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Attorneys for Defendants
STATE OF HAWAI'I and
HAWAI'I PUBLIC HOUSING AUTHORITY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

HAZEL MCMILLON; GENE) CIVIL NO. 08-00578 JMS LEK
STRICKLAND; TRUDY)
SABALBORO; KATHERINE) Civil Rights Action
VAIOLA; and LEE SOMMERS,) Class Action
each individually and on behalf of a)
class of present and future residents)
of Kuhio Park Terrace and Kuhio) DEFENDANTS STATE OF
Homes who have disabilities) HAWAI'I AND HAWAI'I PUBLIC

affected by architectural barriers and hazardous conditions,

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY; REALTY LAUA LLC, formerly known as R & L Property Management LLC, a Hawai'i limited liability company,

Defendants.

) HOUSING AUTHORITY'S
) ANSWER TO PLAINTIFFS'
) COMPLAINT FOR
) DECLARATORY AND
) INJUNCTIVE RELIEF AND
) DAMAGES, FILED ON
) DECEMBER 18, 2008; CROSS-
) CLAIM AGAINST REALTY
) LAUA, LLC, FORMERLY
) KNOWN AS R&L PROPERTY
) MANAGEMENT, LLC, A
) HAWAII LIMITED LIABILITY
) COMPANY, AND DOES 1-20;
) THIRD-PARTY COMPLAINT
) AGAINST URBAN
) MANAGEMENT CORPORATION
) DBA URBAN REAL ESTATE
) COMPANY; SUMMONS,
) CERTIFICATE OF SERVICE
)
) (No trial date set)
)

DEFENDANTS STATE OF HAWAII AND HAWAII PUBLIC HOUSING AUTHORITY'S ANSWER TO PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES, FILED ON DECEMBER 18, 2008

Defendants STATE OF HAWAII and HAWAII PUBLIC HOUSING AUTHORITY (collectively referred to as "HPHA"), by and through their counsel, Mark J. Bennett, Attorney General of the State of Hawaii, John M. Cregor, Jr., John C. Wong, Jarod J. Buna, Krislen N. Chun, Caron M. Inagaki, and Diane K. Taira, Deputy Attorneys General, in Answer to Plaintiffs' Complaint filed on December 18, 2008, alleges and avers as follows:

I. Admissions and Denials

1. HPHA admits the allegations in paragraphs 12, 13, 14, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 71, 73, 79, 81, 87, 89, and 96.

2. HPHA lacks knowledge or information at this time sufficient to form a belief about the truth of the allegations in paragraphs 7, 8, 9, 10, 11, 64, 72, 80, 88, 91, and 97.

3. As to the following:

a. paragraph 2: HPHA admits the first sentence and denies all remaining allegations in said Paragraph;

b. paragraph 23: HPHA admits the allegations except for the last sentence;

c. paragraph 26: HPHA admits that it submits required annual plans to HUD, but denies the remaining allegations;

d. paragraph 27: HPHA admits that it is a party with HUD to the Annual Contributions Contract (ACC), under 42 U.S.C. §1437f(b) which sets out terms and conditions for receipt of federal funds, but denies the remaining allegations.

4. HPHA denies the allegations in paragraphs 1, 3, 4, 5, 6, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 51, 65, 66, 67, 68, 69, 74, 75, 76, 77, 82, 83, 84, 85, 90, 92, 93, 94, 98, 99, 100, 101, 102, 103, 104, 105, and the entire Prayer for Relief.

5. HPHA denies any and all claims involving the recently deceased Plaintiff Gene Strickland.

6. Answering Paragraphs 62, 70, 78, 86 and 95, HPHA restates and incorporates by reference its responses to the previous paragraphs as if fully set forth herein.

II. Lack of Jurisdiction

All or a portion of the Complaint is barred because the Court lacks the requisite jurisdiction.

III. Failure to State a Claim

The Complaint fails to state a claim upon which relief can be granted.

IV. Statute of Limitations

All or part of the Plaintiffs' claims may be barred by the statute of limitations.

V. Mootness

All or part of the Plaintiffs' claims may be moot.

VI. Failure to Exhaust Administrative Procedures and Remedies

Plaintiffs have failed to exhaust the required administrative procedures and remedies relating to their allegations.

VII. Discretionary Function

HPHA cannot be held liable on any claim, allegation or cause of action

based on acts or omissions in performing or failing to perform a discretionary function or duty.

VIII. Accommodation

HPHA has made the required reasonable effort to accommodate Plaintiffs needs and requests.

IX. Standing

Plaintiffs lack the requisite standing to assert the statutory causes of action.

X. Wrongdoing By Others

HPHA is not liable for the wrongdoing, if any, of others.

XI. Failure to Name an Indispensable Party

Plaintiffs have failed to name an indispensable party or parties to this action.

XII. No Retroactive Injunctive Relief

Plaintiffs are not entitled to injunctive relief to remedy any alleged retroactive claims.

XIII. Eleventh Amendment Immunity

To the extent authorized by law, some or all of the Plaintiffs claims are barred by the Eleventh Amendment to the United States Constitution and sovereign immunity.

XIV. Failure to Meet Class Action Requirement

On information and belief, Plaintiffs are not proper class representatives.

XV. Other Defenses


HPHA reserves the right to amend this Answer or to otherwise plead other defenses which may be revealed during continuing discovery in this action.

Wherefore, HPHA prays as follows:

- A. That the Complaint be dismissed with prejudice in its entirety;
- B. That HPHA be awarded its reasonable attorneys fees and costs in having to defend this action;
- C. That HPHA be awarded such other relief as this Court deems is appropriate.

DATED: Honolulu, Hawaii, July 17, 2009.

MARK J. BENNETT
Attorney General
State of Hawaii



JOHN M. GREGOR
JOHN C. WONG
JAROD BUNA
KRISLEN N. CHUN
Deputy Attorneys General

Attorneys for Defendants
STATE OF HAWAII and
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE)	CIVIL NO. 08-00578 JMS LEK
STRICKLAND; TRUDY)	
SABALBORO; KATHERINE	)	Civil Rights Action
VAIOLA; and LEE SOMMERS,	)	Class Action
each individually and on behalf of a)	
class of present and future residents	)	DEFENDANTS STATE OF
of Kuhio Park Terrace and Kuhio	)	HAWAII AND HAWAII PUBLIC
Homes who have disabilities	)	HOUSING AUTHORITY'S CROSS-
affected by architectural barriers and	)	CLAIM AGAINST REALTY
hazardous conditions,	)	LAUA, LLC, FORMERLY
	)	KNOWN AS R&L PROPERTY
Plaintiffs,	)	MANAGEMENT, LLC, A
	)	HAWAII LIMITED LIABILITY
vs.	)	COMPANY, AND DOES 1-20
)	
STATE OF HAWAII; HAWAII)	
PUBLIC HOUSING AUTHORITY;)	
REALTY LAUA LLC, formerly)	
known as R & L Property)	
Management LLC, a Hawaii limited)	
liability company,)	
)	
Defendants.)	

**DEFENDANTS STATE OF HAWAII AND HAWAII PUBLIC HOUSING
AUTHORITY'S CROSS-CLAIM AGAINST REALTY LAUA, LLC,
FORMERLY KNOWN AS R&L PROPERTY MANAGEMENT, LLC, A
HAWAII LIMITED LIABILITY COMPANY, AND DOES 1-20**

Defendants and Cross Claim Plaintiffs STATE OF HAWAII and THE
HAWAII PUBLIC HOUSING AUTHORITY (hereinafter referred to as "HPHA")
by and through their counsel, Mark J. Bennett, Attorney General of the State of

Hawaii, John M. Cregor, Jr., John C. Wong, Jarod J. Buna, Krislen N. Chun, Caron M. Inagaki, and Diane K. Taira, Deputy Attorneys General, for their Cross-Claim against Defendant REALTY LAUA, LLC, formerly known as R&L Property Management, LLC, a Hawaii Limited Liability Company, and Does 1-20 (hereinafter referred to as "REALTY"), allege and aver as follows:

1. Plaintiffs filed a Complaint against Defendants HPHA and REALTY on December 18, 2008 alleging injuries and/or damages allegedly resulting from said parties' negligence and/or violation of, among other things, 42 U.S.C. §12132, 29 U.S.C. § 794 and 42 U.S.C. §3604f(1).

2. REALTY is the managing agent for Asset Management Project 40, which consists of Kuhio Park Terrace and Kuhio Homes pursuant to a contract and supplements thereto, executed by and between HPHA and REALTY effective August 1, 2008 to present.

3. Pursuant to terms and conditions of the contract, REALTY shall defend, indemnify and hold harmless the State of Hawaii, HPHA, the contracting agency, their officers, employees, and agents from and against all liability, loss, damage, cost and expense including all attorneys' fees, and all claims, suits and demands therefore arising out of or resulting from the acts or omissions of REALTY, REALTY'S employees, officers, agents or subcontractors under the contract.

4. If Plaintiffs sustained the injuries and/or damages as alleged in the Complaint, such injuries and/or damages were the result of the negligent, wrongful, and/or knowing conduct of REALTY and DOES 1-20 and not as a result of negligence or wrongful act or omission of HPHA.

5. Specifically, the "Fourth Cause of Action" and the "Fifth Cause of Action" alleged in the Complaint are asserted against REALTY only.

5. If Plaintiffs are entitled to any right of recovery, such right is against REALTY and DOES 1-20 and not HPHA.

6. If the HPHA was in any way negligent, the negligent, wrongful, and/or knowing conduct of REALTY and DOES 1-20 were active and primary, whereas HPHA's conduct was only secondary and passive, and therefore, REALTY and DOES 1-20 must fully indemnify the State for any resulting damages, including Plaintiffs attorneys' fees and costs.

7. If Plaintiffs are entitled to a judgment against HPHA, HPHA is entitled to a corresponding judgment against REALTY and DOES 1-20.

WHEREFORE, HPHA prays for judgment on its Cross-Claim against REALTY as follows:

A. That HPHA be provided full contribution and indemnification by REALTY if any or all of Plaintiffs' claims are found against HPHA;


B. That HPHA be awarded its reasonable costs and attorneys' fees by REALTY that will be incurred through the pendency of this action until a final judgment or settlement is entered;

C. That if Plaintiffs are entitled to any judgment against HPHA, that said judgment be awarded against REALTY;

D. That if Plaintiffs are awarded any monetary judgment against HPHA, that HPHA have judgment against REALTY for the same monetary amount awarded to Plaintiffs;

E. That HPHA be awarded such other relief as this Court may deem just and proper.

DATED: Honolulu, Hawaii, July 17, 2009.



JOHN M. GREGOR
JOHN C. WONG
JAROD BUNA
KRISLEN N. CHUN
Deputy Attorneys General

Attorneys for Defendants
STATE OF HAWAII and
HAWAII PUBLIC HOUSING AUTHORITY

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Attorneys for Defendants
STATE OF HAWAII and
HAWAII PUBLIC HOUSING AUTHORITY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE
STRICKLAND; TRUDY SABALBORO;
KATHERINE VAIOLA; and LEE
SOMMERS, each individually and on
behalf of a class of present and future
residents of Kuhio Park Terrace and
Kuhio Homes who have disabilities
affected by architectural barriers and
hazardous

CIVIL NO. CV 08-00578 JMS-LEK
Civil Rights Action
Class Action

**DEFENDANTS STATE OF
HAWAII AND HAWAII PUBLIC
HOUSING AUTHORITY'S
THIRD-PARTY COMPLAINT
AGAINST URBAN**

conditions,

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY; REALTY LAUA LLC, formerly known as R & L Property Management LLC, a Hawaii limited liability company,

Defendants.

STATE OF HAWAII; HAWAII PUBLIC HOUSING AUTHORITY,

Third-Party Plaintiffs,

vs.

URBAN MANAGEMENT CORPORATION DBA URBAN REAL ESTATE COMPANY, DOES 1-20,

Third-Party Defendant.

**MANAGEMENT CORPORATION
DBA URBAN REAL ESTATE
COMPANY; SUMMONS**

DEFENDANTS STATE OF HAWAII AND HAWAII PUBLIC HOUSING AUTHORITY’S THIRD-PARTY COMPLAINT AGAINST URBAN MANAGEMENT CORPORATION DBA URBAN REAL ESTATE COMPANY

Defendants and Third-Party Defendants STATE OF HAWAII and HAWAII PUBLIC HOUSING AUTHORITY (collectively referred to as “HPHA”), by and through their counsel, Mark J. Bennett, Attorney General of the State of Hawaii, John M. Cregor, Jr., John C. Wong, Jarod J. Buna, Krislen N. Chun, Caron M.

Inagaki, and Diane K. Taira, Deputy Attorneys General, and for a Third-Party Complaint against URBAN MANAGEMENT CORPORATION dba URBAN REAL ESTATE COMPANY, and Does 1-20 (hereinafter referred to as “URBAN”), allege and aver as follows:

1. Plaintiffs filed a Complaint against Defendants HPHA and REALTY on December 18, 2008 alleging injuries and/or damages allegedly resulting from violations of the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1978.

2. REALTY is the managing agent for Asset Management Project 40, which consists of Kuhio Park Terrace and Kuhio Homes pursuant to a contract and supplements thereto, executed by and between HPHA and REALTY since August 1, 2008.

3. URBAN was the managing agent for Asset Management Project 40, which consists of Kuhio Park Terrace and Kuhio Homes pursuant to a contract and supplements thereto, executed by and between HPHA and URBAN prior to August 1, 2008.

4. Pursuant to terms and conditions of the contract, URBAN shall defend, indemnify and hold harmless the State of Hawaii, HPHA, the contracting agency, their officers, employees, and agents from and against all liability, loss, damage, cost and expense including all attorneys’ fees, and all claims, suits and

demands therefore arising out of or resulting from the acts or omissions of URBAN, URBAN's employees, officers, agents or subcontractors under the contract.

5. If Plaintiffs sustained the injuries and/or damages as alleged in the Complaint, such injuries and/or damages were the result of the negligent, wrongful, and/or knowing conduct of URBAN and DOES 1-20 and not as a result of negligence or wrongful act or omission of HPHA.

6. If Plaintiffs are entitled to any right of recovery, such right is against URBAN and DOES 1-20 and not HPHA.

7. If the HPHA was in any way negligent, the negligent, wrongful, and/or knowing conduct of URBAN and DOES 1-20 were active and primary, whereas HPHA's conduct was only secondary and passive, and therefore, URBAN and DOES 1-20 must fully indemnify the State for any resulting damages, including Plaintiffs attorneys' fees and costs.

8. If Plaintiffs are entitled to a judgment against HPHA, HPHA is entitled to a corresponding judgment against URBAN and DOES 1-20.

WHEREFORE, HPHA prays for judgment on its Third-Party Complaint against URBAN as follows:

A. That HPHA be provided full contribution and indemnification by URBAN if any or all of Plaintiffs' claims are found against HPHA;

B. That HPHA be awarded its reasonable costs and attorneys' fees by URBAN that will be incurred through the pendency of this action until a final judgment or settlement is entered;


C. That if Plaintiffs are entitled to any judgment against HPHA, that said judgment be awarded against URBAN;

D. That if Plaintiffs are awarded any monetary judgment against HPHA, that HPHA have judgment against URBAN for the same monetary amount awarded to Plaintiffs;

E. That HPHA be awarded such other relief as this Court may deem just and proper.

DATED: Honolulu, Hawaii, July 17, 2009.

MARK J. BENNETT
Attorney General
State of Hawaii



CARON M. INAGAKI
DIANE K. TAIRA
JOHN M. CREGOR
JOHN C. WONG
JAROD BUNA
KRISLEN N. CHUN
Deputy Attorneys General

Attorneys for Defendants
STATE OF HAWAII and
HAWAII PUBLIC HOUSING AUTHORITY

AO 441 (Rev. 5/85) Third Party Summons in a Civil Action

United States District Court

DISTRICT OF HAWAII

PLAINTIFF

HAZEL MCMILLON, et al.

THIRD PARTY SUMMONS

V. DEFENDANT AND THIRD PARTY PLAINTIFF

IN A CIVIL ACTION

STATE OF HAWAII, et al.

CASE NUMBER 08-00578 JMS-LEK

V. THIRD PARTY DEFENDANT

**URBAN MANAGEMENT CORPORATION
DBA URBAN REAL ESTATE COMPANY**

To: (Name and address of Third Party Defendant)

Urban Management Corporation
dba Urban Real Estate Company
50 S. Beretania Street, Suite C101
Honolulu, Hawaii 96813

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

PAUL ALSTON
Alston Hunt Floyd & Ing
American Savings Bank Tower
1001 Bishop Street, 18th Floor
Honolulu, Hawaii 96813

DEFENDANT AND THIRD-PARTY PLAINTIFF'S ATTORNEY
(NAME AND ADDRESS)

JOHN M. CREGOR, JR., ESQ.
Department of the Attorney
General, State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

an answer to the third-party complaint which is herewith served upon you within 20 days after the service of the 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 third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff. You have the option of answering or not answering to the plaintiff's complaint, unless (1) this is a case within Rule 9(h) Federal Rules of Civil Procedure, and (2) the third-party plaintiff is demanding judgment against you in favor of the original plaintiff under the circumstances described in Rule 14(c) Federal Rules of Civil Procedure, in which situation you are required to make your defenses, if any, to the claim of plaintiff as well as to the third party plaintiff.

CLERK

DATE

(BY) DEPUTY CLERK

AO 441 (Rev. 5/85) Third Party Summons in a Civil Action

RETURN OF SERVICE		
Service of the summons and the complaint was made by me ¹	DATE	
NAME OF SERVER	TITLE	
<p><input type="checkbox"/> Served personally upon the third-party defendant. Place where served:</p> <p><input type="checkbox"/> Left copies thereof at the third-party defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.</p> <p style="padding-left: 40px;">Name of person with whom the summons and complaint were left:</p> <p><input type="checkbox"/> Return unexecuted:</p> <p><input type="checkbox"/> Other (specify):</p>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
		\$ 0.00
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date</p> <p style="text-align: right;">_____ Signature of Server</p> <p style="text-align: right; margin-top: 20px;">_____ Address of Server</p>		

¹ As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

HAZEL MCMILLON; GENE
STRICKLAND; TRUDY SABALBORO;
KATHERINE VAIOLA; and LEE
SOMMERS, each individually and on
behalf of a class of present and future
residents of Kuhio Park Terrace and
Kuhio Homes who have disabilities
affected by architectural barriers and
hazardous
conditions,

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII PUBLIC
HOUSING AUTHORITY; REALTY
LAUA LLC, formerly known as R & L
Property Management LLC, a Hawaii
limited liability company,

Defendants.

STATE OF HAWAII; HAWAII PUBLIC
HOUSING AUTHORITY,

Third-Party Plaintiffs,

vs.

URBAN MANAGEMENT
CORPORATION DBA URBAN REAL
ESTATE COMPANY, DOES 1-20,

Third-Party
Defendant.

CIVIL NO. CV 08-00578 JMS-LEK
Civil Rights Action
Class Action

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, a copy of the foregoing documents was served on the following parties at their last-known addresses by means of either depositing said copy in the United States mail, postage prepaid, or served electronically through CM/ECF as follows:

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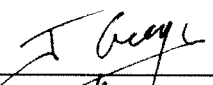
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Attorney for Third-Party Defendant
URBAN MANAGEMENT CORPORATION dba URBAN REAL
ESTATE COMPANY

DATED: Honolulu, Hawaii, July 17, 2009.



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JOHN C. WONG
JAROD BUNA
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Deputy Attorneys General

Attorneys for State Defendants
STATE OF HAWAII and
HAWAII PUBLIC HOUSING
AUTHORITY