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Attorney for Plaintiff-Successor Trustee,
JAMES B. NICHOLSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JAMES B. NICHOLSON,
SUCCESSOR TRUSTEE,

Plaintiff,

v.

BOBBY N. HARMON,

Defendant.

CIVIL NO. CV05-00030 DAE/KSC

DECLARATION OF STEVEN GUTTMAN
REGARDING FAILURE OF DEFENDANT
BOBBY N. HARMON TO COMPLY WITH
THE ORDER GRANTING PLAINTIFF'S
MOTION FOR CONTEMPT AGAINST
DEFENDANT BOBBY N. HARMON OF
FINAL JUDGMENT FILED AUGUST 22,
2006, AND COURT'S ORDER GRANTING
PLAINTIFF'S MOTION FOR ENTRY OF
JUDGMENT ON THE ARBITRATION
AWARD AGAINST BOBBY N. HARMON
FILED AUGUST 18, 2006, FILED
JANUARY 26, 2007; EXHIBIT "A";
CERTIFICATE OF SERVICE

[NON-HEARING MOTION]

JUDGE: Hon. David A. Ezra

DECLARATION OF STEVEN GUTTMAN REGARDING
FAILURE OF DEFENDANT BOBBY N. HARMON TO COMPLY WITH
THE ORDER GRANTING PLAINTIFF'S MOTION FOR CONTEMPT
AGAINST DEFENDANT BOBBY N. HARMON OF FINAL JUDGMENT
FILED AUGUST 22, 2006, AND COURT'S ORDER GRANTING
PLAINTIFF'S MOTION FOR ENTRY OF JUDGMENT ON THE
ARBITRATION AWARD AGAINST BOBBY N. HARMON FILED
AUGUST 18, 2006, FILED JANUARY 26, 2007

I, STEVEN GUTTMAN, do hereby declare the following under penalty of perjury:

1. I am an attorney licensed to practice law before all courts of the State of Hawaii and am counsel for record for Plaintiff, Successor-Trustee JAMES B. NICHOLSON ("Plaintiff") in the above-entitled action. I have personal knowledge of the facts in this case and could and would competently testify to them if called as a witness.

2. Pursuant to the Court's Order Granting Plaintiff's Motion for Contempt Against Defendant Bobby N. Harmon of Final Judgment Filed August 22, 2006 and Court's Order Granting Plaintiff's Motion for Entry of Judgment on the Arbitration Award Against Bobby N. Harmon Filed August 18, 2006, filed January 26, 2007 ("Order"), Defendant Bobby N. Harmon was ordered by the Court to "provide Plaintiff with access, including all passwords, to Harmon's website such that Plaintiff would be able to enter all areas of the site and remove any PSM" within 10 days of January 26, 2007, the date on which the Order was issued.

3. On February 5, 2007, Defendant provided me with what was purported to be the username and password to Defendant's website, subject to the

various “permissions, limitations and admonitions” itemized in his letter. Attached hereto as Exhibit “A” is a true and correct copy of Defendant’s letter to Plaintiff, in care of the undersigned, dated February 5, 2007.

4. After reading Defendant’s letter, I entered “the-catbird-seat.net” website and, through application of the username and password, was able to gain visual access to the password protected sites. However, I was unable to manipulate, remove or otherwise alter any of the material located at these password protected sites. Contrary to the Court’s Order, access was limited to a “read only” status.

5. The January 26, 2007, Order states: “If Mr. Harmon fails to so comply with this Order, the Final Judgment and Entry of Judgment, within 10 days, then this Court will issue an order to Yahoo! Small Business Hosting directing it to shut down Mr. Harmon’s website and forbid him from creating another website until such time as Mr. Harmon has verified to this Court that the new website will not contained any PSM. The January Order further states: “In addition, if Mr. Harmon fails to so comply with this Order, the Final Judgment, and Entry of Judgment, within 10 days, this Court will enter an order prohibiting Mr. Harmon from creating any new website, with any new host, until such time as Mr. Harmon has verified to this Court that the new wesite will not contain any of the PSM.

6. At noted herein, the Defendant has, once again, purposefully and blatantly ignored this Court’s clear and direct orders. In light of the Defendant’s long history of disregarding settlement agreements, arbitration awards and court

orders, neither the Plaintiff nor I have any reason to believe the Defendant will ever voluntarily comply. Therefore, on behalf of the Plaintiff, I respectfully request that the Court issue an order directed to “Yahoo! Small Business Hosting” to terminate and forever close down Defendant’s website and, furthermore, that the Court issue an order barring Defendant from creating another website until such time as he has verified to the Court that the new website will not contain any protected information.

I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, February 16, 2007.



STEVEN GUTTMAN

BOBBY N. HARMON, CPCU, ARM

February 5, 2007

VIA e-mail: sguttman@kdubm.com

James Nicholson, Curtis Ching, and Carol Muranaka
Office of the United States Trustee
c/o Steven Guttman, Esq. Kessner Duca Umebayashi, et al.
220 S. King Street, Floor 10
Honolulu, HI 96813

RE: CV 05-00030 - Office of The United States Trustee vs. Harmon
Hearing regarding Plaintiff's Contempt of Court Motion
Hearing Date: January 16, 2007 (Cancelled without notice)
Judge: The Honorable David Alan Ezra

Ref: Order Granting Plaintiff's Motion for Contempt, Signed January 26, 2007

Gentlemen and Ms. Muranaka:

As I wish to make all possible good faith efforts to comply with the Order Granting Plaintiff's Motion for Contempt (the "Order"), signed on January 26, 2007, by Judge David Alan Ezra, this is to advise you of some of the actions I have taken and some of the questions and difficulties that still remain in my understanding of exactly which materials so broadly designated as "Protected Subject Matter" ("PSM") by the arbitrator, Judith Neustadter Fuqua, are truly protected by the Order, and which are "protected", in my favor, under a higher law – the United States Constitution.

Since we never had a Pre-hearing Conference as I had requested, and since the Contempt Hearing at which I had hoped to have these questions answered was cancelled without notice, I am taking this avenue of approach to see what further actions I need to take to be in compliance with the Order which I quote, in part, as follows:

"Harmon's creation of password protection for sites that previously contained PSM indicates that he is fully aware that these sites are covered by the various Agreements and Orders, which he has repeatedly disregarded. Harmon claims to have made a good faith effort to remove PSM from "public view." The Court's various orders, however, do not contemplate mere removal from public view. The Court ordered Harmon to remove all PSM from his website within ten days of the entry of judgment. ... The requirement was unambiguous. The creation of password protected areas on the website cannot reasonably be construed as a good faith effort to permanently remove the offending content. Rather, it demonstrates blatant disobedience to the Court. Thus, Plaintiff has proved that Harmon is in contempt of this Court's orders.

"Therefore, this Court HEREBY FINDS Bobby N. Harmon in civil contempt of the Final Judgment and Entry of Judgment. Mr. Harmon must comply with this Court's orders. It is FURTHER ORDERED that within 10 days of the issuance of this Order, Mr. Harmon shall provide Plaintiff with complete access, including all passwords, to Harmon's

EXHIBIT "A"

website such that Plaintiff would be able to enter all areas of the site and remove any PSM (as defined above). If Mr. Harmon fails to so comply with this Order, the Final Judgment and Entry of Judgment, within 10 days, then this Court will issue an order to **Yahoo! Small Business Hosting** directing it to shut down Mr. Harmon's website and forbid him from creating another website until such time as Mr. Harmon has verified to this Court that the new website does not contain any PSM. In addition, if Mr. Harmon fails to so comply with this Order, the Final Judgment, and Entry of Judgment, within 10 days, this Court will enter an order prohibiting Mr. Harmon from creating any new website, **with any new host**, until such time as Mr. Harmon has verified to this Court that the new website will not contain any of the PSM.

Even though this portion of Order is clearly against my Constitutional Rights to Freedom of Speech and Privacy, which seems to be tantamount to my being ordered to turn over to you the keys to my house and let you enter without notice or warrant and take away any documents, computers, etc. that you consider to contain "PSM", I have provided you with the following User Name and Password which should allow you to enter all password-protected sites at www.the-catbird-seat.net:

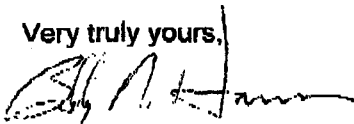
User Name: Guttman
Password: LOVE

Along with this skeleton key to my private virtual domain, however, I am issuing the following permissions, limitations and admonitions to you:

1. You have my permission TO ENTER all password protected sites.
2. You DO NOT have my permission TO REMOVE or TO ALTER any documents or materials in these sites UNTIL YOU HAVE FIRST PROVIDED TO ME a list of ALL documents that you intend to remove or to alter, and a clear description of the PSM matter that you allege each of these documents contains.
3. AFTER you have provided this information, I will respond within 10 days to grant you permission to remove or to alter these documents; OR to request further clarification from you as to why you consider these to be PSM materials, and/or why these materials are not protected under the First Amendment.
4. IF you remove or alter any documents WITHOUT my prior WRITTEN PERMISSION, I will consider this an invasion of privacy and the destruction of evidence in the instant case as well as in any other claims that I have made against you, or your co-conspirators, such as fraud, tax evasion, bad faith, racketeering, money-laundering, obstruction of justice, etc.

Please contact me as soon as possible if you have any questions or comments.

Very truly yours,



Bobby N. Harmon, CPCU, ARM

cc: Theresa Lam (via e-mail: theresa_lam@hid.uscourts.gov)

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Others ..

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