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9 Attorneys for Defendants  
 10 KAMEHAMEHA SCHOOLS/BERNICE  
 PAUAHI BISHOP ESTATE; J. DOUGLAS  
 11 ING, NAINOA THOMPSON, DIANE J.  
 PLOTTS, ROBERT K.U. KIHUNE, and  
 12 CORBETT A.K. KALAMA, in their capacities  
 as Trustees of the Kamehameha  
 13 Schools/Bernice Pauahi Bishop Estate

14 UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA

16 ERIC GRANT,  
 17 Plaintiff,  
 18 v.  
 19 KAMEHAMEHA SCHOOLS/BERNICE PAUAHI BISHOP  
 ESTATE; J. DOUGLAS ING, NAINOA THOMPSON, DIANE  
 20 J. PLOTTS, ROBERT K.U. KIHUNE, and CORBETT A.K.  
 KALAMA, in their capacities as Trustees of the Kamehameha  
 21 Schools/Bernice Pauahi Bishop Estate; JOHN DOE; and JANE  
 DOE,  
 22 Defendants.

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

No. 08-00672 FCD-KJM

DECLARATION OF DAVID  
 SCHULMEISTER IN  
 SUPPORT OF  
 KAMEHAMEHA SCHOOLS  
 DEFENDANTS'  
 OPPOSITION TO JOHN  
 AND JANE DOE'S MOTION  
 FOR PRELIMINARY  
 INJUNCTION

Date: April 17, 2008  
 Time: 4:00 p.m.  
 Courtroom: 2  
 Before: Hon. Frank C.  
 Damrell, Jr.

1 I, David Schulmeister, declare as follows:

2 1. I am a member of Cades Schutte LLP (“Cades Schutte”) and make this  
3 declaration based upon personal knowledge.

4 2. As a member of Cades Schutte, I serve as outside counsel on various matters for  
5 the Kamehameha Schools/Bernice Pauahi Bishop Estate and J. Douglas Ing, Nainoa Thompson,  
6 Diane J. Plotts, Robert K.U. Kihune, and Corbett A.K. Kalama, in their capacities as Trustees of  
7 the Kamehameha Schools/Bernice Pauahi Bishop Estate (collectively, the “Kamehameha  
8 Schools” or the “Estate”).

9 3. One such matter that I served as outside counsel for the Kamehameha Schools  
10 was to defend it with other outside counsel against claims brought by “John Doe, a minor, by his  
11 mother and next friend, Jane Doe” in litigation initiated on June 25, 2003 in the United States  
12 District Court for the District of Hawaii and assigned Civil No. CV03-00316 ACK LES (the  
13 “Underlying Litigation”), which sought declaratory relief, a permanent injunction, and  
14 compensatory and punitive damages. A true and correct copy of the complaint filed by attorneys  
15 John W. Goemans, Eric Grant, and James F. Sweeney in the Underlying Litigation is attached  
16 hereto as Exhibit “A.”

17 4. Following the February 8, 2008 publication in The Honolulu Advertiser of details  
18 of the confidential settlement agreement entered into between the Kamehameha Schools and  
19 “Jane Doe” and “John Doe” to resolve the Underlying Litigation that were reportedly revealed  
20 by John Goemans, I was requested by the general counsel of the Kamehameha Schools to  
21 explore with the current Hawaii counsel for the Does, Ken T. Kuniyuki, the possibility of  
22 resolving the breach of the confidentiality provision of the settlement agreement without the  
23 necessity of filing a lawsuit.

24 5. On March 24, 2008, I met with Mr. Kuniyuki in my office in Honolulu. I told  
25 him that the Estate believes the settlement agreement had been breached and that it is entitled to  
26 damages. I further explained that a public lawsuit could make it difficult for that anonymity to  
27 be preserved, particularly at the post judgment execution stage, but I assured him the Estate was  
28 cognizant of Does’ desire to remain anonymous.

1           6.       I also told him the Estate was concerned that the settlement proceeds, which were  
2 seen as the primary source of recovery for the Estate, might be hidden or dissipated. I suggested  
3 that this concern could easily be allayed by the Does depositing the sum of \$2 million dollars in  
4 an escrow or trust account, which would then give the parties ample time to try to resolve the  
5 matter free of any concerns over whether the proceeds would remain available, and without the  
6 need to file a lawsuit.

7           7.       I asked Mr. Kuniyuki to consider my suggestion, discuss it with his clients, and  
8 let me know whether this would be agreeable. I also invited him to consider with his clients  
9 making an alternative proposal for how to move the matter to an acceptable resolution.

10          8.       At no time during this meeting did I state that the Estate had already decided to  
11 file a lawsuit; that the Estate was going to unilaterally disclose the Does' identities in connection  
12 with any future lawsuit; or that the Estate's efforts to obtain any pre- or post-judgment remedy  
13 would necessarily disclose the Does' identities. I did say that some future disclosure might  
14 occur, but I was contemplating disclosure by third parties (such as someone involved in effecting  
15 a writ of attachment or garnishment), not unilateral disclosure by the Estate or anyone acting on  
16 its behalf. I made it clear to Mr. Kuniyuki that my purpose in meeting with him was to try to  
17 reach an accommodation that would save all parties time and money and give his clients  
18 complete protection that their anonymity would be maintained by avoiding risks created by the  
19 litigation process.

20          9.       At no time during this meeting did I say that the Estate intended to sue Eric Grant.  
21 While Mr. Kuniyuki stated that he and his clients believed any deposit of funds should be made  
22 by Mr. Grant and/or Mr. Goemans, I did not express any view one way or the other on what the  
23 source of the funds should be.

24          10.      At the close of the meeting, I advised Mr. Kuniyuki that I would be traveling out  
25 of the state during the week of March 31, 2008, and he responded that he could easily get back to  
26 me before I left.

27          11.      My next communication with Mr. Kuniyuki was on March 28, 2008, when I  
28 called to him to remind him that I would be traveling the following week, and that he had

1 promised to get back to me before I left. During that conversation, which lasted only a few  
2 minutes, he stated that the Does had unsuccessfully sought to have Mr. Grant and Mr. Goemans  
3 contribute towards a deposit, and that the Does refused to do so.

4 12. I then asked him if he had any alternative proposal to make, to which he  
5 responded in the negative. He then stated that he did not believe it would be necessary for the  
6 Does to be identified prior to my client establishing its entitlement to any specific amount of  
7 damages or to any pre-judgment remedy. He did not, however, ask me whether I agreed with  
8 this assertion or for any assurances that the Does' identities would not be disclosed by the Estate  
9 without prior court approval. If he had requested such an assurance, I would have given it to him  
10 without qualification.

11 13. At no time prior to this action being filed did Mr. Kuniyuki or anyone else advise  
12 me that this action was being contemplated or that such an assurance was desired by the Does.

13 I declare under penalty of law that the foregoing is true and correct.

14 DATED: Honolulu, Hawaii, April 10, 2008.

15  
16 /s/ David Schulmeister  
17 DAVID SCHULMEISTER  
18 (original signature retained by Paul Alston)  
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