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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

JUNELL FAITH ALIVIADO and
JAMIQUIA GLASS,

Plaintiffs,

vs.

SHARI KIMOTO, Mainland Branch
Coordinator, Department of Public
Safety, State of Hawaii, in her
individual and official capacities;
JEANETTE BALTERO, Contract
Monitor, Department of Public Safety,
State of Hawaii, in her individual and
official capacities; TED SAKAI,¹
Interim Director, Department of Public
Safety, State of Hawaii, in his official
capacity; and DOES 1-30,

Defendants.

CIV. NO. 12-00259 SOM/BMK

[CIVIL RIGHTS ACTION]

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

¹ As the Director of the Department of Public Safety was named in her official capacity, the current Interim Director's name has been substituted for the original name (Jodie Maesaka-Hirata).

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, RELEASE AND INDEMNITY
AGREEMENT**

This Settlement Agreement (hereinafter, “Agreement”) is by and between Plaintiffs JAMIQUA TRASHELLE PETTWAY (also known as JAMIQUA GLASS) and JUNELL FAITH ALIVIADO (hereinafter collectively, “Releasors”), their heirs, representatives, successors, and assigns, and Defendants SHARI KIMOTO, JEANETTE BALTERO and TED SAKAI (hereinafter collectively, “Releasees”), in connection with the case entitled *Junell Faith Aliviado and Jamiquia Glass v. Shari Kimoto, Jeanette Baltero, and Ted Sakai*, Civil No. CV 12-00259 SOM-BMK (hereinafter, “Lawsuit”).

WHEREAS, Releasors, through their attorneys, filed an Amended Complaint in the above-referenced Lawsuit on May 29, 2012 in the United States District Court for the District of Hawaii;

WHEREAS Releasors sought and obtained a preliminary injunction order on August 2, 2012, which allowed each to marry to her fiancé; and

WHEREAS, each and every cause of action alleged in said Lawsuit has been denied by Releasees; 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;

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

1. Defendants shall pay the sum of EIGHTY-SIX THOUSAND EIGHT HUNDRED SEVENTY-ONE AND 21/100 DOLLARS (\$86,871.21) via one check payable to “ACLU of Hawaii Foundation Clients’ Trust Account” to be distributed as follows: TWENTY-FIVE THOUSAND DOLLARS AND NO/100 for Plaintiff JUNELL FAITH ALIVIADO; TWENTY-FIVE THOUSAND DOLLARS AND NO/100 for Plaintiff JAMIQUA PETTWAY; THIRTY-FIVE THOUSAND DOLLARS AND NO/100 (\$35,000) to be paid as attorneys’ fees to the American Civil Liberties Union of Hawaii Foundation (a tax exempt organization) (“ACLU”); and ONE THOUSAND EIGHT HUNDRED SEVENTY ONE AND 21/100 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, Defendants do 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, each of the Releasors understands and affirms that neither Defendants nor Plaintiffs' counsel makes any representation regarding any potential tax consequences that may arise from the monetary payments to each of the Releasors or to the ACLU, and each of the Releasors further understands and agrees that she 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 State of Hawaii will issue an IRS Form 1099 to the ACLU, if that is consistent with the standard practice of the State.

Plaintiffs' counsel has represented that these fees and costs are paid pursuant to statutory authority, thus no IRS Form 1099 shall be issued by any of the Defendants or the State of Hawaii to either of the Plaintiffs for these fees and/or costs. Counsel for the parties disagree as to the scope and applicability of *Commissioner of Internal Revenue v. Banks*, 543 U.S. 426 (2005) and cases interpreting *Banks*. Counsel for the Defendants express no opinion as to the tax consequences of the terms of this settlement agreement.

2. Defendant Ted Sakai or his successor(s) shall, within thirty (30) days of the Effective Date of this Agreement, issue an internal memorandum to

- all personnel in the Corrections Division of the Department of Public Safety (“PSD”) indicating that an inmate’s application for permission to marry should presumptively be approved unless: (a) there is a legal restriction to the marriage; or (b) the proposed marriage presents a threat to the security or the good government of the institution or to the protection of the public. A copy of this internal memorandum shall be provided to Plaintiffs’ counsel.
3. Whenever a prisoner requests an application packet (that is, any form(s) that PSD provides to prisoners who wish to get married while incarcerated), PSD shall include a copy of its current marriage policy with those application materials.
 4. In consideration for the foregoing, Releasors do hereby release and forever acquit and discharge the said Releasees, their departments, successors, present and former employees, officers, agents, and assigns from and on account of any and all claims, actions, causes of action, demands, liability, damages or expenses of any kind and 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 or related to Releasors as set forth in the Lawsuit.

5. 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. Except as set forth above, all parties will bear their own costs and attorney's fees.
6. IT IS UNDERSTOOD AND AGREED that this release is conditioned on the actual receipt of funds to be appropriated by the Legislature of the State of Hawaii during the 2013 Regular Legislative Session, and that those funds shall be paid to the Releasors or their representatives within a reasonable time after such appropriation.
7. IT IS FURTHER UNDERSTOOD AND AGREED that this agreement is conditioned upon approval by Governor Neil Abercrombie of its terms and conditions.
8. IT IS UNDERSTOOD AND AGREED that in consideration for the aforementioned payment and actions by Defendants, Releasors intend and hereby release Releasees of and from any and all claims that

Releasors has against Releasees and for any and all items of damage, whether special, general, or economic, related to the Lawsuit.

9. IT IS UNDERSTOOD AND AGREED that this payment is not an admission by Releasees of liability, negligence, breach of duty, misconduct, violation of statute, fault, and/or wrongdoing of any kind, character or nature whatsoever on the part of Releasees or their departments, present and former employees, officers, or agents with respect to any of the allegations raised, contained in or in any manner relating to the aforementioned civil action and/or the incident, but compromise and settle all actual and potential disputes between Releasors and Releasees for the purpose of avoiding further controversy, litigation and expense, and that the aforementioned payment and actions by Defendants are the final consideration for this release and agreement, and no other payment or consideration has been promised or will be paid.
10. 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. 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.

11. 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.
12. 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.

13. This Agreement shall be construed and the rights of the parties determined in accordance with the laws of the State of Hawaii.
14. 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.
15. 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”).
16. RELEASORS HEREBY STIPULATE AND AGREE, for the foregoing consideration, for their heirs and assigns, to indemnify, defend, and forever hold harmless Releasees against loss and/or liability from any and all claims, liens, judgments, costs, expenses, attorney’s fees, demands or actions, claims or actions for contribution, indemnity and reimbursement (contractual or otherwise), cross-claims and third-party claims, whether such claims or actions have merit or not, that may have or hereafter at any time may be brought against Releasees by said Releasors or by anyone acting on Releasors’ behalf, or holding by or through them, or

any third party, for damages on account of the loss or damages sustained or which may be sustained in consequence of the matters covered by this Agreement.

17. RELEASORS REPRESENT THAT they have been fully advised as to their rights and the effects of this Release, that this Agreement contains the entire agreement between Releasors and Releasees with regard to the matters set forth herein. This Agreement shall be binding upon and inure to the representatives, heirs, successors, and assigns of Releasors and Releasees.
18. RELEASORS AND RELEASEES AGREE to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
19. RELEASORS AND RELEASEES AGREE to accept facsimile signatures as if they were original signatures.
20. RELEASORS AND RELEASEES AGREE that this Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

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:

By: /s/ John F. Molay
John F. Molay

David Louie
Attorney General
John F. Molay
Caron M. Inagaki
Deputy Attorneys General
Attorneys for Defendants
SHARI KIMOTO, Mainland
Branch Coordinator, Department of
Public Safety, State of Hawaii, in
her individual and official
capacities; JEANETTE BALTERO,
Contract Monitor, Department of
Public Safety, State of Hawaii, in
her individual and official
capacities; TED SAKAI, Interim
Director, Department of Public
Safety, State of Hawaii, in his
official capacity; and DOES 1-30

Dated:

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

Lois K. Perrin
Daniel M. Gluck
Laurie A. Temple
ACLU of Hawaii Foundation

Attorneys for Plaintiffs

APPROVED AND SO ORDERED:

DATED: Honolulu, HI; May 28, 2013.



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

Aliviado, et al. v. Kimoto, et al., USDC 12-00259 SOM/BMK; STIPULATION FOR DISMISSAL WITH PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(i)(A)(2) AND 41(a)(2) AND ORDER