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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JUN 21 2005

at 7 o'clock and 20 min. AM  
SUE BEITIA, CLERK

Attorneys for Defendants  
STEPHANIE AVEIRO and  
HOUSING AND COMMUNITY DEVELOPMENT  
CORPORATION OF HAWAII

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

RODELLE SMITH, SHEILA ) CIVIL NO. CV04 00309  
TOBIAS, BARBARA BARAWIS, ) DAE/KSC  
and LEWIS GLASER, ) (Class Action)  
individually, and on )  
behalf of all persons ) DEFENDANTS SEPARATE AND  
similarly situated, ) CONCISE STATEMENTS OF  
 ) FACTS IN SUPPORT OF  
Plaintiffs, ) COUNTER-MOTION FOR  
 ) SUMMARY JUDGMENT, AND IN  
vs. ) OPPOSITION TO PLAINTIFFS  
 ) MOTION FOR PARTIAL  
STEPHANIE AVEIRO, in her ) SUMMARY JUDGMENT FILED ON  
official capacity as the ) MARCH 21, 2005; EXHIBITS  
Executive Director of ) "A", "B"; CERTIFICATE OF

the Housing and	)	<b>SERVICE</b>
Community Development	)	
Corporation of Hawaii;	)	
HOUSING AND COMMUNITY	)	<b>Hearing: July 11, 2005</b>
DEVELOPMENT CORPORATION	)	<b>TIME: 10:30 A.M.</b>
OF HAWAII, a duly	)	<b>JUDGE: Hon. David A. Ezra</b>
organized and recognized	)	
agency of the State of	)	
Hawaii,	)	<b>Trial Date: Week of</b>
	)	<b>November 14, 2005</b>
Defendants.	)	

**DEFENDANTS SEPARATE AND CONCISE STATEMENT OF FACTS  
 IN SUPPORT OF COUNTER-MOTION FOR SUMMARY JUDGMENT AND  
 IN OPPOSITION TO PLAINTIFFS MOTION FOR  
PARTIAL SUMMARY JUDGMENT FILED ON MARCH 21, 2005**

Defendants submit their Separate and Concise Statement of Facts pursuant to LR 56.1(b)2.

**1. FACT:** Defendants undertook corrective action to comply with 24 C.F.R. §965.501-507 after the filing of the Complaint on May 13, 2004.

**1A. SOURCE:** Affidavit of Stephanie Aveiro ("Aveiro" attached hereto as Exhibit "A"), at par. 3.

**2. FACT:** Updated utility allowances for eligible federal public housing residents were implemented on

October 1, 2004 and made retroactive to September 1, 2004.

**2A. SOURCE:** Aveiro, at par. 4.

**3. FACT:** Plaintiffs, through their counsel, were provided a preliminary schedule of the updated utility allowances for their review and comment, before they were implemented on October 1, 2004.

**3A. SOURCE:** Declaration of John C. Wong ("Wong", attached hereto as Exhibit "B"), at par. 4.

**4. FACT:** Since October 1, 2004, HCDCH has complied with 24 C.F.R. §965.507 in updating the utility allowances.

**4A. SOURCE:** Aveiro, at par. 4

**5. FACT:** Pursuant to chapter 91, Hawaii Revised Statutes, HCDCH has promulgated amendments to its administrative rules incorporating the provisions of 24 C.F.R. §965.501-507, and the amended rules are awaiting final approval by Governor Lingle.

**5A. SOURCE:** Aveiro, at par.5.

**6. FACT:** The annual review of the utility

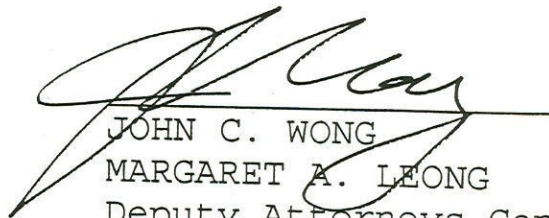
allowances and any required adjustments are now a mandatory operating procedure, the records of which will be available for periodic HUD review.

6A. SOURCE: Aveiro, par. 6.

DATED: Honolulu, Hawaii

June 21, 2005

MARK J. BENNETT  
Attorney General



JOHN C. WONG  
MARGARET A. LEONG  
Deputy Attorneys General  
Attorneys for Defendants



IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RODELLE SMITH, et al.,           ) CIVIL NO. CV04 00309  
  )                                     DAE/KSC  
        Plaintiffs,                 ) (Class Action)  
  )  
        v.                                 ) AFFIDAVIT OF STEPHANIE  
  ) AVEIRO; EXHIBITS "A",  
STEPHANIE AVEIRO, et             ) "B", "C"  
al.,                                     )  
  )  
        Defendants.                    )  
  )  
  )  
  )  
\_\_\_\_\_

AFFIDAVIT OF STEPHANIE AVEIRO

STATE OF HAWAII   )  
   ) SS.  
CITY AND COUNTY OF HONOLULU     )

STEPHANIE AVEIRO, being first duly sworn on oath,  
states the following:

1. I am the Executive Director for the Housing and Community Development Corporation of Hawaii ("HCDCH") and I am familiar with and have personal knowledge of the facts stated in this Affidavit.

2. As Executive Director of the agency I am responsible for the management and operation of all HCDCH programs.

3. As a result of this lawsuit, HCDCH undertook corrective actions, including retaining a nationally recognized consultant, NFC, Inc., to assist the agency in updating the utility allowances for federal public housing residents and the procedures as required by 24 C.F.R. §965.501-507.

4. HCDCH is in compliance with 24 C.F.R. §965.507. On October 1, 2004 HCDCH implemented amended utility allowance schedules, retroactive to September 1, 2004, in accordance with the federal regulations. In most cases, residents received a credit on their October, 2004 rent. A true and correct copy of the updated utility allowance schedules put into effect on October 1, 2004 is attached hereto as Exhibit "A".

5. HCDCH has also promulgated amendments to its administrative rules under chapter 91, Hawaii Revised Statutes, including amendments to H.A.R. 17-2028-7 ,

relating to the utility allowances for federal public housing residents pursuant to 24 C.F.R. §965.501-507.

A true and correct copy of the final draft of the amended rule, H.A.R. 17-2028-7, which is being sent for Governor Lingle's final approval is attached hereto as Exhibit "B".

6. In accordance with the administrative rules, the annual review and any adjustments, if required, of the utility allowances under 24 C.F.R. §965.501-507 are mandatory and part of HCDCH's operating procedures. A true and correct copy of the Inter-Office Memorandum to HCDCH staff is attached hereto as Exhibit "C".

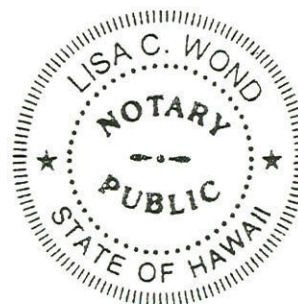
FURTHER AFFIANT SAYETH NAUGHT.

Stephanie Aveiro  
STEPHANIE AVEIRO

Subscribed and sworn to me on  
this \_\_\_\_\_ day of JUN 21 2005, 2005.

[Signature]

Notary Public, State of Hawai'i  
My commission expires: 07-12-2007





October 2004 Utility Allowance

Island	City	Project Number	Project	Type of Dwelling (House/ Apt)	No of bedrooms	New utility allowance (rounded)	Current utility allowance	Difference
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	1	44.00	27.00	17.00
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	2	50.00	30.00	20.00
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	3	58.00	34.00	24.00
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	4	67.00	38.00	29.00
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	5	75.00	43.00	32.00
Hawaii	Hilo	HI001004	Lanakila Homes I	1 stry 4-plex	2	169.00	133.00	36.00
Hawaii	Hilo	HI001004	Lanakila Homes I	1& 2 stry 4-plex	3	200.00	157.00	43.00
Hawaii	Hilo	HI001004	Lanakila Homes I	2 stry 4-plex	4	229.00	179.00	50.00
Oahu	Honolulu	HI001005	Kalihi Valley Homes	2 story twnhse	1	58.00	48.00	10.00
Oahu	Honolulu	HI001005	Kalihi Valley Homes	2 story twnhse	2	74.00	64.00	10.00
Oahu	Honolulu	HI001005	Kalihi Valley Homes	2 story twnhse	3	90.00	81.00	9.00
Oahu	Honolulu	HI001005	Kalihi Valley Homes	2 story twnhse	4	111.00	102.00	9.00
Oahu	Honolulu	HI001005	Kalihi Valley Homes	2 story twnhse	5	132.00	124.00	8.00
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	1	44.00	27.00	17.00
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	2	50.00	30.00	20.00
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	3	58.00	34.00	24.00
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	4	67.00	38.00	29.00
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	5	75.00	43.00	32.00
Oahu	Honolulu	HI001008	Palolo Homes	2 story twnhse	1	97.00	39.00	58.00
Oahu	Honolulu	HI001008	Palolo Homes	2 story twnhse	2	126.00	49.00	77.00
Oahu	Honolulu	HI001008	Palolo Homes	2 story twnhse	3	157.00	60.00	97.00
Oahu	Honolulu	HI001008	Palolo Homes	2 story twnhse	4	195.00	74.00	121.00
Oahu	Honolulu	HI001008	Palolo Homes	2 story twnhse	5	231.00	88.00	143.00
Oahu	Honolulu	HI001009	Kaahumanu Homes	2 story twnhse	2	85.00	30.00	55.00
Oahu	Honolulu	HI001009	Kaahumanu Homes	2 story twnhse	3	101.00	34.00	67.00
Hawaii	Hilo	HI001013	Lanakila Homes II	1 stry 4-plex	1	142.00	112.00	30.00
Hawaii	Hilo	HI001013	Lanakila Homes II	1 stry 4-plex	2	169.00	133.00	36.00
Hawaii	Hilo	HI001013	Lanakila Homes II	1& 2 stry 4-plex	3	200.00	157.00	43.00
Hawaii	Hilo	HI001013	Lanakila Homes II	2 stry 4-plex	4	229.00	179.00	50.00
Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam	2	121.00	90.00	31.00



Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam		3	143.00	105.00	38.00
Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam		4	163.00	119.00	44.00
Oahu	Pearl City	HI001027	Hale Laulima	2 story twnhse		2	100.00	56.00	44.00
Oahu	Pearl City	HI001027	Hale Laulima	2 story twnhse		3	125.00	70.00	55.00
Hawaii	Hilo	HI001028	Punahelu Homes	1 story dupl		2	169.00	133.00	36.00
Oahu	Kaneohe	HI001030	Koolau Village	2 story twnhse		1	102.00	76.00	26.00
Oahu	Kaneohe	HI001030	Koolau Village	2 story twnhse		2	121.00	90.00	31.00
Oahu	Kaneohe	HI001030	Koolau Village	2 story twnhse		3	143.00	105.00	38.00
Oahu	Kaneohe	HI001030	Koolau Village	2 story twnhse		4	163.00	119.00	44.00
Hawaii	Kailua-Kona	HI001032	Kaimalino	duplex		1	-	-	-
Hawaii	Kailua-Kona	HI001032	Kaimalino	2 story twnhse		2	-	-	-
Hawaii	Kailua-Kona	HI001032	Kaimalino	2 story twnhse		3	-	-	-
Hawaii	Kailua-Kona	HI001032	Kaimalino	Single Family Homes		4	-	-	-
Oahu	Maili	HI001033	Maili I	Single Fam		2	74.00	67.00	7.00
Oahu	Maili	HI001033	Maili I	Single Fam		3	90.00	82.00	8.00
Oahu	Nanakuli	HI001035	Nanakuli Homes	Single Fam		3	90.00	82.00	8.00
Oahu	Maili	HI001042	Maili II	duplex		2	74.00	67.00	7.00
Oahu	Maili	HI001042	Maili II	Single Fam		4	111.00	100.00	11.00
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twnhse		1	111.00	34.00	77.00
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twnhse		2	133.00	42.00	91.00
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twnhse		3	157.00	51.00	106.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twnhse		1	85.00	48.00	37.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twnhse		2	115.00	64.00	51.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twnhse		3	146.00	81.00	65.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph II	3 story twnhse		1	52.00	-	52.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph II	3 story twnhse		2	63.00	-	63.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	3 story twnhse		1	58.00	48.00	10.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	3 story twnhse		2	74.00	64.00	10.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	3 story twnhse		3	90.00	81.00	9.00
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaluu	2 story twnhse		1	79.00	41.00	38.00
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaluu	2 story twnhse		2	97.00	50.00	47.00
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaluu	2 story twnhse		3	118.00	59.00	59.00
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaluu	2 story twnhse		4	142.00	71.00	71.00
Oahu	Honolulu	HI001062	Kalakaua Homes high rise	high rise		1	52.00	30.00	22.00
Oahu	Honolulu	HI001062	Kalakaua Homes low rise	3 story twnhse		1	85.00	30.00	55.00



Oahu	Honolulu	HI001062	Kalaikaua Homes low rise	3 story twnhse	2	115.00	37.00	78.00
Oahu	Honolulu	HI001062	Kalaikaua Homes low rise	3 story twnhse	3	146.00	43.00	103.00
Hawaii	Kealakou	HI001063	Nani Olu (E)	2 story 8 plx	1	131.00	66.00	65.00
Kauai	Kekaha	HI001064	Kekaha Ha'aheo	1 story tw n hse	1	143.00	77.00	66.00
Kauai	Kekaha	HI001064	Kekaha Ha'aheo	1 story tw n hse	2	170.00	93.00	77.00
Kauai	Kekaha	HI001064	Kekaha Ha'aheo	1 story tw n hse	3	200.00	110.00	90.00
Oahu	Honolulu	HI001066	Salt Lake	high rise	1	75.00	43.00	32.00
Oahu	Kaneohe	HI001069	Kaneohe Apartments	3 story wlkup	1	85.00	48.00	37.00
Oahu	Kaneohe	HI001069	Kaneohe Apartments	3 story wlkup	2	115.00	64.00	51.00
Hawaii	Kailua-Kona	HI001070	Kealakehe	2 story twnhse	1	79.00	41.00	38.00
Hawaii	Kailua-Kona	HI001070	Kealakehe	2 story twnhse	2	97.00	50.00	47.00
Hawaii	Kailua-Kona	HI001070	Kealakehe	2 story twnhse	3	118.00	59.00	59.00
Hawaii	Kamuela	HI001071	Noelani I	tw n hse	1	131.00	59.00	72.00
Hawaii	Kamuela	HI001071	Noelani I	tw n hse	2	178.00	77.00	101.00
Oahu	Kaneohe	HI001072	Hookipa Kahaluu	2 story twnhse	1	85.00	43.00	42.00
Oahu	Kaneohe	HI001072	Hookipa Kahaluu	2 story twnhse	2	115.00	56.00	59.00
Oahu	Kaneohe	HI001072	Hookipa Kahaluu	2 story twnhse	3	146.00	70.00	76.00
Oahu	Honolulu	HI001073	Spencer House	3 story wlkup	2	50.00	30.00	20.00
Oahu	Honolulu	HI001073	Spencer House	3 story wlkup	3	58.00	34.00	24.00
Hawaii	Kamuela	HI001078	Noelani II	3 story wlk up	3	226.00	70.00	156.00
Kauai	Koloa	HI001086	Kawailehua - Federal	2 story twnhse	3	200.00	110.00	90.00
Molokai	Maunaloa	HI001088	Kahale Mua - Federal	dup/twnhse	3	183.00	129.00	54.00
Oahu	Waimanalo	HI001090	Kauhale O'Hana	2 story twnhse	3	58.00	34.00	24.00
Oahu	Waianae	HI001091	Kau'iokalani	2 story twnhse	3	58.00	34.00	24.00
Maui	Waiehu	HI001092	Makani Kai Hale	2 story twnhse	3	75.00	46.00	29.00
Hawaii	Hilo	HI001097	Kauhale O'Hanakahi	2 story twnhse	3	200.00	74.00	126.00
Hawaii	Waikoloa	HI001097	Ke Kurmu 'Ekolu	2 story twnhse	3	90.00	74.00	16.00
Maui	Waiehu	HI001097	Makani Kai Hale II	2 story twnhse	3	75.00	46.00	29.00
Oahu	Honolulu	HI001099	Kamehameha Homes	2 story twnhse	1	111.00	56.00	55.00
Oahu	Honolulu	HI001099	Kamehameha Homes	2 story twnhse	2	132.00	73.00	59.00
Oahu	Honolulu	HI001099	Kamehameha Homes	2 story twnhse	3	155.00	97.00	58.00



§17-2028-7 Utility allowances. (a) The monthly rent for a tenant residing in a federally assisted housing project shall include utility allowances established in accordance with HUD's standards for utility allowances.

(b) Utility allowances shall be calculated by determining the utility rate then multiplying it by the applicable quantity allowance. A schedule of applicable quantity allowances for lighting, electric domestic hot water heaters, miscellaneous electrical, gas domestic hot water heaters is incorporated by reference and attached as exhibit H.

(c) The corporation shall conduct a review of utility rates in January of each year. Electric and gas rate schedules for all providers shall be collected and reviewed for each month from the preceding January through December of the calendar year prior to the fiscal year beginning July 1. These monthly rates shall be averaged over the year period.

(d) The new utility allowances shall be posted and noticed to residents at least sixty (60) days prior to the implementation date, during which time residents shall have the opportunity to present written or oral comments. The applicable schedules shall be publicly posted in a conspicuous manner at the corporation's project offices and shall be furnished upon request. The implementation date for new allowances shall be July 1.

(e) Implementation of all new allowances or components of allowances, by utility, shall be required when there is more than a ten per cent change in rates. In cases when a utility is granted a substantial rate increase in between the annual review, a mid-year allowance adjustment may be required.

(f) The corporation may update the quantity allowances. To update the quantity allowance, units of various sizes in a sampling of different types of developments shall be surveyed to determine the types of existing equipment as well as to identify any factors affecting energy efficiency. If there is a variance in energy consumption factors among housing projects, the worst case scenario shall be identified and utilized for calculating the quantity allowances.

- (1) Allowances for lighting shall be developed by conducting a field survey of various units to determine the number and type of fixtures. The following factors shall be used to determine the kilowatt hour per month allowance for each unit size:

- (A) The number of fixtures;
  - (B) Watts per fixture; and
  - (C) Hours of use per day.
- (2) Allowances for miscellaneous electric equipment shall be based upon usage of a television, radio, miscellaneous small appliances, and a fan.
  - (3) The allowance for refrigerators is based on a new, but non-energy efficient model. For 0, 1, and 2 bedroom units a 14 cubic foot model utilizing 155 kilowatt hours per month is assumed. For a 3, 4 and 5 bedroom unit, a 16 cubic foot model utilizing 165 kilowatt hours per month is assumed.
  - (4) Allowances for cooking shall be 930 kilowatt hours per year for 0, 1, and 2 bedroom units, and 1140 kilowatt hours per year for 3, 4, and 5 bedroom units, respectively.
  - (5) Allowances for electric domestic hot water heating shall be based on engineering calculations for each bedroom size assuming a certain number of occupants. The data used in the calculations include estimated consumption per occupant per day, temperature of incoming water, temperature of hot water supply, efficiency of heater, and energy required to heat water to supply temperature.
  - (6) Allowance for solar domestic hot water shall be based on a cost analysis of a domestic hot water heating system.
  - (7) Gas consumption allowances shall be developed using the same methodology as the electric consumption allowance.

(g) The corporation shall provide medical disability allowances for residents who have provided proof of medical necessity to the corporation. The quantity allowances for medical equipment shall be as follows:

- (1) For window air conditioners, 229 kilowatt hours per month;
- (2) For oxygen concentrators, 219 kilowatt hours per month;
- (3) For nebulizers, 5 kilowatt hours per month;
- (4) For electric hospital beds, 1 kilowatt hour per month;
- (5) For alternating pressure pads, 51 kilowatt hours per month;
- (6) For low air-loss mattresses, 88 kilowatt hours per month;



- (7) For power wheelchairs or scooters, 33 kilowatt hours per month; (8) For CPAP machines, 9 kilowatt hours per month; and
- (9) For any other medical equipment, the quantity allowance shall be determined by taking the equipment's average energy consumption multiplied by the normal frequency of usage.

(h) A tenant shall pay for utility usage in excess of the applicable utility allowance.

(i) A tenant shall receive a utility reimbursement when the utility allowance exceeds the total tenant payment with the exception of tenants paying a flat rent. [Eff ] (Auth: HRS §201G-15) (Imp: HRS §201G-32; 24 C.F.R. §§5.603, 5.632, 960.253, Part 965 Subpart E, §966.4)

**INTEROFFICE MEMORANDUM  
HOUSING & COMMUNITY DEVELOPMENT  
CORPORATION OF HAWAII**

REF. NO.: 05:OED-180

DATE: 6/20/05

SUSPENSE:

Subject: Annual Review of Federal Public Housing and Section 8 Project-Based  
Utility Allowances Pursuant to 24 CFR §965.501-508 and 24 CFR  
§880.610

Originator:

TO: PMMB, All Public Housing Management Unit  
Supervisors, Contracts and Procurement Office,  
THRU: Compliance Office

FROM: Stephanie Aveiro   
Executive Director

1. As you may know, HCDCH has been involved in several litigation cases for the year based on the agency's failure to annually review and update the utility allowances for eligible federal public housing residents, disabled and non-disabled, under the applicable HUD regulations. We undertook immediate corrective actions, including the hiring of an expert consultant to assist us in updating the allowances and our procedures for reviewing the allowances.
2. On October 1 and December 4, 2004, respectively, we implemented updated utility allowances for all eligible residents and supplemental utility allowances for all eligible disabled residents.
3. To insure that these circumstances never recur, we have promulgated amendments to HCDCH's administrative rules, specifically 17-2028-7, H.A.R., to comply with the HUD regulations. Based on the rules, henceforth HCDCH will conduct a mandatory review of the utility allowances for the previous year, beginning every January 1. Any necessary adjustments to the allowances will be implemented, subject to all notice and public hearing requirements, on July 1, to coincide with our fiscal year and our budget submittals to HUD. However, under the HUD regulations and the administrative rule, interim adjustments to the utility allowances may have to be put in place before July 1 if there is a 10% or more change in the utility rates and costs in any given month.

We have been advised by our consultant that this procedure is consistent with the HUD regulations and with procedures adopted by other PHA's nationwide.

4. The purpose of this IOM is to make clear that the full cooperation of all staff is required in the review, updating and provision of the required notice of the utility allowances to the residents in order that the agency continue to be in compliance with the applicable law and regulations.
5. Accordingly, I am directing that a copy of this IOM be placed in the agency's Procedural Manual and that the applicable branches and sections calendar the annual review as part of their standard operating procedure.

**EX. "C"**



INTEROFFICE MEMORANDUM  
HOUSING & COMMUNITY DEVELOPMENT  
CORPORATION OF HAWAII

REF. NO.:

DATE:

SUSPENSE:

Subject:

Originator:

TO:

FROM:

THRU:

05:OED-180

Page 2

6. A copy of the current utility allowance schedule shall be provided to those public housing residents who pay for utilities as part of their rent upon their initial acceptance into housing and on all subsequent annual re-examinations.
7. A copy of the current supplemental utility allowances for eligible residents suffering from a disability shall also be provided to all public housing residents, disabled or not, upon their initial acceptance into housing and on all subsequent annual re-examinations.
8. Managers are instructed to document receipt of the utility allowance schedules by the resident in the tenant file.
9. Effective immediately, if not done so already, the utility allowance schedule and the supplemental utility allowance schedule shall be posted in all management offices.

I sincerely appreciate your efforts and cooperation in this matter.

Distribution:

Pamela Y. Dodson, Executive Assistant  
PMMB Branch Chief  
PMMB – CAS, RSU, APPS, MS  
Management Units 1, 2, 3, 4, 5, 7, 8, 9  
Management Units 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 80  
Compliance Office  
Contracts and Procurement Office  
John Wong, Esq., Deputy Attorney General

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RODELLE SMITH, et al.,            ) CIVIL NO. CV04 00309  
  )    DAE KSC  
                  Plaintiffs,        ) (Class Action)  
  )  
                  v.                    ) DECLARATION OF JOHN C.  
  ) WONG; EXHIBITS "AA",  
STEPHANIE AVEIRO, et            ) "BB", "CC"  
al.,                                    )  
  )  
                  Defendants.         )  
  )  
  )  
  )  
\_\_\_\_\_

DECLARATION OF JOHN C. WONG

JOHN C. WONG, under penalty of perjury, declares and states the following to be true and correct:

1. I am a duly licensed attorney in the State of Hawaii and I am a deputy attorney general with the Department of the Attorney General, attorney for Defendants.

2. This Declaration is based on my personal knowledge of the facts and records of the proceedings in this case.



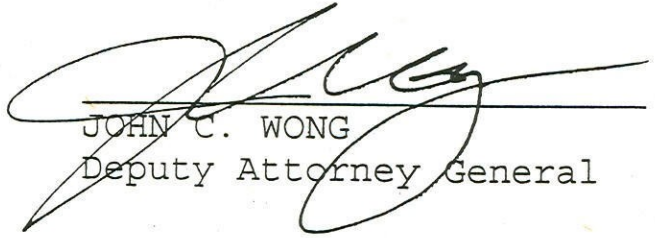
3. I provided Plaintiffs counsel with a copy of the proposed amended utility allowances which were developed by HCDCH's consultant in August, 2004 for their review and comment before HCDCH's implementation target date of October 1, 2004. A true and correct copy of the proposed amended utility allowances which was sent to Plaintiffs counsel is attached hereto as Exhibit "AA".

4. By letter dated August 13, 2004, to me, Plaintiffs counsel, Gavin Thornton, Esq., provided comments to the schedules sent to him. A true and correct copy of the August 13, 2004 letter is attached hereto as Exhibit "BB".

5. A true and correct copy of the November 4, 2004 status letter acknowledging HCDCH's update of the utility allowances from Gavin Thornton, Esq., to the Honorable Magistrate Judge Barry M. Kurren is attached hereto as Exhibit "CC".

I declare under penalty of perjury the foregoing is true and correct.

DATED: HONOLULU, HAWAII June 21, 2005.

  
\_\_\_\_\_  
JOHN C. WONG  
Deputy Attorney General



Island	City	Project Number	Project	Type of Dwelling (House/ Apt)	No of bedrooms	Square Footage	Electricity		SNG		LPG		Total est utility cost	New utility allowance (rounded)	Current utility allowance	Difference	No. of units	Total difference
							Fuel Chg	Cust Chg	Total	Fuel Chg	Cust Chg	Total						
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	1	530	37.47	7.00	44.47	-	-	-	44.47	44.00	27.00	17.00	24	408
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	2	732	43.24	7.00	50.24	-	-	-	50.24	50.00	30.00	20.00	114	2,280
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	3	908	51.17	7.00	58.17	-	-	-	58.17	58.00	34.00	24.00	168	4,032
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	4	1203	59.81	7.00	66.81	-	-	-	66.81	67.00	38.00	29.00	50	1,450
Oahu	Honolulu	HI001003	Mayor Wright Homes	2 story twnhse	5	1399	68.46	7.00	75.46	-	-	-	75.46	75.00	43.00	32.00	8	256
Hawaii	Hilo	HI001004	Lanakia Homes I	1 stry 4-plex	2	705	67.25	10.00	77.25	-	-	-	77.25	169.32	169.00	36.00	17	612
Hawaii	Hilo	HI001004	Lanakia Homes I	1 & 2 stry 4-plex	3	1056	79.58	10.00	89.58	-	-	-	89.58	199.97	200.00	157.00	19	817
Hawaii	Hilo	HI001004	Lanakia Homes I	2 stry 4-plex	4	1347	93.03	10.00	103.03	-	-	-	103.03	228.66	229.00	179.00	2	100
Oahu	Honolulu	HI001005	Kailhi Valley Homes	2 story twnhse	1	494	51.31	7.00	58.31	-	-	-	58.31	58.00	48.00	10.00	52	520
Oahu	Honolulu	HI001005	Kailhi Valley Homes	2 story twnhse	2	674	66.59	7.00	73.59	-	-	-	73.59	74.00	64.00	10.00	60	600
Oahu	Honolulu	HI001005	Kailhi Valley Homes	2 story twnhse	3	834	83.16	7.00	90.16	-	-	-	90.16	90.00	81.00	9.00	123	1,107
Oahu	Honolulu	HI001005	Kailhi Valley Homes	2 story twnhse	4	1115	103.92	7.00	110.92	-	-	-	110.92	111.00	102.00	9.00	26	208
Oahu	Honolulu	HI001005	Kailhi Valley Homes	2 story twnhse	5	1276	124.67	7.00	131.67	-	-	-	131.67	132.00	124.00	8.00	112	1,008
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	1	490	37.47	7.00	44.47	-	-	-	44.47	44.00	27.00	17.00	20	340
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	2	688	43.24	7.00	50.24	-	-	-	50.24	50.00	30.00	20.00	32	640
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	3	877	51.17	7.00	58.17	-	-	-	58.17	58.00	34.00	24.00	37	888
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	4	1042	59.81	7.00	66.81	-	-	-	66.81	67.00	38.00	29.00	37	888
Oahu	Honolulu	HI001007	Kuhio Homes	2 story twnhse	5	1183	68.46	7.00	75.46	-	-	-	75.46	75.00	43.00	32.00	8	256
Oahu	Honolulu	HI001008	Palo Alto Homes	2 story twnhse	1	513	70.62	7.00	77.62	-	-	-	77.62	75.00	49.00	22.00	8	464
Oahu	Honolulu	HI001008	Palo Alto Homes	2 story twnhse	2	676	95.13	7.00	102.13	-	-	-	102.13	126.39	126.00	49.00	34	2,618
Oahu	Honolulu	HI001008	Palo Alto Homes	2 story twnhse	3	1045	121.07	7.00	128.07	-	-	-	128.07	157.34	157.00	77.00	40	3,880
Oahu	Honolulu	HI001008	Palo Alto Homes	2 story twnhse	4	1147	154.22	7.00	161.22	-	-	-	161.22	195.50	195.00	74.00	32	3,872
Oahu	Honolulu	HI001008	Palo Alto Homes	2 story twnhse	5	1303	187.37	7.00	194.37	-	-	-	194.37	231.15	231.00	88.00	4	572
Oahu	Honolulu	HI001009	Kaahumanu Homes	2 story twnhse	2	714	53.62	7.00	60.62	-	-	-	60.62	84.88	85.00	30.00	16	6380
Hawaii	Hilo	HI001013	Lanakia Homes II	1 stry 4-plex	1	568	58.28	10.00	68.28	-	-	-	68.28	101.42	101.00	34.00	36	2,412
Hawaii	Hilo	HI001013	Lanakia Homes II	1 stry 4-plex	2	705	67.25	10.00	77.25	-	-	-	77.25	142.06	142.00	50.00	2	60
Hawaii	Hilo	HI001013	Lanakia Homes II	1 & 2 stry 4-plex	3	1056	79.58	10.00	89.58	-	-	-	89.58	169.32	169.00	133.00	15	540
Oahu	Waimanalo	HI001013	Lanakia Homes II	2 stry 4-plex	4	1347	93.03	10.00	103.03	-	-	-	103.03	199.97	200.00	157.00	17	731
Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam	2	877	43.24	7.00	50.24	-	-	-	50.24	229.00	229.00	179.00	8	400
Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam	3	1017	51.17	7.00	58.17	-	-	-	58.17	143.20	143.00	90.00	19	589
Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam	4	1171	59.81	7.00	66.81	-	-	-	66.81	163.36	163.00	105.00	18	684
Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam	2	877	43.24	7.00	50.24	-	-	-	50.24	121.43	121.00	31.00	19	589
Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam	3	1017	51.17	7.00	58.17	-	-	-	58.17	143.20	143.00	90.00	18	684
Oahu	Waimanalo	HI001025	Waimanalo Homes	Single Fam	4	1171	59.81	7.00	66.81	-	-	-	66.81	163.36	163.00	105.00	18	684
Oahu	Waimanalo	HI001027	Hale Lanilima	2 story twnhse	2	771	92.53	7.00	99.53	-	-	-	99.53	100.00	119.00	44.00	4	176
Oahu	Waimanalo	HI001028	Punahoe Homes	1 story dupl	3	893	118.11	7.00	125.11	-	-	-	125.11	100.00	56.00	44.00	20	880
Oahu	Waimanalo	HI001030	Koolau Village	2 story twnhse	2	649	67.25	10.00	77.25	-	-	-	77.25	125.00	70.00	55.00	16	890
Oahu	Waimanalo	HI001030	Koolau Village	2 story twnhse	1	526	37.47	7.00	44.47	-	-	-	44.47	169.32	169.00	133.00	30	1,080
Oahu	Waimanalo	HI001030	Koolau Village	2 story twnhse	2	662	43.24	7.00	50.24	-	-	-	50.24	101.85	102.00	76.00	8	208
Oahu	Waimanalo	HI001030	Koolau Village	2 story twnhse	3	915	51.17	7.00	58.17	-	-	-	58.17	121.43	121.00	90.00	24	744
Oahu	Waimanalo	HI001030	Koolau Village	2 story twnhse	4	996	59.81	7.00	66.81	-	-	-	66.81	143.20	143.00	105.00	36	1,368
Hawaii	Kailua-Kona	HI001032	Kaimaliho	duplex	1	504	-	-	-	-	-	-	-	163.36	163.00	119.00	12	528
Hawaii	Kailua-Kona	HI001032	Kaimaliho	2 story twnhse	2	794	-	-	-	-	-	-	-	-	-	-	10	-
Hawaii	Kailua-Kona	HI001032	Kaimaliho	2 story twnhse	3	1030	-	-	-	-	-	-	-	-	-	-	14	-
Hawaii	Kailua-Kona	HI001032	Kaimaliho	Single Family H	4	1114	-	-	-	-	-	-	-	-	-	-	14	-
Oahu	Maui	HI001033	Maui I	Single Fam	2	768	-	-	-	-	-	-	-	-	-	-	2	-
Oahu	Maui	HI001033	Maui I	Single Fam	3	912	-	-	-	-	-	-	-	-	-	-	7	-
Oahu	Maui	HI001033	Maui I	Single Fam	3	912	-	-	-	-	-	-	-	-	-	-	13	-



October 2004 Utility Allowance

Island	City	Project Number	Project	Type of Dwelling (House/ Apt)	No of bedrooms	Square Footage	Electricity			SNG			LPG			Total est utility cost	New utility allowance (rounded)	Current utility allowance	Difference	No. of units	Total difference
							Fuel Chg	Cust Chg	Total	Fuel Chg	Cust Chg	Total	Fuel Chg	Cust Chg	Total						
Oahu	Nanakuli	HI001035	Nanakuli Homes	Single Fam	3	1024	83.16	7.00	90.16	-	-	-	-	-	90.16	90.00	82.00	8.00	36	288	
Oahu	Maui	HI001042	Maui II	duplex	2	912	66.59	7.00	73.59	-	-	-	-	-	73.59	74.00	67.00	7.00	12	84	
Oahu	Maui	HI001042	Maui II	Single Fam	4	1394	103.92	7.00	110.92	-	-	-	-	-	110.92	111.00	102.00	9.00	12	132	
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twntse	1	550	37.47	7.00	44.47	-	-	50.63	6.75	57.38	101.85	102.00	34.00	68.00	14	952	
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twntse	2	616	43.24	7.00	50.24	-	-	64.44	6.75	71.19	121.43	121.00	42.00	79.00	16	1,264	
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twntse	3	821	51.17	7.00	58.17	-	-	78.28	6.75	85.03	143.20	143.00	51.00	92.00	20	1,840	
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twntse	1	590	77.83	7.00	84.83	-	-	-	-	84.83	85.00	48.00	37.00	8	296		
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twntse	2	513	108.10	7.00	115.10	-	-	-	-	115.10	115.00	64.00	51.00	6	306		
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twntse	3	590	139.08	7.00	146.08	-	-	-	-	146.08	146.00	81.00	65.00	8	520		
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph II	3 story twntse	1	815	44.68	7.00	51.68	-	-	-	-	51.68	52.00	52.00	0.00	8	520		
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph II	3 story twntse	2	650	56.21	7.00	63.21	-	-	-	-	63.21	63.00	58.00	5.00	12	120		
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	3 story twntse	2	815	51.31	7.00	58.31	-	-	-	-	58.31	58.00	48.00	10.00	12	120		
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	3 story twntse	2	991	66.59	7.00	73.59	-	-	-	-	73.59	74.00	64.00	10.00	24	240		
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	3 story twntse	3	991	83.16	7.00	90.16	-	-	-	-	90.16	90.00	81.00	9.00	24	216		
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaalu	2 story twntse	1	610	69.49	10.00	79.49	-	-	-	-	79.49	79.00	41.00	38.00	8	304		
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaalu	2 story twntse	2	767	87.42	10.00	97.42	-	-	-	-	97.42	97.00	50.00	47.00	12	564		
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaalu	2 story twntse	3	1039	107.60	10.00	117.60	-	-	-	-	117.60	118.00	59.00	59.00	22	1,298		
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaalu	2 story twntse	4	1191	132.25	10.00	142.25	-	-	-	-	142.25	142.00	71.00	71.00	8	568		
Oahu	Honolulu	HI001062	Kalakaaua Homes high rise	high rise	1	564	44.68	7.00	51.68	-	-	-	-	51.68	52.00	30.00	22.00	123	2,706		
Oahu	Honolulu	HI001062	Kalakaaua Homes low rise	3 story twntse	1	559	77.83	7.00	84.83	-	-	-	-	84.83	85.00	48.00	37.00	4	220		
Oahu	Honolulu	HI001062	Kalakaaua Homes low rise	3 story twntse	2	711	108.10	7.00	115.10	-	-	-	-	115.10	115.00	43.00	78.00	58	4,524		
Oahu	Honolulu	HI001062	Kalakaaua Homes low rise	3 story twntse	3	901	139.08	7.00	146.08	-	-	-	-	146.08	146.00	66.00	65.00	36	3,708		
Hawaii	Kealahou	HI001063	Nani Olu (E)	2 story 8 plx	1	535	121.05	10.00	131.05	-	-	-	-	131.05	131.00	77.00	77.00	12	924		
Kauai	Kekaha	HI001064	Kekaha Haahaao	1 story twin hse	1	666	66.89	9.72	76.61	-	-	59.95	6.75	66.70	143.30	143.00	77.00	66.00	42	2,080	
Kauai	Kekaha	HI001064	Kekaha Haahaao	1 story twin hse	2	819	77.18	9.72	86.90	-	-	76.31	6.75	83.06	169.95	170.00	93.00	77.00	12	924	
Oahu	Honolulu	HI001066	Sail Lake	high rise	1	642	67.88	7.00	74.88	-	-	92.70	6.75	99.45	200.49	200.00	110.00	90.00	24	2,160	
Oahu	Kaneohe	HI001069	Kaneohe Apartments	3 story wlkup	1	429	77.83	7.00	84.83	-	-	-	-	84.83	85.00	48.00	37.00	5	185		
Oahu	Kaneohe	HI001069	Kaneohe Apartments	3 story wlkup	2	648	108.10	7.00	115.10	-	-	-	-	115.10	115.00	64.00	51.00	19	969		
Hawaii	Kailua-Kona	HI001070	Kealahou	2 story twntse	1	576	69.49	10.00	79.49	-	-	-	-	79.49	79.00	41.00	38.00	16	608		
Hawaii	Kailua-Kona	HI001070	Kealahou	2 story twntse	2	689	87.42	10.00	97.42	-	-	-	-	97.42	97.00	50.00	47.00	16	752		
Hawaii	Kailua-Kona	HI001070	Kealahou	2 story twntse	3	924	107.60	10.00	117.60	-	-	-	-	117.60	118.00	59.00	59.00	16	944		
Hawaii	Kamuela	HI001071	Noelani I	twin hse	1	673	121.05	10.00	131.05	-	-	-	-	131.05	131.00	59.00	72.00	7	504		
Hawaii	Kamuela	HI001071	Noelani I	twin hse	2	786	168.12	10.00	178.12	-	-	-	-	178.12	178.00	77.00	101.00	12	1,212		
Oahu	Kaneohe	HI001072	Hookipa Kahaalu	2 story twntse	1	549	77.83	7.00	84.83	-	-	-	-	84.83	85.00	48.00	42.00	8	336		
Oahu	Kaneohe	HI001072	Hookipa Kahaalu	2 story twntse	2	697	108.10	7.00	115.10	-	-	-	-	115.10	115.00	56.00	59.00	32	1,888		
Oahu	Kaneohe	HI001072	Hookipa Kahaalu	2 story twntse	3	891	139.08	7.00	146.08	-	-	-	-	146.08	146.00	70.00	76.00	16	1,216		
Oahu	Honolulu	HI001073	Spencer House	3 story wlkup	2	798	43.24	7.00	50.24	-	-	-	-	50.24	50.00	34.00	20.00	1	20		
Hawaii	Kamuela	HI001078	Noelani II	3 story wlkup	3	880	216.31	10.00	226.31	-	-	-	-	226.31	226.00	70.00	24.00	16	384		
Kauai	Koia	HI001086	Kawaihaua - Federal	2 story twntse	3	939	91.32	9.72	101.04	-	-	-	-	101.04	100.00	34.00	156.00	24	3,744		
Molokai	Maunaloa	HI001088	Kahale Mua - Federal	duplex/twnhse	3	983	83.32	7.50	90.82	-	-	92.70	6.75	99.45	200.49	200.00	110.00	90.00	25	2,250	
Oahu	Waimanalo	HI001090	Kauhale O'Hana	2 story twntse	3	1003	51.17	7.00	58.17	-	-	85.19	6.75	91.94	182.76	183.00	129.00	54.00	25	1,350	
Oahu	Waianae	HI001091	Kau'okalani	2 story twntse	3	987	51.17	7.00	58.17	-	-	-	-	58.17	58.00	34.00	24.00	25	600		
Maui	Waiehu	HI001092	Makani Kai Hale	2 story twntse	3	947	67.77	7.50	75.27	-	-	-	-	75.27	75.00	46.00	29.00	25	1,225		



October 2004 Utility Allowance

Island	City	Project Number	Project	Type of Dwelling (House/ Apt)	No of bedrooms	Square Footage	Electricity			SNG			LPG			Total est utility cost	New utility allowance (rounded)	Current utility allowance	Difference	No. of units	Total difference
							Fuel Chg	Cust Chg	Total	Fuel Chg	Cust Chg	Total	Fuel Chg	Cust Chg	Total						
Hawaii	Hilo	HI001097	Kaunale O'Hanakahahi	2 story twnhse	3	0	79.58	10.00	89.58	-	-	-	103.64	6.75	110.39	199.97	200.00	74.00	126.00	20	2,520
Hawaii	Waikoloa	HI001097	Ke Kumu Ekaui	2 story twnhse	3	0	79.58	10.00	89.58	-	-	-	-	-	-	89.58	90.00	74.00	16.00	20	320
Maui	Waiehu	HI001097	Makani Kai Hale II	2 story twnhse	3	947	67.77	7.50	75.27	-	-	-	-	-	-	75.27	75.00	46.00	29.00	4	116
Oahu	Honolulu	HI001099	Kamehameha Homes	2 story twnhse	1	572	37.47	7.00	44.47	60.06	6.75	66.81	-	-	-	111.29	111.00	56.00	55.00	62	3,410
Oahu	Honolulu	HI001099	Kamehameha Homes	2 story twnhse	2	818	43.24	7.00	50.24	75.08	6.75	81.83	-	-	-	132.07	132.00	73.00	59.00	123	7,257
Oahu	Honolulu	HI001099	Kamehameha Homes	2 story twnhse	3	991	51.17	7.00	58.17	90.10	6.75	96.85	-	-	-	155.01	155.00	97.00	58.00	36	2,088
							2,672			\$ 109,241											

FOR EQUAL JUSTICE

P.O. Box 4984  
Kailua-Kona, HI 96745  
(808) 322-3045

David Reber, Esq.  
President, Board of Directors

Susan Dorsey, Esq.  
Executive Director

## FACSIMILE COVER SHEET

### Notice of Confidentiality

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TO: John Wong  
Office of the Attorney General

DATE: August 13, 2004  
FAX: (808) 587-2938

FROM: Gavin Thornton  
Lawyers for Equal Justice

FAX: (808) 263-2591

RE: *Smith v. Aviero*; Request for Additional Information

DESCRIPTION OF DOCUMENT(S) TRANSMITTED: (# of Pgs. including cover):

7 Pages: Cover; August 13<sup>th</sup> Letter, Guide for Estimating Utility Allowances.

#### REMARKS:

Please see the letter that follows.

(If you do not receive all pages or if they are illegible, please call (808) 322-3045)

EX. "BB"



**I WYERS FOR EQUAL JUSTICE**

P.O. Box 4984  
Kailua-Kona, HI 96745  
(808) 322-3045

David Reber, Esq.  
President, Board of Directors

Susan Dorsey, Esq.  
Executive Director

August 13, 2004

Mr. John C. Wong Esq.  
Office of the Attorney General  
Facsimile: (808) 587-2938  
*Sent via Facsimile*

**SETTLEMENT COMMUNICATION**  
**SUBJECT TO RULE 408, F.R.E.**

Re: *Smith v. Aviero*

Dear Mr. Wong:

While reviewing the information that you recently provided us, we found a few more discrepancies between our information and the information HCDCH has provided. In preparation for our settlement conference this coming Tuesday, we would appreciate it if you would inquire about the following issues to resolve those discrepancies.

**Consumption Allowances for Individual Hot Water with Heat Pump and with Solar**

There was no consumption information for "Ind HP" or "Ind Solar" in the materials initially provided by HCDCH, though allowances in terms of dollars were provided. Our consumption figures in terms of kilowatt hours were derived by using the information for other types of utility consumption (e.g. basic electric and cooking) to figure out what the effective utility rate and customer charge were at the time that the dollar allowance schedules were promulgated. By figuring out how many additional dollars a tenant with Ind Solar or Ind HP received for a utility allowance, we were able to derive the consumption allowances for Ind Solar and Ind HP.

Our consumption allowances for Ind Solar and Ind HP in terms of kWh are as follows:

**Ind Solar**

One-bedroom	Two-bedroom	Three-bedroom	Four-bedroom	Five-bedroom
50	65	105	130	170

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**Ind HP**

One-bedroom	Two-bedroom	Three-bedroom	Four-bedroom	Five-bedroom
170	250	350	N/A	N/A

In the information you recently sent, it appears that HCDCH has two different sets of consumption allowances for Ind Solar and Ind HP. The document titled "Electric \$ Allowance" lists the consumption allowances that appear to have been used to calculate HCDCH's updated dollar allowances in the document titled "2004 \$ Allowance LIPH." The document title "Utility Service from 9/11/2003" provides a different set of consumption allowances that are generally higher than the allowances we derived. It is not clear why there is a discrepancy between the two consumption allowances that HCDCH provided. Nor is it clear why the figures from the "Electric \$ Allowance" document were used instead of the figures from the "Utility Service from 9/11/2003" document when calculating the updated dollar allowances. The tables below list both sets of consumption allowances ("Electric \$ Allowance" allowances on top, "Utility Service from 9/11/2003" allowances on bottom)

**Ind Solar**

One-bedroom	Two-bedroom	Three-bedroom	Four-bedroom	Five-bedroom
46	72	97	131	165
53	78	104	137	170

**Ind HP**

One-bedroom	Two-bedroom	Three-bedroom	Four-bedroom	Five-bedroom
161	252	339.5	N/A	N/A
170	259	351	N/A	N/A



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The consumption allowances that we used in calculating the information that we have provided to you are similar (though slightly less) than the consumption allowances from the "Utility Service from 9/11/2003" document you provided. If you would like to discuss using different consumption allowances than those that we have derived for Ind Solar and Ind HP, please gather the necessary information on how the allowances for Ind Solar and Ind HP were derived.

**Customer Charges Missing from HCDCH Calculations**

The information that you recently provided us in the document titled "2004 \$ Allowance LIPH" excludes the monthly customer charge when calculating the updated allowances for all projects except Kekaha Ha'aeo. It is our understanding that tenants in all projects are required to pay the monthly customer charge and thus it should be included in the utility allowance calculation. Unless HCDCH has a reason why the customer charges for electric utilities were excluded, the customer charges must be included to determine the appropriate allowances.

**Electricity Utility Rates**

The document titled "Electric \$ Allowance" contains the calculations used to figure out the updated utility allowances for each project in the document titled "2004 \$ Allowance LIPH." It is not clear from any of the information that we were given how the electric utility rates used were derived. The rates used do not correspond with recent utility rate information. The Oahu rate used appears to be significantly higher than the Oahu effective rate has *ever* been. The rates for the remainder of the islands are generally lower the recent rate information that we have. We would appreciate it if you would inquire as to where the rates used on the "Electric \$ Allowance" spreadsheet came from.

**SNG rates**

The document "SNG \$ Allowance" (in the same packet with "Electric \$ Allowance") lists a rate for Synthetic Natural Gas of \$2.937183 per Therm, but there is

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**SUBJECT TO RULE 408, F.R.E.**

no indication in the other materials of how this number was derived. We would appreciate it if you would inquire as to where the SNG rate used came from.

**SNG and LPG Conversions from Cubic Feet to Therms**

The information that you provided uses different conversion rates than the conversion rates that we used to convert cubic feet of SNG and LPG to Therms. The conversion rates that we used were taken from a document titled "Guide for Estimating Utility Allowances" which was found in the HCDCH files with what appeared to be course materials for a utility allowance course taken by the HCDCH employee that established the original utility allowances. A copy of that document is enclosed for your reference. The document suggests that 100 cubic feet of SNG is equivalent to 1 Therm (versus 95.24 cubic feet per Therm from the materials you provided) and that 33.7 cubic feet of LPG is equivalent to 1 Therm (versus 40 cubic feet per Therm from the materials you provided). While we realize that the conversion rates in the "Guide for Estimating Utility Allowances" could be inaccurate, we would appreciate it if HCDCH could provide the authority upon which the conversion rates used in the documents you recently provided were based.

**Waimaha-Sunflower**

Information originally provided by HCDCH indicated that Waimaha-Sunflower tenants paid for basic electric, electric cooking, and electric hot water. The information you recently provided (in the document titled "2004 \$ Allowance LIPH") indicates that tenants pay for different utilities depending on the phase of Waimaha-Sunflower that they reside in. Is that truly the case? If so, would you please provide information regarding the number of units in each phase?

**Kalakaua Homes**

Information provided earlier by HCDCH indicated that all Kalakaua Homes low-rise tenants did not pay for Individual Hot Water, but the information you recently provided indicates that they do. Would you please find out which information is correct?



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We appreciate your continuing assistance. Please let Shelby Floyd or me know whether we can clarify regarding the above issues. Thank you.

Sincerely,



Gavin Thornton  
Staff Attorney

cc: Shelby Floyd, Esq.

**LAWYERS FOR EQUAL JUSTICE**

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(808) 322-3045

David Reber, Esq.  
President, Board of Directors

Susan Dorsey, Esq.  
Executive Director

November 4, 2004

The Honorable Barry M. Kurren  
U.S. Magistrate Judge  
United States District Court  
300 Ala Moana Blvd., Rm. C-229  
Honolulu, Hawai'i 96850

Re: **Smith, et al. v. Averio, et al.**  
**Civ. No. CV 04 00309 DAE KSC**

Dear Magistrate Kurren:

We are providing this statement to update you regarding the status of the settlement talks in the above case. The case was filed to obtain declaratory and injunctive relief requiring the Housing and Community Development Corporation of Hawaii (HCDCH) to update utility allowances in public housing to comply with federal law and account for the significant increase in utility rates over the past decade.

Since the settlement conference with you on August 17, 2004, HCDCH has adjusted the utility allowances in public housing to correspond with current utility rates. This change was applied on October 1, 2004 and was made effective retroactively to September 1, 2004. The utility allowance adjustments HCDCH proposed applied current utility rates to HCDCH's consumption allowances (i.e. the allowances in terms of kilowatt hours of electricity and Therms of gas), a method that was acceptable to Plaintiffs. We have not yet had the opportunity to review the final adjustments that were put in place and we understand that HCDCH is still reviewing the accuracy of the adjustments for a few of the affected housing projects, but we do not foresee any disputes regarding the newly revised allowances.

To resolve the final issues in the case, we have recently requested that HCDCH enter into a stipulated judgment containing the following terms:

- (1) That HCDCH complete a review of the public housing consumption allowances as required by federal law;

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The Honorable Barry M. Kurren

November 4, 2004

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- (2) That HCDCH adopt a standard that will trigger the revision of the allowances where utility rates change by 10 percent or more from the rates on which the October 2004 revisions, and any subsequent revisions of the allowance, were based; and
- (3) That HCDCH post the newly revised allowances in each applicable project office as required by the HCDCH rental agreement.

We are awaiting a response from HCDCH regarding these terms, but we anticipate that we will be able to come to a resolution of this matter shortly. We will continue to keep you apprised of the progress of the case.

Sincerely,



Gavin Thornton

cc: Shelby Anne Floyd, Esq.  
John Wong, Esq. ✓

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RODELLE SMITH, et al.,            ) CIVIL NO. CV04 00309  
  )    DAE KSC  
                  Plaintiffs,        ) (Class Action)  
  )  
                  vs.                    ) **CERTIFICATE OF SERVICE**  
  )  
STEPHANIE AVEIRO, et            )  
al.,                                    )  
  )  
                  Defendants.         )  
  )  
  )  
\_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served upon the following by depositing the same in the United States mail, postage prepaid, as addressed below:

GAVIN K. THORNTON  
SUSAN K. DORESY  
P.O. BOX 37952  
HONOLULU HI 96837-0952

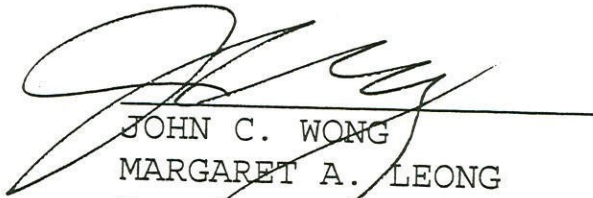
Attorney for Plaintiffs



SHELBY ANNE FLOYD  
PAUL ALSTON  
65-1230 MAMALAHOA HWY SUITE C21  
KAMUELA HI 96743

Attorneys for Plaintiffs

DATED: Honolulu, Hawaii, June 21, 2005.

A handwritten signature in black ink, appearing to read 'John C. Wong', is written over a horizontal line. The signature is stylized and cursive.

JOHN C. WONG  
MARGARET A. LEONG  
Deputy Attorneys General  
Attorneys for Defendants