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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, )

v. )

CIVIL NO. **C1V08 00578**

Civil Rights Action  
 Class Action

**JMS LEK**

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

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. )  
\_\_\_\_\_ )

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

**INTRODUCTION**

1. This is a class action for relief from Defendants’ violation of Plaintiffs’ civil rights under Title II and Title V of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Amendments Act of 1988, arising out of Defendants’ ownership, operation, control, and management of two of Hawai`i’s federally funded public housing projects.

2. Plaintiffs, and the persons whose interests they represent, are low-income persons with disabilities who live in, and who are eligible to live in, Kuhio Park Terrace (KPT) and Kuhio Homes. KPT, consisting of two 16 story towers and 614 units, and Kuhio Homes, a low-rise complex containing 134 units, are public housing projects receiving federal financial assistance that are owned, operated, and controlled by the Defendants State of Hawai`i (Hawai`i) and the Hawai`i 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.

3. Defendants' facilities at KPT and Kuhio Homes are characterized by discriminatory obstacles and hazardous conditions for residents with disabilities, including multiple and pervasive architectural barriers and toxic particulate in the air, all in violation of federal disability nondiscrimination laws which prohibit public housing entities from disability discrimination and require that they provide program access and reasonable modifications and accommodations to residents with disabilities.

4. Plaintiffs seek to represent a class of present and future residents of KPT and Kuhio Homes who have disabilities and have been subjected to discrimination. Plaintiffs seek injunctive and declaratory relief, damages, attorneys' fees and costs, and additional relief.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 2202. Plaintiffs bring this suit under Title II and Title V of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. § 794, and the Fair Housing Act Amendments, 42 U.S.C. § 3604.

6. Venue is proper in the District of Hawai'i pursuant to 28 U.S.C. § 1391(b) because the events giving rise to Plaintiffs' claims occurred in this District.

## **PARTIES**

### **Plaintiffs**

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. Plaintiff MCMILLON has arthritis, severe allergies, glaucoma, thyroid problems, high blood pressure, and depression. Her breathing, vision, and mobility are severely impaired, and she can climb and descend stairs only with great difficulty. She is a person with a disability within the meaning of all applicable statutes, and is a qualified person with a disability within the meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. As a result of architectural barriers and hazardous conditions in violation of federal disability laws, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and unmaintained garbage facilities, Plaintiff MCMILLON has been harmed and has suffered damages. At least four or five times per month, Plaintiff MCMILLON has been forced to climb or descend the stairs due to broken elevators. She struggles to see, breathe, bathe, and enter and leave her unit due to the lack of access and other hazardous conditions. Further, Plaintiff MCMILLON has made requests for reasonable modifications and accommodations that Defendants have ignored.

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. He walks with great difficulty using a cane or walker and is in severe pain without medication. He has obesity, which is related to his orthopedic injuries, and which exacerbates his mobility limitations. He also has asthma and high blood pressure. He is a person with a disability within the meaning of all applicable statutes, and is a qualified person with a disability within the meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. As a result of architectural barriers and hazardous conditions in violation of federal disability laws, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and unmaintained garbage facilities, Plaintiff STRICKLAND has been, and is being, harmed and has suffered damages. Because of his disability, Plaintiff STRICKLAND cannot safely climb or descend the stairs. On many occasions, Plaintiff STRICKLAND has been unable to access his housing unit due to malfunctioning elevators. He has been forced to wait up to two hours for elevator service, causing him to miss more than fifteen doctors' appointments. On several occasions when Plaintiff STRICKLAND has endeavored to climb the stairs, he has fallen. Because of the nature of his disability, any fall in the stairways is extremely hazardous to Plaintiff STRICKLAND, and can further exacerbate his injuries and limitations. During a recent elevator outage, Plaintiff STRICKLAND was forced to walk down ten flights of unmaintained stairs in order to pick up his wife from work. He fell and suffered a hernia requiring medical attention. On several occasions, Plaintiff

STRICKLAND, has been trapped in the bathroom due to the lack of grab bars and other features needed to make the facilities accessible to persons with disabilities. Further, Plaintiff STRICKLAND has made requests for reasonable modifications and accommodations that Defendants have ignored.

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. Plaintiff SABALBORO is mobility impaired and uses a scooter or wheelchair. She has multiple sclerosis, arthritis, severe heart problems, severe respiratory problems, and diabetes. She is a person with a disability within the meaning of all applicable statutes, and is a qualified person with a disability within the meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. As a result of architectural barriers and hazardous conditions in violation of federal disability laws, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and unmaintained garbage facilities, Plaintiff SABALBORO has been, and is being, harmed and has suffered damages. On many occasions, Plaintiff SABALBORO has been unable to access her housing unit due to malfunctioning elevators, and has been forced to wait for long periods of time for elevator service. She struggles to breathe, bathe, and enter and leave her unit due to the lack of access and other hazardous conditions. Further, Plaintiff SABALBORO has made requests for reasonable modifications and accommodations that Defendants have ignored.

10. Plaintiff KATHERINE VAIOLA (VAIOLA) is a resident of Hawai`i, and is eligible and qualified to live in Hawai`i public housing. She lived in KPT from approximately 1979 to 1993. She was transferred to Kuhio Homes in 1993 where she currently resides. Plaintiff VAIOLA became mobility impaired after a knee amputation necessitated by her diabetes and must use a wheelchair. She has “end stage renal disease” and receives hemodialysis three times a week. She is also visually impaired due to cataracts, has limited hearing in her right ears, thyroid problems, and high blood pressure. She is a person with a disability within the meaning of all applicable statutes, and is a qualified person with a disability within the meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. As a result of architectural barriers and hazardous conditions in violation of federal disability laws, including lack of required fire equipment, pest infestations, and insufficient and unmaintained garbage facilities, Plaintiff VAIOLA has been, and is being, harmed, and has suffered damages. Plaintiff VAIOLA lives in a two-story unit in which the bedrooms and bathroom are upstairs. Because she is unable to walk or climb stairs, she is forced to live in the downstairs living room, is unable to bathe, and must use a portable toilet in the living room. The portable toilet must be cleaned and the waste disposed of whenever she uses it. Her unit has not been modified to accommodate her disability. She is forced to use a makeshift plywood ramp made by her friend in order to access her unit. Because she cannot maneuver over it by herself she leaves her apartment only when someone can assist her, making it

difficult for her to attend dialysis appointments three times a week. Plaintiff VAIOLA has made requests for reasonable modifications and accommodations that Defendants have ignored.

11. 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. Plaintiff SOMMERS is mobility impaired and is required to use a wheelchair. She is diabetic and has high blood pressure. Because of her diabetes, she has had two toes amputated from each foot. Due to the risk of severe bacterial infection, SOMMERS is not supposed to stand on her feet. Plaintiff SOMMERS is a person with a disability within the meaning of all applicable statutes, and is a qualified person with a disability within the meaning of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973. As a result of architectural barriers and hazardous conditions in violation of federal disability laws, including non-functioning elevators, frequent trash chute fires, lack of required fire equipment, lack of hot water, pest infestations, and insufficient and unmaintained garbage facilities, Plaintiff SOMMERS has been, and is being, harmed and has suffered damages. She is required to go to the hospital for antibiotics on a daily basis, but often has difficulties leaving or returning to her unit due to the malfunctioning elevators. She has sometimes missed appointments because she is unable to leave her unit. There have been approximately six sewage backups in her unit from unmaintained plumbing, putting her at serious health risk and destroying many of her belongings. After the sewage spills, management does not clean the floor. Plaintiff must use her own

clothes and towels to clean the floor which, due to her mobility impairments, she can only do with great difficulty. Plaintiff SOMMERS has made requests for reasonable modifications and accommodations that Defendants have ignored.

### **Defendants**

12. 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 Kuhio Homes, and is responsible for ensuring compliance with federal disability nondiscrimination laws at these facilities. Defendant HPHA is a public entity within the meaning of Title II of the ADA, and receives federal financial assistance including money from the U.S. Department of Housing and Urban Development and is covered by the Rehabilitation Act. Defendant HPHA employs 50 or more employees.

13. Defendant STATE OF HAWAII (HAWAII) oversees the HPHA through its Department of Human Services, and is responsible for ensuring compliance with federal disability nondiscrimination laws at its programs, including KPT and Kuhio Homes. Defendant HAWAII is a public entity within the meaning of Title II of the ADA. Defendant HAWAII receives federal financial assistance including money from the U.S. Department of Housing and Urban Development and is covered by the Rehabilitation Act. Defendant HAWAII employs 50 or more employees.

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

### **CLASS ACTION ALLEGATIONS**

15. 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) of the Federal Rules of Civil Procedure. The proposed class consists of:

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 herein (“the Class”).

16. Plaintiffs and their counsel adequately represent the Class of all qualified present and future residents of KPT and Kuhio Homes who have mobility impairments or other disabling medical conditions that constitute “disabilities” under federal disability nondiscrimination laws, and who have been denied the right to full and equal access to the facilities, programs, services, activities of the Defendants because of the architectural barriers and hazardous conditions described herein.

17. Membership of the class is so numerous in number that joinder of all members is impractical. There are hundreds of present and future residents who have disabilities affected by architectural barriers and hazardous conditions complained of herein. The individual names of each class member is not capable of being identified at this time, as the proposed class includes residents who presently reside in KPT and Kuhio Homes as well as future residents of the housing projects.

18. Common questions of law and fact exist, and include whether residents are being denied the right, on the basis of disability, to equal use and enjoyment, including safety, of the housing units at KPT and Kuhio Homes, in violation of federal disability nondiscrimination mandates.

19. The claims of the named Plaintiffs are typical of the claims of the other putative class members, in that they have been denied program access, and otherwise discriminated against, on the basis of their disabilities. Plaintiffs have no avenue for seeking reasonable modifications to the Defendants' programs and activities, as Defendants have no effective policies or procedures for implementing such accommodations. Defendants have further failed to complete the required self-evaluation and transition plans, or to adopt, and implement, effective grievance procedures. These are the same injuries that members of the proposed class are suffering, and, unless this Court grants relief, will continue to suffer.

20. Plaintiffs are members of the proposed class in that they live in KPT or Kuhio Homes, are eligible for public housing, and

have been subjected to disability-based discrimination. The proposed members of the Class have been and/or will be subjected to disability-based discrimination. 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 challenging disability discrimination.

21. 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.

22. Defendants have acted, refused to act, and/or failed to act in a manner that violates the federal statutory rights of the Class members entitling the Class Members (in whole or in part) to declaratory and preliminary and final injunctive relief, as well monetary damages incidental to and necessary to the effectuation of the requested declaratory and injunctive relief.

### **FACTS COMMON TO ALL ALLEGATIONS**

23. Kuhio Park Terrace (KPT) and Kuhio Homes are state-run public housing projects funded by the U.S. Department of Housing

**HPHA's Failure to Comply with HUD's Standards.**

24. 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.

25. 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.

26. 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.

27. 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 and to comply with all applicable federal statutes, regulations, and executive orders. HPHA has failed, and continues to fail, to provide decent, safe, and sanitary housing in violation of the ACC and federal laws.

**Defendants' Failures to Provide Program Access and Discrimination Against Persons with Disabilities at KPT and Kuhio Homes.**

28. Despite the unequivocal and longstanding mandates of federal disability nondiscrimination statutes, the Defendants have failed to take affirmative effective action to remedy the discriminatory barriers and toxins pervading KPT and Kuhio Homes. Defendants have failed to provide basic program access to

disabled residents, or to create any system for responding to requests for reasonable modifications, or for implementing such accommodations. Upon information and belief, Defendants have failed to designate an Americans with Disabilities Act compliance officer as required by federal law. Nor have the Defendants ensured that the facilities are equally safe for persons with disabilities.

29. As a result of Defendants' actions and inactions, the housing facilities at KPT and at Kuhio Homes are characterized by architectural barriers, 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 and inaccessible conditions.

30. Given these conditions, residents with disabilities are unable to safely live in KPT or Kuhio Homes, or to use the facilities on an equal basis with nondisabled residents. Residents with mobility disabilities must live in housing units and negotiate common areas that are not accessible to or usable by them. With elevators that are hazardous and inoperable, KPT residents are denied safe and reliable access to and egress from their housing units. Despite a terrifying pattern of fires at KPT, and the absence of basic fire control devices, there are no evacuation plans for persons with disabilities. Residents with disabilities that are affected by hazardous conditions have experienced worsened disabilities, or have acquired new disabilities, simply by living at the projects. In these and other ways, Plaintiffs have been denied an

equal opportunity to safely use and enjoy the housing at KPT and Kuhio Homes.

31. The deplorable and hazardous conditions at KPT and Kuhio Homes 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. Since at least 1998, HUD inspection reports show that KPT's building exteriors and common areas are inaccessible to persons with mobility impairments, with accessibility routes either missing or obstructed. Kuhio Homes has also consistently received a failing HUD score of below 60 out of a possible 100.

**Nonfunctioning and Dangerous Elevators at KPT.**

32. Each of the towers at KPT has two tenant elevators and one freight elevator. As a result of Defendants' unlawful failure to maintain these accessibility features, one or both tenant elevators in each tower have been broken and nonfunctioning during most months in recent years. As a result, tenants with mobility impairments or other disabling medical conditions 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.

33. On countless occasions over the past few years, all elevators in one or both towers have been broken. Without elevator service, persons with mobility and respiratory impairments must struggle to ascend or descent multiple flights of stairs contained

within a concrete stairwell. Traveling this route requires that disabled residents climb or descend dangerous and poorly lit stairs and landings while avoiding wet areas, trash, and urine. Some disabled residents have been carried by friends and family up or down flights of stairs to access or leave their residential units. The carrying of persons with disabilities up and down concrete stairways is dangerous, frightening, and humiliating.

34. 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. Many residents with mobility disabilities remain in their housing units unless they must leave, as they are reasonably afraid of being trapped inside the elevators. 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.

35. Residents with disabilities have complained about the nonfunctioning and dangerous elevators. In response, Defendants have failed to provide program access or any reasonable modifications or accommodations, to give information about any grievance procedure or ADA coordinator, and to comply with their obligation to maintain the elevators.

**Fires, Fire Hazards and the Lack of Evacuation Plans for Persons with Disabilities at KPT and Kuhio Homes.**

36. Despite the numerous persons with mobility and

respiratory disabilities who live at the facilities, Defendants have failed to take basic steps to ensure fire prevention, fire control, and the safe evacuation of residents including residents with disabilities 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. There are no evacuation plans or evacuation equipment for persons with disabilities.

37. 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.

38. 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.

39. Residents with disabilities have complained about the failure to eliminate fire hazards and the danger posed by fire hazards to persons with disabilities. In response, Defendants have failed to ensure that persons with disabilities can live safely at their facilities, or to provide any reasonable modifications or accommodations, such as the elimination of fire hazards or the implementation of evacuation plans, or to give any information about their grievance procedure or ADA coordinator.

**Toxic Air Filled With Soot and Particulate from Rodent and Roach Infestation, Hazardous Plumbing Spills at KPT.**

40. The air at KPT is filled with hazardous particulates known to exacerbate, trigger, and create respiratory distress and disorders, and to cause and exacerbate other disabling medical conditions. 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). The particulates and allergens caused by fires and vermin are well-established triggers for persons with asthma and other respiratory ailments. Added to these toxins are the effects of leaking and burst pipes, and plumbing backups, causing brown wastewater to fill housing units. Plaintiffs with respiratory and immune-compromising disorders have been sickened, and their health worsened, by these hazardous conditions.

41. 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.

42. The infestations of rats and roaches are sustained 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.

43. Residents with disabilities have complained about the failure to eliminate soot, vermin, trash, and hazardous plumbing leaks. In response, Defendants have failed to provide program access, or any reasonable modifications or accommodations, such as the scheduling of regular extermination of vermin or trash collection, or to give any information about their grievance procedure or ADA coordinator.

**No Hot Water at KPT.**

44. During most hours of most days, there is no hot water at KPT, and this condition has existed for years. Residents with a range of disabling conditions have been unable to bathe themselves, as the available water is so cold as to trigger a worsening of their conditions, or the risk of opportunistic infections such as pneumonia. As a result of the Defendants' failure to provide hot water, residents with disabilities cannot bathe or take care of themselves on an equal basis with nondisabled residents.

**Architectural Barriers in Housing Units and Common Areas at KPT and Kuhio Homes.**

45. Additional architectural barriers pervade all areas of the Defendants' facilities, both common and residential. Persons who are mobility impaired and who use wheelchairs are unable to independently open or travel through exterior or interior doors. Bathrooms and kitchen areas in apartments leased by disabled

residents are not accessible to or useable by persons with disabilities. Facilities such as the laundry room areas cannot be accessed equally or independently by persons with mobility impairments. Residents with mobility disabilities cannot independently operate basic environmental controls, such as light switches, electrical outlets, thermostats, and similar features in their living areas or in the common areas. At KPT, there is only one handicapped or disabled parking space for each tower.

## **GOVERNING LAW**

### **Title II of the Americans with Disabilities Act.**

46. Title II of the Americans with Disabilities Act, enacted in 1990, prohibits disability discrimination by state and local governments. 42 U.S.C. § 12132. Congress delegated regulatory authority for Title II to the Department of Justice. 42 U.S.C. § 12134. The requirements of Title II and the DOJ regulations became effective on January 26, 1992. 56 Fed. Reg. 35694 (July 26, 1991).

#### **Nondiscrimination.**

47. Title II of the Americans with Disabilities prohibits many forms of discrimination, including policies and practices that are discriminatory in their effects upon persons with disabilities:

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or

other arrangements, on the basis of disability-- (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; [or] (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others ....

A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities ....

28 C.F.R. § 35.130(a), (b)(1)(i)-(iii), (b)(3)(i)-(ii), (b)(8).

**Program Access and Accessibility Features.**

48. Under Title II, “[a] public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a). As necessary to achieve program access, structural and other changes are required. 28 C.F.R. § 35.150(a)(1), (b)(1), (c). Structural changes were to be completed “within three years of January 26, 1992, but in any event as expeditiously as possible.” 28 C.F.R. § 35.150(c). For public entities employing 50 or more persons, a transition plan setting forth the steps necessary to complete the structural changes was due “within six months of January 26, 1992.” 28 C.F.R.

§ 35.150(d)(1); *see also* 28 C.F.R. § 35.150(d)(3). Further, “[a] public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.” 28 C.F.R. § 35.133(a).

**Reasonable Modifications in Policies, Practices and Procedures.**

49. To comply with Title II, “[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 130(b)(7). Further, by January 26, 1992, a public entity must “evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.” 28 C.F.R. § 35.105(a).

**Notice and Grievance Procedures.**

50. Public entities must make available to participants and beneficiaries information about the requirements of Title II. 28 C.F.R. § 35.106. Public entities employing 50 or more employees must designate an ADA coordinator, and must adopt a grievance procedure providing for the prompt and equitable resolutions of complaints alleging prohibited action. 28 C.F.R. § 35.107.

## **Americans With Disability Act Amendments of 2008.**

51. In 2008, in response to growing concern that case law had improperly narrowed the broad scope of protection intended to be afforded by the ADA, Congress enacted amendments to the definition of “disability” used in the Americans with Disabilities Act and the Rehabilitation Act. The amended statute continues to define “disability” as a “physical or mental impairment that substantially limits one or more major life activities,” but provides several clarifying rules of construction. Among the rules added are:

52. The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

A person has a disability if she or he is substantially limited in a major life activity which includes, but is not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”

A person has a disability if she or he is substantially limited in “the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Public Law 110-325 (Sept. 25, 2008) (section 4). The amendments take effect January 1, 2009.

**Section 504 of the Rehabilitation Act.**

53. Congress enacted Section 504 of the Rehabilitation Act in 1973 to prohibit disability discrimination by entities receiving federal money. 29 U.S.C. § 794. In 1977, the U.S. Department of Health, Education and Welfare promulgated the first set of regulations implementing and interpreting Section 504. 42 Fed. Reg. 22677 (May 4, 1977) (published at 45 C.F.R. Part 84). In 1978, Congress amended Section 504 to incorporate the remedies and procedures of Title VI of the Civil Rights Act of 1964.

54. That same year, Executive Order 11914 required federal funding agencies to issue their own regulations consistent with Section 504 and based on minimum standards. 43 Fed. Reg. 2132 (Jan. 13, 1978) (minimum standards now appear at 28 C.F.R. Part 41. Executive Order 12250 (Nov. 2, 1980); 46 Fed. Reg. 40686 (August 11, 1981).)

55. The Department of Housing and Urban Development (HUD) issued its Section 504 regulations in 1988. 53 Fed. Reg. 20233 (June 2, 1988) (published at 24 C.F.R. Part 8).

**Nondiscrimination.**

56. Section 504 prohibits a range of discriminatory actions and inactions by federally funded entities, and includes prohibitions targeting the discriminatory effects of a funded entity's actions and inactions:

No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied

the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap ... [d]eny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service.

A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, [or] (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons ....

28 C.F.R. §§ 41.51(a), (b)(1)(i), (b)(3) (DOJ coordination regulations);

24 C.F.R. § 8.4(a), (b)(1)(i), (b)(4) (HUD regulations).

**Program Access.**

57. Section 504 requires that persons with disabilities have access to the programs and activities of funded entities, even if the programs and activities have been situated in physically inaccessible facilities. “No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.” 28 C.F.R. § 41.56; *accord* 24 C.F.R. § 8.20. Under this standard, “[a] recipient shall operate each housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible

to and useable by persons with handicaps.” 24 C.F.R. § 8.24(a); *accord* 28 C.F.R. § 41.57(a).

58. As necessary to achieve program access, structural and other changes are required. 28 C.F.R. § 41.57(b), (c); 24 C.F.R. §§ 8.24(b), (c), 8.25(c); *see also* 24 C.F.R. § 8.26 (“Accessible dwelling units required by § 8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible ... be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities ...”). The deadlines for planning and achieving program access in public housing have long since passed. 24 C.F.R. § 8.24(c) (structural changes due “within three years of July 11, 1988,” nonstructural changes due “within sixty days of July 11, 1988”); (d) (transition plan due “within six months of July 11, 1988”); 24 C.F.R. § 8.25(c) (transition plan to achieve program access in public housing due “as expeditiously as possible, but in any event no later than two years after July 11, 1988” and structural changes due “no later than four years after July 11, 1988”).

### **Modification of Policies and Practices.**

59. Section 504 requires recipients to modify policies and practices where necessary to include individuals with disabilities. 24 C.F.R. § 8.33. Relatedly, “within one year of July 11, 1988,” each recipient must evaluate its current policies and practices, modify any policies and practices that do not meet the requirements of Section 504, and take appropriate corrective steps to remedy any discrimination revealed by the evaluation. 24 C.F.R. § 8.51.

**Notice and Grievance Procedures.**

60. Section 504 requires recipients with 15 or more employees to take steps to notify participants of its obligations under Section 504, to adopt grievance procedures, and to designate a Section 504 coordinator. 24 C.F.R. §§ 8.53, 8.54.

**Fair Housing Act Amendments of 1988.**

61. As amended in 1988, the Fair Housing Act (FHA) prohibits discrimination in the rental of any dwelling because of the handicap of the renter, a person residing or intending to reside in the dwelling, or a person associated with the renter. 42 U.S.C.A. § 3604(f)(1). Discrimination is defined to include “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C.A. § 3604(f)(3)(B). HUD issued its regulations under the FHA in 1989. 54 Fed. Reg. 3232 (Jan. 23, 1989).

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

Disability-Based Discrimination in Violation of  
Title II of The Americans with Disabilities Act of 1990,  
42 U.S.C. § 12132  
(Against Defendants Hawai`i and HPHA)

62. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 61 of this Complaint.

63. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to

64. Plaintiffs, and the persons whose interests they represent, are qualified persons with disabilities within the meaning of Title II of the ADA.

65. Plaintiffs, and the persons whose interests they represent, have been excluded from or otherwise discriminated against with regard to Defendants' provision of public housing at KPT and Kuhio Homes. Defendants have failed to make the necessary reasonable modifications to the public housing facilities at KPT and Kuhio Homes such that they are readily accessible to and useable by individuals with disabilities. Plaintiffs have made requests for and/or are entitled to reasonable accommodations and modifications, but Defendants have failed to respond to Plaintiffs' reasonable requests or make reasonable modifications. As a result of, *inter alia*, Defendants' failure to implement evacuation plans for participants with disabilities, and make other accessibility changes necessary, the public housing facilities at KPT and Kuhio Homes are not as safe for disabled participants as they are for nondisabled participants.

66. In particular, Defendants have violated Title II of the ADA and its regulations, and unlawfully discriminated against Plaintiffs, by, *inter alia*: failing to provide program access and reasonable modifications for persons with disabilities; failing to provide and maintain safe and functioning elevators at KPT; failing to prevent, respond to and ameliorate fire hazards; failing to create and implement evacuation plans; failing to prevent, respond to and ameliorate allergens and toxic air; failing to eliminate and remedy

additional architectural barriers and hazardous conditions; and denying Plaintiffs' requests for reasonable accommodations without any, or with insufficient, investigation, and/or by rendering such requests futile through their pervasive and consistent inaction.

67. Plaintiffs, and the persons whose interests they represent, have been, and are being, excluded from and discriminated against with regard to Defendants' provision of public housing at KPT and Kuhio Homes by reason of their disabilities.

68. Defendants' unlawful actions were and continue to be intentional, willful, malicious, and/or done with deliberate indifference to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, to be free from discrimination based on disability. Defendants know that harm to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, is substantially likely, but nevertheless have failed, and continue to fail, to act upon that likelihood.

69. As a proximate result of Defendants' unlawful acts, Plaintiffs, and the persons whose interests they represent, have suffered and continue to suffer injuries, including emotional injuries, and are entitled to compensatory damages, including damages for emotional distress, to injunctive and declaratory relief, and attorneys' fees and costs.

## **SECOND CAUSE OF ACTION**

### **Disability-Based Discrimination in Violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Against Defendants Hawai`i and HPHA)**

70. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 69 of this Complaint.

71. Section 504 of the Rehabilitation Act requires that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). Accordingly, “[n]o qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department [HUD].” 24 C.F.R. § 8.4.

72. Plaintiffs, and the persons whose interests they represent, are qualified persons with disabilities or handicaps within the meaning of Section 504 of the Rehabilitation Act and are eligible for the type of public housing available at KPT and Kuhio Homes.

73. Defendants State of Hawai`i and HPHA receive federal financial assistance from the U.S. Department of Housing and Urban Development (HUD) for its public housing program, including the program under which the State of Hawai`i and HPHA operate KPT and Kuhio Homes.

74. As detailed herein, Defendants have violated Section 504

of the Rehabilitation Act by, *inter alia*: failing to make the required changes, including structural changes, such that Defendants' public housing facilities at KPT and Kuhio Homes are readily accessible to and usable by persons with handicaps or disabilities; failing to provide and maintain safe and functioning elevators at KPT; failing to prevent, respond to and ameliorate fire hazards; failing to create and implement evacuation plans; failing to prevent, respond to and ameliorate allergens and toxic air; failing to eliminate and remedy additional architectural barriers and hazardous conditions; and denying Plaintiffs' requests for reasonable accommodations without any, or with insufficient, investigation, and/or by rendering such request futile through their pervasive and consistent inaction.

75. As a result of Defendants' actions and inactions, Plaintiffs, and the persons whose interests they represent, have been unlawfully denied the benefits of Hawai'i's public housing program, and in particular, the benefits of decent, safe, and affordable housing at KPT and/or Kuhio Homes, solely by reason of their handicaps and disabilities.

76. Defendants' unlawful actions were and continue to be intentional, willful, malicious, and/or done with deliberate indifference to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, to be free from discrimination based on disability. Defendants know that harm to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, is substantially likely, but nevertheless have failed, and continue to fail, to act upon that

likelihood.

77. As a proximate result of Defendants' unlawful acts, Plaintiffs, and the persons whose interests they represent, have suffered and continue to suffer injuries, including emotional injuries, and are entitled to compensatory damages, including damages for emotional distress, to injunctive and declaratory relief, and attorneys' fees and costs.

### **THIRD CAUSE OF ACTION**

#### **Disability-Based Discrimination in Violation of The Fair Housing Act Amendments, 42 U.S.C. § 3604(f) (Against Defendants Hawai`i and HPHA)**

78. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 77 of this Complaint.

79. The Fair Housing Act prohibits "discriminat[ion] against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of ... that person." 42 U.S.C. § 3604(f)(2)(A). Under the Act, unlawful discrimination is defined to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

80. Plaintiffs, and the persons whose interests they represents, are handicapped within the meaning of 42 U.S.C. § 3602(h).

81. Defendants Hawai`i and HPHA own, manage, and oversee Kuhio Park Terrace and Kuhio Homes, dwellings covered by the Act,

and are obligated to comply with the terms of the Act. 42 U.S.C. § 3603(a)(2).

82. Defendants knew or should reasonably be expected to know of Plaintiffs' handicaps.

83. As detailed herein, the Defendants have violated the Fair Housing Act and its regulations by their failure to ensure disability nondiscrimination or to provide reasonable accommodations for persons with handicaps necessary to afford them an equal opportunity to use and enjoy their dwellings, and by denying Plaintiffs' requests for reasonable accommodations without any, or with insufficient, investigation and/or by rendering such requests futile through their pervasive and consistent inaction.

84. Defendants' unlawful actions were and continue to be intentional, willful, malicious, and/or done with deliberate indifference to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, to be free from discrimination based on disability or handicap. Defendants know that harm to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, is substantially likely, but nevertheless have failed, and continue to fail, to act upon that likelihood.

85. As a proximate result of Defendants' unlawful acts, Plaintiffs, and the persons whose interests they represent, have suffered and continue to suffer injuries, including emotional injuries, and are entitled to compensatory damages, including damages for emotional distress, to injunctive and declaratory relief, and attorneys' fees and costs.

#### **FOURTH CAUSE OF ACTION**

##### **Disability-Based Discrimination in Violation of The Fair Housing Act Amendments, 42 U.S.C. § 3604(f) (Against Defendant Realty Laua LLC)**

86. Plaintiffs incorporate by reference as though fully set forth herein paragraphs 1 through 85 of this Complaint.

87. The Fair Housing Act prohibits “discriminat[i]on against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of ... that person.” 42 U.S.C. § 3604(f)(2)(A). Under the Fair Housing Act, unlawful discrimination is defined to include “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B).

88. Plaintiffs, and the persons whose interests they represents, are handicapped within the meaning of 42 U.S.C. §3602(h).

89. Defendant Realty Laua is the property management company for Kuhio Park Terrace and Kuhio Homes, dwellings covered by the Act, and Defendant is obligated to comply with the terms of the Act. 42 U.S.C. §3603(a)(2).

90. Defendant knew or should reasonably be expected to know of Plaintiffs’ handicaps.

91. As detailed herein, Defendant Realty Laua has violated the Fair Housing Act and its regulations by their failure to ensure disability nondiscrimination or to provide reasonable accommodations for persons with handicaps necessary to afford

them an equal opportunity to use and enjoy their dwellings, and by denying Plaintiffs' requests for reasonable accommodations without any, or with insufficient, investigation and/or by rendering such requests futile through their pervasive and consistent inaction.

92. Defendant's unlawful actions were and continue to be intentional, willful, malicious, and/or done with deliberate indifference to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, to be free from discrimination based on disability or handicap. Defendant is aware of Plaintiffs' rights under federal disability nondiscrimination statutes. Defendant knows that harm to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, is substantially likely, but nevertheless has failed, and continues to fail, to act upon that likelihood.

93. As a proximate result of Defendant's unlawful acts, Plaintiffs, and the persons whose interests they represent, have suffered and continue to suffer injuries, including emotional injuries, and are entitled to compensatory damages, including damages for emotional distress, and to injunctive and declaratory relief, and attorneys' fees and costs.

94. Plaintiffs, as victims of Defendant's discriminatory housing practices, are also entitled to punitive damages against Defendant Realty Laua as provided by 42 U.S.C. § 3613(c)(1) for its intentional and egregious actions which it knows are, and were, or might have been, in violation of federal law.

**FIFTH CAUSE OF ACTION**

Interference in Violation of Title V of  
The Americans with Disabilities Act of 1990  
42 U.S.C. § 12203(b)  
(Against Defendant Realty Laua LLC)

95. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 94 of this Complaint.

96. The ADA prohibits any person from interfering with any individual in the exercise or enjoyment of his or her rights under the Act. 42 U.S.C. § 12203(b). In particular, section 12203(b) provides: “It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.”

97. Plaintiffs, and the persons whose interests they represent, are qualified persons with disabilities within the meaning of the ADA.

98. Under the ADA, Plaintiffs have the right to, *inter alia*, program access and reasonable modifications for persons with disabilities. Plaintiffs have either exercised their rights under the ADA by making oral or written requests for reasonable accommodations, or have been prevented from exercising such rights by Defendants’ unlawful actions.

99. Defendant Realty Laua has interfered, and continues to interfere, with Plaintiffs’ rights under the ADA by failing to provide

and maintain safe and functioning elevators at KPT; failing to prevent, respond to and ameliorate fire hazards; failing to create and implement evacuation plans; failing to prevent, respond to and ameliorate allergens and toxic air; failing to eliminate and remedy additional architectural barriers and hazardous conditions; failing to adequately respond to and/or inform the HPHA of Plaintiffs' requests for reasonable accommodations; and denying Plaintiffs' requests for reasonable accommodations without any, or with insufficient, investigation, and/or by rendering such requests futile through its pervasive and consistent inaction.

100. Defendant Realty Laua's unlawful interference has prevented, and is continuing to prevent, Plaintiffs from enforcing their rights under the ADA, thereby depriving Plaintiffs of their federally protected rights.

101. Defendant Realty Laua's unlawful actions were and continue to be intentional, willful, malicious, and/or done with deliberate indifference to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, to be free from discrimination based on disability. Defendants know that harm to the federally protected rights of Plaintiffs, and other present and future residents similarly situated, is substantially likely, but nevertheless have failed, and continue to fail, to act upon that likelihood.

102. As a proximate result of Defendant Realty Laua's unlawful acts, Plaintiffs', and the persons whose interests they represent, have suffered and continue to suffer injuries, including emotional injuries, and are entitled to compensatory damages,

including damages for emotional distress, to injunctive and declaratory relief, and attorneys' fees and costs.

### **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

103. Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 102, above.

104. An actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. Defendants have failed and continue to fail to comply with the provisions of Title II and Title V of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act Amendments of 1988, for at least the reasons set forth herein. Plaintiffs are entitled to a declaratory judgment as well as such other and further relief as may follow from the entry of such declaratory judgment.

105. Plaintiffs have no adequate remedy at law. Unless enjoined by the Court, Defendants will continue to infringe Plaintiffs' statutorily and constitutionally protected rights and will continue to inflict irreparable injury. This threat of injury to Plaintiffs from continuing violations requires preliminary and permanent injunctive relief.

### **PRAYER FOR RELIEF**

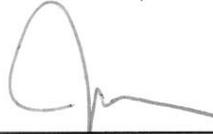
WHEREFORE, Plaintiffs, individually and behalf of all persons similarly situated, respectfully request that this Court:

1. Assume jurisdiction over this action;
2. Issue a declaratory judgment stating that Defendants

Hawai`i and HPHA have violated Title II of the ADA, Section 504 of the Rehabilitation Act, and the Fair Housing Act Amendments, and that Defendant Realty Laua LLC has violated the Fair Housing Act Amendments and Title V of the ADA;

3. Grant all injunctive relief necessary to bring Defendants into compliance with the ADA, Section 504 of the Rehabilitation Act, and the Fair Housing Act Amendments;
4. Grant such other declaratory and injunctive relief as may be appropriate;
5. Order Defendants to pay compensatory damages, including damages for emotional distress, pain and suffering, in an amount to be proven at trial;
6. Award Plaintiffs reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action pursuant to 42 U.S.C. § 12205, 42 U.S.C. § 3613, and other application laws; and
7. Order such other relief as this Court deems just and proper.

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



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PAUL ALSTON  
JASON H. KIM  
Attorneys for Plaintiffs

**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury to all legal claims so triable.

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



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PAUL ALSTON  
JASON H. KIM  
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAZEL MCMILLON; GENE ) CIVIL NO.  
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 ) **SUMMONS**  
residents of Kuhio Park Terrace )  
and Kuhio Homes who have )  
disabilities affected by )  
architectural barriers and )  
hazardous conditions, )  
)  
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, )  
)  
Defendants. )  
\_\_\_\_\_ )

**SUMMONS**

To the above-named Defendant(s):

You are hereby summoned and required to serve upon  
ALSTON HUNT FLOYD & ING, attorneys for Plaintiff, whose address  
is 18th Floor, American Savings Bank Tower, 1001 Bishop Street,

Honolulu, Hawai'i 96813, an answer to the Complaint for Declaratory and Injunctive Relief and Damages 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. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

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



SUE BEITIA

/s/ Drew Tomimoto

(BY) DEPUTY CLERK