ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BLUEEARTH BIOFUELS, LLC,	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO.: 25628
HAWAIIAN ELECTRIC COMPANY, INC, MAUI ELECTRIC COMPANY, LTD, ALOHA PETROLEUM, LTD AND KARL E. STAHLKOPF, INDIVIDUALLY,	§	(JURY DEMANDED)
Defendants.	§	3-08CV1779-L

PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BlueEarth Biofuels, LLC ("BlueEarth" or "Plaintiff"), Plaintiff, complaining of Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., Aloha Petroleum, Ltd., and Karl E. Stahlkopf, individually (collectively "Defendants"), and for cause of action would show:

I.
PARTIES, JURISDICTION & VENUE

1. Plaintiff BlueEarth is a Nevada Limited Liability Company. BlueEarth's managing members are citizens of Texas and Connecticut.

2. Defendant Hawaiian Electric Company, Inc. ("HECO") is a Hawaiian corporation with its principal place of business in Hawaii. HECO may be served by and through its registered agent, Molly M. Egged, 900 Richards Street, Room 914, Honolulu, Hawaii 96813.

3. Defendant Maui Electric Company, Ltd. ("MECO") is a Hawaiian corporation with its principal place of business in Hawaii. MECO may be served by and through its registered agent, Eileen Wachi, 210 W. Kamehameha Avenue, Kahului, Hawaii 96733.

4. Defendant Aloha Petroleum, Ltd. ("Aloha") is a Hawaiian corporation with its principal place of business in Hawaii. Aloha may be served by and through its registered agent, Robert W. Fung, 1132 Bishop Street, Suite 1700, Honolulu, Hawaii 96813.

5. Defendant Karl E. Stahlkopf ("Stahlkopf") is a natural person who is a citizen of Hawaii and may be served at his residence located at 2350 Pacific Heights Road, Honolulu, Hawaii 96813.

6. This Court has jurisdiction over this action based upon 28 U.S.C. §1332(a) because this action involves a controversy between citizens of different states and because the matter in controversy exceeds the minimum jurisdictional limits of the Court.

7. Venue is proper in the Northern District of Texas, Dallas Division, by written agreement of Plaintiff and all Defendants.[1]

II.
SUMMARY OF ACTION

8. BlueEarth entered into certain exclusive agreements with HECO and MECO to design and develop a biodiesel production facility to be located on the island of Maui (the "Project"). The Project would produce biodiesel for MECO and other HECO affiliates in the Hawaiian Islands.

9. BlueEarth, HECO and MECO (each are referred to as a "party" or collectively as "parties") agreed in writing, among other things: (a) to negotiate exclusively with each other in good faith to develop an investment agreement for the Project, (b) to work

[1] *See* Mutual Non-Circumvention and Non-Disclosure Agreements (the "NDAs") at p.3 ¶7 attached hereto as Exhibits A and B and incorporated herein by reference.

exclusively and in good faith with each other to develop the Project, (c) that information furnished by one party to the other will be kept confidential by the receiving party and will not be disclosed or used for any purpose other than evaluating the Project, (d) that any contacts (names, addresses, fax numbers, or e-mail addresses) revealed by one party to the other are exclusive and valuable contacts of the disclosing party and that the receiving party shall not enter into direct negotiations or transactions with these contacts, (e) that each party shall not solicit or accept any business from sources made available by one party to the other without the express written permission of the party who made the source available, and (f) that each party shall not avoid payment of any fees, commissions, or other remuneration in any way whatsoever. BlueEarth, HECO, and MECO also agreed that the efforts of the parties would be rewarded with annual income from the Project that would be distributed on the basis of each party's ownership in a newly created entity, referred to hereinafter as "Newco."

10. In consideration of these promises and representations, BlueEarth expended significant money, time, and other valuable efforts and resources.

11. During this process, BlueEarth introduced one of its contacts or sources, Aloha, to MECO as a potential operator of a terminal facility for the Project. The operation of this terminal facility would be a separate project outside the scope of Newco. Aloha signed a non-disclosure agreement with BlueEarth, similar to the non-disclosure agreements among BlueEarth, HECO and MECO.

12. Following the introduction of Aloha to MECO, however, HECO and MECO began separate and exclusive negotiations with Aloha for, among other things, the

development, investment, and ownership in the Project. These exclusive negotiations were made without the consent or knowledge of BlueEarth.

13. HECO and MECO now refuse to continue working with BlueEarth to develop an investment for the Project and/or to complete the Project. More specifically, Stahlkopf has informed BlueEarth that HECO and MECO have no intention of completing the Project with BlueEarth, that BlueEarth will not receive the annual income expected from the Project, and that HECO and MECO intend to contract with Aloha to complete the Project.

14. BlueEarth has performed or is ready, willing and able to perform its obligations as set forth in its agreements with HECO and MECO.

15. Consequently, BlueEarth now seeks recovery of the damages it has suffered and continues to suffer as a result of Defendant HECO and MECO's breach of certain contracts, conspiracy to breach contracts, and interference with existing contracts, and is entitled to specific performance of its agreements with HECO and MECO and injunctive and other equitable relief.

16. BlueEarth seeks recovery of damages from Aloha for its breach of contract and interference with existing contracts, seeks specific performance of its agreement with Aloha, and is also entitled to injunctive and other equitable relief.

17. BlueEarth seeks recovery of damages from Stahlkopf because he induced and conspired with HECO, MECO and Aloha to breach their contracts with BlueEarth, and is entitled to injunctive and other equitable relief.

III.
FACTUAL BACKGROUND

18. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-17, hereinabove.

19. BlueEarth is a business involved in the development of biodiesel production facilities.

20. HECO is a corporation involved in the production and supply of electricity for the Hawaiian Islands.

21. MECO is a wholly-owned subsidiary of HECO and is involved in the production and supply of electricity in Maui, Hawaii.

22. On or about March, 2006, HECO and MECO began talks with BlueEarth, a company with significant knowledge and expertise in renewable energy sources, to jointly develop the Project on an exclusive basis. The purpose of the Project was to provide a supply of biodiesel for the Hawaiian Islands while also assisting Hawaii in meeting its renewable energy objectives and enhancing HECO and MECO's public goodwill.

23. On September 27, 2006, BlueEarth and HECO executed a Mutual Non-Circumvention and Non-Disclosure Agreement (the "HECO NDA") in the course of and in furtherance of their talks regarding the Project.[2] On this same date, BlueEarth also executed a Mutual Non-Circumvention and Non-Disclosure Agreement with MECO (the "MECO NDA") (the HECO NDA and the MECO NDA are collectively referred to as the "NDAs").[3]

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[2] *See* Exhibit A.
[3] *See* Exhibits A and B.

24. Stahlkopf, the Senior Vice President for Energy Solutions and Chief Technology Officer of HECO, signed the HECO NDA on behalf of HECO.

25. The NDAs provide that in furtherance of HECO's, MECO's and BlueEarth's (collectively the "NDA Signatories") common desire to jointly develop the Project, certain information and documents (the "Confidential Information") would be shared between the NDA Signatories. Accordingly, the NDA Signatories mutually agreed in the NDAs that:

> a. Confidential Information given by one party to another will remain at all times property of the originating party;[4]
>
> b. Confidential Information of the originating party will be kept confidential by the receiving party and will not be disclosed or used for any purpose other than evaluating the Project by the receiving party without the prior written consent of the originating party;[5]
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> c. any contacts (names, addresses, fax numbers, or e-mail addresses) revealed by one party to the other are exclusive and valuable contacts of the disclosing party and that the receiving party shall not enter into direct negotiations or transactions with these contacts;[6]
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> d. each party shall not solicit or accept any business from sources made available by one party to the other without the express written permission of the party who made the source available;[7]
>
> e. each party shall not avoid payment of any fees, commissions, or other remuneration in any way whatsoever;[8]
>
> f. each party will be responsible for any breach of an NDA by its respective company representative;[9]
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> g. because there is no adequate remedy for a breach of an NDA, a party is entitled to injunctive relief, in addition to any other remedy at law or in equity, to prevent breaches and specifically enforce the terms of the NDAs;[10]

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[4] *Id.* at p. 1 ¶3.
[5] *Id.* at p. 1 ¶4.
[6] *Id.* at p. 3 ¶3.
[7] *Id.* at p. 3 ¶1.
[8] *Id.* at p. 3 ¶3.
[9] *Id.* at p. 1 ¶4.
[10] *Id.* at p. 2 ¶4.

h. in the event of circumvention of an NDA by a party, the circumvented party shall be entitled to a legal monetary penalty equal to the maximum services it should realize from such a transaction and any and all expenses, including, but not limited to, legal fees that would involve the recovery of said funds;[11]

i. the exclusive venue for enforcement of the NDAs is any United States court; and[12]

j. the NDAs will remain in effect for three years from the date on which they were signed.[13]

26. The NDAs have not been altered, amended, or terminated. BlueEarth performed its obligations under the NDAs.

27. On January 29, 2007, BlueEarth, HECO, and MECO executed the "Confidential and Proprietary Memorandum of Understanding between Hawaiian Electric Company, Inc., Maui Electric Company, Ltd. and BlueEarth Biofuels, LLC to Proceed with Evaluation and Development of a Biodiesel Production Facility on Maui Electric Company, Limited's Wa'ena Site on Maui, HI" (the "Memorandum").

28. The Memorandum's stated goal was to memorialize the preliminary understandings between BlueEarth, HECO, and MECO (the "Memorandum Signatories") with regard to their affiliation and business relationship with each other, future agreements between them, and to document the current understanding of the anticipated roles and responsibilities they may undertake with respect to the evaluation, funding and development of the Project.

29. In addition to memorializing the general understandings of the Memorandum Signatories, BlueEarth, HECO, and MECO agreed in the Memorandum:

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[11] *Id.* at p. 3 ¶4.
[12] *Id.* at p. 3 ¶7.
[13] *Id.* at p. 4 ¶1.

a. to negotiate exclusively with each other in good faith to develop an investment agreement for the Project; and

b. to work exclusively and in good faith with each other to develop the Project.

30. The Memorandum has not been amended or terminated. BlueEarth performed its obligations under the Memorandum.

31. In consideration of the promises and representations in the NDAs and the Memorandum, BlueEarth spent money in excess of $1,200,000.00, and expended significant time and other valuable efforts and resources, which included, but were not limited to, working to obtain permitting for the Project, conducting project engineering, site review, finding and securing project investment, project assessment, pricing and analysis, planning and development for a terminal facility to support the Project, and meetings with state lawmakers, agricultural groups, landowners, corporations, and local universities. BlueEarth also established Newco, an entity known as BlueEarth Maui Biodiesel, LLC, of which 50.1% is owned by BlueEarth and the remaining 49.9% is owned by a HECO wholly-owned subsidiary, Uluwehiokama Biofuels Corp.

32. BlueEarth began talks with Defendant Aloha, a Hawaiian fuel retailer and owner of fuel storage terminals, regarding logistical support for incoming feedstock and other raw materials used by the Project and the third party sale of a small portion of the biodiesel manufactured at the Project's refinery.

33. To help facilitate the exchange of technical information between BlueEarth and Aloha, BlueEarth and Aloha entered into a Mutual Non-Disclosure Agreement on January 28, 2008 and later, on July 14, 2008, the Mutual Confidentiality Agreement (the "Agreement") whereby they agreed, among other things, (a) not to disclose each other's confidential information, (b) not to solicit business from each other's clients, and (c) that

in addition to any other remedy at law or in equity available for a breach of the Agreement, the non-breaching party shall be entitled to injunctive relief.[14]

34. On March 14, 2008, BlueEarth introduced Aloha to MECO during a broader audience planning meeting as a potential operator of the planned fuel terminal facility, which was not a part of the Project.

35. In addition to Aloha's anticipated participation as a fuel terminal operator, on May 15, 2008, Aloha expressed an interest to BlueEarth in making a small minority investment in the Project.

36. Shortly after BlueEarth shared its confidential information regarding the details of the Project with Aloha, Stahlkopf informed BlueEarth that based upon numerous private meetings between HECO and Aloha in June of 2008, HECO was unilaterally terminating investment talks with the Project's potential equity investor in order to provide Aloha with a key investment role in the Project. This key investment role, promised to Aloha by HECO included the opportunity to purchase a majority interest in the Project.

37. As Aloha gained further information regarding the Project and after additional private meetings between HECO and Aloha, Stahlkopf informed BlueEarth that HECO expected BlueEarth to sell its entire interest in the Project to Aloha or risk losing its entire investment in the project.

38. HECO and MECO now refuse to continue working with BlueEarth to develop a viable investment for the Project or to complete the Project. More specifically, Stahlkopf, with full knowledge of the NDAs, Memorandum, and the Agreement, informed BlueEarth that HECO and MECO have no intention of completing the Project

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[14] *See* the July 14, 2008 Mutual Confidentiality Agreement (the "Agreement") attached hereto as Exhibit C and incorporated herein by reference.

with BlueEarth, that BlueEarth will not receive the annual income expected from the Project, and that, after January 29, 2009, the expiration date of the Memorandum, HECO and MECO intend to contract with Aloha to complete the Project.

39. HECO and MECO have, among other things, disclosed BlueEarth's Confidential Information to third parties, have used BlueEarth's Confidential Information for a purpose other than the evaluation of the Project, and have solicited, negotiated, and accepted business from a contact and source of BlueEarth, all without the express written permission of BlueEarth; therefore, HECO and MECO are in breach of the NDAs.

40. HECO and MECO have failed to negotiate and work exclusively with BlueEarth in good faith to develop the investment for the Project and to develop the Project itself; therefore, HECO and MECO are in breach of the Memorandum.

41. Aloha solicited business from BlueEarth's clients; therefore, Aloha is in breach of the Agreement.

42. Stahlkopf induced and conspired with HECO, MECO, and Aloha to breach their contracts with BlueEarth; therefore, Stahlkopf is liable for inducement to breach contracts, interference with contracts and conspiracy.

43. Due to the foregoing, BlueEarth retained the undersigned counsel to prosecute its claims against Defendants, and BlueEarth has agreed to pay the reasonable attorneys' fees and expenses in prosecuting this matter, and any appeal thereof.

IV.
Claims for Relief

(HECO - Breach of Contract I)

44. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-43, hereinabove.

45. The HECO NDA provides that Plaintiff would disclose its Confidential Information, contacts, and sources to HECO. In return, HECO agreed not to, among other things, disclose Plaintiff's Confidential Information to third parties, make use of Plaintiff's Confidential Information for a purpose other than the evaluation of the Project, or solicit, negotiate, or accept business from Plaintiff's contacts, or sources without the express written consent of Plaintiff. The HECO NDA further stated that it was to remain in effect for three years from the date of execution.[15]

46. Plaintiff fully performed its contractual obligations under the HECO NDA and all conditions precedent have been satisfied.

47. HECO materially breached the HECO NDA by disclosing Plaintiff's Confidential Information to third parties and has made use of Plaintiff's Confidential Information for a purpose other than the evaluation of the Project without the express written consent of Plaintiff. HECO materially breached the HECO NDA by soliciting, negotiating, transacting, and accepting business with Aloha without the written consent of Plaintiff. HECO materially breached the HECO NDA by expressly stating that Plaintiff will not receive any fees, commission or any remuneration from the Project.

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[15] Exhibit A.

48. HECO's breach caused injury to Plaintiff which is within the jurisdictional limits of this Court, for which Plaintiff is entitled to monetary damages attorneys' fees, and injunctive relief.

(HECO - Breach of Contract II)

49. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-48, hereinabove.

50. The Memorandum provides that the Memorandum Signatories would negotiate exclusively with each other in good faith to develop an investment for the Project, that the Memorandum Signatories would work exclusively and in good faith with each other to develop the Project, and that the Memorandum would remain in effect for twenty-four months.

51. Plaintiff fully performed its contractual obligations under the Memorandum and all conditions precedent have been satisfied.

52. HECO materially breached the Memorandum by failing to negotiate and work exclusively in good faith with BlueEarth during the time that the Memorandum was in effect, to wit: HECO negotiated with Aloha regarding the development, investment, and completion of the Project.

53. HECO's breach caused injury to Plaintiff which is within the jurisdictional limits of this Court, for which Plaintiff is entitled to monetary damages, attorneys' fees, and injunctive relief.

(MECO - Breach of Contract I)

54. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-53, hereinabove.

55. The MECO NDA provides that Plaintiff would disclose its Confidential Information, contacts, and sources to MECO. In return, MECO agreed not to, among other things, disclose Plaintiff's Confidential Information to third parties, make use of Plaintiff's Confidential Information for a purpose other than the evaluation of the Project, or solicit, negotiate, or accept business from Plaintiff's contacts, or sources without the express written consent of Plaintiff. The MECO NDA further stated that it was to remain in effect for three years from the date of execution.[16]

56. Plaintiff fully performed its contractual obligations under the MECO NDA and all conditions precedent have been satisfied.

57. MECO materially breached the MECO NDA by disclosing Plaintiff's Confidential Information to third parties and has made use of Plaintiff's Confidential Information for a purpose other than the evaluation of the Project without the express written consent of Plaintiff. MECO materially breached the MECO NDA by soliciting, negotiating, transacting, and accepting business with Aloha without the written consent of Plaintiff. MECO materially breached the MECO NDA by expressly stating that Plaintiff will not receive any fees, commission or any remuneration from the Project.

58. MECO's breach caused injury to Plaintiff which is within the jurisdictional limits of this Court, for which Plaintiff is entitled to monetary damages, attorneys' fees, and injunctive relief.

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[16] Exhibit B

(MECO - Breach of Contract II)

59. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-58, hereinabove.

60. The Memorandum provides that the Memorandum Signatories would negotiate exclusively with each other in good faith to develop an investment for the Project, that the Memorandum Signatories would work exclusively and in good faith with each other to develop the Project, and that the Memorandum would remain in effect for twenty-four months.

61. Plaintiff fully performed its contractual obligations under the Memorandum and all conditions precedent have been satisfied.

62. MECO materially breached the Memorandum by failing to negotiate and work exclusively in good faith with BlueEarth during the time that the Memorandum was in effect, to wit: MECO negotiated with Aloha regarding the investment for the Project and for development and completion of the Project.

63. MECO's breach caused injury to Plaintiff which is within the jurisdictional limits of this Court, for which Plaintiff is entitled to monetary damages, attorneys' fees, and injunctive relief.

(Aloha – Breach of Contract)

64. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-63, hereinabove.

65. The Agreement provides that Plaintiff and Aloha would discuss the possibility of a business relationship between them and in connection therewith each would disclose confidential information to the other. In return, Plaintiff and Aloha agreed to, among

other things, refrain from disclosing this confidential information to third parties and refrain from soliciting or attempting to solicit business from each other's clients without the express written consent of the other.[17]

66. Plaintiff fully performed its contractual obligations under the Agreement and all conditions precedent have been satisfied.

67. Aloha materially breached the Agreement by, among other things, disclosing Plaintiff's confidential information to third parties and soliciting or attempting to solicit business with HECO and MECO, both BlueEarth's clients, without the written consent of Plaintiff.

68. Aloha's breach caused injury to Plaintiff which is within the jurisdictional limits of this Court, for which Plaintiff is entitled to recovery, including attorneys' fees and injunctive relief.

(All Defendants – Interference with Existing Contract I)

69. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-68, hereinabove.

70. Plaintiff had existing contracts with HECO[18] (the HECO NDA), MECO[19] (the MECO NDA) and Aloha[20] (the Agreement) (collectively the NDAs and Agreement are referred to as the "Existing Contracts") whereby Plaintiff would disclose its Confidential Information, contacts, and sources to HECO, MECO and Aloha. In return, HECO, MECO and Aloha agreed not to, among other things, disclose Plaintiff's Confidential Information to third parties, make use of Plaintiff's Confidential Information for a

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[17] Exhibit C.
[18] Exhibit A.
[19] Exhibit B.
[20] Exhibit C.

purpose other than the evaluation of the Project, or solicit, negotiate, or accept business from Plaintiff's contacts, or sources without the express written consent of Plaintiff.

71. All Defendants knew or had reason to know of the Existing Contracts and of Plaintiff's interest in the Existing Contracts.

72. HECO willfully and intentionally interfered with the MECO NDA and the Agreement, to wit: HECO intentionally induced or caused MECO and Aloha to breach the MECO NDA and the Agreement, respectively, with Plaintiff.

73. MECO willfully and intentionally interfered with the HECO NDA and the Agreement, to wit: MECO intentionally induced or caused HECO and Aloha to breach the HECO NDA and the Agreement, respectively, with Plaintiff.

74. Aloha willfully and intentionally interfered with the HECO NDA and the MECO NDA, to wit: Aloha intentionally induced or caused HECO and MECO to breach the NDAs with Plaintiff.

75. Stahlkopf willfully and intentionally interfered with the Existing Contracts, to wit: Stahlkopf intentionally induced or caused HECO, MECO and Aloha to breach the Existing Contracts with Plaintiff.

76. Defendants' interference proximately caused injury to Plaintiff which is within the jurisdictional limits of this Court and for which there is no adequate remedy at law.

(All Defendants – Interference with Existing Contract II)

77. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-76, hereinabove.

78. The Memorandum provides that the Memorandum Signatories (BlueEarth, HECO, and MECO) would negotiate exclusively with each other in good faith to develop

an investment for the Project, that the Memorandum Signatories would work exclusively and in good faith with each other to develop the Project, and that the Memorandum would remain in effect for twenty-four months.

79. All Defendants knew or had reason to know of the Memorandum and of Plaintiff's interest in the Memorandum.

80. HECO willfully and intentionally interfered with the Memorandum, to wit: HECO intentionally induced or caused MECO to breach the Memorandum with Plaintiff.

81. MECO willfully and intentionally interfered with the Memorandum, to wit: MECO intentionally induced or caused HECO to breach the Memorandum with Plaintiff.

82. Aloha willfully and intentionally interfered with the Memorandum, to wit: Aloha intentionally induced or caused HECO and MECO to breach the Memorandum with Plaintiff.

83. Stahlkopf willfully and intentionally interfered with the Memorandum, to wit: Stahlkopf intentionally induced or caused HECO and MECO to breach the Memorandum with Plaintiff.

84. Defendants' interference proximately caused injury to Plaintiff which is within the jurisdictional limits of this Court and for which there is no adequate remedy at law.

(Stahlkopf – Inducement to Breach)

85. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-84, hereinabove.

86. Plaintiff had existing contracts with HECO[21] (the HECO NDA), MECO[22] (the MECO NDA) and Aloha[23] (the Agreement) (collectively the NDAs and Agreement are

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[21] Exhibit A.
[22] Exhibit B.

referred to as the "Existing Contracts") whereby Plaintiff would disclose its Confidential Information, contacts, and sources to HECO, MECO and Aloha. In return, HECO, MECO and Aloha agreed not to, among other things, disclose Plaintiff's Confidential Information to third parties, make use of Plaintiff's Confidential Information for a purpose other than the evaluation of the Project, or solicit, negotiate, or accept business from Plaintiff's contacts, or sources without the express written consent of Plaintiff.

87. Plaintiff also had a contract with HECO and MECO, to wit: the Memorandum. The Memorandum provides that the Memorandum Signatories (BlueEarth, HECO, and MECO) would negotiate exclusively with each other in good faith to develop an investment for the Project, that the Memorandum Signatories would work exclusively and in good faith with each other to develop the Project, and that the Memorandum would remain in effect for twenty-four months.

88. Stahlkopf knew or had reason to know of the NDAs, Agreement, and the Memorandum (the "Contracts") and of Plaintiff's interest in the Contracts.

89. Stahlkopf willfully and intentionally induced HECO, MECO, and Aloha to breach the Contracts with Plaintiff so that the Project could continue without Plaintiff's involvement.

90. Stahlkopf's interference proximately caused injury to Plaintiff which is within the jurisdictional limits of this Court and for which there is no adequate remedy at law.

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[23] Exhibit C.

(All Defendants – Conspiracy)

91. Plaintiff incorporates herein by reference every averment set forth in paragraphs 1-90, hereinabove.

92. By the activities described above, Defendants and each of them have conspired and agreed to breach their agreements with Plaintiff, misappropriate BlueEarth's confidential and proprietary information, and to complete the Project without BlueEarth's participation. Defendants undertook the above-described activities with knowledge of the nature and goals of the conspiracy and its unlawful purpose and in furtherance of the conspiracy.

93. By the activities described above, Defendants and each of them have conspired and agreed to interfere with the relationship between BlueEarth and HECO, MECO, and Aloha by inducing HECO, MECO, and Aloha to breach their respective contracts with Plaintiff, to interfere with the existing contracts with BlueEarth, to use BlueEarth's confidential and propriety information for their own benefit, and to generally deprive BlueEarth of legal rights. Defendants undertook the above described activities with knowledge of the nature and goals of the conspiracy and its unlawful purpose and in furtherance of the conspiracy.

94. As a proximate result of Defendants' conspiracy, BlueEarth has suffered and continues to suffer substantial damages.

95. In forming this conspiracy and acting to further the conspiracy, the Defendants have acted maliciously and/or in conscious disregard of BlueEarth's rights. Therefore, BlueEarth should be awarded exemplary damages against all Defendants.

V.
Claim for Attorneys' Fees and Expenses

96. Pursuant to the NDAs[24] and the Agreement,[25] BlueEarth is entitled to attorney fees and costs incurred in the prosecution of this action.

VI.
Jury Demand

97. BlueEarth demands a trial by jury on its claims for relief.

VII.
Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Plaintiff BlueEarth Biofuels, LLC prays for the following relief:

A. With regard to BlueEarth's claims for breach of the HECO NDA against HECO:

(1) That HECO and its affiliates, all directors, officers, employees, agents, representatives, attorneys of HECO and their affiliates, and all those in active concert or participation with them, be temporarily restrained and preliminarily and permanently enjoined from doing or authorizing any of the following acts without the authorization of BlueEarth:

(a) Disclosing BlueEarth's Confidential Information to third parties;

(b) Using BlueEarth's Confidential Information;

(c) Soliciting, negotiating, transacting, or accepting business from a contact or source of BlueEarth, including Aloha;

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[24] Exhibits A and B at p. 3 ¶4.
[25] Exhibit C at p. 2.

(d) Using BlueEarth's Confidential Information in furtherance of the Project, including, but not limited to, the design and construction of the Project;

(e) Avoiding payment of any fees, commissions, or other remuneration due BlueEarth from the Project; and

(f) Procuring any non-petroleum liquid fuel, including any biodiesel or liquid renewable fuels, from any person or entity that is not approved by BlueEarth.

(2) That the Court order the seizure and impoundment of all Confidential Information that is the property of BlueEarth that has not been returned by HECO.

(3) Specific performance of the HECO NDA pursuant to the terms and provisions enumerated therein, or, in the alternative, that HECO be required to pay, jointly and severally, to BlueEarth its actual damages, special damages measured by BlueEarth's lost profits and/or HECO's revenues/profits and BlueEarth's expenses and reasonable and necessary attorney fees incurred in the prosecution of this action.

B. With regard to BlueEarth's claims for breach of the Memorandum against HECO:

(1) That HECO and its affiliates, all directors, officers, employees, agents, representatives, attorneys of HECO and their affiliates, and all those in active concert or participation with them be temporarily restrained

and preliminarily and permanently enjoined from doing or authorizing any of the following acts without the authorization of BlueEarth:

(a) Disclosing BlueEarth's Confidential Information to third parties;

(b) Negotiating or working with any party other than BlueEarth, including Aloha, regarding any investment in the Project or the evaluation, development and construction of the Project;

(c) Using BlueEarth's Confidential Information in furtherance of the Project, including, but not limited to the design, development and construction of the Project; and

(d) Procuring any non-petroleum liquid fuel, including any biodiesel or renewable fuels, from any person or entity that is not approved by BlueEarth.

(2) That the Court order the seizure and impoundment of all Confidential Information that is the property of BlueEarth that has not been returned by HECO.

(3) Specific performance of the Memorandum pursuant to the terms and provisions enumerated therein, or, in the alternative, that HECO be required to pay, jointly and severally, to BlueEarth its actual damages, special damages measured by BlueEarth's lost profits and/or HECO's revenues/profits and BlueEarth's expenses and reasonable and necessary attorney fees incurred in the prosecution of this action.

C. With regard to BlueEarth's claims for breach of the MECO NDA against MECO:

(1) That MECO and its parent company, affiliates, all directors, officers, employees, agents, representatives, attorneys of MECO and their affiliates, and all those in active concert or participation with them be temporarily restrained and preliminarily and permanently enjoined from doing or authorizing any of the following acts without the authorization of BlueEarth:

(a) Disclosing BlueEarth's Confidential Information to third parties;

(b) Using BlueEarth's Confidential Information;

(c) Soliciting, negotiating, transacting, or accepting business from a contact or source of BlueEarth, including Aloha;

(d) Using BlueEarth's Confidential Information in furtherance of the Project, including, but not limited to, the design and construction of the Project; and

(e) Avoiding payment of any fees, commissions, or other remuneration due BlueEarth from the Project; and

(f) Procuring any non-petroleum liquid fuel, including any biodiesel or liquid renewable fuels, from any person or entity that is not approved by BlueEarth.

(2) That the Court order the seizure and impoundment of all Confidential Information that is the property of BlueEarth that has not been returned by MECO.

(3) Specific performance of the MECO NDA pursuant to the terms and provisions enumerated therein, or, in the alternative, that MECO be required to pay, jointly and severally, to BlueEarth its actual damages, special damages measured by BlueEarth's lost profits and/or MECO's revenues/profits and BlueEarth's expenses and reasonable and necessary attorney fees incurred in the prosecution of this action.

D. With regard to BlueEarth's claims for breach of the Memorandum against MECO:

(1) That MECO and its parent company, affiliates, all directors, officers, employees, agents, representatives, attorneys of MECO and their affiliates, and all those in active concert and participation with them, be temporarily restrained and preliminarily and permanently enjoined from doing or authorizing any of the following acts without the authorization of BlueEarth:

(a) Disclosing BlueEarth's Confidential Information to third parties;

(b) Negotiating or working with any party other than BlueEarth, including Aloha, regarding any investment in the Project or the evaluation, development, and construction of the Project;

(c) Using BlueEarth's Confidential Information in furtherance of the Project, including, but not limited to the design, development, and construction of the Project; and

(d) Procuring any non-petroleum liquid fuel, including any biodiesel or liquid renewable fuels, from any person or entity that is not approved by BlueEarth.

(2) That the Court order the seizure and impoundment of all Confidential Information that is the property of BlueEarth that has not been returned by MECO.

(3) Specific performance of the Memorandum pursuant to the terms and provisions enumerated therein, or, in the alternative, that MECO be required to pay, jointly and severally, to BlueEarth its actual damages, special damages measured by BlueEarth's lost profits and/or MECO's revenues/profits and BlueEarth's expenses and reasonable and necessary attorney fees incurred in the prosecution of this matter.

E. With regard to BlueEarth's claims for breach of the Agreement against Aloha:

(1) That Aloha and its affiliates, all directors, officers, employees, agents, representatives, and attorneys of Aloha and their affiliates, and all those in active concert and participation with them, be temporarily restrained and preliminarily and permanently enjoined from doing or authorizing any of the following acts without the authorization of BlueEarth:

(a) Disclosing BlueEarth's Confidential Information to third parties;

(b) Using BlueEarth's Confidential Information;

(c) Soliciting, negotiating, transacting, or accepting business from a contact or source of BlueEarth;

(d) Using BlueEarth's Confidential Information in furtherance of the Project, including, but not limited to the design and construction of the Project; and

(e) Procuring any non-petroleum liquid fuel, including any biodiesel or liquid renewable fuels, from any person or entity that is not approved by BlueEarth.

(2) That the Court order the seizure and impoundment of all Confidential Information that is the property of BlueEarth that has not been returned by Aloha.

(3) Specific performance of the Agreement pursuant to the terms and provisions enumerated therein, or, in the alternative, that Aloha be required to pay, jointly and severally, to BlueEarth its actual damages, special damages measured by BlueEarth's lost profits and/or Aloha's revenues/profits and BlueEarth's expenses and reasonable and necessary attorney fees incurred in the prosecution of this matter.

F. With regard to BlueEarth's claims for interference with an existing contract against all Defendants:

(1) That all Defendants be required to pay, jointly and severally, to BlueEarth actual damages, special damages measured by BlueEarth's lost profits and/or Defendants revenues/profits and BlueEarth's reasonable and necessary attorney fees; and

(2) That all Defendants be required to pay, jointly and severally, to BlueEarth exemplary damages.

G. With regard to BlueEarth's claim against Stahlkopf for inducement to breach:

(1) That Stahlkopf be required to pay, jointly and severally, to BlueEarth actual damages, special damages measured by BlueEarth's lost profits and/or Defendants revenues/profits and BlueEarth's reasonable and necessary attorney fees;

(2) That Stahlkopf be required to pay, jointly and severally, to BlueEarth exemplary damages;

H. With regard to BlueEarth's claim for conspiracy: That all Defendants found to have engaged in a conspiracy against BlueEarth be required to pay, jointly and severally, all of BlueEarth's damages proximately caused by the conspiracy and exemplary damages in an amount sufficient to deter them and others from engaging in such conduct in the future.

I. Pursuant to Federal Rule of Civil Procedure 57 and The Declaratory Judgment Act (28 U.S.C. §§2201-2202), BlueEarth requests that this Court determine BlueEarth's rights and obligations under the NDAs and the Memoranda, to wit:

a. That BlueEarth's Confidential Information given to HECO, MECO, or Aloha will remain at all times property of BlueEarth;

b. That BlueEarth's Confidential Information will be kept confidential by HECO, MECO, and Aloha, and their directors, officers, employees, agents, representatives, and all those in active concert or participation with them, and that BlueEarth's Confidential Information will not be disclosed or used for any purpose other than evaluating the Project without the prior written consent of BlueEarth;

c. That any contacts, including Aloha, that BlueEarth revealed to HECO and MECO are exclusive and valuable contacts of BlueEarth and that HECO and MECO, and their directors, officers, employees, agents, representatives, and all those in active concert or participation with them shall not enter into direct negotiations or transactions with these contacts, including Aloha;

d. That HECO and MECO, and their directors, officers, employees, agents, representatives, and all those in active concert or participation with them shall not solicit or accept any business from sources made available to them by BlueEarth, including Aloha, without the express written permission of BlueEarth;

e. That Aloha, and its directors, officers, employees, agents, representatives, and all those in active concert or participation with them shall not solicit or accept any business from BlueEarth's clients, including HECO and MECO, without the express written permission of BlueEarth;

f. That HECO and MECO shall not avoid payment of any fees, commissions, or other remuneration due BlueEarth from the Project in any way whatsoever;

g. That HECO and MECO must negotiate exclusively with BlueEarth in good faith to develop an investment agreement for the Project;

h. That HECO and MECO must work exclusively with BlueEarth in good faith to develop the Project; and

i. That, as a result of HECO's and MECO's circumvention or threatened circumvention of the NDAs, BlueEarth is entitled to a legal monetary penalty equal to the maximum services it would realize from the Project and any and all expenses, including, but not limited to, legal fees that involves BlueEarth's recovery of said funds.

J. With regard to BlueEarth's claims for declaratory relief under Federal Rule of Procedure 57 and The Declaratory Judgment Act (28 U.S.C. §§2201-2202) above, BlueEarth requests that this Court order a speedy hearing and that this Court advance said hearing to the earliest possible date on the Court's calendar.

K. With regard to BlueEarth's claims generally: That BlueEarth be awarded its costs, prejudgment and post-judgment interest at the maximum rate allowed by law, and that BlueEarth have such other relief, at law or in equity, as the Court deems just.

Respectfully submitted,

CLARK ASHWORTH MILBY, RLLP

Mitchell S. Milby
Texas Bar No. 00794307

1401 Elm, Suite 3404
Dallas, Texas 75202
Telephone: (214) 220-1210
Telecopy: (214) 204-9130

ATTORNEYS FOR BLUEEARTH BIOFUELS, LLC

BlueEarth Biofuels LLC

Mutual Non-Circumvention and Non-Disclosure Agreement

This Agreement is entered into this 27th day of September, 2006

For and in consideration of their mutual promises and covenants set forth herein, whereas the parties herein mentioned below (signatories of this Agreement) are mutually desirous of working together for their common benefit with regard to Renewable Energy Opportunities, said parties agree to abide by the following terms and conditions.

Information furnished by and/or to either party, its directors, officers, employees, agents or representatives, including, without limitation, its attorneys, accountants, consultants and financial advisors (collectively "Representatives"), and all documents based in whole or in part on such information will be referred to herein as Information. The Information will remain the property of the originating party.

The Information of the originating party will be kept confidential by the receiving party and/or its Representatives and will not be disclosed by the receiving party or its Representatives without the prior written consent of the originating party. The Information may be disclosed to and used by the Parties' Representatives, as defined above, but such Information will not be used for any purpose other than evaluating the transaction referred to above. Each party agrees to be responsible for any breach of this Agreement by its respective Representatives.

The parties agree not to disclose to any other person that the Information has been made available, that discussions are taking place concerning a possible transaction between the parties or that this Agreement has been entered into.

If the Parties discontinue discussions, agree not to enter into a transaction with each other, or a party requests the return of its Information for any reason, the receiving party will promptly, upon request, either return all documents and other materials constituting the originating party's Information or certify that the documents and other materials have been destroyed.

The confidentiality obligations of this Agreement will not apply to any portion of the Information that (a) is in the public domain through no act or omission of the

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BlueEarth Biofuels LLC

receiving party, (b) becomes available to the receiving party on a non-confidential basis from another source, provided that such source is not bound by a confidentiality agreement with either party or otherwise prohibited from transmitting the Information, or (c) was already known to the receiving party on a non-confidential basis or was independently developed.

Each party acknowledges that although it has endeavored to include in the Information those materials that are believed to be reliable and relevant for the purpose of evaluation, neither party nor it's respective Representatives makes any representation or warranty as to the accuracy or completeness of the Information. Each party agrees that neither party, nor its Representatives, shall have any liability to the other party or its Representatives as a result of its reliance on or use of the Information.

If either party or its Representatives is legally compelled to disclose any of the Information, such party will promptly notify the other party so that it may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Otherwise, the party so compelled, or its Representatives, will furnish only that portion of the Information which is legally required and will exercise reasonable effort to obtain reliable assurance that the Information will be treated confidentially.

Both Parties acknowledge and agree that the Parties would not have an adequate remedy at law and would be irreparably harmed in the event any of the provisions of this Agreement were not performed in accordance with their specified terms or were otherwise breached. Accordingly, the Parties agree that they are entitled to injunctive relief to prevent breaches of this Agreement and to specifically enforce its terms in addition to any other remedy to which they may be entitled, at law or in equity.

Each party agrees that failure or delay in exercising any right, power or privilege under this Agreement will not operate as a waiver thereof or preclude any other or future exercise of any right, power or privilege hereunder.

Each Party shall have the right to assign its rights and obligations in this Agreement to an affiliate, subsidiary, or successor company who shall be bound by the terms and conditions of this Agreement.

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BlueEarth Biofuels LLC

The parties shall not in any manner solicit nor accept any business from sources nor their affiliates that are made available by the other party or parties to this Agreement at any time without the express written permission of the party or parties who made the source available.

The parties shall maintain complete confidentiality regarding each other's business sources or their identities and shall disclose only to named parties pursuant to the express written permission of the party who made available the said source.

The parties shall not disclose any names, addresses, fax numbers or e-mail addresses of any contract revealed by any party to the third party and each signatory recognizes such contacts to be an exclusive and valuable contact of the respective party or parties, and they shall not enter into direct negotiations or transactions with such contacts revealed by the other party or parties.

Neither party shall avoid payment of any fees, commissions, or other remuneration in any way whatsoever. In the event of circumvention by said party directly or indirectly, the circumvented party shall be entitled to a legal monetary penalty equal to the maximum services it should realize from such a transaction and any and all expanses, including, but not limited to, legal fees that would involve the recovery of said funds.

All considerations, benefits, participant's fees, and commissions received as a result of the contraction of the parties to this Agreement relating to any and all transactions will be allocated as mutually agreed to.

This Agreement is intended by the Parties to be the final, complete and exclusive embodiment of their agreement about the matters covered herein, and no prior stipulation, agreement or understanding of the Parties, their employees or agents shall be valid or enforceable. This Agreement may not be altered, amended or changed in any way except by a written instrument executed by the Parties.

This Agreement is valid for any and all transactions, renewals, extensions, rollovers, etc. between the parties and related principals, whether or not said related principals to this or other transactions sign this Agreement or other agreements or contracts related thereto. This Agreement is hereto enforceable in any United States court as the exclusive venue. The duration of this

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BlueEarth Biofuels LLC

Agreement shall be for a period of three (3) years from the above-mentioned date, unless otherwise extended.

Signed fax copies of this document shall be deemed to be "originals" and shall be legal and binding on all parties.

Any paragraph or clause of this Agreement that is deemed by a court of competent jurisdiction to be unenforceable or non-binding shall not have any effect on any of the remaining paragraphs or clauses.

In witness hereof, the parties have executed this Agreement on the date first written above.

ACCEPTED BY:

BLUEEARTH BIOFUELS LLC

Authorized Signature

HAWAIIAN ELECTRIC COMPANY
Name of Company

Authorized Signature

Name:
Address:
City:
State, Zip
Phone:
Fax:

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BlueEarth Biofuels LLC

Mutual Non-Circumvention and Non-Disclosure Agreement

This Agreement is entered into this 27th day of September, 2006

For and in consideration of their mutual promises and covenants set forth herein, whereas the parties herein mentioned below (signatories of this Agreement) are mutually desirous of working together for their common benefit with regard to Renewable Energy Opportunities, said parties agree to abide by the following terms and conditions.

Information furnished by and/or to either party, its directors, officers, employees, agents or representatives, including, without limitation, its attorneys, accountants, consultants and financial advisors (collectively "Representatives"), and all documents based in whole or in part on such information will be referred to herein as Information. The Information will remain the property of the originating party.

The Information of the originating party will be kept confidential by the receiving party and/or its Representatives and will not be disclosed by the receiving party or its Representatives without the prior written consent of the originating party. The Information may be disclosed to and used by the Parties' Representatives, as defined above, but such Information will not be used for any purpose other than evaluating the transaction referred to above. Each party agrees to be responsible for any breach of this Agreement by its respective Representatives.

The parties agree not to disclose to any other person that the Information has been made available, that discussions are taking place concerning a possible transaction between the parties or that this Agreement has been entered into.

If the Parties discontinue discussions, agree not to enter into a transaction with each other, or a party requests the return of its Information for any reason, the receiving party will promptly, upon request, either return all documents and other materials constituting the originating party's Information or certify that the documents and other materials have been destroyed.

The confidentiality obligations of this Agreement will not apply to any portion of the Information that (a) is in the public domain through no act or omission of the

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BlueEarth Biofuels LLC

receiving party, (b) becomes available to the receiving party on a non-confidential basis from another source, provided that such source is not bound by a confidentiality agreement with either party or otherwise prohibited from transmitting the Information, or (c) was already known to the receiving party on a non-confidential basis or was independently developed.

Each party acknowledges that although it has endeavored to include in the Information those materials that are believed to be reliable and relevant for the purpose of evaluation, neither party nor it's respective Representatives makes any representation or warranty as to the accuracy or completeness of the Information. Each party agrees that neither party, nor its Representatives, shall have any liability to the other party or its Representatives as a result of its reliance on or use of the Information.

If either party or its Representatives is legally compelled to disclose any of the Information, such party will promptly notify the other party so that it may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Otherwise, the party so compelled, or its Representatives, will furnish only that portion of the Information which is legally required and will exercise reasonable effort to obtain reliable assurance that the Information will be treated confidentially.

Both Parties acknowledge and agree that the Parties would not have an adequate remedy at law and would be irreparably harmed in the event any of the provisions of this Agreement were not performed in accordance with their specified terms or were otherwise breached. Accordingly, the Parties agree that they are entitled to injunctive relief to prevent breaches of this Agreement and to specifically enforce its terms in addition to any other remedy to which they may be entitled, at law or in equity.

Each party agrees that failure or delay in exercising any right, power or privilege under this Agreement will not operate as a waiver thereof or preclude any other or future exercise of any right, power or privilege hereunder.

Each Party shall have the right to assign its rights and obligations in this Agreement to an affiliate, subsidiary, or successor company who shall be bound by the terms and conditions of this Agreement.

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BlueEarth Biofuels LLC

The parties shall not in any manner solicit nor accept any business from sources nor their affiliates that are made available by the other party or parties to this Agreement at any time without the express written permission of the party or parties who made the source available.

The parties shall maintain complete confidentiality regarding each other's business sources or their identities and shall disclose only to named parties pursuant to the express written permission of the party who made available the said source.

The parties shall not disclose any names, addresses, fax numbers or e-mail addresses of any contract revealed by any party to the third party and each signatory recognizes such contacts to be an exclusive and valuable contact of the respective party or parties, and they shall not enter into direct negotiations or transactions with such contacts revealed by the other party or parties.

Neither party shall avoid payment of any fees, commissions, or other remuneration in any way whatsoever. In the event of circumvention by said party directly or indirectly, the circumvented party shall be entitled to a legal monetary penalty equal to the maximum services it should realize from such a transaction and any and all expanses, including, but not limited to, legal fees that would involve the recovery of said funds.

All considerations, benefits, participant's fees, and commissions received as a result of the contraction of the parties to this Agreement relating to any and all transactions will be allocated as mutually agreed to.

This Agreement is intended by the Parties to be the final, complete and exclusive embodiment of their agreement about the matters covered herein, and no prior stipulation, agreement or understanding of the Parties, their employees or agents shall be valid or enforceable. This Agreement may not be altered, amended or changed in any way except by a written instrument executed by the Parties.

This Agreement is valid for any and all transactions, renewals, extensions, rollovers, etc. between the parties and related principals, whether or not said related principals to this or other transactions sign this Agreement or other agreements or contracts related thereto. This Agreement is hereto enforceable in any United States court as the exclusive venue. The duration of this

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BlueEarth Biofuels LLC

Agreement shall be for a period of three (3) years from the above-mentioned date, unless otherwise extended.

Signed fax copies of this document shall be deemed to be "originals" and shall be legal and binding on all parties.

Any paragraph or clause of this Agreement that is deemed by a court of competent jurisdiction to be unenforceable or non-binding shall not have any effect on any of the remaining paragraphs or clauses.

In witness hereof, the parties have executed this Agreement on the date first written above.

ACCEPTED BY:

BLUEEARTH BIOFUELS LLC

Authorized Signature

Maui Electric Co. Ltd
Name of Company

Authorized Signature

Name:
Address:
City:
State, Zip
Phone:
Fax:

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Initials________

MUTUAL CONFIDENTIALITY AGREEMENT

This Agreement is made this day by and between said companies stated below as BlueEarth Biofuels LLC ("BlueEarth"), Aloha Petroleum Ltd. ("Aloha") and NewMech Companies, Inc. ("NewMech"), hereafter known as the "Parties". The Parties wish to discuss the possibility of a business relationship between them or, if such a relationship presently exists, they wish to continue such relationship. In connection with these discussions, Parties have provided, or will provide, the other Parties with certain information relating to the business of each Party.

As a condition to furnishing such information, each party agrees as follows:

1. Non-disclosure of Confidential Information. The Confidential Information (as defined in Section 4) will not be used other than in connection with the purpose described above, and will be kept confidential by each Party's directors, officers, employees and representatives (collectively, "Representatives"). Confidential Information may be disclosed only, (a) to Representatives, (b) only to such Representatives as need to know the Confidential Information for the purpose described above, and (c) only in strict accordance with Section 3 of this Agreement. Such Representatives shall be informed of the confidential nature of the Confidential Information and the requirement that it not be used other than for the purpose described above. Such Representatives shall agree in writing to be bound by the terms of this Agreement as a condition of receiving the Confidential Information. In any event, each party shall be responsible for any breach of the Agreement by any of their Representatives. Neither party nor any of their Representatives shall use or disclose to any person Confidential Information other than as expressly permitted by this Agreement, and will use best efforts, and cause each of their Representatives to whom Confidential Information has been disclosed to use his or her best efforts, to safeguard the Confidential Information from unauthorized disclosure or use. The term "person" as used in this agreement shall be broadly interpreted to include without limitation any individual, corporation, company, partnership or other entity.

2. Non-disclosure of Discussions. Without the prior written consent of the opposite party, each party hereto will direct their Representatives not to disclose to any person the fact that the Confidential Information has been made available to them, or that they have inspected any portion of the Confidential Information, or that discussions with respect to the above purpose are taking place, or any other facts with respect to these discussions, including the status thereof.

3. Notice of Attempts to Compel Disclosure. If Representatives of either party are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then such party will promptly notify the opposite party of such request or requirement so the opposite party may seek an appropriate protective order or waive compliance with provisions of the Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, either party is, in the written opinion of their counsel, compelled to disclose the Confidential Information or else stand liable for contempt or suffer other censure or significant penalty, such party may disclose only such of the Confidential Information to the party compelling disclosure as is required by law. Such party shall not be liable for the disclosure of Confidential Information pursuant to the preceding sentence unless such disclosure was caused by such party or their representatives and not otherwise permitted by this Agreement. Either party will exercise best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

4. Definition of "Confidential Information". As used herein, "Confidential Information" means all information that is furnished to the recipient party which concerns the opposite party unless the recipient can establish that such information is generally available to the public. Any information furnished by a director, officer, employee or representative of either party shall be deemed for the purposes of this Agreement to be furnished by the Company.

   Notwithstanding the foregoing, information which is or becomes generally available to the public other than as a result of a disclosure by a Representative of either party will not constitute Confidential

EXHIBIT

C

information for purposes of this Agreement. The mere availability of data included in the subject matter hereof shall not constitute general availability to the public.

5. Return of Information. Each party shall keep a record of the Confidential Information furnished to and from each party and of the location of such Confidential Information. The written Confidential Information will be returned to the opposite party within 7 days of such other party's request, and no copies shall be retained by the surrendering party. That portion of the Confidential Information that may be found in analyses, compliance, studies or other documents prepared for internal use, oral Confidential Information and written Confidential Information not so requested for return, will be held by either party and kept subject to the terms of this Agreement or destroyed.

6. Non-Solicitation and Non-Circumvention.

   a. Without prior written consent, neither party nor any affiliates will solicit for employment any person who is currently employed by the other party or any of its subsidiaries, either directly or indirectly or through another party (including a company, partnership, person, self or other third party). This non-solicitation provision shall apply to any person proposed for employment by a third-party recruiter or agency on behalf of a party, and any person with whom a party has commenced employment discussions.

   b. No party will solicit or attempt to solicit business from any other party's client or client subsidiaries or affiliates without the prior written consent of the other party. This restriction shall not apply to any client or client subsidiary for which a party had established a prior business relationship with the intention of performing services within the sphere of that party's existing business or reasonable expansion thereof.

7. No Waiver. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

8. Remedies, Headings, Jurisdiction and Governing Law. Money damage would not be a sufficient remedy for any breach of this Agreement and the non-breaching party shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity, including indemnification for every loss, cost, damage or expense, including attorney's fees. The headings of the Sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement. Jurisdiction in any action brought in any court, federal or state, shall reside within the State of domicile of the party aggrieved, in any such court having subject matter jurisdiction arising under this Agreement. The Agreement shall be governed and construed in accordance with the internal laws of the State of Minnesota applicable to such agreements.

Agreed and accepted: By executing below, each party is representing that they are duly authorized and acting with the property legal authority to bind each of their respective companies.

(Signature page follows.)

By: [signature]

Print: PAUL WIDMER

Date: 7/15/08

Title: VP - RENEWABLE FUELS

NewMech Companies, Inc.

By: [signature]

Print: LANDIS R. MAEZ

Date: 7/14/08

Title: PRESIDENT

BlueEarth BioFuels LLC

By: [signature]

Print: THOMAS A. GRUMUS

Date: July 14, 2008

Title: VP + CFO

Aloha Petroleum Ltd.

JS 44 (Rev. 12/07) ORIGINAL

CIVIL COVER SHEET

3-08CV1779-L

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
BlueEarth Biofuels, LLC

DEFENDANTS
Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., Aloha Petroleum, Ltd., and Karl E. Stahlkopf

(b) County of Residence of First Listed Plaintiff: Collin County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: Honolulu
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Mitchell S. Milby, Clark Ashworth Milby, RLLP, 1401 Elm St., Ste 3404, Dallas, Texas 75202

Attorneys (If Known)
Not Known.

RECEIVED
OCT 6 2008
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 28 U.S.C. 1332 - Diversity of Citizens
Brief description of cause: Breach of Contract, Interference with Existing Contract, Conspiracy, TRO, Preliminary Injunction,

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $ DAMAGES EXCEED MINIMUM JURISDICTIONAL LIMITS OF THE COURT
CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 10/06/2008 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE