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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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Douglas Ing, in their capacities as Trustees of
the Estate of Bernice Pauahi Bishop dba
Kamehameha Schools

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAI'I

JOHN DOE, a minor, by his mother
and next friend, JANE DOE,

Plaintiff,

v.

KAMEHAMEHA SCHOOLS/
BERNICE PAUahi BISHOP
ESTATE; and CONSTANCE H. LAU,
NAINOA THOMPSON, DIANE J.
PLOTTS, ROBERT K.U. KIHUNE,
and J. DOUGLAS ING, in their
capacities as Trustees of the
Kamehameha Schools/Bernice Pauahi
Bishop Estate,

Defendants.

CIVIL NO. 03-00316 ACK-LEK

ANSWER OF DEFENDANTS
CONSTANCE H. LAU, NAINOA
THOMPSON, DIANE J. PLOTTS,
ROBERT K.U. KIHUNE, AND J.
DOUGLAS ING, IN THEIR
CAPACITIES AS TRUSTEES OF
THE ESTATE OF BERNICE
PAUahi BISHOP ESTATE DBA
KAMEHAMEHA SCHOOLS, TO
COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF,
AND DAMAGES FILED JUNE 25,
2003; CERTIFICATE OF SERVICE

**ANSWER OF DEFENDANTS CONSTANCE H. LAU,
NAINOA THOMPSON, DIANE J. PLOTTS, ROBERT K.U. KIHUNE,
AND J. DOUGLAS ING, IN THEIR CAPACITIES AS TRUSTEES OF
THE ESTATE OF BERNICE PAUAHI BISHOP DBA KAMEHAMEHA
SCHOOLS, TO COMPLAINT FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND DAMAGES FILED JUNE 25, 2003**

Defendants CONSTANCE H. LAU, NAINOA THOMPSON, DIANE J. PLOTTS, ROBERT K.U. KIHUNE, and J. DOUGLAS ING, in their capacities as Trustees of the Estate of Bernice Pauahi Bishop Estate dba Kamehameha Schools (collectively "KS"), by their attorneys, answer the Complaint for Declaratory Relief, Injunctive Relief, and Damages filed June 25, 2003 (the "Complaint") by Plaintiff JOHN DOE, a minor, by his mother and next friend, JANE DOE, as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. KS answers paragraph 1 of the Complaint by admitting that it has a preference in its admissions policy for children of Hawaiian ancestry. KS was established by the Will of Ke Ali'i Bernice Pauahi Bishop ("Pauahi") in 1883. At the time of her death, the Hawaiian people had been ravaged by Western disease, had lost much of their self-esteem, and were economically destitute. Princess Pauahi saw education as the salvation of her people. As a consequence, in

her Will she embraced the children of her people and gave them the gift of education by bequeathing the bulk of her vast estate to be used for the creation and operation of Kamehameha Schools. KS' present mission is to fulfill Pauahi's desire to create educational opportunities to improve the capability and well-being of people of Hawaiian ancestry. KS' mission is inspired by, among other things, the deprivations suffered by Hawaiians both prior and subsequent to the involuntary loss of their right of self-governance in 1893. Today, as in the past, native Hawaiian children face educational at-risk factors disproportionately compared to non-Hawaiian children. Through its educational programs, KS seeks to address these needs. The legitimacy of KS' mission has been recognized by Congress. Congress has made findings that the Hawaiian community continues to suffer deprivations in many areas of life and economic activity as compared with other groups. In addition to developing federal programs to assist Hawaiians, Congress has acknowledged KS' important role in serving the Hawaiian community. KS denies that the preference in its admissions policy "constitutes invidious discrimination on the basis of race in violation of 42 U.S.C. § 1981." The preference is not motivated by any racial animus against any racial group. KS admits students of many races, ethnicities, and ancestries; is non-segregationist; and its student body reflects a broad racial and ethnic diversity that is unparalleled in the majority of private schools located throughout the United States. To ensure

that the schools survive, inasmuch as they are sustained primarily by the trust corpus, KS must allocate its available seats in a sensible and efficient manner in carrying out its mission. KS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 of the Complaint, and therefore denies those allegations.

3. KS admits the allegations in paragraphs 3, 7, 9, 10, 12, and 13 of the Complaint.

4. KS is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 4, 5, 6, 19, 20 and 21 of the Complaint, and therefore denies those allegations.

5. KS denies the allegations in paragraphs 22, 24, 28, 29, 30, 31, 32, 33, and 34 of the Complaint.

6. KS answers paragraph 2 of the Complaint by denying that Plaintiff's claim properly arises under 42 U.S.C. §1981. The allegations of paragraph 2 pertaining to subject matter jurisdiction are admitted.

7. KS answers paragraph 8 of the Complaint by admitting the allegations therein to the extent that the phrase "the matters described herein" does not refer to any violation of law.

8. KS answers paragraphs 11 and 27 of the Complaint by admitting that its schools are private, in that KS is not an agency or instrumentality

of any government; by admitting that the schools are nonsectarian, in that KS has been judicially determined to be a secular institution; and, while KS charges tuition for most, but not all, students to attend the schools, KS is an eleemosynary, non-profit charitable trust that subsidizes the vast majority of the cost of educating each student and charges, if at all, only a small fraction of the total cost KS privately bears at continuous financial loss of educating each student; and therefore denies the remaining allegations of paragraphs 11 and 27.

9. KS answers paragraph 14 of the Complaint by admitting that its admissions policy, as described on its web site, operates to the extent permitted by law. KS denies the remaining allegations in paragraph 14.

10. KS answers paragraph 15 of the Complaint by admitting that last year it admitted a student possessing no percentage of Hawaiian ancestry; and that, in approximately the last four decades, all of its other admittees to its regular, academic year programs possessed some degree of Hawaiian ancestry. KS has admitted students without Hawaiian ancestry to certain of its pre-school and summer school programs. The overwhelming majority of the students of Hawaiian ancestry admitted to KS classify themselves as members of one or more of the following categories:

African American	Marshallese
American Indian	Mexican
Arabian	Micronesian

Armenian	Native Alaskan
Basque	New Zealand Maori
Brazilian	Norwegian
Caucasian	Okinawan
Chinese	Pakistani
Cook Island Maori	Palauan
Czechoslovakian	Paumotu
Danish	Peruvian
Dutch	Polish
East Indian	Portuguese
English	Puerto Rican
Filipino	Rarotongan
Finnish	Rotuman
French	Russian
German	Samoan
Greek	Scottish
Guamanian	Serbian
Hungarian	Spanish
Indian	Swedish
Indonesian	Syrian
Irish	Tahitian
Italian	Thai
Jamaican	Tongan
Japanese	Turkish
Jewish	Ukrainian
Korean	Vietnamese
Lebanese	Welsh
Lithuanian	Yugoslavian
Maori	

In short, while KS' policy is to give preference to children of Hawaiian ancestry, KS' student body has broad racial and ethnic diversity.

11. KS answers paragraph 16 of the Complaint by denying KS pledged to review its admissions process “so that the anomaly of a non-Native Hawaiian admission would never happen again.” KS admits the remaining allegations in paragraph 16.

12. KS answers paragraph 17 of the Complaint by denying KS “made good” on a pledge in 2002 to review its admissions process by including the “Ethnic Ancestry Survey 2003-2004.” This survey was, in fact, similar to ancestry surveys included in KS admission packets for many years.

13. KS answers paragraph 18 of the Complaint by denying that it “announced last month that it is not offering enrollment to any non-Native Hawaiians for the upcoming school year.” KS announced that “[a]ll of the applicants invited to enroll at the [Maui and Hawai‘i] campuses for the 2003-2004 school year requested consideration and were admitted under KS’ policy of giving preference to children of Hawaiian ancestry to the extent permitted by law.” While current invitees for the 2003-2004 school year all possess some degree of Hawaiian ancestry, KS’ student body has broad racial and ethnic diversity including, but not limited to, Caucasian, Asian, and African American. Further, the admission cycle for the 2003-2004 school year is not yet closed.

14. KS answers paragraph 23 of the Complaint by admitting that, absent an injunction by this Court, KS and its agents will continue to implement, to

the extent permitted by law, a preference for children of Hawaiian ancestry in its admissions policies and practices, as those policies and practices may be modified from to time, consistent with KS' mission of providing educational opportunities to such children. KS denies the remaining allegations in paragraph 23.

15. KS answers paragraph 25 of the Complaint by incorporating and re-alleging its answers to paragraphs 1 through 24.

16. KS answers paragraph 26 of the Complaint by admitting that Section 1 of the Civil Rights Act of 1866, 14 Stat. 27, now provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens,” and denies the remaining allegations in paragraph 26.

17. KS denies each and every other allegation in the Complaint not previously admitted, denied, or otherwise controverted.

THIRD DEFENSE

18. KS asserts that Plaintiff lacks standing to assert the claims contained in the Complaint.

FOURTH DEFENSE

19. KS asserts that Plaintiff's claims are barred by the applicable statute of limitations.

FIFTH DEFENSE

20. KS asserts that its admissions policy does not discriminate on the basis of race.

SIXTH DEFENSE

21. KS asserts that its actions and preference are in conformance with all applicable federal statutory provisions.

SEVENTH DEFENSE

22. KS asserts that Plaintiff has suffered no compensable injuries as a result of the actions and preference of KS as alleged in the Complaint.

EIGHTH DEFENSE

23. KS asserts that Plaintiff has failed to mitigate his damages.

NINTH DEFENSE

24. KS asserts that Plaintiff's claims are not ripe.

TENTH DEFENSE

25. KS asserts that Plaintiff's claims are moot.

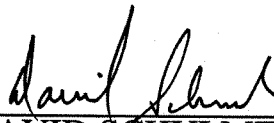
WHEREFORE, KS requests that:

1. The Complaint against KS be dismissed with prejudice;
2. Judgment be entered in favor of KS and against Plaintiff;
3. KS be awarded its costs;

4. KS be awarded reasonable attorneys' fees pursuant to 42 U.S.C. 1988(b); and
5. KS be provided such other relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, July 16, 2003.

CADES SCHUTTE
A Limited Liability Law Partnership



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