

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

3 FEB 17 2005
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WALTER A.Y.H. CHINN, CLERK

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MARA AMONE individually, and)	CIVIL NO. CV04-00508 ACK/BMK
on behalf of all persons similarly)	
situated,)	PLAINTIFF'S REPLY IN SUPPORT
)	OF MOTION FOR CLASS
Plaintiffs,)	CERTIFICATION; CERTIFICATE
)	OF SERVICE
v.)	Date: February 28, 2005
)	Time: 9:30 a.m.
)	Judge: The Hon. Alan C. Kay

STEPHANIE AVEIRO, in her)
official capacity as the Executive)
Director of the Housing and)
Community Development)
Corporation of Hawaii; HOUSING)
AND COMMUNITY)
DEVELOPMENT CORPORATION)
OF HAWAII, a duly organized)
and recognized agency of the)
State of Hawaii.)
))
Defendants.)
_____)

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION**

Plaintiff MARA AMONE (“Amone”), by and through her
counsel, submits this reply in further support of her Motion for
Class Certification, filed January 3, 2004.

I. INTRODUCTION

Plaintiff Amone, on behalf of herself and other disabled
tenants of public housing in Hawai‘i¹, sought declaratory and

¹ The proposed class is defined as disabled persons that
currently reside, or have resided within the last six years, in an
HCDCH public housing project in which residents receive utility
allowances because the special needs arising from their disability
require them to consume utilities in excess of the amount provided
for in the standard public housing utility allowances.

injunctive relief because Defendant Housing and Community Development Corporation of Hawai'i ("HDCDH") violated various federal housing laws and regulations by (1) failing to provide notice to tenants of public housing that if they were disabled and, therefore, required increased usage of utilities, they would be entitled to an increase in their utilities allowance, and (2) having rules and procedures in place to determine what the increased allowance would be.

Plaintiff's claims are precisely the type that federal courts consistently recognize as appropriate for class certification.

However, although HCDCH does not deny that the law requires it to give notice and have procedures in place, it argues that it is now (nine months after the filing of the complaint, and many years after the effective date of the regulations) beginning to address the issue. It further acknowledges that 1388 residents of public housing are disabled, but argues that Plaintiff has not met the numerosity, commonality, and other elements of Rule 23 for class certification. For the following reasons, HCDCH is wrong.

II. ARGUMENT

A. **The Substantive Allegations in the Complaint Must be Taken As True**

Much of HCDCH's argument appears to be directed at the merits of Plaintiff's claim.² Although Plaintiff bears the burden of establishing each elements for class certification, in determining whether Plaintiff has carried her burden, the Court may not consider the merits of Plaintiff's claims. *See Burkhalter Travel Agency v. MacFarms Intern., Inc.*, 141 F.R.D. 144, 152 (N.D. Cal 1991).

Instead, the Court must accept the Plaintiff's substantive allegations as true. *See Petroleum Prods. Antitrust Litig.*, 691 F.2d 1335, 1342 (9th Cir. 1982); *Arthur Young & Co. v. U.S. District Court*, 549 F.2d 686 (9th Cir. 1976); *Blackie v. Barrack*, 524 F.2d 891, n.17 (9th Cir. 1975). The critical substantive allegations for the purpose of this motion are in paragraphs 33 and 34 of the Complaint: *HCDCH never notified Plaintiff or any other disabled*

² However, HCDCH wisely does not address the facts which would establish conclusively that it had no policies or procedures required by law to notify disabled tenants of their particular rights concerning utility allowances.

tenant of the availability of an adjusted utility allowance upon their admission to public housing, and never adjusted any disabled tenant's utility allowance.

B. Numerosity

The key questions with respect to the Rule 23 requirement of "numerosity" is whether it is impractical to join each affected potential class member. It is obvious, simply based on HCDCH's opposition, that is the case here. HCDCH concedes that almost 1400 persons who are currently listed on its housing rolls are disabled. See Opposition at 12. It nowhere addresses the number, location, or identify of those persons who were public housing tenants during the six years prior to the filing of the Complaint, and who were disabled, although the Complaint addresses the rights of those tenants. See Complaint ¶14.

HCDCH also states that "only" 300 residents have requested a "reasonable accommodation" due to their disability. It should be noted, however, that the Complaint alleges that, until after this litigation was filed, HCDCH had no notice and procedure required whereby tenants would be informed of their rights.

C. Commonality

To determine whether the "commonality" requirement of FRCP 23(a)(2), is satisfied, the proper inquiry is whether other members of the class have the same or similar injury, whether the action is based on conduct not special or unique to the named plaintiff, and whether all members have been injured by the same course of conduct. *Koenig v. Benson*, 117 F.R.D. 330, 335 (E.D.N.Y. 1987) (quoting *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 99 (S.D.N.Y. 1981)); *see also Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985) (same).

Here, the gravamen of Plaintiff's claims is that Defendant HCDCH had an obligation to notify disabled public housing tenants of their right to request reduced rents (higher utility allowances) because of the need to spend higher than normal amounts on electricity to operate medical equipment prescribed by a physician, and to have a process for determining what kind of increased allowance they would get, if needed. Every member of the putative class has exactly the same claim based on the federal regulations.

Therefore, Ms. Amone's claims satisfy the commonality and typicality elements of Rule 23(a).

B. Plaintiffs Satisfy the Requirements of Rule 23(b)

HCDCCH asserts that Plaintiff does not meet the requirements of Rule 23(b). However, it is obvious that a favorable adjudication on the merits of Plaintiff's claims involving the statutory and regulatory violations will be dispositive of the same claims of all other disabled tenants.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court to grant her Motion for Class Certification, filed on January 3, 2004.

DATED: Kamuela, Hawai'i, February 17, 2005.



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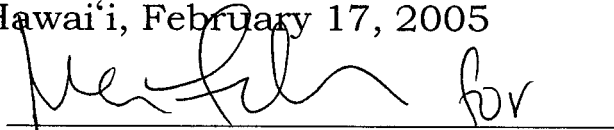
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was duly served upon the following party on this date, by depositing said copy, postage prepaid, first class, in the United States Post Office, at Honolulu, Hawai'i, addressed as set forth below:

John Wong, Esq.
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Attorneys for Defendants

DATED: Kamuela, Hawai'i, February 17, 2005

Handwritten signature of Shelby Anne Floyd in cursive script, followed by the word "for" in a smaller, simpler font.

SHELBY ANNE FLOYD
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Attorneys for Plaintiff