

Exhibit “A”

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

STUDENTS FOR FAIR ADMISSIONS;
I.P., by and through her next friend and
mother, B.P.; and B.P.,
Plaintiffs,

v.

TRUSTEES OF THE ESTATE OF
BERNICE PAUAHI BISHOP d/b/a
KAMEHAMEHA SCHOOLS,
Defendant.

Case No. 1:25-cv-450-MWJS-RT

**NON-PARTY INTERVENOR
HAWAIIAN KINGDOM'S
PROPOSED
RULE 12(b)(6)
MOTION TO DISMISS**

INTRODUCTION

1. The Council of Regency of the Hawaiian Kingdom (hereinafter, “Hawaiian Kingdom”), as proposed non-party intervenor in the above-captioned case, respectfully moves this Court to dismiss the plaintiffs’ complaint because it fails as a matter of law and fact and proceeds under an inapplicable legal framework.
2. The claims brought forward by plaintiffs fail to recognize the continued existence of the Hawaiian Kingdom as a sovereign State under international law, and they misapply U.S. civil rights statutes to a trust lawfully established and governed under Hawaiian Kingdom law.
3. Kamehameha Schools, as a charitable trust created under will of Princess Bernice Pauahi Bishop in 1883, is governed by Hawaiian Kingdom law. This legal framework predates the overthrow of the government of the Hawaiian Kingdom in 1893 and purported statehood.
4. Plaintiffs’ claims must be dismissed because they misstate the governing law, ignore controlling Hawaiian Kingdom constitutional law, and improperly attempt to apply United States civil rights statutes to a foreign charitable trust established and governed by a separate sovereign legal system.

5. Put simply, Plaintiffs ignore the historical and legal context behind Bernice Pauahi Bishop's trust, and fail to state a claim upon which relief can be granted.

6. The law that governs the trust, its purpose, and its admissions policies is Hawaiian Kingdom law, as recognized under principles of international law, comity, and the law of occupation, including the provisional laws proclaimed by the Council of Regency in 2014 pursuant to Article 43 of the 1907 Hague Regulations. *See* Hague Convention (IV) Respecting the Laws and Customs of War on Land art. 43, Oct. 18, 1907, 36 Stat. 2277; Council of Regency of the Hawaiian Kingdom, Proclamation of Provisional Laws (Oct. 10, 2014) (Exhibit G, memorandum of law in support of motion to intervene).

BACKGROUND

The History and Validity of Bernice Pauahi Bishop's Will

7. By her Last Will and Testament dated October 31, 1883, with two codicils dated October 4, 1884, and October 9, 1884, Princess Bernice Pauahi Bishop established a charitable trust mandating the creation of two schools "to be known as, and called the Kamehameha Schools," and expressly directed that a portion of the annual income be devoted to "the support and education of orphans, and others in indigent circumstances, giving the preference to Hawaiians of pure or part aboriginal blood." *See* Will of Bernice Pauahi Bishop (Oct. 31, 1883).

8. The Will and codicils were admitted to probate by the Supreme Court of the Hawaiian Kingdom on December 2, 1884. The designated trustees formally accepted their duties on March 4, 1885. These actions took place in full accordance with the laws and constitutional structure of the Hawaiian Kingdom, which recognized and enforced the trust's charitable purpose.

9. The Will further required that vacancies in trusteeship be filled by a majority of the Justices of the Hawaiian Kingdom Supreme Court and that annual reports be submitted to the Chief Justice or highest judicial officer of the Kingdom.

10. The Kamehameha Schools for Boys opened in 1887, followed by the Schools for Girls in 1894, fulfilling Pauahi's testamentary mandate to provide educational opportunities primarily for Hawaiian children.

11. Contemporary statements by Charles Reed Bishop confirm that Pauahi's intent was to provide educational opportunities in which "Hawaiians have the preference," so that her people could protect their material and national welfare in a changing political environment. *See* Charles R. Bishop, Address at First Founder's Day Celebration of the Kamehameha Schools (Dec. 19, 1888).

12. The trust was properly constituted under Hawaiian Kingdom law, including its formation, charitable purpose, trustee oversight, and admissions preference, and

was accepted and supervised by the highest judicial authority of the Kingdom in accordance with then-existing constitutional and trust principles.

ARGUMENT

I. Plaintiffs Fail to State a Claim Upon Which Relief Can Be Granted (12(b)(6))

A. Standard of Review

13. A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) may be granted if the complaint fails “to state a claim upon which relief can be granted.” *See* Fed. R. Civ. P. 12(b)(6).

14. To survive a motion to dismiss, a complaint must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

15. The plausibility standard requires more than conclusory allegations or a “formulaic recitation of the elements of a cause of action.” *Id.*

16. Here, the Complaint fails both factual and legal plausibility because a) it misstates the governing law, attempting to apply U.S. statutes to a foreign trust; b) it ignores the historical context and controlling Hawaiian Kingdom law; and c) it asserts claims that are legally incompatible under the applicable sovereign Hawaiian Kingdom framework, even if the factual allegations were accepted as a true.

17. Even assuming arguendo that all the factual allegations in the Complaint are true, Plaintiffs cannot prevail as a matter of law because their claims rest on a fundamentally flawed legal theory. Dismissal is therefore warranted under 12(b)(6).

B. The Hawaiian Kingdom Has a Duty to Protect Future Generations

18. Hawaiian Kingdom law recognizes a duty to safeguard future generations, including the welfare of the Hawaiian people, as consistent with constitutional principles and national interests. *See Rex v. Booth*, 2 Haw. 616, 631 (1863).

19. Plaintiffs' claims, if successful, threaten Kamehameha Schools' lawful policies that benefit native Hawaiians. Should the lawsuit succeed, it would impact the admissions policies of Kamehameha Schools that were expressly mandated by Pauahi's will and upheld under Hawaiian Kingdom law, thereby threatening an institution designed to benefit aboriginal Hawaiians and future generations.

20. The admission policies and trust administration are not arbitrary exclusions but are integral to the trust's charitable purpose: to protect the cultural, educational, and civil interests of aboriginal Hawaiians.

C. Plaintiffs Misstate Hawaiian History and Legal Status

21. Plaintiffs incorrectly assert that "[o]nce Hawaii became a territory over a century ago, Kamehameha became subject to Section 1981." Am. Compl. ¶ 122.

22. At the time of Pauahi's will and when the trust was accepted by the Hawaiian Kingdom Supreme Court, the Hawaiian Kingdom existed as a recognized sovereign and independent State under international law; its laws still govern trusts and the civil rights of Hawaiian subjects, including native Hawaiians. *See Larsen v. Hawaiian Kingdom*, 119 I.L.R. 566, 581 (Perm. Ct. Arb. 2001).

23. Moreover, annexation of the Hawaiian Islands did not occur through a treaty. International scholars agree that Hawai'i was never properly annexed nor did it constitute a purported territory or purported state of the American union; under international law and the law of occupation, the Hawaiian Kingdom continues to exist as a State. *Id.*

D. Hawaiian Kingdom Law Controls, Not U.S. Statutes

24. Plaintiffs' Complaint rests on fundamental errors concerning (a) the governing law (U.S. civil rights statutes versus Hawaiian Kingdom law), (b) historical context (overthrow, annexation, and statehood), and (c) the legal status of Kamehameha Schools as a foreign charitable trust.

25. International law establishes that the laws of the occupied State control and not the laws of the occupying State. Article 43 of the Hague Regulations of 1907 requires the occupying power to respect the laws "in force in the country" which

remain applicable during occupation with respect to civil status, property, trusts, and education. Hague Convention (IV) art. 43, Oct. 18, 1907, 36 Stat. 2277.

26. Although this Court is not an occupation court – which would be the proper venue for an occupying force in a foreign nation, U.S. courts routinely apply foreign law where appropriate, including to trusts and civil matters governed by another sovereign under principles of comity and choice of law. *See, e.g., Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895).

27. Under these principles, and under international law governing occupation, the Court has an obligation to apply Hawaiian Kingdom law, which remains controlling with respect to the trust at issue. Plaintiffs’ claims fail under this governing law. *See* Hague Convention (IV) art. 43, Oct. 18, 1907, 36 Stat. 2277.

28. The Complaint misstates the controlling law. Plaintiffs assert claims under 42 U.S.C. § 1981, premised on United States constitutional and statutory concepts of racial discrimination. However, § 1981 does not apply to a private charitable trust organized and governed under foreign law, particularly where that law remains operative under international law.

29. Kamehameha Schools is governed by Hawaiian Kingdom law with respect to trust formation, administration, and admissions policy, and Plaintiffs’ attempt to impose U.S. constitutional standards misapplies governing principles.

II. Hawaiian Kingdom Law Supports Kamehameha Schools' Admission Policies

30. Hawaiian Kingdom constitutional law allows for preferential policies that promote the welfare of aboriginal Hawaiians, consistent with the Kingdom's conception of civil rights and national welfare.

31. Comparable trusts, including the Lunalilo Trust and the Lili'uokalani Trust, lawfully incorporated preferences for Hawaiians of pure or part aboriginal blood. Preferential treatment for aboriginal Hawaiians was thus consistent with civil rights and national welfare.

32. The Hawaiian Kingdom Supreme Court addressed the scope of civil rights and special legislation affecting aboriginal Hawaiians in *Naone v. Thurston*, 1 Haw. 392 (1856); *Rex v. Booth*, 2 Haw. 616 (1863); and *Rex v. Henry H. Sawyer* (Haw. Kingdom Sup. Ct. 1859). These cases establish that Hawaiian law allows special legislation to protect the material interests of aboriginal Hawaiians.

33. In *Booth*, the Supreme Court rejected arguments grounded in notions of equality imported from U.S. constitutional theory and clarified that Hawaiian constitutional law permits measures that promote the material interests and general welfare of the nation, including its aboriginal population. *Rex v. Booth*, 2 Haw. at 629–31.

34. The Court emphasized that civil rights under Hawaiian law must be interpreted within the Kingdom's constitutional structure as a limited monarchy, not a republic, and that policies benefiting aboriginal Hawaiians are lawful where they advance national welfare. *Id.* at 631.

35. Kamehameha Schools' admissions policy is a private trust policy, not legislation, and it conforms to the same constitutional framework upheld in *Booth* and related cases.

36. Accordingly, the preference for aboriginal Hawaiian students is lawful under Hawaiian Kingdom law and consistent with Pauahi's testamentary intent, Hawaiian constitutional principles, and the trust's charitable purpose.

III. No Legal Remedy Exists Because Plaintiffs Cannot Override Hawaiian Kingdom Law

37. Plaintiffs' attempt to apply U.S. constitutional law misapplies governing principles. The Complaint does not address Hawaiian Kingdom law, does not refute its applicability, and does not allege facts sufficient to override the trust's governing legal framework.

38. Kamehameha Schools' policies promote the welfare of aboriginal Hawaiians in accordance with Hawaiian Kingdom law, and Plaintiffs cannot obtain relief by imposing an inapplicable U.S. statutory regime.

39. The Complaint therefore fails as a matter of law and must be dismissed in its entirety.

CONCLUSION

For the foregoing reasons, dismissal is warranted because:

- 1) Plaintiffs misapply United States law to an entity governed by Hawaiian Kingdom law, making their claims legally unsustainable;
- 2) The historical and legal record does not support plaintiffs' allegations, as Kamehameha Schools' admissions policies are lawful under Hawaiian Kingdom law and consistent with Pauahi's will and the constitutional principles of the Hawaiian Kingdom;
- 3) Kamehameha Schools' policies, in accordance with Hawaiian Kingdom law, protect the rights and welfare of aboriginal Hawaiians and plaintiffs' claims cannot override this lawful framework.

Accordingly, the Hawaiian Kingdom respectfully requests that this Court dismiss the Complaint in its entirety.

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Respectfully submitted this 16th of January, 2026.

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