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VIA FEDEX

October 18, 2013

Office of the Clerk
James R. Browning Courthouse
U.S. Court of Appeals
95 Seventh Street
San Francisco, CA 94103-1526

**Re: *HonoluluTraffic.com, et al. v. Federal Transportation Authority, et al.*
(Ninth Circuit Court of Appeal Case No. 13-15277)
on appeal from the U.S. District Court for the District of Hawaii
(Case No. 11-cv-00307-AWT)**

Dear Sir or Madam:

Defendants understand that this Court has not yet received notice of the District Court's October 17, 2013 Order (District Court Dkt. No. 255) in this matter, and, at the suggestion of the docket clerk, respectfully submit a true and correct copy of that Order herewith.

The relevant factual background for this letter is as follows:

On August 14, 2013, City Defendants-Appellees filed a Motion for Limited Remand to Modify Partial Injunction (Ninth Circuit Dkt. No. 79-1). On August 27, 2013, the Court issued its Order (Ninth Circuit Dkt. No. 81) granting City Defendants-Appellees' Motion for Limited Remand.

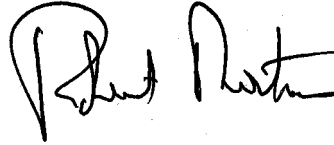
On September 6, 2013, City Defendants-Appellees filed their Second Motion to Modify Partial Injunction (District Court Dkt. No. 243) ("Motion"). On October 2, 2013, the District Court issued its Order re Second Motion to Modify Partial Injunction (District Court Dkt. No. 249) granting City Defendants-Appellees' Motion and requiring the parties to submit a Stipulated Order Modifying Partial Injunction.

On October 11, 2013, Plaintiffs-Appellants and City Defendants-Appellees submitted the Stipulation and [Proposed] Order Modifying Partial Injunction (District Court Dkt. No. 254) ("Stipulation"), which modified Paragraph 3 of the Partial Injunction to allow: (1) the continuation of negotiations with public agencies regarding acquisitions of rights-of-way, but without completing the acquisitions of such rights-of-way; (2) the relocation of owners and tenants at properties acquired prior to the date of the Partial Injunction; and (3) the acquisition of certain properties and utility easements, and the relocation of displaced businesses, along Dillingham Boulevard that are necessary for either the approved Project alignment or the Beretania Street Tunnel Alternative, which is the subject of the remand

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proceedings required by the District Court. On October 17, 2013, the District Court issued its Order Modifying Partial Injunction.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Thornton". The signature is written in a cursive style with a large initial "R" and "T".

Robert D. Thornton
of Nossaman LLP

RDT/lmb

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**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

HONOLULU TRAFFIC.COM; CLIFF SLATER; BENJAMIN CAYETANO; WALTER HEEN; HAWAII'S THOUSAND FRIENDS; THE SMALL BUSINESS HAWAII ENTREPRENEURIAL EDUCATION FOUNDATION; RANDALL W. ROTH; DR. MICHAEL UECHI; and THE OUTDOOR CIRCLE,

Plaintiffs,

vs.

FEDERAL TRANSIT ADMINISTRATION; LESLIE ROGERS, in his official capacity as Federal Transit Administration Regional Administrator; PETER M. ROGOFF, in his official capacity as Federal Transit Administration Administrator; UNITED STATES DEPARTMENT OF TRANSPORTATION; ANTHONY FOXX,* in his official capacity as Secretary of Transportation; THE CITY AND COUNTY OF HONOLULU; and MICHAEL FORMBY, in his official capacity as Director of the City and County of Honolulu Department of Transportation,

Defendants,

CV No. 11-0307 AWT

**ORDER MODIFYING
PARTIAL INJUNCTION**

1 FAITH ACTION FOR COMMUNITY
2 EQUITY; PACIFIC RESOURCE
3 PARTNERSHIP; and MELVIN UESATO,

Intervenors - Defendants.

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5 Pursuant to the limited remand from the Ninth Circuit Court of Appeals and the
6 Stipulation Modifying Partial Injunction entered into between Plaintiffs and City
7 Defendants, filed 10/11/2013, as to which all other parties are deemed to have consented
8 because no other party has filed an objection within the time provided in the Order re
9 Second Motion to Modify Partial Injunction, filed 10/02/2013,

10 **IT IS ORDERED** that the first sentence on page 3 of the Judgment and Partial
11 Injunction, filed December 27, 2012, shall be modified to read as follows:

12 **DEFENDANTS**, their officers, agents, servants, employees, and attorneys;
13 and all other persons who are in active concert or participation with them, are
14 hereby restrained and enjoined from conducting any construction activities and
15 real estate acquisition activities in Phase 4 of the Honolulu High-Capacity Transit
16 Corridor Project (the "Rail Project"), except that the Defendants shall be permitted
17 to take the following actions:

18 (1) participate in discussions and/or negotiations with public agencies
19 regarding the acquisition of rights-of-way within Phase 4, provided that
20 Defendants do not complete the acquisition of or enter into any binding
21 agreements to complete the acquisition of such rights-of-way;

22 (2) provide relocation assistance as required pursuant to state or federal law
23 to the former owners and tenants of the property at 902 Kekaulike Street and to
24 owners and tenants of properties acquired by City Defendants prior to December
25 27, 2012, provided that such properties, including 902 Kekaulike Street, will be

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27 * Anthony Foxx is substituted for his predecessor, Ray LaHood, as Secretary
28 of Transportation, pursuant to Fed. R. Civ. P. 25(d).

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maintained and will not be demolished; and

(3) acquire properties, including utility easements, along Dillingham Boulevard that are common to the Rail Project and the Beretania Street Tunnel Alternative and that are identified or described in Exhibit 2 to the Declaration of Jerry Iwata in Support of the Second Motion, and provide relocation assistance to the owners and tenants of such property interests as required pursuant to state or federal law, provided that such acquisitions and/or assistance do not result in any change to the physical environment.

The Judgment and Partial Injunction is not modified in any other respect.

• • •

Counsel are reminded that, pursuant to Fed. R. App. P. 12.1(b), “the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.”

DATED this 17th day of October, 2013.

/s/ A. Wallace Tashima
A. WALLACE TASHIMA
United States Circuit Judge
Sitting by Designation.

9th Circuit Case Number: 13-15277

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the **NOTICE OF DISTRICT COURT ORDER GRANTING MOTION TO MODIFY PARTIAL INJUNCTION ON LIMITED REMAND; EXHIBIT “A”** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 18, 2013.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Michael Jay Green
Attorney at Law
841 Bishop Street, Suite 2201
Honolulu, HI 96813
Telephone: 808.521.3336

DATED: October 18, 2013

Respectfully submitted,

By: /s/ Robert D. Thornton
ROBERT D. THORNTON
EDWARD V. A. KUSSY
JOHN P. MANAUT
LINDSAY N. MCANEELEY
DONNA Y. L. LEONG
DON S. KITAOKA

Attorneys for Defendants/Appellees
THE CITY AND COUNTY OF
HONOLULU and MICHAEL FORMBY, in
his official capacity as Director of the City
and County of Honolulu Department of
Transportation Services