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October 2, 2012

**PURSUANT TO RULE 408
HAWAII RULES OF EVIDENCE**

Via Hand Delivery Only

Mr. Eric K. Martinson
Mr. Carl A. Carlson, Jr.
Mr. James H.Q. Lee
University of Hawai'i
Board of Regents
2444 Dole Street, Bachman Hall
Honolulu, Hawai'i 96822

Re: **M.R.C. Greenwood v. University of Hawai'i and State of Hawai'i**

Dear Messrs. Martinson, Carlson, and Lee:

I. INTRODUCTION

This letter is to the Board of Regents ("BOR") through you. It is an initial effort to promptly and amicably resolve all of the issues surrounding the employment of Dr. M.R.C. Greenwood ("Dr. Greenwood"), the President of the University of Hawai'i ("UH" or "University"). Before getting into the substance of this letter, Dr. Greenwood would like to make it clear to you that she does not blame the leadership of the BOR for any of the events that lead to the necessity of writing this letter. She has enjoyed working with the BOR and has appreciated their support throughout her tenure. Rather, this letter is being provided because of the actions of others, and in order to comply with the requirements of paragraph 26 of her employment contract (Exhibit 1 hereto), which provides as follows:

26. DISPUTE RESOLUTION. *In the event a dispute arises between the parties concerning any aspect of this Agreement, the parties agree to negotiate face-to-face within twenty (20) days of receipt of a letter describing the nature of the dispute and referencing this paragraph of the Agreement. The meeting will be held at the place of business or residence of the party receiving the letter unless the parties mutually agree to meet at another place. In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting, the parties shall engage a mediator and attempt to mediate the dispute. The parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules*

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of the American Arbitration Association, before resorting to litigation. If the dispute is not resolved by mediation within sixty (60) days of the initial mediation meeting or such further time as the parties may agree to or that the mediator deems is needed, any party may commence a legal action in the state circuit court in the City and County of Honolulu.

Our office concentrates in employment and complex commercial litigation, and we have successfully tried many such cases. However, we believe that the interests of the UH, the Governor, the House, the Senate and Dr. Greenwood all commend a resolution of this matter at an early stage, and we are, therefore, committed to exploring a possible early resolution with you.

As we proceed with this process, we must ask first that you please understand clearly that Dr. Greenwood is *not* resigning her position, nor is she contemplating leaving absent an acceptable settlement. She is committed to the fulfillment of the terms of her contract as extended through July, 2015.

Second, we respectfully provide formal notice that the UH may not be represented in this matter by the Office of General Counsel for the UH lead by Darolyn H. Lendio and her employees, due to her role, and the role of Ryan Akamine, in the approvals related to the underlying dispute. Accordingly, we will communicate only with the counsel for UH, Robert Katz and Jeffrey Harris, unless new and un-conflicted counsel is appointed.

In order for you to evaluate Dr. Greenwood's position, I will summarize the most relevant information below.

II. DR. GREENWOOD'S BACKGROUND

Dr. Greenwood is a nationally known and highly competent scientist, educator and administrator who was recruited to become the President of UH over many other applicants in August, 2009. She has served successfully since that time in a period of severe budget cuts, significant union challenges, major construction and development goals. She has met the goals set for her during this period and she has achieved excellent performance reviews of "exceptional" from the BOR. The level of her competence was confirmed by the recent system Western Association of Schools and Colleges' ("WASC") evaluation this past month.

Copies of her performance reviews are attached as **Exhibits 2 to 4** hereto. Given these reviews, she is not susceptible to discharge "for cause" as her performance has been exceptional. In particular, a copy of the August 21, 2011 "Report of Factfinders Regarding the

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Stevie Wonder Benefit Concert" (attached as Exhibit 5 hereto) established that she was not personally at fault in that incident. This was separately confirmed by the BOR in its minutes of August 22, 2012, a copy of which is attached as Exhibit 6 hereto.

III. EVENTS LEADING TO CURRENT DISPUTE

As you know, it is critical that the UH generally, and Dr. Greenwood particularly, be absolutely free from outside political interference in the management of the UH. The requirement that they be free from such interference is a prerequisite to the ability of the University to remain accredited by the WASC which is reflected in their own guideline on accreditation, as follows:

GUIDELINE: *The institution has no history of interference in substantive decisions or educational functions by political, religious, corporate, or other external bodies outside the institution's own governance arrangements.*

The UH's ability to remain accredited is vital to the worth of the degrees provided by the UH to all past graduates, all current students, and all future graduates. There is no duty that is more fundamental to any university than to safeguard its independence, and, thus, its accreditation — from any attempts by powerful politicians to dictate staff decisions. If this was not the case, public universities' payrolls would be populated by employees picked by politicians who could exert unseemly control over their finances and future.

You are all familiar with the controversy involving Jim Donovan and the Stevie Wonder concert. Mr. Donovan's employment status, as to that controversy, was resolved by way of a written settlement agreement dated August 11, 2012, a copy of which is attached as Exhibit 7 hereto. With the advice of counsel, and pursuant to that settlement agreement, Mr. Donovan accepted his current re-assignment from the position of Athletic Director ("AD") at his current reduced base compensation. Under the settlement, he ends his current position on March 23, 2013. He will be recommended for a new three-year appointment beginning March 24, 2013 to a new managerial position at a salary of \$211,000 per year (temporarily reduced to \$200,640 per year) and can only be terminated for cause within that period of time. This settlement was discussed and affirmed by the BOR as of the date of its August 22, 2012 meeting. The settlement was for substantially less than was originally demanded by his counsel. A copy of the original demand letter is available on request.

Regrettably, powerful politicians wanted more for Mr. Donovan than was provided in this already generous settlement. On August 10, 2012, one day before the settlement was signed, but at a time when the settlement negotiations were nearly finished, Dr. Greenwood

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went to a previously scheduled meeting with Governor Abercrombie at 11:15 in the morning. She attended, and present in the room with her and the Governor, were Marvin Wong and Bruce Coppa. She wrote detailed notes of the meeting the next day. A copy of those notes is attached as **Exhibit 8** hereto. These notes show direct pressure upon Dr. Greenwood to abandon the settlement and to reinstate Mr. Donovan to the AD position. This was followed by a direct threat to Dr. Greenwood that if she did not reinstate Mr. Donovan to the AD position she could expect "that the University's budget would be in deep trouble at the Legislature" and a statement that she had "united the speaker and the president on at least one issue." He also threatened, in response to Dr. Greenwood's comments that she could not return Mr. Donovan to his position, that there would be "consequences" if she did not do so, and that she "needed to take the path" he was advising "for both her well being, Chancellor Apple's well being and the well being of the University." Governor Abercrombie made his wishes abundantly clear at the end of the meeting by stating twice "You understand what I'm saying, don't you?"

Following her meeting with the Governor, Dr. Greenwood got a confirming text from Mr. Coppa (who had been present at the meeting that morning) reaffirming that the Governor wanted Mr. Donovan back as AD. A copy of the text of August 10, 2012, as reprinted from her phone, is attached as **Exhibit 9** hereto. The relevant part of the text states:

August 10, 2012, 2:29 pm

BC: I just spoke w Marvin n governor tis was discussed after toms call to president n speaker *They would like the option of Jim back as AD as discussed this morning*

This text was the second overt act of inappropriate pressure upon Dr. Greenwood now expressly from the Governor, the President of the Senate and the Speaker of the House.

A third instance occurred when she got a voice message from the Governor on August 16, 2012. At that time, the Governor was trying to get her to call a special BOR meeting to reinstate Mr. Donovan to the AD position. A true and correct copy of the transcription of the voice message is attached as **Exhibit 10** hereto. A copy of the tape is also available. In the voice mail, the Governor made the following comments:

... because I assure you, if this issue is not resolved, decisively, on Wednesday, by Thursday, you're going to be in the thick of a Senate investigation and all that that entails. I don't think that's a good outcome.

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He also stated:

I reiterate to you my, my ah projection is, I can't say for certain, but what I told you was going to happen, what I thought would happen, has happened and I, again, what I think is going to happen, if this suggestion isn't acted on is that by Wednesday evening or whenever that Regents' meeting end, if there is not a satisfactory and decisive conclusion that there will be a full fledged effort by the Legislature or members of the Legislature to bring it to a conclusion themselves.

Regrettably, but consistent with these threats, a Legislative hearing was thereafter held which continued through yesterday. Dr. Greenwood was examined unpleasantly by Senator Kim. She truthfully confirmed that pressure had been placed upon her by the Governor. Senator Kim then called Mr. Coppa. He denied that any such pressure had been placed on Dr. Greenwood. Copies of this testimony can be made available on request. Mr. Coppa's testimony appears at time stamp 2:42 of the hearing. In it, he states expressly "The governor would not make any pressure." In later responses to Senator Kim's leading questions he repeats similar denials. The Governor has also issued similar denials, which are, of course, contradicted by Dr. Greenwood's notes, his own voice mail and Mr. Coppa's text.

Mr. Coppa's testimony was, of course, completely untrue, as Mr. Coppa was not only present at the meeting at which the pressure was applied, he was the sender of the text noted above which referred to the pressure which had been applied earlier that same day.

In light of these events, Dr. Greenwood has regrettably concluded that she has not been given the ability to function independently, as is required of the office of the President of UH, and that she has been severely defamed. The reasons why the House, the Senate, and the Governor have been so assiduous in protecting the position of this individual will be the subject of intensive discovery should this case not be resolved.

Dr. Greenwood does not intend to cave in to the pressure and to reinstate Mr. Donovan. In these circumstances, she feels that her contract with UH has been breached and her ability to function has been severely impaired--all through no fault of her own. Obviously, however, the Governor can appoint Regents who will act on his desire to remove her if she fails to comply with his request to reinstate Mr. Donovan. In addition, the House or the Senate can hold further hearings and otherwise retaliate against her and against the UH for her principled decision.

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IV. TERMINATION WITHOUT CAUSE

The employment agreement provides for the following payments and benefits in the event of a termination without cause, each of which Dr. Greenwood is clearly entitled to, in addition to her attorneys' fees and costs.

10. TERMINATION BY BOARD WITHOUT CAUSE.

The parties agree that ~~the Board may terminate this Agreement, prior to expiration of the Term~~ (as defined in section I (Appointment and Term) herein), *without cause* (as defined in Section 9 (Termination by Board for Cause) *by giving sixty (60) days' written notice thereof to Dr. Greenwood.*

a. Termination payment. *If Dr. Greenwood is so terminated as the University's President, the University shall pay Dr. Greenwood, in lieu of all compensation, benefits, allowances, and other payments that may otherwise be due to Dr. Greenwood under this Agreement, the lesser of the following amounts: (1) the amount of Dr. Greenwood's base salary that would have been payable to Dr. Greenwood for the portion of the Term remaining after the date that Dr. Greenwood's termination as the University's President becomes effective or (2) twelve (12) months of Dr. Greenwood's then current base salary (hereafter the "Termination payment").*

b. Release. In return for the Termination payment, Dr. Greenwood shall release, waive, and discharge any and all claims relating to this Agreement, the appointment of Dr. Greenwood as the University's President (including the selection, retention, and employment process), Dr. Greenwood's performance as the University's President under this Agreement, the employment of Dr. Greenwood as the University's President, and the termination of Dr. Greenwood as the University's President, and execute a separate general release of all such claims that Dr. Greenwood may have against the Board, the University, or any of its or their officers and employees.

c. University's obligations upon termination. The University shall have no further obligations under this Agreement if this Agreement is terminated without cause, except:

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i. Housing. *The University shall, for a time period not to exceed sixty (60) days from the effective date of Dr. Greenwood's termination as the University's President: (A) provide housing for Dr. Greenwood at the College Hill residence, at no cost to Dr. Greenwood, or (B) pay Dr. Greenwood the housing allowance described in subsection 4.a.iii (Housing allowance), subject to and in accordance with the limitations and requirements stated therein, which would enable Dr. Greenwood to continue to reside in such Alternate Residence.*

ii. Moving expense reimbursement. *The University shall reimburse Dr. Greenwood for: (a) moving and storage expenses to move Dr. Greenwood out of the College Hill residence or such Alternate Residence to Dr. Greenwood's next destination, provided that the reimbursement to Dr. Greenwood of such moving and storage costs (but not for the purchase of replacement furnishings) shall be made in accordance with Section 6 (Reimbursement of Moving and Storage Expenses) or this Agreement.*

iii. University position. *The University shall permit Dr. Greenwood to transfer into her position as a tenured faculty member, provided that the Board approved tenure for Dr. Greenwood upon completion of the Tenure Process and prior to the start of the Term. The Board's approval of tenure for Dr. Greenwood constitutes the final step in the Tenure Process. Dr. Greenwood will be allowed to assume her position (provided the termination was not "for cause") as a tenured faculty member, as her tenure request was approved by the Board in accordance with the University guidelines and Board policies. Prior to the time that this Agreement is terminated without cause and Dr. Greenwood leaves her position as the University's President, the Board will approve the salary payable to Dr. Greenwood in her position as a tenured faculty member, as her tenure request was approved by the Board in accordance with the University's guidelines and Board policies (provided Dr. Greenwood has successfully completed the Tenure Process, including obtaining Board approval prior to the start of the Term).*

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V. LEGAL ANALYSIS

A. Breach of Contract

The pressure placed on Dr. Greenwood is a clear breach of her contract, which is premised on her ability to act independently and to be free of inappropriate threats, which threats are themselves a serious violation of multiple laws.

B. Whistle Blowing

Dr. Greenwood has previously reported and is hereby reconfirming her report of these threats to the BOR as a violation, or suspected violation, of applicable law.

The Hawaii Whistleblowers Protection Act provides for appropriate relief for any employee discharged, otherwise threatened, or discriminated against for making such reports:

§378-62 Discharge of, threats to, or discrimination against employee for reporting violations of law. An employer shall not *discharge, threaten, or otherwise discriminate against* an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment *because*:

(1) *The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of:*

(A) *A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States; or*

(B) *A contract executed by the State, a political subdivision of the State, or the United States, unless the employee knows that the report is false; or*

(2) An employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

Haw. Rev. Stat. 378-62 (emphasis added).

[§378-64] Remedies ordered by court. A court, in rendering a judgment in an action brought pursuant to this part, shall order, as the court considers appropriate, *reinstatement of the employee,*

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payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, *including reasonable attorney's fees* and witness fees, if the court determines that the award is appropriate.

Haw. Rev. Stat. 378-64 (emphasis added).

Dr. Greenwood would be entitled to recover all of her damages and her attorneys' fees and costs under this Hawai'i statute.

C. Violation of Public Policy

Dr. Greenwood also has an independent public policy discharge claim under *Parnar v. Americana Hotels, Inc.*, 65 Haw. 370, 652 P.2d 625 (Haw. 1982), based on the same facts as set forth above. It is clearly against public policy for the independence of the University to be threatened in this manner.

D. Defamation, Physical Illness, and Emotional Distress

Recent comments surrounding these incidents have defamed Dr. Greenwood as being dishonest and untrustworthy. She has suffered high blood pressure, sleeplessness, stomach problems and other serious physical illness directly as a result--for all of which she is currently being treated. Her enviable career and her hard won and extraordinary reputation have been placed in question. She would be entitled to recover on each of these claims against those institutions and individuals who are responsible if this matter is not resolved.

VI. DAMAGES

Given the unexpired term of her contract, her health, rental, moving and other benefits and her absolute right to a tenured position after any departure, Dr. Greenwood's special damages alone exceed \$2 million, before consideration of any general or punitive damages, or her attorneys' fees and costs--which are mandated both for a breach of contract claim and a whistle blowing claim.

VII. SETTLEMENT OFFER

Dr. Greenwood is aware that the powerful politicians can place the University in jeopardy out of a misguided effort to punish her for her stand in this matter. She profoundly regrets that the leadership of the State is insisting on this course of action at the expense of the independence of a fine institution. However, she is willing to support the University and to

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allow it to move on under new leadership if that can be done fairly. She is willing to provide a complete release in consideration of \$2,000,000, an amount approximately equal to only her special damages, attorneys' fees and costs, which amount would be mutually agreed to be paid pursuant to IRC Section 104 as general damages for her personal physical injuries and or sickness. The settlement would include a complete mutual release, including a confidentiality agreement, and other standard terms for this jurisdiction. Her departure would be treated as a discharge without cause, and she would be provided a favorable letter of reference from the UH and president emeritus status, as contemplated by her contract.

This offer will remain open only until 4:00 p.m. HST on **October 12, 2012**. Should the offer not be accepted within that time, it will lapse and the parties should then proceed with the mediation contemplated by paragraph 26 of the Employment Agreement.

VIII. CONCLUSION

The record in this case shows inappropriate pressure from the highest levels for improper political purposes which has threatened the independence of UH and the reputation of Dr. Greenwood. To make matters worse, deliberate misrepresentations have been made about Dr. Greenwood's veracity and truthfulness.

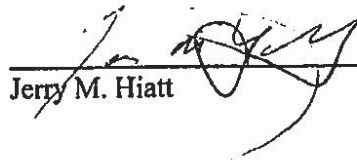
Please take the opportunity to review the essential facts of this dispute and UH's and the State of Hawai'i's exposure. We will be glad to discuss the issues with you. We do view this short window of time as the best and likely the only opportunity to resolve this matter confidentially. Once the claims are filed and of public record, the case may well attract the attention of the national media.

This offer and all attachments are made pursuant to Rule 408 of the Hawai'i Rules of Evidence and may not be used in any further proceedings herein.

Thank you for your assistance. Please telephone me if you have any questions.

Very truly yours,

HIATT & HIATT



Jerry M. Hiatt

JMH/esc
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xc/encls: Dr. M.R.C. Greenwood
