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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE STRICKLAND; TRUDY SABALBORO; KATHERINE VAIOLA; and LEE SOMMERS, each individually and on behalf of a class of present and future residents of Kuhio Park Terrace and Kuhio Homes	CIVIL NO. CV 08-00578 JMS-LEK Civil Rights Action Class Action **PLAINTIFFS' COMBINED REPLY MEMORANDUM IN SUPPORT OF MOTION FOR**

who have disabilities affected by architectural barriers and hazardous conditions,

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY; REALTY LAUA LLC, formerly known as R & L Property Management LLC, a Hawaii limited liability company,

Defendants.

STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY,

Third-Party Plaintiffs,

vs.

URBAN MANAGEMENT CORPORATION DBA URBAN REAL ESTATE COMPANY, DOES 1-20,

Third-Party Defendant.

PRELIMINARY INJUNCTION, FILED 12/16/09; DECLARATION OF JASON H. KIM; EXHIBITS "1"-"2"; DECLARATION OF SERAFI SIONE; EXHIBITS "A"-"D"; CERTIFICATE OF WORD COUNT; CERTIFICATE OF SERVICE

[Relates to Document 126]

DATE: February 22, 2010
TIME: 10:00 a.m.
JUDGE: J. Michael Seabright

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I. INTRODUCTION

Plaintiffs continue to experience dangerous and distressing barriers to accessing their public housing units in violation of federal disability nondiscrimination laws. As a result of malfunctioning and inoperable elevators, individuals with mobility disabilities continue to experience problems safely leaving and reaching their homes. The Plaintiffs continue to traverse dangerous pathways, risking falls and injuries. And the Plaintiffs continue to experience the stress and fear of living in facilities that lack minimal fire prevention and emergency and evacuation planning.

While the Defendants have made promises and plans, such pledges have been made before without meaningful relief for disabled tenants. The hazardous and unlawful conditions continue and will continue until the Court ***orders*** the Defendants to actually implement changes.

The decades-long existence of severe barriers for tenants with disabilities becomes more understandable in light of the State Defendants' erroneous view of their obligations under federal disability discrimination laws. Despite two decades of affirmative obligations under governing program access regulations – which require structural changes when needed to achieve access – the State Defendants believe that they can "stand behind the construction date of the buildings and deny

any obligation to do anything." State Opp. at 15; *see also id*. at 7 ("HPHA has no duty, no legal obligation … to remove any access barrier[ ] at KPT.").

When pressed, the State Defendants allow that they might be required to move persons with disabilities to accessible housing at comparable public housing facilities. But there is no evidence that a prompt and effective transfer program exists. Indeed, HPHA's former director has testified that there is a lack of accessible units system-wide. Dunne Decl. to Plaintiffs' Motion at Exh. J; *See also* Attached Declaration of Jason H. Kim at Ex. 1.

Presently, hundreds of tenants with disabilities remain living in public housing that is not readily accessible to and useable by them. This motion seeks immediate preliminary relief to remove the most dangerous barriers being experienced now and to ensure that the Defendants comply with their obligation to provide reasonable accommodations.

II. ARGUMENT

A. THE PLAINTIFFS HAVE SATISFIED THE PREREQUISITES OF PRELIMINARY MANDATORY RELIEF.

Courts have routinely granted mandatory relief where – as here – ongoing discrimination against persons with disabilities has been proven. *See, e.g.*, *Doe v. Judicial Nominating Com'n for Fifteenth Judicial Circuit of Florida*, 906 F. Supp. 1534, 1545 (S.D. Fla. 1995) (granting plaintiff mandatory preliminary injunction because "[d]iscrimination on the basis of disability is the type of harm that

warrants injunctive relief"); *Sullivan By and Through Sullivan v. Vallejo City Unified School District*, 731 F. Supp. 947, 961 (E.D. Cal. 1990) (granting preliminary injunction in favor of disabled student, stating: "Neither an award of damages nor a permanent injunction following the conclusion of this litigation could possibly restore to plaintiff the loss of independence she is likely to suffer in the interim as a result of defendant's conduct.").

More specifically, there is ample precedent for a court to order a government agency to take affirmative steps, including modifying policies, to insure disability access. *See Cupolo v. BART*, 5 F. Supp. 2d 1078, 1085-86 (N.D. Cal. 1997) (ordering elevator maintenance needed to ensure disability access to stations); *Galusha v. New York State Dept. of Environmental Conservation*, 27 F. Supp. 2d 117, 126 (N.D.N.Y. 1998) (ordering change in policies regarding motorized vehicle access to state park).

Here, Plaintiffs have shown that "the facts and law clearly favor the moving party," *Dahl v. HEM Pharmaceuticals Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993), and are entitled to preliminary relief.

B. REGARDLESS OF THE AGE OF KPT AND KUHIO HOMES, THE STATE DEFENDANTS MUST TAKE AFFIRMATIVE STEPS TO ENSURE EQUAL ACCESS TO PUBLIC HOUSING.

Under the ADA and Section 504 regulations, public entities must operate their housing programs, services, and activities so as to provide equal access to

individuals with disabilities. *See* 28 C.F.R. § 35.150(a); 28 C.F.R. § 8.24(a); *Barden v. City of Sacramento*, 292 F.3d 1073, 1075 (9th Cir. 2002) ("One form of prohibited discrimination is the exclusion from a public entity's services, programs, or activities because of the inaccessibility of the entity's facility ….").

Contrary to the State Defendants' position, the "program access" standard applies to existing buildings, including the 45-year-old buildings at issue here:

> A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," ***applies to all existing facilities of a public entity***.

Department of Justice, The Americans with Disabilities Act, Title II Technical Assistance Manual (Title II TAM), II-5.0000, available at www.ada.gov/taman2.html (emphasis added).

To be sure, program access may be achieved in various ways:

> A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities …. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

28 C.F.R. § 35.150(b)(1). But where non-structural methods are ineffective, a public entity must make structural changes regardless of the age of the facilities involved. *Id.*; *accord Ability Center of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 910 (6th Cir. 2004) ("[T]o avoid denying the individual of the benefits of the public services at issue, the public entity must remove the impeding architectural barriers.").

If structural changes are needed, they must meet accessibility standards such as UFAS or ADAAG. 28 C.F.R. § 35.150(b)(1) ("A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of § 35.151."). In *Chaffin v. Kansas State Fair Bd.*, the Tenth Circuit explained:

> The Fair has shown by its failure to accommodate disabled individuals, despite its efforts to redesign and renovate its existing facilities, that no methods are effective in achieving program accessibility other than making structural changes. … Because the Fair must make these alterations to its existing facility, it must comply with the accessibility requirements stated in 28 C.F.R. § 35.151. As noted above, § 35.151 requires that the public entity, in making alterations to existing facilities, comply with either the ADAAG or the UFAS, or else provide clearly equivalent access to the altered facility.

Chaffin, 348 F.3d 850, 861 (10th Cir. 2003).

The deadlines for planning and implementing these structural and other nonstructural changes have long since passed. *See, e.g.* 24 C.F.R. §§ 8.24(c) (nonstructural changes due "within sixty days of July 11, 1988"), 8.25(c) (transition plan to achieve program access in public housing due "no later than two years after July 11, 1988" and structural changes due "no later than four years after

July 11, 1988"); 28 C.F.R. § 35.150(c) ("Where structural changes in facilities are undertaken to comply with the [program access] obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible."). Such changes must be made unless they would necessitate "a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." 28 C.F.R. § 35.150(a)(3).

Numerous federal courts have applied the program access standards to existing facilities and judicial relief is available even where defendants have represented that they have made progress toward barrier removal. *Chaffin*, 348 F.3d at 861 (structural changes required despite defendant's efforts to renovate existing facilities); *Huezo v. Los Angeles Community College District*, 2008 WL 7182477, at *16 (C.D. Cal. 2008) (ordering interim barrier removal, including barriers related to accessible paths of travel and parking, despite defendant's representations of progress); *Matthews v. Jefferson*, 29 F. Supp. 2d 525, 533, 537-38 (W.D. Ark. 1998) (ordering injunctive relief to comply with section 35.150); *Layton v. Elder*, 143 F.3d 469, 472-73 (8th Cir. 1998) (noting that continued use of existing facility would require structural changes); *Putnam v. Oakland Unified School Dist.*, 1995 WL 873734, at *14 (N.D. Cal. June 9, 1995) (granting summary judgment for plaintiff seeking removal of barriers from existing facilities); *Tyler v.*

City of Manhattan, 857 F. Supp. 800, 820-22 (D. Kan. 1994) (ordering injunctive relief to comply with program access regulations, including order to remove steel barrier to park entrance and to establish schedule for installing curb cuts).

C. PUBLIC ENTITIES MUST TAKE ALL AFFIRMATIVE STEPS NEEDED TO PROVIDE PROGRAM ACCESS WITHOUT REGARD TO WHETHER ANY INDIVIDUAL TENANT WITH A DISABILITY MAKES A REQUEST.

The State Defendants mistakenly believe they have no obligation to make KPT and Kuhio Homes accessible because they purportedly respond to requests for reasonable accommodation, including requests to transfer to an accessible unit. State Opp. at 6-7. But "program access" does not require or depend upon any individual request for reasonable accommodation or reasonable modification. The obligation of public entities to ensure program access is stated in the imperative ("A public entity shall …"), and separately from the distinct obligation of entities to respond to individual requests for reasonable modifications. *Compare* 28 C.F.R. § 35.150 *with* 28 C.F.R. § 35.130(b)(7); *see also Putnam*, 1995 WL 873734, at *13 ("Program accessibility and reasonable individual accommodation are separate requirements.").

In *Putnam*, the Northern District of California explained:

> [Defendants] mistakenly argue that the regulations do not require entities to take any action to address architectural barriers creating the potential for denial of access, but instead allow entities to deal with problems when they "actually arise," either by then removing the barrier or by alternative means. However, the regulations impose upon schools the affirmative duty continuously "to operate each program ... so that the program ..., when

viewed in its entirety, is readily accessible to handicapped persons." *Putnam*, 1995 WL 873734, at *10.

Numerous courts have concurred. *See Parker v. Universidad de Puerto Rico*, 225 F.3d 1, 8 (1st Cir. 2000) ("University must act affirmatively to eliminate barriers on the premises that would otherwise serve to deny persons with disabilities access to services, programs, or activities"); *Huezo*, 2008 WL 7182477 at **4, 12 (noting ADA violation where defendant failed to take affirmative steps to ensure program access and plaintiff was forced to request accommodations); *Tyler*, 857 F. Supp. at 814-15 ("A public entity that simply adopts a policy of responding to individual complaints alleging violations of Title II has not gone far enough to affirmatively identify access problems with its services, policies, and practices, and proceed on its own to correct them[.]").

The State Defendants' passive approach to complying with its obligation to make its housing accessible is contrary to federal law. Their assertion that "HPHA has no legal obligation to comply with ADAGS or to remove any access barriers at KPT," State Opp. at 7, is simply incorrect. Unless they can show a prompt and effective alternative means of providing equal access to housing, the State Defendants must make structural and other changes to ensure access.

D. PLAINTIFFS' MOTION IS NOT MOOT – DEFENDANTS HAVE A HISTORY OF NONCOMPLIANCE AND SEVERE ACCESS PROBLEMS ARE CONTINUING.

A case is moot only if the defendant can meet the heavy burden of establishing that "there is no reasonable expectation that the wrong will be repeated." *U.S. v. W.T. Grant Co*., 345 U.S. 629, 633 (1953). Injunctive relief is necessary because, absent an order compelling lawful conduct, the "defendant is free to return to [its] old ways." *Id.* at 632. Relying on *U.S. v. W.T. Grant*, Judge Kay certified a class and rejected the mootness argument asserted by the housing authority in *Amone v. Aviero,* 226 F.R.D. 677, 687-88 (D. Hawaii 2005) ("The [mootness] burden is a heavy one and Defendants here have not established that there is no reasonable expectation that the conduct alleged by Plaintiff will not continue."). Similarly, in *Layton v. Elder*, the Eight Circuit rejected "appellant's contention that this appeal is moot in light of the improvements made by Montgomery County to upgrade the accessibility of its government services and programs," stating: "In order to demonstrate that this appeal is moot by virtue of its voluntary actions, the county must prove that it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Layton*, 143 F.3d at 471.

The State Defendants' purported efforts to move toward compliance with federal law cannot meet these requirements. The theoretical possibility that tenants

with disabilities can be moved to accessible and comparable public housing does not alter the existing conditions. Tenants with disabilities are ***not*** being moved in a timely manner and the State Defendants have admitted a lack of accessible housing system-wide. Dunne Decl. to Plaintiffs' Motion at Exh. J. *See also* Exh. 1 to Kim Decl. Although the State Defendants claim that the named Plaintiffs have been placed on a waiting list for disabled units, State Opp. at 19, they provide no information about how long they can be expected to wait and to which facilities they are likely to be moved. Similarly, the State Defendants' announcement that they are revising their reasonable accommodation policies – without detail or assurance as to notice and implementation – is no basis for denying relief. Nor does the theoretical possibility of new and improved housing in future years or decades change the realities of the housing that is being used now. *See, e.g.*, *Cooper v. Weltner*, 1999 WL 1000503, at *6 (D. Kan. 1999) ("The defendants also suggest that because they had plans to build a new facility …, this extinguished the need to comply with the ADA at its existing facility. However, construction of a new accessible facility was of no value to Cooper at the time.").

E. THE PLAINTIFFS ARE ENTITLED TO THE RELIEF REQUESTED.

1. Operation and Maintenance of Elevators.

The State Defendants dismiss Plaintiffs' request to maintain at least two working elevators in KPT buildings A and B as moot and "impossible." (State

Opp. at 11.). This position ignores their affirmative obligations under 28 C.F.R. § 35.133(a) and 35 C.F.R. § 35.150(a). Of course, "[m]echanical failures in equipment such as elevators or automatic doors will occur from time to time." Title II TAM at II-3.10000. However, "[t]he obligation to ensure that facilities are readily accessible to and usable by individuals with disabilities would be violated if repairs are not made promptly or if improper or inadequate maintenance causes repeated and persistent failures." *Id.* Here, it is undisputed that the elevators are frequently inoperable, causing waits, delays, unsafe passage along stairwells, and the inability to leave or enter housing units.

According to HPHA's own modernization schedule, only one elevator in each building should be "offline" at a time, leaving two. Presently, the freight elevator in Building A and a passenger elevator in Building B are "offline." Defendant Realty Laua should be ordered to manually operate the freight elevator when needed to provide two elevators for passengers (such as at Building B, presently).

Given the history of neglect, Defendants must be ordered to maintain and repair the "online" elevators (*i.e.* those not being modernized). *See Cupolo*, 5 F. Supp. 2d at 1085. The existence of a maintenance contract, without more, has proven insufficient to keep the elevators operational. *See* State Opp. at 11. If Defendants cannot ensure at least two working elevators, they should be ordered to

devise an alternative plan to assist disabled residents with ingress and egress from their units or immediately relocate residents to other projects. Requiring tenants to endure the status quo while awaiting a modernization project not scheduled for completion until May 2011 is contrary to the Defendants' obligation to make its facilities "readily" accessible.

2. Fire Safety, Emergency and Evacuation Planning.

Fire codes set the minimum standard for fire safety for individuals generally. To ensure safety for tenants with disabilities, the Defendants must at least comply with basic fire codes as well as the additional measures set forth by the Plaintiffs' safety expert. Here, the Defendants have not and cannot deny the numerous fire code violations and fire safety concerns. While Defendants assert that KPT has a "Disaster Evacuation Plan," there is no evidence that the plan has been communicated to residents generally, residents with disabilities, and first responders. If the Defendants maintain, as they claim, a list of mobility-impaired residents, the named Plaintiffs and additional declarants have never heard of it, and are not to their knowledge on the list. Furthermore, Defendants' papers indicate that the list has not yet been provided to the fire department. Nor have Defendants implemented other safety measures identified as essential to residents' health and safety (such as fire evacuation chairs and exit signs). Similarly, while HPHA "plans" to communicate with tenants about the new alarm system, this has not yet

happened. Years of outstanding fire code violations demonstrate that actual implementation and communication of an effective fire safety and evacuation planning – as required by HUD and federal disability laws – remain totally uncertain absent court order.

3. Plaintiffs' Request with Respect to Dangerous Paths of Travel Should Be Granted.

As explained, hazardous paths of travel are not exempt simply because they were constructed before 1992. The Defendants acknowledge that they know of 23 persons with mobility impairments living at KPT and Kuhio Homes; based on statistics and counsel's fact investigation and discovery underlying class certification, there are certainly many more. The Defendants must provide accessible public housing to these individuals. Accessible public housing includes the ability to move about the premises. Whether or not the named Plaintiffs themselves have articulated problems is irrelevant. Mr. Mastin has explained, in detail, the particular hazards posed by these conditions. HPHA has conceded as much by making limited repairs. State Opp. at 15. It must, however, do more. Mr. Mastin's Second Declaration identifies multiple access barriers that are hazardous and have not been repaired.[1]

[1] Until the dispute with regarding the City's versus the State's maintenance obligations is resolved, Plaintiffs will not seek injunctive relief regarding the sidewalks along Linapuni Street.

4. Plaintiffs' Request with Respect to Unit Bathrooms and Entrances Should Be Granted.

a. Grab Bars, Shower Chairs, Toilet Seats, Shower Barriers.

The Defendants must be ordered to purchase and install grab bars, toilet seats, and shower chairs. *See Cooper*, 1999 WL 1000503 at **5-6 (consistent with ADAAG and section 35.150, public entity must provide handrails, shower chair, and spray hose to inmates with disabilities); *Phipps v. Sheriff of Cook County*, __ F. Supp.2d __, 2009 WL 4146391, at *13 (N.D. Ill. 2009) (finding that ADA requires access to toilets, sinks, showers, and toilets in existing facilities in case brought by inmates seeking shower chairs, grab bars, and wheelchair accessible sinks, toilets, soap dispensers, and showers).

While Defendants claim that they now accept requests for grab bars "without the need for medical support," State Opp. at 16, n. 6, they are silent as to other bathroom access features. Moreover, the Defendants are careful to state that they are "accepting" requests for grab bars, not that they are filling them. Plaintiffs' evidence is that the policy change has not yet been implemented. For instance, Serafi Sione, a mobility-impaired Kuhio Homes resident, requested grab bars around July 2009 and offered to pay for them; management told her she has to wait. (*See* Declaration of Serafi Sione.) She has now been waiting six months since her most recent request, and years since her initial request.

b. Shower Barrier.

Although HPHA dismisses Plaintiffs' requests to remove the shower barrier as too expensive, Mr. Mastin explains that the barrier can be removed without much expense, and that installing a shower pan does not require re-grading of the floor.

5. Entrance Ramps.

The State Defendants do not explain exactly why entrance ramps have a "disproportionally high cost" and "could not lead to an 'accessible route.'" State Opp. at 17. Moreover, the State Defendants are incorrect that ramp requests only affects Plaintiff Vaiola.[2] Plaintiffs have requested the entrance ramps for all mobility impaired class members who need them, including Ms. Vaiola, Ms. Sione, and others.[3]

6. Plaintiffs' Request with Respect to Accessible Parking Should Be Granted.

The State Defendants are incorrect that a residential housing complex is not

[2] The Defendants have identified 23 residents at Kuhio Homes with mobility impairments. The Defendants have not produced any evidence that these individuals either have ramps, or do not need them. The relief the Plaintiffs are seeking would require the Defendants to, within 30 days, identify residents in need of ramps and to install those ramps.

[3] Additionally, there is no evidence that the Defendants have offered Ms. Vaiola a reasonable accommodation. The idea that the Defendants' offer to transfer Ms. Vaiola to KPT is a reasonable accommodation is absurd. State Defendants' Opp. at 17. The State Defendants themselves have admitted that KPT is inaccessible.

required to have any accessible parking unless it has visitor parking open to the public. Rather, "a public entity should provide an adequate number of accessible parking spaces in existing parking lots or garages over which it has jurisdiction." Title II TAM at II-5.4000 ("Existing parking lots or garages."). Moreover, the access requirements of sections 35.150 and 35.151 have been applied to many settings used only by a sub-population of the public, such as schools and prisons. *See, e.g.*, *Cooper*, 1999 WL 1000503; *Huezo*, 2008 WL 7182477; *Phipps*, 2009 WL 4146391; *Campos v. San Francisco State University*, 1999 WL 1201809 (N.D. Cal. 1999); *Putnam*, 1995 WL 873734. With respect to parking in particular, access claims made in the context of schools and universities typically seek and achieve relief related to student parking. *See Huezo*, 2008 WL 7182477 at **14-16; *see also Layton*, 143 F.3d at 473 (discussing need to provide accessible parking at existing facilities).

7. Plaintiffs' Requests with Respect to the Named Plaintiffs Should Be Granted.

Far from being vague, the named Plaintiffs' declaration testimony regarding their immediate access and accommodation needs is very specific and the access barriers in their units are obvious. The request of some plaintiffs to transfer within 60 days is also clearly articulated. Given the hazards experienced daily by tenants with severe disabilities, waiting 60 days for a transfer is reasonable. Waiting longer, waiting for years, is not reasonable, and is inconsistent with the

requirement that programs be "readily" accessible. *See Huezo*, 2008 WL 7182477 at *12 (access planning must be promptly implemented).

Furthermore, the Plaintiffs disagree with the State Defendants' approach of placing Plaintiffs on a waiting list as of the date of filing the Complaint. State Opp. at 19. Plaintiffs should be placed on the list as of the date the Defendants should have known of a need for transfer. For Ms. Vaiola, for example, this would be in 2005 (the year she lost a leg to amputation, was exempt from community service based on disability, and had an annual review during which Defendants would have observed her living situation).[4]

8. Plaintiffs' Request with Respect to a Lawful Reasonable Accommodation Policy and Procedure Should Be Granted.

Acknowledging that its existing procedures are outdated, the State Defendants represent that they have prepared new ones for the HPHA Board's adoption, and that they are "in the process of revising forms to comply with the revised policy." State Opp. at 9, 20. It is not stated when this "process" will be complete, and how the Defendants will effectively communicate and implement the revised policy. Here, Plaintiffs have shown that the Defendants fail to notify tenants of their reasonable accommodation procedures, and fail to effectively and promptly implement accommodations. See Plaintiffs' Motion at 38. While

[4] Persons with disabilities who require transfer based on disability have priority over nondisabled persons. *See* 24 C.F.R. § 8.27 (accessible vacant public housing units must be offered to disabled persons prior to nondisabled persons).

promising revisions in procedures and forms, the State Defendants and Realty Laua have done nothing to ensure that they will follow the new procedures, whenever they are adopted. The Court need only look to the Defendants' past conduct to see that the mere existence of a policy does not mean that Defendants will follow it.

The Plaintiffs do not oppose using a policy and forms developed by NCHM so long as such documents comply with the law. The concern, however, is when and how residents will be notified of their rights. *See* 28 C.F.R. § 106. When disabled residents' federal civil rights are at stake, waiting for the bureaucratic process to unfold is not a viable option. The Court should order the Defendants to notify residents of their reasonable accommodation rights within 30 days of the court's order. Such notice should, among other things, let residents know that they can make a request, orally or in writing, and that State Defendants will respond, in writing, within 20 days. *See* Plaintiffs' Motion at 38-39. Further delay only prolongs Defendants' discrimination and the tenants' loss of independence.

Given the historical failures to respond to accommodation requests, and the pendency of this matter, improved record-keeping is essential. *See* Plaintiffs' Motion at 38. Existing records do not, for instance, state whether the request was actually fulfilled. (*See* Motion at Dunne Decl., Exh. K; Kim Decl., Exh. 2 ("Request for Reasonable Accommodation Log"). To ensure compliance with

federal law and an accurate record in this matter, the Court should direct the Defendants to maintain a written record of requests and responses to requests.

F. THE PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION PROPERLY SEEKS RELIEF AGAINST REALTY LAUA.

Preliminary injunctive relief is warranted against Realty Laua. Realty Laua plays a key role in the reasonable accommodations process. It receives, processes, and approves requests for accommodations, it implements accommodations, and maintains related records. It is a central participant in the implementation and communication of fire evacuation plans; and in the operation, oversight, and maintenance of the KPT elevators. *See* "Interoffice Memorandum", dated Oct. 12, 2001, attached to March 2009 Declaration of Chad Taniguchi, Exh. 2; Management Contract at p. 3.

In the Fifth Cause of Action of their Complaint, Plaintiffs specifically allege – as is supported by the evidence presented here -- that Realty Laua is interfering with tenants' rights under the ADA. A management company is also a proper defendant in a claim based on the Fair Housing Act. *See U.S. v. Big D Enterprises, Inc.*, 184 F.3d 924, 930-31 (8th Cir. 1999) (affirming jury verdict against owner and management company on FHA claims); *U.S. v. Habersham Properties, Inc.*, 319 F. Supp. 2d 1366, 1376 (N.D. Ga. 2003) (property management company could be liable under FHA). Including Realty Laua in any preliminary injunctive relief order issued is necessary to make the order effective, especially as to those

parts that relate to the reasonable accommodations policy, elevator operation, and fire safety.

III. CONCLUSION

For the foregoing reasons, in addition to the reasons presented in the Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction and such additional evidence as may be heard at the hearing, this Court should grant Plaintiffs' Motion for Preliminary Injunction.

DATED: Honolulu, Hawai`i, February 8, 2010.

/s/ Jason H. Kim
PAUL ALSTON
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