

Hawaii State Bar Association
Young Lawyers Division
Presents
The Hawaii High School
Mock Trial Competition

**2024 Mock Trial
Civil Case¹**

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF HAWAII

THE PAHALA CHAPTER OF FRIENDS OF
`ALALĀ,

Plaintiff,

vs.

ZENOPHARMA, INC.,

Defendant.

Case No. 24-0000001

NOTE: All characters, names, events, places, and circumstances in this Mock Trial case are fictitious.

Each witness can be portrayed by a student of any gender. Instances where a witness is referred to using “him,” “her,” “his,” “hers,” “he,” or “she,” are inadvertent.

¹ With much appreciation to the Pennsylvania Bar Association, Young Lawyers Division, for permission to adapt their problem. Special thanks to the authors of this Problem, Jonathan A Grode and Paul W. Kaufman. Thank you also to the HSBA Young Lawyers Division and Mock Trial Committee for their countless hours and dedication revising this Case for the 2024 competition.

Case Summary

On October 1, 2023, Skylar Cabrera (“Skylar”) finally found redemption! Sitting on the branch of a flowering ‘ōhia lehua tree, on property owned by the pharmaceutical giant ZenoPharma, Inc. (“ZenoPharma”) in the small town of Pahala, Hawai‘i, were three ‘alalā (Hawaiian crows). Before the ‘alalā flew away, Skylar was able to photograph one of them. Or so Skylar says.

This case is about the balance between protecting the environment and promoting development. The birds Skylar claims to have seen are extremely rare and protected by the Endangered Species Act. The site of Skylar’s alleged discovery was the very location where ZenoPharma produced its most prized and bestselling product, SutureStick. SutureStick is a revolutionary organic medical adhesive made from the sap of the ‘ōhia trees growing in an old grove on the property. A forestry operation on the property had once been a primary source of jobs for the town, but the operation closed down many years before.

Carlos Fernpicker, a ZenoPharma scientist and Pahala resident, discovered the ‘ōhia tree sap’s unique properties in 2013 and was tapped by ZenoPharma to head the creation of Pahala’s SutureStick factory. By 2019, the factory was at full production, employed hundreds of Pahala residents, and led an economic revival in Pahala. Demand, however, outstripped the capacity of both the old grove and the factory. Efforts to produce SutureStick synthetically in a lab failed. Facing economic ruin, ZenoPharma now seeks to expand both the grove and the factory in order to increase its sap harvest, triple its revenue, and create more jobs.

Within a few weeks of Skylar’s discovery, a group headed by Skylar, Friends of ‘Alalā, filed a lawsuit in federal court claiming that ZenoPharma’s grove and factory expansion would violate the Endangered Species Act. The Friends of ‘Alalā (“Plaintiff”) seek a permanent injunction preventing the expansion from ever occurring. Plaintiff claims that an expansion will result in the loss of a critical ‘alalā habitat, displacement, or other “taking” of ‘alalā.

Plaintiff also argues that ZenoPharma’s factory expansion will pose a threat to public health because increased sap processing at the factory will lead to higher levels of rapid ‘ōhia death in the surrounding forest and will lead to higher levels of cadmium in the environment. Plaintiff argues higher levels of cadmium may increase the propagation of the bacteria *Mycobacterium Ulcerans* (“MU”), an aggressive “flesh eating” organism. Plaintiff also believes the expansion of the factory will allow MU to reach the Ka‘u aquifer, the primary source of drinking water for many Pahala residents. Plaintiffs also dispute Defendant ZenoPharma’s claims as to the extent of ZenoPharma’s economic impact.

ZenoPharma argues no ‘alalā have been found on the property. It claims the one Skylar photographed was planted there or the photo was altered/photoshopped. ZenoPharma also claims that even if ‘alalā live on its property, its property should not be considered critical habitat for the ‘alalā because (1) there are crows in other states and (2) the economic and other impacts of the factory’s expansion would be so dramatic as to outweigh any harm to the ‘alalā.

ZenoPharma also strongly denies that its factory or grove had anything to do with the MU infection in Pahala. ZenoPharma argues no one has ever shown that MU was ever present in their irrigation water or connected with ZenoPharma at all. ZenoPharma also notes the levels of cadmium are well within EPA limits and that any cadmium on its property might be naturally-occurring.

ZenoPharma further alleges if the factory cannot expand, ZenoPharma could be forced out of business, devastating the Pahala economy and depriving medical science of a powerful tool in its race to save lives.

A bench trial is scheduled to decide two issues: whether the land in question is critical ‘alalā habitat and whether the public interest favors conservation of the land or developing it.

At trial, Plaintiff Friends of ‘Alalā will present three witnesses:

- (1) Skylar Cabrera, the founder of Friends of ‘Alalā and the student who discovered the ‘alalā on ZenoPharma land;
- (2) Kai Kurtz, a former ZenoPharma executive who claims to be telling the real story about her/his former employer’s business; and
- (3) Lee Fletcher, an expert in environmental assessment and a former Hawai‘i Department of Environmental Protection employee who will testify that ZenoPharma’s land is essential to the conservation of the ‘alalā species, whether or not there are ‘alalā on it.

At trial, Defendant ZenoPharma will present three witnesses:

- (1) Carlos Fernpicker, the self-described genius behind the development of the SutureStick and head of the Pahala factory;
- (2) Jo Keahi, Skylar Cabrera’s teacher and head of the Pahala City Council; and
- (3) Bree Nellie, an environmental engineer who will testify that ZenoPharma’s property is not critical ‘alalā habitat.

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COMPLAINT

1. The Friends of ‘Alalā (“FOA” or “Plaintiff”) is a non-profit entity headquartered in Pahala, Hawai‘i. FOA is dedicated to the protection of ‘alalā, scientifically known as *Corvus hawaiiensis*, and other endangered species in Hawai‘i.
2. The Pahala Chapter of FOA is headquartered in Pahala, Hawai‘i. It has more than one hundred nominal members and thirteen dues-paying members, all but one of whom are Pahala residents.
3. ZenoPharma, Inc. (“ZenoPharma” or “Defendant”) is a Delaware corporation headquartered in Wilmington, Delaware. ZenoPharma owns and operates research and manufacturing facilities across the country, including in Pahala, Hawai‘i.
4. Defendant owns and operates the ZenoPharma SutureStick Factory located in Pahala, Hawai‘i.
5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.
6. Venue is proper in this district because the events giving rise to this action occurred or will occur in this district, Plaintiff is a resident in this district, and Defendant has

conducted business in this district and has availed itself of the protection of the law of this district.

7. Beginning in approximately 2014, Defendant began developing SutureStick, a medical device that relies on the sap of 'ōhia trees for its manufacture. The 'ōhia tree sap is collected from an old grove owned by Defendant. The 'ōhia tree sap is processed by ZenoPharma at the Pahala SutureStick Factory (the "Factory").
8. Ka'u stream is adjacent to the Factory. Ka'u stream provides drinking water to the residents of Pahala. The Factory's wastewater is discharged into Ka'u stream. Some of that water returns to the Ka'u aquifer, allowing pollutants in the Factory's wastewater to seep into groundwater drunk by Pahala residents.
9. ZenoPharma intends to expand the Factory into the forest surrounding the Factory's buildings.
10. The forest where ZenoPharma's expansion is planned to occur is home to a colony of 'alalā.
11. 'Alalā is a protected species within the meaning of the Endangered Species Act, 16 U.S.C. § 1531 et seq.
12. ZenoPharma's planned expansion of the Factory would destroy the habitat currently occupied by the 'alalā.
13. ZenoPharma's expansion would therefore endanger a protected species of birds and further risk their extinction.
14. In addition, ZenoPharma's planned expansion would result in a significant increase in the amount of sap processed by the Factory.

15. The processing at the Factory already generates cadmium and other chemicals and/or other pollutants.
16. The harmful byproducts of the sap processing, including but not limited to cadmium, remain in the wastewater discharged by the Factory into Pahala's drinking water.
17. ZenoPharma's planned expansion would increase the amount of harmful byproducts of the sap processing, including but not limited to cadmium, that the Factory discharges into Ka'u stream through its wastewater.
18. ZenoPharma's planned expansion would also allow the harmful byproducts of the algae processing, including but not limited to cadmium, to reach the Ka'u aquifer.
19. Many citizens of Pahala receive water for drinking and washing directly from the Ka'u aquifer.
20. Members of the Pahala community have become sick from drinking or washing with the tainted water, including but not limited to rare skin conditions caused by Mycobacterium Ulcerans ("MU"). MU grows in the Ka'u stream water because it has been tainted by the pollutants from ZenoPharma's Factory.
21. "Group 12" metals like zinc, mercury, and cadmium are associated with the growth and sustenance of MU.
22. If the Factory and grove are expanded, it could increase the propagation of MU in Ka'u stream.
23. ZenoPharma's planned expansion of the Factory could allow higher amounts of MU to reach the Ka'u aquifer.

24. 'Ōhia trees are the backbone of Hawai'i's native forests and watersheds. ZenoPharma's planned expansion of the grove will increase the prevalence of rapid 'ōhia death caused by *Ceratocystis* ("ROD") in the surrounding forest.
25. ROD has the potential to kill all 'ōhia trees state-wide. ROD is caused by microscopic fungi that can be spread to healthy trees from diseased trees. Insects that bore into an 'ōhia tree with ROD may infect a healthy tree that they bore next.
26. By bringing new 'ōhia tree seedlings into the Pahala forest area, Defendant will increase the prevalence of ROD and further destroy the 'alalā's habitat.

COUNT ONE – THE ENDANGERED SPECIES ACT

27. Plaintiff incorporates by reference the foregoing paragraphs.
28. If ZenoPharma's expansion is permitted to occur, critical 'alalā habitat will be lost.
29. If ZenoPharma's expansion is permitted to occur, the 'alalā currently residing on this habitat will be forced from their homes or, more likely, killed.
30. The death of these 'alalā will do irreparable harm to their species and the environment of Pahala, Hawai'i.
31. Because the 'alalā is an endangered species, actions that lead to 'alalā death or loss of 'alalā habitat are forbidden by the Endangered Species Act, 16 U.S.C. § 1531 et seq.
32. The planned expansion poses a threat to public health because, among other reasons, it will lead to higher levels of MU in the Ka'u stream and in the Ka'u aquifer.
33. For the foregoing reasons, Plaintiff's request for an injunction should be granted.

WHEREFORE, Plaintiff respectfully moves that the Court:

- (a) Grant judgment in its favor;
- (b) Enjoin Defendant from expanding the Factory without further order of the Court; and
- (c) Grant such other relief as is just and proper.

DATED: October 31, 2023. Kailua-Kona, Hawai'i.

_____/S/ Attorney
ATTORNEY
1991 Queen Street
Kailua-Kona, HI
Attorney for Plaintiff

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ANSWER

1. Defendant ZenoPharma, Inc. (“Defendant”) admits that Friends of ‘Alalā (“FOA”) is a non-profit entity registered with the State of Hawai‘i. FOA’s registration lists its headquarters as 14 Central Road, Pahala, Hawai‘i 96777. By way of further response, that is also the home address of Skylar Cabrera. Defendant lacks information sufficient to determine the truth or falsity of the remaining allegations and are therefore denied.

2. Defendant lacks knowledge or information sufficient to determine the truth or falsity of the allegations and are therefore denied. Upon information and belief, the Pahala chapter is the only active chapter of FOA and both it and FOA are substantially funded by Stull Medical Adhesives, Inc., Defendant’s direct competitor.

3. Admitted.

4. Admitted.

5. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest jurisdiction.

6. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendant does not contest venue.

7. Denied. Defendant admits that in 2014, its employees began research into the technology that would eventually be incorporated into SutureStick. Defendant admits further that the technology was derived from sap found at a grove in Pahala and that the processing of sap occurs at Defendant's Pahala SutureStick Manufacturing Plant ("Plant").

8. Defendant admits that the Pahala aquifer passes close to the grove at the Plant and that pollutants in the grove, both naturally occurring and man-made, could reach the aquifer. Defendant expressly denies that such pollutants, if any, reach the aquifer in sufficient quantities to affect the groundwater. By way of further response, the Pahala aquifer has been tested by both the Environmental Protection Agency, and the Hawai'i Department of Environmental Protection, and has been found to meet all relevant legal standards for drinking water.

9. Admitted. By way of further response, the Defendant has received all required building and environmental permits for its planned expansion.

10. Denied.

11. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendant admits that 'alalā are an endangered species and receive such protection as is afforded to endangered species.

12. Denied. By way of further response, there are no 'alalā on or near the Plant property.

13. Denied. By way of further response, there are no 'alalā on or near the Plant property.

14. Denied as stated. Defendant admits only that more sap would be processed by its planned Plant expansion.

15. Denied as stated. Defendant admits that cadmium is a byproduct of the sap processing. Defendant denies that the sap processing produces any pollutants other than cadmium, which is produced in very limited quantities entirely within the limits set by the Environmental Protection Agency and the Hawai'i Department of Environmental Protection.

16. Denied. By way of further response, cadmium is a naturally occurring substance and, to the extent it is found in the Pahala aquifer, it is there naturally. Defendant admits that cadmium may remain in the grove in highly diluted form.

17. Denied. Defendant admits only that additional cadmium will be produced in the expanded facility. Defendant cannot say whether that will lead to a higher concentration of cadmium in the grove.

18. Admitted in part. Defendant admits that it is possible that cadmium could reach the Pahala aquifer, but Defendant has taken steps to moderate this possibility. By way of further response, even if the cadmium produced by the plant were to reach the Ka`u aquifer, its level would remain within the guidelines set by the Environmental Protection Agency and the Hawai'i Department of Environmental Protection.

19. Denied. By way of further response, Defendant specifically denies that any residents of Pahala have become sick from drinking the water of the Pahala aquifer and specifically denies that any actions of the defendant have made the water of the Pahala aquifer any less safe for humans.

20. Defendant lacks knowledge or information sufficient to determine the truth or falsity of the allegations and are therefore denied.

21. Denied. By way of further response, the alleged link between Mycobacterium Ulcerans and cadmium is entirely speculative.

22. Denied as stated. Defendant admits that the planned expansion allows water to flow between the grove and the Pahala aquifer. Defendant denies that there is Mycobacterium Ulcerans or any other demonstrably harmful biological or non-biological substance in the grove.

23. Admitted in part. Defendant admits only that the original source of the drinking and washing water for some residents of Pahala is the Ka`u aquifer. By way of further response, all or virtually all of this water is filtered and treated by the well equipment used to retrieve it and/or filter or treatment facilities inside individual residences.

24. Defendant incorporates by reference its response to the foregoing paragraphs.

25. Denied.

26. Denied. By way of further response, there are no ‘alalā on or near the Pahala Plant.

27. Denied. By way of further response, ZenoPharma cares deeply about the environment and all the creatures and plants in it. ZenoPharma would not act were it displacing an endangered or threatened species, and it gives liberally to environmental causes and has received numerous environmental awards.

28. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, they are denied.

29. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, they are denied. By way of further response, the Plant has been an unalloyed boon to the economy and culture of Pahala. The public interest of Pahala strongly favors expansion of the Plant. The Plant will bring hundreds of jobs and millions of dollars to the

local Pahala economy, which has no other large employer, and will attract dozens of new businesses to serve those employees.

30. For the foregoing reasons, Plaintiff's request for an injunction should be denied.

WHEREFORE, Defendant respectfully requests that the Court enter judgment in its favor and against Plaintiff.

DATED: November 6, 2023, Kailua-Kona, Hawai'i.

 /S/ Attorney
ATTORNEY
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Attorney for Defendant

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MEMORANDUM AND OPINION

Defendant ZenoPharma, Inc. (“ZenoPharma”) moves the Court to dismiss the complaint against it for failure to state a claim. Plaintiff Friends of `Alala (“FOA”) moves for immediate summary judgment and/or judgment on the pleadings. Both motions will be denied.

The primary question of this case is whether the property onto which ZenoPharma seeks to expand is a critical habitat for the ‘alalā (*Corvus hawaiiensis*), a species considered endangered by both the federal and state government. ZenoPharma argues that no ‘alalā have been found on the property and that, therefore, the property cannot be considered a critical habitat. This argument fails for two reasons. First the Endangered Species Act (“ESA”) provides two pathways to the designation of a critical habitat, but only one requires the actual presence of ‘alalā. *See* 16 U.S.C. § 1532(5)(A). Subsection (i) of § 1532(5)(A) relates to designations of areas where an endangered species is actually found, but sub-section (ii) specifically refers to “areas outside the geographical area occupied by the species at the time it is listed [as endangered].” Accordingly, even were ZenoPharma correct that no `alala live on its property, that would not decide the question. Secondly, FOA has produced at least some evidence tending to show that there may be `alala on the property. This question is therefore a matter for trial.

ZenoPharma next argues that the habitat in question cannot be considered critical because the Secretary of the Interior or Secretary of Commerce have not designated the area in question as a critical habitat for ‘alalā. *See* 16 U.S.C. § 1533(b)(2). The Court is well aware, as are the parties, that the Secretaries of Interior and commerce have decided not to designate any land as critical habitat for the ‘alalā, in order to prevent poachers from locating the birds and in order to avoid a situation where, while the regulation was pending, property owners would destroy the habitat in order to avoid future litigation like this one. Thus, were the Secretaries’ decision to function as ZenoPharma suggests and prevent any habitat from ever being designated as critical, it would render the ESA’s protections mere hollow words.

FOA recognizes, to its credit, that the question of whether `alala are actually present is a matter of dispute that must be resolved at trial. But FOA argues that even if `alala are not present, the area is critical habitat for them and should be protected for that reason. However, the fundamental problem with FOA's argument is that it ignores the fact that when making a critical habitat determination, the Secretary must consider the "economic impact" of her/his decision. Indeed, "the Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat..." 16 U.S.C.A. § 1533(b)(2). ZenoPharma claims that its plant is critical to the economy of Pahala, and the township and its residents would be irrevocably harmed were the injunction to issue. Thus, the Court cannot decide this question based on the characteristics of the land itself, and since the economic impact of the ZenoPharma expansion is disputed, this question must be tried.²

In deciding whether to grant a permanent injunction, this Court must determine whether: (1) the moving party has shown actual success on the merits; (2) the moving party will be irreparably injured by the denial of injunctive relief; (3) the granting of the permanent injunction will result in even greater harm to the defendant' and (4) the injunction would be in the public interest. *Gucci America, Inc. v. Daffy's Inc.*, 354 F.3d 228, 236-237 (9th Cir. 2003), *citing Shields v. Zuccarini*, 254 F.3d 476 (9th Cir. 2001). Only if all four factors weigh in Plaintiff's favor will an injunction be appropriate. That much, at least, is well understood.

However, FOA urges this Court to rule in advance of trial that if FOA can prove that the land in question is a critical habitat, the injunction will issue automatically. In other words, plaintiff argues that "[t]he traditional ... injunction analysis does not apply to injunctions issued pursuant to the ESA," *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 793 (9th Cir. 2005), and it urges that this Court does not consider factors (2), (3) or (4). Plaintiff reasons that:

- With respect to irreparable harm, "Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration i.e., irreparable." *Amoco Production. Co. v. Village of Gambell*, 480 U.S. 531 (1987); *United States v. Government of the Virgin Islands*, 248 F.Supp.2d 420, (D.V.I. 2003) ("environmental harm and imminent risk to human health can only be viewed as irreparable"). Accordingly, plaintiff argues that any destruction of a critical habitat is irreparable as a matter of law.
- With respect to the balancing of harms, plaintiff argues that "under the ESA the balance of hardships always tips sharply in favor of endangered or threatened species." *Marbled Murrelet v. Babbitt*, 83 F.3d 1068, 1073 (9th Cir. 1996); *see also Amoco Prod. Co.*, 480 U.S. at 545 (if environmental injury "is sufficiently likely ... the balance of harms will usually favor the issuance of an injunction to protect the environment"). Accordingly, plaintiff argues that the economic harm to the defendant is irrelevant when a critical habitat is at issue.

² The parties have agreed to a temporary restraint on development pending this Court's decision. Accordingly, the Court need not address the issue of a preliminary injunction.

- With respect to the public interest, plaintiff argues that “Congress has...[made] it abundantly clear that the balance has been struck in favor of affording endangered species the highest of priorities.” *TVA v. Hill*, 437 U.S. 153, 194, (1978); see also *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1176 (9th Cir. 2006) (“Prevented environmental degradation and loss of resources is in the public interest”); *The Lands Council v. McNair*, 537 F.3d 981, 1005 (9th Cir. 2008) (“public interest in preserving nature and avoiding irreparable environmental injury outweighs economic concerns”). Accordingly, plaintiff argues that the public interest always favors endangered species.

The Court cannot entirely agree with the plaintiff. The Ninth Circuit has rejected the unyielding standard that plaintiff proposes. See *Hawksbill Sea Turtle v. Federal Emergency Management Agency*, 126 F.3d 461, 478 n. 13 (9th Cir. 1997). Moreover, the Court is unwilling to substitute its judgment for the Secretary’s without at least allowing ZenoPharma to raise any argument it could have made in the administrative process. However, although *Hawksbill Sea Turtle* rejected the standard the plaintiff proposes, the Third Circuit did not articulate a legal standard for making these decisions. Accordingly, this Court must now do so.

Plaintiff argues persuasively that environmental harms are irreparable by nature, and many courts have so found, including the United States Supreme Court. Thus, if plaintiff able to succeed on the merits, it will have shown irreparable harm automatically as a matter of law.

Plaintiff has also persuaded the Court that Congress has decided to put its fingers firmly on the scales when harm is weighed as between endangered species and private landowner. No harm to ZenoPharma would outweigh the harm done to endangered birds by the destruction of critical habitat, and the case books are littered with examples of highly valuable projects blocked by the ESA. Many times, the companies sponsoring those projects suffered severe economic harm, even bankruptcy. However, plaintiff is correct – when an endangered species is present, the harm to the defendant becomes unimportant.

However, the plaintiff had failed to persuade the Court that the public interest favors endangered species in all cases. Indeed, the Supreme Court in *Winter* and the Ninth Circuit in *Hawksbill Turtle* have made clear that this is simply not the law. While there is a per se public interest in the protection of endangered species, it is not automatically enough to overcome all other public interests. Nor will the Court place limits on the kinds of arguments that ZenoPharma or FOA can make. The Ninth Circuit made it clear in *Geeps v. Acme Silver Co.*, 999 F.2d 1234 (9th Cir. 1997), that economic interests can sometimes be paramount, and it made clear in *Lexy v. Washington Dept. of Transportation*, 500 F.3d. 22 (9th Cir. 2007), that they will not always be. This is a matter for trial.

The Court reaches this decision considering, as ZenoPharma urges, that the balance here is not just between endangered species and the public interest generally, but between endangered species and human life. ZenoPharma has claimed that its product, SutureStick, saves lives. The Court takes no position on whether this claim is accurate. However, the majority of judges on the *Hawksbill Sea Turtle* panel found that where benefits to human life are alleged, the traditional injunction standard should be applied. This Court is bound by that decision, and

therefore cannot hold as a matter of law that the public interest prong of the injunction test is automatically met even if there are 'alalā on the property at issue.³

Where plaintiff and defendant present competing claims of injury, the traditional function of equity has been to arrive at a “nice adjustment and reconciliation” between the competing claims, *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). Moreover, courts pay particular regard for the public consequences in employing the extraordinary remedy of injunction. *Railroad Comm’n v. Pullman Co.*, 312 U.S. 496, 500 (1941). Even if a statute is violated, then, and injunction is only appropriate when both the public interest demands it, and the plaintiff is more harmed by the defendant’s action than the defendant would be if not allowed to act.

Accordingly, a trial is required. For the foregoing reasons, the Court finds that an injunction will be issued if (1) the plaintiff succeeds on the merits of its ESA claim and (2) the public interest does not favor ZenoPharma’s expansion.

As noted above, FOA can succeed on its ESA claim in either of two ways. First, it can show that there are actually 'alalā on the property at issue. If it does so, because 'alalā are so rare, this Court will conclude that, as a matter of law, any expansion would result in an 'alalā “taking,” which is prohibited by 16 U.S.C. § 1538(a)(1)(B). In light of the clear intent of the ESA and the regulations implementing it, if the plaintiff shows that there are actually 'alalā on the property, the defendant will bear the burden of proving that the public interest in its expansion significantly outweighs the public interest in preserving the environment.

Alternatively, the plaintiff may show that the property in question is critical 'alalā habitat, even if no 'alalā live there. It may do so by showing that the property contains “physical or biological features essential to the conservation of the species.” See U.S.C. § 1532(5)(A)(i). However, because the Secretary would be required to consider the economic impact of a decision to designate the area as critical habitat, and because there is no allegation that the 'alalā will become extinct if the expansion is allowed, ZenoPharma may argue that the habitat should not be considered critical because the “economic impact” of such a decision outweighs the benefits of that designation. See 16 U.S.C. § 1533(b)(2). Moreover, for the same reason, if the plaintiff fails to prove that there are actually 'alalā on the property, the defendant’s burden to show that public interest favors it is far lighter, a mere preponderance. The Court notes that even this burden-shifting represents a significant concession to Congress’s intent; in any other, non-environmental matter, plaintiff alone would bear the burden of proof. Although this may not be a perfect system, it represents a “nice adjustment and reconciliation” between the claims.

Under either theory, the parties may adduce whatever facts they choose in addressing the public interest prong of the permanent injunction standard, including whatever facts and opinions are admissible regarding both the public health and economic consequences of this decision. The Court will instruct the jury that they may consider any interest common to members of the local, state, and national community that they in their collective wisdom find appropriate.

³ The fact that plaintiff argues that ZenoPharma’s expansion would be harmful to human health does not change that calculation. The jury may consider FOA’s arguments about public health impacts as well and reach its own decision, but FOA cannot short-circuit that process.

Accordingly, this Court enters the following:

IT IS HEREBY ORDERED that Defendant's Motion for Failure to State a claim is DENIED; and Plaintiff's Motion for Summary Judgment and/or Motion for Judgment on the Pleadings is DENIED.

A hearing on Plaintiff's request for a permanent injunction shall be held as soon as practicable, and there shall be a bench trial as to the following issues:

1. Is the land onto which ZenoPharma intends to expand the plant and grove a critical habitat for 'alalā; and if so,
2. Does the public interest favor allow that expansion despite the potential destruction of critical 'alalā habitat.

It is FURTHER ORDERED that such a hearing shall be a full, factual hearing, and that the parties shall have the right to call up to three (3) witnesses in support of their claims. The parties shall promptly confer to reach stipulations and create a joint list of potential exhibits. The hearing will be conducted in accordance with the rules of procedure and the rules of evidence as though it were a trial on the merits.

 /S/ Judge P. Shimizu
Judge of the above-entitled Court.

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STIPULATIONS

1. Jurisdiction, venue, and chain of custody of the evidence are proper and may not be challenged.
2. All statements were notarized on the day on which they were signed.
3. With the exception of Exhibit 2.1, all documents, signatures, and exhibits, including pre-markings, included in the case materials are authentic and accurate in all respects; no objections to the authenticity of the documents or exhibits other than Exhibit 2.1 will be entertained. The parties reserve the right to dispute any legal or factual conclusions based on these items and to make objections other than to authenticity.
4. Exhibit 1 is an accurate depiction of the property in question, and the markings on Exhibit 1 accurately depict the area into which ZenoPharma, Inc., plans to expand its plant. The portion of Exhibit 1 labeled ‘Alalā Sighting’ accurately indicates the GPS coordinates where Exhibit 2.1 was allegedly taken. Defendant vigorously disputes that there was an actual ‘Alalā sighting at that location.
5. ‘Alalā (*Corvus hawaiiensis*) are endangered species nationwide and in Hawai‘i.
6. With regard to Exhibit 2:
 - a. All four photos (Exhibits 2.1, 2.2, 2.3, and 2.4) were digital photos produced on a camera owned by Skylar Cabrera. A forensic examination of the metadata embedded in the picture files reveal they were original photos taken on October 1,

2023 at the following times: Exhibit 2.1 at 1:15 p.m., Exhibit 2.2 at 2:07 p.m., Exhibit 2.3 at 2:24 p.m., and Exhibit 2.4 at 2:25 p.m.

- b. Exhibit 2.1 is authentic in the sense that it is the photograph that Skylar Cabrera claims to have taken on October 1, 2023. Defendant does not agree that Exhibit 2.1 represents a true and accurate image of the property or the ‘alalā alleged to be on the property.
 - c. The digital photo in Exhibit 2.1 is that of an ‘alalā.
 - d. The digital photos in Exhibits 2.3 and 2.4 are of regular crows.
 - e. GPS readings tagged to the photograph show that the photo depicted in Exhibit 2.1 was taken at the point indicated on Exhibit 1. As noted above, Defendant disputes the authenticity of this photograph.
 - f. GPS readings tagged to the photographs show that the photos depicted in Exhibits 2.2, 2.3, and 2.4 were all taken from the Defendant’s property, generally on the south side of the plant/factory.
7. Exhibit 3 is an accurate depiction of a web banner advertisement for SutureStick from medical websites. Both Carlo Fernicker and Kai Kurtz are familiar with this advertisement.
8. Exhibits 4, 5, and 9 were produced by public officers or agencies and regard matters about which those agencies had a duty to report.
9. Exhibit 15 was distributed to senior ZenoPharma, Inc. (“ZenoPharma”) executives including Carlos Fernpikker and Kai Kurtz. David P. Carney was ZenoPharma’s Senior Vice President for Research and Development. Among David Carney’s duties was reporting quarterly to senior ZenoPharma executives on the status of ZenoPharma’s research and development activities.
10. The Hawai‘i Department of Environmental Protection (the “Department”) issued all permits necessary for ZenoPharma’s proposed expansion. On October 9, 2023, it conducted a preliminary investigation into the allegation that ‘alalā were present on the property. After a three hour search, the Department found none. Accordingly, the Department did not pursue a more complete investigation, and the Department’s original finding allowing ZenoPharma’s project to proceed was reinstated.
11. Skylar Cabrera is the chief executive officer of Friends of ‘Alalā, and has been since s/he turned 18. Prior to that, the chief executive officer of Friends of ‘Alalā was Lydia Cabrera, Skylar Cabrera’s mother.

12. Janus Freslavin and Tamera Blackwood's Diseases and Conditions of Tropical Medicine, (8th Ed. 2009) is a medical school textbook commonly known as "Tropical Medicine," and is used in classrooms throughout the United States. "Tropical Medicine" is often consulted by experts in microbiology, infectious diseases, and internal medicine in their practices, particularly when they encounter unusual pathogens or diseases.

/s/ Attorney

Plaintiff's Attorney

/s/ Attorney

Defendant's Attorney

APPLICABLE LAW⁴

The Endangered Species Act Generally

[W]ith respect to any endangered [or threatened] species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to . . .

- (B) take any such species within the United States . . . [or]
- (G) violate any such regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

16 U.S.C. § 1538(a)(1)

Critical Habitat (Definition)

The term “critical habitat” for a threatened or endangered species means –

- (i) The specific areas within the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, in which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection; and
- (ii) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

16 U.S.C. § 1532(5)(A)

Critical Habitat (Designation)

The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless (s)he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

⁴ Several cases cited throughout the problem, including the Restatement of Environmental Law, are fictional.

16 U.S.C. § 1533(b)(2)

‘Alalā (Hawaiian Crow)

‘Alalā are one of the species listed as “Endangered and Threatened Wildlife by the United States Fish and Wildlife Service pursuant to its authority under the Endangered Species Act, 16 U.S.C. § 1533. See 50 C.F.R. § 17.11(h); see also Haw. Rev. Stat. § 195D-4.

Many factors contributed to the decline of ‘alalā in the wild. Destruction of most of the lowland forests restricted the bird’s ability to follow seasonal fruiting up and down the mountains. The upland forests have been thinned and fragmented, and many fruiting plants lost, due to logging, ranching, and the effects of grazing by feral pigs, cattle, and sheep. Mongooses, cats, and rats prey on ‘alalā eggs and fledglings. Diseases carried by introduced mosquitoes may have caused the mortality of many ‘alalā, as they did other forest birds. The role of ‘Io in this decline, however is unknown, despite their known effect on released birds. However, ‘Io densities are higher, and vulnerability of ‘alalā may be greater, in areas where ungulate grazing has reduced understory cover . . .

Recovery is contingent upon protecting and managing suitable habitat for reintroduction of ‘alalā. Recovery actions include measures to protect habitat where the taxa occurred and habitat where the species is not known to have occurred but which may be suitable, restoration of degraded habitat, removal of feral ungulates from habitat areas, predator control, captive propagation, and reintroduction, developments of strategies to reduce mortality of reintroduced ‘alalā by ‘Io predation, and the development of means to avian disease.

68 FR 71128 (Dec. 22, 2003)

Restatement (1st) of Environmental Law

Division 5: Endangered Species

Chapter 4: Development

Topic 5: Injunctions

Section 7: The Public Interest

As a general rule, because Congress has prioritized protection of endangered or threatened species, demonstrating destruction of habitat is itself sufficient to demonstrate that destruction of the habitat is contrary to the public interest. However, in exceptional cases, there may be contrary public interests that outweigh the general protection of endangered species and the environment. In such cases, the burden is placed on the defendant to demonstrate that the public interest in the proposed activity “significantly outweighs” the general public interest in

preserving the environment. Where the defendant can meet such burden, the proposed activity may proceed despite the risk of loss to the species or destruction of its habitat.

Where a critical habitat is threatened by development, but where it is alleged that no endangered or threatened species is known to be present there, at least one court has held that the traditional injunction standards apply. The Court in that case held that the burden of proof shifts to defendant with respect to the public interest portion of the injunction standard if plaintiff was able to demonstrate that the land in question was critical habitat. See Friends of 'Alalā v. ZenoPharma, Inc., ___ F.Supp. 2d ___ (2023). The result of that case is not yet known.

Case Citations:

1. Winter v. National Resources Defense Council, Inc., 555 U.S. 7, 31-31 (2008): Where United States Navy credibly alleged that sonar training was necessary or helpful for military preparedness, public interest weighed in favor of allowing such training even where it could harm endangered species and/or the environment.
2. Lexy v. Washington Dept. of Transportation, 500 F.3d. 22 (9th Cir. 2007): Where planned highway would have destroyed habitat of Fox Squirrel, public interest in protecting environment outweighed interest of public in new highway, even though roadway would have served isolated communities, would have cost millions of dollars to re-route, and had already cost \$3 million to plan.
3. Geeps v. Acme Silver Co., 999 F.2d 1234 (9th Cir. 1997): Where evidence showed that silver mine was the sole significant industry in town of five hundred, employing half of the town's residents directly and providing education and medical care facilities on site, public interest in allowing mine to survive outweighed danger to woodrat posed by proposed mine expansion.

In other words, "under the ESA the balance of hardships always tips sharply in favor of endangered or threatened species." Marbeld Murrelet v. Babbitt, 83 F.3d. 1068 (9th Cir. 1996).

Standard for Preliminary Injunction

In deciding whether to grant a permanent injunction, the district court must consider whether: (1) the moving party has shown actual success on the merits; (2) the moving party will be irreparable injured by the denial of injunctive relief; (3) the granting of the permanent injunction will result in even greater harm to the defendant; and (4) the injunction would be in the public interest. Gucci America, Inc., v. Daffy's Inc., 354 F.3d 228, 236-237 (9th Cir. 2003) (citing Shields v. Zuccarini, 254 F.3d 476, 482 (9th Cir. 2001)).

JURY INSTRUCTIONS

A COPY OF THESE INSTRUCTIONS MAY NOT BE USED AS AN EXHIBIT DURING THE MOCK TRIAL COMPETITION; HOWEVER STUDENTS MAY USE THESE CONCEPTS IN FASHIONING THEIR CASE AND MAKING ARGUMENTS.

PRELIMINARY INSTRUCTIONS

Role of the Jury

Now that you have been sworn, I have the following preliminary instructions for your guidance as jurors in this case.

You will hear the evidence, decide what the facts are, and then apply those facts to the law that I will give to you.

You and only you will be the judges of the facts. You will have to decide what happened. I play no part in judging the facts. You should not take anything I may say or do during the trial as indicating what I think of the evidence or what your verdict should be. My role is to be the judge of the law. I make whatever legal decisions must be made during the course of the trial, and I will explain to you the legal principles that must guide you in your decisions. You must follow that law whether you agree with it or not.

Moreover, although the lawyers may have called your attention to certain facts or factual conclusions they thought were important, what the lawyer(s) said is not evidence and is not binding on you. It is your recollection and interpretation of evidence that controls your decision in this case.

Neither sympathy nor prejudice should influence your verdict. You are to apply the law as stated in these instructions to the facts as you find them, and in this way decide the case.

POST-TRIAL INSTRUCTIONS

Burden of Proof

This is a civil case in which the plaintiff seeks an injunction. An injunction is an order issued by the Court that forbids a party to do something or requires that party to do something. Here, the Plaintiff has asked the Court to issue an order forbidding Defendant ZenoPharma, Inc. from expanding its SutureStick manufacturing facility at the property it owns in Pahala, Hawai‘i.

The plaintiff, Friends of ‘Alalā, has the burden of proving its case by what is called the “preponderance of the evidence.” This means the Plaintiff has to prove to you, in light of all the evidence, that what it claims is more likely so than not so. To say it differently: if you were to put

the evidence favorable to Plaintiff and the evidence favorable to Defendant on opposite sides of the scales, the Plaintiff would have to make the scales tip ever so slightly to its side. If the Plaintiff fails to meet this burden, the verdict must be for Defendant. If you find, after considering all the evidence that a claim or fact is more likely so than not so, then the claim or fact has been proved by a preponderance of the evidence.

Here, the Plaintiff must prove two things. First, Plaintiff must prove the expansion of the ZenoPharma, Inc. manufacturing facility would violate the Endangered Species Act by destroying critical habitat for an endangered species. The parties have stipulated, and I am instructing you now, that the ‘alalā is an endangered species under federal and state law.

Plaintiff can prove its case in either of two ways. If you find, after considering all the evidence in this case, that it is more likely than not that ‘alalā actually live on the ZenoPharma, Inc. property, then you must find that ZenoPharma’s expansion would destroy critical habitat and therefore violate the Endangered Species Act. Alternatively, you may find that the property into which ZenoPharma, Inc. intends to expand is critical habitat for ‘alalā, even if you find that no ‘alalā actually live there, if you find that it is more likely than not that both (1) the property contains “physical or biological features essential to the conservation” of the ‘alalā species and (2) the benefits of designating the property as critical habitat are not outweighed by the economic and other impacts of designating the property as critical habitat.

If you find that the property is not critical habitat, that ends your consideration of this matter.

If you find that the property is critical habitat for either reason I have just discussed, then you must then consider whether the public interest favors the issuance of this injunction. In a moment I will discuss how you determine the public interest in this case. For now, I will just instruct you that because Congress has determined that the protection of endangered species and the environment is a public interest, the Defendant bears the burden of proving to you by a preponderance of the evidence that other public interests outweigh that interest and any others that counsel against allowing the expansion.

In determining whether any fact has been proved by a preponderance of evidence in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard of proof and applies only to criminal cases. It does not apply in civil cases such as this, so you should put it out of your mind.

Critical Habitat

During your deliberations, you will be asked to determine whether the Plaintiff has shown by a preponderance of the evidence that there is ‘*‘alalā*’ actually present on the property onto which ZenoPharma, Inc. plans to expand its plant. If you determine there are ‘*‘alalā*’ present, that decision means the land is, as a matter of law, critical ‘*‘alalā*’ habitat.

If, however, you determine the Plaintiff has not shown there is ‘*‘alalā*’ present on the property, you will have to determine whether the land in question is nonetheless, a critical habitat for ‘*‘alalā*’. It is not required that ‘*‘alalā*’ be present on the property for you to determine that it is a critical ‘*‘alalā*’ habitat. However, the absence of ‘*‘alalā*’ is a factor you may consider in reaching your decision.

In determining whether the land is critical ‘*‘alalā*’ habitat, you must also consider the economic impact, and any other relevant impact, of classifying that land as critical habitat. If you determine the benefits of designating the property as critical ‘*‘alalā*’ habitat do not outweigh the costs of these impacts, you must determine that the property is not critical ‘*‘alalā*’ habitat.

Public Interest

If you determine the property in question is critical ‘*‘alalā*’ habitat, you will need to determine whether the public interest in allowing Defendant ZenoPharma, Inc. to expand its plant outweighs the public interest in protecting ‘*‘alalā*’ or the environment and any other public interest that weighs against allowing Defendant ZenoPharma, Inc. to expand.

Because Congress has already decided that public policy generally favors the protection of endangered species and the environment, the Defendant bears the burden of proving to you that public interest favors allowing it to expand. If you determine there is ‘*‘alalā*’ on the property, the Defendant must show that the public interest in allowing it to expand significantly outweighs those interests favoring not allowing it to expand. If you determine that Plaintiff has not shown there are ‘*‘alalā*’ on the land in question, but the land is nonetheless essential to the preservation of ‘*‘alalā*’ as a species, the Defendant must show only that the public interest in allowing it to expand outweighs, by however little, the interests that weigh against that expansion.

The term “public interest” has the broadest possible meaning, and it encompasses all aspects of the life of Pahala, the County of Hawai‘i, the state of Hawai‘i, and the United States. Included in the term “public interest” are, in no particular order, economics, public health, environmental quality, and any other interest you can imagine. The only limitation is that you may only consider those interests that affect all citizens equally. Therefore, you are not to concern yourself with the effect your decision would have on any one citizen or any sub-group of citizens. Public interests are those interests common to us all. For example, you may not consider the effect that your decision would have on Skylar Cabrera, Friends of ‘*‘Alalā*’, or on ZenoPharma, Inc., except that you may consider any effect that your decision would have on those individuals insofar as that effect would be felt by members of the community as a whole.

Sympathy and Prejudice

Please keep in mind this dispute between the parties is, for them, a most serious matter. They and the court rely upon you to give full and conscientious consideration to the issues and evidence before you. Neither sympathy nor prejudice may influence your deliberations. You should not be influenced by anything other than the law as I have stated it to you and the evidence in this case, together with your own judgment and evaluation of that evidence.

All parties stand equally before the court, and each is entitled to the same fair and impartial treatment in your hands. Please keep in mind you are bound by the law, and your sole job in this case is to be judges of the facts and of the public interest. This case does not concern whether you agree or disagree with laws that protect endangered species or your personal feelings regarding ‘ālalā. You may not substitute your judgment for that of the court or your elected representatives in Congress and the Hawai‘i legislature regarding the value that is placed on endangered species and environmental protection. You are, instead, to use your common sense and collective experience to determine the facts in this case and to balance the competing interests in accordance with the law about which I have just instructed you.

LIST OF WITNESSES

The plaintiff and the defendant must call each of their respective witnesses. Both Skylar Cabrera and Carlos Fernpicker are permitted to sit at counsel table as representatives of the plaintiff and the defendant, respectively.

For the Plaintiff, Friends of the ‘Alalā:

- Skylar Cabrera: Hawai‘i High School Student; Friends of the ‘Alalā Founder
- Kai Kurtz: former Operations Manager of the SutureStick Plant/Factory
- Lee Fletcher: Environmental Expert Witness

For the Defendant, ZenoPharma, Inc.:

- Carlos Fernpicker: ZenoPharma, Inc. Vice President and Creator of SutureStick
- Jo Keahi: Pahala City Council Member and Hawai‘i High School Teacher and Environmental Club Advisor
- Bree Nelli: Environmental Expert Witness

Statement of Skylar Cabrera

1 My name is Skylar Cabrera, and I'm 18 years old. In 2024, I will be joining the University of
2 Hawai'i where I will be majoring in environmental geology. Someday, I hope to fulfill my goal
3 of becoming an environmental engineer or investigator for the Hawai'i Department of
4 Environmental Protection. Yes, my calling in life is protecting the environment, and I'm proud to
5 admit that I'm evangelical about it. I am a vegan, I do my best to eat only organic vegetables,
6 and I'm a member of PETA and Greenpeace. People today are so selfish that they refuse to
7 acknowledge their actions will affect future generations. There is only one Earth, and we need to
8 protect it. Change starts at home. For me, that's Pahala, Hawai'i. In August 2023, when I
9 discovered how ZenoPharma and Carlos Fernpicker were treating Pahala, I had to do something.

10
11 Everyone in Pahala heralded the ZenoPharma plant as a savior. Unemployment was high, and the
12 community was suffering. Main Street was littered with empty store fronts. But desperate times
13 do not always call for desperate measures. Sacrificing not only the health of the ecosystem, but
14 also the health of the population is too great a price to pay for a few big box stores near the
15 interstate and a shinier floor for the basketball team. Pahala may have sold out, but I never will.
16 They should have marketed the natural beauty instead. I always thought that an industrial
17 produce marketed as being 100% environmentally friendly was too good to be true.

18
19 When I was a freshman at Pahala High in 2020, my father lost most of his leg to a bizarre
20 infection caused by the "sticky stuff" he worked with at ZenoPharma. He was a sap collector
21 there. He got this really bad rash on his right leg that turned into a big open sore. I took a photo
22 of the infection because I'd never seen anything like it before. He ended up having surgery and a
23 big chunk of his leg was removed. After that he couldn't walk without a walker and would get so
24 tired sometimes, all he could do was watch TV. Even after the surgery, the pain didn't really go
25 away. It obviously had to be something at the plant that caused him so many problems; how else
26 was a guy in Pahala going to get a tropical disease? Dad ended up having to take a job at the
27 KTA as a cashier to make ends meet. He was humiliated, and he has never really been the same
28 since. I think he is still really depressed.

29
30 Dad's workers' compensation claim against ZenoPharma was denied in 2021. Carlos Fernpicker
31 must have bought off the judge the same way s/he buys off everyone else. Ever since then, some
32 people say that I have been trying to get back at the company. That couldn't be further from the
33 truth; my father always told me never to carry a grudge, so I let it go a long time ago. That said, I
34 do think his illness may have been what drives my curiosity in saving the environment. Because
35 his condition was foreign to the area, I figured it must have been from something else that was
36 not supposed to be here. Then I read an article from a former DEP employee named Lee Fletcher
37 on the Earth First! Website about para-environmental disruption. The idea is simple: if a place
38 was able to retain its indigenous plants and animals, it would be less likely that someone would
39 get sick. This not only made sense of what happened to my dad. It's just when you're the only
40 game in town, you're gonna draw attention to yourself.

41

42 Early in my high school career, I joined the Environmental Science Club. I was looking for
43 something to do and to make some friends. Instead, I found much more. One day during the
44 spring term in 2022, me and a couple of the other students in the class went down to the Suzy
45 W's Pet Palace to make sure that Suzy, the owner, was treating the animals right. We had heard
46 some rumors that she was abusing them. Instead, when we arrived, we noticed that Suzy had the
47 nicest bird you could ever imagine showcased. I saw that Suzy was asking for \$750 for the bird,
48 which I thought was ridiculously high. Suzy told me that someone had found it southwest of
49 town on the side of the road and brought it to her so it would not get run over. Suzy said she did
50 some research and learned it was a rare breed called an 'alalā, or Hawaiian Crow, and that they
51 were valuable. I thought that it was a nice story and did a write-up for our school paper. Well,
52 I'm not sure how it happened, but Hawai'i Species Council got ahold of my story and next thing
53 we all now, poor old Suzy was arrested for trafficking an endangered species! I was taken by
54 what happened and started a small organization called Friends of 'Alalā to spread awareness. We
55 even registered as a non-profit organization, but no one really gave us any money. Suzy even
56 joined, and she offered her shop as a place for us to meet and talk about endangered species.

57
58 Due to my exposing of the trafficker, Ms./Mr. Jo Keahi, the faculty advisor of the environmental
59 club, named me President for my senior year. I wanted to do something special and change the
60 town for the better, not just do another 5K run. Like I said, I was suspicious about ZenoPharma's
61 "greenglue" marketing campaign. So, about a week before classes were set to start, I walked over
62 to the SutureStick processing plant for inspiration. As I approached the boundary fence, I noticed
63 a surveyor pointing her theodolite at me. I called her over and asked what the project was about.
64 She told me that the company was planning on building another processing plant because they
65 wanted to harvest more tree sap for the glue. Right then, the manager of the entire facility, Carlos
66 Fernpicker, came over and asked why I was spying and accused me of being a trespasser. I told
67 Carlos my name and that I was from the environmental club. S/He got visibly flustered. In this
68 creepy and calm voice, s/he said that it was best if I left and let the workers do their jobs, but said
69 that if I wanted to bring my "green buddies" down to the plant, s/he would be happy to show us
70 their planet-friendly operation. I knew I was being patronized but thought it best to back down
71 for now. Still, I felt that ZenoPharma was breaking some sort of law. Why else would Fernpicker
72 be so defensive?

73
74 During the first week of school, I suggested at our first club meeting on September 4, 2023 that
75 we protest against the expansion right outside the plant. But when I brought it up, everyone
76 thought it was an awful idea. I even heard another senior cough names under his breath at me
77 like "quack" and "looney", and everyone else snickered. Not the reaction I was expecting for as
78 the new president. Ms./ Mr. Keahi told us that ZenoPharma was good for the town, and the
79 expansion would mean more jobs and a stronger economy. S/He even said it wouldn't make a
80 difference to the environment if they just added a new building. S/He said there was really no
81 reason for a protest. I couldn't believe s/he was so flippant.

82
83 I decided I needed proof if I was going to convince the club that I was right. So, I decided that
84 Saturday night I would head over to the processing plant to see if I could find some evidence. It

85 was kind of fun, like I was in one of those spy movies. I dressed in all black and carried a small,
86 solar powered LED flashlight. Around 11 p.m., I scoped the perimeter of the property but didn't
87 see anything unusual. I knew I needed to get closer, so I decided to scale the fence near the
88 eastern edge of the plant. I knew that it was against the law, but sometimes rules have to be
89 broken for the greater good. Unfortunately, that was a huge mistake. As soon as I got over the
90 fence, a floodlight turned on, and an alarm started sounding. I tried to make a break for it, but
91 before I could take ten steps, I was tackled by ZenoPharma security.

92
93 About an hour later, I found myself in the Pahala police station with my parents, some cop
94 named Conrad and, believe it or not, Carlos Fernpicker her/himself. Everyone was talking about
95 me like I wasn't even there. Anyway, I remember Carlos saying something to my dad like since
96 he was such a valued employee of the company for such a long period of time, ZenoPharma
97 would drop the charges if I promised never to come within 100 yards of the property again. I
98 knew I was going to be applying to colleges soon, so I agreed to the deal. My parents escorted
99 me back to the house and I immediately went to my room to cry. My dad came up and sat outside
100 my door. He told me not to fight the system, that life is easier when you play within the rules. It
101 really hurt to see what ZenoPharma had done to him. He then said that a letter addressed to the
102 Friends of the 'Alalā arrived in the mail earlier that day and slipped it under my door.

103
104 After I calmed down, I opened the envelope. My heart skipped a beat when I saw that gorgeous
105 'alalā staring back at me from the sheet of paper inside. It was a couple pages of a report created
106 by Lee Fletcher in conjunction with the planned expansion. The report essentially stated that
107 while there was no conclusive evidence that 'alalā were present in the planned expansion area,
108 the land was a prime natural habitat for the endangered species. I felt like I had just found the
109 proof I was looking for to convince my classmates and Ms./Mr. Keahi that I was right all along
110 and that ZenoPharma had to be stopped. The report also said that expanding the sap processing
111 plant would introduce harmful bacteria into the town's aquifer and that potentially harmful
112 contaminants could ultimately be consumed by people living in Pahala! While that all sounded
113 interesting, I was far more intrigued by the 'alalā. A while before when I was really into the
114 whole Friends of 'Alalā thing, I had read an article on greenpahala.com about how an entire road
115 project was halted because environmentalists had discovered 'alalā on the desired route. I just
116 loved the story about how such a small creature was able to stop the machine. The next day, I
117 told my dad about this, and he remembered saying one of his fellow sap testers saw a crow-like
118 bird, but that was all he knew about the birds and ZenoPharma.

119
120 I was nervous, and at the same time excited for school that Monday, which was September 11th.
121 All day I was running over and over again in my mind how I would address the club. When I
122 finally got there, I started by describing the 'alalā and its plight. This really got their attention.
123 Everyone loves cute, defenseless little animals and bringing down Suzy W was a huge source of
124 pride for the club. However, when I tried to make the link between the 'alalā and ZenoPharma,
125 the hissing started again. I even pulled out the Fletcher report, explaining in vivid detail what I
126 had to go through to get it, but still no one seemed to be on my side. Everyone was fooled by
127 ZenoPharma's propaganda.

128

129 After the meeting, Ms./Mr. Keahi pulled me aside and gave me a very stern lecture. S/He said
130 that I had to stop going after ZenoPharma and that the Company means too much to the
131 community for an insignificant student group to challenge it. Ms./Mr. Keahi also said that s/he
132 knew on a first-hand basis that ZenoPharma had a permit for the expansion, so the report I was
133 holding couldn't be accurate. Finally, s/he told me that because I was interfering with the
134 education mission of the club by promoting criminal activity, I would no longer be President.
135 Ms./Mr. Keahi even suggested that I visit the school counselor to discuss my behavioral issues. I
136 was completely devastated.

137

138 But I am resilient, and I wasn't going to let what seemed like a failure stand in my way of
139 success. I decided that I was going to take over where Fletcher left off. On September 15th, after
140 school had ended for the day, I took my camera and a bag full of provisions and went on a
141 mission to find 'alalā. I know I wasn't supposed to go within 100 yards of the property, but it
142 wasn't like they had a restraining order against me. Fortunately, there wasn't anyone around the
143 perimeter of the property. I searched until nightfall, crawling on my hands and knees across the
144 land, but I couldn't find any 'alalā. I tried again and again with no luck. But I didn't give up and
145 returned as often as I could even though I did get a horrible case of rash from some of the sap
146 from the mango trees on the property. At first, I stayed at the edge of the property, but when that
147 didn't work, I went in further and further.

148

149 On October 1, 2023, my redemption day, I finally found them. I was combing the ZenoPharma
150 property approximately 50 yards from the property fence to the south of the processing plant.
151 There, sitting on the branch of a flowering ohia 'ōhi'a lehua tree, I saw them: three 'alalā. I was
152 so excited that I fumbled with my camera. By the time I got myself composed, two of the 'alalā
153 flew off. These birds move faster than you think! But I did get one awesome shot of the third
154 'alalā. I also noted my coordinates on this aerial map I printed from the internet and took a photo
155 of the processing plant to verify my location. I looked for the other 'alalā, but despite searching
156 the area for several days, I never saw them again. As I was leaving, I noticed what I thought were
157 more 'alalā on the trees and I carefully took two photographs of them.

158

159 Rather than going back to my classmates with what I found, I decided it was best to find a true
160 believer. So I looked up Ms./Mr. Fletcher's contact information and emailed her/him with my
161 findings. S/He turned out to be so nice and took every word I said as truth. S/He even said that
162 because I had done such an excellent job, and since time was of the essence, there was no need
163 for her/him to confirm my findings in person. The one photo of the 'alalā in the tree was as real
164 as it gets. Unfortunately, Ms./Mr. Fletcher was pretty sure the ones from the plant itself were
165 common crows. From what I understand, Ms./ Mr. Fletcher contacted the Hawai'i Department of
166 Environmental Protection the very next day.

167

168 Unfortunately, the wheels of government are often slow. Knowing that the only way to save the
169 environment was to take action myself, I decided to pursue this injunction through the Friends of
170 'Alalā. But litigation is really expensive. Fletcher offered to cut his/her rates, but Friends of

171 'Alalā could not afford it until it got a great \$15,000.00 donation from Jane Meyerson, from
172 Animal Planet's Jane of the Jungle, to help pay for Fletcher's work. Fletcher later told me that
173 s/he called Meyerson personally. How cool is that?! That took care of a third of Friends of
174 'Alalā's costs and the rest has been donated by various community and environmental groups,
175 like the Nature Conservancy and the Natural Resources Defense Council. I know that Fernpicker
176 wants everyone to believe that I planted crows on the property in order to cause problems. While
177 I want nothing more than to see them fail, I'd never cut a corner like that.

I declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief.

Skylar Cabrera

Date: November 1, 2023

Statement of Kai Kurtz

1 My name is Kai Kurtz and I am 44 years old. I currently serve as a community advisor to the
2 town of Pahala, where I proudly reside. Sure a \$37,000 per year salary is a step down from the
3 \$215,000 plus bonus I was making as Operations Manager for the ZenoPharma SutureStick
4 plant, but if I wanted to save my soul, it was a small price to pay. My loving spouse was in full
5 agreement with my decision, and our two children, ages 9 and 11, couldn't be happier to grow up
6 in such a wonderful community. Really, the only thing that could make me happier is to see
7 Carlos Fernpicker stopped. That is why I am here today. I want the world to know what the
8 SutureStick operation is really all about. I even passed up a lucrative severance agreement
9 because it contained a gag order. SutureStick is not as green as everyone is led to believe.

10
11 I started working for ZenoPharma in their sales and marketing department in 2002, after I got my
12 marketing degree from Clarion University. It was a big move for me from Honolulu to Ka'u. I
13 didn't know anything about pharmaceuticals, but I had a nice smile and warm eyes, and that goes
14 far in the sales game. Before I knew it, I was crisscrossing the country on a regular basis, visiting
15 doctors' offices and hospitals by the dozens. During those first few years, I traveled so much that
16 I didn't feel like I had a home.

17
18 I met Carlos Fernpicker during my third year with the company, at our annual holiday party.
19 Carlos was standing by her/himself in the corner, not talking to anyone. You see, Carlos was a
20 researcher for the company and one of the smartest and socially awkward people I have ever
21 met. Carlos told me later that no one could relate to her/him. Somehow, we became fast friends.
22 The best part was that Carlos was willing to take the time to explain to me the science behind our
23 products. With that knowledge, my ability to sell increased exponentially, and I was off on my
24 meteoric rise. In 2013, when I just turned 34, I became the youngest Vice President of Sales and
25 marketing in the history of the Company. I think Carlos was always a bit jealous. Being a lab rat
26 isn't exactly a lucrative position, even though it is really important.

27
28 When Carlos made the breakthrough of a lifetime and discovered SutureStick in early 2014, I
29 couldn't have been happier for her/him. Not only was s/he getting the credit s/he deserved, but
30 the world was also given a potentially revolutionary advancement in science. Carlos decided to
31 take me along on this adventure and got me moved laterally to the position of Operations
32 Manager. I was happy because it meant stability and my spouse and I had just started our family,
33 but I still should've seen the warning signs.

34
35 First off, even though ZenoPharma publicly stated that the business was going well, those of us
36 inside the company knew that we were really lagging behind the competition. We didn't have
37 that many products in the pipeline, and all our best sellers were going to go generic in the next
38 five to ten years. This caused senior leadership to make some rash decisions, most certainly
39 including Carlos as Executive Director of the soon-to-be-built SutureStick facility in Pahala.
40 Now Carlos may have been an extraordinary scientist, but s/he was not a leader. Really, it would
41 have been far more natural for someone like me to take over that position rather than Carlos. I

42 honestly thought Carlos would crack under the pressure, but instead it made her/him go savage
43 beyond recognition. It's sad what power does to people.

44
45 Of course, I didn't realize it at first, and I went about business as I saw fit. One of my first
46 initiatives was to hire as many locals as possible to fill our vacant low-skill positions. This made
47 me very popular in town and jump-started my love affair with Pahala. It was clear to anyone who
48 visited there that the town was struggling, and I thought it was our duty to help. Unemployment
49 was high and the pay was generally low. Carlos couldn't have cared less, but to me it was very
50 important. When we received FDA approval for SutureStick in early 2016, I really stepped up
51 my "employ local" plan. That's when I hired Steven Cabrera as a sap tester. I only mention
52 Steven because if it weren't for him, I may have never realized how calloused and incentivized
53 Carlos had become. Everything seemed great on the surface, just like the magical sap itself. I
54 was so used to believing everything Carlos said that I just took it at face value. When Carlos said
55 that the SutureStick process was 100% natural and completely green, I believed it. I started a
56 massive marketing campaign that I nicknamed "operation greenglue" plugging into the growing
57 consumer desire to save the environment.

58
59 By the beginning of 2019, we were at the top of our game. That year, we grossed over \$100
60 million and employed more than 230 people at the Pahala plant. I was very proud of the fact that
61 about 60% of them were from Pahala. I even won an industry award for the best marketing
62 campaign of the year. However, Carlos was not satisfied. The rest of her/his science buddies back
63 at HQ still couldn't generate the sap synthetically, and we were already beginning to max out
64 production at the Pahala plant just as demand was growing. During our strategy meetings, Carlos
65 would lament the future instead of enjoying the present. To me, her/his concerns seemed
66 irrelevant and counterproductive. All of the feedback we were getting from the medical
67 community was that our product was the best surgical adhesive out there. If our reputation
68 continued to grow, then we could charge more for SutureStick. It's simple economics really. But
69 Carlos didn't understand; s/he was obsessed with making and selling more.

70
71 However, when Steven Cabrera contracted his strange flesh eating bacteria, I began to re-think
72 my priorities. It was September 23, 2020. I was making my normal rounds of the facility. Out in
73 the grove, I noticed Steven taking sap samples. He was wearing shorts and socks pulled halfway
74 up his calves. Right above his sock, I noticed this strange rash. It was pretty gruesome really. It
75 was an ulcer with some yellow puss oozing out of it. I told him that he should get it checked out,
76 but Steven was a bit stubborn and said it was nothing. Two days later, the lesion had quadrupled
77 in size and Steven was in the hospital with tremendous pain. Later I found out that he had to have
78 a chunk of his leg removed. He couldn't return to work. I felt awful. All the money in the world
79 really didn't matter if we were maiming our people in the process. I sure don't support blood
80 diamonds, and feel the same way about blood sap. I was certain that something in the sap caused
81 the ailment. What else could it have been? When I visited Steven in the hospital, I told him that
82 our insurance would cover all of his medical bills and that our workers' compensation plan
83 would help him out financially for a while.

84

85 I immediately went to speak with Carlos about the possibility that the sap was causing the
86 disease, which I learned from Steven's doctor was called mycobacterium ulcerans ("MU") and is
87 unheard of in the United States. Steven's doctor had taken a complete medical history, and she
88 was certain that the only places that Steven could have come into contact with the MU were the
89 sap and the grove. The doctor was very worried that other workers could be exposed, although
90 she had never seen a case of MU in Pahala before. Unfortunately, Carlos wasn't having any of it.
91 S/He was so worried about how this news could affect SutureStick's reputation that s/he decided
92 to challenge the workers' compensation claim behind my back. I tried to order some testing on
93 the company's budget, but I learned that there is no test that will tell you whether water or sap
94 has MU in it. Still, from that day forward, Carlos refused to drink water from any faucet at the
95 plant and never touched the sap with her/his bare hands again.

96
97 When Carlos won the workers' compensation case in 2021, s/he came to my office jumping up
98 and down repeating over and over how we had saved ZenoPharma from tremendous
99 embarrassment. I was livid. I yelled at Carlos, thinking that if I spoke loud enough I could get
100 through her/his ever-thickening skull. I told her/him that we should cut Steven a check for
101 \$250,000.00 to make up for it, but Carlos was certain it would be seen as an admission of guilt
102 no matter what language our lawyers could have worked out. I felt completely helpless and
103 decided right then and there I would only speak to Carlos when it was absolutely necessary.

104
105 Over the next couple years, I was just going through the motions at work. Some days I wouldn't
106 do anything but surf the web and watch the clock until quitting time came around. I was
107 depressed, and our little plant was essentially on cruise control anyway. Fortunately, none of the
108 other workers came down with the same virus that plagued Steven. But I did hear a strange story
109 one night in 2021 at my favorite local watering hole, the Slate Shack. Some deer hunters were
110 nestled in a deer stand not too far from the SutureStick plant and they bagged a deer, but when
111 they went to collect the body, the deer was covered in ulcers that oozed a yellow liquid. To me,
112 this was far more than just mere coincidence.

113
114 In February 2023, Carlos came to my office. S/He had gotten the okay from headquarters to
115 expand the size of the processing plant in the hope of increasing production for the following
116 year. It was a desperation move. I had seen an internal memo in January 2023, from a Senior VP
117 explaining that ZenoPharma was in big trouble. Not only was the synthetic SutureStick project
118 still stumbling, but our last three big selling drugs were going to be subject to generic
119 competition in 2024. What was even more troubling was the report's mention of the fact that
120 long term testing of SutureStick suggested that those who had used the product in heart surgeries
121 had begun to experience some negative side effects, including abnormal chest pain associated
122 with inflammation of the suture site. I asked Carlos about this, but s/he mumbled something
123 about it just being conjecture for liability purposes and moved on. I knew better: we had moved
124 too fast, and now everyone was paying the price. The human element aside, what if the
125 expansion destroyed whatever in the grove made the sap special in the first place?

126

127 Obtaining the construction permit required us to get clearance from the Hawai‘i Department of
128 Environmental Protection. I was supposed to obtain these permits for the company. I decided to
129 take this task very seriously since it was my first opportunity to really affect the way the
130 company operated in quite some time. It sort of pulled me out of my deep depression. I decided
131 to hire one of the most well-respected environmentalists in the area to conduct our environmental
132 impact analysis, Dr. Lee Fletcher. Fletcher worked efficiently and combed the expansion area in
133 great detail for a number of weeks before finally turning her/his report to me on April 14, 2023. I
134 was pleased with the level of detail and intrigued to read that s/he thought that the planned
135 expansion was a prime location for a flock of ‘alalā to reside. Lee suspected there might be a
136 flock living there now but hadn’t been able to prove it.

137
138 I had never heard of an ‘alalā before, but quickly got myself up to speed. ‘Alalā are an
139 endangered species in Hawai‘i. Lee’s report suggested that the expansion plan should not
140 proceed because this area was so important to the population of this dying species. Of equal
141 interest to me was Lee’s astute observation that the planned expansion would potentially cause
142 rapid ‘ōhi‘a death, allowing contaminants from the plant to reach the aquifer and local water
143 supply. This means that whatever had made Steven Cabrera sick could make the whole town ill.
144 I faked a sense of disappointment and emailed the report to Carlos later that day.

145
146 It wasn’t until a few months later that I heard anything again about the Fletcher report or the
147 expansion. On Friday, September 8, 2023, Carlos blasted an email to the entire plant notifying us
148 that construction was due to start in early November, right after the end of the sap harvest season.
149 I think Carlos was intentionally keeping me out of the loop, so I decided to pay her/him a visit.
150 Carlos told me that s/he fired Fletcher and hired her/his own consultant, Bree Nellie. Nellie’s
151 report made no mention of ‘alalā or any other endangered species, and it was used to secure the
152 required permits. I was shocked and stared right through Carlos. That’s when I really took notice
153 of the huge cage located in Carlos’ office. For years, Carlos had boasted about the cage and how
154 s/he had perfectly recreated the habitat surrounding grove using actual samples s/he took from
155 the property. Right there in front of my eyes was all the evidence you would ever need that
156 Carlos was manipulating the truth. Sitting on an ‘Ōhi‘a Lehua branch was an ‘alalā. I could tell
157 immediately because I remembered reading that ‘alalā have a thicker bill than regular crows.
158 How could Carlos deny the fact that ‘alalā were thriving on the property when s/he had collected
159 one her/himself? I asked her/him what kind of bird was in the cage, and Carlos stumbled from
160 the unexpected question. Carlos said, “Well that, my friend is an a hem...a crow, what I mean
161 to say is that, that’s a crow.” Talk about an almost Freudian slip! If only my eyes hadn’t lit up, I
162 think s/he would have out and out admitted it!”

163
164 That was the last straw. I threw my hands up in the air and yelled, “I quit, take your plant, take
165 your glue and stick it! If you don’t care about the environment, then I don’t care about you, this
166 company or this job! The horror! The horror!” I know it was a bit over the top but the sentiment
167 was 100% correct. Carlos was a monster who had manipulated everything, and the Pahala
168 community is paying the price. I went back to clean out my office. I shredded everything that I
169 was supposed to under company protocol, with two exceptions. I kept Fletcher’s executive

170 summary, which is all I had left of her/his report, and also took a printout of the January 2023
171 ZenoPharma report that outlined the concerns HQ had about the company and SutureStick. You
172 never know when something like that will come in handy. I didn't know what to do with
173 Fletcher's report so I looked online for a group that could help. That is when I learned about the
174 Pahala Chapter of the Friends of the 'Alalā. I shoved the report in a blank envelope and dropped
175 it off the next day at the address listed on the website. If any group knew what to do with that
176 information, it was them.

177

178 I really do hope that between what I have said and what Fletcher and Skylar have done, Carlos
179 and ZenoPharma can be stopped. Sometimes, David should defeat Goliath, especially when
180 people's health and the environment are at stake!

I declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief.

Kai Kurtz

Date: November 1, 2023

Statement of Lee Fletcher

1 My name is Lee Fletcher. I am sixty-one years old, and I am the President and Chief Executive
2 Officer of my own consulting business, Planet Protectors, LLC, or “PPL” for short. PPL provides
3 comprehensive environmental assessments for government, private industry, and litigation.
4 Please note that I said “comprehensive.” Anyone can provide an environmental assessment that
5 complies with the bare minimum the law requires. But some companies want more than just the
6 thin analysis of endangered or threatened species that have actually been found. If you truly care
7 about the environment, you care not just about those species you see but those that might be
8 present. Critical habitat is destroyed every single day in this country. Right now, an endangered
9 or threatened animal somewhere in this county is watching its home be destroyed by a developer,
10 its favorite food gets out-competed by a genetically engineered crop, or its precious, life-giving
11 forest be cut down by a corporation.

12
13 That is why PPL doesn’t just assess what animals can specifically be identified on a property, it
14 assesses whether the property could become a home for endangered or threatened species. Even
15 Congress recognized that an endangered animal doesn’t need to be present for habitat to be
16 critical to its survival. Our proprietary software, called NestFinder, contains habitat parameters
17 for every endangered and threatened species in the world. I get most of the data on the animals
18 from old encyclopedias, from fish and wildlife databases, or from the internet. So, after we
19 perform extensive environmental testing and assessment, we plug those into the system and -
20 voila! - it generates a list of every species–threatened, endangered, or otherwise–that could use
21 that land as a habitat. It’s a revolution in environmental assessments. Or at least it will be once I
22 get it to work. Right now, I still do most of the calculations and searches by hand. I’m PPL’s sole
23 employee, although we have outsourced the receptionist position.

24
25 I have given the lawyers a copy of my resume, which explains my career in greater depth. I
26 graduated from Oberlin College in 1984. After a few years in wildlife preservation, I went back
27 to school and got a masters’ degree in zoology from Penn State. Not long thereafter, I was hired
28 by the Hawai’i Department of Environmental Protection. It was a great opportunity, although
29 overtime I began to clash with my bosses. The more I thought about things, the more I came to
30 realize that the environment was a sacred realm that had to be zealously guarded from human
31 invasion. Unfortunately, the Department of Environmental Protection was not as aggressive in its
32 view as me. After a few suspensions for insubordination, I got into a fight with the Lieutenant
33 Governor and was charged with disturbing the peace. The Department and I agreed to go our
34 separate ways. Of course, I threatened to sue. I have the First Amendment right to join whatever
35 organizations I wanted. Even if some other people in those organizations advocated violent
36 means to protect the environment, I did not. And I was only convicted of trespassing once, when
37 I was on annual leave protesting a new mine in Boulder, Colorado. I gladly paid the small fine in
38 order to make my voice heard. Ultimately, the Department and I settled. They paid me not to
39 come to work for a year until my pension vested, and I retired early. The next few years were
40 great. Following advice from a fellow environmentalist, I even went without shoes for a year!
41 What an amazing way to experience earth . . . the freezing snow between your toes, the burning

42 desert under your feet! Ironically, while out on one of my walks, I sliced the bottom of my foot
43 on a broken piece of glass, and the ER doctor used SutureStick to close my wound. It worked so
44 well that I wasn't surprised to be told it was an organic product. Now I know better.

45
46 But all good things must come to an end, and my pension wasn't stretching quite as far as I
47 thought. You have to understand that even though my term at the Department of Environmental
48 Protection was occasionally rocky, it was also very productive. I performed thousands of
49 environmental assessments and drafted dozens of environmental impact statements. I also served
50 as an investigator and lead investigator for over fifty enforcement actions, including a dozen
51 Endangered Species Act litigations. I have been in court on environmental matters more than all
52 but half a dozen or so people, and I knew I could leverage that. Since founding PPL, I have done
53 over one hundred environmental assessments and have prepared six environmental impact
54 statements. I have testified in court on nine occasions, and my deposition has been taken in five
55 or ten others. I've been qualified as an expert seven times, although twice the court declined to
56 qualify me. Neither of those was in Hawai'i, and I have testified twice in private practice and
57 dozens, if not hundreds, of times in my life. As you can see, although I might be a bit "granola"
58 in my private life, I know how to separate my personal views from my professional
59 responsibilities.

60
61 At first, PPL was very successful, and money came in from companies, governments, and friends
62 I had made over the years at the Department of Environmental Protection. But over time, that
63 income stream dried up, and PPL's clientele began to shift. Today, PPL works mostly with small
64 groups and individuals, often those who are in litigation or those who are considering it. We have
65 worked for defendants from time to time, but the majority of the work we do – probably 75% or
66 80% - is for environmental plaintiffs.

67
68 When Kai Kurtz called me to discuss performing an environmental assessment for ZenoPharma,
69 I was overjoyed. Not only was this the first corporate client to call in over a year, but I knew that
70 ZenoPharma's Pahala plant was highly profitable, so they would be able to afford the kind of
71 comprehensive environmental assessment I love to perform. I faxed Kurtz a contract, fired up my
72 biodiesel sedan, and headed to Pahala immediately. I spent nine days on the property – three in
73 the offices reviewing the expansion plans, two taking soil and water samples, and four personally
74 walking the entire area, so that I could see the nocturnal life of the ecosystem as well. You can
75 bet you won't get that from the likes of Bree Nellie!

76
77 'Alalā are one of Hawai'i's greatest ecological resources. They're over 1.5 feet long from bill to
78 tail, and not even Big Bird in all their glory could have held a candle to the 'alalā. Not only that,
79 but 'alalā have a real personality. They are very intelligent and would be great pets . . . or would
80 be if they were not an endangered species. Not that that has stopped pet store owners, you
81 understand. An 'alalā can be worth a thousand dollars or more. I understand that there are only 2
82 such 'alalā sites or so in the entire county, and the 'alalā are no where else in the nation.

83

84 Although I put all of the data into NestFinder, even a casual student of the environment could
85 have told you that the ZenoPharma property was ‘alalā heaven! ‘Alalā flourish in dry and semi-
86 dry forests. The ‘alalā also likes to have many fruiting trees, which the ZenoPharma property had
87 too. Their favorite plants were also there in the grove. It was about the best habitat you could
88 imagine for ‘alalā.

89

90 In fact, it was so good I was stunned not to actually see any ‘alalā or ‘alalā scat there. And I was
91 looking! Even without sighting an actual ‘alalā, I knew within a reasonable degree of scientific
92 certainty that the property contained physical and biological features essential to the conservation
93 of ‘alalā. In thirty years doing environmental assessments, I have never seen a better ‘alalā
94 habitat.

95

96 What I suspected would be the case was proven by Skylar Cabrera. Skylar reached out to me in
97 October 2023, and I was excited to see that s/he had found an ‘alalā on the property. Of course, I
98 didn’t take the findings at face value. When I received the photos, I sent them immediately to a
99 friend who specializes in computer forensics. She reported back that the photos had not been
100 altered and that the GPS tags were legitimate. I confirmed that the GPS tags corresponded to the
101 ZenoPharma property and checked my own notes to confirm that the vegetation was consistent
102 with that area. It was, as best I could tell, although I was denied permission to return to the
103 property myself to see if I could verify the specifics. I’m well aware that some unscrupulous
104 people have “planted” ‘alalā in order to try and stop development, and that possibility cannot be
105 entirely foreclosed, but I have spoken at length with Skylar. S/He’s not that kind of person.
106 Besides, the findings just showed what I already knew: when you find a habitat that’s good for
107 ‘alalā, if you look long enough, you’ll find them.

108

109 It is my opinion, with a reasonable degree of scientific certainty, that the ZenoPharma expansion
110 endangers critical ‘alalā habitat for three reasons. First, the proposed expansion would greatly
111 increase the plant’s “footprint,” meaning that it would take up lots more space. We know from
112 Skylar’s photos that there are ‘alalā on that land who would be displaced or killed. In addition,
113 the increase in ‘ōhi‘a plantings create rapid ‘ōhi‘a death which would change the type of
114 vegetation and food that ‘alalā require. Second, the expanded plant would be processing much
115 more of the sap, which increase the dumping into Ka`u stream and thus the aquifer. Finally,
116 ZenoPharma will be hiring more people and putting in an employee cafeteria. That means more
117 trash and thus more scavengers like rats and mongoose, which love the taste of ‘alalā eggs and
118 chicks. ZenoPharma’s plan is tailor-made to ruin what could be the largest ‘alalā flock in
119 Hawai‘i.

120

121 But the danger to ‘alalā isn’t the only thing wrong with the expansion. By digging out the new
122 part of the grove, ZenoPharma will cause run-off into the aquifer to an unprecedented degree.
123 That’s a bad idea generally, but it’s even worse if, like ZenoPharma, you’re dumping chemicals
124 in the stream. Although the forest is within the EPA’s limits, and probably would be even with
125 the planned expansion, the cadmium levels are way above normal. At least I think they are. The

126 water was never tested before I tested it, so there's no way to be certain about the baseline
127 natural levels.

128
129 Any time a company is dumping unnatural chemicals into an ecosystem, it risks other effects,
130 which I call "para-environmental disruption." Because every disruption in the ecosystem has
131 consequences, you can just look for the consequences, and if you find them, you know
132 something is wrong, like a doctor looking for symptoms in order to realize that a disease is
133 present. If I find abnormalities, then, they probably indicate a para-environmental disruption. I
134 wrote a paper on this that was published on www.planetearthfirst.com, and I'm trying to get it
135 published. So far, I've been shut out by the traditional peer reviewed, scientific journals.

136
137 When I asked around town, looking for telltale abnormalities, I found that four different Pahala
138 residents have experienced some kind of necrotic skin condition in the three years since the plant
139 got up to full production. Four! In a town of only 10,000! According to the Centers for Disease
140 Control, the usual annual rate of necrotic skin conditions is only 6 per 100,000. That means that
141 Pahala's rate is about twice what it should be. It sounded like a classic case of para-
142 environmental disruption, and I told Kai that. That's when I learned about Steven Cabrera's
143 condition. I mean Mycobacterium Ulcerans?! There's never been a reported case of that in the
144 United States. Now, there is no test that can be used to determine whether MU is in the water or
145 not, but Steven Cabrera worked at that laboratory everyday. I looked into it, and according to
146 Freslevin and Blackwood's Tropical Medicine, MU is often found in developing countries when
147 there's new construction. Tropical Medicine also says that MU grows more vigorously in
148 solutions containing elevated concentrations of zinc and mercury. Not much is known about
149 exactly how ZenoPharma processes the sap, but we know it produces cadmium. Cadmium is a
150 "group 12" metal, just like zinc and mercury, so it's likely that cadmium has the same effect.
151 Tropical Medicine also says that MU lives in water of 60 to 75 degrees Fahrenheit. ZenoPharma
152 records show that the aquifer water stays in that range year round. Although I can't say how the
153 MU got into the water, or even for certain that it's there, elevating cadmium levels might make
154 the environment more hospitable for MU. The danger is obvious. While most residents use some
155 sort of filtration system on their well water, not all of them are equipped to remove bacteria such
156 as MU. If more of the quarry water mixes with the aquifer, thousands of people could be exposed
157 to MU and other potentially harmful substances.

158
159 I bill \$250/hour for an environmental assessment, and I worked 10 hours per day for 9 days, plus
160 three full 8-hour nights. Plus, it took me an extra week working full-time to analyze the data and
161 prepare my forty-page report. I didn't realize, until Skylar Cabrera contacted me, that those you-
162 know-whats didn't even use it! Instead, they hired some wet-behind-the-ears kid to throw
163 something together. Still, if ZenoPharma had never hired Bree, Skylar never would have gone
164 looking, and we would have missed the 'alalā living at the SutureStick facility. The size of the
165 bird is the telltale sign of an 'alalā. Sadly, I cannot say the same for the rest of Skylar's
166 conclusions. First, there are no bird droppings in the photos. Second, the birds in the other photos
167 are not 'alalā. They're just common crows. I wish they were 'alalā - then we would've been able
168 to close the entire plant down! But they're not. Still, I gave Friends of 'Alalā a nice discount rate,

169 \$200/hr., half my usual rate for litigation work. I've billed over 50 hours on this case reviewing
170 my report, preparing Friends of 'Alalā attorneys for court, and drafting this statement.

171
172 It's impossible to know for certain whether the other two birds Skylar saw that day were 'alalā,
173 but I would bet they were. Skylar is an unusually keen observer. Regardless, it's commonly
174 accepted in the environmental science community that for every one of an endangered species
175 like the 'alalā that you see, there are three to five more in the same habitat. That means that there
176 might be a dozen or more 'alalā, all living right in the vicinity of that plant, which would
177 represent one of the largest flocks ever discovered in all of Hawai'i. I immediately contacted the
178 Department of Environmental Protection, but they just sent someone out for a couple hours to
179 look around and then gave up. I would not have made such an amateur mistake.

180
181 I know that there are a lot of economic factors at play here, and I'm aware that a designation of
182 critical habitat must consider economics. But unemployment and the recession are temporary
183 issues. Once the 'alalā are gone, they will never come back. And how about when Steven
184 Cabrera isn't the only one with a flesh-eating bacterium? ZenoPharma must be stopped.

185

I declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief.

Lee Fletcher

Date: November 1, 2023

Statement of Carlos Fernpicker

1 My name is Carlos Fernpicker, and I am a Vice President of ZenoPharma, Inc. I am also the
2 Executive Director and Research Coordinator for ZenoPharma's manufacturing facility for
3 SutureStick. That facility is located in Pahala, Hawai'i, where I have lived for the past sixteen
4 years on a quiet street on the outskirts of town. I graduated from Drexel University with degrees
5 in biomedical engineering and biology. Several years ago, I received an Executive MBA from
6 Villanova University. I am fifty-two years old.

7
8 When I first moved to Pahala, it was a sad, dying town. Since then, I have been excited to watch
9 it come alive again, much like the thousands of people who the hard working employees of
10 ZenoPharma have helped with SutureStick. But I am not going to stand on some high horse and
11 say that I, or ZenoPharma, is above reproach just because we've created a few jobs and are
12 selling a product that helps people. We have to follow the law, just like everybody else. But what
13 we have here is one person with her/his own personal vendetta trying to disrupt progress based
14 on nothing more than a vivid imagination and some clever manipulation of the legal system. I
15 can understand why Skylar is upset, and I've tried to cut her/him a break or two, but the bottom
16 line is that I simply don't believe that s/he found a flock of 'alalā on the property. Besides,
17 Pahala is on life support. Now is not the time to pull the plug.

18
19 I remember the day I discovered the magic that existed in my own backyard. It was September
20 14, 2013. At that time, I was working at ZenoPharma's facility in Ka'u as a research director.
21 On my way to work, I would drive by the old grove located on the outskirts of town. That day, I
22 decided to park my car on the side of the road and take a closer look at the different types of
23 trees. I couldn't help but notice the sap from an 'ōhi'a lehua tree. It was unlike anything I had
24 ever seen. I decided to take a sample back to the lab to figure out exactly what it was. What was
25 immediately apparent was that this stuff was extremely sticky. In fact, I had to use some old
26 newspaper I had in my trunk to get the clump I had grabbed off my hands before I could even
27 touch my steering wheel.

28
29 That was when it hit me. My research team had been working for years trying to develop an
30 adhesive to be used in surgical procedures. This is a very significant issue – using surgical
31 staples or even sutures increases the risk of infection, impedes healing, and can lead to more
32 visible scars. We at ZenoPharma knew that if a chemical could be synthesized that would close
33 surgical wounds and would degrade naturally, it would be a blockbuster. The sap showed
34 promise in early testing, and I was able to convince ZenoPharma to give me a small lab.
35 Initially, I purified the sap through a filtration system and then ran it through a massive
36 centrifuge to remove most of the water. Then I blended the dense material left behind into a paste
37 before finally removing all other contaminants through a novel heating technique that I invented.
38 But I could not get the balance right; it was always too sticky to use. Then I remembered the
39 newspaper, and I figured out that the Pahala Times uses cadmium in its inks. Sure enough,
40 adding a little cadmium to the mixture made the balance just right, and SutureStick was born.

41

42 SutureStick is 10 times stronger than any commercially available medical adhesive: to break the
43 bond it forms on a piece of glass takes an amazing 120N/mm, which is the same amount of
44 downward force as six elephants balancing on a silver dollar! I was also able to create a solvent
45 using Lysozyme, which is produced in saliva and tears, so everything associated with
46 SutureStick is 100% organic.

47
48 In early 2014, I approached my bosses with SutureStick. I was lauded as a genius, and who was I
49 to disagree? The Company quickly purchased the old Campbell grove the next day. Within a
50 month, I was made a Vice President, given shares in the Company, and placed in charge of the
51 plant that was to be built there to harvest the sap. To start the process of gaining FDA approval
52 and creating the plant, I was allowed to assemble my own team of experts. Among those who
53 first made the move to Pahala with me was Kai Kurtz. When I was at ZenoPharma HQ, Kai was
54 responsible for sales and marketing, and we were as tight as two coworkers could be. I made Kai
55 the plant's operations manager. Kai took to the job better than I would have imagined. I mean, I
56 had been living out in Pahala for years and hardly knew anyone, but Kai instantly became the
57 face of the company in town.

58
59 By 2016, we had FDA approval, twelve patents, and had entered full production mode. That year,
60 we grossed nearly \$110 million in revenue and were viewed by HQ as the future star of the
61 company. At that point, we employed over 250 people, the majority of whom were Pahala
62 residents. We even received a huge tax break from the County for being so "green." Meanwhile,
63 SutureStick orders were coming in faster than they could be filled. By late 2016, SutureStick had
64 been used in over 100,000 procedures worldwide, including as both a surgical and dental
65 adhesive, and had even been used in emergencies to close wounds on the battlefields in Iraq and
66 Afghanistan. However, when I tried to simulate the sap's growth in the lab, it would not
67 reproduce, and we have never been able to create any other chemical in the lab that gives the
68 same result. As a result, we can only use as much sap as we can harvest from the grove. And of
69 course, we can't harvest all of it, or there would be none left to grow the following year. My
70 calculations at the time showed that we would max out productivity in 2023 with revenue
71 somewhere in the \$250 million range, which is nice, but tiny for a medical device.

72
73 Right around that time, things between Kai and I got a bit strained. Steven Cabrera, one of our
74 local sap testers, came down with this strange illness, some kind of flesh-eating bacteria. It was
75 so bad that he lost a portion of his leg and had to quit. I felt kind of bad for him, but I challenged
76 Steven's workers compensation claim. We ended up winning because Steven couldn't prove that
77 the bacteria were present in the sap or water. What a relief! The bad press from that could have
78 killed SutureStick. But Kai was furious. S/He felt that not only had I gone behind her/his back,
79 but that I had turned my back on the locals. Kai wanted to cut Steven a check for over two
80 hundred grand! I vetoed that move, thinking that it would be the same as admitting guilt. I
81 remember Kai screaming at me that I needed to be stopped before the entire town was ruined,
82 and more workers had their flesh fall off their bones. Frankly, there is no room for that kind of
83 drama in running a business. It's not like anyone else was getting sick. There was simply no

84 scientific connection between our plant and Steven Cabrera’s MU case. I did order bottled water
85 for the plant, though, and I never again touched the sap. Better safe than sorry, you know.

86
87 In February 2023, we reached our production capacity. Just prior to that, I received a report from
88 ZenoPharma’s head of research and development stating that the SutureStick development team
89 was still five years or more away from being able to produce the sap in a laboratory setting at
90 levels that would match our current demand. To make matters worse, the company’s biggest
91 drugs were about to go off patent. There was also some mention of problematic longer-term data
92 on the effectiveness of SutureStick, but I wasn’t too concerned with that because the report stated
93 it was all within the margin of statistical error. Bottom line: the company was relying on
94 SutureStick and, without it, ZenoPharma was a prime target for a corporate takeover or, worse,
95 bankruptcy. I was speaking with the President of the company daily, and we decided that the best
96 way to increase production in the short term was to expand the size of the facility so that we
97 could harvest more sap. Of course, it wouldn’t have made much sense to expand the facility
98 without expanding the amount of available sap because no one knows what other plants make
99 this sap. If my calculations were correct, this expansion would allow us to triple our revenue and
100 double the size of our staff.

101
102 In order to obtain the permits for construction, we were required to submit an environmental
103 impact assessment to the Hawai’i Department of Environmental Protection. I let Kai take the
104 lead on this, which proved to be a mistake. Kai hired Lee Fletcher. Fletcher explored the
105 proposed expansion site, which I had designated as the 150,000 sq. ft. area on the south end of
106 the grove. In mid-April 2023, Fletcher produced one of the most absurd things I had ever read.
107 The entire report was about ‘alalā. ‘Alalā: the one animal everyone knows will kill a
108 development project! It went into detail about how the forest land south of the grove was their
109 perfect habitat. That alone was silly, but the kicker was that the report didn’t say anything about
110 actually finding any ‘alalā on the property. I can understand respecting endangered species – I’d
111 give \$200 every year to the Nature Conservancy – but I would think there would actually have to
112 be an ‘alalā there to be endangered! Look, I love the environment, and for years I have kept a
113 cage in my office filled with specimens I collected from the land around the plant, including a
114 crow. But, an endangered species finding would most likely mean the end of the expansion and
115 quite possibly the end of ZenoPharma! The report also claimed that expanding the facility would
116 taint the aquifer and harm the local population. It was absurd. We all knew from Steven
117 Cabrera’s workers compensation claim that there was nothing wrong with the water. It was safe
118 to drink. So, naturally, I shredded the report and fired Fletcher. Of course, I decided not to tell
119 Kai; s/he was the one who hired the tree-hugging hippie in the first place.

120
121 Instead, I retained Bree Nellie, an environmental consultant from Honolulu, sometime in early
122 May 2023. Bree was a good kid who graduated from Yale but couldn’t find a job. I knew s/he
123 would be hungry for the work and would do right by us. Bree was able to produce the document
124 we needed in a few days and didn’t mention the ‘alalā anywhere in her/his report. S/He also
125 confirmed my assertion that the aquifer would not be harmed. The City Council and Department
126 of Environmental Protection signed off in a heartbeat once they read that report.

127
128 On September 1st, I was finally able to get all of the permits in place and the surveyors out there
129 to plan the project. I was walking around the grounds that day when I noticed one of the
130 surveyors talking to someone standing on the outside of our property fence. I feared it was a
131 corporate spy or someone who would chain her/himself to a bulldozer, so I confronted her/him
132 aggressively. However, as soon as s/he introduced her/himself as Steven Cabrera's kid, working
133 on some environmental project, I relaxed. I offered to take Skylar and the other students in the
134 club around the plant. No one is prouder of our green processes than I am!

135
136 Right around closing time the following Friday, Kai confronted me about the Fletcher report.
137 Kai was furious that I had fired Fletcher and questioned my motives for doing so. I told Kai that
138 that was yesterday's news and that I had taken care of the problem. Kai stared off into the
139 distance for a minute then suddenly stood up, looked me right in the eye and exclaimed, "I quit,
140 take your plant, take your glue and stick it! The horror! The horror!" I called security
141 immediately, and they shadowed Kai as s/he packed a few boxes, shredded some papers, and
142 departed. I categorically deny ever talking with Kai about my cage, much less about the 'alalā
143 s/he mistakenly claims I possessed. I've only ever had crows and other birds in the cage. Kai
144 must have confused a regular crow with an 'alalā. S/He was never one for science.

145
146 The next night, I was awakened by a call from Sergeant Corad down at the Pahala police station.
147 Apparently, security caught Skylar Cabrera trespassing on ZenoPharma property. I went to the
148 station but decided not to press charges. I guess I felt bad about what happened with Kai the day
149 before and, of course, for Steven who was there. I should've known better and at least sought
150 some sort of restraining order. After all, Skylar was 18. Instead, I let the little troublemaker go.

151
152 In October, I got a call from an Officer Dunn at the Department stating that my licenses were
153 under re-review and that permits couldn't be pulled because a cluster of up to 15 'alalā were
154 reported in the area where the expansion was planned. Officer Dunn gave me the exact location
155 and said that she would be out there on Monday the 9th to take a look. To see exactly what I was
156 dealing with, I went out to the supposed spot with Dunn. We must've been out there for five
157 hours, and I can confirm that no 'alalā, nests, or even droppings were found. I figured out that the
158 review process would take months, so I decided to forge ahead with breaking ground and deal
159 with the fallout, if any, when it occurred. By then, the land would be cleared and there would be
160 nothing anyone could do about it. That's the cost of doing business, you know. But thankfully,
161 the Department finished its investigation right away and cleared us to proceed.

162
163 Unfortunately, Skylar filed this bogus injunction against me. At first, I didn't understand how the
164 so-called "Friends of the 'Alalā" could afford the lawyers they hired. But then I saw Jane
165 Meyerson's name in Skylar's statement. It all makes sense now. Sure, everyone thinks she's great
166 for cavorting with baby gorillas or whatever on TV, but where does she get the money to fly off
167 to Kenya all the time? She's also the chairman of her family's business, Stull Medical Adhesives,
168 which she inherited. Stull is our toughest competitor! Now construction is halted, and
169 ZenoPharma is in the red and running out of operating capital. Skylar Cabrera is being played.

170 S/He set this ‘alalā thing up as some sort of elaborate hoax to get revenge on me because of what
171 happened to her/his dad, but now it appears that Stull is calling the shots.

172
173 I think Skylar found the ‘alalā somewhere else or got them from Jane or one of her/his other
174 environmentalist buddies and planted them on ZenoPharma property or photo-shopped it or
175 something. How can anyone tell from that one single photo that this bird was found on our land?
176 I guess it doesn’t matter, though. Whatever s/he did for whatever reason, there is way too much
177 at stake for way too many people to let a PETA wannabe stop ZenoPharma from saving lives and
178 the town of Pahala. You have to understand what the town was like a few years ago. If we cannot
179 expand, we may not be able to keep ZenoPharma in business. If there’s no ZenoPharma plant,
180 hundreds of jobs will be lost and things will quickly go back to the way they were: no money, no
181 hope. I’d bet even the KTA wouldn’t last more than a year or two, much less the newer stores
182 that just opened here. We have to do whatever it takes to see that the plant expands, not just for
183 ZenoPharma, but for Pahala.

I declare under penalty of perjury that the above statement is true and correct to the best of my knowledge and belief.

Carlos Fernpicker

Date: November 1, 2023

Statement Jo Keahi

1 My name is Jo Keahi, but most folks just call me “Coach,” or at least they did before I just
2 resigned. Those allegations about me taking payments from UH boosters to steer my players
3 there were absurd, but when the NCAA hearing panel found me guilty of lying to investigators
4 under oath, that really hurt my reputation around town. People had thought that I was totally
5 honest, and I always have been, but now they don’t trust me with their kids. I guess the court of
6 public opinion is the only one that matters. A few old-timers have gone back to calling me
7 “Genie,” short for “genesis,” because I was where all the plays began. It’s a nickname I earned
8 when I set the single game, single season, and career assist marks at HPU. That record has stood
9 for three decades. I’m now fifty-two years old.

10
11 When I graduated college in 1993, I had a degree in communications and a business minor, but I
12 didn’t have a business other than basketball. I didn’t know what to do with myself and had to
13 move in with my parents in Pahala to figure things out. That is when I heard that the Chamber of
14 Commerce had a marketing position opening up. I knew they could not turn down the Genie, and
15 I was right. So I spent two years trying to convince businesses to come to Pahala. Unfortunately,
16 the only one I landed was a KTA, but everybody welcomed a real “big box” business in town. Of
17 course, I also coached basketball for the Pahala Central JV as a volunteer. That’s how I knew that
18 Coach Pono was retiring from the school before everyone else did. I went to a couple of night
19 school classes and was certified as a teacher. It was a lot easier back then than it is today. I don’t
20 know if I was the best history and econ teacher who applied, but when Coach’s announcement
21 was made public, my resume floated right up to the top of the pile. I don’t feel bad about it – no
22 kid’s ever complained that my class was too hard, and a couple dozen trophies in the case are
23 mine. Plus, I came up with the idea to sell advertising on the gym walls. When you’re winning,
24 that real estate is valuable.

25
26 So I guess you can see I have a head for business. Well, you’re not the only one. The Chamber
27 saw that, too, and after my third District title, they decided that I’d make a good candidate for
28 County Council. It’s a close-knit community, and the five County Council members are
29 responsible for running it. We don’t even have a mayor. I can’t say that I minded the extra
30 income. I have been on Council for sixteen wonderful years, and for six as the Chair. My focus
31 remains simple: business development. I may not have a Ph.D. in Economics, but I understand
32 what it takes to run a business in the real world and what business means to a small community
33 searching for an identity. For twelve of my sixteen years on Council, I was the Chair of the Local
34 Business sub-committee, and I traveled around the country looking for opportunities to bring
35 businesses here. I took a bunch of classes offered by the National Association of Mayors, and I
36 even got half-way to an M.B.A. in small business administration from the University of Phoenix
37 online program before I realized I wasn’t learning much more than I already knew. Even though I
38 am slowing down a bit, I still feel my Council work is my greatest contribution to the
39 community.

40

41 Anyway, I've been involved in just about everything that's happened in this town in the past
42 decade or two in one way or another. But honestly, until about 2004, there wasn't much
43 happening. I hate to say it this bluntly, but this town was dying. Slowly. For nearly one hundred
44 years, one big business kept us on the map – Campbell Farms, which ran the grove – and the rest
45 of the town existed to support it. Campbell employed nearly five hundred workers in its heyday,
46 plus the executives, support staff, and everyone else. And that's just the folks whose paychecks
47 Campbell signed. That barely scratches the surface of what the company meant to this town. It's
48 like I teach my kids in AP Economics: the folks employed by a company are “direct jobs,” but
49 those “direct jobs” support many more “secondary” jobs. For example, if you have five hundred
50 workers, you have maybe four hundred families. Those families need medical care, which means
51 jobs for nurses and doctors. They need housing, which means jobs in construction, real estate,
52 and banking. They need food, which means supermarket jobs and trucking or dock jobs to get the
53 food here. Plus, you need car sales, car repairs, police, lawyers, judges, prisons . . . heck, even
54 education is driven by population.

55
56 Someone famous once said that the business of America is business. That's darn right. Creating
57 jobs is what County Council is there to do, and, like I said, I am happy to be a part of it. But
58 there ain't many towns that can sustain losing their number one employer, especially if that
59 employer offers blue-collar jobs that don't need a ton of training. And for 65 years, that was the
60 grove. This town was nothing more than a tavern and a general store before 1959, when old
61 Pappy Campbell began farming. Well, Campbell Farms put Pahala on the map, and more
62 importantly, it employed practically the whole town. At first it was just men in the land, but as
63 the company grew, it started hiring women, first as secretaries and then into administration.
64 Heck, Ellie Campbell was the first female comptroller in the county!

65
66 Then the farm began to die, and the economy turned. Once people didn't have the money to
67 afford the Campbell goods, that was it. By the mid-1980's, the farm was letting people go, and in
68 1989, Joe Campbell went up there one night, put a padlock on the fence, and flat disappeared.
69 That was the end for Campbell Farms, and it was just about the end of Pahala. The town hung
70 on, mostly the older folks living off their pensions or savings, but the difference between dying
71 slow and dying fast is just the hands on a clock. By 2016, Pahala had nearly 15% unemployment,
72 9.3% of which was long-term.

73
74 Someone upstairs sure does have a funny sense of humor, though. Who would have thought that
75 the town would get saved by that sticky junk that would ruin all the kids' clothes when they
76 jumped the fences to play in the grove? I guess Carlos Fernpicker, that's who. I knew Carlos a
77 little from campaigning, but I never thought much of her/him, not then at least. Of course, I have
78 gotten to know her/him really well in the years since. Not really as friends, but I guess more as
79 partners. Carlos is the one with the cash that keeps the town's registers ringing, and s/he who
80 pays the piper calls the tune. Anyway, Carlos walks into Council one day and s/he's talking about
81 a plant that would employ over two hundred people, and they wanted Pahala folks to build it for
82 them. Well, not the design or supervision, we don't have the expertise for that. But hauling the
83 materials and construction, you know, the lower down stuff. Ultimately, only about 150 Pahala

84 residents wound up working there permanently, but another forty or fifty people moved to town
85 with the company. Most of our residents got the low-tech jobs, like cleaning the floors or
86 harvesting the sap, but when you're dying of thirst, you don't complain when someone hands
87 you a glass of water that's only half full.
88

89 The United States Department of Labor Bureau of Labor Statistics ("BLS") studies employment
90 trends carefully in order to understand just how important primary employers are to communities
91 like Pahala. Their system is called RIMS, which stands for Regional Industrial Multiplier
92 System. They have found that a single direct job can be responsible for creating as many as five
93 secondary jobs based on the industry. BLS measures this in dollars spent, but it is easy to
94 translate back into actual jobs. This is why having a ZenoPharma manufacturing plant in Pahala
95 is such a big deal. We only have a population of about 10,000, of which maybe 15% are
96 retirement age and another 15% or so are not yet old enough to work full-time. According to
97 RIMS, for every 100 people that are employed by ZenoPharma, as many as 500 secondary jobs
98 are created. Just take a look at the recent employment statistics for Pahala and you'll see.
99

100 For all my training in business development, even I couldn't have guessed how ZenoPharma
101 would have changed the town. It's not just the jobs, it's the idea of it. We weren't some old,
102 dying town anymore; we were "the new face of biotechnology." You like that? It was my slogan.
103 ZenoPharma changed the town completely, even if a bunch of old businesses did go under. It
104 ushered in a new era of national chain stores and renewed energy. Our students' test scores went
105 up, although some of that was the ZenoPharma scientists' kids. Carlos Fernpicker even paid to
106 redo the locker rooms and re-surface the basketball court her/himself. I tell you, it was like a gift
107 from the heavens to us. And then the *makana* kept coming. In September 2023, ZenoPharma
108 announced that it was going to expand the facility, tripling its production. We were all smiles.
109 Half of Council worked with ZenoPharma one way or another, but that wasn't surprising – it
110 seemed like half the town was associated with them as well.
111

112 These days, the economy is really humming in Pahala. According to the 2022 stats, we have an
113 unemployment rate right around 2%, which is way below the national average. Some of that are
114 the jobs that ZenoPharma directly created, but a lot of them are from secondary jobs and new
115 industry. Using the money that the ZenoPharma plant has already brought in, we have developed
116 an eco-tourism center, taking people up into the beautiful mountains around town for hiking
117 trips. Usually, tourism requires more of an educated populace than we have, but more of our kids
118 are going to college than ever, and lots of them are coming home, and not working at the plant.
119 We've even landed two or three other start-up companies, and next week, I'll be cutting the
120 ribbon on one that is expanding and will be providing a dozen new jobs. It's definitely not like
121 the old days when this was just a one business town.
122

123 It is for all these reasons that I couldn't believe it when Skylar Cabrera started all this trouble
124 aimed at ZenoPharma in 2023. I knew Skylar well from the environmental club at school. It's not
125 that I'm some green freak; far from it. But each club for which you're the advisor gets you a few
126 hundred extra bucks in your paycheck. I'd just show some videos or have a guest speaker about

127 some trees or some cute bunny, and once a semester we had a recycling drive or something. It
128 was easy money! I'd been doing it for a year or two when Skylar joined, and I could see s/he was
129 really into it. I supported her/him, especially when Skylar and a few of her/his classmates were
130 able to stumble upon the local pet shop owner and her illegal poaching operation. Sure, it was a
131 bit of dumb luck, but it generated press for the town which reached the national media. It didn't
132 hurt that those birds were so beautiful. As a result, when Skylar became a senior, I helped make
133 her/him President of the club, to bolster her/his college applications.

134

135 During the club's first meeting in September 2023, Skylar's agenda became very clear. Skylar
136 wanted to make the group – how was it s/he put it? – “an army of action, not of words.” At first,
137 the kids loved it, but they even quickly turned, especially when Skylar started attacking
138 ZenoPharma and the plant's planned expansion. I mean, a lot of kids' folks worked there, and
139 everybody knew what it was doing for the town. I immediately suspected this had something to
140 do with Skylar's father. It was a downright shame what happened to him. Everybody around
141 town likes Steven – he's a genuine, nice guy – but bad things sometimes happen to good people.
142 Blaming ZenoPharma for some weird bacteria thing is just not right. I knew the workers'
143 compensation board would make ZenoPharma pay him if it harmed him, even though I heard
144 that the head of the board was living with the plant's production supervisor. They decided that
145 ZenoPharma wasn't responsible, and that's good enough for me.

146

147 You would have thought all the kids calling her/him names like “quack” and me explaining the
148 impact from the expansion wouldn't hurt the environment would have stopped Skylar. But no, it
149 seemed to only make her/him more agitated. I didn't take it too seriously at that point, but I was
150 later concerned that Skylar was coming unhinged. My fears were confirmed just a week later
151 during the club's next meeting. Skylar got up in front of the class again and started talking all
152 about the endangered species of Hawai'i. This, in and of itself, was nothing out of the norm,
153 especially when s/he started talking about our club's favorite creature, the 'alalā. It was fairly
154 well known in the land development business that these birds can cause some of the biggest
155 problems for construction projects because of their status as an endangered species. Skylar said
156 expansion had to be stopped or else they would die. S/he then pulled out some printed out pages
157 of some report. The students, as expected, were mean, and the name calling was louder than ever.
158 No one wanted to hear about ZenoPharma. This enraged Skylar, and s/he launched into a rant
159 about how s/he found the document after trespassing on company property and getting arrested!
160 The club spiraled out of control, and I had to cancel the meeting.

161

162 I had Skylar stay behind, and I gave her/him one of the sternest lectures I had ever given a
163 student off the basketball court. I told her/him s/he could no longer serve as president of the club.
164 I also told her/him that I knew firsthand that ZenoPharma had a permit in place, so the report
165 s/he had couldn't be real. Finally, I told Skylar that s/he had to go and visit with the school
166 counselor because I was worried that s/he had become mentally unstable. As Skylar left my
167 classroom, I distinctly remember her/him yelling, “Well, if you will not support me, I will find
168 someone who will. It doesn't matter what it will take, I will find a way to bring them down!” By

169 the look in her/his eye, it was too late, all self-control was gone. I didn't know what s/he would
170 do.

171
172 At the end of the day, it doesn't really matter if Skylar found an 'alalā near the grove or not. The
173 economic benefits that ZenoPharma provides Pahala far outweigh the livelihood of a few birds.
174 Environmentalists always talk about how important symbiotic relationships in nature are when
175 arguing for the protection of wildlife. This should also hold true for humans. Here in Pahala, we
176 have a symbiotic relationship with ZenoPharma. My understanding is that if the expansion
177 doesn't happen, the company may fold completely. Of course, Carlos also told me after one of
178 our Council meetings that those fears have been way overblown and the company's doing better
179 than it feared. Still, if ZenoPharma does close, it would be a serious blow especially in this
180 economy. If anything else goes wrong then life in Pahala will be as empty as it was before the
181 Company saved our dying town. Not only would that be really bad for the community, but it
182 could also ruin my Council reelection chances. I've already got an uphill battle on my hands
183 dealing with the fallout from the whole booster thing.

184
185 Of course, the Genie doesn't dwell on doom and gloom. We didn't win six Districts and one
186 State Title because Pahala folk ran from a challenge. The fact is, we needed ZenoPharma very
187 badly in 2016, and we need them a little less badly now. Pahala is a town with a future. Hey, I
188 like that. Jo Keahi for County Council of Pahala, a town with a future!
189

I declare under penalty of perjury that the above statement is true and correct to the best
of my knowledge and belief.

Jo Keahi

Date: November 1, 2023

Statement of Bree Nellie

1 My name is Bree Nellie, and I am thirty-four years old. I prepared the environmental impact
2 assessment for ZenoPharma that the Hawai'i Department of Environmental Protection
3 ("Department") relied upon in deciding to grant the permits that ZenoPharma requested for the
4 facility expansion in Pahala.

5 I've provided my entire curriculum vitae to the lawyers, but I should mention a couple of things.
6 First, I went to college late. Where I grew up, lots of kids got in trouble, and I was no exception.
7 Right after I turned eighteen, one of my friends asked me to buy a gun for her, since she was a
8 convicted felon and could not own one. And I did it! I can't believe how stupid I was. My friend
9 got caught, and I lied to the police about my role, and I even swore at the preliminary hearing
10 that it wasn't me. My folks bailed me out pre-trial, and I thought it would impress the Judge if I
11 signed up for the Army. When my lawyer told the prosecutor what I had done, she had this real
12 serious talk with me about second chances and how few people got them. She decided to offer
13 me a deal. I agreed to plead guilty to the misdemeanor of false swearing in official matters and
14 the prosecutor agreed to drop the felony charge. The military doesn't accept applications, it
15 accepts commitments, and I was committed. Two weeks later I was in basic training.

16

17 Being in the Army was the best thing that ever happened to me. I was assigned to the Corp of
18 Engineers. Back then, I could barely read or do math. But my commanding officer and unit
19 sergeant gave me things to read during my own time. Pretty soon I was reading technical
20 manuals and textbooks. As soon as I left the Army, I enrolled at the University of California,
21 attended college using my G.I. Bill benefits, and graduated in three years with a degree in
22 environmental engineering. I spent a year as a park ranger and four at the Yale School of
23 Forestry, where I received a Ph.D. in Ecology in 2020. I was even able to take classes at the Yale
24 Law School in environmental law.

25

26 Unfortunately, when I graduated, the economy was in a really bad place. I may have become Dr.
27 Nellie, but I was living with my parents again. I applied to every government job I could find,
28 but even with veteran's preference, my criminal record held me back. So I opened my own shop,
29 relying for business on an informal network of former service buddies, friends from Yale, and
30 members of the Hawaii Young Engineers. Sure enough, the harder I worked, the "luckier" I got.
31 For the last two years, I have been doing freelance environmental assessments for use in
32 planning and/or litigation. I've performed over two dozen environmental assessments and have
33 testified in Hawai'i courts three times, plus twice in California, and once in Washington. I also
34 have consulted in a dozen or so matters. I pride myself in three things: my objectivity, my
35 creativity, and my price. I have worked for both defendants and plaintiffs, 60/40, and the results
36 of my assessments have ranged from finding no problem at all to stopping a twenty million
37 dollar condo project. And I only charge \$5,000 for a simple environmental assessment, and
38 \$10,000 for more complex work.

39

40 I charge a little lower than the going rate to be sure, but I'm relatively new in this field, and my
41 credentials on paper certainly aren't as impressive as some other people, like Lee Fletcher. Of

42 course, I don't come with Fletcher's idiosyncrasies either. And I try to work quickly. I don't do a
43 bunch of unnecessary tests and try to think of every possible environmental impact. That's not
44 what the law requires. What the law does say is that in deciding whether to designate a habitat as
45 critical, the Secretary needs to consider three things: (1) whether there are actually animals there;
46 (2) whether the area is "essential to conservation of the species" and (3) whether the harm done
47 by that designation is outweighed by the economic impact of preserving that land. That's what I
48 do. I don't have a degree in economics, but I have learned some things about business, and I try
49 to talk to the people in the community as part of any report I create.

50

51 When I was contacted by Carlos Fernpicker in May 2023, I was really excited about the
52 opportunity to do some work for a big pharmaceutical corporation. I was surprised that Carlos
53 found me through my meager web presence, but sometimes a bit of luck is needed in order to get
54 to the top. Just like with Apollo randomly picked Rocky, I wasn't going to turn down the shot of
55 a lifetime. During my first meeting with Carlos, s/he clearly laid out the purpose of my task. The
56 company was planning on expanding its plant and needed to obtain an environmental impact
57 analysis report in order to get the proper permits. This is all pretty standard stuff. The only
58 strange thing was that Carlos kept telling me how time was of the essence and that s/he couldn't
59 tolerate any more delays. I asked Carlos if s/he had any similar reports done in the past, and s/he
60 told me that none had been performed. I now know that this is not true, but honestly, even if I
61 had read Fletcher's report before I started, there is little chance it would have impacted my
62 opinion. I know to keep an eye out for 'alalā. Who doesn't? The only other odd thing was that
63 Carlos had a cage in her/his office in which s/he said s/he had collected flora and fauna from the
64 grove area. In it was what looked like a black bird, eyeballing us through the whole conversation.
65 But I didn't get too close a look.

66

67 Before I left to start my survey of the land, Carlos looked me in the eye and stated, "Now you
68 know what you have to do to get this done right?" to which I responded, "Yes, of course." Carlos
69 then stated that if I did a good job, there would be more work for me in the future. If I didn't
70 know any better, I would have thought Carlos was trying to influence my result. If so, s/he had
71 another thing coming. First of all, I learned my lesson a long time ago, and second, no one single
72 case, no matter how big, was worth my reputation.

73

74 Between May 4th and May 5th, 2023, I surveyed the entire area. I took water and soil samples
75 and looked for signs of endangered species and/or habitat that could support them. While some
76 of the forest areas south of the grove could support 'alalā, I didn't feel the likelihood was so
77 significant it was worth mentioning in my report, because I didn't actually find any birds there.
78 'Alalā habitats are rare, but hardly unheard of. Habitat actually occupied by 'alalā is a whole
79 different story. But it looked to me like the only things that would lose their homes were a few
80 white-tailed deer, and they are anything but endangered. Of course, had I actually found 'alalā
81 there, my opinion would've changed dramatically.

82

83 ZenoPharma was well-known for its green initiatives, and it lived up to its billing. They even
84 made painstaking efforts to ensure that their wastewater was properly decontaminated and

85 disposed of, so the stream and the aquifer was not affected. I have read Lee's opinion that the
86 plant expansion will increase the Plant flow into the stream and mix with the aquifer; and Lee's
87 drawing of that effect is more or less accurate. But Lee isn't an engineer, and it shows. No one
88 knows the exact dimensions of the plant, but after the expansion, it will be approximately 1000'
89 long x 550' wide. That would result in 820 million gallons being pumped out of the plant, many
90 times over enough to dilute the small amounts of cadmium that escapes from the filters that
91 ZenoPharma uses in the sap processing. The levels of cadmium in the water are well below any
92 environmental standard or regulation I know, and a lot of that cadmium might be naturally
93 occurring.

94
95 Of course, that's nothing compared to an aquifer. I don't know exactly how much water flows in
96 the Ka`u aquifer, but it's a lot. So, even though the plant water is going to mix with the stream
97 once the expansion occurs, the idea that mycobacterium ulcerans could reproduce in quantities
98 sufficient to survive that trip, in that dilution, through those filters . . . its science fiction, not
99 science – although a few individual MU bacteria can cause a massive lesion if they touch broken
100 skin. Plus, it's not like the entire plant will dump into the aquifer. The vast majority of the water
101 will stay in the stream, and only a modest amount will even reach the aquifer.

102
103 The real science, within a reasonable degree of certainty, is this: we simply don't have enough
104 information to make sense of the data. The necrotic skin infections Fletcher mentions could have
105 been anything from Steven Cabrera's near- amputation to a couple simple cases of staph
106 infection on the football team. Admittedly, Steven Cabrera's MU infection, which was diagnosed
107 by trained professionals, is bizarre and somewhat alarming. However, according to the Freslevin
108 and Blackwood textbook, an MU culture takes five months to grow. Who knows what could've
109 happened during that time? There's simply no evidence connecting MU to the ZenoPharma
110 plant. There is no test for it in water, so there's no way to say how Steven Cabrera was infected.
111 And Fletcher's idea that cadmium is causing it to grow is a huge leap. Just because cadmium is a
112 group 12 like mercury doesn't mean that MU will grow in it too. By that logic, I could check my
113 temperature with a cadmium thermometer! The unemployment compensation board got it right.

114
115 Let's be really clear about what's going on here. The Endangered Species Act is the most
116 powerful environmental law on the books, and the quickest way to stop a development you want
117 stopped is to get an endangered species involved. It doesn't matter whether you're the
118 government, a land owner, or a private company: you just can't develop in a way that wipes out
119 critical habitat or threatens a protected species. And the 'alaalā has become the go-to species for
120 stopping development in the County of Hawai'i. It has everything you would want: it's beautiful
121 and lives in the forests, which are all over the place. It's also highly portable. I've heard stories
122 from colleagues within my field that people try to block development by planting 'alaalā on
123 property in order to get an injunction. I'm not aware that any charges have been filed, mostly
124 because the attempts have been amateurish that they were spotted early by investigative
125 professionals. But in nature, animals adapt to survive, and it was only a matter of time before
126 more sophisticated efforts at fraud would happen.

127

128 Now, I can't prove that's what's going on. Is it possible that there are 'alalā on the property? I
129 guess. If there were some, they'd be happy, because that land is pretty good for 'alalā. The only
130 problem is, no one ever seems to have seen evidence of the 'alalā being there by Skylar Cabrera:
131 not the facility's staff, not the Department investigator, not me in the ten or so hours I spent on
132 the property, not even Fletcher on her/his midnight strolls.

133
134 Let's be clear. 'Alalā are very hard to find. They're big, but they love to hide in the trees. You
135 could walk right under one. But spotting the 'alalā isn't the only way to know it's there. Think
136 about the average 'alalā's day: wake up, eat, go to the bathroom, fly around a little, sit in the sun,
137 eat some more, go to the bathroom again, sleep. Each of those things leave evidence. Did I find
138 bird nests on the property? Yes. But that just means birds. If 'alalā were living there, they would
139 have left some footprints or partially eaten vegetation. And scat. Like the kids' book says,
140 "Everybody Poops." So, while an amateur might need to spot a 'alalā to know that it's there, a
141 trained environmental professional doesn't. We look for any sign that the 'alalā has been there -
142 partially eaten food, tracks, evidence of lairing, or excrement. But neither Lee nor I saw any of
143 those things. Of course, because of the time pressure, I wasn't specifically looking for secondary
144 evidence of 'alalā. Still, if there was a huge flock of 'alalā as Lee now is claiming, one of us
145 would have found some evidence. Between that and the fact that no one else has seen an 'alalā
146 here, there's simply no way that Skylar could be telling the truth.

147
148 Of course, if s/he were, it would be a remarkable find. According to the Hawai'i Species Council,
149 there have never been any 'alalā flocks of this size, although, not all sightings are public
150 information, because they're kept secret to protect the 'alalā from poachers, who can sell them
151 for thousands of dollars or more on the black market. I heard from some townspeople that the
152 local pet store owner had a history in that business.

153
154 The photo that Skylar took is highly suspicious. Yes, the picture is of an 'alalā; you can tell right
155 away by the feathers. But the GPS coordinates only show that the camera was on the property at
156 the time, not that the 'alalā was native there. And the photograph was taken on October 1, 2023.
157 Normally the 'alalā fly to a different area for the winter. Finding an 'alalā on the 15th, much less
158 three, would be highly unlikely. And then there's the fact that by October 9th, when the
159 Department investigated the site, there was no remaining indication that it was present on the
160 land at all: no lair, no chewed food, and no scat. These things do not disappear into thin air.
161 Unfortunately, the kind of searching investigation that it would take to completely prove Skylar
162 is lying could take the better part of 2024 to complete. In my opinion, there is no reason for
163 going through all that time and expense. This is way beyond a reasonable degree of scientific
164 certainty. The Warriors have a better chance of winning the title than we do of finding 'alalā here.

165
166 I don't want to sound like I don't care about 'alalā. It's a marvelous creature, one unquestionably
167 threatened by habitat destruction and human predation, and like all species, it deserves our
168 protection and stewardship. Put in legal terms, the taking of 'alalā and destruction of critical
169 'alalā habitat is an irreparable harm to the environment and therefore to us all. However, when
170 Lee says that ZenoPharma property is "essential to the conservation of the species," that's just

171 wrong. Although ‘alalā are endangered, there are no properties in Hawai‘i that are essential to the
172 conservation of the species.

173
174 Moreover, while the expansion would diminish the habitat, it would not eliminate it. That’s
175 especially true if ZenoPharma took steps to replant trees to preserve the forest area. I
176 recommended that to Carlos when this whole ‘alalā thing came up. But those steps are very
177 expensive, and ZenoPharma hasn’t committed to them.

178
179 The biggest flaw with Fletcher’s report, though, is that it ignores the balancing of human interest
180 with environmental interest. I have spoken with local businessmen and politicians. ZenoPharma
181 has revitalized the Pahala community, creating desperately needed new jobs and bringing in
182 millions of dollars in investment and new businesses. It’s changed the whole outlook here. And
183 that’s just the impact on Pahala. SutureStick isn’t some consumer good; it’s a medical marvel.
184 Every secondary infection that’s prevented by SutureStick, every wound that doesn’t open or
185 doctor’s visit that isn’t needed . . . all of those must be weighed in the balance as well. Heck,
186 even I have benefited. Not only did I get the money from the complex assessment I did for
187 ZenoPharma, but now I’m making \$275/hr for my work on the litigation. I have already worked
188 a couple dozen hours, and I haven’t even testified yet! Plus, Carlos has been touting my efforts,
189 and as a result my phone has not stopped ringing.

I declare under penalty of perjury that the above statement is true and correct to the best
of my knowledge and belief.

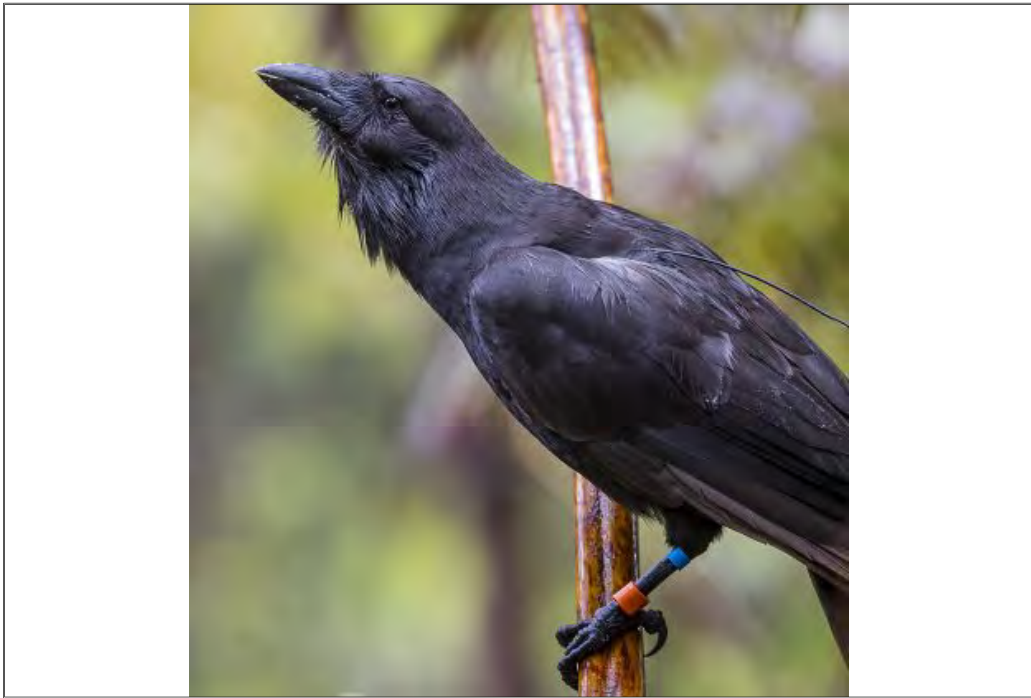
Bree Nellie

Date: November 1, 2023

Exhibit 1



Exhibit 2



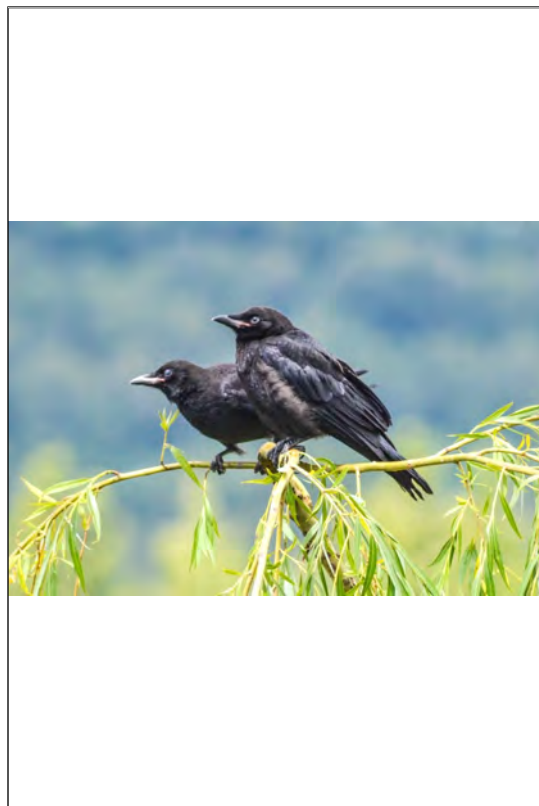
2.1 *Photograph of `alala found approximately 40 yards south of Pahala Grove* **Date:** *October 1, 2023 ~ Credit Skylar Cabrera*



2.2 *Photograph of Pahala Grove approximately 40 yards north of `Alala sighting* **Date:** *October 1, 2011 ~ Credit Skylar Cabrera*



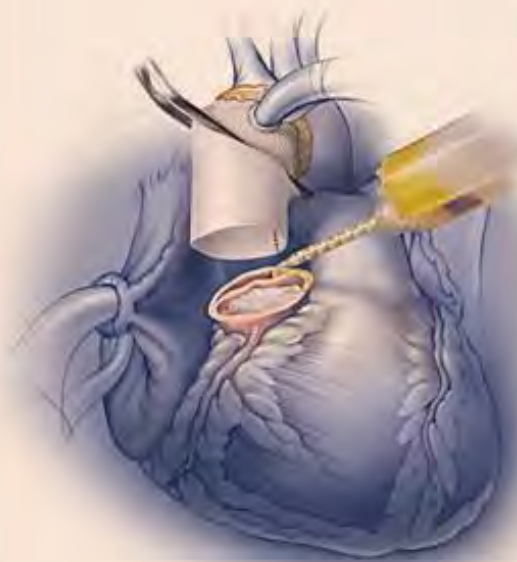
2.3 *Photograph of birds later identified as regular crows on ZenoPharma property
Date: October 1, 2023~Credit Skylar Cabrera*



2.4 *Photograph of birds later identified as regular crows on ZenoPharma property
Date: October 1, 2023 ~ Credit Skylar Cabrera*

Exhibit 3

Suture STICK®



World's most popular
surgical adhesive

- ~ 100% All Organic!!!
- ~ 10 times stronger than the craziest of crazy glues!
- ~ reduces need for surgical drain.
- ~ uses yellow dye for easy application.
- ~ has been successfully used on battlefield and in operating room.
- ~ simple and quick application.
- ~ superior dental adhesive.
- ~ minimizes scarring.
- ~ cost effective.

Warning:

sticks skin and eyelids in seconds

ZenoPharma
TM

100% Green



Exhibit 4

Steven I. Cabrera, Petitioner
v.
Workers' Compensation Appeal Board (ZenoPharma, Inc.), Respondent

No. 00023 C.D. 2021
COUNTY OF PAHALA
*2021 Haw. Unpub. NEXLAW 1622**

November 16, 2021, Submitted
December 21, 2021, Decided and Filed

NOTICE: OPINION
NOT REPORTED

JUDGES: [*1] BEFORE: HONORABLE NATHAN MEYER, President Judge, HONORABLE K. SYLVIA McCLELLAN, Judge, HONORABLE LIAM DUNN, Senior Judge. MEMORANDUM OPINION BY SENIOR JUDGE LIAM DUNN.

MEMORANDUM OPINION BY: LIAM DUNN

Steven I. Cabrera (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) affirming the Workers' Compensation Judge's (WCJ) decision denying his claim petition. We affirm.

On or about January 5, 2020, Claimant filed a claim petition alleging that he sustained a work-related injury to his lower right leg from an extremely rare necrotic infection while employed by ZenoPharma, Inc. (Employer). Employer filed a timely answer denying the material allegations. Hearings before the WCJ ensued.

Upon review of the evidence presented, the WCJ found as follows:

From February 10, 2018 through September 27, 2020, Claimant was employed by Employer at its facility in Pahala, Hawaii. As a part of his duties with Employer, Claimant was responsible for the processing of ohia lehua sap growing on that property, the

adhesive properties of which were critical to the function of SutureStick, a medical device product for which Employer is the exclusive manufacturer.

Employer's sap is processed through a secret method that need not be discussed in greater detail in order to render this decision. Suffice it to say that the sap processors, including Claimant, must extract the sap from the trees in the grove adjacent to which the Employer's plant is located, must remove the sap from the collection equipment [*2] using a chemical derived from cadmium, and must add chemicals at precise intervals while the equipment in industrial-scale vats stirs and heats the sap to accelerate the chemical reactions. Once a given quantity of sap has been processed, the vats must be scrubbed clean using other chemicals. During his time as a ZenoPharma employee, Claimant was responsible for each step of this operation, and at the time of the alleged injury, he was principally responsible for testing the sap growing in the grove itself in order to determine whether or not it contained the appropriate levels of key active ingredients.

Employer submits that employees are issued safety gear according to the job that they will be performing. For example, the vat-stirring employees wear light plastic

waders and thick sleeve length rubber gloves, while the vat-cleaning employees wear full hazardous materials suits and ear protection. All employees wear eye protection and full respirators. Claimant disputes this characterization, stating that many employees do not wear the issued gear and that Employer is aware that many employees do not wear that gear. Claimant states that on numerous occasions, he performed his duties without the required gear because it was not available or because it was too hot for the climate. Employer disputes this.

Employer submits that the chemicals used in its sap processing are non-toxic, inert chemicals and that there are no known human pathologies associated with them. Claimant admits that the chemicals have no known pathologies associated with them. He vigorously disputes that they are inert or non-toxic.

It is undisputed that on or about September 27, 2019, Claimant suffered an attack of an organism that was diagnosed by his family doctor as Mycobacterium Ulcerans (“MU”). The parties agree that MU is a highly unusual diagnosis in any part of the world and an organism never before found in the United States. To the contrary, MU is virtually exclusively found in tropical and equatorial regions. The parties agree that the symptoms Claimant suffered were consistent with a necrotic skin infection [*3] like MU. Claimant suffered aggressive ulceration and bleeding at several layers of the skin, including the dermis, panniculus, and deep fascia. This left him in terrible pain and led to a very serious surgery in which a large area of necrotic tissue was removed. This in turn led to an extended hospitalization, a significant loss of functional capacity, and significant permanent impairments in Claimant’s ability to walk, run, or stand for extended periods of time.

A test for MU was performed and was returned positive. Employer claims that the test was likely a false positive. For purposes

of this inquiry, the question of whether the organism that caused Claimant’s injury was MU or was some other necrotizing organism with similar effects on Claimant’s livelihood is largely irrelevant.

Claimant claims that he could only have come into contact with the organism, whatever it was, at Employer’s plant. Employer denies that Claimant contracted the organism at work. As the party seeking benefits under the Workers’ Compensation Act, Claimant bears the burden of proving that his injury was related to his work.

Unfortunately, he cannot meet this burden. There is no test for MU in water, or indeed anywhere outside the human body. Accordingly, Claimant’s allegation that the water at the Employer’s plant was tainted by MU is mere speculation. Claimant’s representatives were permitted to test the water for other organisms with similar effects in the human body, but they declined to do so on account of the considerable costs associated with such testing. In the absence of any actual, scientific proof that the water in Employer’s grove or sap were associated with the organism that attacked Claimant, his allegation that the injury is work-related lacks substance.

Ultimately, neither Claimant nor Employer has provided a complete or entirely credible description of how Claimant came to be so severely injured. However, Claimant bears the burden of proof, not Employer. Accordingly, if neither side is entirely persuasive, Employer prevails. In the absence of competent, [*4] scientific evidence connecting Claimant’s injury, I have no choice but to deny the claim for workers’ compensation.

(WCJ Adjudication pp. 1-3)

Claimant appealed the decision of the WCJ to the Board, which affirmed. This appeal followed.

Initially, we note that this Court shall affirm unless it determines that the adjudication is in violation of the claimant's constitutional rights,

that it is not in accordance with the law, that provisions relating to practice and procedure of the Board have been violated, or that any necessary findings of fact are not supported by substantial evidence. See *Lehigh County Vo-Tech School v. WCAB (Wolfe)*, 652 A.2d 797 (Pa. 1995). An adjudication is against the law where the WCJ capriciously disregards material and competent evidence. *Leon E. Wintermyer, Inc. v. WCAB (Marlowe)*, 812 A.2d 478 (2002). Capricious disregard of evidence is shown if the WCJ willfully or deliberately ignored evidence that any reasonable person would have considered to be important. *Id.*

In this case, Claimant argues that the WCJ's findings are not in accordance with the law wherein the WCJ deliberately disregarded competent evidence that supported the finding that Claimant's contraction of MU or some other necrotizing organism was work-related.

As noted by the WCJ, the claimant bears the burden of proving that his or her injury arose in the course of employment and was related thereto. *Krawchuk v. Philadelphia Electric Co.*, 439 A.2d 627 (Pa. 1981). Generally, if there is no obvious relationship between the disability and the work-related cause, unequivocal medical testimony is required to meet this burden of proof. *Lewis v. Commonwealth*, 498 A.2d 800 (Pa. 1985).

The WCJ, as fact finder, had exclusive province over questions of credibility and evidentiary weight and is free to accept or reject the testimony of any witness, including a medical witness, in whole or in part. *General Electric Co. v. WCAB (Valsamaki)*, 593 A.2d 921 (Pa. Cmwlth.). Determinations as to witness credibility and evidentiary [*5] weight are not subject to appellate review. *Hayden v. WCAB (Wheeling Pittsburgh Steel Corp.)*, 479 A.2d 631 (Pa. Cmwlth.

1984).The WCJ's findings will not be disturbed when they are supported by substantial competent evidence. *Northeastern Hospital v. WCAB (Turiano)*, 578 A.2d 83 (Pa. Cmwlth. 1990). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mrs. Smith's Frozen Foods v. WCAB (Clouser)*, 539 A.2d 11 (Pa. Cmwlth. 1988).

Our review of the record reveals that the Board correctly concluded that the WCJ had not capriciously disregarded any evidence in finding a lack of causation between Claimant's injury and his employment. Claimant, in fact, put forth *no* evidence that the water at the Employer's plant was tainted by MU or a similar necrotizing organism.

Claimant does argue, somewhat persuasively, that there is simply no other reasonable explanation for where he could have contracted a necrotizing organism. However, the WCJ did consider evidence that Claimant enjoys outdoor activities including hiking, fishing, and kayaking, and was presented by the Employer with a list of organisms with which Claimant could have had contact that could have had the identified effect. While each of the proposed organisms is rare and the identified effect incredibly unlikely, Claimant's theory that Employer's sap or water is somehow responsible for infecting him with a pathogen completely unknown in the United States is no less of a strain.

Accordingly, this Court finds that the WCJ did not commit an error of law in denying Claimant's claim. The Board's order is affirmed.

ORDER

AND NOW, this 21st day of December, 2021, the order of the Workers' Compensation Appeal Board [*6] in the above-captioned matter is hereby affirmed.

Exhibit 5

US. Department of Labor
 Suite 410 –The Pahala Center
 600 Central Rd.
 Pahala, Hawaii 96777

Hawaii County, Hawaii Division
 Phone: 808.555.3421
 Fax: 808.555.3422

Statistical Category	2020	2021	2022	10 Year Avg.
Total Population	9674	8945	10452	9690
Labor Force	5629	4977	6042	5549
Employment	4841	4220	5891	4921
Unemployment	788	757	151	628
Unemployment Rate	14.00%	15.20%	2.50%	11.30%
Mining	15	13	74	34
Manufacturing	251	227	899	456
Trade / Transportation	698	648	714	687
Restaurant / Leisure	895	783	981	886
Financial activities	147	129	169	148
Prof. and Business Services	1182	1023	1291	1165
Education	527	528	607	554
Health Services	478	420	500	466
Other Services	570	385	389	448
Government	78	64	79	74

Exhibit 6

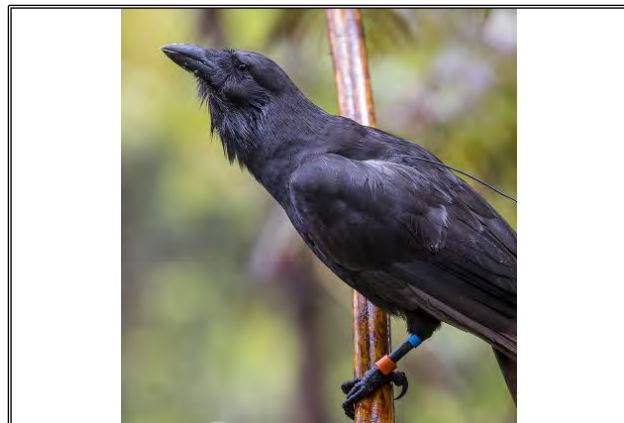


FIELD OF DREAMS: REPORT ON THE PROPOSED ZENOPHARMA EXPANSION

Executive Summary

Investigator Lee Fletcher was retained to investigate a planned expansion of the ZenoPharma plant in Pahala, HI, and a concurrent expansion of the grove adjacent thereto. That property contains numerous features common to habitats of one of Hawaii's greatest ecological treasures, the `alala. Bog turtles are a highly endangered species living at the very margin of survivability. They are also one of the most charming of all reptile species, highly sought after both for their beauty and their companionship.

The property of the ZenoPharma planned expansion is a near-perfect `alala habitat. The dry and semi dry-forests provide perfect conditions. Further the grove's fruiting trees and native plants allow for higher `alala inhabitation. The dense foliage also allow `alala to hide in the trees. The `alala habitat is further demonstrated by the presence of many of the `alala preferred vegetation.



In sum, the abandonment of the grove years ago created just the kind of stable ecological environment in which the `alala thrives. It is somewhat surprising, then, that no `alala were specifically sighted, and no immediate residue of their existence (scat, feathers left behind by predators, etc.) was discovered. They are, however, challenging to locate, even by an experienced professional.

The primary threats to `alala are human, and this is no exception. The ZenoPharma expansion would disrupt the critical habitat surrounding the grove and would distort the environment such that `alala might not be able to live there any longer, if any `alala currently live there, or move there in the future. The proposed expansion would threaten the forest balance and introduce additional harmful predators that scavenge on human garbage. The heat pollution from the ZenoPharma expansion would pose another, more attenuated danger, by potentially disrupting the vegetation.

In addition, the investigator has determined that the planned expansion could pose a risk to human health when the stream water mixes with the Ka`u aquifer. If contaminants in the stream, such as cadmium or bacteria present in the sap, were to reach the aquifer, they could reach the town's drinking and washing water. Because many Pahala residents rely on wells that may or may not be able to filter out these contaminants, they could be exposed to health risks, including serious health risks.

The investigator was shown revenue projections for the proposed expansion. The proposed expansion would undoubtedly benefit ZenoPharma, and it would likely benefit the local economy. But the `alala is one of nature's greatest treasures, and even in the absence of an actual `alala sighting, the risks inherent in the expansion are too great.

PPL finds that the land into which the expansion is planned is critical `alala habitat. Accordingly, should ZenoPharma even bother to apply for an environmental permit, it ought rightly to be denied. ZenoPharma is advised that it is lucky that the DEP didn't notice this before the plant even opened, and it is advised that requesting the permit could lead the DEP to shut down the plant entirely in order to protect the `alala and the people of Pahala.

By my hand, this 13th day of April, 2023,

Lee Fletcher

President
CEO
Lead Investigator

Exhibit 7

Nellie Consulting, LLC

15 Tuk Terrace | Volcano, Hawaii 96785
Phone: 808.555.9089 | Bree@nellieconsult.com
founder & principal: Bree Nellie

Carlos Fernpicker
ZenoPharma, Inc.
Pahala, HI

Dear Mr./Ms. Fernpicker:

I am pleased to report that I have concluded my investigation. You have nothing to fear. The ZenoPharma plant is currently located on an abandoned **grove** of no particular environmental significance. I have carefully toured the land itself, and I have run water and soil samples. They show no levels of pollution in excess of state or federal regulations. You directed my attention particularly to the levels of cadmium. They are well within tolerance.

I have examined the grounds carefully and found no evidence that any endangered or threatened species is present on the property in question. There is a healthy ecological balance, and I was pleased by our conversation, in which you suggested that ZenoPharma would do everything it could to maintain that balance, consistent with your obligations to your shareholders and the citizens of **Pahala**.

I have also spoken with members of the Chamber of Commerce and the City Council. To say that they are excited for your expansion would be an understatement. They are aware that **the stream water will soon be mixing to a greater degree with the town's aquifer, but I** assured them that the **stream** water was safe. No test I was able to run in the time allotted showed the contrary, and I reminded them that there has never been a successful claim of workplace injury stemming from the activities of the ZenoPharma plant.

All of my conclusions are within a reasonable degree of scientific certainty, based on my education, training and experience conducting environmental assessments.

I trust this report meets with your satisfaction. Congratulations on your company's business endeavors and its long history of charitable and environmental excellence. I look forward to seeing you at the ribbon-cutting ceremony. If there is anything else that I or my company can do for you, please do not hesitate to contact me. We stand ready to serve any of ZenoPharma's environmental investigatory needs.

Very Truly Yours,

Bree Nellie

Key

← = Flow Direction

Exhibit 8

Prepared by Lee Fletcher
04/2023

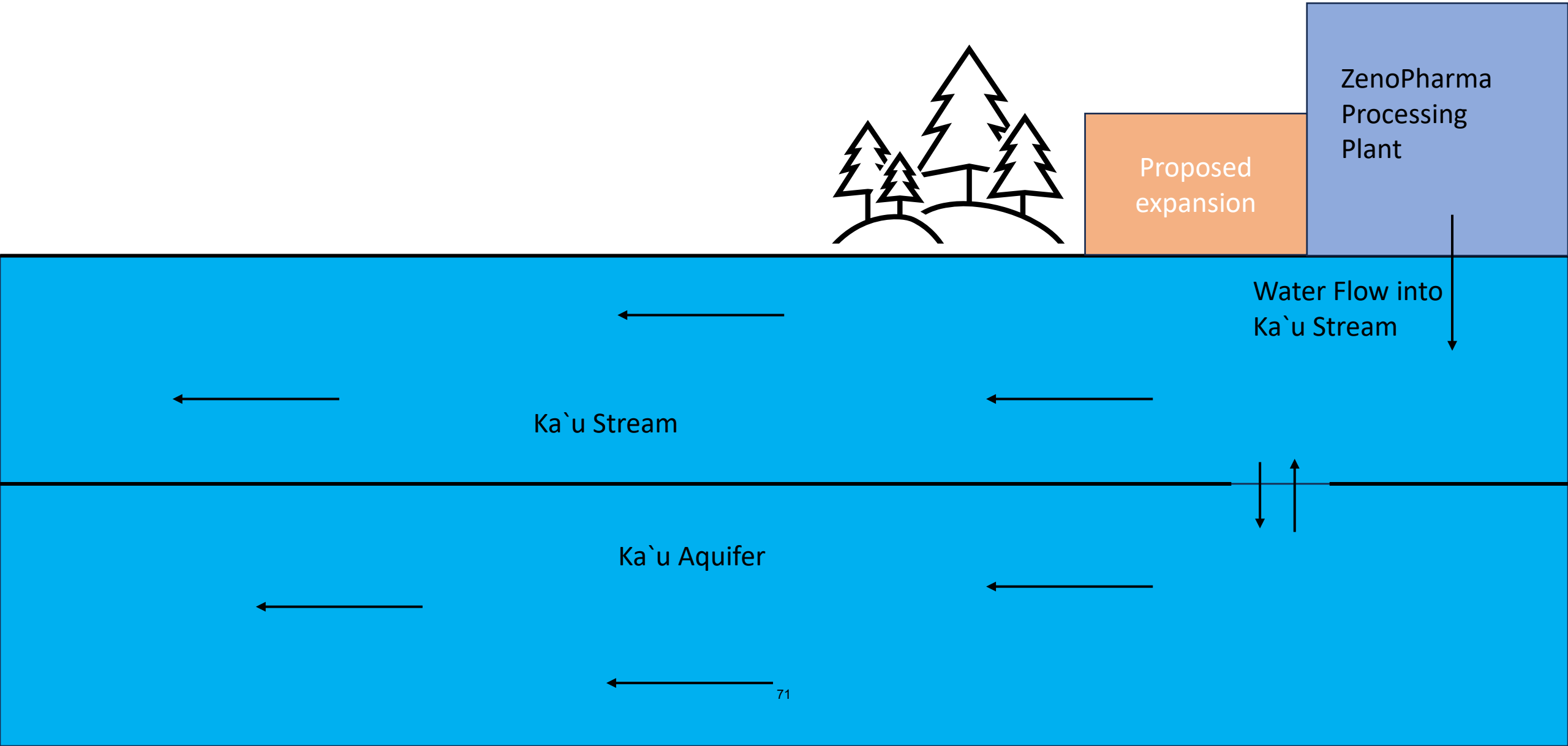


Exhibit 9

Fact Sheet – Hawaiian Crow *From the Hawaii Department of Land and Natural Resources*

Scientific Name: *Corvus hawaiiensis*

Reproductive Age: Female crows are considered sexually mature at about 2 or 3 years of age and males at 4 years.

Longevity: 18 years in the wild, and 28 years in captivity

Key Identifying Characteristics: The 'Alalā is about the size of the carrion crow at 48–50 cm (19–20 in) in length, but with more rounded wings and a much thicker bill. It has soft, brownish-black plumage and long, bristly throat feathers; the feet, legs and bill are black.

Habitat and Distribution: In the past, 'Alalā lived in dry and semi-dry forests in the South Kohala, Kona, Ka'ū, and into Puna districts. They would range from 1,000 – 8,200 feet in elevation. According to the subfossil record 'alalā, or a closely related subspecies, was also found on Maui and Moloka'i.

A large number of understory shrubs provided food and cover to hide from predators. 'Alalā are the only survivor of five *corvid* species that evolved in the Hawaiian Islands, the other four species went extinct before Western contact.

'Alalā play an important role in the forests where it lived. It was an important seed disperser for many native plants. It ate the fruits of these plants, flew to another location, and left behind the seeds that had passed through its digestive tract. Without the 'Alalā, these native plants can have a harder time spreading and reproducing since some plants have higher germination rates after passing through the 'alalā digestive tract than simply falling to the forest floor.

Primary Threats: The 'Alalā faces an ample number of threats in the wild, which are considered contributing factors to their extinction in the wild. Small population size makes the species more vulnerable to environmental fluctuations, leading to a higher likelihood of inbreeding, which could result in lethal deformities. Unlike most crows, Hawaiian crows did not adapt well to human presence. **Persecution by humans is another threat to their survival. Farmers have shot 'alalā** because they were believed to disturb crops. Illegal hunting has continued even after legal protection was granted to the crows. Humans have also caused habitat degradation and deforestation through agriculture, ranching, logging, and non-native ungulates. Loss of canopy cover exposes the 'alalā to dangerous predators. Chicks are vulnerable to tree-climbing rats and, after they leave their nests, to cats, dogs, and mongooses. Deforestation also increases soil erosion and the spread of invasive plants and mosquitoes (avian malaria). This directly relates to the primary cause of the Hawaiian crow's extinction, disease.

State and Federal Protection: The Hawaiian crow is the most endangered corvid species in the world and the only species left in Hawaii. Like other critically endangered species, harming the Hawaiian crow is illegal under U.S. federal law. The 'alalā has been legally protected by the state of Hawaii since 1931 and was recognized as federally endangered in 1967.



Exhibit 10



*Photograph of Steven Cabrera's infected right leg.
Date: September 25, 2020 ~ Credit Skylar Cabrera*

EXHIBIT 11

GREENHAWAII.COM

ROAD EXPANSION STUCK IN THE FOREST

By A. Ching, Greenhawaii Staff Writer** April 22, 2009

When planning a massive road construction project, engineers are often concerned, and rightly so, with the big issues that require creative solutions and big dollars, common questions like how do we get around this rock outcrop, where are bridges going to be located, and what drainage systems should be used on flood plains? However, as the Hawaii Department of Transportation (“DOT”) recently realized, it is sometimes the smallest of issues that cause the greatest of problems.

In this case, the smallest issue is the rarest bird in Hawaii – the `alala. This cute bird is approximately 20 inches from bill to tail. After decades of development, its numbers reached critical levels and it officially became an endangered species in 1967. It’s not like it used to be when the housing development was built on a forest reserve without question years ago.

While the government has finally recognized the importance of saving the `alala, what is often lost on the general population is the cost associated with finding alternative solutions when an `alala habitat becomes threatened. About 15 years ago, a single `alala stopped an entire project in Kohala from occurring. The only way the county can use the land now is to keep it as a conservancy, because a such a group would never develop it. Now the proposed highway between Volcano and Kohala has been jeopardized by the discovery of an `alala flock along the proposed route. As a result, DOT will have one of three choices: 1) Divert the route and displace additional homeowners; 2) build an expensive bridge over the forest where the birds were found; or 3) abandon the proposed highway all together. Each option carries costs in excess of \$1 million. Kermit was right – it’s not easy being green.

We here at greenhawaii certainly applaud the county for its efforts and making this discovery public information and for trying to find a green solution. We also echo a word of caution to environmentalists in the area since the `alala has become the poster child for anti-urbanization: do not attempt to plant `alala in locations where they do not exist. Even though a black market `alala can sell for as much as \$1500, many opponents of construction projects feel it is a small price to pay to run some interference. But that is not the only cost. Now, if you are caught you will be prosecuted.

A representative from the Hawaii Species Council, who chose not to have their name cited in this article, informed greenhawaii that she knows of at least five instances in the past three years where opponents of given construction projects have tried to plant `alala on site in hope of derailing it. To a trained environmental scientist, it is easy to spot a fake sighting. `Alala live in very specific and limited locations. The conditions must be just right to support the endangered species. It is not an environment that can be created. While none of the environmental vandals have yet to be prosecuted, a new mandate in Species Council policy is about to change all of that. It is illegal to own or possess `alala. Convictions can even include up to four years of jail time and the Species Council will now prosecute, even if your “possession” was limited to the few minutes it takes to drop it in the path of the new superhighway or chain store and snap a few shots with your camera.

It is yet to be known if the `alala found along the planned highway route were real or planted. However, given the delay in construction, it appears as if DOT is not taking any chances. At the time of the writing of this article, DOT was in the process of consulting with the Army Corp of Engineers to determine the cost of building a bridge over the bog area in question.

Questions? Comments- write to me: A.Ching@greenhawaii.com

Exhibit 12

Pahala High School
Pahala, Hawaii
www.wisaweHS.edu



Home of the Hawks!

May 2021 Newsletter
Vol. 37 Issue 9

Suzy's W's Pet Palace Lives up to Its Name *by Skylar Cabrera (9th)*

Two days ago me and a couple of my fellow members of the Environmental Science Club went and visited Suzy W's Pet Palace down on Main Street. We had heard that Suzy had been mistreating some of the dogs and cats that she sold there. Our informant told us that she would often forget to feed them and rarely took the dogs out of their pens. Puppy mills are really bad for the community and that is where we heard Suzy got most of her dogs.

Well, I am happy to report that Suzy W's Pet Palace was really that – a palace! All of the rumors are not true. The cats and the dogs are well cared for. In fact, Suzy regularly adopts shelter dogs and cats for herself and donates money to the SPCA. We were all very impressed.

Suzy is even saving the lives of one of Hawaii's endangered species – the 'alalā. The 'alalā is a beautiful species with

a short beak and black feathers. In the middle of the Pet Palace was a larger cage that had two 'alalā in it. Someone had found the turtles on the side of a country road somewhere southwest of Wisawe. But the birds were ill. Suzy nursed them back to health and recreated their environment. Suzy told me that they make great pets and that she hopes to have more 'alalā's available in the future from a trusted source. Because they are so rare, a single 'alalā can cost \$750. Suzy said she will only sell them to the right buyer.

It is so nice to report a story of someone helping the community and the environment like the work done by Suzy and her Pet Palace!

Upcoming Baseball Schedule

Date	Opponent	Home / Away
May 5	South High	Home
May 13	Slately High	Away
May 18	North High	Away
May 21	Central High	Home
May 25	Hilo High	Home

page 1

Exhibit 13

Lee Fletcher

P.O. Box 10 • Pahala, Hawaii 96777

EDUCATION

Penn State University, M.S., Zoology, 1986

Oberlin College, B.S., Literature, 1984
Departmental honors

EXPERIENCE

Planet Protectors, LLC, Pahala, HI, 2018-Present

President and CEO, 2006-Present

Provides comprehensive environmental analysis and litigation support, including categorical exclusion analysis, environmental assessments, environmental impact statements, and other examination of water, soil, and air pollution; present and potential population of existing or planned property for threatened or endangered species using the proprietary NestFinder database; and wildflowers suitable for consumption. Provides investigation and expert testimony on matters of environmental science and conservation, including litigation testimony. Expert eco-tourism guide.

Pun-Yin Institute for Wholistic Studies, 2015-2018

Guru, 2017-2018 | Student of the Wave, 2015-2017

Led seminar sessions in zoology, botany, environmental science, reflexology and aura cleansing to groups of students from around the world studying nature, human impacts, and fengshui.

Hawaii Department of Environmental Protection, 1986-2015

Chief, Investigations, 1993, 1996, 2000 | Senior Investigator, 1994-1995, 1997-1999, 2001-03 Investigator, 1985-1994 | Associate Investigator, 1977-1984

Assisted, joined, and led teams of investigators in performing environmental assessments and drafting environmental impact statements. Investigated allegations of permit violations relating to clean water, clean air, and soil pollution. Testified before executive, legislative, and judicial tribunals on matters relating to environmental science, including on behalf of the DEP in enforcement and injunction proceedings. Served as Chief of the Investigations division at request of DEP administration for three years, supervising over fifty investigators.

PROFESSIONAL ASSOCIATIONS

Association for Environmental Studies and Sciences

Greenpeace

Association of Environmental Professionals

Earth Liberation Front

Natural Resources Defense Council

TerraFirst!

League of Conservation Voters

Greenwar

REPRESENTATIVE PUBLICATIONS

Para-Environmental Disruption: Toward a New Paradigm of Conservation,

www.planetearthfirst.com *Living on the Edge: Birds*, Wild Resource Conservation Fund 2007 (educational video) *A Mother's Love: Gaia, Her Children, and Unity of Spirit and Body*, Redbook, October 2005

Exhibit 14

Bree Nellie, Ph.D.

15 Tuk Terrace • Volcano, HI 96785

EDUCATION

Yale School of Forestry and Environmental Studies, New Haven, CT, Ph.D. Ecology, 2020;

Honors: Gravesend Research Fellowship, Cambridge University, 2019

University of California, Los Angeles, CA, B.S. Environmental Engineering, 2012

Honors: Josef Teodor Konrad Prize for Undergraduate Research - Environmental Engineering
Achebe Scholars Program

EXPERIENCE

Nellie Consulting, LLC, Founder and Principal, 2020-Present

Provide environmental assessments and, where necessary, prepare environmental impact statements for public and private clients seeking completeness and discretion. Utilize all modern, accepted methodologies for determining presence or absence of threatened or endangered species. Work with clients on environmental management plans to minimize disruptive influence of development or expansion projects on endangered or threatened species or their habitat. Act as liaison with governmental entities, private groups, and press relating to development. Testify as expert before executive, legislative or judicial bodies.

Rutgers University - Camden, Adjunct Professor of Law, 2019

Taught environmental law seminar classes to second and third year law students. Received excellent evaluations and invitation to return as adjunct professor in the future.

Drexel University, Lecturer in Environmental Engineering, 2019

Lectured in various aspects of environmental engineering, ecology, and botany.

National Park Service, Park Ranger, 2015-16

Patrolled, maintained, and guided tours and other groups at Valley Forge National Historical Park and other national parks. Accredited as federal law enforcement officer.

United States Army Corps of Engineers, 249th Engineer Battalion, 2005-2009

As enlisted member of United States military, actively participated in the world's largest public engineering, design and construction management enterprise. Actively supported Corps work with Federal Emergency Management Agency. Engaged in water management, coastal navigation, outdoor recreation, water supply and disaster recovery efforts.

PUBLICATIONS

The Crisis in Our Forests: Invasive Species and Human-Mediated Transplantation of Wood-Boring Beetles, Journal of Environmental Sciences, June 2020

Clean Water, Clean Air, and a Cleaned-Out Wallet?: Strategies for Mediating the Impact of Environmental Findings on Development and Expansion, in *Green Growth, 4th Ed.*, Berdichev and Bishopsbourne, eds., University of Chicago Business Press, 2019

Does The Endangered Species Act Adequately Protect Growth?, Comment, Yale Journal of Regulation, Winter 2019

PROFESSIONAL ASSOCIATIONS

American Academy of Environmental
Engineers Hawaii Chamber of Commerce
United States Army Alumni Association

Hawaii Young Engineers Nature
Conservancy Board of Advisors Yale
Alumni Association

Exhibit 15



Date: January 31, 2023
To: All ZenoPharma Executive Level Employees
From: David P. Carney – Sr. Vice President, Research and Development
Re: **Current Trends in ZenoPharma Research & Development**

Dear Colleagues:

With a heavy pen and heavier heart, I must report that our research and development efforts have not met expectations. A perfect storm of increased cost of capital, an increasingly robust FDA adjudicative process and the fact that some of our best selling products are or soon will be subject to generic competition, paints a bleak future. Worse, based on publicly available information, our competitors appear to have had greater success stocking their pipeline with new products for market. If we are not able to break through on our pending projects, and barring any unexpected legal activity that would extend the patents on our leading pharmaceuticals, it is possible that we could be targeted by one of our competitor companies, or, worse, be forced to enter bankruptcy, sell some of our assets and close our less profitable divisions. Needless to say, this would bring about a substantial workforce downsizing.

Specifically, our three biggest profit generating products, Tellnopsis (the leading post-glaucoma surgery eye drop), Crownopy (asthma medication), and Sympiocore (anti-depressant) will have lost their patent protection by February 1, 2024. Indeed, Tellnopsis, which lost list protection in Nov. 2023, is already losing market share to aggressive generic competition. In addition, our high hope for Thermadapline (high blood pressure medication) was dashed when the drug recently failed in phase three testing. It will not be eligible for FDA approval until 2026 at the earliest. This leaves ZenoPharma reliant on SutureStick (medical adhesive) as our primary profit driver. Unfortunately, as I documented in my report last quarter, the production levels of SutureStick are limited to the sap production and processing capabilities of our Pahala facility. We have been trying for many years to get the sap to grow in laboratory settings to increase production levels. However, this project has suffered significant setbacks, and we may be as far as 5 years away from being able to utilize laboratory based production to supplement the groves's natural sap production on even a limited scale. We are examining options for substantially increasing the quarry's productivity in order to provide sufficient revenue to remain solvent in this trying time. Furthermore, the long term testing of SutureStick has produced some troubling results, including an increased occurrence of patients suffering abnormal pain around suture sites and elevated cortisol levels. However, these results are still well within the statistical margin of testing error, and they are not significantly higher than those associated with SutureStick's primary competitor, Stull Medical Adhesive's BioBinder. However, these long term test results are fair warning that we cannot become entirely reliant upon this single product.

Do not share the contents of this memo with line employees, but keep its message in mind through all of your endeavors. ZenoPharma has faced trying times before, but the creativity and hard work of our management and our employees have always pulled us through. The night is always darkest just before the dawn. Together, with perseverance, we and ZenoPharma will survive and flourish.

- DPC