

MATSUBARA KOTAKE & TABATA
A Law Corporation
BENJAMIN M. MATSUBARA 993-0
Charles R. Kendall Building
888 Mililani Street, Suite 308
Honolulu, Hawai'i 96813-2931
Phone: (808) 526-9566
Fax: (808) 538-3840
Email: bmatsubara@m-klawyers.com
Special Master

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SONNENBERG LAW OFFICE, LLLC
ERIC H. SONNENBERG 4024-0
1212 Punahou Street, #2406
Honolulu, Hawai'i 96826
Phone: (808) 358-2063
Email: Eric.sonnenbergllic@gmail.com
Special Master

KOBAYASHI SUGITA & GODA, LLP
CAYCIE K. GUSMAN WONG 10056-0
First Hawaiian Center
999 Bishop Street, Suite 2600
Honolulu, Hawai'i 96813
Phone: (808) 535-5700
Fax: (808) 535-5799
Email: ckg@ksglaw.com
Special Master

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate

of

BERNICE P. BISHOP,

Deceased.

EQUITY NO. 2048

SPECIAL MASTERS' REPORT ON THE
TRUSTEES' PETITION FOR REVIEW OF
TRUSTEE SELECTION PROCESS AND
TRUSTEE TERMS, FILED MAY 10, 2022;
DECLARATION OF SPECIAL MASTERS;
EXHIBITS "A"- "B"; CERTIFICATE OF
SERVICE

Hearing Date:

Date: June 27, 2024

Time: 10:00 am

Judge: The Honorable Jeannette H. Castagnetti



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**SPECIAL MASTERS' REPORT ON THE TRUSTEES' PETITION FOR
REVIEW OF TRUSTEE SELECTION PROCESS AND TRUSTEE TERMS,
FILED MAY 10, 2022**

TO THE HONORABLE PRESIDING JUDGE OF THE ABOVE-ENTITLED COURT:

Comes now BENJAMIN M. MATSUBARA, ESQ., ERIC H. SONNENBERG, ESQ., and CAYCIE KAHIAU GUSMAN WONG, ESQ., the duly Court-appointed Special Masters (collectively, the “**Special Masters**”), having completed their review and examination of the Trustees’ Petition for Review of Trustee Selection Process and Trustee Terms and all exhibits and the declaration of counsel attached thereto, filed by the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased (the “Trust” or “KS”), on May 10, 2022 [Dkt. 5129] (the “**Petition**”), and having conducted such additional investigation, interviews, and inquiries deemed relevant and appropriate, hereby respectfully report to the Court.

I. **INTRODUCTION**

A. **The Petition**

1. The Petition was filed by ROBERT K. W. H. NOBRIGA (Chair of the Board of Trustees), LANCE KEAWE WILHELM, ELLIOT K. MILLS, CRYSTAL KAUILANI ROSE, and DR. JENNIFER GOODYEAR-KA‘OPUA as TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, acting in their fiduciary and not in their individual capacities, as Petitioners (collectively, “**Trustees**” or “**Petitioners**”) on May 10, 2022 [Dkt. 5129].

2. The Petition, *inter alia*, asked the Court to appoint one or more special masters as the Court deems appropriate to review the Procedure for Selection of Trustees that was approved by this Court in the Order Granting Petition for the

Establishment of a Procedure for Selection of Future Trustees dated January 6, 2000 [Dkt 2696] (the “**Trustee Selection Process Order**”). See Petition, at para 7, Ex. A, and Ex. B.

3. The Trustees indicated that they do not mean to imply any dissatisfaction with the Trustee Selection Process Order or with the outcome of the selection process over the two decades, but just as they periodically review the policies and procedures that apply to the Trust to ensure that they reflect best practices, they believe that it is prudent to have the Trustee Selection Process reviewed periodically and finetuned as necessary to ensure that KS receive the benefit of the best Trustee candidates and that transitions of Trustees on and off the Board can be undertaken effectively. See Petition, at para 14.

B. **Appointment of the Special Masters**

Pursuant to Hawai‘i Probate Rules 28 and 29 and the Order of Reference to Special Masters, filed on August 15, 2022 [Dkt 5209] (the “**Order of Reference to the Special Masters**”), this Court appointed the undersigned Special Masters to examine and report on the Petition.

C. **The Purpose of the Trust Estate**

1. Princess Bernice Pauahi Bishop (“**Pauahi**”) died on October 16, 1884, and her Will and two codicils (collectively, the “**Will**”) were duly admitted to Probate in the Supreme Court of the Hawaiian Islands on December 2, 1884. See Dkt. 5378 (Master’s Report, filed March 5, 2024).

2. A true and accurate copy of said Will is attached hereto as **Exhibit “A”**.

3. The assets of the Estate of Pauahi (the “**Trust Estate**”) consist of real, personal and other properties and had an estimated value of approximately \$11.9 billion at the time of the filing of the Petition. See Petition, at para. 3.

4. The Trust Estate exists solely for the support of KS and the educational purposes specified in the Will. See Dkt. 5378; see also Petition.

5. KS is a perpetual, charitable education trust for the purpose of education of native Hawaiians and has no ascertainable beneficiaries. See Petition, at para. 5.

6. The Attorney General of the State of Hawai‘i represents all beneficiaries as *parens patriae*. Id.

7. The function of the Attorney General, as *parens patriae* of charitable trusts, is to represent the interests of those who benefit from the trust; that is, “to oversee the activities of the trustees to the end that the trust is performed and maintained in accordance with the provisions of the trust document, and to bring any abuse or deviation on the part of the trustees to the attention of the court for correction.” Midkiff v. Kobayashi, 54 Haw. 299, 335, 507 P.2d 724, 745 (1973).

8. By the terms of her Will, namely Article *Thirteenth*, Princess Pauahi gave, devised, and bequeathed all the rest, residue and remainder of her estate, subject to certain life interests which have lapsed or been surrendered, unto certain trustees, to hold upon the following, namely:

to erect and maintain in the Hawaiian Islands two schools, each for boarding and day scholars, one for boys and one for girls, to be known as, and called the Kamehameha Schools. I direct my trustees to expend as such amount

as they may deem best, not to exceed however one-half of the fund which may come into their hands, in the purchase of suitable premises, the erection of school buildings, and in furnishing the same with the necessary and appropriate fixtures furniture and apparatus. I direct my trustees to invest the remainder of my estate in such matter as they may think best, and to expend the annual income in the maintenance of said schools; meaning thereby the salaries of teachers, the repairing of buildings and other incidental expenses; and to devote a portion of each years income to support and education of orphans, and other in indigent circumstances, giving the preference to Hawaiian of pure or part aboriginal blood; the proportion in which said annual income is to be divided among the various objects above mentioned to be determined solely by my said trustees they to have full discretion. I desire my trustees to provide first and chiefly a good education in this common English branches, and also instruction in morals and in such useful knowledge as may tend to make good and industrious men and women; and I desire instruction in the higher branches to be subsidiary to the foregoing objects. For purposes aforesaid I grant unto my said trustees the full power to lease or sell any portion of my real estate, and to reinvest the proceeds and the balance of my estate in real estate, or in such other manner as to my said trustees may seem best. I also give unto my said trustees full power to make all such rules and regulations as they may deem necessary for the government of said schools and to regulate the admission of pupils, and the same to alter, amend and publish upon a vote of a majority of said trustees. I also direct that my said trustees shall annual make a full and complete report of all receipts and expenditures, and of the condition of said schools to the Chief Justice of the Supreme Court, and other highest judicial officer in this county; and shall also file before him annually an inventory of the property in their hands and how invested, and to publish the same in some News-paper published in said Honolulu; I also direct my said trustees to keep said school buildings insured in good Companies, and in case of loss to expend the amounts recovered in replacing or repairing said buildings. I also direct that the teachers of said schools shall forever be persons of the Protestant religion, but I do not intend that the choice should be restricted to persons of any particular sect of Protestants.

See Pauahi's Will at **Exhibit "A"**.

D. Jurisdiction

This Court has jurisdiction of this matter pursuant to Hawai'i Revised Statutes ("HRS") §§ 554D-202, 554D-203, 554D-103, 603-21.6, 603-21.7(1)(C), 560:1-201, 560:1-302. Venue is proper pursuant to §§ 554D-204 and 603-36(3).

II. REVIEW PROCESS

Pursuant to the Order of Reference to the Special Masters and the requests made in the Petition, the Special Masters requested various documents and public comments¹, conducted interviews, held discussions, made inquiries, and conducted reviews and investigations deemed appropriate. In the course of discharging their duties, the Special Masters reviewed the following records and documents:

1. The Petition and all attached exhibits and the declaration of counsel, including the Trustee Selection Process Order dated January 6, 2000, and the Master's Report on the Petition for Establishment of a Procedure for Selection of Trustees dated November 22, 1999 (the current "**Procedure for Selection of Trustees**"), which was adopted and approved by the Trustee Selection Process Order dated January 6, 2000;
2. The Will;
3. The KS Governance Policy;
4. The various procedures of the Trustees' Operations, Meetings, Delegation of Authority to CEO, Limitations, and Reporting;
5. The KS Strategic Vision 2040 ("**Vision 2040**");

Within a generation of twenty-five years, we see a thriving lāhui where our learners achieve postsecondary educational success, enabling good life and career choices. We also envision that our learners will be grounded in Christianity and Hawaiian values and will be leaders who contribute to their communities, both locally and globally.

¹ Attached as **Exhibit "B"** is a copy of the public comment advertisement that was published in Star Advertiser. The public comment advertisement was also published in various other print and distribution sources as provided in this Report infra.

6. KS' Mission:

Kamehameha Schools' mission is to fulfill Pauahi's desire to create educational opportunities in perpetuity to improve the capability and well-being of people of Hawaiian ancestry.

7. KS' Strategic Map 2025;

8. Selected Master's Reports from prior years filed with the Court

and exhibits attached thereto;

9. Trustees' Petition for Approval of the 137th Annual Account and all

attached exhibits, responses, and relevant orders;

10. The IRS and KS Closing Agreement dated August 18, 1999;

11. Stipulation Concerning Revisions to New Guidelines, filed April

30, 2014 (the "**2014 Guidelines**");

12. The 37 confidential public comments requested and/or provided to

the Special Masters, with the assistance of their consultant, *Inkinen Executive Search*; and

13. Other reports, documents, and records requested and/or provided

by the Trust or accessible under this Equity No. 2048.

**III. SUMMARY OF THE SPECIAL MASTERS' SIGNIFICANT FINDINGS
AND RECOMMENDATIONS WITH RESPECT TO THE CURRENT
PROCEDURE FOR SELECTION OF TRUSTEES**

After conducting their aforementioned review of the current Procedure for Selection of Trustees, the Special Masters hereby provide a summary of their significant findings and recommendations for this Court's consideration. The Special Masters' findings and recommendations are also further reflected and detailed in their [Proposed] Amended and Restated Procedure for Selection of Trustees set forth in Section IV hereinafter.

A. **Findings**

1. The current Procedure for Selection of Trustees was adopted on January 6, 2000—*nearly 25 years ago*.

2. The current Procedure for Selection of Trustees is not broken, but a review by the Special Masters was appropriate and necessary.

3. Changes and improvements to the current Procedure for Selection of Trustees should be made, and the Procedure for Selection of Trustees should be reviewed periodically and finetuned as necessary to ensure that KS receive the benefit of the best Trustee candidates.

4. Changes and improvements to the current Procedure for Selection of Trustees described hereinafter can be made and remain consistent with Princess Pauahi's Will.

5. Enhancing transparency of (i) the process by which individuals are selected to serve on the Trustee Selection Committee ("**Committee**"), and (ii) what characteristics, experience and qualifications those selected to the Committee possess which enable each of them to appropriately serve on the Committee, can improve the current Procedure for Selection of Trustees.

6. Enhancing collaboration between the Committee and the acting Trustees and CEO can improve the current Procedure for Selection of Trustees.

B. **Recommendations**

1. **Enhance Transparency With Respect to the Court's Selection of Committee Members**

a. One year in advance of a Trustee vacancy, the Trustees should file a Notice of Anticipated Vacancy with the Court.

b. Upon such notice, the Court shall appoint a Committee within a reasonable time whose purpose is to assist the Court in actively seeking a qualified individual (described hereinafter in Section IV at III(D)) to fill the vacant trustee position.

c. The Court should publish and make available to the public the names, resumes and cover letters of the selected Committee members in the Court's Order of Reference.

d. The Court has the discretion to appoint a special master(s) and/or an experienced consultant to assist in recruiting, obtaining and/or collecting the names, resumes and cover letters of those interested in serving as a Committee member.

e. The cover letter provided by an individual interested in serving as a Committee member should provide the basis that the individual satisfies the qualifications of a Committee member (as described in Section IV at III(A) hereinafter).

2. Enhance Collaboration of Input and Information

a. Prior to the Committee seeking applicants for the anticipated trustee vacancy, the Trustees shall provide a confidential report to the Committee that sets forth the Strategic Vision of KS, the risks and challenges KS is currently facing, the needs of KS, and their desired skills, experience and/or characteristics of a successor trustee.

b. The Trustees are not prohibited from encouraging individuals, who they believe meet the qualifications and characteristics, to apply for a Trustee position;

c. Prior to seeking applicants for the anticipated Trustee vacancy, the Committee must interview the Trustees and the CEO of KS as a whole;

d. Prior to seeking applicants for the anticipated Trustee vacancy, the Committee must interview the Trustees, individually but in their fiduciary capacity;

e. Prior to seeking applicants for the anticipated Trustee vacancy, the Committee must interview the CEO of KS, individually but in the CEO's fiduciary capacity;

f. Prior to seeking applicants for the anticipated Trustee vacancy and as they deem necessary, the Committee may interview prior Committee members, the current or prior Masters, former trustees, KS Alumni, KS Stakeholders, and/or other native Hawaiian organizations or individuals and community members who are intimately familiar with the history, legacy and purpose of KS under Princess Pauahi's Will, with respect to obtaining information that could assist them with selecting the best Trustee candidate; and

g. The interviews as set forth in c. through f. shall be confidential.

C. **Suggested Changes Not Adopted and More Appropriate as the Subject of One or More Future and Specific Petition(s)**

The Special Masters received the following suggested changes, which were reviewed and considered; however, the Special Masters believe the following suggested changes were not required at this time, and would be more appropriate as the subject of one or more future and specific petition(s):

1. **Extend Trustee Terms**

Institutional knowledge is valuable and cannot be underscored. However, the Special Masters do not recommend any changes to the current Trustee Terms at this time.

2. **The Committee Members Should be Limited to KS Stakeholders and/or KS Alumni Only**

a. The Special Masters acknowledge that individuals with a deep understanding of the person, legacy, and Will of Princess Pauahi and how it is manifested and implemented in the vision and mission of KS is imperative, and also embodied by many KS Stakeholders and/or KS Alumni.

b. The Special Masters also acknowledge that many KS Stakeholders and/or KS Alumni have familiarity with KS' Strategic Vision, concern for the well-being of native Hawaiians, have an understanding and appreciation for the foundation upon which KS was founded, and have made invaluable contributions to the betterment of the native Hawaiian community and the community at large.

c. The Special Masters, however, have received various definitions and input with respect to what various individuals perceive as a "KS Stakeholder".

d. The Special Masters do not recommend that Committee members be solely limited to KS Stakeholders (various definitions) and/or KS Alumni.

e. The Special Masters recommend that the Court should consider the qualifications and characteristics of individuals closely before selecting them as Committee members, and publish and make available to the public the names, resumes and cover letters of the selected Committee members in the Court's Order of Reference. The cover letter provided by an individual interested in serving as a Committee member should provide the basis for why they satisfy the qualifications and characteristics of a Committee member as set forth hereinafter.

3. **Sitting KS Trustee(s) Should Serve as Committee Members**

The Special Masters acknowledge that the sitting KS Trustees and CEO have unparalleled insight into the needs, risks and challenges KS is currently facing, and enhancing collaboration will improve the current Procedure for Selection of Trustees. However, the Special Masters do not recommend that sitting KS Trustee(s) or KS' CEO serve as a Committee Member, and recommend that the Court to consider implementing their recommendations to enhance collaboration and involvement.

IV. **PROPOSED AMENDED AND RESTATED PROCEDURE FOR SELECTION OF TRUSTEES**

I

INTRODUCTION

A. **Background**

1. Under the Will of Princess Pauahi, the Justices of the Supreme Court of the Kingdom of Hawai'i were delegated the power to appoint the Trustees of the Estate of Pauahi, Deceased.

2. In pertinent part, Article 14 of the Will states that "[trustee] vacancies shall be filled by the choice of a majority of the Justices of the Supreme Court."

3. In a letter dated April 19, 1999, and filed in this Equity No. 2048, Chief Justice Ronald T. Moon, and Justices Steven H. Levinson, Paula A. Nakayama, and Mario R. Ramil confirmed that they would no longer exercise the power to appoint trustees to the Board of Trustees of Princess Pauahi's Trust.

4. Thus, by way of the Trustee Selection Process Order filed on January 6, 2000, this Court ruled that in view of the declaration by the Justices, the

Probate Court had the authority and jurisdiction to exercise the power of appointment and to establish a selection procedure, in as much as the selection mechanism established by the Will had been rendered inoperable.

5. Currently, the five incumbent Justices of the Supreme Court of Hawai‘i, acting in their individual capacities and not in their collective or official capacity as the Supreme Court of Hawai‘i, have continued to confirm to the Court with respect to the appointments of trustees that they decline to exercise the power to appoint trustees to the Board of Trustees of Princess Pauahi’s Trust.

B. The Will of Bernice Pauahi Bishop.

The Will clearly and unambiguously provides that the trustees of the Trust Estate shall be appointed as follows:

... I further direct that the number of my said trustees shall be kept at five; and that vacancies shall be filled by the choice of a majority of the Justices of the Supreme Court, the selection to be made from persons of the Protestant religion ...

See Article Fourteenth of the Will (emphasis added).

In construing this provision of the Will, the Hawai‘i Supreme Court has held that the power of appointment is vested in the Justices, as individuals, and not as a court. See Estate of Bishop, 23 Haw. 575, 581 – 582 (1917), aff’d, 250 F. 145, 149 – 50 (9th Cir. 1918). The Court explained that the language used in the Will is merely descriptive of the persons whom Pauahi intended should exercise the power of appointment. Id. The power of appointment is granted to the Justices in their individual capacities. Therefore, there is no basis in law or equity to compel the Justices to exercise that power. Moreover, the Will does not provide for nor suggests an alternative mechanism for selecting future trustees.

C. **Participation by Justices**

Notwithstanding their withdrawal from the trustee selection process, the Justices, by virtue of the power of appointment granted to them under the Will, conceivably remain "interested persons" as contemplated in the Uniform Probate Code. See generally HRS § 554D-103. Consequently, the Justices will be served with courtesy copies of this Report. The Justices may submit their individual responses to this Report if they choose to do so.

D. **Prior Court Orders and Stipulations**

A number of Probate Court Orders and Stipulations have been issued in this Equity No. 2048, affecting the Trust Estate. Under the "law of the case" doctrine, the relevant Orders and Stipulations filed herein are binding upon the Special Masters in their review and recommendations with respect to the procedure for selecting trustees described herein below.

The "law of the case" doctrine is defined as follows:

The phrase "law of the case" has . . . been used in discussing, *inter alia*, the question whether a trial court judge is bound to follow a prior interlocutory decision of fact or law made in the same case by another judge of the same court. 5 Am.Jur.2d *Appeal and Error* § 744 (1962). This is a rule of practice based on consideration of efficiency, courtesy, and comity. Wong v. City and County of Honolulu, 66 Haw. 389, 665 P.2d 157 (1983); Gallas v. Sanchez, 48 Haw. 370, 405 P.2d 772 (1965); Annot., 132 A.L.R. 14-89 (1941).

State v. Goodwin, 7 Haw.App. 261, 263 n. 2, 752 P.2d 598, 600 n. 2 (1988).

E. **CEO-Based Management System and Governance Policy**

KS underwent substantial changes as a result of the implementation of a CEO-based management system required by Stipulation 14 in the Stipulations Concerning Master's Recommendations (109th, 110th, and 111th Annual Accounts), filed October 2, 1998 ("1998 Stipulations"), and the conditions required by the terms of the IRS Closing Agreement

dated February 23, 2000 (the “IRS Closing Agreement”) and approved by this Court’s Order Approving Petition for Approval of Settlement of IRS Audit Issues filed on December 1, 1999. See the 2014 Guidelines, filed on April 30, 2014.

KS’ CEO-based system of management incorporates a formal governance policy and procedures and defines their fiduciary responsibilities of the Board of Trustees as follows:

- a. Ensure that the KS mission is appropriate, relevant and vital to the intended beneficiaries under the Will and the vision of Ke Ali‘i Pauahi, and monitor the success of KS in fulfilling its mission.
- b. Oversee the development of and approve all strategic policies affecting the administration of KS, especially its educational, endowment, fiscal and stewardship objectives.
- c. Ensure that KS and its assets are managed prudently and exclusively for KS’ charitable educational purposes consistent with the terms of the Will, orders of the Hawai‘i Probate Court, KS strategic plans, KS’ tax-exempt status and applicable laws.
- d. Monitor and review financial reports and projections and be accountable for KS’ financial well-being, including its endowment, as it relates to carrying out financial responsibilities, which includes setting appropriate financial reporting metrics and periodically assessing the endowment’s overall performance against established metrics.
- e. Review and approve the annual budget and ensure that effective fiscal controls are established.
- f. Hire, support, and provide guidance to the CEO; set goals and objectives for the CEO; evaluate and monitor the CEO’s performance; and, where appropriate, remove and replace the CEO.
- g. Consult with the CEO to ensure that management development, compensation and succession plans are in place for executive management positions.
- h. Approve plans for any major organizational or program change.

See Dkt. 5378; see also Governance Policy.

F. **Public Comment**

In considering the Petition, the Special Masters requested comments and recommendations from the public regarding the current Trustee Selection Process and Trustee Terms, including the reasons in support of any comments and/or recommendations,

and any supporting documents referenced. As set forth in the Public Notice Announcement, a copy of which is attached to as **Exhibit “B”**, the Special Masters indicated that all information submitted for consideration would be treated as confidential and would not attribute any information in any public report to the person who submitted it unless reasonably necessary as required by law.

Consequently, on May 12-17, 19, 24, 2023, the Special Masters published Public Notice in various newspapers wherein they requested written comments from the community at large regarding the current Trustee Selection Process and Trustee Terms. The Public Notice was published in the following:

Print ads:

- Press release
- Hawai‘i Tribune Herald
- Honolulu Star Advertiser
- Maui News
- MidWeek
- The Office of Hawaiian Affairs (OHA)’s Ka Wai Ola
- Pacific Business News
- The Garden Island
- West Hawai‘i Today

Email Distribution:

- Hawaiian Civic Clubs
- KS Alumni Association
- Native Hawaiian Chamber of Commerce
- Native Hawaiian Legal Corporation

Online posting:

- Kamehemaha Schools (website and Instagram)
- Inkinen website

- Council for Native Hawaiian Advancement

As of the July 14, 2023 deadline set forth in the Public Notice, the Special Masters received thirty-seven (37) written comments.

The Special Masters considered all of the written comments submitted in response to the Public Notice. The Special Masters appreciate the time and effort taken by individuals who submitted comments on the issues of concern in this proceeding.

II

DISCUSSION

A. **The Authority and Roles of the Probate Court**

The Probate Court is required to construe a will or trust so as to implement the intent of the settlor. Bishop v. Kemp, 35 Haw. 1 (1939); Campbell v. Kawanānakoā, 34 Haw. 333, 342 (1937); In re Campbell, 33 Haw. 799 (1936); Hapai v. Brown, 21 Haw. 499, 505 (1913); Haw. Rev. Stat. § 560:2-603. The settlor's intent is to be ascertained, if at all possible, from the four corners of the document. In re Lopez, 62 Haw. 44, 49, 636 P. 2d 731 (1981); In re Dowsett, 38 Haw. 407 (1949); Fitchie v. Brown, 18 Haw. 52, 70-71 (1906); Haw. Rev. Stat. § 560:2-603. Furthermore, construction of a will or trust entails the same principles as construction of a contract. In re Lopez, *supra*, 64 Haw. at 58, n. 13.

The Probate Court's role in the exercise of its authority is to give effect to Pauahi's instructions as set forth in her Will. Except under the most extreme circumstances, the Probate Court is not permitted to depart from or alter the terms of the Will. In this case, based upon the declarations of the Justices, in their individual capacity, declining their authority to exercise the power of appointment of trustees, Pauahi's instructions regarding trustee selection is now inoperable. In the absence of an alternative means for fulfilling

this function, the legal authority for appointing (and removing) the trustees of the Trust is now vested in the Probate Court. See HRS §§ 554D-202, 554D-203, 554D-103, 603-21.6, 603-21.7(1)(C), 560:1-201, 560: 1-302. Venue is proper pursuant to §§ 554D-204 and 603-36(3).

The Probate Court also possesses the authority to fashion a procedure that will best maintain and further Pauahi's Will. In fashioning such a procedure, the Probate Court, may consider Pauahi's legacy as embodied in KS and the children educated there, including the size, status and historical role of the Trust here in Hawai'i. HRS § 560:1-302(b) ("The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it."). The Probate Court may also consider the unprecedented circumstances the Trust faced prior to the Court's issuance of Trustee Selection Process Order on January 6, 2000, including the demands by the native Hawaiian community to participate in the selection process, the public's desire for an impartial and non-politicized selection process, and the Justices' desire to preserve the integrity of the Judiciary.

The procedure selected must, at a minimum, address the following guidelines:

1. be consistent with Pauahi's Will, intent and wishes;
2. be a process which encompasses the confidence of the native Hawaiian community and the community at large; and
3. be devoid of elements and features that would invite legal challenges that could result in changes to Pauahi's vision and legacy.

Recommending that the Probate Court act as the selecting authority is not based upon a quality or character judgment over the other appointing authorities which have been proposed. Rather, this recommendation is based upon the statutory authority and

jurisdiction of the Probate Court to appoint trustees of any trust when the mechanism for appointment set forth in the respective trust instruments become inoperable. Since the mechanism established in the Will has been rendered inoperable, the normal and customary statutory procedure should apply. Any other conclusion would result in an unnecessary rewriting of the Will.

B. **Princess Pauahi's Legacy Would Best Be Served By The Probate Court Exercising The Power of Appointment**

Upon review of the prior orders, stipulations, and applicable Hawai'i law, the Special Masters conclude that the terms of the Will would be preserved by having the Probate Court appoint the trustees of the Trust Estate. The Probate Court is vested with the authority and jurisdiction to exercise the power of appointment, and to adopt a selection procedure. The Probate Court already considers the annual accounts of the trustees for approval through the review and examination of its court-appointed masters. Furthermore, the Probate Court has presided over all the material proceedings affecting the trustees' compliance with the prior Orders and Stipulations relating to the governance and leadership of the Trust Estate. Therefore, being best advised of the premises herein and in the interest of judicial economy, the Probate Court can and should continue to exercise its statutory authority by confirming this Amended and Restated Procedure for Trustee Selection.

In exercising its authority, it is well within the discretion of the Probate Court to consider the various interests affecting the Trust and to incorporate mechanisms to address them. Among the interests noted in the pleadings and comments received is the participation of the native Hawaiian community in the selection process.

The Special Masters believe it is well within the jurisdiction and discretion of the Probate Court to continue to adopt a procedure that allows individuals from the native

Hawaiian community and community at large to participate in the trustee selection process, provided that each of these individuals, *inter alia*, possess integrity, moral character, a commitment to the purpose and intent of Princes Pauahi's Will and legacy, and are familiar with, sensitive to, and have an understanding and appreciation for Princess Pauahi's Will, legacy and her vision for the education and well-being of people of native Hawaiian ancestry. See Section III(A) infra.

Finally, the Special Masters believe that it is well within the Probate Court's authority to adopt within the selection process a specific statement of required trustee qualifications. These qualifications are included in the current Procedure for Selection of Trustees dated November 22, 1999, which the Special Masters suggest amending in part, to include additional required trustee qualifications as provided hereinafter in Section III(D). The Special Masters continue to believe that an affirmative expression of objective qualifications in selecting trustees will positively serve Pauahi's intent, the beneficiaries of the Trust Estate, the image of the Judiciary, and the interests of the native Hawaiian community and the community at large.

III

SELECTION PROCESS FOR FUTURE TRUSTEES

A. Appointment of the Committee

1. One year in advance of a Trustee vacancy, the Trustees should file a Notice of Anticipated Vacancy with the Court.
2. Upon such notice, the Court shall appoint a committee (the "**Committee**") whose purpose is to assist the Court in seeking a qualified individual (as described hereinafter) to fill the vacant trustee position.
3. The Court shall constitute the Committee within a reasonable time.

4. The Court should publish and make available to the public the names, resumes and cover letters of the selected Committee members in the Court's Order of Reference.
5. The Court may appoint a special master(s) and/or an experienced consultant(s) to assist in recruiting, obtaining and/or collecting the names, resumes and cover letters of those interested in serving as a Committee member.
6. The cover letter provided by an individual interested in serving as a Committee member should provide the basis for why the individual satisfies the qualifications of a Committee member.
7. The Committee shall be comprised of a minimum of seven (7) persons as determined by the Court from time to time.
8. The Committee shall consist of knowledgeable and informed individuals, each of whom the Probate Court finds to possess a commitment to the purpose and intent of Pauahi's Will and legacy, integrity, ethical conduct, moral character, disinterested status necessary to be qualified and serve as an independent and unconflicted Committee member, and demonstrated a longstanding history leadership, competence, and probity.
9. Each Committee member shall be familiar with, sensitive to, and have an understanding and appreciation for:
 - a. Princess Pauahi's Will, legacy and her vision for the education and well-being of people of native Hawaiian ancestry;
 - b. The history and role of the Trust relative to the native Hawaiian community and the community at large;
 - c. KS' strategic vision and mission; and
 - d. The foundation upon which KS was founded.
10. Each Committee member, relative to the purpose and intent of the Will, should ideally possess experience and insight into the operation, management, and leadership of large organizations such as:
 - a. a large private educational institution;
 - b. large financial institutions; or
 - c. large public charitable trusts or foundations.

11. Membership in one or more Hawaiian organizations shall not exclude any person from being selected as a Committee member. However, such Committee members shall act as individuals and not as representatives of any Hawaiian organizations he or she might be a member of. Committee members need not be a member of a native Hawaiian organization to be appointed as a Committee member.
12. The Special Masters believe that individual character traits and qualifications as opposed to group membership as a basis for appointment to the Committee is the more appropriate standard to utilize due to the eternal consensus of what comprises positive character traits. The Special Masters believe it would be inappropriate to exclude qualified individuals because of their non-membership in a particular group. This procedure is meant to be inclusive rather than exclusive.
13. Prior to the Committee seeking applicants the anticipated trustee vacancy, the Trustees shall provide a confidential report to the Committee that sets forth the Strategic Vision of KS, the risks and challenges KS is currently facing, the needs of KS, and their desired skills, experience and/or characteristics of a successor trustee.
14. The Trustees are not prohibited from encouraging individuals, who they believe meet the qualifications and characteristics, to apply for a Trustee position.
15. Prior to seeking applicants for the Trustee vacancy, the Committee must interview the Trustees and the CEO of KS as a whole.
16. Prior to seeking applicants for the Trustee vacancy, the Committee must interview the Trustees, individually but in their fiduciary capacity.
17. Prior to seeking applicants for the Trustee vacancy, the Committee must interview the CEO of KS, individually but in the CEO's fiduciary capacity.
18. Prior to seeking applicants for the Trustee vacancy and as they deem necessary, the Committee may interview prior Committee members, the current or prior Masters, former trustees, KS Alumni, KS Stakeholders, and/or other native Hawaiian organizations or individuals and community members who are intimately familiar with the history, legacy and purpose of KS under Princess Pauahi's will, with respect to obtaining information that could assist them with selecting the best Trustee candidate.

19. The interviews set forth in 15 through 18 shall be confidential.
20. The Court shall designate the Committee members of the Committee as officers of the Court akin to a court-appointed master² or a “kokua kanawai” in accordance with Rules 28 and 113 of the Hawai’i Probate Rules, respectively.
21. The Committee shall receive statements, testimony and information from witnesses with such assurances to them of confidentiality as the Committee reasonably deems appropriate. No such confidence shall be broken by the Committee except with the express approval of the witness concerned or except as required by law.
22. The statements, testimony and information received or obtained by the Committee, except as shall have been filed with the Court by the Committee, shall remain under the seal of the Court, available for inspection only by the Court. The Committee’s deliberations shall not be public proceedings.
23. The Committee shall not be compensated, except for reimbursement of its reasonable out of pocket expenses, until its decision has been filed or as otherwise ordered by the Court. If a vacancy arises on the Committee, the Court, upon notice and consideration shall appoint a replacement Committee member.
24. If the Committee fails or is unable to render a timely decision, the Court shall constitute a new Committee.
25. The Committee may but shall not be required to file with the Court any other written evidence or submissions received, gathered or considered by it.
26. The Committee’s determination shall be determined by a simple majority of the Committee. Dissenting Committee members shall be entitled to file with the Court a statement of their dissent and the reasons therefor.
27. The Committee’s selection of finalists shall be entitled to a presumption of reasonableness.
28. The Court shall reject the Committee’s selection of semi-finalists if its selection(s) was:

² See generally Estate of Lee Chuck, 33 Haw. 220 (1934) (the master becomes an agent of the court and aids and assists the court in clarifying the issues and making tentative findings).

- a. procured by corruption, fraud, or undue means; or
 - b. based upon partiality or corruption in the Committee or any of its members; or
 - c. if any Committee members or any of them were guilty of misconduct, in refusing or neglecting to obtain information of a candidate, or in refusing to hear evidence pertinent and material to its consideration of the candidate, or of any other misbehavior, by which the interests of the Trust Estate or its trustees have been prejudiced; or
 - d. where the Committee exceeded its powers or so imperfectly executed them that its consideration of candidates consistent with the selection criteria set forth herein was not made.
29. The foregoing shall not be deemed or construed to limit the Court's authority to modify or disapprove the Committee's selection of finalists for other cause.

The Committee's ability to act independently is assured by having its members designated as officers of the Court. See generally Seibel v. Honolulu, 63 Haw. 516, 631, P. 2d 173 (1981); Hulsman v. Hemmeter Development Corp., 65 Haw. 58, 647, P.2d 713 (1982). The Committee's independence is further preserved by granting the Committee the authority to make assurances of confidentiality to witnesses and to have its deliberations kept confidential. This will allow for free and open discussions, while maintaining the privacy of individuals applying for the position of trustees.

B. Authority to Retain Consultant

- 1. The Committee shall have the authority to retain an experienced consultant knowledgeable and experienced in hiring of executive personnel.
- 2. The consultant should:
 - a. Assist the Committee in organizing, screening, and reviewing applications and nominations for the vacant trusteeship position;

- b. Verify information provided by the applicant, including educational background, business background, honors and awards, community activities, and involvement in native Hawaiian issues; and
 - c. Provide the initial screening of applicants and report its findings to the Committee.
- 3. All costs and expenses incurred by the consultant in carrying out the directives of the Committee shall be borne by the Trust Estate.

C. **The Trustee Selection Process**

The Committee shall assist the Probate Court with the following:

- 1. Thoroughly reviewing and considering the confidential report submitted by the Trustees to the Committee that sets forth the Strategic Vision of KS, the risks and challenges KS is currently facing, the needs of KS, and their desired skills, experience and/or characteristics of a successor trustee.
- 2. Publishing notice of anticipated trustee vacancy and the qualifications and requirements of applicants in various print and distribution sources.
- 3. Screening and identifying qualified applicants.
- 4. Soliciting qualified individuals who may not have applied.
- 5. Applicants will be required to provide a statement regarding their perceived role of a trustee and their goals and objectives for the Trust Estate if appointed.
- 6. Reviewing applications to determine best qualified candidates.
- 7. In the event of a conflict of interest between a Committee member and a candidate who has met the minimum qualifications, the Committee member should declare that a conflict exists and fully describe the nature and extent of the conflict. The remaining Committee should determine whether that Committee member in question should withdraw from consideration of the candidate in question. For a Committee member to be considered not to have a conflict of interest, that Committee member must not:
 - a. be related to (i.e., a member of the family of) any disqualified person whose compensation is being determined;

- b. be in an employment relationship subject to the direction or control of any applicant;
 - c. be receiving compensation or other payments subject to the approval of such applicant;
 - d. have any material financial interest that would be affected by the selection of such applicant as a trustee; and
 - e. approve any arrangement with respect to an applicant who has approved or will approve a transaction providing economic benefits to the Committee member.
8. Based on information in the applications and gathered by the consultant, the Committee should reduce the number of applicants under consideration to six (6) semi-finalists.
 9. The Committee then should proceed with interviews of the six (6) semi-finalists to determine three (3) finalists.
 10. Upon determination of the three (3) finalists, the Committee shall file their names in a writing filed with the Court as a public record, and shall also publish their names in a newspaper of statewide distribution.
 11. The Trustees of the Trust Estate and the Attorney General, as *parens patriae*, shall be entitled to submit such evidence and testimony for the Committee's review and consideration as may be pertinent and material to the Committee's further deliberation of the three (3) finalists.
 12. In the event there is more than one (1) vacancy on the Board of Trustee, the name of an additional finalist shall be submitted to the Court for each additional vacancy.
 13. The native Hawaiian community and general public shall also be entitled to submit comment and support of the candidates to the Committee within thirty (30) days from the initial date of publication of the names of the three (3) finalists.
 14. The Committee shall file a final report, including any other written evidence or submissions received, gathered or considered by it regarding the qualifications of the three (3) finalists, and serve copies of such report to the Attorney General, as *parens patriae*, and the Trustees of the Trust Estate.

15. The Court shall schedule a hearing at which the Attorney General, as *parens patriae*, and the Trustees of the Trust Estate shall be afforded an opportunity to be heard.
16. The Court shall interview the finalists and select one of the finalists as Trustee. If none of the finalists is selected, the Court will advise the Committee of its reasons and request additional names.

D. **Statement of Required Trustee Qualifications**

1. **Commitment to Uphold Pauahi's Will and Legacy**

A candidate for trustee should be able to demonstrate the following:

- a. A willingness, sincerity, and strong commitment to uphold the purposes of KS and the Trust Estate, as stated in Princess Pauahi's Will and Two Codicils;
- b. An understanding of the legacy of Princess Pauahi and how it is manifested and implemented in the mission of KS;
- c. A concern for the well-being of native Hawaiians; and
- d. The capacity to fulfill the responsibilities of a fiduciary under trust law.

2. **Characteristics, Personal Traits, and Qualities**

A candidate for trustee should be able to demonstrate and embody the following minimum characteristics, personal traits, and qualities:

- a. A recognized reputation of integrity, ethical conduct, moral character and leadership;
- b. Respect from and for the native Hawaiian community and the community at large;
- c. Consistent and active servant leadership in the community with a specific emphasis on those issues that impact the well-being of native Hawaiians and the people of Hawai'i;
- d. Have a history of success in business, finance, or related areas necessary to fulfill the Will of Pauahi and mission of KS;
- e. Have received a formal education; and

- f. Possess outstanding personal traits, including Hawaiian values such as *pono* (to be moral and proper), *'imi 'ike* (to seek knowledge), *laulima* (to work cooperatively), *lokomaiika'i* (to share), *na 'au pono* (to possess a deep sense of justice), *mālama* (to care for each other), and *ha'aha'a* (to be humble).

3. **Experience and Skills**

The trustee candidate should have experience and be able to demonstrate skills in strategic thinking and collaboration, and possess expertise in one or more of the following areas:

- a. **Business Administration:** to include knowledge, skills and prior successful experience in managing a large corporation;
- b. **Finance and Investment:** to include management of land and monetary assets of a large corporation;
- c. **Strategic Planning and Policy Setting:** to include responsibility for administering the affairs and/or setting policies for the direction and management of a large corporation or educational institution;
- d. **General areas of interest,** including education, law, finance or especially relevant background in governance.

The Special Masters believe that the candidates' experience and skills as outlined above, are essential for them as trustees to fulfill their duties and responsibilities as set forth in the Governance Policy. In addition, these candidates, as trustees, must be able to properly assess the performance of the CEO in managing the Trust Estate.

The education and well-being of people of native Hawaiian ancestry is a timeless and solemn covenant between Princess Pauahi and the Trustees of the Trust Estate. Therefore, the Committee must not merely rely on the aforementioned statement of qualifications in assessing a candidates. Instead, from aforementioned statement of

qualifications, the Committee must discern whether that candidate possesses a deep sense of commitment and willingness to carry Pauahi's Will, vision and legacy into the future.

E. **Trustee Term Limits and Mandatory Age Limits**

1. The trustees shall be appointed to a five-year term and shall be eligible to petition the Court for reappointment of one additional, consecutive five-year term.
2. One year prior to the expiration of a trustee's term, if eligible, that trustee may submit a petition to the Court for reappointment.
3. Upon receipt of the trustee's petition for reappointment, the Court shall schedule a hearing at which the Attorney General, as *parens patriae*, the incumbent trustees, and the court-appointed master responsible for reviewing the annual accounts shall be afforded an opportunity to be heard.
4. In the event that trustee is not reappointed by the Court, the Court shall constitute a Committee in accordance with the procedures set forth herein whose members shall proceed with the selection process and shall submit the names of three finalists to the Court.
5. There should be no mandatory retirement age nor any other arbitrary limit upon the terms of the trustees, except that where more than one trustee is selected at the same time, their respective terms should be staggered to ensure that no more than two trustees' terms expire within the same year.
6. The five (5) year term limits for trustees, subject to reappointment for an additional five (5) year term, as set forth in prior orders in this Equity No. 2048, is reasonable based upon the trustees' duties and responsibilities outlined in the Governance Policy and the orders in effect should not be disturbed.

V. **REQUEST FOR THE COURT**

Your Special Masters respectfully request that this Honorable Court:

1. Issue an Order approving the Amended and Restated Procedure for

Trustee Selection described in Section IV herein;

2. Grant each of the Special Masters' request for fees, costs, and expenses incurred in preparing this Report on the Petition. Details of the fees, costs and expenses will be provided to the Trust, Attorney General, and the Court prior to the scheduled hearing on the subject Petition.

DATED: Honolulu, Hawai'i, June 10, 2024.

/s/ Benjamin M. Matsubara
BENJAMIN M. MATSUBARA
Special Master

/s/ Eric H. Sonnenberg
ERIC H. SONNENBERG
Special Master

/s/ Caycie K. Gusman Wong
CAYCIE KAHIAU GUSMAN WONG
Special Master

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In the Matter of the Estate

of

BERNICE P. BISHOP,

Deceased.

EQUITY NO. 2048

DECLARATION OF SPECIAL MASTERS

DECLARATION OF SPECIAL MASTERS

WE, SPECIAL MASTERS BENJAMIN M. MATSUBARA, ERIC H. SONNENBERG, and CAYCIE KAHIAU GUSMAN WONG, declare the following to be true and correct based upon my personal knowledge:

1. Attached hereto as **Exhibit “A”** to the Special Masters’ Report on the Trustees’ Petition for Review of Trustee Selection Process and Trustee Terms, filed May 10, 2022 [Dkt. 5129] (the “**Special Masters’ Report**”) is a true and correct copy of the Will of Bernice Pauahi Bishop and her two codicils, which the Special Masters obtained from the Trustees’ Petition for Approval of the 137th Annual Account (FYE June 30, 2022) at Exhibit A, filed on May 15, 2023 [Dkt 5268] in this Equity No. 2048.

2. Attached hereto as **Exhibit “B”** is a true and copy of the public comment advertisement that the Special Masters published in the Star Advertiser, with the assistance of their consultant, *Inkinen Executive Search*. The Special Masters’ public comment advertisement was also published in various other print and distribution sources as provided in the Special Masters’ Report.

WE, SPECIAL MASTERS BENJAMIN M. MATSUBARA, ERIC H. SONNENBERG,
and CAYCIE KAHIAU GUSMAN WONG, do declare and certify under penalty of law that the
foregoing is true and correct.

DATED: Honolulu, Hawai'i, June 10, 2024.

/s/ Benjamin M. Matsubara
BENJAMIN M. MATSUBARA

/s/ Eric H. Sonnenberg
ERIC H. SONNENBERG

/s/ Caycie K. Gusman Wong
CAYCIE KAHIAU GUSMAN WONG

Exhibit "A"

Will of Bernice Pauahi Bishop

Know all Men by these Presents, That I, Bernice Pauahi Bishop, the wife of Charles R. Bishop, of Honolulu, Island of Oahu, Hawaiian Islands, being of sound mind and memory, but conscious of the uncertainty of life, do make, publish and declare this my last Will and Testament in manner following, hereby revoking all former wills by me made:

First. I give and bequeath unto my namesakes, E. Bernice Bishop Dunham, niece of my husband, now residing in San Joaquin County, California, Bernice Parke, daughter of W. C. Parke Esq., of Honolulu, Bernice Bishop Barnard, daughter of the late John E. Barnard Esq. of Honolulu, Bernice Bates, daughter of Mr. Dudley C. Bates, of San Francisco, California, Annie Pauahi Cleg-horn of Honolulu, Lilah Bernice Wodehouse, daughter of Major J. H. Wodehouse, of Honolulu, and Pauahi Judd the daughter of Col. Charles H. Judd of Honolulu, the sum of Two hundred Dollars (\$200.) each.

Second. I give and bequeath unto Mrs. William F. Allen, Mrs. Amoe Haalelea, Mrs. Antone Rosa, and Mrs. Nancy Ellis, the sum of Two Hundred Dollars (\$200.) each.

Third. I give and bequeath unto Mrs. Caroline Bush, widow of A. W. Bush, Mrs. Sarah Parmenter, wife of Gilbert Parmenter Mrs. Keomailani Taylor, wife of Mr. Wray Taylor, to their sole and separate use free from the control of their husbands, and to Mrs. Emma Barnard, widow of the late John E. Barnard Esq. the sum of Five hundred dollars (\$500.) each.

Fourth. I give, devise and bequeath unto H. R. H. Liliuokalani, the wife of Gov. John O. Dominis, all of those tracts of land known as the "Ahupuaa of Lumahai," situated on the Island of Kauai, and the "Ahupuaa of Kealia", situated in South Kona Island of Hawaii; to have and to hold for and during the term of her natural life; and after her decease to my trustees upon the trusts below expressed.

Fifth. I give and bequeath unto Kahakuakoi (w) and Kealohapauole, her husband, and to the survivor of them, the sum of Thirty Dollars (\$30.) per month, (not \$30. each) so long as either of them may live. And I also devise unto them and to their heirs of the body of either, the lot of land called "Mauna Kamala", situated at Kapalama Honolulu; upon default of issue the same to go to my trustees upon the trusts below expressed.

Sixth. I give and bequeath unto Mrs. Kapoli Kamakau, the sum of Forty Dollars (\$40.) per month during her life; to my servant woman Kaia the sum of Thirty Dollars (\$30.) per month during her life, and to Nakaahiki (w) the sum of Thirty Dollars (\$30.) per month during her life.

Seventh. I give, devise and bequeath unto Kapaa (k) the house-lot he now occupies, situated between Merchant and Queen Streets in Honolulu, to have and to hold for and during the term of his natural life; upon his decease to my trustees upon the trusts below expressed.

Eighth. I give, devise and bequeath unto Auhea (w) the wife of Lokana (k) the house-lot situated on the corner of Richard and Queen Streets, now occupied by G. W. Macfarlane & Co; to have and to hold for and during the term of her natural life; upon her decease to my trustees upon the trusts below expressed.

Ninth. I give, devise and bequeath unto my husband, Charles R. Bishop, all of the various tracts and parcels of land situated upon the Island of Molokai, comprising the

"Molokai Ranch", and all of the live-stock and personal property thereon; being the same premises now under the care of R. W. Myer Esq.; and also all of the real property wherever situated, inherited by me from my parents, and also all of that devised to me by my aunt Akahi, except the two lands above devised to H. R. H. Liliuokalani for her life; and also all of my lands at Waikiki, Oahu, situated makai of the government main road leading to Kapiolani Park; to have and to hold together with all tenements, hereditaments, rights, privileges and appurtenances to the same appertaining, for and during the term of his natural life; and upon his decease to my trustees upon the trusts below expressed.

Tenth. I give, devise and bequeath unto Her Majesty Emma Kaleleonalani, Queen Dowager, as a token of my good will, all of the premises situated upon Emma Street in said Honolulu, known as "Kaakopua," lately the residence of my cousin Keelikolani; to have and to hold with the appurtenances for and during the term of her natural life; and upon her decease to my trustees upon the trusts below expressed.

Eleventh. I give and bequeath the sum of Five thousand Dollars (\$5000.) to be expended by my executors in repairs upon Kawaiahao Church building in Honolulu, or in improvements upon the same.

Twelfth. I give and bequeath the sum of Five thousand Dollars (\$5000.) to be expended by my executors for the benefit of the Kawaiahao Family School for Girls (now under charge of Miss Norton) to be expended for additions either to the grounds, buildings or both.

Thirteenth. I give, devise and bequeath all of the rest, residue and remainder of my estate real and personal, wherever situated unto the trustees below named, their heirs and assigns forever, to hold upon the following trusts, namely: to erect and maintain in the Hawaiian Islands two schools, each for boarding and day scholars, one for

boys and one for girls, to be known as, and called the Kamehameha Schools. I direct my trustees to expend such amount as they may deem best, not to exceed however one-half of the fund which may come into their hands, in the purchase of suitable premises, the erection of school buildings, and in furnishing the same with the necessary and appropriate fixtures furniture and apparatus. I direct my trustees to invest the remainder of my estate in such manner as they may think best, and to expend the annual income in the maintenance of said schools; meaning thereby the salaries of teachers, the repairing buildings and other incidental expenses; and to devote a portion of each years income to the support and education of orphans, and others in indigent circumstances, giving the preference to Hawaiians of pure or part aboriginal blood; the proportion in which said annual income is to be divided among the various objects above mentioned to be determined solely by my said trustees they to have full discretion. I desire my trustees to provide first and chiefly a good education in the common English branches, and also instruction in morals and in such useful knowledge as may tend to make good and industrious men and women; and I desire instruction in the higher branches to be subsidiary to the foregoing objects. For the purposes aforesaid I grant unto my said trustees full power to lease or sell any portion of my real estate, and to reinvest the proceeds and the balance of my estate in real estate, or in such other manner as to my said trustees may seem best. I also give unto my said trustees full power to make all such rules and regulations as they may deem necessary for the government of said schools and to regulate the admission of pupils, and the same to alter, amend and publish upon a vote of a majority of said trustees. I also direct that my said trustees shall annually make a full and complete report of all receipts and expenditures, and of the condition of said schools to the Chief Justice of the Supreme Court, or other highest judicial officer in this country; and shall also file before him annually an inventory of the property in their hands

and how invested, and to publish the same in some Newspaper published in said Honolulu; I also direct my said trustees to keep said school buildings insured in good Companies, and in case of loss to expend the amounts recovered in replacing or repairing said buildings. I also direct that the teachers of said schools shall forever be persons of the Protestant religion, but I do not intend that the choice should be restricted to persons of any particular sect of Protestants.

Fourteenth. I appoint my husband Charles R. Bishop, Samuel M. Damon, Charles M. Hyde, Charles M. Cooke, and William O. Smith, all of Honolulu, to be my trustees to carry into effect the trusts above specified. I direct that a majority of my said trustees may act in all cases and may convey real estate and perform all of the duties and powers hereby conferred; but three of them at least must join in all acts. I further direct that the number of my said trustees shall be kept at five; and that vacancies shall be filled by the choice of a majority of the Justices of the Supreme Court, the selection to be made from persons of the Protestant religion.

Fifteenth. In addition to the above devise to Queen Emma, I also give, devise and bequeath to her (said Emma Kaleleonalani Queen Dowager (*sic*) the Fish-pond in Kawaa, Honolulu near Oahu Prison, called "Kawa", for and during the term of her natural life; and after her decease to my trustees upon the trusts aforesaid.

Sixteenth. In addition to the above devise to my husband, I also give and bequeath to him, said Charles R. Bishop all of my personal property of every description, including cattle at Molokai; to have and to hold to him, his executors, administrators and assigns forever.

Seventeenth. I hereby nominate and appoint my husband Charles R. Bishop and Samuel M. Damon, executors of this my will.

In witness whereof I, said Bernice Pauahi Bishop, have hereunto set my hand and seal this thirty-first day of October A. D. Eighteen hundred and eighty-three.

BERNICE P. BISHOP (SEAL)

The foregoing instrument, written on eleven pages, was signed, sealed, published and declared by said Bernice Pauahi Bishop, as and for her last will and testament in our presence, who at her request, in her presence, and in the presence of each other, have hereunto set our names as witnesses thereto, this 31st day of October A. D. 1883.

F. W. MACFARLANE
FRANCIS M. HATCH

CODICIL NO. 1.

This is a Codicil to the last Will and Testament of me, Bernice P. Bishop, dated October thirty-first A. D. Eighteen hundred and eighty-three:

1st I give and bequeath unto Mrs William F. Allen the sum of One thousand Dollars (\$1000.) in place of the amount given to her in my said will.

2nd I revoke the devise to Her Majesty Emma Kaleleonalani of the premises situated upon Emma Street in Honolulu, known as "Kaakopua", contained in the tenth article of my said will; and in place thereof I give, devise and bequeath unto her, said Emma Kaleleonalani, all of those parcels of land situated in Nuuanu Valley, Oahu, on both sides of the road, known as "Laimi"; to hold for and during the term of her natural life; and upon her decease to my trustees upon the trusts expressed in my said will. Said Emma to also have the fish pond known as "Kawa", as provided in the fifteenth article of my said will.

3rd In addition to the bequests to my husband named in my said will I also give, devise and bequeath unto my said husband, Charles R. Bishop, the land known as Waialae-nui, as well as Waialae-iki and also the land known as "Maunaloa", Island of Oahu; and also all of the premises situated in said Honolulu, known as the Ili of "Kaakopua", extending from Emma to Fort Street and also all kuleanas in the same, and everything appurtenant to said premises; to hold for his life, remainder to my trustees.

4th I give, devise and bequeath unto Kuaiwa (k) and Kaakaole (w), old retainers of my parents, that piece of land now occupied by them, situated in upper Kapalama,

in said Honolulu, called "Wailuaakio"; to have and to hold for and during the term of their natural lives and that of the survivor of them; remainder to my trustees upon the trusts named in my said will.

5th I give, devise and bequeath unto Kaluna (k) and Hoopii, his wife, those premises now occupied and cultivated by them in Kauluwela, Liliha Street, Honolulu; to have and to hold for and during the terms of their natural lives and that of the survivor of them; remainder to my trustees upon the trusts named in my said will.

6th I give, devise and bequeath unto Naiapaakai (k) and Loika Kahua his wife, that lot of land now enclosed and occupied by them, in Kauluwela in said Honolulu, the size of said lot not to exceed one acre; to have and to hold for and during the term of their natural lives, and that of the survivor of them; remainder to my trustees upon the trusts named in my said will.

7th I give and bequeath unto Lola Kahailiopua Bush, of said Honolulu, the sum of Three hundred Dollars (300.) per year during her minority, to be applied towards her education and clothing; and upon her becoming of age the sum of One thousand Dollars, (\$1000.) to her sole and separate use, free from the control of any husband she may marry.

8th I give and bequeath unto Bernice B. Barnard, of said Honolulu the sum of Three hundred Dollars (\$300.) a year during her minority, to be applied towards her education and clothing; and upon her becoming of age the sum of One thousand Dollars (\$1000.) to her sole and separate use, free from the control of any husband she may marry. This in lieu of the \$200. given by my will.

9th I give, devise and bequeath unto my friend Samuel M. Damon, of said Honolulu, all of that tract of land

known as the Ahupuaa of Moanalua, situated in the District of Honolulu, Island of Oahu; and also the fishery of Kaliawa; to have and to hold with the appurtenances to him, his heirs and assigns forever.

10th I give and bequeath unto my servants Kaleleku (k) and Kaoliko (k) his brother, each the sum of Twenty Dollars (\$20.) per month, during the term of the natural life of each of them.

11th I revoke so much of the fifth article of my said will as devises the land known as "Mauna Kamala" to Kahakuakoi (w) and Kealohapauole her husband; and in lieu thereof I give, devise and bequeath unto said Kahakuakoi (w) and Kealohapauole (k) all of that tract of land known as Hanohano, situated at Ewa, Island of Oahu, formerly the property of Puhalahua; to have and to hold as limited in said fifth article of my said will.

12th I give and bequeath unto the Bishop's School in Honolulu, called "Iolani College", the sum of Two thousand Dollars (\$2000.); and to the English Sisters School called "St. Albans Priory" the sum of Two thousand Dollars (\$2000.); and to "St. Andrews Church" the sum of Two thousand Dollars (\$2000.).

13th I give, devise and bequeath unto Kaiulani Cleghorn, daughter of A. S. Cleghorn, of Honolulu, all of that parcel of land and spring situated at Waikiki-uka, Oahu, known as Kanewai; to have and to hold for and during the term of her natural life; remainder to my trustees upon the trusts named in my said will.

14th I give and bequeath unto the Rev. Henry H. Parker, of Honolulu, the sum of Five hundred Dollars (\$500.)

15th I give and bequeath unto Mary R. Collins, if she be with me at the time of my death, the sum of Two hundred Dollars (\$200.); and unto Maggie Wynn, if she be then with me, the sum of One hundred Dollars (\$100.)

16th I hereby give the power to all of the beneficiaries named in my said will, and in this codicil, to whom I have given a life interest in any lands, to make good and valid leases of such lands for the term of ten years; which said leases shall hold good for the remainder of the several terms thereof after the decease of said devisees; the rent however, after such decease to be paid to my executors or trustees; provided however that no rent be collected for a longer period in advance at any one time than for six months, and no bonus be taken by said devisees, or any of them, on account of such leases or lease; in either of which cases such lease or leases shall cease and determine, at the option of my executors or trustees, upon the death of such devisee or devisees, who shall have collected rent for a longer period in advance than for six months, or who shall have taken such bonus.

17th I give unto the trustees named in my will the most ample power to sell and dispose of any lands or other portion of my estate, and to exchange lands and otherwise dispose of the same; and to purchase land, and to take leases of land whenever they think it expedient, and generally to make such investments as they consider best; but I direct that my said trustees shall not purchase land for said schools if any lands come into their possession under my will which in their opinion may be suitable for such purpose; and I further direct that my said trustees shall not sell any real estate, cattle ranches, or other property, but to continue and manage the same, unless in their opinion a sale may be necessary for the establishment or maintenance of said schools, or for the best interest of my estate. I further direct that neither my executors, nor trustees shall have any control or disposition of any of my

personal property, it being my will that my husband, Charles R. Bishop, shall have absolutely all of my personal property of every description. And I give unto my executors named in my said will full power to sell any portion of my real estate for the purpose of paying debts or legacies without obtaining leave of Court; and to give good and valid deeds for the same, the purchasers under which are not to be responsible for the application of the purchase money.

In witness whereof I, said Bernice P. Bishop, have hereunto set my hand and seal this fourth day of October A. D. Eighteen hundred and eighty-four. The words "to hold for his life, remainder to my trustees" interlined on 2d page before signing.

BERNICE P. BISHOP (SEAL)

Signed, sealed, published and declared by the said Bernice P. Bishop as and for a codicil to her last will and testament, in our presence, who at her request, in her presence and in the presence of each other, have subscribed our names as witnesses thereto.

Oct. 4, 1884

WILLIAM W. HALL
FRANCIS M. HATCH

CODICIL NO. 2.

This is a second Codicil to the last Will and Testament of me, Bernice P. Bishop, dated thirty-first October A. D. Eighteen hundred and eighty three:

1st In addition to the lands devised in the fourth article of my said will to H. R. H. Liliuokalani, the wife of John O. Dominis, I also give, devise and bequeath unto her, said Liliuokalani, all of that tract of land situated in the District of Honolulu, Island of Oahu, adjoining Waialae nui, known as "Kahala", together with the buildings thereon, and the fishing rights appurtenant thereto; to have and to hold for and during the term of her natural life, remainder to my trustees upon the trusts named in my said will.

2d In addition to the house lot devised to Kapaa (k) in the seventh article of my said will, which house lot was formerly the property of his wife Akahi, I also give, devise and bequeath unto him, said Kapaa (k) all of that parcel of land adjoining said house lot, fronting on Queen Street and extending to Richards Street, and now under lease to Henry R. Macfarlane; he, said Kapaa, to pay the taxes upon the same and upon the parcel devised by me to Auhea; to have and to hold for and during the term of the natural life of him said Kapaa, remainder to my trustees, upon the trusts named in my said will.

3d I revoke the devise to Auhea (w) wife of Lokana, set forth in the eighth article of my said will. And I give, devise and bequeath unto said Auhea, that house lot situated on said Richards Street (not on the corner of Queen Street) formerly occupied by said Auhea, and which was formerly the dwelling of Akahi; the same adjoining the premises under lease to Henry R. Macfarlane but not included in said lease; to have and to hold for and during

the term of the natural life and her, said Auhea, free from the control of her husband; remainder to my trustees upon the trusts named in my said will.

4th Of the two schools mentioned in the thirteenth article of my said will, I direct the school for boys shall be well established and in efficient operation before any money is expended or anything is undertaken on account of the new school for girls. It is my desire that my trustees should do thorough work in regard to said schools as far as they go; and I authorize them to defer action in regard to the establishment of said school for girls, if in their opinion from the condition of my estate it may be expedient, until the life estates created by my said will have expired, and the lands so given shall have fallen into the general fund. I also direct that my said trustees shall have power to determine to what extent said school shall be industrial, mechanical, or agricultural; and also to determine if tuition shall be charged in any case.

In witness whereof I, said Bernice P. Bishop have hereunto set my hand and seal this ninth day of October A. D. 1884.

BERNICE P. BISHOP

Signed, sealed, published and declared by the said Bernice P. Bishop as and for a codicil to her last will and testament in the presence of us, who at her request, in her presence and in the presence of each other have hereunto subscribed our names as witnesses thereto.

October 9th 1884.

G. TROUSSEAU
J. BRODIE

Exhibit "B"

PUBLIC NOTICE

Seeking Comment on Kamehameha Schools Trustee Selection Process and Trustee Terms

The Hawai'i State Probate Court has appointed Benjamin M. Matsubara, Eric H. Sonnenberg, and Caycie Kahiau Gusman Wong as Special Masters to examine and report on the Trustees' Petition for Review of Trustee Selection Process and Trustee Terms, filed May 10, 2022, by the Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools.

In reporting on the subject of the Petition, the Special Masters request comments and recommendations from the public regarding the current Trustee Selection Process and Trustee Terms (www.inkinen.com/KS-trustee). Please include your reasons in support of any comments and/or recommendations, and attach any supporting documents that are referenced.

The Special Masters will treat all information submitted for consideration as confidential and will not attribute the information in any public report to the person who submitted it unless reasonably necessary or required by law. Consequently, comments that do not include the name and contact information of the person who submitted the information will not be accepted and reviewed. This will help to ensure that the Special Masters have a person to contact to validate information and to seek clarification or additional information regarding submitted comments as may be necessary.

Please submit comments, including full name and contact information by July 14, 2023 to:

**Special Masters
c/o Inkinen Executive Search**

Email:
KStrustee@inkinen.com

Mail:
1003 Bishop Street, Suite 1477
Honolulu, HI 96813

For more information, please visit
www.inkinen.com/KS-trustee
Exhibit "B"

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

In the Matter of the Estate

of

BERNICE P. BISHOP,

Deceased.

EQUITY NO. 2048

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct filed copy of the foregoing document was served on this date, electronically via the Judiciary Filing and Service System (JEFS), and/or via U.S. Mail, Postage Prepaid upon the following interested parties as follows:

RHONDA L. GRISWOLD, ESQ.
PŌHAI NU'UHIWA CAMPBELL, ESQ.
Cades Schutte, LLP
1000 Bishop Street, Suite 1200
Honolulu, Hawai'i 96813
E-mail: rgriswold@cades.com
pcampbell@cades.com

[JEFS]

Attorneys for the Trustees under the Will and of
the Estate of BERNICE PAUAHI BISHOP,
Deceased

ANNE E. LOPEZ, ESQ.
KRISTIE CRUZ CHANG, ESQ.
Department of the Attorney General
425 Queen Street
Honolulu, Hawai'i 96813
E-mail: kristie.c.chang@hawaii.gov
kaiwi.opulaoho@hawaii.gov

[JEFS]

Attorneys for the Attorney General of Hawai'i
as *Parens Patriae*

WALTER S. KIRIMITSU
Pauahi Tower, Suite 1700
Honolulu, Hawai'i 96813
Email: wskirimitsu@gmail.com

[U.S. Mail, Postage Prepaid]

Court Appointed Master

COURTESY COPIES TO HAWAI'I SUPREME COURT JUSTICES, AS
INDIVIDUALS:

MARK E. RECKTENWALD
Hawai'i Supreme Court
Ali'iōlani Hale
417 South King Street
Honolulu, Hawai'i 96813-2943

[U.S. Mail, Postage Prepaid]

SABRINA S. MCKENNA
Hawai'i Supreme Court
Ali'iōlani Hale
417 South King Street
Honolulu, Hawai'i 96813-2943

[U.S. Mail, Postage Prepaid]

TODD W. EDDINS
Hawai'i Supreme Court
Ali'iōlani Hale
417 South King Street
Honolulu, Hawai'i 96813-2943

[U.S. Mail, Postage Prepaid]

LISA M. GINOZA
Hawai'i Supreme Court
Ali'iōlani Hale
417 South King Street
Honolulu, Hawai'i 96813-2943

[U.S. Mail, Postage Prepaid]

VLADIMIR P. DEVENS
Hawai'i Supreme Court
Ali'iōlani Hale
417 South King Street
Honolulu, Hawai'i 96813-2943

[U.S. Mail, Postage Prepaid]

DATED: Honolulu, Hawai‘i, June 10, 2024.

/s/ Benjamin M. Matsubara
BENJAMIN M. MATSUBARA
Special Master

/s/ Eric H. Sonnenberg
ERIC H. SONNENBERG
Special Master

/s/ Caycie K. Gusman Wong
CAYCIE KAHIAU GUSMAN WONG
Special Master