

SCRQ-24-00000602

**Electronically Filed
Supreme Court
SCRQ-24-0000602
04-NOV-2024
06:27 PM
Dkt. 52 OB**

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN RE MAUI WILDFIRE CASES

Special Proceeding No. 2CSP-23-0000057
(Reserved Questions)

**COURT'S ORDER FOR RESERVED
QUESTION PURSUANT TO RULE 15,
HAWAII RULES OF APPELLATE
PROCEDURE**

SECOND CIRCUIT COURT

HON. PETER CAHILL

PLAINTIFFS' OPENING BRIEF

APPENDICES

STATEMENT OF RELATED CASES

CERTIFICATE OF SERVICE

Jesse Max Creed (011731)
PANISH SHEA RAVIPUDI, LLP
24 N. Church St.
Wailuku, HI 96793
jcreed@panish.law
Telephone: 808-242-4049

Jan Apo (002960)
APO, RECK & KUSACHI
24 North Church Street, Suite 302
Wailuku, HI 96793
jankapo@jankapo.com
Telephone: 808-244-6073

Jacob Lowenthal (009945)
LOWENTHAL & LOWENTHAL, LLLC
122 Maa St. B
Kahului, HI 96732
jkl@lowenthal-Hawai'i.com
Telephone: 808-242-5000

Cynthia K. Wong (006053)
CYNTHIA K. WONG, ATTORNEY AT LAW, LLLC
2035 Main Street, Suite 2
Wailuku, HI 96793
cyn@legalmaui.net
Telephone: 808-727-2921

Liaison Counsel for Individual Action Plaintiffs

Aimee M. Lum (008364)
DAVIS LEVIN LIVINGSTON
851 Fort Street, Suite 400
Honolulu, Hawai'i 96813
alum@davislevin.com
Telephone: (808) 524-7500

Co-Counsel on the Briefs

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTS AND PROCEEDINGS BELOW.....	5
A. The Fires and the Lawsuits	5
B. The Settlement and Trial Court Proceedings to Facilitate the Settlement.....	7
C. The Timing Question	10
III. ARGUMENT.....	12
A. First Reserved Question: <i>Yukumoto</i> Extends to Property Insurers	12
1. The Plain Language of HRS §§ 431:13-103(a)(10) and 663-10 Applies to Property and Casualty Insurers.....	12
2. The Legislative History of Sections 431:13-103(a)(10) and 663-10 Supports Applying Those Provisions to Property Insurers.....	16
3. <i>Yukumoto</i> Sidestepped the Question of Whether its Interpretation of the Legislature’s Comprehensive Procedure for Collateral Source Claims Applied to Property Insurers Because It Did Not Need to Reach the Question.....	19
4. Application of <i>Yukumoto</i> ’s Holdings to Property Insurers Furthers the Legislature’s Purpose of Establishing a Fair, Uniform, and Comprehensive Procedure for Resolving Collateral Source Claims	20
B. Second Reserved Question: Plaintiffs’ Release of Defendants Binds Subrogating Insurers Under <i>State Farm</i> Because the Global Settlement Does Not Actually Prejudice the Subrogating Insurers’ Right to Reimbursement	23
C. Third Reserved Question: Hawai’i Law Requires Insureds to be Made Whole Before Insurers Can Pursue Subrogation Rights Against Third- Party Tortfeasors	26
1. Insofar as All Damages, Insured and Uninsured, Must be Recovered to Make Plaintiffs Whole, Plaintiffs will not be Made Whole by the Global Settlement	29
2. Equity and Public Policy Dictate that Plaintiffs be Made Whole Before Insurers (Namely, Subrogation Claimants) Can Assert Subrogation Rights and/or a Right of Reimbursement	32
IV. CONCLUSION.....	35

TABLE OF AUTHORITIES

HAWAII CASES

Adams v. CDM Media USA, Inc., 135 Hawai‘i 1, 346 P.3d 70 (2015)..... 15

AIG Hawai‘i Ins. Co. v. Rutledge, 87 Hawai‘i 337, 955 P.2d 1069 (App. 1998)..... 5, 26, 29

Bynum v. Magno, 106 Hawai‘i 81, 101 P.3d 1149 (2004)..... 35

First Ins. Co. v. Haw., Ltd. v. Jackson, 67 Haw. 165, 681 P.2d 569 (1984) 24, 30

Fujioka v. Kam, 55 Haw. 7, 514 P.2d 568 (1973) 19

Kam Chin Chun Ming v. Kam Hee Ho, 45 Haw. 521, 371 P.2d 379 (1962)..... 25

State Farm Fire & Casualty Co. v. Pacific Rent-All, Inc., 90 Hawai‘i 315, 978 P.2d 753
(1999)..... passim

State v. Hussein, 122 Hawai‘i 495, 229 P.3d 313 (2010) 18

State v. Valdivia, 95 Hawai‘i 465, 24 P.3d 661 (2001) 12

State v. Wheeler, 121 Hawai‘i 383, 219 P.3d 1170 (2009)..... 12

Tabieros v. Clark Equip. Co., 85 Hawai‘i 336, 944 P.2d 1279 (1997) 35

Yukumoto v. Tawarahara, 140 Hawai‘i 285, 400 P.3d 486 (2017)..... passim

OTHER CASES

Amerisure Ins. Co. v. Navigator Ins. Co., 611 F.3d 299 (5th Cir. 2010)..... 20

Barnes v. Indep. Auto. Dealers of Cal., 64 F.3d 1389 (9th Cir. 1995)..... 28

Blue Cross & Blue Shield of Neb., Inc. v. Dailey, 687 N.W.2d 689 (Neb. 2004) 34

Bradley v. H.A. Manosh Corp., 601 A.2d 978 (Vt. 1991) 27

Brandon v. W. Bend Mut. Ins. Co., 681 N.W.2d 633 (Iowa 2004)..... 28

Bush v. Richardson, 484 S.E.2d 490 (W. Va. 1997)..... 28, 34

Canfora v. Coast Hotels & Casinos, Inc., 121 P.3d 599 (Nev. 2005) 28

Complete Health, Inc. v. White, 638 So.2d 784 (Ala. 1994) 30, 33

Duncan v. Integon Gen. Ins. Corp., 482 S.E.2d 325 (Ga. 1997) 28, 34

Fireman’s Fund Ins. Co. v. TD Banknorth Ins. Agency, Inc., 72 A.3d 36 (Conn. 2013)..... 28, 34

<i>Fischer v. Steffen</i> , 797 N.W.2d 501 (Wis. 2011).....	33, 34
<i>Franklin v. Healthsource of Ark.</i> , 942 S.W.2d 837 (Ark. 1997)	27
<i>Garrity v. Rural Mut. Ins. Co.</i> , 253 N.W.2d 512 (Wis. 1977).....	34
<i>Hare v. State</i> , 733 So. 2d 277 (Miss. 1999).....	28
<i>Health Cost Controls, Inc. v. Gifford</i> , 239 S.W.3d 728 (Tenn. 2007).....	30, 31, 32
<i>Jones v. Nationwide Prop. & Cas. Ins. Co.</i> , 32 A.3d 1261 (Pa. 2011).....	27
<i>Leader Nat. Ins. Co. v. Torres</i> , 779 P.2d 722 (Wash. 1989)	32, 33
<i>Lopez v. United Auto. Ins. Co.</i> , 427 S.W.3d 154 (Ark. Ct. App. 2013).....	30
<i>Magsipoc v. Larsen</i> , 639 So. 2d 1038 (Fla. Dist. Ct. App. 1994).....	28
<i>Petta v. ABC Ins. Co.</i> , 692 N.W.2d 639 (Wis. 2005)	passim
<i>Porter v. McPherson</i> , 479 S.E.2d 668 (W. Va. 1996)	34
<i>Progressive W. Ins. Co. v. Superior Ct.</i> , 135 Cal. App. 4th 263 (2005).....	27
<i>Riley v. State Farm Mut. Auto. Ins. Co.</i> , 381 S.W.3d 840 (Ark. 2011)	27
<i>Rimes v. State Farm Mut. Auto. Ins. Co.</i> , 316 N.W.2d 348 (Wis. 1982).....	passim
<i>S. Farm Bureau Cas. Ins. Co. v. Tallant</i> , 207 S.W.3d 468 (Ark. 2005).....	33
<i>Schonau v. GEICO Gen. Ins. Co.</i> , 903 So. 2d 285 (Fla. Dist. Ct. App. 2005).....	33
<i>Schulte v. Frazin</i> , 500 N.W.2d 305 (Wis. 1993).....	30, 32, 33
<i>Shelter Ins. Cos. v. Frohlich</i> , 498 N.W.2d 74 (Neb. 1993)	34
<i>Swanson v. Hartford Ins. Co. of Midwest</i> , 46 P.3d 584 (Mont. 2002).....	28, 34
<i>Thiringer v. American Motors Ins. Co.</i> , 588 P.2d 191 (Wa. 1978)	25, 28, 33
<i>Turco v. Schuning</i> , 716 N.W.2d 415 (Neb. 2006)	28
<i>USF & G. v. Maggiore</i> , 299 A.D.2d 341 (N.Y. App. Div. 2002).....	34
<i>Werner v. Latham</i> , 752 A.2d 832, 835 (N.J. App. Div. 2000).....	28
<i>Wilson v. Educators Mut. Ins. Ass’n</i> , 436 P.3d 144 (Utah Ct. App. 2018).....	28
<i>Wimberly v. Am. Cas. Co.</i> , 584 S.W.2d 200 (Tenn. 1979).....	28
<i>Wine v. Globe Am. Cas. Co.</i> , 917 S.W.2d 558, 562 (Ky. 1996).....	27

HAWAI‘I REVISED STATUTES AND HAWAI‘I RULES

Hawai‘i Rule of Appellate Procedure 15(a).....	10
HRS § 431:1-215	15
HRS § 431:3-203	15
HRS § 431-13:103(a)(10).....	passim
HRS § 641-1(b).....	10
HRS § 663-10	passim

LEGISLATIVE MATERIALS

2000 Haw. Sess. Laws Act 29 (2000).....	14, 15
2002 Haw. Sess. Laws Act 228 (2002).....	15
H. Stand. Comm. Rep. No. 1330-00 (2000)	14
H. Standing Comm. Rpt. 636-00 (2000).....	17
S. Standing Comm. Rpt. No. 2743 (2000).....	17
Sen. Comm. Rep. 2743 (2000).....	17
Sen. Comm. Rep. 1330-00 (2000)	20
Sen. Judiciary Comm. Rep. No. 1005 (2001).....	18
Stand. Com. on Commerce, Cons. Prot. & Hous. Rep. No. 107 (2001).....	18
Stand. Com. On Commerce, Cons. Prot., & Hous. Rep. No. 107 (2001).....	17

PERIODICAL MATERIALS

Dan Nakaso, “Disaster insurance drove billions in revenue for companies,” Honolulu Star-Advertiser (Sept. 1, 2024).....	1, 3
Kevin Knodell, “Overall costs for Maui Wildfires are expected to top \$12 billion,” Honolulu Star-Advertiser (Aug. 10, 2024)	29
Nat’l Ass’n of Ins. Comm’rs, <i>Report on Profitability by Line by State in 2022</i> (Mar. 2024)	3
Santurl Nerkar & Emily Flitter, “Hawaii Wildfires Spur insurers to Reassess the State’s Risk,” N.Y. Times (Aug. 25, 2023)	3
Shawn Hubler, “Maui Wildfire Plaintiffs Reach \$4 Billion Settlement as Anniversary Nears,” N.Y. Times (Aug. 2, 2024)	29

Stewart Yerton, “Maui Judge Clears Path To Final \$4.04 Billion Settlement Of Wildfire Cases,” Honolulu Civil Beat (Aug. 13, 2024) 3

OTHER AUTHORITIES

4 R. Long, *The Law of Liability Insurance*, § 23.02[2] 27

Restatement (Second) of Torts § 928 (1977)..... 35

PLAINTIFFS' OPENING BRIEF

“And remember that while [the insurance companies] make these giant profits, they don’t send refunds back to the people when there aren’t incidents. They invest in the stock market or pay their CEO \$25 million like this year at State Farm. But when a tragedy occurs they want to recoup payments that go to the victims. It’s fundamentally unfair, and they call it subrogation.”

- Governor Josh Green¹

I. INTRODUCTION

On August 2, 2024, a historic settlement of the Maui Fire claims for \$4.037 billion was achieved in record time for wildfire litigation. Attorneys representing thousands of individual claimants signed on to the proposed global settlement (the “**Global Settlement**”), as did Defendants in this sprawling litigation, including the State of Hawai‘i, the County of Maui, the Trustees of the Bishop Estate, the State’s electric utility Hawaiian Electric and the State’s telecommunication providers Spectrum Oceanic, LLC and Hawaiian Telcom, Inc. The settlement was reached after mediators appointed by the Circuit Court engaged in multiple in-person and virtual mediation sessions over the course of months. The settlement reflected the “informed view” of those mediators of the “maximum amount that the [Defendants] could fairly and practicably contribute based on the facts and circumstances of the case, including potential exposure, availability of insurance, and limitations on ability to pay.” (CC Dkt. No. 1740, Decl. of Jesse Creed (“**Creed Decl.**”), Ex. 1 (“**Term Sheet**”) ¶ 1(b) (Recitals)). Contributions to the Global Settlement by the Defendant had “exhaust[ed] available insurance for the payment of Maui Fires Claims and/or include[d] a Paying Party’s own funds.” *Id.* Today, after extensive monthslong negotiations under the supervision of the mediators, Liaison Counsel, over thirty law firms for the Maui Fire victims, and the Defendants entered into a final, binding historic settlement framework for the resolution of all Maui Fire claims. This agreement is attached hereto as Appendix 1 to accurately address the Court’s timing question.

The Global Settlement confers enormous benefits to all involved. Of paramount importance, it offers meaningful and swift justice delivered in record time to the victims of the worst wildfire in Hawai‘i’s history. These victims need resources to rebuild their lives, their

¹ Dan Nakaso, “Disaster insurance drove billions in revenue for companies,” Honolulu Star-Advertiser (Sept. 1, 2024), available <https://www.staradvertiser.com/2024/09/01/hawaii-news/disaster-insurance-drove-billions-in-revenue-for-companies> (last visited Nov. 4, 2024).

homes, and the Lahaina community. The Global Settlement avoids the financial and emotional toll of protracted litigation for all parties. It saves the State's electric utility Hawaiian Electric and the County of Maui from the brink of bankruptcy. It avoids the existential danger protracted litigation and delayed justice poses to the people of Maui and core institutions of the State of Hawai'i.

The Subrogating Insurers, representing over 160 of the insurance companies that issued policies to the fire victims, fully participated in the court-supervised mediation. Yet, the Subrogating Insurers have made concerted, transparent efforts to interfere with and block the Global Settlement so that they can continue to pursue subrogation claims against the Defendants. These efforts, if allowed to proceed, will torpedo the Global Settlement and divert recovery to the Subrogating Insurers without determining if the policyholders have been fully compensated for their losses.

To advance their own interests, the Subrogating Insurers refused to join in the Global Settlement or accept the mediators' proposal and have fought their policyholders at every turn. The Subrogating Insurers then fought their policyholders' motion that the insurers' claims must proceed as the insurer did in *Yukumoto v. Tawarahara*, 140 Hawai'i 285, 400 P.3d 486 (2017), which confines the insurers' subrogation rights to Hawai'i Revised Statutes ("HRS") § 663-10. Without this ruling, the Global Settlement fails in accordance with its terms. After the Court granted their policyholders' motion to apply *Yukumoto* to property insurers with respect to Maui Fire claims, the Subrogating Insurers fought their policyholders in seeking to petition this Court to take the Reserved Questions. Without a resolution of these Reserved Questions that is favorable to Plaintiffs, the Global Settlement also fails. The Subrogating Insurers know this, because it's written into the Term Sheet. They wish for the Global Settlement to fail. The Subrogating Insurers then fought Defendants' motion to transfer their subrogation actions from the First Circuit (self-exiled from their policyholders in the Second Circuit) to the Second Circuit. And literally the day after Judge Ochiai granted the transfer to Judge Cahill and while these Reserved Questions were pending, the Subrogating Insurers began forum shopping by seeking to intervene in the federal class action case, thereby generating a federal avenue of appeal, in order to circumvent the Second Circuit Court's ruling extending *Yukumoto* to the Subrogating Insurers and to sidestep this Court's jurisdiction over state law questions.

Despite the Subrogating Insurers' conspicuous efforts to thwart the Global Settlement,

the three Reserved Questions are relatively simple and straightforward. All three questions reflect the fundamental principle that subrogation is a creature of equity whose rules can be modified by legislative enactment (like HRS §§ 431-13:103(a)(10) and 663-10) or guided by principles of equity. Where policyholders have paid the insurers to accept the risk of loss of a fire to their property, Hawai‘i law and principles of equity demand that the insurers avoid competing with their policyholders for recovery and bear the burden of under-compensation for any losses. Allowing the insurers to compete with their policyholders means the policyholders bear the risk of under-compensation for their losses, which is contrary to Hawai‘i law and the law of the majority of other jurisdictions.

This rule is only fair in light of the extraordinary profits the Subrogating Insurers have earned in one of the most lucrative insurance markets in the United States. The Subrogating Insurers have reaped \$38 billion in insurance premiums and \$23 billion in net profits over the past twenty years.² The Hawai‘i insurance industry is one of the most profitable in the nation.³ And some of the Subrogating Insurers have no stake in this case, having sold their subrogation claims to Wall Street hedge funds, selling, in Governor Green’s words, “tragedy and misery to Wall Street.”⁴

² See Nakaso, “Disaster insurance drove billions in revenue for companies,” Hon. Star Advertiser (Sept. 1, 2024), available <https://www.staradvertiser.com/2024/09/01/hawaii-news/disaster-insurance-drove-billions-in-revenue-for-companies> (last visited Nov. 4, 2024) (reporting based on data provided by the Department of Commerce and Consumer Affairs that insurers have made “more than \$23.6 billion” over the past 20 years); Santurl Nerkar & Emily Flitter, “Hawaii Wildfires Spur insurers to Reassess the State’s Risk,” N.Y. Times (Aug. 25, 2023), available at <https://www.nytimes.com/2023/08/25/business/hawaii-fires-insurance.html> (last visited Nov. 4, 2024).

³ See Nat’l Ass’n of Ins. Comm’rs, *Report on Profitability by Line by State in 2022* (Mar. 2024), available at <https://content.naic.org/sites/default/files/publication-pbl-pb-profitability-line-state.pdf> (last visited Nov. 4, 2024) at p. 203 (showing Hawai‘i had in 2022 highest total underwriting profit for homeowners insurance and highest return on net worth of the 50 States); *id.* at p. 207 (showing Hawai‘i had in 2022 third highest total underwriting profit for commercial multiple peril lines of the 50 States); *id.* at p. 209 (showing Hawai‘i had in 2022 fifth highest total underwriting profit for fire lines of the 50 States); *id.* at p. 211 (showing Hawai‘i had in 2022 second highest total underwriting profit for allied lines, i.e. coverage bought in conjunction with fire, of the 50 States).

⁴ Stewart Yerton, “Maui Judge Clears Path To Final \$4.04 Billion Settlement Of Wildfire Cases,” Honolulu Civil Beat (Aug. 13, 2024), available at <https://www.civilbeat.org/2024/08/maui-judge-clears-path-to-final-4-04-billion-settlement-of-wildfire-cases/> (last visited Nov. 4, 2024).

With this context in mind, resolution of any one of the following Reserved Questions in favor of Plaintiffs will put an end to the money-grab by the Subrogating Insurers and satisfy a necessary condition to the Global Settlement:

Question 1 (the “First Reserved Question”): Does the holding of *Yukumoto v. Tawarahara*, 140 Hawai‘i 285, 400 P.3d 486 (2017) that limited the subrogation remedies available to health insurers to reimbursement from their insureds under HRS § 663-10 and barred independent actions against tortfeasors who settled with the insureds extend to property and casualty insurance carriers?

Answer: Yes. *Yukumoto* interpreted HRS §§ 431-13:103(a)(10) and 663-10 to expressly forbid Hawaii Medical Service Association (“HMSA”) from pursuing an independent action against a tortfeasor after the tortfeasor settled with HMSA’s policyholder. *Id.* at 295-96, 400 P.3d at 496-97. The Court required HMSA to pursue its subrogation rights through HRS § 663-10. The Court held that HMSA’s “sole rights to reimbursement *and* subrogation are provided for in those statutes,” referring to HRS §§ 663-10 and 431-13:103(a)(10). *Id.* (emphasis added). By their very terms, those statutes apply equally to property insurers.⁵ There is nothing in those statutes or their legislative history that indicate an exemption for property insurers. As a result, the Subrogation Insurers are limited to seeking reimbursement from their policyholders, rather than a direction against the tortfeasors.

Question 2 (the “Second Reserved Question”): Is a property and casualty insurer’s subrogation right of reimbursement prejudiced by its insured’s release of any tortfeasor when the settlement documents and release preserve those same rights under HRS § 663-10?

Answer: No. In *State Farm Fire & Casualty Co. v. Pacific Rent-All, Inc.*, 90 Hawai‘i 315, 978 P.2d 753 (1999), this Court held that a policyholder’s release of a tortfeasor is binding on its insurer unless the “insurer proves . . . that the insurer’s subrogation right of reimbursement is actually prejudiced by the insured’s release of the tortfeasor.” *Id.* at 330, 978 P.2d at 768. The “right of reimbursement” refers to the “right of repayment *against the insured*,” whereas “subrogation allows the insurer to stand in the shoes of the insured.” (Subro. Ins. Br., CC Dkt. No. 1905 at p. 6 (quoting 16 *Couch on Ins.* § 226:4)). Because the Global Settlement preserves the Subrogating Insurers’ “right of reimbursement,” the releases of their policyholders will be

⁵ Reference to the property insurers includes casualty insurers.

binding on the Subrogating Insurers under *State Farm*. Additionally, because the Subrogating Insurers have not shown and cannot show that their policyholders have been or will be fully compensated or “made whole,” the releases by their policyholders do not prejudice their claims.

Question 3 (the “Third Reserved Question”): Under the circumstances of the Maui Fire Cases and the terms of the “Global Settlement,” does the law of the State of Hawai‘i require that insureds be made whole for all claimed injuries or damages before their insurers can pursue a subrogation right of recovery or reimbursement against a third-party tortfeasor?

Answer: Yes. The made-whole doctrine recognizes that, in cases where an insured has not been fully compensated for all their losses, and insurer has no right to subrogation or reimbursement. In *State Farm*, this Court endorsed the made-whole doctrine as an independent bar to subrogation claims: “The *general rule* is that the subrogated insurer is entitled to no subrogation, or to reduced subrogation, if the result of full subrogation would be to cause the insured to be less than fully compensated for the loss.” 90 Hawai‘i at 329 n.8, 978 P.2d at 767 n.8 (quoting *The Law of Liability Insurance*, § 23.02[2], at 23.8-13) (emphasis added). The Intermediate Court of Appeals (“ICA”) has endorsed the made-whole doctrine in the context of underinsured motorist coverage. *AIG Hawai‘i Ins. Co. v. Rutledge*, 87 Hawai‘i 337, 345-46, 955 P.2d 1069, 1077-78 (App. 1998) (noting that “commentators and courts have expressed support for the principle of full, yet not duplicative, recovery of damages” such that” if “*the total damages [suffered by the insured] exceed the sources of collection, certainly the rights of the insured to be fully compensated should not be impaired*”). Where the policyholder has not been made whole for all losses when combining all sources of collection, there is no risk of a double recovery and, therefore, subrogation serves no purpose in that situation.

II. FACTS AND PROCEEDINGS BELOW

A. The Fires and the Lawsuits

The reason for these lawsuits is well-known to everybody in Hawai‘i, if not the world. On August 8, 2023, a series of fires began on the island of Maui after several energized power lines ignited desiccated vegetation during foreseeably dry and windy conditions (“Maui Fires”). Shortly thereafter, the victims of the Maui Fires began making first-party claims on property insurance carriers and filing lawsuits against the parties they believed were responsible for causing the Maui Fires. As of the time of Plaintiffs’ original motion, the number of lawsuits proliferated rapidly, reaching over 600 lawsuits (each of which may contain multiple plaintiffs).

(Creed Decl. ¶ 3). As of the same date, the number of victims represented by lawyers with unfiled complaints is believed to be close to 10,000. (*Id.*).

On October 27, 2023, to facilitate the orderly administration of the onslaught of lawsuits never before seen by the Hawai‘i judiciary, the Circuit Court⁶ entered an Order Granting Ex Parte Petition for the Coordination of Individual Plaintiffs Maui Fire Cases. (*Id.* at Ex. 2). In that Order, the Circuit Court determined with respect to the Individual Plaintiffs Maui Fires Cases that it has the inherent authority to issue complex case management order(s) under the Rules of the Circuit Courts of the State of Hawai‘i and that all such cases be coordinated within a Special Proceeding so that the Circuit Court “may issue complex case management orders that can be applicable to all such cases within the coordinated filings.” (*Id.* at Ex. 2 ¶¶ 1-3).

On January 9, 2024, Court Appointed Liaison Counsel filed a Master Complaint in this Court under Special Proceeding No. 2CSP-23-0000057. (*Id.* at Ex. 4). The Master Complaint identified as parties responsible for causing the Maui Fires: Hawaiian Electric Industries, Inc. and certain of its affiliates, Spectrum Oceanic, LLC, Hawaiian Telcom, Inc. and certain of its affiliates, Trustees of the Bishop Estate, Hawai‘i Housing Finance and Development Corporation, the State of Hawai‘i, and the County of Maui. (*Id.* at Ex. 4 ¶¶ 4-17).⁷

On January 12, 2024, over 140 insurance companies (“Subrogating Insurers”) filed a separate lawsuit in the Circuit Court of the First Circuit, seeking to recover compensation for the payments made to fire victims under their insurance contracts. (*Id.* at Ex. 5). The Subrogating Insurers’ complaint failed to allege the identity of the insureds, the addresses of the properties at issue, the amount of the losses paid or incurred, or the fact that their insureds had been “made whole” for their losses.⁸ (*Id.*). The Subrogating Insurers filed an action seeking to stand in the shoes of their insureds *without* joining the insureds as parties, potentially impairing the claims of the insureds in that an adjudication on the merits of the Subrogating Insurers’ claims may bar

⁶ “Circuit Court” means the Second Circuit unless otherwise indicated.

⁷ On June 28, 2024, after granted leave by the Court, Plaintiffs filed a First Amended Master Complaint identifying Charter Communications, Inc., an affiliate of Spectrum Oceanic, LLC, as a party defendant. (CC Dkt. No. 1740, Creed Decl. ¶ 7).

⁸ Nor could they. In many cases, the insurers paid full policy limits, prima facie evidence that the insured had not been made whole on uninsured losses alone. (CC Dkt. No. 1740, Creed Decl., Ex. 12 ¶¶ 4, 7, 21).

their insureds' claims and to the extent that the Subrogating Insurers recover funds from tortfeasors with limited capacity to pay their own insureds. (*Id.*).

As occurred at a massive scale in respect of the PG&E wildfires, it appears based on publicly available information that “significant” insurance carriers have already sold or are in active efforts to sell their Maui Fire subrogation claims to Wall Street hedge funds. (*Id.* at Ex. 6-8). In fact, over \$75 million in sales of Maui Fire subrogation claims, representing probably \$340 million in subrogation payouts, appears to have been arranged by a single dealer.⁹ In PG&E wildfires, hedge funds bought billions of dollars of subrogation insurance claims, whereby the carriers sold their claims to hedge funds at a steep discount. In fact, one hedge fund, the Baupost Group, bought \$6.8 billion worth of subrogation claims in the PG&E fires – by far the largest subrogation claimholder – according to publicly-filed documents in the bankruptcy proceeding. (*Id.* at Ex. 9 at 9). Many other hedge funds piled in, including Attestor Capital LLP (\$834 million in claims) and Strategic Value Partners, LLC (\$132,030,617.58). (*Id.* at Ex. 9 at 8, 20). Thus, the insurance carriers have a practice of selling their claims to funds that do not operate going concerns in Hawai‘i. In addition, Hawai‘i insurance companies have made \$4.2 billion in profits over the past ten years, according to publicly available data. (*Id.* at Ex. 12 ¶¶ 1, 12, *supra* fn. 4).

B. The Settlement and Trial Court Proceedings to Facilitate the Settlement

On April 17, 2024, the Circuit Court appointed the Hon. Louis M. Meisinger, Ret. as special settlement master under its complex-court authority set forth in Hawai‘i Rules of the Circuit Courts 12(c). (*Id.* at Ex. 10). The Circuit Court also appointed Keith Hunter as “co-administrator of all mediation efforts.” (*Id.*). On May 9, 2024, the Circuit Court appointed the Hon. Daniel Buckley, Ret. as a co-special settlement master. (*Id.* at Ex. 11).

These mediation professionals convened all the parties as well as subrogation carriers in an effort to mediate a resolution of the Maui Fires Cases. (Term Sheet ¶ 1 (Recitals)). Individual Plaintiffs, Class Plaintiffs, Subrogating Insurers, and Defendants all engaged over the course of months in multiple in-person and virtual mediation sessions. (Term Sheet ¶ 1(c)).

On July 23, 2024, Liaison Counsel requested a status conference regarding the mechanics

⁹ The evidence shows that the claims are being sold at a 22%-25% discount. Therefore, the roughly \$75 million in publicized sale value represents a 22%-25% discount of the value of the total claim.

of resolving subrogation rights and liens in the context of a potential global settlement. (CC Dkt. No. 1740, Creed Decl. at Ex. 14). On July 26, 2024, the Circuit Court held a status conference. (*Id.* at Ex. 15). Shortly thereafter, the Circuit Court issued a Sua Sponte Order. (*Id.*). In the Sua Sponte Order, after reciting the history of this complex litigation and describing the fundamental principles of “subrogation claims,” the Circuit Court stated:

Thus, despite the filing of a separate lawsuit pending in a different circuit, **THIS COURT FINDS AND CONCLUDES** that it has jurisdiction, authority ***and legal duty*** to review and resolve subrogation liens in the event of settlement of any Maui Fire Case. This authority flows from HRS Sec. 663-10. Because the subrogation claims are inextricably tied to the just, efficient, and economic determination of all the Maui Fire Cases, this Court has the authority to bring together all necessary persons and entities to achieve that result. This authority also derives from the designation of all the Maui Fire Cases as complex matters pursuant to HRCC Rule 12.

(*Id.* at 3).

On August 2, 2024, Plaintiffs and Defendants entered into the Global Settlement. The Global Settlement provides for the payment by the Defendants of \$4.037 billion to the Plaintiffs (as well as an additional estimated \$800 million of consideration in the form of a waiver by the County of its affirmative claims). (Term Sheet ¶ 3). No Subrogating Insurer has agreed to the Term Sheet or the Global Settlement.

Among other things, as relevant here, the Global Settlement also requires as a condition to payment an order that under Hawai‘i law, if the Settlement Agreement between the Plaintiffs and Defendants becomes effective, “(i) the Subrogation Plaintiffs’ exclusive remedy for any Maui Fires Claims would be asserting liens, if any, against their policyholders for their respective shares of the Aggregate Settlement Amount, and (ii) the Subrogation Plaintiffs would be barred from bringing or maintaining any Maui Fires Claims against the [Defendants].” (Term Sheet ¶ 4(b)). This condition embodies existing law of Hawai‘i: if plaintiffs assert their own claim against a tortfeasor and settle directly with a tortfeasor, the subrogation lienholder is limited to seeking reimbursement directly from the policyholders. *Yukumoto*, 140 Hawai‘i at 295-96, 400 P.3d at 496-97.

In addition, the Global Settlement provides, as a corollary to the order sought in Circuit Court, that “The Parties will use best efforts to obtain, within 90 days or as soon thereafter as possible, from each trial court where any Subrogation Plaintiff’s claim has been filed, judgments,

orders, or opinions dismissing with prejudice all claims by Subrogation Plaintiffs against the Paying Parties.” (Term Sheet ¶ 4(c)). The Global Settlement requires as a condition to payment that all these orders become “final and unappealable,” which means that: “(aa) all parties with a right to appeal that order, judgment or opinion waive their right to do so; (bb) the time to appeal expires with no appeal filed; or (cc) the judgment, order, or opinion is affirmed by an appellate court with no further possibility of appeal.” (Term Sheet ¶ 4(d)).

Finally, the Global Settlement will require each plaintiff who receives a payment from the Global Settlement to “indemnify the Defendants with respect to any individual liens asserted by any subrogated insurer against the IP arising out of or relating to the Maui Fires.” (Term Sheet ¶ 5). In other words, if a plaintiff receives a recovery, the Subrogating Insurers will, in effect, be suing the plaintiff who is the insurer’s policyholder to recover payments, setting up direct competition between the Subrogating Insurers and the plaintiff over the funds at issue.

On August 2, 2024, Individual Action Plaintiffs filed a motion (the “**Motion**”) seeking an order channeling the subrogation claims through the settlements of the Individual Action Plaintiffs under Hawai‘i law. (*See* CC Dkt. Nos. 1740, 1741). The Subrogating Insurers, the Dentist Insurance Company, and Hyundai Marine & Fire Insurance Company, Ltd. filed oppositions. (CC Dkt. Nos. 1905, 1907, 1909).

On August 13, 2024, the Circuit Court held a hearing on Plaintiffs’ Motion. On August 19, the Circuit Court entered an order granting the Motion, setting forth its findings and conclusions. (CC Dkt. No. 1954). In its Order, the Circuit Court ruled that it had “exclusive jurisdiction, authority, and legal duty to review and resolve any and all subrogation claims or liens” in the event a settlement between Plaintiffs (who are the insureds) and Defendants becomes effective. (*Id.* at ¶ 2). The Circuit Court further rejected the Subrogating Insurers’ jurisdiction objection, ruling that it “has jurisdiction over the subrogating insurers because these entities are in privity with their insureds” and finding that the indemnity required of the plaintiffs effectively means that the subrogation insurers will be required to make claims against their settling insureds. (*Id.* at ¶ 3).

As to the merits of the Motion, the Circuit Court ruled that HRS §§ 430:13-103(a)(10) and 663-10 “do not solely apply to health insurers” because the statutes “cover[] all insurers in the business of insurance except those expressly exempted” and “[p]roperty and casualty insurers are not expressly exempted, just as health insurers [in *Yukumoto*] are not expressly exempted.”

(*Id.* at ¶ 4). The Circuit Court followed the reasoning and orders of the trial court in *Yukumoto*, which this Court affirmed in their entirety, specifically that HRS § 663-10 provides “the ‘exclusive remedy’ for the Subrogation Insurers to recover past benefits paid.” (*Id.* at ¶ 7 (quoting *Yukumoto*)). The Circuit Court noted that the trial court in *Yukumoto* “ordered the dismissal of the subrogating insurers’ direction action against the tortfeasors in light of the plaintiff’s settlement with the tortfeasor,” and this Court unanimously “affirmed this dismissal.” (*Id.* at ¶ 8). Finally, the Circuit Court found, “[b]ased upon the evidence before me and the history of mediation and settlement discussions, the proposed settlement is not collusive,” but “reflects the outcome of a settlement process supervised by court-appointed mediators who worked with all parties, including Subrogating Insurers, to develop a global mediators’ proposal, and that the aggregate settlement amount in the proposed settlement reflects that proposal.” (*Id.* at ¶ 9).

Thereafter, in order to satisfy the “final and unappealable order” requirement of the Global Settlement, on August 21, 2024, Plaintiffs filed a motion for reserved questions under Hawai‘i Rule of Appellate Procedure (“HRAP”) 15(a) or for leave to take an interlocutory appeal under HRS § 641-1(b). (CC Dkt. No. 1958). Here too, the Subrogating Insurers interfered with Plaintiffs’ efforts to finalize the Global Settlement, opposing the motion. (CC Dkt. No. 1971). Following a hearing on August 30, 2024, the Circuit Court granted its own motion for reserved questions to the Hawai‘i Supreme Court under HRAP 15(a), seeking answers to the three Reserved Questions. On September 25, 2024, this Court accepted the three Reserved Questions.

On September 18, 2024, Judge Ochiai, who was presiding over the Subrogating Insurers’ direct action, heard Defendants’ motion to transfer their action to the Second Circuit in light of Judge Cahill’s orders. *See Amguard Ins. Co., et al. v. Maui Elec. Co., Ltd., et al.*, Case No. 1CCV-24-0000068 DEO, Dkt. No. 348. Over the Subrogating Insurers’ vociferous objection, on October 21, Judge Ochiai issued an order transferring venue to the Second Circuit Court, ruling that it would be “more fair and equitable” for the Subrogating Insurers’ claims to be adjudicated in coordination with their policyholders’ claims in light of the Global Settlement. *Id.* at ¶ 4.

C. The Timing Question

This Court requested that Plaintiffs “specify the dates for the condition precedent described in paragraph 4 of the Settlement Term Sheet.” As an initial matter, the Term Sheet contemplated a final agreement. As of today’s date, the Parties to the Term Sheet have executed

two final, binding agreements: the Individual Settlement Agreement, attached hereto as Appendix 1, and the Class Settlement Agreement, attached hereto as Appendix 2. Article V: Subrogation Claims and Indemnification, which is identical in both agreements, contains the relevant deadline of May 19, 2025. This deadline reflects the urgency by which Hawaiian Electric must proceed with this settlement to avoid bankruptcy proceedings. A bankruptcy of Hawaiian Electric would be prejudicial to the finality of the settlement as well the victims of the Maui Fires, delaying justice for years.

The deadline in the Global Settlement Agreements mirrors the language in the Term Sheets. The Global Settlement Agreements requires **by May 19, 2025** that **only one of the two** following requirements is met:

5.1.1 Each and every Subrogation Plaintiff executes and delivers to the Parties a written agreement approved by the Parties in which each Subrogation Plaintiff agrees to release all Released Claims against Releasees; or

5.1.2 A decision of a trial court becomes Final and Unappealable holding that, if the Class and Individual Settlement Agreements become effective, (a) the Subrogation Plaintiffs' exclusive remedy for any claims arising out of the Maui Fires would be asserting liens, if any, against their policyholders for their respective shares of the Aggregate Settlement Amount, and (b) the Subrogation Plaintiffs shall be barred from bringing or maintaining any claims arising out of the Maui Fires against the Defendants.

(App'x 1 at ¶¶ 5.1.1 & 5.1.2). As is clear by the Subrogating Insurers' attitude through this litigation, the first alternative requirement will not be met. As for the second alternative requirement, the Parties have agreed that "the order entered by Judge Peter Cahill on August 19, 2024, in the Special Proceeding, constitutes a decision of a trial court that, if rendered Final and Unappealable, would satisfy Section 5.1.2." (*Id.* at 5.4). A judgment, order or opinion is final and unappealable if any of the following occurs: "(1) all Persons with a right to appeal the judgment, order, or opinion have waived or forfeited their right to do so; (2) the time to appeal has expired with no appeal filed; (3) the judgment, order, or opinion has been affirmed by an appellate court with no further possibility of appeal; or (4) all appeals from the judgment, order, or opinion have been dismissed." An answer to any of the Reserved Questions in favor of Plaintiffs will satisfy the relevant conditions.¹⁰

¹⁰ There is another deadline set forth in Paragraph 4 of the Term Sheet and reincorporated into the Global Settlement Agreements. That deadline requires that, before the initial payment date,

III. ARGUMENT

A. **First Reserved Question: *Yukumoto* Extends to Property Insurers**

Judge Cahill ruled that the two statutes at issue in *Yukumoto* – specifically, HRS §§ 431:13-103(a)(10) and 663 – “do not apply solely to health insurers” and apply to “[a]ll insurance companies” including “property and casualty insurance companies,” unless expressly exempted by the statute. CC Dkt. No. 1954 at ¶ 5. Accordingly, the interpretation of those statutes by *Yukumoto* “appl[ies] directly to the claims of the Maui Fires,” resulting in the “subrogation and reimbursement rights” of the Subrogating Insurers being “limited” to the same extent as HMSA’s rights in *Yukumoto*. *Id.* The Circuit Court’s ruling was correct based on the plain language of the statutes, the legislative history, and the purpose of the statutes. In sum, this Court should answer the First Question “yes” and follow the plain language of the statutes that do not exempt property insurers from their terms.

1. **The Plain Language of HRS §§ 431:13-103(a)(10) and 663-10 Applies to Property and Casualty Insurers**

“Statutory interpretation is a question of law reviewable de novo.” *Yukumoto*, 140 Hawai‘i at 291, 219 P.3d at 492 (quoting *State v. Wheeler*, 121 Hawai‘i 383, 390, 219 P.3d 1170, 1177 (2009)) (internal quotation marks omitted). This Court’s construction of statutes is guided by the following rules:

First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

Id. at 291, 400 P.3d at 492 (quoting *Wheeler*, 121 Hawai‘i at 390, 219 P.3d at 1177). The Court “may only resort to the use of legislative history when interpreting an ambiguous statute.” *Id.* (quoting *State v. Valdivia*, 95 Hawai‘i 465, 472, 24 P.3d 661, 668 (2001)).

“all claims brought by any Subrogation Insurer against any Releasee for subrogation arising out of the Maui Fires must be dismissed with prejudice in a Final and Unappealable order.” (App’x 1 at ¶ 5.2). This condition mirrors exactly the result of *Yukumoto*: HMSA’s direct action against the defendant driver was dismissed with prejudice.

This Court interpreted HRS §§ 431:13-103(a)(10) and 663-10 in *Yukumoto*. In *Yukumoto*, the plaintiff suffered catastrophic injuries in an auto collision on March 20, 2014. *Id.* at 287, 400 P.3d at 488. The plaintiff and his wife sued the defendant driver. *Id.* The plaintiff had recovered from two collateral sources: (1) \$325,824.33 for medical expenses paid by HMSA and (2) \$50,000 for underinsured motorist coverage. *Id.* HMSA filed a “Notice of Claim of Lien” in the case. *Id.* On November 6, 2011, the plaintiff settled directly with the defendant driver for policy limits of \$1.1 million. *Id.* The plaintiff filed a “Petition for Determination of Validity of Claim of Lien” under HRS § 663-10, claiming his uninsured “wage loss and general damages claim” was \$4 million. *Id.* The plaintiff contended in his Petition that he remained “undercompensated by approximately \$2,850,000.” *Id.* The plaintiff further contended that the subrogation lienholder “has the burden of proving that the settlement or recovery duplicates medical expenses that were paid by the health insurer” to recover anything on its lien. HMSA, the lienholder, claimed it had an independent “contractual lien or subrogation right[]” permitting it to recover any amount the plaintiffs recovered and filed a motion to intervene to assert claims directly against the defendant driver. *Id.* at 288, 400 P.3d at 489. The motion to intervene was granted and HMSA filed a direct complaint against the defendant driver seeking \$339,255.40. *Id.* at 288-89, 400 P.3d at 489-90. The trial court allowed HMSA to conduct limited “discovery as to whether or not there is duplication [of recovery from the collateral source and the defendant driver] such that their lien rights under [HRS §] 663-10 [are] protected because if it’s duplicative, then there is a reimbursement.” *Id.* at 290, 400 P.3d at 491 (some alterations in original). HMSA conceded that it could not prove that the \$1.1 million recovery by the plaintiffs from the defendant driver was duplicative of the benefits it conferred upon the plaintiff. *Id.*

The defendant driver, the tortfeasor, filed a motion to dismiss HMSA’s action against her. *Id.* The defendant driver “argued that HMSA had no standing to bring an action against her because the court had ruled that HMSA’s subrogation rights were abrogated” by HRS § 663-10. *Id.* In opposition, HMSA argued that “it’s right of subrogation against [the defendant driver] is separate and independent from its right of reimbursement from [the plaintiff] under HRS § 663-10, and will survive the Court’s ruling as to a distribution of the proceeds.” *Id.* The trial court entered two orders that were later appealed by HMSA: (1) an order ruling that when the plaintiff settles with the tortfeasors, HRS § 663-10 “provided HMSA’s exclusive remedy ‘in this particular type of situation’” and to the extent any insurance policy is to the contrary, “HRS §

663-10 [and § 431:13-103(a)(10)] abrogated HMSA’s right of subrogation against [the defendant driver, i.e., the tortfeasor],” *id.* at 288, 400 P.3d at 489, and (2) an order “grant[ing] the motion to dismiss” HMSA’s direct action against the tortfeasor, *id.* at 290, 400 P.3d at 490.¹¹

This Court affirmed both rulings. *Id.* at 299, 400 P.3d at 500. This Court held that HRS §§ 663-10 and 431:13-103(10)(a) “limited” the insurers’ right to subrogation. *Id.* at 295, 400 P.3d at 496. The Court reasoned that HRS § 663-10 had a “comprehensive scope” that was “reflected in the statute’s declaration that it applies broadly to ‘any claim of a lien.’” *Id.* It surveyed the legislative history of HRS §§ 663-10 and 431:13-103(10)(a) to confirm its interpretation of the express language of those statutes: (1) In 2000, the Legislature enacted Act 29, thereby enacting HRS § 431:13-103(10)(a); (2) “Act 29 made clear that collateral sources were required to pay benefits, and *were limited to reimbursement under the statute in third-party personal injury situation;*” and (3) “The legislature also limited reimbursement and subrogation for *all* insurance companies, excluding health insurers in HRS § 431:13-103(10)(a), while also applying the same restrictions to reimbursement and subrogation to health insurers in HRS § 663-10.” *Id.* at 296-97, 400 P.3d at 497-98 (emphasis added). This Court also quoted legislative history showing that the exemption of health insurers from HRS § 431:13-103(10)(a) persuaded the Legislature to expressly extend HRS § 663-10 and therefore “place all of the rights and obligations of health benefit providers and consumers in Section 663-10 for third-party liability situations to create a uniform and comprehensive procedure.” *Id.* at 297, 400 P.3d at 498 (quoting H. Stand. Comm. Rep. No. 1330-00, in 2000 House Journal, at 1515).

The “uniform and comprehensive procedure” was intended to apply to both health insurers and property insurers. At the time Act 29 was enacted, HRS § 431:13-103(10)(a) applied to property carriers but expressly exempted health insurers. *See* 2000 Haw. Sess. Laws Act 29, § 1 at 55 (2000).¹² Therefore, property carriers were subject to the anti-subrogation

¹¹ Plaintiffs or Defendants intend to seek the second order from the appropriate court(s).

¹² Act 29 added the following language:

(10) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that: (A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10; and (B) This paragraph shall not apply to entities licensed under chapter 386 [workers’ compensation carriers], 431:10C [auto carriers], 432, or

regulations set forth in HRS § 431:13-103(10)(a), which expressly incorporated the procedures set forth in HRS § 663-10. To create the “uniform and comprehensive procedure” regulation subrogation rights, the Legislature also expressly “include[ed] health insurance or benefits” as a collateral source regulated by HRS § 663-10.

Because *Yukumoto*’s interpretation of HRS §§ 431:13-103(a)(10) and 663-10 was based on the plain language and legislative history of the statutes, the First Question must determine whether those statutes or their legislative history evince any intent to exempt property insurers. If property insurers are not exempt, then the holdings of *Yukumoto* interpreting those statutes squarely apply. The answer is, of course, that the statutes do not exempt property insurers.

The plain language of HRS § 431:13-103(a)(10) squarely applies to property insurers. Section 431:13-103(a)(10) sets forth an “unfair method[] of competition and unfair or deceptive act[] or practice[] *in the business of insurance.*” HRS § 431:13-103(a). It cannot be disputed that property and casualty insurers are “in the business of insurance,” rendering this prohibition squarely applicable. *See, e.g.*, HRS § 431:1-215 (defining the “transaction of an insurance business” as, e.g., “making of . . . as an insurer, an insurance contract,” “collection of any premium,” and “issuance . . . of contracts of insurance” to Hawai‘i residents). Holding otherwise would exempt property and casualty insurers from a wide swath of regulations in the Insurance Code. *See, e.g.*, HRS § 431:3-203 (requiring foreign insurers, e.g., State Farm and Allstate, to have “continuously, actively, and successfully transacted the *business of insurance* for at least five years” (emphasis added)). Because property and casualty insurers are in the business of insurance, they must comply with every prohibition against unfair methods of competition set forth in HRS § 431:13-103(a) *unless expressly exempted*.

There is no express exemption from HRS § 431:13-103(a)(10) for property insurers. Act 29 originally exempted health insurers, workers’ compensation insurers, and auto insurers. (2000 Haw. Sess. Laws Act 29, § 1). Act 228 eliminated the exemption for health insurers two years later. (2002 Haw. Sess. Laws Act 228, § 1 (2002)). The *expressio unius* doctrine in Hawai‘i applies to a “statutory list of exceptions” to hold that “when the legislature has created certain exceptions, it does not follow that courts have authority to create others.” *Adams v. CDM Media USA, Inc.*, 135 Hawai‘i 1, 18-19, 346 P.3d 70, 87-88 (2015). “[T]he proper inference

432D [both health insurers].

from a list of exceptions to a statute is that the legislature considered the issue of exceptions and, in the end, limited the statute to the ones set forth.” *Id.* (quoting *United States v. Johnson*, 529 U.S. 53, 58 (2000)) (internal quotations omitted). Thus, because an exception for property insurers is not part of the list of exceptions from HRS § 431:13-103(a)(10), the proper inference is that the provision applies to property insurers as much as it does health insurers.

Accepting the premise that HRS § 431:13-103(a)(10) applies to property and casualty insurers means that an affirmative answer to the First Question is a foregone conclusion. *Yukumoto* interpreted HRS §§ 431:13-103(a)(10) and 663-10 to “limit reimbursement and subrogation for *all* insurance companies, excluding [inapplicable statutory exceptions].” *Yukumoto*, 140 Hawai‘i 296, 400 P.3d at 497 (emphasis added). Based on its interpretation of these statutes, this Court affirmed the trial court’s dismissal of the direct subrogation action based on the insured’s settlement with the tortfeasor for the policy limits. If those statutes do not exempt property insurers, then *Yukumoto*’s framework equally applies.

2. The Legislative History of Sections 431:13-103(a)(10) and 663-10 Supports Applying Those Provisions to Property Insurers

The legislative history resolves any doubt that the Legislature intended for *Yukumoto*’s holding to apply to property and casualty insurers. The Subrogating Insurers grossly misstated the legislative history in the trial court, contending that the legislative history’s focus on health insurers proves that the provisions were intended to apply solely to health insurers.

This Court discussed the legislative history of these provisions at length in *Yukumoto*. In 1986, the Legislature enacted HRS § 663-10 as part of a series of tort reform measures. Its purpose was to allow for collateral sources to be reimbursed in order to prevent the insured-plaintiff from obtaining a double recovery. Section 663-10 provided a mechanism for the insured to reimburse the insurer for duplicative damages, i.e. the same damage recovered from both the insurer and the tortfeasor. In 1999, this Court decided *State Farm*, which is discussed in greater detail below in the context of the Second Question.

One year after *State Farm*, the Legislature enacted Act 29, which enacted HRS § 431-13:103(a)(10) and slightly amended HRS § 663-10. *See Yukumoto*, 140 Hawai‘i at 296, 400 P.3d at 497 n.13 (quoting text of original enactment). The original enactment included the same twin provisions at issue in *Yukumoto*: the prohibition on insurers competing with insureds for recovery against the third party with the exception of HRS § 663-10. However, the original

enactment also *expressly excluded* health insurers in addition to workers' compensation and auto carriers. This history reinforces the conclusion that HRS § 431-13:103(a)(10) was intended to apply to property and casualty insurers. If the original enactment excluded health insurers, auto insurers, and workers' compensation carriers, then what other insurance carriers could the provision possibly apply to? Tellingly, State Farm, the largest property insurer in Hawai'i, lobbied against the adoption of Act 29 and testified in the Senate Committee. *See* H. Standing Comm. Rpt. 636-00 (2000), in 2000 House Journal at pp. 1207-1208 ("The Hawai'i Medical Service Association and State Farm also opposed this measure."); S. Standing Comm. Rpt. No. 2743 (2000), in 2000 Senate Journal at pp. 1127-28 (HMSA and State Farm submitted testimony).¹³

Act 29 also amended HRS § 663-10 to clarify its scope by adding the phrase "including health insurance or benefits" as the types of "collateral sources" included within the definition of a "lien." *See Yukumoto*, 140 Hawai'i at 295, 400 P.3d at 496 (quoting HRS § 663-10(a) (Supp. 2002)). Thus, the amendment was intended to be *inclusionary* as to the health insurers, not *exclusionary* as to property insurers. To interpret this language of inclusion as demonstrating that HRS § 663-10 applied exclusively to health insurers has it backwards. The language of *inclusion* was meant to reflect "HRS § 663-10's comprehensive scope . . . that it appl[y] broadly to 'any claim of a lien.'" *Id.* (quoting HRS § 663-10(a) (Supp. 2002)). This Court described Act 29 in *Yukumoto* as making "clear that collateral sources were required to pay benefits and were limited to reimbursement under the statute" for third party claims. *Id.* Act 29 also "limited reimbursement and subrogation for all insurance companies, excluding health insurers, in HRS § 431:13-103(a)(10)." *Id.* The Senate Committee Report described Act 29 as a measure that "will help to clarify an insurers' rights and duties and protect consumers' rights to coverage in cases involving third party claims." Sen. Comm. Rep. 2743 (2000), 2000 Sen. Journal at p. 1127.

With the original enactment, Act 29 exempted health insurers at the insistence of HMSA, a fact that was used by health insurers to claim they were exempt from the unfair competition prohibition set forth in Act 29 and therefore were permitted to seek direct recovery against

¹³ State Farm's two biggest lines of business in Hawai'i are property insurance and motor vehicle insurance. State Farm opposed Act 29 even though it *excluded* motor vehicle insurance entirely from its prohibition, suggesting that State Farm itself understood the consequences of this legislation for its property insurance business.

tortfeasors. Stand. Com. On Commerce, Cons. Prot., & Hous. Rep. No. 107 (2001) (“Testimony indicated that under current law, societies and HMOs may be interfering with a third-party settlement by claiming that they are exempt from insurance unfair trade practice as a result of Act 29, SLH 2000.”).¹⁴ The Senate Committee on Judiciary found that the exemption for health insurers created a “major loophole” from the Legislature’s two-part structure that “made things worse for accident victims.” Sen. Judiciary Comm. Rep. No. 1005 (2001).¹⁵ The Senate Committee on Commerce, Consumer Protection and Housing received testimony from the State Insurance Commissioner indicating that the health insurer exemption was an “oversight.” Stand. Com. on Commerce, Cons. Prot. & Hous. Rep. No. 107 (2001).¹⁶

The Legislature ultimately enacted SB940, which amended HRS § 431:13-103(a)(10) to close the loophole for health insurers and remove their express exemption. As recognized in *Yukumoto*, the House Committee on Consumer Protection and Commerce received testimony that health insurers were claiming to “‘be entitled to all of the settlement,’ effectively depriving insureds of large amounts of the settlement proceeds.” *Yukumoto*, 140 Hawai‘i at 297, 400 P.3d at 498. This Court concluded that the legislative history “supports the conclusion that HMSA’s sole rights to reimbursement and subrogation are provided for in HRS §§ 663-10 and 431-13:103(a)(1) [sic].” *Id.* at 298, 400 P.3d at 499. In the seven years since *Yukumoto* was decided, the Legislature has not amended the statute, nor imposed the limits sought here by the insurers, reflecting that it has acquiesced in this Court’s interpretation. *See State v. Hussein*, 122 Hawai‘i 495, 529, 229 P.3d 313, 347 (2010) (“Where the legislature fails to act in response to our statutory interpretation, the consequence is that the statutory interpretation of the court must be considered to have the tacit approval of the legislature and the effect of legislation.” (internal quotation marks and citation omitted)).

In the Circuit Court, the Subrogating Insurers contended that *Yukumoto* and its interpretation of the statutory provisions at issue do not extend to property and casualty insurers,

¹⁴ *See* https://www.capitol.hawaii.gov/sessions/session2001/commreports/SB940_SSCR107_.htm

¹⁵ *See* https://www.capitol.hawaii.gov/sessions/session2001/commreports/SB940_SSCR1005_.htm

¹⁶ *See* https://www.capitol.hawaii.gov/sessions/session2001/commreports/SB940_SSCR107_.htm

citing the legislative history. But in fact, the legislative history establishes otherwise: the statutory provisions at issue, HRS § 431-13:103(a)(10) and its exception for § 663-10, applied from their inception to property and casualty insurers. The reason the legislative history extensively focused on health insurers was because the original enactment, Act 29, expressly exempted health insurers and the Legislature had to close the “loophole,” correct the “oversight,” and put health insurers on the same footing as other non-exempted insurers, including property insurers.

3. *Yukumoto* Sidestepped the Question of Whether its Interpretation of the Legislature’s Comprehensive Procedure for Collateral Source Claims Applied to Property Insurers Because It Did Not Need to Reach the Question

The Subrogating Insurers contended in the trial court that *Yukumoto* preserved the right of subrogation for property and casualty insurers. To be sure, *Yukumoto* did state that this “court held that ‘in the context of fire and casualty insurance . . . the insurer may maintain a subrogation action against the tortfeasor’ regardless of outside settlement.” *Yukumoto*, 140 Hawai‘i at 293, 400 P.3d at 494.¹⁷ But this Court acknowledged *State Farm*’s holding as rejecting HMSA’s contention that it had an “equitable common law right of subrogation.” *Id.* at 291, 400 P.3d at 492. The Court sidestepped these issues by holding that “HMSA does not have equitable subrogation rights,” leaving *State Farm* untouched by its holdings. *Id.*

The First Reserved Question requires this Court to answer the question it left unanswered in *Yukumoto*: Does *State Farm* continue to be good law in light of the Legislature’s comprehensive scheme set forth in HRS §§ 431:13-103(a)(10) and 663-10? The answer is “no” for three reasons. *First*, to the extent that *State Farm* is inconsistent with the statutory text of HRS § 431:13-103(a)(10) as interpreted by *Yukumoto*, then *Yukumoto*’s interpretation of HRS §§ 431:13-103(a)(10) and 663-10 controls. The Legislature has the power to “change or entirely abrogate common law rules through its exercise of the legislative power under the Hawai‘i State Constitution,” so long as it does not violate constitutional provisions. *Fujioka v. Kam*, 55 Haw. 7, 10, 514 P.2d 568, 570 (1973). One year after *State Farm*, the Legislature “change[d] or entirely abrogate[d]” insurers’ subrogation rights—as it is authorized to do—by enacting HRS §

¹⁷ As discussed below, the *State Farm* court recognized that insurers may be barred under certain circumstances from pursuing subrogation as a result of outside settlements.

431:13-103(a)(10), which barred insurers from limiting coverage to policyholders (by, for example, taking money from their own settlement recovery) except to the extent permitted by HRS § 663-10.

Second, nothing in the text, structure, or history of the statutes interpreted by *Yukumoto* hints at distinguishing between property and health insurers or between equitable subrogation and contractual subrogation. For the reasons described above, the provisions interpreted by *Yukumoto* expressly exempt workers compensation and auto carriers.

Third, HMSA had a contractual subrogation right, which functions in the same way as equitable subrogation. “When the insurer seeks to recover through contractual subrogation, it stands in the shoes of the insured, obtaining only those rights held by the insured against a third party . . .” *See Amerisure Ins. Co. v. Navigator Ins. Co.*, 611 F.3d 299, 305 (5th Cir. 2010). So too with equitable subrogation. *State Farm*, 90 Hawai‘i at 329, 978 P.2d at 329 (“[S]ubrogation involves ‘stepping into’ the shoes of another,” with the “insurer’s rights flow[ing] from the insured’s rights”). Accordingly, there is no legal basis to conclude that the relevant statutory provisions regulate the conduct of insurers with only contractual subrogation rights. The statutory provisions regulate the conduct of *all* insurers, unless expressly exempted.

4. Application of *Yukumoto*’s Holdings to Property Insurers Furthers the Legislature’s Purpose of Establishing a Fair, Uniform, and Comprehensive Procedure for Resolving Collateral Source Claims

Finally, application of the holdings of *Yukumoto* to property insurers supports the Legislature’s purpose in enacting the statutes at issue. The Legislature set out to “prevent duplicate recoveries in personal injury claims while creating a *fair, uniform* and *comprehensive* procedure governing the rights and obligations of insurance companies and consumers for the reimbursement of insurance benefits from third-party sources of recovery.” Sen. Comm. Rep. 1330-00 (2000), in 2000 House Journal Standing Comm. Rep. at p. 1515. *First*, application of the holdings of *Yukumoto* to property insurers furthers a *fair* procedure. HRS § 663-10 incorporates a made-whole standard by requiring the insurer to prove that the insured’s recovery duplicates insurance benefits paid. *See Yukumoto*, 140 Hawai‘i at 296, 400 P.3d at 497 (HRS § 663-10 “allowed for collateral sources to be reimbursed when *special damages* recovered in a judgment or settlement duplicated the amounts they had paid”). A policyholder who has not been made whole for losses by definition has not received a duplicative recovery. If the

payments to the policyholder are duplicative of insurance benefits, the insurer recovers to prevent a double recovery to the plaintiff. If they are not, the insurer recovers nothing. Thus, the plaintiff in *Yukumoto* was undercompensated for his losses, which meant that HMSA could not prove the medical benefits it paid duplicated the plaintiff's special-damages recovery. *Id.* at 290, 400 P.3d at 491. A fair procedure can be accomplished only if the Legislature's standard applies equally to all regulated insurers. If property insurers were permitted to pursue direct actions like this Court forbid HMSA from doing, they would be able to evade the standards imposed by the Legislature's enactment of HRS §§ 431:13-103(a)(10) and 663-10.

Furthermore, it is fair to apply the standards of HRS § 663-10 because application of a procedure focused on preventing duplicative recoveries ensures that the plaintiff obtains a full and complete, but not duplicative, recovery. The insurer was adequately compensated to accept the risk by payment of premiums by the policyholder. That is the bargain insurers strike with the policyholders. The policyholder pays the premium to the insurer in exchange for eliminating the risk of inadequate payment by a wrongdoer. Your house gets burned down by a homeless person or a bankrupt electrical supplier? Robbed by a penniless criminal? No problem – insurance has you covered. Neither the policyholder nor the insurer can recover from any of these wrongdoers. The risk-shifting paid for by the policyholder should not change when the wrongdoer has inadequate resources to cover the policyholder's losses *after* accounting for insurance proceeds. And the Legislature enacted HRS § 663-10 to account for that analysis. Take the damage calculations and collateral sources of recovery for the plaintiff in *Yukumoto*, for instance. He was under-compensated for his \$4 million-plus loss *after* accounting for (1) a general damages recovery of \$1.1 million against the wrongdoer, (2) a recovery of \$50,000.00 against his underinsured motorist coverage carrier, and (3) a recovery of \$325,824.33 against HMSA. *Id.* at 287, 400 P.3d at 488. Had the plaintiff been required to compete with the insurer over the recovery against the wrongdoer without the limits imposed by HRS § 663-10, the plaintiff would have been even more grossly undercompensated. Indeed, as the testimony leading up to the 2001 amendments revealed, the plaintiff may be essentially required to pay HMSA to get rid of its nuisance interference (just as the Subrogating Insurers are seeking here) even though HMSA would be entitled to nothing under HRS § 663-10. How is that fair?

Second, application of the holdings of *Yukumoto* to property insurers furthers a **uniform** procedure. In this case, many plaintiffs will have recovered from collateral sources in the form

of property and health insurers, including but not limited to victims of burn injuries, respiratory injuries, and mental health injuries. Health insurers will require resolution of those collateral source lien claims. A uniform procedure requires that the collateral sources recover on the same basis, using the same procedure, applied under the same terms. The procedure for resolution of those collateral source claims should not change based on the type of insurer. While *Yukumoto* made a distinction between indemnity and personal insurance, these claims show how that distinction can be illusory. The Court used this indemnity/personal insurance distinction to sidestep the claim by HMSA that *State Farm* applied, thereby avoiding the issue of whether the statutes at issue apply to indemnity insurers. The Court noted that “[s]ituations involving tort recovery in personal insurance contexts, like the instant case, often include payment by the tortfeasor for intangible losses such as life, death, health, pain and suffering, and physical wellbeing, where it is difficult to ascertain exact measurements of loss.” *Id.* at 294, 400 P.3d at 495. The Court used this premise to conclude that “recovery [in tort recovery in personal insurance contexts] does not necessarily produce a windfall or duplicative recovery to the insured.” *Id.* In the context of the Maui Fires, this premise does not hold true. In fact, the opposite is likely to hold more true – that the majority of claimants have “life, death, health, pain and suffering, and physical wellbeing” claims. The extent of human suffering in this case – with 102 wrongful deaths, numerous serious physical injury and harrowing evacuation claims causing emotional distress – far exceeds the property losses at issue. Consider Nelda Pagdilao, a plaintiff whose complaint is in the appellate record:

[Plaintiff Nelda] Pagdilao’s husband, Pablo Pagdilao, died in the Lahaina Fire. After urging his wife to save herself by climbing over and staying below the seawall for safety, Mr. Pagdilao perished in the fire. Partially paralyzed from a stroke, Mr. Pagdilao was not physically able to follow her to safety. She lost her home where she raised her four children and their own young families. She lost her entire Lahaina community. Her husband, her home, and her community perished in the Maui Fires.

(CC Dkt. No. 1741, Creed Decl., Ex 12 ¶ 2).

Allowing for different resolution procedures to govern health insurers than property insurers will re-introduce the problem the Legislature specifically set out to avoid. When the Legislature closed the health insurer loophole, it noted that the insurance carriers were “interfering with a third-party settlement by claiming they are exempt from insurance unfair trade practice” *Yukumoto*, 140 Hawai‘i at 297, 400 P.3d at 498 (quoting S. Stand. Comm.

Rep. No. 107, in 2001 Senate Journal, at 987). Here, the property insurers are interfering with a third-party settlement by claiming they are exempt from the *Yukumoto* framework.

Third, application of the holdings of *Yukumoto* to property insurers furthers a *comprehensive* procedure. A procedure that carves out the single biggest collateral source payer is clearly not comprehensive. To be comprehensive, the procedure must ensure that collateral sources are resolved based on a single, governing procedure that provides for both procedural and substantive standards applicable to all collateral sources. HRS § 663-10 allows for discovery tools available to the insurers to determine whether the plaintiff’s recovery is duplicative of insurance benefits. *See id.* at 289-90, 400 P.3d at 490-91 (discussing discovery made available by trial court to HMSA). HRS § 663-10 addresses how to deal with costs and fees. HRS § 663-10 (“[T]he court shall deduct from the payment a reasonable sum for the costs and fees incurred by the party who brought the civil action in tort.”).

In sum, to achieve the legislative purpose of establishing a fair, uniform, and comprehensive procedure, all collateral sources should be treated in the same manner, under the same procedures, using the same standards as set out in HRS § 663-10.

B. Second Reserved Question: Plaintiffs’ Release of Defendants Binds Subrogating Insurers Under *State Farm* Because the Global Settlement Does Not Actually Prejudice the Subrogating Insurers’ Right to Reimbursement

The Second Reserved Question seeks to determine whether a property insurer’s subrogation right of reimbursement is actually prejudiced within the meaning of *State Farm* by its insured’s release of the tortfeasor when the settlement documents and release preserve those same rights under HRS § 663-10. If the answer is “no” – i.e., there is no prejudice – then, in the absence of collusion, the release is binding on the insurer and the insurer’s sole recovery is by reimbursement under HRS § 663-10. Judge Cahill found that the Global Settlement was not collusive. (CC Dkt. No. 1954, 8/19/24 Order at ¶ 9).

In *State Farm*, the Court held that the “general rule provides that an insured may affect its insurer’s subrogation rights because they are derivative, i.e., the insurer’s subrogation rights rest upon the viability of the insured’s claim against the tortfeasor.” *State Farm*, 90 Hawai‘i at 329, 978 P.2d at 767. “If the insured waives its right to bring an action against the tortfeasor, then the insurer is barred from bringing a subrogation action.” *Id.* “If the insured settles with and releases the tortfeasor after payment is made by the insurer, the insurer is entitled to seek

reimbursement from the insured.” *Id.*

This general rule becomes qualified if the defendant has notice of the subrogation claim. This Court held that, “in the context of fire and casualty insurance, if the insurer proves (1) that the tortfeasor had actual or constructive knowledge of the insurer’s subrogation right of reimbursement or that the tortfeasor and insured colluded to destroy the insurer’s subrogation right and (2) that the ***insurer’s subrogation right of reimbursement is actually prejudiced*** by the insured’s release of the tortfeasor, then the insurer may maintain a subrogation action against the tortfeasor.” *Id.* at 329, 978 P.2d at 767 (emphasis added).

The Second Question relates to the emphasized language above. The Court’s use of the term “right of reimbursement” is critical because the right of reimbursement is a term of art describing the right to be reimbursed from the policyholder. The Subrogating Insurers themselves strenuously argued in Circuit Court that HRS § 663-10 provides for a right of reimbursement, which is a different legal concept than the right of subrogation. The Subrogating Insurers argued that there was a “legal and conceptual distinction between subrogation and reimbursement claims.” (CC Dkt No. 1905, Subro. Ins. Memo. at p. 10). The Subrogating Insurers emphasized that the “concepts of ‘reimbursement’ and ‘subrogation’ are different principles: subrogation allows the insurer to stand in the shoes of the insured, whereas, with reimbursement, the insurer only has a right of repayment against the insured.” (*Id.* at p. 6) (quoting 16 *Couch on Ins.* § 226:4). The Subrogating Insurers themselves acknowledge that the “concepts of reimbursement and subrogation are, indeed, different both in their functioning and in their legal effect.” (*Id.*). The Subrogating Insurers admit that “reimbursement claims” are “not a subrogation action in the classical sense since the suit is against the insured.” *Id.* (quoting *First Ins. Co. v. Haw., Ltd. v. Jackson*, 67 Haw. 165, 681 P.2d 569 (1984)).

In Hawai‘i, the right of reimbursement against a settlement or judgment is enshrined in HRS § 663-10. That provision uses the term “reimbursement” four times to describe the right available to collateral sources, including insurers. Therefore, under *State Farm*, as long as the right of reimbursement under HRS § 663-10 is available to the insurer after the policyholder settles the claim, then the insurer’s “right of reimbursement” is not “actually prejudiced.”

Furthermore, even if this Court meant that the *State Farm* standard protected an insurer’s subrogation claim, the Subrogating Insurers would have to prove actual prejudice by showing what everyone in Hawai‘i knows is impossible: that their settling insureds had been made whole

for all their losses. *See* Sect. III.C, *infra*. If the settling insureds had not been made whole, then, for reasons described below with respect to the Third Reserved Question, the Subrogating Insurers effectively have a worthless claim. If the Subrogating Insurers cannot show that their insureds have been made whole for their losses, then the Subrogating Insurers have no subrogation claim that could be prejudiced.

In addition, the Subrogating Insurers could not show actual prejudice to their subrogation claims because the global settlement exhausts all available insurance limits and requires a contribution by the settling Defendants without making their policyholders whole. In *Thiringer v. American Motors Ins. Co.*, 588 P.2d 191 (Wa. 1978), the Washington Supreme Court faced a nearly identical situation to *Yukumoto*. There, like in *Yukumoto*, the plaintiff accepted a policy limits settlement in exchange for a full release of the tortfeasor. *Id.* at 192. The plaintiff's settlement did not fully compensate him for his injuries, nor did the defendant have sufficient personal assets to contribute to the settlement. *Id.* The trial court determined that "the settlement was reasonable and that the insurer's subrogation rights were not prejudiced by it." *Id.* The trial court applied a made-whole priority that is exactly like the one applied in *Yukumoto*: "[The trial court] held that the proceeds of the settlement should be applied first toward the payment of the insured's general damages and then, if any excess remained, toward the payment of his special damages covered by [personal injury protection] provision." *Id.* at 192-93. This holding was based on the "principle . . . that the insured was entitled to be made whole, and that only after he had made a full recovery for his damages did the insurer's right of subrogation arise." *Id.* at 193. The Washington Supreme Court affirmed the trial court's order, holding that the "insurer was not prejudiced by the settlement" because the "settlement exhausted the tortfeasor's assets" and the insurer "lost nothing" by the release. *Id.* It further held that the "general rule is that . . . [an insurer] can recover only the excess which the insured has received from the wrongdoer, remaining after the insured is fully compensated for his loss." *Id.*

As a final note, to prove prejudice, the Subrogating Insurer would be required to prove that it continues to retain an interest in the claim. The Subrogating Insurer itself would suffer no prejudice if the Subrogating Insurer has liquidated its own claim by assignment of the claim to a third party, which the record discloses has occurred with respect to the Maui Fires subrogation claims. Prejudice in that situation would no longer apply to the insurer, but rather a Wall Street hedge fund who is the assignee. "He who seeks equity must do equity." *Kam Chin Chun Ming*

v. Kam Hee Ho, 45 Haw. 521, 563, 371 P.2d 379, 404 (1962). Thus, the assignee of a Subrogating Insurer that has liquidated its own claim cannot prevent the insured from liquidating his or her own claim. In that case, the Subrogating Insurer has been fully compensated for the claim, and so the policyholder's release does not prejudice the Subrogating Insurer's rights at all.

C. **Third Reserved Question: Hawai'i Law Requires Insureds to be Made Whole Before Insurers Can Pursue Subrogation Rights Against Third-Party Tortfeasors**

Even if the Court pretended the statutes underlying *Yukumoto* did not exist and *State Farm*'s actual prejudice requirement were not met, a third independent reason bars the Subrogating Insurers from pursuing independent claims – the made-whole doctrine. This Court and the ICA have endorsed the application of the made-whole doctrine in subrogation cases. In *Rutledge*, the ICA adopted the tenet that an injured insured is entitled to “full but not duplicative recovery of damages.”¹⁸ *Rutledge*, 87 Hawai'i at 345-46, 955 P.2d at 1077-78 (emphasis added); *Yukumoto*, 140 Hawai'i at 291, 400 P.3d at 486 (“Subrogation is a ‘creature of equity,’ and is premised on the notion that an insured should not be able to ‘unduly benefit from a loss and thereby enjoy a double recovery from both the insurer and the tortfeasor.’” (internal quotation omitted) (citations omitted)). This is because an insured's right to be fully compensated should not be impaired when total damages exceed sources of collection. *Rutledge*, 87 Hawai'i at 345, 955 P.2d at 1077 (citation omitted). It follows that “an attempt by an insurance company to secure proceeds of a recovery from a third party . . . is appropriately denied when the damage sustained by an insured have not been completely compensated.” *Id.* at 346, 955 P.2d at 1078 (alteration and citation omitted).

Adopting the rationale of the Vermont and Kentucky Supreme Courts, the ICA in *Rutledge* explained that (1) if an insured's UM payments and jury award *exceed* damages awarded by the jury, an insurer could seek reimbursement from a tortfeasor other than the uninsured motorist so that the insured is not overcompensated and (2) “[u]nder general principles of equity . . . an insured must be fully compensated for losses sustained (**made whole**) before the

¹⁸ *Cf. Ing v. Acceptance Ins. Co.*, 76 Hawai'i 266, 270, 874 P.2d 1091, 1095 (1994) (“Succinctly stated, HRS § 663-10 was enacted to prevent double recoveries by allowing collateral source payors to recover payments made to an injured party” for damages in tort).

subrogation rights of an insurance carrier arises.” *Id.* (alteration in original) (citing *Bradley v. H.A. Manosh Corp.*, 601 A.2d 978, 984 (Vt. 1991); *Wine v. Globe Am. Cas. Co.*, 917 S.W.2d 558, 562 (Ky. 1996)). Indeed, unless and until an insured fully recovers, i.e., is made whole, duplicate recovery is a non-issue.

In *State Farm*,¹⁹ this Court identified the made-whole rule as a requirement that must be met before legal/equitable subrogation arises. “[T]he insurer must have paid the loss. The right extends to the extent of the amount actually paid and the amount paid must have been paid to the insured.” *Id.* at 329 n.8, 978 P.2d at 767 n.8 (quoting 4 R. Long, *The Law of Liability Insurance*, § 23.02[2], at 23.8-13 (1998)). Critically, “the amount paid by the insurer *must result in the insured’s being made ‘whole.’*” *Id.* (emphasis added) (quoting *The Law of Liability Insurance*, § 23.02[2], at 23.8-13). “The **general rule** is that the subrogated insurer is entitled to no subrogation, or to reduced subrogation, if the result of full subrogation would be to cause the insured to be less than fully compensated for the loss.” *Id.* (quoting *The Law of Liability Insurance*, § 23.02[2], at 23.8-13) (emphasis added). Courts across the country have adopted the made whole doctrine and are in accord with this result.²⁰

¹⁹ Although Plaintiffs contest the validity of *State Farm* after the enactment HRS §§ 431:13-103(a)(10) and 663-10, its general discussion about subrogation and the made-whole doctrine is instructive.

²⁰ See, e.g., *Rimes v. State Farm Mut. Auto. Ins. Co.*, 316 N.W.2d 348, 353 (Wis. 1982) (“[U]nder Wisconsin law as recapitulated in *Garrity*, one who claims subrogation rights, whether under the aegis of either legal or conventional subrogation, is barred from any recovery unless the insured is made whole.”); *Jones v. Nationwide Prop. & Cas. Ins. Co.*, 32 A.3d 1261, 1271 (Pa. 2011) (noting that the made whole doctrine applies in Pennsylvania and explaining that it “both ensures that the insured is fully compensated for his or her injury before the insurer recovers, in cases where there are insufficient funds to satisfy both the insured and the insurer, and prevents the insured from receiving dual recovery for the same loss from both the tortfeasor and the insurer” (citation omitted)); *Franklin v. Healthsource of Ark.*, 942 S.W.2d 837, 839 (Ark. 1997) (“[A]n insurer is entitled to enforce its contractual right of subrogation after the insured has been fully compensated, or ‘made whole,’ for his total loss. This precludes the insured from recovering twice for some of his or her damages; therefore, the insurer is entitled to reimbursement from funds received by the insured from the third party when the insured receives more than the total of his or her loss.”); *Riley v. State Farm Mut. Auto. Ins. Co.*, 381 S.W.3d 840, 850 (Ark. 2011) (“The subrogation lien cannot arise, or attach, until the insured has received the settlement proceeds or damage award and until there is a judicial determination that the insured has been made whole.”); *Progressive W. Ins. Co. v. Superior Ct.*, 135 Cal. App. 4th 263, 274 (2005) (“It is a general equitable principle of insurance law that, absent an agreement to the contrary, an insurance company may not enforce a right to subrogation until the insured has been fully compensated for [his or] her injuries, that is, has been made whole.” (alteration in original))

If the answer to the third question is “yes,” then the insurers’ action must be dismissed pending a showing by the insurers that their policyholders have been made whole by both their payouts and the settlement. Absent this showing, the insurer has not satisfied the requirement set

(internal quotation marks omitted)); *Fireman’s Fund Ins. Co. v. TD Banknorth Ins. Agency, Inc.*, 72 A.3d 36, 40-41 (Conn. 2013) (adopting the made whole doctrine, which it described as “restricting the enforcement of an insurer’s subrogation rights until after ‘the insured has been fully compensated for her injuries, that is . . . made whole’” (citations omitted)); *Magsipoc v. Larsen*, 639 So. 2d 1038, 1041-42 (Fla. Dist. Ct. App. 1994) (“The general rule in Florida, as well as other jurisdictions, is that no common law right of subrogation exists for an indemnitor who has fully paid its required sums under an insurance contract to its insured, where the insured has not recovered the total amount of damages, and cannot be said to have been ‘made whole.’” (footnotes omitted)); *Duncan v. Integon Gen. Ins. Corp.*, 482 S.E.2d 325, 326 (Ga. 1997) (“Georgia public policy strongly supports the rule that an insurer may not obtain reimbursement unless and until its insured has been completely compensated for his losses.”); *Brandon v. W. Bend Mut. Ins. Co.*, 681 N.W.2d 633, 641 (Iowa 2004) (“The full recovery rule requires that the insurance company’s claim for reimbursement does not mature until the insured has been fully compensated for his or her damages.” (citation omitted)); *Thiringer*, 588 P.2d at 193 (“[T]he insured was entitled to be made whole, and that only after he had made a full recovery for his damages did the insurer’s right of subrogation arise.”); *Hare v. State*, 733 So. 2d 277, 281 (Miss. 1999) (“The ‘made whole’ rule, as it sometimes called, is the general principle that an insurer is not entitled to equitable subrogation until the insured has been fully compensated.”); *Swanson v. Hartford Ins. Co. of Midwest*, 46 P.3d 584, 589 (Mont. 2002) (“[I]t is the public policy in Montana that [under the made whole doctrine,] an insured must be totally reimbursed for all losses as well as costs, including attorney fees, involved in recovering those losses before the insurer can exercise any right of subrogation, regardless of any contract language providing to the contrary.”); *Turco v. Schuning*, 716 N.W.2d 415, 418 (Neb. 2006) (“[A]n insurer may exercise its right of subrogation only when the insured has obtained an amount that exceeds the insured’s loss’ . . . In other words, the insured had to be ‘made whole’ before the insurer could subrogate.” (citation omitted)); *Canfora v. Coast Hotels & Casinos, Inc.*, 121 P.3d 599, 604 (Nev. 2005) (“The make-whole doctrine ‘is a general equitable principle of insurance law’ that prevents an insurance company from enforcing its subrogation rights before the insured has been fully reimbursed for their losses.” (quoting *Barnes v. Indep. Auto. Dealers of Cal.*, 64 F.3d 1389, 1394 (9th Cir. 1995)); *Werner v. Latham*, 752 A.2d 832, 835 (N.J. App. Div. 2000) (“[T]he right of subrogation does not arise until the injured party has been made whole.” (internal quotation marks omitted)); *Wimberly v. Am. Cas. Co.*, 584 S.W.2d 200, 203 (Tenn. 1979) (“[T]he insured must be made whole before subrogation rights arise in favor of the insurers.”); *Wilson v. Educators Mut. Ins. Ass’n*, 436 P.3d 144, 149 (Utah Ct. App. 2018) (“[I]n the absence of a clear contract to the contrary, an insurer cannot assert its equitable subrogation rights against a tortfeasor unless its insured has been made whole.”); *Bush v. Richardson*, 484 S.E.2d 490, 494 (W. Va. 1997) (“We have explained the made-whole rule in insurance cases as meaning ‘[u]nder general principles of equity, in the absence of statutory law or valid contractual obligations to the contrary, an insured must be fully compensated for injuries or losses sustained (made whole) before the subrogation rights of an insurance carrier arise.’” (alteration in original) (internal quotation marks omitted)).

forth in *State Farm* for subrogation to arise.

Second, the insurer must have been obligated to pay the subject loss by operation of law or contract. *Id.* (quoting *The Law of Liability Insurance*, § 23.02[2], at 23.8-13). Hawai‘i law clearly requires Plaintiffs (the policyholders) to be made whole before the Subrogating Insurers can assert subrogation rights of recovery or reimbursement against the tortfeasors. Here, the total losses to all plaintiffs exceed \$12 billion.²¹ It is inconceivable that any plaintiff will be made whole from the \$4 billion global settlement. Because Plaintiffs will not be fully compensated for their fire-related losses, the Subrogating Insurers’ rights do not arise.

1. Insofar as All Damages, Insured and Uninsured, Must be Recovered to Make Plaintiffs Whole, Plaintiffs will not be Made Whole by the Global Settlement

Although Hawai‘i courts have recognized and applied made whole principles, there is currently no standard adopted by the Hawai‘i courts for ascertaining whether an insured has been made whole in the context of a settlement. In *Rutledge*, the ICA compared the amount actually recovered by plaintiffs from the arbitration (\$114,483.61) to the amount owed by all responsible parties (\$114,483.61) to conclude that the plaintiffs were “fully compensated for their damages.” *Rutledge*, 87 Haw. at 348, 955 P.2d at 1080. But what happens in the context of a settlement? How should the Circuit Court determine whether the plaintiff has been “made whole”? An insurer is strictly liable to the policyholder and is capable of paying up to the full policy amounts, while the settling defendants may have defenses that reduce the recovery to the policyholder or may be unable to pay more. How should the Circuit Court evaluate the defenses settling defendants may have and the ability of settling defendants to pay in determining whether the policyholders have been made whole? All these questions are necessary to evaluate the insurers’ burden in proving the policyholders have been made whole.

As a preliminary matter, the insurer has the burden of establishing the policyholder has been made whole to show entitlement to subrogation. *See State Farm*, 90 Hawai‘i at 327 n.7,

²¹ *See* Shawn Hubler, “Maui Wildfire Plaintiffs Reach \$4 Billion Settlement as Anniversary Nears,” N.Y. Times (Aug. 2, 2024), available at <https://www.nytimes.com/2024/08/02/us/maui-wildfire-hawaii-settlement.html> (last visited Nov. 4, 2024); Kevin Knodell, “Overall costs for Maui Wildfires are expected to top \$12 billion,” Honolulu Star-Advertiser (Aug. 10, 2024), available at <https://www.staradvertiser.com/2024/08/10/hawaii-news/overall-costs-for-maui-wildfires-are-expected-to-top-12-billion/> (last visited Nov. 4, 2024).

978 P.2d at 765 n.7 (quoting *Jackson*, 67 Haw. at 167, 681 P.2d at 571); See *Lopez v. United Auto. Ins. Co.*, 427 S.W.3d 154, 158 (Ark. Ct. App. 2013) (stating that the insurer has the burden of proof as to whether an insured was made whole); *Complete Health, Inc. v. White*, 638 So.2d 784, 788 (Ala. 1994) (imposing the burden on the insurer “to show affirmatively that the settlement fully compensated [the insured] and that the amounts paid by [the insurer], when added to the amount of the settlement, provided [the insured] an amount in excess of that amount required for full compensation for his injuries”), *overruled on other grounds by Ex parte State Farm Fire & Cas. Co.*, 764 So.2d 543 (Ala. 2000).

Like the process established in HRS § 663-10, the circuit court should determine whether an injured party has been made whole. The Wisconsin Supreme Court has outlined a procedure for determining how a settlement impacts an insurer’s subrogation rights, requiring the insured to: “(1) settle with the tortfeasor without resolving the subrogated insurer’s claim; (2) request a *Rimes* hearing^[22] to determine if the settlement made the insured whole; and (3) provide the insurer an opportunity to participate in that hearing.” *Petta v. ABC Ins. Co.*, 692 N.W.2d 639, 650 (Wis. 2005) (citing *Schulte v. Frazin*, 500 N.W.2d 305 (Wis. 1993)); see also *Health Cost Controls, Inc. v. Gifford*, 239 S.W.3d 728, 733 (Tenn. 2007) (establishing a process for the trial court in which the parties would present evidence to enable the trial court to reasonably assess the insured’s damages, i.e., the monetary value of the insured’s recovery from all sources and the monetary value of all elements of the insured’s damages). Under this process, a determination by the circuit court that the settlement did not make the settling insured whole extinguishes the insurer’s subrogation rights. *Petta*, 692 N.W.2d at 650.

In determining whether an insured has been made whole, other courts factor all damages at issue, not only insured damages. Appellants urge the Court to adopt the test articulated by the Wisconsin Supreme Court in *Rimes v. State Farm Mutual Automobile Insurance Co.*:²³

²² A *Rimes* hearing is “a ‘trial’ . . . conducted before the [trial] court solely to ascertain the damages suffered by the plaintiff.” *Muller v. Soc’y Ins.*, 750 N.W.2d 1, 10 (Wis. 2008). The process employed in this case will likely need to deviate from standard practice given the volume of cases and claims. But in a traditional case, a mini trial or evidentiary hearing would be appropriate to determine the damages incurred by an insured.

²³ *Rimes* involved an automobile accident where the insured sustained personal injury damages for personal injuries and medical expenses in excess of \$300,000.00. *Rimes*, 316 N.W.2d at 350. The insured received \$9,649.90 from its insurer, State Farm, under medical-pay policy provisions

the test of wholeness depends upon *whether the insured has been completely compensated for all the elements of damages, not merely those damages for which the insurer has indemnified the insured*. Thus, the mere fact that the settlement figure of \$125,000 exceeded the insurer's claim for subrogation is immaterial. The injured or aggrieved party is *not made whole unless all his damages arising out of the tort have been fully compensated*.

We pointed out in *Garrity* that the cause of action against a tortfeasor is indivisible. Accordingly, it is only when there has been *full compensation for all the damage elements of the entire cause of action that the insured is made whole*. Thus, only where an injured party has received an award by judgment or otherwise which pays all of his elements of damages, including those for which he has already been indemnified by an insurer, is there any occasion for subrogation.

Rimes, 316 N.W.2d at 355 (emphases added); *Petta*, 692 N.W.2d at 650 (extending the made whole doctrine to wrongful death plaintiffs and reiterating that full compensation for all damages elements of an entire cause of action is required to make an insured whole).

The *Rimes* test finds support in other jurisdictions,²⁴ including Tennessee, where courts similarly consider *all possible damages* in the made-whole calculus and impose different standards of proof depending on the nature of the damages. *Gifford*, 239 S.W.3d at 733. Damages with readily ascertainable monetary values, such as lost wages or medical expenses, must be proven with “relative precision.” *Id.* On the other hand, non-economic damages, which are not susceptible to mathematical calculation, may be established by evidence “that is ‘as certain as the nature of the case permits’ and that ‘enable[s] the trier of fact to make a fair and

in two State Farm policies and subsequently reached a \$125,000.00 settlement with the tortfeasors' insurers. *Id.* at 350-51. The insured received all but the \$9,649.90, which was held in escrow subject to State Farms' subrogation claim. *Id.* at 351. After conducting a mini trial, the circuit court determined that the insured's total damages were \$300,433.54 – past medical expenses were \$26,560.70.10; past loss earnings were \$65,855.34; past physical disability, pain, and suffering to the time of trial were \$35,000.00; future medical expenses were \$20,517.50; loss of future earning capacity was \$82,500.00; future physical disability, pain and suffering, inconvenience, humiliation and mental anguish were \$45,000.00; and loss of consortium suffered by the insured's wife was \$25,000.00. *Id.* at 352. Because the insured was not made whole by the settlement or medical pay, the *Rimes* court held that State Farm was not entitled to any of the settlement proceeds. *Id.* at 356; *see also id.* at 355 (holding that \$300,433.54, and nothing less, “would have sufficed to make the plaintiffs whole for the injuries”).

²⁴ *See also, e.g., Swanson*, 46 P.3d at 589 (requiring total reimbursement of all losses and costs, including attorneys' fees, for an insured to be made whole); *Magsipoc*, 639 So.2d at 1041-42 (requiring recovery of the total amount of damages for an insured to be made whole).

reasonable assessment of the damages.” *Id.* (alteration in original) (citation omitted).

While the volume of the Maui Fires claims far exceed the single-plaintiffs in *Rimes*, the insurers have argued there should be no “mass tort” exception. There need not be one. If the insurers insist on their right to prove subrogation on a case-by-case basis, they can do so. The end result is highly likely to be the same: the Plaintiffs (and future claimants who suffered losses from the Maui fire) have collectively sustained damages far in excess of the \$4.036 billion settlement fund, particularly when significant uninsured tort damages are at issue.

2. Equity and Public Policy Dictate that Plaintiffs be Made Whole Before Insurers (Namely, Subrogation Claimants) Can Assert Subrogation Rights and/or a Right of Reimbursement

A number of equitable factors and public policy arguments support the application of the made-whole doctrine given the circumstances of the Maui Fires and the Global Settlement. They include “the knowledge of insureds and tortfeasors as to outstanding subrogation claims, the extent of the prejudice to insurers’ subrogation interests, the desirability of encouraging settlements, the possibility of sharp practices by tortfeasors, insureds or their insurance carriers, and the general public policy that persons suffering compensable injuries are entitled to be made whole.” *Leader Nat. Ins. Co. v. Torres*, 779 P.2d 722, 724 (Wash. 1989) (en banc). Other key equitable factors include “practical competition between an insured and the subrogated insurer,” *Schulte*, 500 N.W.2d at 309, and a balancing of “an insurer’s right to recoup benefits paid and an injured person’s right to obtain full compensation.” *Petta*, 692 N.W.2d at 651 (citation omitted).

The equities in this case overwhelmingly weigh in favor of the Plaintiffs.

First, settlements should always be encouraged and neither the Plaintiffs nor underlying Defendants should suffer unnecessary losses at the hands of subrogation claimants Subrogating Insurers, who seek only to deplete the settlement fund to enrich themselves and their investors. This Court has acknowledged “the well-settled rule that the law favors the resolution of controversies through compromise or settlement rather than by litigation.” *State Farm*, 90 Hawai‘i at 323, 978 P.2d at 761 (citation omitted). Settlements “not only bring[] finality to the uncertainties of the parties but [are] consistent with this court’s policy to foster amicable, efficient, and inexpensive resolutions of disputes. In turn, [they are] advantageous to judicial administration and thus to government and its citizens as a whole.” *Id.* (citation omitted). The Plaintiffs and Defendants acted in good faith and worked tirelessly, with the assistance of the

mediators, to reach a fair global settlement just shy of the one-year anniversary of the fires.

This settlement, if effectuated and not torpedoed by the subrogation claimants, will save millions in litigation expenses, prevent protracted litigation, allow the underlying Defendants to remain solvent, enable the thousands of Maui Fires victims to rebuild their lives, and reestablish the Lahaina community so tragically decimated on August 8, 2023. Unlike settlements in individual personal injury cases, the subject Global Settlement has statewide implications.

The Plaintiffs are entitled to settle their claims on their own terms. *Petta*, 692 N.W.2d at 650 (citation omitted). A release merely relinquishes a right or a claim; “it may or may not be for full consideration and may or may not make the grantor of the release whole.” *Rimes*, 316 N.W.2d at 354; *S. Farm Bureau Cas. Ins. Co. v. Tallant*, 207 S.W.3d 468, 473 (Ark. 2005) (explaining that settling for less than the policy limits is not determinative of whether an insured has been made whole); *Complete Health*, 638 So.2d at 787 (holding that “a settlement does not necessarily set the amount of a plaintiff’s damages for the purpose of determining whether the plaintiff has been fully compensated”). By definition, a settlement is “the satisfaction of a claim by agreement often with less than full payment.” *Rimes*, 316 N.W.2d at 354 (quoting *Webster’s Third New International Dictionary*).

Second, the unfortunate reality of settlements is that settling policyholders and their Subrogating Insurers are competing for limited settlement funds. *Schulte*, 500 N.W.2d at 309; *Petta*, 692 N.W.2d at 651-52. “The made whole doctrine prevents competition between the injured party and the subrogated party (the insurer) when the injured party’s damages exceed a limited pool of funds from which recovery may be had.” *Fischer v. Steffen*, 797 N.W.2d 501, 507 (Wis. 2011). In such instances, “the injured party should be the first to tap into the limited pool of funds and recover on any loss.” *Id.*; see also *Schonau v. GEICO Gen. Ins. Co.*, 903 So. 2d 285, 287 (Fla. Dist. Ct. App. 2005) (“[W]here both the insurer and the insured simultaneously attempt to recover all of their damages from a tortfeasor who cannot (because of insolvency, limited insurance coverage, or other reasons) pay the full value of damages, the insured has priority of recovery over the insurer.”). When a tortfeasor’s assets, both present and prospective, are exhausted by a settlement, an insurer is not prejudiced by the settlement, having lost nothing. *Thiringer*, 588 P.2d at 193; *Leader*, 779 P.2d at 724.

There should be no competition or question of priority as between the Plaintiffs and their insurers. There is an inadequate monetary fund to cover all losses, and the Plaintiffs must be

allowed to recover first. This is truer still with respect to Subrogation Insurers. It would be a travesty of justice and offend public policy to allow Wall Street hedge funds who have purchased deeply discounted subrogation claims to recover and profit from the subrogation process at the expense of the Plaintiffs, who were the victims of the Maui Fires.

Third, it is widely accepted as an equitable principle underlying the made-whole doctrine that “the burden of loss should rest on the party paid to assume the risk (the insurer) and not on the party least able to shoulder the loss (the inadequately compensated insured).” *Porter v. McPherson*, 479 S.E.2d 668, 673 (W. Va. 1996) (citation omitted).²⁵

For the reasons stated in the preceding section, equities mandate that the Plaintiffs be the primary, if not exclusive, beneficiaries of the Global Settlement fund. Insurers profited from the exorbitant premiums paid by the insureds for the insurers to bear the risk of loss and they should not be permitted to assert subrogation rights against a limited fund that will inadequately compensate the Plaintiffs as is.

²⁵ *Fireman’s Fund Ins. Co. v. TD Banknorth Ins. Agency, Inc.*, 72 A.3d 36, 41 (Conn. 2013) (same); *Rimes*, 316 N.W.2d at 355 (“[W]here either the insurer or the insured must, to some extent go unpaid, the loss should be borne by the insurer for that is a risk the insured has paid it to assume.”); *Garrity v. Rural Mut. Ins. Co.*, 253 N.W.2d 512, 514 (Wis. 1977) (same); *Complete Health*, 638 So. 2d at 788 (same); *Bush v. Richardson*, 484 S.E.2d 490, 494 (W. Va. 1997) (same); *Petta*, 692 N.W.2d at 651 (“What has traditionally tipped the balance in favor of an injured person’s right to be made whole as the just resolution is that the insurer has been paid to accept the risk that it may go unpaid.” (citation omitted)); *Shelter Ins. Cos. v. Frohlich*, 498 N.W.2d 74, 81 (Neb. 1993), *disapproved of on other grounds by Blue Cross & Blue Shield of Neb., Inc. v. Dailey*, 687 N.W.2d 689 (Neb. 2004) (holding that any loss should be borne by the insurer, “which has already been paid a premium for the risk it assumed and which would have been obligated to make the medical payments irrespective of its insured’s negligence and irrespective of whether or not a culpable third party could have been found”); *Blue Cross & Blue Shield*, 687 N.W.2d at 699-700 (same); *Duncan*, 482 S.E.2d at 326 (same); *USF & G. v. Maggiore*, 299 A.D.2d 341, 344 (N.Y. App. Div. 2002) (holding that the burden of loss should rest on the insurer, who was paid to assume the risk, and “[t]o do otherwise would mean that the insured loses money and the insurer gains by such a financial arrangement, which is contrary to the principal purpose of an insurance contract: to protect an insured from loss, thereby placing the risk of loss on the insurer, and the insurer has accepted payments from the insured to assume this risk of loss” (quoting 16 *Couch, Insurance 3d*, § 223:136, at 223-152–223-153)); *Swanson*, 46 P.3d at 589 (“[I]f one must to some extent go uncompensated, it should be the insurer rather than the injured party. . . . The only practical way we can satisfy this principle is to allow full compensation to the plaintiff first, before subrogation is allowed.” (citation omitted)); *Fischer*, 797 N.W.2d at 507 (“When someone cannot be fully paid, the loss should be borne by the subrogee (the insurer).”).

Fourth, subrogation rights were considered in mediating the underlying case, and insurers and subrogation claimants were included in the mediation process, so this is not a situation where the insureds and tortfeasors colluded to extinguish valid subrogation rights.

Finally, the underlying litigation arises from the deadliest wildfire in the United States in more than a century and is the second deadliest natural disaster in Hawai‘i’s history. It is difficult to imagine a more compelling scenario for the application of the made-whole doctrine to fulfill the principle that persons suffering compensable injuries are entitled to be made whole. Compensating injured parties comports with Hawai‘i precedent and is the only proper outcome under the circumstances.²⁶

The foregoing evaluation of the pertinent equitable factors and public policy issues establish that the made-whole doctrine must be applied to preclude the Subrogation Insurers from asserting subrogation rights and/or seeking reimbursement unless and until the Plaintiffs are found to be made whole, which will not be the case under the circumstances.

IV. CONCLUSION

In sum, Plaintiffs respectfully request that the Court answer the First Reserved Question with a “yes,” the Second Reserved Question with a “no,” and the Third Reserved Question with a “yes,” for the reasons set forth above. The survival of the Global Settlement depends on those answers.

²⁶ See, e.g., *Bynum v. Magno*, 106 Hawai‘i 81, 85, 101 P.3d 1149, 1153 (2004) (“Compensatory damages seek to ‘compensate the injured party for the injury sustained’ . . . in hopes of ‘restor[ing] a plaintiff to his or her position prior to the tortious act’” (alteration in original) (citations omitted)); *Tabieros v. Clark Equip. Co.*, 85 Hawai‘i 336, 389, 944 P.2d 1279, 1332 (1997) (“[T]he general rule in measuring damages is to give a sum of money to the person wronged which as nearly as possible, will restore him [or her] to the position he [or she] would be in if the wrong had not been committed.” (alterations in original) (citations omitted)); *State v. Pardee*, 86 Hawai‘i 165, 170, 948 P.2d 586, 591 (App. 1997) (“[I]n civil cases, cost of repair has traditionally been an acceptable method of proving the amount of damage to property. The *Restatement (Second) of Torts* § 928 (1977) allows either the diminution in value of the property or the reasonable cost of repair or restoration, at the election of the person whose property was damaged.”).

DATED: November 4, 2024

PANISH | SHEA | RAVIPUDI LLP

/s/ Jesse Creed

Jesse Creed (011731)
24 N. Church St.
Wailuku, HI 96793
jcreed@panish.law
Tel: 808-242-4049

Jan Apo (002960)
APO, RECK & KUSACHI
24 North Church Street, Suite 302
Wailuku, HI 96793
jankapo@jankapo.com
Tel: 808-244-6073

Jacob Lowenthal (009945)
LOWENTHAL & LOWENTHAL, LLLC
122 Maa St. B
Kahului, HI 96732
jkl@lowenthal-hawaii.com
Tel: 808-242-5000

Cynthia K. Wong (006053)
CYNTHIA K. WONG, ATTORNEY AT LAW, LLLC
2035 Main Street, Suite 2
Wailuku, HI 96793
cyn@legalmaui.net
Tel: 808-727-2921

Liaison Counsel for Individual Action Plaintiffs

Aimee M. Lum (008364)
DAVIS LEVIN LIVINGSTON
851 Fort Street, Suite 400
Honolulu, Hawai'i 96813
alum@davislevin.com
Telephone: (808) 524-7500

Co-Counsel on the Briefs

APPENDICES

- Appendix 1:** *In re Maui Wildfires* Individual Settlement Agreement
- Appendix 2:** *In re Maui Wildfires* Class Settlement Agreement

APPENDIX 1

IN RE MAUI WILDFIRES**INDIVIDUAL SETTLEMENT AGREEMENT**

This INDIVIDUAL SETTLEMENT AGREEMENT, dated as of November 1, 2024 (the “Settlement Date”), is made and entered into by and among Identified Plaintiffs’ Counsel and Defendants, who are parties to multiple lawsuits arising out of the Maui windstorm and fires of August 2023, including the fires in Lahaina, Kula, and Olinda (“Maui Fires”). This Individual Settlement Agreement, including the Individual Settlement Agreements and Releases, together with the Class Settlement Agreement that Defendants are entering into simultaneously, is intended by the Parties to fully and finally compromise, settle, resolve, discharge, release, and dismiss with prejudice on a comprehensive, global basis all Released Claims against the Releasees, as set forth below, under the terms set forth herein, subject to review and approval by the Approving Court and satisfaction of all other Conditions set forth below.

Capitalized terms have the meaning provided in Article II unless this Individual Settlement Agreement provides otherwise.

ARTICLE I: RECITALS

1.1 Multiple actions against Defendants are pending in state and federal courts arising out of the Maui Fires. Those include putative class actions, actions filed by Individual Action Plaintiffs, actions filed by Subrogation Plaintiffs, and actions filed by Defendants against one another, as well as cross-, counter-, and third-party claims in these Actions. All of the Actions allege injury—including property damage (real and personal), personal injury, wrongful death, non-economic damages such as emotional distress and inconvenience, and economic loss—incurred as a result of the Maui Fires. Plaintiffs and Subrogation Plaintiffs seek to hold Defendants liable under various theories of liability, including negligence, inverse condemnation, nuisance, trespass, and abnormally dangerous activity. Plaintiffs and Subrogation Plaintiffs seek compensatory, punitive, and exemplary damages; medical monitoring; and injunctive and other equitable relief.

1.2 On October 27, 2023, the Hon. Peter T. Cahill created a Special Proceeding for all cases that had been or would be brought by Individual Action Plaintiffs relating to the Maui Fires in the Second Circuit Court, State of Hawai‘i (Case No. 2CSP-23-000057). On January 2, 2024, Judge Cahill appointed Jan K. Apo, Jesse Max Creed, Jacob Lowenthal, and Cynthia K. Wong as Individual Action Plaintiffs’ Liaison Counsel, and selected twenty-eight law firms to appoint one member each to the “Individual Plaintiffs’ Steering Committee.” On January 9, 2024, Liaison Counsel filed the “Individual Plaintiffs’ Master Complaint & Demand for Jury Trial” (“Master Complaint”), which was amended on June 28, 2024, in the “Individual Plaintiffs’ First Amended Master Complaint & Demand for Jury Trial” (“First Amended Master Complaint”). Pursuant to Judge Cahill’s case management orders, the First Amended Master Complaint is the operative pleading for all Individual Action Plaintiffs in the Second Circuit who filed or later file a notice of adoption of the Master Complaint. Approximately 3,000 Individual Action Plaintiffs have filed notices of adoption as of the Settlement Date.

1.3 On January 12, 2024, a group of Subrogation Plaintiffs filed a complaint against certain Defendants in the First Circuit Court, State of Hawai‘i, before the Hon. Dean E. Ochiai (Case No. 1CCV-24-0000068), seeking to recover for payments made to Subrogation Plaintiffs’ insureds for allegedly covered claims, including for real and personal property loss or damage, business interruption, and alternate living expenses, arising from the Lahaina fire. Two other similar lawsuits were filed in the First Circuit Court by other Subrogation Plaintiffs, Case Nos. 1CCV-24-0000179 and 1CCV-24-0000437, and several lawsuits have been filed in the Second Circuit Court by other Subrogation Plaintiffs. On October 21, 2024, Judge Ochiai entered a written order transferring each of these three cases to the Second Circuit.

1.4 On April 25, 2024, the Hon. Barry M. Kurren consolidated three class actions pending in the United States District Court for the District of Hawai‘i into a single putative class action, *In re Lahaina Wildfire Litigation*, which came to be identified with the Case No. 1:24-cv-00259-JAO-BMK. On June 4, 2024, Class Counsel filed a consolidated complaint. On October 29, 2024, the parties to *In re Lahaina Wildfire Litigation* stipulated to dismiss that case. On October 30, 2024, Class Counsel filed the Consolidated Complaint in the Second Circuit Court, State of Hawai‘i, Case No. 2CCV-24-0000964.

1.5 Defendants deny having any liability for any claims, causes of action, costs, expenses, attorneys’ fees, or damages of any kind arising out of the Maui Fires. Defendants have asserted or intend to assert legal and factual defenses against Plaintiffs’ claims in the Actions filed against them.

1.6 Plaintiffs, through their counsel, have engaged in substantial fact investigation to evaluate the merits of their claims and Defendants’ defenses, including reviewing thousands of pages of documents produced in discovery, deposing multiple witnesses (including from multiple Defendants), retaining expert consultants, and inspecting evidence and real and personal properties. Plaintiffs also have analyzed the legal issues raised by their claims and Defendants’ defenses as well as the insurance coverage, solvency, and financial resources of the Defendants to evaluate their ability to pay settlements and verdicts.

1.7 In spring 2024, Judge Cahill appointed the Hon. Louis Meisinger (ret.), the Hon. Daniel Buckley (ret.), and Keith Hunter as settlement mediators (collectively, the “Mediators”) in the Special Proceeding. Representatives of the Parties then conducted multiple mediation sessions over nearly four months. The mediation sessions included attorneys representing Individual Action Plaintiffs and Class Plaintiffs (including Class Counsel) who had filed (or intended to file) tort and any other claims related to the Maui Fires, whether on an individual, representative, or class basis in state or federal court; attorneys representing Subrogation Plaintiffs; and attorneys representing Defendants. The Mediators ultimately made a Mediators’ proposal that reflected their informed view of the maximum amount that Defendants could fairly and practicably contribute based on the facts and circumstances of the case, including potential exposure, availability of insurance, and limitations on ability to pay. The Mediators proposed that Defendants contribute the Aggregate Settlement Amount, according to a payment schedule, to reach a global settlement of all Released Claims. The Mediators also proposed what each Defendant’s respective share of the Aggregate Settlement Amount would be.

1.8 On August 2, 2024, the Parties entered into a Term Sheet setting forth the material terms and conditions for a comprehensive global settlement to resolve, release, and forever discharge all Released Claims, expressly providing that the comprehensive global settlement fund in the amount of the Aggregate Settlement Amount must fully resolve all Released Claims, including those that had been brought or could have been brought by all Plaintiffs, including Individual Plaintiffs and Class Plaintiffs, Defendants, the Subrogation Plaintiffs, any other insurers or entities that have or may have subrogation claims, and any relevant federal agency or department.¹

1.9 The Parties thereafter agreed to create two settlement funds to effectuate the global settlement contemplated by the Term Sheet: the Class Settlement Fund and the Individual Settlement Fund. Class Counsel and Liaison Counsel have agreed to decide the Individual Settlement Amount and the Class Settlement Amount through the procedure contemplated under Section 3.1.4.

1.10 The Parties negotiated two settlement agreements: the Individual Settlement Agreement, to which Identified Plaintiffs' Counsel and Defendants are signatories, which will govern administration of the Individual Settlement Fund and the release of all Maui Fires claims by Individual Plaintiffs; and the Class Settlement Agreement, to which Class Counsel, the Class Representatives, and Defendants are signatories, which is attached hereto as Exhibit 2 and which will govern administration of the Class Settlement Fund and the release of all Maui Fires claims by Class Plaintiffs. Together, these two funds and two agreements are intended to achieve a global resolution of all Released Claims. All Parties to these agreements understand that it is a condition to either agreement becoming final and effective that the other is also final and effective.

1.11 Upon careful review and analysis, Identified Plaintiffs' Counsel have concluded that it is in the best interests of their respective clients to settle all Released Claims against the Releasees for consideration reflected in the terms and benefits of this Individual Settlement Agreement, as well as each Individual Plaintiff's Individual Settlement Agreement and Release. After arm's length negotiations, including through the efforts of the Mediators, Identified Plaintiffs' Counsel have considered, among other things: (1) the complexity, expense, and likely duration of the litigation, through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert development completed; (3) the potential for Defendants to prevail on the merits, in whole or in part, and as to any Defendant, on liability issues; (4) the Defendants' defenses to damages and the challenges in proving damages as to each Individual Plaintiff; (5) the range of possible recovery; (6) each Defendant's ability to pay; (7) the availability of insurance; (8) the benefits of a settlement at this time to Individual Plaintiffs; (9) the benefits and challenges of a global resolution and alternative resolution mechanisms, including potential bankruptcy proceedings for certain Defendants; and (10) the Mediators' reasoned proposal, and they have determined that the Aggregate Settlement Amount and the process for determining the Individual Settlement Amount are fair, reasonable, adequate,

¹ The Term Sheet excluded from the definition of Released Claims certain derivative and securities claims asserted against the Hawaiian Electric parties, as reflected in Section 2.2 of this Individual Settlement Agreement.

and in the best interests of Individual Plaintiffs, as are the terms of this Individual Settlement Agreement generally. Identified Plaintiffs' Counsel further represent that they have no current intention to file claims arising out of the Maui Fires against any additional Persons that are not Defendants.

1.12 Upon careful review and analysis, each Defendant has similarly concluded that it is in its best interests to settle all Released Claims against all other Defendants. After arm's length negotiations, including through the efforts of the Mediators, each Defendant has considered, among other things: (1) the complexity, expense, and likely duration of the litigation, through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert analysis completed; (3) the potential for both Plaintiffs and other Defendants to prevail on the merits, in whole or in part; (4) the other Defendants' defenses to damages and the challenges in proving damages as to each other Defendant; (5) the range of possible recovery; (6) each Defendant's ability to pay; (7) the availability of insurance; (8) the benefits of a global settlement with all Parties at this time; and (9) the Mediators' proposal. Considering all of these factors, each Defendant has determined that the release provisions contemplated by this Individual Settlement Agreement, and included in the Individual Settlement Agreement and Release, are reasonable, fair, adequate, and in its best interests, as are the terms of this Individual Settlement Agreement generally.

1.13 The Individual Parties agree to seek review and approval of the Individual Settlement Agreement from the applicable Approving Court(s) as necessary, and will further seek orders and/or judgments dismissing all of the Actions with prejudice, as described more particularly below.

1.14 Neither the Class Settlement Agreement nor the Individual Settlement Agreement will be construed as evidence, or as an admission by Releasees of any liability or wrongdoing whatsoever, as an admission by the Plaintiffs of any lack of merit in their claims, or as evidence or an admission of the value of the Plaintiffs' claims.

1.15 By entering this Individual Settlement Agreement, neither the State of Hawai'i nor the County of Maui, and their respective officers, employees, and departments, waives any immunity that any of them may have, except to the extent necessary for the interpretation or enforcement of this Individual Settlement Agreement.

1.16 NOW, THEREFORE, in consideration of the agreements, promises, and covenants set forth in this Individual Settlement Agreement, the Actions and all Released Claims by all Releasors shall be settled and compromised under the following terms and conditions:

ARTICLE II: DEFINITIONS

2.1 For the purposes of this Individual Settlement Agreement, the following terms (designated by initial capitalization throughout this Individual Settlement Agreement) will have the meanings set forth in this Article. Where a term is not capitalized, it shall have its ordinary meaning, in the context of the sentence, rather than the defined meaning.

2.2 “Actions” means all lawsuits against any Defendant(s) arising out of the Maui Fires, including all individual and putative class actions whether filed in state or federal court, and including complaints filed by Subrogation Plaintiffs, but not including derivative and securities claims asserted in the following cases: *Bhangal v. HEI, et al.*, Case No. 3:23-cv-04332 (N.D. Cal.); *Rice v. Connors, et al.*, Case No. 1CCV-23-0001181 (Haw. Cir. Ct.); *In re Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc. Derivative Litigation*, Case No. 3:23-cv-06627 (N.D. Cal.); *In re Hawaiian Electric Industries, Inc., Stockholder Derivative Litigation*, Case No. 24-cv-00164 (D. Haw.). For avoidance of doubt, nothing in this Individual Settlement Agreement should be construed to directly release, dismiss, or otherwise extinguish these derivative and securities claims.

2.3 “Affiliate” means, with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that Person.

2.4 “Aggregate Settlement Amount” means the \$4.037 billion total, aggregate payment to be made by Defendants to Plaintiffs by funding the Class Settlement Fund and Individual Settlement Fund, or such lesser amount as may be agreed pursuant to Section 3.3 of this Individual Settlement Agreement, and Section 3.3 of the Class Settlement Agreement. For avoidance of doubt, the Aggregate Settlement Amount includes the amount paid to the County under Section 4.1.2(k), which is paid from the Individual Settlement Fund.

2.5 “Approved Investments” shall have the meaning specified in Section 3.2.3.

2.6 “Approving Court” shall mean any court of competent jurisdiction to which a motion, petition, or request is made to approve or authorize the implementation of the Class Settlement Agreement or Class Settlement Plan, in whole or in part, or the Individual Settlement Agreement, or any Individual Settlement Agreement and Release, or the Individual Settlement Plan, in whole or in part.

2.7 “Class Counsel” means the class action counsel who are signatories to the Class Settlement Agreement.

2.8 “Class Representatives” means the named plaintiffs in the Consolidated Complaint.

2.9 “Class Settlement Agreement” means the settlement agreement signed by Class Counsel, the Class Representatives, and Defendants to provide for the release of all Released Claims by Class Plaintiffs, attached hereto as Exhibit 2.

2.10 “Class Settlement Amount” means the total payment to be made to the Class Settlement Fund by the Defendants out of the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3, as determined by Section 3.1.4.

2.11 “Class Settlement Fund” has the meaning described in Article III of the Class Settlement Agreement.

2.12 “Conditions” has the meaning provided for in Section 3.3.

2.13 “Consolidated Complaint” is the operative class action complaint in *Burnes, et al. v. Hawaiian Electric Co., Inc., et al.*, Case No. 2CCV-24-0000964 (Haw. Cir. Ct.)

2.14 “Defendant Releasors” shall refer jointly and severally, individually and collectively to all Defendants, and their respective past and present, direct and indirect, parents, guardians, conservators, fiduciaries, next friends, subsidiaries, Affiliates, officers, directors, employees, agents, legal representatives, servants, and representatives (and any of the foregoing listed Persons’ past and present officers, directors, employees, agents, attorneys, servants, and representatives), insurers (including any Subrogation Insurers), any person who may be a claimant under Hawai‘i Revised Statute § 663-3, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

2.15 “Defendants” means all of the following Persons:

2.15.1 The State of Hawai‘i and all of its subdivisions, agencies, and departments (the “State”);

2.15.2 The County of Maui and all of its subdivisions, agencies, and departments (the “County”);

2.15.3 Hawaiian Electric Company, Inc. and Hawaiian Electric Industries, Inc. (together “Hawaiian Electric”). (For the avoidance of doubt, Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc. are not Defendants, although they are named as defendants in pending Actions. They are intended beneficiaries of this Individual Settlement Agreement, and are Releasees);

2.15.4 The Trustees of the Estate of Bernice Pauahi Bishop: Elliot Kawaiho‘olana Mills, Crystal Kaulani Rose, Jennifer Noelani Goodyear-Ka‘ōpua, Michelle Ka‘uhane, and Robert K.W.H. Nobriga, in their fiduciary capacities as said Trustees, and not in their individual capacities (collectively, “KS”);

2.15.5 Spectrum Oceanic, LLC (“Spectrum”) and Charter Communications, Inc.;

2.15.6 Cincinnati Bell Inc. and Hawaiian Telcom, Inc. (collectively, “Hawaiian Telcom”); and

2.15.7 The West Maui Land Company, Inc. and certain Affiliates, including Launiupoko Irrigation Company, Inc., Hope Builders Holding LLC, Kauaula Land Company LLC, Makila Land Co., LLC, Hope Builders LLC nka Hope Builders, Inc., Launiupoko Water Company, Inc., Kauaula Land Company LLC, Kipa Centennial LLC, Wainee Land & Homes, LLC, Peter Klint Martin, individually and as trustee of the Peter Klint Martin Revocable Trust, JV Enterprises, LLC, Donna Anne Poseley, individually and as personal representative of the Estate of Douglas Poseley, Jeanne Riley, as trustee of the Jeanne Riley Trust and Successor Trustee of the James Riley trust, Makila Ranches Homeowners Association, Inc., Makila Ranches, Inc., and Olowalu Elua Associates LLC (collectively, “West Maui Land”).

2.16 “Defendants’ IP Administration Share” has the meaning specified in Section 3.1.5.

2.17 “Eligible Relatives” means any surviving spouse of, reciprocal beneficiary of, child of, father of, mother of, and any person wholly or partly dependent upon a person who died or suffered physical injury due to the Maui Fires, or any other Person who asserts a claim based on the death or physical injury of another due to the Maui Fires.

2.18 “Final Approval” means the Approving Court issuing an order granting the motion described in Section 9.4 of the Class Settlement Agreement.

2.19 “Final Order and Judgment” means the final judgment and order entered by the Approving Court finally approving the Class Settlement Agreement and Class Settlement Plan as set forth in Section 9.4 of the Class Settlement Agreement.

2.20 “Final and Unappealable” means, with respect to a judgment, order, or opinion, that such judgment, order, or opinion has achieved any one of the following criteria: (1) all Persons with a right to appeal the judgment, order, or opinion have waived or forfeited their right to do so; (2) the time to appeal has expired with no appeal filed; (3) the judgment, order, or opinion has been affirmed by an appellate court with no further possibility of appeal; or (4) all appeals from the judgment, order, or opinion have been dismissed.

2.21 “First Amended Master Complaint” has the meaning specified in Section 1.2.

2.22 “Government Entities” means any government agency, department, division, subdivision, unit, component, bureau, commission, office, board, or instrumentality of any kind, including federal, state, and municipal entities, that could assert any Released Claim against any Releasee.

2.23 “Hawaiian Electric” has the meaning specified in Section 2.15.3.

2.24 “Holdback Claim” has the meaning specified in Section 8.3.3.

2.25 “Holdback Credit” has the meaning specified in Section 8.3.4.

2.26 “Holdback Fund” has the meaning specified in Section 8.3.

2.27 “Holdback Remainder Amount” has the meaning specified in Section 8.3.5(c).

2.28 “Identified Plaintiffs’ Counsel” mean the attorneys representing Individual Action Plaintiffs who are signatories to this Individual Settlement Agreement.

2.29 “Individual Action Plaintiffs” means individual plaintiffs who have pending Actions as of the Settlement Date.

2.30 “Individual Defendant Aggregate Contribution” means the sum of each Defendant’s Individual Defendant Class Contribution and Individual Defendant IP Contribution.

2.31 “Individual Defendant Class Contribution” means the amount each Defendant has agreed to contribute to the Class Settlement Fund, as described in the Class Settlement Agreement.

2.32 “Individual Defendant IP Contribution” means the amount each Defendant has agreed to contribute to the Individual Settlement Fund, as further described in Sections 3.1 and 3.3.

2.33 “Individual Parties” means the Individual Plaintiffs, Identified Plaintiffs’ Counsel, and Defendants.

2.34 “Individual Plaintiff Releasors” shall refer jointly and severally, individually and collectively to all Individual Plaintiffs, and their respective past and present, direct and indirect, estates, parents, children, spouses, issue, beneficiaries, guardians, conservators, fiduciaries, next friends, next of kin, subsidiaries, Affiliates, officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers (and any of the foregoing listed Persons’ past and present officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers), insurers (including any Subrogation Insurers), any Person who may be a claimant under Hawai‘i Revised Statute § 663-3, Eligible Relatives, and the predecessors, successors, heirs, executors, trustees, administrators, and assigns of each of the foregoing.

2.35 “Individual Plaintiffs” means all Persons who timely and validly execute a signed Individual Settlement Agreement and Release in the form attached hereto as Exhibit 4.

2.36 “Individual Settlement Administration Expenses” means the costs incurred in administering this Individual Settlement Agreement, including payments to the Individual Settlement Administrator, all of which will be paid from the Individual Settlement Fund, except as specified in Section 3.1.5.

2.37 “Individual Settlement Administrator” has the meaning specified in Section 3.8.

2.38 “Individual Settlement Agreement” means this settlement agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

2.39 “Individual Settlement Agreement and Release” means the document that each Individual Plaintiff must sign to become an Individual Plaintiff, attached hereto as Exhibit 4.

2.40 “Individual Settlement Amount” means the total payment to be made to the Individual Settlement Fund by the Defendants out of the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3, as determined by Section 3.1.4.

2.41 “Individual Settlement Fund” means the fund created to provide Monetary Awards to Individual Plaintiffs, as described in this Individual Settlement Agreement.

2.42 “Individual Settlement Percentage” means the Individual Settlement Amount divided by the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3.

2.43 “Individual Settlement Plan” has the meaning described in Article IV.

2.44 “Initial Defendant Payment” means the total amount due to be paid by each individual Defendant on the Initial Payment Due Date to the Class Settlement Fund and the Individual Settlement Fund (cumulatively) but does not include any subsequent payments pursuant to a payment schedule.

2.45 “Initial Payment Due Date” means the initial deadline for each Defendant to make its Initial Defendant Payment as described in Section 3.3.

2.46 “Liaison Counsel” means the court-appointed Liaison Counsel pursuant to Case Management Order No. 1 entered in the Special Proceeding who are signatories to this Individual Settlement Agreement, namely Cynthia K. Wong, Jesse Max Creed, Jacob Lowenthal, and Jan K. Apo. All obligations of Liaison Counsel set forth in Section 3.8 and Article IV will be performed by a committee created by the Individual Plaintiffs’ Steering Committee (as that Committee is defined in Case Management Order No. 1 dated January 2, 2024) consisting of all major plaintiff stakeholders in the settlement, as may be decided among the Individual Plaintiffs’ Steering Committee.

2.47 “Litigation Trustee” means an individual appointed by Plaintiffs’ Counsel and approved by the Court to manage any litigation arising from non-payment of any part of an Individual Aggregate Defendant Contribution. For the avoidance of doubt, the “Litigation Trustee” is the same individual designated “Litigation Trustee” in the Class Settlement Agreement.

2.48 “Master Complaint” has the meaning specified in Section 1.2.

2.49 “Maui Fires” has the meaning as specified in the opening paragraph of this Individual Settlement Agreement.

2.50 “Mediators” has the meaning as specified in Section 1.7.

2.51 “Monetary Award” means the payment of money from the Individual Settlement Fund to an Individual Plaintiff as set forth in Section 4.1.

2.52 “Necessary Approvals” means those Conditions identified in Section 3.3.1(a), (b), (c), and (d).

2.53 “Necessary Holdback Amount” has the meaning specified in Section 8.3.5(b).

2.54 “Non-Participant” means any Person who is a member of the Settlement Class, as defined in Section 2.77 of the Class Settlement Agreement, who opts out and, as of the day after the Return Date, is not an Individual Plaintiff.

2.55 “Non-State Defendants” means all Defendants except for the State.

2.56 “One Ohana Fund” means the Maui Wildfires Compensation Program entered into on March 1, 2024.

2.57 “Parties” means, collectively, Defendants and Plaintiffs.

2.58 “Person” means an individual, corporation, company, partnership, limited liability company, joint venture, association, trust, or other entity, including a government agency, division, or department.

2.59 “Plaintiffs” means, collectively, all Individual Plaintiffs and Class Plaintiffs.

2.60 “Plaintiffs’ Counsel” means, collectively, Class Counsel and Liaison Counsel.

2.61 “Preliminary Approval” means an Approving Court issuing an order granting the motion described in Article IX of the Class Settlement Agreement.

2.62 “Released Claims” means all claims, counterclaims, cross-claims, actions, rights, disputes, and causes of action of any kind or nature whatsoever, including claims for relief, damages, liabilities, suits, arbitrations, costs, expenses, compensations, fees, attorneys’ fees, experts’ and consultants’ fees, demands, injuries, and/or losses, including, but not limited to, economic losses, medical expenses, emotional distress, property damage, diminution in property value, business interruption damages, lost profits, personal injury, medical monitoring, wrongful death, contribution, and indemnity, whether based on federal, state, local, common, or foreign law, in contract, statute, rule, ordinance, administrative provision or regulation, tort, equity, or otherwise, whether foreign or domestic, whether asserted or unasserted, known or unknown, suspected or unsuspected, liquidated or unliquidated, matured or unmatured, discoverable or undiscoverable, foreseen or unforeseen, fixed or contingent, accrued or unaccrued, direct or indirect, including those that are concealed or hidden, whether class or individual in nature, past, present, or future, in contract, statute, tort, equity, or otherwise, arising from, resulting from, due to, or relating in any way to the Maui Fires.

2.63 “Releasees” shall refer jointly and severally, individually and collectively to Defendants and all of their past, present, and future, direct or indirect, respective departments, holding companies, Affiliates, related companies, parent entities, subsidiaries, predecessors, and successors; all of their respective past, present, and future, direct or indirect, employees, stockholders, shareholders, officers, directors, boards of directors, agents, advisors, accountants, attorneys, representatives, employees, adjusters, insurers, reinsurers, assigns, general partners, limited partners, members, managers, member managers, funds, investors, co-investors, investment managers, investment vehicles, investment accounts, portfolio companies, principals, joint venturers, transferees, heirs, beneficiaries, executors, estate administrators, trustees, associates, or personal representatives, contractors, subcontractors, and vendors. The Releasees shall include, without limitation, the Persons listed on Exhibit 5 hereto. Releasees that are not Defendants are intended third-party beneficiaries under the Class Settlement Agreement that have relied upon and may enforce the Class Settlement Agreement.

2.64 “Releasers” shall refer collectively to Individual Plaintiff Releasers and Defendant Releasers.

2.65 “Return Date” means the deadline for Individual Plaintiffs to provide the Administrator with signed Individual Settlement Agreement and Releases, which shall be 60 days after the deadline to opt out of the Settlement Class.

2.66 “Settlement Date” has the meaning specified in the opening paragraph of this Individual Settlement Agreement.

2.67 “Special Proceeding” means that special proceeding opened in the Second Circuit Court, State of Hawai‘i, by Judge Cahill on October 27, 2023, captioned *In the Matter of the Petition for the Coordination of Individual Plaintiffs Maui Fires Cases*, Case No. 2CSP-23-0000057.

2.68 “Subrogation Plaintiffs” means all plaintiffs in the following actions originally filed as: *Amguard Insurance, et al. v. MECO, et al.*, Case No. 1CCV-24-0000068 (Haw. Cir. Ct.); *Certain Underwriters at Lloyd’s London Subscribing to Policy Number TRIB223061 v. MECO, et al.*, Case No. 1CCV-24-0000179 (Haw. Cir. Ct.); *Hyundai Marine & Fire Insurance Company, Ltd. v. MECO, et al.*, Case No. 1CCV-24-0000437 (Haw. Cir. Ct.); *The Dentist Insurance Co. v. MECO, et al.*, Case Nos. 2CCV-24-0000668, 2CCV-24-0000800, 2CCV-24-0000801, 2CCV-24-0000802 (Haw. Cir. Ct.). Subrogation Plaintiffs also include any other insurance carriers with subrogation claims arising out of the Maui Fires that are represented by any law firm in those actions, and, for the avoidance of doubt, other Persons to whom any insurance carrier has assigned the rights, title, interest, or proceeds of a subrogation claim arising out of the Maui Fires.

2.69 “Subrogation Insurers” means any insurer or insurance syndicate that paid, or reserved for future payment, any property damage claims (including business loss or interruption) arising out of the Maui Fires, including but not limited to the Subrogation Plaintiffs, and, for the avoidance of doubt, other Persons to whom any such insurer or insurance syndicate has assigned the rights, title, interest, or proceeds for claims arising out of such payments or reservations.

2.70 “Term Sheet” means that certain settlement term sheet dated August 2, 2024.

2.71 “Termination Event” has the meaning specified in Section 8.1.2.

2.72 Unless the context requires otherwise, (i) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (ii) the word “or” shall be construed in its inclusive sense to have the same meaning and effect as the words “and/or”; (iii) the word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (iv) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Haw. Rev. Stat. § 8-1), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (v) references to this Individual Settlement Agreement will include all exhibits, schedules, and annexes hereto; (vi) references to any law will include all rules and regulations promulgated thereunder; (vii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; (viii) when a capitalized singular form of a plural defined term is used, it refers to any one of the defined term; (ix) when a capitalized plural form of a singular defined term is used, it refers to one or more of the defined term; (x) references to dollars or “\$” are to United States dollars; and (xi) all day and time references are based on Hawai‘i Standard Time.

ARTICLE III: SETTLEMENT FUND

3.1 **Defendant Aggregate Contributions.** In consideration of the releases set forth in Article VII of this Individual Settlement Agreement and Article VII of the Class Settlement Agreement, the dismissal with prejudice of the Actions, and the terms and conditions of both the Individual Settlement Agreement and the Class Settlement Agreement, each Defendant will, in addition to performing its other obligations set forth in this Individual Settlement Agreement, pay or cause to be paid its Individual Defendant Aggregate Settlement Contribution at the times and in the amounts set forth in Section 3.3 of this Individual Settlement Agreement and Section 3.3 of the Class Settlement Agreement, with each Defendant's Individual Defendant Aggregate Contribution being the amount that has been agreed upon by that Defendant with the Mediators.

3.1.1 A Defendant's payment of its Individual Defendant Aggregate Contribution into the Class and Individual Settlement Funds shall satisfy all monetary obligations of that Defendant under both this Individual Settlement Agreement and the Class Settlement Agreement. In no event shall any Defendant be required to pay more than its Individual Defendant Aggregate Contribution.

3.1.2 Defendants are not jointly liable for the whole amount to be paid into the Class Settlement Fund and Individual Settlement Fund, or either of them. Any failure by any Defendant to timely pay all or part of its Individual Defendant Aggregate Contribution—including either its Individual Defendant Class Contribution or its Individual Defendant IP Contribution—shall not affect the effectiveness of any release of any Released Claim, including as to any other Defendant (and its associated Releasees), nor provide Plaintiffs a cause of action against any Defendant (or its associated Releasees) other than the non-paying Defendant for that payment.

3.1.3 Each Defendant's contribution to the One Ohana Fund shall be a credit that will be applied dollar-for-dollar as a partial payment of its Individual Defendant Aggregate Contribution, and the Aggregate Settlement Amount includes such contributions.

3.1.4 **Individual Settlement Amount.** The Class Settlement Amount and the Individual Settlement Amount will be determined in accordance with the terms and conditions set forth in Exhibit 10. The procedures set forth in Exhibit 10 to determine the Class Settlement Amount and the Individual Settlement Amount may not modify or add to any provision of this Individual Settlement Agreement or the Class Settlement Agreement, including, but not limited to, the definition of the Settlement Class in the Class Settlement Agreement, the Releases under Section VII, the Aggregate Settlement Amount, and the terms of Section 4.1.2(k). For avoidance of doubt, no requirement in this Individual Settlement Agreement may be altered without the written consent of all signatories to this Individual Settlement Agreement.

3.1.5 **Individual Settlement Administration Expenses.** Defendants will be responsible for, in addition to the Aggregate Settlement Amount, 50% of the Individual Settlement Administration Expenses, up to a cap of \$15 million, which shall be known as the Defendants' IP Administration Share. The Defendants' IP Administration Share will be paid from the sources as follows in the following order. First, all interest generated by the principal amounts contributed to the One Ohana Fund will be exhausted. Second, if, and only if, that

interest is exhausted, then any refund to the County of amounts it previously contributed to the One Ohana Fund will be exhausted, and this shall satisfy the County's full and total obligation to pay any remaining IP Administration Share. Third, if, and only if, these first two sources are exhausted, the remaining Defendants will collectively pay the remainder of Defendants' IP Administration Share, with each Defendant paying a proportion that corresponds to its Individual Defendant Aggregate Contribution divided by the Aggregate Settlement Amount.

3.2 **Creation of Individual Settlement Fund.**

3.2.1 Upon payment of any portion of any Individual Defendant IP Contribution into the Individual Settlement Fund, the Individual Settlement Fund shall become a "qualified settlement fund," as defined in 26 C.F.R. § 1.468B-1. Liaison Counsel or the Individual Settlement Administrator shall establish accounts that together will be designated as a "qualified settlement fund," as defined in 26 C.F.R. § 1.468B-1, pursuant to the Internal Revenue Code.

3.2.2 Neither the Individual Parties nor the Individual Settlement Administrator shall take any position in any filing or before any tax authority that is inconsistent with treating the Individual Settlement Fund as a "qualified settlement fund," as defined in 26 C.F.R. § 1.468B-1. Each Defendant shall be a "transferor," and the Individual Settlement Administrator shall be the "administrator" of the Individual Settlement Fund within the meaning of 26 C.F.R. §§ 1.468B-1(d)(1) and 1.468B-2(k)(3), respectively. As a result, the Individual Settlement Administrator will be responsible for all tax paying, filing, withholding, and reporting obligations of the "qualified settlement fund," including, without limitation, those arising from any payments made from the Individual Settlement Fund, including any reporting required on IRS Form 1099 for distributions made from the Individual Settlement Fund. The Individual Parties agree to take all necessary and reasonable actions to qualify the Individual Settlement Fund pursuant to the United States Treasury Regulations.

3.2.3 The Individual Settlement Administrator shall hold the cash in the Individual Settlement Fund in one or more account(s) that are either (i) FDIC-insured and/or (ii) invested in securities backed by the full faith and protection of the U.S. Government (either in the form of U.S. Treasury bonds or in the form of a Treasury securities money market account) ("Approved Investments"). The Individual Settlement Administrator shall make such investments in Approved Investments on the same day it receives Individual Settlement Fund payments. During any settlement period and/or when cash is in the Individual Settlement Administrator's account prior to the payment to Individual Plaintiffs, the Individual Settlement Administrator shall hold such cash in FDIC-insured accounts, providing FDIC insurance for all such funds. The Individual Settlement Administrator shall take all precautions necessary to ensure that the funds are used solely for the purposes authorized by this Individual Settlement Agreement.

3.2.4 Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Individual Settlement Fund, including any risk of bank failures, seizures, freezes, or fraudulent or incorrect payments, which shall be the sole responsibility of Identified Plaintiffs' Counsel and the Individual Settlement Administrator. Individual Plaintiffs and Identified Plaintiffs' Counsel bear all risk and liability in the event that the bank is placed into receivership or conservatorship, and Individual Plaintiffs cannot access or

receive some or all of the funds from the Individual Settlement Amount. Any such bank receivership or conservatorship shall not limit or otherwise affect the releases of the Releasees, as defined pursuant to the Individual Settlement Agreement.

3.2.5 Identified Plaintiffs' Counsel and the Individual Settlement Administrator will segregate KS's Individual Defendant IP Contribution from the contributions of the other Defendants in a separate account that is part of the Individual Settlement Fund. The distributions from this account shall be used to pay claims related to the Lahaina fire only.

3.3 Timing of Payments to Individual Settlement Fund.

3.3.1 No payment by any Defendant will be due until the Initial Payment Due Date. The Initial Payment Due Date shall be 30 days after each of the following Conditions has been satisfied, except for the Condition specified in subsection (f), which, per Section 5.2, must occur on or before the Initial Payment Due Date:

(a) As to the State, the enactment of legislation appropriating funds for the State's Individual Defendant Aggregate Contribution;

(b) As to KS, approvals of KS's Individual Defendant Aggregate Contribution through: (1) written fiduciary affirmation letters from the State Attorney General (as *parens patriae*); (2) fiduciary approvals from the State Probate Court (in KS' open-probate case), in a Final and Unappealable order; and (3) tax approvals from the Internal Revenue Service (as a tax-exempt organization), in a Private Letter Ruling. For these approvals, KS must complete and submit to regulators its fiduciary reviews of expected liabilities, financial capacities, the Class Settlement Plan (as defined in the Class Settlement Agreement), and the Individual Settlement Plan, to determine if its Individual Defendant Aggregate Contribution is, among other things, prudent, fiduciarily justified, and without impermissible private benefit;

(c) Final Approval of the Class Settlement Agreement and Class Settlement Plan;

(d) Any other approvals necessary to render any release provided by any Plaintiff, including any Class or Individual Plaintiff, enforceable;

(e) Satisfaction of the requirements set forth in Section 5.1.1 or Section 5.1.2;

(f) Satisfaction of the requirement set forth in Section 5.2;

(g) The Final Order and Judgment has become Final and Unappealable;

(h) The deadlines for exercising all termination rights set forth in Article VIII have passed with no Party validly exercising such termination rights; and

(i) The Approving Court has made a Final and Unappealable good-faith determination approving the Class Settlement Agreement and Individual Settlement Agreement in accordance with Section 9.3.

3.3.2 Each Defendant will pay its Individual Defendant IP Contribution according to the following schedule:

3.3.3 For Hawaiian Electric, the Individual Settlement Percentage multiplied by \$478,750,000 on the Initial Payment Due Date, and three additional payments of the Individual Settlement Percentage multiplied by \$478,750,000 that are, in each case, made one year and one day after the previous one, plus the amount refunded by the One Ohana Fund of the principal amount Hawaiian Electric contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of Hawaiian Electric's receipt of such funds, provided that, at Hawaiian Electric's option, Hawaiian Electric may accelerate all or any portion of amounts due after the Initial Payment Due Date, in which case, subject to Section 3.4, such accelerated payments shall be discounted at the rate of 5.5%, with a corresponding reduction in its Individual Defendant IP Contribution and Individual Defendant Aggregate Contribution, as well as the Aggregate Settlement Amount and the Individual Settlement Amount.

(a) Hawaiian Electric further agrees to the conditions under Appendix B.

3.3.4 For the State of Hawai'i, \$201,875,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, and \$201,875,000 multiplied by the Individual Settlement Percentage on each of the three successive anniversaries of the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount the State of Hawai'i contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of the State of Hawai'i's receipt of such funds.

3.3.5 For KS, \$213,750,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, and \$213,750,000 multiplied by the Individual Settlement Percentage on each of the three successive anniversaries of the Initial Payment Due Date, provided that, at KS's option, KS may accelerate all or any portion of amounts due after the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount KS contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of KS's receipt of such funds.

3.3.6 For Hawaiian Telcom, \$97,500,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount Hawaiian Telcom contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of Hawaiian Telcom's receipt of such funds.

3.3.7 For Spectrum, \$177,500,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund

of the principal amount Spectrum contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of Spectrum's receipt of such funds.

3.3.8 For West Maui Land, \$9,500,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount West Maui Land contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of West Maui Land's receipt of such funds.

3.3.9 If a Defendant elects to make an accelerated payment, such Defendant will provide written notice to Plaintiffs' Counsel thirty (30) days prior to the date of such payment. Such notice shall set forth the amount of the accelerated payment, how the amount was calculated (including which payment(s) is/are accelerated), and the schedule of remaining payments. Any dispute about the calculations shall be subject to the dispute resolution provision in Section 10.2.

3.4 **Holdback.** In accordance with Section 8.3, the Class Settlement Administrator and the Individual Settlement Administrator shall hold back certain funds from each payment by any Defendant to the Class Settlement Fund or Individual Settlement Fund.

3.5 **Uses of Settlement Fund.** All Monetary Awards to Individual Plaintiffs, Individual Settlement Administration Expenses (except as specified in Section 3.1.5), and payments to Subrogating Insurers or for medical or other liens for Individual Plaintiffs, if any, as to Released Claims, and payments or amounts due on Holdback Claims per Section 8.3, shall be paid exclusively from the Individual Settlement Fund. The Individual Settlement Fund and Class Settlement Fund are, collectively, the sole sources of recovery for Plaintiffs, Non-Participants, Government Entities, and Subrogation Insurers for any Released Claims.

3.6 **Taxes.** All Individual Plaintiffs shall agree to be solely responsible for, and be legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by them to any national, federal, state, local, regional, or any other governmental taxing authority as a result of any payment made in connection with this Individual Settlement Agreement. Identified Plaintiffs' Counsel understand, and Individual Plaintiffs must affirm that they understand, that Defendants have not made, and they do not rely upon, any representations regarding the tax treatment of the payments made in connection with this Individual Settlement Agreement. Moreover, Individual Plaintiffs shall agree to indemnify and hold Defendants and Releasees harmless if any governmental taxing authority asserts against any Defendant or other Releasee any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon any payment made in connection with this Individual Settlement Agreement.

3.7 **Attorneys' Fees and Costs.**

3.7.1 Attorneys for Individual Plaintiffs will be compensated by Individual Plaintiffs consistent with the terms of agreements between them and applicable law.

3.7.2 For the avoidance of doubt, Defendants shall have no responsibility for any payments beyond their Individual Defendant Aggregate Contributions, and no responsibility to pay any fees or costs other than insofar as those fees and costs are paid from, in the aggregate, the Class Settlement Fund and Individual Settlement Fund. Plaintiffs shall have no responsibility to pay any fees or costs of any Defendant except where specified in this Individual Settlement Agreement.

3.7.3 Defendants shall bear each of their own attorneys' fees and costs incurred in the Actions and this Individual Settlement Agreement.

3.8 Individual Settlement Administrator.

3.8.1 Liaison Counsel and Defendants will agree on a neutral party within 20 days of the Settlement Date, whose tasks under this Individual Settlement Agreement are limited to implementing this Section. Liaison Counsel will use a competitive bidding process to assess candidates to be the Individual Settlement Administrator. Liaison Counsel will thereafter submit their selected candidate to the neutral appointed under this Section, in addition to all of the bids they received. That neutral will have the unilateral right to approve or disapprove the candidate for appointment as the Individual Settlement Administrator, based solely on an assessment whether, taking into account the bids, the amounts proposed to be paid to the candidate for Individual Settlement Administrator are reasonable. The neutral will not be limited, in assessing the candidate, to approving only the candidate who submitted a bid with the lowest proposed fees.

3.8.2 Liaison Counsel will request that the Approving Court appoint the candidate ultimately selected pursuant to Section 3.8.1 as Individual Settlement Administrator. Except as expressly stated in this Individual Settlement Agreement, Defendants shall not have any responsibility, authority, or liability for the selection of the Individual Settlement Administrator, the administration of the Individual Settlement Agreement or the Individual Settlement Plan, receiving and responding to any inquiries from Individual Plaintiffs, or disbursement of funds to Individual Plaintiffs. For avoidance of doubt, the Class Settlement Administrator may be the same Person as the Individual Settlement Administrator. The Individual Settlement Administrator's rights, obligations, responsibilities, and authority shall include the following:

3.8.3 The Individual Settlement Administrator shall administer the settlement according to the terms of this Individual Settlement Agreement and the Individual Settlement Plan. The Individual Settlement Administrator shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, this Individual Settlement Agreement or the Individual Settlement Plan, deemed by the Individual Settlement Administrator and any consultants retained by the Individual Settlement Administrator to be reasonably necessary for the efficient and timely administration of this Individual Settlement Agreement and the Individual Settlement Plan.

3.8.4 The Individual Settlement Administrator shall determine eligibility of Individual Plaintiffs for Monetary Awards according to the terms of this Individual Settlement Agreement and the Individual Settlement Plan, and shall create administrative procedures and

administrative processes supplementary to those specified in this Individual Settlement Agreement and the Individual Settlement Plan that provide further specific details about how the Individual Settlement Fund is administered, and/or other aspects of this Individual Settlement Agreement and the Individual Settlement Plan; provided, however, that such procedures comply with and are in no way inconsistent with the terms of this Individual Settlement Agreement and the Individual Settlement Plan.

3.8.5 The Individual Settlement Administrator shall be compensated for its reasonable and necessary charges incurred in the performance of the position at a reasonable rate for the services to be performed, as approved by Liaison Counsel, and such approved compensation shall be part of the Individual Settlement Administration Expenses.

3.8.6 Beginning the first January after appointment, the Individual Settlement Administrator will provide annual financial reports to the Court, Defendants, and Liaison Counsel, based on information from the preceding year, regarding: (a) the number of Individual Plaintiffs who received Monetary Awards, and the number of Individual Plaintiffs who sought but were found by the Individual Settlement Administrator not to qualify for Monetary Awards; (b) the monetary amounts paid through Monetary Awards; (c) the number of Individual Plaintiffs for whom appeals are pending regarding Monetary Awards; (d) the identification/breakdown of any law firms representing Individual Plaintiffs; (e) administrative costs, including a summary accounting of the administrative expenses incurred by the Individual Settlement Administrator; (f) the projected expenses/administrative costs over the next calendar year; (g) the monies remaining in the Individual Settlement Fund; and (h) any other information requested by the Court, Defendants, or Liaison Counsel.

3.8.7 The Defendants may elect, at their own expense, to cause an audit to be performed by a certified public accountant of the financial records of the Individual Settlement Administrator, and the Individual Settlement Administrator shall cooperate in good faith with the audit. Audits may be conducted at any time. Complete copies of the audit findings report will be provided to the Court and to any Defendant or Liaison Counsel that pays their pro-rata share of the cost of the audit.

3.8.8 If the Individual Settlement Administrator resigns or otherwise cannot perform its duties and responsibilities under the Individual Settlement Agreement, a replacement will be selected by Liaison Counsel.

3.9 **Website.** Liaison Counsel in conjunction with the Individual Settlement Administrator will establish and maintain a public website containing information about the Individual Settlement Agreement.

ARTICLE IV: PARTICIPATION IN THE INDIVIDUAL SETTLEMENT

4.1 **Individual Settlement Plan.** Liaison Counsel will work with the Individual Settlement Administrator to develop an Individual Settlement Plan for the administration of the Individual Settlement Fund. Liaison Counsel will file the final version of the Individual

Settlement Plan publicly with the Approving Court along with a request that the Approving Court approve that plan.

4.1.1 In the event that the Approving Court requires changes to the Individual Settlement Plan, the Individual Parties remain bound to the Individual Settlement Agreement, except that requirements that are expressly stated in this Individual Settlement Agreement (except where expressly noted) may not be altered without the written consent of all signatories to this Individual Settlement Agreement.

4.1.2 The following provisions must be included in the Individual Settlement Plan:

(a) The Individual Settlement Plan shall include a plan for determining the Monetary Award for each Individual Plaintiff, which may address the valuation of specific categories of claims and the proof or evidentiary showing, if any, necessary for an Individual Plaintiff to establish entitlement to a Monetary Award.

(b) The Individual Settlement Plan shall include a plan for claims administration, including the distribution and timing of Monetary Awards. In any such plan, a failure of an Individual Plaintiff, or their agent, to comply with the requirements of the Individual Settlement Plan to receive a Monetary Award, or the fact that an Individual Plaintiff ultimately does not receive any particular Monetary Award that was allocated to them, will not affect the validity or enforceability of the Release provided by such Individual Plaintiff.

(c) The Individual Settlement Plan shall require that any Individual Plaintiff who is eligible for payment from the One Ohana Fund must register for and seek payment from the One Ohana Fund as a condition precedent to receiving any money from the Individual Settlement Fund. The Individual Settlement Plan shall ensure that any Individual Plaintiff's Monetary Award takes into consideration the amount of any payment that the Individual Plaintiff previously received from the One Ohana Fund. For the avoidance of doubt, Individual Plaintiffs may receive additional money from the Individual Settlement Fund beyond any amounts previously received from the One Ohana Fund.

(i) The State of Hawai'i will work with the contributors to the One Ohana Fund to reopen it for the submission of claims for a time period of at least six months after the issuance of the order of Preliminary Approval to effectuate this requirement under Section 4.1.2(c).

(d) The Individual Settlement Plan shall ensure that any Individual Plaintiff's Monetary Award does not impact the eligibility of an Individual Plaintiff to receive assistance from the Federal Emergency Management Agency ("FEMA"). The Individual Settlement Plan shall implement measures that take into consideration the amount of any payment that the Individual Plaintiff previously received from FEMA when determining that Individual Plaintiff's Monetary Award. For the avoidance of doubt, Individual Plaintiffs may receive additional money from the Individual Settlement Fund beyond any amounts previously received from FEMA.

(e) The Individual Settlement Plan shall include a plan for approval of any Individual Settlement Agreement and Release that requires approval from an Approving Court.

(f) The Individual Settlement Plan shall include a plan for the establishment and implementation of procedures to detect and prevent fraudulent submissions and the payment of fraudulent claims from the Individual Settlement Fund. Defendants and Liaison Counsel each will have the absolute right and discretion, at any time, but at their sole expense, in good faith to conduct, or have conducted by an independent auditor, audits to verify Monetary Award claims submitted by Individual Plaintiffs.

(g) The Individual Settlement Plan shall include a plan for the identification and satisfaction of liens. The plan shall set forth a process for the identification of liens on an Individual Plaintiff's recovery, including but not limited to any potential health care liens or recovery claims related to this Individual Settlement Agreement, as well as any liens related to property insurance or business loss claims. The plan shall require any Individual Plaintiff to, as part of the claims process, provide the names of any insurers, including for medical coverage, property loss or damage, and business loss or interruption, to which the Individual Plaintiff has made a claim for payment of any sums arising out of or related to the Maui Fires and the amount of such payments sought and received. The plan shall set forth the process by which all liens shall be satisfied, and shall provide for the completion of any applicable reporting obligations. The plan shall provide that Individual Plaintiffs are solely responsible to pay, satisfy, compromise or settle any costs, expenses, liens, claims and demands. The plan shall state that no Monetary Award shall be made to an Individual Plaintiff until all lien and other fees and cost obligations of the Individual Plaintiff have been resolved and paid or have been withheld subject to an applicable lien holdback. The plan shall further address the role that the Approving Court will have in resolving any disputes related to identification and satisfaction of liens, including the amount of such liens.

(i) The Individual Settlement Plan shall require, as a condition for receipt of any Monetary Award, Individual Plaintiffs to provide the Individual Settlement Administrator with all information necessary to resolve all liens or rights of subrogation or reimbursement from any doctors, hospitals, other healthcare providers and servicers, and any other individuals, insurers, companies, agencies, workers' compensation insurers or agencies, governmental agencies, political subdivisions, attorneys, or other third parties, including, but not limited to, Medicare, Med-QUEST, the Veterans Administration, Tricare, the Department of Health Care Services, Medicaid, the Centers for Medicare & Medicaid Services, or any other federal or state programs or Persons (collectively, "Medical Liens"). The Individual Settlement Plan shall further require Individual Plaintiffs to obtain waivers or other documentation from all Persons holding such Medical Liens, establishing that all Medical Liens for all Individual Plaintiffs have been paid, satisfied, or waived.

(ii) The plan shall require that the Individual Plaintiffs agree that, to the extent their Medicare, Medicaid, and SCHIP Extension Act ("MMSEA") reporting obligations change during the executory period of this Individual Settlement Agreement, Individual Plaintiffs must provide any additional information needed to comply with such requirements.

(h) The plan shall include provisions that address the resolution of claims of Subrogation Insurers for payments made to policyholders who are Individual Plaintiffs.

(i) The Individual Settlement Plan shall not modify or adjust the amount allocated to an Individual Plaintiff based on whether such Individual Plaintiff received, or is entitled to receive, payments from a Subrogation Insurer under a policy of insurance.

(j) The Individual Settlement Plan shall include a plan for potential distribution of Holdback Funds to Individual Plaintiffs, subject to Section 8.3.

(k) The Individual Settlement Plan shall include provisions that the County shall receive \$25,000,000.00 in a single cash payment payable on the third annual anniversary of the Initial Payment Due Date (“Individual County Payment”). This payment will come out of the Individual Settlement Amount. By agreement of the Parties, the Individual County Payment is a sum certain that shall not be subject to the Individual Settlement Administration process or subject to any modification by the Settlement Administrators or others, or the allocation procedure referenced in Section 3.1.4.

(l) **FEMA Obligation.** This Individual Settlement Agreement encompasses and includes claims for the FEMA-eligible work and financial assistance to the County provided by FEMA related to the Maui Fires. After coordinating with FEMA, it is the understanding of the Parties that the pro rata allocation of the settlement funds referenced in Section 4.1.2(k) to the County shall also satisfy all FEMA interests in the alleged potential liability of the Parties for costs of FEMA reimbursements and financial assistance and leaves no basis for FEMA to directly pursue from the Parties these or any other costs related to the County’s claims against Defendants. The County and the Parties agree that this Individual Settlement Agreement and the settlement sum identified in Section 4.1.2(k) represent a fair, reasonable, and just amount of compensation for the claimed, disputed damages, and that the County made commercially reasonable efforts to pursue claims to recover the monies and benefits obligated, paid or given or sought to be obligated, paid or given, to or by the County by FEMA. The County and the Parties agree that the County made commercially reasonable efforts to secure the settlement sum in this litigation, which includes those monies and benefits obligated, paid or given, or sought to be obligated, paid or given, by FEMA. The letters to and from FEMA reflect the procedures agreed to by FEMA. The letters between FEMA, on the one hand, and the State and County, on the other hand, are attached as Exhibit 9.

4.2 **Liability for Allocation of Consideration.** Identified Plaintiffs’ Counsel bear full and sole responsibility for devising a method of allocating the Individual Settlement Amount among the Individual Plaintiffs and devising a method to determine how much of the Individual Settlement Amount each shall receive. Identified Plaintiffs’ Counsel assume all risk of liability for all damages, losses, and any other relief, including attorneys’ fees and costs, for any claim asserted against Releasees related to payment of Individual Plaintiffs, including related to allocation of the Individual Settlement Amount or Aggregate Settlement Amount. The total amount paid to Individual Plaintiffs (inclusive of all attorneys’ fees, expert fees, Administrator’s fees, and all costs and other amounts) cannot exceed the Individual Settlement Amount, except pursuant to Section 4.1.2(a) of the Class Settlement Agreement.

4.3 On the Initial Payment Due Date, the Parties hereby irrevocably authorize the Individual Settlement Administrator to deliver to the Defendants all executed original copies of the Individual Settlement Agreement and Releases.

ARTICLE V: SUBROGATION CLAIMS AND INDEMNIFICATION

5.1 It is a Condition to this Individual Settlement Agreement that, by May 19, 2025, one of the following two requirements is met:

5.1.1 Each and every Subrogation Plaintiff executes and delivers to the Parties a written agreement approved by the Parties in which each Subrogation Plaintiff agrees to release all Released Claims against Releasees; or

5.1.2 A decision of a trial court becomes Final and Unappealable holding that, if the Class and Individual Settlement Agreements become effective, (a) the Subrogation Plaintiffs' exclusive remedy for any claims arising out of the Maui Fires would be asserting liens, if any, against their policyholders for their respective shares of the Aggregate Settlement Amount and (b) the Subrogation Plaintiffs shall be barred from bringing or maintaining any claims arising out of the Maui Fires against the Defendants.

5.2 It is a Condition to this Individual Settlement Agreement that, on or prior to the Initial Payment Due Date, all claims brought by any Subrogation Insurer against any Releasee for subrogation arising out of the Maui Fires must be dismissed with prejudice in a Final and Unappealable order.

5.3 The Defendants agree to join in any lawful and reasonable motions for expediting appellate review of the trial court's judgments, orders, or opinions under Sections 5.1.2 and 5.2.

5.4 For the avoidance of doubt, the order entered by Judge Peter Cahill on August 19, 2024, in the Special Proceeding, constitutes a decision of a trial court that, if rendered Final and Unappealable, would satisfy Section 5.1.2.

5.5 Plaintiffs' Counsel will promptly notify the Defendants if, in their judgment, the conditions of Section 5.1 have been satisfied. The Defendants shall thereafter promptly notify Plaintiffs' Counsel whether, in the Defendants' judgment, the conditions in Section 5.1 have been satisfied. If the Defendants contend that the conditions have not been satisfied, and Plaintiffs' Counsel dispute that determination, the issue shall be discussed further with the assistance of the Mediators.

5.6 In the event that the Condition in Section 5.1 is satisfied by an agreement under Section 5.1.1, the signatories to this Individual Settlement Agreement and the Class Settlement Agreement will negotiate in good faith to modify both agreements consistent with the intention to establish a global resolution, including by addition of provisions for the release and/or indemnification of the Releasees with respect to all Released Claims by all Subrogation Insurers. Such modifications may include broadening the definition of Parties in this Individual Settlement Agreement and/or the Class Settlement Agreement to include Subrogation Insurers. Any

modifications to this Individual Settlement Agreement require the written consent of all signatories to this Individual Settlement Agreement.

5.7 Subrogation Indemnification. Each Individual Plaintiff who receives a Monetary Award shall be required to indemnify the Releasees with respect to any individual liens asserted by any Subrogation Insurer against that Individual Plaintiff arising out of or relating to the Maui Fires.

5.7.1 Each Individual Plaintiff who receives a Monetary Award shall agree to indemnify, forever hold harmless, and defend Releasees against loss, liability, cost, or expense from any and all claims, lawsuits, appeals, liens, demands, actions, cross claims, and third-party claims arising out of the Maui Fires that have been made or brought, or that may be made or brought later, by such Person or by anyone acting on their behalf, or by anyone holding by or through them, including Persons asserting rights of subrogation in connection with such Individual Plaintiff's claims.

5.7.2 Each Individual Plaintiff who receives a Monetary Award shall affirm that they understand and agree that the defense and indemnification obligation in Section 5.7.1 includes the defense, payment, and satisfaction of claims or liens by all Persons who have claimed or in the future may claim that they have money due and owing to them from this Individual Settlement Agreement or any matter covered by or related to this Individual Settlement Agreement, including, but not limited to, claims or liens by Persons who have provided or paid, or who will provide or pay, to or on behalf of Individual Plaintiff, pursuant to contract, law, insurance claims, or government benefits of any kind arising from the Maui Fires.

5.8 Each Individual Plaintiff who receives a Monetary Award shall specifically represent that if any lien or reimbursement right is asserted under any legal theory against the proceeds herein or against Releasees, then, in consideration of the Individual Plaintiff's Monetary Award, Individual Plaintiff shall covenant to pay and satisfy such asserted lien or reimbursement right, or to satisfy the same on a compromise basis or through final determination by a court of competent jurisdiction, and to obtain a release of Releasees, and to indemnify and hold harmless Releasees from any costs, expenses, attorneys' fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien or reimbursement rights by any Person having or claiming to have such lien or reimbursement right.

5.9 Provisions reflecting the obligations set forth in Section 5.7 and Section 5.8 are included in the Individual Settlement Agreement and Release.

ARTICLE VI: NO ADMISSION OF LIABILITY

6.1 No Admission of Liability. This Individual Settlement Agreement (whether or not consummated), including the exhibits hereto and the Individual Settlement Plan (or any other plan of allocation that may be approved by the Approving Court), the negotiations leading to the execution of this Individual Settlement Agreement, and any proceedings in connection with this Individual Settlement Agreement and/or approval of any Individual Settlement Agreement and Release (including any arguments proffered in connection therewith) shall not constitute, be

construed as, be deemed to be, or be offered against any Releasee as evidence of any presumption, concession, or admission by Defendants or other Releasees with respect to the truth of any fact alleged by Plaintiffs, the validity of any claim that was or could have been asserted, the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, the amount of any alleged damages incurred by any or all Plaintiffs or attributable to any Defendant, or any liability, negligence, fault, or other wrongdoing of any kind by Defendants or any other Releasees, or be referred to for any other reason as against Defendants or any other Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate or enforce the provisions of this Individual Settlement Agreement.

ARTICLE VII: RELEASES

7.1 Individual Plaintiff Releasors. The Individual Settlement Agreement and Release shall require that an Individual Plaintiff, on behalf of all of their respective Individual Plaintiff Releasors, expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever releases, discharges, and holds harmless the Releasees from any and all Released Claims and waives, compromises, relinquishes, and settles the Released Claims against Releasees. For the avoidance of doubt, nothing in these releases shall prevent that Litigation Trustee from pursuing an action contemplated by Section 7.7. A failure of an Individual Plaintiff, or their agent, to comply with the requirements of the Individual Settlement Plan to receive a Monetary Award, or the fact that an Individual Plaintiff ultimately does not receive any particular Monetary Award that was allocated to them, will not affect the validity or enforceability of these releases. This Individual Settlement Agreement does not itself constitute a release of any particular claim of any particular Person eligible to become an Individual Plaintiff. This Individual Settlement Agreement does not require any Person eligible to become an Individual Plaintiff to settle their Released Claims, and any such Person is free to settle or not settle their Released Claims consistent with the terms of this Individual Settlement Agreement. The ultimate authority whether to sign the Individual Settlement Agreement and Release remains completely with each Person eligible to become an Individual Plaintiff.

7.1.1 Subrogation. For the avoidance of doubt, these releases shall be binding on all insurers who paid Individual Plaintiffs under insurance policies for claims in any way related to the Maui Fires.

7.2 Agreements with Government Entities.

7.2.1 Defendants have received letters from FEMA and receipt of these letters is a material part of the consideration received by Defendants for this Individual Settlement Agreement.

7.2.2 In addition, Defendants agree that they will work diligently and use their best efforts to obtain written releases and/or commitments from relevant Government Entities not to pursue any claims arising out of the Maui Fires against Releasees, as provided under Sections 6 and 7 of the Term Sheet, prior to the Initial Payment Due Date.

7.3 Defendants' Releases. In consideration of the terms of this Individual Settlement Agreement and the Class Settlement Agreement, each and every Defendant, on behalf of its respective Defendant Releasors, shall release the Releasees from any Released Claim, including cross-claims for indemnity or contribution for any Released Claim, provided, however, that, subject to Section 8.3.6, this release shall not include cross-claims between Defendants (or their respective Defendant Releasors) for indemnity, contribution, or otherwise for any Released Claim brought against any Releasee by any Person who is not a Plaintiff. Any Released Claim brought against any Releasee by any Person who is not a Plaintiff shall be paid and defended from the Holdback Fund, as more particularly discussed in this Individual Settlement Agreement and the Class Settlement Agreement. If a Defendant Releasor enters into a settlement of a Released Claim with any Person who is not a Plaintiff, the Defendant Releasor shall make reasonable efforts to ensure that the settlement requires the settling Person to unconditionally release all Released Claims against all Releasees, including as described in Section 8.3.3.

7.4 Individual Settlement and Releases.

7.4.1 Court Approval. Liaison Counsel shall submit the form of the Individual Settlement Agreement and Release, attached as Exhibit 4, to the Approving Court for approval. In the event that the Approving Court either denies approval or conditions approval on changes to the Individual Settlement Agreement and Release, and any such changes would be inconsistent with this Individual Settlement Agreement, then Defendants and Liaison Counsel shall negotiate in good faith to modify the Individual Settlement Agreement and the Individual Settlement Agreement and Release in a manner that resolves the issues identified by the Approving Court. If Defendants and Liaison Counsel are unable to agree on such modifications, any Defendant or Liaison Counsel may request the assistance of the Mediators. If the Mediators notify Defendants and Liaison Counsel of an impasse, then, within 10 days of receipt of such notice, any Defendant or Liaison Counsel may provide a notice of termination of this Individual Settlement, which notice shall be effective immediately. For the avoidance of doubt, any change to the Individual Settlement Agreement and Release that does not involve a change to this Individual Settlement Agreement is not a basis for termination under this paragraph.

7.4.2 Collection. A signed Individual Settlement Agreement and Release must be provided to Defendants by each Person in order for any such Person to become an Individual Plaintiff or receive a Monetary Award from the Individual Settlement Fund. Counsel for the Person signing an Individual Settlement Agreement and Release shall be solely responsible for obtaining and submitting an Individual Settlement Agreement and Release on behalf of that Person. All executed Individual Settlement Agreement and Releases shall be delivered to the Individual Settlement Administrator to be held in trust for the Parties until the Initial Payment Due Date or the earlier termination of this Individual Settlement Agreement. If the termination of this Individual Settlement Agreement occurs prior to the Initial Payment Due Date, then the Parties irrevocably authorize the Individual Settlement Administrator to return all Individual Settlement Agreement and Releases to counsel for the Person(s) who executed the Individual Settlement Agreement and Release.

7.4.3 Reporting. The Parties agree that the Individual Settlement Administrator shall be instructed to provide a report each month after the Settlement Date which report shall detail the activities performed in the prior month and identify the Individual Plaintiffs who have

executed and delivered Individual Settlement Agreement and Releases as of month's end, together with a copy of each Individual Settlement Agreement and Release received by the Individual Settlement Administrator in such month (for purposes of clarity, such Individual Settlement Agreement and Releases shall not be deemed delivered to Defendants unless and until the Initial Payment Due Date occurs). Defendants shall inform the Individual Settlement Administrator within thirty (30) days of each report whether the copies of the Individual Settlement Agreement and Releases—should identical versions be delivered to Defendants—are acceptable in form to Defendants, and the Individual Settlement Administrator shall be instructed to notify the Individual Plaintiff through their counsel of any such communication by Defendants.

7.5 No Claims Based on Newly Learned Facts. The Individual Settlement Agreement and Release shall require that Individual Plaintiffs, on behalf of their respective Individual Plaintiff Releasors, acknowledge that they may learn additional facts relating to the Releasees' actions or omissions regarding the Released Claims. Individual Plaintiffs, on behalf of their respective Individual Plaintiff Releasors, shall agree that the Individual Settlement Agreement and Release shall be and remain effective in all respects, notwithstanding such different or additional facts and the subsequent discovery thereof. Each of the Releasors shall be deemed to have, fully, finally, and forever settled and released, resolved, relinquished, waived, and discharged any and all Released Claims, including known claims or unknown claims, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts. Individual Plaintiffs, on behalf of their respective Individual Plaintiff Releasors, shall agree to waive any and all rights they may have under any statute, code, regulation, ordinance, or the common law, which may limit or restrict the effect of a general release as to claims, including claims that Releasors do not know or suspect to exist in their favor at the time of giving the release set forth in the Individual Settlement Agreement and Release. Without limiting the generality of the foregoing, and without the Parties intending in any way to limit the scope of Section 10.11, or to suggest that Hawai'i substantive law does not govern any Released Claim, (1) Releasors shall certify that they are aware of and have read and reviewed the following provision of California Civil Code Section 1542, which states: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY**; and (2) Individual Plaintiffs, on behalf of their respective Releasors, shall expressly waive and relinquish any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction (including Section 28-1-1602 of the Montana Code, Section 9-13-02 of the North Dakota Century Code, and Section 20-7-11 of the South Dakota Codified Laws) and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the Release set forth above. The Individual Parties acknowledge that the foregoing waiver was separately bargained for and its inclusion in the Individual Settlement Agreement and Release is a key element of the Individual Settlement Agreement.

7.6 Timing of Release. The releases contemplated in this Article VII shall become effective on the Initial Payment Due Date. A failure by any Defendant to make any payment required by the Class Settlement Agreement or Individual Settlement Agreement, including any part of its Initial Defendant Payment, shall not affect the validity or enforceability of the Releases as to any Defendant or Releasee, including the defaulting Defendant. However, as noted herein, the Litigation Trustee shall have the right to pursue the remedies described in Section 7.7 against the defaulting Defendant.

7.7 Action for Non-Payment.

7.7.1 Plaintiffs' Counsel shall appoint the Litigation Trustee to manage any arbitration or litigation under this Section. The Litigation Trustee shall adopt rules for the appointment and payment of counsel. The Litigation Trustee shall be required to abide by the obligations, terms, and conditions in this Individual Settlement Agreement that apply to the Litigation Trustee.

7.7.2 In the event of any non-payment by a Defendant of any part of its Individual Defendant Aggregate Contribution, the Litigation Trustee shall have as its sole and exclusive remedy claims for recovery on behalf of the Class Settlement Fund and Individual Settlement Fund solely against the Defendant failing to make such required payment (and for the avoidance of doubt, not against any other Defendant). Plaintiffs may not individually sue any Defendant for non-payment.

7.7.3 The Litigation Trustee, on behalf of the Class Settlement Fund and Individual Settlement Fund, may recover, in any successful action against a Defendant for non-payment of any part of its respective Individual Defendant Aggregate Contribution, reasonable attorneys' fees, pre-judgment interest under the prevailing Hawai'i rate, and liquidated damages of 15% per year, accruing daily as of the date of non-payment. The Parties agree, for purposes of this settlement only and for no other purpose, that this liquidated damages figure is a reasonable approximation of the daily consequential damages suffered by Individual Plaintiffs as a result of nonpayment. Such consequential damages include the additional alternative-living-expenses and out-of-pocket costs associated with the delays in payment of construction for the rebuild of their homes.

7.7.4 Each Non-State Defendant consents to arbitration under Section 10.2, as modified by this Section 7.7.4, to resolve any claim by the Litigation Trustee for non-payment of its respective Individual Defendant Aggregate Contribution under this Section 7.7. For the avoidance of doubt, the procedures provided in this Section 7.7.4 do not apply to the State. In the event that the Litigation Trustee asserts that any Non-State Defendant has failed to timely make any part of its Individual Defendant Aggregate Contribution, the Litigation Trustee shall promptly provide written notice to the respective Non-State Defendant, and submit that claim to arbitration pursuant to Section 10.2. The notice shall set forth the amount the Litigation Trustee asserts was due from such Non-State Defendant, including amounts under Section 7.7.3. Within two days of receipt of such notice, such Non-State Defendant shall provide a written response, which shall set forth whether the Non-State Defendant contests that it is obligated to pay the amount set forth in the notice provided by the Litigation Trustee. The arbitrator will consolidate all claims for non-payment against a Non-State Defendant, whether for non-payment to the Class

Settlement Fund or Individual Settlement Fund. In any arbitration over a failure to pay any part of a Non-State Defendant's Initial Defendant Payment, the arbitrator shall issue a final award (i) within three days, if the Non-State Defendant fails to timely respond to the Litigation Trustee's notice under this section, or provides a response that fails to contest its obligation to make payment in the amount claimed by the Litigation Trustee or (ii) if the Non-State Defendant provides a timely response to the Litigation Trustee's notice under this section contesting its obligation to make payment in the amount claimed by the Litigation Trustee, (a) within 30 days of the Litigation Trustee initiating arbitration, with respect to an alleged failure by a Non-State Defendant to make any part of its Initial Defendant Payment and (b) within 15 days of the Litigation Trustee initiating arbitration with respect to an alleged failure by a Non-State Defendant to make any part of its Individual Defendant Aggregate Contribution other than its Initial Defendant Payment. Following issuance of the final arbitral award, the Litigation Trustee may enforce such award in the Second Circuit Court of Hawai'i, pursuant to H.R.S. § 658A-22. In any such action, the Non-State Defendant against whom the award is made will agree to any reasonable request to expedite proceedings and secure a judgment against that Non-State Defendant under H.R.S. § 658A-25.

7.8 Dismissal of All Claims. The Individual Settlement Agreement and Releases shall require that all claims asserted in any court by any Individual Plaintiff Releasor against any Releasee arising out of the Maui Fires must be dismissed with prejudice within ten (10) days after the Initial Payment Due Date. Executed stipulations for dismissal with prejudice for all such claims must be provided to the Individual Settlement Administrator within 60 days after the Return Date, to be held in escrow and provided to Defendants for filing the day after the Initial Payment Due Date.

7.9 Order Governing Non-Participants. The Parties will submit to the Second Circuit Court and request approval of a proposed order, attached as Exhibit 7, governing all Released Claims pending or subsequently brought in the Special Proceeding that are not dismissed within ten (10) days of the Initial Payment Due Date, or are thereafter filed. The Parties will request that the Special Proceeding remain open for at least three years after the Initial Payment Due Date to enforce this order.

7.10 Exclusive Remedy. The Individual Settlement Agreement and Release shall require that upon the effectiveness of the releases described under this Article VII, the Releasors acknowledge and agree that their sole and exclusive remedy with respect to any and all Released Claims against Releasees arising out of the Maui Fires shall be pursuant to the terms of this Individual Settlement Agreement or, as applicable, the Class Settlement Agreement (including as limited by Section 7.7). No Releasor shall recover, or be entitled to seek to recover, directly or indirectly, any sums from any Releasee other than the consideration received under the terms of this Individual Settlement Agreement.

7.11 Covenant Not to Sue. Without limiting any of the releases described under this Article VII, the Individual Settlement Agreement and Release shall require that Releasors agree and covenant that, if the releases described in this Article VII become effective, they will not take any action against any Releasee to initiate, pursue or maintain, or otherwise attempt to execute upon, collect, or enforce, any Released Claims; institute any new legal, equitable, or other action against any of the Releasees or any other Persons relating to any Released Claims;

attempt to execute, collect on, or otherwise enforce, any judgment that may be entered against any of the Releasees on any Released Claims; or maintain any pending legal action that the Releasor may have filed in any court against any of the Releasees asserting any Released Claims. The Releasors shall further covenant and agree that they will not sue or bring any action or cause of action under any state, local, or federal law challenging the releases described under this Article VII.

ARTICLE VIII: CONTINGENCIES

8.1 Termination Provisions.

8.1.1 In the event that any Defendant validly terminates the Class Settlement Agreement under the provisions of that agreement, this Individual Settlement Agreement will immediately terminate.

8.1.2 If (i) the time limit for satisfaction of the Conditions under Section 5.1 has passed without satisfaction of that Condition or (ii) one or more other Conditions has not been satisfied within two years of the date on which the motion for Preliminary Approval is filed, that will be known as a “Termination Event.” On or after the date of a Termination Event, any signatory to this Individual Settlement Agreement or the Class Settlement Agreement may provide notice to the other signatories of a proposed termination of the agreement or agreements to which the signatory is a party. To be valid, the notice must state that the party providing notice believes that the satisfaction of the Conditions under Section 5.1 and/or of the other Conditions is not reasonably likely to occur within a reasonable period of time. Within 10 days of receipt of such notice, any other signatory to this Individual Settlement Agreement or the Class Settlement Agreement may contest the proposed termination. If any of the signatories to this Individual Settlement Agreement or the Class Settlement Agreement disagrees as to whether a Termination Event has occurred, or as to whether the satisfaction of the Conditions under Section 5.1 and/or of the other Conditions is reasonably likely to occur within a reasonable period of time, all signatories to both agreements shall meet and confer. If these signatories are unable to agree as to whether the agreements may be terminated, then the signatories will resolve their dispute through dispute resolution pursuant to Section 10.2.

8.1.3 In the event of any termination under this Article VIII of either the Class Settlement Agreement or the Individual Settlement Agreement, the Class Settlement Agreement, this Individual Settlement Agreement, and all Individual Settlement Agreement and Releases shall terminate in their entirety, except as follows: with respect to the Class Settlement Agreement, as to Sections 1.14, 1.15, 8.1, Article II (to the extent such definitions are used in other surviving provisions), Article VI, and Article X; with respect to the Individual Settlement Agreement, Sections 1.14, 1.15, 8.1, Article II (to the extent such definitions are used in other surviving provisions), Article VI, and Article X; and the Parties shall have thirty (30) days to submit proposals to all relevant courts for recommencing litigation.

8.2 [Reserved.]

8.3 Holdback Fund. Upon payment of any Defendant’s Initial Defendant Payment, the Class Settlement Administrator and Individual Settlement Administrator shall begin to hold back certain funds from the Class Settlement Fund and Individual Settlement Fund, respectively, as described more fully below, and ensure they are not used to pay Monetary Awards or any other costs or expenses of settlement except as specified herein. The money held back in the Class Settlement Fund and Individual Settlement Fund, in the aggregate, is known as the “Holdback Fund.” The total amount in the Holdback Fund shall be \$500 million. Although the Holdback Fund shall comprise amounts held back from the Class Settlement Fund and Individual Settlement Fund, the Class and Individual Settlement Administrators shall ensure that the Holdback Fund operates as a single fund to satisfy the requirements of Section 8.3.

8.3.1 Respective Fund Holdback Amounts. Subject to the schedule under Section 8.3.2, the Class Settlement Administrator shall hold back from the Class Settlement Fund the total amount of the Holdback Fund multiplied by the Class Settlement Percentage, and the Individual Settlement Administrator shall hold back from the Individual Settlement Fund the total amount of the Holdback Fund multiplied by the Individual Settlement Percentage. Whenever funds are drawn from the Holdback Fund, the Class Settlement Administrator and Individual Settlement Administrator shall pay those funds on a pro-rata basis from the Class Settlement Fund and Individual Settlement Fund, respectively, corresponding to these percentages.

8.3.2 Holdback Schedule. Each time any Defendant makes any payment to satisfy all or part of its Individual Defendant Aggregate Contribution, the Class Settlement Administrator and Individual Settlement Administrator shall, in the aggregate, hold back from that payment for inclusion in the Holdback Fund an amount equal to the total amount of that payment times \$500 million divided by the Aggregate Settlement Amount.

8.3.3 Holdback Payments. Any Defendant that is not prohibited from doing so under Section 8.3.7 may draw funds from the Holdback Fund to pay (a) judgments and (b) settlements, in each case for any Released Claim brought by any Person that is not a Plaintiff. Such a claim is known as a “Holdback Claim.” Defendants will develop a process for approving these payments, which will be subject to review and consent of the Class Settlement Administrator, which consent may not be unreasonably withheld. Any dispute about the reasonableness of payments from the Holdback Fund shall be subject to dispute resolution pursuant to Section 10.2. A Releasee may obtain a payment from the Holdback Fund to settle a Holdback Claim only if the settlement requires the Person asserting the Holdback Claim to execute an unconditional release of all Released Claims against all Releasees, in form and substance reasonably satisfactory to the Defendants, unless all Defendants consent otherwise.

8.3.4 Holdback Credit. In the event that a Defendant makes a payment that would be drawn from the Holdback Fund under Section 8.3.3, but, as a result of the payment schedule under Section 8.3.2, the Holdback Fund does not yet have sufficient funds to cover that payment, the Defendant is entitled to a credit against the Holdback Fund for the amount that would have been properly drawn from the Holdback Fund under Section 8.3.3. The Holdback Fund will make payment of that credit when, under Section 8.3.2, it next receives funding.

8.3.5 Adjustment to Holdback Fund.

(a) On the later of (1) two years and 60 days after the Return Date or (2) two years and 15 days after the Initial Payment Due Date, the Parties shall assess whether money in the Holdback Fund should be distributed to the Individual Settlement Fund and Class Settlement Fund to be used in accordance with the Class Settlement Plan and Individual Settlement Plan. To the degree any disputes arise as to the quantity of any of the following amounts, or as to any calculation or determination necessary to calculate them, those disputes will be resolved pursuant to Section 10.2.

(b) The Parties shall calculate the Necessary Holdback Amount, which is the sum of the following four quantities:

- (1) All Holdback Credits under Section 8.3.4 that have yet to be reimbursed by the Holdback Fund;
- (2) The reasonable aggregate value of all pending Holdback Claims. The reasonable aggregate value of such claims shall be the reasonable estimate of the Defendants' potential exposure at trial on these claims, which may be higher than the settlement value of the claims;
- (3) If any Defendant has a reasonable basis to conclude that a Released Claim may yet be asserted, the reasonable value of such claim (with reasonable value defined in the same manner as under part 2). A Defendant need not identify a specific Person who will bring the Released Claim to have a reasonable basis that a Holdback Claim may be brought under this paragraph; and
- (4) If any payment is owed by a Defendant as a result of a Holdback Claim, but has not yet been made, the amount not yet paid.

(c) The Parties shall calculate the Holdback Remainder Amount. This is the amount that, as of the calculation date, is included in the Holdback Fund and not yet distributed under Section 8.3.3. For avoidance of doubt, this does not include amounts, if any, set to be *added* to the Holdback Fund under Section 8.3.2 from any remaining payments Defendants are scheduled to make to the Class Settlement Fund or Individual Settlement Fund.

(d) If the Holdback Remainder Amount is greater than the Necessary Holdback Amount, then the Class Settlement Administrator shall transfer the Class Settlement Percentage multiplied by the difference between the Holdback Remainder Amount and the Necessary Remainder Amount to the Class Settlement Fund, and the Individual Settlement Administrator shall transfer the Individual Settlement Percentage multiplied by the difference between the Holdback Remainder Amount and the Necessary Remainder Amount to the Individual Settlement Fund.

(e) If the Holdback Remainder Amount is equal to or less than the Necessary Remainder Amount, then the Parties will not transfer any funds in the Holdback Fund to the Class Settlement Fund and Individual Settlement Fund.

(f) **Further Distribution of Holdback Funds.** One year after the date specified in Section 8.3.5(a), the Parties shall, in the same manner, newly calculate the Necessary Holdback Amount and the Holdback Remainder Amount, and follow the same formula and steps under Section 8.3.5. The Parties will repeat this process each year thereafter, until the Holdback Remainder Amount is zero and there are no further amounts to be added to the Holdback Fund from later payments by Defendants. Upon written consent of all Defendants, this calculation and further distribution may be done more frequently than every year.

8.3.6 **Cross-claims.** No Defendant or Releasee may assert a cross-claim for indemnity, contribution, or otherwise for any Released Claim brought against any Releasee unless and until the Holdback Fund is fully exhausted. For any cross-claim for indemnity, contribution, or otherwise brought by any Releasee against another Releasee that is not released under Section 7.3, the time to file such cross-claim(s) is tolled until the Holdback Fund is fully exhausted.

8.3.7 **Effect of Default.**

(a) If any Defendant is in default on any part of its Individual Defendant Aggregate Contribution as determined under Sections 7.7.3 or 7.7.4, or is in the process of litigating or arbitrating an allegation of default under those Sections, it may not access any funds in the Holdback Fund or assert or maintain any cross-claim for indemnity or contribution against any non-defaulting Defendant or Releasee for any Released Claim until such default is cured. A Defendant is no longer in default if (i) the factfinder or arbitrator finds that the Defendant is not in default; (ii) the Defendant cures that default by satisfying the judgment described in Sections 7.7.3 or 7.7.4; or (iii) the Litigation Trustee agrees in writing that the Defendant is not in default.

(b) A Defendant that is found not to be in default in litigation under Section 7.7.3 or in an arbitration decision issued under Section 7.7.4 is entitled to reimbursement of any amounts paid during the period of ineligibility under Section 8.3.7(a), including for judgments and settlements that would otherwise have been payable from the Holdback Fund under Section 8.3.3.

ARTICLE IX: APPROVAL

9.1 The Defendants and their counsel, the Class Representatives, Class Counsel, Individual Plaintiffs, Identified Plaintiffs' Counsel, and Liaison Counsel agree to take all commercially reasonable actions necessary to obtain orders and judgments dismissing with prejudice all Released Claims against all Releasees. Defendants and their counsel, Individual Plaintiffs, Identified Plaintiffs' Counsel, and Liaison Counsel agree to offer mutual support to the proposed Individual Settlement Agreement in all court proceedings and public communications.

9.2 [Reserved.]

9.3 **Good Faith Settlement Approval.** Within twenty-one (21) days after Preliminary Approval, the Parties shall file a joint motion with the Approving Court for a determination that the Class Settlement Agreement and Individual Settlement Agreement,

including the Aggregate Settlement Amount, were made in good faith under the provisions of Section 663-15.5, Hawai‘i Revised Statutes. The Parties agree to make any necessary, commercially reasonable judicial filings, provide appropriate notices, and undertake reasonable efforts to obtain a good-faith settlement determination pursuant to Section 663-15.5, Hawai‘i Revised Statutes, that will bind all joint tortfeasors and co-obligors, known and unknown.

9.4 [Reserved]

9.5 KS shall use reasonable best efforts to obtain within nine months of the Settlement Date (1) written fiduciary affirmation letters from the State Attorney General (as *parens patriae*); (2) fiduciary approvals from the State Probate Court (in KS’ open-probate case), in a Final and Unappealable order; and (3) tax approvals from the Internal Revenue Service (as a tax-exempt organization), in a Private Letter Ruling.

ARTICLE X: MISCELLANEOUS PROVISIONS

10.1 **Complete Agreement.** Other than as stated herein, the Individual Parties warrant that no representation, promise, or inducement has been offered or made to induce any Individual Party to enter into this Individual Settlement Agreement or Individual and that they are competent to execute this Individual Settlement Agreement and accept full responsibility therefor. This Individual Settlement Agreement and its exhibits, including the Individual Settlement Agreement and Release, contain and constitute the entire understanding and agreement among the Individual Parties and supersede all previous oral and written negotiations, agreements, commitments, and writings in connection therewith. This Individual Settlement Agreement may not be amended or modified except by a writing signed by authorized representatives of all Individual Parties.

10.2 **Arbitration.** The Individual Parties agree to meet and confer in good faith to resolve any disagreements over the implementation of the terms of this Individual Settlement Agreement or any other documents necessary to effectuate the Individual Settlement Agreement. If the meet and confer is not successful, the Individual Plaintiffs, Identified Plaintiffs’ Counsel, and Non-State Defendants agree to binding, non-appealable arbitration to resolve any disagreements over the implementation of the terms of this Individual Settlement Agreement or any other documents necessary to effectuate the Individual Settlement Agreement. In any such arbitration, there will be one arbitrator, who can be any of the three Mediators, and the Mediators will promptly determine among themselves who the arbitrator will be. If all of the three Mediators are unavailable to conduct the arbitration, then the Individual Plaintiffs, Identified Plaintiffs’ Counsel, and Non-State Defendants will meet and confer in good faith to appoint a different arbitrator. If the Individual Plaintiffs, Identified Plaintiffs’ Counsel, and Non-State Defendants are unable to agree upon an arbitrator, then the arbitration will occur before a panel of three arbitrators. The Non-State Defendants will select one of the three arbitrators; Liaison Counsel will select one of the three arbitrators; and the arbitrators selected by Non-State Defendants and Liaison Counsel will select the third arbitrator. In the event that an arbitration under this provision involves a dispute among Plaintiffs’ Counsel (rather than solely Liaison Counsel) and Non-State Defendants, then Plaintiffs’ Counsel shall collectively exercise all rights

in this paragraph otherwise solely allocated to Liaison Counsel. For the avoidance of doubt, the arbitration procedures provided in this Section 10.2 do not apply to the State.

10.3 Knowing and Voluntary Agreement. Each Individual Party agrees that he, she, or it is entering into this Individual Settlement Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Individual Party further affirms that he, she, or it has not been coerced, threatened, or intimidated into signing this Individual Settlement Agreement; that he, she, or it has been advised to consult with an attorney; and that he, she, or it in fact has consulted with an attorney before signing this Individual Settlement Agreement or had an opportunity to do so. Identified Plaintiffs' Counsel represent that they have conducted a thorough investigation into the facts of the Actions and have diligently pursued an investigation of the claims asserted arising from or relating to the Maui Fires. Based on their own independent investigation and the extensive litigation and mediation, which led to this settlement, Identified Plaintiffs' Counsel state that they are of the opinion that the Individual Settlement Agreement with Defendants is fair, reasonable, and adequate, and is in the best interest of the Individual Plaintiffs, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Defendants.

10.4 Notices. Notices pursuant to this Individual Settlement Agreement shall be provided to those listed and as set out in Exhibit 8.

10.5 Severability. If any part of this Individual Settlement Agreement is found to be illegal, invalid, inoperative, or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Individual Settlement Agreement, which shall be construed, reformed, and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Individual Settlement Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Individual Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law. However, the releases under Article VII, the Individual Defendant Aggregate Contributions, the Conditions under Sections 5.1 and 5.2, and the Aggregate Settlement Amount are critical terms upon which the Individual Settlement Agreement rests and may not be severed or altered.

10.6 Binding on Successors and Assigns. This Individual Settlement Agreement shall be binding upon and inure to the benefit of the Individual Parties and their respective heirs, trustees, issue, next-of-kin, executors, administrators, successors, and assigns.

10.7 Counterparts. This Individual Settlement Agreement may be executed in counterparts, including by electronic means, and when each Individual Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one Individual Settlement Agreement, which shall be binding upon and effective as to the Parties.

10.8 Headings. The headings used in this Individual Settlement Agreement are for convenient reference only, and do not alter or limit the terms of each section.

10.9 **Amendment or Modification.** This Individual Settlement Agreement may be amended or modified only by a written instrument signed by all Individual Parties.

10.10 **Authorization to Enter into Settlement.**

10.10.1 [Reserved]

10.10.2 Each Defendant represents and warrants:

(a) Except as to KS, and any natural persons, it is a duly organized, validly existing entity and is in good standing under the laws of the jurisdiction of its formation and is duly qualified to do business (if a business) and in good standing as a foreign entity in the jurisdiction of its principal place of business (if not formed in that jurisdiction);

(b) That it has the full legal right, power, and authority to enter into this Individual Settlement Agreement and perform its obligations under this Individual Settlement Agreement;

(c) That it has taken all appropriate and necessary action to authorize its execution, delivery, and performance of this Individual Settlement Agreement and the transactions contemplated hereunder, except for the Necessary Approvals; and

(d) That it has obtained all consents, approvals, permits and other authorizations in connection with the execution, delivery and performance of this Individual Settlement Agreement required to be obtained by it, except for the Necessary Approvals.

10.11 **Governing Law.** All terms of this Individual Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of Hawai‘i without regard to its principles of conflict of laws.

10.12 **Jurisdiction of the Court.** Except as otherwise provided in this Individual Settlement Agreement, any dispute regarding the interpretation or validity of, or otherwise arising out of, this Individual Settlement Agreement, including any disputes regarding fees, costs and/or expenses amongst counsel, shall be subject to the exclusive jurisdiction of the Approving Court and shall be decided pursuant to the laws of the State of Hawai‘i. The Approving Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Individual Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their respective counsel submit to the jurisdiction of the Approving Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Individual Settlement Agreement and all orders and judgments entered in connection therewith. Furthermore, the Individual Parties agree that, subject to Approving Court approval, the Approving Court will have jurisdiction over any claims by a Non-Participant, and that any such litigation will be deemed related to the Actions.

10.13 **Waiver of Right to Object.** By signing this Individual Settlement Agreement, Identified Plaintiffs’ Counsel (in their representative capacity as representatives of their clients), Liaison Counsel, and Defendants and their counsel agree not to object to any of the terms of this Individual Settlement Agreement or the Class Settlement Agreement. Any such objection shall

therefore be void and of no force or effect. This provision shall not be interpreted or intended to restrict any Identified Plaintiffs' Counsel's practice of law.

10.14 Public Communications. Except to the extent inconsistent with the Hawai'i Rules of Professional Conduct, Identified Plaintiffs' Counsel (including their firms and any representative on their behalf) agree that they will not make any public statements that disparage (i) the Individual Settlement Agreement (ii) the Class Settlement Agreement, or (iii) Releasees or Releasees' conduct, character, or business reputation in regards to the Maui Fires, except in connection with petitioning activity, scholarly work, or non-Maui Fires litigation.

10.15 Non-Use of Work Product. Unless inconsistent with their ethical obligations or order of the Court, or as otherwise agreed to in writing by Identified Plaintiffs' Counsel and Defense Counsel, Identified Plaintiffs' Counsel agree that they will not use, nor will they allow to be used, any work product derived from any discovery in these Actions, whether or not any such work product includes information designated protected under the protective order in this case, in the prosecution or litigation of any other case, claim, or action.

10.16 Cooperation. The Individual Parties agree to cooperate fully and execute any and all supplementary documents, and take all additional actions, which may be necessary or appropriate to give full force and effect to the terms and intent of this Individual Settlement Agreement.

10.17 No Third-Party Beneficiaries. Except for Individual Plaintiffs, Defendants, the Releasees, and their respective successors and assigns, no provision of this Individual Settlement Agreement is intended to create any third-party beneficiary to this Individual Settlement Agreement.

10.18 No Construction Against Any Party. This Individual Settlement Agreement is the product of negotiations between the Individual Parties hereto represented by counsel and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Individual Settlement Agreement and are expressly waived.

10.19 Reasonable Extension of Deadlines. The signatories to this Individual Settlement Agreement are authorized to consent to any reasonable extension of any deadline set forth in this Individual Settlement Agreement, to the degree such extension does not require approval from the Approving Court, provided that any such extension must be agreed to by all signatories and in writing.

10.20 No Waiver. No waiver of any breach of any provision of this Individual Settlement Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions of this Individual Settlement Agreement. No waiver shall be effective unless made in writing and signed by the waiving party.

Signature Pages to Follow

IN WITNESS WHEREOF, the State hereby sets its hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

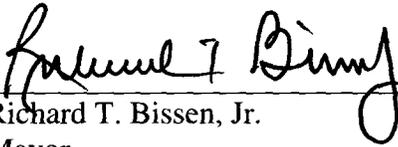
DATED: Nov 1, 2024

Anne E. Lopez

Anne E. Lopez
Attorney General of Hawaii
STATE OF HAWAII

IN WITNESS WHEREOF, the County hereby sets its hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED:



Richard T. Bissen, Jr.
Mayor
COUNTY OF MAUI

APPROVED AS TO FORM

DATED:



Victoria J. Takyesu-Hamilton
Corporation Counsel
COUNTY OF MAUI

IN WITNESS WHEREOF, Hawaiian Electric has set its hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/4/2024

Signed by:
Scott Seu
FFB81AE5A3914F0

Scott Seu
President and CEO
HAWAIIAN ELECTRIC INDUSTRIES,
INC.

DATED: 11/4/2024

DocuSigned by:
Shelee Kimura
B5FC5C9713E34EC...

Shelee Kimura
President and CEO
HAWAIIAN ELECTRIC COMPANY, INC.

IN WITNESS WHEREOF, KS¹ hereby sets its hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED:



Livingston "Jack" Wong
CEO
KAMEHAMEHA SCHOOLS

¹ Trustees Not Personally Liable. This instrument has been executed on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or addressed against said Trustees in their individual capacities.

IN WITNESS WHEREOF, Spectrum Oceanic, LLC and Charter Communications, Inc. hereby sets its hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: November 1, 2024

Signed by:

A3E65B5EE4FE464...
Gregg Fujimoto
SVP Field Operations – Hawaii
SPECTRUM OCEANIC, LLC
By: Charter Communications, Inc., its
Manager

DATED: November 1, 2024

Signed by:

A3E65B5EE4FE464...
Gregg Fujimoto
SVP Field Operations – Hawaii
CHARTER COMMUNICATIONS, INC.

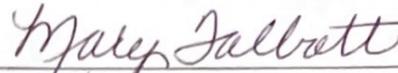
IN WITNESS WHEREOF, Hawaiian Telcom hereby sets its hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: Nov. 3, 2024



Les Ueoka
General Counsel
HAWAIIAN TELCOM, INC.

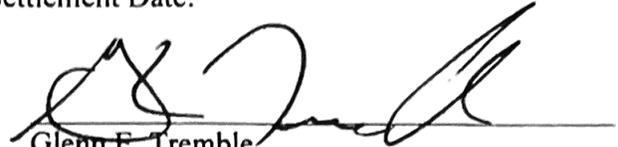
DATED: Nov. 3, 2024



Mary Talbott
Chief Legal Officer
CINCINNATI BELL INC.

IN WITNESS WHEREOF, West Maui Land hereby sets its hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED:



Glenn E. Tremble
Secretary/Treasurer
WEST MAUI LAND COMPANY, INC.

DATED:



Glenn E. Tremble
Secretary/Treasurer
LAUNIUPOKO IRRIGATION COMPANY
INC.

DATED:



Peter K. Martin
Manager
HOPE BUILDERS HOLDING LLC

DATED:



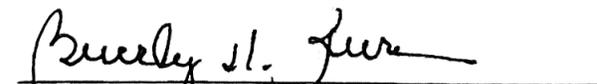
Peter K. Martin
Manager
KAUAULA LAND COMPANY LLC

DATED:



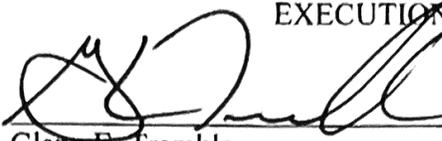
Peter K. Martin
Manager
MAKILA LAND CO., LLC

DATED:



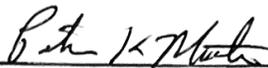
Beverly H. Kurokawa
Assistant Secretary
HOPE BUILDERS LLC nka HOPE
BUILDERS, INC.

DATED:



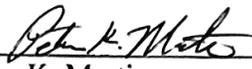
Glenn E. Tremble
Secretary/Treasurer
LAUNIUPOKO WATER COMPANY, INC.

DATED:



Peter K. Martin
Manager
KIPA CENTENNIAL, LLC

DATED:



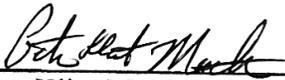
Peter K. Martin
Manager
WAINEE LAND & HOMES, LLC

DATED:



Glenn E. Tremble
Member
LAUNIUPOKO WATER DEVELOPMENT
LLC

DATED:



Peter Klint Martin
Individually and as Trustee of the Peter Klint
Martin Revocable Trust

DATED:

Justin Miller
Member
JV ENTERPRISES, LLC

DATED:

Glenn E. Tremble
Secretary/Treasurer
LAUNIUPOKO WATER COMPANY, INC.

DATED:

Peter K. Martin
Manager
KIPA CENTENNIAL, LLC

DATED:

Peter K. Martin
Manager
WAINEE LAND & HOMES, LLC

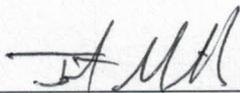
DATED:

Glenn E. Tremble
Member
LAUNIUPOKO WATER DEVELOPMENT
LLC

DATED:

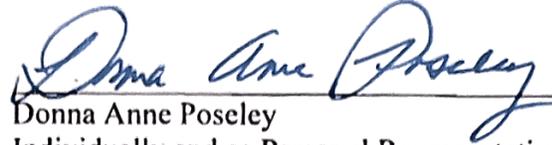
Peter Klint Martin
Individually and as Trustee of the Peter Klint
Martin Revocable Trust

DATED: 11/04/24



Justin Miller
Member
JV ENTERPRISES, LLC

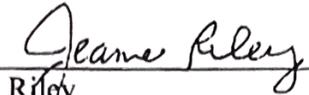
DATED:



Donna Anne Poseley
Individually and as Personal Representative
of the Estate of Douglas Poseley

DATED:

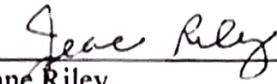
Nov 1, 2024



Jeanne Riley
Trustee of the Jeanne Riley Trust and
Successor Trustee of the James Riley Trust

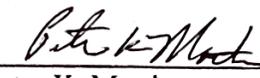
DATED:

Nov 1, 2024



Jeanne Riley
Secretary
MAKILA RANCHES HOMEOWNERS
ASSOCIATION, INC.

DATED:



Peter K. Martin
President
MAKILA RANCHES, INC.

DATED:



Peter K. Martin
Manager
LOWALU ELUA ASSOCIATES LLC

IN WITNESS WHEREOF, undersigned Identified Plaintiffs' Counsel has set her hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

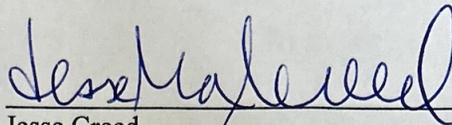
DATED: NOV 02 2024



Cynthia Wong
CYNTHIA K. WONG ATTORNEY AT
LAW, LLC
Liaison Counsel

IN WITNESS WHEREOF, undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: November 3, 2024



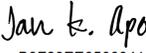
Jesse Creed

PANISH | SHEA | RAVIPUDI LLP

Liaison Counsel

IN WITNESS WHEREOF, undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

B3F29EE65668410...

Jan K. Apo
APO, RECK & KUSACHI, LLP
Liaison Counsel

IN WITNESS WHEREOF, undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

Signed by:

440B7FF3CD2D4E5...

Jacob Lowenthal
LOWENTHAL & LOWENTHAL, LLC
Liaison Counsel

IN WITNESS WHEREOF, the undersigned Identified Plaintiff's Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

95C4F1F6B529436...

Mike Arias
ARIAS SANGUINETTI WANG & TEAM
LLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

DocuSigned by:

James Bostwick

F4CA44F3D234412...

James Bostwick
BOTSWICK & PETERSON

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

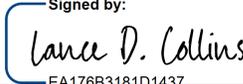
DATED: 11/4/2024

DocuSigned by:

BB3C269D9C00471...
Richard Bridgford
BRIDGFORD GLEASON & ARTINIAN

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

Signed by:

EA176B3181D1437

Lance Collins
LAW OFFICES OF LANCE D. COLLINS

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

E74D335E907F4F7...

Alex Edrenkin
PACLAW GROUP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:
David Fox
5FBFAAE721B24FE...

David Fox
FOX LAW APC

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

James Frantz

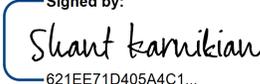
CF1FADA141E9409...

James Frantz

FRANTZ LAW GROUP, APLC

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

Signed by:

621EE71D405A4C1...

Shant Karnikian
KABATECK LLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

Raffi Kassabian

C488773CE948420

Raffi Kassabian

BEZDIK KASSAB LAW GROUP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

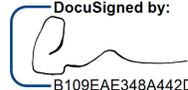
Signed by:

1C2B6D22C652437...

William McKeon
BERDING & WEIL LLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

B109EAE348A442D...

Christopher Moon
MOON LAW APC

IN WITNESS WHEREOF, the undersigned Identified Plaintiff's Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:
Mike Morgan
ECF022009E804D2...

Mike Morgan
MORGAN & MORGAN

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

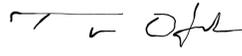
Signed by:

A3200472B4474B0...

Kalani Morse
DURRETT LANG MORSE, LLLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

Signed by:

9512F8794AE641A...

Thomas Otake
ALPA & OTAKE, LLLC

IN WITNESS WHEREOF, undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

DocuSigned by:

6EB60E4D1F7243E

Brian Panish
PANISH | SHEA | RAVIPUDI LLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

Signed by:

Brett Parkinson

9A2C12278E3C4C3...

Brett Parkinson

PARKINSON BENSON POTTER

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

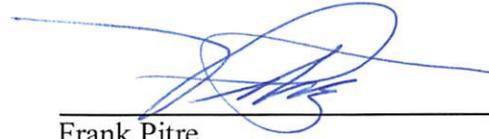
Signed by:

5EBBA6A2CE794C7...

Judith Pavey
STARN O'TOOLE MARCUS & FISHER

IN WITNESS WHEREOF, the undersigned Identified Plaintiff's Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024



Frank Pitre
COTCHETT, PITRE & MCCARTHY

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

Signed by:

Dennis Potts

87BF04547443440...

Dennis Potts
POTTS & POTTS

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

Signed by:

A53EE2CA5EB6400

Bill Robins
ROBINS CLOUD

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

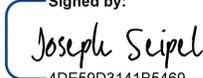
DocuSigned by:

40D704D24B3445B...

Max Schuver
WALKUP MELODIA KELLY &
SCHOENBERGER

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

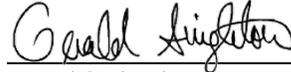
DATED: 11/4/2024

Signed by:

4DE59D3141B5468...

Joseph Seipel
LAW OFFICE OF JOSEPH SEIPEL

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

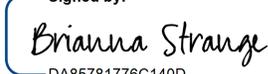
DATED: 11/03/2024



Gerald Singleton
SINGLETON SCHREIBER, LLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set her hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/4/2024

Signed by:

DA85781776C140D...

Brianna Strange
STRANGE LLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

Jay Stuemke
ADF56C09E9724A1...

Jay Stuemke
STUEMKE LAW FIRM PLLC

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set her hands to this Individual Settlement Agreement to be effective as of the Settlement Date:



DATED: 11/3/24

Denise Sze
ONYX LAW GROUP, APC

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/2/2024

DocuSigned by:

Anthony Takitani

F657FF6F126041C...

Anthony Takitani
TAKITANI AGARAN JORGENSEN &
WILDMAN, LLLP

DATED: 11/2/2024

Signed by:

Gilbert S.C. Keith-Agaran

29A72E17F016403...

Gilbert Agaran
TAKITANI AGARAN JORGENSEN &
WILDMAN, LLLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiff's Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:
Mikal Watts
2EA1CD7AEF35427...

Mikal Watts
WATTS LAW FIRM LLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set her hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

Ilana Waxman

B4D86EC56A414DF

Ilana Waxman
GALIHAR DEROBERTIS & WAXMAN
LLP

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

Signed by:

BA5896B760174AB

Evan Willis
RICHARDS WILLIS PC

IN WITNESS WHEREOF, the undersigned Identified Plaintiffs' Counsel has set his hands to this Individual Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/3/2024

DocuSigned by:

John Yamane

54BC8CB4A75C4C3...

John Yamane

LEAVITT, YAMANE & SOLDNER

Index of Appendices and Exhibits

Appendices

Letter	Title	Class GSA	Individual GSA
A	Non-Participant Thresholds	Included	Not Included
B	Hawaiian Electric Provisions Regarding Payment (with Schedule B1)	Included	Included

Exhibits

No.	Title	Class GSA	Individual GSA
1	Individual Settlement Agreement	Included	Not Included
2	Class Settlement Agreement	Not Included	Included
3	WFIGS Interagency Fire Perimeters Maps Maintained by the National Interagency Fire Center	Included	Not Included
4	Individual Settlement Agreement and Release	Not Included	Included
5	Lists of Persons Who Are Included Among the Releasees	Included	Included
6	List of Decedents	Included	Not Included
7	[Proposed] Case Management Order No. 8	Included	Included
8	List of Notice Recipients	Included	Included
9	State and County FEMA Letters	Included	Included
10	Stipulation Between Liaison Counsel and Class Counsel re Procedure to Determine Class Settlement Amount and Individual Settlement Amount	Included	Included

Appendix A

[Reserved]

Appendix B: Hawaiian Electric Provisions Regarding Payment

Hawaiian Electric will not, and will not permit any Hawaiian Electric Significant Subsidiary to, incur, create, assume or permit to exist any Lien on the capital stock or similar Equity Interests of or other ownership interests in any Hawaiian Significant Subsidiary, now or hereafter owned, for the purpose of securing the obligations under the Hawaiian Electric Existing Funded Indebtedness without effectively providing concurrently therewith a Lien to equally and ratably secure the obligations of Hawaiian Electric to make its Individual Defendant Aggregate Contribution pursuant to documentation in form and substance substantially identical to the documentation pursuant to which the applicable Hawaiian Electric Existing Funded Indebtedness is secured.

Additionally, within seven (7) days of the Settlement Date, HEI shall capitalize New HEI Subsidiary with the HEI Initial Payment Cash. From the Settlement Date through and including the Initial Payment Due Date, absent the consent of Plaintiffs' Counsel, New HEI Subsidiary shall not (a) incur any indebtedness for borrowed money or (b) transfer the HEI Initial Payment Cash to any person or entity other than in connection with funding Hawaiian Electric's Initial Payment in accordance with the terms hereof.

* * * * *

For purposes of this Appendix B, the following definitions, in additions to those specified in Article II of this Individual Settlement Agreement, shall apply:

“Consolidated Total Assets” means, at any date of determination, with respect to HEI and its Subsidiaries on a consolidated basis, the total assets of HEI and its Subsidiaries, determined in accordance with GAAP.

“Equity Interests” shall mean (a) shares of capital stock and any other equity security that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing company and (b) all warrants, options or other rights to acquire any Equity Interest described in clause (a) of this definition.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States of America; *provided, however*, that if the SEC shall require at such future time the replacement of GAAP with another system of accounting principles, GAAP as used herein shall be deemed to refer to such SEC required or approved accounting principles (however named).

“Hawaiian Electric Existing Funded Indebtedness” means the funded indebtedness of the Hawaiian Electric Parties set forth on Schedule B1.

“Hawaiian Electric Significant Subsidiary” means each of HECO, HELCO, MECO, and any other Subsidiary having 15% or more of the total assets, or 15% or more of the total operating income, of HEI and its Subsidiaries on a consolidated basis, in either case as the Consolidated Total Assets and consolidated total operating income of HEI and its Subsidiaries are reflected in

the most recent annual or quarterly consolidated financial statements of the Hawaiian Electric Parties.

“HECO” means Hawaiian Electric Company, Inc.

“HEI” means Hawaiian Electric Industries, Inc.

“HEI Initial Payment Cash” means cash in an amount equal to Hawaiian Electric’s Initial Defendant Payment.

“HELCO” means Hawaii Electric Light Company, Inc.

“Lien” shall mean, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or capital lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

“MECO” means Maui Electric Company, Limited.

“New HEI Subsidiary” means a newly formed subsidiary of HEI, which shall (a) be formed on or before the Settlement Date, and (b) not constitute a “Significant Subsidiary” under the terms of Hawaiian Electric’s existing funded indebtedness.

“Subsidiary” shall mean, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries).

Schedule B1**Hawaiian Electric Existing Funded Indebtedness**

HEI	HECO	HELCO	MECO
Credit Facilities			
\$175MM revolving credit facility	\$200MM revolving credit facility	N/A	N/A
SPRBs			
N/A	3.25% Refunding SPRB, Series 2015	3.25% Refunding SPRB, Series 2015	3.25% Refunding SPRB, Series 2015
	3.10% Refunding SPRB, Series 2017A	3.10% Refunding SPRB, Series 2017A	3.10% Refunding SPRB, Series 2017A
	4.00% Refunding SPRB, Series 2017B	4.00% Refunding SPRB, Series 2017B	4.00% Refunding SPRB, Series 2017B
	3.20% Refunding SPRB, Series 2019	3.20% Refunding SPRB, Series 2019	3.50% SPRB, Series 2019
	3.50% SPRB, Series 2019	3.50% SPRB, Series 2019	
Notes			
4.58% Senior Notes, Series 2018A	4.72% Senior Notes, Series 2012D	4.84% Senior Notes, Series 2013C	4.84% Senior Notes, Series 2013A
4.72% Senior Notes, Series 2018B	5.39% Senior Notes, Series 2012E	5.23% Senior Notes, Series 2015A	5.65% Senior Notes, Series 2013B
2.98% Senior Notes, Series 2020A	4.53% Senior Notes, Series 2012F	4.38% Senior Notes, Series 2018A	5.23% Senior Notes, Series 2015A
3.15% Senior Notes, Series 2020B	4.84% Senior Notes, Series 2013B	4.53% Senior Notes, Series 2018B	4.31% Senior Notes, Series 2017A
2.82% Senior Notes, Series 2020C	5.65% Senior Notes, Series 2013C	4.72% Senior Notes, Series 2018C	4.38% Senior Notes, Series 2018A
2.48% Senior Notes, Series 2021A	5.23% Senior Notes, Series 2015A	4.21% Senior Notes, Series 2019A	4.53% Senior Notes, Series 2018B
2.78% Senior Notes, Series 2021B	4.54% Senior Notes, Series 2016A	3.96% Senior Notes, Series 2020A	4.72% Senior Notes, Series 2018C
3.74% Senior Notes, Series 2021C	4.31% Senior Notes, Series 2017A	3.28% Senior Notes, Series 2020B	4.21% Senior Notes, Series 2019A
2.98% Senior Notes, Series 2022A	4.38% Senior Notes, Series 2018A	3.51% Senior Notes, Series 2020C	3.31% Senior Notes, Series 2020A
3.94% Senior Notes, Series 2022B	4.53% Senior Notes, Series 2018B	3.70% Senior Notes, Series 2022A	3.96% Senior Notes, Series 2020B
5.43% Senior Notes, Series 2022C	4.72% Senior Notes, Series 2018C	6.25% Senior Notes, Series 2023A	3.51% Senior Notes, Series 2020C
5.43% Senior Notes, Green Series 2022D	4.21% Senior Notes, Series 2019A		3.70% Senior Notes, Series 2022A

HEI	HECO	HELCO	MECO
6.04% Senior Notes, Series 2023A	3.31% Senior Notes, Series 2020A		6.25% Senior Notes, Series 2023A
6.10% Senior Notes, Series 2023B	3.31% Senior Notes, Series 2020B		
	3.96% Senior Notes, Series 2020C		
	3.28% Senior Notes, Series 2020D		
	3.51% Senior Notes, Series 2020E		
	3.70% Senior Notes, Series 2022A		
	6.11% Senior Notes, Series 2023A		
	6.25% Senior Notes, Series 2023B		
	6.70% Senior Notes, Series 2023C		

EXHIBIT 1

RESERVED

EXHIBIT 2

IN RE MAUI WILDFIRES**CLASS SETTLEMENT AGREEMENT**

This CLASS SETTLEMENT AGREEMENT, dated as of November 1, 2024 (the “Settlement Date”), is made and entered into by and among Class Counsel, Class Representatives, and Defendants, who are parties to the Consolidated Complaint arising out of the Maui windstorm and fires of August 2023, including the fires in Lahaina, Kula, and Olinda (“Maui Fires”). This Class Settlement Agreement, together with the Individual Settlement Agreement that Defendants are entering into simultaneously, is intended by the Parties to fully and finally compromise, settle, resolve, discharge, release, and dismiss with prejudice on a comprehensive, global basis all Released Claims against the Releasees, as set forth below, under the terms set forth herein, subject to review and approval by the Approving Court and satisfaction of all other Conditions set forth below.

Capitalized terms have the meaning provided in Article II unless this Class Settlement Agreement provides otherwise.

ARTICLE I: RECITALS

1.1 Multiple actions against Defendants are pending in state and federal courts arising out of the Maui Fires. Those include putative class actions, actions filed by Individual Action Plaintiffs, actions filed by Subrogation Plaintiffs, and actions filed by Defendants against one another, as well as cross-, counter-, and third-party claims in these Actions. All of the Actions allege injury—including property damage (real and personal), personal injury, wrongful death, non-economic damages such as emotional distress and inconvenience, and economic loss—incurred as a result of the Maui Fires. Plaintiffs and Subrogation Plaintiffs seek to hold Defendants liable under various theories of liability, including negligence, inverse condemnation, nuisance, trespass, and abnormally dangerous activity. Plaintiffs and Subrogation Plaintiffs seek compensatory, punitive, and exemplary damages; medical monitoring; and injunctive and other equitable relief.

1.2 On October 27, 2023, the Hon. Peter T. Cahill created a Special Proceeding for all cases that had been or would be brought by Individual Action Plaintiffs relating to the Maui Fires in the Second Circuit Court, State of Hawai‘i (Case No. 2CSP-23-0000057).

1.3 On January 12, 2024, a group of Subrogation Plaintiffs filed a complaint against certain Defendants in the First Circuit Court, State of Hawai‘i, before the Hon. Dean E. Ochiai (Case No. 1CCV-24-0000068), seeking to recover for payments made to Subrogation Plaintiffs’ insureds for allegedly covered claims, including for real and personal property loss or damage, business interruption, and alternate living expenses, arising from the Lahaina fire. Two other similar lawsuits were filed in the First Circuit Court by other Subrogation Plaintiffs, Case Nos. 1CCV-24-0000179 and 1CCV-24-0000437, and several lawsuits have been filed in the Second Circuit Court by other Subrogation Plaintiffs. On October 21, 2024, Judge Ochiai entered a written order transferring each of these three cases to the Second Circuit.

1.4 On April 25, 2024, the Hon. Barry M. Kurren consolidated three class actions pending in the United States District Court for the District of Hawai‘i into a single putative class action, *In re Lahaina Wildfire Litigation*, which came to be identified with the Case No. 1:24-cv-00259-JAO-BMK. On June 4, 2024, Class Counsel filed a consolidated complaint. On October 29, 2024, the parties to *In re Lahaina Wildfire Litigation* stipulated to dismiss that case. On October 30, 2024, Class Counsel filed the Consolidated Complaint in the Second Circuit Court, State of Hawai‘i, Case No. 2CCV-24-0000964.

1.5 Defendants deny having any liability for any claims, causes of action, costs, expenses, attorneys’ fees, or damages of any kind arising out of the Maui Fires. Defendants have asserted or intend to assert legal and factual defenses against Plaintiffs’ claims in the Actions filed against them.

1.6 Plaintiffs, through their counsel, have engaged in substantial fact investigation to evaluate the merits of their claims and Defendants’ defenses, including reviewing thousands of pages of documents produced in discovery, deposing multiple witnesses (including from multiple Defendants), retaining expert consultants, and inspecting evidence and real and personal properties. Plaintiffs also have analyzed the legal issues raised by their claims and Defendants’ defenses as well as the insurance coverage, solvency, and financial resources of the Defendants to evaluate their ability to pay settlements and verdicts.

1.7 In spring 2024, Judge Cahill appointed the Hon. Louis Meisinger (ret.), the Hon. Daniel Buckley (ret.), and Keith Hunter as settlement mediators (collectively, the “Mediators”) in the Special Proceeding. Representatives of the Parties then conducted multiple mediation sessions over nearly four months. The mediation sessions included attorneys representing Individual Action Plaintiffs and Class Plaintiffs (including Class Counsel) who had filed (or intended to file) tort and any other claims related to the Maui Fires, whether on an individual, representative, or class basis in state or federal court; attorneys representing Subrogation Plaintiffs; and attorneys representing Defendants. The Mediators ultimately made a Mediators’ proposal that reflected their informed view of the maximum amount that Defendants could fairly and practicably contribute based on the facts and circumstances of the case, including potential exposure, availability of insurance, and limitations on ability to pay. The Mediators proposed that Defendants contribute the Aggregate Settlement Amount, according to a payment schedule, to reach a global settlement of all Released Claims. The Mediators also proposed what each Defendant’s respective share of the Aggregate Settlement Amount would be.

1.8 On August 2, 2024, the Parties entered into a Term Sheet setting forth the material terms and conditions for a comprehensive global settlement to resolve, release, and forever discharge all Released Claims, expressly providing that the comprehensive global settlement fund in the amount of the Aggregate Settlement Amount must fully resolve all Released Claims, including those that had been brought or could have been brought by all Plaintiffs, including Individual Plaintiffs and Class Plaintiffs, Defendants, the Subrogation Plaintiffs, any other

insurers or entities that have or may have subrogation claims, and any relevant federal agency or department.¹

1.9 The Parties thereafter agreed to create two settlement funds to effectuate the global settlement contemplated by the Term Sheet: the Class Settlement Fund and the Individual Settlement Fund. Class Counsel and Liaison Counsel have agreed to decide the Individual Settlement Amount and the Class Settlement Amount through the procedure contemplated under Section 3.1.4.

1.10 The Parties negotiated two settlement agreements: this Class Settlement Agreement, to which Class Counsel, the Class Representatives, and Defendants are signatories, which will govern administration of the Class Settlement Fund and the release of all Maui Fires claims by Class Plaintiffs; and the Individual Settlement Agreement, to which Identified Plaintiffs' Counsel and Defendants are signatories, which is attached hereto as Exhibit 1, and which will govern administration of the Individual Settlement Fund and the release of all Maui Fires claims by Individual Plaintiffs. Together, these two funds and two agreements are intended to achieve a global resolution of all Released Claims. All Parties to these agreements understand that it is a condition to either agreement becoming final and effective that the other is also final and effective.

1.11 Upon careful review and analysis, Class Counsel have concluded that it is in the best interests of the Class Plaintiffs to settle all Released Claims against the Releasees for consideration reflected in the terms and benefits of this Class Settlement Agreement. After arm's length negotiations, including through the efforts of the Mediators, Class Counsel have considered, among other things: (1) the complexity, expense, and likely duration of the litigation, through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert development completed; (3) the potential for Defendants to prevail on the merits, in whole or in part, and as to any Defendant, on liability issues; (4) the Defendants' defenses to damages and the challenges in proving damages as to each Class Plaintiff; (5) the range of possible recovery; (6) each Defendant's ability to pay; (7) the availability of insurance; (8) the benefits of a settlement at this time to Class Plaintiffs; (9) the benefits and challenges of a global resolution and alternative resolution mechanisms, including potential bankruptcy proceedings for certain Defendants; and (10) the Mediators' reasoned proposal, and they have determined that the Aggregate Settlement Amount and the process for determining the Class Settlement Amount are fair, reasonable, adequate, and in the best interests of Class Plaintiffs, as are the terms of this Class Settlement Agreement generally. Class Counsel further represent that they have no current intention to file claims arising out of the Maui Fires against any additional Persons that are not Defendants.

1.12 Upon careful review and analysis, each Defendant has similarly concluded that it is in its best interests to settle all Released Claims against all other Defendants. After arm's length negotiations, including through the efforts of the Mediators, each Defendant has considered, among other things: (1) the complexity, expense, and likely duration of the litigation,

¹ The Term Sheet excluded from the definition of Released Claims certain derivative and securities claims asserted against the Hawaiian Electric parties, as reflected in Section 2.2 of this Class Settlement Agreement.

through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert analysis completed; (3) the potential for both Plaintiffs and other Defendants to prevail on the merits, in whole or in part; (4) the other Defendants' defenses to damages and the challenges in proving damages as to each other Defendant; (5) the range of possible recovery; (6) each Defendant's ability to pay; (7) the availability of insurance; (8) the benefits of a global settlement with all Parties at this time; and (9) the Mediators' proposal. Considering all of these factors, each Defendant has determined that the release provisions in this Class Settlement Agreement are reasonable, fair, adequate, and in its best interests, as are the terms of this Class Settlement Agreement generally.

1.13 The Class Parties agree to seek review and approval of the Class Settlement Agreement from the applicable Approving Court(s), and, upon Preliminary Approval, and after completion of all interim steps as described in this Class Settlement Agreement, the Class Parties will seek a Final Order and Judgment from the Approving Court(s), and will further seek orders and/or judgments dismissing all of the Actions with prejudice, as described more particularly below.

1.14 Neither the Class Settlement Agreement nor the Individual Settlement Agreement will be construed as evidence, or as an admission by Releasees of any liability or wrongdoing whatsoever, as an admission by the Plaintiffs of any lack of merit in their claims, or as evidence or an admission of the value of the Plaintiffs' claims.

1.15 By entering this Class Settlement Agreement, neither the State of Hawai'i nor the County of Maui, and their respective officers, employees, and departments, waives any immunity that any of them may have, except to the extent necessary for the interpretation or enforcement of this Class Settlement Agreement.

1.16 NOW, THEREFORE, in consideration of the agreements, promises, and covenants set forth in this Class Settlement Agreement, the Actions and all Released Claims by all Releasers shall be settled and compromised under the following terms and conditions:

ARTICLE II: DEFINITIONS

2.1 For the purposes of this Class Settlement Agreement, the following terms (designated by initial capitalization throughout this Class Settlement Agreement) will have the meanings set forth in this Article. Where a term is not capitalized, it shall have its ordinary meaning, in the context of the sentence, rather than the defined meaning.

2.2 "Actions" means all lawsuits against any Defendant(s) arising out of the Maui Fires, including all individual and putative class actions whether filed in state or federal court, and including complaints filed by Subrogation Plaintiffs, but not including derivative and securities claims asserted in the following cases: *Bhargal v. HEI, et al.*, Case No. 3:23-cv-04332 (N.D. Cal.); *Rice v. Connors, et al.*, Case No. 1CCV-23-0001181 (Haw. Cir. Ct.); *In re Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc. Derivative Litigation*, Case No. 3:23-cv-06627 (N.D. Cal.); *In re Hawaiian Electric Industries, Inc., Stockholder Derivative Litigation*, Case No. 24-cv-00164 (D. Haw.). For avoidance of doubt, nothing in this Class

Settlement Agreement should be construed to directly release, dismiss, or otherwise extinguish these derivative and securities claims.

2.3 “Affiliate” means, with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that Person.

2.4 “Aggregate Settlement Amount” means the \$4.037 billion total, aggregate payment to be made by Defendants to Plaintiffs by funding the Class Settlement Fund and Individual Settlement Fund, or such lesser amount as may be agreed pursuant to Section 3.3 of this Class Settlement Agreement, and Section 3.3 of the Individual Settlement Agreement. For avoidance of doubt, the Aggregate Settlement Amount includes the amount paid to the County under Section 4.1.2(k) of the Individual Settlement Agreement, which is paid from the Individual Settlement Fund.

2.5 “Approved Investments” shall have the meaning specified in Section 3.2.3.

2.6 “Approving Court” shall mean any court of competent jurisdiction to which a motion, petition, or request is made to approve or authorize the implementation of the Class Settlement Agreement or Class Settlement Plan, in whole or in part, or the Individual Settlement Agreement, or any Individual Settlement Agreement and Release, or the Individual Settlement Plan (as defined in the Individual Settlement Agreement), in whole or in part.

2.7 “Business Interruption – Within Fire Perimeters Claim” means any claim by any Person that allegedly owned or operated a business, excluding income-earning residential or commercial real property, within the Fire Perimeters for business income losses as a result of property damage caused by the Maui Fires, but is limited to businesses that have a business license and/or paid business taxes in 2022 or 2023. For the avoidance of doubt, a claim for loss of or damage to real property is not a Business Interruption – Within Fire Perimeters Claim, but may be either a Residential Property Loss – Within Fire Perimeters Claim or a Commercial Property Loss – Within Fire Perimeters Claim.

2.8 “Class Claimant” means any Person who files a claim for or receives a Monetary Award from the Class Settlement Fund.

2.9 “Class Counsel” means the class action counsel who are signatories to the Class Settlement Agreement.

2.10 “Class Parties” means the Class Plaintiffs and Defendants.

2.11 “Class Plaintiff Releasors” shall refer jointly and severally, individually and collectively to all Class Plaintiffs, and their respective past and present, direct and indirect, parents, guardians, conservators, fiduciaries, next friends, next of kin, subsidiaries, Affiliates, officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers (and any of the foregoing listed individuals’ or entities’ past and present officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers), insurers (including any Subrogation Insurers), any

person who may be a claimant under Hawai‘i Revised Statute § 663-3, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

2.12 “Class Plaintiffs” means all Persons included within the Settlement Class who do not timely and validly elect to opt-out of the Settlement Class pursuant to the procedures set forth in the Class Notice.

2.13 “Class Representatives” means the named plaintiffs in the Consolidated Complaint.

2.14 “Class Settlement Administration Expenses” means the costs incurred in administering this Class Settlement Agreement, including the costs of class notice and payments to the Class Settlement Administrator, which will be paid from the Class Settlement Fund.

2.15 “Class Settlement Administrator” has the meaning specified in Section 3.8.

2.16 “Class Settlement Agreement” means this settlement agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

2.17 “Class Settlement Amount” means the total payment to be made to the Class Settlement Fund by the Defendants out of the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3, as determined by Section 3.1.4.

2.18 “Class Settlement Fund” has the meaning described in Article III.

2.19 “Class Settlement Percentage” means the Class Settlement Amount divided by the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3.

2.20 “Class Settlement Plan” has the meaning described in Article IV.

2.21 “Commercial Property Loss – Within Fire Perimeters Claim” means any claim by the owner of real property within the Fire Perimeters that was partially or fully destroyed by the Maui Fires, for loss of or damage to that property and/or the contents thereof, that is not a Residential Property Loss – Within Fire Perimeters Claim. For avoidance of doubt, these properties include apartments, apartment buildings, condominium buildings (but not individual condominium units), but exclude home businesses that meet the definition of Residential Property Loss – Within Fire Perimeters Claims.

2.22 “Conditions” has the meaning provided for in Section 3.3.

2.23 “Consolidated Complaint” is the operative class action complaint in *Burnes, et al. v. Hawaiian Electric Co., Inc., et al.*, Case No. 2CCV-24-0000964 (Haw. Cir. Ct.).

2.24 “Defendant Releasors” shall refer jointly and severally, individually and collectively to all Defendants, and their respective past and present, direct and indirect, parents, guardians, conservators, fiduciaries, next friends, subsidiaries, Affiliates, officers, directors, employees, agents, attorneys, servants, and representatives (and any of the foregoing listed

Persons' past and present officers, directors, employees, agents, attorneys, servants, and representatives), insurers (including any Subrogation Insurers), any person who may be a claimant under Hawai'i Revised Statute § 663-3, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

2.25 "Defendants" means all of the following Persons:

2.25.1 The State of Hawai'i and all of its subdivisions, agencies, and departments (the "State");

2.25.2 The County of Maui and all of its subdivisions, agencies, and departments (the "County");

2.25.3 Hawaiian Electric Company, Inc. and Hawaiian Electric Industries, Inc. (together, "Hawaiian Electric"). (For the avoidance of doubt, Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc. are not Defendants, although they are named as defendants in pending Actions. They are intended beneficiaries of this Class Settlement Agreement, and are Releasees);

2.25.4 The Trustees of the Estate of Bernice Pauahi Bishop: Elliot Kawaiho'olana Mills, Crystal Kauilani Rose, Jennifer Noelani Goodyear-Ka'ōpua, Michelle Ka'uhane, and Robert K.W.H. Nobriga, in their fiduciary capacities as said Trustees, and not in their individual capacities (collectively, "KS");

2.25.5 Spectrum Oceanic, LLC ("Spectrum") and Charter Communications, Inc.;

2.25.6 Cincinnati Bell Inc. and Hawaiian Telcom, Inc. (collectively, "Hawaiian Telcom"); and

2.25.7 The West Maui Land Company, Inc. and certain Affiliates, including Launiupoko Irrigation Company, Inc., Hope Builders Holding LLC, Kauaula Land Company LLC, Makila Land Co., LLC, Hope Builders LLC nka Hope Builders, Inc., Launiupoko Water Company, Inc., Kauaula Land Company LLC, Kipa Centennial LLC, Wainee Land & Homes, LLC, Peter Klint Martin, individually and as trustee of the Peter Klint Martin Revocable Trust, JV Enterprises, LLC, Donna Anne Poseley, individually and as personal representative of the Estate of Douglas Poseley, Jeanne Riley, as trustee of the Jeanne Riley Trust and Successor Trustee of the James Riley trust, Makila Ranches Homeowners Association, Inc., Makila Ranches, Inc., and Olowalu Elua Associates LLC (collectively, "West Maui Land").

2.26 "Eligible Relatives" means any surviving spouse of, reciprocal beneficiary of, child of, father of, mother of, and any person wholly or partly dependent upon a person who died or suffered physical injury due to the Maui Fires, or any other Person who asserts a claim based on the death or physical injury of another due to the Maui Fires.

2.27 "Evacuation Claim" means any claim for damages arising from or relating to evacuation from the Maui Fires by any claimant who was present within the Fire Perimeters during the times outlined below and does not have a Serious Evacuation Claim.

2.27.1 Lahaina Fire: 6:30 a.m. on August 8, 2023 to 9:00 a.m. on August 9, 2023.

2.27.2 Kula Fire: 11:20 a.m. on August 8, 2023 to 9:00 a.m. on August 9, 2023.

2.27.3 Olinda Fire: 10:45 p.m. on August 7, 2023 to 9:00 a.m. on August 9, 2023.

2.28 “Excluded Person” means any Person who, as of the deadline to submit an Opt Out Form, has executed and delivered to the Class Settlement Administrator an Individual Settlement Agreement and Release.

2.29 “Final Approval” means the Approving Court issuing an order granting the motion described in Section 9.4.

2.30 “Final Order and Judgment” means the final judgment and order entered by the Approving Court finally approving the Class Settlement Agreement and Class Settlement Plan as set forth in Section 9.4.

2.31 “Final and Unappealable” means, with respect to a judgment, order, or opinion, that such judgment, order, or opinion has achieved any one of the following criteria: (1) all Persons with a right to appeal the judgment, order, or opinion have waived or forfeited their right to do so; (2) the time to appeal has expired with no appeal filed; (3) the judgment, order, or opinion has been affirmed by an appellate court with no further possibility of appeal; or (4) all appeals from the judgment, order, or opinion have been dismissed.

2.32 “Fire Perimeters” means the boundaries of the geographic areas burned by the August 2023 fires in Lahaina, Kula, and Olinda, respectively, as determined by the Wildland Fire Interagency Geospatial Services (“WFIGS”) Group and as reflected in the WFIGS Interagency Fire Perimeters maps maintained by the National Interagency Fire Center, and attached hereto as Exhibit 3. Lahaina Fire Perimeter, Kula Fire Perimeter, or Olinda Fire Perimeter refer to the specific fire perimeter for the August 8, 2023, fire in that respective area.

2.33 “Government Entities” means any government agency, department, division, subdivision, unit, component, bureau, commission, office, board, or instrumentality of any kind, including federal, state, and municipal entities, that could assert any Released Claim against any Releasee.

2.34 “Hawaiian Electric” has the meaning specified in Section 2.25.3.

2.35 “Holdback Claim” has the meaning specified in Section 8.3.3.

2.36 “Holdback Credit” has the meaning specified in Section 8.3.4.

2.37 “Holdback Fund” has the meaning specified in Section 8.3.

2.38 “Holdback Remainder Amount” has the meaning specified in Section 8.3.5(c).

2.39 “Identified Plaintiffs’ Counsel” mean the attorneys representing Individual Action Plaintiffs who are signatories to the Individual Settlement Agreement.

2.40 “Immediate Family Member” means, as to a Person, a spouse, reciprocal beneficiary, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, stepsibling, and equivalent adoptive relationships.

2.41 “Individual Action Plaintiffs” means individual plaintiffs who have pending Actions as of the Settlement Date.

2.42 “Individual Defendant Aggregate Contribution” means the sum of each Defendant’s Individual Defendant Class Contribution and Individual Defendant IP Contribution.

2.43 “Individual Defendant Class Contribution” means the amount each Defendant has agreed to contribute to the Class Settlement Fund, as further described in Sections 3.1 and 3.3.

2.44 “Individual Defendant IP Contribution” means the amount each Defendant has agreed to contribute to the Individual Settlement Fund, as described in the Individual Settlement Agreement.

2.45 “Individual Plaintiffs” means all Persons who timely and validly execute a signed Individual Settlement Agreement and Release in the form attached to the Individual Settlement Agreement as Exhibit 4.

2.46 “Individual Settlement Administrator” means the settlement administrator for the Individual Settlement Fund, as described in Section 3.8 of the Individual Settlement Agreement.

2.47 “Individual Settlement Agreement” means the settlement agreement signed by Identified Plaintiffs’ Counsel and Defendants to provide for the release of all Released Claims by Individual Plaintiffs, attached hereto as Exhibit 1.

2.48 “Individual Settlement Agreement and Release” means the document that each Individual Plaintiff must sign to become an Individual Plaintiff.

2.49 “Individual Settlement Amount” means the total payment to be made to the Individual Settlement Fund by the Defendants out of the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3, as determined by Section 3.1.4.

2.50 “Individual Settlement Fund” means the fund created to provide Monetary Awards to Individual Plaintiffs, as described in the Individual Settlement Agreement.

2.51 “Initial Defendant Payment” means the total amount due to be paid by each individual Defendant on the Initial Payment Due Date to the Class Settlement Fund and the Individual Settlement Fund (cumulatively) but does not include any subsequent payments pursuant to a payment schedule.

2.52 “Initial Payment Due Date” means the initial deadline for each Defendant to make its Initial Defendant Payment as described in Section 3.3.

2.53 “Liaison Counsel” means the court-appointed Liaison Counsel pursuant to Case Management Order No. 1 entered in the Special Proceeding who are signatories to the Individual

Settlement Agreement, namely Cynthia K. Wong, Jesse Max Creed, Jacob Lowenthal, and Jan K. Apo.

2.54 “Litigation Trustee” means an individual appointed by Plaintiffs’ Counsel and approved by the Court to manage any litigation arising from non-payment of any part of an Individual Aggregate Defendant Contribution. For the avoidance of doubt, the “Litigation Trustee” is the same individual designated “Litigation Trustee” in the Individual Settlement Agreement.

2.55 “Maui Fires” has the meaning as specified in the opening paragraph of this Class Settlement Agreement.

2.56 “Mediators” has the meaning as specified in Section 1.7.

2.57 “Monetary Award” means the payment of money from the Class Settlement Fund to a Class Claimant as set forth in Section 4.1.

2.58 “Necessary Approvals” means those Conditions identified in Section 3.3.1(a), (b), (c), and (d).

2.59 “Necessary Holdback Amount” has the meaning specified in Section 8.3.5(b).

2.60 “Non-Participant” means any Person who is a member of the Settlement Class who opts out and, as of the day after the Return Date, is not an Individual Plaintiff.

2.61 “Non-State Defendants” means all Defendants except for the State.

2.62 “One Ohana Fund” means the Maui Wildfires Compensation Program entered into on March 1, 2024.

2.63 “Opt Out Form” means the form, under Section 4.3, that must be timely and properly submitted by a member of the Settlement Class for that Person to not become a Class Plaintiff.

2.64 “Parties” means, collectively, Defendants and Plaintiffs.

2.65 “Person” means an individual, corporation, company, partnership, limited liability company, joint venture, association, trust, or other entity, including a government agency, division, or department.

2.66 “Plaintiffs” means, collectively, all Individual Plaintiffs and Class Plaintiffs.

2.67 “Plaintiffs’ Counsel” means, collectively, Class Counsel and Liaison Counsel.

2.68 “Preliminary Approval” means an Approving Court issuing an order granting the motion described in Section 9.1.

2.69 “Released Claims” means all claims, counterclaims, cross-claims, actions, rights, disputes, and causes of action of any kind or nature whatsoever, including claims for relief,

damages, liabilities, suits, arbitrations, costs, expenses, compensations, fees, attorneys' fees, experts' and consultants' fees, demands, injuries, and/or losses, including, but not limited to, economic losses, medical expenses, emotional distress, property damage, diminution in property value, business interruption damages, lost profits, personal injury, medical monitoring, wrongful death, contribution, and indemnity, whether based on federal, state, local, common, or foreign law, in contract, statute, rule, ordinance, administrative provision or regulation, tort, equity, or otherwise, whether foreign or domestic, whether asserted or unasserted, known or unknown, suspected or unsuspected, liquidated or unliquidated, matured or unmatured, discoverable or undiscoverable, foreseen or unforeseen, fixed or contingent, accrued or unaccrued, direct or indirect, including those that are concealed or hidden, whether class or individual in nature, past, present, or future, in contract, statute, tort, equity, or otherwise, arising from, resulting from, due to, or relating in any way to the Maui Fires.

2.70 "Releasees" shall refer jointly and severally, individually and collectively to Defendants and all of their past, present, and future, direct or indirect, respective departments, holding companies, Affiliates, related companies, parent entities, subsidiaries, predecessors, and successors; all of their respective past, present, and future, direct or indirect, employees, stockholders, shareholders, officers, directors, boards of directors, agents, advisors, accountants, attorneys, representatives, employees, adjusters, insurers, reinsurers, assigns, general partners, limited partners, members, managers, member managers, funds, investors, co-investors, investment managers, investment vehicles, investment accounts, portfolio companies, principals, joint venturers, transferees, heirs, beneficiaries, executors, estate administrators, trustees, associates, or personal representatives, contractors, subcontractors, and vendors. The Releasees shall include, without limitation, the Persons listed on Exhibit 5 hereto. Releasees that are not Defendants are intended third-party beneficiaries under the Class Settlement Agreement that have relied upon and may enforce the Class Settlement Agreement.

2.71 "Releasers" shall refer collectively to Class Plaintiff Releasers and Defendant Releasers.

2.72 "Renter – Within Fire Perimeters Claim" means any claim for loss of, or damage to, personal property as a result of the Maui Fires by a Person who resided in and/or rented, but did not own, residential property within the Fire Perimeters.

2.73 "Residential Property Loss – Within Fire Perimeters Claim" means any claim by the owner of real property within the Fire Perimeters that was used for residential purposes and was partially or fully destroyed by the Maui Fires for loss of or damage to that real property and the contents thereof. For the avoidance of doubt, these properties include single family residences and units in condominiums, duplexes, and similar structures, whether or not rented or occupied, and whether or not a primary residence, but exclude apartments.

2.74 "Return Date" means the deadline for Individual Plaintiffs to provide the Administrator with signed Individual Settlement Agreement and Releases, which shall be 60 days after the deadline to opt out of the Settlement Class.

2.75 "Serious Evacuation Claim" means any claim for damages arising from or relating to evacuation from the Maui Fires by any claimant who was present within the Fire

Perimeters at the times specified in Section 2.27.1, 2.27.2, or 2.27.3, and was in danger of immediate bodily harm.

2.76 “Serious Physical Injury Claim” means any claim for alleged physical injury as a result of the Maui Fires that meets one or more of the following conditions:

2.76.1 injuries requiring overnight hospitalization for one or more nights;

2.76.2 second- or third-degree burns;

2.76.3 cardiac arrest, stroke, and/or acute heart failure that occurred or was diagnosed between August 8, 2023 and August 15, 2023;

2.76.4 inhalational lung injuries requiring hospitalization and/or resulting in chronic functional lung impairment;

2.76.5 brain injuries that occurred or were diagnosed between August 8, 2023 and August 15, 2023;

2.76.6 spinal injuries that occurred or were diagnosed between August 8, 2023 and August 15, 2023;

2.76.7 any injury that resulted in at least \$30,000 in medical costs (whether or not paid out of pocket by the claimant).

2.77 “Settlement Class” means all Persons who (1) owned, rented, or resided on real property, or owned personal property, within the Fire Perimeters or within 0.5 miles of the Fire Perimeters on August 8, 2023, (2) owned, operated, or otherwise worked for or in connection with a business within the Fire Perimeters or within 0.5 miles of the Fire Perimeters at any time between August 8, 2023 and October 8, 2023, (3) were present within the Fire Perimeters or within 5 miles of the Fire Perimeters at any time between August 8, 2023 and 9:00 a.m. on August 9, 2023, (4) suffered physical injury due to the Maui Fires, or are Eligible Relatives of such persons, (5) are personal representatives or Eligible Relatives of a person who died due to the Maui Fires, (6) are Immediate Family Members of Persons who were present within the Fire Perimeters on August 8, 2023; (7) purchased a ticket prior to August 8, 2023 for travel by plane or ship to Maui between August 8, 2023 and October 8, 2023, and suffered economic loss that was not fully refunded due to trip cancellation or delay; or (8) had damage to their property on Maui between August 8, 2023 and October 8, 2023 from the Maui Fires; or (9) owned or operated a business on Maui that suffered damages resulting from a decline in tourism between August 8, 2023 and October 8, 2023. Excluded from the Settlement Class are: (a) Defendants and their counsel; (b) the judicial officers to whom any Actions are assigned; (c) insurers and insurance syndicates that claim or could claim damage or harm regarding the Maui Fires arising out of a right of subrogation or reimbursement; and (d) any Excluded Person. For the avoidance of doubt, exclusion (c) does not preclude an insurer from submitting a claim on behalf of its policyholder as set forth in Section 4.1.2(k).

2.78 “Settlement Date” has the meaning specified in the opening paragraph of this Class Settlement Agreement.

2.79 “Special Proceeding” means that special proceeding opened in the Second Circuit Court, State of Hawai‘i, by Judge Cahill on October 27, 2023, captioned *In the Matter of the Petition for the Coordination of Individual Plaintiffs Maui Fires Cases*, Case No. 2CSP-23-0000057.

2.80 “Subrogation Plaintiffs” means all plaintiffs in the following actions originally filed as: *Amguard Insurance, et al. v. MECO, et al.*, Case No. 1CCV-24-0000068 (Haw. Cir. Ct.); *Certain Underwriters at Lloyd’s London Subscribing to Policy Number TRIB223061 v. MECO, et al.*, Case No. 1CCV-24-0000179 (Haw. Cir. Ct.); *Hyundai Marine & Fire Insurance Company, Ltd. v. MECO, et al.*, Case No. 1CCV-24-0000437 (Haw. Cir. Ct.); *The Dentist Insurance Co. v. MECO, et al.*, Case Nos. 2CCV-24-0000668, 2CCV-24-0000800, 2CCV-24-0000801, 2CCV-24-0000802 (Haw. Cir. Ct.). Subrogation Plaintiffs also include any other insurance carriers with subrogation claims arising out of the Maui Fires that are represented by any law firm in those actions, and, for the avoidance of doubt, other Persons to whom any insurance carrier has assigned the rights, title, interest, or proceeds of a subrogation claim arising out of the Maui Fires.

2.81 “Subrogation Insurers” means any insurer or insurance syndicate that paid, or reserved for future payment, any property damage claims (including business loss or interruption) arising out of the Maui Fires, including but not limited to the Subrogation Plaintiffs, and, for the avoidance of doubt, other Persons to whom any such insurer or insurance syndicate has assigned the rights, title, interest, or proceeds for claims arising out of such payments or reservations.

2.82 “Term Sheet” means that certain settlement term sheet dated August 2, 2024.

2.83 “Termination Event” has the meaning specified in Section 8.1.3.

2.84 “Wrongful Death Claim” means any claim (a) for alleged wrongful death by any Person, such as a personal representative, authorized by law to bring a claim on behalf of any individual identified on Exhibit 6 or any other individual who, to a reasonable degree of medical certainty, died as a result of the Maui Fires; and (b) by an Eligible Relative for recovery of damages allegedly caused by the death of any such individual.

2.85 Unless the context requires otherwise, (i) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (ii) the word “or” shall be construed in its inclusive sense to have the same meaning and effect as the words “and/or”; (iii) the word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (iv) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Haw. Rev. Stat. § 8-1), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (v) references to this Settlement Agreement will include all exhibits, schedules, and annexes hereto; (vi) references to any law will include all rules and regulations promulgated thereunder; (vii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; (viii) when a capitalized singular form of a plural defined term is used, it refers to any one of the defined term; (ix) when a capitalized

plural form of a singular defined term is used, it refers to one or more of the defined term; (x) references to dollars or “\$” are to United States dollars; and (xi) all day and time references are based on Hawai‘i Standard Time.

ARTICLE III: SETTLEMENT FUND

3.1 **Defendant Aggregate Contributions.** In consideration of the releases set forth in Article VII of this Class Settlement Agreement and Article VII of the Individual Settlement Agreement, the dismissal with prejudice of the Actions, and the terms and conditions of both the Class Settlement Agreement and the Individual Settlement Agreement, each Defendant will, in addition to performing its other obligations set forth in this Class Settlement Agreement, pay or cause to be paid its Individual Defendant Aggregate Settlement Contribution at the times and in the amounts set forth in Section 3.3 of this Class Settlement Agreement and Section 3.3 of the Individual Settlement Agreement, with each Defendant’s Individual Defendant Aggregate Contribution being the amount that has been agreed upon by that Defendant with the Mediators.

3.1.1 A Defendant’s payment of its Individual Defendant Aggregate Contribution into the Class and Individual Settlement Funds shall satisfy all monetary obligations of that Defendant under both this Class Settlement Agreement and the Individual Settlement Agreement. In no event shall any Defendant be required to pay more than its Individual Defendant Aggregate Contribution.

3.1.2 Defendants are not jointly liable for the whole amount to be paid into the Class Settlement Fund and Individual Settlement Fund, or either of them. Any failure by any Defendant to timely pay all or part of its Individual Defendant Aggregate Contribution—including either its Individual Defendant Class Contribution or its Individual Defendant IP Contribution—shall not affect the effectiveness of any release of any Released Claim, including as to any other Defendant (and its associated Releasees), nor provide Plaintiffs a cause of action against any Defendant (or its associated Releasees) other than the non-paying Defendant for that payment.

3.1.3 Each Defendant’s contribution to the One Ohana Fund shall be a credit that will be applied dollar-for-dollar as a partial payment of its Individual Defendant Aggregate Contribution, and the Aggregate Settlement Amount includes such contributions.

3.1.4 **Class Settlement Amount.** The Class Settlement Amount and the Individual Settlement Amount will be determined in accordance with the terms and conditions set forth in Exhibit 10. The procedures set forth in Exhibit 10 to determine the Class Settlement Amount and the Individual Settlement Amount may not modify or add to any provision of this Class Settlement Agreement or the Individual Settlement Agreement, including, but not limited to, the definition of the Settlement Class, the Releases under Section VII, the Aggregate Settlement Amount, and the terms of Section 4.1.2(k) of the Individual Settlement Agreement. For avoidance of doubt, no requirement in this Class Settlement Agreement may be altered without the written consent of all signatories to this Class Settlement Agreement.

3.2 Creation of Class Settlement Fund.

3.2.1 Upon payment of any portion of any Individual Defendant Class Contribution into the Class Settlement Fund, the Class Settlement Fund shall become a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1. Class Counsel or the Class Settlement Administrator shall establish accounts that together will be designated as a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1, pursuant to the Internal Revenue Code.

3.2.2 Neither the Class Parties nor the Class Settlement Administrator shall take any position in any filing or before any tax authority that is inconsistent with treating the Class Settlement Fund as a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1. Each Defendant shall be a “transferor,” and the Class Settlement Administrator shall be the “administrator” of the Class Settlement Fund within the meaning of 26 C.F.R. §§ 1.468B-1(d)(1) and 1.468B-2(k)(3), respectively. As a result, the Class Settlement Administrator will be responsible for all tax paying, filing, withholding, and reporting obligations of the “qualified settlement fund,” including, without limitation, those arising from any payments made from the Class Settlement Fund, including any reporting required on IRS Form 1099 for distributions made from the Class Settlement Fund. The Class Parties agree to take all necessary and reasonable actions to qualify the Class Settlement Fund pursuant to the United States Treasury Regulations.

3.2.3 The Class Settlement Administrator shall hold the cash in the Class Settlement Fund in one or more account(s) that are either (i) FDIC-insured and/or (ii) invested in securities backed by the full faith and protection of the U.S. Government (either in the form of U.S. Treasury bonds or in the form of a Treasury securities money market account) (“Approved Investments”). The Class Settlement Administrator shall make such investments in Approved Investments on the same day it receives Class Settlement Fund payments. During any settlement period and/or when cash is in the Class Settlement Administrator’s account prior to the payment to Class Claimants, the Class Settlement Administrator shall hold such cash in FDIC-insured accounts, providing FDIC insurance for all such funds. The Class Settlement Administrator shall take all precautions necessary to ensure that the funds are used solely for the purposes authorized by this Class Settlement Agreement.

3.2.4 Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Class Settlement Fund, including any risk of bank failures, seizures, freezes, or fraudulent or incorrect payments, which shall be the sole responsibility of Class Counsel and the Class Settlement Administrator. Class Claimants and Class Counsel bear all risk and liability in the event that the bank is placed into receivership or conservatorship, and Class Claimants cannot access or receive some or all of the funds from the Class Settlement Amount. Any such bank receivership or conservatorship shall not limit or otherwise affect the releases of the Releasees, as defined pursuant to the Class Settlement Agreement.

3.2.5 Class Counsel and the Class Settlement Administrator will segregate KS’s Individual Defendant Class Contribution from the contributions of the other Defendants in a separate account that is part of the Class Settlement Fund. The distributions from this account shall be used to pay claims related to the Lahaina fire only.

3.3 Timing of Payments to Class Settlement Fund.

3.3.1 No payment by any Defendant will be due until the Initial Payment Due Date. The Initial Payment Due Date shall be 30 days after each of the following Conditions has been satisfied, except for the Condition specified in subsection (f), which, per Section 5.2, must occur on or before the Initial Payment Due Date.

(a) As to the State, the enactment of legislation appropriating funds for the State's Individual Defendant Aggregate Contribution;

(b) As to KS, approvals of KS's Individual Defendant Aggregate Contribution through: (1) written fiduciary affirmation letters from the State Attorney General (as *parens patriae*); (2) fiduciary approvals from the State Probate Court (in KS' open-probate case), in a Final and Unappealable order; and (3) tax approvals from the Internal Revenue Service (as a tax-exempt organization), in a Private Letter Ruling. For these approvals, KS must complete and submit to regulators its fiduciary reviews of expected liabilities, financial capacities, the Class Settlement Plan, and the Individual Settlement Plan (as defined in the Individual Settlement Agreement), to determine if its Individual Defendant Aggregate Contribution is, among other things, prudent, fiduciarily justified, and without impermissible private benefit;

(c) Final Approval of the Class Settlement Agreement and Class Settlement Plan;

(d) Any other approvals necessary to render any release provided by any Plaintiff, including any Class or Individual Plaintiff, enforceable;

(e) Satisfaction of the requirements set forth in Section 5.1.1 or Section 5.1.2;

(f) Satisfaction of the requirement set forth in Section 5.2;

(g) The Final Order and Judgment has become Final and Unappealable;

(h) The deadlines for exercising all termination rights set forth in Article VIII have passed with no Party validly exercising such termination rights; and

(i) The Approving Court has made a Final and Unappealable good-faith determination approving the Class Settlement Agreement and Individual Settlement Agreement in accordance with Section 9.3.

3.3.2 Each Defendant will pay its Individual Defendant Class Contribution according to the following schedule:

3.3.3 For Hawaiian Electric, the Class Settlement Percentage multiplied by \$478,750,000 on the Initial Payment Due Date, and three additional payments of the Class Settlement Percentage multiplied by \$478,750,000 that are, in each case, made one year and one

day after the previous one, plus the amount refunded by the One Ohana Fund of the principal amount Hawaiian Electric contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of Hawaiian Electric's receipt of such funds, provided that, at Hawaiian Electric's option, Hawaiian Electric may accelerate all or any portion of amounts due after the Initial Payment Due Date, in which case, subject to Section 3.4, such accelerated payments shall be discounted at the rate of 5.5%, with a corresponding reduction in its Individual Defendant Class Contribution and Individual Defendant Aggregate Contribution, as well as the Aggregate Settlement Amount and the Class Settlement Amount.

(a) Hawaiian Electric further agrees to the conditions under Appendix B.

3.3.4 For the State of Hawai'i, \$201,875,000 multiplied by the Class Settlement Percentage on the Initial Payment Due Date, and \$201,875,000 multiplied by the Class Settlement Percentage on each of the three successive anniversaries of the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount the State of Hawai'i contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of the State of Hawai'i's receipt of such funds.

3.3.5 For KS, the Class Settlement Percentage multiplied by \$213,750,000 on the Initial Payment Due Date, and the Class Settlement Percentage multiplied by \$213,750,000 on each of the three successive anniversaries of the Initial Payment Due Date, provided that, at KS's option, KS may accelerate all or any portion of amounts due after the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount KS contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of KS's receipt of such funds.

3.3.6 For Hawaiian Telecom, \$97,500,000 multiplied by the Class Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount Hawaiian Telecom contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of Hawaiian Telecom's receipt of such funds.

3.3.7 For Spectrum, \$177,500,000 multiplied by the Class Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount Spectrum contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of Spectrum's receipt of such funds.

3.3.8 For West Maui Land, \$9,500,000 multiplied by the Class Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount West Maui Land contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of West Maui Land's receipt of such funds.

3.3.9 If a Defendant elects to make an accelerated payment, such Defendant will provide written notice to Plaintiffs' Counsel thirty (30) days prior to the date of such payment.

Such notice shall set forth the amount of the accelerated payment, how the amount was calculated (including which payment(s) is/are accelerated), and the schedule of remaining payments. Any dispute about the calculations shall be subject to the dispute resolution provision in Section 10.2.

3.4 **Holdback.** In accordance with Section 8.3, the Class Settlement Administrator and the Individual Settlement Administrator shall hold back certain funds from each payment by any Defendant to the Class Settlement Fund or Individual Settlement Fund.

3.5 **Uses of Settlement Fund.** All Monetary Awards to Class Claimants, Class Settlement Administration Expenses, awards of attorneys' fees or costs or other amounts to Class Counsel, amounts paid to Class Representatives as service awards, payments to Subrogating Insurers or for medical or other liens for Class Plaintiffs, if any, as to Released Claims, and payments or amounts due on Holdback Claims per Section 8.3, shall be paid exclusively from the Class Settlement Fund. The Class Settlement Fund and Individual Settlement Fund are, collectively, the sole sources of recovery for Plaintiffs, Non-Participants, Government Entities, and Subrogation Insurers for any Released Claims.

3.6 **Taxes.** Class Claimants shall be solely responsible for, and are legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by them to any national, federal, state, local, regional, or any other governmental taxing authority as a result of any payment made in connection with this Class Settlement Agreement. Class Claimants and Class Counsel understand that Defendants have not made, and they do not rely upon, any representations regarding the tax treatment of the payments made in connection with this Class Settlement Agreement. Moreover, Class Claimants agree to indemnify and hold Defendants and Releasees harmless if any governmental taxing authority asserts against any Defendant or other Releasee any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon any payment made in connection with this Class Settlement Agreement.

3.7 **Attorneys' Fees and Costs.**

3.7.1 Class Counsel and Defendants did not discuss attorneys' fees or reimbursement of costs prior to agreement on the material terms of the Class Settlement Agreement. Class Counsel may petition the Approving Court for an award of fees and costs for work performed in connection with the Actions filed by Class Counsel and the Class Settlement Agreement that is not inconsistent with applicable law. Any award of attorneys' fees or costs to Class Counsel shall be paid from the Class Settlement Fund.

3.7.2 For the avoidance of doubt, Defendants shall have no responsibility for any payments beyond their Individual Defendant Aggregate Contributions, and no responsibility to pay any fees or costs other than insofar as those fees and costs are paid from, in the aggregate, the Class Settlement Fund and Individual Settlement Fund. Plaintiffs shall have no responsibility to pay any fees or costs of any Defendant except where specified in this Class Settlement Agreement.

3.7.3 Defendants shall bear each of their own attorneys' fees and costs incurred in the Actions and this Class Settlement Agreement.

3.8 **Class Settlement Administrator.** The motion seeking Preliminary Approval of this Class Settlement Agreement will request that the Approving Court appoint a Class Settlement Administrator. Except as expressly stated herein, Defendants shall not have any responsibility, authority, or liability for the selection of the Settlement Administrator, the administration of the Settlement, the Class Settlement Plan, receiving and responding to any inquiries from Class Claimants, or disbursement of funds to Class Claimants. For avoidance of doubt, the Class Settlement Administrator may be the same Person as the Individual Settlement Administrator. The Class Settlement Administrator's rights, obligations, responsibilities, and authority shall include the following:

3.8.1 The Class Settlement Administrator shall administer the Settlement according to the terms of this Settlement Agreement, the Class Settlement Plan, and orders of the Court. The Class Settlement Administrator shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, this Class Settlement Agreement or the Class Settlement Plan, deemed by the Class Settlement Administrator and any consultants retained by the Class Settlement Administrator to be reasonably necessary for the efficient and timely administration of this Class Settlement Agreement and the Class Settlement Plan.

3.8.2 The Class Settlement Administrator shall determine eligibility of Class Claimants for Monetary Awards according to the terms of this Settlement Agreement, the Class Settlement Plan, and orders of the Court, and shall create administrative procedures and administrative processes supplementary to those specified in this Class Settlement Agreement and the Class Settlement Plan that provide further specific details about how the Class Settlement Fund is administered, and/or other aspects of this Class Settlement Agreement and the Class Settlement Plan; provided, however, that such procedures comply with and are in no way inconsistent with the terms of this Class Settlement Agreement and the Class Settlement Plan.

3.8.3 The Class Settlement Administrator shall be compensated for its reasonable and necessary charges incurred in the performance of the position at a reasonable rate for the services to be performed, as approved by the Approving Court, and such approved compensation shall be part of the Settlement Administration Expenses.

3.8.4 Beginning the first January after appointment, the Class Settlement Administrator will provide annual financial reports to the Court, Defendants, and Class Counsel, based on information from the preceding year, regarding: (a) the number of Class Claimants who received Monetary Awards, and the number of Class Claimants who sought but were found by the Class Settlement Administrator not to qualify for Monetary Awards; (b) the monetary amounts paid through Monetary Awards; (c) the number of Class Claimants for whom appeals are pending regarding Monetary Awards; (d) the identification/breakdown of any law firms representing Class Claimants on an individual basis, if known; (e) administrative costs, including a summary accounting of the administrative expenses incurred by the Class Settlement Administrator; (f) the projected expenses/administrative costs over the next calendar year; (g) the

monies remaining in the Class Settlement Fund; and (h) any other information requested by the Court.

3.8.5 The Defendants may elect, at their own expense, to cause an audit to be performed by a certified public accountant of the financial records of the Class Settlement Administrator, and the Class Settlement Administrator shall cooperate in good faith with the audit. Audits may be conducted at any time. Complete copies of the audit findings report will be provided to the Court and to any Defendant or Class Counsel that pays their pro-rata share of the cost of the audit.

3.8.6 If the Class Settlement Administrator resigns or otherwise cannot perform its duties and responsibilities under the Class Settlement Agreement, a replacement will be selected by Class Counsel, after consultation with Defendants. Any disputes about the replacement of the Class Settlement Administrator shall be decided pursuant to Section 10.2.

3.9 **Website.** Upon entry of the order granting Preliminary Approval, Class Counsel in conjunction with the Class Settlement Administrator will establish and maintain a public website containing information about the Settlement Agreement, including the Settlement class notice, the individual notice, and “Frequently Asked Questions.”

ARTICLE IV: PARTICIPATION IN THE CLASS SETTLEMENT

4.1 **Settlement Plan.** Pursuant to Section 4.1.1, Class Counsel will develop a Class Settlement Plan for the administration of the Class Settlement Fund, the final version of which shall be filed publicly with the Approving Court pursuant to Section 9.1.1.

4.1.1 Class Counsel will present a proposed Class Settlement Plan to Defendants within 24 days after the filing of the Preliminary Approval Motion. Within 21 days of receipt of the Class Settlement Plan, Defendants shall advise of any objections or requested modifications. Defendants may file objections to the Class Settlement Plan with the Approving Court, including on the grounds that the Class Settlement Plan is inconsistent with this Class Settlement Agreement. In the event that the Approving Court requires changes to the Class Settlement Plan, the Class Parties remain bound to the Class Settlement Agreement, except that requirements that are expressly stated in this Class Settlement Agreement (except where expressly noted) may not be altered without the written consent of all signatories to this Class Settlement Agreement.

4.1.2 The following provisions must be included in the Class Settlement Plan.

(a) The Class Settlement Plan shall include a provision for a reallocation of any residual amount from the Class Settlement Fund, with such residual amount defined as the difference between the Class Settlement Amount and the Monetary Awards actually made to all Class Claimants pursuant to the plan of allocation.

(b) The Class Settlement Plan shall include a plan for determining the Monetary Award for each Class Claimant, if any, which may address the valuation of specific

categories of claims and the proof or evidentiary showing, if any, necessary for a Class Claimant to establish entitlement to a Monetary Award.

(c) The Class Settlement Plan shall include a plan for claims administration, including the distribution and timing of Monetary Awards, and including any relevant deadlines for the submission of claim forms or accompanying information, and the submission of any required forms of information for receipt of a Monetary Award. In any such plan, a failure of a Class Plaintiff, or their agent, to comply with the requirements of the Class Settlement Plan to receive a Monetary Award, or the fact that a Class Plaintiff ultimately does not receive any particular Monetary Award that was allocated to them, will not affect the validity or enforceability of the releases set forth in Section 7.1.

(d) The Class Settlement Plan shall require that any Class Claimant who is eligible for payment from the One Ohana Fund must register for and seek payment from the One Ohana Fund as a condition precedent to receiving any money from the Class Settlement Fund. The Class Settlement Plan shall ensure that any Class Claimant's Monetary Award takes into consideration the amount of any payment that the Class Claimant previously received from the One Ohana Fund. For the avoidance of doubt, Class Claimants may receive additional money from the Class Settlement Fund beyond any amounts previously received from the One Ohana Fund.

(i) The State of Hawai'i will work with the contributors to the One Ohana Fund to reopen it for the submission of claims for a time period of at least six months after the issuance of the order of Preliminary Approval to effectuate this requirement under Section 4.1.2(d).

(e) The Class Settlement Plan shall ensure that any Class Claimant's Monetary Award does not impact the eligibility of a Class Claimant to receive assistance from the Federal Emergency Management Agency ("FEMA"). The Class Settlement Plan shall implement measures that take into consideration the amount of any payment that the Class Claimant previously received from FEMA, where known, when determining that Class Claimant's Monetary Award. For the avoidance of doubt, Class Claimants may receive additional money from the Class Settlement Fund beyond any amounts previously received from FEMA.

(f) The Class Settlement Plan shall include a plan for class notice that satisfies any applicable legal requirements, including Hawai'i law and due process.

(g) The Class Settlement Plan shall include a plan for approval of the Class Settlement Agreement by the Approving Court(s), including as to the Settlement Class. The plan shall provide, consistent with this Class Settlement Agreement, a plan to address and satisfy any applicable requirements of Hawai'i law for achieving Preliminary Approval, Final Approval, and preliminary and final certification of the Settlement Class for settlement purposes. The Class Settlement Plan may include sub-classes; involve appointment of additional class or sub-class representatives; or otherwise include provisions not inconsistent with this Class Settlement Agreement for the purpose of satisfying applicable legal requirements.

(h) The Class Settlement Plan shall propose deadlines for submitting Opt Out Forms, written objections to the Class Settlement Agreement, briefing related to Preliminary Approval, and briefing related to Final Approval.

(i) The Class Settlement Plan shall include a plan for the establishment and implementation of procedures to detect and prevent fraudulent or invalid submissions and the payment of such claims from the Class Settlement Fund. Defendants and Class Counsel each will have the absolute right and discretion, at any time, but at their sole expense, in good faith to conduct, or have conducted by an independent auditor, audits to verify Monetary Awards to Class Claimants.

(j) The Class Settlement Plan shall set forth a process for the identification of liens on a Class Claimant's recovery, including, but not limited to, any potential health care liens or recovery claims related to this Class Settlement Agreement, as well as any liens related to property insurance or business loss claims. The plan shall require any Class Claimant to, as part of the claims process or otherwise to be eligible for a Monetary Award, provide the names of any insurers, including for medical coverage, property loss or damage, and business loss or interruption, to which the Class Claimant has made a claim for payment of any sums arising out of or related to the Maui Fires and the amount of such payments sought and received. The plan shall set forth the process by which all liens shall be satisfied, and shall provide for the completion of any applicable reporting obligations. The plan shall provide that Class Claimants are solely responsible to pay, satisfy, compromise, or settle any costs, expenses, liens, claims, and demands. The plan shall state that no Monetary Award shall be made to a Class Claimant until all lien and other fees and cost obligations of the Class Claimant have been resolved and paid or have been withheld subject to an applicable lien holdback. The plan shall further address the role that the Approving Court will have in resolving any disputes related to identification and satisfaction of liens, including the amount of such liens. Notwithstanding the foregoing, nothing in this Class Settlement Agreement shall limit the ability of the Class Plaintiffs and the Subrogation Insurers to agree to an alternative process for resolution of liens.

(i) The Class Settlement Plan shall require, as a condition for receipt of any Monetary Award, that Class Claimants provide the Class Settlement Administrator with all information necessary to resolve all liens or rights of subrogation or reimbursement from any doctors, hospitals, other healthcare providers and servicers, and any other individuals, insurers, companies, agencies, workers' compensation insurers or agencies, governmental agencies, political subdivisions, attorneys, or other third parties, including, but not limited to, Medicare, Med-QUEST, the Veterans Administration, Tricare, the Department of Health Care Services, Medicaid, the Centers for Medicare & Medicaid Services, or any other federal or state programs or Persons (collectively, "Medical Liens"). The Class Settlement Plan shall further require Class Claimants to obtain waivers or other documentation from all Persons holding such Medical Liens, establishing that all Medical Liens for all Class Claimants have been paid, satisfied, or waived.

(ii) The Class Parties agree that, to the extent their Medicare, Medicaid, and SCHIP Extension Act ("MMSEA") reporting obligations change during the executory period of this Class Settlement Agreement, Class Claimants must provide any additional information needed to comply with such requirements.

(k) The Class Settlement Plan shall include provisions that address the resolution of claims of Subrogation Insurers for payments made to policyholders who are Class Plaintiffs but are not Class Claimants, which shall include a process for such insurers to submit claims on behalf of their insureds when such insureds do not submit a claim.

(l) The Class Settlement Plan shall not modify or adjust the amount allocated to a Class Claimant based on whether such Class Claimant received, or is entitled to receive, payments from a Subrogation Insurer under a policy of insurance.

(m) The Class Settlement Plan shall include a plan for disposition of funds that remain after the claims process, to the degree not addressed in Section 4.1.2(a).

(n) The Class Settlement Plan shall include a plan for potential distribution of Holdback Funds to Class Claimants, subject to Section 8.3.

4.2 Liability for Allocation of Consideration. Class Counsel bear full and sole responsibility and liability for allocating the Class Settlement Amount among the Class Claimants and determining how much of the Class Settlement Amount each shall receive. Class Counsel assume all risk of liability and agree to indemnify and hold Releasees harmless for all damages, losses, and any other relief, including attorneys' fees and costs, for any claim asserted against Releasees related to payment of Class Claimants, including related to allocation of the Class Settlement Amount or Aggregate Settlement Amount. The total amount paid to Class Claimants (inclusive of all attorneys' fees, expert fees, Administrator's fees, and all costs and other amounts) cannot exceed the Class Settlement Amount.

4.3 Opt-Out. A member of the Settlement Class may opt out of the Settlement Class by submitting a compliant Opt Out Form to the Class Settlement Administrator in the manner and by the date set in the class notice.

4.3.1 The Opt Out Form shall comply with all requirements in this Class Settlement Agreement, including those under this Section 4.3.

4.3.2 An Opt Out Form is compliant if, in addition to any other requirements set by the Approving Court or the Class Settlement Plan, it includes the following information:

(a) The nature of the Released Claim(s) the person submitting the Opt Out Form claims to possess. The Opt Out Form will include check boxes for the following categories of claims, as well as definitions for these claims: Wrongful Death, Serious Physical Injury, Residential Property Loss – Within Fire Perimeters, Commercial Property Loss – Within Fire Perimeters, Business Interruption – Within Fire Perimeters, Renter – Within Fire Perimeters, Serious Evacuation, Evacuation, and other. The “other” category will include a blank space for additional information. The Opt Out Form will also allow a Person to indicate, in lieu of checking one of these boxes, that they do not believe they have any basis to assert a Released Claim.

(b) The name (if applicable) and address for any property or business the Person submitting the Opt Out Form alleges was damaged by the Maui Fires.

4.3.3 “Mass” or “class” Opt Out Forms are not compliant. There is a limit of one Person per Opt Out Form. No member of the Settlement Class may submit an Opt Out Form on behalf of another member of the Settlement Class. Opt Out Forms that do not conform to this paragraph are not compliant.

4.3.4 Any member of the Settlement Class who does not submit a timely and compliant Opt Out Form is a Class Plaintiff, and will be bound by the release described in Section 7.1, among other provisions.

4.3.5 The information contained in any timely and compliant Opt Out Form must be shared with Defendants no later than seven (7) days following the deadline for submitting Opt Out Forms.

4.3.6 If a member of the Settlement Class opts out, that Person may not file an objection to the Class Settlement Agreement. Likewise, Individual Plaintiffs may not file an objection to the Class Settlement Agreement.

ARTICLE V: SUBROGATION CLAIMS AND INDEMNIFICATION

5.1 It is a Condition to this Class Settlement Agreement that, by May 19, 2025, one of the following two requirements is met:

5.1.1 Each and every Subrogation Plaintiff executes and delivers to the Parties a written agreement approved by the Parties in which each Subrogation Plaintiff agrees to release all Released Claims against Releasees; or

5.1.2 A decision of a trial court becomes Final and Unappealable holding that, if the Class and Individual Settlement Agreements become effective, (a) the Subrogation Plaintiffs’ exclusive remedy for any claims arising out of the Maui Fires would be asserting liens, if any, against their policyholders for their respective shares of the Aggregate Settlement Amount, and (b) the Subrogation Plaintiffs shall be barred from bringing or maintaining any claims arising out of the Maui Fires against the Defendants.

5.2 It is a Condition to this Class Settlement Agreement that, on or prior to the Initial Payment Due Date, all claims brought by any Subrogation Insurer against any Releasee for subrogation arising out of the Maui Fires must be dismissed with prejudice in a Final and Unappealable order.

5.3 The Defendants agree to join in any lawful and reasonable motions for expediting appellate review of the trial court’s judgments, orders, or opinions under Sections 5.1.2 and 5.2.

5.4 For the avoidance of doubt, the order entered by Judge Peter Cahill on August 19, 2024, in the Special Proceeding, constitutes a decision of a trial court that, if rendered Final and Unappealable, would satisfy Section 5.1.2.

5.5 Plaintiffs’ Counsel will promptly notify the Defendants if, in their judgment, the conditions of Section 5.1 have been satisfied. The Defendants shall thereafter promptly notify

Plaintiffs' Counsel whether, in the Defendants' judgment, the conditions in Section 5.1 have been satisfied. If the Defendants contend that the conditions have not been satisfied, and Plaintiffs' Counsel dispute that determination, the issue shall be discussed further with the assistance of the Mediators.

5.6 In the event that the Condition in Section 5.1 is satisfied by an agreement under Section 5.1.1, the signatories to this Class Settlement Agreement and the Individual Settlement Agreement will negotiate in good faith to modify both agreements consistent with the intention to establish a global resolution, including by addition of provisions for the release and/or indemnification of the Releasees with respect to all Released Claims by all Subrogation Insurers. Such modifications may include broadening the definition of Parties in this Class Settlement Agreement and/or the Individual Settlement Agreement to include Subrogation Insurers. Any modifications to this Class Settlement Agreement require the written consent of all signatories to this Class Settlement Agreement.

5.7 **Subrogation Indemnification.** Each Class Claimant who receives a Monetary Award is required to indemnify the Releasees with respect to any individual liens asserted by any Subrogation Insurer against that Class Claimant arising out of or relating to the Maui Fires.

5.7.1 Each Class Claimant who receives a Monetary Award agrees to indemnify, forever hold harmless, and defend Releasees against loss, liability, cost, or expense from any and all claims, lawsuits, appeals, liens, demands, actions, cross claims, and third-party claims arising out of the Maui Fires that have been made or brought, or that may be made or brought later, by such Person or by anyone acting on their behalf, or by anyone holding by or through them, including Persons asserting rights of subrogation in connection with such Class Claimant's claims.

5.7.2 Each Class Claimant who receives a Monetary Award specifically understands and agrees that the defense and indemnification obligation in Section 5.7.1 includes the defense, payment, and satisfaction of claims or liens by all Persons who have claimed or in the future may claim that they have money due and owing to them from this Class Settlement Agreement or any matter covered by or related to this Class Settlement Agreement, including, but not limited to, claims or liens by Persons who have provided or paid, or who will provide or pay, to or on behalf of Class Claimant, pursuant to contract, law, insurance claims or government benefits of any kind arising from the Maui Fires.

5.8 Each Class Claimant who receives a Monetary Award specifically represents that if any lien or reimbursement right is asserted under any legal theory against the proceeds herein or against Releasees, then, in consideration of the Class Claimant's Monetary Award, Class Claimant covenants to pay and satisfy such asserted lien or reimbursement right, or to satisfy the same on a compromise basis or through final determination by a court of competent jurisdiction, and to obtain a release of Releasees, and to indemnify and hold harmless Releasees from any costs, expenses, attorneys' fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien or reimbursement rights by any Person having or claiming to have such lien or reimbursement right.

ARTICLE VI: NO ADMISSION OF LIABILITY

6.1 **No Admission of Liability.** This Class Settlement Agreement (whether or not consummated), including the exhibits hereto and the Class Settlement Plan (or any other plan of allocation that may be approved by the Approving Court), the negotiations leading to the execution of this Class Settlement Agreement, and any proceedings in connection with this Class Settlement Agreement and/or approval of the Class Settlement Agreement (including any arguments proffered in connection therewith) shall not constitute, be construed as, be deemed to be, or be offered against any Releasee as evidence of any presumption, concession, or admission by Defendants or other Releasees with respect to the truth of any fact alleged by Plaintiffs, the validity of any claim that was or could have been asserted, the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, the amount of any alleged damages incurred by any or all Plaintiffs or attributable to any Defendant, or any liability, negligence, fault, or other wrongdoing of any kind by Defendants or any other Releasees, or be referred to for any other reason as against Defendants or any other Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate or enforce the provisions of this Class Settlement Agreement.

ARTICLE VII: RELEASES

7.1 **Class Plaintiff Releasors.** In consideration of the terms of this Class Settlement Agreement, each and every Class Plaintiff, on behalf of all Class Plaintiff Releasors, hereby expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever releases, discharges, and holds harmless the Releasees from any and all Released Claims and waives, compromises, relinquishes, and settles the Released Claims against Releasees. For the avoidance of doubt, nothing in this Release shall prevent the Litigation Trustee from pursuing an action contemplated by Section 7.7.

7.1.1 **Subrogation.** For the avoidance of doubt, the releases in Section 7.1 are binding on all insurers who paid Class Plaintiffs under insurance policies for claims in any way related to the Maui Fires.

7.2 **Agreements with Government Entities.**

7.2.1 Defendants have received letters from FEMA. Receipt of these letters is a material part of the consideration received by Defendants for this Class Settlement Agreement.

7.2.2 In addition, Defendants agree that they will work diligently and use their best efforts to obtain written releases and/or commitments from relevant Government Entities not to pursue any claims arising out of the Maui Fires against Releasees, as provided under Sections 6 and 7 of the Term Sheet, prior to the Initial Payment Due Date.

7.3 **Defendants' Releases.** In consideration of the terms of this Class Settlement Agreement and the Individual Settlement Agreement, each and every Defendant, on behalf of its respective Defendant Releasors, shall release the Releasees from any Released Claim, including cross-claims for indemnity or contribution for any Released Claim, provided, however, that,

subject to Section 8.3.6, this release shall not include cross-claims between Defendants (or their respective Defendant Releasors) for indemnity, contribution, or otherwise, for any Released Claim brought against any Releasee by any Person who is not a Plaintiff. Any Released Claim brought against any Releasee by any Person who is not a Plaintiff shall be paid and defended from the Holdback Fund, as more particularly discussed in this Class Settlement Agreement and the Individual Settlement Agreement. If a Defendant Releasor enters into a settlement of a Released Claim with any Person who is not a Plaintiff, the Defendant Releasor shall make reasonable efforts to ensure that the settlement requires the settling Person to unconditionally release all Released Claims against all Releasees, including as described in Section 8.3.3.

7.4 [Reserved]

7.5 No Claims Based on Newly Learned Facts. Class Plaintiffs, on behalf of their respective Class Plaintiff Releasors, acknowledge that they may learn additional facts relating to the Releasees' actions or omissions regarding the Released Claims. Class Plaintiffs, on behalf of their respective Class Plaintiff Releasors, agree that this Class Settlement Agreement shall be and remain effective in all respects, notwithstanding such different or additional facts and the subsequent discovery thereof. Each of the Releasors shall be deemed to have, fully, finally, and forever settled and released, resolved, relinquished, waived, and discharged any and all Released Claims, including known claims or unknown claims, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts. Class Plaintiffs, on behalf of their respective Class Plaintiff Releasors, agree to waive any and all rights they may have under any statute, code, regulation, ordinance, or the common law, which may limit or restrict the effect of a general release as to claims, including claims that Releasors do not know or suspect to exist in their favor at the time of giving the release set forth in the Class Settlement Agreement. Without limiting the generality of the foregoing, and without the Parties intending in any way to limit the scope of Section 10.11, or to suggest that Hawai'i substantive law does not govern any Released Claim, (1) Releasors certify that they are aware of and have read and reviewed the following provision of California Civil Code Section 1542, which states: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;** and (2) Class Plaintiffs, on behalf of their respective Releasors, hereby expressly waive and relinquish any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction (including Section 28-1-1602 of the Montana Code, Section 9-13-02 of the North Dakota Century Code, and Section 20-7-11 of the South Dakota Codified Laws) and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the Release set forth above. The Class Parties acknowledge that the foregoing waiver was separately bargained for and is a key element of the Class Settlement Agreement.

7.6 Timing of Release. The releases described under this Article VII shall become effective on the Initial Payment Due Date. A failure by any Defendant to make any payment

required by the Class Settlement Agreement or Individual Settlement Agreement, including any part of its Initial Defendant Payment, shall not affect the validity or enforceability of the Releases as to any Defendant or Releasee, including the defaulting Defendant. However, as noted herein, the Litigation Trustee shall have the right to pursue the remedies described in Section 7.7 against the defaulting Defendant.

7.7 Action for Non-Payment.

7.7.1 Plaintiffs' Counsel shall appoint the Litigation Trustee to manage any arbitration or litigation under this Section. The Litigation Trustee shall adopt rules for the appointment and payment of counsel. The Litigation Trustee shall be required to abide by the obligations, terms, and conditions in this Class Settlement Agreement that apply to the Litigation Trustee.

7.7.2 In the event of any non-payment by a Defendant of any part of its Individual Defendant Aggregate Contribution, the Litigation Trustee shall have as its sole and exclusive remedy claims for recovery on behalf of the Class Settlement Fund and Individual Settlement Fund solely against the Defendant failing to make such required payment (and for the avoidance of doubt, not against any other Defendant). Plaintiffs may not individually sue any Defendant for non-payment.

7.7.3 The Litigation Trustee, on behalf of the Class Settlement Fund and Individual Settlement Fund, may recover, in any successful action against a Defendant for non-payment of any part of its respective Individual Defendant Aggregate Contribution, reasonable attorneys' fees, pre-judgment interest under the prevailing Hawai'i rate, and liquidated damages of 15% per year, accruing daily as of the date of non-payment. The Parties agree, for purposes of this settlement only and for no other purpose, that this liquidated damages figure is a reasonable approximation of the daily consequential damages suffered by Class Plaintiffs as a result of nonpayment. Such consequential damages include the additional alternative-living-expenses and out-of-pocket costs associated with the delays in payment of construction for the rebuild of their homes.

7.7.4 Each Non-State Defendant consents to arbitration under Section 10.2, as modified by this Section 7.7.4, to resolve any claim by the Litigation Trustee for non-payment of its respective Individual Defendant Aggregate Contribution under this Section 7.7. For the avoidance of doubt, the procedures provided in this Section 7.7.4 do not apply to the State. In the event that the Litigation Trustee asserts that any Non-State Defendant has failed to timely make any part of its Individual Defendant Aggregate Contribution, the Litigation Trustee shall promptly provide written notice to the respective Non-State Defendant, and submit that claim to arbitration pursuant to Section 10.2. The notice shall set forth the amount the Litigation Trustee asserts was due from such Non-State Defendant, including amounts under Section 7.7.3. Within two days of receipt of such notice, such Non-State Defendant shall provide a written response, which shall set forth whether the Non-State Defendant contests that it is obligated to pay the amount set forth in the notice provided by the Litigation Trustee. The arbitrator will consolidate all claims for non-payment against a Non-State Defendant, whether for non-payment to the Class Settlement Fund or Individual Settlement Fund. In any arbitration over a failure to pay any part of a Non-State Defendant's Initial Defendant Payment, the arbitrator shall issue a final award (i)

within three days, if the Non-State Defendant fails to timely respond to the Litigation Trustee's notice under this section, or provides a response that fails to contest its obligation to make payment in the amount claimed by the Litigation Trustee or (ii) if the Non-State Defendant provides a timely response to the Litigation Trustee's notice under this section contesting its obligation to make payment in the amount claimed by the Litigation Trustee, (a) within 30 days of the Litigation Trustee initiating arbitration, with respect to an alleged failure by a Non-State Defendant to make any part of its Initial Defendant Payment and (b) within 15 days of the Litigation Trustee initiating arbitration with respect to an alleged failure by a Non-State Defendant to make any part of its Individual Defendant Aggregate Contribution other than its Initial Defendant Payment. Following issuance of the final arbitral award, the Litigation Trustee may enforce such award in the Second Circuit Court of Hawai'i, pursuant to H.R.S. § 658A-22. In any such action, the Non-State Defendant against whom the award is made will agree to any reasonable request to expedite proceedings and secure a judgment against that Non-State Defendant under H.R.S. § 658A-25.

7.8 Dismissal of All Claims. All claims asserted in any court by any Class Plaintiff Releasor against any Releasee arising out of the Maui Fires must be dismissed with prejudice within ten (10) days after the Initial Payment Due Date. Executed stipulations for dismissal with prejudice for all such claims must be provided to the Administrator within 60 days after the Return Date, to be held in escrow and provided to Defendants for filing the day after the Initial Payment Due Date.

7.9 Order Governing Non-Participants. The Parties will submit to the Second Circuit Court and request approval of a proposed order, attached as Exhibit 7, governing all Released Claims pending or subsequently brought in the Special Proceeding that are not dismissed within ten (10) days of the Initial Payment Due Date, or are thereafter filed. The Parties will request that the Special Proceeding remain open for at least three years after the Initial Payment Due Date to enforce this order.

7.10 Exclusive Remedy. Upon the effectiveness of the releases described under this Article VII, the Class Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all Released Claims against Releasees arising out of the Maui Fires shall be pursuant to the terms of this Class Settlement Agreement or, as applicable, the Individual Settlement Agreement (including as limited by Section 7.7). No Class Plaintiff shall recover, or be entitled to seek to recover, directly or indirectly, any sums from any Releasee other than the consideration received under the terms of this Class Settlement Agreement.

7.11 Covenant Not to Sue. Without limiting any of the releases described under this Article VII, the Class Parties agree and covenant that, if the releases described in this Article VII become effective, they will not take any action against any Releasee to initiate, pursue, maintain, or otherwise attempt to execute upon, collect, or enforce, any Released Claims; institute any new legal, equitable, or other action against any of the Releasees or any other Persons relating to any Released Claims; attempt to execute, collect on, or otherwise enforce, any judgment that may be entered against any of the Releasees on any Released Claims; or maintain any pending legal action that the Releasor may have filed in any court against any of the Releasees asserting any Released Claims. The Class Parties further covenant and agree that they will not sue or bring

any action or cause of action under any state, local, or federal law challenging the releases described under this Article VII.

ARTICLE VIII: CONTINGENCIES

8.1 Termination Provisions.

8.1.1 Within 30 days after the Return Date, Defendants and Class Counsel will cooperate to identify every Non-Participant, and to determine whether the thresholds for non-participation set forth in Appendix A are met. The Class Parties will rely on the information provided on the Opt Out Forms, except that Class Counsel, or any Defendant, may, within 15 days after the Return Date, present evidence that either (i) a Non-Participant is a member of one of the categories set forth in Appendix A even if that Person did not represent as such in an Opt Out Form or (ii) a Non-Participant is not a member of one of the categories set forth in Appendix A even if that Person did represent as such in an Opt Out Form. If Class Counsel and all Defendants fail to unanimously agree on whether the evidence presented merits adjusting the participation numbers for the categories in Appendix A, they will resolve their dispute through dispute resolution pursuant to Section 10.2.

8.1.2 If any participation threshold in Appendix A is, subject to resolution of any disputes under Section 8.1.1, met, then Defendants shall have sixty (60) days from the Return Date to exercise the right to rescind, terminate, or cancel this Class Settlement Agreement as follows: (i) any Defendant whose Individual Defendant Aggregate Contribution equals or exceeds 20% of the Aggregate Settlement Amount has the individual, unilateral right to terminate this Class Settlement Agreement upon written notice to all Defendants and Plaintiffs' Counsel or (ii) if at least three Defendants choose to terminate the Class Settlement Agreement then, upon written notice to all Defendants and Plaintiffs' Counsel, it is terminated. For purposes of this termination right, each set of Persons under Sections 2.25.1, 2.25.2, 2.25.3, 2.25.4, 2.25.5, 2.25.6, and 2.25.7 will count as a single Defendant (that is, for example, all Persons listed under 2.25.6 collectively count as a single Defendant).

8.1.3 If (i) the time limit for satisfaction of the Conditions under Section 5.1 has passed without satisfaction of that Condition; or (ii) one or more other Conditions has not been satisfied within two years of the date on which the motion for Preliminary Approval is filed, that will be known as a "Termination Event." On or after the date of a Termination Event, any signatory to this Class Settlement Agreement or the Individual Settlement Agreement may provide notice to the other signatories of a proposed termination of the agreement or agreements to which the signatory is a party. To be valid, the notice must state that the party providing notice believes that the satisfaction of the Conditions under Section 5.1 and/or of the other Conditions is not reasonably likely to occur within a reasonable period of time. Within 10 days of receipt of such notice, any other signatory to this Class Settlement Agreement or the Individual Settlement Agreement may contest the proposed termination. If any of the signatories to this Class Settlement Agreement or the Individual Settlement Agreement disagrees as to whether a Termination Event has occurred, or as to whether the satisfaction of the Conditions under Section 5.1 and/or of the other Conditions is reasonably likely to occur within a reasonable period of time, all signatories to both agreements shall meet and confer. If these signatories are

unable to agree as to whether the agreements may be terminated, then the signatories will resolve their dispute through dispute resolution pursuant to Section 10.2.

8.1.4 In the event that the Approving Court either denies Preliminary Approval or Final Approval or conditions Preliminary Approval or Final Approval on changes to the Class Settlement Agreement, Defendants and Class Counsel shall negotiate in good faith to modify this Class Settlement Agreement in a manner that resolves the issues identified by the Approving Court. If Defendants and Class Counsel are unable to agree on such modifications, any Defendant or Class Counsel may request the assistance of the Mediators. If the Mediators notify Defendants and Class Counsel of an impasse, then, within 10 days of receipt of such notice, any Defendant or Class Counsel may provide a notice of termination of this Class Settlement, which notice shall be effective immediately. For the avoidance of doubt, any change to the Class Settlement Plan that does not involve a change to the Settlement Agreement is not a basis for termination under this paragraph.

8.1.5 In the event of any termination under this Article VIII of either the Class Settlement Agreement or the Individual Settlement Agreement, the Class Settlement Agreement, the Individual Settlement Agreement, and all Individual Settlement Agreement and Releases shall terminate in their entirety, except as follows: with respect to the Class Settlement Agreement, as to Sections 1.14, 1.15, 8.1, Article II (to the extent such definitions are used in other surviving provisions), Article VI, and Article X; with respect to the Individual Settlement Agreement, Sections 1.14, 1.15, 8.1, Article II (to the extent such definitions are used in other surviving provisions), Article VI, and Article X; and the Parties shall have thirty (30) days to submit proposals to all relevant courts for recommencing litigation.

8.2 **Class Action.** Within ten (10) days after execution of this Class Settlement Agreement, Class Counsel and Defendants shall stipulate to amend the Consolidated Complaint, with the class definition corresponding to the Settlement Class provided in this Class Settlement Agreement.

8.3 **Holdback Fund.** Upon payment of any Defendant's Initial Defendant Payment, the Class Settlement Administrator and Individual Settlement Administrator shall begin to hold back certain funds from the Class Settlement Fund and Individual Settlement Fund, respectively, as described more fully below, and ensure they are not used to pay Monetary Awards or any other costs or expenses of settlement except as specified herein. The money held back in the Class Settlement Fund and Individual Settlement Fund, in the aggregate, is known as the "Holdback Fund." The total amount in the Holdback Fund shall be \$500 million. Although the Holdback Fund shall comprise amounts held back from the Class Settlement Fund and Individual Settlement Fund, the Class and Individual Settlement Administrators shall ensure that the Holdback Fund operates as a single fund to satisfy the requirements of Section 8.3.

8.3.1 **Respective Fund Holdback Amounts.** Subject to the schedule under Section 8.3.2, the Class Settlement Administrator shall hold back from the Class Settlement Fund the total amount of the Holdback Fund multiplied by the Class Settlement Percentage, and the Individual Settlement Administrator shall hold back from the Individual Settlement Fund the total amount of the Holdback Fund multiplied by the Individual Settlement Percentage. Whenever funds are drawn from the Holdback Fund, the Class Settlement Administrator and

Individual Settlement Administrator shall pay those funds on a pro-rata basis from the Class Settlement Fund and Individual Settlement Fund, respectively, corresponding to these percentages.

8.3.2 Holdback Schedule. Each time any Defendant makes any payment to satisfy all or part of its Individual Defendant Aggregate Contribution, the Class Settlement Administrator and Individual Settlement Administrator shall, in the aggregate, hold back from that payment for inclusion in the Holdback Fund an amount equal to the total amount of that payment times \$500 million divided by the Aggregate Settlement Amount.

8.3.3 Holdback Payments. Any Defendant that is not prohibited from doing so under Section 8.3.7 may draw funds from the Holdback Fund to pay (a) judgments and (b) settlements, in each case for any Released Claim brought by any Person that is not a Plaintiff. Such a claim is known as a “Holdback Claim.” Defendants will develop a process for approving these payments, which will be subject to review and consent of the Class Settlement Administrator, which consent may not be unreasonably withheld. Any dispute about the reasonableness of payments from the Holdback Fund shall be subject to dispute resolution pursuant to Section 10.2. A Releasee may obtain a payment from the Holdback Fund to settle a Holdback Claim only if the settlement requires the Person asserting the Holdback Claim to execute an unconditional release of all Released Claims against all Releasees, in form and substance reasonably satisfactory to the Defendants, unless all Defendants consent otherwise.

8.3.4 Holdback Credit. In the event that a Defendant makes a payment that would be drawn from the Holdback Fund under Section 8.3.3, but, as a result of the payment schedule under Section 8.3.2, the Holdback Fund does not yet have sufficient funds to cover that payment, the Defendant is entitled to a credit against the Holdback Fund for the amount that would have been properly drawn from the Holdback Fund under Section 8.3.3. The Holdback Fund will make payment of that credit when, under Section 8.3.2, it next receives funding.

8.3.5 Adjustment to Holdback Fund.

(a) On the later of (1) two years and 60 days after the Return Date or (2) two years and 15 days after the Initial Payment Due Date, the Parties shall assess whether money in the Holdback Fund should be distributed to the Individual Settlement Fund and Class Settlement Fund to be used in accordance with the Class Settlement Plan and Individual Settlement Plan. To the degree any disputes arise as to the quantity of any of the following amounts, or as to any calculation or determination necessary to calculate them, those disputes will be resolved pursuant to Section 10.2.

(b) The Parties shall calculate the Necessary Holdback Amount, which is the sum of the following four quantities:

- (1) All Holdback Credits under Section 8.3.4 that have yet to be reimbursed by the Holdback Fund;
- (2) The reasonable aggregate value of all pending Holdback Claims. The reasonable aggregate value of such claims shall be the reasonable estimate

of the Defendants' potential exposure at trial on these claims, which may be higher than the settlement value of the claims;

(3) If any Defendant has a reasonable basis to conclude that a Released Claim may yet be asserted, the reasonable value of such claim (with reasonable value defined in the same manner as under part 2). A Defendant need not identify a specific Person who will bring the Released Claim to have a reasonable basis that a Holdback Claim may be brought under this paragraph; and

(4) If any payment is owed by a Defendant as a result of a Holdback Claim, but has not yet been made, the amount not yet paid.

(c) The Parties shall calculate the Holdback Remainder Amount. This is the amount that, as of the calculation date, is included in the Holdback Fund and not yet distributed under Section 8.3.3. For avoidance of doubt, this does not include amounts, if any, set to be *added* to the Holdback Fund under Section 8.3.2 from any remaining payments Defendants are scheduled to make to the Class Settlement Fund or Individual Settlement Fund.

(d) If the Holdback Remainder Amount is greater than the Necessary Holdback Amount, then the Class Settlement Administrator shall transfer the Class Settlement Percentage multiplied by the difference between the Holdback Remainder Amount and the Necessary Remainder Amount to the Class Settlement Fund, and the Individual Settlement Administrator shall transfer the Individual Settlement Percentage multiplied by the difference between the Holdback Remainder Amount and the Necessary Remainder Amount to the Individual Settlement Fund.

(e) If the Holdback Remainder Amount is equal to or less than the Necessary Remainder Amount, then the Parties will not transfer any funds in the Holdback Fund to the Class Settlement Fund and Individual Settlement Fund.

(f) **Further Distribution of Holdback Funds.** One year after the date specified in Section 8.3.5(a), the Parties shall, in the same manner, newly calculate the Necessary Holdback Amount and the Holdback Remainder Amount, and follow the same formula and steps under Section 8.3.5. The Parties will repeat this process each year thereafter, until the Holdback Remainder Amount is zero and there are no further amounts to be added to the Holdback Fund from later payments by Defendants. Upon written consent of all Defendants, this calculation and further distribution may be done more frequently than every year.

8.3.6 Cross-claims. No Defendant or Releasee may assert a cross-claim for indemnity, contribution, or otherwise for any Released Claim brought against any Releasee unless and until the Holdback Fund is fully exhausted. For any cross-claim for indemnity, contribution, or otherwise brought by any Releasee against another Releasee that is not released under Section 7.3, the time to file such cross-claim(s) is tolled until the Holdback Fund is fully exhausted.

8.3.7 Effect of Default.

(a) If any Defendant is in default on any part of its Individual Defendant Aggregate Contribution as determined under Sections 7.7.3 or 7.7.4, or is in the process of litigating or arbitrating an allegation of default under those Sections, it may not access any funds in the Holdback Fund or assert or maintain any cross-claim for indemnity or contribution against any non-defaulting Defendant or Releasee for any Released Claim until such default is cured. A Defendant is no longer in default if (i) the factfinder or arbitrator finds that the Defendant is not in default; (ii) the Defendant cures that default by satisfying the judgment described in Sections 7.7.3 or 7.7.4; or (iii) the Litigation Trustee agrees in writing that the Defendant is not in default.

(b) A Defendant that is found not to be in default in litigation under Section 7.7.3 or in an arbitration decision issued under Section 7.7.4 is entitled to reimbursement of any amounts paid during the period of ineligibility under Section 8.3.7(a), including for judgments and settlements, that would otherwise have been payable from the Holdback Fund under Section 8.3.3.

ARTICLE IX: APPROVAL

9.1 The Defendants and their counsel, the Class Representatives, and Class Counsel agree to take all commercially reasonable actions necessary to obtain Preliminary Approval and Final Approval of the Settlement and entry of a Final Order and Judgment, as well as orders and judgments dismissing with prejudice all Released Claims against all Releasees. Defendants and their counsel, the Class Representatives, and Class Counsel agree to offer mutual support to the proposed Class Settlement Agreement in all court proceedings and public communications.

9.1.1 The following deadlines apply to the class approval process, and will be supplemented by additional deadlines contained in the order granting Preliminary Approval.

(a) Within seven (7) days after the date on which Judge Cahill issues an order determining the Class Settlement Amount and Individual Settlement Amount pursuant to Section 3.4.1, Class Counsel will provide to Defendants a draft motion for Preliminary Approval to be filed in the Approving Court.

(b) Within seven (7) days of receipt of the draft motion, Defendants shall advise of any objections or requested modifications.

(c) Within twenty-one (21) days after the date on which Judge Cahill issues an order determining the Class Settlement Amount and Individual Settlement Amount, Class Counsel will file a motion for Preliminary Approval in the Approving Court seeking Preliminary Approval of the Class Settlement Agreement.

(d) Within forty-five (45) days after filing the motion for Preliminary Approval, Class Counsel will file a Class Settlement Plan.

9.1.2 In the motion for Preliminary Approval, Class Counsel shall request that the Court (1) preliminarily approve the terms and conditions of the Class Settlement Agreement; (2) approve the notice to the Settlement Class and the claim forms and authorize the notice program distributing them; (3) preliminarily certify the Settlement Class for settlement purposes only and appoint the Class Counsel as counsel to the Settlement Class for purposes of this Settlement; and (4) schedule a Final Approval Hearing, not earlier than one-hundred (100) days after Preliminary Approval. The motion for Preliminary Approval of the settlement shall be accompanied by a Proposed Order Granting Preliminary Approval of Settlement in a form to be agreed upon by Class Counsel and Defendants. Solely for purposes of effectuating the Class Settlement Agreement, Defendants will not oppose the motion for Preliminary Approval. For the avoidance of doubt, Defendants' non-opposition to the motion for Preliminary Approval shall not be construed as an admission by any Defendant as to the appropriateness of class certification for non-settlement purposes.

9.2 Objections.

9.2.1 Any Class Plaintiff may present written objections to Final Approval of the Class Settlement Agreement. No later than such date as is ordered by the Approving Court, a Class Plaintiff who wishes to object to any aspect of the Class Settlement Agreement or Class Settlement Plan must file with the Approving Court, or as the Approving Court otherwise may direct, a written statement of the objection(s). The written statement of objection(s) must include a detailed statement of the Class Plaintiff's objection(s), as well as the specific reasons for each such objection, including any evidence and legal authority the Class Plaintiff wishes to bring to the Approving Court's attention. That written statement also must contain the Class Plaintiff's printed name, address, telephone number, and date of birth, written evidence establishing that the objector is a Class Plaintiff, and any other supporting papers, materials, or briefs the Class Plaintiff wishes the Approving Court to consider when reviewing the objection. A written objection may not be signed using any form of electronic signature but must contain the dated signature of the Class Plaintiff (not just counsel) making the objection.

9.2.2 Attorneys asserting objections on behalf of a Class Plaintiff must: (i) file a notice of appearance with the Approving Court by the date set forth in the order granting Preliminary Approval, or as the Approving Court otherwise may direct; (ii) file a sworn declaration attesting to representation of the Class Plaintiff on whose behalf the objection is being filed or a copy of the contract (to be filed *in camera*) between that attorney and that Class Plaintiff; and (iii) comply with the procedures described in this Article.

9.2.3 A Class Plaintiff who has submitted a written statement of objection(s) (or counsel individually representing him or her, if any) may seek to appear at the Final Approval hearing by filing with the Approving Court, by the date set forth in the order granting Preliminary Approval, or as the Approving Court otherwise may direct, a written notice of intention to appear at the hearing, in accordance with the requirements set forth in the order granting Preliminary Approval.

9.2.4 Any Class Plaintiff who fails to comply with the provisions of this Article will waive and forfeit any and all rights to object to the Class Settlement Agreement.

9.2.5 Mass or class objections are invalid. No Class Plaintiff may submit an objection on behalf of another Class Plaintiff.

9.3 **Good Faith Settlement Approval.** Within twenty-one (21) days after Preliminary Approval, the Parties shall file a joint motion with the Approving Court for a determination that the Class Settlement Agreement and Individual Settlement Agreement, including the Aggregate Settlement Amount, were made in good faith under the provisions of Section 663-15.5, Hawai‘i Revised Statutes. The Parties agree to make any necessary, commercially reasonable judicial filings, provide appropriate notices, and undertake reasonable efforts to obtain a good-faith settlement determination pursuant to Section 663-15.5, Hawai‘i Revised Statutes, that will bind all joint tortfeasors and co-obligors, known and unknown.

9.4 **Final Approval.** Class Counsel will provide to Defendants a draft motion for Final Approval to be filed in the Approving Court at least fourteen (14) days before it is filed. Within seven (7) days of receipt of the draft motion, Defendants shall advise of any objections or requested modifications. The motion shall request that the Court (1) finally approve the terms and conditions of the Class Settlement Agreement and Class Settlement Plan; (2) find the notice to the Settlement Class adequate under applicable law; (3) finally certify the Settlement Class for settlement purposes only; (4) direct that the Class Settlement Agreement and Class Settlement Plan be implemented according to their terms; (5) enjoin Releasers from asserting or litigating Released Claims against Releasees; (6) enter the Final Order and Judgment; and (7) reserve exclusive and continuing jurisdiction over implementation and enforcement of the Class Settlement Agreement and Class Settlement Plan. Solely for purposes of effectuating the Class Settlement Agreement, Defendants will not oppose the motion for Final Approval. For the avoidance of doubt, Defendants’ non-opposition to the motion for Final Approval shall not be construed as an admission by any Defendant as to the appropriateness of class certification for non-settlement purposes.

9.5 KS shall use reasonable best efforts to obtain within nine months of the Settlement Date (1) written fiduciary affirmation letters from the State Attorney General (as *parens patriae*); (2) fiduciary approvals from the State Probate Court (in KS’ open-probate case), in a Final and Unappealable order; and (3) tax approvals from the Internal Revenue Service (as a tax-exempt organization), in a Private Letter Ruling.

ARTICLE X: MISCELLANEOUS PROVISIONS

10.1 **Complete Agreement.** Other than as stated herein, the Class Parties warrant that no representation, promise, or inducement has been offered or made to induce any Class Party to enter into this Class Settlement Agreement and that they are competent to execute this Class Settlement Agreement and accept full responsibility therefor. This Class Settlement Agreement and its exhibits contain and constitute the entire understanding and agreement among the Class Parties and supersede all previous oral and written negotiations, agreements, commitments, and writings in connection therewith. This Class Settlement Agreement may not be amended or modified except by a writing signed by authorized representatives of all Class Parties.

10.2 Arbitration. The Class Parties agree to meet and confer in good faith to resolve any disagreements over the implementation of the terms of this Class Settlement Agreement or any other documents necessary to effectuate the Class Settlement Agreement. If the meet and confer is not successful, the Class Plaintiffs and Non-State Defendants agree to binding, non-appealable arbitration to resolve any disagreements over the implementation of the terms of this Class Settlement Agreement or any other documents necessary to effectuate the Class Settlement Agreement. In any such arbitration, there will be one arbitrator, who can be any of the three Mediators, and the Mediators will promptly determine among themselves who the arbitrator will be. If all of the three Mediators are unavailable to conduct the arbitration, then the Class Plaintiffs and Non-State Defendants will meet and confer in good faith to appoint a different arbitrator. If the Class Plaintiffs and Non-State Defendants are unable to agree upon an arbitrator, then the arbitration will occur before a panel of three arbitrators. The Non-State Defendants will select one of the three arbitrators; Class Counsel will select one of the three arbitrators; and the arbitrators selected by Non-State Defendants and Class Counsel will select the third arbitrator. In the event that an arbitration under this provision involves a dispute among Plaintiffs' Counsel (rather than solely Class Counsel) and Non-State Defendants, then Plaintiffs' Counsel shall collectively exercise all rights in this paragraph otherwise solely allocated to Class Counsel. For the avoidance of doubt, the arbitration procedures provided in this Section 10.2 do not apply to the State.

10.3 Knowing and Voluntary Agreement. Each Class Party agrees that he, she, or it is entering into this Class Settlement Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Class Party further affirms that he, she, or it has not been coerced, threatened, or intimidated into signing this Class Settlement Agreement; that he, she, or it has been advised to consult with an attorney; and that he, she, or it in fact has consulted with an attorney before signing this Class Settlement Agreement or had an opportunity to do so. Class Counsel represent that they have conducted a thorough investigation into the facts of the Actions and have diligently pursued an investigation of the claims asserted arising from or relating to the Maui Fires. Based on their own independent investigation and the extensive litigation and mediation, which led to this Settlement, Class Counsel state that they are of the opinion that the Class Settlement Agreement with Defendants is fair, reasonable, and adequate, and is in the best interest of the Class Plaintiffs, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Defendants.

10.4 Notices. Notices pursuant to this Class Settlement Agreement shall be provided to those listed and as set out in Exhibit 8.

10.5 Severability. If any part of this Class Settlement Agreement is found to be illegal, invalid, inoperative, or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Class Settlement Agreement, which shall be construed, reformed, and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Class Settlement Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Class Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law. However, the Settlement Class definition, the releases under Article VII, the Individual Defendant Aggregate Contributions, the Conditions under Sections 5.1 and 5.2, and the Aggregate Settlement Amount

are critical terms upon which the Class Settlement Agreement rests and may not be severed or altered.

10.6 Binding on Successors and Assigns. This Class Settlement Agreement shall be binding upon and inure to the benefit of the Class Parties and their respective heirs, trustees, issue, next-of-kin, executors, administrators, successors, and assigns.

10.7 Counterparts. This Class Settlement Agreement may be executed in counterparts, including by electronic means, and when each Class Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one Class Settlement Agreement, which shall be binding upon and effective as to the Parties.

10.8 Headings. The headings used in this Class Settlement Agreement are for convenient reference only, and do not alter or limit the terms of each section.

10.9 Amendment or Modification. This Class Settlement Agreement may be amended or modified only by a written instrument signed by all Class Parties and their counsel and, after Final Approval, with consent of the Approving Court.

10.10 Authorization to Enter into Settlement.

10.10.1 Class Counsel represent and warrant that they are authorized by the Class Representatives whom they represent to enter into this Class Settlement Agreement and to take all appropriate action required or permitted to be taken by such parties to effectuate its terms, and to execute any other documents required to carry out the terms of this Class Settlement Agreement.

10.10.2 Each Defendant represents and warrants:

(a) Except as to KS, and any natural persons, it is a duly organized, validly existing entity and is in good standing under the laws of the jurisdiction of its formation and is duly qualified to do business (if a business) and in good standing as a foreign entity in the jurisdiction of its principal place of business (if not formed in that jurisdiction);

(b) That it has the full legal right, power, and authority to enter into this Class Settlement Agreement and perform its obligations under this Class Settlement Agreement;

(c) That it has taken all appropriate and necessary action to authorize its execution, delivery, and performance of this Class Settlement Agreement and the transactions contemplated hereunder, except for the Necessary Approvals; and

(d) That it has obtained all consents, approvals, permits and other authorizations in connection with the execution, delivery and performance of this Class Settlement Agreement required to be obtained by it, except for the Necessary Approvals.

10.11 **Governing Law.** All terms of this Class Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of Hawai'i without regard to its principles of conflict of laws.

10.12 **Jurisdiction of the Court.** Except as otherwise provided in this Class Settlement Agreement, any dispute regarding the interpretation or validity of, or otherwise arising out of, this Class Settlement Agreement, including any disputes regarding fees, costs and/or expenses amongst counsel, shall be subject to the exclusive jurisdiction of the Approving Court and shall be decided pursuant to the laws of the State of Hawai'i. The Approving Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Class Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their respective counsel submit to the jurisdiction of the Approving Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Class Settlement Agreement and all orders and judgments entered in connection therewith. Furthermore, the Class Parties agree that, subject to Approving Court approval, the Approving Court will have jurisdiction over any claims by a Non-Participant, and that any such litigation will be deemed related to the Actions.

10.13 **Waiver of Right to Object.** By signing this Class Settlement Agreement, Class Representatives, Class Counsel, and Defendants and their counsel agree not to object to any of the terms of this Class Settlement Agreement or the Individual Settlement Agreement. Any such objection shall therefore be void and of no force or effect.

10.14 **Public Communications.** Class Counsel (including their firms and any representative on their behalf) agree that they will not make any statements that disparage the Class Settlement Agreement or Individual Settlement Agreement, Releasees, or Releasees' conduct, character, or business reputation.

10.15 **Non-Use of Work Product.** Unless inconsistent with their ethical obligations or order of the Court, or as otherwise agreed to in writing by Class Counsel and Defense Counsel, Class Counsel agree that they will not use, nor will they allow to be used, any work product derived from any discovery in these Actions, whether or not any such work product includes information designated protected under the protective order in this case, in the prosecution or litigation of any other case, claim, or action.

10.16 **Cooperation.** The Class Parties agree to cooperate fully and execute any and all supplementary documents, and take all additional actions, which may be necessary or appropriate to give full force and effect to the terms and intent of this Class Settlement Agreement.

10.17 **No Third-Party Beneficiaries.** Except for Class Plaintiffs, Defendants, the Releasees, and their respective successors and assigns, no provision of this Class Settlement Agreement is intended to create any third-party beneficiary to this Class Settlement Agreement.

10.18 **No Construction Against Any Party.** This Class Settlement Agreement is the product of negotiations between the Class Parties hereto represented by counsel and any rules of

construction relating to interpretation against the drafter of an agreement shall not apply to this Class Settlement Agreement and are expressly waived.

10.19 Reasonable Extension of Deadlines. The signatories to this Class Settlement Agreement are authorized to consent to any reasonable extension of any deadline set forth in this Class Settlement Agreement to the degree such extension does not require approval from the Approving Court(s), provided that any such extension must be agreed to by all signatories and in writing.

10.20 No Waiver. No waiver of any breach of any provision of this Class Settlement Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions of this Class Settlement Agreement. No waiver shall be effective unless made in writing and signed by the waiving party.

Signature Pages to Follow

EXHIBIT 3

RESERVED

EXHIBIT 4

INDIVIDUAL SETTLEMENT AGREEMENT AND RELEASE

This Individual Settlement Agreement and Release (“Release Agreement”) is made and entered into on the date signed below by the undersigned Individual Plaintiff (“Plaintiff”) and, if applicable, by the undersigned authorized representative of the Individual Plaintiff or Individual Plaintiff’s estate (also referred to as “Plaintiff”). Capitalized terms are defined in Article II.

ARTICLE I: RECITALS

WHEREAS, Plaintiff has a potential claim against one or more Releasees arising out of the Maui Fires;

WHEREAS, the Defendants and certain Persons who assert claims against Defendants have entered into the Individual Settlement Agreement (the “Individual Settlement Agreement”) to resolve all claims that have been, or may be, asserted against the Releasees arising out of the Maui Fires, and the Individual Settlement Agreement is attached hereto as Exhibit A;

WHEREAS, the Individual Settlement Agreement establishes the Individual Settlement Fund, into which Defendants will make payments; and from which Plaintiffs may receive payments;

WHEREAS, the Individual Settlement Plan, established pursuant to the Individual Settlement Agreement, governs how the Individual Settlement Fund will be apportioned and administered, including the process for Individual Plaintiffs to make claims for Monetary Awards from the Settlement Fund;

WHEREAS, Plaintiff’s ultimate payment that Plaintiff might receive from the Individual Settlement Plan will be determined by the Individual Settlement Administrator, after submission of required documentation, among other conditions;

WHEREAS, the Plaintiff has reviewed and been fully informed of the terms of the Individual Settlement Plan and the Individual Settlement Agreement;

WHEREAS, if Plaintiff has hired an attorney, Plaintiff has discussed the Individual Settlement Plan and the Individual Settlement Agreement with the Plaintiff’s attorney;

WHEREAS, Plaintiff understands that the terms of this Release govern the resolution of any Action Plaintiff has brought or could have brought and any Released Claims Plaintiff may have against Releasees;

WHEREAS, Plaintiff understands that signing this Release is a condition precedent to seeking benefits under the Individual Settlement Plan and any Monetary Award under the Individual Settlement Fund, and understands that this Release is irrevocable once signed;

WHEREAS, the Releasees deny any liability or wrongdoing related to the Maui Fires;

WHEREAS, the Plaintiff desires to settle with Defendants on an individual basis and become an Individual Plaintiff;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, Plaintiff, on behalf of all Releasers, agrees as follows:

ARTICLE II: DEFINITIONS

2.1. Unless otherwise specified herein, capitalized terms shall have the meaning assigned in Article II of the Individual Settlement Agreement, attached hereto as Exhibit A, which is expressly incorporated by reference into this Release Agreement.

2.2. "Plaintiff" refers to the undersigned Individual Plaintiff and, if applicable, that Individual Plaintiff's authorized representative or estate.

2.3. "Plaintiff's Counsel" refers to the lawyer or lawyers executing the Certification of Counsel attached to this Release as Appendix A.

2.4. "Released Claims" means all claims, counterclaims, cross-claims, actions, rights, disputes, and causes of action of any kind or nature whatsoever, including claims for relief, damages, liabilities, suits, arbitrations, costs, expenses, compensations, fees, attorneys' fees, experts' and consultants' fees, demands, injuries, and/or losses, including but not limited to economic losses, medical expenses, emotional distress, property damage, diminution in property value, business interruption damages, lost profits, personal injury, medical monitoring, wrongful death, contribution, and indemnity, whether based on federal, state, local, common, or foreign law, in contract, statute, rule, ordinance, administrative provision or regulation, tort, equity, or otherwise, whether foreign or domestic, whether asserted or unasserted, known or unknown, suspected or unsuspected, liquidated or unliquidated, matured or unmatured, discoverable or undiscoverable, foreseen or unforeseen, fixed or contingent, accrued or unaccrued, direct or indirect, including those that are concealed or hidden, whether class or individual in nature, past, present, or future, in contract, statute, tort, equity, or otherwise, arising from, resulting from, due to, or relating in any way to the Maui Fires.

2.5. "Releasees" shall refer jointly and severally, individually and collectively to Defendants and all of their past, present, and future, direct or indirect, respective departments, holding companies, Affiliates, related companies, parent entities, subsidiaries, predecessors, and successors; all of their respective past, present, and future, direct or indirect, employees, stockholders, shareholders, officers, directors, boards of directors, agents, advisors, accountants, attorneys, representatives, employees, adjusters, insurers, reinsurers, assigns, general partners, limited partners, members, managers, member managers, funds, investors, co-investors, investment managers, investment vehicles, investment accounts, portfolio companies, principals, joint venturers, transferees, heirs, beneficiaries, executors, estate administrators, trustees, associates, or personal representatives, contractors, subcontractors, and vendors. The Releasees shall include, without limitation, the Persons listed on Exhibit 5 to the Individual Settlement Agreement. Releasees that are not Defendants are intended third-party beneficiaries under the Individual Settlement Agreement that have relied upon and may enforce the Individual Settlement Agreement.

2.6. “Releasers” shall refer jointly and severally, individually and collectively to Plaintiff, and his, her, or their respective past and present, direct and indirect, estates, parents, children, spouses, issue, beneficiaries, guardians, conservators, fiduciaries, next friends, next of kin, subsidiaries, Affiliates, officers, directors, employees, agents, legal representatives, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers (and any of the foregoing listed Persons’ past and present officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers), insurers (including any Subrogation Insurers), any Person who may be a claimant under Hawai‘i Revised Statute § 663-3, Eligible Relatives, and the predecessors, successors, heirs, executors, trustees, administrators, and assigns of each of the foregoing.

2.7. Unless the context requires otherwise, (i) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (ii) the word “or” shall be construed in its inclusive sense to have the same meaning and effect as the words “and/or”; (iii) the word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (iv) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Haw. Rev. Stat. § 8-1), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (v) references to this Release Agreement will include all exhibits, schedules, and annexes hereto; (vi) references to any law will include all rules and regulations promulgated thereunder; (vii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; (viii) when a capitalized singular form of a plural defined term is used, it refers to any one of the defined term; (ix) when a capitalized plural form of a singular defined term is used, it refers to one or more of the defined terms; (x) references to dollars or “\$” are to United States dollars; and (xi) all day and time references are based on Hawai‘i Standard Time.

ARTICLE III: RELEASE

3.1. **Complete and Final Release.** In return for good and valuable consideration, including the establishment and funding of the Individual Settlement Fund, and the establishment of the Individual Settlement Plan, both under the Individual Settlement Agreement, and the right to make a claim for a Monetary Award as set forth in the Individual Settlement Agreement and Individual Settlement Plan, the sufficiency of which is acknowledged, Plaintiff, on behalf of all Releasers, hereby expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever releases and discharges the Releasees from any and all Released Claims and waives, compromises, and settles the Released Claims against Releasees. As described in Section 4.9, this release shall be effective on the Initial Payment Due Date, after all Conditions, as that term is defined in the Individual Settlement Agreement, are satisfied.

(a) Without limiting the foregoing, this release includes any and all claims which Releasers may now or may hereafter have or assert against Releasees for alleged injuries, losses, and damages, including pain and suffering, wrongful death, punitive damages, survivorship, personal injuries, and related damages, and loss of services, consortium,

companionship, property damage, business economic loss, emotional injury, or any other type of damage, loss, injury or harm of any kind arising out of or related to the Maui Fires, including without limitation, medical monitoring, or any other type of legal or equitable relief related to the Maui Fires, and all other intangible losses, whether based on a tort, intentional tort, contract, statute, or other theory of recovery, attorneys' fees and costs, mental or emotional distress, or for hospital, medical, nursing or other healthcare related expenses, lost wages, or any other losses or expenses, whether known or unknown, whether already in existence or to arise in the future, anticipated or not, arising from, relating to, due to, or resulting in any way from the Maui Fires.

(b) Without limiting the foregoing, this release includes any and all claims which any surviving spouse of, reciprocal beneficiary of, child of, father of, mother of, and any person wholly or partly dependent upon Plaintiff (including, but not limited to, putative or common law spouse or domestic partner), and Eligible Relatives, if any, may now or may hereafter have or assert against Releasees for alleged injuries, losses and damages, including pain and suffering, wrongful death, punitive damages, attorneys' fees and costs, loss of services, loss of companionship and/or consortium, society or support, mental or emotional distress, or for hospital, medical or nursing or other related healthcare expenses, lost wages, or any other losses and expenses, whether known or unknown, whether already in existence or to arise in the future, arising from, relating to, due to, or resulting in any way from the Maui Fires.

(c) Without limiting the foregoing, this release includes any and all claims against Releasees for pecuniary loss, injury, or damage which might accrue to Plaintiff, his, her, or their estate and other Persons by virtue of Plaintiff's death, whether such claims are pursued directly or indirectly or by some person or persons in a representative capacity, if such claims arise from, relate to, or result from the Maui Fires.

(d) Without limiting the foregoing, this release is binding on all Subrogation Insurers who paid Plaintiff under insurance policies for claims in any way related to the Maui Fires.

(e) Without limiting the foregoing, Plaintiff hereby agrees and covenants that Releasers will never:

(i) Take any action to initiate, pursue or maintain, or otherwise attempt to execute upon, collect, or otherwise enforce, any claim arising from, relating to, due to, or in connection with the Maui Fires;

(ii) Institute any new legal, equitable, or other action against any of the Releasees or any other Persons relating to any past, present, or future injury arising from, relating to, due to, or resulting in any way from the Maui Fires;

(iii) Attempt to execute or collect on, or otherwise enforce, any judgment that may be entered against any of the Releasees arising from, relating to, due to, or resulting in any way from the Maui Fires; and/or

(iv) Maintain any pending legal action which the Releaser may have filed in any court against any of the Releasees arising from, relating to, due to, or resulting in any way from the Maui Fires.

(f) **Without limiting the foregoing, Plaintiff acknowledges that the Monetary Award the Plaintiff has received or will receive under the Settlement Plan, if any, shall constitute the full compensation which will ever be paid to Releasors by Releasees by reason of the claims which have been or which may ever be made against Releasees arising out of, by reason of, or in any manner connected with Releasors' past, present, or future injuries arising from, relating to, due to, or resulting in any way from the Maui Fires; that this Release Agreement is final and binding upon Releasors; and that no such claim, be it derivative or otherwise, may ever be made or may ever be brought against Releasees.** Should any Releasor bring a claim arising from, relating to, or resulting in any way from the Maui Fires against a non-Releasee, Plaintiff agrees and undertakes to indemnify and hold the Releasees harmless from and against any judgment or settlement obtained by the non-Releasee against the Releasees in connection with that claim, as well as any and all reasonable costs and expenses incurred by the Releasees in connection with such claim, including attorneys' fees. For avoidance of doubt, Plaintiff is required to indemnify the Releasees with respect to any individual liens asserted by any Subrogation Insurer against that Plaintiff arising out of or relating to the Maui Fires.

3.2. **Other Claims.** Plaintiff understands and agrees that certain of Plaintiff's relatives, dependents, Eligible Relatives, or others might have potential claims against one or more Releasees for any injuries of Releasors. Plaintiff understands and agrees that by executing this Release Agreement and accepting the opportunity to obtain a Monetary Award under the Individual Settlement Plan, Releasors have received fair, just, and adequate consideration for any claims for any injuries of Plaintiff which may arise from, relate to, or result in any way from the Maui Fires. Plaintiff understands and agrees that by executing this Release Agreement, Releasors have forever remised, released, discharged, and given up any and all claims that Releasors or others might have against any and all Releasees for any injuries of Plaintiff arising from, relating to, or resulting in any way from the Maui Fires.

(a) Plaintiff specifically agrees and undertakes to indemnify and hold the Releasees harmless from and against any claim arising from, relating to, or resulting in any way from the Maui Fires that may be brought by any claimed or actual beneficiary, next of kin or Eligible Relative of Plaintiff or its Releasors against any Releasee. Plaintiff understands and agrees that such indemnification includes the payment of all reasonable costs and expenses of investigation, defense, settlement, attorneys' fees, judgments, court costs and all other costs and expenses of defending any such claim or other claim for wrongful death.

(b) Plaintiff warrants and represents that, other than for attorneys' fees and litigation costs, no claims or portion of the claims which are the subject of this Release Agreement have been assigned or otherwise transferred to any person or legal entity which claims a right thereunder as against the Releasors and/or Releasees. Plaintiff specifically warrants and represents that to the extent any bankruptcy action is pending, it will take all necessary actions to notify the Bankruptcy Court of this settlement and will fulfill all obligations to said Bankruptcy Court. Plaintiff agrees to indemnify, defend, and hold harmless Releasees from any loss, claim, expense, demand, or cause of action of any kind or character, including costs and attorneys' fees that result from the failure, if any, of Releasor to fulfill its obligations to said Bankruptcy Court. Upon request, Plaintiff further agrees to provide written confirmation

that he, she, or it fulfilled said Bankruptcy Court obligations. Plaintiff acknowledges that the Releasees are relying upon the warranties made in this Section.

3.3. No Claims Based on Newly Learned Facts.

(a) Plaintiff acknowledges that it may learn additional facts relating to the Releasees' actions or omissions regarding the Released Claims. Plaintiff agrees that this Release Agreement and shall be and remain effective in all respects, notwithstanding such different or additional facts and the subsequent discovery thereof. Plaintiff agrees to waive any and all rights it may have under any statute, code, regulation, ordinance, or the common law, which may limit or restrict the effect of a general release as to claims, including claims that Releasees do not know or suspect to exist in their favor at the time of Claimants giving the release set forth in this Release Agreement. Plaintiff specifically agrees as follows: **THAT THIS RELEASE EXTENDS TO CLAIMS THAT PLAINTIFF DOES NOT KNOW OR SUSPECT TO EXIST IN THEIR FAVOR AT THE TIME OF EXECUTION OF THIS RELEASE AND THAT, IF KNOWN BY THEM, WOULD HAVE MATERIALLY AFFECTED THEIR SETTLEMENT WITH DEFENDANTS.**

(b) **Non-Hawaii Plaintiffs Only: this paragraph applies only to Plaintiffs who are not both residents and citizens of Hawaii.** Without limiting the generality of the foregoing, and without the Parties intending in any way to limit the scope of Section 4.15, or to suggest that Hawai'i substantive law does not govern any Released Claim, (1) Plaintiff certifies that it is aware of and has read and reviewed the following provision of the California Civil Code Section 1542, which states: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;** and (2) Plaintiff hereby expressly waives and relinquishes any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction (including Section 28-1-1602 of the Montana Code, Section 9-13-02 of the North Dakota Century Code, and Section 20-7-11 of the South Dakota Codified Laws) and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the Release Agreement set forth herein.

3.4. **Terms of the Individual Settlement Agreement and Individual Settlement Fund.** Plaintiff acknowledges that, under the terms of the Individual Settlement Agreement, Releasees have agreed to pay the Individual Settlement Amount to the Individual Settlement Fund. Plaintiff acknowledges that Plaintiff shall only receive a Monetary Award out of this Individual Settlement Fund. Plaintiff acknowledges that Releasees shall have no responsibility or liability relating to the administration, investment, or distribution of the Individual Settlement Fund, which shall be the sole responsibility of the Individual Settlement Administrator. Plaintiff acknowledges and understands that Releasees waive any right to appeal or to otherwise challenge this Release Agreement on the basis that Plaintiff's Monetary Award under the Settlement Plan is inadequate. Plaintiff further acknowledges that it understands this Release Agreement and that there is no guarantee that Plaintiff will receive any Monetary Award

or, if any Monetary Award is paid, the amount thereof. In any such event, Plaintiff's releases of all Released Claims against all Releasees shall remain binding on Plaintiff.

3.5. **Exclusive Remedy.** Upon the effectiveness of the releases described under this Article III, Plaintiff acknowledges and agrees that their sole and exclusive remedy with respect to any and all Released Claims arising out of the Maui Fires shall be pursuant to the terms of the Individual Settlement Agreement. No Plaintiff shall recover, directly or indirectly, any sums from any Releasee other than the consideration indicated under the Individual Settlement Agreement, including any Monetary Award that any Plaintiff may receive from the Individual Settlement Fund pursuant to the terms of the Individual Settlement Plan.

3.6. **Covenant Not to Sue.** Without limiting the releases described in this Release Agreement, Plaintiff agrees and covenants that, if the release in this Release Agreement becomes effective, Plaintiff will not take any action against any Releasee to initiate, pursue or maintain, or otherwise attempt to execute upon, collect, or otherwise enforce, any Released Claim; institute any new legal, equitable, or other action against any of the Releasees or any other Persons relating to any Released Claim; attempt to execute or collect on, or otherwise enforce, any judgment that may be entered against any of the Releasees on any Released Claim; or maintain any pending legal action which the Releasor may have filed in any court against any of the Releasees on any Released Claim. Plaintiff further covenants and agrees that Plaintiff will not sue or bring any action or cause of action under any state or federal law challenging the releases described under this Release Agreement.

ARTICLE IV: CERTAIN ACKNOWLEDGEMENTS BY RELEASOR.

4.1. **Voluntary Agreement.** Plaintiff acknowledges that it is entering into this Release Agreement freely and voluntarily, without being induced, pressured, or influenced by, and without relying on any representation or other statements made by or on behalf of the Releasees or any other Person. Plaintiff understands, acknowledges, and accepts the nature, value, and sufficiency of the consideration described in this Release Agreement. Plaintiff acknowledges that it has read this Release Agreement and Individual Settlement Agreement and has had an opportunity to obtain advice from, and ask questions of, counsel of Plaintiff's choosing regarding the terms and legal effect of these documents and Plaintiff's decision to participate in the settlement. Plaintiff further acknowledges that it has had the opportunity to discuss these matters with Plaintiff's Counsel executing the Certification of Counsel attached to this Release as Appendix A, as well as independent counsel other than Plaintiff's Counsel of record in Plaintiff's Action and that all of Plaintiff's questions, if any, have been answered to Plaintiff's satisfaction.

4.2. **Condition to Monetary Award.** Plaintiff acknowledges that the valid and timely submission of this Release Agreement is a condition precedent to receiving a Monetary Award from the Individual Settlement Fund pursuant to the Individual Settlement Plan. Plaintiff also acknowledges that failure to comply with the requirements of the Individual Settlement Plan to receive a Monetary Award, or the fact that Plaintiff may not ultimately receive any particular Monetary Award, will not affect the validity or enforceability of this Release Agreement.

4.3. **Liens.** Plaintiff acknowledges and understands that any amounts paid to Plaintiff will be paid subject to liens and the provisions of the Individual Settlement Agreement, in particular the lien identification and satisfaction plan set forth in accordance with Article IV of the Individual Settlement Agreement. Plaintiff acknowledges that no payments shall be made to Plaintiff under the Individual Settlement Plan until all liens and other fees and cost obligations of the Releasors have been resolved and paid or have been withheld subject to an applicable lien holdback, as set forth pursuant to the lien identification and satisfaction plan. Without limiting any of the foregoing, Plaintiff specifically acknowledges that some or all of any Monetary Award Plaintiff may receive under the Individual Settlement Plan may be used to reduce or resolve any lien against the payment.

4.4. **Apportionment of Payment to Medical Lienholders.** Plaintiff or Plaintiff's Counsel shall provide the Individual Settlement Administrator with all information necessary to resolve all liens or rights of subrogation or reimbursement from any doctors, hospitals, other healthcare providers and servicers, and any other individuals, insurers, companies, agencies, workers' compensation insurers or agencies, governmental agencies, political subdivisions, attorneys, or other third parties, including, but not limited to Med-QUEST, the Veterans Administration, Tricare, the Department of Health Care Services, Medicaid, the Centers for Medicare & Medicaid Services, or any other federal or state Medicaid health care program or other programs or Persons (collectively, "Medical Liens"). Plaintiff or Plaintiff's Counsel must obtain waivers or other documentation from all Persons holding such Medical Liens, establishing that all Medical Liens for all Releasors have been paid, satisfied, or waived. Appropriate documentation to facilitate the resolution and releases of all Medical Liens are found in Appendix B, which will be provided only to the Individual Settlement Administrator (and not included when the Individual Settlement Administrator provides this Release Agreement to Defendants)

(a) Any Monetary Award Plaintiff may receive under the Individual Settlement Plan will not accrue until after the final resolution of any Medical Liens.

(b) The Parties agree that, to the extent their Medicare, Medicaid, and SCHIP Extension Act ("MMSEA") reporting obligations change during the executory period of this Settlement Agreement, Plaintiff and Plaintiff's Counsel must provide any additional information needed to comply with such requirements.

4.5. **Medical Lien Indemnification.** Plaintiff agrees to indemnify the Releasees from and against any and all claims, losses, penalties, fines, or other amounts relating in any way to Medical Liens, including payment of Releasees' attorneys' fees and costs. In addition, Plaintiff agrees to indemnify and hold harmless the Releasees from any claims, whether known or unknown, that may be made by any agency or Person as a result of a failure to comply with any notice, reporting, conditional payment, or set aside requirements relating to Medical Liens. Plaintiff further agrees to waive any and all claims of any nature and/or damages against the Releasees should any party (including Medicare or a Medicare Advantage Organization) seek reimbursement of conditional payments, including, but not limited to, a private cause of action against any of the Releasees under 42 U.S.C. § 1395y(b)(3)(A), Welfare and Institutions Code Section 14124.70 et seq., MCA 71-3-1111 et seq., and the Federal Medical Care Recovery Act. If any of the Releasees receives a Medical Lien claim, Plaintiff must provide the Releasees with

confirmation of payment or satisfaction by Plaintiff within 60 days of demand. Plaintiff further agrees to promptly provide to Releasees any information they may need to comply with any reporting requirements and obligations related to Medical Liens.

4.6. **Taxes.** Plaintiff shall be solely responsible for, and is legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by them to any national, federal, state, local, regional, or any other governmental taxing authority as a result of any payment made in connection with this Release Agreement or the Individual Settlement Agreement. Plaintiff and Plaintiff's Counsel understand that Defendants have not made, and they do not rely upon, any representations regarding the tax treatment of the payments made in connection with this Release Agreement or the Individual Settlement Agreement. Moreover, Plaintiff agrees to indemnify and hold Defendants and Releasees harmless if any governmental taxing authority asserts against any Defendant or other Releasee any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon any payment made in connection with this Release Agreement or the Individual Settlement Agreement.

4.7. **One Ohana Fund.** Plaintiff acknowledges that, pursuant to the terms of the Individual Settlement Agreement, any Plaintiff who is eligible for payment from the One Ohana Fund must register for and seek payment from the One Ohana Fund as a condition precedent to receiving any money from the Individual Settlement Fund. For the avoidance of doubt, Individual Plaintiffs may receive additional money from the Individual Settlement Fund beyond any amounts previously received from the One Ohana Fund.

4.8. **Dismissal with Prejudice.** Plaintiff acknowledges that all Released Claims asserted in any court by Plaintiff against any Releasees must be dismissed with prejudice within ten (10) days after the Initial Payment Due Date. Executed stipulations for dismissal with prejudice for all such claims must be provided to the Individual Settlement Administrator within sixty (60) days after the Return Date, to be held in escrow and provided to Defendants for filing the day after the Initial Payment Due Date.

4.9. **Timing of Release.** The releases described in this Release Agreement shall become effective on the Initial Payment Due Date, after all Conditions, as that term is defined in the Individual Settlement Agreement, are satisfied. A failure by any Defendant to make any payment required by the Class Settlement Agreement or Individual Settlement Agreement, including any part of its Initial Defendant Aggregate Payment, shall not affect the validity or enforceability of the Releases as to any Defendant or Releasee, including the defaulting Defendant. However, as noted in the Individual Settlement Agreement, the Litigation Trustee shall have the right to pursue the remedies described in Section 7.7 of that agreement against the defaulting Defendant. Plaintiffs may not individually sue any Defendant for non-payment.

4.10. **No Admission of Fault or Liability.** Plaintiff understands and agrees that Defendants have agreed to pay the Individual Settlement Amount (only if and after all Conditions for such payment set forth in the Individual Settlement Agreement have been satisfied) solely by way of compromise and resolution. This Release Agreement is not, and shall not be construed as evidence, nor as an admission by Releasees of any liability or wrongdoing whatsoever. This Release shall not constitute, be construed as, be deemed to be, or be offered

against any Releasee as evidence of any presumption, concession, or admission by Defendants or other Releasees with respect to the truth of any fact alleged by Plaintiff or any Releasee, the validity of any claim that was or could have been asserted, the deficiency of any defense that has been or could have been asserted in any litigation, the amount of any alleged damages incurred by Plaintiff or attributable to any Defendant, or any liability, negligence, fault, or other wrongdoing of any kind by Defendants or any other Releasees, or be referred to for any other reason as against Defendants or any other Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate or enforce the provisions of this Release Agreement.

4.11. **Modification.** This Release Agreement shall not be amended, supplemented or modified other than in a writing executed by Plaintiff and by an authorized representative of each Defendant.

4.12. **Entire Agreement.** This Release Agreement, together with any exhibit, document, or instrument delivered thereunder and the Individual Settlement Agreement and the Individual Settlement Plan, constitutes the entire agreement between Plaintiff and Defendants, and supersedes any and all other prior or contemporaneous agreements and understandings between Plaintiff and Defendants, whether written or oral. To the extent that this Release Agreement is inconsistent with the Individual Settlement Agreement or the Individual Settlement Plan, the Individual Settlement Agreement and the Individual Settlement Plan control.

4.13. **Severability.** In the event that any provision in or obligation under this Release Agreement, except the release described herein, is determined to be invalid, illegal, or unenforceable in the applicable jurisdiction, the validity, legality, and enforceability of all other provisions in or obligations under this Release Agreement shall not be affected or impaired in any way. No part of the release described herein may be severed or altered.

4.14. **No Construction Against Any Party.** This Release Agreement is the product of negotiations between the parties hereto represented by counsel and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Release Agreement and are expressly waived.

4.15. **Governing Law.** This Release Agreement shall be construed according to the laws of the State of Hawai'i as applied to contracts entered into in that state.

4.16. **Electronic Signatures.** This Release Agreement and any exhibit hereto, to the extent signed and delivered electronically or by facsimile, shall be treated in all manner and respects as an original agreement, and shall be considered to have the same binding legal effect as if it were the original signed version thereof, delivered in person.

4.17. **Headings.** The headings used herein are intended for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Release Agreement.

4.18. **Jurisdiction of the Court.** Except as otherwise provided in the Release Agreement or Settlement Agreement, any dispute regarding the interpretation or validity of, or otherwise arising out of, this Release Agreement shall be subject to the exclusive jurisdiction of

the Approving Court and shall be decided pursuant to the laws of the State of Hawai'i. The Approving Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Release Agreement and all orders and judgments entered in connection therewith, and the Parties and their respective counsel submit to the jurisdiction of the Approving Court for purposes of interpreting, implementing, and enforcing the release embodied in this Release Agreement and all orders and judgments entered in connection therewith.

Appendix A: Certification of Counsel

(COUNSEL FOR PLAINTIFF)

I, _____, hereby represent and declare that _____ (“**Plaintiff**”) has at all relevant times been represented by the undersigned counsel. I have provided Releasor a copy of the Individual Settlement Agreement and Release (“**Release**”) to which this Certification of Counsel is attached as well as the Individual Settlement Agreement. I have made disclosures to Releasor sufficient to satisfy my obligations under Rule 1.8.g of the Hawaii Rules of Professional Conduct. I hereby certify that, having had a full opportunity to read, understand, and inquire of counsel about the terms and conditions of the foregoing documents, Plaintiff does not have, and I do not have, any objection to the terms of this Release or any of the other foregoing documents.

BY COUNSEL FOR RELEASOR:

By: _____

Name: _____

Title: _____

Dated: _____

Confidential Appendix B: Medical Declaration

(To be provided to the Individual Settlement Administrator ONLY)

Name: _____

1. I am a **Medicare** beneficiary. _____ Yes _____ No
My Medicare ID Number is: _____

2. I receive state **Medicaid** medical benefits. _____ Yes _____ No
My Medicaid ID Number is: _____
State(s) in which I receive Medicaid benefits: _____

3. I receive care for treatment of my injury/injuries arising from the Maui Fires from
Tricare/VA. _____ Yes _____ No

4. I receive care for treatment of my injury/injuries arising from the Maui Fires from
Med-QUEST. _____ Yes _____ No

5. I am aware of **private health care liens (including worker compensation liens)** against
me. _____ Yes _____ No
If yes, identify lienholder: _____

Dated this ____th day of _____, 202_.

[NAME]

EXHIBIT 5

EXHIBIT 5**List of Persons Who Are Included Among the Releasees**

The Releasees are the following parties, as well as all of their past, present, and future, direct or indirect, respective departments, holding companies, Affiliates, related companies, parent entities, subsidiaries, predecessors, and successors; all of their respective past, present, and future, direct or indirect, employees, stockholders, shareholders, officers, directors, boards of directors, agents, advisors, accountants, attorneys, representatives, employees, adjusters, insurers, reinsurers, assigns, general partners, limited partners, members, managers, member managers, funds, investors, co-investors, investment managers, investment vehicles, investment accounts, portfolio companies, principals, joint venturers, transferees, heirs, beneficiaries, executors, estate administrators, trustees, associates, or personal representatives, contractors, subcontractors, and vendors. The Releasees also includes all persons, entities or parties claiming by, through, or under the named Releasees.

Releasees Affiliated with Hawaiian Electric

Hawaiian Electric Company, Inc.
Hawaiian Electric Industries, Inc.
Hawai'i Electric Light Company, Inc.
Maui Electric Company, Inc.

Releasees Affiliated with the State of Hawai'i

State of Hawai'i (including the Hawai'i Housing Finance and Development Corporation, the Hawai'i Department of Land and Natural Resources, and all other state agencies, departments, and employees)

Releasees Affiliated with the County

County of Maui (including the Department of Fire and Public Safety; the Maui Police Department; the Maui Emergency Management Agency; and all other County agencies, departments, and present and former directors, officers, and employees).

Releasees Affiliated with KS

Elliott Kawaiho'olana Mills
Crystal Kauilani Rose
Jennifer Noelani Goodyear-Ka'ōpua
Michelle Ka'uhane
Robert K.W.H. Nobriga

Releasees Affiliated with Hawaiian Telcom

Cincinnati Bell Inc.
Hawaiian Telcom, Inc.
Hawaiian Telcom Holdco, Inc.
Hawaiian Telcom Communications, Inc.
Hawaiian Telcom Services Company, Inc.
Wavecom Solutions Corporation

SystemMetrics Corporation
Hawaiian Telcom Federal LLC

Releasees Affiliated with Spectrum

Spectrum Oceanic, LLC
Charter Communications, Inc.
Time Warner Cable Information Services (Hawaii), LLC
Charter Communications Holding Company, LLC
Charter Communications Holdings, LLC
Charter Communications, LLC
Charter Communications Operating, LLC
Time Warner Cable Information Services (Hawaii), Inc.
Time Warner Cable Business LLC
Spectrum Mobile, LLC
Spectrum Mobile Equipment, LLC

Releasees Affiliated with West Maui Land

West Maui Land Company, Inc.
Peter Klint Martin, Individually
Peter Klint Martin, as Trustee of the Peter Klint Martin Revocable Trust
Peter Klint Martin Revocable Trust
Launiupoko Irrigation Company, Inc.
Launiupoko Water Company, Inc.
Launiupoko Water Development LLC
Hope Builders Holding LLC
Hope Builders LLC nka Hope Builders, Inc.
Kauaula Land Company LLC
Kipa Centennial, LLC
Wainee Land & Homes, LLC
Makila Land Co., LLC
Makila Ranches Inc.
Olowalu Elua Associates LLC
Donna Poseley, Individually
Donna Poseley, as Personal Representative of the Estate of Douglas Poseley
Jeanne Riley, Trustee of the Jeanne Riley Trust
Jeanne Riley, Successor Trustee of the James Riley Trust
Makila Ranches Homeowners Association, Inc.
JV Enterprises, LLC

EXHIBIT 6

RESERVED

EXHIBIT 7

[PROPOSED] CASE MANAGEMENT ORDER NO. 8
PROCEDURES GOVERNING INDIVIDUAL PLAINTIFF
OPT OUT CASES PENDING AS OF [DATE]¹

WHEREAS, the COURT hereby considers the Parties' joint request for a Case Management Order governing any and all Individual Plaintiffs Maui Fires opt out cases pending before this Court as of [DATE] ("CMO 8 Effective Date") or filed on or after that date, and GOOD CAUSE appearing, finds that:

1. This Court has authority under Hawai'i Rule of Civil Procedure 42(a) and Circuit Court Rule 12(c)(4) to issue any case management order the Court believes to be conducive to the just, efficient, and economic determination of the coordinated cases and may make such orders that tend to avoid unnecessary costs or delay.

2. This Case Management Order No. 8 shall apply to any Individual Plaintiffs Maui Fire tort cases pending before this Court as of the CMO 8 Effective Date, or to any new tort cases arising out of the Maui windstorm and fires of August 2023, including the fires in Lahaina, Kula, and Olinda, filed after the CMO 8 Effective Date.

NOW THEREFORE, the Court orders as follows:

A. Serving of Initial Plaintiff Discovery. Each Plaintiff shall provide all information requested in (a) the Plaintiff Fact Sheet (Exhibit A to Case Management Order No. 7 ("CMO No. 7"), Dkt. 1645), and the Trial Damages Questionnaire (attached as Exhibit B to CMO No. 7), pursuant to the procedures and deadlines set forth in CMO No. 7, except that the deadline to submit the Trial Damages Questionnaire shall be amended to be within either (i) thirty (30) days of the online form being made available by BrownGreer or (ii) within thirty (30) days of the

¹ [NTD: This date will be inserted as 10 days after the Initial Payment Due Date (Class Settlement / Individual Settlement Section 7.9).]

filing of a Short Form Complaint and Notice of Adoption (“Complaint”) by a new Plaintiff, whichever is later. The deadline for completion of the Plaintiff Fact Sheet and Trial Case Damages Questionnaire may be modified as set out in CMO 7. Should the mediation process as set out in Section B not lead to a settlement, then any Defendant may serve additional non-duplicative discovery on the Plaintiff using any form of discovery available under the Hawaii Rules of Civil Procedure.

B. Mediation Process Required.

1. Each Plaintiff shall, within 120 days of the date serving a compliant Plaintiff Fact Sheet and Trial Damages Questionnaire described in Section A, engage in mediation with all Defendants named in the Plaintiff’s Complaint with a mediator or mediators agreed upon by all parties. The costs of mediation will be borne 50% by the Plaintiff(s) involved in the particular mediation and 50% by the Defendant(s) named in the particular Plaintiff’s complaint.

2. In addition to the Plaintiff Fact Sheet and Trial Damages Questionnaire described in Section A, each Plaintiff shall, prior to engaging in mediation, serve each Defendant with all documents and information required to submit a claim for a Monetary Award, as defined by the Class Settlement Agreement.

3. Plaintiff may not proceed to litigate their claims in Court until the completion of the mediation process described in this Section. All litigation deadlines, including without limitation deadlines for discovery or to file and serve a response to Plaintiff’s new or existing Complaint, shall be held in abeyance until the completion of the mediation process described in this Section.

4. Should any Defendant contend that a particular Plaintiff is not entitled to continue his or her case because the Plaintiff did not submit a valid opt-out form or otherwise released their claims, then any Defendant may seek dismissal of that Plaintiff's claims from the Court prior to commencing mediation. The deadline to mediate in this section is tolled while any motion seeking dismissal on the grounds set out in this paragraph is pending.

C. Stay in Effect Until Answer. All Maui Fires cases are currently stayed and remain stayed (except as expressly set out herein) through the mediation process outlined in Section B. The stay for each individual case will be lifted only as follows. If a case does not resolve in the mediation process outlined in Section B, then each defendant's deadline to answer or otherwise respond to the complaint is 30 days after the completion of that process. If any defendant files a dispositive motion within that timeframe, then no answer is due from any defendant. The stay remains in effect until a defendant files an answer (either upon the conclusion of the initial 30-day period or after resolution of the dispositive motion). Plaintiffs may not serve any discovery during the stay.

D. Trial Date. No trial date shall be set until the completion of the mediation process described in Section B and the resolution of any dispositive motion filed under Section C. After all defendants answer the complaint, the parties shall notify the Court and request that the Court set a trial date that is no sooner than 12 months after the date that the request for a trial date is made.

E. Dismissal of Plaintiffs Who Fail to Comply With This Order.

1. *Notice of Non-Compliance and Opportunity to Cure.* If any Plaintiff fails to comply with any provision of this Order, Defendants shall provide Plaintiff written notice of such non-compliance ("Notice of Non-Compliance") specifying the non-compliance and shall

file the Notice of Non-Compliance with the Court. Upon receipt of a Notice of Non-Compliance, Plaintiff shall have thirty (30) days to cure her, his, or its non-compliance specified in the Notice of Non-Compliance. During the period wherein non-compliance has not yet been cured, all deadlines applicable to Defendants shall be held in abeyance.

2. *Failure to Cure.* If, after the passage of thirty (30) days of service of a Notice of Non-Compliance, a Plaintiff fails to cure her, his, or its non-compliance, upon application by the Defendants, the Plaintiff's claims, as well as any derivative claim(s), will be dismissed with prejudice pursuant to HRCP 41(b) as against any Defendants.

3. *Extensions of Time.* The Court, on motion and for good cause shown, may order an extension of the time to comply with this Order.

F. Sanctions. Any Plaintiff or counsel for that Plaintiff who submits false or misleading information, or otherwise attempts to satisfy the documentation requirements of this Order through any form of deception, dishonesty or fraud, may be subject to appropriate sanctions (including monetary sanctions and costs) and dismissal with prejudice pursuant to HRCP 37.

G. No Admission of Liability. This Case Management Order will not be construed as evidence, nor as an admission by Defendants of any liability or wrongdoing whatsoever or as an admission by the Plaintiffs of any lack of merit in their claims.

EXHIBIT 8

EXHIBIT 8**List of Recipients of Notices**

Any notices issued pursuant to the terms of the Individual Settlement Agreement or the Class Settlement Agreement shall be sent to the Persons listed below, as appropriate, via email:

<p>If to Individual Plaintiffs, via Liaison Counsel:</p>	<p>Cynthia Wong Cynthia K. Wong Attorney at Law, LLC cyn@legalmaui.net</p> <p>Jesse Creed Panish Shea Boyle Ravipudi 11111 Santa Monica Blvd., Suite 700 Los Angeles, CA 90025 jcreed@panish.law</p> <p>Jacob Lowenthal Lowenthal & Lowenthal jkl@lowenthal-hawaii.com</p> <p>Jan Apo Apo, Reck & Kusachi jankapo@jankapo.com</p>
<p>If to Class Plaintiffs, via Class Counsel:</p>	<p>Lexi J. Hazam Lief Cabraser Heimann & Bernstein, LLP hazam@lchb.com</p> <p>Patrick Kyle Smith Law Office of Kyle Smith kyle@smithlawhawaii.com</p> <p>Terrance M. Revere Paul V.K. Smith Revere & Associates, LLC terry@revereandassociates.com paul@revereandassociates.com</p> <p>Graham B. LippSmith Lippsmith LLP g@lippsmith.com</p> <p>Alexander Robertson, IV Robertson & Associates, LLP arobertson@arobertsonlaw.com</p>

	<p>Robert A. Curtis Foley Bezek Behle & Curtis, LLP 15 West Carrillo Street Santa Barbara, CA 93101 rcurtis@foleybezek.com</p> <p>Kenneth S. Kasdan Kasdan Turner Thomson Booth LLLC kskasdan@kasdanedlaw.com</p> <p>Richard E. Wilson Law Offices of Richard E. Wilson, LLC rewilsonlaw@yahoo.com</p>
If to the State of Hawai'i:	<p>Michael M. Purpura Hueston Hennigan LLP mpurpura@hueston.com</p> <p>Rajan Trehan Hueston Hennigan LLP rtrehan@hueston.com</p>
If to the County:	<p>Victoria Takayesu-Hamilton Corporation Counsel, County of Maui Victoria.takayesu-hamilton@co.maui.hi.us</p>
If to Hawaiian Electric:	<p>Erin Kippen General Counsel Hawaiian Electric Co. erin.kippen@hawaiianelectric.com</p> <p>and</p> <p>Kurt Murao General Counsel Hawaiian Electric Industries, Inc. kmurao@hei.com</p> <p>with a copy to</p> <p>Randall C. Whattoff Cox Fricke LLP rwhattoff@cfhawaii.com</p> <p>and</p>

	<p>Nicholas D. Fram Munger, Tolles & Olson, LLP 560 Mission St., 27th Fl. San Francisco, CA 94105 Nicholas.fram@mto.com</p>
<p>If to KS:</p>	<p>Nalani Fujimori Kaina General Counsel and Vice President Nākiakaulani – Legal Group Kamehameha Schools mikaina@ksbe.edu</p> <p>and</p> <p>Sabrina R. Toma Deputy General Counsel Kamehameha Schools Legal Group satoma@ksbe.edu</p> <p>with a copy to</p> <p>Jeff Boozell Quinn Emanuel Urquhart & Sullivan, LLP 865 South Figueroa Street, 10th Floor Los Angeles, CA 90017 jeffboozell@quinnemanuel.com</p> <p>and</p> <p>Paul Alston Dentons US LLP paul.altson@dentons.com</p>
<p>If to Hawaiian Telcom:</p>	<p>Cincinnati Bell Inc. 221 E. Fourth Street Attn: Legal Cincinnati, OH 45202 mary.talbott@altafiber.com</p> <p>and</p> <p>Les Ueoka General Counsel Hawaiian Telcom, Inc. 1177 Bishop Street, Suite 15</p>

	<p>Honolulu, HI 96813 les.ueoka@hawaiiantel.com</p> <p>with a copy to</p> <p>Eric H. Tsugawa Tsugawa Lau Muzzi LLC Harbor Court 55 Merchant Street, Suite 3000 Honolulu, Hawaii 96813 etsugawa@hilaw.us (808) 531-0490</p> <p>and</p> <p>Christine Y. Wong Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 ChristineWong@mofo.com (415) 268-7000</p>
If to Spectrum:	<p>General Counsel Charter Communications 400 Washington Blvd. Stamford, CT 06902 CharterLegalDepartment@charter.com</p> <p>and</p> <p>Bronwyn F. Pollock Mayer Brown LLP 333 S. Grand Ave., 47th Floor Los Angeles, California 90071 bpollock@mayerbrown.com</p>
If to West Maui Land:	<p>Wesley H. H. Ching Fukunaga Matayoshi Ching & Kon-Herrera whc@fmhc-law.com</p>

EXHIBIT 9

JOSH GREEN, M.D.
GOVERNOR



ANNE E. LOPEZ
ATTORNEY GENERAL

MATTHEW S. DVONCH
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
Ka 'Oihana O Ka Loio Kuhina
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

October 25, 2024

Robert J. Fenton
Regional Administrator, FEMA Region 9
1111 Broadway, Suite 1200
Oakland, CA 94607
robert.fenton@fema.dhs.gov

VIA EMAIL

Re: State of Hawaii's Resolution of Potential Claims Related to the 2023 Maui Fires

Dear Administrator Fenton:

I write on behalf of the State of Hawaii (the "State") to provide an update regarding the State's involvement in the litigation arising out of the August 2023 Maui Wildfires ("Maui Fires").

The State appreciates that the Federal Emergency Management Agency ("FEMA") has provided financial assistance through its Public Assistance Program to the State in connection with the Maui Fires. The State recognizes that FEMA has a legal obligation to assure that Public Assistance recipients do not receive a duplication of benefits from any other source, and that FEMA therefore requires Public Assistance recipients to make a commercially reasonable effort to recover costs from potentially liable third parties.

Since August 2023, multiple parties—including the State itself—have been named as defendants in litigation arising out of the Maui Fires. As part of this litigation, the State has had the option to pursue potential crossclaims against other defendants as well as potential claims against other third parties. After extensive fact investigation and formal discovery, the State has made the decision to participate in global settlement negotiations to resolve all Maui Fires claims. As part of this settlement, the State intends to release any potential crossclaims or third-party claims arising out of the Maui Fires that the State could have asserted against other defendants.

The State has determined that participation in the global settlement and a corresponding release of all potential crossclaims against the other defendants is the most prudent path forward for several reasons.

First, the State believes that the global settlement presents the best avenue for the efficient resolution of the pending Maui Fires litigation, which has been unprecedented in both scale and complexity. After careful evaluation of the merits of potential crossclaims against the other defendants, the State has concluded that the likelihood of success against other defendants and parties is uncertain, and the State is mindful of the risks and costs associated with prolonged litigation in the absence of a negotiated resolution. Moreover, the State is not currently aware of any facts that would support a claim of intentional misconduct against any Defendant.

Second, the State recognizes that the global settlement was the result of extensive mediation efforts conducted by a group of experienced neutral mediators. The mediators made an ultimate proposal as to both the total settlement amount and the respective contributions of each defendant. The State understands that those recommendations were crafted based on a careful consideration of numerous priorities, including a recognition of the financial limitations of the defendants and the need to provide meaningful compensation to the plaintiffs. The State believes that the global settlement strikes a fair and reasonable balance in maximizing the availability of limited settlement funds to help provide compensation and closure to individual fire victims.

In short, the State believes that its decision to participate in the global settlement is commercially reasonable in light of the interests described above. We therefore respectfully ask that you please confirm in writing that (1) the State acted in a commercially reasonable manner in entering the global settlement and agreeing to release all potential counterclaims against other defendants, and (2) the State has therefore satisfied its obligation to avoid a duplication of benefits under Section 312 of the Stafford Act and 44 CFR §206.223(e).

We look forward to receiving your response. We appreciate your continued cooperation and attention in this matter.

Very truly yours,

A handwritten signature in black ink that reads "Anne E. Lopez". The signature is fluid and cursive, with the first name "Anne" and last name "Lopez" clearly legible.

Anne E. Lopez
Attorney General

CC: John-Paul Henderson, Regional Counsel, FEMA Region 9



FEMA

October 26, 2024

Anne E. Lopez
Attorney General
State of Hawaii
425 Queen Street
Honolulu Hawaii 96813

Re: State of Hawaii Litigation related to the 2023 Maui Wildfires

Dear Attorney General Lopez:

This letter is in response to your October 25, 2024, letter regarding the litigation surrounding the 2023 Maui Wildfires, which were included in a major disaster declaration (DR-4724) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). In your letter, you requested that FEMA confirm the State's actions in the litigation are commercially reasonable and that the State has met its obligation to avoid a potential duplication of benefits with FEMA disaster assistance.

The State is eligible to receive FEMA financial assistance, through the Hawaii Emergency Management Agency (HIEMA), as a result of the 2023 Maui Wildfires. The State has been named as a defendant in litigation arising from the Maui wildfires. The State had the option to pursue crossclaims against the other defendants or claims against other third parties, which could have included costs potentially eligible for reimbursement under the FEMA Public Assistance (PA) grant program. The State has elected to participate in the global settlement negotiation to resolve all Maui Wildfire claims and intends to release any crossclaims or other claims against other parties as part of the final agreement.

The Stafford Act authorizes FEMA to provide grants through the PA program to state and local governments, upon a declaration of a major disaster by the President. Federal assistance under the Stafford Act is supplemental. Section 312 of the Stafford Act requires FEMA to assure that recipients of federal assistance do not receive a duplication of benefits from any other source, including claims against potentially liable third parties. Where a FEMA applicant for assistance has available to it a potential other source of funding from insurance coverage or a potentially liable third party, FEMA requires the applicant make a "commercially reasonable" effort to collect from that potential source of funding. In other words, a FEMA applicant must make an effort to collect from a potential other source of funding as if it was without other recourse (*i.e.*, FEMA assistance) under the circumstances.

Based on the information provided in your October 25, 2024 letter and discussions between our respective legal counsel, including the unique nature of this litigation involving hundreds of

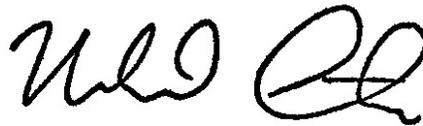
Anne E. Lopez
Page 2 of 2

claims against the State, Maui County, and numerous other defendants, as well as an analysis of the relative merits of claims and costs of litigation, FEMA concludes that the State's decision not to pursue any crossclaims against the other defendants or claims against other third parties was commercially reasonable and the State has fulfilled its obligations under the Stafford Act to avoid a duplication of benefits, inclusive of both financial assistance and direct assistance (e.g., Mission Assignments to the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Coast Guard, U.S. Department of Defense, and other federal agencies) provided to the State.

As the State did not bring any claims in the litigation, FEMA must reserve the right to pursue claims against the other defendants related to DR-4724 for the federal share of financial and direct assistance provided to the State. We note that any claims considered by FEMA would be brought pursuant to Section 317 of the Stafford Act (42 U.S.C. § 5160). Section 317 makes liable "[a]ny person who *intentionally* causes a condition for which Federal assistance is provided" under the Stafford Act (emphasis added). FEMA is not currently aware of any facts that would support a claim of intentional misconduct against any Defendant. FEMA also notes that no government agency investigations, including those completed by the Maui County Department of Fire and Public Safety and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), have concluded any person or entity intentionally caused the Maui Fires.

If you have any questions, please contact Region 9 Regional Counsel John-Paul Henderson at 510-627-7055 or johnpaul.henderson@fema.dhs.gov.

Sincerely,



Robert J. Fenton
Regional Administrator

Cc: James DS. Barros, Administrator, Hawaii Emergency Management Agency
John-Paul Henderson, Regional Counsel, FEMA Region 9



Baron & Budd P.C.
11440 West Bernardo Court
Suite 265
San Diego, CA 92127
tel 858.251.7424
fax 214-279-9915

Diab Chambers LLP
10089 Willow Creek Road
Suite 200
San Diego, CA 92131
tel 619.658.7010

October 16, 2024

SENT VIA E-MAIL

John-Paul Henderson
Regional Counsel, FEMA Region IX
111 Broadway, Suite 1200
Oakland CA 94607
JohnPaul.Henderson@fema.dhs.gov

Re: County of Maui's Resolution of Claims related to the 2023 Maui Fires

Dear Mr. Henderson:

Baron & Budd P.C. and Diab Chambers LLP represent the County of Maui ("the County") in litigation arising out of the August 2023 Maui Fires ("Maui Fires") against Maui Electric Company, Hawaiian Electric Company, Inc., Hawai'i Electric Light Company, Inc., and Hawaiian Electric Industries, Inc., (collectively, "Defendants"). Specifically, the County filed a lawsuit against Defendants seeking costs and damages incurred as a result of the Maui Fires. The County and Defendants reached a confidential settlement in principle on August 2, 2024, resolving the County's claim for \$25,000,000.¹

In order to comply with direction and guidance from FEMA regarding Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act") and 44 CFR §206.223(e), the County included in its demand to Defendants: (1) FEMA-eligible costs known by the County under the FEMA Public Assistance Program ("PA") program as of the date of its demand; and (2) all non-FEMA eligible costs and damages. Accordingly, the County's demand of \$720,000,000, included all known FEMA-eligible costs and damages that the County submitted and/or anticipates submitting to FEMA as of the date of the demand. FEMA's share of the County's demand to Defendants is 56%, or \$401,000,000 and is inclusive of the County's local cost share.

Attachment A to this letter provides the list of FEMA projects or anticipated projects included in the demand, the pro-rata percentage recovered on a project by project basis, the net

¹ Maui County has agreed to release its claims against HECO and the other defendants in exchange for \$25,000,000 plus a full release of any claims of liability against the County. While the County maintains it played no part in causing any of the Maui Fires, which was also confirmed by the ATF in its investigative report, the County faces over 700 lawsuits by more than 3,000 plaintiffs claiming it was legally responsible. The County believes this resolution is a fair and reasonable outcome given the unique circumstances of this case, including HECO's financial limitations in satisfying a multi-billion-dollar liability. In addition, it provides the County with the finality it needs to move forward and for the community to heal.

October 16, 2024

Page 2

amount received through the settlement after attorneys' fees and costs are deducted, and the net amount of each available credit to FEMA.² This list of projects reflects all FEMA projects and costs known to the County as of the date of the demand.

Pursuant to FEMA's direction and guidance, and pursuant to our agreements in this matter, the County will follow the procedures as set forth in **Attachment B**, or will follow agreed upon procedures that are substantially similar to those set forth in Attachment B, and which are mutually agreeable to all parties to this agreement, to ensure there are no duplications of benefits under the Stafford Act and 44 CFR §206.223(e). The amount FEMA will receive from the settlement will be adjusted to reflect that the settlement is not a dollar-for-dollar resolution as it relates to the demand, but rather, a reduced settlement amount. Accordingly, any amount that FEMA will receive will be adjusted, pro-rata. The County incurred attorney fees and other costs associated with the resolution, and per our agreement, the amount the County will deduct from any application, or agree to have de-obligated, or agree to reimburse, will be the net amount received associated with the project *after* attorneys' fees and costs are deducted.

Pursuant to our agreement, the methodology described herein, and in Attachment B to this letter, satisfies FEMA's guidance to the County regarding the use of commercially reasonable efforts to recover from Defendants the FEMA-eligible costs and assistance related to the Maui Fires. We ask that you please confirm in writing that: (i) the methodology as described in this letter, including the procedures set forth in Attachment B, fully and fairly satisfies direction and guidance of FEMA regarding the Stafford Act and 44 CFR §206.223(e); (ii) the County acted in a commercially reasonable manner in obtaining these reimbursements; (iii) FEMA will commit to process the County's pending and anticipated applications for reimbursement in the normal and customary manner consistent with prior disasters; and, (iv) FEMA agrees to release the County and Defendants from any and all claims relating to the FEMA funds included in this agreement.

We look forward to receiving your confirming letters. Thank you for your continued cooperation and efforts in this matter.

Sincerely,



John Fiske
Torri Sherlin
Baron & Budd P.C.



Ed Diab
Robert Chambers II
Diab Chambers LLP

² Final cost accounting is ongoing. To the extent the figures in Attachment A change through the final cost accounting process, we will provide an update.

Attachment A

EXECUTION VERSION

CONFIDENTIAL/PRIVILEGED – FOR MEDIATION USE ONLY

Maui County

FEMA-Eligible Claim	Total Claim	Pro-Rata FEMA Share	Total Settlement	Attorney Fee %
\$401,000,000	\$720,000,000	55.69%	\$25,000,000	18%

Summary

		Total FEMA Eligible Expenses at Time of Settlement	% of FEMA Eligible Costs	% of Total Damages (Apply to S25M)	Gross (Pre Fees and Costs)	Client Specific Costs	Attorney Fees	Project Credits	Project Credits (\$)**	
									FEMA Credits	Local Credits
Obligated	FEMA PA	\$8,314,089.76	3.55%	1.98%	\$494,516.42	\$27,102.65	\$84,134.48	\$383,279.29	\$344,951.36	\$38,327.93
Pending	FEMA PA	\$225,777,535.33	96.45%	53.72%	\$13,429,094.69	\$736,000.06	\$2,284,757.03	\$10,408,337.60	\$9,418,892.49	\$989,445.11
Total		\$234,091,625.09	100.00%	55.69%	\$13,923,611.11	\$763,102.71	\$2,368,891.51	\$10,791,616.89	\$9,763,843.85	\$1,027,773.04

** Actual credit applied may differ from initial credits available based on final project status and costs.

By Project

Project Type	Status as of Settlement	Category	Project #	Title/Description	Total FEMA Expenses at Time of Settlement	% of FEMA Expenses	% of Total Damages Apply to S25M	Gross (Pre Fees and Costs)	Client Specific Costs	Attorney Fees	Project Credits	Original Project Cost Share %		Project Credits (\$)**	
												FEMA	Local	FEMA Credits	Local Credits
FEMA PA	Pending	B	746111	MEMACDA - Security Contract Cost_1 - August - March-P04	\$12,000,000.00	5.13%	2.8550%	\$713,751.86	\$39,118.16	\$121,434.07	\$553,199.64	90.00%	10.00%	\$497,879.68	\$55,319.96
FEMA PA	Pending	B	737311	MEMACDA - EOC Purchases-P01	\$900,000.00	0.38%	0.2141%	\$53,531.39	\$2,933.86	\$9,107.56	\$41,489.97	90.00%	10.00%	\$37,340.98	\$4,149.00
FEMA PA	Pending	B	741030	MEMACDA - EOC FAL OT-P02	\$900,000.00	0.38%	0.2141%	\$53,531.39	\$2,933.86	\$9,107.56	\$41,489.97	90.00%	10.00%	\$37,340.98	\$4,149.00
FEMA PA	Pending	B	746119	MEMACDA - Security Contract Cost_2 (dates 5/8/24 to 6/30/24)-P05	\$3,850,000.00	1.64%	0.9160%	\$228,995.39	\$12,550.41	\$38,960.10	\$177,484.88	90.00%	10.00%	\$159,736.40	\$17,748.49
FEMA PA	Pending	B	744152	MEMACDA - Donated Resources County-Wide-P03	\$3,800.00	0.00%	0.0009%	\$26.02	\$12.39	\$38.45	\$175.18	90.00%	10.00%	\$157.66	\$17.52
FEMA PA	Pending	A	736509	Debris Removal Operations	\$382,817.76	0.16%	0.0911%	\$22,769.74	\$1,247.93	\$3,873.93	\$17,647.89	90.00%	10.00%	\$15,883.10	\$1,764.79
FEMA PA	Obligated	B	736380	Emergency Protective Measures - Contract (8/8/23 to 9/23/23)	\$1,962,733.04	0.84%	0.4670%	\$116,742.03	\$6,398.21	\$19,861.89	\$90,481.93	90.00%	10.00%	\$81,433.74	\$9,048.19
FEMA PA	Pending	B	748207	Emergency Protective Measures - Contract Part 2	\$1,509,097.95	0.64%	0.3590%	\$89,760.12	\$4,919.43	\$15,271.33	\$69,569.37	90.00%	10.00%	\$62,612.43	\$6,956.94
FEMA PA	Pending	B	740143	Emergency Protective Measures - Force Account	\$500,000.00	0.21%	0.1190%	\$29,739.66	\$1,629.92	\$5,059.75	\$23,049.98	90.00%	10.00%	\$20,744.99	\$2,305.00
FEMA PA	Pending	C	736383	Damaged Roadway & Components	\$2,500,000.00	1.07%	0.5948%	\$148,698.30	\$8,149.62	\$25,298.76	\$115,249.02	90.00%	10.00%	\$103,724.93	\$11,524.99
FEMA PA	Obligated	B	744531	MPD - ANDE Expenses-P02 (3/3/24 to 7/31/24)	\$192,409.93	0.08%	0.0458%	\$11,444.41	\$627.23	\$1,947.09	\$8,289.09	90.00%	10.00%	\$7,983.08	\$887.01
FEMA PA	Pending	B	747380	MPD Misc Cat B 1	\$200,000.00	0.09%	0.0476%	\$11,895.86	\$651.97	\$2,023.90	\$9,219.99	90.00%	10.00%	\$8,297.99	\$922.00
FEMA PA	Pending	B	735078	MPD FALOT Equipment-P01	\$900,000.00	0.38%	0.2141%	\$53,531.39	\$2,933.86	\$9,107.56	\$41,489.97	90.00%	10.00%	\$37,340.98	\$4,149.00
FEMA PA	Obligated	B	742559	MDFPS - Contracts and Equipment Rental-P04 (8/8/23 to 10/20/23)	\$399,797.33	0.17%	0.0951%	\$23,779.67	\$1,303.28	\$4,045.75	\$18,430.64	90.00%	10.00%	\$16,587.58	\$1,843.06
FEMA PA	Pending	B	746264	MDFPS - Materials & Supplies, Food & Water-P05	\$299,245.67	0.13%	0.0712%	\$17,798.93	\$975.49	\$3,028.22	\$13,795.22	90.00%	10.00%	\$12,415.69	\$1,379.52
FEMA PA	Obligated	B	733310	MDFPS - FAL OT-P01 (8/8/23 to 9/30/23)	\$550,021.37	0.23%	0.1309%	\$32,714.90	\$1,792.99	\$5,565.94	\$25,355.97	90.00%	10.00%	\$22,820.37	\$2,535.60
FEMA PA	Obligated	E	736368	MDFPS-Equipment/Vehicles Destroyed-P02	\$2,092,195.61	0.89%	0.4978%	\$124,442.38	\$6,820.24	\$21,171.99	\$96,450.15	90.00%	10.00%	\$86,805.14	\$9,645.02
FEMA PA	Pending	E	742557	MDFPS - Damaged Equipment, Contracted Labor, Materials and Supplies-P03	\$900,000.00	0.38%	0.2141%	\$53,531.39	\$2,933.86	\$9,107.56	\$41,489.97	90.00%	10.00%	\$37,340.98	\$4,149.00
FEMA PA	Pending	A	739712	Debris Removal throughout Lahaina County	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	B	743574	Emergency Protective Measures - FAL OT	\$159,395.67	0.07%	0.0379%	\$9,480.75	\$516.61	\$1,613.01	\$7,348.14	90.00%	10.00%	\$6,613.32	\$734.81
FEMA PA	Pending	E	743649	Lahaina Civic Center Base yard, roof damages	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	G	740533	Alaheka Park	\$20,000.00	0.01%	0.0048%	\$1,189.59	\$65.20	\$202.39	\$922.00	90.00%	10.00%	\$829.80	\$92.20
FEMA PA	Pending	G	740535	Kamehameha Iki Park	\$200,000.00	0.09%	0.0476%	\$11,895.86	\$651.97	\$2,023.90	\$9,219.99	90.00%	10.00%	\$8,297.99	\$922.00
FEMA PA	Pending	G	740536	Kelaewa Mauka Park	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	G	740537	Malu Ulu O Lile Park	\$100,000.00	0.04%	0.0238%	\$5,947.93	\$325.98	\$1,011.95	\$4,610.00	90.00%	10.00%	\$4,149.00	\$461.00
FEMA PA	Pending	G	740538	Faunau Park	\$100,000.00	0.04%	0.0238%	\$5,947.93	\$325.98	\$1,011.95	\$4,610.00	90.00%	10.00%	\$4,149.00	\$461.00
FEMA PA	Pending	G	740540	Hahakuli Terrace Park	\$100,000.00	0.04%	0.0238%	\$5,947.93	\$325.98	\$1,011.95	\$4,610.00	90.00%	10.00%	\$4,149.00	\$461.00
FEMA PA	Pending	G	740541	Lahaina Courthouse Park	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	G	740554	Hahakuli Wayside Park	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	G	742261	Lahaina Recreation Center, Boys & Girls Club, 2-Baseball field, and Skate Park	\$1,000,000.00	0.43%	0.2379%	\$59,479.32	\$3,259.85	\$10,119.51	\$46,099.97	90.00%	10.00%	\$41,489.97	\$4,610.00
FEMA PA	Pending	B	742541	MOED - GEN Distribution Center Expenses-P02	\$236,368.26	0.10%	0.0562%	\$14,059.02	\$770.52	\$2,391.93	\$10,896.57	90.00%	10.00%	\$9,806.91	\$1,089.66
FEMA PA	Pending	B	742544	MOED - Food Processing Expenses-P03	\$397,560.00	0.17%	0.0946%	\$23,646.60	\$1,295.98	\$4,023.11	\$18,327.50	90.00%	10.00%	\$16,494.75	\$1,832.75
FEMA PA	Obligated	B	742250	MOED-Website Contract_Distribution Centers Related Costs-P01 (8/9/23 to 12/31/23)	\$414,790.27	0.18%	0.0987%	\$24,671.44	\$1,352.15	\$4,197.47	\$19,121.82	90.00%	10.00%	\$17,209.64	\$1,912.18
FEMA PA	Obligated	A	736367	Debris Removal	\$193,836.64	0.08%	0.0461%	\$11,529.27	\$631.88	\$1,961.53	\$8,935.86	90.00%	10.00%	\$8,042.28	\$893.59
FEMA PA	Pending	A	747440	EP&S Division (Damaged Auto and White Goods Disposal) Part 2	\$98,151.87	0.04%	0.0234%	\$5,838.01	\$319.96	\$993.25	\$4,524.80	90.00%	10.00%	\$4,072.32	\$452.48
FEMA PA	Obligated	B	741227	EP&S Division - Emergency Protective Measures (8/13/23 to 10/25/23)	\$49,129.78	0.02%	0.0117%	\$2,922.21	\$160.16	\$497.17	\$2,624.88	90.00%	10.00%	\$2,038.39	\$226.49
FEMA PA	Pending	B	736370	Emergency Protective Measures	\$7,920,000.00	3.38%	1.8843%	\$471,076.23	\$25,817.98	\$80,146.48	\$365,111.76	90.00%	10.00%	\$328,600.59	\$36,511.18
FEMA PA	Obligated	E	742141	Residential Trash Cart Replacement	\$128,282.98	0.03%	0.0186%	\$4,656.22	\$255.19	\$792.19	\$3,608.84	90.00%	10.00%	\$3,276.96	\$368.88
FEMA PA	Pending	F	736374	Waste Water Treatment Facility Damages	\$134,182,100.00	57.32%	31.9242%	\$7,981,060.31	\$437,413.02	\$1,357,856.51	\$6,185,790.78	90.00%	10.00%	\$5,567,211.70	\$618,579.08
FEMA PA	Pending	B	735579	Emergency Protective Measures	\$1,000,000.00	0.43%	0.2379%	\$59,479.32	\$3,259.85	\$10,119.51	\$46,099.97	90.00%	10.00%	\$41,489.97	\$4,610.00
FEMA PA	Obligated	E	743969	Damaged Vehicle, Contents & Computer Destroyed in Fire	\$62,277.25	0.03%	0.0148%	\$3,704.21	\$203.01	\$630.21	\$2,870.98	90.00%	10.00%	\$2,583.88	\$287.10
FEMA PA	Pending	E	750244	Lahaina Base Yard Damages	\$20,000.00	0.01%	0.0048%	\$1,189.59	\$65.20	\$202.39	\$922.00	90.00%	10.00%	\$829.80	\$92.20
FEMA PA	Pending	F	750245	Kula / Olinda Meters, Boxes & Laterals	\$100,000.00	0.04%	0.0238%	\$5,947.93	\$325.98	\$1,011.95	\$4,610.00	90.00%	10.00%	\$4,149.00	\$461.00
FEMA PA	Pending	F	736290	Potable Water System Infrastructure Damage	\$9,000,000.00	3.84%	2.1413%	\$535,313.90	\$29,338.62	\$91,075.55	\$414,899.73	90.00%	10.00%	\$373,409.76	\$41,489.97
FEMA PA	Obligated	B	734966	MDPA - FALOT Travel Supplies_Mileage - P01 (8/10/23 to 10/23/23)	\$36,965.75	0.02%	0.0088%	\$2,198.70	\$120.50	\$374.08	\$1,704.12	90.00%	10.00%	\$1,533.71	\$170.41
FEMA PA	Obligated	B	734774	MDOT FALOT, Contracts and FA Equipment-P01(8/8/23 to 9/30/23)	\$427,962.58	0.18%	0.1018%	\$25,454.92	\$1,395.09	\$4,330.77	\$19,729.06	90.00%	10.00%	\$17,756.16	\$1,972.91
FEMA PA	Obligated	B	742575	MDOT - Transportation Contract Cost-P04 (10/1/23 to 1/2/24)	\$597,577.67	0.26%	0.1422%	\$35,543.51	\$1,948.01	\$6,047.19	\$27,548.31	90.00%	10.00%	\$24,793.48	\$2,754.83
FEMA PA	Obligated	E	734986	MDOT Destroyed Bus-P02	\$892,701.00	0.38%	0.2124%	\$53,097.25	\$2,910.07	\$9,033.69	\$41,153.49	90.00%	10.00%	\$37,038.14	\$4,115.35
FEMA PA	Obligated	E	740392	MDOT Burned Bus Stop Shelter-P03	\$188,771.02	0.08%	0.0449%	\$11,227.97	\$615.36	\$1,910.27	\$8,702.34	90.00%	10.00%	\$7,832.10	\$870.23
FEMA PA	Pending	A	739396	MDHHC - Debris Removal-P02	\$0.00	0.00%	0.0000%	\$0.00	\$0.00	\$0.00	\$0.00	90.00%	10.00%	\$0.00	\$0.00
FEMA PA	Pending	B	739474	MDHHC - FAL OT, FA Equipment, Materials-P03 (8/10/23 to 12/13/23)	\$51,747.75	0.02%	0.0123%	\$3,077.92	\$168.69	\$523.66	\$2,385.57	90.00%	10.00%	\$2,147.01	\$238.56
FEMA PA	Pending	E	739478	MDHHC - Equipment, Interior Contents, Vehicles-P04	\$0.00	0.00%	0.0000%	\$0.00	\$0.00	\$0.00	\$0.00	90.00%	10.00%	\$0.00	\$0.00
FEMA PA	Pending	E	739479	MDHHC - West Maui Senior Center-P05	\$9,511,248.00	4.06%	2.2629%	\$565,722.58	\$31,005.21	\$96,249.13	\$438,468.25	90.00%	10.00%	\$394,621.42	\$43,846.82
FEMA PA	Pending	E	739482	MDHHC - Lahaina Crossroads Apartments-P06	\$9,325,321.00	3.98%	2.2187%	\$554,663.77	\$30,399.11	\$94,367.64	\$429,897.02	90.00%	10.00%	\$386,907.32	\$

Attachment B

ATTACHMENT B

COUNTY OF MAUI CREDITS TO FEMA RELATED TO MAUI FIRES RESOLUTION

Pursuant to direction and guidance from FEMA regarding Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”) and 44 CFR §206.223(e), and pursuant to our agreements in this matter, the County of Maui (or, “County”) will follow the procedures stated herein, or will follow agreed upon procedures that are substantially similar to those set forth herein according to mutual agreement between the County and FEMA, to provide FEMA a credit (if applicable) as described more fully below (“the FEMA Crediting Process”). The County is responsible for maintaining records of transactions associated with the FEMA Crediting Process as support for future audits by FEMA, the Office of the Inspector General, or similar agency with authority, regarding issues of Duplication of Benefits and recover of FEMA funds from negligent third parties.

A. FEMA CREDITING PROCESS

Attachment A to the Baron & Budd and Diab Chambers letter dated October 16, 2024, includes the list of FEMA projects or anticipated projects included in the County’s settlement with Maui Electric Company, Hawaiian Electric Company, Inc., Hawai’i Electric Light Company, Inc., and Hawaiian Electric Industries, Inc., (collectively, “Defendants”), the pro-rata percentage recovered for each project, the net amount received through the settlement after attorneys’ fees and costs are deducted, the net amount of each available credit to FEMA (“the FEMA Credits”), and the County’s net recovery for its local share (“the Public Entity Credits”), as to each project.¹ Throughout this letter we refer to the FEMA Credits and the Public Entity Credits combined, on a project by project basis, as “the Project Credit(s).”² The remaining project cost, after subtracting the Project Credit from the current project cost, is referred to as the “Credit-Adjusted Project Cost.”

Pursuant to this agreement, the County will provide FEMA a credit (if applicable) based upon a combination of the following three project attributes:

- (1) **Eligibility determination** (i.e., ineligible/withdrawn, pending, or obligated);
- (2) **Payment status by FEMA** (i.e., no payments made from FEMA to the County, partially paid, or fully paid); and,
- (3) **Current project cost relative to the Project Credit received** (as reflected in Attachment A).

Pursuant to the June 2022 FEMA internal instruction entitled, *Identification and Collection of Monies Owed from Non-Federal Entities*, the County will provide all necessary credits to FEMA, within 60-days of receipt of the settlement funds. If the County needs additional time, it is entitled to request an additional 30-day extension to provide any necessary credits.

¹ Final cost accounting is ongoing. To the extent the figures in Attachment A change through the cost accounting process, we will provide an update.

² The Project Credits were determined by the project cost information available at the time of settlement. Project Credits will not increase with increases in project costs after settlement.

Throughout this letter we provide a description of the crediting methodology and we provide a hypothetical scenario to demonstrate how the Project Credits will be applied under the methodology, using an example FEMA project (“Project A”) with an original estimated cost of \$100, of which the FEMA cost share is 90% and the local cost share is 10%.³ For purposes of this example, we use a hypothetical settlement amount of \$37 associated with Project A (\$100 x 37%).⁴ In this hypothetical, the Public Entity’s proportional local share of the credit is \$3.70 (\$37 x 10%) and the FEMA credit is \$33.30 (\$37 x 90%). A summary of the credit distribution scenarios is also provided in **Table 1**, below.

B. FEMA CREDIT CALCULATION

1. **Entire Project Denied by FEMA or Withdrawn by the County** – For each project that has been denied by FEMA or withdrawn by the County in its entirety, the County will retain all Project Credits associated with that project. FEMA will receive no credit because no funds were ultimately paid by FEMA.
2. **Current Project Costs are Less than or Equal to the Total Project Credit Received** – When current project costs are less than or equal to the Project Credit, crediting to FEMA will depend upon the current project payment status. Since current project costs are less than or equal to the Project Credit, the Project Credit is sufficient to cover all project costs. Thus, the County shall exhaust the Project Credit prior to seeking reimbursement from FEMA. If FEMA has already funded the project, the County will provide credit refund to FEMA such that there is no duplication of benefits (“Credit Refund”).⁵ The County will retain any excess funds after the Credit Refund has been provided.
 - a. **Pending or Obligated, Not Yet Paid** - With respect to both pending applications and obligated projects where the current project costs are less than or equal to the Project Credit received and no payments have been made by FEMA, the County will withdraw the project application and will retain the entire Project Credit to cover the project cost, including any excess credits between the current project costs and the available Project Credit. If the project is in process but the work is not yet complete, the County shall exhaust the Project Credit prior to seeking reimbursement from FEMA but will not withdraw the project until the full project costs are known, even when project costs are anticipated to be less than the Project Credit.

Example: *If the current project cost decreases to \$30 (i.e., below the Project Credit), the Public Entity withdraws the project. The Public Entity retains the entire*

³ The 90% FEMA cost share and the 10% local cost share is for purposes of example in this hypothetical only. The actual cost shares for the Maui Fire are as follows: 90% FEMA 10% sub-recipient (local), unless otherwise defined.

⁴ Actual credits designated per project are slightly less than the pro-rata share calculated using the percent recovery due to adjustments made for legal fees and costs. These are omitted from this example for simplicity.

⁵ Credit refunds to FEMA will not include any interest.

Project Credit to cover project costs, including the excess credits between the current project costs and the Project Credit (\$37 total, including \$7 in excess credit).

- b. Obligated and payments have begun but are not complete** – With respect to obligated projects where current project costs are less than or equal to the Project Credit and payments by FEMA has begun but are not yet complete, the County will inform FEMA of the Project Credit received. FEMA shall de-obligate any outstanding funds to the County. The County will provide a Credit Refund to FEMA to reimburse FEMA for all completed payments associated with the project. The County will retain the remaining Project Credits to cover the project costs (including any excess credits). If the project is in process but the work is not yet complete, the County shall exhaust the Project Credit prior to seeking reimbursement from FEMA, and FEMA shall de-obligate any outstanding funds; however, the project shall not be withdrawn until the full project costs are known, even when project costs are anticipated to be less than the Project Credit.

***Example:** If the current project cost decreases to \$30 (i.e., below the Project Credit) and FEMA has already paid \$15, the Public Entity provides a Credit Refund of \$15 to FEMA. FEMA de-obligates the remaining \$12 in payments scheduled based on their cost share for the project ($\$30 \times 90\% = \$27 - \$15 = \12). The Public Entity retains the remaining \$22 in Project Credits after providing the Credit Refund, which includes coverage of the \$3 local share and the \$12 in de-obligated FEMA funds, plus \$7 in excess credit.*
- c. Obligated and all payments complete** - For projects where FEMA has completed all payments to the County, the County will provide FEMA a Credit Refund for all payments received by FEMA associated with the project. The County will retain the remaining Project Credits after the Credit Refund to cover the County's local cost share for the project (including any excess credits).

***Example:** If the current project cost decreases to \$30 (i.e., below Project Credit) and FEMA has completed their cost share payments of \$27 ($\$30 \times 90\%$), the Public Entity refunds \$27 to FEMA and retains the remaining \$10 Project Credits, which includes coverage for the Public Entity's \$3 local cost share and \$7 in excess credit.*
- 3. Current Project Costs are Greater than Total Project Credit Received** – When current project costs are greater than the Project Credit received, the credit shares defined in **Attachment A** are applied to FEMA and the County. FEMA and the County are responsible for the remaining project costs as defined by the FEMA project cost share agreement.

 - a. Pending Projects** - For projects that are pending an eligibility determination, the County will revise the project application by subtracting the entire Project Credit

from the current project application. The County will retain the entire Project Credit to fund the project work now excluded from the application. If after credits are applied, the Credit Adjusted Project Cost falls below the minimum Public Assistance project cost threshold of \$3,800, the County will withdraw the project and will be responsible for the remaining project costs which fall below the threshold.⁶

Example: *If the current project costs are \$80, the Public Entity revises the application to a new total of \$43 (\$80 - \$37). Public Entity retains entire Project Credit.*

- b. **Obligated, Payments Not Complete** - For projects that are obligated, but payments are not complete, the County will calculate the revised FEMA cost share for the project by subtracting the FEMA Credits listed in **Attachment A** from the obligated FEMA cost share (“the Credit-Adjusted FEMA cost-share”).

Example: *If current project costs are \$80, the obligated FEMA cost share is \$72 (\$80 x 90%). The FEMA Credit is \$33.30. Thus, the credit-adjusted FEMA cost share (i.e., cost share after subtracting the FEMA Credit) is \$38.70 (\$72 - \$33.30).*

- i. **If the payments made to date by FEMA are less than the Credit-Adjusted FEMA cost share** (including obligated projects with no payments made), the County will request that FEMA de-obligate funds in the amount of the FEMA Credit as defined in **Attachment A**. The County will retain the entire Project Credit, which covers the amount FEMA de-obligated and a portion of the County’s local cost share.

Example Continued: *FEMA obligated cost share is \$72 (\$80 x 90%). The Credit-Adjusted FEMA cost share is \$38.70. If FEMA has already paid \$30 to the Public Entity, FEMA de-obligates \$33.30 and is responsible for paying the remaining \$8.70 to complete their Credit-Adjusted cost share (\$30 already paid + \$8.70 remaining = \$38.70). The Public Entity retains the entire Project Credit of \$37, which includes the amount FEMA de-obligated (\$33.30) and a portion of the Public Entity’s local cost share (\$3.70).*

- ii. **If the payments made to date by FEMA are greater than or equal to the Credit-Adjusted FEMA cost share and payments by FEMA are still ongoing**, the County will request that FEMA de-obligate any outstanding

⁶ FEMA sets minimum project threshold costs under which projects are no longer eligible for reimbursement. FEMA PA projects are subject to a \$3,800 project cost minimum threshold for disasters that occurred in 2023. When a Credit-Adjusted Project Cost falls below the \$3,800 minimum threshold for **pending** FEMA PA projects, the County shall withdraw the project and will be responsible for the amounts remaining below the minimum threshold. Pursuant to Agreement between the County and FEMA, the minimum threshold rule shall not apply to projects where FEMA funds have been paid and thus applies to pending projects only. Category Z projects are excluded from the project minimum thresholds pursuant this Agreement.

payments on the project. The County will provide a Credit Refund to FEMA amounting to the difference between payments made to date and Credit-Adjusted FEMA cost share. The amount de-obligated plus the FEMA refund payment will equal the FEMA Credit. The County will retain the remainder of the Project Credits received after providing the Credit Refund.

Example Continued: FEMA obligated cost share is \$72 ($\$80 \times 90\%$). The Credit-Adjusted FEMA cost share is \$38.70. If FEMA has already paid \$50 to the Public Entity, FEMA de-obligates \$22 ($\$72 - \50). The Public Entity provides FEMA a Credit Refund of \$11.30 ($\$50 - \38.70). The amount de-obligated plus the FEMA refund payment equals the FEMA Credit amount in Attachment A ($\$22 + \$11.30 = \$33.30$). The Public Entity retains the remaining Project Credit of \$25.70 after providing the Credit Refund (which covers the amount de-obligated (\$22), plus \$3.70 which covers a portion of the public entity's local share).

- c. **Obligated, Payments Complete** - For projects that are obligated and all payments from FEMA to the County are complete, the County will provide a Credit Refund to FEMA in the amount of the FEMA Project Credit as defined in **Attachment A**. The County will retain the remaining Project Credit after providing the Credit Refund, which covers a portion of the County's local cost share.

Example: If current project costs are \$80, the obligated FEMA cost share is \$72 ($\$80 \times 90\%$). The revised FEMA cost share, after subtracting the FEMA credit, is \$38.70 ($\$72 - \33.30). If FEMA has paid \$72 to the Public Entity and the payment process is complete, the Public Entity refunds \$33.30 to FEMA and retains the remaining Project Credit of \$3.70 after the Credit Refund has been provided ($\$72 - \$33.30 = \$3.70$), which covers a portion of the Public Entity's local cost share for the project.

[continued on page 6]

October 16, 2024

Page 6

Table 1. Summary of Credit Distribution Scenarios*References in parentheses refer to the sections above describing each scenario.*

		Current Project Cost	
		Less than or Equal to Total Project Credit Received	Greater than Total Project Credit Received
Entire Project Withdrawn or Ineligible		County retains entire Project Credit. (1)	
Pending		County withdraws project and retains entire Project Credit. (2.a)	County revises the project application by subtracting entire Project Credit from current project cost. County retains entire Project Credit. (3.a)
Obligated	No Payments Made		FEMA de-obligates funds in the amount of the FEMA portion of the Project Credit as defined in Attachment A. County retains entire Project Credit. (3.b.i)
	Payments Made up to Credit-adjusted FEMA Project Cost Share	See Payments Made Greater than Credit-adjusted FEMA share ^[1]	
	Payments Made Greater than Credit-adjusted FEMA share	County provides Credit Refund to cover all FEMA payments on project to date. FEMA de-obligates any remaining payments. County retains remaining Project Credit after providing the refund to FEMA, including any excess credits above the project cost. (2.b)	County provides Credit Refund to cover FEMA payments made up to the amount of the FEMA credit. FEMA de-obligates any remaining payments. The FEMA Credit Refund plus the amount de-obligated equals the FEMA portion of the Project Credit as reflected in Attachment A. County retains remaining Project Credit after providing the refund to FEMA. (3.b.ii)
	Fully Paid	County provides Credit Refund to FEMA to cover all FEMA payments on project. County retains remaining Project Credit after providing the Credit Refund to FEMA, including any excess credits above the project cost. (2.c)	County refunds FEMA the amount of the FEMA portion of the Project Credit as reflected in Attachment A. County retains remaining Project Credit after providing the refund to FEMA. (3.c)
If the Credit-Adjusted Project Cost falls below FEMA's Public Assistance minimum threshold of \$3,800 for a pending project, the County will withdraw project and cover remaining project costs under the minimum threshold.			

Pursuant to our agreements in this matter, the above methodology satisfies direction and guidance from FEMA to the County regarding FEMA's interpretations of section 312 of the Stafford Act and 44 CFR §206.223(e) to use commercially reasonable efforts to recover from Defendants the FEMA costs and damages related to the 2023 Maui Fires and to avoid any duplication of benefits. Per our agreement, FEMA commits to processing applications in the normal and customary course and this agreement in no way limits the County's right to file an appeal if a project is denied or partially denied. For projects subject to an appeal, the County will retain all project credits and reduce the application subject to the appeal by the project credit amount. If FEMA partially denies a project but has paid funds on a project subject to an appeal, the County follow the procedures as set forth in this letter to provide any necessary project credits to FEMA. If there are excess funds remaining after applying project credits on partially denied

^[1] Revised FEMA cost share is \$0 when current project cost is less than or equal to net amount received. Therefore, if payments are underway, payments made have to be greater than \$0 and fall under the next category, Payments Greater than Credit-adjusted FEMA share.

October 16, 2024

Page 7

project applications that have been paid, the County will retain the excess credits and will reduce project applications subject to the appeal by the excess project credit amount. Retaining project credits while an appeal is pending will not be deemed a duplication of benefits by FEMA. Once a final decision has been made on a pending appeal, the County will follow the procedures in this letter to ensure there is no duplication of benefits.



FEMA

October 18, 2024

John Fiske
Baron & Budd P.C.
11440 West Bernardo Court
Suite 265
San Diego, CA 92127

Ed Diab
Diab Chambers LLC
10089 Willow Creek Road
Suite 200
San Diego, CA 92131

Re: Maui County Resolution of Claims related to the 2023 Maui Wildfires

Dear Mr. Fiske and Mr. Diab:

This letter is in response to your October 16, 2024, letter outlining the terms of the proposed settlement agreement between your client, Maui County (the County), and Maui Electric Company, Hawaiian Electric Company, Inc., Hawai'i Electric Light Company, Inc., and Hawaiian Electric Industries, Inc., (collectively, "Defendants") in relation to the 2023 Maui Wildfires, which were included in a major disaster declaration (DR-4724) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). This letter also responds to the proposed procedures by the County to credit funds to the Federal Emergency Management Agency (FEMA) in relation to the proposed settlement.

The County is eligible to receive FEMA financial assistance, through the Hawaii Emergency Management Agency (HIEMA), as a result of the 2023 Maui Wildfires. The County has presented legal claims for damages to the Defendants, which include costs potentially eligible for reimbursement under the FEMA Public Assistance (PA) grant program. We understand the County and the Defendants reached a confidential settlement in principle on August 2, 2024, resolving the County's claims.

Based on the information provided in your October 16, 2024 letter, including the unique nature of this litigation involving hundreds of claims against the County, the Defendants, and other parties, FEMA concludes that the proposed settlement agreement and procedures to credit FEMA satisfy the County's obligations under the Stafford Act to avoid duplication of benefits.

The Stafford Act authorizes FEMA to provide grants through the PA program to state and local governments, upon a declaration of a major disaster by the President. Federal assistance under the Stafford Act is supplemental. Section 312 of the Stafford Act requires FEMA to assure that recipients of federal assistance do not receive a duplication of benefits from any other source, including claims against potentially liable third parties. Where a FEMA applicant for assistance has available to it a potential other source of funding from insurance coverage or a potentially liable third party, FEMA requires the applicant make a "commercially reasonable" effort to

John Fiske and Ed Diab
Page 2 of 2

collect from that potential source of funding. In other words, a FEMA applicant must make an effort to collect from a potential other source of funding as if it was without other recourse (*i.e.*, FEMA assistance) under the circumstances.

FEMA has been working with your firms to ensure the County satisfies its obligation to avoid a duplication of benefits under Section 312 of the Stafford Act. Based on the information provided in your October 16, 2024 letter, FEMA concludes with respect to the legal obligation to avoid duplication that the proposed settlement amount and methodology set forth in your letter is commercially reasonable. The proposed procedures to credit funds and pro rata allocation of the settlement related to potentially PA eligible work included in the claim (minus reasonable attorney fees and other reasonable costs) will satisfy the County's obligations under Section 312 of the Stafford Act with respect to its potential claims against the Defendants.

Final adoption of the proposed settlement agreement by all parties, and the implementation of the proposed procedures to credit FEMA the pro rata allocation of the settlement related to the potentially FEMA eligible work, will satisfy all FEMA interests in the potential liability of the Defendants for costs of the County eligible for FEMA reimbursement and leave no basis for FEMA to directly pursue from the Defendants these or any other costs related to the County's claims against the Defendants. With respect to continued delivery of FEMA's PA program, FEMA will continue supporting the State and the County through the usual and customary PA process. All other regulations and policies regarding administration of the PA program will continue to apply.

FEMA reserves the right to pursue any other claims against the Defendants related to DR-4724 that were not included in the County's claims, including but not limited to: the federal share of direct assistance provided by FEMA to the State and public entities; the federal share of financial assistance provided by FEMA to the State, public entities not a party to the settlement agreement, and individuals impacted by the disasters; and FEMA's costs for administering its disaster assistance programs.

If you have any questions, please contact Region 9 Regional Counsel John-Paul Henderson at 510-627-7055 or johnpaul.henderson@fema.dhs.gov.

Sincerely,



Robert J. Fenton
Regional Administrator

Cc: James DS. Barros, Administrator, Hawaii Emergency Management Agency
John-Paul Henderson, Regional Counsel, FEMA Region 9

EXHIBIT 10

Exhibit 10**APPENDIX REGARDING ALLOCATION OF GLOBAL SETTLEMENT AMOUNT**

Class Plaintiffs¹ and the IP Plaintiffs (collectively, “Parties”) agree to the following binding, final procedure to determine the proper allocation of the Aggregate Settlement Amount between the Class Settlement Amount and the Individual Settlement Amount:

1. The terms set forth in this Appendix apply only to the procedure to determine a proper allocation of the Aggregate Settlement Amount between the Class Settlement Amount and the Individual Settlement Amount are not applicable to any other matters. These terms shall not extend to or be applicable in any other contexts or matters
2. The allocation between the Class Settlement Amount and the Individual Settlement Amount of the limited settlement proceeds provided in the Aggregate Settlement Amount will be determined by an evidentiary hearing in a new Special Proceeding to be initiated by the Class Plaintiffs and the IP Plaintiffs before the Honorable Peter T. Cahill, Second Circuit Court of the State of Hawaii (“Court”). The Parties stipulate the case is a Maui Fires case and will label the complaint as a Maui Fires case.
3. Subject to the availability of the Court’s calendar and coordinating schedules among counsel, the Parties will request that the trial be held within approx. 75 days of the Settlement Date or as soon thereafter as the Court may order.
4. The Court will begin by allocating \$25,000,000 to the Individual Settlement Fund to make the payment to the County contemplated under Section 4.1.2(k) of the Individual Settlement Agreement.
5. The Court will then determine a fair and equitable allocation of the Aggregate Settlement Amount, minus the \$25,000,000 under Section 4 of this Appendix, based on (1) the number of represented individuals as of December 1, 2024 (“IP Plaintiffs”) and the potential value of their claims compared to the number of unrepresented individuals as of the same date, who are within the settlement class definition (“Class Plaintiffs”) and the potential value or lack thereof of their claims; (2) the terms of the Class Settlement Agreement and the Individual Settlement Agreement; and (3) other equitable and/or legal factors the Court may choose to consider, provided the Court shall not enter a ruling on whether certain claims within the Settlement Class definition are precluded under the economic loss rule, nor shall the allocation void or change the Settlement Class definition.
6. If the number of Individual Plaintiffs or eligible Class Plaintiffs in each damages category deviates significantly from the number presented at the evidentiary hearing, the Parties will seek to agree on an appropriate adjustment based on the data or submit to the Court

¹ All capitalized terms used in this Exhibit 10 have the same meaning as in the Class Settlement Agreement and Individual Settlement Agreement, unless otherwise defined in this Exhibit 10.

for resolution should agreement not be reached.

7. The Court's allocation decision may be expressed in terms of percentages for the Class Settlement Amount and the Individual Settlement Amount, respectively. Any percentages will be translated to dollar figures for the subsequent Preliminary Approval motion and for purposes of determining the Class Settlement Amount and the Individual Settlement Amount.
8. IP Plaintiffs agree they shall provide registration data for all IP Plaintiffs as soon as feasible, which the Court and Class Plaintiffs shall rely upon for the purpose of the allocation. Registration data shall include, at minimum: (a) legal name; (b) address on August 8, 2023; (c) description by BrownGreer/IP damage category; and (d) name of attorney.
9. The following rules shall apply to the trial, subject to the Court's discretion to otherwise alter these rules:
 - a. Hawaii Rules of Evidence and Civil Procedure unless otherwise agreed herein.
 - b. The burden of proof shall be in the nature of interpleader wherein Class and IP Plaintiffs may present evidence, argument, and testimony in support of their respective claims against the limited Aggregate Settlement Amount.
 - c. Deadlines for expert reports and expert depositions will be set following conference with the Court.
 - d. Any depositions shall be by mutual agreement by parties or court order.
 - e. Trial briefs setting forth the parties' case, witness list, exhibit list, stipulations and any evidentiary issues will be due 7 days before trial begins.
 - f. Trial will consist of opening, witness examinations, and closing arguments.
 - g. After the Court issues findings of fact and conclusions of law and order, a final order will be entered that will be referenced within the Class Settlement Agreement and Individual Settlement Agreement.
 - h. The Parties will submit a joint request to the Court requiring insurers to provide all relevant data.
 - i. Both sides waive service, responsive pleadings, and answers.
10. The Parties irrevocably agree to waive appeals from the allocation award, any interlocutory or collateral orders entered in the Special Proceeding, or judgment entered in the Special Proceeding, and expressly agree that the Court's determinations of the Class Settlement Amount and the Individual Settlement Amount is binding.
11. The Parties can settle at any time before judgment is entered.

APPENDIX 2

IN RE MAUI WILDFIRES**CLASS SETTLEMENT AGREEMENT**

This CLASS SETTLEMENT AGREEMENT, dated as of November 1, 2024 (the “Settlement Date”), is made and entered into by and among Class Counsel, Class Representatives, and Defendants, who are parties to the Consolidated Complaint arising out of the Maui windstorm and fires of August 2023, including the fires in Lahaina, Kula, and Olinda (“Maui Fires”). This Class Settlement Agreement, together with the Individual Settlement Agreement that Defendants are entering into simultaneously, is intended by the Parties to fully and finally compromise, settle, resolve, discharge, release, and dismiss with prejudice on a comprehensive, global basis all Released Claims against the Releasees, as set forth below, under the terms set forth herein, subject to review and approval by the Approving Court and satisfaction of all other Conditions set forth below.

Capitalized terms have the meaning provided in Article II unless this Class Settlement Agreement provides otherwise.

ARTICLE I: RECITALS

1.1 Multiple actions against Defendants are pending in state and federal courts arising out of the Maui Fires. Those include putative class actions, actions filed by Individual Action Plaintiffs, actions filed by Subrogation Plaintiffs, and actions filed by Defendants against one another, as well as cross-, counter-, and third-party claims in these Actions. All of the Actions allege injury—including property damage (real and personal), personal injury, wrongful death, non-economic damages such as emotional distress and inconvenience, and economic loss—incurred as a result of the Maui Fires. Plaintiffs and Subrogation Plaintiffs seek to hold Defendants liable under various theories of liability, including negligence, inverse condemnation, nuisance, trespass, and abnormally dangerous activity. Plaintiffs and Subrogation Plaintiffs seek compensatory, punitive, and exemplary damages; medical monitoring; and injunctive and other equitable relief.

1.2 On October 27, 2023, the Hon. Peter T. Cahill created a Special Proceeding for all cases that had been or would be brought by Individual Action Plaintiffs relating to the Maui Fires in the Second Circuit Court, State of Hawai‘i (Case No. 2CSP-23-0000057).

1.3 On January 12, 2024, a group of Subrogation Plaintiffs filed a complaint against certain Defendants in the First Circuit Court, State of Hawai‘i, before the Hon. Dean E. Ochiai (Case No. 1CCV-24-0000068), seeking to recover for payments made to Subrogation Plaintiffs’ insureds for allegedly covered claims, including for real and personal property loss or damage, business interruption, and alternate living expenses, arising from the Lahaina fire. Two other similar lawsuits were filed in the First Circuit Court by other Subrogation Plaintiffs, Case Nos. 1CCV-24-0000179 and 1CCV-24-0000437, and several lawsuits have been filed in the Second Circuit Court by other Subrogation Plaintiffs. On October 21, 2024, Judge Ochiai entered a written order transferring each of these three cases to the Second Circuit.

1.4 On April 25, 2024, the Hon. Barry M. Kurren consolidated three class actions pending in the United States District Court for the District of Hawai‘i into a single putative class action, *In re Lahaina Wildfire Litigation*, which came to be identified with the Case No. 1:24-cv-00259-JAO-BMK. On June 4, 2024, Class Counsel filed a consolidated complaint. On October 29, 2024, the parties to *In re Lahaina Wildfire Litigation* stipulated to dismiss that case. On October 30, 2024, Class Counsel filed the Consolidated Complaint in the Second Circuit Court, State of Hawai‘i, Case No. 2CCV-24-0000964.

1.5 Defendants deny having any liability for any claims, causes of action, costs, expenses, attorneys’ fees, or damages of any kind arising out of the Maui Fires. Defendants have asserted or intend to assert legal and factual defenses against Plaintiffs’ claims in the Actions filed against them.

1.6 Plaintiffs, through their counsel, have engaged in substantial fact investigation to evaluate the merits of their claims and Defendants’ defenses, including reviewing thousands of pages of documents produced in discovery, deposing multiple witnesses (including from multiple Defendants), retaining expert consultants, and inspecting evidence and real and personal properties. Plaintiffs also have analyzed the legal issues raised by their claims and Defendants’ defenses as well as the insurance coverage, solvency, and financial resources of the Defendants to evaluate their ability to pay settlements and verdicts.

1.7 In spring 2024, Judge Cahill appointed the Hon. Louis Meisinger (ret.), the Hon. Daniel Buckley (ret.), and Keith Hunter as settlement mediators (collectively, the “Mediators”) in the Special Proceeding. Representatives of the Parties then conducted multiple mediation sessions over nearly four months. The mediation sessions included attorneys representing Individual Action Plaintiffs and Class Plaintiffs (including Class Counsel) who had filed (or intended to file) tort and any other claims related to the Maui Fires, whether on an individual, representative, or class basis in state or federal court; attorneys representing Subrogation Plaintiffs; and attorneys representing Defendants. The Mediators ultimately made a Mediators’ proposal that reflected their informed view of the maximum amount that Defendants could fairly and practicably contribute based on the facts and circumstances of the case, including potential exposure, availability of insurance, and limitations on ability to pay. The Mediators proposed that Defendants contribute the Aggregate Settlement Amount, according to a payment schedule, to reach a global settlement of all Released Claims. The Mediators also proposed what each Defendant’s respective share of the Aggregate Settlement Amount would be.

1.8 On August 2, 2024, the Parties entered into a Term Sheet setting forth the material terms and conditions for a comprehensive global settlement to resolve, release, and forever discharge all Released Claims, expressly providing that the comprehensive global settlement fund in the amount of the Aggregate Settlement Amount must fully resolve all Released Claims, including those that had been brought or could have been brought by all Plaintiffs, including Individual Plaintiffs and Class Plaintiffs, Defendants, the Subrogation Plaintiffs, any other

insurers or entities that have or may have subrogation claims, and any relevant federal agency or department.¹

1.9 The Parties thereafter agreed to create two settlement funds to effectuate the global settlement contemplated by the Term Sheet: the Class Settlement Fund and the Individual Settlement Fund. Class Counsel and Liaison Counsel have agreed to decide the Individual Settlement Amount and the Class Settlement Amount through the procedure contemplated under Section 3.1.4.

1.10 The Parties negotiated two settlement agreements: this Class Settlement Agreement, to which Class Counsel, the Class Representatives, and Defendants are signatories, which will govern administration of the Class Settlement Fund and the release of all Maui Fires claims by Class Plaintiffs; and the Individual Settlement Agreement, to which Identified Plaintiffs' Counsel and Defendants are signatories, which is attached hereto as Exhibit 1, and which will govern administration of the Individual Settlement Fund and the release of all Maui Fires claims by Individual Plaintiffs. Together, these two funds and two agreements are intended to achieve a global resolution of all Released Claims. All Parties to these agreements understand that it is a condition to either agreement becoming final and effective that the other is also final and effective.

1.11 Upon careful review and analysis, Class Counsel have concluded that it is in the best interests of the Class Plaintiffs to settle all Released Claims against the Releasees for consideration reflected in the terms and benefits of this Class Settlement Agreement. After arm's length negotiations, including through the efforts of the Mediators, Class Counsel have considered, among other things: (1) the complexity, expense, and likely duration of the litigation, through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert development completed; (3) the potential for Defendants to prevail on the merits, in whole or in part, and as to any Defendant, on liability issues; (4) the Defendants' defenses to damages and the challenges in proving damages as to each Class Plaintiff; (5) the range of possible recovery; (6) each Defendant's ability to pay; (7) the availability of insurance; (8) the benefits of a settlement at this time to Class Plaintiffs; (9) the benefits and challenges of a global resolution and alternative resolution mechanisms, including potential bankruptcy proceedings for certain Defendants; and (10) the Mediators' reasoned proposal, and they have determined that the Aggregate Settlement Amount and the process for determining the Class Settlement Amount are fair, reasonable, adequate, and in the best interests of Class Plaintiffs, as are the terms of this Class Settlement Agreement generally. Class Counsel further represent that they have no current intention to file claims arising out of the Maui Fires against any additional Persons that are not Defendants.

1.12 Upon careful review and analysis, each Defendant has similarly concluded that it is in its best interests to settle all Released Claims against all other Defendants. After arm's length negotiations, including through the efforts of the Mediators, each Defendant has considered, among other things: (1) the complexity, expense, and likely duration of the litigation,

¹ The Term Sheet excluded from the definition of Released Claims certain derivative and securities claims asserted against the Hawaiian Electric parties, as reflected in Section 2.2 of this Class Settlement Agreement.

through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert analysis completed; (3) the potential for both Plaintiffs and other Defendants to prevail on the merits, in whole or in part; (4) the other Defendants' defenses to damages and the challenges in proving damages as to each other Defendant; (5) the range of possible recovery; (6) each Defendant's ability to pay; (7) the availability of insurance; (8) the benefits of a global settlement with all Parties at this time; and (9) the Mediators' proposal. Considering all of these factors, each Defendant has determined that the release provisions in this Class Settlement Agreement are reasonable, fair, adequate, and in its best interests, as are the terms of this Class Settlement Agreement generally.

1.13 The Class Parties agree to seek review and approval of the Class Settlement Agreement from the applicable Approving Court(s), and, upon Preliminary Approval, and after completion of all interim steps as described in this Class Settlement Agreement, the Class Parties will seek a Final Order and Judgment from the Approving Court(s), and will further seek orders and/or judgments dismissing all of the Actions with prejudice, as described more particularly below.

1.14 Neither the Class Settlement Agreement nor the Individual Settlement Agreement will be construed as evidence, or as an admission by Releasees of any liability or wrongdoing whatsoever, as an admission by the Plaintiffs of any lack of merit in their claims, or as evidence or an admission of the value of the Plaintiffs' claims.

1.15 By entering this Class Settlement Agreement, neither the State of Hawai'i nor the County of Maui, and their respective officers, employees, and departments, waives any immunity that any of them may have, except to the extent necessary for the interpretation or enforcement of this Class Settlement Agreement.

1.16 NOW, THEREFORE, in consideration of the agreements, promises, and covenants set forth in this Class Settlement Agreement, the Actions and all Released Claims by all Releasers shall be settled and compromised under the following terms and conditions:

ARTICLE II: DEFINITIONS

2.1 For the purposes of this Class Settlement Agreement, the following terms (designated by initial capitalization throughout this Class Settlement Agreement) will have the meanings set forth in this Article. Where a term is not capitalized, it shall have its ordinary meaning, in the context of the sentence, rather than the defined meaning.

2.2 "Actions" means all lawsuits against any Defendant(s) arising out of the Maui Fires, including all individual and putative class actions whether filed in state or federal court, and including complaints filed by Subrogation Plaintiffs, but not including derivative and securities claims asserted in the following cases: *Bhargal v. HEI, et al.*, Case No. 3:23-cv-04332 (N.D. Cal.); *Rice v. Connors, et al.*, Case No. 1CCV-23-0001181 (Haw. Cir. Ct.); *In re Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc. Derivative Litigation*, Case No. 3:23-cv-06627 (N.D. Cal.); *In re Hawaiian Electric Industries, Inc., Stockholder Derivative Litigation*, Case No. 24-cv-00164 (D. Haw.). For avoidance of doubt, nothing in this Class

Settlement Agreement should be construed to directly release, dismiss, or otherwise extinguish these derivative and securities claims.

2.3 “Affiliate” means, with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that Person.

2.4 “Aggregate Settlement Amount” means the \$4.037 billion total, aggregate payment to be made by Defendants to Plaintiffs by funding the Class Settlement Fund and Individual Settlement Fund, or such lesser amount as may be agreed pursuant to Section 3.3 of this Class Settlement Agreement, and Section 3.3 of the Individual Settlement Agreement. For avoidance of doubt, the Aggregate Settlement Amount includes the amount paid to the County under Section 4.1.2(k) of the Individual Settlement Agreement, which is paid from the Individual Settlement Fund.

2.5 “Approved Investments” shall have the meaning specified in Section 3.2.3.

2.6 “Approving Court” shall mean any court of competent jurisdiction to which a motion, petition, or request is made to approve or authorize the implementation of the Class Settlement Agreement or Class Settlement Plan, in whole or in part, or the Individual Settlement Agreement, or any Individual Settlement Agreement and Release, or the Individual Settlement Plan (as defined in the Individual Settlement Agreement), in whole or in part.

2.7 “Business Interruption – Within Fire Perimeters Claim” means any claim by any Person that allegedly owned or operated a business, excluding income-earning residential or commercial real property, within the Fire Perimeters for business income losses as a result of property damage caused by the Maui Fires, but is limited to businesses that have a business license and/or paid business taxes in 2022 or 2023. For the avoidance of doubt, a claim for loss of or damage to real property is not a Business Interruption – Within Fire Perimeters Claim, but may be either a Residential Property Loss – Within Fire Perimeters Claim or a Commercial Property Loss – Within Fire Perimeters Claim.

2.8 “Class Claimant” means any Person who files a claim for or receives a Monetary Award from the Class Settlement Fund.

2.9 “Class Counsel” means the class action counsel who are signatories to the Class Settlement Agreement.

2.10 “Class Parties” means the Class Plaintiffs and Defendants.

2.11 “Class Plaintiff Releasors” shall refer jointly and severally, individually and collectively to all Class Plaintiffs, and their respective past and present, direct and indirect, parents, guardians, conservators, fiduciaries, next friends, next of kin, subsidiaries, Affiliates, officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers (and any of the foregoing listed individuals’ or entities’ past and present officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers), insurers (including any Subrogation Insurers), any

person who may be a claimant under Hawai‘i Revised Statute § 663-3, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

2.12 “Class Plaintiffs” means all Persons included within the Settlement Class who do not timely and validly elect to opt-out of the Settlement Class pursuant to the procedures set forth in the Class Notice.

2.13 “Class Representatives” means the named plaintiffs in the Consolidated Complaint.

2.14 “Class Settlement Administration Expenses” means the costs incurred in administering this Class Settlement Agreement, including the costs of class notice and payments to the Class Settlement Administrator, which will be paid from the Class Settlement Fund.

2.15 “Class Settlement Administrator” has the meaning specified in Section 3.8.

2.16 “Class Settlement Agreement” means this settlement agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

2.17 “Class Settlement Amount” means the total payment to be made to the Class Settlement Fund by the Defendants out of the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3, as determined by Section 3.1.4.

2.18 “Class Settlement Fund” has the meaning described in Article III.

2.19 “Class Settlement Percentage” means the Class Settlement Amount divided by the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3.

2.20 “Class Settlement Plan” has the meaning described in Article IV.

2.21 “Commercial Property Loss – Within Fire Perimeters Claim” means any claim by the owner of real property within the Fire Perimeters that was partially or fully destroyed by the Maui Fires, for loss of or damage to that property and/or the contents thereof, that is not a Residential Property Loss – Within Fire Perimeters Claim. For avoidance of doubt, these properties include apartments, apartment buildings, condominium buildings (but not individual condominium units), but exclude home businesses that meet the definition of Residential Property Loss – Within Fire Perimeters Claims.

2.22 “Conditions” has the meaning provided for in Section 3.3.

2.23 “Consolidated Complaint” is the operative class action complaint in *Burnes, et al. v. Hawaiian Electric Co., Inc., et al.*, Case No. 2CCV-24-0000964 (Haw. Cir. Ct.).

2.24 “Defendant Releasors” shall refer jointly and severally, individually and collectively to all Defendants, and their respective past and present, direct and indirect, parents, guardians, conservators, fiduciaries, next friends, subsidiaries, Affiliates, officers, directors, employees, agents, attorneys, servants, and representatives (and any of the foregoing listed

Persons' past and present officers, directors, employees, agents, attorneys, servants, and representatives), insurers (including any Subrogation Insurers), any person who may be a claimant under Hawai'i Revised Statute § 663-3, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

2.25 "Defendants" means all of the following Persons:

2.25.1 The State of Hawai'i and all of its subdivisions, agencies, and departments (the "State");

2.25.2 The County of Maui and all of its subdivisions, agencies, and departments (the "County");

2.25.3 Hawaiian Electric Company, Inc. and Hawaiian Electric Industries, Inc. (together, "Hawaiian Electric"). (For the avoidance of doubt, Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc. are not Defendants, although they are named as defendants in pending Actions. They are intended beneficiaries of this Class Settlement Agreement, and are Releasees);

2.25.4 The Trustees of the Estate of Bernice Pauahi Bishop: Elliot Kawaiho'olana Mills, Crystal Kauilani Rose, Jennifer Noelani Goodyear-Ka'ōpua, Michelle Ka'uhane, and Robert K.W.H. Nobriga, in their fiduciary capacities as said Trustees, and not in their individual capacities (collectively, "KS");

2.25.5 Spectrum Oceanic, LLC ("Spectrum") and Charter Communications, Inc.;

2.25.6 Cincinnati Bell Inc. and Hawaiian Telcom, Inc. (collectively, "Hawaiian Telcom"); and

2.25.7 The West Maui Land Company, Inc. and certain Affiliates, including Launiupoko Irrigation Company, Inc., Hope Builders Holding LLC, Kauaula Land Company LLC, Makila Land Co., LLC, Hope Builders LLC nka Hope Builders, Inc., Launiupoko Water Company, Inc., Kauaula Land Company LLC, Kipa Centennial LLC, Wainee Land & Homes, LLC, Peter Klint Martin, individually and as trustee of the Peter Klint Martin Revocable Trust, JV Enterprises, LLC, Donna Anne Poseley, individually and as personal representative of the Estate of Douglas Poseley, Jeanne Riley, as trustee of the Jeanne Riley Trust and Successor Trustee of the James Riley trust, Makila Ranches Homeowners Association, Inc., Makila Ranches, Inc., and Olowalu Elua Associates LLC (collectively, "West Maui Land").

2.26 "Eligible Relatives" means any surviving spouse of, reciprocal beneficiary of, child of, father of, mother of, and any person wholly or partly dependent upon a person who died or suffered physical injury due to the Maui Fires, or any other Person who asserts a claim based on the death or physical injury of another due to the Maui Fires.

2.27 "Evacuation Claim" means any claim for damages arising from or relating to evacuation from the Maui Fires by any claimant who was present within the Fire Perimeters during the times outlined below and does not have a Serious Evacuation Claim.

2.27.1 Lahaina Fire: 6:30 a.m. on August 8, 2023 to 9:00 a.m. on August 9, 2023.

2.27.2 Kula Fire: 11:20 a.m. on August 8, 2023 to 9:00 a.m. on August 9, 2023.

2.27.3 Olinda Fire: 10:45 p.m. on August 7, 2023 to 9:00 a.m. on August 9, 2023.

2.28 “Excluded Person” means any Person who, as of the deadline to submit an Opt Out Form, has executed and delivered to the Class Settlement Administrator an Individual Settlement Agreement and Release.

2.29 “Final Approval” means the Approving Court issuing an order granting the motion described in Section 9.4.

2.30 “Final Order and Judgment” means the final judgment and order entered by the Approving Court finally approving the Class Settlement Agreement and Class Settlement Plan as set forth in Section 9.4.

2.31 “Final and Unappealable” means, with respect to a judgment, order, or opinion, that such judgment, order, or opinion has achieved any one of the following criteria: (1) all Persons with a right to appeal the judgment, order, or opinion have waived or forfeited their right to do so; (2) the time to appeal has expired with no appeal filed; (3) the judgment, order, or opinion has been affirmed by an appellate court with no further possibility of appeal; or (4) all appeals from the judgment, order, or opinion have been dismissed.

2.32 “Fire Perimeters” means the boundaries of the geographic areas burned by the August 2023 fires in Lahaina, Kula, and Olinda, respectively, as determined by the Wildland Fire Interagency Geospatial Services (“WFIGS”) Group and as reflected in the WFIGS Interagency Fire Perimeters maps maintained by the National Interagency Fire Center, and attached hereto as Exhibit 3. Lahaina Fire Perimeter, Kula Fire Perimeter, or Olinda Fire Perimeter refer to the specific fire perimeter for the August 8, 2023, fire in that respective area.

2.33 “Government Entities” means any government agency, department, division, subdivision, unit, component, bureau, commission, office, board, or instrumentality of any kind, including federal, state, and municipal entities, that could assert any Released Claim against any Releasee.

2.34 “Hawaiian Electric” has the meaning specified in Section 2.25.3.

2.35 “Holdback Claim” has the meaning specified in Section 8.3.3.

2.36 “Holdback Credit” has the meaning specified in Section 8.3.4.

2.37 “Holdback Fund” has the meaning specified in Section 8.3.

2.38 “Holdback Remainder Amount” has the meaning specified in Section 8.3.5(c).

2.39 “Identified Plaintiffs’ Counsel” mean the attorneys representing Individual Action Plaintiffs who are signatories to the Individual Settlement Agreement.

2.40 “Immediate Family Member” means, as to a Person, a spouse, reciprocal beneficiary, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, stepsibling, and equivalent adoptive relationships.

2.41 “Individual Action Plaintiffs” means individual plaintiffs who have pending Actions as of the Settlement Date.

2.42 “Individual Defendant Aggregate Contribution” means the sum of each Defendant’s Individual Defendant Class Contribution and Individual Defendant IP Contribution.

2.43 “Individual Defendant Class Contribution” means the amount each Defendant has agreed to contribute to the Class Settlement Fund, as further described in Sections 3.1 and 3.3.

2.44 “Individual Defendant IP Contribution” means the amount each Defendant has agreed to contribute to the Individual Settlement Fund, as described in the Individual Settlement Agreement.

2.45 “Individual Plaintiffs” means all Persons who timely and validly execute a signed Individual Settlement Agreement and Release in the form attached to the Individual Settlement Agreement as Exhibit 4.

2.46 “Individual Settlement Administrator” means the settlement administrator for the Individual Settlement Fund, as described in Section 3.8 of the Individual Settlement Agreement.

2.47 “Individual Settlement Agreement” means the settlement agreement signed by Identified Plaintiffs’ Counsel and Defendants to provide for the release of all Released Claims by Individual Plaintiffs, attached hereto as Exhibit 1.

2.48 “Individual Settlement Agreement and Release” means the document that each Individual Plaintiff must sign to become an Individual Plaintiff.

2.49 “Individual Settlement Amount” means the total payment to be made to the Individual Settlement Fund by the Defendants out of the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3, as determined by Section 3.1.4.

2.50 “Individual Settlement Fund” means the fund created to provide Monetary Awards to Individual Plaintiffs, as described in the Individual Settlement Agreement.

2.51 “Initial Defendant Payment” means the total amount due to be paid by each individual Defendant on the Initial Payment Due Date to the Class Settlement Fund and the Individual Settlement Fund (cumulatively) but does not include any subsequent payments pursuant to a payment schedule.

2.52 “Initial Payment Due Date” means the initial deadline for each Defendant to make its Initial Defendant Payment as described in Section 3.3.

2.53 “Liaison Counsel” means the court-appointed Liaison Counsel pursuant to Case Management Order No. 1 entered in the Special Proceeding who are signatories to the Individual

Settlement Agreement, namely Cynthia K. Wong, Jesse Max Creed, Jacob Lowenthal, and Jan K. Apo.

2.54 “Litigation Trustee” means an individual appointed by Plaintiffs’ Counsel and approved by the Court to manage any litigation arising from non-payment of any part of an Individual Aggregate Defendant Contribution. For the avoidance of doubt, the “Litigation Trustee” is the same individual designated “Litigation Trustee” in the Individual Settlement Agreement.

2.55 “Maui Fires” has the meaning as specified in the opening paragraph of this Class Settlement Agreement.

2.56 “Mediators” has the meaning as specified in Section 1.7.

2.57 “Monetary Award” means the payment of money from the Class Settlement Fund to a Class Claimant as set forth in Section 4.1.

2.58 “Necessary Approvals” means those Conditions identified in Section 3.3.1(a), (b), (c), and (d).

2.59 “Necessary Holdback Amount” has the meaning specified in Section 8.3.5(b).

2.60 “Non-Participant” means any Person who is a member of the Settlement Class who opts out and, as of the day after the Return Date, is not an Individual Plaintiff.

2.61 “Non-State Defendants” means all Defendants except for the State.

2.62 “One Ohana Fund” means the Maui Wildfires Compensation Program entered into on March 1, 2024.

2.63 “Opt Out Form” means the form, under Section 4.3, that must be timely and properly submitted by a member of the Settlement Class for that Person to not become a Class Plaintiff.

2.64 “Parties” means, collectively, Defendants and Plaintiffs.

2.65 “Person” means an individual, corporation, company, partnership, limited liability company, joint venture, association, trust, or other entity, including a government agency, division, or department.

2.66 “Plaintiffs” means, collectively, all Individual Plaintiffs and Class Plaintiffs.

2.67 “Plaintiffs’ Counsel” means, collectively, Class Counsel and Liaison Counsel.

2.68 “Preliminary Approval” means an Approving Court issuing an order granting the motion described in Section 9.1.

2.69 “Released Claims” means all claims, counterclaims, cross-claims, actions, rights, disputes, and causes of action of any kind or nature whatsoever, including claims for relief,

damages, liabilities, suits, arbitrations, costs, expenses, compensations, fees, attorneys' fees, experts' and consultants' fees, demands, injuries, and/or losses, including, but not limited to, economic losses, medical expenses, emotional distress, property damage, diminution in property value, business interruption damages, lost profits, personal injury, medical monitoring, wrongful death, contribution, and indemnity, whether based on federal, state, local, common, or foreign law, in contract, statute, rule, ordinance, administrative provision or regulation, tort, equity, or otherwise, whether foreign or domestic, whether asserted or unasserted, known or unknown, suspected or unsuspected, liquidated or unliquidated, matured or unmatured, discoverable or undiscoverable, foreseen or unforeseen, fixed or contingent, accrued or unaccrued, direct or indirect, including those that are concealed or hidden, whether class or individual in nature, past, present, or future, in contract, statute, tort, equity, or otherwise, arising from, resulting from, due to, or relating in any way to the Maui Fires.

2.70 "Releasees" shall refer jointly and severally, individually and collectively to Defendants and all of their past, present, and future, direct or indirect, respective departments, holding companies, Affiliates, related companies, parent entities, subsidiaries, predecessors, and successors; all of their respective past, present, and future, direct or indirect, employees, stockholders, shareholders, officers, directors, boards of directors, agents, advisors, accountants, attorneys, representatives, employees, adjusters, insurers, reinsurers, assigns, general partners, limited partners, members, managers, member managers, funds, investors, co-investors, investment managers, investment vehicles, investment accounts, portfolio companies, principals, joint venturers, transferees, heirs, beneficiaries, executors, estate administrators, trustees, associates, or personal representatives, contractors, subcontractors, and vendors. The Releasees shall include, without limitation, the Persons listed on Exhibit 5 hereto. Releasees that are not Defendants are intended third-party beneficiaries under the Class Settlement Agreement that have relied upon and may enforce the Class Settlement Agreement.

2.71 "Releasers" shall refer collectively to Class Plaintiff Releasers and Defendant Releasers.

2.72 "Renter – Within Fire Perimeters Claim" means any claim for loss of, or damage to, personal property as a result of the Maui Fires by a Person who resided in and/or rented, but did not own, residential property within the Fire Perimeters.

2.73 "Residential Property Loss – Within Fire Perimeters Claim" means any claim by the owner of real property within the Fire Perimeters that was used for residential purposes and was partially or fully destroyed by the Maui Fires for loss of or damage to that real property and the contents thereof. For the avoidance of doubt, these properties include single family residences and units in condominiums, duplexes, and similar structures, whether or not rented or occupied, and whether or not a primary residence, but exclude apartments.

2.74 "Return Date" means the deadline for Individual Plaintiffs to provide the Administrator with signed Individual Settlement Agreement and Releases, which shall be 60 days after the deadline to opt out of the Settlement Class.

2.75 "Serious Evacuation Claim" means any claim for damages arising from or relating to evacuation from the Maui Fires by any claimant who was present within the Fire

Perimeters at the times specified in Section 2.27.1, 2.27.2, or 2.27.3, and was in danger of immediate bodily harm.

2.76 “Serious Physical Injury Claim” means any claim for alleged physical injury as a result of the Maui Fires that meets one or more of the following conditions:

2.76.1 injuries requiring overnight hospitalization for one or more nights;

2.76.2 second- or third-degree burns;

2.76.3 cardiac arrest, stroke, and/or acute heart failure that occurred or was diagnosed between August 8, 2023 and August 15, 2023;

2.76.4 inhalational lung injuries requiring hospitalization and/or resulting in chronic functional lung impairment;

2.76.5 brain injuries that occurred or were diagnosed between August 8, 2023 and August 15, 2023;

2.76.6 spinal injuries that occurred or were diagnosed between August 8, 2023 and August 15, 2023;

2.76.7 any injury that resulted in at least \$30,000 in medical costs (whether or not paid out of pocket by the claimant).

2.77 “Settlement Class” means all Persons who (1) owned, rented, or resided on real property, or owned personal property, within the Fire Perimeters or within 0.5 miles of the Fire Perimeters on August 8, 2023, (2) owned, operated, or otherwise worked for or in connection with a business within the Fire Perimeters or within 0.5 miles of the Fire Perimeters at any time between August 8, 2023 and October 8, 2023, (3) were present within the Fire Perimeters or within 5 miles of the Fire Perimeters at any time between August 8, 2023 and 9:00 a.m. on August 9, 2023, (4) suffered physical injury due to the Maui Fires, or are Eligible Relatives of such persons, (5) are personal representatives or Eligible Relatives of a person who died due to the Maui Fires, (6) are Immediate Family Members of Persons who were present within the Fire Perimeters on August 8, 2023; (7) purchased a ticket prior to August 8, 2023 for travel by plane or ship to Maui between August 8, 2023 and October 8, 2023, and suffered economic loss that was not fully refunded due to trip cancellation or delay; or (8) had damage to their property on Maui between August 8, 2023 and October 8, 2023 from the Maui Fires; or (9) owned or operated a business on Maui that suffered damages resulting from a decline in tourism between August 8, 2023 and October 8, 2023. Excluded from the Settlement Class are: (a) Defendants and their counsel; (b) the judicial officers to whom any Actions are assigned; (c) insurers and insurance syndicates that claim or could claim damage or harm regarding the Maui Fires arising out of a right of subrogation or reimbursement; and (d) any Excluded Person. For the avoidance of doubt, exclusion (c) does not preclude an insurer from submitting a claim on behalf of its policyholder as set forth in Section 4.1.2(k).

2.78 “Settlement Date” has the meaning specified in the opening paragraph of this Class Settlement Agreement.

2.79 “Special Proceeding” means that special proceeding opened in the Second Circuit Court, State of Hawai‘i, by Judge Cahill on October 27, 2023, captioned *In the Matter of the Petition for the Coordination of Individual Plaintiffs Maui Fires Cases*, Case No. 2CSP-23-0000057.

2.80 “Subrogation Plaintiffs” means all plaintiffs in the following actions originally filed as: *Amguard Insurance, et al. v. MECO, et al.*, Case No. 1CCV-24-0000068 (Haw. Cir. Ct.); *Certain Underwriters at Lloyd’s London Subscribing to Policy Number TRIB223061 v. MECO, et al.*, Case No. 1CCV-24-0000179 (Haw. Cir. Ct.); *Hyundai Marine & Fire Insurance Company, Ltd. v. MECO, et al.*, Case No. 1CCV-24-0000437 (Haw. Cir. Ct.); *The Dentist Insurance Co. v. MECO, et al.*, Case Nos. 2CCV-24-0000668, 2CCV-24-0000800, 2CCV-24-0000801, 2CCV-24-0000802 (Haw. Cir. Ct.). Subrogation Plaintiffs also include any other insurance carriers with subrogation claims arising out of the Maui Fires that are represented by any law firm in those actions, and, for the avoidance of doubt, other Persons to whom any insurance carrier has assigned the rights, title, interest, or proceeds of a subrogation claim arising out of the Maui Fires.

2.81 “Subrogation Insurers” means any insurer or insurance syndicate that paid, or reserved for future payment, any property damage claims (including business loss or interruption) arising out of the Maui Fires, including but not limited to the Subrogation Plaintiffs, and, for the avoidance of doubt, other Persons to whom any such insurer or insurance syndicate has assigned the rights, title, interest, or proceeds for claims arising out of such payments or reservations.

2.82 “Term Sheet” means that certain settlement term sheet dated August 2, 2024.

2.83 “Termination Event” has the meaning specified in Section 8.1.3.

2.84 “Wrongful Death Claim” means any claim (a) for alleged wrongful death by any Person, such as a personal representative, authorized by law to bring a claim on behalf of any individual identified on Exhibit 6 or any other individual who, to a reasonable degree of medical certainty, died as a result of the Maui Fires; and (b) by an Eligible Relative for recovery of damages allegedly caused by the death of any such individual.

2.85 Unless the context requires otherwise, (i) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (ii) the word “or” shall be construed in its inclusive sense to have the same meaning and effect as the words “and/or”; (iii) the word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (iv) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Haw. Rev. Stat. § 8-1), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (v) references to this Settlement Agreement will include all exhibits, schedules, and annexes hereto; (vi) references to any law will include all rules and regulations promulgated thereunder; (vii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; (viii) when a capitalized singular form of a plural defined term is used, it refers to any one of the defined term; (ix) when a capitalized

plural form of a singular defined term is used, it refers to one or more of the defined term; (x) references to dollars or “\$” are to United States dollars; and (xi) all day and time references are based on Hawai‘i Standard Time.

ARTICLE III: SETTLEMENT FUND

3.1 **Defendant Aggregate Contributions.** In consideration of the releases set forth in Article VII of this Class Settlement Agreement and Article VII of the Individual Settlement Agreement, the dismissal with prejudice of the Actions, and the terms and conditions of both the Class Settlement Agreement and the Individual Settlement Agreement, each Defendant will, in addition to performing its other obligations set forth in this Class Settlement Agreement, pay or cause to be paid its Individual Defendant Aggregate Settlement Contribution at the times and in the amounts set forth in Section 3.3 of this Class Settlement Agreement and Section 3.3 of the Individual Settlement Agreement, with each Defendant’s Individual Defendant Aggregate Contribution being the amount that has been agreed upon by that Defendant with the Mediators.

3.1.1 A Defendant’s payment of its Individual Defendant Aggregate Contribution into the Class and Individual Settlement Funds shall satisfy all monetary obligations of that Defendant under both this Class Settlement Agreement and the Individual Settlement Agreement. In no event shall any Defendant be required to pay more than its Individual Defendant Aggregate Contribution.

3.1.2 Defendants are not jointly liable for the whole amount to be paid into the Class Settlement Fund and Individual Settlement Fund, or either of them. Any failure by any Defendant to timely pay all or part of its Individual Defendant Aggregate Contribution—including either its Individual Defendant Class Contribution or its Individual Defendant IP Contribution—shall not affect the effectiveness of any release of any Released Claim, including as to any other Defendant (and its associated Releasees), nor provide Plaintiffs a cause of action against any Defendant (or its associated Releasees) other than the non-paying Defendant for that payment.

3.1.3 Each Defendant’s contribution to the One Ohana Fund shall be a credit that will be applied dollar-for-dollar as a partial payment of its Individual Defendant Aggregate Contribution, and the Aggregate Settlement Amount includes such contributions.

3.1.4 **Class Settlement Amount.** The Class Settlement Amount and the Individual Settlement Amount will be determined in accordance with the terms and conditions set forth in Exhibit 10. The procedures set forth in Exhibit 10 to determine the Class Settlement Amount and the Individual Settlement Amount may not modify or add to any provision of this Class Settlement Agreement or the Individual Settlement Agreement, including, but not limited to, the definition of the Settlement Class, the Releases under Section VII, the Aggregate Settlement Amount, and the terms of Section 4.1.2(k) of the Individual Settlement Agreement. For avoidance of doubt, no requirement in this Class Settlement Agreement may be altered without the written consent of all signatories to this Class Settlement Agreement.

3.2 Creation of Class Settlement Fund.

3.2.1 Upon payment of any portion of any Individual Defendant Class Contribution into the Class Settlement Fund, the Class Settlement Fund shall become a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1. Class Counsel or the Class Settlement Administrator shall establish accounts that together will be designated as a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1, pursuant to the Internal Revenue Code.

3.2.2 Neither the Class Parties nor the Class Settlement Administrator shall take any position in any filing or before any tax authority that is inconsistent with treating the Class Settlement Fund as a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1. Each Defendant shall be a “transferor,” and the Class Settlement Administrator shall be the “administrator” of the Class Settlement Fund within the meaning of 26 C.F.R. §§ 1.468B-1(d)(1) and 1.468B-2(k)(3), respectively. As a result, the Class Settlement Administrator will be responsible for all tax paying, filing, withholding, and reporting obligations of the “qualified settlement fund,” including, without limitation, those arising from any payments made from the Class Settlement Fund, including any reporting required on IRS Form 1099 for distributions made from the Class Settlement Fund. The Class Parties agree to take all necessary and reasonable actions to qualify the Class Settlement Fund pursuant to the United States Treasury Regulations.

3.2.3 The Class Settlement Administrator shall hold the cash in the Class Settlement Fund in one or more account(s) that are either (i) FDIC-insured and/or (ii) invested in securities backed by the full faith and protection of the U.S. Government (either in the form of U.S. Treasury bonds or in the form of a Treasury securities money market account) (“Approved Investments”). The Class Settlement Administrator shall make such investments in Approved Investments on the same day it receives Class Settlement Fund payments. During any settlement period and/or when cash is in the Class Settlement Administrator’s account prior to the payment to Class Claimants, the Class Settlement Administrator shall hold such cash in FDIC-insured accounts, providing FDIC insurance for all such funds. The Class Settlement Administrator shall take all precautions necessary to ensure that the funds are used solely for the purposes authorized by this Class Settlement Agreement.

3.2.4 Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Class Settlement Fund, including any risk of bank failures, seizures, freezes, or fraudulent or incorrect payments, which shall be the sole responsibility of Class Counsel and the Class Settlement Administrator. Class Claimants and Class Counsel bear all risk and liability in the event that the bank is placed into receivership or conservatorship, and Class Claimants cannot access or receive some or all of the funds from the Class Settlement Amount. Any such bank receivership or conservatorship shall not limit or otherwise affect the releases of the Releasees, as defined pursuant to the Class Settlement Agreement.

3.2.5 Class Counsel and the Class Settlement Administrator will segregate KS’s Individual Defendant Class Contribution from the contributions of the other Defendants in a separate account that is part of the Class Settlement Fund. The distributions from this account shall be used to pay claims related to the Lahaina fire only.

3.3 Timing of Payments to Class Settlement Fund.

3.3.1 No payment by any Defendant will be due until the Initial Payment Due Date. The Initial Payment Due Date shall be 30 days after each of the following Conditions has been satisfied, except for the Condition specified in subsection (f), which, per Section 5.2, must occur on or before the Initial Payment Due Date.

(a) As to the State, the enactment of legislation appropriating funds for the State's Individual Defendant Aggregate Contribution;

(b) As to KS, approvals of KS's Individual Defendant Aggregate Contribution through: (1) written fiduciary affirmation letters from the State Attorney General (as *parens patriae*); (2) fiduciary approvals from the State Probate Court (in KS' open-probate case), in a Final and Unappealable order; and (3) tax approvals from the Internal Revenue Service (as a tax-exempt organization), in a Private Letter Ruling. For these approvals, KS must complete and submit to regulators its fiduciary reviews of expected liabilities, financial capacities, the Class Settlement Plan, and the Individual Settlement Plan (as defined in the Individual Settlement Agreement), to determine if its Individual Defendant Aggregate Contribution is, among other things, prudent, fiduciarily justified, and without impermissible private benefit;

(c) Final Approval of the Class Settlement Agreement and Class Settlement Plan;

(d) Any other approvals necessary to render any release provided by any Plaintiff, including any Class or Individual Plaintiff, enforceable;

(e) Satisfaction of the requirements set forth in Section 5.1.1 or Section 5.1.2;

(f) Satisfaction of the requirement set forth in Section 5.2;

(g) The Final Order and Judgment has become Final and Unappealable;

(h) The deadlines for exercising all termination rights set forth in Article VIII have passed with no Party validly exercising such termination rights; and

(i) The Approving Court has made a Final and Unappealable good-faith determination approving the Class Settlement Agreement and Individual Settlement Agreement in accordance with Section 9.3.

3.3.2 Each Defendant will pay its Individual Defendant Class Contribution according to the following schedule:

3.3.3 For Hawaiian Electric, the Class Settlement Percentage multiplied by \$478,750,000 on the Initial Payment Due Date, and three additional payments of the Class Settlement Percentage multiplied by \$478,750,000 that are, in each case, made one year and one

day after the previous one, plus the amount refunded by the One Ohana Fund of the principal amount Hawaiian Electric contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of Hawaiian Electric's receipt of such funds, provided that, at Hawaiian Electric's option, Hawaiian Electric may accelerate all or any portion of amounts due after the Initial Payment Due Date, in which case, subject to Section 3.4, such accelerated payments shall be discounted at the rate of 5.5%, with a corresponding reduction in its Individual Defendant Class Contribution and Individual Defendant Aggregate Contribution, as well as the Aggregate Settlement Amount and the Class Settlement Amount.

(a) Hawaiian Electric further agrees to the conditions under Appendix B.

3.3.4 For the State of Hawai'i, \$201,875,000 multiplied by the Class Settlement Percentage on the Initial Payment Due Date, and \$201,875,000 multiplied by the Class Settlement Percentage on each of the three successive anniversaries of the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount the State of Hawai'i contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of the State of Hawai'i's receipt of such funds.

3.3.5 For KS, the Class Settlement Percentage multiplied by \$213,750,000 on the Initial Payment Due Date, and the Class Settlement Percentage multiplied by \$213,750,000 on each of the three successive anniversaries of the Initial Payment Due Date, provided that, at KS's option, KS may accelerate all or any portion of amounts due after the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount KS contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of KS's receipt of such funds.

3.3.6 For Hawaiian Telecom, \$97,500,000 multiplied by the Class Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount Hawaiian Telecom contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of Hawaiian Telecom's receipt of such funds.

3.3.7 For Spectrum, \$177,500,000 multiplied by the Class Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount Spectrum contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of Spectrum's receipt of such funds.

3.3.8 For West Maui Land, \$9,500,000 multiplied by the Class Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount West Maui Land contributed to the One Ohana Fund (not including interest) multiplied by the Class Settlement Percentage within 30 days of West Maui Land's receipt of such funds.

3.3.9 If a Defendant elects to make an accelerated payment, such Defendant will provide written notice to Plaintiffs' Counsel thirty (30) days prior to the date of such payment.

Such notice shall set forth the amount of the accelerated payment, how the amount was calculated (including which payment(s) is/are accelerated), and the schedule of remaining payments. Any dispute about the calculations shall be subject to the dispute resolution provision in Section 10.2.

3.4 **Holdback.** In accordance with Section 8.3, the Class Settlement Administrator and the Individual Settlement Administrator shall hold back certain funds from each payment by any Defendant to the Class Settlement Fund or Individual Settlement Fund.

3.5 **Uses of Settlement Fund.** All Monetary Awards to Class Claimants, Class Settlement Administration Expenses, awards of attorneys' fees or costs or other amounts to Class Counsel, amounts paid to Class Representatives as service awards, payments to Subrogating Insurers or for medical or other liens for Class Plaintiffs, if any, as to Released Claims, and payments or amounts due on Holdback Claims per Section 8.3, shall be paid exclusively from the Class Settlement Fund. The Class Settlement Fund and Individual Settlement Fund are, collectively, the sole sources of recovery for Plaintiffs, Non-Participants, Government Entities, and Subrogation Insurers for any Released Claims.

3.6 **Taxes.** Class Claimants shall be solely responsible for, and are legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by them to any national, federal, state, local, regional, or any other governmental taxing authority as a result of any payment made in connection with this Class Settlement Agreement. Class Claimants and Class Counsel understand that Defendants have not made, and they do not rely upon, any representations regarding the tax treatment of the payments made in connection with this Class Settlement Agreement. Moreover, Class Claimants agree to indemnify and hold Defendants and Releasees harmless if any governmental taxing authority asserts against any Defendant or other Releasee any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon any payment made in connection with this Class Settlement Agreement.

3.7 **Attorneys' Fees and Costs.**

3.7.1 Class Counsel and Defendants did not discuss attorneys' fees or reimbursement of costs prior to agreement on the material terms of the Class Settlement Agreement. Class Counsel may petition the Approving Court for an award of fees and costs for work performed in connection with the Actions filed by Class Counsel and the Class Settlement Agreement that is not inconsistent with applicable law. Any award of attorneys' fees or costs to Class Counsel shall be paid from the Class Settlement Fund.

3.7.2 For the avoidance of doubt, Defendants shall have no responsibility for any payments beyond their Individual Defendant Aggregate Contributions, and no responsibility to pay any fees or costs other than insofar as those fees and costs are paid from, in the aggregate, the Class Settlement Fund and Individual Settlement Fund. Plaintiffs shall have no responsibility to pay any fees or costs of any Defendant except where specified in this Class Settlement Agreement.

3.7.3 Defendants shall bear each of their own attorneys' fees and costs incurred in the Actions and this Class Settlement Agreement.

3.8 **Class Settlement Administrator.** The motion seeking Preliminary Approval of this Class Settlement Agreement will request that the Approving Court appoint a Class Settlement Administrator. Except as expressly stated herein, Defendants shall not have any responsibility, authority, or liability for the selection of the Settlement Administrator, the administration of the Settlement, the Class Settlement Plan, receiving and responding to any inquiries from Class Claimants, or disbursement of funds to Class Claimants. For avoidance of doubt, the Class Settlement Administrator may be the same Person as the Individual Settlement Administrator. The Class Settlement Administrator's rights, obligations, responsibilities, and authority shall include the following:

3.8.1 The Class Settlement Administrator shall administer the Settlement according to the terms of this Settlement Agreement, the Class Settlement Plan, and orders of the Court. The Class Settlement Administrator shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, this Class Settlement Agreement or the Class Settlement Plan, deemed by the Class Settlement Administrator and any consultants retained by the Class Settlement Administrator to be reasonably necessary for the efficient and timely administration of this Class Settlement Agreement and the Class Settlement Plan.

3.8.2 The Class Settlement Administrator shall determine eligibility of Class Claimants for Monetary Awards according to the terms of this Settlement Agreement, the Class Settlement Plan, and orders of the Court, and shall create administrative procedures and administrative processes supplementary to those specified in this Class Settlement Agreement and the Class Settlement Plan that provide further specific details about how the Class Settlement Fund is administered, and/or other aspects of this Class Settlement Agreement and the Class Settlement Plan; provided, however, that such procedures comply with and are in no way inconsistent with the terms of this Class Settlement Agreement and the Class Settlement Plan.

3.8.3 The Class Settlement Administrator shall be compensated for its reasonable and necessary charges incurred in the performance of the position at a reasonable rate for the services to be performed, as approved by the Approving Court, and such approved compensation shall be part of the Settlement Administration Expenses.

3.8.4 Beginning the first January after appointment, the Class Settlement Administrator will provide annual financial reports to the Court, Defendants, and Class Counsel, based on information from the preceding year, regarding: (a) the number of Class Claimants who received Monetary Awards, and the number of Class Claimants who sought but were found by the Class Settlement Administrator not to qualify for Monetary Awards; (b) the monetary amounts paid through Monetary Awards; (c) the number of Class Claimants for whom appeals are pending regarding Monetary Awards; (d) the identification/breakdown of any law firms representing Class Claimants on an individual basis, if known; (e) administrative costs, including a summary accounting of the administrative expenses incurred by the Class Settlement Administrator; (f) the projected expenses/administrative costs over the next calendar year; (g) the

monies remaining in the Class Settlement Fund; and (h) any other information requested by the Court.

3.8.5 The Defendants may elect, at their own expense, to cause an audit to be performed by a certified public accountant of the financial records of the Class Settlement Administrator, and the Class Settlement Administrator shall cooperate in good faith with the audit. Audits may be conducted at any time. Complete copies of the audit findings report will be provided to the Court and to any Defendant or Class Counsel that pays their pro-rata share of the cost of the audit.

3.8.6 If the Class Settlement Administrator resigns or otherwise cannot perform its duties and responsibilities under the Class Settlement Agreement, a replacement will be selected by Class Counsel, after consultation with Defendants. Any disputes about the replacement of the Class Settlement Administrator shall be decided pursuant to Section 10.2.

3.9 **Website.** Upon entry of the order granting Preliminary Approval, Class Counsel in conjunction with the Class Settlement Administrator will establish and maintain a public website containing information about the Settlement Agreement, including the Settlement class notice, the individual notice, and “Frequently Asked Questions.”

ARTICLE IV: PARTICIPATION IN THE CLASS SETTLEMENT

4.1 **Settlement Plan.** Pursuant to Section 4.1.1, Class Counsel will develop a Class Settlement Plan for the administration of the Class Settlement Fund, the final version of which shall be filed publicly with the Approving Court pursuant to Section 9.1.1.

4.1.1 Class Counsel will present a proposed Class Settlement Plan to Defendants within 24 days after the filing of the Preliminary Approval Motion. Within 21 days of receipt of the Class Settlement Plan, Defendants shall advise of any objections or requested modifications. Defendants may file objections to the Class Settlement Plan with the Approving Court, including on the grounds that the Class Settlement Plan is inconsistent with this Class Settlement Agreement. In the event that the Approving Court requires changes to the Class Settlement Plan, the Class Parties remain bound to the Class Settlement Agreement, except that requirements that are expressly stated in this Class Settlement Agreement (except where expressly noted) may not be altered without the written consent of all signatories to this Class Settlement Agreement.

4.1.2 The following provisions must be included in the Class Settlement Plan.

(a) The Class Settlement Plan shall include a provision for a reallocation of any residual amount from the Class Settlement Fund, with such residual amount defined as the difference between the Class Settlement Amount and the Monetary Awards actually made to all Class Claimants pursuant to the plan of allocation.

(b) The Class Settlement Plan shall include a plan for determining the Monetary Award for each Class Claimant, if any, which may address the valuation of specific

categories of claims and the proof or evidentiary showing, if any, necessary for a Class Claimant to establish entitlement to a Monetary Award.

(c) The Class Settlement Plan shall include a plan for claims administration, including the distribution and timing of Monetary Awards, and including any relevant deadlines for the submission of claim forms or accompanying information, and the submission of any required forms of information for receipt of a Monetary Award. In any such plan, a failure of a Class Plaintiff, or their agent, to comply with the requirements of the Class Settlement Plan to receive a Monetary Award, or the fact that a Class Plaintiff ultimately does not receive any particular Monetary Award that was allocated to them, will not affect the validity or enforceability of the releases set forth in Section 7.1.

(d) The Class Settlement Plan shall require that any Class Claimant who is eligible for payment from the One Ohana Fund must register for and seek payment from the One Ohana Fund as a condition precedent to receiving any money from the Class Settlement Fund. The Class Settlement Plan shall ensure that any Class Claimant's Monetary Award takes into consideration the amount of any payment that the Class Claimant previously received from the One Ohana Fund. For the avoidance of doubt, Class Claimants may receive additional money from the Class Settlement Fund beyond any amounts previously received from the One Ohana Fund.

(i) The State of Hawai'i will work with the contributors to the One Ohana Fund to reopen it for the submission of claims for a time period of at least six months after the issuance of the order of Preliminary Approval to effectuate this requirement under Section 4.1.2(d).

(e) The Class Settlement Plan shall ensure that any Class Claimant's Monetary Award does not impact the eligibility of a Class Claimant to receive assistance from the Federal Emergency Management Agency ("FEMA"). The Class Settlement Plan shall implement measures that take into consideration the amount of any payment that the Class Claimant previously received from FEMA, where known, when determining that Class Claimant's Monetary Award. For the avoidance of doubt, Class Claimants may receive additional money from the Class Settlement Fund beyond any amounts previously received from FEMA.

(f) The Class Settlement Plan shall include a plan for class notice that satisfies any applicable legal requirements, including Hawai'i law and due process.

(g) The Class Settlement Plan shall include a plan for approval of the Class Settlement Agreement by the Approving Court(s), including as to the Settlement Class. The plan shall provide, consistent with this Class Settlement Agreement, a plan to address and satisfy any applicable requirements of Hawai'i law for achieving Preliminary Approval, Final Approval, and preliminary and final certification of the Settlement Class for settlement purposes. The Class Settlement Plan may include sub-classes; involve appointment of additional class or sub-class representatives; or otherwise include provisions not inconsistent with this Class Settlement Agreement for the purpose of satisfying applicable legal requirements.

(h) The Class Settlement Plan shall propose deadlines for submitting Opt Out Forms, written objections to the Class Settlement Agreement, briefing related to Preliminary Approval, and briefing related to Final Approval.

(i) The Class Settlement Plan shall include a plan for the establishment and implementation of procedures to detect and prevent fraudulent or invalid submissions and the payment of such claims from the Class Settlement Fund. Defendants and Class Counsel each will have the absolute right and discretion, at any time, but at their sole expense, in good faith to conduct, or have conducted by an independent auditor, audits to verify Monetary Awards to Class Claimants.

(j) The Class Settlement Plan shall set forth a process for the identification of liens on a Class Claimant's recovery, including, but not limited to, any potential health care liens or recovery claims related to this Class Settlement Agreement, as well as any liens related to property insurance or business loss claims. The plan shall require any Class Claimant to, as part of the claims process or otherwise to be eligible for a Monetary Award, provide the names of any insurers, including for medical coverage, property loss or damage, and business loss or interruption, to which the Class Claimant has made a claim for payment of any sums arising out of or related to the Maui Fires and the amount of such payments sought and received. The plan shall set forth the process by which all liens shall be satisfied, and shall provide for the completion of any applicable reporting obligations. The plan shall provide that Class Claimants are solely responsible to pay, satisfy, compromise, or settle any costs, expenses, liens, claims, and demands. The plan shall state that no Monetary Award shall be made to a Class Claimant until all lien and other fees and cost obligations of the Class Claimant have been resolved and paid or have been withheld subject to an applicable lien holdback. The plan shall further address the role that the Approving Court will have in resolving any disputes related to identification and satisfaction of liens, including the amount of such liens. Notwithstanding the foregoing, nothing in this Class Settlement Agreement shall limit the ability of the Class Plaintiffs and the Subrogation Insurers to agree to an alternative process for resolution of liens.

(i) The Class Settlement Plan shall require, as a condition for receipt of any Monetary Award, that Class Claimants provide the Class Settlement Administrator with all information necessary to resolve all liens or rights of subrogation or reimbursement from any doctors, hospitals, other healthcare providers and servicers, and any other individuals, insurers, companies, agencies, workers' compensation insurers or agencies, governmental agencies, political subdivisions, attorneys, or other third parties, including, but not limited to, Medicare, Med-QUEST, the Veterans Administration, Tricare, the Department of Health Care Services, Medicaid, the Centers for Medicare & Medicaid Services, or any other federal or state programs or Persons (collectively, "Medical Liens"). The Class Settlement Plan shall further require Class Claimants to obtain waivers or other documentation from all Persons holding such Medical Liens, establishing that all Medical Liens for all Class Claimants have been paid, satisfied, or waived.

(ii) The Class Parties agree that, to the extent their Medicare, Medicaid, and SCHIP Extension Act ("MMSEA") reporting obligations change during the executory period of this Class Settlement Agreement, Class Claimants must provide any additional information needed to comply with such requirements.

(k) The Class Settlement Plan shall include provisions that address the resolution of claims of Subrogation Insurers for payments made to policyholders who are Class Plaintiffs but are not Class Claimants, which shall include a process for such insurers to submit claims on behalf of their insureds when such insureds do not submit a claim.

(l) The Class Settlement Plan shall not modify or adjust the amount allocated to a Class Claimant based on whether such Class Claimant received, or is entitled to receive, payments from a Subrogation Insurer under a policy of insurance.

(m) The Class Settlement Plan shall include a plan for disposition of funds that remain after the claims process, to the degree not addressed in Section 4.1.2(a).

(n) The Class Settlement Plan shall include a plan for potential distribution of Holdback Funds to Class Claimants, subject to Section 8.3.

4.2 Liability for Allocation of Consideration. Class Counsel bear full and sole responsibility and liability for allocating the Class Settlement Amount among the Class Claimants and determining how much of the Class Settlement Amount each shall receive. Class Counsel assume all risk of liability and agree to indemnify and hold Releasees harmless for all damages, losses, and any other relief, including attorneys' fees and costs, for any claim asserted against Releasees related to payment of Class Claimants, including related to allocation of the Class Settlement Amount or Aggregate Settlement Amount. The total amount paid to Class Claimants (inclusive of all attorneys' fees, expert fees, Administrator's fees, and all costs and other amounts) cannot exceed the Class Settlement Amount.

4.3 Opt-Out. A member of the Settlement Class may opt out of the Settlement Class by submitting a compliant Opt Out Form to the Class Settlement Administrator in the manner and by the date set in the class notice.

4.3.1 The Opt Out Form shall comply with all requirements in this Class Settlement Agreement, including those under this Section 4.3.

4.3.2 An Opt Out Form is compliant if, in addition to any other requirements set by the Approving Court or the Class Settlement Plan, it includes the following information:

(a) The nature of the Released Claim(s) the person submitting the Opt Out Form claims to possess. The Opt Out Form will include check boxes for the following categories of claims, as well as definitions for these claims: Wrongful Death, Serious Physical Injury, Residential Property Loss – Within Fire Perimeters, Commercial Property Loss – Within Fire Perimeters, Business Interruption – Within Fire Perimeters, Renter – Within Fire Perimeters, Serious Evacuation, Evacuation, and other. The “other” category will include a blank space for additional information. The Opt Out Form will also allow a Person to indicate, in lieu of checking one of these boxes, that they do not believe they have any basis to assert a Released Claim.

(b) The name (if applicable) and address for any property or business the Person submitting the Opt Out Form alleges was damaged by the Maui Fires.

4.3.3 “Mass” or “class” Opt Out Forms are not compliant. There is a limit of one Person per Opt Out Form. No member of the Settlement Class may submit an Opt Out Form on behalf of another member of the Settlement Class. Opt Out Forms that do not conform to this paragraph are not compliant.

4.3.4 Any member of the Settlement Class who does not submit a timely and compliant Opt Out Form is a Class Plaintiff, and will be bound by the release described in Section 7.1, among other provisions.

4.3.5 The information contained in any timely and compliant Opt Out Form must be shared with Defendants no later than seven (7) days following the deadline for submitting Opt Out Forms.

4.3.6 If a member of the Settlement Class opts out, that Person may not file an objection to the Class Settlement Agreement. Likewise, Individual Plaintiffs may not file an objection to the Class Settlement Agreement.

ARTICLE V: SUBROGATION CLAIMS AND INDEMNIFICATION

5.1 It is a Condition to this Class Settlement Agreement that, by May 19, 2025, one of the following two requirements is met:

5.1.1 Each and every Subrogation Plaintiff executes and delivers to the Parties a written agreement approved by the Parties in which each Subrogation Plaintiff agrees to release all Released Claims against Releasees; or

5.1.2 A decision of a trial court becomes Final and Unappealable holding that, if the Class and Individual Settlement Agreements become effective, (a) the Subrogation Plaintiffs’ exclusive remedy for any claims arising out of the Maui Fires would be asserting liens, if any, against their policyholders for their respective shares of the Aggregate Settlement Amount, and (b) the Subrogation Plaintiffs shall be barred from bringing or maintaining any claims arising out of the Maui Fires against the Defendants.

5.2 It is a Condition to this Class Settlement Agreement that, on or prior to the Initial Payment Due Date, all claims brought by any Subrogation Insurer against any Releasee for subrogation arising out of the Maui Fires must be dismissed with prejudice in a Final and Unappealable order.

5.3 The Defendants agree to join in any lawful and reasonable motions for expediting appellate review of the trial court’s judgments, orders, or opinions under Sections 5.1.2 and 5.2.

5.4 For the avoidance of doubt, the order entered by Judge Peter Cahill on August 19, 2024, in the Special Proceeding, constitutes a decision of a trial court that, if rendered Final and Unappealable, would satisfy Section 5.1.2.

5.5 Plaintiffs’ Counsel will promptly notify the Defendants if, in their judgment, the conditions of Section 5.1 have been satisfied. The Defendants shall thereafter promptly notify

Plaintiffs' Counsel whether, in the Defendants' judgment, the conditions in Section 5.1 have been satisfied. If the Defendants contend that the conditions have not been satisfied, and Plaintiffs' Counsel dispute that determination, the issue shall be discussed further with the assistance of the Mediators.

5.6 In the event that the Condition in Section 5.1 is satisfied by an agreement under Section 5.1.1, the signatories to this Class Settlement Agreement and the Individual Settlement Agreement will negotiate in good faith to modify both agreements consistent with the intention to establish a global resolution, including by addition of provisions for the release and/or indemnification of the Releasees with respect to all Released Claims by all Subrogation Insurers. Such modifications may include broadening the definition of Parties in this Class Settlement Agreement and/or the Individual Settlement Agreement to include Subrogation Insurers. Any modifications to this Class Settlement Agreement require the written consent of all signatories to this Class Settlement Agreement.

5.7 **Subrogation Indemnification.** Each Class Claimant who receives a Monetary Award is required to indemnify the Releasees with respect to any individual liens asserted by any Subrogation Insurer against that Class Claimant arising out of or relating to the Maui Fires.

5.7.1 Each Class Claimant who receives a Monetary Award agrees to indemnify, forever hold harmless, and defend Releasees against loss, liability, cost, or expense from any and all claims, lawsuits, appeals, liens, demands, actions, cross claims, and third-party claims arising out of the Maui Fires that have been made or brought, or that may be made or brought later, by such Person or by anyone acting on their behalf, or by anyone holding by or through them, including Persons asserting rights of subrogation in connection with such Class Claimant's claims.

5.7.2 Each Class Claimant who receives a Monetary Award specifically understands and agrees that the defense and indemnification obligation in Section 5.7.1 includes the defense, payment, and satisfaction of claims or liens by all Persons who have claimed or in the future may claim that they have money due and owing to them from this Class Settlement Agreement or any matter covered by or related to this Class Settlement Agreement, including, but not limited to, claims or liens by Persons who have provided or paid, or who will provide or pay, to or on behalf of Class Claimant, pursuant to contract, law, insurance claims or government benefits of any kind arising from the Maui Fires.

5.8 Each Class Claimant who receives a Monetary Award specifically represents that if any lien or reimbursement right is asserted under any legal theory against the proceeds herein or against Releasees, then, in consideration of the Class Claimant's Monetary Award, Class Claimant covenants to pay and satisfy such asserted lien or reimbursement right, or to satisfy the same on a compromise basis or through final determination by a court of competent jurisdiction, and to obtain a release of Releasees, and to indemnify and hold harmless Releasees from any costs, expenses, attorneys' fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien or reimbursement rights by any Person having or claiming to have such lien or reimbursement right.

ARTICLE VI: NO ADMISSION OF LIABILITY

6.1 **No Admission of Liability.** This Class Settlement Agreement (whether or not consummated), including the exhibits hereto and the Class Settlement Plan (or any other plan of allocation that may be approved by the Approving Court), the negotiations leading to the execution of this Class Settlement Agreement, and any proceedings in connection with this Class Settlement Agreement and/or approval of the Class Settlement Agreement (including any arguments proffered in connection therewith) shall not constitute, be construed as, be deemed to be, or be offered against any Releasee as evidence of any presumption, concession, or admission by Defendants or other Releasees with respect to the truth of any fact alleged by Plaintiffs, the validity of any claim that was or could have been asserted, the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, the amount of any alleged damages incurred by any or all Plaintiffs or attributable to any Defendant, or any liability, negligence, fault, or other wrongdoing of any kind by Defendants or any other Releasees, or be referred to for any other reason as against Defendants or any other Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate or enforce the provisions of this Class Settlement Agreement.

ARTICLE VII: RELEASES

7.1 **Class Plaintiff Releasors.** In consideration of the terms of this Class Settlement Agreement, each and every Class Plaintiff, on behalf of all Class Plaintiff Releasors, hereby expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever releases, discharges, and holds harmless the Releasees from any and all Released Claims and waives, compromises, relinquishes, and settles the Released Claims against Releasees. For the avoidance of doubt, nothing in this Release shall prevent the Litigation Trustee from pursuing an action contemplated by Section 7.7.

7.1.1 **Subrogation.** For the avoidance of doubt, the releases in Section 7.1 are binding on all insurers who paid Class Plaintiffs under insurance policies for claims in any way related to the Maui Fires.

7.2 Agreements with Government Entities.

7.2.1 Defendants have received letters from FEMA. Receipt of these letters is a material part of the consideration received by Defendants for this Class Settlement Agreement.

7.2.2 In addition, Defendants agree that they will work diligently and use their best efforts to obtain written releases and/or commitments from relevant Government Entities not to pursue any claims arising out of the Maui Fires against Releasees, as provided under Sections 6 and 7 of the Term Sheet, prior to the Initial Payment Due Date.

7.3 **Defendants' Releases.** In consideration of the terms of this Class Settlement Agreement and the Individual Settlement Agreement, each and every Defendant, on behalf of its respective Defendant Releasors, shall release the Releasees from any Released Claim, including cross-claims for indemnity or contribution for any Released Claim, provided, however, that,

subject to Section 8.3.6, this release shall not include cross-claims between Defendants (or their respective Defendant Releasors) for indemnity, contribution, or otherwise, for any Released Claim brought against any Releasee by any Person who is not a Plaintiff. Any Released Claim brought against any Releasee by any Person who is not a Plaintiff shall be paid and defended from the Holdback Fund, as more particularly discussed in this Class Settlement Agreement and the Individual Settlement Agreement. If a Defendant Releasor enters into a settlement of a Released Claim with any Person who is not a Plaintiff, the Defendant Releasor shall make reasonable efforts to ensure that the settlement requires the settling Person to unconditionally release all Released Claims against all Releasees, including as described in Section 8.3.3.

7.4 [Reserved]

7.5 No Claims Based on Newly Learned Facts. Class Plaintiffs, on behalf of their respective Class Plaintiff Releasors, acknowledge that they may learn additional facts relating to the Releasees' actions or omissions regarding the Released Claims. Class Plaintiffs, on behalf of their respective Class Plaintiff Releasors, agree that this Class Settlement Agreement shall be and remain effective in all respects, notwithstanding such different or additional facts and the subsequent discovery thereof. Each of the Releasors shall be deemed to have, fully, finally, and forever settled and released, resolved, relinquished, waived, and discharged any and all Released Claims, including known claims or unknown claims, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts. Class Plaintiffs, on behalf of their respective Class Plaintiff Releasors, agree to waive any and all rights they may have under any statute, code, regulation, ordinance, or the common law, which may limit or restrict the effect of a general release as to claims, including claims that Releasors do not know or suspect to exist in their favor at the time of giving the release set forth in the Class Settlement Agreement. Without limiting the generality of the foregoing, and without the Parties intending in any way to limit the scope of Section 10.11, or to suggest that Hawai'i substantive law does not govern any Released Claim, (1) Releasors certify that they are aware of and have read and reviewed the following provision of California Civil Code Section 1542, which states: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;** and (2) Class Plaintiffs, on behalf of their respective Releasors, hereby expressly waive and relinquish any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction (including Section 28-1-1602 of the Montana Code, Section 9-13-02 of the North Dakota Century Code, and Section 20-7-11 of the South Dakota Codified Laws) and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the Release set forth above. The Class Parties acknowledge that the foregoing waiver was separately bargained for and is a key element of the Class Settlement Agreement.

7.6 Timing of Release. The releases described under this Article VII shall become effective on the Initial Payment Due Date. A failure by any Defendant to make any payment

required by the Class Settlement Agreement or Individual Settlement Agreement, including any part of its Initial Defendant Payment, shall not affect the validity or enforceability of the Releases as to any Defendant or Releasee, including the defaulting Defendant. However, as noted herein, the Litigation Trustee shall have the right to pursue the remedies described in Section 7.7 against the defaulting Defendant.

7.7 Action for Non-Payment.

7.7.1 Plaintiffs' Counsel shall appoint the Litigation Trustee to manage any arbitration or litigation under this Section. The Litigation Trustee shall adopt rules for the appointment and payment of counsel. The Litigation Trustee shall be required to abide by the obligations, terms, and conditions in this Class Settlement Agreement that apply to the Litigation Trustee.

7.7.2 In the event of any non-payment by a Defendant of any part of its Individual Defendant Aggregate Contribution, the Litigation Trustee shall have as its sole and exclusive remedy claims for recovery on behalf of the Class Settlement Fund and Individual Settlement Fund solely against the Defendant failing to make such required payment (and for the avoidance of doubt, not against any other Defendant). Plaintiffs may not individually sue any Defendant for non-payment.

7.7.3 The Litigation Trustee, on behalf of the Class Settlement Fund and Individual Settlement Fund, may recover, in any successful action against a Defendant for non-payment of any part of its respective Individual Defendant Aggregate Contribution, reasonable attorneys' fees, pre-judgment interest under the prevailing Hawai'i rate, and liquidated damages of 15% per year, accruing daily as of the date of non-payment. The Parties agree, for purposes of this settlement only and for no other purpose, that this liquidated damages figure is a reasonable approximation of the daily consequential damages suffered by Class Plaintiffs as a result of nonpayment. Such consequential damages include the additional alternative-living-expenses and out-of-pocket costs associated with the delays in payment of construction for the rebuild of their homes.

7.7.4 Each Non-State Defendant consents to arbitration under Section 10.2, as modified by this Section 7.7.4, to resolve any claim by the Litigation Trustee for non-payment of its respective Individual Defendant Aggregate Contribution under this Section 7.7. For the avoidance of doubt, the procedures provided in this Section 7.7.4 do not apply to the State. In the event that the Litigation Trustee asserts that any Non-State Defendant has failed to timely make any part of its Individual Defendant Aggregate Contribution, the Litigation Trustee shall promptly provide written notice to the respective Non-State Defendant, and submit that claim to arbitration pursuant to Section 10.2. The notice shall set forth the amount the Litigation Trustee asserts was due from such Non-State Defendant, including amounts under Section 7.7.3. Within two days of receipt of such notice, such Non-State Defendant shall provide a written response, which shall set forth whether the Non-State Defendant contests that it is obligated to pay the amount set forth in the notice provided by the Litigation Trustee. The arbitrator will consolidate all claims for non-payment against a Non-State Defendant, whether for non-payment to the Class Settlement Fund or Individual Settlement Fund. In any arbitration over a failure to pay any part of a Non-State Defendant's Initial Defendant Payment, the arbitrator shall issue a final award (i)

within three days, if the Non-State Defendant fails to timely respond to the Litigation Trustee's notice under this section, or provides a response that fails to contest its obligation to make payment in the amount claimed by the Litigation Trustee or (ii) if the Non-State Defendant provides a timely response to the Litigation Trustee's notice under this section contesting its obligation to make payment in the amount claimed by the Litigation Trustee, (a) within 30 days of the Litigation Trustee initiating arbitration, with respect to an alleged failure by a Non-State Defendant to make any part of its Initial Defendant Payment and (b) within 15 days of the Litigation Trustee initiating arbitration with respect to an alleged failure by a Non-State Defendant to make any part of its Individual Defendant Aggregate Contribution other than its Initial Defendant Payment. Following issuance of the final arbitral award, the Litigation Trustee may enforce such award in the Second Circuit Court of Hawai'i, pursuant to H.R.S. § 658A-22. In any such action, the Non-State Defendant against whom the award is made will agree to any reasonable request to expedite proceedings and secure a judgment against that Non-State Defendant under H.R.S. § 658A-25.

7.8 Dismissal of All Claims. All claims asserted in any court by any Class Plaintiff Releasor against any Releasee arising out of the Maui Fires must be dismissed with prejudice within ten (10) days after the Initial Payment Due Date. Executed stipulations for dismissal with prejudice for all such claims must be provided to the Administrator within 60 days after the Return Date, to be held in escrow and provided to Defendants for filing the day after the Initial Payment Due Date.

7.9 Order Governing Non-Participants. The Parties will submit to the Second Circuit Court and request approval of a proposed order, attached as Exhibit 7, governing all Released Claims pending or subsequently brought in the Special Proceeding that are not dismissed within ten (10) days of the Initial Payment Due Date, or are thereafter filed. The Parties will request that the Special Proceeding remain open for at least three years after the Initial Payment Due Date to enforce this order.

7.10 Exclusive Remedy. Upon the effectiveness of the releases described under this Article VII, the Class Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all Released Claims against Releasees arising out of the Maui Fires shall be pursuant to the terms of this Class Settlement Agreement or, as applicable, the Individual Settlement Agreement (including as limited by Section 7.7). No Class Plaintiff shall recover, or be entitled to seek to recover, directly or indirectly, any sums from any Releasee other than the consideration received under the terms of this Class Settlement Agreement.

7.11 Covenant Not to Sue. Without limiting any of the releases described under this Article VII, the Class Parties agree and covenant that, if the releases described in this Article VII become effective, they will not take any action against any Releasee to initiate, pursue, maintain, or otherwise attempt to execute upon, collect, or enforce, any Released Claims; institute any new legal, equitable, or other action against any of the Releasees or any other Persons relating to any Released Claims; attempt to execute, collect on, or otherwise enforce, any judgment that may be entered against any of the Releasees on any Released Claims; or maintain any pending legal action that the Releasor may have filed in any court against any of the Releasees asserting any Released Claims. The Class Parties further covenant and agree that they will not sue or bring

any action or cause of action under any state, local, or federal law challenging the releases described under this Article VII.

ARTICLE VIII: CONTINGENCIES

8.1 Termination Provisions.

8.1.1 Within 30 days after the Return Date, Defendants and Class Counsel will cooperate to identify every Non-Participant, and to determine whether the thresholds for non-participation set forth in Appendix A are met. The Class Parties will rely on the information provided on the Opt Out Forms, except that Class Counsel, or any Defendant, may, within 15 days after the Return Date, present evidence that either (i) a Non-Participant is a member of one of the categories set forth in Appendix A even if that Person did not represent as such in an Opt Out Form or (ii) a Non-Participant is not a member of one of the categories set forth in Appendix A even if that Person did represent as such in an Opt Out Form. If Class Counsel and all Defendants fail to unanimously agree on whether the evidence presented merits adjusting the participation numbers for the categories in Appendix A, they will resolve their dispute through dispute resolution pursuant to Section 10.2.

8.1.2 If any participation threshold in Appendix A is, subject to resolution of any disputes under Section 8.1.1, met, then Defendants shall have sixty (60) days from the Return Date to exercise the right to rescind, terminate, or cancel this Class Settlement Agreement as follows: (i) any Defendant whose Individual Defendant Aggregate Contribution equals or exceeds 20% of the Aggregate Settlement Amount has the individual, unilateral right to terminate this Class Settlement Agreement upon written notice to all Defendants and Plaintiffs' Counsel or (ii) if at least three Defendants choose to terminate the Class Settlement Agreement then, upon written notice to all Defendants and Plaintiffs' Counsel, it is terminated. For purposes of this termination right, each set of Persons under Sections 2.25.1, 2.25.2, 2.25.3, 2.25.4, 2.25.5, 2.25.6, and 2.25.7 will count as a single Defendant (that is, for example, all Persons listed under 2.25.6 collectively count as a single Defendant).

8.1.3 If (i) the time limit for satisfaction of the Conditions under Section 5.1 has passed without satisfaction of that Condition; or (ii) one or more other Conditions has not been satisfied within two years of the date on which the motion for Preliminary Approval is filed, that will be known as a "Termination Event." On or after the date of a Termination Event, any signatory to this Class Settlement Agreement or the Individual Settlement Agreement may provide notice to the other signatories of a proposed termination of the agreement or agreements to which the signatory is a party. To be valid, the notice must state that the party providing notice believes that the satisfaction of the Conditions under Section 5.1 and/or of the other Conditions is not reasonably likely to occur within a reasonable period of time. Within 10 days of receipt of such notice, any other signatory to this Class Settlement Agreement or the Individual Settlement Agreement may contest the proposed termination. If any of the signatories to this Class Settlement Agreement or the Individual Settlement Agreement disagrees as to whether a Termination Event has occurred, or as to whether the satisfaction of the Conditions under Section 5.1 and/or of the other Conditions is reasonably likely to occur within a reasonable period of time, all signatories to both agreements shall meet and confer. If these signatories are

unable to agree as to whether the agreements may be terminated, then the signatories will resolve their dispute through dispute resolution pursuant to Section 10.2.

8.1.4 In the event that the Approving Court either denies Preliminary Approval or Final Approval or conditions Preliminary Approval or Final Approval on changes to the Class Settlement Agreement, Defendants and Class Counsel shall negotiate in good faith to modify this Class Settlement Agreement in a manner that resolves the issues identified by the Approving Court. If Defendants and Class Counsel are unable to agree on such modifications, any Defendant or Class Counsel may request the assistance of the Mediators. If the Mediators notify Defendants and Class Counsel of an impasse, then, within 10 days of receipt of such notice, any Defendant or Class Counsel may provide a notice of termination of this Class Settlement, which notice shall be effective immediately. For the avoidance of doubt, any change to the Class Settlement Plan that does not involve a change to the Settlement Agreement is not a basis for termination under this paragraph.

8.1.5 In the event of any termination under this Article VIII of either the Class Settlement Agreement or the Individual Settlement Agreement, the Class Settlement Agreement, the Individual Settlement Agreement, and all Individual Settlement Agreement and Releases shall terminate in their entirety, except as follows: with respect to the Class Settlement Agreement, as to Sections 1.14, 1.15, 8.1, Article II (to the extent such definitions are used in other surviving provisions), Article VI, and Article X; with respect to the Individual Settlement Agreement, Sections 1.14, 1.15, 8.1, Article II (to the extent such definitions are used in other surviving provisions), Article VI, and Article X; and the Parties shall have thirty (30) days to submit proposals to all relevant courts for recommencing litigation.

8.2 **Class Action.** Within ten (10) days after execution of this Class Settlement Agreement, Class Counsel and Defendants shall stipulate to amend the Consolidated Complaint, with the class definition corresponding to the Settlement Class provided in this Class Settlement Agreement.

8.3 **Holdback Fund.** Upon payment of any Defendant's Initial Defendant Payment, the Class Settlement Administrator and Individual Settlement Administrator shall begin to hold back certain funds from the Class Settlement Fund and Individual Settlement Fund, respectively, as described more fully below, and ensure they are not used to pay Monetary Awards or any other costs or expenses of settlement except as specified herein. The money held back in the Class Settlement Fund and Individual Settlement Fund, in the aggregate, is known as the "Holdback Fund." The total amount in the Holdback Fund shall be \$500 million. Although the Holdback Fund shall comprise amounts held back from the Class Settlement Fund and Individual Settlement Fund, the Class and Individual Settlement Administrators shall ensure that the Holdback Fund operates as a single fund to satisfy the requirements of Section 8.3.

8.3.1 **Respective Fund Holdback Amounts.** Subject to the schedule under Section 8.3.2, the Class Settlement Administrator shall hold back from the Class Settlement Fund the total amount of the Holdback Fund multiplied by the Class Settlement Percentage, and the Individual Settlement Administrator shall hold back from the Individual Settlement Fund the total amount of the Holdback Fund multiplied by the Individual Settlement Percentage. Whenever funds are drawn from the Holdback Fund, the Class Settlement Administrator and

Individual Settlement Administrator shall pay those funds on a pro-rata basis from the Class Settlement Fund and Individual Settlement Fund, respectively, corresponding to these percentages.

8.3.2 Holdback Schedule. Each time any Defendant makes any payment to satisfy all or part of its Individual Defendant Aggregate Contribution, the Class Settlement Administrator and Individual Settlement Administrator shall, in the aggregate, hold back from that payment for inclusion in the Holdback Fund an amount equal to the total amount of that payment times \$500 million divided by the Aggregate Settlement Amount.

8.3.3 Holdback Payments. Any Defendant that is not prohibited from doing so under Section 8.3.7 may draw funds from the Holdback Fund to pay (a) judgments and (b) settlements, in each case for any Released Claim brought by any Person that is not a Plaintiff. Such a claim is known as a “Holdback Claim.” Defendants will develop a process for approving these payments, which will be subject to review and consent of the Class Settlement Administrator, which consent may not be unreasonably withheld. Any dispute about the reasonableness of payments from the Holdback Fund shall be subject to dispute resolution pursuant to Section 10.2. A Releasee may obtain a payment from the Holdback Fund to settle a Holdback Claim only if the settlement requires the Person asserting the Holdback Claim to execute an unconditional release of all Released Claims against all Releasees, in form and substance reasonably satisfactory to the Defendants, unless all Defendants consent otherwise.

8.3.4 Holdback Credit. In the event that a Defendant makes a payment that would be drawn from the Holdback Fund under Section 8.3.3, but, as a result of the payment schedule under Section 8.3.2, the Holdback Fund does not yet have sufficient funds to cover that payment, the Defendant is entitled to a credit against the Holdback Fund for the amount that would have been properly drawn from the Holdback Fund under Section 8.3.3. The Holdback Fund will make payment of that credit when, under Section 8.3.2, it next receives funding.

8.3.5 Adjustment to Holdback Fund.

(a) On the later of (1) two years and 60 days after the Return Date or (2) two years and 15 days after the Initial Payment Due Date, the Parties shall assess whether money in the Holdback Fund should be distributed to the Individual Settlement Fund and Class Settlement Fund to be used in accordance with the Class Settlement Plan and Individual Settlement Plan. To the degree any disputes arise as to the quantity of any of the following amounts, or as to any calculation or determination necessary to calculate them, those disputes will be resolved pursuant to Section 10.2.

(b) The Parties shall calculate the Necessary Holdback Amount, which is the sum of the following four quantities:

- (1) All Holdback Credits under Section 8.3.4 that have yet to be reimbursed by the Holdback Fund;
- (2) The reasonable aggregate value of all pending Holdback Claims. The reasonable aggregate value of such claims shall be the reasonable estimate

of the Defendants' potential exposure at trial on these claims, which may be higher than the settlement value of the claims;

(3) If any Defendant has a reasonable basis to conclude that a Released Claim may yet be asserted, the reasonable value of such claim (with reasonable value defined in the same manner as under part 2). A Defendant need not identify a specific Person who will bring the Released Claim to have a reasonable basis that a Holdback Claim may be brought under this paragraph; and

(4) If any payment is owed by a Defendant as a result of a Holdback Claim, but has not yet been made, the amount not yet paid.

(c) The Parties shall calculate the Holdback Remainder Amount. This is the amount that, as of the calculation date, is included in the Holdback Fund and not yet distributed under Section 8.3.3. For avoidance of doubt, this does not include amounts, if any, set to be *added* to the Holdback Fund under Section 8.3.2 from any remaining payments Defendants are scheduled to make to the Class Settlement Fund or Individual Settlement Fund.

(d) If the Holdback Remainder Amount is greater than the Necessary Holdback Amount, then the Class Settlement Administrator shall transfer the Class Settlement Percentage multiplied by the difference between the Holdback Remainder Amount and the Necessary Remainder Amount to the Class Settlement Fund, and the Individual Settlement Administrator shall transfer the Individual Settlement Percentage multiplied by the difference between the Holdback Remainder Amount and the Necessary Remainder Amount to the Individual Settlement Fund.

(e) If the Holdback Remainder Amount is equal to or less than the Necessary Remainder Amount, then the Parties will not transfer any funds in the Holdback Fund to the Class Settlement Fund and Individual Settlement Fund.

(f) **Further Distribution of Holdback Funds.** One year after the date specified in Section 8.3.5(a), the Parties shall, in the same manner, newly calculate the Necessary Holdback Amount and the Holdback Remainder Amount, and follow the same formula and steps under Section 8.3.5. The Parties will repeat this process each year thereafter, until the Holdback Remainder Amount is zero and there are no further amounts to be added to the Holdback Fund from later payments by Defendants. Upon written consent of all Defendants, this calculation and further distribution may be done more frequently than every year.

8.3.6 Cross-claims. No Defendant or Releasee may assert a cross-claim for indemnity, contribution, or otherwise for any Released Claim brought against any Releasee unless and until the Holdback Fund is fully exhausted. For any cross-claim for indemnity, contribution, or otherwise brought by any Releasee against another Releasee that is not released under Section 7.3, the time to file such cross-claim(s) is tolled until the Holdback Fund is fully exhausted.

8.3.7 Effect of Default.

(a) If any Defendant is in default on any part of its Individual Defendant Aggregate Contribution as determined under Sections 7.7.3 or 7.7.4, or is in the process of litigating or arbitrating an allegation of default under those Sections, it may not access any funds in the Holdback Fund or assert or maintain any cross-claim for indemnity or contribution against any non-defaulting Defendant or Releasee for any Released Claim until such default is cured. A Defendant is no longer in default if (i) the factfinder or arbitrator finds that the Defendant is not in default; (ii) the Defendant cures that default by satisfying the judgment described in Sections 7.7.3 or 7.7.4; or (iii) the Litigation Trustee agrees in writing that the Defendant is not in default.

(b) A Defendant that is found not to be in default in litigation under Section 7.7.3 or in an arbitration decision issued under Section 7.7.4 is entitled to reimbursement of any amounts paid during the period of ineligibility under Section 8.3.7(a), including for judgments and settlements, that would otherwise have been payable from the Holdback Fund under Section 8.3.3.

ARTICLE IX: APPROVAL

9.1 The Defendants and their counsel, the Class Representatives, and Class Counsel agree to take all commercially reasonable actions necessary to obtain Preliminary Approval and Final Approval of the Settlement and entry of a Final Order and Judgment, as well as orders and judgments dismissing with prejudice all Released Claims against all Releasees. Defendants and their counsel, the Class Representatives, and Class Counsel agree to offer mutual support to the proposed Class Settlement Agreement in all court proceedings and public communications.

9.1.1 The following deadlines apply to the class approval process, and will be supplemented by additional deadlines contained in the order granting Preliminary Approval.

(a) Within seven (7) days after the date on which Judge Cahill issues an order determining the Class Settlement Amount and Individual Settlement Amount pursuant to Section 3.4.1, Class Counsel will provide to Defendants a draft motion for Preliminary Approval to be filed in the Approving Court.

(b) Within seven (7) days of receipt of the draft motion, Defendants shall advise of any objections or requested modifications.

(c) Within twenty-one (21) days after the date on which Judge Cahill issues an order determining the Class Settlement Amount and Individual Settlement Amount, Class Counsel will file a motion for Preliminary Approval in the Approving Court seeking Preliminary Approval of the Class Settlement Agreement.

(d) Within forty-five (45) days after filing the motion for Preliminary Approval, Class Counsel will file a Class Settlement Plan.

9.1.2 In the motion for Preliminary Approval, Class Counsel shall request that the Court (1) preliminarily approve the terms and conditions of the Class Settlement Agreement; (2) approve the notice to the Settlement Class and the claim forms and authorize the notice program distributing them; (3) preliminarily certify the Settlement Class for settlement purposes only and appoint the Class Counsel as counsel to the Settlement Class for purposes of this Settlement; and (4) schedule a Final Approval Hearing, not earlier than one-hundred (100) days after Preliminary Approval. The motion for Preliminary Approval of the settlement shall be accompanied by a Proposed Order Granting Preliminary Approval of Settlement in a form to be agreed upon by Class Counsel and Defendants. Solely for purposes of effectuating the Class Settlement Agreement, Defendants will not oppose the motion for Preliminary Approval. For the avoidance of doubt, Defendants' non-opposition to the motion for Preliminary Approval shall not be construed as an admission by any Defendant as to the appropriateness of class certification for non-settlement purposes.

9.2 Objections.

9.2.1 Any Class Plaintiff may present written objections to Final Approval of the Class Settlement Agreement. No later than such date as is ordered by the Approving Court, a Class Plaintiff who wishes to object to any aspect of the Class Settlement Agreement or Class Settlement Plan must file with the Approving Court, or as the Approving Court otherwise may direct, a written statement of the objection(s). The written statement of objection(s) must include a detailed statement of the Class Plaintiff's objection(s), as well as the specific reasons for each such objection, including any evidence and legal authority the Class Plaintiff wishes to bring to the Approving Court's attention. That written statement also must contain the Class Plaintiff's printed name, address, telephone number, and date of birth, written evidence establishing that the objector is a Class Plaintiff, and any other supporting papers, materials, or briefs the Class Plaintiff wishes the Approving Court to consider when reviewing the objection. A written objection may not be signed using any form of electronic signature but must contain the dated signature of the Class Plaintiff (not just counsel) making the objection.

9.2.2 Attorneys asserting objections on behalf of a Class Plaintiff must: (i) file a notice of appearance with the Approving Court by the date set forth in the order granting Preliminary Approval, or as the Approving Court otherwise may direct; (ii) file a sworn declaration attesting to representation of the Class Plaintiff on whose behalf the objection is being filed or a copy of the contract (to be filed *in camera*) between that attorney and that Class Plaintiff; and (iii) comply with the procedures described in this Article.

9.2.3 A Class Plaintiff who has submitted a written statement of objection(s) (or counsel individually representing him or her, if any) may seek to appear at the Final Approval hearing by filing with the Approving Court, by the date set forth in the order granting Preliminary Approval, or as the Approving Court otherwise may direct, a written notice of intention to appear at the hearing, in accordance with the requirements set forth in the order granting Preliminary Approval.

9.2.4 Any Class Plaintiff who fails to comply with the provisions of this Article will waive and forfeit any and all rights to object to the Class Settlement Agreement.

9.2.5 Mass or class objections are invalid. No Class Plaintiff may submit an objection on behalf of another Class Plaintiff.

9.3 **Good Faith Settlement Approval.** Within twenty-one (21) days after Preliminary Approval, the Parties shall file a joint motion with the Approving Court for a determination that the Class Settlement Agreement and Individual Settlement Agreement, including the Aggregate Settlement Amount, were made in good faith under the provisions of Section 663-15.5, Hawai‘i Revised Statutes. The Parties agree to make any necessary, commercially reasonable judicial filings, provide appropriate notices, and undertake reasonable efforts to obtain a good-faith settlement determination pursuant to Section 663-15.5, Hawai‘i Revised Statutes, that will bind all joint tortfeasors and co-obligors, known and unknown.

9.4 **Final Approval.** Class Counsel will provide to Defendants a draft motion for Final Approval to be filed in the Approving Court at least fourteen (14) days before it is filed. Within seven (7) days of receipt of the draft motion, Defendants shall advise of any objections or requested modifications. The motion shall request that the Court (1) finally approve the terms and conditions of the Class Settlement Agreement and Class Settlement Plan; (2) find the notice to the Settlement Class adequate under applicable law; (3) finally certify the Settlement Class for settlement purposes only; (4) direct that the Class Settlement Agreement and Class Settlement Plan be implemented according to their terms; (5) enjoin Releasers from asserting or litigating Released Claims against Releasees; (6) enter the Final Order and Judgment; and (7) reserve exclusive and continuing jurisdiction over implementation and enforcement of the Class Settlement Agreement and Class Settlement Plan. Solely for purposes of effectuating the Class Settlement Agreement, Defendants will not oppose the motion for Final Approval. For the avoidance of doubt, Defendants’ non-opposition to the motion for Final Approval shall not be construed as an admission by any Defendant as to the appropriateness of class certification for non-settlement purposes.

9.5 KS shall use reasonable best efforts to obtain within nine months of the Settlement Date (1) written fiduciary affirmation letters from the State Attorney General (as *parens patriae*); (2) fiduciary approvals from the State Probate Court (in KS’ open-probate case), in a Final and Unappealable order; and (3) tax approvals from the Internal Revenue Service (as a tax-exempt organization), in a Private Letter Ruling.

ARTICLE X: MISCELLANEOUS PROVISIONS

10.1 **Complete Agreement.** Other than as stated herein, the Class Parties warrant that no representation, promise, or inducement has been offered or made to induce any Class Party to enter into this Class Settlement Agreement and that they are competent to execute this Class Settlement Agreement and accept full responsibility therefor. This Class Settlement Agreement and its exhibits contain and constitute the entire understanding and agreement among the Class Parties and supersede all previous oral and written negotiations, agreements, commitments, and writings in connection therewith. This Class Settlement Agreement may not be amended or modified except by a writing signed by authorized representatives of all Class Parties.

10.2 Arbitration. The Class Parties agree to meet and confer in good faith to resolve any disagreements over the implementation of the terms of this Class Settlement Agreement or any other documents necessary to effectuate the Class Settlement Agreement. If the meet and confer is not successful, the Class Plaintiffs and Non-State Defendants agree to binding, non-appealable arbitration to resolve any disagreements over the implementation of the terms of this Class Settlement Agreement or any other documents necessary to effectuate the Class Settlement Agreement. In any such arbitration, there will be one arbitrator, who can be any of the three Mediators, and the Mediators will promptly determine among themselves who the arbitrator will be. If all of the three Mediators are unavailable to conduct the arbitration, then the Class Plaintiffs and Non-State Defendants will meet and confer in good faith to appoint a different arbitrator. If the Class Plaintiffs and Non-State Defendants are unable to agree upon an arbitrator, then the arbitration will occur before a panel of three arbitrators. The Non-State Defendants will select one of the three arbitrators; Class Counsel will select one of the three arbitrators; and the arbitrators selected by Non-State Defendants and Class Counsel will select the third arbitrator. In the event that an arbitration under this provision involves a dispute among Plaintiffs' Counsel (rather than solely Class Counsel) and Non-State Defendants, then Plaintiffs' Counsel shall collectively exercise all rights in this paragraph otherwise solely allocated to Class Counsel. For the avoidance of doubt, the arbitration procedures provided in this Section 10.2 do not apply to the State.

10.3 Knowing and Voluntary Agreement. Each Class Party agrees that he, she, or it is entering into this Class Settlement Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Class Party further affirms that he, she, or it has not been coerced, threatened, or intimidated into signing this Class Settlement Agreement; that he, she, or it has been advised to consult with an attorney; and that he, she, or it in fact has consulted with an attorney before signing this Class Settlement Agreement or had an opportunity to do so. Class Counsel represent that they have conducted a thorough investigation into the facts of the Actions and have diligently pursued an investigation of the claims asserted arising from or relating to the Maui Fires. Based on their own independent investigation and the extensive litigation and mediation, which led to this Settlement, Class Counsel state that they are of the opinion that the Class Settlement Agreement with Defendants is fair, reasonable, and adequate, and is in the best interest of the Class Plaintiffs, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Defendants.

10.4 Notices. Notices pursuant to this Class Settlement Agreement shall be provided to those listed and as set out in Exhibit 8.

10.5 Severability. If any part of this Class Settlement Agreement is found to be illegal, invalid, inoperative, or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Class Settlement Agreement, which shall be construed, reformed, and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Class Settlement Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Class Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law. However, the Settlement Class definition, the releases under Article VII, the Individual Defendant Aggregate Contributions, the Conditions under Sections 5.1 and 5.2, and the Aggregate Settlement Amount

are critical terms upon which the Class Settlement Agreement rests and may not be severed or altered.

10.6 Binding on Successors and Assigns. This Class Settlement Agreement shall be binding upon and inure to the benefit of the Class Parties and their respective heirs, trustees, issue, next-of-kin, executors, administrators, successors, and assigns.

10.7 Counterparts. This Class Settlement Agreement may be executed in counterparts, including by electronic means, and when each Class Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one Class Settlement Agreement, which shall be binding upon and effective as to the Parties.

10.8 Headings. The headings used in this Class Settlement Agreement are for convenient reference only, and do not alter or limit the terms of each section.

10.9 Amendment or Modification. This Class Settlement Agreement may be amended or modified only by a written instrument signed by all Class Parties and their counsel and, after Final Approval, with consent of the Approving Court.

10.10 Authorization to Enter into Settlement.

10.10.1 Class Counsel represent and warrant that they are authorized by the Class Representatives whom they represent to enter into this Class Settlement Agreement and to take all appropriate action required or permitted to be taken by such parties to effectuate its terms, and to execute any other documents required to carry out the terms of this Class Settlement Agreement.

10.10.2 Each Defendant represents and warrants:

(a) Except as to KS, and any natural persons, it is a duly organized, validly existing entity and is in good standing under the laws of the jurisdiction of its formation and is duly qualified to do business (if a business) and in good standing as a foreign entity in the jurisdiction of its principal place of business (if not formed in that jurisdiction);

(b) That it has the full legal right, power, and authority to enter into this Class Settlement Agreement and perform its obligations under this Class Settlement Agreement;

(c) That it has taken all appropriate and necessary action to authorize its execution, delivery, and performance of this Class Settlement Agreement and the transactions contemplated hereunder, except for the Necessary Approvals; and

(d) That it has obtained all consents, approvals, permits and other authorizations in connection with the execution, delivery and performance of this Class Settlement Agreement required to be obtained by it, except for the Necessary Approvals.

10.11 **Governing Law.** All terms of this Class Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of Hawai'i without regard to its principles of conflict of laws.

10.12 **Jurisdiction of the Court.** Except as otherwise provided in this Class Settlement Agreement, any dispute regarding the interpretation or validity of, or otherwise arising out of, this Class Settlement Agreement, including any disputes regarding fees, costs and/or expenses amongst counsel, shall be subject to the exclusive jurisdiction of the Approving Court and shall be decided pursuant to the laws of the State of Hawai'i. The Approving Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Class Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their respective counsel submit to the jurisdiction of the Approving Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Class Settlement Agreement and all orders and judgments entered in connection therewith. Furthermore, the Class Parties agree that, subject to Approving Court approval, the Approving Court will have jurisdiction over any claims by a Non-Participant, and that any such litigation will be deemed related to the Actions.

10.13 **Waiver of Right to Object.** By signing this Class Settlement Agreement, Class Representatives, Class Counsel, and Defendants and their counsel agree not to object to any of the terms of this Class Settlement Agreement or the Individual Settlement Agreement. Any such objection shall therefore be void and of no force or effect.

10.14 **Public Communications.** Class Counsel (including their firms and any representative on their behalf) agree that they will not make any statements that disparage the Class Settlement Agreement or Individual Settlement Agreement, Releasees, or Releasees' conduct, character, or business reputation.

10.15 **Non-Use of Work Product.** Unless inconsistent with their ethical obligations or order of the Court, or as otherwise agreed to in writing by Class Counsel and Defense Counsel, Class Counsel agree that they will not use, nor will they allow to be used, any work product derived from any discovery in these Actions, whether or not any such work product includes information designated protected under the protective order in this case, in the prosecution or litigation of any other case, claim, or action.

10.16 **Cooperation.** The Class Parties agree to cooperate fully and execute any and all supplementary documents, and take all additional actions, which may be necessary or appropriate to give full force and effect to the terms and intent of this Class Settlement Agreement.

10.17 **No Third-Party Beneficiaries.** Except for Class Plaintiffs, Defendants, the Releasees, and their respective successors and assigns, no provision of this Class Settlement Agreement is intended to create any third-party beneficiary to this Class Settlement Agreement.

10.18 **No Construction Against Any Party.** This Class Settlement Agreement is the product of negotiations between the Class Parties hereto represented by counsel and any rules of

construction relating to interpretation against the drafter of an agreement shall not apply to this Class Settlement Agreement and are expressly waived.

10.19 Reasonable Extension of Deadlines. The signatories to this Class Settlement Agreement are authorized to consent to any reasonable extension of any deadline set forth in this Class Settlement Agreement to the degree such extension does not require approval from the Approving Court(s), provided that any such extension must be agreed to by all signatories and in writing.

10.20 No Waiver. No waiver of any breach of any provision of this Class Settlement Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions of this Class Settlement Agreement. No waiver shall be effective unless made in writing and signed by the waiving party.

Signature Pages to Follow

IN WITNESS WHEREOF, the State hereby sets its hands to this Class Settlement Agreement to be effective as of the Settlement Date:

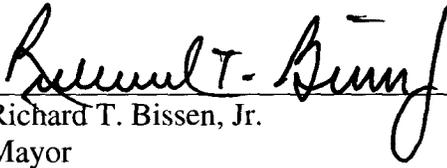
DATED: Nov 1, 2024

Anne E. Lopez

Anne E. Lopez
Attorney General of Hawaii
STATE OF HAWAII

IN WITNESS WHEREOF, the County hereby sets its hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED:



Richard T. Bissen, Jr.
Mayor
COUNTY OF MAUI

APPROVED AS TO FORM

DATED:



Victoria J. Takayesu-Hamilton
Corporation Counsel
COUNTY OF MAUI

IN WITNESS WHEREOF, Hawaiian Electric hereby sets its hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/4/2024

Signed by:

Scott Seu

EFB81AE5A3914F0...

Scott Seu

President and CEO

HAWAIIAN ELECTRIC INDUSTRIES,
INC.

DATED: 11/4/2024

DocuSigned by:

Shelee Kimura

B5FC5C9713E34FC...

Shelee Kimura

President and CEO

HAWAIIAN ELECTRIC COMPANY, INC.

IN WITNESS WHEREOF, KS¹ hereby sets its hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED:



Livingston "Jack" Wong
CEO

KAMEHAMEHA SCHOOLS

¹ Trustees Not Personally Liable. This instrument has been executed on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or addressed against said Trustees in their individual capacities.

IN WITNESS WHEREOF, Spectrum Oceanic, LLC and Charter Communications, Inc. hereby sets its hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: November 1, 2024

Signed by:

A3E85B5EE4FE464...
Gregg Fujimoto
SVP Field Operations – Hawaii
SPECTRUM OCEANIC, LLC
By: Charter Communications, Inc., its
Manager

DATED: November 1, 2024

Signed by:

A3E85B5EE4FE464...
Gregg Fujimoto
SVP Field Operations – Hawaii
CHARTER COMMUNICATIONS, INC.

EXECUTION VERSION

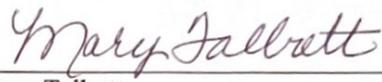
IN WITNESS WHEREOF, Hawaiian Telcom hereby sets its hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: Nov. 3, 2024



Les Ueoka
General Counsel
HAWAIIAN TELCOM, INC.

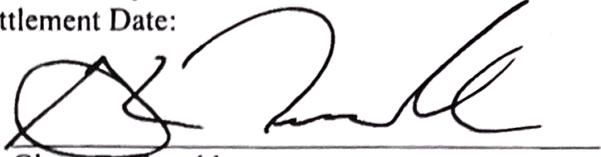
DATED: Nov. 3, 2024



Mary Talbott
Chief Legal Officer
CINCINNATI BELL INC.

IN WITNESS WHEREOF, West Maui Land hereby sets its hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED:



Glenn E. Tremble
Secretary/Treasurer
WEST MAUI LAND COMPANY, INC.

DATED:



Glenn E. Tremble
Secretary/Treasurer
LAUNIUPOKO IRRIGATION COMPANY
INC.

DATED:



Peter K. Martin
Manager
HOPE BUILDERS HOLDING LLC

DATED:



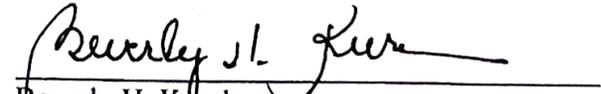
Peter K. Martin
Manager
KAUAULA LAND COMPANY LLC

DATED:



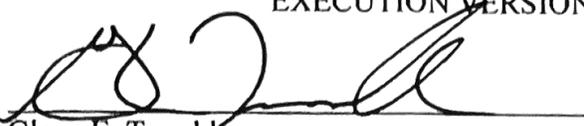
Peter K. Martin
Manager
MAKILA LAND CO., LLC

DATED:



Beverly H. Kurokawa
Assistant Secretary
HOPE BUILDERS LLC nka HOPE
BUILDERS, INC.

DATED:


Glenn E. Tremble
Secretary/Treasurer
LAUNIUPOKO WATER COMPANY, INC.

DATED:


Peter K. Martin
Manager
KIPA CENTENNIAL, LLC

DATED:


Peter K. Martin
Manager
WAINEE LAND & HOMES, LLC

DATED:


Glenn E. Tremble
Member
LAUNIUPOKO WATER DEVELOPMENT
LLC

DATED:


Peter Klint Martin
Individually and as Trustee of the Peter Klint
Martin Revocable Trust

DATED:

Justin Miller
Member
JV ENTERPRISES, LLC

DATED:

Glenn E. Tremble
Secretary/Treasurer
LAUNIUPOKO WATER COMPANY, INC.

DATED:

Peter K. Martin
Manager
KIPA CENTENNIAL, LLC

DATED:

Peter K. Martin
Manager
WAINEE LAND & HOMES, LLC

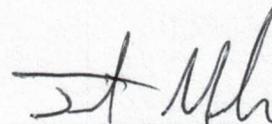
DATED:

Glenn E. Tremble
Member
LAUNIUPOKO WATER DEVELOPMENT
LLC

DATED:

Peter Klint Martin
Individually and as Trustee of the Peter Klint
Martin Revocable Trust

DATED: 11/04/24



Justin Miller
Member
JV ENTERPRISES, LLC

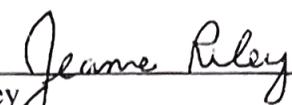
DATED:



Donna Anne Poseley
Individually and as Personal Representative
of the Estate of Douglas Poseley

DATED:

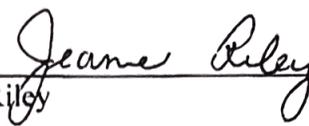
Nov 1, 2024



Jeanne Riley
Trustee of the Jeanne Riley Trust and
Successor Trustee of the James Riley Trust

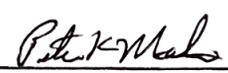
DATED:

Nov 1, 2024



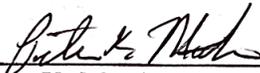
Jeanne Riley
Secretary
MAKILA RANCHES HOMEOWNERS
ASSOCIATION, INC.

DATED:



Peter K. Martin
President
MAKILA RANCHES, INC.

DATED:



Peter K. Martin
Manager
LOWALU ELUA ASSOCIATES LLC

IN WITNESS WHEREOF, the below Class Representative has set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/04/24


Jennifer L. McNamee (Nov 4, 2024 10:16 PST)

Jennifer Lynn McNamee
Class Representative

IN WITNESS WHEREOF, the below Class Representative has set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/04/24


Rolland Williams Jr (Nov 4, 2024 10:34 PST)

Rolland Williams, Jr.
Class Representative

IN WITNESS WHEREOF, the below Class Representative has set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/04/24


DAVID L HEYMES (Nov 4, 2024 09:20 HST)

David Heymes
Class Representative

IN WITNESS WHEREOF, the below Class Representative has set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: Nov 04, 2024

Rede Eder
[Rede Eder \(Nov 4, 2024 12:23 HST\)](#)

Rede S. Eder
Class Representative

IN WITNESS WHEREOF, the below Class Representative has set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: Nov 04, 2024

Monica I Eder
Monica I Eder (Nov 4, 2024 12:29 HST)

Monica I. Eder
Class Representative

IN WITNESS WHEREOF, the below Class Representative has set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED:

11 / 04 / 2024



Lani Chaldi, individually and as Trustee of
the Aotaki Family Irrevocable Trust
Class Representative

IN WITNESS WHEREOF, Class Counsel have set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED: 11/1/2024



LEXI J. HAZAM
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
Attorneys for Plaintiffs
NOVA BURNES; MAUI CONCIERGE
AESTHETICS, LLC; LANI CHADLI,
individually and as Trustee of the AOTAKI
FAMILY IRREVOCABLE TRUST;
BARRETT PROCELL; KATHRYN
LLAMAS

DATED:

TERRANCE M. REVERE
PAUL V.K. SMITH
RICHARD E. WILSON
PATRICK KYLE SMITH
Attorneys for Plaintiffs
NOVA BURNES; MAUI CONCIERGE
AESTHETICS, LLC; LANI CHADLI,
individually and as Trustee of the AOTAKI
FAMILY IRREVOCABLE TRUST;
BARRETT PROCELL; KATHRYN
LLAMAS

DATED:

ROBERT A. CURTIS
FOLEY BEZEK BEHLE & CURTIS, LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDICE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLAND WILLIAMS, JR

IN WITNESS WHEREOF, Class Counsel have set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED:

LEXI J. HAZAM
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
Attorneys for Plaintiffs
NOVA BURNES; MAUI CONCIERGE
AESTHETICS, LLC; LANI CHADLI,
individually and as Trustee of the AOTAKI
FAMILY IRREVOCABLE TRUST;
BARRETT PROCELL; KATHRYN
LLAMAS

DATED:


TERRANCE M. REVERE
PAUL V.K. SMITH
RICHARD E. WILSON
PATRICK KYLE SMITH
Attorneys for Plaintiffs
NOVA BURNES; MAUI CONCIERGE
AESTHETICS, LLC; LANI CHADLI,
individually and as Trustee of the AOTAKI
FAMILY IRREVOCABLE TRUST;
BARRETT PROCELL; KATHRYN
LLAMAS

DATED:

ROBERT A. CURTIS
FOLEY BEZEK BEHLE & CURTIS, LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDACE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLLAND WILLIAMS, JR

IN WITNESS WHEREOF, Class Counsel have set their hands to this Class Settlement Agreement to be effective as of the Settlement Date:

DATED:

LEXI J. HAZAM
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
Attorneys for Plaintiffs
NOVA BURNES; MAUI CONCIERGE
AESTHETICS, LLC; LANI CHADLI,
individually and as Trustee of the AOTAKI
FAMILY IRREVOCABLE TRUST;
BARRETT PROCELL; KATHRYN
LLAMAS

DATED:

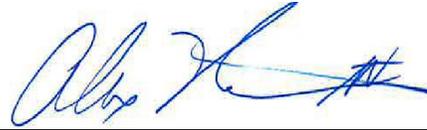
TERRANCE M. REVERE
PAUL V.K. SMITH
RICHARD E. WILSON
PATRICK KYLE SMITH
Attorneys for Plaintiffs
NOVA BURNES; MAUI CONCIERGE
AESTHETICS, LLC; LANI CHADLI,
individually and as Trustee of the AOTAKI
FAMILY IRREVOCABLE TRUST;
BARRETT PROCELL; KATHRYN
LLAMAS

DATED: 11-1-24



ROBERT A. CURTIS
FOLEY BEZEK BEHLE & CURTIS, LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDACE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLLAND WILLIAMS, JR

DATED: November 1, 2024



ALEXANDER ROBERTSON, IV
ROBERTSON & ASSOCIATES, LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDACE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLLAND WILLIAMS, JR

DATED:

GRAHAM B. LIPPSMITH
MARYBETH LIPPSMITH
JACLYN L. ANDERSON
CELENE CHAN ANDREWS
LIPPSMITH LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDACE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLLAND WILLIAMS, JR

DATED:

KENNETH S. KASDAN
CHRISTOPHER K. HIKIDA
D. KAENA HOROWITZ
SHARLA ANN MANLEY
Attorneys for Plaintiff
CHARDELL NAKI

DATED:

ALEXANDER ROBERTSON, IV
ROBERTSON & ASSOCIATES, LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDACE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLLAND WILLIAMS, JR

DATED: November 1, 2024



GRAHAM B. LIPPSMITH
MARYBETH LIPPSMITH
JACLYN L. ANDERSON
CELENE CHAN ANDREWS
LIPPSMITH LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDACE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLLAND WILLIAMS, JR

DATED:

KENNETH S. KASDAN
CHRISTOPHER K. HIKIDA
D. KAENA HOROWITZ
SHARLA ANN MANLEY
Attorneys for Plaintiff
CHARDELL NAKI

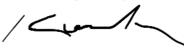
DATED:

ALEXANDER ROBERTSON, IV
ROBERTSON & ASSOCIATES, LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDACE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLLAND WILLIAMS, JR

DATED:

GRAHAM B. LIPPSMITH
MARYBETH LIPPSMITH
JACLYN L. ANDERSON
CELENE CHAN ANDREWS
LIPPSMITH LLP
Attorneys for Plaintiffs
MONICA I. EDER; REDE S. EDER;
CANDACE FAUST; PETER FAUST;
DAVID HEYMES; JENNIFER LYNN
MCNAMEE; ROLLAND WILLIAMS, JR

DATED: 11/4/2024

DocuSigned by:


KENNETH S. KASDAN
CHRISTOPHER K. HIKIDA
D. KAENA HOROWITZ
SHARLA ANN MANLEY
Attorneys for Plaintiff
CHARDELL NAKI

Index of Appendices and Exhibits

Appendices

Letter	Title	Class GSA	Individual GSA
A	Non-Participant Thresholds	Included	Not Included
B	Hawaiian Electric Provisions Regarding Payment (with Schedule B1)	Included	Included

Exhibits

No.	Title	Class GSA	Individual GSA
1	Individual Settlement Agreement	Included	Not Included
2	Class Settlement Agreement	Not Included	Included
3	WFIGS Interagency Fire Perimeters Maps Maintained by the National Interagency Fire Center	Included	Not Included
4	Individual Settlement Agreement and Release	Not Included	Included
5	Lists of Persons Who Are Included Among the Releasees	Included	Included
6	List of Decedents	Included	Not Included
7	[Proposed] Case Management Order No. 8	Included	Included
8	List of Notice Recipients	Included	Included
9	State and County FEMA Letters	Included	Included
10	Stipulation Between Liaison Counsel and Class Counsel re Procedure to Determine Class Settlement Amount and Individual Settlement Amount	Included	Included

Appendix A: Non-Participant Thresholds

For purposes of section 8.1, Defendants will have the unilateral right to terminate this Class Settlement Agreement if any of the following thresholds for non-participation are met:

(a) There are more than 0 Non-Participants who have asserted or could assert Wrongful Death Claims;

(b) There are more than 0 Non-Participants who have asserted or could assert Serious Physical Injury Claims;

(c) There are more than 90 residential properties for which Non-Participants have asserted or could assert Residential Property Loss – Within Fire Perimeters Claims;

(d) There are more than 25 commercial properties for which Non-Participants have asserted or could assert Commercial Property Loss – Within Fire Perimeters Claims;

(e) There are more than 65 residential properties for which Non-Participants have asserted or could assert Renter – Within Fire Perimeters Claims.

(f) There are more than 30 businesses for which Non-Participants have asserted or could assert Business Interruption – Within Fire Perimeters Claims;

(g) There are more than 10 Non-Participants who have asserted or could assert Serious Evacuation Claims.

(h) There are more than 30 Non-Participants who have asserted or could assert Evacuation Claims.

Appendix B: Hawaiian Electric Provisions Regarding Payment

Hawaiian Electric will not, and will not permit any Hawaiian Electric Significant Subsidiary to, incur, create, assume or permit to exist any Lien on the capital stock or similar Equity Interests of or other ownership interests in any Hawaiian Significant Subsidiary, now or hereafter owned, for the purpose of securing the obligations under the Hawaiian Electric Existing Funded Indebtedness without effectively providing concurrently therewith a Lien to equally and ratably secure the obligations of Hawaiian Electric to make its Individual Defendant Aggregate Contribution pursuant to documentation in form and substance substantially identical to the documentation pursuant to which the applicable Hawaiian Electric Existing Funded Indebtedness is secured.

Additionally, within seven (7) days of the Settlement Date, HEI shall capitalize New HEI Subsidiary with the HEI Initial Payment Cash. From the Settlement Date through and including the Initial Payment Due Date, absent the consent of Plaintiffs' Counsel, New HEI Subsidiary shall not (a) incur any indebtedness for borrowed money or (b) transfer the HEI Initial Payment Cash to any person or entity other than in connection with funding Hawaiian Electric's Initial Payment in accordance with the terms hereof.

* * * * *

For purposes of this Appendix B, the following definitions, in additions to those specified in Article II of this Individual Settlement Agreement, shall apply:

“Consolidated Total Assets” means, at any date of determination, with respect to HEI and its Subsidiaries on a consolidated basis, the total assets of HEI and its Subsidiaries, determined in accordance with GAAP.

“Equity Interests” shall mean (a) shares of capital stock and any other equity security that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing company and (b) all warrants, options or other rights to acquire any Equity Interest described in clause (a) of this definition.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States of America; *provided, however*, that if the SEC shall require at such future time the replacement of GAAP with another system of accounting principles, GAAP as used herein shall be deemed to refer to such SEC required or approved accounting principles (however named).

“Hawaiian Electric Existing Funded Indebtedness” means the funded indebtedness of the Hawaiian Electric Parties set forth on Schedule B1.

“Hawaiian Electric Significant Subsidiary” means each of HECO, HELCO, MECO, and any other Subsidiary having 15% or more of the total assets, or 15% or more of the total operating income, of HEI and its Subsidiaries on a consolidated basis, in either case as the Consolidated Total Assets and consolidated total operating income of HEI and its Subsidiaries are reflected in

the most recent annual or quarterly consolidated financial statements of the Hawaiian Electric Parties.

“HECO” means Hawaiian Electric Company, Inc.

“HEI” means Hawaiian Electric Industries, Inc.

“HEI Initial Payment Cash” means cash in an amount equal to Hawaiian Electric’s Initial Defendant Payment.

“HELCO” means Hawaii Electric Light Company, Inc.

“Lien” shall mean, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or capital lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

“MECO” means Maui Electric Company, Limited.

“New HEI Subsidiary” means a newly formed subsidiary of HEI, which shall (a) be formed on or before the Settlement Date, and (b) not constitute a “Significant Subsidiary” under the terms of Hawaiian Electric’s existing funded indebtedness.

“Subsidiary” shall mean, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries).

Schedule B1**Hawaiian Electric Existing Funded Indebtedness**

HEI	HECO	HELCO	MECO
Credit Facilities			
\$175MM revolving credit facility	\$200MM revolving credit facility	N/A	N/A
SPRBs			
N/A	3.25% Refunding SPRB, Series 2015	3.25% Refunding SPRB, Series 2015	3.25% Refunding SPRB, Series 2015
	3.10% Refunding SPRB, Series 2017A	3.10% Refunding SPRB, Series 2017A	3.10% Refunding SPRB, Series 2017A
	4.00% Refunding SPRB, Series 2017B	4.00% Refunding SPRB, Series 2017B	4.00% Refunding SPRB, Series 2017B
	3.20% Refunding SPRB, Series 2019	3.20% Refunding SPRB, Series 2019	3.50% SPRB, Series 2019
	3.50% SPRB, Series 2019	3.50% SPRB, Series 2019	
Notes			
4.58% Senior Notes, Series 2018A	4.72% Senior Notes, Series 2012D	4.84% Senior Notes, Series 2013C	4.84% Senior Notes, Series 2013A
4.72% Senior Notes, Series 2018B	5.39% Senior Notes, Series 2012E	5.23% Senior Notes, Series 2015A	5.65% Senior Notes, Series 2013B
2.98% Senior Notes, Series 2020A	4.53% Senior Notes, Series 2012F	4.38% Senior Notes, Series 2018A	5.23% Senior Notes, Series 2015A
3.15% Senior Notes, Series 2020B	4.84% Senior Notes, Series 2013B	4.53% Senior Notes, Series 2018B	4.31% Senior Notes, Series 2017A
2.82% Senior Notes, Series 2020C	5.65% Senior Notes, Series 2013C	4.72% Senior Notes, Series 2018C	4.38% Senior Notes, Series 2018A
2.48% Senior Notes, Series 2021A	5.23% Senior Notes, Series 2015A	4.21% Senior Notes, Series 2019A	4.53% Senior Notes, Series 2018B
2.78% Senior Notes, Series 2021B	4.54% Senior Notes, Series 2016A	3.96% Senior Notes, Series 2020A	4.72% Senior Notes, Series 2018C
3.74% Senior Notes, Series 2021C	4.31% Senior Notes, Series 2017A	3.28% Senior Notes, Series 2020B	4.21% Senior Notes, Series 2019A
2.98% Senior Notes, Series 2022A	4.38% Senior Notes, Series 2018A	3.51% Senior Notes, Series 2020C	3.31% Senior Notes, Series 2020A
3.94% Senior Notes, Series 2022B	4.53% Senior Notes, Series 2018B	3.70% Senior Notes, Series 2022A	3.96% Senior Notes, Series 2020B
5.43% Senior Notes, Series 2022C	4.72% Senior Notes, Series 2018C	6.25% Senior Notes, Series 2023A	3.51% Senior Notes, Series 2020C
5.43% Senior Notes, Green Series 2022D	4.21% Senior Notes, Series 2019A		3.70% Senior Notes, Series 2022A

HEI	HECO	HELCO	MECO
6.04% Senior Notes, Series 2023A	3.31% Senior Notes, Series 2020A		6.25% Senior Notes, Series 2023A
6.10% Senior Notes, Series 2023B	3.31% Senior Notes, Series 2020B		
	3.96% Senior Notes, Series 2020C		
	3.28% Senior Notes, Series 2020D		
	3.51% Senior Notes, Series 2020E		
	3.70% Senior Notes, Series 2022A		
	6.11% Senior Notes, Series 2023A		
	6.25% Senior Notes, Series 2023B		
	6.70% Senior Notes, Series 2023C		

EXHIBIT 1

IN RE MAUI WILDFIRES**INDIVIDUAL SETTLEMENT AGREEMENT**

This INDIVIDUAL SETTLEMENT AGREEMENT, dated as of November 1, 2024 (the “Settlement Date”), is made and entered into by and among Identified Plaintiffs’ Counsel and Defendants, who are parties to multiple lawsuits arising out of the Maui windstorm and fires of August 2023, including the fires in Lahaina, Kula, and Olinda (“Maui Fires”). This Individual Settlement Agreement, including the Individual Settlement Agreements and Releases, together with the Class Settlement Agreement that Defendants are entering into simultaneously, is intended by the Parties to fully and finally compromise, settle, resolve, discharge, release, and dismiss with prejudice on a comprehensive, global basis all Released Claims against the Releasees, as set forth below, under the terms set forth herein, subject to review and approval by the Approving Court and satisfaction of all other Conditions set forth below.

Capitalized terms have the meaning provided in Article II unless this Individual Settlement Agreement provides otherwise.

ARTICLE I: RECITALS

1.1 Multiple actions against Defendants are pending in state and federal courts arising out of the Maui Fires. Those include putative class actions, actions filed by Individual Action Plaintiffs, actions filed by Subrogation Plaintiffs, and actions filed by Defendants against one another, as well as cross-, counter-, and third-party claims in these Actions. All of the Actions allege injury—including property damage (real and personal), personal injury, wrongful death, non-economic damages such as emotional distress and inconvenience, and economic loss—incurred as a result of the Maui Fires. Plaintiffs and Subrogation Plaintiffs seek to hold Defendants liable under various theories of liability, including negligence, inverse condemnation, nuisance, trespass, and abnormally dangerous activity. Plaintiffs and Subrogation Plaintiffs seek compensatory, punitive, and exemplary damages; medical monitoring; and injunctive and other equitable relief.

1.2 On October 27, 2023, the Hon. Peter T. Cahill created a Special Proceeding for all cases that had been or would be brought by Individual Action Plaintiffs relating to the Maui Fires in the Second Circuit Court, State of Hawai‘i (Case No. 2CSP-23-000057). On January 2, 2024, Judge Cahill appointed Jan K. Apo, Jesse Max Creed, Jacob Lowenthal, and Cynthia K. Wong as Individual Action Plaintiffs’ Liaison Counsel, and selected twenty-eight law firms to appoint one member each to the “Individual Plaintiffs’ Steering Committee.” On January 9, 2024, Liaison Counsel filed the “Individual Plaintiffs’ Master Complaint & Demand for Jury Trial” (“Master Complaint”), which was amended on June 28, 2024, in the “Individual Plaintiffs’ First Amended Master Complaint & Demand for Jury Trial” (“First Amended Master Complaint”). Pursuant to Judge Cahill’s case management orders, the First Amended Master Complaint is the operative pleading for all Individual Action Plaintiffs in the Second Circuit who filed or later file a notice of adoption of the Master Complaint. Approximately 3,000 Individual Action Plaintiffs have filed notices of adoption as of the Settlement Date.

1.3 On January 12, 2024, a group of Subrogation Plaintiffs filed a complaint against certain Defendants in the First Circuit Court, State of Hawai‘i, before the Hon. Dean E. Ochiai (Case No. 1CCV-24-0000068), seeking to recover for payments made to Subrogation Plaintiffs’ insureds for allegedly covered claims, including for real and personal property loss or damage, business interruption, and alternate living expenses, arising from the Lahaina fire. Two other similar lawsuits were filed in the First Circuit Court by other Subrogation Plaintiffs, Case Nos. 1CCV-24-0000179 and 1CCV-24-0000437, and several lawsuits have been filed in the Second Circuit Court by other Subrogation Plaintiffs. On October 21, 2024, Judge Ochiai entered a written order transferring each of these three cases to the Second Circuit.

1.4 On April 25, 2024, the Hon. Barry M. Kurren consolidated three class actions pending in the United States District Court for the District of Hawai‘i into a single putative class action, *In re Lahaina Wildfire Litigation*, which came to be identified with the Case No. 1:24-cv-00259-JAO-BMK. On June 4, 2024, Class Counsel filed a consolidated complaint. On October 29, 2024, the parties to *In re Lahaina Wildfire Litigation* stipulated to dismiss that case. On October 30, 2024, Class Counsel filed the Consolidated Complaint in the Second Circuit Court, State of Hawai‘i, Case No. 2CCV-24-0000964.

1.5 Defendants deny having any liability for any claims, causes of action, costs, expenses, attorneys’ fees, or damages of any kind arising out of the Maui Fires. Defendants have asserted or intend to assert legal and factual defenses against Plaintiffs’ claims in the Actions filed against them.

1.6 Plaintiffs, through their counsel, have engaged in substantial fact investigation to evaluate the merits of their claims and Defendants’ defenses, including reviewing thousands of pages of documents produced in discovery, deposing multiple witnesses (including from multiple Defendants), retaining expert consultants, and inspecting evidence and real and personal properties. Plaintiffs also have analyzed the legal issues raised by their claims and Defendants’ defenses as well as the insurance coverage, solvency, and financial resources of the Defendants to evaluate their ability to pay settlements and verdicts.

1.7 In spring 2024, Judge Cahill appointed the Hon. Louis Meisinger (ret.), the Hon. Daniel Buckley (ret.), and Keith Hunter as settlement mediators (collectively, the “Mediators”) in the Special Proceeding. Representatives of the Parties then conducted multiple mediation sessions over nearly four months. The mediation sessions included attorneys representing Individual Action Plaintiffs and Class Plaintiffs (including Class Counsel) who had filed (or intended to file) tort and any other claims related to the Maui Fires, whether on an individual, representative, or class basis in state or federal court; attorneys representing Subrogation Plaintiffs; and attorneys representing Defendants. The Mediators ultimately made a Mediators’ proposal that reflected their informed view of the maximum amount that Defendants could fairly and practicably contribute based on the facts and circumstances of the case, including potential exposure, availability of insurance, and limitations on ability to pay. The Mediators proposed that Defendants contribute the Aggregate Settlement Amount, according to a payment schedule, to reach a global settlement of all Released Claims. The Mediators also proposed what each Defendant’s respective share of the Aggregate Settlement Amount would be.

1.8 On August 2, 2024, the Parties entered into a Term Sheet setting forth the material terms and conditions for a comprehensive global settlement to resolve, release, and forever discharge all Released Claims, expressly providing that the comprehensive global settlement fund in the amount of the Aggregate Settlement Amount must fully resolve all Released Claims, including those that had been brought or could have been brought by all Plaintiffs, including Individual Plaintiffs and Class Plaintiffs, Defendants, the Subrogation Plaintiffs, any other insurers or entities that have or may have subrogation claims, and any relevant federal agency or department.¹

1.9 The Parties thereafter agreed to create two settlement funds to effectuate the global settlement contemplated by the Term Sheet: the Class Settlement Fund and the Individual Settlement Fund. Class Counsel and Liaison Counsel have agreed to decide the Individual Settlement Amount and the Class Settlement Amount through the procedure contemplated under Section 3.1.4.

1.10 The Parties negotiated two settlement agreements: the Individual Settlement Agreement, to which Identified Plaintiffs' Counsel and Defendants are signatories, which will govern administration of the Individual Settlement Fund and the release of all Maui Fires claims by Individual Plaintiffs; and the Class Settlement Agreement, to which Class Counsel, the Class Representatives, and Defendants are signatories, which is attached hereto as Exhibit 2 and which will govern administration of the Class Settlement Fund and the release of all Maui Fires claims by Class Plaintiffs. Together, these two funds and two agreements are intended to achieve a global resolution of all Released Claims. All Parties to these agreements understand that it is a condition to either agreement becoming final and effective that the other is also final and effective.

1.11 Upon careful review and analysis, Identified Plaintiffs' Counsel have concluded that it is in the best interests of their respective clients to settle all Released Claims against the Releasees for consideration reflected in the terms and benefits of this Individual Settlement Agreement, as well as each Individual Plaintiff's Individual Settlement Agreement and Release. After arm's length negotiations, including through the efforts of the Mediators, Identified Plaintiffs' Counsel have considered, among other things: (1) the complexity, expense, and likely duration of the litigation, through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert development completed; (3) the potential for Defendants to prevail on the merits, in whole or in part, and as to any Defendant, on liability issues; (4) the Defendants' defenses to damages and the challenges in proving damages as to each Individual Plaintiff; (5) the range of possible recovery; (6) each Defendant's ability to pay; (7) the availability of insurance; (8) the benefits of a settlement at this time to Individual Plaintiffs; (9) the benefits and challenges of a global resolution and alternative resolution mechanisms, including potential bankruptcy proceedings for certain Defendants; and (10) the Mediators' reasoned proposal, and they have determined that the Aggregate Settlement Amount and the process for determining the Individual Settlement Amount are fair, reasonable, adequate,

¹ The Term Sheet excluded from the definition of Released Claims certain derivative and securities claims asserted against the Hawaiian Electric parties, as reflected in Section 2.2 of this Individual Settlement Agreement.

and in the best interests of Individual Plaintiffs, as are the terms of this Individual Settlement Agreement generally. Identified Plaintiffs' Counsel further represent that they have no current intention to file claims arising out of the Maui Fires against any additional Persons that are not Defendants.

1.12 Upon careful review and analysis, each Defendant has similarly concluded that it is in its best interests to settle all Released Claims against all other Defendants. After arm's length negotiations, including through the efforts of the Mediators, each Defendant has considered, among other things: (1) the complexity, expense, and likely duration of the litigation, through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert analysis completed; (3) the potential for both Plaintiffs and other Defendants to prevail on the merits, in whole or in part; (4) the other Defendants' defenses to damages and the challenges in proving damages as to each other Defendant; (5) the range of possible recovery; (6) each Defendant's ability to pay; (7) the availability of insurance; (8) the benefits of a global settlement with all Parties at this time; and (9) the Mediators' proposal. Considering all of these factors, each Defendant has determined that the release provisions contemplated by this Individual Settlement Agreement, and included in the Individual Settlement Agreement and Release, are reasonable, fair, adequate, and in its best interests, as are the terms of this Individual Settlement Agreement generally.

1.13 The Individual Parties agree to seek review and approval of the Individual Settlement Agreement from the applicable Approving Court(s) as necessary, and will further seek orders and/or judgments dismissing all of the Actions with prejudice, as described more particularly below.

1.14 Neither the Class Settlement Agreement nor the Individual Settlement Agreement will be construed as evidence, or as an admission by Releasees of any liability or wrongdoing whatsoever, as an admission by the Plaintiffs of any lack of merit in their claims, or as evidence or an admission of the value of the Plaintiffs' claims.

1.15 By entering this Individual Settlement Agreement, neither the State of Hawai'i nor the County of Maui, and their respective officers, employees, and departments, waives any immunity that any of them may have, except to the extent necessary for the interpretation or enforcement of this Individual Settlement Agreement.

1.16 NOW, THEREFORE, in consideration of the agreements, promises, and covenants set forth in this Individual Settlement Agreement, the Actions and all Released Claims by all Releasors shall be settled and compromised under the following terms and conditions:

ARTICLE II: DEFINITIONS

2.1 For the purposes of this Individual Settlement Agreement, the following terms (designated by initial capitalization throughout this Individual Settlement Agreement) will have the meanings set forth in this Article. Where a term is not capitalized, it shall have its ordinary meaning, in the context of the sentence, rather than the defined meaning.

2.2 “Actions” means all lawsuits against any Defendant(s) arising out of the Maui Fires, including all individual and putative class actions whether filed in state or federal court, and including complaints filed by Subrogation Plaintiffs, but not including derivative and securities claims asserted in the following cases: *Bhangal v. HEI, et al.*, Case No. 3:23-cv-04332 (N.D. Cal.); *Rice v. Connors, et al.*, Case No. 1CCV-23-0001181 (Haw. Cir. Ct.); *In re Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc. Derivative Litigation*, Case No. 3:23-cv-06627 (N.D. Cal.); *In re Hawaiian Electric Industries, Inc., Stockholder Derivative Litigation*, Case No. 24-cv-00164 (D. Haw.). For avoidance of doubt, nothing in this Individual Settlement Agreement should be construed to directly release, dismiss, or otherwise extinguish these derivative and securities claims.

2.3 “Affiliate” means, with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that Person.

2.4 “Aggregate Settlement Amount” means the \$4.037 billion total, aggregate payment to be made by Defendants to Plaintiffs by funding the Class Settlement Fund and Individual Settlement Fund, or such lesser amount as may be agreed pursuant to Section 3.3 of this Individual Settlement Agreement, and Section 3.3 of the Class Settlement Agreement. For avoidance of doubt, the Aggregate Settlement Amount includes the amount paid to the County under Section 4.1.2(k), which is paid from the Individual Settlement Fund.

2.5 “Approved Investments” shall have the meaning specified in Section 3.2.3.

2.6 “Approving Court” shall mean any court of competent jurisdiction to which a motion, petition, or request is made to approve or authorize the implementation of the Class Settlement Agreement or Class Settlement Plan, in whole or in part, or the Individual Settlement Agreement, or any Individual Settlement Agreement and Release, or the Individual Settlement Plan, in whole or in part.

2.7 “Class Counsel” means the class action counsel who are signatories to the Class Settlement Agreement.

2.8 “Class Representatives” means the named plaintiffs in the Consolidated Complaint.

2.9 “Class Settlement Agreement” means the settlement agreement signed by Class Counsel, the Class Representatives, and Defendants to provide for the release of all Released Claims by Class Plaintiffs, attached hereto as Exhibit 2.

2.10 “Class Settlement Amount” means the total payment to be made to the Class Settlement Fund by the Defendants out of the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3, as determined by Section 3.1.4.

2.11 “Class Settlement Fund” has the meaning described in Article III of the Class Settlement Agreement.

2.12 “Conditions” has the meaning provided for in Section 3.3.

2.13 “Consolidated Complaint” is the operative class action complaint in *Burnes, et al. v. Hawaiian Electric Co., Inc., et al.*, Case No. 2CCV-24-0000964 (Haw. Cir. Ct.)

2.14 “Defendant Releasors” shall refer jointly and severally, individually and collectively to all Defendants, and their respective past and present, direct and indirect, parents, guardians, conservators, fiduciaries, next friends, subsidiaries, Affiliates, officers, directors, employees, agents, legal representatives, servants, and representatives (and any of the foregoing listed Persons’ past and present officers, directors, employees, agents, attorneys, servants, and representatives), insurers (including any Subrogation Insurers), any person who may be a claimant under Hawai‘i Revised Statute § 663-3, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

2.15 “Defendants” means all of the following Persons:

2.15.1 The State of Hawai‘i and all of its subdivisions, agencies, and departments (the “State”);

2.15.2 The County of Maui and all of its subdivisions, agencies, and departments (the “County”);

2.15.3 Hawaiian Electric Company, Inc. and Hawaiian Electric Industries, Inc. (together “Hawaiian Electric”). (For the avoidance of doubt, Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc. are not Defendants, although they are named as defendants in pending Actions. They are intended beneficiaries of this Individual Settlement Agreement, and are Releasees);

2.15.4 The Trustees of the Estate of Bernice Pauahi Bishop: Elliot Kawaiho‘olana Mills, Crystal Kaulani Rose, Jennifer Noelani Goodyear-Ka‘ōpua, Michelle Ka‘uhane, and Robert K.W.H. Nobriga, in their fiduciary capacities as said Trustees, and not in their individual capacities (collectively, “KS”);

2.15.5 Spectrum Oceanic, LLC (“Spectrum”) and Charter Communications, Inc.;

2.15.6 Cincinnati Bell Inc. and Hawaiian Telcom, Inc. (collectively, “Hawaiian Telcom”); and

2.15.7 The West Maui Land Company, Inc. and certain Affiliates, including Launiupoko Irrigation Company, Inc., Hope Builders Holding LLC, Kauaula Land Company LLC, Makila Land Co., LLC, Hope Builders LLC nka Hope Builders, Inc., Launiupoko Water Company, Inc., Kauaula Land Company LLC, Kipa Centennial LLC, Wainee Land & Homes, LLC, Peter Klint Martin, individually and as trustee of the Peter Klint Martin Revocable Trust, JV Enterprises, LLC, Donna Anne Poseley, individually and as personal representative of the Estate of Douglas Poseley, Jeanne Riley, as trustee of the Jeanne Riley Trust and Successor Trustee of the James Riley trust, Makila Ranches Homeowners Association, Inc., Makila Ranches, Inc., and Olowalu Elua Associates LLC (collectively, “West Maui Land”).

2.16 “Defendants’ IP Administration Share” has the meaning specified in Section 3.1.5.

2.17 “Eligible Relatives” means any surviving spouse of, reciprocal beneficiary of, child of, father of, mother of, and any person wholly or partly dependent upon a person who died or suffered physical injury due to the Maui Fires, or any other Person who asserts a claim based on the death or physical injury of another due to the Maui Fires.

2.18 “Final Approval” means the Approving Court issuing an order granting the motion described in Section 9.4 of the Class Settlement Agreement.

2.19 “Final Order and Judgment” means the final judgment and order entered by the Approving Court finally approving the Class Settlement Agreement and Class Settlement Plan as set forth in Section 9.4 of the Class Settlement Agreement.

2.20 “Final and Unappealable” means, with respect to a judgment, order, or opinion, that such judgment, order, or opinion has achieved any one of the following criteria: (1) all Persons with a right to appeal the judgment, order, or opinion have waived or forfeited their right to do so; (2) the time to appeal has expired with no appeal filed; (3) the judgment, order, or opinion has been affirmed by an appellate court with no further possibility of appeal; or (4) all appeals from the judgment, order, or opinion have been dismissed.

2.21 “First Amended Master Complaint” has the meaning specified in Section 1.2.

2.22 “Government Entities” means any government agency, department, division, subdivision, unit, component, bureau, commission, office, board, or instrumentality of any kind, including federal, state, and municipal entities, that could assert any Released Claim against any Releasee.

2.23 “Hawaiian Electric” has the meaning specified in Section 2.15.3.

2.24 “Holdback Claim” has the meaning specified in Section 8.3.3.

2.25 “Holdback Credit” has the meaning specified in Section 8.3.4.

2.26 “Holdback Fund” has the meaning specified in Section 8.3.

2.27 “Holdback Remainder Amount” has the meaning specified in Section 8.3.5(c).

2.28 “Identified Plaintiffs’ Counsel” mean the attorneys representing Individual Action Plaintiffs who are signatories to this Individual Settlement Agreement.

2.29 “Individual Action Plaintiffs” means individual plaintiffs who have pending Actions as of the Settlement Date.

2.30 “Individual Defendant Aggregate Contribution” means the sum of each Defendant’s Individual Defendant Class Contribution and Individual Defendant IP Contribution.

2.31 “Individual Defendant Class Contribution” means the amount each Defendant has agreed to contribute to the Class Settlement Fund, as described in the Class Settlement Agreement.

2.32 “Individual Defendant IP Contribution” means the amount each Defendant has agreed to contribute to the Individual Settlement Fund, as further described in Sections 3.1 and 3.3.

2.33 “Individual Parties” means the Individual Plaintiffs, Identified Plaintiffs’ Counsel, and Defendants.

2.34 “Individual Plaintiff Releasors” shall refer jointly and severally, individually and collectively to all Individual Plaintiffs, and their respective past and present, direct and indirect, estates, parents, children, spouses, issue, beneficiaries, guardians, conservators, fiduciaries, next friends, next of kin, subsidiaries, Affiliates, officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers (and any of the foregoing listed Persons’ past and present officers, directors, employees, agents, attorneys, servants, representatives, general partners, limited partners, members, managers, member managers, and joint venturers), insurers (including any Subrogation Insurers), any Person who may be a claimant under Hawai‘i Revised Statute § 663-3, Eligible Relatives, and the predecessors, successors, heirs, executors, trustees, administrators, and assigns of each of the foregoing.

2.35 “Individual Plaintiffs” means all Persons who timely and validly execute a signed Individual Settlement Agreement and Release in the form attached hereto as Exhibit 4.

2.36 “Individual Settlement Administration Expenses” means the costs incurred in administering this Individual Settlement Agreement, including payments to the Individual Settlement Administrator, all of which will be paid from the Individual Settlement Fund, except as specified in Section 3.1.5.

2.37 “Individual Settlement Administrator” has the meaning specified in Section 3.8.

2.38 “Individual Settlement Agreement” means this settlement agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

2.39 “Individual Settlement Agreement and Release” means the document that each Individual Plaintiff must sign to become an Individual Plaintiff, attached hereto as Exhibit 4.

2.40 “Individual Settlement Amount” means the total payment to be made to the Individual Settlement Fund by the Defendants out of the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3, as determined by Section 3.1.4.

2.41 “Individual Settlement Fund” means the fund created to provide Monetary Awards to Individual Plaintiffs, as described in this Individual Settlement Agreement.

2.42 “Individual Settlement Percentage” means the Individual Settlement Amount divided by the Aggregate Settlement Amount, or such lesser amount as may be agreed pursuant to Section 3.3.

2.43 “Individual Settlement Plan” has the meaning described in Article IV.

2.44 “Initial Defendant Payment” means the total amount due to be paid by each individual Defendant on the Initial Payment Due Date to the Class Settlement Fund and the Individual Settlement Fund (cumulatively) but does not include any subsequent payments pursuant to a payment schedule.

2.45 “Initial Payment Due Date” means the initial deadline for each Defendant to make its Initial Defendant Payment as described in Section 3.3.

2.46 “Liaison Counsel” means the court-appointed Liaison Counsel pursuant to Case Management Order No. 1 entered in the Special Proceeding who are signatories to this Individual Settlement Agreement, namely Cynthia K. Wong, Jesse Max Creed, Jacob Lowenthal, and Jan K. Apo. All obligations of Liaison Counsel set forth in Section 3.8 and Article IV will be performed by a committee created by the Individual Plaintiffs’ Steering Committee (as that Committee is defined in Case Management Order No. 1 dated January 2, 2024) consisting of all major plaintiff stakeholders in the settlement, as may be decided among the Individual Plaintiffs’ Steering Committee.

2.47 “Litigation Trustee” means an individual appointed by Plaintiffs’ Counsel and approved by the Court to manage any litigation arising from non-payment of any part of an Individual Aggregate Defendant Contribution. For the avoidance of doubt, the “Litigation Trustee” is the same individual designated “Litigation Trustee” in the Class Settlement Agreement.

2.48 “Master Complaint” has the meaning specified in Section 1.2.

2.49 “Maui Fires” has the meaning as specified in the opening paragraph of this Individual Settlement Agreement.

2.50 “Mediators” has the meaning as specified in Section 1.7.

2.51 “Monetary Award” means the payment of money from the Individual Settlement Fund to an Individual Plaintiff as set forth in Section 4.1.

2.52 “Necessary Approvals” means those Conditions identified in Section 3.3.1(a), (b), (c), and (d).

2.53 “Necessary Holdback Amount” has the meaning specified in Section 8.3.5(b).

2.54 “Non-Participant” means any Person who is a member of the Settlement Class, as defined in Section 2.77 of the Class Settlement Agreement, who opts out and, as of the day after the Return Date, is not an Individual Plaintiff.

2.55 “Non-State Defendants” means all Defendants except for the State.

2.56 “One Ohana Fund” means the Maui Wildfires Compensation Program entered into on March 1, 2024.

2.57 “Parties” means, collectively, Defendants and Plaintiffs.

2.58 “Person” means an individual, corporation, company, partnership, limited liability company, joint venture, association, trust, or other entity, including a government agency, division, or department.

2.59 “Plaintiffs” means, collectively, all Individual Plaintiffs and Class Plaintiffs.

2.60 “Plaintiffs’ Counsel” means, collectively, Class Counsel and Liaison Counsel.

2.61 “Preliminary Approval” means an Approving Court issuing an order granting the motion described in Article IX of the Class Settlement Agreement.

2.62 “Released Claims” means all claims, counterclaims, cross-claims, actions, rights, disputes, and causes of action of any kind or nature whatsoever, including claims for relief, damages, liabilities, suits, arbitrations, costs, expenses, compensations, fees, attorneys’ fees, experts’ and consultants’ fees, demands, injuries, and/or losses, including, but not limited to, economic losses, medical expenses, emotional distress, property damage, diminution in property value, business interruption damages, lost profits, personal injury, medical monitoring, wrongful death, contribution, and indemnity, whether based on federal, state, local, common, or foreign law, in contract, statute, rule, ordinance, administrative provision or regulation, tort, equity, or otherwise, whether foreign or domestic, whether asserted or unasserted, known or unknown, suspected or unsuspected, liquidated or unliquidated, matured or unmatured, discoverable or undiscoverable, foreseen or unforeseen, fixed or contingent, accrued or unaccrued, direct or indirect, including those that are concealed or hidden, whether class or individual in nature, past, present, or future, in contract, statute, tort, equity, or otherwise, arising from, resulting from, due to, or relating in any way to the Maui Fires.

2.63 “Releasees” shall refer jointly and severally, individually and collectively to Defendants and all of their past, present, and future, direct or indirect, respective departments, holding companies, Affiliates, related companies, parent entities, subsidiaries, predecessors, and successors; all of their respective past, present, and future, direct or indirect, employees, stockholders, shareholders, officers, directors, boards of directors, agents, advisors, accountants, attorneys, representatives, employees, adjusters, insurers, reinsurers, assigns, general partners, limited partners, members, managers, member managers, funds, investors, co-investors, investment managers, investment vehicles, investment accounts, portfolio companies, principals, joint venturers, transferees, heirs, beneficiaries, executors, estate administrators, trustees, associates, or personal representatives, contractors, subcontractors, and vendors. The Releasees shall include, without limitation, the Persons listed on Exhibit 5 hereto. Releasees that are not Defendants are intended third-party beneficiaries under the Class Settlement Agreement that have relied upon and may enforce the Class Settlement Agreement.

2.64 “Releasors” shall refer collectively to Individual Plaintiff Releasors and Defendant Releasors.

2.65 “Return Date” means the deadline for Individual Plaintiffs to provide the Administrator with signed Individual Settlement Agreement and Releases, which shall be 60 days after the deadline to opt out of the Settlement Class.

2.66 “Settlement Date” has the meaning specified in the opening paragraph of this Individual Settlement Agreement.

2.67 “Special Proceeding” means that special proceeding opened in the Second Circuit Court, State of Hawai‘i, by Judge Cahill on October 27, 2023, captioned *In the Matter of the Petition for the Coordination of Individual Plaintiffs Maui Fires Cases*, Case No. 2CSP-23-0000057.

2.68 “Subrogation Plaintiffs” means all plaintiffs in the following actions originally filed as: *Amguard Insurance, et al. v. MECO, et al.*, Case No. 1CCV-24-0000068 (Haw. Cir. Ct.); *Certain Underwriters at Lloyd’s London Subscribing to Policy Number TRIB223061 v. MECO, et al.*, Case No. 1CCV-24-0000179 (Haw. Cir. Ct.); *Hyundai Marine & Fire Insurance Company, Ltd. v. MECO, et al.*, Case No. 1CCV-24-0000437 (Haw. Cir. Ct.); *The Dentist Insurance Co. v. MECO, et al.*, Case Nos. 2CCV-24-0000668, 2CCV-24-0000800, 2CCV-24-0000801, 2CCV-24-0000802 (Haw. Cir. Ct.). Subrogation Plaintiffs also include any other insurance carriers with subrogation claims arising out of the Maui Fires that are represented by any law firm in those actions, and, for the avoidance of doubt, other Persons to whom any insurance carrier has assigned the rights, title, interest, or proceeds of a subrogation claim arising out of the Maui Fires.

2.69 “Subrogation Insurers” means any insurer or insurance syndicate that paid, or reserved for future payment, any property damage claims (including business loss or interruption) arising out of the Maui Fires, including but not limited to the Subrogation Plaintiffs, and, for the avoidance of doubt, other Persons to whom any such insurer or insurance syndicate has assigned the rights, title, interest, or proceeds for claims arising out of such payments or reservations.

2.70 “Term Sheet” means that certain settlement term sheet dated August 2, 2024.

2.71 “Termination Event” has the meaning specified in Section 8.1.2.

2.72 Unless the context requires otherwise, (i) the word “will” shall be construed to have the same meaning and effect as the word “shall”; (ii) the word “or” shall be construed in its inclusive sense to have the same meaning and effect as the words “and/or”; (iii) the word “extent” in the phrase “to the extent” will mean the degree to which a subject or other thing extends, and such phrase will not simply mean “if”; (iv) references to “day” or “days” in the lower case are to calendar days, but if the last day is a Saturday, Sunday, or legal holiday (as defined in Haw. Rev. Stat. § 8-1), the period will continue to run until the end of the next day that is not a Saturday, Sunday, or legal holiday; (v) references to this Individual Settlement Agreement will include all exhibits, schedules, and annexes hereto; (vi) references to any law will include all rules and regulations promulgated thereunder; (vii) the terms “include,” “includes,” and “including” will be deemed to be followed by “without limitation,” whether or not they are in fact followed by such words or words of similar import; (viii) when a capitalized singular form of a plural defined term is used, it refers to any one of the defined term; (ix) when a capitalized plural form of a singular defined term is used, it refers to one or more of the defined term; (x) references to dollars or “\$” are to United States dollars; and (xi) all day and time references are based on Hawai‘i Standard Time.

ARTICLE III: SETTLEMENT FUND

3.1 **Defendant Aggregate Contributions.** In consideration of the releases set forth in Article VII of this Individual Settlement Agreement and Article VII of the Class Settlement Agreement, the dismissal with prejudice of the Actions, and the terms and conditions of both the Individual Settlement Agreement and the Class Settlement Agreement, each Defendant will, in addition to performing its other obligations set forth in this Individual Settlement Agreement, pay or cause to be paid its Individual Defendant Aggregate Settlement Contribution at the times and in the amounts set forth in Section 3.3 of this Individual Settlement Agreement and Section 3.3 of the Class Settlement Agreement, with each Defendant's Individual Defendant Aggregate Contribution being the amount that has been agreed upon by that Defendant with the Mediators.

3.1.1 A Defendant's payment of its Individual Defendant Aggregate Contribution into the Class and Individual Settlement Funds shall satisfy all monetary obligations of that Defendant under both this Individual Settlement Agreement and the Class Settlement Agreement. In no event shall any Defendant be required to pay more than its Individual Defendant Aggregate Contribution.

3.1.2 Defendants are not jointly liable for the whole amount to be paid into the Class Settlement Fund and Individual Settlement Fund, or either of them. Any failure by any Defendant to timely pay all or part of its Individual Defendant Aggregate Contribution—including either its Individual Defendant Class Contribution or its Individual Defendant IP Contribution—shall not affect the effectiveness of any release of any Released Claim, including as to any other Defendant (and its associated Releasees), nor provide Plaintiffs a cause of action against any Defendant (or its associated Releasees) other than the non-paying Defendant for that payment.

3.1.3 Each Defendant's contribution to the One Ohana Fund shall be a credit that will be applied dollar-for-dollar as a partial payment of its Individual Defendant Aggregate Contribution, and the Aggregate Settlement Amount includes such contributions.

3.1.4 **Individual Settlement Amount.** The Class Settlement Amount and the Individual Settlement Amount will be determined in accordance with the terms and conditions set forth in Exhibit 10. The procedures set forth in Exhibit 10 to determine the Class Settlement Amount and the Individual Settlement Amount may not modify or add to any provision of this Individual Settlement Agreement or the Class Settlement Agreement, including, but not limited to, the definition of the Settlement Class in the Class Settlement Agreement, the Releases under Section VII, the Aggregate Settlement Amount, and the terms of Section 4.1.2(k). For avoidance of doubt, no requirement in this Individual Settlement Agreement may be altered without the written consent of all signatories to this Individual Settlement Agreement.

3.1.5 **Individual Settlement Administration Expenses.** Defendants will be responsible for, in addition to the Aggregate Settlement Amount, 50% of the Individual Settlement Administration Expenses, up to a cap of \$15 million, which shall be known as the Defendants' IP Administration Share. The Defendants' IP Administration Share will be paid from the sources as follows in the following order. First, all interest generated by the principal amounts contributed to the One Ohana Fund will be exhausted. Second, if, and only if, that

interest is exhausted, then any refund to the County of amounts it previously contributed to the One Ohana Fund will be exhausted, and this shall satisfy the County's full and total obligation to pay any remaining IP Administration Share. Third, if, and only if, these first two sources are exhausted, the remaining Defendants will collectively pay the remainder of Defendants' IP Administration Share, with each Defendant paying a proportion that corresponds to its Individual Defendant Aggregate Contribution divided by the Aggregate Settlement Amount.

3.2 **Creation of Individual Settlement Fund.**

3.2.1 Upon payment of any portion of any Individual Defendant IP Contribution into the Individual Settlement Fund, the Individual Settlement Fund shall become a "qualified settlement fund," as defined in 26 C.F.R. § 1.468B-1. Liaison Counsel or the Individual Settlement Administrator shall establish accounts that together will be designated as a "qualified settlement fund," as defined in 26 C.F.R. § 1.468B-1, pursuant to the Internal Revenue Code.

3.2.2 Neither the Individual Parties nor the Individual Settlement Administrator shall take any position in any filing or before any tax authority that is inconsistent with treating the Individual Settlement Fund as a "qualified settlement fund," as defined in 26 C.F.R. § 1.468B-1. Each Defendant shall be a "transferor," and the Individual Settlement Administrator shall be the "administrator" of the Individual Settlement Fund within the meaning of 26 C.F.R. §§ 1.468B-1(d)(1) and 1.468B-2(k)(3), respectively. As a result, the Individual Settlement Administrator will be responsible for all tax paying, filing, withholding, and reporting obligations of the "qualified settlement fund," including, without limitation, those arising from any payments made from the Individual Settlement Fund, including any reporting required on IRS Form 1099 for distributions made from the Individual Settlement Fund. The Individual Parties agree to take all necessary and reasonable actions to qualify the Individual Settlement Fund pursuant to the United States Treasury Regulations.

3.2.3 The Individual Settlement Administrator shall hold the cash in the Individual Settlement Fund in one or more account(s) that are either (i) FDIC-insured and/or (ii) invested in securities backed by the full faith and protection of the U.S. Government (either in the form of U.S. Treasury bonds or in the form of a Treasury securities money market account) ("Approved Investments"). The Individual Settlement Administrator shall make such investments in Approved Investments on the same day it receives Individual Settlement Fund payments. During any settlement period and/or when cash is in the Individual Settlement Administrator's account prior to the payment to Individual Plaintiffs, the Individual Settlement Administrator shall hold such cash in FDIC-insured accounts, providing FDIC insurance for all such funds. The Individual Settlement Administrator shall take all precautions necessary to ensure that the funds are used solely for the purposes authorized by this Individual Settlement Agreement.

3.2.4 Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Individual Settlement Fund, including any risk of bank failures, seizures, freezes, or fraudulent or incorrect payments, which shall be the sole responsibility of Identified Plaintiffs' Counsel and the Individual Settlement Administrator. Individual Plaintiffs and Identified Plaintiffs' Counsel bear all risk and liability in the event that the bank is placed into receivership or conservatorship, and Individual Plaintiffs cannot access or

receive some or all of the funds from the Individual Settlement Amount. Any such bank receivership or conservatorship shall not limit or otherwise affect the releases of the Releasees, as defined pursuant to the Individual Settlement Agreement.

3.2.5 Identified Plaintiffs' Counsel and the Individual Settlement Administrator will segregate KS's Individual Defendant IP Contribution from the contributions of the other Defendants in a separate account that is part of the Individual Settlement Fund. The distributions from this account shall be used to pay claims related to the Lahaina fire only.

3.3 Timing of Payments to Individual Settlement Fund.

3.3.1 No payment by any Defendant will be due until the Initial Payment Due Date. The Initial Payment Due Date shall be 30 days after each of the following Conditions has been satisfied, except for the Condition specified in subsection (f), which, per Section 5.2, must occur on or before the Initial Payment Due Date:

(a) As to the State, the enactment of legislation appropriating funds for the State's Individual Defendant Aggregate Contribution;

(b) As to KS, approvals of KS's Individual Defendant Aggregate Contribution through: (1) written fiduciary affirmation letters from the State Attorney General (as *parens patriae*); (2) fiduciary approvals from the State Probate Court (in KS' open-probate case), in a Final and Unappealable order; and (3) tax approvals from the Internal Revenue Service (as a tax-exempt organization), in a Private Letter Ruling. For these approvals, KS must complete and submit to regulators its fiduciary reviews of expected liabilities, financial capacities, the Class Settlement Plan (as defined in the Class Settlement Agreement), and the Individual Settlement Plan, to determine if its Individual Defendant Aggregate Contribution is, among other things, prudent, fiduciarily justified, and without impermissible private benefit;

(c) Final Approval of the Class Settlement Agreement and Class Settlement Plan;

(d) Any other approvals necessary to render any release provided by any Plaintiff, including any Class or Individual Plaintiff, enforceable;

(e) Satisfaction of the requirements set forth in Section 5.1.1 or Section 5.1.2;

(f) Satisfaction of the requirement set forth in Section 5.2;

(g) The Final Order and Judgment has become Final and Unappealable;

(h) The deadlines for exercising all termination rights set forth in Article VIII have passed with no Party validly exercising such termination rights; and

(i) The Approving Court has made a Final and Unappealable good-faith determination approving the Class Settlement Agreement and Individual Settlement Agreement in accordance with Section 9.3.

3.3.2 Each Defendant will pay its Individual Defendant IP Contribution according to the following schedule:

3.3.3 For Hawaiian Electric, the Individual Settlement Percentage multiplied by \$478,750,000 on the Initial Payment Due Date, and three additional payments of the Individual Settlement Percentage multiplied by \$478,750,000 that are, in each case, made one year and one day after the previous one, plus the amount refunded by the One Ohana Fund of the principal amount Hawaiian Electric contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of Hawaiian Electric's receipt of such funds, provided that, at Hawaiian Electric's option, Hawaiian Electric may accelerate all or any portion of amounts due after the Initial Payment Due Date, in which case, subject to Section 3.4, such accelerated payments shall be discounted at the rate of 5.5%, with a corresponding reduction in its Individual Defendant IP Contribution and Individual Defendant Aggregate Contribution, as well as the Aggregate Settlement Amount and the Individual Settlement Amount.

(a) Hawaiian Electric further agrees to the conditions under Appendix B.

3.3.4 For the State of Hawai'i, \$201,875,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, and \$201,875,000 multiplied by the Individual Settlement Percentage on each of the three successive anniversaries of the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount the State of Hawai'i contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of the State of Hawai'i's receipt of such funds.

3.3.5 For KS, \$213,750,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, and \$213,750,000 multiplied by the Individual Settlement Percentage on each of the three successive anniversaries of the Initial Payment Due Date, provided that, at KS's option, KS may accelerate all or any portion of amounts due after the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount KS contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of KS's receipt of such funds.

3.3.6 For Hawaiian Telcom, \$97,500,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount Hawaiian Telcom contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of Hawaiian Telcom's receipt of such funds.

3.3.7 For Spectrum, \$177,500,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund

of the principal amount Spectrum contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of Spectrum's receipt of such funds.

3.3.8 For West Maui Land, \$9,500,000 multiplied by the Individual Settlement Percentage on the Initial Payment Due Date, plus the amount refunded by the One Ohana Fund of the principal amount West Maui Land contributed to the One Ohana Fund (not including interest) multiplied by the Individual Settlement Percentage within 30 days of West Maui Land's receipt of such funds.

3.3.9 If a Defendant elects to make an accelerated payment, such Defendant will provide written notice to Plaintiffs' Counsel thirty (30) days prior to the date of such payment. Such notice shall set forth the amount of the accelerated payment, how the amount was calculated (including which payment(s) is/are accelerated), and the schedule of remaining payments. Any dispute about the calculations shall be subject to the dispute resolution provision in Section 10.2.

3.4 **Holdback.** In accordance with Section 8.3, the Class Settlement Administrator and the Individual Settlement Administrator shall hold back certain funds from each payment by any Defendant to the Class Settlement Fund or Individual Settlement Fund.

3.5 **Uses of Settlement Fund.** All Monetary Awards to Individual Plaintiffs, Individual Settlement Administration Expenses (except as specified in Section 3.1.5), and payments to Subrogating Insurers or for medical or other liens for Individual Plaintiffs, if any, as to Released Claims, and payments or amounts due on Holdback Claims per Section 8.3, shall be paid exclusively from the Individual Settlement Fund. The Individual Settlement Fund and Class Settlement Fund are, collectively, the sole sources of recovery for Plaintiffs, Non-Participants, Government Entities, and Subrogation Insurers for any Released Claims.

3.6 **Taxes.** All Individual Plaintiffs shall agree to be solely responsible for, and be legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by them to any national, federal, state, local, regional, or any other governmental taxing authority as a result of any payment made in connection with this Individual Settlement Agreement. Identified Plaintiffs' Counsel understand, and Individual Plaintiffs must affirm that they understand, that Defendants have not made, and they do not rely upon, any representations regarding the tax treatment of the payments made in connection with this Individual Settlement Agreement. Moreover, Individual Plaintiffs shall agree to indemnify and hold Defendants and Releasees harmless if any governmental taxing authority asserts against any Defendant or other Releasee any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon any payment made in connection with this Individual Settlement Agreement.

3.7 **Attorneys' Fees and Costs.**

3.7.1 Attorneys for Individual Plaintiffs will be compensated by Individual Plaintiffs consistent with the terms of agreements between them and applicable law.

3.7.2 For the avoidance of doubt, Defendants shall have no responsibility for any payments beyond their Individual Defendant Aggregate Contributions, and no responsibility to pay any fees or costs other than insofar as those fees and costs are paid from, in the aggregate, the Class Settlement Fund and Individual Settlement Fund. Plaintiffs shall have no responsibility to pay any fees or costs of any Defendant except where specified in this Individual Settlement Agreement.

3.7.3 Defendants shall bear each of their own attorneys' fees and costs incurred in the Actions and this Individual Settlement Agreement.

3.8 Individual Settlement Administrator.

3.8.1 Liaison Counsel and Defendants will agree on a neutral party within 20 days of the Settlement Date, whose tasks under this Individual Settlement Agreement are limited to implementing this Section. Liaison Counsel will use a competitive bidding process to assess candidates to be the Individual Settlement Administrator. Liaison Counsel will thereafter submit their selected candidate to the neutral appointed under this Section, in addition to all of the bids they received. That neutral will have the unilateral right to approve or disapprove the candidate for appointment as the Individual Settlement Administrator, based solely on an assessment whether, taking into account the bids, the amounts proposed to be paid to the candidate for Individual Settlement Administrator are reasonable. The neutral will not be limited, in assessing the candidate, to approving only the candidate who submitted a bid with the lowest proposed fees.

3.8.2 Liaison Counsel will request that the Approving Court appoint the candidate ultimately selected pursuant to Section 3.8.1 as Individual Settlement Administrator. Except as expressly stated in this Individual Settlement Agreement, Defendants shall not have any responsibility, authority, or liability for the selection of the Individual Settlement Administrator, the administration of the Individual Settlement Agreement or the Individual Settlement Plan, receiving and responding to any inquiries from Individual Plaintiffs, or disbursement of funds to Individual Plaintiffs. For avoidance of doubt, the Class Settlement Administrator may be the same Person as the Individual Settlement Administrator. The Individual Settlement Administrator's rights, obligations, responsibilities, and authority shall include the following:

3.8.3 The Individual Settlement Administrator shall administer the settlement according to the terms of this Individual Settlement Agreement and the Individual Settlement Plan. The Individual Settlement Administrator shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, this Individual Settlement Agreement or the Individual Settlement Plan, deemed by the Individual Settlement Administrator and any consultants retained by the Individual Settlement Administrator to be reasonably necessary for the efficient and timely administration of this Individual Settlement Agreement and the Individual Settlement Plan.

3.8.4 The Individual Settlement Administrator shall determine eligibility of Individual Plaintiffs for Monetary Awards according to the terms of this Individual Settlement Agreement and the Individual Settlement Plan, and shall create administrative procedures and

administrative processes supplementary to those specified in this Individual Settlement Agreement and the Individual Settlement Plan that provide further specific details about how the Individual Settlement Fund is administered, and/or other aspects of this Individual Settlement Agreement and the Individual Settlement Plan; provided, however, that such procedures comply with and are in no way inconsistent with the terms of this Individual Settlement Agreement and the Individual Settlement Plan.

3.8.5 The Individual Settlement Administrator shall be compensated for its reasonable and necessary charges incurred in the performance of the position at a reasonable rate for the services to be performed, as approved by Liaison Counsel, and such approved compensation shall be part of the Individual Settlement Administration Expenses.

3.8.6 Beginning the first January after appointment, the Individual Settlement Administrator will provide annual financial reports to the Court, Defendants, and Liaison Counsel, based on information from the preceding year, regarding: (a) the number of Individual Plaintiffs who received Monetary Awards, and the number of Individual Plaintiffs who sought but were found by the Individual Settlement Administrator not to qualify for Monetary Awards; (b) the monetary amounts paid through Monetary Awards; (c) the number of Individual Plaintiffs for whom appeals are pending regarding Monetary Awards; (d) the identification/breakdown of any law firms representing Individual Plaintiffs; (e) administrative costs, including a summary accounting of the administrative expenses incurred by the Individual Settlement Administrator; (f) the projected expenses/administrative costs over the next calendar year; (g) the monies remaining in the Individual Settlement Fund; and (h) any other information requested by the Court, Defendants, or Liaison Counsel.

3.8.7 The Defendants may elect, at their own expense, to cause an audit to be performed by a certified public accountant of the financial records of the Individual Settlement Administrator, and the Individual Settlement Administrator shall cooperate in good faith with the audit. Audits may be conducted at any time. Complete copies of the audit findings report will be provided to the Court and to any Defendant or Liaison Counsel that pays their pro-rata share of the cost of the audit.

3.8.8 If the Individual Settlement Administrator resigns or otherwise cannot perform its duties and responsibilities under the Individual Settlement Agreement, a replacement will be selected by Liaison Counsel.

3.9 **Website.** Liaison Counsel in conjunction with the Individual Settlement Administrator will establish and maintain a public website containing information about the Individual Settlement Agreement.

ARTICLE IV: PARTICIPATION IN THE INDIVIDUAL SETTLEMENT

4.1 **Individual Settlement Plan.** Liaison Counsel will work with the Individual Settlement Administrator to develop an Individual Settlement Plan for the administration of the Individual Settlement Fund. Liaison Counsel will file the final version of the Individual

Settlement Plan publicly with the Approving Court along with a request that the Approving Court approve that plan.

4.1.1 In the event that the Approving Court requires changes to the Individual Settlement Plan, the Individual Parties remain bound to the Individual Settlement Agreement, except that requirements that are expressly stated in this Individual Settlement Agreement (except where expressly noted) may not be altered without the written consent of all signatories to this Individual Settlement Agreement.

4.1.2 The following provisions must be included in the Individual Settlement Plan:

(a) The Individual Settlement Plan shall include a plan for determining the Monetary Award for each Individual Plaintiff, which may address the valuation of specific categories of claims and the proof or evidentiary showing, if any, necessary for an Individual Plaintiff to establish entitlement to a Monetary Award.

(b) The Individual Settlement Plan shall include a plan for claims administration, including the distribution and timing of Monetary Awards. In any such plan, a failure of an Individual Plaintiff, or their agent, to comply with the requirements of the Individual Settlement Plan to receive a Monetary Award, or the fact that an Individual Plaintiff ultimately does not receive any particular Monetary Award that was allocated to them, will not affect the validity or enforceability of the Release provided by such Individual Plaintiff.

(c) The Individual Settlement Plan shall require that any Individual Plaintiff who is eligible for payment from the One Ohana Fund must register for and seek payment from the One Ohana Fund as a condition precedent to receiving any money from the Individual Settlement Fund. The Individual Settlement Plan shall ensure that any Individual Plaintiff's Monetary Award takes into consideration the amount of any payment that the Individual Plaintiff previously received from the One Ohana Fund. For the avoidance of doubt, Individual Plaintiffs may receive additional money from the Individual Settlement Fund beyond any amounts previously received from the One Ohana Fund.

(i) The State of Hawai'i will work with the contributors to the One Ohana Fund to reopen it for the submission of claims for a time period of at least six months after the issuance of the order of Preliminary Approval to effectuate this requirement under Section 4.1.2(c).

(d) The Individual Settlement Plan shall ensure that any Individual Plaintiff's Monetary Award does not impact the eligibility of an Individual Plaintiff to receive assistance from the Federal Emergency Management Agency ("FEMA"). The Individual Settlement Plan shall implement measures that take into consideration the amount of any payment that the Individual Plaintiff previously received from FEMA when determining that Individual Plaintiff's Monetary Award. For the avoidance of doubt, Individual Plaintiffs may receive additional money from the Individual Settlement Fund beyond any amounts previously received from FEMA.

(e) The Individual Settlement Plan shall include a plan for approval of any Individual Settlement Agreement and Release that requires approval from an Approving Court.

(f) The Individual Settlement Plan shall include a plan for the establishment and implementation of procedures to detect and prevent fraudulent submissions and the payment of fraudulent claims from the Individual Settlement Fund. Defendants and Liaison Counsel each will have the absolute right and discretion, at any time, but at their sole expense, in good faith to conduct, or have conducted by an independent auditor, audits to verify Monetary Award claims submitted by Individual Plaintiffs.

(g) The Individual Settlement Plan shall include a plan for the identification and satisfaction of liens. The plan shall set forth a process for the identification of liens on an Individual Plaintiff's recovery, including but not limited to any potential health care liens or recovery claims related to this Individual Settlement Agreement, as well as any liens related to property insurance or business loss claims. The plan shall require any Individual Plaintiff to, as part of the claims process, provide the names of any insurers, including for medical coverage, property loss or damage, and business loss or interruption, to which the Individual Plaintiff has made a claim for payment of any sums arising out of or related to the Maui Fires and the amount of such payments sought and received. The plan shall set forth the process by which all liens shall be satisfied, and shall provide for the completion of any applicable reporting obligations. The plan shall provide that Individual Plaintiffs are solely responsible to pay, satisfy, compromise or settle any costs, expenses, liens, claims and demands. The plan shall state that no Monetary Award shall be made to an Individual Plaintiff until all lien and other fees and cost obligations of the Individual Plaintiff have been resolved and paid or have been withheld subject to an applicable lien holdback. The plan shall further address the role that the Approving Court will have in resolving any disputes related to identification and satisfaction of liens, including the amount of such liens.

(i) The Individual Settlement Plan shall require, as a condition for receipt of any Monetary Award, Individual Plaintiffs to provide the Individual Settlement Administrator with all information necessary to resolve all liens or rights of subrogation or reimbursement from any doctors, hospitals, other healthcare providers and servicers, and any other individuals, insurers, companies, agencies, workers' compensation insurers or agencies, governmental agencies, political subdivisions, attorneys, or other third parties, including, but not limited to, Medicare, Med-QUEST, the Veterans Administration, Tricare, the Department of Health Care Services, Medicaid, the Centers for Medicare & Medicaid Services, or any other federal or state programs or Persons (collectively, "Medical Liens"). The Individual Settlement Plan shall further require Individual Plaintiffs to obtain waivers or other documentation from all Persons holding such Medical Liens, establishing that all Medical Liens for all Individual Plaintiffs have been paid, satisfied, or waived.

(ii) The plan shall require that the Individual Plaintiffs agree that, to the extent their Medicare, Medicaid, and SCHIP Extension Act ("MMSEA") reporting obligations change during the executory period of this Individual Settlement Agreement, Individual Plaintiffs must provide any additional information needed to comply with such requirements.

(h) The plan shall include provisions that address the resolution of claims of Subrogation Insurers for payments made to policyholders who are Individual Plaintiffs.

(i) The Individual Settlement Plan shall not modify or adjust the amount allocated to an Individual Plaintiff based on whether such Individual Plaintiff received, or is entitled to receive, payments from a Subrogation Insurer under a policy of insurance.

(j) The Individual Settlement Plan shall include a plan for potential distribution of Holdback Funds to Individual Plaintiffs, subject to Section 8.3.

(k) The Individual Settlement Plan shall include provisions that the County shall receive \$25,000,000.00 in a single cash payment payable on the third annual anniversary of the Initial Payment Due Date (“Individual County Payment”). This payment will come out of the Individual Settlement Amount. By agreement of the Parties, the Individual County Payment is a sum certain that shall not be subject to the Individual Settlement Administration process or subject to any modification by the Settlement Administrators or others, or the allocation procedure referenced in Section 3.1.4.

(l) **FEMA Obligation.** This Individual Settlement Agreement encompasses and includes claims for the FEMA-eligible work and financial assistance to the County provided by FEMA related to the Maui Fires. After coordinating with FEMA, it is the understanding of the Parties that the pro rata allocation of the settlement funds referenced in Section 4.1.2(k) to the County shall also satisfy all FEMA interests in the alleged potential liability of the Parties for costs of FEMA reimbursements and financial assistance and leaves no basis for FEMA to directly pursue from the Parties these or any other costs related to the County’s claims against Defendants. The County and the Parties agree that this Individual Settlement Agreement and the settlement sum identified in Section 4.1.2(k) represent a fair, reasonable, and just amount of compensation for the claimed, disputed damages, and that the County made commercially reasonable efforts to pursue claims to recover the monies and benefits obligated, paid or given or sought to be obligated, paid or given, to or by the County by FEMA. The County and the Parties agree that the County made commercially reasonable efforts to secure the settlement sum in this litigation, which includes those monies and benefits obligated, paid or given, or sought to be obligated, paid or given, by FEMA. The letters to and from FEMA reflect the procedures agreed to by FEMA. The letters between FEMA, on the one hand, and the State and County, on the other hand, are attached as Exhibit 9.

4.2 **Liability for Allocation of Consideration.** Identified Plaintiffs’ Counsel bear full and sole responsibility for devising a method of allocating the Individual Settlement Amount among the Individual Plaintiffs and devising a method to determine how much of the Individual Settlement Amount each shall receive. Identified Plaintiffs’ Counsel assume all risk of liability for all damages, losses, and any other relief, including attorneys’ fees and costs, for any claim asserted against Releasees related to payment of Individual Plaintiffs, including related to allocation of the Individual Settlement Amount or Aggregate Settlement Amount. The total amount paid to Individual Plaintiffs (inclusive of all attorneys’ fees, expert fees, Administrator’s fees, and all costs and other amounts) cannot exceed the Individual Settlement Amount, except pursuant to Section 4.1.2(a) of the Class Settlement Agreement.

4.3 On the Initial Payment Due Date, the Parties hereby irrevocably authorize the Individual Settlement Administrator to deliver to the Defendants all executed original copies of the Individual Settlement Agreement and Releases.

ARTICLE V: SUBROGATION CLAIMS AND INDEMNIFICATION

5.1 It is a Condition to this Individual Settlement Agreement that, by May 19, 2025, one of the following two requirements is met:

5.1.1 Each and every Subrogation Plaintiff executes and delivers to the Parties a written agreement approved by the Parties in which each Subrogation Plaintiff agrees to release all Released Claims against Releasees; or

5.1.2 A decision of a trial court becomes Final and Unappealable holding that, if the Class and Individual Settlement Agreements become effective, (a) the Subrogation Plaintiffs' exclusive remedy for any claims arising out of the Maui Fires would be asserting liens, if any, against their policyholders for their respective shares of the Aggregate Settlement Amount and (b) the Subrogation Plaintiffs shall be barred from bringing or maintaining any claims arising out of the Maui Fires against the Defendants.

5.2 It is a Condition to this Individual Settlement Agreement that, on or prior to the Initial Payment Due Date, all claims brought by any Subrogation Insurer against any Releasee for subrogation arising out of the Maui Fires must be dismissed with prejudice in a Final and Unappealable order.

5.3 The Defendants agree to join in any lawful and reasonable motions for expediting appellate review of the trial court's judgments, orders, or opinions under Sections 5.1.2 and 5.2.

5.4 For the avoidance of doubt, the order entered by Judge Peter Cahill on August 19, 2024, in the Special Proceeding, constitutes a decision of a trial court that, if rendered Final and Unappealable, would satisfy Section 5.1.2.

5.5 Plaintiffs' Counsel will promptly notify the Defendants if, in their judgment, the conditions of Section 5.1 have been satisfied. The Defendants shall thereafter promptly notify Plaintiffs' Counsel whether, in the Defendants' judgment, the conditions in Section 5.1 have been satisfied. If the Defendants contend that the conditions have not been satisfied, and Plaintiffs' Counsel dispute that determination, the issue shall be discussed further with the assistance of the Mediators.

5.6 In the event that the Condition in Section 5.1 is satisfied by an agreement under Section 5.1.1, the signatories to this Individual Settlement Agreement and the Class Settlement Agreement will negotiate in good faith to modify both agreements consistent with the intention to establish a global resolution, including by addition of provisions for the release and/or indemnification of the Releasees with respect to all Released Claims by all Subrogation Insurers. Such modifications may include broadening the definition of Parties in this Individual Settlement Agreement and/or the Class Settlement Agreement to include Subrogation Insurers. Any

modifications to this Individual Settlement Agreement require the written consent of all signatories to this Individual Settlement Agreement.

5.7 Subrogation Indemnification. Each Individual Plaintiff who receives a Monetary Award shall be required to indemnify the Releasees with respect to any individual liens asserted by any Subrogation Insurer against that Individual Plaintiff arising out of or relating to the Maui Fires.

5.7.1 Each Individual Plaintiff who receives a Monetary Award shall agree to indemnify, forever hold harmless, and defend Releasees against loss, liability, cost, or expense from any and all claims, lawsuits, appeals, liens, demands, actions, cross claims, and third-party claims arising out of the Maui Fires that have been made or brought, or that may be made or brought later, by such Person or by anyone acting on their behalf, or by anyone holding by or through them, including Persons asserting rights of subrogation in connection with such Individual Plaintiff's claims.

5.7.2 Each Individual Plaintiff who receives a Monetary Award shall affirm that they understand and agree that the defense and indemnification obligation in Section 5.7.1 includes the defense, payment, and satisfaction of claims or liens by all Persons who have claimed or in the future may claim that they have money due and owing to them from this Individual Settlement Agreement or any matter covered by or related to this Individual Settlement Agreement, including, but not limited to, claims or liens by Persons who have provided or paid, or who will provide or pay, to or on behalf of Individual Plaintiff, pursuant to contract, law, insurance claims, or government benefits of any kind arising from the Maui Fires.

5.8 Each Individual Plaintiff who receives a Monetary Award shall specifically represent that if any lien or reimbursement right is asserted under any legal theory against the proceeds herein or against Releasees, then, in consideration of the Individual Plaintiff's Monetary Award, Individual Plaintiff shall covenant to pay and satisfy such asserted lien or reimbursement right, or to satisfy the same on a compromise basis or through final determination by a court of competent jurisdiction, and to obtain a release of Releasees, and to indemnify and hold harmless Releasees from any costs, expenses, attorneys' fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien or reimbursement rights by any Person having or claiming to have such lien or reimbursement right.

5.9 Provisions reflecting the obligations set forth in Section 5.7 and Section 5.8 are included in the Individual Settlement Agreement and Release.

ARTICLE VI: NO ADMISSION OF LIABILITY

6.1 No Admission of Liability. This Individual Settlement Agreement (whether or not consummated), including the exhibits hereto and the Individual Settlement Plan (or any other plan of allocation that may be approved by the Approving Court), the negotiations leading to the execution of this Individual Settlement Agreement, and any proceedings in connection with this Individual Settlement Agreement and/or approval of any Individual Settlement Agreement and Release (including any arguments proffered in connection therewith) shall not constitute, be

construed as, be deemed to be, or be offered against any Releasee as evidence of any presumption, concession, or admission by Defendants or other Releasees with respect to the truth of any fact alleged by Plaintiffs, the validity of any claim that was or could have been asserted, the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, the amount of any alleged damages incurred by any or all Plaintiffs or attributable to any Defendant, or any liability, negligence, fault, or other wrongdoing of any kind by Defendants or any other Releasees, or be referred to for any other reason as against Defendants or any other Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate or enforce the provisions of this Individual Settlement Agreement.

ARTICLE VII: RELEASES

7.1 Individual Plaintiff Releasors. The Individual Settlement Agreement and Release shall require that an Individual Plaintiff, on behalf of all of their respective Individual Plaintiff Releasors, expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever releases, discharges, and holds harmless the Releasees from any and all Released Claims and waives, compromises, relinquishes, and settles the Released Claims against Releasees. For the avoidance of doubt, nothing in these releases shall prevent that Litigation Trustee from pursuing an action contemplated by Section 7.7. A failure of an Individual Plaintiff, or their agent, to comply with the requirements of the Individual Settlement Plan to receive a Monetary Award, or the fact that an Individual Plaintiff ultimately does not receive any particular Monetary Award that was allocated to them, will not affect the validity or enforceability of these releases. This Individual Settlement Agreement does not itself constitute a release of any particular claim of any particular Person eligible to become an Individual Plaintiff. This Individual Settlement Agreement does not require any Person eligible to become an Individual Plaintiff to settle their Released Claims, and any such Person is free to settle or not settle their Released Claims consistent with the terms of this Individual Settlement Agreement. The ultimate authority whether to sign the Individual Settlement Agreement and Release remains completely with each Person eligible to become an Individual Plaintiff.

7.1.1 Subrogation. For the avoidance of doubt, these releases shall be binding on all insurers who paid Individual Plaintiffs under insurance policies for claims in any way related to the Maui Fires.

7.2 Agreements with Government Entities.

7.2.1 Defendants have received letters from FEMA and receipt of these letters is a material part of the consideration received by Defendants for this Individual Settlement Agreement.

7.2.2 In addition, Defendants agree that they will work diligently and use their best efforts to obtain written releases and/or commitments from relevant Government Entities not to pursue any claims arising out of the Maui Fires against Releasees, as provided under Sections 6 and 7 of the Term Sheet, prior to the Initial Payment Due Date.

7.3 Defendants' Releases. In consideration of the terms of this Individual Settlement Agreement and the Class Settlement Agreement, each and every Defendant, on behalf of its respective Defendant Releasors, shall release the Releasees from any Released Claim, including cross-claims for indemnity or contribution for any Released Claim, provided, however, that, subject to Section 8.3.6, this release shall not include cross-claims between Defendants (or their respective Defendant Releasors) for indemnity, contribution, or otherwise for any Released Claim brought against any Releasee by any Person who is not a Plaintiff. Any Released Claim brought against any Releasee by any Person who is not a Plaintiff shall be paid and defended from the Holdback Fund, as more particularly discussed in this Individual Settlement Agreement and the Class Settlement Agreement. If a Defendant Releasor enters into a settlement of a Released Claim with any Person who is not a Plaintiff, the Defendant Releasor shall make reasonable efforts to ensure that the settlement requires the settling Person to unconditionally release all Released Claims against all Releasees, including as described in Section 8.3.3.

7.4 Individual Settlement and Releases.

7.4.1 Court Approval. Liaison Counsel shall submit the form of the Individual Settlement Agreement and Release, attached as Exhibit 4, to the Approving Court for approval. In the event that the Approving Court either denies approval or conditions approval on changes to the Individual Settlement Agreement and Release, and any such changes would be inconsistent with this Individual Settlement Agreement, then Defendants and Liaison Counsel shall negotiate in good faith to modify the Individual Settlement Agreement and the Individual Settlement Agreement and Release in a manner that resolves the issues identified by the Approving Court. If Defendants and Liaison Counsel are unable to agree on such modifications, any Defendant or Liaison Counsel may request the assistance of the Mediators. If the Mediators notify Defendants and Liaison Counsel of an impasse, then, within 10 days of receipt of such notice, any Defendant or Liaison Counsel may provide a notice of termination of this Individual Settlement, which notice shall be effective immediately. For the avoidance of doubt, any change to the Individual Settlement Agreement and Release that does not involve a change to this Individual Settlement Agreement is not a basis for termination under this paragraph.

7.4.2 Collection. A signed Individual Settlement Agreement and Release must be provided to Defendants by each Person in order for any such Person to become an Individual Plaintiff or receive a Monetary Award from the Individual Settlement Fund. Counsel for the Person signing an Individual Settlement Agreement and Release shall be solely responsible for obtaining and submitting an Individual Settlement Agreement and Release on behalf of that Person. All executed Individual Settlement Agreement and Releases shall be delivered to the Individual Settlement Administrator to be held in trust for the Parties until the Initial Payment Due Date or the earlier termination of this Individual Settlement Agreement. If the termination of this Individual Settlement Agreement occurs prior to the Initial Payment Due Date, then the Parties irrevocably authorize the Individual Settlement Administrator to return all Individual Settlement Agreement and Releases to counsel for the Person(s) who executed the Individual Settlement Agreement and Release.

7.4.3 Reporting. The Parties agree that the Individual Settlement Administrator shall be instructed to provide a report each month after the Settlement Date which report shall detail the activities performed in the prior month and identify the Individual Plaintiffs who have

executed and delivered Individual Settlement Agreement and Releases as of month's end, together with a copy of each Individual Settlement Agreement and Release received by the Individual Settlement Administrator in such month (for purposes of clarity, such Individual Settlement Agreement and Releases shall not be deemed delivered to Defendants unless and until the Initial Payment Due Date occurs). Defendants shall inform the Individual Settlement Administrator within thirty (30) days of each report whether the copies of the Individual Settlement Agreement and Releases—should identical versions be delivered to Defendants—are acceptable in form to Defendants, and the Individual Settlement Administrator shall be instructed to notify the Individual Plaintiff through their counsel of any such communication by Defendants.

7.5 No Claims Based on Newly Learned Facts. The Individual Settlement Agreement and Release shall require that Individual Plaintiffs, on behalf of their respective Individual Plaintiff Releasors, acknowledge that they may learn additional facts relating to the Releasees' actions or omissions regarding the Released Claims. Individual Plaintiffs, on behalf of their respective Individual Plaintiff Releasors, shall agree that the Individual Settlement Agreement and Release shall be and remain effective in all respects, notwithstanding such different or additional facts and the subsequent discovery thereof. Each of the Releasors shall be deemed to have, fully, finally, and forever settled and released, resolved, relinquished, waived, and discharged any and all Released Claims, including known claims or unknown claims, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts. Individual Plaintiffs, on behalf of their respective Individual Plaintiff Releasors, shall agree to waive any and all rights they may have under any statute, code, regulation, ordinance, or the common law, which may limit or restrict the effect of a general release as to claims, including claims that Releasors do not know or suspect to exist in their favor at the time of giving the release set forth in the Individual Settlement Agreement and Release. Without limiting the generality of the foregoing, and without the Parties intending in any way to limit the scope of Section 10.11, or to suggest that Hawai'i substantive law does not govern any Released Claim, (1) Releasors shall certify that they are aware of and have read and reviewed the following provision of California Civil Code Section 1542, which states: **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY**; and (2) Individual Plaintiffs, on behalf of their respective Releasors, shall expressly waive and relinquish any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction (including Section 28-1-1602 of the Montana Code, Section 9-13-02 of the North Dakota Century Code, and Section 20-7-11 of the South Dakota Codified Laws) and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the Release set forth above. The Individual Parties acknowledge that the foregoing waiver was separately bargained for and its inclusion in the Individual Settlement Agreement and Release is a key element of the Individual Settlement Agreement.

7.6 Timing of Release. The releases contemplated in this Article VII shall become effective on the Initial Payment Due Date. A failure by any Defendant to make any payment required by the Class Settlement Agreement or Individual Settlement Agreement, including any part of its Initial Defendant Payment, shall not affect the validity or enforceability of the Releases as to any Defendant or Releasee, including the defaulting Defendant. However, as noted herein, the Litigation Trustee shall have the right to pursue the remedies described in Section 7.7 against the defaulting Defendant.

7.7 Action for Non-Payment.

7.7.1 Plaintiffs' Counsel shall appoint the Litigation Trustee to manage any arbitration or litigation under this Section. The Litigation Trustee shall adopt rules for the appointment and payment of counsel. The Litigation Trustee shall be required to abide by the obligations, terms, and conditions in this Individual Settlement Agreement that apply to the Litigation Trustee.

7.7.2 In the event of any non-payment by a Defendant of any part of its Individual Defendant Aggregate Contribution, the Litigation Trustee shall have as its sole and exclusive remedy claims for recovery on behalf of the Class Settlement Fund and Individual Settlement Fund solely against the Defendant failing to make such required payment (and for the avoidance of doubt, not against any other Defendant). Plaintiffs may not individually sue any Defendant for non-payment.

7.7.3 The Litigation Trustee, on behalf of the Class Settlement Fund and Individual Settlement Fund, may recover, in any successful action against a Defendant for non-payment of any part of its respective Individual Defendant Aggregate Contribution, reasonable attorneys' fees, pre-judgment interest under the prevailing Hawai'i rate, and liquidated damages of 15% per year, accruing daily as of the date of non-payment. The Parties agree, for purposes of this settlement only and for no other purpose, that this liquidated damages figure is a reasonable approximation of the daily consequential damages suffered by Individual Plaintiffs as a result of nonpayment. Such consequential damages include the additional alternative-living-expenses and out-of-pocket costs associated with the delays in payment of construction for the rebuild of their homes.

7.7.4 Each Non-State Defendant consents to arbitration under Section 10.2, as modified by this Section 7.7.4, to resolve any claim by the Litigation Trustee for non-payment of its respective Individual Defendant Aggregate Contribution under this Section 7.7. For the avoidance of doubt, the procedures provided in this Section 7.7.4 do not apply to the State. In the event that the Litigation Trustee asserts that any Non-State Defendant has failed to timely make any part of its Individual Defendant Aggregate Contribution, the Litigation Trustee shall promptly provide written notice to the respective Non-State Defendant, and submit that claim to arbitration pursuant to Section 10.2. The notice shall set forth the amount the Litigation Trustee asserts was due from such Non-State Defendant, including amounts under Section 7.7.3. Within two days of receipt of such notice, such Non-State Defendant shall provide a written response, which shall set forth whether the Non-State Defendant contests that it is obligated to pay the amount set forth in the notice provided by the Litigation Trustee. The arbitrator will consolidate all claims for non-payment against a Non-State Defendant, whether for non-payment to the Class

Settlement Fund or Individual Settlement Fund. In any arbitration over a failure to pay any part of a Non-State Defendant's Initial Defendant Payment, the arbitrator shall issue a final award (i) within three days, if the Non-State Defendant fails to timely respond to the Litigation Trustee's notice under this section, or provides a response that fails to contest its obligation to make payment in the amount claimed by the Litigation Trustee or (ii) if the Non-State Defendant provides a timely response to the Litigation Trustee's notice under this section contesting its obligation to make payment in the amount claimed by the Litigation Trustee, (a) within 30 days of the Litigation Trustee initiating arbitration, with respect to an alleged failure by a Non-State Defendant to make any part of its Initial Defendant Payment and (b) within 15 days of the Litigation Trustee initiating arbitration with respect to an alleged failure by a Non-State Defendant to make any part of its Individual Defendant Aggregate Contribution other than its Initial Defendant Payment. Following issuance of the final arbitral award, the Litigation Trustee may enforce such award in the Second Circuit Court of Hawai'i, pursuant to H.R.S. § 658A-22. In any such action, the Non-State Defendant against whom the award is made will agree to any reasonable request to expedite proceedings and secure a judgment against that Non-State Defendant under H.R.S. § 658A-25.

7.8 Dismissal of All Claims. The Individual Settlement Agreement and Releases shall require that all claims asserted in any court by any Individual Plaintiff Releasor against any Releasee arising out of the Maui Fires must be dismissed with prejudice within ten (10) days after the Initial Payment Due Date. Executed stipulations for dismissal with prejudice for all such claims must be provided to the Individual Settlement Administrator within 60 days after the Return Date, to be held in escrow and provided to Defendants for filing the day after the Initial Payment Due Date.

7.9 Order Governing Non-Participants. The Parties will submit to the Second Circuit Court and request approval of a proposed order, attached as Exhibit 7, governing all Released Claims pending or subsequently brought in the Special Proceeding that are not dismissed within ten (10) days of the Initial Payment Due Date, or are thereafter filed. The Parties will request that the Special Proceeding remain open for at least three years after the Initial Payment Due Date to enforce this order.

7.10 Exclusive Remedy. The Individual Settlement Agreement and Release shall require that upon the effectiveness of the releases described under this Article VII, the Releasors acknowledge and agree that their sole and exclusive remedy with respect to any and all Released Claims against Releasees arising out of the Maui Fires shall be pursuant to the terms of this Individual Settlement Agreement or, as applicable, the Class Settlement Agreement (including as limited by Section 7.7). No Releasor shall recover, or be entitled to seek to recover, directly or indirectly, any sums from any Releasee other than the consideration received under the terms of this Individual Settlement Agreement.

7.11 Covenant Not to Sue. Without limiting any of the releases described under this Article VII, the Individual Settlement Agreement and Release shall require that Releasors agree and covenant that, if the releases described in this Article VII become effective, they will not take any action against any Releasee to initiate, pursue or maintain, or otherwise attempt to execute upon, collect, or enforce, any Released Claims; institute any new legal, equitable, or other action against any of the Releasees or any other Persons relating to any Released Claims;

attempt to execute, collect on, or otherwise enforce, any judgment that may be entered against any of the Releasees on any Released Claims; or maintain any pending legal action that the Releasor may have filed in any court against any of the Releasees asserting any Released Claims. The Releasors shall further covenant and agree that they will not sue or bring any action or cause of action under any state, local, or federal law challenging the releases described under this Article VII.

ARTICLE VIII: CONTINGENCIES

8.1 Termination Provisions.

8.1.1 In the event that any Defendant validly terminates the Class Settlement Agreement under the provisions of that agreement, this Individual Settlement Agreement will immediately terminate.

8.1.2 If (i) the time limit for satisfaction of the Conditions under Section 5.1 has passed without satisfaction of that Condition or (ii) one or more other Conditions has not been satisfied within two years of the date on which the motion for Preliminary Approval is filed, that will be known as a “Termination Event.” On or after the date of a Termination Event, any signatory to this Individual Settlement Agreement or the Class Settlement Agreement may provide notice to the other signatories of a proposed termination of the agreement or agreements to which the signatory is a party. To be valid, the notice must state that the party providing notice believes that the satisfaction of the Conditions under Section 5.1 and/or of the other Conditions is not reasonably likely to occur within a reasonable period of time. Within 10 days of receipt of such notice, any other signatory to this Individual Settlement Agreement or the Class Settlement Agreement may contest the proposed termination. If any of the signatories to this Individual Settlement Agreement or the Class Settlement Agreement disagrees as to whether a Termination Event has occurred, or as to whether the satisfaction of the Conditions under Section 5.1 and/or of the other Conditions is reasonably likely to occur within a reasonable period of time, all signatories to both agreements shall meet and confer. If these signatories are unable to agree as to whether the agreements may be terminated, then the signatories will resolve their dispute through dispute resolution pursuant to Section 10.2.

8.1.3 In the event of any termination under this Article VIII of either the Class Settlement Agreement or the Individual Settlement Agreement, the Class Settlement Agreement, this Individual Settlement Agreement, and all Individual Settlement Agreement and Releases shall terminate in their entirety, except as follows: with respect to the Class Settlement Agreement, as to Sections 1.14, 1.15, 8.1, Article II (to the extent such definitions are used in other surviving provisions), Article VI, and Article X; with respect to the Individual Settlement Agreement, Sections 1.14, 1.15, 8.1, Article II (to the extent such definitions are used in other surviving provisions), Article VI, and Article X; and the Parties shall have thirty (30) days to submit proposals to all relevant courts for recommencing litigation.

8.2 [Reserved.]

8.3 Holdback Fund. Upon payment of any Defendant’s Initial Defendant Payment, the Class Settlement Administrator and Individual Settlement Administrator shall begin to hold back certain funds from the Class Settlement Fund and Individual Settlement Fund, respectively, as described more fully below, and ensure they are not used to pay Monetary Awards or any other costs or expenses of settlement except as specified herein. The money held back in the Class Settlement Fund and Individual Settlement Fund, in the aggregate, is known as the “Holdback Fund.” The total amount in the Holdback Fund shall be \$500 million. Although the Holdback Fund shall comprise amounts held back from the Class Settlement Fund and Individual Settlement Fund, the Class and Individual Settlement Administrators shall ensure that the Holdback Fund operates as a single fund to satisfy the requirements of Section 8.3.

8.3.1 Respective Fund Holdback Amounts. Subject to the schedule under Section 8.3.2, the Class Settlement Administrator shall hold back from the Class Settlement Fund the total amount of the Holdback Fund multiplied by the Class Settlement Percentage, and the Individual Settlement Administrator shall hold back from the Individual Settlement Fund the total amount of the Holdback Fund multiplied by the Individual Settlement Percentage. Whenever funds are drawn from the Holdback Fund, the Class Settlement Administrator and Individual Settlement Administrator shall pay those funds on a pro-rata basis from the Class Settlement Fund and Individual Settlement Fund, respectively, corresponding to these percentages.

8.3.2 Holdback Schedule. Each time any Defendant makes any payment to satisfy all or part of its Individual Defendant Aggregate Contribution, the Class Settlement Administrator and Individual Settlement Administrator shall, in the aggregate, hold back from that payment for inclusion in the Holdback Fund an amount equal to the total amount of that payment times \$500 million divided by the Aggregate Settlement Amount.

8.3.3 Holdback Payments. Any Defendant that is not prohibited from doing so under Section 8.3.7 may draw funds from the Holdback Fund to pay (a) judgments and (b) settlements, in each case for any Released Claim brought by any Person that is not a Plaintiff. Such a claim is known as a “Holdback Claim.” Defendants will develop a process for approving these payments, which will be subject to review and consent of the Class Settlement Administrator, which consent may not be unreasonably withheld. Any dispute about the reasonableness of payments from the Holdback Fund shall be subject to dispute resolution pursuant to Section 10.2. A Releasee may obtain a payment from the Holdback Fund to settle a Holdback Claim only if the settlement requires the Person asserting the Holdback Claim to execute an unconditional release of all Released Claims against all Releasees, in form and substance reasonably satisfactory to the Defendants, unless all Defendants consent otherwise.

8.3.4 Holdback Credit. In the event that a Defendant makes a payment that would be drawn from the Holdback Fund under Section 8.3.3, but, as a result of the payment schedule under Section 8.3.2, the Holdback Fund does not yet have sufficient funds to cover that payment, the Defendant is entitled to a credit against the Holdback Fund for the amount that would have been properly drawn from the Holdback Fund under Section 8.3.3. The Holdback Fund will make payment of that credit when, under Section 8.3.2, it next receives funding.

8.3.5 Adjustment to Holdback Fund.

(a) On the later of (1) two years and 60 days after the Return Date or (2) two years and 15 days after the Initial Payment Due Date, the Parties shall assess whether money in the Holdback Fund should be distributed to the Individual Settlement Fund and Class Settlement Fund to be used in accordance with the Class Settlement Plan and Individual Settlement Plan. To the degree any disputes arise as to the quantity of any of the following amounts, or as to any calculation or determination necessary to calculate them, those disputes will be resolved pursuant to Section 10.2.

(b) The Parties shall calculate the Necessary Holdback Amount, which is the sum of the following four quantities:

- (1) All Holdback Credits under Section 8.3.4 that have yet to be reimbursed by the Holdback Fund;
- (2) The reasonable aggregate value of all pending Holdback Claims. The reasonable aggregate value of such claims shall be the reasonable estimate of the Defendants' potential exposure at trial on these claims, which may be higher than the settlement value of the claims;
- (3) If any Defendant has a reasonable basis to conclude that a Released Claim may yet be asserted, the reasonable value of such claim (with reasonable value defined in the same manner as under part 2). A Defendant need not identify a specific Person who will bring the Released Claim to have a reasonable basis that a Holdback Claim may be brought under this paragraph; and
- (4) If any payment is owed by a Defendant as a result of a Holdback Claim, but has not yet been made, the amount not yet paid.

(c) The Parties shall calculate the Holdback Remainder Amount. This is the amount that, as of the calculation date, is included in the Holdback Fund and not yet distributed under Section 8.3.3. For avoidance of doubt, this does not include amounts, if any, set to be *added* to the Holdback Fund under Section 8.3.2 from any remaining payments Defendants are scheduled to make to the Class Settlement Fund or Individual Settlement Fund.

(d) If the Holdback Remainder Amount is greater than the Necessary Holdback Amount, then the Class Settlement Administrator shall transfer the Class Settlement Percentage multiplied by the difference between the Holdback Remainder Amount and the Necessary Remainder Amount to the Class Settlement Fund, and the Individual Settlement Administrator shall transfer the Individual Settlement Percentage multiplied by the difference between the Holdback Remainder Amount and the Necessary Remainder Amount to the Individual Settlement Fund.

(e) If the Holdback Remainder Amount is equal to or less than the Necessary Remainder Amount, then the Parties will not transfer any funds in the Holdback Fund to the Class Settlement Fund and Individual Settlement Fund.

(f) **Further Distribution of Holdback Funds.** One year after the date specified in Section 8.3.5(a), the Parties shall, in the same manner, newly calculate the Necessary Holdback Amount and the Holdback Remainder Amount, and follow the same formula and steps under Section 8.3.5. The Parties will repeat this process each year thereafter, until the Holdback Remainder Amount is zero and there are no further amounts to be added to the Holdback Fund from later payments by Defendants. Upon written consent of all Defendants, this calculation and further distribution may be done more frequently than every year.

8.3.6 **Cross-claims.** No Defendant or Releasee may assert a cross-claim for indemnity, contribution, or otherwise for any Released Claim brought against any Releasee unless and until the Holdback Fund is fully exhausted. For any cross-claim for indemnity, contribution, or otherwise brought by any Releasee against another Releasee that is not released under Section 7.3, the time to file such cross-claim(s) is tolled until the Holdback Fund is fully exhausted.

8.3.7 **Effect of Default.**

(a) If any Defendant is in default on any part of its Individual Defendant Aggregate Contribution as determined under Sections 7.7.3 or 7.7.4, or is in the process of litigating or arbitrating an allegation of default under those Sections, it may not access any funds in the Holdback Fund or assert or maintain any cross-claim for indemnity or contribution against any non-defaulting Defendant or Releasee for any Released Claim until such default is cured. A Defendant is no longer in default if (i) the factfinder or arbitrator finds that the Defendant is not in default; (ii) the Defendant cures that default by satisfying the judgment described in Sections 7.7.3 or 7.7.4; or (iii) the Litigation Trustee agrees in writing that the Defendant is not in default.

(b) A Defendant that is found not to be in default in litigation under Section 7.7.3 or in an arbitration decision issued under Section 7.7.4 is entitled to reimbursement of any amounts paid during the period of ineligibility under Section 8.3.7(a), including for judgments and settlements that would otherwise have been payable from the Holdback Fund under Section 8.3.3.

ARTICLE IX: APPROVAL

9.1 The Defendants and their counsel, the Class Representatives, Class Counsel, Individual Plaintiffs, Identified Plaintiffs' Counsel, and Liaison Counsel agree to take all commercially reasonable actions necessary to obtain orders and judgments dismissing with prejudice all Released Claims against all Releasees. Defendants and their counsel, Individual Plaintiffs, Identified Plaintiffs' Counsel, and Liaison Counsel agree to offer mutual support to the proposed Individual Settlement Agreement in all court proceedings and public communications.

9.2 [Reserved.]

9.3 **Good Faith Settlement Approval.** Within twenty-one (21) days after Preliminary Approval, the Parties shall file a joint motion with the Approving Court for a determination that the Class Settlement Agreement and Individual Settlement Agreement,

including the Aggregate Settlement Amount, were made in good faith under the provisions of Section 663-15.5, Hawai‘i Revised Statutes. The Parties agree to make any necessary, commercially reasonable judicial filings, provide appropriate notices, and undertake reasonable efforts to obtain a good-faith settlement determination pursuant to Section 663-15.5, Hawai‘i Revised Statutes, that will bind all joint tortfeasors and co-obligors, known and unknown.

9.4 [Reserved]

9.5 KS shall use reasonable best efforts to obtain within nine months of the Settlement Date (1) written fiduciary affirmation letters from the State Attorney General (as *parens patriae*); (2) fiduciary approvals from the State Probate Court (in KS’ open-probate case), in a Final and Unappealable order; and (3) tax approvals from the Internal Revenue Service (as a tax-exempt organization), in a Private Letter Ruling.

ARTICLE X: MISCELLANEOUS PROVISIONS

10.1 **Complete Agreement.** Other than as stated herein, the Individual Parties warrant that no representation, promise, or inducement has been offered or made to induce any Individual Party to enter into this Individual Settlement Agreement or Individual and that they are competent to execute this Individual Settlement Agreement and accept full responsibility therefor. This Individual Settlement Agreement and its exhibits, including the Individual Settlement Agreement and Release, contain and constitute the entire understanding and agreement among the Individual Parties and supersede all previous oral and written negotiations, agreements, commitments, and writings in connection therewith. This Individual Settlement Agreement may not be amended or modified except by a writing signed by authorized representatives of all Individual Parties.

10.2 **Arbitration.** The Individual Parties agree to meet and confer in good faith to resolve any disagreements over the implementation of the terms of this Individual Settlement Agreement or any other documents necessary to effectuate the Individual Settlement Agreement. If the meet and confer is not successful, the Individual Plaintiffs, Identified Plaintiffs’ Counsel, and Non-State Defendants agree to binding, non-appealable arbitration to resolve any disagreements over the implementation of the terms of this Individual Settlement Agreement or any other documents necessary to effectuate the Individual Settlement Agreement. In any such arbitration, there will be one arbitrator, who can be any of the three Mediators, and the Mediators will promptly determine among themselves who the arbitrator will be. If all of the three Mediators are unavailable to conduct the arbitration, then the Individual Plaintiffs, Identified Plaintiffs’ Counsel, and Non-State Defendants will meet and confer in good faith to appoint a different arbitrator. If the Individual Plaintiffs, Identified Plaintiffs’ Counsel, and Non-State Defendants are unable to agree upon an arbitrator, then the arbitration will occur before a panel of three arbitrators. The Non-State Defendants will select one of the three arbitrators; Liaison Counsel will select one of the three arbitrators; and the arbitrators selected by Non-State Defendants and Liaison Counsel will select the third arbitrator. In the event that an arbitration under this provision involves a dispute among Plaintiffs’ Counsel (rather than solely Liaison Counsel) and Non-State Defendants, then Plaintiffs’ Counsel shall collectively exercise all rights

in this paragraph otherwise solely allocated to Liaison Counsel. For the avoidance of doubt, the arbitration procedures provided in this Section 10.2 do not apply to the State.

10.3 Knowing and Voluntary Agreement. Each Individual Party agrees that he, she, or it is entering into this Individual Settlement Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Individual Party further affirms that he, she, or it has not been coerced, threatened, or intimidated into signing this Individual Settlement Agreement; that he, she, or it has been advised to consult with an attorney; and that he, she, or it in fact has consulted with an attorney before signing this Individual Settlement Agreement or had an opportunity to do so. Identified Plaintiffs' Counsel represent that they have conducted a thorough investigation into the facts of the Actions and have diligently pursued an investigation of the claims asserted arising from or relating to the Maui Fires. Based on their own independent investigation and the extensive litigation and mediation, which led to this settlement, Identified Plaintiffs' Counsel state that they are of the opinion that the Individual Settlement Agreement with Defendants is fair, reasonable, and adequate, and is in the best interest of the Individual Plaintiffs, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Defendants.

10.4 Notices. Notices pursuant to this Individual Settlement Agreement shall be provided to those listed and as set out in Exhibit 8.

10.5 Severability. If any part of this Individual Settlement Agreement is found to be illegal, invalid, inoperative, or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Individual Settlement Agreement, which shall be construed, reformed, and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Individual Settlement Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Individual Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law. However, the releases under Article VII, the Individual Defendant Aggregate Contributions, the Conditions under Sections 5.1 and 5.2, and the Aggregate Settlement Amount are critical terms upon which the Individual Settlement Agreement rests and may not be severed or altered.

10.6 Binding on Successors and Assigns. This Individual Settlement Agreement shall be binding upon and inure to the benefit of the Individual Parties and their respective heirs, trustees, issue, next-of-kin, executors, administrators, successors, and assigns.

10.7 Counterparts. This Individual Settlement Agreement may be executed in counterparts, including by electronic means, and when each Individual Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one Individual Settlement Agreement, which shall be binding upon and effective as to the Parties.

10.8 Headings. The headings used in this Individual Settlement Agreement are for convenient reference only, and do not alter or limit the terms of each section.

10.9 **Amendment or Modification.** This Individual Settlement Agreement may be amended or modified only by a written instrument signed by all Individual Parties.

10.10 **Authorization to Enter into Settlement.**

10.10.1 [Reserved]

10.10.2 Each Defendant represents and warrants:

(a) Except as to KS, and any natural persons, it is a duly organized, validly existing entity and is in good standing under the laws of the jurisdiction of its formation and is duly qualified to do business (if a business) and in good standing as a foreign entity in the jurisdiction of its principal place of business (if not formed in that jurisdiction);

(b) That it has the full legal right, power, and authority to enter into this Individual Settlement Agreement and perform its obligations under this Individual Settlement Agreement;

(c) That it has taken all appropriate and necessary action to authorize its execution, delivery, and performance of this Individual Settlement Agreement and the transactions contemplated hereunder, except for the Necessary Approvals; and

(d) That it has obtained all consents, approvals, permits and other authorizations in connection with the execution, delivery and performance of this Individual Settlement Agreement required to be obtained by it, except for the Necessary Approvals.

10.11 **Governing Law.** All terms of this Individual Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of Hawai‘i without regard to its principles of conflict of laws.

10.12 **Jurisdiction of the Court.** Except as otherwise provided in this Individual Settlement Agreement, any dispute regarding the interpretation or validity of, or otherwise arising out of, this Individual Settlement Agreement, including any disputes regarding fees, costs and/or expenses amongst counsel, shall be subject to the exclusive jurisdiction of the Approving Court and shall be decided pursuant to the laws of the State of Hawai‘i. The Approving Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Individual Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their respective counsel submit to the jurisdiction of the Approving Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Individual Settlement Agreement and all orders and judgments entered in connection therewith. Furthermore, the Individual Parties agree that, subject to Approving Court approval, the Approving Court will have jurisdiction over any claims by a Non-Participant, and that any such litigation will be deemed related to the Actions.

10.13 **Waiver of Right to Object.** By signing this Individual Settlement Agreement, Identified Plaintiffs’ Counsel (in their representative capacity as representatives of their clients), Liaison Counsel, and Defendants and their counsel agree not to object to any of the terms of this Individual Settlement Agreement or the Class Settlement Agreement. Any such objection shall

therefore be void and of no force or effect. This provision shall not be interpreted or intended to restrict any Identified Plaintiffs' Counsel's practice of law.

10.14 Public Communications. Except to the extent inconsistent with the Hawai'i Rules of Professional Conduct, Identified Plaintiffs' Counsel (including their firms and any representative on their behalf) agree that they will not make any public statements that disparage (i) the Individual Settlement Agreement (ii) the Class Settlement Agreement, or (iii) Releasees or Releasees' conduct, character, or business reputation in regards to the Maui Fires, except in connection with petitioning activity, scholarly work, or non-Maui Fires litigation.

10.15 Non-Use of Work Product. Unless inconsistent with their ethical obligations or order of the Court, or as otherwise agreed to in writing by Identified Plaintiffs' Counsel and Defense Counsel, Identified Plaintiffs' Counsel agree that they will not use, nor will they allow to be used, any work product derived from any discovery in these Actions, whether or not any such work product includes information designated protected under the protective order in this case, in the prosecution or litigation of any other case, claim, or action.

10.16 Cooperation. The Individual Parties agree to cooperate fully and execute any and all supplementary documents, and take all additional actions, which may be necessary or appropriate to give full force and effect to the terms and intent of this Individual Settlement Agreement.

10.17 No Third-Party Beneficiaries. Except for Individual Plaintiffs, Defendants, the Releasees, and their respective successors and assigns, no provision of this Individual Settlement Agreement is intended to create any third-party beneficiary to this Individual Settlement Agreement.

10.18 No Construction Against Any Party. This Individual Settlement Agreement is the product of negotiations between the Individual Parties hereto represented by counsel and any rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Individual Settlement Agreement and are expressly waived.

10.19 Reasonable Extension of Deadlines. The signatories to this Individual Settlement Agreement are authorized to consent to any reasonable extension of any deadline set forth in this Individual Settlement Agreement, to the degree such extension does not require approval from the Approving Court, provided that any such extension must be agreed to by all signatories and in writing.

10.20 No Waiver. No waiver of any breach of any provision of this Individual Settlement Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions of this Individual Settlement Agreement. No waiver shall be effective unless made in writing and signed by the waiving party.

Signature Pages to Follow

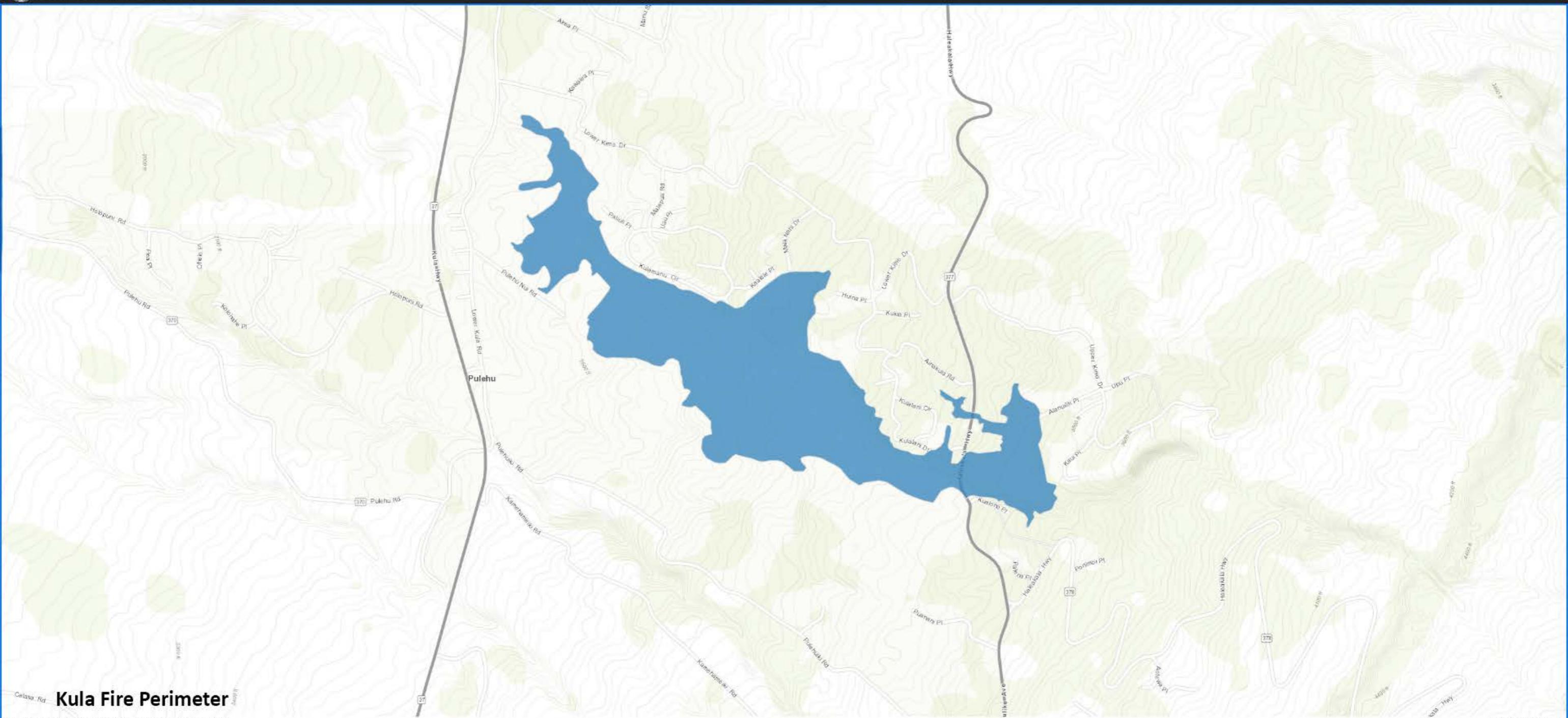
EXHIBIT 2

RESERVED

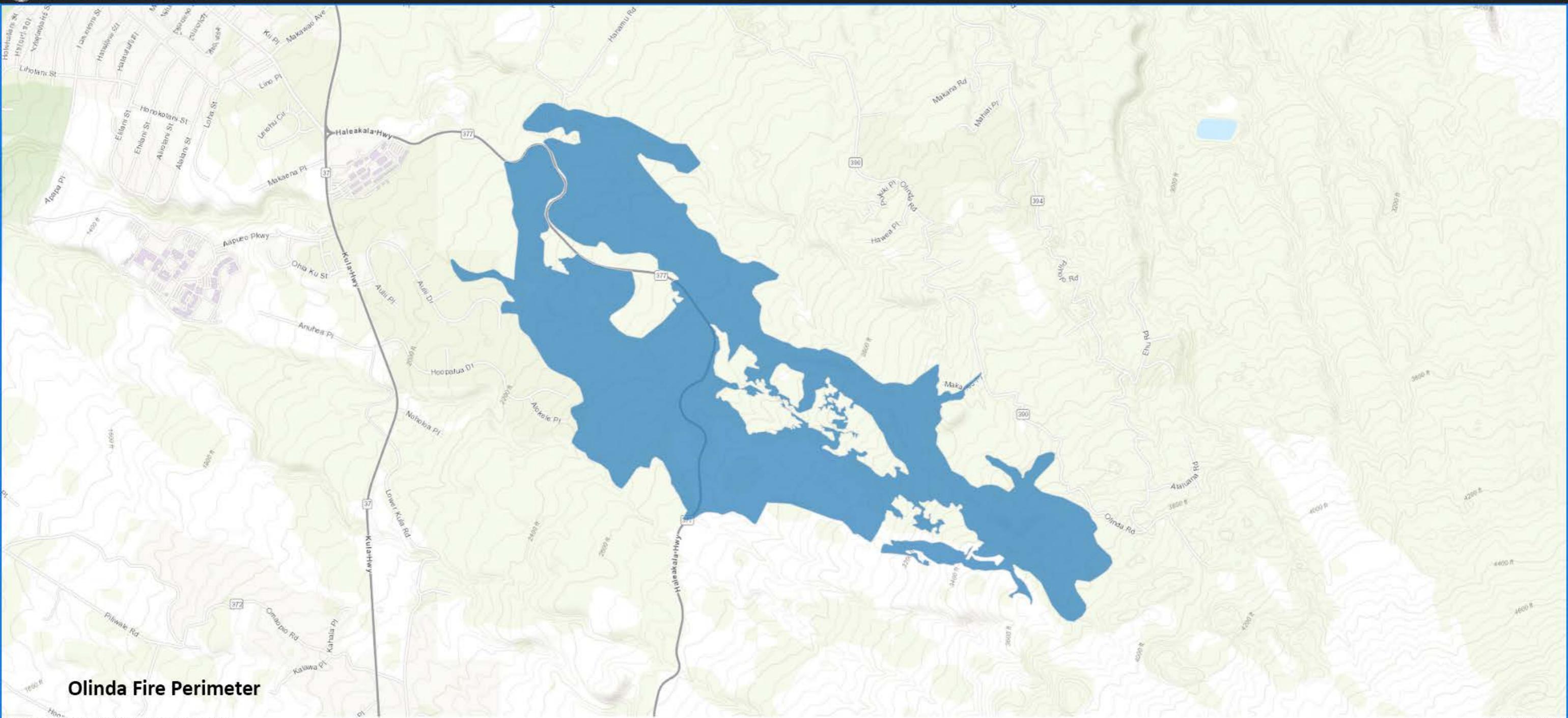
EXHIBIT 3



Lahaina Fire Perimeter



Kula Fire Perimeter



Olinda Fire Perimeter

EXHIBIT 4

RESERVED

EXHIBIT 5

EXHIBIT 5**List of Persons Who Are Included Among the Releasees**

The Releasees are the following parties, as well as all of their past, present, and future, direct or indirect, respective departments, holding companies, Affiliates, related companies, parent entities, subsidiaries, predecessors, and successors; all of their respective past, present, and future, direct or indirect, employees, stockholders, shareholders, officers, directors, boards of directors, agents, advisors, accountants, attorneys, representatives, employees, adjusters, insurers, reinsurers, assigns, general partners, limited partners, members, managers, member managers, funds, investors, co-investors, investment managers, investment vehicles, investment accounts, portfolio companies, principals, joint venturers, transferees, heirs, beneficiaries, executors, estate administrators, trustees, associates, or personal representatives, contractors, subcontractors, and vendors. The Releasees also includes all persons, entities or parties claiming by, through, or under the named Releasees.

Releasees Affiliated with Hawaiian Electric

Hawaiian Electric Company, Inc.
Hawaiian Electric Industries, Inc.
Hawai'i Electric Light Company, Inc.
Maui Electric Company, Inc.

Releasees Affiliated with the State of Hawai'i

State of Hawai'i (including the Hawai'i Housing Finance and Development Corporation, the Hawai'i Department of Land and Natural Resources, and all other state agencies, departments, and employees)

Releasees Affiliated with the County

County of Maui (including the Department of Fire and Public Safety; the Maui Police Department; the Maui Emergency Management Agency; and all other County agencies, departments, and present and former directors, officers, and employees).

Releasees Affiliated with KS

Elliott Kawaiho'olana Mills
Crystal Kauilani Rose
Jennifer Noelani Goodyear-Ka'ōpua
Michelle Ka'uhane
Robert K.W.H. Nobriga

Releasees Affiliated with Hawaiian Telcom

Cincinnati Bell Inc.
Hawaiian Telcom, Inc.
Hawaiian Telcom Holdco, Inc.
Hawaiian Telcom Communications, Inc.
Hawaiian Telcom Services Company, Inc.
Wavecom Solutions Corporation

SystemMetrics Corporation
Hawaiian Telcom Federal LLC

Releasees Affiliated with Spectrum

Spectrum Oceanic, LLC
Charter Communications, Inc.
Time Warner Cable Information Services (Hawaii), LLC
Charter Communications Holding Company, LLC
Charter Communications Holdings, LLC
Charter Communications, LLC
Charter Communications Operating, LLC
Time Warner Cable Information Services (Hawaii), Inc.
Time Warner Cable Business LLC
Spectrum Mobile, LLC
Spectrum Mobile Equipment, LLC

Releasees Affiliated with West Maui Land

West Maui Land Company, Inc.
Peter Klint Martin, Individually
Peter Klint Martin, as Trustee of the Peter Klint Martin Revocable Trust
Peter Klint Martin Revocable Trust
Launiupoko Irrigation Company, Inc.
Launiupoko Water Company, Inc.
Launiupoko Water Development LLC
Hope Builders Holding LLC
Hope Builders LLC nka Hope Builders, Inc.
Kauaula Land Company LLC
Kipa Centennial, LLC
Wainee Land & Homes, LLC
Makila Land Co., LLC
Makila Ranches Inc.
Olowalu Elua Associates LLC
Donna Poseley, Individually
Donna Poseley, as Personal Representative of the Estate of Douglas Poseley
Jeanne Riley, Trustee of the Jeanne Riley Trust
Jeanne Riley, Successor Trustee of the James Riley Trust
Makila Ranches Homeowners Association, Inc.
JV Enterprises, LLC

EXHIBIT 6

EXHIBIT 6**List of Decedents**

	Full Name (Last Name, First Name)
1.	Paxton Hartley, Carole
2.	Trejos, Franklin
3.	Benjamin, Melva
4.	Dyckman, Robert
5.	Jantoc, III, Lorenzo "Buddy"
6.	Dofa, Virginia
7.	Fuentes, Kenyero
8.	Gomes, Donna
9.	Galinato, Alfredo
10.	Sagudang, Danilo
11.	Sagudang, Conchita
12.	Somaoang, Jonathan
13.	Deleon, Juan
14.	Gloege, Douglas
15.	Molina, Antonia
16.	Baylosis, Narciso Jr.
17.	Baylosis, Vanessa
18.	Schilling, Joseph
19.	Yamafuji, Todd
20.	Cook, Theresa
21.	Wakida, Clyde
22.	Rocutan, Rodolfo
23.	Tam Lung, Freeman
24.	Tobias, Carlo
25.	Kitaguchi, Albert
26.	Ponali, Tau
27.	Manibog, Lynn
28.	Coloma, Salvador
29.	Kauffman, Valerie
30.	Vasquez, Angelita
31.	Takafua, Tony
32.	Tone, Salote
33.	Rans (Wells), Rebecca
34.	Nakamura, Todd
35.	Tone, Faaoso
36.	Dyckman, Bette Jo

	Full Name (Last Name, First Name)
37.	Tone, Maluifonua
38.	Portabes, Bernard
39.	Hall, George III
40.	Ibarra-Hinau, Roxanne
41.	Mabalot, Rogelio
42.	Jones, Coleen
43.	Pagdilao, Pablo III
44.	Losano, Poomaikai
45.	Nuesca, David Jr.
46.	Ono, Carolyn
47.	Recolizado, Eugene
48.	Kaminsky, Mark
49.	Sato, Edward
50.	Puou, Gwendolyn
51.	Lara, Joseph
52.	Wagner, Leroy
53.	Nakamoto, Tim
54.	Simpson, Anthony
55.	Yabes, Glenda
56.	Turbin, Nicholas
57.	McCarthy, John
58.	Abihai, Louise
59.	Constantino, Leticia
60.	St. Clair, Floyd
61.	Lutrania, Bibiana "Bhing"
62.	Imperial, Rafael
63.	Yoshino, Glenn
64.	Carter, Joe "Buddy"
65.	Buen, Maurice
66.	Dias, Marilou
67.	Anbe, June
68.	Gordon, Michael
69.	Matsuda-Boucher, Douglas
70.	St. Clair, Janet
71.	Cole, Rex
72.	Vaikeli, Linda

	Full Name (Last Name, First Name)
73.	Kaita, Morris
74.	Tomboc, Revelina
75.	Kam, Richard
76.	Smith, James
77.	Carter, Kirk
78.	Recolizado, Justin
79.	Castillo, Edimede Pavian
80.	Recolizado, Maria Victoria
81.	Morinho, Michael
82.	Thomas, Terri
83.	Rawlings, Alfred
84.	Osato, Matsuyuki
85.	Quijano, Junmark
86.	Baclig, Angelica
87.	Villegas, Adela
88.	Villegas, Joel
89.	Quijano, Felimon
90.	Bernabe, Luz
91.	Constantino, Allen John
92.	Allen, Laurie
93.	Mahnensmith, Michael
94.	Eliason, Jeanne
95.	Smith, Leslie
96.	Richter, Dale
97.	Misaka, Michael
98.	Rogo, Lee
99.	Rabang, Sharlene
100.	Coloma, Lydia
101.	Kasprzycki, Paul
102.	Heermance, Claudette

EXHIBIT 7

[PROPOSED] CASE MANAGEMENT ORDER NO. 8
PROCEDURES GOVERNING INDIVIDUAL PLAINTIFF
OPT OUT CASES PENDING AS OF [DATE]¹

WHEREAS, the COURT hereby considers the Parties' joint request for a Case Management Order governing any and all Individual Plaintiffs Maui Fires opt out cases pending before this Court as of [DATE] ("CMO 8 Effective Date") or filed on or after that date, and GOOD CAUSE appearing, finds that:

1. This Court has authority under Hawai'i Rule of Civil Procedure 42(a) and Circuit Court Rule 12(c)(4) to issue any case management order the Court believes to be conducive to the just, efficient, and economic determination of the coordinated cases and may make such orders that tend to avoid unnecessary costs or delay.

2. This Case Management Order No. 8 shall apply to any Individual Plaintiffs Maui Fire tort cases pending before this Court as of the CMO 8 Effective Date, or to any new tort cases arising out of the Maui windstorm and fires of August 2023, including the fires in Lahaina, Kula, and Olinda, filed after the CMO 8 Effective Date.

NOW THEREFORE, the Court orders as follows:

A. Serving of Initial Plaintiff Discovery. Each Plaintiff shall provide all information requested in (a) the Plaintiff Fact Sheet (Exhibit A to Case Management Order No. 7 ("CMO No. 7"), Dkt. 1645), and the Trial Damages Questionnaire (attached as Exhibit B to CMO No. 7), pursuant to the procedures and deadlines set forth in CMO No. 7, except that the deadline to submit the Trial Damages Questionnaire shall be amended to be within either (i) thirty (30) days of the online form being made available by BrownGreer or (ii) within thirty (30) days of the

¹ [NTD: This date will be inserted as 10 days after the Initial Payment Due Date (Class Settlement / Individual Settlement Section 7.9).]

filing of a Short Form Complaint and Notice of Adoption (“Complaint”) by a new Plaintiff, whichever is later. The deadline for completion of the Plaintiff Fact Sheet and Trial Case Damages Questionnaire may be modified as set out in CMO 7. Should the mediation process as set out in Section B not lead to a settlement, then any Defendant may serve additional non-duplicative discovery on the Plaintiff using any form of discovery available under the Hawaii Rules of Civil Procedure.

B. Mediation Process Required.

1. Each Plaintiff shall, within 120 days of the date serving a compliant Plaintiff Fact Sheet and Trial Damages Questionnaire described in Section A, engage in mediation with all Defendants named in the Plaintiff’s Complaint with a mediator or mediators agreed upon by all parties. The costs of mediation will be borne 50% by the Plaintiff(s) involved in the particular mediation and 50% by the Defendant(s) named in the particular Plaintiff’s complaint.

2. In addition to the Plaintiff Fact Sheet and Trial Damages Questionnaire described in Section A, each Plaintiff shall, prior to engaging in mediation, serve each Defendant with all documents and information required to submit a claim for a Monetary Award, as defined by the Class Settlement Agreement.

3. Plaintiff may not proceed to litigate their claims in Court until the completion of the mediation process described in this Section. All litigation deadlines, including without limitation deadlines for discovery or to file and serve a response to Plaintiff’s new or existing Complaint, shall be held in abeyance until the completion of the mediation process described in this Section.

4. Should any Defendant contend that a particular Plaintiff is not entitled to continue his or her case because the Plaintiff did not submit a valid opt-out form or otherwise released their claims, then any Defendant may seek dismissal of that Plaintiff's claims from the Court prior to commencing mediation. The deadline to mediate in this section is tolled while any motion seeking dismissal on the grounds set out in this paragraph is pending.

C. Stay in Effect Until Answer. All Maui Fires cases are currently stayed and remain stayed (except as expressly set out herein) through the mediation process outlined in Section B. The stay for each individual case will be lifted only as follows. If a case does not resolve in the mediation process outlined in Section B, then each defendant's deadline to answer or otherwise respond to the complaint is 30 days after the completion of that process. If any defendant files a dispositive motion within that timeframe, then no answer is due from any defendant. The stay remains in effect until a defendant files an answer (either upon the conclusion of the initial 30-day period or after resolution of the dispositive motion). Plaintiffs may not serve any discovery during the stay.

D. Trial Date. No trial date shall be set until the completion of the mediation process described in Section B and the resolution of any dispositive motion filed under Section C. After all defendants answer the complaint, the parties shall notify the Court and request that the Court set a trial date that is no sooner than 12 months after the date that the request for a trial date is made.

E. Dismissal of Plaintiffs Who Fail to Comply With This Order.

1. *Notice of Non-Compliance and Opportunity to Cure.* If any Plaintiff fails to comply with any provision of this Order, Defendants shall provide Plaintiff written notice of such non-compliance ("Notice of Non-Compliance") specifying the non-compliance and shall

file the Notice of Non-Compliance with the Court. Upon receipt of a Notice of Non-Compliance, Plaintiff shall have thirty (30) days to cure her, his, or its non-compliance specified in the Notice of Non-Compliance. During the period wherein non-compliance has not yet been cured, all deadlines applicable to Defendants shall be held in abeyance.

2. *Failure to Cure.* If, after the passage of thirty (30) days of service of a Notice of Non-Compliance, a Plaintiff fails to cure her, his, or its non-compliance, upon application by the Defendants, the Plaintiff's claims, as well as any derivative claim(s), will be dismissed with prejudice pursuant to HRCP 41(b) as against any Defendants.

3. *Extensions of Time.* The Court, on motion and for good cause shown, may order an extension of the time to comply with this Order.

F. Sanctions. Any Plaintiff or counsel for that Plaintiff who submits false or misleading information, or otherwise attempts to satisfy the documentation requirements of this Order through any form of deception, dishonesty or fraud, may be subject to appropriate sanctions (including monetary sanctions and costs) and dismissal with prejudice pursuant to HRCP 37.

G. No Admission of Liability. This Case Management Order will not be construed as evidence, nor as an admission by Defendants of any liability or wrongdoing whatsoever or as an admission by the Plaintiffs of any lack of merit in their claims.

EXHIBIT 8

EXHIBIT 8**List of Recipients of Notices**

Any notices issued pursuant to the terms of the Individual Settlement Agreement or the Class Settlement Agreement shall be sent to the Persons listed below, as appropriate, via email:

<p>If to Individual Plaintiffs, via Liaison Counsel:</p>	<p>Cynthia Wong Cynthia K. Wong Attorney at Law, LLC cyn@legalmaui.net</p> <p>Jesse Creed Panish Shea Boyle Ravipudi 11111 Santa Monica Blvd., Suite 700 Los Angeles, CA 90025 jcreed@panish.law</p> <p>Jacob Lowenthal Lowenthal & Lowenthal jkl@lowenthal-hawaii.com</p> <p>Jan Apo Apo, Reck & Kusachi jankapo@jankapo.com</p>
<p>If to Class Plaintiffs, via Class Counsel:</p>	<p>Lexi J. Hazam Lief Cabraser Heimann & Bernstein, LLP hazam@lchb.com</p> <p>Patrick Kyle Smith Law Office of Kyle Smith kyle@smithlawhawaii.com</p> <p>Terrance M. Revere Paul V.K. Smith Revere & Associates, LLC terry@revereandassociates.com paul@revereandassociates.com</p> <p>Graham B. LippSmith Lippsmith LLP g@lippsmith.com</p> <p>Alexander Robertson, IV Robertson & Associates, LLP arobertson@arobertsonlaw.com</p>

	<p>Robert A. Curtis Foley Bezek Behle & Curtis, LLP 15 West Carrillo Street Santa Barbara, CA 93101 rcurtis@foleybezek.com</p> <p>Kenneth S. Kasdan Kasdan Turner Thomson Booth LLLC kskasdan@kasdancedlaw.com</p> <p>Richard E. Wilson Law Offices of Richard E. Wilson, LLC rewilsonlaw@yahoo.com</p>
If to the State of Hawai'i:	<p>Michael M. Purpura Hueston Hennigan LLP mpurpura@hueston.com</p> <p>Rajan Trehan Hueston Hennigan LLP rtrehan@hueston.com</p>
If to the County:	<p>Victoria Takayesu-Hamilton Corporation Counsel, County of Maui Victoria.takayesu-hamilton@co.maui.hi.us</p>
If to Hawaiian Electric:	<p>Erin Kippen General Counsel Hawaiian Electric Co. erin.kippen@hawaiianelectric.com</p> <p>and</p> <p>Kurt Murao General Counsel Hawaiian Electric Industries, Inc. kmurao@hei.com</p> <p>with a copy to</p> <p>Randall C. Whattoff Cox Fricke LLP rwhattoff@cfhawaii.com</p> <p>and</p>

	<p>Nicholas D. Fram Munger, Tolles & Olson, LLP 560 Mission St., 27th Fl. San Francisco, CA 94105 Nicholas.fram@mto.com</p>
If to KS:	<p>Nalani Fujimori Kaina General Counsel and Vice President Nākiakaulani – Legal Group Kamehameha Schools mikaina@ksbe.edu</p> <p>and</p> <p>Sabrina R. Toma Deputy General Counsel Kamehameha Schools Legal Group satoma@ksbe.edu</p> <p>with a copy to</p> <p>Jeff Boozell Quinn Emanuel Urquhart & Sullivan, LLP 865 South Figueroa Street, 10th Floor Los Angeles, CA 90017 jeffboozell@quinnemanuel.com</p> <p>and</p> <p>Paul Alston Dentons US LLP paul.altson@dentons.com</p>
If to Hawaiian Telcom:	<p>Cincinnati Bell Inc. 221 E. Fourth Street Attn: Legal Cincinnati, OH 45202 mary.talbott@altafiber.com</p> <p>and</p> <p>Les Ueoka General Counsel Hawaiian Telcom, Inc. 1177 Bishop Street, Suite 15</p>

	<p>Honolulu, HI 96813 les.ueoka@hawaiiantel.com</p> <p>with a copy to</p> <p>Eric H. Tsugawa Tsugawa Lau Muzzi LLLC Harbor Court 55 Merchant Street, Suite 3000 Honolulu, Hawaii 96813 etsugawa@hilaw.us (808) 531-0490</p> <p>and</p> <p>Christine Y. Wong Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 ChristineWong@mofo.com (415) 268-7000</p>
If to Spectrum:	<p>General Counsel Charter Communications 400 Washington Blvd. Stamford, CT 06902 CharterLegalDepartment@charter.com</p> <p>and</p> <p>Bronwyn F. Pollock Mayer Brown LLP 333 S. Grand Ave., 47th Floor Los Angeles, California 90071 bpollock@mayerbrown.com</p>
If to West Maui Land:	<p>Wesley H. H. Ching Fukunaga Matayoshi Ching & Kon-Herrera whc@fmhc-law.com</p>

EXHIBIT 9

JOSH GREEN, M.D.
GOVERNOR



ANNE E. LOPEZ
ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
Ka 'Oihana O Ka Loio Kuhina
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

MATTHEW S. DVONCH
FIRST DEPUTY ATTORNEY GENERAL

October 25, 2024

Robert J. Fenton
Regional Administrator, FEMA Region 9
1111 Broadway, Suite 1200
Oakland, CA 94607
robert.fenton@fema.dhs.gov

VIA EMAIL

Re: State of Hawaii's Resolution of Potential Claims Related to the 2023 Maui Fires

Dear Administrator Fenton:

I write on behalf of the State of Hawaii (the "State") to provide an update regarding the State's involvement in the litigation arising out of the August 2023 Maui Wildfires ("Maui Fires").

The State appreciates that the Federal Emergency Management Agency ("FEMA") has provided financial assistance through its Public Assistance Program to the State in connection with the Maui Fires. The State recognizes that FEMA has a legal obligation to assure that Public Assistance recipients do not receive a duplication of benefits from any other source, and that FEMA therefore requires Public Assistance recipients to make a commercially reasonable effort to recover costs from potentially liable third parties.

Since August 2023, multiple parties—including the State itself—have been named as defendants in litigation arising out of the Maui Fires. As part of this litigation, the State has had the option to pursue potential crossclaims against other defendants as well as potential claims against other third parties. After extensive fact investigation and formal discovery, the State has made the decision to participate in global settlement negotiations to resolve all Maui Fires claims. As part of this settlement, the State intends to release any potential crossclaims or third-party claims arising out of the Maui Fires that the State could have asserted against other defendants.

The State has determined that participation in the global settlement and a corresponding release of all potential crossclaims against the other defendants is the most prudent path forward for several reasons.

First, the State believes that the global settlement presents the best avenue for the efficient resolution of the pending Maui Fires litigation, which has been unprecedented in both scale and complexity. After careful evaluation of the merits of potential crossclaims against the other defendants, the State has concluded that the likelihood of success against other defendants and parties is uncertain, and the State is mindful of the risks and costs associated with prolonged litigation in the absence of a negotiated resolution. Moreover, the State is not currently aware of any facts that would support a claim of intentional misconduct against any Defendant.

Second, the State recognizes that the global settlement was the result of extensive mediation efforts conducted by a group of experienced neutral mediators. The mediators made an ultimate proposal as to both the total settlement amount and the respective contributions of each defendant. The State understands that those recommendations were crafted based on a careful consideration of numerous priorities, including a recognition of the financial limitations of the defendants and the need to provide meaningful compensation to the plaintiffs. The State believes that the global settlement strikes a fair and reasonable balance in maximizing the availability of limited settlement funds to help provide compensation and closure to individual fire victims.

In short, the State believes that its decision to participate in the global settlement is commercially reasonable in light of the interests described above. We therefore respectfully ask that you please confirm in writing that (1) the State acted in a commercially reasonable manner in entering the global settlement and agreeing to release all potential counterclaims against other defendants, and (2) the State has therefore satisfied its obligation to avoid a duplication of benefits under Section 312 of the Stafford Act and 44 CFR §206.223(e).

We look forward to receiving your response. We appreciate your continued cooperation and attention in this matter.

Very truly yours,

A handwritten signature in black ink that reads "Anne E. Lopez". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Anne E. Lopez
Attorney General

CC: John-Paul Henderson, Regional Counsel, FEMA Region 9



FEMA

October 26, 2024

Anne E. Lopez
Attorney General
State of Hawaii
425 Queen Street
Honolulu Hawaii 96813

Re: State of Hawaii Litigation related to the 2023 Maui Wildfires

Dear Attorney General Lopez:

This letter is in response to your October 25, 2024, letter regarding the litigation surrounding the 2023 Maui Wildfires, which were included in a major disaster declaration (DR-4724) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). In your letter, you requested that FEMA confirm the State's actions in the litigation are commercially reasonable and that the State has met its obligation to avoid a potential duplication of benefits with FEMA disaster assistance.

The State is eligible to receive FEMA financial assistance, through the Hawaii Emergency Management Agency (HIEMA), as a result of the 2023 Maui Wildfires. The State has been named as a defendant in litigation arising from the Maui wildfires. The State had the option to pursue crossclaims against the other defendants or claims against other third parties, which could have included costs potentially eligible for reimbursement under the FEMA Public Assistance (PA) grant program. The State has elected to participate in the global settlement negotiation to resolve all Maui Wildfire claims and intends to release any crossclaims or other claims against other parties as part of the final agreement.

The Stafford Act authorizes FEMA to provide grants through the PA program to state and local governments, upon a declaration of a major disaster by the President. Federal assistance under the Stafford Act is supplemental. Section 312 of the Stafford Act requires FEMA to assure that recipients of federal assistance do not receive a duplication of benefits from any other source, including claims against potentially liable third parties. Where a FEMA applicant for assistance has available to it a potential other source of funding from insurance coverage or a potentially liable third party, FEMA requires the applicant make a "commercially reasonable" effort to collect from that potential source of funding. In other words, a FEMA applicant must make an effort to collect from a potential other source of funding as if it was without other recourse (*i.e.*, FEMA assistance) under the circumstances.

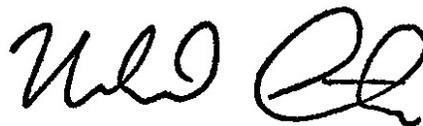
Based on the information provided in your October 25, 2024 letter and discussions between our respective legal counsel, including the unique nature of this litigation involving hundreds of

claims against the State, Maui County, and numerous other defendants, as well as an analysis of the relative merits of claims and costs of litigation, FEMA concludes that the State's decision not to pursue any crossclaims against the other defendants or claims against other third parties was commercially reasonable and the State has fulfilled its obligations under the Stafford Act to avoid a duplication of benefits, inclusive of both financial assistance and direct assistance (e.g., Mission Assignments to the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Coast Guard, U.S. Department of Defense, and other federal agencies) provided to the State.

As the State did not bring any claims in the litigation, FEMA must reserve the right to pursue claims against the other defendants related to DR-4724 for the federal share of financial and direct assistance provided to the State. We note that any claims considered by FEMA would be brought pursuant to Section 317 of the Stafford Act (42 U.S.C. § 5160). Section 317 makes liable "[a]ny person who *intentionally* causes a condition for which Federal assistance is provided" under the Stafford Act (emphasis added). FEMA is not currently aware of any facts that would support a claim of intentional misconduct against any Defendant. FEMA also notes that no government agency investigations, including those completed by the Maui County Department of Fire and Public Safety and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), have concluded any person or entity intentionally caused the Maui Fires.

If you have any questions, please contact Region 9 Regional Counsel John-Paul Henderson at 510-627-7055 or johnpaul.henderson@fema.dhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. J. Fenton', written in a cursive style.

Robert J. Fenton
Regional Administrator

Cc: James DS. Barros, Administrator, Hawaii Emergency Management Agency
John-Paul Henderson, Regional Counsel, FEMA Region 9

October 16, 2024

SENT VIA E-MAIL

John-Paul Henderson
Regional Counsel, FEMA Region IX
111 Broadway, Suite 1200
Oakland CA 94607
JohnPaul.Henderson@fema.dhs.gov

Re: County of Maui's Resolution of Claims related to the 2023 Maui Fires

Dear Mr. Henderson:

Baron & Budd P.C. and Diab Chambers LLP represent the County of Maui ("the County") in litigation arising out of the August 2023 Maui Fires ("Maui Fires") against Maui Electric Company, Hawaiian Electric Company, Inc., Hawai'i Electric Light Company, Inc., and Hawaiian Electric Industries, Inc., (collectively, "Defendants"). Specifically, the County filed a lawsuit against Defendants seeking costs and damages incurred as a result of the Maui Fires. The County and Defendants reached a confidential settlement in principle on August 2, 2024, resolving the County's claim for \$25,000,000.¹

In order to comply with direction and guidance from FEMA regarding Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act") and 44 CFR §206.223(e), the County included in its demand to Defendants: (1) FEMA-eligible costs known by the County under the FEMA Public Assistance Program ("PA") program as of the date of its demand; and (2) all non-FEMA eligible costs and damages. Accordingly, the County's demand of \$720,000,000, included all known FEMA-eligible costs and damages that the County submitted and/or anticipates submitting to FEMA as of the date of the demand. FEMA's share of the County's demand to Defendants is 56%, or \$401,000,000 and is inclusive of the County's local cost share.

Attachment A to this letter provides the list of FEMA projects or anticipated projects included in the demand, the pro-rata percentage recovered on a project by project basis, the net

¹ Maui County has agreed to release its claims against HECO and the other defendants in exchange for \$25,000,000 plus a full release of any claims of liability against the County. While the County maintains it played no part in causing any of the Maui Fires, which was also confirmed by the ATF in its investigative report, the County faces over 700 lawsuits by more than 3,000 plaintiffs claiming it was legally responsible. The County believes this resolution is a fair and reasonable outcome given the unique circumstances of this case, including HECO's financial limitations in satisfying a multi-billion-dollar liability. In addition, it provides the County with the finality it needs to move forward and for the community to heal.

amount received through the settlement after attorneys' fees and costs are deducted, and the net amount of each available credit to FEMA.² This list of projects reflects all FEMA projects and costs known to the County as of the date of the demand.

Pursuant to FEMA's direction and guidance, and pursuant to our agreements in this matter, the County will follow the procedures as set forth in **Attachment B**, or will follow agreed upon procedures that are substantially similar to those set forth in Attachment B, and which are mutually agreeable to all parties to this agreement, to ensure there are no duplications of benefits under the Stafford Act and 44 CFR §206.223(e). The amount FEMA will receive from the settlement will be adjusted to reflect that the settlement is not a dollar-for-dollar resolution as it relates to the demand, but rather, a reduced settlement amount. Accordingly, any amount that FEMA will receive will be adjusted, pro-rata. The County incurred attorney fees and other costs associated with the resolution, and per our agreement, the amount the County will deduct from any application, or agree to have de-obligated, or agree to reimburse, will be the net amount received associated with the project *after* attorneys' fees and costs are deducted.

Pursuant to our agreement, the methodology described herein, and in Attachment B to this letter, satisfies FEMA's guidance to the County regarding the use of commercially reasonable efforts to recover from Defendants the FEMA-eligible costs and assistance related to the Maui Fires. We ask that you please confirm in writing that: (i) the methodology as described in this letter, including the procedures set forth in Attachment B, fully and fairly satisfies direction and guidance of FEMA regarding the Stafford Act and 44 CFR §206.223(e); (ii) the County acted in a commercially reasonable manner in obtaining these reimbursements; (iii) FEMA will commit to process the County's pending and anticipated applications for reimbursement in the normal and customary manner consistent with prior disasters; and, (iv) FEMA agrees to release the County and Defendants from any and all claims relating to the FEMA funds included in this agreement.

We look forward to receiving your confirming letters. Thank you for your continued cooperation and efforts in this matter.

Sincerely,



John Fiske
Torri Sherlin
Baron & Budd P.C.



Ed Diab
Robert Chambers II
Diab Chambers LLP

² Final cost accounting is ongoing. To the extent the figures in Attachment A change through the final cost accounting process, we will provide an update.

Attachment A

Maui County

FEMA-Eligible Claim	Total Claim	Pro-Rata FEMA Share	Total Settlement	Attorney Fee %
\$401,000,000	\$720,000,000	55.69%	\$25,000,000	18%

Summary

		Total FEMA Eligible Expenses at Time of Settlement	% of FEMA Eligible Costs	% of Total Damages (Apply to S25M)	Gross (Pre Fees and Costs)	Client Specific Costs	Attorney Fees	Project Credits	Project Credits (\$)**			
									FEMA Credits	Local Credits		
Obligated	FEMA PA	\$8,314,089.76	3.55%	1.98%	\$494,516.42	\$27,102.65	\$84,134.48	\$383,279.29	Obligated	FEMA PA	\$344,951.36	\$38,327.93
Pending	FEMA PA	\$225,777,535.33	96.45%	53.72%	\$13,429,094.69	\$736,000.06	\$2,284,757.03	\$10,408,337.60	Pending	FEMA PA	\$9,418,892.49	\$989,445.11
Total		\$234,091,625.09	100.00%	55.69%	\$13,923,611.11	\$763,102.71	\$2,368,891.51	\$10,791,616.89	Total		\$9,763,843.85	\$1,027,773.04

** Actual credit applied may differ from initial credits available based on final project status and costs.

By Project

Project Type	Status as of Settlement	Category	Project #	Title/Description	Total FEMA Expenses at Time of Settlement	% of FEMA Expenses	% of Total Damages Apply to S25M	Gross (Pre Fees and Costs)	Client Specific Costs	Attorney Fees	Project Credits	Original Project Cost Share %		Project Credits (\$)**	
												FEMA	Local	FEMA Credits	Local Credits
FEMA PA	Pending	B	746111	MEMACDA - Security Contract Cost 1 - August - March-P04	\$12,000,000.00	5.13%	2.8550%	\$713,751.86	\$39,118.16	\$121,434.07	\$553,199.64	90.00%	10.00%	\$497,879.68	\$55,319.96
FEMA PA	Pending	B	737311	MEMACDA - EOC Purchases-P01	\$900,000.00	0.38%	0.2141%	\$53,531.39	\$2,933.86	\$9,107.56	\$41,489.97	90.00%	10.00%	\$37,340.98	\$4,149.00
FEMA PA	Pending	B	741030	MEMACDA - EOC FAL OT-P02	\$900,000.00	0.38%	0.2141%	\$53,531.39	\$2,933.86	\$9,107.56	\$41,489.97	90.00%	10.00%	\$37,340.98	\$4,149.00
FEMA PA	Pending	B	746119	MEMACDA - Security Contract Cost 2 (dates 5/8/24 to 6/30/24)-P05	\$3,850,000.00	1.64%	0.9160%	\$228,995.39	\$12,550.41	\$38,960.10	\$177,484.88	90.00%	10.00%	\$159,736.40	\$17,748.49
FEMA PA	Pending	B	744152	MEMACDA - Donated Resources County-Wide-P03	\$3,800.00	0.00%	0.0009%	\$26.02	\$12.39	\$38.45	\$175.18	90.00%	10.00%	\$157.66	\$17.52
FEMA PA	Pending	A	736509	Debris Removal Operations	\$382,817.76	0.16%	0.0911%	\$22,769.74	\$1,247.93	\$3,873.93	\$17,647.89	90.00%	10.00%	\$15,883.10	\$1,764.79
FEMA PA	Obligated	B	736380	Emergency Protective Measures - Contract (8/8/23 to 9/23/23)	\$1,962,733.04	0.84%	0.4670%	\$116,742.03	\$6,398.21	\$19,861.89	\$90,481.93	90.00%	10.00%	\$81,433.74	\$9,048.19
FEMA PA	Pending	B	748207	Emergency Protective Measures - Contract Part 2	\$1,509,097.95	0.64%	0.3590%	\$89,760.12	\$4,919.43	\$15,271.33	\$69,569.37	90.00%	10.00%	\$62,612.43	\$6,956.94
FEMA PA	Pending	B	740143	Emergency Protective Measures - Force Account	\$500,000.00	0.21%	0.1190%	\$29,739.66	\$1,629.92	\$5,059.75	\$23,049.98	90.00%	10.00%	\$20,744.99	\$2,305.00
FEMA PA	Pending	C	736383	Damaged Roadway & Components	\$2,500,000.00	1.07%	0.5948%	\$148,698.30	\$8,149.62	\$25,298.76	\$115,249.92	90.00%	10.00%	\$103,724.93	\$11,524.99
FEMA PA	Obligated	B	744531	MPD - ANDE Expenses-P02 (3/3/24 to 7/31/24)	\$192,409.93	0.08%	0.0458%	\$11,444.41	\$627.23	\$1,947.09	\$8,249.09	90.00%	10.00%	\$7,983.08	\$887.01
FEMA PA	Pending	B	747380	MPD Misc Cat B 1	\$200,000.00	0.09%	0.0476%	\$11,895.86	\$651.97	\$2,023.90	\$9,219.99	90.00%	10.00%	\$8,297.99	\$922.00
FEMA PA	Pending	B	735078	MPD FALOT Equipment-P01	\$900,000.00	0.38%	0.2141%	\$53,531.39	\$2,933.86	\$9,107.56	\$41,489.97	90.00%	10.00%	\$37,340.98	\$4,149.00
FEMA PA	Obligated	B	742559	MDFPS - Contracts and Equipment Rental-P04 (8/8/23 to 10/20/23)	\$399,797.33	0.17%	0.0951%	\$23,779.67	\$1,303.28	\$4,045.75	\$18,430.64	90.00%	10.00%	\$16,587.58	\$1,843.06
FEMA PA	Pending	B	746264	MDFPS - Materials & Supplies, Food & Water-P05	\$299,245.67	0.13%	0.0712%	\$17,798.93	\$975.49	\$3,028.22	\$13,795.22	90.00%	10.00%	\$12,415.69	\$1,379.52
FEMA PA	Obligated	B	733310	MDFPS - FAL OT-P01 (8/8/23 to 9/30/23)	\$550,021.37	0.23%	0.1309%	\$32,714.90	\$1,792.99	\$5,565.94	\$25,355.97	90.00%	10.00%	\$22,820.37	\$2,535.60
FEMA PA	Obligated	E	736388	MDFPS-Equipment/Vehicles Destroyed-P02	\$2,092,195.61	0.89%	0.4978%	\$124,442.38	\$6,820.24	\$21,171.99	\$96,450.15	90.00%	10.00%	\$86,805.14	\$9,645.02
FEMA PA	Pending	E	742557	MDFPS - Damaged Equipment, Contracted Labor, Materials and Supplies-P03	\$900,000.00	0.38%	0.2141%	\$53,531.39	\$2,933.86	\$9,107.56	\$41,489.97	90.00%	10.00%	\$37,340.98	\$4,149.00
FEMA PA	Pending	A	739712	Debris Removal throughout Lahaina County	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	B	743574	Emergency Protective Measures - FAL OT	\$159,395.67	0.07%	0.0379%	\$9,480.75	\$519.61	\$1,613.01	\$7,348.14	90.00%	10.00%	\$6,613.32	\$734.81
FEMA PA	Pending	E	743649	Lahaina Civic Center Base yard, roof damages	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	G	740533	Alaheka Park	\$20,000.00	0.01%	0.0048%	\$1,189.59	\$65.20	\$202.39	\$922.00	90.00%	10.00%	\$829.80	\$92.20
FEMA PA	Pending	G	740535	Kamehameha Iki Park	\$200,000.00	0.09%	0.0476%	\$11,895.86	\$651.97	\$2,023.90	\$9,219.99	90.00%	10.00%	\$8,297.99	\$922.00
FEMA PA	Pending	G	740536	Kelaewa Mauka Park	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	G	740537	Malu Ulu O Lile Park	\$100,000.00	0.04%	0.0238%	\$5,947.93	\$325.98	\$1,011.95	\$4,610.00	90.00%	10.00%	\$4,149.00	\$461.00
FEMA PA	Pending	G	740538	Faunau Park	\$100,000.00	0.04%	0.0238%	\$5,947.93	\$325.98	\$1,011.95	\$4,610.00	90.00%	10.00%	\$4,149.00	\$461.00
FEMA PA	Pending	G	740540	Wahikuli Terrace Park	\$100,000.00	0.04%	0.0238%	\$5,947.93	\$325.98	\$1,011.95	\$4,610.00	90.00%	10.00%	\$4,149.00	\$461.00
FEMA PA	Pending	G	740541	Lahaina Courthouse Park	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	G	740554	Wahikuli Wayside Park	\$50,000.00	0.02%	0.0119%	\$2,973.97	\$162.99	\$505.98	\$2,305.00	90.00%	10.00%	\$2,074.50	\$230.50
FEMA PA	Pending	G	742261	Lahaina Recreation Center, Boys & Girls Club, 2-Baseball field, and Skate Park	\$1,000,000.00	0.43%	0.2379%	\$59,479.32	\$3,259.85	\$10,119.51	\$46,099.97	90.00%	10.00%	\$41,489.97	\$4,610.00
FEMA PA	Pending	B	742541	MOED - GEN Distribution Center Expenses-P02	\$236,368.20	0.10%	0.0562%	\$14,059.02	\$770.52	\$2,391.93	\$10,896.57	90.00%	10.00%	\$9,806.91	\$1,089.66
FEMA PA	Pending	B	742544	MOED - Food Processing Expenses-P03	\$397,566.00	0.17%	0.0946%	\$23,646.60	\$1,295.98	\$4,023.11	\$18,327.50	90.00%	10.00%	\$16,494.75	\$1,832.75
FEMA PA	Obligated	B	742250	MOED-Website Contract Distribution Centers Related Costs-P01 (8/9/23 to 12/31/23)	\$414,790.27	0.18%	0.0987%	\$24,671.44	\$1,352.15	\$4,197.47	\$19,121.82	90.00%	10.00%	\$17,209.64	\$1,912.18
FEMA PA	Obligated	A	736367	Debris Removal	\$193,836.64	0.08%	0.0461%	\$11,529.27	\$631.88	\$1,961.53	\$8,935.86	90.00%	10.00%	\$8,042.28	\$893.59
FEMA PA	Pending	A	747440	EP&S Division (Damaged Auto and White Goods Disposal) Part 2	\$98,151.87	0.04%	0.0234%	\$5,838.01	\$319.96	\$993.25	\$4,524.80	90.00%	10.00%	\$4,072.32	\$452.48
FEMA PA	Obligated	B	741227	EP&S Division - Emergency Protective Measures (8/13/23 to 10/25/23)	\$49,129.78	0.02%	0.0117%	\$2,922.21	\$160.16	\$497.17	\$2,264.88	90.00%	10.00%	\$2,038.39	\$226.49
FEMA PA	Pending	B	736370	Emergency Protective Measures	\$7,920,000.00	3.38%	1.8843%	\$471,076.23	\$25,817.98	\$80,146.48	\$365,111.76	90.00%	10.00%	\$328,600.59	\$36,511.18
FEMA PA	Obligated	E	742141	Residential Trash Cart Replacement	\$182,282.98	0.08%	0.0461%	\$4,656.22	\$255.19	\$792.19	\$3,608.84	90.00%	10.00%	\$3,276.99	\$331.85
FEMA PA	Pending	F	736374	Waste Water Treatment Facility Damages	\$134,182,100.00	57.32%	31.9242%	\$7,981,060.31	\$437,413.02	\$1,357,856.51	\$6,185,790.78	90.00%	10.00%	\$5,567,211.70	\$618,579.08
FEMA PA	Pending	B	735579	Emergency Protective Measures	\$1,000,000.00	0.43%	0.2379%	\$59,479.32	\$3,259.85	\$10,119.51	\$46,099.97	90.00%	10.00%	\$41,489.97	\$4,610.00
FEMA PA	Obligated	E	743969	Damaged Vehicle, Contents & Computer Destroyed in Fire	\$62,277.25	0.03%	0.0148%	\$3,704.21	\$203.01	\$630.21	\$2,870.98	90.00%	10.00%	\$2,583.88	\$287.10
FEMA PA	Pending	E	750244	Lahaina Base Yard Damages	\$20,000.00	0.01%	0.0048%	\$1,189.59	\$65.20	\$202.39	\$922.00	90.00%	10.00%	\$829.80	\$92.20
FEMA PA	Pending	F	750245	Kula / Olinda Meters, Boxes & Laterals	\$100,000.00	0.04%	0.0238%	\$5,947.93	\$325.98	\$1,011.95	\$4,610.00	90.00%	10.00%	\$4,149.00	\$461.00
FEMA PA	Pending	F	736290	Potable Water System Infrastructure Damage	\$9,000,000.00	3.84%	2.1413%	\$535,313.90	\$29,338.62	\$91,075.55	\$414,899.73	90.00%	10.00%	\$373,409.76	\$41,489.97
FEMA PA	Obligated	B	734966	MDPA - FALOT Travel Supplies Mileage - P01 (8/10/23 to 10/23/23)	\$36,965.75	0.02%	0.0088%	\$2,198.70	\$120.50	\$374.08	\$1,704.12	90.00%	10.00%	\$1,533.71	\$170.41
FEMA PA	Obligated	B	734774	MDOT FALOT, Contracts and FA Equipment-P01(8/8/23 to 9/30/23)	\$427,962.58	0.18%	0.1018%	\$25,454.92	\$1,395.09	\$4,330.77	\$19,729.06	90.00%	10.00%	\$17,756.16	\$1,972.91
FEMA PA	Obligated	B	742575	MDOT - Transportation Contract Cost-P04 (10/1/23 to 1/2/24)	\$597,577.67	0.26%	0.1422%	\$35,543.51	\$1,948.01	\$6,047.19	\$27,548.31	90.00%	10.00%	\$24,793.48	\$2,754.83
FEMA PA	Obligated	E	734986	MDOT Destroyed Bus-P02	\$892,701.00	0.38%	0.2124%	\$53,097.25	\$2,910.07	\$9,033.69	\$41,153.49	90.00%	10.00%	\$37,038.14	\$4,115.35
FEMA PA	Obligated	E	740392	MDOT Burned Bus Stop Shelter-P03	\$188,771.02	0.08%	0.0449%	\$11,227.97	\$615.36	\$1,910.27	\$8,702.34	90.00%	10.00%	\$7,832.10	\$870.23
FEMA PA	Pending	A	739396	MDHHC - Debris Removal-P02	\$0.00	0.00%	0.0000%	\$0.00	\$0.00	\$0.00	\$0.00	90.00%	10.00%	\$0.00	\$0.00
FEMA PA	Pending	B	739474	MDHHC - FAL OT, FA Equipment, Materials-P03 (8/10/23 to 12/13/23)	\$51,747.75	0.02%	0.0123%	\$3,077.92	\$168.69	\$523.66	\$2,385.57	90.00%	10.00%	\$2,147.01	\$238.56
FEMA PA	Pending	E	739478	MDHHC - Equipment, Interior Contents, Vehicles-P04	\$0.00	0.00%	0.0000%	\$0.00	\$0.00	\$0.00	\$0.00	90.00%	10.00%	\$0.00	\$0.00
FEMA PA	Pending	E	739479	MDHHC - West Maui Senior Center-P05	\$9,511,248.00	4.06%	2.2629%	\$565,722.58	\$31,005.21	\$96,249.13	\$438,468.25	90.00%	10.00%	\$394,621.42	\$43,846.82
FEMA PA	Pending	E	739482	MDHHC - Lahaina Crossroads Apartments-P06	\$9,325,321.00	3.98%	2.2187%	\$554,663.77	\$30,399.11	\$94,367.64	\$429,897.02	90.00%	10.00%	\$386,907.32	\$42,989.

Attachment B

ATTACHMENT B

COUNTY OF MAUI CREDITS TO FEMA RELATED TO MAUI FIRES RESOLUTION

Pursuant to direction and guidance from FEMA regarding Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”) and 44 CFR §206.223(e), and pursuant to our agreements in this matter, the County of Maui (or, “County”) will follow the procedures stated herein, or will follow agreed upon procedures that are substantially similar to those set forth herein according to mutual agreement between the County and FEMA, to provide FEMA a credit (if applicable) as described more fully below (“the FEMA Crediting Process”). The County is responsible for maintaining records of transactions associated with the FEMA Crediting Process as support for future audits by FEMA, the Office of the Inspector General, or similar agency with authority, regarding issues of Duplication of Benefits and recover of FEMA funds from negligent third parties.

A. FEMA CREDITING PROCESS

Attachment A to the Baron & Budd and Diab Chambers letter dated October 16, 2024, includes the list of FEMA projects or anticipated projects included in the County’s settlement with Maui Electric Company, Hawaiian Electric Company, Inc., Hawai’i Electric Light Company, Inc., and Hawaiian Electric Industries, Inc., (collectively, “Defendants”), the pro-rata percentage recovered for each project, the net amount received through the settlement after attorneys’ fees and costs are deducted, the net amount of each available credit to FEMA (“the FEMA Credits”), and the County’s net recovery for its local share (“the Public Entity Credits”), as to each project.¹ Throughout this letter we refer to the FEMA Credits and the Public Entity Credits combined, on a project by project basis, as “the Project Credit(s).”² The remaining project cost, after subtracting the Project Credit from the current project cost, is referred to as the “Credit-Adjusted Project Cost.”

Pursuant to this agreement, the County will provide FEMA a credit (if applicable) based upon a combination of the following three project attributes:

- (1) **Eligibility determination** (i.e., ineligible/withdrawn, pending, or obligated);
- (2) **Payment status by FEMA** (i.e., no payments made from FEMA to the County, partially paid, or fully paid); and,
- (3) **Current project cost relative to the Project Credit received** (as reflected in Attachment A).

Pursuant to the June 2022 FEMA internal instruction entitled, *Identification and Collection of Monies Owed from Non-Federal Entities*, the County will provide all necessary credits to FEMA, within 60-days of receipt of the settlement funds. If the County needs additional time, it is entitled to request an additional 30-day extension to provide any necessary credits.

¹ Final cost accounting is ongoing. To the extent the figures in Attachment A change through the cost accounting process, we will provide an update.

² The Project Credits were determined by the project cost information available at the time of settlement. Project Credits will not increase with increases in project costs after settlement.

Throughout this letter we provide a description of the crediting methodology and we provide a hypothetical scenario to demonstrate how the Project Credits will be applied under the methodology, using an example FEMA project (“Project A”) with an original estimated cost of \$100, of which the FEMA cost share is 90% and the local cost share is 10%.³ For purposes of this example, we use a hypothetical settlement amount of \$37 associated with Project A ($\$100 \times 37\%$).⁴ In this hypothetical, the Public Entity’s proportional local share of the credit is \$3.70 ($\$37 \times 10\%$) and the FEMA credit is \$33.30 ($\$37 \times 90\%$). A summary of the credit distribution scenarios is also provided in **Table 1**, below.

B. FEMA CREDIT CALCULATION

1. **Entire Project Denied by FEMA or Withdrawn by the County** – For each project that has been denied by FEMA or withdrawn by the County in its entirety, the County will retain all Project Credits associated with that project. FEMA will receive no credit because no funds were ultimately paid by FEMA.

2. **Current Project Costs are Less than or Equal to the Total Project Credit Received** – When current project costs are less than or equal to the Project Credit, crediting to FEMA will depend upon the current project payment status. Since current project costs are less than or equal to the Project Credit, the Project Credit is sufficient to cover all project costs. Thus, the County shall exhaust the Project Credit prior to seeking reimbursement from FEMA. If FEMA has already funded the project, the County will provide credit refund to FEMA such that there is no duplication of benefits (“Credit Refund”).⁵ The County will retain any excess funds after the Credit Refund has been provided.
 - a. **Pending or Obligated, Not Yet Paid** - With respect to both pending applications and obligated projects where the current project costs are less than or equal to the Project Credit received and no payments have been made by FEMA, the County will withdraw the project application and will retain the entire Project Credit to cover the project cost, including any excess credits between the current project costs and the available Project Credit. If the project is in process but the work is not yet complete, the County shall exhaust the Project Credit prior to seeking reimbursement from FEMA but will not withdraw the project until the full project costs are known, even when project costs are anticipated to be less than the Project Credit.

Example: *If the current project cost decreases to \$30 (i.e., below the Project Credit), the Public Entity withdraws the project. The Public Entity retains the entire*

³ The 90% FEMA cost share and the 10% local cost share is for purposes of example in this hypothetical only. The actual cost shares for the Maui Fire are as follows: 90% FEMA 10% sub-recipient (local), unless otherwise defined.

⁴ Actual credits designated per project are slightly less than the pro-rata share calculated using the percent recovery due to adjustments made for legal fees and costs. These are omitted from this example for simplicity.

⁵ Credit refunds to FEMA will not include any interest.

Project Credit to cover project costs, including the excess credits between the current project costs and the Project Credit (\$37 total, including \$7 in excess credit).

- b. Obligated and payments have begun but are not complete** – With respect to obligated projects where current project costs are less than or equal to the Project Credit and payments by FEMA has begun but are not yet complete, the County will inform FEMA of the Project Credit received. FEMA shall de-obligate any outstanding funds to the County. The County will provide a Credit Refund to FEMA to reimburse FEMA for all completed payments associated with the project. The County will retain the remaining Project Credits to cover the project costs (including any excess credits). If the project is in process but the work is not yet complete, the County shall exhaust the Project Credit prior to seeking reimbursement from FEMA, and FEMA shall de-obligate any outstanding funds; however, the project shall not be withdrawn until the full project costs are known, even when project costs are anticipated to be less than the Project Credit.

***Example:** If the current project cost decreases to \$30 (i.e., below the Project Credit) and FEMA has already paid \$15, the Public Entity provides a Credit Refund of \$15 to FEMA. FEMA de-obligates the remaining \$12 in payments scheduled based on their cost share for the project ($\$30 \times 90\% = \$27 - \$15 = \12). The Public Entity retains the remaining \$22 in Project Credits after providing the Credit Refund, which includes coverage of the \$3 local share and the \$12 in de-obligated FEMA funds, plus \$7 in excess credit.*
- c. Obligated and all payments complete** - For projects where FEMA has completed all payments to the County, the County will provide FEMA a Credit Refund for all payments received by FEMA associated with the project. The County will retain the remaining Project Credits after the Credit Refund to cover the County’s local cost share for the project (including any excess credits).

***Example:** If the current project cost decreases to \$30 (i.e., below Project Credit) and FEMA has completed their cost share payments of \$27 ($\$30 \times 90\%$), the Public Entity refunds \$27 to FEMA and retains the remaining \$10 Project Credits, which includes coverage for the Public Entity’s \$3 local cost share and \$7 in excess credit.*
- 3. Current Project Costs are Greater than Total Project Credit Received** – When current project costs are greater than the Project Credit received, the credit shares defined in **Attachment A** are applied to FEMA and the County. FEMA and the County are responsible for the remaining project costs as defined by the FEMA project cost share agreement.

 - a. Pending Projects** - For projects that are pending an eligibility determination, the County will revise the project application by subtracting the entire Project Credit

from the current project application. The County will retain the entire Project Credit to fund the project work now excluded from the application. If after credits are applied, the Credit Adjusted Project Cost falls below the minimum Public Assistance project cost threshold of \$3,800, the County will withdraw the project and will be responsible for the remaining project costs which fall below the threshold.⁶

Example: *If the current project costs are \$80, the Public Entity revises the application to a new total of \$43 (\$80 - \$37). Public Entity retains entire Project Credit.*

- b. **Obligated, Payments Not Complete** - For projects that are obligated, but payments are not complete, the County will calculate the revised FEMA cost share for the project by subtracting the FEMA Credits listed in **Attachment A** from the obligated FEMA cost share (“the Credit-Adjusted FEMA cost-share”).

Example: *If current project costs are \$80, the obligated FEMA cost share is \$72 (\$80 x 90%). The FEMA Credit is \$33.30. Thus, the credit-adjusted FEMA cost share (i.e., cost share after subtracting the FEMA Credit) is \$38.70 (\$72 - \$33.30).*

- i. **If the payments made to date by FEMA are less than the Credit-Adjusted FEMA cost share** (including obligated projects with no payments made), the County will request that FEMA de-obligate funds in the amount of the FEMA Credit as defined in **Attachment A**. The County will retain the entire Project Credit, which covers the amount FEMA de-obligated and a portion of the County’s local cost share.

Example Continued: *FEMA obligated cost share is \$72 (\$80 x 90%). The Credit-Adjusted FEMA cost share is \$38.70. If FEMA has already paid \$30 to the Public Entity, FEMA de-obligates \$33.30 and is responsible for paying the remaining \$8.70 to complete their Credit-Adjusted cost share (\$30 already paid + \$8.70 remaining = \$38.70). The Public Entity retains the entire Project Credit of \$37, which includes the amount FEMA de-obligated (\$33.30) and a portion of the Public Entity’s local cost share (\$3.70).*

- ii. **If the payments made to date by FEMA are greater than or equal to the Credit-Adjusted FEMA cost share and payments by FEMA are still ongoing**, the County will request that FEMA de-obligate any outstanding

⁶ FEMA sets minimum project threshold costs under which projects are no longer eligible for reimbursement. FEMA PA projects are subject to a \$3,800 project cost minimum threshold for disasters that occurred in 2023. When a Credit-Adjusted Project Cost falls below the \$3,800 minimum threshold for **pending** FEMA PA projects, the County shall withdraw the project and will be responsible for the amounts remaining below the minimum threshold. Pursuant to Agreement between the County and FEMA, the minimum threshold rule shall not apply to projects where FEMA funds have been paid and thus applies to pending projects only. Category Z projects are excluded from the project minimum thresholds pursuant this Agreement.

payments on the project. The County will provide a Credit Refund to FEMA amounting to the difference between payments made to date and Credit-Adjusted FEMA cost share. The amount de-obligated plus the FEMA refund payment will equal the FEMA Credit. The County will retain the remainder of the Project Credits received after providing the Credit Refund.

Example Continued: FEMA obligated cost share is \$72 ($\$80 \times 90\%$). The Credit-Adjusted FEMA cost share is \$38.70. If FEMA has already paid \$50 to the Public Entity, FEMA de-obligates \$22 ($\$72 - \50). The Public Entity provides FEMA a Credit Refund of \$11.30 ($\$50 - \38.70). The amount de-obligated plus the FEMA refund payment equals the FEMA Credit amount in Attachment A ($\$22 + \$11.30 = \$33.30$). The Public Entity retains the remaining Project Credit of \$25.70 after providing the Credit Refund (which covers the amount de-obligated (\$22), plus \$3.70 which covers a portion of the public entity's local share).

- c. **Obligated, Payments Complete** - For projects that are obligated and all payments from FEMA to the County are complete, the County will provide a Credit Refund to FEMA in the amount of the FEMA Project Credit as defined in **Attachment A**. The County will retain the remaining Project Credit after providing the Credit Refund, which covers a portion of the County's local cost share.

Example: If current project costs are \$80, the obligated FEMA cost share is \$72 ($\$80 \times 90\%$). The revised FEMA cost share, after subtracting the FEMA credit, is \$38.70 ($\$72 - \33.30). If FEMA has paid \$72 to the Public Entity and the payment process is complete, the Public Entity refunds \$33.30 to FEMA and retains the remaining Project Credit of \$3.70 after the Credit Refund has been provided ($\$72 - \$33.30 = \$3.70$), which covers a portion of the Public Entity's local cost share for the project.

[continued on page 6]

Table 1. Summary of Credit Distribution Scenarios

References in parentheses refer to the sections above describing each scenario.

		Current Project Cost	
		Less than or Equal to Total Project Credit Received	Greater than Total Project Credit Received
Entire Project Withdrawn or Ineligible		County retains entire Project Credit. (1)	
Pending		County withdraws project and retains entire Project Credit. (2.a)	County revises the project application by subtracting entire Project Credit from current project cost. County retains entire Project Credit. (3.a)
Obligated	No Payments Made		FEMA de-obligates funds in the amount of the FEMA portion of the Project Credit as defined in Attachment A. County retains entire Project Credit. (3.b.i)
	Payments Made up to Credit-adjusted FEMA Project Cost Share	See Payments Made Greater than Credit-adjusted FEMA share ^[1]	
	Payments Made Greater than Credit-adjusted FEMA share	County provides Credit Refund to cover all FEMA payments on project to date. FEMA de-obligates any remaining payments. County retains remaining Project Credit after providing the refund to FEMA, including any excess credits above the project cost. (2.b)	County provides Credit Refund to cover FEMA payments made up to the amount of the FEMA credit. FEMA de-obligates any remaining payments. The FEMA Credit Refund plus the amount de-obligated equals the FEMA portion of the Project Credit as reflected in Attachment A. County retains remaining Project Credit after providing the refund to FEMA. (3.b.ii)
	Fully Paid	County provides Credit Refund to FEMA to cover all FEMA payments on project. County retains remaining Project Credit after providing the Credit Refund to FEMA, including any excess credits above the project cost. (2.c)	County refunds FEMA the amount of the FEMA portion of the Project Credit as reflected in Attachment A. County retains remaining Project Credit after providing the refund to FEMA. (3.c)
If the Credit-Adjusted Project Cost falls below FEMA’s Public Assistance minimum threshold of \$3,800 for a pending project, the County will withdraw project and cover remaining project costs under the minimum threshold.			

Pursuant to our agreements in this matter, the above methodology satisfies direction and guidance from FEMA to the County regarding FEMA’s interpretations of section 312 of the Stafford Act and 44 CFR §206.223(e) to use commercially reasonable efforts to recover from Defendants the FEMA costs and damages related to the 2023 Maui Fires and to avoid any duplication of benefits. Per our agreement, FEMA commits to processing applications in the normal and customary course and this agreement in no way limits the County’s right to file an appeal if a project is denied or partially denied. For projects subject to an appeal, the County will retain all project credits and reduce the application subject to the appeal by the project credit amount. If FEMA partially denies a project but has paid funds on a project subject to an appeal, the County follow the procedures as set forth in this letter to provide any necessary project credits to FEMA. If there are excess funds remaining after applying project credits on partially denied

^[1] Revised FEMA cost share is \$0 when current project cost is less than or equal to net amount received. Therefore, if payments are underway, payments made have to be greater than \$0 and fall under the next category, Payments Greater than Credit-adjusted FEMA share.

October 16, 2024

Page 7

project applications that have been paid, the County will retain the excess credits and will reduce project applications subject to the appeal by the excess project credit amount. Retaining project credits while an appeal is pending will not be deemed a duplication of benefits by FEMA. Once a final decision has been made on a pending appeal, the County will follow the procedures in this letter to ensure there is no duplication of benefits.



FEMA

October 18, 2024

John Fiske
Baron & Budd P.C.
11440 West Bernardo Court
Suite 265
San Diego, CA 92127

Ed Diab
Diab Chambers LLC
10089 Willow Creek Road
Suite 200
San Diego, CA 92131

Re: Maui County Resolution of Claims related to the 2023 Maui Wildfires

Dear Mr. Fiske and Mr. Diab:

This letter is in response to your October 16, 2024, letter outlining the terms of the proposed settlement agreement between your client, Maui County (the County), and Maui Electric Company, Hawaiian Electric Company, Inc., Hawai'i Electric Light Company, Inc., and Hawaiian Electric Industries, Inc., (collectively, "Defendants") in relation to the 2023 Maui Wildfires, which were included in a major disaster declaration (DR-4724) under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). This letter also responds to the proposed procedures by the County to credit funds to the Federal Emergency Management Agency (FEMA) in relation to the proposed settlement.

The County is eligible to receive FEMA financial assistance, through the Hawaii Emergency Management Agency (HIEMA), as a result of the 2023 Maui Wildfires. The County has presented legal claims for damages to the Defendants, which include costs potentially eligible for reimbursement under the FEMA Public Assistance (PA) grant program. We understand the County and the Defendants reached a confidential settlement in principle on August 2, 2024, resolving the County's claims.

Based on the information provided in your October 16, 2024 letter, including the unique nature of this litigation involving hundreds of claims against the County, the Defendants, and other parties, FEMA concludes that the proposed settlement agreement and procedures to credit FEMA satisfy the County's obligations under the Stafford Act to avoid duplication of benefits.

The Stafford Act authorizes FEMA to provide grants through the PA program to state and local governments, upon a declaration of a major disaster by the President. Federal assistance under the Stafford Act is supplemental. Section 312 of the Stafford Act requires FEMA to assure that recipients of federal assistance do not receive a duplication of benefits from any other source, including claims against potentially liable third parties. Where a FEMA applicant for assistance has available to it a potential other source of funding from insurance coverage or a potentially liable third party, FEMA requires the applicant make a "commercially reasonable" effort to

collect from that potential source of funding. In other words, a FEMA applicant must make an effort to collect from a potential other source of funding as if it was without other recourse (*i.e.*, FEMA assistance) under the circumstances.

FEMA has been working with your firms to ensure the County satisfies its obligation to avoid a duplication of benefits under Section 312 of the Stafford Act. Based on the information provided in your October 16, 2024 letter, FEMA concludes with respect to the legal obligation to avoid duplication that the proposed settlement amount and methodology set forth in your letter is commercially reasonable. The proposed procedures to credit funds and pro rata allocation of the settlement related to potentially PA eligible work included in the claim (minus reasonable attorney fees and other reasonable costs) will satisfy the County's obligations under Section 312 of the Stafford Act with respect to its potential claims against the Defendants.

Final adoption of the proposed settlement agreement by all parties, and the implementation of the proposed procedures to credit FEMA the pro rata allocation of the settlement related to the potentially FEMA eligible work, will satisfy all FEMA interests in the potential liability of the Defendants for costs of the County eligible for FEMA reimbursement and leave no basis for FEMA to directly pursue from the Defendants these or any other costs related to the County's claims against the Defendants. With respect to continued delivery of FEMA's PA program, FEMA will continue supporting the State and the County through the usual and customary PA process. All other regulations and policies regarding administration of the PA program will continue to apply.

FEMA reserves the right to pursue any other claims against the Defendants related to DR-4724 that were not included in the County's claims, including but not limited to: the federal share of direct assistance provided by FEMA to the State and public entities; the federal share of financial assistance provided by FEMA to the State, public entities not a party to the settlement agreement, and individuals impacted by the disasters; and FEMA's costs for administering its disaster assistance programs.

If you have any questions, please contact Region 9 Regional Counsel John-Paul Henderson at 510-627-7055 or johnpaul.henderson@fema.dhs.gov.

Sincerely,



Robert J. Fenton
Regional Administrator

Cc: James DS. Barros, Administrator, Hawaii Emergency Management Agency
John-Paul Henderson, Regional Counsel, FEMA Region 9

EXHIBIT 10

Exhibit 10**APPENDIX REGARDING ALLOCATION OF GLOBAL SETTLEMENT AMOUNT**

Class Plaintiffs¹ and the IP Plaintiffs (collectively, “Parties”) agree to the following binding, final procedure to determine the proper allocation of the Aggregate Settlement Amount between the Class Settlement Amount and the Individual Settlement Amount:

1. The terms set forth in this Appendix apply only to the procedure to determine a proper allocation of the Aggregate Settlement Amount between the Class Settlement Amount and the Individual Settlement Amount are not applicable to any other matters. These terms shall not extend to or be applicable in any other contexts or matters
2. The allocation between the Class Settlement Amount and the Individual Settlement Amount of the limited settlement proceeds provided in the Aggregate Settlement Amount will be determined by an evidentiary hearing in a new Special Proceeding to be initiated by the Class Plaintiffs and the IP Plaintiffs before the Honorable Peter T. Cahill, Second Circuit Court of the State of Hawaii (“Court”). The Parties stipulate the case is a Maui Fires case and will label the complaint as a Maui Fires case.
3. Subject to the availability of the Court’s calendar and coordinating schedules among counsel, the Parties will request that the trial be held within approx. 75 days of the Settlement Date or as soon thereafter as the Court may order.
4. The Court will begin by allocating \$25,000,000 to the Individual Settlement Fund to make the payment to the County contemplated under Section 4.1.2(k) of the Individual Settlement Agreement.
5. The Court will then determine a fair and equitable allocation of the Aggregate Settlement Amount, minus the \$25,000,000 under Section 4 of this Appendix, based on (1) the number of represented individuals as of December 1, 2024 (“IP Plaintiffs”) and the potential value of their claims compared to the number of unrepresented individuals as of the same date, who are within the settlement class definition (“Class Plaintiffs”) and the potential value or lack thereof of their claims; (2) the terms of the Class Settlement Agreement and the Individual Settlement Agreement; and (3) other equitable and/or legal factors the Court may choose to consider, provided the Court shall not enter a ruling on whether certain claims within the Settlement Class definition are precluded under the economic loss rule, nor shall the allocation void or change the Settlement Class definition.
6. If the number of Individual Plaintiffs or eligible Class Plaintiffs in each damages category deviates significantly from the number presented at the evidentiary hearing, the Parties will seek to agree on an appropriate adjustment based on the data or submit to the Court

¹ All capitalized terms used in this Exhibit 10 have the same meaning as in the Class Settlement Agreement and Individual Settlement Agreement, unless otherwise defined in this Exhibit 10.

for resolution should agreement not be reached.

7. The Court's allocation decision may be expressed in terms of percentages for the Class Settlement Amount and the Individual Settlement Amount, respectively. Any percentages will be translated to dollar figures for the subsequent Preliminary Approval motion and for purposes of determining the Class Settlement Amount and the Individual Settlement Amount.
8. IP Plaintiffs agree they shall provide registration data for all IP Plaintiffs as soon as feasible, which the Court and Class Plaintiffs shall rely upon for the purpose of the allocation. Registration data shall include, at minimum: (a) legal name; (b) address on August 8, 2023; (c) description by BrownGreer/IP damage category; and (d) name of attorney.
9. The following rules shall apply to the trial, subject to the Court's discretion to otherwise alter these rules:
 - a. Hawaii Rules of Evidence and Civil Procedure unless otherwise agreed herein.
 - b. The burden of proof shall be in the nature of interpleader wherein Class and IP Plaintiffs may present evidence, argument, and testimony in support of their respective claims against the limited Aggregate Settlement Amount.
 - c. Deadlines for expert reports and expert depositions will be set following conference with the Court.
 - d. Any depositions shall be by mutual agreement by parties or court order.
 - e. Trial briefs setting forth the parties' case, witness list, exhibit list, stipulations and any evidentiary issues will be due 7 days before trial begins.
 - f. Trial will consist of opening, witness examinations, and closing arguments.
 - g. After the Court issues findings of fact and conclusions of law and order, a final order will be entered that will be referenced within the Class Settlement Agreement and Individual Settlement Agreement.
 - h. The Parties will submit a joint request to the Court requiring insurers to provide all relevant data.
 - i. Both sides waive service, responsive pleadings, and answers.
10. The Parties irrevocably agree to waive appeals from the allocation award, any interlocutory or collateral orders entered in the Special Proceeding, or judgment entered in the Special Proceeding, and expressly agree that the Court's determinations of the Class Settlement Amount and the Individual Settlement Amount is binding.
11. The Parties can settle at any time before judgment is entered.

STATEMENT OF RELATED CASES

There are estimated to be over 600 Maui Fire cases filed that were coordinated before Judge Peter Cahill in the Second Circuit Court that are all related to these Reserved Questions.

SCRQ-24-00000602

IN THE SUPREME COURT OF THE STATE OF HAWAII

IN THE MATTER OF THE PETITION FOR
COORDINATION OF MAUI FIRE

CIVIL No. 2CSP-23-0000057
(Reserved Questions)

CERTIFICATE OF SERVICE

SECOND CIRCUIT COURT

HON. PETER CAHILL

CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing document will be duly served all parties or their attorneys in the Maui Fire Cases by service both via filing on JEFS in SCRQ-24-00000602 and Special Proceeding No. 2CSP-23-0000057 and via CaseAnywhere, the electronic service provider designated by the Second Circuit Court for service of all pleadings in the Maui Fire cases.

DATED: November 4, 2024

PANISH | SHEA | RAVIPUDI LLP

/s/ Jesse Creed

Jesse Creed (011731)

24 N. Church St.

Wailuku, HI 96793

jcreed@panish.law

Tel: 808-242-4049