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CORBETT A.K. KALAMA, in their capacities as  
Trustees of the Estate of Bernice Pauahi Bishop

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ERIC GRANT,  
Plaintiff,  
v.  
KAMEHAMEHA SCHOOLS/BERNICE  
PAUAHI BISHOP ESTATE; J. DOUGLAS ING,  
NAINOA THOMPSON, DIANE J. PLOTTS,  
ROBERT K.U. KIHUNE, and CORBETT A.K.  
KALAMA, in their capacities as Trustees of the  
Estate of Bernice Pauahi Bishop; JOHN DOE;  
and JANE DOE,  
Defendants.  
And Related Counterclaims and Cross-Claims

No. 08-00672 FCD-KJM  
KAMEHAMEHA SCHOOLS  
DEFENDANTS AND CROSS-CLAIM  
DEFENDANTS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO  
TRANSFER TO DISTRICT OF  
HAWAII PURSUANT TO 28 U.S.C.  
§ 404  
Date: October 31, 2008  
Time: 10:00 a.m.  
Courtroom: 2  
Before: Hon. Frank C. Damrell, Jr.

1 **I. INTRODUCTION**

2 This case should be heard in Hawai`i, not California. Plaintiff Eric Grant (“Grant”) and  
3 Cross Claimants John and Jane Doe (together, the “Does”) allege that a Hawai`i lawyer  
4 representing Defendant Kamehameha Schools/Bernice Pauahi Bishop Estate and its trustees  
5 (“KS”), a Hawai`i charitable trust estate, threatened to sue the Does, who also reside in Hawai`i,  
6 for breach of a confidential settlement agreement (the “Settlement Agreement”) that resolved a  
7 Hawai`i lawsuit between the Does and KS. The Settlement Agreement was also breached in  
8 Hawai`i, where local newspapers and television stations learned from the Does’ Hawai`i local  
9 counsel certain terms of the Settlement Agreement in blatant violation of the confidentiality  
10 provision. Likewise, the alleged threat to sue, which purportedly consisted of a threat to make  
11 disclosures in connection with new litigation filed in a Hawai`i court seeking to attach the Does’  
12 Hawai`i assets, occurred in Hawai`i in a disputed conversation between KS’ Hawai`i counsel and  
13 the Does’ Hawai`i attorney.

14 Despite Hawai`i’s virtually exclusive connection to this action, Grant filed in this Court  
15 (the “Eastern District”) in a transparent effort to obtain what he considers a more convenient and  
16 favorable forum. To rationalize this choice of forum, Grant offers only the argument that he  
17 negotiated terms of the Settlement Agreement in California with one of KS’ mainland-based  
18 lawyers and they then signed the Settlement Agreement “as to form” in California. However, the  
19 negotiations have nothing to do with the current dispute.

20 Given the tenuous relationship between this dispute and California, KS has filed motions  
21 to dismiss on the ground that this Court has neither jurisdiction over KS nor the claims of Grant  
22 and the Does. However, KS is filing this motion because, even if jurisdiction exists, this Court  
23 should transfer this case to Hawai`i based on considerations of convenience and the interests of  
24 justice, as provided for under 28 U.S.C. §1404(a). Virtually every factor federal courts consider  
25 in connection with a Section 1404(a) motion to transfer -- the ease of access to sources of proof,  
26 the availability of compulsory process to compel attendance of non-party witnesses, the state that  
27 is most familiar with the governing law and the most important factor of all, location of the  
28

1 parties and the witnesses -- weigh heavily in favor of transfer to the District of Hawai`i. The one  
2 countervailing factor on which Grant and the Does may rely, their choice of forum, is entitled to  
3 little weight because the Eastern District has no significant contact with the activities alleged in  
4 the action.

5 **II. STATEMENT OF FACTS**

6 **A. The Underlying Litigation and Settlement**

7 The Does, who are Hawai`i citizens, sued KS in June 2003 in the United States District  
8 Court for the District of Hawai`i (the "Underlying Litigation"). The Does alleged that KS'  
9 policy of giving preference to applicants of native Hawaiian ancestry constituted discrimination  
10 on the basis of race in violation of federal civil rights statutes. John and Jane Doe's Cross-Claim  
11 ("Does Cross-Claim"), ¶ 4 (filed 4/1/08). The Does sought declaratory relief, a permanent  
12 injunction, and compensatory and punitive damages. The Does were represented in the  
13 Underlying Litigation by Grant and their local Hawai`i counsel, John Goemans. Does Cross-  
14 Claim, ¶ 8.

15 After the District Court of Hawai`i and the *en banc* Ninth Circuit Court of Appeals  
16 decided in KS' favor, the Does filed a petition for certiorari. In May 2007, while that petition  
17 was pending, the Does and KS entered into the Settlement Agreement. Does Cross-Claim, ¶ 7.  
18 All settlement terms, including monetary terms, were made strictly confidential. Does Cross-  
19 Claim, ¶ 7.

20 **B. Goemans' Disclosure of the Settlement Agreement and the**  
21 **Alleged Threats**

22 On February 8, 2008, the *Honolulu Advertiser* published a story in which it reported that  
23 Goemans had revealed details of the Settlement Agreement, including its monetary terms. Does  
24 Cross-Claim, ¶ 9. Hawai`i television stations also interviewed Goemans regarding the settlement  
25 and his disclosure. Request for Judicial Notice in Support of KS' Motion to Dismiss, filed  
26 7/9/08 ("RJN"), Ex. 13a-13c (filed 7/9/08). Shortly thereafter, one of KS' outside counsel in  
27 Hawai`i, David Schulmeister, met with Ken T. Kuniyuki, the Does' current Hawai`i counsel, in  
28 Schulmeister's Honolulu office, to discuss the consequences of Goemans' disclosures.

1 Supplemental Declaration of Ken T. Kuniyuki in Support of Motion for Temporary Restraining  
2 Order and Preliminary Injunction, ¶ 3 (filed 4/15/08) (“Kuniyuki Dec.”).

3 According to the Does, during that meeting, Schulmeister said that (1) KS was going to  
4 sue the Does on the grounds that they are responsible for Goemans’ release of the information  
5 about the Settlement Agreement (Does Cross-Claim, ¶ 13); and (2) KS was going to seek a  
6 prejudgment attachment order and, in the process of pursuing that relief, the Does’ identities  
7 might be revealed; and (3) to avoid risk of disclosure, the Does should agree to put \$2 million  
8 into an escrow account pending resolution of KS’s damage claims. (*Id.*) Schulmeister denies  
9 saying that KS had already decided to file suit or threatening that KS would disclose the Does’  
10 identities. Declaration of David Schulmeister in Support of Kamehameha Schools Defendants’  
11 Opposition to John And Jane Doe’s Motion for Preliminary Injunction, ¶ 8 (filed 4/14/08)  
12 (Schulmeister Dec.).<sup>1</sup>

13 **C. Grant’s and the Does’ Lawsuits Against KS**

14 On March 28, 2008, Grant filed his Complaint for Declaratory Relief (“Grant Complaint”  
15 or “Complaint”) in this action because he apparently feared that KS would bring suit against him  
16 in Hawai`i for breach of contract. Specifically, Grant alleges that KS threatened to sue him for  
17 damages resulting from Goemans’ disclosure of the settlement terms. Grant Complaint, ¶ 27.  
18 Grant alleges that the Does threatened to sue him as well. Grant Complaint, ¶ 30. Through his  
19 lawsuit, Grant seeks a declaration that he is not liable for “any alleged breach of the Doe-KSBE  
20 settlement agreement by any person, or for any alleged disclosures of confidential information by  
21 John Goemans, or for any related matter.” Grant Complaint, Prayer for Relief ¶ (a).

22 In a matter of days and without being formally served, the Does responded by answering  
23 and filing a Cross-Claim seeking an injunction prohibiting Kamehameha Schools and its trustees  
24 from “disclosing the Does’ identities to an[y] third party or in any Court filing.” Does Cross-  
25 Claim, Prayer for Relief, ¶ 1. According to the Does, the news article regarding the settlement  
26

27 <sup>1</sup> On August 6, 2008, KS filed suit against the Does in the Third Circuit Court in Hawai`i. Grant  
28 is not a defendant in the case. *See* Exhibit “A”, attached. Since the Does have not yet responded  
to KS’ complaint, it is not known whether Grant, Goemans, or anyone else will be sued by the  
Does in a crossclaim, counterclaim, or third-party claim.

1 terms generated significant interest in the Settlement Agreement and the Does' identities. Does  
2 Cross-Claim, ¶ 11 ("There have been 1,551 comments posted by readers to the Honolulu  
3 Advertiser's February 8, 2008 article disclosing the terms of the settlement case"). The Does  
4 allege that because many of the messages posted on the internet in response to the news articles  
5 regarding Goemans' disclosure contained threats, they "fear for their safety if their identities are  
6 disclosed. If their identities are disclosed they anticipate that they will have to go into hiding in  
7 order to avoid undue harassment and potential physical violence." Does Cross-Claim, ¶ 12. The  
8 Does also seek "a declaration from this Court that Goemans' disclosure of the monetary terms of  
9 the settlement does not constitute a breach of the confidentiality provision in the Agreement  
10 between the Does and the Estate." Does Cross-Claim, ¶ 20. The Does claim they are not liable  
11 for Goemans' disclosure because "[t]here is no mention of Goemans in the Agreement and no  
12 definition of the term 'counsel' that would make the Does liable for any breach of the  
13 confidentiality agreement by their former counsel Goemans." Does Cross-Claim, ¶ 10.

### 14 **III. ARGUMENT**

#### 15 **A. This Case Should Be Transferred to the District of Hawai`i**

16 A district court has broad discretion to transfer a civil action to another district where it  
17 might have been brought for the convenience of the parties and witnesses and in the interests of  
18 justice. 28 U.S.C. § 1404(a). As the Ninth Circuit explained in *Jones v. GNC Franchising, Inc.*,  
19 211 F.3d 495, 498 (9th Cir. 2000), this Court may consider:

- 20
- 21 (1) the location where the relevant agreements were negotiated and
  - 22 executed; (2) the state that is most familiar with the governing law;
  - 23 (3) the plaintiff's choice of forum; (4) the respective parties'
  - 24 contacts with the forum; (5) the contacts relating to the plaintiff's
  - 25 cause of action in the chosen forum; (6) the differences in costs of
  - litigation in the two forums; (7) the availability of compulsory
  - process to compel attendance of unwilling non-party witnesses;
  - and (8) ease of access to sources of proof.

26 211 F.3d at 498-499. As explained below, these factors, taken together, weigh heavily in favor  
27 of transferring this action to the District of Hawai`i.<sup>2</sup>

28 <sup>2</sup> Under Section 1404(a), a case may only be transferred to another district "where it might have

1           **B.       Transfer to the District of Hawai`i Would Serve the**  
2           **Convenience of the Witnesses**

3           The convenience of witnesses is the most important factor in any transfer of venue  
4           analysis. *L.A. Memorial Coliseum Comm'n v. Nat'l Football League*, 89 F.R.D. 497, 501 (C.D.  
5           Cal. 1981).<sup>3</sup> In this case, with but perhaps two exceptions -- Grant and perhaps Goemans -- all  
6           witnesses are located in Hawai`i. The Does are citizens of Hawai`i, as are KS, its five trustees  
7           and all of its employees. Grant Complaint, ¶¶ 5, 6, 8. The two participants in the conversation  
8           that produced the purported threat, Schulmeister and Kuniyuki, are also citizens of Hawai`i,<sup>4</sup> as  
9           are the Hawai`i reporters to whom Goemans disclosed information about the settlement in  
10          violation of a confidentiality provision. RJN, Exs. 10, 11, 12, 13a-e, 14. Goemans himself,  
11          according to Grant, also appears to be in Hawai`i or was at one time. Declaration of James J.  
12          Banks in support of Motion to Compel, ¶ 2 (filed 4/22/08 in *Grant v. Goemans*) (attached as  
13          Ex. B).

14          In contrast, the only potential witnesses residing elsewhere are Grant (who resides in the  
15          Eastern District) and perhaps Goemans, whose present whereabouts are unknown. Declaration  
16          of Paul Alston, attached. Their residency is entitled to minimal weight because (1) none of the  
17          rules governing jurisdiction or venue turns on the plaintiff's place of residence, and (2) this  
18          action grows out of the Underlying Litigation, which Grant and Goemans elected to file and  
19          prosecute in Hawai`i, for Hawai`i clients. *See T.M. Hylwa, M.D., Inc. v. Palka*, 823 F.2d 310,

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20          been brought.” Grant could have certainly brought his action in the District of Hawai`i. That  
21          Court would have jurisdiction over the Does and KS because they are citizens of Hawai`i. If this  
22          Court has subject matter jurisdiction over the claims in this action, then the District of Hawai`i  
23          would as well. Additionally, venue would be proper in the District of Hawai`i under 28 U.S.C.  
24          § 1391(a)(2) because, as described above, a substantial part of the events giving rise to Grant's  
25          claims occurred in Hawai`i.

26          <sup>3</sup> *See also In re Yahoo! Inc.*, 2008 U.S. Dist. LEXIS 20605 at \*8-13 (C.D. Cal. Mar. 10, 2008)  
27          (“The convenience of the witnesses is usually the most important factor to consider in deciding  
28          whether to transfer an action”) (citation omitted); *Saleh v. Titan Corp.*, 361 F. Supp.2d 1152,  
29          1160-1161 (S.D. Cal. 2005) (“[t]he relative convenience to the witnesses is often recognized as  
30          the most important factor to be considered in ruling on a motion under §1404(a)”) (internal  
31          citation omitted); *David v. Alphin*, 2007 U.S. Dist. LEXIS 3095 at \*15-16 (N.D. Cal.  
32          Jan. 4, 2007) (“this order places considerable weight on the fact that so many trial witnesses are  
33          in [the transferee state]”).

34          <sup>4</sup> Schulmeister Dec., ¶¶ 1, 2, 4, 5.

1 314-15 (9th Cir. 1987) (out-of-state accountant who performed work for California resident and  
2 periodically traveled to California “deliberately created continuing obligations between himself  
3 and residents of the forum” and “should reasonably anticipate being haled into court there”);  
4 *Stratagene v. Parsons Behle & Latimer*, 315 F. Supp. 2d 765, 769 (D. Md. 2004) (refusing to  
5 transfer case to out-of-state lawyers’ home state where lawyers had traveled to Maryland to  
6 represent party in underlying litigation and were subject to personal jurisdiction in Maryland).  
7 *Accord, Trinity Indus., Inc. v. Myers & Assoc.*, 41 F.3d 229, 230 (5th Cir.), *cert. denied*, 516 U.S.  
8 807 (1995) (out-of-state lawyer who voluntarily represented Texas client in litigation in Texas  
9 federal court for eight months “availed himself . . . of the opportunity to represent a Texas  
10 resident” and could be required to litigate resulting dispute in Texas); *Streber v. Hunter*, 221  
11 F.3d 701, 718-19 (5th Cir. 2000) (out-of-state attorney who gave tax advice for use by Texas  
12 client and who appeared in mediation in Texas could be required to litigate resulting dispute in  
13 Texas).

14 **C. Transfer to the District of Hawai`i Would Greatly Ease the**  
15 **Parties’ Ability to Obtain and Present Evidence at Trial**

16 Ease of proof, including convenient access to books and records, and the availability of  
17 compulsory process, are additional compelling reasons to transfer this case to Hawai`i. *In re*  
18 *Horseshoe Entertainment*, 337 F.3d 429, 434 (5th Cir. 2003); *Reed v. Fina Oil & Chem. Co.*, 995  
19 F. Supp. 705, 714 (E.D. Tex. 1998). The vast majority of the documents relevant to this action  
20 are in Hawai`i. Any documents the Does or KS possesses are in Hawai`i. The documents  
21 relating to Goemans’ service as the Does’ counsel are also, according to Goemans, in Hawai`i.  
22 Memorandum in Support of Motion to Compel Further Responses to Form Interrogatories and  
23 Request for Production of Documents and for Evidentiary and Monetary Sanctions, at 2 (filed  
24 4/22/08 in *Grant v. Goemans*) (attached as Ex. C). Further, the Does’ claim that they will suffer  
25 harm if their identities are disclosed is dependent on facts which are local to Hawai`i and which  
26 will likely involve testimony from people in Hawai`i. Does Cross Claim, ¶¶ 11, 15. Finally,  
27 Schulmeister, Kuniyuki, the journalists who heard Goemans’ disclosures, and any witnesses to  
28 any alleged threats made to or against the Does are all non-party witnesses in Hawai`i. The

1 Hawai`i court’s compulsory process power over those witnesses is a significant factor in favor of  
2 transfer.

3 **D. The Hawai`i Court’s Familiarity With Hawai`i Law Weighs in**  
4 **Favor of Transfer**

5 The many issues in this action raising questions of Hawai`i law also weigh heavily in  
6 favor of transfer. According to the Does, KS’ alleged threat to file attachment proceedings is  
7 impermissible because attachment would not be available for a breach of contract claim under  
8 Hawai`i law brought by KS against the Does. In support of this argument, the Does (in KS’ view,  
9 wrongly) cite two District of Hawai`i cases that analyze Hawai`i attachment law: *Frank F. Fasi*  
10 *Supply Co. v. Wigwam Investment Co.*, 308 F. Supp. 59 (D. Haw. 1969) and *Vasquez v. Center*  
11 *Art Gallery*, 485 F. Supp. 1015 (D. Haw. 1980). Ex Parte Motion for Temporary Restraining  
12 Order, at 11-12 (filed 4/3/08) (“TRO Motion”).

13 Similarly, in connection with the declaratory relief claims, the question arises whether  
14 Grant and the Does are liable for Goemans’ disclosure of the settlement terms. Not surprisingly,  
15 given that the parties to the Settlement Agreement (the Does and KS) are Hawai`i citizens, the  
16 Does concede in their restraining order papers that the interpretation of the Settlement  
17 Agreement is governed by Hawai`i law. See TRO Motion, at 12, n. 4 (citing *Standard Mgmt.,*  
18 *Inc. v. Kekona*, 99 Hawai`i 125, 134 (App. 2001) in support of their argument that they did not  
19 intend to include Goemans in the definition of “counsel” in the Settlement Agreement). This  
20 also strongly favors Hawai`i because “[t]here is an appropriateness . . . in having the trial of a  
21 diversity case in a forum that is at home with the state law that must govern the case, rather than  
22 having a court in some other forum untangle problems in conflict of laws, and in law foreign to  
23 itself.” *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947). Because at least two principal  
24 issues underlying this action — KS’ right to disclose the Does’ identities and the Does’ liability  
25 for Goemans’ disclosure — are governed by Hawai`i law, the case should be transferred to the  
26 District of Hawai`i.



1           **E.       The Does' Claim for Injunctive Relief Weighs Strongly in**  
2                           **Favor of Transfer to Hawai`i**

3           The Does are seeking an order prohibiting KS and its trustees from revealing their  
4 identities to any third party or in any court filing. KS, and all of its employees and trustees, are  
5 in Hawai`i. So far, the only publication of confidential information about the Settlement  
6 Agreement (that disclosed by Goemans) has occurred in Hawai`i. The Does are in Hawai`i,  
7 therefore, any attachment proceeding that would potentially result in the release of their names  
8 would also occur in Hawai`i. Consequently, if a court were to issue an injunction along the lines  
9 the Does request, it would be best if that court were in Hawai`i so that it could more easily  
10 monitor compliance with its order. *See Law Bulletin Pub. Co. v. LRP Publ'g, Inc.*, 992 F. Supp.  
11 1014, 1020-1021 (N.D. Ill. 1998) (where injunctive relief is sought, it is important to consider  
12 whether one court or the other will be "closer to the action" and better able to monitor  
13 compliance with any injunction that may be granted).

14           **F.       Grant's Choice of Forum Should Be Given Little Weight Given**  
15                           **the Eastern District's Lack of Significant Contact With the**  
16                           **Activities Alleged in This Action**

17           Although courts normally give some weight to plaintiff's choice of forum in deciding a  
18 motion to transfer, this consideration is particularly weak here. That is because "where the  
19 transactions giving rise to the action lack a significant connection to the plaintiff's chosen forum,  
20 the plaintiff's choice of forum is given considerably less weight, even if the plaintiff is a resident  
21 of the forum." *Farmer v. Ford Motor Co.*, 2007 U.S. Dist. LEXIS 90289 \*7 (N.D. Cal.  
22 Nov. 28, 2007) (transferring action to Northern District of Ohio, despite plaintiff's California  
23 residency, because "a majority of the operative facts giving rise to this case occurred in Ohio"),  
24 citing *Schmidt v. American Inst. of Physics*, 332 F.Supp.2d 28, 33-34 (D. D.C. 2004) (holding  
25 that deference to District of Columbia resident plaintiff's choice of District of Columbia forum is  
26 not merited because "the material events that constitute the factual predicate for the plaintiff's  
claims occurred in Maryland") (citation and internal quotation marks omitted).<sup>5</sup>

27           <sup>5</sup> *See also Collins v. JC Penny Life Ins. Co.*, 2002 U.S. Dist. LEXIS 5676 at \*8-10 (N.D. Cal.  
28 Mar. 29, 2002) (affording plaintiff's choice of forum little weight where transactions giving rise  
to the action lack a significant connection to the plaintiff's chosen forum), *citing* Schwarzer,  
Tashima, & Wagstaffe, *Federal Civil Procedure Before Trial*, § 4:284; *Joe Boxer Corp. v.*

1 This case does not have a significant connection to the Eastern District. It arises out of  
2 Goemans' disclosure of the settlement terms and KS' alleged threats to bring claims against  
3 Grant and the Does and to disclose the Does' identities. Grant's involvement in this action arises  
4 out of his decision to represent Hawai'i clients in a Hawai'i lawsuit against Hawai'i defendants.  
5 Those events occurred in Hawai'i, not anywhere on the mainland, much less the Eastern District.  
6 And, as the Does allege in their Cross-Claim, both the Underlying Litigation and Goemans'  
7 disclosure of the settlement terms have generated great interest in Hawai'i. Indeed, the filings in  
8 this case are reports by Hawai'i local media. RJN, Exs. 10-14; KS' Notice of Manual Filing,  
9 (filed 7/9/08). Therefore, Grant's choice of the Eastern District should not be given any  
10 deference, and this action should be transferred to the District of Hawai'i. *See, e.g., Ironworkers*  
11 *Local Union No. 68 & Participating v. Amgen, Inc.*, 2008 U.S. Dist. LEXIS 8740 at \*22-23  
12 (C.D. Cal. Jan. 22, 2008) (granting defendant's motion to transfer based, in part, on New Jersey's  
13 interest in resolving local controversies and because the Court accords minimal deference to  
14 plaintiffs' choice of forum).<sup>6</sup>

#### 15 IV. CONCLUSION

16 All but one of the parties in this action reside in Hawai'i. Almost all of the witnesses and  
17 the bulk of the evidence relevant to this action are in Hawai'i. The dispute underlying this action  
18 relates to litigation that occurred in Hawai'i and to issues that remain the subject of great interest  
19 in Hawai'i. Moreover, the court trying this action will have to resolve issues of Hawai'i law and,  
20 if the Does are successful, enforce an injunction against a Hawai'i citizen relating to conduct in  
21 Hawai'i. For the convenience of the parties and the witnesses, and in the interests of justice, this  
22

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23 *R. Siskind & Co.*, 1999 U.S. Dist. LEXIS 9622 at \*25-26 (N.D. Cal. June 1, 1999) (according  
24 little weight to resident plaintiff's choice of forum where "center of gravity" of dispute is in  
another forum).

25 <sup>6</sup> *See also United Food & Commer. Workers Cent. Pa. v. Amgen, Inc.*, 2007 U.S. Dist. LEXIS  
26 85148 at \*24-25 (C.D. Cal. Nov. 13, 2007) (same); *Sagent Tech. v. Micros Sys.*, 2002 U.S. Dist.  
27 LEXIS 26647 at \*5 (N.D. Cal. May 29, 2002) (granting defendants' motion to transfer due to the  
"public interest factors of having localized controversies decided locally"); *Jarvis v. Marietta*  
28 *Corp.*, 1999 U.S. Dist. LEXIS 12659 at \*19 (N.D. Cal. Aug. 12, 1999) (granting defendant's  
motion to transfer where the actions substantiating the claim occurred in the non-California  
forum, involve a non-California defendant, and witnesses and evidence are in the other forum,  
despite California's interest in protecting its citizens).

1 case should be transferred to the District of Hawai`i.

2  
3 DATED: August 22, 2008

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