

CARRIE K.S. OKINAGA, 5958
Corporation Counsel

D. SCOTT DODD, 6811
Deputy Corporation Counsel
530 S. King Street, Room 110
City and County of Honolulu
Honolulu, Hawai'i 96813
Telephone: (808) 768-5129
Facsimile: (808) 768-5105
Email address: dsdodd@honolulu.gov

Attorneys for Defendant
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 LEK
)
) (Contract) (Declaratory Judgment)
) (Other Civil Actions)
) Class Action
)
) DEFENDANT CITY AND COUNTY
) OF HONOLULU'S MOTION FOR
) LEAVE TO FILE THIRD-PARTY
) COMPLAINT AGAINST HAWAIIAN
) PROPERTIES, LTD.;
) MEMORANDUM IN SUPPORT OF
) MOTION; DECLARATION OF D.
) SCOTT DODD; EXHIBIT "A";
) CERTIFICATE OF SERVICE
)
) Trial Date: December 15, 2009
) Judge: Leslie E. Kobayashi

**DEFENDANT CITY AND COUNTY OF HONOLULU'S
MOTION FOR LEAVE TO FILE THIRD-PARTY
COMPLAINT AGAINST HAWAIIAN PROPERTIES, LTD.**

Defendant CITY AND COUNTY OF HONOLULU (hereinafter “CITY”), by and through its attorneys, Carrie K.S. Okinaga, Corporation Counsel, and D. Scott Dodd, Deputy Corporation Counsel, hereby moves this Court pursuant to Rule 14 of the Federal Rules of Civil Procedure for an Order granting leave to the City to file a Third Party Complaint against HAWAIIAN PROPERTIES, LTD (“HPL”). The City’s proposed Third Party Complaint Against HPL is attached to the motion as Exhibit “A”.

This motion is based upon Fed. R. Civ. P. Rule 14 and this Court’s Amended Rule Scheduling Conference Order of February 18, 2009, and is based upon the Memorandum in Support of Motion, the Declaration of D. Scott Dodd, and the records and files herein.

DATED: Honolulu, Hawai‘i, May 15, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By /s/D. Scott Dodd
D. SCOTT DODD
Deputy Corporation Counsel

Attorney for Defendant
CITY AND COUNTY OF HONOLULU

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

BEVERLY BLAKE, STEPHANIE	)	CIVIL NO. CV08-00281 LEK
CAMILLERI, ARLENE SUPAPO,)	
individually, and on behalf of all	)	(Contract) (Declaratory Judgment)
persons similarly situated,	)	(Other Civil Actions)
	)	Class Action
Plaintiffs,)	
	)	MEMORANDUM IN SUPPORT OF
vs.	)	MOTION
)	
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.)	
)	

MEMORANDUM IN SUPPORT OF MOTION

I. STATEMENT OF FACTS:

On June 12, 2008, Plaintiffs Beverly Blake, Stephanie Camilleri, and Arlene Supapo (“Plaintiffs”) instituted legal action against Craig Nishimura in his official capacity as Acting Director of the Department of Facility Maintenance (“Nishimura”)¹ and the City and County of Honolulu (“City”) (collectively referred to as the “City Defendants”) alleging, among other things, that their civil rights

¹ Mr. Nishimura has been dismissed by stipulation of the parties.

have been violated as a result of the City's alleged failure to increase utility allowances and alleged failure to calculate rental amounts properly. Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals, and they seek damages and declaratory relief from the Court.

During all relevant times, HAWAIIAN PROPERTIES, LTD. ("HPL") was and has been the property manager for Westlake Apartments. The instant lawsuit alleges matters for which HPL has undertaken contractual obligations on behalf of the City.

In 2003, HPL entered into a contract with the City, known as Contract No. 14214 ("Contract"), to manage the City-owned housing project known as Westlake Apartments and located at 3139 Ala Ilima Street, Honolulu, Hawaii. This Contract was extended via letter dated July 18, 2005, again via letter dated September 14, 2006, and finally on December 21, 2007. Under the "Minimum Specifications" portions of the contract, Contract No. 14214 provides as follows:

A. GENERAL

1. Requirements and Instructions.

Westlake Apartments is subject to a mortgage insured by the Federal Department of Housing and Urban Development (HUD) under Section 221-D-4 of the National Housing Act. This Project also has a Section 8 Contract with HUD to provide decent, safe, and sanitary housing to low and moderate income families at reasonable rents. Because of this Federal involvement in this Project, the Contractor must meet HUD and DFM requirements listed below:

...

b. HUD Requirements. In performing its duties under this Management Agreement, [HPL] will comply with all pertinent requirements of the Regulatory Agreement, the Section 8 Contract and the directives of the Secretary [of HUD]. In the event any instruction from the [City] is in contravention of such requirements, the latter will prevail.

c. [HPL] must have previous experience managing HUD and HUD-insured projects, as well as Section 8 housing assistance programs, or shall present evidence reflecting expertise to implement HUD and HUD-insured projects.

...

e. [HPL] shall have the capability to provide complete management services, including but not limited to physical maintenance of the premises, establishing and collecting rents according to the procedures of the Section 8 program, depositing all Project incomes into Project bank accounts as specified by DFM and HUD, making all Project disbursements from the Project accounts and providing accounting and reporting services according to procedures specified by DFM and HUD (emphasis added).

Section P of the Minimum Specifications that are incorporated into the

Contract relates to insurance and provides as follows:

[HPL] shall obtain and maintain all at times on behalf of the City comprehensive liability insurance covering the Project with an insurance company or companies authorized to do business in the State of Hawaii, for the term of the contract, with minimum limits of not less than \$1,000,000 for injury to one person and \$2,000,000 for injury to more than one person, in any one accident or occurrence. [HPL] shall name the City as an ADDITIONAL INSURED party in the insurance policy or policies and shall submit either duplicate copies of the policies or the current certificates of such insurance.

Section Q of the Minimum Specifications that are incorporated into the

Contract relates to indemnification and provides as follows:

[HPL] shall indemnify and save the City harmless from all claims for losses, damages or liabilities occasioned wholly or in part by acts or omissions of [HPL] (emphasis added).

Section S of the Minimum Specifications that are incorporated into the Contract relates to compliance with government order and provides as follows:

[HPL] shall take actions as may be necessary to comply promptly with any and all governmental order or other requirements affecting the Project, whether imposed by Federal, State, or County authority, subject however, to the limitation stated in section H with respect to repairs. Nevertheless, [HPL] shall take no action so long as the City is contesting, or has affirmed its intention to contest, any such order or requirement. [HPL] will notify the City in writing of all notices or such orders or other requirements, within forty-eight hours from the time of their receipt.

Additionally, the Contract contains a section entitled “GENERAL TERMS AND CONDITIONS FOR GOODS AND SERVICES FOR THE CITY AND COUNTY OF HONOLULU.” Paragraph 15 of that section includes an additional clause relating to indemnification of the City by HPL:

15. **INDEMNITY.** [HPL] shall indemnify, hold harmless and defend the City and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgments of any character that may be brought against the City by whomsoever, **on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by [HPL]**, or any of its officers, employees, subcontractors, assignees, or representatives, in the performance of the contract.

In their Complaint filed June 12, 2008, Plaintiffs allege as follows:

26. Under the Brook Amendment to the United States Housing Act, rent, including utilities, for tenants residing in Section 8 Loan Management developments cannot exceed a certain percentage of a tenant’s income. 42 U.S.C. § 1437a(a)(1). See also 24 C.F.R. § 5.603(b).

27. The owner of a Section 8 Loan Management development receives a certain amount of rent to operate each unit (called the “contract rent”), which is set by a “Housing Assistance Payment Contract” between the owner and the U.S. Department of Housing and Urban Development (“HUD”). 24 C.F.R. § 886.110. To ensure that the owner receives the full contract rent for operation of a subsidized unit, HUD pays the owner the difference between the tenant’s portion of the rent and the contract rent. 24 C.F.R. § 886.118.

28. To ensure that tenants’ rent plus utilities do not exceed the Brooke Amendment’s rent ceiling when tenants are directly responsible for the payment of utility services (i.e., where the tenant must pay a utility provider directly), HUD regulations require that tenants be provided with a “utility allowance.” See 24 C.F.R. § 5.603(b).

29. 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. [24 C.F.R. § 5.603(b)].

30. Each time the contract rents for a Section 8 Loan Management development are adjusted, the owner must complete and submit an analysis of the adequacy of utility allowances in light of the relevant changes since the allowances were last adjusted (e.g., changes in utility rates). See, e.g., 24 C.F.R. § 886.126.

31. 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. § 886.126.

See, Plaintiffs’ Complaint, ¶¶ 26 – 31.

Plaintiffs further allege that they, residents of the Westlake project, pay their own electric utilities, and have been provided a monthly utility allowance in the amount of \$40.00. Id., ¶ 41. Plaintiffs allege that even though utility rates have

increased in excess of 10 percent since the utility allowances were last updated, Defendants have failed to increase the utility allowance for Westlake. Id., ¶ 42. Plaintiffs allege that Defendants have failed to complete and submit an analysis of the adequacy of utility allowances in connection with Defendants' requests for adjustments of the contract rents for Westlake. Id., ¶ 43.

Plaintiffs allege that as a result of this, they have been required to pay amounts for utility bills in excess of the utility allowance provided and thereby have been forced to pay an amount for rent in excess of 30% of their income. Id., ¶ 44. Plaintiffs claim that Defendants repeatedly falsely certified that the rents for Plaintiff were calculated in accordance with HUD regulations and procedures. Id., ¶ 45. Plaintiffs claim they therefore paid rents in excess of what they should have paid. Id., ¶ 46.

Pursuant to the Contract, calculation of appropriate tenant rent was HPL's responsibility. HPL was tasked with being cognizant of all applicable Section 8 and HUD requirements, and it was HPL's responsibility to ensure that tenant rents did not exceed the rent ceiling allowed by the Brooke Amendment. It was HPL's duty to determine if the utility allowance was appropriate in the calculation of the tenants' rent, and to request an increase in the utility allowance to ensure that the City was in compliance with the Brooke Amendment and all other applicable laws.

II. APPLICABLE LAW:

FRCP 15(a) governs amendments to pleadings and provides that “leave shall be freely granted when justice so requires.” See, DCD Programs, Ltd. V. Leighton, 833 F.2d 183 (9th Cir. 1987). Moreover, this Court’s Amended Scheduling Order of February 18, 2009 provides that the parties have until May 15, 2009 to seek leave to add additional parties. The proposed third-party defendant is on notice of the City’s claim against it in that the City tendered its defense and indemnity to HPL and its insurance carrier via letter dated October 22, 2008. HPL’s insurance carrier, Nautilus Insurance Group, appointed counsel (David M. Louie, Esq.) to represent the City; however, via letter dated April 29, 2009, Nautilus stated that the allegations in Plaintiffs’ Complaint are not covered under the insurance policy and that Nautilus would not be indemnifying the City as a result of those allegations. Therefore, the City seeks to add HPL as a Third Party Defendant to enforce its contractual obligations of indemnity to the City.

Finally, this amendment will not prejudice the Plaintiffs as the motion for leave is within the time provided by this court’s orders and will in fact bring before the court those party whose actions caused the City to face potential liability to Plaintiffs.

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IV. CONCLUSION:

Based on the foregoing information, the Defendant City respectfully moves that it be allowed to file a Third Party Complaint against Hawaiian Properties, Ltd.

DATED: Honolulu, Hawai'i, May 15, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By /s/D. Scott Dodd
D. SCOTT DODD
Deputy Corporation Counsel

Attorney for Defendant
CITY AND COUNTY OF HONOLULU

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

BEVERLY BLAKE, STEPHANIE	)	CIVIL NO. CV08-00281 LEK
CAMILLERI, ARLENE SUPAPO,)	
individually, and on behalf of all	)	(Contract) (Declaratory Judgment)
persons similarly situated,	)	(Other Civil Actions)
	)	Class Action
Plaintiffs,)	
	)	DECLARATION OF D. SCOTT
vs.	)	DODD
)	
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.)	
)	

DECLARATION OF D. SCOTT DODD

D. SCOTT DODD, hereby declares under penalty of perjury that:

1. I am an attorney licensed to practice law in the Hawaii State courts and the United States District Court for the District of Hawaii.

2. I am a Deputy Corporation Counsel with the Department of the Corporation Counsel, and one of the attorneys representing Defendant City and County of Honolulu in the above-entitled action.

3. I have personal knowledge of and am competent to make this Declaration concerning the matters set forth below.

4. I spoke with Plaintiffs' counsel Jason H. Kim, Esq. regarding the City's desire to file a third party complaint against Hawaiian Properties, Ltd. Mr. Kim stated that he did not object to the City filing a third party complaint against Hawaiian Properties, Ltd., but did not want any undue delay in the possible settlement or other resolution of this matter.

5. Attached hereto as Exhibit "A" is a true and accurate copy of the proposed Third-Party Complaint and Summons. Attached to proposed Third-Party Complaint as Exhibit "1" is a true and accurate copy of the Complaint filed on June 12, 2008.

I, D. SCOTT DODD, DO DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Honolulu, Hawaii, May 15, 2009.

D. SCOTT DODD

EXHIBIT "A"

**DEFENDANT CITY AND COUNTY
OF HONOLULU'S THIRD-PARTY
COMPLAINT AGAINST THIRD-
PARTY DEFENDANT HAWAIIAN
PROPERTIES, LTD.; EXHIBIT "1";
SUMMONS**

CARRIE K.S. OKINAGA, 5958
Corporation Counsel

D. SCOTT DODD, 6811
Deputy Corporation Counsel
530 S. King Street, Room 110
City and County of Honolulu
Honolulu, Hawai'i 96813
Telephone: (808) 768-5129
Facsimile: (808) 768-5105
Email address: dsdodd@honolulu.gov

Attorneys for Defendant
and Third-Party Plaintiff
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
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CRAIG NISHIMURA, in his official
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) COMPLAINT AGAINST THIRD-
) PARTY DEFENDANT HAWAIIAN
) PROPERTIES, LTD.; EXHIBIT "1";
) SUMMONS
)
) Trial Date: December 15, 2009
) Judge: Leslie E. Kobayashi
)
)
)
)

CITY AND COUNTY OF)
HONOLULU,)
)
Third-Party Plaintiff,)
)
vs.)
)
HAWAIIAN PROPERTIES, LTD.)
)
Third-Party Defendants.)
)
)
)

DEFENDANT AND THIRD PARTY PLAINTIFF CITY AND COUNTY OF HONOLULU’S THIRD PARTY COMPLAINT AGAINST THIRD-PARTY DEFENDANT HAWAIIAN PROPERTIES, LTD.

Defendant and Third-Party Plaintiff CITY AND COUNTY OF HONOLULU (hereinafter “CITY”), by and through its attorneys, Carrie K.S. Okinaga, Corporation Counsel, and D. Scott Dodd, Deputy Corporation Counsel, for its Third-Party Complaint against Third-Party Defendants HAWAIIAN PROPERTIES, LTD. (“HPL”), and ROE DEFENDANTS 1-100 alleges and avers as follows:

PARTIES

1. Defendant and Third-Party Plaintiff CITY AND COUNTY OF HONOLULU (“CITY”) is a municipal corporation duly organized under the laws of the State of Hawaii and known as City and County of Honolulu, State of

Hawaii. CITY is deemed a resident of the City and County of Honolulu, State of Hawaii.

2. CITY is informed and believes, and based thereon alleges that Third-Party Defendant HPL is a Hawaii corporation, with its principal place of business in the City of Honolulu, State of Hawaii.

3. CITY is ignorant of the true names and capacities of Third-Party Defendants sued herein as ROE DEFENDANTS 1-100, and therefore sues these Third-Party Defendants by such fictitious names. The CITY will amend this Third-Party Complaint to allege their true names and capacities when ascertained.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343(a)(3), 28 U.S.C. §1367, and 42 U.S.C. §1983. Venue is appropriate pursuant to 28 U.S.C. §1391(b).

FACTUAL ALLEGATIONS

5. In the Complaint filed in this case by Plaintiffs Beverly Blake, Stephanie Camilleri and Arlene Supapo, individually, and on behalf of all persons similarly situated on June 12, 2008, Plaintiffs allege that, among other things, their civil rights have been violated as a result of the CITY's alleged failure to increase utility allowances and alleged failure to calculate rental amounts properly.

Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals, and they seek damages and declaratory relief from the Court.

A copy of the Complaint is attached hereto as Exhibit "1" and incorporated herein by reference.

6. The CITY is informed and believes and thereon alleges that each of the named Third-Party Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiffs' damages as alleged in their Complaint were proximately caused by such Third-Party Defendants.

7. CITY is informed and believes that during all relevant times, HAWAIIAN PROPERTIES, LTD. ("HPL") was and has been the property manager for Westlake Apartments. The instant lawsuit alleges matters for which HPL has undertaken contractual obligations on behalf of the City.

8. In 2003, HPL entered into a contract with the CITY, known as Contract No. 14214 ("Contract"), to manage the City-owned housing project known as Westlake Apartments and located at 3139 Ala Ilima Street, Honolulu, Hawaii. This Contract was extended via letter dated July 18, 2005, again via letter dated September 14, 2006, and finally on December 21, 2007.

9. The Contract states that the Westlake Apartment project ("the Project") is subject to a mortgage insured by the Federal Department of Housing and Urban Development (HUD) under Section 221-D-4 of the National Housing

Act. The Project also has a Section 8 Contract with HUD to provide decent, safe, and sanitary housing to low and moderate income families at reasonable rents.

Because of this Federal involvement in this Project, [HPL] must meet HUD and DFM requirements listing in the Contract.

10. The Contract requires HPL to comply with all pertinent requirements of the Regulatory Agreement, the Section 8 Contract and the directives of the HUD Secretary. The Contract further requires HPL to have previous experience managing HUD and HUD-insured projects, as well as Section 8 housing assistance programs, or shall present evidence reflecting expertise to implement HUD and HUD-insured projects.

11. The Contract requires that HPL shall have the capability to provide complete management services, including but not limited to physical maintenance of the premises, establishing and collecting rents according to the procedures of the Section 8 program, depositing all Project incomes into the Project bank accounts as specified by HUD, making all Project disbursements from the Project accounts and providing accounting and reporting services according to procedures specified by HUD.

12. The Contract requires HPL to obtain and maintain at all times on behalf of the CITY comprehensive liability insurance, and to name the CITY as an additional insured in the insurance policy or policies.

13. The Contract provides that HPL shall indemnify and save the CITY harmless from all claims for losses, damages or liabilities occasioned wholly or in part by acts or omissions of HPL.

14. The Contract provides that HPL shall take any and all actions as may be necessary to comply promptly with any and all governmental order or other requirements affecting the Project, whether imposed by Federal, State or County authority.

15. The Contract provides that HPL shall indemnify, hold harmless and defend the CITY and its officers, employees, agents and representatives from all suits, actions, claims damages, and judgments of any character that may be brought against the CITY by whomsoever, on account of any injuries or damages sustained by any person or property, due to the negligent acts or omissions by HPL, or any of its officers, employees, subcontractors, assignees, or representatives, in the performance of the Contract.

16. In their Complaint, Plaintiffs' allege that under the Brook Amendment to the U.S. Housing Act, rent, including utilities, for tenants residing in Section 8 Loan Management developments cannot exceed a certain percentage of a tenant's income. Also, that the owner of a Section 8 Loan Management development receives a certain amount of rent to operate each unit (called the "contract rent"), which is set by a "Housing Assistance Payment Contract" between the owner and

HUD. Further, to ensure that the owner receives the full contract rent for operation of a subsidized unit, HUD pays the owner the difference between the tenant's portion of the rent and the contract rent.

17. Plaintiffs' allege that to ensure that tenants' rent plus utilities do not exceed the Brooke Amendment's rent ceiling when tenants are directly responsible for the payment of utility services (i.e., where the tenant must pay a utility provider directly), HUD regulations require that tenants be provided with a "utility allowance." Also that 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. Further, each time the contract rents for a Section 8 Loan Management development are adjusted, the owner must complete and submit an analysis of the adequacy of utility allowances in light of the relevant changes since the allowances were last adjusted (e.g., changes in utility rates). Finally, 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, Complaint, ¶¶26 – 31.

18. Plaintiff further allege they, residents of the Westlake Apartment Project, pay their own electric utilities, and have been provided a monthly utility allowance in the amount of \$40.00. Plaintiffs allege that even though utility rates

have increased in excess of 10 percent since the utility allowances were last updated, the CITY has failed to increase the utility allowances for Westlake.

Plaintiffs allege that the CITY has failed to complete and submit an analysis of the adequacy of utility allowances in connection with the CITY's requests for adjustments of the contract rents for Westlake. See, Complaint, ¶¶41 – 43.

19. Plaintiffs allege that as a result of this, they have been required to pay amounts for utility bills in excess of the utility allowance provided and thereby have been forced to pay an amount for rent in excess of 30% of their income. Plaintiffs allege that the CITY “repeatedly falsely” certified that the rents for Plaintiffs were calculated in accordance with HUD regulations and procedures. Plaintiffs allege that therefore they paid rents in excess of what they should have paid. See, Complaint ¶¶ 44 – 46.

20. Pursuant to the Contract, calculation of appropriate tenant rent at the Westlake Project was HPL's responsibility. HPL was required to be familiar with all applicable Section 8 and HUD requirements, and it was HPL's responsibility to ensure that tenant rents did not exceed the rent ceiling allowed by the Brooke Amendment. It was HPL's duty to determine if the utility allowance was appropriate in the calculation of the tenants' rent, and to request an increase in the utility allowance if necessary to ensure that the CITY was in compliance with the Brooke Amendment to the U.S. Housing Act and all other applicable laws.

COUNT I

(Breach of Contract-As Against Defendant HAWAIIAN PROPERTIES, LTD.)

21. The CITY realleges and incorporates herein by reference all of the allegations contained in paragraphs 1 through 20, inclusive, as though fully set forth herein.

22. The aforementioned acts and/or omissions of HPL constitute a breach of the aforementioned Contract for the management of the Westlake Apartment Project, as a result of HPL's not performing its duties and responsibilities, as a result of HPL's failing to calculate an appropriate tenant rent in accordance with applicable laws, rules and regulations, as a result of HPL's failing to ensure that tenant rent did not exceed the rent ceiling allowed by the Brooke Amendment, and as a result of other breaches to be proven at trial.

23. As a result of said breach(es), the CITY has been forced to incur costs and fees in defense of the present action and has suffered damages in an amount to be proven at trial.

COUNT II

(Indemnity/Contribution-As Against All Third-Party Defendants)

24. CITY realleges and incorporates by reference the allegations of Paragraph 1 through 23 above as fully set forth herein.

25. If Plaintiffs' sustained any injuries and/or damages, it was due to the negligent or otherwise tortious conduct of the Third-Party Defendants and not the CITY.

26. If the CITY engaged in any tortious conduct, such tortious conduct was passive and secondary and the tortious conduct of the Third-Party Defendants was active and primary in causing Plaintiffs' injuries, and therefore the CITY is entitled to full indemnity and/or contribution from the Third-Party Defendants.

COUNT IV

(Indemnity/Breach of Contract-As Against HAWAIIAN PROPERTIES, LTD.)

27. CITY realleges and incorporates by reference the allegations of Paragraphs 1 through 26 above as fully set forth herein.

28. At the time of the incident alleged in Plaintiff's Complaint, Contract No. 14214 between CITY and HPL was in effect. Said Contract provides:

[HPL] shall indemnify and save the City harmless from all claims for losses, damages or liabilities occasioned wholly or in part by acts or omissions of [HPL].

29. The same such Contract also provides that:

INDEMNITY. [HPL] shall indemnify, hold harmless and defend the City and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgments of any character that may be brought against the City by whomsoever, on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by [HPL], or any of its officers, employees, subcontractors, assignees, or representatives, in the performance of the contract.

30. The CITY has made a demand on Third-Party Defendant HPL for indemnification and defense of the CITY in the instant lawsuit.

31. Any failure of Third-Party Defendant HPL to indemnify and defend the CITY in the instant lawsuit constitutes a breach of contract.

32. The CITY has suffered damages and will continue to suffer damages as a result of Third-Party Defendant HPL's breach of contract as alleged herein.

COUNT IV

(Declaratory Relief)

33. The CITY realleges and incorporates by reference the allegations of paragraphs 1 through 32 above as if fully set forth herein.

34. Contract No. 14214 between CITY and HPL sets forth the terms and conditions regarding indemnity and defense for the CITY.

35. The CITY avers that Third-Party Defendant HPL has the duty and obligation to provide indemnity and defense for the City in the instant lawsuit.

36. A controversy exists between the CITY and Third-Party Defendant HPL with regard to the rights and obligations pursuant to said agreement.

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PRAYER FOR RELIEF

WHEREFORE the Defendant and Third-Party Plaintiff CITY prays for judgment on its Third-Party Complaint as against Third Party Defendants, as follows:

A. That Plaintiffs' aforementioned Complaint be dismissed against the CITY and that the CITY be awarded its costs and attorneys' fees;

B. That if Plaintiffs' are entitled to any judgment, such judgment be rendered solely against Third-Party Defendants HAWAIIAN PROPERTIES, LTD., and/or ROE DEFENDANTS 1-100, and not against the CITY;

C. That should it be determined that the CITY and Third-Party Defendant HAWAIIAN PROPERTIES, LTD. and/or Third-Party Defendants ROE DEFENDANTS 1-100 are liable herein, that the CITY have judgment against HAWAIIAN PROPERTIES, LTD. and/or ROE DEFENDANTS 1-100 and be indemnified in full for the amount of any judgment in favor of Plaintiffs against which the CITY may pay, including costs and expenses of suit;

D. That if it be determined that both CITY and any Third-Party Defendant were negligent or the acts and/or omissions of both were otherwise wrongful with respect to the events described in Plaintiffs' Complaint, the relative and comparative degree of fault be determined for each party in accordance with

Section 663-10.5 and 663-31 of the Hawaii Revised Statutes, as amended, and judgment be rendered accordingly; and

E. That the Court award compensatory damages to CITY as a result of HAWAIIAN PROPERTIES, LTD.'s breach of contract.

F. That if Plaintiffs should recover judgment against CITY, that CITY have judgment against HAWAIIAN PROPERTIES, LTD. for the entire amount of any such judgment against the CITY, together with costs, attorneys' fees and expenses of this action.

G. That this Court determine and declare that HAWAIIAN PROPERTIES, LTD. has a duty to defend and/or indemnify the CITY for the claims set forth in the instant lawsuit.

H. That the CITY be awarded such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawai'i, May 15, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By /s/D. Scott Dodd
D. SCOTT DODD
Deputy Corporation Counsel

Attorney for Defendant and
Third-Party Plaintiff
CITY AND COUNTY OF HONOLULU

SPK

ORIGINAL

Of Counsel:
LAWYERS FOR EQUAL JUSTICE

VICTOR GEMINIANI 4354
WILLIAM H. DURHAM 8145
GAVIN K. THORNTON 7922
PO Box 37952
Honolulu, HI 96837
Telephone: (808) 779-1744
Email: victor@lejehawaii.org
william@lejehawaii.org
gavin@lejehawaii.org

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
JUN 12, 2008
at 1 o'clock and 2 min. P.M.
SUE BEITIA, CLERK

ALSTON HUNT FLOYD & ING

PAUL ALSTON 1126
JASON KIM 7128
American Savings Bank Tower
1001 Bishop St., 18th Floor
Honolulu, HI 96813
Telephone: (808) 524-1800
Fax: (808) 524-4591
Email: palston@ahfi.com
jkim@ahfi.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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 Action)
) Class Action
)
) **COMPLAINT; DEMAND FOR JURY**
) **TRIAL; EXHIBITS 1-2; SUMMONS**

COMPLAINT

I. INTRODUCTION

1. The CITY AND COUNTY OF HONOLULU and the other named defendants have been overcharging the low-income tenants of Westlake Apartments for years, unbeknownst to the tenants who relied on Defendants' false certifications that they calculated tenant rents in accordance with the federal rules that govern the Westlake Apartments complex.

2. Defendants own Westlake Apartments, a 95-unit low-income housing project subsidized by the federal "Section 8 Loan Management program" ("Westlake"). Under the program, the rent charged to tenants, including utilities, generally cannot exceed 30% of a tenant's income.

3. Where--as at Westlake--tenants pay their own utilities, landlords must provide utility allowances to cover the costs of reasonable utility consumption. To ensure that the allowances remain adequate to cover the tenants' utility costs, the allowances must be periodically reviewed. The allowances must be adjusted whenever utility rates have increased by 10%.

4. Although utility rates have skyrocketed during recent years, Defendants have failed to adjust the allowances at Westlake apartments for a least a decade. As a result, the tenants of Westlake have been significantly overcharged.

5. During that period, Defendants have repeatedly falsely certified to Westlake tenants that their rents were

properly calculated, leading tenants to continually pay excessive rents.

6. Plaintiffs, for themselves and the class of tenants they represent, seek restitution and damages, including but not limited to repayment of rent overcharges resulting from Defendants' violations of law and breaches of tenants' rental agreements. They also seek treble damages for Defendants' unfair and deceptive actions in repeatedly overcharging residents for rent and falsely certifying that their rents were properly calculated.

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

II. JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

9. This Court further has jurisdiction under 42 U.S.C. § 1983 to redress the deprivation, under federal law, of rights secured by the U.S. Housing Act.

10. This Court has supplemental jurisdiction under 28

U.S.C. § 1367 over Plaintiffs' state law claims.

11. Venue is proper in this District under 28 U.S.C. § 1391(b) on the grounds that (a) all defendants reside in this District; and (b) the violations of law described herein occurred in this District and relate to property located in this District.

12. There is an actual controversy between Plaintiffs and Defendants within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

III. PARTIES

13. Plaintiff BEVERLY BLAKE, aged 76, is a tenant of Westlake and a citizen and resident of the State of Hawai'i. Plaintiff BEVERLY BLAKE brings this action on her own behalf and, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of all others who are similarly situated.

14. Plaintiff STEPHANIE CAMILLERI is a tenant of Westlake and a citizen and resident of the State of Hawai'i. Plaintiff STEPHANIE CAMILLERI brings this action on her own behalf and, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of all others who are similarly situated.

15. Plaintiff ARLENE SUPAPO is a tenant of Westlake and a citizen and resident of the State of Hawai'i. Plaintiff ARLENE SUPAPO brings this action on her own behalf and, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of all others who are similarly situated.

16. Plaintiffs seek to represent a class of present and past Westlake tenants who paid excessive rent because Defendants failed properly and timely to update the Westlake utility allowances.

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

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

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

20. Plaintiff will fairly and adequately represent the interest of the class. Plaintiffs know of no conflicts of interest among members of the class.

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

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

a. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

b. Defendants have acted on grounds generally applicable to the class, making appropriate injunctive or declaratory relief with respect to the class as a whole.

c. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

23. Questions of law and fact common to the Plaintiff class include:

a. Whether the Defendants failed to recalculate utility allowances where a utility rate change would have resulted in a cumulative increase of 10 percent or more in the most recently approved utility allowance;

b. The extent of the increases in utility rates since Defendants last adjusted the allowances;

c. The amounts of the adjustments that should have been made to correspond with utility rate increases;

d. Whether Defendants violated the U.S. Housing Act and Westlake tenant leases by providing tenants with inadequate utility allowances; and

e. Whether Defendants engaged in unfair or deceptive practices when they overcharged Westlake tenants for rent and falsely certified that the rents were properly calculated.

24. Defendant CRAIG NISHIMURA is the Acting Director of the Department of Facility Management, City and County of Honolulu and is responsible for administering property management contracts for Westlake. He is sued in his official capacity only.

25. Defendant CITY AND COUNTY OF HONOLULU is a Municipal Corporation. The CITY AND COUNTY OF HONOLULU owns and operates Westlake.

IV. LEGAL FRAMEWORK

26. Under the Brooke Amendment to the United States Housing Act, rent, including utilities, for tenants residing in Section 8 Loan Management developments cannot exceed a certain percentage of a tenant's income. 42 U.S.C. § 1437a(a)(1). See also 24 C.F.R. § 5.603(b).

27. The owner of a Section 8 Loan Management development receives a certain amount of rent to operate each unit (called the "contract rent"), which is set by a "Housing Assistance Payment Contract" between the owner and the U.S. Department of Housing and Urban Development ("HUD"). 24 C.F.R. § 886.110. To ensure that the owner receives the full contract rent for operation of a subsidized unit, HUD pays the owner the difference between the tenant's portion of the rent and the contract rent. 24 C.F.R. § 886.118.

28. To ensure that tenants' rent plus utilities do not exceed the Brooke Amendment's rent ceiling when tenants are directly responsible for the payment of utility service (i.e.,

where tenants must pay a utility provider directly), HUD regulations require that tenants be provided with a "utility allowance." See 24 C.F.R. § 5.603(b).

29. 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.*

30. Each time the contract rents for a Section 8 Loan Management development are adjusted, the owner must complete and submit an analysis of the adequacy of utility allowances in light of the relevant changes since the allowances were last adjusted (e.g., changes in utility rates). See, e.g., 24 C.F.R. § 886.126.

31. 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. § 886.126.

V. FACTUAL ALLEGATIONS

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

33. Westlake is a Section 8 Loan Management housing project located at 3139 Ala Ilima St., Honolulu, Hawai'i 96818.

34. Defendants own Westlake.

35. For over thirty-one (31) years Plaintiff BEVERLY

BLAKE has been a tenant of Westlake. She resides in a two-bedroom unit under a rental agreement with Defendant CITY AND COUNTY OF HONOLULU.

36. For over ten (10) years Plaintiff STEPHANIE CAMILLERI has been tenant of Westlake. She resides in a two-bedroom rental unit under a rental agreement with Defendant CITY AND COUNTY OF HONOLULU.

37. For over ten (10) years, Plaintiff ARLENE SUPAPO has been a tenant of Westlake. She resides in a two-bedroom rental unit under a rental agreement with Defendant CITY AND COUNTY OF HONOLULU.

38. A true and correct copy of SUPAPO's rental agreement for her Westlake Apartment is attached hereto as Exhibit 1.

39. Plaintiffs are informed and believe, and on that basis allege, that the rental agreements for all Westlake tenants are the same as, or materially similar to, SUPAPO's rental agreement.

40. Each year SUPAPO and the other Westlake tenants go through a "recertification" process in which their rents are redetermined by Defendants. As part of the process, Defendants prepare a "Form HUD 50059—Certification and Recertification of Tenant Eligibility" on which Defendants certify that each tenants' rent has been computed in accordance with HUD regulations and procedures. The Form HUD 50059 informs tenants

what their rent and utility allowance is, and is incorporated by reference in the tenants' rental agreements. Attached hereto as Exhibit 2 is a true and correct copy of SUPAPO's Form HUD-50059 for 2006.

41. As residents of Westlake, BLAKE, CAMILLERI, and SUPAPO pay their own electric utilities. Defendants provide a monthly utility allowance to BLAKE, CAMILLERI, and SUPAPO in the amount of \$40.00 each, which is deducted from their rent obligations.

42. Even though utility rates have increased in excess of 10 percent since the utility allowances were last updated, Defendants have failed to increase the utility allowances for Westlake.

43. Further, Defendants have failed to complete and submit an analysis of the adequacy of utility allowances in connection with Defendants' requests for adjustments of the contract rents for Westlake.

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

45. With knowledge of the falsity of their statements, or in reckless disregard of whether the statements were true or false, Defendants have repeatedly certified that the rents for

the members of the Plaintiff class were calculated in accordance with HUD regulations and procedures.

46. In reliance on Defendants' statements, Plaintiffs and the Plaintiff class paid rents in excess of what they should have paid.

VI. FIRST CLAIM FOR RELIEF: VIOLATION OF THE U.S. HOUSING ACT AND ITS SUPPORTING REGULATIONS

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

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

49. Defendants, as a result of their failure to update utility allowances at Westlake, have charged the Plaintiff class rents in excess of those permitted by the U.S. Housing Act, 42 U.S.C. § 1437a(a)(1) and its supporting regulations.

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

51. As a direct result of Defendant's actions in violations of the U.S. Housing Act and its supporting regulations, Plaintiffs and the class they represent have been damaged in an amount to be determined at trial. Additionally, Plaintiffs and the class they represents are entitled to declaratory and injunctive relief to enforce compliance with the U.S. Housing Act and its supporting regulations, and to prevent irreparable harm resulting from their evictions or other adverse actions.

VII. SECOND CLAIM FOR RELIEF: VIOLATION OF 42 U.S.C. § 1983.

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

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

54. Defendant CITY AND COUNTY AND HONOLULU, under color of state law, policies, customs, and/or usages, violated the rights of the Plaintiff class under 42 U.S.C. § 1983, by maintaining a policy, practice and long-standing custom of not updating utility allowances, overcharging for rent, and falsely certifying that rents were calculated in accordance with federal law.

55. Further, decisions to improperly calculate rent were made or ratified by Defendant NISHIMURA, a municipal official with final policy-making authority, and the series of decision to inappropriately calculate rents manifested a custom or usage to which final policy-makers at the CITY AND COUNTY OF HONOLULU must have been aware.

56. Finally, and in the alternative, the failure to calculate rent properly evidences a failure by the CITY AND COUNTY OF HONOLULU to train and supervise its employees to such an extent as to display a deliberate indifference to the statutory rights of those within its jurisdiction.

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

58. Plaintiffs are entitled to reasonable attorneys' fees and costs.

VIII. THIRD CLAIM FOR RELIEF: BREACH OF RENTAL AGREEMENT

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

60. The rental agreement for Westlake tenants requires Defendants to calculate tenant rents in accordance with the HUD requirements.

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

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

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

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

members of the Plaintiff class.

65. As a direct result of Defendants' breaches, Plaintiffs and the class they seek to represent have been damaged in an amount to be determined at trial.

66. Additionally, on information and belief, Defendants may have taken action to evict members of the Plaintiff class from their apartments for alleged rent delinquencies. Plaintiffs and the class they seek to represent are entitled to declaratory and injunctive relief to enforce the terms of the rental agreement and Defendants' corresponding obligations pursuant to the U.S. Housing Act and HUD requirements, and to prevent irreparable harm resulting from their evictions or other adverse actions.

IX. FOURTH CLAIM FOR RELIEF: H.R.S CHAPTER 480 VIOLATIONS

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

68. Plaintiffs and each member of the class they seeks to represent is a "consumer" and "person" as those terms are defined in H. R. S. Chapter 480-1, and the above-described acts and practices involved "trade or commerce," as that term is defined in H.R.S. § 480-2(a).

69. An unfair or deceptive act or practice (hereinafter referred to as "UDAP") in the conduct of any trade or commerce is unlawful, pursuant to H.R.S. § 480-2(a).

70. Defendants have engaged in UDAPs that violate H.R.S. § 480-2 (a), including but not limited to:

a. Repeatedly certifying that Defendants had properly calculated the rents for Plaintiffs and each member of the class they seek to represent when in fact Defendants had not;

b. Charging rents in excess of those permitted by the rental agreements between Defendants and Plaintiffs and each member of the class they seek to represent; and

c. Charging rents in excess of those permitted by federal law.

71. The conduct described in the above paragraphs caused Plaintiffs and each member of the class they seek to represent to suffer injury to their property.

72. Plaintiff Blake and many members of the class Plaintiffs seek to represent are "elders" within the meaning of H.R.S. § 480-13.5. Defendants' conduct was in willful disregard of the rights of such elders and Defendants knew or should have known that their conduct was directed towards or targeted in part such elders.

73. A consumer who is injured by a UDAP is entitled, for each UDAP, to be awarded threefold any damage he or she sustained and reasonable attorney's fees, together with the costs of suit. See H.R.S. § 480-13(b)(1). Blake and those members of the class Plaintiffs seek to represent who are "elders" within the meaning of H.R.S. § 480-13.5 are also entitled to minimum

damages of \$5,000 under H.R.S. § 480-13(b)(1).

74. Further, a consumer who is injured by a UDAP may bring proceedings to enjoin the unlawful practices. See H.R.S. § 480-13(b)(2),

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Assume jurisdiction of this case.
2. Certify the plaintiff class.
3. Declare that Defendants have violated Plaintiff's rights as set forth herein.
4. Enter preliminary and permanent injunctions requiring Defendants to comply with the terms of the rental agreements of the plaintiff class, the U.S. Housing Act and HUD requirements, and barring Defendants from initiating or proceeding with eviction actions against members of the Plaintiff class based on rent delinquencies until rent overcharges resulting from Defendants' unlawful actions are credited to the tenants' rent payments.
5. Award damages and pre-judgment interest to each member of the plaintiff class for amounts charged for rent by Defendants in excess of 30% of tenant income resulting from inadequacies in the utility allowances.
6. Award treble damages.
7. Award statutory damages of \$5,000 to each member of the Plaintiff class that is an elder, if such amount is

greater than three times the damages sustained by such member.

8. Award Plaintiffs' costs and attorneys' fees.

9. Grant Plaintiffs and the Plaintiff class such other relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues triable herein.

DATED: Honolulu, Hawai'i, June 12, 2008.



VICTOR GEMINIANI
WILLIAM H. DURHAM
GAVIN K. THORNTON
LAWYERS FOR EQUAL JUSTICE

PAUL ALSTON
JASON KIM
ALSTON HUNT FLOYD & ING

ATTORNEYS FOR PLAINTIFF

**HOUSING MANAGEMENT DEPARTMENT
LEASE**

**Project No.: 14035018
HUD Contract No. HI10L000008**

**PARTIES AND DWELLING
UNIT:**

1. The parties to this Agreement are CITY & COUNTY OF HONOLULU referred to as Landlord, and SUPAPO, Arlene S., referred to as the Tenant. The Landlord leases to the Tenant dwelling Unit Number 303, located at 3139 ALA ILIMA STREET, HONOLULU, HAWAII 96818 in a project known as WESTLAKE APARTMENT'S.

LENGTH OF TIME (TERM):

2. The initial term of this Agreement shall begin on June 01, 1999. and end on May 31, 2000. After the initial term ends, the Agreement will continue for successive terms of one month periods, unless automatically terminated as permitted by Paragraph 23 of this Agreement.

RENT:

3. Effective June 01, 1999 the Tenant agrees to pay a rent of \$118.00 per month. This amount is due and payable to the project on the first day of the month. To ensure proper credit, payment must sent with the statement and self-addressed envelope provided for your convenience by Hawaii Affordable Properties Inc., P. O. Box 148, Kealahou, Hawaii 96750.

- a. For Tenants not paying market rent, it is understood that this monthly rent less than the market (unsubsidized) rent due on this unit. This lower rent is available because the Department of Housing and Urban Development (HUD) makes monthly payments available to the Owner on behalf of the Tenants. (For Section 8, Rent Supplement & RAP only: These payments are called the tenant assistance payment and is shown on the "Assistance Payment" line of the Certification and Rectification of Tenant Eligibility Form-HUD Form 50059 attached as Attachment No. 1.)
- b. The Tenant may initially pay his/her rent by personal check. However, if one check is not honored for payment, the Landlord requires the Tenant to make all future rent payments by cashier's check, certified check or money order.

CHANGES IN THE TENANTS

SHARE OF THE RENT:

- 4. The Tenant agrees that the amount of rent the Tenant pays and/or the amount of assistance that HUD pays on behalf of the Tenant may be changed during the term of this Agreement if:
 - a. HUD determines, in accordance with HUD procedures, that an increase in rents is needed;
 - b. HUD changes any allowance for utilities or services considered in computing the Tenant's share of the rent;
 - c. the income, the number of persons in the Tenant's household or other factors considered in calculating the Tenant's rent change and

HUD procedures provide that the Tenant's rent or assistance payment be adjusted to reflect the change;

- d. changes in the Tenant's rent or assistance payment are required by HUD's recertification or subsidy termination procedures;
- e. HUD's procedures for computing Tenant's assistance payment or rent change; or
- f. the Tenant fails to provide information on his/her income, family composition or other factors as required by the Landlord;

The Landlord agrees to implement changes in the Tenant's rent or tenant assistance payment only in accordance with the time frames and administrative procedures set forth in HUD's handbooks, instructions and regulations related to administration of multifamily subsidy programs. The Landlord agrees to give the Tenant at least 45 days advance written notice of any increase in the Tenant's rent except as noted in Paragraphs 11, 15 or 17. The notice will state the new amount the Tenant is required to pay, the date the new amount is effective, and the reasons for the change in rent. The notice will also advise the Tenant that he/she may meet with the Landlord to discuss the rent change.

**CHARGES-LATE FEES,
RETURN CHECKS LEGALFEES
&PRIORITY OFAPPLICA- 5.
TION OF PAYMENTS**

If the Tenant does not pay the full amount of rent shown in paragraph 3 by the end of the 5th day of the month, the Landlord may collect a late fee of \$ 10.00 or NA % of the Tenant's contribution and/or market rent.

The Landlord may not terminate this Agreement for failure to pay late charges, but may terminate this Agreement for non-payment of rent, as explained in paragraph 23.

The Landlord may assess to the Tenant the actual fee charged by a bank for a rent or security check resumed to the Landlord for a second time for insufficient funds.

If Tenant defaults in making any payment required by this Agreement, and/or if tenant violates any other terms of this Lease Agreement and the Landlord has obtained the services of any atom with respect to the collection and/or enforcement thereof, the Tenant Covenants and agrees to pay to the Landlord any legal fees and court cost involved.

If any late fees and/or legal fees and/or court costs and/or return check charges are incurred by the Landlord and assessed against the Tenant, irrespective of any instructions to the contrary, all payments made by Tenant shall be applied in the order of priority as follows: 1) First, to return check charges; 2) Second, to late fees; 3) Third, to legal fees and costs; 4) Fourth, to rent; and 5) Fifth, to any other charges and/or costs.

**CONDITION OF
DWELLING UNIT:**

- 6. By signing this Agreement, the Tenant acknowledges that the unit is safe, clean and in good condition. The Tenant agrees that all appliances

and equipment in the unit are in good working order, except as described on the Unit Inspection Report, initially attached as Attachment No. 2 to this Agreement. The Tenant also agrees that the Landlord has made no promises to decorate, alter, repair, or improve the unit, except as listed on the Unit Inspection Report.

CHARGES FOR UTILITIES & SERVICES:

7. The following chart describes how the cost of utilities related to occupancy of the unit will be paid:

<u>Utilities Not Included In Tenant's Rent</u>	<u>Type of Utility</u>	<u>Utilities Included in Tenant's</u>
<u>X</u>	Lights, Electric	<u> </u>
<u>X</u>	Cooking, Gas/Electric	<u> </u>
<u> </u>	Water	<u>X</u>
<u>X</u>	Other (Specify) Parking	<u> </u>

Tenant agrees that the above chart accurately describes the services to be paid by the Landlord and the services to be paid by the Tenant.

SECURITY DEPOSITS:

8. The Tenant has deposited 124.00 with the Landlord. The Landlord will hold this security deposit for the period the Tenant occupies the unit. After the Tenant has moved from the unit, the Landlord will determine whether the Tenant is eligible for a refund of any or all of the security deposit. The amount of the refund will be determined in accordance with the following:

- a. The Tenant will be eligible for a refund of the security deposit only in accordance with Chapter 521, Residential Landlord-Tenant Code, Hawaii Revised Statutes.
- b. The Resident Manager will inspect the unit and complete another Unit Inspection Report. The Tenant will accompany the Resident Manager during this inspection, if the Tenant so requests. The Resident Manager and the Tenant will mutually agree on an inspection date and time which will be convenient for both parties. Failure by the Tenant to appear on the agreed date and time constitutes waiver of the Tenant's rights to dispute refurbishing charges.
- c. The Landlord will refund to the Tenant the amount of the security deposit less any amount needed to pay the cost of:
 - 1) unpaid rent;
 - 2) repairing damage(s) that are not due to normal wear and tear and are not listed on the initial Unit Inspection Report;
 - 3) charges for late payment of rent (if applicable) and returned checks, as described in Paragraph 5; and
 - 4) charges for unreturned keys, as described Paragraph 9.

- d. The Landlord agrees to refund the amount in Paragraph 8 within 14 days after the Tenant has permanently moved out of the unit and given his/her new address to the Landlord. The Landlord will also give the Tenant a written list of charges that were subtracted from the deposit. If the Tenant does not believe that the amounts deducted by the Landlord are just)justified, the Managing Agent agrees to informally discuss the disputed charges with the Tenant.
- e. If the unit is rented by more than one person, the Tenants agrees that they will work out the details of such refunds among themselves. The Landlord must pay the refund, if any, to any Tenant identified in Paragraph 1 of this Agreement.
- f. During occupancy, the Tenant understands that the Landlord will not count the security deposit towards the last month's rent or towards repair charges owed by the Tenant in accordance with Paragraph 11.

KEYS AND LOCKS:

- 9. The Tenant agrees not to install additional or different locks or gates on any doors or windows of the unit without the written permission of the Landlord. If the Landlord approves the Tenant's request to install such locks, the Tenant agrees to provide the Resident Manager with a key for each lock. When this Agreement ends, the Tenant agrees to return all keys to the dwelling unit to the Resident Manager. The Landlord may charge a fee for each key not resumed to the Resident Manager. The Tenant understands that the Landlord will not refund any charges for extra/replacement keys during his/her tenancy.

MAINTENANCE :

- 10. a. The Landlord agrees to:
 - 1) regularly clean and maintain all common areas and facilities of the property in a safe condition.
 - 2) provide and maintain appropriate containers for collecting garbage and to arrange for the regular removal of such garbage;
 - 3) maintain all equipment and appliances in safe and working order,
 - 4) make necessary repairs with reasonable promptness;
 - 5) maintain exterior lighting in good working order;
 - 6) provide extermination services, as necessary; and
 - 7) maintain grounds and shrubs.
- b. The Tenant agrees to:
 - 1) keep the unit clean;
 - 2) use all appliances, fixtures and equipment in a safe manner and only for the purposes for which they are intended;
 - 3) not litter the grounds or common areas of the project;

- 4) not destroy, deface, damage, or remove any part of the unit, common areas, or project grounds;
- 5) give the Landlord prompt notice of any defects in the plumbing, fixtures, appliances, heating and cooling equipment, or any other part of the dwelling unit or related facilities;
- 6) remove garbage and other waste from the unit in a clean and safe manner as required by local laws or ordinance; and
- 7) avoid excessive or unnecessary use of water.

DAMAGES:

11. Whenever damage is caused by carelessness, misuse, or neglect on the part of the Tenant, his/her family, or visitors, the Tenant agrees to pay:
 - a. the cost of all repairs and do so within 30 days after receipt of the Landlord's demand for charges; and
 - b. rent for the period the unit is damaged whether or not the unit is habitable. The Tenant understands that HUD will not make assistance payments for any period in which the unit is not habitable. For any such period, the Tenant agrees to pay the HUD-approved market rent rather than the Tenant rent shown in Paragraph 3 of this Agreement.

RESTRICTIONS OR ALTERATIONS:

12. The Tenant agrees not to do any of the following without first obtaining the Landlord's written permission:
 - a. change or remove any part of the appliances, fixtures, or equipment in leased premises;
 - b. paint or install wallpaper or contact paper in the unit;
 - c. attach awnings or window guards in the unit;
 - d. attach or place any fixtures, signs, or fences on the building(s), the common areas, or the project grounds;
 - e. attach any shelves, screen doors, or other permanent improvements in the unit;
 - f. install washing machines, dryers, freezers, fans, heaters or air conditioners in the unit; or
9. place any aerials, antennas or other electrical connections on the unit.

GENERAL RESTRICTIONS:

13. The Tenant must live in the unit and the unit must be the Tenant's place of residence. The Tenant shall use the premises only as a private dwelling for himself/herself and the individuals listed on the Certification and Rectification of Tenant Eligibility.
(Form attached as Attachment No. 1)

The Tenant agrees to permit other individuals to reside in the unit only after obtaining the prior written approval of the Landlord. The Tenant agrees not to:

- a. sublet or assign the unit, or any part of the unit;
- b. use the dwelling unit for unlawful purposes;
- c. 1) permit guests or other household members to engage in unlawful activities in the unit, in the common areas or on the project grounds. These unlawful activities include but are not limited to the possession, use and/or sale of illegal drugs and disturbances or acts of violence that damage or destroy the dwelling unit or disturb or injure other residents.

2) the Tenant further agrees not to engage personally in unlawful activities in the unit, in the common areas or on or off the project grounds. Such activities include but are not limited to those listed above.
- d. have pets or animals of any kind in the unit without the prior written permission of the Landlord;
- e. make or permit noises or acts that will disturb the rights and comforts of neighbors. The Tenant agrees to keep the volume of any radio, hi-fi, stereo, etc., television, or musical instrument at a level which will not disturb the neighbors.
- f. Tenant shall notify the Landlord in writing of any planned extended absences from the apartment prior to departure, not later than the first day of such absence; or
- g. the unit shall not be used for the carrying out of any trade or business and/or for the purpose of rendering any services, including but not limited to child care or baby-sitting.

RULES:

- 14. The Tenant agrees to obey the House Rules initially attached as Attachment No. 3 to this Agreement. The Tenant agrees to obey additional rules established after the effective date of this Agreement if:
 - a. the rules are reasonably related to the safety, care and cleanliness of the building and the safety, comfort, and convenience of the Tenants; and
 - b. the Tenant receives written notice of the proposed rule at least 30 days before the rule is enforced.

**REGULARLY SCHEDULED
(ANNUAL)
RECERTIFICATIONS:**

- 15. Every year, around the fifteenth day of NA, the Landlord will request the Tenant to report the income and composition of the Tenant's household and to supply any other information required by HUD for the

purposes of determining the Tenant's rent and assistance payment, if any. The Tenant agrees to provide accurate statements of this information and to do so by the date specified in the Landlord's request. The Landlord will verify the information supplied by the Tenant and use the verified information to recompute the amount of the Tenant's rent and assistance payment, if any.

- a. If the Tenant does not submit the required recertification information by the date specified in the Landlord's request, the Landlord may impose the following penalties. The Landlord may implement these penalties only in accordance with the administrative procedures and time frames specified in HUD's regulations, handbooks and instructions related to the administration of multifamily subsidy programs.**
 - 1) Require the Tenant to pay the higher, HUD-approved market rent for the unit.**
 - 2) Implement any increase in rent (to market rent) resulting from the recertification processing immediately upon the Tenant's failure to submit the required recertification information by the date specified in the Landlord's request.**
- b. The Tenant may request to meet with the Landlord to discuss any change in rent or assistance payment resulting from the recertification processing. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and discuss how the Tenant's rent and assistance payment, if any, were computed.**

**REPORTING CHANGES BETWEEN
REGULARLY SCHEDULED
RECERTIFICATIONS
(AMENDMENTS/INTERIM):**

- 16. a. If any of the following changes occur, the Tenant agrees to advise the Landlord immediately:**
 - 1) Any household member moves in/out of the unit.**
 - 2) An adult member of the household who was reported as unemployed on the most recent certification or recertification obtains employment.**
 - 3) The household's income cumulatively increases by \$40 or more a month.**
- b. The Tenant may report any decrease in income or any change in other factors considered in calculating the Tenant's rent. Unless the Landlord has confirmation that the decrease in income or change in other factors will last less than one month, the Landlord will verify the information and make the appropriate rent reduction. However, if the Tenant's income will be partially or fully restored within two months, the Landlord may delay the certification process until the new income is known, but the rent reduction will be retroactive and the Landlord may not evict the Tenant for nonpayment of rent due during the period of the reported decrease and the completion of the certification process. The Tenant has thirty days after receiving**

written notice of any rent due for the above described time period to pay or the Landlord can evict for nonpayment of rent.

- c. If the Tenant does not advise the Landlord of these interim changes, the Landlord may increase the Tenant's rent to the HUD-approved market rent. The Landlord may do so only in accordance with the time frames and administrative procedures set forth in HUD's regulations, handbooks and instructions on the administration of multifamily subsidy programs.
- d. The Tenant may request to meet with the Landlord to discuss how any change in income or other factors affected his/her rent or assistance payment, if any. If the Tenant requests such a meeting, the Landlord agrees to meet with the Tenant and explain how the Tenant's rent or assistance payment, if any, was computed.

**REMOVAL OF SUBSIDY
(RENT SUPPLEMENT,
SECTION 8 OR RAP)**

- 17. a. The Tenant understands that assistance made available on his/her behalf may be terminated if events in either items 1 or 2 below occur. Termination of assistance means that the Landlord may make the assistance available to another Tenant and the Tenant's rent will be recomputed. In addition, if the Tenant's assistance is terminated because of criterion (1) below, the Tenant will be required to pay the HUD-approved market rent for the unit.
 - 1) The Tenant does not provide the Landlord with the information or reports required by Paragraph 15 or 16 within 10 calendar days after receipt of the Landlord's notice of intent to terminate the Tenant's assistance payment.
 - 2) The amount the Tenant would be required to pay towards rent and utilities under HUD rules and regulations equals the Family Gross Rent shown on Attachment No. 1.
- b. The Landlord agrees to give the Tenant written notice of that proposed termination. The notice will advise the Tenant that, during the ten calendar days following the date of the notice, he/she may request to meet the Landlord to discuss the proposed termination of assistance. If the Tenant requests a discussion of the proposed termination, the Landlord agrees to meet with the Tenant.
- c. Termination of assistance shall not affect the Tenant's other right under this Agreement, including the right to occupy the unit. Assistance may subsequently be reinstated if the Tenant submits the income or other data required by HUD procedures, the Landlord determines the Tenant is eligible for assistance, and assistance is available.

**TENANT OBLIGATION
TO REPAY:**

- 18. If the Tenant submits false information on any application, certification or request for interim adjustment or does not report interim changes in family income or other factors as required by Paragraph 16 of this Agreement, and as a result, is charged a rent less than the amount

required by HUD's rent formulas, the Tenant agrees to reimburse the Landlord for the difference between the rent he/she should have paid and the rent he/she was charged. The Tenant is not required to reimburse the Landlord for undercharges caused solely by the Landlord's failure to follow HUD's procedures for computing rent or assistance payments.

- a. Landlord may at its discretion enter into a Repayment Agreement with the assisted Tenant family guilty of committing fraud.
- b. The Landlord reserves the right to pursue any of the following options should the assisted Tenant default in the Repayment Agreement.
 - 1) Civil suit
 - 2) Termination of assistance
 - 3) Eviction
 - 4) Criminal prosecution, if a plea agreement is violated
 - 5) Referral to collection agency
 - 6) Reporting to Credit Bureau

SIZE OF DWELLING:

19. The Tenant understands that HUD requires the Landlord to assign units according to the size of the household and the age and sex of the household members. If the Tenant is or becomes eligible for a different size unit, and the required size unit becomes available, the Tenant agrees to:
 - a. Move within 30 days after the Landlord notifies him/her that a unit of the required size is available within the project; or
 - b. Remain in the same unit and pay the HUD-approved market rent.

ACCESS BY LANDLORD:

20. The Landlord agrees to enter the unit only during reasonable hours, to provide reasonable advance notice of his/her intent to enter the unit only after receiving the tenant's consent to do so, except when emergency situations make such notices impossible or except under Paragraph (c) below:
 - a. The Tenant agrees to permit the Landlord, his/her agents or other persons, when authorized by the Landlord, to enter the unit for the purpose of making reasonable repairs and periodic inspections.
 - b. After the Tenant has given a notice of intent to move, the Tenant agrees to permit the Landlord to show the unit to prospective tenants during reasonable hours.
 - c. If the Tenant moves before this Agreement ends, the Landlord may enter the unit to decorate, remodel, alter or otherwise prepare the unit for re-occupancy.

**DISCRIMINATION
PROHIBITED:**

21. The Landlord agrees not to discriminate based upon race, color, religion, creed, national origin, sex, age, handicap, membership in a class, such as unmarried mothers or recipients of public assistance or because there are children in the family.

**CHANGE IN
RENTAL AGREEMENT:**

22. The Landlord may, with the prior approval of HUD, change the terms and conditions of this Agreement. Any changes will become effective only at the end of the initial term or a successive term. The Landlord must notify the Tenant of any change and must offer the Tenant a new Agreement or an amendment to the existing Agreement. The Tenant must receive the notice at least 60 days before the proposed effective date of the change (except in the case of an interim adjustment). The Tenant may accept the changed terms and conditions by signing the new Agreement or the amendment to the existing Agreement and returning it to the Landlord. The Tenant may reject the changed terms and conditions by giving the Landlord written notice that he/she intends to terminate the tenancy. The Tenant must give such notice at least 30 days before the proposed change will go into effect. If the Tenant does not accept the amended Agreement, the Landlord may require the Tenant to move from the project, as provided in Paragraph 23.

**TERMINATION OF
TENANCY:**

- 23. a. To terminate this Agreement, the Tenant must give the Landlord 28 days written notice before moving from the unit. If the Tenant does not give the full 28-day notice, the Tenant shall be liable for rent up to the end of the 28 days for which notice was required or to the date the unit is re-rented, whichever date comes first.
- b. Any termination of this Agreement by the Landlord must be carried out in accordance with HUD regulations, State and local law, and the terms of this Agreement. The Landlord may terminate this Agreement only for:
 - 1) criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, or any drug-related criminal activity on or near such premises, engaged in by a tenant, any member of the tenant's household, or any guest or other person under the tenant's control; or
 - 2) the Tenant's material noncompliance with the terms of this Agreement.

the term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that: (a) disrupt the livability of the project, (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project; (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and

submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), or to knowingly provide incomplete or inaccurate information; and (4) non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

- 3) the Tenant's material failure to carry out obligations under any State Landlord and Tenant Act; or
 - 4) other good cause, which includes but is not limited to the Tenant's refusal to accept the Landlord's proposed change to this Agreement. Termination's for "other good cause" may only be effective as of the end of any initial or successive term.
- c. If the Landlord proposes to terminate this Agreement, the Landlord agrees to give the Tenant written notice of the proposed termination. If the Landlord is terminating this agreement for "other good cause", the termination notice must be mailed to the Tenant and hand-delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD required notice period may run concurrently with any notice period required by State or local law. All termination notices must:
- 1) specify the date this Agreement will be terminated;
 - 2) state the grounds for termination with enough detail for the Tenant to prepare a defense;
 - 3) advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Landlord. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the day after the date the notice is mailed. If the Tenant requests the meeting, the Landlord agrees to discuss the proposed termination with the Tenant; and
 - 4) advise the Tenant of his/her right to defend the action in court.
- d. If any eviction is initiated, the Landlord agrees to rely only upon those grounds cited in the termination notice required by Paragraph (c).

HAZARDS:

24. The Tenant shall not undertake, or permit his/her family or guests to undertake, any hazardous acts or do anything will increase the project's insurance premiums. Such action constitutes a material non-compliance. If the unit is damaged by fire, wind, or rain to the extent that the unit cannot be lived in and the damage is not caused or made worse by the Tenant, the Tenant will be responsible for rent only up to the date of the destruction. Additional rent will not accrue until the unit has been

repaired to a livable condition.

PENALTIES FOR SUBMITTING FALSE INFORMATION:

25. Knowingly giving the Landlord false information regarding income or other factors considered in determining Tenant's eligibility and rent is a material noncompliance with the lease subject to termination of tenancy. In addition, the Tenant could become subject to penalties available under the Federal law. Those penalties include fines up to \$10,000 and imprisonment for up to five years.

CONTENTS OF THIS AGREEMENT:

26. This Agreement and its Attachments make up the entire agreement between the Tenant and the Landlord regarding the unit. If any Court declares a particular provision of this Agreement to be invalid or illegal, all other terms of this Agreement will remain in effect and both the Landlord and the Tenant will continue to be bound by them.

ATTACHMENTS TO THE AGREEMENT:

27. The Tenant certifies that he/she has initially received a copy of this agreement and the following attachments to this Agreement and understands that these attachments are part of this Agreement.

a. Attachment No. 1 - Form HUD-50059, Certification and Rectification of Tenant Eligibility. RS
(Initial)

b. Attachment No. 2 - Unit Inspection Report. RS
(Initial)

c. Attachment No. 3 - House Rules. RS
(Initial)

SIGNATURES:

TENANT

By:

1.	<u>Orlando J. Pappas</u>	<u>6-1-99</u>
		Date Signed
2.	_____	_____
		Date Signed
3.	_____	_____
		Date Signed

LANDLORD: HAWAII AFFORDABLE PROPERTIES, INC., AGENT FOR

WESTLAKE APARTMENTS

[Signature]
By: Property Manager

6/1/99
Date Signed

Date Signed

LEASE AMENDMENT

COPY

June 9, 2006

Ms. Arlene Supapo
3139 Ala Ilima Street, #303
Honolulu, HI 96818-

Dear Ms. Arlene Supapo:

This is to notify you that on the basis of our recent review of your income and family composition, your monthly rent has been adjusted as follows:

Contract Rent	\$	745
Utility Allowance	\$	40
Assistance Payment	\$	371
Total Tenant Payment	\$	414
Tenant Rent	\$	374

The new rent is effective with the rent due for the month of 06/01/2006. This notification amends Paragraph 4 of your lease agreement which sets forth the amount of rent you pay each month. All other provisions of your lease remain in full force and effect. The next scheduled recertification is 06/01/07.

Attached for your records is a copy of the Form 50059 Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures and applicable worksheet(s). You should substitute these forms in place of the previous 50059 and worksheet(s) which are attached to your lease. The 50059 shows you the income we used to calculate your new rent and the amount of rental assistance, if any, that HUD pays monthly on your behalf.

The next scheduled recertification is 06/01/07. By signing below, you acknowledge that you have been informed by this INITIAL NOTICE of when your next scheduled recertification is and understand your responsibility to respond to a Reminder Notice that will be sent to you approximately 120 days prior to the next scheduled recertification. If you do not respond to the Reminder Notice by 4/10/07, your lease gives us the right to raise your rent.

You may call me at (808) 839-2027 if you wish to arrange a meeting to discuss the above. Thank you for your cooperation.

Sincerely,



Dolores Barcelona
Cert Occup Specialist

Accepted:

x 
Head of Household

6/24/06
Date

Spouse/Co-Head

Date

EXHIBIT 2

Received 6/24/06

**Owner's Certification of Compliance
with HUD's Tenant Eligibility
and Rent Procedures**

**U.S. Department of Housing
And Urban Development**
Office of Housing
Federal Housing of Commissioner

NOT for submission to the Federal Government
Landlord's Official Record of Certification

(Exp. 12/31/2007)

Section A: Acknowledgements

Read this before you complete and sign this form HUD-50059

Public Reporting Burden. The reporting burden for this collection of information is estimated to average 55 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (2502-0204), Washington, DC 20503. The information is being collected by HUD to determine an applicant's eligibility, the recommended unit size, and the amount the tenant(s) must pay toward rent and utilities. HUD uses this information to assist in managing certain HUD properties, to protect the Government's financial interest, and to verify the accuracy of the information furnished. HUD or a Public Housing Authority (PHA) may conduct a computer match to verify the information you provide. This information may be released to appropriate Federal, State, and local agencies, when relevant, and to civil, criminal, or regulatory investigators and prosecutors. However, the information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law. You must provide all of the information requested, including the Social Security Numbers (SSNs) you, and all other household family members age six (6) years and older, have and use. Giving the SSNs of all family members age six (6) years and older is mandatory; not providing the SSNs will affect your eligibility. Failure to provide any information may result in a delay or rejection of your eligibility approval.

Privacy Act Statement. The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1973, as amended (42 U.S.C. 1437 et. seq.); the Housing and Urban-Rural Recovery Act of 1983 (P.L. 98-181); the Housing and Community Development Technical Amendments of 1984 (P.L. 98-479); and by the Housing and Community Development Act of 1987 (42 U.S.C. 3543).

Tenant(s)' Certification - I/We certify that the information in Sections C, D, and E of this form are true and complete to the best of my/our knowledge and belief. I/We understand that I/we can be fined up to \$10,000 or imprisoned up to five years, or lose the subsidy HUD pays and have my/our rent increased, if I/we furnish false or incomplete information.

Owner's Certification - I certify that this Tenant's eligibility, rent and assistance payments have been computed in accordance with HUD's regulations and administrative procedures and that all required verifications were obtained.

Warning to Owners and Tenants. By signing this form, you are indicating that you have read the above Privacy Act Statement and are agreeing with applicable Certification.

False Claim Statement. Warning: U.S. Code, Title 31, Section 3729, False Claims, provides a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damage for any person who knowingly presents, or causes to be presented, a false or fraudulent claim; or who knowingly makes, or caused to be used, a false record or statement; or conspires to defraud the Government by getting a false or fraudulent claim allowed or paid.

Certification Summary from Page 2:

Name of Project	WESTLAKE APARTMENTS	Unit Number	303	Effective Date	06/01/2006	Certification Type	AR
Head of Household	SUPAPO, ARLENE	Total Tenant Payment	\$414	Assistance Payment	\$371	Tenant Rent	\$374

Tenant Signatures

Head of Household	Date	Other Adult	Date
Spouse / Co-Head	Date	Other Adult	Date
Other Adult	Date	Other Adult	Date
Other Adult	Date	Other Adult	Date
Other Adult	Date	Other Adult	Date
Other Adult	Date	Other Adult	Date
Other Adult	Date	Other Adult	Date

Owner/Agent Signature

Owner/Agent	Date
<input type="checkbox"/> Check this box if Tenant is unable to sign for a legitimate reason	Anticipated Voucher Date

**Owner's Certification of Compliance
with HUD's Tenant Eligibility
and Rent Procedures**

**U.S. Department of Housing
And Urban Development
Office of Housing
Federal Housing of Commissioner**

NOT for submission to the Federal Government
Landlord's Official Record of Certification

(Exp. 12/31/2007)

Section B: Summary Information

1. Project Name WESTLAKE APARTMENTS	13. Effective Date 06/01/2006	25. Unit Number 303
2. Subsidy Type 1-Sec 8	14. Anticipated Voucher Date 07/01/2006	26. No. of Bedrooms 2
3. Secondary Subsidy Type *Future	15. Next Recertification Date 06/01/2007	27. Building ID *Future
4. Property ID *Future	16. Project Move-In Date 06/01/1998	28. Unit Transfer Code *Future
5. Project Number 14036018	17. Unit Move-In Date *Future	29. Previous Unit No. AR
6. Contract Number H/10L000008	18. Certification Type AR	30. Security Deposit \$124.00
7. TRACSMail ID TRACM21183	19. Action Processed	31. Market Rent \$0.00
8. Plan of Action Code	20. Correction Type	32. Contract Rent \$746.00
9. HUD-Owner Project? N	21. Cert. Correction Date *Future	33. Utility Allowance \$40.00
10. Region Code *Future	22. Prev. Subsidy Type	34. Gross Rent \$785.00
11. Field Office Code *Future	23. Previous Housing Code	35. Conversion Date Code
12. FIPS County Code *Future	24. Displacement Status Code	36. Age 62 at Conversion Indicator N
		37. Continuous Section 8 Indicator N

Section C: Household Information

38. No.	39. Last Name	40. First Name	41. MI	42. Rel.	43. Sex	44. Race	45. Eth.	46. Birth Date	47. Special Status	48. ID Code (SSN)	49. Elig. Code	50. Allen Reg. Number	51. Age at Cert.	52. Work Codes
01	SUPAPO	ARLENE	S	H	F	1	2	10/08/1971		576-80-3439	EC		34	
02	SUPAPO HARRAWAY	DUSTIN	D	D	M	*F	*F	06/20/1994	H	576-69-1074	EC		11	
03	SUPAPO HARRIS	CASEY	M	D	M	*F	*F	02/07/2001	H	576-69-4879	PV		5	

53. Family is Mobility Impaired ? N	56. Number of Family Members 3	60. Expected Family Addition - Adoption 0
54. Family is Hearing Impaired ? N	57. Number of Non-Family Members 0	61. Expected Family Addition - Pregnancy 0
55. Family is Visually Impaired ? N	58. Number of Dependents 2	62. Expected Family Addition - Foster Children 0
	59. Number of Eligible Members 3	

63. Previous Head Last Name	66. Previous Effective Date
64. Previous Head First Name	67. Previous Head ID
65. Previous Head Middle Initial	68. Previous Head Birth Date

Section D: Income Information **Section E: Asset Information**

69. Mbr. No.	70. Income Type Code	71. Amount	72. SSN Benefits Claim No.	78. Mbr. No.	79. Description	80. Status	81. Cash Value	82. Actual Yearly Income	83. Date Divested
01	Pub. Asst. - Gen Ass	\$5,016	*Future	*F	HON FED EMPL FC	C	\$12	\$0	*Future
01	Pensions - SSI	\$7,236	*Future	*F	HON FED EMPL FC	C	\$473	\$4	*Future
03	Pensions - SSI	\$7,236	*Future						

73. Total Employment Income \$0	84. Cash Value of Assets \$485
74. Total Pension Income \$14,472	85. Actual Income from Assets \$4
75. Total Public Assistance Income \$5,016	86. HUD Passbook Rate 2.00%
76. Total Other Income \$0	87. Imputed Income from Assets \$0
77. Total Non-Asset Income \$19,488	88. Asset Income \$4

Section F: Allowances & Rent Calculations

89. Total Annual Income \$19,492	100. Allowance for Dependents \$960	111. Total Tenant Payment \$414
90. Lower Income Limit \$61,360	101. Child Care Expense (work) \$0	112. Tenant Rent \$374
91. Very Low Income Limit \$32,100	102. Child Care Expense (school) \$1,980	113. Utility Reimbursement \$0
92. Extremely Low Income Limit \$19,250	103. 3% of Income \$585	114. Assistance Payment \$371
93. Current Income Status 2 (Very Low)	104. Disability Expense \$0	115. Welfare Rent \$0
94. Eligibility Universe Code 2	105. Disability Allowance \$0	116. HCDA percentage 30.00%
95. Sec. 8 Assist. 1984 Indicator	106. Medical Expense \$0	117. Percent Actually Charged 30.00%
96. Income Exception Code	107. Medical Allowance \$0	118. Hardship Exemption
97. Police / Security Tenant? N	108. Elderly Household Allowance \$0	119. Waiver Type Code *Future
98. Survivor of Qualifier? N	109. Total Allowance \$2,940	
99. Household Assistance Status F	110. Adjusted Annual Income \$16,552	

Previous versions of this form are obsolete.
This form also replaces HUD-50059-D, -E, -F, & -G.

Easy Worksheet for Computing
Total Tenant Payment/Tenant Rent
(All Programs)

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner
OMB No.2502-0204 (Exp. 4-30-90)

Name of Tenant SUPAPO, ARLENE S	Name of Project WESTLAKE APARTMENTS	Unit Number 303
------------------------------------	--	--------------------

**** Part A - Compute the Total Tenant Payment / Tenant Rent ****
Complete only 1 Section. Select the Section that applies to the type of subsidy

Section 8 / RAP Tenants		Rent Supplement Tenants	
A-1	[1624.33] Monthly Income	A-1	[////////] Monthly Income
A-2	[1379.33] Monthly Adj Income	A-2	[] Monthly Adj Income
A-3	[30] HCDA Percentage	A-3	[] HCDA Percentage
A-4	[413.80] Monthly Adj x HCDA	A-4	[] Gross Rent
A-5	[162.43] 10% x Monthly Inc.	A-5	[] 30% x Gross Rent
A-6	[0.00] Welfare Rent	A-6	[] Monthly Adj x HCDA
A-7	[413.80] Total Tenant Payment (Enter largest of A4, A5, or A6)	A-7	[] Total Tenant Payment (Enter larger of A5 or A6)

*If this is MoveIn or Initial, Tenant is eligible ONLY if TTP is less than 90% of Gross Rent - ie A7 < (.90 * A4)
* Go To Part B *

* Go To Part B *

Section 236 Tenants		Utility Allowance	
No Utility Allowance		Utility Allowance	
A-1	[////////] Monthly Income	A-1	[////////] Monthly Income
-2	[] Monthly Adj Income	A-2	[] Monthly Adj Income
-3	[] HCDA Percentage	A-3	[] HCDA Percentage
A-4	[] Monthly Adj x HCDA	A-4	[] Monthly Adj x HCDA
A-5	[] *Basic Rent	A-5	[] *Utility Allowance
A-6	[] *Market Rent	A-6	[] A4 minus A5
A-7	[] Tenant Rent of A4, A5 but not more than A6)	A-7	[] *Basic Rent
		A-8	[] Higher of A6 or A7
		A-9	[] Minimum Rent
		A-10	[] *Market Rent
		A-11	[] Tenant Rent (Enter th larger of A8 or A9 but not > A10)

* Go To Part B *

* Note: Use the Rents and Utility Allowance as of Date Tenant Rent is Effective

**** Part B - Transfer this Worksheet Data to the HUD-50059 ****

Enter the Answer from Part A in:	Item No.
- Section 236 Tenants	51
- All Other Tenants	50
Enter HDCA Percentage from A3 in	54
Check "No" in	55

Prepared By (Name and Date) | Supervisory Review By (Initials and Date)

[Signature] 06/09/08

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT

for the

District of Hawaii

BEVERLY BLAKE, et al.)	
Plaintiff)	
v.	)	Civil Action No.
CRAIG NISHIMURA, et al.)	
Defendant)	

Summons in a Civil Action

To: *(Defendant's name and address)*

Craig I. Nishimura, P.E.
 Acting Director and Chief Engineer
 1000 Uluohia Street, Suite 215
 Kapolei, HI 96707

City & County of Honolulu
 c/o Department of the Corporation Counsel
 530 S. King Street, Room 110
 Honolulu, HI 96813

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

VICTOR GEMINIANI, ESQ.
 WILLIAM H. DURHAM, ESQ.
 GAVIN K. THORNTON, ESQ.
 Lawyers for Equal Justice
 P.O. Box 37952 Honolulu, HI 96837

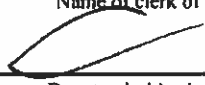
PAUL ALSTON, ESQ.
 JASON H. KIM, ESQ.
 Alston Hunt Floyd & Ing
 1001 Bishop Street
 ASB Tower, Suite 1800 Honolulu, HI 96813

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SUE BEITIA

Date: JUN 12 2008

 Name of clerk of court



 Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

AO 440 (Rev. 04/08) Civil Summons (Page 2)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

(1) personally delivering a copy of each to the individual at this place, _____;
_____ ; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____ ; or

(4) returning the summons unexecuted to the court clerk on _____ ; or

(5) other (specify) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

Date: _____

Server's signature

Printed name and title

Server's address

ORIGINAL CIVIL COVER SHEET CV08 00281 SPK LEK

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

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

(b) County of Residence of First Listed Plaintiff Honolulu (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jason H. Kim Alston Hunt Floyd & Ing 1001 Bishop Street, Honolulu, HI 96813 (808) 524-1800

DEFENDANTS

CRAIG NISHIMURA, in his official capacity as Acting Director of the Department of Facility Maintenance, City and County of

County of Residence of First Listed Defendant Honolulu (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, IMMIGRATION, AGRICULTURE, LABOR, LABOR STANDARDS, LABOR/ MGMT. RELATIONS, LABOR/ MGMT. REPORTING & DISCLOSURE ACT, RAILWAY LABOR ACT, OTHER LABOR LITIGATION, EMPLOYMENT, SECURITY ACT, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1983; 42 U.S.C. 1437a

Brief description of cause: failure to calculate rent allowances as required by 42 U.S.C. 1437a and related claims

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE JUN 12 2008 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

BEVERLY BLAKE, STEPHANIE) CIVIL NO. CV08-00281 LEK
CAMILLERI, ARLENE SUPAPO,)
individually, and on behalf of all) (Contract) (Declaratory Judgment)
persons similarly situated,) (Other Civil Actions)

Plaintiffs,)
)
) SUMMONS

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.)

_____)
CITY AND COUNTY OF)
HONOLULU,)

Third-Party Plaintiff,)

vs.)

HAWAIIAN PROPERTIES, LTD.)

Third-Party Defendants.)
)
)

SUMMONS

STATE OF HAWAII

TO: THIRD-PARTY DEFENDANTS HAWAIIAN PROPERTIES, LTD.

You are hereby summoned and required to serve upon D. Scott Dodd, Deputy Corporation Counsel, attorney for Defendant and Third-Party Plaintiff City and County of Honolulu, whose address is 530 South King Street, Room 110, Honolulu Hale (City Hall), Honolulu, Hawaii 96813, an answer to the Third-Party Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Third-Party Complaint.

DATED: Honolulu, Hawaii, _____.

Clerk of the above-entitled Court

CIVIL NO. CV08-00281 LEK; BLAKE, et al. v. NISHIMURA, CITY, et al. and City v. HAWAIIAN PROPERTIES, LTD.; Summons

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

BEVERLY BLAKE, STEPHANIE	)	CIVIL NO. CV08-00281 LEK
CAMILLERI, ARLENE SUPAPO,)	
individually, and on behalf of all	)	(Contract) (Declaratory Judgment)
persons similarly situated,	)	(Other Civil Actions)
	)	Class Action
Plaintiffs,)	
	)	CERTIFICATE OF SERVICE
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.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 2009, and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses as shown below.

Served Electronically through CM/ECF:

WILLIAM H. DURHAM, ESQ.
GAVIN K. THORNTON
Lawyers for Equal Justice
P. O. Box 37952
Honolulu, Hawai'i 96837

william@lejhawaii.org
gavin@legjawaii.org

and

Served Electronically through CM/ECF:

PAUL ALSTON, ESQ.
JASON KIM, ESQ.
Alston Hunt Floyd & Ing
ASB Tower
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813

palstone@ahfi.com
jkim@ahfi.com

Attorneys for Plaintiffs

DATED: Honolulu, Hawai'i, May 15, 2009.

CARRIE K.S. OKINAGA
Corporation Counsel

By /s/D. Scott Dodd
D. SCOTT DODD
Deputy Corporation Counsel

Attorney for Defendant
CITY AND COUNTY OF HONOLULU