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*Attorneys for Plaintiffs, individually and on behalf of all
others similarly situated*



IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

NOVA BURNES, *et al.*, individually and on behalf of all others similarly situated,

Plaintiffs.

vs.

HAWAIIAN ELECTRIC COMPANY, INC.
dba HAWAIIAN ELECTRIC, *et al.*,

Defendants.

Case No. 2CCV-24-0000964

**ORDER GRANTING PRELIMINARY
APPROVAL OF PROPOSED
SETTLEMENT**

Judge: Hon. Peter T. Cahill

**ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT**

Before the Court is the Motion for Preliminary Approval of Class Settlement, Certification of Class Settlement, and Appointment of Settlement Class Counsel (“Motion for Preliminary Approval”), filed by Plaintiffs Nova Burnes; Maui Concierge Aesthetics, LLC; Lani Chadli, individually and as Trustee of the Aotaki Family Irrevocable Trust; Monica I. Eder; Rede S. Eder; Candace Faust; Peter Faust; David Heymes; Kathryn Llamas; Jennifer Lynn McNamee; Chardell Naki; Barret Procell; and Rolland Williams, Jr., individually and on behalf of others similar situated (“Plaintiffs”). Plaintiffs and Defendants Hawaiian Electric Company, Inc. dba Hawaiian Electric; Maui Electric Company, Limited dba MECO; Hawai‘i Electric Light Company, Inc.; Hawaiian Electric Industries, Inc. (collectively, “Hawaiian Electric”); the Trustees of the Estate of Bernice Pauahi Bishop (“Kamehameha Schools”); the County of Maui; the State of Hawaii; Hawaiian Telcom, Inc.; Spectrum Oceanic, LLC; Peter Klint Martin; Peter Klint Martin Revocable Trust; Hope Builders Holding LLC; Hope Builders Inc.; Hope Builders LLC; Kauaula Land Company LLC; Kipa Centennial, LLC; James C. Riley Trust; Jeanne A. Riley Trust; Wainee Land & Homes, LLC; West Maui Land Company, Inc.; Makila Ranches Inc.; Makila Land Co., LLC; and Makila Ranches Homeowners Association, Inc. (“West Maui Landowner Defendants”) have entered into a Class Settlement Agreement and Release, dated

November 1, 2024 (“Settlement Agreement”). Having thoroughly reviewed the Settlement Agreement, including the exhibits thereto; the Motion for Preliminary Settlement Approval, including the proposed forms of Class Notice and other exhibits thereto; and the papers and arguments in connection therewith, and good cause appearing, the Court hereby **ORDERS** as follows:

1. The capitalized terms used in this Order Granting Preliminary Approval of Proposed Settlement have the same meaning as defined in the Settlement Agreement.

2. The Court hereby preliminarily approves the Settlement Agreement and the terms embodied therein. The Court does not address or make findings as to whether the Settlement Class may be certified for any purpose other than for effectuating the proposed settlement. For settlement purposes only, the Court preliminarily finds that the proposed Settlement Class, as defined in the Settlement Agreement, meets the requirements for class certification under Haw. R. Civ. P. 23(a) and 23(b)(3) as follows:

- a. The Settlement Class is so numerous that joinder of all members in a single proceeding would be impracticable;
- b. The members of the Settlement Class share common questions of law and fact;
- c. The Plaintiffs’ claims are typical of those of the Settlement Class Members;
- d. The Plaintiffs and Settlement Class Counsel have fairly and adequately protected the interests of the Settlement Class and will continue to do so; and
- e. Questions of law and fact common to the Settlement Class predominate over the questions affecting only individual Settlement Class Members, and certification of the Settlement Class is superior to other available methods for the fair and efficient resolution of this controversy.

3. The Court preliminarily finds that the proposed settlement embodied in the Settlement Agreement is fair, reasonable, and adequate, entered into in good faith, and free from

collusion. The Court furthermore finds that Settlement Class Counsel have ably represented the proposed Settlement Class. They conducted a thorough investigation of the facts and law prior to filing suit, are knowledgeable of the strengths and weaknesses of the case, and engaged in a lengthy and intensive settlement negotiation process. The involvement of experienced neutral Mediators Keith Hunter, Judge Louis Meisinger (Ret.), and Judge Daniel Buckley (Ret.) in the negotiation process supports this Court's finding that the Settlement Agreement was reached at arm's length and is free from collusion. The relief provided for in the Settlement Agreement, together with the substantial costs, delay, and risks presented by further litigation of issues during pre-trial, trial, and possible appeal, also support the fairness, reasonableness, and adequacy of the settlement. Based on these factors, the Court concludes that the proposed settlement meets the criteria for preliminary settlement approval and is fair, reasonable, and adequate, such that notice to the Settlement Class is appropriate.

4. The Court appoints Patrick Kyle Smith of Law Office of Kyle Smith; Graham B. LippSmith of LippSmith LLP; Terrance M. Revere of Revere & Associates LLLC; Robert A. Curtis of Foley Bezek Behle & Curtis, LLP (*pro hac vice*); Lexi J. Hazam of Lieff Cabraser Heimann & Bernstein LLP (*pro hac vice*); and Alexander "Trey" Robertson, IV of Robertson & Associates LLP (*pro hac vice*) as Settlement Class Counsel.

5. The Court appoints Nova Burnes; Maui Concierge Aesthetics, LLC; Lani Chadli, individually and as Trustee of the Aotaki Family Irrevocable Trust; Monica I. Eder; Rede S. Eder; Candace Faust; Peter Faust; David Heymes; Kathryn Llamas; Jennifer Lynn McNamee; Chardell Naki; Barret Procell; and Rolland Williams, Jr. as Class Representatives.

6. A Final Approval Hearing shall be held before this Court at a future date to:
(a) determine whether the proposed settlement should be finally approved pursuant to Haw. R. Civ. P. 23(e); (b) consider any timely objections to this settlement and the Parties' responses to such objections; (c) rule on any application for attorneys' fees and expenses; (d) rule on any application for incentive awards; and (e) determine whether the Class Settlement Plan that will be submitted by Settlement Class Counsel should be approved.

7. The Court recognizes that the certification of this Class is for settlement purposes only. Defendants' agreement to a class settlement and lack of opposition to class certification for purposes of the proposed settlement will not be deemed admissible in this or any other proceeding except to enforce or interpret the Settlement Agreement.

8. Consideration of the Class Settlement Plan, any application for attorneys' fees and expenses and any objections thereto, and any application for incentive awards and any objections thereto, shall be separate from consideration of whether the proposed settlement should be preliminarily approved, and the Court's rulings on each motion or application shall be embodied in a separate order.

9. Plaintiffs shall file their motion for final settlement approval no later than 85 days after entry of this Order Granting Preliminary Approval. Any hearing on final settlement approval shall not occur earlier than 160 days after entry of this Order Granting Preliminary Approval, and not sooner than either (a) the time for any Defendant to exercise a termination right under Sections 8.1.1 and 8.1.2 of the Settlement Agreement passes without any Defendant exercising such right or (b) each and every Defendant entitled to a termination right under those sections of the Settlement Agreement declines, in writing, to exercise such a right. For avoidance of doubt, nothing in this Order alters or eliminates any termination right any party to the Settlement Agreement has, or will continue to have, on or after preliminary or final approval.

10. With the exception of such proceedings as are necessary to implement, effectuate, and grant final approval to the terms of the Settlement Agreement, all proceedings are stayed in this Action and all members of the Settlement Class and Releasees are enjoined from commencing or continuing any action or proceeding in any court or tribunal asserting any claims that would be released under the Settlement Agreement until the Initial Payment Date. If the Settlement Agreement is terminated pursuant to Section 8.1 of the Settlement Agreement, the stay shall terminate 14 days after said termination.

11. The Court appoints Simpluris, Inc. as the Settlement Administrator in this Action. In accordance with the Parties' Settlement Agreement and the Orders of this Court, the

Settlement Administrator shall effectuate the provision of notice to Settlement Class Members and shall administer the Settlement Agreement and distribution process *except that* the Court appoints BrownGreer PLC (“BrownGreer”) to provide notice to Individual Action Plaintiffs whose attorneys, within 7 days of the entry of this Order, (a) opt into BrownGreer providing notice, and within 21 days of the entry of this Order (b) provide BrownGreer, on a confidential basis, with the names, loss locations, and mailing addresses of their clients; and if known, provide their date of birth and email. BrownGreer will provide notice of the class settlement to this population of Individual Action Plaintiffs (the “BrownGreer IPs”) as set forth in this Order, and shall include the Individual Plaintiffs Cover Letter substantially in the form attached hereto as Exhibit A. BrownGreer will work with the Settlement Administrator to remove the BrownGreer IPs from the Settlement Administrator’s Class Notice list, and the Settlement Administrator shall not mail or email notice to the BrownGreer IPs. Any data provided to the Settlement Administrator by BrownGreer for the purpose of identifying the BrownGreer IPs will be provided confidentially for this limited purpose. Any person who has signed an Individual Settlement Agreement and Release and provides it to BrownGreer prior to the date that BrownGreer sends out the notice does not need to be sent Class Notice by BrownGreer.

12. The Court finds that the Parties’ plan for providing notice to the Class (a) constitutes the best notice practicable under the circumstances of this Action; (b) constitutes due and sufficient notice to the Class of the terms of the Settlement Agreement and the Final Approval Hearing; and (c) complies fully with the requirements of due process under the Hawai’i Constitution and the Fourteenth Amendment to the U.S. Constitution, the Hawai’i Rules of Civil Procedure, and any other applicable law.

13. The Court approves, as to form and content, the Long Form Notice and Postcard Notice, substantially in the forms attached as Exhibits A and B to the Declaration of Julie Meichsner in Support of Motion for Preliminary Approval of Class Action Settlement (“Administrator Declaration”), and the IP Cover Letter. The Notice Plan, as set forth in the

Administrator Declaration, is modified to incorporate the provisions of this Order requiring BrownGreer to provide notice to the BrownGreer IPs.

- a. Within 10 days of the Court's entry of this Preliminary Approval Order, the Settlement Administrator shall cause the Long Form Notice to be published on the website created for this settlement. The Long Form Notice shall be substantially in the form attached to the Declaration of Julie Meichsner as Exhibit A.
- b. Within 65 days of the Court's entry of this Preliminary Approval Order, (a) the Settlement Administrator will complete notice via U.S. mail, and (b) BrownGreer will complete notice to the BrownGreer IPs. BrownGreer shall send the IP Cover Letter, the Long Form Notice, and all other notice documents that the Settlement Administrator sends along with the Long Form Notice to the BrownGreer IPs via U.S. mail and email.
- c. Not later than 75 days following the entry of this Preliminary Approval Order, the Settlement Administrator shall file with the Court declarations attesting to its compliance with this paragraph, and BrownGreer shall file with the Court declarations attesting to its compliance with this paragraph.

14. Each and every member of the Settlement Class shall be bound by all determinations and orders pertaining to the settlement, including the release of all claims to the extent set forth in the Settlement Agreement, unless such person opts out from the settlement in a timely and proper manner, as hereinafter provided.

15. A member of the Settlement Class wishing to opt out from the settlement shall submit the opt-out form to the Settlement Administrator. The opt-out form shall be in the written or electronic form attached to the Declaration of Julie Meichsner as Exhibit D and be submitted or postmarked no later than 110 days following entry of this Preliminary Approval Order. Requests to opt out must otherwise comply with the requirements stated in the Settlement Agreement.

16. Members of the Settlement Class who timely and validly opt out from the settlement will relinquish their rights to benefits under the Settlement Agreement.

17. All members of the proposed Settlement Class who do not timely and validly opt out shall be bound by all terms of the Settlement Agreement and by the Final Approval Order and Judgment.

18. The Settlement Administrator will promptly, and no later than 7 days following the deadline for members of the Settlement Class to opt out, provide the Recipients of Notices listed in Exhibit 8 to the Settlement Agreement with copies of any opt-out requests.

19. Any Settlement Class member who has not opted out may object to the Settlement Agreement, any application for attorneys' fees and expenses, any application for incentive awards, and/or the Class Settlement Plan submitted by Settlement Class Counsel. Any Settlement Class member who wishes to object must file with the Court and serve on all counsel listed in paragraph 21, below, no later than 110 days after entry of this Preliminary Approval Order, a detailed statement of the specific objections being made and the basis for those objections. In addition to the statement, the objecting Person must include his, her, or its name, address, telephone number, date of birth, and evidence that the objecting Person is in fact a member of the Settlement Class. A written objection may not be signed using any form of electronic signature but must contain the dated signature of the Settlement Class member (not just counsel) making the objection. Any objecting Settlement Class member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class member's expense. Any Settlement Class member who intends to appear at the Final Approval Hearing either in person or through counsel must file with the Court and serve on all counsel listed in paragraph 21, no later than 21 days before the hearing, a written notice of intention to appear. Failure to file a notice of intention to appear may result in the Court declining to hear the objecting Settlement Class member or the Settlement Class member's counsel at the Final Approval Hearing. By this same date, any attorney asserting an objection on behalf of a Settlement Class member must (i) file a notice of appearance with the

Court; (ii) file a sworn declaration attesting to representation of the Settlement Class member on whose behalf the objection is being filed or a copy of the contract (to be filed *in camera*) between that attorney and that Settlement Class member; and (iii) comply with all other procedures in this Order. Any objection must otherwise comply with the requirements stated in the Settlement Agreement.

20. Settlement Class Counsel shall file a supplemental brief in support of Final Approval and a supplemental brief in support of the Class Settlement Plan that responds to any objections no later than 30 days before the Final Approval Hearing.

21. Service of all objections on counsel for the Parties shall be made as follows: for Interim Settlement Class Counsel, to: Kyle Smith, Esq. at Law Office of Kyle Smith, 604 Ilimano Street, Kailua, Hawai'i 96734; Graham B. LippSmith, Esq. at LippSmith LLP, 55 Merchant Street, Suite 1850, Honolulu, Hawai'i 96813; Terrance M. Revere at Revere & Associates LLC, 970 North Kalaleo Ave., Suite A301, Kailua, Hawai'i 96734. Class Counsel promptly shall serve all objections they receive on Defendants.

22. Any Settlement Class member who does not make an objection in the time and manner provided shall be deemed to have waived such objection and forever shall be foreclosed from making any objection in any court to the fairness or adequacy of the proposed Settlement Agreement, the payment of attorneys' fees and expenses and incentive awards, the Class Settlement Plan, the Final Approval Order, and the Judgment.

23. In the event that (a) the proposed Settlement Agreement is not finally approved by the Court, (b) the Settlement Agreement is terminated pursuant to its terms, or (c) any of the Conditions for occurrence of the Initial Payment Due Date do not otherwise occur, this Order and all Orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy. In such event, the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of

any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

24. Upon application from a party to the Settlement Agreement and for good cause, the Court may extend any of the deadlines set forth in this Order without further notice to the Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class Members, be continued by order of the Court.

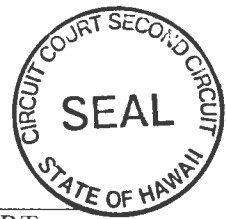
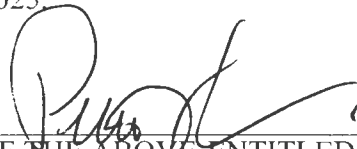
25. The following schedule is hereby ordered:

Last Day for the Plaintiffs to file Class Settlement Plan	15 days after Preliminary Approval Order Entered
Notice to be Completed	65 days after Preliminary Approval Order Entered
Last day for Plaintiffs to File Motion for Final Approval of Settlement and Approval of the Class Settlement Plan, and for Interim Settlement Class Counsel to file Application for Fees and Expenses and for Incentive Awards	85 days after Preliminary Approval Order Entered
Last day to file Objections or Opt-Out Requests	110 days after Preliminary Approval Entered
Last day to file supplemental briefs in support of Final Approval, Class Settlement Plan, Attorneys' Fees and Expenses, and Incentive Awards	30 days before Final Approval Hearing
Final Approval Hearing	<p>_____, 2025 at _____ a.m./p.m.</p> <p>Not earlier than 160 days after Preliminary Approval Order Entered</p>

IT IS SO ORDERED.

Nova Burnes, et al. v. Hawaiian Electric Company, Inc., Circuit Court of the Second Circuit, State of Hawai'i Case No. 2CCV-24-0000964: **ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT**

DATED: Wailuku, Hawaii, _____ June 19, 2025.



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

DATED: Honolulu, Hawai'i, June 16, 2025.

/s/ Nicholas D. Fram _____

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HAWAII ELECTRIC LIGHT COMPANY, INC.,
and HAWAIIAN ELECTRIC INDUSTRIES, INC.**

DATED: Honolulu, Hawai'i, June 16, 2025.

/s/ Jordan K. Inafuku _____

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Nova Burnes, et al. v. Hawaiian Electric Company, Inc., Circuit Court of the Second Circuit,
State of Hawai'i Case No. 2CCV-24-0000964: **ORDER GRANTING PRELIMINARY
APPROVAL OF PROPOSED SETTLEMENT**

DATED: Honolulu, Hawai'i, June 16, 2025.

/s/ Steven E. Tom
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DATED: Honolulu, Hawai'i, June 16, 2025.

/s/ Eric H. Tsugawa
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Nova Burnes, et al. v. Hawaiian Electric Company, Inc., Circuit Court of the Second Circuit,
State of Hawai'i Case No. 2CCV-24-0000964; **ORDER GRANTING PRELIMINARY
APPROVAL OF PROPOSED SETTLEMENT**

DATED: Honolulu, Hawai'i, June 16, 2025.

/s/ Paul Alston

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PAUHI BISHOP**

DATED: Honolulu, Hawai'i, June 16, 2025.

/s/ Gregory K. Markham

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Nova Burnes, et al. v. Hawaiian Electric Company, Inc., Circuit Court of the Second Circuit,
State of Hawai'i Case No. 2CCV-24-0000964: **ORDER GRANTING PRELIMINARY
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