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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RODELLE SMITH, SHEILA TOBIAS,
BARBARA BARAWIS, and LEWIS
GLASER individually, and on behalf of
all persons similarly situated,

Plaintiffs,

v.

HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION OF
HAWAII, a duly organized and
recognized agency of the State of
Hawaii.

) CIVIL NO. 04-1 0069K
) (Contract)
) Class Action

) **PLAINTIFFS' MOTION FOR CLASS**
) **CERTIFICATION; MEMORANDUM IN**
) **SUPPORT OF MOTION; EXHIBITS "A"-**
) **"E" DECLARATION OF SHELBY ANNE**
) **FLOYD; EXHIBIT "1"; DECLARATION**

) (Title continued on next page)

) HEARING:

) DATE: September 20, 2005

) TIME: 8:00 A.M.

) JUDGE: HON. ELIZABETH STRANCE

Defendant.

) OF GAVIN; THORNTON; EXHIBITS
) "A"- "C";
) NOTICE OF MOTION AND
) CERTIFICATE OF SERVICE

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs RODELLE SMITH, SHEILA TOBIAS, BARBARA BARAWIS, and LEWIS GLASER, by and through their counsel, hereby move this Court for an Order allowing this cause to be maintained as a class action, and requiring notice to be provided to all class members.

This Motion is made pursuant to Rules 7, 23(a) and (b)(3) of the Hawai'i Rules of Civil Procedure. It is based on the attached Memorandum in Support of Motion, the Declaration of Shelby Anne Floyd, and the Declaration of Gavin Thornton.

In support of this Motion, Plaintiffs assert that:

1. Plaintiffs seek certification of a class and subclass as follows:

Class: persons that currently reside, or resided at any point from May 17, 2002 to the present in a federally funded public housing project in which residents receive or should receive utility allowances

Subclass: persons that resided at any point between May 17, 1998 to May 16, 2002 in a federally funded public housing project in which residents receive or should receive utility allowances.¹

2. The class and subclass is so numerous that joinder of all its members is impracticable.

¹Plaintiffs may later seek to certify a class of tenants residing in public housing prior to May 17, 1998 depending on information derived through discovery.

3. There are questions of law and/or fact common to the class and subclass.

4. The claims of the named Plaintiff are typical of the claims of the class and subclass.


5. The named Plaintiffs will fairly and adequately represent the claims of the entire class and subclass.

6. The Defendants have acted on grounds generally applicable to the class and subclass, thereby making appropriate final injunctive and declaratory relief with respect to the classes as a whole.

7. Questions of law and fact predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

WHEREFORE, Plaintiffs pray that this action be certified as a class action pursuant to Rules 23(a) and (b)(3) of the Hawai'i Rules of Civil Procedure, and that Defendants be ordered to provide notice of the pendency of this action to all class members.

DATED: Honolulu, Hawai'i, AUGUST 10, 2005.


SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN THORNTON
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RODELLE SMITH, SHEILA TOBIAS,	)	CIVIL NO. 04-1 0069K
BARBARA BARAWIS, and LEWIS)	
GLASER individually, and on behalf of	)	MEMORANDUM IN SUPPORT OF
all persons similarly situated,	)	MOTION
)	
Plaintiffs,)	
)	
v.)	
)	
HOUSING AND COMMUNITY)	
DEVELOPMENT CORPORATION OF)	
HAWAII, a duly organized and)	
recognized agency of the State of)	
Hawaii.)	
)	
Defendant.)	

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Plaintiff seeks declaratory relief and damages against Defendant Housing and Community Development Corporation of Hawaii ("HCDCH") for failing to adjust utility allowances in public housing as utility rates increased, in violation of Plaintiffs' rights under the U.S. Housing Act, the Annual Contributions Contract ("ACC") between HCDCH and the U.S. Department of Housing and Urban Development ("HUD"), and the rental agreement between public housing residents and HCDCH.

The United States Housing Act requires that shelter costs for tenants residing in federally subsidized public housing projects do not exceed 30% of tenant income. 42 U.S.C. § 1437a(a), 24 C.F.R. §§ 965.501-965.508. See also *Dorsey v. Housing Authority of Baltimore City*, 984 F.2d 622, 624 (4th Cir. 1993). Utilities are included in rent. *Id.* Where tenants are directly responsible for the payment of utility service, the supporting federal regulations require public

housing authorities (PHAs) like HCDCH to provide the tenants with a utility allowance. 24 C.F.R. §§ 965.501-965.508.

In establishing the utility allowances, a PHA must approximate a "reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment." 24 C.F.R. § 965.505(a). Sometime prior to 1997, HCDCH determined the amounts of utility consumption by public housing residents that were reasonable and in accordance with 24 C.F.R. § 965.505(a). Based on its determination, HCDCH established a utility allowance schedule set in terms of consumption per kilowatt hour of electricity or cubic foot of gas (hereinafter "consumption allowances"). A copy of the HCDCH consumption allowance schedule is attached hereto as Exhibit "A" to the Declaration of Gavin Thornton. Because tenants at different projects pay for different utilities (e.g. some tenants might pay for only electric lighting and refrigeration, while others might pay for electric lighting and refrigeration plus gas for cooking and a hot water heater), the consumption allowances set forth the consumption amounts in different categories (e.g. the amount of gas required for one month's use of a hot water heater) and according to the number of bedrooms in a unit. For example, a family residing in a three-bedroom unit at a project where tenants pay electricity bills for lighting, refrigeration, and cooking would have a consumption allowance of 480 kilowatt hours of electricity per month. See Exhibit "A" to Declaration of Gavin Thornton.

To allow tenants to purchase the quantity of utilities provided for in the consumption allowances, at some point HCDCH applied the utility rates at the time to the consumption allowances to convert them into terms of dollar amounts (hereinafter "dollar allowances"). When the rents for public housing tenants are calculated, HCDCH factors in a rent credit in the amount of the dollar allowances in an attempt to ensure that the tenant's total rent, including the cost of utilities, does not exceed 30% of tenant income.

While the consumption allowances are applicable to all public housing tenants who pay their own utilities, because of differences in the cost of utilities, the dollar allowances differ depending on the location of the housing project. For example, a tenant on Maui who resides in a one-bedroom unit and pays for utilities to cover lighting and refrigeration would be provided the same consumption allowance as a tenant on Oahu living in a one-bedroom unit and paying for lighting and refrigeration. However, the dollar allowances provided to the Oahu resident and the Maui resident would be different because of differences in the cost of electricity on each island.

The federal regulations require regular revisions to the dollar allowances to ensure that the rent credits tenants receive continue to be sufficient to cover the reasonable utility consumption amounts provided for in the consumption allowances, thereby ensuring that rents do not exceed 30% of tenant income. PHAs are required to annually review and adjust their utility allowances. 24 C.F.R. § 965.507(a). Additionally, in between annual reviews, where there is a change in the utility rates of greater than 10%, PHAs must make interim adjustments to their allowances. 24 C.F.R. § 965.507(b).

Since sometime prior to 1997, HCDCH has failed to annually review the utility allowances and make adjustments to the dollar allowances to account for utility rate increases. Because utility rates have increased substantially since the dollar allowances were last adjusted, the rent credits provided to residents under the dollar allowances were grossly insufficient to purchase the amount of utilities provided for in HCDCH's consumption allowance schedule. Only recently, after a suit seeking injunctive relief was filed by Plaintiffs in the United States District Court for the District of Hawaii, did HCDCH update the dollar allowances to account for changes in utility rates since the allowances were last revised.¹¹

¹¹ Two related class action suits were filed in the United States District Court for the District of Hawaii. The suits are briefly described below:

Smith, et al. v. Aveiro, et al., Civil No. 04-00309 DAE KSC, was filed on

Attached as Exhibit "B" to Declaration of Gavin Thornton is an HCDCH spreadsheet indicating the difference between the old dollar allowances and the new allowances. As the spreadsheet indicates, prior to the revisions public housing tenants were receiving utility allowances that were as much as \$150 per month less than what they should have been receiving. As a result, tenants have had to pay rent charges well in excess of 30% of tenant income.

In addition to violating the U.S. Housing Act and its supporting regulations, by failing to comply with the HUD requirements for development and operation of public housing, HCDCH breached the Annual Contributions Contract between HUD and HCDCH. Furthermore, HCDCH breached the rental agreements between HCDCH and public housing tenants that required HCDCH to provide tenants with a utility allowance in accordance with the applicable allowances, namely the HCDCH consumption allowance.

II. THE PROPOSED CLASS

To avoid unnecessary argument at this stage of the litigation, Plaintiffs seek certification of a class and subclass. The proposed class for certification is defined as persons that currently reside, or resided at any point

May 13, 2004. The suit sought equitable relief on behalf of all public housing tenants who pay their own utilities for rent over-charges arising out of HCDCH's failure to adjust utility allowances as utility rates increased. In October 2004, HCDCH adjusted its utility allowances retroactive to September 2004 in accordance with the amounts indicated in Exhibit "B", attached to the Declaration of Gavin Thornton. The suit was dismissed as moot on July 12, 2005, based on a determination that HCDCH's update of the utility allowances brought them into compliance with federal law.

Amone v. Aveiro, et al., Civ. No. 04-508ACK, was filed in August 2004 by disabled public housing tenants who have been denied their rights to receive notice of and request increased utility allowances as a result of their need for medical devices using electricity. On June, 17, 2005, the court issued an order granting a permanent injunction requiring HCDCH to comply with federal regulations governing the provision of utility allowance adjustments to disabled public housing tenants and declaring that class members were entitled to have their rents adjusted.

from May 18, 2002 to the present in an HCDCH public housing project in which residents receive or should receive utility allowances. The proposed subclass is defined as persons that resided at any point between May 18, 1998 to May 17, 2002 in an HCDCH public housing project in which residents receive or should receive utility allowances.

Certification of a class and subclass to address potential issues relating to the statute of limitations, and to reserve rulings on complex issues such as the date of accrual of the claim and equitable tolling is consistent with the recent practice of other Hawaii courts. In a statewide class action in which substitute teachers challenged the Department of Education's failure to pay statutory wages, *Garner v. Department of Education*, Civil No. 03-1-000305, First Circuit Court, State of Hawaii, the First Circuit Court certified a class and subclass based on statute of limitations categories. See Exhibit 1 to Declaration of Shelby Anne Floyd attached.

The Court has the discretion to alter or amend the class certification order at any time before a decision on the merits, HRCP 23(c)(1), as "the scope and contour of a class may change radically as discovery progresses and more information is gathered about the nature of the putative class members' claims." See *Prado-Steiman v. Prado, M.C.*, 221 F.3d 1266, 1273 (11th Cir. 2000).

III. THE REQUIREMENTS AND PURPOSES OF RULE 23 ARE MET

The provisions of the Hawai'i Rules of Civil Procedure ("HRCP") regarding certification and maintenance of a class, HRCP 23(a) and (b), are identical to rules 23(a) and (b) of the Federal Rules of Civil Procedure ("FRCP"). Hawai'i State courts often rely on federal precedent relating to class certification under the Federal Rules to interpret the HRCP requirements for class certification. See *e.g. Life of the Land v. Land Use Commission*, 63 Haw. 166 (Haw. 1981); *Life of the Land v. Burns*, 59 Haw. 244 (Haw. 1978); *Akua v. Olohana*, 65 Haw. 383 (Haw. 1982).

Class actions have two primary purposes: (1) to protect rights of persons who might not be able to present claims on an individual basis, and (2) to accomplish judicial economy by avoiding multiple suits. *Haley v Medtronic, Inc.*, 169 FRD 643 (C.D. Cal. 1996). See also *Levi v. University of Hawaii*, 67 Haw. 90, 93 (Haw. 1984) (stating, "[o]ne of the purposes of a class action suit is to prevent multiplicity of actions, thereby preserving the economies of time, effort and expense"). The former purpose is clearly served in the instant case where it would be impracticable, if not impossible, for the members of the proposed class to secure the redress available to the named plaintiffs. As residents of low-income public housing, almost every member of the putative class will be poor. It is doubtful that many of them could afford to use their scarce resources to obtain counsel to secure relief for the rent overcharges with which they have been burdened. Additionally, the amount of damages each member would be eligible to recover, while substantial in respect to the members' incomes and cumulatively quite large, would probably not be sufficient to cover the costs of bringing a suit on an individual basis in most cases.

The purpose of judicial economy is clearly served in the instant case as well. It would be unduly burdensome on the courts to litigate the claims of each of the, what will likely be, over 3000 class members on an individual basis, especially when the matter can be properly handled as a class action. The legal and factual claims for each of the members in this case are nearly identical. As discussed further below, the only differences between the claims will be in regard to the amount of the damages caused to each class member, which will be based on a few easily determinable variables. The questions of law and fact that are common to all the members of the proposed class predominate over any questions that affect only individual members.

A. THE REQUIREMENTS OF RULE 23(a) ARE MET

To certify a class action, Plaintiffs must establish that all of the requirements of HRCP 23(a) are met, and must also establish that at least one of

the alternative requirements of HRCF 23(b) is met. *Daly v. Harris*, 209 F.R.D. 180, 184 (D. Haw. 2002).

HRCF 23(a) requires a finding that:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) The representative parties will fairly and adequately protect the interests of the class.

As discussed below, Plaintiffs meet each of the requirements of HRCF 23(a).

1. The Plaintiff Class is so Numerous that Joinder is Impracticable

While there is no minimum number of plaintiffs required to maintain a class action, generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the numerosity prerequisite is satisfied. *Stewart v. Abraham*, 275 F.3d 220, 226-227 (3d Cir. 2001). *See also Life of the Land v. Land Use Commission of the State of Hawaii*, 63 Haw. 166, 623 P.2d 431 (1981) (finding the numerosity requirement to be satisfied where a defendant class was composed of over 150 identifiable members); *Wolkenstein v. Reville*, 539 F.Supp. 87 (W.D. N.Y. 1982), *aff'd* 694 F.2d 35 (2d Cir. 1982) (finding that the numerosity requirement is generally satisfied when the number of class members exceeds 40, and particularly when the number exceeds 100 or 1000); *Penk v. Oregon State Bd. of Higher Education*, 93 F.R.D. 45 (D.C. Or. 1981) (holding that a putative class consisting of approximately 1500 present members and 350 past members was clearly too large to join all members); *Polich v. Burlington Northern*, 116 FRD 258 (D.C. Mont. 1987) (finding that a class consisting of 60 potential members is sufficiently large to raise a presumption that joinder is impracticable).

There are over 2600 housing units in the HCDCH federally subsidized public housing projects where residents directly pay for their own utilities and should receive utility allowances. See Exhibit "C" to Declaration of Gavin Thornton (an HCDCH spreadsheet indicating, *inter alia*, the number of units per housing project where utility allowances are provided). The State has identified the heads of household who, at some point since May 1, 2002, resided in HCDCH federally subsidized public housing projects where residents directly pay for their own utilities and should receive utility allowances. While the exact number of members of the entire class is not known, the list indicates that there were over 3000 persons eligible for inclusion in the class just since 2002. See Declaration of Gavin Thornton.

Though the sheer size of the putative class in this case makes joinder impracticable, there are other relevant considerations that make the impracticability of joinder even more obvious. These relevant considerations include, *inter alia*, the financial resources of class members, the ability of claimants to institute individual suits, the size of individual claims, and the inefficiency inconvenience that would result from being required to bring multiple individual claims. *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993). When these considerations are applied to the present case, in addition to the size of the class, it is clear that joinder is impracticable for the following reasons: (1) the members of the class lack the financial resources to bring individual claims; (2) the size of individual claims would often not support individual claims; and (3) requiring each member of the proposed class to bring an individual action would be extremely inefficient given that each claim is practically identical.

2. There Are Questions of Law or Fact Common to the Class

To satisfy the "commonality" requirement of HRCP 23(a)(2), Plaintiffs need only present a single issue of law or fact common to all class members. *Blackie v. Barrack*, 524 F.2d 891, 904 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976); *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 145 (N.D. Cal. 2004).

The gravamen of Plaintiffs' claims is the fact that Defendant had an obligation to update the utility allowances in public housing as the utility rates increased. Defendant failed to do so, and as a result has not provided public housing residents residing in HCDCH projects with a sufficient dollar allowance to cover the cost of their utilities, thereby overcharging the residents for rent. Both the fact and method of Defendant's breaches of its statutory, regulatory, and contractual obligations are common to all prospective class members.

3. The Representative Plaintiffs' Claims are Typical of the Class' Claims

The HRCF 23(a)(3) requirement that the named Plaintiffs' claims be typical of the class' claims overlaps considerably with the other requirements of Rule 23(a). *Dukes, supra*, at 144. Courts have devised several tests to determine whether this criterion is met. The requirement is satisfied where there is no antagonism between the claims of the named Plaintiff and the claims of the class. *Fowler v. Birmingham News Co.*, 608 F.2d 1055, 1058 (5th Cir. 1979). *See also Life of the Land v. Land Use Commission of the State of Hawaii*, 63 Haw. 166, 183, 623 P.2d 431, 445 (1981) (equating the typicality requirement to requiring an absence of a conflict of interest). The requirement is also satisfied where the named representative's claims are similar enough to the class claims to ensure that the named Plaintiff will adequately represent them. *Cruz v. Bowen*, 672 F. Supp. 1300, 1305 (N.D. Cal. 1987) (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982)).

The named Plaintiffs seek relief that is appropriate to all of the members of the proposed class. As residents of an HCDCH public housing project in which residents pay their own utilities and receive a utility allowance, their claims are virtually identical to the claims of other class members and are in no way antagonistic to the interests of other class members. If Plaintiffs prevail on the merits, the interest of the class members in obtaining damages for rent

overcharges resulting from HCDCH's failure to update the utility allowance will be furthered.

4. The Named Plaintiffs Will Fairly and Adequately Protect the Interests of the Class

The fourth requirement of HRCP 23(a) is satisfied where (1) the class representatives have common interests with the unnamed members of the class, and (2) the representatives will be able to prosecute the class claims vigorously. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). *See also Life of the Land*, 63 Haw. at 183, 623 P.2d at 445 (stating that where claims or defenses are coextensive, there is a probability of fair and adequate representation). In the case at bar, both these requirements are met.

First, lead counsel for Plaintiff has litigated numerous individual and class actions concerning the enforcement of federal rights. *See* Declaration of Shelby Anne Floyd. Gavin Thornton of Lawyers for Equal Justice has advocated on the behalf of many public housing tenants, and is familiar with the federal and contractual rights of such tenants. *See* Declaration of Gavin Thornton. Together they are adequate advocates for Plaintiffs and the class, and will prosecute the class claims vigorously.

Second, the Plaintiffs are seeking to enforce the statutory and contractual obligations of HCDCH that are the same with respect to all class members. As in class actions where plaintiffs sought agency compliance with statutory and constitutional requirements, the key interests of the Plaintiffs are co-extensive with the class members' interests. *See, e.g., Perez-Funez v. District Director, INS*, 611 F. Supp. 990, 997 (C.D. Cal. 1984); *Cornelius v. Mintner*, 395 F. Supp. 616 (D.C. Mass. 1974).

B. PLAINTIFFS SATISFY THE REQUIREMENTS OF RULE 23(b)

HRCP 23(b) allows class certification where the court finds: (1) that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) that a class action is

superior to other available methods for the fair and efficient adjudication of the controversy. HRC(b)(3).

The common issues in this case clearly predominate over questions affecting only individual members. Common questions will be found to predominate where there is a common course of conduct over a period of time directed against members of the class and violating common statutory provisions. *Epstein v. Weiss*, 50 F.R.D. 387, 391 (D.C.E.D.La., 1970) (citing *Esplin v. Hirschi*, 402 F.2d 94, 100 (2d Cir. 1968) and *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 914 (9th Cir. 1964)). In this case, Defendant's breaches of its statutory, regulatory, and contractual obligations are common to all prospective class members and are the main issue of the suit.

As discussed above, HCDCH's consumption allowances are applicable to all members of the putative class. For all members of the putative class, HCDCH failed to regularly revise the dollar allowances as utility rates increased. As a result, all members of the putative class were damaged by not being provided with a sufficient utility allowance and being charged over 30% of their income for rent. These common issues clearly predominate over any issues affecting only individual members.

Though the damages each class member has suffered is different, these difference are minor when viewing the claims as a whole, and even the method of calculating the damages will be consistent across the class. The calculation of each individual's damages will be dependant on the following variables: (1) the period of time the individual resided in public housing; (2) the utility rates for the island on which the individual resided; (3) the utilities paid for by the tenants in the project in which the individual resided; (4) the dollar allowances provided for tenants in the project in which the individual resided; and (5) the number of bedrooms in the individual's unit. All of these variables are easily ascertainable through HCDCH records and utility records. Apart from these differences, the claims of each class member will be established by formula.

Regarding the second component of HRCP 23(b)(3), class action treatment is superior to other methods for the fair and efficient adjudication of this controversy for reasons already mentioned above. HRCP 23(b)(3) favors class actions where common questions of law or fact permit the court to consolidate otherwise identical actions into a single efficient unit. See *Bynum v. Dist. of Columbia*, 214 F.R.D. 43, 49 (D.D.C., 2003). The acts of HCDCH are common to all class members and the claims of each member of the putative class are virtually identical. Further, class action treatment is the only way to achieve fairness in this case since few potential class members would have the means to undertake individual litigation against HCDCH to recover the relatively modest individual damages at issue. Therefore, in the absence of a class action, few class members would have any meaningful redress against HCDCH as a practical matter. A class action is the superior method of resolving this controversy.

IV. NOTICE SHOULD BE PROVIDED TO ALL CLASS MEMBERS IN THE ATTACHED FORM

When a class action is certified and maintained under Haw. R. Civ. P. 23(b)(3), the Court "shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Haw. R. Civ. P. 23(c)(2). Pursuant to Rule 23(c)(2), the notice must:

[A]dvice each member that (A) the court will exclude the member from the class if the member so requests by a specific date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

A proposed form of Notice of Pendency of Class Action meeting the requirements of Rule 23(c)(2) is attached as Exhibit "A". This form is based on similar notices approved by the First Circuit Court in *Garner v. Department of Education* (Exhibit "B") and the Second Circuit Court in *Bento v. Valley Isle, et al.* (Exhibit "C").

Where a class action is certified and maintained under Haw. R. Civ. P. Rule 23(b)(3), the Court has the broad discretion to determine the best notice practicable under the circumstances. *See* Haw. R. Civ. P. Rule 23(c)(2). Here, the best notice practicable under the circumstances is individual notice of the class action to the class members by mailings incorporated into HCDCH's correspondence with its tenants conducted in the regular course of HCDCH's business, and separate mailings to former tenants. Individual notice to the class members is appropriate and required because HCDCH tenants during the relevant class and subclass periods are easily identifiable.

Additionally, it has been recognized that “[w]hen the names and addresses of most class members are known, notice by mail (generally first-class mail) is usually required.” (emphasis added) *Newberg on Class Actions* § 8.2, pg. 164 (citing the *Manual for Complex Litigation* § 30.211). *See also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (holding that “[i]ndividual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort” in Rule 23 (b)(3) actions) (emphasis added); *Contract Buyers League v. F & F Investment*, 48 F.R.D. 7, 15 (N.D. Ill. 1969) (holding that under the reasonable notice standard of Rule 23(c)(2), “adequate notice should require individual notice to the extent that the identities of the class members are ascertainable.”); *Akau v. Olohana Corp.*, 65 Haw. 383, 392, 652 P.2d 1130, 1136 (Haw. 1982) (“A 23(b)(2) action requires less specificity than a 23(b)(3) action because only the latter requires individual notice to members and the ability of members to be excluded from the class as described in Rule 23(c)(2).”).

Here, the proposed Notice should be approved because it meets all the requirements of Rule 23(c)(2). The Notice fairly and accurately describes the nature of the action, and expressly provides that HCDCH disputes the allegations (if it does) and that the Court has not yet substantively ruled on the merits of Plaintiffs' claims. Furthermore, the Notice informs the class members of their rights, including their right to opt-out of the class action, intervene in the class action, and enter an appearance through separate counsel.


The Court also has broad discretion and flexibility to allocate notification costs under Haw. R. Civ. P. Rule 23(c)(2). A well-recognized exception to the general rule that a party seeking the class action must bear the costs of identifying and notifying class members is efficiency, which is "when the task ordered can be performed as part of the defendant's regular course of business." A. Conte and H. Newberg, *Newberg on Class Actions* § 8.8, at 188 (4th ed. 2002). HCDCH should be responsible for mailing the notifications because it communicates with its tenants on a monthly basis concerning their income and rents, and can efficiently provide the notices as part of its "regular course of business" with little or no additional costs.

Finally, allocating the responsibility and expense of sending the class action notifications to the State is not a novel concept. In fact, Courts in this jurisdiction have ordered the State bear the expense of providing notice to those it has contact with on a regular basis. *See e.g.*, Exhibits "D" and "E" (orders in class actions cases where the Court shifted the notification costs to the State). Therefore, Plaintiff requests that the Court approve the substance of this form of notice, and order that the notice requirements of Rule 23 will be satisfied by mailing a copy of this notice to each individual class and subclass member.

V. CONCLUSION

Plaintiffs submit that this action meets all of the requirements for class certification prescribed by Rule 23 of the Hawaii Rules of Civil Procedure. For the foregoing reasons, Plaintiffs respectfully request that this Court certify this action as a class action, pursuant to HRCP 23(a) and 23(b)(3).

DATED: Honolulu, Hawaii, August 10, 2005.



SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN K. THORNTON
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RODELLE SMITH, SHEILA TOBIAS,	)	CIVIL NO. 04 01 0069 K
BARBARA BARAWIS, and LEWIS	)	(Contract)
GLASER individually, and on behalf of	)	CLASS ACTION
all persons similarly situated,)	
)	
Plaintiffs,	)	NOTICE OF PENDENCY OF CLASS
	)	ACTION
v.)	
)	
HOUSING AND COMMUNITY)	
DEVELOPMENT CORPORATION OF)	
HAWAII, a duly organized and)	
recognized agency of the State of)	
Hawaii.)	
)	
Defendants.)	

NOTICE OF PENDENCY OF CLASS ACTION

TO: All Persons Receiving This Notice Who Are Tenants of Certain Public Housing Projects or Were Tenants During the Period May 17, 1998 to the present.

I. WHY YOU SHOULD READ THIS NOTICE

Your rights and the rights of others may be affected by the Class Action lawsuit known as *RODELLE SMITH, SHEILA TOBIAS, BARBARA BARAWIS, and LEWIS GLASER, individually and on behalf of all persons similarly situated vs. HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, a duly organized and recognized agency of the State of Hawaii*; Civil No. 04-1-0069K in the

Circuit Court of the Third Circuit, State of Hawai'i (referred to in this notice as the "Class Action").

Notice of this Class Action is being provided by bulk mail to all Class members.

II. THE CLASS AND SUBCLASS

The Court has certified a group, or "class" of plaintiffs in this Class Action (the "Class"). The Class is defined as:

All persons that currently reside, or resided at any point from May 17, 2003 to the present in an HCDCH project based Section 8 project in which residents receive or should receive utility allowances.

The Court has certified a subclass of plaintiffs in the Class Action as follows:

All persons that resided at any point between May 17, 1999 to May 16, 2003 in an HCDCH project-based project in which residents receive or should receive utility allowances.

Because you are receiving this notice, you are a member of the Class or Subclass.

III. THE LITIGATION

This Class Action involves claims for reimbursements of excess rents paid by public housing tenants who receive utility allowances for utility consumption.

Plaintiffs RODELLE SMITH, SHEILA TOBIAS, BARBARA BARAWIS, and LEWIS GLASER, individually and on behalf of all persons similarly situated ("Plaintiffs"), allege that the HCDCH failed to adjust utility allowances as required by law and therefore charged excessive rents to certain public housing tenants. Plaintiffs seek recovery of the overpayments, interest, and additional relief as allowable by law.

HCDCH denies these allegations, and the Court has not ruled on the merits of Plaintiffs' claims.

IV. REMAINING IN, OR EXCLUDING YOURSELF FROM ("OPTING OUT") OF THE CLASS:

A. Staying in the Class or Subclass:

You do not need to do anything to remain in the Class or Subclass. If you remain in the Class or Subclass, you will be automatically and legally bound by all proceedings, orders, and judgments entered in connection with the Class Action, whether favorable or unfavorable. This means that if you remain in the Class or Subclass and the judgment is favorable to the Plaintiffs and the Class and/or Subclass, you may receive a proportionate share of any judgment. Also, if you remain in the Class or Subclass and the judgment is not favorable to the plaintiffs and the Class and/or Subclass, you will be bound by the adverse decision and will have no right to relitigate any of the claims asserted on behalf of the Class or Subclass in this action. You will be represented by Plaintiffs and their attorneys for the purposes of this Class Action.

B. Excluding Yourself From the Class or Subclass/"Opting Out":

You may choose to "opt out" and not to be a Class or Subclass member. You may then retain your own attorney and take legal action on your own. If you exclude yourself from the Class or Subclass you will not be bound by court orders or judgments entered in connection with this Class Action. You must "opt out" to exclude yourself from this Class Action litigation.

If you wish to opt out and **not** participate in this Class Action, please send written notice of that intent to Plaintiffs' counsel, whose address is ALSTON HUNT FLOYD & ING, ASB Tower, Suite 1800, 1001 Bishop Street, Honolulu, HI 96813, Attn: HCDCH Class Action. A request to opt out and be excluded from the class must contain your: (1) legal name, (2) address(es), (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case number reference Civil No. 04-01-0069 and (6) your signature. Any request to opt out must be received by Plaintiffs' counsel by [30 days from the date of mailing the notice] in order to be effective.

V. PLAINTIFFS AND THEIR COUNSEL

The Court has appointed Plaintiffs RODELLE SMITH, SHEILA TOBIAS, BABARA BARAWIS and LEWIS GLASER, individually and on behalf of all persons similarly situated, and their counsel to act on behalf of the Class and Subclass for the purposes of the Class Action. Counsel for Plaintiffs may be reached at the following address:

ALSTON HUNT FLOYD & ING

ASB Tower, Suite 1800
1001 Bishop Street
Honolulu, Hawai'i 96813
Attn: HCDCH Class Action

LAWYERS FOR EQUAL JUSTICE

P.O. Box 36952
Honolulu, Hawai'i 96837-0952]

**PLEASE DO NOT TELEPHONE OR SEND CORRESPONDENCE TO THE COURT
REGARDING THIS NOTICE**

DATED: _____, Hawaii, _____, 2005.

BY THE ORDER OF THE CIRCUIT COURT
FOR THE THIRD CIRCUIT OF HAWAI'I
THE HONORABLE _____

OF COUNSEL:

ERIC G. FERRER 6828-0
Law Offices of Eric G. Ferrer
One Main Plaza
2200 Main Street, Suite 521
Wailuku, Hawai'i 96793
Telephone: (808) 244-1160
Facsimile: (808) 442-0794

MURRAY T.S. LEWIS (pro hac vice)
Lewis Law Firm
409 Pioneer Building
600 First Avenue
Seattle, Washington 98104
Telephone: (206) 223-7008
Facsimile: (206) 223-7009

PAUL ALSTON 1126-0
BRUCE H. WAKUZAWA 4312-0
MEI-FEI KUO 7377-0
American Savings Bank Tower
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591

Attorneys for Plaintiffs, Individually and
on Behalf of All Those Similarly Situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

DAVID GARNER; PATRICIA SMITH;
ANDREA CHRISTIE; ALLAN
KLITERNICK; KAREN SOUZA;
JO JENNIFER GOLDSMITH; and
DAVID HUDSON, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

STATE OF HAWAII, DEPARTMENT
OF EDUCATION; JOHN DOES 1-5,

) Civil No. 03-1-000305 (KA)
) (CLASS ACTION)

) **STIPULATED ORDER RESOLVING**
) **PLAINTIFFS' MOTION FOR**
) **APPROVAL OF CLASS ACTION**
) **NOTICE AND ALLOCATION OF**
) **NOTIFICATION COSTS, FILED**
) **APRIL 28, 2005; EXHIBIT "A".**

288611-1/6954-1

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2005 JUN 28 AM 11:25

CLERK

EXHIBIT B

JOHN DOE CORPORATIONS 1-5,	)	Judge Karen S.S. Ahn
JOHN DOE PARTNERSHIPS 1-5, ROE)	
NON-PROFIT CORPORATIONS 1-5,	)	No Trial Date Set
and ROE GOVERNMENTAL)	
AGENCIES 1-5,)	
)	
Defendants.)	

**STIPULATED ORDER RESOLVING PLAINTIFFS' MOTION FOR APPROVAL
OF CLASS ACTION NOTICE AND ALLOCATION OF NOTIFICATION COSTS,
FILED APRIL 28, 2005**

IT IS HEREBY STIPULATED, by and between all Parties to this action and through their respective counsel, and HEREBY ORDERED by the Court that Plaintiffs' Motion for Approval of Class Action Notice and Allocation of Notification Costs, filed on April 28, 2005, is resolved as follows:

Pursuant to Haw. R. Civ. P. Rule 23(c)(2), the identifiable "Class" and "Sub-Class" members will be provided individual notice of the pending class action through a one-page notice ("individual notice"). The individual notice will advise the "Class" and "Sub-Class" members of the class action and their rights, as well as reference a website containing the complete "Notice of Pendency of Class Action" ("Class Action Notice") approved by the Court and a telephone number where the Class Action Notice can also be provided by mail upon request. A true and correct copy of the Class Action Notice is attached as Exhibit "A".

The Parties have further agreed that the Defendant State of Hawai'i, Department of Education ("DOE") will mail the individual notice to persons qualified to act as substitute teachers in the 2005-2006 school year with whom the DOE is currently planning to communicate with by mail during the summer of 2005. The DOE will provide Plaintiffs with a list of the names and addresses of the persons to whom it mails the notice upon completion of the mailing and not later than August 31, 2005. Plaintiffs will mail the individual notice to all other members of the class.

The DOE will bear all costs of preparing and mailing the individual notice to the persons it is mailing to as identified above. Plaintiffs will bear all other costs of notice.

The Parties have stipulated, and it is further ordered, that the individual notice will contain the following content:

IMPORTANT NOTICE

As a past or current substitute teacher, you are part of a class action lawsuit that is pending in the First Circuit Court in Honolulu. The lawsuit seeks back pay based upon allegations that the State of Hawai'i, Department of Education ("DOE") miscalculated your pay from 1996 through July 2004. The DOE denies there is any merit to the lawsuit.

You have important rights ^{about this lawsuit} with respect to the lawsuit. It is important that you review the information that is available at www.hawaiiclassaction.com. If you have no access to the internet, or if you have trouble reading or understanding the information found there, you may request more information by calling (808) 441-6112.

^{of the lawsuit} You should know (a) the Court will exclude ^{from the lawsuit} any class member who requests to opt-out by September 23, 2005; The opt-out procedures are explained on the website; (b) the judgment in the class action, favorable or not, will include all class members who do not opt-out; and (c) any class member

who does not opt-out may enter an appearance through separate counsel at his/her own expense. If you do not appear with your own lawyers or opt out of ~~the case~~, your interests will be represented by the class counsel, who are:

the class action lawsuit,

Paul Alston and Mei-Fei Kuo, Alston Hunt Floyd & Ing,
Honolulu, Hawai'i
Eric Ferrer, Wailuku, Maui, Hawai'i
Murray Lewis, Seattle, Washington

The stipulated content of the individual notice and the agreed method of notice are sufficient under Haw. R. Civ. P. Rule 23(c)(2), which states that "the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through a reasonable effort." Here, the certified "Class" and "Sub-Class" members are identifiable and, in fact, have been identified by the DOE. Therefore, the individual notice regarding the class action, which will be sent by mail and supplemented by the internet posting, is the best notice practicable under the circumstances.

Furthermore, the individual notice contains the information required under Rule 23(c)(2) by advising the "Class" and "Sub-Class" members of the pending class action and their rights, including the right to opt-out of the class action, the binding effect of the judgment on class members who are not excluded, and the right to enter a separate appearance of counsel. The individual notice also provides the "Class" and "Sub-Class" members access to the full Class Action Notice through either the internet or, for those without internet access, through the mail upon request. The Plaintiffs will bear the

responsibility and costs of mailing the Class Action Notice to the "Class" and "Sub-Class" members who call to request a copy.

DATED: Honolulu, Hawai'i, JUN 28 2005

APPROVED AND SO ORDERED:

KAREN S. S. AHN



JUDGE OF THE ABOVE ENTITLED COURT

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Eric G. Ferrer".

ERIC G. FERRER
MURRAY T.S. LEWIS (pro hac vice)
PAUL ALSTON
BRUCE H. WAKUZAWA
MEI-FEI KUO
Attorneys for Plaintiffs, Individually
and on Behalf of All Those Similarly Situated

A handwritten signature in cursive script, appearing to read "James E. Halvorson".

JAMES E. HALVORSON
WILLIAM J. WYNHOFF
KATHRYN-JEAN T.K. TANIGUCHI
Attorneys for Defendant
STATE OF HAWAII,
DEPARTMENT OF EDUCATION

David Garner, et al. v. State of Hawai'i Department of Education, et al.; Civil No. 03-1-000305 (KSSA); **STIPULATED ORDER RESOLVING PLAINTIFFS' MOTION FOR APPROVAL OF CLASS ACTION NOTICE AND ALLOCATION OF NOTIFICATION COSTS, FILED APRIL 28, 2005.**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID GARNER; PATRICIA SMITH; ANDREA CHRISTIE; ALLAN KLITERNICK; KAREN SOUZA; JO JENNIFER GOLDSMITH; and DAVID HUDSON, on behalf of themselves and all others similarly situated,	)	Civil No. 03-1-000305 (KSSA)
	)	(CLASS ACTION)
	)	NOTICE OF PENDENCY OF CLASS
	)	ACTION; CERTIFICATE OF
	)	SERVICE.
)	
Plaintiffs,)	
vs.)	
)	
STATE OF HAWAII, DEPARTMENT OF EDUCATION; JOHN DOES 1-5, JOHN DOE CORPORATIONS 1-5, JOHN DOE PARTNERSHIPS 1-5, ROE NON-PROFIT CORPORATIONS 1-5, and ROE GOVERNMENTAL AGENCIES 1-5,	)	Judge Karen S.S. Ahn
)	
Defendants.	)	No Trial Date Set

NOTICE OF PENDENCY OF CLASS ACTION

**TO: All Substitute Teachers Employed by the State of Hawai'i,
Department of Education, Who Provided Educational Services to
Hawai'i Public Schools from July 1, 1996 to July 23, 2004.**

I. WHY YOU SHOULD READ THIS NOTICE

The rights of you and others may be affected by the class action lawsuit known as David Garner, et. al. v. State of Hawai'i, Department of Education, Civil No. 03-1-000305, in the Circuit Court of the First Circuit, State of Hawai'i (referred to in this notice as the "Class Action").

Pursuant to Haw. R. Civ. P. Rule 23, notice of this Class Action is being provided by individual bulk mailing to all "Class" and "Sub-Class" members (collectively "class members") identified in the personnel records of the State of Hawai'i, Department of Education ("DOE").

289273-2 (Final)

EXHIBIT A

If you know of other persons who may be a class member, please show them this Notice.

II. THE CERTIFIED CLASS AND SUB-CLASS

On July 23, 2004, the Court certified a group, or "Class", and a sub-group, or "Sub-Class", of plaintiffs in this Class Action.

The "Class" is defined as:

All persons who have served in position numbers 75100, 75101, 75102, as identified on a DOE SF-5 as a substitute teacher for the Hawai'i DOE at public schools of the State of Hawai'i from November 8, 2000 through the present.

The "Sub-Class" is defined as:

All persons who have served in positions numbers 75100, 75101, 75102 as identified on a DOE SF-5 as a substitute teacher for the Hawai'i DOE at public schools of the State of Hawai'i from July 1, 1996 through November 7, 2000.

This Notice describes: (1) the nature of the claims in this Class Action, (2) how to participate or exclude yourself from the "Class" and/or "Sub-Class", and (3) how to protect your rights.

PLEASE READ THIS NOTICE CAREFULLY

III. THE LITIGATION

This Class Action involves a "Class" and "Sub-Class" of persons, who were employed by the DOE as substitute teachers and provided substitute teaching services at Hawai'i's public schools between 1996 and 2004.

On November 8, 2002, the Plaintiffs, on behalf of similarly situated substitute teachers employed by the DOE, filed a lawsuit against the DOE to recover back pay for the DOE's alleged violation of Haw. Rev. Stat. § 302A-624(e). The Complaint states that in 1996, the Hawai'i State Legislature passed Haw. Rev. Stat. § 302A-624(e), which provided that substitute teacher pay "shall be based on the annual entry salary step rate established for a Class II teacher on the most current teachers' salary schedule." The Complaint

alleges that the DOE has failed to pay substitute teachers this statutorily mandated rate since the statute became effective on July 1, 1996.

On January 6, 2005, Plaintiffs amended and supplemented the Complaint to (1) clarify their alleged violation of Haw. R. Stat. § 302A-624(e) claim and (2) assert a violation of contract rights claim.

The DOE denies the above claims.

To date, the Court has ruled that Plaintiffs' claim for back-pay based upon a violation of Haw. R. Stat. § 302A-624(e) is barred by the doctrine of sovereign immunity. The Court has also denied the Plaintiffs' request for prospective injunctive relief and prejudgment interest. Finally, the Court has determined that the statute of limitations extends back two years before the filing of the Complaint, which was November 7, 2002.

The Court has not yet substantively ruled on the merits of Plaintiffs' violation of contract rights claim, or on the statute of limitations for that claim.

IV. DETERMINING WHETHER YOU ARE A CLASS MEMBER

To be a class member, you must have been employed by the DOE as a substitute teacher, in a position numbered 75100, 75101, and/or 75102 as identified on a DOE SF-5, between July 1, 1996 and July 23, 2004.

V. REMAINING IN OR EXCLUDING YOURSELF FROM ("OPTING OUT") THE CLASS ACTION

A. Staying in the Class Action

If you are a class member, you do not need to do anything to remain in the Class Action. You will be legally bound by all proceedings, orders, and judgments entered in connection with the Class Action, whether favorable or unfavorable. You will be represented by the Plaintiffs and their attorneys for purposes of this Class Action.

If the Plaintiffs become unable to adequately represent the "Class" and/or the "Sub-Class" for any reason, another named plaintiff may be appointed to represent you. As a class member, you may still file a motion with the Court for permission to intervene in the Class Action.

B. Excluding Yourself From the Class Action/“Opting Out”

You may choose not to be class member and not to participate in this Class Action. You may retain your own attorney and take legal action on your own or in combination with others. If you exclude yourself from the Class Action, you will not be bound by court orders or judgments entered in connection with this Class Action. You must “opt out” to exclude yourself from this Class Action litigation.

If you wish to opt out and **not** participate in this Class Action, please send written notice of that intent to Plaintiffs’ counsel, whose address is below.

A request to “opt out” and to be excluded from the class must contain your: (1) legal name, (2) address(es), (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case number reference, which is David Garner, et. al. v. State of Hawai’i, Department of Education, Civil No. 03-1-000305 (KSSA), and (6) **the request must be signed by you.**

You may use the attached “Request for Exclusion” form. Any request to “opt-out” of the Class Action must be received by Plaintiffs’ counsel by September 23, 2005 in order to be effective.

C. Motions To Intervene

You may file a motion to intervene in this Class Action. Any motions to intervene or the like should be filed in the Circuit Court for the First Circuit before the Honorable Karen S.S. Ahn, Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai’i 96813.

Copies of motions should be served on (1) the Plaintiffs’ counsel, whose address appears below, and (2) the counsel for the Defendant DOE: JAMES E. HALVORSON, ESQ., KATHRYN-JEAN T.K. TANIGUCHI, ESQ., whose address is Office of the Attorney General, State of Hawai’i, 235 South Beretania Street, 15th Floor, Honolulu, Hawai’i 96813.

VI. PLAINTIFFS AND THEIR COUNSEL

To act on behalf of the class members for the purposes of the Class Action, the Court has appointed Plaintiffs and their counsel, as follows:

PAUL ALSTON
BRUCE H. WAKUZAWA
MEI-FEI KUO

ERIC G. FERRER
Law Offices of Eric G. Ferrer
One Main Plaza

ALSTON HUNT FLOYD & ING
American Savings Bank Tower
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800

2200 Main Street, Suite 521
Wailuku, Hawai'i 96793
Telephone: (808) 244-1160

MURRAY T.S. LEWIS (pro hac vice)
Lewis Law Firm
409 Pioneer Building
600 First Avenue
Seattle, Washington 98104
Telephone: (206) 223-7008

Please address any correspondence other than the "opt-out" notice regarding the Class Action to ALSTON HUNT FLOYD & ING, and include the reference "RE: Garner v. State of Hawai'i, Department of Education" to enable the attorneys to know what it concerns. Please include in such correspondence your legal name, e-mail address, telephone number, mailing address, or other contact information.

VII. ATTORNEYS' FEES AND EXPENSES

Plaintiffs' counsel have not and will not receive any payment for their services in prosecuting the Class Action, and will not be reimbursed for out-of-pocket costs, unless the class members received a benefit from the lawyers' efforts.

If Plaintiffs' counsel obtain any compensation for you -- by settlement, judgment or otherwise, they will ask the Court to (1) reimburse them for all of the costs they paid or incurred on behalf of the class, and (2) award them (a) attorneys' fees equal to 25% of the total amount of the fund (damages plus any court-awarded fees and costs) that is created through the litigation, and (b) general excise tax. Class members will not be personally liable for any attorneys' fees or expenses of Plaintiffs' counsel.

VIII. HOW TO GET MORE INFORMATION

- By Internet: <http://www.hawaiiclassaction.com>
- By e-mail: classaction@ahfi.com
- Telephone: 808-441-6112
- Fax: 808-524-4591

PLEASE DO NOT TELEPHONE OR SEND CORRESPONDENCE TO THE COURT REGARDING THIS NOTICE. NOTHING IN THIS NOTICE IS TO BE INTERPRETED AS ANY COMMENT BY THE COURT REGARDING THE MERITS OF THE CLASS ACTION.

DATED: _____, 2005

BY ORDER OF THE CIRCUIT COURT FOR
THE FIRST CIRCUIT OF HAWAI'I
THE HONORABLE KAREN S.S. AHN

**REQUEST FOR EXCLUSION FROM THE CLASS ACTION/
"OPT OUT" FORM**

David Garner, et. al. v. State of Hawai'i, Department of Education,
Civil No. 03-1-000305 (KSSA)

LEGAL NAME: _____

(Please do not use aliases or nicknames; include the name under which you received general assistance)

ADDRESS: _____

(Please include all address(es) at which you receive mail)

E-Mail Address: _____

(if applicable)

TELEPHONE

NUMBER(S): _____

(Please include all numbers at which you can be contacted)

I wish to be excluded from the "Class" and "Sub-Class" certified in the above named Class Action. I understand that it is my duty to find my own attorney to represent me and protect my rights as related to the claims in this Class Action. I will seek other legal assistance and advice.

Signature

If you do not wish to be part of the Class and Sub-Class, and will retain your own attorneys, please fill out this form and mail it to:

ALSTON HUNT FLOYD & ING
(Re: Garner v. DOE, 6954-1)
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813

FILED

ALSTON HUNT FLOYD & ING
Attorneys at Law
A Law Corporation

2004 JUL -7 AM 8:38

PAUL ALSTON 1126-0
BRUCE H. WAKUZAWA 4312-0
PETER KNAPMAN 6926-0
American Savings Bank Tower
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800

N. YOTSUYA, CLERK
SECOND JUDICIAL CIRCUIT
STATE OF HAWAII

and

VAN BUREN CAMPBELL & SHIMIZU
GEORGE VAN BUREN 3496-0
ROBERT CAMPBELL 3399-0
Topa Financial Center, West Tower
745 Fort Street, Suite 1950
Honolulu, HI 96813

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JOSEPH R. BENTO and ROSE A.)
BENTO, both individually and on)
behalf of all others similarly situated,)

Civil No. 03-1-0114 (2) (SFR)
(Class Action)

Plaintiffs,)

**ORDER GRANTING PLAINTIFFS'
MOTION TO APPROVE PROPOSED
NOTICE OF PENDENCY OF CLASS
ACTION FILED ON APRIL 23,
2004; EXHIBIT "A"**

vs.)

VALLEY ISLE MOTORS, LTD.; SAFE-)
GUARD PRODUCTS,)
INTERNATIONAL, INC.; DOE)
DEFENDANTS 1-50,)

Hearing:
Date: May 12, 2994
Time: 8:30 a.m.
The Honorable Shackley F. Raffetto

Defendants.)

Trial Date: July 6, 2004

**ORDER GRANTING PLAINTIFFS' MOTION TO APPROVE PROPOSED
NOTICE OF PENDENCY OF CLASS ACTION FILED ON APRIL 23, 2004**

Plaintiffs' Motion to Approve Proposed Notice of Pendency of Class Action filed on April 23, 2004, came on for hearing before the Honorable Shackley F. Raffetto in his Courtroom on May 12, 2004 at 8:30 a.m.

Bruce H. Wakuzawa, Esq. and Paul Alston, Esq. appeared on behalf of Plaintiffs, Renee Yuen, Esq. appeared on behalf of Defendant Valley Isle Motors, Ltd., and Lane C. Hornfeck, Esq. appeared on behalf of Defendant Safe-Guard Products International, Inc. Having considered the memoranda filed by the parties, the arguments of counsel, and the record and files in this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion to Approve Proposed Notice of Pendency of Class Action is Granted. The Court orders that notice be provided to the Class and Sub-Class members pursuant to the Notice attached as Exhibit "A".

DATED: Wailuku, Hawai'i, JUL - 7 2004

/s/ SHACKLEY F. RAFFETTO (Seal)

JUDGE OF THE ABOVE-ENTITLED COURT

Joseph R. Bento, et al. v. Valley Isle Motors, Ltd., et al.; Civil No. 03-1-0114 (2) (SFR);
**ORDER GRANTING PLAINTIFFS' MOTION TO APPROVE PROPOSED NOTICE OF
PENDENCY OF CLASS ACTION FILED ON APRIL 23, 2004**

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JOSEPH R. BENTO and ROSE A. BENTO, both individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

VALLEY ISLE MOTORS, LTD.; SAFE-GUARD PRODUCTS, INTERNATIONAL, INC.; DOE DEFENDANTS 1-50,

Defendants.

Civil No. 03-1-0114 (2)
(Class Action)

NOTICE OF PENDENCY OF CLASS ACTION

NOTICE OF PENDENCY OF CLASS ACTION

TO: All Persons Receiving This Notice Who Purchased an Automobile From Valley Isle Motors, Ltd. During the Period March 24, 1999 to May 12, 2004

I. WHY YOU SHOULD READ THIS NOTICE

The rights of you and others may be affected by the Class Action lawsuit known as *Joseph R. Bento and Rose A Bento, individually and on behalf of all persons similarly situated vs. Valley Isle Motors, Ltd., et al.*, Civil No. 03-1-0114 (2) in the Circuit Court of the Second Circuit, State of Hawai'i (referred to in this notice as the "Class Action").

Notice of this Class Action is being provided by bulk mail to all Class members.

II. THE CLASS

The Court has certified a group, or "class" of plaintiffs in this Class Action (the "Class"). The Court has approved Plaintiffs' Motion to act on behalf of the Class for the purposes of the Class action. The Class is defined as:

All consumers who purchased an automobile from VALLEY ISLE MOTORS, LTD., during the period from March 24, 1999 to May 12, 2004, who were charged both (a) a "Documentation Fee" and (b) a fee for "State Odometer Fee, License and Registration."

The Court has also certified a VTR Sub-Class as follows:

All members of the Class who were charged a "VTR" fee by VALLEY ISLE MOTORS, LTD., during the period from March 24, 1999 to December 31, 2002.

Excluded from the Class are defendants Valley Isle Motors, Ltd., Safe-Guard Products International, Inc., and their subsidiaries, parents and affiliates, including all directors, officers and employees, as well as any entity in which any defendant has a controlling interest, and the legal representatives, heirs, successors or assigns of the defendants.

Because you are receiving this notice, you may be a member of the Class. You may or may not also be a member of the VTR Sub-Class.

III. THE LITIGATION

This Class Action involves consumers who purchased automobiles from Valley Isle Motors, Ltd. ("Valley Isle") during the period between March 24, 1999 and May 12, 2004. These consumers may have been charged both (a) a "Documentation Fee" and (b) for the "State Odometer Fee, License and Registration."

Plaintiffs Joseph R. Bento and Rose A. Bento, individually and on behalf of all others similarly situated ("Plaintiffs"), allege that these charges constitute an unfair or deceptive trade practice. Plaintiffs seek damages, including triple or punitive damages on behalf of the Class, among other relief including equitable disgorgement of the monies received by Valley Isle.

The Court has also certified a VTR Sub-Class. Members of the VTR Sub-Class paid a "VTR" fee to Valley Isle for a "Vehicle Theft Protection System" issued by Valley Isle and/or Defendant Safe-Guard Products International, Inc. ("Safe-Guard"). Plaintiffs allege that this "VTR" charge constitutes an unfair and deceptive trade practice by Valley Isle and Safe-Guard and also a civil conspiracy by Defendants. Plaintiffs seek damages, including triple or punitive damages on behalf of the VTR Sub-Class, among other relief including equitable disgorgement of the monies received by Defendants.

Defendants deny the above claims and the Court has not ruled on the merits of Plaintiffs' claims.

IV. REMAINING IN, OR EXCLUDING YOURSELF FROM ("OPTING OUT") OF THE CLASS:

A. Staying in the Class:

You do not need to do anything to remain in the Class. By not opting out, however, you will be automatically and legally bound by all proceedings, orders, and judgments entered in connection with the Class Action, whether favorable or unfavorable. This means that if you do not opt out or request exclusion from this Class Action and the judgment is favorable to the plaintiffs and the Class, you may receive a proportionate share of any judgment. In that event, the VTR contracts may be rendered void. Also, if you do not opt out or request exclusion from this Class Action and the judgment is not favorable to the plaintiffs and the Class, you will be bound by the adverse decision and will have no right to relitigate any of the claims asserted on behalf of the class in this action. You will be represented by Plaintiffs Joseph and Rose Bento and their attorneys for purposes of this Class Action.

B. Excluding Yourself From the Class/"Opting Out":

You may choose to "opt out" and not to be a Class member. You may then retain your own attorney and take legal action on your own. If you exclude yourself from the Class you will not be bound by court orders or judgments entered in connection with this Class Action. You must "opt out" to exclude yourself from this Class Action litigation.

If you wish to opt out and **not** participate in this Class Action, please send written notice of that intent to Plaintiffs' counsel, whose address is ALSTON HUNT FLOYD & ING, ASB Tower, Suite 1800, 1001 Bishop Street, Honolulu, HI 96813. A request to opt out and be excluded from the class must contain your: (1) legal name, (2) address(es), (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case number reference *Joseph R. Bento and Rose A Bento, individually and on behalf of all persons similarly situated vs. Valley Isle Motors, Ltd., et al.*, Civil No. 03-1-0114 (2) and (6) your signature. Providing this information and written request to opt out does not mean that you will be contacted or encouraged to participate in the litigation if you chose to opt out.

Any request to opt out must be received by Plaintiffs' counsel by [30 days from the date of mailing the notice] in order to be effective.

C. Right to Participate in the Class Action:

You may choose to remain in the class and enter an individual appearance through counsel. If you do so, you must file an appropriate motion with the Circuit Court for the Second Circuit before the Honorable Shackley F. Raffetto, 2145 Main Street, Wailuku, HI 96793.

Copies of motions should be served on (1) Plaintiff's counsel (see addresses below); (2) counsel for Valley Isle: RENEE M.L. YUEN, ESQ., Haseko Center, Suite 703, 820 Mililani Street, Honolulu, HI 96813 and (3) counsel for Safe-Guard LANE HORNFECK, ESQ., Starn O'Toole Marcus & Fisher, 737 Bishop Street, Ste. 1740, Honolulu, HI 96813.

V. PLAINTIFFS AND THEIR COUNSEL

The Court has appointed Plaintiffs Joseph and Rose Bento and their counsel to act on behalf of the Class for the purposes of the Class Action. Counsel for Plaintiffs may be reached at the following address:

ALSTON HUNT FLOYD & ING
ASB Tower, Suite 1800
1001 Bishop Street
Honolulu, Hawai'i 96813

VAN BUREN CAMPBELL & SHIMIZU
Topa Financial Center, West Tower
745 Fort Street, Suite 1950
Honolulu, Hawai'i 96813

PLEASE DO NOT TELEPHONE OR SEND CORRESPONDENCE TO THE COURT REGARDING THIS NOTICE

DATED: _____, 2004

BY ORDER OF THE CIRCUIT COURT FOR
THE SECOND CIRCUIT OF HAWAII
THE HONORABLE SHACKLEY F.
RAFFETTO

ALSTON HUNT FLOYD & ING
Attorneys at Law
A Law Corporation

PAUL ALSTON 1126-0
GLENN T. MELCHINGER 7135-0
18th Floor, Pacific Tower
1001 Bishop Street
Honolulu, Hawai'i 96813

Telephone: (808) 524-1800

ERIC A. SEITZ
ATTORNEY AT LAW
A LAW CORPORATION

ERIC A. SEITZ 1412-0
LAWRENCE I. KAWASAKI 5820-0
820 Mililani Street, Suite 714
Honolulu, Hawai'i 96813
Telephone: (808) 533-7434

Attorneys for Plaintiff
GARY KIHARA

1ST CIRCUIT COURT
STATE OF HAWAII

2001 MAY 31 PM 4:08

M.N. TANAKA
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

GARY KIHARA, individually and on behalf)
of all others similarly situated)

Plaintiff,)

vs.)

SUSAN M. CHANDLER, Director of the)
Department of Human Services, a duly)
organized and recognized agency of the)
State of Hawaii, in her official and)
individual capacities,)

Defendant.)

Civil No. 00-1-2847-09 SSM
(Class Action)

ORDER GRANTING PLAINTIFF GARY
KIHARA'S MOTION FOR CLASS
CERTIFICATION FILED ON APRIL 19,
2001

DATE: May 14, 2001
TIME: 11:00 a.m.
JUDGE: Hon. Sabrina S. McKenna

EXHIBIT D

ORDER GRANTING PLAINTIFF GARY KIHARA'S MOTION FOR CLASS
CERTIFICATION FILED ON APRIL 19, 2001

Plaintiff Gary Kihara's Motion for Class Certification, filed on April 19, 2001, came on for hearing before the Honorable Sabrina S. McKenna in her Courtroom on May 14, 2001, at 11:00 a.m. Glenn T. Melchinger, Esq. and Eric A. Seitz, Esq. appeared on behalf of Plaintiff Gary Kihara, and Deputy Attorney General Wendy J. Utsumi, appeared on behalf of Defendant. The Court has considered the memoranda and documents filed by the parties relating to the motion and heard the arguments of counsel. For good cause shown,

IT IS HEREBY ORDERED that Gary Kihara's Motion for Class Certification, filed herein on April 19, 2001, is GRANTED.

1. Under Hawai'i Rules of Civil Procedure Rules 23(b)(1)(A), 23(b)(1)(B), and 23(b)(3) the Court hereby certifies a class defined as:

All disabled persons (other than those with a primary diagnosis of substance abuse) who received General Assistance benefits and were adversely affected by Hawai'i Administrative Rules Sections 17-678-17 to 17-678-19, promulgated on July 24, 1995, effective after February 29, 1996.

2. As Plaintiff is indigent, the cost of notification of the prospective class members is to be shared by Plaintiff and Defendant in that Plaintiff will advance the cost and arrange for notification by publication in a newspaper of statewide circulation on a given day of the week for three consecutive weeks. The costs of publication will be promptly reimbursed to Plaintiff by Defendant. Defendant will bear the costs of providing individual notice in the form of a Court-approved Notice Of Pendency of Class Action to all the potential class members still on the Department of Human Services rolls for financial, medical, or food stamps assistance programs. This

method of notice is calculated to provide the best means of notice under the circumstances.


3. The Court appoints the law firm of Alston Hunt Floyd & Ing and Eric Seitz, Attorney at Law as co-lead counsel for the Plaintiff class. Papers filed with the Court shall be served upon both firms.

4. Plaintiff will submit a final proposed Notice of Pendency of Class Action ("Notice") to this Court for approval by May 30, 2001. Defendant may submit her objections to the proposed Notice in writing or in the form of her own proposed Notice by June 8, 2001.

DATED: Honolulu, Hawai'i, MAY 7 2001
SARINA C. ...

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:



WENDY J. OTSUMI
Deputy Attorney General
Attorney for Defendant

In the First Circuit Court, State of Hawai'i; Civil No. 00-1-2847-09 (SSM); Gary Kihara v. Susan M. Chandler; Order Granting Plaintiff Gary Kihara's Motion for Class Certification filed on April 19, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SHEA T. BURNS-VIDLAK, a minor, by his mother and
next friend, HONEY BURNS, and GEORGE COHN,
Plaintiffs,
vs.
SUSAN CHANDLER, in her official capacity as the
Director of the Department of Human Services of the
State of Hawaii, and STATE OF HAWAII,
Defendants.

CIVIL NO. 95-00871 ACK
FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
AUG 07, 1996
at 11 o'clock and 29 min. A.M.
WALTER A.Y.H. CHINN, CLERK

IMPORTANT NOTICE TO CLASS AND ORDER

TO: ALL DISABLED OR BLIND PERSONS NOT ELIGIBLE FOR MEDICAID WHO WOULD
HAVE BEEN ELIGIBLE FOR QUEST BENEFITS BETWEEN AUGUST 1, 1994 AND MARCH
29, 1996 EXCEPT FOR THEIR DISABILITY

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, you are hereby notified:

1. The above captioned class action is pending in this Court. It was brought on behalf of a class consisting of all Hawaii residents who were ineligible for Medicaid but were eligible for medical benefits under the State of Hawaii's Department of Human Services ("DHS") QUEST program but were blind or disabled and therefore either did not apply for or applied for and were denied QUEST benefits between August 1, 1994 and March 29, 1996. The suit claims that the QUEST regulations in effect during that period violated 42 U.S.C. § 12132 and 29 U.S.C. § 729 by discriminating on the basis of disability. The suit seeks compensatory and punitive damages for the class.
2. On April 12, 1996, the Court entered an order in favor of the Plaintiffs, holding that DHS' QUEST regulations did violate the law, and that Plaintiffs are entitled to prove their claims for monetary damages.
3. On June 27, 1996, the Court entered an order certifying certain portions of this action as a class action and defining the class as set forth in paragraph 1. The portions which are included in the class action are (1) that class members have been discriminated against and have the right to seek compensatory damages for the discrimination; (2) that class members may seek punitive damages against the State of Hawaii in this lawsuit; and (3) that class members have the right to file separate actions to prove their actual damages.
4. This notice is given to you in the belief that you may be a member of the above class whose rights may be affected by this lawsuit. It should not be understood as an expression of any opinion by the Court concerning your right to recovery of damages or your obligation to support the class representatives. This notice is intended merely to advise you of the pendency of this action and of your rights with respect thereto.
5. If you are a member of the class described in paragraph 1, you will be included in the class unless you request to be excluded from such class in the manner set forth below. If you remain a member of the class, you will be bound by the judgment whether favorable or unfavorable, but if there is a recovery of punitive damages, you will be entitled to share in the proceeds unless costs, expenses and attorneys' fees which the Court may allow to be paid out of any such recovery. You will not be responsible for any Court costs to the defendants. Court may allow to be paid out of any such recovery. You will not be responsible for any Court costs to the defendants.
6. If you remain a member of the class and the Court directs that a judgment be entered in favor of the class as to punitive damages, you will not receive any monies collected pursuant to such judgment unless you complete and mail a Proof of Claim form to attorneys for the class, as discussed below, postmarked on or before December 27, 1996.
7. If you wish to file an individual action for individualized compensatory damages, whether or not you remain in the class, you should do so promptly or your claims may become barred by applicable statutes of limitation or otherwise.
8. If you wish to be excluded from the class, you must send a letter setting forth your name, present address, and a statement that you wish to be excluded from the class, postmarked on or before March 31, 1997, addressed to attorneys for the class as follows:

Shelby Anne Floyd, Esq. or Brad L. Tamm, Esq.
ALSTON HUNT FLOYD & ING
Suite 1800, 1001 Bishop Street
Honolulu, HI 96813
Telephone: (808) 524-1800
9. You may also write or call attorneys for the class at the above address and phone number to request a Proof of Claim form or to inquire as to any other matter concerning this notice.
10. This notice shall be mailed by Defendants, by first class mail, postmarked on or before September 27, 1996, to the last known address of all known applicants who were denied QUEST benefits.
11. This notice shall also be published on or before September 27, 1996 at least twice in the Honolulu Advertiser, twice in the Honolulu Star-Bulletin, and twice in each of the Neighbor Island newspapers of general circulation. Publication shall be in a display ad at least four columns wide. Defendants shall bear the cost of publication.
12. This notice shall be posted by Defendants in all welfare offices from the filing of this notice and order through December 27, 1996. In addition, Defendants shall request of the library system that this notice be posted for at least one month at all libraries.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, AUG 7, 1996

Alan C. Key
Chief United States District Judge

BURNS-VIDLAK v. CHANDLER: CIV. NO. 95-00871 ACK: IMPORTANT NOTICE TO CLASS AND ORDER

EXHIBIT E

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RODELLE SMITH, SHEILA TOBIAS,	)	CIVIL NO. 04-1 0069K
BARBARA BARAWIS, and LEWIS	)	(Contract)
GLASER individually, and on behalf of)	
all persons similarly situated,	)	DECLARATION OF SHELBY ANNE
	)	FLOYD
Plaintiffs,)	
)	
v.)	
)	
HOUSING AND COMMUNITY)	
DEVELOPMENT CORPORATION OF)	
HAWAII, a duly organized and)	
recognized agency of the State of)	
Hawaii.)	
)	
Defendant.)	
_____)	

DECLARATION OF SHELBY ANNE FLOYD

Pursuant to Hawaii Circuit Court Rule 7(g) I declare that:

1. I am attorney with the law firm of Alston Hunt Floyd & Ing, counsel for Plaintiff herein.
2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. I am lead counsel in this matter because of my training and experience in the handling of complex federal and class action litigation. I received my J.D. degree from Columbia University School of Law in 1975, and was admitted to the bar in California in 1975 and in Hawaii in 1976. I have

been admitted to practice before the Ninth Circuit Court of Appeals and the United States Supreme Court.

4. My class action experience includes being named lead counsel in a related case *Amone v. Housing and Community Development Corp. of Hawai'i*, Civ. No. 04-00508 ACK/BMK, U.S. District Court for the District of Hawai'i; *Felix v. Waihee* (now Lingle), Civ. No. 93-367 DAE, U.S. District Court for the District of Hawaii; *Burns-Vidlak v. Chandler*, Civ. No. 95-892 ACK; *Sterling v. Chandler*, Civil No. 97-435 BMK, all of which involved enforcement of federal rights in complex civil actions. *Burns-Vidlak* and *Sterling* involved claims for damages too, and resulted in settlements of over \$7,000,000.

5. Attached hereto as Exhibit 1 is a true and correct copy of the Order Granting Plaintiffs' Motion for Class Certification filed on June 10, 2004 in *Garner v. Department of Education*, Civil No. 03-1-000305, First Circuit Court, State of Hawai'i.

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

Executed in Kamuela, Hawai'i on AUGUST 10, 2005.


Shelby Anne Floyd

Of Counsel:
ERIC G. FERRER 6828-0
Law Offices of Eric G. Ferrer
One Main Plaza
2200 Main Street, Suite 521
Wailuku, HI 96793
Tele: (808) 244-1160
Fax: (808) 244-1138

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2004 JUL 23 AM 11:30

T. WONG
CLERK

MURRAY T.S. LEWIS (pro hac vice)
Lewis Law Firm
409 Pioneer Building
600 First Avenue
Seattle, Washington 98104
Telephone: (206) 223-7008
Facsimile: (206) 223-7009

PAUL ALSTON 1126-0
BRUCE H. WAKUZAWA 4312-0
MEI-FEI KUO 7377-0
ELIZABETH A. ROBINSON 7805-0
American Savings Bank Tower
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591

Attorneys for Plaintiffs, Individually and
On Behalf of All Those Similarly Situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

DAVID GARNER; PATRICIA
SMITH; ANDREA CHRISTIE,
ALLEN KLITERNICK; KAREN
SOUZA; JO JENNIFER
GOLDSMITH; and DAVID
HUDSON, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

STATE OF HAWAII, DEPARTMENT
OF EDUCATION; JOHN DOES 1-
5, JOHN DOE CORPORATIONS 1-
5, JOHN DOE PARTNERSHIPS 1-

Civil Action No. 03-1-000305
RWP

**ORDER GRANTING PLAINTFFS'
MOTION FOR CLASS
CERTIFICATION FILED ON
JUNE 10, 2004**

Hearing:

Date: July 1, 2004

Time: 11:00 a.m.

Judge: The Honorable Richard
W. Pollack

EXHIBIT 1

5, ROE NON-PROFIT
CORPORATIONS 1-5, and ROE
GOVERNMENTAL AGENCIES 1-5.

Defendants.

Trial Date: January 24, 2005
The Honorable Karen S.S. Ahn

**ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION FILED ON JUNE 10, 2004**

Plaintiffs' Motion for Class Certification filed on June 10, 2004, came on for hearing before the Honorable Richard W. Pollack in his Courtroom on July 1, 2004 at 11:00 a.m. Paul Alston, Esq., Eric Ferrer, Esq. and Murray Lewis, Esq. appeared on behalf of Plaintiffs and Kathryn-Jean T.K. Taniguchi, Esq. and Jonathan A. Swanson appeared on behalf of Defendant State of Hawai'i, Department of Education.

Having considered the memoranda filed by the parties, the arguments of counsel, and the record and files in this action, and having determined that all requirements of Hawai'i Rules of Civil Procedures, Rules 23(a) and (b)(3),

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion is granted and the following class and subclass are certified pursuant to Hawai'i Rules of Civil Procedures, Rules 23(a) and (b)(3) with Plaintiffs David Garner, Patricia Smith, Andrea Christie, Allen Kliternick, Karen Souza, Jo Jennifer Goldsmith and David Hudson as class representatives as follows:

1. The Class

All persons who have served in position numbers 75100, 75101, 75102, as identified on a DOE SF-5 as a substitute

teacher for the Hawaii DOE at public schools of the State of Hawaii from November 8, 2000 through the present.

2. The Sub-Class

All persons who have served in positions numbers 75100, 75101, 75102 as identified on a DOE SF-5 as a substitute teacher for the Hawaii DOE at public schools of the State of Hawaii from July 1, 1996 through November 7, 2000.

DATED: Honolulu, Hawai'i, _____

JUL 2 2004

RICHARD W. POLLACK



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "J. Halvorson", written over a horizontal line.

JAMES E. HALVORSON
KATHRYN-JEAN T.K. TANIGUCHI
JONATHAN A. SWANSON
Attorneys for Defendant
STATE OF HAWAII, DEPARTMENT
OF EDUCATION

David Garner, et al. v. State of Hawai'i, Department of Education;
Civil No. 03-1-000305 RWP; **ORDER GRANTING PLAINTIFFS' MOTION**
FOR CLASS CERTIFICATION FILED ON JUNE 10, 2004

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

RODELLE SMITH, SHEILA TOBIAS,	)	CIVIL NO. 04-1 0069K
BARBARA BARAWIS, and LEWIS)	
GLASER individually, and on behalf of	)	DECLARATION OF GAVIN
all persons similarly situated,	)	THORNTON; EXHIBITS "A"- "C"
)	
Plaintiffs,)	
)	
v.)	
)	
HOUSING AND COMMUNITY)	
DEVELOPMENT CORPORATION OF)	
HAWAI'I, a duly organized and)	
recognized agency of the State of)	
Hawai'i.)	
)	
Defendant.)	
<hr/>		

DECLARATION OF GAVIN THORNTON

Pursuant to Hawaii Circuit Court Rule 7(g) I declare that:

1. I am an attorney with the law firm of Lawyers for Equal Justice, counsel for Plaintiff herein.
2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. I received my J.D. degree from the University of Virginia School of Law in 2002, and was admitted to the bar in Washington State in 2002, and Hawaii in 2003.
4. I began working with the Legal Aid Society of Hawaii in 2002. Since that time, the focus of my practice has been on advocating for public housing tenant rights. I have attended extensive trainings in public housing law and am a member of

the Housing Justice Network, a nationwide organization of attorneys specializing in public housing law. I am especially familiar with the portions of the U.S. Housing Act applicable to the federally subsidized housing projects that are the subject of this litigation.

5. Attached hereto as Exhibit "A" is a true and correct copy of the Housing and Community Development Corporation of Hawaii ("HCDCH") schedule referred to as the "consumption allowance."

6. Attached hereto as Exhibit "B" is a true and correct copy of the HCDCH updated utility allowance schedules (referred to as "dollar allowances") put into effect on October 1, 2004, and submitted by HCDCH in support of its Counter-Motion for Summary Judgment in Civil No. CV04 00309 DAE/KSC filed in the United States District Court for the District of Hawaii on June 21, 2005.

7. Attached hereto as Exhibit "C" is a true and correct copy of proposed utility allowance schedules provided by counsel for Defendants, which indicate, *inter alia*, the number of housing units in each public housing project where a utility allowance is received.

8. Information provided by counsel for Defendants John C. Wong indicates that there were over 3,000 persons in HCDCH public housing that received or should have received utility allowances just since 2002.

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

Executed in Honolulu, Hawai'i on August 9, 2005.


Gavin Thornton

UTILITY ALLOWANCE

ELECTRICITY	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR
1. BASIC (LIGHTS/REFRIGERATOR)	240	260	300	355	415	475
2. BASIC + COOKING	265	310	390	480	580	700
3. BASIC + COOKING + INDIVIDUAL WATER HEATER	420	540	750	955	1245	1525
4. BASIC + COOKING + INDIVIDUAL WATER HEATER W/HEAT PUMP	370	475	645	820	1050	1280
1. BASIC + COOKING + INDIVIDUAL WATER HEATER W/SOLAR	295	360	465	500	725	855
6. BASIC + INDIVIDUAL WATER HEATER W/ HEAT PUMP	345	425	555	695	875	1055
2. BASIC + INDIVIDUAL HOT WATER HEATER W/ SOLAR	270	310	375	455	580	640
SYNTHETIC NATURAL GAS 3						
1. COOKING	390	400	500	800	1000	1100
2. COOKING + INDIVIDUAL WATER HEATER	1500	2200	2800	2400	3900	4300
3. COOKING + INDIVIDUAL WATER HEATER WITH SOLAR EXCEPT HA 107	1200	1750	2250	2750	3175	3500
LIQUID PROPANE GAS						
1. COOKING	110	147	220	294	358	405
2. COOKING + INDIVIDUAL WATER HEATER W/ SOLAR	552	809	1030	1251	1435	1582
3. COOKING + INDIVIDUAL WATER HEATER W/ SOLAR	442	644	828	1012	1168	1289

1. ELECTRICITY ALLOWANCE IS IN KILOWATT HOURS (KWH) PER DWELLING UNIT PER MONTH.

EXHIBIT A

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
Hawaii	Hilo	HI001004	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

EXHIBIT B

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 Lailima	2 story twnhse	2	100.00	56.00	44.00
Oahu	Pearl City	HI001027	Hale Lailima	2 story twnhse	3	125.00	70.00	55.00
Hawaii	Hilo	HI001028	Punahale 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	Maui	HI001033	Maui I	Single Fam	2	90.00	82.00	8.00
Oahu	Maui	HI001033	Maui I	Single Fam	3	74.00	67.00	7.00
Oahu	Nanakuli	HI001035	Nanakuli Homes	Single Fam	3	111.00	100.00	11.00
Oahu	Maui	HI001042	Maui II	Single Fam	2	111.00	34.00	77.00
Oahu	Maui	HI001042	Maui II	duplex	2	133.00	42.00	91.00
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twnhse	3	157.00	51.00	106.00
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twnhse	1	85.00	48.00	37.00
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twnhse	2	115.00	64.00	51.00
Oahu	Wahiawa	HI001056	Kauhale Nani	2 story twnhse	3	146.00	81.00	65.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twnhse	1	52.00	-	52.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twnhse	2	63.00	-	63.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph I	3 story twnhse	1	58.00	48.00	10.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph II	3 story twnhse	2	74.00	64.00	10.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph II	3 story twnhse	3	90.00	81.00	9.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	2 story twnhse	1	79.00	41.00	38.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	2 story twnhse	2	97.00	50.00	47.00
Oahu	Waianae	HI001057	Waimaha-Sunflower Ph III	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
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaluu	high rise	1	52.00	30.00	22.00
Hawaii	Kailua-Kona	HI001061	Ka Hale Kahaluu	3 story twnhse	1	85.00	30.00	55.00
Oahu	Honolulu	HI001062	Kalaikoa Homes high rise					
Oahu	Honolulu	HI001062	Kalaikoa Homes low rise					

Oahu	Honolulu	HI001062	Kalakaua Homes low rise	3 story twnhse	2	115.00	37.00	78.00
Oahu	Honolulu	HI001062	Kalakaua Homes low rise	3 story twnhse	3	146.00	43.00	103.00
Hawaii	Kealahou	HI001063	Nani Olu (E)	2 story 8 plx	1	131.00	66.00	65.00
Kauai	Kekaha	HI001064	Kekaha Ha'aheo	1 story tw hse	1	143.00	77.00	66.00
Kauai	Kekaha	HI001064	Kekaha Ha'aheo	1 story tw hse	2	170.00	93.00	77.00
Kauai	Kekaha	HI001064	Kekaha Ha'aheo	1 story tw 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 wikip	1	85.00	48.00	37.00
Oahu	Kaneohe	HI001069	Kaneohe Apartments	3 story wikip	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 hse	1	131.00	59.00	72.00
Hawaii	Kamuela	HI001071	Noelani I	tw 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 wikip	2	50.00	30.00	20.00
Oahu	Honolulu	HI001073	Spencer House	3 story wikip	3	58.00	34.00	24.00
Hawaii	Kamuela	HI001078	Noelani II	3 story wikip	3	226.00	70.00	156.00
Kauai	Koloa	HI001086	Kawaiehua - 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	Wailanae	HI001091	Kau'iohalani	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 Kumu '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

Island	City	Project	Project	Type of Dwelling	No. of bedrooms	Square Footage	Electricity			SNG			LPG			Total net utility cost	New utility allowance (rounded)	Current utility allowance	Difference	No. of units	Total difference
							Fuel Chg	Cost Chg	Total	Fuel Chg	Cost Chg	Total	Fuel Chg	Cost Chg	Total						
Caru	Honolulu	H001003	Mayor Wright Homes	2 story bungalow	1	530	37.47	7.00	44.47	-	-	-	-	-	-	44.47	44.00	27.00	11.00	24	408
Caru	Honolulu	H001003	Mayor Wright Homes	2 story bungalow	2	732	43.24	7.00	50.24	-	-	-	-	-	-	50.24	50.00	30.00	20.00	114	2,280
Caru	Honolulu	H001003	Mayor Wright Homes	2 story bungalow	3	906	51.17	7.00	58.17	-	-	-	-	-	-	58.17	58.00	34.00	24.00	169	4,032
Caru	Honolulu	H001003	Mayor Wright Homes	2 story bungalow	4	1203	59.81	7.00	66.81	-	-	-	-	-	-	66.81	67.00	38.00	25.00	50	1,450
Caru	Honolulu	H001004	Mayor Wright Homes	2 story bungalow	5	1399	68.46	7.00	75.46	-	-	-	-	-	-	75.46	76.00	43.00	32.00	6	296
Caru	Honolulu	H001004	Mayor Wright Homes	1 story 4-gates	2	706	67.25	10.00	77.25	-	-	-	-	-	-	77.25	78.00	43.00	32.00	6	296
Hawaii	Hilo	H001004	Mayor Wright Homes	18.2 story 4-gates	1	1096	78.58	10.00	88.58	-	-	-	-	-	-	88.58	89.00	43.00	32.00	17	612
Hawaii	Hilo	H001004	Mayor Wright Homes	2 story 4-gates	4	1347	83.03	10.00	93.03	-	-	-	-	-	-	93.03	94.00	43.00	32.00	2	100
Caru	Honolulu	H001006	Keolu Valley Homes	2 story bungalow	2	694	51.31	7.00	58.31	-	-	-	-	-	-	58.31	58.00	48.00	10.00	52	520
Caru	Honolulu	H001006	Keolu Valley Homes	2 story bungalow	2	674	66.59	7.00	73.59	-	-	-	-	-	-	73.59	74.00	64.00	10.00	60	600
Caru	Honolulu	H001006	Keolu Valley Homes	2 story bungalow	2	634	68.18	7.00	75.18	-	-	-	-	-	-	75.18	76.00	81.00	8.00	123	1,026
Caru	Honolulu	H001006	Keolu Valley Homes	2 story bungalow	4	1115	103.92	7.00	110.92	-	-	-	-	-	-	110.92	111.00	102.00	8.00	112	1,008
Caru	Honolulu	H001006	Keolu Valley Homes	2 story bungalow	5	1276	124.67	7.00	131.67	-	-	-	-	-	-	131.67	132.00	124.00	8.00	208	2,080
Caru	Honolulu	H001007	Kono Homes	2 story bungalow	2	490	37.47	7.00	44.47	-	-	-	-	-	-	44.47	44.00	27.00	11.00	20	200
Caru	Honolulu	H001007	Kono Homes	2 story bungalow	3	680	43.24	7.00	50.24	-	-	-	-	-	-	50.24	50.00	30.00	20.00	32	640
Caru	Honolulu	H001007	Kono Homes	2 story bungalow	4	827	51.17	7.00	58.17	-	-	-	-	-	-	58.17	58.00	43.00	32.00	37	1,073
Caru	Honolulu	H001007	Kono Homes	2 story bungalow	6	1182	68.46	7.00	75.46	-	-	-	-	-	-	75.46	76.00	43.00	32.00	6	296
Caru	Honolulu	H001008	Palo Alto Homes	2 story bungalow	1	613	70.62	7.00	77.62	12.51	6.75	19.26	-	-	-	66.81	67.00	34.00	3.00	3	84
Caru	Honolulu	H001008	Palo Alto Homes	2 story bungalow	2	876	96.13	7.00	103.13	17.52	6.75	24.27	-	-	-	75.46	76.00	43.00	32.00	6	296
Caru	Honolulu	H001008	Palo Alto Homes	2 story bungalow	2	1046	121.07	7.00	128.07	22.52	6.75	29.27	-	-	-	96.89	97.00	49.00	7.00	34	2,618
Caru	Honolulu	H001008	Palo Alto Homes	2 story bungalow	4	1447	154.22	7.00	161.22	27.52	6.75	34.27	-	-	-	150.34	151.00	67.00	17.00	49	3,682
Caru	Honolulu	H001008	Palo Alto Homes	2 story bungalow	5	1303	187.37	7.00	194.37	30.00	6.75	36.75	-	-	-	186.50	187.00	74.00	13.00	32	3,672
Caru	Honolulu	H001009	Kaunani Homes	2 story bungalow	2	714	53.62	7.00	60.62	17.52	6.75	24.27	-	-	-	231.15	231.00	86.00	30.00	4	572
Caru	Honolulu	H001009	Kaunani Homes	2 story bungalow	3	898	55.15	7.00	62.15	22.52	6.75	29.27	-	-	-	101.42	101.00	34.00	6.00	38	8,280
Caru	Honolulu	H001013	Lanania Homes I	1 story 4-gates	1	666	58.28	10.00	68.28	-	-	-	-	-	-	142.00	142.00	112.00	30.00	2	60
Caru	Honolulu	H001013	Lanania Homes II	18.2 story 4-gates	2	706	67.25	10.00	77.25	-	-	-	-	-	-	169.32	169.00	133.00	36.00	16	540
Caru	Honolulu	H001013	Lanania Homes II	2 story 4-gates	4	1096	78.58	10.00	88.58	-	-	-	-	-	-	103.64	103.00	157.00	43.00	17	573
Caru	Honolulu	H001025	Waimanalo Homes	Single Farm	2	1347	93.03	10.00	103.03	-	-	-	-	-	-	118.88	119.00	121.00	17.00	8	400
Caru	Honolulu	H001025	Waimanalo Homes	Single Farm	3	877	43.24	7.00	50.24	-	-	-	-	-	-	64.44	64.00	44.00	31.00	9	969
Caru	Honolulu	H001025	Waimanalo Homes	Single Farm	4	1017	51.17	7.00	58.17	-	-	-	-	-	-	71.19	71.00	51.00	18.00	18	176
Caru	Honolulu	H001027	Hale Lanania	2 story bungalow	2	1171	59.81	7.00	66.81	-	-	-	-	-	-	89.80	90.00	44.00	20.00	4	176
Caru	Honolulu	H001028	Hale Lanania	2 story bungalow	2	659	67.25	7.00	74.25	-	-	-	-	-	-	96.53	96.00	70.00	26.00	18	880
Caru	Honolulu	H001028	Hale Lanania	2 story bungalow	3	823	72.16	7.00	79.16	-	-	-	-	-	-	126.11	126.00	96.00	30.00	10	1,080
Caru	Honolulu	H001030	Koala Village	2 story bungalow	1	649	67.25	10.00	77.25	-	-	-	-	-	-	101.86	102.00	78.00	24.00	8	508
Caru	Honolulu	H001030	Koala Village	2 story bungalow	2	852	43.24	7.00	50.24	-	-	-	-	-	-	70.28	70.00	50.00	20.00	24	744
Caru	Honolulu	H001030	Koala Village	2 story bungalow	3	816	51.17	7.00	58.17	-	-	-	-	-	-	142.20	142.00	106.00	36.00	36	1,584
Caru	Honolulu	H001030	Koala Village	2 story bungalow	4	996	59.81	7.00	66.81	-	-	-	-	-	-	183.36	183.00	119.00	64.00	12	628
Caru	Honolulu	H001032	Kaunani	2 story bungalow	2	784	-	-	-	-	-	-	-	-	-	-	-	-	-	10	-
Caru	Honolulu	H001032	Kaunani	2 story bungalow	3	1030	-	-	-	-	-	-	-	-	-	-	-	-	-	14	-
Caru	Honolulu	H001033	Kaunani	Single Family 1	4	1114	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-
Caru	Honolulu	H001033	Kaunani	Single Farm	2	768	-	-	-	-	-	-	-	-	-	-	-	-	-	7	-
Caru	Honolulu	H001033	Kaunani	Single Farm	3	912	-	-	-	-	-	-	-	-	-	-	-	-	-	13	-

Unit #	City	Project	Project Name	Type of Dwelling (House/Apt)	No. of Bedrooms	Square Footage	Electricity		SNG		LPG		Total east utility cost	New utility allowance (rounded)	Current utility allowance	Difference	No. of units	Total difference
							Fuel Chg	Cost Chg	Total	Fuel Chg	Cost Chg	Total						
0101	Meriden	Meriden II	Meriden II	Single Fam	3	1674	63.16	7.00	90.16	-	-	90.16	90.00	82.00	8.00	36	288	
0102	Meriden	Meriden II	Meriden II	duplex	4	912	60.59	7.00	73.59	-	-	73.59	74.00	67.00	7.00	12	84	
0103	Meriden	Meriden II	Meriden II	Single Fam	1	1394	103.92	7.00	110.92	-	-	110.92	111.00	100.00	11.00	12	132	
0104	Meriden	Meriden II	Meriden II	2 story terrace	2	550	37.47	7.00	44.47	-	-	44.47	45.00	42.00	3.00	14	192	
0105	Meriden	Meriden II	Meriden II	2 story terrace	2	616	42.24	7.00	49.24	-	-	49.24	50.00	42.00	8.00	16	288	
0106	Meriden	Meriden II	Meriden II	2 story terrace	2	821	57.73	7.00	64.73	-	-	64.73	65.00	51.00	14.00	20	380	
0107	Meriden	Meriden II	Meriden II	2 story terrace	1	590	77.83	7.00	84.83	-	-	84.83	85.00	48.00	37.00	8	296	
0108	Meriden	Meriden II	Meriden II	2 story terrace	2	513	108.10	7.00	115.10	-	-	115.10	115.00	64.00	51.00	6	306	
0109	Meriden	Meriden II	Meriden II	2 story terrace	3	590	138.08	7.00	145.08	-	-	145.08	146.00	81.00	65.00	8	520	
0110	Meriden	Meriden II	Meriden II	2 story terrace	1	616	44.68	7.00	51.68	-	-	51.68	52.00	42.00	10.00	12	168	
0111	Meriden	Meriden II	Meriden II	2 story terrace	2	650	56.21	7.00	63.21	-	-	63.21	63.00	48.00	15.00	18	270	
0112	Meriden	Meriden II	Meriden II	2 story terrace	1	819	61.31	7.00	68.31	-	-	68.31	68.00	48.00	20.00	24	360	
0113	Meriden	Meriden II	Meriden II	2 story terrace	2	991	66.59	7.00	73.59	-	-	73.59	74.00	64.00	10.00	24	360	
0114	Meriden	Meriden II	Meriden II	2 story terrace	2	991	63.18	7.00	70.18	-	-	70.18	70.00	48.00	22.00	24	360	
0115	Meriden	Meriden II	Meriden II	2 story terrace	1	810	60.49	7.00	67.49	-	-	67.49	68.00	48.00	20.00	24	360	
0116	Meriden	Meriden II	Meriden II	2 story terrace	2	787	87.42	7.00	94.42	-	-	94.42	95.00	58.00	37.00	8	320	
0117	Meriden	Meriden II	Meriden II	2 story terrace	2	1039	107.60	7.00	114.60	-	-	114.60	115.00	71.00	44.00	8	320	
0118	Meriden	Meriden II	Meriden II	2 story terrace	4	1191	132.25	7.00	139.25	-	-	139.25	140.00	84.00	56.00	8	320	
0119	Meriden	Meriden II	Meriden II	2 story terrace	1	656	77.63	7.00	84.63	-	-	84.63	85.00	52.00	33.00	8	320	
0120	Meriden	Meriden II	Meriden II	2 story terrace	1	711	108.10	7.00	115.10	-	-	115.10	115.00	65.00	50.00	8	320	
0121	Meriden	Meriden II	Meriden II	2 story terrace	2	901	119.10	7.00	126.10	-	-	126.10	127.00	77.00	50.00	8	320	
0122	Meriden	Meriden II	Meriden II	2 story terrace	1	535	52.10	7.00	59.10	-	-	59.10	60.00	48.00	12.00	8	320	
0123	Meriden	Meriden II	Meriden II	2 story terrace	1	666	64.89	7.00	71.89	-	-	71.89	72.00	58.00	14.00	8	320	
0124	Meriden	Meriden II	Meriden II	2 story terrace	2	819	77.18	7.00	84.18	-	-	84.18	85.00	63.00	22.00	8	320	
0125	Meriden	Meriden II	Meriden II	2 story terrace	2	642	67.88	7.00	74.88	-	-	74.88	75.00	48.00	27.00	8	320	
0126	Meriden	Meriden II	Meriden II	2 story terrace	1	429	77.63	7.00	84.63	-	-	84.63	85.00	52.00	33.00	8	320	
0127	Meriden	Meriden II	Meriden II	2 story terrace	2	648	108.10	7.00	115.10	-	-	115.10	115.00	65.00	50.00	8	320	
0128	Meriden	Meriden II	Meriden II	2 story terrace	1	576	69.49	7.00	76.49	-	-	76.49	77.00	58.00	19.00	8	320	
0129	Meriden	Meriden II	Meriden II	2 story terrace	2	699	67.42	7.00	74.42	-	-	74.42	75.00	58.00	17.00	8	320	
0130	Meriden	Meriden II	Meriden II	2 story terrace	3	924	107.60	7.00	114.60	-	-	114.60	115.00	77.00	38.00	8	320	
0131	Meriden	Meriden II	Meriden II	2 story terrace	1	673	121.06	7.00	128.06	-	-	128.06	129.00	83.00	46.00	8	320	
0132	Meriden	Meriden II	Meriden II	2 story terrace	2	796	108.12	7.00	115.12	-	-	115.12	116.00	71.00	45.00	8	320	
0133	Meriden	Meriden II	Meriden II	2 story terrace	1	548	77.83	7.00	84.83	-	-	84.83	85.00	52.00	33.00	8	320	
0134	Meriden	Meriden II	Meriden II	2 story terrace	2	617	108.10	7.00	115.10	-	-	115.10	115.00	65.00	50.00	8	320	
0135	Meriden	Meriden II	Meriden II	2 story terrace	2	891	139.08	7.00	146.08	-	-	146.08	147.00	90.00	57.00	8	320	
0136	Meriden	Meriden II	Meriden II	2 story terrace	3	796	43.24	7.00	50.24	-	-	50.24	51.00	34.00	17.00	8	320	
0137	Meriden	Meriden II	Meriden II	2 story terrace	3	890	51.17	7.00	58.17	-	-	58.17	59.00	42.00	17.00	8	320	
0138	Meriden	Meriden II	Meriden II	2 story terrace	3	629	216.31	10.00	226.31	-	-	226.31	228.00	150.00	78.00	8	320	
0139	Meriden	Meriden II	Meriden II	2 story terrace	2	883	83.32	7.00	90.32	-	-	90.32	91.00	63.00	28.00	8	320	
0140	Meriden	Meriden II	Meriden II	2 story terrace	3	1003	51.17	7.00	58.17	-	-	58.17	59.00	42.00	17.00	8	320	
0141	Meriden	Meriden II	Meriden II	2 story terrace	3	987	51.17	7.00	58.17	-	-	58.17	59.00	42.00	17.00	8	320	
0142	Meriden	Meriden II	Meriden II	2 story terrace	3	987	51.17	7.00	58.17	-	-	58.17	59.00	42.00	17.00	8	320	

5 - October 2004 allowance

10/2/2004

October 2004 Utility Allowance

Island	City	Project Number	Project	Type of Dwelling (House/Apt)	No of Bedrooms	Square Footage	Electricity			SNG			LPG			Total set utility cost	New utility allowance (rounded)	Current utility allowance	Difference	No. of units	Total difference
							Fuel Chg	Cost Chg	Total	Fuel Chg	Cost Chg	Total	Fuel Chg	Cost Chg	Total						
Hawaii	Hilo	H1001097	Kaunohi CTremains	2 story bndhse	3	0	78.08	10.00	88.08	-	-	-	-	-	-	88.08	200.00	74.00	126.00	20	2,520
Hawaii	Waialeale	H1001097	Maunaloa Kai Hale II	2 story bndhse	3	947	57.77	7.50	65.27	-	-	-	-	-	-	65.27	75.00	46.00	29.00	4	18
Hawaii	Waialeale	H1001099	Kaunohi Kai Hale II	2 story bndhse	1	572	37.47	7.00	44.47	60.06	6.75	66.81	-	-	-	111.29	111.00	96.00	55.00	62	3,410
Hawaii	Honolulu	H1001099	Kaunohi Kai Hale II	2 story bndhse	2	818	43.24	7.00	50.24	75.06	6.75	81.81	-	-	-	132.67	132.00	73.00	59.00	123	7,257
Hawaii	Honolulu	H1001099	Kaunohi Kai Hale II	2 story bndhse	3	981	51.17	7.00	58.17	90.10	6.75	96.85	-	-	-	155.01	155.00	97.00	58.00	36	2,088

2,572 \$ 108,241

5 - October 2004 allowance

8/24/2004

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RODELLE SMITH, SHEILA TOBIAS,	)	CIVIL NO. 04-1 0069K
BARBARA BARAWIS, and LEWIS)	
GLASER individually, and on behalf of	)	NOTICE OF MOTION AND
all persons similarly situated,	)	CERTIFICATE OF SERVICE
)	
Plaintiffs,)	
)	
v.)	
)	
HOUSING AND COMMUNITY)	
DEVELOPMENT CORPORATION OF)	
HAWAII, a duly organized and)	
recognized agency of the State of)	
Hawaii.)	
)	
Defendant.)	
_____)	

NOTICE OF MOTION

TO: MARK BENNETT
Attorney General
JOHN WONG
Deputy Attorneys General
465 S. King Street, Room B2
Honolulu, Hawaii 96813

Attorneys for Defendant

PLEASE TAKE NOTICE that the following Motion for Class Certification will be heard in the courtroom of the Judge of the above-entitled Court, in the Circuit Court of the Third Circuit, 79-1020 Haukapila Street,

Kealahou, Hawaii on Tuesday, Sept. 20, 2005, at 8:00 a.m., or
as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, August 10, 2005.



SHELBY ANNE FLOYD
THOMAS E. BUSH
GAVIN K. THORNTON
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was
duly served upon the above-mentioned parties on this date, by depositing said
copy, postage prepaid, first class, in the United States Post Office, at Honolulu,
Hawaii, as addressed above.

DATED: Honolulu, Hawaii, August 10, 2005.



SHELBY ANNE FLOYD
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