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Attorneys for Defendant
LILLIAN B. KOLLER

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

DAVID L. BOHN, on behalf of
himself, and all others similarly
situated,

Plaintiffs,

vs.

LILLIAN B. KOLLER in her official
capacity as Director of the State of
Hawaii Department of Human
Services,

Defendant.

CIVIL NO. 10-00680 DAE LEK

ANSWER TO COMPLAINT;
CERTIFICATE OF SERVICE

Defendant, LILLIAN B. KOLLER, in her official capacity as Director of the Department of Human Services, by and through her attorneys, Russell A. Suzuki, Acting Attorney General, and John F. Molay, and Heidi Rian, Deputy Attorneys General and answer the Complaint, , as follows:

FIRST DEFENSE

The Complaint failed to state a cause of action upon which relief can be granted.

SECOND DEFENSE

1. Defendant admits to the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 38, 40, 41, 44, 47, 49, 50, 51 and 52 of the Complaint.

2. The Defendant denies the allegations contained in paragraphs 1, 33, 36, 43, 45, 46, and 48 of the Complaint.

3. Defendant does not have sufficient knowledge to admit or deny paragraphs 9, 10, 11, 13, 39, and 42 of the Complaint.

THIRD DEFENSE

Plaintiffs are not entitled to 42 U.S.C. § 1988 attorney fees.

FOURTH DEFENSE

Defendant is not liable to Plaintiffs because at all times relevant, the Defendant acted in good faith and without malice.

FIFTH DEFENSE

Defendant is entitled to qualified immunity on the grounds that she did not violate a clearly established constitutional right of the Plaintiffs, which a reasonable public official would have known.

SIXTH DEFENSE

Plaintiffs' claims are barred by fraud.

SEVENTH DEFENSE

Defendant is not liable to Plaintiffs for any claims based upon her failure to enforce, or the adequacy of their enforcement, of statutes, ordinances, rules and regulations.

EIGHTH DEFENSE

Defendant cannot be held liable on any claim based on acts or omissions in performing or failing to perform a discretionary function or duty and/or acting in good faith.

NINTH DEFENSE

This action is barred by the doctrine of unclean hands.

TENTH DEFENSE

Defendant had no control over the acts or omissions of other individuals as relevant to the Complaint.

ELEVENTH DEFENSE

Defendant gives notice that they intend to rely on the defense that Plaintiffs have not suffered injury or damage and/or failed to mitigate their damages, if any.

TWELFTH DEFENSE

Defendant gives notice that she intends to rely upon the defense that she was acting lawfully pursuant to her official duties and/or obligations and did not act outside and/or beyond the scope of her authority.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred because Plaintiffs have failed to exhaust their administrative remedies.

FOURTEENTH DEFENSE

The acts complained of do not rise to the level of a deprivation of federal constitutional rights.

FIFTEENTH DEFENSE

There is a lack of subject matter in that the issues raised by this action are non-justiciable political questions.

SIXTEENTH DEFENSE

This Court lacks subject matter jurisdiction, in that Plaintiffs lack standing pursuant to Article III (i.e., no case or controversy).

SEVENTEENTH DEFENSE

Defendant had no personal involvement in the deprivation alleged to have suffered by the Plaintiffs.

EIGHTEENTH DEFENSE

This action is barred by chapters 661, 662 and 663, Hawaii Revised Statutes.

NINETEENTH DEFENSE

The alleged actions of Defendant was not the proximate cause of Plaintiffs' injuries, as it was not a substantial factor in bringing about their alleged damages.

TWENTIETH DEFENSE

Plaintiffs' alleged injuries and/or damages were sustained as a result of the negligent and/or wrongful and/or illegal acts or omissions of another party or parties and not the Defendant.

TWENTY-FIRST DEFENSE

Defendant owed no duty to Plaintiffs. If, however, the Defendants owed a duty to Plaintiffs, said alleged injuries and/or damages were not the result of a breach of any duty owed to Plaintiffs.

TWENTY-SECOND DEFENSE

Defendant had no duty to protect Plaintiffs against the wrongful, criminal, or illegal acts of third parties.

TWENTY-THIRD DEFENSE

Defendant is not liable under the theory of respondeat superior as such

theory is inapplicable to actions brought under 42 U.S.C. §1983 and any allegedly improper actions of an individual cannot be attributed to her.

TWENTY-FOURTH DEFENSE

Defendant is not responsible to Plaintiffs under any theory of imputed or vicarious liability.

TWENTY-FIFTH DEFENSE

The Defendant had probable cause to take the actions she undertook as part of her official duties with the State of Hawaii.

TWENTY-SIXTH DEFENSE

Any and all alleged acts were done on the basis of legitimate, non-discriminatory justifications and reasons.

TWENTY-SEVENTH DEFENSE

The conduct of Defendant was at all times lawful, reasonable and proper.

TWENTY-EIGHTH DEFENSE

_____ Because Plaintiffs are barred from bringing a private, federal cause of action based on the alleged violations, either substantively or procedurally, no federal subject-matter jurisdiction exists over the Plaintiffs' stated cause of action predicated on a violation of federal law.

TWENTY-NINTH DEFENSE

Plaintiffs have not met the requirements for class certification pursuant to FRCivP, Rule 23.

THIRTIETH DEFENSE

All notices sent to Plaintiffs regarding benefits complied with all applicable federal and state laws.

THIRTY-FIRST DEFENSE

Defendants reserve all rights to assert any affirmative defenses or to rely on any other matter constituting an avoidance pursuant to Rule 8(c) of the Federal/Hawaii Rules of Civil Procedure and to seek leave to amend their Answer to allege any such defenses and to assert any other defenses, claims and counterclaims as discovery and the evidence may merit. Defendants reserve the right to assert any affirmative or other defense, which may be disclosed during discovery. Defendants reserve the right to identify any affirmative or other defenses that become available to it as discovery progresses.

WHEREFORE, Defendants pray as follow:

- A. That the SAC be dismissed, or in the alternative, that Plaintiffs take nothing by the SAC.
- B. That Defendants be awarded her reasonable attorneys' fees and costs;
- C. That if it be determined that the Answering Defendant, the other Defendants, and the Plaintiffs were negligent or acted wrongfully, then, any

damages should be apportioned according to their relative degrees of fault or liability according to law; and

D. That the Court award such further relief as may be just and proper under the circumstances.

DATED: Honolulu, Hawaii, December 8, 2010.

/s/ John F. Molay .
JOHN F. MOLAY
Deputy Attorney General
Attorney for Defendant

LILLIAN B. KOLLER