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 10 ERIC GRANT

11  
 12 UNITED STATES DISTRICT COURT  
 13 EASTERN DISTRICT OF CALIFORNIA  
 14

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

23  
 24 AND RELATED COUNTERCLAIM.  
 25  
 26  
 27  
 28

CASE NO. 2:08-cv-00672-FCD-KJM  
**STIPULATED PROTECTIVE ORDER**  
(Court Modifications Shown In  
 Strikeout/Underline Format)

1 Plaintiff and Counter-Defendant ERIC GRANT (“Grant”), Defendants and Cross-  
2 Defendants KAMEHAMEHA SCHOOLS/BERNICE PAUAAHI BISHOP ESTATE; J.  
3 DOUGLAS ING, NAINOA THOMPSON, DIANE J. PLOTTS, ROBERT K.U. KIHUNE, and  
4 CORBETT A.K. KALAMA, in their capacities as Trustees of the Kamehameha Schools/Bernice  
5 Pauahi Bishop Estate (collectively herein, “KSBE”), and Defendants and Counterclaimants  
6 JOHN DOE and JANE DOE (collectively herein, the “Does”), by and through their counsel of  
7 record, hereby stipulate and agree that discovery or disclosure in this case of private, privileged,  
8 proprietary and confidential information shall be had on the following terms and conditions:

9 **1. DEFINITIONS.**

10 **1.1** As used herein, the term “confidential information” means: (a) any  
11 information or documents concerning which the designating party has a good faith basis to  
12 believe that comprise of or contain information for which any applicable law affords protection  
13 from disclosure or provides for limited disclosure; (b) information not in the public domain  
14 relating to a party’s financial information, tax information, financial value, financial transactions,  
15 business affairs, sensitive personal information; the amount and location of assets, liabilities,  
16 income, expenses and net worth of any party and/or any party’s affiliates, partners, co-venturers,  
17 co-owners, lenders, agents, attorneys, trustees, and family members; and (c) the identity of John  
18 Doe and Jane Doe.

19 **1.2** The term “Confidential - Attorneys’ Eyes Only” means any confidential  
20 information or confidential document that a party or a nonparty has a good faith belief is of such  
21 a high confidential and/or proprietary nature that the risk of improper use arising from disclosure  
22 to another party clearly outweighs the right of that party to review items produced in this action,  
23 and embodies information of the kind whose confidentiality is properly protected under Rule  
24 26(c) of the Federal Rules of Civil Procedure.

25 **1.3** As used herein, the terms “document” or “documents” shall include,  
26 without limitation, all original, recorded or graphic matters or copies thereof, including all  
27 “writings” as defined in Rule 1001(1) of the Federal Rules of Evidence, whether written,  
28 recorded, computer stored or computer-retrievable information, whether produced or created by

1 a party or another person, and whether produced pursuant to a subpoena, by agreement, or  
2 otherwise.

3 **1.4** As used herein, the terms “Court” and “Court personnel” shall include the  
4 judicial reference and the judicial reference’s support staff.

5 **1.5.** The term “confidential document” means any document containing, in  
6 whole or in part, any confidential information or any summary thereof.

7 **2. DESIGNATION OF CONFIDENTIAL INFORMATION.**

8 **2.1** This Stipulation and Order applies to all discovery responses and other  
9 materials containing confidential information disclosed or utilized in this action that are  
10 designated by a party or a third party as confidential information under this Stipulation and  
11 Order, as defined below, whether such disclosure is by order of the Court, in response to  
12 questions in a deposition, written interrogatories, requests for the production of documents and  
13 other tangible things, requests for admission, or any other formal or informal discovery  
14 undertaken in this action.

15 **2.2** Any party or third party may protect information it believes constitutes  
16 confidential information by designating such information as CONFIDENTIAL or  
17 CONFIDENTIAL-ATTORNEYS’ EYES ONLY prior to or at the time of disclosure. Such  
18 designation shall be accomplished by placing the appropriate designation on every page of each  
19 document so designated or by any other reasonable methods. In the case of confidential  
20 information disclosed in a non-paper medium (e.g., videotape, audiotape, computer disks, etc.),  
21 the appropriate designation shall be affixed to the outside of the medium or its container so as to  
22 clearly give notice of the designation. Such designation is deemed to apply to the document  
23 itself and to the confidential information contained therein.

24 **2.3** Confidential information designated CONFIDENTIAL or  
25 CONFIDENTIAL-ATTORNEYS’ EYES ONLY shall be used only for the purposes of this  
26 litigation and may not be used by any party to which or whom that information is produced or  
27 disclosed for research, development, sales, marketing, business or competitive purposes, or any  
28 other purpose.

1                   **2.4**     The parties and third parties shall use reasonable care and good faith to  
2 avoid designating any materials as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS'  
3 EYES ONLY that are not entitled to such designation or that are generally available to the  
4 public.

5                   **3.     DISCLOSURE OF DESIGNATED CONFIDENTIAL OR**  
6 **CONFIDENTIAL-ATTORNEYS' EYES ONLY INFORMATION.**

7                   **3.1**     All designated information shall be maintained in confidence and shall not  
8 be disclosed, directly or indirectly, to any person except as provided in this Stipulation and  
9 Order.

10                  **3.2**     While the disclosure of designated information under this Order to persons  
11 not authorized by this Order could, by definition, be prejudicial to the privacy, business, or  
12 operations of the designating party or third party, the appropriate confidential designations  
13 should not be overused.

14                  **3.3**     Information designated as CONFIDENTIAL and any copies thereof, and  
15 information obtained from inspecting such CONFIDENTIAL information and notes made  
16 therefrom, shall not be used by any person for any purpose other than the litigation of this action,  
17 except with prior written consent of counsel for the party that produced such designated  
18 CONFIDENTIAL information or with the prior Order of the Court. Designated  
19 CONFIDENTIAL information and any copies thereof and notes made therefrom, shall be  
20 disclosed only to qualified persons (as defined in paragraphs 3.3.1 – 3.3.6 ~~3.3.7~~, below), who  
21 shall be bound by the terms of this Stipulation and Order. Access to designated  
22 CONFIDENTIAL information is limited to:

23                               ~~3.3.1~~ ~~The Counsel and Court personnel;~~

24                               ~~3.3.2~~ **3.3.1**     Counsel for the parties;

25                               ~~3.3.3~~ **3.3.2**     Pursuant to paragraphs 4, 4.1, 4.2, 5 and 5.1, deponents and  
26 counsel for deponents at their depositions;

27                               ~~3.3.4~~ **3.3.3**     Non-technical and clerical staff employed by counsel for  
28 the respective parties in connection with the preparation for and the trial of this action;

1                    ~~3.3.5~~ **3.3.4**     Independent personnel retained or consulted by counsel for  
2 the parties to furnish technical or other expert services or advice or to give expert testimony;

3                    ~~3.3.6~~ **3.3.5**     The parties, officers of and employees of a party, where  
4 needed for the preparation for and trial of this action;

5                    ~~3.3.7~~**3.3.6**     Private investigators employed by counsel for the parties  
6 for the purpose of searching for, collecting and reporting data to assist counsel and/or the  
7 independent personnel described above in paragraph 3.3.4 ~~3.3.5~~ in discovery or trial.

8                    **3.4**     No designated CONFIDENTIAL information received by any party in this  
9 lawsuit may be revealed or disclosed to any person or entity not described in Section 3.3, with  
10 the exception of the Court and Court personnel, including but not limited to members of the  
11 press.

12                    **3.5**     Information designated as CONFIDENTIAL-ATTORNEYS' EYES  
13 ONLY and any copies thereof, and information obtained from inspecting such  
14 CONFIDENTIAL-ATTORNEYS' EYES ONLY information and notes made therefrom, shall  
15 not be used by any person for any purpose other than the litigation of this action, except with  
16 prior written consent of Counsel for the Party that produced such designated CONFIDENTIAL-  
17 ATTORNEYS' EYES ONLY information or with the prior Order of the Court. Designated  
18 CONFIDENTIAL-ATTORNEYS' EYES ONLY information and any copies thereof and notes  
19 made therefrom, shall be disclosed only to qualified persons (as defined in paragraphs 3.5.1 –  
20 3.5.4 ~~3.5.5~~, below), who shall be bound by the terms of this Stipulation and Order. Access to  
21 designated CONFIDENTIAL-ATTORNEYS' EYES ONLY information is limited to:

22                    ~~3.5.1~~—The Court and Court personnel;

23                    3.5.1 ~~3.5.2~~     Outside counsel of record for the parties;

24                    3.5.2 ~~3.5.3~~     Pursuant to paragraphs 4, 4.1, 4.2, 5 and 5.1 deponents and  
25 outside counsel of record for deponents at their depositions;

26                    3.5.3 ~~3.5.4~~     Non-technical and clerical staff employed by outside  
27 counsel of record for the respective parties in connection with the preparation for and the trial of  
28 this action.

1                    ~~3.5.4~~ **3.5.5**     Independent personnel retained or consulted by counsel for  
2 the parties to furnish technical or other expert services or advice or to give expert testimony.

3                    **3.6**     No designated CONFIDENTIAL-ATTORNEYS' EYES ONLY  
4 information received by any party in this lawsuit may be revealed or disclosed to any person or  
5 entity not described in Section 3.5, with the exception of the Court and Court personnel,  
6 including but not limited to members of the press.

7                    **3.7**     Each (a) outside vendor used as support personnel for counsel of record,  
8 and (b) consultant or expert authorized pursuant to this Order, shall, prior to being given access  
9 to designated information, acknowledge in writing his or her familiarity with the terms of this  
10 Stipulation and Order and execute a declaration in the form specified in Exhibit A, attached  
11 hereto.

12                   **3.8**     Nothing herein shall prohibit a party, or its counsel, from disclosing a  
13 document that contains confidential information to the person whom the document identifies as  
14 an author, addressee, or recipient of such document.

15                   **3.9**     Nothing herein shall prohibit a party from redacting what that party claims  
16 is privileged client information contained in a document. The parties reserve their respective  
17 rights and arguments as to whether, or to what extent, any other party to this action is entitled to  
18 review such information. Any disputes as to whether the redaction was appropriate are to be  
19 resolved by the Court.

20                   **4.     DEPOSITIONS.**

21                   With respect to depositions, the following shall apply with regard to  
22 CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY information of  
23 documents:

24                   **4.1**     With respect to the examination of witnesses upon oral deposition, before  
25 designated confidential information is supplied to the deponent, or when the deponent's  
26 testimony contains, reflects, or comments on information designated CONFIDENTIAL or  
27 CONFIDENTIAL-ATTORNEYS' EYES ONLY the deposition reporter and/or videotape  
28 operator shall be informed of this Stipulation and Order by the party or third party seeking to

1 invoke its protection, and will be required to agree to be bound by its terms in accordance with  
2 Paragraph 3.7. Any party may, in good faith, designate as CONFIDENTIAL any such portions  
3 of any deposition testimony deemed to contain CONFIDENTIAL INFORMATION by advising  
4 the court reporter and counsel of record at the beginning and ending of the testimony containing  
5 CONFIDENTIAL INFORMATION, either orally at the deposition or in writing within thirty  
6 (30) days of receipt of the deposition transcript. The reporter shall mark the face of the transcript  
7 to designate the beginning and ending of the CONFIDENTIAL INFORMATION portions  
8 thereof and if appropriate, a separate original transcript containing the CONFIDENTIAL  
9 INFORMATION clearly marked on each page as CONFIDENTIAL INFORMATION. Copies  
10 of the transcript for counsels' use may contain the CONFIDENTIAL INFORMATION  
11 testimony and other testimony in a single volume. Any additional out-of-pocket costs caused by  
12 the CONFIDENTIAL INFORMATION designation shall be borne by the designating party.  
13 The party designating a portion of a deposition transcript as containing CONFIDENTIAL  
14 INFORMATION shall have the burden of establishing its designation if said designation is  
15 challenged by the receiving party. If a receiving party objects to the designation, it shall notify  
16 the designating party within thirty (30) days of receipt of the transcript designated as containing  
17 CONFIDENTIAL INFORMATION of its objection and the grounds on which it objects to the  
18 designation. Counsel for the parties shall then take appropriate steps to prevent such separate  
19 transcript or videotape designated pursuant to this Stipulation and Order from being disclosed to  
20 any person, except as provided herein.

21           **4.2**     If designated CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS'  
22 EYES ONLY information is to be discussed or disclosed in a deposition, any party or third party  
23 claiming such confidentiality may exclude from the room any person who is not entitled to  
24 receive such confidential information during that portion of the deposition in which the  
25 confidential information is actually discussed or disclosed.

26           **5.       POTENTIAL WITNESSES AND DEONENTS BOUND BY THIS ORDER.**

27           **5.1.**     Each potential witness and each deponent to whom any party proposes to  
28 disclose designated CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY

1 information at a deposition, ~~trial~~, or other out-of-court proceeding shall be given a copy of this  
2 Stipulation and Order and informed of its contents before disclosure occurs. If the  
3 witness/deponent expressly agrees (in writing or on the record at a deposition) to be bound  
4 hereby, the party may disclose the information. If the witness/deponent refuses, then no  
5 disclosure may occur unless and until a further order of the Court resolves the contention of the  
6 designating party that is entered requiring the witness/deponent should be ~~to be~~ bound by the  
7 obligations of confidentiality and non disclosure as set forth in this Stipulation and Order, and in  
8 particular by Paragraphs 2.3, 3.1 *et seq.*, and 9.4. A party shall require all of his/her/its agents  
9 and employees who are out of court witnesses or deponents to agree to be bound hereby.

10 **6. FILING OR LODGING UNDER SEAL.**

11 **6.1** If any party seeks to file or lodge with the Court any documents (including  
12 deposition transcripts or videotapes) that contain information designated confidential by another  
13 party, then the party who intends to file or lodge such documents shall exercise all reasonable  
14 effort to give all other parties five (5) court days (and in no event less than two (2) court days)  
15 notice of such intent, prior to filing. The notice shall be by telephone and in writing, and it shall  
16 specifically identify the documents intended to be filed.

17 **6.2** The parties shall meet and confer to determine whether redacted versions  
18 of documents may be filed.

19 **6.3** The burden of obtaining an order from the Court allowing the redacting  
20 (other than as required by Local Rule) or sealing of a court record will be on the party claiming  
21 confidentiality.

22 **7. CHALLENGING A DESIGNATION.**

23 **7.1** In the event that outside counsel of record for any party at any time  
24 believes that designated information should not be so designated, or that a different designation  
25 should be employed, such counsel shall so notify the designating party in writing. Outside  
26 counsel of record for the complaining and designating parties then shall meet and confer in good  
27 faith concerning such disputed confidential information within fourteen (14) days of receipt of  
28 the notice. If agreement is not reached within those fourteen (14) days, the complaining party



1 may file a motion requesting that the Court order the removal of the designating party's  
2 designation or order a different designation. In such a proceeding, the designating party bears  
3 the burden of showing good cause with respect to any challenged designation. The designated  
4 confidential information shall be subject to and protected by this Stipulation and Order under the  
5 designation assigned by the designating party until the Court has ruled on any such motion. If  
6 any party takes a writ or appeal from the Court's ruling on any such motion, that party may apply  
7 for a stay pending determination of the writ or appeal.

8           **7.2** No party shall be obliged to challenge the propriety of a designation, and a  
9 failure to do so shall not preclude a subsequent attack on the propriety of such designation.

10           **8. INADVERTENT DISCLOSURE OF MATERIALS.**

11           **8.1** Neither the inadvertent production of work product or privileged materials  
12 nor the inadvertent failure to designate information under this Stipulation and Order prior to or at  
13 the time of disclosure shall operate as a waiver of a party's right to designate such information  
14 under this Order so long as such party, within a reasonable time after the party learns of the  
15 inadvertent disclosure, takes steps to seek return of the materials and/or correct the failure  
16 properly to designate such information.

17           **8.2** In the event that confidential information is designated as confidential  
18 after disclosure, the receiving party shall employ reasonable efforts to ensure that all  
19 inadvertently disclosed information is subsequently treated as required pursuant to the terms of  
20 this Stipulation and Order. In the event that privileged documents and/or work product is to be  
21 returned, the returning party(ies) shall return or destroy all such material and refrain from using  
22 or referring thereto except in any proceeding challenging either (a) the inadvertence of the  
23 production, or (b) the validity of the claim of privilege. In those circumstances, copies of the  
24 disputed material may be submitted by either party to the Court for *in camera* review pending  
25 further order of the Court.

26           **9. MISCELLANEOUS.**

27           **9.1** Documents designated CONFIDENTIAL or CONFIDENTIAL-  
28 ATTORNEYS' EYES ONLY shall be maintained in the custody of outside counsel of record for

1 the parties except that: (a) any court reporter who transcribes testimony given in this action may  
2 maintain any such designated documents for the purpose of rendering his or her normal  
3 transcribing services; and (b) partial or complete copies of such documents may be retained by  
4 consultants entitled to see such documents under the terms of this Stipulation and Order to the  
5 extent necessary for their study, analysis, and preparation of the case. A person with custody of  
6 documents designated CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY  
7 shall maintain them in a manner that limits access to those documents to only those persons  
8 entitled under this Order to access them.

9           **9.2** Unless counsel agree otherwise in writing, at the conclusion of this  
10 litigation, whether by settlement or final decision of the Court, all copies of any documents, other  
11 than attorney work product, containing designated information produced by a party or third party  
12 shall be destroyed or returned to the party or third party producing such documents or writings.  
13 Notwithstanding the foregoing, outside counsel of record shall be permitted to retain a file copy  
14 of all pre trial, trial, and post trial materials, depositions and deposition exhibits, and document  
15 databases.

16           **9.3** The provisions of this Stipulation and Order apply to all proceedings in  
17 this action, including all appeals and proceedings upon remand.

18           **9.4** A designation pursuant to this Stipulation and Order shall be effective and  
19 shall be respected by the parties and all persons in any way involved in these proceedings or to  
20 whose attention confidential information shall come unless and until otherwise ordered by the  
21 Court or stipulated by all parties to this action in the event there is no need for a Court order.  
22 These obligations of confidentiality and non-disclosure shall survive the conclusion of this action  
23 unless and until otherwise ordered by the Court, or until the parties to this action stipulate that  
24 designated information can be disclosed.

25           **9.5** By entering into this Order, no party waives any objections it might have  
26 to the production of any documents, or other form of information, covered by this Order, except  
27 that neither party shall refuse to produce documents or respond to any discovery request of the  
28 other party based on the assertion that the request seeks CONFIDENTIAL or CONFIDENTIAL-





**ATTACHMENT "A"**

**NONDISCLOSURE AGREEMENT**

I, \_\_\_\_\_, do solemnly swear that I am familiar with the terms of the Stipulated Protective Order ("Order") entered in *Eric Grant v. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.*, United States District Court for the Eastern District of California Case No. 2:08-cv-00672-FCD-KJM ("Action"), and hereby agree to comply with and be bound by the terms and conditions of said Order, unless and until modified by further order of the Court. I will not disclose to any individuals, other than those specifically authorized by this Order or by the Court, any information designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" pursuant to the Order ("Information") which is disclosed to me; will not copy, use or disclose any information designated as "CONFIDENTIAL" OR "CONFIDENTIAL-ATTORNEYS' EYES ONLY" except for the purpose of the Action and/or any rights of any of the parties under state or federal law. As a condition to access by me to information designated by a party as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS' EYES ONLY ("Information"), I subject myself to the jurisdiction of the United States District Court for the Eastern District of California and the jurisdiction of any successor court with jurisdiction over the Action (or any other action in which the information is disclosed) in connection with any alleged breach by me of the Order.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_