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HAWAIIAN PROPERTIES, LTD.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI‘I

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

Plaintiffs,

v.

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

Defendants.

CIVIL NO. CV09-00480 LEK  
(Contract)

STIPULATION REGARDING CLASS  
CERTIFICATION; ORDER

KAHUKU HOUSING FOUNDATION,  
INC.,

Cross-claimant,

v.

HAWAIIAN PROPERTIES, LTD.,

Cross-claim Defendants.

STIPULATION REGARDING CLASS CERTIFICATION

WHEREAS, on September 8, 2009, Plaintiffs TIMOTHY SHEA, MARY JACQUELINE LEE, DON E. MURDOCK (“Plaintiffs”) brought an action in the Circuit Court of the First Circuit entitled TIMOTHY SHEA, MARY JACQUELINE LEE, DON E. MURDOCK, individually, and on behalf of all persons similarly situated v. KAHUKU HOUSING FOUNDATION, INC., and HAWAIIAN PROPERTIES, LTD., Civil No. 09-1-2076-09 (GWBC) (hereinafter referred to as “Lawsuit”). Plaintiffs allege that Defendants have failed to comply with Section 8 regulations in the calculation of utility allowances for Section 8 tenants. Plaintiffs alleged that Defendants KAHUKU HOUSING FOUNDATION, INC., and HAWAIIAN PROPERTIES, LTD. (collectively, “Defendants”), failed to complete and submit an analysis of the adequacy of utility allowance in connection with adjustments of the Section 8 contract rents for Kahuku Elderly Housing Project (“KEHP”). Id., at ¶ 35. Plaintiffs allege that this is a violation of

24 C.F.R. § 880.610. Id., at ¶¶ 24 and 25. As a result, Plaintiffs assert claims against the Defendants for: (1) breach of the rental agreements and (2) unfair trade practices prohibited by HRS Chapter 480.

WHEREAS, on October 9, 2009, Defendant HAWAIIAN PROPERTIES, LTD. removed this lawsuit to the United States District Court for the District of Hawai‘i on the basis of federal question jurisdiction under 28 U.S.C. §1441(a) and (b), and lawsuit was assigned CIVIL No. CV09-00480 DAE LEK;

WHEREAS, on February 24, 2010, Plaintiffs filed their Motion for Class Certification;

WHEREAS, on May 5, 2010, Plaintiffs withdrew without prejudice their Motion for Class Certification;

WHEREAS, on November 2, 2010, Plaintiffs filed their First Amended Complaint alleging new claims based on allegations of retaliation against class members as it related to the accessibility of the bookmobile and community center;

WHEREAS, the Parties hereby stipulate, subject to the approval and Order of this Court, to Class Certification as follows:

1. Plaintiffs have satisfied the "numerosity" requirement of Fed. R. Civ. P. Rule 23 (a)(1), as the proposed class is "so numerous that joinder of all members is impracticable." KEHP consists of 64 subsidized units. Potential class members include: past and present heads of households who have left

KEHP and who received inadequate utility allowances, and the present and future heads of household at KEHP who have been or will be denied access to the bookmobile and the community center, and/or will move into KEHP before the utility allowance is recalculated as units turn over.

2. Plaintiffs have satisfied the "commonality" requirement of Rule 23 (a)(2) as there are "questions of law or fact common to the class." The core legal and factual issues that need be decided would be necessary to the resolution of any case by a KEHP tenant on the adequacy of the utility allowance and the alleged retaliation claims. Plaintiffs have raised common questions of fact and law as to the adequacy of the utility allowances, whether the Defendants' calculation of the utility allowances breached the terms of the rental agreements, whether the Defendants' calculation of the utility allowances constitutes an unfair trade practice prohibited by HRS Chapter 480, whether the limits on accessibility of the bookmobile and the community center were the result of retaliation, and what relief is available to Plaintiffs.

3. Plaintiffs have satisfied the "typicality" requirement of Rule 23(a)(3) as "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Here, Plaintiffs' alleged injuries are not unique, but rather are characteristic of those allegedly suffered by every other member of the class because Plaintiffs' claims are based on the same course of allegedly

injurious conduct. Furthermore, it does not appear that the Plaintiffs' claims are subject to unique defenses.

4. Plaintiffs have satisfied the "adequacy" requirement of Rule 23(a)(4) because they can "fairly and adequately protect the interest of the class." Plaintiffs are represented by appropriate counsel and the parties are not aware of any conflict that exists between the named Plaintiffs and the class. Therefore, the proposed class representatives will fairly and adequately protect the interests of the class.

5. Certification is appropriate under Fed. R. Civ. P. Rule 23(b)(3). Rule 23(b)(3) provides:

A class action may be maintained if Rule 23(a) is satisfied and if: ...

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

6. The predominance requirement has been met as the common questions of fact and law presented by Plaintiffs' claims as set forth above

predominate over any individual differences. The Defendants' calculation of the utility allowance is applicable to all residents of KEHP eligible for Section 8 assistance. Although the alleged damages suffered by each class member may vary depending on the length of time they resided at KEHP, such damages can be computed based on formula. In addition, the bookmobile and the community center were available to all residents of KEHP and the denial thereof allegedly injured all residents. The damages suffered by each class member for the alleged retaliation was the same for each member.

7. The superiority requirement has been met as resolution of all class members' claims in a single action is superior to other methods for the fair and efficient adjudication of this controversy. The size of each individual claim is relatively small such that, in the absence of class certification, few class members would have any practical means of resolving their claims. There appear to be no anticipated difficulties in managing this class action.

8. Based on the foregoing, pursuant to Fed. R. Civ. P. Rules 23(a) and (b)(2), the class herein is defined as follows:

[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.

9. Plaintiffs TIMOTHY SHEA (deceased), MARY JACQUELINE LEE and DON E. MURDOCK are the Class Representatives. Mr. Shea having passed away since the initial filing of the lawsuit.

10. Victor Geminiani, Esq., William Durham, Esq., and Elizabeth M. Dunne, Esq., of the Lawyers for Equal Justice, P.O. Box 37952, Honolulu, HI 96837, telephone (808) 587-7605, and Paul Alston, Esq., and Jason H. Kim, Esq., of Alston Hunt Floyd & Ing, 1001 Bishop Street, 18<sup>th</sup> Floor, Honolulu, HI 96813, telephone (808) 524-1800, are counsel for the Class Representatives.

11. The parties further hereby agree to meet and confer by November 30, 2010, to discuss and find resolution on the proposed notice to potential class members pursuant to Fed. R. Civ. P. Rule 23(d)(2), and to discuss and find resolution on a method for ascertaining the identity of class members and providing the best notice practicable under the circumstances to those class members.

DATED: Honolulu, Hawai'i, November 3, 2010.

LAWYERS FOR EQUAL JUSTICE

/S/ Victor Geminiani  
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/S/ Matt A. Tsukazaki

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Attorneys for Defendant and  
Cross-Claim Defendant  
HAWAIIAN PROPERTIES, LTD.

APPROVED AND SO ORDERED:



/S/ Leslie E. Kobayashi

Leslie E. Kobayashi  
United States Magistrate Judge

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Timothy Shea, Mary Jacqueline Lee, Don E. Murdock, Individually, et al., vs. Kahuku Housing Foundation, Inc., and Hawaiian Properties, Ltd.; Civil No. CV 09-00480 LEK (Contract);  
*Stipulation Regarding Class Certification and Order*