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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEWERS FALETOGO; HAZEL
MCMILLON; GENE STRICKLAND,
TRUDY SABALBORO; and LEE
SOMMERS, individually and on behalf of
a class of past, present, and future
residents of Kuhio Park Terrace,

Plaintiffs,

v.

STATE OF HAWAII; HAWAII PUBLIC
HOUSING AUTHORITY; REALTY LAUA
LLC, formerly known as R & L Property
Management LLC, a Hawai'i limited
liability company; and Does 1-20,

Defendants.

) CIVIL NO. 08-1-2608-12 SSM
) (Other Civil Action)
)
) **PLAINTIFFS' MEMORANDUM IN**
) **OPPOSITION TO DEFENDANTS'**
) **MOTION TO DISMISS COMPLAINT**
) **FOR FAILURE TO STATE CLAIMS**
) **UPON WHICH RELIEF CAN BE**
) **GRANTED OR, IN THE**
) **ALTERNATIVE, MOTION FOR**
) **SUMMARY JUDGMENT, FILED**
) **3/31/09; DECLARATION OF**
) **LEWERS FALETOGO; DECLARATION**
) **OF HAZEL MCMILLON;**
) **DECLARATION OF GENE**
) **STRICKLAND; DECLARATION OF**
) **TRUDY SABALBORO; DECLARATION**
) **OF LEE SOMMERS; DECLARATION**
) **OF JASON H. KIM; EXHIBITS "A"- "C";**
) **CERTIFICATE OF SERVICE**

DATE: April 27, 2009
TIME: 11:00 a.m.
JUDGE: Sabrina S. McKenna

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. RELEVANT ALLEGATIONS AND FACTS	2
A. Allegations in Plaintiffs' Complaint.	2
B. Additional Facts Submitted in Opposition to the HPHA's Motion for Summary Judgment.....	3
III. ARGUMENT.....	4
A. Standard for Motion to Dismiss and For Summary Judgment.....	4
B. Plaintiffs Have Alleged Viable Claims for Breach of the Rental Agreement and Breach of the Implied Warranty of Habitability and Disputed Issues of Material Fact Preclude Summary Judgment on These Claims.	5
1. Breach of Rental Agreements	5
2. Implied Warranty of Habitability.....	7
C. The HPHA Has Not Produced Any Evidence to Negate Any Element of Plaintiffs' Claims or Establish Any Affirmative defenses.....	8
D. A Claim for Breach of Contract or Breach of the Implied Warranty of Habitability May be Brought for Publicly- Subsidized Housing.	9
E. No Federal Law or Regulation Preempts Plaintiffs' Claims.	11
F. Plaintiffs are Intended Third-Party Beneficiaries of the Management Agreement Between the HPHA and Realty Laua.	13
G. A Claim for Unfair and Deceptive Trade Practices Can Be Maintained Against the State Under the Circumstances of this Case.....	16
H. Plaintiffs Have Adequately Stated a Claim for Medical Monitoring	17

I. In the Alternative, Plaintiffs Request A Continuance Pursuant to HRCP Rule 56(f)..... 17

IV. CONCLUSION..... 18

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Alexander v. U.S. Department of Housing and Urban Development</i> , 555 F.2d 166 (7th Cir. 1977).....	10, 11
<i>Chase v. Theodore Mayer Brothers</i> , 592 F. Supp. 90 (D. Ohio 1983).....	11, 13
<i>Conille v. Pierce</i> , 649 F. Supp. 1133 (D. Mass. 1986).....	10
<i>Conille v. Secretary of Housing and Urban Development</i> , 840 F.2d 105 (1st Cir. 1988).....	10, 11
<i>In Re Day</i> , 208 B.R. 358 (Bankr. E.D. Pa. 1997)	10
<i>Falzarano v. U.S.</i> , 607 F.2d 506 (1st Cir. 1979).....	15
<i>Gonzalez v. St. Margaret's House Housing Development Corp.</i> , 620 F. Supp. 806 (D.C.N.Y. 1985)	14
<i>Harlib v. Lynn</i> , 511 F.2d 51 (7th Cir. 1975).....	14
<i>Holbrook v. Pitt</i> , 643 F.2d 1261 (7th Cir. 1981)	14, 15
<i>Kingston Square Tenants Association v. Tuskegee Gardens, Ltd.</i> , 792 F. Supp. 1566 (S.D. Fla. 1992)	14, 15
<i>Mann v. Pierce</i> , 803 F.2d 1552 (11th Cir. 1986)	10, 11
<i>McNeill v. New York City Housing Authority</i> , 719 F. Supp. 233 (S.D.N.Y. 1989)	14
<i>Permanent Mission of Republic of Estonia to the United Nations v. Thompson</i> , 477 F. Supp. 2d 615 (S.D.N.Y. 2007)	8
<i>Perry v. Housing Authority of City of Charleston</i> , 644 F.2d 1210 (4th Cir. 1981)	15
<i>Young v. Coloma-Agaran</i> , 340 F.3d 1053 (9th Cir. 2003).....	11

STATE CASES

<i>Aged Hawaiians v. Hawaiian Homes Commission</i> , 78 Hawai'i 192 (1995)	13
<i>Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Co.</i> , 799 P.2d 250 (Wash. 1990)	8
<i>Au v. Au</i> , 63 Haw. 210 (1981)	5
<i>Big Island Small Ranchers Association v. State</i> , 60 Haw. 228 (1978)	16
<i>Fought & Co. v. Steel Engineering & Erection</i> , 87 Hawai'i 37 (1998)	5, 7, 16
<i>Hawai'i Cmty. Fed. Credit Union v. Keka</i> , 94 Hawai'i 213 (2000)	5
<i>Housing Authority of City of East St. Louis v. Melvin</i> , 507 N.E.2d 1289 (Ill. App. Ct. 1987)	10
<i>Housing Authority of City of Newark v. Scott</i> , 348 A.2d 195 (N.J. Super. 1975)	1, 10, 12
<i>Lau v. Bautista</i> , 61 Haw. 144 (1979)	8
<i>Lemle v. Breeden</i> , 51 Haw. 426 (1969)	7, 8
<i>Lund v. MacArthur</i> , 51 Haw. 473 (1969)	8
<i>Marshall v. University of Hawaii</i> , 9 Haw. App. 21 (1991)	18
<i>Marsland v. Pang</i> , 5 Haw. App. 463 (Haw. App. Ct. 1985)	5
<i>Midkiff v. Castle & Cooke, Inc.</i> , 45 Haw. 409 (1962)	5
<i>Multi-Family Management, Inc. v. Hancock</i> , 664 A.2d 1210 (D.C. 1995)	10, 12, 13
<i>Redland Soccer Club, Inc. v. Department of the Army</i> , 696 A.2d 137 (Pa. 1997)	17
<i>Sierra Club v. DOT</i> , ___ Haw. ___, 202 P.3d 1226 (slip op. at 148-49) (2009)	16
<i>Solow v. Wellner</i> , 595 N.Y.S.2d 619 (N.Y. Sup. 1992)	8
<i>Zigas v. Superior Court</i> , 174 Cal. Rptr. 806 (Cal. App. Ct. 1981)	14

FEDERAL STATUTES

24 C.F.R. § 966 12

STATE RULES

HRCP Rule 12(b)(6) 4
HRCP Rule 56(c)..... 5
HRCP Rule 56(f) 17

STATE STATUTES

HRS § 343-7 16
HRS § 480-2 1, 16
HRS § 607-14..... 16
HRS § 661-1 5, 7, 16
HRS Chapter 356D 12

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR
FAILURE TO STATE CLAIMS UPON WHICH RELIEF CAN BE
GRANTED OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY
JUDGMENT, FILED 3/31/09**

I. INTRODUCTION

Defendants State of Hawai'i and the Hawai'i Public Housing Authority (collectively the "HPHA") have not even come close to meeting their burden for either a motion to dismiss or a motion for summary judgment. Plaintiffs' detailed and thorough Complaint adequately alleges claims for: (1) breach of the implied warranty of habitability; (2) breach of the rental agreement between the HPHA and Plaintiffs; (3) breach of the management contract between the HPHA and Defendant Realty Laua LLC ("Realty Laua"), as to which Plaintiffs are third-party beneficiaries; (4) unfair trade practices in violation of HRS § 480-2; and (5) medical monitoring. These allegations are fully supported by the attached declarations of Plaintiffs and attached documents, evidence that shows numerous disputed issues of material fact for trial.

Although the HPHA offers numerous facts that purportedly mitigate its responsibility for the dangerous and inhumane conditions at KPT, including the age of the building, the actions of other tenants, and its belated recent efforts to improve conditions, these facts are barely relevant to whether the HPHA is liable to Plaintiffs under the theories alleged in the Complaint. The HPHA does not even attempt to relate these facts to negating any element of Plaintiffs' claims or establishing any affirmative defenses.

The HPHA's legal defenses are equally meritless. Numerous courts have allowed claims for breach of the implied warranty of habitability in federally-subsidized housing and have found no conflict with any federal laws or policy. *See, e.g., Housing Authority of City of Newark v. Scott*, 348 A.2d 195, 198 (N.J. Super. 1975). The cases cited by the HPHA holding to the contrary

are for the most part distinguishable because they involved housing owned directly by the United States Department of Housing and Urban Development (“HUD”) as to which federal common law, and not state law, applies.

Furthermore, the HPHA has not managed to cite a single case where a court has found that federal public housing law or HUD regulations preempt state law causes of action for breach of a rental agreement or breach of the implied warranty of habitability (other than in the case of properties owned by HUD). Indeed, as the HPHA admits, it is obligated by federal law and its contract with HUD to provide “decent, safe, and sanitary housing.” Allowing the tenants of KPT to enforce that obligation through this litigation will in no way interfere with HUD’s regulatory authority.

II. RELEVANT ALLEGATIONS AND FACTS

A. ALLEGATIONS IN PLAINTIFFS’ COMPLAINT.

Plaintiffs are low-income persons who have lived in or currently live in KPT. Compl. at ¶ 1. KPT, consisting of two 16 story towers and 614 units, is a public housing project owned, operated, and controlled by the HPHA and managed by Realty Laua. *Id.* KPT is funded in part by HUD and is the largest state-owned public housing project in Hawai‘i. Compl. at ¶ 28.

KPT is characterized by squalid, unsafe, and unsanitary conditions that violate numerous provisions of State and County health and safety regulations (as set forth in more detail below). Compl. at ¶ 2. Specifically:

- **No Working Elevators** – the elevators at KPT (two 16-story buildings) have been in a state of constant disrepair for several years. At times, there were no elevators operating at all. Without elevators, tenants have been required to walk up and down the dank and darkly-lit stairwells, which constantly smell of urine, to their apartments. Disabled and elderly tenants have become virtual shut-ins. Compl. at ¶¶ 35-37.
- **Fires and Fire Hazards** –KPT is in violation of several provisions of the City and County Fire Code. There is no functioning fire alarm system and required fire fighting equipment is almost completely absent. There have been numerous fires reported at KPT – in 2007, the fire department came to KPT to respond to fires at least 60 times. Compl. at ¶¶ 38-40.

- **Rodent Infestations and Particulates in the Air** – Garbage chutes and other common areas are infested with rats. The apartments are infested with roaches, especially the kitchens. As a result of the fires, rodent infestations, and lack of sanitary trash disposal, the air at KPT is full of toxins and allergens. Compl. at ¶¶ 41-43.
- **No Hot Water** – hot water has been completely unavailable during most hours of most days. Compl. at ¶¶ 44.

These conditions are contrary to the express terms of the rental agreements between the HPHA with its tenants (including Plaintiffs). In those agreements, the HPHA promises, among other things, to (a) “[m]aintain the Project in a decent, safe, and sanitary condition,” (b) “[c]omply with all applicable laws, rules, regulations, and ordinances of governmental authorities governing maintenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part, noncompliance with which would have the effect of endangering health or safety;” (c) “[m]aintain all electrical, plumbing, and other facilities and appliances supplied by Management in good working order and condition,” (d) “[p]rovide and maintain appropriate receptacles and conveniences ... for the removal of normal amounts of rubbish and garbage and arrange for the frequent removal of such waste materials,” and (e) “[k]eep Project buildings, facilities, and areas not otherwise assigned to the Tenant for maintenance and upkeep in a clean and safe condition.” Compl. at ¶ 52. *See also* Exhibit “2” to Taniguchi Declaration attached to Motion to Dismiss at ¶ 7 (rental agreement).

B. ADDITIONAL FACTS SUBMITTED IN OPPOSITION TO THE HPHA’S MOTION FOR SUMMARY JUDGMENT.

These allegations are amply supported by the attached Declarations of Plaintiffs and documents. The Plaintiffs consistently complain about the unreliable or non-existent of elevator service;¹ fire hazards;² rodent

¹ Faletogo Dec. at ¶¶ 5-8; McMillon Dec. at ¶¶ 3-6; Strickland Dec. at ¶¶ 4-10;
(continued...)

infestations and air conditions;³ and lack of hot water.⁴ They also consistently complain about the HPHA and Realty Laua's failure to make repairs necessary to prevent immediate risks to health and safety.⁵

Federal and County authorities have also noted the HPHA's failure to comply with health and safety regulations at KPT. HUD has recognized that KPT has severe deficiencies. In a February 2008 inspection, HUD awarded Kuhio Park Terrace a failing score of 40 out of a possible 100 points. See attached Exhibit "A" to Declaration of Jason H. Kim ("Kim Dec.").⁶ Nineteen points were deducted for health and safety violations. *Id.* The report notes roach infestations and inoperable fixtures in bathrooms and kitchens in several units, inoperable elevators, and missing or expired fire extinguishers. *Id.*

The Honolulu Fire Department has also cited Kuhio Park Terrace for numerous violations of the City and County's Fire Code. See attached Exhibit "B" to Declaration of Jason H. Kim. A February 14, 2006 inspection found seven separate violations, including the complete lack of a working fire alarm system. *Id.*

III. ARGUMENT

A. STANDARD FOR MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

A motion to dismiss a complaint under HRCP Rule 12(b)(6) may only be granted where "it appears beyond a doubt that the plaintiff can prove

(...continued)

Sabalboro Dec. at ¶¶ 3-4; Sommers Dec. at ¶¶ 3-5 & 7.

² Faletogo Dec. at ¶ 14; McMillon Dec. at ¶ 7; Strickland Dec. at ¶ 14;

Sabalboro Dec. at ¶¶ 5-6; Sommers Dec. at ¶ 8

³ Faletogo Dec. at ¶¶ 10 & 12; McMillon Dec. at ¶¶ 8-9 & 11; Strickland Dec. at ¶¶ 11-12 & 14; Sabalboro Dec. at ¶ 7; Sommers Dec. at ¶ 10.

⁴ Faletogo Dec. at ¶ 11; McMillon Dec. at ¶ 10; Strickland Dec. at ¶ 13; Sommers Dec. at ¶ 6.

⁵ Faletogo Dec. at ¶ 9; McMillon Dec. at ¶ 12; Strickland Dec. at ¶ 16; Sabalboro Dec. at ¶ 8 & 10; Sommers Dec. at ¶ 9.

⁶ Government reports are admissible evidence of the facts reported therein. See HRE 803(8).

no set of facts in support of his claim that would entitle him to relief.” *Midkiff v. Castle & Cooke, Inc.*, 45 Haw. 409, 414 (1962). All allegations of fact in the complaint must be taken as true. *Au v. Au*, 63 Haw. 210, 214 (1981). “The motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.” *Marsland v. Pang*, 5 Haw. App. 463, 474 (Haw. App. Ct. 1985).

A motion for summary judgment under HRCF Rule 56 may only be granted where the movant satisfies its burden of showing that “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” HRCF Rule 56(c). All evidence and inferences must be construed in favor of the non-moving party. *Hawai'i Cmty. Fed. Credit Union v. Keka*, 94 Hawai'i 213, 221 (2000).

B. PLAINTIFFS HAVE ALLEGED VIABLE CLAIMS FOR BREACH OF THE RENTAL AGREEMENT AND BREACH OF THE IMPLIED WARRANTY OF HABITABILITY AND DISPUTED ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT ON THESE CLAIMS.

1. Breach of Rental Agreements

The State and its agencies have expressly waived their sovereign immunity as to claims “founded ... upon any contract, express or implied, with the State.” HRS § 661-1. Accordingly, the State and its agencies are required to comply with their express and implied contractual obligations to the same extent as private parties. *See Fought & Co. v. Steel Engineering & Erection*, 87 Hawai'i 37, 56 (1998) (“When the state has consented to be sued, its liability is to be judged under the same principles as those governing the liability of private parties.”)

Here, in the rental agreements, the HPHA promised its tenants that it would:

- (a) [m]aintain the Project in a **decent, safe, and sanitary condition**,
- (b) [c]omply with **all applicable laws, rules, regulations, and ordinances of governmental authorities** governing maintenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part, **noncompliance with**

which would have the effect of endangering health or safety;

(c) [m]aintain all electrical, plumbing, and other facilities and appliances supplied by Management in **good working order and condition,**

(d) [p]rovide and maintain **appropriate receptacles and conveniences ... for the removal of normal amounts of rubbish and garbage** and arrange for the frequent removal of such waste materials, and

(e) [k]eep Project buildings, facilities, and areas not otherwise assigned to the Tenant for maintenance and upkeep in a **clean and safe condition.**

Exhibit "2" to Taniguchi Dec. attached to Motion to Dismiss at ¶ 7 (rental agreement) (emphasis added).

Plaintiffs allege that the HPHA has utterly failed to meet these obligations. Compl. at ¶¶ 35-44. The conditions at KPT as described above violate numerous State and County health and safety regulations, including but not limited to:

- HAR § 12-230-6, which requires elevators to be "maintained and operated by the owner or lessees in a safe condition and manner";
- Section 1007.2.9.1.1 of the 1997 Uniform Fire Code (adopted as the Hawai'i Fire Code), which requires a "manual and automatic fire alarm system in every apartment house over one story and containing 17 or more dwelling units";
- HAR § 11-11-10(a), which requires the owner of every building to "keep clean the public halls, stairways, yards, plumbing, and other parts thereof used in common by its occupants";
- HAR § 11-26-33, which requires "[e]very owner ... of any premises that has rodents" to "promptly eradicate or in good faith continually endeavor to eradicate the rodents by poisoning, trapping, or other appropriate means" and that requires garbage to be "removed promptly and stored in ratproof containers";
- HAR § 11-26-34, which states that "[n]o rubbish shall be placed, left, dumped, or permitted to be stored in the vicinity of any building, in such a way as to afford a harboring or breeding place

for rats”;

- HAR § 11-26-62, which requires that “[p]remises shall be kept reasonably free of cockroach infestation to prevent hazards to public health, welfare, and comfort”;
- Honolulu Housing Code § 19-13(b), which states that an “owner or the owner’s designated agent shall be responsible for the maintenance of the plumbing system in a safe and sanitary condition”; and
- Honolulu Housing Code § 27-91, which defines a “substandard building” as one that has a “[l]ack of hot ... running water to plumbing fixtures in a dwelling unit.”

Furthermore, Plaintiffs’ Declarations and Exhibits “A” and “B” show many disputed issues of material fact as to the extent of these violations and Plaintiffs’ injury from these violations so as to preclude summary judgment. The Motion to Dismiss should be denied as to this claim.

2. Implied Warranty of Habitability

In Hawai‘i, all contracts for residential leases contain an implied warranty of habitability and fitness for the purposes intended. *See Lemle v. Breeden*, 51 Haw. 426, 433 (1969). The implied warranty arises from the fact that a residential lease is a contractual relationship as well as an estate in land. *Id.* Contrary to the State’s argument, the implied warranty has never been expressly limited by any Hawai‘i court to “private” housing. Motion to Dismiss at 8. Indeed, any such limitation would be contrary to HRS § 661-1, which waives sovereign immunity for claims based on express and ***implied*** contracts and *Fought & Co.*, 87 Hawai‘i at 56, which requires the State to be treated the same as private litigants in contract actions.

A claim for breach of the warranty of habitability does not, contrary to the HPHA’s argument, require a prior finding by any governmental authority that the premises are literally “uninhabitable.” Motion to Dismiss at 11-12. The HPHA has cited no authority in support of this novel proposition. The very purpose of this lawsuit is to determine whether the implied warranty has been breached. Indeed, in *Lemle*, the Supreme Court found a breach of the

warranty without any prior finding of uninhabitability by any governmental authority. *Lemle*, 51 Haw. at 433-34.

Courts have found breaches of the implied warranty based on the type of conditions Plaintiffs complain about here. See *Solow v. Wellner*, 595 N.Y.S. 2d 619, 621 (N.Y. Sup. 1992) (finding breach of the implied warranty based on significant decrease in elevator services causing prolonged delays and skipping of floors); *Atherton Condominium Apartment-Owners Ass'n Bd. of Directors v. Blume Development Co.*, 799 P.2d 250, 259 (Wash. 1990) (violations of fire code may be a breach of the implied warranty); *Lemle*, 51 Haw. at 433-34 (rodent infestation breached the implied warranty); *Permanent Mission of Republic of Estonia to the United Nations v. Thompson*, 477 F. Supp. 2d 615, 618 (S.D.N.Y. 2007) ("Failure to provide ... hot water has been recognized as a breach of the warranty of habitability.").

Plaintiffs have adequately alleged numerous breaches of the implied warranty of habitability. Compl. at ¶¶ 35-44. And the Plaintiffs' Declarations and Exhibits "A"- "B" show the existence of numerous disputed issues of material fact as to these breaches. Whether the implied warranty was breached is a fact-intensive issue not amenable to determination on summary judgment. See *Lund v. MacArthur*, 51 Haw. 473, 476 (1969) (remanding breach of implied warranty claim to determine whether violations of building code breached the implied warranty and whether the violations were material); *Lau v. Bautista*, 61 Haw. 144, 151 (1979) (remanding breach of implied warranty counterclaim to determine whether landlord was responsible for "substandard conditions" and whether those conditions breached the warranty of habitability). The Motion to Dismiss should be denied as to this claim.

C. THE HPHA HAS NOT PRODUCED ANY EVIDENCE TO NEGATE ANY ELEMENT OF PLAINTIFFS' CLAIMS OR ESTABLISH ANY AFFIRMATIVE DEFENSES.

The HPHA attaches to its Motion to Dismiss Declarations from Chad Taniguchi, Robert Faleafine, and Stephanie Fo. None of the facts in these declarations establish the absence of any disputed issue of material fact.

Indeed, the HPHA does not even attempt to relate the facts in those affidavits to any element of Plaintiffs' claims or any recognized affirmative defenses to those claims.

While it may be true that Defendants engage in "continuously planning and scheduling repairs" to KPT, Tanguchi Dec. at ¶ 4; Faleafine Dec. at ¶ 4; Fo Dec. at ¶ 4, this is largely irrelevant to Plaintiffs' claims. If the result of the planning and repairs is housing that does not comply with health and safety regulations, Plaintiffs may still bring claims for breach of the rental agreement and implied warranty of habitability. It is the "output" and not the "input" that matters. Similarly, although these declarations state that *some* units at KPT have been closed where the health and safety of tenants is threatened, Taniguchi Dec. at ¶ 10; Faleafine Dec. at ¶ 5, this fact alone does not establish that the HPHA takes sufficient action every time there is a threat to the health and safety of tenants. And, as discussed below, the fact that no governmental authority has required the HPHA to close KPT and relocate its tenants, Taniguchi Dec. at ¶11; Faleafine Dec. at ¶ 6, is irrelevant to Plaintiffs' claims. Finally, the fact that certain repairs may be contemplated in the future, Ex. "1" to Fo Dec., is irrelevant to Plaintiffs' damages claims (which are of course based on the past conditions at KPT).⁷ Furthermore, there is no guarantee that these planned improvements will materialize or be done properly. Again, it is the actual conditions at KPT that matter, not the HPHA's future plans or good intentions.

D. A CLAIM FOR BREACH OF CONTRACT OR BREACH OF THE IMPLIED WARRANTY OF HABITABILITY MAY BE BROUGHT FOR PUBLICLY-SUBSIDIZED HOUSING.

Numerous courts have recognized a claim for breach of the implied

⁷ The fact that the Honolulu Fire Department has exempted KPT from the requirement to maintain fire hoses, see Ex. 2 to Fo Dec., is relevant to Plaintiffs' claims but falls far short of proving the absence of any disputed issue of material fact. The lack of fire hoses is among the least of the regulatory violations alleged by Plaintiffs.

warranty of habitability and/or breach of contract in publicly-subsidized housing. See *Mann v. Pierce*, 803 F.2d 1552, 1557 (11th Cir. 1986) (affirming denial of motion to dismiss tenants' claims against HUD for breach of the implied warranty of habitability); *In Re Day*, 208 B.R. 358, 371-72 (Bankr. E.D. Pa. 1997) ("We therefore find that there is simply no basis on which to find that a state housing authority ... is immune from such a broad and basic tenant of state landlord-tenant law as the implied warranty of habitability."); *Multi-Family Management, Inc. v. Hancock*, 664 A.2d 1210, 1213 (D.C. 1995) (recognizing claim for breach of implied warranty of habitability in HUD-financed housing project: HUD was not an indispensable party to the action); *Housing Authority of City of East St. Louis v. Melvin*, 507 N.E.2d 1289, 1294 (Ill. App. Ct. 1987); *Housing Authority of City of Newark v. Scott*, 348 A.2d 195, 197-98 (N.J. Super. 1975) (allowing claim for rent abatement for breach of the implied warranty would not conflict with any federal or state law regulating public housing).

The cases cited by the HPHA are either distinguishable or actually support the Plaintiffs' claims. First, *Alexander v. U.S. Department of Housing and Urban Development*, 555 F.2d 166, 171 (7th Cir. 1977), involved a housing project directly owned by HUD. The issue in *Alexander* was whether the court should "develop[] a **federal** landlord-tenant law imposing a warranty of habitability in leases between **federally owned** low income housing projects and their tenants." *Id.* (emphasis added). *Alexander* may be relevant to federal common law but it has little relevance to whether state law applies to federally-subsidized (as opposed to federally-owned) housing projects.

The HPHA also relies on the district court decision in *Conille v. Pierce*, 649 F. Supp. 1133 (D. Mass. 1986). *Conille* also dealt with federally-owned housing. More importantly, this decision was overruled, and the decision on appeal largely supports the Plaintiffs' position. See *Conille v. Secretary of Housing and Urban Development*, 840 F.2d 105, 114-15 (1st Cir. 1988) (although Massachusetts landlord-tenant law does not apply directly to HUD, tenant would be allowed reimbursement of rental payments for HUD's

failure to keep premises in habitable condition pursuant to federal common law).

Similarly, the other federal district court case cited by the HPHA, *Chase v. Theodore Mayer Bros*, 592 F. Supp. 90, 97-01 (D. Ohio 1983), involved federal common law because HUD was a mortgagee in possession. And although the court found that the state landlord tenant law did not apply directly, it did allow a claim for restitution of rent for breach of the warranty of habitability if it was found on remand that the property violated local building, housing, and health and safety codes. *Id.*

The vast weight of authority supports claims for breach of contract and breach of the implied warranty of habitability in publicly-subsidized housing. Even in the federal common law context, which is not controlling here, *Alexander* does not represent the prevailing view. The Eleventh Circuit in *Mann*, 803 F.2d at 1557 and the First Circuit in *Conille*, 840 F.2d at 114-15, allowed claims against HUD for breach of contract and/or rent reimbursement based on the conditions of HUD-owned housing. There is no basis to dismiss Plaintiffs' claims for breach of the rental agreements and breach of the warranty of habitability based on any alleged conflict with federal law or policy.

E. NO FEDERAL LAW OR REGULATION PREEMPTS PLAINTIFFS' CLAIMS.

The HPHA has not cited any case holding that state contract law is preempted by federal housing law or HUD regulations. Instead, the HPHA relies on vague generalities about preemption. The mere fact that "HPHA and its various housing projects are ... closely regulated by federal law and regulations," Motion to Dismiss at 15, is not enough for federal preemption.

Federal law preempts state law in only three circumstances: "(1) federal law may explicitly preempt state law in a given area; (2) federal law may implicitly preempt state law by dominating regulation in a given area; or (3) state law may actually conflict with federal law." *Young v. Coloma-Agaran*, 340 F.3d 1053, 1055 (9th Cir. 2003). None of these three circumstances are present here.

First, the HPHA has not cited any provision of federal law that **explicitly** mandates preemption of state law with respect to HUD-financed housing. Second, it is obvious that federal law does not “dominate” regulation in this area so as to preempt the entire field. The State has promulgated its own laws governing federally-funded housing. See HRS Chapter 356D. Third, the HPHA has not identified any **specific** conflict between federal law and state law.

Federal law does not preempt state law claims for breach of contract and/or breach of the warranty of habitability in federally-funded housing because the goals of federal housing law and state landlord-tenant law are consistent. As the court reasoned in *Housing Authority of City of Newark*, 348 A.2d at 198:

[T]he essential objective of the federal law is to assist state and local governments in alleviating “unsafe and unsanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of low income.” ... It is not the statutory design to require tenants to subsidize public housing by paying rent for substandard accommodations.

See also *Multi-Family Management, Inc.*, 664 A.2d at 1213 (“[T]he D.C. Housing Code standards imposed on the landlord do not conflict with the federal housing standards imposed by HUD on properties receiving project-based Section 8. Absent such a conflict ... there is no federal preemption.”).

Furthermore, as the HPHA admits, HUD **requires** that it include in its contracts with tenants the obligations on which the Plaintiffs base their breach of contract claim, including the obligations to provide “safe, decent, and sanitary housing” and to comply with health and safety regulations. Motion to Dismiss at 1, citing 24 C.F.R. § 966, *et seq.* It would make no sense for HUD to require the HPHA to include these provisions in its contracts with its **tenants** if the tenants had no right to enforce them.

Relatedly, without citing any applicable authority or analyzing the requirements of HRCP Rule 19, the HPHA claims that HUD is a necessary and

indispensable party. But as the court held in *Multi-Family Management, Inc.*, 664 A.2d at 1213, HUD is not a necessary party to an action for breach of the warranty of habitability in federally-subsidized housing because: (1) “HUD’s absence from this lawsuit will not “impair or impede” its ability to protect its interests as “HUD can enforce its own rights against the landlord under the HAP contract” and would not be bound by the outcome of an action between the tenant and the owner; and (2) there was no risk of the defendant incurring multiple or inconsistent obligations because there is no conflict between HUD’s requirements and the requirements of the D.C. Housing Code.

Equally unpersuasive is the HPHA’s contention that primary jurisdiction requires this Court to defer to HUD. First, there is no mechanism by which Plaintiffs can ask HUD to decide whether the HPHA is complying with its obligations to maintain “safe, decent, and sanitary housing” and its other contractual obligations to tenants of KPT, much less require HUD to enforce the contract and federal law. See *Chase*, 592 F. Supp. at 99 (“The applicable housing statutes and regulations promulgated thereunder ... *contain no enforcement scheme* operating in favor of plaintiffs.”) (Emphasis in original.) Second, HUD does not have any specialized expertise in the issues raised by this lawsuit, which focus on whether the conditions at KPT violate state and county health and safety regulations. Thus, the doctrine of primary jurisdiction does not apply. See *Aged Hawaiians v. Hawaiian Homes Commission*, 78 Hawai‘i 192, 202 (1995) (primary jurisdiction does not apply where “technical matters calling for the special competence of the administrative expert are not involved”).

F. PLAINTIFFS ARE INTENDED THIRD-PARTY BENEFICIARIES OF THE MANAGEMENT AGREEMENT BETWEEN THE HPHA AND REALTY LAUA.

The management agreement between the HPHA and Realty Laua requires Realty Laua to, among other things, “maintain the overall physical appearance and condition of the properties, including maintenance and up-keep to the individual units.” Ex. “1” to Dec. of Robert Faleafine attached to HPHA’s Motion to Dismiss. In substance, the HPHA has delegated to Realty

Laua part of its contractual obligations to Plaintiffs to provide "decent, safe, and sanitary" housing as described above. Maintenance of the common areas and units at KPT obviously provides a direct and intended benefit to KPT's tenants.

Furthermore, the ultimate beneficiaries of the federal housing programs funding KPT and Realty Laua's management contract are KPT's tenants. Tenants are intended third-party beneficiaries of contracts between the government and private parties relating to public housing because the tenants are the primary beneficiaries of the laws that authorize such contracts. *See Holbrook v. Pitt*, 643 F.2d 1261, 1273 (7th Cir. 1981) (tenants had right to sue under contract between HUD and owner to enforce provisions relating to timely certification for benefits); *McNeill v. New York City Housing Authority*, 719 F. Supp. 233, 249 (S.D.N.Y. 1989) (tenants were intended third-party beneficiaries of contract between municipal housing agency and private landlord under federal Section 8 program); *Gonzalez v. St. Margaret's House Housing Development Corp.*, 620 F. Supp. 806, 810 (D.C.N.Y. 1985) (tenants were intended third-party beneficiaries of housing assistance payment contracts between HUD and private landlord); *Zigas v. Superior Court*, 174 Cal. Rptr. 806, 835 (Cal. App. Ct. 1981) (tenants were intended third-party beneficiaries of financing agreement between private landlord and HUD because the contract arose from federal housing legislation and there is "no doubt that petitioners are members of the class which this legislation was intended to benefit").

As noted by the HPHA and by the court in *Kingston Square Tenants Association v. Tuskegee Gardens, Ltd.*, 792 F. Supp. 1566, 1573 (S.D. Fla. 1992), there is also federal authority to the contrary. *Harlib v. Lynn*, 511 F.2d 51, 55-56 (7th Cir. 1975), however, did not turn on whether the tenants were third-party beneficiaries but rather held that the tenants could not state a claim under the HUD contract based on a rent increase because the contract specifically allowed for such an increase and provided no right to notice and

hearing prior to the increase. *Perry v. Housing Authority of City of Charleston*, 644 F.2d 1210, 1218 (4th Cir. 1981); *Falzarano v. U.S.*, 607 F.2d 506, 511 (1st Cir. 1979), and *Kingston Square Tenants Association*, 792 F. Supp. at 1573, concluded with almost no analysis (and in part based on a misreading of *Harlib*) that tenants were not third-party beneficiaries.

The analysis of *Holbrook*, 643 F.2d at 1270-73, is more thorough and persuasive than the cases following *Harlib*. In *Holbrook*, the court reasoned that the purpose of the Section 8 program was critical to determining the parties' intent in entering into a contract authorized by that program. Based on a thorough analysis of the legislative history of the laws creating the Section 8 program and the implementing regulations, the court concluded that the overarching purpose of the laws and regulations is to benefit low-income tenants. *Id.* The tenants were therefore intended third-party beneficiaries with standing to sue under the contract between HUD and the project owner. *Id.* at 1273. As the court stated, "If the tenants are not the primary beneficiaries of a program designed to provide housing assistance payments to low income families, the legitimacy of the ... program is placed in grave doubt." *Id.* at 1270.

Similarly, if the tenants at KPT are not intended beneficiaries of the contract between the HPHA and Realty Laua, there would be "grave doubt" as to what the purpose of the management contract is at all. Although Realty Laua's performance of the management contract also benefits the HPHA by managing and maintaining the HPHA's property, the HPHA's only interest in that property is its utility in providing "decent, safe and sanitary" housing to needy Hawaiian families. Plaintiffs are intended beneficiaries of the management contract and are therefore entitled to sue to enforce its terms.⁸

⁸ The fact that the contract between the HPHA and HUD specifically provides that no third parties may enforce its terms is irrelevant to the interpretation of the contract between the HPHA and Realty Laua.

G. A CLAIM FOR UNFAIR AND DECEPTIVE TRADE PRACTICES CAN BE MAINTAINED AGAINST THE STATE UNDER THE CIRCUMSTANCES OF THIS CASE.

Although the Hawai'i Supreme Court held in *Big Island Small Ranchers Association v. State*, 60 Haw. 228, 236 (1978) that HRS § 480-2 did not apply to the State, more recent decisions of the Hawai'i Supreme Court call into doubt the application of that case here. In *Fought & Co.*, 87 Hawai'i at 55, the Hawai'i Supreme Court held that HRS § 607-14 applies to suits against the State even though the State has not expressly waived its sovereign immunity as to attorneys' fees and Section 607-14 does not by its terms apply to the State. The court reasoned that the attorney fee claim arose from a contract claim as to which the State expressly waived its sovereign immunity and that "a further waiver of sovereign immunity is not necessary in order for HRS § 607-14 to apply to the state ... in matters in which, by virtue of the express waiver of sovereign immunity set forth in HRS § 661-1, the state ... has become a party." *Fought & Co.*, 87 Hawai'i at 56.

Here, the HPHA has "become a party" to this "matter" due to the express waiver of sovereign immunity for contract actions in HRS § 661-1. Plaintiffs' claim under HRS § 480-2 is based on the same facts as their express and implied contract claims: Plaintiffs allege that the HPHA committed "unfair" trade practices by allowing conditions at KPT that violate health and safety regulations. The only practical effect of the Section 480-2 claim here is to increase the remedial options available to Plaintiffs. Just as in *Fought & Co.*, a claim allowing for additional remedies does not require a "further waiver of sovereign immunity" when it arises from an action as to which the State has expressly waived its sovereign immunity. See also *Sierra Club v. DOT*, __ Haw. __, 202 P.3d 1226 (slip op. at 148-49) (2009) (State was liable for attorneys' fees pursuant to private attorney general doctrine because the claim for fees arose from a claim under HRS § 343-7, as to which the State had no sovereign immunity).

Furthermore, even if the HPHA is not a proper defendant for this

claim, it may still be maintained against Realty Laua, a private entity.

H. PLAINTIFFS HAVE ADEQUATELY STATED A CLAIM FOR MEDICAL MONITORING

A claim for medical monitoring requires proof of the following elements: (1) exposure greater than background levels; (2) to a proven hazardous substance; (3) caused by defendant's negligence; (4) proximately causing an increased risk of contracting a latent disease; and (5) the existence of a monitoring regime that is different from that normally recommended in the absence of such exposure that is reasonably necessary to detect the disease. *See Redland Soccer Club, Inc. v. Department of the Army*, 696 A.2d 137, 146 (Pa. 1997). Here, Plaintiffs have alleged exposure to hazardous substances such as smoke, rodent droppings, and asbestos caused by the HPHA's failure to properly maintain KPT. Compl. at ¶ 71. Plaintiffs have also alleged that a reasonable physician would recommend monitoring and that effective monitoring regimes are available. Compl. at ¶ 72. The HPHA's suggestion that the medical monitoring claim is not "ripe," Motion to Dismiss at 14-15, disregards the essential nature of a medical monitoring claim, which is to detect **latent** diseases in the future where the defendant's conduct has increased the risk of contracting the disease. *Redland Soccer Club, Inc.*, 696 at 146.⁹

I. IN THE ALTERNATIVE, PLAINTIFFS REQUEST A CONTINUANCE PURSUANT TO HRCP RULE 56(F).

As set forth above, the HPHA has not met its burden for obtaining summary judgment and its motion should therefore be denied. In the alternative, however, Plaintiffs request a denial or continuance pursuant to HRCP Rule 56(f) of the Motion to Dismiss to the extent it seeks summary judgment because of the need to obtain additional discovery. This action was

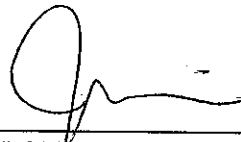
⁹ A Rule 56(f) continuance, as discussed below, is especially appropriate for this claim because of the need for expert medical testimony and environmental testing of the environmental conditions at KPT.

filed on December 18, 2008. See Kim Dec. at ¶ 4. Plaintiffs did not serve any discovery requests in early 2009 because the parties were actively discussing a possible settlement. *Id.* at ¶ 5. The Defendants have not yet responded to Plaintiffs' first request for production of documents. *Id.* at ¶ 6. That request seeks numerous documents crucial to Plaintiffs' ability to prove their claims at trial, including: (1) repair and maintenance logs; (2) contracts for the performance of extermination and garbage removal services; (3) inspections by government agencies, including HUD; and (4) incident reports, complaints, and other documents to show the extent of the elevator and hot water problems. See Exhibit "C" attached to Kim Dec. Once these documents are obtained, Plaintiffs will depose representatives of Realty Laua and the HPHA to obtain additional information about the conditions at KPT. Under these circumstances, a continuance is appropriate. See *Marshall v. University of Hawaii*, 9 Haw. App. 21, 29 (1991) (circuit court erred in granting summary judgment where motion was filed early in the case and plaintiff informed the court he needed discovery on several key issues).

IV. CONCLUSION

For the reasons set forth above, the HPHA's Motion to Dismiss and Realty Laua's Joinder therein should be denied.

DATED: Honolulu, Hawai'i, April 24, 2009.



PAUL ALSTON
JASON H. KIM
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEWERS FALETOGO; HAZEL
MCMILLON; GENE STRICKLAND,
TRUDY SABALBORO; and LEE
SOMMERS, individually and on behalf
of a class of past, present, and future
residents of Kuhio Park Terrace

Plaintiffs,

v.

STATE OF HAWAI'I; HAWAI'I
PUBLIC HOUSING AUTHORITY;
HAWAI'I PUBLIC HOUSING
AUTHORITY; REALTY LAUA LLC,
formerly known as R & L Property
Management LLC, a Hawai'i limited
liability company; and Does 1-20.

Defendants.

) CIVIL NO. 08-1-2608-12 SSM
) (Other Civil Action)

) **DECLARATION OF LEWERS**
) **FALETOGO**

DECLARATION OF LEWERS FALETOGO

I, LEWERS FALETOGO, hereby declare that:

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

2. I lived in building A at Kuhio Park Terrace (KPT), 1475 Linapuni Street in Honolulu, Hawai'i, from 1995 until 2008. In 2008, I moved to the low-rise apartments across the street, Kuhio Homes. I have been a tenant there ever since.

3. I have arthritis and very serious respiratory problems. I am obese and weigh over 400 pounds. Due to my respiratory problems, I had to have a tracheotomy. I cannot walk more than 20 feet without stopping to rest. To move around outside of my apartment, I must use a wheelchair.

4. I regularly see three doctors including: my regular doctor, a specialist for my respiratory problems, and a dietician. I meet with each of my doctors every month for at least one visit.

5. To go out, when the elevator was working, I would take my wheelchair to the elevator and wait 10-15 minutes for it to come. There were three elevators in my building, two for the residents and one for freight. The residential elevators were down for a long time and the freight elevator was usually the only one that worked. It also frequently broke down and would not run. About once or twice a month the elevator would be broken when I

wanted to use it and I could not go anywhere. I worried all the time about the elevator. I was afraid to use the elevator because I did not want to get stuck. My cousins were stuck in the elevator once for over two hours. I only went out when I absolutely needed to. I had to cancel doctor's appointments on days when the elevators weren't working or I was afraid I would get stuck.

6. I only left my apartment when I had to because I was afraid the elevator would be broken when I got back and I would not be able to get home. Once in 2006 or 2007, I had to go to a doctor's appointment. When I left, only one elevator was working. Someone had been stuck in the elevator shortly before I got on. I took the elevator and went to my doctor's appointment. When I came back a couple of hours later, the elevator was not working. I had to go to the bathroom so I had to get my two brothers to come help me. They carried me up the stairs by grabbing my legs and carrying me over their shoulders. I was embarrassed. There were other people there. My brothers didn't care. They were willing to help me because they love me.

7. I have been carried down the steps many times. From July 2006 to July 2007, I had to be carried on the steps about 7 times. I went into the hospital in July 2007 and was there until December 2007. From the time I

got out of the hospital until I moved across the street, I avoided using the elevator as much as possible because I was scared that it would break.

8. The elevator was also a problem for me receiving my medical supplies that are delivered to me. They come monthly and sometimes the delivery person had problems getting them to me because of the elevators.

9. There were many other problems at Kuhio Park Terrace. The sewer backed up a lot, usually every 2 or 3 months. When this happened, it flooded the floor of my apartment with human waste—including feces. Maintenance would come and sweep out the water, but that's it. My things in my apartment were sometimes ruined. When the sewerage pipes in the building backed up, the pipes were opened in front of the building and all of the waste was pumped out onto the front lawn.

10. We also had problems with bedbugs. I had to throw some mattresses away because they became infected. I've never seen the management fumigate the building. No one came by and sprayed.

11. The water at KPT was also a huge problem. There was only hot water from about midnight until 6:00am. I cannot shower with cold water because of my respiratory problems—I get pneumonia fast. When I was living at KPT, I usually could not shower because the water is too cold. My family had to boil water and wipe me down with it.

12. There were also rats, flies, and bugs. They came in through holes around pipes in my apartment. I coughed a lot because of the bad air from all of the fumes.

13. I got lots of skin rashes while I lived at KPT.

14. The trash chutes at KPT were on fire a lot. The trash chute was dirty and made me cough a lot. There was a big hole by the trash chute on my floor that was there the whole time I lived at KPT. Since I lived on the second floor, the fumes and the rodents and insects from the open garbage pit on my first floor next to the elevator door come into my apartment.

15. The washer and dryer room down stairs was very rarely open. There was no normal schedule and that made cleaning clothes and sheets very difficult.

16. When I lived at KPT, I worried all the time. Every day, I worried about the elevator not working and not having any hot water. Even just going to the doctor. I was always really emotional when people talked to me about living at KPT. It made me feel like I did not want to live.

17. This Declaration addresses only some of the problems that I experience or have experienced since residing at Kuhio Park Terrace.

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

Executed this 15 day of April, 2009 in Honolulu, HI.


LEWERS FALETOGO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEWERS FALETOGO; HAZEL
MCMILLON; GENE STRICKLAND,
TRUDY SABALBORO; and LEE
SOMMERS, individually and on behalf
of a class of past, present, and future
residents of Kuhio Park Terrace

Plaintiffs,

v.

STATE OF HAWAI'I; HAWAI'I
PUBLIC HOUSING AUTHORITY;
HAWAI'I PUBLIC HOUSING
AUTHORITY; REALTY LAUA LLC,
formerly known as R & L Property
Management LLC, a Hawai'i limited
liability company; and Does 1-20.

Defendants.

) CIVIL NO. 08-1-2608-12 SSM
) (Other Civil Action)

) **DECLARATION OF HAZEL**
) **MCMILLON**

DECLARATION OF HAZEL MCMILLON

I, HAZEL MCMILLON, hereby declare that:

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

2. I live in building A at Kuhio Park Terrace (KPT), 1475 Linapuni Street in Honolulu, Hawaii. I have been a tenant at KPT since 2002.

3. The elevators at KPT are frequently not working properly or are completely out of service. This happens at least once a week. It has not been uncommon for me to wait 30 minutes to an hour for elevator service.

4. At least four or five times a month I struggle to climb and descend the eight flights of stairs to and from my apartment due to the broken elevators.

5. The stairways at KPT are wet, slippery, and smell of urine. The stairways are not well lit. A number of light fixtures are missing.

6. When I am forced to climb and descend the stairs, I struggle to see due to my glaucoma and the lack of adequate lighting in the stairwells.

7. There are frequent fires in the trash chutes at KPT.

8. Roaches are a big problem at KPT but I stopped complaining to management because I don't see the point. They never do anything to get rid of them and never fumigate. I came up with my own mixture of pine sol

and bleach to kill them, but I have to be careful because of my granddaughter.

9. In 2007, there was a fire in the unit next door and it made a big hole in the wall near my bedroom window. The unit is still empty and I think it is overrun with roaches now because they come through the hole in the wall all the time. I have made several complaints to maintenance and management to fix the hole but they never fixed it.

10. We never have hot water during the day at KPT and if I want to take a hot shower I have to wake up at 2 A.M.

11. The maintenance people do not take care of the trash and it piles up by the trash chutes, which really irritates my allergies.

12. The plumbing in KPT is really old and some time around March 2008 my toilet overflowed. I called maintenance right away but no one ever came to fix it. I spent the whole night bailing dirty water out of my apartment. No one ever responded to my calls and then I finally found a maintenance guy working downstairs and I forced him to come up and fix it. If I had not seen him working I don't think they would have ever come to fix my toilet.

13. My stove has been broken since I moved in. It is very rusty and one of the burners never worked. When I called maintenance to fix the broken burner, they told me "just don't use it" and they never came to fix it.

14. This Declaration addresses only some of the problems that I experience or have experienced since residing at Kuhio Park Terrace.

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

Executed this 15 day of April, 2009 in Honolulu, HI.


HAZEL MCMILLON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEWERS FALETOGO; HAZEL
MCMILLON; GENE STRICKLAND,
TRUDY SABALBORO; and LEE
SOMMERS, individually and on behalf
of a class of past, present, and future
residents of Kuhio Park Terrace

Plaintiffs,

v.

STATE OF HAWAII; HAWAII
PUBLIC HOUSING AUTHORITY;
HAWAII PUBLIC HOUSING
AUTHORITY; REALTY LAUA LLC,
formerly known as R & L Property
Management LLC, a Hawaii limited
liability company; and Does 1-20.

Defendants.

) CIVIL NO. 08-1-2608-12 SSM
) (Other Civil Action)

) **DECLARATION OF GENE**
) **STRICKLAND**

DECLARATION OF GENE STRICKLAND

I, GENE STRICKLAND, hereby declare that:

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows.
2. I live in building A at Kuhio Park Terrace (KPT), 1475 Linapuni Street in Honolulu, Hawai`i. I have been a tenant there since 2006.
3. I am mobility impaired due to a spinal cord injury. I also suffer from obesity, asthma and high blood pressure.
4. Due to my spinal cord injury, I can only walk with the assistance of a cane or walker, and then with great difficulty. I must constantly take medication to control my pain. My obesity is related to my orthopedic injuries and exacerbates my mobility impairment.
5. The elevators at KPT are frequently not working properly or are completely out of service. It has not been uncommon for me to wait 30 minutes to an hour for elevator service. There have been times when I have been forced to take the stairs in order to get in or out of my unit.
6. The stairways at KPT are wet, slippery, and smell of urine. The stairways are not well lit. A number of light fixtures are missing.
7. When I have been forced to climb or descend the ten flights of unmaintained stairs from my apartment due to broken elevators, I have

fallen. Due to the nature of my disability, falls are extremely dangerous for me.

8. During a recent elevator outage, I had to descend the stairs to pick up my wife from work. I fell and suffered a hernia that required medical treatment.

9. During another elevator outage, I tried to climb the stairs but they were extremely wet and I slipped. I decided to wait downstairs until the elevators were fixed so I would not slip and hurt myself. I had to wait over two hours in the lobby for the elevator to be fixed.

10. Due to the dangers of climbing the stairs and the unreliability of the elevators, I feel trapped in my home. I worry that if I leave the elevator will be broken when I return and I will have to wait or attempt to climb the stairs.

11. My apartment is continually infested with roaches. They are in my kitchen cabinets, making some parts of my kitchen unusable. It does not matter how often I clean out my kitchen cabinets, they are always full of roach feces. I have reported this infestation to management on more than one occasion, no one has ever been sent to fumigate my apartment.

12. Though I have not had a rodent problem in my apartment, they are all over the common areas. You see them big time in the closets next to the trash chutes.

13. We have had problems with hot water since we moved in. I remember the first time we had hot water after we moved in was on Christmas Day, but then it was gone the next day. I asked the maintenance guy why we had hot water for one day and he said they "forgot to turn it off."

14. We have fires in the garbage chutes all the time and the fire trucks have to come at least once a month to put them out. The fires really aggravate my asthma and one time I had to go to the hospital it was so bad.

15. The plumbing in my apartment is a constant problem. Both the sink and shower in my bathroom leaked constantly, but maintenance could not fix it. It took several calls to get them to come and look at it and when they finally came to fix it they actually made it worse. I finally had to hire my own plumber to come and fix them.

16. The toilet in the unit above mine began to leak through the ceiling and it was nine days before management sent anyone to fix it. During that time, dirty water dripped down on my wife and I anytime we needed to use the toilet.

17. The electrical wiring and sockets are really old and need to be replaced. If you try to plug something in to the wall, it just hangs really loose out of the socket. You have to push something against the plug to make it stay in the wall, which is really dangerous.

18. This Declaration addresses only some of the problems that I experience or have experienced since residing at Kuhio Park Terrace.

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

Executed this 14 day of April, 2009 in Honolulu, HI.


GENE STRICKLAND

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEWERS FALETOGO; HAZEL
MCMILLON; GENE STRICKLAND,
TRUDY SABALBORO; and LEE
SOMMERS, individually and on behalf
of a class of past, present, and future
residents of Kuhio Park Terrace

Plaintiffs,

v.

STATE OF HAWAII; HAWAII
PUBLIC HOUSING AUTHORITY;
HAWAII PUBLIC HOUSING
AUTHORITY; REALTY LAUA LLC,
formerly known as R & L Property
Management LLC, a Hawaii limited
liability company; and Does 1-20.

Defendants.

) CIVIL NO. 08-1-2608-12 SSM
) (Other Civil Action)

) **DECLARATION OF TRUDY**
) **SABALBORO**

DECLARATION OF TRUDY SABALBORO

I, TRUDY SABALBORO, hereby declare that:

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

2. I live in building A at Kuhio Park Terrace (KPT), 1475 Linapuni Street in Honolulu, Hawaii. I have been a tenant at KPT since 2002.

3. I have multiple sclerosis, arthritis, severe heart problems, severe respiratory problems, and diabetes. I have to use a scooter or wheel chair to move around.

4. Because of the elevators being broken, I have often had trouble leaving or returning to my apartment. On several occasions I have had to wait hours to return to my apartment, as I am unable to use the stairs.

5. There are constant fires in the trash chutes at KPT.

6. Despite frequent fires, I am unaware of KPT's emergency evacuation procedures. I have never been informed of KPT's policies regarding the evacuation of disabled tenants. No one has told me that I would receive help should there be an emergency evacuation. If a fire breaks out, I could easily be stuck on the fourth floor.

7. The constant fires in the trash chutes and the droppings from the roaches that infest the entire building exacerbate my respiratory problems making it hard for me to breathe.

8. I have repeatedly asked HPHA and KPT management to do badly needed maintenance in my unit. My toilet constantly overflows which has ruined all the tile in my bathroom and creates a huge mess that I have to clean up. Every time my toilet overflows I call maintenance immediately. It is supposed to be considered an emergency and they should come right away, but it usually takes them a day to come and fix it. They will do something to my toilet which makes it stop overflowing for about a month, but then it will overflow again. I have had to do this almost every month for the last five years. I complained to management several times over the years, but they tell me I have to talk to maintenance and they cannot help me with my toilet.

9. Both the shower and sink in the bathroom leak non-stop. They were able to fix my sink, but they will not fix my shower. They tried to fix my shower once and told me they do not have the part they need to make it stop leaking. I asked them why they can't just order the part and they would not give me an answer. I still made requests to get it fixed after they told me all they needed was a part, but I think they are ignoring my request.

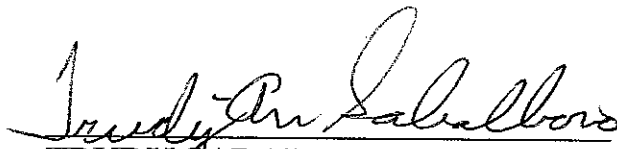
10. I have made repeated requests to repair the broken screen on my kitchen window which abuts the main walkway, but they have never responded. It is unsafe to have no screen on the window where everyone walks by, but they have ignored my requests for a replacement.

11. My lanai door has been stuck in the open position since I moved in to KPT. I made several requests to have it repaired and they finally came to fix it. They were able to close it but then it became stuck in the open position again the very next day. I made requests to get it fixed again but they have been ignored.

12. This Declaration addresses only some of the problems that I experience or have experienced since residing at Kuhio Park Terrace.

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

Executed this 16 day of APRIL, 2009 in Honolulu, HI.


TRUDY SABALBORO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

LEWERS FALETOGO; HAZEL
MCMILLON; GENE STRICKLAND,
TRUDY SABALBORO; and LEE
SOMMERS, individually and on behalf
of a class of past, present, and future
residents of Kuhio Park Terrace

Plaintiffs,

v.

STATE OF HAWAI'I; HAWAI'I
PUBLIC HOUSING AUTHORITY;
HAWAI'I PUBLIC HOUSING
AUTHORITY; REALTY LAUA LLC,
formerly known as R & L Property
Management LLC, a Hawai'i limited
liability company; and Does 1-20.

Defendants.

) CIVIL NO. 08-1-2608-12 SSM
) (Other Civil Action)

) **DECLARATION OF LEE**
) **SOMMERS**

DECLARATION OF LEE SOMMERS

I, LEE SOMMERS, hereby declare that:

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

2. I live in building B at Kuhio Park Terrace (KPT), 1545 Linapuni Street in Honolulu, Hawaii. I have been a tenant at KPT since 2006.

3. Due to the amputation of two of my toes on each foot, my doctors have ordered me to use a wheelchair instead of walking. I am also at constant risk for bacterial infection.

4. I must visit the hospital daily for IV antibiotic treatments to reduce the risk of bacterial infection in my feet. I often have trouble leaving and returning to my apartment from these appointments due to the elevator breakdowns at KPT. I have missed several appointments altogether due to broken elevators.

5. The elevators at KPT are frequently not working properly or are completely out of service. It has not been uncommon for me to wait 30 minutes to an hour for elevator service. I have to call security in order to get the elevator to stop on the second floor. There have been times when I have been forced to take the stairs in order to get in or out of my unit.

6. I have not had consistent hot water since I moved in to my unit at KPT. I think it comes on for an hour or two really late at night or in the early hours of the morning, but it is usually cold or lukewarm.

7. The stairways at KPT are wet, slippery, and smell of urine. The stairways are not well lit. A number of light fixtures are missing.

8. There are frequent fires in the trash chutes at KPT.

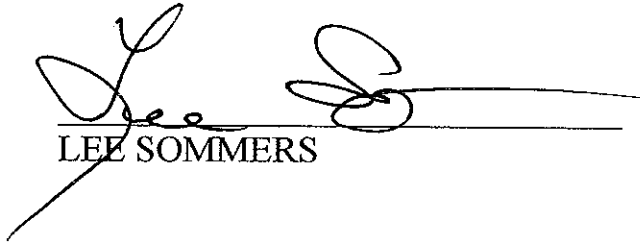
9. There have been approximately six sewage backups into my apartment since I have lived there. The sewage backs up into my shower and floods my apartment. Management does not come to clean it up, forcing me to clean it with my own supplies. Exposing myself to raw sewage on the floor puts me at even greater risk for serious infection.

10. When I first moved into KPT, my apartment was completely overrun by roaches. Another KPT resident suggested a certain type of trap which helped a little, but they are still a problem.

11. This Declaration addresses only some of the problems that I experience or have experienced since residing at Kuhio Park Terrace.

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

Executed this 15 day of April, 2009 in Honolulu, HI.



LEE SOMMERS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEWERS FALETOGO; HAZEL)	CIVIL NO. 08-1-2608-12 SSM
MCMILLON; GENE STRICKLAND,)	(Other Civil Action)
TRUDY SABALBORO; and LEE)	
SOMMERS, individually and on behalf of)	DECLARATION OF JASON H. KIM
a class of past, present, and future)	
residents of Kuhio Park Terrace,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE OF HAWAII; HAWAII PUBLIC)	
HOUSING AUTHORITY; REALTY LAUA)	
LLC, formerly known as R & L Property)	
Management LLC, a Hawai'i limited)	
liability company; and Does 1-20,)	
)	
Defendants.)	
)	

DECLARATION OF JASON H. KIM

I, Jason H. Kim, do hereby declare and state under penalty of perjury that the following facts are true and correct:

1. I am an attorney with the law firm of Alston Hunt Floyd & Ing, counsel for Plaintiffs in this matter. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

2. Attached as Exhibit "A" is a true and correct copy of the United States Department of Housing and Urban Development's ("HUD") report of the February 2008 inspection of Kuhio Park Terrace, which was received from HUD pursuant to a Freedom of Information Act request.

3. Attached as Exhibit "B" is a true and correct copy of the City & County of Honolulu Fire Department's report of the February 14, 2006 inspection of Kuhio Park Terrace, which was received from the Fire Department pursuant to a Hawai'i Information Practices Act request.

4. The Complaint in this matter was filed on December 18, 2008.

5. Soon after the filing of the Complaint, the Attorney General's office approached Plaintiffs' counsel to discuss early settlement. The parties engaged in numerous settlement meetings in early 2009, both among themselves and with the assistance of Keith Hunter of Dispute Resolution and Prevention.

6. Attached as Exhibit "C" is a true and correct copy of Plaintiffs' First Request for Production of Documents, served April 9, 2009. The Defendants have not yet responded to this request.

Executed in Honolulu, Hawai'i on April 24, 2009.



JASON H. KIM

Inspection Summary Report - 291809

Inspection No: 291809
 Property: (84050) KUHIO PARK TERRACE
 1475 LINAPUNI ST
 HONOLULU, HI 96819

Inspection Date: 2/20/2008
 Phone: (808) 833-6075
 Fax: (808) 632-3438
 E-Mail Address: chad.taniguchi@HQBCH.Hawaii.gov
 ACC#: _____
 CA#: _____

Scattered Site?: No
 EIT Project: HI001010
 Comments: tag for o.s. is 639801, tag for p.c. is 540349, tag # not meeting sample is 540549 got it from angle, elevators in b building is under

Building Unit Count

	#Total	#Inspected
Buildings	19	16
Units	609	26

Health and Safety Counts

	Non-Life Threatening			
	Site	Bldg	Unit	Total
Actual	2	6	18	26
Inspected	---	84%	4%	---
Projected	2	7	422	431

Scores

	Possible Points	Area Points	H&S Deduction
Site	18.6	0.8	0.8
Bldg Ext	18.4	0.8	0.0
Bldg Sys	25.2	19.2	3.0
CA	2.4	0.0	0.1
Units	30.4	24.4	8.7
Overall	100.0	59.6	19.6
Final Score = Area Points - H&S Deduction	40.0		

Life Threatening

	Site	Bldg	Unit	Total
Actual	0	0	5	5
Inspected	---	84%	4%	---
Projected	0	0	24	24

Smoke Detectors

	Site	Bldg	Unit	Total
Actual	0	1	1	2
Inspected	---	84%	4%	---
Projected	0	1	23	25

Item Deficiencies

Area	Item	Defect	# with Defect	# Total	% of Bldgs / Units with Defect	
Total	CA	Kitchen	Range/Stove - Missing/Damaged/Inoperable**	1	3	33%
	DU	Kitchen	Range/Stove - Missing/Damaged/Inoperable**	15	26	50%
Minor			Refrigerator - Missing/Damaged/Inoperable	12	26	46%
	Bldg Ext	FHEO - Accessibility to Main Floor Entrance**	Observed or Missing Accessibility Route**	13	16	81%
		Walls	Missing Pieces (Hole/Spalling)**	8	16	39%
	Bldg Sys	Emergency Power	Run-Up Record/Documentation Not Available	2	2	100%
	CA	Closet/Utility/Mechanical	Doors - Damaged Surface - Hole/Pain/Rusting/Glass	2	3	100%
		FHEO - Accessible Outside Common Areas**	Route - Obstructed or Inaccessible to Wheelchair**	13	16	81%
		Hall/Corridor/Stairs	Ceiling - Peeling/Flaking Paint**	2	4	50%
			Doors - Damaged Hardware/locks**	2	4	50%
			Doors - Damaged Surface - Hole/Pain/Rusting/Glass	2	4	50%
			Walls - Peeling/Flaking Paint**	2	4	50%
		Site - Common Area Spaces	Ceiling - Hole/Missing Tiles/Paint/Cracks**	1	3	33%
			Ceiling - Water Stains/Water Damage/Mold/Mildew**	1	3	33%
		Restrooms/Pool Structures	Lavatory Sink - Damaged/Missing**	2	4	50%
			Plumbing - Leaking Faucet/Pipes	2	4	50%
	DU	Doors	Damaged Hardware/locks**	10	26	38%

Capital items are repairs that generally require large cash outlays. (Items such as new tools and new appliances.)
 Ordinary items are repairs that require smaller cash outlays. (Items such as toilet fixtures, fire extinguishers, and smoke detectors.)

Inspection Summary Report - 291809

Participants:

Management Agent RNL PROPERTY MANAGEMENT	FALEAFINE, ROBERT	Phone: Fax: E-Mail Address:	(808) 832-8375 (808) 832-9439 Robert.Faleafine@HCDCH.Hawaii.G	1475 LINAPUN ST HONOLULU, HI 96819
Owner/PIA MPHA	TANIGUCHI, CHAD	Phone: Fax: E-Mail Address:	(808) 832-4894 (808) 587-0600 chad.taniguchi@HCDCH.Hawaii.G	1002 N School St HONOLULU, HI 96817
Site Manager RNL PROPERTY MANAGEMENT	Faleafine, Robert	Phone: Fax: E-Mail Address:	(808) 832-8375 (808) 832-9439 Robert.Faleafine@HCDCH.Hawaii.G	1475 Linapun St Honolulu, HI 96819

Buildings/Units:

No	Name/Type/Reason Uninspectable	Year Built	# Units	Address
1	A Mid/High Rise Apartments	1955	273	1475 LINAPUN ST BLDG A HONOLULU, HI 96819

Comments: 218 tenant assoc

Unit No	Bedrooms	Occupied
1015	3 Bedroom	Occupied
1111	3 Bedroom	Occupied
1503	2 Bedroom	Occupied
1712	3 Bedroom	Occupied
305	2 Bedroom	Occupied
308	2 Bedroom	Occupied
402	2 Bedroom	Occupied
605	3 Bedroom	Occupied
805	2 Bedroom	Occupied
813	2 Bedroom	Occupied
909	2 Bedroom	Occupied
917	3 Bedroom	Occupied

No	Name/Type/Reason Uninspectable	Year Built	# Units	Address
2	B Mid/High Rise Apartments	1966	297	1554 LINAPUN ST HONOLULU, HI 96819

Comments: 201 1/2 storage

Unit No	Bedrooms	Occupied	Remarks
104	3 Bedroom	Not Occupied	Vacant
1601	2 Bedroom	Occupied	
1605	3 Bedroom	Occupied	
1607	2 Bedroom	Occupied	
1703	1 Bedroom	Occupied	Occupant Failure
302	2 Bedroom	Occupied	
306	3 Bedroom	Occupied	
511	1 Bedroom	Occupied	
415	3 Bedroom	Occupied	
504	3 Bedroom	Occupied	
515	3 Bedroom	Occupied	
705	3 Bedroom	Occupied	
803	1 Bedroom	Occupied	

Inspection Summary Report - 291809

	607	2 Bedroom	Occupied		
	617	2 Bedroom	Occupied		
3	1427 Common Building		1965	0	1427E LINAPUNI ST HONOLULU HI 96819
Comments: rental program					
4	1445 Common Building No Keys		1965	0	1445E LINAPUNI ST HONOLULU HI 96819
Comments: police station, library, no keys					
5	1472-1478 Row/Town Houses		1965	4	1472C-1478C LINAPUNI ST HONOLULU HI 96819
6	1482-1488 Row/Town Houses		1965	4	1482C-1488C LINAPUNI ST HONOLULU HI 96819
7	1492-1498 Row/Town Houses		1965	4	1492C-1498C LINAPUNI ST HONOLULU HI 96819
8	1518-1520 Duplex Vacant		1965	2	1518D-1520D LINAPUNI ST HONOLULU HI 96819
Comments: VACANT for HOME VIDEOTATION					
9	1530-1532 Duplex Vacant		1965	1	1530D-1532D LINAPUNI ST HONOLULU HI 96819
Comments: Unit 1532 was converted for sewing center					
10	1538-1540 Duplex		1965	2	1538D-1540D LINAPUNI ST HONOLULU HI 96819
11	1548-1550 Duplex		1965	2	1548D-1550D LINAPUNI ST HONOLULU HI 96819
12	1552-1558 Row/Town Houses		1965	4	1552C-1558C LINAPUNI ST HONOLULU HI 96819
13	1562-1568 Row/Town Houses		1965	4	1562C-1568C LINAPUNI ST HONOLULU HI 96819
	1568	3 Bedroom	Occupied		
	1568	2 Bedroom	Not Occupied	Vacant	
14	1570-1578 Row/Town Houses		1965	4	1570C-1578C LINAPUNI ST HONOLULU HI 96819
15	1578-1584 Row/Town Houses		1965	4	1578C-1584C LINAPUNI ST HONOLULU HI 96819
16	1588-1592 Row/Town Houses		1965	4	1588C-1592C LINAPUNI ST HONOLULU HI 96819
17	Community Hall Common Building		1965	0	1475 LINAPUNI ST COMMUNITY CENTER HONOLULU HI 96819
18	Guard House 1 Common Building		1964	0	1475 LINAPUNI ST Guard House 1 HONOLULU HI 96819
19	Guard House 2 Common Building		1964	0	1475 LINAPUNI ST Guard House 2 HONOLULU HI 96819

Inspection Summary Report - 291809

Inspectable Items:

Inspected Item	NO/OD	Observation	Severity	Location/Comments	Pos.
Certificates					
Lead Based Paint Disclosure Form	NO				
Lead Based Paint Inspection Report	NO				

Site - Health & Safety

Inspected Item	NO/OD	Observation	Severity	Location/Comments	Pos.
Hazards					
	OD	Tipping (NET)	Level 3	Location: site near a building, poles station in building; Comments: trip hazard > 3/4 inch	5.5

Site

Inspected Item	NO/OD	Observation	Severity	Location/Comments	Possible Points
Fencing and Gates**					
	OD	Holes** (NLT)	Level 3	Location: site near guard shack; Comments: hole > 2 ft	4.4
		Missing Sections**	Level 1		1.1
Grounds					
	OD	Overgrown/Penetrating Vegetation	Level 2		2.8
Market Appeal					
	OD	Graffiti**	Level 3	Location: site; Comments: graffiti > 10 location	4.7
		Litter**	Level 2		2.5
Parking Lots/Driveways/Roads					
	OD	Cracks**	Level 2		1.9

Building 3 - Building Exterior

Inspected Item	NO/OD	Observation	Severity	Location/Comments	Possible Points
Walls					
	OD	Cracks/Spalls**	Level 3	Location: rear (near training building, near mail office); Comments: crack > 3/8 x 3/8 x 6 inches	5.5
		Spalled/Peeling/Needs Paint	Level 1		0.6

Building 1 - Building Systems

Inspected Item	NO/OD	Observation	Severity	Location/Comments	Possible Points
Emergency Power					
	OD	Run Up Records/Documentation Not Available	Level 3	Location: emerg. system; Comments: no record kept	0.7
Fire Protection					
	OD	Missing/Damaged/Expired Extinguishers**	Level 1		2.2

Building 1 - Common Areas

Inspected Item	NO/OD	Observation	Severity	Location/Comments	Possible Points
Entrances/Exits					
	OD	Doors - Damaged Hardware/Locks**	Level 3	Location: trash rm fire door 1st fl; Comments: damaged hardware, door function as designed	0.1
		Doors - Damaged Surface - Holes/Pan/Puncturing Glass**	Level 2	Location: fire door to trash rm, 1st fl; Comments: hole in glass pane > 3-12 inches	0.3
Work Area/Work Stairs					
	OD	Coating - Peeling/Needs Paint**	Level 1		<0.05
		Doors - Damaged Hardware/Locks**	Level 3	Location: 17th fl 16th fire door near elevator; multiple floors; Comments: damaged hardware, door function as designed	0.3
		Doors - Damaged Surface - Holes/Pan/Puncturing Glass**	Level 3	Location: 17th fl 16th fire door near elevator; multiple floors; Comments: hole in glass pane > 12 inches	0.3
		Walls - Peeling/Needs Paint**	Level 2		<0.05
Rooms/Pool Structures					
	OD	Lavatory Sink - Damaged/Missing** (NLT)	Level 3	Location: comm. bath near mail office; Comments: missing hardware, door function as designed	0.1
		Plumbing - Leaking Faucet/Pipes	Level 1		<0.05

Inspection Summary Report - 291809

Building 1 - Common Areas - Health & Safety					
Hazards	OD	Sharp Edges (NLT)	Level 3	Location: hall 10th fl exit sign, near 304. Comments: sharp edges, broken glass	0.3
		Tripping (NLT)	Level 3	Location: main office. Comments: trip hazard, cable cords	0.0

Building 1 - Unit 1018					
					Possible Points: 1.2
Bathroom	OD	Lavatory/Sink - Damaged/Missing** (NLT)	Level 3	Location: bath. Comments: cold knob inoperable	0.6
Kitchen	OD	Range/Stove - Missing/Damaged/Inoperable**	Level 3	Location: kit. Comments: 2 burners inoperable	0.6
		Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1

Building 1 - Unit 1018 - Health & Safety					
Infestation	OD	Insects (NLT)	Level 3	Location: unit. Comments: roaches	0.6

Building 1 - Unit 1111					
					Possible Points: 1.4
Doors	OD	Damaged Hardware/Locks**	Level 3	Location: unit entry, patio entry. Comments: not self closing, don't function as designed	0.2
Kitchen	OD	Range/Stove - Missing/Damaged/Inoperable**	Level 2		0.3
		Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1

Building 1 - Unit 1111 - Health & Safety					
Infestation	OD	Insects (NLT)	Level 3	Location: bed 3. Comments: roaches	0.6

Building 1 - Unit 1503					
					Possible Points: 1.4
Doors	OD	Damaged Hardware/Locks**	Level 3	Location: patio, entry door. Comments: damaged hardware, don't function as designed	0.2
		Damaged Surface - Holes/Panel Busting/Glass**	Level 3	Location: patio entry. Comments: broken glass, sharp edges	0.2

Building 1 - Unit 1503 - Health & Safety					
Hazards	OD	Sharp Edges (NLT)	Level 2	Location: patio door. Comments: sharp edges, turn broken glass	0.6
		Tripping (NLT)	Level 3	Location: hall. Comments: trip hazard, cable cords	0.1
Infestation	OD	Insects (NLT)	Level 3	Location: kit. Comments: roaches	0.6

Building 1 - Unit 1712					
					Possible Points: 1.2
Electrical System	OD	Blocked Access to Electrical Panel** (NLT)	Level 3	Location: kit. Comments: blocked by range	0.4
Kitchen	OD	Range/Stove - Missing/Damaged/Inoperable**	Level 3	Location: kit. Comments: all burners inoperable	0.6
Outlets/Switches	OD	Missing/Broken Cover Plates	Level 1		0.05
Smoke Detector	OD	Missing/Inoperable** (SD)	Level 3	Location: liv rm. Comments: inoperable	

Building 1 - Unit 304					
					Possible Points: 1.4
Doors	OD	Damaged Surface - Holes/Panel Busting/Glass**	Level 3	Location: closet. Comments: 2 Turbo	0.2
Kitchen	OD	Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1

Inspection Summary Report - 291809

Building 1 - Unit 304 - Health & Safety					
Infestation	GD	Insects (NCT)	Level 3	Location: Kit, Comments: roaches	0.6

Building 1 - Unit 308						
					Possible Points	1.4
Kitchen	GD	Plumbing - Leaking Faucet/Pipes	Level 1		0.1	
		Range/Stove - Missing/Damaged/Inoperable**	Level 2		0.3	
		Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1	

Building 1 - Unit 308 - Health & Safety					
Hazards	GD	Sharp Edges (NCT)	Level 3	Location: Hall, floor, Comments: sharp edges broken glass	0.6

Building 1 - Unit 302						
					Possible Points	1.4
Kitchen	GD	Range/Stove - Missing/Damaged/Inoperable**	Level 2		0.3	

Building 1 - Unit 605						
					Possible Points	1.4
Doors	GD	Damaged Hardware/Locks**	Level 3	Location: unit entry, patio entry, Comments: not self closing, don't function as designed	0.2	

Building 1 - Unit 605 - Health & Safety					
Infestation	GD	Insects (NCT)	Level 3	Location: kit, Comments: roaches	0.6

Building 1 - Unit 608						
					Possible Points	1.4
Doors	GD	Damaged Hardware/Locks**	Level 3	Location: unit entry, patio entry, bath, Comments: not self closing, don't function as designed	0.2	
Kitchen	GD	Range/Stove - Missing/Damaged/Inoperable**	Level 2		0.3	
		Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1	
Lighting	GD	Missing/Inoperable Fixtures**	Level 1		0.05	

Building 1 - Unit 813						
					Possible Points	1.4
Kitchen	GD	Plumbing - Leaking Faucet/Pipes	Level 1		0.1	
		Range/Stove - Missing/Damaged/Inoperable	Level 2	Location: Kit, Comments: 2 Burner Inoperable	0.6	

Building 1 - Unit 909						
					Possible Points	1.4
Doors	GD	Damaged Hardware/Locks**	Level 3	Location: unit patio entry, Comments: damaged hardware, don't function as designed	0.2	
Kitchen	GD	Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1	

Building 1 - Unit 911						
					Possible Points	1.4
Kitchen	GD	Range/Stove - Missing/Damaged/Inoperable**	Level 2		0.3	
		Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1	

Building 1 - Unit 911 - Health & Safety					
Infestation	GD	Insects (NCT)	Level 3	Location: Kit, Comments: roaches	0.6

Inspection Summary Report - 291809

Building 2 - Building Exterior					Possible Points	17
Walls	OD	Missing Pieces/Holes/Spalling**	Level 2			16

Building 2 - Building Systems					Possible Points	12.2
Floors	OD	Not Operable** (NLT)	Level 3	Location: elevators 4, 5. Comments: inoperable. 6 is working		3.1
Emergency Power	OD	Run-Up Records/Documentation Not Available	Level 3	Location: emergency system. Comments: no records kept		0.7
Fire Protection	OD	Missing/Damaged/Expired Extinguishers**	Level 3			2.4

Building 2 - Common Areas					Possible Points	0.6
Closets/Utility/Mechanical	OD	Doors - Damaged Surface - Holes/Panels/Flashing/Glass**	Level 3	Location: fire door trash rm. Comments: 12 inch hole, missing glass		0.1
Halls/Corridors/Stairs	OD	Ceiling - Holes/Missing Tiles/Panels/Ceils**	Level 2			0.2
		Ceiling - Peeling/Needs Paint**	Level 2			0.05
		Doors - Damaged Hardware/Locks**	Level 3	Location: fire door near elevator, 15th floor, 10th fl. multiple floors. Comments: damaged hardware, door function as designed		0.3
		Doors - Damaged Surface - Holes/Panels/Flashing/Glass**	Level 3	Location: hall 15th floor near elevator, fire door, 14th, 15th multiple floors. Comments: hole - 12 inches, missing glass		0.3
		Walls - Damaged**	Level 1			0.1
		Walls - Peeling/Needs Paint**	Level 2			0.05
Laundry Room	OD	Smoke Detector - Missing/Inoperable** (SD)	Level 3	Location: laundry rm. Comments: inoperable		
Rooftop/Pod Structures	OD	Plumbing - Leaking/Pipe/Drains	Level 1			0.05
		Water Closet/Toilet - Damaged/Closed/Missing	Level 3	Location: hall near laundry rm. Comments: inoperable		0.3

Building 2 - Common Areas - Health & Safety					Possible Points	0.3
Hazards	OD	Sharp Edges (NLT)	Level 3	Location: water glass cover near 312. Comments: sharp edges, broken glass, no abate exposure		0.3

Building 2 - Unit 1501					Possible Points	1.1
Appliances	OD	Range/Stove - Missing/Damaged/Inoperable**	Level 1	Location: kit. Comments: 2 panes inoperable		0.6

Building 2 - Unit 1505					Possible Points	0.4
Doors	OD	Damaged Hardware/Locks**	Level 3	Location: unit entry, hallway. Comments: not self closing, door function as designed		0.2
Walls	OD	Peeling/Needs Paint**	Level 1			0.05

Building 2 - Unit 1607					Possible Points	1.4
Doors	OD	Damaged Hardware/Locks**	Level 2			0.1
Appliances	OD	Range/Stove - Missing/Damaged/Inoperable**	Level 3	Location: kit. Comments: unit inoperable		0.5
		Refrigerator - Missing/Damaged/Inoperable (NLT)	Level 3	Location: kit. Comments: inoperable		0.8

Building 2 - Unit 302					Possible Points	1.2
Doors	OD	Damaged Hardware/Locks**	Level 3	Location: unit entry. Comments: not self closing, door function as designed		0.2

Inspection Summary Report - 291809

Kitchen	OD	Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1
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Building 2 - Unit 506

Possible Points: 1.4

Doors	OD	Damaged Hardware/Locks**	Level 3	Location: unit entry; Comments: not self closing, don't function as designed	0.2
Kitchen	OD	Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1

Building 2 - Unit 511

Possible Points: 1.4

Bathroom	OD	Water Closet/Floor - Damaged/Clogged/Missing (NLT)	Level 3	Location: bath; Comments: inoperable, won't flush	1.0
Doors	OD	Damaged Hardware/Locks**	Level 3	Location: patio entry to unit; Comments: damaged hardware, don't function as designed	0.2

Building 2 - Unit 513

Possible Points: 1.4

Doors	OD	Damaged Hardware/Locks**	Level 3	Location: unit entry, patio entry; Comments: not self closing, don't function as designed	0.2
Kitchen	OD	Range/Stove - Missing/Damaged/Inoperable**	Level 2		0.3
Walls	OD	Peeling/Chipped Paint*	Level 1		<0.05

Building 2 - Unit 504

Possible Points: 1.4

Doors	OD	Damaged Hardware/Locks**	Level 3	Location: unit entry; Comments: not self closing, don't function as designed	0.2
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Building 2 - Unit 504 - Health & Safety

Roaches	OD	Insects (RUL*)	Level 3	Location: kitchen; Comments: roaches	0.6
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Building 2 - Unit 519

Possible Points: 1.3

Doors	OD	Damaged Hardware/Locks**	Level 3	Location: unit entry, patio entry; Comments: not self closing, don't function as designed	0.2
Kitchen	OD	Range/Stove - Missing/Damaged/Inoperable**	Level 3	Location: kitchen; Comments: 3 burners inoperable	0.5

Building 2 - Unit 706

Possible Points: 1.4

Doors	OD	Damaged Hardware/Locks**	Level 3	Location: patio entry door; Comments: damaged hardware, don't function as designed	0.2
Kitchen	OD	Cabinets - Missing/Damaged**	Level 2		0.2
		Plumbing - Leaking Faucet/Pipes (NLT)	Level 3	Location: kitchen; Comments: leak causes adverse conditions under sink	0.6
		Refrigerator - Missing/Damaged/Inoperable	Level 1		0.1
Light Switches	OD	Missing/Broken Cover Plates (LT)	Level 3	Location: bed 1; Comments: missing cover causes exposed connection	0.2
	OD	Peeling/Chipped Paint*	Level 1		<0.05

Building 2 - Unit 605

Possible Points: 1.4

Kitchen	OD	Range/Stove - Missing/Damaged/Inoperable	Level 3	Location: kitchen; Comments: 2 burners inoperable	0.6
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Building 2 - Unit 603 - Health & Safety

Roaches	OD	Insects (NLT)	Level 3	Location: kitchen; Comments: roaches	0.6
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Inspection Summary Report - 291809

Building 2 - Unit 807				Possible Points	0.4
Bathroom	OD	Plumbing - Leaking Faucet/Pipes	Level 1		0.2
Doors	OD	Damaged Hardware/Locks**	Level 2	Location: patio entry. Comments: damaged hardware, does not function as designed	0.2

Building 2 - Unit 817				Possible Points	0.4
Bathroom	OD	Water Cooled/Taps - Damaged/Closed/missing	Level 2		0.2

Building 3 - Building Exterior				Possible Points	0.1
FEED - Accessibility to Main Floor Entrance**	OD	Obstructed or Missing Accessibility Route**		Location: main entrance. Comments: not accessible, step	

Building 4 - Common Areas				Possible Points	0.0
FEED - Accessible Outside Common Areas**	OD	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area. Comments: not accessible, step	

Building 5 - Building Exterior				Possible Points	0.1
FEED - Accessibility to Main Floor Entrance**	OD	Obstructed or Missing Accessibility Route**		Location: main entrance. Comments: not accessible, step	
Walls	OD	Missing Pieces/Holes/Spalling**	Level 3	Location: rear near 1478, 1479. Comments: exposed rebar, bricks damaged > 6-1/2 x 11	<0.05

Building 6 - Common Areas				Possible Points	0.0
FEED - Accessible Outside Common Areas**	OD	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area. Comments: not accessible, step	

Building 6 - Building Exterior				Possible Points	0.1
FEED - Accessibility to Main Floor Entrance**	OD	Obstructed or Missing Accessibility Route**		Location: main entrance. Comments: not accessible, step	
Walls	OD	Missing Pieces/Holes/Spalling**	Level 2		<0.05

Building 6 - Common Areas				Possible Points	0.0
FEED - Accessible Outside Common Areas**	OD	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area. Comments: not accessible, step	

Building 7 - Building Exterior				Possible Points	0.1
FEED - Accessibility to Main Floor Entrance**	OD	Obstructed or Missing Accessibility Route**		Location: main entrance. Comments: not accessible, step	
Walls	OD	Missing Pieces/Holes/Spalling**	Level 3	Location: rear near 1498. Comments: bricks damaged > 6-1/2 x 11	<0.05
		Stained/Peeling/Needs Paint	Level 1		<0.05

Building 7 - Common Areas				Possible Points	0.0
FEED - Accessible Outside Common Areas**	OD	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area. Comments: not accessible, step	

Building 10 - Building Exterior				Possible Points	0.1
FEED - Accessibility to Main Floor Entrance**	OD	Obstructed or Missing Accessibility Route**		Location: main entrance. Comments: not accessible, step	

Building 10 - Common Areas				Possible Points	0.0
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Inspection Summary Report - 291809

FHEO - Accessible Outside Common Areas**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step		
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Building 11 - Building Exterior

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step		Possible Points: 0.1
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Building 11 - Common Areas

FHEO - Accessible Outside Common Areas**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step		Possible Points: 0.0
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Building 12 - Building Exterior

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step		Possible Points: 0.1
Walls	00	Missing Bricks/Holes/Spalling**	Level 3	Location: near room 1606; Comments: bricks damaged (2' x 8" / 2' x 1")		<0.05

Building 12 - Common Areas

FHEO - Accessible Outside Common Areas**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step		Possible Points: 0.0
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Building 13 - Building Exterior

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step		Possible Points: 0.1
Walls	00	Missing Bricks/Holes/Spalling**	Level 3	Location: general area 1606; Comments: section of brick missing; damaged (5' x 12" x 1")		<0.05

Building 13 - Common Areas

FHEO - Accessible Outside Common Areas**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step		Possible Points: 0.0
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Building 13 - Unit 1606

Walls	00	Holes/Missing Tiles/Panels**	Level 1			Possible Points: 0.1
Water	00	Water Stains/Water Damage/Mold/Mildew**	Level 1			<0.05
Electrical System	00	GFI - Inoperative (N.I.T.)	Level 3	Location: bath 2nd fl; Comments: inoperative		0.0
Roof	00	Reloofwater - Missing Damage/Inoperative	Level 1			0.1

Building 13 - Unit 1606 - Health & Safety

Walls	00	Tripping (N.I.T.)	Level 3	Location: living hall; Comments: trip hazard; table pads		0.0
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Building 14 - Building Exterior

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step		Possible Points: 0.1
Walls	00	Damaged Scaffolding	Level 1			<0.05

Building 14 - Common Areas

FHEO - Accessible Outside Common Areas**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step		Possible Points: 0.0
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Building 15 - Building Exterior

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step		Possible Points: 0.1
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Inspection Summary Report - 291809

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step	
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Building 15 - Common Areas

FHEO - Accessible Outside Common Area**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step	Possible Points: 0.0
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Building 16 - Building Exterior

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step	Possible Points: 0.0
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Building 16 - Building Systems

Domestic Water	00	Leaking Central Water Supply	Level 3	Location: rear 1505; Comments: leaking fixtures	Possible Points: 0.1
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Building 16 - Common Areas

FHEO - Accessible Outside Common Area**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step	Possible Points: 0.0
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Building 17 - Common Areas

Kitchen	00	Range/Stove - Missing/Damaged/Inoperable**	Level 3	Location: common area; Comments: inoperable unit	Possible Points: 0.0
Other Community Spaces	00	Ceiling - Tiles/Missing Tiles/Panels/Cracks**	Level 2		0.1
		Ceiling - Water Stains/Water Damage/Leak/Absorb**	Level 1		<0.05
Restrooms/Pod Structures	00	Lavatory Sink - Damaged/Missing** (NLT)	Level 3	Location: locker hall; Comments: sink inoperable	0.1

Building 18 - Building Exterior

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step	Possible Points: 0.0
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Building 18 - Common Areas

FHEO - Accessible Outside Common Area**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step	Possible Points: 0.0
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Building 19 - Building Exterior

FHEO - Accessibility to Main Floor Entrance**	00	Obstructed or Missing Accessibility Route**		Location: main entrance; Comments: not accessible; step	Possible Points: 0.0
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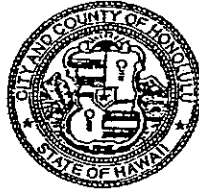
Building 19 - Common Areas

FHEO - Accessible Outside Common Area**	00	Routes Obstructed or Inaccessible to Wheelchair**		Location: common area; Comments: not accessible; step	Possible Points: 0.0
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GTE: Score for any given building or unit cannot be negative (if deductions are greater than possible points, the score is set to zero)

HONOLULU FIRE DEPARTMENT
CITY AND COUNTY OF HONOLULU

636 SOUTH STREET • HONOLULU, HAWAII 96813
TELEPHONE: (808) 723-7139 • FAX: (808) 723-7111 • INTERNET: www.honolulufire.org



MUFI HANNEMANN
MAYOR

KENNETH G. SILVA
FIRE CHIEF

ALVIN K. TOMITA
DEPUTY FIRE CHIEF

March 22, 2006

Ms. Stephanie Aveiro, Executive Director
Housing and Community Development Corporation of Hawaii
State of Hawaii
Department of Human Services
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

Dear Ms. Aveiro:

Subject: Fire Code Violations
Kuhio Park Terrace
1475 Linapuni Street
Honolulu, Hawaii 96819
Tax Map Key: 1-3-039: 001

The Honolulu Fire Department conducted an inspection of Kuhio Park Terrace on February 14, 2006, and identified several violations of the Fire Code of the City and County of Honolulu.

1. The trash chute doors are damaged on every floor. Repair the trash chute doors.
2. The dry and wet standpipe systems lack satisfactory service tags. Repair the dry and wet standpipe systems and provide satisfactory service tags.
3. The wet standpipe system hose cabinets lack hoses on every floor in both buildings. Service the wet standpipe system hose cabinets.
4. The fire alarm system is inoperable. Repair the fire alarm system.

Please provide us with written documentation on you department letterhead that the above-mentioned fire code violations have been corrected.

EXHIBIT B

To: Ms. Stephanie Aveiro, Executive Director

DBA: Housing and Community Development Corporation of Hawaii

Address: 677 Queen Street, Suite 300 Honolulu, HI 96813

HAVING INSPECTED THE PREMISES LOCATED AT: TMK: 1 3 0 3 9 0 0 1

DBA: Kuhio Park Terrace

Address: ¹⁴⁷⁵~~429~~ Hinapuni St

VIOLATION(S):

- Trash chute doors are Damaged on all floors
- Dry standpipe system not serviced since 1983 and needs repairs
- Wet Standpipe and hose cabinets need repair and are lacking hoses on every floor in both buildings
- Fire Alarm system is damaged and thus a fire watch is in effect.

YOU ARE HEREBY ORDERED TO:

(Reference: UFC Sec.)

- Repair trash chute Doors - Fire Protection 1111.2.1
- Service the dry standpipe system - Fire Protection 1001.5.2b
- Service the wet standpipe system hose cabinet - Fire Protection 1001.5.2d
- Repair the fire alarm system - Fire Alarm Systems 1001.5.1

Inspector: Brendan O'Connor
(Print)

Brian O'Connor
(Signature)

Date: 3/7/06

Supervisor: Kenneth Pean
(Print)

[Signature]
(Signature)

Date: 3/8/06

Honolulu Fire Department
City and County of Honolulu
FIRE INSPECTION REPORT

DBA: Kuhio Park Terrace
Address: 1427 LINAPUNI ST

TMK: 13039001
Space/Suite:
Zip Code: 96819
Phone: 832-6075
Job ID: FI2006-02-0074

Owner/Agent: Robert Faleafine

GENERAL BUILDING Complex: Kuhio Park Terrace
INFORMATION: Subcomplex:

No. of Stories: 17 No. of Units: No. of Beds: Basement: N

Fire Appliances:

A.S.S:		Class I:	Other	
FFES:		Class II:	Alii Fire Protection	02/1983
FE:	Faith Fire Services, LLC	Class III:		
FAS:		Combo Systems:		
		Private Hydrant:		

Occupancy Type: Occupancy Load:

Type of Permits: Expiration Date:

Type of Construction: Type I

Violations:

Fire Protection 1111.2.1 All Floors

Repair trash chute doors.

Trash chute doors shall be properly repaired, restored or replaced when damaged, altered, removed or improperly installed.

Fire Alarm Systems 1001.5.1

Repair the fire alarm system.

Fire alarm systems shall be in an operative condition at all times and be replaced or repaired where defective.

Fire Protection 1001.5.2b

Service the dry standpipe system.

Dry standpipe systems shall be flow tested every five years.

Fire Protection 1001.5.2d No hose on any floors

Service the wet standpipe system hose cabinet.

Wet Standpipe system hose cabinets shall be inspected annually.

Fire Protection 1111.2.1 All Floors

Repair trash chute doors.

Trash chute doors shall be properly repaired, restored or replaced when damaged, altered, removed or improperly installed.

Fire Alarm Systems 1001.5.1

Repair the fire alarm system.

Fire alarm systems shall be in an operative condition at all times and be replaced or repaired where defective.

Fire Protection 1001.5.2b

Service the dry standpipe system.

Dry standpipe systems shall be flow tested every five years.

VICTOR GEMINIANI 4354
LAWYERS FOR EQUAL JUSTICE
P.O. Box 37952
Honolulu, Hawai'i 96837
Telephone: (808) 779-1744

PAUL ALSTON 1126
JASON H. KIM 7128
ALSTON HUNT FLOYD & ING
American Savings Bank Tower
1001 Bishop Street, 18th Floor
Honolulu, Hawai'i 96813
Telephone: (808) 524-1800
Facsimile: (808) 524-4591

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEWERS FALETOGO; HAZEL)	CIVIL NO. 08-1-2608-12 SSM
MCMILLON; GENE STRICKLAND,)	(Other Civil Action)
TRUDY SABALBORO; and LEE)	
SOMMERS, individually and on behalf of)	
a class of past, present, and future)	PLAINTIFFS' FIRST REQUEST FOR
residents of Kuhio Park Terrace,)	PRODUCTION OF DOCUMENTS TO
)	DEFENDANTS
Plaintiffs,)	
)	
v.)	
)	
STATE OF HAWAII; HAWAII PUBLIC)	
HOUSING AUTHORITY; REALTY LAUA)	
LLC, formerly known as R & L Property)	
Management LLC, a Hawai'i limited)	
liability company; and Does 1-20,)	
)	TRIAL DATE: None
Defendants.)	
)	

**PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO DEFENDANTS**

PLEASE TAKE NOTICE that pursuant to Rule 34 of the Hawai'i Rules of Civil Procedure, Plaintiffs LEWERS FALETOGO; HAZEL MCMILLON; GENE STRICKLAND, TRUDY SABALBORO; and LEE SOMMERS, Individually and on Behalf of a Class of Past, Present, and Future Residents of Kuhio Park Terrace (collectively "Plaintiffs"), request that Defendants STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY ("State"); and REALTY LAUA LLC, formerly known as R & L Property Management LLC ("Realty Laua"); (collectively "Defendants") produce and permit the inspection and copying of the documents specified below.

Plaintiffs request that the above-described documents be produced at the law offices of ALSTON HUNT FLOYD & ING, American Savings Bank Tower, 1001 Bishop Street, 18th Floor, Honolulu, Hawai'i 96813 no later than thirty (30) days after service and it is requested that two copies of the responses be provided. Plaintiffs further notify Defendants that the inspection and copying will take place in the following manner:

1. Defendants will produce the original of all documents when they are available. When the original is unavailable, the best available copy shall be produced.

2. The documents, or so many of them as Plaintiffs shall select after inspection, shall be copied and the originals returned to Defendants, unless the parties agree otherwise. Copies of these documents may be made for other parties to this action; each such party shall bear the expense of

copying its set of documents.

If Defendants assert that any of the documents and things requested above are protected from discovery by any evidentiary privilege or as attorney work product, Defendants are requested to include in its written response, at least: 1) the grounds asserted as the reason for non-production; 2) the date the document was prepared; 3) the identity of the attorneys who drafted or received the documents (if attorney-client privilege or attorneys' work product is claimed), or the identity of the parties who prepared and received the document; and 4) the nature of the document.

DEFINITIONS

The following definitions and instructions shall apply, unless otherwise specified in these interrogatories.

The following abbreviations and definitions are used:

(a) "Defendants" collectively refers to Defendants STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY; and REALTY LAUA LLC, formerly known as R & L Property Management LLC, including all their employees, agents, consultants, attorneys and/or representatives;

(b) The word "representative" includes any officer, director, owner, employee, agent, or attorney of the company or person referred to;

(c) The word "person" includes individuals and firms, partnerships, corporations, joint ventures or other business entities;

(d) "Plaintiffs" collectively refers to Plaintiffs LEWERS FALETOGO; HAZEL MCMILLON; GENE STRICKLAND, TRUDY SABALBORO; and LEE SOMMERS, Individually and on Behalf of a Class of Past, Present, and Future Residents of Kuhio Park Terrace;

(e) "State" refers to Defendant STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY, including all its employees, agents, consultants, attorneys and/or representatives;

(f) "Realty Laua" refers to Defendant REALTY LAUA LLC, formerly known as R & L Property Management LLC, a Hawai'i limited liability company, including its predecessors, successors, employees, agents, consultants, attorneys and/or representatives;

(g) "Documents" includes all writings and recordings of every kind, including, but not limited to, letters, telegrams, e-mails, facsimiles, memoranda, interoffice and intraoffice communications, contracts, agreements, legal instruments, official documents, forms, files, messages, bills, checks, receipts, expense accounts, reports, studies, calendar or diary entries, minutes, brochures, pamphlets, notes, charts, tabulations, computerized printouts, computer data and computer disks, and records of meetings, conferences and telephone or other conversations or communications in your actual or constructive possession, custody or control. The term "documents" is defined in Rule 34 of the Hawai'i Rules of Civil Procedure to include writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained or translated, if

necessary, by the respondent through detection devices into reasonably usable form. The term "documents" also includes copies which are not identical duplicates of the original and copies of documents the originals of which are not in your possession, custody or control, or in the possession, custody or control of your attorneys, agents, employees or representatives.

This request for production of documents includes a request to produce copies of each and every document formerly in existence and known to or possessed by you or within your control but since destroyed or lost. To the extent that no copies are available, please list any responsive documents you cannot produce and state when, by whom, and why the documents were destroyed.

REQUEST FOR PRODUCTION OF DOCUMENTS & THINGS

1. All documents relating to Plaintiffs, including but not limited to each such person's complete tenant file.
2. All documents relating to compliance, attempts to comply, or lack of compliance with federal, state, and local laws and regulations that govern federally-subsidized housing from 2003 to the present to the extent those laws and regulations relate to: (1) the physical condition of the property; (2) maintenance of the property; (3) contracts for services at the property, including the contract between the State and Realty Laua; and/or (4) the State's obligation to provide "decent, safe, and sanitary" housing.
3. All documents concerning the energy audit conducted by Ameresco Pacific Energy of KPT and KH.

4. All documents concerning communications with the United States Department of Housing and Urban Development ("HUD") relating to Kuhio Park Terrace from 2000 to the present, including but not limited to reports submitted to HUD, evaluations performed by HUD, and communications relating to any applications for HOPE VI grants for Kuhio Park Terrace.
5. All documents concerning HUD's designation of HPHA as a troubled agency.
6. All documents concerning any HUD audits of HPHA from 2000 to the present.
7. All documents concerning any memorandums of understanding between HUD and HPHA from 2000 to the present.
8. All documents concerning any voluntary compliance agreements between HUD and HPHA from 2000 to the present.
9. All documents concerning compliance, attempts to comply, or lack of compliance from 2003 to the present with state and county building codes, sanitation codes, fire codes, and any other health and safety regulations;
10. All documents concerning reports from 2003 to the present relating to the physical condition of Kuhio Park Terrace, including but not limited to inspection reports or notices of violations by any federal, state or county agency.
11. All documents concerning contracts (both executed and

anticipated) from 2003 to the present relating to capital improvements, repair, maintenance, trash removal, fire safety systems, and extermination at Kuhio Part Terrace.

12. All documents concerning operating and capital budgets from 2003 to the present for Kuhio Park Terrace.

13. All documents concerning maintenance policies, plans, logs, and work orders from 2003 to the present for Kuhio Park Terrace (including for work requested in individual units).

14. All documents concerning the management contract between Realty Laua and the State, including but not limited to all documents concerning Realty Laua's bid for that contract, all documents concerning evaluations of Realty Laua's performance under that contract, and all tenant complaints about Realty Laua.

15. All documents concerning the former management contract between R & L Property Management and the State, including but not limited to all documents concerning R & L's bid for that contract, all documents concerning evaluations of R & L's performance under that contract, and all tenant complaints about R & L.

16. All documents relating to complaints, grievances, administrative appeals, or lawsuits against any Defendant (other than the instant lawsuit) from 2003 to the present alleging that any condition at Kuhio Park Terrace breaches the terms of the rental agreements, breaches the warranty of habitability, is in violation of any federal, state, or county health

and safety regulation, is hazardous or the result of negligence, or in any way gives rise to liability under state or federal law.

17. Complete "as built" architectural drawings for Kuhio Park Terrace.

18. All documents concerning the operation (or lack of operation) of the elevators at Kuhio Park Terrace from 2003 to the present, including but not limited to maintenance reports, inspection reports, incident reports, accident reports, and complaints.

19. All documents concerning Realty Laua's obligation to man the elevators as required by its contract with HPHA.

20. All documents concerning the design of the six KPT passenger elevators for which modernization is scheduled to begin in 2009.

21. All documents concerning the availability of hot water at Kuhio Park Terrace from 2003 to the present, including but not limited to maintenance reports, inspection reports, incident reports, and complaints.

22. All documents concerning evacuation and/or fire safety plans at Kuhio Park Terrace or Kuhio Homes from 2003 to the present, including but not limited to any fire watch program.

23. All documents concerning air quality, pollutants, airborne particulates, and/or smoke at Kuhio Park Terrace from 2003 to the present, including but not limited to studies, analysis, reports and complaints.


24. All documents concerning the existence of lead at KPT and Kuhio Homes.

25. All documents concerning the existence of asbestos at KPT and Kuhio Homes.

26. All documents concerning insects, rat, or other vermin at Kuhio Park Terrace from 2003 to the present.

27. All documents concerning Defendants' document retention policies.

DATED: Honolulu, Hawai'i, April 9, 2009.



PAUL ALSTON
JASON H. KIM

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of to be served on the following persons by facsimile, hand-delivery or U.S. mail, postage prepaid (as indicated below) to their respective addresses:

HAND- FAXED MAILED
DELIVERED

JOHN M. CREGOR, JR., ESQ.
JOHN C. WONG, ESQ.
Deputy Attorneys General
Department of the Attorney General
425 Queen Street
Honolulu, Hawai'i 96813

X

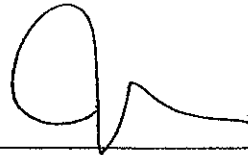
Attorneys for Defendants
STATE OF HAWAII and HAWAII
PUBLIC HOUSING AUTHORITY

GEORGE W. PLAYDON, ESQ.
Reinwald O'Connor & Playdon
733 Bishop Street, 24th Floor
Honolulu, Hawai'i 96813

X

Attorney for Defendant
REALTY LAUA LLC

DATED: Honolulu, Hawai'i, April 24, 2009.



PAUL ALSTON
JASON H. KIM
Attorneys for Plaintiffs