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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES I. KUROIWA, JR.; PATRICIA A. CARROLL; TOBY M. KRAVET; GARRY P. SMITH; EARL F. ARAKAKI; THURSTON TWIGG-SMITH,

Plaintiffs - Appellants,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee,

LINDA LINGLE, in her official capacity as Governor of the the State of Hawaii; GEORGINA KAWAMURA, in her official capacity as Director of the Department of Budget and Finance; RUSS K. SAITO, in his official capacity as State Comptroller and Director of the Department of Accounting and General Services; LAURA H. THIELEN, in her official capacity as Chairman of the Board of Land and Natural Resources; SANDRA LEE KUNIMOTO, in her official capacity as Director of the Department of Agriculture; THEODORE E. LIU, in his official capacity as Director of the Department of Business Economic

No. 08-16769

D.C. No. CV-08-00153-JMS-KSC

MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Development and Tourism; BRENNON MORIOKA, in his official capacity as Interim Director of the Department of Transportation; HAUNANI APOLIONA, in her capacity as Chairperson of the Office of Hawaiian Affairs; WALTER M. HEEN; ROWENA AKANA; DONALD B. CATALUNA; ROBERT K. LINDSEY JR.; COLETTE Y. MACHADO; BOYD P. MOSSMAN; OSWALD STENDER; JOHN D. WAIHEE IV, in their official capacities as Trustees of the Office of Hawaiian Affairs,

Defendants - Appellees.

JAMES I. KUROIWA, JR.; PATRICIA A. CARROLL; TOBY M. KRAVET; GARRY P. SMITH; EARL F. ARAKAKI; THURSTON TWIGG-SMITH,

Plaintiffs,

and

H. WILLIAM BURGESS,

Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee,

No. 08-17287

D.C. No. CV-08-00153-JMS-KSC

LINDA LINGLE, in her official capacity as Governor of the the State of Hawaii; GEORGINA KAWAMURA, in her official capacity as Director of the Department of Budget and Finance; RUSS K. SAITO, in his official capacity as State Comptroller and Director of the Department of Accounting and General Services; LAURA H. THIELEN, in her official capacity as Chairman of the Board of Land and Natural Resources; SANDRA LEE KUNIMOTO, in her official capacity as Director of the Department of Agriculture; THEODORE E. LIU, in his official capacity as Director of the Department of Business Economic Development and Tourism; BRENNON MORIOKA, in his official capacity as Interim Director of the Department of Transportation; HAUNANI APOLIONA, in her capacity as Chairperson of the Office of Hawaiian Affiars; WALTER M. HEEN; ROWENA AKANA; DONALD B. CATALUNA; ROBERT K. LINDSEY JR.; COLETTE Y. MACHADO; BOYD P. MOSSMAN; OSWALD STENDER; JOHN D. WAIHEE IV, in their official capacities as Trustees of the Office of Hawaiian Affairs,

Defendants - Appellees.

Appeals from the United States District Court
for the District of Hawaii
J. Michael Seabright, District Judge, Presiding

Argued and Submitted October 13, 2009, as to No. 08-17287
Submitted October 13, 2009, as to No. 08-16769**
Honolulu, Hawaii

Before: BEEZER, GRABER, and FISHER, Circuit Judges.

Plaintiffs James I. Kuroiwa, Jr., Patricia A. Carroll, Toby M. Kravet, Garry P. Smith, Earl F. Arakaki, and Thurston Twigg-Smith appeal the district court's judgment on the pleadings in their action alleging breaches of trust and constitutional claims against Defendants Linda Lingle, Georgina Kawamura, Russ K. Saito, Laura H. Thielen, Sandra Lee Kunimoto, Theodore E. Liu, Brennon Morioka, Haunani Apoliona, Walter M. Heen, Rowena Akana, Donald B. Cataluna, Robert K. Lindsey, Jr., Colette Y. Machado, Boyd P. Mossman, Oswald Stender, and John D. Waihee IV. Plaintiffs' lawyer, H. William Burgess, appeals the district court's imposition of sanctions against him under Federal Rule of Civil Procedure 11. Burgess also appeals the district court's denial of his motion for Rule 11 sanctions against Defendants' lawyers. Reviewing de novo the judgment on the pleadings, Knappenberger v. City of Phoenix, 566 F.3d 936, 939 (9th Cir. 2009), and reviewing for abuse of discretion the imposition of Rule 11 sanctions,

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

as well as a refusal to do so, Holgate v. Baldwin, 425 F.3d 671, 675 (9th Cir. 2005), we affirm.

1. The district court correctly held that Plaintiffs' claims are foreclosed by Arakaki v. Lingle, 477 F.3d 1048 (9th Cir. 2007). Although we remanded in Arakaki to allow the plaintiffs to present an alternative theory of standing, if any exists, Plaintiffs here raise only theories of standing that we rejected in Arakaki. Our decision in Arakaki is binding on us. See generally Miller v. Gammie, 335 F.3d 889, 899–900 (9th Cir. 2003) (en banc).

2. The district court did not abuse its discretion in imposing Rule 11 sanctions against Burgess. The filing of the complaint was "both baseless and made without a reasonable and competent inquiry." Holgate, 425 F.3d at 676 (internal quotation marks and emphases omitted). As discussed above, Arakaki is binding on us and on the district court. The district court reasonably concluded that the complaint's failure to allege a different theory of standing rendered the complaint frivolous. Because Burgess was the counsel of record in Arakaki, the second prong of the inquiry is plainly met.

3. The district court did not abuse its discretion in denying the motion for sanctions against Defendants' lawyers. The district court correctly concluded that the motion was, itself, "wholly frivolous." Kuroiwa v. Lingle, No. CV-08-00153-

JMS-KSC, 2008 WL 4056137, at *5 (D. Haw. Aug. 27, 2008) (unpublished order granting OHA Defendants' motion for Rule 11 sanctions and denying Plaintiffs' motion for Rule 11 sanctions).

AFFIRMED.