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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

TIMOTHY SHEA, MARTY  
JACQUELINE LEE, DON E.  
MURDOCK individually, and on  
behalf of all persons similarly  
situated,

Plaintiffs,

vs.

KAHUKU HOUSING  
FOUNDATION, INC. and  
HAWAIIAN PROPERTIES, LTD.,  
Defendants.

) CIVIL NO. CV09 00480 LEK  
) (Contract) (Declaratory Judgment)  
) Class Action  
)  
) **PLAINTIFFS' MOTION FOR**  
) **AN AWARD OF ATTORNEYS'**  
) **FEES AND COSTS;**  
) MEMORANDUM IN SUPPORT  
) OF MOTION; DECLARATION  
) OF JASON H. KIM; EXHIBIT 1;  
) DECLARATION OF M. VICTOR  
) GEMINIANI; EXHIBITS 2-3;  
) CERTIFICATE OF SERVICE  
)  
)  
)

**PLAINTIFFS' MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND COSTS**

Plaintiffs TIMOTHY SHEA, MARTY JACQUELINE LEE, and DON E. MURDOCK, by and through their counsel, Alston Hunt Floyd & Ing and Lawyers for Equal Justice move this Court for an award of attorneys' fees and costs to be paid from the settlement fund established by the settlement in this matter. Plaintiffs request an award of \$21,766.13 in attorneys' fees and costs.

This Motion is made pursuant to Rules 7, 23(h)(1), and 54 of the Federal Rules of Civil Procedure, Local Rule 54.3, and 42 U.S.C. § 12205 and is supported by the attached Memorandum, Declarations, and Exhibits, as well as the pleadings and files in this action.

DATED: Honolulu, Hawai`i, February 7, 2011.

/s/ Jason H. Kim  
PAUL ALSTON  
JASON H. KIM  
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

TIMOTHY SHEA, MARTY	)	CIVIL NO. CV09 00480 LEK
JACQUELINE LEE, DON E.	)	(Contract) (Declaratory Judgment)
MURDOCK individually, and on	)	Class Action
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situated,	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF MOTION</b>
Plaintiffs,	)	
	)	
vs.	)	
	)	
KAHUKU HOUSING	)	
FOUNDATION, INC. and	)	
HAWAIIAN PROPERTIES, LTD.,	)	
Defendants.	)	
	)	

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**MEMORANDUM IN SUPPORT OF MOTION**

**I. INTRODUCTION**

This action brought by TIMOTHY SHEA, MARTY JACQUELINE LEE, and DON E. MURDOCK (“Named Plaintiffs”) seeks damages and declaratory and injunctive relief against defendants Kahuku Housing Foundation and Hawaiian Properties, LTD (collectively “Defendants”) for overcharging tenants at the Kahuku Elderly Housing Project (“Kahuku Housing”) in violation of the U.S. Housing Act and its supporting regulations and contrary to the terms of their contracts with Kahuku Housing tenants by failing to update utility allowances.

After settlement discussions facilitated by this Court, the Named Plaintiffs and Defendants entered into a Settlement Agreement. This Court has preliminarily approved the settlement and the final fairness hearing is set for March 14, 2011.

Under the Settlement Agreement, the Defendants agreed to an award of attorneys' fees and costs in the total amount of \$21,766.13. This amount is reasonable and fair to the class in light of: (1) the actual attorney time and expenses reasonably and necessarily expended in this matter, which exceed this amount; and (2) the relief obtained for the benefit of the class.

## **II. BACKGROUND**

### **A. Procedural History**

On September 8, 2009, the Named Plaintiffs commenced a class action in the Circuit Court for the First Circuit of the State of Hawai'i against Defendants alleging that they overcharged tenants at Kahuku Housing in violation of the U.S. Housing Act and its supporting regulations and contrary to the terms of their contracts with Kahuku Housing tenants by failing to update utility allowances. The Named Plaintiffs alleged claims for breach of the rental agreements and unfair and deceptive trade practices prohibited by HRS § 480-2. Defendants removed the case to this Court on October 9, 2009 [DE 1].

The parties engaged in discovery and settlement negotiations under the supervision of this Court and reached an agreement to settle all claims and class counsel's claims for attorneys' fees, as set forth in Exhibit "3" to the Amended Stipulation for Preliminary Approval of Settlement [DE 57]. The Settlement Agreement included a payment of \$21,766.13 to class counsel in full satisfaction of their claims for attorneys' fees and costs. As a result of the settlement discussions, on November 2, 2010, the Named Plaintiffs filed a First Amended Complaint [DE 53] adding additional claims based on allegations of retaliation against class members with respect to the accessibility of a bookmobile and the community center. On November 4, 2010, this Court issued its Stipulation Regarding Class Certification and Order [DE 55], in which it certified a class consisting of:

[a]ll persons who are, were, or will be head of household tenants at Kahuku Elderly Housing Project, who were or are: (a) entitled to receive utility allowances from the Kahuku Housing Foundation as part of their section 8 subsidy at any time during which Defendants Kahuku Housing Foundation and/or Hawaiian Properties, Ltd. failed or fails to provide properly-calculated utility allowances for the Kahuku Elderly Housing Project; and (b) required, desired, sought, or expected, access to a bookmobile and community center simply because of their status as residents of the Kahuku Elderly Housing Project.

The Court preliminarily approved the settlement by its Stipulation for Preliminary Approval of Settlement, entered November 22, 2010, as amended on

December 3, 2010 [DE 57]. Notice of the settlement has been provided to the class and the final fairness hearing is set for March 14, 2011.

Class counsel actually incurred over \$21,766.13 in attorneys' fees and costs, as set forth in the attached Declarations of Jason H. Kim and Victor Geminiani and Exhibits "1"- "3."

### III. ARGUMENT

#### A. Class Counsel Are Entitled to an Award of Their Reasonable Attorneys' Fees and Costs.

Plaintiffs' counsel are entitled to an award of their reasonable fees and costs in this action, both under the terms of the Settlement Agreement and under the applicable substantive law. *See* FRCP Rule 23(h) ("In a certified class action, the court may award reasonable attorney's fees and non-taxable costs that are authorized by law or by the parties' agreement.") The parties agreed that the Defendants would pay \$21,766.13 to class counsel for their attorneys' fees and costs. Ex. "3" to Amended Stipulation for Preliminary Approval of Settlement [DE 57].

Furthermore, the Plaintiffs brought and settled claims under HRS § 480-2. A prevailing party for such a claim is entitled to reasonable attorneys' fees. HRS § 480-13. A party that obtains a settlement agreement that grants enforceable relief is a "prevailing party" for purposes of fee-shifting statutes. *See Jankey v. Poop Deck*, 537 F.3d 1122, 1130 (9<sup>th</sup> Cir. 2008) ("A settlement

agreement meaningfully alters the legal relationship between parties [so as to support an award of attorneys' fees] if it allows one party to require the other party to do something it otherwise would not be required to do.") (Internal quotation omitted.)

**B. The Fees and Expenses Incurred by Class Counsel Were Reasonable.**

In statutory fee shifting cases, a reasonable attorneys' fee is determined by multiplying the hours reasonably expended times a reasonable hourly rate. *Blum v. Stenson*, 465 U.S. 886, 888, 104 S. Ct. 1541, 1544 (1984). This "lodestar" amount is presumed to be the reasonable fee to which counsel is entitled. *Id.* at 897, 104 S. Ct. at 1548.

As demonstrated in the attached Exhibits "1" and "2," \$21,766.13 is a reasonable attorneys' fee and costs award in light of the time and expenses "reasonably incurred" by class counsel. Although the parties were able to settle this case relatively early in the litigation, it nonetheless required a meaningful expenditure of attorney time to: (1) investigate and draft the complaint; (2) negotiate the terms of the settlement, which involved multiple settlement conferences and exchanges of correspondence; and (3) complete the filings required to effectuate the settlement.

The attorneys' fees sought by this Motion are substantially less than the actual attorneys' fees reasonably incurred by class counsel. Multiplying the

actual time reasonably incurred by hourly rates previously approved by this Court in other matters yields a total of \$31,828.12 in attorneys' fees (excluding General Excise Tax) and \$1,096.33 in costs. The amount requested by this Motion represents a substantial discount from the attorneys' fees actually incurred and thus a benefit to the class.

An award of \$21,766.13 in attorneys' fees and costs is also reasonable when measured against the total relief obtained for the class. Class counsel created a settlement fund of \$32,040 to compensate the class. As this Court knows from its involvement in the settlement negotiations, this sum is the product of a diligent and good faith effort to *fully* compensate the class for the actual overpayments of rent paid by class members because of the alleged failure to update utility allowances. In addition, class counsel obtained injunctive relief to increase access to the community center at Kahuku Housing and to allow the operation of a bookmobile there.

Even if the injunctive relief obtained for the class were not so substantial, a full award of Plaintiffs' attorneys' fees and costs would be appropriate without regard to the amount of damages awarded to the class. The purpose of fee shifting provisions is to encourage plaintiffs to bring lawsuits to vindicate important statutory rights, regardless of the amount at stake. *See Anderson v. AB Painting and Sandblasting Inc.*, 578 F.3d 542 , 545 (7<sup>th</sup> Cir. 2009)

(district court erred by reducing attorney fee award to be proportionate with the damages: part of the purpose of fee shifting statutes is to “discourage petty tyranny” and it is therefore “no surprise that the cost to pursue a contested claim will often exceed the amount in controversy”).

The amount sought by this Motion is a reasonable award of attorneys' fees and costs given the hours actually expended by class counsel and the relief obtained for the class. This Court should therefore approve an award of attorneys' fees and costs in the amount of \$21,766.13, as agreed upon by the Named Plaintiffs and the Defendants.

#### **IV. CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request that the Court approve an award of \$21,766.13 to class counsel for their reasonable attorneys' fees and costs as set forth in the Settlement Agreement.

DATED: Honolulu, Hawai`i, February 7, 2011.

/s/ Jason H. Kim  
PAUL ALSTON  
JASON H. KIM  
Attorneys for Plaintiffs