

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2011 APR 21 AM 11:59

N. ANAYA  
CLERK

VICTOR GEMINIANI 4354  
DIANE C. HAAR 9367  
LAWYERS FOR EQUAL JUSTICE  
P.O. Box 37952  
Honolulu, Hawai'i 96837-0952  
Telephone: (808) 587-7605  
Email: victor@lejehawaii.org  
diane@lejehawaii.org

PAUL ALSTON 1126  
JASON H. KIM 7128  
ALSTON HUNT FLOYD & ING  
1001 Bishop Street, Suite 1800  
Honolulu, Hawai'i 96813  
Telephone: (808) 524-1800  
Facsimile: (808) 524-4591  
E-mail: palston@ahfi.com  
jkim@ahfi.com

Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

FETU KOLIO; KAZNER ALEXANDER;  
and FRANCES WONG, individually  
and on behalf of a class of past,  
present, and future residents of  
Mayor Wright Housing,

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII PUBLIC  
HOUSING AUTHORITY; and DOES 1-  
20,

Defendants.

Civil No. 11-1-0795-04 GWBC

Civil Rights Action  
Class Action

**COMPLAINT FOR DAMAGES AND  
DECLARATORY AND INJUNCTIVE  
RELIEF; DEMAND FOR JURY TRIAL;  
SUMMONS**

I do hereby certify that this is a full, true, and  
correct copy of the original on file in this office.

  
Clerk, Circuit Court, First Circuit

**COMPLAINT FOR DAMAGES AND DECLARATORY AND  
INJUNCTIVE RELIEF**

This is a class action for relief from Defendants' violations of the implied warranty of habitability and breach of leases arising out of their ownership, operation, control, and management of Mayor Wright Homes, a Hawai'i public housing project.

**PRELIMINARY STATEMENT**

1. Plaintiffs, and the persons whose interests they represent, are low-income persons who have lived in, currently live in, and/or are eligible to live in, Mayor Wright Housing (MWH). MWH is an approximately 364 unit public housing project receiving federal financial assistance that is owned, operated, controlled and managed by the Defendants State of Hawai'i (HAWAII) and the Hawai'i Public Housing Authority (HPHA).

2. Defendants' facilities are characterized by squalid, unsafe, and unsanitary conditions for all residents that, among other things: (1) breach the warranty of habitability implied in all residential leases; (2) breach the express terms of the leases between Plaintiffs and HPHA; and (3) violate numerous provisions of State and County health and safety regulations.

3. Plaintiffs seek to represent a class of past, present, and future residents of MWH. Plaintiffs seek injunctive and declaratory relief, retrospective and prospective rent abatement, special and compensatory damages, attorneys' fees and costs, and additional relief.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter and the parties pursuant to HRS § 603-21.5, HRS § 661-1, and HRS § 662-3.

5. Venue is proper in this Circuit pursuant to HRS § 603-36 because (1) Plaintiffs' claims for relief arose in this Circuit; and (2) all Defendants are domiciled in this Circuit.

## **PLAINTIFFS**

6. Plaintiff FETU KOLIO (KOLIO) is a resident of Hawai`i, and is eligible and qualified to live in Hawai`i public housing. He has lived at MWH from approximately 1986 to 1990 and again from 2004 to present. As a result of severe pest and vermin infestations, a lack of hot water, inadequate maintenance and upkeep, insufficient and poorly maintained garbage facilities, and security deficiencies, plaintiff KOLIO has been harmed and has suffered damages.

7. Plaintiff KAZNER ALEXANDER is a resident of Hawai`i, and is eligible and qualified to live in Hawai`i public housing. He has lived at MWH from approximately 2007 to present. As a result of severe pest and vermin infestations, a lack of hot water, inadequate maintenance and upkeep, insufficient and poorly maintained garbage facilities, and security deficiencies, plaintiff ALEXANDER has been harmed and has suffered damages.

8. Plaintiff FRANCES WONG is a resident of Hawai`i, and is eligible and qualified to live in Hawai`i public housing. She has lived at MWH from approximately 1970 to present. As a result of severe pest and vermin

infestations, a lack of hot water, inadequate maintenance and upkeep, insufficient and poorly maintained garbage facilities, and security deficiencies, plaintiff WONG has been harmed and has suffered damages.

### **DEFENDANTS**

9. Defendant HAWAII PUBLIC HOUSING AUTHORITY (HPHA) is a public entity created by the Legislature of the State of Hawai'i. Defendant HPHA is charged with managing federal and state public housing programs, including the Housing Choice Voucher Program (informally known as Section 8) and senior housing. Defendant HPHA administers MWH, and is responsible for ensuring compliance with applicable laws and regulations at MWH.

10. Defendant STATE OF HAWAII (HAWAII) oversees the HPHA through its Department of Human Services, and is responsible for ensuring compliance with applicable laws and regulations at MWH.

11. Defendants DOE 1-20 are individuals, entities, or governmental bodies that are in any way responsible for or liable for the conditions at MWH described in this Complaint.

### **STATEMENT OF FACTS**

12. Mayor Wright Housing (MWH) is a state-run public housing project funded by the U.S. Department of Housing and Urban Development. MWH is a low-rise complex consisting of 35 one and two story beige and light green walk ups and townhouses, with approximately 364 units total. Hawai'i suffers from a severe shortage of affordable, safe, and well-maintained public housing.

### ***Failure to Comply with HUD Standards***

13. HPHA has a long history of failing to comply with U.S. Department of Housing and Urban Development (HUD) standards for public housing agencies. In 2003, after several years of finding HPHA's performance inadequate and issuing corrective action orders, HUD commissioned an Independent Assessment of the agency. The Independent Assessment found that HPHA suffers from a number of organizational, structural, procedural, and management weaknesses.

14. Following the Independent Assessment, in 2003 and 2004 HUD conducted its own on-site confirmatory review of HPHA in accordance with its Public Housing Assessment System (PHAS). HUD uses the PHAS to score a public housing agency's performance. Because of HPHA's failing score, HUD designated it as a troubled or substandard agency. In its review, HUD identified several areas of great concern including: inadequate staffing, lack of internal controls, widespread lack of training, lack of a comprehensive maintenance plan, use of outdated physical inspection standards, high rates of uncorrected work orders, and difficulties with financial tracking and accounting. As a result of HPHA's troubled status, and in accordance with HUD regulations, HUD and HPHA entered into a Memorandum of Understanding (MOU) which included performance targets, oversight, and monitoring of HPHA's performance. Upon information and belief, HPHA has failed to meet the MOU's performance targets and to take appropriate corrective actions to remedy its violations of federal laws.

15. HPHA is required to submit annual improvement plans to HUD to show how it is implementing its performance targets and taking corrective action to comply with federal law. Upon information and belief, HPHA has failed, and continues to fail, to meet the performance targets established in its improvement plans.

16. HUD and HPHA are also parties to an Annual Contributions Contract (ACC) as provided by 42 USC § 1437f(b). The ACC sets out the terms and conditions for HPHA's continued receipt of federal funds. Under the ACC, HPHA is obligated to provide decent, safe, and sanitary housing for eligible families. HPHA has failed, and continues to fail, to provide decent, safe, and sanitary housing in violation of the ACC.

17. As a result of Defendants' actions and inactions, the housing facilities at MWH are characterized by an almost total lack of hot water and multiple additional hazardous conditions.

18. The deplorable and hazardous conditions at MWH are well known to the Defendants.

***Lack of Hot Water***

19. Solar panels installed approximately 20 years ago are intended to heat almost all of the water distributed among some 80 tanks and used by residents at MWH. The entirety of the solar heating system has been increasingly failing over the years, with most residents of MWH having no reliable access to hot water.

20. The majority of individuals living at MWH claim that they have not been receiving hot water for several years. This has been well-documented in recent years in the media. In one article, Mayor Wright Tenant Association President, Fetu Kolio stated that “This does not change throughout the day, except on very hot, especially sunny days when I may have warm water between 1:00 p.m. to 2:00 p.m., but no more than that.”

21. The lack of hot water is not just a problem for bathing, washing dishes, and cleaning. For those residents with health concerns and disabilities including heart disease, chronic obstructive pulmonary disease, and conditions involving chronic pain, of which there are many, the lack of hot water is intolerable due to severe aggravation of already existing pain and may even be life threatening due to exacerbation of heart conditions and breathing impairments.

### ***Inadequate Security***

22. With the termination of the Weed and Seed program at MWH in 2003 – whereby police officers were stationed at the project, initiated drug stings, and worked on community service projects with residents – crime, menacing, and violence has risen severely. Currently, unarmed security guards roam the premises with another stationed at the vehicular entrance to the community.

23. Security guards are too few and stretched too thin to deal with the growing problems in the community, and those that are available are also often unresponsive to problems. This includes allowing repeated entry to individuals

who do not live in the complex and who have caused problems for tenants on prior occasions, ignoring some of the troublemakers, and at times, entering units without authorization.

24. Security problems are exacerbated by poor facility maintenance. Trees are overgrown and block out electric lighting intended to provide illumination at night. Groups of individuals are able to roam freely and often undetected, even if one of the small number of security guards is nearby.

25. The consequence of this lack of security is that vandalism is a rampant problem. Such vandalism includes graffiti, broken windows, defecation, and the presence of various areas and vacant units in disrepair. Parents are afraid to allow their children out after dark. One favorite area of vandals is MWH's only playground.

26. Serious crime also occurs at MWH. Reports describe a 20 year old tenant with brain injuries after a beating, another 15 year old tenant chased, attacked, and left to die after a beating, and other assaults leaving tenants seriously injured and frightened.

***Failure to Provide Sanitary Premises Causing Vermin Infestation and Toxic Air Particulates***

27. Trash areas at MWH have severely inadequate capacity. Dumpsters overflow often, forcing many residents to place trash on the ground or otherwise around the trash enclosure. Trash bags around the dumpster are torn apart by roaming dogs and feral cats. Broken or missing covers on dumpsters create wafting trash odors and poor facility maintenance results in common areas strewn with garbage including rotting food and other debris.



28. Bulk pick-up of large items by MWH maintenance, including furniture, appliances, and even Christmas trees occurs periodically. However, these bulk items – including items removed from units due to bedbug and other infestations – are merely deposited in an enclosure surrounded by a chain link fence behind the MWH management office. Rotting, uncovered debris remains within this space that directly fronts building 18 for months at a time until MWH workers transport items to the landfill.

29. Rat, roach, and other vermin infestations are ubiquitous throughout the premises including within units. Bedbugs have also infiltrated many of the buildings. Hazardous air particulates due to roach dust (made up of roach body parts and dander), rat allergens (from rat urine and feces), and rotting trash causing inhalant hazards and nauseating smells are produced by these unsanitary conditions and continue to hang in the air even after dumpsters are emptied. Meanwhile, extermination services are infrequent. Even if a unit is treated, the rest of the building around the treated unit remains untreated, which results quickly in re-infestation from other units after treatment.

***Failure to Maintain and Upkeep Premises.***

30. Units and buildings throughout MWH are dilapidated and falling further into disrepair due to long-term neglect.

31. A 2008 Physical Needs Assessment for MWH reported moderate to severe corrosion of 90% of the facilities original windows making some completely inoperable, as well as problems where newer windows have been

installed due to panes falling out. The report further described severely corroded roof access hatches, moderate to severe corrosion on 50% of the junction boxes, and mold growing on 19 water heater tanks due to slashes in the waterproof coating among other problems, many of which still remain unrepaired.

32. The 2008 Physical Needs Assessment also states that within the units 30% of bathroom floors have water damage due to poor maintenance and/or poor installation, and that water damage in ceilings is a major problem. In addition, the report describes missing fire extinguishers, inadequate ventilation, cracks and gaps in door frames, walls, ceilings, and around toilets, numerous corroded doorways and bathroom fixtures, and a stunning number of other types of deficiencies, many of which remain unaddressed. Residents often are either forced to live in units in disrepair or fix problems themselves, if they are able.

### **CLASS ACTION ALLEGATIONS**

33. Plaintiffs bring this action on behalf of themselves and on behalf of a class of all those similarly situated pursuant to Rule 23(a) and (b)(2) and (b)(3) of the Hawai'i Rules of Civil Procedure.

34. Plaintiffs seek to represent a class of all qualified past, present, and future residents of MWH.

35. The class is so numerous that joinder of all members is impractical. There are hundreds of past, present, and future residents of MWH. Moreover, putative class members are not capable of being identified at

this time, as the proposed class includes future residents. The class is in flux, with some residents leaving and others moving into the facilities.

36. There are common questions of law and fact, including but not limited to, whether Defendants have (1) breached the implied warranty of habitability; (2) breached the express terms of the form leases between the class members and HPHA; and (3) allowed the maintenance of conditions that violate State and County health and safety regulations.

37. The claims of the named Plaintiffs are typical of the claims of the other putative class members. All putative class members experience the same squalid, unsafe, unsanitary, and unlawful conditions at MWH. Plaintiffs are members of the proposed class in that they have lived in, currently live in, and/or are qualified to live in MWH.

38. Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs intend to prosecute this action rigorously in order to secure remedies for the entire class. Counsel of record for Plaintiffs are experienced in federal civil rights litigation and class actions, including systemic litigation against state defendants regarding public housing.

39. Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole under Hawai'i Rule of Civil Procedure 23(b)(2).

40. Common issues of law and fact predominate over individual issues and a class action is superior to other available methods for the fair and

efficient adjudication of this controversy under Hawai'i Rule of Civil Procedure 23(b)(3).

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION Breach of the Implied Warranty of Habitability**

41. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 40 of this Complaint.

42. Plaintiffs and Defendants HAWAII and HPHA were parties to leases whereby Defendants provided dwellings to Plaintiffs at MWH in exchange for Plaintiffs' payment of rent.

43. There is an implied warranty of habitability and fitness for intended use in all residential leases.

44. The conditions described above, including but not limited to the lack of hot water, failure to maintain and upkeep premises, failure to provide adequate sanitation services and pest control, and failure to provide adequate security, breached the implied warranty of habitability and fitness for intended use.

45. Plaintiffs, and the persons whose interests they represent, have been injured by Defendants' breach of the implied warranty of habitability and fitness for intended use in an amount to be proven at trial.

46. Plaintiffs, and the persons whose interests they represent, are also entitled to total or partial abatement of past and future rent, declaratory relief, injunctive relief, and attorneys' fees as a result of Defendants' breach of the implied warranty of habitability and fitness for intended use.

**SECOND CAUSE OF ACTION**  
**Breach of Lease**

47. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 46 of this Complaint.

48. The form Rental Agreements between Plaintiffs and Defendants HAWAII and HPHA require these Defendants to, among other things, (a) “[m]aintain the Project in a decent, safe, and sanitary condition,” (b) “[c]omply with all applicable laws, rules, regulations, and ordinances of governmental authorities governing maintenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part, noncompliance with which would have the effect of endangering health or safety,” and (c) “[m]aintain all electrical, plumbing, and other facilities and appliances supplied by Management in good working order and condition.”

49. The conditions described above, including but not limited to the lack of hot water and adequate security, breach these and other provisions of the Rental Agreement.

50. Plaintiffs, and the persons whose interests they represent, have been injured by Defendants’ breaches of the Rental Agreement in an amount to be proven at trial.

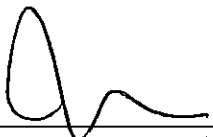
51. Plaintiffs, and the persons whose interests they represent, are also entitled to total or partial abatement of past and future rent, declaratory relief, injunctive relief, and attorneys’ fees as a result of Defendants’ breach of the implied warranty of habitability and fitness for intended use.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and behalf of all persons similarly situated, respectfully request that this Court:

1. Assume jurisdiction over this action;
2. Certify the plaintiff class;
3. Order Defendants to pay compensatory damages to each member of the plaintiff class;
4. Abate the past and future rent of the plaintiff class;
5. Issue a declaratory judgment stating that Defendants have breached the implied warranty of habitability and the terms of the Rental Agreements;
6. Grant all injunctive relief necessary to bring Defendants into compliance with their contractual obligations as described above;
7. Grant such other declaratory and injunctive relief as may be appropriate;
8. Award Plaintiffs reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action; and
9. Order such other relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, April 21, 2011.



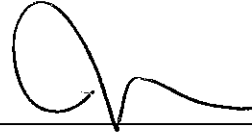
---

PAUL ALSTON  
JASON H. KIM  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury of all claims and causes of action so triable.

DATED: Honolulu, Hawai'i, April 21, 2011.



---

PAUL ALSTON  
JASON H. KIM  
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

FETU KOLIO; KAZNER ALEXANDER;  
and FRANCES WONG, individually  
and on behalf of a class of past,  
present, and future residents of  
Mayor Wright Housing,

Plaintiffs,

vs.

STATE OF HAWAII; HAWAII PUBLIC  
HOUSING AUTHORITY; and DOES 1-  
20,

Defendants.

Civil No.

Civil Rights Action  
Class Action

**SUMMONS**

**SUMMONS**

STATE OF HAWAII

To the above-named Defendant(s):

You are hereby summoned and required to serve upon ALSTON HUNT FLOYD & ING, attorneys for Plaintiffs, whose address is 18th Floor, American Savings Bank Tower, 1001 Bishop Street, Honolulu, Hawaii 96813, an answer to the Complaint for Damages and Declaratory and Injunctive Relief which is herewith served upon you, within twenty (20) days after service of this 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 Complaint.

This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge



of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawai'i, APR 21 2011

N. ANAYA



CLERK OF THE ABOVE-ENTITLED COURT