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 3 Telephone: (916) 388-0833
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 4 E-Mail: grant@eric-grant.com

5 James J. Banks (Bar No. 119525)
 Banks & Watson
 6 Hall of Justice Building
 813 6th Street, Suite 400
 7 Sacramento, California 95814
 Telephone: (916) 325-1000
 8 Facsimile: (916) 325-1004
 E-Mail: jbanks@bw-firm.com

9
 10 Counsel for Plaintiff and
 Counter-Defendant ERIC GRANT

ERIC GRANT, ATTORNEY AT LAW
 8001 Folsom Boulevard, Suite 100
 Sacramento, California 95826
 Telephone: (916) 388-0833

11
 12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA

14 ERIC GRANT,)	No. 2:08-cv-00672-FCD-KJM
)	
15 Plaintiff,)	
)	DECLARATION OF JAMES J. BANKS IN
16 v.)	SUPPORT OF PLAINTIFF AND COUNTER-
)	DEFENDANT ERIC GRANT'S MOTION
17 KAMEHAMEHA SCHOOLS/BERNICE)	FOR SUMMARY JUDGMENT
PAUAAHI BISHOP ESTATE; J. DOUGLAS)	
18 ING, NAINOA THOMPSON, DIANE J.)	
PLOTTS, ROBERT K.U. KIHUNE, and)	
19 CORBETT A.K KALAMA, in their)	
capacities as Trustees of the Kamehameha)	
20 Schools/Bernice Pauahi Bishop Estate;)	Hearing Date: Oct. 31, 2008
JOHN DOE; and JANE DOE,)	Time: 10:00 a.m.
)	Courtroom: 2
21 Defendants.)	Judge: Hon. Frank C. Damrell, Jr.
22)	
23 JOHN DOE and JANE DOE,)	
)	
24 Counter-Claimants,)	
)	
25 v.)	
)	
26 KAMEHAMEHA SCHOOLS/BERNICE)	
PAUAAHI BISHOP ESTATE, et al.,)	
27)	
Counter-Defendants.)	
28)	

1 I, James J. Banks, declare as follows:

2 1. I am co-counsel for Plaintiff and Counter-Defendant Eric Grant (“Grant”) in the
3 above-entitled case. I make this declaration in support of Grant’s motion for summary judgment
4 filed concurrently herewith. I make the statements of fact in this declaration of my own personal
5 knowledge. If called as a witness in this proceeding, I could and would competently testify to the
6 facts set forth herein.

7 2. In the following paragraphs, I refer to Defendants Kamehameha Schools/Bernice
8 Pauahi Bishop Estate, J. Douglas Ing, Nainoa Thompson, Diane J. Plotts, Robert K.U. Kihune, and
9 Corbett A.K. Kalama collectively as “KSBE.” I refer to Defendants John Doe and Jane Doe, two
10 individuals whose true identities are known to me, using their “Doe” pseudonyms. I refer to non-
11 party John Goemans as “Goemans.”

12 3. In a letter addressed to me and dated June 11, 2007, and which I received on that
13 date, the Does’ then-counsel Robert L. Esensten demanded: “Please also provide me a copy of the
14 Settlement Agreement executed by [Jane Doe]. I understand that [she] has made multiple requests
15 for this Settlement Agreement to date.” A true and correct copy of Mr. Esensten’s letter, with the
16 quoted passage highlighted on Page 1 thereof and with Jane Doe’s true name redacted, is attached
17 hereto as Exhibit 1.

18 4. In a letter addressed to Mr. Esensten and dated June 22, 2007, and which I sent on
19 that date, I responded to Mr. Esensten’s demand: “Pursuant to your request, I enclose an executed
20 copy of the Settlement Agreement and General Release entered into in that certain litigation styled,
21 *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.*” I enclosed a copy of the Set-
22 tlement Agreement with my letter. A true and correct copy of my letter (not including exhibits),
23 with the quoted passage highlighted and with Jane Doe’s true name redacted, is attached hereto as
24 Exhibit 2.

25 5. I did not provide a copy of the Doe-KSBE Settlement Agreement to Goemans.

26 6. On April 8, 2008, I sent a letter to KSBE’s then-counsel Kelly G. LaPorte. In sum,
27 that letter conveyed Mr. Grant’s offer to dismiss KSBE from this action in exchange for KSBE’s
28 binding acknowledgment that “it has no claim for breach of the [Doe-KSBE] settlement agreement

1 against Mr. Eric Grant.” That offer would not have required KSBE to pay any damages, attorney’s
2 fees, or even costs to Mr. Grant. KSBE did not accept Grant’s offer. A true and correct copy of
3 my letter (including enclosures), with the referenced passages highlighted on Page 1 thereof, is at-
4 tached hereto as Exhibit 3.

5 7. On April 9, 2008, I received a response to my letter to Mr. LaPorte, via an e-mail
6 message from KSBE’s counsel Paul Alston. That message reads in part:

7 I am responding to your April 8 letter to Kelly LaPorte.

8 Your letter does not accurately reflect what Mr. LaPorte said to you on April 4. As
9 stated in his April 7 email to the court (a copy of which is reprinted below), it is
10 correct to say that [KSBE] has no present intention to sue Mr. Grant. It is not correct
11 to say that [KSBE] has decided it has no claims against Mr. Grant. At this point,
12 given the conflicting positions taken by Mr. Grant, Mr. Goemans and Mrs. Doe,
13 [KSBE] is still in the process of evaluating its rights and claims.

12 A true and correct copy of a printout of Alston’s message, with the quoted passage highlighted, is
13 attached hereto as Exhibit 4.

14 8. I am informed and believe that on April 9, 2008, KSBE counsel Paul Alston sent an
15 e-mail message to the Does’ counsel Jerry H. Stein. The body of that message read as follows:

16 Jerry:

17 Thank you for sending the email forwarding a copy of the email Kelly LaPorte sent
18 to the judge in Sacramento on April 7.

19 That email is consistent with what I said during our recent telephone call. KS, at
20 this point, is reviewing and evaluating the situation, and it presently has no intention
21 to sue Mr. Grant. Nor, for that matter, does KS presently intend to sue your clients.
22 KS is reserving all of its rights and claims, and, until the conflicting denials can be
23 evaluated more fully, KS is going to hold its fire. Regardless what the future brings,
24 KS will not, under any circumstances violate the settlement agreement. In partic-
25 ular, KS will not identify the Does without a court order obtained after notice and
26 hearing. That is NOT to say that KS intends now to seek such an order; it is merely
27 to reserve KS’s rights to seek such orders as may be needed to vindicate KS’s rights.

28 Attached is a letter the Cades firm received from Banks & Watson. As you will see,
that letter claims (wrongly) that KS “believes it has no claim” against Mr. Grant. KS
presently has no such belief; it is, as I said above, still evaluating its rights.

PAUL ALSTON

27 A true and correct copy of a printout of Alston’s message, as forwarded to me from Mr. Stein on
28 April 10, 2008, is attached hereto as Exhibit 5.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 3, 2008.

/s/ James J. Banks
JAMES J. BANKS

ERIC GRANT, ATTORNEY AT LAW
8001 Folsom Boulevard, Suite 100
Sacramento, California 95826
Telephone: (916) 388-0833

Exhibit 1

Law Offices

WASSERMAN, COMDEN & CASSELMAN, L.L.P.

LOS ANGELES OFFICE

5567 RESEDA BOULEVARD

SUITE 330

TARZANA, CALIFORNIA 91356

MAIL TO: P.O. BOX 7033, TARZANA, CA 91357-7033

(818) 705-6800 (323) 872-0995

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STEVEN G. BRENNER
DAVID B. CASSELMAN
FRANK W. CHEN
LEONARD J. COMDEN
ROBERT L. ESENSTEN*
CATHERINE S. GARCIA
MARK S. GOTTLIEB
MELISSA HARNETT
ROBERT C. NICHOLS
GREGORY J. RAMIREZ
JAY N. ROSENWALD
STEVE K. WASSERMAN
I. DONALD WEISSMAN
CECILIA S. WU

ROBERT BORSKY
PAUL D. CADMAN
ASTER C. CHANG
KIRK S. COMER
JOEL FISCHMAN
SUSU KHINE
AARON KOLLITZ
KARIN LEAVITT
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CORNELIA STERNER
RYAN J. STONEROCK
STEVE Z. WANG
CHRISTOPHER P. WARNE

OF COUNSEL

TIM T. CHANG
MICHAEL T. FOX
OSCAR C. GONZALEZ
KATHRYN S. MARSHALL
CHARLES A. SHULTZ**

KARASIK LAW GROUP

OLGA A. KARASIK
TERRY D. SHAYLIN

* A PROFESSIONAL LAW CORP.
** ALSO ADMITTED IN NEW YORK

June 11, 2007

WRITER'S DIRECT CONTACT
(818) 609-2384
RESENSTEN@WCCLAW.COM

VIA FACSIMILE AND U.S. MAIL

James J. Banks, Esq.
Banks & Watson
813 Sixth Street, Suite 400
Sacramento, CA 95814

Re: Fee Dispute
John Doe vs. Kamehameha Schools / Bernice Pauahi Bishop Estate, et al.

Dear Mr. Banks:

I have received your letter of June 7, 2007. I will accept service on behalf of my client. I will also agree to stay this action so that this matter may be arbitrated. Please prepare a stipulation for my review. I would prefer to have this matter arbitrated before the State Bar of California versus the Sacramento Bar Association.

Is the intent of your lawsuit to sue _____ only? From reading the complaint, it was not apparent that this lawsuit would cover the dispute between Mr. Grant and Mr. Goemans. Was that your intent?

Please provide me with evidence that the \$2.8 million remains Mr. Grant's Client Trust Account. Based on the size of the funds, I would recommend that the funds be transferred to a special trust account requiring two signatures to withdraw the funds, one being either you or Mr. Grant, and the other being, a representative of this firm or me.

Please also provide me a copy of the Settlement Agreement executed by _____ . I understand that _____ has made multiple requests for this Settlement Agreement to date.

Mr. James J. Banks
June 11, 2007
Page 2

Should you wish to discuss this matter, please call me.

Very truly yours,

WASSERMAN, COMDEN & CASSELMAN, L.L.P.

A handwritten signature in black ink, appearing to read 'R. ESENSTEN', written over the printed name.

ROBERT L. ESENSTEN

RLE/ltt

cc: John Goemans, Esq.

814992.1

Exhibit 2

BANKS & WATSON
ATTORNEYS

813 SIXTH STREET, SUITE 400 · SACRAMENTO, CALIFORNIA 95814-2403
TELEPHONE 916 325.1000 · FAX 916 325.1004
WWW.BW-FIRM.COM

June 22, 2007

JAMES J. BANKS

Mr. Robert L. Esensten
Wasserman, Comden & Casselman, L.L.P.
5507 Reseda Boulevard, Suite 330
Tarzana, California 91356

Re: *Eric Grant v. John Doe and Jane Doe*

Dear Mr. Esensten:

Pursuant to your request, I enclose an executed copy of the Settlement Agreement and General Release entered into in that certain litigation styled, *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.* I also enclose a screenshot of the client trust account maintained by Mr. Grant showing the balance of the settlement proceeds.

On several occasions I have inquired about your willingness to conduct a JAMS arbitration of the issues that separate and Mr. Grant. You have not responded to those requests. I will take your lack of response as a lack of interest in that approach to resolving this litigation. I have advised that we do not believe your clients' breach of the settlement agreement reached last month is arbitrable under Business and Professions Code sections 6200, *et seq.* and we do believe those claims should be resolved prefatory to engaging in a fee arbitration. Since it appears we are unable to agree on a mechanism for resolving these claims, we will make the appropriate motion to sever.

You also have not responded to our inquiry about conflict waivers amongst your clients. Please do respond in that respect so that we can put that issue to rest.

Yours very truly,


JAMES J. BANKS

JJB:db
Encls.

cc: Mr. Eric Grant

Exhibit 3

BANKS & WATSON
ATTORNEYS

813 SIXTH STREET, SUITE 400 · SACRAMENTO, CALIFORNIA 95814-2403
TELEPHONE 916 325.1000 · FAX 916 325.1004
WWW.BW-FIRM.COM

April 8, 2008

JAMES J. BANKS

VIA ELECTRONIC & FIRST-CLASS MAIL

Mr. Kelly G. LaPorte
Cades Schutte LLP
1000 Bishop Street, Suite 1200
Honolulu, HI 96813

Re: *Eric Grant v. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.*
and Related Cross-Action (E.D. No. 2:08-cv-00672-FCD-KJM)

Dear Mr. LaPorte:

Thank you for speaking with me on Friday, April 4, 2008 about the captioned litigation and your letter of that date to Mr. Grant. The purpose of this letter is to confirm the gist of our conversation, *viz.*, your advisement that Kamehameha Schools/Bernice Pauahi Bishop Estate and its trustees (the "Estate") have determined that they have no claims against Mr. Eric Grant arising from Mr. John Goemans' disclosure of the amount of that certain settlement between the Estate and the individuals designated as John Doe and Jane Doe. Mr. Goemans' disclosures occurred on February 7, 2008 and February 8, 2008 and were apparently extensively republished in the *Honolulu Advertiser* and in other media in Hawaii.

Moreover, as I understand the Estate's position, it believes that it has no claim for breach of the settlement agreement against Mr. Eric Grant because (1) he is not a party to the settlement agreement and (2) the breach of the confidentiality provision in the Estate/Doe settlement agreement was not a consequence of any misconduct of Mr. Grant's, but rather that of Mr. Goemans.

Mr. LaPorte, please confirm that you are authorized to speak for the Estate regarding the foregoing matters and countersign a copy of this letter where indicated below. Mr. Grant will, as a consequence, dismiss his declaratory relief claim against the Estate, pursuant to Rule 41(a)(1)(A)(i). A copy of that dismissal is enclosed. I will immediately file the dismissal with the United States District Court once we receive this letter countersigned by you.

Mr. Kelly G. LaPorte
April 8, 2008
Page 2

Your courtesy and cooperation are appreciated.

Very truly yours,



JAMES J. BANKS

JJB:db
Encl.

cc: Mr. Eric Grant
(via Electronic Mail)

I, Kelly G. LaPorte, state that I am counsel to Kamehameha Schools/Bernice Pauahi Bishop Estate and its trustees, that I have been duly authorized to communicate the Estate's agreement to the matters set forth in this letter and by affixing my signature below memorialize the Estate's agreement in those respects.

Kelly G. LaPorte

1 ERIC GRANT (Bar No. 151064)
Attorney at Law
2 8001 Folsom Boulevard, Suite 100
Sacramento, CA 96826
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Facsimile: (916) 691-3261
4 E-Mail: grant@eric-grant.com

5 JAMES J. BANKS (Bar No. 119525)
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813 6th Street, Suite 400
7 Sacramento, CA 95814-2403
Telephone: (916) 325-1000
8 Facsimile: (916) 325-1004
E-Mail: jbanks@bw-firm.com

9 Attorneys for Plaintiff
10 ERIC GRANT

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

14 ERIC GRANT,

15 Plaintiff,

16 v.

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

21 Defendants.

22 AND RELATED COUNTERCLAIM.
23

CASE NO. 2:08-CV-00672-FCD-KJM

**PLAINTIFF'S NOTICE OF VOLUNTARY
DISMISSAL OF ACTION AS TO
DEFENDANTS OTHER THAN JOHN DOE
AND JANE DOE**

[Federal Rule of Civil Procedure 41(a)(1)(A)(i)]

24
25 TO THIS COURT, THE HONORABLE FRANK C. DAMRELL, JR., TO ALL PARTIES AND
26 TO THEIR ATTORNEYS OF RECORD:

27 NOTICE IS HEREBY GIVEN pursuant to Federal Rules of Civil Procedure, rule 41(a)(1)(A)(i),
28 that plaintiff voluntarily dismisses this action without prejudice as to defendants KAMEHAMEHA

1 SCHOOLS/ BERNICE PAUAHI BISHOP ESTATE; J. DOUGLAS ING, NAINOA THOMPSON,
2 DIANE J. PLOTTS, ROBERT K.U. KIHUNE, and CORBETT A.K. KALAMA, in their capacities as
3 Trustees of the Kamehameha Schools/Bernice Pauahi Bishop Estate, and each of them. *Cf. Hells*
4 *Canyon Preservation Council v. United States Forest Service*, 403 F.3d 683, 687 (9th Cir. 2005)
5 (observing that Rule 41(a) “allow[s] the dismissal of all claims against [a] defendant”).

6 Plaintiff continues this action without change against Defendants JOHN DOE and JANE DOE.

7
8 DATED: April __, 2008

BANKS & WATSON

9
10 By: _____
11 JAMES J. BANKS
12 Attorneys for Plaintiff ERIC GRANT
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1 **BANKS & WATSON**

2 **CASE NAME:** *Eric Grant v. Kamehameha Schools/Bernice Pauahi Bishop Estate, et al.*
3 **COURT:** **United States District Court for the Eastern District of California**
4 **CASE NO:** **2:08-CV-00672-FCD-KJM**

5 **PROOF OF SERVICE**

6 STATE OF CALIFORNIA)
7) ss.
8 COUNTY OF SACRAMENTO)

9 At the time of service, I was over 18 years of age and not a party to this action. My business
10 address is 813 Sixth Street, Suite 400, Sacramento, California 95814.

11 On April __, 2008, I served the within copy of:

12 **PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL OF ACTION AS TO**
13 **DEFENDANTS OTHER THAN JOHN DOE AND JANE DOE**

14 on the person(s) below, as follows:

15 Mr. David Schulmeister Attorneys for Kamehameha Schools/Bernice
16 Email: dschulmeister@cades.com Pauahi Bishop Estate; J. Douglas Ing, Nainoa
17 Mr. Kelly G. LaPorte Thompson, Diane J. Plotts, Robert K.U. Kihune,
18 Email: klaporte@cades.com and Corbett A.K. Kalama, in their capacities as
19 Cades Schutte LLP Trustees of the Kamehameha Schools/Bernice
20 1000 Bishop Street, Suite 1200 Pauahi Bishop Estate
21 Honolulu, HI 96813
22 (Courtesy Copy via Email)

23 (✓) **BY UNITED STATES MAIL** – I enclosed the document in a sealed envelope or package
24 addressed to the person(s) at the address(es) listed above and placed the envelope for collection
25 and mailing, following our ordinary business practices. I am readily familiar with this office's
26 practice for collection and processing correspondence for mailing. On the same day that
27 correspondence is placed for collection and mailing, it is deposited in the ordinary course of
28 business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I
am employed in the county where the mailing occurred. The envelope or package was placed in
the mail at Sacramento, California.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction
this service was made. Executed on April __, 2008, at Sacramento, California.

Diane Brown

Exhibit 4

James J. Banks

From: PAUL Alston [PAAlston@ahfi.com]
Sent: Wednesday, April 09, 2008 8:02 PM
To: James J. Banks
Cc: charlene.shimada@bingham.com; Clyde Wadsworth; Colleen Wong
Subject: Grant/Doe/KS Litigation

Dear Mr. Banks:

I have been retained by Kamehameha Schools and its Trustees (collectively, "KS") to represent them in the lawsuit filed by Eric Grant in the Eastern District. Our local counsel is Charlene Shimada of the Bingham McCutcheon firm. All communications relating to this litigation should be directed to me and Ms. Shimada.

I am responding to your April 8 letter to Kelly LaPorte.

Your letter does not accurately reflect what Mr. LaPorte said to you on April 4. As stated in his April 7 email to the court (a copy of which is reprinted below), it is correct to say that KS has no present intention to sue Mr. Grant. It is not correct to say that KS has decided it has no claims against Mr. Grant. At this point, given the conflicting positions taken by Mr. Grant, Mr. Goemans and Mrs. Doe, KS is still in the process of evaluating its rights and claims.

Based upon this representation, I trust you and Mr. Grant will be willing to dismiss his claims against KS without prejudice.

PAUL ALSTON

-----Original Message-----

From: David Schulmeister
Sent: Monday, April 07, 2008 8:17 AM
To: 'mprice@caed.us.courts.gov'
Cc: Kelly LaPorte; 'Colleen Wong'
Subject: Grant v. Kamehameha Schools

Ms. Price:

I just opened your email re the above.

Please be advised as follows:

1. I am counsel for Kamehameha Schools but am not admitted to practice in California.
2. To my knowledge, service has not been made on Kamehameha Schools.
3. Kamehameha Schools has not threatened to sue Eric Grant for breach of the relevant Settlement Agreement, and has no such intention.
4. It is my understanding that, as the result of communications between my partner, Kelly Laporte, and Eric Grant's counsel, Mr. Banks, that Mr. Grant's complaint against Kamehameha Schools will be

dismissed upon receipt of satisfactory assurance of the above.

5. Kamehameha Schools has serious questions regarding whether the court has jurisdiction over the Does' complaint against Kamehameha Schools, but has not had adequate time to prepare a response, and thus does not intend to appear at the hearing this morning.

By communicating this brief message to the court, we do not intend to submit to the jurisdiction of this court, as we have substantial concerns over the existence of subject matter and personal jurisdiction over our Hawaii clients with respect to a request for immediate emergency relief sought by another citizen of Hawaii.

Respectfully,

David Schulmeister

This message was sent by:

PAUL ALSTON



ALSTON HUNT FLOYD & ING
SUITE 1800 ASB TOWER
1001 BISHOP STREET
HONOLULU, HAWAII 96813
PHONE: 808.524.1800 FAX: 808.524.4591
DIRECT LINE: 808.524.1888 CELL: 808.722.6000

EMAIL: PALSTON@AHFI.COM WWW.AHFI.COM

This message may contain privileged and/or confidential information. If you have received it by mistake, please do not print, copy or forward it to anyone. Instead, please contact me immediately. Thank you.

Exhibit 5

James J. Banks

From: Jerry H. Stein [Jstein@lscslaw.com]
Sent: Thursday, April 10, 2008 10:54 AM
To: James J. Banks
Subject: FW: Grant/KS/Doe
Attachments: Grant - 04.08.08 Letter to Kelly LaPorte.pdf

Jim:

FYI, below I an e-mail that I received from Alston

Jerry Stein

From: PAUL Alston [mailto:PAAlston@ahfi.com]
Sent: Wednesday, April 09, 2008 6:16 PM
To: jstein@lscslaw.com
Cc: Clyde Wadsworth; charlene.shimada@bingham.com; Colleen Wong
Subject: Grant/KS/Doe

Jerry:

Thank you for sending the email forwarding a copy of the email Kelly LaPorte sent to the judge in Sacramento on April 7.

That email is consistent with what I said during our recent telephone call. KS, at this point, is reviewing and evaluating the situation, and it presently has no intention to sue Mr. Grant. Nor, for that matter, does KS presently intend to sue your clients. KS is reserving all of its rights and claims, and, until the conflicting denials can be evaluated more fully, KS is going to hold its fire. Regardless what the future brings, KS will not, under any circumstances violate the settlement agreement. In particular, KS will not identify the Does without a court order obtained after notice and hearing. That is NOT to say that KS intends now to seek such an order; it is merely to reserve KS's rights to seek such orders as may be needed to vindicate KS's rights..

Attached is a letter the Cades firm received from Banks & Watson. As you will see, that letter claims (wrongly) that KS "believes it has no claim" against Mr. Grant. KS presently has no such belief; it is, as I said above, still evaluating its rights.

PAUL ALSTON