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April 5, 2009

Ms. Molly Dwyer
Clerk of Court
U.S. Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1518

Re: Kuroiwa v. Lingle, No. 08-16769
Citation of Supplemental Authority
FRAP 28(j) and Ninth Circuit Rule 28-6

Dear Ms. Dwyer:

Plaintiffs-Appellants Kuroiwa et al. advise you of the following decision entered after their briefs and motion for injunction pending appeal were filed.

Hawaii et al v. Office of Hawaiian Affairs et al, --- S.Ct. ----, 2009 WL 814889 (U.S.Hawai'i) decided 3/31/2009.

The high court reversed Hawaii Supreme Court's 1/31/2008 judgment enjoining the State from selling any of the 1.2 million acres of the Ceded Lands Trust until the claims of native Hawaiians to those lands have been resolved. The Hawaii court had relied on a "plain reading of the 1993 Apology Resolution" which "dictated" its conclusion that injunction was required. (*Id.* at 6.)

SCOTUS: "Pursuant to the Newlands Resolution, the Republic of Hawaii ... "cede[d] ... to the United States the absolute fee and ownership of all public, Government, or Crown lands, ... (*Id.* at 3). The 1993 Apology Resolution has two substantive provisions, neither justifies the judgment below. (*Id.* at 7.) Reliance on "whereas" clauses was "wrong for at least

three reasons,” the third being that “the Apology Resolution would raise grave constitutional concerns if it purported to “cloud” Hawaii’s title to its sovereign lands.” (*Id.* at 8.)

This decision settles the question of whether OHA’s claims to special treatment for native Hawaiians “cloud” the title of the State of Hawaii as Trustee of the 1.2 million acres. They do not. Any such claims are foreclosed by the Newlands Resolution as reiterated by the Organic Act.

The special treatment of one class of beneficiaries is the primary question presented in Kuroiwas’ complaint for breach of trust. See Complaint ER 16, 409-420. Thus, the highest court of the land has now validated Kuroiwas’ first claim for relief and their motion for injunction pending appeal.

The high court’s holding that the Apology Resolution has no legal effect cuts the heart out of the Akaka bill (See Kuroiwas’ Opening Brief 13-15); and

At 8, the decision cites the canon of constitutional avoidance under which Kuroiwas challenge the misinterpretation of Admission Act § 5(f); thereby obviating the need for the United States as a party. See Kuroiwas’ Opening Brief 17 – 21.

Very truly yours,

/s/ H. William Burgess
H. William Burgess
Attorney for Plaintiffs-Appellants
James I. Kuroiwa, Jr. et al.

Cc: All counsel via CM/ECF system.