

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

NA LEI ALII KAWANANAKOA, a)
Hawaii nonprofit corporation; and)
ROYAL HAWAIIAN ACADEMY)
OF TRADITIONAL ARTS, a)
Hawaii nonprofit corporation,)

Plaintiffs,)

vs.)

BISHOP MUSEUM, a Hawaii)
nonprofit corporation; HUI)
MALAMA I NA KUPUNA 'O)
HAWAII NEI, a Hawaii nonprofit)
corporation; JOHN DOES 1-50;)
JANE DOES 1-50; DOE)
CORPORATIONS 1-50; DOE)
PARTNERSHIPS 1-50; DOE)
GOVERNMENTAL ENTITIES 1-)
10; and OTHER DOE ENTITIES 1-)
50,)

Defendants.)

CV. NO. 05-00540 DAE-KSC

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 28 2005

at 11 o'clock and 26 min. AM
SUE BEITIA, CLERK

ORDER FINDING EDWARD HALEALOHA AYAU, PUALANI
KANAKA'OLE KANAHELE, WILLIAM AILA AND ANTOINETTE FREITAS
IN CONTEMPT OF COURT

Nearly four months ago, on September 7, 2005, this Court granted
Plaintiffs' Motion for a Preliminary Injunction. In that order, the Court noted that
Plaintiffs had raised a serious question as to whether the Native American Graves

Protection and Repatriation Act (“NAGPRA”) had been violated since the NAGPRA Review Committee twice found that no valid repatriation of the items that were eventually loaned by the Bishop Museum to Defendant Hui Malama I Na Kupuna O Hawai’i Nei (“Hui Malama”) had occurred. Thus, this Court held that the loan of the items had to be recalled so that the repatriation process may validly continue and ordered Hui Malama to either return the items itself, or cause the items to be returned through some other means. Hui Malama was also required to disclose to the Court, Plaintiffs, and its co-Defendant Bishop Museum the location of the items that were loaned, and confer with Plaintiffs and Defendant Bishop Museum to ensure that all parties had the ability to be present and monitor the removal of the items from the cave(s).¹

Hui Malama appealed the decision. The Ninth Circuit Court of Appeals issued a stay pending its decision on the merits. On December 12, 2005, the Ninth Circuit affirmed this Court’s granting of the preliminary injunction and vacated the stay.

On December 20, 2005, this Court held a status conference and ordered Hui Malama to file and serve under seal the following information:

¹At that time, Hui Malama had represented that the items were located in only one cave. At the status conference held on December 20, 2005, however, Hui Malama represented that the items are located in two caves.

- a) A full and specific inventory of each and every item loaned to it by the Bishop Museum;
- b) The precise location of each and every item loaned to it by the Bishop Museum. The location must be described in as much detail as possible. For example, by providing a map with a legend depicting exactly which items are in which caves, and/or on an item by item basis, delineating whether the item is in a cave, identifying the name of the cave, and providing the GPS coordinates for that cave. If the item is not located in a cave, Hui Malama shall provide the location for that item. Also, to the extent possible, for items that are buried in a cave, Hui Malama shall note whether the item is buried on, under, or near human remains;² and
- c) The names and addresses of each person who has knowledge of the exact location of any of the items.

(Order Setting Compliance Dates.) On December 21, 2005, Hui Malama filed a Submission Pursuant to December 20, 2005 Order Setting Compliance Dates, with the declarations of Edward Halealoha Ayau, Pualani Kanaka'ole Kanahele, Kahu Charles Kauluwehi Maxwell, William Aila, Antoinette Freitas, attached, and three exhibits, which were filed under seal. However, as admitted by Mr. Ayau in his declaration, Hui Malama's submission, including the sealed exhibits, did not comply with this Court's December 20, 2005 Order Setting Compliance Dates.

² It is critical that the precise location of the items be determined so that when the items are attempted to be returned, disturbance to the items is minimized as much as possible, and the iwi or bones, if any, in the vicinity are not disturbed.

Mr. Ayau specifically testified that he reviewed this Court's Order Setting Compliance Dates and the September 7, 2005 preliminary injunction order, and that "Hui Malama's board voted in an emergency meeting to not disclose the names of those who ceremonially reinterred the *iwi kūpuna* and *moepū* and the precise location of each of the 83 *moepū* within each of the two Kawaihae burial caves." (Ayau Decl. ¶¶ 6, 1, 3.)

On December 22, 2005, this Court found that Hui Malama's submission did not comply with the December 20, 2005 Order since it did not include the precise location of each and every item loaned to it by the Bishop Museum as described in the order, or the names and addresses of each person who has knowledge of the exact location of any of the items. This Court issued an Order to Show Cause, requiring each member of the Board of Directors of Hui Malama, Edward Halealoha Ayau, Pualani Kanaka'ole Kanahele, Kahu Charles Kauluwehi Maxwell, William Aila, and Antoinette Freitas to appear before this Court on December 27, 2005, to inform this Court whether they had complied or intended to comply with this Court's Order Setting Compliance Dates. Edward Halealoha Ayau, Pualani Kanaka'ole Kanahele, William Aila, and Antoinette Freitas each appeared before this Court on December 27, 2005, as summoned. Mr. Murakami, Esq. represented that Kahu Charles Kauluwehi Maxwell was

unable to appear at the hearing because he was in the hospital with a serious illness and stated that he had a doctor's note for Mr. Maxwell.

At the hearing, Edward Halealoha Ayau, Pualani Kanaka'ole Kanahele, William Aila, and Antoinette Freitas each stated that they would not comply with this Court's Order Setting Compliance Dates. Although it is this Court's continued wish that sensitive matters such as this might be resolved by the parties themselves, it is this Court's duty to uphold federal law. As these individuals continue to disobey a valid Court order that has been affirmed by the Ninth Circuit Court of Appeals, this Court has no choice but to find these individuals in contempt based upon their willful and wanton failure to comply with this Court's orders.

As each individual has had numerous opportunities to comply with the Order Granting Plaintiff's Motion for Preliminary Injunction and the Order Setting Compliance Dates, and as each individual understood these Court orders and the penalties for failing to comply, pursuant to the Order to Show Cause, filed December 22, 2005, and the hearing held on December 27, 2005, this Court
HEREBY FINDS EDWARD HALEALOHA AYAU, PUALANI KANAKA'OLE KANAHELE, WILLIAM AILA and ANTOINETTE FREITAS in civil contempt. It is further HEREBY ORDERED that EDWARD HALEALOHA AYAU shall be

remanded to the custody of the United States Marshall. Mr. Ayau has testified that he is the Executive Director of Hui Malama and that he personally participated in burying the items loaned to Hui Malama by the Bishop Museum. Mr. Ayau shall remain in custody until such time as any of the following events occur:

1) Mr. Ayau complies with this Court's December 20, 2005 Order Setting Compliance Dates by providing, under seal, the precise location of each and every item loaned to Hui Malama by the Bishop Museum and by providing the names and addresses of each person who has knowledge of the exact location of any of the items; or

2) This Court is provided, under seal, with the precise location of each and every item loaned to Hui Malama by the Bishop Museum and the names and addresses of each person who has knowledge of the exact location of any of the items; or

3) Each and every item loaned to Hui Malama by the Bishop Museum is returned to the Bishop Museum.

As it would serve no further purpose to place all four individuals into the custody of the United States Marshall, PUALANI KANAKA'OLE KANAHELE, WILLIAM AILA and ANTOINETTE FREITAS are not remanded to custody at this time. However, PUALANI KANAKA'OLE KANAHELE,

WILLIAM AILA AND ANTOINETTE FREITAS continue to be held in contempt of court until such time as this Court's December 20, 2005 Order Setting Compliance Dates is complied with. Further disposition of the matter, if any, will be determined by this Court at a later date.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, _____.

DEC 28 2005



DAVID ALAN EZRA
UNITED STATES DISTRICT JUDGE

Na Lei Alii Kawanānakoā, et al. vs. Bishop Museum, et al., Civil No. 05-00540 DAE-KSC; ORDER FINDING EDWARD HALEALOHA AYAU, PUALANI KANAKA'OLE KANAHELE, WILLIAM AILA AND ANTOINETTE FREITAS IN CONTEMPT OF COURT