

Copyright	Date	September 20, 2018	Court	Osaka District Court, 26th Civil Division
	Case number	2015 (Wa) 2570		
- A case in which the court approved copyrightability for the choreographies of hula dance created by Plaintiff, and granted an injunction against stage performance of Plaintiff's choreographies.				

Case type: Injunction, etc

Result: Partially granted

References: Article 10, paragraph (1), item (iii) of Copyright Act

Summary of the Judgment

1. In the present case, Plaintiff (a kumu hula, or a master teacher or instructor of hula dance, residing in Hawaii), who, under an agreement with Defendant, used to give instructions to the members of Defendant, an operator of hula dance schools, on the choreographies of hula dance which were personally created by Plaintiff, asserted that the Defendant's act of having its members perform the choreographies created by Plaintiff even after dissolution of Defendant's contractual relationship with Plaintiff constitutes infringement of copyright (stage performance right), which Plaintiff has over the choreographies, thereby demanding for an injunction against the stage performance of the choreographies. Points of concern included copyrightability of choreographies.
2. In the judgment of the present case, the court held as follows concerning the aforementioned point of concern. Generally, hula dance is used as a means for representing lyrics, and it consists of hand motions in which the movements corresponding to specific words are predetermined, and of typical and existing steps which do not represent lyrics. Given these characteristics, [i] (i) in the choreographies of a specific song, if the hand motions, which are used in places corresponding to lyrics, are such that they can be assumed from the lyrics concerned, or (ii) in the choreographies for a certain lyrics part, if the hand motions used are not the same as existing hand motions, or even in the case where there are no predetermined hand motions, if the movement is the same as that which is used in other choreographies, which are found in the same song or a different song, and which correspond to the same lyrics part, it shall not be acknowledged that the author's personality is expressed, and [ii] even if the choreographies for a certain lyrics part are different from existing hand motions or other similar examples, if the difference is such that it only concerns a minor part or an unnoticeable part of the movement, it shall not be acknowledged, on the

basis of such difference, that the author's personality is expressed, and [iii] even if the difference with existing hand motions or other similar examples is merely commonplace, such as whether the movement is performed with one hand or both hands, or with the right hand or the left hand, it shall not be acknowledged that the difference shows the author's personality, and [iv] with regards to the steps, basically it shall not be acknowledged that the author's personality is shown therein, but if the steps are new and noticeably different from existing steps, it shall be acknowledged that the author's personality is shown in the representation by the steps per se, and [v] if, by combining hand motions with steps, it is acknowledged that the representation of lyrics is noticeably amplified, or that the dancing effect is noticeably increased, it shall be approved that the movement of the choreographies concerned, in which the hand motions and steps are considered as a whole, shows the author's personality. On that premise, since hula dance, as choreography of a song, consists of a series of flows that combines parts showing the choreographer's personality and parts not showing it, and given that the subject of copyright is the whole of such flows of actions, such actions constitute a dance, and if, among such actions, the parts showing the choreographer's personality appear over a certain extent, copyrightability of dance shall be acknowledged on the whole of the series of flows. Based on these theories, the court approved copyrightability for all six choreographies presented by Plaintiff.

Judgment rendered on September 20, 2018

Original received by court clerk on the same day

2015 (Wa) 2570 Case of seeking injunction against copyright infringement etc.

Date of conclusion of oral argument: May 15, 2018

Judgment

Plaintiff: P1

Defendant: Yugen Kaisha Kyushu Hawaiian Association

Main text

1. Defendant shall not perform the choreographies numbered 6, 11, 13, and 15 to 17 indicated on the attached List of Choreographies, nor have any member who belongs to Defendant or any other third party perform said choreographies at the facilities in Japan where Defendant teaches hula dance to the members belonging to Defendant, or where Defendant performs hula dance, including the facilities indicated on the attached List of Schools.
2. Defendant shall pay to Plaintiff a sum of 433,158 yen along with the interest accruing therefrom at the rate of 5% per annum from November 1, 2017 until the date of payment in full.
3. Other claims made by Plaintiff shall be dismissed.
4. The court costs shall be divided into five portions, three of which shall be borne by Plaintiff, while the remaining two shall be borne by Defendant.
5. Only Section 2 of this judgment can be provisionally executed.
6. The additional period for filing an appeal against this judgment shall be 30 days for Plaintiff.

Facts and reasons

No. 1 Claims

1. Defendant shall not perform the choreographies indicated on the attached List of Choreographies, nor have any member who belongs to Defendant or any other third party perform said choreographies at the facilities in Japan where Defendant teaches hula dance to the members belonging to Defendant, or where Defendant performs hula dance, including the facilities indicated on the attached List of Schools.

2. Defendant shall not play the musical works indicated on the attached List of Songs at the facilities in Japan where Defendant teaches hula dance to the members belonging to Defendant, or where Defendant performs hula dance, including the facilities indicated on the attached List of Schools, by any of the following methods:
 - (1) Having a singer sing the work;
 - (2) Having an instrument player perform the work on ukulele, guitar, bass, keyboard, drum set, percussion, or the like; and
 - (3) Playing the work by operating a reproduction device for recordings.
3. Defendant shall pay to Plaintiff a sum of 2,503,440 yen along with the interest accruing therefrom at the rate of 5% per annum from November 1, 2017 until the date of payment in full.
4. Defendant shall pay to Plaintiff a sum of 3,851,910 yen along with the money accruing therefrom at the rate of 6% per annum from March 26, 2015 until the date of payment in full.

No. 2 Outline of the case

1. Summary of claims

Previously, Plaintiff, who is kumu hula (a master teacher or instructor of hula dance) and currently lives in Hawaii, concluded a contract with Defendant, who operates hula schools, and taught and gave guidance on hula dance to Defendant or to Kyushu Hawaiian Association (hereinafter referred to as "KHA"), which is substantively operated by Defendant, and to members of the Association, but the contractual relationship between Plaintiff and Defendant was dissolved. The present case concerns the following claims which Plaintiff made against Defendant.

- (1) Plaintiff alleged that the act by Defendant's president of personally performing, or having its members perform, the choreographies indicated in the attached List of Choreographies (hereinafter referred to as "Choreography 1" and so on according to the numbers given, and collectively referred to as "Choreographies") at the facilities where Defendant teaches hula dance to its members, or where Defendant performs hula dance, constitutes infringement of the copyright (stage performance right) which Plaintiff has over the Choreographies, thereby demanding against Defendant for an injunction against the stage performance of the Choreographies pursuant to Article 112, paragraph (1) of the Copyright Act (No. 1-1).
- (2) Plaintiff alleged that the act by Defendant of playing the songs indicated on

the attached List of Songs (hereinafter referred to as "Song 1" and so on according to the numbers given, and collectively referred to as "Songs") at the facilities where Defendant teaches hula dance to its members, or where Defendant performs hula dance, constitutes infringement of the copyright which Plaintiff has over the Songs, thereby demanding against Defendant for an injunction against the musical performance of the Songs pursuant to Article 112, paragraph (1) of the Copyright Act (No. 1-2).

(3) Plaintiff alleged that the act by Defendant of performing the Choreographies or having Defendant's members perform the Choreographies (as described above in (1)) and the act of playing the Songs (as described above in (2)) constitute infringement of Plaintiff's copyright and demanded against Defendant, on the basis of an act of tort, for payment of 2,503,440 yen along with delinquency charges accruing therefrom at the annual rate of 5% as prescribed by the Civil Code, from November 1, 2017, which is subsequent to the act of tort, until the date of payment in full, as part of the damages in the amount of 6,422,464 yen (4,092,120 yen as the amount equivalent to royalties and 2,330,344 yen as attorney's fees) for the period from November 2014 until October 2017 (No. 1-3).

(4) Plaintiff alleged that, although it had concluded with Defendant a time and material contract under which Plaintiff was to teach hula dance to Defendant or KHA's members at the workshops to be organized by KHA and the like in the fall of 2014 (hereinafter referred to as "T&M Contract"), Defendant cancelled the contract at a time that was detrimental to Plaintiff. Accordingly, Plaintiff demanded against Defendant, pursuant to Article 656 and the operative part of Article 651, paragraph (2) of the Civil Code, payment of damages in the amount of 3,851,910 yen along with delinquency charges accruing therefrom at an annual rate of 6%, which is the statutory rate of interest for commercial matters, from March 26, 2015, which is the day following the date of delivery of a complaint, until the date of payment in full (No. 1-4).

2. Basic facts (matters over which the parties are not in dispute, and other matters which are easily acknowledged based on the evidence described later and the entire import of the oral argument)

(1) Parties

Plaintiff is a master teacher or instructor of the hula called "kumu hula" and lives in Hawaii. She choreographs her dances and writes lyrics and music for hula songs, and teaches hula dance and Tahitian dance and provides songs

for these dances.

Defendant is a company engaged in the teaching of hula dance as well as planning and organizing of events through Hawaiian music, and Defendant substantively operates the KHA to run hula schools. KHA teaches hula dance to its members at the headquarters school and at other schools opened by KHA's instructors (it can be said that members of KHA are Defendant's members as well) (Exhibit Ko 2).

Yugen Kaisha Chu-Shikoku Hawaiian Association (hereinafter referred to as "Other Company") is a company which substantively operates Chu-Shikoku Hawaiian Association (hereinafter referred to as "CSHA") and runs hula schools, and its relationship with Defendant is very close, as shown by the act of jointly issuing a pocketbook which indicates the Associations' rules and regulations (Exhibit Ko 2).

(2) Contractual relationship between Plaintiff and Defendant

Around 1988, Plaintiff was asked by Defendant's former president (hereinafter referred to as "Defendant's Former President") to provide instructions on hula dance (Exhibit Ko 39-2, Exhibit Otsu 29), and thereafter, taught hula dance and Tahitian dance, which Plaintiff choreographed, to KHA's members. By the end of 2009, if not earlier, she had concluded with Defendant a consulting agreement under which, at least upon request by Defendant, in exchange for the professional fee of 1,000 USD (hereinafter simply referred to as "dollars") per month, she provided instructions and gave advice on hula dance to Defendant, KHA, or its members (hereinafter referred to as "Consulting Agreement").

In addition, Plaintiff concluded with Defendant, separately from the Consulting Agreement and for each and every instance, a time and material contract for personally teaching hula dance and Tahitian dance to KHA's members at workshops which KHA organized three or four times per year in cities in the Kyushu and Chugoku regions, and Plaintiff was paid separately under such agreements (Exhibits Ko 1, 2-2, 3, 39-2, Exhibit Otsu 28). Upon providing these instructions, Plaintiff organized a group in Japan called "KPDA", and KPDA worked in partnership with KHA.

Furthermore, Plaintiff's relationship with CSHA was similar to that which is described above, and concerning workshops, CSHA held them in cities of the Chugoku and Shikoku regions at the same time as KHA held workshops in the cities of the Kyushu region using the same curriculum, and Plaintiff taught

hula dance and Tahitian dance to CSHA's members as well at workshops organized by CSHA.

(3) Plaintiff's choreographing of hula dances (Choreographies), writing of Songs, and performance and playing at KHA

The hula is a traditional Hawaiian dance and is choreographed by sets of hand motions and steps. By the end of January 2014, if not earlier, Plaintiff wrote lyrics and music for the Songs, and also choreographed hula dances and came up with the Choreographies to accompany the Songs or other songs written by others, and ever since, Plaintiff taught and gave advice on the choreographies to KHA's members, who performed the Choreographies at the workshops where the members can receive Plaintiff's instructions in person, as well as at events organized by KHA such as Ho'ike (hula festivals), hula parties, and hula competitions, and Songs were sometimes played during such events.

Plaintiff has copyright over the Songs and the Choreographies 1 to 4 (hereinafter referred to as "Choreography 1, etc."), and Defendant agrees with this fact. On the other hand, the parties are in dispute over whether Choreographies 6, 11, 13, and 15 to 17 (hereinafter referred to as "Choreography 6, etc.") have copyrightability.

Details of Choreography 6, etc. are as indicated in No. 3 of each of Annexes 6, 11, 13, and 15 to 17 to the attached List of Choreographies, and the lyrics for the songs corresponding to the above choreographies are as indicated in No. 1 of each of Annexes 6, 11, 13, and 15 to 17 to the attached List of Choreographies (Exhibits Ko 21, 22, 32, 40, 45, 50, the entire import of the oral argument).

(4) Cancellation of 2014 Fall Workshop

In March 2014, Plaintiff concluded a contract (T&M Contract) with Defendant for teaching hula dance (for workshops organized by KHA) and Tahitian dance (for workshops organized by KPDA) to KHA's members at the workshops to be organized by KHA and KPDA in cities of the Kyushu region in the fall of the same year (hereinafter referred to as "Workshops"). The Workshops were scheduled to be held in a total of five cities between October 2 and 9 of the same year, and in a total of three cities between October 22 and 26 of the same year (Exhibit Ko 23-2).

Of the above period, Plaintiff was to teach hula dance (workshops organized by CSHA) and Tahitian dance (workshops organized by KPDA), as

has been the case in the past, to CSHA's members at workshops which CSHA and KPDA organized in cities of the Chugoku and Shikoku regions between October 10 and October 21 of the same year (Exhibit Ko 23-2).

However, on September 17 of the same year, Defendant decided to call off the Workshops and expressed to Plaintiff the intention to cancel the T&M Contract (hereinafter referred to as "Cancellation").

Meanwhile, Plaintiff taught hula dance and Tahitian dance to CSHA's members, as scheduled, at the workshops held between October 10 and 21.

(5) Dissolution of contractual relationship between Plaintiff and Defendant

Around June 2014, Plaintiff expressed its intention, to Defendant, of dissolving the contractual relationship with Defendant, and Defendant agreed, and thus the Consulting Agreement ended as of October 31 of the same year.

Upon dissolving the contractual relationship with Defendant, Plaintiff expressed its intention to prohibit KHA's members from performing hula dance, which Plaintiff had choreographed, thereafter. However, Defendant believed that it was able to use Plaintiff's choreographies even after the dissolution of the contract, so that even after November 1 of the same year, Defendant sometimes used at least Choreography 6, etc., from among the Choreographies, at Ho'ike and the like (Exhibits Otsu 61 to 82, 84 to 134; the parties are in dispute over whether or not Defendant used Choreography 1, etc. and performed the Songs on or after the same date).

3. Issues

- (1) In relation to the claim concerning copyright infringement (No. 1-1 to No. 1-3)
 - (Issues commonly found in the claims)
 - A. Copyrightability of Choreography 6, etc. (Issue 1)
 - B. Whether or not there was assignment of copyright for Choreographies or grant of right for permanent use (Issue 2)
(Issues specific to the claim for injunction)
 - C. Whether or not there is likelihood of Defendant playing the Songs or performing the Choreographies or having a third party perform the Choreographies (Issue 3)
(Issues specific to the claim for damages)
 - D. Whether or not there was copyright infringement by Defendant pertaining to the Songs and Choreography 1, etc. (Issue 4)
 - E. Whether or not there was intent or negligence on the part of Defendant (Issue 5)

- F. Amount of damages incurred by Plaintiff (Issue 6)
- (2) In relation to the claim for damages pursuant to the operative part of Article 651, paragraph (2) the Civil Code (No. 1-4)
 - A. Whether the Cancellation took place at a time that was detrimental to Plaintiff (Issue 7)
 - B. Whether or not there were unavoidable grounds for the Cancellation (Issue 8)
 - C. Whether or not Plaintiff suffered damage, and if so, the amount of damages (Issue 9)

No. 3 Allegations made by the parties regarding the Issues

1. Regarding Issue 1 (Copyrightability of Choreography 6, etc.)

(Plaintiff's assertion)

Whether or not Choreography 6, etc. are creative should be determined based on whether the personality of Plaintiff, who came up with the Choreographies, is expressed, by considering the choreographies as a whole.

Regarding this point, since Plaintiff's interpretation of the songs corresponding to Choreography 6, etc. is original, Plaintiff's personality is shown in each of the choreographies in the Choreography 6, etc. In fact, Choreography 6, etc. contain, among the hand motions and steps used therein, those which were independently created by Plaintiff or those which were created by Plaintiff's previous kumu hula and which Plaintiff succeeded, and those which are existing hand motions but which are not normally used as the hand motions to represent the lyrics concerned. As such, Choreography 6, etc. are different from other choreographies, and thus they show Plaintiff's personality.

When the foregoing is considered individually for Choreography 6, etc., it is as indicated in the column for "Plaintiff's Allegations" in the attached Table of Comparison of Allegations for Choreography 6, Table of Comparison of Allegations for Choreography 11, Table of Comparison of Allegations for Choreography 13, Table of Comparison of Allegations for Choreography 15, Table of Comparison of Allegations for Choreography 16, and Table of Comparison of Allegations for Choreography 17, and Plaintiff's personality is shown, for example by containing distinctive choreographies which are not found in other choreographies.

Accordingly, each of Choreography 6, etc. has copyrightability, as a whole, respectively.

(Defendant's assertion)

- (1) Whether or not Choreography 6, etc. are original should be determined based on whether or not the choreographies concerned are ordinary and commonplace.

Regarding this point, choreographies of a hula dance consist of existing hand motions and existing steps which correspond to the lyrics of the song and which are then arranged and combined, so that choreographies naturally become converged into a restricted range. Since Choreography 6, etc. are in fact as such and lack originality, it cannot be said that Choreography 6, etc. have copyrightability.

- (2) The subject of protection under the Copyright Act is not the thought or sentiment per se but the expressions which appear on the outside; thus, even if the interpretation of the songs which correspond to Choreography 6, etc. is original, it does not immediately confirm copyrightability of Choreography 6, etc. Also, in light of the fact that, as pointed out in the above (1), choices are limited in the choreographies of a hula dance, confirming copyrightability for Choreography 6, etc. means excessively restricting the freedom of third parties, so that it is not appropriate.

- (3) When the foregoing is considered individually for each of Choreography 6, etc., it is as indicated in the column for "Defendant's Allegations" in the attached Table of Comparison of Allegations for Choreography 6, Table of Comparison of Allegations for Choreography 11, Table of Comparison of Allegations for Choreography 13, Table of Comparison of Allegations for Choreography 15, Table of Comparison of Allegations for Choreography 16, and Table of Comparison of Allegations for Choreography 17, and the choreographies of the Choreography 6, etc. lack independence and originality because the same choreographies are found in other choreographies, or they are movements which reflect existing hand motions.

Accordingly, it cannot be said that Choreography 6, etc. have copyrightability.

2. Regarding Issue 2 (Whether or not there was assignment of copyright for Choreographies or grant of right for permanent use)

(Defendant's assertion)

With regards to the copyright for the Choreographies, Defendant was assigned the same, or was granted the right to permanently use the same, in exchange for payment of money in a lump sum to Plaintiff.

(Plaintiff's assertion)

Denied.

3. Regarding Issue 3 (Whether or not there is likelihood of Defendant playing the Songs or performing the Choreographies or having a third party perform the Choreographies)

(Plaintiff's assertion)

Since Defendant played the Songs and performed the Choreographies even after November 2014, there is likelihood of Defendant playing the Songs and performing the Choreographies in the future as well.

(Defendant's assertion)

With regards to the Songs and Choreography 1, etc., Defendant acknowledges that Plaintiff has copyright over them, and since November 2014, Defendant has not played the Songs or performed Choreography 1, etc. upon teaching hula dance to KHA's members, and has no plan of playing or performing the same in the future. Accordingly, there is no likelihood of Defendant playing the Songs or performing Choreography 1, etc.

4. Regarding Issue 4 (Whether or not Defendant infringed copyright pertaining to the Songs and Choreography 1, etc.)

(Plaintiff's assertion)

Even after November 2014, Defendant has played the Songs and performed the Songs and Choreography 1, etc.

(Defendant's assertion)

Denied.

5. Regarding Issue 5 (Whether or not there was intent or negligence on the part of Defendant)

(Plaintiff's assertion)

Given that Defendant performed the Choreographies while being aware that it may be pointed out by Plaintiff that performance of the same falls under copyright infringement, it is clear that there is at least negligence on the part of Defendant for the act of infringement of copyright for the Choreographies.

(Defendant's assertion)

Since Defendant was not clearly aware as to Choreography 6, etc. having copyrightability, it cannot be said that there was negligence on the part of Defendant for the act of infringement of copyright for Choreography 6, etc.

6. Regarding Issue 6 (Whether or not Plaintiff suffered damage, and if so, the amount of damages)

(Plaintiff's assertion)

(1) Amount equivalent to royalties

A. In the world of hula, it is not normally the case that the kumu hula, who choreographed a dance, would grant license for the choreographies concerned without the same kumu hula providing advice or instructions. By concluding the Consulting Agreement with Defendant, Plaintiff had given the blanket permission which allowed KHA's members to perform Plaintiff's choreographies at Ho'ike (hula festivals), hula parties, and hula competitions, in addition to performing the same at schools for practice to participate in these events. It is for this reason that Plaintiff sometimes provided KHA's members with advice and instructions necessary for performing the Choreographies. Accordingly, the professional fee under the Consulting Agreement includes the purpose of royalties for Plaintiff's choreographies.

Since Plaintiff had given most of the advice and instructions to KHA's members during workshops, Plaintiff received professional fees for advice and instructions under time and materials contracts which Plaintiff concluded with Defendant separately from the Consulting Agreement. In that case, it should be considered that the entire amount of consideration under the Consulting Agreement (1,000 dollars per month) substantively constitutes the royalties for Plaintiff's choreographies, and that the consideration for the advice and instructions given outside the workshops was included therein.

Accordingly, the amount equivalent to the royalties for the Choreographies and the Songs is 36,000 dollars (when converted into Japanese yen, 4,092,120 yen) for the period of copyright infringement (36 months: From November 1, 2014 until October 31, 2017).

B. Given that Plaintiff had kept the amount of royalties to 1,000 dollars per month irrespective of the number of songs and the number of performances, it is not reasonable to consider, based on the reason that the Choreographies constitute a part of the choreographies created by Plaintiff and performed by Defendant, that the amount equivalent to the royalties for the Choreographies and the Songs should remain a part of the 1,000 dollars.

(2) Amount equivalent to attorney's fees

The amount equivalent to attorney's fees for the present suit shall not be below 10% of 23,303,440 yen, which is a total of 2,330,344 yen (13 × 1,600,000 yen), the jurisdictional amount in the claim for injunction pertaining

to the Choreographies (choreographies for ten songs) and the Songs (three songs), and 2,503,440 yen, the amount of damages on the basis of an act of tort (copyright infringement). Accordingly, the amount equivalent to attorney's fees for the present suit is 2,330,344 yen.

(Defendant's assertion)

(1) Amount equivalent to royalties

A. The Consulting Agreement only sets forth that Plaintiff shall, if requested by Defendant, who teaches hula dance to KHA's members, provide advice to Defendant, like under a so-called advisory contract, and granting of license, as alleged by Plaintiff, is not included therein. As such, the professional fees paid under the agreement do not include the purpose of royalties for the choreographies created by Plaintiff. In addition, Plaintiff has not reached any agreement with Defendant concerning royalties for the choreographies created by Plaintiff. As a result, Plaintiff had given consent to Defendant as to using Plaintiff's choreographies free of charge.

In light of such example of licensing between Plaintiff and Defendant concerning royalties for Plaintiff's choreographies, it is reasonable to consider that the amount of royalties for the Choreographies and the Songs shall be zero yen, and if not zero yen, a price as close as possible to zero yen.

B. Since the description of entrustment under the Consulting Agreement includes that Plaintiff shall provide advice to Defendant as may be requested by Defendant who teaches hula dance to KHA's members, the professional fees under the Consulting Agreement include the purpose as to the giving of advice above, and thus it is impossible that the entire amount of 1,000 dollars per month is intended as royalties for Plaintiff's choreographies.

(2) Amount equivalent to attorney's fee

Denied or to be disputed. The Songs are not played, and the corresponding choreographies, namely, Choreographies 1 to 3 and Choreography 4, are not performed, either. As such, the claim for injunction pertaining to these songs and choreographies is not legitimate, so that the demand for the amount equivalent to attorney's fees pertaining to the claim for injunction is not legitimate.

7. Regarding Issue 7 (Whether the Cancellation took place at a time that was

detrimental to Plaintiff)

(Plaintiff's assertion)

Since the Cancellation took place immediately before the Workshops were to be held, Plaintiff could not engage in an alternative work for the time when the Workshops were scheduled, and was not able to earn income from such work. Accordingly, the Cancellation was implemented at a time that was detrimental to Plaintiff.

(Defendant's assertion)

To be disputed.

8. Regarding Issue 8 (Whether or not there were unavoidable grounds for the Cancellation)

(Defendant's assertion)

Since the number of applicants for the Workshops (the deadline for application was September 10, 2014) was very small in light of the number of participants at workshops held in the fall of 2012 and 2013, it was estimated that holding the Workshops would be money-losing. Furthermore, since August 2014, there was the situation of instructors and the students taught by such instructors leaving KHA one after another.

This resulted from the circumstances in which, in the same month, Plaintiff prepared, and distributed to KHA's instructors, a document containing insults and wild accusations against Defendant as well as information which caused the misunderstanding that performance of the choreographies taught by Plaintiff will no longer be allowed (Exhibit Ko 13), and in which Plaintiff colluded with a person who left Defendant and who was about to launch West Japan Hawaiian Association, which was to be a competitor of KHA, to take members away from KHA.

Under these circumstances, holding the Workshops would have been money-losing, and furthermore, it was predicted that, because of Plaintiff's insults and wild accusations against Defendant at the Workshops, even more members would leave KHA. As such, it was unavoidable for Defendant, which is a profit-making company, to decide to cancel the T&M Contract on September 16 of the same year, and on the following day, to express to Defendant the intention to cancel the T&M Contract.

(Plaintiff's assertion)

First of all, it is difficult to trust Defendant's assertion as to holding the Workshops being estimated to be money-losing and making this the main reason

for cancellation of the T&M Contract.

Even if this point is put aside, the reason for which Plaintiff created the document (Exhibit Ko 13), which Defendant pointed out, is that Plaintiff wanted to explain to KHA's top instructors, whom Plaintiff had taught over many years, the background to dissolving the relationship with Defendant and Plaintiff's personal feelings about the matter, and not to insult or make wild accusations against Defendant or to solicit KHA's members to the West Japan Hawaiian Association. Furthermore, since it is the convention in the world of hula that a person who leaves the guidance of kumu hula will no longer be able to perform the choreographies taught by the kumu hula, it is justifiable that Plaintiff prohibits the performance of the choreographies which Plaintiff personally taught to KHA's members.

Furthermore, in light of the fact that as of June of the same year, Plaintiff had informed Defendant of the intention to prohibit the performance of the choreographies which Plaintiff taught to KHA's members, the fact that Plaintiff informed KHA's members of such intention per se was something which Defendant, too, would have naturally predicted. If Plaintiff were to dissolve its relationship with Defendant, Defendant could easily predict that not only KHA's members, who were attracted to the opportunity of being taught by Plaintiff, would refrain from participating in the Workshops, but also that KHA's members may even leave KHA. Nevertheless, Defendant decided to dissolve the relationship with Plaintiff and went on to hold the Workshops.

Accordingly, the situation in which holding the Workshops would be money-losing and in which KHA's members left KHA one after another was brought about by Defendant on its own, and was naturally predictable, yet Defendant called off the Workshops immediately before the scheduled time, and this act by Defendant of passing on to Plaintiff the risk of damages arising from the cancellation of Workshops shall not be permitted.

9. Regarding Issue 9 (Whether or not Plaintiff suffered damage, and if so, the amount of damages)

(Plaintiff's assertion)

If the cancellation of T&A Contract did not take place at the time which was detrimental to Plaintiff, by being immediately before the Workshops were held, and when Plaintiff was preparing for the Workshops, [i] Plaintiff would have been able to attend other events during the period of Workshops (a total of 16 days from September 30, 2014 until October 9 of the same year, and from October 22 until

October 27 of the same year), and as a result, would have been able to earn an income of at least 5,922,240 yen (eight times the 740,280 yen which she earned from attending events for two days), and [ii] Plaintiff would have been able to spend the hours during which she prepared for Workshops (45 days) as the hours to attend other events, and as a result, would have been able to earn an income of at least 16,656,300 yen (22.5 times the income of 740,280 yen which she earned from attending events for two days).

Accordingly, the amount of damages incurred by Plaintiff due to the cancellation by Defendant of the T&M Contract shall not be below 31,750 dollars (when converted into Japanese yen, 3,851,910 yen), which is the amount of professional fees under the T&M Contract as agreed with Defendant.
(Defendant's assertion)

During the period of Workshops, from October 10, 2014 until October 21 of the same year, Plaintiff taught hula dance and Tahitian dance, which Plaintiff choreographed, to CSHA's members at workshops that were held in a total of four cities. Concerning the damage of [ii] as asserted by Plaintiff, the same period as the period spent for the Workshops was necessary for the preparation, in any case, and as for the damage of [i], Plaintiff was not able to attend other events before and after the above period.

Accordingly, it cannot be acknowledged that Plaintiff suffered damage due to the cancellation of T&A Contract by Defendant (it should be noted that the amount of professional fees scheduled to be paid to Plaintiff under the T&M Contract is 28,750 dollars).

No. 4 Judgment of this court

1. Regarding Issue 1 (Copyrightability of Choreography 6, etc.)

(1) Copyrightability of a hula dance

- A. Article 10, paragraph (1), item (iii) of the Copyright Act lists "works of choreography" as examples of "works". A work of choreography is such that the forms of a person's physical movements are represented in choreographies. Regarding this point, the "right to give a stage performance of the work with the purpose of having it seen directly by the public" (stage performance right) is stipulated as a subdivided right of copyright (Article 22 of the same Act).
- B. The Hawaiian folk dance is called "hula" or "hula dance". There are traditional hula and modern hula, and while traditional hula consists of chant (oli) and dance (hula), which have been carefully preserved since

ancient times and succeeded by respective schools throughout the history of the Hawaiian people, the modern hula first came about in the nineteenth century under the influence of western civilization and was created by incorporating melodies, and developed jointly with so-called Hawaiian music. What is at issue in the present case concerns modern hula, and in modern hula, kumu hula (kumu), or the master teacher, personally creates choreographies for a song and teaches them at his or her own school (hālau) (the above is from Exhibit Ko 14 [Statement by Kumu Hula]).

The hula dance, which is Hawaiian folk dance, is characterized by the use of hand motions to represent the meanings of songs (Exhibit Ko 14). An introductory book on hula dance describes the hula as using body language to represent lyrics (Exhibit Otsu 3), and describes that the basics of hula are such that the dancer uses hand motions to represent the meanings of lyrics while taking steps to keep rhythm and create a flow (Exhibit Otsu 5). While a hula dance is choreographed by use of hand motions and steps, certain movements corresponding to specific words are predetermined for hand motions (a word may be represented by two or more movements); as such, an introductory book describes hand movements by stating that in hula, each hand movement has its own meaning (Exhibit Otsu 3), or that hand motions are sort of like sign language in that the dancer uses his/her hands, at the center, and the rest of his/her upper body to represent the meanings of lyrics (Exhibit Otsu 5). On the other hand, steps are based on typical patterns (introductory books according to Exhibits Otsu 3 to 6 introduce a total of 16 patterns), and an introductory book describes steps as such that once memorized, they can be combined freely to create one's own styles (Exhibit Otsu 3).

- C. Based on these characteristics of hula, if choreographies of a certain song merely include, in places having corresponding lyrics, hand motions which can be assumed from the lyrics concerned, the choreographies are such that predetermined hand motions were simply applied to the lyrics, so that the choreographies in these places cannot be acknowledged as showing the author's personality.

Also, in light of the fact that hand motions of a hula dance represent lyrics, in the cases where predetermined hand motions or routine hand motions are not used in the choreographies of a certain part of lyrics, if the movement is the same as the one used in other choreographies for the same

lyrics of the same song or of other songs, it means that there exists an example in which the same choreographies are used as representations of the lyrics concerned, so that taking the same movement to represent the lyrics concerned cannot be acknowledged as showing the author's personality.

Furthermore, if choreographies of a certain lyrics part are different from predetermined hand motions or other similar examples, if the difference concerns only a small part or an unnoticeable part in movement, its effect on the impression of the dance, as seen by the audience, is small, and the borderline is unclear when compared with other choreographies, so that it is not reasonable to acknowledge that such difference shows the author's personality. Also, if the difference between the predetermined hand motions and other similar examples are commonplace changes, for example the movement being made by a single hand or by both hands, or by either the right or the left hand, such difference cannot be acknowledged as showing the author's personality.

Naturally, if two or more patterns of hand motions and similar movements correspond to a single lyric, a choice is made from among the patterns to create a choreography, and as a result of such choices being made for each lyrics part, the combination of hand motions in the entire dance may become unlike any other example. It is believed that an author of a hula dance takes into consideration the dancing effect, including the unity in movements throughout the dance, lively physical movements, and elegance, as he/she devises the combination of movements. However, even in this case, if the hand motions are identical to the existing and limited hand motions, or if there is no significant difference, and if, in that sense, it can be evaluated that choices were made from among the limited options, such combination of choices cannot be acknowledged as showing the author's personality, and as for the arrangement, it is based on the order of lyrics, so that likewise, it cannot be acknowledged as showing the author's personality.

- D. On the other hand, if, contrary to what is described above, a choreography corresponding to a lyric is not a predetermined hand motion that can be assumed from the lyric or a hand motion that is found in other similar examples, or is not significantly different from either of the foregoing, it can be said that such movement is a movement of

choreography for the lyrics part concerned and is original to the choreography or is a result of a significant arrangement to an existing movement, so that it is reasonable to acknowledge that the author's personality is shown.

Naturally, even such movement may be commonplace if it is seen as a movement of choreography in a hula dance in general, and furthermore, if it is seen as a movement of choreography in a dance in general. Defendant asserts that in such case, said movement is commonplace.

However, given that the hand motions of a hula dance represent lyrics, if, in spite of the movement per se being commonplace, the use of the movement to choreograph the lyrics concerned is not found in other examples, it is reasonable to consider that the author's personality is shown as a representation of the lyrics concerned, and even if this interpretation is adopted, the interpretation is not such that the author's personality is acknowledged for movement per se and apart from the specific lyrics of a specific song, so that it is believed that the scope within which the showing of an author's personality is acknowledged will not extend to an unreasonable scope.

- E. Incidentally, given that hand motions of a hula dance represent lyrics, in order to create choreographies for lyrics, interpretation of the meanings of the lyrics is a precondition. Normally, it is assumed that lyrics are interpreted based on the ordinary meanings of words, but depending on the author, choreographies may be created based on an original interpretation of lyrics apart from the ordinary meanings of words. It seems that Plaintiff's intent is to assert that, in such case, the author's personality should be acknowledged for the originality of the interpretation per se. However, since the Copyright Act protects the creativity of specific expressions, even if the interpretation is original, if the resulting specific choreographies are as described in the above C, it still cannot be acknowledged that the author's personality is shown in the choreographies.

On the other hand, Defendant asserts that even in the case where interpretation of lyrics is original and thus choreographies become different from others, if, based on such interpretation, it is commonplace to use such choreographies, granting protection under the Copyright Act for the choreographies is nothing other than to ultimately protect the interpretation of lyrics of a song, and shall not be permitted. However, in the case

where interpretation of lyrics is original, and if this is the reason due to which the resulting choreographies differ from others, such motives that led to the choreographies do not exist for other authors, so that it is reasonable to acknowledge that the author's personality is shown in the giving of said movements to said lyrics parts. Even based on this interpretation, what is acknowledged as the showing of personality concerns only the choreographies, which are specific representations, and it does not prevent other choreographies from being created under the same interpretation, so that it does not lead to dominance over the interpretation per se.

Meanwhile, if there are cases in which choreographies are created based on the same interpretation, but in which interpretation of lyrics may deviate from the ordinary meanings of the words, it means that other authors, too, were presented with the motives that led to creating choreographies under the same interpretation, so that if it is commonplace to use said choreographies under said interpretation, it cannot be acknowledged that the author's personality is shown in the giving of said movements to said lyrics parts.

- F. While hand motions are as described above, typical patterns exist for steps as mentioned above, and an introductory book also indicates that once the steps are memorized, they can be freely combined to create one's own style. As such, steps do not represent lyrics, and it is believed that steps are selected and combined, as appropriate, in consideration of the theme and the dancing effect, and the choices available are not very variant. In that case, it should be said that steps merely consist of basically commonplace choices and the combination thereof, and it cannot be acknowledged that the author's personality is shown therein. However, if a step is new and notably different from existing steps, it should be acknowledged that the author's personality is shown in the step itself (if the author's personality is acknowledged simply on the basis that a step is different from existing steps in some respect, steps with respect to which personality is acknowledged on the basis of minor differences would appear and may hinder the performance of hula dance, so that in order to acknowledge the author's personality in the steps per se, it is reasonable to interpret that such steps must be notably different from existing steps). Also, if it is acknowledged that hand motions and steps are combined for the purpose of notably expanding the representations of lyrics or of notably

increasing the dancing effect, it is reasonable to regard the hand motions and steps as a set and acknowledge that the author's personality is shown in the choreographies concerned.

- G. Even if, as described above, the author's personality is shown in the choreographies of a specific lyrics part, the length of the lyrics part lasts only for several seconds or so at most, and such a brief moment of movement does not constitute a dance. Accordingly, as asserted by Defendant, copyrightability of dance cannot be acknowledged individually for a specific lyrics part. However, a hula dance, as choreographing of a song, becomes a hula dance as a set of parts, some of which show the author's personality as described above while others cannot be acknowledged as such. Accordingly, if a set of movements are considered as a whole, such movements make up a dance, and if, among the movements, the parts in which the author's personality is shown exist to a certain degree, it is reasonable to acknowledge copyrightability of dance for the set of parts as a whole. In the present case, since Plaintiff asserts that the choreography of a song as a whole has copyrightability, the foregoing should be considered for the whole choreography.

In addition, based on this perspective, in the case where it is acknowledged that a hula dance has copyrightability, in order to acknowledge that the copyright is infringed, it is needless to say that the performance, as a whole, which is alleged to be the subject of infringement, must contain the choreographies corresponding to the specific lyrics parts for which the author's personality is acknowledged, but this is not sufficient, and it is reasonable to interpret that the performance as a whole must be felt as having the characteristics of a dance as a series of movements of the hula dance.

- H. Based on the thinking described above, copyrightability of each of Choreography 6, etc. shall be considered below (since, as described above, the author's personality basically cannot be acknowledged for steps, reference to steps shall be made only when special consideration is required).

(2) Consideration of Choreographies 6, 11, 13, 15 to 17

A. Choreography 6 (Song: E Pili Mai)

(A)'Auhea wale ana 'oe

- a. "'Auhea" means "where", and "'oe" means "you" (Exhibit Otsu

54), and Plaintiff gives the translation, "where are you?"

- b. Choreography 6 consists of the following movements which can be largely divided into the following two parts, namely, [i] the right arm is held up to the forehead with the palm down, and the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and the left arm is placed horizontally in front of the chest, and the body, which faces forward to the left, is moved so as to face forward to the right, and in doing so, the right foot and the left foot alternately take two steps each to the right, and [ii] next, the left arm is extended, and the right elbow is bent slightly, and both hands are lined up at chest height with palms facing the same direction (turned facing front and slightly downward), and the body, which faces forward to the right, is moved so as to face forward to the left.

Regarding these movements, Plaintiff asserts that the movement of moving both arms to the left, along with the direction of the body, represents the meaning of "where are you?"

First, when the movement of [i] is considered, the hand motion for "Auhea" (where) is such that one hand is held up to the forehead (Exhibit Otsu 26), and likewise, the choreography indicated in Exhibit Otsu 12 is such that one hand is held up to the forehead. Naturally, whereas in the movement of [i], the other hand which is not held up to the forehead is bent and placed in front of the chest, the hand is extended according to Exhibits Otsu 12 and 26, but the change of bending two arms at a place where only one arm is bent is commonplace, and this cannot be considered a significant difference.

Next, when the movement of [ii] is considered, the hand motion for "oe" (you) is such that a fingertip or the palm of one hand is used to point to the person in front of the dancer (Exhibits Otsu 3, 4). Accordingly, the movement of [ii] involves simultaneously moving the direction to which the body faces, and thus the movement, including the movement of the body, is the same as the choreography indicated in the lower left corner and lower right corner of Exhibit Ko 25.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(B) Ku'u lei o ka pō

- a. "Ku'u" means "my", "lei" means "wreath" (worn on the head or around the neck)", a figurative expression for "beloved child/wife/husband/lover/younger brother/younger sister", and "pō" means "night" (Exhibits Otsu 33 and 54). Plaintiff gives the liberal translation, "my loved one at night".
- b. Choreography 6 consists of the following movements which can be largely divided into the following two parts, namely, [i] the right arm is raised slightly so as to create a space in the armpit, and is bent at the elbow, and the right hand is placed horizontally in front of the chest with the palm down, the left hand is raised so as to create a space in the armpit, with the elbow bent and the palm kept turned down, and is moved from the front, over the head, passing behind the head, and to the front of the left chest, and in doing so, the body moves as the right foot and the left foot alternately take two steps each to the right, and [ii] next, both arms are bent at the elbow, with the palms turned inward, and the arms are slightly lowered once in a bouncy manner in front of the chest, and then the palms are turned up, and simultaneously, the arms are slowly extended and held up to a position above the head.

First, with regards to the movement of [i], Plaintiff asserts that in this song, "lei" has the two meanings of "lei" as in a necklace and "loved one", and that the movement of the dancer putting on a lei (necklace) represents the meaning of "the lei I put on me is a symbol of you, my lover whom I truly care for". However, the movement of one hand moving from the front, over the head, passing the back of the head, and to in front of the left chest is the hand motion meaning "lei" (Exhibit Otsu 4), and these movements, along with other parts, are the same as the choreographies indicated in the lower right corner of Exhibit Ko 25.

Next, with regards to the movement of [ii], Plaintiff asserts that the movement of holding up both arms represents the dark sky, or heaven, and that this movement represents that the lover is in the darkness of night. However, such movement is the same as the choreography indicated in the lower right corner of Exhibit Ko 25. Meanwhile, Plaintiff emphasizes the point that the palms are turned inward, but this point, as well as the rest of the movement, is the

same as in the example indicated in the lower right corner of Exhibit Ko 25, so that Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(C) Pō anu ho 'okahi no au

- a. "Pō" means "night", "anu" means "cold", "ho 'okahi" means "alone", and "au" means "I" (Exhibits Otsu 54, 3), and Plaintiff gives the translation, "the night is cold and I am alone".
- b. Choreography 6 consists of the following movements which can be largely divided into the following two parts, namely, [i] with both palms down, the right arm is bent slightly at the elbow, and both arms are lowered to the chest and crossed in front of the chest, parallel to the body, with the palms turned inward, and these series of movements are performed while the feet make a 270-degree turn to the right, and [ii] next, while the dancer is still facing diagonally backward to the left from the turn, the right foot and the left foot alternately take two steps each diagonally backward to the left as the arms are lowered until they are fully extended.

First, with regards to the movement of [i], Plaintiff asserts that the movement in which the body rotates clockwise while both arms are lowered and are crossed in front of the chest represents that the dark night has continued and that it is getting dark and cold. Regarding this point, while other choreographies of Exhibit Ko 25 and Exhibit Otsu 12 show the same movement as Choreography 6 with regards to the hand motion, no turn is made while doing so. A turn is a type of normal steps (as in the spin turn in Exhibit Otsu 5), but a turn is not normally assumable from static lyrics such as "night" and "cold", and since the turn which is made while the arms are lowered enhances the liveliness of the entire body, it should be said that the difference is made more significant. Meanwhile, Defendant asserts that the hand movement is an existing hand motion and that the foot movement is an existing step, and a movement resulting from the combination thereof is commonplace, but as described above, this assertion cannot be accepted.

Next, regarding the movement of [ii], Plaintiff asserts that the movement of walking alone in the direction that is opposite to the

audience (the back) represents that "he" is alone, and that the movement of lowering the arms represents that "he" is spending the night alone and cold without anyone to hold "him". Since this movement is not assumable from the corresponding lyrics, and furthermore, since there is no example in which the same movement is used, the movement is acknowledged to be original to Choreography 6. Meanwhile, Defendant points out that such movement is commonplace in all kinds of dances, but as described above in (1) D, such assertion by Defendant cannot be accepted.

- c. Accordingly, it can be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(D) Sweetheart mine E pili mai

- a. "Sweetheart mine" are English words meaning "my sweetheart", and "pili" means "together" or "close relationship", and "mai" means "please come this way" (Exhibits Otsu 33, 54), and Plaintiff gives the translation, "my sweetheart, come with me".
- b. Choreography 6 consists of the following movements which can be largely divided into the following two parts, namely, [i] both arms are bent inward at the elbow, and both hands, with open palms, are rotated once in front of the chest, and while the left arm is raised slightly so as to create a space in the armpit and is bent at the elbow, the left hand is placed in front of the chest with the palm up, and the right hand, which is placed in front of the left chest with the palm up, is extended diagonally forward to the right, and these series of movements are performed while the feet make a 135-degree turn to the right, and [ii] the extended right hand is pulled back slightly, and the left hand is slightly extended to the outer side of the body. Pointer fingers of both hands are raised, and both arms are extended to the outer side of the body, and simultaneously, the arms are brought to the front of the body and both hands are joined together in front of the chest.

First, with regards to the movement of [i], Plaintiff asserts that the dancer's walking back to the direction of the audience (front) from the state of facing away from the audience, and extending the right hand, with the palm up, from the position in front of the chest means that "he" is giving his love to "his" lover, and that "his"

never-ending love for the lover will last forever, but such movement is the same as the choreography of Exhibit Otsu 12.

Next, regarding the movement of [ii], Plaintiff asserts that by extending both arms horizontally in both directions and gradually bringing them to the front of the body, and by joining the hands in front of the body, the movement shows that their love is so strong that it can keep them together, but such movement is a hand motion that corresponds to "e pili", of raising pointer fingers of both hands and joining the hands in front of the chest (Exhibit Otsu 26), and the movement is found in some examples to represent the same lyric of "e pili" in different songs (Exhibits Otsu 21 to 23). Meanwhile, Plaintiff asserts that since there is no similar example, Choreography 6 has originality, but as described above, the assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(E) Inā 'o 'oe a'o au

- a. "Inā" means "if ... were", "'oe" means "you", and "au" means "I" (Exhibits Otsu 54, 3), and Plaintiff gives the translation, "if you were with me".
- b. Choreography 6 consists of the following movements which can be largely divided into the following three parts, namely, [i] the left hand is lowered and is placed parallel to the body, and the right hand, as the palm is turned up, is extended forth from the state of the elbow being slightly bent diagonally forward to the right, and [ii] next, the left arm is extended diagonally forward to the left, with the palm down, and the right arm is raised so as to create a space in the armpit, and is bent lightly, with the palm down, pointing diagonally to the left, and [iii] next, the extended left arm is bent and pulled back to the front of the chest, and is placed in front of the chest parallel to the body, with the right palm and the left palm turned inward and one palm being placed over the other.

First, regarding the movements of [i] and [ii], Plaintiff asserts that the movements represent how "he" is very strongly looking forward to be with "you". However, such movement is made by the hand motion that corresponds to "'oe" (you), of using the entire

palm to point to the other person in front (Exhibit Otsu 4), performed once by each hand, respectively. The example shown in the lower left corner of Exhibit Ko 25 shows the same hand motion being performed two times by the right hand and once by the left hand, and the example shown in the lower right corner shows the same hand motion being performed only once by the right hand, so that it cannot be said that performing the same hand motion once by each of the right and the left hand, respectively, has a significant difference.

Next, regarding the movement of [iii], Plaintiff asserts that the movement represents "he" and "his" lover being together. However, such movement is a hand motion that corresponds to "au" (I), of placing the palms in front of the chest and facing them in the dancer's direction (Exhibit Otsu 3), and this choreography is performed in the examples in the lower right corner and lower left corner of Exhibit Ko 25 as well.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(F) 'Ike i ke ahi o Makana

- a. "Ike" means "to see", "ahi" means "fire", and "Makana" is a geographical name (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives the translation, "we will know the fire of Makana".
- b. Choreography 6 consists of the following movements which can be largely divided into the following three parts, namely, [i] the right hand is placed by the right eye, with the palm down, and is turned diagonally upward to the left together with the face, and the left hand is extended straight, with the palm down, and is turned diagonally upward to the left, and [ii] later, the right hand is placed around the elbow area of the extended left hand, and the left arm, which is kept extended, with the wrist bent downward, is brought down diagonally downward to the left, rather swiftly, from the position of diagonally upward to the left, and simultaneously as the left arm is brought down, the dancer lowers his/her hip and crouches down slightly, and [iii] next, the dancer, while maintaining his/her low posture, slightly bends both hands and lines them up in front of

the chest, and makes a wavy motion once with both palms, and, as the dancer raises his/her hip and stretches upward, he/she brings the left arm, which is extended, slightly diagonally downward to the side of the body, and brings the right arm, which is extended, slightly diagonally upward to the side of the body, and once again he/she makes a wavy motion with both palms.

First, with regards to the movement of [i], Plaintiff asserts that this movement is a representation of the anticipation that something will happen, or of the waiting for something that is about to happen, so that it is an expression of how "he" is truly looking forward to what is to happen. However, this movement is a hand motion that corresponds to "ike" (to see), of holding both hands to the eyes and turning the palm of one hand and the face outward while extending the other hand (Exhibit Otsu 4), and the same movement is also found in the lower left corner of Exhibit Ko 25, and the same movement, with the right hand and left hand used alternately, is found in the lower right corner of Exhibit Ko 25 as well.

Next, with regards to the movements of [ii] and [iii], Plaintiff asserts that grabbing the torch, which is falling, represents the symbol of the burning desire, in love, to be together. However, regarding the movement of [ii], since in the example in the lower right corner of Exhibit Ko 25, both hands are raised above and are lowered as the dancer crouches down, it can be said that there is a similar example for the movement of up and down (Plaintiff asserts that the interpretation of grabbing the falling torch is original, but since a similar example exists as a specific representation, originality of choreography cannot be acknowledged based only on the originality of interpretation). As for the movement of [iii], it has the elements of the hand motion for "place", of extending one hand forward and extending the other hand upward (Exhibit Otsu 5).

However, when the movements of [i] to [iii] are observed as a series of movements, Choreography 6 is a lively choreography involving the entire body, as is not seen in other examples, by the combination of the movement of [i] in which the dancer makes a big motion of extending upward, and of the movement of [ii] in which the dancer makes a big motion of crouching down, and of the

movement of [iii] in which the dancer makes a big motion once again of extending upward. As for the individual movements themselves, the movement of [i] is unlike any other example, in that one hand is extended high upward until almost right above the body, as the body stretches out, and the movement of [ii] is unlike the example in the lower right corner of Exhibit Ko 25 in the way the hands are crossed when they are brought down, and the movement of [iii] is not exactly the same as the hand motion for "place" in that the body stretches upward, and as a series of movements, there is no example of the same combination.

- c. In light of the foregoing, it is reasonable to acknowledge that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(G)He makana ia na ke aloha

- a. "Makana" (a noun) means "gift", and "aloha" means "love" (Exhibits Otsu 33, 54), and Plaintiff gives the liberal translation, "that will be a gift of love".
- b. Choreography 6 consists of the following movements which can be largely divided into the following two parts, namely, [i] the right arm is extended straight, diagonally upward to the right, with the open palm facing front, and similarly with the open palm facing front, the left arm is placed alongside the right arm, by slightly bending the left arm, and by extending the left arm at the same time as when the right arm is bent, the heights of the arms are reversed, and [ii] next, the dancer lowers his/her hip and takes a slightly crouching posture while slowly bending both arms simultaneously, and crossing the wrists in front of the chest, with the palms turned inward.

First, with regards to the movement of [i], Plaintiff asserts that the prior movement, which represents the previously mentioned mountain of Makana, shifts to the movement representing "makana", as in "gift". However, the movement here is similar to the hand motion for "mountain" (Exhibit Otsu 4), of alternately raising both hands, with each hand raised to a different height. However, there is no example in which the hand motion for "mountain" is used here to perform the same movement as the movement of [i] on the basis

that "makana" (gift) and the immediately preceding "Makana" (geographical name) are homonyms. Furthermore, the choreographies indicated in the lower right corner and lower left corner of Exhibit Ko 25 and in Exhibit Otsu 12 are such that both hands are placed in front of the chest and then spread to the front. The movement of these examples is obedient to the lyric of "manaka" (gift), and use of the hand motion for "mountain" is not normally assumable from the content of the lyrics. Meanwhile, Defendant points out that the movement of Choreography 6 is commonplace in all kinds of dances, but as described in the above (1) D, such assertion by Defendant cannot be accepted.

Next, with regards to the movement of [ii], Plaintiff asserts that the "makana", which means "gift", shifts to the movement of crossing hands in front of the chest, which means "love", so that the movement represents that "he" is sending a gift of love. However, such movement is a hand motion for "aloha" (love), of crossing the hands in front of the chest, with the right hand on top and the left hand on bottom, from the state in which both hands are spread or thrust forward, (Exhibit Otsu 4), and it is the same as the choreography indicated in the lower left corner of Exhibit Ko 25.

- c. Accordingly, of the choreographies corresponding to the lyrics here, while the movement of [i] can be evaluated as original to Choreography 6 and as showing Plaintiff's personality, the movement of [ii] cannot be evaluated as showing Plaintiff's personality.

(H)No nā kau a kau 'o 'oe a 'o au

- a. "No nā kau a kau" means "to be together forever", and "'oe" means "you", and "au" means "I" (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives the translation, "together forever, you and I".
- b. Choreography 6 consists of the following movements which can be largely divided into the following two parts, namely, [i] the right arm is slowly extended diagonally upward to the right, with the open palm up, and the left arm is slowly extended to the left side of the body, with the open palm up, and meanwhile, the body makes a 360-degree rotation to the right as the arms are slowly extended,

respectively, and [ii] next, the left arm is extended straight, diagonally forward to the left with the palm down, and the right arm, which is raised so as to create a space in the armpit, is slightly bent at the elbow and is placed by the chest, with the palm down, while the extended left arm is returned to the front of the chest with the palm turned inward, and the left hand is placed above the right hand in a way so as not to overlap, and both palms are placed in front of the chest parallel to the body.

First, with regards to the movement of [i], Plaintiff asserts that the dancer taking sliding steps for eight beats while extending the arms upward and outward represents the flow of time. Regarding this point, concerning the movement by the hand of extending both arms upward and outward, a similar movement is found in the choreographies of the examples indicated in the lower left corner and lower right corner in Exhibit Ko 25. However, such movement is different from the movement of [i] in that steps for rotation are not taken during the movement, and there is no other similar example in which steps for rotation are taken in this place. The turn is a type of normal steps, but a turn is not usually assumable from the meanings of the lyrics or from the theme, and as the dancer makes a turn with the arms widely stretched out, the liveliness of the entire body is enhanced to an extent that is not found in any other example, so that it should be said that the difference is even more significant. Meanwhile, Defendant asserts that the hand movement is found in similar examples and that the movement by the feet consists of existing steps, and that the combination thereof is commonplace. However, as described above, the assertion cannot be accepted.

Next, with regards to the movement of [ii], Plaintiff asserts that the movement represents that "you and I are always together forever", but the movement of placing one hand to the chest while extending the other hand forward is a hand motion for "oe" (you) (Exhibits Otsu 3, 5), and the movement of turning both palms, which are in front of the chest, to the dancer's direction is a hand motion for "au" (I), and the choreographies indicated in the lower right corner of Exhibit Ko 25 show an example for the movement of

extending of the hand, which is then bent and returned to the position in front of the chest, although there is the difference of using one hand instead of both hands for "oe".

- c. Accordingly, of the choreographies corresponding to the lyrics here, it can be evaluated that the movement of [i] shows Plaintiff's personality even more strongly whereas the movement of [ii] does not show Plaintiff's personality.

(I) Sweetheart mine E pili mai

- a. Meanings of these lyrics are the same as the above (D).
- b. Choreography 6 consists of the following movements which can be largely divided into the following two parts, namely, [i] after both arms are bent inward at the elbow and both hands rotate once in front of the chest, with palms open, the left arm, still bent at the elbow, is raised so as to create a space in the armpit, and the left hand is placed in front of the chest with the palm up, and the right hand is extended diagonally forward to the right from the position in front of the left chest, with the palm up, and [ii] next, the movement of [ii] in the above (D) is performed.

First, with regards to the movement of [i], Plaintiff asserts that the choreography is created from the movement for "heart", which means "lover". However, while the examples indicated in the lower left corner and lower right corner of Exhibit Ko 25 are different in that both examples use the movement of crossing the arms in front of the chest (a movement similar to the hand motion for "aloha" (love)), the example in Exhibit Otsu 12 shows the same choreography as that of Plaintiff.

Also, the movement of [ii] is a hand motion for "e pili" (together) like the movement in [ii] in the above (D), so that there is a similar example as well.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(J) Interlude

- a. Choreography 6 consists of the following movements which can be largely divided into the following three parts, namely, [i] the body is turned 90 degrees to the right, and simultaneously, the left arm is raised so as to create a space in the armpit, and is bent at the

elbow, and the left hand is placed horizontally in front of the chest with the palm down. Once the body is turned 90 degrees to the right, the dancer picks up the skirt with his right hand by the hem near the right knee, and slightly raises the skirt. Keeping the same posture, the dancer makes a 90-degree turn to the left until facing front, and [ii] next, the dancer extends the left arm diagonally forward to the left, and raises it so as to create a space in the armpit, and lightly bends it at the elbow, and places the right arm in front of the chest. With the palms of both hands turned down, a wavy motion is made once, slowly with both palms, and [iii] finally, the right arm is extended diagonally forward to the right, with the palm up, as if to scoop up something from underneath, and later the left arm is similarly extended diagonally forward to the left.

Regarding this point, the movement of [ii] is a hand motion for the interlude (Exhibit Otsu 5, page 30, 31), and as for the movement of [iii], the same movement is found in the choreography indicated in the lower right corner of Exhibit Ko 25, although the example uses each hand respectively instead of both hands at the same time, and thus it cannot be said that the difference is significant. On the other hand, since the movement of [i] can be found in neither other choreographies of Exhibit Ko 25 nor in the choreographies of Exhibit Otsu 12, and even in light of the examples for the intro, interlude, and outro for other songs, it cannot be acknowledged that the movement is commonplace as a choreography for an interlude.

- b. Accordingly, it can be evaluated that the choreographies corresponding to the interlude show Plaintiff's personality with regards to the movement of [i]. Meanwhile, Defendant asserts that Choreography 6 is an existing hand motion, but as described above in a, while Choreography 6 contains parts which are existing hand motions, there are other parts as well, and thus Defendant's assertion cannot be accepted.

(K)'Auhea wale ana 'oe, Ku' u lei o ka pō, Pō anu ho 'okahi no au, Sweetheart mine, E pili mai, Inā 'o 'oe a 'o au, 'Ike i ke ahi o Makana, He makana ia na ke aloha, No nā kau a kau, 'o 'oe a 'o au, Sweetheart mine, E pili mai (second verse)

The same as described above in (A) to (I).

(L) Sweetheart mine E pili mai (repeated twice)

- a. For the first "Sweetheart mine", Choreography 6 has a movement which is different from that which is used for the same lyrics appearing immediately before, in that both elbows are bent, and both wrists are crossed in front of the chest with the palms turned inward, as the dancer makes a 360-degree turn to the right.

This movement is performed while the dancer makes the hand motion for "aloha" (love) (Exhibit Otsu 4), of spreading out both hands or sticking them out to the front and then crossing them in front of the chest, with the right hand on top and the left hand on bottom, as the dancer makes a turn, and this movement is normally assumable from the lyric of "Sweetheart mine". Choreographies indicated in the lower left corner and lower right corner of Exhibit Ko 25 show the same movement, except for the turn. It can be said that the addition of a turn here is creative to a certain degree. However, in the case where the final lyrics are repeated before the outro, the addition of a turn to give some change to the dance is something that is also found in the choreographies indicated in the upper right corner of Exhibit Ko 46 and in Exhibits Otsu 35-7 and 35-8 immediately before the outro ("aloha ē" in F (U) below) of the song (Maunaleo) corresponding to Choreography 17 (described below in F), so that the presence or lack of a turn cannot be considered a significant difference.

- b. Also, for the second "Sweetheart mine", the movement of Choreography 6 is such that the left arm is extended, unbent, and is lowered, and the right arm is bent at the elbow, with the palm turned inward, and the place around the tips of the pointer finger and the middle finger is touched to the mouth once, and later, the right arm is slowly extended diagonally forward to the right, with the palm up, and in doing so, two steps are taken to the left, alternately with the left foot and the right foot. This movement is another hand motion for "aloha" (love), of extending one hand or both hands forward, after they are placed to the mouth (Exhibit Otsu 3), and this movement is normally assumable from the lyric of "Sweetheart mine".
- c. Also, as for the "E pili mai" which is repeated twice here, it

cannot be evaluated, as described in the above (D), that Plaintiff's personality is shown.

- d. Based on the above, it can be said that the repetitive part here is basically found in similar examples, or is a movement that can be assumed from the lyrics.

(M) **Outro**

The same as described above in (J), and it can be evaluated that Plaintiff's personality is shown.

(N) **Summary**

As described above, Choreography 6 not only has choreographies which are completely original (aforementioned (C) [ii], (G) [i] [and (K)]), but also is arranged throughout in significantly different ways as compared with other choreographies (above (C) [i], (F), (H) [i], (J) [i] [and (K)]), so that it is reasonable, when Choreography 6 is seen as a whole, to acknowledge that Plaintiff's personality is shown for the whole of Choreography 6.

B. Choreography 11 (Song: Lei Ho' oheno)

(A) **Intro**

- a. Choreography 11 consists of the following movements, namely, [i] the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and the left hand is brought to the front of the chest and placed there horizontally, with the palm down, and the right hand holds the hem of the skirt at about the right side of the hip, and lightly picks up the skirt, and in doing so, the body is turned diagonally forward to the right, and [ii] next, the left arm is brought down, unbent, and the right arm is extended straight forward, unbent, at shoulder height, with the palm up, and in doing so, the body is turned diagonally forward to the left, and [iii] later, the extended right arm is raised so as to create a space in the armpit, and is slowly bent, with the palm down, and is stopped in front of the chest, and the above movements are performed by reversing right and left, followed by the same movements performed alternately by the left arm and the right arm, respectively.

On the other hand, in the choreographies indicated in the upper right corner, lower left corner, and lower right corner of Exhibit Ko 26, both hands are alternately extended, but before doing so, the

other hand is never bent, so that these choreographies do not include the movements found in Choreography 11, of bending one hand and then extending the other hand. Since this difference affects the shape of the entire body, it should be considered a significant difference. As for the hand motions for the intro and interlude (Exhibit Otsu 5), of extending one hand diagonally forward and placing the other hand in front of the chest, with the palm down, and the same movement being performed by the opposite side, they do not involve the movement in which, before one hand is extended, the other hand is bent, and the movement of bending the other hand before extending one hand is not normally assumable from the theme.

Meanwhile, Defendant asserts that these movements are commonly found in a hula dance. However, there is no appropriate evidence that provides basis for acknowledging as such, and furthermore, even if the movement is commonplace in a hula dance, since it cannot be said that doing so in a part that has no lyrics, like the intro, is commonplace, Defendant's assertion cannot be accepted.

- b. Accordingly, the choreographies corresponding to the interlude are such that at least existing choreographies and hand motions are combined with different movements, and a significant arrangement is made thereto, so that it can be evaluated that Plaintiff's personality is shown.

(B) E ku' u pili aloha

- a. "ku' u" means "my", "pili aloha" means "friendship with a close friend" (Exhibit Otsu 54), and Plaintiff gives the translation, "my dear friend".
- b. Choreography 11 consists of the following movements which can be largely divided into the following three parts, namely, [i] the right arm is extended, unbent, diagonally forward to the right with the palm up, at chest height, and the left arm is bent at the elbow, and the left hand is placed in front the left chest with the palm turned inward, and the body is turned to the right first, and is then turned so as to face front, and [ii] next, after facing front, the dancer performs the movement of extending both arms straight forward at shoulder height with the hands trying to clasp against each other,

and [iii] both arms are slowly bent at the elbow at the same time, and both wrists are crossed in front of the chest with the palms turned inward.

Regarding these movements, Plaintiff asserts that extending the right hand horizontally and placing the left hand to the chest, and then clasping both hands and crossing the arms in front of "poli" (heart) or the chest, represent the love for a very close and dear friend.

Regarding this point, the movement of [ii] is almost the same as the hand motion for "e pili" (together), as described in the above A (D) (Exhibit Otsu 26), and the movement of [iii] is the hand motion for "aloha" (love), as described in the above A (G) (Exhibits Otsu 4, 5). However, while the choreography indicated in the lower left corner of Exhibit Ko 26 involves the movement of [ii], and the choreography indicated in the upper right corner of Exhibit Ko 26 involves the movement of [iii] as performed repeatedly, and the choreography indicated in the lower right corner of Exhibit Ko 26 involves the movements of [ii] and [iii] after the movement of spreading out both arms, none of the choreographies involves the movement of [i], and there is no choreography in which, like Choreography 11, all of the movements [i] to [iii] are performed. Also, the movement of [i] is not normally assumable from the meanings of the lyrics or from the theme.

- c. Accordingly, the choreographies corresponding to the lyrics here consist of an arrangement of existing choreographies and hand motions combined with different movements, and since this makes the movement of the entire body different, it should be considered a significant difference, and it can be evaluated that Plaintiff's personality is shown. Although Defendant asserts that the movement of [i] is commonplace in a hula dance, even if such is the case, it is as described in the above a, that the use of the movement of [i] as the choreographies corresponding to the lyrics here is not commonplace, so that Defendant's assertion cannot be accepted.

(C) Ku' u lei kau po' ohiwi

- a. "Ku' u" is "my", "lei" is "wreath" (worn on the head or around the neck)", a figurative expression for "beloved

child/wife/husband/lover/younger brother/younger sister", "kau" means "to hang", and "po' ohiwi" means "shoulder" (Exhibit Otsu 54), and Plaintiff gives the translation, "the lei decorating my shoulder".

- b. Choreography 11 consists of the following movements which can be largely divided into the following two parts, namely, [i] both arms are raised so as to create a space in the armpit, and are bent at the elbow, and the hands are placed in front of the chest, in such a way that they do not overlap, with the palms turned inward, and then, as the right arm maintains the same state, the palm of the right hand is turned down, and the left arm, while still slightly bent at the elbow, is brought over the head to pass behind the head and to the front of the chest, and [ii] next, the body is turned diagonally forward to the left, and both arms are raised so as to create a space in the armpit, and are bent at the elbow, and the hands are placed on the shoulders with the palms down, and then, the body is turned diagonally forward to the right, and both hands are simultaneously brought down, with the palms turned inward, so that they pass in front of the shoulders as the fingers make slightly swishing movements.

Regarding these movements, Plaintiff asserts that moving the left arm from the top of the head to the shoulders and placing the right hand in front of the chest represent the gesture of decorating oneself by hanging a lei over the shoulders.

First with regards to the movement of [i], the hand motion for "lei" is, as described above in A (B), the movement of hanging a lei over the shoulders by, sort of like, lifting up the arms from under the chest. There is also the gesture in which one hand is used to support the bottom of the lei and the other hand is used to hang the lei over the shoulders (Exhibit Otsu 4). In the choreographies indicated in the upper right corner, lower left corner, and lower right corner of Exhibit Ko 26, the movement is such that both hands are used to place a lei around the neck. As such, the movement of [i] here is the same as these movements.

Next, regarding the movement of [ii], the hand motion for "po' ohiwi" (shoulder) is such that while the eyes are directed to the

shoulders, one hand touches a shoulder lightly (Exhibit Otsu 4), and in the choreographies indicated in the upper right corner and lower right corner of Exhibit Ko 26, the body is kept facing front, and both hands are placed on one shoulder, and then they are placed on the other shoulder, and thus there is no such movement as half the body being twisted and both hands being placed on the shoulders simultaneously (it should be noted that the choreography indicated in the lower left corner of Exhibit Ko 26 does not even have any movement in which a hand is placed on a shoulder). As such, while Choreography 11 is based on the existing movement of placing hands on shoulders, since twisting half the body while placing both hands on the shoulders at the same time produces a dynamic change that makes the movement different from similar examples, it should be said that Plaintiff's personality is shown to a certain degree in this respect as well.

(D)Onaona i ka ihu

- a. "Onaona" means "pleasant scent", and "ihu" means "nose" (Exhibit Otsu 54), and Plaintiff gives the translation, "sweet and mild scent".
- b. Choreography 11 has a movement in which the left arm is extended diagonally forward to the left at shoulder height, and the fingers of the left hand are pinched and directed upward, and the right arm is extended and the right hand touches the fingertips of the left hand once, and the right arm is moved to the right at shoulder height so as to pass in front of the nose (when the fingertips of the right hand comes to the front of the nose, the dancer actually draws in a breath to smell), and when the right hand comes to the front of the right shoulder, the palm is turned down, and the right arm is extended diagonally forward to the right.

Regarding these movements, Plaintiff asserts that the movements of extending the left hand to hold a flower, which is a symbol for a best friend, and touching the tip of the flower by the right hand, and bringing the flower to one's own nose to smell the scent of the friend (as symbolized by the flower) who smells sweet and mild, represent how much the best friend is important and close. However, the movement of smelling a scent by holding a hand to the

nose is the hand motion for "onaona" (pleasant scent) (Exhibits Otsu 4, 26), and is also performed in the choreographies indicated in the lower left corner and lower right corner of Exhibit Ko 26, and furthermore, the movement here is the same as the choreography indicated in the lower left corner of Exhibit Ko 33, which corresponds to the part, "onaona" (movement of [ii] in E (B) below), in the lyrics, "He 'ala onaona kūpaoa", which are the same as the lyrics here, and which are among the lyrics for the song (Māpu Mau Ke' Ala), which corresponds to Choreography 16 (as described below in E). Meanwhile, Plaintiff asserts that there is no example in which the same movement as Choreography 11 is performed, but such assertion cannot be accepted in light of what is described above.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(E) Nohea i ka maka

- a. "Nohea" means "pretty", and "maka" means "eye" (Exhibit Otsu 54), and Plaintiff gives the liberal translation, "lovely appearance".
- b. Choreography 11 consists of the following movements which can be largely divided into the following two parts, namely, [i] with the palm of the right hand turned down, the right arm is extended diagonally forward to the right at shoulder height, and at the same time, the left arm is extended upward with the palm turned inward, and [ii] the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and as the palm of the left hand is placed by the left eye, the palm of the right hand is turned up, and the right arm, which remains extended, is raised straight above.

Regarding these movements, Plaintiff asserts that, by extending the left hand towards the heaven (distant sky) and bringing the hand to one's eye, they indicate the message, "you are a gift from the heaven, and I love you".

Regarding this point, the movement of [ii] is the hand motion for "maka" (eye) (Exhibit Otsu 4), of touching the area around the eye with both hands or with one hand. However, while other choreographies of Exhibit Ko 26 involve the movement of [ii], they do not involve the movement of [i], and there is no choreography in which, like Choreography 11, the movement of [i] is performed in

addition to performing the movement of [ii], and furthermore, the movement of [i] is not normally assumable from the meanings of the lyrics or from the theme.

- c. Accordingly, the choreographies corresponding to the lyrics here consist of the arrangement of existing choreographies and hand motions combined with different movements, and since, as a result, the movement of the entire body becomes different, it should be considered a significant difference, and it can be evaluated that Plaintiff's personality is shown.

(F) Liliko i ka ua kilihune

- a. "Liliko" means "to shine", "ua" means "rain", and "kilihune" means "soft and misty rain (Exhibits Otsu 37, 54, the entire import of the oral argument), and Plaintiff gives the translation, "shining brightly in the misty rain blown by the wind".
- b. Choreography 11 consists of the following movements which can be largely divided into the following two parts, namely, [i] while the right arm is extended upward with the palm facing front, the left hand, with the palm facing front, is raised to a slightly lower position than that of the right hand, and is placed alongside, and both palms are closed once and then opened, and in that state, the dancer makes a 180-degree turn to the left, and once the body is thus turned back, the dancer once again closes the palms and then opens them, and [ii] next, as the dancer shakes the fingers of both palms flutteringly, the palms are gradually brought diagonally downward to the right, to hip height, and at that time, the body makes a 215-degree turn to the right, and from the state of looking back, the body is turned diagonally forward to the right.

Regarding these movements, Plaintiff asserts that as the dancer, while making a turn from the direction away from the audience (back side) to face front, makes the gesture of moving both hands in a way that suggests sparkles, these movements represent how the misty rain (the rain called "kanilehua"), which is a rain that is characteristic of the region of Hilo, on the island of Hawaii is blown by the wind as it sparkles in the flow.

First, the movement of [ii] is the same as the hand motion for "ua" (rain) (Exhibits Otsu 3, 4), of holding up both hands, and while

moving the fingertips in a sprinkling motion, both hands are lowered diagonally at the same time. In the choreographies indicated in the lower right corner and lower left corner of Exhibit Otsu 26, fingertips of both hands or one hand are moved in a sprinkling motion and lowered in the form of an S-shape (it is acknowledged that this movement corresponds to what is explained in Exhibit Otsu 3, concerning the hand motion for "ua", that the lowering of hands as if to draw an S-shape represents "fog" or "snow"). Accordingly, the movement of [ii] is a combination of the hand motion for "ua" and a turn.

Also, while the movement of [i] is not a special hand motion for lyrics, in order to make the movement of lowering both hands down from above in the movement of [ii], it inevitably becomes necessary to perform the movement of raising both arms up in the previous step, and since such movement is performed in other choreographies of Exhibit Ko 26 as well, the difference once again lies in the presence or lack of a turn.

In this regard, the turn here involves the movement of the entire body and produces liveliness, but the choreographies in the lower right corner of Exhibit Ko 26 involve the movement, which is the same as the above movements of [i] and [ii], for the place corresponding to "kanilehua" in the following lyrics in (G), of extending both hands upward, and then making a turn, and while moving the fingertips in a sprinkling motion, lowering both arms diagonally at the same time. As such, in light of the meaning of the lyric, which is such that the "kanilehua" used therein is the "name of the well-known fog-like rain that falls in Hilo (a geographical location on the island of Hawaii)"(Exhibit Otsu 54), it cannot be said that the combination of a turn for the "ua" here in order to create movements [i] and [ii] is significant. Meanwhile, Plaintiff asserts that the turn in the movements of [i] and [ii] is original, but as described above, such assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(G)Kilipohe i ke kanilehua (only "lehua" is repeated)

- a. "Kilipohe" means "wet", "kanilehua" is the "name of the well-

known fog-like rain that falls in Hilo (a geographical location on the island of Hawaii)" (literally meaning "(the rain which) the flower of lehua drinks"), "lehua" means the "flower blossoming on the tree of "ōhi'a" or "island flower on the island of Hawaii, as is well-known in songs and legends" (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives the translation, "wet with the rain of kanilehua".

- b. For the first part of "Kilipohe i ke kanilehua", Choreography 11 consists of the following movements which can be largely divided into the following three parts, namely, [i] the fingers of the left hand are pinched and directed upward, and the right hand is placed under the left hand as if for support, and while the hands remain as such, both hands are extended high, diagonally upward to the left, as the direction of the body is returned to the direction of facing front, and [ii] the right hand is raised even higher than the left hand, with the palm of the right hand facing front, and as the fingers of the right hand make fluttering motions behind the left hand, both hands are gradually lowered diagonally downward to the right until they reach chest height, and in the following part of "lehua" which repeats itself, [iii] the fingers of the left hand are pinched and are directed upward, and the right hand is placed under the left hand as if for support and the hands, which are at shoulder height, are extended straight forward, and the body makes a 360-degree turn to the right, and later, as the hands remain as such, both hands, which are extended forward, are slowly raised diagonally upward to the left.

Regarding these movements, Plaintiff asserts that the movement, in which the left hand, which is accompanied by the right hand, holds the flower, which is the symbol for a best friend, and raising the hand, which holds the flower, upward to a high position, represents the deep affection for the best friend, and that lowering the fingers from the direction of the heaven (distant sky) as they make tiny trembling motions represents how the bright misty rain (rain called "kanilehua"), which was carried by gentle wind, pours softly, and the movement of pinching the fingers of the left hand and then gradually lowering the right hand while making fluttering motions represents how the misty rain called "kanilehua" keeps the

flower of "lehua", which symbolizes the island of Hawaii, fresh.

First, with regards to the movement of [i], it is the same as the hand motion for "pua" (flower), of making a bud-like shape by the pinching of the hand and directing the hand upward (Exhibits Otsu 4, 5, 25), and the movement of extending both hands upward is necessary in preparation for the next movement for "ua" (rain). Also, the movement of [ii] is such that the left hand makes the hand motion for "pua" (flower) while the right hand makes the hand motion for "ua" (rain), as described in the above (F). Accordingly, of what is described above, making the hand motion for "ua" is assumable from the aforementioned meanings for "Kilipohe" and "kanilehua", and the hand motions for "ua" and misty rain, which is a type of rain, are adopted by other choreographies of Exhibit Ko 26 as well. However, adoption of factors for "pua" in the lyrics part that precedes the repetitive part is not directly related to the meanings of "Kilipohe" and "kanilehua", and even if literal meanings for "kanilehua" include the meaning of "flower" by the name of "lehua", adoption of factors for "pua" in this place is not found in other choreographies of Exhibit Ko 26, and especially with regards to the movement in which the factors for "ua" and "pua" are parallelly adopted at the same time, such movement is not found in other choreographies of Exhibit Ko 26. Accordingly, the movement is original to Choreography 11, and it can be evaluated that Plaintiff's personality is shown.

Next, with regard to the movement of [iii], the hand movement is a hand motion for the above "pua", so that it is assumable from the meaning for the lyric here (lehua). However, while in Choreography 11, the steps taken involve a turn, such steps involving a turn are not found in other choreographies of Exhibit Ko 26, and since the difference in liveliness resulting from the presence or lack of a turn cannot be ignored, it should be said that Plaintiff's personality is shown to a certain degree in this respect as well.

- c. Accordingly, since the lyrics part corresponding to the lyrics here are original to Choreography 11, it can be evaluated that Plaintiff's personality is shown.

(H)E ku' u pili aloha, Ku' u lei kau po' ohiwi, Onaona i ka ihu,

Nohea i ka maka, Liliko i ka ua kilihune, Kilipohe i ke kanilehua
(second verse)

The same as described above in (A) to (G).

(I) Wewelo ke aloha i ka 'onohi

- a. "Wewelo" is a transformation of "welo", which means "to flutter, to float", and "aloha" means "love", and "'onohi" means "eyeball" (Exhibits Otsu 33, 54, the entire import of the oral argument), and Plaintiff gives the translation, "love that flows before my eyes".
- b. Choreography 11 consists of the following movements which can be largely divided into the following four parts, namely, [i] both arms are raised so as to create a space in the armpit, and are lightly bent at the elbow upward, and both hands are lined up in front of the face with the palms facing front, and while maintaining that state, the dancer makes a 360-degree turn to the right, and [ii] when the turn is about to be completed, the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and the right hand, with the palm turned inward, is placed by the right eye, and the palm of the left hand is turned up and the left arm is lightly extended diagonally forward to the left at shoulder height, and [iii] next, both arms are bent at the elbow and brought to the front of the chest, and the palms of both hands are turned inward, and both wrists are crossed in front of the chest, and [iv] next, the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and the left hand is placed by the left eye with the palm turned inward, and the palm of the right hand is turned up and the right arm is extended straight, diagonally upward to the right, and the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and the right hand is placed by the right eye with the palm turned inward, and meanwhile, the palm of the left hand is turned up, and the left arm is extended straight, slightly diagonally downward to the left.

First, with regards to the movement of [i], Plaintiff asserts that the movement of rotating both hands in front of the face represents how love floats before the eyes and flows, as well as the feeling of "look at me, I am here to be loved by you", and that, by rotating the body, it expresses how the love flows with the passing of time. However, such movement is not assumable from the lyrics, and

since similar choreographies cannot be found anywhere, including the other choreographies of Exhibit Ko 26, it should be said that the movement is original to Choreography 11, and the movement produces a significant difference to the movement of the entire body as a result.

On the other hand, with regards to the movement of [ii], given that the meaning for "onohi" (eyeball) is the same as the meaning for "maka" (eye), and the hand motion for "maka" consists of touching around the eyes with both hands or with one hand (Exhibit Otsu 4), it is acknowledged that the movement is assumable from the meanings of the lyrics here.

Next, with regards to the movement of [iii], Plaintiff asserts that the movement of crossing the hands in front of the chest represents deep love for a best friend. However, this movement is the same as the hand motion for "aloha" (love) (Exhibits Otsu 4, 5), and it is acknowledged that the movement is the same as the choreographies indicated in the lower left corner and lower right corner of Exhibit Ko 26.

Furthermore, with regards to the movement of [iv], it is acknowledged that the movement, like the movement of [ii], is assumable from the meanings of the lyric for "onohi" here.

- c. Accordingly, while it cannot be acknowledged that the movements of [ii] to [iv] show Plaintiff's personality, as for the movement of [i], the movement is original to Choreography 11, and thus it can be evaluated that Plaintiff's personality is shown.

(J) 'Ume' ume mai ho' i kau

- a. "Ume' ume" means "attractive", "mai ho' i kau" means "superb" (in the case of "mai" only, it means "please come this way") (Exhibits Otsu 4, 33, 54), and Plaintiff gives the translation, "how attractive you are".
- b. Choreography 11 has a movement in which the left arm is extended diagonally downward to the left, with the palm of the left hand turned up, and while in that state, the right arm is bent at the elbow and lowered to the front of the right chest with the palm of the right hand turned up, and as both arms are bent slightly, the palms are shaken twice as if to beckon someone, and, with the palm

of the right hand turned up, the right arm is extended diagonally downward to the right, and the left arm is bent at the elbow and placed in front of the left chest with the palm of the left hand turned up, and as the arms are bent slightly, the palms are shaken twice as if to beckon someone.

Regarding this movement, Plaintiff asserts that the movement of looking at both directions and making the beckoning gesture with both hands, respectively in each direction, represent the message of "I want you to come here quickly", and that the best friend is so seductive or attractive that the dancer acts in such a way. However, such movement consists of the hand motion for "mai" ("please come this way") (Exhibit Otsu 5), of turning both palms up, and positioning the right hand in front of the chest while the left hand is extended diagonally forward to the left, and the left hand, bent at the wrist, making a movement of softly pulling in as if to lure someone, and holding up both palms in front of the chest, all of which are repeated after reversing the directions of the body. The same movement, although without the repetition, is found in the choreography indicated in the lower right corner of Exhibit 26 as well. Meanwhile, Plaintiff asserts that there is no similar example, but there is a similar example, as described above, and thus Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(K)E kahi lei ho' oheno

- a. "Kahi" means "only one", "lei" means "wreath" (worn on the head or around the neck), a figurative expression for "beloved child/wife/husband/lover/younger brother/younger sister", "ho' oheno" means "to love" or "expression of love (in songs, etc.)" (Exhibits Otsu 33, 54), and Plaintiff gives the liberal translation, "my beloved friend".
- b. Choreography 11 consists of the following movements which can be largely divided into the following two parts, namely, [i] both arms are raised so as to create a space in the armpit, and are bent at the elbow, and both hands are lined up side by side, so as not to overlap, in front of the chest with the palms turned inward, and a

wavy motion is created with the palms once, and in that state, both arms are extended straight forward at shoulder height, and [ii] next, both arms are extended, and with the palms lined up, both hands, passing in front of the face, are raised to above the head as if to hold something up, and once the hands are fully extended upward, both hands, which are kept lined up, are brought behind the head by bending the arms at the elbow, and while keeping the elbows bent, both arms are lowered in such a way that each arm respectively passes the front of each shoulder.

Regarding these movements, Plaintiff asserts that the gesture of picking up a lei with the fingers of both hands and then hanging it over the shoulders represents the message, "you are the only person for whom I hang the lei over the shoulders or the chest". However, with regards to the movement of [ii], the hand motion for "lei" (Exhibit Otsu 4), which is performed with one hand, is performed using both hands, and the movement is the same as the choreographies indicated in the lower left corner and lower right corner of Exhibit Ko 26. Also, like the movement of [i], the movement of extending both arms forward as a precondition for the movement of [ii] is also found in the choreography in the lower right corner of Exhibit Ko 26, and the preceding movement of lining up both palms in front of the chest is not an obvious movement, and thus it cannot be considered a significant difference as an act of precondition for extending both arms forward. Meanwhile, Plaintiff asserts that the movement is original in that this different movement is performed prior to the movement of hanging a lei around the neck. However, such assertion cannot be accepted as described above.

c. Accordingly, it cannot be said that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(L) E ku' u pili aloha, Ku' u lei kau po' ohiwi, Onaona i ka ihu, Nohea i ka maka, Liliko i ka ua kilihune, Kilipohe i ke kanilehua, Wewelo ke aloha i ka 'onohi, Ume' ume mai ho' i kau, E kahi lei ho' oheno, E ku' u pili aloha, Ku' u lei kau po' ohiwi, Onaona i ka ihu, Nohea i ka maka, Liliko i ka ua kilihune, Kilipohe i ke kanilehua

The same as described above in (A) to (H), and (J) to (L).

(M) Outro

Choreography 11 consists of the following movements, namely, [i] the fingers of the left hand are pinched and directed upward, and the right hand is placed under the left hand as if for support, and the hands are extended forward at shoulder height, and in that state, the body makes a 360-degree turn to the right, and [ii] keeping the hands in the same state, both hands are slowly raised diagonally upward to the left, and [iii] the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and the left hand is brought horizontally to the front of the chest with the palm down, and the right hand holds the hem of the skirt around the right side of the hip, and picks up the skirt, and in doing so, the body is turned diagonally forward to the right, and the left arm is lowered straight downward, and the right arm, with the palm up, is extended straight forward at shoulder height, and in doing so, the body is turned diagonally forward to the left, and [iv] the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and the right hand is placed over the right chest, with the palm down, and the left arm is extended forward with the palm down at shoulder height, and finally, both hands are lowered.

Regarding these movements, first of all, it is unknown what other choreographies are performed in this part, so that whether or not there is originality when compared with other examples is unknown, and furthermore, even Plaintiff does not point out this part as being particularly creative. In light of the foregoing, it cannot be acknowledged sufficiently that Plaintiff's personality is shown in these choreographies.

(N) Summary

As described above, Choreography 11 not only has completely independent choreographies ((G) [i] and [ii], (I) [i] [and (L)]), but also arrangements which are found throughout and which are different from the arrangement of other choreographies ((A), (B) [i], (C) [ii], (E), (G) [iii] [and (L)]). Accordingly, when Choreography 11 is seen as a whole, Plaintiff's personality is shown, and it is reasonable to acknowledge copyrightability for the whole of Choreography 11.

C. Choreography 13 (Song: Ua Lanipili I Ka Nani O Papakōlea)

(A) Ua lanipili i ka nani o Papakōlea

- a. "Ua" means "rain", and "lanipili" is a geographical name, "nani" means "beautiful", and "Papakōlea" is a geographical name (Exhibit Otsu 37, the entire import of the oral argument), and Plaintiff gives the translation, "the rain of lanipili in Papakōlea is beautiful".
- b. Choreography 13 consists of the following movements which can be largely divided into the following four parts, namely, [i] both arms are bent lightly at the elbow, and the hands are extended upward with the palms facing front and the fingers extended, and as the fingertips make tiny trembling motions, the hands are lowered to chest height, and [ii] next, with the palm turned inward the fingertips extended, the right palm is placed in front of the left shoulder, and the left palm is placed on the right hip, and [iii] next, the left arm is lightly bent at the elbow, and left hand, with the palm turned up and the fingertips lightly extended, is extended diagonally forward to the left at shoulder height, and the right arm is lightly bent at the elbow and, with the palm turned inward and the fingertips lightly extended, is extended upward, and in doing so, the face and the eyes are turned to the direction to which the right arm is extended, and the body is turned diagonally backward to the left, and [iv] finally, with the body still turned diagonally backward to the left, the palms of both hands are turned to the front with the fingertips extended, and both arms are extended upward, and in doing so, the left hand is raised to a slightly high position at first, and next, the right hand is raised to a slightly high position, and the heights of both hands are reversed, and the face and the eyes are turned to the direction of the hands.

First, with regards to the movement of [i], Plaintiff asserts that the movement of slowly lowering both hands from the direction of the heaven (above the head) represents the pouring of the rain. However, this movement is the hand motion for "ua" (rain) (Exhibit Otsu 4), of holding up both hands and simultaneously bringing them down from above while making fluttering motions with fingertips as if it is raining, and this is the same as the choreographies indicated in the lower left corner and the lower right corner of Exhibit Ko 51. Meanwhile, Plaintiff asserts that the movement is different from the choreography indicated in the lower right corner of Exhibit Ko 51 in

terms of the direction, angle, speed, and number of the hand movements, as well as of the direction of the body when making the movement, so that there is originality, but the differences pointed out by Plaintiff are all minor differences, and thus Plaintiff's assertion cannot be accepted.

Next, with regards to the movement of [ii], Plaintiff asserts that the movement of crossing the hands in front of the chest indicates that the rain of lanipili is loved by people, in addition to representing "pili" (closeness). However, Plaintiff created this choreography based on its own interpretation in which "lanipili" is given an alternative meaning of "pili" (together, close), and this choreography is not found in other examples, including the other choreographies of Exhibit Ko 51, and furthermore, it is not a movement that is normally assumable from the meanings of lyrics and the theme, so that it is acknowledged that the movement is original to Choreography 13.

Next, regarding the movements of [iii] and [iv], Plaintiff asserts that the movements of opening up the arms, which are crossed, and turning back, and extending the arms in that state represent the beauty of the region of Papakōlea. However, with regards to the movement of [iii], given that the hand motion for a "place", which is related to the lyric of Papakōlea (a geographical name), consists of raising one hand and the other hand making a movement that starts from the side of the raised hand, passing in front of the body, and spreading out horizontally (Exhibits Otsu 3, 5), and that the hands make an L-shape as a result, the movement of [iii] is the hand motion for "place" combined with a turn. Since the choreography indicated in the lower right corner of Exhibit Ko 51 adds a turn in this place as well, it cannot be said that the presence or lack of a turn constitutes a significant difference.

Next, with regards to the movement of [iv], the movement of reversing the heights of both hands, which are extended upward, is the same as the choreography indicated in the lower right corner of Exhibit Ko 51. While Choreography 13 is performed with the back turned to the audience, the choreography indicated in the lower right corner of Exhibit Ko 51 is different in that the movement is

performed as the dancer takes steps and looks in four directions. However, since the choreography indicated in the lower right corner of Exhibit Ko 51 includes the movement which is performed with the back turned to the audience, it cannot be said that making a movement with the back turned is original in this place. Meanwhile, Plaintiff emphasizes that the difference lies in whether or not the dancer makes the movement with the back turned to the audience. However, as described above, such difference cannot be considered a significant difference in this place.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it cannot be evaluated that the movements of [i], [iii], and [iv] show Plaintiff's personality, but since the movement of [ii] is original to Choreography 13, it can be evaluated as showing Plaintiff's personality.

(B) He nani uluwehi ke kui pua melia

- a. "Nani" means "beautiful", "uluwehi" means "lush and beautiful greenery", "pua melia" means "plumeria flower" (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives the liberal translation, "decorated with lush and beautiful plumeria flowers".
- b. Choreography 13 consists of the following movements which can be largely divided into the following three parts, namely, [i] the palm of the right arm is turned inward, and the left arm is bent lightly at the elbow, with the palm turned up and the fingertips extended lightly, and is extended diagonally forward to the left at shoulder height, and in doing so, the face and the eyes are turned to the direction of the extended left arm, and [ii] next, both arms are raised so as to create a space in the armpit, and with the arms bent at the elbow, the palms of both hands are turned inward with the fingertips extended, and the hands make a scooping motion from the hip height to the chest height, diagonally forward to the left and diagonally forward to the right, respectively (such movement as if to scoop up something from below with both hands), and [iii] the elbow of the left arm is extended lightly, and the left arm is extended forward to the left of the body at shoulder height, and the palm of the left hand is turned up, with the tips of the pointer finger

and the thumb joined, and as for the right arm, as the tips of the thumb and the pointer finger of the palm of the right hand are joined, it passes just above the right hand from the right to the left, and later, the fingertips of the left palm are extended and directed upward, and as for the right palm, the finger tips are extended and pinched and directed upward, and in that state, the right palm is placed on the left palm, and is moved diagonally forward to the right from the position of diagonally forward to the left.

First, with regards to the movements of [i] and [ii], Plaintiff asserts that they represent the beauty of the region of Papakōlea and the many flowers of plumeria growing thick. However, the movement of [i] is such that the hand motion which corresponds to "place" and which forms an L-shape with both arms is performed while making a turn in a opposite direction from the movement of (A) [iii] above, and the movement is not found in other examples for the same lyrics, including the other choreographies of Exhibit Ko 51, and furthermore, the movement is not normally assumable from the meanings of the lyrics or from the theme, so that it is acknowledged that the movement is original to Choreography 13. Meanwhile, Defendant asserts that the movement is the hand motion for "nani" (beautiful), but since the hand motion for "nani" is made by lowering both hands or one hand down from above (Exhibits 4, 5, 26), Defendant's assertion cannot be accepted.

Next, with regards to the movement of [ii], it is the same as the choreography indicated in the lower left corner of Exhibit Ko 41, corresponding to "uluwehiwehi" (movement of [ii] in D (D) below) of the lyrics, "Ua noho i ka malu i ka uluwehiwehi", which are the same as the lyrics here, from among the lyrics for the song (Blossoms nani ho'i e) corresponding to Choreography 15 (D below). Since the meaning of the lyric, "uluwehi", is the same as the meaning of the lyric, "uluwehiwehi" (plural form of "uluwehi"; Exhibit Otsu 37), the movement of [ii] is assumable from the lyrics.

Next, with regards to the movement of [iii], Plaintiff asserts that the movement represents how the fragrant plumeria flowers are joined together to make a beautiful lei. However, the hand motion for "pua" (flower), of pinching a hand and directing it upward to

create a bud-like shape, may sometimes be performed with one hand (Exhibit Otsu 4), and sometimes with both hands (Exhibits Otsu 5, 25), and in Choreography 13, the hand motion for "pua" is performed with both hands. Choreography 13 is performed by joining both hands together, but if, of the hand motions for "pua", that which should be performed with both hands is performed without joining the hands, such difference concerns a minute part, so that it cannot be considered a significant difference.

- c. Accordingly, of the choreographies corresponding to the lyrics here, the movement of [i] is original to Choreography 13, and it can be evaluated as showing Plaintiff's personality, but it cannot be evaluated that the movements of [ii] and [iii] show Plaintiff's personality.

(C) Interlude

- a. Choreography 13 consists of the following movements which can be largely divided into the following two parts, namely, [i] the left arm is raised so as to create a space in the armpit, and while keeping the elbow bent, the left hand, with the palm turned down and the fingertips extended, is placed in front of the left chest, and as for the right arm, with the palm turned down and the fingertips extended, it circles inwardly, starting from underneath the left palm and going up, and is extended to the right side of the body with the arm bent lightly at the elbow, and [ii] the right arm is raised so as to create a space in the armpit, and while keeping the elbow bent, with the palm turned down and fingertips extended, is placed in front of the right chest, and as for the left hand, it is rotated inwardly, starting from below the right palm and going up, and is extended to the left side of the body with the arm bent lightly at the elbow.

Such movements are the same as the choreography indicated in the lower left corner of Exhibit Ko 46 and in No. 2 of Exhibit Otsu 34, which is one of the choreographies corresponding to the interlude (F (F) below) of the song (Maunaleo) corresponding to Choreography 17 (F below).

- b. Accordingly, it cannot be evaluated that the choreographies corresponding to the interlude here show Plaintiff's personality.

(D) Ulu 'ohi'ohi nā pua melia no Anianikū

- a. "Ulu" means "to grow", "ohi" means "youth" or "healthy", "pua melia" means "plumeria flower", and "Anianikū" is a geographical name (Exhibits Otsu 37, 54, the entire import of the oral argument), and Plaintiff gives the translation, "lush plumeria flowers blossoming in Anianikū".
- b. Choreography 13 consists of the following movements which can be largely divided into the following four parts, namely, [i] with the body turned to the right, the left arm is raised so as to create a space in the armpit, and with the elbow bent, and with the palm turned down and the fingertips extended, the left hand is placed in front of the left chest, and as for the right arm, the palm of the right hand is turned down, with the fingertips extended, and with the elbow bent lightly, the right arm is extended to the right side on shoulder height, and later, with the body once again turned to face front, the right arm is bent lightly at the elbow, in line with the turn, and in that state, is extended to the front, with the palm turned up and the fingertips pinched, and in doing so, the face and the eyes are turned to the direction of the extended right arm, and are shifted from looking back to looking to the front, in line with the movement of the right arm, and [ii] with the right arm in the state of the immediately preceding movement, the body is turned to the left, and the left arm, with the palm down and the fingertips extended, is lightly bent at the elbow, and is extended to the left side at shoulder height, and later, with the body turned once again to face front, the left arm is bent lightly at the elbow, in line with the turn, and in that state, is extended to the front, and as for the left hand, the palm is turned up and the fingertips are pinched, and in doing so, the face and the eyes are turned to the direction of the extended left arm, and are shifted from looking back to looking to the front, in line with the movement of the left arm, and [iii] the arms, which are extended to the front of the body, are slowly raised to the head height simultaneously by maintaining the state of the immediately preceding movement of the palms joined together, and in doing so, the face and the eyes are turned to the direction of both hands, and are shifted from looking front to looking upward, in line with the movement of the hands, and [iv] with the palms facing front, the

fingertips are extended, and both arms are slightly raised in such a way as to create a space in the armpit, and are extended upward.

First, with regards to the movements of [i] and [ii], Plaintiff asserts that they represent how the plumeria flowers are growing thick in a large number. However, the movements are the same as the choreographies indicated in the lower left corner of Exhibit Ko 33 for "pua" (flower) (movement of [i] of E (G) below) of the lyrics, "Ka pua 'Awapuhi 'auli'i", which are the same as the lyrics here, from among the lyrics for the song (Māpu Mau Ke' Ala) corresponding to Choreography 16 (E below). Given that the lyrics here, along with the immediately following "pua melia", have the meaning of plumeria flowers growing thick and strong, the use of the choreography for "pua" in this place is a movement that is assumable from the lyrics and from the theme.

Next, with regards to the movements of [iii] and [iv], Plaintiff asserts that holding up both hands high represents the praise for beautiful plumeria flowers, and that widely spreading out both hands represents the place of Anianikū. However, first of all, with regards to the movement of [iii], the dancer performs the hand motion for "pua", of pinching a hand and directing it upward to form a bud-like shape, and raises the hand up at the same time, and the movement is merely a slightly arranged version of the hand motion for "pua".

Next, with regards to the movement of [iv], such movement is not found in other choreographies of Exhibit Ko 51 as the choreographies for the lyrics here. However, considering that Anianikū is a highland (the entire import of the oral argument), it should be said that holding up both hands is a movement that is assumable from the lyrics, as is the case with the choreographies which are indicated in the upper right corner and lower right corner of Exhibit Ko 46 and in Exhibit Otsu 34-3, for "uka" (highland) (movement of [ii] in F (C) below) of the lyrics, "Kohu 'ahu'ao no ka uka", of the song (Maunaleo) corresponding to Choreography 17 (F below).

- c. Accordingly, of the choreographies corresponding to the lyrics here, it cannot be said that movements of [i] to [iii] show Plaintiff's

personality.

(E) I ka mili 'ia e ka ua lanipili o Papakōlea

- a. "Mili" means "to touch with the hand" or "to caress", "ua" means "rain", "lanipili" is a geographical name, and "Papakōlea" is a geographical name (Exhibit Otsu 37, the entire import of the oral argument), and Plaintiff gives the translation, "entwined with the rain of lanipili in Papakōlea".
- b. Choreography 13 consists of the following movements which can be largely divided into the following three parts, namely, [i] both arms are bent lightly at the elbow, with the palms respectively turned inward and the fingertips extended, and are extended to the front at shoulder height, and while shaking the palms of both hands, the palms of both hands are vertically crossed, with the right palm on top, followed by the left palm on top, [ii] the left arm is bent lightly at the elbow, and with the palm of the left hand facing front and the fingertips extended, is extended upward, and the right arm, with the palm of the right hand facing front and the fingertips extended, is placed in the lower right corner of the left hand, and later, the heights of both palms are reversed, and in doing so, the fingertips are shaken lightly, and the face and the eyes are shifted to look to the direction of the palm which is raised high, and [iii] the body makes a 180-degree turn clockwise, and is turned back, and later, the palm of the right hand is turned inward, and as for the left arm, it is bent lightly at the elbow, and with the palm of the left hand turned up, the fingertips are extended lightly, and in that state, the left arm is extended diagonally forward to the left at shoulder height, and the body makes a 180-degree turn to the left and once again faces front, and in doing so, the face and the eyes are turned to the direction of the extended left arm, and are shifted diagonally forward to the front left from the posture of looking back, in line with the movement of the left arm.

First, with regards to the movement of [i], Plaintiff asserts that the movement of extending both hands to the front and reversing the top and bottom positions of the left hand and the right hand represents how two things come together and are entangled. However, given that the hand motion for "mili" (to caress) consists

of joining both palms, with one on top of the other, and swaying them (Exhibit Otsu 26), the movement of [i] is merely a minor variation of the hand motion.

Next, with regards to the movement of [ii], Plaintiff asserts that the movement of extending both hands upward and reversing the heights of the hands represents the rain of lanipili. Although this movement is simple, it is not found in other examples as the choreography for the lyrics here or for the same lyrics, including the other choreographies of Exhibit Ko 51, and is also different from the hand motion for "ua" (rain) (Exhibits Otsu 3, 4), of holding up both hands and, with the fingertips fluttering, the hands being lowered simultaneously, so that the movement is original to Choreography 13.

Next, with regards to the movement of [iii], Plaintiff asserts that the movements of returning to the posture of facing front from the posture of looking back, and extending the left arm represent the place of Papakōlea. However, given that the hand motion for "place" for the lyric of "Papakōlea" (geographical name) consists of raising one hand and the other hand making a movement that starts from the side of the raised hand, passing in front of the body, and spreading out horizontally (Exhibits Otsu 3, 5), and that the hands make an L-shape as a result, the hand motion is the same as the movement of [iii]. However, the movement of [iii] is such that, as the dancer performs the hand motion for "place", the dancer makes a 180-degree turn and turns the back to the audience, and by making another 180-degree turn, turns to the front. The combination of such big turns produces liveliness of the entire body, and this movement is not found in other examples of Exhibit Ko 51. Meanwhile, Defendant asserts that the choreographies indicated in the lower left corner and lower right corner of Exhibit Ko 51 also perform the hand motion for "place" while the body makes a turn. However, since it cannot be acknowledged that the choreographies indicated in the lower left corner and lower right corner of Exhibit Ko 51 involve a turn, Defendant's assertion cannot be accepted.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it cannot be evaluated that the movement of [i] shows

Plaintiff's personality, but since the movement of [ii] is original to Choreography 13, it can be evaluated that Plaintiff's personality is shown, and as for the movement of [iii], it can be evaluated that Plaintiff's personality is further expressed to a certain degree.

(F) Ua lanipili i ka nani o Papakōlea, He nani uluwehi ke kui pua melia
The same as described in the above (A) and (B).

(G) I luna nānā Kalāwahine

- a. "Luna" means "high" or "highland", "nānā" means "to see", and "Kalāwahine" is a geographical name (Exhibit Otsu 37, the entire import of the oral argument), and Plaintiff gives the liberal translation, "on the top, I see Kalāwahine".
- b. Choreography 13 consists of the following movements which can be largely divided into the following three parts, namely, [i] both arms are bent lightly at the elbow, with the palms turned down, and are extended to the front in the area around the hip, and later, with the wrists turned up, and the palms turned towards the body, both arms are raised slightly so as to create a space in the armpit, and are simultaneously extended to above the head, and in doing so, the face and the eyes are shifted upward from the posture of looking to the front, in line with the movement of the arms, and [ii] the fingertips of both palms are extended and directed to the front, and the right arm is extended straight upward, and as for the left arm, it is raised so as to create a space in the armpit, and is bent at the elbow, with the palm placed by the left eye, and in doing so, the face and the eyes are turned to the direction which is pointed out by the extended right arm, and later, the positions of the hands are reversed, with each hand performing the movement which was previously performed by the other hand, and [iii] the body makes a 90-degree turn to the right, and the right arm is extended straight upward, and as for the left arm, it is raised so as to create a space in the armpit, and is bent at the elbow, and with the palm turned down and the fingertips extended, the left hand is placed in front of the left chest, and later, the body makes another 90-degree turn to the right, and the positions of the hands are reversed twice, and the body makes yet another 90-degree turn to the right, and once again the positions of the hands are reversed, and thus the body makes a turn

with the arms alternately extended, and in doing so, the face and the eyes are turned to the direction which is pointed out by the extended arm.

First, with regards to the movement of [i], Plaintiff asserts that slowly raising both arms upward from below represents "what is up there". Although this movement is not found in other examples, including the other choreographies of Exhibit Ko 51, and given that raising both hands high is a natural movement for the meaning of "luna" (high), and since, with regards to "uka" (highland; Exhibit Otsu 36) which has the same meaning, there is a similar example in which both hands are raised in the choreography indicated in the upper right corner and lower right corner of Exhibit Ko 46, and in Exhibit Otsu 34-3, for "uka" (movement of [ii] in F (C) below) in the lyrics, "Kohu 'ahu'ao no ka uka", which are the same as the lyrics here, from among the lyrics for the song (Maunaleo) corresponding to Choreography 17, it is acknowledged that the movement is assumable from the lyrics.

Next, with regards to the movement of [ii], Plaintiff asserts that the movements of extending one hand upward and placing the other hand by the eye, and directing the eyes upward represent looking at something. However, given that the hand motion for "ike", which has the same meaning as "nānā", of "to see", consists of holding up both hands to the eyes, with the palm of one hand and the face looking outward, and the other hand being extended (Exhibit Otsu 3), and that the choreography indicated in the lower right corner of Exhibit Ko 51 also involves the movement of extending one hand upward and the other hand being placed by the eye, the movement of [ii] is such that these movements for "to see" are performed merely by reversing the positions of the hands, and it cannot be said that this constitutes a significant difference.

Next, the movement of [iii] is the same as the choreography indicated in the lower right corner of Exhibit Ko 51 for "Papakōlea" (movement of [iv] in (A)), in the lyrics, "Ua lanipili i ka nani o Papakōlea", in the above (A), which are the same as the lyrics here. Given that, like "Papakōlea", "Kalāwahine" is a geographical name, it is acknowledged that the movement is assumable from the lyrics

here.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(H)He Anianikū me Pūowaina o Papakōlea

- a. "Anianikū" is a geographical name, "Pūowaina" is a geographical name, and "Papakōlea" is a geographical name (the entire import of the oral argument), and in Plaintiff's translation of these geographical names, the names are written in Japanese alongside the words written in letters.
- b. Choreography 13 consists of the following movements which can be largely divided into the following three parts, namely, [i] the body is turned to the left, and the arms are bent slightly at the elbow, and with the palms turned down and the fingertips extended lightly, are raised slightly so as to create a space in the armpit, approximately to the height above the head, and later, with the palms of both hands turned inward and joined together, the arms are raised above the head, and the face and the eyes are turned to the direction of the arms, and [ii] the left arm is extended upward, with the palm turned inward, and the right arm is bent lightly at the elbow, and with the palm turned upward and the fingertips extended lightly, is extended forward at shoulder height, and as the body makes a 90-degree turn to the right, the position of the right hand is moved diagonally forward to the right, and in doing so, the face and the eyes are turned to the direction of the right hand, and are shifted to the right from the left, in line with the movement of the right hand, and [iii] both arms are bent lightly at the elbow, and with the palms turned down and the fingertips extended lightly, are extended forward at shoulder height, and in that state, the extended right hand and right arm slowly make wavy motions, three times, and while doing so, the body makes a 360-degree turn to the right, and face and the eyes are turned to the direction of the extended right hand.

First, with regards to the movement of [i], Plaintiff asserts that the movements of turning the body sideways and the feet alternately taking one step each while the arms are extended diagonally downward and are then raised upward represent the place of Anianikū. However, the movement is the same as the hand motion

for "mauna" (mountain) (positioning both hands at hip height in the direction that is diagonally forward to the left, and shifting the hands diagonally upward to the right; Exhibit Otsu 5), which pertains to the lyric of "Anianikū" (geographical name), a highland, being performed with the body turned sideways, and the same movement is also found in the choreography indicated in the lower left corner of Exhibit Ko 51, in the place corresponding to the following movement of [iii], as the direction of the body is shifted.

Next, with regards to the movement of [ii], Plaintiff asserts that extending the right hand forward while turning the body to return to the posture of facing front represents the place of Pūowaina. However, the movement is such that merely the hand motion for "place", which is related to the lyric of "Pūowaina" (geographical name), is performed while turning the direction of the body, and the same movement is also found in the choreography indicated in the lower left corner of Exhibit Ko 51, in the place corresponding to the following movement of [iii], by shifting the direction of the body.

Next, with regards to the movement of [iii], it is similar to a certain degree to the choreography indicated in the lower right corner of Exhibit Ko 51, for "Papakōlea" (movement of [iv] in (A)) of the lyrics, "Ua lanipili i ka nani o Papakōlea", in the above (A), which are the same as the lyrics here. However, while in Choreography 13, steps are taken to make a turn while the extended arms make wavy motions, the choreography indicated in the lower right corner of Exhibit Ko 51 is different in that the hands are alternately extended and the turn is made as a result of the body shifting the direction at the same time as the arms are extended. Accordingly, the difference resulting from the combination thereof also makes a difference to the movement of the entire body. Meanwhile, Defendant asserts that the turn is merely a result of existing steps having been combined, but as described above, such assertion cannot be accepted.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it cannot be evaluated that the movements of [i] and [ii] show Plaintiff's personality, but it can be evaluated that the movement of [iii] is significantly different from similar examples, so that it can be

evaluated as showing Plaintiff's personality to a certain degree.

(I) Ua lanipili i ka nani o Papakōlea, He nani uluwehi ke kui pua melia; the interlude

The same as described in above (A) and (B).

(J) Ke aloha i ka 'ohu, e Papakōlea

a. "Aloha" means "love", "ohu" means "fog", and "Papakōlea" is a geographical name (Exhibits Otsu 33, 36, the entire import of the oral argument), and Plaintiff gives the translation, "beloved fog of Papakōlea".

b. Choreography 13 consists of the following movements which can be largely divided into the following three parts, namely, [i] the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the palm turned down and the fingertips extended, the left hand is placed in front of the left chest, and the right arm is raised so as to create a space in the armpit, and is bent at the elbow, with the palm turned down and the fingertips extended, and in that state, the right hand rotates once around the left palm, and with the palm turned up, the right arm is bent lightly at the elbow and is extended diagonally forward to the right, and in doing so, the face and the eyes are turned to the direction of the right hand, and are shifted to the right from the left, in line with the movement of the right hand, and [ii] the palms of both hands are turned towards the body, and with the fingers extended, the right hand is placed on the right shoulder, and the left hand is placed in front of the right shoulder, and later, the same movement is performed symmetrically, and both hands are placed on the left shoulder, and in doing so, the face and the eyes are turned to the direction of the shoulder on which the hands are placed, and [iii] the body makes a 90-degree turn to the right, and the left arm, with the palm turned down and the fingertips extended, is extended to the left of the body at shoulder height, and the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the palm turned down and the fingertips extended, is placed in front of the right chest, and in that state, both arms slowly make wavy motions, and the face and the eyes are turned to the direction which is pointed out by the extended left arm, and the body makes a 180-degree turn to

the right, and the right arm, with the palm turned down and the fingertips extended, is extended to the right of the body at shoulder height, and the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the palm turned down and the fingertips extended, the left hand is placed in front of the left chest, and in that state, both arms slowly make wavy motions, and the face and the eyes are turned to the direction which is pointed out by the extended right arm.

First, with regards to the movement of [i], Plaintiff asserts that rotating both hands in front of the chest represents the feelings of love and respect. However, such movement is the same as the choreography indicated in the lower left corner of Exhibit Ko 51.

Next, with regards to the movement of [ii], Plaintiff asserts that placing both hands on the shoulders represents how the misty rain pouring down decorates the body beautifully. However, this movement is the same as when using both hands to perform the hand motion for "lei" (Exhibit Otsu 5), of shifting one hand from one shoulder to the other shoulder. Furthermore, given that another hand motion for "lei" (Exhibit Otsu 4), of hanging a lei around the neck, is performed in the choreography of Exhibit Otsu 34-3 for "'ohu'ohu" (F (Q) below) of the lyrics, "'Ohu'ohu i ka Mālie", which are the same as the lyrics here, of the song (Maunaleo) corresponding to Choreography 17 (F below), there is a similar example of the performance, per se, of the movement of the hand motion for "lei" as a choreography for "'ohu", and the movement of [ii] is merely a slightly arranged version of such similar example.

Next, with regards to the movement of [iii], Plaintiff asserts that turning the body sideways and extending the arms to the front represents the place of Papakōlea. However, this movement is not found in other examples as a choreography for the lyrics here or for the same lyrics, including the other choreographies of Exhibit Ko 51, and is also different from the hand motion for "place" (Exhibit Otsu 5), which is related to the lyric, "Papakōlea", and is also not normally assumable from the meanings of the lyrics or from the theme, so that it is acknowledged that the movement is original to Choreography 13.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it cannot be acknowledged that the movements of [i] and [ii] show Plaintiff's personality, and since the movement of [iii] is original to Choreography 13, it can be evaluated that the movement of [iii] shows Plaintiff's personality.

(K)'O ka noe a ka ua lanipili o Papakōlea

- a. "Noe" means "fog", "ua" means "rain", "lanipili" is a geographical name, and "Papakōlea" is a geographical name (Exhibits Otsu 37, 54, the entire import of the oral argument), and Plaintiff gives the translation, "the misty rain of lanipili pouring on Papakōlea".
- b. Choreography 13 consists of the following movements which can be largely divided into the following two parts, namely, [i] the right arm is bent lightly at the elbow, and with the palm facing front and the fingertips extended, is extended diagonally forward to the right, to a position slightly higher than the head, and from there to approximately the hip height, the right arm is lowered as if to draw the shape of the letter "S", and when doing so, the left arm, with the palm turned inward, is lowered with the fingers extended lightly, and the face and the eyes are turned to the direction of the right hand, and are moved down from above, in line with the movement of the right hand, and next, the right hand and the left hand are reversed, and as the left arm is bent lightly at the elbow, with the palm facing front and the fingertips extended, the left arm is extended diagonally forward to the left to a position slightly higher than the head, and from there to approximately the hip height, is lowered as if to draw the shape of the letter "S", and when doing so, the right arm, with the palm turned inward, is lowered with the fingertips extended lightly, and the face and the eyes are turned to the direction of the left hand, and are shifted downward from the above, in line with the movement of the left hand, and [ii] both arms are bent lightly at the elbow, and with the palm turned down and the fingertips extended lightly, the arms are extended forward at shoulder height, and in that state, by slowly making wavy motions with the extended right hand and right arm, three times, the body makes a 360-degree turn to the right, and the face and the eyes are

turned to the direction of the extended right hand.

First, with regards to the movement of [i], Plaintiff asserts that alternately lowering both hands from above as they draw an S-shape represents how the misty rain called "lanipili" is pouring. However, although the movement consists of the hand motion for "mist" (Exhibit Otsu 3), of raising both arms and lowering them as if to draw an S-shape, performed alternately by each hand, it is merely a slightly arranged version of an existing hand motion.

Next, with regards to the movement of [ii], Plaintiff asserts that making a turn while extending both hands and making wavy motions represents the beauty of the place of Papakōlea. However, this is the same movement as the movement of [iii] in the above (H), so that it is significantly different from similar examples. Meanwhile, Defendant asserts that the movement consists of the hand motion for "aina" (earth), which is related to the lyric of "Papakōlea", performed with one hand. However, since the hand motion for "aina" is such that the palms are turned to the ground and the hands are spread out, from front to the right and left directions (Exhibits Otsu 3, 4), and is different from the movement of [ii], Defendant's assertion cannot be accepted.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it cannot be evaluated that the movement of [i] shows Plaintiff's personality, and as for the movement of [ii], it can be evaluated that Plaintiff's personality is shown further, to a certain degree.

(L) Ua lanipili i ka nani o Papakōlea, He nani uluwehi ke kui pua melia; the interlude

The same as described above in (A) and (C).

(M) Hū ana ka mana'o, ha'i manawa

- a. "Mana'o" means "thought", and "ha'i manawa" means "to inform time" (Exhibit Otsu 37), and Plaintiff gives the translation, "I inform you of my thoughts".
- b. Choreography 13 consists of the following movements which can be largely divided into the following three parts, namely, [i] the body is turned sideways to the right, and the right arm, bent lightly at the elbow, and with the palm turned down and the fingertips

extended, is extended to the same direction as the direction of the body, and the left arm is raised so as to create a space in the armpit, and with the palm turned down and the fingertips extended, is placed in front of the left chest, and with the form of the hand in that state, the body is turned to face front, and the extended right arm is raised like the left arm so as to create a space in the armpit, and with the palm turned down and the fingertips extended, is placed in front of the right chest, and in doing so, the face and the eyes are turned to the direction of the right hand, and are shifted, in line with the movement of the right hand, and next, the body is turned sideways to the left, and the left arm, bent lightly at the elbow, and with the palm turned down and the fingertips extended, is extended to the same direction as the direction of the body, and the right arm is raised so as to create a space in the armpit, and with the palm turned down and the fingertips extended, is placed in front of the right chest, and with the form of the hand unchanged, the body is returned to the direction of facing front, and the extended left arm is raised so as to create a space in the armpit, and with the palm turned outward and the fingertips extended, the fingertips are placed near the left temple, and [ii] both palms are turned towards the body, and with the fingers extended lightly, are placed in front of the mouth once, are turned upward at shoulder height, in the direction that is diagonally forward to the left, and both arms are slowly extended, with the face and the eyes directed towards the hands, and [iii] with the palm turned down, the right arm is moved, from the direction that is diagonally left, to the direction that is diagonally right, along with the turning of the body, and in doing so, the face and the eyes are turned to the direction of the extended right hand, and are shifted to the right from the left, in line with the movement of the right hand.

First, with regards to the movement of [i], Plaintiff asserts that alternately extending one hand and, at the end, placing the left hand by the temple represents that the composer's thoughts are presented in the song. However, the hand motion for "mana'o" (thought) consists of raising the right pointer finger and touching the forehead with it (Exhibit Otsu 3), and if the part about placing the finger to

the area around the forehead is taken out, the same movement is also found in the choreography indicated in the lower right corner of Exhibit Ko 51. As for other parts, it is believed that they consist of the hand motion for "'oe" (you), of pointing at the other person, who is right in front, with a finger or the palm of one hand (Exhibit Otsu 3), and the hand motion for "au" (I), of turning the palm to the dancer's direction in front of the chest (Exhibit Otsu 3), repeated alternately. Since there is no other example of the movement as the choreography for the lyrics here or for the same lyrics, including the other choreographies of Exhibit Ko 51, and since the movement is not normally assumable from the meaning of the lyric, "mana'o", and from the theme, the movement is original to Choreography 13.

Next, with regards to the movement of [ii], Plaintiff asserts that slowly extending both arms forward from the position in front of the mouth represents that a story is being told. However, this is the same movement as the hand motion for "ha'ina" (to speak), of placing both hands to the mouth and extending them to the front in a relaxed manner. (Exhibit Otsu 5) In light of the meaning of "ha'i manawa" (to inform time), it is acknowledged that the movement is assumable from the meaning of "ha'i", and the same movement, performed with one hand, is also found in the choreography indicated in the lower left corner of Exhibit Ko 51.

Furthermore, with regards to the movement of [iii], Plaintiff asserts that extending both arms and bringing the right arm to the right from the left represents that a story is being told right at this moment. Although this movement is simple, it is not found in other examples as the choreography for the lyrics here or for the same lyrics, including the other choreographies of Exhibit Ko 51, and since the movement is not normally assumable from the meanings of the lyrics or from the theme, it is acknowledged that the movement is original to Choreography 13.

- c. Accordingly, of the choreographies corresponding to the lyrics here, the movements of [i] and [iii] are original to Choreography 13, and it can be evaluated that Plaintiff's personality is shown, but it cannot be evaluated that the movement of [ii] shows Plaintiff's personality.

(N)Ha' ina 'ia mai o ku' u mele o Papakōlea

- a. "Ha' ina" means "to talk", "mai" means "to come" or "please come this way", "ku' u" means "my", and "mele" means "song" (Exhibits Otsu 33, 37, 54, the entire import of the oral argument), and Plaintiff gives the liberal translation, "my song to Papakōlea".
- b. Choreography 13 consists of the following movements which can be largely divided into the following three parts, namely, [i] the body is turned diagonally forward to the left, and the left arm is extended upward with the palm turned inward and the fingers extended, and the right arm is placed in front of the mouth with the palm turned inward and the fingers extended, and later, the right hand, with the palm turned up, is extended to the front at shoulder height, and is shifted diagonally forward to the right from the position that is diagonally forward to the left, and in doing so, the body is simultaneously shifted diagonally forward to the right from the position that is diagonally forward to the left, and the face and the eyes are turned to the direction of the right hand, and are shifted to the right from the left in line with the movement of the right hand, and [ii] the left arm is raised so as to create a space in the armpit, and with the elbow bent, and with the palm turned down and the fingertips extended, the left hand is placed in front of the left chest, and the right arm is extended upward with the elbow bent, and with the palm turned down and the fingertips extended, is brought to above the head from the position around the front of the face, passing the back of the neck, and is brought to the front of the right chest to be positioned there, and [iii] with the elbows bent lightly and with the palms turned down and the fingertips extended lightly, the arms are extended forward at shoulder height, and in that state, the extended right hand and right arm slowly make wavy motions, three times, and the body makes a 360-degree turn to the right, and the face and the eyes are turned to the direction of the extended right hand.

Frist, with regards to the movement of [i], Plaintiff asserts that extending an arm forward and bringing it to the right from the left, after the hand is placed in front of the mouth, represents that one's own story is being told in the song. However, the choreography

indicated in the lower left corner of Exhibit Ko 51 is the same as the movement of [i], of extending the left hand upward, and after placing the right hand to the mouth once, extending the right hand to the front. Naturally, the choreography indicated in the lower left corner of Exhibit Ko 51 is different in that the movement is not performed as the direction of the body is shifted diagonally forward to the right from the position that is diagonally forward to the left, but since the angle of rotation is not big in Choreography 13, either, the arrangement is only minor, and cannot be considered a significant difference.

Next, with regards to the movement of [ii], Plaintiff asserts that the movement of hanging a lei over the shoulders represents the message of "this is my lei of aloha". Since there is no example in which such movement as the hand motion for "lei" (Exhibit Otsu 4) is performed in the lyrics here or in the same lyrics, including the other choreographies of Exhibit Ko 51, and since the hand motion for "lei" is not normally assumable from the meanings of the lyrics here or from the theme, it is acknowledged that the movement is original to Choreography 13. Meanwhile, Defendant asserts that Plaintiff, based on the interpretation that the lyrics in this place refer to "lei", merely applied the existing and typical hand motion for "lei", and that since interpretation is merely an idea that is not protected by the Copyright Act, the choreography in which the above hand motion is applied based on said interpretation is not original. However, as described in (1) E, such interpretation cannot be accepted, and as described above, it is acknowledged that Plaintiff's personality is shown in the choreography here.

Next, with regards to the movement of [iii], Plaintiff asserts that making a turn as the hands are extended forward and make wavy motions represents the feelings for Papakōlea, which is the composer's hometown, and the beauty of the place. Since the movement is the same as the movement of [iii] in the above (H), there is a significant difference from similar examples.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it cannot be evaluated that the movement of [i] shows Plaintiff's personality, but since the movement of [ii] is original to

Choreography 13, it can be evaluated as showing Plaintiff's personality, and as for the movement of [iii], since it is significantly different from similar examples, it can be evaluated that the movement shows Plaintiff's personality further, to a certain degree.

(O)Ua lanipili i ka nani o Papakōlea, He nani uluwehi ke kui pua melia, Ua lanipili i ka nani o Papakōlea, He nani uluwehi ke kui pua melia

The same as described above in (A) and (B).

(P) Summary

As described above, there are more than a few choreographies that are completely original to Choreography 13 ((A) [ii], (B) [i], (E) [ii], (J) [iii], (M) [i] and [iii], (N) [ii] [and (F), (I), (L), and (O)]), and furthermore, some of the arrangements are significantly different from other choreographies ((E) [iii], (H) [iii], (K) [ii], and (N) [iii]), and when seen as a whole, it can be said sufficiently that Plaintiff's personality is shown.

D. Choreography 15 (Song: Blossom nani ho'i e)

(A)He blossom nani ho'i e (before intro)

- a. Choreography 15 consists of the movement of standing up with the body turned to face front. Given that the scene is at the start of the song to be immediately followed by the intro, it should be said that the movement of not starting the choreography for the lyrics and being still with the body facing front is commonplace. Plaintiff, too, explains that this is where the dancer is waiting before starting the dance, and the same movement, performed after lightly making a bow, is also found in Exhibit Otsu 32-3 (in the lower left corner of Exhibit Ko 41; since Exhibit Otsu 32 contains all other choreographies indicated in Exhibit Ko 41, reference shall be made hereinafter only to Exhibit Otsu 32).
- b. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(B)Intro

- a. Choreography 15 consists of the movements in which the right arm is raised so as to create a space in the armpit, and the right hand, with the palm turned down and the fingers lined up and extended, is placed in front of the right chest, and the left arm is lightly bent at the elbow, and with the fingers bent, the left hand is placed by the

hip, and next, the arms are reversed, and the left arm is raised so as to create a space in the armpit, and the left hand, with the palm turned down and the fingers lined up and extended, is placed in front of the left chest, and the right arm is lightly bent at the elbow, and with the fingers bent, the right hand is placed by the right hip. Such movement is the same as the movement of the choreography indicated in Exhibit Otsu 32-1.

- b. Accordingly, since the choreographies corresponding to the intro here are found in a similar example, it cannot be evaluated that Plaintiff's personality is shown.

(C) Ka'ala, ka mauna Ku kilakila

- a. "Ka'ala, ka mauna" means "mountain of Ka'ala" (name of a mountain), and "kilakila" means "magnificent" or "majestic" (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives the liberal translation, "the majestic mountain of Ka'ala looms".
- b. Choreography 15 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is turned sideways to the right, and the left arm is extended straight upward, and as for the left hand, the palm is turned to the front and the fingertips are lined up and extended, and the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and the right hand, with the palm facing front and the fingertips extended, is placed on the right side of the face, and the face and the eyes are turned to the direction of the left hand which is extended upward, and the steps are taken alternately, with two steps each, to move backward, and later, the body makes a turn clockwise, and is turned sideways to the left, and the right arm is extended straight upward, with the palm facing front and the fingertips lined up and extended, and the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and the left hand, with the palm facing front and the fingertips extended, is placed on the left side of the face, and [ii] with the right arm in the same state, the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and is placed in front of the body and is kept level to the ground, and the left hand, with the palm turned down and the fingers lined

up and extended, is placed in front of the left chest, and next, the left arm is extended straight upward, and the palm of the left hand is turned to the front and the fingertips are lined up and extended, and the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and is placed in front of the body and is kept level to the ground, and the right hand, with the palm turned down and the fingers lined up and extended, is placed in front of the right chest, and the arms are reversed from their positions in the immediately preceding movement.

First, with regards to the movement of [i], Plaintiff asserts that as the dancer holds up the left hand high and the face and the eyes are turned to that direction, the movement represents the mountain of Ka'ala. This movement consists of the hand motion for "mauna" (Exhibit Otsu 4), of holding up both hands, being performed while the body makes a turn. Although other choreographies, including the other choreographies of Exhibit Ko 41, are not such that the dancer performs the hand motion for "mauna" while making a turn, since the dancer takes steps in line with the fast-paced song and also makes a big movement with the body, it cannot be acknowledged that the presence or lack of a turn here produces a significant difference to the impression given. Meanwhile, Plaintiff emphasizes that the movement is different from other choreographies, but as described above, it cannot be said that the difference is significant on the basis of this aspect.

Next, with regards to the movement of [ii], Plaintiff asserts that extending the arms straight up represents that the mountain of Ka'ala is very high and is looming. However, given that the hand motion for "kilakila" consists of extending one hand upward while bending the other hand at the elbow (Exhibit Otsu 26), it is acknowledged that the same movement is merely performed twice.

- c. Accordingly, it cannot be evaluated that the choreography for the lyrics here shows Plaintiff's personality.

(D)Ua noho i ka malu i ka uluwehiwehi

- a. "Ua" means "rain", "noho" means "to live" or "to stay", "malu" means "in the shade", and "uluwehiwehi" means "lush" (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives

the translation, "blossoming in the shade of lush greenery".

- b. Choreography 15 consists of the following movements which can be largely divided into the following two parts, namely, [i] while the right arm is kept in the same state as the immediately preceding movement, the face and the eyes are slightly turned diagonally downward to the right, and at the same time, the left arm is extended upward, with the elbow bent lightly, and the left hand, with the palm turned down, is placed on the head, and [ii] the body is turned sideways to the left, and the arms are simultaneously moved to the front from the outer side of the body, and as the palms of both hands are turned up in front of the body (around the front of the chest), the arms make a movement as if to scoop up water, and later, as the direction of the body is returned to face front, both arms are raised simultaneously, and after the body is turned to face front, the arms are bent lightly at the elbow, and in a movement as if to hold something above the head, the palms of both hands are turned inward and are raised to the head height.

First, with regards to the movement of [i], Plaintiff asserts that holding up the left hand above the head represents being in the shade of a tree. However, the same movement is also found in the choreography of Exhibit Otsu 32-1, following the shaking of the body, with the face kept turned to face front. The difference in the length of the movement and in the direction of the face is minor, and it cannot be acknowledged as creating a significant difference.

Next, with regards to the movement of [ii], Plaintiff asserts that using both arms to indicate thickly growing trees around the chest and above the head represents the forest growing tall and thick. However, the same movement of scooping up water with both hands is also found in the choreographies of Exhibits Otsu 32-3 and 32-4, and the choreography of Exhibit Otsu 32-4 is also the same in that the arms are raised at the same time. Regarding the latter, the difference is that the movement is performed while turning the body, but since in this place, the choreography of Exhibit Otsu 32 is such that the steps are taken in line with the fast-paced song, and the movement involved is also big, the change in the direction of the body at this place is merely a slightly changed version of the similar

example with the same basic elements, so that it cannot be said that the difference is significant. Meanwhile, Plaintiff emphasizes that the movement is different from other choreographies, but in light of the above, Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(E) He blossom nani ho'i e

- a. "Blossom" is an English word meaning "flower", "nani" means "beautiful", and "ho'i" means "please come" or "please come this way" (Exhibits Otsu 3, 54), and Plaintiff gives the liberal translation, "the beauty of the blossoms (flowers) is reborn".
- b. Choreography 15 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is turned sideways to the right, and the right arm is extended straight to the back side, and with the fingertips of the right hand pinched and directed upward, the body is turned sideways to the left, and the right arm is extended straight to the front (the direction to the right of the body which is turned sideways to the left), and the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and the palm of the left hand is directed upward, with the fingers extended, and is placed in front of the left chest, and [ii] with the body turned in the same direction and both arms in the same state, a motion of "shake" (making a wavy motion with both hands and arms as if to invite someone) is performed, and then as the body is turned to face front, the arms are raised as if to create a space in the armpit, and are bent at the elbow, and the hands, with the palms directed to the dancer's own body and with the fingers extended, are placed in front of the chest (the palm of the right hand in front of the right chest, the palm of the left hand in front of the left chest).

Regarding these choreographies, Plaintiff asserts that the flower is represented by the right hand, and bringing the flower from back to the front, and to the front of the "poli" ("heart" in the emotional sense) or the chest represents how the beautiful memories of the grandmother, told by the grandmother herself, continue to live forever.

First, with regards to the movement of [i], the pinching of fingertips and directing them upward is the hand motion for "pua" (flower) (Exhibit Otsu 4). While the movement of [i] is performed by changing the direction of the body and reversing the right with the left, the same movement is also found in the choreography indicated in the lower left corner of Exhibit Ko 33 for "Ka pua" (movement of [i] in E (G)) of "Ka pua 'Awapuhi 'auli'i", which are the same as the lyrics for the song (Māpu Mau Ke' Ala) corresponding to Choreography 16 (E below). Given that the meaning for "blossom" is the same as the meaning for "pua", it is acknowledged that the movement of [i] is assumable from the lyrics and is found in a similar example.

Next, with regards to the movement of [ii], the use of both hand to beckon someone is the same as the hand motion for "ho'i" (please come), of turning palms upward and using both hands to beckon someone (Exhibits Otsu 3 to 5), and the placement of both hands in front of the chest is the hand motion for "au" (I), but since "ho'i" means "please come", making the hand motion for "I", to whom the "ho'i" is directed, is not unrelated to the lyrics, and the same movement is also found in the choreography of Exhibit Otsu 32-4.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(F) Ho'olana i ka malie

- a. "Ho'olana" means "to float" or "to drift", and "malie" means "silence" (the entire import of the oral argument), and Plaintiff gives the translation, "drifting in the silence".
- b. Choreography 15 consists of the following movements which can be largely divided into the following two parts, namely, [i] with both arms raised so as to create a space in the armpit, and with the elbows bent, the hands, with the palms turned inward and the fingertips extended, are placed on both cheeks of the smiling face, and the palms of both hands are turned over to face front, and [ii] both arms are extended straight down, in the front of the body, to the area around the front of the hip, and the palms of both hands are turned down and the fingertips are extended, and later, with the arms in the same state, the body makes a 360-degree turn to the left.

First, with regards to the movement of [i], Plaintiff asserts that this movement represents how blossoms are loved by everyone and are happy. However, this movement is the same as the hand motion for "pāpālina" (to smile) (Exhibit Otsu 3), which is not derived from the lyrics. Accordingly, it cannot be said that this movement is a hand motion that is assumable from the lyrics, and since there is no other similar example for the same lyrics, including the other choreographies of Exhibit Ko 41, it is acknowledged that the movement is original to Choreography 15. Meanwhile, Defendant asserts that Plaintiff merely interpreted the lyric in this place as "happy", and on that basis, applied the existing and typical hand motion for "smile", and that since an interpretation is an idea that is not protected by the Copyright Act, there is no originality to the choreography which is merely such that the aforementioned hand motion is applied based on said interpretation. However, as described above in (1) E, this assertion by Defendant cannot be accepted.

Next, with regards to the movement of [ii], Plaintiff asserts that extending both arms downward and making a turn represents that blossoms (flowers) are in the state of silence. Incidentally, the hand motion for "malie" consists of spreading both hands downward (Exhibit Otsu 26), and is also found in the choreography of Exhibit Otsu 32-1 and 32-3, so that the movement of [ii] is different from the hand motion merely in that a turn is performed at the same time. However, given that the meaning for "malie" is "silence", making a big movement like a turn is not assumable from the lyrics, and since, even in the other choreographies of Exhibit Otsu 32, the movement is such that only the direction of the body is changed, it is acknowledged that the performance of a turn in this place is a significant difference. Also, while Choreography 15 is such that the performance of the movement of [i] is followed by the performance of a different movement, or the movement of [ii], the choreography of Exhibit Otsu 32-1 and 32-3 is such that the movement for "malie", of continuously extending both hands downward, is performed. When the change in movement is also taken into consideration, it should be said that Choreography 15 is

significantly different from other choreographies.

- c. Accordingly, since the choreographies corresponding to the lyrics here are original to Choreography 15, it can be evaluated that Plaintiff's personality is shown.

(G) Interlude

The same as described above in (B).

(H) Ka'ala, ka mauna Ku kilakila, Ua noho i ka malu i ka uluwehiwehi, He blossom nani ho'i e, Ho'olana i ka malie

The same as described in the above (C) and (F).

(I) Interlude

- a. Choreography 15 consists of the following movement in which the body is turned to face front, and with the palm of the right hand turned down and the fingertips extended, the right arm is extended to the right, and the left arm is raised so as to create a space in the armpit and is bent at the elbow, and with the palm of the left hand turned down and the fingertips extended, the left hand is placed in front of the left chest, and with both arms extended, the palms of both hands make a "shake" motion (a wavy motion) once, and then with the left arm in the same state, the right arm is raised so as to create a space in the armpit, and with the elbow bent, the right hand is placed in front of the right chest, and meanwhile, both palms make fists in front of the chest, and making a movement as if to tie a string, both hands are pulled to the outer side of the body (right and left) once, and next, with the palm of the left hand turned down and the fingertips extended, the left arm is extended to the left, and the right arm is raised so as to create a space in the armpit and is bent at the elbow, and the right hand, with the palm turned down and the fingertips extended, is placed in front of the right chest, and with the right arm in the same state, the left arm is raised so as to create a space in the armpit and is bent at the elbow, and the left hand is placed in front of the left chest, and meanwhile, both hands make fists at the same time in front of the chest, and by making a movement as if to tie a string, both hands are pulled to the outer side of the body (right and left) once.

This movement is the same as the hand motion for the interlude (Exhibit Otsu 5), and is also the same as the other choreographies of

Exhibit Otsu 32. However, the movement of jutting out both elbows to the outer side by making a movement as if to tie a string is not used for the interlude anywhere else, including other songs. Furthermore, considering that the aforementioned hand motion for the interlude gives an elegant and static impression, it cannot be denied that inserting a movement that is brisk and dynamic as described above, although for just a moment, in between creates a significant difference to the impression given by the movement. Meanwhile, Defendant asserts that the jutting out of both elbows to the outer side is the same as the existing hand motion for "lino" (to tie) (Exhibit Otsu 4), but since the act per se of making such hand motion in a scene of the interlude is a significant difference that is not found in other examples, Defendant's assertion cannot be accepted.

- b. Accordingly, since the choreography for the interlude here resulted from adding a significant arrangement to a similar example, it can be evaluated as showing Plaintiff's personality.

(J) Wahiawa, e 'ike 'ia Leilehua

- a. "Wahiawa" is a geographical name, "ike" means "to see", and "Leilehua" is a geographical name (the entire import of the oral argument, Exhibit Otsu 54), and Plaintiff gives the translation, "look at Leilehua of Wahiawa".
- b. Choreography 15 consists of the following movements which can be largely divided into the following three parts, namely, [i] with the palm of the left hand turned up, and the fingertips extended, the left arm is extended straight, diagonally forward to the left, and at the same time, with the palm of the right hand turned down and the fingertips extended, the right hand is extended straight forward to the left, and the palm of the right hand is placed on the palm of the left hand, and later, with the left arm in the same state, fingers of the left hand are slightly extended upward, and the palm of the right hand is turned inward, and the right arm, kept extended, is extended straight upward, and [ii] with the left arm extended straight, diagonally forward to the left, the palm of the left hand is turned down, and at the same time, the right hand is lowered by bending the right elbow, and with the palm turned down and the fingertips

extended, the right hand is placed by the right eye, and later, as the right arm is extended diagonally forward to the right, the fingertips of the right hand are extended and the palm is turned down, and the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the fingertips extended and directed downward, the left hand is placed by the left eye, and [iii] with the palm of the left hand facing front and the fingers extended and lined up, the left arm is extended straight, diagonally upward to the front, and the palm of the right hand is turned to the front and the fingers are extended and lined up, and the right arm is bent at the elbow without being raised so as to create a space in the armpit, and the palm of the right hand is placed in the lower right of the palm of the left hand. With the arms and hands in the same state, the body makes a 360-degree turn to the left.

First, with regards to the movement of [i], Plaintiff asserts that the movement represents the beauty and expanse of the land of Wahiawa. However, since the movement is the same as the hand motion for "place" (Exhibit Otsu 5), of extending one hand upward and the other hand forward, and given that "Wahiawa" is a geographical name, it is acknowledged that the movement is assumable from the lyrics.

Next, with regards to the movement of [ii], Plaintiff asserts that the movement represents looking at Leilehua of Wahiawa. However, it is acknowledged that the movement is such that merely the hand motion for "ike" (Exhibit Otsu 4), of placing one hand by the eyes, is performed alternately with each hand.

Next, with regards to the movement of [iii], Plaintiff asserts that the movement represents the expanse of the land of Leilehua. However, the movement consists of the hand motion for "mauna" (mountain) (Exhibit Otsu 4), of holding both hands up, being performed as the body makes a turn. While the other choreographies, including the other choreographies of Exhibit Ko 41, are not such that the hand motion for "mauna" is performed while the body makes a turn, since steps are taken in line with the fast-paced song and the body movement is also big, it cannot be acknowledged that the presence or lack of a turn produces a

significant difference. Meanwhile, Plaintiff emphasizes on the presence or lack of a turn, but since, with regards to this place, there is no significant difference to the impression given, Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(K)I wili 'ia me ka lei kaulana

- a. According to a dictionary, "wili" means "to wind or turn (a screw, clock, etc.)", but the meaning here is "to tie or to knit", and "lei" means "wreath" (worn on the head or around the neck)", a figurative expression for "beloved child/wife/husband/lover/younger brother/younger sister" (Exhibit Otsu 33, the entire import of the oral argument), and Plaintiff gives the liberal translation, "tied together like a famous lei".

- b. Choreography 15 consists of the following movements which can be largely divided into the following two parts, namely, [i] with both arms in the state of the immediately preceding movement, the arms are bent at the elbow, and as the fingertips of both hands are extended and the palms are turned inward, the hands are crossed in front of the face and above the head, two times, and the hands are brought above the head from the position in front of the face, and both arms are extended straight upward, and [ii] with both arms extended straight up above the head, the fingertips of both hands are joined together, and later, with the arms raised so as to create a space in the armpit, the elbows are bent, and both hands are simultaneously lowered to behind the head, and in the same flow, the hands, from the position behind the head, pass the front of both shoulders, and are lowered further simultaneously, and the arms are raised so as to create a space in the armpit, and with the elbows bent, the palms of both hands are turned down and the fingers are extended, and the fingertips are lined up in front of the chest (the right hand in front of the right chest, and the left hand in front of the left chest).

Regarding these choreographies, Plaintiff asserts that the movements of crossing the hands and extending them upward, and

lowering them from behind the head to pass the front of the shoulders, represent that Wahiawa and Leilehua are both well-known places, and that the memories of them are tied together like a lei. However, first, with regards to the movement of [i], the movement is the same as the choreography of Exhibit Otsu 32-4 in that both arms are crossed in front of the chest, and it cannot be said that the difference of extending the hands upward or not creates a significant difference. Meanwhile, Plaintiff emphasizes the difference in the manner in which the hands, which will be crossed, are extended, but in light of what is described above, Plaintiff's assertion cannot be accepted.

Also, with regards to the movement of [ii], the hand motion for "lei" (Exhibit Otsu 4), of hanging a lei around the neck, is performed with both hands, and it is the same as the choreography of Exhibit Otsu 32-3.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(L) He blossom neni ho'i e, Ho'olana i ka malie; the interlude

The same as described in the above (E) to (G).

(M) Wahiawa, e 'ike 'ia Leilehua, I wili 'ia me ka lei kaulana, He blossom neni ho'i e, Ho'olana i ka malie; the interlude

The same as described in the above (J) and (K), and (E) and (F), and (I).

(N) Pu'uloa o ka i'a hamau leo

- a. "Pu'uloa" is a geographical name (old name for Pearl Harbor), and "o ka i'a hamau leo" means "quiet fish" (the entire import of the oral argument), and Plaintiff gives the translation, "Pu'uloa, quiet fish".
- b. Choreography 15 consists of the following movements which can be largely divided into the following three parts, namely, [i] the body is turned slightly diagonally forward to the right, and the fingers of the left hand are extended and directed downward, and the left arm is extended straight, diagonally to the left, and at the same time, the fingertips of the right hand are extended and directed downward, and the right arm is extended straight, diagonally to the left, in such a way as to accompany the left arm, and next, with the

body turned diagonally forward to the right, the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and is moved backward as if to trace the front of the chest, and is extended straight to the right side of the body (diagonally backward to the right), and in doing so, the right hand, with the fingertips extended and kept directed downward, the direction of the face and the eyes is shifted to the back from looking to the front as if to look at the right hand, and [ii] with the direction of the body and the state of the right arm maintained, the direction of the face and the eyes is turned to the left hand, and with the left arm extended, the palm of the left arm makes a big motion of "shake" (wavy motion) once, from down to up, and [iii] with the direction of the body and the right arm still kept in the same state, the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and by raising the pointer finger of the left hand and placing it in front of the mouth, the left arm is once again extended straight, diagonally forward to the left, and at the same time as the left arm is extended, the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the fingertips extended and the palm turned down, the right hand is placed by the right side of the mouth.

First, with regards to the movement of [i], Plaintiff asserts that moving the right arm from front to back and extending the right arm straight represents the expanse of the land of Pu'uloa. However, this movement is not found in other choreographies for similar lyrics, including the other choreographies of Exhibit Otsu 32 in this place, and is also different from the hand motion for "place" pertaining to the lyric of Pu'uloa (geographical name), and is not a movement that is normally assumable from the meaning of "Pu'uloa" or from the theme. Accordingly, it is acknowledged that the movement is original to Choreography 15. Meanwhile, Defendant asserts that the movement is the same as the choreography of Exhibit Otsu 32-1, but since Choreography 15, in which the left hand is put forward and the right hand is moved from the front to the back, and the choreography of Exhibit Otsu 32-1, in which the movement of opening up both hands and lowering them is repeated, are clearly different in movement, Defendant's assertion

cannot be accepted.

Next, with regards to the movement of [ii], there is no other example of use of the same as a choreography for the same lyrics in this place, including the other choreographies of Exhibit Otsu 32, and the movement is also not normally assumable from the meanings of the lyrics or from the theme. Accordingly, it is acknowledged that the movement is original to Choreography 15.

Next, with regards to the movement of [iii], Plaintiff asserts that placing the pointer finger, which is raised, to the mouth, represents silence as well as the land of Pu'uloa being peaceful and quiet, and that by moving the hand forward from the position of being placed to the mouth, it means "to call out to someone" or "speaking voice", and these series of choreographies represent that Pu'uloa is a quiet place. However, the choreographies of Exhibit Otsu 32-1, 32-4, and 32-5 involve the movement of placing the pointer finger, which is raised, to the mouth, and this is a movement indicating "quiet" in general, not just in hula dance. Also, the choreography of Exhibit Otsu 32-1 also involves the movement of moving forward the hand, which is placed to the mouth. The movement of [iii] is different in that these movements are performed by reversing the right and the left hand, and in the position of the hand, which is not placed to the mouth, but these differences are based on the movement which is also found in Exhibit Otsu 32 and other choreographies, with slight arrangements made thereto, and it cannot be said that these differences are significant.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it can be evaluated that the movements of [i] and [ii] show Plaintiff's personality, but it cannot be evaluated that the movement of [iii] shows Plaintiff's personality.

(O)A me ka momi a ho'ohenoheno

- a. "Momi" means "pearl", and "ho'ohenoheno" means "to be affectionate" or "to love" (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives the translation, "pearl that is cherished".
- b. Choreography 15 consists of the movements in which, as the body is turned diagonally forward to the left, the arms are kept down

so as not to create a space in the armpit, and are bent at the elbow at the same time, and the hands, with the palms turned inward and the fingers extended, are crossed in front of the chest, and with both arms bent at the elbow, and as if to stroke the arms and with the hands making the motion of "shake" (moving up and down in a wavy motion), the right hand strokes down the upper part of the left arm, and the left hand simultaneously strokes down the upper part of the right arm, and in the continuing flow from the immediately preceding movement, the body is turned diagonally forward to the right, and with the palms of both hands turned inward, the arms are bent at the elbow and are crossed in front of the chest, and in that state, as if to stroke the arms with both hands and with the hands making the motion of "shake" (moving up and down in a wavy motion), the right hand strokes up, and then down, the upper part of the left arm, and the left hand simultaneously strokes up, and then down, the upper part of the right arm.

Regarding the movement here, Plaintiff asserts that "momi", which means "pearl", is used as a figure of speech for "blossom" (flower), and that the movement of crossing the hands in front of the chest represents the big love for the flower and that the love will be valued and embraced forever. However, the crossing of both hands in front of the chest is the hand motion for "aloha", which, like "ho'ohenoheno", means "love" (Exhibit Otsu 4), and the same movement is also found in the choreography of Exhibit Otsu 32-3. The movement here is different in that the movement is performed two times by reversing the direction of the body, but such difference concerns the meanings of lyrics or is within the scope of a minor variation of the movement found in Exhibit Otsu 32-3, and it should be said that no significant difference is created. Meanwhile, Plaintiff emphasizes the difference in the direction to which the body is turned, but in light of what is described above, such assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that Plaintiff's personality is shown in the choreographies corresponding to the lyrics here.

(P) He blossom neni ho'i e, Ho'olana i ka malie; the interlude
The same as described in the above (E) to (G).

(Q)Pu'uloa o ka i'a hamau leo, A me ka momi a ho'ohenoheno, He blossom neni ho'i e, Ho'olana i ka malie; the interlude

The same as described in the above (N) and (O), (E) and (F), and (I).

(R)Ha'ina mai ana ka puana

- a. "Ha'ina mai ana ka puana" means "to inform of a simple refrain" (Exhibit Otsu 33), and it is acknowledged that, as per Plaintiff's translation, this expression can be liberally translated as "the talk has reached an end" (the entire import of the oral argument).
- b. Choreography 15 consists of the following movements which can be largely divided into the following three parts, namely, [i] with the palm of the left hand turned inward and the fingertips extended and lined up, the left arm is extended straight upward, and the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and the right hand, with the palm turned down and the fingertips extended, is placed in front of the mouth once, and then as the right hand makes a wavy motion once, the right arm is extended straight, diagonally forward to the right, and [ii] with the palm of the right hand turned inward and the fingertips extended and lined up, the right arm is extended straight upward, and the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and the left hand, with the palm turned down and the fingertips extended, is placed in front of the mouth once, and then as the left hand makes a wavy motion once, the left hand is extended straight, diagonally forward to the left, and [iii] both arms are raised slightly so as to create a space in the armpit, and are bent at the elbow, and with the fingertips extended and the palm turned inward, the hands are simultaneously brought to the front of the chest, and with the palms turned inward, the tips of both hands are placed to the mouth once, and then, with the palms turned up and the fingers lined up and extended, the arms are lined up and extended straight forward, and once fully extended forward, the arms are spread out horizontally, and are moved to a position that is diagonally forward to the body.

Regarding these movements, Plaintiff asserts that the movement of extending one arm straight upward, with the other hand and arm being extended forward from the position at the mouth, represents a

story about the beautiful memory of blossoms (flowers). However, given that placing both hands to the mouth, as in the movement of [iii], and slowly extending them to the front, constitute the hand motion for "Ha'ina" and "puana" (Exhibit Otsu 5), the movements of [i] and [ii] are such that said hand motion is performed alternately with each hand. Such movements of [i] to [iii] are the same as the choreography of Exhibit Otsu 32-1, and the same movement as the hand motion for "Ha'ina" and "puana" above is also found in other choreographies. The movements of [i] to [iii] are different from the choreography of Exhibit Otsu 32-1 in the direction of the body, but this is a result of merely a slight change being added to the basic elements, which are the same as those of similar examples, and it should be said that no significant difference is created.

c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(S) I wili 'ia me ka lei kaulana, He blossom nani ho'i e, Ho'olana i ka malie;
the interlude

The same as described in (O), and (E) to (G) above.

(T) Ha'ina mai ana ka puana, I wili 'ia me ka lei kaulana, He blossom nani
ho'i e, Ho'olana i ka malie

The same as described in (R), (O), and (E) and (G) above.

(U) Ka pua 'ala onaona

a. "Pua" means "flower", "'ala" means "scent", and "onaona" means "pleasant scent" (Exhibit Otsu 54), and Plaintiff gives the liberal translation, "the scent of flowers is floating".

b. Choreography 15 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is turned sideways to the right, and after the right arm is extended straight backward, the fingertips of the right hand are pinched and directed upward, and in doing so, the direction of the body is returned so as to face diagonally forward to the right, and the right arm, as if to circle the right side of the body, is extended straight, diagonally forward to the right, and meanwhile, the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and the left hand, with the palm turned up and the fingers extended, is placed in front of the left chest, and the face and the

eyes are moved so as to look at the right hand, and [ii] with the direction of the body and the right arm maintaining the same state as the immediately preceding movement, the left arm, with the fingertips of the left hand lined up and directed downward, is extended straight, diagonally forward to the right, and after touching, once, the part of the pinched fingertips of the right hand, the left arm is kept raised so as to create a space in the armpit, and is bent at the elbow, and the left hand passes in front of the nose and moves diagonally forward to the left from the position of diagonally forward to the right, and the left arm is extended straight, diagonally forward to the left.

First, with regards to the movement of [i], Plaintiff asserts that the movement of the right hand, with the fingertips pinched, from back to the front, represents "blossom" (flower). However, this movement is the same as the movement of [i] in the above (E) (He blossom nani ho'i e), and it is acknowledged that the movement is, like what is described there, assumable from the lyrics and is found in a similar example.

Next, with regards to the movement of [ii], Plaintiff asserts that the movement of touching the tip of the pinched fingertips of the right hand with the left hand, and moving the left hand to the left from the right by passing in front of the nose, represents the sweet scent of blossoms (flowers) softly wafting in the air, and that by breathing in the scent, blossoms (flowers) are remembered. However, this movement is the same as the movement for "onaona" (pleasant scent) (movement of [ii] in E (B) below) of "He 'ala onaona kūpaoa ", which are the same lyrics for the song, "Māpu Mau Ke' Ala" (E below), corresponding to Choreography 16, so that it is acknowledged that the movement is, as what is described there, assumable from the lyrics and is found in a similar example.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(V)Outro

- a. Choreography 15 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is turned to face front, and with the palm of the right hand

turned down and the fingertips extended, the right arm is extended to the right, and the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the palm turned down and the fingertips extended, the left hand is placed in front of the left chest, and with the arms in the same state, the palms make a motion of "shake" (wavy motion) once, and then, with the left arm in the same state, the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and the right hand is placed in front of the right chest, and meanwhile, the palms of both hands make fists at the same time in front of the chest, and in a movement resembling the tying of a string, the hands are pulled towards the outer sides (right and left sides) of the body once, and [ii] the left foot takes a slightly big step diagonally backward to the left, and the body is turned directly forward to the left, and with the right arm extended and the fingertips of the right hand extended, the right hand is moved as if to draw a large circle clockwise on the right side of the body, and in the same flow, the right arm is extended straight upward, and then, with the palm of the right hand turned up, the right arm is lowered from above and is extended slightly diagonally forward to the right (right side of the body with the body turned diagonally forward to the left), and in doing so, the face and the eyes are directed to the right hand, and are moved in line with the circle drawn with the right hand, and the left arm is lowered straight down along the body.

First, with regards to the movement of [i], it is the same movement as the interlude of (I) above, so that it is a significantly arranged version of a similar example.

Next, with regards to the movement of [ii], the movement is not found in other examples, including the other choreographies of Exhibit Ko 41. However, since this movement is generally found in a dance and not just in a hula dance, in a scene where the dancer greets the audience, it is acknowledged that the movement is assumable from the lyrics.

- b. Accordingly, of the choreographies corresponding to the outro here, it can be evaluated that the movement of [i] shows Plaintiff's personality, but it cannot be evaluated that the movement of [ii]

shows Plaintiff's personality.

(W) Summary

As described above, Choreography 15 contains not only choreographies which are completely original ((F) [i], (N) [i] and [ii] [and (H), (L), (M), (P), (Q), and (S)]), but also choreographies which are significantly different from other choreographies ((F) [ii], (I), (V) [i] [(H), (L), (M), (P), (Q), and (S)]), and when seen as a whole, Plaintiff's personality is shown, so that it is reasonable to acknowledge copyrightability for the whole of Choreography 15.

E. Choreography 16 (Song: Māpu mau ke 'ala)

(A)Intro

a. Choreography 16 consists of the movements in which the right hand, with the palm turned down and the elbow bent lightly, is extended to the front of the body at chest height and is lightly shaken there. Meanwhile, the left hand holds the hem of the skirt and is placed by the hip, and the left hand, with the palm turned down and the elbow bent lightly, is extended to the front of the body at chest height and is lightly shaken there, and meanwhile, the right hand holds the hem of the skirt and is placed by the hip.

Such movement is the same as the choreography indicated in the lower right corner of Exhibit Ko 26 for the intro (B (A) above) of the song (Lei Ho' oheno) corresponding to Choreography 11 (B above).

b. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(B)He 'ala onaona kūpaoa

a. "'Ala" means "smelling good", "onaona" means "pleasant scent", and "kūpaoa" means "strong and permeating scent (like Jasmine)" (Exhibit Otsu 54), and Plaintiff gives the translation, "strong and sweet scent".

b. Choreography 16 consists of the following movements which can be largely divided into the following three parts, namely, [i] with both palms turned inward to the body, both arms are raised so as to create a space in the armpit, and are placed in front of the nose in such a way that the right hand is slightly over the left hand, and later, both hands are extended diagonally forward to the right, and

[ii] next, with both hands extended, the palm of the right hand is turned up, and the fingers are pinched and the fingertips are directed upward, and next, the left hand, with the palm turned down, is extended diagonally forward to the left by passing in front of the nose, and when the left hand is extended, the palm is turned up, and [iii] next, with the palms of both hands turned down, both arms are lightly extended horizontally in both directions, and from the same directions, the arms are simultaneously extended to the front at chest height. When the arms are extended to the front, they are bent at the elbow, and the hands are crossed once in front of the nose, and by further extending both arms horizontally in both directions, they are simultaneously extended upward.

First, with regards to the movement of [i], Plaintiff asserts that the movement of both hands to the front from the position at the nose represents how a man is smelling the scent of ginger, which was carried by the wind blowing in from the window as he drives. However, given that the hand motion for "onaona" (pleasant scent) is to place both hands in front of the nose (Exhibits Otsu 4, 26), the movement of placing both hands in front of the nose for a lyric which generally means "scent" is assumable from the meanings of the lyrics. There is also an example of the same movement, of placing both hands in front of the nose and then extending them forward and spreading them out, in the choreography indicated in the upper right corner of Exhibit Ko 33.

Next, with regards to the movement of [ii], Plaintiff asserts that the movement of extending one hand to the right, by touching the tip of the left hand with the right hand first, represents the scent of ginger flowers continuously wafting in the car. However, the movement of touching the nose with one hand for a lyric meaning "scent" is also found in other choreographies of Exhibit Ko 33 for this lyric, and in particular, the choreography for "He 'ala" at the beginning as indicated in the lower left corner of Exhibit Ko 33 is the same as the movement of [ii], including the point of touching the tip of the left hand with the right hand first.

Also, with regards to the movement of [iii], Plaintiff asserts that the series of movements of extending the arms at a 45-degree angle

represents how the scent of ginger flowers is very strong and the scent gradually fills the car. However, the movement of extending both hands simultaneously upward from the state of being extended to the front is also found in the choreography indicated in the lower left corner of Exhibit Ko 33. The movement of [ii] here is different in that the hands are crossed once in front of the nose in mid-course, but the addition of a movement that focuses on the nose is within a scope that is assumable from the lyric which means "scent". Meanwhile, Plaintiff asserts that the hand which is placed on the nose or is extended involves not one hand, but two hands, but the act per se of placing both hands in front of the nose is the hand motion for "onaona" meaning "scent" to begin with, so that Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(C)e moani mai nei

- a. "Moani" means "breeze or soft wind (normally that which carries scent)", "mai" means "to come" or "please come this way", and "nei" means "shuddering of breeze" (Exhibits Otsu 33, 54), and Plaintiff gives the translation, "blowing this way".
- b. Choreography 16 consists of the following movements which can be largely divided into the following three parts, namely, [i] both arms, extended upward, are bent at the elbow and are crossed once above the head, and [ii] with the elbows extended, fingertips of both hands are extended and the palms are turned inward, and both hands are brought to the front of the face, and [iii] later, with the palms turned up, both arms are extended to the front.

Regarding these movements, Plaintiff asserts that the movements of [i] and [ii] represent how strongly the scent of ginger fills the car, and how "he" simply enjoys the wonderful scent, and the movement of [iii] consists of getting ready to move on to the movement corresponding to the next lyric. However, the choreography indicated in the lower left corner of Exhibit Ko 33 is also such that, following the same movement as the movement of [i], a movement that is slightly different from the movement of [ii], in that both arms are brought to the front of the chest, is performed,

and later, [iii] like the movement of [iii], both arms are extended to the front. As described above, the choreography indicated in the lower left corner of Exhibit Ko 33 and the aforementioned choreographies of [i], [ii], and [iii] are different with regards to whether the arms are brought to the front of the face or to the front of the chest in the part of [ii], but the difference merely involves a slight difference in the hand position, and furthermore, the movement of [ii], which is suggestive of scent, can be assumed from the meanings of the lyrics here.

Meanwhile, Plaintiff asserts that the movement of [i] is original in that the arms are crossed, and that the movement of [ii] is original in that the movement is performed while the body is kept turned facing front. However, it is acknowledged that the choreography indicated in the lower left corner of Exhibit Ko 33, although small, also involves the crossing of the arms. Also, since the turning to face front is the most basic posture, it cannot be evaluated that such movement constitutes Plaintiff's originality.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(D)E kono mai ana ia 'u,e

- a. "Kono" means "to invite", "mai" means "to come" or "please come this way", and "ia 'u" means "me" (Exhibits Otsu 33, 54), and Plaintiff gives the translation, "as if to invite me".
- b. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is turned diagonally forward to the right, and the right arm is bent at the elbow, and the right hand is placed by the body at chest height, and the left arm is extended forward, and with the palms of both hands turned up, the hands are shaken once, and then, both arms are bent at the elbow, and are pulled towards the front of the chest with the palms turned inward, and at the same time, the direction of the body is returned so as to face front, and the above movements are performed once, followed by the same movements performed once by reversing the right and the left, and [ii] next, both arms are raised so as to create a space in the armpit, and with both palms turned inward and the fingertips extended, the hands are

placed in front of the chest, and with the palms kept turned upward, the arms are simultaneously extended straight to the front of the body, and after the arms are extended, the elbows are bent, and with the palms turned inward and the fingertips extended, the hands are returned to the state of being placed in front of the chest, and meanwhile, the face and the eyes are moved as if to follow the fingertips of both hands, and the above movements are repeated two times.

First, with regards to the movement of [i], Plaintiff asserts that making the movement of inviting someone repeatedly represents the meaning of "come to me, I invite you to come near me". However, the hand motion for "mai" (to come, please come this way) is such that with the palms of both hands turned up, one hand is placed in front of the chest, and the other hand is extended diagonally forward, and the hand, bent at the wrist, makes a movement of softly pulling in as if to lure someone, and both palms are held up in front of the chest (Exhibit Otsu 5). The choreography indicated in the lower left corner of Exhibit Ko 33 is such that the same movement is performed by the dancer whose posture is to face diagonally forward or front, in the first part of the choreography, and the choreography indicated in the lower right corner of Exhibit Ko 33 is such that the same movement is performed by the dancer whose posture is to face front, in the second part of the choreography. The movement of [i] is such that the same movement is performed by the dancer in the posture of facing diagonally forward, in the first part, and in the second part, in the posture of facing front, so that the movement is merely such that basically, the aforementioned hand motion is performed with slight changes made thereto. Meanwhile, Plaintiff asserts that there is originality in that, in the movement of [i], both hands are placed in front of the chest betweentimes during the movement of [i], and that the movement of [i] is performed without any turn being made. However, in light of what is described above, such assertion cannot be accepted.

With regards to the movement of [ii], Plaintiff asserts that repeating the movement of extending the hands forward and then bringing them to the chest represents "the scent invites me to come

near". However, given that the hand motion for "au" (I), which has the same meaning as "ia 'u", consists of turning the palms towards the dancer's own body in front of the chest (Exhibit Otsu 3), the movement is assumable from the lyrics, and nearly the same movement is also found in the choreography indicated in the lower right corner of Exhibit Ko 33. Meanwhile, Plaintiff asserts that there is originality in that the movement of [ii] starts by placing both arms in front of the chest, and that the arms are extended straight to the front, and that the same movement is repeated twice, but in light of what is described above, such assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(E) 'Auhea 'oe, e ku'u nani

- a. "'Auhea" means "where", "'oe" means "you", "ku'u" means "my", and "nani" means "beautiful" (Exhibit Otsu 54), and Plaintiff gives the translation, "where are you, my beautiful person".
- b. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] with both arms raised so as to create a space in the armpit, both hands are extended forward from the position in front of the chest, and with both palms turned up, the hands are crossed in front of the chest, and later, both arms are extended diagonally forward so as to spread out in both directions, and [ii] next, with the fingertips of the left hand extended upward, the left arm is extended straight upward, and with the right arm slightly bent, the right hand is placed around the hip, and later, with the right hand in the same state, and as the palm of the extended left hand is shaken twice, the left arm is lowered straight downward, and meanwhile, the face and the eyes are turned so as to follow the fingertips of the left hand.

First, with regards to the movement of [i], Plaintiff asserts that the movement of crossing the hands in front of the chest, and then extending both arms outward from the position in front, represents the state of looking for something or someone, as in "where are you? I can smell you but cannot see you". However, while this movement is not found in other choreographies of Exhibit Ko 35, the same movement is found in the choreography indicated in

Exhibit Otsu 28 for "Auhea" in the lyrics for the song, "My Sweet Pikake Lei" (Exhibit Otsu 27), and in the choreography indicated in Exhibit Otsu 30 for "Auhea" in the lyrics for the song, "Mele of mythical goddess", so that there are similar examples for the movement of [i] as the choreography for "Auhea". Meanwhile, Plaintiff makes an assertion as if there is no similar example for the movement of [i], but as described above, such assertion cannot be accepted.

Next, regarding the movement of [ii], Plaintiff asserts that moving a hand downward on the right side of the body represents a beautiful woman (nani), who is a friend. However, this movement is a hand motion for "nani" (beautiful), of bringing both hands or one hand down from above (Exhibits Otsu 4, 5, 26), and is the same as the choreography indicated in the lower right corner of Exhibit Ko 33.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(F) ku'u pua, e milika'a ai

- a. "Ku'u" means "my", "pua" means "flower", "mili" means "to touch by hand" or "to be affectionate", and "ka'a" means "to roll" (Exhibits Otsu 37, 54), and Plaintiff gives the liberal translation, "beloved flowers".
- b. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] the left arm is lowered to the left side of the body, and the right arm is lowered to the front of the body, and the palms are turned down, and the elbows are bent lightly, and in that state, both palms make a wavy motion once, and later, as both arms are lifted and are extended to the front of the body, the fingertips of the right hand are pinched and directed upward, and the left hand, with the palm turned upward, is placed under the right hand, and [ii] next, after both arms are fully extended to the front, with the forms of both hands maintained, the elbows are bent slowly and the arms are returned to the position in front of the chest, and meanwhile, the face and the eyes are turned to the direction of the hands, and are moved as if to follow the direction pointed out by both hands.

First, with regards to the movement of [i], Plaintiff asserts that the choreography of the hand represents "flower", which symbolizes a beautiful woman (nani), who is a friend. However, this movement is assumable given that the hand motion for "pua" (flower) consists of one hand or both hands being pinched and directed upward as if to create a bud-like shape (Exhibits Otsu 3, 4), and the same movement is performed in the choreographies indicated in the lower left corner and lower right corner of Exhibit Ko 33, either with one hand or with both hands.

With regards to the movement of [ii], Plaintiff asserts that bringing the above "flower" to the dancer's own chest represents how "nani" is delicate and frail, and of the desire to hold her and take care of her. However, given that the hand motion for "mili" (to be affectionate) is to place one palm on top of the other in front of the chest and to shake them (Exhibit Otsu 26), the placing of both hands in front of the chest is assumable from the lyrics, and the same movement is also found in the choreographies indicated in the lower left corner and lower right corners of Exhibit Ko 33. Meanwhile, Plaintiff asserts that there is originality in that [a] both arms are extended straight, [b] both arms are bent while the body is kept facing front, and [c] the hand, whose fingers are not pinched, is placed alongside the other hand, whose fingers are pinched, instead of the first hand brushing the second hand. However, with regards to [a], it is the same as the choreography indicated in the lower left corner of Exhibit Ko 33, and as for [b] and [c], even if there are differences in these respects, they concern minor parts, so that they cannot be considered significant differences. Accordingly, Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(G)Ka pua 'Awapuhi 'auli'i

- a. "Pua" means "flower", "Awapuhi" means "ginger", "au" means "group" or "huddle", and "li'i" means "small" (Exhibit Otsu 54), and Plaintiff gives the translation, "delicate and elegant ginger flower".
- b. Choreography 16 consists of the following movements which can be largely divided into the following three parts, namely, [i]

with both hands kept in the same form as the immediately preceding movement, both arms are once again extended to the front of the body, and in that state, are turned diagonally backward to the right, and [ii] next, as the body is returned to the direction of facing front, the left arm is bent, and the left hand, with the palm turned down, is passed in front of the nose and is extended diagonally forward to the left while the palm is turned upward, and meanwhile, the direction of the face and the eyes is turned as if to follow the direction pointed out by the left hand, and [iii] next, the left arm, which is extended diagonally forward to the left, is bent at the elbow with the palm turned inward, and is pulled to the front of the nose, and later, is extended diagonally forward to the left again, and the fingers of the palm are pinched and directed upward, and later, the right arm is moved from the right to the left as it is kept extended forward, and the right hand, with the palm turned upward, is placed under the left hand.

First, with regards to the movement of [i], Plaintiff asserts that the flower represented by the hand motion is a ginger flower. However, this is a result of the same movement as the hand motion for "pua" (flower) (Exhibits Otsu 4, 5, 25), of pinching a hand and directing it upward so as to create a bud-like shape, combined with a turn of looking diagonally backward.

Next, with regards to the movement of [ii], Plaintiff asserts that by touching the left hand, which represents "flower", with the right hand, and drawing in a breath, the movement represents the kindness of a woman called "nani". However, this movement is the same as the movement of [ii] in the choreography corresponding to "He 'ala onaona kūpaoa" in (B) above, and is the choreography for "scent", and this per se is the same as the choreography indicated in the lower left corner of Exhibit Ko 33 for "He 'ala" at the beginning of the above (B).

Next, with regards to the movement of [iii], Plaintiff asserts that the movement of bringing the left hand to the lips while taking the steps of "kao" represents the love towards the delicacy (frailness) of the friend. However, this movement is such that while the right hand makes the same movement as the hand motion for "pua"

(flower), of pinching the hand and directing it upward to make a bud-like shape, the left hand makes the same movement as the hand motion for "onaona" (pleasant smell), of bringing the hand to the tip of the nose as the dancer draws in a breath.

As described above, choreographies of the above [i] to [iii] consist of factors of flower and scent, and considering that the lyrics here are "pua" and "'Awapuhi", it can be said that the factor of the flower can be derived from the lyrics, and the factor of scent is also related to flower. However, the direct lyric here concerns only the flower, and in fact, when other choreographies of Exhibit Ko 33 are considered, it is evaluated that the choreographies corresponding to the lyrics here are merely performed in such a way that the same movement as the hand motion for "pua", or what can be considered an arranged version thereof, is performed in a movement which consists of two parts at most, and there is no example in which the movement consists of a total of three parts by incorporating the hand motion for "scent", as in Choreography 11. In particular, the movement of [iii] is such that the factors of flower and scent are incorporated therein, and such choreography is not found in other choreographies of Exhibit Ko 33.

- c. Accordingly, while it can be said that the choreographies corresponding to the lyrics here are combinations of existing movements and hand motions that are assumable from the meanings of the lyrics, and since such combinations include Plaintiff's original combinations, it can be evaluated that Plaintiff's personality is shown. Meanwhile, Defendant asserts that the combinations merely consist of existing hand motions and thus originality should not be acknowledged, but in light of what is described above, such assertion cannot be accepted.

(H)I kāhea mai ia'u

- a. "Kāhea" means "to call", "mai" means "to come" or "please come this way", and "ia'u" means "me" (Exhibits Otsu 33, 54), and Plaintiff gives the liberal translation, "you, as if to invite me".
- b. Choreography 16 consists of the movements in which the left arm is raised so as to create a space in the armpit, and with the palm facing front, the left hand is placed to the left side of the mouth, and

with the left hand in that state, the right arm is extended to the front, with the palm turned down, and as the right arm is kept extended to the front, it is moved diagonally forward to the right from the position that is diagonally forward to the left, along with the direction of the body, and meanwhile, the direction of the face and the eyes are moved as if to follow the direction pointed out by the right hand.

Regarding this movement, Plaintiff asserts that placing the left hand next to the mouth and moving the right hand away from the mouth represents that scent is calling out, inviting, and seducing in such a way as to resemble that "he" is looking for someone or something. However, the hand motion for "olelo", which means "to call out" like "kāhea", is such that fingertips of both hands are placed to the mouth, and one hand is held out while lightly turning the palm upward (Exhibit Otsu 3), so that even in the case of "kāhea", the movement of placing a hand to the mouth and then extending the hand to the front is assumable from the lyrics. Such movement of placing one hand to the mouth and extending the other hand to the front is found in similar examples in the choreographies indicated in the upper right corner and lower right corner of Exhibit Ko 33. Meanwhile, Plaintiff asserts that there is originality in that one hand is placed next to the mouth, and the other hand is extended to the front and is moved in the same state, but in light of what is described above, such assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here represent Plaintiff's personality.
- (I) e walea me 'oe, i lalia
- a. "Walea" means "to enjoy", "me" means "together with someone/something", "'oe" means "you", and "lalia" means "there" (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives the translation, "enjoying while being relaxed there".
 - b. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is bent diagonally forward to the right, and as the palm of the left hand is directed downward, the left arm is bent at the elbow, and in that state, the left hand is lowered to the front of the chest, and at

the same time, the right arm, which is extended diagonally forward to the right, is bent, and the right hand, with the palm turned down, is placed around the area in front of the neck, and later, as both palms are turned up, both arms are extended straight, diagonally forward to the right, and [ii] next, both arms are extended to the front, and with the palms still turned upward, and as the palms make wavy motions four times, the body makes a 450-degree turn counterclockwise from the position that is diagonally forward to the right, and turns diagonally forward to the left.

With regards to the movement of [i], Plaintiff asserts that placing the right hand under the chin represents the state of being relaxed or enjoying, and the following movement of extending both arms diagonally forward represents "it's you I mean", and with regards to the movement of [ii], moving the feet in octuple time and making a 360-degree turn while the arms are extended diagonally forward represents the hopefulness of the man who wants what he is looking for to be found.

Regarding this point, starting with the other choreographies of Exhibit Ko 33, movements like movements of [i] and [ii] are not found in other choreographies. While movements of [i] and [ii] partly incorporate the same movement as the hand motion for "'oe" (Exhibits Otsu 3 to 5), of pointing at the person in front, the preceding movement and the following movement are not normally assumed from the meanings of the lyrics such as "walea" and "me 'oe" and "lalia" or from the theme.

Meanwhile, Defendant asserts that the other choreographies of Exhibit Ko 33 are the same movements as Choreography 16 in that both hands are extended, so that it cannot be said that Choreography 16 has originality. Certainly, while other choreographies of Exhibit Ko 33 contain the aspect, per se, of extending both hands, the flow is completely different from that of Choreography 16, so that it cannot be evaluated as a similar example of Choreography 16. Accordingly, Defendant's assertion cannot be accepted.

- c. Accordingly, since the choreographies corresponding to the lyrics here are original to Choreography 16, it can be evaluated that Plaintiff's personality is shown.

(J) Pulupe i ka ua

- a. "Pulupe" means "soaking wet", and "ua" means "rain" (Exhibits Otsu 37, 54), and Plaintiff gives the translation, "soaked in the rain".
- b. Choreography 16 consists of the movements in which both arms, which are extended to the front, are raised up from the left side of the body, and the left arm, with the palm turned inward, is extended up, and the right arm is lightly bent at the elbow, and the right hand, with the palm turned inward and the fingertips directed upward, is placed in front of the face, and later, the extended left arm is bent, and the right arm is bent at the same time, and both arms are lowered to the same position (around above the left shoulder), and meanwhile, the direction of the face and the eyes is moved so as to follow the direction of the left hand, and the above movements are performed once again by reversing the right and left.

Regarding this movement, Plaintiff asserts that lowering the hands to the shoulder from above while gently shaking the fingers represents light rain moistening the ginger flower, and at the same time, the "kindness" of a friend. However, the hand motion for "ua" (rain) is to hold up both hands, and while fluttering the fingertips as if to indicate the falling rain, both hands are simultaneously brought down from above (Exhibit Otsu 4), and Choreography 16 here is such that the same movement is performed two times by lowering both hands to around the area above the shoulder and in the posture of reversing the left and the right. The choreography indicated in the lower left corner of Exhibit Ko 33 is such that the same movement as Choreography 16 is performed, although as an extension of the next phrase.

Meanwhile, Plaintiff asserts that there is originality in that the palms are not shaken when both arms are lowered, and that the steps do not involve much locomotion. Certainly, the movement is different from the choreography indicated in the lower left corner of Exhibit Ko 33 in whether or not the palms are shaken when both arms are lowered. However, this point only concerns a minor part, and cannot be considered a significant difference. As for the difference in the level of locomotion, the choreography indicated in the lower left corner of Exhibit Ko 33 does not involve much

locomotion, either, so that this, too, cannot be considered a significant difference. Accordingly, Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(K)le'ale'a kāua i ka nahele,e

- a. "Le'ale'a" means "happiness" or "amusement", "kāua" means "we", and "nahele" means "forest" (Exhibit Otsu 54), and Plaintiff gives the liberal translation, "we found happiness in the forest".
- b. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is turned diagonally forward to the left, and the right arm is bent at the elbow, with the palm turned inward, and the right hand, with the fingertips directed upward, is placed to the left shoulder, and the left arm, as it is lowered, is bent lightly at the elbow, and the left palm is turned inward and is placed to the right side of the hip, and meanwhile, the direction of the face is kept in the state of facing front, and [ii] with the body turned to the left, the right arm is extended upward in front of the body, and the right palm is turned inward, and the left arm is extended diagonally forward to the left, and the left palm is lightly extended upward, and in that state, the body makes a 360-degree turn clockwise.

First, with regards to the movement of [i], Plaintiff asserts that this caressing movement represents how being with a woman, who is a friend, and with the "flower" which symbolizes that friend, brings happiness. However, this movement is the same as the hand motion for "le'ale'a" (happiness) (Exhibit Otsu 26), of crossing the hands in front of the chest. Meanwhile, Plaintiff asserts that there is originality because there is no similar example, but as described above, since the movement of [i] is the same as an existing hand motion, the point made by Plaintiff cannot provide a basis for acknowledging originality.

Next, with regard to the movement of [ii], Plaintiff asserts that extending the arms upward represents the state of the vast surroundings. Although the movements up to the raising of both arms are the same as the choreographies indicated in the lower left

corner and lower right corner of Exhibit Ko 33, the choreography of making an L-shape with both hands and turning the body in that state is not found in other examples. While a turn is a type of normal steps, making a turn is not normally assumable from the meanings of the lyrics or from the theme, and making a turn while spreading both arms and making an L-shape amplifies liveliness and the spreading effect, so that it is reasonable to evaluate that Plaintiff's personality is shown further, to a certain degree. Meanwhile, Defendant asserts that since the movement is the same as the other choreographies of Exhibit Ko 33, there is no originality, but in light of what is described above, such assertion cannot be accepted.

(L) Ua ho'i akula ka Helena

- a. "Ua" is a particle that precedes a verb and indicates a completed action, "ho'i" means "to depart" or "to go", "akula" is a particle that indicates the direction away from the speaker, and "Helena" means "characteristics, face" (Exhibits Ko 60-1, 60-2, Exhibits Otsu 37, 54), and Plaintiff gives the liberal translation, by combining them with the lyrics of (M), "although the sight of the beloved flower has gone".
- b. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] the face and the body are turned diagonally forward to the right, and the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and the right palm is directed downward and is placed in front of the chest, and the left arm is raised so as to create a space in the armpit, and is lightly bent and is placed to the left side of the hip, and these movements are performed once again by reversing the right and the left, and [ii] next, with the body turned diagonally forward to the left, the left arm is bent at the elbow and is raised so as to create a space in the armpit, and the left palm is turned down and is placed in front of the chest, and as the body is returned to the position of facing front, the right arm is bent at the elbow and is raised so as to create a space in the armpit, and the right palm is turned inward and is placed to the left cheek first, and later, as the palm is turned outward, the right palm is moved towards the right

cheek, and with the right palm turned outward, the right palm is placed to the right cheek, and meanwhile, the face is kept turned facing front.

First, with regards to the movement of [i], Plaintiff asserts that placing a hand to the chest as the dancer looks far away represents that "she" is not physically present. The choreography indicated in the upper right corner of Exhibit Ko 33 is such that the hand, which is not bent at the elbow, is extended forward, so that it is different from the movement of [i] in that the hand, which is not bent at the elbow, is bent lightly and is placed to the hip, as is the case in the movement of [i], but the choreography and the movement of [i] are the same in all other respects. Furthermore, since this difference is not such that the difference in the body movement becomes greater as a result, it cannot be considered a significant difference. Meanwhile, Plaintiff asserts that there is originality in that the hand, which is not bent at the elbow, is not extended forward, but in light of what is described above, such assertion cannot be accepted.

Next, with regards to the movement of [ii], Plaintiff asserts that moving the palm along the front of the face represents that the image of "her" face will continue to live forever in "his" heart. Choreography indicated in the upper right corner of Exhibit Ko 33 is such that the hand, which is not placed to the cheek, is extended forward instead of being bent at the elbow, so that there is a difference from the movement of [ii] in which the hand, which is not placed to the cheek, is bent. However, the choreography and the movement of [ii] are the same in all other respects. Furthermore, as is the case with the movement of [i] above, this difference cannot be considered significant. Meanwhile, Plaintiff asserts that there is originality in that the hand, which is placed on one cheek, is moved towards the other cheek, and that the arm, whose hand is not placed to a cheek, is bent at the elbow, and that the face is turned to face front. However, since the former two merely concern unnoticeable differences involving minor parts, and the latter merely concerns a difference of a degree that does not affect the movement of the entire body, none of them can be considered a significant difference, and thus Plaintiff's assertion cannot be accepted.

c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(M) o ka pua ho'oheno

a. "Pua" means "flower", and "ho'oheno" means "to love", and Plaintiff, by combining them with the lyrics of (L), gives the liberal translation, "although the sight of the beloved flower has gone".

b. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] the fingers of both hands are extended and the palms are turned outward, and the right hand is kept in a position slightly higher than that of the left hand, and in that state, both hands are extended straight, diagonally upward to the left, and [ii] as both arms, which are extended to the upper left, are simultaneously lowered to the position in front of the chest, and as both palms are turned over, the fingers are pinched and the fingertips are directed upward, and both arms are lined up at the position in front of the chest and are extended diagonally forward to the right.

Regarding these movements, Plaintiff asserts that making the movement of a symbol for the ginger flower, which represents "nani", who is a friend, represents how memories remain dear to a person forever.

Regarding this point, the movement of [ii] is the same as the hand motion for "pua" (flower), of pinching the hand and directing it upward so as to create a bud-like shape (Exhibits Otsu 4, 5, 25).

On the other hand, the movement of [i] is not found in other choreographies, including the other choreographies of Exhibit Ko 33, and is different from the hand motion for "pua" (flower), and is also different from the hand motion for "ho'oheno" (to love) (Exhibit Otsu 26), of crossing the hands in front of the chest, so that the movement is not normally assumable from the meanings of the lyrics or from the theme. Meanwhile, Defendant asserts that the movement of Choreography 16 is found in other choreographies of Exhibit Ko 33, so that there is no originality, but as described above, the movement of [i] is not found in the other choreographies of Exhibit Ko 33, so that Defendant's assertion cannot be accepted.

c. Accordingly, of the choreographies corresponding to the lyrics

here, the movement of [i] is original to Choreography 16, so that it can be evaluated as showing Plaintiff's personality, but it cannot be evaluated that the movement of [ii] shows Plaintiff's personality.

(N)Māpu mau mai ke 'ala anuheā

- a. "Māpu" means "scent" (especially the scent blown by the wind and wafting through the air), "mau" means "always" or "unchanged", and "mai" means "to come", "ke 'ala" means "scent", and "anuheā" means "cool and agreeable fragrance (like the highland of a forest area)" (Exhibits Otsu 33, 54), Plaintiff gives the liberal translation, "the fresh scent still remains".
- b. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] as both palms are turned inward, both arms, which are extended diagonally forward to the right, are pulled back, and the fingers of both hands are extended and the palms are turned inward, and the right hand is placed in front of the nose and the left hand is placed underneath the right hand, and later, as both arms are once again extended diagonally forward to the right, and as the fingers of the right hand are pinched, the fingertips are directed upward, and [ii] next, after both arms are extended diagonally forward to the right, with the right hand kept in the same state, the tip of the left hand touches the tip of the right hand, and then, the left arm is pulled towards the front of the face, and the left palm is turned down and is placed in front of the nose, and from there, the left arm is once again extended straight, diagonally upward to the left.

Regarding these movements, Plaintiff asserts that the movements of pulling both hands towards the front of the nose and then extending the hands again, and the left hand touching the right hand, which represents "flower", and the left hand passing the front of the flower and being extended upward, represent how the "flower", which symbolizes a friend, has withered and disappeared, but that the refreshing scent, or in other words, the memory with a dear friend, will continue to remain.

First, with regards to the movement of [i], it is the same as the choreography indicated in the lower right corner of Exhibit Ko 33 except for the pinching of fingers. Next, the pinching of the

fingers is the same as the hand motion for "pua" (flower), of pinching the hand and directing it upward so as to create a bud-like shape (Exhibits Otsu 4, 5, 25). While the choreography indicated in the lower left corner of Exhibit Ko 33 is such that, in the place corresponding to the following [ii], there is a movement involving one hand, instead of two hands, of extending the hand forward with the fingers pinched after the hand is placed in front of the flower, and since performing a movement which incorporates the hand motion for "pua" in this part of the lyrics is found in a similar example, it cannot be said that the aforementioned difference is significant. Meanwhile, Plaintiff asserts that the movement of [i] is original in that after both arms are placed in front of the nose, they are not spread out in both directions again. However, the movement is the same as the choreography indicated in the lower right corner of Exhibit Ko 33 in that the extended arms are placed in front of the nose together, and are then extended, so that the point made by Plaintiff is a minor difference, and thus Plaintiff's assertion cannot be accepted.

Next, with regards to the movement of [ii], the choreography indicated in the lower left corner of Exhibit Ko 33 has the same movement in the place which corresponds to the movement of [i] above, and the aforementioned choreography also has the same movement in the place which corresponds to "the He 'ala onaona kūpaoa" in the above (B). At the end of the movement of [ii], there is a movement in which the left hand is once again placed in front of the nose and is extended, but since this is merely a repeat of the immediately preceding movement, it cannot be said that the movement is significantly different from similar examples. Meanwhile, Plaintiff asserts that the movement of [ii] is original in that the movement is not found in the other choreographies of Exhibit Ko 33, but in light of what is described above, such assertion cannot be accepted.

- c. Accordingly, since the choreographies corresponding to the lyrics here are assumable from existing choreographies and from the lyrics, it cannot be evaluated that Plaintiff's personality is shown.

(O)He 'ala onaona kūpaoa, e moani mai nei, E kono mai ana ia u,e, 'Auhea

'oe, e ku'u nani, ku'u pua, e milika'a ai, Ka pua 'Awapuhi 'auli'i, I kāhea mai ia'u, e walea me 'oe,i lalia, Pulupe i ka ua, le'ale'a kāua i ka nahele,e, Ua ho'i akula ka Helena, o ka pua ho'oheno, Māpu mau mai ke 'ala anuheā, Māpu mau mai ke 'ala anuheā

The same as described above in (B) to (N).

(P) Outro

- a. Choreography 16 consists of the following movements which can be largely divided into the following two parts, namely, [i] with the right palm turned down, the right elbow is bent slightly, and the right arm is extended to the front at chest height and is shaken lightly, and meanwhile, the left hand holds the hem of the skirt and is placed next to the hip, and the left palm is turned down, and the left elbow is bent slightly, and the left arm is extended to the front of the body at chest height and is shaken lightly, and meanwhile, the right hand holds the hem of the skirt and is placed next to the hip, and [ii] with both palms turned down, both arms are extended to the front by passing the right and left sides of the body, and both palms are lined up in front of the body, and later, both arms are lowered to the sides of the body.

First, the movement of [i] is the same as the choreography indicated in the lower right corner of Exhibit Ko 26, which is one of the choreographies corresponding to the intro of (A). Next, the movement of [ii] is the same as the choreography indicated in the lower left corner of Exhibit Ko 33.

- b. Accordingly, it cannot be evaluated that the choreographies corresponding to the outro show Plaintiff's personality.

(Q) Summary

As described above, Choreography 16 contains choreographies which are completely original ((G), (I), (M) [i] [and (O)]), and furthermore, contains arrangements which are significantly different from arrangements of other choreographies ((K) [ii] [and (O)]), so that when seen as a whole, Plaintiff's personality is shown, and thus it is reasonable to acknowledge copyrightability for the whole of Choreography 16.

F. Choreography 17 (Song: Maunaleo)

(A) He aloha nō 'o Maunaleo

- a. "Aloha" means "to love", and "Maunaleo" is the name of a mountain (Exhibit Otsu 33, the entire import of the oral argument), and Plaintiff gives the liberal translation, "truly beloved mountain, Maunaleo".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and in that state, with the palm turned down and the fingertips extended, the left hand is placed in front of the left chest where the palm is turned upward, and the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and in that state, with the palm turned down and the fingertips extended, the right hand rotates once around the left palm, which is placed in front of the left chest, and as the palm is turned upward, the elbow is extended rightward in a circular motion from the position in front of the body, and the direction of the face and the eyes is turned to the lower left corner at first, and is turned to the right immediately before the right arm is extended rightward the body, and [ii] the body is turned diagonally forward to the right, and the fingertips are extended and the palm is turned down, and in that state, as both arms are extended and lowered in the area around the front of the hip, and as the palm is kept turned down, both palms are lined up and placed parallel to each other and moved as if to be placed in the area around the front of the hip, and then, both palms are turned over so as to face front, and later, both palms are slowly spread out in both directions, and in doing so, the face and the eyes are turned to the direction of both hands, and are then turned diagonally upward.

First, with regards to the movement of [i], Plaintiff asserts that making a movement with the right hand as if to offer the heart represents something that is loved. However, the movement of [i] corresponding to "He aloha" here is the same as the choreography indicated in the lower left corner of Exhibit Ko 51 for "aloha" (movement of [i] of the above C (J)) in "Ke aloha i ka 'ohu, e Papakōlea", which are the same lyrics as the song (Ua Lanipili I Ka Nani O Papakōlea) corresponding to Choreography 13 (above C), so

that it is acknowledged that the movement is assumable from the lyric of "aloha".

Next, with regards to the movement of [ii], Plaintiff asserts that both hands represent the foot of the mountain of Maunaleo, and the movement of the eyes represents the vastness of the mountain of Maunaleo. However, except for the difference of the dancer fully standing up or sitting with one knee drawn up, the choreography indicated in the lower right corner of Exhibit Ko 46 involves the same movement in which the dancer sits with one knee up, and it cannot be said that the movement of [ii] in which the same movement is performed with the dancer standing up is significantly different.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(B) I lohia e ke kilihune

- a. Of "I lohia", "lohia" means "sparkling", and "kilihune" means "gentle misty rain" (Exhibits Otsu 36, 54), and Plaintiff gives the liberal translation, "gently sparkling misty rain".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] as the direction of the body is turned diagonally forward to the right, both palms are turned to the front and the fingers are extended, and in that state, both arms are bent lightly at the elbow and are extended upward, and in doing so, the right palm is positioned slightly higher than the left palm at first, and in that state, both palms make fists once and are opened again by extending the fingertips, and next, the positions of the left palm and the right palm are reversed, and once again both palms make fists and are opened again by extending fingertips, and in doing so, the face and the eyes are turned to the direction pointed out by both hands, and [ii] by lining up the fingers and opening both palms, the palms are turned to the front, and both arms are extended slightly diagonally forward, and later, with the heights of both palms lined up, and with the palms kept facing front, and as the fingers of both palms make small shaky motions, both palms are slowly lowered at the same time, and in doing so, the face and the eyes are turned to the direction of both

palms, and are lowered from above along with the movement of both palms.

First, with regards to the movement of [i], Plaintiff asserts that holding up both hands and making fists and then opening them represents the state of sparkling. However, the choreography indicated in Exhibit Otsu 35-6 is the same in that both hands are held up and the heights of both hands are reversed, and is only different in that whether or not palms make fists and are opened (although Defendant asserts that there is no difference in this respect, such assertion cannot be accepted). Since the above difference is minor, it cannot be said that there is a significant difference.

Next, with regards to the movement of [ii], Plaintiff asserts that lowering both hands as the hands make small shaky motions represents the sparkling misty rain that is blown by the wind. However, this movement is the same as the hand motion for "ua" (rain) (Exhibits Otsu 3, 4), of holding up both hands, and as the fingertips make fluttering motions, both hands are simultaneously lowered diagonally. Given that the meanings of the lyrics, "ua" (rain) and "kilihune" (gentle misty rain) are the same, it is acknowledged that the movement is assumable from the lyrics.

- c. Accordingly, it cannot be acknowledged that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(C) Kohu 'ahu 'ao no ka uka

- a. "Ahu" means "clothes or external coat that covers the upper body or the shoulder part (like a cape, shirt, or coat)", and "uka" means "highland" (Exhibit Otsu 36), and Plaintiff gives the liberal translation, "like a coat placed over the highland".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is turned to face front, and the right arm is lightly lowered so as not to create a space in the armpit, and is bent at the elbow, and with the fingers of the right hand lined up and extended, and with the fingertips turned towards the body, the right hand is brought to the area around above the right shoulder, and at the same, the left arm is lightly lowered so as not to create a space in the armpit, and is bent at the elbow, and with the fingers of the left hand extended,

and as the left palm is turned towards the body, the left hand is brought to the front of the right shoulder, and next, the positions of the right hand and the left hand are reversed, and the movement is performed with the right and the left being opposite, and in doing so, the face and the eyes are moved in the direction to the left from the direction of the right along with the positions of both hands, and [ii] both palms are turned to the front and the fingertips are extended, and in that state, the hands are extended diagonally forward to the front of the body, and in doing so, the right arm is lightly bent at the elbow, and the right palm is placed in a position that is slightly lower than that of the left palm. The face and the eyes are turned towards the fingertips of the extended hands.

First, with regards to the movement of [i], Plaintiff asserts that the movement of using both hands and placing them alternately on the shoulders represents how a delicately-woven coat is hung over the shoulders. Since "ahu" means an external coat that covers the shoulder part, and the choreography indicated in the lower left corner of Exhibit Ko 46 and the choreography indicated in Exhibit Otsu 35-6 also have the movement of simultaneously bringing both hands to the shoulders, the movement per se of bringing the hands to the shoulders is commonplace. However, while in the aforementioned similar examples, the movement of bringing both hands to the shoulders is for a brief moment, the movement of [i] is such that both hands are placed on one shoulder first, and are then brought to the other shoulder, so that there is a difference involving the movement of the entire body, and thus the impression given by the difference is made significantly different. Accordingly, the movement of [i] is such that the meanings of the lyrics and the existing choreographies are basically the same as similar examples but are arranged significantly differently.

Next, with regards to the movement of [ii], Plaintiff asserts that holding up both hands high represents the height of the highland. However, "uka" means "highland", and the choreographies indicated in the upper right corner and the lower left corner of Exhibit Ko 46 and the choreographies indicated in Exhibit Otsu 34-3 are the same as the movement of [ii] in that both hands are held up, and the only

difference concerns the difference in the heights to which the hands are held up. Furthermore, such difference is merely minor, so that it cannot be said that there is a significant difference.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it can be evaluated that the movement of [i] shows Plaintiff's personality, but it cannot be said that the movement of [ii] shows Plaintiff's personality.

(D)He kamalani kamaehu kau i ka hano ē

- a. "Kamalani" means "favorite child", "kamalani kamaehu kau" means "to be cherished", and "i ka hano ē" means "to be revered" (Exhibit Otsu 36, the entire import of the oral argument), and Plaintiff gives the liberal translation, "to be cherished and be revered for power and strength".
- b. Choreography 17 consists of the movements in which the body is turned to the right, and the left arm is lowered straight and lightly holds the skirt, and the right palm is opened and is directed upward, and the right arm, with the elbow bent slightly, is extended to the right side of the body, and in the same flow, the right arm is rotated slightly to the front and is extended diagonally forward to the right side of the body, and the face and the eyes are turned to the direction pointed out by the right hand, and are moved in line with the movement of the right hand, and with the right hand and the right arm in the same state as the immediately preceding movement, the left palm is turned upward, and with the fingertips extended, the left arm is slowly extended diagonally upward to the front left, and the face and the eyes are turned diagonally upward to the left.

Regarding this movement, Plaintiff asserts that extending the right arm diagonally forward from the right side of the body represents how Maunaleo (mother) is cherished by people, and that holding up the left hand high represents how Maunaleo (mother) is respected by people. As such, in Choreography 17, one hand is extended to the side, and the same hand is extended diagonally forward from the side, and later, the other hand is extended upward. If the three ways in which the hand is extended are individually considered, the same choreographies can be found in similar examples, but there is no example of the choreography in which

these three ways of extending the hand are combined in such ways, and since it cannot be said that the movement is normally assumable from the lyrics or from the theme, and since the movement is big for a movement that involves the entire body, it should be said that there is an even more significant difference. Meanwhile, Defendant asserts that the ways in which the hand is extended are found in similar examples, but Defendant's assertion is not such that it affects the above determination.

- c. Accordingly, it can be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(E) He kamalei, kamahiwa pā i ka lani ē ka lani ē

- a. "Kamalei" means "dear child" or "darling child", and "lani" means "heaven" (Exhibits Otsu 4, 36), and Plaintiff gives the translation, "respected and cherished as if to touch heaven".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and the right palm is turned down and the fingertips are extended, and in that state, the right hand is placed horizontally in front of the right chest, and with the right hand kept in the same state, the left hand, with the palm turned down and the fingertips extended, is moved to above the head from the state of being extended diagonally forward to the left, and the left hand is lowered from above the head to behind the neck in such a way as to pass the front of the left shoulder, and when the left hand is brought to the front of the left chest, the left palm is turned down and the fingers are lined up and extended, and the left palm and the right palm are lined up in front of the chest to face each other in close proximity, and the face and the eyes are turned to slightly lower right at first, and at about the time when the left hand passes behind the neck, are moved to the left side, and when the palms are lined up, they are turned to the direction pointed out by the fingertips, and [ii] the palms are simultaneously turned over and turned towards the body, and the fingertips are extended upward, and in that state, both arms are slowly and fully extended upward simultaneously in front of the body until they are the same height, and the face and the eyes are

turned upward in line with the movement of both hands, and next, with the fingertips extended, the palms are turned over to face front, and with both palms facing front and kept at the same height, the arms are slowly lowered to the side of the body by passing the front of the body, and the face and the eyes are lowered in line with the movement of the hands, and are stopped in the state of facing the front.

First, with regards to the movement of [i], Plaintiff asserts that hanging a lei over the body with the left hand represents how Maunaleo (mother) is respected by people and cherished. It is believed that this choreography of hanging a lei around the neck consists of performing the hand motion for "lei" (Exhibit Otsu 4) as the choreography for the lyric, "kamalei", which contains the sound of "lei". However, given that the choreography indicated in the lower left corner of Exhibit Ko 46 is such that a different hand motion for "lei" (Exhibit Otsu 5), of shifting a hand from one shoulder to the other shoulder, is performed in the image of gently touching the lei which is hung around the neck, it is acknowledged that there is a similar example in which the hand motion for "lei" is performed as the choreography for the lyric, "kamalei", which contains the sound of "lei". In that case, the movement of [i] is merely such that, based on the interpretation of a lyric for which other similar examples exist, one of the hand motions corresponding to the interpretation is used (above (1) E), so that it cannot be acknowledged that the use of such choreography for the lyric here shows Plaintiff's personality.

Next, with regards to the movement of [ii], Plaintiff asserts that slowly holding up both hands from the front of the chest towards the sky represents "heaven" (to be loved by God). However, the hand motion for "lani" (heaven) is to raise both hands high, join them together and then spread them out (Exhibit Otsu 4), and extend the hands upward, and later cross the hands and then open them (Exhibit Otsu 5), and the other choreographies of Exhibit Ko 46 also include the movement of holding up both hands and crossing them. With regards to the movement of [ii], it is different from those other choreographies in that the hands are neither joined nor crossed after

they are extended, but it should be said that this is a minor difference in a movement which is basically the same in terms of the meanings of the lyrics and the existing choreographies, so that it cannot be acknowledged that this difference is significant.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(F) Interlude

- a. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the left arm is lowered and lightly holds the skirt, and the right arm is lightly bent at the elbow and is extended to the front, and the right palm is turned down, and as the fingertips of the right hand are extended to the front, the right arm slowly makes a motion of "shake" once, and the face and the eyes are turned diagonally forward to the right, and [ii] the left arm is raised so as to create a space in the armpit, and the left arm is bent at the elbow, and the left palm is turned down and the fingers are extended, and in that state, the left hand is placed horizontally in front of the chest, and the right arm is lowered and lightly holds the skirt. The face and the eyes are turned diagonally forward to the left.

First, regarding the movement of [i], it is the same as the choreography indicated in the lower right corner of Exhibit Ko 26, which is one of the choreographies for the intro of "Lei Ho' oheno", which is the song corresponding to Choreography 11.

Next, regarding the movement of [ii], it is the same as the choreography of Exhibit 35-10.

- b. Accordingly, it cannot be evaluated that the choreographies corresponding to the interlude here show Plaintiff's personality.

(G) He aloha nō 'o Maunaleo, I lohia e ke kilihune, Kohu 'ahu'ao no ka uka,
He kamalani kamaehu kau i ka hano ē, He kamalei, kamahiwa pā i ka
lani ē, ka lani ē; the interlude

The same as the interlude in the above (A) to (F).

(H) Po'ohina i ka 'ohu kolo

- a. "Po'o" means "head", "hina" means "white-haired", "ohu" means "fog", "kolo" means "to crawl" (Exhibit Otsu 36), and Plaintiff gives the liberal translation, "being covered with silver fog".

b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] both arms are raised so as to create a space in the armpit, and are bent at the elbow, and fingertips of both palms are extended, and both palms are turned inward on both sides of the head, and both palms are applied to the hairline on the sides of the temples once, and with both palms turned over so that they face inward, both arms are slowly extended upward at the same time, and the face and the eyes are turned diagonally upward to the front, and [ii] in the position that is diagonally upward to the front of the face, both palms are lightly opened, and after the right palm is placed slightly above the left palm, the top and bottom positions of both palms are reversed two times in such a way as to rotate the palms, and while doing so, the right and left feet alternately take two steps each to the left so as to make a 360-degree turn counterclockwise, and the face and the eyes are kept turned diagonally upward to the front.

First, with regards to the movement of [i], Plaintiff asserts that placing both hands to the forehead and brushing the hands along the area around the hairline represents the mother's hair having turned silver. However, this movement is the same as the choreography indicated in the lower left corner of Exhibit Ko 46.

Next, with regards to the movement of [ii], Plaintiff asserts that making a turn while rotating both hands represents how the high areas of the mountain are covered by fog. However, the movement of holding up both hands and rotating them is the same as the choreography indicated in the lower left corner of Exhibit Ko 46, and since, in Exhibit Otsu 35-11, the same movement is performed as the body makes a turn, it is acknowledged that there is a similar example. Meanwhile, Plaintiff emphasizes the difference of the presence or lack of a turn, but in light of what is described above, such assertion cannot be accepted.

c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(I) Kahiko no ka poli 'olu

a. "Kahiko no ka" means "decorative ornament", "poli 'olu" means "calm mind" (the entire import of the oral argument), and Plaintiff

gives the translation, "ornament that decorates a calm mind".

- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the right palm turned towards the body and the fingers extended, the right hand is placed in front of the right chest, and the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the left palm turned towards the body and the fingertips extended, the left hand is placed to the back of the neck, and later, the positions of the left hand and the right hand are reversed, and the same movement is performed by the opposite side, and the face and the eyes are turned diagonally downward to the right, and then diagonally downward to the left, in line with the movement of both hands, and [ii] the left arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the left palm turned towards the body and the fingertips extended, the left hand is placed in front of the left chest, and when doing so, the right arm is raised so as to create a space in the armpit, and is bent at the elbow, and with the right palm turned towards the body and the fingertips extended, the right palm is placed above the left palm once, and later, the right palm is placed underneath the left palm, and the face and the eyes are turned to the direction of both hands (slightly diagonally downward to the front), which are placed in front of the chest.

First, with regards to the movement of [i], Plaintiff asserts that placing one hand in front of the chest and the other hand behind the neck, alternately with both hands, represents the state of being decorated with ornaments such as a lei. Since this movement is not assumable from the lyrics (although "kahiko" [ornament] is related to "lei", which is a type of ornament, the movement here is also different from the hand motion for "lei" (Exhibits Otsu 4, 5)), and is also not found in similar examples, it is acknowledged that the movement is original to Choreography 17. Meanwhile, Defendant asserts that the movement is the same as the existing hand motion for "lei". However, the hand motion for "lei" consists of hanging a lei around the neck (Exhibit Otsu 4) and moving a hand from the left

shoulder to the right shoulder in an image of gently touching the lei which is hung around the neck (Exhibit Otsu 5), so that it can be said that the movement of [i] is different from the foregoing, and since it also cannot be said that the movement is a minor arrangement of the foregoing, Defendant's assertion cannot be accepted.

Next, with regards to the movement of [ii], Plaintiff asserts that placing both hands in front of the chest (representing "poli" or heart) represents the ornament being given with love. However, the movement of placing both hands in front of the chest is the same as the choreography indicated in the lower left corner and lower right corner of Exhibit Ko 46, and as for the choreography indicated in the lower left corner of Exhibit Ko 46, the difference with the movement of [ii] is unnoticeable even with regards to the point of reversing, by turning both hands, the top and the bottom positions of the hands which are placed in front of the chest.

- c. Accordingly, of the choreographies corresponding to the lyrics here, the movement of [i] is original to Choreography 17 and it can be evaluated that Plaintiff's personality is shown, but it cannot be evaluated that the movement of [ii] shows Plaintiff's personality.

(J) Apo 'ia e nā kualono

- a. "Apo" means "to surround", and "kualono" means "territory near the mountain top" (Exhibits Otsu 36, 54), and Plaintiff gives the liberal translation, "cradled in the surrounding ridges".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the fingertips of the right palm are extended, and the right arm is lowered to the side of the body, and the fingertips of the left palm are extended and directed downward, and in that state, the left arm is extended straight, slightly diagonally forward to the left, and the face and the eyes are turned to the direction pointed out by the left hand, and after the left arm is fully extended, the right arm is quickly bent at the elbow, and as the body is turned from the right to the direction that is backward to the right, the right arm is also bent at the same time, and while doing so, with the body turned to the back, and with both palms turned inward and the fingertips extended,

the arms are crossed in front of the chest, and [ii] with the fingertips of the left palm extended and facing the front of the body, the left arm is extended diagonally upward to the front, and with the fingertips of the right palm also extended to face front, the right arm is extended diagonally upward to the front, and in doing so, the right arm is lightly bent at the elbow, and the right palm is placed in a position slightly below the left palm (around the front of the face), and the face and the eyes are turned towards the fingertips of both hands, and these series of movements are performed while the body is turned to the opposite side of the front (diagonally backward to the left).

First, with regards to the movement of [i], Plaintiff asserts that extending the left hand and changing the direction of the body represents the state of being surrounded and embraced. However, this movement is the same as the choreography indicated in the lower left corner of Exhibit Ko 46 and the choreography of Exhibit Otsu 34-2.

Next, with regards to the movement of [ii], Plaintiff asserts that holding up both hands with the body turned back represents the ridges of Maunaleo. The movement of holding up both hands is also found in Exhibits Otsu 34-3 to 34-5, but the movement being performed while the body is facing the side that is opposite to the front is a unique example, as shown by glancing through various choreographies shown by the evidence of the present case, and it should be said that this difference is significant.

- c. Accordingly, of the choreographies corresponding to the lyrics here, it cannot be evaluated that the movement of [i] shows Plaintiff's personality, but it can be evaluated that the movement of [ii] shows Plaintiff's personality.

(K)He hi'ina, hi'alo, aloha ē

- a. "Hi'i" means "to cradle (a child, etc.) against the chest", and "aloha" means "to love" (Exhibits Otsu 33, 36), and Plaintiff gives the liberal translation, "by holding, being near, and loving the person".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the

body is turned diagonally forward to the left, and the right arm is extended straight, diagonally forward to the left, and when the arm is fully extended, the right hand quickly makes a fist once as if to grab something, and later, the right arm is bent at the elbow, and the right palm lightly makes a fist, and in that state, the right hand is placed in front of the chest. The left arm, lightly bent at the elbow, is lowered, and lightly holds the skirt, and the face and the eyes are turned towards the right hand, and are moved in line with the movement of the right hand, and [ii] with the left hand kept in the same state, the right arm is lightly bent at the elbow, and as the right palm is opened, the palm is turned upward with the fingertips extended, and in that state, the right arm is once again extended diagonally forward to the left, and is moved to a position that is diagonally forward to the right as if to circle the front of the body, and in doing so, the face and the eyes are turned to the direction pointed out by the right hand as in the immediately preceding movement, and are moved to the right from the left in line with the movement of the right hand.

Regarding the above, Plaintiff asserts that the movements of turning the direction from the immediately preceding movement, which represents the state of being surrounded by ridges, and extending the right hand and making the movement of grabbing something, which is then brought to the chest (heart), represent the feeling of love towards someone.

First, with regards to the movement of [i], the movement is the same as the choreography of Exhibit Otsu 35-8, except for the difference of whether or not the hand, which is brought to the chest, makes a fist, and it cannot be said that this difference is significant.

Next, with regards to the movement of [ii], since the movement is the same as the choreography for "aloha" (movement of [i] in the above C (J)) of "Ke aloha i ka 'ohu, e Papakōlea" in the choreography indicated in the lower left corner of Exhibit Ko 51 for the song (Ua Lanipili I Ka Nani O Papakōlea) corresponding to Choreography 13 (above C), it is acknowledged that the movement is assumable from the lyric of "aloha". Meanwhile, Plaintiff emphasizes the difference of whether or not a fist is made by the

hand which is brought to the chest, but since the difference involves a minor part for a body movement, Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's personality.

(L) Hi'ipoli, hi'ilei, hi'ilani ē hi'ilani ē

- a. "Hi'i" means "to cradle (a child, etc.) against the chest", "lei" means a "wreath" (worn on the head or around the neck), a figurative expression for "beloved child/wife/husband/lover/younger brother/younger sister", and "lani" means "heaven" (Exhibits Otsu 4, 36), and Plaintiff gives the liberal translation, "loved from the heart, and cherished and noble".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the body is turned diagonally forward to the left, and the left arm is extended diagonally forward to the left, and when extended fully, the left hand quickly makes a fist once as if to grab something, and the left arm is bent at the elbow, and with the left palm lightly making a fist, the left hand is placed in front of the chest, and the right arm, which is lightly bent at the elbow, is lowered and lightly holds the skirt, and the face and the eyes are turned towards the left hand, and are moved in line with the movement of the left hand, and [ii] with the right hand kept in the same state, the left palm is opened and turned towards the body, and with the fingertips extended, the left arm is extended straight upward, and the face and the eyes are turned towards the left hand, and are moved upward in line with the movement of the left hand, and with the right hand kept in the same state, the left palm is turned over to face front, and the left arm is slowly lowered to the side of the body by passing the front of the body, and the face and the eyes are lowered in line with the movement of the left hand, and the movement is stopped when the face and the eyes face front.

First, with regards to the movement of [i], extending the left hand and once again grabbing something, which is then brought closer to the chest (heart), represents the deep love for the mother. However, the movement is the same as the choreography of Exhibit

Otsu 35-8, except for the difference of whether or not the hand, which is brought to the chest, makes a fist, and since the difference is unnoticeable and involves a minor part, it cannot be said that this difference is significant.

Next, with regards to the movement of [ii], Plaintiff asserts that extending the left arm in the direction of heaven represents the feelings of gratitude for the loved one, and from there, by lowering the raised left arm, it guides to the next movement. The hand motion for "lani" (heaven) is to raise both hands high, join them, and then spread them out (Exhibit Otsu 4), and to extend the hands upward, and later, cross the hands and then open them (Exhibit Otsu 5), and the choreographies of Exhibits Otsu 34-3 and 34-5 are the same in that both hands are held up high. On the other hand, the movement of [ii] is different in that only one hand is held up, but doing the same movement with one hand or with both hands is merely a commonplace change, and this change, too, cannot be considered a significant difference. Meanwhile, Plaintiff emphasizes the differences from other choreographies, but in light of what is described above, such assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreography corresponding the lyrics here shows Plaintiff's originality.

(M) Interlude

The same as described in the above (F).

(N) Po'ohina i ka 'ohu kolo, Kahiko no ka poli 'olu, Apo 'ia e nākualono, He hi'ina, hi'alo, aloha ē, Hi'ipoli, hi'ilei, hi'ilani ē, hi'ilani ē; the interlude

The same as described in the above (H) to (M).

(O) Eia ku' u lei aloha

- a. "Ku'u" means "my" (Exhibit Otsu 54), "lei" means "wreath" (worn on the head or around the neck)", a figurative expression for "beloved child/wife/husband/lover/younger brother/younger sister", and "aloha" means "to love" (Exhibits Otsu 33, 54), and Plaintiff gives the translation, "this is my precious lei".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] with the left hand and the left arm in the same state as the immediately preceding movement, the right arm is raised so as to create a space

in the armpit, and is bent at the elbow, and the right palm is opened and directed downward, and is placed in front of the chest, and in doing so, the fingertips of both palms are extended and lined up horizontally in front of the chest, so that the fingertips of both hands just about touch each other, and [ii] both palms are simultaneously turned inward, and with both hands lined up, both arms are simultaneously extended upward, and are put behind the back of the head, and then both arms are lowered to the chest by respectively passing the front of the shoulders, and the face and the eyes are turned to the direction pointed out by the hands, and are moved upward from the front of the chest in line with the movement of both hands, and when both hands are lowered to the shoulders, they are turned slightly downward to the left.

Regarding these movements, Plaintiff asserts that holding up both hands from the position in front of the chest, and lowering them from the back of the neck by passing the front of the shoulders, represents the very deep love, of how much the person, over whose body the lei is hung, is loved.

First, with regards to the movement of [i], it is the hand motion for "wau" or "au" (I) (Exhibit Otsu 3), of turning the palms towards the dancer in front of the chest. Given that the meaning of the lyric "ku'u" is the same as the meaning of "wau" or "au", it is acknowledged that the movement is assumable from the lyric, and the same movement is also found in the choreography indicated in the lower right corner of Exhibit Ko 35.

Next, with regards to the movement of [ii], the hand motion for "lei" (Exhibit Otsu 4), of hanging a lei around the neck, is performed with both hands, and this movement is the same as the choreography of Exhibit Otsu 34-4 and the choreographies of Exhibits Otsu 35-6 to 35-7 and 35-11.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's originality.

(P) No Maunaleo i ka nani

- a. "Maunaleo" is the name of a mountain, "nani" means "beautiful" (Exhibit Otsu 54, the entire import of the oral argument), and Plaintiff gives the translation, "beautiful Maunaleo".

- b. Choreography 17 has the movement in which the body is turned diagonally forward to the right, and with both hands lined up, both arms are simultaneously extended straight to the front of the hip, and the fingertips are extended and the palms are turned down, and next, both palms are simultaneously turned over to face front, and are slowly opened horizontally in both directions in the area around the front of the chest, and the face is turned to the direction pointed out by both hands, and when both hands are opened horizontally in both directions, they are directed diagonally upward.

Regarding these movements, Plaintiff asserts that horizontally opening both arms in front of the chest represents the foot of the mountain, and turning the direction of the eyes upward represents the strength, grandeur, and beauty of Maunaleo. However, the same movement is also performed, in the posture of sitting with one knee drawn up, in the choreography indicated in the lower right corner of Exhibit Ko 46 for the choreography corresponding to the lyric of "Maunaleo" in the lyrics, "He aloha nō 'o Maunaleo", in the above (A), which are the same lyrics as the lyrics here. The movement of [ii] in which the same movement is performed in the posture of standing up is merely a commonplace change, and it cannot be said that there is a significant difference in this respect, so that it is acknowledged that the movement is assumable from the lyric of "Maunaleo". Meanwhile, Plaintiff emphasizes whether or not the movement is performed in the posture of fully standing up, but since, as a posture, the posture of standing up is, if anything, more normal, and since it cannot be said that the posture creates a significant difference, Plaintiff's assertion cannot be accepted.

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's originality.

(Q)'Ohu'ohu i ka Mālie

- a. "Ohu" means "fog", and "Mālie" means "wind of Mālie" (Exhibit Otsu 36, the entire import of the oral argument), and Plaintiff gives the liberal translation, "being admired by the wind of Mālie".
- b. Choreography 17 consists of the following movements which can be largely divided into the following two parts, namely, [i] the

body is turned to face front, and the left arm is slightly raised so as not to create a space in the armpit, and is bent at the elbow, and the fingers of the left hand are lined up and extended, and the fingertips are turned towards the body, and the left hand is brought to the area around above the left shoulder, and at the same time, the right arm is lightly raised so as not to create a space in the armpit, and is bent at the elbow, and the fingers of the right hand are extended, and as the right palm is turned towards the body, it is brought to the front of the left shoulder, and next, the positions of the right hand and the left hand are reversed, and the same movement is performed by the opposite side, and in doing so, the face and the eyes are moved to the right from the left in line with the positions of both hands, and [ii] from around the hip height to above the head, with both elbows bent lightly and with the fingertips of both palms extended, the arms are raised upward, by swaying alternately in the order of the right arm, the left arm, and the right arm, as if to draw a semicircle, circling inwardly upward from below and the face and the eyes are moved upward from below in line with the movement of both hands.

First, with regards to the movement of [i], Plaintiff asserts that placing both hands alternately on the shoulders represents how fog hangs over Maunaleo as if a lei hangs over the mountain. It is acknowledged that this movement is the hand motion for "lei" (Exhibit Otsu 5), of shifting a hand from one shoulder to the other shoulder in an image of gently touching the lei, which is hung around the neck. The choreography of making the movement of "lei" in the place for the lyric of "ohu'ohu" (fog) is not derived from the lyrics. However, given that the choreography of Exhibit Otsu 34-3 is such that a different hand motion for "lei" (Exhibit Otsu 4), of hanging a lei around the neck, is performed, it is acknowledged that there is a similar example for performing the hand motion for "lei" in the choreography of the lyric for "'ohu". In that case, since the movement of [i] is merely such that, based on the interpretation of a lyric for which other similar examples exist, one of the hand motions corresponding to the interpretation is applied (above (1) E), it cannot be acknowledged that applying such choreography shows Plaintiff's originality.

Next, with regards to the movement of [ii], Plaintiff asserts that raising both hands in such a way as to rotate them represents how the gentle wind is blowing up. The hand motion for "makani" (wind), which is related to the lyric of "Mālie" (wind of Mālie), is such that both hands are extended, with one hand rotating on the swirl of the head as if to draw an image of tide there, and that, in order to represent a strong wind or storm, both hands are raised above the head and rotated there in a big motion (Exhibit Otsu 3), and the choreography indicated in the upper right corner of Exhibit Ko 46 also shows the same movement as this hand motion. However, the movement of [ii] is such that the arms are raised, in the order of the right arm, the left arm, and the right arm, by alternately swaying them as if to draw semicircles, with the arms turned inwardly from bottom to above, so that there is a difference in the movement of the entire body, and it is acknowledged that the impression given by the difference is significant. Accordingly, from among the choreographies which are created in the image of wind, it is reasonable to acknowledge that the movement of [ii] is original to Choreography 17.

- c. Accordingly, of the choreographies corresponding to the lyrics here, while it cannot be evaluated that the movement of [i] shows Plaintiff's originality, since the movement of [ii] is original to Choreography 17, it can be evaluated as showing Plaintiff's originality.

(R) He kamalani kamaehu kau i ka hano ē, He kamalei, kamahiwa pā i ka lani ē, ka lani ē; the interlude

The same as the above (D) to (F).

(S) Eia ku'u lei aloha, No Maunaleo i ka nani, 'Ohu'ohu i ka Mālie, He kamalani kamaehu kau i ka hano ē, He kamalei, kamahiwa pā i ka lani ē

The same as the above (O) to (Q) as well as (D) and (E).

(T) No Maunaleo ke aloha kū i ka la'i ē

- a. "Maunaleo" is the name of a mountain, "aloha" means "to love", and "la'i" means "silence" (Exhibit Otsu 33, the entire import of the oral argument), and Plaintiff gives the liberal translation, "Maunaleo has the tranquility of deep love".
- b. Choreography 17 consists of the following movements which

can be largely divided into the following three parts, namely, [i] with the fingertips of both palms extended and the palms facing front, both arms are extended upward, and the right arm is lightly bent at the elbow, and the right palm is placed slightly below the left palm, and the face and the eyes are turned towards both hands, and [ii] both palms are turned over towards the body, and both elbows are bent at the same time, and both hands are crossed in front of the chest, and [iii] both palms are turned down, and as the elbows are bent lightly, both arms are extended forward at hip height, and at hip height, with both palms kept turned down, both hands are slowly opened horizontally in both directions, and the face and the eyes are turned towards the left hand.

First, with regards to the movement of [i], Plaintiff asserts that holding up both hands high represents Maunaleo towering high. However, the movement is the same as the choreography of Exhibits Otsu 35-6 and 35-8.

Next, with regards to the movement of [ii], Plaintiff asserts that crossing the hands in front of the chest represents the deep love for Maunaleo (mother). However, this is the hand motion for "aloha" (love) (Exhibit Otsu 5), of crossing the hands in front of the chest.

As for the movement of [iii], Plaintiff asserts that extending both hands forward at hip height, and with palms turned down, slowly spreading out both hands horizontally in both directions, represents silence. However, given that the hand motion for "mālie" (quiet), which has the same meaning as "la'i" (silence) here, consists of spreading out both hands in a downward direction (Exhibit Otsu 26), it is acknowledged that the movement is assumable from the lyric of "la'i".

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's originality.

(U) Aloha ē, aloha ē

- a. "Aloha" means "to love" (Exhibit Otsu 33), and Plaintiff gives the liberal translation, "you, whom I love, are very dear to me".
- b. Choreography 17 consists of the following movements which can be largely divided into the following four parts, namely, [i] the left arm is raised so as to create a space in the armpit, and with the

elbow bent, the palm is turned down and the fingertips are extended, and the left hand is placed in front of the left chest, with the palm turned up, and the right arm is raised so as to create a space in the armpit, and with the elbow bent, the palm is turned down and the fingertips are extended, and the right hand rotates once around the left hand which is placed in front of the left chest, and as the right palm is turned up, the right arm is extended diagonally forward to the right in such a way as to circle the front of the body, and the face and the eyes are directed towards both hands (slightly downward to the left) first, and are turned diagonally forward to the right when the right hand is extended diagonally forward to the right, and [ii] with the right hand kept in the same state, the left arm is raised so as not to create a space in the armpit, and is bent at the elbow, and the fingertips of the left palm are extended and are placed to the mouth once, and then with the left palm turned up, the left arm is extended straight, diagonally forward to the left, and the face and the eyes are turned diagonally forward to the left, and [iii] the left arm is raised so as to create a space in the armpit, and with the elbow bent, the palm is turned down and the fingertips are extended, and the left hand is placed in front of the left chest and the left palm is turned up. The right arm is raised so as to create a space in the armpit, and with the elbow bent, the right palm is turned down and the fingertips are extended, and the right hand rotates once around the left palm, which is placed in front of the left chest, and as the right palm is turned up, the right arm is extended diagonally forward to the right as if to circle the front of the body, and the face and the eyes are turned towards both hands (slightly downward to the left), and are turned diagonally forward to the right when the right hand is extended diagonally forward to the right, and this series of movements are performed while the body makes a turn rightward, and [iv] with the right hand in the same state, the left arm is raised so as not to create a space in the armpit, and is bent at the elbow, and the fingers of the left palm are extended and are placed once to the mouth, and with the left palm turned up, the left arm is extended straight, diagonally forward to the left, and the face and the eyes are turned diagonally forward to the left.

Regarding these movements, Plaintiff asserts that both the movement of turning an arm in front of the chest and extending the right hand diagonally forward to the right, and the movement of placing the left hand to the mouth once and extending it forward to the left represent "everlasting love".

First, with regards to the movement of [i], the same choreography is found in the interlude in the choreography indicated in the lower left corner of Exhibit Ko 35, and the choreography indicated in the lower left corner of Exhibit Ko 51, which is one of the choreographies corresponding to the interlude (above C (C)) of the song (Ua Lanipili I Ka Nani O Papakōlea), which corresponds to Choreography 13 (above C), is also the same. Given that the outro follows immediately after the part, "Aloha ē, aloha ē", it is acknowledged that the movement is assumable from the lyrics.

Next, with regards to the movement of [ii], the movement is the same as the hand motion for "aloha" (Exhibit Otsu 3), of extending a hand forward after it is placed to the mouth.

As for the movement of [iii], the movement is such that the above movement of [i] is performed while making a turn. While the movement here is devised in such a way so that it does not become a mere repetition of the same movement as the movement of [i], it cannot be said that combining a normal turn so as to create a difference constitutes a significant difference.

Furthermore, with regards to the movement of [iv], it is the same as the movement of the above [ii].

- c. Accordingly, it cannot be evaluated that the choreographies corresponding to the lyrics here show Plaintiff's originality.

(V)Outro

- a. Choreography 17 consists of the following movements which can be largely divided into the following three parts, namely, [i] the left arm is lowered and lightly holds the skirt, and the right arm is lightly bent at the elbow and is extended to the front, and the right palm is turned down, and as the fingertips of the right hand are extended to the front, the right arm slowly makes a motion of "shake" once, and the face and the eyes are turned diagonally forward to the right, and the left arm is raised so as to create a space

in the armpit, and the left arm is bent at the elbow, and with the left palm turned down and the fingertips extended, the left hand is placed horizontally in front of the left chest, and the right arm is lowered and lightly holds the skirt, and the face and the eyes are turned diagonally forward to the left, and [ii] the body is turned to the right, and the fingertips are extended and the left palm is turned down, and in that state, the left arm is extended straight to the right side at chest height, and when fully extended, the left arm makes a motion of "shake" (wavy motion) once, and in doing so, the face and the eyes are turned to the left side of the body (the front side of the stage), and next, the body is turned to the left, and with the fingertips extended and the right palm turned down, the right arm is extended straight to the left side at chest height, and when fully extended, the right arm makes a motion of "shake" (wavy motion) once, and meanwhile, the face and the eyes are turned to the right side of the body (the front side of the stage), and [iii] the body is turned diagonally forward to the right, and with the fingertips extended and the palm turned down, both arms are extended, and when doing so, the arms are lowered to the area around the front of the hip, and with the palms kept turned down, the palms are lined up and placed parallel to each other and moved as if to be placed in the area around the front of the hip, and then, both palms are turned over so as to face front, and later, the palms are slowly spread out horizontally in both directions, and in doing so, the face and the eyes are turned to the direction of both hands, and are then turned diagonally upward.

First, with regards to the movements of [i] and [ii], Plaintiff asserts that they represented the melody of the song by taking into consideration factors such as the interpretation, image, tempo, and rhythm of the entire song. However, since the movement of [i] is the same as the interlude of the above (F), there is a similar example, and as for the movement of [ii], it is the same as the choreography of Exhibit Otsu 35-10.

Next, with regards to the movement of [iii], Plaintiff asserts that it represents the foot of Maunaleo, which is the motif of the song. However, since the movement is the same as the choreography for

"Maunaleo" in the lyrics, "He aloha nō 'o Maunaleo" (above (A)), which appear at the beginning, there is a similar example per se, and when the fact that the title of the song is "Maunaleo" is taken into consideration, the selection of the movement for the ending is also assumable from the theme.

b. Accordingly, it cannot be evaluated that the choreographies corresponding to the outro here show Plaintiff's personality.

(W) Summary

As described above, Choreography 17 contains choreographies which are completely original ((I) [i], (Q) [ii] [and (N), (S)]), and furthermore, contains arrangements which are significantly different from arrangements of other choreographies ((C) [i], (D), (J) [ii] [and (G), (N), (R), (S)]), so that when seen as a whole, Plaintiff's personality is shown, and thus it is reasonable to acknowledge copyrightability for the whole of Choreography 17.

2. Regarding Issue 2 (Whether or not there was assignment of copyright for Choreographies or grant of right for permanent use)

According to the e-mail exchange between P2, who is a former employee of Defendant, and Plaintiff's interpreter (Exhibit Otsu 138), it is acknowledged that in December 2013, e-mails were exchanged in connection with the choreographies which Plaintiff created for certain original songs, which were written by a third party. It is acknowledged that in the e-mails, the copyright for the songs and choreographies was to be assigned to Defendant at a price of 3,000 dollars per song. However, as of the same month, agreement was not reached due to the monetary aspect of the negotiations. Then, in an e-mail exchange on January 9, 2014 (Exhibit Otsu 139), Plaintiff's side made a proposition as to both parties keeping the copyright, but thereafter, it is not clear how the matter was eventually determined, and it is also not clear whether any money was actually paid.

Also, even if the copyright for the songs was assigned, or the right for permanent use was granted through these exchanges, it is not clear whether the same is true of the Choreographies.

Furthermore, since there is no other evidence to sufficiently acknowledge that copyright was assigned or the right for permanent use was granted for the Choreographies, such assignment of copyright or grant of the right cannot be acknowledged as a fact.

3. Regarding Issue 3 (Whether or not there is likelihood of Defendant playing

the Songs or performing the Choreographies or having a third party perform the Choreographies)

(1) As indicated in the basic facts, Defendant denies copyrightability for Choreography 6, etc., and it is acknowledged that Defendant has used Choreography 6, etc. in events such as Ho'ike and for relevant practices even after November 1, 2014, which is the day following the day on which the Consulting Agreement with Plaintiff was ended. Accordingly, there is likelihood of Defendant using Choreography 6, etc. in the future as well. Defendant asserts that, with regards to the parts where there are no lyrics, such as the interlude, instructors do not use the same choreographies as Choreography 6, etc., but instead, they dance freely and flexibly. Even if this is the case, it cannot be denied that there is likelihood of dance being performed according to Choreography 6, etc., including in the interlude.

Next, as shown by the entire import of the oral argument, it is acknowledged that, in Ho'ike and other events as well as in relevant practices, the representative of Defendant or instructors, who are members of KHA, may perform hula dance, but in reality, those who perform hula dance are mostly KHA's members. Evidence (Exhibits Otsu 61 to 82, 84 to 134) and the entire import of the oral argument show that [i] Ho'ike is a hula dance recital, and at KHA, members who belong to each school practice the choreography of a song, by spending at least half a year, usually in one or two lessons per week, and perform the dance in front of members of other schools on the day of the Hula Festival which is held once a year by each region, and [ii] a competition is an event in which schools belonging to KHA compete against each other, and the practice of the relevant song starts at each school at least several months before the competition (in addition to this competition, there is also a different competition in which the schools, as a whole, compete against other groups outside KHA, but such external competition has not been held since November 1, 2014), and [iii] a hula party is a party organized for each region at the end of the year or at the start of a new year, and it is a casual event in which the main focus is the stage on which KHA's members who attended the event dance freely in tune with the music. It is acknowledged that all of these events are organized by KHA, which manages advance preparations as well as the program and progress on the day of each event. In light of the foregoing, it can be evaluated that the performance of hula dance by KHA's members at each event, including the practices beforehand, is carried out under the control

of KHA, and it is acknowledged that the presentation and interactions pertaining to these events are carried out for the purpose of maintaining and increasing KHA's members, so that it can be evaluated that the performance by the members was caused by Defendant or KHA.

Accordingly, it is acknowledged that there is likelihood of Defendant infringing on Plaintiff's copyright as a result of performing Choreography 6, etc., or having its members perform the same.

(2) On the other hand, regarding the Songs and Choreography 1, etc., Defendant asserts, on the premise of acknowledging Plaintiff's copyright, that Defendant does not intend to use the songs and choreographies, either, and in reality, it is acknowledged that there has been no such use in events, including Ho'ike, since November 1, 2014 (Exhibits Otsu 61 to 82, 84 to 134). Accordingly, it cannot be acknowledged that there is likelihood of Defendant playing the Songs or performing Choreography 1, etc., or having its members perform Choreography 1, etc.

(3) Based on the above, Plaintiff's demand for an injunction against the stage performance of the Choreographies and the demand for an injunction against the musical performance of the Songs are reasonable within the extent of seeking an injunction against the performance of Choreography 6, etc.

4. Regarding Issue 4 (Whether or not there was copyright infringement by Defendant pertaining to the Songs and Choreography 1, etc.)

As per the determination with regards to Issue 3 above, it is acknowledged that Defendant performed Choreography 6, etc., or had its members perform the same, at Ho'ike and other events on or after November 11, 2014, which is the day following the day on which the Consulting Agreement was ended. Defendant asserts that, with regards to the parts where there are no lyrics such as the interlude, instructors dance freely and flexibly instead of using the same choreographies as Choreography 6, etc. Even if the choreographies for the interlude are different from Choreography 6, etc., given that a hula dance is a dance for representing the lyrics of a song, the significance of the choreographies for the parts without lyrics is low, so that this fact does not provide basis for exemption from copyright infringement.

On the other hand, it cannot be acknowledged that Defendant played the Songs and Choreography 1, etc. or performed the same, or had its members perform the same on or after said date.

Accordingly, since the acknowledgment as to Defendant performing an act of

copyright infringement on or after November 1, 2014 is limited to Defendant performing, or having its members perform, Choreography 6, etc. (or the parts other than the interlude), this shall be the premise for considering Defendant's liability for compensation below.

5. Regarding Issue 5 (Whether or not there was intent or negligence on the part of Defendant)

In light of the background, as per the basic facts above, in which Defendant performed Choreography 6, etc., in spite of the demand by Plaintiff to prohibit the performance of the same, it should be said that it was possible to predict that the act of performing Choreography 6, etc. would infringe on Plaintiff's copyright, so that it is acknowledged that, with regards to the act of copyright infringement for the choreographies, there was at least negligence on the part of Defendant.

Meanwhile, Defendant asserts, on the basis of Defendant not having the concrete awareness that Choreography 6, etc. have copyrightability, that it cannot be said that Defendant was negligent in the act of copyright infringement for Choreography 6, etc. In fact, it is acknowledged that, as of October 2014, Defendant obtained from an attorney-at-law a written opinion stating that in principle, there is no copyrightability to Plaintiff's choreographies of hula dances (Exhibit Ko 3). However, P3, who used to serve as the general manager at Defendant, had heard about there being an issue concerning whether or not it is possible to perform the choreographies created by the kumu hula who no longer teaches at Defendant's hula dance schools (Statement by Witness P3, p. 28), and thus Defendant was aware of the issue of copyrightability concerning Plaintiff's choreographies. As such, under the circumstances in which the work of a dance is stipulated in law as one of copyrighted works (Article 10, paragraph (1), item (iii) of Copyright Act), and in which there is no finalized ruling which denied copyrightability for choreographies of a hula dance, it should be said that the fact of having obtained a written opinion from a single attorney-at-law shall not provide basis for exemption from negligence. Accordingly, Defendant's assertion cannot be accepted.

6. Regarding Issue 6 (Amount of damages incurred by Plaintiff)

(1) Content of Consulting Agreement and the purpose of professional fees

A. The parties are not in dispute over the fact that the Consulting Agreement stipulates that if Defendant seeks advice concerning the teaching of hula dance to KHA's members, Plaintiff shall comply, and that the professional fees (1,000 dollars per month) include the purpose of

compensation for the above instructions and advice.

On the other hand, while it is clear that Plaintiff had, from before, given permission to KHA's members to play or perform the choreographies and songs, which Plaintiff created, at events called Ho'ike (hula festival), hula parties, and competitions, and at schools during the practices for participating at these events, it cannot be acknowledged that Plaintiff, upon concluding the Consulting Agreement with Defendant, gave a clear consent as to including, in the professional fees, the royalties for the choreographies and songs created or written by Plaintiff. Furthermore, it cannot be acknowledged that Plaintiff otherwise reached a clear agreement with Defendant as to receiving payment of royalties for the choreographies and songs, which Plaintiff created or wrote, in settings other than the Consulting Agreement. Accordingly, the Issues involve whether the Consulting Agreement covers the grant of license for the use of choreographies and songs, and whether the professional fees include the purpose of royalties for choreographies and songs.

- B. Accordingly, first of all, how Plaintiff gave advice to Defendant or to KHA's members through Defendant shall be considered. According to evidence (Exhibits Ko 63, 64) and the entire import of the oral argument, the following is acknowledged.
- (A) At workshops which were organized by KHA about three or four times a year, Plaintiff had its assistant(s) called "'alaka'i", who accompanied Plaintiff from Hawaii, perform choreographies as Plaintiff explained the choreographies and the song, for the assigned song which is informed to the members in advance. After the explanation, Plaintiff provided instructions by way of responding to individual questions from participants.
- (B) When Plaintiff came to Japan for workshops, Plaintiff also gave instructions to KHA's members, who were to participate in competitions, on the choreographies to be performed at the competitions and on what to wear for the competitions.
- (C) Plaintiff also gave advice and instructions, by e-mail and the like, on occasions other than the visits to Japan for workshops. For example, from July 2013 to October 2014, the instances in which Plaintiff gave advice to Defendant or to KHA's members through Defendant, on occasions other than workshops, totaled only five, during

which Plaintiff gave advice on songs, lyrics, costumes, and hairstyles for external competitions, by e-mail (Exhibits Ko 66 to 71).

Of these instructions and advice, for those which were given at workshops, Plaintiff individually concluded time and materials contracts for each workshop, separately from the Consulting Agreement, and received professional fees (the amount of which was 400 dollars per hour; Exhibit Ko 23-2) in exchange for the instructions. The parties are not in dispute regarding this point. Next, since this concerns the above (A), it is acknowledged that the instructions and advice under the Consulting Agreement pertain to the above (B) and (C). Regarding this point, Plaintiff's assertion can be interpreted as asserting that the professional fees of the above (B) are also included in the professional fees under the individual time and materials contracts per workshops. However, according to Exhibit Ko 23-2, it is acknowledged that the professional fees at workshops were calculated based on the number of hours of lessons of each curriculum, so that Plaintiff's assertion cannot be accepted.

Since the professional fees of the above (B) cover only the instructions in-between the workshops, which are held approximately three to four times a year, and the professional fees of the above (C) cover only the instructions and advice given during mere five instances over a period of 16 months concerning matters which do not concern the choreographies themselves, it is believed that there were months in which no instructions or advice was provided, whereas the professional fees under the Consulting Agreement were fixed at 1,000 dollars per month. As such, the Consulting Agreement is like a so-called advisory contract in which Plaintiff holds the continuous position of teaching hula dance to Defendant and KHA's members, and in which Defendant can receive advice from Plaintiff when asked for advice as to teaching hula dance to KHA's members (Defendant, too, calls the Consulting Agreement an "advisory contract" in Exhibit Ko 11). Accordingly, it is acknowledged that the professional fees under the Consulting Agreement (1,000 dollars per month) are not the compensation for the action per se of actually giving advice as described above, but are instead more like advisory fees which cover the purpose of compensation for Plaintiff's holding the aforementioned position or for

giving advice each and every time such request is made.

- C. Incidentally, according to Exhibit Ko 14, it is acknowledged that in the hula culture of Hawaii, choreographies for hula require deep understanding of the Hawaiian culture and of the nature in Hawaii, and can only be created by a kumu hula, who has received long years of training under a previous kumu hula and was recognized, and that it is not permissible to make arrangements to choreographies or to use choreographies without authorization. Plaintiff was introduced in "Hula Jiten" (Encyclopedia on Hula), which was issued in February 2006 (Exhibit Ko 9), as an amazing kumu hula whose hālau, which Plaintiff founded, boasts the largest number of students on the island of Kauai and who also achieves a high ranking at the Merrie Monarch Festival. A magazine called "Hula-no-okubukai-miryoku-to-Hawaii-no-saishinjoho-wo-mansaishita-visual magazine" (Visual Magazine on Profound Appeal and Latest Information about Hawaii), which was issued in February 2008 (Exhibit Ko 8), contains an article in which Plaintiff was interviewed and introduced as the leading kumu hula of the island of Kauai. Even from the content of the assertions made in the present case, it is acknowledged that Plaintiff has the creed of greatly valuing the disciplines of the hula culture of Hawaii, as described above, as a member of the kumu hula.

From what is described above, for Plaintiff, the fact of continuously being in the position to teach hula dance to Defendant and KHA's members means the following, as a whole; specifically, that Plaintiff, as a kumu hula of modern hula, accepts Defendant or KHA as its own hālau, and grants the use of the choreographies, which Plaintiff created, and provides instructions and advice on the choreographies. On the other hand, it is believed that, for Defendant, the fact that Plaintiff, who is a prominent kumu hula as described above, is in the advisory position to provide instructions means not only that KHA's legitimacy is justified, but also that it enables KHA to make an appeal on the point that when a person joins KHA, the person will be able to perform the choreographies and songs created or written by Plaintiff, in addition to receiving instructions on choreographies by Plaintiff in person, which is significantly advantageous to Defendant, who is a profit-oriented business that pursues profits. In that case, it is reasonable to interpret the Consulting Agreement as something more than just a mere an agreement which provides that, if

Defendant asks that Plaintiff give advice to KHA's members concerning instructions on hula dance, Plaintiff shall comply, but instead as an agreement, which should be called, so to speak, a "kumu hula agreement", which provides that Plaintiff shall act as the kumu hula for Defendant or KHA, and that Defendant may broadly use the position and authority of Plaintiff, who is a kumu hula. Accordingly, it is reasonable to acknowledge that the professional fees not only include the purpose of compensation for Plaintiff being in the position of an advisor (kumu hula), but also the following, as a set; namely, the purpose of compensation for being responded to every time the aforementioned advice is sought, on a case-by-case basis, and the purpose of compensation for having Plaintiff create choreographies and write songs and being granted the right to use the choreographies and songs. Accordingly, since Plaintiff had not granted to Defendant, free of charge, the right to use Choreography 6, etc., it is acknowledged that the damage, whose amount is equivalent to the royalties, occurred as a result of the unauthorized use.

(2) Calculation of the amount of damages

- A. As described above in (A), the circumstance which should be emphasized the most upon calculating the amount equivalent to royalties in the present case is that, under the Consulting Agreement, the professional fees per month which cover the purpose of Plaintiff granting to Defendant the right to use the choreographies and songs, which are created or written by Plaintiff, is 1,000 dollars.
- B. Incidentally, Plaintiff asserts that the entire amount of the monthly professional fee under the Consulting Agreement constitutes royalties. However, as described above in (1), the Consulting Agreement covers factors other than the grant of the right for use of the choreographies and songs created or written by Plaintiff, so that it is acknowledged that the royalties constituted a part of the monthly professional fee.

Next, Plaintiff asserts that since it is unlikely for Plaintiff to only grant the right for use of choreographies, separately from the Consulting Agreement under which Plaintiff is the kumu hula for Defendant, the entire amount of the monthly professional fee should be the amount that is equivalent to the royalties.

Certainly, given that the Consulting Agreement is an agreement which integrally promises that Plaintiff shall act as the kumu hula for Defendant

and KHA, and that Plaintiff has the creed of emphasizing the hula culture of Hawaii, it seems difficult to think of a circumstance in which Plaintiff enters into an agreement which only provides for the grant of license for choreographies and songs, independently from the activities of a kumu hula. However, as is shown in the determination of Issue 2 above, between December 2013 and January 2014, Plaintiff discussed with Defendant the amount of compensation for assigning to Defendant, in return for compensation, the copyright for the choreographies created by Plaintiff or for joint ownership of the same (which is substantively the same as the right for permanent use). Accordingly, it is acknowledged that Plaintiff was willing, depending on the terms and conditions, to give to Defendant the right to freely use or dispose of the choreographies which Plaintiff created and to use them economically, irrespective of whether Plaintiff will be involved or give instructions as the kumu hula. As such, it should be said that the circumstance in which Plaintiff enters into an agreement which only provides for the grant of license for choreographies and songs, independently from among the activities of a kumu hula, was possible, and Plaintiff's assertion to the contrary cannot be accepted.

- C. In view of the above, upon considering the amount that is equivalent to the royalties in the case of using the choreographies and songs, which were created or written by Plaintiff, in general (not restricted to Choreography 6, etc.), like in the case of the Consulting Agreement, it is acknowledged that the Consulting Agreement contains various factors as described above, but since it is a fundamental aspect of the business of hula dance schools, which are operated by Defendant, for the members to be able to dance hula, it is acknowledged that the grant of license for choreographies accounts for a high percentage of the Consulting Agreement. Next, since the instructions and advice given under the Consulting Agreement were limited to a small portion, of giving instructions by using opportunities such as workshops and by e-mail, it is acknowledged that such instructions and advice do not account for much of the entirety. On the other hand, since it is believed that the fact that Plaintiff, who is a prominent kumu hula, is in the advisory position as an instructor, not only leads to the justification of legitimacy of KHA but also enables Defendant to make an appeal on the opportunity to receive instructions on choreographies from Plaintiff, the creator of the choreographies, in person, such fact considerably contributed

to Defendant's ability to attract members, so that it is acknowledged that this aspect accounted for a proportionate share of the entirety as well.

By taking these factors into consideration, and also in light of the background in which Defendant continued to use Choreography 6, etc. in spite of Plaintiff's request to stop using the choreographies which Plaintiff created, it is reasonable to acknowledge that the amount equivalent to the royalties in the case of using the choreographies and songs overall, which were created by Plaintiff, is 700 dollars per month, and Plaintiff's assertion cannot be accepted.

- D. Next, as described above in (1), while the monthly professional fee under the Consulting Agreement was a fixed amount irrespective of the number of choreographies or songs, which were created or written by Plaintiff, and which were performed or played for the month, or the number of instance of performing or playing the same for the month, the damage suffered by Plaintiff, which should be considered in the present case, is only the amount that is equivalent to royalties for the specific act of copyright infringement, or in other words, the amount that is equivalent to the royalties pertaining to the performance of Choreography 6, etc. alone. In view of this fact, it is not reasonable to consider that the entire amount of 700 dollars per month, as mentioned above, is the amount that is equivalent to the royalties in the present case, but instead, the amount should be calculated in light of the state of performance of Choreography 6, etc. among the state of performance by Defendant of the whole of the choreographies which were created by Plaintiff. Specifically, it is reasonable to consider that the amount that is equivalent to the royalties pertaining to the unauthorized performance of Choreography 6, etc. in the present case shall be calculated, for the month in which unauthorized performance took place, by the formula in which 700 dollars, or the amount that is equivalent to the monthly professional fee, is multiplied by the percentage of the number of instances of performance of Choreography 6, etc. accounting for the number of all instances of performance of choreographies by Defendant for the month.
- E. In view of the above, the state of performance or playing of the choreographies and songs which were created or written by Plaintiff, including the Choreographies and Songs, at Ho'ike, hula parties, and competitions organized by KHA shall be considered for the period from

November 2014 until October 2017, which Plaintiff asserts as the period for demanding damages. According to evidence (Exhibits Otsu 61 to 82, 84 to 134) and the entire import of the oral argument, as per the column of "Total Number of Choreographies and Songs Created or Written by Plaintiff" in the attached List of Playing and Performance of Choreographies and Songs Created or Written by Plaintiff, it is acknowledged that the choreographies and songs, which were created or written by Plaintiff, were played or performed in a total of 732 instances, and as for the individual playing and performance of each Choreography and each Song, there was a total of 90 instances for a total of six songs, as per the column of "Choreography 6 (E pili mai)", the column of "Choreography 11 (Lei Ho'oheno)", the column of "Choreography 13 (Ua Lanipili I Ka Nani O Papakōlea)", the column of "Choreography 15 (Blossom Nani Ho'i e)", the column of "Choreography 16 (Māpu Mau Ke' Ala)", and the column of "Choreography 17 (Maunaleo)" in the attached List of Playing and Performance of Choreographies and Songs Created or Written by Plaintiff.

First, the months which are colored in red in the column of "Month" in the attached List of Playing and Performance of Choreographies and Songs Created or Written by Plaintiff are the months in which any of the Choreographies and Songs was performed or played at least once at an event held in the relevant month, so that they are months of infringement.

Next, the months which are colored in yellow in the column of "Month" in the attached List of Playing and Performance of Choreographies and Songs Created or Written by Plaintiff are the months in which no event was held in the first place, and are the months in which, accordingly, Choreographies and Songs were not at all performed or played at events, but given that the members who were to participate in internal competitions of KHA perform the choreographies, which will be performed in the competitions, for practice, usually at least several months in advance, it is acknowledged that the relevant months are the months in which performance took place as practice for the "competitions", which are colored in yellow in the column of "Event" in the attached List of Playing and Performance of Choreographies and Songs Created or Written by Plaintiff, so that it is reasonable to consider these months as months of infringement.

Furthermore, the months which are colored in blue in the column of "Month" in the attached List of Playing and Performance of Choreographies and Songs Created or Written by Plaintiff are the months in which no event was held in the first place, so that accordingly, none of the Choreographies or Songs was performed or played, or the months in which events per se were held but in which Choreography 6, etc. were not performed or played even once. However, given that the members who will participate in Ho'ike perform the choreographies, which are to be performed at the Ho'ike, in schools for practice, usually at least six months in advance, it is acknowledged that the relevant months are the months in which performance took place as practice for the "Ho'ike", which are colored in blue in the column of "Event" in the attached List of Playing and Performance of Choreographies and Songs Created or Written by Plaintiff, so that it is reasonable to consider these months as months of infringement.

On the other hand, the months which are colored in green in the column of "Month" in the attached List of Playing and Performance of Choreographies and Songs Created or Written by Plaintiff are the months in which events per se were held, but the Choreographies and Songs were not performed or played even once. Given that the Ho'ike that was held most immediately after the month concerned was held at least six months afterward, and that a party is a casual event which can be attended freely, it is difficult to consider that participants would practice choreographies for such event, so that it can hardly be acknowledged that the months concerned are months of infringement.

- F. In that case, for the period of compensation, from November 2014 until October 2017 (36 months), the months of infringement constitute a total of 35 months excluding October 2015, and during the months of infringement, the number of instances in which the choreographies and songs, which were created or written by Plaintiff, was performed or played was 726 (the number of instances calculated by subtracting six, which is the number of instances of playing and performance in October 2015, from a total of 732 instances of playing and performance during the 36-month period from November 2014 until October 2017), and of the foregoing, the number of instances in which Choreography 6, etc. were performed is 90 (in October 2015, Choreographies and Songs were not performed or played). In light of the foregoing, it is reasonable to consider that the amount that is

equivalent to the royalties for Choreography 6, etc. shall be 3,037 dollars (rounded down to the nearest one dollar), which is calculated by multiplying 700 dollars by 35, which is the period of infringement, and then multiplying the result by 90, which is the number of instances of performance or playing of the choreographies and songs, which were created or written by Plaintiff, in proportion to 726, which is the number of instances of performance or playing of the choreographies and songs, which were created or written by Plaintiff ($700 \times 35 \times (90 \div 726) \doteq 3,037$).

Naturally, since Plaintiff demands this amount in Japanese currency, conversion of the foreign currency to Japanese currency, based on the exchange rate on the date of conclusion of oral argument, is required (refer to the Supreme Court Decision rendered by Third Petty Bench on July 15, 1975; Minshu Vol. 29, No. 6, page 1029). Regarding this point, since it is public knowledge that the rate of foreign exchange (the central spot rate in the Tokyo Market as announced by the Bank of Japan) as of May 15, 2018, which is the day of conclusion of oral argument in the present case, was 109.7 yen to the US dollar, the amount that is equivalent to royalties shall be, when converted into Japanese yen, 333,158 yen (rounded down to the nearest one yen). ($3,037 \times 109.7 \doteq 333,158$)

(3) Amount equivalent to attorney's fees

By taking into consideration all the circumstances which appeared in the present case, including the amount approved in the above (2) and the fact that Plaintiff filed an additional action, to be combined with the action of the present case, seeking an injunction against copyright infringement by Defendant, it is reasonable to acknowledge that the amount of damages for attorney' fees having reasonable legally sufficient cause with the act of copyright infringement by Defendant shall be 100,000 yen.

(4) Summary

From what is described above, Plaintiff's demand for damage compensation on the basis of copyright infringement is reasonable within the extent of seeking payment of 433,158 yen as well as the delinquent charges arising therefrom at the rate of 5% per annum for the period from November 1, 2017, which is after the occurrence of the act of tort, until payment in full.

7. Regarding Issue 7 (Whether the Cancellation took place at a time that was detrimental to Plaintiff) and Issue 8 (Whether or not there were unavoidable grounds for the Cancellation)

(1) Facts on which determination shall be based

According to the basic facts, evidence (other than the documentary evidence which is especially listed, Statement by Plaintiff, and Exhibit Ko 39-2, Statement by Witness P3, and Exhibits Otsu 29, 31, 38), and the entire import of the oral argument, the following facts are acknowledged.

A. State prior to the conclusion of T&M Contract

(A) Method of operation by KHA

KHA has its headquarters and office in Kumamoto Prefecture, and branch offices in the Kyushu region and the Chugoku region. In addition to teaching general members at the headquarters school, general members are also taught at schools opened by instructors who became certified as KHA's instructors, and membership fees are collected from instructor members and general members (Exhibit Ko 2). Also, separately from these routine instructions, KHA organizes workshops, about three or four times a year, for which Plaintiff comes to Japan to give instructions in person as described above, and lesson fees are separately collected for these workshops. Also, KHA's policy stated, in connection with withdrawal of membership, as follows. "At the Association, members use, teach, and dance the choreographies of the Association. If you withdraw your membership, you will no longer be able to use or dance the Association's choreographies, for which the Association has the master license for the songs" (Exhibit Ko 2).

(B) State of accounting concerning workshops

For workshops organized by KHA and KPDA for KHA's members, Defendant earned the profit, which is calculated by subtracting expenses from the lesson fees (= sales) collected from participants, and for workshops organized by CSHA and KPDA for CSHA's members, the Other Company earned the profit, which is calculated by subtracting the same from the lesson fees (= sales) collected from participants.

The sales and the like from the workshops during the fall of 2012 and 2013, which were held for KHA's members, were as follows.

a. Sales pertaining to hula dance (workshops organized by KHA)

(a) 2012 (Exhibit Otsu 44)

- Participants 350
- Sales 8,346,000 yen

(b) 2013 (Exhibit Otsu 45)

- Participants 356
- Sales 8,703,500 yen
- b. Sales pertaining to Tahitian dance (workshops organized by KPDA)
 - (a) 2012 (Exhibit Otsu 58)
 - Participants 218
 - Sales 3,035,000 yen
 - (b) 2013 (Exhibit Otsu 59)
 - Participants 199
 - Sales 2,790,000 yen
- c. Cost of sales
 - The cost of sales required for holding workshops in the fall of 2012 and 2013 for the workshops organized by KHA (by combining those for hula dance and those for Tahitian dance) was 5,682,700 yen (the entire import of the oral argument).

B. State after the conclusion of T&M Contract

(A) Plaintiff's mistrust of Defendant

After Defendant's former representative passed away in October 2012 and was succeeded by his daughter who then became the current representative of Defendant (Exhibit Ko 1), Plaintiff began to have a sense of mistrust towards Defendant's management team which mainly consists of Defendant's current representative and P3, who became the general manager at Defendant in January 2012 (Statement by Plaintiff, page 1, 12). Also, Plaintiff began to feel that the amount of compensation paid by KHA is unreasonably low, and asked Defendant for increase in compensation, but Defendant did not respond (Exhibit Otsu 2; Statement by Witness P3, page 2).

(B) Conclusion of T&M Contract and issue of Document Exhibit Otsu 2 by Plaintiff

In March 2014, Plaintiff was entrusted by Defendant to teach hula dance and Tahitian dance at the Workshops, which were to be held by KHA in the fall of the same year, and Plaintiff agreed (conclusion of T&M Contract).

However, due to the circumstances described in (A), Plaintiff began to think that Plaintiff cannot continue to teach hula dance and Tahitian dance to KHA's members with the management team (Statement by Plaintiff, page 1, 15). As such, on June 18 of the same year, Plaintiff

issued a document (Exhibit Otsu 2; hereinafter referred to as "Document Exhibit Otsu 2") to Defendant's current representative (Statement by Plaintiff, page 1; Statement by Witness P3, page 2, 14, 15). Document Exhibit Otsu 2 indicates that although Plaintiff tried to discuss the amount of compensation, Defendant did not respond, and indicated as follows. "Such delay in response to me has led me to believe that your company no longer values my work, and I decided that your action towards me regarding this matter shows your disrespect for me", "I hereby submit my letter of resignation dated April 15, 2014, as the kumu hula for the Kyushu Hawaiian Association and the supervisor for KPDA", and "KHA demands that when its student leaves KHA, the student 'will no longer be able to teach the choreographies learned at KHA', and I demand the same from P4, who is my student, and P4's company. I am no longer your kumu hula, so that from now on, you may not use any of the choreographies for hula and Tahitian dances that I taught you over the past 26 years".

In response, Defendant, who had found Plaintiff's demand for increase in compensation and Plaintiff's day-to-day attitude to be unfavorable, decided to dissolve the relationship with Plaintiff, with the Workshops to be held in October of the same year being the last event. Meanwhile, Defendant believed that Defendant was able to perform the choreographies, which Plaintiff created and taught, even after the Consulting Agreement was ended (Statement by Witness P3, page 3).

(C) Issue of Document Exhibit Ko 36 by Defendant

By June 2014, the schedule for the workshops to be held in the fall of 2014 became concrete; for example, that, of the three songs for the Workshops (A-1 to A-3), two of them would be those which were created and written by Plaintiff (Choreographies 2 and 3, and Songs 2 and 3), so that around the end of July of the same year, Defendant prepared a document titled "Notice of 2014 Fall Workshops" (Exhibit Otsu 24, Exhibit Ko 36; hereinafter referred to as "Document Exhibit Ko 36") (Statement by Witness P3, page 2, 3). Document Exhibit Ko 36 indicated the following message, as well as that the deadline for application was September 10 of the same year and the deadline for payment was September 19 of the same year. "It is mandatory for instructors to attend at least one of the workshops, A-1 and A-2. As

for the substitute instructors teaching at the headquarters school, please take this opportunity to attend all workshops for the songs whose requirements for attendance can be satisfied, so that you will be able to offer higher quality lessons to your students".

In early August of the same year, Defendant sent Document Exhibit Ko 36 to KHA's members (Statement by Witness P3, page 3).

(D) Distribution of Document Exhibit Ko 13 by Plaintiff's related personnel

a. On July 27 of the same year, Plaintiff prepared a document that starts with "Dear Top Instructors of Kyushu Hawaiian Association" (Exhibits Ko 12, 13; hereinafter referred to as "Document Exhibit Ko 13"). Document Exhibit Ko 13 contained the following.

- "After the decease of the Chairman, P4 and P3 were newly appointed as the Chairman and the Manager, respectively. I felt that this fact resulted in significant changes in the direction of various matters for KHA's members and Chairman P4's family. Due to the company's big change in direction, I must suddenly inform you that I can no longer remain as the kumu hula for the top instructors and KHA's members. The direction which the company plans to pursue is not at all what I agree with, and as a kumu hula, I had to make up my mind that I cannot work in an environment that is disturbing, unpleasant, and distressing. In the unhealthy and distressing environment which was brought about by the personnel selection of the Manager by Chairman P4, I can no longer remain with KHA. I shall humbly give up my post as the kumu of the Kyushu Hawaiian Association."
- "In connection with my departure from KHA, I asked P4, who is the chairman of KHA, to please stop using the choreographies which I kept providing to KHA over the past 26 years. This resolution as to 'prohibiting the use of choreographies' is not intended to hurt KHA's members. I had to say this because once I leave KHA, I will no longer be able to give sufficient instructions to you concerning my choreographies. I would like KHA's members and all other related personnel to truly understand that I am the creator of these choreographies as well as the person in charge of them."

This decision reflects my heartfelt sentiment, and I had to make this decision because of the deep feelings I have towards hula and its culture. As the kumu hula of KHA, I have admired and loved you all. Please understand that the decision I made is not intended to abandon you. I simply want to protect the creativity which I value from the heart towards my creation of choreography and the right vested therein."

- "This request shall be implemented from November 1, 2014. In the event that this request is ignored by Chairman P4 or any other person, I am determined to take countermeasures. I am willing to accept discussions on how to remedy this situation. I shall continue to teach as the kumu hula for the Kyushu Hawaiian Association until October 31, 2014."
- b. P5, who is a former head of office at Defendant and who resigned from Defendant at the end of June this year, held a briefing in mid-August of 2014 for KHA's members, jointly with Plaintiff's interpreter and the like, and there, issued Document Exhibit Ko 13 to the audience, who are KHA's members, and gave explanation, and also explained about the West Japan Hawaiian Association, which was planned to be established (Statement by Witness P3, page 4, 12. Plaintiff denies that explanation about the West Japan Hawaiian Association was given at the briefing. However, given the following circumstances, namely, that Plaintiff wrote in Document Exhibit Ko 13 as to prohibiting KHA from using the choreographies, which are created by Plaintiff, after the relationship was dissolved, and that Plaintiff wrote about not having the intention to abandon KHA's members and about the willingness to discuss about how to remedy the situation, and, as described later, that a new company which substantively operates the West Japan Hawaiian Association was founded on September 5 of the same year, which is immediately after the briefing, and that it is presumed that, at the time of the briefing, it was already planned that that the West Japan Hawaiian Association would accept members from KHA, and that, even in the "Kyushu Hawaiian Dayori" (Kyushu Hawaiian Newsletter) which was issued by KHA in October of the same year, the aforementioned

briefing, in which Document Exhibit Ko 13 was distributed, was called by the name, "Briefing on New Company" (Exhibit Exhibit Ko 3), Plaintiff's assertion cannot be accepted).

Since Defendant heard from KHA's member(s) about Document Exhibit Ko 13 being distributed at the aforementioned briefing, Defendant obtained Document Exhibit Ko 13 in late August (Statement by Witness P3, page 3, 4).

(E) Distribution of Document Exhibit Ko 11 by Defendant

Even after obtaining Document Exhibit Ko 13, Defendant believed that, from the perspective of the prospect for profit, it was possible to hold Workshops provided that about the same number of participants as in the past would attend the Workshops. As for the choreographies taught by Plaintiff, Defendant believed that it was possible to perform them, in spite of being prohibited to do so by Plaintiff, even after the Consulting Agreement was ended because Defendant had the "master license for the songs" for those choreographies. Accordingly, Plaintiff distributed to KHA's members a document dated 20th of the same month and that starts with "Dear Members of the Kyushu Hawaiian Association" (Exhibit Ko 11; hereinafter referred to as "Document Exhibit Ko 11"), explaining about Defendant's situation (Statement by Witness P3, page 6). Document Exhibit Ko 11 contains the following.

- "Most regrettably, P1, who has taught us hula over the years, decided to end the advisory contract with the Kyushu Hawaiian Association, with the workshops to be held in October being the last event."
- "Please be assured that you can continue using the choreographies as before."
- "As for a new hula advisor, we will not decide on one particular person at this point in time. Instead, we will make our decision through our encounters with several kumu hula by taking into consideration who gets along best with KHA's members and the association."
- "Although the Kyushu Hawaiian Association cannot succeed KPDA, you will be able to perform hula dance at events other than Ho'ike, which is organized by the Association."

(F) Withdrawal of instructors and members

Between late August and early September of the same year, the situation of KHA's members sending documents indicating their intention to withdraw their membership was as follows.

- a. Around August 27 of the same year 1 instructor (Exhibit Otsu 49)
- b. Around September 3 of the same year
 - (a) 1 instructor and 33 members taught at the instructor's school (Exhibit Otsu 50)
 - (b) 1 instructor and 25 members taught at the instructor's school (Exhibit Otsu 51)
 - (c) 1 instructor and 83 members taught at the instructor's school (Exhibit Otsu 52)

(G) Establishment of West Japan Hawaiian Association

- a. On September 5, 2014, Lei Production Kabushiki Kaisha was founded for teaching hula dance, with P5 as the representative (Exhibit Otsu 53), as the company that substantively operates the West Japan Hawaiian Association. Plaintiff's interpreter, and P2 and P6, who were Defendant's employees and were also in charge of the KPDA office, joined the company.
- b. On September 6 of the same year, P2 prepared, without Defendant's prior consent, a document titled "Dear Members of KPDA", under the name of the Kyushu Hawaiian Association office and the KPDA office, and distributed the same to Defendant's members (Exhibit Ko 30). The document contained the following.
 - "Most regrettably, P1, who has taught us hula over the years, decided to end the advisory contract with the Kyushu Hawaiian Association, with the workshops to be held in October being the last event."
 - "Future Measures by Kyushu Hawaiian Association (KHA)", "As of November 1, 2014, KHA will not succeed KPDA", "You are able to perform the songs which you have learned so far (including the songs from Tiare classes) at events other than Ho'ike, which is organized by the Association".
 - "Future Measures by KPDA Office", "As of November 1, 2014, the KPDA will be succeeded by a new company which concludes a new agreement with P1 (KPDA will leave

KHA)", "The KPDA office will continue to use the same system as before, so that announcements on workshops, Tiare classes, and license for KPDA members will be made in the same manner as before".

- "Contact information", "Until October 31, 2014, the KPDA Office will be at the Kyushu Hawaiian Association. From November 1, 2014, the KPDA Office will be at the new company. The location and contact information of the new office will be announced at the workshops to be held in October, along with more information about future plans".

(H) State of application for Workshops

On September 10, 2014, the application for the Workshops was closed. Sales from the Workshops, as assumed from the state of application, are as follows.

- a. Expected sales in connection with hula dance (Exhibit Otsu 46)
 - (a) Applicants 245 persons
 - (b) Expected sales 6,236,947 yen
- b. Expected sales in connection with Tahitian dance (Exhibit Otsu 60)
 - (a) Applicants 40 persons
 - (b) Expected sales 540,000 yen
- c. Cost of sales
 - The cost of sales required for organizing Workshops (the cost for hula dance and the cost for Tahitian dance combined) was expected to be approximately the same amount as in 2012 and 2013 (5,682,700 yen) (the entire import of the oral argument).

(I) The Cancellation

By seeing the state of application for the Workshops, Defendant believed that the Workshops would be money-losing, and also believed that by holding the Workshops, there was the likelihood of there being insults and wild accusations made against KHA and talk to the effect that Plaintiff's choreographies cannot be used, as well as the solicitation to the West Japan Hawaiian Association. Accordingly, Defendant decided to call off the Workshops, and on September 17 of the same year, Defendant notified Plaintiff of the intention to cancel the T&M Contract.

In response, Plaintiff sent an e-mail to Defendant on the same day, noting that the "notification was very late" and demanding that Defendant "compensate me [Plaintiff] and my staff [Plaintiff's staff] by payment of 50% of the professional fees" (Exhibit Otsu 19-2). In response, P2 sent, without Defendant's prior consent, an e-mail titled "Staff & Penalty Fee" to Plaintiff's interpreter (Exhibit Ko 23-1) on October 1 of the same year. The e-mail message indicated "WS Penalty \$14,375" and the Excel file attached thereto was titled "2014 Oct workshop" and indicated "Total 73h \$28,750" and "Penalty 50% \$14,375" (Exhibit Ko 23-2).

As described above, the Workshops aimed at KHA's members was cancelled, but the workshops aimed at CSHA's members were held as scheduled, and Plaintiff taught hula dance and Tahitian dance, which Plaintiff choreographed, to CSHA's members.

(J) How the situation evolved thereafter

- a. The Consulting Agreement was cancelled as of October 31 of the same year.
- b. Since November 1, 2014, KPDA has partnered with the West Japan Hawaiian Association, and Plaintiff teaches hula dance and Tahitian dance, which Plaintiff created, to the members of the West Japan Hawaiian Association, and the partnership with CSHA has continued as before.

(2) Regarding Issue 7 (Whether the Cancellation took place at a time that was detrimental to Plaintiff)

A mandate agreement may be cancelled by either party at any time (Article 651 of the Civil Code). However, if one of the parties (hereinafter referred to as "Cancelling Party") cancels the mandate at a time that is detrimental to the other party (hereinafter referred to as "Other Party"), the Cancelling Party must compensate the damages suffered by the Other Party (operative part of the same Article, item (2)). The purport of the same is such that since a mandate agreement is an agreement that is based on the relationship of personal trust between the parties, each party is able to end the agreement without any reason and at will, and in that sense, the parties are not guaranteed to gain profit by continuing the contractual relationship, but in the case where damage is incurred due to the cancellation taking place at a detrimental timing, the Cancelling Party shall be held liable for compensating the Other Party for the

damage incurred as a result of the detrimental timing of cancellation. In light of the foregoing, the "detrimental timing" is interpreted as a timing at which point damage is incurred by the Other Party as a result of the agreement being cancelled at that point in time. As such, like in the present case, in the case where the mandatory engages in the administration of the mandated business in exchange for payment, cancellation by the mandatory shall be interpreted as falling under the aforementioned "detrimental timing" if the mandatory, whose intention was to continue the mandate, loses the opportunity to earn other income as a result.

In the present case, the Workshops were scheduled to be held from October 2 to 9, 2014, and from October 22 to 26, 2014, and the Cancellation took place on September 17 of the same year. According to the Statement by Plaintiff (page 17), it is acknowledged that the cancellation must have taken place two to three months in advance in order for Plaintiff to arrange for some other work during this period, so that it is reasonable to acknowledge that the Cancellation took place at a "detrimental timing".

It seems that Plaintiff's assertion is such that if the cancellation does not take place one year before the Workshops, it falls under a "detrimental timing", but in light of the above Statement by Plaintiff, such assertion cannot be accepted. It also seems that Plaintiff's assertion is such that the hours spent for preparing for Workshops should be considered "damage" as well, and that the above assertion is made on the premise of referring to a timing at which point such work could have been avoided. However, in light of the fact that Plaintiff had to give the same instructions to CHSA's members, as those to be given at the Workshops, the aforementioned preparations were necessary in any case, so that Plaintiff's assertion cannot be accepted due to its premise.

(3) Regarding Issue 8 (Whether or not there were unavoidable grounds for the Cancellation)

A. Even if the optional cancellation of a mandate agreement takes place at a time that is detrimental to the Other Party, causing the Other Party to suffer damage, if "there are unavoidable grounds" for the cancellation, the Cancelling Party shall not be held liable for compensating the Other Party for the damage incurred (proviso of Article 651, paragraph (2), Civil Code). "Unavoidable grounds" as used herein must exist for exemption of the liability for compensating the other party for the damage incurred as a result of the cancellation taking place at a detrimental timing, so that it is

interpreted that there must be sufficient circumstances based on which it can be said that cancellation at the timing concerned was unavoidable even if the other party were to suffer damage.

- B. As the reason for cancelling the T&M Contract, Defendant points to the prediction that if Workshops were held, they would not only become money-losing, but there would also be the likelihood of Plaintiff making insults and wild accusations against Defendant, which would then lead to more members withdrawing from KHA, and asserts that they constitute "unavoidable grounds". On the other hand, Plaintiff denies these reasons for cancellation and also denies that they constitute "unavoidable grounds".

Upon considering the background to the Cancellation, as per the basic facts of (1), first of all, on June 18, 2014, Defendant received from Plaintiff the Document Exhibit Otsu 2 indicating a request for dissolution of the teaching relationship, and around that time, Defendant decided to dissolve the Consulting Agreement with Plaintiff as of October 31 of the same year with the Workshops being the last event. It is still not acknowledged that this timing is a "detrimental timing". However, if, after November of the same year, it no longer became possible to receive Plaintiff's instructions at KHA, the circumstance in which participants at the Workshops, which immediately precede the dissolution of the Consulting Agreement, would be less than usual, or in which members would leave KHA, was predictable. Despite the foregoing, Defendant still maintained the policy of holding the Workshops. Accordingly, if the reason for the Cancellation, as asserted by Defendant, was merely such that the prediction at that point in time was realized, it cannot be said that there was any "unavoidable ground" due to which the timing of cancellation became September 17 of the same year.

However, as per the basic facts of the above (1), the following circumstances which took place later are not merely the circumstances in which the aforementioned prediction was realized, said circumstances being that in mid-August of the same year, which reached the "detrimental timing", people around Plaintiff distributed Document Exhibit Ko 13 to KHA's general members other than the top instructors, indicating Plaintiff's intention of prohibiting the use by KHA of the choreographies, which Plaintiff created, after the Consultancy Agreement ended, and not only the foregoing but also that the establishment of the West Japan Hawaiian Association is planned as a place for accepting KHA's members, along with

the explanation about the new association, even before the dissolution of the Consulting Agreement. Meanwhile, Defendant distributed Document Exhibit Ko 11, dated the 20th of the same month, to members and explained Defendant's situation in an attempt to control the state of affairs, but from late August until early September, instructors belonging to KHA and members affiliated with these instructors left KHA one after another, and on the 6th of the same month, which is the day following establishment of Lei Production Kabushiki Kaisha on the 5th of the same month, P2, who was an employee of Defendant and who later transferred to the West Japan Hawaiian Association, and who, it is presumed, already had the intention of such transfer at this point in time, distributed, without prior consent of Defendant and even before the dissolution of the Consulting Agreement, Document Exhibit Ko 30 indicating that after November of the same year, a new company would succeed the relationship of partnership with KPDA, and that the location of the new office would be announced at the Workshops, all of which led to the increased likelihood of the Workshops being an opportunity for the West Japan Hawaiian Association, which is a competitor of Defendant or KHA, to offer explanation and to solicit members. When, on September 10 of the same year, the application for joining the Workshops was closed, it was discovered that the applicants for hula dance had significantly decreased to 250 persons, from the usual number of 350 persons or so, and the applicants for Tahitian dance had greatly decreased to 40 persons, from the usual number of 200 persons or so, and it is acknowledged that the circumstance was such that, given the sales (6,776,947 yen) and the cost of sales (5,682,700 yen) that was expected from the number of applicants, the Workshops would hardly become profitable if various other expenses were also taken into consideration. One week later, on the 17th of the same month, Defendant notified Plaintiff of the Cancellation.

In light of the above background, it is acknowledged that the reason for which Defendant cancelled the T&M Contract by calling off the Workshops is not only the fact that the Workshops would be money-losing due to the small number of applicants (hereinafter referred to as "Circumstance 1"), but also the concern that by holding the Workshops, even more members would withdraw from KHA (hereinafter referred to as "Circumstance 2"). Especially with regards to the Circumstance 2, given

that it is believed that the concern as to more members withdrawing from KHA increased due to the actions taken by Plaintiff and the people around Plaintiff after mid-August of 2014, which is after having already reached the "detrimental timing", and that it influenced the state of application for Workshops of Circumstance 1, and since the state of application, which reflected the combination of Circumstance 1 and Circumstance 2, was discovered on September 10 of the same year, it is reasonable to acknowledge that the cancellation by Defendant of the T&M Contract on the 17th of the same month was under "unavoidable grounds" due to which the cancellation had to take place at a "detrimental timing" for Plaintiff.

Regarding this point, Plaintiff asserts that, according to the custom of the world of hula dance, it is legitimate for Plaintiff to prohibit KHA's members from performing the choreographies which Plaintiff created. Even if this is the case, it cannot be said that it is legitimate for Plaintiff and its surrounding people to take an action which substantively constitutes solicitation, by explaining to KHA's members about the West Japan Hawaiian Association, which is a competitor of KHA or Defendant and which would accept members in place of KHA, even before the dissolution of the Consulting Agreement, and since it is reasonable that Defendant would be concerned about how the foregoing influences withdrawal of KHA's members and the number of applicants for the Workshops, the above assertion by Plaintiff is not such that it affects the above determination.

- (4) From what is described above, the claim for compensation pursuant to the operative part of Article 651, paragraph (2) of the Civil Code is unreasonable without having to consider other points.

8. Conclusion

In view of the above, Plaintiff's claims are reasonable within the extent of demanding against Defendant, on the basis of copyright, for an injunction against the performance of Choreography 6, etc., and on the basis of an act of tort of copyright infringement, for payment of damages in the amount of 433,158 yen along with delinquency charges arising therefrom at an annual rate of 5% per annum from November 1, 2017, which is subsequent to the act of tort, until payment in full, so that the claims shall be approved within the extent described above (since it is not reasonable to issue a declaration of provisional execution for Paragraph 1 of the main text, a declaration of provisional execution shall not be

issued), and the rest, being unreasonable, shall be dismissed. Therefore, the judgment shall be rendered in the form of the main text by applying Article 96, paragraph (2) of the Code of Civil Procedure to the additional period for filing an appeal.

Osaka District Court, 26th Civil Division

Presiding Judge: TAKAMATSU Hiroyuki

Judge: NOGAMI Seiichi

Judge: DAIMON Koichiro

(Attachment)

List of Defendant's Schools (omitted)

(Attachment)

List of Choreographies

1. Name of the song: Awapuhi Sweet
Choreographer: Plaintiff
Details of choreography: As per the recording of "Awapuhi Sweet" in File 1 recorded in the DVD-R attached to the Complaint

2. Name of the song: Ka Pua Loke Mae Ole
Choreographer: Plaintiff
Details of choreography: As per the recording of "Ka Pua Loke Mae Ole" in File 2 recorded in the DVD-R attached to the Complaint

3. Name of the song: E Kaimana' alohi
Choreographer: Plaintiff
Details of choreography: As per the recording of "E Kaimana' alohi" in File 3 recorded in the DVD-R attached to the Complaint

4. Name of the song: Nani O Kauai
Choreographer: Plaintiff
Details of choreography: As per the recording of "Nani O Kauai" in File 4 recorded in the DVD-R attached to the Complaint

6. Name of the song: E Pili Mai
Choreographer: Plaintiff
Details of choreography: As per Attachment 6

11. Name of the song: Lei Ho' oheno
Choreographer: Plaintiff
Details of choreography: As per Attachment 11

13. Name of the song: Ua Lanipili I Ka Nani O Papakōlea
Choreographer: Plaintiff
Details of choreography: As per Attachment 13

15. Name of the song: Blossom Nani Ho'i e
Choreographer: Plaintiff
Details of choreography: As per Attachment 15

16. Name of the song: Māpu Mau Ke' Ala
Choreographer: Plaintiff
Details of choreography: As per Attachment 16

17. Name of the song: Maunaleo
Choreographer: Plaintiff
Details of choreography: As per Attachment 17