

NATIVE HAWAIIAN LEGAL CORPORATION

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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MAY 13 2005

at 2 o'clock and 10 min. P.M.  
WALTER A.Y.H. CHINN, CLERK

ANDREW B. SPRENGER 7681

MOSES K.N. HAIA III 6277

Attorneys for Plaintiffs

GERMAINE KAAPUNI BUSH, et al.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GERMAINE KAAPUNI BUSH, ) CIVIL NO. 04-00096 DAE/KSC  
et al., )

Plaintiffs, ) SETTLEMENT AGREEMENT;  
vs. ) CERTIFICATE OF SERVICE


STATE OF HAWAII; LINDA )  
LINGLE, in her official capacity as )  
the Governor of the State of Hawaii, )  
et al., )

Defendants. )

SETTLEMENT AGREEMENT

Plaintiffs Germaine Kaapuni Bush, et al., through their counsel, Native Hawaiian Legal Corporation, hereby files the SETTLEMENT AGREEMENT in the above-entitled matter.

Dated: Honolulu, Hawaii, May 13, 2005.

  
ANDREW B. SPRENGER  
MOSES K.N. HAIA III  
Attorneys for Plaintiffs  
Germaine Kaapuni Bush, et al.

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into between Germaine Kaapuni Bush, Richard Kapela Davis, Robert K. Desoto, Lance W. Fox, Tyrone K. N. Galdones, Teddy Haudenschild, Robert Apolo Holbron, Glenn Kaihewalu, Charles K. Kamaka, Euel Ray Kaleihau Kamauu, Shane Caminos, Raymond Evangelista, Bodi Garcia, Damien Kaahu, Raynald Ragudo, Lawrence Reyes, George Silva, Cy Foster, Mark Thornton, Paulino Verzosa, Samson Kauhi, Johathan Kaluna Lum, Bertram Mahulu, Harold Medeiros, Jr., David A. Monalim, William B. Napeahi, Peter Pauole, Jr., John Pawai, Michael Pawai, Kalai Poaha, Eddie Poai, Alexander Simeona, and Vestal Simeona, the undersigned (individually and collectively referred to as "Releasors") and State of Hawai`i ("SOH"), Linda Lingle, the Hawai`i Department of Public Safety ("DPS"), John F. Peyton, Jr., Frank Lopez, State of Oklahoma ("SOO"), Brad Henry, Oklahoma Department of Corrections, Ron Ward, Oklahoma Department of Corrections Private Prison Administration ("ODCPA"), Dennis Cunningham, Lolita Rodgers, Corrections Corporation of America ("CCA"), Diamondback Correctional Facility ("DbCF"), James Yates, Lane Blair and Jerry Parker(individually referred to by acronym and/or collectively referred to as "Releasees");

**RECITALS**

WHEREAS, the parties to this Agreement wish to compromise the disputes which have arisen, or which could arise, between them growing out of the events which occurred on or about November 21, 2003 and continuing at the Diamondback Correctional Facility, Route 2, Box 336, Watonga, Oklahoma (the "Incident"), which is the subject of the lawsuit filed by Releasors against Releasees, designated as Germaine Kaapuni Bush, et al v. State of Hawaii, et al., Civil No. CV04 00096 DAE/KSC, District Court of the District of Hawaii, (the "Lawsuit"); and

WHEREAS, Releasors and their attorney represent and warrant that there are no potential joint tortfeasors or co-obligors whose liability to Releasors for damages caused by the Incident is not released by this Agreement;

NOW THEREFORE, it is agreed by and between Releasors and Releasees, as follows:

RELEASE. In consideration of the terms and conditions stated within this Agreement and the terms and conditions of Attachment 1 that are agreed to only between Releasors and Releasees DPS, CCA and DbCF and incorporated by reference, Releasors, for themselves and for all persons and/or entities claiming by, through or under them, hereby releases, acquits and forever discharges all Releasees and their respective past, present and future heirs, executors, administrators, personal representative, guardians, departments, subsidiaries, divisions, affiliates, elected officials, officers, directors, employees, servants, agents, representatives, attorneys, insurers (including without limitation CCA), indemnitors, consultants, suppliers, partners (including shareholders of incorporated partners), members, volunteers, joint venturers, successors and/or assigns, from any and all claims, whether liquidated, contingent or uncertain, relating to or arising out of the Incidents, including but not limited to claims for bodily injury, wrongful death, emotional distress, personal injury, property damage, loss of use of tangible or intangible property, financial or economic loss, or loss of society or consortium, and including but not limited to claims arising from or relating to negligent or intentional conduct, sexual harassment, employment discrimination, professional errors or omissions, breach of duty, breach of fiduciary duty, breach of warranty, breach of contract, tortious breach of contract, "bad faith" or breach of the covenant of good faith and fair dealing, fraud or misrepresentation, retaliation, whistleblowing or violations of public policy, defamation, libel, slander or damage or injury to reputation, invasion of privacy, employee drug testing, payment of employee compensation and/or benefits, and all other claims of any nature, whether common law, statutory or equitable, and/or claims for attorney's fees and costs. This release includes, but is not limited to any and all claims, charges, demands, and causes of action of any kind whatsoever

under the U.S. Constitution, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et seq.), the Civil Rights Act of 1971 (42 U.S.C. § 1983) and the Religious Land Use and Institutionalized Person Act (“RLUIPA”), 42 U.S.C. § 2000cc-1(a) (together with all Code of Federal Regulations sections promulgated under such federal enactments), the Hawaii Constitution, Hawai‘i Civil Rights Commission (HRS Chapter 368) and Hawaii Revised Statutes §353-16.2(together with all Hawai‘i Administrative Rules promulgated under either and/or both HRS Chapters), that Releasors now have, ever had, or will have in the future, known or unknown, that resulted from, arose out of, are connected with, or are traceable either directly or indirectly with or to those arising out the Incident. This release shall be a fully binding and complete settlement between the parties to this Agreement and all parties represented by or claiming by, through or under such parties. Releasors understands that they may have suffered injuries or damages that are unknown to then at present and that unknown complications may arise in the future, and Releasors acknowledge that the above-mentioned consideration is intended to and does release and discharge any claims by Releasors in regard to such unknown and future injuries, damages and/or complications.

JOINT TORTFEASOR AND CO-OBLIGOR RELEASE. This Agreement shall reduce, to the extent of either (1) the *pro rata* share or contractual apportionment of any liability of Releasees and all persons, entities or organizations released herein or (2) the amount of the consideration paid pursuant to this Agreement, whichever is greater, Releasors’ damages recoverable against all other tortfeasors and/or obligors by reason of the Incident, whether or not the provisions of HRS Chapters 663 or 483 apply to Releasors’ claims against said other tortfeasors or obligors. Releasors acknowledge that said other tortfeasors and/or obligors are intended beneficiaries of this Agreement with the right to enforce the provisions of this paragraph.

INDEMNIFICATION. Releasors agree to indemnify and to forever hold harmless and defend Releasees and all persons, entities or organizations released herein from any and all claims arising

from, related to or connected with the Incident (including but not limited to claims based upon the indemnitee's own negligence or other fault): (1) made by any person, entity or organization claiming by, through or under Releasors; (2) seeking reimbursement of collateral source payments, including without limitation no-fault, temporary disability, workers compensation or other wage loss, medical expense or substitute service benefits, reimbursement of uninsured or underinsured motorist benefits, and/or payment or reimbursement of Department of Human Services, Medicare and/or Social Security Administration liens; and/or (3) seeking indemnity, contribution, subrogation, attorney's fees, costs or any other relief relating to, arising from or connected in any way with any liability or alleged liability arising out of the Incident.

DISMISSAL WITH PREJUDICE. Releasors agree to cause the Lawsuit to be dismissed with prejudice as against Releasees, with the provision that each party to this Agreement will bear his, her or its own attorneys' fees and costs. Releasors agree that they will be responsible for obtaining any and all approvals required by HRS §§ 346-37 or 663-10 or any other applicable statute or rule, and that any and all liens arising out of claims for payments made or indemnified from collateral sources for costs or expenses arising out of the Incident will be satisfied, if at all, out of the above-mentioned consideration. Releasors agree that if Releasors should make any claims or pursue any actions against joint tortfeasors or co-obligors to recover damages caused by the Incident, Releasors shall petition a court of competent jurisdiction for a hearing on the issue of good faith of the terms of this Agreement, pursuant to HRS § 663-15.5 (Act 300, 2001 Session Laws, Section 1).

NOT AN ADMISSION OF LIABILITY. It is further understood and agreed that this Agreement and the consideration exchanged therefor are in no way to be construed as an admission of liability by any person or entity whomsoever, but are to be construed strictly as a compromise of contested claims in order to avoid the time, expense, publicity and intangible costs, including emotional

distress and uncertainty, inherent in litigation. This Agreement is subject to the provisions of Rules 408 of the Hawai'i and Federal Rules of Evidence.

GOVERNING LAW, CHOICE OF FORUM. This Agreement shall be applied, interpreted and construed in accordance with the substantive laws of the State of Hawai'i, without regard to any choice of law principles. The parties agree that the forum for the resolution of any disputes concerning any aspect of this Agreement, including but not limited to the validity of this Agreement, the interpretation or construction of any of its terms, or any alleged breach of its provisions, shall be exclusively in the state of Hawai'i.

NOT AN ACT SUBMITTING TO PERSONAL JURISDICTION. The parties to this Agreement expressly acknowledge and agree that by entering into and executing this Agreement and Attachment #1, Releasees do not subject themselves to the jurisdiction of any court of the United States of America or of any state, territory or possession thereof, including but not limited to the state of Hawai'i, and Releasors expressly waive their ability and right, if any, to allege this Agreement and Attachment #1 as a basis for the exercise of personal jurisdiction over Releasees by any court of the United States of America or of any state, territory or possession thereof, including but not limited to the state of Hawai'i.

COUNTERPART/FACSIMILE EXECUTION. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; however, all such counterparts shall constitute but one and the same instrument, notwithstanding the fact that all Parties are not signatories to an original or the same counterpart. For all purposes, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document. A facsimile signature to this Agreement shall be deemed to be and may be relied upon as an original for all purposes. Likewise, facsimile transmission by the executing party of an executed counterpart of this Agreement shall be deemed delivery of an original, executed counterpart.

ENTIRE AGREEMENT. This Agreement and Attachment 1 (incorporated by reference) contains the entire agreement of the parties and supersedes any and all prior or contemporaneous discussions, agreements, representations, and warranties. The terms of this Agreement and Attachment 1 are contractual and not a mere recital. The terms of this Agreement and Attachment 1 have been negotiated and for purposes of construction or interpretation of this Agreement and Attachment 1, no party shall be deemed to have been its author or drafter.

ACKNOWLEDGMENTS. Releasors acknowledge, represent and warrant that they are the Plaintiffs in the Lawsuit and the sole legal owners and holders of all claims and rights hereby released, and that all court approvals necessary to make the terms of this Agreement and Attachment 1 binding upon Releasors have been obtained. Releasors acknowledge that the terms of this Agreement and Attachment 1 have been read, that its provisions are fully understood and are binding upon Releasors' successors and assigns, that it has been approved by Releasors' counsel, and that it has been duly signed by Releasors as their free acts and deeds.

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DATED: Honolulu, Hawaii, \_\_\_\_\_, 2004.

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Attorney for RELEASORS

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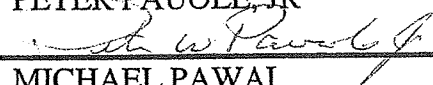
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DATED: Honolulu, Hawaii, \_\_\_\_\_, 2004.

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ANDREW B. SPRENGER

Attorney for RELEASORS

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RAYNALD RAGUDO

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KALAI POAHA

\_\_\_\_\_  
ALEXANDER SIMEONA

DATED: Honolulu, Hawaii, \_\_\_\_\_

MAY 13 2005

*Andrew B. Sprenger*  
\_\_\_\_\_  
ANDREW B. SPRENGER

Attorney for RELEASORS

ATTACHMENT #1

1. For purposes of constitutional claims based on the denial of religious activities raised by Plaintiffs under the U.S. Constitution, First Amendment and the Hawaii Constitution, Article 1 §4, Defendants Department of Public Safety ("DPS"), Corrections Corporation of America ("CCA") and Diamondback Correctional Facility ("DbCF") recognize the Native Hawaiian Religion. The Plaintiffs and Defendants DPS, CCA and DbCF agree that the religious tenets of NHR and its application in particular situations are subject to determination by the relevant parties on a case-by-case basis.

2. Any of the Plaintiffs wanting to practice NHR at any DPS and/or CCA operated prison facilities agree that they must initiate or apply through the appropriate administrative process applicable to each facility in order to practice and participate in any religious activities associated with NHR. The request and/or application will be subject to the same review, scrutiny, restriction, conditional approval and/or rejection afforded other similar requests by the reviewing facility's administrative staff. Furthermore, the Plaintiffs agree that any subsequent or future request(s) at DbCF, including but not limited to the present and subsequent Makahiki Festivals, will be subject to review, scrutiny, restriction, conditional approval and/or rejection on a case by case basis by the appropriate prison facility's administrative staff.

3. Defendant DPS, CCA and DbCF recognize that the Makahiki is a Native Hawaiian Holiday.

4. For the purposes of the 2004-2005 Makahiki Festival, DbCF has agreed to allow the Makahiki Festival for 2005 to proceed on November 17, 2004. The Plaintiffs and DbCF agree that the Makahiki Festival for 2005 will be subject to the following terms and conditions:

a. DbCF and Plaintiffs have agreed that Plaintiffs will assemble in an open and/or enclosed area designated by DbCF for the opening (1 day) and closing (1 day) ceremony to witness the rising sun between 6:30 a.m. to 7:30 a.m. and to recite and conduct Hawaiian prayers, processions, chants and dances. The Plaintiffs further agree that they will then assemble in an area designated by DbCF between 6:30 p.m. to 9:00 p.m. on both days to participate in an opening and closing feast. Notwithstanding the terms within #c, there will be no special foods served or guests allowed during the opening and closing feast.

b. DbCF and Plaintiffs have agreed that Plaintiffs may construct a small altar and image of Lono from approved cardboard/paper materials approved by DbCF for the opening and closing ceremony.

c. DbCF and Plaintiffs agree neither DbCF or CCA will purchase poi or any special foods for the Makahiki Festival through its commissary but will agree to dispense poi if the Plaintiffs or any other entity supplies and pays for the costs of purchasing and shipping of the poi to the facility. The poi will be dispensed to the Plaintiffs at the closing day feast by DbCF staff.



d. DbCF and Plaintiffs have agreed that no musical instruments may be played at any "outside" location during the Makahiki Festival's opening and closing day. However, Plaintiffs may use/sound the "Pu"(conch shell) at the outdoor location once at the opening and closing of the Makahiki Festival. The Plaintiffs may also have access to the indoor use of an "Ipu" (gourd) during the opening and closing ceremonies.

e. The Plaintiffs have agreed that all of the above Makahiki activities are to be facilitated by a religious volunteer trained and approved by DbCF or will be subject to continuous and/or intermittent observation and/or videotaping by a DbCF staff member.

5. The Plaintiffs agree that the Makahiki activities enumerated in paragraph 4a through 4e are subject to present and future review and that DbCF reserves the right to prohibit and/or stop any activity that is or becomes contrary to a legitimate penological purpose or is deemed non-conducive to a peaceful and orderly prison environment.

6. DbCF and Plaintiffs have agreed that Plaintiffs, who are practitioners of the Native Hawaiian Religion, may meet one time a week for one hour to practice the Native Hawaiian Religion consistent with DbCF's current policy and practice. The time and place of the one hour meetings will be determined by DbCF. The Plaintiffs agree that the one hour weekly meeting is to be facilitated by a religious volunteer trained and approved by DbCF or will be subject to continuous and/or intermittent observation and/or videotaping by a DbCF staff member. DbCF and Plaintiffs agree that DbCF has the right to prohibit and/or stop any activity that is or becomes contrary to a legitimate penological purpose or is deemed non-conducive to a peaceful and orderly prison environment.

7. In exchange for the above, the Plaintiffs will agree to execute a Stipulation for Dismissal with Prejudice with each party to bear their own fees and costs as well as execute a Settlement Agreement which has been drafted by Defendant CCA.. The Court will retain jurisdiction over the terms and conditions of the settlement agreement.

8. With the exception of the recognition of the Native Hawaiian Religion as stated in Paragraph 1, the Plaintiffs agree that the remaining terms and conditions of this Agreement in no way legally and/or contractually binds and/or infers any future enforceable legal and/or contractual obligation, whatsoever, against Defendants DPS, CCA and Diamondback or any other entity nor does it create or bestow any present or future enforceable legal and/or contractual benefit and/or third-party benefit, whatsoever, upon the Plaintiffs and/or any other individual.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

|                                      |   |                            |
|--------------------------------------|---|----------------------------|
| GERMAINE KAAPUNI BUSH,               | ) | CIVIL NO. 04-00096 DAE/KSC |
| et al.,                              | ) |                            |
|                                      | ) | CERTIFICATE OF SERVICE     |
| Plaintiffs,                          | ) |                            |
| vs.                                  | ) |                            |
|                                      | ) |                            |
| STATE OF HAWAII; LINDA               | ) |                            |
| LINGLE, in her official capacity as  | ) |                            |
| the Governor of the State of Hawaii, | ) |                            |
| et al.,                              | ) |                            |
|                                      | ) |                            |
| Defendants.                          | ) |                            |

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date indicated below, a true and correct copy of the SETTLEMENT AGREEMENT, was duly served upon the following parties by hand-delivery or by U.S. Mail, postage prepaid to their last known address:

Bryan C. Yee, Esq.  
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Diamondback Correctional Facility

By Hand-Delivery


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Pro Hac Vice Counsel for  
Oklahoma Defendants

By U.S. Mail

DATED Honolulu, Hawaii, May 13, 2005.



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Attorneys for Plaintiffs  
Germaine Kaapuni Bush, et al.