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FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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F. OTAKE  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS, individually, and on behalf  
of all persons similarly situated,

Plaintiffs,

vs.

HOUSING AND COMMUNITY  
DEVELOPMENT CORPORATION OF  
HAWAII, a duly organized and recognized  
agency of the State of Hawai'i; HHA  
WILIKINA APARTMENTS PROJECT,  
INC.; DOES 1-25,

Defendants.

HOUSING AND COMMUNITY  
DEVELOPMENT CORPORATION OF  
HAWAII and HHA WILIKINA  
APARTMENTS PROJECT, INC.,

Defendants and Third-Party  
Plaintiffs,

vs.

•

) CIVIL NO. 05-1-0815-05 (EEH)  
) (Contract)

) DEFENDANTS' MEMORANDUM IN  
) OPPOSITION TO PLAINTIFFS' MOTION  
) FOR PARTIAL SUMMARY JUDGMENT  
) FILED OCTOBER 14, 2005

) EXHIBITS "A" TO "E"

) DECLARATION OF MICHAEL J. HEE

) CERTIFICATE OF SERVICE

) DATE: NOVEMBER 2, 2005

) TIME: 10:45 A.M.

) JUDGE: EDEN E. HIFO

URBAN MANAGEMENT CORP.; )  
 MARCUS & ASSOCIATES, INC.; JOHN )  
 DOES 26-50, )  
 )  
 Third-Party Defendants. )  
 \_\_\_\_\_ )

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT FILED OCTOBER 14, 2005

I. INTRODUCTION

Defendants are State agencies and instrumentalities that own and operate (through a managing agent) apartment buildings for low-income tenants. Third party defendants are or were the managing agents.

Plaintiffs are tenants in the apartments. Plaintiffs claim they overpaid rent. The present version of the complaint alleges two theories: breach of contract and violation of federal law.

II. STATUS AND PROCEDURAL HISTORY

DATE	EVENT
May 6, 2005	Complaint
August 4, 2005	Entry of default as to HCDCH (not HHA)
August 10, 2005	Plaintiffs' motion for class certification
August 30, 2005	Stipulation to set aside default
August 31, 2005	Defendants' answer to complaint
September 12, 2005	Defendants' amended answer to complaint and third party complaint against Urban Management Corp.
September 13, 2005	Defendants' motion to dismiss federal law claim
October 3, 2005	Order granting in part motion to certify class
October 6, 2005	First Amended Complaint
October 14, 2005	Plaintiffs' motion for summary judgment
October 18, 2005	Defendants' answer to first amended complaint and third party complaint against Urban Management Corp. and Marcus & Associates, Inc. (served 10/18/05)

Defendants have now stipulated to plaintiffs' filing a Second Amended Complaint. See Exhibit "A" attached hereto. This second amended complaint: 1) adds Stephanie Aveiro, the

executive director of HCDCH, as a party in her official capacity only; 2) deletes plaintiffs' request for damages based on the federal law claim; and 3) adds a claim for injunctive relief based on 42 U.S.C. § 1983.

Plaintiffs' proposed deletion of their federal law request for damages along with addition of an official capacity State official moots defendants' motion on that issue. Defendants intend to withdraw the motion when the second amended complaint is filed.

### III. DISCUSSION

#### A. PLAINTIFFS' MOTION SHOULD BE CONTINUED

As shown above, this case has been at issue between plaintiffs and the State for less than two months. The entities that manage or previously managed the subject projects have been named and served, but have not yet appeared. Plaintiffs intend substantially to revise the complaint, including addition of a new official capacity defendant. There has been no discovery as to these parties and only limited discovery between the State and plaintiffs.

Accordingly this motion is premature and should be continued at least until all parties have entered an appearance.

In addition, defendants requests that this matter be continued pursuant to HRCP 56(f). The facts not presently available to present by affidavit include information concerning changes to tenants' rent as discussed below.

#### B. PLAINTIFFS' MOTION SHOULD BE DENIED AS TO VIOLATION OF FEDERAL LAW

As indicated in defendants' motion to dismiss, plaintiffs do not have a federal law claim against the present defendants, because of the Eleventh Amendment. Plaintiffs' motion completely misses the point. The cases they cite prove only that they could have a claim against

someone. That may or may not be true. The only relevant point at this stage of the case is that such a claim cannot be brought directly against the State.

Plaintiffs effectively concede this point by the second amended complaint, which deletes their federal law claim for damages and adds a State official (in her official capacity) as a defendant.

C. PLAINTIFFS' MOTION SHOULD BE DENIED AS TO INJUNCTIVE RELIEF

First, under the present state of the pleadings, plaintiffs' claim for injunctive relief is barred by the State's sovereign immunity, because no official capacity defendants are named.

The Hawai'i Supreme Court has consistently recognized that the doctrine of sovereign immunity precludes a suit against the State without the State's express consent. Chun v. Board of Trustees of Employees' Retirement System of State of Hawai'i, 106 Haw. 416, 432, 106 P.3d 339, 355 (2005).

At present, our case is brought only against state agencies. Sovereign immunity bars entry of an injunction against the State itself. This rule is rooted in the fundamental principle that any attempt to assert jurisdiction over a state in a private action brought without the state's express consent is barred because sovereign immunity protects against "the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." Seminole Tribe v. Florida, 517 U.S. 44, 58 (1996) (citation omitted).

Plaintiffs' proper course of action as to injunctive relief is to name and seek to enjoin responsible officials in their official capacity. W.H. Greenwell, Limited v. Department of Land and Natural Resources, 50 Haw. 207, 209, 436 P.2d 527, 528 (1968). Plaintiffs' second amended complaint takes exactly this action. By doing so, plaintiffs effectively concede the point and make their motion moot as to this issue.

Second, plaintiffs cannot meet the familiar requirements of injunctive relief: “(1) Is the plaintiff likely to prevail on the merits? (2) Does the balance of irreparable damage favor the issuance of a temporary injunction? (3) Does the public interest support granting the injunction?” Life of the Land v. Ariyoshi, 59 Haw. 156, 158, 577 P.2d 1116, 1118 (1978).”<sup>1</sup> “Injury is irreparable where it is of such a character that a fair and reasonable redress may not be had in a court of law.” Penn v. Transportation Lease Hawaii, Ltd., 2 Haw.App. 272, 276, 630 P.2d 646, 650 (1981).

In this case, the only claim for which there is a waiver of sovereign immunity is the contract claim. But the alleged harm as to the contract is simply overpayment of rent. Plaintiffs seek “reimbursement for rent overcharges and inadequate reimbursements resulting from Defendants’ violations of law and breaches of tenants’ rental agreements.” FAC ¶ 9. In short, plaintiffs’ remedy, if they win, is payment of damages – damages that can be exactly calculated and which amount will be, if necessary, fully paid. Even if defendants fail to adjust the utility allowance going forward, that failure only increases the damages. Plaintiffs can never have irreparable harm and can never be entitled to injunctive relief.

Third, without conceding that the utility allowance has been inadequate in the past, defendants are presently doing everything possible to adjust the utility allowance. As explained in the attached declaration and exhibits, defendants cannot change the allowance without HUD’s

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<sup>1</sup> Plaintiffs are mistaken to ask for permanent injunction, which they cannot obtain until a final judgment is entered in their favor. In any case, the standards for a permanent injunction are essentially the same as for a preliminary injunction, except the plaintiff must actually succeed on the merits. Amoco Production Co. v. Village of Gambell, 480 U.S. 531 (1987); Ladd v. Thomas, 14 F. Supp.2d 222 (D.Conn. 1998); Indian Motorcycle Associates III Ltd. Partnership v. Massachusetts Housing Finance Agency, 66 F.3d 1246 (1st Cir. 1995). Irreparable harm is still required.

approval. They are actively seeking that approval (through the managing agent). A mandatory injunction from this court is neither necessary nor sufficient with respect to the adjustment.

D. PLAINTIFFS' MOTION SHOULD BE DENIED AS THE CONTRACT CLAIM

The standard contract between defendants and plaintiffs states an exact dollar amount of rent that the tenant agrees to pay. In Waters' case, he and his wife, Alvina Solomon, agreed as follows:

The Tenant agrees to pay \$50.00 for the partial month ending on 11/30/97. After that, the Tenant agrees to pay a rent of \$213.00 per month. This amount is due on the first (1st) day of the month at Urban Real Estate Co., 850 Richards Street, Suite 603, Honolulu, Hawaii 96813.

Exhibit "A" to plaintiffs' motion. Accordingly, there can be no question that at the beginning of the tenancy at least there is no breach of contract. Tenants, including Waters, agreed to pay a specific dollar amount. And that is exactly how much they paid.

As pointed out by plaintiffs, the contract also contains a clause relating to changes in the agreed upon rent:

The Landlord agrees to implement changes in the Tenant's rent or assistance payment only in accordance with the time frames and administrative procedures set forth in HUD's handbooks, instructions, and regulations related to administration of multifamily subsidy programs.

By the plain language of this clause, at most, the State may have breached the rental agreements when (and if) it changed a tenant's rent without adjusting the utility allowance "in accordance with" HUD requirements.

Clearly this is not a common issue of fact as to all plaintiff class members. The attached declaration of Michael J. Hee explains that tenants' rent is not changed until a year after they sign the original rental agreement.

On its face, the motion is already limited to defendants' alleged liability "with respect to Wilikina Apartments." The above analysis shows that, at a minimum, the motion must be further limited to tenants whose rent has been changed.

Under the circumstances, defendants respectfully request that the motion be denied without prejudice to re-filing when all parties have appeared and appropriate discovery has been undertaken.

DATED: Honolulu, Hawai'i, 10/25/5.



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William J. Wynhoff  
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Attorney for Defendants

Of Counsel:

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

JACK WATERS, individually, and MARGARET )  
MARA, individually, and on behalf of all )  
persons similarly situated, )

Plaintiff, )

vs. )

HOUSING AND COMMUNITY DEVELOPMENT )  
CORPORATION OF HAWAI'I, a duly organized )  
and recognized agency of the State of Hawai'i; )  
HHA WILIKINA APARTMENTS PROJECT, INC.; )  
DOES 1-25 )

Defendants. )

CIVIL NO. 05-1-0815-05 EEH )  
(Contract) )

**STIPULATION FOR LEAVE TO )  
FILE SECOND AMENDED )  
COMPLAINT; EXHIBIT "A"; )  
ORDER )**

Class Action )

No trial date set )

HOUSING AND COMMUNITY DEVELOPMENT )  
CORPORATION OF HAWAI'I and HHA )  
WILIKINA APARTMENTS PROJECT, INC., )



Defendants and Third-Party Plaintiffs,	)
	)
vs.	)
	)
URBAN MANAGEMENT CORP.; JOHN DOES	)
26-50,	)
	)
Third-Party Defendants	)

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**STIPULATION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Pursuant to Rule 15(a) of the Hawai'i Rules of Civil Procedure, IT IS HEREBY STIPULATED by and between the parties herein, through their respective counsel, that Plaintiffs may file a Second Amended Complaint in this action in the form attached hereto as Exhibit "A". There is no trial date set in this action.

DATED: Honolulu, Hawai'i, \_\_\_\_\_, 2005.

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




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WILLIAM J. WYNHOFF  
 Deputy Attorney General

APPROVED AND SO ORDERED:

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JUDGE OF THE ABOVE-ENTITLED COURT

Of Counsel:

LAWYERS FOR EQUAL JUSTICE

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

JACK WATERS, individually, and )  
MARGARET MARA, individually, and on )  
behalf of all persons similarly situated, )

Plaintiff, )

vs. )

HOUSING AND COMMUNITY )  
DEVELOPMENT CORPORATION OF )  
HAWAI'I, a duly organized and recognized )  
agency of the State of Hawai'i; HHA )  
WILIKINA APARTMENTS PROJECT, INC.; )  
STEPHANIE AVEIRO, in her official )  
capacity as the Executive Director of the )  
Housing and Community Development )  
Corporation of Hawaii; DOES 1-25 )

CIVIL NO. 05-1-0815-05 EEH  
(Contract)

**SECOND AMENDED COMPLAINT;  
CERTIFICATE OF SERVICE**

Class Action

Defendants.	)
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HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII and HHA WILIKINA APARTMENTS PROJECT, INC.,	)
Defendants and Third-Party Plaintiffs,	)
vs.	)
URBAN MANAGEMENT CORP.; JOHN DOES 26-50,	)
Third-Party Defendants	)
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**SECOND AMENDED COMPLAINT**

**I. INTRODUCTION**

1. Defendants HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII ("HCDCH"), HHA WILIKINA APARTMENTS PROJECT, INC. ("HHA"), and DOES 1-25 (hereinafter cumulatively referred to as "Defendants") own, operate and/or administer federally subsidized housing projects under the "project-based Section 8 program."

2. Defendant STEPHANIE AVEIRO is the Executive Director of the HCDCH, and she is sued in her official capacity only.

3. Plaintiff JACK WATERS and MARGARET MARA and the class they seek to represent (hereinafter "Plaintiff class") are tenants of project-based Section 8 programs owned, operated and/or administered by one or more of the above-named Defendants.

4. Pursuant to the United States Housing Act, 42 U.S.C. § 1437a(a)(1)

(known as the "Brooke Amendment"), rent, including utilities, for tenants residing in project-based Section 8 developments cannot exceed a certain percentage of tenant income. 42 U.S.C. § 1437a(a)(1); *see also* 24 C.F.R. § 5.603(b).

5. The owner of a project-based Section 8 development receives a certain amount of rent to operate each unit (called the "contract rent"), which is set by a "Housing Assistance Payment Contract" between the owner and the U.S. Department of Housing and Urban Development ("HUD"). 24 C.F.R. § 880.201. To ensure that the owner receives the full contract rent for operation of a subsidized unit, HUD pays the owner the difference between the tenant's portion of the rent and the contract rent. 24 C.F.R. § 880.501(d).

6. To ensure that tenants' rents plus utilities do not exceed the Brooke Amendment's rent ceiling when tenants are directly responsible for the payment of utility service (i.e., where tenants must pay a utility provider directly), HUD regulations require that tenants are provided with a "utility allowance." *See* 24 C.F.R. § 5.603(b).

7. The utility allowance provided to tenants takes the form of a rent credit that must be equal to an amount that tenants are estimated to pay for a reasonable consumption of utilities. *Id.*

8. Each time the contract rents for a project-based Section 8 development are to be adjusted, the owner must complete and submit an analysis of the adequacy of utility allowances in light of the relevant changes since the allowances were last adjusted (e.g., changes in utility rates). *See, e.g.,* 24 C.F.R. § 880.610.

9. Where utility rates increase by 10 percent or more since the most recently approved utility allowance, the utility allowances must be increased to

account for the utility rate increase to ensure that tenants are not charged more than 30 percent of their income for rent. *See, e.g.*, 24 C.F.R. § 880.610.

10. Defendants have failed to complete and submit an analysis of the adequacy of utility allowances in connection with adjustments of the contract rents for the project-based Section 8 developments that Defendants own, operate and/or administer.

11. Additionally, though utility rates have increased in excess of 10 percent since the utility allowances were last updated, Defendants have failed to revise or request revisions to the utility allowances for the project-based Section 8 developments that Defendants own, operate and/or administer.

12. Defendants actions are in direct violation of federal law and U.S. Department of Housing and Urban Development ("HUD") procedures and regulations regarding the setting of rents for project-based Section 8 tenants.

13. Defendants' violations of the U.S. Housing Act, 42 U.S.C. § 1437a(a)(1) and its supporting regulations, were taken under color of state law and are in violation of 42 U.S.C. § 1983.

14. Defendants' violations of federal law and HUD procedures and regulations amount to a material breach of the rental agreements for tenants residing in project-based Section 8 developments owned, operated and/or administered by Defendants.

15. The Plaintiff class seeks reimbursement or rent credit for rent overcharges and inadequate utility reimbursements resulting from Defendants' violations of law and breaches of tenants' rental agreements.

16. Additionally, the Plaintiff class seeks declaratory and injunctive relief

directing Defendants to comply with federal law, HUD procedures and regulations, and the terms of the Plaintiff class's rental agreements by updating the utility allowances to account for increases in utility rates since the allowances were last updated, and barring any eviction proceedings based on rent delinquencies until tenants are credited with rent overcharges resulting from Defendants' failure to adjust the utilities allowances.

## **II. JURISDICTION AND VENUE**

17. This Court has jurisdiction pursuant to Haw. Rev. Stat. § 603-21.5(a)(3), which affords jurisdiction of all civil actions other than where otherwise expressly provided by statute. The amount in controversy in this case exceeds \$20,000.

18. Jurisdiction is also appropriate under Haw. Rev. Stat. § 661-1(1), which affords jurisdiction for all claims against the State founded upon any contract with the State.

19. Venue is appropriate pursuant to Haw. Rev. Stat. § 603-36(5).

## **III. PARTIES**

20. Plaintiff JACK WATERS is a tenant of project-based Section 8 subsidized housing and a citizen and resident of the State of Hawai'i. Plaintiff WATERS brings this action on his own behalf and, pursuant to Rule 23 of the Hawai'i Rules of Civil Procedure, on behalf of all others who are similarly situated.

21. Plaintiff MARGARET MARA is a tenant of project-based Section 8 subsidized housing and a citizen and resident of the State of Hawai'i. Plaintiff MARA brings this action on her own behalf and, pursuant to Rule 23 of the Hawai'i Rules of Civil Procedure, on behalf of all others who are similarly situated.

22. Plaintiffs represent present and past project-based Section 8 tenants in

the State of Hawai'i for whom Defendants AVEIRO, HCDCH, HHA, and/or DOES 1-25 pay or should have paid utility allowances and whose rights have been violated by Defendants AVEIRO, HCDCH, HHA, and/or DOES 1-25 as set forth herein.

23. The class is so numerous that joinder of all members is impracticable.

24. There are questions of law and/or fact common to the class, as set forth below.

25. Plaintiffs' claims are typical of the claims of the class as a whole.

26. Plaintiffs will fairly and adequately represent the interest of the class.

Plaintiffs know of no conflicts of interest among members of the class.

27. Plaintiffs are represented by attorneys who are experienced class action litigators and will adequately represent the interest of the entire class.

28. A class action is appropriate in this case for one or more of the following reasons:

- a. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
- b. Defendants have acted on grounds generally applicable to the class, making appropriate injunctive or declaratory relief with respect to the class as a whole.
- c. Questions of law and fact common to the members of the class predominate over any questions affecting only individual

members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

29. Questions of law and fact common to the Plaintiff class include:
- a. Whether the Defendants failed to increase or request an increase of the utility allowances where a utility rate change would have resulted in a cumulative increase of 10 percent or more in the most recently approved utility allowance;
  - b. The extent of the increases in utility rates since Defendants last adjusted the allowances;
  - c. The amounts of the adjustments that should have been made to correspond with utility rate increases.

30. Defendant STEPHANIE AVEIRO is the Executive Director of HCDCH. She has full authority over HCDCH to see that HCDCH's policies and practices conform to the law. She is also responsible for the operation and administration of HCDCH. She is sued in her official capacity.

31. HCDCH is a duly organized and recognized agency of the State of Hawai'i with the power to sue and be sued.

32. HHA is a non-profit corporation incorporated in the State of Hawai'i with the power to sue and be sued.

33. The board of directors of HHA is comprised entirely of members of the board of directors of HCDCH and HCDCH holds itself out as the owner, operator, and/or administrator of Wilikina Apartments.

34. DOES 1-25 are owners, operators, and/or administrators of project-based Section 8 developments (other than HCDCH and HHA) located within the State



of Hawai'i who are required by federal law to provide utility allowances to members of the Plaintiff class, and who have failed to: (1) analyze the adequacy of utility allowances in connection with the adjustment of contract rents; and/or (2) failed to adjust, or request adjustments to, the utility allowances though utility rates have increased in excess of 10 percent since the allowances were last revised. Plaintiffs do not know the true names of these defendants and therefore sues them by these fictitious names.

#### **IV. FACTUAL ALLEGATIONS**

35. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

36. Plaintiff JACK WATERS has been a head of household and tenant of a project-based Section 8 development for over seven years.

37. Plaintiff WATERS resides in a two-bedroom rental unit in the Wilikina Apartments housing project ("Wilikina") located at 730 Wilikina Drive, Wahiawa, Hawai'i 96786, pursuant to a rental agreement executed between Plaintiff WATERS and Defendant HHA on September 15, 1994.

38. Plaintiff MARGARET MARA has been a head of household and tenant of a project-based Section 8 development for over seven years.

39. Plaintiff MARA resides in a two-bedroom rental unit at Wilikina, pursuant to a rental agreement executed between Plaintiff MARA and Defendant HHA.

40. Defendants AVEIRO, HCDCH, and HHA own, operate and/or administer Wilikina, or hold themselves out as doing such.

41. As residents of Wilikina, Plaintiffs WATERS and MARA pay their own electric utilities. Defendants AVEIRO, HCDCH and HHA WILIKINA APARTMENTS

PROJECT, INC. provide a monthly utility allowance to WATERS and MARA in the amount of \$56 each, which is deducted from their rent balances.

42. Defendants AVEIRO and HCDCH own, operate and/or administer Banyan Street Manor at 1122 Banyan Street, Honolulu, Hawai'i 96817, a project-based Section 8 development, or hold themselves out as doing such.

43. Tenants of Banyan Street Manor pay their own electric utilities. Defendants AVEIRO and HCDCH provide a monthly utility to allowance to these tenants, which is deducted from their rent balances.

44. On information and belief, utility rates have increased by more than 10 percent since Defendants last revised, or requested revisions to, the utility allowances provided to the Plaintiff class.

45. As a result, Plaintiffs and the class they represent have been required to pay amounts for utility bills in excess of the utility allowance provided and thereby have been forced to pay an amount for rent in excess of 30% of their income.

46. With knowledge of the falsity of their statements, or in reckless disregard of whether the statements were true or false, Defendants have certified that the rents for the members of the Plaintiff class were calculated in accordance with HUD regulations and procedures when in fact they were not. In reliance on Defendants' statements, Plaintiffs and the Plaintiff class failed to take action earlier to enforce their rights.

#### **V. FIRST CLAIM FOR RELIEF: BREACH OF RENTAL AGREEMENT**

47. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

48. On information and belief, the rental agreements for project-based

Section 8 tenants requires the Landlord to calculate tenant rents in accordance with the HUD requirements.

49. Section 4 of the rental agreement for Wilikina tenants provides, in part, that “[t]he Landlord agrees to implement changes in the Tenant’s rent or assistance payment only in accordance with the time frames and administrative procedures set forth in HUD’s handbooks, instructions, and regulations related to administration of multifamily subsidy programs.”

50. Section 27 of the rental agreement for Wilikina tenants incorporates into the terms of the lease by reference Form HUD-50059, Certification and Recertification of Tenant Eligibility. Form HUD-50059 includes an “Owner’s Certification” section in which the owner must certify, in part, to the following: “I certify that this Tenant’s eligibility, rent and assistance payment have been computed in accordance with HUD’s regulations and administrative procedures....”

51. On information and belief, the rental agreement for Wilikina tenants is substantially similar to the rental agreements for other project-based Section 8 developments owned, operated, and/or administered by Defendants.

52. Additionally, since existing law is part of a contract where there is no stipulation to the contrary, the U.S. Housing Act and the supporting HUD procedures and regulations are implied into the terms of the rental agreements between the Plaintiff class and Defendants.

53. Defendants’ actions with regard to the calculation of tenant rents and their failures to revise, or request revisions to the utility allowances have not been in accordance with the U.S. Housing Act and the supporting HUD regulations and procedures, thereby breaching the rental agreements with the members of the Plaintiff

class.

54. As a direct result of Defendants' breaches, Plaintiffs and the class they represents have been damaged in an amount to be determined at trial. Additionally, HCDCH has taken action to evict Plaintiff WATERS and other members of the Plaintiff class from their apartments for alleged rent delinquencies. Plaintiffs and the class they represent are entitled to declaratory and injunctive relief to enforce the terms of the rental agreement and Defendants' corresponding obligations pursuant to the U.S. Housing Act and HUD requirements, and to prevent irreparable harm resulting from their evictions or other adverse actions.

**V. SECOND CLAIM FOR RELIEF: VIOLATION OF THE U.S. HOUSING ACT AND ITS SUPPORTING OBLIGATIONS**

55. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

56. Defendant AVEIRO has failed to comply with the federal regulations governing project-based Section 8 housing that require AVEIRO to increase, or request increases to, utility allowances where utility rates have increase by 10 percent or more since the utility allowances were last revised.

57. Defendant AVEIRO, as a result of her failure to update utility allowances for project-based Section 8 housing developments, has charged the Plaintiff class rents in excess of those permitted by the U.S. Housing Act, 42 U.S.C. § 1437a(a)(1) and its supporting regulations.

58. As a direct result of Defendant AVEIRO's actions in violation of the U.S. Housing Act and its supporting regulations, Plaintiffs and the class they represent are entitled to declaratory and injunctive relief to enforce compliance with the U.S.

Housing Act and its supporting regulations, and to prevent irreparable harm resulting from their evictions or other adverse actions.

**VI. THIRD CLAIM FOR RELIEF: VIOLATION OF 42 U.S.C. § 1983.**

59. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

60. Defendant AVEIRO, acting under color of state law, violated the rights of the Plaintiff class under 42 U.S.C. § 1983 by committing acts and omissions set forth above in violation of rights secured by federal statute, specifically the U.S. Housing Act and its supporting regulations.

61. As a result of Defendant AVEIRO's actions, Plaintiffs and the class they represent are entitled to declaratory and injunctive relief to enforce compliance with the U.S. Housing Act and its supporting regulations, and to prevent irreparable harm resulting from their evictions or other adverse actions.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

1. Assume jurisdiction of this case.
2. Certify the plaintiff class.
3. Declare that Defendants have violated Plaintiff's rights as set forth herein.
4. Enter preliminary and permanent injunctions requiring Defendants to comply with the terms of the rental agreements of the plaintiff class, the U.S. Housing Act and HUD requirements, and barring Defendants from initiating or proceeding with eviction actions against members of the Plaintiff class based on rent

- delinquencies until rent overcharges resulting from Defendants' unlawful actions are credited to the tenants' rent payments.
5. Award damages and pre-judgment interest to each member of the plaintiff class for amounts charged for rent by Defendants in excess of 30% of tenant income resulting from inadequacies in the utility allowances.
  6. Award Plaintiffs costs and attorneys' fees.
  7. Grant Plaintiffs and the Plaintiff class such other relief as may be just and proper.

DATED: Honolulu, Hawai'i, \_\_\_\_\_, 2005.

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SHELBY ANNE FLOYD  
THOMAS E. BUSH  
GAVIN K. THORNTON  
ATTORNEYS FOR PLAINTIFFS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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MARA, individually, and on behalf of all  
persons similarly situated,

Plaintiff,

vs.

HOUSING AND COMMUNITY DEVELOPMENT  
CORPORATION OF HAWAII, a duly organized  
and recognized agency of the State of Hawaii;  
HHA WILIKINA APARTMENTS PROJECT, INC.;  
STEPHANIE AVEIRO, in her official capacity  
as the Executive Director of the Housing and  
Community Development Corporation of  
Hawaii; DOES 1-25

Defendants.

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HOUSING AND COMMUNITY DEVELOPMENT  
CORPORATION OF HAWAII and HHA  
WILIKINA APARTMENTS PROJECT, INC.,

Defendants and Third-  
Party Plaintiffs,

vs.

URBAN MANAGEMENT CORP.; JOHN DOES  
26-50,

Third-Party Defendants

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CIVIL NO. 05-1-0815-05 EEH  
(Contract)

**CERTIFICATE OF SERVICE**

Class Action

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the SECOND AMENDED  
COMPLAINT was duly served upon the following party on this date, by facsimile and

by depositing said copy, postage prepaid, first class, in the United States Post Office,  
at Honolulu, Hawai'i, as indicated and addressed as set forth below:

**HAND-  
DELIVERED**

**FAX.**

**MAILED**

( X )

( )

( X )

WILLIAM J. WYNHOFF, ESQ.  
Deputy Attorney General  
Office of the Attorney General  
State of Hawai'i  
465 King St., Suite 300  
Honolulu, Hawai'i 96734  
FAX.: 808-587-2999

Attorney for Defendants

DATED: Honolulu, Hawai'i, \_\_\_\_\_, 2005.

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



**REVIS**

**PROPOSED RENT INCREASE AND  
UTILITY ALLOWANCE ADJUSTMENT**

September 27, 2005

Dear Resident:

Take notice that on October 26, 2005, we plan to submit a request for approval of an increase in the maximum permissible rents for Banyan Street Manor, to the United States Department of Housing and Urban Development [HUD]. The proposed increase is needed for the following reasons:

- Annual rent increase, as allowed by HUD, to cover increased costs to manage the property

The rent increases for which we have requested approval are:

Bedroom Size	Present Rent	Proposed Increase	Proposed New Rent
1 Bedroom	\$569.00	\$ 13.00	\$582.00
2 Bedroom	\$724.00	\$ 16.00	\$740.00

A request to increase the utility allowance for each bedroom size will also be submitted for approval. The utility allowance is in need of adjustment to reflect the estimated average utility cost. The proposed utility allowance we are requesting approval for are:

Bedroom Size	Present Utility Allowance	Proposed Utility Allowance
1 Bedroom	\$31.00	\$52.00
2 Bedroom	\$45.00	\$56.00

Copies of the materials that we are submitting to HUD in support of our request will be available during normal business hours at Urban Real Estate Company, 50 S. Beretania Street, #C-101, Honolulu, Hawaii 96813, for a period of 30 days from the date of service of this notice for inspection and copying by tenants of Banyan Street Manor. And, if the tenants wish, by legal or other representatives acting for them individually or as a group.

During a period of 30 days from the date of this notice, tenants of Banyan Street Manor, may submit written comments on the proposed rent increase to us at Urban Real Estate Company, 50 S. Beretania Street, #C-101, Honolulu, Hawaii 96813. Tenant representatives may assist tenants in preparing those comments. If, at HUD's request or otherwise, we make any material change during the comment period in the materials available for inspection and copying, we will notify the tenants of the change or changes, and the tenants will have a period of 15 days from the date of service of this additional notice in which to inspect and copy the materials as changed and to submit comments on the proposed rent increase. These comments will be transmitted to HUD, along with our evaluation of them and our request of the increase. You may also send a copy of your comments directly to HUD at the following address:

U.S. Dept. of Housing and Urban Development  
Hawaii State Office  
500 Ala Moana Boulevard, #3A  
Honolulu, HI 96813

HUD will approve, adjust upward or downward, or disapprove the proposed rent increase upon reviewing the request and comments. When HUD advises us in writing of its decision, you will be notified. Any increases will be put into effect only after a period of at least 45 days from the date you are served with that notice and in accordance with the terms of existing leases.

We want to stress that we do not anticipate any changes in rent to tenants receiving Section 8 assistance.

Sincerely,



Lui Faleafine, Property Manager  
Banyan Street Manor

**EXHIBIT B**

**REVISE**

**PROPOSED RENT INCREASE AND  
UTILITY ALLOWANCE ADJUSTMENT**

October 13, 2005

Dear Resident:

Take notice that on November 14, 2005, we plan to submit a request for approval of an increase in the maximum permissible rents for Wilikina Apartments, to the United States Department of Housing and Urban Development [HUD]. The proposed increase is needed for the following reasons:

- Annual rent increase, as allowed by HUD, to cover increased costs to manage the property

The rent increases for which we have requested approval are:

Bedroom Size	Present Rent	Proposed Increase	Proposed New Rent
1 Bedroom	\$564.00	\$ 12.00	\$576.00
2 Bedroom	\$709.00	\$ 15.00	\$724.00

A request to increase the utility allowance for each bedroom size will also be submitted for approval. The utility allowance is in need of adjustment to reflect the estimated average utility cost. The proposed utility allowance we are requesting approval for are:

Bedroom Size	Present Utility Allowance	Proposed Utility Allowance
1 Bedroom	\$40.00	\$74.00
2 Bedroom	\$56.00	\$90.00

Copies of the materials that we are submitting to HUD in support of our request will be available during normal business hours at Urban Real Estate Company, 50 S. Beretania Street, #C-101, Honolulu, Hawaii 96813, for a period of 30 days from the date of service of this notice for inspection and copying by tenants of Wilikina Apartments. And, if the tenants wish, by legal or other representatives acting for them individually or as a group.

During a period of 30 days from the date of this notice, tenants of Wilikina Apartments, may submit written comments on the proposed rent increase to us at Urban Real Estate Company, 50 S. Beretania Street, #C-101, Honolulu, Hawaii 96813. Tenant representatives may assist tenants in preparing those comments. If, at HUD's request or otherwise, we make any material change during the comment period in the materials available for inspection and copying, we will notify the tenants of the change or changes, and the tenants will have a period of 15 days from the date of service of this additional notice in which to inspect and copy the materials as changed and to submit comments on the proposed rent increase. These comments will be transmitted to HUD, along with our evaluation of them and our request of the increase. You may also send a copy of your comments directly to HUD at the following address:

U.S. Dept. of Housing and Urban Development  
Hawaii State Office  
500 Ala Moana Boulevard, #3A  
Honolulu, HI 96813

HUD will approve, adjust upward or downward, or disapprove the proposed rent increase upon reviewing the request and comments. When HUD advises us in writing of its decision, you will be notified. Any increases will be put into effect only after a period of at least 45 days from the date you are served with that notice and in accordance with the terms of existing leases.

We want to stress that we do not anticipate any changes in rent to tenants receiving Section 8 assistance.

Sincerely,



Lui Faleasfine, Property Manager  
Wilikina Apartments

**EXHIBIT C**



October 19, 2005

Department of Housing and Urban Development  
Honolulu Field Office  
500 Ala Moana Boulevard, #3A  
Honolulu, HI 96813  
Attn: Barbara Cox

RE: Banyan Street Manor  
Request for Increase in Utility Allowance

Dear Ms. Cox:

Please find enclosed the Utility Allowance Analysis for the proposed increase in the utility allowance at Banyan Street Manor. The Owner has requested that the request for increase in utility allowance be submitted separately for immediate review.

The increase in the utility allowance is based on the findings of the utility allowance analysis done by a consultant contracted by the Owner.

We request an increase in utility allowance as follows:

- Increase the one bedroom units from \$31 to \$52
- Increase the two bedroom units from \$45 to \$56

We would appreciate the approval process to be expedited at your earliest convenience.

If you have any questions or concerns, please call me at 524-2731 X 18.

Sincerely,

Harris Zane  
Urban Real Estate Company

Encis

50 S. Beretania Street  
Suite C-101  
Honolulu, Hawaii 96813  
Tel: 808.524.2731  
Fax: 808.545.5214



October 19, 2005

Department of Housing and Urban Development  
Honolulu Field Office  
500 Ala Moana Boulevard, #3A  
Honolulu, HI 96813  
Attn: Barbara Cox

RE: Willikina Apartments  
Request for Increase in Utility Allowance

Dear Ms. Cox:

Please find enclosed the Utility Allowance Analysis for the proposed increase in the utility allowance at Willikina Apartments. The Owner has requested that the request for increase in utility allowance be submitted separately for immediate review.

The increase in the utility allowance is based on the findings of the utility allowance analysis done by a consultant contracted by the Owner.

We request an increase in utility allowance as follows:

- Increase the one bedroom units from \$40 to \$74
- Increase the two bedroom units from \$55 to \$90

We would appreciate the approval process to be expedited at your earliest convenience.

If you have any questions or concerns, please call me at 524-2731 X 18.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harris Zane', written over a horizontal line.

Harris Zane  
Urban Real Estate Company

Encls

50 S. Beretania Street  
Suite C-101  
Honolulu, Hawaii 96813  
Tel: 808.524.2731  
Fax: 808.545.5214

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**EXHIBIT E**



2. My duties include supervision of staff charged with monitoring management activities of Urban Management Corp., the current managing agent for Wilikina Apartments and Banyan Street Manor.

3. Any adjustment to the tenants' utility allowances at Wilikina and Banyan requires approval from HUD and absolutely cannot be implemented without that approval.

4. Urban Management Corp. is in the process of attempting to secure an adjustment to the tenants' utility allowances at Wilikina and Banyan.

5. Any proposed downward adjustment to the tenants' utility allowances requires notification to the tenants and a thirty day comment period. Any comments must be forwarded to HUD for its information.

6. In this case, the proposed adjustment is upward so we did not strictly need to seek tenant comments as to this adjustment. Nevertheless, on October 13, 2005, Urban Management Corp. sent to all tenants at Wilikina and Banyan a notice of proposed contract rent increase and utility allowance adjustment. Exhibit "B" is a true and correct copy of the notice as to Banyan. Exhibit "C" is a true and correct copy of the notice as to Wilikina.

7. On October 19, 2005, Urban Management Corp. sent to HUD a request for increase in utility allowance as to both Wilikina and Banyan. Exhibit "D" is a true and correct copy of the request as to Banyan (without enclosures). Exhibit "E" is a true and correct copy of the request as to Wilikina (without enclosures).

8. My office and to my knowledge, Urban Management Corp., are making all efforts to adjust and increase the utility allowances for all tenants at both projects at the earliest possible date. We intend to speak directly to HUD and urge them to process the request as soon as

possible. I am not aware of anything that either my office or Urban Management Corp. could do to speed up the process.

9. In most cases, no upward adjustment is made to a tenant's rent until approximately one year after the original lease date.

10. HCDCH does not have files for current tenants in its possession. Active tenant files are in the possession of the managing agent, Urban Management Corp. and those files reflect whether or when tenant rent was adjusted as to current tenants.

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

DATED: Honolulu, Hawaii 10/24/05.

  
\_\_\_\_\_  
MICHAEL J. HEE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS, individually, and on behalf  
of all persons similarly situated,

Plaintiffs,

vs.

HOUSING AND COMMUNITY  
DEVELOPMENT CORPORATION OF  
HAWAII, a duly organized and recognized  
agency of the State of Hawai'i; HHA  
WILIKINA APARTMENTS PROJECT,  
INC.; DOES 1-25,

Defendants.

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HOUSING AND COMMUNITY  
DEVELOPMENT CORPORATION OF  
HAWAII and HHA WILIKINA  
APARTMENTS PROJECT, INC.,

Defendants and Third-Party  
Plaintiffs,

vs.

URBAN MANAGEMENT CORP.;  
MARCUS & ASSOCIATES, INC.; JOHN  
DOES 26-50,

Third-Party Defendants.

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CIVIL NO. 05-1-0815-05 (EEH)  
(Contract)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served on the following  
persons at the addresses shown by mail on 10/15/15 :