

JEFFREY SCOTT GOOLD

Honolulu, Hawai'i 96815

Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

JEFFREY SCOTT GOOLD,

Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY, INC.;
HAWAIIAN ELECTRIC INDUSTRIES, INC.;
CONSTANCE H. LAU; SHELEE KIMURA;
SUSAN LI; THAO T. TRAN; SHANA M.
BUKO; ELIZABETH DEAR; JANE DOES 1-10;
JOHN DOES 1-10; DOE CORPORATIONS 1-10;
DOE PARTNERSHIPS 1-10; DOE ENTITIES
1-10; and DOE GOVERNMENTAL
ENTITIES 1-10,

Defendants.

CIVIL NO: _____
(Other Civil Action)

COMPLAINT; EXHIBITS 1-4;
DEMAND FOR JURY TRIAL;
SUMMONS

COMPLAINT

Plaintiff JEFFREY SCOTT GOOLD for causes of action against the above-named

Defendants, alleges and avers as follows:

I. JURISDICTION AND VENUE.

1. This Court has jurisdiction over this controversy pursuant to Hawai'i Revised Statutes ("HRS") § 603-21.5, as the amount in controversy, exclusive of interest, fees and costs, exceeds \$40,000.00, and HRS § 368-11, as this controversy includes a unlawful discrimination claim pursuant to Chapter 378, Part I. The Hawai'i Civil Right Commission ("HCRC") issued a right to sue letter by USPS, dated January 9, 2023, attached as "**Exhibit 1.**" This action is timely.

2. The First Circuit Court is the proper venue for this action pursuant to HRS § 603-36, as the claims for relief arose in the City and County of Honolulu, State of Hawai'i.

3. The Hawai'i Supreme Court declared Hawai'i statute and Hawai'i Administrative Rules ("HAR") prohibiting discrimination based on disability are textually similar to the Americans with Disabilities Act ("ADA"). Plaintiff's instant action involves medical cannabis, and federal law is in conflict with Hawai'i statute. Federal ADA standards are inappropriate.

4. Federal protection, Rohrabacher-Farr amendment, passed in the omnibus spending bill beginning December 2014. Hawai'i is included. Federal funds shall not be used to prevent states from implementing their own state laws that authorize the use, distribution, possession or cultivation of medical cannabis.¹

5. HRS §329-125.5(b), is textually similar to Arizona, classifies medical cannabis equivalent to the use of any other legally, prescribed medication:

For the purpose of medical care, including organ transplants, a registered qualifying patient's use of cannabis in compliance with this part shall be

¹ "None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawai'i, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana."

considered the equivalent of the use of any other medication under the direction of a physician and shall not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.²

6. Defendants, collectively, can neither dispute nor deny that no federal law, no state law, no public rule or regulation in Hawai'i mandates Hawaiian Electric (1) drug test non-safety-sensitive employees for medical cannabis, or (2) remove non-safety-sensitive employees from duty who indicate positive for medical cannabis.

II. PARTIES.

7. Plaintiff JEFFREY SCOTT GOOLD (“Plaintiff” or “Mr. Goold”) is and was at all relevant times a married resident of the State of Hawai'i.

8. Upon information and belief, Defendant HAWAIIAN ELECTRIC INDUSTRIES, INC. (“HEI”) is and was at all relevant times a corporation with a principal place of business in the State of Hawai'i, and at all relevant times classified a federal contractor and grantee under the Drug-Free Workplace Act, 41 U.S. Code § 8102.

9. Upon information and belief, Defendant HAWAIIAN ELECTRIC COMPANY, INC. (“HECO”) is and was at all relevant times a corporation with a principal place of business in the State of Hawai'i, and at all relevant times classified a federal contractor and grantee under the Drug-Free Workplace Act, 41 U.S. Code § 8102.

² Hawai'i HRS §329.125.5(b) and Arizona anti-discrimination language are textually similar. Arizona state Court of Appeals ruled that Arizona Medical Marijuana Act “protects Ridgell’s use of medical marijuana.” *Ridgell v. Ariz. Dep't of Child Safety*, 508 P.3d 1143, 67 Arizona Cases Digest 17 (Ariz. Ct. App. 2022); and the Arizona Supreme Court declined to accept an appeal from the state Department of Child Safety on this matter.

10. Upon information and belief, Defendant CONSTANCE HEE LAU (“Lau”) is and was at all relevant times a resident of the State of Hawai’i, and an employee of Defendant HEI, serving as HEI President & Chief Executive Officer, ASB and HECO Chairman of the Board.

11. Upon information and belief, Defendant SHELEE KIMURA (“Kimura”) is and was at all relevant times a resident of the State of Hawai’i, and an employee of Defendant HECO, serving as HECO President & Chief Executive Officer.

12. Upon information and belief, Defendant SUSAN LI (“Li”) is and was at all relevant times a resident of the State of Hawai’i and an employee of Defendant HECO.

13. Upon information and belief, Defendant THAO T. TRAN (“Tran”) is and was at all relevant times a resident of the State of Hawai’i and an employee of Defendant HECO.

14. Upon information and belief, Defendant SHANA M. BUCO (“Buco”) is and was at all relevant times a resident of the State of Hawai’i and an employee of Defendant HECO.

15. Upon information and belief, Defendant ELIZABETH DEAR (“Dear”) is and was at all relevant times a resident of the State of Hawai’i and a contracted employee of Defendant HECO.

16. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE ENTITIES 1-10, and DOE GOVERNMENTAL ENTITIES 1-10 (collectively referred to as “Doe Defendants”) are persons, corporations, partnerships, business entities, and/or governmental entities who acted in a discriminatory, retaliatory or hostile manner, and which proximately caused or contributed to the injuries and damages sustained by Plaintiff. Plaintiff has been unable to ascertain the names and identities of the above-named Doe Defendants from the investigation conducted to date.

Accordingly, Plaintiff has sued the unidentified Doe Defendants herein with fictitious names pursuant to Rule 17(d) of the Hawaii Rules of Civil Procedure, and Plaintiff will substitute the true names, identities, capacities, acts and/or admissions of the Doe Defendants when the same are ascertained.

III. BACKGROUND FACTS.

A. HECO Recruits Plaintiff for Contract Employment Services.

17. On about July 2018, EdgeRock Technologies, LLC, dba EdgeRock Technology Partners (“EdgeRock”) contacted Plaintiff, who was a competent IT database analyst (“DBA”).

18. EdgeRock provides contract employees and consultants, who perform services on a temporary basis to third-party businesses. Plaintiff was located off-island providing services on Kaua’i, Hawai’i. EdgeRock sought to place Plaintiff with HECO on O’ahu, Hawai’i.

19. On about July 12, 2018, at 9:00am HST, Plaintiff submitted to a competitive interview process with HECO IT manager Lori Yafuso (“Manager Yafuso”) and other HECO representatives.

20. On about July 19, 2018, Plaintiff received notification from EdgeRock that Manager Yafuso responded positively, “The team thought you and one other gentleman would be a fit. He has more experience, but they loved your personality and thought you’d be a fit culturally.”

21. On about July 28, 2018, Plaintiff received notice from EdgeRock that they “just got word that the team at HECO wants you for the project. Congrats!”

22. On about July 30, 2018, Plaintiff executed a contractual agreement with EdgeRock, which included a non-compete clause restricting future employment with HECO,

professional expectations, and corporate drug policy. At all relevant times, Plaintiff was compliant with EdgeRock policy.

23. On about July 30, 2018, Manager Yafuso directed Plaintiff to complete HECO's background check process. Manager Yafuso served as Plaintiff's sponsor. Plaintiff submitted HECO's Sponsor and Contractor IT Compliance Acknowledgement form.

24. Defendant HECO did not require a pre-employment drug screen or discuss medication policy with Plaintiff.

25. On about August 6, 2018, Manager Yafuso notified Plaintiff and HECO lead IT DBA, Greg Sasaki ("DBA Sasaki"), that their team was "looking forward to having [Plaintiff] onboard with us on Monday [August 13, 2018]."

B. HECO Hires Plaintiff for Contract Employment Services.

26. On August 13, 2018, Defendant HECO directed Plaintiff, contract employee of EdgeRock, to relocate to Honolulu, Hawai'i, on the island of O'ahu, and report to duty in person at HECO offices located at 711 Kapiolani Blvd in Pacific Park Plaza ("PPP"), 12th floor.

27. Defendant HECO directed Plaintiff to provide IT services related to DBA duties in a **non-safety-sensitive** employment space, Monday through Friday, with general hours between 7:30am to 4:00pm.

28. Defendant HECO directed Plaintiff to report to and be supervised at all relevant times by HECO IT Manager Yafuso.

29. Plaintiff was an employee of EdgeRock, but directed by Defendant HECO. EdgeRock compensated Plaintiff, as approved by Defendant HECO. Defendant HECO reimbursed EdgeRock for Plaintiff's labor and services, and EdgeRock administration fees.

30. On about August 13, 2018, Manager Yafuso provided Plaintiff with Defendant HEI “Corporate Code of Conduct, November 20, 2017” (“HEI Code”). Defendant Lau authorized and signed HEI Code.

31. Defendants HEI and Lau directed and required Plaintiff, and “All Company directors, officers and employees (which for purposes of the Code includes all full-time, part-time, contract and temporary employees),” to abide by HEI Code.

32. Defendants HEI and Lau directed and required Plaintiff to abide by HEI Code, Appendix A, specifically for Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company (collectively, the “Company”).

33. Defendants HEI and Lau directed and required Plaintiff to abide by HEI Code, Appendix A, 2. d (Emphasis mine):

- d. Reporting to work under the influence of alcohol or drugs, drinking alcoholic beverages (other than as permitted at functions or events approved by your respective Company President), possession or the **unprescribed** use or distribution of any controlled substance or **illegal drug**, or any other illegal act which occurs on work premises (including any non-Company site where you are performing work on behalf of the Company) or during your work hours (including meal breaks or rest periods) or which interferes with work performance.*

34. Defendants HEI and Lau did not require or direct Plaintiff to submit to a pre-employment drug screen. Defendants HEI and Lau did not disclose or notify Plaintiff of a prohibition on medical cannabis.

35. At all relevant times, Plaintiff had a debilitating medical condition and was disabled pursuant to HRS § 378-1: “Disability” means the state of having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment.

36. At all relevant times, Plaintiff was registered with the State of Hawai'i — Department of Health as a qualifying patient and participant in the Medical Cannabis Registry Program (“MCRP”) under HRS § 329-121 et seq.

37. At all relevant times, Plaintiff’s treatment plan recommended medication prior to bed in the evening to reduce severe chronic pain so he could sleep soundly; and never before or during working hours. Plaintiff followed all requirements of MCRP and directions from his medical team.

38. State of Hawai'i legalized medical cannabis in 2000; added anti-discrimination protections in 2015, pursuant to HRS § 329.125.5.

39. HRS § 329.122(e) restricts conditions of use: “The authorization for the medical use of cannabis in this section shall not apply to:

- (1) The medical use of cannabis that endangers the health or well-being of another person;
- (2) The medical use of cannabis:
 - (A) In a school bus, public bus, or any moving vehicle;
 - (B) In the workplace of one’s employment;
 - (C) On any school grounds;
 - (D) At any public park, public beach, public recreation center, recreation or youth center; or
 - (E) At any other place open to the public ...”

40. At all relevant times, Plaintiff claims compliance with HRS § 329.122(e) by **not using** medical cannabis in a school bus, public bus, or any moving vehicle; not using medical cannabis in the workplace of one’s employment; nor on any school grounds; nor at any public park, public beach, public recreational center, recreation or youth center; nor at any other place open to the public. Defendants cannot prove otherwise.

41. At all relevant times, Plaintiff claims compliance with HRS § 329.122(e) by **only using** medical cannabis in the privacy of his personal dwelling. Defendants cannot prove otherwise.

42. Plaintiff claims he attempted to disclose his **disability** to Defendants HECO and Dear on February 14, 2019, and Defendants HECO, Dear and Buco denied Mr. Goold an opportunity to provide a more detailed profile and medical history.

43. Plaintiff claims he attempted to disclose his **medication prescription** to Defendants HECO and Dear on February 14, 2019. Defendants HECO, Dear and Buco denied Mr. Goold an opportunity to provide a more detailed profile and medical history.

44. Plaintiff claims he attempted to disclose his **treatment plan** to Defendants HECO and Dear on February 14, 2019. Defendants HECO, Dear and Buco denied Mr. Goold an opportunity to provide a more detailed profile and medical history.

45. At all relevant times, Plaintiff was a trained CDC-University of New Mexico School of Medicine addiction and drug intervention specialist, who is certified to counsel individuals and groups to encourage avoidance of deadly and addictive opioid medications, and recommend substitution of medical cannabis as one safe alternative.

46. At all relevant times, Plaintiff was **classified a non-safety-sensitive** IT employee, rather than a regulated safety-sensitive employee, as defined by the U.S. Department of Transportation, October 22, 2009, attached as “**Exhibit 2.**”

C. HECO Selects Plaintiff for Internal Employment.

47. On about November 13, 2018, Manager Yafuso provided a 90-day review of Plaintiff’s performance:

“YOU have been a great asset to our team and it is your personality and humble nature that makes all of us so comfortable working together. We have had contractors on the DBA team before, but never with the synergy and positive energy that you bring with you. I believe you have had the greatest influence in our success and glad that we selected the right contractor. You have definitely made your mark here at HECO and have set the bar very high for future contractors!

Thank you for being you...keep doing what you do...keep that good karma flowing!”

48. On about December 2018, Defendant HECO extended Plaintiff’s service contract an additional six-months through approximately July 31, 2019.

49. On about January 2019, an internal DBA position opened within the IT department. Manager Yafuso requested Plaintiff apply.

50. Manager Yafuso warned Plaintiff that the contract DBA position he filled would be eliminated when the new internal DBA was hired. Manager Yafuso requested Plaintiff join the internal team. Mr. Goold reported the conversation to EdgeRock.

51. Due to the warning from HECO, EdgeRock agreed to release Plaintiff from the contractual non-complete clause, if HECO selected him for the position. Mr. Goold applied.

52. Manager Yafuso provided Plaintiff an internal link to the job post, which was not available to outside candidates. Defendant HECO treated Plaintiff as an internal employee.

53. In February 11, 2019, Defendant Buco notified Mr. Goold in an offer letter that he had been selected conditionally, although conditions were ambiguous:

“This offer is contingent upon a review of your conviction record, if any, and motor vehicle record check (if driving is required). Based on the requirements of the position, you must also pass some or all of the following: drug screening tests, and a physical and functional capacity exam, if applicable.”

54. As Defendants HEI, HECO and Lau directed Plaintiff to adhere to HEI Code, Appendix A, 2.d, and was a **non-safety-sensitive employee**, Plaintiff reasonably believed he was compliant with HECO drug and medication use policy.

55. Defendants HECO and Buco discriminated against Plaintiff failing to make available HECO's "Hawaiian Electric, Maui Electric, Hawai'i Electric Light: Health & Safety, Substance Abuse Policy, August 2015 edition ("SAP")", as required. See Training 9.0.

56. Defendants HECO, Li and Tran discriminated against Plaintiff and created a hostile work environment for Plaintiff beginning August 13, 2018, failing to make available SAP.

57. SAP requires employees "who are undergoing medical treatment taking prescribed medication with a controlled substance must report this treatment to his/her supervisor prior to beginning work ..." See Section 5.0: Use of Legal and Prescription Drugs. (Emphasis in original)

58. Defendant HECO should not have directed Plaintiff to begin work August 13, 2018. Defendants HECO, Li, Tran and Buco had six months to make available SAP. They failed EdgeRock, Mr. Goold, Manager Yafuso and HECO's IT Department.

IV. CLAIMS FOR RELIEF.

COUNT I (Hostile Work Environment)

59. Plaintiff realleges and incorporates by reference the allegations contained above as through fully set forth herein.

60. Plaintiff's first day of employment at HECO was Monday, August 13, 2018. Manager Yafuso provided Mr. Goold the HEI Code, signed by Defendant Lau.

61. Plaintiff trusted and respected Defendant Lau. Mr. Goold became a HEI stockholder (HE) around 2008. Lau was rated a competent, proficient leader. Speaking in 2007:

“We looked for great individuals and we had a number of them in the company. Then what you do is you look for that kind of special contribution that each person can make and you encourage it.”

“I guess the mastery is in pulling all of these individual skills and experiences and backgrounds together and this wonderful mix where everybody supports everybody else.”³

62. Defendants HECO, Li, and Tran were required to support Plaintiff and make available SAP, as specified in 9.0 Training. Defendants did not. (Emphasis mine)

9.0 Training

All employees of the Company shall receive initial training of this Substance Abuse Policy within 12 months of its effective date and the policy will be provided to all new employees as part of their on-boarding process. This policy shall also be made part of the recurring training program and made available to all agency temporary workers, contractors, consultants, and vendors.

63. SAP applies to “all full-time, part-time, temporary or regular employees,” as well as “all agency workers, contractors, consultants and vendors working for the Company” (p1).

64. Non-compliance with SAP “may result in immediate removal from Company premises, bar from future re-entry onto Company premises, and/or termination of the contract and future contractual agreements” (*Id.*).

65. As noted, SAP requires employees “who are undergoing medical treatment taking prescribed medication with a controlled substance must report this treatment to his/her supervisor

³ <http://www.gretergoodradio.com/2007/02/03/connie-lau-2/>

prior to beginning work ...” (*Id.*, Section 5.0: Use of Legal and Prescription Drugs, at p2).

(Emphasis in original)

66. Defendants HEI, HECO, Lau, Li and Tran created a hostile work environment for Plaintiff beginning August 13, 2018, by issuing only HEI Code, and not making available SAP.

67. On February 11, 2019, Defendant Buco notified Plaintiff in an offer letter that he had been selected conditionally. Buco created a hostile work environment for Plaintiff failing to make available SAP.

68. Had Defendants HECO, Li, Tran and Buco made available SAP, Plaintiff would have been directed to speak to his supervisor about his legal, prescription medication.

69. Defendants HECO, Li, Tran and Buco denied Plaintiff an opportunity to either switch medications or seek a waiver in Company policy.

70. Defendant HECO recruited Plaintiff off-island, and directed Plaintiff to relocate to a new cultural space. Defendants HEI, HECO, Lau, Li, Tran and Buco created a hostile work environment for the new arrival, who was unaware hidden corporate expectations. Mr. Goold has been damaged in an amount to be proven at trial.

COUNT II
(Discrimination)

71. Plaintiff realleges and incorporates by reference the allegations contained above as through fully set forth herein.

72. On February 11, 2019, Defendant Buco notified Plaintiff in an offer letter that he had been selected conditionally. Buco discriminated against Mr. Goold failing to make available SAP.

73. On February 14, 2019, Defendant Dear contacted Mr. Goold to schedule a pre-employment drug screen. Dear discriminated against Plaintiff failing to make available SAP.

74. On February 14, 2019, Dear informed Plaintiff of the drug testing facility. Plaintiff inquired about location and distance, as Plaintiff did not have personal transportation. Plaintiff disclosed that he suffered injuries and a mobility disability that limited his ability to walk.

75. On February 14, 2019, at 9:36 AM, Dear emailed an update to the test facility address, as Plaintiff had physical limitations, “So sorry for the confusion the address is 800 not 815 so sorry about that so a little closer!”

76. Dear offered to answer Plaintiff’s questions, “if you have any additional questions please feel free to call me at 808-543-4848.”

77. Minutes later, Plaintiff requested a private telephonic conversation with Dear. Dear provided a direct HECO phone number, 808-202-5241. At 9:45 am, on February, 14, 2019, Plaintiff spoke with Defendant Dear for approximately three minutes.

78. Plaintiff claims he briefly summarized his disability, medical cannabis prescription and treatment plan. Plaintiff believed Dear told him conclusively that he would be fine. Mr. Goold therefore asked no further questions and provided no additional details.

79. Defendant HECO stated that Dear responded, “I don’t believe it will be a problem, but I will inform my supervisor of the situation and if there are any issues, someone will get back to you” [HCRC Statement, p4 ⁴].

⁴ Position statement of Hawaiian Electric Company dated February 11, 2020, in response to Amended Charge of Discrimination submitted by Plaintiff Jeffrey Scott Goold to the Hawai’i Civil Rights Commission on November 11, 2019 (“HCRC Statement”).

80. Plaintiff claims Dear was certain. Had Dear been uncertain, Plaintiff would have requested to speak with someone who was certain.

81. Dear claims she told Plaintiff someone will get back to him if there were any issues. Defendant HECO had issues. Nobody got back to Mr. Goold.

82. Defendants HECO, Bucu and Dear discriminated against Mr. Goold denying an opportunity to clear up any confusion, answer any questions, and fully disclose details about his medication, treatment plan and disability.

83. Outrageously, Defendants HECO, Bucu and Dear created a discriminatory and hostile work environment for Plaintiff by falsely leading Mr. Goold to believe (1) he was fine, (2) that there were no issues, and (3) that he was compliant with HECO policy, prior to agreeing to submit to the Company's pre-employment drug screen.

84. At all relevant times, Mr. Goold was ethical, honest and forthright with Dear.

85. Defendants HECO, Bucu and Dear discriminated against Plaintiff providing inaccurate medical policy information to him — resulting in the **adverse event** of HECO withdrawing the job offer and discharging Mr. Goold from his contract employee position.

86. Defendant HECO cannot deny that they set Mr. Goold up for failure.

87. Defendant HECO claims that Dear “was not aware of HECO's specific policies regarding the usage of marijuana.” [*Id.*]

88. Plaintiff had no way to know what Dear knew or did not know. Dear discriminated against Plaintiff failing to state that she did not know and failing to instruct Mr. Goold to speak with someone who could have answered his questions competently.

89. Defendant Lau directed Plaintiff to trust people assigned to work with him:

“The Code cannot and is not intended to cover every applicable law or provide answers to all questions that might arise; for that we must ultimately rely on each person’s good sense of what is right, including a sense of when it is proper to seek guidance from others on the appropriate course of conduct” [HEI Code, p3].

90. Defendant HECO was directed to make available SAP to Dear and Plaintiff.

91. Defendant HECO claims Dear “immediately informed Buco about Goold’s claimed marijuana use.” [*Id.*]

92. Defendant Buco discriminated against Plaintiff by not getting back to him, as there were issues.

93. Defendant Buco discriminated against Plaintiff by denying him an opportunity to clear up any confusion, answer any questions, and fully disclose details about his medication, treatment plan and disability.

94. Defendant HECO claims that Defendant Buco “told Deer [sic] to allow Goold to take the test, and a decision would be made once HECO received the test results.” [*Id.*]

95. Defendants HECO and Buco discriminated against Plaintiff by **not allowing** Mr. Goold to make the decision if he wanted to submit to the pre-employment drug screen.

96. Plaintiff submitted to the pre-employment screen under false pretense that he would be fine.

97. Defendants HECO and Buco discriminated against Plaintiff by defrauding and deceiving Mr. Goold into incriminating himself.

98. Defendant HECO claims that “While Buco was aware that Goold had a medical marijuana certification, she had no knowledge that he was disabled, or the nature of any claimed impairment.” [*Id.*]

99. Defendant Bucu made the unilateral decision not to speak with Plaintiff — and Bucu discriminated against Mr. Goold failing to do so.

100. Defendants HECO, Bucu, Li and Tran discriminated against Plaintiff choosing not to speak with him once Mr. Goold disclosed his medical cannabis prescription, which must be treated like any other prescribed medication, pursuant to HRS §329.125.5(b).

101. Defendant HEI and HECO discriminated against Plaintiff by classifying medical cannabis similar as recreational cannabis — illegal.

102. State of Hawai'i added non-discriminatory language in 2015. Defendants HEI and HECO had plenty time to update policy, and were warned to do so in the local “Employment Law Seminar, August 2018,” hosted by Torkildson, Katz, Hetherington, Harris and Knorek.

103. Plaintiff informed staff at Straub Occupational Health Services of his legal medical cannabis certificate prior to providing a urine sample.

104. On about February 19, 2019, Plaintiff received a telephone call from Michael M. Kusaka, MD, of Straub Occupational Health Services. Dr. Kusaka informed Plaintiff that his urine drug screen was positive for marijuana (THC) metabolites (“THC-COOH”). Plaintiff reported Dr. Kusaka disclosed that he had notified Defendant HECO.

105. Defendant HECO's urine-drug screen methodology discriminates against long-term and legal medical cannabis patients. Urine-based assessment measures THC-COOH metabolites. These compounds neither intoxicate nor impair. They are biological markers that collect in fat stores of the patient's body after consumption of THC-infused cannabis (“Delta9 THC”), which is the intoxicating compound.

106. For a recreational user, THC-COOH metabolites dissolve within hours to a couple days. The clumsy, imprecise urine screen can detect THC-COOH in a long-term and legal patient, someone like Mr. Goold, for weeks and up to many months. Although a patient may no longer consume THC-infused cannabis, they can indicate positive on a urine drug screen.

107. Due to the discriminatory nature of Defendant HECO's drug assessment, Plaintiff easily could have passed the drug screen had he been an illegal recreational user.

108. HECO discriminates against and punishes honest, ethical medical patients, labeling them drug abusers, while allowing illicit drug criminals an opportunity to slip through screening protocols.

109. On about February 20, 2019, Plaintiff received two (2) phone calls from HECO IT Security Administrator, Herman Lau ("IT Lau"). In the initial communication, Plaintiff reported that IT Lau informed him of a work order to migrate Mr. Goold's computer and email accounts.

110. Plaintiff claims IT Lau asked Mr. Goold if he knew his start date. Mr. Goold reported he did not. Plaintiff claims IT Lau stated he would find out and hung up.

111. In a second phone call from IT Lau, some 5-10 minutes later, Plaintiff reported that IT Lau disclosed he had spoken with HECO HR. IT Lau informed Mr. Goold that his start date would be February 25, 2019; and directed Mr. Goold to terminate his contract employee position at the end-of-day Friday, February 22, 2019.

112. Plaintiff reported that IT Lau congratulated Mr. Goold for joining the brotherhood, and planned to migrate the accounts early the next week as he was backlogged with work requests.

113. Defendant HECO claimed Mr. Goold “called to check on the status of the work request” [HCRC Statement, p11].

114. Plaintiff avers this statement to be false. Mr. Goold had no knowledge of a work request or who might complete a work request had he known of its existence. Inspection of HECO digital phone logs supports Mr. Goold’s account of events.

115. Plaintiff immediately informed Manager Yafuso on February 20, 2019, who was eager to confirm her new hire. Manager Yafuso congratulated Mr. Goold.

116. Plaintiff immediately informed DBA Sakaki and colleagues in his workgroup. Coworkers congratulated Mr. Goold for being selected for the permanent and internal assignment.

117. Plaintiff immediately informed his wife, family and friends about being selected for the permanent and internal HECO position. Wife, family and friends were delighted and proud of Mr. Goold’s career and professional advancement.

118. Plaintiff immediately informed EdgeRock that Mr. Goold’s final day would be February 22, 2019. EdgeRock staff congratulated Mr. Goold.

119. Although Plaintiff informed his managers and coworkers that he had been selected, and that the start date was Monday, February 25, 2019, Defendants HECO, Li, Tran and Buco did not correct Plaintiff’s false belief, which created a hostile work environment for Mr. Goold.

120. Upon information and belief, Plaintiff claims Dr. Kusaka notified Defendant HECO telephonically about February 19, 2019, of Plaintiff’s positive indication of medical cannabis. Defendant HECO did not warn Plaintiff that there might be discipline or issues.

121. Defendants HECO, Li, Tran and Buco allowed Plaintiff to believe he was fine; inform colleagues that he had been selected, which created a hostile work environment for Mr. Goold.

122. Defendant HECO affirmed that “Goold’s start date for his Database Analyst position was originally set for Monday, February 25, 2019” [HCRC Statement, p4].

123. Defendants HECO wrote deceptively, falsely and misrepresented facts:

“but because HECO had not received the results of his drug test by Saturday, February 23, 2019, HECO informed Mr. Goold that his start date would be delayed and that he was to continue in his capacity as a contractor and until his new start date of March 4, 2019, assuming he passed his screening tests” [HCRC Statement, p4].

124. Defendants Li, Tran, Buco and Dear did not speak with Plaintiff after he submitted to the drug screen on February 14, 2019.

125. Defendant HECO did not notify Mr. Goold of a delayed start date; nor did Defendant HECO instruct Mr. Goold to continue in his capacity as a contractor.

126. Defendant HECO’s claim that they informed Mr. Goold of a new start date of March 4, 2019 is provably false.

127. Defendant HECO confirmed that official test results were not received by Saturday, February 23, 2019, and Defendant Buco fired Plaintiff on Monday. Defendant HECO cannot deny that they misrepresented facts, and were untruthful and deceptive to HCRC.

128. Defendants HECO, Li, Tran and Buco knew, or should have known, of Plaintiff’s confirmed violation of policy by February 19, 2019. Defendants allowed Mr. Goold to humiliate himself celebrating with Manager Yafuso and coworkers near end-of-day Friday, February 22, 2019. This discrimination created a hostile work environment for Mr. Goold.

129. Based on Defendant HECO assurances, Plaintiff celebrated with friends and family over the weekend — under false pretenses, which left Mr. Goold traumatized, embarrassed and shamed once Defendant HECO terminated his employment.

130. Defendants HECO, Li, Tran and Bucu failed to notify Plaintiff of a new start date, and Defendant HECO directed Plaintiff to report for duty on Monday, February 25, 2019, for his first day as a HECO employee.

131. Plaintiff arrived early Monday morning around 7:15 am. Bucu discharged Mr. Goold around 11:15 am. Mr. Goold served as a HECO employee for approximately one-half day.

132. Defendants HECO deny “that Goold was discharged because he was never an employee of HECO” [HCRC Statement, p7].

133. Facts and statements expose the falsity of Defendant HECO’s claim.

134. Defendant HECO directed Plaintiff to terminate his relationship with EdgeRock on Friday end-of-day, and directed Mr. Goold to begin work as a HECO employee on February 25, 2019. Defendants cannot deny nor dispute these facts.

135. On February 25, 2019, about 11:15 am, Defendant Bucu called Plaintiff. Defendant HECO reported,

“Bucu called Goold, told him that she had received the results of his drug screening, and the results were positive for marijuana use. Bucu told Goold that, per HECO’s policy, HECO was rescinding his offer of employment because he did not pass the drug screening” [HECO Response, p4].

136. Defendant HECO admitted to rescinding the offer of internal employment. However, HECO had extended Mr. Goold’s contract employee position in December 2018 through approximately July 31, 2019.

137. Defendant HECO reported, “Buco did not tell Goold that he was ‘terminated’ or discharged from his employment with EdgeRock or from his assignment at HECO as an EdgeRock employee” [*Id.* at 5].

138. Defendant HECO’s statement is factually incorrect and false.

139. Defendant Buco directed Mr. Goold to stop all work — not respond to outstanding phone calls or open emails; do not pass critical information to coworkers. Buco directed Mr. Goold to surrender his HECO IT badge and depart PPP offices immediately. In the chaos and confusion, Mr. Goold left his expensive professional dress shoes.

140. Plaintiff complied with Buco’s directive, as Plaintiff had complied with all HEI and HECO directives known to him. Mr. Goold surrendered his HECO IT badge to Manager Yafuso and exited the PPP facility. Mr. Goold has been damaged in an amount to be proven at trial.

COUNT III
(Intentional Infliction of Emotional Distress)

141. Plaintiff realleges and incorporates by reference the allegations contained above as through fully set forth herein.

142. Plaintiff claims he was in tears listening to Defendant Buco discharge him. Plaintiff claims Buco’s harsh words and condescending tone triggered a panic attack. Mr. Goold reported he wondered why Defendants HECO and Buco were cruel, unkind and uncaring.

143. Defendant HECO had confirmed Plaintiff’s official hire and he was in progress with short, medium and long term projects. Plaintiff claims Defendant Buco directed him to

immediately cease all work, and stated that he could not work for HECO in any capacity. Mr. Goold reported that Bucu treated him like a criminal.

144. Plaintiff reported that Defendant Bucu claimed the pre-employment drug screen showed that he had been impaired or intoxicated at work, was engaged in illegal activity and presented a danger to coworkers, the company and general public.

145. Plaintiff reported that Defendant Bucu directed him in an unprofessional and disrespectful tone to surrender his HECO ID badge and immediately depart PPP offices.

146. Plaintiff asked Defendant Bucu why HECO did not publish policy about medical cannabis. Plaintiff claims Bucu told him that she had never seen policy in writing, as the policy was passed verbally around HR offices. Bucu did not make available SAP at the time.

147. Plaintiff believes Bucu told him Defendant Tran was responsible for disseminating relevant policy. Mr. Goold requested to speak with Tran. Bucu denied the request.

148. Plaintiff spoke with Manager Yafuso. Mr. Goold recalls that Yafuso was in tears. She had been informed. Yafuso accepted Mr. Goold's HECO ID badge. Mr. Goold reported that Manager Yafuso gave him a warm hug and said good-bye. Mr. Goold exited the premises.

149. Attorneys for Defendant HECO stated deceptively, "Yafuso spoke in person with Goold after his phone call with Bucu, and allowed Goold to take the remainder of the day off" [HCRC Response, p5].

150. Had Manager Yafuso simply given Plaintiff the day off, neither Yafuso nor Bucu would have directed Mr. Goold to surrender his HECO ID badge.

151. Plaintiff reported that he experienced intense anxiety, including a racing heartbeat, shortness of breath, shaking, disorientation and nausea. Plaintiff was not prepared emotionally or

mentally for the abrupt termination. Defendant HECO led him to believe, since about February 20, 2019, that he was officially selected for the position.

152. Plaintiff had informed everyone close to him. Mr. Goold was now humiliated, embarrassed and stigmatized like a criminal — a victim of Defendant HECO’s irrational and unscientific war on Americans who use medical cannabis.

153. Plaintiff reported that he collapsed physically and emotionally once outside the building. Mr. Goold was now isolated, frustrated and alienated — suicidal. Apart from his wife, Mr. Goold’s only human connection in this foreign ‘Ohana were coworkers — his hanai family.

154. Plaintiff cried as he wondered what he would tell his wife. Due to Defendant HECO’s interest and encouragement, she left her “dream job” to relocate with her husband. Her husband had just been fired.

155. Plaintiff cried as he wondered how he would explain the termination to extended family and acquaintances. Prestigious HECO fired, terminated or discharged him due to illegal “drug abuse.” Bucu told Mr. Goold he could no longer work for the Company.

156. From Plaintiff’s perspective, Defendant HECO stigmatized him as a criminal — like a rapist, methhead or addict — on this tiny island. Mr. Goold believed he would never work professionally on O’ahu again. Mr. Goold believed his only option was to end his life.

157. HECO IT department customarily honored departing internal employees, contract employees or consultants by taking the individual to lunch. Defendant HECO discriminated against Mr. Goold treating a legal medical patient like an illegal drug abuser. Defendant HECO intentionally inflicted emotional distress on Mr. Goold by denying him a professional separation and honoring him with the traditional and respectful gesture of appreciation.

158. Defendants HECO, Li and Tran refused to speak with Plaintiff and clarify HECO policy. Plaintiff had only the HEI Code, which did not prohibit medical cannabis. Although Mr. Goold asked Buco for policy in writing, Defendant HECO denied Plaintiff's request.

159. Defendant HECO did not make available SAP to Plaintiff until April 2021. The confusion caused Mr. Goold frustration and led Plaintiff to respond out-of-character.

160. Not only had Plaintiff suffered discrimination being treated as a recreational drug abuser, rather than medical cannabis patient, Defendants discriminated against Mr. Goold by withholding SAP — even after Plaintiff requested written policy. This discrimination caused Mr. Goold to respond out-of-character.

161. SAP states that “Violations of this Substance Abuse Policy **may result** in disciplinary action up to and including termination” [SAP, 8.0 Discipline, p6]. (Emphasis mine)

162. Defendants HECO, Li and Tran were not required to terminate Plaintiff, which created a discriminatory and hostile work environment.

163. Plaintiff reported that a friend, Korean woman, suffered breast cancer during this period. Some cancer patients use medical cannabis. Upon information and belief, Plaintiff claims that female management at HECO would not terminate another female — particularly one suffering cancer. HEI Code allows for waivers of policy [p24]. HEI Code demands fair dealing [p21].

164. Defendant HECO and the female executives were not fair, did not offer a waiver, and cruelly discriminated by discharging Plaintiff — non-Asian male — from employment. They stripped Mr. Goold of income to support his family, as well as needed healthcare insurance.

165. Defendant HECO and the female executives had a choice. They intentionally punished Plaintiff, who had not been make aware of policy due to their professional failure, and discriminated against the disabled, non-Asian male employee.

166. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount to be proven at trial.

V. POST-TERMINATION HISTORY.

167. Plaintiff realleges and incorporates by reference the allegations contained above as through fully set forth herein.

A. Plaintiff's Action.

168. Plaintiff reported that the abrupt and unexpected termination from service left him despondent and demoralized. Defendant HECO led Plaintiff to believe that he was officially selected for the position. Mr. Goold reported being in heaven. Five days later, kicked out of work at Hawaiian Electric, Mr. Goold was in hell. Many people react violently. Mr. Goold did not. Some people might take their own life. Mr. Goold contemplated such action.

169. Plaintiff reported he could not sleep. He was agitated, distressed, enraged. He felt hopeless and forlorn. Plaintiff's wife cried, which made it worse. Defendant HECO had stigmatized him: *lost job for drug abuse*. Humiliated, embarrassed and horrible shame! Wife left "dream job" to relocate. Signed long-term lease. Mr. Goold now instructed his wife to leave him. Told his wife that he was a worthless loser.

170. As an addiction specialist and counselor, Plaintiff is trained in mental health intervention. One tool used by professionals is to encourage struggling individuals to write a

journal. Mr. Goold began writing — sometimes privately, sometimes to others. Mr. Goold called out in desperation seeking help.

171. On February 26, 2019, Plaintiff emailed an appeal to Defendant Bucu, who he believed was HECO HR director. Plaintiff was highly agitated and confused, as Defendant HECO had made available only HEI Code. Excerpts illustrate the frustrated, but professional tone of Mr. Goold's communication:

(a) First, I respectfully request my email records (c-sgoold) and computer files (pwc-sgoold) be retained. I beg this unjust termination be corrected. HECO failed 'imi pono. This is not a righteous act. We are friends. You are my 'Ohana. Please strive to be righteous!

(b) Yesterday, my friend, HR Rep Shana Bucu, told me HECO was terminating me because I am unsafe ... that I pose a safety risk to the company. This is a false allegation. It's a slander. It is an irrational discrimination. Scott Goold is not an unsafe employee and he certainly isn't a safety risk because of medical cannabis use.

(c) Scott Goold has NEVER been impaired or intoxicated while working at HECO. Scott Goold has NEVER brought his legal medication onto the properties of HECO. Scott Goold has NEVER been unsafe while working for HECO. Why then was Scott Goold fired? This is not righteous. This is not 'imi pono.

(d) HECO required Mr. Goold to undergo a background security check and drug screen. Prior to the drug test, Mr. Goold informed HR Rep Elizabeth Deer he was an active and legal participant in the state's DOH Medical Cannabis program, as he expected to test positive for cannabis/THC. Ms. Deer did not warn Mr. Goold there might be consequences.

(e) HEI's Code of Conduct sets the standard, Appendix A, 2.d. Mr. Goold has NEVER been in possession of or used an "unprescribed" or "illegal" drug while working for HECO. Mr. Goold has NEVER reported to work under the influence of alcohol or any drug.

(f) Code of Conduct, 7: Equal Employment Opportunity and Affirmative Action protects individuals from unreasonable discrimination, while the company pledges not to refuse to hire or promote a disabled individual. Mr. Goold seeks only "reasonable accommodation."

(g) Reasonable accommodation in this case is a Waiver of the Code. Mr. Goold does not climb utility poles; he does not drive a HECO vehicle; he does not operate heavy construction machinery; he does not work with high voltage equipment or dangerous chemicals. Scott Goold sits at a desk 8-10 hours per day studying analysis on dual computer monitors while typing on a

keyboard. Residual Delta9-THC in his body does not present a risk to company employees, the general public or Mr. Goold.

(h) Along with striving for righteousness, HECO managers and staff are required to deal fairly with each other, customers, competitors and the public. It is unfair to punish an employee for using a legal medication when the medication use does not present a risk to the company.

(i) We need 'imi pono. We must strive to be righteous. This is an outdated and unscientific policy. Mr. Goold does not present a safety risk to HECO, MECO or HELCO. Mr. Goold has never been intoxicated at work. Mr. Goold has never been impaired at work. Mr. Goold is discreet about his medical cannabis use and administers his legal medication before bed to reduce pain and allow him to sleep restfully. Keep in mind a person who does not sleep soundly may be impaired — similar to intoxication from alcohol or other drugs. Sleep deprivation is a cause for concern — not residual medical cannabis.

(j) Please rescind this tragic decision. HECO has spent tens of thousands of dollars to hire, train and prepare Mr. Goold for mission critical duties. These tasks must be completed now. Mr. Goold works with many talented professionals and is humbled by their expertise. Yet he adds value to his team. They are currently in "March Madness" to complete security upgrades to protect the company, customers and the general public. Removing Mr. Goold at this time creates a safety risk for HEI and Hawai'i.

(h) Please provide Mr. Goold with a Waiver to the Code and get him back to work. Please take the pono action. Thank you and mahalo!

172. On February 27, 2019, Plaintiff and Defendant Buco spoke for approximately one hour by telephone. The session was polite, civil and professional. Mr. Goold reported on the conversation in a follow-up email to Manager Yafuso and Buco:

“I received a call from Shana today and wanted to memorialize our conversation. I really appreciate Shana’s time this morning. We spoke for over an hour. As always, she was kind, professional and gracious. Thank you, Shana!”

173. Excerpts of the follow-up email show Plaintiff raised numerous concerns, and the comments illustrate Mr. Goold’s professional and courteous tone:

(a) The events of February 25th, the day of the untimely termination, was confusing and difficult for all of us. As I mentioned, I was shocked and blindsided. I had no knowledge my pain medication created a problem for HECO.

(b) As a contractor, I did not have full access to HR or personnel pages. HECO provided me simply with Code of Conduct (Code). The Code is clear. Employees are prohibited from using “illegal” or “unprescribed” drugs.

(c) Prior to the drug screen, I notified HR about my profile. This is how I acted in previous situations with employers. I informed Ms. Deer [sic] of my legal DOH permit and that I was active on cannabis. She did not raise an objection or warn me medical cannabis was prohibited.

(d) Aware of the trending acceptance of medical cannabis, and reading HECO code, I had no indication my medication would be problematic. I asked Shana why HECO didn’t specifically state in the Code medical cannabis wasn’t permitted. The lack of clarity causes confusion.

(e) Second, I asked Shana about any written HECO policy regarding medical cannabis. She told me honestly, to the best of her knowledge, as of Feb. 27th, she never remembers seeing anything in HECO documentation about medical cannabis. She explained the policy was transmitted verbally through legal and HR ranks. This creates a legal dilemma as well. Medical cannabis is a serious issue. Serious policy decisions should be in writing.

(f) Absent clear policy, HECO created confusion about their standards. As a trained professional in pain medication, I had no reason to believe my behavior might be in violation of company policy. I am being penalized for doing something I believed was legal and permitted. HECO must accept responsibly to fully and completely inform employees of their standards. Failure to do so may be considered “arbitrary and capricious” policy, although I’m not an attorney.

(g) HECO does not drug test contractors and HECO relies on many contractors. If cannabis or other drugs are such a concern, why aren’t contractors held to similar standards? This does not make logical sense. I’ve been on this medication since I started with HECO. Why was my position as a contractor terminated as well? HECO didn’t believe I posed a threat on Day 1; why do they on Day 181?

(h) Near the end of our conversation, I asked Shana why she didn’t immediately remove me from duty when I notified Ms. Deer [sic] of my active cannabis use. HECO allegedly believes medical cannabis users pose a threat, a risk to safety and security, yet I was allowed to continue working for about two more weeks. Shana said she wasn’t informed and didn’t want to be held accountable for something of which she had not been informed. EXACTLY!!!

(i) Righteous people don’t punish each other when the person wasn’t properly and reasonably informed. I had taken measured steps to be legal. Patients pay money out-of-pocket to be in the program. There are many regulatory hurdles. I made an active, informed and conscientious decision to ensure my behavior was legal.

(j) I asked about applying for the position, Database Administrator, 3342, posted on 02/25/2019. Shana told me I had already applied, and since it's the same position, I cannot apply again. She said I'm still listed in the applicant pool, but disqualified due to the drug screen results.

(k) Shana also said HECO policy does not allow me to be retested for the drug screen. Essentially, HECO will not allow me to be considered for employment going forward. This seems to be a form of Double Jeopardy. HECO considers medical cannabis use to be illegal. People who do illegal activities are criminals. Thus, by rules of transitive logic, HECO considers Scott Goold to be a criminal. For example:

- $A=B$
- $B=C$
- Therefore, $A = C$

I'm not a criminal. A court of law generally does not punish someone for a crime if the person reasonably believed they were engaged in legal behavior. Why then does HECO punish me?

(l) Concluding by phone with Shana today, I asked for a meeting. I adore the Hawaiian tradition of ho'oponopono. What a sophisticated means of dispute resolution! There is no wise reason to break up this team. This minor issue can be easily resolved if we have the will to meet and talk with each other.

(m) This is an amazing company staffed by tremendously talented and dedicated people. Please allow our greatness to shine at this challenging time. This situation offers us an opportunity to reveal our true character! Aloha and mahalo!

174. Defendant HECO refused Plaintiff's relentless attempts to engage in ho'oponopono or dispute resolution to end this nightmare for Mr. Goold and his family.

175. Unable to sleep, struggling to eat, and flooded with thoughts about suicide, Plaintiff met with his doctor. The professional advised Mr. Goold to continue journaling and writing officials. The professional believed, as did Plaintiff, that striving to be returned to duty would reduce depression, anxiety, anger and the constant thoughts about ending his life. Mr.

Goold's goal was to write at least one letter each day. The intervention worked. Mr. Goold did not commit suicide or lash out violently.

176. Defendant HECO did not respond. HECO forced Plaintiff to hire an attorney, which cost Mr. Goold \$5,000.00, while he was unemployed. HECO forced Plaintiff and the Company into an adversarial relationship. Mr. Goold did not want to take this step.

177. On about March 25, 2019, Plaintiff's attorney, Joseph T. Rosenbaum, forwarded a demand letter to Constance H. Lau and Alan M. Oshima, "Re: HECO's Wrongful Denial of Employment and Termination of Disabled Employee Scott Goold."

B. Negotiation Attempt.

178. On about April 12, 2019, HECO attorneys Defendants Li and and Tran responded. Key provisions of Defendant HECO's response was that Plaintiff "be allowed not more than thirty (30) days to provide a negative drug test result from the execution of this agreement." HECO also demanded Plaintiff submit to a urine-based assessment.

179. Defendant HECO stipulated that the "above offer will expire unless accepted in writing and received by our office on or before **Monday, April 22, 2019 at 4:00 p.m. HST.**" (Emphasis in original)

COUNT IV
(Reckless Endangerment)

180. Plaintiff realleges and incorporates by reference the allegations contained above as through fully set forth herein.

181. Plaintiff had never been required to detox from the legal, prescribed medication. Mr. Goold had no idea how long the process might take. Defendant HECO's attorneys required Mr. Goold to detox "cold turkey."

182. Plaintiff reported to Defendant HECO that he ended use of medical cannabis about April 12, 2019, the day Plaintiff received HECO's response. Mr. Goold desperately needed to return to duty and was forced to sacrifice his health — possibly put his life in jeopardy.

183. Defendant HECO's requirement was not safe from a medical position. Long-term patients generally must taper off use from powerful medications. Denying a tapered withdrawal can lead to erratic behavior, medical emergencies, suicidal thoughts and even death.

184. The unsound demand by Defendant HECO's attorneys, who are not medical experts, recklessly endangered Mr. Goold's life.

185. Defendant HECO agreed to a short increase in the time allotment to detox: "as a reasonable accommodation, HECO offered Goold the opportunity to switch medications and pass a drug test after forty-five days" [HCRC Response, p16].

186. Plaintiff researched the detox process and consulted with a local medical expert. Defendant HECO demanded Plaintiff submit a urine sample. This test does not measure pharmacological active Delta THC, but non-intoxicating and non-impairing THC-COOH.

187. Although Plaintiff had ceased use of medical cannabis about April 12, 2019, Mr. Goold learned that ridding his body of THC-COOH could take months, possibly as long as 180 days. Timeline was uncertain. Age of patient, metabolic rate, gender, activity level, body fat composition and general health conditions factor into the estimate. Simply put, medical experts could not provide Mr. Goold with an accurate timeline.

188. Rather than the use the crude and unscientific urine-based assessment demanded by Defendant HECO, Plaintiff requested a DOT-sanctioned blood assessment. HECO falls under DOT regulation. Plaintiff's request was reasonable.

189. As Plaintiff discontinued use of medical cannabis around April 12, 2019, his blood sample would indicate negative on a DOT-sanctioned test. Defendant HECO denied the requested reasonable accommodation to modify testing methodology.

190. Plaintiff's attorney therefore requested a waiver until the THC-COOH could "be completely flushed," as documented in the email thread between Defendant Tran and Plaintiff's attorney, Joe Rosenbaum:

April 29, 2019

Mr. Goold spoke with an expert in the field and there is no guarantee that the marijuana metabolites will leave his system in a certain time period short of possibly 180 days. Therefore, we wanted to see if the company is interested in providing Mr. Goold a waiver for the medical marijuana in his system until it can be completely flushed in order to resolve the case and get him back to work. I have information that HELCO has provided an employee with a medical marijuana use waiver in the past.

Let me know.

Thanks,

Joe

May 3, 2019

Hi Joe:

Thank you for your email and the proposed counteroffer. This is to inform you that we reject your counteroffer and, as you know, our offer is off the table as the deadline to respond to that offer has passed.

As mentioned in my previous phone conversation with you, the Company is discovering on a regular basis Mr. Goold's continued misrepresentation of, among others, our company's relationship with him, which was never an employer-employee relationship. Mr. Goold was never an employee of the Company and was not terminated from our Company. The Company has concerns with such misrepresentations.

Thank you,
Thao

THAO T. TRAN
HECO Senior Associate General Counsel

191. Defendant HECO discriminated against Mr. Goold by rejecting Plaintiff's counteroffer and withdrawing their offer, claiming *time's up*.

192. Plaintiff and his attorney were shocked by Defendant HECO's response. Courts, particularly the U.S. Court of Appeals for the Ninth Circuit, have consistently required employers to engage in an "interactive process" with disabled employees to explore possible accommodations:

"The Court recognized that in the employment context, a covered employer generally must provide a reasonable accommodation for an otherwise qualified employee or applicant with a disability, if such an accommodation is requested.

In order to identify an appropriate reasonable accommodation, the employer generally must "initiate an informal, interactive process with the individual with a disability in need of the accommodation." (29 C.F.R. § 1630.2)

The interactive process requires communication and good-faith exploration of possible accommodations between employers and individual employees, and neither side can delay or obstruct the process." Tauscher v. Phx. Bd. of Realtors, Inc., No. CV-15-00125-PHX-SPL (D. Ariz. Sep. 29, 2017)

193. Plaintiff argues Defendant HECO failed to provide reasonable accommodation by (1) not allowing Plaintiff to submit to a DOT-sanctioned blood assessment rather than urine screen, or (2) not allowing Plaintiff to taper withdrawal from his medication under a waiver. For six months, Mr. Goold demonstrated proficiency and safe behavior while under medical treatment, or (3) not offering Plaintiff additional time to explore safe medical options.

194. Defendant HECO deceptively and falsely summarized Plaintiff's position in their response to HCRC:

"However, Goold refused HECO's offer and instead requested that HECO waive its policies that would prohibit his potential continued marijuana use and future positive test results" [HCRC Response, p19].

"Notwithstanding the Goold's requested accommodation would require HECO to ignore potential future marijuana use by Goold, which would be contrary to HECO's obligation to ensure a drug-free workplace under DFWA" [*Id.*]

195. First paragraph is a clear misrepresentation of Plaintiff's action. Plaintiff had stopped using medical cannabis "cold turkey," which HECO required. A DOT-sanctioned blood screen would have verified Mr. Goold's claim.

196. Denied the accurate drug screen, Plaintiff did not request to continue medical cannabis; only sufficient time to allow THC-COOH to completely flush from his system.

197. Second paragraph misrepresents Plaintiff's request. Mr. Goold did not seek to use medical cannabis in the future. He sought only six months to safely end his long-term use, and was willing to submit to a DOT-sanctioned blood assessment to verify compliance.

198. Second paragraph misrepresents the federal drug-free workplace act ("DFWA"), attached as "**Exhibit 3.**" DFWA **does not require** a regulated company, such as HECO, to drug test employees using a urine screen; **does not require** a regulated company, such as HECO, to prohibit medical cannabis for non-safety-sensitive employees or terminate those who do outside the workplace.

199. DOT regulations prohibit the use of medical cannabis by safety-sensitive employees. At all relevant times Plaintiff was a non-safety-sensitive IT employee.

200. To apparently justify their withdrawal from negotiations, Defendant HECO stated falsely:

“Because HECO undisputedly offered Goold a reasonable accommodation and Goold undisputedly refused the offered accommodation (and then proposed an accommodation that would be no accommodation at all, as it would allow Goold to continue use [sic] marijuana in violation of HECO’s policies, state law, and DFWA), Goold’s failure to accommodate claim is without merit” [*Id.*]

201. Mr. Goold did not refuse Defendant HECO’s offer. Plaintiff had ceased all use of medical cannabis, as directed.

202. *Arguendo*, had Defendant HECO permitted Plaintiff to continue using medical cannabis, Mr. Goold would not violate state law or DFWA. Mr. Goold was a non-safety-sensitive employee. Defendant HECO stated falsely and deceptively to the HCRC.

203. Defendant HECO’s claim “Goold rejected HECO’s reasonable accommodation” [*Id.* at 17] is factually untrue and deceptive. Defendant HECO cannot prove otherwise.

204. As a direct and proximate result of Defendants’ actions, Plaintiff has been damaged in an amount to be proven at trial.

COUNT V
(Retaliation)

205. Plaintiff realleges and incorporates by reference the allegations contained above as through fully set forth herein.

206. Defendant HECO’s withdrawal from negotiations was unprofessional, and violated requirements of good faith and the interactive process. Defendant Tran’s communication to Plaintiff’s attorney on May 3, 2019, suggests retaliation by Defendant HECO:

“As mentioned in my previous phone conversation with you, the Company is discovering on a regular basis Mr. Goold’s continued misrepresentation of, among others, our company’s relationship with him, which was never an employer-employee relationship. Mr. Goold was never an employee of the Company and was not terminated from our Company. The Company has concerns with such misrepresentations.”

207. As shown herein, which Defendants cannot dispute, Defendant HECO directed Plaintiff to end his relationship with EdgeRock end-of-day, February 22, 2019, and directed Mr. Goold to report to duty, February 25, 2019, in official capacity as a HECO IT employee.

208. Mr. Goold **was an employee** of the Company beginning about 7:15am, until Defendant Bucu **terminated Mr. Goold** shortly before noon. An employer-employee relationship existed, at minimum, for about four hours

209. Defendant HECO should have concerns about their misrepresentation of facts about Plaintiff’s relationship with the Company.

210. More importantly, there was no urgency or requirement to end negotiations and the interactive process on May 3, 2019. Tran’s statement exposed the Company’s hostile and retaliatory behavior toward Mr. Goold.

211. Plaintiff filed a complaint with HCRC on about March 2019, claiming HECO had terminated his employment, and denied his request to re-apply. EEOC, which Plaintiff contacted previously, recommended Mr. Goold submit a complaint to HCRC. Defendant Tran’s behavior in May 2019 constitutes retaliation.

212. Due to federal restrictions, EEOC does not investigate medical cannabis disputes. HCRC unpaid commissioner chair, Liann Ebesugawa, was employed and compensation by HEI.

Based on information and belief, Plaintiff claims Ebesugawa informed both HEI and HECO of Mr. Goold allegations.

213. Plaintiff endured massive physical pain at the time. Not only suffering the established disability, Plaintiff was injured by a motorist about March 28, 2019.

214. The accident left Plaintiff with a broken pelvis, dislocated left shoulder and road rash along the left side of his body. However, to comply with Defendant HECO's demands, Plaintiff immediately ended use of medical cannabis on about April 12, 2019. Mr. Goold took no pain medication to avoid interfering with his intense regime of starvation dieting to remove body fat — and THC-COOH metabolites, as Defendant HECO demanded.

215. Plaintiff's attorney informed Mr. Goold that HECO was not interested in further negotiation.

216. The excruciating pain prevented Plaintiff from obtaining quality sleep and rest. Emotionally distressed, sick from the rapid withdrawal of medication and lack of food, Plaintiff responded to his attorney on May 6, 2019, three days after Defendant Tran ended negotiations:

“Aloha Joe ... Made peace this weekend that my job is gone ... You asked previously if I wanted my job or to be an activist. I wanted the job. That is gone — thus, I'm left being an activist ... Cannabis helps me sleep. No cannabis; no sleep. And no sleep means I'm working all the time.

I've connected now to activists in two states as well as here. I am the perfect case example ... And I can use this to change policy here and across the nation.

I can create a national coalition. I know the key players. I've contacted a major music group today. They will join this movement. We can reach young people ... They are searching for a cause. Well, I've got one. HECO lit a fuse the nation may not be able to extinguish.”

217. On about May 9, 2019, Plaintiff emailed media and called for Connie Lau's resignation from Consuelo Foundation. As Defendant HECO denied SAP to Plaintiff, Mr. Goold believed that CEO Lau's HEI Code led to termination as a contract employee and loss of the internal position. Defendant HECO created confusion and triggered Mr. Goold's reaction.

218. On about May 10, 2019, Defendant Tran emailed Plaintiff's attorney:

Hi Joe:

I hope this email finds you well. I've learned that your client has been reaching out to some of our employees. I would appreciate that, should your client have inquiries relating to this matter, that he works with you to discuss them with me, as opposed to going to our employees.

Thank you for your understanding.

~Thao

219. Later on May 10, 2019, Plaintiff's attorney forwarded Tran's email to Mr. Goold. Defendant Tran had walked out of negotiations, and attorney Rosenbaum was not sympathetic to the request:

Scott- FYI- See below. I have no problem with you talking to their employees. It's still a free country.

220. After receiving the forwarded email, Plaintiff gave notice to Defendant Tran of his intended political action to change medical cannabis policy for more than 25,000+ patients and Veterans in Hawai'i. Mr. Goold titled the email, "Want to Play a Game":⁵

Aloha Ms. Tran,

Hope this evening finds you well. Mahina is majestic in the night sky!

Believe it was May 3rd when you notified my kind and gracious attorney you dropped negotiations. You ended ho'oponopono, not us. Thus, he's not working on anything for me now. Please do not bother him. You are free to

⁵ The number of legally registered medical cannabis patients in the Hawai'i MCRP at the time. DOH reports some 35,000+ medical patients at this time.

Speak directly with me at any time — as I requested of Ms. Shana Buco on February 27, 2019.

You chose not to be civil and professional with me. You drew First Blood. I'm just a simple peasant who loved his job, manager and team. You could have negotiated with me or us. You thought you could silence me. I'm just warming up. I have an army of over 25,000+ patients on medical cannabis in the 808 that you ban from working at HEI. Shame on you! You don't even know the difference between THC-COOH and Delta 9 THC. Not wise to bring a coco puff to to a gun fight.

We are pau with this discrimination. It just takes one to light the fuse. One day you'll wish you would have chatted with me. Nation's on our side! 90% of Americans support legal medical cannabis. Dinosaurs were unable to adapt and evolve. See any around today?

221. Defendant HECO claimed the title derives from a “well-known phrase used by the murderous antagonist of the horror movie franchise “Saw” [*Id.* at 7].

222. Plaintiff is not a fan of murderous horror movies, and does not recall ever seeing or hearing about “Saw.” Mr. Goold is an IT professional and remembers the phrase from the movie, “WarGames,” where a secret national defense computer begins a countdown to global thermonuclear war due to inadvertent hacks by a protagonist teenager. The teenager saves the world. Mr. Goold dedicated efforts to saving 25,000+ medical patients and Veterans from losing employment due to irrational and unscientific corporate medical policy.

223. Defendant HECO retaliated against Plaintiff, reported falsely about Mr. Goold, made inaccurate and unsubstantiated disparaging remarks about Mr. Goold, and misrepresented Mr. Goold actions and comments to other parties and officials.

224. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount to be proven at trial.

COUNT VI
(Harassment and Defamation of Character)

225. Plaintiff realleges and incorporates by reference the allegations contained above as through fully set forth herein.

226. As Defendant HECO refused Plaintiff's requests for negotiation or settlement, Mr. Goold's legal team filed a tort claim on about February 25, 2021.

227. On about April 6, 2021, Defendant HECO served Mr. Goold with a Rule 11 motion for sanctions ("Sanctions Motion") alleging Plaintiff engaged in harassment and other violations, attached as "**Exhibit 4.**"

228. Plaintiff's legal team withdrew representation of Mr. Goold fearing penalty.

229. On about May 21, 2019, Plaintiff filed a First Amended Complaint ("Complaint") in his name. Mr. Goold requested Defendant HECO file their Sanctions Motion.

230. Defendant HECO refused ... and refused ... and refused to file the Sanctions Motion. Plaintiff claims the allegations are deceptive and defamatory. HECO used a common defensive strategy to blame the victim, and deflect focus from the actual adverse incident.

231. In January 2022, Defendant HECO selected Shelee Kimura as CEO and President of Hawaiian Electric Company, Inc. On January 20, 2022, Defendant HECO filed a motion to dismiss Plaintiff's Complaint. Defendants HECO and Kimura continued their refusal to file the Sanctions Motion.

232. Plaintiff claims the open Sanctions Motion creates a Specter of Rule 11 over the instance action and obstructs his ability to secure legal representation. Mr. Goold claims Defendants HECO and Kimura weaponized the Sanctions Motion to harass his legal efforts.

233. By denying Plaintiff an opportunity to respond to the allegations, Defendants HECO and Kimura slandered and defamed Mr. Goold's professional reputation and character. Defendants even reported to the circuit court that Mr. Goold had caused real harm and real stress and real injury to ordinary folks. However, they refused to file the Sanctions Motion.

234. Defendants HECO and Kimura included unlawful evidence pursuant to Rule 11 precedent, *Adduono v. World Hockey Ass'n*, 824 F.2d 617, 621 (8th Cir. 1987):

Rule 11 is "not a panacea intended to remedy all manner of attorney misconduct occurring before or during the trial of civil cases ... Thus, no matter how improper [Plaintiff's] alleged conduct may have been, Rule 11 is an inappropriate vehicle for reviewing and disciplining such conduct."

235. Plaintiff's behavior was neither uncivil nor illegal. Mr. Goold was "zealously advocating" for a return to duty and change in policy. Mr. Goold simply wanted to work.

236. In addition, a party claiming harassment has the duty to file a motion for sanctions as soon as practicable after discovery of Rule 11 violation. Defendants HECO and Kimura are some two years tardy. *Divane v. Kroll Elec. Co.*, 200 F.3d 1020, 1027 (7th Cir 1999); *XCO Int'l, Inc. v. Pacific Scientific Co.*, No. 01-C-6851, 2003 U.S. Dist. LEXIS 7286 (N.D. Ill. Apr. 29, 2003).

237. Based on information and belief, Plaintiff claims Defendants HECO and Kimura never intended to file the Sanctions Motion. Strategy was to "threaten and retreat." Plaintiff called their bluff. Mr. Goold said, "File your accusations with the court." Defendants HECO and Kimura refused ... and refused ... and still refuse.

238. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount to be proven at trial.

V. PRAYER FOR RELIEF.

WHEREFORE, Plaintiff respectfully requests the following relief:

A. That judgment be entered against Defendants, jointly and severally, for damages to career, professional reputation and emotional trauma, as follows:

1. HEI CEO & President Constance H. Lau (former). Written apology and \$1.00 [ONE US DOLLAR].

2. HECO Sr. Vice President, General Counsel, Chief Compliance & Administrative Officer & Corporate Secretary Susan Li (former). Written apology and \$1.00 [ONE US DOLLAR].

3. HECO Sr. Associate General Counsel Thao T. Tran. Written apology and \$1.00 [ONE US DOLLAR].

4. HECO HR representative Shana M. Buco. Written apology and \$1.00 [ONE US DOLLAR].

5. HECO HR representative Elizabeth Dear (former). Written apology and \$1.00 [ONE US DOLLAR].

6. HECO CEO & President Shelee Kimura. Repair and restore Plaintiff's reputation by publicly recognizing and honoring Mr. Goold with an 'imi pono award for advancing legal protections for disabled persons and Veterans, to include a \$1,000.00 [ONE THOUSAND US DOLLARS] gift card to Ala Moana Center.

7. Defendant HEI for damages in an amount to be determined at trial, which include but are not limited to compensatory, special, and general damages.

8. Defendant HECO for damages in an amount to be determined at trial, which include but are not limited to compensatory, special, and general damages.

B. That the Court award Plaintiff his reasonable attorneys' fees and costs;

C. That the Court award Plaintiff pre-judgment and post-judgment interest; and

D. For such further and other relief as this Court deems just and equitable.

E. Attached hereto as **Exhibit 1** is a true and correct copy of a Notice of Dismissal and Right to Sue letter from Mr. William D. Hoshijo, dated January 9, 2023.

F. Attached hereto as **Exhibit 2** is a true and correct copy of U.S. Department of Transportation, DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE, October 22, 2009.

G. Attached hereto as **Exhibit 3** is a true and correct copy of 41 USC 8102: Drug-free workplace requirements for Federal contractors.

H. Attached hereto as **Exhibit 4** is a true and correct copy of Defendant HECO's Notice of Service and Sanctions Motion, dated April 6, 2021.

DATED: Honolulu, Hawai'i, April 6, 2023.

/s/ Scott Goold
JEFFREY SCOTT GOOLD

PLAINTIFF PRO SE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

JEFFREY SCOTT GOOLD,

Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY, INC.;
HAWAIIAN ELECTRIC INDUSTRIES, INC.;
CONSTANCE H. LAU; SHELEE KIMURA;
SUSAN LI; THAO T. TRAN; SHANA M.
BUCO; ELIZABETH DEAR; JANE DOES 1-10;
JOHN DOES 1-10; DOE CORPORATIONS 1-10;
DOE PARTNERSHIPS 1-10; DOE ENTITIES
1-10; and DOE GOVERNMENTAL
ENTITIES 1-10,

Defendants.

CIVIL NO: _____
(Other Civil Action)

DEMAND FOR JURY TRIAL


DEMAND FOR JURY TRIAL

Plaintiff JEFFREY SCOTT GOOLD hereby demands a trial by jury on all issues so triable herein.

DATED: Honolulu, Hawai'i, April 6, 2023.

/s/ Scott Goold
JEFFREY SCOTT GOOLD

PLAINTIFF PRO SE

STATE OF HAWAII CIRCUIT COURT OF THE FIRST <input checked="" type="checkbox"/> CIRCUIT		SUMMONS TO ANSWER CIVIL COMPLAINT	
CASE NUMBER			
PLAINTIFF'S NAME & ADDRESS, TEL. NO. JEFFREY SCOTT GOOLD [REDACTED] Honolulu, Hawai'i 96815 [REDACTED] scott@infoimagination.org			
PLAINTIFF JEFFREY SCOTT GOOLD		VS.	DEFENDANT(S) HAWAIIAN ELECTRIC INDUSTRIES, INC., HAWAIIAN ELECTRIC COMPANY, INC., CONSTANCE HEE LAU, SHELEE KIMURA, SUSAN LI, THAO T. TRAN, SHANA M. BUCO, ELIZABETH DEAR, JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; DOE ENTITIES 1-10; AND DOE GOVERNMENTAL ENTITIES 1-10
TO THE ABOVE-NAMED DEFENDANT(S) You are hereby summoned and required to file with the court and serve upon JEFFREY SCOTT GOOLD [REDACTED] Honolulu, Hawai'i 96815			
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.			
DATE ISSUED	CLERK	CIRCUIT COURT CLERK	
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			
 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; MAUI- Phone No. 808-244-2929, FAX 808-244-2777; HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411; KAUAI- Phone No. 808-482-2365, TTY 808-482-2533, FAX 808-482-2509, at least ten (10) working days prior to your hearing or appointment date.			