



# HAWAII CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TTY: (808) 586-8692

January 9, 2023

Jeffrey S. Goold

[REDACTED]  
Honolulu HI 96815

Dear Jeffrey Goold:

According to our records you failed to claim the enclosed letter that was mailed to you on December 6, 2022, Certified Mail Return Receipt Requested. Therefore, I am sending you the enclosed letter by regular mail.

You will note that the enclosed letter dated December 6, 2022, notifies you of the dismissal of your complaint and issues you the right to file a private lawsuit in State Circuit Court within ninety (90) days after the receipt of the notice. In addition to the December 6, 2022, certified mailing of that notice of dismissal and right to sue (now being re-sent with this transmittal), a copy of that notice was also sent as an attachment to a letter dated December 19, 2022, which was sent to you via regular mail. Your ninety day period to file a lawsuit under state law starts to run on the date of actual receipt of the notice.

Sincerely,

William D. Hoshijo  
Executive Director

WDH:cc

c: Hawaiian Electric Industries, Inc. & Hawaiian Electric Company, Inc.,  
c/o Joseph A. Ernst, Esq.

EXHIBIT 1



# HAWAII CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TTY: (808) 586-8692

December 6, 2022

Jeffrey S. Goold

[REDACTED]  
Honolulu HI 96815

**Re: Notice of Dismissal and Right to Sue in  
Jeffrey S. Goold vs. Hawaiian Electric Industries, Inc.; and Hawaiian Electric  
Company, Inc.  
FEPA No. 20793 (Amended); EEOC No. 37B-2019-00269**

Dear Jeffrey Goold:

The investigator assigned to handle subject discrimination complaint which you filed with the Hawaii Civil Rights Commission (HCRC) has recommended that the case be closed on the basis of complaint withdrawn due to complainant elected court action.

Please be advised that this recommendation has been accepted, your case has been closed effective December 6, 2022 and your complaint is being dismissed pursuant to Hawaii Administrative Rules (H.A.R.), Section 12-46-8. You have the right to file a private lawsuit against Respondent in the State Circuit Court within ninety (90) days after receipt of this notice pursuant to Hawaii Revised Statutes, Section 368-12, H.A.R. Section 12-46-20.

Sincerely,

A handwritten signature in black ink, appearing to read "W. D. Hoshijo".

William D. Hoshijo  
Executive Director

WDH:ky

**Certified Mail-RETURN RECEIPT REQUESTED**

c: Hawaiian Electric Industries, Inc. & Hawaiian Electric Company, Inc.,  
c/o Joseph A. Ernst, Esq.

## DOT OFFICE OF DRUG AND ALCOHOL POLICY AND COMPLIANCE NOTICE



Recently, the Department of Justice (DOJ) issued guidelines for Federal prosecutors in states that have enacted laws authorizing the use of “medical marijuana.”

<http://www.justice.gov/opa/documents/medical-marijuana.pdf>.

We have had several inquiries about whether the DOJ advice to Federal prosecutors regarding pursuing criminal cases will have an impact upon the Department of Transportation’s longstanding regulation about the use of marijuana by safety-sensitive transportation employees – pilots, school bus drivers, truck drivers, train engineers, subway operators, aircraft maintenance personnel, transit fire-armed security personnel, ship captains, and pipeline emergency response personnel, among others.

We want to make it perfectly clear that the DOJ guidelines will have no bearing on the Department of Transportation’s regulated drug testing program. We will not change our regulated drug testing program based upon these guidelines to Federal prosecutors.

The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize “medical marijuana” under a state law to be a valid medical explanation for a transportation employee’s positive drug test result.

That section states:

**§ 40.151 What are MROs prohibited from doing as part of the verification process?**

As an MRO, you are prohibited from doing the following as part of the verification process:

(e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the “medical marijuana” laws that some states have adopted.)

Therefore, Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use “medical marijuana.” Please note that marijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation’s drug testing regulations to use marijuana.

We want to assure the traveling public that our transportation system is the safest it can possibly be.

Jim L. Swart  
Director  
Office of the Secretary of Transportation  
Office of Drug and Alcohol  
Policy and Compliance  
Department of Transportation  
October 22, 2009

**EXHIBIT 2**

## **41 USC 8102: Drug-free workplace requirements for Federal contractors**

Text contains those laws in effect on April 4, 2023

### **From Title 41-PUBLIC CONTRACTS**

Subtitle IV-Miscellaneous

CHAPTER 81-DRUG-FREE WORKPLACE

#### **Jump To:**

[Source Credit](#)

[Miscellaneous](#)

[Amendments](#)

[Effective Date](#)

## **§8102. Drug-free workplace requirements for Federal contractors**

### **(a) IN GENERAL.-**

(1) **PERSONS OTHER THAN INDIVIDUALS.-**A person other than an individual shall not be considered a responsible source (as defined in section 113 of this title) for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 134 of this title) by a Federal agency, other than a contract for the procurement of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title), unless the person agrees to provide a drug-free workplace by-

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about-

- (i) the dangers of drug abuse in the workplace;
- (ii) the person's policy of maintaining a drug-free workplace;
- (iii) available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on the contract the employee will-

- (i) abide by the terms of the statement; and
- (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) **INDIVIDUALS.-**A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

### **(b) SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.-**

(1) **GROUND FOR SUSPENSION, TERMINATION, OR DEBARMENT.-**Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that-

(A) the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(B) the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.-A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual.

(3) EFFECT OF DEBARMENT.-A contractor or individual debarred by a final decision under this subsection is ineligible for award of a contract by a Federal agency, and for participation in a future procurement by a Federal agency, for a period specified in the decision, not to exceed 5 years.

( Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3827 ; Pub. L. 115-232, div. A, title VIII, §836(b)(20), Aug. 13, 2018, 132 Stat. 1864 .)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8102	41:701.	Pub. L. 100-690, title V, §5152, Nov. 18, 1988, 102 Stat. 4304 ; Pub. L. 103-355, title IV, §4104(d), title VIII, §8301(f), Oct. 13, 1994, 108 Stat. 3342 , 3397; Pub. L. 104-106, div. D, title XLIII, §§4301(a)(3), 4321(i)(13), Feb. 10, 1996, 110 Stat. 656 , 677.

#### EDITORIAL NOTES

#### AMENDMENTS

**2018-Subsec. (a)(1).** Pub. L. 115-232 substituted "commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title)" for "commercial items (as defined in section 103 of this title)" in introductory provisions.

#### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

April 6, 2021

Jason M. Tani  
Bryan M. Harada  
Rush Moore LLP  
Pacific Guardian Center, Mauka Tower  
737 Bishop Street, Suite 2400  
Honolulu, HI 96813

Via Email

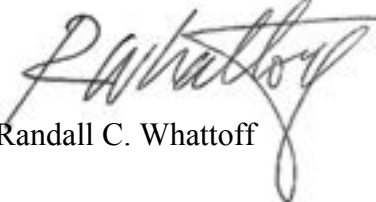
Re: *Jeffrey Scott Goold v. Hawaiian Electric Company, Inc., et al.*  
Civil No. 1CCV-21-0000216 DEO

Dear Mr. Tani and Mr. Harada:

On behalf of my clients Hawaiian Electric Company, Inc., Hawaiian Electric Industries, Inc. and Shana M. Bucu (collectively "Hawaiian Electric"), I am hereby serving a copy of Hawaiian Electric's Motion for Sanctions on your client, Jeffrey Scott Goold, pursuant to Rule 11(c) of the Hawai'i Rules of Civil Procedure. If Mr. Goold does not withdraw his Complaint by 21 days from the date of this letter, Hawaiian Electric will have no choice but to file the Motion. We previously discussed the basis for this motion at length on or about March 8, 2021, but please do not hesitate to contact me if you would like to discuss further.

Thank you for your prompt attention to this matter.

Sincerely,

COX FRICKE LLP  
A LIMITED LIABILITY LAW PARTNERSHIP

Randall C. Whattoff

RCW/jmd  
Enclosure**EXHIBIT 4**

COX FRICKE LLP  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

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Attorney for Defendants  
HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAIIAN ELECTRIC INDUSTRIES, INC.,  
and SHANA M. BUCO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JEFFREY SCOTT GOOLD,  
  
Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY,  
INC.; HAWAIIAN ELECTRIC  
INDUSTRIES, INC.; ELIZABETH DEER;  
SHANA M. BUCO; 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,

Defendants.

CASE NO. 1CCV-21-0000216 DEO  
(Other Civil Action)

DEFENDANTS HAWAIIAN  
ELECTRIC COMPANY, INC.,  
HAWAIIAN ELECTRIC INDUSTRIES,  
INC., AND SHANA M. BUCO'S  
MOTION FOR SANCTIONS  
AGAINST PLAINTIFF RELATED TO  
THE COMPLAINT FILED  
FEBRUARY 25, 2021;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF  
ELIZABETH DEAR; DECLARATION  
OF SHANA BUCO; DECLARATION  
OF THAO TRAN; EXHIBITS 1-13;  
NOTICE OF HEARING OF MOTION  
AND CERTIFICATE OF SERVICE

DATE: \_\_\_\_\_

TIME: \_\_\_\_\_

JUDGE: Honorable Dean E. Ochiai

Trial: None set

**DEFENDANTS HAWAIIAN ELECTRIC COMPANY, INC., HAWAIIAN ELECTRIC INDUSTRIES, INC., AND SHANA M. BUCO'S MOTION FOR SANCTIONS AGAINST PLAINTIFF RELATED TO THE COMPLAINT FILED FEBRUARY 25, 2021**

Defendants HAWAIIAN ELECTRIC COMPANY, INC., HAWAIIAN ELECTRIC INDUSTRIES, INC., and SHANA M. BUCO (collectively "Defendants"), by and through their attorneys, Cox Fricke LLP, respectfully move this Honorable Court for sanctions against Plaintiff Jeffrey Scott Goold and his attorneys. Mr. Goold has violated Rule 11(b) of the Hawai'i Rules of Civil Procedure by commencing a lawsuit that is based on false statements and that is presented for the improper purpose of harassment. Accordingly, Defendants request that this Court order the Complaint be withdrawn and/or dismissed, and that Mr. Goold pay Defendants the reasonable attorneys' fees and costs incurred as a result of Mr. Goold's violations.

On April 6, 2021, Defendants served their proposed, unfiled Motion on counsel for Mr. Goold, as required by Rule 11(c) of the Hawai'i Rules of Civil Procedure.

This Motion is brought pursuant to Rules 7 and 11 of the Hawai'i Rules of Civil Procedure, and is based upon the attached memorandum, declarations, and exhibits in support of the Motion, the records and file herein, and such other and further matters as may be properly brought to the attention of the Court at the hearing on this Motion.

DATED: Honolulu, Hawai'i, April 6, 2021.

/s/Randall C. Whattoff

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RANDALL C. WHATTOFF

Attorney for Defendants  
HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAIIAN ELECTRIC INDUSTRIES, INC., and  
SHANA M. BUCO



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JEFFREY SCOTT GOOLD,

Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY,  
INC.; HAWAIIAN ELECTRIC  
INDUSTRIES, INC.; ELIZABETH DEER;  
SHANA M. BUCO; 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,

Defendants.

CASE NO. 1CCV-21-0000216 DEO  
(Other Civil Action)

MEMORANDUM IN SUPPORT OF  
MOTION

**MEMORANDUM IN SUPPORT OF MOTION**

**I. INTRODUCTION**

In early 2019, Plaintiff Jeffrey Goold (“Mr. Goold”) was offered employment with Defendant Hawaiian Electric Company, Inc. (“Hawaiian Electric”), conditioned upon passage of the company’s mandatory drug screening process. When Mr. Goold’s drug screening result was positive for marijuana, Hawaiian Electric rescinded the job offer pursuant to its written company policy. Mr. Goold thereafter filed a complaint with the Hawai‘i Civil Rights Commission (“HCRC”), which is still pending.

Apparently frustrated with his progress before the HCRC, Mr. Goold has embarked on a campaign of harassment against Hawaiian Electric, its employees, and its parent company. Among other things, Mr. Goold has sent numerous e-mails badgering and threatening Hawaiian Electric employees. Perhaps most egregiously, Mr. Goold has filed spurious complaints with the Office of Disciplinary Counsel against Connie Lau (the President and CEO of Hawaiian Electric Industries, Inc. (“HEI”)), Susan Li (the former Senior Vice President, General Counsel, Chief Compliance and Administrative Officer, and Corporate Secretary of

Hawaiian Electric), and Thao Tran (Senior Associate General Counsel, Legal Department, Hawaiian Electric).

The instant lawsuit is based on patently untrue allegations, and it is nothing more than Mr. Goold’s most recent attempt to harass Hawaiian Electric, its employees, and its contractors. For instance, Mr. Goold has alleged that Hawaiian Electric and Elizabeth Dear defrauded him by intentionally lying to him about whether his medical marijuana card would allow him to work at Hawaiian Electric despite testing positive for marijuana.<sup>1</sup> In fact, none of the statements that Mr. Goold attributes to Ms. Dear ever took place. Ms. Dear was an administrative contract worker in Hawaiian Electric’s human resources department, where she was responsible for scheduling drug tests. She spoke to Mr. Goold for a few minutes—at most—and never gave him any advice about how Hawaiian Electric handles medical marijuana cards. There is absolutely no basis for trying to transform this scheduling discussion into a “fraud” claim—other than to cause emotional distress to Ms. Dear. Mr. Goold’s other claims are similarly premised on facts that have been invented from whole cloth.

A reasonable inquiry into the facts in the Complaint and Mr. Goold’s history of harassing Hawaiian Electric would have quickly revealed that this case is presented for an improper purpose and that it is merely part of Mr. Goold’s relentless campaign against the company. The Complaint contains numerous Rule 11 violations, including that (1) the litigation is presented for an improper purpose; (2) the allegations underlying the claims are factually baseless; (3) and HEI was improperly named as defendant without any legal or factual justification. The Complaint should be dismissed and Mr. Goold should be subject to sanctions.

## **II. RELEVANT BACKGROUND**

### **A. Mr. Goold Was Employed by EdgeRock Technology Partners and Subsequently Applied for a Position With Hawaiian Electric**

At the outset, it should be noted that Mr. Goold was never employed by Hawaiian Electric. Buco Decl. at ¶ 3. Prior to his application for employment with Hawaiian Electric in or about January 2019, Mr. Goold was employed by EdgeRock Technology Partners (“EdgeRock”). *Id.* at ¶ 4. EdgeRock contracted with Hawaiian Electric to provide consulting services, and Mr. Goold was assigned to work on that contract. *Id.* As an EdgeRock employee, Mr. Goold worked

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<sup>1</sup> Plaintiff incorrectly spells Elizabeth Dear’s last name as “Deer” throughout the Complaint.

as an SQL Database Administrator within Hawaiian Electric’s Software Applications Services Department. *Id.*

In early 2019, Mr. Goold applied for a Database Analyst position at Hawaiian Electric. Buco Decl. at ¶ 5. On February 11, 2019, Hawaiian Electric made Mr. Goold a conditional offer of employment contingent upon his passage of a drug test. *Id.* at ¶ 6.

In compliance with both federal and state law, Hawaiian Electric prohibits “[a]ny possession of marijuana in any form . . . , or its use or presence in an employee’s body while at work or while on Company premises, either **with or without a medical prescription.**” Ex. 1 at 5 (emphasis in original). Hawaiian Electric’s policy provides for mandatory drug testing, and establishes that “[e]xternal applicants who test positive for illegal substances shall not be considered for employment.” Ex. 2 at 27. Accordingly, on February 12, 2019, HR Business Partner Shana Buco spoke with Mr. Goold about completing his background check, and made clear to him that he would be required to pass a drug test. Buco Decl. at ¶ 7. Mr. Goold did not tell Ms. Buco that he used medicinal marijuana at that time. *Id.*

Two days later, on February 14, 2019, HR Service Center Representative Elizabeth Dear called Mr. Goold to schedule his drug test. Dear Decl. at ¶ 5.<sup>2</sup> Shortly thereafter, Mr. Goold called Ms. Dear back and informed her that he used medical marijuana and had a medical marijuana card. Dear Decl. at ¶ 6. Ms. Dear told Mr. Goold that she would let her supervisor know his situation. *Id.* This was a short call the lasted one or two minutes. Contrary to the allegations in paragraphs 29 and 55 of the Complaint, Ms. Dear did **not** tell Mr. Goold that he “would be fine” or that his use of medical marijuana would not be a problem. *Id.* at ¶¶ 5-9.

Mr. Goold took his drug test on February 14, 2019. Buco Decl. at ¶ 9. On or about February 25, 2019, Ms. Buco received Mr. Goold’s drug test result, which was positive for marijuana. *Id.* at ¶ 10. Ms. Buco subsequently informed Mr. Goold of the positive test result. *Id.* at ¶ 11. Ms. Buco told Mr. Goold that, per Hawaiian Electric’s policy, Hawaiian Electric was rescinding his offer of employment because he did not pass the drug screening. *Id.*

Contrary to the allegations in the Complaint at paragraphs 38 and 42, Ms. Buco **never** told Mr. Goold (i) that he was a danger to coworkers, the company, and general public; (ii)

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<sup>2</sup> At all relevant times Ms. Dear was an employee of Kumabe HR LLC, which contracted with Hawaiian Electric to provide certain human resources support services, including the scheduling of pre-employment drug tests and conducting reference checks. Buco Decl. at ¶ 8.

that his test results indicated that he had been intoxicated or impaired in the workplace; or (iii) that he was engaged in illegal activity. Buco Decl. at ¶¶ 12-13. Further, contrary to the allegations in the Complaint at paragraph 51, Hawaiian Electric has *not* been “reiterating” these statements to anyone, including Hawaii Dental Service (“HDS”). *Id.* at ¶¶ 14-15. As discussed below, these are false allegations that violate Rule 11.<sup>3</sup>

**B. Mr. Goold’s Harassing and Threatening Behavior**

Following the rescission of his offer of employment, Mr. Goold began harassing Ms. Buco and other Hawaiian Electric employees by sending numerous e-mails about his disagreement with Hawaiian Electric’s drug screening policies. These e-mails frequently took on a badgering or harassing tone:

- “I submitted myself for arrest at the HPD Waikiki substation. I spoke with Officer M. King. I told her I was fired by Hawaiian Electric for engaging in what they consider to be criminal activity. I dumped my bag of Medical Cannabis on the counter and displayed my DOH permit, ‘I am here to be arrested.’” Ex. 3.
- “Seems nobody wants to arrest me, yet I'm unfit to continue employment with Hawaiian Electric. I'm a leper in this land. I'm considered a dangerous and deviate citizen, and there's no place for me to go. Some years ago, society considered a young Jewish man to be dangerous for his non-traditional behavior. There was no place for him in our world: Father, forgive them, for they know not what they are doing. [Luke 23:34]” Ex. 4.
- “How Does It Feel to be SO WRONG and CRUEL? This is a Democratic-state. YOU FIRED ME for using legal medical cannabis – refusing to test for intoxication – pushing us toward opioids. Criminal!!!” Ex. 5.
- “There is a facade of aloha here. This is a form of indentured servitude. Bow to the corporate king who stole these lands in 1893. It is time for a revolution in Hawai‘i. Hawaiian Electric puts our energy grid at risk, while punishing smart people who use a better and more safe alternative for long-term pain management.” Ex. 6.
- “Interesting, isn’t it? I’ve spoken with law enforcement, politicians, attorneys, and now, medical professionals. None say it makes any sense to strip a person’s livelihood over this legal medication. Does it make sense to anyone at HEI? I sure would like to know why I was fired.” Ex. 7.

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<sup>3</sup> All references to the rules are to the Hawai‘i Rules of Civil Procedure, unless otherwise noted.

To be clear, these are just some of the many e-mails that Mr. Goold sent to Ms. Bucu and others at Hawaiian Electric. Some of Mr. Goold's e-mails rose beyond harassment and contained implied threats. For instance, in July 2019, Mr. Goold sent a particularly alarming e-mail to Ms. Bucu, in which he said that he found her on LinkedIn, told her he had always wondered what she looked like, and **attached her picture**. Ex. 8. In the e-mail, Mr. Goold stated: "Can't stop crying, Shana! I'm not the monster you think I am. I'm in so much pain. Each night as I go to bed, I ask god to take me. I beg ... please, no more!!! Please!!! . . . You killed my soul." *Id.* Mr. Goold also sent an e-mail to Hawaiian Electric's Senior Associate General Counsel, Thao Tran, titled, "Want to play a game?," using the well-known phrase used by the murderous antagonist of the horror movie franchise, "Saw." Ex. 9. In that e-mail, Mr. Goold accused Ms. Tran:

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?

*Id.*

In addition to these e-mails and other postings, Mr. Goold also accused Ms. Lau, Ms. Tran, and Ms. Li of ethical violations, and filed formal complaints with the Office of Disciplinary Counsel ("ODC"). *See* Exs. 10-11; Declaration of Thao Tran ("Tran Decl.") at ¶ 5. Hawaiian Electric was not provided with copies of the Complaints, but all of the individuals were informed that ODC "determined that no actionable violation of the rules of professional conduct were evident, and based upon that review, we closed this matter without formal investigation, effective this date." *Id.*

**C. The HCRC Charge and the Instant Complaint**

On November 12, 2019, Mr. Goold filed a Charge of Discrimination (the “Charge”) with the HCRC. *See* Ex. 12. In the Charge, Mr. Goold alleged that Hawaiian Electric and HEI violated HRS Chapter 378 and committed discriminatory employment practices when they did not accommodate his medical marijuana useage. *See id.* at ¶ I. The investigation with the HCRC has not yet been completed, in part because Mr. Goold has made unsubstantiated allegations about the process, including that the HCRC “is currently engaged in coercive behavior to harass and intimidate [his] family,” and that one of the HRCR Commissioners has a conflict of interest because she is an employee of HEI. *See* Ex. 13.

Because Mr. Goold has failed to obtain a right-to-sue letter from the HCRC, he is currently barred from pursuing his discrimination claims in Circuit Court. *See* HRS §§ 368-3, 368-12. The instant Complaint is an attempt to circumvent that clear rule by inventing tort claims where none exist. The Complaint purports to assert eight claims:

- Count I for Fraud is based on an interaction that lasted a few minutes between Mr. Goold and the administrative contractor who schedules drug tests for Hawaiian Electric. *See* Compl. ¶¶ 26-29, 55-59. As discussed below, the statement that the entire Fraud claim hinges upon never occurred.
- Count II for Defamation is based on statements that Shana Buco allegedly made to prospective employers that contacted Hawaiian Electric to check Mr. Goold’s references. *See id.* ¶¶ 51-52, 61-66. As discussed below, these statements also never occurred.
- Counts III and IV assert that Hawaiian Electric committed Intentional Infliction of Emotional Distress (Count III) and Negligent Infliction of Emotional Distress (Count IV) when it rescinded Mr. Goold’s job offer as a result of his positive drug test. *See id.* ¶¶ 67-78.
- Count V is not actually a cause of action, but rather contains Mr. Goold’s allegations regarding *respondeat superior*. Mr. Goold alleges that at all relevant times, Ms. Dear and Ms. Buco were acting within the scope of their agency or employment for Hawaiian Electric. *See id.* ¶¶ 80-81. Mr. Goold also asserts that “Defendant HEI is vicariously liable for the actions of Defendants HECO, Deer, and Buco,” but provides no explanation for why that would be the case. *Id.* at 84.
- Counts VI and VII are for Negligent Supervision and Negligent Training of Ms. Dear and Ms. Buco. These claims seem to be premised on the same purported acts as Counts I and II. *See id.* ¶¶ 86-93.

- Finally, Count VIII seeks declaratory relief as to whether marijuana use can serve as a basis for rescinding an employment offer where the user has a medical marijuana card. *See id.* ¶¶ 94-103.

Mr. Goold appears to be asserting each of these claims against all Defendants.

### III. LEGAL STANDARD

Rule 11(b) provides in relevant part that by “presenting to the court” “a pleading,” such as a complaint:

An attorney or unrepresented party is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support .

...

Hawai‘i courts have explained that “a Rule 11 inquiry is heavily fact-intensive, requiring careful consideration of the particular circumstances of each case, and involving questions of reasonableness, credibility and, often, motive.” *Matter of Hawaiian Flour Mills, Inc.*, 76 Haw. 1, 15, 868 P.2d 419, 433 (1994) (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401 (1990)). Consequently, “the court may . . . impose an appropriate sanction upon the attorneys, law firms, or parties that violated subdivision (b) of this Rule or are responsible for the violation.” Rule 11(c). A sanction, “if imposed on motion and warranted for effective deterrence,” may include “an order directing payment to the movant of some or all of the reasonable attorneys’ fees and other expenses incurred as a direct result of the violation.” Rule 11(c)(2). As discussed below, the Complaint here violates subsection (b)(1) because it is being presented for an improper purpose and (b)(3) because there is no factual support for Mr. Goold’s key allegations.

#### IV. ARGUMENT

##### A. The Instant Litigation Is Part of Mr. Goold's Campaign to Harass Hawaiian Electric

The instant litigation is in clear violation of Rule 11(b)(1), as it is merely part of Mr. Goold's relentless campaign to harass Hawaiian Electric. *See Schutts v. Bentley Nevada Corp.*, 966 F. Supp. 1549, 1560 (D. Nev. 1997) ("Rule 11 sanctions are imposed where a pleading as a whole is frivolous and of a harassing nature.") (citing *Romero v. City of Pomona*, 883 F.2d 1418, 1429 (9th Cir. 1989)).<sup>4</sup> Mr. Goold's threatening behavior towards Hawaiian Electric makes clear that the motive behind the Complaint is to further harass Hawaiian Electric. *See Matter of Hawaiian Flour Mills, Inc.*, 76 Haw. at 15, 868 P.2d at 433 (noting that "a Rule 11 inquiry" "involve[s] questions of reasonableness, credibility and, often, motive" (citation omitted)). Indeed, the improper motive here is demonstrated by:

- The harassing and alarming e-mails Mr. Goold sent to Ms. Bucu and Ms. Tran, *see, e.g.*, Exs. 3-9;
- The unwarranted complaints Mr. Goold filed with ODC (including complaints against individuals who had nothing to do with Mr. Goold's situation), *see* Exs. 10-13;
- The fact that Mr. Goold's Complaint is based upon blatant misrepresentations of key facts, *see* Section IV.B, *infra*;
- The fact that Mr. Goold improperly included Hawaiian Electric's parent company, *see* Section IV.C, *infra*.

Perhaps the best indicator of Mr. Goold's intent is his inclusion of Elizabeth Dear and Shana Bucu as individual defendants. As Mr. Goold expressly alleges in his Complaint, at all relevant times, Ms. Dear and Ms. Bucu were acting within the scope of their employment and/or agency. *See* Compl ¶¶ 80-81. As such, there was no reasonable rationale for including them as individual defendants in this action. *See Saranillio v. Silva*, 78 Hawai'i 1, 13, 889 P.2d 685, 697 (1995) (noting that "[u]nder the doctrine of *respondeat superior*, the employer and the

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<sup>4</sup> Hawai'i courts have recognized that "[o]n January 1, 2000, HRCF Rule 11 was amended to incorporate, in almost identical language, the 1993 amendments to FRCP Rule 11." *Isobe v. Sakatani*, 127 Hawai'i 368, 378, 279 P.3d 33, 43 (Ct. App. 2012). Further, "because HRCF Rule 11 is patterned after and substantially similar to Federal Rules of Civil Procedure (FRCP) Rule 11, we are guided by authorities addressing and interpreting FRCP Rule 11." *Id.* (citing *Gap*, 106 Hawai'i at 341, 104 P.3d at 928). Both Rule 11 and Federal Rules of Civil Procedure Rule 11 require that, in a pleading, the "factual contentions have evidentiary support[.]" Rule 11; Fed. R. Civ. P. Rule 11.



employee share a common liability to the Mr. Goold,” and that “legally, the act of the employee becomes the act of the employer, the individuality of the employee being identified with the employer”) (citations and internal brackets omitted). Instead, their inclusion is part of Mr. Goold’s continuing efforts to badger and harass Hawaiian Electric’s individual employees, officers, and contractors, including those like Ms. Dear who no longer have anything to do with Hawaiian Electric. As Ms. Dear explains, Mr. Goold’s actions have had the desired effect:

It was very disturbing to be named as a defendant in a lawsuit. I no longer work for Kumabe or Hawaiian Electric, or even live in Hawai‘i. My husband is deployed overseas, and I am presently alone raising our infant son. I have never been involved in a lawsuit or experienced anything like this before.

The fact that Mr. Goold named me personally as a defendant has caused me significant distress and has been very upsetting. It has caused me stress and I have lost sleep because of these allegations. I cannot think of any reason why Mr. Goold would include me in this lawsuit.

Dear Decl. at ¶¶ 11-12; *see, e.g., Ballentine v. Taco Bell Corp.*, 135 F.R.D. 117, 125 (E.D.N.C. 1991) (holding that even where there was some legitimate purpose to Mr. Goold’s overall lawsuit, Mr. Goold nevertheless violated Rule 11 where the reason for naming an employee in his individual capacity was to harass the employee).

Rather than challenge Hawaiian Electric’s policy directly,<sup>5</sup> Mr. Goold has sought to attack Hawaiian Electric, its employees, and its contractors through a pattern of harassment. The instant complaint—with its false and baseless claims for Fraud, Defamation, and other

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<sup>5</sup> To be clear, Hawaiian Electric believes the law is clear that employment offers can be rescinded based on medical marijuana usage. *See, e.g., Lambdin v. Marriott Resorts Hosp. Corp.*, No. 16-00004 HG-KJM, 2017 WL 4079718, at \*10 (D. Haw. Sept. 14, 2017) (holding that Hawai‘i’s decision to decriminalize medical marijuana “does not create an affirmative requirement for employers to accommodate medical marijuana use,” and upholding termination of employee who failed drug test for marijuana where it was prohibited by employer’s policies); *see also Steele v. Stallion Rockies Ltd.*, 106 F. Supp. 3d 1205, 1208, 1211-12 (D. Colo. 2015) (concluding that an employer lawfully terminated an employee who was required to re-take drug test when, prior to retaking the test, the employee disclosed he was a “Medical Marijuana Participant”); *Ross v. Raging Wire Telecomms., Inc.*, 174 P.3d 200, 204-05 (Cal. 2008) (holding that, California law that, like Hawai‘i law, decriminalized marijuana use for certain purposes, does not require an employer to accommodate the use of drugs that are illegal under federal law).

torts—is just the most recent part of Mr. Goold’s improper campaign. Taken together, the frequent e-mails and Internet posts, direct attacks against individuals, and factually unsupportable Complaint establish that Mr. Goold is improperly using the judicial system to antagonize Hawaiian Electric and its employees and contractors, in violation of Rule 11.

**B. The Complaint Is Based on Allegations That Are Factually Baseless**

The Complaint also violates Rule 11(b)(3) because the critical facts upon which several of Mr. Goold’s claims rest are misrepresentations that are completely void of any evidentiary support. “The primary purpose of Rule 11 is to set a more demanding standard for establishing the propriety of court filings and deter baseless filings.” *Gap v. Puna Geothermal Venture*, 106 Hawai‘i 325, 342, 104 P.3d 912, 929 (2004) (citation omitted). Accordingly, courts have held that the imposition of sanctions is “justified by Mr. Goold’s counsel’s factual misrepresentations in the Complaint[.]” *Truesdell v. S. Cal. Permanente Med. Grp.*, 209 F.R.D. 169, 177 (C.D. Cal. 2002); *see also Ayzazian v. Moore L. Grp.*, No. 2:12-CV-01506-ODW, 2012 WL 2411181, at \*3 (C.D. Cal. June 26, 2012) (“By carelessly stating facts that have no evidentiary support, Mr. Goold has failed to comply with Rule 11.”).

**1. Mr. Goold’s Fraud Claim Is Based on Patently Untrue Statements**

Mr. Goold’s Fraud claim is based entirely on his assertion that “Defendants HECO and Deer made false representations to Mr. Goold that his use of medical cannabis would not be a problem.” *See* Compl. ¶¶ 55. In violation of Rule 9(b), Mr. Goold provides no further details about the allegedly fraudulent statement, other than that it was made on or about February 14, 2019. *See id.* ¶ 57. However, based on the rest of the Complaint, the only possible statement that Mr. Goold could be relying upon is the following interaction:

26. On or about February 14, 2019, Plaintiff disclosed to Defendant Deer, via telephone, that he was both disabled and was a registered participant in the MCRP.

27. Plaintiff disclosed to Defendant Deer that he was being prescribed medical cannabis for his disability, that he took the prescribed dosage at night before bed, and never took any medical cannabis in the mornings and/or during work hours.

28. Plaintiff sought assurances from Defendant Deer that his actions were in compliance with Defendant HECO’s policies, and that his

employment would not be affected by any positive drug results for cannabis.

29. Defendant Deer told Plaintiff that he “would be fine” and based on this representation Plaintiff arranged to take a drug test and agreed to provide his 329 Card to Defendant HECO.

Virtually all of the allegations in paragraphs 27-29 are untrue. Ms. Dear was an HR Service Center Representative in charge of scheduling drug tests and other administrative tasks. Dear Decl. at ¶¶ 2-4. She interacted with Mr. Goold for just a few minutes on February 14, 2021. *See id.* at ¶¶ 5-6. As Ms. Dear explains in her declaration:

5. I interacted with Jeffrey Goold on February 14, 2021. In the first interaction, I contacted Mr. Goold to schedule a drug test. I provided Mr. Goold the location and the available times for the drug test. Mr. Goold asked the distance to the drug test, which I provided. I then called him back to confirm the time. The scheduling process took place over two telephone calls that lasted a few minutes. We did not discuss anything else.

6. An hour or two later, Mr. Goold called me again. He told me that he had a medical marijuana card and that he used marijuana for medicinal purposes. I told him that I would let my supervisor know his situation. This was also a short call the lasted one or two minutes. This was my only other interaction with Mr. Goold.

Mr. Goold’s attempt to spin these interactions into a Fraud claim is patently improper. As Ms. Dear makes expressly clear in her declaration, the statements that Mr. Goold attributes to her are false and untrue. *See id.* at ¶ 7. He never gave Ms. Dear any specifics about his marijuana use, *see id.*, and Ms. Dear “never advised Mr. Goold that ‘his employment would not be affected by any positive drug results for cannabis’ or that his employment ‘would be fine’ if he failed the drug test but had a medical marijuana card,” *id.* at ¶ 8. Instead, Ms. Dear “simply told Mr. Goold that [she] would advise [her] supervisor that he had a medical marijuana card.” *Id.* Because Mr. Goold has misrepresented the interaction that forms the entire basis for his Fraud claim, the Complaint violates Rule 11(b)(2). *See, e.g., Marcus & Millichap Co.*, No. C 10-05050 CRB, 2011 WL 2175207, at \*2 (N.D. Cal. June 3, 2011) (“The falsity of these critical allegations undermines the entire Complaint and is sanctionable conduct.”). Other claims also appear to be

based on this same false statement (*e.g.*, Intentional Infliction of Emotional Distress (Count III)<sup>6</sup>; Negligent Infliction of Emotional Distress (Count IV)<sup>7</sup>).

## 2. Mr. Goold's Defamation Claim Is Also Based on Patently Untrue Statements

Mr. Goold's Defamation claim is based entirely on his assertion that Hawaiian Electric told one of Mr. Goold's potential employers, HDS, that

(1) Plaintiff's positive urine screen violated company's drug-free workplace policy; (2) Plaintiff was a danger to coworkers, the company and general public; (3) Plaintiff's test results indicated that Plaintiff had been intoxicated or impaired in the workplace; and (4) Plaintiff was engaged in illegal activity.

*See id.* ¶¶ 48, 52, 61. Like the allegedly fraudulent statements, these allegations are also categorically false. In her declaration, Ms. Bucu makes clear she has never made any such statements to HDS or any other third-party. *See* Bucu Decl. at ¶ 14 ("These statements are false and untrue. I never made any of these alleged statements to any 'third-parties' or to 'Plaintiff's prospective future employers.'").<sup>8</sup> Nor did anyone else at Hawaiian Electric:

When other companies contact Hawaiian Electric about former employees, Hawaiian Electric has a strict policy regarding what information it provides to the new employer. Hawaiian Electric will only (1) confirm whether the individual was employed by Hawaiian Electric; (2) provide the dates of the individual's employment; and (3) provide the individual's job title. Hawaiian Electric does not provide any additional information. Hawaiian

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<sup>6</sup> "Defendants failed to comply with the provisions of HRS § 329-121 et seq. when they ***provided false information to Plaintiff*** and/or terminated Plaintiff for his authorized use of medical cannabis." Compl. ¶ 69 (emphasis added).

<sup>7</sup> "Defendant HECO failed to comply with the provisions of HRS § 329-121 et seq. when they ***provided false information to Plaintiff*** and/or terminated Plaintiff for his authorized use of medical cannabis." Compl. ¶ 76 (emphasis added).

<sup>8</sup> *See also* Bucu Decl. ¶ 13 ("It is correct that I told ***Mr. Goold*** that, as a result of his positive test, Hawaiian Electric's policy required that his offer be rescinded. However, I never stated that '(2) Plaintiff was a danger to coworkers, the company and general public; (3) Plaintiff's test results indicated that Plaintiff had been intoxicated or impaired in the workplace; and (4) Plaintiff was engaged in illegal activity.'") (emphasis added).

Electric absolutely will not reveal the results of a drug test to a third-party.

*Id.* at ¶ 15. Because these allegations are void of *any* evidentiary support, they constitute a separate Rule 11 violation.<sup>9</sup>

**C. The Complaint Improperly Names HEI as a Defendant**

Courts may impose sanctions where a Mr. Goold improperly names a defendant. *See, e.g., Porsboll v. Vaile*, No. CVS020706RLHRJJ, 2004 WL 7338695, at \*2 (D. Nev. Mar. 1, 2004) (ordering the plaintiff to show cause why sanctions should not be imposed regarding the naming of defendant, as the defendant “questioned whether Plaintiff made an adequate inquiry into the Defendant’s activities prior to listing him or other defendants in this suit”); *Misa Mfg., Inc. v. Pac. Egg & Poultry Assn.*, No. CV 86-1495 AHS, 1987 WL 119913, at \*2 (C.D. Cal. Jan. 7, 1987) (granting the defendants’ motion for sanctions “because [the plaintiff] has failed to demonstrate any reasonable factual or legal basis for bringing any of these parties before this Court”).

There is no conceivable basis for including HEI as a defendant in this case— certainly none is identified in the Complaint. As alleged by Mr. Goold, he applied for and was offered a position with Hawaiian Electric, *not* with HEI. *See* Compl. at ¶¶ 20-24. The individuals he interacted with were employees or agents of Hawaiian Electric, *not* HEI. *See id.* ¶¶ 80-81.

The only allegation that Mr. Goold makes related to holding HEI liable is that “Defendant HECO was a wholly owned subsidiary of Defendant HEI.” *Id.* ¶ 82. That is plainly

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<sup>9</sup> Mr. Goold’s attempt to couch his allegations “[u]pon information and belief,” Compl. ¶ 51, does not save him from a Rule 11 violation. The Advisory Committee Notes for the 1993 amendments to the Federal Rules of Civil Procedure (“FRCP”) Rule 11 make clear that:

Tolerance of factual contentions in initial pleadings by plaintiffs or defendants when specifically identified as made on information and belief does not relieve litigants from the obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances; ***it is not license to join parties, make claims, or present defenses without any factual basis or justification.***

FRCP Rule 11, Advisory Committee Notes (1993 Amendments) (emphasis added).

not sufficient to pierce the corporate veil and hold HEI liable for the conduct of Hawaiian Electric.

The alter ego doctrine has been adopted by the courts in cases where the corporate entity has been ***used as a subterfuge and to observe it would work an injustice***. The rationale behind the theory is that, if the shareholders or the corporations themselves disregard the proper formalities of a corporation, then the law will do likewise as necessary to protect individual and corporate creditors. The rule is designed to give incentives to those using the corporate form to obey the state's laws fully by maintaining the formalities and the legal separateness of the corporation. Thus, those who fail to maintain the corporate formalities cannot expect the state to grant them the limited liability that flows from the corporate form.

*Robert's Haw. Sch. Bus, Inc. v. Laupahoehoe Transp. Co., Inc.*, 91 Hawai'i 224, 241, 982 P.2d 853, 870 (1999) (emphasis added). Furthermore, “[c]ourts apply the alter ego doctrine with great caution and reluctance. In fact, many courts require exceptional circumstances before disregarding the corporate form.” *Id.*

Here, there is not a single allegation (let alone evidence) that recognizing Hawaiian Electric's separate existence “would bring about injustice and inequity” or “that the corporate fiction has been used to perpetrate a fraud or defeat a rightful claim.” *See id.* at 242, 982 P.2d at 871. To the contrary, Hawaiian Electric is one of the State's oldest and most well-respected companies. “Hawaiian Electric provides electricity and services to 95 percent of the state's 1.4 million residents on Oahu, Maui County and Hawaii Island. The company is also one of the state's leading employers and a major contributor and supporter of community and educational programs.” *See* Our History and Timeline, <https://www.hawaiianelectric.com/about-us/our-history> (last visited Mar. 18, 2021). Hawaiian Electric has been the recipient of numerous awards for both the strength of its utilities and its dedication to the community. *See* Awards & Recognition, <https://www.hawaiianelectric.com/about-us/awards-and-recognition> (last visited Mar. 18, 2021). Its financial status is strong and publicly visible. *See* Key Performance Metrics, Financial, <https://www.hawaiianelectric.com/about-us/key-performance-metrics/financial> (last visited Mar. 18, 2021). Simply put, naming HEI is just another attempt to exert pressure on Defendants by improper means.

**D. Hawaiian Electric Is Entitled to Attorneys' Fees and Costs**

Hawaiian Electric should be awarded its attorneys' fees and costs incurred as a direct result from the Rule 11 violation. In particular, Hawaiian Electric should be awarded its attorneys' fees and costs incurred in bringing this Motion, as well as the Motion to Dismiss the Complaint. *Lepere v. United Pub. Workers, Loc. 646, AFL-CIO*, 77 Hawai'i 471, 475, 887 P.2d 1029, 1033 (1995) (providing award of reasonable attorneys' fees and costs, excluding from such calculations amounts attributable to the plaintiff's motion for reconsideration, which the circuit court had directed the plaintiff to file); *Matter of Hawaiian Flour Mills, Inc.*, 76 Haw. at 17, 868 P.2d at 435 (remanding for an award of appropriate sanctions in accordance with Rule 11 for reasonable expenses, including attorneys' fees). Mr. Goold's threatening and harassing behavior emphasizes the need for the Court to deter Mr. Goold from bringing frivolous claims and arguments based on misrepresentations.<sup>10</sup>

**V. CONCLUSION**

For the foregoing reasons, Defendants respectfully request the Court grant this Motion.

DATED: Honolulu, Hawai'i, April 6, 2021.

/s/Randall C. Whattoff

RANDALL C. WHATTOFF

Attorney for Defendants  
HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAIIAN ELECTRIC INDUSTRIES, INC., and  
SHANA M. BUCO

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<sup>10</sup> If the Court grants this Motion, Hawaiian Electric will submit a declaration to the Court evidencing its fees and costs.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

JEFFREY SCOTT GOOLD,  
Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY,  
INC.; HAWAIIAN ELECTRIC  
INDUSTRIES, INC.; ELIZABETH DEER;  
SHANA M. BUCO; 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,

Defendants.

CASE NO. 1CCV-21-0000216 DEO  
(Other Civil Action)

DECLARATION OF ELIZABETH  
DEAR

**DECLARATION OF ELIZABETH DEAR**

I, ELIZABETH DEAR, declare and say that:

1. All of the information stated herein is information based on my personal knowledge that I learned in my capacity as a contractor with Hawaiian Electric Company, Inc. (“Hawaiian Electric”). If called as a witness, I could and would testify to the truth of the matters stated herein except as to those matters stated to be true on information and belief, and as to those matters I believe them to be true.

2. I am a former contract worker for Kumabe HR LLC (“Kumabe”). I was employed by Kumabe from 2017 until March 2019. I left Kumabe because my husband, who is in the military, was transferred from Oahu to San Diego, California.



3. In or around March 2018, Kumabe placed me in a position as a contract worker with Hawaiian Electric. My position at Hawaiian Electric was “HR Service Center Representative.”

4. My role at Hawaiian Electric included answering phones, responding to salary verifications (when a bank verifies an employee’s compensation in connection with a loan), scheduling drug screenings, doing verbal reference checks, and other administrative tasks related to human resources.

5. I interacted with Jeffrey Goold on February 14, 2021. In the first interaction, I contacted Mr. Goold to schedule a drug test. I provided Mr. Goold the location and the available times for the drug test. Mr. Goold asked the distance to the drug test, which I provided. I then called him back to confirm the time. The scheduling process took place over two telephone calls that lasted a few minutes. We did not discuss anything else.

6. An hour or two later, Mr. Goold called me again. He told me that he had a medical marijuana card and that he used marijuana for medicinal purposes. I told him that I would let my supervisor know his situation. This was also a short call that lasted one or two minutes. This was my only other interaction with Mr. Goold.

7. I have read the portion of Mr. Goold’s Complaint where he describes his interactions with me. Mr. Goold states:

26. On or about February 14, 2019, Plaintiff disclosed to Defendant Deer, via telephone, that he was both disabled and was a registered participant in the MCRP.

27. Plaintiff disclosed to Defendant Deer that he was being prescribed medical cannabis for his disability, that he took the prescribed dosage at night before bed, and never took any medical cannabis in the mornings and/or during work hours.

These statements are false and untrue. Mr. Goold told me that he was prescribed and used medicinal marijuana, but he never told me that he was disabled or provided any details about his use. Mr. Goold never gave me any specifics such as “that he took the prescribed dosage at night before bed, and never took any medical cannabis in the mornings and/or during work hours.”

8. In his Complaint, Mr. Goold also states:

28. Plaintiff sought assurances from Defendant Deer that his actions were in compliance with Defendant HECO’s policies, and that his employment would not be affected by any positive drug results for cannabis.

29. Defendant Deer told Plaintiff that he “would be fine” and based on this representation Plaintiff arranged to take a drug test and agreed to provide his 329 Card to Defendant HECO.

These statements are also false and untrue. I never advised Mr. Goold that “his employment would not be affected by any positive drug results for cannabis” or that his employment “would be fine” if he failed the drug test but had a medical marijuana card. I simply told Mr. Goold that I would advise my supervisor that he had a medical marijuana card.

9. In his Complaint, Mr. Goold also states:

55. Defendants HECO and Deer made false representations to Plaintiff that his use of medical cannabis would not be a problem.

56. Defendant Deer knew of the falsity of her statement, or made her statement without knowledge of its truth or falsity.

57. Defendant Deer made her statement in contemplation of inducing Plaintiff to undergo drug testing on February 14, 2019.

These statements are also false and untrue. I never advised Mr. Goold that “his use of medical cannabis would not be a problem.” It is certainly not true that I “knew of the falsity” of any

statement I made, or that I made any statement "without knowledge of its truth or falsity." Nor did I ever attempt to "induc[e] Plaintiff to undergo drug testing." As I stated above, I simply told Mr. Goold that I would let my supervisor know he had a medical marijuana card.

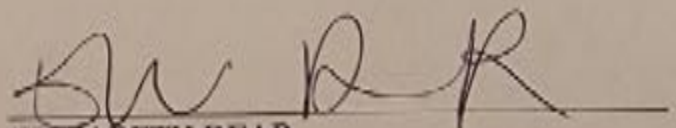
10. I had never spoken with or met Mr. Goold prior to the three phone calls mentioned above. I never had any interactions with him since then. I did not have any knowledge about Mr. Goold outside of these three phone calls. I was just the person who schedules drug tests for prospective employees.

11. It was very disturbing to be named as a defendant in a lawsuit. I no longer work for Kumabe or Hawaiian Electric, or even live in Hawai'i. My husband is deployed overseas, and I am presently alone raising our infant son. I have never been involved in a lawsuit or experienced anything like this before.

12. The fact that Mr. Goold named me personally as a defendant has caused me significant distress and has been very upsetting. It has caused me stress and I have lost sleep because of these allegations. I cannot think of any reason why Mr. Goold would include me in this lawsuit.

I do declare under penalty of law that the foregoing is true and correct.

Executed this 18th day of March 2021, at San Diego, California.

  
ELIZABETH DEAR

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JEFFREY SCOTT GOOLD,  
Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY,  
INC.; HAWAIIAN ELECTRIC  
INDUSTRIES, INC.; ELIZABETH DEER;  
SHANA M. BUCO; 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,

Defendants.

CASE NO. 1CCV-21-0000216 DEO  
(Other Civil Action)

DECLARATION OF SHANA BUCO

**DECLARATION OF SHANA BUCO**

I, SHANA BUCO declare and say that:

1. I am a Human Resources Business Partner at Hawaiian Electric Company, Inc. ("Hawaiian Electric") and have held that role at all relevant times. All of the information stated herein is information based on my personal knowledge that I learned in my capacity as a Human Resources Business Partner. If called as a witness I could and would testify to the truth of the matters stated herein, except as to those matters stated to be true on information and belief, and as to those matters I believe them to be true.

2. As a Human Resources Business Partner, I am responsible for managing a wide range of activities related to organizational capability including talent management, staffing, attracting and retaining talent, performance management, employee relations, policy

interpretation and compliance, and implementation of workforce strategies into the business plans of functional areas. I have worked in human resources at Hawaiian Electric since 2012.

3. Plaintiff Jeffrey Scott Goold was never employed by Hawaiian Electric.

4. Prior to his application for employment with Hawaiian Electric in or about January 2019, Mr. Goold was employed by EdgeRock Technology Partners (“EdgeRock”).

EdgeRock contracted with Hawaiian Electric to provide consulting services, and Mr. Goold was assigned to work on that contract. As an EdgeRock employee, Mr. Goold worked as an SQL Database Administrator within Hawaiian Electric’s Software Applications Services Department.

5. In early 2019, Mr. Goold applied for a Database Analyst position at Hawaiian Electric.

6. On February 11, 2019, Hawaiian Electric made Plaintiff a conditional offer of employment contingent upon his passage of a drug test.

7. On February 12, 2019, I spoke with Mr. Goold about completing his background check, and made clear to him that he would be required to pass a drug test. Mr. Goold did not tell me that he used medicinal marijuana at that time.

8. In February 2019, Elizabeth Dear was an employee of Kumabe HR LLC, which contracted with Hawaiian Electric Company, Inc. to provide certain human resources services, including the scheduling of pre-employment drug tests and conducting reference checks.

9. I understand that Ms. Dear contacted Mr. Goold to schedule his drug test, and Plaintiff took his drug test on February 14, 2019.

10. On or about February 25, 2019, Hawaiian Electric received Mr. Goold’s drug test result, which was positive for marijuana.

11. I subsequently informed Mr. Goold of the positive test result. I told Mr. Goold that, per Hawaiian Electric's policy, Hawaiian Electric was rescinding his offer of employment because he did not pass the drug screening.

12. I have read the portion of Mr. Goold's Complaint where he describes his interactions with me. Mr. Goold states on February 25, 2019 the following occurred:

38. Shortly before lunch, Plaintiff was contacted by Defendant Buco and informed of the following allegations: (1) Plaintiff's positive urine screen violated company's drug-free workplace policy; (2) Plaintiff was a danger to coworkers, the company and general public; (3) Plaintiff's test results indicated that Plaintiff had been intoxicated or impaired in the workplace; and (4) Plaintiff was engaged in illegal activity.

Mr. Goold also states that I repeated these allegations on February 27, 2021. *See* Compl., ¶ 42.

13. It is correct that I told Mr. Goold that, as a result of his positive test, Hawaiian Electric's policy required that his offer be rescinded. However, I never stated that "(2) Plaintiff was a danger to coworkers, the company and general public; (3) Plaintiff's test results indicated that Plaintiff had been intoxicated or impaired in the workplace; and (4) Plaintiff was engaged in illegal activity."

14. Mr. Goold also claims that I or someone at Hawaiian Electric made similar statements to Mr. Goold's potential employers, including Hawaiian Dental Services.

61. Upon information and belief, Defendants HECO and Buco made the following false and defamatory statements regarding Plaintiff: (1) Plaintiff's positive urine screen violated company's drug-free workplace policy; (2) Plaintiff was a danger to coworkers, the company and general public; (3) Plaintiff's test results indicated that Plaintiff had been intoxicated or impaired in the workplace; and (4) Plaintiff was engaged in illegal activity.

62. Upon information and belief, Defendants HECO and Buco made unprivileged publications of these statements to third-parties, including but not limited to Plaintiff's prospective future employers.

63. Upon information and belief, Defendants HECO and Buco intentionally and knowingly made unprivileged publications of these statements to third-parties, including but not limited to Plaintiff's prospective future employers.

*See also* Compl. ¶¶ 50-52. These statements are false and untrue. I never made any of these alleged statements to any "third-parties" or to "Plaintiff's prospective future employers."

15. Nor has anyone else at Hawaiian Electric made such statements. When other companies contact Hawaiian Electric about former employees, Hawaiian Electric has a strict policy regarding what information it provides to the new employer. Hawaiian Electric will only (1) confirm whether the individual was employed by Hawaiian Electric; (2) provide the dates of the individual's employment; and (3) provide the individual's job title. Hawaiian Electric does not provide any additional information. Hawaiian Electric absolutely will not reveal the results of a drug test to a third-party.

16. Attached hereto as **Exhibit 1** is a true and correct copy of Hawaiian Electric Company, Inc.'s Health & Safety, Substance Abuse Policy, Section 600.202, dated August 2015.

17. Attached hereto as **Exhibit 2** is a true and correct copy of an excerpt from Hawaiian Electric Company, Inc.'s Substance Abuse Policies and Procedures, dated December 1, 1986 and revised August 1, 2015.

18. Attached hereto as **Exhibit 3** is a true and correct copy of an e-mail that I received from Plaintiff dated March 4, 2019.

19. Attached hereto as **Exhibit 4** is a true and correct copy of an e-mail that I received from Plaintiff dated March 12, 2019.

20. Attached hereto as **Exhibit 5** is a true and correct copy of an e-mail that I received from Plaintiff dated June 5, 2019.

21. Attached hereto as **Exhibit 6** is a true and correct copy of an e-mail that I received from Plaintiff dated May 7, 2019.

22. Attached hereto as **Exhibit 7** is a true and correct copy of an e-mail that I received from Plaintiff dated March 22, 2019.

23. Attached hereto as **Exhibit 8** is a true and correct copy of an e-mail that I received from Plaintiff dated July 31, 2019.



I do declare under penalty of law that the foregoing is true and correct.

Executed this <sup>6</sup> \_\_\_ day of April 2021, at Honolulu, Hawai'i.

DocuSigned by:  
*Shana Buce*  
E44B9787A28443E  
SHANA BUCO

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.; ELIZABETH  
DEER; SHANA M. BUCO; 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,  
Defendants.

CASE NO. 1CCV-21-0000216 DEO  
(Other Civil Action)

DECLARATION OF THAO T.  
TRAN

**DECLARATION OF THAO T. TRAN**

I, THAO T. TRAN declare and say that:

1. I am a Senior Associate General Counsel, Legal Department, with Hawaiian Electric Company, Inc. ("Hawaiian Electric"), and have been in that role at all relevant times. All of the information stated herein is information based on my personal knowledge that I learned in my capacity as a Senior Associate General Counsel at Hawaiian Electric. If called as a witness I could and would testify to the truth of the matters stated herein except as to those matters stated to be true on information and belief, and as to those matters I believe them to be true.

2. Attached hereto as **Exhibit 9** is a true and correct copy of an e-mail that I received from Plaintiff Jeffrey Scott Goold ("Plaintiff") on May 10, 2019.

3. Attached hereto as **Exhibit 10** is a true and correct copy of Confidential letters to Constance H. Lau and Plaintiff dated September 9, 2019 from the Office of Disciplinary Counsel that is being filed under seal.

4. Attached hereto as **Exhibit 11** is a true and correct copy of Confidential letters to myself and Plaintiff dated September 9, 2019 from the Office of Disciplinary Counsel that is being filed under seal.


5. I understand that Susan Li, former Senior Vice President, General Counsel, Chief Compliance and Administrative Officer, and Corporate Secretary of Hawaiian Electric, received a notice regarding Plaintiff from the Office of Disciplinary Counsel nearly identical to Exhibits 10 and Exhibits 11 attached hereto.

6. Attached hereto as **Exhibit 12** is a true and correct copy of the Charge of Discrimination dated November 12, 2019.

7. Attached hereto as **Exhibit 13** is a true and correct copy of a letter dated March 3, 2021, with attachments, from Plaintiff to the Equal Employment Opportunity Commission.

I do declare under penalty of law that the foregoing is true and correct.

Executed this 6<sup>th</sup> day of April 2021, at Honolulu, Hawai'i.

  
THAO T. TRAN



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**600.202**  
**HEALTH & SAFETY**  
**SUBSTANCE ABUSE POLICY**  
**AUGUST 2015**

**1.0 Policy and Purpose Statement**

- 1.1 The Company has a strong commitment to the health, safety and well-being of all employees. Substance abuse, while at work or otherwise, seriously endangers the safety of employees as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, possible fatalities and/or property damage.
- 1.2 The Company prohibits the use, possession, transfer, sale, manufacture, and distribution of narcotics, drugs or controlled substances while on Company property (including all company owned or leased property, vehicles, equipment and parking areas) or on the job away from Company property. The Company also prohibits the use and possession of alcohol on Company property or on the job away from Company property.
- 1.3 This policy, along with the Company's Substance Abuse procedures, provides the standards, monitoring activities, personal and organizational responsibilities to detect and control substance abuse by Company employees. In addition, it provides information for disciplinary action, return to duty criteria and voluntary assistance programs.

**2.0 Scope and Coverage**

This policy applies to all full-time, part-time, temporary or regular employees of the Company. **Employees in positions covered by the FMCSA or PHMSA will be held to Department of Transportation standards and/or subject to additional requirements.**

All agency temporary workers, contractors, consultants, and vendors working for the Company shall also abide by the Substance Abuse Policy and procedures while on Company premises and/or while performing work for the Company. Non-compliance with the Substance Abuse Policy and procedures 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.



### 3.0 Definitions

Term		Definition
3.1	The Company	Hawaiian Electric Company, Inc., and its subsidiaries Maui Electric Company, Ltd., and Hawai'i Electric Light Company, Inc.
3.2	FMCSA	Federal Motor Carrier Safety Administration
3.3	PHMSA	Pipeline and Hazardous Materials Safety Administration
3.4	DOT	Department of Transportation
3.5	Alcohol	Any beverage with an alcoholic content, including any medication containing alcohol
3.6	Controlled Substances	For the purpose of this Policy, marijuana, cocaine, opiates, amphetamines (including crystal methamphetamine), and phencyclidine (PCP), and any other substance hereafter recognized by the U.S. Department of Health and Human Services, U.S. FMCSA or PHMSA as a controlled substance.
3.7	Driver	Any position which requires the operation of a Company vehicle. Operation of commercial motor vehicles requires a <b>Commercial Driver's License (CDL)</b> , which is subject to DOT regulations.
3.8	Drug	Any substance (other than alcohol, but including paint and glue), whether legal or illegal, that is capable of altering the mood, perception, pain level, physical dexterity or judgment of the individual consuming or using it.
3.9	Prescription Drug	Any substance prescribed by a licensed medical practitioner for the individual consuming it.
3.10	Reasonable Suspicion	A good faith Company belief that the actions, appearance, or conduct of an employee are indicative of the use of alcohol, drugs and/or controlled substance(s).
3.11	Substance Abuse Professional (SAP)	A licensed physician, licensed or certified psychologist, social worker, employee assistance professional, or certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and illegal drug-related disorders.



#### 4.0 Procedures

The procedures provide general guidelines to a safe, drug-free and alcohol-free working environment. All employees will be subject to drug testing in accordance with Federal and State DOT laws and regulations as well as Company policies. Drug/alcohol testing may be conducted for the following purpose(s):

4.1 **Pre-Employment** - All external and internal applicants will be subject to Pre-Employment DOT or non-DOT drug testing. Internal applicants for positions governed by FMCSA or PHMSA will be subject to DOT drug testing at the time of transfer.

4.2 **Reasonable Suspicion** – An employee will be tested for the use of drugs, controlled substances and/or alcohol if reasonable suspicion exists. Once a determination has been made that there is reason to require an employee to submit to a reasonable suspicion drug and alcohol test, the employee shall be relieved from duty and placed on administrative leave without pay until otherwise notified.

4.3 **Criteria for Drug and Alcohol Testing** - Any employee involved in a vehicle or non-vehicle accident shall submit to drug and alcohol testing based on (but not limited to) the following:

- Vehicle accident resulting in an injury and/or fatality of self or another person, injury requiring immediate medical care away from the scene, and/or at least one vehicle being towed from the scene.
- Non-vehicle accident resulting in fatality, or serious injury and illness (in-patient hospitalization, amputations or loss of an eye).
- All electrical contact / flash incidents which result in injury.
- Assessment of employee's fitness for duty
- Any situation required by DOT for drivers covered under FMCSA

4.3.1 Alcohol Testing – Any employee who is requested by the Company to submit to post-accident alcohol testing shall provide specimen(s) to be tested pursuant to this policy as soon as possible, but no later than eight (8) hours after the accident. Any employee who is seriously injured and incapable of providing a specimen within these guidelines shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there was any alcohol in their system.

4.3.2 Drug Testing – The employee must submit to post accident drug testing as soon as possible, but no later than thirty-two (32) hours after the accident.



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If the employee is seriously injured and incapable of providing a specimen, the Company will accept within thirty-two (32) hours other reports or documentation from the hospital that would indicate whether there were any drugs or controlled substances in the employee's system.

- 4.4 **Return-To-Duty Testing** – Any employee who returns to active employment status in any capacity at the Company after receiving an alcohol test result indicating an alcohol concentration of 0.02 grams/210L or greater, and/or who successfully undergoes treatment as recommended by the Company's SAP shall undergo a return to duty alcohol test at their own expense. Any employee who returns to active employment status in any capacity at the Company after testing positive for drugs pursuant to this Policy and successfully completes a rehabilitation program shall undergo a return to duty drug test at their own expense.
- 4.5 **Fitness-for-Duty or Follow Up Testing** – Any employee who returns to active employment status in any capacity at the Company after testing positive for drugs or after receiving an alcohol test result indicating an alcohol concentration of 0.04 grams/210L or greater and successfully completes a rehabilitation program shall be subject to unannounced drug and/or alcohol testing scheduled solely at the discretion of the Company.
- 4.6 **Random Testing** - (DOT covered employees only) – Testing will be in accordance with State and/or Federal laws and regulations. Random drug and alcohol tests will be unannounced and the dates will be randomly spread throughout the year with the schedule at the sole discretion of the Company. The employee shall be subject to a minimum of six (6) drug and/or alcohol tests over the following twelve (12) months and may be subject to further follow-up tests, as determined by the Company's SAP and/or a properly designated Company official.
- 4.7 **Refusal To Test** – If an employee refuses to be tested, the employee should be warned that the refusal is an act of insubordination. Such refusal shall subject the employee to disciplinary action up to and including termination of employment. **A refusal to test will be presumed and counted as a positive test result.** Refusal to test includes, but is not limited to:
- Refusal to undergo testing
  - Refusal to sign consent forms
  - Failure to provide an adequate breath or urine specimen within a reasonable time or without a valid medical reason



- Failure to report for a scheduled appointment to provide a specimen
- Adulteration of the specimen
- Substitution of the specimen
- Failure to cooperate with collection site personnel
- Failure to comply with the recommendation of the SAP

4.8 **Return-to-Duty** – Employees who are suspended for violating the Company's Substance Abuse Policy will be allowed to return to duty upon written agreement and satisfactory completion of the stipulations provided in the Substance Abuse procedures.

4.9 **Employee Assistance Program** – Under the Employee Assistance Program (EAP), employees and their families with a substance abuse problem can call the current EAP provider located on each of the islands for assistance. The program is personal and confidential. Initial problem assessment and counseling services are provided at no cost to the employee. If further assistance is necessary, the counselor will make referrals to the most appropriate outside agency. The Company is committed to continually review this program in an effort to determine which methods, procedures, and policies will most effectively enhance the employee's chances for successful rehabilitation.

**5.0 Use of Legal and Prescription Drugs** – 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, so that the supervisor may determine, after consultation with the Corporate Health & Wellness Director (Hawaiian Electric), Manager of Administration (Hawai'i Electric Light), or Human Resources Director (Maui Electric), whether the employee can perform his/her assigned duties in a safe and efficient manner. If the employee is not able to perform his/her assigned duties in a safe and efficient manner because of prescription medication, it may be necessary to reassign or relieve the employee from duty while on that medication/treatment.

5.1 Any possession of marijuana in any form including synthetic forms of marijuana, or its use or presence in an employee's body while at work or while on Company premises, either **with or without medical prescription, is prohibited by Company rules and policies**. This applies regardless of Hawaii State laws regarding medically-prescribed possession and use of marijuana or synthetic forms. This applies to employees and to all individuals who are on Company premises.

5.2 Failure to report the use of medically prescribed controlled substances (including medical marijuana) may result in administrative and disciplinary action up to and including termination of employment.





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## **6.0 Testing Methodology**

- 6.1 Alcohol Test– Non-DOT testing will be administered using a blood test in accordance with State of Hawaii requirements. DOT testing will be administered using an Evidential Breathalyzer (EBT) in accordance with DOT regulations.
- 6.2 Drug Test - All drug tests will be administered using a urine test in accordance with DOT and State of Hawaii requirements. Employees will be tested for the presence of controlled substances (marijuana, cocaine, opiates, amphetamines including crystal methamphetamines and phencyclidine (PCP)).

## **7.0 Record Retention**

All investigation records, reports, disciplinary actions, appeals and decisions shall be maintained in accordance with the provisions of the Code of Conduct, Section 3, Information, Records, Security and Company Property - Record Retention, and other applicable Information Technology policies.

## **8.0 Discipline**

Violations of this Substance Abuse Policy may result in disciplinary action up to and including termination. Different standards may apply for positions covered by FMCSA and PHMSA.

## **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.



## 10.0 Reporting Policy Violations

All employees of the Company must immediately report known, suspected, or potential violations of this policy in accordance with the Corporate Code of Conduct, Part 15, *Guidance and Reporting Potential or Suspected Violations*.

## 11.0 Related Company Policies and Procedures

11.1	Corporate Code of Conduct, dated December 11, 2014
11.2	Substance Abuse Program (revised 08/2013)
11.3	Discipline and Appeals Policy dated February 2014

## 12.0 Revision History

12.1	Prior version(s)	February 2015 - Original
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## 13.0 Review and Approval List

13.1	Preparer	Wanya Ogata – Director, Health & Wellness
13.2	Review and Recommend for Approval	Steven Newell –Manager, Safety, Security & Facilities  Rhea Lee –Manager, Administration, Hawai'i Electric Light  Eileen Wachi –Manager, Administration, Maui Electric
13.3	Legal Review	Lester Goo, Senior Associate General Counsel, Legal
13.4	Approver:	Patricia U. Wong – Senior Vice President, Corporate Services

# **SUBSTANCE ABUSE POLICIES AND PROCEDURES**

**EFFECTIVE: DECEMBER 1, 1986  
REVISED: AUGUST 1, 2015**

**Hawaiian Electric  
Maui Electric  
Hawai'i Electric Light**



For Internal Use Only

Exhibit 2

# **SECTION 4**

## **DRUG AND ALCOHOL VIOLATIONS DISCIPLINE**

**1. PRE-EMPLOYMENT TESTING (Drugs only)**

**External applicants** who test positive for illegal substances shall not be considered for employment. Such applicants may re-apply with the Company after six (6) months provided that steps have been taken to ensure their drug-free status to the satisfaction of the Company.

**Internal applicants for DOT-covered positions** who test positive for illegal substances shall be disqualified for the position applied for and will be immediately placed on disciplinary suspension **without pay** for a minimum of thirty (30) days. The employee will be allowed to return-to-duty upon written agreement to the requirements stated under “**Return-to-Duty**” in this section. The employee may bid for subsequent jobs after six (6) months provided that steps have been taken to ensure their drug-free status to the satisfaction of the Company.

**2. REASONABLE SUSPICION OR POST-ACCIDENT TESTING**

**Drugs and 0.04+ Alcohol**

Employees who test positive for illegal substances and/or who receive an alcohol test result indicating an alcohol concentration of 0.04 grams/210L or greater under reasonable suspicion or post-accident testing shall be **terminated** and will be subject to the “Re-employment” provisions as stated in this section.

**3. RANDOM TESTING**

**Drugs and 0.04+ Alcohol**

Employees who are in positions covered under DOT drug and alcohol testing regulations (CDL drivers and Pipeline covered positions) and who test positive for illegal substances and/or test with an alcohol concentration of 0.04 grams/210L or greater under random testing will be subject to a minimum 30-day suspension without pay. The employee will be subject to the “Return-to-Duty” provisions as stated in this section.

**REASONABLE SUSPICION, POST-ACCIDENT OR RANDOM TESTING**

**0.02 – 0.039 Alcohol**

Covered employees who receive an alcohol test result indicating an alcohol concentration of 0.02 – 0.039 grams/210L are subject to the following discipline:

- **1st occurrence:**
  - 1-day suspension without pay
  - Provide a Return-to-Duty alcohol test result of less than 0.02 grams/210L alcohol concentration prior to returning to work. Test shall be at the employee’s expense.

**\*NOTE: Failure to provide <0.02 will move employee to next occurrence.**
  
- **2nd occurrence within 3 years:**
  - 15-day (calendar) suspension without pay
  - Provide a Return-to-Duty alcohol test result of less than 0.02 grams/210L alcohol concentration prior to returning to work. Test shall be at the employee’s expense.

**\*NOTE: Failure to provide <0.02 will move employee to next occurrence.**

## Buco, Shana

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**From:** Scott Goold [REDACTED]  
**Sent:** Monday, March 04, 2019 3:29 PM  
**To:** Buco, Shana; Yafuso, Lori  
**Cc:** lcataluna@staradvertiser.com; David Shapiro; [REDACTED]  
**Subject:** HPD Refuses to Arrest Scott Goold

[This email is coming from an EXTERNAL source. Please use caution when opening attachments or links in suspicious email.]

Dear Ms. Buco,

About 2:30 HST today, March 4, 2019, I submitted myself for arrest at the HPD Waikiki substation. I spoke with Officer M. King. I told her I was fired by Hawaiian Electric for engaging in what they consider to be criminal activity. I dumped my bag of Medical Cannabis on the counter and displayed my DOH permit, "I am here to be arrested."

Officer King was speechless for an awkward amount of time. "Is that your medical card?" she finally asked. Yes, I replied. "You are not in violation of the law." I told her Hawaiian Electric claimed I was in violation of federal law. Officer King responded saying you are fully legal in Hawai'i. You are not in violation of federal law, as long as you have a medical card for your cannabis medication.

She said I needed to get an attorney and recommended I file a complaint with the EEOC.

Tomorrow, I will make the difficult and likely dangerous trek on my scooter to Kapolei. I've never been to that part of the island. Wish me luck!

Aloha

> On Mar 4, 2019, at 1:42 PM, Scott Goold [REDACTED] wrote:

>

> Good afternoon Ms. Buco,

> In December I shared with my manager I was blessed to dine with Millie Akaka, wife of late, great Senator Akaka. We had a wonderful time. She's gracious, brilliant and totally charming. When she got ready to depart, she leaned over and said, "I know your CEO. Please tell her for me HECO made an excellent decision. You're a great fit for the company."

>

> Now, I must tell Ms. Akaka I'm a criminal.

>

> When we spoke last week, you informed me Hawaiian Electric recognizes State of Hawai'i law permitting the use of Medical Cannabis to qualified patients in the state, yet considers the use of Medical Cannabis to be an illegal activity at the federal level. Therefore, HECO terminated my employment.

>

> I just contacted the FBI and reported my alleged criminal activity for my use of Medical Cannabis. I told the representative Hawaiian Electric just fired me for this illegal behavior. She was unclear what to do and asked who fired me. I gave her your name. I told her I wished to submit myself to the agency for arrest. She didn't believe this was appropriate. She's not on island but took my information. I'll file a subsequent report through their TIPS hotline.

>

> The FBI rep gave me a contact number for the DOH Health & Human Services department. I called them and left a message, but told the FBI rep I need to do my civic duty and turn myself in. She confirmed there is a FBI office on island in Kapolei where I can walk in. This is quite a distance for me on my scooter but will go tomorrow morning.

>

> She also suggested I could report this to Honolulu police. I'll try do this today. I'll take my medication, medical permit and surrender to HPD for arrest and possible prosecution. They may contact you for further information.

>

> I am sad HEI considers me to be a criminal. I worked very hard for this great company; enjoyed the collegial environment with my talented, gracious coworkers; and together we have done amazing work.

>

> If I'm a criminal, I must pay my debt to society. I'll keep you posted.

>

> Aloha

>

> -----

> Scott Goold

> "I Can't Accept Not Trying"

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Scott Goold

"I Can't Accept Not Trying"

## Buco, Shana

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**From:** Scott Goold [REDACTED]  
**Sent:** Tuesday, March 12, 2019 12:07 PM  
**To:** Buco, Shana; info; Rosalyn Baker  
**Cc:** Malie Medical Clinic; Medical Cannabis Registry Program; Kristen Consillio; David Shapiro; lcataloguna@staradvertiser.com; [REDACTED] Gary Hooser; Lynn Mariano  
**Subject:** Father, forgive them. They know not what they are doing.  
**Attachments:** Govlge\_3.12.19.pdf

[This email is coming from an EXTERNAL source. Please use caution when opening attachments or links in suspicious email.]

Constance H. Lau, President and CEO, Hawaiian Electric Industries  
David Ige, Governor, State of Hawai'i  
Rosalyn Baker, State Senator, County of Maui  
Various Community Leaders

Aloha Governor Ige ,

I continue my appeal to HEI President and CEO, Ms. Connie Lau. My team needs me. I need my team. The company and rate payers need all of us. I seek your help!

Hawaiian Electric labels me and 25,000 other Hawai'i residents as criminals per the Controlled Substances Act (CSA) for engaging in compassionate Medical Cannabis activity. They will not employ us and will fire any who are employed if they find out. Honolulu police won't arrest me; the FBI won't arrest me. They suggested I contact the DEA.

I spoke with officials in the Hawai'i DEA office moments ago. They won't arrest me either. The agent told me the agency generally doesn't focus resources on individual users. He suggested I contact the U.S. Attorneys office. I was unable to reach someone by phone, but submitted myself for arrest through their online tip service.

Seems nobody wants to arrest me, yet I'm unfit to continue employment with Hawaiian Electric. I'm a leper in this land. I'm considered a dangerous and deviate citizen, and there's no place for me to go. Some years ago, society considered a young Jewish man to be dangerous for his non-traditional behavior. There was no place for him in our world:

Father, forgive them, for they know not what they are doing. [Luke 23:34]

While the U.S. government continues its mission to eliminate production and distribution of cannabis in all forms, our close friend and ally, the Jewish nation of Israel, pursues an alternative path.

While the U.S. government has and will put American citizens in prison for marijuana use and possession, the feds continue to support Israel with annual contributions in billions of taxpayer dollars for military and economic assistance. U.S. citizens are criminalized; Israel is supported.

The nation of Israel produces and distributes this Schedule I drug, which the federal government claims has high potential for abuse and no accepted medical use. The federal government believes this drug is unsafe to use, even under medical supervision.

This means Israel, as well as Canada, are rogue, terrorist nations. From a federal government perspective, the two countries work to poison human beings around the world. Yet the federal government continues our close relationship with both nations. They only punish American citizens.

Israel's cabinet approved a law to allow medical cannabis exports on January 27, 2019. The legislation licenses companies approved by the health regulator and police to export medical cannabis to countries that permit its use. The Israeli company Intercure announced plans to expand into 10 countries over the next two years to produce cannabis and meet growing demand for medical marijuana.

Benefiting from a favorable climate and expertise in medical and agricultural technologies, Israeli companies are among the world's biggest producers of medical marijuana. Finance and health ministries estimate exports could raise tax income by 1 billion shekels (\$265 million) a year.



To appease Public Security Ministry concerns over abuse, the Israeli law allows police to object to a particular company being granted a license. An expert committee will then review and rule on the application.

Pakalolo is extremely popular in the islands. Law enforcement also has more important priorities. With our favorable climate and expertise in agricultural technologies, we could raise significant public funding by taxing the production of medical cannabis.

Leaders claim we must protect our keiki from the scourge of this illicit drug. While we disagree about methods, we are unanimous in our goal of protecting our children. Sadly, our current drug policy enriches criminal producers, turns generally decent people into "illegal" actors, while our keiki are awash in mountains of marijuana.

Examples from the regulated medical cannabis market show encouraging behavior from Responsible Users, additional tax revenues for state coffers, and reduced illegal dealings, crime and violence on our streets. This helps our keiki.

Public resources could fund our financially-struggling schools, which would truly help the keiki. Money now goes to criminals. Regulated markets keep illicit substances far from our keiki.

Many leaders urge caution and restraint. They hope tomorrow will bring additional information or options. They fail to understand our streets are replete with these illicit substances today. Inaction does not help our keiki.

We have two choices: continue a failed policy that has led to the arrest and incarceration of millions, while illegal drugs are more prevalent than ever; or trust our commitment to freedom and regulated markets, as America has successfully done for some 250 years.

However we look at this situation, our failure leaves us in tears. Father, please forgive them. They know not what they are doing!

Mahalo nui loa,

-----

Scott Goold

"I Can't Accept Not Trying"



## Buco, Shana

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**From:** Scott Goold [REDACTED]  
**Sent:** Tuesday, May 07, 2019 12:41 PM  
**To:** Scott Goold; TulsiHawaiiOffice@mail.house.gov  
**Cc:** Nina Turner, Our Revolution; Tulsi Gabbard, The Sanders Institute; info@tulsi2020.com  
**Subject:** Social Media Announcements. Please share!

[This email is coming from an EXTERNAL source. Please use caution when opening attachments or links in suspicious email.]

Aloha Honorable and Heroic Rep. Gabbard and Freedom Fighters,

Sample of what is going out today. Have created a collection of compelling articles that tell the horror story of the discrimination medical cannabis patients suffer in Hawai'i. This is a "liberal" state. Yet they treat smart people who avoid opioids as second class citizens and with contempt. Our amazing Rep. Tulsi Gabbard wants to legalize. Yet people in her own state stab Veterans like her in the back.



Hawaii Aloha · Now

Check out how LIBERALS treat Veterans in Hawai'i. Freedom? For those who defend this nation?

Please see:

<https://www.infoimagination.org/comments/silver-wings.php>



Hawaiian Electric :: Put Silver Wings on My Son's Chest

InfoImagination leads Hawaii and New Mexico in Business Intelligence, Market Research, Web Applications,...

INFOIMAGINATION.ORG

Reply · Share · Like · Comment

SEE: <https://www.infoimagination.org/comments/silver-wings.php>

These are very cruel, evil and incompetent people. They test for inert, non-intoxicating THC-COOH, which tells them nothing. They could test for Delta 9 THC, which measures intoxication. Do you support safe streets and workplaces or companies that simply waste money and further punitive policy?

People who have never served this nation, and who sit in AC rooms at plush desks and make 6-7 figure salaries, diagnose and punish veterans, athletes, people who have worked hard all their life to secure and defend this nation; do the heavy lifting at challenging, tough jobs, and serve the good people of Hawai'i Nei. Is this acceptable to you?



HawaiiAloha · 1m

I was removed Hawaiian Electric for having inert THC-COOH in my urine. I have a legal Medical Cannabis authorization in Hawai'i. THC-COOH is inert - a byproduct. The DOT tests for Delta 9 THC. This is the intoxicating component.

I am allowed to legally use medical cannabis at home before bed for my pain. I'm 61. Former athlete. I guess I can no longer work. THC-COOH can remain in my fat cells for 6-9 months.

Check out this story. You won't believe it. FREEDOM. Not with Liberals!

<https://www.infoimagination.org/comments/drug-criminal.php>



**Danger Danger :: I Am a Legal Medical Cannabis Drug Criminal**

Infoimagination leads Hawaii and New Mexico in Business Intelligence, Market Research, Web Applications,...

INFOIMAGINATION ORG

Reply · Share ·

<https://www.infoimagination.org/comments/drug-criminal.php>

There is a facade of aloha here. This is a form of indentured servitude. Bow to the corporate king who stole these lands in 1893. It is time for a revolution in Hawai'i.

Hawaiian Electric puts our energy grid at risk, while punishing smart people who use a better and more safe alternative for long-term pain management.

Welcome to the Dark Ages in Hawai'i.

-----

Scott Goold

"I Can't Accept Not Trying"

## Buco, Shana

---

**From:** Scott Goold [REDACTED]  
**Sent:** Friday, March 22, 2019 2:09 PM  
**To:** Buco, Shana; Yafuso, Lori; info  
**Cc:** [REDACTED]  
**Subject:** Medical Update 2

[This email is coming from an EXTERNAL source. Please use caution when opening attachments or links in suspicious email.]

Aloha Friday Ms. Buco,

Fast-moving week for me. My new PCP had his staff x-ray my hip after we met Wednesday. Orthopedic team reviewed the pictures next day (Thursday) and I received a call from them mid-morning. They wanted to fast track this process and see me immediately.

Met with surgeon this morning. He said my hip is “terrible, as bad as it gets.” His assistant told me she had taken one look at my x-rays and said, “Oh!!! Got to get dis guy in immediately!”

Surgeon wanted to know why I sought consultation at this time. I told him Hawaiian Electric fired me for using medical cannabis to manage the pain from this injury. Told him I can’t lose a job over this and have to do something. “What do you do?” he asked. I told him I’m IT, sit at desk all day, don’t drive a company vehicle, and don’t work with heavy machinery or dangerous chemicals. He shook his head bewildered, “Unbelievable!!! That makes no sense at all.”

Interesting, isn’t it? I’ve spoken with law enforcement, politicians, attorneys, and now, medical professionals. None say it makes any sense to strip a person's livelihood over this legal medication. Does it make sense to anyone at HEI? I sure would like to know why I was fired.

My attorney asked if I had received any paperwork about the termination. Is there any? I only have our verbal conversations and various emails. Did you summarize this incident in writing? I would appreciate a copy if you did.

Thank you for your time and have a wonderful weekend.

Mahalo!

> On Mar 20, 2019, at 2:10 PM, Scott Goold [REDACTED] wrote:

>

> Good afternoon Ms. Buco,

> I sincerely hope your week is going well. My primary care physician is on Kaua’i. Due to this incident with Hawaiian Electric, I established my PCP on island today. It took me a couple weeks to get in. As this was our first meeting, the doctor took considerable time to review my medical profile. He was shocked HEI fired me for my use of Medical Cannabis. He told me “for the record” he’s not authorized to prescribe cannabis, but considered my decision to be “reasonable” and “medically sound.”

>

> I told him I’ve been on this mediation for nearly ten years. “Why then do you wish to change? Seems it’s been helpful.” Yes, Doc, it’s worked out well for me. I asked, “Do you know how devastating it is to have your employment stripped?” Being fired from a job is similar to suffering a death in the family. It’s a crushing, cruel penalty — especially when one is trying to follow company policy and the law! My doctor also told me he believes HEI violated ADA protections. My attorney agrees.

>

> Although I’m willing to consider changing medications, the people have spoken about medical cannabis here as well as across the country. Ninety-one percent of voters nationwide support “allowing adults to legally use marijuana for medical purposes.” [Jan. 11, 2018: Quinnipiac Poll] Some 31 U.S. states, the District of Columbia, Guam and Puerto Rico permit medical cannabis use.

>

> The greatest irony of my meeting today was seeing this instrument on the counter in the exam room. Isn't it generous of Celebrex to give out free medical tools? They also funnel millions to campaign coffers of our nation's politicians. They fund elected officials, who conveniently continue the prohibition of medical cannabis, which allows producers of Celebrex to make billions of dollars. Some would claim this is corruption. Follow the money!!!

>

> <celebrex.jpeg>

>

> My team needs me. I need my team. HECO needs all of us. I recognize you do not control this situation. I pray our senior leaders will hear my cries for reason, compassion and righteousness.

>

> Thank you for your time!

>

> -----

> Scott Goold

> "I Can't Accept Not Trying"

>

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>

>

>

>

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>

>

-----

Scott Goold

"I Can't Accept Not Trying"

From: [SCOTT GOOLD](#)  
To: [Buco, Shana](#)  
Cc: [Tran, Thao; info](#)  
Subject: LinkedIn  
Date: Wednesday, July 31, 2019 11:04:44 AM  
Attachments: [Screen Shot 2019-07-31 at 10.15.40 AM.png](#)

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[This email is coming from an EXTERNAL source. Please use caution when opening attachments or links in suspicious email.]

Aloha Shana,

How funny! Your LinkedIn page came up on my feed today. Always wondered what you looked like. Remember well the first time you called — maybe around Feb 11th. You have such a pleasant and happy voice. Remains such a wonderful memory. You told me HECO selected me ... just a couple more steps.

I was working with an Executive Director at UH the other day. Said her biggest frustration is the lack of sophistication throughout the Hawai'i system. People simply aren't trained well she said. She came here a few years ago from mainland. Demands are so rigorous there. We are expected to be "practically perfect in every way."

I know you're a good person. Know Liz Deer is as well. Also assume there simply wasn't a sophisticated training program to prepare all of you for medical cannabis issues. I want you to know I don't blame you for what happened. You can't pass on what is not passed to you. Leadership comes from the top.

Wish so much I was a woman. Wish I was someone like you. I've always been a geeky guy — a scientist who didn't do well at parties. Didn't have that pleasant personality. I talk better to computers than people. It's so hard to find friends who are like me. Had that with Lori and her team. For once in my life, I found a place where I fit. Was so happy being able to help all of you. Couldn't wait to come to work each day. Was so proud to tell people I worked for HECO.

Can't stop crying, Shana! I'm not the monster you think I am. I'm in so much pain. Each night as I go to bed, I ask god to take me. I beg ... please, no more!!! Please!!!



You offer people much happiness. Hope you remember in your work how important EVERY detail is to others; every decision. As a young lieutenant in the military, the master sergeant found me kicking back after a hard day. Asked me if my troops were 100% ready. I said almost. He said almost gets people killed. This is what they call Sense of Urgency. Didn't go to sleep that night. Worked and worked and worked. Got my troops squared away.

You didn't write HEI policy. You're a young lieutenant. Yet I was YOUR troop. I put my life, my career, in your hands. You have a fantastic job. I'm so proud of you. Wish you all the success. All that was needed was THREE little words: Medical Cannabis Prohibited.

Sense of Urgency and Attention to Detail. I would be alive today. Would be happy with my team. You killed my soul. Please don't let this happen to anyone else. Connie Lau refuses to speak with me. I'm dead to her. She said, "With great privilege comes great responsibility." Sad she doesn't live her own words. You have great privilege. Please remember this. I'm not a drug criminal. I'm just in pain.



Shana Buco · 2nd  
HR Business Partner at Hawaiian Electric Company  
Hawaiian Islands · 87 connections · [Contact info](#)

 Hawaiian Electric Company  
 University of Hawaii at  
Manoa

-----  
Ko'olau of Kaua'i. I am the Defiant One  
"I Believe We Can"

**From:** [Scott Goold](#)  
**To:** [Tran, Thao](#)  
**Cc:** [Joseph T. Rosenbaum](#); [REDACTED]  
**Subject:** Want to play a game?  
**Date:** Friday, May 10, 2019 11:48:09 PM

---

[This email is coming from an EXTERNAL source. Please use caution when opening attachments or links in suspicious email.]

Aloha Ms. Tran,  
Hope this evening finds you well. Mahina is majestic in the night sky!

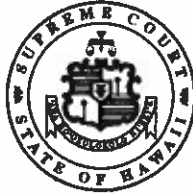
Believe it was May 3rd when you notified my kind and gracious attorney you dropped negotiations. You ended ho'oponopono, not us. Thus, he's not working on anything for me now. Please do not bother him. You are free to speak directly with me at any time — as I requested of Ms. Shana Buco on February 27, 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?



Office of Disciplinary Counsel  
201 Merchant Street, Suite 1600  
Honolulu, Hawai'i 96813  
Telephone (808) 521-4591  
www.dbhawaii.org



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Deputy Chief Disciplinary Counsel  
Rebecca M. Salwin, Esq.  
Assistant Disciplinary Counsel  
Ryan S. Little, Esq.  
Chloe M. R. Fasi, Esq.

Investigators  
Andrea R. Sink  
Joanna A. Sayavong  
Josiah K. Sewell  
Lisa K. Lemon

September 9, 2019

CONFIDENTIAL

Constance H. Lau, Esq.  
Hawaiian Electric Industries, Inc.  
Exec. Offices  
P.O. Box 730  
Honolulu, HI 96808

Re: ODC No. 19-0448  
Scott Goold, Complainant

Dear Constance H. Lau:

Our office received a complaint alleging professional misconduct brought against you by the above referenced Complainant. Following initial screening, we determined that no actionable violation of the rules of professional conduct were evident, and based upon that review, we closed this matter without formal investigation, effective this date.

This disposition has been reviewed by a member of the Disciplinary Board appointed to review our recommendations. See Rules of the Supreme Court of Hawaii ("RSCH") Rule 2.6(b)(2), and Disciplinary Board Rule ("DBR") Rule 13(c). Therefore, this disposition is final, however, should other facts or allegations come to our attention, the matter may be reopened. If that should occur, you will be informed. Otherwise, the complaint and associated records will be subject to destruction after six years. DBR Rule 33(c)(1).

This ethics case is now closed.

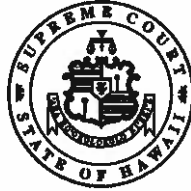
Sincerely,

A handwritten signature in blue ink, appearing to read "Bradley R. Tamm", written over a faint circular stamp.

BRADLEY R. TAMM  
CHIEF DISCIPLINARY COUNSEL

BRT:uo:acs

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Josiah K. Sewell  
Lisa K. Lemon

September 9, 2019

CONFIDENTIAL

Mr. Scott Goold

[REDACTED]  
Honolulu, HI 96815

Re: ODC 19-0448  
Constance H. Lau, Respondent

Dear Mr. Goold:

Thank you for your complaint of August 26, 2019.

This Office of Disciplinary Counsel ("ODC") investigates and prosecutes acts of professional misconduct committed by Hawai'i licensed attorneys on behalf of the Hawai'i Supreme Court. When a complaint such as yours is received, we review it to determine if it involves behavior which could constitute professional misconduct by an attorney under the Hawai'i rules. The rules of professional conduct (court mandated rules of conduct) are more narrow than the general field of ethics (morality), and not all "unethical behavior" is prohibited by the rules of professional conduct. Further, an attorney may be found to have committed professional misconduct only if a violation of a specific rule can be proven by "clear and convincing evidence." Finally, unless there is a sufficient legal and factual basis to warrant an investigation, no action will be taken.

Following a careful review of your complaint, we have determined that no actionable professional misconduct has been demonstrated to warrant further investigation. Our initial determination has been reviewed and approved by a member of the Disciplinary Board of the Hawai'i Supreme Court, and we have been authorized to close this matter.

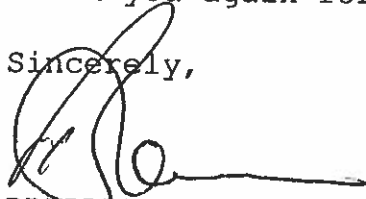
Mr. Scott Goold  
September 9, 2019  
Page 2 of 2

Please note, ODC's jurisdiction is limited by law, and our determination does not mean that your grievance is invalid, it only means that we are not the appropriate agency to take action. You are encouraged to seek your own counsel as to any other remedies you may have. Although this matter is closed, your letter will be kept on file for future reference, subject to our document retention policies.

By copy of this letter, I am advising Constance H. Lau of your contact with this office, and this terminating disposition.

Thank you again for bringing this matter to our attention.

Sincerely,

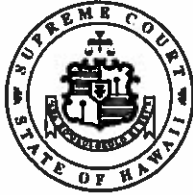
A handwritten signature in black ink, appearing to be 'B. Tamm', with a long horizontal line extending to the right.

BRADLEY R. TAMM  
CHIEF DISCIPLINARY COUNSEL

BRT:uo:acs

✓ cc: Constance H. Lau, Esq.

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201 Merchant Street, Suite 1600  
Honolulu, Hawai'i 96813  
Telephone (808) 521-4591  
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Josiah K. Sewell  
Lisa K. Lemon

September 9, 2019

CONFIDENTIAL

Thao Tu Tran, Esq.  
Hawaiian Electric Co., Inc.  
P.O. Box 2750  
Honolulu, HI 96840

Re: ODC No. 19-0429  
Scott Goold, Complainant

Dear Thao Tu Tran:

Our office received a complaint alleging professional misconduct brought against you by the above referenced Complainant. Following initial screening, we determined that no actionable violation of the rules of professional conduct were evident, and based upon that review, we closed this matter without formal investigation, effective this date.

This disposition has been reviewed by a member of the Disciplinary Board appointed to review our recommendations. See Rules of the Supreme Court of Hawaii ("RSCH") Rule 2.6(b)(2), and Disciplinary Board Rule ("DBR") Rule 13(c). Therefore, this disposition is final, however, should other facts or allegations come to our attention, the matter may be reopened. If that should occur, you will be informed. Otherwise, the complaint and associated records will be subject to destruction after six years. DBR Rule 33(c)(1).

This ethics case is now closed.

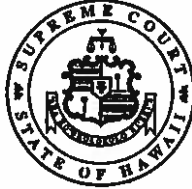
Sincerely,

A handwritten signature in blue ink, appearing to be "Bradley R. Tamm", written over a blue circular stamp.

BRADLEY R. TAMM  
CHIEF DISCIPLINARY COUNSEL

BRT:uo:acs

Office of Disciplinary Counsel  
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Investigators  
Barbara Gash  
Andrea R. Sink  
Joanna A. Sayavong  
Josiah K. Sewell  
Lisa K. Lemon

September 9, 2019

CONFIDENTIAL

Mr. Scott Goold

[REDACTED]  
Honolulu, HI 96815

Re: ODC 19-0429  
Thao Tu Tran, Respondent

Dear Mr. Goold:

Thank you for your complaint of August 26, 2019.

This Office of Disciplinary Counsel ("ODC") investigates and prosecutes acts of professional misconduct committed by Hawai'i licensed attorneys on behalf of the Hawai'i Supreme Court. When a complaint such as yours is received, we review it to determine if it involves behavior which could constitute professional misconduct by an attorney under the Hawai'i rules. The rules of professional conduct (court mandated rules of conduct) are more narrow than the general field of ethics (morality), and not all "unethical behavior" is prohibited by the rules of professional conduct. Further, an attorney may be found to have committed professional misconduct only if a violation of a specific rule can be proven by "clear and convincing evidence." Finally, unless there is a sufficient legal and factual basis to warrant an investigation, no action will be taken.

Following a careful review of your complaint, we have determined that no actionable professional misconduct has been demonstrated to warrant further investigation. Our initial determination has been reviewed and approved by a member of the Disciplinary Board of the Hawai'i Supreme Court, and we have been authorized to close this matter.

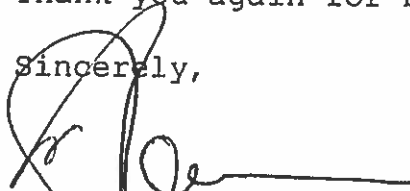
Mr. Scott Goold  
September 9, 2019  
Page 2 of 2

Please note, ODC's jurisdiction is limited by law, and our determination does not mean that your grievance is invalid, it only means that we are not the appropriate agency to take action. You are encouraged to seek your own counsel as to any other remedies you may have. Although this matter is closed, your letter will be kept on file for future reference, subject to our document retention policies.

By copy of this letter, I am advising Thao Tu Tran of your contact with this office, and this terminating disposition.

Thank you again for bringing this matter to our attention.

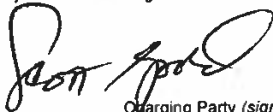

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Tamm', with a long horizontal line extending to the right.

BRADLEY R. TAMM  
CHIEF DISCIPLINARY COUNSEL

BRT:uo:acs

✓cc: Thao Tu Tran, Esq.



CHARGE OF DISCRIMINATION		AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974. See Privacy Act Statement before completing this form.		<input checked="" type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	20793 (Amended) 37B-2019-00269
Hawaii Civil Rights Commission <i>State or local Agency, if any</i>		and EEOC	
NAME (Indicate Mr., Ms., Mrs.) Mr. Jeffrey S. Goold		HOME TELEPHONE (Include Area Code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY, STATE AND ZIP CODE Honolulu HI 96815	DATE OF BIRTH
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below)			
NAME Hawaiian Electric Industries, Inc.		NUMBER OF EMPLOYEES, MEMBERS 15+	TELEPHONE (Include Area Code) (808) 543-5662
STREET ADDRESS 2900 American Savings Bank Tower, 1001 Bishop St.		CITY, STATE AND ZIP CODE Honolulu HI 96813	COUNTY 003
NAME Hawaiian Electric Company, Inc.		TELEPHONE (Include Area Code)	
STREET ADDRESS P.O. Box 2750		CITY, STATE AND ZIP CODE Honolulu HI 96840	COUNTY 003
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE EARLIEST _____ LATEST 2/27/19	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN / ANCESTRY <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		<input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed attach extra sheet(s))			
<p>I. At the time of my discharge, I held a legal and current "written certification" for the use of medical cannabis [marijuana], as a "qualifying patient" suffering a "chronic or debilitating disease or medical condition" that produces "severe pain" per Hawai'i Revised Statutes, Chapter 329, Part IX. §329-122 Medical use of marijuana; conditions of use specifically states (c) The authorization for the medical use of marijuana in this section shall not apply to: (B) In the workplace of one's employment. I medicated only in the privacy of my home as directed by law and only prior to bed — never before or during work or in the workplace of my employer. I was denied a reasonable accommodation for my disability (physical), and discharged on February 25, 2019 from my IT Specialist position, earning \$90 hourly. On February 27, 2019, I was denied the opportunity to apply for a position based upon my disability. I was hired in or about August 2018. These are violations of Hawai'i Revised Statutes, Chapter 378, Part I. My beliefs are based upon the following:</p> <p>A. Upon information and belief, Hawaiian Electric Industries, Inc. [HEI] and Hawaiian Electric Company, Inc. [HECO] are my joint employers. The Companies operate exclusively in the State of Hawai'i. I am a resident of the State of Hawai'i.</p> <p>B. On August 13, 2018, I was hired as a contract employee working in the IT Department. Respondents required no drug screen. Respondents did not disclose to me or notify me of a drug-free workplace policy. Respondents did not assert a prohibition on medical cannabis.</p> <p>C. On about December 15, 2018, Respondents extended my contract through July 2019. Respondents required no drug screen. Respondents did not disclose a drug-free workplace policy. Respondents did not assert a prohibition on medical cannabis.</p>			
Page 1 of 4			
<input checked="" type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State & local requirements)	
I declare under penalty of perjury that the following is true and correct		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief	
Date: 11/11/19  Charging Party (signature)		SIGNATURE OF COMPLAINANT  11.11.19 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)	

<b>CHARGE OF DISCRIMINATION</b>	AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.	<input checked="" type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	20793 (Amended) 37B-2019-00269
Hawaii Civil Rights Commission		and EEOC
State or local Agency, if any		

THE PARTICULARS ARE (If additional space is needed attach extra sheet(s):

- D. In or about January 2019, Respondents encouraged me to apply for an internal Database Analyst position. Respondents did not disclose a drug-free workplace policy. Respondents did not assert a prohibition on medical cannabis. Respondents notified me of my selection for the position on February 11, 2019.
- E. On or about February 11, 2019, I was requested to provide information for a background security check, which I passed.
- F. On or about February 14, 2019, I notified Elizabeth Deer, Human Resource representative, of my disability and that I had a legal prescription for medical cannabis and offered to provide a copy of my Hawai'i State Department of Health 329 Medical Cannabis Registration Card. Ms. Deer thanked me for being proactive and said I would be fine. Ms. Deer did not disclose to me or notify me of a drug-free workplace policy. She did not assert a prohibition on medical cannabis.
- G. On or about February 14, 2019, Ms. Deer requested that I provide a urine sample as part of a drug screen. I informed Ms. Deer that the medical cannabis will likely show active in the drug screen. Ms. Deer did not disclose to me or notify me of a drug-free workplace policy. She did not assert a prohibition on medical cannabis.
- H. On or about February 14, 2019, I submitted to the drug screen and informed the Straub Medical Center lab that I was prescribed medical cannabis.
- I. On February 18, 2019, Michael M. Kusaka, MD contacted me and notified me that I tested positive for cannabis in the drug screen. I informed the doctor that I was a legal patient of the State of Hawai'i Department of Health Medical Cannabis Program. Dr. Kusaka informed me he had notified Respondents by telephone.
- J. On February 19, 2019, Michael M. Kusaka, MD, of Straub OHS sent an official notification letter to Hawaiian Electric Co., Inc informing the companies of the positive urine drug screen related to "Marijuana (THC) Metabolites." Dr. Kusaka added, Mr. Goold "states he has a Marijuana Certificate."
- K. On February 20, 2019, Herman Lau, IT Security Manager, called and confirmed my employment and informed me that my start date would be on February 25, 2019. I notified my coworkers, friends and family I had been officially selected for the new position.

Page 2 of 4

<input checked="" type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - (When necessary for State & local requirements)  I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief
I declare under penalty of perjury that the following is true and correct	SIGNATURE OF COMPLAINANT
<div style="display: flex; justify-content: space-between;"> <div style="text-align: left;"> <p>11/11/19 Date</p> </div> <div style="text-align: center;">             Charging Party (signature)            Jeffrey S. Goold         </div> </div>	<div style="text-align: center;">             SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE            (Day, month, and year)         </div>



**CHARGE OF DISCRIMINATION**

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AGENCY

- FEPA
- EEOC

CHARGE NUMBER

20793 (Amended)  
37B-2019-00269

Hawaii Civil Rights Commission  
State or local Agency, if any

and EEOC

THE PARTICULARS ARE (If additional space is needed attach extra sheet(s))

- L. On February 25, 2019, Shana Bucu, Human Resource Director, informed me Respondents had withdrawn the offer of internal employment and that I was discharged from my contract position due to a positive indication of cannabis on the pre-employment urine drug screen. I claimed I had "passed" the pre-employment drug screen per HEI Corporate Code of Conduct, as my medication was legal or prescribed. Ms. Bucu said I was terminated because I was intoxicated or impaired in the workplace, engaged in illegal activity, and was a danger to coworkers, the company and the general public. I reminded Ms. Bucu HEI Corporate Code of Conduct did not prohibit medical cannabis and my use of medical cannabis was legal in the State of Hawai'i. I disclosed I used only at home at night before bed; never before or during work; and have never been intoxicated or impaired in the workplace. I noted I was not requesting accommodation for "on-site" medical use of cannabis in the workplace. I disclosed my medical team had prescribed medical cannabis for my disability, as medical cannabis is the most effective medication for my debilitating medical condition and severe chronic pain, and any alternative medication whose use would be permitted by HEI Corporate Code of Conduct would be less effective. I also informed Ms. Bucu I was a trained opioid addiction specialist and fearful of opioid prescription pain medications, which were one of few options for me. I informed Ms. Bucu I had disclosed my mobility disability and medical cannabis "329" authorization to Elizabeth Deer February 14, 2019, and she said I would be fine. Ms. Bucu said Respondents had "zero tolerance" for cannabis.
- M. I informed Ms. Bucu the HEI Corporate Code of Conduct, Appendix A, 2.d. prohibits the "possession or the unprescribed use or distribution of any controlled substance or illegal drug." As Medical Cannabis is legal in the State of Hawai'i and I have a prescription for the use of Medical Cannabis, my behavior does not violate the HEI Corporate Code of Conduct.
- N. On February 27, 2019, Ms. Bucu finally returned my calls. She again claimed the pre-employment urine drug screen showed I was intoxicated or impaired in the workplace, engaged in illegal activity, and was a danger to coworkers, the company and the general public. I told Ms. Bucu "I am not a criminal" and "I am not engaged in illegal activity." I again stated I have never been intoxicated or impaired in the workplace. Ms. Bucu said Respondents had federal government contracts and cannabis was against federal law. I again informed Ms. Bucu I am a resident of the State of Hawai'i and legally participating in the State of Hawai'i Department of Health's Medical Cannabis program due to my disability. I informed Ms. Bucu I had a prescription from my physician for medical cannabis for my disability, and HEI Corporate Code of Conduct prohibits only "illegal" or "unprescribed" use of substances. I reminded Ms. Bucu HEI Corporate Code of Conduct does not prohibit medical cannabis. Ms. Bucu reiterated Respondents had "zero tolerance" for cannabis; that I was discharged; and denied my request to reapply for the internal position with Respondents.
- O. I reminded Ms. Bucu that HEI Corporate Code of Conduct nor any of the other written information or verbal statements by supervisors or managers speak about Respondents having a prohibition on medical cannabis.

Page 3 of 4

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State & local requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief

I declare under penalty of perjury that the following is true and correct

SIGNATURE OF COMPLAINANT

11/11/19  
Date

Charging Party (signature)  
Jeffrey S. Goold

11-11-19

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(Day, month, and year)

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

AGENCY

CHARGE NUMBER

- FEPA
- EEOC

20793 (Amended)  
37B-2019-00269

Hawaii Civil Rights Commission  
State or local Agency, if any

and EEOC

THE PARTICULARS ARE (If additional space is needed attach extra sheet(s):

- P. I affirm I never used medical cannabis prior to going to work or during my work hours. My medical cannabis use is legally prescribed for use at home due to my debilitating medical condition that produces chronic severe pain. HEI Corporate Code of Conduct permits "legal" or "prescribed" drugs.
- Q. I believe that the Federal Drug-Free Workplace Act (DFWA) does not require drug testing. I further believe that the DFWA is not opposed to hiring employees who use medical cannabis outside of work while off-duty because the federal government under the False Claims Act is not defrauded. I believe that Federal law requires federal contractors to make a good faith effort to maintain a drug-free workplace, but does not require a "zero-tolerance" drug-testing policy.
- R. Respondents claim to enforce a "drug-free workplace policy" but did not test me as a contract employee for some six months. Respondents did not test contract employees at the time of my employment with Respondents. Nothing in the Drug Free Workplace Act (DFWA) of 1988 governs the use of cannabis outside the covered workplace for companies. A company covered by the DFWA will be subject to penalties only if it fails to implement the "six steps" required to establish a drug-free workplace. I believe Respondents failed to implement the six steps, in particular, as Respondent failed to notify me and other employees of their drug-free workplace policy; disclose whether they had established a "drug-free awareness program"; and make me and other employees aware of a) the dangers of drug abuse "in the workplace"; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
- S. Respondents took no action when I informed HECO HR representative Elizabeth Deer on February 14, 2019, of my medical cannabis authorization, use and expected positive indication for cannabis on the pre-employment drug screen. Respondents took no action when informed by Dr. Michael M. Kusaka from Straub Occupational Health Services by telephone on about February 18, 2019 of my positive indication of cannabis on the pre-employment drug screen. Respondents took no action when informed by Dr. Michael M. Kusaka from Straub Occupational Health Services in writing on February 19, 2019, of my positive indication of cannabis on the pre-employment drug screen.
- T. I did not seek accommodation to use medical cannabis "on site" during work hours. As a non-safety-sensitive employee working at a desk in the IT department, I believe I was denied a reasonable accommodation for a "Waivers of the Code" of the HEI Corporate Code of Conduct for the alleged violation of Respondents Core Values to use my legally prescribed medication in the privacy of my home outside of work, and subsequently discharged and denied applying for positions based on my disability (physical).

Page 4 of 4

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State & local requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief

I declare under penalty of perjury that the following is true and correct

SIGNATURE OF COMPLAINANT

11/11/19  
Date

Charging Party (signature)  
Jeffrey S. Goold

11.11.19

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(Day, month, and year)

## Hawai'i Civil Rights Commission Obstructs Justice

Raymond Griffin, Jr., Director  
Rogelio A Colón / Senior Investigator (Bilingual Spanish)  
EEOC Honolulu Local Office  
Prince Jonah Kuhio Kalaniana'ole Federal Building  
300 Ala Moana Blvd, Rm 4-257  
Honolulu, HI 96850

William D. Hoshijo, Executive Director State of Hawaii  
Hawaii Civil Rights Commission  
830 Punchbowl St., Room 411 Honolulu, HI 96813

Cc:  
David Ige, Governor  
Josh Green, MD, Lt. Governor  
Roselyn "Roz" Baker, State Senator  
Mike Gabbard, State Senator

**RE: Petitioner v. Hawaiian Electric Industries, Inc.**  
**HCRC No. 20793; EEOC No. 37B-2019-00269**

March 3 2021

**Aloha e Mr. Griffin, Jr,**

I requested to withdraw my complaint from the Hawai'i Civil Rights Commission (HCRC or Commission) on February 26, 2021. The Commission has refused to respond to my request and disrespects my rights in this matter. At this time I make my request directly to you.

In emailed discussion with HCRC Investigator Supervisor, Stephen K.L. Chang, February 22, 2021, he wrote:

Dear Mr. Goold,

We would not accept the withdrawal form as modified by you and we would not process a closure of your case based on your signing the modified form. Also, if you truly feel that you are being coerced into withdrawing your case, you should not sign the withdrawal. We are not opposed to continuing with your case, should that be your wish. I don't believe the circumstances support that your signing has been coerced by the Hawaii Civil Rights Commission. The enforcement section of the Commission acts independently of the Commission members in processing complaints of discrimination, and we are not influenced by (and generally not even aware of) the links between Commission members and any Complainant or Respondent. The processing of your complaint has been under my supervision and I have never communicated about your case with any Commission member.

Stephen K.L. Chang  
Investigator Supervisor  
Hawai'i Civil Rights Commission

HCRC does not have the right to “coerce” me into changing the justification for seeking to withdraw from this matter. First Amendment guarantees protect my right to petition and address government as our family deems necessary.

As of this date, please close my case, cease any investigation, and provide a Right-to-Sue Notice by End-of-Day two (2) business days from the date of this letter and signed request, Friday, March 5, 2021. Please instruct HCRC to provide all case files from Charging Party and Respondent within fourteen (14) calendar days of signed date of this request, Wednesday, March 17, 2021.

See Attached [1] REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION.

I have also included my February 26th communication to HCRC, including request to withdraw, as an attachment to this memorandum for your files. Attached [2]

I have been forced into making this request, as HCRC refuses to dismiss my charge after nearly 700 days or further investigate my charge. The Commission is currently engaged in coercive behavior to harass and intimidate our family into changing justification for withdrawal.

HCRC Commissioner and Chair Liann Ebesugawa is Assistant General Counsel for Hawaiian Electric Industries, Inc. Previously she served as an Associate General Counsel for Hawaiian Electric Company, Inc. As chair, Ms. Ebesugawa is actively working with the state legislature to codify discrimination of medical cannabis patients for the companies she serves. Attached [3]

HCRC has a conflict of interest in this matter.

Thank you for your anticipated cooperation. Mahalo Ke Akua

Scott Goold

**Attached:**

[1] REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION

[2] Hawai'i Civil Rights Commission Obstructs Justice (4 pages), including REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION (1 page)

[3] Hawaiian Civil Rights Commission, Re: S.B. No. 64, February 17, 2021.

REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION

This charge is presently open with the Equal Employment Opportunity Commission (EEOC) and Hawaii Civil Rights Commission (HCRC). To withdraw your charge, it will be necessary to so indicate in the space provided below. EEOC will provide a Right-to-Sue Notice by End-of-Day two (2) business days from signed date of this request, and request HCRC provide all case files from Charging Party and Respondent within fourteen (14) calendar days of signed date of this request.

HCRC No.: FE-O-20793                      EEOC Charge No.: 378-2019-00269

Charging Party Name:                      Jeffrey S. Goold

Respondent(s) Name:                      Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc.

\*\*\*\*\*

I am aware HCRC and/or EEOC protects my right to file a complaint. I have been advised it is unlawful for any person covered by Title VII of the Civil Rights Act of 1964, as amended, to threaten, intimidate or harass me because I have filed a complaint. HCRC currently ignores my request to withdraw my charge (2.26.2021) in attempt to coerce me to change my justification for withdrawing. This action appears to violate my First Amendment rights and serves to intimidate and harass. Time is of the essence in this matter.

I request the withdrawal of my charge because:

/XX/ I wish to pursue this matter in court. Please provide a Right-to-Sue Notice. I understand in being issued a Right-to-Sue Notice the EEOC will close my case and cease any investigation. As my case is dual-filed with HRCR, I understand HCRC will close my case, cease any investigation, and forward all cases files as requested.

\*\*\*\*\*

I wish to withdraw my charge filed with the Equal Employment Opportunity Commission. As my complaint is also dual-filed with Hawaii Civil Rights Commission, I also wish to withdraw that charge. I have been forced into making this request, as HCRC refuses to dismiss my charge after nearly 700 days or further investigate my charge. HCRC Commissioner and Chair Liann Ebesugawa is Assistant General Counsel for Hawaiian Electric Industries, Inc. Previously she served as an Associate General Counsel for Hawaiian Electric Company, Inc. HCRC has a conflict of interest in this matter.



\_\_\_\_\_  
COMPLAINANT  
CRC-C-2 Rev. (9/92)

\_\_\_\_\_  
March 3, 2021  
DATE

## Hawai'i Civil Rights Commission Obstructs Justice

William D. Hoshijo, Executive Director  
State of Hawaii  
Hawaii Civil Rights Commission  
830 Punchbowl St., Room 411  
Honolulu, HI 96813

Rogelio A Colón / Senior Investigator (Bilingual Spanish)  
EEOC Honolulu Local Office  
Prince Jonah Kuhio Kalaniana'ole Federal Building  
300 Ala Moana Blvd, Rm 4-257  
Honolulu, HI 96850

Cc:  
David Ige, Governor  
Josh Green, MD, Lt. Governor  
Roselyn "Roz" Baker, State Senator  
Mike Gabbard, State Senator

**RE: Petitioner v. Hawaiian Electric Industries, Inc.**  
**HCRC No. 20793; EEOC No. 37B-2019-00269**

February 26, 2021

**Aloha e Mr. Hoshijo,**

I have written to you a number times claiming unfair treatment by the Commission. I initially filed my complaint with your office April 9, 2019. If my grievance was absent merit, your team would have quickly dismissed the matter and issued a Right To Sue (RTS) notice.

After some 686 days, our complain remains unassigned to an investigator. Clearly our case cannot be dismissed and demonstrates probable cause of discriminatory behavior. As the Commission does not act, you force us to withdraw. Mr. Stephen K. Chang now objects to the language we have included. Demands we must remove this language before the Commission will honor our request. This is coercion.

Hawaiian Electric Industries (HEI) and Hawaiian Electric Company (HECO) claim to follow "drug-free" workplace policy. I always chuckle when writing "drug-free." America is many things, but not drug-free. We use more drugs than any nation in the history of the world. The term itself is an oxymoron. I'm unaware of anyone who is drug free.

On September 15, 1986, President Reagan signed Executive Order 12564, establishing the goal of a Drug-Free Federal Workplace. The Order made it a condition of employment for all federal employees to refrain from using illegal drugs on or off duty.<sup>1</sup>

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<sup>1</sup> <https://www.samhsa.gov/sites/default/files/workplace/ModelPlan508.pdf>, p.6.

The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.<sup>2</sup>

Medical cannabis is not illegal in Hawai'i, and the federal government has not interfered with the DOH program in 20 years. No one has claimed my legal use can be considered abusive:

**HRS §329-1 Definitions. As used in this chapter:**

"Abuse" means the misuse of a substance or the use of a substance to an extent deemed deleterious or detrimental to the user, to others, or to society.

I have been under "medical care" for some 10+ years and while employed by Hawaiian Electric.

**HRS §329-125.5:**

(b) For the purposes of **medical care**, including organ transplants, a registered qualifying patient's use of marijuana in compliance with this part shall be 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. [emphasis mine]

**HRS §321-33:**

"Medical care" means every type of care, treatment, surgery, hospitalization, attendance, service, and supplies as the nature of the injury or condition requires."

Second, there is no federal, state or local law, ordinance, policy or rule requiring a drug screen of "non-safety sensitive" applicants for open positions or employees without cause. For federal contractors:

Ensure that all employees working on the federal contract understand their personal reporting obligations. Under the terms of the Drug-Free Workplace Act, an employee must notify the employer within five calendar days if he or she is convicted of a criminal drug violation.<sup>3</sup>

For companies in federal safety-sensitive industries, they must test "safety-sensitive employees":

Employers are required to test **safety-sensitive employees** at certain points. These points include pre-employment (as a new hire or before the employee begins safety-sensitive functions for the first time) and whenever there is "reasonable cause or suspicion" that an employee has been involved in the use of or is under the influence of drugs or alcohol at work. Tests are also required immediately after an employee is involved in an accident and before allowing an employee to return to duty following a testing violation.<sup>4</sup>

I spent about a year serving as a database administrator with a federal contractor. Not only did we serve the Department of Defense, NASA, JPL, we had five nuclear reactors on property along with towers of hazardous and dangerous chemicals. We produced solar panels for space missions.

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<sup>2</sup> Ibid, p.10.

<sup>3</sup> <https://www.samhsa.gov/workplace/legal/federal-laws/contractors-grantees>

<sup>4</sup> <https://www.samhsa.gov/workplace/legal/federal-laws/safety-security-sensitive>

You recently watched the U.S. achieve a historical milestone in space exploration on February 18th. *Perseverance* had an extraordinary landing carrying the first experimental helicopter for Mars — *Ingenuity*. I worked on that project. Company’s internal motto was “We get shit done.”



<b>Name</b>	Ingenuity
<b>Main Job</b>	A technology demonstration to test the first powered flight on Mars. The helicopter rode to Mars attached to the belly of the <i>Perseverance</i> rover.
<b>Launch</b>	July 30, 2020, Cape Canaveral Air Force Station, Florida
<b>Landed</b>	Feb. 18, 2021, Jezero Crater, Mars

Management also had their shit together in term of “drug-free” workplace policy. I was screened prior to employment, and as a medical cannabis patient, indicated positive. My classification was “non-safety sensitive” employee, and my medication did not lead to discipline or termination. The only requirements were to provide a copy of my medical license to HR and be “fit for duty” at all times.

On the other hand, Connie Lau and Hawaiian Electric do not have their shit together relative to “drug-free” workplace policy. I worked in the Pacific Park Plaza building, which hosts administrative services for many companies. We did not have nuclear reactors or dangerous chemicals. From my observation, all employees in PPP are “non-safety” sensitive workers. They did not screen contractors, as I was.

This therefore is not a complex matter. Hawaiian Electric was not required to drug screen me, and as a “non-safety” sensitive employee, they were not justified to kick me out of the building, embarrass me and terminate my employment for medical cannabis use during non-working hours in the privacy of my home.

If our family was to give Mr. Stephen K. Chang the benefit of the doubt, we might conclude your office is simply too overwhelmed to handle our concerns. If so, please honor my request immediately. Let me withdraw my charge and issue a RTS notice so we can move forward.

On the other hand, the Commission has behaved suspiciously and unprofessionally in this matter. The actions of Chair Liann Ebesugawa suggest the Commission has prejudicial interest to favor HEI and HECO.

It was nice to see you and hear you speak before the state Senate joint LCA/HTH committee hearing February 17th. I’ve had time to review the comments submitted by Chair Ebesugawa and Commissioners. Memorializing: Ms. Ebesugawa is employed by HEI.

*Liann Ebesugawa is chairperson of the Hawaii Civil Rights Commission and has served in that capacity since 2019. She has served on the Commission since 2017 and was recently confirmed for a second term through 2023. She is Assistant General Counsel and Assistant Corporate Secretary for Hawaiian Electric Industries, Inc.*



Chair Ebesugawa supports Senate Bill 64, which codifies corporations such as HEI and HECO may continue to discriminate against both safety and non-safety sensitive medical cannabis patients. Specifically:

**Anti-Discrimination Protections would not apply to:**

- (9) Employees who operate or are in physical control of any of the following:
  - (D) Public utilities, such as the electrical power grid or water source.

Our family wants no part of this travesty of American justice. As the Commission and Chair Ebesugawa pursue this irrational legal reasoning, this leaves us no option but to withdraw our complaint. We will never be treated fairly by this agency.

In the 1950s, similar policies exempted Black Americans from discriminatory protection. Still in the 1960s, women were excluded. By the 1990s, it was clear the U.S. and states were excluding members of the LGBTQ community from anti-discrimination guarantees.

Now the State of Hawai'i intends to codify discrimination across broad industries — with the support of the Commission. This prevents a highly qualified female economist at the University of Hawai'i Manoa from applying for a position for either HEI or HECO due to her fibromyalgia and recommended medical cannabis pain medication.

Or a highly qualified male data analyst like myself would be barred from employment at these companies due to my medical cannabis authorization to manage my chronic pain. We are both “non-safety sensitive” employees who medicate during non-working hours.

There is not one scientific study, evidenced-based research finding or medical justification for punishing talented employees or denying essential public companies access to qualified candidates in our complex island community. This is a disease of bigotry, flavored with racist motivations, and seasoned with medical ignorance and non-scientific reasoning.

If you believe our case is without merit, please dismiss the matter and give us 90 days to seek appropriate remedy. On the other hand, let us withdraw. Your agency has breached our trust. We do not wish to move forward before the Commission. You have no right to force us to remain, nor coerce us into change our justification for withdrawing.

Thank you for your anticipated cooperation. Mahalo Ke Akua

Scott Goold

Attached: REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION

REQUEST FOR WITHDRAWAL OF CHARGE OF DISCRIMINATION

This charge is presently open with the Hawaii Civil Rights Commission (HCRC) and/or the Equal Employment Opportunity Commission (EEOC). To withdraw your charge, it will be necessary to so indicate in the space provided below. HCRC will provide a Right-to-Sue Notice by End-of-Day two (2) business days from signed date of this request, and provide all case files from Charging Party and Respondent within fourteen (14) calendar days from signed date of this request.

HCRC No.: FE-O-20793 EEOC Charge No.: 378-2019-00269

Charging Party Name: Jeffrey S. Goold

Respondent(s) Name: Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc.

\*\*\*\*\*

I am aware that HCRC and/or EEOC protects my right to file a complaint. I have been advised that it is unlawful for any person covered by Title VII of the Civil Rights Act of 1964, as amended, to threaten, intimidate or harass me because I have filed a complaint. I have not been coerced into requesting this withdrawal.

I request the withdrawal of my charge because (check appropriate box):

/XX/ I wish to pursue this matter in court. Please provide a Right-to-Sue Notice if that has not already been done. I understand in being issued a Right-to-Sue that the HCRC will close my case and cease any investigation. If my case is dual-filed with EEOC, I understand that EEOC will close my case and cease any investigation as well.

/ / Other (please explain): I wish to withdraw my complaint

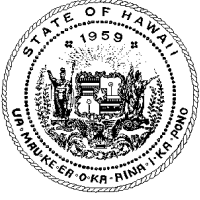
\*\*\*\*\*

I wish to withdraw my charge filed with the Hawaii Civil Rights Commission. If my complaint is also dual-filed with Equal Employment Opportunity Commission, I also wish to withdraw that charge. I have been forced into making this request, as HCRC refuses to assign an investigator and investigate my charge. HCRC Commissioner Chair Liann Ebesugawa is Assistant General Counsel for Hawaiian Electric Industries, Inc. Previously she served as an Associate General Counsel for Hawaiian Electric Company, Inc.

HCRC has a conflict of interest in this matter.

\_\_\_\_\_  
COMPLAINANT

\_\_\_\_\_  
February 26, 2021  
DATE



# HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

February 17, 2021  
Rm. 225, 1:00 p.m.

To: The Honorable Brian Taniguchi, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
Members of the Senate Committee on Labor, Culture and the Arts

The Honorable Jarrett Keohokalole, Chair  
The Honorable Rosalyn H. Baker, Vice Chair  
Members of the Senate Committee on Health

From: Liann Ebesugawa, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 64

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

**The HCRC supports the intent of S.B. No. 64 and offers the following comments and concerns regarding the bill as drafted.**

S.B. No. 64 amends HRS § 329-125.5 to prohibit an employer from discriminating against a person in the hiring, termination, or condition of employment based on the person’s status as a medical cannabis cardholder, or a registered qualifying medical cannabis patient’s positive drug test for cannabis components or metabolites, unless the patient was impaired on the premises of the place of employment during hours of employment. The new statutory protection expressly does not apply if failure to hire, terminate, impose any term or condition of employment or otherwise penalize an employee would cause the employer to lose a monetary benefit or license-related benefit under federal law. And, the new statute would expressly allow

employers to use a “fit for duty” test as a tool for a registered qualifying medical cannabis patient in a potentially dangerous occupation.

The HCRC appreciates that the bill places this new protection in HRS chapter 329, within the statute governing the Department of Health’s administration of the state medical cannabis program, recognizing that the HCRC’s interest is more narrowly focused on the rights of persons with a disability. It is noteworthy that the HRS § 329-121 definition of “debilitating medical condition” is not identical to the HRS § 378-1 and HAR § 12-46-182 definition of “disability,” so not every registered qualifying medical cannabis patient will necessarily be a person with a disability entitled to a reasonable accommodation (and not every person with a disability has a debilitating medical condition). This measure will protect all registered qualifying medical cannabis patients, and does not directly affect the right of persons with a disability to a reasonable accommodation.

#### **HCRC Concerns**

The HCRC testified in support of the intent of a similar bill during the 2020 Session, S.B. No. 2543. S.B. No. 64 differs from S.B. No. 2543 (2020) in one substantive respect. It amends HRS 329-125.5 to add this shield to employer liability:

(e) No employer shall have any liability to any employee who is injured or killed during the performance of the employee's job if the employee's impairment by medical cannabis was the sole contributing factor to the employee's death or injury.

This proposed liability shield raises two concerns:

- 1) It is unclear what “sole contributing factor” means, as it is not a known standard and appears oxymoronic; and
- 2) The scope of the employer liability shield for employee injury or death is unclear, whether it is meant to shield employers from both tort claims and workers compensation claims for employee injury or death. Workers compensation is the exclusive remedy for work-related injuries. If the proposed employer liability shield affects workers compensation, it would be a fundamental change, introducing the element of “fault” and deviating from the trade-off of workers compensation as the exclusive remedy for work injuries in return for no-fault recovery.

The HCRC supports the intent of S.B. No. 64, with the concerns noted in this testimony.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JEFFREY SCOTT GOOLD,

Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY,  
INC.; HAWAIIAN ELECTRIC  
INDUSTRIES, INC.; ELIZABETH DEER;  
SHANA M. BUCO; 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,

Defendants.

CASE NO. 1CCV-21-0000216 DEO  
(Other Civil Action)

NOTICE OF HEARING OF MOTION  
AND CERTIFICATE OF SERVICE

**NOTICE OF HEARING OF MOTION**

TO: JASON M. TANI  
BRYAN M. HARADA  
Rush Moore LLP  
Pacific Guardian Center, Mauka Tower  
737 Bishop Street, Suite 2400  
Honolulu, HI 96813  
  
Attorneys for Plaintiff  
JEFFREY SCOTT GOOLD

NOTICE IS HEREBY GIVEN that the above-identified Motion shall come on for hearing before the Honorable Dean E. Ochiai, Judge of the above-entitled Court, in his courtroom, at 777 Punchbowl Street, Honolulu, Hawai'i 96813, on \_\_\_\_\_, at \_\_\_\_\_, or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i, April 6, 2021.

/s/Randall C. Whattoff

\_\_\_\_\_  
RANDALL C. WHATTOFF

Attorney for Defendants

HAWAIIAN ELECTRIC COMPANY, INC.,  
HAWAIIAN ELECTRIC INDUSTRIES, INC., and  
SHANA M. BUCO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

JEFFREY SCOTT GOOLD,  
Plaintiff,

vs.

HAWAIIAN ELECTRIC COMPANY,  
INC.; HAWAIIAN ELECTRIC  
INDUSTRIES, INC.; ELIZABETH DEER;  
SHANA M. BUCO; 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,

Defendants.

CASE NO. 1CCV-21-0000216 DEO  
(Other Civil Action)

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date, a true and correct copy of the foregoing document was duly served upon the following parties via the means and on the date indicated below:

NAME(S)	U.S. MAIL POSTAGE PREPAID	HAND DELIVERY	ECF
JASON M. TANI BRYAN M. HARADA Rush Moore LLP Pacific Guardian Center, Mauka Tower 737 Bishop Street, Suite 2400 Honolulu, HI 96813  Attorneys for Plaintiff JEFFREY SCOTT GOOLD			<input checked="" type="checkbox"/>

DATED: Honolulu, Hawai‘i, April 6, 2021.

/s/Randall C. Whattoff

RANDALL C. WHATTOFF

Attorney for Defendants  
HAWAIIAN ELECTRIC COMPANY, INC. and  
HAWAIIAN ELECTRIC INDUSTRIES, INC., and  
SHANA M. BUCO