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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RODELLE SMITH, SHEILA)	Civil No.
TOBIAS, BARBARA BARAWIS, and)	
LEWIS GLASER individually, and on)	COMPLAINT; SUMMONS
behalf of all person similarly situated,)	CLASS ACTION
)	
Plaintiffs,)	
v.)	
)	

STEPHANIE AVEIRO, in her official)
 capacity as the Executive Director of)
 the Housing and Community)
 Development Corporation of Hawaii;)
 HOUSING AND COMMUNITY)
 DEVELOPMENT CORPORATION)
 OF HAWAII, a duly organized and)
 recognized agency of the State of)
 Hawaii.)
)
 Defendants.)
 _____)

COMPLAINT

I. INTRODUCTION

1. The United States Housing Act, 42 U.S.C. §1437(a)(1), requires that shelter costs for tenant’s residing in federally subsidized public housing projects do not exceed 30% of tenant income. Utilities are included in shelter costs. Where tenants are directly responsible for the payment of utility service, the supporting federal regulations require public housing authorities (PHAs) to provide the tenants with a utility allowance. 24 C.F.R. §965.501 et seq.

2. In establishing the utility allowances, the PHA must approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with

the requirements of a safe, sanitary, and healthful living environment. 24 C.F.R. §965.505(a). The PHA must annually review the utility allowances and make adjustments to reflect changes in the basis upon which the allowances are based. 24 C.F.R. §965.507(a). Additionally, where there is a change in the rates upon which the allowance is based of greater than 10%, the PHA must make interim adjustments to its allowances. 24 C.F.R. §965.507(b).

3. The Housing and Community Development Corporation of Hawaii (HCDCH), a State of Hawaii PHA, has failed to review or update the utility allowances for all HCDCH projects since sometime before 1997.

4. Since HCDCH last updated its utility allowances, utility rates have increased substantially resulting in inadequate utility allowances and rent charges in excess of 30% of tenant income.

5. Plaintiffs seek declaratory and injunctive relief directing Defendants to appropriately adjust HCDCH utility allowances to reflect changes in utility costs.

II. JURISDICTION

6. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331 and 1343, which afford original jurisdiction of all civil actions arising from federal questions under the Constitution, laws or treaties of the United States.

7. Plaintiffs bring this action against Defendant Aveiro pursuant to 42 U.S.C. §1983 to challenge the deprivation of her rights by Defendant's actions under color of state law.

8. Declaratory relief is authorized pursuant to 28 U.S.C. §§2201-02.

9. Injunctive relief is authorized pursuant to Rule 65 of the Federal Rules of Civil Procedure. Plaintiffs have no adequate remedy at law and will suffer irreparable injury.

10. Supplemental jurisdiction is conferred over nonfederal claims by 28 U.S.C. §1367.

III. PARTIES

11. Plaintiffs RODELLE SMITH, SHEILA TOBIAS, BARBARA BARAWIS, and LEWIS GLASER are public housing tenants and citizens and residents of the State of Hawaii.

12. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs represent a class of public housing tenants for

whom HCDCH pays or should have paid electric and/or gas utility allowances whose rights have been violated by HCDCH as set forth herein.

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

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

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

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

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

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

- a. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or

substantially impair or impede their ability to protect their interests.

- b. HCDCH has acted on grounds generally applicable to the class, making appropriate injunctive or declaratory relief with respect to the class as a whole.
- c. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

19. Defendant STEPHANIE AVEIRO is the Executive Director of HCDCH. She has full authority over HCDCH to see that HCDCH's policies and practices conform to the law. She is also responsible for the operation and administration of HCDCH. She is sued in her official capacity.

20. HCDCH is a duly organized and recognized agency of the State of Hawaii with the power to sue and be sued.

V. FACTUAL ALLEGATIONS

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

22. Plaintiff RODELLE SMITH has been a HCDCH head of household and tenant for approximately 10 years.

23. Plaintiff BARBARA BARAWIS has been a HCDCH head of household and tenant for approximately 2 years.

24. Both SMITH and BARAWIS reside in HCDCH four-bedroom rental units in the Ka Hale Kahaluu housing project. As residents of Ka Hale Kahaluu, SMITH and BARAWIS pay their own electric utilities. HCDCH provides a monthly utility allowance to SMITH and BARAWIS in the amount of \$71.00 each, which is deducted from their rent balances.

25. Plaintiff SHEILA TOBIAS has been a HCDCH head of household and tenant for approximately 14 years.

26. As a resident of a three-bedroom unit at the Ka Hale Kahaluu housing project, HCDCH provides TOBIAS with a monthly utility allowance of \$59.00, which is deducted from her rent balance.

27. Plaintiff LEWIS GLASER has been a HCDCH head of household and tenant for approximately 19 years.

28. As a resident of a one-bedroom unit at the Ka Hale Kahaluu housing project, HCDCH provides GLASER with a monthly utility allowance of \$41.00, which is deducted from his rent balance.

29. HCDCH has not adjusted the allowances provided to SMITH, TOBIAS, BARAWIS, GLASER, and for other tenants of HCDCH projects since sometime before 1997, although charges for electricity and gas have increased over the same period. As a result, SMITH, TOBIAS, BARAWIS, GLASER, and other tenants of HCDCH projects have been required to pay amounts for utility bills in excess of the utility allowance provided and thereby have been forced to pay an amount for rent in excess of 30% of their income.

VI. FIRST CLAIM FOR RELIEF: VIOLATIONS OF THE U.S. HOUSING ACT

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

31. Defendants violated 42 U.S.C. §1437a and the supporting federal regulations at 24 C.F.R. §965.507(a) and have continued such violations by failing to annually review and adjust the HCDCH utility allowances since sometime before 1997.

32. Defendants violated 42 U.S.C. §1437a, the supporting federal regulations at 24 C.F.R. §965.507(b), and the rights of public housing tenants under those laws, and have continued such violations by failing to make interim adjustments to

the utility allowances since sometime before 1997.

33. Defendants violated 42 U.S.C. §1437a, the supporting federal regulations, and the rights of public housing tenants under those laws, and have continued such violations by charging tenants in excess of 30% of tenant income for rent.

34. As a result of Defendants' actions, Plaintiffs and the class they represent are entitled to injunctive relief to enforce the U.S. Housing Act.

VII. SECOND CLAIM FOR RELIEF: BREACH OF THE ANNUAL CONTRIBUTIONS CONTRACT

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

36. Pursuant to 42 U.S.C. §1437c, HCDCH has entered into an Annual Contributions Contract (hereinafter ACC) with the U.S. Department of Housing and Urban Development (hereinafter HUD) that has been in full force and effect at all relevant times. Under the ACC, HUD makes annual contributions to subsidize the cost of operating and managing low-income public housing in the State of Hawaii. See 42 U.S.C. §1437c and g.

37. In consideration for receiving financial assistance

from HUD, HCDCH agreed in the ACC to comply with HUD requirements for the development and operations of public housing. 24 C.F.R. §964.7.

38. Public housing tenants are the intended beneficiaries of the ACC between HUD and HCDCH.

39. Defendants have breached the ACC by failing to review and adjust the HCDCH utility allowances and for charging HCDCH tenants in excess of 30% of tenant income for rent.

40. As a result of Defendants' breach, Plaintiffs and the class they represent are entitled to injunctive relief to enforce the U.S. Housing Act.

VIII. THIRD CLAIM FOR RELIEF: VIOLATION OF 42 U.S.C.

§1983

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

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

43. As result of Defendant's actions, Plaintiffs and the class they represent are entitled to injunctive relief to enforce the U.S. Housing.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Assume jurisdiction of this case.
2. Certify the plaintiff class.
3. Declare that Defendants have violated Plaintiffs' rights as set forth herein.
4. Enter preliminary and permanent injunctions requiring Defendants to make appropriate adjustments to HCDCH utility allowances in accordance with the U.S. Housing Act and its implementing regulations.
5. Award Plaintiffs their costs and attorneys' fees.
6. Grant Plaintiffs and the plaintiff class such other relief as may be just and proper.

DATED: Honolulu, Hawaii, _____.

DAVID M. FOREMAN
ATTORNEY FOR PLAINTIFFS

United States District Court

DISTRICT OF HAWAII

RODELLE SMITH, SHEILA TOBIAS, BARBARA
BARAWIS, and LEWIS GLASER individually, and on
behalf of all person similarly situated

Plaintiffs,

v.

STEPHANIE AVEIRO, in her official capacity as the
Executive Director of the Housing and Community
Development Corporation of Hawaii; Housing and
Community Development Corporation of Hawaii, a
duly organized and recognized agency of the State of
Hawaii.

CASE NUMBER:

TO: The Above-Named Defendant(s)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and
serve upon PLAINTIFF'S ATTORNEYS

SHELBY ANNE FLOYD, ESQ.
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Alston Hunt Floyd & Ing
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-or-

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Lawyers for Equal Justice
P. O. Box 4984
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an answer to the complaint which is herewith served upon you, within
days after service of this summons upon you, exclusive of the day of service. If you fail
to do so, judgment by default will be taken against you for the relief demanded in the
complaint.

CLERK

DATE

BY DEPUTY CLERK

DATE