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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

FETU KOLIO; KAZNER
ALEXANDER; and FRANCES
WONG, individually and on behalf of a
class of past, present, and future
residents of Mayor Wright Housing

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII
PUBLIC HOUSING AUTHORITY;
DENISE WISE IN HER OFFICIAL
CAPACITY AS EXECUTIVE
DIRECTOR OF THE HAWAII

Case No. **CV 11 00266 LEK RLP**

Civil Rights Action
Class Action

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES; DEMAND FOR JURY
TRIAL; SUMMONS**

PUBLIC HOUSING AUTHORITY;
and Does 1-20,

Defendants.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND DAMAGES**

INTRODUCTION

1. This is a class action for relief from Defendants' violation of Plaintiff's civil rights under Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Amendments Act of 1988, arising out of Defendants' ownership, operation, control, and management of Mayor Wright Homes, a Hawai'i public housing project.

2. Plaintiffs, and the persons whose interests they represent, are low-income persons with disabilities who live in, and are eligible to live in, Mayor Wright Homes (MWH) – an approximately 364 unit public housing project receiving federal financial assistance that is owned, operated, controlled and managed by the Defendants STATE OF HAWAII (HAWAII), the HAWAII PUBLIC HOUSING AUTHORITY (HPHA), and DENISE WISE (WISE) in her official capacity as Executive Director of the Hawai'i Public Housing Authority.

3. Defendants' facilities at MWH are characterized by discriminatory obstacles and hazardous conditions for residents with disabilities, including

multiple and pervasive architectural barriers and toxic particulate in the air, all in violation of federal disability nondiscrimination laws which prohibit public housing entities from engaging in disability discrimination and require that they provide program access and reasonable modifications and accommodations to residents with disabilities.

4. Plaintiffs seek to represent a class of present and future residents of MWH who have disabilities and have been subjected to discrimination. Plaintiffs seek injunctive and declaratory relief, damages, attorneys' fees and costs, and additional relief.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 2202. Plaintiffs bring this suit under Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 794, and the Fair Housing Act Amendments, 42 U.S.C. § 3604.

6. Venue is proper in the District of Hawai'i pursuant to 28 U.S.C. § 1391(b) because the events giving rise to Plaintiffs' claims occurred in this District.

PARTIES

Plaintiffs

7. Plaintiff FRANCES WONG is a resident of Hawai'i, and is eligible and qualified to live in MWH. Plaintiff WONG has lived at MWH since approximately 1970 until the present. Plaintiff WONG is mobility impaired as the result of a stroke in 2008. She is able to move about only with the aid of a wheelchair and her left side is paralyzed. She also suffers from Chronic Obstructive Pulmonary Disease (COPD). She is a person with a disability within the meaning of all applicable statutes, and is a qualified person with a disability within the meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. As a result of architectural barriers and hazardous conditions in violation of federal disability law, including severe pest infestations, insufficient garbage facilities, narrow doorways, lack of accessible ramps, and inadequate hot water, Plaintiff WONG has been, and is being, harmed and has suffered damages. Because of her disability, Plaintiff WONG cannot safely climb over the side of the bathtub nor does the doorway provide her enough room to enter the bathroom in her wheelchair. In addition, the failure of maintenance to make timely repairs in her unit causes her shower rod to continuously fall, among other things. She must have someone in her unit at all times to help her with such barriers, although her help is limited by her income to family members. In addition, due to her lack of

mobility, Plaintiff WONG is especially tormented by vermin, including roaches, mice, and bedbugs from which she cannot escape. Her physical therapy intended to increase her level of functioning has been terminated by the provider due to Plaintiff WONG's admitted problems with bedbug infestation. Plaintiff WONG has requested reasonable accommodations, which Defendants have ignored.

8. Plaintiff KAZNER ALEXANDER is a resident of Hawai'i, and is eligible and qualified to live in MWH. Plaintiff ALEXANDER has lived in MWH since 2007 with his wife Ancheny, and his children Antorio and Mylast. He suffers from asthma with permanent lung damage, moderate heart disease, high blood pressure, and arthritis. His wife is worse off, as she has suffered four back surgeries due to debilitating spinal stenosis, none of which has alleviated her condition, in addition to diabetes and hypertension. ALEXANDER is a person with a disability within the meaning of all applicable statutes, and is a qualified person with a disability within the meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973, as is his wife, a member of the proposed class. As a result of architectural barriers and hazardous conditions in violation of federal disability law, including severe pest infestations, inadequate hot water, and failures to provide reasonable accommodations, Plaintiff ALEXANDER has been, and is being, harmed and has suffered damages. Despite the very real potential of cold water bathing exacerbating Plaintiff ALEXANDER's heart disease, most of the

time only cold water has been available to him since his 2007 arrival. In addition, Plaintiff ALEXANDER has requested to be transferred to a ground floor unit numerous times on behalf of himself and his wife. However, these repeated requests for reasonable accommodations have been ignored by Defendants to date.

9. Plaintiff FETU KOLIO is a resident of Hawai'i, and is eligible and qualified to live in MWH. Plaintiff KOLIO has lived at MWH from 1986 to 1990 and again since approximately 2004. Plaintiff KOLIO is totally disabled due to severe spinal trauma with degeneration and pain radiation into his legs. He is a person with a disability within the meaning of all applicable statutes, and is a qualified person with a disability within the meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973, as is his wife who suffers severe, debilitating asthma and is a member of the proposed class. As a result of architectural barriers and hazardous conditions in violation of federal disability law, including severe pest infestations, inadequate hot water, and failures to provide reasonable accommodations, Plaintiff KOLIO has been, and is being, harmed and has suffered damages. With only cold water in which to bathe almost all of the time, Plaintiff KOLIO suffers exacerbation of his chronic pain related to his spinal trauma and is unable to do the shower exercises required of him by his physical therapist to increase his mobility. Cold water in addition to toxic air particulates also severely aggravates his wife's condition, causing debilitating

asthma attacks and increased sickness from the resultant immunosuppression. Despite repeated requests by Plaintiff KOLIO to management to ameliorate these defects, Defendants have taken no such action.

Defendants

10. Defendant HAWAII PUBLIC HOUSING AUTHORITY (HPHA) is a public entity created by the Legislature of the State of Hawai'i. Defendant HPHA is charged with managing federal and state public housing programs, including the Housing Choice Voucher Program (informally known as Section 8) and senior housing. Defendant HPHA administers and manages MWH and is responsible for ensuring compliance with federal disability nondiscrimination laws at these facilities. Defendant HPHA is a public entity within the meaning of Title II of the ADA, and receives federal financial assistance including money from the U.S. Department of Housing and Urban Development and is covered by the Rehabilitation Act. Defendant HPHA employs 50 or more employees.

11. Defendant STATE OF HAWAII (HAWAII) oversees the HPHA through its Department of Human Services, and is responsible for ensuring compliance with federal disability nondiscrimination laws in its programs, including MWH. Defendant HAWAII is a public entity within the meaning of Title II of the ADA. Defendant HAWAII receives federal financial assistance including money from the U.S. Department of Housing and Urban Development

and is covered by the Rehabilitation Act. Defendant HAWAII employs 50 or more employees.

12. Defendant DENISE WISE (WISE), in her official capacity is the EXECUTIVE DIRECTOR of the HAWAII PUBLIC HOUSING AUTHORITY, is responsible for ensuring that organization's compliance with federal disability nondiscrimination laws at public housing facilities including the Fair Housing Act Amendments.

CLASS ACTION ALLEGATIONS

13. Plaintiffs bring this action on behalf of themselves and on behalf of a class of all those individuals similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The proposed class consists of: All present and future residents of MWH who are eligible for public housing, who have mobility impairments or other disabling medical conditions that constitute disabilities" or "handicaps" under federal disability nondiscrimination laws, and who are being denied access to the facilities, programs, services, and/or activities of the Defendants, and/or discriminated against, because of the architectural barriers and/or hazardous conditions and/or failure to provide reasonable accommodations described herein ("the Class").

14. Plaintiffs and their counsel will adequately represent the Class of all qualified present and future residents of MWH who have mobility impairments or

other disabling medical conditions that constitute “disabilities” under federal disability nondiscrimination laws, and who have been denied the right to full and equal access to the facilities, programs, services, activities of the Defendants because of the architectural barriers and/or hazardous conditions and/or failure to provide reasonable accommodations described herein.

15. Membership of the class is so numerous in number that joinder of all members is impractical. There are hundreds of present and future residents who have disabilities affected by architectural barriers, hazardous conditions, and failure to provide reasonable accommodations complained of herein. The individual names of each class member are not capable of being identified at this time, as the proposed class includes residents who presently reside in MWH as well as future residents of the housing project.

16. Common questions of law and fact exist, and include whether residents are being denied the right on the basis of disability to equal use and enjoyment, including safety, of the housing units at MWH in violation of federal disability nondiscrimination mandates.

17. The claims of the named Plaintiffs are typical of the claims of the other putative class members, in that they have been denied program access, and otherwise discriminated against, on the basis of their disabilities. Plaintiffs have no avenue for seeking reasonable modifications to the Defendants’ programs and

activities, as Defendants have no effective policies or procedures for implementing such accommodations. Defendants have further failed to complete the required self-evaluation and transition plans, or to adopt, and implement, effective grievance procedures. These are the same injuries that members of the proposed class are suffering, and, unless this Court grants relief, will continue to suffer.

18. Plaintiffs are members of the proposed class in that they live in MWH, are eligible for public housing, and have been subjected to disability-based discrimination. The proposed members of the Class have been and/or will be subjected to disability-based discrimination. Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for the entire class. Counsel of record for Plaintiffs are experienced in federal civil rights litigation and class actions, including systemic litigation against state defendants challenging disability discrimination.

19. A class action is the only realistic method available for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation makes it impracticable for members of the class to seek redress individually for the wrongful conduct herein alleged. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the

Court and create the risk of inconsistent rulings which would be contrary to the interest of justice and equity.

20. Defendants have acted, refused to act, and/or failed to act in a manner that violates the federal statutory rights of the Class members entitling the Class Members (in whole or in part) to declaratory and preliminary and final injunctive relief, as well as monetary damages incidental to and necessary to the effectuation of the requested declaratory and injunctive relief.

FACTS COMMON TO ALL ALLEGATIONS

21. MWH is a state-run public housing project funded by the U.S. Department of Housing.

HPHA's Failure to Comply with HUD's Standards.

22. HPHA has a long history of failing to comply with U.S. Department of Housing and Urban Development (HUD) standards for public housing agencies. In 2003, after several years of finding HPHA's performance inadequate and issuing corrective action orders, HUD commissioned an Independent Assessment of the agency. The Independent Assessment found that HPHA suffers from a number of organizational, structural, procedural, and management weaknesses.

23. Following the Independent Assessment, in 2003 and 2004 HUD conducted its own on-site confirmatory review of HPHA in accordance with its Public Housing Assessment System (PHAS). HUD uses the PHAS to score a

public housing agency's performance. Because of HPHA's failing score, HUD designated it as a troubled or substandard agency. In its review, HUD identified several areas of great concern including: inadequate staffing, lack of internal controls, widespread lack of training, lack of a comprehensive maintenance plan, use of outdated physical inspection standards, high rates of uncorrected work orders, and difficulties with financial tracking and accounting. As a result of HPHA's troubled status, and in accordance with HUD regulations, HUD and HPHA entered into a Memorandum of Understanding (MOU) which included performance targets, oversight, and monitoring of HPHA's performance. Upon information and belief, HPHA has failed to meet the MOU's performance targets and to take appropriate corrective actions to remedy its violations of federal laws.

24. HPHA is required to submit annual improvement plans to HUD to show how it is implementing its performance targets and taking corrective action to comply with federal law. Upon information and belief, HPHA has failed, and continues to fail, to meet the performance targets established in its improvement plans.

25. HUD and HPHA are also parties to an Annual Contributions Contract (ACC) as provided by 42 USC § 1437f(b). The ACC sets out the terms and conditions for HPHA's continued receipt of federal funds. Under the ACC, HPHA is obligated to provide decent, safe, and sanitary housing for eligible families and

to comply with all applicable federal statutes, regulations, and executive orders. HPHA has failed, and continues to fail, to provide decent, safe, and sanitary housing in violation of the ACC and federal laws.

Defendants' Failure to Provide Program Access, Remove Architectural Barriers, and Treat Disabled MWH Residents on an Equal Basis to Those without Disabilities.

26. Despite the unequivocal and longstanding mandates of federal disability nondiscrimination statutes, the Defendants have failed to take affirmative effective action to remedy the discriminatory barriers and toxins pervading MWH. Defendants have failed to provide basic program access to disabled residents, or to create any system for responding to requests for reasonable modifications, or for implementing such accommodations. Defendants have also failed to ensure that the facilities are equally safe for persons with disabilities.

27. As a result of Defendants' actions and inactions, the housing facilities at MWH are characterized by architectural barriers, leaking and bursting plumbing, an almost total lack of hot water, rat and roach infestations, overflowing trash piles, toxic air filled with noxious particulate, and additional hazardous and inaccessible conditions.

28. Given these conditions, residents with disabilities are unable to safely live in MWH, or to use the facilities on an equal basis with nondisabled residents. Residents with mobility disabilities must live in housing units and negotiate

common areas that are not accessible to or usable by them. Without necessary ramps in doorways, MWH residents are denied safe and reliable access to and egress from their housing units. Despite wheelchair bound resident's inability to enter bathrooms through narrow doorways or bathtubs due to nonnegotiable wall height, no modifications have been made. Residents with disabilities that are affected by hazardous conditions have experienced worsened disabilities simply by living at the projects. In these and other ways, Plaintiffs have been denied an equal opportunity to safely use and enjoy the housing at MWH.

29. The deplorable and hazardous conditions at MWH are well known to the Defendants. A 2008 Physical Needs Assessment and Energy Audit Report prepared for HPHA chronicled numerous structural, unit and common area deficits to include dangerous walks and steps and cracks and gaps in floors making many areas inaccessible or overly dangerous to persons with mobility impairments. This is not the totality of violations however, as the executive summary of this same report states, "None of the units on the project are ADA compliant."

30. Individuals with respiratory illness, such as asthma, emphysema, and other types of chronic obstructive pulmonary disease are inundated with toxic air particulate and other exacerbators of illness including noxious fumes from rotting garbage and particulate products from mouse and rat droppings, as well as roach and bedbug body parts, all of which are known not only to exacerbate illness, but

also to trigger and create respiratory distress and disorders. It is well-known that all units suffer severe roach infestation, as well as mouse and rat infiltration through holes in walls, under doors, and around pipes. Some buildings also report chronic, severe bedbug infestation. Vermin infestation is sustained by unsanitary trash disposal including inadequate trash disposal and storing bulk items, some of which are deposited due to bedbug infestation on site, in front of building 18 for months at a time.

31. Individuals with respiratory illness as well as individuals with heart and chronic pain conditions also suffer exacerbation of their conditions because they are required to bathe with chronically cold water. Those with respiratory illness suffer shortness of breath, while individuals with heart disease undergo dangerous shocks that could worsen heart conditions. Individuals in chronic pain due to a myriad of conditions must endure a worsening of their pain brought on by cold water. Of those who are immune-suppressed, as many of the individuals with disabilities are, cold water puts them at risk for opportunistic infections including pneumonia. As a result of the Defendants' failure to provide hot water, residents with disabilities cannot bathe or take care of themselves on an equal basis with nondisabled residents.

32. Residents with disabilities have complained about the failure to eliminate vermin and trash. In response, Defendants have failed to provide

(a) program access, (b) any reasonable modifications or accommodations, such as the scheduling of regular extermination of vermin or trash collection, or (c) any information about their grievance procedure or ADA coordinator.

GOVERNING LAW

Title II of the Americans with Disabilities Act.

33. Title II of the Americans with Disabilities Act, enacted in 1990, prohibits disability discrimination by state and local governments. 42 U.S.C. § 12132. Congress delegated regulatory authority for Title II to the Department of Justice. 42 U.S.C. § 12134. The requirements of Title II and the DOJ regulations became effective on January 26, 1992. 56 Fed. Reg. 35694 (July 26, 1991).

Nondiscrimination.

34. Title II of the Americans with Disabilities prohibits many forms of discrimination, including policies and practices that are discriminatory in their effects upon persons with disabilities:

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid,

benefit, or service that is not equal to that afforded others; [or] (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others

A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities

28 C.F.R. § 35.130(a), (b)(1)(i)-(iii), (b)(3)(i)-(ii), (b)(8).

Program Access and Accessibility Features.

35. Under Title II, “[a] public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” 28 C.F.R.

§ 35.150(a). As necessary to achieve program access, structural and other changes are required. 28 C.F.R. § 35.150(a)(1), (b)(1), (c). Structural changes were to be completed “within three years of January 26, 1992, but in any event as expeditiously as possible.” 28 C.F.R. § 35.150(c). For public entities employing 50 or more persons, a transition plan setting forth the steps necessary to complete the structural changes was due “within six months of January 26, 1992.” 28 C.F.R. § 35.150(d)(1); *see also* 28 C.F.R. § 35.150(d)(3). Further, “[a] public entity shall

maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.” 28 C.F.R. § 35.133(a).

Reasonable Modifications in Policies, Practices and Procedures.

36. To comply with Title II, “[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 130(b)(7). Further, by January 26, 1992, a public entity must “evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.” 28 C.F.R. § 35.105(a).

Notice and Grievance Procedures.

37. Public entities must make available to participants and beneficiaries information about the requirements of Title II. 28 C.F.R. § 35.106. Public entities employing 50 or more employees must designate an ADA coordinator, and must adopt a grievance procedure providing for the prompt and equitable resolutions of complaints alleging prohibited action. 28 C.F.R. § 35.107.

Americans With Disability Act Amendments of 2008.

38. In 2008, in response to growing concern that case law had improperly narrowed the broad scope of protection intended to be afforded by the ADA, Congress enacted amendments to the definition of “disability” used in the Americans with Disabilities Act and the Rehabilitation Act. The amended statute continues to define “disability” as a “physical or mental impairment that substantially limits one or more major life activities,” but provides several clarifying rules of construction.

39. Among the clarifying rules added is the following language: The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

A person has a disability if she or he is substantially limited in a major life activity which includes, but is not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”

A person has a disability if she or he is substantially limited in “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

The determination of whether an impairment substantially limits a major life activity shall be made

without regard to the ameliorative effects of mitigating measures.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Public Law 110–325 (Sept. 25, 2008) (section 4). The amendments took effect on January 1, 2009.

Section 504 of the Rehabilitation Act.

40. Congress enacted Section 504 of the Rehabilitation Act in 1973 to prohibit disability discrimination by entities receiving federal money. 29 U.S.C. § 794. In 1977, the U.S. Department of Health, Education and Welfare promulgated the first set of regulations implementing and interpreting Section 504. 42 Fed. Reg. 22677 (May 4, 1977) (published at 45 C.F.R. Part 84). In 1978, Congress amended Section 504 to incorporate the remedies and procedures of Title VI of the Civil Rights Act of 1964.

41. That same year, Executive Order 11914 required federal funding agencies to issue their own regulations consistent with Section 504 and based on minimum standards. 43 Fed. Reg. 2132 (Jan. 13, 1978) (minimum standards now appear at 28 C.F.R. Part 41. Executive Order 12250 (Nov. 2, 1980); 46 Fed. Reg. 40686 (August 11, 1981).)

42. The Department of Housing and Urban Development (HUD) issued its Section 504 regulations in 1988. 53 Fed. Reg. 20233 (June 2, 1988) (published at 24 C.F.R. Part 8).

Nondiscrimination.

43. Section 504 prohibits a range of discriminatory actions and inactions by federally funded entities, and includes prohibitions targeting the discriminatory effects of a funded entity's actions and inactions:

No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap ... [d]eny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service.

A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons

28 C.F.R. §§ 41.51(a), (b)(1)(i), (b)(3) (DOJ coordination regulations); 24 C.F.R.

§ 8.4(a), (b)(1)(i), (b)(4) (HUD regulations).

Program Access.

44. Section 504 requires that persons with disabilities have access to the programs and activities of funded entities, even if the programs and activities have been situated in physically inaccessible facilities. “No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.” 28 C.F.R. § 41.56; accord 24 C.F.R. § 8.20. Under this standard, “[a] recipient shall operate each housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and useable by persons with handicaps.” 24 C.F.R. § 8.24(a); accord 28 C.F.R. § 41.57(a).

45. As necessary to achieve program access, structural and other changes are required. 28 C.F.R. § 41.57(b), (c); 24 C.F.R. §§ 8.24(b), (c), 8.25(c); *see also* 24 C.F.R. § 8.26 (“Accessible dwelling units required by § 8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible ... be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities ...”). The deadlines for planning and achieving program access in public housing have long since passed. 24 C.F.R. § 8.24(c) (structural changes due “within three years of July 11, 1988,” nonstructural changes due “within sixty days of July 11, 1988”);

(d) (transition plan due “within six months of July 11, 1988”); 24 C.F.R. § 8.25(c) (transition plan to achieve program access in public housing due “as expeditiously as possible, but in any event no later than two years after July 11, 1988” and structural changes due “no later than four years after July 11, 1988”).

Modification of Policies and Practices.

46. Section 504 requires recipients to modify policies and practices where necessary to include individuals with disabilities. 24 C.F.R. § 8.33. Relatedly, “within one year of July 11, 1988,” each recipient must evaluate its current policies and practices, modify any policies and practices that do not meet the requirements of Section 504, and take appropriate corrective steps to remedy any discrimination revealed by the evaluation. 24 C.F.R. § 8.51.

Notice and Grievance Procedures.

47. Section 504 requires recipients with 15 or more employees to take steps to notify participants of its obligations under Section 504, to adopt grievance procedures, and to designate a Section 504 coordinator. 24 C.F.R. §§ 8.53, 8.54. Fair Housing Act Amendments of 1988.

48. As amended in 1988, the Fair Housing Act (FHA) prohibits discrimination in the rental of any dwelling because of the handicap of the renter, a person residing or intending to reside in the dwelling, or a person associated with the renter. 42 U.S.C.A. § 3604(f)(1). Discrimination is defined to include “a

refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C.A. § 3604(f)(3)(B). HUD issued its regulations under the FHA in 1989. 54 Fed. Reg. 3232 (Jan. 23, 1989).

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Disability-Based Discrimination in Violation of Title II of
The Americans with Disabilities Act of 1990,
42 U.S.C. § 12132
(Against Defendants HAWAII and HPHA)**

49. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 48 of this Complaint.

50. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

51. Plaintiffs, and the persons whose interests they represent, are qualified persons with disabilities within the meaning of Title II of the ADA.

52. Plaintiffs, and the persons whose interests they represent, have been excluded from or otherwise discriminated against with regard to Defendants’ provision of public housing at MWH. Defendants have failed to make the

necessary reasonable modifications to the public housing facilities at MWH such that they are readily accessible to and useable by individuals with disabilities. Plaintiffs have made requests for and/or are entitled to reasonable accommodations and modifications, but Defendants have failed to respond to Plaintiffs' reasonable requests or make reasonable modifications. As a result of, *inter alia*, Defendants' failure to provide for safe ingress and egress of units and implement necessary accessibility changes, the public housing facilities at MWH are not as safe for disabled participants as they are for nondisabled participants.

53. In particular, Defendants have violated Title II of the ADA and its regulations, and unlawfully discriminated against Plaintiffs, by, *inter alia*: failing to provide program access and reasonable modifications for persons with disabilities; failing to provide and maintain safe ingress and egress to units; failing to prevent, respond to and ameliorate obstacles to mobility; failing to prevent, respond to and ameliorate allergens and toxic air; failing to eliminate and remedy additional architectural barriers and hazardous conditions; failing to provide adequate hot water; and denying Plaintiffs' requests for reasonable accommodations without any, or with insufficient, investigation, and/or by rendering such requests futile through their pervasive and consistent inaction.

54. Plaintiffs and the persons whose interests they represent, have been, and are being, excluded from and discriminated against with regard to Defendants' provision of public housing at MWH by reason of their disabilities.

55. Defendants' unlawful actions were and continue to be intentional, willful, malicious, and/or done with deliberate indifference to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, to be free from discrimination based on disability. Defendants know that harm to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, is substantially likely, but nevertheless have failed, and continue to fail, to act upon that likelihood.

56. As a proximate result of Defendants' unlawful acts, Plaintiffs, and the persons whose interests they represent, have suffered and continue to suffer injuries, including emotional injuries, and are entitled to compensatory damages, including damages for emotional distress, to injunctive and declaratory relief, and attorneys' fees and costs.

SECOND CAUSE OF ACTION

Disability-Based Discrimination in Violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Against Defendants HAWAII and HPHA)

57. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 56 of this Complaint.

58. Section 504 of the Rehabilitation Act requires that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). Accordingly, “[n]o qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department [HUD].” 24 C.F.R. § 8.4.

59. Plaintiffs, and the persons whose interests they represent, are qualified persons with disabilities or handicaps within the meaning of Section 504 of the Rehabilitation Act and are eligible for the type of public housing available at MWH.

60. Defendants HAWAII and HPHA receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD) for its public housing program, including the program under which the HAWAII and HPHA operate MWH.

61. As detailed herein, Defendants have violated Section 504 of the Rehabilitation Act by, *inter alia*: failing to make the required changes, including structural changes, such that Defendants’ public housing facilities at MWH are

readily accessible to and usable by persons with handicaps or disabilities; failing to provide and maintain safe ingress and egress to and inside rooms of units; failing to prevent, respond to and ameliorate hazards; failing to prevent, respond to and ameliorate allergens and toxic air; failing to eliminate and remedy additional architectural barriers and hazardous conditions; failing to provide adequate hot water; and denying Plaintiffs' requests for reasonable accommodations without any, or with insufficient, investigation, and/or by rendering such request futile through their pervasive and consistent inaction.

62. As a result of Defendants' actions and inactions, Plaintiffs, and the persons whose interests they represent, have been unlawfully denied the benefits of Hawai'i's public housing program, and in particular, the benefits of decent, safe, and affordable housing at MWH solely by reason of their handicaps and disabilities.

63. Defendants' unlawful actions were and continue to be intentional, willful, malicious, and/or done with deliberate indifference to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, to be free from discrimination based on disability. Defendants know that harm to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, is substantially likely, but nevertheless have failed, and continue to fail, to act upon that likelihood.

64. As a proximate result of Defendants' unlawful acts, Plaintiffs, and the persons whose interests they represent, have suffered and continue to suffer injuries, including emotional injuries, and are entitled to compensatory damages, including damages for emotional distress, to injunctive and declaratory relief, and attorneys' fees and costs.

THIRD CAUSE OF ACTION

Disability-Based Discrimination in Violation of The Fair Housing Act Amendments, 42 U.S.C. § 3604(f) (Against Defendant WISE)

65. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 64 of this Complaint.

66. The Fair Housing Act prohibits "discriminat[ion] against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of ... that person." 42 U.S.C. § 3604(f)(2)(A). Under the Act, unlawful discrimination is defined to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

67. Plaintiffs, and the persons whose interests they represent, are handicapped within the meaning of 42 U.S.C. § 3602(h).

68. Defendants WISE, HAWAII and HPHA own, manage, control, and oversee the MWH dwellings covered by the Act, and are obligated to comply with the terms of the Act. 42 U.S.C. § 3603(a)(2).

69. Defendants knew or should reasonably be expected to know of Plaintiffs' handicaps.

70. As detailed herein, the Defendants have violated and continue to violate the Fair Housing Act and its regulations by their failure to ensure disability nondiscrimination or to provide reasonable accommodations for persons with handicaps necessary to afford them an equal opportunity to use and enjoy their dwellings, and by denying Plaintiffs' requests for reasonable accommodations without any, or with insufficient, investigation and/or by rendering such requests futile through their pervasive and consistent inaction.

71. This Count is brought solely against Defendant WISE in her official capacity and seeks only prospective relief to enjoin the Defendants' ongoing violation of federal law pursuant to *Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441 (1908).

72. As a proximate result of Defendants' unlawful acts, Plaintiffs, and the persons whose interests they represent, have suffered and continue to suffer injuries, and are entitled to injunctive and declaratory relief, and attorneys' fees and costs.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

73. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 72, above.

74. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. Defendants have failed and continue to fail to comply with the provisions of Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act Amendments of 1988, for at least the reasons set forth herein. Plaintiffs are entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such declaratory judgment.

75. Plaintiffs have no adequate remedy at law. Unless enjoined by the Court, Defendants will continue to infringe Plaintiffs' statutorily and constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiffs from continuing violations requires preliminary and permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and behalf of all persons similarly situated, respectfully request that this Court:

1. Assume jurisdiction over this action;

2. Issue a declaratory judgment stating that Defendants HAWAII and HPHA have violated Title II of the ADA and Section 504 of the Rehabilitation Act, and Denise Wise acting in her official capacity as Executive Director of HPHA has violated the Fair Housing Act Amendments;

3. Grant all injunctive relief necessary to bring Defendants into compliance with the ADA, Section 504 of the Rehabilitation Act, and the Fair Housing Act Amendments;

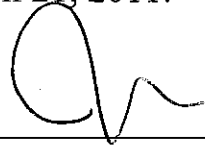
4. Grant such other declaratory and injunctive relief as may be appropriate;

5. Order Defendants to pay compensatory damages, including damages for emotional distress, pain and suffering, in an amount to be proven at trial;

6. Award Plaintiffs reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action pursuant to 42 U.S.C. § 12205, 42 U.S.C. § 3613, and other applicable laws; and

7. Order such other relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, April 21, 2011.



PAUL ALSTON
JASON H. KIM
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury to all legal claims so triable.

DATED: Honolulu, Hawai`i, April 21, 2011.



PAUL ALSTON
JASON H. KIM
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

FETU KOLIO; KAZNER
ALEXANDER; and FRANCES
WONG, individually and on behalf of a
class of past, present, and future
residents of Mayor Wright Housing

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII
PUBLIC HOUSING AUTHORITY;
DENISE WISE IN HER OFFICIAL
CAPACITY AS EXECUTIVE
DIRECTOR OF THE HAWAII
PUBLIC HOUSING AUTHORITY;
and Does 1-20,

Defendants.

Case No.

Civil Rights Action
Class Action

SUMMONS

SUMMONS

To the above-named Defendant(s):

You are hereby summoned and required to serve upon ALSTON
HUNT FLOYD & ING, attorneys for Plaintiffs, whose address is 18th Floor,
American Savings Bank Tower, 1001 Bishop Street, Honolulu, Hawaii 96813, an
answer to the Complaint for Declaratory and Injunctive Relief and Damages which
is herewith served upon you, within twenty (20) days after service of this

Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

DATED: Honolulu, Hawai'i, APR 21 2011.

SUE BEITIA

CLERK

/s/ Erin Taniguchi

(BY) DEPUTY CLERK

