

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE ) CIVIL NO. CV 08-00578 LEK  
STRICKLAND; TRUDY ) Civil Rights Action  
SABALBORO; KATHERINE ) Class Action  
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. )

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STATE OF HAWAII; HAWAII )  
PUBLIC HOUSING AUTHORITY, )

Third-Party Plaintiffs, )

vs. )

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

Third-Party )  
Defendants. )

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## **NOTICE OF SETTLEMENT OF CLASS ACTION**

TO ALL PERSONS RECEIVING THIS NOTICE WHO ARE OR WERE  
TENANTS OF KUHIO PARK TERRACE OR KUHIO HOMES

### **I. WHY YOU SHOULD READ THIS NOTICE**

Your rights and the rights of others may be affected by the proposed partial settlement of the class action lawsuit known as *McMillon v. State*, Civil Number 08-00578 LEK in the United States District Court for the District of Hawai'i (referred to in this notice as the "Class Action").

### **II. THE CLASS**

The Court has certified a group, or "class," of plaintiffs in this Class Action. The Class is defined as:

All present and future residents of KPT and Kuhio Homes who are eligible for public housing, who have mobility impairments or other disabling medical conditions that constitute "disabilities" or "handicaps" under federal disability nondiscrimination laws, and who are being denied access to the facilities, programs, services, and/or activities of the Defendants, and/or discriminated against, because of the architectural barriers and/or hazardous conditions described in the Complaint.

Because you are receiving this Notice, you are or may be a member of the Class.

### **III. THE LITIGATION**

This Class Action involves claims against the State of Hawaii and Hawaii Public Housing Authority ("State Defendants") for alleged violations of the Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act of 1973 ("Section 504") and the Fair Housing Act Amendments ("FHAA") regarding physical access for persons with disabilities at Kuhio Park Terrace (KPT) and Kuhio Homes and failure to provide reasonable accommodations. Plaintiffs seek damages and injunctive relief to bring State Defendants into compliance with the ADA, Section 504, and FHAA. Plaintiffs also allege claims against Realty Laua, LLC ("Realty Laua"), the management company for KPT and Kuhio Homes, for violation of the Fair Housing Act Amendments and Title V of the ADA for interference with the Class's rights under the ADA.

The State Defendants and Realty Laua deny these allegations and the Court has not ruled on the merits of the Plaintiffs' claims.

#### **IV. PLAINTIFFS AND THEIR COUNSEL**

The Court has appointed Hazel McMillon, Trudy Sabalboro, Lee Sommers, and Katherine Vaiola and their counsel to act on behalf of the Class for the Class Action:

##### **ALSTON HUNT FLOYD & ING**

American Savings Bank Tower  
1001 Bishop Street, 18<sup>th</sup> Floor  
Honolulu, HI 96813  
Jason H. Kim

##### **Lawyers for Equal Justice**

P.O. Box 37952  
Honolulu, HI 96837-0952  
Victor Geminiani

#### **V. THE PROPOSED SETTLEMENT**

The Class Representatives and the State Defendants have agreed to a proposed settlement of this Class Action as to the State Defendants only. The settlement has been preliminarily approved by the Court but final approval is still pending, as set forth below.

The terms of the settlement are as follows:

- The State Defendants have implemented and will comply with improved policies and forms for requests for reasonable accommodations and transfers to accessible housing units;
- The State Defendants have committed to deadlines for responding to and implementing requests for reasonable accommodations and transferring disabled tenants to accessible units;
- The State Defendants have, and will, make certain improvements and modifications to the KPT and Kuhio Homes premises and grounds to improve access for individuals with disabilities;

- The State Defendants shall contract with a nationally-recognized organization with experience in accessible housing to monitor compliance with the ADA and Section 504, review policies and procedures, perform a physical site assessment of KPT and Kuhio Homes, and provide training to the State Defendants' employees and contractors;
- The State Defendants shall pay to Plaintiffs a total of \$610,000, to be disbursed as follows: (1) \$45,000 to the Named Plaintiffs; (2) \$200,000 for the beginning of a fund to distribute among class members; and (3) \$365,000 in attorneys' fees and costs. This is only a partial settlement. The Class Representatives shall continue to pursue claims on behalf of the Class against Realty Laua and anticipate that the fund for distribution to the Class will be substantially increased through settlement or judgment with Realty Laua (and third-party Defendant Urban Management Corporation). No funds shall be distributed to any member of the Class (other than the Class Representatives) until all such claims have been resolved;
- The State Defendants shall assign all claims against Realty Laua and Urban relating to the class actions to the Named Plaintiffs, who shall prosecute these claims for the benefit of the Class; and
- The Named Plaintiffs and the Class shall release and dismiss all claims against the State Defendants alleged in this action and the Circuit Court action.
- In connection with this settlement, the Named Plaintiffs contemplate dismissing their federal claims against Realty Laua and pursuing claims against Realty Laua only in the related State Court action.

## **VI. COURT APPROVAL OF THE SETTLEMENT**

If the Court gives final approval of the settlement, the Court will enter a judgment dismissing with prejudice the claims asserted by the Class against the State Defendants and forever discharging and releasing the State Defendants from all claims relating to State Defendants' alleged violations of the US Housing Act of 1937, as amended, the ADA or Section 504 of the Rehabilitation Act of 1978, except the claims of those class members who have opted out of this class action

and/or this partial settlement.

The Court will conduct a hearing on this settlement on January 31, 2011, at 10:00 a.m., in the courtroom of the Honorable Leslie Kobayashi at 300 Ala Moana Blvd., Honolulu Hawai`i ("Fairness Hearing"). The purpose of the Fairness Hearing is for the Court to determine whether this settlement is fair, reasonable, and adequate.

## **VI. YOUR RIGHTS AS A CLASS MEMBER**

If you do nothing and have not opted out of this Class Action, you will remain a member of the Class and will be bound by the partial settlement set forth above. If you are a member of the Class and have not opted out of this Class Action and do not opt out of this partial settlement, you may receive a payment from the Class fund described above once all claims are resolved. If you have not opted out of this class and do not opt out of this partial settlement, you will be bound by the partial settlement and potential dismissal of claims against Realty Laua and will have no right to relitigate any of the claims asserted on behalf of the Class.

You may chose to "opt out" of this partial settlement. You may then retain your own attorney and take legal action on your own. If you exclude yourself from this partial settlement, you will not be bound by court orders or judgments entered in connection with this Class Action or the partial settlement as set forth above. At the same time, you will not obtain any money from the partial settlement set forth above or any later settlement or judgment. If you wish to opt out and not participate in this partial settlement, please send **written notice** of that intent to Class counsel, at one of the addresses provided above. A request to opt out and be excluded from the class must contain your: (1) legal name, (2) address, (3) telephone number, (4) a clear written request to be excluded from the class, (5) the case reference number, Civil Number 08-00578 LEK and (6) your signature. Any request to opt out must be received by Plaintiffs' counsel by **January 15, 2011** in order to be effective.

You may, but are not required to, enter an appearance in this Class Action and/or at the Fairness Hearing through counsel of your choice and at your own expense. You may also appear personally without counsel at the Fairness Hearing to state your position as to whether the settlement should or should not be approved. Finally, you or your counsel may file a written objection with the Court pursuant to the rules and procedures of the United States District Court for the District of Hawai`i prior to the Fairness Hearing.

If you do not: (1) opt out of this partial settlement; or (2) object to the settlement at or before the Fairness Hearing, you shall be deemed to have waived any and all objections to the partial settlement and dismissal of claims against Realty Laua as set forth above.

## VII. ADDITIONAL INFORMATION

This notice provides only a summary of the Class Action and settlement. The Complaint; Settlement Release, Indemnification, and Assignment Agreement; Motion for Preliminary Approval of Settlement of Class Action; Motion for an Award of Attorneys' Fees and Costs, and other relevant documents are available at [www.hawaiiclassaction.com](http://www.hawaiiclassaction.com) and [www.lejhawaii.org](http://www.lejhawaii.org).

You may also contact class counsel at the at the phone number below (in addition to the addresses provided above:

Victor Geminiani  
Lawyers for Equal Justice  
(808) 587-7605

**Please do not call the Court or any court personnel with any questions or concerns.**

DATED: Honolulu, Hawai'i, December 14, 2010.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States Magistrate Judge

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*McMillon v. State of Hawai'i*, Civil No. CV 08-00578 LEK (D. Hawai'i); Notice of Settlement of Class Action