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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

KAZNER ALEXANDER, individually and on
behalf of a class of past and present residents
of Mayor Wright Homes,

Plaintiff,

vs.

STATE OF HAWAII; HAWAII PUBLIC
HOUSING AUTHORITY; and Does 1-20,

Defendants.

Civil No. 11-1-0795-04 (GWBC)
(Other Civil Litigation)

**MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM IN
SUPPORT OF MOTION; DECLARATION
OF GAVIN THORNTON; EXHIBITS A – E;
DECLARATION OF JOHN RHEE;
PROPOSED ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AGREEMENT;
NOTICE OF HEARING MOTION AND
CERTIFICATE OF SERVICE**

Hearing:

Date:

Time:

Judge:

10/22/14

8:30 AM

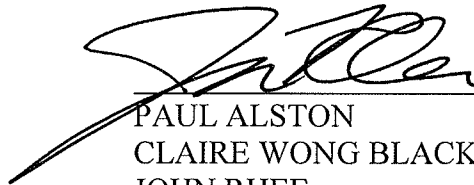
Honorable Karen T. Nakasone

**MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Plaintiffs, by and through their counsel, hereby move this Court for preliminary approval of the class action settlement and notice agreement reached between Plaintiffs, both individually and as representatives a settlement class of heads of household residing at the Mayor Wright Homes project during the period from April 21, 2009 to June 19, 2014, and Defendants. A form of Proposed Order is attached to this Motion.

This Motion is made pursuant to Rules 7 and 23 of the Hawai'i Rules of Civil Procedure, and is based on the memorandum, declaration, and exhibits attached hereto and the records and files herein.

DATED: Honolulu, Hawai'i, September 15, 2014.



PAUL ALSTON
CLAIRE WONG BLACK
JOHN RHEE
VICTOR GEMINIANI
GAVIN THORNTON

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

KAZNER ALEXANDER, individually and on
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STATE OF HAWAII; HAWAII PUBLIC
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(Other Civil Litigation)

**MEMORANDUM IN SUPPORT OF
MOTION**

MEMORANDUM IN SUPPORT OF MOTION

Plaintiffs— both individually and as representatives of a settlement class of heads of household residing at the Mayor Wright Homes project during the period from April 21, 2009 to June 19, 2014—and Defendants have entered into a settlement of all claims in this action.¹ Plaintiffs move this Court for preliminary approval of the class settlement pursuant to Rule 23 of the Hawai'i Rules of Civil Procedure. A Proposed Order is attached, which would establish orders regarding the following issues: (1) Preliminary Approval of the Class Action Settlement, (2) Certification of a Settlement Class Under HRCP 23(b)(3), (3) Preliminary Approval of Distribution of Settlement Funds Excluding Attorneys' Fees and Costs, (4) Approval of the Form of Settlement Notice, (5) Establishment of Objection and Claim Deadlines, (6) Direction Regarding Dissemination of Notice, and (7) Final Fairness Hearing Scheduling. Within 10 days, a motion for attorneys' fees will be submitted in conjunction with this motion.

Preliminary approval will allow the parties to provide notice of the proposed settlement to class members, and allow those class members to participate in a hearing on whether the class settlement should be finally approved. As explained herein, the terms of the settlement meet the

¹ A copy of the settlement agreement is attached hereto as Exhibit A. Thornton Decl. at ¶ 8.

standards for preliminary approval and were the product of serious, informed and non-collusive negotiations.

I. PROCEDURAL HISTORY AND BACKGROUND

The complaint in this action was filed on April 21, 2011. The complaint asserted, among other things, breach of the implied warranty of habitability and breach of lease for Defendants' alleged failure to properly maintain the Mayor Wright Homes housing project. After the parties had engaged in early extensive, but ultimately unfruitful settlement discussions, Plaintiffs moved for class certification on July 3, 2012. This Court denied class certification on September 26, 2012, but left open the possibility of a subsequent class certification motion after Plaintiffs had the opportunity to conduct further discovery. The parties engaged in exhaustive discovery regarding the matter, including engaging expert witnesses, conducting three depositions, reviewing tens of thousands of pages of discovery, and gathering information directly from Mayor Wright Homes tenants. Thornton Decl. at ¶ 3.

Plaintiffs' filed a renewed motion for class certification on May 9, 2014, which was fully briefed by both parties. With the class certification motion pending, the parties renewed their settlement discussions with the assistance of mediator Keith Hunter and Settlement Judge Karen T. Nakasone. As a result of these efforts, the parties reached agreement on the terms of a settlement. The parties now seek preliminary approval of the settlement.

II. LEGAL STANDARD

Rule 23(e) of the Hawai'i Rules of Civil Procedure provides:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed settlement shall be given to all members of the class in such manner as the court directs.

Construing analogous provisions of the Federal Rules of Civil Procedure, courts agree that:

There are three steps which must be taken by the court in order to approve a settlement: (1) the court must preliminarily approve the proposed settlement, (2) members of the class must be given notice of the proposed settlement, and (3) after holding a hearing, the court must give its final approval of the settlement. *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983); *Enterprise Energy Corp.*, 137 F.R.D. at 245; *In re Dun & Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366, 369 (S.D. Ohio 1990).

Brotherton v. Cleveland, 141 F. Supp. 2d 894, 903 (S.D. Ohio 2001).

"Preliminary approval of a proposed settlement to a class action lies within the sound discretion of the Court." *In re Shell Oil Refinery*, 155 F.R.D. 552, 555 (E.D. La. 1993). The standard for approval of the settlement is whether it is "fundamentally fair, adequate, and reasonable." *Durkin v. Shea & Gould*, 92 F.3d 1510, 1512 n. 6 (9th Cir. 1996). The court must consider the strengths of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; . . . the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; . . . and the reaction of the class members to the proposed settlement." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

Preliminary approval shall be granted "if the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval "

Annotated Manual for Complex Litigation 1 § 30.41 at 297 (3d ed. 1999). Ultimately, "[t]he test is whether the settlement is adequate and reasonable and not whether a better settlement is conceivable." *Id.* § 30.47, at 309 (citation omitted).

Based on the foregoing standards, the class settlement in this case appropriately warrants this Court's preliminary approval.

III. THIS COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT

A. Strengths of the Plaintiffs' Case

As set forth in Plaintiffs' renewed motion for class certification filed on May 9, 2014, Plaintiffs' counsel believes certification of the class to be appropriate. However, class certification had previously been denied and some risk remained regarding the certification question. Plaintiffs' renewed class certification motion set forth ample evidence supporting the claims of the putative class, which included hot water surveys indicating that residents throughout the project lacked hot water for certain periods of time, and conditions inspection reports from the U.S. Department of Housing and Urban Development giving Mayor Wright failing scores, which noted several life-threatening deficiencies. In spite of this evidence, liability was hotly contested by Defendants. A settlement now avoids any possibility that the claims of the class will be dismissed or that the amount of damages awarded will be less than what is provided in the settlement.

B. Risk, Expense, and Complexity of Further Litigation

As stated above, there are risks to the class associated with proceeding with the litigation. This case was filed over three years ago, and the potential for appeal creates a likelihood that the case could continue for additional years. Further, as explained below, the case has already involved considerable expense, and further expenditures on litigation are not warranted in light of the favorable terms of the settlement.

C. The Amount Offered in the Settlement

Although a detailed evaluation of the proposed Settlement Agreement is not necessary for the Court's preliminary approval of the settlement, the settlement terms are fair and reasonable and provide for fair compensation to class members. A Settlement and Release Agreement ("Settlement Agreement" or "Agreement") reached between the parties is attached hereto as Exhibit A. The primary terms of the Agreement provides for the following:

1. Certification of a settlement class of the following persons: "All persons who are or were heads of household at Mayor Wright Homes at any time during the period from April 21, 2009 to June 19, 2014."
2. Payment by Defendants of THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00), inclusive of all Plaintiffs' attorneys' fees and costs (hereafter referred to as the "Settlement Amount").
3. Continued repair work by Defendants over the next 1.5 to 2 years in addition to the \$4 million-plus in repairs and upgrades already completed by Defendants since this suit was filed.

The amount of the \$350,000 settlement fund was reached as a result of multiple intensive negotiations with the assistance of a third-party mediator and the Court, which took place over the course of many months. Defendants have agreed to supply Plaintiffs' counsel with a list of the class members and their duration of occupancy at Mayor Wright. Using this information, the settlement share each class member receives will be based on a mathematical formula under which each individual class member will receive a pro rata share of the settlement agreement (after deduction of fees and costs) based on the number of months during which the class member resided at Mayor Wright. *See* Thornton Decl. at ¶ 4. The total amount of the fund and the methodology used to distribute the fund, all weigh in favor of the fairness of the settlement. Additionally, within 10 days of the filing of this motion, Plaintiffs' counsel will submit a motion for attorneys' fees to be considered in conjunction with this motion.

D. The Stage of Proceedings

The settling parties have had the opportunity to conduct discovery and research the legal bases of their arguments and defenses. The discovery in this case was exhaustive and included the review of tens of thousands of pages of documents, three depositions, and extension outreach efforts to gather information directly from Mayor Wright tenants. *Id.* at ¶ 3. The settlement was reached only after the discovery deadline had passed (though a number of depositions had been agreed upon, but not yet held) and within approximately a month-and-a-half of the trial date. At this point in the proceedings, Plaintiffs are in a strong position to make an informed decision about settlement. They have assessed the Defendants' positions and determined that settlement is the appropriate method for resolving this case.

E. Experience and Views of Counsel

Counsel for Plaintiffs, Alston Hunt Floyd & Ing and Hawaii Appleseed Center for Law & Economic Justice have extensive class action experience, and have been certified as class counsel in numerous actions involving the rights of low-income and marginalized persons, including many cases relating to the rights of tenants in federally subsidized housing. *See* Thornton Decl. at ¶¶ 5 – 7, Rhee Decl. at ¶¶ 3 - 4. In light of their experience, Plaintiffs' counsel believes that the terms of the settlement are fair and reasonable. *See* Thornton Decl. at ¶ 3.

IV. THE PROPOSED NOTICE PROCESS

According to HRCP 23(c)(2), for classes certified under 23(b)(3) as requested here, “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. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified 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.”

Plaintiffs propose a process for notification of class members that meets the above standard through the following means:

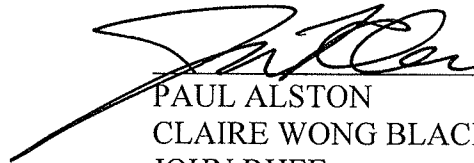
1. In December 2014, holding a Final Fairness Hearing, which will provide sufficient time to distribute of class notice and obtain responses thereto, but will occur before the commencement of the legislative session in January 2015 in which the settlement will need to be approved.
2. On or before fifteen days from the date of this order, Defendants will review their records and provide Plaintiffs’ Counsel with: (1) the identity and last known addresses of the members of the Class; and (2) the number of months each class member occupied Mayor Wright Homes during the period from April 2009 to June 2014.
3. On or before forty-five days from the date of this order, Defendants’ will provide current residents of Mayor Wright with the notice attached hereto as Exhibit B along with the residents’ monthly billing statements or by other commercially reasonable means.
4. On or before forty-five days from the date of this order, Plaintiffs’ counsel, Hawaii Appleseed, will mail, by first class mail, the notice and claim form attached hereto as Exhibits C and D respectively to the last known address of each class member who is no longer residing at Mayor Wright.
5. Plaintiffs will also post information about the settlement and the claim form attached hereto as Exhibit E on the internet.
6. Class members who wish to opt out or object to the Agreement must do so on or before 15 days prior to the date set for the Final Fairness Hearing, in accordance with the instructions contained in the mailed notices.
7. All members of the Plaintiff class who do not timely opt out, object, and/or comment, in accordance with the instructions in the notice, shall be subject to and bound by the provisions of the Agreement, the Releases contained therein, and the Judgment with respect to all released claims.

8. Class members who are required under the Agreement to file a claim form in order to participate in the settlement, must do so by the date of the Final Fairness hearing.

V. CONCLUSION

For the reasons set forth herein, this Court should grant preliminary approval of the settlement and proposed notice process so that the settling parties can begin the process of providing notice to Class members and allow those Class members to participate in a hearing on whether the settlement should be finally approved.

DATED: Honolulu, Hawai'i, September 15, 2014.



PAUL ALSTON
CLAIRE WONG BLACK
JOHN RHEE
VICTOR GEMINIANI
GAVIN THORNTON

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KAZNER ALEXANDER, individually and
on behalf of a class of past and present
residents of Mayor Wright Homes,

Plaintiff,

vs.

STATE OF HAWAII; HAWAII PUBLIC
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Defendants.

Civil No. 11-1-0795-04 (GWBC)
(Other Civil Litigation)

DECLARATION OF GAVIN THORNTON

DECLARATION OF GAVIN THORNTON

I, Gavin Thornton, declare that:

1. I am an attorney licensed to practice before this Court, and I am one of the attorneys for Plaintiffs in this matter.
2. I make this declaration based on my personal knowledge and am competent to testify to the matters discussed herein.
3. During the course of this litigation, the parties engaged in exhaustive discovery regarding the matter. Plaintiffs retained an expert witness with significant experience in the inspection of housing conditions. Defendants also retained an expert witnesses in an attempt to rebut Plaintiffs' expert. Plaintiffs conducted two depositions regarding various issues, and Defendants deposed the class representative. Additionally, Plaintiffs reviewed over 10,000 pages of documents and engaged in extensive outreach efforts include unit inspections and tenant interviews. As a result, Plaintiffs' counsel became well versed with the facts of this case and the pros and cons of accepting a settlement versus proceeding with further litigation. It is my belief that the terms of the proposed settlement are fair and reasonable based on my experience with other similar lawsuits and the particular facts of this case.

4. The individual distributions to each class member will be determined using a mathematical formula based on the duration of each class members' occupancy at Mayor Wright during the relevant period.

5. Hawai'i Appleseed has extensive experience in class actions and has been found to be qualified to act as class counsel in many cases involving claims asserted on behalf of low-income related to federal and state entitlements.

6. I have the following personal experience working on class actions involving the enforcement of federal rights of low-income or marginalized persons:

- a. *Cruz v. Waipahu Jack Hall Memorial Housing Corp.*, Civil No. 09-1-2007-09 ECN (Haw. Cir. Ct.) – filed suit on behalf of class of approximately 250 residents of federally subsidized housing to obtain reimbursement of rent overcharges resulting in a \$615,000 class-wide settlement.
- b. *J.W., et al., v. Pierce County et al.*, Civil No. 3:09-cv-5430-RJB (W.D. Wa.) – served as lead counsel in a case filed on behalf of juveniles confined to jail and obtained a class-wide settlement ensuring the provision of educational services for youth at the jail.
- c. *Jane Doe 1, et al., v. Harold Clarke, et al.*, Cause No. 07-2-01513-0 (Thurston Co. Superior Ct.) – filed suit against for injunctive and declaratory relief and damages against the Washington State Department of Corrections relating to allegations of staff sexual misconduct against female inmates; with co-counsel obtained a settlement providing \$1 million in damages to the suit's named plaintiffs and overhauling the Department's handling of sexual abuse allegations.

- d. *Kaleuati v. Tonda*, Civil No. 07-00504 HG LEK (D. Haw.) – obtained a preliminary injunction and class-wide settlement working with co-counsel on behalf of all homeless school aged children in Hawai‘i against the Hawai‘i Department of Education to remedy violations of the federal McKinney-Vento Act and the equal protection clause of the U.S. Constitution.

- e. *Waters v. Housing and Community Dev. Corp. of Hawai‘i*, Civil No. 05-1-0815-05 EEH (Haw. Cir. Ct.) – obtained a settlement for damages and injunctive relief working with co-counsel Alston Hunt Floyd & Ing in a suit for breach of contract arising out of the State of Hawai‘i’s failure to comply with federal law and regulations regarding utility allowances in federally subsidized housing projects.

- f. *Smith v. Housing & Community Dev. Corp. of Hawai‘i*, Civil No. 04-1-0069K (Haw. Cir. Ct.) – filed suit with co-counsel Alston Hunt Floyd & Ing on behalf of thousands of public housing residents for breach of contract arising out of the State of Hawai‘i’s failure to comply with federal law and regulations regarding utility allowances in public housing; obtained a \$2.3 million settlement and caused the State to update utility allowances in compliance with federal law.

- g. *Amone v. Housing & Community Dev. Corp. of Hawai‘i*, Civil No. 04-508 ACK (D. Haw) – filed suit with co-counsel Alston Hunt Floyd & Ing and obtained a permanent injunction against the State of Hawai‘i to remedy violations of 42 U.S.C. § 1983 and the Fair Housing Act related to utility overcharges assessed against disabled public housing residents.

7. In addition to my above experience, Hawai`i Appleseed attorneys have litigated with co-counsel the following class actions:

- a. *Blake v. Nishimua*, Civ. No. 08-00281 LEK (D. Haw.) – filed suit for breach of contract arising out of the City and County of Honolulu’s failure to comply with federal law and regulations regarding utility allowances in subsidized housing resulting in a class settlement reimbursing tenants for rent overcharges.
- b. *Shea v. Kahuku*, Civ. No. 09-00480 DAE LEK (D. Haw.) – filed suit for breach of contract arising out of the federally-subsidized Kahuku Elderly Housing project owner’s failure to comply with federal law and regulations regarding utility allowances in subsidized housing resulting in a class settlement reimbursing tenants for rent overcharges.
- c. *Korab v. Koller*, Civ. No. 10-00483 JMS/KSC (D. Haw.) – obtained a preliminary injunction on behalf of a class of persons residing in Hawai`i under the Compact of Free Association challenging the State of Hawai`i’s cuts to health insurance for immigrants in violation of the Equal Protection Clause of the Fourteenth Amendment; the case is currently on appeal to the 9th Circuit.
- d. *Bohn v. Koller*, Civ. No. 10-00680 DAE-LEK (D. Haw.) – obtained a preliminary injunction on behalf of low-income residents of Hawai`i against the State of Hawai`i for its failure to timely process food stamp applications in accordance with federal law.

e. *McMillon v. State of Hawai`i Public Housing Authority*, Civ. No 08-00578 JMS LEK (D. Haw.) and *Faletogo v. State of Hawai`i*, Civ. No. 08-1-2608-12 ECN (Haw. Cir. Ct.) – filed two class action lawsuits against the State of Hawai`i on behalf of thousands of tenants at Kuhio Park Terrace alleging violations of the Americans with Disabilities Act and tenants’ lease provisions regarding the habitability of the rentals; obtained settlement agreements for injunctive relief and damages.

8. A true and correct copy of the Settlement & Release Agreement for this case is attached hereto as Exhibit A.

9. A true and correct copy of Plaintiffs’ proposed notice of class action settlement for current tenants of Mayor Wright Homes is attached hereto as Exhibit B.

10. A true and correct copy of Plaintiffs’ proposed notice of class action settlement for former tenants of Mayor Wright Homes is attached hereto as Exhibit C.

11. A true and correct copy of Plaintiffs’ proposed claim form to be mailed to former tenants of Mayor Wright Homes is attached hereto as Exhibit D.

12. A true and correct copy of Plaintiffs’ proposed claim form to be posted on the internet for former tenants of Mayor Wright Homes is attached hereto as Exhibit E.

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

Executed in Honolulu, Hawai`i on September 11, 2014.



GAVIN THORNTON

SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE (“Settlement Agreement”), entered into this _____ day of _____ 2014, between Plaintiffs (as defined in paragraph C.2, hereinbelow), the law firms of ALSTON HUNT FLOYD AND ING, LAWYERS FOR EQUAL JUSTICE, now known as THE HAWAII APPLESEED CENTER FOR LAW AND ECONOMIC JUSTICE (collectively referred to as “the Law Firms” or “Counsel” as defined in paragraph C.9, hereinbelow), the STATE OF HAWAII and HAWAII PUBLIC HOUSING AUTHORITY (collectively referred to as “State” or the “State Defendants”, and as defined in paragraph C.4, hereinbelow), for themselves and their “Representatives” (as defined in paragraph C.6, hereinbelow):

PART A. CONTINGENCIES

This Settlement Agreement is contingent upon the following:

1. Approval of this settlement by the U.S. Department of Housing and Urban Development (HUD) and the State Court with jurisdiction over this matter; and
2. That no more than FIVE PER CENT (5%) of the eligible class members opt out of this settlement in writing, following due notice of the settlement of this Lawsuit (as described in Part G hereinbelow).

PART B. RECITALS

1. On April 21, 2011, Named Plaintiffs Fetu Kolio, Kazner Alexander, and Frances Wong filed a putative class action in the Circuit Court of the First Circuit for the State of Hawaii (the "Circuit Court"), Civil No. 11-1-0795-04 (the "State Lawsuit") alleging, *inter alia*, breach of the implied warranty of habitability and breach of lease. By Stipulation and Order dated May 6, 2014, Fetu Kolio and Frances Wong were dismissed as Named Plaintiffs from the State Lawsuit.

2. On April 21, 2011, Named Plaintiffs Fetu Kolio, Kazner Alexander, and Frances Wong commenced a putative class action in the United States District Court for Hawaii ("District Court"), Case No. CV11 00266 LEK RLP (the "Federal Action"), against State Defendants and Denise Wise, in her official capacity as Executive Director of the Hawaii Public Housing Authority, alleging *inter alia*, discrimination in violation of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act of 1973 ("Section 504") and the Fair Housing Act Amendments (the "FHAA") regarding physical access for persons with disabilities at Mayor Wright Homes ("MWH") and the failure to provide reasonable accommodations. A class was never certified in the Federal Action, and the

case was settled with respect to the Named Plaintiffs only (“Federal Settlement”).

3. This Settlement Agreement applies only to the State Lawsuit.

4. Defendant Hawaii Public Housing Authority (“HPHA”) is a public entity created by the Legislature of the State of Hawaii. Defendant HPHA was and is charged with managing federal and state public housing programs. Defendant HPHA administers MWH, and is responsible for ensuring compliance with applicable laws and regulations at MWH.

5. The State Lawsuit has been vigorously prosecuted and defended.

6. For the purposes of this Settlement Agreement, Plaintiffs and Defendants stipulate to certification of the following class:

- a. All persons who are or were heads of household at Mayor Wright Homes at any time during the period from April 21, 2009 to June 19, 2014.

7. The Circuit Court has jurisdiction over the State Action.

8. State Defendants deny any and all liability to the Plaintiffs and to the Class Members, deny that they have breached any contractual obligations with respect to the Named Plaintiffs and Class Members, and deny that they have violated the warranty of habitability.

9. However, in the interest of all the parties herein to resolve the State Lawsuit and to avoid further costs, expense and time as a result of continued litigation and, without admitting liability of any kind, the parties are entering into this Settlement Agreement.

PART C. DEFINITIONS

1. "Settlement Agreement" shall mean this Settlement and Release Agreement.

2. "Plaintiffs" shall mean all plaintiffs named in the State Lawsuit and each and every member of the class covered in the State Lawsuit.

3. "State of Hawaii" shall mean the State of Hawaii, its departments, agencies, officers and employees, past and present, and specifically includes the Hawaii Public Housing Authority ("HPHA"), its officers, directors and employees, past and present.

4. "State Defendants" shall mean the State of Hawaii, the Hawaii Public Housing Authority, and their officers, directors and employees, past and present.

5. "Person" shall mean any individual, corporation, association, partnership, agency, joint venture, institution, organization, governmental agency, or other entity, and his, her or its legal Representatives.

6. "Representatives" shall mean the past and present Representatives, directors, officers, agents, servants, employees, shareholders, predecessors, successors, assigns, law firms and attorneys. In the case of the State, all of its departments shall also be included.

7. "Undersigned Parties" shall mean the persons executing this Settlement Agreement and includes Plaintiffs and their Representatives, the Law Firms and their Representatives, and the HPHA and the State of Hawaii and its Representatives.

8. "Covered Claims" shall mean any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, and/or expenses of the Plaintiffs arising out of, related to and/or caused by:

(a) any claim or alleged cause of action of whatever kind, and related to the allegations in the Complaint filed on April 11, 2011 in the State Lawsuit;

(b) any claims or allegations asserted or which could have been asserted in the State Lawsuit, to the fullest extent allowed by applicable principles of claim preclusion with respect to class action settlements and/or judgments; and,

(c) attorney's fees, costs, and any other expenses related to the State Lawsuit.

The above are "Covered Claims" whether based directly or indirectly on a constitutional claim, tort, statute, rule, regulation, contract or any other theory of recovery, and which Plaintiffs now have or may hereafter accrue or acquire, whether anticipated or not and whether known or unknown at the time of this Settlement Agreement.

9. "Class Counsel" means and refers to the Law Firms.

10. Hawai'i Public Housing Authority ("HPHA") means the officers, directors, agents (including contractors), employees, and successors or assigns of the Hawaii Public Housing Authority.

11. "Effective Date" is the date on which the contingencies set forth in Part A of this Settlement Agreement have been fulfilled.

12. "Execution Date" is the date on which the Settlement Agreement is signed by all parties identified at the end of this Agreement.

13. "Notice," with the exception of notice to the State Class of the proposed settlement of this matter, shall mean a written notification to the attorneys for the Defendants, and/or to Class Counsel, or those attorneys' designees. Unless otherwise stated herein, notice shall be provided within a reasonable period of time.

PART D. RELEASE

1. Release. Plaintiffs, for themselves and their Representatives, do hereby fully release and discharge absolutely and forever from such Covered Claims, the State Defendants, their Representatives, and all other persons, firms, partnerships, corporations and entities who might be liable to them for any of the Covered Claims, in whole or in part.

2. Plaintiffs acknowledge and agree that the releases and discharges set forth herein are general releases applicable to the Covered Claims. Plaintiffs expressly assume the risk of any and all claims for damages which exist as of the date Plaintiffs, through their Representatives and their Law Firms, execute this Settlement Agreement, but of which Plaintiffs do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect Plaintiffs' decision to enter into this Settlement Agreement. Plaintiffs further agree that they will accept the consideration to be given by Defendants as a complete compromise of matters involving disputed issues of law and fact. Plaintiffs assume the risk that the facts or law may be other than they may now believe. It is understood and agreed by Plaintiffs that the settlement is a compromise of a disputed claim and the payments are not to

be construed as an admission of liability on the part of any party, and that liability is expressly denied.

3. Warranty. Plaintiffs represent and warrant that they own the right, title and interest in all claims Plaintiffs are releasing and that they have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, their right, title or interest in any such claim to any person, including insurance carriers.

4. Release. The Law Firms, for themselves and their Representatives, hereby fully release and discharge absolutely and forever any claim they may have or incur for attorney fees, costs, or other expenses arising out of the Covered Claims.

5. The release in the immediately previous paragraph shall be a fully binding and complete settlement between the Law Firm and their Representatives and the State Defendants and their Representatives with respect to the Covered Claims, either directly or indirectly, through their clients.

PART E. SETTLEMENT PAYMENT

1. In consideration of the provisions set forth above, the State Defendants agree to settle the State Lawsuit in the amount of THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$350,000.00),

inclusive of all Plaintiffs' attorneys' fees and costs (hereafter referred to as the "Settlement Amount").

2. Payment of the Settlement Amount shall be made jointly and severally to the Law Firms.

3. The State Defendants acknowledge that Class Counsel intends to distribute a portion of the Settlement Amount under this Agreement to members of the Class. The State Defendants agree to provide reasonable cooperation to Class Counsel to identify: (1) the identity and last known addresses of the members of the Class; and (2) the number of months each class member occupied Mayor Wright Homes during the period from April 2009 to June 2014. This obligation shall be limited to producing existing data and records and shall not require the State Defendants to sort or analyze such data or records. All information provided to Class Counsel pursuant to this provision shall be subject to appropriate confidentiality arrangements to comply with applicable state and federal laws.

4. Payment of the Settlement Amount is contingent upon the approval to fund this Settlement Agreement by the Hawaii State Legislature.

**PART F. OBLIGATION TO CONTINUE TO IMPROVE
CONDITIONS**

1. Defendant, HPHA, has embarked on a program to identify and remediate certain physical conditions of the demised dwelling units at MWH. To that end, all units have been assessed by a team of qualified professionals and placed in one of the following categories:

- (a) No work needed other than minor repairs; however Ground Fault Circuit Interrupter (“GFCI”) outlets in the kitchen and bathroom and additional smoke detectors will be installed, where appropriate.
- (b) Bathroom repairs
- (c) Kitchen repairs
- (d) Repairs to both the bathroom and the kitchen
- (e) Repairs are not economical

2. Where necessary and appropriate, domestic water pipes will be replaced and walls patched where opened to access the pipes.

3. HPHA has further developed an order of repairs by building to most efficiently complete the repairs. That order will only be made public at the option of HPHA. For any unit whose repairs would not be economical (e.g. exceed \$35,000 if done by HPHA staff or \$50,000 if done by an outside

contractor), HPHA reserves the right to close the unit and relocate the tenant to another unit or property.

4. HPHA reserves the right to “right size” individuals and families if appropriate.

5. The estimated target date for completing the repair work is 1 ½ to 2 years from the date of this agreement.

6. HPHA continues to commit in good faith to use its best efforts to complete this program.

7. In addition, HPHA commits at the time of each annual unit inspection to test the hot water flowing from the kitchen faucet to insure that it is at least 110 degrees Fahrenheit. If no significant hot water issues are identified after two years of such annual unit inspections, HPHA’s commitment under this agreement shall cease.

8. Commencing on December 31, 2014, HPHA shall provide Plaintiffs’ counsel with written quarterly status updates as to their progress on the work described in this Part F. The obligation to provide such reports shall continue for a period of two years from the Effective Date of this Settlement Agreement.

9. Within twenty days after the Execution Date of this Settlement Agreement, HPHA shall arrange a meeting between HPHA employee(s) and

Plaintiff's counsel to provide information as to how demised dwelling units at MWH were assessed and what types of repairs have been made or will be made to those units identified as needing repairs.

PART G. NOTICE OF SETTLEMENT AND OPT-OUT BY CLASS MEMBERS

1. Upon preliminary approval of this Settlement Agreement by the Circuit Court, Class Counsel shall direct notice of this Settlement Agreement and the settlement it memorializes to Class Members in a manner sufficient to comply with the requirements of Haw. R. Civ. P. Rule 23(e). With respect to current tenants, notice of the settlement shall be provided by Defendants, which Defendants will include in current tenants' monthly billing statements. The cost of any additional notice required to be given to the Class Members shall be borne by Plaintiffs.

2. All Class Members shall have a reasonable opportunity to opt-out of the monetary aspects of the settlement prior to the Final Approval of this Settlement Agreement. This Settlement Agreement shall be null and void at State Defendants' election if more than FIVE PERCENT (5%) of Class Members opt out.

PART H. RESOLUTION OF ANY DISPUTES; RETENTION OF JURISDICTION FOR ENFORCEMENT OF SETTLEMENT ONLY

1. In the case of any disputes arising out of or related to any alleged failure to perform in accordance with the terms of this Settlement Agreement, the party asserting a failure of performance shall notify the counsel for the other parties via facsimile and overnight mail. Within ten (10) business days of the notification, the Parties shall commence to meet and confer in a good faith effort to resolve the dispute. If the parties are unable to resolve the dispute through the “meet and confer” process, the Parties shall engage in non-binding mediation before Keith Hunter of Dispute Prevention & Resolution to be calendared within 21 days of the last meeting of the parties. If Keith Hunter is not available to serve as the mediator, the parties shall mutually agree upon a mediator. If the parties are unable to agree upon a mediator, a mediator shall be selected by the Circuit Court.

2. Upon determination from the mediator that the parties cannot resolve the dispute through mediation, either party may file a motion with the Circuit Court to resolve the issue or issues specified in the meet and confer process. In the motion, the party shall indicate whether the resolution of the motion requires the taking of live testimony.

3. To this extent, upon the Effective Date of this Settlement Agreement, the Circuit Court shall retain jurisdiction of this matter only for purposes of enforcement of the terms of this Settlement Agreement for a period of two years from the Effective Date of this Settlement Agreement.

PART I. ADDITIONAL PROVISIONS

1. Counterparts

This Settlement Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.

2. Interpretation

The language of this Settlement Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings in this Settlement Agreement are solely for convenience and will not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and the terms “and” and “or” shall mean “and/or.” This Settlement Agreement is the product of negotiation and joint drafting so that any ambiguity shall not be construed against any Party.

3. Additional Documents

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

4. Authority to Bind

The undersigned each represent and warrant that they are authorized to sign on behalf of, and to bind, their respective Party.

5. Fulfillment of Contingencies

The State Defendants shall make a good faith effort to ensure the fulfillment of the contingencies set forth in Part A of this Settlement Agreement and to ensure that the Settlement Payment described in Part E is made. In the event that the contingencies set forth in Part A are not fulfilled by December 31, 2014, or the Settlement Payment described in Part E is not made by July 31, 2015, Plaintiffs shall have the option of voiding this Settlement Agreement by providing written notice to counsel for Defendants, and recommencing the State Lawsuit.

6. Dismissal with Prejudice

Within thirty (30) days of the fulfillment of all contingencies set forth in Part A and issuance of the Settlement Payment described in Part E, Plaintiffs


shall obtain an Order from the Circuit Court dismissing with prejudice the State Lawsuit.

DATED: Honolulu, Hawaii; September 5, 2014.

For Plaintiffs:

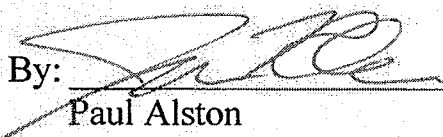
HAWAII APPLESEED CENTER
FOR LAW AND ECONOMIC
JUSTICE

Dated: Sept. 5, 2014

By: 
Victor Geminiani
Gavin Thornton
Attorneys for Plaintiffs

ALSTON HUNT FLOYD & ING

Dated: 9-5, 2014

By: 
Paul Alston
John Rhee
Claire Wong Black
Attorneys for Plaintiffs

Dated: 9-5-14, 2014

KAZNER ALEXANDER



//

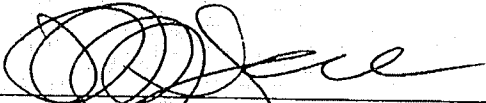
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For Defendants:

Dated: SEP 15, 2014

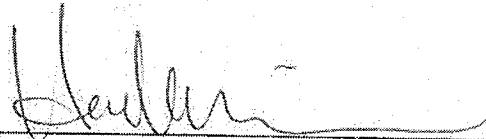
STATE OF HAWAII

By: 

DAVID M. LOUIE
ATTORNEY GENERAL

Dated: SEP 12, 2014

HAWAII PUBLIC HOUSING
AUTHORITY

By: 

Hakim Ouansafi
Its Executive Director

APPROVED AS TO FORM:



DAVID M. LOUIE

Attorney General of Hawaii

CARON M. INAGAKI

DIANE K. TAIRA

JOHN M. CREGOR

JOHN C. WONG

HENRY S. KIM

JENNIFER R. SUGITA

Deputy Attorneys General

Attorneys for Hawai'i Public Housing Authority

CLASS ACTION SETTLEMENT NOTICE

To: [INSERT CLASS MEMBER NAME]
[ADDRESS LINE 1]
[ADDRESS LINE 2]

WHY YOU SHOULD READ THIS NOTICE

Your rights may be affected by the settlement of a class action lawsuit known as *Kazner Alexander, et al. v. State of Hawai'i, et al., Civil No. 11-1-0795-04 (GWBC)* in the State of Hawaii Circuit Court of the First Circuit.

A “class action” is a lawsuit brought by one or more people on behalf of a large group of people that have similar legal claims. The few people bringing the suit are called “class representatives” and the group of people affected are called “class members.” The class members in this case include:

All persons who are or were heads of household at Mayor Wright Homes at any time during the period from April 21, 2009 to June 19, 2014.

Notice of this class action settlement is being provided by mail or other means to all known class members affected by this case. If you have received this notice, you are likely a member of the class.

THE CASE

This case involves claims that Defendants State of Hawai'i and the Hawai'i Public Housing Authority violated the rental agreements of Mayor Wright Homes tenants, among other things, by failing to properly maintain the Mayor Wright Homes housing project—for example, by failing to provide adequate hot water. Plaintiffs filed the suit in April 2011 seeking repairs and improvements to Mayor Wright, in addition to compensation for having lived in substandard conditions. The Defendants deny these allegations.

THE PROPOSED SETTLEMENT

This lawsuit was filed in April 2011 and was scheduled for trial in August 2014. In order to avoid further expense, additional delay and the risk of litigation during the trial or any appeal, Plaintiffs and Defendants have reached a proposed settlement. Under the terms of the settlement, Defendants have agreed to do the following:

- Pay eligible class members a combined total of \$350,000, minus attorney's fees and costs to be paid to Plaintiffs' counsel.
- Continue scheduled repair work over the next 1.5 to 2 years to improve the conditions at Mayor Wright in addition to the \$4 million-plus in repairs and upgrades already completed by Defendants since the lawsuit was filed.

A portion of the total settlement amount—after deduction of \$_____ for attorneys' fees, costs, settlement administration fees, and payments to the class representatives—will be distributed to each class member based on each class member's length of residency at Mayor Wright. If the settlement is approved, it is estimated that you will receive a total of at least \$_____.

EXHIBIT B
(Current Tenant Settlement Notice)

THE SETTLEMENT PROCESS

The Court has already determined as a preliminary matter that the proposed settlement, including the award for attorneys' fees and costs, is fair. For the settlement to go into effect, the Court and the Hawai'i State Legislature will both need to approve the settlement. The process will likely take many months AND IT IS UNLIKELY THAT PAYMENTS WILL BE DISTRIBUTED BEFORE SEPTEMBER 2015.

If you want to participate in the settlement: If you currently live in Mayor Wright at the address indicated on this notice, you do not need to do anything to receive your payment. If the settlement is approved, you can expect the payment to be mailed to you by check during the month of September 2015. If you move from Mayor Wright or the address on this notice, to receive your payment you will need to contact Plaintiffs' attorneys identified below to update your address information.

If you DO NOT want to participate in the settlement: If you *do not* want to participate and receive money from the settlement, you may "opt out" by submitting a written request to Class Counsel at the address listed below no later than _____. If you "opt-out," you will not be bound by the settlement, WILL NOT RECEIVE ANY OF THE SETTLEMENT FUND, and will reserve any rights you may have against the State. You will have the right to pursue your own lawsuit against the State at your own risk and expenses. Not that your lawsuit must be filed within a fixed time period, and some of the period covered by the Settlement may have already past.

If you object to the settlement: If you disagree with the settlement, you must write to the Court about why you don't like the settlement and attend the Final Approval and Fairness Hearing on _____ at the State of Hawaii First Circuit Court in the courtroom of the Honorable _____, 777 Punchbowl Street, Honolulu, Hawaii 96813. You must file your written objections with the First Circuit Court no later than _____.

ADDITIONAL INFORMATION

It is the position of Plaintiffs' attorneys that amounts paid under this settlement are reimbursements of rent overcharges and do not constitute income. However, if you receive public benefits, it is your responsibility to determine whether receipt of money under this settlement will affect your public benefits. You are not obligated to cash any checks received as a result of the settlement. Checks not cashed after 180 days of issuance will be cancelled; the funds will be forfeited and will be distributed to the Hawaii Justice Foundation.

Additional information about the lawsuit, the complete Settlement Agreement, key pleadings, and a printable claim form may be obtained by visiting www.hiappleseed.org/MWH-settlement.com or by contacting Class Counsel at the address listed below. The attorneys representing the class may be reached at the following address:

Hawaii Appleseed Center for Law and Economic Justice
Alston Hunt Floyd & Ing
Attn: MWH Class Action
PO Box 37952
Honolulu, HI 96837
(808) 587-7605

CLASS ACTION SETTLEMENT NOTICE

To: [INSERT CLASS MEMBER NAME]
[ADDRESS LINE 1]
[ADDRESS LINE 2]

WHY YOU SHOULD READ THIS NOTICE

Your rights may be affected by the settlement of a class action lawsuit known as *Kazner Alexander, et al. v. State of Hawai'i, et al., Civil No. 11-1-0795-04 (GWBC)* in the State of Hawaii Circuit Court of the First Circuit.

A “class action” is a lawsuit brought by one or more people on behalf of a large group of people that have similar legal claims. The few people bringing the suit are called “class representatives” and the group of people affected are called “class members.” The class members in this case include:

All persons who are or were heads of household at Mayor Wright Homes at any time during the period from April 21, 2009 to June 19, 2014.

Notice of this class action settlement is being provided by mail or other means to all known class members affected by this case. If you have received this notice, you are likely a member of the class.

THE CASE

This case involves claims that Defendants State of Hawai'i and the Hawai'i Public Housing Authority violated the rental agreements of Mayor Wright Homes tenants, among other things, by failing to properly maintain the Mayor Wright Homes housing project—for example, by failing to provide adequate hot water. Plaintiffs filed the suit in April 2011 seeking repairs and improvements to Mayor Wright, in addition to compensation for having lived in substandard conditions. The Defendants deny these allegations.

THE PROPOSED SETTLEMENT

This lawsuit was filed in April 2011 and was scheduled for trial in August 2014. In order to avoid further expense, additional delay and the risk of litigation during the trial or any appeal, Plaintiffs and Defendants have reached a proposed settlement. Under the terms of the settlement, Defendants have agreed to do the following:

- Pay eligible class members a combined total of \$350,000, minus attorney's fees and costs to be paid to Plaintiffs' counsel.
- Continue scheduled repair work over the next 1.5 to 2 years to improve the conditions at Mayor Wright in addition to the \$4 million-plus in repairs and upgrades already completed by Defendants since the lawsuit was filed.

A portion of the total settlement amount—after deduction of \$_____ for attorneys' fees, costs, settlement administration fees, and payments to the class representatives—will be distributed to each class member based on each class member's length of residency at Mayor Wright. If the settlement is approved, it is estimated that you will receive a total of at least \$_____.

EXHIBIT C
(Former Tenant Settlement Notice)

THE SETTLEMENT PROCESS

The Court has already determined as a preliminary matter that the proposed settlement, including the award for attorneys' fees and costs, is fair. For the settlement to go into effect, the Court and the Hawai'i State Legislature will both need to approve the settlement. The process will likely take many months AND IT IS UNLIKELY THAT PAYMENTS WILL BE DISTRIBUTED BEFORE SEPTEMBER 2015.

If you want to participate in the settlement and receive these funds, you must sign and return the postcard – claim form enclosed with this notice, postmarked no later than _____. The claim form is an official court document. By signing the form, you are verifying that you are the person named on the form. If the settlement is approved and you timely submit your claim form, you can expect the payment to be mailed to you by check during the month of September 2015. If you move from Mayor Wright or the address on this notice, to receive your payment you will need to contact Plaintiffs' attorneys identified below to update your address information.

If you DO NOT want to participate in the settlement: If you *do not* want to participate and receive money from the settlement, you may "opt out" by submitting a written request to Class Counsel at the address listed below no later than _____. If you "opt-out," you will not be bound by the settlement, WILL NOT RECEIVE ANY OF THE SETTLEMENT FUND, and will reserve any rights you may have against the State. You will have the right to pursue your own lawsuit against the State at your own risk and expenses. Not that your lawsuit must be filed within a fixed time period, and some of the period covered by the Settlement may have already past.

If you object to the settlement: If you disagree with the settlement, you must write to the Court about why you don't like the settlement and attend the Final Approval and Fairness Hearing on _____ at the State of Hawaii First Circuit Court in the courtroom of the Honorable _____, 777 Punchbowl Street, Honolulu, Hawaii 96813. You must file your written objections with the First Circuit Court no later than _____.

ADDITIONAL INFORMATION

It is the position of Plaintiffs' attorneys that amounts paid under this settlement are reimbursements of rent overcharges and do not constitute income. However, if you receive public benefits, it is your responsibility to determine whether receipt of money under this settlement will affect your public benefits. You are not obligated to cash any checks received as a result of the settlement. Checks not cashed after 180 days of issuance will be cancelled; the funds will be forfeited and will be distributed to the Hawaii Justice Foundation.

Additional information about the lawsuit, the complete Settlement Agreement, key pleadings, and a printable claim form may be obtained by visiting www.hiappleseed.org/MWH-settlement.com or by contacting Class Counsel at the address listed below. The attorneys representing the class may be reached at the following address:

Hawaii Appleseed Center for Law and Economic Justice
Alston Hunt Floyd & Ing
Attn: MWH Class Action
PO Box 37952
Honolulu, HI 96837
(808) 587-7605

CLAIM FORM - POSTCARD

If you want to participate in the *Mayor Wright* settlement, you must sign and return this postcard, postmarked by _____!

I certify that I am the person named below and that I want to participate in the *Mayor Wright* settlement as described in the Class Action Notice of Settlement mailed to me.

Signature of [INSERT NAME]

Date

If your current address is different than the address that was listed on the notice, make sure you fill out the return address portion of this postcard, and check the box indicating a new address.

You must affix first-class postage of 33¢.

FRONT

Please check if new address

**33¢ Postage
Required**
Post Office will
not deliver
without proper
postage

**Hawaii Appleseed Center for
Law & Economic Justice**
Attn: Mayor Wright Class Action
PO Box 37952
Honolulu, HI 96837

BACK

EXHIBIT D
(Claim Postcard for Former Tenants)

MAYOR WRIGHT SETTLEMENT CLAIM FORM

A COMPLETED CLAIM FORM MUST BE POSTMARKED TO THE ADDRESS BELOW BY _____.

A settlement has been reached in the class action lawsuit known as *Kazner Alexander, et al. v. State of Hawai'i, et al., Civil No. 11-1-0795-04 (GWBC)* in the State of Hawaii Circuit Court of the First Circuit. If you were the head of household tenant at mayor Wright Homes at any time during the period from April 21, 2009 to June 19, 2014, you may be entitled to compensation under this settlement. The settlement agreement, rather than this claim form, determines your eligibility for participation in the settlement.

For further information, please see www.hiappleseed.org/cruz-settlement.com or contact Class Counsel at:

Hawaii Appleseed Center for Law & Economic Justice
Alston Hunt Floyd & Ing
Attn: Mayor Wright Class Action
PO Box 37952
Honolulu, HI 96837
(808) 587-7605

IN ORDER TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE PAYMENT, THE COMPLETED CLAIM FORM MUST BE SENT TO THE ADDRESS BELOW AND POSTMARKED BY _____ . Please type or print legibly.

Full Name: _____
Address to which payment should be sent: _____

Residence and cell phone numbers: _____

I was a head of household tenant at Mayor Wight Homes from _____ to _____.
date of move-in date of move-out

Payments will be distributed only if the Court and the Hawai'i State Legislature approves the settlement, and then only if you are eligible for payment under the terms of the settlement.

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

Signature of Class Member

Date

Send the completed form to: Hawaii Appleseed Center for Law & Economic Justice
Attn: Mayor Wright Class Action
PO Box 37952
Honolulu, HI 96837

EXHIBIT E
(Internet Claim Form)

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KAZNER ALEXANDER, individually and
on behalf of a class of past and present
residents of Mayor Wright Homes,

Plaintiff,

vs.

STATE OF HAWAII; HAWAII PUBLIC
HOUSING AUTHORITY; and Does 1-20,

Defendants.

Civil No. 11-1-0795-04 (GWBC)
(Other Civil Litigation)

DECLARATION OF JOHN RHEE

DECLARATION OF JOHN RHEE

I, John Rhee, declare that:

1. I am an attorney licensed to practice before this Court, and I am one of the attorneys for Plaintiffs in this matter.
2. I make this declaration based on my personal knowledge and am competent to testify to the matters discussed herein.
3. The law firm of Alston Hunt Floyd & Ing has extensive experience in class actions and has been found to be qualified to act as class counsel in dozens of cases, many of them involving claims relating to federal and state benefits.
4. Class actions in which Alston Hunt Floyd & Ing served as lead or co-lead class counsel include the following:
 - a. In 1992, *Felix v. Cayetano*, Civil No. 93-00367 (DAE) was brought on behalf of a Maui public school student whose guardian was compelled to sue the Governor and the State of Hawai'i because federally-guaranteed mental health and educational services were not being provided as required by law. The number in the class was approximately 13,000. Alston Hunt Floyd & Ing was co-lead counsel for the *Felix* plaintiffs.

b. In 1995, Alston Hunt Floyd & Ing filed a class action lawsuit, *Burns-Vidlak v. Chandler*, Civil No. 95-00892, against the State of Hawai'i and the Department of Human Services for disability discrimination under section 504 of the Rehabilitation Act and the Americans with Disabilities Act. The U.S. District Court for the District of Hawai'i certified a class action. Summary judgment was entered against the State of Hawai'i on behalf of the class on the issue of liability for compensatory damages under Section 504 of the Rehabilitation Act. Subsequently, over 300 individual compensatory damage actions were filed. Alston Hunt Floyd & Ing was lead counsel for the *Burns-Vidlak* case.

c. In 1998, Alston Hunt Floyd & Ing filed *Sterling v. Chandler* on behalf of a class of plaintiffs and against the Department of Human Services, State of Hawai'i, for discrimination in medical insurance coverage for disabled persons. The lawsuit was based on the State's continued discrimination against the disabled, for which the *Burns-Vidlak* class action was filed. Summary judgment was entered on behalf of the class members. Alston Hunt Floyd & Ing was lead counsel for the *Sterling* plaintiffs.

d. In *Pasatiempo v. Aizawa*, 103 F.3d 796 (9th Cir. 1996), parents and students brought a class action against the State of Hawai'i Department of Education alleging that the state failed to comport with the procedural requirements of the Individuals with Disabilities Education Act and the Rehabilitation Act in administering evaluation of students. The Ninth Circuit ruled in favor of the plaintiff class. Alston Hunt Floyd & Ing was lead counsel for the plaintiff class.

e. In *Kihara v. Chandler*, Civil No. 00-1-2847-09 (SSM), Alston Hunt Floyd & Ing filed a class action lawsuit on behalf of a class of plaintiffs alleging that the State of Hawai'i Department of Human Services incorrectly reduced the General Assistance benefits to the plaintiffs' class. The suit sought reimbursement of GA benefits wrongfully withheld; general,

special, and punitive damages against the defendant; and reimbursement of costs and expenses, including attorneys' fees. On April 29, 2002, the court approved a settlement for the class which including the establishment of a fund for the payment of claims to members of the class certified in Kihara in the amount of \$1,500,000.00. Alston Hunt Floyd & Ing was co-lead counsel for the plaintiff class.

f. Between 2003 and 2007, Alston Hunt Floyd & Ing filed four class action lawsuits in the First Circuit alleging that the Department of Education failed to pay substitute teachers properly according to law. Class certification has been granted in all of these cases. Alston Hunt Floyd & Ing is co-lead counsel for the plaintiff class.

g. In 2005, Alston Hunt Floyd & Ing filed a class action, *Maunalua Bay Ohana v. State* seeking damages and injunctive relief on behalf of all private owners of oceanfront land based upon the state's effort to take accreted land without just compensation. Class certification was granted.

h. In *Waters v. Housing and Community Development Corp. of Hawaii*, Civil No. 05-1-0815-05 EEH, Alston Hunt Floyd & Ing (along with Lawyers for Equal Justice) filed a class action lawsuit against the Housing and Community Development Corporation of Hawaii ("HCDC") alleging that the HCDC had failed to update utility allowances for hundreds of tenants who had lived or were living in federally-subsidized housing managed by the HCDC. This firm and Lawyers for Equal Justice obtained a \$2.3 million settlement. This action and others filed by this firm and Lawyers for Equal Justice also caused the HCDC to finally update utility allowances and institute a process for keeping them updated in the future.

i. In *Amone v. Aveiro*, CV04-00508 ACK/BMK, Alston Hunt Floyd & Ing (along with Lawyers for Equal Justice) filed a class action lawsuit against the HCDC alleging that the HCDC had failed to provide supplemental utility allowances for disabled tenants who


had lived or were living in federally-subsidized housing managed by the HCDC and who, because of their medical needs, consumed a greater amount of utilities than other tenants. This firm and Lawyers for Equal Justice obtained a permanent injunction in favor of the plaintiff class.

j. In *McMillon v. State*, CV08-00578 JMS/LEK, Alston Hunt Floyd & Ing (along with Lawyers for Equal Justice and the Legal Aid Society) filed a class action lawsuit against the State, Hawai'i Public Housing Authority, and Realty Laua LLC alleging violations of Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Fair Housing Act Amendments. Class certification was granted, and the Court ultimately approved a class action settlement.

k. In *Cruz et al. v. Waipahu Jack Hall Memorial Housing Corp. et al.*, CIV. 09-1-2077-09 ECN, Alston Hunt Floyd & Ing (along with Hawai'i Appleseed Center for Law and Economic Justice) filed a class action alleging that Defendants had failed to update utility allowances for hundreds of tenants who had lived or were living in federally-subsidized housing managed by Bob Tanaka, Inc. Class certification was granted, and the Court ultimately approved a class action settlement in December 2013.

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

Executed in Honolulu, Hawai'i on September 15, 2014.


JOHN RHEE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KAZNER ALEXANDER, individually and on behalf of a class of past and present residents of Mayor Wright Homes,

Plaintiff,

vs.

STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY; and Does 1-20,

Defendants.

Civil No. 11-1-0795-04 (GWBC)
(Other Civil Litigation)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AGREEMENT**

Hearing:

Date : _____

Time : _____

Judge : Honorable Karen T. Nakasone

**[PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

Plaintiffs, by and through their counsel, have moved this Court for preliminary approval of the class action settlement and notice agreement reached between Plaintiffs, both individually and as representatives of a putative settlement class. The motion for preliminary approval was heard by this Court on _____, 2014. _____ appeared on behalf of Plaintiffs. _____ appeared on behalf of Defendants.

The Court has read and considered the Settlement & Release Agreement submitted with Plaintiffs motion for preliminary approval ("Settlement Agreement" or "Agreement"), which sets forth the terms and conditions for a proposed settlement of the action, and is otherwise fully informed and with good cause appearing therefore;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order (the "Preliminary Approval Order") incorporates by reference the definitions in the Agreement, and all capitalized terms used herein shall have the same meanings set forth in the Agreement.

2. The Court has jurisdiction over the subject matter of this action and over all parties to this action.

3. The Court preliminarily approves the Agreement, including the releases contained therein, and finds the settlement is fair, reasonable and adequate for the Plaintiff Class.

4. The Court approves, as to form and content, the Notice of Proposed Class Action Settlement attached as Exhibits B and C to Plaintiffs' Motion for Preliminary Approval.

5. The Court approves, as to form and content, the Claim Forms attached as Exhibits D and E to Plaintiffs' Motion for Preliminary Approval.

6. The Court finds that the mailing and distribution of the Notice substantially in the manner and form set forth, constitutes the best notice practicable under the circumstances and constitutes valid, due and sufficient notice to all persons entitled thereto, complying fully with the requirements of HRCP 23 and due process.

7. On or before fifteen days from the date of this order, Defendants are ordered to provide Plaintiffs' counsel, Hawai'i Appleseed Center for Law & Economic Justice ("Hawaii Appleseed"), with a list of all class members, their last known addresses, and their durations of occupancy at Mayor Wright during the period from April 21, 2009 to June 19, 2014.

8. On or before forty-five days from the date of this order, Defendants' are ordered to provide current residents of Mayor Wright with the Exhibit B Notice along with the residents' monthly billing statements or by other commercially reasonable means.

9. At or prior to the Final Fairness Hearing (defined below), Defendants shall file with the Court and serve on Plaintiffs' counsel proof by declaration or affidavit that the Exhibit B Notices have been mailed in satisfaction of paragraph 8 above.

10. On or before forty-five days from the date of this order, Plaintiffs' counsel, Hawaii Appleseed, is ordered to mail, by first class mail, the Exhibit C Notice to the last known address of each class member who is no longer residing at Mayor Wright.

11. At or prior to the Final Fairness Hearing, Hawaii Appleseed shall file with the Court and serve on Defendants' counsel proof by declaration or affidavit that the Exhibit C Notices have been mailed in satisfaction of paragraph 10 above.

12. Class members who wish to opt out or object to the Agreement must do so on or before 15 days prior to the date set for the Final Fairness Hearing, in accordance with the instructions contained in the mailed notice.

13. All members of the Plaintiff class who do not timely opt out, object, and/or comment, in accordance with the instructions in the notice, shall be subject to and bound by the provisions of the Agreement, the Releases contained therein, and the Judgment with respect to all released claims.

14. Class members who are required under the Agreement to file a claim form in order to participate in the settlement, must do so by the date of the Final Fairness hearing.

15. A hearing ("the Final Fairness Hearing") shall be held at _____ on _____, before this Court to determine whether:

- a. the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;
- b. this Action satisfies the applicable prerequisites for class action treatment under HRCF 23(a) and 23(b)3) for purposes of the Settlement;
- c. the Settlement has been negotiated at arm's length by the named Plaintiffs or their counsel on behalf of the Class;
- d. final Order Approving Settlement should be entered;

- e. counsel's application for an award of attorneys' fees and expenses pursuant to the common fund or other doctrine is fair, reasonable, and adequate and should be approved by the Court;
- f. for the Court to rule upon such other matters as contemplated by the Agreement or as the Court deems just and proper.

16. Any Class member may appear and show cause (if s/he has any) why the Court should or should not: (a) approve the proposed settlement as set forth in the Agreement as fair, reasonable, and adequate; (b) enter an order of Final Judgment and Dismissal; or (c) approve the plan of distribution to the eligible Plaintiffs. However, no person shall be heard with respect to, or shall be entitled to contest, the foregoing matters, unless on or before fourteen days prior to the Final Fairness Hearing, that person has filed with the Court and served on Plaintiffs' counsel written objections indicating his or her intention to appear, setting forth briefly each objection and the basis therefore.

17. Unless otherwise ordered by the Court, any Plaintiff class member who does not make his or her objection in the manner provided for herein, shall be deemed to have waived such objection and shall forever be enjoined from making any objection regarding the foregoing matters.

18. The Court may adjourn the Final Fairness Hearing from time to time and without further notice to the Plaintiff class. The Court reserves the right to approve the Settlement at or after the Final Fairness Hearing with such modifications as may be consented to by the settling parties and without further notice to the Plaintiff Class, and to enter an Order of Final Judgment and Dismissal without further notice to the Plaintiff Class.

19. Upon entry of an order dismissing this case with prejudice pursuant to the terms of the Settlement Agreement, the members of the Plaintiff Class shall be bound by the provisions of the Settlement and shall be entitled to benefits from the Settlement Fund.

20. All reasonable costs and expenses incurred in providing notice to the Plaintiff Class and in disbursing the Settlement Fund shall be paid as set forth in the Agreement.

21. The Court retains jurisdiction over all proceedings arising out of or related to the Settlement Agreement.

22. If for any reason the Settlement Agreement does not become effective in accordance with its terms, this Preliminary Approval Order shall be rendered null and void and shall be vacated *nunc pro tunc*.

23. Without further order of the Court or without further notice to the Plaintiff Class, the parties may agree to reasonable extensions of time to carry out any of the provisions of this Preliminary Approval Order or the Agreement.

IT IS SO ORDERED this _____ day of _____ 2014.

JUDGE OF THE ABOVE ENTITLED COURT

APPROVED AS TO FORM:

DAVID M. LOUIE, ESQ.
CARON M. INAGAKI, ESQ.
JOHN M. CREGOR, ESQ.
JOHN C. WONG, ESQ.
HENRY S. KIM, ESQ.
JENNIFER R. SUGITA, ESQ.
Deputy Attorneys General
Department of the Attorney General

Attorneys for Defendants
STATE OF HAWAII and HAWAII PUBLIC
HOUSING AUTHORITY

ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, *KAZNER ALEXANDER, ET AL. V. STATE OF HAWAII, ET AL.*, Civil No. 11-1-0795-04 (GWBC)

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

KAZNER ALEXANDER, individually and on behalf of a class of past and present residents of Mayor Wright Homes,

Plaintiff,

vs.

STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY; and Does 1-20,

Defendants.

Civil No. 11-1-0795-04 (GWBC)
(Other Civil Litigation)

**NOTICE OF HEARING OF MOTION
and CERTIFICATE OF SERVICE**

NOTICE OF HEARING OF MOTION

TO: **DAVID M. LOUIE, ESQ.**
CARON M. INAGAKI, ESQ.
JOHN M. CREGOR, ESQ.
JOHN C. WONG, ESQ.
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Department of the Attorney General
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425 Queen Street
Honolulu, Hawai'i 96813


Attorneys for Defendants
STATE OF HAWAII and HAWAII PUBLIC
HOUSING AUTHORITY

NOTICE IS HEREBY GIVEN that the above-identified Motion shall come on for hearing before the Honorable Karen T. Nakasone, Judge of the above-entitled Court, in her

courtroom in the ~~Kaahumanu Hale, 777 Punchbowl Street~~, ^{Kauikeauli Hale, 1111 Alakea St. SB} Honolulu, Hawai'i 96813, at

8:30 o'clock A.m. on 10/22/14, or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawai'i, September 15, 2014.


VICTOR GEMINIANI
PAUL ALSTON
CLAIRE WONG BLACK
JOHN RHEE

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was duly served on the above identified parties at their respective addresses by hand delivery on September 15, 2014:

DAVID M. LOUIE, ESQ.
CARON M. INAGAKI, ESQ.
JOHN M. CREGOR, ESQ.
JOHN C. WONG, ESQ.
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DATED: Honolulu, Hawai`i, September 15, 2014.


VICTOR GEMINIANI
PAUL ALSTON
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JOHN RHEE
Attorneys for Plaintiff