

14  
NATIVE HAWAIIAN LEGAL CORPORATION  
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STEVEN C. MOORE  
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1506 Broadway  
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Kailua, Hawaii 96734  
Telephone: 262-4900

Attorneys for Plaintiff  
PELE DEFENSE FUND

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THIRD CIRCUIT  
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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII


PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
	)	
vs.	)	PLAINTIFF'S MOTION TO DELETE
	)	DEFENDANTS WILLIAM PATY, MOSES
WILLIAM PATY, in his capacity	)	KEALOHA, DOUGLAS ING, LEONARD
as Chairman of the Board of	)	ZALOPANY, JOHN ARISUMI AND
Land and Natural Resources,	)	HERBERT ARATA AS NAMED
	)	DEFENDANTS FROM THE CAPTION;
State of Hawaii, et al.,	)	AFFIDAVIT OF PAUL F.N. LUCAS;
	)	EXHIBITS "A" - "C"; NOTICE OF
Defendants.	)	HEARING OF MOTION; CERTIFICATE
	)	OF SERVICE
	)	
	)	Hearing Date: May 7, 1993
	)	(By Telephone Conference)
	)	Time: 8:00 a.m.
	)	Judge: Hon. Ricki Amano

PLAINTIFF'S MOTION TO DELETE DEFENDANTS WILLIAM PATY,  
MOSES KEALOHA, DOUGLAS ING, LEONARD ZALOPANY, JOHN ARISUMI  
AND HERBERT ARATA AS NAMED DEFENDANTS FROM THE CAPTION

Plaintiff PELE DEFENSE FUND, by and through their undersigned

counsel, hereby move this Court to delete Defendants William Paty, Moses Kealoha, Douglas Ing, Leonard Zalopany, John Arisumi and Herbert Arata from the caption as named Defendants herein. This Motion is made pursuant to Rules 7 and 21, Hawaii Rules of Civil Procedure and is based upon the attached affidavit, exhibits and the records and pleadings herein.

DATED: Honolulu, Hawaii, April 6, 1993.

  
\_\_\_\_\_  
ALAN T. MURAKAMI  
PAUL F. NAHOA LUCAS  
YUKLIN ALULI  
STEVEN C. MOORE  
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
	)	
vs.	)	AFFIDAVIT OF PAUL F.N. LUCAS;
	)	EXHIBITS "A" - "C"
WILLIAM PATY, in his capacity	)	
as Chairman of the Board	)	
of Land and Natural Resources,	)	
State of Hawaii, et al.,	)	
	)	
Defendants.	)	
	)	

---

AFFIDAVIT OF PAUL F. N. LUCAS

STATE OF HAWAII )  
: SS.  
CITY AND COUNTY OF HONOLULU )

I, PAUL F. N. LUCAS, being first duly sworn upon oath, deposes and says that:

1. I am an attorney licensed to practice law in the State of Hawaii.

2. I am co-counsel for the Plaintiff in the above-entitled action.

3. The facts contained in this affidavit are based upon my own personal knowledge and belief.

4. On or about March 15, 1993, I prepared a stipulation to remove Defendants Paty, et al., a copy of which is attached hereto as Exhibit "A", and circulated to opposing counsel for their signatures.

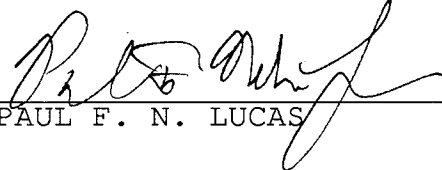
5. On March 19, 1993, I received a letter from Michael Gibson, counsel for Defendants Campbell Estate denying our request, a copy of which is attached hereto as Exhibit "B".

6. Pursuant to the Hawaii Supreme Court's Opinion in Pele Defense Fund v. Paty, 73 Haw. 578 (1992), and the Judgment on Appeal dated and filed October 26, 1992, which is attached hereto as Exhibit "C", Defendants Paty, et al. have been dismissed from

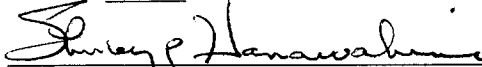
this action.

7. This request is merely to correct a technical error with the pleadings and does not affect the substantive nature or rights of the parties in this action.

Further affiant sayeth naught.

  
\_\_\_\_\_  
PAUL F. N. LUCAS

Subscribed and sworn to before me  
this 6th day of April, 1993.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: 6-3-96



NATIVE  
HAWAIIAN  
LEGAL  
CORPORATION

1164 BISHOP STREET • SUITE 1205 • HONOLULU, HAWAII 96813 • TELEPHONE (808) 521-2302 • FAX (808) 537-4268

March 15, 1993

James K. Mee, Esq.  
Ashford & Wriston  
1099 Alakea Street 14th Flr  
P. O. Box 131  
Honolulu, Hawai'i 96810

Gary B.K.T. Lee, Esq.  
Kendall Building, 8th Floor  
888 Millilani Street  
Honolulu, Hawai'i 96813

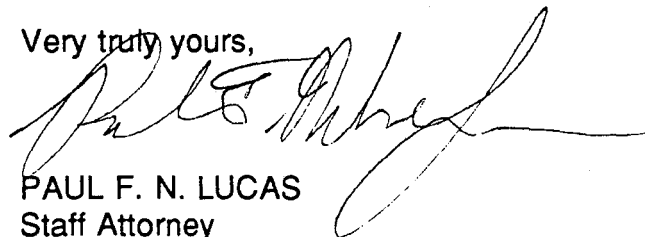
Re: Civil No. 89-089; Pele Defense Fund vs. William Paty, et al.

Dear Messrs Mee and Lee:

Enclosed is a proposed Stipulation and Order removing Defendants William Paty, et al. from the caption in this action, since they are no longer parties to this action as a result of the Supreme Court's opinion in Pele Defense Fund vs. Paty, 73 Haw. 578 (1992), and the Judgment on Appeal dated and filed October 26, 1992. Please review the Stipulation, sign and forward the Stipulation (envelope enclosed for your convenience) to Mr. Gary Lee for signature and return to our office as soon as possible. By copy of this letter, Mr. Gary Lee is informed of the transmittal of the Stipulation to him via your office. If you have any questions or concerns, please do not hesitate to contact me.

Your prompt attention and cooperation in this matter is greatly appreciated.

Very truly yours,



PAUL F. N. LUCAS  
Staff Attorney

PFNL:sph

f:\dedman1\mee15.mar

cc: Mr. Gary B.K.T. Lee

EXHIBIT "A"

NATIVE HAWAIIAN LEGAL CORPORATION  
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Honolulu, Hawaii 96813  
Telephone: 521-2302

ALAN T. MURAKAMI 2285  
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STEVEN C. MOORE  
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YUKLIN ALULI 1428  
415-C Uluniu Street  
Kailua, Hawaii 96734  
Telephone: 262-4900

Attorneys for Plaintiff  
PELE DEFENSE FUND

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
	)	
vs.	)	STIPULATION TO REMOVE
	)	DEFENDANTS WILLIAM PATY,
WILLIAM PATY, in his capacity	)	MOSES KEALOHA, DOUGLAS ING,
as Chairman of the Board of	)	LEONARD ZALOPANY, JOHN ARISUMI
Land and Natural Resources	)	AND HERBERT ARATA AS NAMED
State of Hawaii, et al.,	)	DEFENDANTS IN THIS ACTION;
	)	ORDER; CERTIFICATE OF SERVICE
Defendants.	)	
	)	(Trial Date: 7/19/93)

STIPULATION TO REMOVE DEFENDANTS WILLIAM PATY, MOSES  
KEALOHA, DOUGLAS INC, LEONARD ZALOPANY, JOHN ARISUMI AND  
HERBERT ARATA AS NAMED DEFENDANTS IN THIS ACTION

IT IS HEREBY STIPULATED by and between the parties herein,  
through their respective counsel, that Defendants William Paty, in  
his capacity as Chairman of the Board of Land and Natural  
Resources, State of Hawaii, MOSES KEALOHA, DOUGLAS ING, LEONARD  
ZALOPANY, JOHN ARISUMI and HERBERT ARATA, in their capacity as

members of the Board of Land and Natural Resources, are hereby removed as named Defendants in the above-entitled action as a result of the Hawaii Supreme Court's Opinion in Pele Defense Fund v. Paty, 73 Haw. 578 (1992), and the Judgment on Appeal dated and filed October 26, 1992. Accordingly, the caption in this action shall be amended to reflect this change.

DATED: Honolulu, Hawaii, March \_\_\_, 1993

---

ALAN T. MURAKAMI  
PAUL F. NAHOA LUCAS  
YUKLIN ALULI  
STEVEN C. MOORE  
Attorneys for Plaintiff

---

PAUL S. AOKI  
JAMES K. MEE  
KEITH M. YONAMINE  
Attorneys for Defendants Campbell

---

BENJAMIN M. MATSUBARA  
GARY B.K.T. LEE  
JASON M. YOSHIDA  
Attorneys for Defendants True

APPROVED AND SO ORDERED:

\_\_\_\_\_  
Judge of the above-entitled Court

-----  
In the Circuit Court of the Third Circuit; Civil No. 89-089;  
Pele Defense Fund vs. William Paty, et al.;  
Stipulation to Remove Defendants William Paty...; Order

# ASHFORD & WRISTON

ATTORNEYS AT LAW

A. James Wriston Jr.  
Albert H. Ogawa\*  
Galen C. K. Leong  
Wayne Nasser\*  
Douglas W. MacDougall\*  
John A. Lockwood\*

Cuyler E. Shaw\*  
Michael W. Gibson  
Robert Bruce Graham Jr.  
Rosemary T. Fazio  
Diane S. Kishimoto  
Paul S. Aoki

Francis P. Hogan  
James K. Mee  
Lorrin B. Hirano  
Kirk W. Caldwell  
Marjorie C. Y. Au

Adrian W. Rosehill  
Paul R. Goto  
Katharine P. Lloyd  
Naunani Kinau A. Kamali  
Owen H. Matsunaga  
Charles A. Price

Keith M. Yonamine  
Cynthia K. Ching  
Teresa J. A. Quon  
Mary Beth M. Wong  
Shawna J. Sodersten

Alan J. Ma  
Theodore T. Herhold  
Glenn K. C. Ching  
COUNSEL  
M. Eleanor Herberg

OF COUNSEL  
Clinton R. Ashford\*  
John J. Jurensky\*  
Edwin M. Oyano III  
\*A Law Corporation

FILE  
PROMAN  
CHAMP  
WALSH  
N.I.  
ATM  
CCC

March 19, 1993

Paul F.N. Lucas, Esq.  
Native Hawaiian Legal Corporation  
1164 Bishop Street, Ste. 1205  
Honolulu, Hawaii 96813

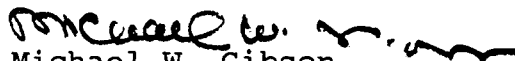
Re: Pele Defense Fund. v. William Paty, et al.

Dear Mr. Lucas:

Your letter dated March 15, 1993 to Jim Mee has been referred to me for response. I will be handling the trial of the captioned matter. In the future, please send all correspondence and pleadings to me instead of Jim Mee.

We will not be signing the Stipulation to Remove Defendants William Paty, et al. I know of no precedent to modify the caption of a case under the circumstances.

Very truly yours,

  
Michael W. Gibson

MWG:sel

cc: Gary B.K. Lee, Esq.  
Mr. Russ Alger  
Mr. Bill DeMent

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EXHIBIT "B"

HONOLULU OFFICE  
Mailing Address:  
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Honolulu, HI 96810

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Alii Place, Suite 1400  
1099 Aliakea Street  
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Facsimile:  
(808) 533-4945

KAILUA-KONA OFFICE  
Kuakini Tower, Suite 208  
75-5722 Kuakini Hwy.  
Kailua-Kona, HI 96740

Telephone:  
(808) 329-7706  
Facsimile:  
(808) 329-7528



NO. 15373

IN THE SUPREME COURT OF THE STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff-	)	Injunction)
Appellant,	)	
	)	APPEAL FROM THE FINDINGS OF
vs.	)	FACT, CONCLUSIONS OF LAW AND
	)	DECISION AND ORDER GRANTING
WILLIAM PATY, in his capacity as)	)	DEFENDANTS' MOTIONS TO
Chairman of the Board of Land )	)	DISMISS OR, ALTERNATIVELY
and Natural Resources, State of )	)	FOR PARTIAL SUMMARY JUDGMENT
Hawaii, MOSES KEALOHA, DOUGLAS )	)	ENTERED ON MAY 20, 1991
ING, LEONARD ZALOPANY, JOHN )	)	
ARISUMI and HERBERT ARATA, in )	)	
their capacity as members of )	)	
the Board of Land and Natural )	)	
Resources, THE ESTATE OF )	)	
JAMES CAMPBELL, Deceased, )	)	
FRED E. TROTTER, W.H. McVAY, )	)	
P.R. CASSIDAY, and HERBERT C. )	)	
CORNUELLE, in their fiduciary )	)	
capacity as Trustees under the )	)	
Will of James Campbell, )	)	
Deceased, TRUE ENERGY )	)	
GEOTHERMAL CORP., TRUE )	)	
GEOTHERMAL DRILLING CO., and )	)	
MID-PACIFIC GEOTHERMAL, INC., )	)	
	)	
Defendants-	)	THIRD CIRCUIT COURT
Appellees.	)	
	)	HONORABLE ERNEST KUBOTA,
	)	JUDGE

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MICHELLE SABADO  
CLERK, SUPREME COURT

1439E

JUDGMENT ON APPEAL

CERTIFICATE OF SERVICE

ROBERT A. MARKS 2163  
Attorney General  
State of Hawaii

WILLIAM M. TAM 1887  
JOHNSON H. WONG 498  
Deputy Attorneys General  
Room 300, Kekuanaoa'a Building  
465 South King Street  
Honolulu, Hawaii 96813  
Tel. No. 587-2982

Attorneys for Defendants-Appellees  
State Officials

EXHIBIT "C"

IN THE SUPREME COURT OF THE STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff-	)	Injunction)
Appellant,	)	
	)	APPEAL FROM THE FINDINGS OF
vs.	)	FACT, CONCLUSIONS OF LAW AND
	)	DECISION AND ORDER GRANTING
WILLIAM PATY, in his capacity as)	)	DEFENDANTS' MOTIONS TO
Chairman of the Board of Land )	)	DISMISS OR, ALTERNATIVELY
and Natural Resources, State of )	)	FOR PARTIAL SUMMARY JUDGMENT
Hawaii, MOSES KEALOHA, DOUGLAS )	)	ENTERED ON MAY 20, 1991
ING, LEONARD ZALOPANY, JOHN )	)	
ARISUMI and HERBERT ARATA, in )	)	
their capacity as members of )	)	
the Board of Land and Natural )	)	
Resources, THE ESTATE OF )	)	
JAMES CAMPBELL, Deceased, )	)	
FRED E. TROTTER, W.H. McVAY, )	)	
P.R. CASSIDAY, and HERBERT C. )	)	
CORNUELLE, in their fiduciary )	)	
capacity as Trustees under the )	)	
Will of James Campbell, )	)	
Deceased, TRUE ENERGY )	)	
GEOHERMAL CORP., TRUE )	)	
GEOHERMAL DRILLING CO., and )	)	
MID-PACIFIC GEOHERMAL, INC., )	)	
	)	
Defendants-	)	THIRD CIRCUIT COURT
Appellees.	)	
	)	HONORABLE ERNEST KUBOTA,
	)	JUDGE

1434E

JUDGMENT ON APPEAL

Pursuant to the opinion of the Supreme Court entered on September 28, 1992, the judgment of the Third Circuit Court, State of Hawaii entered on May 20, 1991 is affirmed in part, reversed in part and remanded in part as follows:

The judgment of the lower court is affirmed in part and reversed in part. The case is remanded for trial on the claim alleging that Defendants-Appellees THE ESTATE OF JAMES CAMPBELL, FRED E. TROTTER, W.H. McVAY, P.R. CASSIDAY, HERBERT C. CORNUELLE, TRUE GEOTHERMAL ENERGY CORP., TRUE GEOTHERMAL DRILLING CO., and MID-PACIFIC GEOTHERMAL, INC. violated article XII, § 7 by the continued denial of access into the undeveloped areas of Wao Kele 'O Puna and other exchanged lands to native Hawaiian PDF members who seek access for customarily and traditionally exercised subsistence, cultural and religious practices. The judgment of the lower court is affirmed in all other respects for the reasons set forth in the opinion. There are no claims remaining against Defendants-Appellees WILLIAM PATY, MOSES KEALOHA, DOUGLAS ING, LEONARD ZALOPANY, JOHN ARISUMI, and HERBERT ARATA, and they are accordingly dismissed from the action.

DATED: Honolulu, Hawaii, OCT 26 1992.

BY THE COURT:

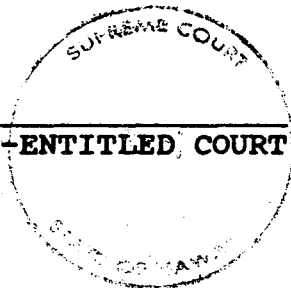
*Eugene L. Sabado*

CLERK OF THE ABOVE-ENTITLED COURT

APPROVED:

*Robert G. Klein*

JUSTICE OF THE ABOVE-ENTITLED COURT



NO. 15373

IN THE SUPREME COURT OF THE STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff-	)	Injunction)
Appellant,	)	
	)	APPEAL FROM THE FINDINGS OF
vs.	)	FACT, CONCLUSIONS OF LAW AND
	)	DECISION AND ORDER GRANTING
WILLIAM PATY, in his capacity as)	)	DEFENDANTS' MOTIONS TO
Chairman of the Board of Land )	)	DISMISS OR, ALTERNATIVELY
and Natural Resources, State of )	)	FOR PARTIAL SUMMARY JUDGMENT
Hawaii, MOSES KEALOHA, DOUGLAS )	)	ENTERED ON MAY 20, 1991
ING, LEONARD ZALOPANY, JOHN )	)	
ARISUMI and HERBERT ARATA, in )	)	
their capacity as members of )	)	
the Board of Land and Natural )	)	
Resources, THE ESTATE OF )	)	
JAMES CAMPBELL, Deceased, )	)	
FRED E. TROTTER, W.H. McVAY, )	)	
P.R. CASSIDAY, and HERBERT C. )	)	
CORNUELLE, in their fiduciary )	)	
capacity as Trustees under the )	)	
Will of James Campbell, )	)	
Deceased, TRUE ENERGY )	)	
GEOTHERMAL CORP., TRUE )	)	
GEOTHERMAL DRILLING CO., and )	)	
MID-PACIFIC GEOTHERMAL, INC., )	)	
	)	
Defendants-	)	THIRD CIRCUIT COURT
Appellees.	)	
	)	HONORABLE ERNEST KUBOTA,
	)	JUDGE

---

1439E

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing document was duly served upon the following by U.S. Mail, postage prepaid, to their last known addresses on October 8, 1992:

MELODY K. MACKENZIE, ESQ.  
PAUL NAHOA LUCAS, ESQ.  
ALAN T. MURAKAMI, ESQ.  
NATIVE HAWAIIAN LEGAL CORPORATION  
1270 Queen Emma Street, Suite 1004  
Honolulu, Hawaii 96813

Attorneys for Appellant  
PELE DEFENSE FUND

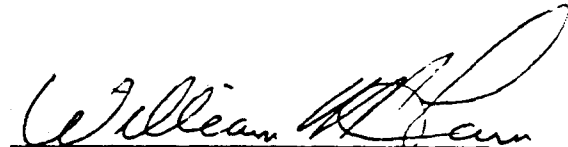
JAMES K. MEE, ESQ.  
PAUL S. AOKI, ESQ.  
ASHFORD & WRISTON  
P. O. Box 131  
Honolulu, Hawaii 96810

Attorneys for Appellees  
CAMPBELL ESTATE AND CORNUELLE

GARY B.K.T. LEE, ESQ.  
STEPHANIE A. REZENTS, ESQ.  
Kendall Building, 8th Floor  
888 Mililani Street  
Honolulu, Hawaii 96813

Attorneys for Appellees  
TRUE GEOTHERMAL ENERGY CORP.,  
TRUE GEOTHERMAL DRILLING CO.,  
and MID-PACIFIC GEOTHERMAL, INC.

DATED: Honolulu, Hawaii, October 8, 1992.

A handwritten signature in dark ink, appearing to read "William M. Tam", is written over a horizontal line.

WILLIAM M. TAM  
Deputy Attorney General  
Attorney for Appellees  
State Officials

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
	)	
vs.	)	NOTICE OF HEARING MOTION;
	)	CERTIFICATE OF SERVICE
WILLIAM PATY, in his capacity )		
as Chairman of the Board )		
of Land and Natural Resources, )		
State of Hawaii, et al., )		Hearing Date: May 7, 1993
	)	(By Telephone Conference)
Defendants. )		Time: 8:00 a.m.
	)	Judge: Hon. Ricki Amano

---

NOTICE OF HEARING MOTION

TO: MICHAEL W. GIBSON, ESQ.  
WAYNE NASSER, ESQ.  
Ashford & Wriston  
1099 Alakea Street 14th Flr  
P. O. Box 131  
Honolulu, Hawai'i 96810

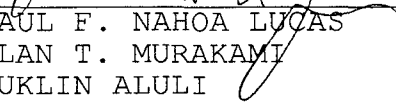
Attorneys for Defendants Campbell, et al.

BENJAMIN M. MATSUBARA, ESQ.  
GARY B.K.T. LEE, ESQ.  
JASON M. YOSHIDA, ESQ.  
Kendall Building, 8th Floor  
888 Mililani Street  
Honolulu, Hawai'i 96813

Attorneys for Defendants True, et al.

PLEASE TAKE NOTICE that the foregoing motion will be heard by telephone conference before the Honorable Ricki Amano, Judge of the above-entitled courtroom, in his courtroom at 75 Aupuni Street, Hilo, Hawaii, on Friday, May 7, 1993 at 8:00 a.m., or as soon thereafter as counsel may be heard.

Dated: Honolulu, Hawaii, April 6, 1993.



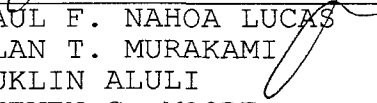
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PAUL F. NAHOA LUCAS  
ALAN T. MURAKAMI  
YUKLIN ALULI  
STEVEN C. MOORE  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon those parties listed on the attached Notice of Hearing Motion by U.S. Mail, postage prepaid, to their last known addresses.

DATED: Honolulu, Hawaii, April 6, 1993.



---

PAUL F. NAHOA LUCAS  
ALAN T. MURAKAMI  
YUKLIN ALULI  
STEVEN C. MOORE  
Attorneys for Plaintiff