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**Electronically Filed  
THIRD CIRCUIT  
3CCV-21-0000188  
17-SEP-2021  
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Dkt. 19 MEO**

Counsel for Plaintiff PUALANI ESTATES  
AT KONA COMMUNITY ASSOCIATION

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PUALANI ESTATES AT KONA	)	CIVIL NO. 3CCV-21-0000188
COMMUNITY ASSOCIATION, a Hawaii	)	(Declaratory/Injunctive Relief) (Kona)
nonprofit corporation	)	
	)	
Plaintiff,	)	PLAINTIFF PUALANI ESTATES AT
vs.	)	KONA COMMUNITY ASSOCIATION’S
	)	OPPOSITION TO DEFENDANT’S
	)	MOTION TO COMPEL ARBITRATION
DEE ANN WUNSCHHEL, an individual; JOHN)	)	(HRS SECTION 658A-7) and MOTION
DOES 1-10; JANE DOES 1-10; DOE	)	FOR JOINDER OF PERSONS NEEDED
PARTNERSHIPS 1-10; DOE	)	FOR ADJUDICATION (HRCP RULE 19);
GOVERNMENTAL AGENCIES 1-10 and	)	DECLARATION OF FRANCIS L. JUNG;
DOE ENTITIES 1-10,	)	EXHIBITS “2”-“3”; DECLARATION OF
	)	MICHAEL KENNEDY; EXHIBIT “1”;
Defendants.	)	CERTIFICATE OF SERVICE
	)	
	)	

**PLAINTIFF PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION’S  
OPPOSITION TO DEFENDANT’S MOTION TO COMPEL ARBITRATION (HRS  
SECTION 658A-7) and MOTION FOR JOINDER OF PERSONS NEEDED FOR  
ADJUDICATION (HRCP RULE 19)**

**COMES NOW, PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION** (hereinafter referred to as the “Association”) by and through its counsel, JUNG & VASSAR, P.C., and pursuant to the provisions of Rule 7 and 19 of the Hawaii Rules of Civil Procedure and Hawaii Revised Statutes (Haw. Rev. Stat.) § 658A-7, hereby files its Memorandum in Opposition to Defendant Dee Ann Wunschel’s Motion to Compel Mediation and Arbitration and Motion to Join as an additional necessary and Third-Party Defendant, Hawaiiana Management Company, Ltd. The Association opposes Wunschel’s Motions as both procedurally improper and substantively misleading.

**I. BRIEF SUMMARY OF OPPOSITION TO MOTIONS**

**The Motion to Compel Mediation and Arbitration**

This case is brought by Plaintiff to redress Defendant DEE ANN WUNSCHEL’s (“Wunschel”) misappropriation of private and confidential email addresses of the Association members who are all Pualani Estates homeowners. There is no claim in the Complaint brought to determine election results as Defendant alleges. None of Plaintiff’s three causes of action (I: Wrongful Conversion and Taking; II: Wrongful Continuous Use of Emails/Invasion of Privacy; or III: Declaratory/Injunctive Relief) could even be inferred to relate to election results. Counts I and II sound in Tort. Count III for declaratory relief does not seek a determination related to election results.

Wunschel asserts that Article XXIV, Section 24.2 (b)(1) requires the Association to engage in Mediation and Arbitration of all disputes with the Association but fails to address the pertinent provisions of Article XXIV, Section 24.2 (a) which specifically provides, in pertinent part, as follows: **“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 . . . .”** Consequently, Wunschel’s reliance upon the provisions of Article XXIV, Section 24.2(b) to require Arbitration is misplaced and the Association has the right to seek judicial relief under these circumstances. The private email addresses in issue were provided to the Association in

confidence by the Association members and the wrongful taking and use of these email addresses by unauthorized persons is a violation of both Hawaii law and the governing documents of the Association. *See* Declaration of Michael Kennedy attached hereto.

Similarly, the Association's CC&Rs do not require arbitration to redress or enjoin the tortious conduct of its members against each other, or to obtain declaratory relief regarding the same. Article XXIV, Section 24.2(b)(1) of the CC&Rs only requires arbitration against "Covered Parties" for disputes involving "Covered Matters." Article XXIV, Section 24.2(b)(1) does not name the "Association as one of the "Covered Parties" or contesting Association election results as a "Covered Matter." Substantively, the CC&Rs limit "negotiation, mediation and arbitration" to actions against the Developer and its agents for defects in the design, construction and improvements by the Developer as stated in the Developer's limited warranty. *Id.*

Significantly, Article XXIV, Section 24.2(b)(4) specifically provides, in pertinent part, as follows: "**Notwithstanding the foregoing, no arbitration may be commenced until Declarant [the Developer] 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.**" *Id.*, (bold added). The Developer/Declarant is not a party to this dispute. Article XXIV, Section 24.2(b)(1) of the CC&Rs, if read *in pari materia*, clearly intends that binding arbitration should be limited to "Covered Matters" under the Developer's Limited Warranty unless otherwise agreed by the parties to another type of dispute.

Finally, Wunschel's Motion also fails to address the requirements of HRS § 421J-13, regarding mediation of disputes in Planned Community Association single family developments which provides, in pertinent part, as follows:

**[§ 421J-13.] Mediation of disputes.**

(a) At the request of any party, any dispute concerning or involving one or more members 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.

**(b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:**

**(1) Actions seeking equitable relief involving threatened property damage or the health, or safety of association members or any other person . . . .**

*Id.*, (bold added.)

This civil action seeks only to protect the privacy, property and safety of all of the Association's members. For the foregoing reasons, Wunschel's Motion to compel mediation and arbitration should be denied.

**Wunschel's Motion for Joinder of Hawaiiana Management Company, Ltd.  
as a Defendant is without Factual Support.**

Wunschel cites (sic) Ha. Dist. Ct. R. Civ. P. 19 as the legal basis for her Motion for Joinder of Hawaiiana Management Company Ltd. ("Hawaiiana") as a party defendant. (Wunschel Motion at 2.) Presumably, since this case is to be heard before the Circuit Court, and not the District Court, Ms. Wunschel meant to refer to HRCF Rule 19 and not to Rule 19 of the DCRCF. In either case, there is nothing in her Motion that would indicate that Hawaiiana is a "necessary" or "indispensable" party to this civil action as required under HRCF Rule 19.

Ms. Wunschel's only alleged factual basis for making such a claim is that Hawaiiana provided her with a copy of the Association members' private email addresses on or about February 11, 2021. *See*, letter dated April 11, 2021 from Dee Ann Wunschel to Francis L. Jung attached here as Exhibit "2" to the Declaration of Francis L. Jung. Hawaiiana has denied any such disclosure (*see* Declaration of Michael Kennedy attached hereto) and has provided Association counsel with a copy of the physical addresses that were actually provided to Ms. Wunschel. Declaration of Francis L. Jung. If Ms. Wunschel wishes to name Hawaiiana as a truly "indispensable" party to this civil action, she should attach a copy of the documentation, communication, letter or email from Hawaiiana to her with all of the members' private email addresses contained therein along with her "sworn statement" that it is a "true and correct" copy of the private email addresses she received from Hawaiiana. If Ms. Wunschel will do that, this Court would then be in a position to rule on Ms. Wunschel's Motion for Joinder.

Unless Ms. Wunschel provides such evidence to this Court, her Motion for Joinder should be denied. In the alternative, Ms. Wunschel always has the option to file a counterclaim and name Hawaiiana as a third party defendant if she truly believes she has a factual basis for any such claim.

## II. BRIEF STATEMENT OF FACTS

Defendant's Declaration in Support of the Motion to Compel Arbitration admits that she obtained private and confidential email addresses from someone, but falls short of disclosing who improperly provided her with that confidential information. Hawaiiiana Management has confirmed that it did not send Defendant the email addresses of the Association members. *See* Declaration of Michael Kennedy.

A List of the names and physical addresses of all Association members are kept and maintained in the offices of the Association management company, Hawaiiiana Management Company, Ltd. ("Hawaiiiana"). All lot and homeowners within the Pualani Estates at Kona Subdivision are members of the Association.

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.

When submitting their private email addresses to Hawaiiiana, each Association member checks a box on a Pualani Estates Owner Data Sheet that states "The Board of Directors has my permission to use my email address solely for the purpose of sending Association communications to me via email." *See* Declaration of Michael Kennedy, and Data Sheet attached as Exhibit "1."

On or about January 26, 2021, upon her request, Defendant was provided with a list of names and *physical* mailing addresses of Association members by Hawaiiiana Management Company, Ltd. Hawaiiiana did not provide Wunschel with a copy of the List of the confidential and private email addresses of the Association members. *See* Declaration of Michael Kennedy.

From sources unknown, on or about January 30, 2021 Defendant illegally and wrongfully obtained a copy of the Association's List of the private and confidential email addresses of all of the members of the Association.

On February 26, 2021, March 12, 2021, and April 9, 2021, Defendant sent emails to

Association members, using the members' confidential email addresses, stating therein, her personal negative opinion of the Association Board. Defendant was not authorized to be in possession of the email addresses, improperly used them for personal communications, and retains those email addresses at this time.

On or about April 8, 2021, Counsel to the Association provided Defendant with a written notice to cease and desist from her use of members' confidential and private email addresses, demanded the return of the email addresses to the Association Board and requested the name of the person or persons who provided her with the confidential and private email addresses of the Association members. *See* Letter dated April 8, 2021 from Francis L. Jung to Dee Ann Wunschel, attached hereto as Exhibit "3" to the Declaration of Francis L. Jung.

Defendant has not agreed to cease and desist from using the Association members' email addresses, or from disseminating personal communication to Association members and has failed to disclose to the Association Board the true name(s) of the person(s) who provided her the confidential and private email addresses of the Association members.

### **III. ARGUMENT**

Defendant is not entitled to an order directing the parties to arbitrate because there is no enforceable agreement between the parties to arbitrate Defendant's tortious misappropriation of emails. Hawaii Revised Statutes § 658-7 provides that if there is no enforceable agreement, the court shall not order arbitration. Specifically, Haw. Rev. Stat. § 658A-7 states in relevant part:

[§658A-7] **Motion to compel or stay arbitration.** (a)

.....

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

.....

(c) If the court finds that there is no enforceable agreement, it shall not, pursuant to subsection (a) or (b), order the parties to arbitrate.

*Id.*

Article XXIV, Section 24.2(b)(1) of the CC&Rs sets forth the parties agreement to mediate and arbitrate only "Covered Claims" and does not address tortious misappropriation of

property or injunctions related thereto, to wit:

#### 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.

*Id.*, (underlining added).

(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 or 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. *See Defendant's Exhibit "1."*

#### IV. JOINDER IS NOT NECESSARY

Hawaiiana Management is not a necessary party in this action. Relief can be granted between Plaintiff and Defendant without Hawaiiana Management.

Haw. Rule of Civil Procedure 19 provides as follows:

(a) Persons to be joined if feasible. **A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, and involuntary plaintiff. [Bold added.]**



At most, Hawaiiana Management would be a witness in this case, but it is not a necessary party; therefore Hawaiiana Management should not be joined as a party.

Moreover, Hawaiiana Management has not been served a copy of Defendant's Motion in order to contest or agree to the same. *See* Defendant's Motion wherein no Certificate of Service was included nor is there Return and Acknowledgment of Service filed with the Court.

## V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant's Motion to Compel Arbitration (HRS Section 658A-7) and Motion for Joinder of Persons Needed for Adjudication (HRCP Rule 19).

DATED: Kailua-Kona, Hawaii, September 17, 2021.

Respectfully submitted,

JUNG & VASSAR, P.C.  
A Law Corporation

*/s/ Francis L. Jung*

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FRANCIS L. JUNG  
DAVID H LAWTON  
CAROL MONAHAN JUNG  
Counsel to Plaintiff PUALANI ESTATES  
AT KONA COMMUNITY ASSOCIATION

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Counsel for Plaintiff PUALANI ESTATES  
AT KONA COMMUNITY ASSOCIATION

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PUALANI ESTATES AT KONA	)	CIVIL NO. 3CCV-21-0000188
COMMUNITY ASSOCIATION, a Hawaii	)	(Declaratory/Injunctive Relief) (Kona)
nonprofit corporation	)	
	)	
Plaintiff,	)	DECLARATION OF FRANCIS L. JUNG
vs.	)	
	)	
	)	
DEE ANN WUNSCHER, an individual; JOHN)	)	
DOES 1-10; JANE DOES 1-10; DOE	)	
PARTNERSHIPS 1-10; DOE	)	
GOVERNMENTAL AGENCIES 1-10 and	)	
DOE ENTITIES 1-10,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

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**DECLARATION OF FRANCIS L. JUNG**

I, Francis L. Jung, under pain of perjury and penalty of law, hereby state and declare as follows:

1. I am over the age of 21 years, a resident of the State of Florida, admitted to practice law before this Court and counsel to the Plaintiffs in the above-captioned Civil Action.
2. This declaration is based upon my personal knowledge and I am competent to testify as to the truth of the statements made herein.
3. Exhibit “3” attached hereto is a true and correct copy of the letter dated April 11, 2021 from Dee Ann Wunschel stating that she obtained the private email addresses of the members of the Pualani Estates of Kona Community Association.
4. Exhibit “2” attached hereto is a true and correct copy of the letter I sent to Dee Ann Wunschel on April 8, 2021 demanding that she cease and desist from using the private and confidential email addresses of the members of the Pualani Estates of Kona Community Association.
5. I received a list of the physical addresses of the Members of the Pualani Estates of Kona Community Association which Hawaiiiana Management Company, Ltd. stated to me was provided to Dee Ann Wunschel at her request.

FURTHER DECLARANT SAYETH NAUGHT:

I declare that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: Bonita Springs, Florida, September 17, 2021.

/s/ Francis L. Jung

\_\_\_\_\_  
FRANCIS L. JUNG

## **EXHIBIT “2”**

**WUNSCHEL LAW FIRM, LLC**

**Dee Ann Wunschel**

**Licensed in the State of Iowa**

**75-320 OMILO PLACE**

**KAILUA-KONA, HI**

**TELEPHONE (712) 792-9241**

**deewunschel@yahoo.com**

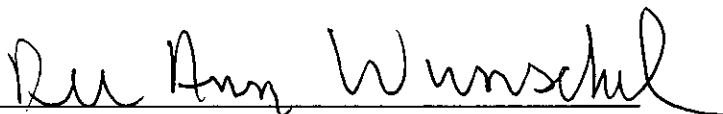
April 11, 2021

Dear Francis,

I am in receipt of your recent letter regarding email addresses. Let me be clear; if you begin judicial proceedings regarding email addresses it will be a waiver by the association of the negotiation, mediation and arbitration requirements set forth in our Declaration. It will also allow me to bring an action for declaratory and injunctive relief, including but not limited to a request for attorney fees and court costs against the Board of Directors as a whole and each of them as individuals for their malicious and intentional conduct, both in that letter and the election as a whole. It will further allow me to seek injunctive relief personally against the Board of Directors and yourself for this intentional conduct, something no insurance policy that I am aware of provides coverage for.

The email list you state I "recently obtained" was in fact included in the membership list I legally requested and paid for as permitted under our By-laws, receiving the same from Hawaiiana approximately 2 months ago. In the future, I can only hope you will review the governing documents for the association you claim to represent as well as obtaining all the facts prior to writing a threatening letter to a lawyer. Further, the Board of Directors has failed to comply with my request for negotiation, mediation and arbitration concerning the recent owner's meeting and election of Directors filed pursuant to the Declaration. I can only assume they are waiving those requirements as set forth in the attached correspondence delivered to the managing agent.

Sincerely,

  
Dee Ann Wunschel

**EXHIBIT “3”**

# JUNG & VASSAR, P.C.

ATTORNEYS AT LAW  
A LAW CORPORATION  
KUAKINI TOWER SUITE 100  
75-5722 KUAKINI HIGHWAY  
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THOMAS W. VASSAR (MD, VA, DC & HI)

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

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April 8, 2021

**VIA: Certified, Return Receipt Requested and Regular U.S. Mail**

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

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

**Re: Private Emails for Pualani Estates at  
Kona Community Association**

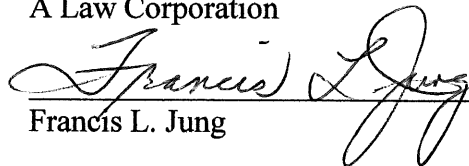
Dear Ms. Wunschel:

As you are aware this law firm represents Pualani Estates at Kona Community Association ("Association"). We are advised that you recently obtained personal email addresses for Pualani Estates at Kona Community Association's ("Pualani Estates") community members, and have used those emails to disseminate information from your personal email account. This email information is both confidential and private and the Board of Directors has never authorized the release and/or disclosure of those email addresses.

Consequently, we hereby make demand that you immediately cease and desist using the private emails for Pualani Estates community members and disclose the names of the person or persons from whom you obtained this confidential information. Should you continue to utilize this wrongfully obtained information, the Association will have no alternative than to seek whatever remedies that are available to it under Hawaii law.

Sincerely,

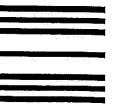
JUNG & VASSAR, P.C.  
A Law Corporation

  
Francis L. Jung

cc: Client

**JUNG & VASSAR, P.C.**

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



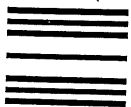
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59740  
APR 09 2021



Ms. Dee Wunschel  
75-320 Omilo Pl  
Kailua Kona HI 96740-7969

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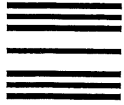


Ms. Dee Ann Wunschel  
400 Sunset Dr  
Lake View IA 51450-7433





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 PITNEY BOWES  
 2000115643  
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For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ®.	
<b>OFFICIAL USE</b>	
Certified Mail Fee \$ 3.60	Postmark Here
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<input type="checkbox"/> Return Receipt (hardcopy) \$ 2.85	
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<input type="checkbox"/> Certified Mail Restricted Delivery \$ _____	
<input type="checkbox"/> Adult Signature Required \$ _____	
<input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ .51	
Total Postage and Fees \$ 6.96	
Sent To Ms. Dee Ann Wunschel Street and Apt. No., or PO Box No. 400 Sunset Dr City, State, ZIP+4® Lake View, IS 51450-7433	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



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 APR 09 2021



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<b>OFFICIAL USE</b>	
Certified Mail Fee \$ 3.60	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy) \$ 2.85	
<input type="checkbox"/> Return Receipt (electronic) \$ _____	
<input type="checkbox"/> Certified Mail Restricted Delivery \$ _____	
<input type="checkbox"/> Adult Signature Required \$ _____	
<input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ .51	
Total Postage and Fees \$ 6.96	
Sent To Ms. Dee Ann Wunschel Street and Apt. No., or PO Box No. 75-320 Omilo Pl. City, State, ZIP+4® Kailua Kona HI 96740-	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

**JUNG & VASSAR, P.C.**  
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 A LAW CORPORATION  
 75-5722 KUAKINI HIGHWAY, SUITE 100  
 KAILUA-KONA, HI 96740

**JUNG & VASSAR, P.C.**  
 ATTORNEYS AT LAW  
 A LAW CORPORATION  
 75-5722 KUAKINI HIGHWAY, SUITE 100  
 KAILUA-KONA, HI 96740

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Ms. Dee Ann Wunschel  
 400 Sunset Dr  
 Lake View, IA 51450-7433



9590 9402 4732 8344 7193 89

2. Article Number (Transfer from service label)  
 7019 1120 0000 5848 4122

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  
 X  
 Agent  
 Addressee
- B. Received by (Printed Name) \_\_\_\_\_ C. Date of Delivery \_\_\_\_\_
- D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery/Restricted Delivery
  - Mail
  - Mail Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

NEVER WRITE OR PRINT ABOVE THE DOTTED LINE

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Ms. Dee Ann Wunschel  
 75-320 Omilo Pl  
 Kailua Kona, HI 96740



9590 9402 4732 8344 7194 19

2. Article Number (Transfer from service label)  
 7019 1120 0000 5848 4115

PS Form 3811, July 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  
 X  
 Agent  
 Addressee
- B. Received by (Printed Name) \_\_\_\_\_ C. Date of Delivery \_\_\_\_\_
- D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery/Restricted Delivery
  - Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

JUNG & VASSAR, P.C.

A Law Corporation  
FRANCIS L. JUNG #5489  
DAVID H. LAWTON #7338  
CAROL MONAHAN JUNG #8228  
Kuakini Tower, Suite 100  
75-5722 Kuakini Highway  
Kailua-Kona, Hawaii 96740  
Telephone: (808) 326-4852  
Facsimile: (808) 326-7904

Counsel for Plaintiff PUALANI ESTATES  
AT KONA COMMUNITY ASSOCIATION

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PUALANI ESTATES AT KONA	)	CIVIL NO. 3CCV-21-0000188
COMMUNITY ASSOCIATION, a Hawaii	)	(Declaratory/Injunctive Relief) (Kona)
nonprofit corporation	)	
	)	DECLARATION OF MICHAEL
Plaintiff,	)	KENNEDY
vs.	)	
	)	
	)	
DEE ANN WUNSCHER, an individual; JOHN)	)	
DOES 1-10; JANE DOES 1-10; DOE	)	
PARTNERSHIPS 1-10; DOE	)	
GOVERNMENTAL AGENCIES 1-10 and	)	
DOE ENTITIES 1-10,	)	
	)	
Defendants.	)	
	)	
	)	

**DECLARATION OF MICHAEL KENNEDY**

I, Michael Kennedy, under pain of perjury and penalty of law, hereby state and declare as follows:

1. I am over the age of 21 years, a resident of the District of North Kona, Island and

State of Hawaii, and a Senior Management Executive of Hawaiiana Management Company, Ltd. (“Hawaiiana”) that manages Pualani Estates at Kona Community Association (“Pualani”).

2. This Declaration is based upon my personal knowledge, and I am competent to testify as to the truth of the statements made herein.

3. When submitting Pualani private email addresses to Hawaiiana, each Association member checks a box on a Pualani Estates Owner Data Sheet that states” The Board of Directors has my permission to use my email address solely for the purpose of sending Association communications to me via email.”

4. See Exhibit “1” a true and correct copy of the Data Sheet referenced in paragraph 3.

5. On or about January 26, 2021, upon her request, Defendant was provided with a list of names and physical mailing addresses of Association members by Hawaiiana.

6. Defendant was not provided Pualani homeowners’ email addresses.

FURTHER DECLARANT SAYETH NAUGHT:

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: Kailua-Kona, Hawaii, September 15, 2021.

*Michael Kennedy*  
\_\_\_\_\_  
MICHAEL KENNEDY

# **EXHIBIT “1”**

# PUALANI ESTATES OWNER DATA SHEET

PLEASE PRINT

LOT NUMBER \_\_\_\_\_

## OWNER MAILING ADDRESS

NAME \_\_\_\_\_  
COMPANY \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_  
STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
HOME PHONE # \_\_\_\_\_  
BUSINESS PHONE # \_\_\_\_\_  
CELL PHONE # \_\_\_\_\_

## BILLING ADDRESS

(IF NOT THE SAME AS ABOVE)

CONTACT NAME \_\_\_\_\_  
BUSINESS NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_  
STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
BUSINESS PHONE # \_\_\_\_\_  
CELL PHONE # \_\_\_\_\_

OWNER SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

**\*VERY IMPORTANT\***

EMAIL ADDRESS \_\_\_\_\_

"The Board of Directors has my permission to use my email address solely for the purpose of sending Association communications to me via email"

Please add additional names and email addresses below so we may add them to our data base

\_\_\_\_\_  
\_\_\_\_\_

## LOCAL CONTACT OR AGENT

Required by law if you rent your home and do not live "FULL TIME" in Hawaii

NAME \_\_\_\_\_  
COMPANY \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_  
STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
CELL PHONE # \_\_\_\_\_  
BUSINESS PHONE # \_\_\_\_\_  
EMAIL \_\_\_\_\_

IS THIS A RENTAL	Y	N
IS THIS A SECONDARY HOME	Y	N

JUNG & VASSAR, P.C.

A Law Corporation  
FRANCIS L. JUNG #5489  
DAVID H. LAWTON #7338  
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Kuakini Tower, Suite 100  
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Counsel for Plaintiff PUALANI ESTATES  
AT KONA COMMUNITY ASSOCIATION

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PUALANI ESTATES AT KONA	)	CIVIL NO. 3CCV-21-0000188
COMMUNITY ASSOCIATION, a Hawaii	)	(Declaratory/Injunctive Relief) (Kona)
nonprofit corporation	)	
	)	CERTIFICATE OF SERVICE [RE:
Plaintiff,	)	PLAINTIFF PUALANI ESTATES AT
vs.	)	KONA COMMUNITY ASSOCIATION'S
	)	OPPOSITION TO DEFENDANT'S
	)	MOTION TO COMPEL ARBITRATION
DEE ANN WUNSCHHEL, an individual; JOHN)	)	(HRS SECTION 658A-7) and MOTION
DOES 1-10; JANE DOES 1-10; DOE	)	FOR JOINDER OF PERSONS NEEDED
PARTNERSHIPS 1-10; DOE	)	FOR ADJUDICATION (HRCP RULE 19);
GOVERNMENTAL AGENCIES 1-10 and	)	DECLARATION OF FRANCIS L. JUNG;
DOE ENTITIES 1-10,	)	EXHIBITS "2"- "3"; DECLARATION OF
	)	MICHAEL KENNEDY; EXHIBIT "1"]
Defendants.	)	
	)	
	)	

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**[CERTIFICATE OF SERVICE [RE:  
PLAINTIFF PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION'S  
OPPOSITION TO DEFENDANT'S MOTION TO COMPEL ARBITRATION (HRS  
SECTION 658A-7) and MOTION FOR JOINDER OF PERSONS NEEDED FOR  
ADJUDICATION (HRCP RULE 19); DECLARATION OF FRANCIS L. JUNG;  
EXHIBITS "2"- "3"; DECLARATION OF MICHAEL KENNEDY;  
EXHIBIT "1"]**

I hereby certify that a copy of the foregoing PLAINTIFF PUALANI ESTATES AT KONA COMMUNITY ASSOCIATION'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL ARBITRATION (HRS SECTION 658A-7) and MOTION FOR JOINDER OF PERSONS NEEDED FOR ADJUDICATION (HRCP RULE 19); DECLARATION OF FRANCIS L. JUNG; EXHIBITS "2"- "3"; DECLARATION OF MICHAEL KENNEDY; EXHIBIT "1" was duly served on September 17, 2021 to:

**VIA: JEFS Email: [deewunschel@yahoo.com](mailto:deewunschel@yahoo.com) AND U.S. FIRST CLASS MAIL TO:**  
Dee Ann Wunschel  
75-320 Omilo Place  
Kailua-Kona, Hawaii 96740

Defendant *pro se*

by JEFS electronic filing service, which will send electronic notification that electronic filing has been submitted on a case in which the recipient is listed as an attorney or party of interest. The recipient has been informed through JEFS that they can view, print, or copy the filing, including documents, by logging onto JEFS, selecting "Manage Cases," and selecting the case number referenced in the JEFS Notice.

DATED: Kailua-Kona, Hawaii, September 17, 2021.

Respectfully submitted,

JUNG & VASSAR, P.C.  
A Law Corporation

*/s/ Francis L. Jung*

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FRANCIS L. JUNG  
DAVID H LAWTON  
CAROL MONAHAN JUNG  
Counsel to Plaintiff PUALANI ESTATES  
AT KONA COMMUNITY ASSOCIATION