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1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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

Plaintiff, )

v. )

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

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

**PLAINTIFF'S MOTION FOR CLASS  
CERTIFICATION; MEMORANDUM IN  
SUPPORT OF MOTION; EXHIBITS "A"-  
"E"; DECLARATION OF SHELBY ANNE  
FLOYD; EXHIBIT "1";**

*[CAPTION CONTINUED ON NEXT PAGE]*

Hearing SEP 2 1 2005

Date: \_\_\_\_\_

Time: 9:45 a

Judge: Eden E. Hifo

Defendants.

) **DECLARATION OF GAVIN THORNTON;**  
) **EXHIBIT 1; DECLARATION OF JACK**  
) **WATERS; NOTICE OF HEARING**  
) **MOTION AND CERTIFICATE OF**  
) **SERVICE**  
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**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Plaintiff JACK WATERS, by and through his counsel, hereby moves this Court for an Order allowing this cause to be maintained as a class action, and requiring notice to be provided to all class members.

This Motion is made pursuant to Rules 7, 23(a) and (b)(3) of the Hawai'i Rules of Civil Procedure. It is based on the attached Memorandum in Support of Motion, and the Declarations of Shelby Anne Floyd, Gavin Thornton and Jack Waters.

1. Plaintiffs seek certification of a class and subclass as follows:

persons that currently reside, or resided at any point from May 6, 2003 to the present in an HCDCH project-based Section 8 project in which residents receive or should receive utility allowances

and

persons that resided at any point between May 6, 1999 to May 5, 2003 in an HCDCH project-based project in which residents receive or should receive utility allowances.

2. The class and subclass is so numerous that joinder of all its members is impracticable.

3. There are questions of law and/or fact common to the class and subclass.

4. The claims of the named Plaintiff are typical of the claims of the class and subclass.

5. The named Plaintiff will fairly and adequately represent the claims of the class.

6. The Defendants have acted on grounds generally applicable to the class and subclass, thereby making appropriate final injunctive and declaratory relief with respect to the classes as a whole.

7. Questions of law and fact 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.

WHEREFORE, Plaintiffs pray that this action be certified as a class action pursuant to Rules 23(a) and (b)(3) of the Hawai'i Rules of Civil Procedure, and that Defendants be ordered to provide notice of the pendency of this action to all class members.

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



SHELBY ANNE FLOYD  
THOMAS E. BUSH  
GAVIN THORNTON

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

JACK WATERS individually, and on ) CIVIL NO. 05-1-0815-05 EEH  
behalf of all persons similarly situated, ) (Contract)  
 ) Class Action  
Plaintiff, )  
 ) **MEMORANDUM IN SUPPORT OF**  
v. ) **MOTION**  
 )  
HOUSING AND COMMUNITY )  
DEVELOPMENT CORPORATION OF )  
HAWAI'I, a duly organized and )  
recognized agency of the State of )  
Hawai'i; HHA WILIKINA )  
APARTMENTS, INC., DOES 1-25, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**MEMORANDUM IN SUPPORT OF MOTION**

**I. INTRODUCTION**

Plaintiff, individually and on behalf of a class of similar situated persons, seeks declaratory relief, injunctive relief, and damages against Defendant Housing and Community Development Corporation of Hawai'i and HHA Wilikina Apartments, Inc. (collectively "HCDCH") for failing to adjust utility allowances in federally-subsidized project-based Section 8 housing as utility rates increased, in violation of Plaintiffs' rights under the U.S. Housing Act and the rental agreement between residents and HCDCH.

Pursuant to the United States Housing Act, 42 U.S.C. § 1437a(a)(1), rent, including utilities, for tenants residing in project-based Section 8 housing<sup>1</sup> cannot exceed 30 percent of tenant income. Where tenants are directly responsible for the payment of utility service (i.e. where tenants must pay a utility provider directly), the supporting federal regulations require that tenants are provided with a “utility allowance” so that their rent plus utilities does not exceed 30 percent of their income. See 24 C.F.R. § 5.603(d).

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.*

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.

Though utility rates have increased in excess of 10 percent since the utility allowances were last updated (sometime prior to November 1997), Defendants have failed to revise or request revisions to the utility allowances for the project-based Section 8 housing that Defendants own, operate and/or

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<sup>1</sup>The federally-funded Section 8 “project-based” assistance program subsidizes buildings or parts of buildings to assure rents affordable to the tenants residing in those buildings. The Section 8 project-based program should not be confused with the Section 8 “voucher” program in which low-income tenants are provided with a rent subsidy that they may use with a private landlord of their choice. HCDCH operates at least two Section 8 project based buildings—Wilikina Apartments and Banyan Street Manor.

administer. As a result, the utility allowances provided to tenants are insufficient and tenants have been charged in excess of 30% of their income for rent.<sup>2</sup>

HCDCH's actions are in violation of the U.S. Housing Act and the supporting U.S. Department of Housing and Urban Development (HUD) regulations regarding the setting of rents for project-based Section 8 tenants. Furthermore, HCDCH breached the rental agreements between HCDCH and project-based Section 8 tenants that required tenant rents to be calculated in accordance with HUD requirements.

## **II. THE PROPOSED CLASS**

To avoid unnecessary argument at this stage of the litigation, Plaintiffs seek certification of a class and subclass. The proposed class for certification is defined as persons that currently reside, or resided at any point from May 6, 2003 to the present in an HCDCH project-based Section 8 project in

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<sup>2</sup>Two related class action suits have been filed in the United States District Court for the District of Hawai'i, and in the Third Circuit Court. The suits are briefly described below:

*Smith, et al. v. Aveiro, et al.*, Civil No. 04-00309 DAE, was filed on May 13, 2004. The suit sought equitable relief on behalf of all public housing tenants who pay their own utilities for rent over-charges arising out of HCDCH's failure to adjust utility allowances as utility rates increased. In October 2004, HCDCH adjusted its utility allowances retroactive to September 2004. The suit was dismissed as moot on July 12, 2005, based on a determination that HCDCH's update of the utility allowances brought them into compliance with federal law.

*Smith, et al. v. Aveiro, et al.*, Civil No. 4-1-0069K, a companion case seeking damages for the same violation was filed in the Third Circuit Court on May 17, 2004.

*Amone v. Aveiro, et al.*, Civ. No. 04-508ACK, US District Court, was filed in August 2004 by disabled public housing tenants who have been denied their rights to receive notice of and request increased utility allowances as a result of their need for medical devices using electricity. On June, 17, 2005, the court issued an order granting a permanent injunction requiring HCDCH to comply with federal regulations governing the provision of utility allowance adjustments to disabled public housing tenants and declaring that class members were entitled to have their rents adjusted.

which residents receive or should receive utility allowances. The proposed subclass is defined as persons that resided at any point between May 6, 1999 to May 5, 2003 in an HCDCH project-based Section 8 project in which residents receive or should receive utility allowances. The classes are identical except for the period of tenancy.

Certification of a class and subclass to address potential issues relating to the statute of limitations, and to reserve rulings on complex issues such as the date of accrual of the claim and equitable tolling, is consistent with the recent practice of other Hawai'i courts. In a statewide class action in which substitute teachers challenged the Department of Education's failure to pay statutory wages, *Garner v. Department of Education*, Civ. No. 03-305, First Circuit Court, State of Hawai'i, the First Circuit Court certified a class and subclass based on statute of limitations categories. See Exhibit 1 to Declaration of Shelby Anne Floyd attached.

Once the class is certified, the Court has the discretion to alter or amend the class certification order at any time before a decision on the merits, HRCP 23(c)(1), as "the scope and contour of a class may change radically as discovery progresses and more information is gathered about the nature of the putative class members' claims." See *Prado-Steiman v. Prado, M.C.*, 221 F.3d 1266, 1273 (11<sup>th</sup> Cir. 2000).

### **III. THE REQUIREMENTS AND PURPOSES OF RULE 23 ARE MET**

The provisions of the Hawai'i Rules of Civil Procedure ("HRCP") regarding certification and maintenance of a class, HRCP 23(a) and (b), are identical to rules 23(a) and (b) of the Federal Rules of Civil Procedure ("FRCP"). Hawai'i State courts often rely on federal precedent relating to class certification

under the Federal Rules to interpret the HRCF requirements for class certification. See e.g. *Life of the Land v. Land Use Commission*, 63 Haw. 166 (Haw. 1981); *Life of the Land v. Burns*, 59 Haw. 244 (Haw. 1978); *Akua v. Olohana*, 65 Haw. 383 (Haw. 1982).

Class actions have two primary purposes: (1) to protect rights of persons who might not be able to present claims on an individual basis, and (2) to accomplish judicial economy by avoiding multiple suits. *Haley v Medtronic, Inc.*, 169 FRD 643 (C.D. Cal. 1996). See also *Levi v. University of Hawai'i*, 67 Haw. 90, 93 (Haw. 1984)(stating, “[o]ne of the purposes of a class action suit is to prevent multiplicity of actions, thereby preserving the economies of time, effort and expense”). The former purpose is clearly served in the instant case where it would be impracticable, if not impossible, for the members of the proposed class to secure the redress available to the named plaintiffs. As residents of federally-assisted housing, almost every member of the putative class will have low or moderate incomes. It is doubtful that many of them could afford to use their scarce resources to obtain counsel to secure relief for the rent overcharges with which they have been burdened. Additionally, the amount of damages each member would be eligible to recover, while substantial in respect to the members’ incomes and cumulatively quite large, would probably not be sufficient to cover the costs of bringing a suit on an individual basis in most cases.

The purpose of judicial economy is clearly served in the instant case as well. It would be unduly burdensome on the courts to litigate the claims of each of the 170+class members on an individual basis, especially when the matter can be properly handled as a class action. The legal and factual claims



for each of the members in this case are nearly identical. As discussed further below, the only differences between the claims will likely be in regard to the amount of the damages caused to each class member, which will be based on a few easily determinable variables. The questions of law and fact that are common to all the members of the proposed class predominate over any questions that affect only individual members.

**A. The Requirements of Rule 23(a) Are Met**

To certify a class action, Plaintiffs must establish that all of the requirements of HRCP 23(a) are met, and must also establish that at least one of the alternative requirements of HRCP 23(b) is met. *Daly v. Harris*, 209 F.R.D. 180, 184 (D. Haw. 2002).

HRCP 23(a) requires a finding that:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) The representative parties will fairly and adequately protect the interests of the class.

As discussed below, Plaintiffs meet each of the requirements of HRCP 23(a).

**1. The Plaintiff Class is so Numerous that Joinder is Impracticable**

As set forth in the Declaration of Gavin Thornton attached, there are at least 174 apartment units operated by HCDCH as Section 8 project-based

housing. Therefore, the class size will exceed that number by the rate of turnover in tenants.

While there is no minimum number of plaintiffs required to maintain a class action, generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the numerosity prerequisite is satisfied. *Stewart v. Abraham*, 275 F.3d 220, 226-227 (3d Cir. 2001). See also *Life of the Land v. Land Use Commission of the State of Hawai'i*, 63 Haw. 166, 623 P.2d 431 (1981) (finding the numerosity requirement to be satisfied where a defendant class was composed of over 150 identifiable members); *Wolkenstein v. Reville*, 539 F Supp 87 (W.D. N.Y. 1982), *aff'd* 694 F.2d 35 (2d Cir. 1982) (finding that the numerosity requirement is generally satisfied when the number of class members exceeds 40, and particularly when the number exceeds 100 or 1000); *Penk v. Oregon State Bd. of Higher Education*, 93 F.R.D. 45 (D.C. Or. 1981) (holding that a putative class consisting of approximately 1500 present members and 350 past members was clearly too large to join all members); *Polich v. Burlington Northern*, 116 FRD 258 (D.C. Mont. 1987) (finding that a class consisting of 60 potential members is sufficiently large to raise a presumption that joinder is impracticable).

Though the size of the putative class in this case makes joinder impracticable, there are other relevant considerations that make the impracticability of joinder even more obvious. These relevant considerations include, *inter alia*, the financial resources of class members, the ability of claimants to institute individual suits, the size of individual claims, and the inefficiency/inconvenience that would result from being required to bring multiple individual claims. *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993). When

these considerations are applied to the present case, in addition to the size of the class, it is clear that joinder is impracticable for the following reasons: (1) the members of the class lack the financial resources to bring individual claims; (2) the size of individual claims would often not support individual claims; and (3) requiring each member of the proposed class to bring an individual action would be extremely inefficient given that each claim is practically identical. These are the same reasons that led Judge Alan Kay to certify in class in *Amone, supra* n. 2, over the State's objections.

**2. There Are Questions of Law or Fact Common to the Class**

To satisfy the "commonality" requirement of HRCP 23(a)(2), Plaintiffs need only present a single issue of law or fact common to all class members. *Blackie v. Barrack*, 524 F.2d 891, 904 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976); *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 145 (N.D. Cal. 2004).

The gravamen of Plaintiffs' claims is the fact that Defendant had an obligation to update the utility allowances in Section 8 project-based housing as the utility rates increased. Defendant failed to do so, and as a result has not provided Section 8 housing residents residing in project-based housing with a sufficient dollar allowance to cover the cost of their utilities, thereby overcharging the residents for rent. Both the fact and method of Defendant's breaches of its statutory, regulatory, and contractual obligations are common to all prospective class members.

**3. The Representative Plaintiff's Claims are Typical of the Class' Claims**

The HRCP 23(a)(3) requirement that the named Plaintiff's claims be typical of the class' claims overlaps considerably with the other requirements of

Rule 23(a). *Dukes, supra*, at 144. Courts have devised several tests to determine whether this criterion is met. The requirement is satisfied where there is no antagonism between the claims of the named Plaintiff and the claims of the class. *Fowler v. Birmingham News Co.*, 608 F.2d 1055, 1058 (5th Cir. 1979). *See also Life of the Land v. Land Use Commission of the State of Hawai'i*, 63 Haw. 166, 183, 623 P.2d 431, 445 (1981) (equating the typicality requirement to requiring an absence of a conflict of interest). The requirement is also satisfied where the named representative's claims are similar enough to the class claims to ensure that the named Plaintiff will adequately represent them. *Cruz v. Bowen*, 672 F. Supp. 1300, 1305 (N.D. Cal. 1987) (quoting *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982)).

The named Plaintiff seeks relief that is appropriate to all of the members of the proposed class. As a resident of Section 8 project-based housing project in which residents pay their own utilities and receive a utility allowance, his claims are virtually identical to the claims of other class members and are in no way antagonistic to the interests of other class members. He has lived in the Wilikina Apartments Section 8 project-based housing since 1997, and thus is a member of both the class and subclass. *See* Declaration of Jack Waters attached. If Plaintiff prevails on the merits, the interest of the class members in obtaining damages for rent overcharges resulting from HCDCH's failure to update the utility allowance will be furthered.

**4. The Named Plaintiff Will Fairly and Adequately Protect the Interests of the Class**

The fourth requirement of HRCF 23(a) is satisfied where (1) the class representatives have common interests with the unnamed members of the class,

and (2) the representatives will be able to prosecute the class claims vigorously. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9<sup>th</sup> Cir. 1998). *See also Life of the Land*, 63 Haw. at 183, 623 P.2d at 445 (stating that where claims or defenses are coextensive, there is a probability of fair and adequate representation). In the case at bar, both these requirements are met.

First, lead counsel for Plaintiff has litigated numerous individual and class actions concerning the enforcement of federal statutory rights. *See* Declaration of Shelby Anne Floyd. Gavin Thornton of Lawyers for Equal Justice has advocated on the behalf of many public housing tenants, and is familiar with the federal and contractual rights of such tenants. *See* Declaration of Gavin Thornton. Together they are adequate advocates for Plaintiffs and the class, and will prosecute the class claims vigorously.

Second, the Plaintiff is seeking to enforce the statutory and contractual obligations of HCDCH that are the same with respect to all class members. As in class actions where plaintiffs sought agency compliance with statutory and constitutional requirements, the key interests of the Plaintiff is co-extensive with the class members' interests. *See, e.g., Perez-Funez v. District Director, INS*, 611 F. Supp. 990, 997 (C.D. Cal. 1984); *Cornelius v. Mintner*, 395 F. Supp. 616 (D.C. Mass. 1974).

**B. Plaintiff Satisfies the Requirements of Rule 23(b)**

HRCP 23(b) allows class certification where the court finds: (1) that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. HRCP(b)(3).

The common issues in this case clearly predominate over questions affecting only individual members. Common questions will be found to predominate where there is a common course of conduct over a period of time directed against members of the class and violating common statutory provisions. *Epstein v. Weiss*, 50 F.R.D. 387, 391 (D.C.E.D.La., 1970) (citing *Esplin v. Hirschi*, 402 F.2d 94, 100 (2d Cir. 1968) and *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 914 (9th Cir. 1964)). In this case, Defendant's breaches of its statutory, regulatory, and contractual obligations are common to all prospective class members and are the main issue of the suit.

HCDCH's failure to update the utility allowances after utility rates increased by 10% or more adversely affects all members of the putative class. All members of the putative class were damaged by not being provided with a sufficient utility allowance and being charged over 30% of their income for rent. The only differences between members of the putative class will be the extent of the damages suffered by each class member, which will depend on a few easily determinable variables such as the length of the individual members occupancy in the building.<sup>3</sup> These differences are minor when viewing the claims as a whole,

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<sup>3</sup>The calculation of each individual's damages is dependant on just a few variables: (1) the period of time the individual resided in federally subsidized housing; (2) the percentage increase in the utility rates from the time the utility allowances were last updated through the individual's period of occupancy; (3) the types of utilities paid for by the tenants in the project in which the individual resided (e.g. electricity for lighting and refrigeration versus electricity for light and refrigeration and gas for cooking); (4) the monetary amount of the allowances provided to tenants in the project in which the individual resided; and (5) the number of bedrooms in the individual's unit. All of these variables are easily ascertainable through HCDCH records and utility records. By considering these few variables, the extent of the damage to each class member can be established by formula.

and even the method of calculating the damages will be consistent across the class.

Regarding the second component of HRCP 23(b)(3), class action treatment is superior to other methods for the fair and efficient adjudication of this controversy for reasons already mentioned above. HRCP 23(b)(3) favors class actions where common questions of law or fact permit the court to consolidate otherwise identical actions into a single efficient unit. *See Bynum v. Dist. of Columbia*, 214 F.R.D. 43, 49 (D.D.C., 2003). The acts of HCDCH are common to all class members and the claims of each member of the putative class are virtually identical. Further, class action treatment is the only way to achieve fairness in this case since few potential class members would have the means to undertake individual litigation against HCDCH to recover the relatively modest individual damages at issue. Therefore, in the absence of a class action, few class members would have any meaningful redress against HCDCH as a practical matter. A class action is the superior method of resolving this controversy.

#### **IV. NOTICE SHOULD BE PROVIDED TO ALL CLASS MEMBERS IN THE ATTACHED FORM**

When a class action is certified and maintained under Haw. R. Civ. P. 23(b)(3), the Court "shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Haw. R. Civ. P. 23(c)(2).

Pursuant to Rule 23(c)(2), the notice must:

[A]dvise each member that (A) the court will exclude the member from the class if the member so requests by a specific date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request

exclusion may, if the member desires, enter an appearance through counsel.

A proposed form of Notice of Pendency of Class Action meeting the requirements of Rule 23(c)(2) is attached as Exhibit "A". This form is based on similar notices approved by the First Circuit Court in *Garner v. Department of Education* (Exhibit "B ") and the Second Circuit Court in *Bento v. Valley Isle, et al.* (Exhibit "C").

Where a class action is certified and maintained under Haw. R. Civ. P. Rule 23(b)(3), the Court has the broad discretion to determine the best notice practicable under the circumstances. *See* Haw. R. Civ. P. Rule 23(c)(2). Here, the best notice practicable under the circumstances is individual notice of the class action to the class members by mailings incorporated into HCDCH's correspondence with its tenants conducted in the regular course of HCDCH's business, and separate mailings to former tenants. Individual notice to the class members is appropriate and required because HCDCH tenants during the relevant class and subclass periods are easily identifiable.

Additionally, it has been recognized that "[w]hen the names and addresses of most class members are known, notice by mail (generally first-class mail) is usually required." (emphasis added) *Newberg on Class Actions* §8.2, pg. 164 (citing the *Manual for Complex Litigation* § 30.211). *See also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (holding that "[i]ndividual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort" in Rule 23 (b)(3) actions) (emphasis added); *Contract Buyers League v. F & F Investment*, 48 F.R.D. 7, 15 (N.D. Ill. 1969)(holding that under the reasonable notice standard of Rule 23(c)(2), "adequate notice should require individual notice to the extent that the identities of the class members are



ascertainable.”); *Akau v. Olohana Corp.*, 65 Haw. 383, 392, 652 P.2d 1130, 1136 (Haw. 1982) (“A 23(b)(2) action requires less specificity than a 23(b)(3) action because only the latter requires individual notice to members and the ability of members to be excluded from the class as described in Rule 23(c)(2)”).

Here, the proposed Notice should be approved because it meets all the requirements of Rule 23(c)(2). The Notice fairly and accurately describes the nature of the action, and expressly provides that HCDCH disputes the allegations (if it does) and that the Court has not yet substantively ruled on the merits of Plaintiffs’ claims. Furthermore, the Notice informs the class members of their rights, including their right to opt-out of the class action, intervene in the class action, and enter an appearance through separate counsel.

The Court also has broad discretion and flexibility to allocate notification costs under Haw. R. Civ. P. Rule 23(c)(2). A well-recognized exception to the general rule that a party seeking the class action must bear the costs of identifying and notifying class members is efficiency, which is “when the task ordered can be performed as part of the defendant’s regular course of business.” A. Conte and H. Newberg, *Newberg on Class Actions* § 8.8, at 188 (4<sup>th</sup> ed. 2002). HCDCH should be responsible for mailing the notifications because it communicates with its tenants on a regular basis concerning their income, see Declaration of Jack Waters attached, and can efficiently provide the notices as part of its “regular course of business” with little or no additional costs.

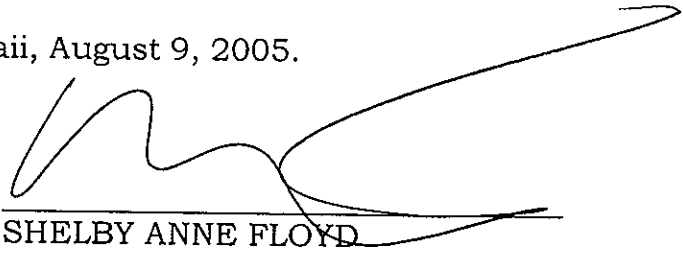
Finally, allocating the responsibility and expense of sending the class action notifications to the State is not a novel concept. In fact, Courts in this jurisdiction have ordered the State bear the expense of providing notice to those

it has contact with on a regular basis. *See e.g.*, Exhibits “D” and “E” (orders in class actions cases where the Court shifted the notification costs to the State). Therefore, Plaintiff requests that the Court approve the substance of this form of notice, and order that the notice requirements of Rule 23 will be satisfied by mailing a copy of this notice to each individual class and subclass member.

**V. CONCLUSION**

Plaintiff submits that this action meets all of the requirements for class certification prescribed by Rule 23 of the Hawaii Rules of Civil Procedure. For the foregoing reasons, Plaintiff respectfully requests that this Court certify this action as a class action, pursuant to HRCP 23(a) and 23(b)(3).

DATED: Honolulu, Hawaii, August 9, 2005.



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

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS individually, and on	)	CIVIL NO. 05-1-0815-05 EEH
behalf of all persons similarly situated,	)	(Contract)
	)	Class Action
Plaintiff,	)	
	)	<b>NOTICE OF PENDENCY OF CLASS</b>
v.	)	<b>ACTION</b>
	)	
HOUSING AND COMMUNITY	)	
DEVELOPMENT CORPORATION OF	)	
HAWAII, a duly organized and	)	
recognized agency of the State of	)	
Hawai'i; HHA WILIKINA	)	
APARTMENTS, INC., DOES 1-25,	)	
	)	
Defendants.	)	

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**NOTICE OF PENDENCY OF CLASS ACTION**

**TO: All Persons Receiving This Notice Who Are Tenants of Certain Public Housing Projects or Were Tenants During the Period May 17, 1998 to the present.**

I. WHY YOU SHOULD READ THIS NOTICE

Your rights and the rights of others may be affected by the Class Action lawsuit known as *JACK WATERS individually, and on behalf of all persons similarly situated, HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, a duly organized and recognized agency of the State of Hawai'i; HHA WILIKINA APARTMENTS, INC., DOES 1-25, CIVIL NO. 05-1-*

0815-05 EEH in the Circuit Court of the Third Circuit, State of Hawai'i (referred to in this notice as the "Class Action").

Notice of this Class Action is being provided by bulk mail to all Class members.

## II. THE CLASS AND SUBCLASS

The Court has certified a group, or "class" of plaintiffs in this Class Action (the "Class"). The Class is defined as:

All persons that currently reside, or resided at any point from May 17, 2003 to the present in an HCDCH project based Section 8 project in which residents receive or should receive utility allowances.

The Court has certified a subclass of plaintiffs in the Class Action as follows:

All persons that resided at any point between May 17, 1999 to May 16, 2003 in an HCDCH project-based project in which residents receive or should receive utility allowances.

Because you are receiving this notice, you are a member of the Class or Subclass.

## III. THE LITIGATION

This Class Action involves claims for reimbursements of excess rents paid by public housing tenants who receive utility allowances for utility consumption.

Plaintiff JACK WATERS, individually, and on behalf of all persons similarly situated, ("Plaintiff"), alleges that the HCDCH failed to adjust utility allowances as required by law and therefore charged excessive rents to certain public housing tenants. Plaintiffs seek recovery of the overpayments, interest, and additional relief as allowable by law.

HCDCH denies these allegations, and the Court has not ruled on the merits of Plaintiffs' claims.

IV. REMAINING IN, OR EXCLUDING YOURSELF FROM ("OPTING OUT") OF THE CLASS:

A. Staying in the Class or Subclass:

You do not need to do anything to remain in the Class or Subclass.

If you remain in the Class or Subclass, you will be automatically and legally bound by all proceedings, orders, and judgments entered in connection with the Class Action, whether favorable or unfavorable. This means that if you remain in the Class or Subclass and the judgment is favorable to the Plaintiffs and the Class and/or Subclass, you may receive a proportionate share of any judgment. Also, if you remain in the Class or Subclass and the judgment is not favorable to the plaintiffs and the Class and/or Subclass, you will be bound by the adverse decision and will have no right to relitigate any of the claims asserted on behalf of the Class or Subclass in this action. You will be represented by Plaintiffs and their attorneys for the purposes of this Class Action.

B. Excluding Yourself From the Class or Subclass/"Opting Out":

You may choose to "opt out" and not to be a Class or Subclass member. You may then retain your own attorney and take legal action on your own. If you exclude yourself from the Class or Subclass you will not be bound by court orders or judgments entered in connection with this Class Action. You must "opt out" to exclude yourself from this Class Action litigation.

If you wish to opt out and **not** participate in this Class Action, please send written notice of that intent to Plaintiffs' counsel, whose address is ALSTON HUNT FLOYD & ING, ASB Tower, Suite 1800, 1001 Bishop Street, Honolulu, HI 96813, Attn: HCDCH Class Action. A request to opt out and be excluded from the class must contain your: (1) legal name, (2) address(es), (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case number reference Civil No. 04-01-0069 and (6) your signature. Any request to opt out must be received by Plaintiffs' counsel by [30 days from the date of mailing the notice] in order to be effective.

V. PLAINTIFFS AND THEIR COUNSEL

The Court has appointed Plaintiffs RODELLE SMITH, SHEILA TOBIAS, BABARA BARAWIS and LEWIS GLASER, individually and on behalf of all persons similarly situated, and their counsel to act on behalf of the Class and Subclass for the purposes of the Class Action. Counsel for Plaintiffs may be reached at the following address:

**ALSTON HUNT FLOYD & ING**

ASB Tower, Suite 1800  
1001 Bishop Street  
Honolulu, Hawai'i 96813  
Attn: HCDCH Class Action

**LAWYERS FOR EQUAL JUSTICE**

P.O. Box 36952  
Honolulu, Hawai'i 96837-0952]

**PLEASE DO NOT TELEPHONE OR SEND CORRESPONDENCE TO THE  
COURT REGARDING THIS NOTICE**

DATED: \_\_\_\_\_, Hawaii, \_\_\_\_\_, 2005.

\_\_\_\_\_  
BY THE ORDER OF THE CIRCUIT COURT  
FOR THE THIRD CIRCUIT OF HAWAI'I  
THE HONORABLE \_\_\_\_\_

OF COUNSEL:

ERIC G. FERRER 6828-0  
Law Offices of Eric G. Ferrer  
One Main Plaza  
2200 Main Street, Suite 521  
Wailuku, Hawai'i 96793  
Telephone: (808) 244-1160  
Facsimile: (808) 442-0794

MURRAY T.S. LEWIS (pro hac vice)  
Lewis Law Firm  
409 Pioneer Building  
600 First Avenue  
Seattle, Washington 98104  
Telephone: (206) 223-7008  
Facsimile: (206) 223-7009

PAUL ALSTON 1126-0  
BRUCE H. WAKUZAWA 4312-0  
MEI-FEI KUO 7377-0  
American Savings Bank Tower  
1001 Bishop Street, 18th Floor  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1800  
Facsimile: (808) 524-4591

Attorneys for Plaintiffs, Individually and  
on Behalf of All Those Similarly Situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID GARNER; PATRICIA SMITH;  
ANDREA CHRISTIE; ALLAN  
KLITERNICK; KAREN SOUZA;  
JO JENNIFER GOLDSMITH; and  
DAVID HUDSON, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

vs.

STATE OF HAWAII, DEPARTMENT  
OF EDUCATION; JOHN DOES 1-5,

) Civil No. 03-1-000305 (KA)  
) (CLASS ACTION)

) **STIPULATED ORDER RESOLVING**  
) **PLAINTIFFS' MOTION FOR**  
) **APPROVAL OF CLASS ACTION**  
) **NOTICE AND ALLOCATION OF**  
) **NOTIFICATION COSTS, FILED**  
) **APRIL 28, 2005; EXHIBIT "A".**

288611-1/6954-1

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

JUN 28 AM 11:25

CLERK

**EXHIBIT B**



JOHN DOE CORPORATIONS 1-5,	)	Judge Karen S.S. Ahn
JOHN DOE PARTNERSHIPS 1-5, ROE	)	
NON-PROFIT CORPORATIONS 1-5,	)	No Trial Date Set
and ROE GOVERNMENTAL	)	
AGENCIES 1-5,	)	
	)	
Defendants.	)	

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**STIPULATED ORDER RESOLVING PLAINTIFFS' MOTION FOR APPROVAL  
OF CLASS ACTION NOTICE AND ALLOCATION OF NOTIFICATION COSTS,  
FILED APRIL 28, 2005**

IT IS HEREBY STIPULATED, by and between all Parties to this action and through their respective counsel, and HEREBY ORDERED by the Court that Plaintiffs' Motion for Approval of Class Action Notice and Allocation of Notification Costs, filed on April 28, 2005, is resolved as follows:

Pursuant to Haw. R. Civ. P. Rule 23(c)(2), the identifiable "Class" and "Sub-Class" members will be provided individual notice of the pending class action through a one-page notice ("individual notice"). The individual notice will advise the "Class" and "Sub-Class" members of the class action and their rights, as well as reference a website containing the complete "Notice of Pendency of Class Action" ("Class Action Notice") approved by the Court and a telephone number where the Class Action Notice can also be provided by mail upon request. A true and correct copy of the Class Action Notice is attached as Exhibit "A".

The Parties have further agreed that the Defendant State of Hawai'i, Department of Education ("DOE") will mail the individual notice to persons qualified to act as substitute teachers in the 2005-2006 school year with whom the DOE is currently planning to communicate with by mail during the summer of 2005. The DOE will provide Plaintiffs with a list of the names and addresses of the persons to whom it mails the notice upon completion of the mailing and not later than August 31, 2005. Plaintiffs will mail the individual notice to all other members of the class.

The DOE will bear all costs of preparing and mailing the individual notice to the persons it is mailing to as identified above. Plaintiffs will bear all other costs of notice.

The Parties have stipulated, and it is further ordered, that the individual notice will contain the following content:

#### IMPORTANT NOTICE

As a past or current substitute teacher, you are part of a class action lawsuit that is pending in the First Circuit Court in Honolulu. The lawsuit seeks back pay based upon allegations that the State of Hawai'i, Department of Education ("DOE") miscalculated your pay from 1996 through July 2004. The DOE denies there is any merit to the lawsuit.

You have important rights with respect to the lawsuit. It is important that you review the information <sup>about this lawsuit</sup> that is available at [www.hawaiiclassaction.com](http://www.hawaiiclassaction.com). If you have no access to the internet, or if you have trouble reading or understanding the information found there, you may request more information by calling (808) 441-6112.

<sup>of the lawsuit</sup> You should know (a) the Court will exclude <sup>from the lawsuit</sup> any class member who requests to opt-out by September 23, 2005; The opt-out procedures are explained on the website; (b) the judgment in the class action, favorable or not, will include all class members who do not opt-out; and (c) any class member

who does not opt-out may enter an appearance through separate counsel at his/her own expense. If you do not appear with your own lawyers or opt out of the case, your interests will be represented by the class counsel, who are:

*the class action lawsuit,*

Paul Alston and Mei-Fei Kuo, Alston Hunt Floyd & Ing,  
Honolulu, Hawai'i  
Eric Ferrer, Wailuku, Maui, Hawai'i  
Murray Lewis, Seattle, Washington

The stipulated content of the individual notice and the agreed method of notice are sufficient under Haw. R. Civ. P. Rule 23(c)(2), which states that "the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through a reasonable effort." Here, the certified "Class" and "Sub-Class" members are identifiable and, in fact, have been identified by the DOE. Therefore, the individual notice regarding the class action, which will be sent by mail and supplemented by the internet posting, is the best notice practicable under the circumstances.

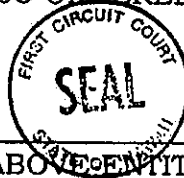
Furthermore, the individual notice contains the information required under Rule 23(c)(2) by advising the "Class" and "Sub-Class" members of the pending class action and their rights, including the right to opt-out of the class action, the binding effect of the judgment on class members who are not excluded, and the right to enter a separate appearance of counsel. The individual notice also provides the "Class" and "Sub-Class" members access to the full Class Action Notice through either the internet or, for those without internet access, through the mail upon request. The Plaintiffs will bear the

responsibility and costs of mailing the Class Action Notice to the "Class" and "Sub-Class" members who call to request a copy.

DATED: Honolulu, Hawai'i, JUN 28 2005

APPROVED AND SO ORDERED:

KAREN S. S. AHN



JUDGE OF THE ABOVE ENTITLED COURT

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Eric G. Ferrer".

ERIC G. FERRER  
MURRAY T.S. LEWIS (pro hac vice)  
PAUL ALSTON  
BRUCE H. WAKUZAWA  
MEI-FEI KUO  
Attorneys for Plaintiffs, Individually  
and on Behalf of All Those Similarly Situated

A handwritten signature in cursive script, appearing to read "James E. Halvorson".

JAMES E. HALVORSON  
WILLIAM J. WYNHOFF  
KATHRYN-JEAN T.K. TANIGUCHI  
Attorneys for Defendant  
STATE OF HAWAII,  
DEPARTMENT OF EDUCATION

David Garner, et al. v. State of Hawai'i Department of Education, et al.; Civil No. 03-1-000305 (KSSA); **STIPULATED ORDER RESOLVING PLAINTIFFS' MOTION FOR APPROVAL OF CLASS ACTION NOTICE AND ALLOCATION OF NOTIFICATION COSTS, FILED APRIL 28, 2005.**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

DAVID GARNER; PATRICIA SMITH;	)	Civil No. 03-1-000305 (KSSA)
ANDREA CHRISTIE; ALLAN	)	(CLASS ACTION)
KLITERNICK; KAREN SOUZA;	)	
JO JENNIFER GOLDSMITH; and	)	<b>NOTICE OF PENDENCY OF CLASS</b>
DAVID HUDSON; on behalf of	)	<b>ACTION; CERTIFICATE OF</b>
themselves and all others similarly	)	<b>SERVICE.</b>
situated,	)	
	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
STATE OF HAWAII, DEPARTMENT	)	
OF EDUCATION; JOHN DOES 1-5,	)	
JOHN DOE CORPORATIONS 1-5,	)	
JOHN DOE PARTNERSHIPS 1-5, ROE	)	
NON-PROFIT CORPORATIONS 1-5,	)	
and ROE GOVERNMENTAL	)	Judge Karen S.S. Ahn
AGENCIES 1-5,	)	
	)	
Defendants.	)	No Trial Date Set

**NOTICE OF PENDENCY OF CLASS ACTION**

**TO: All Substitute Teachers Employed by the State of Hawai'i, Department of Education, Who Provided Educational Services to Hawai'i Public Schools from July 1, 1996 to July 23, 2004.**

**I. WHY YOU SHOULD READ THIS NOTICE**

The rights of you and others may be affected by the class action lawsuit known as David Garner, et. al. v. State of Hawai'i, Department of Education, Civil No. 03-1-000305, in the Circuit Court of the First Circuit, State of Hawai'i (referred to in this notice as the "Class Action").

Pursuant to Haw. R. Civ. P. Rule 23, notice of this Class Action is being provided by individual bulk mailing to all "Class" and "Sub-Class" members (collectively "class members") identified in the personnel records of the State of Hawai'i, Department of Education ("DOE").

If you know of other persons who may be a class member, please show them this Notice.

## **II. THE CERTIFIED CLASS AND SUB-CLASS**

On July 23, 2004, the Court certified a group, or "Class", and a sub-group, or "Sub-Class", of plaintiffs in this Class Action.

The "Class" is defined as:

**All persons who have served in position numbers 75100, 75101, 75102, as identified on a DOE SF-5 as a substitute teacher for the Hawai'i DOE at public schools of the State of Hawai'i from November 8, 2000 through the present.**

The "Sub-Class" is defined as:

**All persons who have served in positions numbers 75100, 75101, 75102 as identified on a DOE SF-5 as a substitute teacher for the Hawai'i DOE at public schools of the State of Hawai'i from July 1, 1996 through November 7, 2000.**

This Notice describes: (1) the nature of the claims in this Class Action, (2) how to participate or exclude yourself from the "Class" and/or "Sub-Class", and (3) how to protect your rights.

**PLEASE READ THIS NOTICE CAREFULLY**

## **III. THE LITIGATION**

This Class Action involves a "Class" and "Sub-Class" of persons, who were employed by the DOE as substitute teachers and provided substitute teaching services at Hawai'i's public schools between 1996 and 2004.

On November 8, 2002, the Plaintiffs, on behalf of similarly situated substitute teachers employed by the DOE, filed a lawsuit against the DOE to recover back pay for the DOE's alleged violation of Haw. Rev. Stat. § 302A-624(e). The Complaint states that in 1996, the Hawai'i State Legislature passed Haw. Rev. Stat. § 302A-624(e), which provided that substitute teacher pay "shall be based on the annual entry salary step rate established for a Class II teacher on the most current teachers' salary schedule." The Complaint

alleges that the DOE has failed to pay substitute teachers this statutorily mandated rate since the statute became effective on July 1, 1996.

On January 6, 2005, Plaintiffs amended and supplemented the Complaint to (1) clarify their alleged violation of Haw. R. Stat. § 302A-624(e) claim and (2) assert a violation of contract rights claim.

The DOE denies the above claims.

To date, the Court has ruled that Plaintiffs' claim for back-pay based upon a violation of Haw. R. Stat. § 302A-624(e) is barred by the doctrine of sovereign immunity. The Court has also denied the Plaintiffs' request for prospective injunctive relief and prejudgment interest. Finally, the Court has determined that the statute of limitations extends back two years before the filing of the Complaint, which was November 7, 2002.

The Court has not yet substantively ruled on the merits of Plaintiffs' violation of contract rights claim, or on the statute of limitations for that claim.

#### **IV. DETERMINING WHETHER YOU ARE A CLASS MEMBER**

To be a class member, you must have been employed by the DOE as a substitute teacher, in a position numbered 75100, 75101, and/or 75102 as identified on a DOE SF-5, between July 1, 1996 and July 23, 2004.

#### **V. REMAINING IN OR EXCLUDING YOURSELF FROM ("OPTING OUT") THE CLASS ACTION**

##### **A. Staying in the Class Action**

If you are a class member, you do not need to do anything to remain in the Class Action. You will be legally bound by all proceedings, orders, and judgments entered in connection with the Class Action, whether favorable or unfavorable. You will be represented by the Plaintiffs and their attorneys for purposes of this Class Action.

If the Plaintiffs become unable to adequately represent the "Class" and/or the "Sub-Class" for any reason, another named plaintiff may be appointed to represent you. As a class member, you may still file a motion with the Court for permission to intervene in the Class Action.

## **B. Excluding Yourself From the Class Action/"Opting Out"**

You may choose not to be class member and not to participate in this Class Action. You may retain your own attorney and take legal action on your own or in combination with others. If you exclude yourself from the Class Action, you will not be bound by court orders or judgments entered in connection with this Class Action. You must "opt out" to exclude yourself from this Class Action litigation.

If you wish to opt out and **not** participate in this Class Action, please send written notice of that intent to Plaintiffs' counsel, whose address is below.

A request to "opt out" and to be excluded from the class must contain your: (1) legal name, (2) address(es), (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case number reference, which is David Garner, et. al. v. State of Hawai'i, Department of Education, Civil No. 03-1-000305 (KSSA), and (6) **the request must be signed by you.**

You may use the attached "Request for Exclusion" form. Any request to "opt-out" of the Class Action must be received by Plaintiffs' counsel by September 23, 2005 in order to be effective.

## **C. Motions To Intervene**

You may file a motion to intervene in this Class Action. Any motions to intervene or the like should be filed in the Circuit Court for the First Circuit before the Honorable Karen S.S. Ahn, Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawai'i 96813.

Copies of motions should be served on (1) the Plaintiffs' counsel, whose address appears below, and (2) the counsel for the Defendant DOE: JAMES E. HALVORSON, ESQ., KATHRYN-JEAN T.K. TANIGUCHI, ESQ., whose address is Office of the Attorney General, State of Hawai'i, 235 South Beretania Street, 15th Floor, Honolulu, Hawai'i 96813.

## **VI. PLAINTIFFS AND THEIR COUNSEL**

To act on behalf of the class members for the purposes of the Class Action, the Court has appointed Plaintiffs and their counsel, as follows:

PAUL ALSTON  
BRUCE H. WAKUZAWA  
MEI-FEI KUO

ERIC G. FERRER  
Law Offices of Eric G. Ferrer  
One Main Plaza



ALSTON HUNT FLOYD & ING  
American Savings Bank Tower  
1001 Bishop Street, 18th Floor  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1800

2200 Main Street, Suite 521  
Wailuku, Hawai'i 96793  
Telephone: (808) 244-1160

MURRAY T.S. LEWIS (pro hac vice)  
Lewis Law Firm  
409 Pioneer Building  
600 First Avenue  
Seattle, Washington 98104  
Telephone: (206) 223-7008

Please address any correspondence other than the "opt-out" notice regarding the Class Action to ALSTON HUNT FLOYD & ING, and include the reference "RE: Garner v. State of Hawai'i, Department of Education" to enable the attorneys to know what it concerns. Please include in such correspondence your legal name, e-mail address, telephone number, mailing address, or other contact information.

#### **VII. ATTORNEYS' FEES AND EXPENSES**

Plaintiffs' counsel have not and will not receive any payment for their services in prosecuting the Class Action, and will not be reimbursed for out-of-pocket costs, unless the class members received a benefit from the lawyers' efforts.

If Plaintiffs' counsel obtain any compensation for you -- by settlement, judgment or otherwise, they will ask the Court to (1) reimburse them for all of the costs they paid or incurred on behalf of the class, and (2) award them (a) attorneys' fees equal to 25% of the total amount of the fund (damages plus any court-awarded fees and costs) that is created through the litigation, and (b) general excise tax. Class members will not be personally liable for any attorneys' fees or expenses of Plaintiffs' counsel.

#### **VIII. HOW TO GET MORE INFORMATION**

- By Internet: <http://www.hawaii.classaction.com>
- By e-mail: [classaction@ahfi.com](mailto:classaction@ahfi.com)
- Telephone: 808-441-6112
- Fax: 808-524-4591

**PLEASE DO NOT TELEPHONE OR SEND CORRESPONDENCE TO THE  
COURT REGARDING THIS NOTICE. NOTHING IN THIS NOTICE IS TO BE  
INTERPRETED AS ANY COMMENT BY THE COURT REGARDING THE  
MERITS OF THE CLASS ACTION.**

DATED: \_\_\_\_\_, 2005

\_\_\_\_\_  
BY ORDER OF THE CIRCUIT COURT FOR  
THE FIRST CIRCUIT OF HAWAII  
THE HONORABLE KAREN S.S. AHN

**REQUEST FOR EXCLUSION FROM THE CLASS ACTION/  
"OPT OUT" FORM**

David Garner, et. al. v. State of Hawai'i, Department of Education,  
Civil No. 03-1-000305 (KSSA)

LEGAL NAME: \_\_\_\_\_

(Please do not use aliases or nicknames; include the name under which you received general assistance)

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Please include all address(es) at which you receive mail)

E-Mail Address: \_\_\_\_\_

(if applicable)

TELEPHONE

NUMBER(S): \_\_\_\_\_

(Please include all numbers at which you can be contacted)

I wish to be excluded from the "Class" and "Sub-Class" certified in the above named Class Action. I understand that it is my duty to find my own attorney to represent me and protect my rights as related to the claims in this Class Action. I will seek other legal assistance and advice.

\_\_\_\_\_  
Signature

If you do not wish to be part of the Class and Sub-Class, and will retain your own attorneys, please fill out this form and mail it to:

ALSTON HUNT FLOYD & ING  
(Re: Garner v. DOE, 6954-1)  
1001 Bishop Street, 18th Floor  
Honolulu, Hawai'i 96813

FILED

ALSTON HUNT FLOYD & ING  
Attorneys at Law  
A Law Corporation

2004 JUL -7 AM 8:38

PAUL ALSTON 1126-0  
BRUCE H. WAKUZAWA 4312-0  
PETER KNAPMAN 6926-0  
American Savings Bank Tower  
1001 Bishop Street, 18<sup>th</sup> Floor  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1800

N. YOTSUYA, CLERK  
SECOND JUDICIAL CIRCUIT  
STATE OF HAWAII

and

VAN BUREN CAMPBELL & SHIMIZU  
GEORGE VAN BUREN 3496-0  
ROBERT CAMPBELL 3399-0  
Topa Financial Center, West Tower  
745 Fort Street, Suite 1950  
Honolulu, HI 96813

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

JOSEPH R. BENTO and ROSE A. )  
BENTO, both individually and on )  
behalf of all others similarly situated, )

Plaintiffs, )

vs. )

VALLEY ISLE MOTORS, LTD.; SAFE- )  
GUARD PRODUCTS, )  
INTERNATIONAL, INC.; DOE )  
DEFENDANTS 1-50, )

Defendants. )

Civil No. 03-1-0114 (2) (SFR)  
(Class Action)

**ORDER GRANTING PLAINTIFFS'  
MOTION TO APPROVE PROPOSED  
NOTICE OF PENDENCY OF CLASS  
ACTION FILED ON APRIL 23,  
2004; EXHIBIT "A"**

**Hearing:**

Date: May 12, 2004  
Time: 8:30 a.m.  
The Honorable Shackley F. Raffetto

Trial Date: July 6, 2004

**ORDER GRANTING PLAINTIFFS' MOTION TO APPROVE PROPOSED  
NOTICE OF PENDENCY OF CLASS ACTION FILED ON APRIL 23, 2004**

Plaintiffs' Motion to Approve Proposed Notice of Pendency of Class Action filed on April 23, 2004, came on for hearing before the Honorable Shackley F. Raffetto in his Courtroom on May 12, 2004 at 8:30 a.m.

Bruce H. Wakuzawa, Esq. and Paul Alston, Esq. appeared on behalf of Plaintiffs, Renee Yuen, Esq. appeared on behalf of Defendant Valley Isle Motors, Ltd., and Lane C. Hornfeck, Esq. appeared on behalf of Defendant Safe-Guard Products International, Inc. Having considered the memoranda filed by the parties, the arguments of counsel, and the record and files in this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion to Approve Proposed Notice of Pendency of Class Action is Granted. The Court orders that notice be provided to the Class and Sub-Class members pursuant to the Notice attached as Exhibit "A".

DATED: Wailuku, Hawai'i, JUL - 7 2004

**/s/ SHACKLEY F. RAFFETTO (Seal)**

**JUDGE OF THE ABOVE-ENTITLED COURT**

---

**Joseph R. Bento, et al. v. Valley Isle Motors, Ltd., et al.; Civil No. 03-1-0114 (2) (SFR);  
ORDER GRANTING PLAINTIFFS' MOTION TO APPROVE PROPOSED NOTICE OF  
PENDENCY OF CLASS ACTION FILED ON APRIL 23, 2004**

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

JOSEPH R. BENTO and ROSE A.	)	Civil No. 03-1-0114 (2)
BENTO, both individually and on	)	(Class Action)
behalf of all others similarly situated,	)	
	)	<b>NOTICE OF PENDENCY OF CLASS</b>
Plaintiffs,	)	<b>ACTION</b>
	)	
vs.	)	
	)	
VALLEY ISLE MOTORS, LTD.; SAFE-	)	
GUARD PRODUCTS, INTERNATIONAL,	)	
INC.; DOE DEFENDANTS 1-50,	)	
	)	
Defendants.	)	
<hr/>		

**NOTICE OF PENDENCY OF CLASS ACTION**

**TO: All Persons Receiving This Notice Who Purchased an Automobile From Valley Isle Motors, Ltd. During the Period March 24, 1999 to May 12, 2004**

**I. WHY YOU SHOULD READ THIS NOTICE**

The rights of you and others may be affected by the Class Action lawsuit known as *Joseph R. Bento and Rose A Bento, individually and on behalf of all persons similarly situated vs. Valley Isle Motors, Ltd., et al.*, Civil No. 03-1-0114 (2) in the Circuit Court of the Second Circuit, State of Hawai'i (referred to in this notice as the "Class Action").

Notice of this Class Action is being provided by bulk mail to all Class members.

**II. THE CLASS**

The Court has certified a group, or "class" of plaintiffs in this Class Action (the "Class"). The Court has approved Plaintiffs' Motion to act on behalf of the Class for the purposes of the Class action. The Class is defined as:

All consumers who purchased an automobile from VALLEY ISLE MOTORS, LTD., during the period from March 24, 1999 to May 12, 2004, who were charged both (a) a "Documentation Fee" and (b) a fee for "State Odometer Fee, License and Registration."

The Court has also certified a VTR Sub-Class as follows:

All members of the Class who were charged a "VTR" fee by VALLEY ISLE MOTORS, LTD., during the period from March 24, 1999 to December 31, 2002.

Excluded from the Class are defendants Valley Isle Motors, Ltd., Safe-Guard Products International, Inc., and their subsidiaries, parents and affiliates, including all directors, officers and employees, as well as any entity in which any defendant has a controlling interest, and the legal representatives, heirs, successors or assigns of the defendants.

Because you are receiving this notice, you may be a member of the Class. You may or may not also be a member of the VTR Sub-Class.

### **III. THE LITIGATION**

This Class Action involves consumers who purchased automobiles from Valley Isle Motors, Ltd. ("Valley Isle") during the period between March 24, 1999 and May 12, 2004. These consumers may have been charged both (a) a "Documentation Fee" and (b) for the "State Odometer Fee, License and Registration."

Plaintiffs Joseph R. Bento and Rose A. Bento, individually and on behalf of all others similarly situated ("Plaintiffs"), allege that these charges constitute an unfair or deceptive trade practice. Plaintiffs seek damages, including triple or punitive damages on behalf of the Class, among other relief including equitable disgorgement of the monies received by Valley Isle.

The Court has also certified a VTR Sub-Class. Members of the VTR Sub-Class paid a "VTR" fee to Valley Isle for a "Vehicle Theft Protection System" issued by Valley Isle and/or Defendant Safe-Guard Products International, Inc. ("Safe-Guard"). Plaintiffs allege that this "VTR" charge constitutes an unfair and deceptive trade practice by Valley Isle and Safe-Guard and also a civil conspiracy by Defendants. Plaintiffs seek damages, including triple or punitive damages on behalf of the VTR Sub-Class, among other relief including equitable disgorgement of the monies received by Defendants.

Defendants deny the above claims and the Court has not ruled on the merits of Plaintiffs' claims.

**IV. REMAINING IN, OR EXCLUDING YOURSELF FROM ("OPTING OUT") OF THE CLASS:**

**A. Staying in the Class:**

You do not need to do anything to remain in the Class. By not opting out, however, you will be automatically and legally bound by all proceedings, orders, and judgments entered in connection with the Class Action, whether favorable or unfavorable. This means that if you do not opt out or request exclusion from this Class Action and the judgment is favorable to the plaintiffs and the Class, you may receive a proportionate share of any judgment. In that event, the VTR contracts may be rendered void. Also, if you do not opt out or request exclusion from this Class Action and the judgment is not favorable to the plaintiffs and the Class, you will be bound by the adverse decision and will have no right to relitigate any of the claims asserted on behalf of the class in this action. You will be represented by Plaintiffs Joseph and Rose Bento and their attorneys for purposes of this Class Action.

**B. Excluding Yourself From the Class/"Opting Out":**

You may choose to "opt out" and not to be a Class member. You may then retain your own attorney and take legal action on your own. If you exclude yourself from the Class you will not be bound by court orders or judgments entered in connection with this Class Action. You must "opt out" to exclude yourself from this Class Action litigation.

If you wish to opt out and **not** participate in this Class Action, please send written notice of that intent to Plaintiffs' counsel, whose address is ALSTON HUNT FLOYD & ING, ASB Tower, Suite 1800, 1001 Bishop Street, Honolulu, HI 96813. A request to opt out and be excluded from the class must contain your: (1) legal name, (2) address(es), (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case number reference *Joseph R. Bento and Rose A Bento, individually and on behalf of all persons similarly situated vs. Valley Isle Motors, Ltd., et al.*, Civil No. 03-1-0114 (2) and (6) your signature. Providing this information and written request to opt out does not mean that you will be contacted or encouraged to participate in the litigation if you chose to opt out.

Any request to opt out must be received by Plaintiffs' counsel by [30 days from the date of mailing the notice] in order to be effective.



**C. Right to Participate in the Class Action:**

You may choose to remain in the class and enter an individual appearance through counsel. If you do so, you must file an appropriate motion with the Circuit Court for the Second Circuit before the Honorable Shackley F. Raffetto, 2145 Main Street, Wailuku, HI 96793.

Copies of motions should be served on (1) Plaintiff's counsel (see addresses below); (2) counsel for Valley Isle: RENEE M.L. YUEN, ESQ., Haseko Center, Suite 703, 820 Mililani Street, Honolulu, HI 96813 and (3) counsel for Safe-Guard LANE HORNFECK, ESQ., Starn O'Toole Marcus & Fisher, 737 Bishop Street, Ste. 1740, Honolulu, HI 96813.

**V. PLAINTIFFS AND THEIR COUNSEL**

The Court has appointed Plaintiffs Joseph and Rose Bento and their counsel to act on behalf of the Class for the purposes of the Class Action. Counsel for Plaintiffs may be reached at the following address:

**ALSTON HUNT FLOYD & ING**  
ASB Tower, Suite 1800  
1001 Bishop Street  
Honolulu, Hawai'i 96813

**VAN BUREN CAMPBELL & SHIMIZU**  
Topa Financial Center, West Tower  
745 Fort Street, Suite 1950  
Honolulu, Hawai'i 96813

**PLEASE DO NOT TELEPHONE OR SEND CORRESPONDENCE TO THE COURT REGARDING THIS NOTICE**

DATED: \_\_\_\_\_, 2004

\_\_\_\_\_  
BY ORDER OF THE CIRCUIT COURT FOR  
THE SECOND CIRCUIT OF HAWAII  
THE HONORABLE SHACKLEY F.  
RAFFETTO

ALSTON HUNT FLOYD & ING  
Attorneys at Law  
A Law Corporation

PAUL ALSTON 1126-0  
GLENN T. MELCHINGER 7135-0  
18th Floor, Pacific Tower  
1001 Bishop Street  
Honolulu, Hawai'i 96813

Telephone: (808) 524-1800

ERIC A. SEITZ  
ATTORNEY AT LAW  
A LAW CORPORATION

ERIC A. SEITZ 1412-0  
LAWRENCE I. KAWASAKI 5820-0  
820 Mililani Street, Suite 714  
Honolulu, Hawai'i 96813  
Telephone: (808) 533-7434

Attorneys for Plaintiff  
GARY KIHARA

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED  
2001 MAY 31 PM 4:08

M.M. TANAKA  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

GARY KIHARA, individually and on behalf )  
of all others similarly situated )

Plaintiff, )

vs. )

SUSAN M. CHANDLER, Director of the )  
Department of Human Services, a duly )  
organized and recognized agency of the )  
State of Hawaii, in her official and )  
individual capacities, )

Defendant. )

Civil No. 00-1-2847-09 SSM  
(Class Action)

ORDER GRANTING PLAINTIFF GARY  
KIHARA'S MOTION FOR CLASS  
CERTIFICATION FILED ON APRIL 19,  
2001

DATE: May 14, 2001  
TIME: 11:00 a.m.  
JUDGE: Hon. Sabrina S. McKenna

**EXHIBIT D**

ORDER GRANTING PLAINTIFF GARY KIHARA'S MOTION FOR CLASS  
CERTIFICATION FILED ON APRIL 19, 2001

Plaintiff Gary Kihara's Motion for Class Certification, filed on April 19, 2001, came on for hearing before the Honorable Sabrina S. McKenna in her Courtroom on May 14, 2001, at 11:00 a.m. Glenn T. Melchinger, Esq. and Eric A. Seitz, Esq. appeared on behalf of Plaintiff Gary Kihara, and Deputy Attorney General Wendy J. Utsumi, appeared on behalf of Defendant. The Court has considered the memoranda and documents filed by the parties relating to the motion and heard the arguments of counsel. For good cause shown,

IT IS HEREBY ORDERED that Gary Kihara's Motion for Class Certification, filed herein on April 19, 2001, is GRANTED.

1. Under Hawai'i Rules of Civil Procedure Rules 23(b)(1)(A), 23(b)(1)(B), and 23(b)(3) the Court hereby certifies a class defined as:

All disabled persons (other than those with a primary diagnosis of substance abuse) who received General Assistance benefits and were adversely affected by Hawai'i Administrative Rules Sections 17-678-17 to 17-678-19, promulgated on July 24, 1995, effective after February 29, 1996.

2. As Plaintiff is indigent, the cost of notification of the prospective class members is to be shared by Plaintiff and Defendant in that Plaintiff will advance the cost and arrange for notification by publication in a newspaper of statewide circulation on a given day of the week for three consecutive weeks. The costs of publication will be promptly reimbursed to Plaintiff by Defendant. Defendant will bear the costs of providing individual notice in the form of a Court-approved Notice Of Pendency of Class Action to all the potential class members still on the Department of Human Services rolls for financial, medical, or food stamps assistance programs. This

method of notice is calculated to provide the best means of notice under the circumstances.

3. The Court appoints the law firm of Alston Hunt Floyd & Ing and Eric Seitz, Attorney at Law as co-lead counsel for the Plaintiff class. Papers filed with the Court shall be served upon both firms.


4. Plaintiff will submit a final proposed Notice of Pendency of Class Action ("Notice") to this Court for approval by May 30, 2001. Defendant may submit her objections to the proposed Notice in writing or in the form of her own proposed Notice by June 8, 2001.

DATED: Honolulu, Hawai'i, MAY 7 2001

SAERINA G. [unclear]

\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:



\_\_\_\_\_  
WENDY J. GTSUMI  
Deputy Attorney General  
Attorney for Defendant

\_\_\_\_\_  
In the First Circuit Court, State of Hawai'i; Civil No. 00-1-2847-09 (SSM); Gary Kihara v. Susan M. Chandler; Order Granting Plaintiff Gary Kihara's Motion for Class Certification filed on April 19, 2001

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID GARNER; PATRICIA SMITH;  
ANDREA CHRISTIE, ALLEN  
KLITERNICK; KAREN SOUZA;  
JO JENNIFER GOLDSMITH, and  
DAVID HUDSON, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

vs.

STATE OF HAWAII, DEPARTMENT  
OF EDUCATION; JOHN DOES 1-5,  
JOHN DOE CORPORATIONS 1-5,  
JOHN DOE PARTNERSHIPS 1-5, ROE  
NON-PROFIT CORPORATIONS 1-5,  
and ROE GOVERNMENTAL AGENCIES  
1-5,

Defendants.

) Civil No. 03-1-000305 [KSSA)  
) (CLASS ACTION)

) **CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

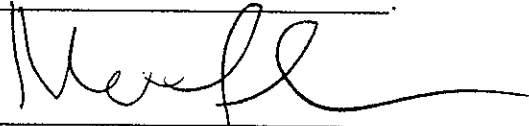
The undersigned hereby certifies that a copy of the foregoing was  
duly served upon the following parties on this date, by hand delivery, facsimile  
or depositing said copy, postage prepaid, first class, in the United States Post  
Office, at Honolulu, Hawai'i, as indicated and addressed as set forth below:

HAND  
DELIVERED FAXED MAILED  
( ✓ ) ( ) ( )

JAMES E. HALVORSON, ESQ.  
KATHRYN-JEAN T.K. TANIGUCHI, ESQ.  
WILLIAM J. WYNHOFF, ESQ.  
Deputy Attorneys General  
Department of the Attorney General  
State of Hawai'i  
235 South Beretania Street, 15th Floor  
Honolulu, HI 96813

**Attorneys for Defendant STATE OF HAWAII,  
DEPARTMENT OF EDUCATION**

Dated: Honolulu, Hawai'i, MAR 30 2005



ERIC G. FERRER  
MURRAY T.S. LEWIS (pro hac vice)  
PAUL ALSTON  
BRUCE H. WAKUZAWA  
MEI-FEI KUO  
ELIZABETH A. ROBINSON  
Attorneys for Plaintiffs, Individually and  
on Behalf of All Those Similarly Situated

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

SHEA T. BURNS-VIDLAK, a minor, by his mother and  
next friend, HONEY BURNS, and GEORGE COHN,  
Plaintiffs,  
vs.  
SUSAN CHANDLER, in her official capacity as the  
Director of the Department of Human Services of the  
State of Hawaii, and STATE OF HAWAII,  
Defendants.

CIVIL NO. 95-00892 ACK  
FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII  
AUG 07, 1996  
at 11 o'clock and 20 min. A.M.  
WALTER A.Y.H. CHINN, CLERK

**IMPORTANT NOTICE TO CLASS AND ORDER**

TO: ALL DISABLED OR BLIND PERSONS NOT ELIGIBLE FOR MEDICAID WHO WOULD  
HAVE BEEN ELIGIBLE FOR QUEST BENEFITS BETWEEN AUGUST 1, 1994 AND MARCH  
29, 1996 EXCEPT FOR THEIR DISABILITY

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, you are hereby notified:

1. The above captioned class action is pending in this Court. It was brought on behalf of a class consisting of all Hawaii residents who were ineligible for Medicaid but were eligible for medical benefits under the State of Hawaii's Department of Human Services ("DHS") QUEST program but were blind or disabled and therefore either did not apply for or applied for and were denied QUEST benefits between August 1, 1994 and March 29, 1996. The suit claims that the QUEST regulations in effect during that period violated 42 U.S.C. § 12132 and 29 U.S.C. § 729 by discriminating on the basis of disability. The suit seeks compensatory and punitive damages for the class.
2. On April 12, 1996, the Court entered an order in favor of the Plaintiffs, holding that DHS' QUEST regulations did violate the law, and that Plaintiffs are entitled to prove their claims for monetary damages.
3. On June 27, 1996, the Court entered an order certifying certain portions of this action as a class action and defining the class as set forth in paragraph 1. The portions which are included in the class action are (1) that class members have been discriminated against and have the right to seek compensatory damages for the discrimination; (2) that class members may seek punitive damages against the State of Hawaii in this lawsuit; and (3) that class members have the right to file separate actions to prove their actual damages.
4. This notice is given to you in the belief that you may be a member of the above class whose rights may be affected by this lawsuit. It should not be understood as an expression of any opinion by the Court concerning your right to recovery of damages or your obligation to support the class representatives. This notice is intended merely to advise you of the pendency of this action and of your rights with respect thereto.
5. If you are a member of the class described in paragraph 1, you will be included in the class unless you request to be excluded from such class in the manner set forth below. If you remain a member of the class, you will be bound by the judgment whether favorable or unfavorable, but if there is a recovery of punitive damages, you will be entitled to share in the proceeds minus costs, expenses and attorneys' fees which the Court may allow to be paid out of any such recovery. You will not be responsible for any Court costs to the defendants. Court may allow to be paid out of any such recovery. You will not be responsible for any Court costs to the defendants.
6. If you remain a member of the class and the Court directs that a judgment be entered in favor of the class as to punitive damages, you will not receive any monies collected pursuant to such judgment unless you complete and mail a Proof of Claim form to attorneys for the class, as discussed below, postmarked on or before December 27, 1996.
7. If you wish to file an individual action for individualized compensatory damages, whether or not you remain in the class, you should do so promptly or your claims may become barred by applicable statutes of limitation or otherwise.
8. If you wish to be excluded from the class, you must send a letter setting forth your name, present address, and a statement that you wish to be excluded from the class, postmarked on or before March 31, 1997, addressed to attorneys for the class as follows:  

Shelby Anne Floyd, Esq. or Brad L. Tanaka, Esq.  
ALSTON HUNT FLOYD & ING  
Suite 1800, 1001 Bishop Street  
Honolulu, HI 96813  
Telephone: (808) 524-1800
9. You may also write or call attorneys for the class at the above address and phone number to request a Proof of Claim form or to inquire as to any other matter concerning this notice.
10. This notice shall be mailed by Defendants, by first class mail, postmarked on or before September 27, 1996, to the last known address of all known applicants who were denied QUEST benefits.
11. This notice shall also be published on or before September 27, 1996 at least twice in the Honolulu Advertiser, twice in the Honolulu Star-Bulletin, and twice in each of the Neighbor Island newspapers of general circulation. Publication shall be in a display ad at least four columns wide. Defendants shall bear the cost of publication.
12. This notice shall be posted by Defendants in all welfare offices from the filing of this notice and order through December 27, 1996. In addition, Defendants shall request of the library system that this notice be posted for at least one month at all libraries.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, AUG 7, 1996

Alan C. Kay  
Chief United States District Judge

BURNS-VIDLAK v. CHANDLER; CIV. NO. 95-00892 ACK; IMPORTANT NOTICE TO CLASS AND ORDER

**EXHIBITE**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS individually, and on ) CIVIL NO. 05-1-0815-05 EEH  
behalf of all persons similarly situated, ) (Contract)  
 )  
Plaintiff, ) **DECLARATION OF SHELBY ANNE**  
 ) **FLOYD; EXHIBIT "1"**  
v. )  
 )  
HOUSING AND COMMUNITY ) Class Action  
DEVELOPMENT CORPORATION OF )  
HAWAII, a duly organized and )  
recognized agency of the State of )  
Hawaii; HHA WILIKINA )  
APARTMENTS, INC., DOES 1-25, )  
 )  
Defendants. )

---

**DECLARATION OF SHELBY ANNE FLOYD**

I declare that:

1. I am an attorney with the law firm of Alston Hunt  
Floyd & Ing, counsel for Plaintiff 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 am lead counsel in this matter because of my  
training and experience in the handling of complex federal and class  
action litigation. I received my J.D. degree from Columbia University  
School of Law in 1975, and was admitted to the bar in California in 1975  
and in Hawaii in 1976. I have been admitted to practice before the Ninth



Circuit Court of Appeals and the United States Supreme Court.

4. My class action experience includes being named lead counsel in a similar action, *Amone v. Housing and Community Development Corporation of Hawaii*, Civil No. 04-508 ACK, U.S. District Court for the District of Hawaii; and in *Felix v. Waihee*, Civ. No. 93-367 DAE, U.S. District Court for the District of Hawaii, *Burns-Vidlak v. Chandler*, Civ. No. 95-892 ACK, and *Sterling v. Chandler*, Civil No. 97-435 BMK, all of which involved enforcement of federal rights in complex class actions. In both *Burns-Vidlak* and *Sterling*, monetary damages were sought as well as injunctive relief.

5. My firm represents the Plaintiff class in *Garner et al v. Department of Education*, Civil No. 03-305, First Circuit Court, State of Hawaii. Attached as Exhibit "1" is a true copy of the Order Granting Class Certification issued by Judge Richard Pollack in that case.

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

Executed in Kamuela, Hawaii on

August 4, 2005

  
SHELBY ANNE FLOYD

Of Counsel:  
ERIC G. FERRER 6828-0  
Law Offices of Eric G. Ferrer  
One Main Plaza  
2200 Main Street, Suite 521  
Wailuku, HI 96793  
Tele: (808) 244-1160  
Fax: (808) 244-1138

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2004 JUL 23 AM 11:30

T. WONG  
CLERK

MURRAY T.S. LEWIS (pro hac vice)  
Lewis Law Firm  
409 Pioneer Building  
600 First Avenue  
Seattle, Washington 98104  
Telephone: (206) 223-7008  
Facsimile: (206) 223-7009

PAUL ALSTON 1126-0  
BRUCE H. WAKUZAWA 4312-0  
MEI-FEI KUO 7377-0  
ELIZABETH A. ROBINSON 7805-0  
American Savings Bank Tower  
1001 Bishop Street, 18<sup>th</sup> Floor  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1800  
Facsimile: (808) 524-4591

Attorneys for Plaintiffs, Individually and  
On Behalf of All Those Similarly Situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

DAVID GARNER; PATRICIA  
SMITH; ANDREA CHRISTIE,  
ALLEN KLITERNICK; KAREN  
SOUZA; JO JENNIFER  
GOLDSMITH; and DAVID  
HUDSON, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

STATE OF HAWAII, DEPARTMENT  
OF EDUCATION; JOHN DOES 1-  
5, JOHN DOE CORPORATIONS 1-  
5, JOHN DOE PARTNERSHIPS 1-

Civil Action No. 03-1-000305  
RWP

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR CLASS  
CERTIFICATION FILED ON  
JUNE 10, 2004**

**Hearing:**

Date: July 1, 2004

Time: 11:00 a.m.

Judge: The Honorable Richard  
W. Pollack

**EXHIBIT 1**

5, ROE NON-PROFIT  
CORPORATIONS 1-5, and ROE  
GOVERNMENTAL AGENCIES 1-5.

Defendants.

Trial Date: January 24, 2005  
The Honorable Karen S.S. Ahn

**ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION FILED ON JUNE 10, 2004**

Plaintiffs' Motion for Class Certification filed on June 10, 2004, came on for hearing before the Honorable Richard W. Pollack in his Courtroom on July 1, 2004 at 11:00 a.m. Paul Alston, Esq., Eric Ferrer, Esq. and Murray Lewis, Esq. appeared on behalf of Plaintiffs and Kathryn-Jean T.K. Taniguchi, Esq. and Jonathan A. Swanson appeared on behalf of Defendant State of Hawai'i, Department of Education.

Having considered the memoranda filed by the parties, the arguments of counsel, and the record and files in this action, and having determined that all requirements of Hawai'i Rules of Civil Procedures, Rules 23(a) and (b)(3),

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion is granted and the following class and subclass are certified pursuant to Hawai'i Rules of Civil Procedures, Rules 23(a) and (b)(3) with Plaintiffs David Garner, Patricia Smith, Andrea Christie, Allen Kliternick, Karen Souza, Jo Jennifer Goldsmith and David Hudson as class representatives as follows:

1. The Class

All persons who have served in position numbers 75100, 75101, 75102, as identified on a DOE SF-5 as a substitute

teacher for the Hawaii DOE at public schools of the State of Hawaii from November 8, 2000 through the present.


2. The Sub-Class

All persons who have served in positions numbers 75100, 75101, 75102 as identified on a DOE SF-5 as a substitute teacher for the Hawaii DOE at public schools of the State of Hawaii from July 1, 1996 through November 7, 2000.

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

\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED  
COURT

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JAMES E. HALVORSON  
KATHRYN-JEAN T.K. TANIGUCHI  
JONATHAN A. SWANSON  
Attorneys for Defendant  
STATE OF HAWAII, DEPARTMENT  
OF EDUCATION

-----  
**David Garner, et al. v. State of Hawai'i, Department of Education;**  
**Civil No. 03-1-000305 RWP; ORDER GRANTING PLAINTIFFS' MOTION**  
**FOR CLASS CERTIFICATION FILED ON JUNE 10, 2004**

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ORIGINAL

JACK WATERS individually, and on ) CIVIL NO. 05-1-0815-C  
behalf of all persons similarly situated, ) (Contract)

Plaintiff, )

) **DECLARATION OF GAVIN THORNTON;**  
) **EXHIBIT "1"**

v. )

) Class Action

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

Defendants. )

**DECLARATION OF GAVIN THORNTON**

I declare that:

1. I am an attorney with the law firm of Lawyers for Equal Justice, counsel for Plaintiff 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 received my J.D. degree from the University of Virginia School of Law in 2002, and was admitted to the bar in Washington State in 2002, and Hawaii in 2003.


4. I began working with the Legal Aid Society of Hawaii in 2002.

Since that time, the focus of my practice has been on advocating for public housing tenant rights. I have attended extensive trainings in public housing law and am a member of the Housing Justice Network, a nationwide organization of attorneys specializing in public housing law. I am especially familiar with the portions of the U.S. Housing Act applicable to the federally subsidized housing projects that are the subject of this litigation.

5. Public documents show that there are 119 units at Wilikina Apartments, and 55 units at Banyan Street Apartments, both of which are project-based Section 8 federally-assisted housing. See [http://www.hcdch.state.hi.us/proj\\_loc.html](http://www.hcdch.state.hi.us/proj_loc.html). Documents supplied by the Housing and Community Development Corporation of Hawaii have confirmed that number. See, e.g., Exhibit "1".

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

Executed in Honolulu, Hawai'i on August 9, 2005.

  
Gavin Thornton

LINDA LINGLE  
GOVERNOR



ROBERT J. HALL  
ACTING EXECUTIVE DIRECTOR

**STATE OF HAWAII**  
DEPARTMENT OF HUMAN SERVICES  
HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII  
677 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813  
FAX: (808) 587-0600

IN REPLY REFER TO:

03:PM/845

November 5, 2003

Mr. Gavin Thornton  
AmeriCorps Attorney  
75-5656 Kuakini Highway, Suite 202  
Kailua-Kona, Hawaii 96740

Dear Mr. Thornton:

Thank you for the extension verbally granted to the Housing and Community Development Corporation of Hawaii (HCDCH) to respond to your request for information of September 30, 2003.

Enclosed are the records requested as follows:

- 1) Records that indicate the type of housing program for each of the housing projects that are in or have been in the HCDCH inventory since 1997 can be found in Attachment A.
- 2) Records indicating the type of utility metering systems used for each housing project in the HCDCH inventory since 1997 can be found in Attachments B and C.
- 3) Records indicating which utilities are paid for by the residents for each housing project in the HCDCH inventory since 1997 can be found in Attachment C.
- 4) Utility allowance and surcharge schedules used from 1997 to present for rent determination purposes for each housing project in the HCDCH inventory since 1997 can be found in Attachment D.
- 5) Utility allowance and surcharge schedules used from 1997 to present for Section 8 programs administered by HCDCH since 1997 can be found in Attachment E.
- 6) Utility allowance and surcharge schedules promulgated by HCDCH since 1997 and the current schedules as of 1997 can be found in Attachment F.

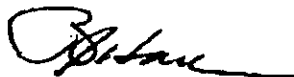
**EXHIBIT** 1

Mr. Gavin Thornton  
November 5, 2003  
Page 2

- 7) Records from 1997 to present which document the basis on which the utility allowance were revised for HCDCH projects can be found in Attachment G.
- 8) HCDCH has not reviewed utility allowances for public housing projects since 1997.
- 9) No notices were given.
- 10) No adjustments were made.
- 11) No adjustments were promulgated.
- 12) No adjustments were made.
- 13) HUD 52722-A and HUD 52722-B

If you should have any questions, please contact Mr. Michael Hee at (808) 832-5970.

Sincerely,



Robert J. Hall  
Acting Executive Director

Enclosures



FEDERAL LOW- RENT PROGRAM	HCDCH No.	City	Total Units	Unit Type					Date of Initial Occu	
				0	1	2	3	4		5
Mayor Wright Homes	1003	Honolulu	364	0	24	114	168	50	8	10/27/52
Lanakila I	1004	Hilo	150	0	26	50	54	20	0	01/01/51
Kalihi Valley Homes	1005	Honolulu	400	0	58	60	135	118	29	08/25/53
Kuhio Homes	1007	Honolulu	134	0	20	32	37	37	8	11/16/53
Palolo Valley Homes	1008	Honolulu	118	0	8	34	40	32	4	06/30/57
Kaahumanu Homes	1009	Honolulu	152	0	0	116	36	0	0	10/26/58
Kuhio Park Terrace	1010	Honolulu	614	0	48	318	206	42	0	02/02/65
Punchbowl Homes (E)	1011	Honolulu	156	0	97	58	1	0	0	12/27/60
Makua Alii (E)	1012	Honolulu	211	0	210	0	1	0	0	12/06/67
Lanakila II	1013	Hilo	50	0	4	16	20	10	0	09/14/61
Lanakila III	1014	Hilo	30	0	0	0	14	16	0	09/14/62
Wahiawa Terrace	1015	Wahiawa	60	0	12	16	24	8	0	10/01/66
David Malo Circle	1016	Lahaina	18	0	2	4	10	2	0	06/01/66
Kahekili Terrace [a & b]	1017	Waikuku	82	0	12	22	36	12	0	05/01/66
Kapaa	1018	Kapaa	36	0	6	8	12	10	0	07/19/66
Hale Hoolulu (E)	1019	Kilauea	12	8	4	0	0	0	0	04/02/74
Eleele Homes	1020	Eleele	24	0	2	6	10	6	0	06/17/66
Hui O Hanamaulu	1021	Hanamaulu	46	0	6	12	16	12	0	05/18/66
Kalaheo	1022	Kalaheo	8	0	0	2	4	2	0	04/03/67
Home Nani (E)	1023	Waimea	14	10	4	0	0	0	0	07/07/70
Kalanihula (E)	1024	Honolulu	151	60	90	0	1	0	0	01/16/69
Waimanalo [a & b]	1025	Waimanalo	41	0	0	19	18	4	0	04/14/67
Puuwai Momi	1026	Aiea	260	0	48	86	88	38	0	07/15/69
Hale Laulima	1027	Pearl City	36	0	0	20	16	0	0	03/24/81
Punahele Homes	1028	Hilo	30	0	0	30	0	0	0	04/01/67
Pomaikai Homes (E)	1029	Hilo	20	10	10	0	0	0	0	04/06/67
Koolau Village	1030	Kaneohe	80	0	8	24	36	12	0	11/05/69
Hale Hauoli (E)	1031	Honokaa	40	24	16	0	0	0	0	03/04/70
Kaimalino	1032	Kailua-Kona	40	0	10	14	14	2	0	06/28/71
Mailli I	1033	Mailli	20	0	0	7	13	0	0	01/28/69
Nanakuli	1035	Nanakuli	36	0	0	0	36	0	0	11/24/69
Paoakalani (E)	1036	Honolulu	151	90	60	0	1	0	0	12/21/70
Waipahu I	1038	Waipahu	19	0	0	12	7	0	0	04/20/70
Waipahu II	1039	Waipahu	20	0	0	15	5	0	0	01/05/70
Mailli II	1042	Mailli	24	0	0	12	0	12	0	12/15/69
Piilani Homes (E)	1044	Lahaina	42	32	10	0	0	0	0	08/17/70
Pahala (E)	1045	Pahala	24	16	8	0	0	0	0	06/14/72
Makamae (E)	1046	Honolulu	124	108	16	0	0	0	0	06/08/71
Pumehana (E)	1047	Honolulu	139	98	40	1	0	0	0	04/04/72
Kupuna Home O'Waiialua (E)	1050	Waiialua	40	24	16	0	0	0	0	02/01/77

Hale Aloha O Puna (E)	1051	Hilo	30	18	12	0	0	0	0	11/08/77
Hale Olaloa (E)	1052	Hilo	50	20	30	0	0	0	0	07/08/76
Hale Hookipa (E)	1053	Kealahakua	32	20	12	0	0	0	0	06/01/76
Hale Nana Kai O Kea (E)	1054	Kapaa	38	20	18	0	0	0	0	10/15/77
Hale Hoonanea (E)	1055	Eleele	40	24	16	0	0	0	0	07/06/76
Kauhale Nani	1056	Wahiawa	50	0	14	16	20	0	0	07/10/80
Waimaha-Sunflower	1057	Waianae	130	0	52	46	32	0	0	07/01/80
Ka Hale Kahaluu	1061	Kailua-Kona	50	0	8	12	22	8	0	08/13/81
Kalakaua Homes	1062	Honolulu	221	0	127	58	36	0	0	12/05/83
Nani Olu (E)	1063	Kealahakua	32	0	32	0	0	0	0	08/31/81
Kekaha Ha'aheo	1064	Kekaha	78	0	42	12	24	0	0	10/12/82
Salt Lake	1066	Honolulu	28	0	28	0	0	0	0	06/25/82
Kaneohe Apartments	1069	Kaneohe	24	0	5	19	0	0	0	04/19/84
Kealahakua	1070	Kailua-Kona	48	0	16	16	16	0	0	08/28/85
Noelani I	1071	Kamuela	19	0	7	12	0	0	0	04/15/83
Hookipa Kahaluu	1072	Kaneohe	56	0	8	32	16	0	0	08/18/83
Spencer House	1073	Honolulu	17	0	0	1	16	0	0	11/16/86
Noelani II	1078	Kamuela	24	0	0	0	24	0	0	11/07/88
Kawailehua - Federal	1086	Koloa	25	0	0	0	25	0	0	10/15/93
Kahale Mua - Federal	1088	Maunaloa	25	0	0	0	25	0	0	12/10/93
Kauhale O'hana	1090	Waimanalo	25	0	0	0	25	0	0	04/08/95
Kau'iokalani	1091	Waianae	50	0	0	0	50	0	0	07/26/95
Makani Kai Hale	1092	Waiehu	25	0	0	0	25	0	0	09/11/95
Makani Kai Hale II	1097c	Waiehu	4	0	0	0	4	0	0	05/01/98
Kauhale O'Hanakahi	1097a	Hilo	20	0	0	0	20	0	0	02/28/97
Ke Kumu Ekolu	1097b	Waikoloa	20	0	0	0	20	0	0	02/28/97
Kamehameha Homes	1099	Honolulu	221	0	62	123	36	0	0	08/26/97
<b>PROGRAM TOTALS</b>			<b>5398</b>	<b>582</b>	<b>1364</b>	<b>1455</b>	<b>1485</b>	<b>453</b>	<b>49</b>	
<b>STATE FAMILY LOW-RENT PROGRAM</b>	<b>HCDCH No.</b>	<b>City</b>	<b>Total Units</b>	<b>Unit Type</b>						<b>Date of Initial Occu</b>
				<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	
Hauiki Homes	2201	Honolulu	46	0	0	20	16	10	0	06/09/64
Puahala Homes I	2002	Honolulu	28	0	0	0	0	14	14	04/19/52
Puahala Homes II	2002	Honolulu	20	0	0	12	8	0	0	04/19/52
Puahala Homes III	2002	Honolulu	40	0	10	14	16	0	0	07/15/59
Puahala Homes IV	2002	Honolulu	40	0	4	32	4	0	0	07/15/59
Kawailehua - State	2004	Koloa	26	0	6	20	0	0	0	11/23/93
Kahale Mua - State	2005	Maunaloa	32	0	12	20	0	0	0	04/11/92
Lokahi	2006	Hilo	30	0	0	14	16	0	0	05/01/62
Ke Kumu Elua	2007	Waikaloa	26	0	10	16	0	0	0	10/22/95
<b>PROGRAM TOTALS</b>			<b>288</b>	<b>0</b>	<b>42</b>	<b>148</b>	<b>60</b>	<b>24</b>	<b>14</b>	

STATE ELDERS LOW-RENT PROGRAM	HCDCH No.	City	Total Units	Unit Type					Date of Initial Occu	
				0	1	2	3	4		5
Hale Po'ai (E)	4001	Honolulu	206	80	126	0	0	0	0	06/01/89
Laiola	4002	Wahiawa	108	60	48	0	0	0	0	10/01/91
Kamalu	4003a	Waipahu	109	85	24	0	0	0	0	12/01/93
Hoolulu	4003b	Waipahu	112	86	26	0	0	0	0	02/02/95
Halia Hale	4004	Honolulu	41	30	11	0	0	0	0	10/20/95
<b>PROGRAM TOTALS</b>			576	341	235	0	0	0	0	
RENTAL HOUSING SYSTEM PROGRAM	HCDCH No.	City	Total Units	Unit Type					Date of Initial Occu	
				0	1	2	3	4		5
Honokowai Kauhale	E12	Lahaina	184	0	42	112	30	0	0	09/06/90
Kamakae Vista	E13	Honolulu	228	0	90	136	0	0	0	12/16/91
Kauhale Kakaako	E15	Honolulu	268	0	116	152	0	0	0	01/01/93
Kekuifani Courts	E16	Kapolei	80	0	0	80	0	0	0	01/26/96
La'ilani	E11	Kealakehe	200	0	32	144	24	0	0	08/15/88
Pohulani (E)	E14	Honolulu	263	128	135	0	0	0	0	08/15/92
<b>PROGRAM TOTALS</b>			1221	128	415	624	54	0	0	
DURF PROGRAM	HCDCH No.	City	Total Units	Unit Type					Date of Initial Occu	
				0	1	2	3	4		5
Kamaaina Hale	L22	Kailua-Kona	128	0	0	128	0	0	0	06/15/78
Nani O Puna	904	Pahoa	31	0	3	18	12	0	0	1975
Uluwehi Apartments	N80	Waianae	60	0	10	50	0	0	0	04/15/78
<b>PROGRAM TOTALS</b>			219	0	13	194	12	0	0	
DOT PROGRAM	HCDCH No.	City	Total Units	Unit Type					Date of Initial Occu	
				0	1	2	3	4		5
Waiaka Apartments	651	Honolulu	8	0	2	6	0	0	0	02/15/76
<b>PROGRAM TOTALS</b>			8	0	2	6	0	0	0	
MISCELLANEOUS PROGRAMS	HCDCH No.	City	Total Units	Unit Type					Date of Initial Occu	
				0	1	2	3	4		5
Banyan Street Manor (S8)	651	Honolulu	55	0	12	43	0	0	0	Pur 11/90
Wilikina Apartments (S8)\	652	Wahiawa	119	0	79	40	0	0	0	Pur 5/93
Kekuifani Gardens (RD)	653	Kapolei	56	0	0	56	0	0	0	01/07/97
Ke Kumu Ekahi (LIHTC)		Waikoloa	48	0	0	48	0	0	0	11/01/93
<b>PROGRAM TOTALS</b>			278	0	91	187	0	0	0	

HOMELESS PROGRAM	HCDCH No.	City	Total Units	Unit Type					Date of Initial Occu	
				0	1	2	3	4		5
Kulaokahua	230	Honolulu	30	24	6	0	0	0	0	08/01/93
Nakolea	217	Honolulu	97	97	0	0	0	0	0	pur9/1/1992
Weinberg Village	503	Waimanalo	28	8	8	7	7	0	0	11/15/94
<b>PROGRAM TOTALS</b>			<b>155</b>	<b>129</b>	<b>14</b>	<b>7</b>	<b>7</b>	<b>0</b>	<b>0</b>	
TEACHER HOUSING PROGRAM	HCDCH No.	City	Total Units	Unit Type					Date of Initial Occu	
				0	1	2	3	4		5
Halaula	T12	Kapaau	9	0	0	6	3	0	0	
Hana "B"	T53	Hana	1	0	0	0	0	1	0	
Honoka'a	T13	Honokaa	3	0	0	1	2	0	0	
Ka'u	T14	Pahala	4	0	0	4	0	0	0	
Kaunakakai	T31	K'kai	8	0	0	6	2	0	0	
Lalakoia	T62	Lanai City	2	0	0	0	2	0	0	
Lanai City	T61	Lanai City	11	0	0	6	5	0	0	
Pahala	T15	Pahala	2	0	0	0	2	0	0	
Waimea	T17	Kamuela	10	4	4	2	0	0	0	
Wakiu A-E	T51	Hana	5	0	0	0	5	0	0	
Wakiu F	T62	Hana	1	0	0	0	1	0	0	
<b>PROGRAM TOTALS</b>			<b>56</b>	<b>4</b>	<b>4</b>	<b>25</b>	<b>22</b>	<b>1</b>	<b>0</b>	

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS individually, and on ) CIVIL NO. 05-1-0815-05 EEH  
behalf of all persons similarly situated, ) (Contract)  
 )  
Plaintiff, ) **DECLARATION OF JACK WATERS**  
 )  
v. )  
 ) Class Action  
HOUSING AND COMMUNITY )  
DEVELOPMENT CORPORATION OF )  
HAWAII, a duly organized and )  
recognized agency of the State of )  
Hawaii; HHA WILIKINA )  
APARTMENTS, INC., DOES 1-25, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**DECLARATION OF JACK WATERS**

I declare that:

1. I am familiar with and have personal knowledge of the facts stated in this Declaration.
2. I currently reside at 730 Wilikina Drive, Apartment 8-12, Wahiawa, Hawaii 96786 in the housing complex known as Wilikina Apartments.
3. I have resided at Wilikina Apartments since November 24, 1997.
4. As a resident of Wilikina Apartments, I pay my own utility bill to Hawaiian Electric Company.

5. I have no conflicts of interest with any of the members of the putative class described in the Motion for Class Certification to which this declaration is attached.

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

Executed in Honolulu, Hawai'i on 8-8-05.

Jack Waters  
JACK WATERS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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

Plaintiff, )

v. )

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

Defendants. )

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

**NOTICE OF HEARING MOTION AND  
CERTIFICATE OF SERVICE**

**NOTICE OF HEARING OF MOTION**

TO: John Wong, Esq.  
Margaret Leong, Esq.  
Office of the Attorney General  
Kekuanao'a Building, Room B-2  
465 South King St.  
Honolulu, Hawaii 96824

Attorneys for Defendants

NOTICE IS HEREBY GIVEN that the above-identified Plaintiff's  
Motion for Class Certification shall come on for hearing before the Honorable  
Eden E. Hifo, Judge of the above-entitled Court, in her courtroom in the  
Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawaii 96813, at 9:45

o'clock 10.m. on SEP. 21 2005, 2005, or as soon thereafter as  
counsel can be heard.

DATED: Honolulu, Hawai'i, August 9, 2005.

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

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing  
Motion was duly served on the above identified parties at their respective  
addresses by mail, postage prepaid.

DATED: Honolulu, Hawai'i, August 9, 2005.

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