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Attorneys for Plaintiffs  
NAINOA THOMPSON, DIANNE J. POTTS,  
CORBETT A.K. KALAMA, ROBERT K.U.  
KIHUNE and J. DOUGLAS ING, in their  
capacity as Trustees of the Estate of  
Bernice Pauahi Bishop

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

NAINOA THOMPSON, DIANNE J.	)	Civil No. _____
POTTS, CORBETT A.K. KALAMA,	)	(Hilo)
ROBERT K.U. KIHUNE and	)	(CONTRACT)
J. DOUGLAS ING, in their capacity as	)	
Trustees of the Estate of Bernice	)	<b>COMPLAINT; SUMMONS</b>
Pauahi Bishop,	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
JOHN DOE and JANE DOE,	)	
	)	
Defendants.	)	
_____	)	

## **COMPLAINT**

Plaintiffs NAINOA THOMPSON, DIANNE J. POTTS, CORBETT A.K. KALAMA, ROBERT K.U. KIHUNE and J. DOUGLAS ING, in their capacity as Trustees of the Estate of Bernice Pauahi Bishop (the "Estate") (collectively, "Plaintiffs"), by and through their counsel, Alston Hunt Floyd & Ing, bring this action against Defendants JOHN DOE and JANE DOE (the "Does" or "Defendants"), and allege as follows:

### **PARTIES**

1. Plaintiffs are the trustees of the Estate, which is a charitable educational trust. Plaintiffs are residents of the City & County of Honolulu, State of Hawai'i. The Estate's principal place of business is Kawaiahao Plaza, 567 South King Street, Suite 200, Honolulu, Hawai'i 96813.

2. Defendants are residents of the County of Hawai'i, State of Hawai'i. Defendants are sued under fictitious names for the reasons explained below.

### **JURISDICTION**

3. This Court has jurisdiction based on Haw. Rev. Stat. § 603-21.5.

4. Venue is proper in this Circuit under Haw. Rev. Stat. § 603-36 because Defendants reside in this Circuit, and some of the acts in question took place in this Circuit.

## **GENERAL ALLEGATIONS**

5. The Does filed a lawsuit against the Estate on June 25, 2003 in the United States District Court for the District of Hawai`i, Civil No. CV03-00316 ACK LEK, seeking declaratory relief, a permanent injunction, and compensatory and punitive damages (the “Underlying Litigation”). The Does were designated by the fictitious names “John Doe” and “Jane Doe” because the Does asserted that they were concerned about the possible danger of invasion of their privacy, retaliation and physical or mental harm. The Does’ attorneys of record in the Underlying Litigation – in the District Court, the Ninth Circuit Court of Appeals, and the United States Supreme Court – included both John W. Goemans and Eric Grant.

6. On May 11, 2007, after the Does lost in both the District Court and the Ninth Circuit Court (en banc), and while the Does' Petition for Certiorari was pending before the Supreme Court, the Does and the Plaintiffs reached a settlement that resolved the Underlying Litigation. The settlement was embodied in a written agreement to which the signatures of the Does and the Estate’s representatives were affixed (the “Settlement Agreement”). The parties’ attorneys approved the Settlement Agreement as to form.

7. The Settlement Agreement obligated the Estate to pay “to Doe” a confidential sum by wire transfer to Grant’s client trust account, and obligated the Does to withdraw their petition for certiorari, which was then pending before the Supreme Court. The Settlement Agreement released all

parties and their attorneys from all claims relating to the claims asserted in the Underlying Litigation.

8. The Settlement Agreement further provided that no signatory or releasee – “including counsel” – would disclose the Does’ names or any term of the Settlement Agreement, including, specifically, the amount of the settlement. Under the terms of the Agreement, signatories were made liable for any actions of their attorneys which violate the confidentiality provision of the Settlement Agreement. The confidentiality requirement was expressly made “a material term” of the Agreement.

9. Pursuant to the Settlement Agreement, the Does dismissed the certiorari petition, and the Estate made the required payment.

10. On or about February 7, 2008, Goemans spoke by telephone with representatives of newspapers and television stations in Hawai`i. In those interviews, Goemans disclosed details of the Settlement Agreement, including what he claimed to be the amount of the settlement between the Does and Plaintiffs.

11. On February 8, 2008, The Honolulu Advertiser published details of the Settlement Agreement based upon Goemans’ disclosures.

12. As a result of the acts and omissions of Defendants and their attorneys, both Plaintiffs and Defendants were sued by one of Defendants’ lawyers, Eric Grant, on March 28, 2008, in the United States District Court for the Eastern District of California in *Grant v. Kamehameha Schools/Bernice Pauahi Bishop Estate*, Case No. 2:08-cv-00672-FCD-KJM (the “California Suit”).

In the suit, Grant sought, among other things, a declaratory judgment against the Estate establishing that he did not breach any duties owed to the Estate under the Settlement Agreement and he is therefore not liable to the Estate. The California Suit was an effort by Grant to pre-empt any lawsuit that Plaintiffs might bring in the State of Hawai`i arising from the unauthorized disclosures of settlement terms and Defendants' and their lawyers' other wrongful acts and omissions.

13. The Does cross-claimed against the Estate in the California Suit, seeking similar declaratory relief, as well as an injunction against the Estate from disclosing the Does' true identities. The Does' claim for an injunction was based on their alleged fear that the Estate would reveal their true identities in the course of proceedings to obtain redress for breach of the Settlement Agreement. Plaintiffs have never intended to reveal the Does' identities in violation of any court order.

14. At all times relevant to this Complaint, Plaintiffs have fully complied with and performed their obligations under the Settlement Agreement.

**FIRST CLAIM FOR RELIEF  
(BREACH OF CONTRACT)**

15. Plaintiffs reallege and incorporate the allegations contained in Paragraphs 1-14 above, as if fully set forth herein.

16. The acts and omissions of Defendants and their lawyers which led to disclosure of the terms of the Settlement Agreement constituted

material breaches of the Settlement Agreement and the duties and obligations Defendants owed to Plaintiffs thereunder.

17. As a direct result of Defendants' material breaches of the Settlement Agreement, Plaintiffs have incurred substantial and continuing legal expenses and consequential damages arising from the need to defend and protect their rights and interests in the California Suit.

18. As a direct result of Defendants' material breaches of the Settlement Agreement, Plaintiffs suffered and continue to suffer damages in amounts to be proven at trial, including but not limited to legal and other expenses incurred and to be incurred as a result of the California Suit, other compensatory, consequential and other special damages incurred by Plaintiffs as a result of Defendants' failure to honor their obligations under the Agreement, and attorneys' fees and costs in defending and pursuing their rights under the Settlement Agreement.

**SECOND CLAIM FOR RELIEF  
(UNJUST ENRICHMENT)**

19. Plaintiffs reallege and incorporate the allegations contained in Paragraphs 1-14 above, as if fully set forth herein.

20. Plaintiffs bestowed a benefit on Defendants by the payment of monies in part to ensure the confidentiality of the settlement terms by Defendants and their counsel.

21. The subsequent disclosure of the settlement terms by Defendants' counsel in violation of the Settlement Agreement makes the retention of the monies received from Plaintiffs unjust.

22. The conduct of Defendants and their counsel is contrary to the fundamental principles of equity and good conscience. Defendants should be ordered to make restitution to Plaintiffs in an amount to be proven at trial, and be ordered to compensate Plaintiffs for the fair and reasonable value of their unjust retention and use of these benefits, in addition to monetary damages, including but not limited to legal and other expenses incurred and to be incurred as a result of the California Suit, other compensatory, consequential and other special damages incurred by Plaintiffs as a result of Defendants' failure to honor their obligations under the Agreement, and attorneys' fees and costs in defending and pursuing their rights under the Settlement Agreement.

**THIRD CLAIM FOR RELIEF  
(INTENTIONAL/RECKLESS MISREPRESENTATION)**

23. Plaintiffs reallege and incorporate the allegations contained in Paragraphs 1-22 above, as if fully set forth herein.

24. In order to induce Plaintiffs to enter into the Settlement Agreement, Defendants affirmatively represented that they had read the terms of the Agreement and that they and their attorneys would abide by such terms, including the confidentiality requirements.

25. Defendants made the representation that they had read the terms of the Settlement Agreement with knowledge that it was false. Defendants made the representation that they and their attorneys would abide by the terms of the Settlement Agreement with knowledge that it was false or made this representation recklessly without knowledge whether it was true or false. Upon information and belief, they did so by, among other things, signing

the Agreement without reading, knowing or seeking to determine and understand all of its terms.

26. Defendants contemplated that Plaintiffs would rely on these representations in entering into the Settlement Agreement.

27. Plaintiffs reasonably believed Defendants' misrepresentations were true and did in fact rely on these misrepresentations in their decision to enter into the Settlement Agreement.

28. As a result of Defendants' misrepresentations, Plaintiffs have been damaged in an amount to be proven at trial, including but not limited to legal and other expenses incurred and to be incurred as a result of the California Suit, and other compensatory, consequential and special damages incurred by Plaintiffs as a result of Defendants' misrepresentations.

WHEREFORE, Plaintiffs pray for judgment against Defendants and each of them, jointly and severally, and for relief as follows:

A. For an award of special, general, compensatory and consequential damages in an amount to be proven at trial;

B. For an award of reasonable attorneys' fees and costs as provided by law;

C. For pre-judgment and post-judgment interest in an amount to be proven at trial; and

D. For such other and further relief as this Court may deem just and proper.



Dated: Honolulu, Hawai'i, August 6, 2008.

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PAUL ALSTON  
LOUISE K.Y. ING  
CLYDE J. WADSWORTH  
Attorneys for Plaintiffs  
NAINOA THOMPSON, DIANNE J. POTTS,  
CORBETT A.K. KALAMA, ROBERT K.U.  
KIHUNE and J. DOUGLAS ING, in their  
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ROBERT K.U. KIHUNE and ) (CONTRACT)  
J. DOUGLAS ING, in their capacity as )  
Trustees of the Estate of Bernice ) **SUMMONS**  
Pauahi Bishop, )  
)  
Plaintiffs, )  
vs. )  
)  
JOHN DOE and JANE DOE, )  
)  
Defendants. )  
\_\_\_\_\_ )

STATE OF HAWAII

To the above-named Defendant(s):

You are hereby summoned and required to serve upon ALSTON HUNT FLOYD & ING, attorneys for Plaintiffs, whose address is 18th Floor, American Savings Bank Tower, 1001 Bishop Street, Honolulu, Hawai'i 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: \_\_\_\_\_, Hawai'i, \_\_\_\_\_.

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CLERK OF THE ABOVE-ENTITLED COURT