

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RICHARD KAPELA DAVIS, ET AL.,)	
)	CASE NO. CV11-00144LEK-BMK
Plaintiffs)	
)	
vs.)	May 14, 2015
)	3:56 p.m.
CORRECTIONS CORPORATION OF)	
AMERICA, ET AL.,)	
)	
Defendants.)	U.S. District Court
)	300 Ala Moana Boulevard
)	Honolulu, Hawaii 96850
)	

TRANSCRIPT OF SETTLEMENT TERMS ON THE RECORD
BEFORE THE HONORABLE BARRY M. KURREN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiffs:	NATIVE HAWAIIAN LEGAL CORPORATION
	By: SHARLA ANN MANLEY, ESQ.
	1164 Bishop Street, #1205
	Honolulu, HI 96813

For Plaintiffs:	LAW OFFICES OF HOWARD K. LUKE
	By: HOWARD K. LUKE, ESQ.
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For Defendants:

ROECA LURIA & HIRAOKA
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For Defendants:

STRUCK WIENEKE & LOVE, PLC
By: RACHEL N. LOVE, ESQ.
3100 West Ray Road, #300
Chandler, AZ 85226

1 MAY 14, 2015 3:56 P.M.

2 THE CLERK: All rise. The United States District
3 Court, for the District of Hawaii, with the Honorable Barry M.
4 Kurren, United States Magistrate Judge presiding is now convened.
5 You may be seated.

6 Calling case number CV11-00144LEK-BMK, Richard Kapela
7 Davis, et al. v. Corrections Corporation of America, et al. This
8 hearing is called for a settlement on the record. Counsel,
9 please make your appearances.

10 MS. MANLEY: Sharla Manley for the plaintiffs.

11 MR. LUKE: Good afternoon, Your Honor, Howard Luke also
12 for the plaintiffs.

13 THE COURT: Yes, good afternoon.

14 MS. LOVE: Rachel Love for defendants.

15 MS. LURIA: And April Luria for defendants.

16 THE COURT: Good afternoon. So I understand we have
17 now reached an agreement. This, of course, will be subject to
18 the consent of members of the class, the plaintiffs. We've
19 discussed this at length during our settlement conference this
20 afternoon, but perhaps this would be a good opportunity to put
21 the material terms of the agreement on the record.

22 I know that some work will be required to finalize a
23 number of the details, but we should put the parameters of this
24 on the record at this time, so that we can be set in place, and
25 then, of course, call off the dogs on our trial prep, and trial

1 date, and the like.

2 MS. LOVE: Thank you, Your Honor. Subject to approval
3 by the class representatives, the plaintiffs and as to one
4 component, subject to approval by the Hawaii Department of Public
5 Safety, as to memorializing the terms into guidelines that would
6 govern SEC operations, the parties have reached a proposed
7 resolution as to the following.

8 The terms of this will be subject to Rule 23, which
9 will require a court approval --

10 THE COURT: Yes.

11 MS. LOVE: -- of the proposed settlement, a fairness
12 hearing, and notice to the parties.

13 Today, the parties agreed -- and if I ever say
14 something wrong or that you do not believe we agreed to, please
15 jump in from the plaintiffs' side.

16 THE COURT: Yes.

17 MS. LOVE: The parties have agreed that as to Saguaro
18 Correctional Center operations pertaining to registered Native
19 Hawaiian inmate practitioners, that Native Hawaiian practitioners
20 who are registered -- and that will be the same for all of these.
21 All operations will apply to registered Native Hawaiian
22 practitioner inmates -- general population and protective custody
23 inmates may retain kihei and malo, one each, in their cell for
24 in-cell use only.

25 They shall be, pursuant to normal procedures relating

1 to the lava-lava, which is already permitted to be stored in a
2 gallon Ziploc bag in the inmate's property in the cell with the
3 inmates name and number. When not in use for religious purposes,
4 the items will be stored in the inmate's respective locker. All
5 items are subject to search and handling by officers in the
6 normal course of facility operations and searches.

7 As to the agreement that general population and
8 protective custody inmates may retain kihei and malo in-cell is
9 of the agreement of the parties that these two items will be made
10 by the Native Hawaiian practitioners in their programming classes
11 that are permitted each Wednesday. One is the hula class, the
12 other the ritual and chant class.

13 The parties will work together to find a vendor for the
14 materials that will be purchased by Saguaro Correctional Center.
15 Each inmate who desires to retain one of these items may then pay
16 their pro rata share of the fabric through their inmate account
17 to pay for the item. Donations as to kihei and malo will be
18 restricted and the source and vendor will be subject to approval
19 by the Saguaro Correctional Center.

20 As to inmates who currently retain a lava-lava in their
21 cells, those will be grandfathered into the process, and they may
22 retain those. As to any inmates who in the future request a
23 lava-lava, they will go through the same process whereby the
24 facility will purchase fabric and they can be made in the
25 programming classes.

1 As to the allowance of inmates to possess -- and this
2 would be general population or protective custody inmates -- to
3 possess bamboo nose flutes, the process that is being currently
4 put into place by the Saguaro Correctional Center, which is a
5 loaner system where an inmate may check out for a weeklong basis,
6 subject to any restriction as to an individual based upon safety
7 and security. There are six nose flutes at the facility
8 available -- that will be available for checkout. SCC agrees to
9 purchase from a vendor, six additional nose flutes that will be
10 permitted for the checkout process.

11 The in-cell retention list will be posted in the
12 chapel. Additionally, Saguaro Correctional Center will add the
13 in-cell retention list to Policy 14-6, in the space that allows
14 for specific protocols as to the Saguaro Correctional Center.

15 If any inmate changes their religion from the Native
16 Hawaiian religion, then they are no longer allowed to possess the
17 in-cell items and those will be dealt with the normal property
18 protocols.

19 As to amulets, those will be allowed to be possessed by
20 the inmates at the facility as to all security levels. There
21 will be a choice of five for the Native Hawaiian practitioners.
22 The parties will work together to identify one to two sources and
23 vendors whereby, the same process, the facility will order the
24 amulets for the inmate. The inmate will pay for the amulet out
25 of his inmate account and the five shapes will be subject to

1 approval by the facility as to shape and security issues. The
2 parties will work together on that.

3 The facility also agrees -- Saguaro Correctional Center
4 also agrees to continue to implement the process already
5 currently being implemented whereby general population and
6 protective custody inmates only may possess a small amount of
7 coconut oil. The facility will source the coconut oil in bulk
8 form from a Hawaiian company. It will then be parsed out into
9 squeeze bottles for the individual inmates, and they make the
10 request for that just as they do for amulets or any other item.

11 The inmates will pay for their pro rata portion of the
12 oil and the process will be put into place for replenishing of
13 the oil just like the salt process. When I say just like, it may
14 be a little bit different as to frequency based upon how many
15 ounces are allowed.

16 THE COURT: Yes.

17 MS. LOVE: The parties agree that as to any of the
18 programming that are agreed to by the parties that those will be
19 implemented within 60 days of final settlement.

20 Saguaro Correctional Center will continue to provide
21 salt to the registered Native Hawaiian practitioners as it
22 currently does.

23 As to items for communal use that are in the chapel,
24 SCC will not authorize donations. However, if -- of additional
25 items at this time. However, on an individualized basis, if a

1 communal chapel item becomes broken, unusable, or in need of
2 replacement, then a request can be made and the facility will
3 work with the inmate population to identify a source and/or a
4 vendor for that item. It will be considered on a case-by-case
5 basis as to that individual item.

6 The facility also agrees to publish a communal items
7 list for the general population Native Hawaiian practitioners to
8 be posted in the chapel. Additionally, that will be added to
9 Policy 14-6 in the spot that is unique and specific to the
10 Saguaro Correctional Center.

11 As to outdoor worship by the general population, Native
12 Hawaiian practitioners, Saguaro Correctional Center agrees that
13 six times a year the inmates who are in the Wednesday ritual
14 class will be permitted to have their class outdoors for 1.5
15 hours, which is the total class time.

16 If there is a situation where the inmates elect, as a
17 group, not to go out that day, then that can be accommodated and
18 documented. However, it will be a situation where the whole
19 class goes out or the whole class stays in versus individuals
20 electing to go in or out.

21 The general -- for the general population, the
22 facility's current processes with respect to Makahiki, both
23 opening and closing each year, two solstice celebrations and two
24 equal equinox programs or celebrations will continue as they do
25 currently.

1 Next, we speak about the Native Hawaiian practitioners
2 who are in protective custody at the Saguaro Correctional Center.
3 The protective custody inmates may retain the same in-cell items
4 as the general population inmates.

5 The registered protective custody Native Hawaiian
6 practitioners may meet once a week in a group and that is a group
7 of protective custody inmates. They will meet once a week in a
8 secure location to be determined by the facility and subject to
9 change during -- due to operations and staffing limitations.

10 The general -- or, I'm sorry -- the protective custody
11 inmates who meet once a week for 1.5 hours, will also be provided
12 access to chapel items in a restricted number and the chaplain
13 and the inmates will work on a list of items that will be taken
14 from the chapel to the protective custody inmates for their
15 weekly gathering, of a reasonable size and amount that can be put
16 on a cart and taken to their location.

17 The parties agree that this will be a list that is
18 primarily consistent and what we are speaking of is to guard
19 against the situation where each week a new list is provided.

20 Protective custody inmates who are Native Hawaiian
21 practitioners at the Saguaro Correctional Center may have a
22 limited opening and closing Makahiki with their protective
23 custody group to take place for operational reasons within a few
24 days of the general population's Makahiki celebration. The
25 location is at the discretion of the facility due to operational

1 and staffing needs.

2 The general -- I'm sorry -- the protective custody
3 Makahiki will be provided the same food offerings that the
4 general population Makahiki is provided and the Makahiki will be
5 supervised by the chaplain and/or a volunteer spiritual advisor
6 where available.

7 The segregation inmates at Saguaro Correctional Center,
8 which include administrative and segregation status, as well as
9 the SHIP Program, which is the Special Housing Incentive Program,
10 steps 1, 2, and 3 is the following category. SHIP and
11 segregation inmates shall be permitted in-cell retention of
12 amulet, sea salts, written materials, and a choice of one of the
13 following: lava-lava, malo, or kihei.

14 The parties will work together to decide, whether the
15 choice of three, whether it's the lava-lava, malo, or kihei, will
16 decide which one it will be, but this will be standard among all
17 inmates, versus that situation where each inmate gets to pick one
18 of the three, it will be standard for all. For safety and
19 security reasons, SHIP and segregation inmates will not be
20 permitted to possess coconut oil or bamboo nose flutes.

21 SHIP and segregation inmates shall have access to a
22 volunteer spiritual advisor upon request and subject to
23 availability and agreements of this volunteer spiritual advisor
24 to provide services to the SHIP and segregation inmates. SHIP
25 and segregation inmates shall make a request to the chaplain,

1 which is the normal process, if they desire to communicate or
2 have an interaction with a volunteer who comes to the facility.

3 As to segregation, and SHIP 1 inmates, and Makahiki,
4 they will be allowed a restricted and limited Makahiki based upon
5 safety, security, and security level concerns.

6 The chaplain will provide notice to the Native Hawaiian
7 practitioners in segregation and SHIP 1, approximately two weeks
8 in advance of a Makahiki -- that Makahiki is going to happen and
9 whether a spiritual advisor is available. If there is a
10 spiritual advisor available, the inmate may make a request to
11 meet with the spiritual advisor, and the spiritual advisor may
12 conduct a -- may meet with the inmate through the cell door for
13 approximately 15 to 20 minutes for ministry, prayers, and chants
14 that are non-destructive to the rest of the operations.
15 Additionally, ceremonial food offerings will be administered
16 through the cell food slot.

17 At the inmate's request, which must be made in writing,
18 pursuant to normal protocols at the facility, the inmate may
19 receive a Makahiki meal, the same one that is provided to the
20 general population on the day of the Makahiki.

21 As related to Makahiki, opportunities for SHIP 2 and 3
22 inmates at the Saguaro Correctional Center, again, they will be
23 provided the same notice as the segregation and SHIP 1 inmates as
24 to upcoming Makahiki and whether there will be a spiritual
25 advisor available. If there is a spiritual advisor available and

1 the spiritual advisor agrees that they want to go to SHIP 2
2 and/or 3, then the registered practitioners in that pod will be
3 able to -- and when I say in that pod, SHIP 2 will do its own,
4 and then SHIP 3 will do its own, because they do not mix -- the
5 inmates who have made a written request will be permitted to come
6 out of cell and gather in the dayroom with the volunteer.

7 The chaplain will also be available at this, and they
8 may chant and pray in a non-disruptive manner. Ceremonial food
9 offerings may be administered to the inmates and if the inmate
10 makes a written request, the inmate may be provided -- or will be
11 provided a Makahiki meal to eat in his cell, the same Makahiki
12 meal that is provided to the general population.

13 And when I say Makahiki meal, both parties understand
14 that those are not special foods or a feast. It is a situation
15 as is current at the facility where those enjoying the Makahiki
16 opportunities are provided a different meal than the general
17 population. That's usually extra food and some extra dessert.

18 All participation in all programming by Native Hawaiian
19 practitioners is subject to individual restriction based upon
20 individual histories or behaviors of an inmate that may pose a
21 safety, security, or operational risk, but that will be
22 determined on an inmate by inmate basis.

23 If an inmate changes his religion from the Native
24 Hawaiian practitioner, then they are not -- they do not have the
25 opportunities for programming or property allowed to the Native

1 Hawaiian practitioners in the normal course as is the same for
2 all other inmates.

3 None of the operational -- none of the operations that
4 I have just spoke of apply to any Hawaii Department of Public
5 Safety facility, they apply to Saguaro Correctional Center
6 exclusively.

7 It is the understanding of the parties that the
8 plaintiffs will waive all damages claims. The parties agree
9 there will not be a consent decree, and there will not be
10 monitoring, and the Court will not retain jurisdiction of the
11 Court -- or jurisdiction of the matter. However, the parties
12 will work together to come to an agreement as -- for defendants
13 to provide plaintiffs opportunity and notice that the agreed upon
14 programming and operations are in place.

15 It is the parties' agreement that the entire class will
16 release all claims due to this proposed resolution. The parties
17 have agreed to a joint press release, which will be issued at the
18 finalization and approval of the Court of the resolution of this
19 matter. The parties agree that in the interim, there will not be
20 press related to the pending proposal until it is approved by the
21 Court, and then by joint press release.

22 And, finally, the parties agree that subject to Rule
23 23, that all of those procedures that apply to this class as to
24 resolution of the case, including court approval of the proposed
25 resolution, a fairness hearing, and notification to the class

1 will be adhered to and as ordered by the Court. I believe I've
2 covered it.

3 THE COURT: Anything else?

4 MS. MANLEY: I just want to be crystal clear that for
5 the men in SHIP and administrative segregation, in addition to
6 choosing one sacred garment, either the malo, kihei, or lava-
7 lava, they will also have in-cell an amulet, the pa'akai, and
8 written religious materials like chants or genealogies.

9 MS. LOVE: Yes, you are correct.

10 MS. MANLEY: Okay.

11 MS. LOVE: Okay. And, also, I believe I forgot this
12 portion of this, which is the monetary agreements of the parties.

13 THE COURT: Oh, yes, right. Right.

14 MS. LOVE: That to resolve the case CCA agrees to pay
15 costs incurred by the Native Hawaiian Legal Corporation in the
16 amount of \$70,000.

17 THE COURT: Yes.

18 MS. LOVE: All parties to bear their own fees and their
19 own costs --

20 THE COURT: Right.

21 MS. LOVE: -- except for the \$70,000, that CCA will pay
22 to the Native Hawaiian Legal Corporation.

23 THE COURT: Okay. Anything else that's been omitted?

24 MS. MANLEY: Nothing further, Your Honor.

25 THE COURT: Okay. So terrific. This is an agreement

1 that you all have reached, and I know the defendants are fully on
2 board with this. All we need to do is to get the class
3 representatives to agree, and then of course notice out to the
4 class.

5 So at this point, I believe we have enough of an
6 agreement to stop the process of preparing for trial and that's
7 one of the incentives, of course, to, you know, reach this
8 agreement at this time. So I'll go ahead and vacate all of the
9 deadlines that are approaching with respect to trial. Why don't
10 we just hold on to the trial date for a few more days to see what
11 they have to say on Tuesday, although, you know, I'm confident
12 we're just going to go ahead and just vacate everything then.

13 So that's what I would suggest right now, so you don't
14 have to do -- I know what you've been doing around the clock
15 right now. We're going to put that to a halt, and we'll get word
16 on Tuesday, which I -- you know, I'm quite hopeful will be
17 positive, based on the representations that have been made here,
18 and then I think we're good to go, and we'll just set a new
19 process time, and place.

20 I don't know if you have any idea of when we can
21 actually be at a point where we have, you know, the agreement in
22 place, and we, you know, can then go ahead, and send out the
23 notice and the like for purposes of the fairness hearing. Have
24 you thought about that at all yet or do you want to give that
25 some further thought, and then we'll get back together maybe

1 sometime next week to sort of figure that out?

2 MS. MANLEY: I think if we could set another status
3 conference.

4 THE COURT: No, that's what I'm going to do for sure.
5 Right.

6 MS. MANLEY: And by then, I think we'll have a clear
7 idea.

8 THE COURT: And I'm thinking maybe we ought to have a
9 status conference like around Wednesday of next week.

10 MS. LOVE: Sure.

11 THE COURT: And if you want to participate by phone or
12 -- yes, okay.

13 MS. LOVE: Thank you.

14 THE COURT: That would be fine. Right, right. Let's
15 go see if we can set something up.

16 THE CLERK: Okay. Wednesday, at 10:00.

17 THE COURT: Does that work for everyone?

18 MS. MANLEY: Yes, we're available.

19 MR. LUKE: Uh-huh.

20 THE COURT: Okay.

21 MS. LOVE: Yes, Your Honor.

22 THE COURT: Very good. Okay. I want to thank you very
23 much for the hard work that you put in today and cooperation, the
24 compromises that you've made all the way around to resolve this
25 case, and I think it's clearly in the best interest of all of the

1 parties. So thank you very much for doing this. Okay.

2 MR. LUKE: Our thanks to the Court.

3 MS. LOVE: Thank you to the Court as well. Thank you,
4 Your Honor.

5 THE CLERK: All rise.

6 (Proceedings Concluded)

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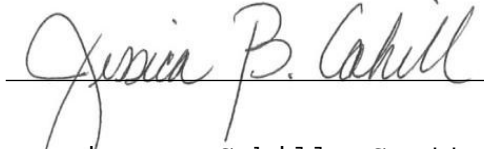
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CERTIFICATE

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Dated: June 2, 2015



Jessica B. Cahill, CET**D-708