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1ST CIRCUIT COURT
STATE OF HAWAII
FILED
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E. ALAGAO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEWERS FALETOGO; HAZEL)
MCMILLON; GENE STRICKLAND,)
TRUDY SABALBORO; and LEE)
SOMMERS, individually and on behalf of)
a class of past, present, and future)
residents of Kuhio Park Terrace,)

Plaintiffs,)

v.)

STATE OF HAWAII; HAWAII PUBLIC)
HOUSING AUTHORITY; REALTY LAUA)
LLC, formerly known as R & L Property)
Management LLC, a Hawai'i limited)
liability company; and Does 1-20,)

Defendants.)

CIVIL NO. 08-1-2608-12 S S M

(Other Civil Action)

**COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS**

COMPLAINT

This is a class action for relief from Defendants' violation of the warranty of habitability, breach of leases, breach of management contracts, and unfair trade practices arising out of Defendants'

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

E. Alagao
Clerk, Circuit Court, First Circuit

ownership, operation, control, and management of a Hawai`i public housing project.

INTRODUCTION

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, Kuhio Park Terrace (KPT). KPT, consisting of two 16 story towers and 614 units, is a public housing project owned, operated, and controlled by the Defendants State of Hawaii (Hawaii) and the Hawaii Public Housing Authority (HPHA), and managed by Defendant Realty Laua LLC, formerly known as R&L Property Management LLC (Realty Laua), pursuant to a property management contract between Realty Laua and HPHA.

2. KPT is characterized by squalid, unsafe, and unsanitary conditions 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; (3) breach the terms of the management agreements between Realty Laua and HPHA, of which Plaintiffs are intended beneficiaries; and (4) violate numerous provisions of State and County health and safety regulations, and therefore constitute unfair acts and practices in the conduct of trade or commerce.

3. Plaintiffs seek to represent a class of past, present, and future residents of KPT. Plaintiffs seek injunctive and declaratory relief,

retrospective and prospective rent abatement, special and compensatory damages, treble 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 LEWERS FALETOGO (FALETOGO) is a resident of Hawai'i, and is eligible and qualified to live in Hawai'i public housing. He lived in Kuhio Park Terrace (KPT) from approximately 1995 to 2008. As a result of hazardous conditions, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and un-maintained garbage facilities, plaintiff FALETOGO has been harmed and has suffered damages.

7. Plaintiff HAZEL MCMILLON (MCMILLON) is a resident of Hawai'i, and is eligible and qualified to live in KPT. Plaintiff MCMILLON has lived at KPT from approximately 2002 until the present. As a result of hazardous conditions, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest

infestations, and insufficient and un-maintained garbage facilities, Plaintiff MCMILLON has been harmed and has suffered damages.

8. Plaintiff GENE STRICKLAND (STRICKLAND) is a resident of Hawai`i, and is eligible and qualified to live in KPT. He has lived at KPT from approximately 2006 until the present. Plaintiff STRICKLAND is mobility impaired as a result of a spinal cord injury. As a result of hazardous conditions, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and un-maintained garbage facilities, Plaintiff STRICKLAND has been, and is being, harmed and has suffered damages.

9. Plaintiff TRUDY SABALBORO (SABALBORO) is a resident of Hawai`i, and is eligible and qualified to live in KPT. She has lived in KPT from approximately 2002 to the present. As a result of hazardous conditions, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and un-maintained garbage facilities, Plaintiff SABALBORO has been, and is being, harmed and has suffered damages.

10. Plaintiff LEE SOMMERS (SOMMERS) is a resident of Hawai`i, and is eligible and qualified to live in KPT. She has lived at KPT from approximately 2006 to the present. As a result of hazardous conditions, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations,

and insufficient and un-maintained garbage facilities, Plaintiff SOMMERS has been, and is being, harmed and has suffered damages.

DEFENDANTS

11. 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 Housing Choice Voucher Program (informally known as Section 8) and senior housing. Defendant HPHA administers KPT, and is responsible for ensuring compliance with applicable laws and regulations at KPT.

12. 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 KPT.

13. Defendant REALTY LAUA LLC, formerly known as R & L Property Management LLC (Realty Laua), is a Hawai`i limited liability company with its principal place of business in Hawai`i. Realty Laua is the management company for KPT pursuant to a property management contract with HPHA under which Realty Laua is responsible for, among other things, maintenance of the premises.

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

CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this class 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.

16. For the purpose of the First, Second, Third and Fourth Causes of Action, Plaintiffs seek to represent a class of past, present, and future KPT residents who are eligible for public housing.

17. For the purpose of the Fifth Cause of Action, Plaintiffs seek to represent a class of present and future KPT residents who are eligible for public housing.

18. Plaintiff LEWERS represents all past KPT residents who are eligible for public housing.

19. Plaintiffs MCMILLON, STRICKLAND, SABALBORO, and SOMMERS represent all present and future KPT residents who are eligible for public housing.

20. The class is so numerous that joinder of all members is impractical. There are hundreds of past, present, and future residents of KPT. Moreover, putative class members are not capable of being identified at this time, as the proposed class includes future residents. Plaintiffs do not know the exact size of each class, with some residents leaving and others moving into the facilities.

21. 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; (3) breached the terms of the management agreements between Realty Laua and HPHA; (4) intended the putative class members to be beneficiaries of the management agreements; (5) allowed the maintenance of conditions that violate State and County health and safety regulations; and (6) committed unfair acts and practices in the conduct of trade or commerce.

22. 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 KPT. Plaintiffs are members of the proposed class in that they have lived in, currently live in, and/or are qualified to live in, KPT.

23. 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.

24. A class action is the only realistic method available for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation makes it impracticable for members of the class to seek redress individually for the wrongful conduct herein alleged.

Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court and create the risk of inconsistent rulings which would be contrary to the interest of justice and equity.

25. 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).

26. 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).

27. Discovery has not commenced in this action at this time. Plaintiffs expect that discovery will reveal information that may be relevant to the current class definitions or may give rise to subclasses, if any. Plaintiffs reserve their right to add subclasses and/or amend the definition of either or both classes based on what discovery reveals.

FACTS COMMON TO ALL ALLEGATIONS

28. Kuhio Park Terrace (KPT) is a state-run public housing projects funded by the U.S. Department of Housing and Urban Development. KPT consists of two 16-story towers (Towers A and B) containing 614 units, and is the largest state-owned public housing

project in Hawai`i. Hawai`i suffers from a severe shortage of affordable, safe, and well-maintained public housing.

Failure to Comply with HUD Standards

29. 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.

30. Following the Independent Assessment, in late 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.

31. 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.

32. 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.

33. As a result of Defendants' actions and inactions, the housing facilities at KPT are characterized by leaking and bursting plumbing, an almost total lack of hot water, rat and roach infestations, nonfunctioning and dangerous elevators, overflowing and burning trash piles, toxic air filled with soot and other noxious particulate, a lack of basic fire safety equipment such as alarms, sprinklers, or fire extinguishers, and additional hazardous conditions.

34. The deplorable and hazardous conditions at KPT are well known to the Defendants. In the Department of Housing and Urban

Development's (HUD's) February 2008 inspection, KPT received a failing score of 40 out of a possible 100 points. Nineteen points were deducted for health and safety violations.

Nonfunctioning and Dangerous Elevators

35. Each of the towers at KPT has two tenant elevators and one freight elevator. One or both tenant elevators in each tower have been broken and nonfunctioning during most months in recent years. As a result, tenants are often forced to use the freight elevator to reach their units. The freight elevators are not designed for tenant use, and require a key and an operator to transport tenants. Freight elevators impose substantial delays and additional hazards compared to passenger elevators.

36. On countless occasions over the past few years, all elevators in one or both towers have been broken. Without elevator service, tenants must struggle to ascend or descent multiple flights of stairs contained within a concrete stairwell. Traveling this route requires that tenants climb or descend dangerous and poorly lit stairs and landings while avoiding wet areas, trash, and urine.

37. Elevators in operation are dangerous and crowded. They are often unable to stop at every floor, and unable to be called from every floor. It is not uncommon for residents to wait as long as one hour for elevator service. Elevators, tenant and freight, frequently break down with tenants inside, trapping them for extensive and unpredictable

periods of time. In 2007, the Honolulu Fire Department came to extract tenants from broken elevators at least seven times; management of KPT has performed many more “rescue” operations.

Fires and Fire Hazards

38. Defendants have failed to take basic steps to ensure fire prevention, fire control, and the safe evacuation of residents in the event of fire or other emergency. Specifically, the facilities lack any functioning, system-wide fire alarms. Fire hoses and fire extinguishers are absent. Many housing units lack functioning smoke detectors.

39. At the same time, at KPT trash fires and fires in other areas at the facilities are common. In 2007, the Honolulu Fire Department (HFD) came to KPT to respond to fires at least 60 times.

40. On February 14, 2006, the HFD inspected the facilities at KPT and found extensive fire hazards, including broken trash chutes, a broken standpipe system (the piping system for fighting fires), and a lack of fire hoses on every floor. Defendants never made repairs ordered by the Department. Similar HFD findings date back to 1994.

Toxic Air Filled With Soot and Particulate from Rodent and Roach Infestation, Hazardous Plumbing Spills

41. The air at KPT is filled with hazardous particulates. These include: soot dust created by frequent trash fires; roach dust (made up of roach body parts and dander); and rat allergens (from rat urine and feces). Added to these toxins are the effects of leaking and burst pipes, and plumbing backups, causing brown wastewater to fill housing units.

42. Specifically, the garbage chutes and other common areas are infested with rats. Rats are often seen near the garbage chutes and rat holes are clearly visible in the garbage chute areas and in the common area closets. The housing units, and particularly the kitchens, are infested with roaches. Many units are infested with bedbugs, an additional allergen.

43. The infestations of rats and roaches are supported by unsanitary garbage disposal. The trash chutes serving KPT are in disrepair. Many floors have broken and/or fire damaged chutes openings such that there is no wall or barrier between the rotting trash and the common areas. Additionally, the trash chutes back up due to disrepair and the Defendants' failure to regularly collect the trash. These conditions ensure the continued infestations of rats and cockroaches, creating a steady stream of allergens and particulates. Fires are common in the trash chutes and trash piles, creating soot and toxic fumes.

No Hot Water

44. During most hours of most days, there is no hot water at KPT, and this condition has existed for years.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Breach of the Implied Warranty of Habitability
(Against Defendants Hawai'i and HPHA)

45. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 44 of this Complaint.

46. Plaintiffs and Defendants Hawaii and HPHA are or were parties to leases whereby Defendants provided dwellings to Plaintiffs at KPT in exchange for Plaintiffs' payment of rent.

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

48. The conditions described above, including but not limited to the non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and un-maintained garbage facilities breached and continue to breach the implied warranty of habitability and fitness for intended use.

49. 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.

50. 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
(Against Defendants Hawai'i and HPHA)

51. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 50 of this Complaint.

52. 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;” (c) “[m]aintain all electrical, plumbing, and other facilities and appliances supplied by Management in good working order and condition,” (d) “[p]rovide and maintain appropriate receptacles and conveniences ... for the removal of normal amounts of rubbish and garbage and arrange for the frequent removal of such waste materials,” and (e) “[k]eep Project buildings, facilities, and areas not otherwise assigned to the Tenant for maintenance and upkeep in a clean and safe condition.”

53. The conditions described above, including but not limited to the non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and un-maintained garbage facilities breached and continue to breach these and other provisions of the Rental Agreement.

54. 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.

55. Plaintiffs, and the persons whose interests they represent, are also entitled to declaratory relief, injunctive relief, and attorneys' fees as a result of Defendants' breaches of the Rental Agreement.

THIRD CAUSE OF ACTION
Breach of the Management Agreement – Third Party Beneficiary
(Against Defendant Realty Laua)

56. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 55 of this Complaint.

57. Defendant Realty Laua has been a party to management agreements with Defendants Hawaii and HPHA by which it became obligated to maintain and repair the common areas of KPT, address tenant complaints, and provide other property management services to Hawaii and HPHA.

58. Defendants intended for Plaintiffs and all tenants of KPT to be beneficiaries of these management agreements.

59. Plaintiffs, and the persons whose interests they represent, are therefore entitled to enforce the management agreements.

60. Defendant Realty Laua's failure to prevent or timely repair the conditions described above, including but not limited to the non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and un-maintained garbage facilities breached and continue to breach the management agreements.

61. Plaintiffs, and the persons whose interests they represent, have been injured by Realty Laua's breaches of the management agreements in an amount to be proven at trial.

62. Plaintiffs, and the persons whose interests they represent, are also entitled to declaratory relief, injunctive relief, and attorneys' fees as a result of Realty Laua's breaches of the management agreements.

FOURTH CAUSE OF ACTION
Unfair Trade Practices Prohibited by HRS § 480-2
(Against all Defendants)

63. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 62 of this Complaint.

64. Plaintiffs, and the persons whose interests they represent, are "consumers" and "persons" as those terms are defined in HRS § 480-1.

65. Defendants' acts and practices described above involve "trade or commerce" as that term is defined in HRS § 480-2(a).

66. An unfair act or practice in the conduct of any trade or commerce is unlawful pursuant to HRS § 480-2(a).

67. Defendants engaged in and continue to engage in unfair practices that violate HRS § 480-2 by, among other things, (a) failing to comply with applicable State and County building, fire, safety, health, and sanitation regulations; and (b) failing to comply with requirements imposed by HUD.

68. Plaintiffs, and the persons whose interests they represent, have been injured in their property by Defendants' unfair trade practices in an amount to be proven at trial.

69. Plaintiffs, and the persons whose interests they represent, are also entitled to declaratory relief, injunctive relief, treble damages, and attorneys' fees as a result of Defendants' unfair trade practices.

FIFTH CAUSE OF ACTION
Future Medical Monitoring
(Against all Defendants)

70. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 69 of this Complaint.

71. Plaintiffs, and the persons whose interests they represent, were and are significantly exposed to significant amounts of proven hazardous substances such as toxic air filled with soot and particulate from rodent and roach infestation, and upon information and belief, asbestos through the negligent and/or intentional actions or omissions of the Defendants.

72. As a proximate result of the exposure, a reasonable physician would recommend medical monitoring because the Plaintiffs have suffered significantly increased risk of contracting serious latent diseases resulting from exposure to proven hazardous substances, including, but not limited to asthma, restrictive airways disease and on information and belief asbestos related diseases, cancer, and reproductive disorders.

73. That increased risk makes periodic diagnostic medical examinations reasonably necessary.

74. Monitoring and testing procedures exist which make the early detection and treatment of potential diseases possible and beneficial.

75. Plaintiffs suffer from present manifest injury due to the exposure to toxic substances.

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 (a) Defendants Hawaii and HPHA have breached the implied warranty of habitability and the terms of the Rental Agreements, (b) Defendant Realty Laua has breached the management agreements, of which the plaintiff class are intended beneficiaries, and (c) all Defendants have engaged in unfair trade practices prohibited by HRS § 480-2;
6. Grant all injunctive relief necessary to bring Defendants into

compliance with their contractual obligations as described above and to cease engaging in unfair trade practices prohibited by HRS § 480-2;

7. Grant special damages to recover costs for future medical monitoring;
8. Grant such other declaratory and injunctive relief as may be appropriate;
9. Order Defendants to pay treble damages;
10. Award Plaintiffs reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action; and
11. Order such other relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, December 18, 2008.



PAUL ALSTON
JASON H. KIM
Attorneys for Plaintiffs

JURY DEMAND

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

DATED: Honolulu, Hawai'i, December 18, 2008.



PAUL ALSTON
JASON H. KIM
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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Management LLC, a Hawai`i limited)	
liability company; and Does 1-20,)	
)	
Defendants.)	
_____)	

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 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, DEC 18 2008

E. ALAGAO



CLERK OF THE ABOVE-ENTITLED COURT