

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

August 25, 2023

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

SUBJECT: Consent to the Assignment of a 50% Interest in Boating Lease No. LH-19-002 Held by One (International and Pacific Enterprises, LLC) of the Two Members of Lessee Pacific Marine Partners LLC, to Its Other 50% Member (Jonas Ikaika Solliday) and Authorize a Ten-Year Lease Extension, Situated at Honokohau Small Boat Harbor, North Kona, Island of Hawaii, Hawaii, Tax Map Key: (3) 7-4-008:003 (Por).

CURRENT LESSEE:

Pacific Marine Partners LLC (“PMP”)

PMP members: International and Pacific Enterprises, LLC (“IPE”) – 50% member
Jonas Ikaika Solliday – 50% member

ASSIGNOR:

IPE’s 50% interest in PMP.

ASSIGNEE:

Jonas Ikaika Solliday whose interest in PMP will then be 100%.

PMP will remain the lessee for Boating Lease No. LH-19-002.

APPLICANT:

IPE, as Assignor, and Jonas Ikaika Solliday, whose interest in PMP will then be 100%, as Assignee, whose address is P.O. Box 492713, Keaau, HI 96749, hereinafter referred to as the “Applicant”.

Item J-1

LEGAL REFERENCE:

Section 171-36(a)(5) and 171-36(b)(3) Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Honokohau Small Boat Harbor (“Honokohau SBH”), North Kona, Island of Hawaii, Hawaii, Identified by Tax Map Key: (3) 7-4-008:003 (por.), as shown on the attached map labeled as **Exhibit A** and attached hereto.

AREA:

9 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act: YES

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Solely for the operation of boat/trailer storage facility and vehicle parking purposes. Residential use shall not be allowed on the premises.

TERM OF LEASE:

Original term of ten (10) years, commencing on November 1, 2018, and expiring on October 31, 2028.

Requested extension of ten (10) years, commencing November 1, 2028, and expiring October 31, 2038.

MONTHLY RENTAL:

\$35,250.00 per month, or 50% of gross receipt sales, whichever is greater.

PERFORMANCE BOND:

Twice the annual rent.

CONSIDERATION:

Mr. Solliday agrees to pay a total sum of \$72,000.00 to IPE for the assignment. Half of the amount, \$36,000 has been paid to IPE. The other half, \$36,000, is owed by Mr. Solliday to IPE upon approval by the Board for the assignment to Mr. Solliday.

RECOMMENDED PREMIUM:

\$8,619.29 (See **Exhibit B**).

PROPOSED IMPROVEMENTS:

The lessee is proposing to spend \$294,640.25 to make improvements to the property (**Exhibit C**).

DCCA VERIFICATION:

LESSEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

ASSIGNOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

ASSIGNEE:

Individual, not applicable.

LESSEE REQUIREMENTS:

Lessee shall be required to complete the improvements, listed in **Exhibit C**, by December 31, 2025.

BACKGROUND:

Boating Lease No. LH-19-002 was awarded to PMP as the sole bidder at a public auction held on July 13, 2018, in Kealahou, North Kona, Hawaii at Honokohau Small Boat Harbor. On November 1, 2018, PMP commenced a 10-year lease agreement with the Division of Boating and Ocean Recreation (DOBOR).

In 2019, DOBOR staff received a letter from Jason Hoopai, the owner of IPE, accused his partner of misusing rental monies from PMP, which Mr. Hoopai claimed was the reason it was delinquent on its rent. Mr. Hoopai requested that the lease be assigned to him personally, with the understanding that the past due rent would be paid in full. At its meeting on October 25, 2019, as agenda item J-2, the Board of Land and Natural Resources (“Board”) deferred the request to assign the lease due to a dispute over the two members’ percentage ownership of PMP. Mr. Hoopai claimed to have 95% interest in the company, while Mr. Solliday claimed a 50% interest.

PMP failed to keep lease rental payments current, so at its meeting on May 22, 2020, as agenda item J-1, the Board approved the termination of PMP’s lease. Subsequent to the Board’s action, Mr. Timothy Vandever, Esq., representing Mr. Solliday, requested a contested case hearing.

At its meeting on June 26, 2020, under agenda item J-6, the Board approved DOBOR staff’s recommendation to reaffirm its decision to terminate PMP’s lease, deny PMP’s petition for a contested case and authorize the Chair and Department of the Attorney General to take all actions necessary to effectuate its decision.

The State and PMP reached a settlement relating to the condition of the premises and additional disputes. Under the settlement agreement, attached as **Exhibit D**, the State agreed to, among other things, pay PMP \$423,000 (via a monthly rent credit equal to \$18,250), rescind the Notice of Default, and rescind the Board’s decision to terminate the lease. At its meeting on July 24, 2020, as agenda item J-2, the Board approved the settlement.

On or about July 12, 2020, Mr. Solliday, Mr. Hoopai, IPE and PMP agreed to participate in binding arbitration to settle the various claims and counterclaims made by the parties. On April 8, 2021, the Arbitrator found, with respect to their respective membership interests in PMP, that Mr. Solliday and IPE each had an equal 50% interest. It was also stated that Mr. Hoopai is a member of IPE, and he was not an individual member of PMP. The Arbitrator’s findings of fact and conclusions of law, and decision and order was granted by Judge Wendy M. DeWeese on August 25, 2021 (**Exhibit E**).

Mr. Hoopai notified Mr. Solliday in a letter dated January 19, 2022, that he assigns and transfers his/IPE’s 50% membership interest in PMP to Mr. Solliday (**Exhibit F**). Following the Final Award, Mr. Solliday has been handling boatyard operations and financial matters, with the guidance of PMP’s accountant David Clarke. Mr. Solliday was granted access to financial records, which he had no access to previously, as Mr. Hoopai had sole control of PMP’s finances and financial records.

REMARKS:

Mr. Solliday is requesting that IPE's 50% interest in PMP be assigned to him, making him the sole owner of PMP.

Although Mr. Solliday has been able to keep current with the monthly rent and gross receipt reports, staff has concerns about Mr. Solliday's financial capacity to carry the lease on his own. The performance bond of \$846,000 has yet to be posted. Mr. Solliday has requested, through his attorney (**Exhibit G**), that the surety bond for performance to be waived, notwithstanding the fact that the 2020 settlement agreement made no mention of waiving the bond and instead states that the lease shall remain in full force and effect, but for the compromises set forth in the settlement agreement. Staff fully understands the difficulty and cost of obtaining such a large performance bond and is willing to accept an irrevocable line of credit from a FDIC insured institution.

Mr. Solliday has also requested the extension of lease LH-19-002. He has provided a list of proposed improvements and contractor quotes (**Exhibit C**). Based on the quotes, the estimated cost of improvements is \$294,640.25. Given the dollar value of the proposed improvements, staff believes a ten (10) year lease extension is justified.

If the Board authorizes the ten (10) year extension as requested, the aggregate term of this lease will be twenty (20) years.

RECOMMENDATION:


That the Board of Land and Natural Resources:

1. Consent to the assignment of International and Pacific Enterprises LLC's 50% interest in Lease No. LH-19-002, to Jonas Ikaika Solliday.
2. Authorize a 10-year extension of Boating Lease No. LH-19-002, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The surety bond or irrevocable line of credit of \$846,000 be posted;
 - b. The lessee shall complete its improvements costing no less than \$294,640.25, no later than December 31, 2025;
 - c. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;

August 25, 2023


- d. Review and approval by the Department of the Attorney General; and
- e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator
Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

Attachments:

- A Site Location
- B PMP Premium Calculation
- C PMP Proposed Improvements
- D Settlement Agreement between State of Hawaii and PMP dated July 31, 2020
- E Final Award dated August 25, 2021
- F Jason Hoopai's Notice of Assignment
- G Jonas Ikaika Solliday's Attorney Letter dated March 31, 2023

Exhibit A

Site Location

Honokohau Small Boat Harbor, Hawaii Island
Pacific Marine Partners, LLC

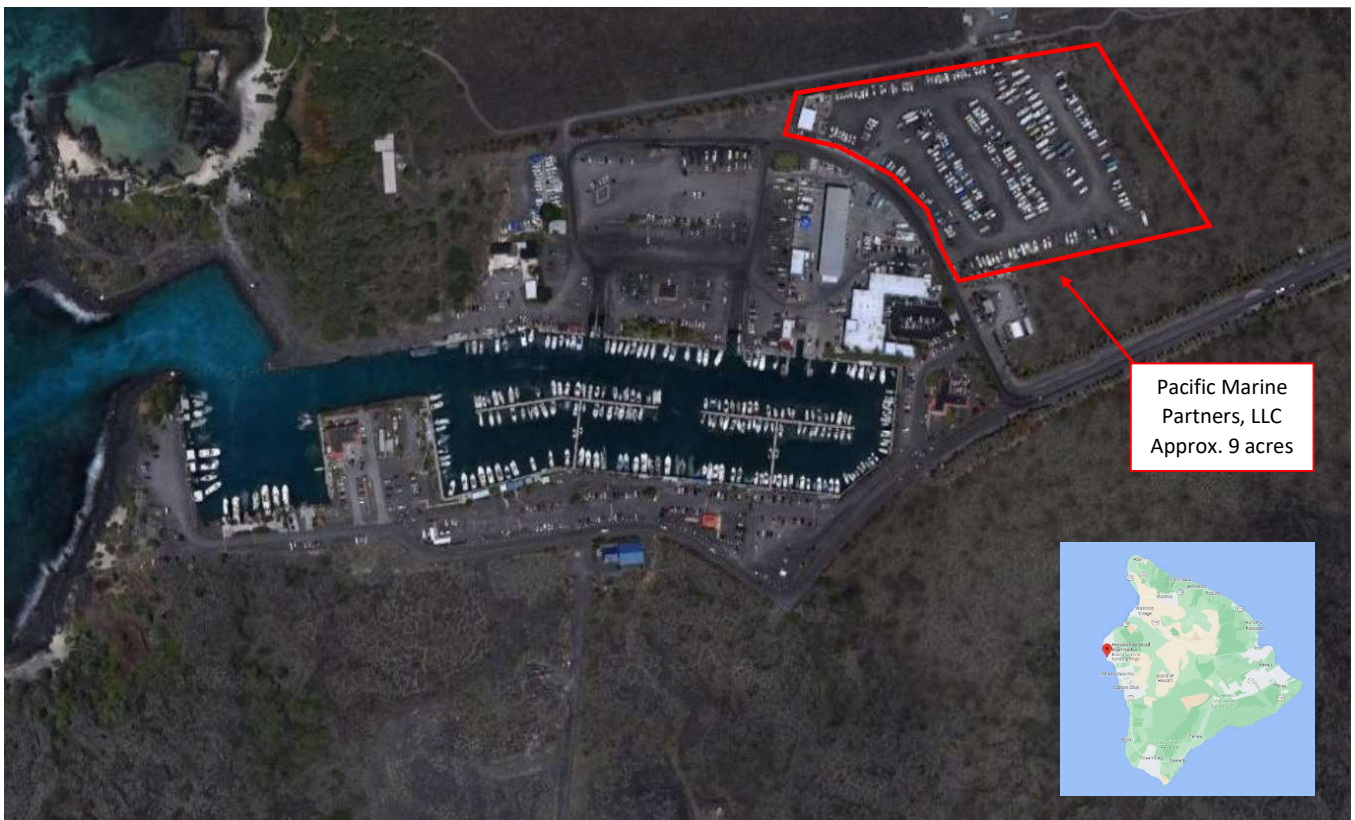


Exhibit A

Exhibit B

PMP PREMIUM CALCULATION

The following figures are based on the formulas provided in the Exhibits and Schedules attached to the PMP-DLNR Lease (provided as an attachment to this document as well). Based on the following, after deducting the adjusted and depreciated costs for improvements/renovations and fixtures, the premium owed by Ikaika Solliday for transfer/assignment of the lease is: **\$8,619.29**.

PMP Improvements / Fixtures (see attached receipts)

Date	Cost	Item	Seller
10/22/18	\$5,273.60	Solar Hybrid Security Lighting	(E Systems Group)
10/28/18	\$6,500.00	Makai Containers	(Unknown)
1/2/19	\$7,800.00	Replacement Gate and Motor	(Dave Vogt)
6/17/19	\$51,488	Solar Energy System and Install	(Maui Pacific Solar)
9/13/21	\$1,079.91	Harbor Lighting	(Amazon)
9/29/21	\$974.05	Harbor Lighting	(Amazon)
11/2/21	\$737.17	Paving	(West Hawaii Concrete)

IMPROVEMENTS/RENOVATIONS

1. 10/22/18 \$5,273.60 Solar Hybrid Security Lighting (E E Systems Group)

A. Adjusted cost of improvement:

$$\text{Actual cost: } \$5,273.60 \times \frac{173.868 - (\text{CCI})^1 - 2022}{133.4 (\text{CCI} - 2018)} = \$6,873.39$$

B. Depreciation:

$$\$6,873.39 \times \frac{41 \text{ months (expired term)}}{119 \text{ months (whole term)}} = \$2,368.14$$

C. Adjusted cost of Solar Hybrid Security Lighting:

$$\underline{\$ 6,873.39} - \underline{\$2,368.14} = \underline{\$4,505.25}$$

¹ Construction Cost Index figures from U.S. Bureau of Labor and Statistics:
<https://data.bls.gov/timeseries/pcu236223236223>

2. 10/28/18 \$6,500.00 Makai Containers (Unknown)

A. Adjusted cost of improvement:

$$\text{Actual cost: } \$6,500.00 \times \frac{173.868 \text{ (CCI - 2022)}}{133.4 \text{ (CCI - 2018)}} = \$8,471.83$$

B. Depreciation:

$$\$8,471.83 \times \frac{41 \text{ month (expired term)}}{119 \text{ months (whole term)}} = \$2,918.87$$

C. Adjusted cost of Solar Hybrid Security Lighting:

$$\$8,471.83 - \$2,918.87 = \$5,552.96$$

3. 6/17/19 \$51,488 Solar Energy System and Install (Maui Pacific Solar)

A. Adjusted cost of improvement:

$$\text{Actual cost: } \$51,488 \times \frac{173.868 \text{ (CCI - 2022)}}{140.7 \text{ (CCI - 2019)}} = \$63,625.55$$

B. Depreciation:

$$\$63,625.55 \times \frac{33 \text{ months (expired term)}}{113 \text{ months (whole term)}} = \$18,580.91$$

C. Adjusted cost of Solar System and Install:

$$\$63,625.55 - \$18,580.91 = \$45,044.64$$

**TOTAL ADJUSTED DEPRECIATED COST OF IMPROVEMENTS/RENOVATIONS:
\$55,102.85**

FIXTURES

1. 1/2/19 \$7,800.00 Replacement Gate and Motor (Dave Vogt)

A. Adjusted cost of Trade Fixture:

$$\text{Actual cost: } \$7,800.00 \times \frac{304.98(\text{CPI}^2 - 2022)}{281.585 (\text{CPI} - 2019)} = \$8,448.05$$

B. Depreciation:

$$\$8,448.05 \times \frac{27 \text{ months (expired term)}}{113 \text{ months (whole term)}} = \$2018.56$$

C. Adjusted cost of Replacement Gate and Motor:

$$\mathbf{\$8448.05 - \$2018.56 = \$6429.49}$$

2. 9/13/21 \$1,079.91 Harbor Lighting (Amazon)

A. Adjusted cost of Trade Fixture:

$$\text{Actual cost: } \$1,079.91 \times \frac{304.98 (\text{CPI} - 2022)}{296.81 (\text{CPI} - 2021)} = \$1,109.64$$

B. Depreciation:

$$\$1109.64 \times \frac{6 \text{ months (expired term)}}{113 \text{ months (whole term)}} = \$58.92$$

C. Adjusted cost of Harbor Lights:

$$\mathbf{\$1109.64 - \$58.92 = \$1,050.72}$$

3. 9/29/21 \$974.05 Harbor Lighting (Amazon)

A. Adjusted cost of Trade Fixture:

² Honolulu Consumer Price Index from U.S. Dept, of Labor, Bureau of Statistics website:
<https://data.bls.gov/timeseries/CUURS49FSA0>

$$\text{Actual cost: } \$974.05 \times \frac{304.98 \text{ (CPI - 2022)}}{296.81 \text{ (CPI - 2021)}} = \$1,000.86$$

B. Depreciation:

$$\$1000.86 \times \frac{6 \text{ months (expired term)}}{113 \text{ months (whole term)}} = \$53.14$$

C. Adjusted cost of Harbor Lights:

$$\mathbf{\$1000.86 - 53.14 = \$947.72}$$

4. 11/2/21 \$737.17 Paving (West Hawaii Concrete)

A. Adjusted cost of Trade Fixture:

$$\text{Actual cost: } \$737.17 \times \frac{304.98 \text{ (CPI - 2022)}}{296.81 \text{ (CPI - 2021)}} = \$757.46$$

B. Depreciation:

$$\$757.46 \times \frac{4 \text{ months (expired term)}}{113 \text{ months (whole term)}} = \$26.81$$

C. Adjusted cost of Paving:

$$\mathbf{\$757.46 - 26.81 = \$730.65}$$

TOTAL ADJUSTED DEPRECIATED COST OF TRADE FIXTURES: \$9,158.58

Net Consideration for Lease Assignment (from Solliday-Hoopai Settlement Agreement):
\$72,000 (CASH) + \$9,500 (CREDIT) = \$81,500

CALCULATION FOR LEASE ASSIGNMENT PREMIUM:

NET CONSIDERATION FOR LEASE:	\$81,500.00
TOTAL ADJ/DEP COST OF IMPROVEMENTS:	- \$55,102.85
TOTAL ADJ/DEP COST OF TRADE FIXTURES:	- <u>\$9,158.58</u>
EXCESS:	\$17,238.57
(FOR LEASES BETWEEN 1-5 YEARS OLD DIVIDE BY 50%):	

PREMIUM= \$8,619.29

PMP - SOLLIDAY PROPOSED IMPROVEMENT COMMITMENT BASED OF PROPOSED LEASE EXTENSION OF 20 YEARS

Substantial Improvements	Vendor / Contractor	Estimated Cost @ 2023 estimates	Estimated Completion Date
GRUB AND GRADE: Grub, grade and level the remaining portion of parcel - roughly 65,000 square feet – to maximize the area available for boat storage	Hawaii Isle General Contracting	\$ 71,204.16	December 31, 2028
STALL DIVIDERS: Install 100 – five (5) foot tall, galvanized parking stall dividers in newly-graded area, permanently cemented in place	Home Depot, Pacific Marine Partners, LLC	\$ 5,242.00	December 31, 2028
GATE: Replace existing front electric gate, motor and guide	Vogt Welding & Gate	\$ 29,190.00	December 31, 2028
RESTROOM: Toilet waste water facilities for employees and customers - septic or if possible use composting/ toilet; reconnect to previously functioning Hotspot shed toilet	Septic Systems Hawaii, Pacific Marine Partners, LLC \$13,238.74 for Septic system, and \$5000.00 for toilet connection and repairs.	\$ 18,238.74	December 31, 2028
DISPOSAL: Remove remaining abandoned property (massive equipment) occupying the one built structure from occupancy by Hotspots Welding (the unpermitted sublessee of previous lessee GKM) and remaining concrete and metal debris on the premises	Big Island Metal Recycling; Conen’s Trucking; Pacific Marine Partners	\$ 20,000.00	December 31, 2028
FENCING: Install new chain-link fence as needed around the entire parcel which is roughly 1,940 feet	Hawaii Isle General Contracting, and Pacific Marine Partners LLC	\$ 89,332.78	December 31, 2028

Exhibit C

<p>POWER: Replace the existing backup diesel generator with 6500 hours, with a new and larger generator. Plus foundation, accessory equipment, trucking, and shipping from mainland.</p>	<p>Multiquip 15kw Generator \$20,065.00, Shipping and delivery \$2,000, Installation and connection \$4,000.</p>	<p>\$ 26,065.00</p>	<p>December 31, 2028</p>
<p>WATER: Connect to the county water main on Kealakehe Parkway; PMP will arrange for offsite and onsite installation</p>	<p>Plumbing Strategies Inc. Kona</p>	<p>\$ 8,587.04</p>	<p>December 31, 2028</p>
<p>INTERNET: Install broad internet satellite services.</p>	<p>Starlink Satellite Internet</p>	<p>\$ 705.76</p>	<p>December 31, 2023</p>
<p>LANDSCAPING: Install low maintenance landscaping and walkways near office and patio area for customers.</p>	<p>‘Ili Kūpono Gardens Nursery & Farm, Pacific Marine Partners, LLC</p>	<p>\$ 9,000.00</p>	<p>December 31, 2028</p>
<p>GRAVEL: Spread 300 tons of base course gravel throughout the boatyard to fill in potholes and low areas.</p>	<p>West Hawaii Concrete</p>	<p>\$ 10,532.37</p>	<p>December 31, 2028</p>
<p>SOLAR LIGHTING: Install 10 solar street lights in the rear portion of the boatyard.</p>	<p>Pacific Pipe Kona, West Hawaii Concrete, Werise Solar Lights.</p>	<p>\$ 6,542.40</p>	
<p style="text-align: center;"><u>Total Estimated Cost</u></p>		<p>\$ 294,640.25</p>	

Exhibit D

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), effective July 31, 2020, is made and entered into by and between the STATE OF HAWAI‘I (including its divisions, departments, officials, agents, employees, and insurers) (“State”), and PACIFIC MARINE PARTNERS LLC, a Hawai‘i limited liability company (“PMP”) and INTERNATIONAL AND PACIFIC ENTERPRISES, LLC, JONAS SOLLIDAY, and JASON HOOPAI (collectively “Releasing Parties”). PMP and the State are referred to herein as the “Parties.”

RECITALS

Whereas, on September 10, 2018, the State, as Lessor, through its Board of Land and Natural Resources, entered into Boating Lease No. LH-19-002 with PMP as Lessee, for the lease of 9.00 acres of State-owned land (the “Premises”) at Kealakehe, North Kona, Island of Hawai‘i (the “Lease”); and

WHEREAS, there was and is a dispute between the Parties as to the condition of the Premises and the Parties’ respective rights and duties with respect to the condition of the Premises; and

WHEREAS, PMP obtained a Phase I Environmental Site Assessment of the Premises prepared by Environmental Science International and dated February 20, 2019 (“Phase I Report”) that identified certain recognized environmental conditions; and

WHEREAS, the recognized environmental conditions described by ESI in the Phase I Report included (1) the “apparently undocumented waste water system at the Hot Spot fabrication shop”; (2) the “uncontrolled dumping of waste or waste-like materials consisting of scrap metal, old tires, construction debris, wood and metal debris, unidentifiable materials, a tractor, and an old air compressor on or around the berms at the eastern and northern

boundaries” of the Premises; (3) “a collection of otherwise de minimis release of oil, paint, or other hazardous substances, solid wastes and abandoned or derelict vessels”; and

WHEREAS, additional disputes include, but are not limited to, the infrastructure that was or should have been delivered with the Premises, the number and nature of vessels on the Premises at the time PMP took possession and which of those vessels were paying rent, occupancy of a portion of the property by Hotspots Welding and Fabrication Limited Liability Company (“Hot Spots”) and any materials or structures left on the Premises by Hot Spots, and utilities provided to or accessible by the Premises; and

WHEREAS, the next payment due on the Lease is due and payable on August 1, 2020; and

WHEREAS, on or about April 14, 2020, the Board of Land and Natural Resources (“Board”) sent a notice of default to PMP for failing to pay rent due under the Lease (“April 14, 2020 Notice of Default”); and

WHEREAS, on or about May 5, 2020, the Board sent a notice of default to PMP citing three bases (1) failure to provide financial statements pursuant to Paragraph A.ii of the Lease, (2) constructing an improvement without prior written approval of the Board, and (3) failing to provide a surety bond pursuant to Paragraph 18 of the Lease (“May 5, 2020 Notice of Default”); and

WHEREAS on May 22, 2020, the Board voted to terminate the Lease based on the April 14, 2020 Notice of Default; and

WHEREAS, on June 1, 2020, PMP filed a Petition for Contested Case Hearing related to the May 22, 2020 decision by the Board to terminate the Lease; and

WHEREAS, after May 22, 2020, PMP made substantial payments with respect to the Lease; and

WHEREAS the outstanding balance of rent under the Lease is \$58,641.66 as of the date hereof; and

WHEREAS, the State and PMP desire to fully, finally, and completely resolve, release, discharge, terminate, settle, compromise, and reach a settlement of all claims relating to disputes as to the Lease and the Premises;

NOW, THEREFORE, in mutual consideration of the terms, covenants, and conditions of this Agreement, the Parties hereby agree as follows:

I. PROMISES AND COVENANTS

1. Settlement Amount. The State agrees to pay to PMP the sum of FOUR HUNDRED TWENTY-THREE THOUSAND DOLLARS AND ZERO CENTS (\$423,000) in full satisfaction of all claims asserted by PMP in connection with the Lease and the Premises (“Settlement Amount”) except as otherwise specifically stated herein. Payment of this Settlement Amount will be made only as set forth in Paragraphs 2 and 3 below.

2. Payment of Settlement Amount – Immediate Credit. PMP shall immediately upon execution of this Agreement receive a rent credit in the amount of \$58,641.66 which is the outstanding rent under the Lease as of the date hereof.

3. Payment of Settlement Amount – Future Credits Starting on August 1, 2020, PMP will make a monthly rent payment of \$17,000 plus any and all additional amounts as may be due by way of percentage rent. This amount is referred to herein as “Monthly Settlement Rent Payable.” The difference between the Monthly Settlement Rent Payable and the amount otherwise owed under the Lease is \$18,250 per month. This difference shall be credited against the Settlement Amount as and upon payment of the Monthly Settlement Rent Payable. PMP will continue to make payments in the amount of the Monthly Settlement Rent Payable on the first calendar day of each month until the balance of the Settlement Amount is exhausted. PMP will continue to comply with all terms of the Lease, except as set forth herein.

After the Settlement Amount is paid or credited as specified herein, PMP shall resume making full monthly payments pursuant to the terms of the Lease.

4. No Direct Payment of Settlement Amount. Rent credits as described above are and shall be the only way that the State makes payment of the Settlement Amount. Under no circumstances shall the State make or be required to make any cash payment of the Settlement Amount. In particular but without limitation, if PMP fails to make any or all of the payments in the amount of the Monthly Settlement Rent Payable, then the State will not be liable for the State's payment of Settlement Amount that month. If the lease is terminated for any reason before the State makes payment in full of the Settlement Amount, the State shall not be liable for any remaining unpaid portion of the Settlement Amount.

5. Lease Shall Remain in Force and Effect. The Parties agree that the Lease shall remain in full force and effect, but for the Parties' compromise as set forth in this Agreement. This Agreement is a compromise of disputed claims and the Parties agree it is not a reformation or modification of the Lease.

6. Wastewater System. The State shall be solely responsible for the closure of the undocumented waste water system at the Hot Spot fabrication shop. The State will work cooperatively with PMP to minimize impact on PMP's operations during the closure of the undocumented waste water system. The State shall return the area surrounding the undocumented waste water system back to similar or like condition before closure. The State will not be liable for any **damage** or loss to existing structures that may be required in order to accomplish closure. Installation of any new or replacement systems shall be PMP's sole responsibility and cost and will comply with all Lease requirements and all relevant laws, rules and regulations.

7. Waste Removal. The Parties agree that all “waste or waste-like materials” and all “solid wastes and abandoned or derelict vessels” described in the Phase I Report were removed from the Premises as of the date of this Agreement. Any additional or different waste or waste-like materials are PMP’s responsibility.

8. Environmental Issues. As set forth in the Phase I Report, the then- existing conditions of the Premises that were identified included: (a) removal and disposal of those derelict vessels at the time of the Lease, (b) undocumented Hot Spots septic tank/cesspool, (c) the possible need to obtain a NPDES Permit and/or Water Pollution Control Plan, (d) remediation of any impacted soil throughout the Premises, (e) disposal of solid wastes at the Hot Spots fabrication shop, and (f) investigation and possible remediation of the perimeter berms. The Parties agree that the State has removed all but one of the derelict vessels and some of the solid waste on the Premises at the beginning of the Lease. The Parties specifically agree and understand that the State is not going to do any other investigation, removal, or remediation of any kind on the Premises other than as set forth in paragraph 6 above. The Phase I Report is the baseline. Anything beyond the Phase I Report is PMP’s responsibility.

9. Notices of Default. The Parties agree that the April 12, 2020 Notice of Default and the May 5, 2020 Notice of Default and the Board’s decision to terminate the Lease are rescinded and that the State will take no further action to terminate the Lease based on these notices. Specifically, the State agrees that as of the date of this Agreement that it has received all financial statements as required by Paragraph A.ii of the Lease. Further, the State agrees that the current mobile container which has been used to facilitate PMP’s operations is not a violation of the Lease. The State reserves the right to pursue any future defaults.

10. Contested Case. PMP's and Jonah Solliday's petitions for Contested Case Hearing have been denied. PMP and Mr. Solliday will take no further action as to those petitions.

11. Release. In exchange for the good and valuable consideration described herein, PMP and Releasing Parties do hereby fully and finally release, acquit, and forever discharge the State (including its divisions, departments, officials, agents, employees, and insurers) from and against any and all claims regarding the Premises whether described above or not, and whether known or not, as of the date of this Agreement ("Released Claims"). This release survives the termination of the Lease for any reason.

12. Covenant Not to Sue. PMP and Releasing Parties agree that they will forever refrain and forbear from commencing or instituting any lawsuit or other proceeding or making any claim against the State based upon the Released Claims. This covenant does not cover or affect claims as may arise from failure to perform the obligations contained in this Agreement. This agreement in no way affects PMP's obligations to comply with applicable laws or comply with the Lease other than as specifically stated herein. This covenant survives the termination of the Lease for any reason.

II. OTHER

1. No Representations. PMP and Releasing Parties admit that no statement of fact or opinion has been made by the State or by anyone acting on behalf of State to induce execution of this Agreement, other than as expressly set forth in this Agreement, and that this Agreement is executed freely by PMP and Releasing Parties upon advice of counsel.

2. Captions or Headings. In this Agreement, the captions or headings of paragraphs are inserted for convenience, reference, and identification purposes only, and shall not control, define, limit, or affect any provisions of this Agreement.

3. Binding on Successors. This Agreement, including the obligations and releases herein contained, shall be binding upon and inure to the benefit of each of the Parties hereto and any successors-in-interest

4. Authority to Execute and Warranties. By signing this Agreement, PMP and Releasing Parties and the State each represents and warrants that they have the authority to execute and bind themselves to the Agreement. PMP warrants that it is the owners of the respective Released Claims, and that it has not assigned, sold, transferred, mortgaged, conveyed, hypothecated, or otherwise disposed of the Released Claims or any of them to anyone.

5. Hawai'i Law. This Agreement is entered into in the State of Hawai'i, and shall be construed and interpreted according to its laws.

6. Amendment. This Agreement shall not be amended except by a written instrument executed and approved by PMP and by the State.

7. Entire Agreement. Except as set forth in the Lease, the Parties have not made any agreement or promise to do or omit to do any act or thing not mentioned in this Agreement. This Agreement contains the entire agreement between and among the Parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation hereto, between the Parties. It is mutually understood that each party fully participated in the drafting of this document and that in no case, including in the case of an ambiguity, should the terms of this Agreement be construed against the drafter because of its status as the drafter.

PACIFIC MARINE PARTNERS LLC

By 

Its: Managing Member.

Jason Hoopa

STATE OF HAWAI'I

By _____

SUZANNE D. CASE
Chairperson, Board of Land
and Natural Resources

INTERNATIONAL AND PACIFIC
ENTERPRISES, LLC

By 

Its: Managing Member

Jason Hoopai

- and -

By _____

CLARE E. CONNORS
Attorney General of Hawai'i

JONAS SOLLIDAY

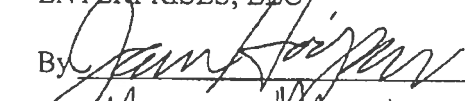

JASON HOOPAI

Approved as to form:

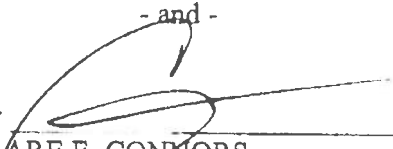
William J. Wynhoff
Deputy Attorney General

Approved by the Board of Land and
Natural Resources at its meeting of
July 24, 2020

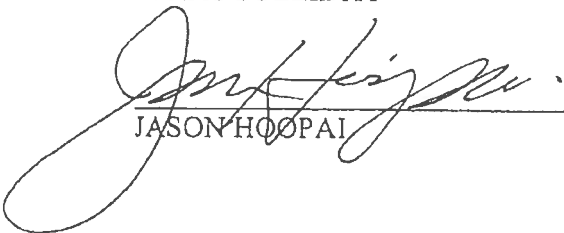
INTERNATIONAL AND PACIFIC
ENTERPRISES, LLC

By 
Its: Managing Member
Jason Hoopai


- and -

By 
CLARE E. CONNORS
Attorney General of Hawai'i

JONAS SOLLIDAY


JASON HOOPAI

Approved as to form:


William J. Wynhoff
Deputy Attorney General

Approved by the Board of Land and
Natural Resources at its meeting of
July 24, 2020

3. Binding on Successors. This Agreement, including the obligations and releases herein contained, shall be binding upon and inure to the benefit of each of the Parties hereto and any successors-in-interest

4. Authority to Execute and Warranties. By signing this Agreement, PMP and Releasing Parties and the State each represents and warrants that they have the authority to execute and bind themselves to the Agreement. PMP warrants that it is the owners of the respective Released Claims, and that it has not assigned, sold, transferred, mortgaged, conveyed, hypothecated, or otherwise disposed of the Released Claims or any of them to anyone.

5. Hawai'i Law. This Agreement is entered into in the State of Hawai'i, and shall be construed and interpreted according to its laws.

6. Amendment. This Agreement shall not be amended except by a written instrument executed and approved by PMP and by the State.

7. Entire Agreement. Except as set forth in the Lease, the Parties have not made any agreement or promise to do or omit to do any act or thing not mentioned in this Agreement. This Agreement contains the entire agreement between and among the Parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation hereto, between the Parties. It is mutually understood that each party fully participated in the drafting of this document and that in no case, including in the case of an ambiguity, should the terms of this Agreement be construed against the drafter because of its status as the drafter.

PACIFIC MARINE PARTNERS LLC

By 

Its: Managing Member.

Jason Hoopa

STATE OF HAWAI'I

By 

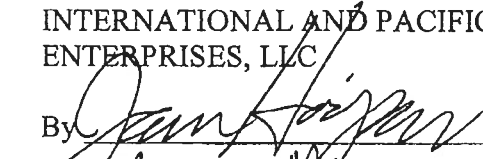
SUZANNE D. CASE
Chairperson, Board of Land
and Natural Resources

INTERNATIONAL AND PACIFIC
ENTERPRISES, LLC

- and -

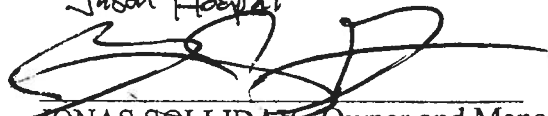
By

Its:


Managing Member
Jason Hoopai

By

CLARE E. CONNORS
Attorney General of Hawai'i


JONAS SOLLIDAY - Owner and Managing Member of Pacific Marine Partners, LLC


JASON HOOPAI

Approved as to form:

William J. Wynhoff
Deputy Attorney General

Approved by the Board of Land and
Natural Resources at its meeting of
July 24, 2020

3. Binding on Successors. This Agreement, including the obligations and releases herein contained, shall be binding upon and inure to the benefit of each of the Parties hereto and any successors-in-interest

4. Authority to Execute and Warranties. By signing this Agreement, PMP and Releasing Parties and the State each represents and warrants that they have the authority to execute and bind themselves to the Agreement. PMP warrants that it is the owners of the respective Released Claims, and that it has not assigned, sold, transferred, mortgaged, conveyed, hypothecated, or otherwise disposed of the Released Claims or any of them to anyone.

5. Hawai'i Law. This Agreement is entered into in the State of Hawai'i, and shall be construed and interpreted according to its laws.

6. Amendment. This Agreement shall not be amended except by a written instrument executed and approved by PMP and by the State.

7. Entire Agreement. Except as set forth in the Lease, the Parties have not made any agreement or promise to do or omit to do any act or thing not mentioned in this Agreement. This Agreement contains the entire agreement between and among the Parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation hereto, between the Parties. It is mutually understood that each party fully participated in the drafting of this document and that in no case, including in the case of an ambiguity, should the terms of this Agreement be construed against the drafter because of its status as the drafter.

PACIFIC MARINE PARTNERS LLC

By 

Its: Managing Member.

Jason Hoopa

STATE OF HAWAI'I

By _____

SUZANNE D. CASE
Chairperson, Board of Land
and Natural Resources

Exhibit E

Electronically Filed
THIRD CIRCUIT
3CC19100211K
25-AUG-2021
11:05 AM
Dkt. 146 ORDG

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

JASON HOOPAI,
INTERNATIONAL AND PACIFIC
ENTERPRISES, LLC and PACIFIC
MARINE PARTNERS LLC,

Plaintiffs and Counterclaim
Defendants

v.

JONAS IKAIIKA SOLLIDAY,

Defendant and
Counterclaimant.

Civ. No. 3CC-19-1-00211K
(Other Civil Action)

ORDER GRANTING DEFENDANT-
COUNTERCLAIMANT JONAS
IKAIIKA SOLLIDAY'S MOTION FOR
CONFIRMATION

Prior Judge: Hon. Melvin H. Fujino
Current Judge: Hon. Wendy M. DeWeese

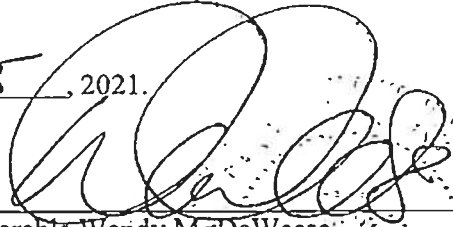
ORDER GRANTING DEFENDANT-COUNTERCLAIMANT
JONAS IKAIKA SOLLIDAY'S MOTION FOR CONFIRMATION

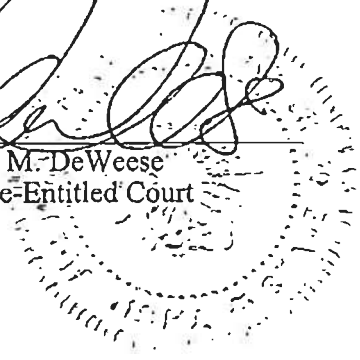
THE COURT HAVING read the Motion and supporting documents and after considering the position of both parties, and the record as a whole, granted Petitioner's Motion.

Accordingly, IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

DEFENDANT-COUNTERCLAIMANT JONAS IKAIKA SOLLIDAY'S CORRECTED Motion for Confirmation of Arbitrator Judge Karl K. Sakamoto's Findings of Fact, Conclusions of Law, and Order ("Final Award") dated April 8, 2021 is **GRANTED**.

DATED: Kailua-Kona, Hawai'i, August 25, 2021.


Honorable Wendy M. DeWeese
Judge of the Above-Entitled Court



DISPUTE PREVENTION & RESOLUTION, INC.

STATE OF HAWAII

JASON HOOPAI, INTERNATIONAL AND PACIFIC ENTERPRISES, LLC and PACIFIC MARINE PARTNERS LLC,)	DPR Arb No. 20-0150-A
)	
Claimants,)	ARBITRATOR'S FINDINGS OF FACT AND CONCLUSIONS OF LAW; CERTIFICATE OF SERVICE
)	
vs.)	<u>ARBITRATION HEARING:</u>
)	DATE: February 23 – 25, 2021 and March 5, 2021
JONAS IKAIKA SOLLIDAY,)	ARBITRATOR: Hon. Karl K. Sakamoto (Ret.)
Respondent.)	
)	
)	
)	
)	

**ARBITRATOR'S
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Arbitrator of the above-entitled matter respectfully submits these FINDINGS OF FACT and CONCLUSIONS OF LAW for the Arbitration held on February 23, 24, 25 and March 5, 2021.

FINDINGS OF FACT

The Arbitrator finds the following facts based upon credible evidence, which were proven by a preponderance of the evidence.

Procedural History

On or about July 12, 2020, the parties executed an Agreement to Participate in Binding Arbitration. On July 10, 2020, Claimants submitted their Statement of Claims. S Exhibit 256. On July 20, 2020, Solliday submitted his Counterclaim. S Exhibit 255. On February 9, 2021, Solliday withdrew his claims for IX. Conversion, XIII. HRS 481A Claims, and XIV. Tortious Interference with Prospective Economic Advantage.

The Arbitration in this matter was held on February 23, 24, 25 and March 5, 2021 with the testimonies of witnesses and exhibits by Claimants and Solliday.

Parties

1. Claimant Jason Hoopai is resident of the City and County of Honolulu, State of Hawaii.
2. Claimant International and Pacific Enterprises, LLC is a Hawaii limited liability company, whose sole member is Jason Hoopai.
3. Claimant Pacific Marine Partners LLC is a Hawaii limited liability company.

4. Respondent Jonas Ikaika Solliday (“Solliday”) is a resident of the County of Hawaii, State of Hawaii.

DLNR Leases- Hoopai and Solliday

5. Hoopai met Solliday through real estate work Hoopai did with Solliday’s brother.

6. At the time, Solliday was working in construction. Claimant’s Exhibit (“C Exhibit”) C. Exhibit 80.

7. Solliday had spent years employed as a licensed crane operator for Hawaiian Crane company. The job is a very lucrative position that allowed Solliday to obtain considerable savings and leave his position to assist and live with his parents in the island of Hawaii.

8. During his youth, Solliday was mentored by members of his family and learned how to research land parcels. ***Testimony (“T”) of Solliday; JIS Ex 280 at page 1 (Dec. of Solliday).***

9. In the summer of 2015, while living in Lahaina, Maui, Solliday was informed by a close friend to contact George Keahi pertaining to a revocable permit at a DLNR leased boatyard. Solliday learned that George Keahi’s brother, Wilson Keahi, had

been operating the DLNR boat storage facility for the past 30 years at the Mala Wharf in Lahaina. Wilson Keahi was having difficulties dealing with DLNR's Division of Boating and Ocean Recreation ("DOBOR"). It was at this time that Solliday became particularly interested in DLNR leases.

10. On or around January 2017, Solliday learned that DLNR's DOBOR property manager had dropped off an eviction notice to Wilson Keahi regarding his Lahaina DLNR boat storage lease. Solliday became even more interested in the way DLNR managed their ocean recreation, harbor, and land leases, and how they were issued. ***T of Solliday; JIS Ex 280 at page 5 (Dec. of Solliday).***

11. Throughout 2017, Solliday researched DLNR leases and in particular DLNR boat storage leases, including making calls and spending time speaking with DLNR personnel at its Honolulu office. Solliday gained substantial knowledge and insight into the leasing of DLNR boatyard storage locations.

12. By late 2017, Solliday was aware that two high value long-term DLNR boat storage leases appeared to be moving towards auction - one on Maui at the Mala Harbor in Lahaina and the other

on the Big Island at Honokōhau Harbor. **JIS Ex 42** (Inquiring emails to DLNR personnel). **T of Solliday; JIS Ex 280** at page 5 (*Dec. of Solliday*).

13. On or about December 17, 2017, upon the advice of DOBOR agent Keiki Kipapa, Solliday submitted the paperwork to receive bulletins from DLNR about any particular leases that would be put up for auction. **JIS Ex 144** (“DLNR Auction Mailing List to receive information about upcoming lease auctions”); **T of Solliday; JIS Ex 280** at page 6 (*Dec. of Solliday*).

14. While pursuing these lease prospects, Solliday began looking for a partner who would be willing to handle the administrative side of the business while he ran the boatyard operation, and who had the financial capacity to put up the lease down payment.

15. Solliday first approached his friend Lamar DeRego. DeRego. DeRego thought the lease was an interesting opportunity but in light of other commitments, he was not interested. **T of Solliday** and **JIS Ex 280** at page 5 (*Dec. of Solliday*); **T of Lamar DeRego; JIS Ex 13** at page 1 (*Dec of Lamar DeRego*).

16. Solliday next approached Jason Hoopai with whom he was acquainted from previous real estate and business pursuits.

17. Over a number of calls, Hoopai expressed interest and pressed Solliday for specifics about potential leases. Hoopai also said that “handling business is what I do”, that he had years of experience using Quickbooks, that he was not employed at the time, that he could devote his time to the company, and that he could cover the down payment if they secured the lease. **T of Solliday and JIS Ex 280 at page 6 (Dec. of Solliday).**

18. By early 2018, Solliday and Hoopai were both involved in researching the boat storage opportunities with DLNR on Maui and on the Big Island. Together they ran numbers on what they should bid and what the monthly expenses would look like and other costs associated with moving in. **T of Solliday and Hoopai; JIS Ex 280 at pages 6-7 (Dec. of Solliday).**

19. Around this same time, Hoopai encouraged Solliday to do the business venture under the umbrella of IPE. **T of Solliday and Hoopai; JIS Ex 280 at page 7 (Dec. of Solliday).** Solliday refused this request and was never hired or paid by IPE to work on its behalf. **T of Solliday.**

20. When it became apparent that the boatyard lease auction for Honokōhau Harbor would soon be scheduled, Hoopai and Solliday determined what percentage interest they would have in the company. Solliday offered “50/50 – equal share” if Hoopai would put up the lease down payment and handle the business side of the company, while Solliday ran the ground operation. Hoopai agreed. **T of Solliday; JIS Ex 280** at pages 7 and 8 (Dec. of Solliday); **T of Destinee Ramirez; JIS Ex 138** at page 2 (Dec of Destinee Ramirez)

21. Solliday and Hoopai agreed the company would be a member-managed limited liability company and decided on the name Pacific Marine Partners, LLC. Around the same time Solliday agreed to having Hoopai’s limited liability company IPE be the member. **T of Solliday; JIS Ex 280** at page 7 (Dec. of Solliday).

22. Hoopai and Solliday identified boat storage facilities, including the Mala Boat Storage Facility in Maui and the Honokohau Small Boat Harbor as their potential projects.

Bid for Honokohau Small Boat Harbor

23. On January 8, 2018, IPE sent a letter to DLNR seeking the Mala Boat Storage Facility. C Exhibit 3.

24. Solliday contacted the asset manager for the Honokohau Harbor to inquire about leasing the property. C Exhibit 4.

25. In addition to bid application requirements, DLNR also had pre-qualifying criteria for all bidders, which included 1) qualifications and experience in the type of use and business proposed by the applicant, 2) business planning, management and marketing experience, and 3) sufficient financial capacity.

26. In advance of submitting the bid application, Solliday contacted the DOBOR representative Keiki Kipapa to discuss these pre-bid qualifications, and pointed out his qualifications and experience to manage the ground operations, including his expansive experience running heavy equipment, his certifications and licenses. Solliday pointed out Hoopai's business planning and financial capacity.

27. Keiki Kipapa encouraged Solliday to apply and advised that together it seemed as if he and Hoopai met the qualifying

criteria. She later told him they appeared to be the only persons bidding.

28. Both Solliday and Hoopai researched and worked up information and figures to include in the bid package, but in large part it, was Hoopai who drafted the extensive Lease Bid Application, including a proposed business plan. Hoopai also confirmed his financial capacity to pay the lease downpayment. **JIS Ex 100** (*PMP Bid Application*).

29. Hoopai emailed Solliday a copy of the proposed Bid application on July 19th, the day before it was due, however it was mailed to Solliday's old email address, rarely used. Solliday did not review that email. **T of Solliday**.

30. Solliday did not thoroughly review the bid application or oversee the bid process, as he trusted Hoopai. Unknown to Solliday at the time the Bid Application was submitted on June 20, 2018, the Application stated IPE had a 95% interest in PMP and did not identify Solliday as having a membership interest, though it did identify Solliday as the LLC manager of PMP. **JIS Ex 100** at page 15 (*PMP Bid Application*).

31. It was not until a year or so later when the membership dispute arose, that Solliday became aware of inconsistencies relating to percentage membership interest that were contained in the Bid Application. **T of Solliday.**

32. Hoopai, having significant business experience, prepared excel spreadsheets and calculations to analyze the viability of taking over the leases of the Mala and Honokohau harbors. C Exhibits 5, 6 and 13 at JH-2806-07.

33. Hoopai and Solliday eventually determined that Mala was not a feasible option and focused on the Honokohau Harbor as the potential project. C Exhibit 6.

34. On June 1, 2018, DLNR published notice of Public Auction for the Honokohau Harbor. C Exhibit 13 at JH-2732 to 2741 and Solliday's Exhibits ("S Exhibit") 265. Hoopai downloaded the Bid Packet for the Public Auction from DLNR's website.

35. Pursuant to the Public Auction Bid Packet, applications to apply to bid at the public auction was due on June 20, 2018. C Exhibit 13 at JH-2737.

36. The Bid Packet required any person wishing to bid and purchase the lease "must first qualify to bid under the general

qualifying criteria and the pre-qualifying criteria[.]” C Exhibit 13 at JH-2735.

37. The pre-qualifying criteria to bid included: (a) qualification and experience, (b) business plan, (c) financial capacity, and (d) not having any convictions for violation of law. C Exhibit 13 at JH-2738.

38. The successful bidder at the public auction would need to pay DLNR \$70,500 at the conclusion of the Public Auction. C Exhibit 13 at JH-2740.

39. Hoopai and Solliday discussed the Bid Packet and the Application after the Public Auction was announced.

40. The Bid Packet identified that any bidder needed to appear at the Public Auction with \$70,500 in cash, certified check, or cashier’s check. C Exhibit 13 at JH-2737.

41. Hoopai immediately began filing out the Application, including the resumes of both members, the business plan, his personal financial documents necessary under the Application, and the Cash Flow Projections. Hoopai obtained specific work history and work experience in the construction field from Solliday. C Exhibit 13 JH-2742 to 2823.

42. On June 13, 2018, Hoopai secured \$80,000 as the down payment of \$70,500, and working capital. C Exhibit 19.

43. The written promissory note was not properly authorized by PMP, as Solliday did not sign the note or agree to the note. The \$9,500 of PMP's initial working capital is a reimbursable expense to Hoopai.

44. The initial deposit for the bid in the amount of \$70,500 was not a properly authorized loan by PMP to Hoopai.

45. The amount of \$70,500 is not a draw on equity.

46. In the Application, Hoopai put that the applicant was Pacific Marine Partners, which would be formed "NEXT BUSINESS DAY AFTER THE AWARDED LEASE". C Exhibit 14 at JH-2742.

47. The Application also provided that PMP would be Member Managed. *Id.*

48. The Application was filled out by Hoopai. Solliday did not fill out the Application and was not interested in doing so as he trusted Hoopai to fill the form

49. Hoopai prepared the resumes attached to the Applications. C Exhibit 13 at JH-2806-2807 and 2814-2815.

50. Hoopai prepared the business plan attached to the Application. C Exhibit 13 at JH-2816 to 2823.

51. Hoopai signed the Application and submitted it to DLNR on June 20, 2018.

52. On July 9, 2018, DLNR wrote to Hoopai and informed him that DLNR had determined that he qualified to participate in the July 13, 2018 Public Auction. C Exhibit 15.

53. Hoopai and Solliday discussed that if PMP were to be awarded the Lease for the Honokohau Harbor that Hoopai and Solliday would create PMP.

54. The Public Auction was held on July 13, 2018, and the Application submitted by Hoopai was the winning bid. C Exhibit 13 at JH-2752 to 2755.

55. Hoopai submitted a Cashier's Check for \$70,500 at the Public Auction. C Exhibit 13 at JH-2757. The Cashier's Check came from Hoopai's personal funds.

Creation of PMP

56. On July 9, 2018, the same day that DLNR informed Hoopai that he was qualified to participate in the Public Auction, Hoopai filed Articles of Organization to create PMP. C Exhibit 16.

57. The Articles of Organization identified IPE and Solliday as the Members of PMP and that PMP would be a Member-Managed limited liability company. *Id.* Hoopai signed the Articles of Organization on behalf of IPE as the organizer. *Id.*

58. Also on July 9, 2018, Hoopai filed a BB-1, Basic Business Application with the State of Hawaii, Department of Taxation to obtain a Hawaii Tax I.D. No. C Exhibit 17.

59. On or about July 10, 2018, Hoopai downloaded three generic documents, an operating agreement, a shareholder agreement, and a partnership agreement, from www.lawdepot.com. C Exhibits 20, 21, and 22.

60. Hoopai and Solliday signed the three agreements.

61. Hoopai and Solliday did not read the documents carefully.

62. Hoopai was the drafter of the three documents.

63. Solliday and Hoopai, on behalf of IPE, signed the operating agreement. C Exhibit 20 at JH-804 to 805.

64. The operating agreement is written in plain and unambiguous language.

65. No coercion or fraud was involved in Hoopai and Solliday signing the operating agreement. No legal basis exists for setting aside the operating agreement. No modification of the operating agreement exists.

66. The pertinent provisions of the OA are the following:

- **Section 6:** The value of each member's Capital Contribution was equal (represented as \$100 each), with Solliday contribution identified as "Member has contributed administrative support, research and development making this partnership possible.", and IPE's contribution identified as "Member has contributed financial support, business planning and procurement.";
- **Section 7:** The Net Profits or Losses, for both accounting and tax purposes "will accrue to and be borne by the Members in equal proportions.";
- **Section 8:** Each Member will receive an equal share of any Distribution.;
- **Section 9:** "No Member will have priority over any other Member for the distribution of Net Profits or Losses.";
- **Section 11:** "No member will withdraw any portion of their Capital Contribution without the

unanimous consent of the other Members.”;

- **Section 17:** “Management is vested in the Members.”;
- **Section 23:** “Each Member will have a single equal vote on any matter.”;
- **Section 24:** “A new Member may only be admitted to the Company with a unanimous vote of the existing Members.”;
- **Section 47:** “At all reasonable times [the company’s books of account] will be available and open to inspection and examination by any Member.

Section 52: Tax Matters Partner_The tax matters partner will be International and Pacific Ent. LLC (the "Tax Matters Partner"). The Tax Matters Partner will prepare, or cause to be prepared, all tax returns and reports for the Company and make any related elections that the Members may deem advisable.

- **Section 54:** Annual Report: “As soon as practicable after the close of each fiscal year, the Company will furnish to each Member an annual report showing a full and complete account of the condition of the Company including all information as will be necessary for the preparation of each Member’s income or other tax returns.” This report will consist of at least: A copy of the Company's federal income tax returns for that fiscal year. Income statement, Balance sheet, Cash flow statement, and a breakdown of the profit and loss attributable to each Member.”;
- **Section 68:** Actions that require unanimous consent of all Members, include “Incurring Company liabilities over \$10,000.”

- **Section 69:** “No amendment or modification of this Agreement will be valid or effective unless in writing and signed by all Members.
- **Section 75:** “This Agreement contains the entire agreement between the Members. All negotiations and understandings have been included in this Agreement. Statements or representations that may have been made by any Member during the negotiation stages of this Agreement, may in some way be inconsistent with this final written Agreement. All such statements have no force or effect in respect to this Agreement. Only the written terms of this Agreement will bind the Members.”

67. Witness testimony and evidence from Destinee Ramirez, Sylva Rivera, and Richard Lindberg corroborate that Hoopai and Solliday were equal members of PMP.

68. Solliday and Hoopai, on behalf of IPE, also signed the shareholder agreement. C Exhibit 21 at JH-819 to 820.

69. The shareholder agreement provided that IPE has 95 shares and Solliday had 5 shares of PMP. C Exhibit 21 at JH-808.

70. No corporate Articles of Incorporation was ever filed with the State of Hawaii DCCA.

71. PMP was organized as an LLC, and not a corporation or a partnership. **T of Solliday; JIS Ex 119** at 15 on page 10 (*Hoopai’s August 20, 2020 Admissions*).

72. On July 12, 2018, Hoopai obtained a Federal Employer Identification Number for PMP. C Exhibit 18.

73. On July 26, 2018, DLNR inquired whether Hoopai's name "must appear" on PMP's documents to sign the lease with DLNR. C Exhibit 24 at JH-2880. The pertinent email states: "The DCCA BREG website lists as members of Pacific Marine Partners LLC: International and Pacific Enterprises, LLC and Jonas Solliday. Mr. Hoopai is not listed as a member (or manager) of Pacific Marine Partners LLC. So if he is not a member or manager of Pacific Marine Partners LLC, how is he signing as lessee for Pacific Marine Partners LLC? Maybe there is additional pertinent information or updated information from the DCCA BREG info?" Hoopai failed to inform the Attorney General's office that he was the sole member of International and Pacific Enterprises, LLC to sign on behalf of IPE.

74. Hoopai did not offer the attorney general to have Solliday sign the lease, consistent with the bid application recognition that if the LLC is a manager-managed LLC, the manager identified is Ikaika Jonas Solliday. Hoopai Ex. 13 at 002745.

75. On July 27, 2018, Hoopai improperly submitted a member change form with DCCA and provided a copy to DLNR. C Exhibits 7, 24 at JH-289 and S Exhibit 3.

Boating Lease- Honokohau Harbor

76. The execution of the lease for the Honokohau Harbor was delayed because of issues with the prior tenant. C Exhibit 24 at JH-2882.

77. On September 10, 2018, PMP and DLNR entered into Boating Lease No. LH-19-002 for the Honokohau Small Boat Harbor (“Lease”). C Exhibit 23.

78. Hoopai signed the Lease on behalf of PMP as a member of IPE and PMP. C Exhibit 23 at JH-955.

79. The Lease is for 10 years, starting on November 1, 2018 and ending on October 31, 2028. C Exhibit 23 at JH-935.

80. The minimum monthly rent payable to the State of Hawaii under the Lease is \$35,250 or 50% percentage rent to the extent percentage rate of the monthly gross receipts exceeds base rent, whichever is greater. C Exhibit 24 at JH-935 to 936.

81. Paragraph 13 of the Lease provides in relevant part as

follows:

The Lessee shall not transfer, assign or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer of assignment made shall be null and void;

...

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "C."

82. Paragraph 21 of the Lease provides in relevant part as

follows:

[I]f Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed . . . the Lessor may, subject to the provision of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action [.]

83. Schedule "C" attached to the Lease provides that a premium must be paid as a condition of any assignment of the lease. Specifically Schedule "C" provides in relevant part that: "[i]f qualification was required of a lessee as a pre-condition of the lease,

the prospective assignee must also be qualified to assume the lease.” C Exhibit 23 at JH-961 to 970.

Honokohau Harbor Operations

84. Prior to acquiring possession of the lease property, Solliday and Hoopai discussed how to receive their compensation for their day-to-day operations for PMP. In addition to an annual member net distribution draw, they agreed that PMP would compensate them weekly without risk of exceeding the net profit of the company.

85. The members compensation was in the form of W-2 wages to be paid \$1,400 weekly to each of them (about \$5,600 a month). **JIS Ex 174** (PMP’s 2019 Payroll Report); **JIS Ex 280** at page 12 (Dec. of Solliday).

86. The post-auction inspection of the Honokōhau boatyard nine-acre leased parcel (hereafter “the parcel”) was carried out on August 30, 2018 by Solliday accompanied by DLNR representative Daniel Mersberg. **JIS Ex 280** at page 10 (Dec. of Solliday).

87. Thereafter on September 4, 2018, the DLNR - PMP lease “Boating Lease NO. LH-19-002” (hereafter “the Lease”) was signed

by BLNR Chairperson Suzanne Case and by Jason Hoopai. **JIS Ex 100** (*Bid Application and signed Lease*).

88. Immediately after PMP took over the Honokohau Harbor, it faced a myriad of issues with the condition of the property. C Exhibits 25, 26, 27 and 28.

89. After obtaining the Lease there was a delay in obtaining possession of the parcel following the discovery of the vandalized condition of the boatyard as left by the previous permittee Gentry's Kona Marina and the presence of an un-permitted welding shop known as Hotspots Welding LLC ("Hotspots"). **JIS Ex 280** at page 11 (*Dec. of Solliday*).

90. On November 1, 2018, PMP took possession of the boatyard property. **JIS Ex 280** at page 11 (*Dec of Solliday*).

91. From the beginning, Solliday and Hoopai together faced major challenges in handling the ground operations and the legal issues resulting from the extensive vandalism and substandard environmental condition of the leased property, as well as from the presence of the trespasser welding operator, Hotspots. **JIS Ex 280** at page 10 (*Dec. of Solliday*).

92. Solliday was very busy assisting the customers at the yard and dealing with the damages to the ground facility, as well as constructing overhead lighting and other essential security measures. At the same time, Hoopai was very busy setting up the Quickbooks programs and dealing with lawyers to handle the environmental and trespass issues. **JIS Ex 280** at page 12 (*Dec. of Solliday*).

93. The prior tenant, Gentry's Kona Marine had initially refused to vacate the premises. C Exhibit 26.

94. More significant was the condition that Gentry's Kona Marine left the premises. C Exhibits 25, 27, 28, and 40 to 45. The following issues were discovered by PMP after it took possession of the Honokohau Harbor: 1) property damage, 2) derelict vessels, 3) solid waste, 4) illegal tenant, 5) not graded land, and 6) pre-existing environmental conditions. C Exhibit 25 at JH-1146.

95. As a result of the myriad of issues regarding the condition of the property that was turned over to PMP, Hoopai sought legal assistance. First from Jason Wong, and then from Duane Fisher of Starn O'Toole Marcus & Fisher and Ian Sandison of Carlsmith Ball. C Exhibits 34 to 38.

96. Hoopai was the lead in coordinating with PMP's attorneys in their discussions with DLNR in requesting rent abatement and environmental remediation. C Exhibits 25 and 34 to 38.

97. Due to the unexpected conditions of the property, PMP had to incur significant start-up costs and legal fees that were not anticipated, including but not limited to: obtaining an alarm system, an electrical power source (generator), gate, container trailer for an office, portable toilets, and bringing in contractors. C Exhibits 30 at JH 633 to 645, 52, 53, 70,

98. As an example, the total legal fees paid out in 2018 were \$39,352.79. C Exhibit 30 at JH 638.

99. As a result of the initial start-up issues, PMP had a negative income of \$128,215.45. C Exhibit 32 at JH-591.

100. Through August of 2019, PMP had a negative income of \$42,291.84.

101. Prior to taking possession of the Honokohau Harbor, it was agreed between Hoopai and Solliday that Solliday would be the "boots on the ground" to deal with physical day to day operations, and Hoopai would be in charge of business matters.

PMP Chevy Truck- Solliday

102. In November of 2018, Solliday and Hoopai together decided to purchase a Chevy truck for PMP business. The purchase was made on November 16, 2018. PMP did not have any credit history for the purchase, so the financing of the PMP truck was registered in Solliday's name.

103. While at the Chevy dealership, Solliday called Hoopai and asked him to text a screenshot from the PMP Quickbooks records to show his earning and PMP earnings. Hoopai obliged. **JIS Ex 15** (*screenshot of Hoopai's text message to Solliday of PMP's Quickbooks records on November 16, 2018, showing that PMP had gross receipts of \$308,951, PMP's net profits to date of \$218,569, and Solliday had gross wages for the first half of November in the amount of \$2800*); **JIS Ex 173** (*Nov 20, 2018 email exchange between Hoopai and Insurance Agent to add the truck to PMP's insurance policy*).

104. The financial inaccuracies contained in the screenshot gave Solliday an inaccurate belief of PMP's financial condition. The inaccuracies led to Solliday's distrust of the Hoopai and PMP's finances.

105. Solliday properly used the truck to do PMP-related work and errands at the boatyard, to and including the twice-weekly trips to purchase fuel for PMP's generator during the initial operations at Honokohau Harbor. **JIS Ex 292** (*Lindberg depo at 90*); **JIS Ex 280** *at page 14 (Dec. of Solliday)*. Since December 2019, the truck has been parked at Solliday's home. **JIS Ex 280** *at page 16 (Dec. of Solliday)*.

106. Once purchased, the truck loan payments were automatically made from PMP's bank account. **JIS Ex 161** (*Vehicle Loan Statement*); **JIS Ex 107** (*PMP's CPB bank account ending #4544, for example page 2 see the January 2019 automatic loan payment from PMP's account*); **JIS Ex 161** (*CPB Truck payment history*).

107. Following the dispute between Hoopai and Solliday in August 2019, the PMP payments for the truck ceased when the PMP bank accounts were frozen.

Employment- Richard Lindberg / Tamara Shumaker

108. In November of 2018, Hoopai hired his friend Richard Lindberg as a part-time worker (20 hours a week) at \$20 per hour to assist him in handling customer accounts at the boatyard.

109. Solliday did not object to the hiring of Lindberg to assist him in his duties at the harbor operations.

110. Hoopai also advised Solliday that Lindberg had a condo in Kona and that PMP would be paying \$700 a month for a room at Lindberg's condo apartment so that they could have a place to stay and/or shower when in Kona. **JIS Ex 280** at page 13 (*Dec. of Solliday*).

111. Soon thereafter, Solliday, who was then living in Hilo and needing a place to stay Kona side, went to use PMP's room at the condo, and Lindberg refused him access. As a result, Solliday had to find other housing in Kona. **JIS Ex 280** at page 13 (*Dec. of Solliday*).

112. Hoopai allowed PMP to pay for the full lease rent for Lindberg's Kona condo at \$2100 per month as well as for utilities/maintenance averaging approximately \$400 per month as part of Lindberg's compensation. **JIS Ex 170** at page 11 (*PMP CPB*

Acct. no. 4544, February 4 2019 rent check no 21); **JIS Ex 210** at page 45 (July 6, 2020 emails between assistant and tax assistant Shiraki). Although Hoopai was allowed use of the condo unit, Solliday was not.

113. In 2019, Hoopai improperly allowed PMP to pay Richard's girlfriend Tamara Shumaker for work she did not perform, but was performed by Lindberg. **JIS Ex 110** (PMP payroll summary); **JIS Ex 293** (Shumaker depo at 41 and 42, stating that she did not work for PMP in 2019 and only briefly prior to 2019).

114. It was not until August 2019 that Hoopai explained to Solliday that he was paying Shumaker instead of Lindberg, because of a garnishment order Lindberg wanted to avoid. **JIS Ex 17** (Sutherland vs. Lindberg Docket for Civ No. 1CC10 -1-002243, Garnishment Orders at pages 9 and 10).

Bank Accounts and Credit/Debit Cards

115. In July of 2018, Hoopai opened a PMP bank account (account ending # 4544) at Central Pacific Bank (CPB), which is where Hoopai had an existing IPE account and a personal account. Hoopai provided CPB with a copies of PMP's Articles of

Organization, the July 10, 2018 Operating Agreement and also the Shareholder Agreement. **JIS Ex 175** (August 03, 2019 email from CPB to Solliday).

116. Both Solliday and Hoopai on behalf of IPE were issued CPB debit cards for PMP's checking account. Solliday and Hoopai used the CPB debit card for PMP business expenses. **JIS Ex 280** at page 18 (Dec. of Solliday); **JIS Ex 106** (Hoopai's 2019 Barclays Statements).

117. PMP had a bank account with Bank of Hawaii- Kona. The PMP operating agreement was used to open the account.

118. On September 6, 2019, Solliday, without notifying Hoopai, opened another PMP bank account at Hawaii Community Federal Credit Union's "HCFCU" Koloko branch.

Loans- Hoopai

119. On March 31, 2019, PMP had \$15,988.24 in its checking account at Central Pacific Bank ("CPB Account 4544"). C Exhibit 90 at JH-405.

120. Hoopai was concerned that PMP would be unable to meet its monthly rent obligations of \$35,250 for the State harbor lease.

121. On April 5, 2019, Hoopai borrowed \$50,000 from Intuit to shore up PMP's finances. C Exhibits 50 and 90 at JH-413.

122. The loan was guaranteed by Hoopai and used to pay for PMP's ordinary monthly expenses. C Exhibit 90 at JH-414 to 438.

123. On June 30, 2019, PMP had \$37,458.09 in its checking account at Central Pacific Bank. C Exhibit 90 at JH-431.

124. At this point, PMP had already used monies that annual and bi-annual customers had paid and PMP needed additional cash to continue its' operations.

125. On or about July 11, 2019, Hoopai borrowed \$60,000 to shore up PMP's dire financial situation. C Exhibit 46. Hoopai was the personal guarantor of the loan. C Exhibit 46 at JH-1235.

126. Hoopai borrowed another \$15,000 on or about August 20, 2019 and was the sole personal guarantor. C Exhibit 48. The funds were used to sustain PMP's operations. C Exhibit 90 at JH-449 to 455.

127. On September 27, 2019, Hoopai borrowed \$30,000 because PMP had used up all of the prior loans proceeds and its checking account balance was \$16,203.56 on August 31, 2019. C

Exhibits 48 and Exhibit 90 at JH-449. Hoopai was the sole personal guarantor of the \$30,000 loan. C Exhibit 48.

128. The funds borrowed by Hoopai were properly used to sustain PMP's operations. C Exhibit 90 at JH-439 to 448.

129. Solliday did not understand the true and full financial picture of PMP leading to the dispute arising in August 2019.

Quickbooks

130. PMP provides three options for its customers to store marine vessels at the Honokohau Harbor: (1) annually, (2) bi-annually, and (3) monthly. Those customers who choose to pay on an annual basis receive a 20% discount, those who chose to pay bi-annually receive a 10% discount, and those who pay monthly receive no discount. Hoopai came up with per/foot rent charge for PMP's customers based on research he did.

131. Initially, Hoopai was using the cash accounting method to keep track of PMP business. Hoopai recognized that PMP needed to change to an accrual accounting system right after PMP took possession of the Honokohau Harbor due to the percentage rent

clause in the Lease and the timing of various payments from customers. C Exhibit 83 at 14-16.

132. In early 2019, after PMP had been operating a few months, Hoopai realized the bookkeeping duties using Quickbooks was complex. He decided it would be best to hire bookkeepers to assist the transition from cash to accrual and due to the volume of transactions (expenses and customer payments). C Exhibit 50.

133. PMP uses Quickbooks, an on-line software to keep track of its books and records.

134. Initially, both Hoopai and Solliday had access to Quickbooks.

135. Solliday had never used Quickbooks before, and so Hoopai taught Solliday how to make entries into Quickbooks.

136. Due to the change from cash to accrual accounting method, the amount that was contained in PMP's checking account was not reflective of the actual profitability of PMP. Instead, because most of PMP's customers pay annually and bi-annually, those amounts paid by those customers are in PMP's checking account but not actually "earned".

137. PMP's additional unexpected startup expenses for security, installation of a solar power system, a generator and fuel for interim power, and costs to replace the damaged security gate amounted to \$96,225. Ex. "25" at JH-001148.

138. PMP's monthly fixed costs were around \$13,000 a month for payroll and healthcare. C Exhibits 32 and 33.

139. Due to the unexpected and significant start-up costs, PMP was not profitable in 2018 and through August of 2019. C Exhibit 30 and Exhibit 31.

140. PMP had to borrow money in order to continue its' operations at the harbor.

Hiring Bookkeeping and Accounting Services

141. During the first six months of operations, Hoopai handled PMP's bookkeeping using Quickbooks.

142. Hoopai encountered difficulties maintaining the bookkeeping after switching to an accrual system, handling the tax ramifications of different GE Tax assessments, and other bookkeeping complexities.

143. Hoopai failed to timely file PMP's 2018 tax returns.

144. Hoopai prudently and properly sought assistance for bookkeeping and accounting services.

145. In April 2019, Hoopai used the bookkeeping services of A Sweet Suite Spot, LLC. Hoopai brought both Hollister and her partner Melody Sunahara to the boatyard and they introduced themselves.

146. Hollister and Sunahara were partners in an LLC, named “A Sweet Suite Spot, LLC”, operating under the trade name “Suite 8”. **JIS Ex 16** (*Suite 8 DCCA Filings*).

147. PMP books were in a complete mess when Suite 8 initially reviewed the bookkeeping records. It took a month for Suite 8 just to review the books.

148. The Independent Contractor Agreement between International & Pacific Enterprises and Suite 8 injured PMP. The bookkeeping services did not recognize PMP as a party to the contract, although the bookkeeping services were paid by PMP. The services improperly included services unrelated to PMP, including “email tracking and response for multiple accounts (Rigorr.com, Gmail.com, Legacytrees.org)...creating /maintaining sales and marketing for projects (i.e., Airbnb, etc.)...”. Solliday Ex. 28.

149. Hoopai had a past and ongoing work employment relationship with Legacy Trees at the time of this contract.

150. The result of the independent contractor agreement was to hinder or prevent open communication of the status of the bookkeeping records with Solliday. Suite 8 was not as forthcoming with their work product because PMP was not correctly identified and recognized in the contract.

151. The independent contractor agreement was improper. The contract breached IPE's required tax responsibilities.

152. The failure of the communication of financial records and books led to Solliday's distrust of the accounting records and to Solliday's reluctance to accept the financial status of PMP relayed by Hoopai.

153. Solliday's distrust was further amplified because Suite 8 needed to correct and clean up the QuickBooks records- necessitating on or about June 2019 a halt to Hoopai's and Solliday's direct input and auto-sync into QuickBooks accounts.

154. On or around May of 2019, Hoopai prudently engaged CPA Daren Katayama to do PMP's tax returns. Mr. Katayama was provided with a copy of PMP's Operating Agreement by either

Hollister or Sunahara. **JIS Ex 185** (*Engagement letter between CPA Katayama and PMP signed by Hoopai*); **JIS Ex 119** (*January 29, 2021 Admission to Discovery Request #25 inquiring whether “CPA Accountant Katayama was given a copy of PMP’s Operating Agreement for purposes of completing PMP’s tax return”, Hoopai responded “Admit”*).

155. The bookkeeping services of Suite 8 and the accounting services by Katayama appear to be accurate and reliable.

156. Hoe, a credible and persuasive witness, was able to use the records of Suite 8 and Katayama for his analysis. Hoe was able to correlate Hoopai’s credit card entries with the bookkeeping records kept.

157. Hoe did not note nor observe inaccuracies or errors in the bookkeeping records or in Katayama’s accounting.

158. No misappropriation by Hoopai was established.

159. The dispute between Solliday and Hoopai on or about August 2019, unfortunately occurred before Solliday could review and examine Suite 8’s completion of their reconciliation of the QuickBooks records, and before Katayama could render the tax reports based on the bookkeeping records.

Dispute- Hoopai and Solliday

160. In August 2019, Hoopai came to Kona and met Solliday at the boatyard office. Solliday confronted Hoopai in front of two witnesses: electrical contractor Sylva Rivera and Richard Lindberg.

161. The meeting lasted several hours during which Solliday again confronted Hoopai about claims that he is the majority owner as well as a number of other concerns including: 1) Hoopai's false representations in tax-related government filings concerning Shumaker and Lindberg's employment, 2) Hoopai's continued failure to provide Solliday with financial and tax documents such as any W-2 or K-1 and 1099 (though Hoopai said he had completed his own 1040 tax return), 3) Hoopai's borrowing of large sums of money at high interest rates, and 4) some inappropriate dealings with trespasser Hotspots LLC. ***T of Solliday; JIS Ex 280 at page 17 (Dec of Solliday).***

162. After Hoopai departed, Solliday asked the two witnesses who were present at the meeting, Hoopai's friend and PMP employee Richard Lindberg and electrical contractor Sylvia Rivera to each write a statement of what had occurred at the meeting.

163. Sylva and Lindberg agreed and then sat together writing their statements. **JIS Ex 10** (August 27, 2019 Statement written by Richard Lindberg); **JIS Ex 11** (August 27, 2019 Statement by Sylva Rivera). In his deposition, when asked why he wrote the statement, Lindberg explained “Ikaika asked me to - Told me to”. **JIS Ex 292** (Lindberg depo. at page 104).

164. Hoopai had promised to return the following day so they could go over the financial accounts. Hoopai, however, did not return the following day. A few days later on August 30, 2019, Hoopai stopped by the harbor office but without any PMP financial records. **JIS Ex 280** at page 26 (Dec. of Solliday).

165. The Hoopai’s failure to provide financial assurance elevated Solliday’s distrust of Hoopai and of PMP’s true financial condition.

Solliday and Hoopai Misconduct

166. On August 30, 2019, without any authority, discussion and right to do so, Solliday filed a Member Change form with the State of Hawai‘i Department of Commerce and Consumer Affairs

("DCCA") that identified Solliday as the 100% sole member owner of PMP. C Exhibit 54.

167. Shortly thereafter, on September 3, 2019, without any authority, discussion and right to do so, Hoopai filed a Member Change for with the State of Hawaii Department of Commerce and Consumer Affairs that identified Hoopai as the 100% sole member owner of PMP. C Exhibit 55.

168. Solliday and Hoopai were not authorized by PMP to file any documents with DCCA to change the membership and ownership of PMP.

169. On September 4, 2019, Solliday again improperly filed another Member Change form with the DCCA naming himself as the sole member of PMP. C Exhibit 56.

170. On September 4, 2019, Hoopai wrote to Solliday and informed him of his disassociation from PMP based on his misdeeds related to filing documents with DCCA. C Exhibit 58.

171. Solliday contacted the State of Hawai'i Office of the Attorney General and spoke to Special Agent Paul Jones and explained the situation. Special Agent Jones urged Solliday to

contact the Hawai'i County Police Department and file a police report, which Solliday did. **JIS Ex 280** at page 28 (Dec. of Solliday).

172. Solliday drafted a "Notice letter" to Hoopai, listing examples of Hoopai/IPE's wrongdoing, misrepresentations, and violations of PMP's Operating Agreement and gave Hoopai Notice of his Involuntary Withdrawal pursuant to PMP's Operating Agreement. **JIS Ex 8** (Letter to Jason Hoopai and IPE dated September 4, 2019 mailed by certified mail at 12:32 pm). On the same day, Solliday also emailed a copy of the Notice Letter to Hoopai. **JIS Ex 154** (Solliday email to Hoopai with the Notice letter" attached). The Notice letter stated as follows:

NOTICE

Notice is hereby served upon you for the following violation of the By-Laws of the Operating Agreement, signed and dated the 10th day of July, 2018,;

TO WIT:

1) Breach of the Operating Agreement ("O.P."), has been done by you, Jason Hoopai ("JH") for taking out high interest Loans on April 04, 2019 and July 12, 2019, without first seeking unanimous consent of all partners", as provided for in paragraphs 30 and 45 of the O.P., said Loans are contracts to which you have entered into, binding Pacific Marine Partners, LLC/HMS. In so doing,

JH did in fact "breach his fiduciary duties."

2) You have violated banking laws by falsifying Business Records and misrepresenting yourself to the banking institute, Central Pacific Bank ("CPB") as the controlling partner in order to obtain the above said loans, when in fact, the company's Operating Agreement are the by-laws of the company. Again, violating the O.P., paragraph 30. Further, Mr. Jonas Ikaika Solliday ("JIS"), is the registered owner of the General Excise Tax License for Pacific Marine Partners LLC, as recorded by the State of Hawaii 's Department of Taxation.

3) You have shown incompetence in your "letter June 5, 2019, Re: Tenancy and Use of Hot Spots on the HMS, property." The lease of the property of Honokōhau Marine Storage does not specify sub leases to any company being allowed. Further, Hot Spots LLC was served with a written Notice to Vacate via certified registered mail, return receipt requested by the former lease holders, Gentry. Hot Spots, owner Cameron initially represented to member, Mr. Jonas Ikaika Solliday ("JIS") and others that he owned the building situated of HMS' lease property with HMS.

4) Mr. Jason Hoopai ("JH"), you knew at all times pertinent heretofore that Hot Spots had no lease agreement with PMP /HMS or any other lawful entity Thus, your letter showed incompetence and would have violated the terms of the lease, thus in so doing, you violated your fiduciary duty to HMS.

5) You have also misrepresented facts pertaining to a Grill (property), owned by Gentry's Kona Marina, to which you asked Cameron of Hot Spots LLC to convert the Compressor Air Tank into a grill. When you were asked by the deputy A.G. about this matter you replied that you knew nothing about it. This fact is supported by Miss. Stacie Horst's written correspondence via e mail dated

March 27,2019 at 9:32: 55 p.m. ("Again showing incompetence in making sound judgement, thereby putting HMS integrity in Jeopardy and jeopardizing HMS lease").

6) It also appears that you violated Labor Laws by hiring Richard Lindberg 's Girlfriend, Tamara Shumaker. However, Miss Shumaker has never came into the HMS property to do any work. However, Richard Lindberg comes in approximately 20 hours a week and does customer service work. Richard Lindberg is not on PMPS payroll list as an employee, yet he gets paid and you have been paying their lease out of PMP funds without my prior approval. You have also submitted forms to both the state and IRS for this matter. Again, violating your fiduciary obligations to PMP and HMS.

7) You have consistently represented yourself as the majority owner of PMP, relying on the shareholder agreement ("as you have done with CPB to open the business account and in order to obtain said loans"). Such representations are untrue. **NOTE: Only Corporations can have shares ("certificates"), not LLCs. See HRS Chapter Sub-sections 424-32 (sic 414-32) and 414-71.** Also see HRS **428-203** (pertaining to Articles of organization). **Therefore, the "Share Holders Agreement" is nullified and has no authority over the O.A.** Also Note: HRS Sub-Section 414-71 (a) states in pertinent part: " The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue." Regardless, as confirmed by the State of Hawaii Department of Taxation, you are not the owner of PMP but was an agent, the very same company that owns HMS.

8) You committed deceptive business practices; have shown incompetence in your decision making; have violated a breach of contract, fraud and it appears you

committed perjury.

9) You have hired Kessie Hollister and Melody Sunahara to do PMP 's Taxes when they are not licensed. You also claimed to have hired a Tax Attorney and Certified Public accountant Firm located in Waimea but did not seek prior approval from JIS to hire anyone of them. Further, no contract agreement was signed and accepted by myself with anyone of the above named people. **Again, violating the terms of the OA.**

10) JH, you have not provided me, JIS with any W-2 or Schedule K-1; Nor did you provide me with any spreadsheet accounting for all income and expenses of HMS, although you said in the meeting held 8/27/19 that you would witnessed by Richard Lindberg and Sylva Rivera.

11) You have not given me, JIS back pay for all of my additional hours worked at the HMS yard as promised in numerous discussions that we've had. The latest reiterated was witnessed on 8/27/19 by Richard Lindberg and Sylva Rivera.

FOR THE ABOVE STATED REASONS, EVIDENCE AND GOOD CAUSE:

Wherefore, you are hereby served with this Notice of Involuntary Withdrawal, Effective Immediately. You are further prevented from doing any act on behalf of PMP and HMS, including any and all financial transactions. Any and All documents owned by PMP and HMS is to be surrendered immediately. Any attempt to violate this directive will be grounds for both criminal and or civil litigation(s) at your own expense. Including but not limited to court costs, lawyer's fees, reimbursements etc.

An Investigation and or Investigations of revenue, financial and business records is currently being conducted by the State of Hawaii Department of Taxation, State of Hawaii DCCA and Internal Revenue Service for the pertinent matters stated above.

173. On the same day, September 4, 2019, Solliday emailed PMP's attorney Duane Fisher of Starn O'Toole Marcus & Fisher Law Corporation a copy of his "Notice Letter". **JIS Ex 153** (*email to PMP Attorney Duane Fisher with a copy of Solliday's Notice letter to Hoopai along with other attached documents including PMP's Operating Agreement, and witness Sylva Rivera's Statement concerning the August 27, 2019 meeting*).¹

174. Solliday also went to the Central Pacific Bank and improperly withdrew \$19,000 of the approximately \$23,000 that was then in PMP's account ending in #4544.

175. Solliday deposited the funds into a new PMP account at Hawaii Community Federal Credit Union (HCFCU). **JIS Ex 257** (*PMP CPB acct. ending #4544 Sep.2019 \$19,000 withdrawal*); **JIS**

¹ On or about September 20, 2019, Solliday also filed written complaints concerning the wrongdoing by Hoopai with the Internal Revenue Service (**JIS Ex 103** *Solliday's IRS Complaint*) and to the State of Hawaii Department of Taxation Special Enforcement Division. **JIS Ex 102** (*Solliday email to Department of Taxation Special Enforcement Division dated September 20, 2019*).

Ex 214 (HCFCU Bank Statement # 622697); **JIS Ex 280** at page 29 (Dec. of Solliday).

176. Solliday withdrew \$16,000 from HCFU to have the funds to cover PMP expenses that were in his name, and to pay his wages while the dispute was settled.

177. Sometime later, Solliday provided a detailed accounting of his spending of these funds to Hoopai's counsel. **JIS Ex 273** (Accounting of PMP Funds Member Solliday).

178. Shortly thereafter, the HCFCU account was frozen (the current balance in that account is \$2621.21). **JIS Ex 214** (HCFCU Bank Statement)).

179. Central Pacific Bank froze PMP's checking account. Hoopai filed a police report with the Honolulu Police Department and executed a stop payment on the cashier's check.

180. On September 6, 2019, Hoopai requested Solliday stop contacting banks and vacate the Honokohau Small Boat Harbor. C Exhibit 60.

181. On or about September 23, 2019, Solliday again sought to obtain copies of PMP's financial statements and tax related information. He requested this information directly from Kessie

Hollister and Melody Sunahara, copies of financial and tax related documents. **JIS Ex 26** (*Solliday letter to Hollister and Sunahara re: PMP's tax documents*).

182. By way of their attorney, Suite 8 was not forthcoming with the requested financial documents, advising Solliday that they are contracted with IPE and not with PMP and are subject to instructions from Jason Hoopai. **JIS Ex 143** (*Attorney Strance letter to Solliday on behalf of Suite 8*). At that time, Solliday had no knowledge that PMP had an accountant who was working with Hollister and Sunahara on PMP's finances and tax return preparation. **T of Solliday**.

183. On September 4, 2019, about an hour after Solliday sent Hoopai his "Notice Letter", Hoopai responded in an email at 3:55 pm, with accusations concerning Solliday's actions, as follows:

Ikaika,

It's apparent your actions and interest to maintain our partnership have changed.

We spoke on Tuesday & Sat. and you said your concerns and upon being made aware of your concerns for the first time, began gathering

information to provide you the answers you requested. However your intentions to do me harm by way of the company, my investment or friendships has been made aware to me through the DCCA, our attorney's, my personal council and other parties, who agree with my findings below.

You have knowingly violated our partnership in the following ways.

1. Withholding vital information from our partnership, intentionally from me specifically so I cannot complete my job.
2. Filed for an officer change against my will and without my authority, falsifying records with the State office of the DCCA.
3. You've made huge accusations of myself, our bookkeeper Kessie and our attorney's implying incompetence and back door dealings.
You've failed to put up any capital of any kind.
4. You unknowingly violated the terms of the State Lease Agreement LH19-002 by disrupting the operation of PMP, it's legal filings and necessary business information which puts PMP and its asset in great danger of Forfeiture.

It was knowingly that PMP is in a difficult situation in regards to the Auction won, by Jason Hoopai. Secured by Jason Hoopai, and approved because of Jason Hoopai. Your involvement with the harbor is because Jason Hoopai funded the necessary transaction to generate the relationship with the DLNR.

The business relationships and bills are paid for by Jason Hoopai. Any debts carried on the business were necessary to maintain the trajectory of resolving the situation with the State. You admitted to this and

agreed on more than one occasion over our phone meetings in Jan. April & May, prior to debts. Prior consent to debts were not a violation of the PMP, but a necessary funding to carry the company to securing a resolution with the State regarding PMP issues.

Your bottomless claims of not having access to the books is false as you have been accessing and looking at our banking and book keeping records with absolute access. You were made aware that the records needed to be cleaned up and that it would take some time. Your request can not be met instantly as the work is still in progress. You know this and have been informed many times. This is not nefarious activity, it's normal business timeline which you are not accustomed too. That why you have a "business" partner.

All these behaviors are causing PMP harm and undue risk in loosing the boat harbor completely. Intentions aside, you are in direct violation of the operating agreement.

Your claims of illegal activity and incompetent decision making are false and bottomless claims from an individual with no business, accounting or transactional experience of our delicate situation. Claims of incompetent council is a clear understanding that the situation we encounter is difficult for you to manage for behavior. The uncontrolled anger and poor treatment of other in the yard is also a sign of your Instability.

Clearly, you have been taking council from Sylva, who has been counseling you to act against the interest of our partnership; instead of addressing and resolving partnership issues among ourselves. Primarily

concerns surrounding severe legal accusations.
Conducting private company business with an

outside entity to conspire against the good will of your partner is violation of trust and loyalty which if not acceptable. This is not a partnership conducted in good faith, solely through your actions.

The Lease will be forfeited back to GKM, the debts will be foreclosed upon and you will cause great harm to my investment and relationships built to maintain the opportunity of the boat yard if you do not resign from PMP immediately.

I am Evoking sec. 13 of our Operating Agreement calling the loans made by myself to PMP due immediately. Additionally, Evoking Sec. 58, where you clearly violated the good faith of this partnership through the conspiracy of staging a cue with your co-conspirator, Sylva Rivera. Your actions against the company, taken without authority of all members especially the key administrative contributing partner, myself, is acting outside of the covenants of U.S. corporate law & the good faith of our operating agreement.

Secondly:

Based on the capital contributions made to the company by me, all partnership pay will cease until all debts are paid in full beginning immediately. Any checks written without consent will be considered embezzlement and prosecuted to the fullest extent of the law.

The confirmation of your resignation is required for the company to continue.

JIS Ex 155 (September 4, 2019 email from Hoopai to Solliday).

184. On September 5, 2019, Hoopai also emailed a letter to Solliday setting forth similar accusations of wrongdoing based on the actions Solliday had taken in response to Hoopai's actions and his refusal to be accountable at the August 27, 2019 boatyard meeting. The letter was signed by Hoopai as "Principal" on behalf of Pacific Marine Partners. **JIS Ex 6** (Hoopai's September 5, 2019 "Notice letter" to Solliday). **JIS Ex 280** at page 29 (Dec. of Solliday).

185. From August 27, 2019 Solliday continued working at the boatyard on his own. He had access to the Quickbooks client accounts and entered payments he received from clients into the Quickbooks as he had been doing all along.

186. On September 5, 2019, when Lindberg arrived at the boatyard, Solliday advised him that he was fired because of the scheme Lindberg and Hoopai had set up to falsely include Tamara Shumaker as an employee, hiding the status of Lindberg as an employee of PMP.

187. December 16, 2019 was the last day that Solliday worked at the boatyard. On that day Hoopai came unannounced with

companions. Solliday called his attorney who advised him not to block Hoopai from taking possession of the yard and better to depart and allow the dispute to be settled through the attorneys.

JIS Ex 280 at page 36 (Dec. of Solliday).

Financial Events Following the Separation

188. During the months of September, October, and November of 2019, some PMP tenants gave their lease payments to Solliday at the boatyard as they were accustomed to doing. Although Solliday's administrative access to PMP's Quickbooks was otherwise blocked as of early-September 2019, he was still able to continue inputting customer payments into the platform for accounts receivable until that access was also blocked in late October 2019. **T of Solliday; JIS Ex 280** at page 30 (Dec of Solliday); **JIS Ex 254** (Copies of Customer receipts provided by Solliday).

189. Customarily, on or before Friday of each week, Solliday would deposit the customer checks and cash into PMP's CPB account. The PMP Central Pacific Bank account was frozen on or about September 17, 2019, and the HCFCU account Solliday had opened for PMP had also been frozen. The frozen bank accounts

prevented Solliday from depositing the monies in a bank. **JIS Ex 214** (*PMPLLC Hawaii Community FCU Statements*)

190. Beginning in September 2019, the regular weekly compensation of \$1400 being paid to Solliday had stopped.

191. Up and until his access to the Quickbooks accounts receivable platform was blocked, Solliday entered each customer payment he received into PMP's Quickbooks accounts and gave each customer a receipt and kept a hard copy of the receipt in the PMP office at the boatyard.

192. After his access to the PMP's Quickbooks accounts receivable platform was blocked, Solliday continued to record all of payments in his hardcopy of receipts which were kept at the boatyard office. **T of Solliday; JIS Ex 280** at page 30 (*Dec of Solliday*).

193. At all times through email, Solliday provided PMP clients a receipt for rent paid whether by cash or by check. **JIS Ex 254** (*Copies of Customer receipts provided by Solliday*)

194. Over this period, Solliday was given 18 customer checks totaling \$6,657.95. **JIS Ex. 252** (*copy of the customer checks*).

195. Of the \$6,657.95 total of stale checks, a total of \$5,358.01 has been recouped by PMP by replacement checks from the respective customers. \$1,319.94 of the stale check total was not recouped. **JIS Ex 221** (*Hoe Report Attachment A Exhibit 5*). **JIS Ex 254** (*List of customer checks entered into Quickbooks up through October 24, 2019*); **JIS Ex 251** (*Error message from Quickbooks to Solliday blocking his access to enter checks into accounts receivable*); **JIS Ex 273** (*accounting of the PMP funds handled by Solliday showing that all cash was used for PMP regular and customary expenses*); **JIS Ex 262** at page 2 (*Correspondence from Margaret Wille & Associates to Attorney Sunny Lee containing the 18 customer checks*).

196. Solliday collected a total of \$5,403.52 in cash payments from customers who paid their boat storage rent at the Harbor. Solliday Exhibit 273.

197. Solliday paid \$7,700.34 in proper PMP business expenses for the period September 1, 2019 to April 21, 2020. He was not reimbursed for these expenses.

198. During the separation caused by the dispute, Solliday properly charged \$379.26 as PMP business expenses.

199. The customer payments, checks and cash, are owned by PMP. Solliday could not directly receive these customer payments as his own.

200. During the period from September to November 2019, using some of the PMP cash he held, Solliday compensated himself for ten weeks at that same weekly rate of pay for a total of \$14,000. **JIS Ex 280** at page 29 (*Dec of Solliday*); **JIS Ex 221**, *Hoe Report Attachment A* at page 14 (“*QBs shows that \$14,000 was classified as ‘Guaranteed Payments’ to Mr. Solliday. ‘Guaranteed Payments is the name given to salaries/compensation paid to LLC members’.*”).

201. Solliday had provided a full accounting of his PMP related expenditures and corresponding receipts. **JIS Ex 269** (*Solliday’s list all of the PMP client cash payments received he received in the fall of 2019*); **JIS Ex 273** (*PMP funds handled by Solliday*).

202. In November of 2019 and in December 2019, as well as in later updates, Solliday provided Hoopai’s Counsel with a list of his PMP related expenditures using these funds.

203. During the time the respective parties’ attorneys negotiated their respective accountings and had the customer

checks held by Solliday turned over to Hoopai's Counsel, the client checks became stale. **JIS Ex 252** (copy of the customer checks).

204. Starting in September 2019 the automatic payments to pay the Solliday/PMP Chevy truck loan and vehicle insurance were terminated. Solliday continued to make personal payments since the vehicle was still registered in his name. **T of Solliday; JIS Ex 280** at page 29 (Dec. of Solliday).

205. Solliday personally paid \$7434.90 for the monthly truck loan payments and vehicle insurance he paid for subsequent to August 2019. The monthly truck loan payments and vehicle insurance for the Chevy truck are calculated as follows:

- DFSH **\$6168.80** Monthly loan for Chevy Truck through February 2021 [ten months at \$616.88= \$6168.80]
- **\$1266.10** GEICO Chevy Truck insurance from Apr.2020 - Feb.2021

T of Solliday; JIS Ex 280 at page 16 (Dec. of Solliday); **JIS Ex 161** pages 1-3 (Bates JIS-277 - JIS-279); **JIS Ex 243** (Solliday Costco Credit Card Statement showing Geico Insurance payments); **JIS Ex 171** at pages 8 and 9 (Solliday's Business receipts); **JIS Ex**

229 at pages 56, 65, 69, 75, 78, etc. (Ramirez BOH acct. no.7370 Dec 2018 - Dec 2020).

206. An accounting of these checks was first provided by Solliday's Counsel Lex Smith to Hoopai's Counsel in November of 2019 and were later turned over to Hoopai's attorney Sunny Lee.

JIS Ex 259 at page 6 (Solliday's Motion Compelling Accounting); **JIS Ex 280** at page 37 (Dec. of Solliday); **JIS Ex 269** (contains full accounting of all 18 checks). **JIS Ex 262** at page 2 (Correspondence from Margaret Wille & Associates to Attorney Sunny Lee containing the 18 customer checks)

207. The vehicle is currently parked at the residence of Solliday. **T of Solliday; JIS Ex 280** at page 16 (Dec. of Solliday).

208. Solliday believed erroneously that Hoopai had misappropriated substantial funds of PMP. He was further suspicious because the bookkeeping records were not given to him freely.

209. Solliday did not comprehend that the bookkeeping records and tax filings were delayed due to the considerable amount of work and time required to correct the PMP Quickbook accounts.

210. Solliday's actions affected PMP's ability to continue its efforts to reconcile the PMP books and records because of the funds that Solliday took from PMP's bank account and from customers.

211. On September 16, 2019, PMP learned that Solliday had disrupted PMP's tax matters by changing PMP's State of Hawai'i Department of Taxation online login information, and preventing PMP and its staff from being able to review, file and pay for PMP's General Excise taxes online. The frozen bank accounts further disrupted PMP from operating its normal business activities. S Exhibit 271 at JIS 3263 at ¶ 39.

212. On September 18, 2019, PMP's legal counsel, Starn, O'Toole, Marcus & Fisher, informed Solliday and Hoopai that they were withdrawing from representing PMP, due to the actions of Solliday. S Exhibit 122.

213. On October 4, 2019, arising from the above-described conduct of Solliday and Hoopai, the Bank of Hawaii new checking account that had been set up for PMP, after Central Pacific Bank had frozen PMP's bank accounts, were also frozen due to a letter from Solliday. This resulted in checks to vendors being bounced, including lease rent payment to DLNR.

214. On July 31, 2020, Hoopai, through his counsel in this Arbitration, reached a settlement with the State of Hawaii related to the condition of the Honokohau Harbor at commencement of the Lease. C Exhibit 78.

215. As a result of Hoopai's efforts, the State of Hawaii gave PMP a rent abatement in the maximum amount allowed under law, in the amount of \$423,000, which is spread out over two years. *Id.*

CONCLUSIONS OF LAW

1. To the extent any of these Conclusions of Law are Findings of Fact, or that any of the above Findings of Fact are Conclusions of Law, they are to be so construed.

Jurisdiction

2. This case is submitted to arbitration by virtue of the Circuit Court's Order Granting Plaintiffs' Motion for An Order (1) Compelling Arbitration and (2) Staying the Case, filed February 3, 2020, filed April 15, 2020 and the Agreement to Participate in Binding Arbitration executed by the parties. The parties have accepted the undersigned Arbitrator to decide this matter.

3. This proceeding is governed by all relevant laws and regulations, including the Hawaii Uniform Arbitration Act, HRS Chapter 658A and Dispute Prevention & Resolution's Arbitration Rules, Procedures & Protocols.

COUNT I: Declaratory Relief: Ownership Interest in PMP and
COUNT III: Injunctive Relief

4. HRS § 632-1(b) provides that “[r]elief by declaratory judgment may be granted in civil cases where an actual controversy exists between contending parties... and the court is satisfied also that a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.”

5. The Operating Agreement (OA) is a contract between the members of PMP. *See Ratliff v. Cochis Agric. Properties, LLC*, 2010 WL6259955, at *7 (9th Cir. BAP October 13, 2010) (citing 1 Larry E. Ribstein & Robert R. Keatinge, *Limited Liability Companies* § 4:16 (2003)) (The operating agreement is a contract among LLC members that governs the members' rights and obligations and is construed according to general principles of contract law.)

6. Pursuant to HRS § 428-103 “Effect of Operating

Agreement; non-waivable provisions”, with very limited exception, an LLC’s OA regulates “the affairs of the company and the conduct of its business, and govern relations among its members, managers, and company”.

7. HRS §428-203(c) provides that the governing document for a LLC as between the company and its members and between its members is its OA. *See e.g. Park Regency, LLC v. R & D Development of the Carolinas, LLC, 741 S.E.2d 528 (S.C. Ct. App. 2012)* (The operating agreement of a limited liability company is a binding contract that governs the relations among the members, managers, and the company; *see also Ratcliff v. Cochis Agric. Properties, LLC* 2010 WL6259955 at *7 (9th Cir BAP October 13, 2010.).

8. Pursuant to HRS § 428-202 “Organization”, the existence of an LLC begins upon the filing of the Articles of Organization with the Director of the DCCA. PMP was formed as an LLC under the laws of the State of Hawaii on July 9, 2018, when its Articles of Organization were filed with the DCCA.

9. PMP is not a Corporation. Pursuant to HRS § 414-33, a corporation is created when its Articles of Incorporation are filed

with the State of Hawaii Director of DCCA. No Articles of Incorporation were ever filed for PMP under the laws of the State of Hawaii with the DCCA, and no corporate shares were ever issued.

10. PMP is a limited liability company organized under the laws of the state of Hawaii and that the relationship between the company and its members and between its members is solely governed by its OA dated July 10, 2018 [Counterclaim Count I];

11. PMP's July 10, 2018 Operating Agreement ["OA"], is the sole binding contract between PMP and between its members Solliday and IPE. As expressly stated in PMP's OA: "The terms and conditions of this Agreement will govern the Members within the limited liability company" and in the absence of an applicable term in the OA, "The rights and obligations of the Members will be as stated in the Hawaii Revised Limited Liability Company (the 'Act') , except as otherwise provided in this agreement.". **JIS Ex 22** at page 1 (*Operating Agreement*).

12. Section 75 of PMP's operating agreement establishes that it is the exclusive controlling governing agreement between the two members of PMP:

"75. This Agreement contains the entire agreement between

the Members. All negotiations and understandings have been included in this Agreement. Statements or representations that may have been made by any Member during the negotiation stages of this Agreement, may in some way be inconsistent with this final written Agreement. All such statements have no force or effect in respect to this Agreement.

Only the written terms of this Agreement will bind the Members.” (Emphasis added).

13. The operating agreement of PMP does not make reference to another agreement, nor does it recognize another agreement by the members.

14. Evidence did not support a rescission or modification of PMP’s operating agreement.

15. PMP’s two equal members are Solliday and IPE.

16. The OA has never been amended.

17. Jason Hoopai is the sole member of member IPE, but is not an individual member of PMP.²

18. The relevant provisions of PMP’s operating agreement are

² Although named as a Claimant in this arbitration proceeding, Hoopai individually does not have standing to pursue any claims on his own behalf separate from claims of his LLC, IPE.

referenced below:

- The capital contribution of PMP's members is deemed to be equal - entered as "\$100.00 for each member") [OA at page 1 Section 6];
 - IPE: Member has contributed financial support, business planning and procurement.
 - Solliday: Member has contributed administrative support, research and development making this partnership possible.
- PMP members' rights to company profits and losses and to distributions is equal, with neither member having a right to priority. OA page 1-2 at Sections 7-9.
- "Management is vested in the Members." (Section 17);
- "Each Member will have a single equal vote on any matter." (Section 23);
- "A new Member may only be admitted to the Company with a unanimous vote of the existing Members." (Section 24);
- "At all reasonable times [the company's books of account] will be available and open to inspection and examination by any Member." (Section 47);
- Annual Report: As soon as practicable after the close of each fiscal year, the Company will furnish to each Member an annual report showing a full and complete

account of the condition of the Company including all information as will be necessary for the preparation of each Member's income or other tax returns. This report will consist of at least: A copy of the Company's federal income tax returns for that fiscal year. Income statement, Balance sheet, Cash flow statement, and a breakdown of the profit and loss attributable to each Member." (Section 54);

- Actions that require unanimous consent of all Members, include "Incurring Company liabilities over \$10,000." (Section 68);
- No amendment to the Operating Agreement "will be valid or effective unless in writing and signed by all members." (Section 69).

19. PMP's OA was the document recognized by PMP's financial institutions as it's governing document upon presentation by Hoopai and Solliday.³

20. Suite 8 and accountant Katayama recognized the OA as

³ Hoopai himself signed a Bank of Hawaii Beneficial Owner form representing that Solliday is a "Beneficial Owner" of PMP, meaning Hoopai affirmed Solliday had at least a 25% ownership of PMP. **JIS Ex 209** at page 9 (*Katayama | PMP IRS 1065 and State of Hawaii | Draft Tax Return*); **JIS Ex 12** (*BOH Certification Regarding Beneficial Owners*).

the governing document. PMP's accountant Daren Katayama, represented PMP member's interest as "50/50" in his draft 1065 tax return based on the OA that was provided him by Hoopai's assistant Kessie Hollister.

21. Based on the plain and unambiguous language of PMP's OA and the findings above, the Arbitrator concludes IPE and Solliday are equal members of PMP and entitled to equal allocation of profits and losses, and equal allocation of any distribution (50/50), with neither member having priority over the other.

22. Hoopai's Count III, which is a request for injunctive relief, is denied.

Disassociation of Solliay and Hoopai

23. Counts II and IV of Claimant's Statement of Claims seeks a ruling for disassociation of Solliday and determination of Solliday's interest in PMP.

24. Count IX of Solliday's Counterclaim pertains to the disassociation of Hoopai.

25. The Operating Agreement states that a member of PMP can be involuntarily withdrawn for a breach of fiduciary duties. The Operating Agreement provides, in relevant part, as follows:

Events leading to the involuntary withdrawal of a Member from the Company will include but not be limited to: death of a Member; Member mental

incapacity; Member disability prevent reasonable participation in the Company; Member incompetence; breach of fiduciary duties by a member...

C Exhibit 20 at ¶ 30.

26. The Uniform Limited Liability Company Act, codified in Haw. Rev. Chap. Chapter 428, Section 428-601 provides “[a] member is dissociated from a limited liability company upon the occurrence of any of the following events: . . . (2) An event agreed to in the operating agreement as causing the member’s dissociation; (3) The member’s expulsion pursuant to the operating agreement”.

27. “To claim breach of fiduciary duty, a plaintiff must show that a fiduciary relationship exists between the parties, the defendant breached a fiduciary duty to the plaintiff, and the breach proximately caused injury to the plaintiff. *Swift v. Swift*, No. CAAP-13-0101, 2016 WL 3573970, at *3 (Haw. App. June 30, 2016) (internal citations omitted).

28. A fiduciary’s duties to the corporation “include undivided, unselfish and unqualified loyalty, unceasing effort never to profit personally at corporate expense, and unbending disavowal of any opportunity which would permit the director’s private interests to

clash with those of his corporation.” *Lussier v. Mau-Van Dev., Inc.*, 4 Haw. App. 359, 381, 667 P.2d 804, 819-20 (1983)(citations omitted).

29. The Operating Agreement provides in relevant part:
 30. Events leading to the involuntary withdrawal of a Member from the Company will include but not be limited to: death of a Member; Member mental incapacity; Member disability preventing reasonable participation in the Company; Member incompetence; breach of fiduciary duties by a Member; criminal conviction of a Member; Operation of Law against a Member or a legal judgment against a Member that can reasonably be expected to bring the business or societal reputation of the Company into disrepute. Expulsion of a Member can also occur on application by the Company or another Member, where it has been judicially determined that the Member: has engaged in wrongful conduct that adversely and materially affected the Company’s business; has willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or to the other Members; or has engaged in conduct related to the Company’s business that makes it not reasonably practicable to carry on the business with the Member.

...

C Exhibit 20.

30. As set forth above, Solliday has breached his fiduciary duty to PMP, including but not limited to: 1) improperly filing numerous member change forms with the DCCA and attempting to name himself as the sole member of PMP; 2) by withdrawing money from PMP's bank account, by collecting and holding rent money from tenants, opening up a bank account on behalf of PMP without notifying the other members of PMP; and 3) preventing PMP from accessing its State of Hawai'i Department of Taxation online information.

31. As set forth above Hoopai has breached his fiduciary duty to PMP, including but not limited to: 1) failing to have PMP the sole and primary beneficial party to the bookkeeping services of Suite 8; 2) improperly filing numerous member change forms with the DCCA and attempting to name himself as the sole member of PMP; 3) failing his tax responsibilities with regard to Richard Lindberg and Tamara Shumaker's employment with PMP; 4) failing to timely file PMP's 2018 tax returns; and 5) failing to recognize Solliday as an equal member in PMP pursuant to the OA.

32. Solliday and Hoopai worked earnestly and hard to make PMP a successful business. Due to the disputed legal status of

their membership interest, and the miscommunication and the lack of communication between the members, the parties became distrustful of each other. The members did not intend to harm or damage their own company or reputation of their company.

33. The disassociation claims by Hoopai and Solliday are denied and dismissed.

Count V: Conversion

34. The Supreme Court defined the tort of conversion many years ago:

Any distinct act of dominion wrongfully exerted over one's property in denial of his right, or inconsistent with it, is a conversion. While therefore it is a conversion where one takes the plaintiff's property and sells or otherwise disposes of it, it is equally a conversion if he takes it for a temporary purpose only, if in disregard of the plaintiff's right.... The word "conversion" by a long course of practice has acquired a technical meaning. It means detaining goods so as to deprive the person entitled to the possession of his dominion over them.... Conversion is any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein ... Conversion may be proved by demand and refusal of possession but evidence of this is not necessary if there is other evidence of actual conversion.

Tsuru v. Bayer, 25 Haw. 693, 1920 WL 830, *2 (1920) (internal citations and quotation marks omitted).

35. As set forth above, Solliday was an equal member of PMP. Although Solliday engaged in improper conduct as set-forth above, he did not intend to wrongfully exert dominion over PMP assets or property as reflected by Solliday's consult of his attorney through the dispute, and his accounting of PMP's assets or property during the relevant period of time of the dispute.

36. The claim of conversion is denied and dismissed.

Solliday's Counterclaims

37. Solliday has asserted twelve various counterclaims⁴. S Exhibit 255.

Counts I, II, III, IV, V, X- Ownership

38. Solliday's Counterclaim I, II, III, IV, V and X relate to the ownership interest in PMP. These claims are deemed moot to the extent based on the finding that Hoopai had a 50% interest in PMP and Solliday had a 50% interest in PMP.

Counterclaims VI, VII, VIII and IX- Fiduciary Duty

39. Solliday's Counterclaim VI, VII, VIII and IX relate to

⁴ Counterclaims XI, XIII and XIV were voluntarily dismissed by Solliday.

breaches of fiduciary duties by Hoopai and a request to dissociate Hoopai from PMP.

40. To the extent reflected in the Disassociation section and findings above, the claim is granted and denied in part.

41. The Arbitrator finds that there was no misuse of funds by Hoopai. Hoopai's expert, Garret Hoe, credibly and persuasively testified that he had reviewed PMP's books and records, had access to PMP's Quickbooks and determined that there was "no misappropriation of PMP assets." C Exhibit 83 at Attachment A p. 1.

Counterclaim XII- Breach Implied Good Faith and Fair

Good Faith and Fair Dealing

42. Solliday alleges in Counterclaim XII a claim for Breach of Implied Covenant of Good Faith and Fair Dealing under Haw. Rev. Stat. 490:1-304. S Exhibit 255 at p. 27.

43. Haw. Rev. Stat. Chapter 490 is Hawaii's adoption of the Uniform Commercial Code, it does not apply in this case.

44. Solliday cites to the operating agreement [C Exhibit 20] as the contract that Hoopai breached and therefore breached the "covenant of good faith and fair dealing." S Exhibit 255 at ¶ 215.

45. However, Haw. Rev. Stat. Chapter 490 does not apply to operating agreements of a limited liability company, instead is limited to transactions in goods between buyers and sellers. See *Kennedy v. Vacation Internationale, Ltd.*, 841 F. Supp. 986 (D. Haw. 1994)(UCC does not apply because there was no sale of goods involved in the matter).

46. Haw. Rev. Stat. § 490:2-106 provides that “contract” as defined in that chapter is “limited to those relating to the present and future sale of goods.” The operating agreement is not a contract for the sale of any goods.

47. Accordingly, Solliday’s claim for breach of Haw. Rev. Stat. § 490:1-304 is inapplicable.

Counterclaim XV and Injunctive Relief

48. Lastly, Solliday seeks in Counterclaim XV injunctive relief: including enjoining Hoopai from (1) continuing to remain in possession of the Honokohau Small Boat Harbor, (2) having access to PMPLLC’s business records (all passwords need to be provided to Sollida, (3) representing to others that Hoopai is the managing member of PMP, and (4) representing to others that Hoopai is a

member of PMP.

49. Hawaii Courts have held that “[g]enerally the granting or denying of injunctive relief rests with the sound discretion of the trial court and the trial court’s decision will be sustained absent a showing of a manifest abuse of discretion.” *Uyeda v. Schermer*, 144 Haw. 163, 171, 439 P.3d 115, 213 (2019) (citations omitted). However, the standard of proof for injunctive relief is “clear and convincing evidence” standard. *Id.*, 144 Haw. at 174.

50. Based on the decision above, equitable relief is set forth in the Order below.

DAMAGES

The parties have not sufficiently proven respective monetary damage amounts against each other. The Arbitrator is unable to apportion the improper conduct committed by IPE/Hoopai and Solliday and the attendant results.

ORDER

Based on the above Findings of Fact and Conclusions of Law, my decision is as follows:

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. Claimants have proved by a preponderance of the evidence that IPE had a 50% ownership interest in PMP and that Solliday had a 50% ownership interest in PMP.

2. IPE and Solliday on behalf of PMP have proved by a preponderance of the evidence PMP's claim for breach of fiduciary duty against IPE and Solliday.

3. IPE's contract with Suite 8 shall be immediately rescinded. A new contract between PMP and Suite 8 may be entered into if the contract contains language establishing PMP as the sole beneficiary of Suite 8 services, contains the language of Section 52 of the OA, and the contract acknowledges the OA as an attachment.

4. Each party is entitled to equal distributions of equity at the same corresponding times, except as otherwise agreed upon by the PMP members in writing and as set forth in this arbitration decision. Section 8, OA.

5. Hoopai and IPE shall not be entitled to loan repayment or equity distribution arising from or related to their deposit on the lease bid at dispute, except to the extent determined by agreement

of the equal members of PMP, Solliday and IPE. Any such related repayment or distribution shall be immediately returned to PMP.

6. Any tax penalties for Solliday's and Hoopai's late tax filing shall be paid for by PMP.

7. Hoopai and Solliday shall be allowed their weekly payments, including but not limited to the period of this dispute, subject to PMP credit for amounts previously received by Hoopai or Solliday.

8. Solliday shall pay PMP \$1,319.94 (the amount of stale checks PMP was unable to recover).

9. Solliday shall pay PMP \$5,403.52 (the amount of PMP customer cash payments).

10. Solliday shall be reimbursed by PMP for his personal payments relating to PMP's Chevy truck that Solliday had use of in the amount of \$7,434.90.

11. Solliday shall be reimbursed by PMP for \$7,700.34 of PMP business expenses paid during the period of the dispute.

12. Hoopai shall be reimbursed \$9,500, constituting the amount Hoopai contributed as PMP's initial working capital.

13. Both IPE and Solliday shall have immediate possession of the Honokohau Small Boat Harbor PMP property, and shall have immediate access to PMP's business records and passwords as equal members of PMP.

14. PMP member IPE shall immediately: 1) correct the Department of Commerce and Consumer Affairs ("DCCA") registration to show its two Members as International and Pacific Enterprises, LLC and Jonas Ikaika Solliday (add Jonas Ikaika Solliday as a member and delete Jason Hoopai individually as a member), and 2) amend PMP's State of Hawai'i General Excise tax license to reinstate its original registration showing International Pacific Enterprises LLC and Jonas Ikaika Solliday as equal owners of PMP with access for both members, and to any other state and county government on-line accounts.

15. PMP member IPE shall immediately provide all PMP banking institutions with a copy of PMP's OA and shall identify member Solliday as an equal beneficial member having full access to all PMP accounts. All persons or entities other than IPE and Solliday shall be removed as signatories on all PMP bank accounts. Unless otherwise agreed to by the Members, the members shall

jointly arrange to transfer all PMP funds currently held outside of PMP's First Hawaiian Bank ("FHB") Account (ending in #1155) to that account.

16. The members of PMP are ordered to refrain from commingling of PMP funds with non-PMP funds.

17. As PMP's tax matters partner, IPE through its member Jason Hoopai, is ordered to prepare PMP's annual report promptly after the close of PMP's fiscal year (calendar year) including providing the membership with the financial records and tax related document specified in its OA to be included in PMP's annual report. IPE/Hoopai is also ordered to prepare an annual report for 2018, 2019, and 2020 as soon as possible, subject to PMP's accountant's availability to assist in the preparation of these documents.

18. Passwords and keys to access PMP's boatyard property and office, and to the surveillance systems shall be immediately made available to Solliday. Immediate and full access to all of PMP's QuickBooks accounts shall be provided to member Solliday who shall be added as an administrative member to any and all of PMP's accounts with full access to all PMP Quickbooks accounts and records.

19. As the members of PMP, IPE/Hoopai and Solliday shall notify all appropriate third parties stating that the membership dispute between them has been resolved, including to DLNR, the office of the Attorney General (Bill Wynhoff), as well as to PMP customers.

20. All medical plans shall be made equally available to both members.

21. PMP funds shall not be used for housing costs of non-members unless agreed to by both members in writing. Both members shall have equal access to the two-bedroom Kona condo while engaged in PMP business at the Honokōhau boatyard.

22. PMP is a member managed company. Except to the extent set forth above, PMP could hire bookkeepers and an accountant to assist Hoopai. PMP could hire workers to maintain its' property to assist Solliday.

23. As ordered by the Circuit Court and consistent with Haw. Rev. Stat. § 658A-21, each party is to bear their own reasonable

attorney fees and costs⁵, including equal share of the Arbitrator's fees.

IT IS SO ORDERED

DATED: Honolulu, Hawai'i, APRIL 8, 2021



KARL K. SAKAMOTO

ARBITRATOR

⁵ The parties have successfully brought respective claims on behalf of PMP to protect PMP's interest in this arbitration. The reasonable attorney fees and costs shall be paid for by PMP.

attorney fees and costs, including equal share of the Arbitrator's

fees.

IT IS SO ORDERED

DATED: Honolulu, Hawaii, April 8, 2021

KARL K. SAKAMOTO

ARBITRATOR

The parties have successfully brought relative claims on behalf of PMP to protect PMP's interest in this arbitration. The reasonable attorney fees and costs shall be paid for by PMP.

MARGARET WILLE & ASSOCIATES

A Limited Liability Law Company

Margaret Wille #8522
Timothy Vandever #11005
tim@mwlawhawaii.com

January 26, 2022

Division of Boating and Ocean Recreation. BY EMAIL ONLY

Attn: Property Manager Richard Howard
4 Sand Island Access Road
Honolulu, Hawaii 96819
Email: richard.t.howard@hawaii.gov

RE: DLNR BOATING LEASE NO. LH-19-002 – Notice of Settlement Agreement between members of DLNR/DOBOR Honokōhau Harbor Lessee Pacific Marine Partners, LLC

Aloha Mr. Howard:

This letter is to inform you that a final settlement has been achieved in litigation between the members of Pacific Marine Partners, LLC (“PMP”). As part of said settlement, Jason Hoopai is transferring his 50% interest in PMP to PMP-member Ikaika Solliday. The members are now working to transition the of ownership of PMP to Ikaika Solliday and register that change with the DCCA. I am attaching a copy of Mr. Hoopai’s Notice of Assignment. In the coming days, we will be reviewing and determining steps to be taken to submit/file a petition to the DLNR board for approval of this proposed change of ownership and removal of Mr. Hoopai as a lessee on the DLNR BOATING LEASE NO. LH-19-002.

Please let us know if you have any questions or if we can be of further assistance. If you need to reach me directly, my cell phone number is: (808) 388-0660.

Sincerely,



Timothy Vandever, Esq.
Margaret Wille & Associates LLLC

Attachment: Hoopai Notice of Assignment

Cc: Ikaika Solliday, Owner, Pacific Marine Partners, LLC

NOTICE OF ASSIGNMENT

Date: January 19, 2022

To: Jonas Ikaika Solliday
Member, Pacific Marine Partnership, LLC ("PMP")

From: Jason Hoopai, individually and on behalf of
PMP Member International and Pacific Enterprises, LLC

Ikaika-

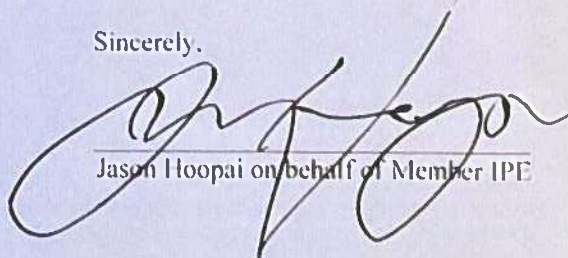
You are hereby notified that on January 19, 2022 I, Jason Hoopai, individually and on behalf of PMP Member International and Pacific Enterprises, LLC ("IPE"), hereby assign and transfer the following:

My/IPE's 50% interest in PMP to Jonas Ikaika Solliday. I agree to approve and support all requirements and related documentation to accomplish this transfer of ownership and assignment of PMP's DLNR Boating Lease No. LH-19-002. To expeditiously effectuate this transfer of ownership and assignment of DLNR Lease, I authorize you, Jonas Ikaika Solliday, to act on PMP and its members' behalf to represent our interests to obtain approval of this assignment from DLNR and comply with any other appropriate state filings to accomplish this transfer of my/IPE's 50% membership interest in PMP.

Please direct any further correspondence to the following address:

Jason Hoopai
c/o IPE
348 Puuhale Rd. #339
Honolulu HI. 96819

Sincerely,



Jason Hoopai on behalf of Member IPE

March 31, 2023

Richard Howard, Property Manager
DLNR, Division of Boating and Ocean Recreation

Kimberly K. Kahaleua, Property Manager
DLNR, Division of Boating and Ocean Recreation

Re: Transfer Application for General Lease No. LH-19-002 including 20-Year Lease Extension for Pacific Marine Partners LLC (“PMP”)

Aloha Richard and Kim:

Thank you for your assistance regarding the partial ownership transfer request from your Lessee, Pacific Marine Partners (“PMP”). This letter memorializes my understanding as to the Division of Boating and Ocean Recreation’s (“DOBOR”) position as well as provides my client Ikaika Mr. Solliday’s (“Mr. Solliday”) response.

I. Recommended 20-Year Lease Extension and Agreed Upon Improvements

From our discussion, I understand that DOBOR would like Mr. Solliday to have access to utilities (electrical, water, sewer, and internet) as long as he pays the expense of connection to the leased premises and adds it to the list of improvements to be made for a 20-year recommended extension to the current lease. **Mr. Solliday agrees to pay the expense of connection on to the leased premises and has added it to the list of improvements for the 20-year extension.**

To be clear, this expense for connection/improvement would be to reimburse the DLNR for reconnecting to the utilities that were present at the time of lease award and site inspection that were subsequently shut off from the PMP property infrastructure by the lessee on the adjacent parcel. This expense for connection/reimbursement would be from the existing transmission lines through the adjacent GKM leased parcel, and not for running brand new electrical/water lines to the property. Mr. Solliday would ask that DLNR engineers work as soon as practicable to reconnect these utilities in order for Mr. Solliday to work on the other improvements.

For the recommended 20-year extension, in addition to the utilities Mr. Solliday has provided an updated list of improvements (see Exhibit C attached to the updated staff recommendation letter attached hereto). The estimated total cost of these improvements exceeds \$250,000. The improvements will be completed prior to December 31, 2028 (the end of the current 10 year lease).

II. Surety Bond Waiver and Personal Guarantee for PMP Performance Under Lease

The bond requirement has always been included in PMP's Lease, but the bond requirement has heretofore not been enforced by DOBOR. Mr. Solliday is not requesting an amendment of the Lease to delete the bond requirement; he is simply requesting that DOBOR continue to waive enforcement of the requirement as it has done to date.

The statutory provision allowing for lease assignment and or ownership transfer includes the requirement of a premium and review of the consideration to be paid but does not include any reference to a surety bond. Moreover, Section 29 of the PMP lease expressly allows for waiver of the surety bond when there has been "substantial compliance" with the Lease terms.¹

Therefore, the key question is whether there has been "substantial compliance" with the Lease by PMP under the management of Mr. Solliday such that continued application of the Section 29 waiver provision remains appropriate. I am glad that you have acknowledged Mr. Solliday's substantial compliance with the terms of the lease since he took over running the company.

I think it is fair to say not only has Mr. Solliday's performance been in substantial compliance with the terms of the Lease, but in fact that his performance under the circumstances (especially having to manage this boat yard operation without access to utilities) has gone above and beyond expectations. Mr. Solliday is however aware that the waiver provision in the Lease allows DOBOR to insist upon the bond in the event the the Lessee fails to meet the substantial compliance requirement at a future time.

Per DOBOR's request, Mr. Solliday has agreed to provide a personal guarantee for the rent performance of PMP under the Lease.

III. Background

General Lease No. LH-19-002 was awarded to Pacific Marine Partners, LLC at a public auction held on July 13, 2018, in Kealakehe, North Kona at Honokōhau Small Boat Harbor. At the time of the lease auction the monthly rental rate was increased significantly from:

- \$7,311.45 a month or 5% of gross receipts whichever is higher to
- \$35,250 a month or 50% of gross receipts whichever is higher.

¹ Specifically, Section 29 of PMP's lease provides as follows: Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond (s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

PMP agreed to this high rent despite the challenge of a far lower anticipated margin to cover expenses and provide for long term improvements. Notably DOBOR based its appraisal for General Lease No. LH-19-002 on comparable surrounding commercial properties all of which had extensive utilities and infrastructure in place. To be clear, when PMP inspected the property with the DLNR representative and thereafter signed the Lease, the property had full access to all utilities including bathroom facilities. At that time no surety bond was required as a condition to signing the Lease or prior to taking possession of the subject property. Instead, upon taking possession of the property, PMP was required to pay a one-time Security Deposit of \$70,000.

The lack of access to the utilities has of course been a great hardship for Mr. Solliday and contrary to PMP's lease provision assuring PMP of quiet enjoyment of the premises (Section 30 "Quiet Enjoyment"). PMP continues to function without utilities at great expense, including often having to use a generator with expensive fuel for power as well as functioning without water and septic system on the premises. These circumstances have also caused Mr. Solliday personal hardship including having to provide 24/7 presence while the entrance gate was not functional. To my knowledge, DOBOR has not held the previous lessee accountable for its disconnection of utility lines to the premises and its extensive vandalism to the premises. PMP believed DOBOR planned to reconnect those utilities, but that has not yet been taken care of. (Note it is my understanding that only Department engineers are permitted to handle utilities on leased properties.)

During the first year of the Lease a dispute arose between its members IPE (Jason Hoopai) and Mr. Solliday when Ho'opa'i claimed he had a 95% interest in PMP although contrary to the express terms of PMP Operating Agreement, which expressly provided that Solliday and PE had an equal 50/50% interest. Hoopai then blocked Mr. Solliday's access to its finances and petitioned DLNR for transfer of the PMP lease to himself individually. This transfer request was promptly recommended by DOBOR to the Board with no surety bond required and no premium required. It was after Mr. Solliday and his Counsel notified the DLNR of the correct IPE/Mr. Solliday membership percentage (50/50), at its October 25, 2019, meeting Hoopai's requested transfer was deferred by the Board.

On May 22, 2020, while PMP's finances were still under the sole control of Hoopai, DOBOR recommended termination of PMP's Boating Lease No. LH-19-002 for "failure to keep lease rental payments current", and the Board followed that recommendation. However, on July 24, 2020, following settlement negotiations between the State and PMP (with both IPE/Hoopai and Mr. Solliday), DOBOR recommended the Board rescind its decision to terminate the Lease and any other notices of default. In its recommendation at that time, DOBOR stated:

Despite all the problems, PMP has been a good tenant. PMP has been cooperative with DOBOR and has tried to help clean up the property, improve operations, and grow its revenues. Most importantly, PMP has paid a lot of rent. It is important to remember that PMP is now paying 5 times as much rent as was GKM.

At that time, a surety bond was contemplated in discussions between PMP and former Deputy Attorney General Bill Wynhoff as one of items in dispute as to the Lease. Ultimately, despite the instances of non-compliance at that time under the management of IPE/Hoopai, the bond issue was resolved as part of the 2020 Settlement Agreement with no surety bond required.

It is also worth noting that the current rent arrangement with GKM for the adjacent harbor property, per my understanding, was fixed by negotiation at roughly \$16,666 per month – a rent that is less than half of what PMP is being charged. Yet the GKM parcel has extensive improvements (including some 19 subleases) compared to PMP's lease property - the usable area of which is a partially graded dirt expanse with incomplete and damaged perimeter fencing and, to date, no utilities.

IV. Substantial Compliance

In April of 2021, following a legal action in which Mr. Solliday prevailed in establishing a 50/50 IPE/Mr. Solliday membership interest in PMP, Mr. Solliday took over both financial and operational management of PMP. As the sole manager of all aspects of PMP's business and boat yard operations at the Honokōhau Harbor for the past 22 months, Mr. Solliday has overcome a tremendous amount of adversity while meeting his lease rental obligations and maintaining a high standard of security and professionalism much appreciated by PMP's customers. He has not only utilized his unique knowledge base and experience operating the boatyard, but also competently handled PMP finances with the assistance of David Clarke, a Kona based CPA. During this period, he has significantly expanded the operation and has maintained excellent customer relations. It is worth noting that when Mr. Solliday took over the entire management of the company, PMP had approximately 260 customers under contract. Since Mr. Solliday took over full operation of PMP, he has increased the number of customers under contract to 330, and over 150 of which are now on an annual or bi-annual payment basis. This represents an increase in customer base of over 26%.

Due to Mr. Solliday's leadership and the resulting increase in customers, DOBOR has been receiving rent in an amount in excess of the base rent of \$35,250. For example, in 2022, based on the increase in customers, PMP paid DOBOR in excess of \$50,000 more than its base rent. Besides effectively running the financial side of the business, Mr. Solliday brings more than a decade of baseyard management and site logistics experience, which is a skill set he earned as a heavy equipment operator and licensed crane operator. Since taking over operations, despite the absence of electric power and water, he has focused on making many needed repairs and improvements and added customer amenities, including the largest expenditure in the history of PMP - clearing fire brush and trees along the entire perimeter of this nine-acre parcel.

V. Consideration of DLNR's Lack of Compliance with Reasonable Expectations

It seems appropriate to consider that DLNR has still not fully complied with the reasonable expectations of PMP as a worthy lessee, both upon acquisition of this lease and following the settlement negotiated with former Deputy Attorney General William Wynhoff up to the present.

Richard Howard
Kimberly K. Kahaleua
March 31, 2023
Page 5

Only DLNR can arrange for access to these utilities given that the utility transmission lines run through DLNR's adjacent property that continues to be leased to GKM Inc. which is the company that sabotaged the utilities to the property along with other facilities on the property. I am sure these actions violated GKM's lease for this property and that DOBOR could have required GKM to restore everything.

PMP has also had to contend with the presence of an un-permitted preexisting sublessee Hotspots Welding ("Hotspots"), which operation included a large warehouse. It was not until Mr. Solliday took over full management of PMP that Hotspots' operation was discontinued, however, PMP still does not have use of that portion of the property. Hotspots' equipment, some of which is massive in size, is still occupying the one fixed structure warehouse on the property - a substantial area that could be used for additional boat storage. Now that it appears the legal actions involving Hotspots Welding appear to have been resolved, Mr. Solliday is taking on responsibility for arranging for removal of the unauthorized equipment located in the warehouse.

Under the terms of the 2020 Settlement, DLNR was responsible for clean-up of the contamination resulting from the illegal Hotspots operation on the premises. Yet there has been no confirmation of adequate remediation. PMP is concerned that without appropriate confirmation, as the current user of the property, it could have potential liability if any further cleanup may be required by the Department of Health or Environmental Protection Agency.

VI. Conclusion

In my view, under the management of Mr. Solliday, PMP has not only been in substantial compliance with its Lease terms, but despite numerous hardships and challenges, has been an exemplary lessee. Surely continued waiver of the bond requirement is appropriate. The partial transfer of ownership is a positive development and has resulted in improvements by PMP as a lessee in every aspect. A 20-year lease extension under these circumstances is also a reasonable and mutually beneficial decision.

Mr. Solliday's willingness to compromise with DOBOR to reimburse for utilities, include additional costly improvements, and provide a personal guaranty for PMP's rent performance under the lease is also a giant step forward in resolving the numerous issues at Honokōhau.

Respectfully,

/s/ A. Bernard Bays

A. Bernard Bays

cc: Dawn Chang, Chairperson, DLNR
Edward R. Underwood, Administrator - DLNR, Division of Boating and Ocean Recreation