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FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2010 DEC 16 PM 2:32

F. OTAKE  
CLERK

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. )

STATE OF HAWAII; HAWAII PUBLIC )  
HOUSING AUTHORITY, )

Third-Party Plaintiffs, )

v. )

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

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION  
AND PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT, FILED  
NOVEMBER 9, 2010; EXHIBIT "A"**

DATE: December 6, 2010  
TIME: 8:30 a.m.  
JUDGE: Robert M. Browning

URBAN MANAGEMENT CORPORATION )  
DBA URBAN REAL ESTATE COMPANY, )  
DOES 1-20, )  
 )  
Third-Party Defendant. )  
\_\_\_\_\_ )

**ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND  
PRELIMINARY APPROVAL OF SETTLEMENT, FILED NOVEMBER 9, 2010**

Plaintiffs HAZEL MCMILLON, TRUDY SABALBORO, and LEE SOMMERS  
("Named Plaintiffs"), individually and on behalf of all persons similarly situated, Motion for  
Class Certification and Preliminary Approval of Settlement, filed on November 9, 2010  
("Motion"), came on for hearing before the Honorable Robert M. Browning on December 6,  
2010.

Jason H. Kim and Victor Geminiani appeared for Plaintiffs. John M. Cregor  
appeared for Defendants State of Hawai'i and Hawai'i Public Housing Authority. Kelvin H.  
Kaneshiro appeared for Defendant Realty Laua LLC. Michael D. Tom appeared for Third-Party  
Defendant Urban Management Corporation, dba Urban Real Estate.

The Court has carefully reviewed the Motion, the opposition filed with respect to  
the Motion, the oral arguments of counsel, and the record of this case. Good cause appearing,

IT IS HEREBY ORDERED that the Motion is GRANTED.

The following class is hereby certified pursuant to Haw. R. Civ. Proc.  
Rule 23(b)(3) for the purpose of settlement of the claims in Plaintiffs' Complaint alleged against  
Defendants State of Hawaii and the Hawaii Public Housing Authority (collectively "State  
Defendants" and trial of the claims in Plaintiffs' Complaint alleged against Defendant Realty  
Laua, LLC ("Realty Laua")):

All current and future residents of Kuhio Park Terrace and those former residents of Kuhio Park Terrace who resided there at any time on or after December 18, 2004.

Plaintiffs HAZEL MCMILLON, TRUDY SABALBORO, and LEE SOMMERS are appointed class representatives and Alston Hunt Floyd & Ing and Lawyers for Equal Justice are appointed class counsel.

The Court finds that this class meets all the requirements of Haw. R. Civ. Proc. Rule 23(a). First, the class is so numerous that joinder of all members would be impracticable. There are several hundred current, future, and past tenants of Kuhio Park Terrace (“KPT”).

Second, there are issues of fact and law common to the class. Common issues of fact include whether Defendants’ actions or inactions have caused unsafe and unsanitary conditions at KPT. Common issues of law include: (a) whether the State Defendants have breached the implied warranty of habitability and/or the terms of the form leases with the class members; (b) whether Realty Laua’s conduct constitutes an unfair trade practice prohibited by HRS § 480-2; and (c) whether Realty Laua’s conduct constitutes a breach of the management contract with the State Defendants and whether Plaintiffs are third party beneficiaries of that contract.

Third, the claims of the named plaintiffs are typical of those of the class. The named plaintiffs, like the class, are tenants at KPT and have allegedly suffered the same injuries from the same conduct by the Defendants as the class. Furthermore, there appear to be no conflicts of interest between the named plaintiffs and the class or any part of the class.

Fourth, the named plaintiffs will fairly and adequately represent the class. As set forth above, there do not appear to be any conflicts of interest. Furthermore, the named plaintiffs are represented by experienced and capable class counsel.

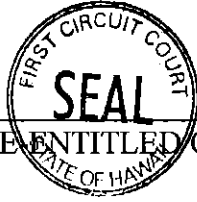
The Court also finds that the class meets the requirements of Haw. R. Civ. Proc. Rule 23(b)(3). The common issues of fact and law set forth above predominate over any individual issues, if any. In the remaining claims to be tried against Realty Laua, Plaintiffs seek only economic, contract-based damages and do not seek damages for physical injury or illness. Furthermore, a class action is superior to other methods for fair and efficient adjudication of this dispute because: (1) the amount of each tenant's individual claim against the Defendants is relatively small and individual litigation may not be feasible, especially because the class members are recipients of public assistance; and (2) there appear to be no issues as to the manageability of this class action.

Having certified the class as set forth above, the Court also preliminarily approves the class settlement between the class and the State Defendants negotiated by the named plaintiffs and class counsel as set forth in the Settlement, Release, Indemnification, and Assignment Agreement attached as Exhibit "1" to Plaintiffs' Motion. The Court finds that the settlement is fundamentally fair, adequate, and reasonable to the class given the merits of the class' claims; the risk, expense, complexity, and likely duration of further litigation; the amount and other consideration offered in settlement; the process by which the settlement was achieved; the stage of the proceedings and the information known to class counsel; and the experience and views of class counsel and counsel for the State Defendants.


The Court therefore schedules a final fairness hearing for January 25, 2011 at 8:30 a.m., and directs class counsel to distribute the notice of class certification and the settlement attached as Exhibit "A" to this Order to the members of the class.


DATED: Honolulu, Hawai'i, DEC 15 2010


R. MARK BROWNING  
JUDGE OF THE ABOVE ENTITLED COURT



APPROVED AS TO FORM:

  
\_\_\_\_\_  
JOHN M. CREGOR, JR.  
JOHN C. WONG  
Attorneys for Defendants  
STATE OF HAWAII and  
HAWAII PUBLIC HOUSING AUTHORITY

  
\_\_\_\_\_  
GEORGE W. PLAYDON  
KELVIN H. KANESHIRO  
Attorneys for Defendant  
REALTY LAUA LLC

  
\_\_\_\_\_  
MICHAEL D. TOM  
BRAD S. PETRUS  
JOSEPH F. KOTOWSKI  
Attorneys for Third-Party Defendant  
URBAN MANAGEMENT CORP. dba  
URBAN REAL ESTATE

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*Faletogo v. State of Hawai'i*, Civil No. 08-1-2608-12 RMB; ORDER GRANTING  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND PRELIMINARY APPROVAL  
OF CLASS SETTLEMENT, FILED NOVEMBER 9, 2010

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEWERS FALETOGO; HAZEL MCMILLON;	)	CIVIL NO. 08-1-2608-12 RMB
GENE STRICKLAND, TRUDY SABALBORO;	)	(Other Civil Action)
and LEE SOMMERS, individually and on behalf	)	
of a class of past, present, and future residents of	)	<b>NOTICE OF PENDENCY OF CLASS</b>
Kuhio Park Terrace,	)	<b>ACTION AND PROPOSED PARTIAL</b>
	)	<b>SETTLEMENT OF CLASS ACTION</b>
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.	)	
	)	
STATE OF HAWAII; HAWAII PUBLIC	)	
HOUSING AUTHORITY,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
URBAN MANAGEMENT CORPORATION	)	
DBA URBAN REAL ESTATE COMPANY,	)	
DOES 1-20,	)	
	)	
Third-Party Defendant.	)	

**NOTICE OF PENDENCY OF CLASS ACTION AND  
PARTIAL SETTLEMENT OF CLASS ACTION**

**TO ALL PERSONS RECEIVING THIS NOTICE WHO ARE FORMER OR CURRENT  
TENANTS OF KUHIO PARK TERRACE**

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

Your rights and the rights of others may be affected by the class action lawsuit known as

*McMillon v. State*, Civil Number 08-1-2608-12 RMB in the Circuit Court of the First Circuit of the State of Hawai'i (referred to in this notice as the "Class Action") and the proposed partial settlement of the Class Action described below.

## II. THE CLASS

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

All current and future residents of Kuhio Park Terrace and those former residents of Kuhio Park Terrace who resided there at any time on or after December 18, 2004

Because you are receiving this Notice, you are or may be a member of the Class.

## III. THE LITIGATION

This Class Action involves claims against Defendants STATE OF HAWAII and the HAWAII PUBLIC HOUSING AUTHORITY (collectively "State Defendants") for breach of the implied warranty of habitability and breach of the leases between the State Defendants and the residents of Kuhio Park Terrace ("KPT"). The Class Representatives also allege claims against REALTY LAUA ("Realty Laua"), the management company for KPT, for breach of the management agreement between the State Defendants and Realty Laua (of which Plaintiffs claim to be third-party beneficiaries) and for violation of HRS § 480-2, which prohibits unfair or deceptive trade practices. The Class Representatives seek on behalf of the Class damages and injunctive relief to bring the Defendants into compliance with the implied warranty of habitability, the lease agreement, and the management agreement.

The Defendants deny these allegations and the Court has not yet ruled on the merits of the Plaintiffs' claims.

## IV. PLAINTIFFS AND THEIR COUNSEL

The Court has appointed HAZEL MCMILLON, TRUDY SABALBORO, and LEE SOMMERS and their counsel to act on behalf of the Class for this Class Action:

### **ALSTON HUNT FLOYD & ING**

American Savings Bank Tower  
1001 Bishop Street, 18<sup>th</sup> Floor  
Honolulu, HI 96813  
Jason H. Kim

### **Lawyers for Equal Justice**

P.O. Box 37952  
Honolulu, HI 96837-0952  
Victor Geminiani

## V. THE PROPOSED SETTLEMENT

The Class Representatives and the State Defendants have agreed to a proposed settlement of this Class Action as to the State Defendants only. The settlement has been preliminarily approved by the Court but final approval is still pending, as set forth below.

The terms of the settlement are as follows:

- The State Defendants shall pay to the Class a total of \$610,000, to be disbursed as follows: (1) \$45,000 to the Class Representatives; (2) \$200,000 for the beginning of a fund to distribute among class members; and (3) \$365,000 in attorneys' fees and costs. This is only a partial settlement. The Class Representatives shall continue to pursue claims on behalf of the Class against Realty Laua and anticipate that the fund for distribution to the Class will be substantially increased through settlement or judgment with Realty Laua (and third-party Defendant Urban Management Corporation). No funds shall be distributed to any member of the Class (other than the Class Representatives) until all such claims have been resolved;
- The State Defendants shall assign all claims against Realty Laua and Urban relating to the Class Action and a related class action to the Class Representatives, who shall prosecute these claims for the benefit of the Class;
- The Class Representatives and the Class shall release and dismiss all claims against the State Defendants alleged in this action and the Federal Action;
- The State Defendants and the Class Representatives acknowledge that several of the conditions at KPT that were the basis of the claims in this action have purportedly been remediated or are in the process of being remediated, including through the installation of a new Fire Alarm System, Elevator Modernization and Garbage Chute Replacement and that the HPHA has duly procured and entered into contracts with the respective contractors for these projects;
- Pending completion of elevator modernization, the State Defendants shall cause a freight elevator to be available for tenants if necessary to ensure that each tower is served by two elevators during peak hours;
- The State Defendants have developed a Fire Disaster and Disaster Preparedness Plan for KPT in consultation with the Honolulu Fire Department and shall provide tenants with a Fire Evacuation Notice; and
- The State Defendants shall make reasonable efforts to ensure that KPT is maintained in safe, sanitary, and habitable condition and shall enforce provisions of the Management Contract requiring Realty Laua to maintain the overall physical appearance and condition of the properties, including maintenance and up-keep to the individual units.



## VI. COURT APPROVAL OF THE SETTLEMENT

If the Court gives final approval of the settlement, the Court will enter a judgment dismissing with prejudice the claims asserted by the Class against the State Defendants and forever discharging and releasing the State Defendants from all claims relating to the State Defendants' alleged breaches of the implied warranty of habitability and lease, except the claims of those class members who have opted out of this class action.

The Court will conduct a hearing on this settlement on January 25, 2011 at 8:30 a.m., in the courtroom of the Honorable Robert M. Browning at 777 Punchbowl Street, Honolulu, Hawaii ("Fairness Hearing"). The purpose of the Fairness Hearing is for the Court to determine whether this settlement is fair, reasonable, and adequate.

## VII. YOUR RIGHTS AS A CLASS MEMBER

If you do nothing, you will remain a member of the Class and will be bound by any settlement and judgment in this Class Action, including the partial settlement set forth above. If you are a member of the Class and do not opt out of this Class Action, you may receive a payment from the Class fund described above once all claims are resolved. If you remain in the Class and the judgment is not favorable, you will be bound by the adverse decision and will have no right to relitigate any of the claims asserted on behalf of the Class. You will be represented by the Class Representatives and their attorneys for the purposes of this Class Action.

You may choose to "opt out" and not be a Class member. You may then retain your own attorney and take legal action on your own. If you exclude yourself from the Class, you will not be bound by court orders or judgments entered in connection with this Class Action or the partial settlement as set forth above. At the same time, you will not obtain any money from the partial settlement set forth above or any later settlement or judgment. If you wish to opt out and not participate in this Class Action and partial settlement, please send **written notice** of that intent to Class counsel, at one of the addresses provided above. A request to opt out and be excluded from the class must contain your: (1) legal name, (2) address, (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case reference number, Civil No. 08-1-2608-12 RMB and (6) your signature. Any request to opt out must be received by Plaintiffs' counsel by **January 24, 2011** in order to be effective.

You may also, but are not required to, not opt out of the class and instead enter an appearance in this Class Action and/or at the Fairness Hearing through counsel of your choice and at your own expense. You may also appear personally without counsel at the Fairness Hearing to state your position as to whether the settlement should or should not be approved. Finally, you or your counsel may file a written objection with the Court pursuant to the rules and procedures of the Circuit Court for the First Circuit of the State of Hawaii prior to the Fairness Hearing.

If you do not: (1) opt out of the Class or (2) object to the settlement at or before the Fairness Hearing, you shall be deemed to have waived any and all objections to the partial settlement set forth above.

## VII. ADDITIONAL INFORMATION

This notice provides only a summary of the Class Action and settlement. The Complaint; Settlement, Release, Indemnification, and Assignment Agreement; Motion for Class Certification and Preliminary Approval of Settlement; Motion for an Award of Attorneys' Fees and Costs, and other relevant documents are or will soon be available at [www.hawaii.classaction.com](http://www.hawaii.classaction.com) and [www.lejhawaii.org](http://www.lejhawaii.org).

You may also contact class counsel at the phone number below (in addition to the addresses provided above):

Victor Geminiani  
Lawyers for Equal Justice  
(808) 587-7605

**Please do not call the Court or any court personnel with any questions or concerns.**

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

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BY ORDER OF THE CIRCUIT COURT FOR  
THE FIRST CIRCUIT OF THE STATE OF  
HAWAII

THE HONORABLE ROBERT M. BROWNING

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*Faletogo v. State of Hawai'i*, Civil No. 08-1-2608-12 RMB; First Circuit Court, State of Hawaii;  
Notice of Pendency of Class Action and Partial Settlement of Class Action