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ASHFORD & WRISTON

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Attorneys for Defendants

The Estate of James Campbell, Deceased,
W. H. McVay and P. R. Cassiday,
Trustees Under the Will and of
the Estate of James Campbell, Deceased,
acting in their fiduciary and not in
their individual capacities, Herbert
C. Cornuelle and F.E. Trotter

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,

Plaintiffs,

vs.

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; 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.)

CIVIL NO. 89-089 (Hilo)

DEFENDANTS THE ESTATE OF
JAMES CAMPBELL, DECEASED, W.
H. McVAY AND P. R. CASSIDAY,
TRUSTEES UNDER THE WILL AND
OF THE ESTATE OF JAMES
CAMPBELL, DECEASED, ACTING IN
THEIR FIDUCIARY AND NOT IN
THEIR INDIVIDUAL CAPACITIES,
HERBERT C. CORNUELLE AND F.E.
TROTTER'S MOTION FOR
PROTECTIVE ORDER OR IN THE
ALTERNATIVE TO QUASH SUBPOENA
DUCES TECUM; MEMORANDUM IN
SUPPORT OF MOTION; EXHIBIT
"1"; AFFIDAVIT OF RUSSELL
ALGER; NOTICE OF HEARING OF
MOTION; CERTIFICATE OF
SERVICE

Hearing: April 16, 1993
Time: 8:30 a.m.
Judge: Riki May Amano

DEFENDANTS THE ESTATE OF JAMES CAMPBELL, DECEASED,
W. H. McVAY AND P. R. CASSIDAY, TRUSTEES UNDER THE
WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, ACTING IN
THEIR FIDUCIARY AND NOT IN THEIR INDIVIDUAL CAPACITIES,
HERBERT C. CORNUELLE AND F.E. TROTTER'S MOTION FOR PROTECTIVE
ORDER OR IN THE ALTERNATIVE TO QUASH SUBPOENA DUCES TECUM

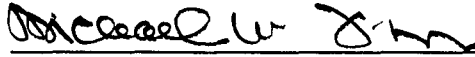
COME NOW, Defendants The Estate of James Campbell, Deceased,
W.H. McVay and P.R. Cassiday, Trustees under the Will and of The
Estate of James Campbell, Deceased, acting in their fiduciary and
not in their individual capacities (hereinafter collectively
referred to as "Defendants Campbell Estate") by and through their
attorneys, Ashford & Wriston, and move this Court for a
protective order or in the alternative, an order to quash the
Subpoena Duces Tecum addressed to Russell Alger.

Additionally, Defendants Campbell Estate request this Court
to award them attorney's fees and costs incurred in bringing this
Motion.

Defendants Campbell Estate Motion is made pursuant to Rules
7, 26, 34 and 45 of the Hawaii Rules of Civil Procedure and is
based upon the memorandum in Support of Motion and Affidavit

attached hereto and by reference made a part hereof and the records and files herein.

DATED: Honolulu, Hawaii; April 12, 1993.



WAYNE NASSER

MICHAEL W. GIBSON

Attorneys for Defendants

The Estate of James Campbell,

Deceased, W. H. McVay and P. R.

Cassiday, Trustees Under the Will

and of the Estate of James

Campbell, Deceased, acting in their

fiduciary and not in their

individual capacities, Herbert C.

Cornuelle and F.E. Trotter

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,)	CIVIL NO. 89-089 (Hilo)
)	
Plaintiffs,)	
)	MEMORANDUM IN SUPPORT OF
vs.)	MOTION
)	
WILLIAM PATY, in his capacity as)	
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and Natural Resources, State of)	
Hawaii, MOSES KEALOHA, DOUGLAS)	
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CORP., TRUE GEOTHERMAL DRILLING)	
CO., and MID-PACIFIC GEOTHERMAL)	
INC.,)	
)	
Defendants.)	

MEMORANDUM IN SUPPORT OF MOTION

BACKGROUND

On or about March 29, 1993, Defendants Campbell Estate through their counsel, received a copy of a Notice of Taking Depositions Upon Oral Examination dated March 26, 1993. Attached to said Notice as Exhibit "A" was a Subpoena Duces Tecum addressed to Russell Alger. A true and correct copy of the Notice of Taking Depositions Upon Oral Examination and Exhibit

"A" theeto is attached as Exhibit "1" and by reference made a part hereof.

Russell Alger, who is the Director, Hawaii Asset Management for the Estate of James Campbell, and who is not a party, has been requested pursuant to the Subpoena Duces Tecum (Exhibit "1") to produce the records of Defendants Campbell Estate and True Geothermal Energy Co. The proper method to obtain documents from a party, is pursuant to Rule 34 of the Hawaii Rules of Civil Procedure by way of production of documents.

None of the documents sought by the Subpoena Duces Tecum to Russell Alger (Exhibit "1") are the property of Mr. Alger. The Subpoena Duces Tecum should either be quashed or a protective order issued. See Affidavit of Russell Alger attached hereto.

Even assuming arguendo that the Subpoena Duces Tecum (Exhibit "1") has been properly issued to Russell Alger, it is the position of Defendants Campbell Estate that said Subpoena Duces Tecum should be quashed and/or a protective order issued to limit the records and documents that are requested in aid Subpoena Duces Tecum.

Rule 45(b)(1) of the Hawaii Rules of Civil Procedure provides that a subpoena may be quashed or modified if it is unreasonable and oppressive. Rule 26(c) of the Hawaii Rules of Civil Procedure provides that for good cause shown, the court may issue a protective order which protects a party or person from annoyance, embarrassment, oppression, or undue burden or expense and that said order may include provisions that certain matters

not be inquired into, or that the scope of discovery be limited to certain matters. Rule 26(c)(4) of the Hawaii Rules of Civil Procedure.

In this matter, the Judgment on Appeal which remanded only a portion of this case limited the issues before this Court to whether "it can be shown that Wao Kele 'O Puna was a traditional gathering area utilized by tenants of abutting ahupua'a and that the other requirements of Kalipi are met in this case..." The sole issue before this Court as to Defendants Campbell Estate and True Geothermal Energy Co. is whether said Defendants denied access to the individuals who satisfy the criteria established by the Supreme Court.

In the Subpoena Duces Tecum filed in this matter (Exhibit "1"), Plaintiff seeks the following:

1. The lease or other legal document which shows the legal relationship between Defendants Campbell Estate and True Geothermal Energy Co. or other document embodying the right of Defendants True Geothermal Energy Co. to enter into the premises of the Defendants Campbell Estate's lands for geothermal or other exploration and/or development activities. Clearly the lease and the terms thereof, other than the fact that Defendants Campbell Estate is the lessor under said lease and Defendants True Geothermal Energy Co. is the lessee under said lease, and a description of the boundaries of the property that is being leased, is not relevant in this matter, is not reasonably

calculated to lead to discovery of admissible evidence and therefore is not discoverable.

2. The current plan of operations for geothermal exploration and/or development activities at Wao Kele 'O Puna and adjoining lands. This information is not discoverable as it (a) is not relevant as it is not related to the issue of denial of access and not reasonably calculated to lead to admissible evidence (Rule 26(b) HRCF), (b) involves trade secrets, confidential research, development or commercial information (Rule 26(c)(7) HRCF), and (c) overboard, oppressive, ambiguous, and unduly burdensome as it requests information regarding "adjoining lands" without any description of said "adjoining lands" (Rule 26(c) HRCF).

3. All permit, issued by the State of Hawaii or the County of Hawaii, or other governmental subdivision of the State relating to the construction of the first access road into Wao Kele ' O Puna and the first and second well sites at Wao Kele 'O Puna and adjoining lands. While the permits requested may be public records if issued by the State of Hawaii or the County of Hawaii, or other governmental subdivision of the State, said permits are also not relevant to the limited issue before this Court. In addition, this information is not reasonable calculated to lead to the discovery of admissible evidence.

4. All permit applications for any or all activities beyond the first access road and well sites one and two in Wao Kele 'O Puna and adjoining lands. Again, all permit applications

which are public records may be discoverable but in this particular matter are not relevant. The request is also overbroad, unduly burdensome, and ambiguous as it addresses "adjoining Lands" without a description of what the "adjoining lands" include.

5. Copies of any and all correspondence and documentation relating to geothermal exploration and/or development activities in Wao Kele 'O Puna and adjoining lands. This request again as it relates to what may be public records, may be discoverable, but is not relevant to this matter and again refers to "adjoining lands" without any definition thereof.

6. Copies of any and all correspondence, internal memoranda or other documents relating to Defendants' True Geothermal Energy Co. policies concerning access to Wao Kele 'O Puna and adjoining lands. Again the documents sought and request made by Plaintiff are not relevant to this matter, involve confidential information, is ambiguous and therefore are not discoverable.

As discussed above, the issues that have been remanded to this Court is very limited. The issues are (1) whether it can be shown that Wao Kele 'O Puna was a traditional gathering area utilized by tenants of abutting ahupua'a and that the other requirements of Kalipi are met and (2) whether the holders of any Kalipi rights were denied access to the underdeveloped areas covered by the lawsuit. None of the documents sought by Plaintiff involve or relate to these issues. Plaintiff is not

seeking discovery in regard to the limited issues remaining in this case. It is instead attempting to broaden the issues in this matter.

For the reasons and arguments stated above, it is respectfully submitted by Defendants Campbell Estate that their Motion be granted and that this Court award Defendants Campbell Estate their reasonable expenses incurred in obtaining an Order herein, including attorney's fees.

DATED: Honolulu, Hawaii; April 12, 1993.



WAYNE NASSER

MICHAEL W. GIBSON

Attorneys for Defendants
The Estate of James Campbell,
Deceased, W. H. McVay and P. R.
Cassiday, Trustees Under the Will
and of the Estate of James
Campbell, Deceased, acting in their
fiduciary and not in their
individual capacities, Herbert C.
Cornuelle and F.E. Trotter

THIRD CIRCUIT COURT
STATE OF HAWAII
FILED

NATIVE HAWAIIAN LEGAL CORPORATION
1164 Bishop Centre
1164 Bishop Street, Suite 1205
Honolulu, Hawaii 96813
Telephone: (808) 521-2302

93 APR -2 PM 3:23

CHARLENE K. CRAWA
CLERK

ALAN T. MURAKAMI 2285
PAUL F. N. LUCAS 4561

STEVEN C. MOORE
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
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YUKLIN ALULI 1428
415-C Uluniu Street
Kailua, Hawaii 96734
Telephone: (808) 262-5900

Attorneys for Plaintiff
PELE DEFENSE FUND

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 TAKING DEPOSITIONS
	)	UPON ORAL EXAMINATION; EXHIBITS
WILLIAM PATY, et al.,	)	"A"- "D"; CERTIFICATE OF SERVICE
)	
Defendants.)	
)	

NOTICE OF TAKING
DEPOSITIONS UPON ORAL EXAMINATION

TO: Michael W. Gibson, Esq.
Keith M. Yonamine, Esq.
Ashford & Wriston
Suite 1400, Alii Place
1099 Alakea Street
Honolulu, Hawaii 96813

Attorneys for Defendants
THE ESTATE OF JAMES CAMPBELL, Deceased,
F.E. TROTTER, W.H. MCVAY, P.R. CASSIDAY,
Trustees under the Will and of the Estate
of James Campbell, Deceased, acting in

of James Campbell, Deceased, acting in
their fiduciary and not in their individual
capacities, and HERBERT C. CORNUELLE

Benjamin M. Matsubara, Esq.
Gary B.K.T. Lee, Esq.
Jason M. Yoshida, Esq.
Matsubara, Lee & Kotake
Suite 800, Kendall Building
888 Mililani Street
Honolulu, Hawaii 96813

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

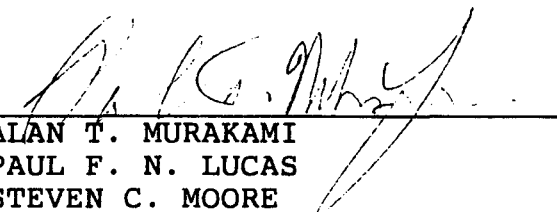
PLEASE TAKE NOTICE that Plaintiff PELE DEFENSE FUND shall
take the oral depositions of the following individuals on the
dates and times as listed below:

<u>NAME</u>	<u>DATE/TIME</u>
Allan G. Kawada c/o Matsubara, Lee & Kotake Charles R. Kendall Building 888 Mililani Street, 8th Floor Honolulu, Hawaii 96813	Tuesday, April 20, 1993, @ 1:00 p.m. and Wednesday, April 21, 1993, @ 9:00 a.m.
Russell Alger c/o Ashford & Wriston Suite 1400, Alii Place 1099 Alakea Street Honolulu, Hawaii 96813	Wednesday, April 21, 1993, @ 1:00 p.m.
Dr. Fred D. Stone University of Hawaii @ Hilo Hawaii Community College General Education Division 523 W. Lanikala Street Hilo, Hawaii 96720	Thursday, April 22, 1993, @ 9:00 a.m.
Maurice Kaya Energy Program Administrator Department of Business Economic Development & Tourism 335 Merchant Street, Room 108 Honolulu, Hawaii 96813	Thursday, April 22, 1993, @ 1:00 p.m.

Said depositions will be taken at the offices of Native Hawaiian Legal Corporation, 1164 Bishop Centre, 1164 Bishop Street, Suite 1205, Honolulu, Hawaii, before a notary public duly sworn to administer oaths, pursuant to Rule 30 of the Hawaii Rules of Civil Procedure, and to testify on behalf of Plaintiff in the above-entitled matter.

The above deponents will be required by Subpoena Duces Tecum to have available any and all records pertaining to all items listed in said Subpoenaes Duces Tecum attached hereto as Exhibits "A" through "D". Said depositions will continue from day to day until completed.

DATED: Honolulu, Hawaii, MARCH 26, 1993.



ALAN T. MURAKAMI
PAUL F. N. LUCAS
STEVEN C. MOORE
YUKLIN ALULI
Attorney for Plaintiff
PELE DEFENSE FUND

NATIVE HAWAIIAN LEGAL CORPORATION
1164 Bishop Centre
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Telephone: (808) 262-5900

Attorneys for Plaintiff
PELE DEFENSE FUND

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
)	
vs.	)	SUBPOENA DUCES TECUM
)	
WILLIAM PATY, et al.,)	
)	
Defendants.)	
)	

SUBPOENA DUCES TECUM

THE STATE OF HAWAII:

TO THE SHERIFF OF THE STATE OF HAWAII or his Deputy or any
Police Officer in the State of Hawaii:

YOU ARE COMMANDED to Subpoena RUSSELL ALGER, Director,
Hawaii Asset Management, for the Estate of James Campbell, whose
address is Suite 500, 828 Fort Street Mall, Honolulu, Hawaii

EXHIBIT "B"
(consisting of four pages)

96813, to appear for his deposition upon oral examination, before a notary public duly authorized by law to administer oaths, at the offices of Native Hawaiian Legal Corporation, 1164 Bishop Centre, 1164 Bishop Street, Suite 1205, Honolulu, Hawaii, on Wednesday, April 21, 1993 at 1:00 p.m., and to bring with him the following items:

1. The lease or other legal document embodying the legal relationship between True Geothermal and the Campbell Estate, or other document embodying the right of True Geothermal to enter onto the premises of the Campbell lands for geothermal or other exploration and/or development activities;

2. The current True Geothermal plan of operations for geothermal exploration and/or development activities at Wao Kele 'O Puna and adjoining lands;

3. All permits, issued by the State of Hawaii or the County of Hawaii, or other governmental subdivision of the state, for activities relating to the construction of the first access road into Wao Kele 'O Puna, and the first and second well sites at Wao Kele 'O Puna and adjoining lands;

4. All permit applications for any or all activities beyond the first access road and well sites one and two in Wao Kele 'O Puna and adjoining lands;

5. Copies of any and all correspondence and/or other documentation with all State or County of Hawaii agencies relating to geothermal exploration and/or development activities in Wao Kele 'O Puna and adjoining lands; and

6. Copies of any and all correspondence, internal memoranda, or other documents (i.e., instructions to security guards, etc.) relating to True's policies concerning access to Wao Kele 'O Puna and adjoining lands by native Hawaiians for purposes of exercising rights under Section 1-1, Hawaii Revised Statutes, and Article XII, Section 7 of the Hawaii Constitution.

DATED: Honolulu, Hawaii, _____.

CLERK OF THE ABOVE-ENTITLED COURT

RETURN OF SERVICE

Received this Subpoena Duces Tecum at _____

_____ on _____ and on _____

I served it on the within named _____

_____ by

delivering a copy to h__ and tendering to h__ the fee for one
day's attendance and the mileage allowed by law.

DATED: Honolulu, Hawaii, _____.

Deputy Sheriff, State of Hawaii

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
)	
Plaintiffs,)	
)	
vs.	)	AFFIDAVIT OF RUSSELL ALGER
)	
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)		
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Resources; The Estate of JAMES)		
CAMPBELL, Deceased, FRED E.)		
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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.)		
)	

AFFIDAVIT OF RUSSELL ALGER

STATE OF HAWAII)	
	)	ss.
CITY AND COUNTY OF HONOLULU)	

RUSSELL ALGER, being first duly sworn on oath, deposes and says:

3. I am the Director, Hawaii Asset Management, for the Estate of James Campbell, Deceased, and am authorized to make this affidavit on behalf of the Estate of James Campbell and its Trustees (singularly and collectively, the "Estate").

4. I make this affidavit on personal knowledge, and am competent to testify as to the matters contained herein.

5. I have reviewed the Notice of Taking Depositions Upon Oral Examination and Subpoena Duces Tecum issued to Affiant which are attached to the Memorandum in Support of Motion as Exhibit "1".

6. That none of the documents described in the Subpoena Duces Tecum addressed to Affiant (Exhibit "1") are his individual property.

7. That the information and documents in regard to the Estate that are described in paragraphs 2, 5, and 6 of the Subpoena Duces Tecum (Exhibit "1") may include trade secrets, confidential research, development or commercial or proprietary information.

FURTHER AFFIANT SAYETH NAUGHT.


RUSSELL ALGER

Subscribed and sworn to before me
this 12th day of April, 1993.


Notary Public, State of Hawaii

My commission expires: Feb. 11, 1996

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,)	CIVIL NO. 89-089 (Hilo)
)	
Plaintiffs,)	
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vs.)	NOTICE OF HEARING OF MOTION
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CORP., TRUE GEOTHERMAL DRILLING)		
CO., and MID-PACIFIC GEOTHERMAL)		
INC.,)		
)	
Defendants.)		
)	

NOTICE OF HEARING OF MOTION

TO: ALAN T. MURAKAMI, ESQ.
PAUL F.N. LUCAS, ESQ.
1164 Bishop Centre
1164 Bishop Street, Ste. 1205
Honolulu, Hawaii 96813

STEVEN C. MOORE
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302

YUKLIN ALULI, ESQ.
415-C Uluniu Street
Kailua, Hawaii 96734

Attorneys for Plaintiff

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

Attorneys for Defendants
True Energy Geothermal Corp., True
Geothermal Drilling Co. and
Mid-Pacific Geothermal Inc.

PLEASE TAKE NOTICE that the foregoing Motion will be presented before the Honorable RIKI MAY AMANO, Judge of the above-entitled Court, in her courtroom, Third Circuit Court, 75 Aupuni Street, Hilo, Hawaii 96720, on Friday, the 16th day of April, 1993, at 8:30 a.m., or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawaii; April 12, 1993.



WAYNE NASSER

MICHAEL W. GIBSON

Attorneys for Defendants
The Estate of James Campbell,
Deceased, W. H. McVay and P. R.
Cassiday, Trustees Under the Will
and of the Estate of James
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CORP., TRUE GEOTHERMAL DRILLING)	
CO., and MID-PACIFIC GEOTHERMAL)	
INC.,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below service of a copy of the foregoing document was made upon the parties below, by depositing the same in the United States mail, postage prepaid, addressed as follows:

ALAN T. MURAKAMI, ESQ.
PAUL N. LUCAS, ESQ.
1164 Bishop Centre
1164 Bishop Street, Ste. 1205
Honolulu, Hawaii 96813

STEVEN C. MOORE
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302

YUKLIN ALULI, ESQ.
415-C Uluniu Street
Kailua, Hawaii 96734

Attorneys for Plaintiff

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

Attorneys for Defendants
True Energy Geothermal Corp., True
Geothermal Drilling Co. and
Mid-Pacific Geothermal Inc.

DATED: Honolulu, Hawaii; April 12, 1993.



WAYNE NASSER

MICHAEL W. GIBSON

Attorneys for Defendants

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Campbell, Deceased, W. H.
McVay and P. R. Cassiday,
Trustees Under the Will and
of the Estate of James
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