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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KEAHOLE POINT HATCHERIES LLC,

Plaintiff,

vs.

STATE OF HAWAI'I NATURAL ENERGY
LABORATORY OF HAWAII
AUTHORITY; STATE OF HAWAI'I
BOARD OF LAND AND NATURAL
RESOURCES; STATE OF HAWAI'I
DEPARTMENT OF LAND AND
NATURAL RESOURCES; DOES 1-50,

Defendants.

CIVIL NO. _____
(Environmental Court)

COMPLAINT; SUMMONS

COMPLAINT

Plaintiff KEAHOLE POINT HATCHERIES LLC (“**Plaintiff**”) comes before this Honorable Court, through their counsel, Watanabe Ing LLP, for a cause of action against the above-named defendants and allege as follows:

PARTIES

1. Plaintiff is a Hawai‘i limited liability company registered to do business in Hawai‘i with its principal place of business in Kailua-Kona, County of Hawai‘i, in the State of Hawai‘i.

2. Defendant STATE OF HAWAI‘I NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY (“**NELHA**”) is a Hawai‘i state agency that manages and administers the Hawaii Ocean Science and Technology Park (“**HOST Park**”) in Kailua-Kona on the island of Hawai‘i.

3. Defendant DEPARTMENT OF LAND AND NATURAL RESOURCES (“**DLNR**”) is the state agency charged with managing and administering the public lands, water resources and streams, and other natural resources of the State of Hawai‘i pursuant to HRS § 26-15(b) and HRS Chapter 171.

4. Defendant BOARD OF LAND AND NATURAL RESOURCES (“**BLNR**”) is the executive board of DLNR and is composed of seven members: one from each of the four land districts (O‘ahu, Hawai‘i Island, Maui Nui, Kaua‘i), two at large, and the Chair, who is also the executive head of DLNR.

5. The main offices of DLNR and BLNR are in Honolulu, Oahu.

6. Upon information and belief, Defendants DOES 1-50 (“**Doe Defendants**”) are persons, partnerships, corporations and/or entities who have an interest in the subject matter of this action, who have or might have caused the injury or damages to Plaintiff as set forth

herein, or who may be liable to Plaintiff for said injuries or damages, and whose names and identities are presently unknown to Plaintiff. Plaintiff will identify such Doe Defendants when and if their names and capacities are ascertained.

JURISDICTION AND VENUE

7. This Court has jurisdiction and venue over this matter pursuant to Hawai‘i Revised Statutes sections 603-21.5, 604A-2, 632-1, 632-3, and 603.36, and article XI, sections 1, 6, and 9 of the Hawai‘i Constitution.

8. Venue also properly lies in this judicial circuit pursuant to HRS § 603-36(5) because it is the location where the majority of the defendants are domiciled.

FACTS

9. Pursuant to Master Lease No. S-5619 (the “**Master Lease**”), NELHA leases from the BLNR the premises referred to as HOST Park, which is situated at Hamanamana, Kalaoa 1st – 4th and Ooma 1st and 2nd, North Kona, Island of Hawai‘i and identified as the “Natural Energy Laboratory of Hawaii Site, Parts 1, 2, and 3”.

10. At all relevant times, NELHA operates and maintains a dual-temperature seawater supply system that draws both cold deep seawater and warmer surface seawater (“SSW”). The surface seawater is vital to aquaculture activities such as marine animal larval rearing in HOST Park.

11. NELHA subleases portions of HOST Park to approximately 45 tenants, including tenants, such as Plaintiff, that operate marine animal larval rearing systems.

12. Pursuant to Sublease No. K-35 (the “**Sublease**”), Plaintiff subleases Lease Parcels C and D in the Small Business Compound of HOST Park (the “**KPH Facility**”) for the

purpose of operating a warm water finfish hatchery to produce and sell post-hatch larvae and fingerlings to local and overseas grow-out companies.

13. As part of the Sublease negotiations, NELHA approved KPH's business plan to use the properties under the Sublease to expand its existing aquaculture operations and that such operations would depend on SSW provided by NELHA. Accordingly, NELHA has an obligation to act in a way that is consistent with the agreed purposes of the contract and reasonable expectations of the parties thereto.

14. NELHA has represented and continues to represent that it provides "pristine" SSW through its pipeline system at HOST Park.

15. NELHA represented that it was in compliance and would remain in compliance with its obligations under the Master Lease.

16. KPH relied on NELHA's representations in entering into the Sublease.

17. KPH uses SSW provided by NELHA's HOST Park system for its fishfin hatchery operations. At all relevant times under the term of the Lease, KPH has complied with its contractual obligations to, among other things, keep and maintain KPH's equipment in good condition.

18. Section 9 of the Master Lease requires NELHA to "keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear accepted."

19. Section 12 of the Master Lease expressly contemplates that NELHA will sublease portions of the NELHA Site to third parties.

20. Section 79 of the Sublease states that the Sublease is subject to the terms and conditions of the Master Lease, which was included as Exhibit F of the Sublease.

21. Section 48 of the Sublease, which states:

Sublessor hereby covenants and agrees with the Sublessee that upon payment of the rent at the times and in the manner provided and the observance and performance of the covenants, terms, and conditions on the part of the Sublessee to be observed and performed, the Sublessee may have, hold, possess and enjoy the subleased premises for the term of the Sublease, without hindrance or interruption by the Sublessor or any other person or persons lawfully claiming by, through or under it.

22. At all relevant times during the Sublease, KPH has timely paid its rent and observed and performed its covenants, terms and conditions under the Sublease.

23. KPH observed unexplained increased mortality rates in its fingerling, larval stock and broodstock fish.

24. Other subtenants operating fisheries at HOST Park also observed unexplained larval mortalities across a variety of marine species.

25. Unable to identify the cause of the larval mortalities, KPH and other subtenants requested NELHA conduct an investigation into potential water quality issues within the HOST Park pipeline system.

26. In early 2024, NELHA retained Dr. Jim Wyban, an expert in fish genetics and aquaculture, to conduct a study of the water quality factors and attributes of the SSW provided by NELHA and their impacts on aquaculture operations at HOST Park.

27. On or around May 14, 2024, Dr. Wyban submitted his report to NELHA (the “**Wyban Report**”).

28. The Wyban Report states that significant water quality issues in the SSW in HOST Park were adversely impacting marine animal larval rearing.

29. The Wyban Report concluded that the most likely causes were biofouling and the accumulation of harmful bacteria in NELHA’s SSW pipeline system.

30. According to the Wyban Report, NELHA had conducted a lone

pigging effort to address biofouling of the SSW pipeline system in the 1990s.

31. Upon information and belief, NELHA has not conducted another pigging effort of the SSW pipeline system at HOST Park.

32. On December 9, 2024, NELHA conducted a high-volume flushing of its SSW pipeline system.

33. The SSW that NELHA delivered to KPH during this high-volume flushing was discolored and contained a large level of sediment, which is further evidence of the biofouling and accumulation of harmful bacteria currently in NELHA's SSW pipeline system.

34. NELHA conducted additional high-volume flushing of its SSW pipeline system on February 25, 2025 and April 25, 2025.

35. NELHA's failure to properly maintain the SSW pipelines at HOST Park has resulted in the degradation of SSW water quality delivered to KPH.

36. The degraded water quality of the SSW delivered by NELHA is the cause of the higher than expected larval and fingerling mortalities at the KPH Facility and other HOST Park subtenants operating marine animal hatcheries.

37. NELHA's failure to properly maintain the SSW pipelines at HOST Park has resulted in the degradation of SSW water quality.

38. Under, *inter alia*, article XI, §§ 1 and 6 of the Hawai'i Constitution, NELHA, DLNR, and BLNR (the "**State Defendants**") have public trust duties to conserve and protect waters of the state, including nearshore marine and inland waters, for present and future generations in Hawai'i.

39. Under article XI, § 9, Plaintiff has a constitutional right to a "clean and healthful environment."

40. Plaintiff is committed to the local aquaculture and fishery industry and relies on clean SSW from HOST Park for its business.

41. As of the filing of this Complaint, NELHA has not taken any adequate steps to mitigate the biofouling and bacterial contamination identified in the Wyban Report.

42. As of the filing of this Complaint, the water quality of the SSW delivered by NELHA to the KPH Facility remains degraded and/or contaminated.

43. As of the filing of this Complaint, NELHA continues to fail to properly and completely remediate the contamination of the SSW pipeline system identified in the Wyban Report, in violation of Section 9 of the Master Lease.

44. Upon information and belief, BLNR and DLNR have failed to take steps to ensure NELHA maintains the pipeline system in HOST Park in good condition and therefore, have caused continuing harm to KPH and the local marine environment.

45. As of the filing of this Complaint, BLNR and DLNR continue to allow NELHA to operate the pipeline system at HOST Park in a manner that contaminates the State's water resources and causes harm to the environment.

46. NELHA, BLNR, and DLNR have systematically failed to exercise their respective statutory and constitutional authority and duty to protect the State's marine resources.

47. NELHA's provision and discharge of contaminated SSW to the KPH Facility has hindered and disrupted KPH's use, possession, and enjoyment of the KPH Facility, in violation of Section 48 of the Sublease.

48. Plaintiff has and continues to suffer reduced larval mortality rates and financial harm as a result of NELHA's failure to properly maintain its SSW pipeline system.

COUNT I
(BREACH OF CONTRACT AGAINST NELHA)

49. Plaintiff realleges and incorporates by reference herein all prior allegations and averments.

50. Plaintiff has at all times material herein performed its duties and obligations under the Sublease.

51. At all relevant times, NELHA operated and controlled the SSW pipeline system at HOST Park that delivers SSW to the KPH Facility.

52. As alleged herein above, NELHA has materially breached its obligations under the Sublease by failing to properly maintain the SSW pipeline system, causing the pipelines to become biofouled and contaminated with bacteria.

53. As a result of NELHA's acts and omissions, the SSW provided by NELHA through the SSW pipeline system to the KPH Facility is contaminated and not fit for its intended use.

54. The provision of SSW that is contaminated by NELHA's acts and omissions violates, at least, Section 48 of the Sublease.

55. Because Section 79 of the Sublease states that the Sublease is subject to the terms and conditions of the Lease, NELHA's breach of its obligations under the Lease is also a breach of the Sublease.

56. Because NELHA failed to maintain the SSW pipeline system in good condition as required by Section 9 of the Lease, NELHA is in breach of the Sublease.

57. As a direct and proximate result of NELHA's material breaches of the Sublease, and pursuant to the terms of the Sublease, Plaintiff has been damaged in an amount to be proven at trial or other hearing of this matter.

COUNT II

(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
AGAINST NELHA)

58. Plaintiff realleges and incorporates by reference herein all prior allegations and averments.

59. A covenant of good faith and fair dealing is implied in the Sublease.

60. NELHA's conduct as alleged herein constitute material breaches of the implied covenant of good faith and fair dealing.

61. As a direct and proximate result of NELHA's material breaches of the implied covenant of good faith and fair dealing, Plaintiff has been damaged in an amount to be proven at a trial or other hearing of this matter.

COUNT III

(BREACH OF BLNR'S OBLIGATIONS UNDER HRS § 171-20 AGAINST BLNR)

62. Plaintiff realleges and incorporates by reference herein all prior allegations and averments.

63. HRS § 171-20 requires BLNR, in the event of a breach of any term, convenante, restriction or condition of any lease issued under HRS § 171, to deliver a written notice of breach or default to the party in default demanding the party to cure or remedy the breach or default within sixty days.

64. BLNR entered into the Master Lease with NELHA pursuant to HRS § 171-95, making the Master Lease a lease issued under Chapter 171.

65. NELHA has breached the terms of the Master Lease by failing to properly maintain the SSW pipelines at HOST Park, which has resulted in the contamination and degradation of SSW water quality delivered to KPH.

66. Pursuant to HRS § 171-20, BLNR must deliver a written notice of the breach to NELHA demanding that NELHA cure or remedy the breach within sixty days.

67. By failing to deliver such notice to NELHA and demand NELHA remedy the breach, BLNR has failed to comply with its statutory duty under HRS § 171-20.

COUNT IV

(BREACH OF PUBLIC TRUST DUTIES AGAINST NELHA, DLNR AND BLNR)

68. Plaintiff realleges and incorporates by reference herein all prior allegations and averments.

69. Under article XI, sections 1 and 6 of the Hawai'i state constitution, the public trust doctrine applies to water and marine resources.

70. It is the responsibility of the State, including the State Defendants, to preserve water and marine resources for the benefit of the public.

71. By allowing biofouling and bacteria to accumulate in the SSW pipeline, NELHA is contaminating the seawater that flows through those pipes.

72. By allowing the contamination of the seawater to occur, NELHA, DLNR and BLNR are violating their public trust duties under Haw. Const. art. XI, §§ 1 and 6.

COUNT V

(BREACH OF THE RIGHT TO A CLEAN AND HEALTHFUL ENVIRONMENT AGAINST NELHA, DLNR AND BLNR)

73. Plaintiff realleges and incorporates by reference herein all prior allegations and averments.

74. The right to a clean and healthful environment is a substantive right guaranteed by the Hawai'i Constitution.

75. The State Defendants have impaired and infringed upon Plaintiff's right to a clean and healthful environment, including the right to clean surface seawater, by maintaining

and operating the SSW pipeline system in a negligent manner that has resulted in, *inter alia*, biofouling and bacterial contamination of State waters.

(REQUEST FOR RELIEF)

76. Plaintiff realleges and incorporates by reference herein all prior allegations and averments.

77. An actual controversy has arisen and now exists between Plaintiff and the Defendants, as to their respective rights and liability for past and any future claims, including response costs arising out of the contamination of the SSW provided by NELHA at HOST Park, which is controlled and/or operated by the State Defendants. A declaratory decree is therefore necessary to resolve the controversy between the parties and to avoid successive actions.

WHEREFORE, Plaintiff demand judgment against Defendants and respectfully pray as follows:

- a. for declaratory judgment and an award of damages in an amount to be proven at trial against NELHA for NELHA's breaches of contract and breaches of the covenant of good faith and fair dealing;
- b. for a declaratory order that:
 - i. NEHLA has breached Section 9 of the Master Lease by failing to properly maintain and operate the SSW pipeline system;
 - ii. BLNR must deliver a written notice of breach to NELHA demanding that NELHA cure or remedy the breach within sixty days, pursuant to HRS § 171-20;
 - iii. NEHLA's violation of the Sublease has resulted in contamination of the SSW that is discharged throughout HOST Park, including to KPH's facility;

iv. The State Defendants have a constitutional public trust obligation under article XI, sections 1 and 6 of the Hawai‘i Constitution to protect and conserve water and marine resources for the benefit of present and future generations;

v. The State Defendants have violated this constitutional public trust obligation under article XI, Sections 1 and 6 of the Hawai‘i Constitution by maintaining and operating the SSW pipeline system at HOST Park in a manner that fails to preserve, protect, and maintain Hawaii’s public trust resources;

vi. The right to a clean and healthful environment under article XI, section 9 of the Hawai‘i Constitution encompasses the right to clean and uncontaminated surface sea water;

vii. The State Defendants have violated article XI, section 9 of the Hawai‘i Constitution by maintaining and operating the SSW pipeline system in a manner that infringes upon KPH’s right to clean and uncontaminated surface sea water;

c. For an order providing for appropriate and necessary injunctive relief, including but not limited to:

- i. Requiring NELHA, DLNR, and BLNR to immediately cease maintaining and operating the pipeline system at HOST Park in a manner that breaches their mandatory duty under the constitutional public trust doctrine and infringes upon Plaintiff’s constitutional right to a clean and healthful environment;
- ii. Requiring NELHA, DLNR, and BLNR to immediately perform the maintenance necessary to conform the pipeline

system at HOST Park with their constitutional duties and Plaintiff's constitutional rights; and

iii. Exercising continuing jurisdiction and oversight as necessary, to ensure defendants' diligence and progress in complying with the Court's order.

- d. for an award of attorneys' fees and costs as authorized by law and/or equity;
- e. for pre-judgment and post-judgment interest; and
- f. for such other and further relief as the Court deems just and proper.

DATED: Honolulu, Hawai'i, May 7, 2025.

/s/ Joyce W.Y. Tam-Sugiyama

IAN L. SANDISON

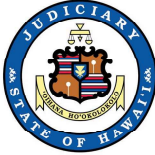

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Attorneys for Plaintiffs

KEAHOLE POINT HATCHERIES LLC

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT		CASE NUMBER
PLAINTIFF KEAHOLE POINT HATCHERIES LLC		VS.	DEFENDANT(S) STATE OF HAWAII NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY; STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES; STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES; DOES 1-50
PLAINTIFF'S NAME & ADDRESS, TEL. NO. Watanabe Ing LLP Ian L. Sandison #5597-0; Ross T. Shinyama #8830-0; Joyce W.Y. Tam-Sugiyama #10325-0; Sophia R. Morgan #11969-0 First Hawaiian Center 999 Bishop Street, Suite 1250 Honolulu, Hawai'i 96813 Telephone: (808) 544-8300; Facsimile: (808) 544-8399			
TO THE ABOVE-NAMED DEFENDANT(S) You are hereby summoned and required to file with the court and serve upon Plaintiffs, c/o Ian L. Sandison, Esq., Ross T. Shinyama, Esq., Joyce W.Y. Tam-Sugiyama, Esq., and Sophia R. Morgan, Esq. of Watanabe Ing LLP, 999 Bishop Street, Suite 1250, Honolulu, Hawai'i 96813 _____, plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS. A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.			
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us		Effective Date of 28-Oct-2019 Signed by: /s/ Patsy Nakamoto Clerk, 1st Circuit, State of Hawai'i 	
 In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402, at least ten (10) working days prior to your hearing or appointment date.			