



March 22, 2021

Committee on Consumer Protection and Commerce
Chair Johanson
Vice Chair Kitagawa

The House of Representatives
The Thirtieth-First Legislature
Regular Session of 2021

RE: SB 714 SD 1 - RELATING TO PUBLICITY RIGHTS
DATE: Wednesday, March 24, 2021
TIME: 2:00 pm
VIA Videoconference
State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Johanson, Vice Chair Kitagawa, and the Members of the Committee,

Thank you for the opportunity to testify in SUPPORT of SB 714 SD1 - RELATING TO PUBLICITY RIGHTS.

SAG-AFTRA represents over 1150 actors, recording artists, and media professionals in our state. We are the professional performers working in front of the camera and behind the microphone.

This measure clarifies that the Hawaii Publicity Rights Act (HPRA), codified as HRS 482P, applies retroactively to protect the publicity rights of individuals who died prior to the date of its enactment. This small addition to the HPRA will go a long way to protect and empower families of those who are deceased and being exploited. We support this clarification that “allows the people of Hawai‘i to protect their legacy and rights that are not covered by federal copyright law and state and federal trademark laws.”

Thank you again for your continued support and please don't hesitate to contact the SAG AFTRA Hawaii Local office for more information on this issue as it relates to professional performers.

Mericia Palma Elmore, Executive Director
SAG-AFTRA Hawaii Local
mericia.palmaelmore@sagaftra.org
201 Merchant St. Suite 2301
Honolulu, HI 96813
Ph: 808-596-0388 Fax: 808-593-2636

SCREEN ACTORS GUILD - AMERICAN FEDERATION OF
TELEVISION AND RADIO ARTISTS
SAGAFTRA.org
Associated Actors & Artistes of America / AFL-CIO

Respectfully,



Mericia Palma Elmore
Executive Director SAG-AFTRA Hawaii Local

**Statement of Eric K. Keawe
before the**

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, March 24, 2021, at 2:00 PM
Via Videoconference
in consideration of

SB 714 - RELATING TO PUBLICITY RIGHTS

Chair Johanson, Vice Chair Kitagawa, and Members of the House Committee on Consumer Protection & Commerce:

I am writing in support of SB 714 because I believe it is important for the Hawaii Publicity Rights Act to protect the personas of people who died prior to the enactment of the law on July 15, 2009, as the legislature intended when the law was passed. If this bill is not passed, the personas of countless local icons who died before July 15, 2009 could be misappropriated for commercial purposes without the consent of their heirs or successors. I strongly urge this Committee to support SB 714 in order to protect these folks' legacies, preserve local culture, and to ensure that in Hawai'i, heirs and successors maintain control of their deceased loved ones' personas.

I am the son, heir/successor of Genoa Keawe who passed away on February 25th, 2008 before the Hawaii Publicity Rights Act was enacted on July 15, 2009. I am also the President of Genoa Keawe Records, Inc.. In January 2009 with the assistance of an organization who knew of my situation to protect my mother's Publicity Rights. Help from a few associate attorney's and a prominent musician, songwriter composer we were able to process this need in legislation to prevent unauthorized 3rd parties from commercialized use and profiting from my mother's previous projects early in her life.

- A) As President of Genoa Keawe Records, Inc. I have registered the publicity rights of Genoa Keawe with DCCA pursuant to the Hawaii Publicity rights Act.
- B) Based on my understanding that the Hawaii Publicity Rights Act protects the personas of all persons living and dead for a term of 70 years after death (even those who died before the statute was enacted),

I continue to rely upon the Hawaii Publicity Rights Act to enforce and protect the publicity rights of Genoa Keawe who died before the statute was enacted.

Thank you for the opportunity to testify on this measure.

Sincerely,



Eric K. Keawe

Statement of Meriel Jane Collins and Gloria Fornasier
before the
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, March 24, 2021, at 2:00 PM
Via Videoconference

in consideration of
SB 714 - RELATING TO PUBLICITY RIGHTS

Chair Johanson, Vice Chair Kitagawa, and Members of the House Committee on Consumer Protection & Commerce:

I am writing in support of SB 714 because I believe it is important for the Hawaii Publicity Rights Act to protect the personas of people who died prior to the enactment of the law on July 15, 2009, as the legislature intended when the law was passed. If this bill is not passed, the personas of countless local icons who died before July 15, 2009 could be misappropriated for commercial purposes without the consent of their heirs or successors. I strongly urge this Committee to support SB 714 in order to protect these folks' legacies, preserve local culture, and to ensure that in Hawai'i, heirs and successors maintain control of their deceased loved ones' personas.

We are the daughters of Norman Kieth Collins, aka Sailor Jerry, who passed away on June 12, 1973, before the Hawaii Publicity Rights Act was enacted on July 15, 2009.

Based on my understanding that the Hawaii Publicity Rights Act protects the personas of all persons living and dead for a term of 70 years after death (even those who died before the statute was enacted), I have relied upon the Hawaii Publicity Rights Act to enforce and protect the publicity rights of Norman Kieth Collins, aka Sailor Jerry] who died before the statute was enacted.

Thank you for the opportunity to testify on this measure.

Signed,

Meriel Jane Collins
290 Karsten Drive
Wahiawa, HI 96786

and

Gloria Fornasier
1803 SE 176th Place
Vancouver, WA 98683

Statement of William G. Meyer III
before the House Committee on Consumer Protection and Commerce
in strong support of SB 714 (Relating to Publicity Rights)
Hearing: Wednesday, March 24, 2021, at 2:00pm

Dear Chair Johanson, Vice Chair Kitagawa, and Members of the House Committee on Consumer Protection and Commerce:

My name is William G. Meyer III, and I hereby express my strong support of SB 714. I have been practicing business law in Honolulu since 1979 with a focus on entertainment and intellectual property law. Over the years I have had the honor and opportunity to represent and assist many noted local artists, entertainers, and public figures and the heirs of such persons.

Background – The Hawaii Publicity Rights Act (“HPRA”)

In 2009, HPRA recognized the existence of a property right, known as the “right of publicity,” in a person’s “persona” (i.e., their name, voice, signature, and likeness). The law was originally enacted to address concerns that the personas of Hawaii’s musicians, entertainers, and cultural icons, both living and dead, were being appropriated by third parties for commercial gain without the permission of such persons or their heirs.

The genesis of HPRA was a dispute between a record label and the estate of the iconic Hawaiian artist “Aunty” Genoa Keawe over the use of (the then-deceased) Aunty Genoa’s persona despite the objections of her son, Mr. Eric Keawe. As a result of this dispute, and recognizing that other local artists and their heirs were subject to misappropriation of identity, the estate of Genoa Keawe and the Office of Hawaiian Affairs (“OHA”) pushed for the passage of HPRA to protect the personas of all people, both living and dead, for a period of 70 years after their death. The bill, SB 1005, was part of OHA’s legislative package in 2009.

The Hawaii Publicity Rights Act Was Always Intended to Protect the Personas of Those Who Died Before it Was Enacted

From its inception, HPRA was intended to protect the publicity rights of persons such as Aunty Genoa Keawe for a period of 70 years even though they (like she) died prior to the enactment of the law. This fact is evident from the very circumstances that precipitated HPRA in 2009 as well as HPRA’s legislative history and the public testimony submitted in connection therewith.

The community response after HPRA was passed further confirms that the law was understood to protect the personas of those who predeceased its enactment. I have encountered many transactions involving the publicity rights of persons who died before HPRA was enacted and it was commonly understood among attorneys and clients alike that such publicity rights were protected under HPRA.

Notably, almost half of the publicity rights names currently registered with the State of Hawaii, Department of Commerce and Consumer Affairs (“DCCA”) pursuant to HPRA were registered by the heirs and successors of people who predeceased the passage of HPRA. Attached hereto as **Exhibit A** is a printout of the DCCA Publicity Rights Name Registration List,

retrieved from the DCCA website on February 10, 2021 (current as of March 23, 2021). Attached hereto as **Exhibit B** is a table of the DCCA Publicity Rights Name Registrations with a column listing the person's date of death showing that, excluding duplicate registrations, seventeen of the forty-one persons whose publicity rights have been registered are people who died prior to the enactment of HPRA.

Why is SB 714 Necessary?

SB 714 is necessary because a recent case held that HPRA does not protect the personas of people who died before the law was enacted on July 15, 2009, even if the 70-year protection period has not yet expired. See *N. K. Collins, LLC v. William Grant & Sons, et al.*, ECF No. 126, Civ. No. 19-000386-ACK-RT (D. Haw. July 17, 2020).

At issue in that case was the persona of someone who died in 1973. The plaintiff sought relief under HPRA, alleging that a third party was exploiting the deceased's persona for commercial purposes without the heirs' permission. Relevant here is the judge's finding that relief under HPRA was unavailable because the legislature did not adequately express its intent that HPRA was intended to apply retroactively (i.e., to people who died before HPRA was enacted, even if less than 70 years has passed since such person's death). Under Hawaii law, a statute only applies retroactively where the legislative intent is clear.

This court ruling created the same dilemma that the legislatures in California, Washington, and Indiana faced with respect to their right of publicity statutes. Although the legislatures in those states meant for their right of publicity statutes to apply retroactively, courts held that each state's statute lacked sufficient language to demonstrate the legislatures' intent. In response to these rulings, each state passed legislation amending its right of publicity law to clarify that the protection extends to those who died prior to the effective date of the original statute.

Similar to legislative amendments made by California, Washington, and Indiana, SB 714 amends HPRA to clearly express the legislature's intent that the law applies to persons who died before July 15, 2009 (the date HPRA was enacted) so long as the 70-year protection period has not expired.

Unless this legislature passes SB 714, the personas of countless local and other persons who died before July 15, 2009 have no protection under HPRA from misappropriation for commercial purposes. The current situation leaves local icons such as Aunt Genoa Keawe, Don Ho, Eddie Aikau, Israel Kamakawi'ole, Patsy Mink, Duke Kahanamoku, and countless others with zero protection under HPRA despite the fact that many have relied on the protections of HPRA for years.

Accordingly, I strongly urge this Committee to pass SB 714 so that the heirs and legal representatives of those who have passed prior to July 15, 2009 may be protected under HPRA.

Respectfully submitted,

Bill Meyer

EXHIBIT A

Department of Commerce and Consumer Affairs
Business Registration

[Home](#) » [Online Services](#) » Publicity Rights Name Registration

PUBLICITY RIGHTS NAME REGISTRATION

| ID NUMBER | APPLICANT'S NAME AND ADDRESS | FILE NUMBER | STATUS | REGISTRATION DATE | EXPIRATION DATE | PUBLICITY RIGHTS NAME | PURPOSE | CERTIFICATE NUMBER |
|-----------|---|-------------|--------|-------------------|-----------------|--|---|--------------------|
| 1 | Cyril Pahinui 94-870 Lumiaua St. K-104, Waipahu HI 96797 | | E | 8/14/2009 | 8/13/2014 | GABBY PAHINUI PUBLICITY RIGHTS | Entertainment/Event & Collateral Services | 270001 |
| 2 | Don Ho Revocable Living Trust of October 29, 1992 P. O. Box 61236, Honolulu HI 96839 | | E | 8/20/2009 | 8/19/2014 | DONALD TAI LOY HO PUBLICITY RIGHTS | Entertainment, general business, merchandising | 270002 |
| 3 | Michael A. Cobb 91-1121 Keoneula Blvd. L4, Ewa Beach HI 96706 | | E | 8/26/2009 | 8/25/2014 | MICHAEL ANTONIO COBB PUBLICITY RIGHTS | Entertainer, Entertainment, Music | 270003 |
| 4 | William Grant & Sons Limited The Glenfiddich Distillery, Dufftown Banffshire, United Kingdom | | A | 9/18/2009 | 9/17/2024 | NORMAN KEITH COLLINS (A/K/A SAILOR JERRY) PUBLICITY RIGHTS | Alcoholic beverages, clothing and accessories, footwear, jewelry, travel bags and tote bags, housewares, smokers articles, books, calendars, posters, postcards, stickers, emblems, patches, glassware, playing cards, aftershave, gifts and merchandise; entertainment and information services general business services and retail services, including internet retail services. | 270004 |
| 5 | GENOA KEAWE RECORDS, INC. 2283 Tantalus Drive, Honolulu HI 96813 | 14527D1 | E | 12/30/2009 | 12/29/2014 | GENOA LEILANI KEAWE PUBLICITY RIGHTS | Recording, Entertainment, Producer, Product Wholesale and Retail Sales | 270005 |
| 6 | AIKAU FAMILY, LLC 352 Auwaiolimu Street, Honolulu HI 96813 | 38340C5 | E | 2/25/2010 | 2/24/2015 | EDWARD RYON MAKUAHANAI "EDDIE" AIKAU PUBLICITY RIGHTS | Clothing, general merchandise, sports competitions including surf competitions, nonprofit fundraising, charitable work, books, documentaries, movies, videos and other entertainment, photographs, sculptures and other artwork, and other uses including other promotional uses. | 270006 |
| 7 | Sydney Lehua Iaukea P. O. Box 10373, Honolulu, HI 96816 | | E | 3/4/2010 | 3/3/2015 | CURTIS PIEHU IAUKEA PUBLICITY RIGHTS | Literary works, film, entertainment, merchandising and general business. | 270007 |
| 8 | Kuulei N. Mitchell – Personal Representative Heirs of Leilani Hia'a Kalaeloa Mitchell 91-204 Piliplii Uia Place, Kapolei HI 96707 | | E | 6/21/2010 | 6/20/2020 | LEILANI HIA'A KALAELOA MITCHELL PUBLICITY RIGHTS | Gift items, accessories, books, Modeling Art Paintings or Images, Entertainment Music Records, and photograph and family names, her name, of her foundation. | 270008 |

| Registration Number | Registrant Name | Business Type | Effective Date | Expiration Date | Registrant Address | Business Description | Registration Number | |
|---------------------|---------------------------------------|---------------|----------------|-----------------|--|--|--|--------|
| 9 | Russ K. Keaulana | A | 5/5/2011 | 5/4/2017 | 84-708 Upena St., Makaha, HI 96792 | Promotional purposes as well as surf competitions and merchandise | 270009 | |
| | | | | | | RUSS K. KEAULANA aka RUSS K., RUSS K. MAKAHA and RUSTY KEAULANA | | |
| 10 | Sarah Piiiani Smith | E | 10/4/2011 | 10/3/2016 | P. O. Box 2519 Honolulu HI 96804 | Entertainment, merchandising & general business | 270010 | |
| | | | | | | SARAH PIILANI SMITH | | |
| 11 | Leonard G. Horowitz | E | 5/31/2012 | 5/30/2017 | 13-3775 Kalapana Hwy Pahoia HI 96778 | Journalism | 270011 | |
| | | | | | | DR. LEONARD HOROWITZ | | |
| 12 | Sherri Kane | E | 5/31/2012 | 5/30/2017 | P O Box 75104 Honolulu HI 96836 | Journalism | 270012 | |
| | | | | | | SHERRI KANE | | |
| 13 | Abigail Kinoiki Kekaulike Kawananakoa | E | 8/23/2012 | 8/22/2017 | 420 Kekau Place Honolulu HI 96817 | Charitable and philanthropic activities including those directed to preserving and enriching cultural and historic knowledge, and general business. | 270013 | |
| | | | | | | ABIGAIL KINOIKI KEKAULIKE KAWANANAKOA | | |
| 14 | Jeff Apaka | E | 9/17/2012 | 9/16/2017 | 2140 Kuhio Avenue Suite 2310 Honolulu, Hawaii 96815 | Entertainment, General Business, Merchandising | 270014 | |
| | | | | | | ALFRED APAKA PUBLICITY RIGHTS | | |
| 15 | Lei Mamo Howell | E | 7/26/2013 | 7/25/2018 | 1164 Kealaolu Avenue Honolulu HI 96816 | Clothing and fashion design and production, merchandising, general business | 270015 | |
| | | | | | | LEI MAMO HOWELL | | |
| 16 | Dana-Li Annette Kwai Tsin Dung | E | 8/2/2013 | 8/1/2018 | 2303 Ho'onanea Street Honolulu HI 96822 | Entertainment, events, merchandising, music, promotional purposes and general business | 270016 | |
| | | | | | | DANA-LI DUNG | | |
| 17 | Darah Dung | E | 8/2/2013 | 8/1/2018 | 2303 Ho'onanea Street Honolulu HI 96822 | Entertainment, events, merchandising, music, promotional purposes and general business | 270017 | |
| | | | | | | DARAH DUNG | | |
| 18 | Denby Dung | E | 8/2/2013 | 8/1/2018 | 2303 Ho'onanea Street Honolulu HI 96822 | Entertainment, events, merchandising, music, promotional purposes and general business | 270018 | |
| | | | | | | DENBY DUNG | | |
| 19 | Angelica Ionananimakamae Marrero | E | 12/3/2013 | 12/2/2018 | 1204 Kuokoa Street Pearl City HI 96782 | Retail, merchandise, promotions, advertising, movies, photos, films, images and music for any organization or product being sold for profit. Sports competitions including surf competitions, nonprofit fundraising, charitable work, and sculptures and other art work. All and anything pertaining to my father. | 270019 | |
| | | | | | | MONTGOMERY ERNEST THOMAS KALUHIOKALANI A.K.A. BUTTONS A.K.A. BUTTONS KALUHIOKALANI PUBLICITY RIGHTS NAME | | |
| 20 | AIKAU FAMILY, LLC | 38340C5 | A | 10/24/2014 | 10/23/2024 | 352 Auwaiolimu Street, Honolulu HI 96813 | Clothing, general merchandise, sports competitions including surf competitions, nonprofit fundraising, charitable work, books, documentaries, movies, videos and other entertainment, photographs, | 270020 |
| | | | | | | EDWARD RYON MAKAUHANAI "EDDIE" AIKAU | | |

| <u>EXHIBIT A</u> | | | | | | sculptures and other artwork, and other uses including other promotional uses. | |
|------------------|---|---|------------|------------|---|--|--------|
| 21 | The Howard Hughes Company, LLC | E | 3/3/2015 | 3/2/2020 | HOWARD ROBARD HUGHES, JR. | real estate development; real estate leasing; real estate management | 270021 |
| | 13355 Noel Road, 22nd Floor, Dallas Texas 75240 | | | | | | |
| 22 | Don Ho Revocable Living Trust | A | 9/23/2015 | 9/22/2020 | DON TAI LOY HO PUBLICITY RIGHTS | entertainment, general, business, merchandising | 270022 |
| | P O Box 61236, Honolulu HI 96839 | | | | | | |
| 23 | Estate of Jose Manuel Figueroa, PlainsCapital Bank Temporary Trustee | A | 10/05/2015 | 10/04/2020 | JOSE MANUEL FIGUEROA ALSO KNOWN AS JOAN SEBASTIAN | celebrity personality | 270023 |
| | 7201 N. 10th Street, McAllen TX 78504 | | | | | | |
| 24 | Tatsuya Yamamoto | A | 10/26/2015 | 10/25/2025 | TATSUYA YAMAMOTO AKA "EDDY Y" | graphic design for fabric, clothing, bags and other consumer goods | 270024 |
| | 92-1509 Aliinui Dr 9C, Kapolei HI 96707 | | | | | | |
| 25 | Daniilo Couto | A | 04/01/2016 | 03/31/2021 | DANILO COUTO | promotional purposes as well as surf competitions and merchandise | 270025 |
| | 59-608 Kam Hwy., Haleiwa HI 96712 | | | | | | |
| 26 | Ramona Charlene Evans Dickens | A | 08/01/2016 | 07/31/2021 | JAMES CECIL DICKENS P/K/A LITTLE JIMMY DICKENS | entertainment industry | 270026 |
| | 5010 West Concord Road Brentwood, TN 37027 | | | | | | |
| 27 | The George Richard Chamberlain Revocable Living Trust dtd December 13, 1982 as amended and restated | A | 09/08/2016 | 09/07/2021 | GEORGE RICHARD CHAMBERLAIN | entertainment | 270027 |
| | c/o Cades Schutte LLP 1000 Bishop Street, 12th floor Honolulu, HI 96813 | | | | | | |
| 28 | Joanne Marroni | A | 04/24/2017 | 04/23/2022 | DANE KEALOHA | entertainment, general business, merchandising | 270028 |
| | P.O. Box 791125 Paia, HI 96779 | | | | | | |
| 29 | Vicki L. Borges | A | 04/25/2017 | 04/24/2022 | JAMES J. BORGES III AKA JIMMY BORGES | musical entertainment, general business, merchandising | 270029 |
| | 1561 Kanunu Street #505 Honolulu, HI 96814 | | | | | | |
| 30 | JWCF, LP | A | 07/14/2017 | 07/13/2022 | JOHNNY CARSON AKA JOHN W. CARSON | entertainment and licensing | 270030 |
| | 16000 Ventura Blvd., Suite 900 Encino, CA 91436 | | | | | | |
| 31 | MOTION PICTURE ASSOCIATES, LLC | A | 12/18/2017 | 12/17/2022 | CECIL B. DEMILLE | entertainment and licensing | 270031 |
| | 223 West Alameda Ave., #101 Burbank, CA 91502 | | | | | | |
| 32 | TRUSTEES OF THE PARKER RANCH FOUNDATION TRUST | A | 6/13/2018 | 6/12/2023 | RICHARD SMART | As licensed | 270032 |
| | 66-1304 Mamelahoa Highway, Kamuela Hawaii 96743 | | | | | | |
| 33 | THE LOUIS ARMSTRONG | A | 10/11/2018 | 10/10/2023 | LOUIS DANIEL ARMSTRONG | entertainment, general business, | 270033 |

| <u>EXHIBIT A</u> | | | | | | merchandising, music, promotional purposes, education | |
|------------------|--|---|------------|------------|---------------------------------------|---|--------|
| | EDUCATIONAL FOUNDATION, INC. | | | | | | |
| | c/o Howard Schain, 10 E. 40th St., Suite 2710, New York NY 10016 | | | | | | |
| 34 | CHELLE C PAHINUI | A | 1/22/2019 | 1/21/2024 | CYRIL LANI PAHINUI | website & music publishing | 270034 |
| | P O Box 29693, Honolulu HI 96820 | | | | | | |
| 35 | RONALD REAGAN PRESIDENTIAL FOUNDATION AND INSTITUTE | A | 5/2/2019 | 5/1/2024 | NANCY DAVIS REAGAN | educational and entertainment and collateral services, merchandising and general business, retail services, charitable and philanthropic activities | 270035 |
| | 40 Presidential Drive, Simi Valley, CA 93065 | | | | | | |
| 36 | RONALD REAGAN PRESIDENTIAL FOUNDATION AND INSTITUTE | A | 5/2/2019 | 5/1/2024 | RONALD WILSON REAGAN | educational and entertainment and collateral services, merchandising and general business, retail services, charitable and philanthropic activities | 270036 |
| | 40 Presidential Drive, Simi Valley, CA 93065 | | | | | | |
| 37 | THE ESTATE OF JAMES BROWN | A | 6/18/2019 | 6/17/2024 | JAMES JOSEPH BROWN | Entertainment, general business, merchandising, music, promotional purposes, education | 270037 |
| | C/O SWEENY, WINGATE & BARROW, P.A., 1515 Lady Street, Columbia, SC 29201 | | | | | | |
| 38 | N.K. COLLINS, LLC | A | 6/14/2019 | 6/13/2024 | NORMAN KEITH COLLINS AKA SAILOR JERRY | General business, merchandising, art, education and licensing | 270038 |
| | 900 FORT STREET MALL, SUITE 1800, HONOLULU, HI 96813 | | | | | | |
| 39 | PETER LEE MERRIMAN | A | 11/06/2019 | 11/05/2024 | PETER LEE MERRIMAN | Bar and restaurant services, cookbooks, food products, clothing, general merchandise, promotional purposes and general business | 270039 |
| | 50 Nonoho Place, Paia, Hawaii 96779 | | | | | | |
| 40 | ESTATE OF ARETHA FRANKLIN | A | 11/15/2019 | 11/14/2024 | ARETHA LOUISE FRANKLIN | Entertainment, general business, merchandising, music, promotional purposes, education | 270040 |
| | c/o Thav Gross, 30150 Telegraph Rd. Ste 444 Bingham Farms, MI 48025 attn: David Bennett, Esq. | | | | | | |
| 41 | BRANDON NACAPOY | A | 2/3/2020 | 2/2/2025 | BRANDON NACAPOY AKA BRAHJ | General Business | 270041 |
| | 46-114 Nahewai Place, Kaneohe HI 96744 | | | | | | |
| 42 | BRANDON NACAPOY | A | 2/3/2020 | 2/2/2025 | BRANDON NACAPOY AKA BRAHJAH | General Business | 270042 |
| | 46-114 Nahewai Place, Kaneohe HI 96744 | | | | | | |
| 43 | BARRY WHITE FAMILY TRUST | A | 2/4/2020 | 2/3/2025 | BARRY EUGENE WHITE P/K/A/ BARRY WHITE | Entertainment, general business, merchandising, music, promotional purposes, education | 270043 |
| | c/o JACK PERRY, 15021 Ventura Blvd., Suite 799, | | | | | | |

| Sherman Oaks, CA 91403 | | EXHIBIT A | | | | | |
|---------------------------|--|------------------|------------|-----------|--|--|--------|
| 44 | ALICE INOUE | A | 2/5/2020 | 2/4/2025 | ALICE INOUE | Services and products that offer life guidance | 270044 |
| | 560 North Nimitz Hwy., #220, Honolulu HI 96817 | | | | | | |
| 45 | Vanessa Bryant, Trustee of the Bryant Community Property Trust | A | 3/11/2020 | 3/10/2025 | Kobe Bryant, aka Kobe Bean Bryant and Kobe B. Bryant | Entertainment, merchandising and general business | 270045 |
| | c/o Leah M. Bishop, Esq., Loeb & Loeb LLP, 10100 Santa Monica Blvd., Ste 2200, Los Angeles, CA 90067 | | | | | | |
| 46 | KUULEI N.MITCHELL | A | 8/27/2020 | 8/26/2025 | LEILANI HIA'A KALUHIUOKALANI MITCHELL KALAKAUA EHU "KALAELOA" | Books, modeling, art, paintings or images, photo's, entertainment music records | 270046 |
| | c/o 91-204 Piliipili Ula Place, Kapolei HI 96707 | | | | | | |
| 47 | ANDREANNA KALUHIOKALANI | A | 11/10/2020 | 11/9/2025 | MONTGOMERY ERNEST THOMAS KALUHIOKALANI AKA BUTTS, AKA BUTTONS, AKA BUTTONS KALUHIOKALANI | Retail items or merchandise, promotions, advertisements, movies, films, images, music, concerts, clothing, for any organization, corporation, LLC, LLP or product being sold for profit, sports competitions including surf competitions, nonprofit fundraising, charitable work, and sculptures & other artwork. All and anything pertaining to our father. | 270047 |
| | 95-534 Limahana Place, Waipahu HI 96797 | | | | | | |

EXHIBIT B

Hawaii Publicity Rights Name Registrations

Registered rights for those who died before the Hawaii Publicity Rights Act was enacted on July 15, 2009 are indicated in **BOLD and HIGHLIGHTED**

| ID | REGISTERED PUBLICITY RIGHTS NAME | DATE OF DEATH | APPLICANT NAME | REGISTRATION DATE | CERTIFICATE NUMBER |
|-----------|---|----------------------|---|--------------------------|---------------------------|
| 1 | GABBY PAHINUI PUBLICITY RIGHTS | 10/13/1980 | Cyril Pahinui | 8/14/2009 | 270001 |
| 2 | DONALD TAI LOY HO PUBLICITY RIGHTS | 4/14/2007 | Don Ho Revocable Living Trust of October 29, 1992 | 8/20/2009 | 270002 |
| 3 | MICHAEL ANTONIO COBB PUBLICITY RIGHTS | N/A | Michael A. Cobb | 8/26/2009 | 270003 |
| 4 | NORMAN KEITH COLLINS (A/K/A SAILOR JERRY) PUBLICITY RIGHTS | 6/12/1973 | William Grant & Sons Limited | 9/18/2009 | 270004 |
| 5 | GENOA LEILANI KEAWE PUBLICITY RIGHTS | 2/25/2008 | GENOA KEAWE RECORDS, INC. | 12/30/2009 | 270005 |
| 6 | EDWARD RYON MAKUAHANAI "EDDIE" AIKAU PUBLICITY RIGHTS | 3/17/1978 | AIKAU FAMILY, LLC | 2/25/2010 | 270006 |
| 7 | CURTIS PIEHU IAUKEA PUBLICITY RIGHTS | 3/5/1940 | Sydney Lehua Iaukea | 3/4/2010 | 270007 |
| 8 | LEILANI HIA'A KALAELOA MITCHELL PUBLICITY RIGHTS | 4/11/2009 | Kuulei N. Mitchell – Personal Representative Heirs of Leilani Hia'a Kalaeloa Mitchell | 6/21/2010 | 270008 |
| 9 | RUSS K. KEAULANA aka RUSS K., RUSS K. MAKAHA and RUSTY KEAULANA | N/A | Russ K. Keaulana | 5/5/2011 | 270009 |
| 10 | SARAH PIILANI SMITH | N/A | Sarah Piilani Smith | 10/4/2011 | 270010 |
| 11 | DR. LEONARD HOROWITZ | N/A | Leonard G. Horowitz | 5/31/2012 | 270011 |
| 12 | SHERRI KANE | N/A | Sherri Kane | 5/31/2012 | 270012 |
| 13 | ABIGAIL KINOIKI KEKAULIKE KAWANANAKOA | N/A | Abigail Kinoiki Kekaulike Kawananakoa | 8/23/2012 | 270013 |
| 14 | ALFRED APAKA PUBLICITY RIGHTS | 1/30/1960 | Jeff Apaka | 9/17/2012 | 270014 |
| 15 | LEI MAMO HOWELL | 1/30/2020 | Lei Mamo Howell | 7/26/2013 | 270015 |
| 16 | DANA-LI DUNG | N/A | Dana-Li Annette Kwai Tsin Dung | 8/2/2013 | 270016 |

EXHIBIT B

| ID | REGISTERED PUBLICITY RIGHTS NAME | DATE OF DEATH | APPLICANT NAME | REGISTRATION DATE | CERTIFICATE NUMBER |
|-----------|--|----------------------|---|--------------------------|---------------------------|
| 17 | DARAH DUNG | N/A | Darah Dung | 8/2/2013 | 270017 |
| 18 | DENBY DUNG | N/A | Denby Dung | 8/2/2013 | 270018 |
| 19 | MONTGOMERY ERNEST THOMAS KALUHIOKALANI A.K.A. BUTTONS A.K.A. BUTTONS KALUHIOKALANI PUBLICITY RIGHTS NAME | 11/2/2013 | Angelica Ionananimakamae Marrero | 12/3/2013 | 270019 |
| 20 | EDWARD RYON MAKUAHANAI "EDDIE" AIKAU | 3/17/1978 | AIKAU FAMILY, LLC | 10/24/2014 | 270020 |
| 21 | HOWARD ROBARD HUGHES, JR. | 4/5/1976 | The Howard Hughes Company, LLC | 3/3/2015 | 270021 |
| 22 | DON TAI LOY HO PUBLICITY RIGHTS | 4/14/2007 | Don Ho Revocable Living Trust | 9/23/2015 | 270022 |
| 23 | JOSE MANUEL FIGUEROA ALSO KNOWN AS JOAN SEBASTIAN | 7/13/2015 | Estate of Jose Manuel Figueroa, PlainsCapital Bank Temporary Trustee | 10/05/2015 | 270023 |
| 24 | TATSUYA YAMAMOTO AKA "EDDY Y" | N/A | Tatsuya Yamamoto | 10/26/2015 | 270024 |
| 25 | DANILO COUTO | N/A | Danilo Couto | 04/01/2016 | 270025 |
| 26 | JAMES CECIL DICKENS P/K/A LITTLE JIMMY DICKENS | 1/2/2015 | Ramona Charlene Evans Dickens | 08/01/2016 | 270026 |
| 27 | GEORGE RICHARD CHAMBERLAIN | N/A | The George Richard Chamberlain Revocable Living Trust dtd December 13, 1982 as amended and restated | 09/08/2016 | 270027 |
| 28 | DANE KEALOHA | N/A | Joanne Marroni | 04/24/2017 | 270028 |
| 29 | JAMES J. BORGES III AKA JIMMY BORGES | 5/30/2016 | Vicki L. Borges | 04/25/2017 | 270029 |
| 30 | JOHNNY CARSON AKA JOHN W. CARSON | 1/23/2005 | JWCF, LP | 07/14/2017 | 270030 |
| 31 | CECIL B. DEMILLE | 1/21/1959 | MOTION PICTURE ASSOCIATES, LLC | 12/18/2017 | 270031 |
| 32 | RICHARD SMART | 11/13/1992 | TRUSTEES OF THE PARKER RANCH FOUNDATION TRUST | 6/13/2018 | 270032 |

EXHIBIT B

| ID | REGISTERED PUBLICITY RIGHTS NAME | DATE OF DEATH | APPLICANT NAME | REGISTRATION DATE | CERTIFICATE NUMBER |
|-----------|--|----------------------|--|--------------------------|---------------------------|
| 33 | LOUIS DANIEL ARMSTRONG | 7/6/1971 | THE LOUIS ARMSTRONG EDUCATIONAL FOUNDATION, INC. | 10/11/2018 | 270033 |
| 34 | CYRIL LANI PAHINUI | 11/17/2018 | CHELLE C PAHINUI | 1/22/2019 | 270034 |
| 35 | NANCY DAVIS REAGAN | 3/6/2016 | RONALD REAGAN PRESIDENTIAL FOUNDATION AND INSTITUTE | 5/2/2019 | 270035 |
| 36 | RONALD WILSON REAGAN | 6/5/2004 | RONALD REAGAN PRESIDENTIAL FOUNDATION AND INSTITUTE | 5/2/2019 | 270036 |
| 37 | JAMES JOSEPH BROWN | 12/25/2006 | THE ESTATE OF JAMES BROWN | 6/18/2019 | 270037 |
| 38 | NORMAN KEITH COLLINS AKA SAILOR JERRY | 6/12/1973 | N.K. COLLINS, LLC | 6/14/2019 | 270038 |
| 39 | PETER LEE MERRIMAN | N/A | PETER LEE MERRIMAN | 11/06/2019 | 270039 |
| 40 | ARETHA LOUISE FRANKLIN | 8/16/2018 | ESTATE OF ARETHA FRANKLIN | 11/06/2019 | 270040 |
| 41 | BRANDON NACAPOY AKA BRAHJ | N/A | BRANDON NACAPOY | 2/3/2020 | 270041 |
| 42 | BRANDON NACAPOY AKA BRAHJAH | N/A | BRANDON NACAPOY | 2/3/2020 | 270042 |
| 43 | BARRY EUGENE WHITE P/K/A/ BARRY WHITE | 7/4/2003 | BARRY WHITE FAMILY TRUST | 2/4/2020 | 270043 |
| 44 | ALICE INOUE | N/A | ALICE INOUE | 2/5/2020 | 270044 |
| 45 | Kobe Bryant, aka Kobe Bean Bryant and Kobe B. Bryant | 1/26/2020 | Vanessa Bryant, Trustee of the Bryant Community Property Trust | 3/11/2020 | 270045 |
| 46 | LEILANI HIA'A KALUHIUOKALANI MITCHELL KALAKAUA EHU "KALAELOA" | 4/11/2009 | KUULEI N.MITCHELL | 8/27/2020 | 270046 |
| 47 | MONTGOMERY ERNEST THOMAS KALUHIOKALANI AKA BUTTS, AKA BUTTONS, AKA BUTTONS KALUHIOKALANI | 11/2/2013 | ANDREANNA KALUHIOKALANI | 11/10/2020 | 270047 |

Statement of Julia Brotman
before the
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, March 24, 2021, at 2:00 PM
Via Videoconference

in consideration of
SB 714 - RELATING TO PUBLICITY RIGHTS

Aloha Chair Johanson, Vice Chair Kitagawa, and Members of the House Committee on Consumer Protection & Commerce,

I am testifying to express my strong support of SB 714. Through my work as a business and intellectual property attorney in Hawai'i and as an active board member of the Kaua'i Music Festival (a nonprofit that supports the music community), I have become familiar with the intellectual property issues that often arise in the local business, entertainment, and creative industries. Relevant to SB 714, I have worked on several matters involving the "right of publicity," i.e., the intellectual property right in a person's name, image, signature, voice, or likeness (their "Persona"), particularly with respect to the publicity rights of local artists, musicians, entertainers, and cultural icons.

The Hawaii Publicity Rights Act, enacted in 2009 and codified at HRS 482P (the "HPRA"), generally requires third parties to obtain consent in order to exploit a Persona for commercial purposes. Recognizing the cultural importance of preventing third parties from misappropriating the Personas of our kūpuna and local icons, the HPRA protects a person's Persona throughout their life and for seventy years after death. This postmortem term allows a person's heirs or chosen successors to exercise and enforce the right of publicity under the HPRA, thereby ensuring that the heirs/successors – and not unauthorized third parties – are the ones to control and enjoy the benefits of the person's legacy.

Since its enactment, the HPRA and its seventy-year postmortem term have been important tools used to prevent third parties from exploiting the Personas of local folks who died in the last several decades without permission. In my experience, it has been generally understood among intellectual property attorneys, right of publicity owners, and other interested parties that the HPRA protects the Personas of all people for seventy years after death, regardless of when they died. This is consistent with the legislative history from 2009, which demonstrates the drafters' understanding that the HPRA would apply retroactively to prevent unauthorized third parties from exploiting the Personas of people who died before the law was enacted on July 15, 2009.

However, a federal judge recently found that the HPRA is ambiguous on this point, and therefore held that the heirs of a person who died in 1973 could not use the HPRA to enforce their publicity rights. In light of this ruling, nothing in the HPRA is currently prohibiting unauthorized third parties from misappropriating the Personas of those who passed away before the HPRA was enacted, even over the explicit objections of their heirs and successors. This ruling jeopardizes the rights of countless local families who have, for years, been exercising their rights under the HPRA and relying on the HPRA to protect the legacies of those who died before July 15, 2009. It disrupts existing contractual arrangements involving the license or assignment of such persons' publicity rights, and also calls into question the existing State of Hawai'i, Department of Commerce and Consumer Affairs registrations for publicity rights of people who predeceased the HPRA.

I support the amendment set forth in SB 714 because it resolves all of these issues, addresses the concerns raised by the judge in the above-referenced lawsuit, and confirms the general understanding among the community and the 2009 legislature that the HPRA applies retroactively. This bill is necessary to clarify that the statutory postmortem right of publicity in Hawai'i protects the Personas of all deceased persons for seventy years after death, not just those who passed away after the statute was enacted.

Accordingly, I strongly urge the members of this Committee to join me in supporting SB 714.

Mahalo,

Julia Brotman