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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

BEVERLY BLAKE, STEPHANIE ) CIVIL NO. CV08 00281 LEK  
CAMILLERI, ARLENE SUPAPO, )  
individually, and on behalf of all ) (Contract)(Declaratory Judgment)(Other  
persons similarly situated, ) Civil Action  
 ) Class Action  
 Plaintiffs, )  
 )  
 vs. ) **PLAINTIFFS' REPLY**  
 ) **MEMORANDUM IN SUPPORT OF**  
 ) **THE MOTION FOR AWARD OF**  
 CRAIG NISHIMURA, in his official ) **ATTORNEYS' FEES AND COSTS**  
 capacity as Acting Director of the ) **FILED BY LAWYERS FOR EQUAL**

Department of Facility Maintenance, ) **JUSTICE; DECLARATION OF**  
City and County of Honolulu; CITY ) **COUNSEL; EXHIBIT 1;**  
AND COUNTY OF HONOLULU, a ) **CERTIFICATE OF SERVICE**  
municipal corporation, )  
) )  
Defendants. )

[CAPTION CONTINUED NEXT  
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CITY AND COUNTY OF )  
HONOLULU, ) Date: March 19, 2010  
) Time: 9:30 a.m.  
Third-Party Plaintiff, ) Judge: Hon. Leslie E. Kobayashi  
) )  
vs. )  
) )  
HAWAIIAN PROPERTIES, LTD., )  
) )  
Third-Party Defendants )

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**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF THE MOTION  
FOR AWARD OF ATTORNEYS' FEES AND COSTS FILED BY  
LAWYERS FOR EQUAL JUSTICE**

**I. INTRODUCTION**

Complete compensation for Lawyers for Equal Justice is mandated in this case, as the work performed was reasonably necessary and mandated by the circumstances. The purpose of 42 U.S.C. § 1988 is to provide fees to ensure recourse to the poor for civil rights violations. Congress realized that litigating complex cases on behalf of low income clients is difficult and expensive and the judgments received often do not reflect the full value to society of such cases.

Defense counsel asks this court to cut Plaintiffs' counsel's fee down to a rate that is not commiserate with the actual work performed. Defense argues that Lawyers for Equal Justice (LEJ) should be compensated for 41 hours for successfully resolving a class action lawsuit against the City and Private counsel over a nearly two years period. Such an argument is simply not in good faith. The effect of such a reduction in fees will make similar types of cases—to ensure fair treatment of the poor in subsidized housing—less appealing to the private bar and to strangle the funding for organizations like LEJ so that such cases cannot be brought. Without adequate payment of fees for these types of public interest cases, they simply will not be brought and justice will remain only in the hands of the privileged and powerful who can afford to pay the ever increasing costs of litigation. Plaintiffs' counsel asks that the court grant Lawyers for Equal Justice's full request.

## **II. ARGUMENT**

### **A. Proposed counsel reimbursement rates are reasonable and reflect a fair market rate.**

Rates proposed for LEJ attorneys are comparable to those received by Alston, Hunt, Floyd, & Ing attorneys and are based on rates charged to the public by that firm. Reducing those rates below those charged to private clients would simply provide a windfall to the defendants.

Contrary to Defense counsel claims that this case did not require much specialized expertise or skill, this case was based on complex administrative procedures that apply only the low-income community. Mr. Geminiani and Mr. Durham's entire careers have been spent specializing on issues affecting the low-income community and they have expertise understanding the statutory and administrative as well as practical issues facing that community. See Declaration of Counsel, ¶¶ 2-8. Few attorneys in Hawaii are as uniquely positioned as we are to manage complex litigation on behalf of the poor.

**B. The amount of work in this case is directly related to failure of the defendants to promptly resolve this case.**

Many of the entries to which Defendants object are directly related to their failure to address numerous issues with Plaintiffs in a timely fashion. Defendants cannot claim that Plaintiffs efforts to resolve these issues are excessive when the Defendants repeatedly were unwillingness to negotiate and resolve issues without court intervention. Their repeated delay in resolving issues as described below forced Plaintiffs to take action to protect their clients interests. Defendants' disinclination to negotiate with Plaintiffs is obvious from the very start of this case. Plaintiffs filed their complaint on June 12, 2008. Immediately, counsel attempted to discuss settlement; however, corporate counsel at that time was unwilling and unable to seriously discuss the case. In fact, they failed to respond timely to the complaint, resulting in a default that had to be set aside. Where Plaintiffs' counsel

must choose between waiting for non-responsive Defense counsel to act and preparing their clients' case, Plaintiffs reasonably chose to act on behalf of their clients. As such, the fees incurred for the following motions and discussions are reasonable and should be recovered.

**1. Fees for preparation for eviction issue are recoverable.**

Because any eviction based on non-payment of rent would cause irreparable harm to the class members, Plaintiffs' complaint requested relief in the form of preliminary and permanent injunctions barring Defendants from initiating or proceeding with eviction actions against members of the class. Doc. 1, ¶ X.4. Although Plaintiffs' counsel immediately proposed and requested a stay on eviction by letter to Marie Gavigan on July 7, 2008 (attached as Exhibit 1 to the Declaration of Counsel), they received no response for weeks. Without a response, Plaintiffs' counsel was forced to take action to protect their clients' interests and began drafting a motion for preliminary injunction. Prior to filing such motion, the city finally agreed to such a stipulation. While Plaintiffs never filed the motion, the threat of a preliminary injunction motion and related hearing was a sufficient incentive for the Defendants to ultimately agree to stay evictions. Defendants cannot claim that the fees incurred in preparation of the motion, which resulted from their failure to negotiate, should not be recovered. Indeed, even where a motion is not filed, the court has held that fees incurred in the preparation and

research to support the motion are recoverable. *Besser v. Prudential Ins. Co. of America*, 2009 WL 5033658 \*5 (D.Hawai‘i, 2009) (research necessary to determine whether the issue was reasonable and whether the motion should have been filed).

**2. The Fees incurred for drafting the Motion for Class Certification are Recoverable.**

Contrary to Defendants’ claims, Plaintiffs expended a reasonable amount of time to prepare the Motion for Class Certification. Although Plaintiffs’ counsel approached the City, requesting agreement on class certification in the same July 7, 2008 letter, the parties did not reach an agreement. Without the prospect of settling this issue, Plaintiffs’ counsel was forced to prepare for a contested class certification hearing. The City did not respond to the motion and ultimately it was granted. Defendants cannot now claim that the time expended on this motion was unreasonable, when the ultimate basis for the work was the failure of the City to agree to a reasonable stipulation on the class certification..

Settlement was always available in this case. Unfortunately, the city—and its belated substitute, Hawaiian Properties—were unwilling or unable to engage in serious negotiations until over a year after filing. Because of these delays, Plaintiffs’ counsel was required to prepare a contested case, moving towards trial. Preparing such a case is expensive and required the significant work. The Defendants suggest that their tardy desire to settle is deserving of a reward by

reducing their obligation to pay reasonable attorneys fees. Their reward is the settlement of the case and the avoidance of paying the additional fees required if a trial occurred. They are required to pay for all fees incurred during first 12 month period of litigation before they finally agreed to proceed in good faith to resolve the case.

**C. Fees incurred in calculating damages and negotiating the settlement are recoverable.**

In an attempt to reduce the hours for which Plaintiffs can recover, Defendants present an inaccurate description of LEJ's work, namely that LEJ's initial calculation of damages was based on a miscalculation of the utility allowance rate. However, Defendants have not disclosed that the "miscalculation" was due to the failure of Defendants to provide Plaintiffs with the complete data needed for such calculations.

Although Plaintiffs served discovery requests for such information, Defendants refused to share this information until the settlement meeting. Specifically, the Defendants failed, despite numerous requests, to provide the manner in which prior utility allowances were calculated and how many kilowatt hours constituted reasonable consumption at the project. Defendants failed to appear for a 30(b)(6) deposition on this issue, notwithstanding Plaintiffs' notice.

As a result, in order to prepare for the settlement discussions, Plaintiffs were forced to use only data available through HECO to calculate "reasonable

consumption.” Defendants cannot claim that fees for Plaintiffs’ “miscalculation” cannot be recovered, when their failure to provide discoverable information is the cause of such “miscalculations.” Moreover, Defendants’ arguments fail to address the value that Plaintiffs’ calculations brought to settlement. The compilation of HECO rates sheets into a digestible form gave the raw material for Plaintiffs’ and Defendants’ calculations to negotiate settlement.

**D. The specific expenditures of time by counsel were reasonable.**

**1. Fees for pre-litigation activity are recoverable.**

Defense counsel alleges that the “11.2 hours in lining up their clients to file this lawsuit” was unreasonable. Interviewing clients and establishing an attorney-client relationship is a basic part of any representation. Plaintiffs’ pre-litigation activity is especially appropriate because it is a legal aid program engaged in educating a community about their rights and working with a population that is averse to asserting such rights. In this case, community members approach LEJ regarding problems in the community and LEJ will then take those issues to determine whether there is legal recourse. Due to the community they serve, Plaintiffs’ counsel must spend time affirming their clients’ rights and their right to assert them. Without such work, a case cannot be filed and relief cannot be obtained. Such expense was necessary to the representation. *Dishman v. UNUM*

(“work done on the lawsuit prior to the filing of the lawsuit are recoverable”).

**2. Fees for travel and waiting time are recoverable.**

Defense counsel complains about travel and waiting time. These are legitimate expenses, as they were time actually spent by counsel in litigating the case. Travel expenses are especially necessary when working with a low-income population that has difficulty with travel. Any attorney would be expected to be compensated for time they spend traveling on a case. *U.S. v. San Francisco*, 748 F.Supp. 1416, 1422 (N.D.Cal. 1990) (“reasonable attorneys’ fees include reasonable travel time compensated at the full hourly rate”); *Henry v. Webermeier*, 738 F.2d 188, 194 (7th Cir.1984) (traveling time in statutory fee cases compensable just as for fee-paying clients). LEJ is no different.

**3. Fees for correspondence and communication among team members are recoverable.**

“Time billed for internal conferencing is recoverable to the extent it is reasonably necessary to conducting the litigation.” *Cruz ex rel. Cruz v. Alhambra School Dist.*, 601 F.Supp.2d 1183, 1192 (C.D.Cal. 2009) *citing to Davis v. City & County of San Francisco*, 976 F.2d 1536, 1545 (9th Cir.1992). Defense counsel complains about time spent corresponding between team members; however this correspondence and communication are a legitimate part of litigation. As with all other major cases, this case also uses a team model. The team approach requires

communication regarding strategy, task delegation, and approval from senior attorneys. This case was no different and, as such, these expenses should be compensated.

**4. Objections to hours expended as “excessive and unreasonable” are unfounded.**

Defendants further object to Plaintiffs’ hours spent on specific filings, including the complaint and motion for class certification, as excessive and unreasonable, and submit their purportedly reasonable figures without any support. Defendants have not provided a sufficient explanation why Plaintiffs’ hours are duplicative. The mere assertion of duplicative work is insufficient to support a reduction of hours. *Moreno v. Sacramento*, 534 F.3d 1106, 1112, 1116 (9th Cir. 2008) (“If opposing counsel cannot come up with specific reasons for reducing the fee request that the district court finds persuasive, it should normally grant the award in full, or with no more than a haircut.”). Indeed, the 9th Circuit recommends deference to the prevailing party’s “professional judgment as to how much time . . . was required to spend on the case.” *Id.* (civil rights cases are not likely to be cases where “plaintiff’s lawyer engages in churning.”)

Here, the time spent by the team was not duplicative. Every member had its role, with lead counsel Kim and Durham doing the majority of the work, while receiving advice and input from senior counsel Alston and Geminiani, and editorial and research work from junior attorneys and paralegals. Such allocations of duties

and responsibilities were an effective use of time to which the Court should defer. *See Nicholas M. ex rel. Laura M. v. Dept. of Educ. Hawai'i*, 2010 WL 234862 \*5 (D.Hawai'i 2010) (court does not find paralegal review of attorney work to be duplicative and allows recovery of fees for such work).

More importantly, and as discussed above, many of these expenses could have been avoided by Defendants prompt attention to Plaintiffs' attempts to settle certain issues. Defendants claim that Plaintiffs work is excessive and unreasonable. All this time and expense could have been avoided by prompt attention by the Defendants to this case.

**5. Additional work generated by Defendants' untimely 3rd party complaint is legitimately billed.**

Defendants object to the 8.9 hours expended by LEJ responding to their 3rd party complaint. This 3rd party complaint was filed and served over a year into the case, in the middle of heated settlement negotiations. In light of the significant impact adding another party to the case, Plaintiff's attorneys spent an appropriate amount of time to research the issue and formally respond to the tardy request. It is a further indication of the disingenuous nature of Defendants' opposition to Plaintiffs' fee request that 8.9 hours should be struck.

**6. Defendants' complaints about the lack of specificity and detail for billing entries are insufficient to completely deny compensation.**

A lack specificity or detail regarding the nature of the work performed does not always merit an elimination of those entries. Where the remaining entries provide sufficient detail as to nature of work, the Court, in its discretion, may decline to reduce the requested hours. *See Nicholas M. ex rel. Laura M. v. Dept. of Educ. Hawai'i*, 2010 WL 234862 \*5 (D.Hawai'i Jan. 21, 2010) (even where entries do not contain a description of the type of records reviewed, or subject of a meeting, surrounding entries provide enough description to determine whether the fees requested were reasonable); *Brandon E. v. Dept. of Educ., State of Hawaii*, 2008 WL 4602533 \*9 (D.Hawai'i Oct. 16, 2008) (“This Court, however, has the discretion to reduce the requested award for insufficient descriptions and the ultimate question is whether there is sufficient information to allow the Court to assess the reasonableness of the requested fee”). Indeed, this Court has gone so far as to say that Defendants’ approach of eliminating all billing entries that do not strictly comply with Local Rule 54.3(d) “rather harsh.” *Melodee H. ex rel. Kili H. v. Department of Educ., Hawaii*, 2008 WL 4344701 \*6 (D. Hawaii’i September 23, 2008). This Court may also apply its discretion to impose a penalty of a percent reduction of the lodestar amount instead of eliminating the contested entries completely. *Signature Homes of Hawaii, LLC v. Cascade Sur. and Bonding, Inc.*, 2007 WL 2258725 \*3 (D.Hawai’i Aug. 3, 2007) (court reduces insufficiently detailed entries by 10%); *Signature Network, Inc. v. Estefan*, 2005 WL 151928 \*3

(N.D.Cal. 2005) (court imposes 10% reduction in lodestar amount where many of counsel's time entries fail to identify subject matter).

Plaintiffs submit that entries are not so egregious to merit a complete elimination of entries. Even if some of its entries do not comply with Local Rule 54.3(d) to the letter, the majority of its time entries provide sufficient detail for this Court to determine the reasonableness of the requested fees. At the very worst, this Court could deduct a small percentage of Plaintiffs' fees. Nevertheless, the complete billing record for Plaintiffs' fee request has sufficient specificity to overcome the faults asserted by Defendants. .

LEJ attorneys and staff are required to keep their time contemporaneously and report them to accounting twice a month. They are trained to keep time with specificity. Time is kept on excel spreadsheets, with time spent (in .1 hour increment), description, date, and a case matter. In preparing our motion, the data from the spreadsheets was extracted and the only changes made were those necessary to categorize them, in compliance with Local Rule 54.3(d). These were then compiled and placed into the declaration previously filed.

### **III. Conclusion**

Defense counsel suggests that LEJ should be compensated for a mere third of the hours expended in litigating a class action case that sought and received significant damages and an immediate increase in utility allowance for an entire

city-run housing project. LEJ spent 128.3 to ensure that low-income families were no longer overcharged by the city. These hours were spent on certifying the class, preventing evictions during the pendency of the case, and conducting discovery, among other tasks. Defense counsel is right in asserting that much of this time was avoidable because many of the hours expended could have been greatly reduced if the Defendants had promptly given this case and Plaintiffs the attention they deserved. In light of the foregoing, the court should award LEJ the fees for its actual hours, as the law intends.

LEJ intends to present additional evidence of its time spent filing this response at hearing and will request that those hours be included in the fee.

DATED: Honolulu, Hawai`i, March, 5, 2010

/s/ William H. Durham  
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GAVIN K. THORNTON  
ELIZABETH M. DUNNE  
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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

BEVERLY BLAKE, ) CIVIL NO. CV08 00281 LEK  
STEPHANIE CAMILLERI, )  
ARLENE SUPAPO, individually, ) (Contract)(Declaratory  
and on behalf of all persons ) Judgment)(Other Civil Action)  
similarly situated, ) Class Action  
)  
Plaintiffs, ) **DECLARATION OF COUNSEL;**  
) **EXHIBIT 1**  
)  
vs. )  
) [CAPTION CONTINUED NEXT  
CRAIG NISHIMURA, in his ) PAGE]

official capacity as Acting )  
Director of the Department of )  
Facility Maintenance, City and )  
County of Honolulu; CITY AND )  
COUNTY OF HONOLULU, a )  
municipal corporation, )

Defendants.

CITY AND COUNTY OF )  
HONOLULU, )

Date: March 19, 2010

Time: 9:30 a.m.

Judge: Hon. Leslie E. Kobayashi

Third-Party Plaintiff, )

vs. )

HAWAIIAN PROPERTIES, )  
LTD., )

Third-Party Defendants

**DECLARATION OF COUNSEL**

I, William H. Durham, hereby declare that

1. I am an attorney licensed to practice before the U.S. District Court for the District of Hawaii and have knowledge of the experience of LEJ staff.
2. Victor Geminiani has practiced law for over 41 years. During that time he has successfully litigated nine class action lawsuits seeking relief under different civil rights acts including:
  - a. Voting rights act litigation ensuring minority participation in elections;
  - b. Prison and jail conditions litigation;
  - c. Litigation under the Fair Housing Act;
  - d. Litigation challenging the constitutionality of consumer statutes

- e. Employment litigation on behalf of government employees.
3. Mr. Geminiani has also been involved in major cases on virtually all aspects of poverty litigation and issues uniquely affecting the low-income community.
  4. I have practiced law over 5 years. During that time, I have been involved as the lead attorney for Lawyers for Equal Justice in the class action lawsuit of *Kaleuati v. Tonda*, which sought and received relief statewide on behalf of all homeless children.
  5. Much of my practice has specifically involved public housing. I was co-lead attorney on state and federal actions that successfully prevented opt-out of section 8 subsidized housing by Kahuku Housing Foundation, saving 64 affordable units for Hawaii's citizens.
  6. I have also handled numerous individual claims on a wide variety of administrative, federal, or state law claims involving rights of people with low-income to housing, welfare, or other entitlement programs.
  7. Lawyers for Equal Justice is a non-profit law firm that specializes in understanding the issues uniquely affecting the low-income population. We specialize in knowing the welfare, public housing, and other entitlement program regulations and bringing lawsuits in appropriate circumstances to ensure full compliance with federal or state law.
  8. Lawyers for Equal Justice is currently counsel in other major cases seeking relief under entitlement programs:
    - a. *Sound v. Koller*, state and federal actions designed to prevent loss of access to medical care for Compact of Free Association citizens
    - b. *McMillan v. State of Hawaii*, state and federal class actions for inaccessible buildings and substandard housing at Kuhio Park Terrace
    - c. *Cruz v. Jack Hall*, federal class action for rent overcharges in subsidized housing

- d. *Shea v. Kahuku Housing Foundation*, federal class action for rent overcharges in subsidized housing
9. On July 15, 2008, LEJ sent a letter to Marie Gavigan, corporate counsel, seeking to resolve the class action issues and eviction issues to prevent unnecessary legal work. The eviction issue was ignored for weeks, during which time we began preparing a motion for preliminary injunction. No definitive response was ever received on the class action issue and we did not know the defendant's would not contest it until they failed to respond to our motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Durham, NC, March 5, 2010.

/s/ William Durham  
William Durham

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Attorneys for Plaintiffs

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FOR THE DISTRICT OF HAWAI'I

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Third-Party Plaintiff, )

vs. )

HAWAIIAN PROPERTIES, )  
LTD., )

Third-Party Defendants

**LAWYERS FOR EQUAL JUSTICE**

P. O. Box 37952  
Honolulu, Hawai'i 96837-0952  
(808) 779-1744

July 15, 2008

Marie Gavigan  
530 S. King St., Room 110  
Honolulu, HI 96813

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George J. Zweibel

Re: *Blake v. Nishimura*, Civil No. 08-00281 SPK LEK

Dear Ms. Gavigan,

I represent the plaintiffs in *Blake v. Nishimura*. I am writing to propose a plan for resolving this matter efficiently.

First, to prevent irreparable harm to members of the proposed class, we are requesting a stipulated stay of any present or future eviction proceedings based on non-payment of rent until the damages claims of the Plaintiffs are resolved. This will avoid the need to litigate a preliminary injunction.

Second, the proposed class easily meets the criteria for certification under FRCP 23. The plaintiffs' counsel have acted as class counsel in numerous similar cases against the State of Hawai'i in both federal and state court. *Amone v. Aveiro*, Civil No. 04-00508 (D. Haw.) (resulting in permanent injunctive relief); *Smith v. HCDCH*, Civil No. 04-1-69K (Haw. 3d Cir. Ct.) (resulting in damages of \$2.3 million); *Waters v. HCDCH*, Civil No. 05-1-0815 (Haw. 1st Cir. Ct.). Therefore, we propose that you stipulate to class certification to prevent unnecessary litigation.

Third, we request an early Rule 26 meeting to discuss these proposals, create a discovery plan, if necessary, and discuss each parties' position on ultimate resolution of this case. We hope that early discussions can lead to a fair result without creating unnecessary costs. We believe everyone can avoid considerable expenses if there is early cooperation between the parties and an attempt to reach a settlement at the earliest possible time.

Please contact me at your earliest convenience at 779-1744 or at [william@lejhawaii.org](mailto:william@lejhawaii.org). Absent agreement on these matters, we intend to file a motion for class certification soon.

Best regards,



William Durham  
Counsel for Plaintiffs

VICTOR GEMINIANI 4354  
WILLIAM H. DURHAM 8145  
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Attorneys for Plaintiffs

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FOR THE DISTRICT OF HAWAI'I

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

Date: March 19, 2010  
Time: 9:30 a.m.  
Judge: Hon. Leslie E. Kobayashi

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the dates and methods of service noted below,  
a true and correct copy of the foregoing was served on the following at their last  
known address:

Served electronically through CM/ECF:

D. Scott Dodd, Esq. March 5, 2010  
[dsdodd@honolulu.gov](mailto:dsdodd@honolulu.gov)  
David M. Louie, Esq. March 5, 2010  
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James Shin, Esq. March 5, 2010  
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CITY AND COUNTY OF HONOLULU

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Phillip A. Li, Esq.

[pal@lt-hawaii.com](mailto:pal@lt-hawaii.com)

March 5, 2010

Attorneys for Third-Party Defendant  
HAWAIIAN PROPERTIES, LTD.

DATED: Honolulu, Hawai`i, March, 5, 2010

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