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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE) CIVIL NO. CV 08 00578 JMS LEK
STRICKLAND; TRUDY SABALBORO;) (Civil Rights Action; Class Action)
KATHERINE VAIOLA; and LEE)
SOMMERS, each individually and on) **PLAINTIFFS' COMBINED REPLY**
behalf of a class of present and future) **MEMORANDUM IN SUPPORT OF**
residents of Kuhio Park Terrace and) **THEIR MOTION FOR CLASS**
Kuhio Homes who have disabilities) **CERTIFICATION FILED JUNE 3,**

affected by architectural barriers and hazardous conditions,

Plaintiffs,

v.

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

Defendants.

) **2009**; CERTIFICATE OF WORD
) COUNT DECLARATION OF
) JASON H. KIM; EXHIBITS “A”-“F”;
) DECLARATION OF RITABELLE
) FERNANDES; CERTIFICATE OF
) SERVICE

)
) DATE: August 13, 2009
) TIME: 9:00 a.m.
) JUDGE: J. Michael Seabright

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**PLAINTIFFS' COMBINED REPLY MEMORANDUM IN SUPPORT OF
THEIR MOTION FOR CLASS CERTIFICATION FILED JUNE 3, 2009**

I. INTRODUCTION

Both Defendants State of Hawai`i and the Hawai`i Public Housing Authority (collectively the “HPHA”) and Defendant Realty Laua LLC’s (“Realty Laua”) Oppositions to Plaintiffs’ Motion for Class Certification are based on a fundamental misunderstanding of the Defendants’ obligations under the Americans With Disabilities Act (“ADA”) and Rehabilitation Act (“RA”) as well as the requirements of FRCP Rule 23. Among other things, the Defendants: (1) rely on manifestly faulty reasoning and ignore information known to them in arguing that the proposed class does not meet the numerosity requirement; (2) conflate their affirmative obligation to make their programs accessible to disabled individuals with their separate but related obligation to accommodate specific disabled individuals; (3) confuse the issue of whether a class should be certified with the issue of whether the Plaintiffs will succeed on the merits of their claims; (4) raise arguments against class certification, some of which have already been rejected by this Court and most of which go to the merits of Plaintiffs’ claims, that actually support commonality and typicality; and (5) mistake the undemanding commonality and typicality requirements of Rule 23(a) for the predominance and superiority requirements of Rule 23(b)(3).

The Defendants' fundamental obligation under the ADA and the RA is to ensure that their programs "when viewed in [their] *entirety*, [are] readily accessible to and usable by *individuals* with disabilities." 28 C.F.R. § 35.150(a)(1) (emphasis added). This regulation focuses on the program "in its entirety" and thus requires a systematic and comprehensive review of the Defendants' policies and practices, as well as the physical condition of its facilities. Those policies and practices include the Defendants' policy regarding requests for reasonable accommodations, which the Plaintiffs allege is ineffective in both design and implementation. Section 35.150(a)(1) focuses not on access for specific disabled individuals but rather on access for "individuals with disabilities" in general. Given the systematic focus of 28 C.F.R. § 35.150(a)(1), it should be clear that this case is appropriate for class certification. *See Armstrong v. Davis*, 275 F.3d 849, 868-69 (9th Cir. 2001) (affirming class certification where the lawsuit "challenges a system-wide practice or policy that affects all of the putative class members").

II. ARGUMENT

A. PLAINTIFFS' CLASS DEFINITION IS NOT VAGUE OR OVERBROAD.

The proposed plaintiff class properly includes all present and future disabled tenants of KPT and Kuhio Homes rather than only those who have mobility and respiratory impairments, contrary to Realty Laua's argument. Realty Laua Opp. at 13. Although many of the Plaintiffs' specific allegations relate to

mobility barriers and environmental conditions, other allegations relate to practices and conditions that affect all disabled tenants at KPT and Kuhio Homes, including the allegation that the Defendants have failed to implement an effective reasonable accommodation policy, Compl. at ¶ 28, and maintain fire equipment and an evacuation plan for disabled residents, Compl. at ¶¶ 29-30. It is not necessary that the class representatives have every conceivable disability represented in the KPT and Kuhio Homes populations as a whole. *See Armstrong*, 275 F.3d at 868 (“the differences that do exist here do not justify requiring groups of persons with different disabilities, all of whom suffer similar harm from the Board’s failure to accommodate their disabilities, to prosecute separate actions”). Although the Ninth Circuit in *Armstrong* required the plaintiffs to add a class representative with kidney disabilities, this was because it was unclear how individuals with kidney disabilities were harmed by the Defendants’ practices. *Id.* at 869. Here, it is obvious that residents of KPT and Kuhio Homes with all kinds of disabilities are equally harmed by the Defendants’ failure to, for example, maintain an effective reasonable accommodation policy.

Similarly, there is no reason to require separate actions to be filed relating to KPT and Kuhio Homes. Both are under common management, *see* Faleafine Decl. at ¶ 1, and under common HPHA policies relating to reasonable accommodations. Although the problems at KPT are more severe, it would be

contrary to Rule 23's goal of adjudicative efficiency to require the overlapping issues between the two buildings to be litigated in separate lawsuits.

B. PLAINTIFFS HAVE PROVEN NUMEROSITY.

Contrary to the HPHA's argument, HPHA Opp. at 16, the Plaintiffs have alleged more than individualized harms relating to their units. The Plaintiffs complain about a lack of elevator service and hazardous environmental conditions, issues that affect numerous disabled residents of KPT. *See* McMillon Decl. at ¶¶ 4-5, 10; Sabalboro Decl. at ¶¶ 4, 7; Sommers Decl. at ¶¶ 7, 9, 11. The Plaintiffs also complain about the Defendants' failure to make reasonable accommodations, another issue that affects other disabled residents of KPT. McMillon Decl. at ¶ 12; Sabalboro Decl. at ¶¶ 9-12; Sommers Decl. at ¶¶ 12-15. The Plaintiffs' experts have submitted declarations testifying to the existence of conditions at KPT that by their nature (*i.e.* access barriers, environmental hazards, and fire hazards) affect disabled individuals other than the Plaintiffs. *See* Mastin Decl., Muniz Decl., and Scofield Decl. attached to Motion. The fact that some of these issues are allegedly being addressed has nothing to do with numerosity.¹ *See* Order Granting in Part and Denying in Part Defendants State of Hawaii and Hawaii Public Housing

¹ Realty Laua argues in response to the Plaintiffs' allegations regarding the lack of a working fire alarm system that it maintains a "fire watch" program at KPT. Realty Laua Opp. at 6. Plaintiffs' counsel requested documents about this fire watch and Realty Laua refused to produce any such documents. *See* Exhibits "E" and "F" to Kim Decl.

Authority's Motion to Dismiss and/or for Summary Judgment, entered June 19, 2009 ("Motion to Dismiss Order") at 14-16 (rejecting argument that Plaintiffs' claims were moot because of planned improvements at KPT).

Both the HPHA and Realty Laua also rely on the Declaration of Robert Faleafine, which asserts that the number of class members is no larger than ten. HPHA Opp. at 17, Realty Laua Opp. at 17. Mr. Faleafine's declaration falls far short of establishing the lack of numerosity for several reasons. First, the declaration limits the potential class to those *forty nine* tenants known to have mobility impairments. Faleafine Decl. at ¶ 6. That number is by itself sufficient to establish numerosity. *Amone v. Aveiro*, 226 F.R.D. 677, 684 (D. Haw. 2005) (forty class members is sufficiently numerous for purposes of Rule 23(a)). Furthermore, the Plaintiffs' proposed class is not limited to individuals with mobility impairments. A number of the issues raised by the Plaintiffs affect all disabled tenants of KPT and Kuhio Homes, as set forth above.

Second, Mr. Faleafine's count is limited to those who have identified themselves to Realty Laua as mobility impaired. As Mr. Faleafine admits, Realty Laua cannot unilaterally inquire about or make a determination as to whether a resident is disabled. Faleafine Decl. at ¶ 12.

Third, Mr. Faleafine further limits the class to those who have requested a transfer to a ground floor unit. *Id.* at ¶ 10. This limitation wrongly

assumes, however, that: (1) every mobility disabled individual is required to request a transfer in order to be a member of the class; and (2) all of the Plaintiffs' claims can be resolved by transferring disabled tenants, assumptions that are deeply at odds with the Defendants' affirmative obligation to provide accessible housing, as set forth in more detail below.

Fourth, despite Mr. Faleafine's statement that he has reviewed "records of reasonable accommodation requests," Faleafine Decl. at ¶ 4, he fails to disclose that these records show that, from 2006 through 2008, *sixty three* tenants at KPT and Kuhio Homes requested reasonable accommodations. *See* Exhibit "A" to attached Declaration of Jason H. Kim ("Kim Decl.") This count most likely understates the number of reasonable accommodation requests. While Realty Laua admits, for example, that Ms. Sommers requested a reasonable accommodation pursuant to the HPHA's procedures when she moved into her unit in 2007, Realty Laua Opp. at 10, 20, her name inexplicably does not appear in the summary of requested reasonable accommodations.² And Dr. Ritabelle Fernandes, a physician who serves KPT and Kuhio Homes residents, has written approximately 400 letters for KPT and Kuhio Homes residents in eight years requesting reasonable accommodations for disabilities, including 200 requesting transfers to accessible

² Although the names have been redacted from the summary, counsel for the HPHA admitted that none of the Plaintiffs' names appeared in the summary. Exhibit "B" to Kim Decl.

units. *See* attached Declaration of Ritabelle Fernandes at ¶ 6. The summary of reasonable accommodation requests and Dr. Fernandes' Declaration contradict Mr. Faleafine's conclusion that the class contains ten or fewer individuals.

Fifth, Mr. Faleafine's Declaration and the HPHA and Realty Laua's arguments do not take into account the Plaintiffs' arguments that the inclusion of future residents of KPT in the class, *see Penderson v. Louisiana State University*, 213 F.3d 858, 868 n. 11 (5th Cir. 2000), and the socio-economic circumstances of the class members, *see Amone*, 226 F.R.D. at 684, make joinder of all individual class members infeasible. *See* Memo. in Supp. of Motion at 18-19. The existence of disabled future tenants of KPT is more than theoretical: the HPHA's own data shows that over twenty percent of families on the waiting list for public housing include an individual with a disability. *See* Exhibit "C" to Kim Decl. at 8.

Finally, both the HPHA and Realty Laua claim that the fact that there are "only" five class representatives demonstrates the lack of numerosity. HPHA Opp. at 16; Realty Laua Opp. at 18-19. Neither the HPHA nor Realty Laua has cited any precedent requiring a particular number of class representatives or finding the number of class representatives relevant to numerosity. In any event, their argument is absurd: requiring that the class representatives themselves be numerous would largely defeat the purpose of class actions.

C. THERE ARE ISSUES OF FACT AND LAW COMMON TO THE CLASS.

“Commonality” is established by “the existence of shared legal issues with divergent factual predicates” or “a common core of salient facts coupled with disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (emphasis added). Contrary to the HPHA’s suggestion that the only common issue alleged by the Plaintiffs is the “broad issue” of whether the Defendants have violated the ADA and RA, Opp. at 4, the Plaintiffs have listed several factual and legal issues common to the class. *See* Memo. in Supp. of Motion at 24-25. This is more than sufficient to satisfy Rule 23(a)’s commonality requirement.

In arguing against commonality, the HPHA relies on several arguments that actually reveal additional common factual and legal issues. First, the HPHA argues that it has no legal obligation to make each of its facilities accessible and that it is not required to alter its facilities if doing so would involve an “undue financial hardship or administrative burden.” HPHA Opp. at 5-6. But whether the HPHA complies with its obligations under the ADA and RA despite maintaining an inaccessible facility because it allegedly has other, accessible facilities is itself an issue of law common to the class. Similarly, whether the modifications required to make KPT and Kuhio Homes accessible would involve an undue financial hardship or administrative burden is an issue of fact common to

the class. The HPHA's related allegation (unsupported by any evidence) that the age, size, and structural features of KPT make modifications impossible is also a factual issue common to the class.³

The HPHA also argues that it has fulfilled its obligations under the ADA and RA by moving disabled KPT tenants into appropriate units in other nearby public housing projects. HPHA Opp. at 9. This is not even close to being true: the HPHA's Executive Director has admitted that the HPHA has a severe shortage of accessible housing units system-wide. *See* Exhibit "D" to Kim Decl. The experience of Ms. Vaiola illustrates the illusory nature of the transfer process.⁴ In response to her request for a transfer to a unit with a ground floor bathroom, Ms. Vaiola was allegedly offered a unit at KPT – a building that the HPHA claims is impossible to make accessible to disabled individuals. Faleafine Dec. at ¶ 14; HPHA Opp. at 6. Exchanging one inaccessible unit for another is no solution.

³ The HPHA's assertion that nothing can be done to make KPT more accessible is obviously untrue. As explained in the Declaration of Jeff Mastin, Defendants can remove many accessibility barriers at nominal cost. *See, e.g.*, Mastin Decl. at ¶¶ 42-43.

⁴ As the Defendants point out, Ms. Vaiola testified at her deposition that, contrary to her Declaration, she did not expressly request a wheelchair ramp for her unit. However, a representative of Realty Laua visits her unit annually to conduct a review of her continued eligibility for public housing. Vaiola Decl. at ¶ 11. It should have been obvious from such visits that Ms. Vaiola is confined to a wheelchair and requires accessibility features for her unit, including a wheelchair ramp, pending transfer to a fully-accessible unit and that she has crude makeshift ramps outside her unit. *See* Vaiola Decl. at ¶ 11.

Although Mr. Faleafine also states that transfer to another project was discussed, there are no details as to whether there were accessible units available at any other project. Faleafine Dec. at ¶ 14. In any event, whether the HPHA may fulfill its obligations through transfers and whether the HPHA has sufficient accessible units available to make transfer a realistic option raise issues of law and fact common to the class.⁵

In response to the Plaintiffs' listing of numerous hazardous and discriminatory conditions at KPT, such as the malfunctioning elevators, lack of hot water, harmful particulates in the air, and lack of an emergency evacuation plan that raise common issues of fact and law, the HPHA claims that these conditions are "de minimis." Opp. at 10-11. These arguments go to the merits of the Plaintiffs' claims and not class certification. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177, 94 S. Ct. 2140, 2152 (1974) (courts have no authority to "conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action").

The HPHA also claims that "mini-trials" would be required for each allegedly discriminatory condition and accessibility barrier. This is both untrue

⁵ Despite the centrality of the availability of transfer to the HPHA's defense, the HPHA failed to produce any documents to the Plaintiffs relating to the waiting list at KPT and Kuhio Homes for accessible units, despite the obvious relevance of this information to class certification. *See* Exhibit "E" to Kim Decl. and Kim Decl. at ¶ 10.

and irrelevant. First, issues about all these conditions and barriers can easily be tried in a single proceeding – the same conditions affect numerous disabled tenants of KPT (albeit to varying extents) and the accessibility barriers can be surveyed on a project-wide basis, as the Plaintiffs’ expert has already done. Second, the existence of some individual issues, even ones that allegedly would require “mini-trials,” although perhaps relevant for purposes of Rule 23(b)(3), is not relevant to the issue of whether there are at least some common issues of law or fact as required by Rule 23(a).

Finally, the HPHA argues that this Court must evaluate each alleged access barrier individually and each barrier’s affect on each individual class member. Opp. at 12. This misstates the nature of the HPHA’s obligations under the ADA and RA. *See Californians for Disability Rights, Inc. v. California Dep't of Transp.*, 249 F.R.D. 334, 344-45 (N.D. Cal. 2008) (rejecting argument that accessibility barriers did not raise common issues because the court would need to make an individualized assessment of each barrier). As this Court has already recognized, the ADA and the RA impose *affirmative* obligations on the HPHA to remove access barriers and otherwise make their programs and facilities accessible to the disabled. *See* Motion to Dismiss Order at 26-28. The Plaintiffs’ expert Jeff Mastin has identified dozens of accessibility barriers at KPT and Kuhio Homes based on objective, nationally-recognized standards. *See* Mastin Decl. and

Exhibit “A-1” attached to Motion. The existence of these barriers and whether they constitute discrimination against the disabled is a factual and legal issue common to the class.

Realty Laua argues that the Plaintiffs’ claims based on the Defendants’ failure to provide reasonable accommodations raise no common issues because each request arises under individual circumstances. Realty Laua Opp. at 20. Realty Laua further argues that the Plaintiffs are barred from challenging the Defendants’ reasonable accommodations policy because all but one of them allegedly failed to follow it. *Id.* at 20-21. Realty Laua’s arguments misconstrue the Plaintiffs’ reasonable accommodation claim and are contrary to this Court’s Motion to Dismiss Order.

First, the Plaintiffs are challenging the Defendants’ policies and practices relating to reasonable accommodations, not challenging any particular denial of a reasonable accommodation. A disability discrimination claim challenging the adequacy of reasonable accommodation policies is appropriate for class adjudication. *See Armstrong*, 275 F.3d at 868-69 (2001) (affirming class certification based on failure of parole board to accommodate disabilities of parole applicants: “commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members”). Although Realty

Laua argues that the HPHA's existing policy is adequate, this in itself is a common factual and legal issue that supports class certification.

Second, as this Court has already held, the Plaintiffs are not barred from bringing this lawsuit because they allegedly failed to comply with the HPHA's policy. *See* Motion to Dismiss Order at 24-25 (a request for a reasonable accommodation need not be made where "the actual procedure for requesting accommodations is faulty" or where "the individual's need for accommodation is obvious"). Indeed, the HPHA's existing policy is facially inadequate, as a housing provider does not comply with its obligation to provide reasonable accommodations if it requires strict compliance with its procedures (such as requiring completion of a specific form) before taking any action on a request for such accommodations. *See* Joint Statement of the Department of Housing and Urban Development and the Department of Justice, "Reasonable Accommodations Under the Fair Housing Act" at 6 ("housing providers must give appropriate consideration for reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests").⁶

⁶ Although this Court has dismissed the Plaintiffs' Fair Housing Act claim against the HPHA, the ADA and RA impose the same requirements as to reasonable accommodations as the Fair Housing Act. *See, e.g., Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1101 (3rd Cir. 1996).

The Defendants have fallen far short of showing that there are no significant factual or legal issues common to the class. *See Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1177 (9th Cir. 2007) (“one significant issue common to the class may be sufficient to warrant certification”). To the contrary, most of their arguments against commonality actually reveal the existence of myriad common factual and legal issues. The Plaintiffs have far exceeded their burden of proving commonality.

D. THE CLAIMS OF THE PLAINTIFFS ARE TYPICAL OF THE CLAIMS OF THE CLASS.

Like the standard for commonality, the standard for typicality is “permissive.” *Id.* at 1184. “[T]he commonality and typicality requirements tend to merge.” *Id.* at n. 12, quoting *General Telephone Company of the Southwest v. Falcon*, 457 U.S. 147, 157 n. 13, 102 S. Ct. 2364, 2371 (1982). All that is required is that the representatives' claims are “reasonably coextensive” with the claims of the class. *Dukes*, 509 F.3d at 1184. Although “[s]ome degree of individuality is to be expected in all cases, ... that specificity does not necessarily defeat typicality.” *Id.*

The Plaintiffs are alleging injury based on “the same injurious course of conduct,” *Armstrong*, 275 F.3d at 869, as that experienced by all disabled residents of KPT and Kuhio Homes, *i.e.*, the Defendants' failure to affirmatively make their facilities and programs accessible to disabled individuals, including by

failing to maintain an effective policy regarding requests for reasonable accommodations. Claims alleging a systematic failure to provide access to disabled individuals satisfy the typicality requirement. *See, e.g., Lighthouse v. County of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997) (claims of plaintiffs are typical because if “the absent class members in this case were to proceed in a parallel action, they would advance legal and remedial theories similar to, if not identical, to those advanced by the named plaintiffs”); *Californians for Disability Rights*, 249 F.R.D. at 346 (plaintiffs satisfied typicality requirement where plaintiffs challenged “the same alleged system-wide failures by Caltrans, under the same legal theories”).

The HPHA claims that the Plaintiffs’ claims are not typical because (based on excerpts of the depositions of only two of the Plaintiffs) they have not been sufficiently injured by the Defendants’ practices. HPHA Opp. at 13-15. Again, the HPHA improperly seeks to litigate the merits of the Plaintiffs’ claims rather than whether they have satisfied the requirements of Rule 23. Furthermore, the fact that Ms. Sabalboro and Ms. Sommers are able to maneuver around the grounds of KPT despite the access barriers (which is only one aspect of their claims) does not mean that their injuries are not typical of those of the class.⁷ *See*

⁷ Realty Laua claims that Ms. Sabalboro is being effectively accommodated because her daughter lives with her. Realty Laua Opp. at 8. Her daughter’s assistance, however, does not change the fact that Ms. Sabalboro is unable to turn

Shotz v. Cates, 256 F.3d 1077, 1080 (11th Cir. 2001) (disabled individuals stated claim under ADA despite the ability to surmount the architectural barriers: “[a] violation of Title II ... does not occur only when a disabled person is completely prevented from enjoying a service, program or activity” but rather “[t]he regulations require that services, programs, and activities be ‘readily accessible’”). Of course, the access barriers at KPT and Kuhio Homes affect different disabled individuals in different ways and with different degrees of severity. But such individual differences are insufficient to defeat typicality. *See Armstrong*, 275 F.3d at 869 (“[a]lthough there are minor differences in the nature of the specific injuries suffered by the various class members, the differences are insufficient to defeat typicality”).

In opposing typicality, Realty Laua against relies on its faulty argument regarding the need for an individualized inquiry regarding each reasonable accommodation requests and the Plaintiffs’ alleged failure to comply with the reasonable accommodation policy. Realty Laua Opp. at 22. Just as these

her scooter within her unit. *See Exhibit “A” to Realty Laua Opp. at 27:6-13.* Furthermore, the HPHA admits that both Ms. Sabalboro and Ms. Sommers experience delay in traveling to and from their units because of nonfunctioning elevators. HPHA Opp. at 13-14. The Defendants’ failure to maintain an adequate number of working elevators at KPT is a discriminatory condition because: (1) unlike ambulatory individuals, Ms. Sabalboro and Ms. Sommers do not have the option to take the stairs and (2) their assistive equipment takes up space in an elevator and overcrowded elevators therefore have a disparate impact on them.

arguments were insufficient to defeat commonality, they are insufficient to defeat typicality for the reasons stated above.

The Plaintiffs have been injured by the Defendants' systematic failure to ensure access to disabled individuals, including their failure to provide an effective system to respond to requests for reasonable accommodations. These failures affect the entire proposed class. Thus, the Plaintiffs have satisfied the typicality requirement.

E. ADEQUATE REPRESENTATION

No Defendant disputes that the Plaintiffs are adequate representatives of the class or that they are represented by adequate counsel. This Court should therefore find that Rule 23(a)'s adequacy requirement is satisfied.

F. THERE IS NO "NEED" REQUIREMENT FOR A RULE 23(b)(2) CLASS ACTION AND, EVEN IF THERE IS, THAT REQUIREMENT IS MET HERE.

Both the HPHA and Realty Laua argue that a Rule 23(b)(2) class may not be certified if there is a "lack of need" for certification because declaratory and injunctive relief would benefit all class members regardless of whether a class is certified. HPHA Opp. at 17-20; Realty Opp. at 22-23. The "lack of need" approach has been rejected by district courts in the Ninth Circuit and other Circuit Courts. *Nehmer v. U.S. Veterans' Admin.*, 118 F.R.D. 113, 118-20 (N.D. Cal. 1987) (questioning whether the "need requirement" is good law in the Ninth Circuit); *Californians for Disability Rights, Inc.*, 249 F.R.D. at 349 (finding "no

requirement that class certification must be ‘necessary’ because “such a requirement would effectively eviscerate Rule 23(b)(2), which was specifically designed with the benefits of collective action in mind.”); *Finberg v. Sullivan*, 634 F.2d 50, 64 (3d Cir. 1980); *Penland v. Warren County Jail*, 797 F.2d 332 (6th Cir. 1986) (whether it is “necessary” to certify a class may be relevant to the superiority requirement of Rule 23(b)(3), but is not relevant to certification of a Rule 23(b)(2) class). As the court reasoned in *Bishop v. New York City Dep’t of Housing Pres. and Dev.*, 141 F.R.D. 229, 241 (S.D.N.Y. 1992):

Here, Defendants [do not] admit the commonality of the class members claims. It is plainly inconsistent for Defendants to argue that any relief granted in connection with this action will be applied to benefit every member of the class, while at the same time they contest the existence of commonality and typicality.

The HPHA and Realty Laua argue (wrongly) that all that is required to comply with the ADA and RA is to accommodate disabled individuals in response to a request for an accommodation and insist that this is an inherently individualized inquiry. Their argument that class certification is not necessary because the class will benefit from the relief granted to the Plaintiffs is completely inconsistent with their arguments opposing commonality and typicality.

Furthermore, unlike *Kansas Health Care Ass’n, Inc. v. Kansas Dep’t of Social and Rehab. Serv.*, 31 F.3d 1536, 1548 (10th Cir. 1994), for example, where it was obvious that a preliminary injunction enjoining Kansas from using a

formula for Medicaid reimbursement that violated federal law would be applied uniformly regardless of class certification, here there is no assurance that any relief granted to the Plaintiffs would benefit other class members. The Defendants could, for example, resolve the Plaintiffs' complaints regarding failure to make reasonable accommodations by offering them their requested accommodations while doing nothing to change their policies and practices. Class certification also prevents the class claims from becoming moot if, for example, the class representatives move. *See Finberg*, 634 F.2d at 64. Even if this Court is required to find that a class action is needed to obtain relief for the class, it should make such a finding here.

III. CONCLUSION

For all the reasons stated above, in addition to the reasons in Plaintiffs' Memorandum in Support, the Court should certify the class proposed by Plaintiffs in this matter.

DATED: Honolulu, Hawai'i, July 31, 2009.

/s/ Jason H. Kim
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; et al.,)	CIVIL NO. CV 08 00578 JMS LEK
)	(Civil Rights Action; Class Action)
Plaintiffs,)	
)	CERTIFICATE OF WORD COUNT
v.)	
)	
STATE OF HAWAII; et al.,)	
)	
Defendants.)	
_____)	

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.5, I hereby certify that Plaintiffs' Combined Reply Memorandum in Support of Their Motion for Class Certification Filed June 3, 2009 contains 4,471 words, exclusive of case caption, table of contents, table of authorities, exhibits, declarations, certificates of counsel, and certificate of service.

DATED: Honolulu, Hawai'i, July 31, 2009.

/s/ Jason H. Kim
PAUL ALSTON
JASON H. KIM
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; et al.,)	CIVIL NO. CV 08 00578 JMS LEK
)	(Civil Rights Action; Class Action)
Plaintiffs,)	
)	DECLARATION OF JASON H.
v.)	KIM
)	
STATE OF HAWAII; et al.,)	
)	
Defendants.)	
_____)	

DECLARATION OF JASON H. KIM

Pursuant to 28 U.S.C. § 1746, I declare that:

1. I am an attorney with the law firm of Alston Hunt Floyd & Ing, counsel for Plaintiffs herein.
2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. I make this declaration in support of Plaintiffs' Combined Reply Memorandum in Support of Their Motion for Class Certification Filed June 3, 2009.
4. Attached as Exhibit A is a true and correct copy of a summary of reasonable accommodation requests for KPT and Kuhio Homes produced by the HPHA in this matter.

5. Attached as Exhibit B is a true and correct copy of an email from Jared Buna, counsel for the HPHA, to counsel for Plaintiffs, dated May 29, 2009.

6. Attached as Exhibit C is a true and correct copy of the HPHA's Annual and Five-Year Plan for Fiscal Years 2010-2014.

7. Attached as Exhibit D is a true and correct copy of a Statement of Chad K. Taniguchi of the HPHA before the Senate Committee on Education and Housing submitted on March 16, 2009.

8. Attached as Exhibit E are true and correct copies of a June 26, 2009 letter and a July 1, 2009 letter from Plaintiffs' counsel to Defendants' counsel.

9. Attached as Exhibit F is a true and correct copy of a July 2, 2009 letter from Realty Laua's counsel to Plaintiffs' counsel.

10. The HPHA has never responded to the letters attached as Exhibit E and have not produced any documents relating to the waiting list for accessible units at KPT and Kuhio Homes.

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

Executed in Honolulu, Hawai'i, on July 31, 2009.

/s/ Jason H. Kim
JASON H. KIM

Reasonable Accommodations Requests

Kuhio Park Terrace/Kuhio Homes
AMP 40/MU 40

2006

EXHIBIT A

HPHA00460

2006 - Reasonable Accommodation Requests - (Respond in Five Business Days)

AC	6/22/2006	Kuhio Park Terrace	MU 40	[REDACTED]	Air conditioner for unit	Canceled. Other-MD office advised tenant expired 06/06/2006	6/29/2006
AC	6/22/2006	Kuhio Park Terrace	MU 40	[REDACTED]	Air conditioner in one bedroom	Approved as requested	6/14/2006
	6/9/2006	Kuhio Homes	MU 40	[REDACTED]	Transfer to Puuhale Home with [REDACTED]	Approved as requested (Transfer requested Puuhale Homes, but MD did not specify need for that specific project.)	2/7/2007
	6/20/2006	Kuhio Park Terrace	MU 40	[REDACTED]	Install bars into shower	Approved as requested. Other - ADAAG guidelines for grab bars included for your use.	7/30/2006
	6/21/2006	Kuhio Park Terrace	MU 40	[REDACTED]	Provide a grab bar in bathroom.	Other: ADAAG guidelines for grab bars to be utilized	7/11/2006
	6/21/2006	Kuhio Park Terrace	MU 40	[REDACTED]	To install an AC.	Deny request. MD did not support request.	8/24/2006
	7/19/2006	Kuhio Park Terrace	MU 40	[REDACTED]	Transfer to a lower floor or install an air conditioner	Approved as noted. MD recommended AC.	8/22/2006
AC	8/1/2006	Kuhio Homes	MU 40	[REDACTED]	To install an AC and provide UA for AC & oxygen concentrator.	Approved as requested. Monthly UA of \$40 for UA is approved.	8/22/2006
AC	8/29/2006	Kuhio Park Terrace	MU 40	[REDACTED]	Install a dead bolt lock with key via independent locksmith and request full reimbursement upon presentation of receipt.	Canceled RA Request. Reconciliation Agreement and file in litigation file.	11/22/2006
AC	10/30/2006	Kuhio Park Terrace	MU 40	[REDACTED]	To install an air conditioner in the unit	Approved as requested. Returned to MU for action as a medical request 2/6/07	Returned 2/6/07
	11/8/2006	Kuhio Park Terrace	MU 40	[REDACTED]	Need a separate bedroom	Approved as requested. Returned to MU for action as a medical request 2/6/07	Returned 2/6/07
	11/8/2006	Kuhio Park Terrace	MU 40	[REDACTED]	Need to have own unit on the ground floor due to asthma and neck & back problems.	Approved as requested. HP/HA does not provide or install AC.	Returned 2/6/07
AC	12/11/2006	Kuhio Park Terrace	MU 40	[REDACTED]	To install an air conditioner in unit	Approved as requested	12/12/2006

HPHA000461

2008 - Reasonable Accommodation Requests - (Respond in Five Business Days)

Date of Request	Date Rec'd by CO	Project Name	MU	if private management (MU 40 - 45), please contact	Name	Request	Approved/Denied	Options Presented to Manager	Date Faxed to Manager	Pending Status
	1/11/2008	Kuhio Homes	MU 40		[REDACTED]	Install an air conditioner because of [REDACTED] condition	Approved as requested HC/DCH does not provide or install ac unit. Other - Excess utility allowance of \$37/mo is also Approved		3/11/2008	
	2/27/2008	Kuhio Park Terrace	MU 40		[REDACTED]	Move to one-bdrm unit.	Deny request - MID advised interior stairs not recommended. Other - Request to downgrade may be handled as a transfer request to a unit without interior stairs Deny request - MID advised A/C not medically necessary at this time		2/27/2008	
	2/19/2008	Kuhio Park Terrace	MU 40		[REDACTED]	To install an ac in [REDACTED] room or the apartment.	Approved as requested. HC/DCH does not provide or install AC unit.		3/9/2008	
	3/6/2008	Kuhio Park Terrace	MU 40		[REDACTED]	Install an air conditioner	Deny Request - Hawaiian Telenorm reduced Lifeline service is a federally funded program which provides a discounted phone rate to lower income families. It does not provide any medical related service.			
	3/21/2008	Kuhio Park Terrace	MU 40		[REDACTED]	Air conditioner				
	5/30/2008	Kuhio Park Terrace	MU 40		[REDACTED]	Utilize telephone services				
	6/1/2008	Kuhio Park Terrace	MU 40		[REDACTED]	Ground floor unit with no stairs on [REDACTED] of the property	Approve as requested		6/2/2008	

2006 - Reasonable Accommodation Requests - (Reported in Five Business Days)				
12/14/2006	12/14/2006	Kulno Park Terrace	NU 40	[REDACTED]
		To transfer to a ground floor unit at Karmelanshe Homes in order to be close to [REDACTED] physician.		
		Approved as requested		
				12/16/2006

Reasonable Accommodations Requests

Kuhio Park Terrace/Kuhio Homes
AMP 40/MU 40

2007

HPHA00464

2007 - Reasonable Accommodation Requests - (Respond in Five Business Days)

AC	UA	Date of Request	Date Rec'd by CO	Project Name	MU	If private mgmt (MU 40-49), state contact	Name	Request	Approved/Denied	Options Presented to Manager	Date Faxed to Manager	Pending Status
x		1/16/2007	2/5/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To transfer to a ground floor/wheelchair accessible unit with a roll in shower, accessible hardware and handrails and UA for hospital bed.	Approved as noted: Unit may be ground floor with accessible route and roll in shower. Other - Monthly UA of \$1 approved for hospital bed.		2/16/2007	
x		2/27/2007	3/1/2007	Kuhio Homes	MU 40		[REDACTED]	To continue to use home oxygen and request excess utility allowance.	Approved as requested. Other: Monthly UA of \$38 for oxygen is approved.		3/5/2007	
x		4/3/2007	5/22/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To install an AC.	Denied - MD did not support request. Denied request - MD office did not confirm medical need for seven-day alternate housing due to fumigation. Approved as requested - 1 AC approved for the bdrm. Other - HPHA does not provide or install AC.		7/3/2007	
		4/9/2007	5/18/2007	Kuhio Park Terrace	MU 40		[REDACTED]	Provide seven-day alternate housing arrangements at a local hotel when apartment is fumigated.	Approved as requested - 1 AC approved for the bdrm. Other - HPHA does not provide or install AC.		5/21/2007	
x		5/22/2007	5/22/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To install an AC.	Per 6/18 email: Request cancelled.		6/26/2007	
		6/5/2007	6/5/2007	Kuhio Park Terrace	MU 40		[REDACTED]	Transfer to ground floor unit. Provide five-day alternate housing arrangements at a local hotel when apartment is fumigated.	Approved as requested - Confirmed with Dr. [REDACTED] on 6/12/07. Fax sent on 6/13/07 mistakenly reflected denial of request.		6/25/2007	
		7/3/2007	7/11/2007	Kuhio Park Terrace	MU 40		[REDACTED]	Allow tenant to install AC in the unit.	Denied - MD did not support request.		7/3/2007	
		7/3/2007	7/11/2007	Kuhio Park Terrace	MU 40		[REDACTED]	Requests ground floor wheelchair accessible unit.	7/11/07 Returned to MU 40 as medical transit to accessible grd flr unit.		7/11/2007	

HPHA00465

2007 - Reasonable Accommodation Requests - (Respond in Five Business Days)

AC	UA	Date of Request	Date Rec'd by CO	Project Name	MU	If private mgmt (MU 40-49), state contact	Name	Request	Approved/Denied	Options Presented to Manager	Date Faxed to Manager	Pending Status
		7/3/2007	8/24/2007	Kuhio Park Terrace	MU 40		[REDACTED]	Transfer to ground floor wheelchair accessible unit	approved		10/19/2007	
		7/23/2007	8/15/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To move to a wheelchair accessible unit.	approved		10/19/2007	
		8/5/2007	9/13/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To install an AC in the unit.	Approved as requested.		9/17/2007	
		8/8/2007	8/21/2007	Kuhio Homes	MU 40		[REDACTED]	Excess utility allowance.	Other - HPHA does not provide or install AC.		9/17/2007	
		9/7/2007	9/14/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To install an AC in the unit.	Deny request - MD did not confirm medical need.		9/17/2007	
		9/14/2007	9/14/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To install grab bars in the shower.	Approved as requested.		9/17/2007	
		9/21/2007	10/1/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To install an AC.	Other - ADAAG guidelines for grab bars included for reference.		9/17/2007	
		10/8/2007	10/8/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To install an AC in the unit.	Approved as requested.		10/17/2007	
		11/6/2007	11/6/2007	Kuhio Homes	MU 40		[REDACTED]	To install an AC in the unit.	Approved as requested. HPHA does not purchase or install AC.		11/9/2007	
		12/17/2007	12/17/2007	Kuhio Park Terrace	MU 40		[REDACTED]	To transfer to lower floor due to pregnancy (Note: No cover sheet was attached to request.)	Other - Pregnancy is not considered a disability for reas accom. This transfer request could be handled by the project as a medical transfer request under the transfer policy.		12/24/2007	

HPHA00466

2007 - Reasonable Accommodation Requests - (Respond in Five Business Days)

AC	UA	Date of Request	Date Rec'd by CO	Project Name	MU	If private mgmt (MU 40 - 49), state contact	Name	Request	Approved/Denied	Options Presented to Manager	Date Faxed to Manager	Pending Status
		5/2/2007	Kuhio Park Terrace	MU 40			[REDACTED]	Requests ground floor unit	5/7/07 - Per [REDACTED] returning to MU 40 Medical transfers to grn floor unit can be done at MU and/or thru IOM to PMMSB if outside of your MU		5/7/2007	

Reasonable Accommodations Requests

Kuhio Park Terrace/Kuhio Homes
AMP 40/MU 40

2008

HPHA00468

2008 - Reasonable Accommodation Requests - (Respond in Five Business Days)

Name	Request	AC	UA	Date of Request	Date Rec'd by CO	Project Name	AMP / MGR	Approved/Denied	Comments	Date Faxed to Manager
[REDACTED]	To allow AC	x		6/25/2008	6/26/2008	Kuhio Park Terrace	AMP 40	Other: Unable to certify need w/MID as ph # sounds like Fax # and listed # in phonebook not in service.		7/1/2008
[REDACTED]	To allow AC			7/21/2008	7/21/2008	Kuhio Park Terrace	AMP 40	approved - HPHA does not provide or install AC		8/14/2008
[REDACTED]	Grabs bars for toilet and bathroom, accessible unit with roll in shower	x		8/25/2008	10/8/2008	Kuhio Homes	AMP 40	Approved		10/2/2008
[REDACTED]	Ground Floor Unit			9/5/2008	9/12/2008	KPT	AMP 40	approved, with modifications		10/14/2008
[REDACTED]	Ground Floor, Grab Bars			9/10/2008	9/18/2008	Kuhio Park Terrace	AMP 40	Approved		10/10/2008
[REDACTED]	Grab bars and an accessible unit			9/11/2008	9/18/2008	Kuhio Homes	AMP 40	Approved		10/10/2008
[REDACTED]	Allow AC			9/23/2008	10/13/2008	KPT	AMP 40	Approved \$72.35		10/21/2008
[REDACTED]	Allow AC			9/24/2008	10/13/2008	KPT	AMP 40	Approved \$72.35		10/21/2008
[REDACTED]	To allow AC			10/14/2008	10/15/2008	KPT	AMP 40	Approved		10/23/2008
[REDACTED]	bathroom grab bars, lower floor unit, ac in unit			11/13/2008	12/17/2008	KPT	AMP 40	denied, no doctor certification		1/5/2009
[REDACTED]	transfer to windward unit			12/24/2008	12/24/2008	KPT	AMP 40	approved		12/26/2009
[REDACTED]	Animal - no cat			8/21/2008		KPT	Faleafine, Lui	approved		
[REDACTED]	Animal			8/28/2008		KPT	Faleafine, Lui			
[REDACTED]	AC & Pulmo-aide Machine			10/10/08		KPT	Faleafine, Lui			
[REDACTED]	Animal			10/21/2008		KPT	Faleafine, Lui			
[REDACTED]	AC & Accessibility			11/10/2008		KPT	Faleafine, Lui	approved		
[REDACTED]	Other - Ground level, wheelchair access, bathroom modification			10/15/2008	10/23/2008	KPT	Faleafine, Robert	Approved use of A/C and ground floor unit approved, grab bars for shower & toilet		12/26/2008
[REDACTED]	AC			10/15/2008	10/15/2008	KPT	Faleafine, Robert	denied on 12/26/08 and approved on 1/12/09		12/26/08
[REDACTED]	AC			10/22/2008	10/22/2008	KPT	Faleafine, Robert	denied on 12/26/08 and approved on 1/12/09		12/26/08
[REDACTED]	To install grab bars in shower & toilet area, if tenant requests a roll-in shower, allow tenant to transfer to an appropriate unit.			2/26/2008	2/27/2008	Kuhio Homes	MU 40	Approved as requested. Other - See attached guide for grab bar installation from ADAAG.		3/4/2008
[REDACTED]	To allow AC	x		5/22/2008	5/23/2008	Kuhio Park Terrace	MU 40	Approved as requested.		5/29/2008

HPHA00469

2008 - Reasonable Accommodation Requests - (Respond in Five Business Days)

Name	Request	AC	UA	Date of Request	Date Rec'd by CO	Project Name	AMP / MGR	Approved/Denied	Comments	Date Faxed to Manager
[REDACTED]	originally requested ground floor unit with accessible route. Mgt confirmed ground floor transfer on 7/08/ also requested utility allowance for heavy duty aerosol compressor, suction catheter for respiratory tracheostomy and heavy duty hospital bed			5/23/2008	7/8/2008	KPT	MU 40	approved, monthly utility allowance of \$1 for hospital bed is approved retro active to August 2008. UA for additional devices pending more info (MD unable to describe make/model and wattage information for compressor and suction catheter. Request tenant to provide info or name and phone number for restory therapist		

HPHA000470

Jason Kim - Reasonable accommodations log

From: <Jarod.J.Buna@hawaii.gov>
To: <victor@lejehawaii.org>, <JKim@ahfi.com>, <emkdunne@gmail.com>, <elizabeth@lejehawaii.org>
Date: 5/29/2009 2:33 PM
Subject: Reasonable accommodations log
CC: <John.C.Wong@hawaii.gov>, <John.M.Cregor@hawaii.gov>, <Susan.A.Ramelb@hawaii.gov>, <Marnie.A.Goo@hawaii.gov>

Elizabeth,

Our paralegal reviewed the redacted Reasonable Accommodation logs we provided you and not one of the Plaintiffs' names appeared on them.

Give me a call if you have any questions.

Thanks,
Jarod

Jarod J. Buna
Deputy Attorney General
425 Queen Street
Honolulu, Hawaii 96813
Phone: (808)-586-1313
Fax: (808) 586-1369



Hawaii Public Housing Authority
 Annual and Five-Year Plan
 Fiscal Years 2010-2014

PHA 5-Year and Annual Plan	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB No. 2577-0226 Expires 4/30/2011
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1.0	PHA Information					
	PHA Name: Hawaii Public Housing Authority			PHA Code: HI001		
	PHA Type:	<input type="checkbox"/> Small	<input type="checkbox"/> High Performing	<input checked="" type="checkbox"/> Standard	<input type="checkbox"/> HCV (Section 8)	
	PHA Fiscal Year Beginning: (MM/YYYY): 07/2009					
2.0	Inventory (based on ACC units at time of FY beginning in 1.0 above)					
	Number of Public Housing Units: 5,331		Number of Housing Choice Voucher units: 3,128			
3.0	Submission Type					
	<ul style="list-style-type: none"> • <input checked="" type="checkbox"/> 5-Year and Annual Plan <input type="checkbox"/> Annual Plan Only <input type="checkbox"/> 5-Year Plan Only 					
4.0	PHA Consortia <input type="checkbox"/> PHA Consortia: (Check box if submitting a joint Plan and complete table below.)					
	Participating PHAs	PHA Code	Program(s) Included in the Consortia	Programs Not in the Consortia	No. of Units in Each Program	
					PH	HCV
	PHA 1:					
	PHA 2:					
	PHA 3:					
5.0	5-Year Plan. Complete items 5.1 and 5.2 only at 5-Year Plan update.					
5.1	Mission.					
	The mission of the Hawaii Public Housing authority is the same as that of the Department of Housing and Urban Development: To promote adequate and affordable housing, economic opportunity and a suitable living environment free from discrimination.					



Hawaii Public Housing Authority
 Annual and Five-Year Plan
 Fiscal Years 2010-2014

5.2 Goals and Objectives

- A. PHA Goal: Expand the supply of assisted housing
 Objectives:
 - 1. Apply for additional rental vouchers if available.
 - 2. Reduce public housing vacancies: Not to exceed 5% vacancy rate.
 - 3. Leverage private or other public funds to create additional housing opportunities: Assess the feasibility of mixed-use private redevelopment.
 - 4. Shelter Plus – 100 units (20 unit per year)

- B. PHA Goal: Improve the quality of assisted housing
 Objectives:
 - 1. Improve public housing management: (PHAS score)
 - PHAS Physical Condition (REAC) - Passing score of 75 out of 100 points.
 - PHAS Financial Condition- Increase rent collection rate to 95%.
 - PHAS Management Operations -Vacant Unit Turnaround Time: Less than or equal to 20 days; Work Orders: Complete or abate 100% of emergency work orders within 24 hours and complete non-emergency work orders within an average of 25 days; Annual Inspections: Inspected 100% of its units and systems using the Uniform Physical Condition Standard (UPCS).
 - PHAS Resident Survey – refer to “Increase Customer Satisfaction” below.
 - Evaluate and upgrade PHA computer software to increase the efficiency of programs agency-wide.
 - Improve tenant rent collection system through timely evictions for non-payment of rents.
 - 2. Improve voucher management: (SEMAP score) Strive for High-Performer: 90%
 - Maintain lease-up to 95% of budget utilization.
 - Partner with the City and County of Honolulu, Section 8 Housing Choice Voucher Program to develop a rent reasonableness process to improve operational effectiveness.
 - Develop and maintain an effective reporting system to improve operational efficiency.
 - Continue to develop relationships with more partners in the recruitment and retention of landlords.
 - 3. Increase customer satisfaction: Resident Services and Satisfaction Survey - Achieve at least a score of 80% in all categories (maintenance and repair, communication, safety, services and neighborhood appearance).
 - 4. Concentrate on efforts to improve specific management functions:
 - Develop strategies and training for PH managers and staff to improve rating on the Resident Service and Satisfaction Survey.
 - Develop a plan to have Tenant Monitors available when managers are not available.
 - 5. Renovate or modernize public housing units.
 - 6. Demolish or dispose of obsolete public housing and provide replacement housing.
 - 7. Provide replacement vouchers.
 - 8. Leverage Capital Funds to accelerate modernization projects.
 - 9. Study the feasibility of utilizing public/private partnerships for the redevelopment of public housing.

- C. PHA Goal: Increase assisted housing choices
 Objectives:
 - 1. Conduct outreach efforts to potential voucher landlords.
 - 2. Provide Section 8 voucher mobility counseling.
 - 3. Increase voucher payment standards.



Hawaii Public Housing Authority
 Annual and Five-Year Plan
 Fiscal Years 2010-2014

5.2	<p>Goals and Objectives (cont.)</p> <ol style="list-style-type: none"> 4. Implement voucher homeownership program. 5. Implement public housing or other homeownership programs. 6. Utilize Geographical Wait Lists. 7. Pursue designated housing for elderly-only project(s). <p>D. PHA Goal: Provide an improved living environment Objectives:</p> <ol style="list-style-type: none"> 1. Implement measures to de-concentrate poverty by bringing higher income public housing households into lower income developments. 2. Implement measures to promote income mixing in public housing by assuring access for lower income families into higher income developments. 3. Implement public housing security improvements. 4. Designate developments or buildings for particular resident groups (elderly, persons with disabilities). <p>E. PHA Goal: Promote self-sufficiency and asset development of assisted households Objectives:</p> <ol style="list-style-type: none"> 1. Increase the number and percentage of employed persons in assisted families by annually assisting public housing residents to attain their goals for economic self-sufficiency. 2. Attract supportive services to improve assistance recipients' employability. 3. Attract supportive services to increase independence for the elderly or families with disabilities by annually providing or attracting supportive services at 5 public housing sites that service elderly or disabled populations. 4. Provide measures and opportunities to increase the income of residents to complement de-concentration and income targeting. 5. Encourage and support resident participation in an existing Individual Development Account (IDA). <p>F. PHA Goal: Ensure equal opportunity and affirmatively further fair housing Objectives:</p> <ol style="list-style-type: none"> 1. Undertake affirmative measures to ensure access to assisted housing regardless of race, color, religion, national origin, sex, familial status, and disability. 2. Undertake affirmative measures to provide a suitable living environment for families living in assisted housing, regardless of race, color, religion, national origin, sex, familial status, and disability. 3. Undertake affirmative measures to ensure accessible housing to persons with all varieties of disabilities regardless of unit size required. 4. Continue on-going efforts to educate and provide information to the general population and to landlords. 5. Conduct on-going training to educate staff. 6. Continue to implement the Section 504 and ADA transition plans. 7. Implement the Limited English Proficiency (LEP) plan for applicants and residents of public housing and Section 8 programs. 8. Provide training to non-English speaking and/or Limited English Proficiency speaking groups with an interpreter available on federal and state fair housing laws. 9. Build community ties with private and non-profit organizations to affirmatively further fair housing. 10. Update the Fair Housing Analysis of Impediments in 2009.
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Hawaii Public Housing Authority
Annual and Five-Year Plan
Fiscal Years 2010-2014

5.2 Goals and Objectives (cont.)

- G. PHA Goal: Improve the housing delivery system through cost-effective management of federal and State government programs and resources:
 - 1. Implement project based accounting and management for federal public housing.
 - 2. Evaluate and upgrade PHA computer software to improve financial accounting and reporting.
 - 3. Improve tenant rent collection system through updating policies and procedures, timely evictions for non-payment of rents, and timely write offs.

- H. PHA Goal: Evaluate the current administration of HPHA's Section 8 Housing Choice Voucher Program.

- I. PHA Goal: Due to the recent change in funding levels for the Section 8 HCV Program by HUD, HPHA will be exploring various options to maximize the number of voucher participants within the current HUD funding level, including:
 - 1. Adjusting the subsidies given to the current voucher holders to increase the number of active vouchers;
 - 2. Maintaining current subsidy amounts and not open the wait list until HUD funding is increased.

- J. PHA Goal: Comply with the Violence Against Women Act to support and assist victims of domestic violence, dating violence, sexual assault, or stalking. To protect certain victims as well as members of the victims' immediate families – from losing their HUD-assisted housing as a consequence of the abuse of which they were the victim.



Hawaii Public Housing Authority
 Annual and Five-Year Plan
 Fiscal Years 2010-2014

6.0 PHA Plan Update

(a) Identify all PHA Plan elements that have been revised by the PHA since its last Annual Plan submission

- *Eligibility, Selection and Admissions Policies, including De-concentration and Wait List Procedures:* HPHA will establish a wait list preference for working families, and is pursuing public/private partnership mixed-use redevelopment at one or more sites to enhance de-concentration.
- *Financial Resources* amounts have changed.
- *Rent Determination:* HPHA will establish a minimum rent of at least \$50 for all tenants. This was presented to and approved by the Resident Advisory Board but inadvertently omitted from the public PHA Plan draft; public testimony was received asking that it be corrected. A new fee of \$25 will be charged for rent paid more than 7 business days after due, and for dishonored checks.
- *Operations and Management* will incorporate mixed-use redevelopment.
- *Designated Housing for Elderly:* HPHA will submit plans for elderly-only designation for one or more sites.
- *Community Service and Self Sufficiency:* a waitlist preference for working families will encourage increased self-sufficiency.
- *Safety and Crime Prevention:* additional sites have been added to those affected by safety needs; additional legislation is being pursued.

(b) Identify the specific location(s) where the public may obtain copies of the 5-Year and Annual PHA Plan.

Hawaii Public Housing Authority (HPHA)
 1002 North School Street, Bldg. E
 Honolulu, Hawaii 96817

Lanakila Homes
 600 Wailoa Street
 Hilo, Hawaii 96720

Ka Hale Kahaluu
 78-6725 Makolea Street
 Kailua-Kona, Hawaii 96740

Kapaa
 4726 Malu Road
 Kapaa, Hawaii 96746

Kahekili Terrace
 2015 Holowai Place
 Wailuku, Hawaii 96793

Also available on the internet at <http://www.hpha.hawaii.gov/housingplans/index.htm>

THE FOLLOWING POLICIES ARE ALSO AVAILABLE AT THE LOCATIONS ABOVE:

Note: ACOP refers to the Admissions and Continued Occupancy Policy document

1. **Eligibility, Selection and Admissions. and Wait List Policies:** ACOP Chapters 2 and 3
2. **De-concentration Policy:** ACOP Chapter 4
3. **Statement of Financial Resources**
4. **Rent Determination policy:** ACOP Chapter 6.
5. **Operation and Management**
6. **Grievance Procedures:** ACOP Chapter 13



Hawaii Public Housing Authority
 Annual and Five-Year Plan
 Fiscal Years 2010-2014

<p>6.0</p>	<p>(cont.)</p> <ul style="list-style-type: none"> 7. Designated Housing for Elderly and Disabled Families 8. Community Service and Self-Sufficiency 9. Safety and Crime Prevention 10. Pets Policy: ACOP Chapter 10 11. Civil Rights Certification 12. Fiscal Year Audit 13. Asset Management 14. Violence Against Women Act (VAWA) activities
<p>7.0</p>	<ul style="list-style-type: none"> • Hope VI or Mixed Finance Modernization or Development: HPHA is planning a Request for Proposals for a developer/partner mixed income/mixed finance redevelopment project at Kuhio Park Terrace (614 units) and Kuhio Homes (134 units). Timetable: <ul style="list-style-type: none"> HPHA Board approval.....February 19, 2009 Issuance of RFP.....March, 2009 Notice of award.....August, 2009 • Demolition and/or Disposition: <ul style="list-style-type: none"> 1. Lanakila Homes, Big Island: HPHA had previously received approval to demolish a number of buildings at Lanakila Homes. Subsequently it was determined that rehabilitation of 3 of those buildings would be more appropriate, and approval to rescind demolition of 6 units was granted by HUD. On February 19, 2009 the HPHA Board of Directors authorized HPHA to pursue a plan to utilize volunteer organizations to renovate the 6 units and return them to service. 2. Waimanalo Homes, Oahu: The Department of Hawaiian Home Lands (DHHL) requested a no-cost six-foot wide sewer easement along the property line of Lot 146, in order to connect a new DHHL subdivision to the existing city sewer system. There is no adverse impact on HPHA, the property or its residents. No units are taken from service, no tenants displaced. Tenants will be informed of the planned easement. 3. No additional demolition requests are planned at this time. HPHA may consider demolition of a limited number of units should circumstances require. Such action would only occur in consultation and with the approval of Department of Housing and Urban Development. • Conversion of Public Housing: None planned for this time period. • Homeownership Programs: Waimanalo Homes (HI10P001025) approved 1/10/2000; 28 units affected. No change in status since previous PHA plan.



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<p>7.0</p>	<ul style="list-style-type: none"> Project-based Vouchers. 305 units at Pololo Homes I and II. Consistent with the HPHA’s efforts to sustain and increase the availability of decent, safe, and affordable housing, HPHA plans to continue its utilization of rent subsidy vouchers through the Federal Project-Based Certificate/Voucher Program. The HPHA will earmark up to the maximum allowable vouchers as specified in 24 CFR 983 and will utilize project basing on the counties of Oahu, Kauai, Maui, and Hawaii in accordance with program guidelines and objectives. <p>To maximize utilization and to encourage tenant development, HPHA applied for and received HUD approval on August 8, 2001 to exceed the 25 percent cap for dwelling units in any building to be assisted under a housing assistance payment (HAP) by requiring owners to offer supportive services. To minimize the loss of existing housing inventories, HPHA applied for and received HUD approval on October 4, 2001 to attach Project Based Assistance to State-owned public housing projects in areas, which exceed the 20 percent poverty rate limitation. HPHA will continue to develop these strategies to better address housing needs in Hawaii.</p>
<p>8.1</p>	<p>Capital Fund Program Annual Statement/Performance and Evaluation Report. As part of the PHA 5-Year and Annual Plan, annually complete and submit the <i>Capital Fund Program Annual Statement/Performance and Evaluation Report</i>, form HUD-50075.1, for each current and open CFP grant and CFFP financing.</p> <p>ATTACHED</p>
<p>8.2</p>	<p>Capital Fund Program Five-Year Action Plan. As part of the submission of the Annual Plan, PHAs must complete and submit the <i>Capital Fund Program Five-Year Action Plan</i>, form HUD-50075.2, and subsequent annual updates (on a rolling basis, e.g., drop current year, and add latest year for a five year period). Large capital items must be included in the Five-Year Action Plan.</p> <p>ATTACHED</p>
<p>8.3</p>	<p>Capital Fund Financing Program (CFFP).</p> <p><input type="checkbox"/> Check if the PHA proposes to use any portion of its Capital Fund Program (CFP)/Replacement Housing Factor (RHF) to repay debt incurred to finance capital improvements.</p> <p>NOT APPLICABLE</p>



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9.0 Housing Needs of Families in the Jurisdiction.

Housing Needs of Families on the Public Housing Waiting List		
	# of families	% of total families
Waiting list total	8,834	
Extremely low income <=30% AMI	7,457	84.41
Very low income (>30% but <=50% AMI)	1,170	13.24
Low income (>50% but <80% AMI)	177	2.0
Families with children	4,504	50.98
Elderly families	1,797	20.34
Families with Disabilities	1,774	20.08
White	1,456	16.48
Hispanic	589	6.67
Black	203	2.3
Am Indian, etc	105	1.19
Asian/Pacific Islander/Other	7,070	80.03
Characteristics by Bedroom Size (Public Housing Only)		
1BR and Studio	3,911	44.27
2 BR	3,277	37.10
3 BR	1,339	15.16
4 BR	227	3.14
5 BR	30	.34
5+ BR	0	



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9.0 Housing Needs (cont.)

Housing Needs of Families on the Section 8 Waiting List		
	# of families	% of total families
Waiting list total	4,252	
Extremely low income <=30% AMI	4,016	94.4
Very low income (>30% but <=50% AMI)	205	4.8
Low income (>50% but <80% AMI)	31	.07
Families with children	1,508	35.5
Elderly families	261	6.1
Families with Disabilities	691	16.3
White	786	18.6
Hispanic	358	8.4
Black	109	2.6
Am Indian, etc	51	1.2
Asian/Pacific Islander/Other	3,306	77.8%

The following data is drawn from the Hawaii Housing Policy Study Update, 2006, by SMS Research for Hawaii Housing Finance and Development Corporation (HHFDC).

Shelter costs as percentage of income (Source: 2006 HHFDC Housing Policy Study):

	State of Hawaii	County of Honolulu	County of Hawaii	County of Maui	County of Kauai
Less than 30% household income	40.7	40.6	43.4	36.5	43.0
30 to 40% of household income	12.8	12.4	12.4	15.8	12.0
More than 40% household income	25.7	25.1	26.1	30.0	24.0
No shelter cost	20.8	21.9	18.1	17.7	20.9

"No shelter cost" includes those renting without payment of cash rent and homeowners with paid-up mortgages.



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9.0 Housing Needs (cont.)

Household income data by County (Source: 2006 HHFDC Housing Policy Study)

County	Year	Total Households	Household Income							
			Less than \$15,000	\$15,000 to \$24,999*	\$25,000 to \$34,999	\$35,000 to \$49,999	\$50,000 to \$74,999	\$75,000 to \$99,999	\$100,000 or more	Refused
Honolulu	1992	247,349	N/A	24%	13%	16%	12%	6%	7%	21%
	1997	272,234	9%	9%	12%	16%	15%	9%	6%	24%
	2003	292,003	8%	10%	14%	22%	18%	11%	17%	—
	2006	303,149	13%	7%	12%	14%	22%	12%	21%	—
Maui	1992	34,266	N/A	20%	17%	20%	11%	2%	3%	27%
	1997	39,252	10%	8%	16%	18%	15%	7%	6%	20%
	2003	43,687	9%	13%	13%	22%	19%	14%	11%	—
	2006	49,484	11%	8%	11%	18%	20%	15%	17%	—
Hawaii	1992	39,789	N/A	24%	19%	20%	11%	3%	4%	20%
	1997	46,271	14%	14%	15%	15%	12%	4%	4%	22%
	2003	54,644	14%	12%	17%	22%	17%	9%	9%	—
	2006	61,213	13%	10%	13%	16%	22%	10%	16%	—
Kauai	1992	16,981	N/A	20%	14%	22%	10%	5%	3%	28%
	1997	18,817	11%	13%	15%	16%	15%	5%	3%	23%
	2003	20,460	13%	12%	16%	21%	18%	9%	12%	—
	2006	21,971	10%	10%	12%	15%	23%	11%	19%	—
Total	1992	338,385	N/A	24%	14%	17%	12%	5%	6%	22%
	1997	376,574	10%	10%	13%	16%	15%	8%	6%	24%
	2003	410,794	10%	10%	14%	21%	19%	10%	15%	—
	2006	435,818	13%	7%	12%	15%	21%	12%	20%	—

Housing Cost by County (Source: 2006 HHFDC Housing Policy Study)

County	Year	Total Households	Average Monthly Mortgage Payment			Average Monthly Rent	
			Total	Single-family	Multi-family	Total	2-bedroom apartment
Honolulu	1992	247,349	\$821	\$915	\$832	\$864	
	1997	272,234	\$1,430	\$1,369	\$1,335	\$928	\$923
	2003	292,003	\$1,546	\$1,650	\$1,239	\$1,014	\$1,072
	2006	303,149	\$1,142	\$1,173	\$1,029	\$1,300	\$1,393
Maui	1992	34,266	\$776	\$831	\$719	\$730	
	1997	39,252	\$1,210	\$1,664	\$789	\$850	\$1,138
	2003	43,687	\$1,310	\$1,346	\$1,104	\$979	\$1,072
	2006	49,484	\$1,461	\$1,451	\$1,458	\$1,256	\$1,253
Hawaii	1992	39,789	\$851	\$891	\$579	\$556	
	1997	46,271	\$954	\$1,069	\$940	\$697	\$844
	2003	54,644	\$1,072	\$1,078	\$919	\$859	\$843
	2006	61,213	\$1,057	\$1,039	\$1,407	\$1,146	\$1,152
Kauai	1992*	16,981	\$726	\$773	\$812	\$807	
	1997	18,817	\$1,151	\$1,290	\$981	\$830	\$880
	2003	20,460	\$1,284	\$1,306	\$1,014	\$983	\$885
	2006	21,971	\$1,165	\$1,178	\$974	\$1,230	\$1,271
Total	1992	338,385	\$800	\$863	\$813	\$793	
	1997	376,574	\$1,319	\$1,330	\$1,288	\$897	
	2003	410,794	\$1,433	\$1,488	\$1,213	\$992	\$1,037
	2006	435,818	\$1,167	\$1,183	\$1,081	\$1,274	\$1,348



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9.0 Housing Needs (cont.)

Shelter to Income Ratios (Source: 2006 HHFDC Housing Policy Study)

County	Year	Total Households	Monthly Shelter Payment as a Percent of Monthly Household Income			
			Under 30 percent	30 to 40 percent	Over 40 percent	Not enough information
Honolulu	1992	247,349	55.7%	14.1%	20.2%	10.0%
	1997	272,234	55.1%	18.9%	18.4%	7.5%
	2003	292,003	55.7%	18.5%	18.0%	7.8%
	2006	303,149	54.8%	10.9%	22.0%	12.0%
Maui	1992	34,266	59.3%	18.1%	15.8%	6.7%
	1997	39,252	47.9%	16.0%	19.8%	16.4%
	2003	43,687	52.2%	18.3%	15.7%	15.9%
	2006	49,484	49.1%	14.3%	27.1%	9.4%
Hawaii	1992	39,789	70.2%	12.4%	11.5%	5.9%
	1997	46,271	51.8%	18.1%	20.4%	9.7%
	2003	54,644	52.5%	19.1%	15.9%	12.4%
	2006	61,213	54.9%	11.1%	22.0%	12.0%
Kauai	1992*	16,981	60.3%	17.7%	13.7%	8.1%
	1997	18,817	44.9%	18.7%	24.7%	11.7%
	2003	20,460	51.8%	16.8%	18.0%	13.3%
	2006	21,971	57.6%	10.8%	21.6%	10.0%
Total	1992	338,395	58.0%	14.5%	18.4%	9.1%
	1997	376,574	53.5%	18.5%	19.1%	8.9%
	2003	410,794	54.7%	18.5%	17.5%	9.5%
	2006	435,818	54.2%	11.3%	22.7%	11.8%

Includes both rent and mortgage payments.



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<p>9.1</p>	<p>Strategy for Addressing Housing Needs.</p> <p>A. Need: Shortage of affordable housing for all eligible populations</p> <p>Strategy 1. Maximize the number of affordable units available to the PHA within its current resources:</p> <ul style="list-style-type: none"> • Employ effective maintenance and management policies to minimize the number of public housing units off-line. • Reduce turnover time for vacated public housing units by outsourcing where appropriate. • Seek replacement of public housing units lost to the inventory through mixed finance development. • Maintain or increase section 8 lease-up rates by establishing payment standards that will enable families to rent throughout the jurisdiction. • Undertake measures to ensure access to affordable housing among families assisted by the PHA, regardless of unit size required. • Maintain or increase section 8 lease-up rates by marketing the program to owners, particularly those outside of areas of minority and poverty concentration. • Participate in the Consolidated Plan development process to ensure coordination with broader community strategies. <p>Strategy 2: Increase the number of affordable housing units:</p> <ul style="list-style-type: none"> • Apply for additional section 8 units should they become available • Leverage affordable housing resources in the community through the creation of mixed - finance housing • Pursue housing resources other than public housing or Section 8 tenant-based assistance. <p>B. Need: Specific Family Types: Families at or below 30% of median</p> <p>Strategy: Target available assistance to families at or below 30 % of AMI</p> <ul style="list-style-type: none"> • Exceed HUD federal targeting requirements for families at or below 30% of AMI in public housing • Exceed HUD federal targeting requirements for families at or below 30% of AMI in tenant-based section 8 assistance • Adopt rent policies to support and encourage work
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9.1	<p>Strategy for Addressing Housing Needs (cont.)</p> <p>C. Need: Specific Family Types: Families at or below 50% of median</p> <p>Strategy: Target available assistance to families at or below 50% of AMI</p> <ul style="list-style-type: none"> • Employ admissions preferences aimed at families who are working • Adopt rent policies to support and encourage work <p>D. Need: Specific Family Types: The Elderly</p> <p>Strategy: Target available assistance to the elderly:</p> <ul style="list-style-type: none"> • Seek designation of public housing for the elderly • Apply for special-purpose vouchers targeted to the elderly, should they become available <p>E. Need: Specific Family Types: Families with Disabilities</p> <p>Strategy: Target available assistance to Families with Disabilities:</p> <ul style="list-style-type: none"> • Carry out the modifications needed in public housing based on the Needs Assessment for Public Housing • Apply for special-purpose vouchers targeted to families with disabilities, should they become available • Affirmatively market to local non-profit agencies that assist families with disabilities <p>F. Need: Specific Family Types: Races or ethnicities with disproportionate housing needs</p> <p>Strategy: Conduct activities to affirmatively further fair housing</p> <ul style="list-style-type: none"> • Counsel section 8 tenants as to location of units outside of areas of poverty or minority concentration and assist them to locate those units • Market the section 8 program to owners outside of areas of poverty /minority concentrations • Provide training to housing providers and to residents with limited English proficiency. <p><u>Reasons for Selecting Strategies</u></p> <ul style="list-style-type: none"> • Funding constraints • Staffing constraints • Limited availability of sites for assisted housing
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<p>9.1</p>	<p>Reasons for Selecting Strategies (cont.)</p> <ul style="list-style-type: none">• Evidence of housing needs as demonstrated in the Consolidated Plan and other information available to the PHA• Influence of the housing market on PHA programs• Community priorities regarding housing assistance• Results of consultation with local or state government• Results of consultation with residents and the Resident Advisory Board• Results of consultation with advocacy groups
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10.0	<p>Additional Information. (a) Progress in Meeting Mission and Goals in the previous 5- Year Plan (FY 2005-2009)</p> <p>1. PHA Goal: Expand the supply of assisted housing</p> <p>A. Apply for additional rental subsidies: <i>Applications for HUD Specific Section 8 Housing Choice Vouchers will be submitted provided that HUD specific funding is available and HPHA meets the criteria for the specific funding..</i></p> <p>B. Reduce public housing vacancies, not to exceed 5% vacancy rate.</p> <ul style="list-style-type: none"> • <i>Of the 537 units vacant as of June 30, 2008, 345 have been repaired.</i> • <i>The remaining 192 units are scheduled to be repaired or under contract for repairs by June 30, 2009.</i> • <i>Current occupancy rate is 94%</i> <p>2. PHA Goal: Improve the quality of assisted housing</p> <p>A. Improve public housing management: (PHAS score) 90.0: <i>The 2008 PHAS score is 75% (standard performer)</i></p> <p>B. Attain SEMAP score of 90% or better: <i>The 2007-2008 final assessment SEMAP score ranks HPHA as a "Standard Performer."</i></p> <p>C. Increase customer satisfaction: <i>The HPHA scored 9 out of 10 in the Resident Satisfaction Assessment Sub-System (RASS) for the fiscal year ending June 30, 2007.</i></p> <p>D. Concentrate on efforts to improve specific management functions: (list; e.g., public housing finance; voucher unit inspections) <i>Implemented strategies and training for public housing managers and their staff in order to obtain a high rating on the Resident Service and Satisfaction Survey.</i></p> <p>E. Renovate or modernize public housing units: <i>the following have had substantial rehabilitation</i></p> <ul style="list-style-type: none"> • <i>Kalihi Valley Homes Phase II (63 units); Pumehana (7 Units); and Lanakila Homes Development Phase IIa and 2b (48 Units).</i> • <i>Modernization at Kalihi Valley Homes Phase IIIa (45 units).</i> • <i>Modernization of Ka Hale Kahaluu (50 Units) completed November 2007.</i> • <i>Kalihi Valley Homes Phase IIIb (27 Units) will be completed by April 30, 2009..</i> • <i>Minor renovation at Noelani I and II (43 Units).</i> • <i>Pumehana, Kalanihulia, and Makamae exterior structure (414 Units).</i>
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10.0	<p>Progress in Meeting Mission and Goals (cont.)</p> <p>F. Provide replacement public housing:</p> <ul style="list-style-type: none"> • 48 new units were developed at Lanakila Homes in Phases IIa and IIb to replace demolished units. • 20 new units currently in design and will be developed at Lanakila Homes in Phase IIIa to replace demolished units. <p>3. PHA Goal: Increase assisted housing choices</p> <ul style="list-style-type: none"> • Geographical Wait List: <i>Administrative rules implemented in December 2001.</i> • Conduct ongoing outreach efforts to potential voucher landlords: <i>Outreach activities to attract new voucher landlords began in March, 2005, including owners of accessible units, and is ongoing on an annual basis.</i> <p>4. PHA Goal: Provide an improved living environment</p> <ul style="list-style-type: none"> • Implement measures to promote income mixing in public housing by assuring access for lower income families into higher income developments: <i>HPHA is considering a waiting list preference for families with income, and is investigating mixed-use redevelopment for one or more sites.</i> • Implement public housing security improvements: <i>HPHA coordinated Neighborhood Watch and Voluntary Tenant Patrol programs in fourteen public housing sites and supported the Boys and Girls Club of Maui to provide after school youth program in public housing.</i> <p>5. PHA Goal: Promote self-sufficiency and asset development of assisted households</p> <ul style="list-style-type: none"> • Increase the number and percentage of employed persons in assisted families: <i>the following has been provided to federal public housing residents</i> <ul style="list-style-type: none"> a) 40 Tenant Aide Positions filled, 19 hours per week b) Individual Training Service Plans for 155 people c) Case management and Congregate activities for 361 elderly residents • Provide or attract supportive services to increase independence for the elderly or families with disabilities: <i>Under the Resident Opportunities and Self-Sufficiency Program, case management and congregate services are being provided at Kalakaua Homes, Makua Alii, Paoakalan; services at, Punchbowl Homes, Pumehana, Kalahuia and Makamae were provided until the grant expired June, 2008.</i> • Submitted and awarded a 2006 Resident Opportunities and self-sufficiency (ROSS) grant application for \$450,000 over three years at Kalakaua Homes, Makua Alii and Paoakalani. <i>Partnering with child and Family Services/Honolulu Gerontology to provide case management/services to assist elderly residents to age in place.</i>
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10.0	<p>Progress in Meeting Mission and Goals (cont.)</p> <ul style="list-style-type: none"> • <i>Submitted and awarded 2006 and 2007 Resident Opportunities and Self-sufficiency (ROSS) grant applications for a Family Self-sufficiency Coordinator.</i> • <i>Submitted and awarded a 2006 Resident Opportunities and Self-sufficiency (ROSS) grant application for \$388,522 to assist residents with psychiatric disabilities at Kalakaua Homes, Makua Alii, and Paoakalani to live in their homes independently, safely and to minimize potential negative interactions</i> <p>6. PHA Goal: Ensure equal opportunity and affirmatively further fair housing</p> <ul style="list-style-type: none"> • <i>Policy and procedures for reasonable accommodation/modification are being implemented throughout HPHA offices.</i> • <i>Complaint process has been established for the HPHA.</i> • <i>On-going education on Fair Housing is being provided to include, but not limited to workshops, publications, etc.</i> • <i>The HPHA has established a partnership with the counties, Hawaii Civil Rights Commission, and the Legal Aid Society of Hawaii.</i> • <i>DHS Limited English Proficiency (LEP) plan has been adopted to affirmatively further fair housing.</i> • <i>Ongoing effort to post fair housing posters at all projects and offices sites; all project management offices have posters. Main office has the posters displayed.</i> • <i>On-going efforts to educate the public and landlords: free workshops have been conducted for anyone wishing to attend.</i> • <i>On-going training to educate staff: in coordination with several counties, workshops were offered to all staff members.</i> • <i>Provide information to the public: The HPHA in conjunction with the counties as coordinated training for the public, landlords, and employees on fair housing laws.</i> • <i>Implement the Section 504 and ADA transition plans: plans for carrying out the transition plans have commenced; accessibility issues are being addressed at each project as they are scheduled.</i> <p>7. PHA Goal: Improve the housing delivery system through cost-effective management of federal and State government programs and resources:</p> <ul style="list-style-type: none"> • <i>Automating major operational components such as public housing and Section 8 wait list data, work order processing and tracking, materials inventory, public housing and Section 8 inspections. The computer system was upgraded to provide electronic transmission of HUD's 50058 Forms for public housing and Section 8 programs.</i> • <i>Proceeding to upgrading the computer network infrastructure to increase productivity. Personal computers are in the process of being upgraded with new models, to provide faster response time for users. HPHA is in the process of developing a hardware and network plan, including upgrading the personal computers, cabling, and switches to provide faster response time for users.</i> • <i>Ongoing SEMAP and PHAS training is being provided to HPHA staff.</i>
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<p>10.0</p>	<p>Additional Information. (b) Significant Amendment and Substantial Deviation/Modification. Provide the PHA’s definition of “significant amendment” and “substantial deviation/modification”</p> <p>In accordance with 24 CFR §903.7(r)(2) which requires public housing authorities to identify the basic criteria the agency will use to determine a substantial deviation from its 5-Year Plan and significant amendments or modification to the 5-Year Plan and Annual Plan, the following definitions are used:</p> <p><u>Substantial Deviation:</u> A substantial change in the goals identified in the Five-Year Plan. For example, making a formal decision not to pursue a listed goal; or substituting an entirely different set of activities to achieve the goal.</p> <p><u>Significant Amendment/Modification:</u> Adding or eliminating major strategies to address housing needs and to major policies (e.g., policies governing eligibility, selection or admissions and rent determination) or programs (e.g., demolition or disposition, designation, homeownership programs or conversion activities); or modifying a strategy such that a substantial transfer of resources away from others is necessary in order to carry it out.</p>
<p>11.0</p>	<p>Required Submission for HUD Field Office Review. In addition to the PHA Plan template (HUD-50075), HPHA will submit the following attachments:</p> <p>(a) Form HUD-50077, <i>PHA Certifications of Compliance with the PHA Plans and Related Regulations</i> (which includes all certifications relating to Civil Rights)</p> <p>(b) Form HUD-50070, <i>Certification for a Drug-Free Workplace</i> (PHAs receiving CFP grants only)</p> <p>(c) Form HUD-50071, <i>Certification of Payments to Influence Federal Transactions</i> (PHAs receiving CFP grants only)</p> <p>(d) Form SF-LLL, <i>Disclosure of Lobbying Activities</i> (PHAs receiving CFP grants only)</p> <p>(e) Form SF-LLL-A, <i>Disclosure of Lobbying Activities Continuation Sheet</i> (PHAs receiving CFP grants only)</p> <p>(f) Resident Advisory Board (RAB) comments. Comments received from the RAB must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the recommendations and the decisions made on these recommendations.</p> <p>(g) Elements of the Plan which were challenged in public hearings.</p> <p>(h) Form HUD-50075.1, <i>Capital Fund Program Annual Statement/Performance and Evaluation Report</i> (PHAs receiving CFP grants only)</p> <p>(i) Form HUD-50075.2, <i>Capital Fund Program Five-Year Action Plan</i> (PHAs receiving CFP grants only)</p>

LINDA LINGLE
GOVERNOR



CHAD K. TANIGUCHI
EXECUTIVE DIRECTOR

LATE TESTIMONY

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
POST OFFICE BOX 17907
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Chad K. Taniguchi
Hawaii Public Housing Authority
Before the

SENATE COMMITTEE on Education and Housing

March 16, 2009 ~~9:00~~ ^{1:15 pm}
Room 225, Hawaii State Capitol

**In consideration of SCR 31 REQUESTING THE AUDITOR TO CONDUCT A
MANAGEMENT AND FINANCIAL AUDIT OF THE HAWAII PUBLIC HOUSING
AUTHORITY'S MAINTENANCE CONTRACTS**

The Hawaii Public Housing Authority (HPHA) is strongly opposed to Senate Concurrent Resolution 31, because with recent funding from the legislature HPHA is resolving the safety concerns raised in the resolution. For example, at Kuhio Park Terrace

- Fire alarms are currently being installed at a cost of \$1.4 million
- Garbage chutes will be repaired at a cost of \$1 million, pending approval of building permit
- Pest infestations are being addressed by better housekeeping requirements for residents and integrated pest control management practices being promoted by HUD
- 6 elevators are being modernized at a cost of \$4.1 million.
- In addition, all 34 elevators serving public housing units will be modernized at an estimated cost of \$11 million.

• HPHA is required to have 259 ADA units. HPHA has 144 ADA units and is working on a plan to provide the remaining 115 units over the 5 years plus. The estimated costs to retrofit these units is \$18 million, of which \$9 million is projected to come from future federal funds. HPHA is requesting that the legislature provide \$4.5 million during this session so we can start on the first 30 units.

Staff at the HPHA are working hard to address the backlog of repair and maintenance issues at our housing sites.

EXHIBIT D

We have made substantial gains in the management and operations of the Agency:

1. For the first time, the HPHA was able to submit and obtain board approval of an agency wide budget for FY 2008-2009 and a budget implementation plan that targets a turnaround of vacant units and seeks to end 4 straight years of deficits.
2. HPHA shed its "Troubled Agency" status under the U.S. Department of Housing and Urban Development's Public Housing Assessment System and has maintained a "Standard Performer" rating since 2006.
3. HPHA has hired key personnel in the areas of Property Branch Chief, Planning Office, Fiscal Management Office (CFO and Fiscal Officer), Hearings Office, and Budget Analyst.
4. Established clear goals and priorities for the Public housing program: Fix vacant units, fill units, collect rents, and evict non-compliant residents.
5. Improved communication with the residents in all communities. We are holding resident community meetings where residents are provided the opportunity to voice their concerns directly with HPHA management and the property management staff.

HPHA still faces many challenges such as:

1. **Conversion to Asset Management** under HUD's new operating formula rules. The Conversion to Asset Management has required HPHA to make changes in all areas of operations: project-based budgeting, project-based accounting, project-based management, establishment of a central office cost center – even the way we earn and use our administrative fees is different under Asset Management.
2. **Operating Subsidy Proration.** Our federal operating budget is not funded at 100% of operating costs. HUD uses a formula to determine what the total cost to operate a project is and this year we were funded at 89% of that amount -11% of what they have determined we need to effectively operate housing.
3. **Capital Needs.** Since the HUD operating subsidy has an 11% budget shortfall, HUD allows PHA to use a portion of their capital fund budget to make up that shortfall. To that end, PHA's around the nation are forced to use a portion of their capital budget to operate the projects. Even with the progress we've made, HPHA still lacks sufficient resources to address all of the major modernization and repair needs of HPHA's inventory.

HPHA already has information available to determine where we need improvement:

1. When HPHA was under the Corrective Action Order, HUD ordered a major assessment of all areas of operations, management and maintenance of the public housing program. As a result, we were audited and closely monitored by HUD for all areas of management and operations. Until today, we still are under close scrutiny by HUD and work with them to make continuous improvements to our program.
2. HUD also has numerous vehicles for monitoring the HPHA's activities:
 - a. Public Housing Assessment System (PHAS) looks at 4 major areas: Operations, Management, Financial, Resident Survey.
 - b. There are monthly monitoring of operations by HUD program staff.
3. HPHA is also required to have an annual financial audit and a single audit, which includes a compliance review to comply with OMB Circular A-133.
4. Most recently, HPHA's Chairman requested a review of HPHA's finances from HUD's Real Estate Assessment Center (REAC). REAC completed a limited scope review in which 12 of 16 Asset Management Projects (AMPs - public housing projects) passed with scores of 60 or higher. Four AMPs received scores of less than 60 (not passing):

Kuhio Park Terrace, Palolo Valley, Puuwaimomi, and Wainaha Sunflower. Please see the correction plan attached.

In contrast, for 2007 HPHA had only ⁷8 of 16 AMPs pass, and had 9 AMPs fail..

The key here is that these audits were performed by governing agencies (i.e., HUD) who are familiar with the regulations governing the program. They are aware of the challenges and obstacles we face and are able to make targeted recommendations and requirements for improvement. We believe that it is unlikely that the Legislative Auditor's report will produce different findings from the current audits and reports already available to HPHA.

What we're doing about it:

1. We've established goals for the staff. Reiterated through meetings. Fix vacants, fill vacant units, collect rents, evict non-compliant tenants.
2. Pressed our Manager's to improved in performance evaluations and disciplinary actions. We're expecting more of ourselves, our tenants, and others – because we recognize that only through a collective community process can we address the needs of public housing families.
3. HPHA is putting together a comprehensive training plan for all offices, which will be specific by position.

Currently obtaining training in key areas: Executive Management (EDEP training by PHADA), Finances (MD Strum, HUD REAC Limited Scope Review), Public Housing Operations and Management (PHADA, NAHRO conferences, St. Paul Housing Agency, HUD), Procurement (Nearly 100 staff are on training plan to attend SPO training, Working on securing quotes for training on federal procurement), Construction Management (securing quotes for training on construction administration & management)

4. Continue to participate in (and even request) monitoring by HUD staff. The benefit here is that the HUD specialists are able to provide technical assistance to our direct line staff, Project Managers, Program monitors, and Branch Supervisors as soon as a problem is identified.

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VIA EMAIL

June 26, 2009

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Re: Fire incidents at Kuhio Park Terrace

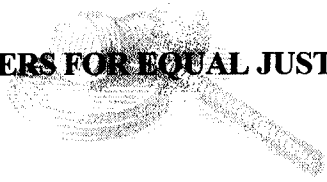
Dear Counsel,

As you are aware, there are frequent fires at Kuhio Park Terrace (KPT). We recently learned of another fire at KPT which occurred on the fourth floor of building A just a few weeks ago. The fire was so large that it destroyed a number of ceiling light fixtures and damaged other common areas near the elevators and trash chutes.

Based on the property management contract and correspondence between the fire department and the housing authority, it appears that there is supposed to be some kind of functioning 24 hour interim fire watch program at KPT. A properly implemented fire watch program requires the maintenance of fire watch logs. Such logs and other documents pertaining to the fire code violations, the interim fire watch program at KPT, and emergency evacuation plans and procedures, are covered by Plaintiffs' outstanding request for production of documents.

EXHIBIT E

LAWYERS FOR EQUAL JUSTICE



Page 2

We understand that the installation of a fire alarm system is underway. We request that you advise us as to when this installation will be complete. We further request that you advise us as to which other fire code violations the State and/or Realty Laua have plans to remedy and the estimated time frame for compliance.

We request that you produce any fire watch logs or other documents pertaining to the implementation of the fire watch program and evacuation plans and procedures by Thursday, **July 2, 2009**. We also request that you provide an estimated date as to the completion of the fire alarm system by that date.

Sincerely,

A handwritten signature in black ink, appearing to read 'Victor Geminiani'. The signature is fluid and cursive, with a prominent initial 'V'.

Victor Geminiani, Esq.

cc: Jason H. Kim, Esq.
Paul Alston, Esq.
Peter Obstler, Esq.
Jinny Kim, Esq.
Claudia Center, Esq.

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VIA EMAIL

July 1, 2009

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Re: Hazel McMillon, et al. v. State of Hawaii, et al., USDC Civil No. 08-00578 JMS-LEK

Dear Counsel,

We served you with Plaintiffs' First Request for Production of Documents on April 9, 2009. We agreed that you did not have to produce documents responsive to Plaintiffs' request until after the Court ruled on Defendants' Motion to Dismiss. Judge Seabright entered his Order on June 19, 2009.

In light of the parties' on-going settlement discussions and the State's representations regarding its limited resources, we have identified certain documents to be produced as part of the first phase of discovery. As stated in our May 18, 2009 letter to you, defendants have affirmatively relied on many of these documents in attempting to dismiss Plaintiffs' federal complaint and they are subject to disclosure pursuant to Federal Rule of Civil Procedure 26.

We ask that you produce the following documents by July 15, 2009:

LAWYERS FOR EQUAL JUSTICE

Page 2

(1) Any self-evaluation and/or transition plans prepared pursuant to Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act, in addition to the 1999 plans previously produced.

(2) The facility review forms developed and/or used by National Center for Housing Management in evaluating KPT and Kuhio Homes.

(3) Any documents relating to physical (structural) improvements, or plans to make improvements, to address accessibility deficiencies at KPT and Kuhio Homes, including any design and construction plans and related RFPs.

(4) Hawaii Public Housing Authority's operating and capital budgets, including any documents related to funds for the design and/or construction of accessible units at KPT and Kuhio Homes and/or for responding to reasonable accommodation or modification requests.

(5) The waiting list or wait list count of persons and families with disabilities living at KPT and Kuhio Homes waiting to be transferred to accessible units.

(6) HPHA and/or Realty Laua files pertaining to the review and determination of reasonable accommodations requests from 2006 to present, including (a) any documents pertaining to the approval or denial of accommodations requests, and (b) any documents showing the status of such requests, such as if, when, and what action, if any, HPHA or Realty Laua has taken in response to the request.

Sincerely,



Victor Geminiani, Esq.

cc: Jason H. Kim, Esq.
Paul Alston, Esq.
Peter Obstler, Esq.
Jinny Kim, Esq.
Claudia Center, Esq.

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July 2, 2009

Via Email (victor@lejhawaii.org) and U.S. Mail

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Honolulu, Hawaii 96837


RE: MCMILLON, ET AL. V. STATE OF HAWAII, ET AL.
Civil No. CV08 00578 (JMS/LEK)

Dear Mr. Geminiani,

The following responds to your letters dated June 26 and July 1, 2009, which generally request the production of various documents that you believe are encompassed by Plaintiffs' initial production of document request to Realty Laua LLC ("Realty") and the State of Hawaii/HPHA. Realty will not produce any of the requested documents at this juncture.

It is our understanding that all discovery, other than the depositions of Plaintiffs on the limited issue of class certification, has been stayed by Judge Kobayashi. On this point, we are enclosing the June 9, 2009 Court Minutes for your reference.

Very truly yours,


George W. Playdon, Jr.
R. Aaron Creps

RAC:tl

Enclosure

cc: John Cregor, Esq./John Wong, Esq./Jarod Buna, Esq. (via email)
Jason Kim, Esq. (via email)

EXHIBIT F

MINUTES

CASE NUMBER: CIVIL NO. 08-00578JMS-LEK
CASE NAME: Hazel McMillon, et al. Vs. State of Hawaii, et al.
ATTYS FOR PLA: Jason H. Kim
Victor Germiniani
ATTYS FOR DEFT: John M. Cregor, Jr.
John C. Wong
George W. Playdon, Jr.
Robert A. Creps

INTERPRETER:

JUDGE:	Leslie E. Kobayashi	REPORTER:	Courtroom 7-No Record
DATE:	06/09/2009	TIME:	1:35-2:05

COURT ACTION: EP: Status Conference Re: Mediation and Discovery held.

Hearing on Motion to Certify Class to go forward. Limited discovery related to motion to certify class, depositions of proposed class representatives, interrogatories, etc., parties to meet and confer on these issues.

Discovery Conference to be scheduled at a later date.

Court to confer with Mediator Keith Hunter re: availability of Mr. Hunter and the Court. Proposed plan regarding mediation schedule, discovery schedule, deposition schedule to be devised.

Submitted by: Warren N. Nakamura, Courtroom Manager

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE)	CIVIL NO. 08-00578 JMS-LEK
STRICKLAND; TRUDY)	Civil Rights Action
SABALBORO; KATHERINE VAIOLA;)	Class Action
and LEE SOMMERS, each individually)	
and on behalf of a class of past, present,)	
and future residents of Kuhio Park)	
Terrace and Kuhio Homes who have)	
disabilities affected by architectural)	
barriers and hazardous conditions)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE OF HAWAII; HAWAII)	
PUBLIC HOUSING AUTHORITY;)	
REALTY LAUA LLC, formerly known)	
as R & L Property Management LLC, a)	
Hawaii limited liability company)	
)	
Defendants.)	
)	
)	

DECLARATION OF RITABELLE FERNANDES

I, Ritabelle Fernandes, hereby declare that:

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows.

2. I am a physician at the Kokua Kalihi Valley (KKV) community health center. I have worked at KKV since 2001. KKV is a community-

organized and community-operated non-profit corporation serving the residents of Kalihi Valley.

3. The majority of my patients live at Kuhio Park Terrace (KPT) or Kuhio Homes. In addition to providing care at KKV satellite clinic in KPT Building A, I provide regular home visits to my homebound patients living at KPT and Kuhio Homes.
4. My patients who live at KPT are exposed to unsafe and unsanitary conditions, such as rat and roach infestations, lack of hot water, stairways covered in urine, non-functioning elevators, and trash chute fires. I have observed this first-hand when I perform home visits.
5. I have patients who suffer from disabilities due of chronic advanced diseases such as stroke, morbid obesity, Parkinson's disease, end-stage renal disease, dementia and asthma.
6. Over the past 8 years, I have written approximately 400 letters for patients with disabilities requesting that they be given reasonable accommodations for their disabilities. Examples of the types of

accommodations requested include bathroom and bedroom on same level, grab bars to toilets, air-conditioning unit in bedroom, wheelchair ramp to enter apartment. Over the past 8 years, I have written approximately 200 letters for patients with disabilities requesting that they be transferred to another project or low rise unit because of their disabilities. Many face great hardship of climbing the KPT stairs when the elevator is broken.

7. Just in the past 5 months, since February 2009, I have written approximately 20 letters on behalf of patients who live at KPT or Kuhio Homes requesting that they either be transferred to an accessible unit in another project or be accommodated to the extent possible in their units.

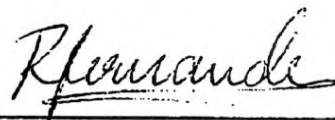
8. One of my stroke patients, Mrs. Serafi Sione who lives at KPT low rise was taking showers in the garden with a garden hose as she could not walk upstairs to the bathroom. After a few years she received a low rise unit with bathroom on same ground level. However this unit given to them does not have a wheelchair ramp despite my request for the same. As a result she showers at home but has limited quality of life due to limited socialization. The family informed me that when they accepted

this unit they were told to build their own wheelchair ramp.

9. My morbidly obese patient Ms. Palepa Buttel finally died in 2008 due to serious skin infection. I repeatedly requested for approval of an air-conditioner as her recurrent infections were worsened by her weight and sweat. She needed to maintain good hygiene, keep her body cool, and to decrease sweating. However this approval came but too late.
10. Another morbidly obese patient Mr. Lewers Faletogo on my initial home visit in 2009 was taking shower sitting on a picnic cooler. There was no shower chair for this man who weighed over 600 lbs. He too died this year from skin infection and respiratory failure.
11. Sadly most of my patients have never received the transfers or accommodations they requested.

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

Executed on this 24 day of July 2009, in Honolulu, Hawaii.



Ritabelle Fernandes, MD, MPH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the dates and methods of service noted below, as true and correct copy of the foregoing was served on the following at their last known address:

Served Electronically through CM/ECF:

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John C. Wong, Esq.

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July 31, 2009

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July 31, 2009

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Attorneys for Defendant
REALTY LAUA LLC

DATED: Honolulu, Hawai'i, July 31, 2009.

/s/ Jason H. Kim

PAUL ALSTON

JASON H. KIM

Attorneys for Plaintiffs