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STATE OF HAWAII

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

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

Plaintiffs,

v.

) Civil No. 04-1 -0069 **K**  
)  
) AMENDED COMPLAINT;  
) SUMMONS  
) CLASS ACTION  
)  
) (Contract)  
)  
)

I hereby certify that this is a full, true and correct  
copy of the original *Amended Complaint* in this office.

*[Signature]*  
Clerk, Third Circuit Court, State of Hawaii

HOUSING AND COMMUNITY )  
DEVELOPMENT )  
CORPORATION OF HAWAII, a )  
duly organized and recognized )  
agency of the State of Hawaii. )  
 )  
Defendant. )

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**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. Pursuant to 42 U.S.C. §1437c, the Housing and Community Development Corporation of Hawaii (HCDCH), a State of Hawaii PHA, 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.

4. 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.

5. HCDCH has failed to review or update the utility

allowances for all HCDCH projects since sometime before 1997.

6. 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.

7. In addition, HCDCH has failed to comply with its rental agreement for federally subsidized housing projects by providing tenants with a utility allowance in terms of dollars that is insufficient to purchase the amount of utilities (in terms of kilowatt hours or cubic feet of gas) provided for in the utility allowance schedule promulgated by HCDCH and incorporated by reference into the rental agreement.

8. Plaintiffs, individually and as representatives of all persons similarly situated, seek reimbursement or rent credit for rent overcharges and inadequate utility reimbursements resulting from HCDCH's violation of the law.

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to Haw. Rev. Stat. § 603-21.5(a)(3), which affords jurisdiction of all civil actions other than where otherwise expressly provided by statute. The



amount in controversy in this case exceeds \$20,000.

2. Jurisdiction is also appropriate under Haw. Rev. Stat. §661-1(1), which affords jurisdiction for all claims against the State founded upon any contract with the State.

3. Venue is appropriate pursuant to Haw. Rev. Stat. §603-36(5).

### **III. PARTIES**

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

5. Pursuant to Rule 23 of the Hawaii Rules of Civil Procedure, Plaintiffs represent a state-wide 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.

6. The class is so numerous that joinder of all members is impracticable. Plaintiffs estimate the class size to exceed 2800 based on HCDCH's reports of the numbers of public housing rental units that should receive utility allowances.

7. There are questions of fact and/or fact common to

the class, as set forth below.

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

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

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

11. 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. 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.

12. Questions of law and fact common to the Plaintiff

class include:

- a. Whether HCDCH failed to conduct interim or annual reviews of the utility allowances in public housing;
- b. Whether HCDCH failed to make annual or interim adjustments to the utility allowances as utility rates increased;
- c. The extent of the increases in utility rates since HCDCH last adjusted the allowances;
- d. The amounts of the adjustments that should have been made to correspond with utility rate increases.

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

#### **IV. FACTUAL ALLEGATIONS**

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

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

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

17. Both SMITH and BARAWIS reside in HCDCH four-





bedroom rental units in the Ka Hale Kahaluu housing project located at 78-6725 Makolea Street in Kailua-Kona, Hawaii. 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.

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

19. 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.

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

21. 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.

22. HCDCH has not reviewed or adjusted the allowance provided to SMITH, BARAWIS, TOBIAS, GLASER and other tenants

of HCDCH projects since sometime before 1997, although charges for electric and gas utilities have increased over the same period.

As a result, the above-named plaintiffs 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.

23. Furthermore, because HCDCH has failed to update the dollar amounts provided to tenants to cover the cost of utilities as utility rates of increased, tenants have not been provided with a sufficient dollar allowance to cover the costs of the amount of utilities (in terms of kilowatt hours and cubic feet of gas) that HCDCH is required to provide according to the rental agreements entered into by SMITH, BARAWIS, TOBIAS, GLASER and other tenants of HCDCH projects.

**V. FIRST CLAIM FOR RELIEF: BREACH OF THE ANNUAL CONTRIBUTIONS CONTRACT**

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

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

26. 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.

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

**VI. SECOND CLAIM FOR RELIEF: BREACH OF RENTAL AGREEMENT**

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

29. Section 5(a) of the HCDCH rental agreement for federally subsidized housing projects provides in relevant part: "For Management-furnished utilities, Management shall pay for and furnish to Tenant water, gas and electricity in accordance with the applicable schedule of utility allowances. For Tenant-purchased utilities, Management shall provide an allowance in dollars for water, gas and electricity in accordance with the applicable schedules."

30. HCDCH has promulgated a utility allowance schedule set in terms of kilowatt hours and cubic feet of gas

[hereinafter "consumption schedule") from which the utility allowance schedules in terms of dollar amounts were created (by applying the then current utility rates to the consumption schedule).

31. Since utility rates have increased significantly since the dollar allowances provided to residents were last updated, the dollar amounts currently provided to tenants are inconsistent with the consumption schedule promulgated by HCDCH (i.e. tenants can no longer purchase the amount of utilities provided for in HCDCH's consumption schedule with the amount of money they are provided each month for the utility allowance).

32. Defendants have breached the rental agreement for federally subsidized housing projects by failing to update the dollar amount of the utility allowance provided to tenants as utility rates increased in order to comply with the consumption schedule incorporated by reference into the rental agreement.

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



**V. 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. Award damages and pre-judgment interest to each member of the plaintiff class for amounts charged for rent by HCDCH in excess of 30% of tenant income resulting from inadequacies in the HCDCH utility allowances.
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: Kailua-Kona, Hawaii, August 10, 2004.

  
GAVIN K. THORNTON  
SHELBY ANNE FLOYD  
ATTORNEYS FOR PLAINTIFFS



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

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

Civil No.

Plaintiffs,

SUMMONS

v.

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII, a duly organized and recognized agency of the State of Hawaii.

Defendant.

SUMMONS

STATE OF HAWAII

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.  
DAVID M. FOREMAN  
Alston Hunt Floyd & Ing  
65-1230 Mamalahoa Hwy., Suite C21  
Kamuela, Hawaii#i 96743

-or-

GAVIN K. THORNTON  
SUSAN K. DORSEY  
Lawyers for Equal Justice  
P. O. Box 4984  
Kailua-Kona, Hawaii 96745

(amended)  
an answer to the complaint which is herewith served upon you, within 20 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. (amended)

Dated: Kealahou, Hawaii, AUG 10 2004

L. KITAOKA (SEAL)

CLERK OF COURT