

*Kai Suzuki*  
*v.*  
*Shannon Smith,*  
*Jordan Cabana, and*  
*Hoku Soccer Club, Inc.*

*NOTE: All characters, names, events, places and circumstances in this mock trial case are fictitious*

*SPONSORED BY THE YOUNG LAWYERS DIVISION OF THE HAWAII STATE BAR ASSOCIATION*

The 2016 Hawaii High School Mock Trial case, Kai Suzuki v. Shannon Smith, Jordan Cabana and Hoku Soccer Club, Inc., was adapted from the 2013 North Carolina trial case, Kai Donovan v. Shannon Dempsey, Jordon Reddick, and Rubicon Soccer Club, Inc. which was written by Susan H. Johnson.

**TRIAL WILL BE AS TO LIABILITY ONLY, NOT DAMAGES**

***Kai Suzuki***

**v.**

***Shannon Smith, Jordan Cabana, and Hoku Soccer Club, Inc.***

**BRIEF CASE SUMMARY:**

Kai Suzuki, a minor child, and the only child of Casey Suzuki, sustained a serious concussion during a college showcase soccer tournament on Friday, December 5, 2014, while playing for the Hoku Soccer Club Under-17 Premier soccer team. Kai continues to suffer from significant mental and physical impairment as a result of the concussion. Kai and Casey filed a lawsuit against Hoku soccer coach Shannon Smith, Hoku Soccer Club Director Jordan Cabana, and Hoku Soccer Club, Inc., arguing that they were negligent in returning Kai to play too soon after an earlier concussion and are therefore liable for the damages which Kai sustained.

**STIPULATIONS:**

1. All exhibits included in case materials are authentic and accurate in all respects. No objections to the authenticity of exhibits will be honored.
2. All exhibits, if offered, shall be admitted.
3. All signatures on Witness Affidavits and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the content of the documents(s) and the date(s) indicated thereon. The Witness Affidavits are deemed to be given under oath or affirmation.
4. The trial is bifurcated and the only issue to be determined is liability. The amount of damages to be awarded, if any, will not be at issue in this trial.
5. The Acute Concussion Evaluation (ACE) report is admissible without further foundation. No hearsay objection to this document will be allowed.
6. Before trial, the Court denied the Defendants' motion to dismiss the lawsuit on the grounds that Plaintiff waived and released Plaintiff's claims through Plaintiff's parent's execution of the Medical Consent/Waiver of Liability and Release, dated June 2, 2014. In its ruling, the Court determined, as a matter of law, that the waiver and release of liability was not enforceable against the Plaintiff.

**WITNESSES:**

Plaintiff witnesses:

Casey Suzuki (parent of injured player Kai Suzuki)

Dr. Bevin Register (concussion expert)

Tobin O'Reilly (Kilauea High School soccer coach)

Defense witnesses:

Shannon Smith (Hoku Soccer Club coach/co-Defendant)

Jordan Cabana (Director of Hoku Soccer Club/co-Defendant)

Quinn Durant (Classmate of Kai Suzuki)

**EXHIBITS:**

1. Acute Concussion Evaluation (ACE) Physician form for Kai Suzuki
2. Acute Concussion Evaluation (ACE) Care Plan for Kai Suzuki
3. CDC Fact Sheet: “Facts About Concussion and Brain Injury”
4. Dr. Robert Cantu’s Return to Play Guidelines
5. Hoku Soccer Club Medical Consent/Waiver of Liability and Release
6. CDC High School Athlete Fact Sheet
7. CDC High School Coaches’ “Heads Up” Clipboard Sticker
8. CDC High School Athletes’ Signs and Symptoms Poster
9. NFHS Fact Sheet: Concussion Physiology
10. Geller-Walton Concussion Awareness Act
11. Geller-Walton Concussion Awareness Act Compliance Forms
12. USYS Concussion Procedure and Protocol
13. USYS Possible Concussion Notification
14. Curriculum Vitae of Dr. Bevin Register
15. Soccer Field Diagram

## THE APPLICABLE LAW

### ISLAND CIVIL CODE

#### 42 ISL. Gen. Stat. § 7101. Negligence; elements of tort.

(a) **GENERAL RULE:** To prove negligence, the party making the claim must prove four elements: duty, breach of duty, causation, and damages.

(1) **DUTY:** Negligence refers to a person's failure to follow a duty of care owed as a result of a relationship that exists between the parties. Every person is under a duty to use ordinary care to protect himself/herself and others from injury. "Ordinary care" means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect himself/herself and others from injury. It includes both the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or the doing of something which a reasonably prudent person would *not* have done under the same or similar circumstances. To prove negligence, the plaintiff must first demonstrate that the defendant owed a duty of care to the plaintiff.

(2) **BREACH OF DUTY:** A person's failure to use ordinary care is a breach of duty. On this issue the burden of proof is on the plaintiff. The plaintiff must prove, by the greater weight of the evidence, that the defendant did not uphold his/her duty to exercise reasonable and prudent care in the given circumstances. Reasonable care is an objective standard, having regard for the particular circumstances of the case, including the age and knowledge of the participants and the conditions at the scene of the injury.

(3) **CAUSATION:** Proximate cause is a cause which in a natural and continuous sequence produces a person's injury, and is a cause which a reasonable and prudent person could have foreseen would probably produce such injury or some similar injurious result. There may be more than one proximate cause of an injury. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the injury. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause of the injury.

(4) **DAMAGES:** Actual damages are the fair compensation to be awarded to a person for any past, present, and/or future injury proximately caused by the negligence of another. In determining the amount, if any, to be awarded to the plaintiff, evidence is considered as to each of the following types of damages: past, present, and future pain and suffering; past, present, and future medical expenses; and past, present, and future diminution of earning capacity. The total of all damages are to be awarded in one lump sum.

***\*\*For purposes of the mock trial exercise, student competitors need only prove the fact of injury and the elements of duty, breach, and causation. The amount of damages need not be proven or argued by participants and will not be determined by our mock trial juries. The element of damages is included here for educational purposes only.***

## **42 ISL. Gen. Stat. § 7102. Contributory negligence.**

(a) **GENERAL RULE:** Contributory negligence refers to the Plaintiff's failure to use ordinary care which joins with the negligence of the defendant to proximately cause injury to the plaintiff. The test of what constitutes negligence is as defined in § 7101 above.

(b) **BURDEN:** The burden to prove contributory negligence lies upon the defendant. The defendant must prove, by a greater weight ("preponderance") of the evidence, that the plaintiff was negligent and that such negligence was a proximate cause of the plaintiff's own injury or damages.

## **42 ISL. Gen. Stat. § 7103. Comparative negligence.**

(a) **GENERAL RULE:** In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff. Thus, even if plaintiff is also negligent, plaintiff can recover some percentage from liable defendants as long as the plaintiff is 50% *or less* at fault than the defendant.

(b) **MINORS; CHILDREN AGE 14 AND OLDER:** Minors under the age of 7 are conclusively presumed by law not to possess sufficient maturity of discretion to be held liable for negligence; minors between the ages of 7 and 14 are considered on a case-by-case basis. All normal children 14 years of age and above are conclusively presumed by law to possess that maturity of discretion which belongs to adults of ordinary prudence; and the general rules of law applicable to adults, including the law of comparative negligence, also apply to them.

## **AVAILABLE CASE LAW**

### **Vendrell v. School District No. 26C (1962)**

Plaintiff suffered a broken neck when tackled during a high school football game. The Oregon Supreme Court ruled that a “coach . . . is required to exercise reasonable care for the protection of students under his supervision,” but determined that the coaches were not liable for plaintiff’s injury because they provided “adequate, standard instruction and practice” to their football team.

### **Mogabgab v. Orleans Parish School Board (1970)**

Two high school football coaches were found negligent for failing to obtain medical care for a student showing signs of heat stroke until two hours later, causing the student’s death. The court found that while coaches are not required to have the same degree of knowledge as medical experts, they must recognize a medical emergency and act reasonably under the circumstances by seeking prompt medical treatment for an ill or injured student.

### **Condon v Basi (1985)**

Plaintiff brought suit against defendant when plaintiff’s leg was broken by the defendant’s “foul” sliding tackle in a soccer match. Defendant was found liable and damages of \$10,000 were awarded against him. The judge ruled that “While the standard [of care] is objective, [it varies based on the] circumstances. Thus there will of course be a higher degree of care required of a player in a First Division [soccer] match than of a player in a local [recreation] league match.”

### **Rogers v. Budgen (1990)**

Defendant Budgen was held liable for assault of plaintiff Rogers in a rugby match, where Budgen intentionally struck Rogers’ head with a forearm contrary to the rules of the game. The Rugby team that employed Budgen was also held liable. The judge explained, “If the employer, by his [emphasis on] winning and his motivation of or instructions to the employee, create a real risk that the employee will act [negligently], that may assist in finding the employer liable for what happened.”

### **Pinson v. State College (1995)**

Plaintiff Pinson suffered a concussion during a collegiate football practice, collapsing and remaining unconscious for 10 minutes. Pinson continued to complain of headaches for several days after leaving the ER, but the athletic trainer did not report those symptoms to the team physician. Based on the athletic trainer’s report of no symptoms, Pinson was cleared to play by the physician. One month later, Pinson collapsed on the sideline; he underwent brain surgery, remained in a coma for several weeks, and suffered severe and permanent neurological damage. The court determined that the athletic trainer’s failure to report Pinson’s symptoms to the ER, team, or attending physicians was a substantial factor in bringing about the permanent damage; “but for” the trainer’s failure, Pinson likely would have had little or no permanent damage. Pinson was awarded \$1.5 million dollars in damages, including \$450,000 from the trainer.

### **Koeltzow v. Utopia High School (2012)**

Plaintiff Koeltzow suffered heat stroke after his high school football coach refused to let players stop running drills in full pads in 94 degree temperatures with high humidity. The court ruled that the lawsuit could proceed; consistent with the legal duty of reasonable care established by the negligence standard, “a coach has an ethical obligation not to create an unsafe environment by enhancing a sport’s inherent risks of injury and to take affirmative steps to protect their athletes from suffering serious injuries or death.”



6. In the aggregate, Plaintiff's claims exceed \$10,000 exclusive of interest and costs, and therefore this Court has original jurisdiction.

### **FACTS**

7. Prior to and on the date of Friday, December 5, 2014, Plaintiff Suzuki was a member of the Under-17 Hoku Soccer Club Premier soccer team, coached by Defendant Smith.

8. On Monday, December 1, 2014, Plaintiff Suzuki struck his/her head on the ground during soccer practice. Plaintiff Suzuki seemed shaken up enough for Defendant Smith to require the Plaintiff Suzuki to sit out for the remainder of practice.

9. Defendant Smith did not inform Casey Suzuki, Plaintiff's parent, of the incident in Monday's practice, nor did the Defendant Smith suggest that Plaintiff Suzuki be checked out by medical personnel for a possible concussion.

10. On Friday, December 5, 2014, Plaintiff Suzuki suffered a blow to the head during the first half of the College Showcase tournament soccer game in Waialae, Hawaii. Defendant Smith did not remove Plaintiff Suzuki from the game at that time to check on him/her, but instead, kept Plaintiff Suzuki in the game until halftime.

11. Defendant Smith did not ask Plaintiff Suzuki about any possible concussion symptoms during halftime.

12. Defendant Smith put Plaintiff Suzuki into the game at the beginning of the second half. About 15 to 20 minutes later, Plaintiff Suzuki was tripped while dribbling the ball toward the goal. Plaintiff Suzuki fell to the ground, striking his/her head hard when Plaintiff Suzuki landed.

13. Plaintiff Suzuki was knocked unconscious by the force of the blow to his/her head. He/She was transported to the emergency room at Kokua County Hospital, where she regained consciousness more than an hour later.

14. Plaintiff Suzuki suffered a serious concussion from the blow to his/her head. He/She continues to suffer from post-concussion syndrome months after this incident.

### **COUNT ONE**

15. The Plaintiff Suzuki hereby adopts and incorporates by reference paragraphs 1 through 14 as if fully set forth herein.

16. At all relevant times, Defendant Smith had a duty of care toward Plaintiff Suzuki to supervise, monitor, regulate, and take all reasonable and appropriate steps to minimize the risk of injury to the Plaintiff Suzuki from his/her participation in soccer practices and games.

17. Beginning on Monday, December 1, 2014, and proceeding through Friday, December 5, 2014, Defendant Smith breached his/her duty to Plaintiff Suzuki by carelessly and negligently ignoring clear symptoms of concussions which Plaintiff Suzuki exhibited throughout that period.

18. By neglecting to remove Plaintiff Suzuki from practices and the College Showcase game until Plaintiff Suzuki had been cleared to play by a physician knowledgeable in the diagnosis and treatment of concussions, Defendant Smith put Plaintiff Suzuki in harm's way, directly and proximately causing the harm which Plaintiff Suzuki suffered from repeated concussive events during the time in question.

19. Plaintiff Suzuki has sustained past medical expenses and will incur future medical expenses and costs associated with the harm suffered and disability referenced above.

20. Plaintiff Suzuki has in the past experienced, continues to experience, and may in the future suffer from an assortment of problems associated with the harm described above, including but not limited to, headaches, dizziness, loss of memory, depression, cognitive dysfunction, diminished educational achievement, employment impairment, limitations in physical activities, and loss of the pleasures of life.

21. As a result of the foregoing, Plaintiff Suzuki has suffered damages and will in the future suffer damages caused by the negligence of Defendant Smith.

## **COUNT TWO**

22. The Plaintiff hereby adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

23. At all relevant times, Defendant Jordan Cabana, as the Director of the Hoku Soccer Club, had a duty of care to Plaintiff Suzuki to supervise, educate, monitor, and provide reasonable information and rules to club players, parents, and coaches, to minimize the risk of injury to the players.

24. Defendant Cabana was careless and negligent by breaching the duty of care to players and coaches both generally and in the following particular respects:

- a. Failing to educate players, parents, and coaches concerning symptoms of a possible concussion;
- b. Failing to warn of the risk of unreasonable harm or possible long-term complications resulting from repeated concussions;
- c. Failing to implement rules and protocols to adequately address the dangers of repeated concussions and to implement a medically-sound return-to-play policy to minimize long-term chronic cognitive problems;
- d. Other acts of negligence or carelessness which may materialize during this civil action.

25. Because of the negligence and breach of duty of Defendant Cabana, Plaintiff Suzuki has suffered damages and will in the future suffer damages as described in the foregoing paragraphs incorporated herein.

### **COUNT THREE**

26. The Plaintiff hereby adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

27. Defendant Hoku Soccer Club, as the organization under which Plaintiff Suzuki engaged in the sport of soccer, had a duty of care to establish reasonable rules and regulations and return-to-play protocols to minimize the risk of injuries to players in the club.

28. By failing to gather and disseminate specific information regarding prior player concussions on club medical waiver forms; failing to establish reasonable rules and regulations to educate players, parents, and coaches about the symptoms and risks of repeated concussions; and failing to establish clear and medically sound policies for safe return-to-play, Hoku Soccer Club breached its duty of care to Plaintiff Suzuki.

29. Because of the negligence and breach of duty of Hoku Soccer Club, Plaintiff Suzuki has suffered damages and will in the future suffer damages as described in the foregoing paragraphs incorporated herein.

WHEREFORE, Plaintiff requests judgment for the following:

1. Judgment against Defendants, jointly and severally, for compensatory damages in an amount to be determined by a jury;
2. Payment of the costs resulting from this action to be taxed against the Defendants, jointly and severally;

3. Injunctive relief against the Hoku Soccer Club, requiring the club, among other things, to adopt corrective measures including the institution of an annual educational program for players, coaches, and parents regarding the symptoms and treatment of concussions; and the implementation of medically sound return-to-play guidelines for players who have sustained concussions; and

4. Such other and further relief as this Court may deem just and proper.

Plaintiff requests a jury trial on all issues.

Respectfully submitted, this the 2nd day of November, 2015.

*/s/ Mabel Cho*  
Counsel for Plaintiff

IN THE CIRCUIT COURT OF THE SEVENTH CIRCUIT

STATE OF HAWAII

\*\*\*\*\*

<b>KAI SUZUKI, a minor,</b>	)	<b>CIVIL NO. 14-1-9999</b>
<b>by and through his/her parent,</b>	)	
<b>CASEY SUZUKI,</b>	)	
<b>Plaintiff,</b>	)	<b>ANSWER</b>
<b>v.</b>	)	
	)	
<b>SHANNON SMITH, JORDAN</b>	)	
<b>CABANA, and HOKU</b>	)	
<b>SOCCER CLUB, INC.,</b>	)	
<b>Defendants.</b>	)	

\*\*\*\*\*

ANSWER

COME NOW the Defendants, SHANNON SMITH, JORDAN CABANA, and HOKU SOCCER CLUB, INC., and respond to the Plaintiff’s Complaint as follows:

JURISDICTION AND VENUE

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Defendants admit that the aggregate damages claimed by Plaintiff Suzuki exceed \$10,000 but deny that the damages are due to negligence on the part of the Defendants.

Nonetheless, Defendants do not contest the venue or jurisdiction of the Circuit Court of the Seventh Circuit, State of Hawaii.

FACTS

7. Admitted.
8. Defendants Jordan Cabana and Hoku Soccer Club lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 8, and thus it is denied.
9. Defendants Jordan Cabana and Hoku Soccer Club lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 9, and thus it is denied.
10. Defendants lack sufficient knowledge to form a belief as to the truth of the first allegation in paragraph 10, and thus it is denied. The second allegation is admitted.
11. Defendants Jordan Cabana and Hoku Soccer Club lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 11, and thus it is denied.
12. Admitted.
13. Admitted. Defendants lack sufficient knowledge to form a belief as to the truth of the second allegation in paragraph 13, and thus it is denied.
14. Defendants lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 13, and thus it is denied.

#### **COUNT ONE**

15. Defendants' responses to Paragraphs 1 – 14 are incorporated hereby by reference.
16. Admitted.
17. Denied.
18. Denied.
19. Defendants lack sufficient knowledge to form a belief as to the truth of the allegations in paragraph 19, and thus it is denied.
20. Denied.
21. Denied.

#### **COUNT TWO**

22. Defendants' responses to all prior paragraphs of the Complaint are incorporated herein by reference.
23. Admitted.
24. Denied in general and in all statements a. – d.
25. Denied.

#### **COUNT THREE**

26. Defendants' responses to all prior paragraphs of the Complaint are incorporated herein by reference.

27. Denied.

28. Denied.

29. Denied.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Defendants assert the defense of comparative negligence. Plaintiff Suzuki failed to exercise reasonable care for his/her own safety and thereby contributed to his/her own injury in one of more of the following ways: (1) by re-entering the soccer game after injuring his/her head, (2) by failing to notify his/her coach of his/her concussive symptoms, and (3) in such further ways as may be shown by evidence in this case.

WHEREFORE, Defendants pray the following from the Court:

1. That Plaintiff Kai Suzuki recover nothing from Defendants Shannon Smith, Jordan Cabana and Hoku Soccer Club, Inc.;
2. That no injunctive relief be imposed upon Defendant Hoku Soccer Club, Inc.; and
3. Such other and further relief which the Court may deem just and proper.

Defendants request a jury trial on all issues.

Respectfully submitted this the 30<sup>th</sup> day of November, 2015.

*/s/ Sawyer Alabanza*  
Counsel for Defendant

## **Affidavit of Casey Suzuki**

1           My name is Casey Suzuki; I am a 42 year old single parent living in Hawaii. I attended Waimalu  
2 University 20 years ago, and after I graduated, I married my college sweetheart and began working as a  
3 graphic design artist at a small marketing company. It doesn't pay a lot, but I love what I do. We were  
4 living the American dream. That is, we were until my spouse died eight years ago in a terrible car  
5 accident, leaving me to raise our only child, Kai, alone. It was such a shock, I could hardly function, but I  
6 had to pull myself together for Kai's sake. I tried to find things we could do as a family, so I started  
7 volunteering with Kai's scout troop and signed Kai up for sports camps at the Y. Kai was amazingly fast  
8 and very coordinated, and soon Kai was the star of his/her basketball, track, and soccer teams. It was  
9 great to see Kai moving past his/her grief and doing something he/she loved.

10           At the time of Kai's injury on Friday, December 5, 2014, Kai was 16 and a junior at Kilauea High  
11 School. Kai has always been crazy about soccer; Kai dreamed of playing in the pros like his/her idols  
12 Landon Donovan and Carli Lloyd. He/She watched soccer every chance he/she could get, and he/she  
13 begged me to take him/her to local collegiate soccer games. So when Kai made it onto the top competitive  
14 soccer team with the Hoku Soccer Club at age 13, Kai was thrilled. Kai knew that many Hoku players  
15 have earned soccer scholarships to college, so it seemed like the first step to reaching his/her dreams. I  
16 had to fill out a pile of paperwork to sign Kai up, although it surprised me that Kai wasn't required to get  
17 a physical or give any real information about past medical history or injuries; they just wanted to know if  
18 Kai had had a tetanus shot or suffered from allergies.

19           The club fees are expensive, and then you have all the costs of traveling to tournaments and  
20 getting expensive cleats and uniforms. I couldn't afford it all on my salary, so I had to start working a  
21 second job in the evenings. It meant I had to find carpools to get Kai to practices, and I couldn't watch all  
22 of his/her games like I used to do. But when I saw his/her joy as he/she made the Kilauea High School  
23 varsity team as a freshman, I felt like the sacrifice was worth it. He/She even got to wear jersey # 10, just  
24 like Landon Donovan and Carli Lloyd. Soon Kai was starting every game as a forward – a “striker” – and  
25 he/she quickly became the leading scorer.

26           When Kai got his/her license on his/her 16<sup>th</sup> birthday, it was a relief to know Kai could drive  
27 himself/herself to practices and games, and I didn't have to keep asking favors of other parents. But I did  
28 arrange my schedule so I could come to really important games, like when we played our school's biggest  
29 rival, Kama'aina High School, in the first playoff game in early May of 2014. Kai was really excited  
30 about the game; he/she thought Kilauea might defeat Kama'aina for the first time ever, and if they could

31 get past Kama'aina maybe they could go all the way to state finals. At halftime we were leading 2 – 0,  
32 and Kai had scored one goal and assisted on the other. But about midway through the second half, Kai  
33 collided with a defender when they both went up for a header, and Kai went down hard. She looked  
34 woozy when she got up, so her coach, Tobin O'Reilly, pulled her out right away. Coach O'Reilly is great;  
35 s/he wants to win, but not at any cost. When Carthage scored, I saw Kai asking to go back in the game,  
36 but Coach O'Reilly wouldn't let him/her. The team managed to hold off Kama'aina and won, 2-1! The  
37 whole team was jumping up and down with excitement, although Kai mostly stayed still and just hugged  
38 his/her teammates.

39 After the game, Coach O'Reilly told me that I should take Kai to the doctor the next day, since  
40 he/she was still a bit woozy and complaining of a headache. Kai appeared to feel completely fine the next  
41 morning, but we went to our physician, Dr. Ricky Mueller, first thing anyway. After examining Kai,  
42 he/she said that Kai had a mild concussion. He/She told Kai he/she needed to rest and avoid strenuous  
43 mental and physical activities, including soccer, for a week, when we should come back for a follow-up  
44 visit. I still have the instruction sheet Dr. Mueller gave us after the visit.

45 Kai rested just as Dr. Mueller ordered. But without Kai, the school team lost the next playoff  
46 game. Kai felt really sad about that, but Coach O'Reilly and all his/her teammates told him/her not to  
47 worry, they'd have another chance the next year. Since soccer was finished for the season and Kai said  
48 he/she felt fine, we never did go back for the follow-up visit with Dr. Mueller. It just didn't seem  
49 necessary since the Hoku club soccer tryouts were a month away.

50 Kai did well in tryouts and stayed on the top Under-17 Hoku team with Coach Peyton Foudy,  
51 although some of his/her good friends got dropped down to the second team. When I turned in all of Kai's  
52 paperwork, I made sure to write down on the Medical Waiver form that Kai had suffered a concussion in  
53 his/her school game on the line marked "List any unusual health information" since the form does not ask  
54 for such information specifically.

55 Kai was really happy when his/her Hoku club soccer practices started back up in mid-summer of  
56 2014. Surprisingly, Kai's team had a new coach, Shannon Smith. At the first team meeting, Coach Smith  
57 told the team that Coach Foudy left to care for his/her dad, who had been diagnosed with cancer. Kai and  
58 her teammates were sad for Coach Foudy, but they were impressed to hear that Coach Smith had played  
59 in college on a full soccer scholarship and had turned down an offer to play in the pros.

60 As the top team in their Premier division, Kai's Hoku club team was getting lots of attention from  
61 college coaches. In fact, the team was so confident of winning their division that they made team shirts  
62 with the slogan "Hoku soccer: We came, We saw, We conquered." Kai was still the leading scorer, and  
63 he/she was playing his/her best soccer ever. Coach Smith stressed hard work and instituted strict rules,  
64 and it all seemed to pay off when the team finished the season undefeated. When the team signed up for a

65 college showcase tournament in early December, Kai knew it was his/her chance to be seen by top college  
66 coaches from all across the country: Duke, UNC, Wake Forest, and even Stanford and UCLA. I made  
67 sure to work extra evening shifts early in the week of the tournament, so I could watch Kai play that  
68 weekend. I knew how important this opportunity was for Kai; he/she had to get a scholarship to have any  
69 hope of attending a top-tier university.

70 The tournament started on Friday afternoon, December 5, 2014, and ran through Sunday,  
71 December 7. I didn't get to talk with Kai very much that week because of my work. When I saw Kai for a  
72 few moments on Tuesday evening, he/she did seem kind of quiet and stressed, but I knew he/she was  
73 feeling pressure to do well in the tournament. He/She was already in bed when I got home from work on  
74 Wednesday, and I didn't get to talk with him/her much on Thursday morning. On Thursday evening when  
75 I got home Kai still seemed stressed, so I tried to tell him/her to relax and play his/her game, and  
76 everything would be fine. Kai kind of paused and looked at me like he/she wanted to say something, but  
77 then he/she just said he/she was going to bed. On Friday morning Kai slept through his/her alarm and I  
78 had to wake him/her up for school, which surprised me because Kai was always up before his/her alarm. I  
79 asked if he/she was getting sick, but he/she said he/she was okay, he/she was just tired from all of the  
80 tests he'd/she'd had that week. I told him/her again to relax and said I would meet him/her at the game  
81 that afternoon.

82 I got an important call right when I was leaving work, so I got to the game after it had already  
83 started. I noticed lots of coaches on the sidelines, taking notes on clipboards; I even saw some of them  
84 pointing out Kai. Kai was out on the field in his/her usual position of striker, but I noticed he/she didn't  
85 seem to be running as hard as usual. I figured that maybe he/she was getting sick after all, and I hoped  
86 he'd/she'd be able to shake it off and play well. With about 10 minutes to go in the first half, Kai tried to  
87 head the ball to score on a corner kick, and it looked like he/she took an elbow to the head. Kai seemed a  
88 bit shaken, and co-captain Avery Cheney even came over to check on him/her. But Coach Smith didn't  
89 seem to care and in any case, he/she didn't pull Kai out. Soon it was halftime, with the score tied 0-0.

90 Kai started the second half, and he/she seemed to be a bit better after the short break for halftime.  
91 In fact, he/she almost scored a goal about 5 minutes in, but the goalkeeper made a great save. About 10  
92 minutes later a teammate passed the ball to Kai right outside the penalty box, and Kai started dribbling  
93 toward the goal. All of a sudden a defender made a hard tackle on the ball, and Kai lost his/her balance  
94 and crashed on the ground, hitting his/her head. I waited for him/her to get up, but he/she just layed there.  
95 The referee stopped play immediately, and Coach Smith ran out on the field. Kai still wasn't moving, and  
96 next thing I knew, I saw the field marshal and athletic trainer run out on the field. I was in shock; and then  
97 I ran out on the field. Coach Smith said to me, "I'm so sorry, I'm so sorry; I knew Kai wasn't feeling  
98 well. I can't believe he/she got hurt." I saw that Kai was unconscious, and I heard them call for the

99 ambulance which was at the tournament to come get Kai and take him/her to the ER. Of course, I rode  
100 with them, although I don't remember much of what went on. All I kept thinking was "please, let him/her  
101 be okay; I can't lose him/her, too."

102 At the hospital, the doctors ran tests, and they said Kai had a concussion. He/She finally woke up  
103 about an hour after we got there, but he/she seemed really "out of it." They kept Kai overnight for  
104 observation, and they talked with both of us about what to watch for and how it might be days or even  
105 weeks before Kai fully recovered. They said that in a small percentage of cases, the person can have  
106 serious, long-lasting problems. Of course, we never thought that would happen to Kai, but our worst fears  
107 have come true.

108 Kai started having serious migraines a few days after he/she was discharged. He/She was  
109 incredibly sensitive to light and noise, and he/she was moody and depressed. He/She couldn't concentrate  
110 and had trouble remembering things. I kept Kai out of school since it was almost the winter break, and I  
111 hoped he/she would get better before the new semester started. But he/she didn't. In fact, he/she hasn't  
112 been able to return to school since the injury. Kai still has intense headaches, dizziness, and even nausea,  
113 even though it's over a year later. Because light still bothers him/her, we have to keep our house dark,  
114 with dim blue lights or candlelight. It's so bad that he/she can't come to testify in court, because the stress  
115 is just too much for him/her.

116 Kai's taking one class online now, but that's all he/she can handle. He/She won't be able to  
117 graduate with his/her class this spring, and he/she certainly won't be going to college on a soccer  
118 scholarship or playing in the pros. His/Her life has been completely changed, and the doctors don't know  
119 if he'll/she'll ever fully recover. And I worry about Kai's future; I mean, you read now about these NFL  
120 football players who are getting early dementia, and I wonder, is that going to be Kai? Will Kai ever go to  
121 college or be the person she could have been?

122 I don't fault the game of soccer. Kai loves soccer, and obviously millions of people play it  
123 without these types of problems. But I do fault Coach Smith and the Hoku Soccer Club Director, Jordan  
124 Cabana. After Kai woke up in the hospital, he/she told me that he/she took a hard hit to the head in  
125 practice on Monday before the tournament, but Coach Smith never did anything about it and certainly  
126 didn't inform me about it. High schools have all these protocols in place to train coaches about  
127 concussions and make sure students aren't put in danger, but the Hoku Soccer Club doesn't do anything  
128 to train coaches about concussions. Sure, the club talks about good nutrition and all, but playing with a  
129 concussion can ruin a player's life.

130 I know I signed a waiver saying I can't hold the club accountable for injuries, but thankfully the  
131 judge ruled that the waiver doesn't keep Kai from suing them. And I wrote right on the waiver form that  
132 Kai had suffered a concussion at school so that the Hoku coach would know to keep an eye on him/her.

133 The Hoku coach and club have a duty to take care of their players, but I think they've forgotten that in  
134 their zeal to brag about their winning teams and scholarship-earning players. They should pay for the  
135 harm that Kai suffered, harm that was preventable if they'd only had their priorities right. Money can  
136 never make things right, but at least it can help us afford all of the therapy and educational support  
137 services that Kai will need in the future. Without that, I just don't know what will become of Kai.

138 Of the exhibits in this case, I am familiar with the following: CDC High School Athlete Fact  
139 Sheet; ACE Evaluation Form and ACE Care Plan for Kai Suzuki; Soccer Field Diagram; and the Hoku  
140 Soccer Club Medical Consent/Waiver of Liability and Release. I am not familiar with any other exhibits  
141 or affidavits other than my own.

142 I hereby attest to having read the above statement and swear or affirm it to be my own. I also  
143 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should contain  
144 all relevant testimony, and I followed those instructions. I also understand that I can and must update this  
145 affidavit if anything new occurs to me until the moment before I testify in this case.

146

147

Casey Suzuki

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Casey Suzuki

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Subscribed and sworn before me on this, the 2<sup>nd</sup> day of March, 2015

150

Beth Eckhardt

151

Beth Eckhardt, Notary Public

## Affidavit of Bevin Register, PhD, AT

1 My name is Dr. Bevin Register; I am 45 years old and the Director of the Geller Sport-Related  
2 Concussion Research Center in Waiialae, Hawaii. The Geller Research Center is part of the Department of  
3 Exercise and Sport Science at the University of Hawaii where I am also Department Chair and Mihalik-  
4 Marshall Distinguished Professor. For nearly twenty years, my research has focused on the diagnosis and  
5 long-term neurological impact of sport-related concussions. More recently, our center has also begun  
6 focusing on injury awareness and prevention among youth athletes. As part of our work at the Geller  
7 Center, we offer pre-concussion baseline and post-injury follow-up testing to youth athletes. I saw Kai  
8 Suzuki in February of 2015 after his/her concussion in December of 2014.

9 I became interested in studying concussions about 20 years ago, when I worked as an athletic  
10 trainer for the California Eagles pro football team. It seemed as though we did not have a good process to  
11 determine when players with concussions could safely return to play. So I earned my Master's degree and  
12 my PhD in sports medicine, focusing on balance testing as an objective measure to confirm concussions  
13 and recovery from concussions. We can never make athletes 100% safe, though; all sports carry some  
14 degree of risk. We can only do our best to reduce the risks as much as possible, realizing that some  
15 percentage of athletes will continue to get hurt.

16 I suffered a concussion as a high school soccer player myself, and as an adult, I have had two  
17 more concussions, one from a ski boarding accident and another from riding a roller coaster. I know from  
18 personal experience that the first concussion puts you at increased risk for more, and how it takes less  
19 force to cause subsequent concussions. Because of all I've seen, you might say I'm on a personal crusade  
20 to raise awareness about the devastating impact of multiple concussions.

21 A concussion is a type of mild traumatic brain injury, or mTBI, caused by a blow or jolt to the  
22 head. Contrary to what many people believe, only 5 - 10% of concussions involve a loss of  
23 consciousness. The injury occurs from acceleration and deceleration forces shaking the brain inside the  
24 skull. We've recently discovered that this movement sets off a cascade of neurophysiologic changes  
25 which are more akin to "software" problems than "hardware" problems such as cell death or structural  
26 changes. We see alterations in the metabolism of glucose (the major fuel for the brain), temporary  
27 disruptions in neural membranes that cause impaired connectivity or changes in neurotransmitters, and  
28 reduced blood flow in the brain. As the brain attempts to return to normal, any additional physical or  
29 cognitive activity can cause symptoms to worsen and even lead to long-term problems.

30 In the last ten to fifteen years we've begun to realize how serious the long-term effects of  
31 repeated concussions can be. Coaches used to encourage players to "tough it out" and get back in the  
32 game; continuing to play after getting your "bell rung" was almost a badge of honor. And we used to  
33 think that the brains of children and youth were more resilient than adults, so that we were less concerned

34 when a youth suffered a concussion. Now we realize that youthful brains are actually more vulnerable,  
35 and it can take youth athletes longer to recover than adults.

36 Every year, U.S. emergency departments treat more than 120,000 youth aged 10-19 for sports and  
37 recreation-related TBIs. The numbers are highest in football and soccer..

38 Immediately after a blow to the head that causes a concussion, certain signs may be observed.  
39 The athlete may appear dazed or stunned; he or she may appear confused about events or slow to respond  
40 to questions. He or she might seem clumsy, or lose consciousness briefly. The athlete might also exhibit  
41 mood swings or personality changes. It is important for coaches to be alert to these symptoms, because  
42 the player might try to stay in the game and shake it off, or beg to be put back in if the coach takes him or  
43 her out. Sometimes players deliberately try to hide the injury from their coaches; other times the player  
44 just isn't aware of what is happening because he or she is not thinking clearly. We can educate athletes  
45 about the symptoms of a concussion, but especially when dealing with youth players, I feel strongly that  
46 the real responsibility lies with the adults in the situation: the coaches, athletic trainers, and parents. It is  
47 crucial that regular training be provided to all athletic trainers and coaches working with youth in contact  
48 sports to make sure that they are aware of the symptoms and proper treatment of concussions.

49 Generally, concussion symptoms fall into four categories. The first category involves difficulty in  
50 cognitive activities: concussed individuals may have trouble thinking clearly, concentrating, or  
51 remembering new information; they may feel mentally sluggish, hazy, or foggy. The second category is  
52 physical effects: nausea or vomiting (early on), headaches, blurry or double vision, dizziness or balance  
53 problems, and sensitivity to light or noise. Affected individuals will say that they have no energy or just  
54 "don't feel right." Next, concussed individuals can experience changes in mood or emotion: they may be  
55 irritable, sad, nervous, or more emotional than usual. Finally, affected individuals can have changes in  
56 their sleep patterns: either difficulty in falling asleep, or sleeping more or less than usual.

57 Dr. R. Dawn Comstock at the Center for Injury and Research Policy in Ohio has been collecting  
58 data on the reported incidence and symptoms of concussions for high school athletes across the U.S. since  
59 the 2005-06 season. Dr. Comstock obtains weekly injury and participation data from Certified Athletic  
60 Trainers (ATs) at a representative nationwide sample of high schools via the High School RIO<sup>TM</sup>  
61 (Reporting Information Online) study. By analyzing the data and tracking trends over time, Dr.  
62 Comstock's research helps the National Federation of State High School Associations (NFHS) to develop  
63 policies to improve athletes' safety. Data from 2008-09 through 2013-14 revealed that during a six-year  
64 period, an estimated 120,000 concussions were sustained by high school boys' soccer players nationwide  
65 and 170,000 concussions by high school girls' soccer players. The girls' concussion numbers were higher  
66 even though the NFHS reports that 10% more boys than girls play high school soccer each year. And

67 these numbers undoubtedly underestimate the true incidence, as they only reflect the concussions which  
68 were known to the athletic trainers.

69 Dr. Comstock found that while headaches are the most commonly reported symptom among all  
70 athletes – approximately 90% report headaches – boys and girls differ in their exhibition of other  
71 symptoms. For instance, more boys than girls experience amnesia (27% versus 14%), loss of  
72 consciousness (5% versus 2%), and tinnitus (11% versus 5%). In contrast, girls more often report  
73 difficulty in concentrating (55% versus 41%), sensitivity to noise (19% versus 12%), nausea (33% versus  
74 24%), and feelings of drowsiness (34% versus 18%). It is important to be aware of these differences so  
75 we don't overlook girls/boys who have sustained a concussion. While many people are aware that  
76 amnesia or loss of consciousness are symptoms of concussions, complaints of drowsiness or sensitivity to  
77 noise may be attributed to busy teen lifestyles rather than recognized as indications of a possible  
78 concussion.

79 When an athlete is suspected of having sustained a concussion, it is very important that he or she  
80 be removed from play right away and not be allowed to go back in the game that day. The athlete needs to  
81 be evaluated by a health care professional who is knowledgeable about assessing and treating  
82 concussions. Diagnosis still largely depends upon observed symptoms and the patient's report, as CT  
83 scans and MRIs appear normal unless the injury is severe enough for intracranial bleeding.

84 Physicians frequently use an "Acute Concussion Evaluation," or ACE, questionnaire when  
85 interviewing a person thought to have sustained a concussion. The ACE notes the characteristics of the  
86 injury, patient symptoms, and risk factors such as previous concussions or a history of headaches that  
87 may indicate a full recovery could take longer than normal. After evaluating the patient, the physician  
88 should give the individual an ACE Care Plan sheet detailing what the patient should and shouldn't do,  
89 and what types of follow-up are recommended. Kai was evaluated using an ACE in May of 2014 after  
90 he/she sustained a concussion while playing on his/her school soccer team. It would have been important  
91 for Kai to tell his/her future coaches about that concussion; I do not know whether Coach Smith was ever  
92 informed or not.

93 After sustaining his/her first concussion in the spring of 2014, Kai was at greater risk for a  
94 subsequent concussion even with a lesser application of force. A study conducted by McGill University in  
95 Montreal found that college soccer players who sustained one concussion were 4 to 6 times more likely  
96 than uninjured players to sustain a second concussion. It is critically important for organizations involved  
97 in youth athletics, whether schools or club sports, to ask incoming players about any past incidents of  
98 concussions so they will know to monitor affected players more closely. Any failure to specifically ask  
99 for such information is unthinkable; no responsible club could possibly fail to recognize the importance of  
100 such information.

101 Most players who have sustained a mild concussion are symptom-free within a week to ten days,  
102 but it takes others much longer to recover. According to the RIO<sup>TM</sup> data, concussion symptoms resolved  
103 within 6 days for 83% of high school boys' soccer players and 75% of high school girls' soccer players,  
104 leaving a substantial percentage with symptoms lasting a week or longer. Since adolescent brains are still  
105 developing, it is better to err on the side of caution when evaluating return-to-play: "When in doubt, sit  
106 them out." Individuals vary greatly in the time needed for a full recovery, and sometimes after physical  
107 symptoms have resolved, the player may have lingering cognitive impairment or brain metabolism  
108 abnormalities.

109 Rest is a key part of recovery, and this includes rest from learning and mental stimulation as well  
110 as physical rest. Youth athletes often feel stressed by the need to take time to recover, feeling that they  
111 should "work through" their symptoms so they do not fall behind in their schoolwork or lose athletic  
112 fitness. It is very important for coaches, parents, athletes, and school personnel to support the athlete's  
113 need to take sufficient time to recover. And nationally-recognized researcher Dr. Robert Cantu has found  
114 that it is even more critical to allow sufficient time when an athlete has suffered a repeat concussion. For  
115 instance, after a second concussion, a player should sit out for a minimum of 2 weeks even if the  
116 symptoms all clear up within 30 minutes of the incident.

117 An athlete should be completely free of symptoms at rest and have no symptoms with cognitive  
118 stress (such as reading or schoolwork) before starting on a gradual progression to return to play. If  
119 symptoms return at any point, the athlete must stop and rest; when they are symptom-free, they must  
120 return to the previous stage that they completed without symptoms. It is important that the athlete not  
121 progress too quickly and that he or she pay careful attention to any recurring symptoms and honestly  
122 report those to their parent, coach, or athletic trainer. While a coach or athletic trainer can observe  
123 symptoms such as poor balance, the athlete must be willing to report other symptoms like difficulty  
124 concentrating which the coach cannot see as readily.

125 In my evaluation of Kai Suzuki at the Geller Center in February of 2015, I conducted a number of  
126 assessments, including computerized cognitive testing, computerized balance testing, clinical cognitive  
127 and balance testing, symptom assessment, and an assessment of his/her history of concussion. All of  
128 his/her test results showed that he/she was suffering from post-concussive syndrome. During my  
129 evaluation he/she displayed difficulties with visual and recall memory, slowed information processing,  
130 and inattentiveness. He/She was experiencing ongoing and severe headaches, including migraines; other  
131 physical symptoms included poor balance, sensitivity to light and noise, and unusual sleepiness. Kai also  
132 reported mood swings, intolerance to stress, and feelings of depression. All of these symptoms made it  
133 impossible for him/her to attend school or take classes online. I evaluated him/her again in early August,  
134 and although his/her symptoms were marginally improved, he/she was still unable to tolerate more than

135 one online class for school. His/Her low tolerance for stress, continuing headaches, and sensitivity to light  
136 and noise will certainly decrease the likelihood of his/her ability to be present in the courtroom.

137 From my assessments and interviews with Kai and Casey Suzuki, it appears that Kai may have  
138 suffered one concussive event on Monday, November 24 and very likely suffered two concussive events  
139 on December 5, 2014. The die was cast when Coach Smith left Kai in the game after the first event on  
140 December 5, for the occurrence of a second blow in the same game is almost certainly a key factor in  
141 his/her ongoing and debilitating problems. As pediatric neurosurgeon Dr. Todd Maugans at Cincinnati  
142 Children's Hospital has noted, "In the recovery phase, rest and avoidance of a second head injury is  
143 imperative . . . when [cerebral] blood flow is low [as occurs after a concussion], another injury could be  
144 catastrophic." If the coach had recognized Kai's symptoms and removed him/her from the game after the  
145 first incident, Kai almost certainly would have received more appropriate and timely care, greatly  
146 increasing his/her chances for a full recovery. Given the seriousness of his/her condition more than a year  
147 after his/her injury, it is strongly likely that Kai will continue to suffer significant physical and cognitive  
148 problems for the rest of his/her life. It is heartbreaking to know that a young man/woman with a bright  
149 future ahead of him/her has almost certainly had that future snatched away, all because a soccer club and  
150 soccer coach were too blind to see what was right in front of their faces. We have to do whatever it takes  
151 to put a stop to this type of tragedy.

152 Of the exhibits in this case, I am familiar with the following: ACE Evaluation Form and Care  
153 Plan for Kai Suzuki; CDC Fact Sheet: "Facts About Concussion and Brain Injury"; Dr. Robert Cantu's  
154 Return to Play Guidelines; NFHS Fact Sheet: Concussion Physiology; Soccer Field Diagram; and my  
155 own Curriculum Vitae. I am not familiar with any other exhibits or affidavits other than my own.

156 I hereby attest to having read the above statement and swear or affirm it to be my own. I also  
157 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should contain  
158 all relevant testimony, and I followed those instructions. I also understand that I can and must update this  
159 affidavit if anything new occurs to me until the moment before I testify in this case.

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161

Bevin Register, PhD, AT

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Bevin Register, PhD, AT

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Subscribed and sworn before me on this, the 24<sup>th</sup> of August, 2015

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Beth Eckhardt

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Beth Eckhardt, Notary Public

## Affidavit of Tobin O'Reilly

1 My name is Tobin O'Reilly; I am 34 years old. I teach Sports Medicine, Health, and PE at  
2 Kilauea High School in Waialae, Hawaii. I also coach the boys' and girls' varsity and JV soccer teams.  
3 I've always wanted to coach and teach at the high school level because I love seeing the excitement in the  
4 students' eyes when they learn a new concept or skill for the first time. And Kilauea High is a great place  
5 to work! As the only high school in town, we have fantastic community support for all of our programs.  
6 When we play our arch-rivals from Kama'aina High School in soccer on a Friday night, the bleachers are  
7 packed with students and townspeople cheering our team on!

8 I've always loved soccer; I played in high school myself and became a FIFA-certified soccer  
9 referee to help pay for college. I even earned a scholarship to play soccer Waimalu University, where I  
10 majored in Exercise and Sports Science with a minor in Coaching Education. Before I graduated in 2000,  
11 I began coaching youth soccer part-time at Triad Soccer Club and started attending soccer coaching  
12 courses. I eventually earned my NSCAA (National Soccer Coaches Association of America) Advanced  
13 National Coaching Diploma, their second highest certification, in 2005. It's an intense course, equivalent  
14 to a USSF "B" level license.

15 After I earned my Advanced National Diploma, I heard that Hoku Soccer Club was looking to  
16 hire a club Director. Hoku was still very new at that time, and the position sounded like a great  
17 opportunity, maybe the only thing that could have lured me away from teaching at Kilauea High. I  
18 applied for the position and thought my interview went well, but Hoku hired Jordan Cabana. I couldn't  
19 believe it. Sure, Jordan had played pro ball and I hadn't, but other coaches at Triad Soccer Club said that  
20 Jordan was too focused on winning without regard to player safety. In fact, they were relieved when  
21 Jordan left. I had to agree; I had seen Jordan's angry behavior on the sidelines when his/her team wasn't  
22 playing well. On more than one occasion, I saw Jordan kick chairs or trash cans when his/her team was  
23 losing, and Jordan often yelled insults at players who made mistakes. I hate to admit it, but I kind of lost  
24 my head and posted some nasty comments about Jordan on the statewide soccer coaches' forum  
25 "WaialaeSoccer.net." It wasn't the wisest idea, but I felt pretty strongly that Jordan got the job that should  
26 have been mine.

27 I learned a lot about general sport safety and fitness in my college classes and my coaching  
28 certification courses. I know that sports injuries can hurt the whole team, so I do everything I can to help  
29 our players stay healthy. I make sure they keep hydrated and eat the right kinds of foods before and after  
30 games and practices. I talk with them about getting enough rest, and of course about keeping their  
31 schoolwork as their top priority. A few of them will be able to play ball in college, but most of them  
32 won't, so I emphasize that they need to have good grades to stay on the team.

33           When I first started coaching, we didn't learn much about concussions in my training classes; we  
34 mostly learned about sprains, strains, hydration, and that sort of thing. But several years ago, back in  
35 2011, I heard in the news about several high school football players who died after suffering a second  
36 concussion in a game or practice. I knew soccer players sometimes got repeat concussions – I had a  
37 teammate in college who had short-term memory problems and recurring headaches after several  
38 concussions – so I started reading all that I could about concussions. We didn't have enough money to  
39 hire athletic trainers at Kilauea HS, which made it my job to stay on top of current research in the field.

40           In the summer of 2013, I learned about the “Heads Up” concussion awareness initiative of the  
41 Centers for Disease Control and Prevention (CDC). The CDC provides a free online training video for  
42 coaches, as well as Fact Sheets to give to student-athletes and parents. The information is incredibly  
43 helpful; it tells the signs and symptoms of concussions, how to prevent them, and what to do if you  
44 suspect an athlete has a concussion. The website even has a guidebook for high school coaches, and  
45 clipboard stickers and wallet cards that make it easy to keep the information with you. That fall I began  
46 implementing the CDC recommendations at the beginning of the season. I sent home the CDC high  
47 school athlete and parent fact sheets with all my students because I wanted to make sure that my players  
48 knew not to hide their symptoms or try to “play through” the pain. I even put up several CDC posters in  
49 my office and in the gym, to remind students to take concussions seriously. As those posters say, “When  
50 in doubt, get checked out; it's better to miss one game than the whole season.” Soccer is a great game, but  
51 it is just a game; I would never risk a player's health for a win.

52           When the soccer season started in 2014, I knew they had the potential to make the playoffs. Kai  
53 Suzuki, a “striker” and our leading scorer, already had a year of experience on the varsity team since  
54 he/she made the team as a freshman. I had never had a player like Kai; he/she was fast, had wonderful  
55 ball control, could place his/her shot exactly where he/she wanted it, and had an intuitive feel for the  
56 game. He/She had an incredible work ethic, and his/her example inspired the other players. He/She was  
57 well-liked and respected by all of his/her teammates, even the seniors, and they voted him/her as a co-  
58 captain at the beginning of the season. I knew that if any of my players had the potential to play in college  
59 or the pros, it was Kai.

60           And the team, and Kai in particular, certainly lived up to my expectations. We were undefeated  
61 going into the playoffs, and our first playoff game was against our arch-rival, Kama'aina High School.  
62 We hadn't played them in the regular season; the game was rained out and we were never able to  
63 reschedule it. So I think the whole town was in the bleachers when we faced Kama'aina at home on  
64 Wednesday, May 4, 2014. We really dominated in the first half; Kai scored a goal and sent a beautiful  
65 cross in to get an assist on another goal. I'd never seen the team play better. With a 2-0 lead at halftime,  
66 we were focused and confident going into the second half.

67 But about 20 minutes into the half, Kai collided with a Kama'aina player when trying to score on  
68 a header. Kai went down and seemed to hit his/her head on the ground. He/She took a minute to get up  
69 and looked kind of dazed, so I pulled him/her out right away. I asked Kai some questions based on my  
70 CDC clipboard sticker. He/She answered my questions slowly, and he/she said she was feeling "foggy."  
71 It was clear to me that Kai might have sustained a concussion, so I told Kai he/she would need to sit out  
72 for the rest of the game. Ten minutes later Kama'aina scored and Kai begged to go back in, but there was  
73 no way I was going to do that. I'd rather lose the game than risk my player's health.

74 Kama'aina came close to scoring, but our defenders were great, and we won 2-1. The crowd and  
75 all the players went wild, except for Kai. He/She had a huge grin on his/her face, but he/she didn't try to  
76 dance around like the other teammates. After things calmed down, I spoke with Kai and Casey Suzuki  
77 and told them he/she needed to go to a doctor the next day because I suspected he/she might have a  
78 concussion. They both assured me they would do that first thing. When he/she left that night, Kai said  
79 "Don't worry, Coach, I'll be ready to play the next game on Saturday." I didn't say anything, but I knew  
80 that was unlikely.

81 At the time, Waialae did not have any laws requiring schools to follow a particular procedure  
82 before allowing athletes to return to play, although I knew several other states had passed bills on the  
83 subject that spring. In fact, the Colorado bill required all middle school, high school, and youth club  
84 coaches to attend seminars on concussions every year, as well as requiring medical clearance before  
85 athletes could return to play. And I knew that the legislature in Waialae was debating a similar bill which  
86 would likely pass the next month. So I wanted to err on the side of caution and would not have let Kai  
87 play again without medical clearance, even though it was not yet required of me by law. Kai did go to see  
88 a doctor on Thursday, and the doctor reportedly told Kai he/she needed to rest for a week and then return  
89 to see the doctor. Without Kai in the game on Saturday, we lost a close match to the Gallic High School  
90 team. Of course Kai and his/her teammates were disappointed, but I told them we would be even better  
91 the next year, and the important thing was that everyone played their best.

92 At the end of May, I learned that Dr. Gerard Gioia and Dr. Jason Mihalik had developed an "app"  
93 for cell phones which helps coaches determine right on the sidelines whether a player may have suffered a  
94 concussion. The app uses CDC information to give coaches the right questions to ask the athlete, and it  
95 even allows the coach to email the information immediately to the player's parents and physician. Of  
96 course I got the app for my phone right away; it was well worth the \$4 cost.

97 In June, the Waialae legislature passed the Geller-Walton Concussion Awareness Act, in honor of  
98 two high school students in Waialae who had died after sustaining brain injuries in high school football  
99 games. All the major newspapers and TV stations had big stories about the passage of the bill; anyone  
100 who cared at all about sports had to hear about it. The Act set up the Geller Sport-Related Concussion

101 Research Center to develop educational materials on concussions for students, parents, and school  
102 personnel. In addition, it requires public schools in Waialae to provide a concussion information sheet  
103 every year to all students participating in interscholastic sports and to their parents. Both the students and  
104 their parents must sign the sheets and return them to the school coach before the student can participate in  
105 any tryouts, practices, or competitions. It also requires school coaches to remove any student from play  
106 who is suspected to have sustained a concussion, and the student must obtain written clearance from a  
107 qualified medical professional before the student can return to play. Obviously at Kilauea High School we  
108 are very supportive of this Act, and we developed our emergency plans and gave instruction sheets to our  
109 students and parents right away in the fall of 2014.

110           As a junior that year, Kai didn't have to take PE as a required course. Yet he/she signed up for my  
111 Tuesday-Thursday "Advanced Personal Fitness" class where students increase their fitness through high-  
112 intensity aerobics, circuit training, Zumba, Yoga, and weight training. Kai seemed to enjoy the class and  
113 said it gave him/her a nice break from all of her AP and Honors courses. He/She always went all-out in  
114 class and often encouraged other students who were not as athletic as he/she was. That's why I remember  
115 thinking that he/she must be getting sick the week after Thanksgiving when he/she asked to sit out  
116 halfway through our Zumba session on Tuesday. When I asked if she was okay, he/she said he/she had a  
117 bit of a headache from all of his/her studying for tests that week. On Thursday he/she didn't seem any  
118 better, so I gave him/her a pass to go to the library to study instead of sitting around in the gym. He/She  
119 had talked about having a big club soccer tournament that weekend, so I hoped he/she would recover in  
120 time to play.

121           The next Monday I heard that Kai had sustained a serious concussion at the soccer tournament.  
122 He/She has not come back to classes on campus at all since that weekend because of his/her lasting  
123 injuries. I am devastated to hear that Kai, such a promising athlete and student, has suffered such serious  
124 long-term problems because of that concussion. I don't know the specifics of his/her injury, but I do know  
125 that if a coach doesn't recognize the symptoms of a concussion and keeps a player in the game who has  
126 taken a hard hit, it can lead to problems like this. And unfortunately the Geller-Walton Act only applies to  
127 public schools, not to club soccer organizations. Even so, all coaches are still responsible for the safety of  
128 their players. The dangerous effects of concussions had been in the news long before Kai was injured in  
129 December of 2014, and the CDC materials were readily available online in 2013. Any reasonable coach  
130 or club who cares about their players would have taken steps to educate themselves and their team  
131 families about concussions, even without being required to do so by law. I did it before the Geller-Walton  
132 Act, because it's just the right thing to do. Tragically, it takes a lawsuit to make some people realize that  
133 concussions are no joke, so they need to take their responsibilities seriously.

134 Of the exhibits in this case, I am familiar with the following: CDC High School Athlete Fact  
135 Sheet; CDC High School Coaches' "Heads Up" Clipboard Sticker; CDC High School Athletes' Signs and  
136 Symptoms Poster; Soccer Field Diagram; Geller-Walton Concussion Awareness Act; and Geller-Waller  
137 Concussion Awareness Act Compliance Forms. I am not familiar with any other exhibits or affidavits  
138 other than my own.

139 I hereby attest to having read the above statement and swear or affirm it to be my own. I also  
140 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should contain  
141 all relevant testimony, and I followed those instructions. I also understand that I can and must update this  
142 affidavit if anything new occurs to me until the moment before I testify in this case.

143

144

*Tobin O'Reilly*

145

Tobin O'Reilly

146

Subscribed and sworn before me on this, the 25<sup>th</sup> of August, 2015.

147

*Beth Eckhardt*

148

Beth Eckhardt, Notary Public

## Affidavit of Shannon Smith

1 My name is Shannon Smith; I am 27 years old. In 2011 I began coaching soccer full-time for the  
2 Hoku Soccer Club after graduating from Kukui College in Waiālae, Hawaii, with a degree in  
3 communications. I played soccer at Kukui on a full scholarship, and I was the second leading scorer on  
4 my team in my senior year even though I played midfield. I also coached part-time at Hoku during my  
5 last two years in college. When I graduated, the California Falcons pro team made me an offer, but I  
6 turned it down because the money for pro players in the US isn't all that great unless you're a superstar.  
7 Hoku Soccer Club Director Jordan Cabana told me I could coach three teams and go full-time if I wanted,  
8 and I could use my communications training to help market the club and update the website. It sounded  
9 good to me, and I've been really happy with the decision to work for Hoku. They are the best club in this  
10 part of , and they have trained lots of players who have gone on to play in college.

11 Right now I'm coaching the Under-14 boys' premier team, the U-15 second division classic boys'  
12 team, and the U-16 first division boys' team. Club soccer is divided into different competitive levels, with  
13 premier level soccer being the highest statewide division, followed by first division classic teams, second  
14 division classic teams, and challenge level teams. Below the challenge level teams are recreation level  
15 teams, which usually have volunteer coaches and players who are just playing for fun. I've coached both  
16 genders.

17 Before I could start working for Hoku full-time, I had to obtain my National "D" level soccer  
18 coaching license from the U.S. Soccer Federation. USSF is the only organization allowed by the  
19 international soccer federation ("FIFA") to issue coaching licenses in the U.S. The licensing course was  
20 pretty intense; it lasted 6 days and included classroom instruction, homework, and sessions where we had  
21 to plan and lead practices. The course covered learning styles of players, soccer techniques, and soccer  
22 tactics. We also had a short session on the care and prevention of injuries, which mostly focused on  
23 strains and sprains, broken bones, and heat exhaustion. We barely touched on concussions. To pass the  
24 course, I had to pass oral, written, and practical field evaluations. I think that out of the 30 people taking  
25 the course with me, only 20 of us earned our National "D" license without having to repeat the course.

26 After I got my "D" license, the club moved me up from coaching challenge teams to coaching  
27 three classic level teams. I was glad for the promotion because it meant I got to coach players who were  
28 more talented and motivated. Don't get me wrong, I enjoyed the enthusiasm of the challenge level  
29 players, but I felt that my skills were put to better use with the more skilled players..

30 In early July of 2014, Peyton Foudy, the coach of the Hoku U17 Premier team, found out that  
31 his/her dad had been diagnosed with cancer and wouldn't live past Christmas. He/She was devastated and  
32 left to be with him right away. Hoku doesn't have assistant coaches for the teams, so the club needed  
33 someone to step in and take Peyton's place. Most of the other full-time coaches already had four teams, so

34 when Jordan Cabana asked if I was up to the job, I jumped at the chance. I've always gotten along great  
35 with my players, so I figured I could handle it.

36 Peyton had evaluated the players at tryouts and picked the maximum of 18 players. They had  
37 already turned in all of their paperwork to the club administrator, who had given the team medical forms  
38 to the team manager. I didn't ask to look at the forms; I figured I'd get them if a player ever got injured  
39 and we needed to know his/her insurance information. The team hadn't started practicing yet, so I called a  
40 meeting to get to know everyone, and I brought watermelon to help put everyone at ease. The players  
41 seemed impressed by my background. And although they were certainly concerned for Coach Foudy, they  
42 seemed to accept the coaching change without complaining. When we began holding our regular practices  
43 on Mondays, Wednesdays, and Thursdays, I was very impressed by their skills and teamwork. I knew that  
44 with a bit of luck, we were going to have a great season. And if the team did well, that would help solidify  
45 my reputation in the club, too, so I wanted to make sure I helped the team to win.

46 The club website has links to great information on sports nutrition and hydration, so I made sure  
47 the team knew what to eat and drink to help them perform their best at practices and games. Hoku is also  
48 involved in an ACL Injury Prevention study in partnership with Waikiki College. It's a pretty cool  
49 program, and it seemed to be working, because none of my players have ever torn their ACL.

50 I always try to treat my players equally and make sure that I maintain a professional relationship  
51 as a coach, not as a "friend," and I got the feeling that I was different from Coach Foudy in that respect.  
52 Since I saw my primary purpose as making them the best soccer players that they could be, I didn't really  
53 take time for a lot of small talk about school or their boyfriends/girlfriends. I figured that I was better off  
54 staying out of all of the drama.

55 The team was highly motivated to finish the season undefeated so they could advance from  
56 statewide Premier level play to the multi-state Regional Premier division in the next season. At least six  
57 of the team members were hoping to earn college scholarships, and they knew that advancing to Regional  
58 Premier would get them a lot more exposure to college coaches. So the players worked incredibly hard in  
59 practice and really stayed focused. Team co-captain Kai Suzuki was a big part of that; he/she had an  
60 incredible work ethic and really set a high standard for the rest of the team to follow. Kai also organized  
61 "team bonding" times outside of practice because he/she said it would help the team be cohesive on and  
62 off the field. I wasn't part of those gatherings, but it did seem to make the team closer.

63 All of their hard work paid off, and the team won every game in the regular season. Incredibly, all  
64 of my players had made it through the season without injury. Kai Suzuki was amazing playing as a  
65 striker; he/she scored at least one goal in every game, two goals in two games, and a "hat trick" (three  
66 goals) in one game! Kai clearly had the potential to play in college and maybe even in the Olympics or  
67 the pros. We went on to win the State Cup championship two weeks before Thanksgiving. I knew that the

68 team's success had caught the eye of Jordan Cabana, and I figured I would have my pick of teams for the  
69 next year. All we had left now was the College Showcase tournament on December 5-6, 2014, one week  
70 after Thanksgiving.

71 Kai was especially excited about the College Showcase because he/she knew a lot of the top  
72 college coaches were planning to be there. I think several coaches were attending specifically to see Kai,  
73 so I wanted to give him/her as much playing time as I could. College Showcase tournaments are a bit  
74 unusual; winning the game isn't the most important thing: being seen is. So players usually don't play  
75 quite as roughly as in a typical tournament because they can't play if they get hurt. I figured that since all  
76 of my players made it through the season without injury, we were probably home free now.

77 We didn't practice the week of Thanksgiving but resumed practice the next Monday. During the  
78 scrimmage at the end of practice, Kai was tripped, fell, and hit his/her head on the ground pretty hard.  
79 He/She was slow to get up, and he/she seemed confused for a moment about where he/she was. He/She  
80 was also holding on to his/her head and saying that he/she felt a little dizzy, so I made him/her sit out the  
81 last 10 minutes while I finished leading practice. As soon as practice ended, Kai headed to his/her car  
82 before I could talk with him/her. I meant to call and check on him/her, but it was too late when I got  
83 home, and it slipped my mind the next day.

84 Kai emailed me on Wednesday to say he/she had had a big test and couldn't make practice. That  
85 was unusual; I think it was the first practice he/she had missed all season. On Thursday we just had a light  
86 practice since we would be playing the next day; I mainly spent the time reviewing the scouting reports  
87 on our opponents. Kai seemed tired and quieter than usual. When I asked him/her how his/her test had  
88 gone, he/she acted confused for a moment and then said it went okay. Kai said he/she had a bit of a  
89 headache from stress and staying up late studying, but he'd/she'd be fine by our game the next day. I  
90 didn't think much else about it; I could remember pulling all-nighters before important tests and knew it  
91 could really wipe you out. I figured Kai would rest up that night because I knew how much it meant to  
92 him/her to impress the college coaches.

93 On Friday afternoon everyone, including Kai, was excited to get going. We were playing a team  
94 from Triad Soccer Club that was good but not great; I figured we should be able to put lots of goals on the  
95 board. And that would make Jordan Cabana happy because Jordan always liked it if we could beat his/her  
96 old club. Lots of college coaches were at our field, and I heard several of them mention Kai's name  
97 specifically. I wanted to give Kai as much playing time as I could so they could get a good look.

98 Kai and the other co-captain, Avery Cheney, led the warm-ups, and I started them in their usual  
99 positions at striker and center midfielder. But about 10 minutes into the game, I noticed that Kai wasn't  
100 playing as well as usual, so I subbed him/her out to check on him/her. Kai said he/she was just a little  
101 tired still, and he/she begged to go back in so he/she could show the college coaches what he/she could

102 do. After he/she drank some water, I subbed him/her in and he/she did play better. Kai was in a perfect  
103 position to score on a header when we got a corner kick near the end of the half, but he/she sent the ball  
104 over the goal. I think he/she might have gotten jostled by a defender, but the referee didn't call a foul. Kai  
105 sort of stood around for a minute looking disgusted that he/she didn't score, and Avery went over to  
106 encourage him/her. Then Kai jogged back into position, although not with his/her usual energy and  
107 enthusiasm. I didn't think anything of it at the time.

108         The first half ended with the score tied 0-0. The team was playing okay but not up to its potential,  
109 so I got after them at halftime. Sure, winning isn't the most important thing in a College Showcase, but  
110 goals are always impressive to college coaches, and we should have been beating that team easily. After I  
111 finished, Kai told me, "Don't worry, coach, I'll get a goal for us," and he/she ran onto the field.  
112 Immediately Avery came over to me and said, "Coach, I'm concerned about Kai. I know he/she wants to  
113 play, but he/she just doesn't seem like himself/herself. When I asked Kai if he/she was okay after he/she  
114 took an elbow on that header, Kai looked at me blankly and didn't say anything. Maybe you should pull  
115 Kai and talk to him/her." Before I could reply, the referee blew his whistle to start the second half and  
116 Avery had to run onto the field.

117         I thought about yelling for a sub to pull Kai out, but he/she had seemed so eager to get back on  
118 the field that I decided to just watch him/her. Five minutes later Kai sent a rocket toward the goal, but the  
119 goalkeeper made an amazing save. Unlucky! Kai seemed back to his/her usual self, and I knew it was just  
120 a matter of time until he/she would score. Maybe 10 minutes later a teammate sent a beautiful pass to Kai  
121 just outside the penalty box, and Kai took a touch on the ball to get ready to shoot. From out of nowhere,  
122 a defender rushed at him/her and tackled the ball hard, and Kai lost his/her balance. He/She didn't even  
123 have time to put out his/her arms to stop his/her fall, and he/she hit her head on the ground really hard.  
124 The referee was sprinting over blowing his whistle; I figured he would call for a penalty kick and Kai  
125 would get his/her goal after all. But Kai didn't get up, and he/she wasn't moving. The referee motioned  
126 for me to come out on the field, and when I got there, I saw that Kai's eyes were closed and it looked like  
127 he/she was unconscious. The field marshal and athletic trainer ran out, too, and they radioed for the  
128 ambulance to come and get Kai. Casey Suzuki had run out on the field, too, and I said how sorry I was  
129 that Kai had gotten hurt and how I was sure he/she would be okay.

130         After the game ended, I called Casey's cell phone to get an update on Kai. It must have been  
131 three hours later before he/she called me back. Casey said that Kai had a serious concussion and that  
132 he/she was going to stay in the hospital overnight for observation. Casey said Kai had mentioned  
133 something about hitting his/her head in practice on Monday, and why didn't I make sure Casey knew  
134 about it!?! Casey also told me that Kai had suffered a concussion in the spring on his/her school team, and  
135 I should have known to keep a closer eye on him/her. That was the first thing I had ever heard about a



## Affidavit of Jordan Cabana

1 My name is Jordan Cabana. I am 39 years old and have been the Director of the Hoku Soccer  
2 Club since 2010. I attended Julian College on a soccer scholarship and started at center back (defender)  
3 all four years. I earned my bachelor's degree in Sport Administration in 1999, which included coursework  
4 in sport marketing, statistics, finance, licensing, facility and event management, and community relations.  
5 After I graduated I played professionally for a few years with the United Football Club in Europe before  
6 coming back home to Hawaii 2002. I put all my knowledge to use by coaching youth soccer part-time at  
7 Triad Soccer Club while working as Director of the Parks and Recreation Department. In 2008 I became  
8 the fulltime Director of Player Development for the Under-15 through Under -18 year old teams at Triad,  
9 but I soon realized that I disagreed with the Triad Board of Directors over their coaching philosophy. The  
10 Triad teams were underperforming, in my opinion; they should have been winning State Cup  
11 championships with the talented players in the club. When I was offered a position at Hoku, I was happy  
12 to leave Triad.

13 Hoku was the "new kid on the block" in 2010; the club had only been in existence since 2009 and  
14 was still trying to "prove" itself. I knew that Hoku could gain respect from other clubs by producing  
15 players who earned college scholarships, so I set high standards for my coaches. I insisted that all of my  
16 classic level coaches must have played in college so they could demonstrate correct soccer techniques and  
17 understand how to compete at a high level. I had earned my National "C" level coaching license, and I  
18 required my coaches to earn a National "D" license or higher (an "A" license is the highest). The  
19 certification courses are rigorous, covering how to teach soccer techniques and tactics and including a  
20 short session on first aid. I knew that requiring my coaches to obtain their National "D" license would  
21 make sure that they not only knew how to *play* soccer, they would also learn how to *coach* soccer.

22 Under my leadership, Hoku Soccer Club has excelled. We are now the third largest club in the  
23 state, and every year about two dozen of our players earn college soccer scholarships. We have ten classic  
24 boys' and girls' teams in the Under-15 to Under-18 age groups, eight of which are at the highest  
25 "Premier" level of play. All of our Premier teams attend at least three tournaments every year in addition  
26 to the State Cup championship, and our club office is full of their trophies. Between our recreational,  
27 challenge, and classic teams, we have over 200 athletes playing soccer at Rubicon. I think our club  
28 success proves that we are on the right track, and the huge turnout of players at tryouts every year shows  
29 that the parents think so, too.

30 In order to get qualified coaches, I have to pay them appropriately, so club fees for the classic  
31 players are not cheap. For the high school age players (U15 – U18) who only play club ball in the high  
32 school off-season (fall club ball for girls, spring for boys), club fees are \$1200 per year, plus a \$250  
33 registration fee, plus \$300 for the uniform, plus the cost of attending tournaments. Altogether it probably

34 costs \$3000 per year for players on the top classic teams. Our fees are in line with the other clubs in the  
35 state, and we do have some scholarship money available for players who can demonstrate a need.

36 Each team has one paid coach and a volunteer manager; we do not have money for paid assistant  
37 coaches or athletic trainers. We are not unusual in our lack of trainers; only the largest soccer club in  
38 Hawaii has an athletic trainer on staff. However, we do have an association with the sports medicine  
39 department at Waikiki College. The college provides athletic trainers at our club-hosted tournaments, and  
40 we refer players who need services to their trainers and physical therapists. It's a great arrangement; the  
41 sports medicine students at Waikiki College get hands-on experience, and we get services for free.

42 Our players' health and safety are very important to us. We emphasize health and injury  
43 prevention in our club because I know from personal experience what a difference good health habits can  
44 make. Both in college and in the pros, I had coaches who were fanatics about proper nutrition before and  
45 after games and practices. So we have links on our website to lots of information about hydration, pre-  
46 game and post-game meals, and how to eat right when traveling to tournaments. We also remind the  
47 players that proper rest is important, for a tired player is at increased risk of injury. When I checked last  
48 summer, I found that fewer than half of the soccer clubs in the state have any kind of nutrition or  
49 hydration information posted on their website, much less any additional information on injury prevention.

50 To show our dedication to our players' safety, just look at our ACL Injury Prevention Project in  
51 partnership with Waikiki College. We're the only soccer club in the state that is involved in this type of  
52 research project. The ACL, or anterior cruciate ligament, is one of the main ligaments which stabilizes a  
53 player's knee. It can get torn if the player tries to turn while his/her foot is firmly planted, or if a player  
54 lands wrong after jumping, or sometimes during a collision with another player. A player who tears  
55 his/her ACL is likely to need surgical repair and then 6 to 9 months of rehab before he/she can play again.  
56 So sports medicine grad students at Waikiki College work with our boys' and girls' classic teams to help  
57 them learn how to move and jump correctly to prevent ACL injuries. The program seems to be working;  
58 our players show improvement at the end of the season, and they have lower rates of ACL injuries than  
59 many other clubs in the state. So it's crazy to say that our club isn't concerned about injury prevention  
60 and player safety.

61 It's true that we don't have any information or links on our website about concussions, although  
62 we are planning to add that before the fall season of 2017. I had always thought that serious injuries from  
63 concussions happened only to football players or boxers. I think there might have been some articles  
64 about concussions in my coaching magazines a few years ago, but I didn't read them very closely because  
65 I was setting up our ACL Injury Prevention Study at the time. When I was playing soccer, the big concern  
66 for soccer players was always torn ACLs or broken bones. Sure, I suffered one concussion when I played  
67 professionally, and several of my teammates had concussions. But we all stayed in the game or went back

68 in the very next game, and none of us had any problems. According to the US Youth Soccer Association  
69 (USYS), over 3 million youth soccer players are registered to play across the US, so if concussions were  
70 such a big problem, you'd expect to hear about it all the time.

71 The USYS isn't the only resource for soccer information. Every soccer club in Hawaii is a  
72 member of the Hawaii Youth Soccer Association (HYSA). HYSA is a member of both the USYS and the  
73 US Soccer Federation (USSF), both of which are under the oversight of FIFA, the international governing  
74 body for soccer. The HYSA, USSF, and USYS are all non-profit organizations designed to provide  
75 education and support for soccer players, coaches, and clubs. They run the certification classes for  
76 coaches both statewide and nationally, and they help organize and run statewide, regional, and national  
77 tournaments. They want to make sure that the sport stays safe and fun for everyone. So these  
78 organizations post educational information about health and injury prevention on their websites.

79 But back in 2013 and early 2014, I was not aware of any information about concussions on the  
80 USYS or USSF sites. If it was on there, it wasn't immediately obvious. After Kai was injured, I did a  
81 specific search on the USYS site and found concussion protocol and notification forms that were posted  
82 in August of 2014, evidently for use in USYS Regional and National tournaments. But I did not know  
83 about them at that time. I do know that the USSF started posting medical information on a variety of  
84 topics on their site in March of 2015. Obviously, that was too late to help Kai Suzuki, and you still have  
85 to search for it to find it. I was not familiar with the Geller-Walton Act at all until this trial today.

86 I have heard of the CDC, but I thought they mainly tried to track down the causes of disease  
87 epidemics. I do remember seeing some free "Heads Up" concussion kits for coaches at a Triad Soccer  
88 Club tournament in November of 2014. I couldn't pick one up because my hands were full at the time,  
89 and I forgot to go back later to get one. I don't think any of our coaches got them, either; at least, no one  
90 told me about getting one.

91 I was at the College Showcase tournament in December of 2014 when Kai was injured; my own  
92 U18 classic Premier boys' team had just finished playing right before Shannon Smith's team took the  
93 field. I always coach at least two teams every year just to keep my skills sharp, and all of my coaching  
94 directors are required to do the same. Anyway, I had gone to the snack bar area to grab a quick bite to eat  
95 and then had returned to the field at the start of the second half to watch Shannon's team in action. I knew  
96 they were playing a team from Triad that they should be able to beat easily, and I was looking forward to  
97 watching the slaughter. It's especially satisfying whenever a Hoku team beats a Triad team.

98 I also knew Shannon had several players who were good enough to play in college, including Kai  
99 Suzuki. I figured Kai might be able to score a "hat trick" against this Triad team. Lots of college coaches  
100 were on the sidelines as I arrived, so I asked the score and was told it was 0-0 at the half. I heard a couple  
101 of coaches saying that they weren't impressed by Kai Suzuki; he/she hadn't been working very hard at all

102 in the first half. I was surprised to hear that because Kai was probably Shannon's best player.

103 Kai looked a bit uncoordinated to start the second half, and he/she wasn't playing with his/her  
104 usual intensity. But then he/she took a great shot a few minutes later, which was barely saved by the  
105 opposing keeper. I figured he'd/she'd soon show those college coaches what he/she could do. Coach  
106 Smith's halftime talk must have been inspiring because several of Kai's teammates were playing better  
107 than I'd ever seen them play before. I was glad to hear the coaches say that maybe it had been worth the  
108 trip to come watch the team after all. Keeping those college coaches happy is good for them and good for  
109 Hoku, too.

110 But Kai still wasn't running with his/her usual speed, and he/she looked a bit confused at times,  
111 like he/she wasn't sure where to go or what to do. I started wondering if he/she was sick or something.  
112 Then one of his/her teammates sent him/her a great pass about 20 yards out from the goal, and Kai started  
113 dribbling the ball into the penalty area. The only person between Kai and the goal was the keeper, and  
114 with Kai, that was practically a guaranteed goal. Then a defender came out of nowhere from the side and  
115 tackled the ball hard, and Kai went flying. He/She crashed to the ground, landing hard on his/her head.  
116 The referee sprinted in, blasting on his whistle, and I waited for Kai to get up and score the penalty kick.  
117 But he/she didn't move, and next thing I knew, Shannon, the Waikiki College athletic trainer, and the  
118 field marshal were all on the field, huddled around Kai. I was shocked and must admit I stood there,  
119 frozen, not sure if I should join them or keep out of the way. I don't have any medical training and figured  
120 I couldn't really help, so I stayed on the sidelines. The ambulance at the soccer complex soon arrived and  
121 took Kai to the hospital. I called Shannon that night to see if he/she had heard anything, and Shannon told  
122 me that Kai had suffered a serious concussion.

123 I'm very sorry that Kai was injured that day, and even more sorry that he/she continues to have  
124 problems so long afterward. Kai is a terrific young man/woman, and of course I would never want  
125 him/her, or any other player, to be hurt badly from playing soccer. What happened to Kai seems like a  
126 freak accident to me. After all this happened, I checked out the statistics on high school sport-related  
127 concussions from Dr. Dawn Comstock at Ohio State like I was trained to do in college. Dr. Comstock  
128 gathers data on the "rate of concussions per 10,000 athlete-exposures." She found that for every 10,000  
129 high school students competing in soccer matches on any given day in the US during the 2010 through  
130 2014 seasons, at least 8 sustained a concussion, and the vast majority don't involve a loss of  
131 consciousness. It's clear that serious concussions like Kai's are certainly not a common occurrence,  
132 although I guess when you consider how many high school girls play soccer across the country, it can add  
133 up.

134 Looking back at all that has happened, I just don't know what Shannon or I could have done to  
135 prevent Kai's injury. Hoku wasn't educating our coaches about concussions at that time, but as far as I

136 know, Triad Soccer Club was the only club in Hawaii handing out those “Heads Up” kits to coaches. Of  
137 course, coaches from all over Hawaii and even other states were at that 2014 tournament. Looking back at  
138 it now, I wish I had gotten one of those kits. Evidently the CDC started publishing their “Heads Up”  
139 materials on their website in 2014, but the USYS and USSF didn’t make an effort to publicize it to all the  
140 state associations at that time as far as I know. Maybe I should have known more about concussions then  
141 – or maybe hindsight is just 20/20.

142 And sure, the Geller-Walton Act was passed in June of 2014 so stories on concussions were  
143 probably in the news at that time. But I didn’t see them, and the Geller-Walton Act only applies to public  
144 schools anyway. We’re definitely going to start doing more now at Hoku to educate our coaches and club  
145 families about concussions. I certainly hope that Kai continues to get better and has a full recovery, and I  
146 understand that Kai and Casey Suzuki n are upset about what happened. But I don’t think it’s reasonable  
147 to sue us for Kai’s injuries when we have always tried to educate our players about health, good nutrition,  
148 and injury prevention. If we only cared about winning, would we have gone to all of that trouble?

149 Of the exhibits in this case, I am familiar with the following: Hoku Soccer Club Medical  
150 Consent/Waiver of Liability and Release; USYS Concussion Procedure and Protocol; USYS Possible  
151 Concussion Notification; and Soccer Field Diagram. I am not familiar with any other exhibits or affidavits  
152 other than my own.

153 I hereby attest to having read the above statement and swear or affirm it to be my own. I also  
154 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should contain  
155 all relevant testimony, and I followed those instructions. I also understand that I can and must update this  
156 affidavit if anything new occurs to me until the moment before I testify in this case.

157

158

Jordan Cabana

159

Jordan Cabana

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Subscribed and sworn before me on this, the 24<sup>th</sup> of August, 2015.

161

Beth Eckhardt

162

Beth Eckhardt, Notary Public

## Affidavit of Quinn Durant

1 My name is Quinn Durant; I'm a senior at Kilauea High School and a classmate of Kai Suzuki's.  
2 At least, we used to be classmates until Kai was injured and couldn't come to class on campus anymore.  
3 I've been friends with Kai since middle school when we both ran track. Kai used to say that track made  
4 him/her run fast, which helped him/her with soccer. He/She was always crazy about soccer, talking about  
5 his/her heroes Landon Donovan and Carlie Lloyd and saying how he/she wanted to win an Olympic  
6 medal and play in the pros like them. I've always been into basketball myself; I think soccer is boring  
7 because everyone runs around but hardly anyone ever scores. It's true that Kai was the top scorer on the  
8 high school varsity team, even as a freshman, but winning 3-1 or 2-0 isn't exactly exciting, at least not to  
9 me. Still, I'd listen to Kai go on and on about soccer, and he'd/she'd listen to me rave about basketball.  
10 He's/She's a good friend that way, always listening to the other person and caring about what they care  
11 about. That's one reason why everyone at Kilauea High School loved Kai. He/She didn't care if you were  
12 a jock or a geek or a slacker, he/she could find a way to be your friend. So it's killing me to be testifying  
13 for the defense. But I promised to tell the truth when I was called to testify, and that's what I'm gonna do.

14 When we moved from middle school to Kilauea High School, we both quit running track and  
15 focused on our favorite sports. As I said, Kai made the varsity soccer team his/her freshman year, while I  
16 played JV basketball the first two years before I moved up. We had a lot of AP classes together, though.  
17 Kai was really smart and in the running for valedictorian before his/her injury. We used to study AP US  
18 History, AP English, and AP Chemistry together. Kai was awesome in the social sciences, and I was  
19 pretty good in science and math, so we were good study partners.

20 We were also in the Key Club together, and we had a lot of fun working on service projects. In  
21 early February of 2014, Kai even organized a free soccer clinic for underprivileged kids in the community  
22 and got a lot of his/her school teammates to come. After that, many of them joined the Key Club and I got  
23 to know them pretty well. Soon a group of us started going to the movies or hanging out at the mall nearly  
24 every weekend if we could. Five or six of his/her teammates were on both the Hoku Club and Kilauea  
25 High School teams with Kai, and it was interesting to hear them talk about their different coaches.  
26 Kilauea High School does a great job of hiring coaches who care about their players as people; my  
27 basketball coaches are awesome! Kai and his/her school teammates love Coach O'Reilly; they said Coach  
28 O'Reilly has legit credentials and pushes them in practice, but also emphasizes the importance of keeping  
29 school first and staying healthy. I took Advanced Personal Fitness class under Coach O'Reilly in the fall  
30 of my junior year, and I can see why Kai and the other players are so impressed. Coach O'Reilly taught  
31 me a ton of stuff about nutrition, health, and preventing injuries in addition to helping me stay fit in the  
32 off-season.

33 Kai and her Hoku Club soccer teammates really like Coach Smith, too. They said Coach Smith

34 played in college and had the chance to go pro but turned it down in order to coach at Hoku. I've never  
35 met Coach Smith, but all of the players have only positive things to say about the soccer skills they've  
36 learned from him/her. They have mentioned that Coach Smith is more serious and less of a friend than  
37 Coach O'Reilly, but they seem okay with that. They know that winning games is lots more important on a  
38 club team because the reputation of the club is at stake; that's the whole purpose of its existence, to win  
39 games and get college scholarships for its players. They said that everyone knows that Coach Smith  
40 expects a lot of the players and will bench them for being late to practice or pull them out if they're  
41 having a bad game, but that he/she does it to make them work harder and give them a better chance of  
42 getting a scholarship.

43         However, several members of the Key Club who were no longer on the top Hoku team with Kai  
44 would complain that the club was too ruthless and too quick to demote players who were having a bad  
45 day. I remember Kai being very upset after tryouts in late May of 2014 because his/her best friend got  
46 dropped down onto the second team. Kai said his/her friend was sick during tryouts and didn't do as well  
47 as normal, so he/she got demoted even though he/she had been one of the best players the previous year.  
48 Kai said she overheard the club director, Jordan Cabana, saying that he/she didn't care if the player was  
49 sick; if he/she couldn't tough it out and do better than that in tryouts, he'd/she'd be useless in tough  
50 games, too. I clearly remember Kai saying, "If the club would do that to him/her, would they do it to me  
51 if I had a bad day?" I told Kai he/she was crazy to worry about it; no way would they demote Kai. But I  
52 could see that it really worried him/her, and it didn't just worry Kai. Three or four of the other Hoku  
53 players nodded their heads and said that it shocked them, too. Some of the joy of the game seemed to  
54 drain out of Kai after that, and she often looked a bit worried in the fall if he/she thought he/she might be  
55 getting sick before a game.

56         Kai and I had several classes together in our junior year: we were both taking AP Chemistry, AP  
57 World History, Honors Pre-Calculus – and Advanced Personal Fitness just for fun. With our other  
58 classes, it was a killer schedule, so we were all pretty tense when it was time for midterms and finals.  
59 Junior year grades are so important for getting into a good college. I knew Kai was looking at several top  
60 schools – Stanford, Duke, Wake Forest, UNC – and he/she was hoping she had the grades to get accepted  
61 and would earn soccer scholarships so he/she could afford to go. It could be pretty stressful to maintain  
62 top grades and keep playing sports at a high level, too.

63         The way our classes were structured, we all had a bunch of big tests the week right after  
64 Thanksgiving. You'd think the teachers would give us a break over the holiday, but that's not how it  
65 works. So in between stuffing myself with turkey and playing with my younger cousins, I tried to study  
66 for exams. I was glad when Kai called me on Saturday afternoon to ask if I wanted to go to a movie with  
67 the Key Club bunch. Of course I jumped at the chance and even suggested we meet for coffee at

68 Moonbucks beforehand. When I got to the coffeehouse, Kai was already there along with five other Key  
69 Club members, all of them Hoku players. I knew I was in for a lot of soccer gossip, but it beat talking  
70 about dinosaurs with my cousins. The others were excited because the big College Showcase tournament  
71 was only a week away. Kai said he/she had heard that coaches from all the schools he/she cared about  
72 were going to be there, so he/she wanted to do his/her best. Kai said he/she was looking forward to  
73 practice that week because he/she knew it would help him/her be prepared when the games started on  
74 Friday. They all chatted about soccer some more, and we all complained about our big tests, and then we  
75 went and enjoyed our movie.

76 On Monday we had our Honors Pre-Calc exam, and both Kai and I felt like we had aced it. One  
77 down, three more to go! Kai said he/she was glad for the chance to run around at practice that night to  
78 blow off some steam. But Tuesday when he/she got to our Advanced Personal Fitness class, he/she  
79 seemed different, quieter than usual and kind of “down.” I asked him/her what was wrong, and at first  
80 he/she said “Nothing; nothing’s wrong.” But when he/she looked uncoordinated in Zumba and asked to  
81 sit out part-way through, I asked him/her again. Kai told me he/she had a bit of a headache and asked if I  
82 had any medicine, so I gave him/her some Tylenol.

83 When we were walking to AP Chemistry after APF, I asked Kai if he/she was feeling any better.  
84 He/She said, “No, not really.” When I asked him/her if the headache came from the stress of all our tests,  
85 he/she said, “Maybe that’s part of it, but mostly I think it’s because I tripped in practice last night and hit  
86 my head really hard when I fell. Do you remember the concussion I got last spring in the school game?  
87 I’m feeling a bit like I did then, sort of woozy and out of it. I started getting the headache last night.” I  
88 asked him/her if he/she told his/her mom/dad or anyone about hitting his/her head, and he/she said, “Are  
89 you kidding? If I did, they wouldn’t let me play in the Showcase. I have to play in the Showcase; it’s my  
90 big chance. You know I can’t afford college without a scholarship. Promise you won’t tell anyone about  
91 this!” I must have looked concerned – because I was; I’d read the posters Coach O’Reilly had posted in  
92 the gym – so he/she grabbed my arm hard and said “Quinn, I mean it! Promise me you won’t tell  
93 anyone!! Not anyone!!!” Reluctantly, I promised.

94 After the AP Chem exam, Kai rushed right out before I could speak with him/her again. I tried  
95 calling him/her that evening to check on him/her because I knew he/she didn’t have soccer practice, but  
96 he/she didn’t answer his/her phone or my texts. We didn’t have any classes together on Wednesday, so  
97 the next time I saw Kai was in APF class on Thursday. But as soon as Kai got there, I saw him/her talking  
98 with Coach O’Reilly, and next thing I knew, Coach O’Reilly gave Kai a library pass and Kai left. I  
99 thought about saying something to Coach O’Reilly but I didn’t want to “rat” Kai out. And anyway, I  
100 wasn’t positive of the reason why he/she left class, so I didn’t want to cost him/her a chance to play if  
101 he/she was feeling better. I figured he/she knew what to look out for since he’d/she’d had a concussion

102 before, and I tried to put it out of my mind.

103 Kai avoided looking at me in AP Chemistry class, and he/she rushed out the door as soon as class  
104 was finished. On Friday Kai looked pretty groggy when he/she got to AP World History, and he/she kept  
105 rubbing his/her head during the exam. I tried to talk with Kai on the way out the door, but he/she just  
106 glared at me and said, "Remember your promise!" Against my better judgment, I kept quiet. I should have  
107 told Coach O'Reilly or called Mr./Ms. Suzuki, but I thought that a friend wouldn't tattle like that. Now I  
108 have to live with knowing that if I'd told someone, maybe Kai wouldn't have played and maybe  
109 he'd/she'd still be okay. From the way he/she acted, I'm sure he/she suspected he/she had gotten a  
110 concussion. And given the look in his/her eyes and the way he/she grabbed my arm when he/she made me  
111 promise to keep silent, I am positive he/she tried to hide it from Coach Smith and Mr./Ms. Suzuki. But I  
112 knew, and I should have done something about it.

113 I feel truly awful that Kai is injured, and I hope nothing like this ever happens to any other  
114 athlete, anywhere. In 2011 when we were in eighth grade, I remember a bunch of news stories about  
115 football players who got seriously injured or even died after suffering repeat concussions. Most of the  
116 players lived in other states, but two of them were right here in Hawaii. It was so shocking; it was all over  
117 the TV stations and newspapers for weeks. I never dreamed something like that could happen to one of  
118 my close friends. But it still doesn't seem fair to hold Coach Smith or the soccer club responsible. I've  
119 never met either Coach Smith or Jordan Cabana. But I do think that if Kai was able to hide his/her  
120 symptoms from Mr./Ms. Suzuki, how could anyone expect Coach Smith or Jordan Cabana to know?

121 Of the exhibits in this case, I am familiar with the following: Soccer Field Diagram; and CDC  
122 High School Athletes' Signs and Symptoms Poster. I am not familiar with any other exhibits or  
123 affidavits other than my own.

124 I hereby attest to having read the above statement and swear or affirm it to be my own. I also  
125 swear or affirm to the truthfulness of its content. Before giving this statement, I was told it should contain  
126 all relevant testimony, and I followed those instructions. I also understand that I can and must update this  
127 affidavit if anything new occurs to me until the moment before I testify in this case.

128

129 Quinn Durant

130 Quinn Durant

131 Subscribed and sworn before me on this, the 24<sup>th</sup> of August, 2015.

132 Beth Eckhardt

133 Beth Eckhardt, Notary Public