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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SIERRA CLUB,

Plaintiff,

vs.

BOARD OF LAND AND NATURAL
RESOURCES, DEPARTMENT OF LAND
AND NATURAL RESOURCES, SUZANNE
CASE, in her official capacity as Chairperson
of the Board of Land and Natural Resources,
ALEXANDER AND BALDWIN, INC., EAST
MAUI IRRIGATION, LLC, COUNTY OF
MAUI, MAHI PONO, LLC, and MAHI PONO
HOLDINGS, LLC,

Defendants.

) CIVIL NO. 19-1-0019-01 JPC
) (Environmental Court)
)
) STIPULATION FOR PARTIAL
) DISMISSAL WITHOUT PREJUDICE
) OF CLAIMS AGAINST
) DEFENDANTS MAHI PONO, LLC,
) AND MAHI PONO HOLDINGS, LLC;
) ORDER; CERTIFICATE OF SERVICE
)
)
) Trial Date: May 11-22, 2020
) Trial Judge: Hon. Jeffrey P. Crabtree
)
)
)
)

STIPULATION FOR PARTIAL DISMISSAL WITHOUT PREJUDICE OF CLAIMS
AGAINST DEFENDANTS MAHI PONO, LLC, AND MAHI PONO HOLDINGS, LLC

WHEREAS, the Sierra Club's initial complaint, filed on January 7, 2019 (“Complaint”), named the Board of Land and Natural Resources, the Department of Land and Natural Resources, Suzanne Case in her official capacity as Chairperson of the BLNR (collectively “**BLNR Defendants**”), and Alexander and Baldwin Inc., and East Maui Irrigation, LLC (collectively “**A&B**”) as Defendants and did not include Mahi Pono, LLC or Mahi Pono Holdings, LLC (“**Mahi Pono**”) as Defendants;

WHEREAS, the allegations in the Sierra Club’s Complaint are directed at the actions and omissions of the BLNR Defendants as well as A&B;

WHEREAS, the BLNR Defendants and A&B dispute and deny the allegations in the Sierra Club’s Complaint;

WHEREAS, the relief that the Sierra Club seeks could affect the BLNR Defendants, A&B and Mahi Pono;

WHEREAS, the Sierra Club believes that Mahi Pono has no legal interest and no property interest at stake in this case or in the water that is diverted from the east Maui streams within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266; and

WHEREAS, Mahi Pono filed a motion to intervene in this proceeding on July 30, 2019;

WHEREAS, at a status conference, the Sierra Club objected orally to the intervention by Mahi Pono, but the issue was resolved by stipulation filed with this court on August 8, 2019;

WHEREAS, in the stipulation, the Sierra Club did not object to the permissive intervention of Mahi Pono;

WHEREAS, Mahi Pono has served an answer to the complaint as well as the first amended complaint and joined in A&B’s two motions for summary judgment, which were denied;

WHEREAS, Mahi Pono acknowledges that resolution of this case could affect the amount of water available to it from east Maui streams, but nevertheless wishes to withdraw as a party defendant without admitting any of the allegations in the Complaint;

WHEREAS, Mahi Pono Holdings, LLC has a 50% interest in Defendant East Maui Irrigation, LLC;

WHEREAS, complete relief can be accorded without Mahi Pono's participation as a party defendant in this case;

WHEREAS, consideration of equity and good conscience dictate that this case can proceed without Mahi Pono's participation as a party defendant;

WHEREAS, Mahi Pono is not a necessary party to this case;

WHEREAS, the Sierra Club and Mahi Pono have not entered into any confidential side agreements; and

WHEREAS, the Sierra Club does not object to Mahi Pono's withdrawal from this case on the condition that Mahi Pono pay the Sierra Club, upon entry of this order, \$9,327.22 for the time spent responding to Mahi Pono's intervention and participation ((25.45 hours x \$350/hour x 1.04712 GET = \$9,327.22).

IT IS HEREBY STIPULATED, by and between the parties, through their respective counsel, that:

1. This Stipulation is entered into pursuant to Rule 41(a)(1)(B) and 41.1 of the Hawaii Rules of Civil Procedure, and has been signed by all parties and/or entities that have appeared in this action;

2. All claims against DEFENDANTS MAHI PONO, LLC and MAHI PONO HOLDINGS, LLC in this action are dismissed without prejudice;

3. In accordance with Rule 41.1(b)(1)(B)(ii), the parties note that Defendants Mahi Pono, LLC and Mahi Pono Holdings, LLC filed an Answer to Plaintiff Sierra Club's First Amended Complaint on December 16, 2019. Defendants Mahi Pono, LLC and Mahi Pono Holdings, LLC have not filed a motion for summary judgment;

4. This Stipulation does not affect Plaintiff SIERRA CLUB's remaining claims against the BLNR Defendants, A&B, and Defendant COUNTY OF MAUI;

5. Plaintiff Sierra Club, BLNR Defendants, A&B, and Defendant County of Maui all remain as parties in this case;

6. This Stipulation does not limit or otherwise affect the ability of the parties to call Mahi Pono employees and officers in this action as witnesses;

7. Mahi Pono shall pay the Sierra Club, upon entry of this order, \$9,327.22 for the time spent responding to Mahi Pono's intervention and participation (25.45 hours x \$350/hour x 1.04712 GET = \$9,327.22);

8. Except as set forth in paragraph no. 7, each party shall bear their own fees and costs relative to this Stipulation and the dismissal.

Dated: Honolulu, Hawaii; February 18, 2020.

/s/ Kevin W. Herring

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SUZANNE CASE, in her official capacity as
Chairperson of the Board of Land and Natural
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/s/ Caleb Rowe

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KRISTIN K. TARNSTROM
Attorneys for Defendant County of Maui

APPROVED AND SO ORDERED

/s/ Jeffrey P. Crabtree



JUDGE OF THE ABOVE-ENTITLED COURT

Sierra Club v. Board of Land and Natural Resources et al; Civil No. 19-1-0019-01 (JPC), STIPULATION FOR PARTIAL DISMISSAL
WITHOUT PREJUDICE OF CLAIMS AGAINST DEFENDANTS MAHI PONO, LLC, AND MAHI PONO HOLDINGS, LLC; ORDER.