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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

AMERICAN CIVIL LIBERTIES
UNION OF HAWAII; MELE
STOKESBERRY; and CHARLES M.
CARLETTA,

Plaintiffs,

vs.

COUNTY OF MAUI,

Defendant.

CIV. NO. 13-00307 LEK/KSC

[CIVIL RIGHTS ACTION]

**STIPULATION FOR DISMISSAL
WITH PREJUDICE PURSUANT TO
FED. R. CIV. P. 41(a)(1)(A)(ii) AND
41(a)(2) AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action, through their respective attorneys, that pursuant to Rule 41(a)(1)(A)(ii) and 41(a)(2) of the Federal Rules of Civil Procedure, this action and all claims asserted herein by Plaintiffs against any and all Defendants, be and is hereby dismissed with prejudice, each party to bear any remaining costs and

attorneys' fees other than the amounts to be paid pursuant to the Settlement Agreement, Release and Indemnity Agreement ("Settlement Agreement").

The parties stipulate to dismiss this action with prejudice upon the Court's approval of this stipulation and order expressly incorporating herein the terms of the executed Settlement Agreement as follows:

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter referred to as “Agreement”) is entered this 12th day of September, 2013, by and between Plaintiffs AMERICAN CIVIL LIBERTIES UNION OF HAWAII, MELE STOKESBERRY, and CHARLES M. CARLETTA (hereinafter collectively referred to as “Releasors” or “Plaintiffs”) and Defendants COUNTY OF MAUI (hereinafter referred to as “Releasee,” “Defendant,” or “County”). This Agreement is entered in connection with the case entitled, AMERICAN CIVIL LIBERTIES UNION OF HAWAII et al. vs. COUNTY OF MAUI, Civil No. 13-00307 LEK/KSC, in the United States District Court for the District of Hawaii (hereinafter referred to as “Lawsuit”).

WHEREAS, Releasors, through their attorneys, filed a Complaint in the above- referenced Lawsuit in the United States District Court for the District of Hawaii, and served same upon Defendant on June 25, 2013; and

WHEREAS, as of the Effective Date of this Agreement, Releasors may have other potential causes of action against the Releasees and/or one or more of their officers, agents, employees, or representatives which may or may not have been initiated or asserted to date, arising out of or related to the alleged injuries and damages claimed to have been suffered by Releasors in the Lawsuit; and

WHEREAS, in order to avoid the further expense and risk of litigation, the Releasors and Releasees (hereinafter collectively referred to as "Undersigned Parties") now desire, upon the terms set forth herein, to release, settle, terminate, dismiss, and discharge any and all claims, demands, actions, whether known or unknown and whether previously asserted or not asserted, which Releasors claim to have against Releasees or any of Releasees' successors, present or former employees, officers, agents, representatives, or assigns, relating to any conduct, act or omission by Releasees or any of Releasees' successors, present or former employees, officers, agents, representatives, or assigns arising out of or connected to the facts and circumstances surrounding the Lawsuit as of the Effective Date; and

WHEREAS, this Agreement shall not be construed as an admission by the Releasees or any of Releasees' successors, present or former employees, officers, agents, representatives, or assigns of any fault, wrongdoing, or liability whatsoever, and is entered into solely as a compromise and to avoid further costs and expenses; and

WHEREAS, the County of Maui (hereinafter referred to as "County") has already ceased enforcement of Maui County Code § 12.42.030(B)(1), (B)(2), and

(B)(5), pending amendment to same that is satisfactory to both Defendant and Plaintiffs.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Releasors and Releasee hereby agree as follows:

1. Effective Date. It is understood and agreed that the Effective Date of this Agreement is the last date upon which a party to the Lawsuit executes said Agreement ("Effective Date").
2. Revising the Code.
 - a. Defendant agrees that it will neither enforce nor threaten to enforce Maui County Code § 12.42.030(B)(1), (B)(2), and (B)(5) as currently written. Defendant agrees that it will place a notice on any County-controlled/County-maintained website that contains the official version of Maui County Code § 12.42.030(B)(1), (B)(2), and (B)(5) indicating that these sections are no longer being enforced.
 - b. Defendant agrees to make reasonable best efforts to repeal Maui County Code § 12.42.030(B)(1), (B)(2), and (B)(5) (as currently written) in a reasonably prompt manner. This may be accomplished either by advising the Maui County Council to

repeal the above-referenced provisions outright or to amend these provisions to comply with constitutional standards.

- c. If Defendant chooses to amend the language in Maui County Code § 12.42.030(B)(1), (B)(2), and (B)(5), rather than repeal the provisions outright, Defendant shall provide Plaintiffs' counsel an opportunity to comment on those provisions.
- d. Nothing in this Agreement shall preclude Plaintiffs or their counsel from bringing any "as applied" challenge to any Maui County Code provision. Nothing in this Agreement shall preclude Plaintiffs or their counsel from bringing any facial challenge to any new or amended version of Maui County Code § 12.42.030(B)(1), (B)(2), and (B)(5), or any portion thereof, enacted on or after the Effective Date of this Agreement, provided Plaintiffs' counsel objected to the enactment thereof or was not given any opportunity to comment thereon prior to the enactment thereof, provided further that this subparagraph shall not preclude a facial challenge to these new or amended Code provisions in the event that the United States Supreme Court, the Ninth Circuit Court of Appeals, and/or any Hawaii state court issues a decision suggesting that

those provisions believed by the parties to be constitutional may be invalid. Any such facial challenge in a court of law shall be preceded with a good faith effort to work with the County to have any such invalidity cured.

5. Payment. Defendant agrees to pay the sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00) via one check payable to “ACLU of Hawaii Foundation Clients’ Trust Account” to be distributed as follows: FIVE HUNDRED DOLLARS AND NO/100 for Plaintiff CHARLES CARLETTA; FIVE HUNDRED DOLLARS AND NO/100 for Plaintiff MELE STOKESBERRY; THIRTEEN THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS AND 22/100 (\$13,575.22) to be paid as attorneys’ fees to the American Civil Liberties Union of Hawaii Foundation (a tax exempt organization) (“ACLU”); and FOUR HUNDRED TWENTY FOUR DOLLARS AND 78/100 (\$424.78) in costs to the ACLU. With respect to the above-listed sums to be paid to the ACLU, the Releasors and their attorneys have represented, and for purposes of this Agreement, Defendant does not dispute, constitute statutory attorneys’ fees and costs under 42 U.S.C. Sections 1983 and 1988. This allocation or characterization of the fees and costs shall have no bearing on any future request for fees and

costs in the event of further action(s) relating to substantial compliance of this Agreement. In addition, Releasors STOKESBERRY and CARLETTA understand and affirm that neither Defendant's nor Plaintiffs' counsel makes any representation regarding any potential tax consequences that may arise from the monetary payments to Releasors or to the ACLU, and Releasors further understand and agree that they shall be responsible for payment of any and all taxes which may be assessed as a result of the payment of the aforementioned consideration. With regard to the sums set forth above, the County of Maui will issue an IRS Form 1099 to the ACLU, if that is consistent with the standard practice of the County of Maui. Plaintiffs' counsel has represented that these fees and costs are paid pursuant to statutory authority, thus no IRS Form 1099 shall be issued by the County of Maui to Plaintiffs CARLETTA or STOKESBERRY for the attorneys' fees and/or costs set forth above.

6. Stipulation of Dismissal. It is understood and agreed that at the time this Agreement is fully and finally executed, the parties to the Lawsuit will execute and lodge a Stipulation of Dismissal With Prejudice and Order, pursuant to Federal Rule of Civil Procedure, Rule 41(a)(1)(ii), which will set forth this Agreement verbatim so that the Court shall retain jurisdiction for

purposes of any enforcement action arising from non-compliance with this Settlement Agreement.

7. No Admission of Liability. Releasors specifically acknowledge that provisions set forth in the prior numbered paragraphs of this Agreement do not constitute an admission of wrongdoing, liability, fault, or responsibility of any kind whatsoever by Releasees or any of Releasees' successors, present or former employees, officers, agents, representatives, or assigns concerning any of the claims asserted by Releasors in the Lawsuit. Further, no past or present wrongdoing, liability, fault, or responsibility on the part of Releasees or any of Releasees' successors, present or former employees, officers, agents, representatives, or assigns shall be implied by the provisions set forth in the numbered paragraphs of this Agreement.
8. Complete Compromise. It is hereby expressly understood and agreed that this Agreement is entered into as a complete resolution and compromise of all disputed claims, including any past potential claims, and that Releasors' acceptance of the settlement sum and terms set forth in this Agreement will constitute a complete compromise of their disputed claims against Releasees and/or any of Releasees' successors, present or former employees, officers,

agents, representatives, or assigns arising out of the subject matter of the Lawsuit as of the Effective Date.

9. Release. For and in consideration of the foregoing, Releasors, for themselves and their heirs, executors, administrators, successors, and assigns, hereby release and forever acquit and discharge Releasees, and Releasees' successors, present and former employees, officers, agents, representatives, assigns, and attorneys from and on account of any and all claims, actions, causes of action, obligations, demand, liability, damages or expenses of any kind and nature, whether known or unknown, up to the date of this Agreement, including any and all tort claims, contractual claims, claims for general and special damages, for past and future earnings loss, for past and future medical expenses, for loss of services, for loss of support, for loss of association, companionship, love and affection, for punitive damages, for attorneys' fees and/or costs of litigation, and for any and all other additional losses, whether at law or in equity, that constitute, relate to and/or arise out of the subject matter of this Lawsuit ("the Released Claims").
10. Unnamed Parties. This Agreement binds the named Releasees and Releasors but does not bind future, unnamed parties unless such party is a successor-in-interest of one of the Defendants, who were named in this Lawsuit in their

official capacities only, and may be amended from time to time by the mutual written agreement of the Undersigned Parties, or their successors in interest.

11. Later Found Facts. The Undersigned Parties fully understand that if the facts supporting Plaintiffs' claims are later found to be other than or different from the facts now believed by the parties to be true, they expressly accept and assume the risk of such possible differences in facts and agree that this Agreement shall be and remain effective notwithstanding any such differences in facts.

12. Further acknowledgement. It is further acknowledged and agreed that the Undersigned Parties rely solely upon the contents of this Agreement and upon nothing else with respect to all matters referred to in this Agreement.

13. Merger. It is hereby expressly understood, certified, and agreed by the Undersigned Parties that the provisions of this Agreement have been carefully read and are fully understood, that the Agreement has been freely and voluntarily entered into with the advice of counsel, that this Agreement supersedes all previous agreements between the parties, that the terms of this Agreement are not mere recitals, but are contractual and binding upon them, and that this Agreement may not be altered, amended, modified,

supplemented, or otherwise changed except by a writing executed by the Undersigned Parties.

14. Entire Agreement. Releasors represent that they have been fully advised as to their rights and the effect of this Agreement, that this Agreement contains the entire agreement between the Undersigned Parties with regard to the matters set forth herein. This Agreement shall be binding upon and inure to the representatives, heirs, successors, and assigns of the Undersigned Parties.
15. No representation. Releasors admit that neither Releasees nor anyone on Releasees' behalf have made any promises, representations, understanding, warranties, or agreements to do or omit to do any act or thing not herein mentioned, that no representation of fact or opinion has been made other than as expressed herein to induce this Agreement, that this Agreement is made by Releasors with full knowledge of the facts and possibilities of the case and with advice of counsel.
16. Scope of Release. Releasors specifically agree that they intend and hereto do release said Releasees and/or Releasees' successors, present and former employees, officers, agents, representatives, attorneys, and assigns of and from any and all claims that they may have against said Releasees and Releasees' successors, present and former employees, officers, agents,

representatives, and assigns for any and all items of damage, whether general, special, contractual, or punitive constituting, relating to and/or arising out of claims that were brought or could have been brought in this Lawsuit.

17. Releasors' Acknowledgment, Approval by Counsel. Releasors acknowledge that they have read the terms of this Release, that its provisions are fully understood, that it has been approved by their counsel and that the same has been duly signed by Releasors as their own free act and deed.
18. Dismissal with Prejudice. Releasors further agree to cause Releasees to be dismissed with prejudice from the claims of the Releasors in the Lawsuit.
19. Choice of Law. This Agreement shall be construed and the rights of the parties determined in accordance with the laws of the State of Hawaii.
20. Captions or Headings, etc. In this Agreement, the captions or headings of paragraphs and subparagraphs are inserted for convenience, reference, and identification purposes only, and shall neither control, define, limit nor affect any provision of this Agreement; the singular shall include the plural, and the plural shall include the singular as the case may be; and the use of any one gender shall include all genders.

21. Severability. If any term, provision or covenant of this Release is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining terms, provisions, and covenants of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

22. Execution in Counterparts. This Agreement may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. If this Agreement or one or more of the signature pages hereof, as executed, is transmitted by one party to the other by facsimile, such facsimile transmission shall be deemed an executed original of such signature.

This stipulation is signed by counsel for all parties in this action. This Court will retain jurisdiction for the purpose of enforcing the Settlement Agreement.

Dated: September 26, 2013

By: /s/ Shinken Naitoh
Shinken Naitoh
Deputy Corporation Counsel
Attorney for Defendant
COUNTY OF MAUI

Dated: September 26, 2013

By: /s/ Daniel M. Gluck
Daniel M. Gluck

Lois K. Perrin
Daniel M. Gluck
ACLU of Hawaii Foundation

Attorneys for Plaintiffs

APPROVED AND SO ORDERED:



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

ACLU, et al. v. County of Maui, USDC 13-00307 LEK/KSC; STIPULATION FOR DISMISSAL WITH PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(i)(A)(2) AND 41(a)(2) AND ORDER