

1 JERRY H. STEIN (State Bar No. 78309)  
 LEVIN & STEIN  
 2 28494 Westinghouse Place, Suite 201  
 Valencia, California 91355  
 3 Telephone: (310) 207-4663  
 Facsimile: (310) 207-2803  
 4 Email: [jstein@lscslaw.com](mailto:jstein@lscslaw.com)

5 KEN T. KUNIYUKI  
 KUNIYUKI & CHANG  
 6 Suite 2660, Pauahi Tower  
 1003 Bishop Street  
 7 Honolulu, HI 96813-3429  
 Telephone: (808) 524-4111  
 8 Facsimile: (808) 521-2389  
 Email: [ken@law-hawaii.com](mailto:ken@law-hawaii.com)

9 Attorneys for Defendants and Counter-Claimants JOHN DOE and JANE DOE

10 UNITED STATES DISTRICT COURT  
 11 EASTERN DISTRICT OF CALIFORNIA

12 ERIC GRANT,	)	CASE NO.:08-00672 FCD-KSM
	)	
13 Plaintiff,	)	JOHN AND JANE DOE’S CROSS-CLAIM
	)	FOR TEMPORARY RESTRAINING ORDER;
14 v.	)	PRELIMINARY INJUNCTION; AND
15 KAMEHAMEHA SCHOOLS/BERNICE	)	PERMANENT INJUNCTION; AND FOR
PAUAHI BISHOP ESTATE; J. DOUGLAS ING,	)	DECLARATORY RELIEF; AND COUNTER-
16 NAINOA THOMPSON, DIANE J. PLOTTS,	)	CLAIM FOR INDEMNITY
ROBERT K.U. KIHUNE, and CORBETT A.K	)	
17 KALAMA, in their capacities as Trustees of the	)	<b>DEMAND FOR JURY TRIAL</b>
Kamehameha Schools/ Bernice Pauahi Bishop	)	
18 Estate; JOHN DOE; and JANE DOE,	)	
	)	
19 Defendants.	)	

---

20 JOHN DOE; and JANE DOE,  
 21 Cross and Counter-Claimants

22 v.  
 23 KAMEHAMEHA SCHOOLS/BERNICE  
 PAUAHI BISHOP ESTATE; J. DOUGLAS ING,  
 24 NAINOA THOMPSON, DIANE J. PLOTTS,  
 ROBERT K.U. KIHUNE, and CORBETT A.K  
 25 KALAMA, in their capacities as Trustees of the  
 Kamehameha Schools/ Bernice Pauahi Bishop  
 26 Estate; and ERIC GRANT,  
 27 Cross and Counter-Defendants

---

1 **JURISDICTION AND VENUE**

2 1. Pursuant to 28 U.S.C § 1367, this Court has supplemental jurisdiction over John Doe and  
3 Jane Doe’s(collectively the “Does”) cross-claims against Kamehameha Schools/Bernice Pauahi Bishop  
4 Estate; J. Douglas Ing, Nainoa Thompson, Diane J. Plotts, Robert K.u. Kihune, and Corbett A.k Kalama,  
5 in their capacities as Trustees of the Kamehameha Schools/ Bernice Pauahi Bishop Estate cross-claims.

6 2. Pursuant to 28 U.S.C. § 1332(a)(1), this Court has subject matter jurisdiction over the Does  
7 counter-claim against Eric Grant (“Grant”) as the matter in controversy exceeds the value of \$75,000,  
8 exclusive of interest and costs, and is between a citizen of California (Grant ) and citizens of Hawaii (the  
9 Does).

10 3. For the reasons set forth in the Complaint, venue lies in this Court and the action was  
11 properly commenced in Sacramento.

12 **FIRST CLAIM FOR RELIEF**

13 (Cross-Claim For Injunctive Relief Against Kamehameha Schools/Bernice Pauahi Bishop Estate;  
14 J. Douglas Ing, Nainoa Thompson, Diane J. Plotts, Robert K.u. Kihune, and Corbett A.k Kalama, in  
15 their capacities as Trustees of the Kamehameha Schools/ Bernice Pauahi Bishop Estate)

16 4. This action is brought by John Doe and Jane Doe who were the plaintiffs+- in certain  
17 litigation styled, *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate et al.*, Case No. 03-00316,  
18 previously venued in the United States District Court for the District of Hawaii (the "Underlying  
19 Litigation"). In the Underlying Litigation the Does sought a declaration from this Court that the Estate's  
20 self-described preference for student applicants of native Hawaiian ancestry constituted discrimination  
21 on the basis of race in violation of federal civil rights statutes. The litigation was extremely  
22 controversial and involved the danger of invasion of privacy, retaliation and physical or mental harm to  
23 such a degree that the Federal District Court, the Ninth Circuit Court of Appeal and the United States  
24 Supreme Court permitted the Does to litigate their case against the Estate using fictitious names. The  
25 controversy and threat to the Does continue and therefore the Does are again denominated in this action  
26 by such fictitious names. The Does are, and at all times herein mentioned were, citizens of the State of  
27 Hawaii.

1           5.       Cross-Defendants The Estate Of Bernice Pauahi Bishop and the Kamehameha Schools  
2 (collectively the "Estate") are, and at all times herein mentioned were, citizens of the State of Hawaii.  
3 They were the defendants in the Underlying Litigation.

4           6.       Defendants J. Douglas Ing, Nainoa Thompson, Diane J. Plotts, Robert K.U. Kihune, and  
5 Corbett A.K. Kalama are the trustees of the Estate ("Trustees") and citizens of Hawaii. Collectively, the  
6 Trustees set policy for the Estate and have responsibility for oversight of the Estate. With respect to the  
7 matters described herein, the Trustees were at all times acting within the scope of their authority as  
8 officers of the Estate and in furtherance of the interests of the Estate. The Trustees are sued only in  
9 their capacity as trustees of the Estate.

10          7.       On or about May 11, 2007, the parties in the Underlying Litigation entered into a written  
11 settlement agreement (the "Agreement") pursuant to which the Estate made a substantial monetary  
12 payment to the Does in exchange for the Does dismissing the Underlying Litigation. The Agreement  
13 between the Does and the Estate contained a confidentiality provision which provided:

14                    "As part of the consideration for this Settlement Agreement and General  
15                    Release, no signatory or Bishop Releasee or Doe Releasee (including  
16                    counsel) will disclose, provide, furnish or deliver, or permit to be  
                      disclosed, provided, furnished or delivered,

17                    (a) all or any part of this Settlement Agreement and General  
18                    Release or any copy hereof or any information relating to the amount or  
19                    any term or provision hereof, or any communication, negotiation or  
20                    document relating to any of the foregoing, or

21                    **(b) the true names of, addresses of, or any other information**  
22                    **identifying John Doe or Jane Doe or their family (whether**  
23                    **individually or collectively)**

24                    to any person or entity, including, but not limited to, any publisher,  
25                    reporter, or other agent or representative of any newspaper, magazine,  
26                    journal, periodical, radio, television, or other media, except pursuant to a  
27                    court order compelling it to do so, when necessary to obtain tax,  
28                    accounting, legal or other professional advice, when necessary to comply  
with any applicable state or Federal disclosure or other regulatory requirements, or when necessary to  
effectuate the purposes and benefits of this Settlement Agreement and General Release. **These  
confidentiality requirements are a material term of this Settlement Agreement and General  
Release. In addition to any other rights or remedies, this provision shall be enforceable by  
injunctive or other equitable relief.** Provided, however, that no signatory shall be liable in money  
damages for a breach of this provision unless such signatory or their counsel shall have personally made  
such disclosure; and that such damages shall not, in the event of a breach by counsel, exceed  
\$2,000,000.00 (Two Million Dollars even)." [Emphasis Added]

1           8.       John Goemans ("Goemans") Goemans is an attorney who once represented the Does in  
2 the Underlying Litigation. On or about February 5, 2008, in an action pending in the California Superior  
3 Court for the County of Sacramento entitled "*Eric Grant v. John Goemans et al.*" Case No.: 07AS04172,  
4 a Temporary Protective Order was issued by the Court prohibiting Goemans from disclosing any  
5 information relating to the settlement between the Does and the Estate.

6           9.       Despite this Order, Goemans subsequently disclosed the monetary terms of the settlement  
7 to the Honolulu Advertiser. On February 8, 2008, the Honolulu Advertiser printed an article setting  
8 forth the monetary terms of the settlement.

9           10.      The only references to the Does' "counsel" in the Agreement are to Eric Grant. Thus, in a  
10 Declaration attached to the Agreement, Grant states that he is the Does' counsel of record. In addition,  
11 the "Approval as to Form" portion of the Agreement, which is executed by Grant, refers to Grant as  
12 "counsel for the Does.." There is no mention of Goemans in the Agreement and no definition of the  
13 term "counsel" that would make the Does liable for any breach of the confidentiality provision by their  
14 former counsel Goemans.

15           11.      As set forth above, because the Underlying Litigation was extremely controversial and  
16 involved the danger of invasion of privacy, retaliation and physical or mental harm to the Does, the  
17 Courts in the Underlying Litigation permitted the Does to litigate their case against the Estate using  
18 fictitious names. The fact that the monetary terms of the settlement have been disclosed has only  
19 heightened the risk to the Does. There have been 1551 comments posted by readers to the Honolulu  
20 Advertiser's February 8, 2008 article disclosing the terms of the settlement case. Many of the posts are  
21 extremely critical of the Does. Some include threats of violence against the Does. Examples of the  
22 negative comments and threats posted to the Honolulu Advertiser's February 8, 2008 article include:

23                   "Seriously...Lawyers like Grant should be killed off...what a slime ball he  
24 his...and the "John Doe" hiding behind...grrr...makes my non Hawaiian  
25 blood boil....greedy SOB's they all are...**If I catch these people alone just  
for a few minutes ...i guarantee i would break every bone and make  
this bastards suffer....**" [Emphasis Added]

26                   "I cannot believe that these people have the nerve to go there!!!  
27 Kamehameha Schools was formed well before we became a state! So I feel  
28 that has nothing to do with the constitution that the United states has  
forced upon us! Im scared for the boy. **His stupid parents were the**

1 **greedy ones and now the boy will have to pay. Now he is probably**  
2 **going to get beat up. I know people who attend Kamehameha**, who  
3 want to kick this boys \*\*\*\* I pray he'll be spared that humiliation. Thanks  
4 for listening." [Emphasis Added]

5 "I believe someone should go out there to review the California court  
6 records to find out who this John and Jane Doe is. Why hide behind the  
7 scenes and be ashamed of what they did to the Hawaiian children that may  
8 be stripped of their benefits. They need to stand up and face those that they  
9 are robbing."

10 12. The Does fear for their safety if their identities are disclosed. If their identities are  
11 disclosed they anticipate that they will have to go into hiding in order to avoid undue harassment and  
12 potential physical violence.

13 13. On March 24, 2008, one of the Does' attorneys, Ken T. Kuniyuki, was informed by one of  
14 the Estate's attorneys, David Schulmeister ("Schulmeister") of the Cades Schutte law, that: (1) The  
15 Estate's position was that Goemans' disclosure of the monetary terms of the settlement constituted a  
16 breach of the confidentiality provision in the Agreement between the Does and the Estate; (2) That the  
17 Estate would be claiming \$2 million in damages as result of this purported breach; (3) That Estate was  
18 going to shortly file a breach of contract action against the Does; (4) That upon the filing of its action the  
19 Estate was also going to seek a writ of attachment against the Does to secure its damage claim of \$2  
20 million; and (5) That because the Estate was seeking a writ of attachment against the Does, it intended to  
21 disclose the Does' identities in its Court filings.

22 14. According to Schulmeister, the \$2 million in damages that the Estate would be seeking in  
23 its action against the Does was not based upon any actual out of pocket losses incurred by the Estate as a  
24 result of Goemans' disclosure of the monetary terms of the settlement, but rather on the Estate's position  
25 that it would have settled the case for \$2 million less but for the inclusion of the confidentiality  
26 provision.

27 15. Unless enjoined and restrained by order of this Court, the Estate's disclosure of the Does'  
28 identities will cause the Does great and irreparable injury to their reputation in the community, as well as  
exposing them to irreparable harm and potential great physical and mental danger.

16. The Does have no adequate remedy at law for the injuries currently and prospectively  
suffered. In view of Goemans' disclosure of material terms of the Agreement, the potential harm to the

1 Does' well being in the event of disclosures of their identities has been greatly increased.

2 **SECOND CLAIM FOR RELIEF**

3 (Cross-Claim for Declaratory Judgment Against Kamehameha Schools/Bernice Pauahi Bishop  
4 Estate; J. Douglas Ing, Nainoa Thompson, Diane J. Plotts, Robert K.u. Kihune, and Corbett A.k Kalama,  
5 in their capacities as Trustees of the Kamehameha Schools/ Bernice Pauahi Bishop Estate )

6 17. The Does repeat and incorporate by this reference as though set forth at length herein each  
7 of the averments contained in paragraphs 1 through 16, inclusive.

8 18. An actual controversy now exists between the Does and the Estate in that the Estate claims  
9 that Goemans' disclosure of the monetary terms of the settlement constituted a breach of the confidentiality  
10 provision in the Agreement between the Does and the Estate, while the Does claim that they are not  
11 responsible for any disclosure by Goemans of the monetary terms of the settlement and are not in breach of  
12 the Agreement.

13 19. The Does performed all things required of them under the terms of their Agreement with the  
14 Estate.

15 20. The Does seek a declaration from this Court that Goemans' disclosure of the monetary terms  
16 of the settlement does not constitute a breach of the confidentiality provision in the Agreement between the  
17 Does and the Estate.

18 **THIRD CLAIM FOR RELIEF**

19 (Counter-Claim Against Grant for Equitable Indemnity)

20 21. The Does repeat and incorporate by this reference as though set forth at length herein each  
21 of the averments contained in paragraphs 1 through 20, inclusive.



**FIFTH CLAIM FOR RELIEF**

(Counter-Claim Against Grant for Express Indemnity)

29. The Does repeat and incorporate by this reference as though set forth at length herein each of the averments contained in paragraphs 1 through 28, inclusive.

30. The Does performed all things required of them under the terms of their agreement with Grant.

31. Regardless of whether there as been an actual breach of the terms of the settlement agreement between the Does and the Estate, based upon the allegations of the Complaint, pursuant to the terms of the settlement agreement between the Does and Grant, Grant has an obligation to pay for the first \$100,000 of the defense of the Estate’s claims against the Does.

WHEREFORE, the Does pray for judgment against the Estate as follows:

1. For a temporary restraining order, a preliminary injunction, and a permanent injunction enjoining the Estate and their agents and employees from disclosing the Does’ identities to ant third party or in any Court filing;

2. For a declaration from this Court that Goemans' disclosure of the monetary terms of the settlement constituted a breach of the confidentiality provision in the Agreement between the Does and the Estate;

3. For costs of suit incurred in this action; and

4. For such other and further relied as the Court deems just and proper;

WHEREFORE, the Does pray for judgment against the Grant as follows:

1. For a judicial declaration that the Does are entitled to indemnity, in whole or in part, from Grant for any sum the Does may pay to Estate;

2. For a judicial declaration that the Does are entitled to indemnity, in whole or in part, from Grant for all costs, expenses, and attorneys' fees the Does have incurred and will incur in defending themselves against claims by Estate or any other party to this action and in prosecuting this Counter and Cross-Complaint;

3. For attorneys' fees;

4. For costs of suit incurred herein; and



