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**UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

HONOLULUTRAFFIC.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; RAY LaHOOD, 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 RE MOTION TO MODIFY PARTIAL INJUNCTION

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

4
5 Intervenor - Defendants.
6

7 Before the court is City Defendants' Motion to Clarify and Modify Partial
8 Injunction, which now has been fully briefed. Plaintiffs oppose the motion, at least in
9 part. No other party opposes the motion.

10 City Defendants seek to modify¹ the partial injunction in four ways: (1) to permit
11 certain types of real estate acquisition activities; (2) to negotiate, but not acquire, rights of
12 way; (3) to permit relocation of owners and tenants of property acquired before issuance
13 of the injunction; and (4) to permit real estate acquisition activities in those areas of Phase
14 4 of the Project which would be necessary either under the present Project alignment for
15 Phase 4, or under the Beretania Street Tunnel Alternative.

16 Plaintiffs appealed the final judgment and partial injunction on February 11, 2013.
17 Once an appeal is taken, the trial court is divested of jurisdiction over the matters
18 appealed. *See McClatchy Newspapers v. Cent. Valley Typographical Union No. 46, Int'l*
19 *Typographical Union*, 686 F.2d 731, 734 (9th Cir. 1982). City Defendants argue,
20 however, that their instant motion falls under an exception to the general rule; namely,
21 that the district court can take action to preserve the *status quo pendente lite*. *See id.*; *see*
22 *also Mayweathers v. Newland*, 258 F.3d 930, 935 (9th Cir. 2001); *Natural Res. Def.*
23 *Council v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166-67 (9th Cir. 2001). The court is
24 unconvinced. Plainly, the sought modifications would permit City Defendants to engage
25 in certain Phase 4 activities now prohibited by the partial injunction; their purpose and
26 effect are not to preserve the *status quo*. Thus, “[these] modification[s would] alter[] the
27 status quo by removing the [existing] prohibition” *Small v. Operative Plasterers' &*

28 ¹ City Defendants also use the word “clarify” in describing the changes they
want to the partial injunction, but clarification does not appear to be the objective of this
motion.

1 *Cement Masons' Int'l Ass'n Local 200*, 611 F.3d 483, 495 (9th Cir.2010).

2 For the forgoing reasons, the court concludes that it is without jurisdiction to grant
3 City Defendants' motion. The motion is therefore **DENIED**. This denial, however, is
4 without prejudice to the further proceedings set forth below.

5 Plaintiffs have made it known that, if this court had jurisdiction, they would not
6 oppose certain of the modifications sought by City Defendants. The court thus hereby
7 indicates that if City Defendants can obtain a *Crateo*² remand from the Ninth Circuit, this
8 court would look favorably on City Defendants' motion to modify the partial injunction
9 to the extent that: (1) it is not opposed by Plaintiffs; and (2) City Defendants and
10 Plaintiffs can reach agreement on the language of such modifications.

11 **IT IS SO ORDERED.**

12 DATED this 22nd day of April, 2013.

13 /s/ A. Wallace Tashima
14 A. WALLACE TASHIMA
15 United States Circuit Judge
16 Sitting by Designation.

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27 _____
28 ² See *Crateo, Inc. v. Intermark, Inc. (In re Crateo)*, 536 F.2d 862, 869 (9th Cir.
1976).