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CRAIG NISHIMURA and
CITY AND COUNTY OF HONOLULU

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

BEVERLY BLAKE, STEPHANIE
CAMILLERI, ARLENE SUPAPO,
individually, and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

CRAIG NISHIMURA, in his official
capacity as Acting Director of the
Department of Facility Maintenance,
City and County of Honolulu; CITY
AND COUNTY OF HONOLULU, a
municipal corporation,

Defendants.

) CIVIL NO. CV08-00281 SPK LEK
)
) (Contract) (Declaratory Judgment)
) (Other Civil Actions)
) Class Action
)
) DEFENDANTS CRAIG NISHIMURA,
) IN HIS OFFICIAL CAPACITY AS
) ACTING DIRECTOR OF THE
) DEPARTMENT OF FACILITY
) MAINTENANCE, CITY AND
) COUNTY OF HONOLULU, AND
) CITY AND COUNTY OF
) HONOLULU'S ANSWER TO
) COMPLAINT FILED ON JUNE 12,
) 2008; CERTIFICATE OF SERVICE
)
) Trial Date: None

DEFENDANTS CRAIG NISHIMURA, IN HIS OFFICIAL
CAPACITY AS ACTING DIRECTOR OF THE DEPARTMENT
OF FACILITY MAINTENANCE, CITY AND COUNTY OF
HONOLULU, AND CITY AND COUNTY OF HONOLULU'S
ANSWER TO COMPLAINT FILED ON JUNE 12, 2008

Defendants, Craig Nishimura, in his official capacity as Acting Director of the Department of Facility Maintenance, City and County of Honolulu (hereinafter referred to as "Nishimura"), and City and County of Honolulu (hereinafter referred to as "City") (collectively hereinafter referred to as "City Defendants"), by and through their attorneys, Carrie K.S. Okinaga, Corporation Counsel, and Marie Manuele Gavigan, Deputy Corporation Counsel, hereby answers the Complaint filed by Plaintiffs Beverly Blake, Stephanie Camilleri, and Arlene Supapo (hereinafter referred to as "Plaintiffs") on June 12, 2008, as follows:

FIRST DEFENSE

The Complaint fails to state a claim against the City Defendants upon which relief can be granted.

SECOND DEFENSE

1. In response to paragraphs 1, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 38, 39, and 42 of the Complaint, City Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in those paragraphs, and on that basis deny the same.

2. In response to paragraph 2 of the Complaint, the City Defendants admit that the City owns Westlake Apartments and that Westlake Apartments is a

housing project subsidized by the federal “Section 8 Loan Management program.”

The City Defendants deny the remainder of the allegations as worded.

3. In response to paragraph 3 of the Complaint, the City Defendants admit that the Westlake tenants pay their own electric utility bills and that they are provided a utility allowance. The City Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the same.

4. In response to paragraphs 4, 5, 6, 7, 16, and 23, the City Defendants deny all allegations of wrongdoing contained in said paragraphs. The City Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in those paragraphs, and on that basis deny the same.

5. In response to paragraph 24 of the Complaint, City Defendants admit that Craig Nishimura is the Director of the City’s Department of Facilities Maintenance. The City Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the same.

6. In response to the allegations contained in paragraph 25 of the Complaint, the City Defendants admit that the City and County of Honolulu is a municipal corporation organized and existing pursuant to the laws of the State of Hawaii. The City Defendants admit that the City and County of Honolulu owns

Westlake apartments, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the same.

7. In response to paragraphs 26, 27, 28, 29, 30, 31, 69, and 74 of the Complaint, the City Defendants state that said allegations are statements of law and that no response is necessary. To the extent that a response is required, the City Defendants are without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in said paragraphs, and on that basis, leave Plaintiffs to their proof as to the allegations contained in said paragraphs.

8. The City Defendants admit the allegations contained in paragraph 33 of the Complaint.

9. In response to the allegations contained in paragraph 34 of the Complaint, the City Defendants admit that the City owns Westlake Apartments, but deny the allegations as worded.

10. In response to paragraphs 35, 36, and 37 of the Complaint, the City Defendants admit that Plaintiffs are residents of Westlake Apartments. The City Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraphs, and on that basis deny the same.

11. In response to the allegations contained in paragraph 40 of the Complaint, the City Defendants admit that there is a “recertification” for the Westlake tenants each year. The City Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the same.

12. In response to the allegations contained in paragraph 41 of the Complaint, the City Defendants admit that as residents of Westlake, Plaintiffs are required to pay their own utility bills. The City Defendants deny the remaining allegations contained in said paragraph as worded.

13. In response to the allegations contained in paragraph 43 of the Complaint, the City Defendants deny the allegations as worded.

14. The City Defendants deny the allegations contained in paragraphs 44, 45, 46, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 63, 64, 65, 66, 68, 70, 71, 72, and 73.

15. In response to the allegations contained in paragraphs 60, 61, and 62, the City Defendants state that the terms of the rental agreement speak for themselves and that no response is necessary. To the extent that a response is required, the City Defendants are without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations contained in said paragraphs, and on the basis, leave Plaintiffs to their proof as to the allegations contained in said paragraphs.

16. In response to the allegations contained in paragraph 32 of the Complaint, City Defendants reallege and incorporate by reference their answers to paragraphs 1 through 31 inclusive, as though fully set forth herein.

17. In response to the allegations contained in paragraph 47 of the Complaint, City Defendants reallege and incorporate by reference their answers to paragraphs 1 through 46 inclusive, as though fully set forth herein.

18. In response to the allegations contained in paragraph 52 of the Complaint, City Defendants reallege and incorporate by reference their answers to paragraphs 1 through 51 inclusive, as though fully set forth herein.

19. In response to the allegations contained in paragraph 59 of the Complaint, City Defendants reallege and incorporate by reference their answers to paragraphs 1 through 58 inclusive, as though fully set forth herein.

20. In response to the allegations contained in paragraph 67 of the Complaint, City Defendants reallege and incorporate by reference their answers to paragraphs 1 through 66 inclusive, as though fully set forth herein.

21. The City Defendants deny each and every other allegation set forth in the Complaint that is not specifically admitted, denied, or otherwise responded to herein.

THIRD DEFENSE

The City Defendants' alleged conduct was not the proximate nor the legal cause of Plaintiffs' alleged injuries and/or damages as the alleged conduct was not

a substantial factor in causing the injuries and/or damages Plaintiffs allegedly suffered.

FOURTH DEFENSE

The City Defendants owed no duty to Plaintiffs. If, however, the City Defendants did owe a duty to Plaintiffs, Plaintiffs' alleged injuries and/or damages were not the result of a breach of any duty owed.

FIFTH DEFENSE

If Plaintiffs sustained any injuries and/or damages as alleged in the Complaint, such injuries and/or damages were the result of their own or another third-party's wrongful, intentional, reckless and malicious misconduct.

SIXTH DEFENSE

The City Defendants give notice that they may rely on the defense of failure to join indispensable parties.

SEVENTH DEFENSE

The City Defendants give notice that they may rely on the defense that the applicable statute of limitations period has expired.

EIGHTH DEFENSE

Nishimura is not liable for Plaintiffs' alleged injuries and/or damages on the basis of qualified immunity.

NINTH DEFENSE

Nishimura acted at all times in good faith, without malice, and within the scope of his duties as an employee of the City.

TENTH DEFENSE

The City Defendants give notice that they may rely on the defenses of laches, waiver, and/or estoppel.

ELEVENTH DEFENSE

The City Defendants are not engaged in a trade or commerce and therefore are not subject to liability under HRS Chapter 480.

TWELFTH DEFENSE

The City is not subject to liability under the provisions of 42 U.S.C. § 1983.

THIRTEENTH DEFENSE

The City Defendants are not liable for Plaintiffs' alleged injuries and/or damages on the basis that there was no City policy or custom that violated Plaintiffs' civil rights.

FOURTEENTH DEFENSE

Plaintiffs' rights, privileges and immunities secured under the laws and the constitutions of the United States and the State of Hawaii have not been violated by any alleged action of the City Defendants.

FIFTEENTH DEFENSE

The City Defendants, by law, cannot be held liable for treble damages.

SIXTEENTH DEFENSE

Plaintiffs' rights, privileges and immunities secured under the laws of the United States have not been violated by any alleged action of the City Defendants.

SEVENTEENTH DEFENSE

The City Defendants reserve the right to assert any other affirmative defenses or to rely on any other matter constituting an avoidance pursuant to Rule 8(c) of the Federal Rules of Civil Procedure and to seek leave to amend their Answer to allege any such defenses and to assert any other defenses, claims and counterclaims as discovery and the evidence may merit.

WHEREFORE, the City Defendants pray as follows:

- A. That the Complaint herein be dismissed with prejudice;
- B. That they be awarded their costs and attorneys' fees;
- C. That they be given such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, July 24, 2008.

CARRIE K.S. OKINAGA
Corporation Counsel

By /s/Marie Manuele Gavigan
MARIE MANUELE GAVIGAN
Deputy Corporation Counsel

Attorney for Defendants
CRAIG NISHIMURA and
CITY AND COUNTY OF HONOLULU