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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

STRATFORD GOODHUE AND
DOREEN GOODHUE,

Plaintiffs,

vs.

COUNTY OF MAUI, a municipal
corporation,

Defendant.

CIV. NO. CV14-00006 ACK 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 Plaintiff 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 parties' Settlement 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 19th day of October, 2015, by and between Plaintiffs STRATFORD GOODHUE and DOREEN GOODHUE (hereinafter referred to as “Releasers” or “Plaintiffs”) and Defendant COUNTY OF MAUI (hereinafter “County”), in connection with the case entitled, STRATFORD GOODHUE & DOREEN GOODHUE vs. COUNTY OF MAUI et al., Civil No. 14-00006 ACK/KSC, in the United States District Court for the District of Hawaii (hereinafter referred to as “Lawsuit”). By way of this Settlement Agreement, and as set forth more fully below, Plaintiffs release all claims against Defendants COUNTY OF MAUI, DARREL RAMOS, and ASBEL POLANCO (collectively, “Defendants”) as well as against Third-Party Defendants AVERY CHUMBLEY AND MAUI FAIR ALLIANCE (collectively, “Third-Party Defendants”). Defendants and Third-Party Defendants are collectively referred to herein as “Releasees.”

WHEREAS, Plaintiffs, through their attorneys, filed a Complaint in the above-referenced Lawsuit in the United States District Court for the District of Hawaii on January 7, 2014, and served same upon Defendants; and

WHEREAS, Defendants, through their attorneys, filed a Third-Party Complaint against Third-Party in the above-referenced Lawsuit on March 4, 2014, and served same upon Third-Party Defendants; and

WHEREAS, as of the Effective Date of this Agreement, Releasers may have other potential causes of action against the Releasees and/or one or more of its/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 Plaintiffs and Defendant County (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;

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

1. CONSIDERATION. The full, sufficient and complete consideration for the promises, covenants and conditions contained in this Agreement includes the following:
 - a. Dismissal of Appeal: No later than October 19, 2015, Defendants will dismiss the appeal with the Ninth Circuit Court of Appeals.
 - b. Dismissal of Third-Party Defendants: No later than October 21, 2015, Defendants will lodge with the District Court a stipulation to dismiss Third-Party Defendants with prejudice.
 - c. Dismissal of Defendants Polanco and Ramos: No later than October 23, 2015, Plaintiffs will lodge with the District Court a stipulation to dismiss Defendants Polanco and Ramos with prejudice.

- d. Training of Maui Police Department Officers. Defendant County covenants and agrees that:
- i. No later than October 28, 2015, and once annually thereafter for an additional two years, Defendant County shall issue a memorandum to all current Maui Police Department officers, explaining the requirements of *Dietrich v. John Ascuaga's Nugget*, 548 F.3d 892 (9th Cir. 2008), and *Gathright v. City of Portland, Or.*, 439 F.3d 573 (9th Cir. 2006), as well as the District Court's Order Denying Plaintiffs' Motion for Partial Summary Judgment in the instant case, as they relate to the First Amendment (specifically, that members of the public retain their First Amendment rights on property that is otherwise open to the public, even if a third party holds a permit or license for that property, subject to reasonable time, place, and manner restrictions). Defendant County shall provide a copy of this memorandum to Plaintiffs' counsel no later than October 30, 2015.
 - ii. Defendant County shall include this topic in all training sessions of prospective and/or current Maui Police Department officers that cover the First Amendment;
 - iii. Plaintiffs, and any other member of the general public, shall be permitted to hand out leaflets as provided by law.
- e. Payment: No later than thirty days after the Effective Date of this Agreement, Defendant County shall pay the sum of \$70,000.00 via one check payable to "ACLU of Hawai'i Foundation Clients' Trust Account" to be distributed as

follows: Six thousand dollars (\$6,000.00) to Plaintiff Stratford Goodhue as damages; six thousand dollars (\$6,000.00) to Plaintiff Doreen Goodhue as damages; and fifty-eight thousand dollars (\$58,000.00) as attorneys' fees and costs to be apportioned between and among Plaintiffs' counsel as Plaintiffs' counsel deems appropriate. Releasors and their attorneys have represented, and for purposes of this Agreement, Defendant County does not dispute, that the above-referenced sums allocated towards attorneys' fees and/or costs 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) arising out of or involving the interpretation of this Agreement. With regard to the sum set forth above, the County may issue an IRS Form 1099 to the ACLU and/or Davis Levin Livingston, if that is consistent with the standard practice of the County. Plaintiffs' counsel has represented that any portion of the above-referenced sum allocated towards fees and costs are paid pursuant to statutory authority, thus no IRS Form 1099 shall be issued by the Defendants or the County to the Plaintiffs for the portion allocated to fees and/or costs. The County may issue an IRS Form 1099 to the Plaintiffs for any sum paid to them as damages. Counsel for Defendant County express no opinion as to the tax consequences of the terms of this Agreement.

2. MUTUAL RELEASES

- a. By Plaintiff: Except as provided in paragraph 6 herein, Releasors hereby releases and forever discharge Releasees (including all Defendants and all

Third-Party Defendants), their departments, successors, present and former employees, officers, attorneys, agents and assigns from and on account of any and all claims, actions, causes of action, claims for relief, liability, liabilities, demands, injuries, losses, treble damages, exemplary damages, punitive damages and damages of whatever name or nature, whether known or unknown, which may now exist or which may in any manner arise or grow out of any act, omission, event or circumstances alleged in the Lawsuit.

- b. By Defendant County: Except as provided in paragraph 6 herein, Defendant County hereby releases and forever discharges Releasors, their heirs, successors, representatives, agents, attorneys, and assigns from and on account of any and all claims, actions, causes of action, claims for relief, liability, liabilities, demands, injuries, losses, treble damages, exemplary damages, punitive damages and damages of whatever name or nature, whether known or unknown, which may now exist or which may in any manner arise or grow out of any act. omission, event or circumstances alleged in the Lawsuit.
- c. “Released Claims” means any and all claims, counter-claims, demands, causes of action, rights of appeal, costs, expenses, damages, judgments, orders and liabilities of whatever kind or nature, in law, equity or otherwise, including but not limited to claims for attorneys’ fees or costs, whether now known or unknown, vested or contingent, suspected or unsuspected, that have existed or may have existed, or that do exist as of the Effective Date, that arise out of or in any way relate to or arise out of any and all claims or allegations made, or which could have been made, in the Lawsuit.

- d. Nothing contained herein is intended to prevent any Party from enforcing this Settlement Agreement.
 - e. Nothing in this Agreement shall preclude Plaintiffs or their counsel from bringing any challenge to any County policy.
3. At the time this Agreement is fully and finally executed, Defendants shall dismiss Third-Party Defendants, and Plaintiffs shall Dismiss Defendants Polanco and Ramos, as set forth *supra*. Thereafter, no later than October 30, 2015, the remaining parties to the Lawsuit (Plaintiffs and Defendant County) will execute and lodge a Stipulation of Dismissal With Prejudice and Order, pursuant to Federal Rule of Civil Procedure, Rule 41(a)(1)(ii) and 41(a)(2), which will set forth this Agreement verbatim so that the Court shall retain jurisdiction for purposes of any enforcement action arising from substantial non-compliance with this Agreement.
4. Covenant Regarding Joint Tortfeasors' Effect of Release
- 4.1. The settlement represented by this Agreement is intended by the parties hereto to be a good faith settlement as that term is used in the HAWAII REVISED STATUTES § 663-15.5. In the event that any person or entity asserts any claim or claims in the future against any Releasee arising out of the October 4-5, 2013 incidents referenced in Plaintiffs' Complaint, Releasors agree to cooperate with Releasees in any way necessary to obtain a court determination that this is a good faith settlement.
- Releasors represent that no claim, action, cause of action or claim for relief has been made or will be made by Releasors against any person, organization, or entity other than Releasees alleging liability to Releasors for injury, loss or damage resulting from the above-mentioned incidents. No such claim, action, cause of action, or claim

for relief will be made in the future without written consent of Releasees and without the Releasers first obtaining a determination by the courts that this is a good faith settlement.

4.2. It is covenanted and agreed that this Agreement shall be construed as a joint tortfeasor release and that this Agreement shall, within the meaning of Chapter 663-15.5, HAWAII REVISED STATUTES, as amended, reduce Releasers' recovery against all other joint tortfeasors by the amount stipulated in this Agreement or in the amount of the consideration paid for it, whichever is greater, all as provided in said Chapter 663, HAWAII REVISED STATUTES, as amended. This provision is intended by the parties hereto to be a third-party beneficiary contract inuring to the benefit of Releasees and any other tortfeasor liable to Releasers as a result of the aforesaid incident.

5. EFFECT OF BREACH. In the event that either party substantially breaches any other provision of the Agreement, the non-breaching party may bring a claim to enforce this Agreement. In the event of any litigation arising out of this Agreement or involving the interpretation of this Agreement, the prevailing party shall be entitled to recover its costs including reasonable attorneys' fees.

6. UNDERSTANDINGS AND AGREEMENTS. The Undersigned Parties acknowledge, agree and understand that:

a. No Admission of Liability: It is understood and agreed that this is a compromise settlement of the matters described herein and that neither this Agreement nor the furnishing of the consideration for this Agreement shall be

deemed or construed as an admission of liability or wrongdoing of any kind by any of the Undersigned Parties.

- b. Complete and Voluntary Agreement: This Agreement constitutes the entire understanding of the Undersigned Parties on the subjects covered. The Undersigned Parties acknowledge that neither of them, nor their agents or attorneys, have made any promise, representation or warranty whatsoever, either express or implied, written or oral, which is not contained in this Agreement, for the purpose of inducing the other Undersigned Party to execute this Agreement, and the Undersigned Parties acknowledge that they have executed this Agreement in reliance only upon such promises, representations and warranties as are contained herein, and are executing this Agreement voluntarily and free of any duress or coercion.
- c. Modification: This Agreement may not be modified in whole or in part except by an agreement in writing signed by the Undersigned Parties.
- d. Knowledge: The Undersigned Parties make this compromise with full knowledge of the facts, are represented by counsel, and are fully informed as to the terms, content and effect of this Agreement.
- e. Expenses, Fees and Costs: Except as otherwise provided in Section 1 of this Agreement, each of the parties shall bear all of its own costs, expenses, and fees, including attorneys' fees, incurred by the party up to and including the date of execution of this Agreement.
- f. Hawai'i Law: This Agreement shall be construed and the rights of the parties determined in accordance with the laws of the State of Hawai'i.

- g. Severability: If any term, provision or covenant of this Agreement 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.
- h. Effective Date: The releases and other provisions of this Agreement shall become effective only upon the mutual execution of this document by and between the Undersigned Parties.
- i. Additional Documents and Actions: The Undersigned Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
- j. No Party Deemed Drafter: In the event of any future action or proceedings relating to this Agreement neither of the Undersigned Parties shall be considered to have drafted this Agreement for purposes of construing the intent of this Agreement.
- k. Counterparts: This Agreement may be executed and delivered by way of electronic signature and transmission or facsimile transmission, and may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than a single counterpart containing the respective signatures of each of the Undersigned parties.

1. Authority to agree to and to execute provisions herein: The Undersigned Parties represent and warrant that they have the authority to agree to, and to execute, all the terms specified herein.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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: November 13, 2015

/s/ Daniel M. Gluck
Daniel M. Gluck
Lois K. Perrin
ACLU OF HAWAII FOUNDATION

Mark S. Davis
Michael K. Livingston
Matthew C. Winter
DAVIS LEVIN LIVINGSTON

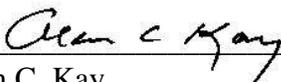
Attorneys for Plaintiffs

/s/ Richard F. Nakamura
Richard F. Nakamura
AYABE, CHONG, NISHIMOTO,
SIA & NAKAMURA
Attorney for Defendant County of Maui

APPROVED AS TO FORM:

DATED: Honolulu, Hawaii, November 16, 2015





Alan C. Kay
Sr. United States District Judge

From: hid_resp@hid.uscourts.gov
To: hawaii_cmecf@hid.uscourts.gov
Subject: Activity in Case 1:14-cv-00006-ACK-KSC Goodhue et al v. County of Maui et al Court's Certificate of Service
Date: Monday, November 16, 2015 2:28:21 PM

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

District of Hawaii

Notice of Electronic Filing

The following transaction was entered on 11/16/2015 at 2:27 PM HST and filed on 11/16/2015

Case Name: Goodhue et al v. County of Maui et al

Case Number: [1:14-cv-00006-ACK-KSC](#)

Filer:

WARNING: CASE CLOSED on 11/16/2015

Document Number: No document attached

Docket Text:

COURT'S CERTIFICATE of Service - [106] STIPULATION FOR DISMISSAL WITH PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(1)(A)(ii) AND 41(a)(2) AND ORDER served on November 16, 2015. Registered Participants of CM/ECF received the document electronically at the e-mail address listed on the Notice of Electronic Filing (NEF). (emt,)

1:14-cv-00006-ACK-KSC Notice has been electronically mailed to:

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