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A Limited Liability Law Partnership

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE	)	CIVIL NO. 08-00578 JMS/LEK
STRICKLAND; TRUDY	)	Civil Rights Action
SABALBORO; KATHERINE	)	Class Action
VAIOLA; and LEE SOMMERS,	)	
each individually and on behalf of a	)	DEFENDANT REALTY LAUA LLC'S
class of present and future residents	)	MEMORANDUM IN OPPOSITION
of Kuhio Park Terrace and Kuhio	)	TO PLAINTIFFS' MOTION FOR
Homes who have disabilities affected	)	PRELIMINARY INJUNCTION FILED
by architectural barriers and	)	DECEMBER 16, 2009; CERTIFICATE
hazardous conditions,	)	OF SERVICE
	)	
Plaintiffs,	)	<u>HEARING</u>
	)	
vs.	)	Date: February 22-23, 2010
	)	Time: 10:00 a.m.
STATE OF HAWAII; HAWAII	)	Judge: Hon. J. Michael Seabright
PUBLIC HOUSING AUTHORITY;	)	
REALTY LAUA LLC, formerly	)	TRIAL DATE: August 3, 2010
known as R & L Property	)	
Management LLC, a Hawai'i limited	)	
liability company,	)	
	)	
Defendants.	)	
	)	

**DEFENDANT REALTY LAUA LLC'S  
MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION FILED DECEMBER 16, 2009**

**I. INTRODUCTION**

Comes now Defendant REALTY LAUA LLC (“Realty”), by and through its attorneys, O’Connor Playdon & Guben LLP, and hereby submits this memorandum in opposition to Plaintiffs’ Motion for Preliminary Injunction, filed herein on December 16, 2009 (“the Motion”).

Initially, the Motion’s treatment of the State and Realty as monolithic “Defendants” must be rejected. These entities are separate and distinct. Realty, a privately-held limited liability company, contracted with the State to provide property management services at Kuhio Park Terrace/Kuhio Homes beginning in August of 2007. This was just over a year prior to Plaintiffs filing their Complaint in this case (December 18, 2008).<sup>1</sup>

The relief sought in the Motion relates to either major capital improvements or system-wide policies. These matters fall largely, if not entirely, within the purview of the State. The State is therefore in the best position to respond to the gravamen of the Motion. Realty has reviewed and substantively

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<sup>1</sup> There is also a parallel case pending in the First Circuit Court of the State of Hawaii, entitled Faletogo, et al. v. State of Hawaii, et al., Civil No. 08-1-2608-12 (SSM). The State court case seeks damages related to allegedly uninhabitable conditions at KPT and Kuhio Homes on breach of lease-type theories.

joins in the State's memorandum in opposition to the Motion, and hereby incorporates by reference the points and authorities cited therein. See Local Rule 7.9.

In addition, Realty raises a procedural objection to the Motion as explained below.

## II. ARGUMENT

### THE MOTION IS PROCEDURALLY IMPROPER.

A preliminary injunction is a tool with a very narrow purpose. “The purpose of a preliminary injunction *is merely to preserve* the relative positions of the parties until a trial on the merits can be held.” Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981) (emphasis added). Correspondingly, burdens of proof and evidentiary rules are ordinarily relaxed. See id. (“ . . . a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.”). For this reason, “it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits.” Id.

Here, however, Plaintiffs are not seeking to preserve the status quo. Quite to the contrary, Plaintiffs *are directly challenging the status quo*. The Motion requests fundamental alterations to the buildings and ancillary facilities at Kuhio Park Terrace/Kuhio Homes and to the manner in which the housing project

is operated. This constitutes a request for mandatory injunction: “A mandatory injunction goes well beyond simply maintaining the status quo *pendente lite* and is *particularly disfavored*. When a mandatory preliminary injunction is requested, the district court should deny such relief unless the facts and law clearly favor the moving party.” Stanley v. Univ. S. Cal., 13 F.3d 1313, 1320 (9th Cir. 1994) (internal cites, brackets, and quotes omitted) (emphasis added).

Further, there is nothing preliminary about the Motion. The requested changes are permanent. In reality, Plaintiffs are pursuing a final adjudication on the merits without having to subject their case to the rigors of discovery and trial.

Since the parties have focused their efforts on settlement discussions until just recently, very little discovery has been completed. Plaintiffs’ experts and treating physicians have not been deposed, Plaintiffs themselves have only been deposed on limited areas related to class certification, and the residents that submitted declarations in support of the Motion but are not named-Plaintiffs (James Silva, Sii Tuia, and Melissa Bowers) have not been deposed. Under the circumstances, the State and Realty have not had an opportunity to fully develop their defenses.

Moreover, Plaintiffs rely heavily on improperly authenticated documents (see, e.g., the Exhibits attached to the Declarations of Elizabeth Dunne





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DATED: Honolulu, Hawaii, February 1, 2010.

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