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Electronically Filed  
THIRD CIRCUIT  
3DRC-23-0000008  
10-MAR-2023  
02:26 PM  
Dkt. 12 MDJ

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DEPARTMENT OF HAWAIIAN HOME LANDS,  
STATE OF HAWAI'I

IN THE DISTRICT COURT OF THE THIRD CIRCUIT

NORTH AND SOUTH HILO DIVISION

STATE OF HAWAI'I

STATE OF HAWAI'I, DEPARTMENT OF  
HAWAIIAN HOME LANDS

Plaintiff,

vs.

LAWRENCE COSTA, JR.

Defendant.

CIVIL NO. 3DRC-23-0000008  
(Ejectment)

PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT; MEMORANDUM IN SUPPORT  
OF MOTION; DECLARATION OF PETER  
KAHANA ALBINIO, JR.; DECLARATION OF  
JOSEPH KUALI'I LINDSEY CAMARA;  
EXHIBITS "1"- "15"; NOTICE OF HEARING;  
CERTIFICATE OF SERVICE

Hearing Date: March 22, 2023  
Time: 10:00 A.M.  
Courtroom: 2C

Trial Date: March 30, 2023  
Time: 8:30 A.M.  
Judge: The Honorable M. Kanani Laubach

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Plaintiff STATE OF HAWAI‘I ,DEPARTMENT OF HAWAIIAN HOME LANDS (“DHHL”), by and through its attorneys, moves this Court for an order granting judgment in its favor on the grounds that there are no genuine issues of material fact to be determined at trial and that DHHL is entitled to judgment as a matter of law. Specifically, Plaintiff requests that judgment for possession be entered in its favor and that a writ of possession be issued.

This motion is brought pursuant to Rule 56 of the District Court Rules of Civil Procedure and Rules 7 and 7.1 of the Rules of the District Courts of the State of Hawai‘i, and is based on the attached memorandum, declaration, and the exhibits, records, and files and herein.

DATED: Honolulu, Hawai‘i, March 10, 2023.

ANNE E. LOPEZ  
Attorney General

/s/ Alyssa-Marie Y. Kau  
CRAIG Y. IHA  
RYAN K.P. KANAKA‘OLE  
ALYSSA-MARIE Y. KAU  
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Attorneys for Plaintiff

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MEMORANDUM IN SUPPORT OF MOTION

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I. INTRODUCTION

Plaintiff State of Hawai'i Department of Hawaiian Home Lands ("DHHL") owns four parcels of real property in Humu'ula and Pi'ihonua in Hilo, Hawai'i: TMK Nos. (3) 3-8-001:007, (3) 3-8-001:002, (3) 3-8-001:009, and (3) 2-6-018:002 (collectively, the "Premises"). Defendant has been occupying the Premises since 2016 despite never having a license, lease, or any other disposition to access and use the Premises from DHHL. Despite repeated notices to vacate the Premises, Defendant continues to possess, occupy, and use the Premises without right, authority, or permission from DHHL. Defendant's efforts to limit access by DHHL staff, licensees, and contractors have restricted DHHL from conducting its land management activities, including feral cattle removal and gorse eradication within the Premises. There is no genuine issue of material fact that DHHL has the right to possession of the Premises, which is being withheld by Defendant. Therefore, DHHL is entitled to judgment and a writ of possession in its favor and against Defendant and any other individuals holding through Defendant.

## II. FACTUAL BACKGROUND

### A. DHHL Owns the Premises

DHHL is an agency of the State of Hawai'i created by the Hawaiian Homes Commission Act, 1920, as amended ("HHCA"). See HHCA § 202. DHHL is headed by the nine-member Commission, which holds executive powers over the agency and Hawaiian home lands. See id. DHHL is responsible for leasing Hawaiian home lands for residential, agricultural, and pastoral homesteading purposes. See HHCA § 207. DHHL also controls and manages Hawaiian home lands that are not under lease for homesteading purposes, like the Premises at issue in this case. See HHCA § 204.

DHHL is the owner of certain parcels of Hawaiian home lands situated in the district of North and South Hilo, more specifically identified as TMK Nos. (3) 3-8-001:007, (3) 3-8-001:002, (3) 3-8-001:009, and (3) 2-6-018:002. See Decl. of Peter Kahana Albinio ¶¶ 4-12; see also Exhibits "1" – "8". Section 203 of the HHCA designates approximately 53,000 acres of land in Humu'ula Mauka in North Hilo and 2,000 acres of agricultural land from the lands of Pi'ihonua in South Hilo as "available lands" for homesteading use by DHHL. See Albinio Decl. ¶ 4, see also Exhibit "1".

The HHCA authorized the selection of public lands of the Territory of Hawai'i to the jurisdiction of the Commission. See Albinio Decl. ¶ 5. The Humu'ula lands to be selected were part of a larger parcel of public lands and were required to be specified by the Commission. See id., see also Exhibit "2". On June 27, 1929, the Commission selected 49,100 acres of government lands of Humu'ula Mauka in North Hilo as available lands for the purpose of homesteading. Id. TMK Nos. (3) 3-8-001:009, (3) 3-8-001:002, and (3) 3-8-001:007 are portions of the Humu'ula

Mauka lands selected by the Commission on June 27, 1929. See Albinio Decl. ¶¶ 5-9, see also Exhibits “3”-“6”.

On June 27, 1929, the Commission selected two thousand (2,000) acres of agricultural lands of Pi‘ihonua in South Hilo as available lands for the purpose of homesteading. See Albinio Decl. ¶ 10, see also Exhibit “7”. TMK No. (3) 2-6-018 is a portion of the Pi‘ihonua lands selected by the Commission on June 27, 1929. See Albinio Decl. ¶ 11, see also Exhibit “8”. Given the foregoing, the “Premises” are a portion of the lands in North and South Hilo classified as “available lands” for homesteading use by DHHL in Section 203 of the HHCA and the Premises is under the control and jurisdiction of DHHL. See Albinio Decl. ¶ 12.

B. Defendant is Unlawfully Withholding the Premises for Cattle Grazing Operations.

In late 2016, DHHL received information that Defendant illegally accessed, entered, and occupied TMK Nos. (3) 3-8-001:007 and (3) 2-6-018:002 for cattle grazing operations. See Albinio Decl. at ¶ 13. Defendant has never had a license, lease, or any other land disposition to access and use the Premises from DHHL. See Albinio Decl. at ¶ 14. Defendant continues to possess, occupy, and make use of the Premises without the right, authority, or permission from DHHL. See Decl. of Joseph Kualī‘i Lindsey Camara ¶ 24. Despite repeated requests for Defendant to vacate the Premises, he refuses to leave. See Camara Decl. ¶¶ 5, 6.

Defendant has constructed gates without DHHL authorization, across Keanakolu-Mana road on the northeast flank of Mauna Kea, restricting access to DHHL staff, licensees, and contractors. See Camara Decl. ¶¶ 7, 13, 21. Defendant also has fencing equipment within the Premises. See Camara Decl. ¶ 14. Defendant has prohibited Joseph Kualī‘i Lindsey Camara, DHHL’s sole Property Development Agent for homestead lands that are under its ‘Āina Mauna Legacy Program, from accessing DHHL’s designated cattle removal license area from

Keanakolu-Mana Road. See Camara Decl. ¶ 13. Defendant grazes between 150 and 450 cattle that he claims as his personal property across 3,200 acres of TMK Nos. (3) 2-6-018:002 and (3) 3-8-001:007 without DHHL authorization. See Camara Decl. ¶¶ 8, 10. Defendant tells Mr. Camara that he eventually seeks to take possession of all pastoral lands and feral cattle within the Premises. See Camara Decl. at ¶ 9. DHHL contractors and licensees that engage in cattle removal activities have reported about Defendant's attempts to restrict them from removing cattle from the Premises to Mr. Camara. See Camara Decl. ¶¶ 11, 17. Representatives from DHHL permittee, Parker Ranch, have also reported that Defendant sought to close Keanakolu-Mana Road at Kanakolu Cabin and would restrict access to TMK No. (3) 3-8-001:009. See Camara Decl. ¶ 20. Additionally, DHHL installed fencing to protect native forests on Mauna Kea from feral cattle. See Camara Decl. ¶ 12. Defendant has threatened legal action if DHHL commences with installation of fencing on the Premises. Id.

Mr. Camara also observes Defendant storing fencing equipment and his ranch truck at the Pu'u 'Ō'o Ranch House located on TMK No. (3) 2-6-018:002. See Camara Decl. ¶ 14. He also observed Defendant constructing a gate to the Ranch House. See Camara Decl. ¶ 17. The Ranch House is the location of a perennial spring that Defendant uses as a water source for his cattle. See Camara Decl. ¶ 14. Defendant uses the Ranch House as the "headquarters" of his occupation. Id.

On February 13, 2017, DHHL Land Management Division Administrator, Peter Kahana Albinio, Jr. mailed Defendant a warning letter via certified mail informing him that he had illegally accessed, entered, and continued to occupy portions of TMK Nos. (3) 3-8-001:007, and (3) 2-6-018:002 for his cattle grazing operations. See Albinio Decl. ¶ 15, see also Exhibit "9". The warning letter provided Defendant notice that DHHL is the sole owner of the Premises and

did not grant permission to Defendant for use of the Premises. Id. DHHL demanded that Defendant remove all his branded cattle and equipment brought onto the Premises by March 20, 2017, and immediately cease and desist from any unauthorized use or access to the Premises. Id. Defendant did not remove his branded cattle and equipment by March 20, 2017 and continued to use and access the Premises without the permission of DHHL. See Albinio Decl. ¶ 16.

On March 6, 2019, Mr. Albinio accompanied former DHHL Enforcement Officer David Hoke to post a trespass warning on the gates constructed by Defendant at TMK Nos. (3) 3-8-001:007 and (3) 2-6-018:002. See Albinio Decl. ¶ 17. The trespass warning warned Defendant that he was committing criminal trespass in the second degree and criminal trespass in the third degree via hand delivery. Id.; see Exhibit “10”. Mr. Albinio and Mr. Hoke also posted “Government Property: No Trespassing” signs at TMK Nos. (3) 3-8-001:007 and (3) 2-6-018:002. See Albinio Decl. ¶ 17; see Exhibit “11”.

On the same day, DHHL staff cut Defendant’s locks on a DHHL gate located on TMK No. (3) 3-8-001:007. See Camara Decl. ¶ 15. DHHL staff replaced Defendant’s locks with its own locks. Id. Defendant admitted to installing the locks and complained to Mr. Camara about the removal of his locks. Id. Mr. Camara then provided new locks to Defendant to compensate him for his destroyed locks. Id. Shortly after DHHL staff reinstalled their own locks, Defendant cut DHHL’s locks and installed his own locks. Id.

On August 6, 2020, after being informed by Mr. Camara that DHHL planned to engage in projects to construct and maintain fencing for ungulate management, Defendant refused to remove his cattle and his fencing materials from the Premises. See Camara Decl. ¶ 16. Defendant also expressed his desire to take possession of DHHL pastoral lands and other feral cattle in the Kaūmana-Pi’ihonua and Humu‘ula regions of the Premises. Id.

On March 25, 2022, Mr. Camara received an email from Zachary Judd, Forestry Manager for Parker Ranch, Inc., where Mr. Judd reported that Defendant called him and stated that he was closing Keanakolu-Mana Road at Kanakolu Cabin and would restrict access to TMK No. (3) 3-8-001:009 to any individual who did not have “official business” in the area. See Camara Decl. ¶ 20; see also Exhibit “14”. Parker Ranch has obtained a license for easement from DHHL to access their Waipunalei parcel. See Camara Decl. ¶ 20; see also Exhibit “15”. Mr. Camara has also reported that Defendant previously constructed a gate on TMK No. (3) 3-8-001:009 tagged with his phone number to block access to Keanakolu-Mana Road. Defendant previously provided Mr. Judd with the combination to the gate. See Camara Decl. ¶ 21; see also Exhibit “14”.

On April 8, 2022, Mr. Albinio mailed a warning letter to Defendant via U.S. mail and effected personal service at Defendant’s residence. See Albinio Decl. ¶ 18; see also Exhibit “12”. He reiterated that DHHL did not grant permission to use or access the Premises and that his acts of destruction of DHHL fence lines, installation of gates and fences, and continued trespass of cattle in DHHL lands were prohibited. Id. He demanded that Defendant remove all his branded cattle and equipment by April 22, 2022, and immediately cease and desist from any unauthorized use or access to the Premises. Id. On April 13, 2022, Defendant provided an “Acknowledgment of Letter dated April 8, 2022,” to DHHL, in part, acknowledging receipt of its April 8, 2022 letter. See Albinio Decl. ¶ 19; see also Exhibit “13”.

On September 14, 2022, Mr. Camara received reports that DHHL licensee Levi Rita that Defendant was obstructing him from transporting feral cattle caught on the Premises. See Camara Decl. ¶ 17. Mr. Camara also accompanied law enforcement officers from the Hawai‘i Police Department and the State of Hawai‘i Department of Land and Natural Resources’



Division of Conservation and Resources Enforcement to the Premises to address Defendant about his obstruction activities. See Camara Decl. ¶ 18. Defendant denied obstructing the cattle transport. Id. When confronted, Defendant informed Mr. Camara that the Premises is his “personal property” and that Mr. Camara was not allowed on the Premises. See Camara Decl. ¶ 19. More specifically, Defendant informed Mr. Camara that he “better not see [him] or any of the licensees or contractors affiliated with DHHL” on the Premises and declared “all DHHL licenses and access agreements” affiliated with the Premises as void. Id.

On the same day, Defendant also contacted DHHL Licensee Sheldon Mattos. See Camara Decl. ¶ 22. Mr. Mattos informed Mr. Camara that Defendant told him that he “cannot access” the area under his license, which is located within the Premises. Id. Mr. Mattos informed Mr. Camara that he will not return until Defendant is removed from the Premises to avoid potential conflict and violence from Defendant. Id.

On January 23, 2023, Mr. Camara encountered Defendant at 10:30 A.M. at TMK No. (3) 3-8-001:002, approximately one mile below Keanakolu-Mana Road. See Camara Decl. ¶ 23. Mr. Camara observed Defendant engaged with DHHL’s gorse control contractor for approximately one hour. Id. During that exchange, Defendant claimed that he owned TMK No. (3) 3-8-001:002. Id.

Defendant’s continued use, access, and occupation of the Premises has suspended or endangers ongoing operations related to DHHL’s land management activities on the Premises, including feral cattle removal and gorse eradication. See Camara Decl. ¶ 25.

### III. STANDARD OF REVIEW

A summary judgment motion “challenges the very existence or legal sufficiency of the claim or defense to which it is addressed.” First Hawaiian Bank v. Weeks, 70 Haw. 392, 396,

772 P.2d 1187, 1190 (1989) (citation and internal quotes omitted). “In effect[,] the moving party takes the position that he [or she] is entitled to prevail because his [or her] opponent has no valid claim for relief or defense to the action[.]” Id. (citation and ellipsis omitted). Summary judgment is appropriate when the moving party demonstrates that there is no genuine issue as to any material fact relative to its claim and that it is entitled to judgment in its favor as a matter of law. Id.; see Rule 56(c), District Court Rules of Civil Procedure (“DCRCP”); GECC Fin. Corp. v. Jaffarian, 79 Hawai‘i 516, 526, 904 P.2d 530, 540 (1995) (Acoba, Jr., concurring), concurring opinion adopted by the Hawai‘i Supreme Court in GECC Fin. Corp. v. Jaffarian, 80 Hawai‘i 118, 119, 905 P.2d 624, 625 (1995).

In response, the adverse party “must set forth specific facts showing that there is a genuine issue for trial” and “may not rest upon the mere allegations or denials of [its] pleading.” Rule 56(e), DCRCP. The moving party “may discharge [their] burden by demonstrating that if the case went to trial there would be no competent evidence to support a judgment for his [or her] opponent. For if no evidence could be mustered to sustain the nonmoving party’s position, a trial would be useless” First Hawaiian Bank, 70 Haw. at 397, 772 P.2d at 1190 (citation, brackets, and ellipsis omitted).

#### IV. ARGUMENT

“[E]jectment is an action for trial of the right to possess real property as against one who presently possesses it wrongfully. The plaintiff’s right to possession of the premises is the foundation of the right to maintain an action at ejectment under the common law.” 25 Am. Jur. 2d Ejectment § 1, at 723 (1996). To maintain an ejectment action, a plaintiff must prove that (1) it has “the title to and right of possession of” the Premises; and that (2) “possession is unlawfully withheld by another.” Kondaur Capital Corp. v. Matsuyoshi, 136 Hawai‘i 227, 241, 361 P.3d

454, 468 (2015) (quoting Carter v. Kaikainahaole, 14 Haw. 515, 516 (Haw. Terr. 1902)). As the owner of the Premises, DHHL is entitled to possession. However, Defendant wrongfully refuses to vacate the Property and as a matter of law, DHHL is entitled to a judgment for possession. There is no genuine dispute of material fact as to any element of DHHL's ejectment claim. Accordingly, summary judgment and a writ of possession should be entered in DHHL's favor.

A. DHHL Has Title to and the Right of Possession of the Premises.

In an ejectment action, the plaintiff is required to prove that it owns the Premises at issue, meaning that the plaintiff must prove that they must have title and right of possession of a parcel. See State v. Magoon, 75 Haw. 164, 175, 858 P.2d 712, 718-19 (1993). The Albinio Declaration and the exhibits attached to the Albinio Declaration trace ownership of the Property from Section 203 of the HHCA to DHHL. See Albinio Decl. ¶¶ 4-12; see also Exhibits "1" – "8". Section 203 of the HHCA designates approximately 53,000 acres of land in Humu'ula Mauka in North Hilo and 2,000 acres of agricultural land from Pi'ihonua in South Hilo as "available" for homesteading use by DHHL. See Albinio Decl. ¶ 4, see also Exhibit "1". The HHCA authorized the selection of public lands of the Territory of Hawai'i to the jurisdiction of the Commission. See Albinio Decl. ¶ 5. Further, on June 27, 1929, the Commission selected 49,100 acres of government lands of Humu'ula Mauka in North Hilo and 2,000 acres of agricultural lands of Pi'ihonua in South Hilo as available lands for the purpose of homesteading. See Albinio Decl. ¶¶ 5-11, see also Exhibits "2"- "8". Given the foregoing, the Premises are a portion of the lands in North and South Hilo, classified as "available lands" for homesteading use by DHHL in Section 203 of the HHCA and the Premises is under the control and jurisdiction of DHHL. See Albinio Decl. ¶ 12.

Hawaiian home lands are state lands, owned in fee, under the exclusive control of DHHL. See HHCA §§ 204 and 206; Kepo‘o v. Watson, 87 Hawai‘i 91, 96-98, 952 P.2d 379, 384-86 (1998). Defendant has never held interest, title, or legal possession to the Premises. DHHL has not issued any permit, license, lease, or other land disposition conveying interest, title, or legal possession to the Premises to any individual or entity. See Albinio Decl. at ¶ 14. Because Defendant never had a land disposition or any other type of claim of interest to the Premises, Defendant has no evidence to support a defense that he is entitled to continue his unauthorized possession of the Premises. Thus, DHHL owns the Premises, which is a tract of Hawaiian home lands, and DHHL has control and management over the premises.

B. Defendant is Unlawfully Withholding Possession of the Premises.

Since late 2016, Defendant actively obstructs DHHL staff, licensees, and contractors from engaging in critical land management activities necessary to facilitate homesteading activities to further DHHL’s mission. See Camara Decl. ¶ 21. DHHL has attempted to enforce its possessory rights repeatedly by written and verbal demands upon Defendant. See Albinio Decl. ¶¶ 15, 18; Exhibits “9” – “12”; Camara Decl. ¶ 16. Despite DHHL’s repeated demands, Defendant has unlawfully refused to vacate the Premises and uses the Premises without the right, authority, or permission of DHHL. See Camara Decl. ¶¶ 6, 16, 24.

Defendant is continuing to use the Premises to: (1) construct gates without DHHL’s authorization, across Keanakolu-Mana Road; (2) restrict access to DHHL staff, licenses, and contractors from DHHL’s designated cattle removal license area and limit their ability to remove cattle from the Premises; (3) graze hundreds of his cattle; (4) store fencing equipment and his ranch truck at the Premises for the “headquarters” of his operation; and (5) serve as a perennial spring for his cattle. See Camara Decl. ¶¶ 7, 8, 11, 13, 14, 16, 17, 19, 20, 21, 22. Defendant cuts

DHHL's locks and replaces them with his own locks, repeatedly forbidding DHHL from accessing their own Premises. See Camara Decl. ¶ 15. Additionally, Defendant actively threatens to DHHL staff, contractors, and licensees, creating conflict and fears of violence. See Camara Decl. ¶¶ 9, 11-13, 19, 22. Defendant also boldly makes declarations, seeking possession of all pastoral lands and cattle within the Premises. See Camara Decl. ¶ 9.

Defendant or persons claiming through Defendant are still trespassing upon, occupying, and using the Premises as of the date of this Motion and refuses to surrender possession the Premises despite DHHL's repeated requests to do so.

V. CONCLUSION

The material facts in this case are undisputed. DHHL owns the Premises. Defendant does not have any right and never had any right to the Premises; no individual or entity presently has a lease or other right to possession of the Premises besides DHHL. Defendant also occupies the Premises despite there being no lessee of record to the Premises. Accordingly, DHHL is entitled to judgment for possession of the Premises as a matter of law, and respectfully asks this Court to grant this motion, enter judgment in its favor, and issue a writ of possession effective forthwith.

DATED: Honolulu, Hawai'i, March 10, 2023.

ANNE E. LOPEZ  
Attorney General

/s/ Alyssa-Marie Y. Kau  
CRAIG Y. IHA  
RYAN K.P. KANAKA'OLE  
ALYSSA-MARIE Y. KAU  
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DEPARTMENT OF HAWAIIAN HOME LANDS,  
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CIVIL NO. 3DRC-23-0000008  
(Ejectment)

DECLARATION OF PETER KAHANA  
ALBINIO, JR.; EXHIBITS "1"- "13"

DECLARATION OF PETER KAHANA ALBINIO, JR.

1. I make this declaration based on my own personal knowledge.
2. I am employed by Plaintiff STATE OF HAWAI'I, DEPARTMENT OF HAWAIIAN HOME LANDS ("DHHL") as the Acting Administrator of DHHL's Land

Management Division. I have been the Acting Administrator of DHHL's Land Management Division since July 2015. From October 2004 to July 2015, I was a Property Development Manager for DHHL. My duties as a Property Development Manager included planning, organizing, and supervising feasibility studies for developing land for commercial, industrial, or other business purposes; overseeing proposed commercial development and the financing of those developments; and preparing long-term dispositions of development projects on Hawaiian home lands.

3. My duties as Acting Administrator of the Land Management Division include, among other things, maintaining an inventory of all lands owned by DHHL and knowing the location, description, and title history of lands owned by DHHL. I am also responsible for the management of general leases and licenses of Hawaiian home lands not used for homesteading.

4. Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, ("HHCA") designates approximately fifty-three thousand (53,000) acres of land in Humu'ula Mauka in North Hilo on Hawai'i Island and two thousand (2,000) acres of agricultural land from the lands of Pi'ihonua in South Hilo as "available lands" for homesteading use by DHHL. A true and correct copy of a portion of Section 203 of the HHCA is attached hereto as Exhibit "1."

5. The HHCA authorized the selection of public lands of the Territory of Hawai'i to be transferred to the jurisdiction of the Hawaiian Homes Commission ("Commission"). The Humu'ula lands to be selected were part of a larger parcel of public lands and were required to be specified by the Commission. On June 27, 1929, the Commission selected forty-nine thousand one hundred acres (49,100) acres of government lands of Humu'ula Mauka in North Hilo in the County of Hawai'i as available lands for the purpose of homesteading. A true and correct copy of the Commission resolution is attached hereto as Exhibit "2."

6. Parcel 1 is a portion of the Humu'ula Mauka lands selected by the Commission on June 27, 1929. Parcel 1 is described and shown on CSF 11558 and CSF 17600, which contains Tax Map Key No. (3) 3-8-001:009. A true and correct copy of CSF 1158 and CSF 17600 with their respective metes and bounds is attached hereto as Exhibit "3".

7. Parcel 2 is a portion of the Humu'ula Mauka lands selected by the Commission on June 27, 1929. Parcel 2 is described and shown on CSF 17601, which contains Tax Map Key No. (3) 3-8-001:002. A true and correct copy of CSF 17601 with its respective metes and bounds is attached hereto as Exhibit "4."

8. Attached hereto as Exhibit "5" are the metes and bounds and a copy of a State of Hawaii Survey Map for Parcel 3 of the Pasture Lease located in Humu'ula, North Hilo, Island of Hawai'i, Hawai'i, which is designated as Tax Map Key No. (3) 3-8-001:007. Parcel 3 is a portion of the Humu'ula Mauka lands selected by the Commission on June 27, 1929.

9. Parcel 4 is a portion of the Humu'ula Mauka lands selected by the Commission on June 27, 1929. Parcel 4 is described and shown on CSF 11561, which contains Tax Map Key No. (3) 3-8-001:008. A true and correct copy of CSF 11561 with its respective metes and bounds is attached hereto as Exhibit "6."

10. On June 27, 1929, the Commission selected two thousand acres (2,000) acres of agricultural lands of Pi'ihonua in South Hilo in the County of Hawai'i as available lands for the purpose of homesteading. A true and copy of the Commission resolution is attached hereto as Exhibit "7."

11. Attached hereto as Exhibit "8" are the metes and bounds and a copy of a State of Hawaii Survey map of a Portion of the Government Land of Pi'ihonua in South Hilo, Hawai'i. The map has been marked to clearly show the Premises' designation as Tax Map Key No. (3) 2-



6-018. This area is a portion of the Pi‘ihonua lands selected by the Commission on June 27, 1929.

12. Given the foregoing, Tax Map Key Nos. (3) 3-8-001:007, (3) 3-8-001:002, (3) 3-8-001:009, and (3) 2-6-018:002 (the “Premises”) are a portion of the lands in North and South Hilo, Island of Hawai‘i classified as “available lands” for homesteading use by DHHL in Section 203 of the HHCA, and the said Premises is under the control and jurisdiction of DHHL.

13. In late 2016, DHHL received information that Defendant illegally accessed, entered, and occupied Tax Map Key Nos. (3) 3-8-001:007 and (3) 2-6-018:002 for his cattle grazing operations.

14. Defendant has never had a license, lease, or any other land disposition to access and use the Premises from DHHL.

15. On February 13, 2017, I mailed Defendant a warning letter via certified mail informing him that he illegally accessed, entered, and continued to occupy portions of Tax Map Key Nos. (3) 3-8-001:007 and (3) 2-6-018:002 for his cattle grazing operations. The warning letter provided Defendant notice that DHHL is the sole owner of the Premises and that DHHL did not grant permission to Defendant for use of the Premises. DHHL demanded that Defendant remove all his branded cattle and equipment brought onto the Premises by March 20, 2017, and immediately cease and desist from any unauthorized use or access to the Premises. A true and copy of the trespass warning is attached hereto as Exhibit “9.”

16. Defendant did not remove his branded cattle and equipment by March 20, 2017 and continued to use and access the Premises without the permission of DHHL.

17. On March 6, 2019, I accompanied former DHHL Enforcement Officer David Hoke when he issued a Trespass Warning at Tax Map Key Nos. (3) 3-8-001:007 and (3) 2-6-

018:002 to Defendant for criminal trespass in the second degree and criminal trespass in the third degree. We posted "Government Property: No Trespassing" signs at Tax Map Key Nos. (3) 3-8-001:007 and (3) 2-6-018:002. Attached hereto as Exhibit "10" is a true and correct copy of the Trespass Warning. Attached hereto as Exhibit "11" are true and correct photographs of the Premises and the signage placed at the Premises.

18. On April 8, 2022, I mailed a warning letter to Defendant via U.S. mail and effected personal service at Defendant's residence. I reiterated that DHHL did not grant permission to use or access the Premises and that his acts of destruction of DHHL fence lines, installation of gates and fences, and continued trespass of cattle in DHHL lands were prohibited. I demanded that Defendant remove all branded cattle and equipment by April 22, 2022, and immediately cease and desist from any unauthorized use or access to the Premises. A true and copy of the letter is attached hereto as Exhibit "12."

19. On April 13, 2022, Defendant provided an "Acknowledgment of Letter dated April 8, 2022," to DHHL, in part, acknowledging receipt of its April 8, 2022 letter. A true and correct copy the letter, without enclosures, is attached hereto as Exhibit "13."

20. Defendant did not remove his branded cattle and equipment by April 22, 2022 and continues to use and access the Premises without the permission of DHHL.

I declare, verify, certify, and state under penalty of perjury that the foregoing is true and correct.

DATED: Kapolei, Hawai'i, March 3, 2023.

  
PETER KAHANA ALBINIO, JR.