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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII**

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OKLEVUEHA NATIVE	)	No. CV 09-00336 SOM-BMK
AMERICAN CHURCH OF HAWAII,	)	<b>DEFENDANTS' SCHEDULING</b>
INC.,	)	<b>CONFERENCE STATEMENT;</b>
MICHAEL REX "RAGING BEAR"	)	<b>CERTIFICATE OF SERVICE</b>
MOONEY,	)	
	)	October 29, 2009
Plaintiffs	)	10:00 a.m.
	)	
vs.	)	
	)	
ERIC H. HOLDER, JR., U.S.	)	
Attorney General;	)	
MICHELE LEONHART, Acting	)	
Administrator, U.S. Drug	)	
Enforcement Administration;	)	
FLORENCE T. NAKAKUNI, U.S.	)	

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Attorney for the District of Hawaii,<sup>1</sup> )  
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Defendants )  
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**DEFENDANTS’ SCHEDULING CONFERENCE STATEMENT**

Defendants Eric H. Holder, Jr., U.S. Attorney General; Michele Leonhart, Acting Administrator, U.S. Drug Enforcement Administration; and Florence T. Nakakuni, U.S. Attorney for the District of Hawaii, submit the following Scheduling Conference Statement in the above-captioned case.

**1. Nature of the Case**

Plaintiff Oklevueha Native American Church of Hawaii, Inc., alleges that it is a Hawaii nonprofit corporation and is a Hawaii-based chapter of the Oklevueha Earthwalks Native American Church of Utah, Inc. Plaintiff Michael Rex “Raging Bear” Mooney alleges that he is a Hawaii citizen and identifies himself as a “Spiritual Leader” and as the “Founder, President and Medicine Custodian” of the Church. The plaintiffs allege that the Church is a religious organization whose religious practices incorporate use of psychoactive drugs. The plaintiffs argue that their cultivation, acquisition, manufacture, processing, possession, use, and distribution of marijuana is protected under the Religious Freedom Restoration

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<sup>1</sup>Florence T. Nakakuni is substituted as a defendant in her official capacity as U.S. Attorney for the District of Hawaii pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

Act, 42 U.S.C. §§ 2000bb to 2000bb-4, and other provisions of federal law, including the Free Exercise Clause of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996. They seek declaratory and injunctive relief prohibiting the Government from interfering with their marijuana-related activities.

**2. Statement of Jurisdiction**

Defendants assert that this case is not justiciable and should be dismissed for lack of subject matter jurisdiction.

**3. Demand for Jury Trial**

No jury trial is available in a case seeking declaratory and injunctive relief, and no jury has been demanded.

**4. Appropriateness of Disclosures**

During the early meeting of counsel, the parties agreed to exchange initial disclosures under Rule 26(a)(1)(A) 30 days after the filing of Defendants' answer.

**5. Discovery Completed and in Progress; Motions Pending; Dates**

Neither party has served any discovery requests to date. Defendants are filing a motion today, October 22, 2009, seeking dismissal of all claims and all parties in this action on both jurisdictional and merits grounds. Defendants anticipate that this motion will terminate the case. Because Defendants' motion presents substantial jurisdictional issues, and because even if the motion is denied

in part, the Court's resolution of the motion will likely resolve at least some of the issues in dispute in this case, Defendants believe that the Court should postpone discovery and other pretrial and trial proceedings until after the Court resolves Defendants' motion to dismiss. Defendants believe that specific dates for pretrial and trial proceedings should be set in the ordinary course.

**6. Appropriateness of Special Procedures**

No special procedures are sought by the Defendants.

**7. Related Cases**

No related cases are known to the Defendants.

**8. Prospects for Settlement**

Due to the nature of the relief Plaintiffs are seeking in this suit, Defendants believe that settlement is unlikely and mediation is unlikely to be productive. However, Defendants have indicated to Plaintiffs that they are willing to entertain settlement proposals from the Plaintiffs.

Date: October 22, 2009

Respectfully submitted,

TONY WEST  
Assistant Attorney General

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United States Attorney

DERRICK K. WATSON  
Assistant United States Attorney

VINCENT M. GARVEY  
Deputy Branch Director

/s/ JAMES C. LUH

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