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FIRST CIRCUIT COURT  
 STATE OF HAWAII  
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Attorneys for Defendants  
 City and County of Honolulu,  
 Jeremy Harris and Jan N. Sullivan

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KAIMANA BEACH COALITION, an )  
 unincorporated association; and )  
 RICHARD S. BERNSTEIN, )

Plaintiffs, )

vs. )

CITY AND COUNTY OF HONOLULU; )  
 JEREMY HARRIS; JAN N. SULLIVAN; )  
 JOHN DOES 1-10; JANE DOES 1-10; )  
 DOE BUSINESS ENTITIES 1-10; and )  
 DOE GOVERNMENTAL ENTITIES 1- )  
 10, )

Defendants. )

CIVIL NO. 99-0-002440 (GWBC)  
 (Other Civil Action)

STIPULATED JUDGMENT

*kaimana/sj*



I do hereby certify that this is a full, true, and correct copy of the original on file in this office.

*[Signature]*  
 Clerk, Circuit Court, First Circuit

## STIPULATED JUDGMENT

IT IS HEREBY STIPULATED, by and between the parties to this case, that judgment be entered as follows:

A. Defendant City and County of Honolulu (the "City") agrees to be hereby enjoined from engaging in construction, restoration or repair activity of the "ocean-based" portion of the Waikiki War Memorial and Natatorium Restoration Project (the "Restoration Project"), except as may be necessary to ensure public health and safety, or as otherwise provided in paragraph C below. As used herein, the terms "land-based portion" and "ocean-based portion" which together comprise the entire Restoration Project, shall have the meanings given to those terms in paragraph 23 of the Findings of Fact in the Court's Findings of Fact and Conclusions of Law and Order dated and filed herein on August 4, 1999 ("the August 4, 1999 Order").

B. The City agrees to be also hereby enjoined from increasing the intensity or frequency of any City-approved or permitted public functions, events, or activities at the Restoration Project, except for the increased public use of the bathrooms and locker room facilities, beyond levels which existed prior to July 15, 1999.

C. The prohibitions contained in paragraphs A and B above shall terminate upon the occurrence of all of the following events:

- (i) the State Department of Health adopts new swimming pool rules specifically applicable to saltwater pools; and
- (ii) the City provides Plaintiff with a sworn declaration by Frans Gerritsen, Ph.D., Patrick Sullivan, Ph.D., P.E., Oceanit Laboratories, **or** Ross Tanimoto, P.E., City Department of Environmental Services, that the operation of the ocean-based



portion of the Restoration Project if constructed as designed could comply with the applicable State Department of Health swimming pool rules.

D. Defendant City shall be permitted to engage in the construction, restoration or repair of the “land-based” portion of the Restoration Project.

E. The City agrees to be hereby enjoined from violating any applicable federal, state and county law, ordinance and permit in the construction and operation of the swimming pool at the Restoration Project.

F. As long as the City provides public parking spaces within the Restoration Project, the City shall post signs indicating that all parking areas within the Restoration Project are open for parking until 7:30 p.m., except that such signs can be removed and parking hours changed as may be necessary to ensure public health and safety, and for periods of time in which the City engages in construction, restoration or repair activities at the Restoration Project or nearby areas. The City shall retain any and all rights it may have to reconfigure, reduce, eliminate, or otherwise change the public parking available at the Restoration Project.

G. Plaintiffs may bring proceedings to enforce any of the provisions contained in this Stipulated Judgment, provided that Plaintiffs may not bring proceedings to enforce the provisions set forth in Paragraph E unless Plaintiffs allege a violation of law, ordinance or permit by the City other than: (1) a violation of Chapter 11-13A, Hawaii Administrative Rules, entitled “Public Swimming Pools” in effect on or before August 31, 2000; or (2) a violation of the SMA permit for the Restoration Project or HRS Chapter 205A based upon non-compliance with any government requirements, approvals and/or permits in effect on or before August 31, 2000.


H. Any and all of Plaintiffs' claims for relief against the City other than the relief herein provided are hereby dismissed with prejudice. All claims are hereby dismissed with prejudice as to the individual Defendants in both their individual and official capacities. The Court shall retain jurisdiction to enforce this Stipulated Judgment against the City, but not as against any other Defendant(s).

I. Each party shall bear their own respective fees and costs incurred to date. Provided, however, in any proceeding to enforce the provisions of this Stipulated Judgment fees and costs may be awarded to the prevailing party.

Dated: Honolulu, Hawaii, September 8, 2000.

  
JAMES J. BICKERTON  
Attorney for Plaintiffs

DAVID Z. ARAKAWA  
Corporation Counsel

By   
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GARY Y. TAKEUCHI  
Deputies Corporation Counsel  
Attorney for Defendants City  
and County of Honolulu,  
Jeremy Harris and  
Jan N. Sullivan

APPROVED AND SO ORDERED:

GARY W. B. CHANG

Judge of the Above-entitled Court



STIPULATED JUDGMENT; Kaimana Beach Coalition, an unincorporated association; and Richard S. Bernstein v. City and County of Honolulu, et al., Civil No. 99-002440 (GWBC)