

DEC 15 2006  
at 4 o'clock and 30 min. M  
SUE BEITIA, CLERK

**SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is made effective this  
7<sup>th</sup> day of December, 2006, by and among the following parties:

1. Na Lei Alii Kawanānākoa ("Na Lei") and Royal Hawaiian Academy of Traditional Arts ("RHATA") (collectively "Plaintiffs");
2. Bernice Pauahi Bishop Museum ("Bishop Museum"); and
3. Hui Malama I Na Kupuna O Hawaii Nei ("Hui Malama").

Plaintiffs, Bishop Museum and Hui Malama are collectively referred to herein as the "Parties."

A. RECITALS

WHEREAS, on August 19, 2005, Plaintiffs filed a Complaint in the United States District Court for the District of Hawaii (the "Complaint"), thereby commencing the action entitled *Na Lei Alii Kawanānākoa et al. v. Bishop Museum, et al.*, Civil No. CV05-00540 DAE-KSC (the "Lawsuit");

WHEREAS, Plaintiffs also filed a Motion for a Preliminary Injunction seeking to have the 83 lots of items that are the subject of the Lawsuit (the "Items") returned to Bishop Museum for safekeeping pending the outcome of the Lawsuit;

WHEREAS, the Court granted Plaintiffs' Motion for a Preliminary Injunction;

WHEREAS, because of safety concerns, the Court appointed certain consultant experts, namely Englekirk & Sabol Consulting Structural Engineers, Inc., Geolabs, Inc., GeoSyntec Consultants, and Resort Management Group to assess the safety of the caves where Hui Malama placed the Items, and to assist with the safe retrieval of the Items from said caves; the fees and costs for said consultants to date (the "consultant expenses") total \$201,705.26;

WHEREAS, Bishop Museum representatives participated in the retrieval and return of the Items, and Bishop Museum incurred certain costs in connection with the recovery of the Items (the "Museum recovery costs") in the amount of \$18,295.72;

WHEREAS, the total amount of consultant expenses and Museum recovery costs to date is \$220,000.98;

WHEREAS, the Court has ordered that Bishop Museum and Hui Malama shall equally share the consultant expenses, that Bishop Museum shall pay all of the consultant expenses directly to each consultant on a timely basis, that Hui Malama shall reimburse Bishop Museum one-half of the consultant expenses, and that if Hui Malama fails to pay its portions of the consultant expenses, Bishop Museum may apply to the Court for a judgment;

WHEREAS, the Department of Hawaiian Home Lands ("DHHL") and the State Attorney General's office incurred certain expenses to provide security in connection with the work of the Court-appointed consultants and recovery of the Items, and the Court has determined that the Parties shall be responsible for \$110,000.00 of said expenses (the "DHHL/AG security costs");

WHEREAS, to the best of the Parties' knowledge and belief, all of the Items have been recovered and are now presently being held by Bishop Museum;

WHEREAS, Bishop Museum filed a Crossclaim against Hui Malama on June 13, 2006 (the "Museum's Crossclaim");

WHEREAS, Plaintiffs are willing to settle this case and waive any claims for damages they may have arising out of the acts and omissions alleged in the Complaint;

WHEREAS, the Parties wish to obviate the need for further legal proceedings relating to Plaintiffs' Complaint and to fully and finally resolve Plaintiffs' claims in the manner provided herein;

WHEREAS, the Parties agree to preserve Bishop Museum's Crossclaim and the claims set forth therein in the manner provided herein; and

WHEREAS, the Parties wish to allocate payment of the consultant expenses, Museum recovery expenses, and DHHL/AG security costs in the manner provided herein.

B. AGREEMENT

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Consideration

a. By Plaintiffs

i. Release of claims; covenant not to sue. Plaintiffs hereby release and forever discharge Bishop Museum and Hui Malama and their respective parent companies, subsidiaries, affiliates, related companies, stockholders, owners, members, officers, directors, trustees, employees, agents, representatives, insurers, attorneys, predecessors, successors, and assigns (hereinafter referred to as the "Releasees") from any and all actions, causes of action, suits at law or in equity, liabilities, claims, demands or damages, of whatever kind or nature, related to, resulting from, arising out of, or connected with (1) the alleged loan of the Items by Bishop Museum to Hui Malama, (2) the placing of the Items by Hui Malama in the Honokoa Gulch caves, (3) the alleged failure of Bishop Museum and Hui Malama to secure the return of the Items, (4) the alleged conspiracy between Bishop Museum and Hui Malama

regarding the Items, (5) the alleged failure of Bishop Museum to properly complete the repatriation process for the Items, (6) the alleged failure of Bishop Museum to comply with the recommendations of the NAGPRA Review Committee, (7) Bishop Museum and Hui Malama's alleged violation of the Native American Graves Protection and Repatriation Act ("NAGPRA"), and (8) any and all claims that were asserted or could have been asserted by Plaintiffs in the Complaint and the Lawsuit (the "Released Claims").

Plaintiffs hereby agree and covenant not to sue the Releasees or to file any claim or complaint, whether in court or through any administrative or governmental agency or other tribunal, including the NAGPRA Review Committee, against Releasees, with respect to the Released Claims.

ii. Dismissal of Complaint. Upon the execution of this Agreement, Plaintiffs shall dismiss the Complaint with prejudice by filing a Stipulation for Dismissal With Prejudice of Plaintiffs' Complaint filed August 19, 2005, and Order, in the form attached hereto as Exhibit "A," and shall execute and/or file any other documents necessary to effectuate this provision.

iii. No Position on Contempt of Hui Malama Officers and Directors. Plaintiffs shall not take a position on the contempt of Hui Malama's officers and directors, and shall leave the matter of their contempt to the discretion of the Court.

b. By Bishop Museum

i. Dismissal of Crossclaim. Upon the execution of this Agreement, Bishop Museum shall dismiss its Crossclaim without prejudice by filing a Stipulation for Dismissal Without Prejudice of Defendant Bernice Pauahi Bishop Museum's Crossclaim Against Defendant Hui Malama I Na Kupuna O Hawaii Nei filed June 13, 2006, and

Order, in the form attached hereto as Exhibit "B," and shall execute and/or file any other documents necessary to effectuate this provision. This dismissal shall not be construed to apply to Bishop Museum's rights of reimbursement with regard to the consultant expenses and Museum recovery costs, including its right to seek a judgment(s) against Hui Malama.

It is expressly understood and agreed that although the claims asserted in Bishop Museum's Crossclaim are being dismissed without prejudice, Bishop Museum may reassert such claims against Hui Malama or assert any other claims against Hui Malama which arise under the same set of facts and circumstances that gave rise to this lawsuit only if claims are first asserted against Bishop Museum by a third party or by Hui Malama relating to the Items or the consultation or repatriation process for the Items.

ii. Payment of consultant expenses and DHHL/AG security costs. Bishop Museum shall be responsible for and shall pay for the consultant expenses in the manner provided by the following Court orders: (1) Amended Order Selecting Structural Engineer, filed 1/13/06, (2) Order Selecting Geotechnical Engineering Firm for Opinion, filed 2/14/06, and (3) Order Appointing Resort Management Group, filed 7/26/06 (collectively referred to as the "Consultant Orders"). This includes the right of Bishop Museum to obtain a judgment(s) against Hui Malama should it fail to pay its share of the consultant expenses. The Court shall retain jurisdiction to enforce this provision and the Consultant Orders. In furtherance of this provision, the Parties agree to execute and file a Stipulated Judgment in Favor of Defendant Bernice Pauahi Bishop Museum and Against Defendant Hui Malama I Na Kupuna O Hawaii Nei and Order (the "Stipulated Judgment") in the form attached hereto as Exhibit "C". The entry of the Stipulated Judgment shall not affect the right of Bishop Museum to seek

reimbursement and/or a judgment for additional consultant expenses that may be assessed against Bishop Museum and Hui Malama subsequent to the entry of the Stipulated Judgment.

Bishop Museum shall pay \$73,333.33 or 2/3 of the DHHL/AG security costs.

iii. No Position on Contempt of Hui Malama Officers and Directors. Bishop Museum shall not take a position on the contempt of Hui Malama's officers and directors, and shall leave the matter of their contempt to the discretion of the Court.

c. By Hui Malama

i. Release and waiver of position of completion of repatriation; exception. By execution of this Agreement and upon the filing of the Stipulation for Dismissal With Prejudice of Plaintiffs' Complaint filed August 19, 2006, Hui Malama shall be deemed to have waived and shall not assert in any future consultation, Review Committee proceeding, court proceeding, or any other process or proceeding relating to the Items that the repatriation of the Items is complete, except that it may discuss this claim in other public forums or educational settings and may assert said position in a court proceeding as a defense only. Under this provision, Hui Malama is not required to assert that repatriation of the Items is not complete, but only to refrain from asserting that it is complete.

ii. Payment of consultant expenses, Museum recovery costs, and DHHL/AG security costs. Hui Malama shall be responsible for and shall pay for the consultant expenses in the manner provided by the Consultant Orders. This includes the right of Bishop Museum to obtain judgment(s) against Hui Malama should it fail to pay its share of the consultant expenses, and to recover its fees and costs as provided by law for the enforcement and collection of judgments. The Court shall retain jurisdiction to enforce this provision and the Consultant Orders.

Hui Malama shall reimburse Bishop Museum for ½ of the Museum recovery costs. Bishop Museum may obtain a judgment against Hui Malama should it fail to reimburse Bishop Museum, and may recover its fees and costs as provided by law for the enforcement and collection of judgments. The Court shall retain jurisdiction to enforce this provision.

In furtherance of these provisions regarding payment and reimbursement by Hui Malama to Bishop Museum, the Parties agree to execute and file a Stipulated Judgment in the form attached hereto as Exhibit "C". The entry of the Stipulated Judgment shall not affect the right of Bishop Museum to seek reimbursement and/or a judgment for additional consultant expenses that may be assessed against Bishop Museum and Hui Malama subsequent to the entry of the Stipulated Judgment.

Hui Malama shall pay \$36,666.67 or 1/3 of the DHHL/AG security costs. Hui Malama may make any arrangement with DHHL and the Attorney General's office regarding payment of Hui Malama's 1/3 share. It is expressly understood that should Hui Malama fail to pay its 1/3 share of the DHHL/AG security costs, Bishop Museum is not responsible for paying for such amount and DHHL and the Attorney General's office shall have no recourse against Bishop Museum.

iii. Tolling as to Bishop Museum Crossclaim. Hui Malama expressly understands and agrees that should any claims be asserted against Bishop Museum in the future by any person, including Hui Malama, relating to the Items or the consultation or repatriation process for the Items, Bishop Museum may reassert against Hui Malama the claims set forth in its Crossclaim, and that the statute of limitation with regard to such claims shall be tolled.

2. No Admission

It is understood and agreed by the Parties that this Agreement is not intended to be and is not an admission of any fact, of wrongdoing, of liability, of the lack of merit of any claims or causes of action or defenses, or of any other matter by any of the Parties. This Agreement is entered into to avoid further costs of litigation with regard to highly disputed claims. Neither the promises made by the Parties to each other nor the negotiations for said promises by the Parties and their respective attorneys and representatives shall in any respect be considered or deemed an admission of liability or responsibility concerning any of the claims of the Parties, and no past or present wrongdoing, liability or responsibility on the part of the Parties shall be implied by such promises or by the negotiation of such promises.

3. Restart of Consultation and Repatriation Process

The Parties expressly understand that Bishop Museum will be restarting the consultation and repatriation process for the Items. Plaintiffs and Hui Malama may participate in the consultation and repatriation process if they choose.

It is further expressly understood and agreed by the Parties that except as otherwise provided in this Agreement, this Agreement does not limit Plaintiffs', Bishop Museum's or Hui Malama's rights with regard to any future consultation and repatriation process for the 83 Items.

4. Fees and Costs

Except as expressly provided herein, each of the Parties shall bear their own attorneys' fees and costs in connection with the Lawsuit, including any fees and expenses relating to negotiation and execution of this Agreement. In the event it is judicially determined that any Party to this Agreement has breached this Agreement, the Parties agree that the Party



who breached the Agreement shall be responsible for all attorneys' fees and costs incurred by the non-breaching Party(s), whether taxable or not.

5. Display of the Items

Bishop Museum agrees that it will not make the Items available for display to the general public during the consultation and repatriation process. This provision in no way limits the ability or right of Bishop Museum to make the Items available for viewing by claimants to the Items, by others pursuant to an agreement of the claimants, by the Review Committee, by such others as Bishop Museum reasonably believes should view the Items to further the consultation and repatriation process, or pursuant to any court order.

6. Unsealing of Court Record

The Parties understand that the Court will unseal the record in the Lawsuit except to the extent necessary to protect from disclosure the location of the caves. The Parties may, if they choose, submit to the Court suggestions or recommendations as to those parts of the record they believe should remain under seal.

7. Voluntary Assent

All Parties and their representatives represent and agree that they have read this Agreement and understand all of its terms and conditions, and hereby execute this Agreement of their own free will and decision without any duress or coercion. The Parties acknowledge that they have been advised and have so consulted with legal counsel before signing this Agreement. Counsel for each Party has signed this Agreement to approve it as to form.

8. Change of Facts

It is understood by the Parties that if the facts in respect of which this Agreement is made may hereafter prove to be other than or different from the facts now known by them or

believed by them to be true, all Parties expressly accept and assume the risk of the facts proving to be so different, and the Parties hereby agree that all of the terms of this Agreement shall be in all respects effective and not subject to termination or rescission or modification by any such difference or change in facts.

9. No Representations

None of the Parties, nor anyone acting on their behalves, has relied upon any representations, statements, or opinions of any of the other Parties or their representatives in entering into and executing this Agreement, other than as expressly set forth herein. The Parties acknowledge that the terms of this Agreement have been negotiated at arms-length with the advice of independent legal counsel.

10. No Party Deemed Drafter

The Parties agree that no Party to this Agreement shall be claimed or deemed to be the drafter of this Agreement should any dispute arise over its interpretation.

11. Binding on Successors and Related Entities

This Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties hereto, and their respective parent companies, subsidiaries, affiliates, related companies, stockholders, owners, members, officers, directors, trustees, employees, agents, representatives, insurers, attorneys, predecessors, successors, and assigns.

12. Amendments

This Agreement shall not be altered, amended, modified or otherwise changed, in any respect or particular whatsoever, except by a writing duly executed by the Parties. The Parties hereby acknowledge and agree that they will make no claim at any time that this Agreement has been orally altered or modified in any respect whatsoever. This Agreement

contains the entire agreement among the Parties hereto and supersedes all prior oral and written agreements, representations, negotiations, and correspondence with respect to the matters addressed herein.

13. Captions and Headings

In this Agreement, the captions and headings are inserted for convenience, reference, and identification purposes only, and shall neither control, define, limit, nor affect any provision of this Agreement.

14. Representation of Authority

Each individual executing this Agreement on behalf of any Party expressly represents and warrants that he or she has authority to do so, and thereby binds the party on behalf of which he or she signs, to the terms of this Agreement.

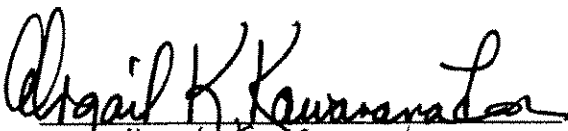
15. Counterparts

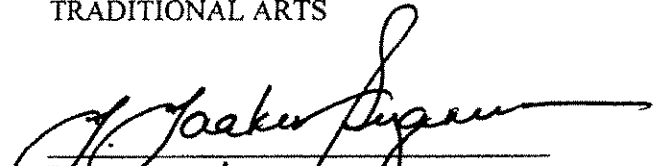
The Parties agree that this Agreement may be executed in counterparts (including by facsimile or multiple signature pages) and that such counterparts shall be deemed to be one instrument. True and accurate copies may be used in lieu of the original.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement effective as of the date first written above.

NA LEI ALII KAWANANAKOA

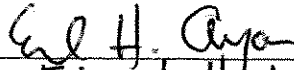
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS


  
By: Abohi K. KAWANAKOA  
Its: President

  
By: L. LAAKEA SUMANUMA  
Its: PRESIDENT

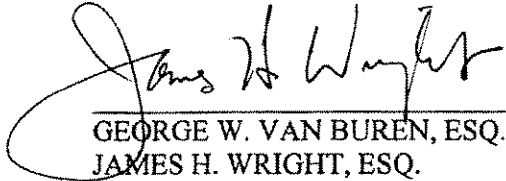
HUI MALAMA I NA KUPUNA O  
HAWAII NEI

BERNICE PAUAHI BISHOP MUSEUM

  
By: Edward H. Ayau  
Its: Creative Director

  
By: William Y. Brown  
Its: President and CEO

APPROVED AS TO FORM:



GEORGE W. VAN BUREN, ESQ.  
JAMES H. WRIGHT, ESQ.  
Attorneys for Plaintiffs  
NA LEI ALII KAWANANAKOA and  
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS

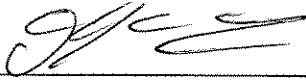
MOSES K.N. HAIA, III, ESQ.  
DAVID KIMO FRANKEL, ESQ.  
Attorneys for Defendant  
HUI MALAMA I NA KUPUNA O  
HAWAII NEI

BRUCE L. LAMON, ESQ.  
LINDALEE K. FARM, ESQ.  
DONNA H. KALAMA, ESQ.  
Attorneys for Defendant  
BERNICE PAUAHI BISHOP MUSEUM

APPROVED AS TO FORM:

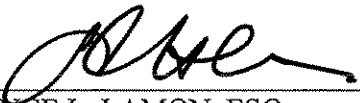
---

GEORGE W. VAN BUREN, ESQ.  
JAMES H. WRIGHT, ESQ.  
Attorneys for Plaintiffs  
NA LEI ALII KAWANANAKOA and  
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS



---

MOSES K.N. HAIA, III, ESQ.  
DAVID KIMO FRANKEL, ESQ.  
Attorneys for Defendant  
HUI MALAMA I NA KUPUNA O  
HAWAII NEI



---

BRUCE L. LAMON, ESQ.  
LINDALEE K. FARM, ESQ.  
DONNA H. KALAMA, ESQ.  
Attorneys for Defendant  
BERNICE PAUAHI BISHOP MUSEUM

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

BRUCE L. LAMON 2738-0  
LINDALEE K. FARM 4514-0  
DONNA H. KALAMA 6051-0

1099 Alakea Street, Suite 1800

Honolulu, Hawai'i 96813

Telephone: (808) 547-5600

Facsimile: (808) 547-5880

[blamon@goodsill.com](mailto:blamon@goodsill.com)

[lfarm@goodsill.com](mailto:lfarm@goodsill.com)

[dkalama@goodsill.com](mailto:dkalama@goodsill.com)

Attorneys for Defendant  
BERNICE PAUAHI BISHOP MUSEUM

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

NA LEI ALII KAWANANAKOA, a  
Hawai'i non profit corporation; and  
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS, a Hawai'i non  
profit corporation,

Plaintiffs,

vs.

BERNICE PAUAHI BISHOP  
MUSEUM, a Hawai'i non profit  
corporation; HUI MALAMA I NA  
KUPUNA 'O HAWAI'I NEI, a Hawai'i  
non profit corporation; JOHN DOES 1-  
50, JANE DOES 1-50, DOE  
CORPORATIONS 1-50; DOE  
PARTNERSHIPS 1-50, DOE  
GOVERNMENTAL ENTITIES 1-50,  
and DOE OTHER ENTITIES 1-50,  
Defendants.

CIVIL NO. 05-00540 DAE-KSC

STIPULATION FOR DISMISSAL  
WITH PREJUDICE OF  
PLAINTIFFS' COMPLAINT FILED  
AUGUST 19, 2005, AND ORDER

**TRIAL DATE: April 24, 2007**

**EXHIBIT A**

**STIPULATION FOR DISMISSAL WITH PREJUDICE OF  
PLAINTIFFS' COMPLAINT FILED AUGUST 19, 2005**

IT IS HEREBY STIPULATED AND AGREED, by and between  
Plaintiffs NA LEI ALII KAWANANAKOA and ROYAL HAWAIIAN  
ACADEMY OF TRADITIONAL ARTS and Defendants BERNICE PAUAHI  
BISHOP MUSEUM and HUI MALAMA I NA KUPUNA O HAWAI'I NEI, by  
and through their respective counsel, that Plaintiffs' Complaint, filed August 19,  
2005, be and hereby is DISMISSED WITH PREJUDICE, pursuant to Federal  
Rules of Civil Procedure Rule 41(a)(1)(ii), with each party to bear its own fees and  
costs. This dismissal does not affect the remaining claims in this action. All  
parties who have appeared in this action have signed this Stipulation. Trial is  
scheduled for April 24, 2007.

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

---

JAMES H. WRIGHT  
GEORGE W. VAN BUREN  
ROBERT G. CAMPBELL  
Attorneys for Plaintiffs  
NA LEI ALII KAWANANAKOA and  
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS



---

MOSES K.N. HAIA, III  
ALAN T. MURAKAMI  
DAVID KIMO FRANKEL  
Attorneys for Defendant  
HUI MALAMA I NA KUPUNA O  
HAWAI'I NEI

---

BRUCE L. LAMON  
LINDALEE K. FARM  
DONNA H. KALAMA  
Attorneys for Defendant  
BERNICE PAUAHI BISHOP MUSEUM

APPROVED AND SO ORDERED.

---

*Na Lei Alii Kawanānākoa, et al. v. Bishop Museum, et al.* United States District Court, District of Hawaii, Civil No. 05-00540 DAE-KSC, ***STIPULATION FOR DISMISSAL WITH PREJUDICE OF PLAINTIFFS' COMPLAINT FILED AUGUST 19, 2005, AND ORDER***

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

BRUCE L. LAMON 2738-0  
LINDALEE K. FARM 4514-0  
DONNA H. KALAMA 6051-0  
1099 Alakea Street, Suite 1800  
Honolulu, Hawai'i 96813  
Telephone: (808) 547-5600  
Facsimile: (808) 547-5880  
[blamon@goodsill.com](mailto:blamon@goodsill.com)  
[lfarm@goodsill.com](mailto:lfarm@goodsill.com)  
[dkalama@goodsill.com](mailto:dkalama@goodsill.com)

Attorneys for Defendant  
BERNICE PAUAHI BISHOP MUSEUM

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

NA LEI ALII KAWANANAKOA, a  
Hawai'i non profit corporation; and  
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS, a Hawai'i non  
profit corporation,

Plaintiffs,

vs.

BERNICE PAUAHI BISHOP  
MUSEUM, a Hawai'i non profit  
corporation; HUI MALAMA I NA  
KUPUNA 'O HAWAI'I NEI, a Hawai'i  
non profit corporation; JOHN DOES 1-  
50, JANE DOES 1-50, DOE  
CORPORATIONS 1-50; DOE  
PARTNERSHIPS 1-50, DOE  
GOVERNMENTAL ENTITIES 1-50,  
and DOE OTHER ENTITIES 1-50,  
Defendants.

CIVIL NO. 05-00540 DAE-KSC

STIPULATION FOR DISMISSAL  
WITHOUT PREJUDICE OF  
DEFENDANT BERNICE PAUAHI  
BISHOP MUSEUM'S  
CROSSCLAIM AGAINST  
DEFENDANT HUI MALAMA  
I NA KUPUNA O HAWAII NEI  
FILED JUNE 13, 2006, AND  
ORDER

**TRIAL DATE: April 24, 2007**

**STIPULATION FOR DISMISSAL WITHOUT PREJUDICE OF  
DEFENDANT BERNICE PAUAHI BISHOP MUSEUM'S  
CROSSCLAIM AGAINST DEFENDANT HUI MALAMA  
I NA KUPUNA O HAWAII NEI FILED JUNE 13, 2006**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs NA LEI ALII KAWANANAKOA and ROYAL HAWAIIAN ACADEMY OF TRADITIONAL ARTS and Defendants BERNICE PAUAHI BISHOP MUSEUM ("Bishop Museum") and HUI MALAMA I NA KUPUNA O HAWAI'I NEI ("Hui Malama") (collectively the "Parties"), by and through their respective counsel, that Defendant Bernice Pauahi Bishop Museum's Crossclaim Against Defendant Hui Malama I Na Kupuna O Hawaii Nei, filed June 13, 2006, be and hereby is DISMISSED WITHOUT PREJUDICE, pursuant to Federal Rules of Civil Procedure Rules 41(a)(1)(ii) and 41(c), with each party to bear its own fees and costs.

This dismissal shall not be construed to apply to or affect Bishop Museum's right of reimbursement with regard to the consultant expenses and Museum recovery costs, as those terms are defined in the Settlement and Release Agreement between the Parties, including the right of Bishop Museum to seek a judgment(s) against Hui Malama for said consultant expenses and recovery costs as provided in the Settlement and Release Agreement and the following Court orders: (1) Amended Order Selecting Structural Engineer, filed 1/13/06, (2) Order

Selecting Geotechnical Engineering Firm for Opinion, filed 2/14/06, and (3) Order Appointing Resort Management Group, filed 7/26/06.

All parties who have appeared in this action have signed this Stipulation. Trial is scheduled for April 24, 2007.

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

---

JAMES H. WRIGHT  
GEORGE W. VAN BUREN  
ROBERT G. CAMPBELL  
Attorneys for Plaintiffs  
NA LEI ALII KAWANANAKOA and  
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS

---

MOSES K.N. HAIA, III  
ALAN T. MURAKAMI  
DAVID KIMO FRANKEL  
Attorneys for Defendant  
HUI MALAMA I NA KUPUNA O  
HAWAI'I NEI

---

BRUCE L. LAMON  
LINDALEE K. FARM  
DONNA H. KALAMA  
Attorneys for Defendant  
BERNICE PAUAHI BISHOP MUSEUM

APPROVED AND SO ORDERED.

---

*Na Lei Alii Kawanānākoa, et al. v. Bishop Museum, et al.* United States District Court, District of Hawaii, Civil No. 05-00540 DAE-KSC, ***STIPULATION FOR DISMISSAL WITHOUT PREJUDICE OF DEFENDANT BERNICE PAUAHI BISHOP MUSEUM'S CROSSCLAIM AGAINST DEFENDANT HUI MALAMA I NA KUPUNA O HAWAII NEI FILED JUNE 13, 2006, AND ORDER***

GOODSILL ANDERSON QUINN & STIFEL  
A LIMITED LIABILITY LAW PARTNERSHIP LLP

BRUCE L. LAMON 2738-0  
LINDALEE K. FARM 4514-0  
DONNA H. KALAMA 6051-0  
1099 Alakea Street, Suite 1800  
Honolulu, Hawai'i 96813  
Telephone: (808) 547-5600  
Facsimile: (808) 547-5880  
[blamon@goodsill.com](mailto:blamon@goodsill.com)  
[lfarm@goodsill.com](mailto:lfarm@goodsill.com)  
[dkalama@goodsill.com](mailto:dkalama@goodsill.com)

Attorneys for Defendant  
BERNICE PAUAHI BISHOP MUSEUM

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

NA LEI ALII KAWANANAKOA, a  
Hawai'i non profit corporation; and  
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS, a Hawai'i non  
profit corporation,

Plaintiffs,

vs.

BERNICE PAUAHI BISHOP  
MUSEUM, a Hawai'i non profit  
corporation; HUI MALAMA I NA  
KUPUNA 'O HAWAI'I NEI, a Hawai'i  
non profit corporation; JOHN DOES 1-  
50, JANE DOES 1-50, DOE  
CORPORATIONS 1-50; DOE  
PARTNERSHIPS 1-50, DOE  
GOVERNMENTAL ENTITIES 1-50,  
and DOE OTHER ENTITIES 1-50,  
Defendants.

CIVIL NO. 05-00540 DAE-KSC

STIPULATED JUDGMENT IN  
FAVOR OF DEFENDANT  
BERNICE PAUAHI BISHOP  
MUSEUM AND AGAINST  
DEFENDANT HUI MALAMA I NA  
KUPUNA O HAWAII NEI, AND  
ORDER; EXHIBIT 1

TRIAL DATE: April 24, 2007

**EXHIBIT C**

**STIPULATED JUDGMENT IN FAVOR OF DEFENDANT BERNICE  
PAUAHI BISHOP MUSEUM AND AGAINST  
DEFENDANT HUI MALAMA I NA KUPUNA O HAWAII NEI**

IT IS HEREBY STIPULATED AND AGREED, by and between  
Plaintiffs NA LEI ALII KAWANANAKOA and ROYAL HAWAIIAN  
ACADEMY OF TRADITIONAL ARTS (“Plaintiffs”) and Defendants BERNICE  
PAUAHI BISHOP MUSEUM (“Bishop Museum”) and HUI MALAMA I NA  
KUPUNA O HAWAI‘I NEI (“Hui Malama”) (collectively the “Parties”), by and  
through their respective counsel, as follows:

WHEREAS, on August 19, 2005, Plaintiffs filed the Complaint  
herein;

WHEREAS, Plaintiffs also filed a Motion for a Preliminary Injunction  
seeking to have the 83 lots of items that are the subject of this lawsuit (the “Items”)  
returned to Bishop Museum for safekeeping pending the outcome of this lawsuit;

WHEREAS, the Court granted Plaintiffs’ Motion for a Preliminary  
Injunction;

WHEREAS, the Court appointed certain consultant experts to assess  
the safety of the caves where Hui Malama placed the Items, and to assist with the  
safe retrieval of the Items from said caves pursuant to the following orders: (1)  
Amended Order Selecting Structural Engineer, filed 1/13/06, (2) Order Selecting  
Geotechnical Engineering Firm for Opinion, filed 2/14/06, and (3) Order

Appointing Resort Management Group, filed 7/26/06 (collectively the “Consultant Orders”);

WHEREAS, the fees and costs for said consultants (the “consultant expenses”) total \$201,705.26 as of the date of this Stipulated Judgment. A list of the consultant expenses covered by this Stipulated Judgment is attached hereto as Exhibit 1;

WHEREAS, pursuant to the Consultant Orders, the Court has ordered that Bishop Museum and Hui Malama shall equally share the consultant expenses, that Bishop Museum shall pay all of the consultant expenses directly to each consultant on a timely basis, that Hui Malama shall reimburse Bishop Museum one-half of the consultant expenses, and that if Hui Malama fails to pay its portions of the consultant expenses, Bishop Museum may apply to the Court for a judgment;

WHEREAS, Bishop Museum has paid in full the total amount of consultant expenses to date, or \$201,705.26;

WHEREAS, Bishop Museum representatives participated in the retrieval and return of the Items, and Bishop Museum incurred certain costs in connection with the recovery of the Items (the “Museum recovery costs”), in the amount of \$18,295.72;

WHEREAS, Hui Malama has agreed to reimburse Bishop Museum one-half of the Museum recovery costs;



WHEREAS, the total amount of consultant expenses and Museum recovery costs is \$220,000.98, and one-half of said total is \$110,000.49;

WHEREAS, Hui Malama has previously paid to Bishop Museum the sum of \$2,556.92 as partial reimbursement of Hui Malama's share of the consultant expenses;

WHEREAS, the Parties have agreed to settle the claims among them, and as part of the settlement, Hui Malama has agreed to the entry of a Stipulated Judgment in accordance with the Settlement and Release Agreement of the Parties and the Consultant Orders, for the balance of Hui Malama's share of the consultant expenses and Museum recovery costs;

WHEREAS, the amount of the Stipulated Judgment against Hui Malama shall be in the sum of \$107,443.57, which is one-half of the consultant expenses and Museum recovery costs, less the \$2,556.92 already paid by Hui Malama;

WHEREAS, attorneys' fees and costs for Bishop Museum's efforts to collect the amounts due under this Stipulated Judgment may be recovered as provided by law for the enforcement and collection of judgments;

WHEREAS, this Stipulated Judgment shall not affect the right of Bishop Museum to seek reimbursement and/or a judgment for additional consultant expenses that may be assessed against Bishop Museum and Hui Malama subsequent to the entry of this Stipulated Judgment;

WHEREAS, the Parties hereto enter into this Stipulated Judgment voluntarily, and having agreed to the amount of the Judgment and the recitals herein;

NOW THEREFORE,

JUDGMENT IS HEREBY ENTERED in favor of Defendant BERNICE PAUAHI BISHOP MUSEUM and against Defendant HUI MALAMA I NA KUPUNA O HAWAII NEI in the amount of \$107,443.57, plus post-judgment interest as provided by law.

This is a final judgment. This Stipulated Judgment has been signed by all parties who have appeared in this action.

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

---

JAMES H. WRIGHT  
GEORGE W. VAN BUREN  
ROBERT G. CAMPBELL  
Attorneys for Plaintiffs  
NA LEI ALII KAWANANAKOA and  
ROYAL HAWAIIAN ACADEMY OF  
TRADITIONAL ARTS

---

MOSES K.N. HAIA, III  
ALAN T. MURAKAMI  
DAVID KIMO FRANKEL  
Attorneys for Defendant  
HUI MALAMA I NA KUPUNA O  
HAWAI'I NEI

---

BRUCE L. LAMON  
LINDALEE K. FARM  
DONNA H. KALAMA  
Attorneys for Defendant  
BERNICE PAUAHI BISHOP MUSEUM

APPROVED AND SO ORDERED.

---

*Na Lei Alii Kawanānakoā, et al. v. Bishop Museum, et al.* United States District Court, District of Hawaii, Civil No. 05-00540 DAE-KSC, ***STIPULATED JUDGMENT IN FAVOR OF DEFENDANT BERNICE PAUAHI BISHOP MUSEUM AND AGAINST DEFENDANT HUI MALAMA I NA KUPUNA O HAWAII NEI, AND ORDER***

**Consultant Expenses**

<u>Consultant</u>	<u>Invoice No. /Date</u>	<u>Amount</u>
Englekirk & Sabol	51569 2/28/06	\$4,499.97
Englekirk & Sabol	51570 2/28/06	\$613.87
Englekirk & Sabol	51769 3/31/06	\$1,822.91
GeoSyntec Consultants	166804 5/11/06	\$936.00
GeoSyntec Consultants	166880 6/08/06	\$234.00
GeoSyntec Consultants	166415 7/12/06	\$1,404.00
GeoSyntec Consultants	166466 8/14/06	\$3,338.87
Englekirk & Sabol	52649 8/31/06	\$7,749.95
Englekirk & Sabol	52650 8/31/06	\$242.50
GeoSyntec Consultants	166722 9/21/06	\$102,367.82
GeoLabs Inc.	028247 9/20/06	\$3,981.64
Englekirk & Sabol	52785 9/30/06	\$999.99
Englekirk & Sabol	52786 9/30/06	\$540.15
GeoSyntec Consultants	166536 10/5/06	\$34,655.31
GeoSyntec Consultants	166593 11/9/06	\$17,112.68
Englekirk & Sabol	53109 11/30/06	\$21,205.60
	<b><u>Total</u></b>	<b><u>\$201,705.26</u></b>

**EXHIBIT 1**