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75-320 Omilo Place  
Kailua-Kona, HI 96740  
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**Electronically Filed**  
**THIRD CIRCUIT**  
**3CCV-21-0000188**  
**09-SEP-2021**  
**08:52 AM**  
**Dkt. 13 MOT**

In Pro Per

**IN THE CIRCUIT COURT OF THE THIRD DISTRICT**  
**STATE OF HAWAII**

PUALANI ESTATES AT KONA )  
COMMUNITY ASSOCIATION, a Hawaii )  
non-profit corporation, )

Plaintiff, )

v. )

DEE ANN WUNSCHEL, an individual; )  
JOHN DOES 1-10, DOE )  
GOVERNMENTAL AGENCIES 1-10 and )  
DOE ENTITIES 1-10 )  
and Does 1 to 10, )

Defendants. )

Case No. 3CCV-21-0000188

**NOTICE OF MOTION AND MOTION TO  
COMPEL ARBITRATION (HRS § 658A-7)  
AND MOTION FOR JOINDER OF  
PERSONS NEEDED FOR JUST  
ADJUDICATION (HRCP RULE 19);  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION, DECLARATION OF DEE ANN  
WUNSCHEL;**

Assigned to: Hon. Wendy DeWeese  
Action Filed: June 25, 2021  
Trial Date: TBD

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD. Please take notice that on October 29, 2021, at 8:00 AM or as soon thereafter as the matter can be heard, in the North & South Kona Division of the Circuit Court of the Third District located at 74-5451 Kamakaeha Ave. , Kailua-Kona, Hawai'i 96740. Movant, Dee Ann Wunschel moves the Court to compel arbitration, pursuant to HI REV. STAT. § 658A-7.

**The foregoing motion will be heard via Zoom remote conferencing on October 29, 2001, at 8:00 AM, in the Circuit Court of the Third Circuit, by the above-entitled Court. You are directed to appear remotely via Zoom video conferencing 15 minutes prior to the scheduled time. Your Zoom Conference ID is: 610 655 7731, no password in required. Non-attorney participants unable to participate by video may call 1 669 900 9128 to participate by telephone by using the above noted Zoom video conference ID.**

Motion will be made on the grounds that Plaintiff's complaint is subject to mediation and arbitration based on the Pualani Estates Declarations of Covenants, Conditions, Restrictions and Easements Dated October 20, 2003 and filed for record on October 27, 2003 as Document 2003-234864, thus this Court lacks subject matter jurisdiction pursuant to HI RULES OF CIVIL PROCEDURE 12.

Motion will further be made pursuant to Ha. Dist. Ct. R. Civ. P. 19 for joinder of persons needed for just adjudication. Motion will be made on the grounds that Hawaiiiana Management Company Ltd. is a necessary party and that without such party the Court cannot accord complete relief among existing parties.

This motion is made based on this notice, the memorandum of points and authorities, supporting declaration, the records and files in this action, and on such evidence as may be presented at the hearing of the motion.

Date: September 9, 2021

  
Dee Ann Wunschel, Movant in pro per

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PUALANI ESTATES AT KONA )  
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 Plaintiff, )

Case No. 3CCV-21-0000188

**MEMORANDUM OF POINTS AND  
 AUTHORITIES**

v. )

DEE ANN WUNSCHEL, an individual; )  
 JOHN DOES 1-10, DOE )  
 GOVERNMENTAL AGENCIES 1-10 and )  
 DOE ENTITIES 1-10 )  
 and Does 1 to 10, )  
 )  
 Defendants. )

Assigned to: Hon. Wendy DeWeese  
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**INTRODUCTION**

1.) Movant, Dee Ann Wunschel (hereinafter “Wunschel”) owns her personal residence within the Pualani Estates At Kona Community Association (hereinafter “Pualani”) and is a member of the association.

2.) Pualani is an association of homeowners within the Pualani Estates at Kona subdivision and is governed by certain By-Laws of the Pualani Estates At Kona Community Association, a non-profit corporation, hereinafter referred to as “By-Laws” and Declaration to Covenants,

Conditions, Restrictions and Easements, herein after referred to as “CC&R’s” (attached hereto as Exhibit 1).

3.) Both Pualani and Wunschel are subject to the terms and conditions of the CC&R’s and Pualani is additionally obligated to follow the By-Law’s of the corporation.

### **STATEMENT OF FACTS AND RELEVANT PROCEDURAL HISTORY**

4.) Disputes arose between Wunschel and Pualani with regard to the election process of the board of directors of Pualani held on March 24, 2021. Wunschel notified Pualani of numerous irregularities in the election and requested negotiation, mediation and arbitration on April 2, 2021. See attached Exhibit 2. Pualani subsequently made claims against Wunschel with regard to emails she sent to members in the association using a list of email addresses given to her. Pualani's claim was that she illegally acquired and converted confidential email addresses of homeowners and used these email addresses as part of the election process.

5.) The CC&R’s at Article XXIV, Section 24.2 (a) states as follows:

**No Litigation.** Except as specifically permitted in this Section no judicial or administrative (inclusive of arbitrations) proceeding shall be commenced or maintained by Owner in respect to a Covered Matter. Further, no judicial proceeding shall be commenced or prosecuted by the Association except those specifically permitted by this Section. This Section shall not apply however, to, and the following judicial actions are permitted by the Association: (i) actions brought by the Association to enforce the provisions of the Declaration, the Bylaws, the Association Rules or the Design Guidelines (including without limitation, the foreclosure of liens) excluding those covered by the Declarant’s limited warranty; (ii) the imposition and collection of Assessments as provided in Article IX; or (iii) counterclaims brought by the Association in proceedings instituted against it. Further, the limitation on the commencement of judicial proceedings contained in this Section 24.2(a) may not be amended except at a duly held meeting of the Members upon the affirmative vote of Class “A” Members representing eighty-five percent (85%) of the Class “A” voting power of the Association but in no event may the provision be amended to permit a judicial action or proceeding against PWC.

6.) On April 21, 2021, Pualani through their attorney wrote a letter agreeing to mediation of the issues in their complaint as well as the dispute concerning the validity of the outcome of the board of directors election. The letter is attached as Exhibit 3.

7.) On April 29, 2021, Wunschel responded to their letter agreeing to waive the negotiation and go directly to mediation. The letter is attached as Exhibit 4.

8.) Pualani is governed by various Hawaii Revises Statutes 421J. H.R.S. 421J-13 requires Pualani to mediate disputes. H.R.S. 421J-13 (a) states as follows:

(a) At the request of any party, any dispute concerning or involving one or more member and an association, its board of directors, managing agent, manager, or one or more other members relating to the interpretation, application, or enforcement of this chapter or the association documents, shall first be submitted to mediation.

9.) No mediation has been held. Pualani filed their complaint after agreeing to mediation in violation of H.R.S. 421J-13 (a).

## **LEGAL ARGUMENT**

### **MOTION TO COMPEL MEDIATION AND ARBITRATION**

10.) Pualani is required both by the CC&R's and by H.R.S. 421J-13 to mediate disputes prior to filing any judicial action. The CC&R's at Article XXIV further mandate that such disputes that fail to settle in mediation must proceed to arbitration.

11.) This dispute by Pualani's own complaint at line (13.) states, "On February 26, 2021, March 12, 2021, and April 9, 2021 Wunschel sent emails to Association members, using the members' confidential email addresses, stating therein, her personal negative opinion of the Association Board., Thus, the crux of Pualani's complaint is that Wunschel used a list containing email addresses of members of the association to email members about Pualani's board of directors. The email they alleged to have used associations email list is attached hereto as

Exhibit 5. The email was sent by six residents of the association, including Wunschel, and was clearly related to the election of directors. This is clearly the type of judicial claim prohibited by the CC&R's Section 24 (2) (a). Furthermore, in accordance with H.R.S. 421J-13, this dispute must go to mediation.

12.) It is not lost on this Movant, and the Court should take notice, that Pualani's complaint against Wunschel came after she demanded negotiation, mediation, and arbitration with regard to irregularities in the election process. Pualani's attempt to quash a member's right to solicit proxies and otherwise convince members to vote for alternative board members to replace the existing board is an affront to the democratic process of this type of association. Board members as a matter of public policy should not be allowed to use their power and the associations funds to file suit in order to quash dissent.

13.) If the Court finds that there was an agreement to both mediate and arbitrate the dispute based on the facts herein then H.R.S. 658A-7(a)(2) requires the court to order the parties to mediate and the CC&R's Section 24.2(a) requires the parties to mediate and arbitrate the dispute. In this case the parties both agreed to attend mediation, which agreement was breached when Pualani filed their complaint.

#### **MOTION FOR JOINDER OF A NECESSARY PARTY**

15. Pualani's complaint at paragraph 9 states: "The private and confidential email addresses of all Association Members are provided to the Association on a confidential basis by Association members and kept, stored, and maintained on a List in confidence by Hawaiiiana for the use of the Association Board of Directors solely for the purpose of communicating official Association communications with Association members. Some, but not all, of the Association Board also have access to the confidential and private email addresses of Association members."

16.) As Pualani has averred in its own complaint: (i.) Hawaiiiana, as manager, creates and controls the email list and its distribution; (ii) The only persons to receive the email list other than Hawaiiiana are members of the board of directors of Pualani.

17.) The only source where Wunschel could have received the list of email addresses was from Hawaiiiana or from a member(s) of the board of directors of Pualani. If Wunschel received the email list from a member(s) of the board of directors of Pualani, then that is an absolute defense against Pualani's claim of conversion. If Pualani provided the email list to Wunschel then by definition it was not taken without permission. On the other hand, if the email list was provided by Hawaiiiana to Wunschel through negligence or by intent, then they are a necessary defendant in this action because without it, there could not be complete relief among the parties since Hawaiiiana would have liability for their intentional or negligent acts with respect to their maintenance and distribution of the email list. Pualani surely ought to have investigated and must be aware of whether or not a member(s) of the board of directors gave the email list to Wunschel. It would be absurd to allow Pualani to file a complaint against Wunschel to discover if it had breached its own duty to keep the email list private. This leaves as the only possible source of distribution of the email list to Wunschel being from Hawaiiiana, making Hawaiiiana a joint tortfeasor.

19.) The only other way Wunschel could have procured the email list was to have taken it from Pualani or Hawaiiiana by theft or by breaking into their computer systems. Neither of these theories of how Wunschel got the email list is found in the complaint, because they are both so obviously absurd. If their claim is based on such a theory then Pualani's complaint must be modified so allege that Wunschel did not receive the email list from Pualani or any of its agents, directors, officers, or employees.

## CONCLUSION

20.) Both parties agreed to attend mediation. If the dispute cannot be resolved through the mediation process then the CC&R's require the parties to submit their dispute to arbitration. Nothing in Pualani's complaint is excluded by the CC&R's from their obligation to both mediate and arbitrate their claims against Wunschel.

21. In order for complete relief to be accorded between the parties Hawaiiiana must be joined as a defendant to the action herein.

Date: September 9, 2021

  
Dee Ann Wunschel, Movant in pro per



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 DOE ENTITIES 1-10 )  
 and Does 1 to 10, )

Defendants. )

Case No. 3CCV-21-0000188

**DECLARATION OF DEE ANN  
 WUNSCHEL IN SUPPORT OF THE  
 MOTION TO COMPEL ARBITRATION**

Assigned to: Hon. Wendy DeWeese  
 Action Filed: June 25, 2021  
 Trial Date: TBD

I, DEE ANN WUNSCHEL, declares as follows:

1.) The matters set forth herein are based upon my own personal knowledge and observation, except as to those matters which are stated to be based upon information and belief. If called to testify herein, I can and would competently testify thereto.

2.) I am a member of the Pualani Estates At Kona Community Association and the named defendant in this action.

3.) Emails and attachments were sent from the Pualani Ohana slate of candidates for the board of directors to Pualani members and not solely from Wunschel.

4.) I did not break into the offices of Hawaiiiana and steal any email addresses nor did I hack into any Hawaiiiana computer system to obtain any email addresses.

5.) Any email addresses I received were given to me voluntarily.

6.) All use of any Pualani member email addresses concerned only association business and no personal use has ever been made of any member email address.

7.) Any member of Pualani who subsequently requested not to be contacted by email was removed from the email list.

I declare under penalty of perjury, under the laws of the State of Hawaii, that the foregoing is true and correct. Executed on September 8, 2021, at Santa Clara County, Ca.

  
Dee Wunschel, Defendant  
In pro per

# EXHIBIT 1

**ARTICLE XXIII**  
**Term; Termination**

This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty years (the "Initial Term"), and thereafter shall continue for successive periods of fifteen years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by a vote of a majority of the Members at a duly held meeting of the Members, or without any meeting if all Members have been duly notified and if a majority of the Members consent in writing to such termination within said 360-day period. This Declaration may be terminated at any time after the Initial Term upon a vote in favor of termination by ninety percent (90%) of the Members, including Declarant, at a duly held meeting of the Members for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period of 180 days prior to such vote to 180 days after such vote, from the holders of Recorded First Mortgages on seventy-five percent (75%) of the Lots upon which there are such Recorded First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or a vice president of the Association and attested by the secretary or an assistant secretary of the Association. Thereupon, this Declaration, as of the date the next extension of the term hereof would otherwise have commenced, shall have no further force and effect, and the Association shall be dissolved.

**ARTICLE XXIV**

**Claims and Litigation**

**Negotiation, Mediation and Arbitration**

**Section 24.1. Limitation on Liability.** Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any Lot, acknowledges and agrees that no officer, director, partner or shareholder of Declarant (or of Declarant's successor or assignee) shall have any personal liability to any Owner or other person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration.

**Section 24.2. Negotiation, Mediation and Arbitration.**

(a) **No Litigation.** Except as specifically permitted in this Section no judicial or administrative (inclusive of arbitrations) proceeding shall be commenced or maintained by Owner in respect of a Covered Matter. Further, no judicial proceeding shall be commenced or prosecuted by the Association except those specifically permitted by this Section. This Section shall not apply, however, to, and the following judicial actions are permitted by the Association: (i) actions brought by the Association to enforce the provisions of this Declaration, the Bylaws, the Association Rules or the Design Guidelines (including without limitation, the foreclosure of liens) excluding those covered by the Declarant's limited warranty; (ii) the imposition and collection of Assessments as provided in Article IX; or (iii) counterclaims brought by the

Association in proceedings instituted against it. Further, the limitation on the commencement of judicial proceedings contained in this Section 24.2(a) may not be amended except at a duly held meeting of the Members upon the affirmative vote of Class "A" Members representing eighty-five percent (85%) of the Class "A" voting power of the Association but in no event may the provision be amended to permit a judicial action or proceeding against PWC.

(b) Negotiation, Mediation and Arbitration.

(1) Each Owner on behalf of Owner, Owner's successors and assigns agree that there shall be no right to litigate in respect of the Covered Matters, hereinafter defined, and in the event Owner or any other person with an interest in the Community shall have any claim or cause of action arising out of or in any way related to this Declaration (and any and all rules, regulations and Supplemental Declarations promulgated pursuant to the foregoing, and the enforcement thereof), the design, orientation of the improvements to the Lot (e.g., the Home and related facilities) or the Lot as they relate to exposure to the sun and/or wind and/or adjacent properties, the development, construction, quality, sales, marketing, disclosures concerning, financing, delivery of the Community or any Lot, improvements to the Lot, Declarant's limited warranty, each of those items identified in the attached limited warranty, all of which are incorporated into this Section by this reference, Declarant's "Customer Care Program" or any other aspect of or activity with respect to the Community or the Property (herein collectively the "Covered Matters"), against any of those persons hereinafter defined as Covered Parties, such claim or cause of action (a "Dispute") whether such dispute is based on contract, tort, or statute, including, without limitation, any dispute over (1) the disposition of any deposits hereunder, (2) breach of contract, (3) negligent or intentional misrepresentation or fraud, (4) nondisclosure, (5) breach of any alleged duty of good faith and fair dealing, (6) allegations of latent or patent construction defects, or (7) any other matter arising from or related to the interpretation of any term or provision of this Declaration, or any defense going to the formation or validity of this Declaration, or any provision of this Declaration, including, without limitation, allegations of unconscionability, fraud in the inducement, or fraud in the execution, whether such dispute arises before or after the close of escrow, shall be arbitrated pursuant to the Federal Arbitration Act and subject to the procedures set forth in this Section ("Arbitration" or "arbitration"), after it shall have first been submitted to the process of "Negotiation" and "Mediation" defined and described below. Any such claim or cause of action shall be subject to Negotiation, Mediation and Arbitration regardless of whether the claim is against another Owner, Declarant, PWC; Declarant's real estate broker, agent or attorney, the architects, engineers, or other design consultants for the Community, the contractor, subcontractors, sub-subcontractors, material suppliers, managing agent or other persons involved with the Community, and their respective officers, directors, agents, servants, employees or representatives, and each of those persons or entities described in Declarant's limited warranty (the "Covered Parties"), provided that such person(s) has entered into an agreement or otherwise agree to negotiate, mediate and/or arbitrate such disputes; or if such claim or cause of action is filed jointly and severally against other parties, it shall be subject to mediation and arbitration with respect to those parties that have agreed to arbitration, regardless of whether other parties are bound to or are willing to submit to arbitration as herein provided. Any dispute concerning the interpretation or the enforceability of this Section, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity of this Declaration, or this Section, or the scope of arbitrable issues under this Section, and any defense relating to the enforcement of this Section, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with this Section and not by a court of law. Further, in the event that a Dispute is raised between the parties after an Owner's acquisition of the Owner's Property (sometimes a

**"post-closing dispute")**, whether such Dispute is related to, or arises from, an act, omission or other event occurring prior to such acquisition, such Dispute shall be decided by an arbitrator in accordance with this Section and not by a court of law.

(2) In respect of all Covered Matters, the Owner agrees to participate in a period of good faith negotiation (the **"Negotiation"**). Each Owner recognizes that the Negotiation process must be completed before the Mediation and/or Arbitration process described in this Section can begin. As such, the claimant Owner must first give written notice to the Covered Party describing the nature of the Dispute and a description of what the Owner believes ought to be done to resolve the Dispute. Owner must also propose a date and time for a conference, which date must fall on a business day between fifteen (15) and twenty (20) days after the date the claimant sends the foregoing notice to the Covered Party (the **"Conference"**), unless mutually extended by the parties. The Conference shall be held at a mutually agreed-upon location. Within five business (5) days of this Conference notice, the Covered Party shall provide a follow-up notice to the claimant confirming the time of the Conference and stating the name and title of Covered Party's representative to the Conference. Prior to the Conference, claimant will, in good faith, discuss with the Covered Party's representative and consider possible resolutions of the claim. At the Conference, the claimant (and claimant's representatives, if any) and Covered Party's representatives shall confer together to resolve the Dispute for a maximum period of two (2) hours, although the parties may extend or adjourn the meeting by mutual agreement. If, as a result of the Conference, the Dispute or certain issues in the Dispute have been resolved, the parties shall jointly state in writing the issues that have been resolved and the issues, if any, that remain unresolved and will require Mediation and Arbitration.

(3) In the event that the parties have completed Negotiation as required by this Section but failed to resolve the entire Dispute, then, if either of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be resolved, if possible, by mediation conducted with the assistance of a single mediator approved by Construction Arbitration Services, Inc. (hereinafter, **"CAS"**) in accordance with its rules or the rules of the approved mediator in effect at the time of the initiation of the mediation (the **"Mediation"**). Any counterclaim a Covered Party may have against a claimant shall also be a subject of (and an attempt shall be made to resolve the same in the context of and by) Mediation. Any Mediation shall be conducted in the County where the Property is located. The parties shall share equally the expense of the mediator.

(4) In the event that the parties have completed Negotiation and Mediation as required by this Section but failed to resolve the claim, then, if any one of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be submitted to binding arbitration by and pursuant to the rules of CAS in effect at the time of the initiation of the arbitration. Notwithstanding the foregoing, no arbitration may be commenced until Declarant is provided access to the Home or common area which is subject to the Dispute and a reasonable opportunity to cure the alleged defect as permitted under Section 16.9 of this Declaration. Declarant shall be provided a minimum of thirty (30) days to exercise its right to repair or remedy any alleged defect or damage, without a waiver of any right by Declarant to seek recovery of the cost of such effort, following notice of the claimant's intent to proceed to arbitration of a Dispute. Any counterclaim a Covered Party may have against a claimant shall also be resolved in the context of and by Arbitration. In the event an arbitration under this provision involves the PWC as the administrator of Declarant's limited warranty, and CAS is unwilling or unable to serve as the arbitrator, then PWC shall be entitled to select another reputable arbitration service, at its sole discretion, at the time the request for arbitration is

submitted. In the event that PWC selects an alternate arbitration service, the rules and procedures of such arbitration service in effect at the time the request for arbitration is submitted shall be followed. The following provisions shall apply to any arbitration commenced by the parties:

(a) Each Owner, the Association and Declarant expressly agree and acknowledge that this Declaration involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act. To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

(b) This Section shall inure to the benefit of, and be enforceable by, Declarant's subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person(s) whom Owner contends is responsible for any alleged defect in or to the Property or the Home or Residence or any improvement or appurtenance thereto.

(c) In the event any Dispute is submitted to arbitration, each party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration.

(d) The decision of the arbitrator shall be final and binding. Owner, the Association and Declarant expressly agree that an application to confirm, vacate, modify or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the county in which the Property is located.

(e) The participation by any party in any judicial proceeding concerning this Section or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section. Any counterclaim a Covered Party may have against a claimant shall also be resolved in the context of and by Arbitration.

(f) Except as otherwise agreed by the parties pursuant to Declarant's limited warranty or as required by applicable law, the administration and/or arbitrator fees charged by the arbitration service shall be borne pro rata by the parties to the arbitration; provided, however, the administration and/or arbitrator fees and any other fees and costs of the arbitration shall ultimately be borne as determined by the arbitrator.

(g) The arbitrator appointed to serve shall be a neutral and impartial individual.

(h) The venue of the arbitration shall be in the county where the Property is located unless the parties agree in writing to another location. To the extent permitted by the Federal Arbitration Act, no punitive damages shall be awarded in any claim against Declarant or any other Covered Parties, and no award for damages attributable to emotional distress or a multiple of actual damages based upon any theory of law may be made or awarded in any claim against or Dispute involving Declarant or any of the other Covered Parties, all of which are expressly waived by the Association and each Owner. No award of

consequential or incidental damages, as defined in the Declarant's limited warranty, shall be awarded. The arbitrator may award equitable relief pursuant to any Arbitration instituted to enforce this Declaration or any Supplemental Declaration.

(i) If any provision of this Section shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(j) In the event the foregoing arbitration provision is held not to apply or is held invalid, void or unenforceable in its entirety for any reason, Owner, the Association and Declarant agree that all Disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. Declarant, the Association and Owner each hereby waive and covenant not to assert their constitutional right to trial by jury of any Disputes, including, but not limited to, Disputes relating to construction defects, misrepresentation or Declarant's failure to disclose material facts. Declarant, the Association and Owner hereby covenant and agree that their mutual waiver of jury trial shall be binding upon their respective successors and assigns and upon all persons and entities asserting rights or claims or otherwise acting on behalf of Declarant or Owner or their successors and assigns.

(5) Notwithstanding the provisions of this Section, the Declarant may proceed by litigation, in connection with: (i) the imposition and collection of assessments by the Declarant under the terms of this Declaration and Supplemental Declaration and/or duly adopted Design Guidelines, including foreclosure actions necessitated by the failure of an Owner to pay the required assessments; or (ii) counterclaims brought by the Declarant in proceedings instituted against it.

## **ARTICLE XXV**

### **General Provisions**

**Section 25.1. Notice.** Notices to the Association provided for in this Declaration, the Bylaws, Association Rules or Design Guidelines shall be in writing and shall be addressed to the Association at the address specified in the Bylaws or as provided in this Section 25.1. The Association may from time to time designate a different address or addresses for notice by giving written notice of such change of address to all Owners. If notice of any action or proposed action by Declarant, the Association, the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, such notice shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by certified mail, to the address of such Owner on file in the records of the Association at the time of such mailing. This Section 25.1 shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner. General notices to all Owners or any classification thereof need not be certified, but may be sent by regular first class mail.

**Section 25.2. Captions; Construction.** Captions given to various Articles and Sections are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The provisions of this Declaration shall be liberally



## EXHIBIT 2

April 2, 2021

Pualani Estates at Kona  
Attention: Board of Directors

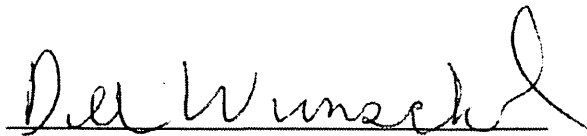
Re: Notice of failure to hold all proxies valid at the owners meeting/voting irregularities

To the Board of Directors.

Pursuant to the Declaration of Covenants, Conditions, Restrictions and Easements, Notice is hereby given that the undersigned hereby challenges the Corporate Secretary and Board of Directors regarding the handling of proxies for the Pualani Estates Annual Owners meeting held on March 24, 2021, including, but not limited to: 1) disallowing certain proxies, 2) allowing other proxies that should have been disallowed, and 3) other voting irregularities, all of which would change the final vote counts for the election of the Board of Directors. As such, you are advised to keep all voting materials until the foregoing issues have been legally resolved.

However, the Board of Directors could resolve these issues at this time by either reopening the Owners meeting to allow all proxies received on or before March 22, 2021 to be counted or by resignation of all members of the Board of Directors and a new Board of Directors election reset for an immediate future date. Otherwise, as there is no middle ground in this particular matter, a waiver of both Negotiation and Mediation is proper so that the matter can be set for immediate binding Arbitration. The undersigned hereby agrees to waive Negotiation and Mediation.

The undersigned is available on either April 20, 2021 or April 21, 2021 to discuss the contents of this Notice and to make arrangements for future proceedings pursuant to the Declaration, if necessary.



Dee Wunschel

Lot # 119

75-320 Omilo Place, Kailua-Kona, HI 96740

deewunschel@yahoo.com

# EXHIBIT 3

# JUNG & VASSAR, P.C.

ATTORNEYS AT LAW  
A LAW CORPORATION  
KUAKINI TOWER SUITE 100  
75-5722 KUAKINI HIGHWAY  
KAILUA-KONA, HI 96740

FRANCIS L. JUNG (NJ\*, DC\* & HI)  
THOMAS W. VASSAR (MD, VA, DC & HI)

OF COUNSEL:  
CAROL MONAHAN JUNG (HI, UT\*)  
DAVID H. LAWTON (HI, CA)

\*Inactive License

TEL (808) 326-4852  
FAX (808) 326-7904  
E-mail: [info@jungvassar.com](mailto:info@jungvassar.com)

WASHINGTON D.C. OFFICE  
7 Rideout Court  
Galtersburg, MD 20877

TEL (202) 905-6076  
[vassarlaw@comcast.net](mailto:vassarlaw@comcast.net)

April 21, 2021

**VIA: Certified, Return Receipt Requested and Regular U.S. Mail  
and Email: [deewunschel@yahoo.com](mailto:deewunschel@yahoo.com)**

Dee Ann Wunschel, Esq.  
400 Sunset Drive  
Lake View, Iowa 51450

Dee Ann Wunschel, Esq.  
75-320 Omilo Pl.  
Kailua-Kona, Hawaii 96740

**Re: Offer of Mediation from Pualani Estates at  
Kona Community Association; HRS §421J-13**

Dear Ms. Wunschel:

As you are aware this law firm represents Pualani Estates at Kona Community Association ("Association"). This letter supplements our letter to you dated April 8, 2021.

Pursuant to the provisions of § 421J-13 of the Hawaii Revised Statutes, please be advised that the Association's Board of Directors has authorized this firm to make the following offer, but not demand, to mediate the current disputes between you and the Association. The disputed issues include the following:

1. Your unauthorized acquisition and conversion of the private and confidential email addresses of the members of the Association;
2. Your continuing unauthorized use of the private and confidential email addresses of the members of the Association; and
3. Your dispute concerning the validity of the outcome of the March 24, 2021 Association vote for the Association Board of Directors.

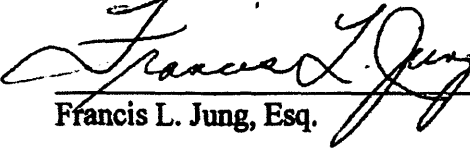
If you are willing to engage in mediation on these issues, please advise us within ten days following your receipt of this letter. In the event that we do not receive your response to this offer of mediation within ten days, we will assume that you have rejected this offer and proceed accordingly.

**Dee Ann Wunschel, Esq.**  
**April 21, 2021**  
**Page Two**

Thank you for your consideration.

Sincerely,

JUNG & VASSAR, P.C.  
A Law Corporation

  
Francis L. Jung, Esq.

cc: Client

# EXHIBIT 4

**WUNSCHEL LAW FIRM, LLC**  
**Dee Ann Wunschel**  
**LICENSED IN THE STATE OF IOWA**  
**75-320 Omilo Place**  
**KAILUA-KONA, HI 96740**  
**TELEPHONE (712) 792-9241**  
**deewunschel@yahoo.com**

April 29, 2021

Francis Jung  
75-5722 Kuakini Hwy.  
Kailua-Kona, HI  
96740

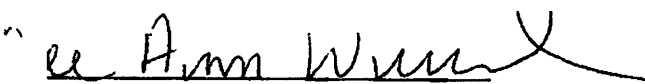
Dear Francis Jung,

I am in receipt, by email, of your offer of Mediation. I agree to waive the negotiation requirement set forth in Article 24 of our Declaration and proceed directly to mediation. The disputed issues I have raised in prior correspondence and demand for negotiation, mediation and arbitration include but are limited to: *AC-7*

1. Personal use by Board members of Association funds to hire counsel and distribute communications to owners for their benefit prior to the election. These will need to be personally reimbursed.
2. The content of communications to owners by the Board both before and since the election towards myself and others.
3. The failure of the Corporate Secretary to allow all valid proxies to be counted at the election and the allowance of invalid proxies to be counted at the election.
4. The failure by the Board to allow a proper motion from the floor to be voted on by the owners at the Owner's Meeting of March 24, 2021.
5. The communications to owners surrounding and during the owner's forum from counsel and Board members in conjunction with the Board Meeting of April 14, 2021.

Sincerely,

**WUNSCHEL LAW FIRM LLC** ^

  
Dee Ann Wunschel

# EXHIBIT 5





Dee Wunschel &lt;pualaniestatesohana@gmail.com&gt;

## Dear Pualani Estates Ohana -

2 messages

Pualani Estates Ohana <pualaniestatesohana@gmail.com>

Fri, Feb 26, 2021 at 5:28 PM

To: pualaniestatesohana@gmail.com

Bcc: "BEAR CAVE HOLDINGS, LLC Co." <mliieber@superioremp.com>, BEAR CAVE-2 <PMetzer@superioremp.com>, BEAR CAVE-3 <mschardein@superioremp.com>, "BUMANGLAG, RICHARD TTEE & FARNSWORTH, ROGER TTEE" <rogerrabbit007@iakamai.com>, "JOHNSON, RALPH & GLENDA" <rcntryhm@gmail.com>, TREMBLAY-2 <maureen.simes@gmail.com>, "WALTERS, BRETT" <konacliff3@gmail.com>

Dear Pualani Ohana,

It greatly disappointed the alternative candidates running for Board positions to read the misleading email blast approved by 5 members of the current Board using your funds and mine.

In the recent email that Board majority tried to use scare tactics you into believing the current HOA documents would be too difficult to amend. What they failed to mention is that the Board itself recognized the need to amend the documents to bring them into compliance with state law. In the December Newsletter, which is posted on the website as of today, you will read the following:

*"Updating Documents- Owners Involvement Needed*

*Did you know the 17 year old governing Community Documents that include the Declaration of Covenants, Conditions, Restriction and Easements (CC&R), and the Bylaws of the Association have never been updated or amended? Would you be interested in joining the CCR, volunteering your time and beginning the process of reviewing the Documents to update them? If so, you would be helping to revitalize this Committee while learning about the governing Documents and bringing ideas and solutions to the table. Have a voice and decide for yourself! Volunteers are needed..."*

The Board knew then and knows now that changing the documents is not impossible or cost prohibitive. To contend otherwise now is disingenuous and contradictory. Any proposed changes will need to be approved by 65% of all owners. A mortgage holder's consent is only required under limited circumstances – and those circumstances would be avoided in any case.

More troubling is the statement in the letter that "any and all notices of violations" are originated by Hawaiiiana. That indeed goes to the heart of the problem, violations should be originated by the Board only after discussion with the homeowner, before they ever reach the level of a written notice. We are Ohana and it is time we are treated with the respect and caring that you would expect from your community.

The Board reference to the culvert as the need for a huge war chest of your money is misleading. One of the first acts of your new Board would be to study the necessity, condition, replacement cost and remaining useful life of the culvert. This would be used to determine whether any money should be reserved for that purpose. It defies common and economic sense that the Board spent money to paint the culvert if the Board honestly believed repair or replacement was on the near horizon.

Finally, contrary to the assertion of 5 members of the Board, **there is no "official" proxy**. Any homeowner may solicit proxies – not just the Board. Our proxy complies with state statute and Pualani By-Laws and is as valid as the one that will be contained in the owner's packet. Another copy of our proxy is attached to this email for you to submit if you have not done so already.

We encourage you to disregard the Board proxy when it arrives and to sign the attached proxy and check the box for Dee Wunschel to elect a new Board that will act with integrity and transparency and will be respectful and more protective of your rights as homeowners.

Respectfully with the deepest Aloha for our community,

Michael Tran Bill Culhane Ron Cole Dee Wunschel Rico Ventenilla



PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION PROXY.pdf

Dee Ann Wunschel  
 75-320 Omilo Place  
 Kailua-Kona, HI 96740  
 Telephone: (712) 210-0974  
 Facsimile: (650) 322-4677  
 Email: deewunschel@yahoo.com  
 In Pro Per

**IN THE CIRCUIT COURT OF THE THIRD DISTRICT  
 STATE OF HAWAII**

PUALANI ESTATES AT KONA )  
 COMMUNITY ASSOCIATION, a Hawaii )  
 non-profit corporation, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 DEE ANN WUNSCHEL, an individual; )  
 JOHN DOES 1-10, DOE )  
 GOVERNMENTAL AGENCIES 1-10 and )  
 DOE ENTITIES 1-10 )  
 and Does 1 to 10, )  
 )  
 Defendants. )

---

Case No. 3CCV-21-0000188

**(PROPOSED) ORDER FOR MEDIATION  
 AND ARBITRATION**

Assigned to: Hon. Wendy DeWeese  
 Action Filed: June 25, 2021  
 Trial Date: TBD

1. IT IS ORDERED, the Plaintiff, Pualani Estates at Kona Community Association, a Hawaii non-profit corporation, have their complaint adjudicated through negotiation, mediation and arbitration pursuant to Article XXIV, Section 24.2 (a) of the CC&R's of the Pualani Estates at Kona Community Association;
2. The matter is STAYED until completion of arbitration or settlement through mediation or otherwise.
3. The Court retains jurisdiction to confirm the arbitration award and enter judgement for the purposes of enforcement or to enforce any settlement agreement.

4. The Court finds that Hawaiiana Management Company Ltd. shall be joined as a defendant in the above action and summons shall be served by plaintiff.

Date: \_\_\_\_\_

\_\_\_\_\_

Judge