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Via Hand Delivery & E-Mail

Ryan Kanaka'ole, Acting Chairperson
Ciara W.K. Kahahane, Deputy Director
Commission on Water Resource Management
1151 Punchbowl Street, Room 227
Honolulu, Hawai'i 96813
dlnr.cwrm@hawaii.gov

Re: Comments and Objections on Surface Water Use Permit Applications (Existing Uses) for Lahaina Aquifer Sector Area Water Management Area, Kahoma Hydrologic Unit

Dear Chair Kanaka'ole, Deputy Director Kahahane, and Commissioners:

On behalf of Hui Mānowai (the "Hui"),[1] we respectfully submit the following comments and objections in response to the Public Notice from the Commission dated April 9, 2026, regarding various Surface Water Use Permit Applications ("WUPAs") for existing uses of water from Kahoma and Kanahā Streams:

A. Brief Background

Kahoma, Kanahā, and Kaua'ula streams historically served as the principal watershed sources for the Lahaina plains, providing life-giving freshwater resources necessary to sustain traditional Kānaka Maoli agricultural systems. For centuries prior to Western contact and the takeover of land by foreign interests, Kahoma, Kanahā, and Kaua'ula streams sustained extensive lo'i kalo (taro fields) and loko i'a (fishponds) through a coordinated network of 'auwai (irrigation channels). The plantation-era diversion of these streams by Pioneer Mill Company redirected water away from traditional agriculture and contributed to the decline of

[1] Hui Mānowai is a community-based organization formed to promote the protection and stewardship of Maui Komohana's public trust water resources and uses, including traditional and customary Native Hawaiian practices. Hui members rely on, routinely use, or seek to use water from the Lahaina Aquifer Sector water management areas, including but not limited to Kahoma and Kanahā streams, for domestic use, agriculture, traditional and customary Native Hawaiian practices, and other recreational, scientific, cultural, educational, aesthetic, and religious activities.

MID-PACIFIC 850 RICHARDS STREET, SUITE 400 HONOLULU, HI 96813
T: 808.599.2436 MPOFFICE@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

lo'i kalo farming and the displacement of Kānaka Maoli families from their lands. After plantation operations ended, private control over land and water continued through acquisitions by the developer Peter Martin, whose conveyances of land to various community members without precise metes and bounds descriptions created uncertainty over ownership, access, and associated water rights. Ambiguities over property boundaries and access to water resources have fueled ongoing conflicts between kuleana landowners asserting traditional and customary Native Hawaiian rights and later landowners claiming interests through subsequent conveyances. Although restoration of stream flow in 2017 revived kalo cultivation and demonstrated the potential for ecological and cultural recovery, unresolved land tenure disputes and competing demands for limited water resources continue to threaten equitable access to water and the exercise of traditional and customary practices in Kahoma Valley. The history of contested land ownership and access to public trust water resources in Kahoma and the impacts on traditional and customary uses, Native Hawaiian rights, and downstream ecosystem health provides critical context for evaluating the pending WUPAs for the Kahoma hydrologic unit.

B. General Comments and Objections.

The Hui raises eight general objections applicable to multiple WUPAs: (1) incomplete applications that are ineligible for processing; (2) failure to provide prima facie proof of appurtenant rights claims; (3) failure to establish traditional and customary ("T&C") practices; (4) failure to provide support for *Ka Pa'akai* analysis; (5) failure to demonstrate the absence of practicable alternatives and mitigation measures; (6) failure to establish reasonable-beneficial use that is in the public interest; (7) failure to show a lack of interference with the rights of the Department of Hawaiian Home Lands ("DHHL") and other existing legal uses of water; and (8) conflicting and unsupported claims regarding existing uses and water demands. Each of these general objections is elaborated in turn below. Except as otherwise noted, all of these general objections apply to the following WUPAs:

Hans and Emily Ann Michel Trust (WUPA No. 6048),
Ceridwen K. Kamohalii (WUPA No. 6073),
Bree Camara (WUPA No. 6074),
Etan Krupnick (WUPA No. 6075),
Matthew Akiona (WUPA No. 6077),
Kainoa and Risa Casco (WUPA No. 6078),
Andrew Chee (WUPA No. 6080),
Joshua Guth (WUPA No. 6081),
Harmony Casco and Justin De Leon (WUPA No. 6082),
Patrick and Naomi Guth (WUPA No. 6084),
Joshua Dean (WUPA No. 6085), and
Andrew Chee and Jordan Chee (WUPA No. 6098).

1. WUPAs without the required information should be deemed incomplete and ineligible for processing.

WUPAs submitted without required information should be deemed incomplete and ineligible for processing absent further supplementation. For a WUPA to be accepted as complete, an applicant must provide, among other information: (1) a "7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion location and the quad map name"; (2) a "[p]roperty tax map showing the stream or diversion location and location of water use referenced to established property boundaries"; and (3) "[p]hotograph(s) of the surface water source, diversion and end use." Application for Surface Water Use Permit for Existing Use in the Lahaina Aquifer Sector Area, West Maui, Surface Water Management Areas, at 1. Without this information, an application will not be accepted as complete, and "**[i]ncomplete applications will not be accepted for processing**." *Id.* (emphasis in original).

Multiple WUPAs submitted for the Kahoma hydrologic unit fail to include some or all of this required information. This information is critical for the public and the Commission to verify existing uses and assess whether the claimed existing uses are reasonable-beneficial and in the public interest. Unless and until these WUPAs are properly supplemented, the Commission should deem them incomplete and ineligible for processing.

2. Failure to provide proof of appurtenant rights claims.

WUPAs that fail to provide prima facie proof of claimed appurtenant rights are not entitled to priority consideration based on such rights. The Hawai'i Constitution and the State Water Code, Hawai'i Revised Statutes chapter 174C, expressly protect appurtenant rights. Haw. Const., art. XI, § 7; Haw. Rev. Stat. §§ 174C-63, -101(d). Under the Code, a permit for water based on an appurtenant right "shall be issued upon application." Haw. Rev. Stat. § 174C-63. The exercise of appurtenant rights is also a "public trust purpose," *In re Waiāhole Combined Contested Case Hearing*, 94 Hawai'i 97, 137 & n.34, 9 P.3d 409, 449 & n.34 (2000) ("*Waiāhole I*"), which the Commission has the affirmative duty to take "into account in the planning and allocation of water resources, and to protect . . . whenever feasible," *id.* at 141, 9 P.3d at 453. Further, the Commission is mandated to "determine appurtenant water rights, including quantification of the amount of water entitled to by that right, which determination shall be valid for purposes of [the Code]." Haw. Rev. Stat. § 174C-5(15).

The Commission, however, cannot fulfill its duty to consider and protect appurtenant rights, much less issue WUPAs to applicants based on such rights, without prima facie proof of the existence and quantification of water uses at the time of the Māhele, including documentation such as the Land Commission Awards, Royal Patents, Native Register, and foreign and native testimonies. *See McBryde Sugar Co. v. Robinson*, 54 Haw. 174, 188, 504 P.2d 1330, 1339 (1973) ("It is the general law of this jurisdiction that when land allotted by the Māhele was confirmed to the awardee by the Land Commission and/or when Royal Patent was

issued based on such award, such conveyance of the parcel of land carried with it the appurtenant right to water for taro growing.").

Multiple applicants' claims to appurtenant rights lack any evidence establishing the existence and quantification of such rights. Multiple applicants also claim that their appurtenant rights have been established by the courts or the Commission, yet fail to provide any supporting documentation. The Hui objects to the following WUPAs on this basis: Ceridwen K. Kamohalii (WUPA No. 6073); Bree Camara (WUPA No. 6074); Etan Krupnick (WUPA No. 6075); Matthew Akiona (WUPA No. 6077); Kainoa and Risa Casco (WUPA No. 6078); Andrew Chee (WUPA No. 6080); Joshua Guth (WUPA No. 6081); Harmony Casco and Justin De Leon (WUPA No. 6082); Patrick and Naomi Guth (WUPA No. 6084); Joshua Dean (WUPA No. 6085); and Andrew Chee and Jordan Chee (WUPA No. 6098). Absent such support, any claim for appurtenant rights should be denied without prejudice, and the applicable WUPAs should be processed with other non-priority permits, subject to the standard burden of proof.

3. Failure to specify and substantiate traditional and customary practices.

WUPAs that fail to establish a traditional and customary ("T&C") practice are not entitled to priority consideration. Multiple WUPA applicants seek a permit based on T&C use of water but fail to specify any T&C practice. The Hui objects to the following WUPAs on this basis: Hans and Emily Ann Michel Trust (WUPA No. 6048); Bree Camara (WUPA No. 6074); Etan Krupnick (WUPA No. 6075); Matthew Akiona (WUPA No. 6077); Kainoa and Risa Casco (WUPA No. 6078); Andrew Chee (WUPA No. 6080); Joshua Guth (WUPA No. 6081); Patrick and Naomi Guth (WUPA No. 6084); Joshua Dean (WUPA No. 6085); and Andrew Chee and Jordan Chee (WUPA No. 6098). If applicants are unable to establish a T&C practice, they should not qualify for priority consideration, and the Commission should defer processing the WUPAs until after all bona fide public trust use applications are processed and permits issued.

4. Failure to provide the data necessary to conduct a *Ka Pa'akai* Analysis.

Multiple WUPAs fail to provide the information necessary for the Commission to conduct a proper *Ka Pa'akai* analysis. The Constitution places "an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights." *Ka Pa'akai o ka 'Āina v. LUC*, 94 Hawai'i 31, 45, 7 P.3d 1068, 1082 (2000) ("*Ka Pa'akai*"); Haw. Const. art. XII, §7. Under article XII, section 7, the state has an obligation to protect "the broadest possible spectrum of native rights." *Flores-Case 'Ohana v. Univ. of Haw.*, 153 Hawai'i 76, 83, 526 P.3d 601, 608 (2023). This obligation applies to all agency actions, including the issuance of water use permits, and is "not intended to be narrowly construed." *Id.* at 83-84, 526 P.3d at 608-09.

To fulfill this obligation, the Commission must, at minimum, "make specific findings and conclusions" as to the following: "(1) the identity and scope of 'valued cultural, historical, or natural resources' in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [State] to reasonably protect native Hawaiian rights if they are found to exist." *Ka Pa'akai*, 94 Hawai'i at 47, 7 P.3d at 1084 (cleaned up).

To enable the Commission to complete this legally required analysis, WUPAs must provide sufficient information including the identity and scope of Native Hawaiian traditional and customary rights in Kahoma Valley, potential impacts of the proposed water use on those rights, and reasonably feasible measures to avoid or mitigate harm to those rights. Multiple WUPAs fail to include any such information.

5. Failure to show the lack of practicable mitigation and alternatives.

Multiple WUPAs fail to satisfy the legal requirement that applicants evaluate practicable mitigation measures and alternative water sources. According to the Hawai'i Supreme Court, "besides advocating the social and economic utility of their proposed uses, permit applicants must also *demonstrate the absence of practicable mitigating measures, including the use of alternative water sources*. Such a requirement is intrinsic to the public trust, the statutory instream use protection scheme, and the definition of 'reasonable-beneficial' use, and is an essential part of any balancing between competing interests." *In re Waiāhole Ditch Combined Contested Case Hr'g*, 105 Haw. 1, 27, 93 P.3d 643, 669 (2004) ("*Waiāhole II*") (emphasis added).

Multiple WUPAs provide bare and conclusory responses for the various categories of alternative water sources without any supporting evidence. Some WUPAs fail to respond to this section of the form at all. This does not meet the applicants' burden of "demonstrat[ing] the absence of practicable mitigating measures, including the use of alternative water sources" required by law. *Id.* at 27, 93 P.3d at 669.

6. Failure to establish reasonable-beneficial use that is in the public interest.

Multiple WUPAs fail to demonstrate that the proposed uses are reasonable-beneficial and consistent with the public interest, as required by the Code. "To obtain a [water use] permit . . . the applicant shall establish that the proposed use of water . . . [i]s a reasonable-beneficial use." HRS §174C-49(a). Reasonable-beneficial use is defined as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest." *Id.* § 174C-3. Moreover, the Code declares specific objectives such as "the protection of traditional and customary Hawaiian rights," "the protection and procreation of

fish and wildlife," and the "maintenance of proper ecological balance and scenic beauty" to be in the public interest. *Id.* § 174C-2(c).

The Hui objects to the following WUPAs on the grounds that the applicants failed to establish that their existing uses of water are reasonable-beneficial uses that are in the public interest: Ceridwen K. Kamohalii (WUPA No. 6073); Bree Camara (WUPA No. 6074); Etan Krupnick (WUPA No. 6075); Matthew Akiona (WUPA No. 6077); Kainoa and Risa Casco (WUPA No. 6078); Andrew Chee (WUPA No. 6080); Joshua Guth (WUPA No. 6081); Harmony Casco and Justin De Leon (WUPA No. 6082); Joshua Dean (WUPA No. 6085); and Andrew Chee and Jordan Chee (WUPA No. 6098). The evidence and analysis in these WUPAs range from cursory to non-existent. Further elaboration on each of these WUPAs' failures to show reasonable-beneficial use that is in the public interest is provided in the specific objections below.

7. Failure to analyze interference with the rights of DHHL or other existing legal uses of water.

Multiple WUPAs fail to show that their proposed water uses will not impair the rights of DHHL or other existing legal uses of water. *See* HRS § 174C-49(a); CWRM SWUPA-E, at 7. Multiple WUPAs submitted for the Kahoma hydrologic unit fail to meaningfully address this issue. Multiple applicants claim that their rights supersede the creation of the Hawaiian Homes Commission Act, and that the "U.S. constitution protects vested property rights from unlawful encumbrances and seizures," neither of which is legally valid.

With respect to the rights of other existing legal uses of water, multiple WUPAs summarily conclude that no other legal uses of water will be infringed upon by the applicants' proposed use of water. Particularly where these applicants assert priority appurtenant or T&C rights without support, this failure to address impacts on other applicants who have provided support for their existing legal uses and rights is a fatal flaw.

8. Conflicting and unsupported claims regarding existing uses and water demands.

The Hui objects to the WUPAs submitted by Bree Camara (WUPA No. 6074), Matthew Akiona (WUPA No. 6077), Kainoa and Risa Casco (WUPA No. 6078), Andrew Chee (WUPA No. 6080), and Andrew and Jordan Chee (WUPA No. 6098) because these applications contain conflicting and unsupported claims regarding existing uses and water demands for TMK 4-5-017-005. According to county tax records, TMK 4-5-017-005 is a 4.99-acre parcel. Collectively, the applicants claim existing agricultural uses that exceed the parcel's total acreage. None of the applicants provide sufficient documentation to substantiate the claimed acreage of their respective existing uses. Because the claimed uses are internally inconsistent and cannot be reconciled with the parcel's available acreage, the Commission should require each applicant to

clarify, verify, and provide competent evidence supporting their claimed existing uses and corresponding water demands. The Commission should further require each applicant to explain the methodology used to calculate existing water use so that the Commission may accurately assess whether the claimed uses constitute reasonable-beneficial uses that are in the public interest.

C. Specific Objections.

In addition to the general objections discussed above, the Hui also raises the following specific objections to WUPAs and requests a hearing on these WUPAs based on the general and specific objections pursuant to Haw. Rev. Stat. § 174C-53(a):

1. Hans and Emily Ann Michel Trust (WUPA No. 6048)

In addition to the general objections discussed above, the Hui objects to Hans and Emily Ann Michel Trust's WUPA because it provides conflicting information regarding actual existing uses and irrigated acreage. Moreover, it offers no justification for the inflated water duty applied to the claimed existing uses. Without accurate and verifiable information regarding actual existing uses, it is impossible for the public or the Commission to assess whether the water uses are reasonable-beneficial and consistent with the public interest.

2. Ceridwen K. Kamohalii (WUPA No. 6073).

In addition to the general objections discussed above, the Hui objects to Kamohalii's WUPA because the request exceeds actual needs and is therefore not reasonable-beneficial; it also seeks water for proposed new uses. An existing use permit "shall be for a quantity of water not exceeding that quantity being consumed under the existing use." HRS § 174C-50(f). The quantity being consumed under the existing use must "be determined and verified by the best available means not unduly burdensome on the applicant, as determined by the commission." *Id.* Here, the WUPA fails to explain how it calculates the claimed average daily use (8,733 gpd for 0.44 acres or almost 20,000 gad), which far exceeds the standard water duty for diversified agriculture established in the *Waiāhole* case and subsequent Commission decisions. This request inflates the claimed existing water use needs and includes water needed for proposed new uses, *see* Kamohalii SWUPA-E, at 6, which is not proper for disposition in an existing use WUPA.

3. Bree Camara (WUPA No. 6074)

In addition to the general objections detailed above, the Hui objects to Bree Camara's WUPA as incomplete. The WUPA entirely omits pages 6-7 and is thus missing the required information to assess whether the claimed existing use is a reasonable-beneficial use in the public interest and does not impair traditional and customary Native Hawaiian rights and the

rights of DHHL and other existing legal uses. Without this basic information, the public and the Commission are unable to assess the applicant's requested water use. The Commission should reject this WUPA as incomplete.

4. Etan Krupnick (WUPA No. 6075)

In addition to the general objections discussed above, the Hui objects to Etan Krupnick's WUPA on several specific grounds. First, the Commission should reject the WUPA because it contains material misrepresentations of fact. To satisfy the requirement that WUPAs "[a]ttach TMK map outlining area and photos for each existing use," *see* CWRM SWUPA-E, at 4, the applicant attached a photo taken by community member Suzette Felicilda of Felicilda's existing lo'i kalo and attempts to represent those as pictures of the applicant's own existing uses. The pictures depict Felicilda's cultivation, which Krupnick had no part of. Further, because the applicant fails to provide prima facie proof of his appurtenant rights claims, the Commission should also deny or defer the requested allocation for new uses. The WUPA inflates its requested allocation by including 100,000 gpd for a *new* use of "intended continued expansion of kalo crops." *See* Krupnick SWUPA-E, at 3, Table 2, Response to #17-O. Without any valid appurtenant or T&C rights, any new use request should not be included for priority consideration. Finally, the WUPA requests that the Commission apply an inflated water duty for diversified agriculture needs, which also should be denied as not based on actual need and, therefore, not reasonable-beneficial.

5. Matthew Akiona (WUPA No. 6077)

In addition to the general objections outlined above, the Hui objects to Akiona's WUPA because it contains a blanket request for 25,000 gpd, but fails to specify the type of uses or the amounts of water needed per use. *See* Akiona SWUPA-E, at 3-4, 6. Without information on the claimed existing uses, the Commission is unable to determine whether the requested water use is reasonable-beneficial. The WUPA also fails to disclose how it estimates average daily use. Absent this information, the public and the Commission are unable to determine whether the requested water use is a reasonable-beneficial use of public trust water resources.

6. Kainoa & Risa Casco (WUPA No. 6078)

In addition to the general objections listed above, the Hui objects to Kainoa and Risa Casco's WUPA because it improperly requests water for proposed new uses far beyond any demonstrated existing use. Kainoa and Risa Casco ("the Cascos") are requesting 36,250 gpd "to fulfill our ag plan." By the applicant's own admission, however, "[o]nly a small amount of planned ag uses have been started," resulting in an estimated existing water use of only 40 gpd. Without any valid appurtenant or T&C rights, this new use request should not be included for priority consideration. Finally, the Hui believes that the Cascos no longer own this property.

7. Andrew Chee (WUPA No. 6080)

In addition to the general objections detailed above, the Hui objects to Andrew Chee's WUPA because the existing use water request is internally inconsistent and inflates actual existing water needs. The applicant failed to submit any of the required photos that would assist the public and the Commission in assessing actual existing uses. The WUPA also neglects to disclose how it estimates average daily use. Absent this information, the public and the Commission are unable to determine whether the requested water use is a reasonable-beneficial use of public trust water resources.

8. Joshua Guth (WUPA No 6081)

In addition to the general objections discussed above, the Hui objects to Joshua Guth's WUPA because the request for 20,000 gpd for what is listed as "AG" uses on TMK 4-5-017-009 appears to be duplicative of the applicant's parent's request, which also requests 20,000 gpd for the same TMK and existing uses. *See* Patrick & Naomi Guth, SWUPA-E, at 3, Table 2; *see also* Part C.10, below. Patrick and Naomi Guth are listed as the source landowners on Joshua Guth's WUPA. Further, tax records indicate that Patrick and Naomi Guth are the landowners of TMK 4-5-017-009. The Commission should, therefore, assess the 20,000 gpd request for TMK 4-5-017-009 as part of Patrick and Naomi Guth's WUPA and deny Joshua Guth's WUPA request as duplicative.

9. Harmony Casco & Justin De Leon (WUPA No. 6082)

In addition to the general objections enumerated above, the Hui objects to Harmony Casco and Justin De Leon's WUPA because it provides conflicting information regarding actual existing uses and irrigated acreage. Moreover, it offers no justification for the water duty applied to the claimed existing uses. Without accurate and verifiable information regarding actual existing uses, it is impossible for the public or the Commission to assess whether the water uses are reasonable-beneficial and consistent with the public interest.

10. Patrick & Naomi Guth (WUPA No. 6084)

In addition to the general objections listed above, the Hui objects to Patrick and Naomi Guth's WUPA as follows. First, the applicants request 100,000 gpd but fail to demonstrate 100,000 gpd of existing uses. The WUPA provides conflicting information regarding actual existing uses and irrigated acreage. It fails to disclose the basis for its claimed average daily use and improperly requests that an inflated water duty be applied to all of their mixed uses (e.g., 100,000 gad for diversified agriculture and undisclosed new uses), which far exceeds the standard water duty for diversified agriculture as established in the *Waiāhole* case and subsequent Commission decisions. Without accurate and verifiable information regarding actual existing uses, it is impossible for the public or the Commission to assess whether the

water uses are reasonable-beneficial and consistent with the public interest. Further, the applicants request 50,000 gpd for what they classify as "N/A" uses on TMKs 4-5-017-010, 4-5-017-011, 4-5-016-012, and 4-5-016-013. *See* Guth SWUPA-E, at pdf p. 3 & 12, Table 2; Guth SWUPA-E, at pdf p. 4 & 13, Table 3. These do not appear to be existing uses. Without any valid appurtenant or T&C rights, this new use request should not be included for priority consideration.

11. Joshua Dean (WUPA No. 6085)

In addition to the general objections included above, the Hui objects to Dean's WUPA because it requests 15,000 gpd but fails to demonstrate 15,000 gpd of existing uses. The WUPA provides conflicting information regarding actual existing uses and irrigated acreage. It fails to disclose the basis for its claimed average daily use and improperly requests that an inflated water duty be applied to claimed mixed uses (e.g., 30,000 gad for diversified agriculture), which far exceeds the standard water duty for diversified agriculture as established in the *Waiāhole* case and subsequent Commission decisions. Without accurate and verifiable information regarding actual existing uses, it is impossible for the public or the Commission to assess whether the water uses are reasonable-beneficial and consistent with the public interest.

12. Andrew & Jordan Chee (WUPA No. 6098)

In addition to the general objections discussed above, the Hui objects to Andrew and Jordan Chee's WUPA because it requests a water use permit for 90,000 gpd, but fails to demonstrate 90,000 gpd of existing uses. The WUPA provides conflicting information regarding actual existing uses and irrigated acreage. It fails to disclose the basis for its claimed average daily use and improperly requests that an inflated water duty be applied to all mixed uses. Without accurate and verifiable information regarding the applicants' actual existing uses, it is impossible for the public or the Commission to assess whether the water uses are reasonable-beneficial and consistent with the public interest.

D. Conclusion

Mahalo for this opportunity to share our manaʻo. To the extent that any of these applicants may supplement their WUPAs, the Hui respectfully reserves its right to provide further comments and objections, as needed. We appreciate the Commission's consideration of these comments and objections in furtherance of its kuleana to protect and conserve public trust resources for present and future generations.

Very truly yours,

Isaac H. Moriwake
Mahesh Cleveland
Elena L. Bryant
Dru N. Hara
Attorneys for Hui Mānowai

cc: Hans and Emily Ann Michel Trust (via First Class U.S. mail)
Ceridwen K. Kamohalii (via First Class U.S. mail)
Bree Camara (via First Class U.S. mail)
Etan K. Krupnick (via First Class U.S. mail)
Matthew Akiona (via First Class U.S. mail)
Kainoa Casco & Risa Casco (via First Class U.S. mail)
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Andrew Chee & Jordan Chee (via First Class U.S. mail)