

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

Of Counsel:

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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JACK WATERS, individually, and on )	CIVIL NO. <u>05- 1- 08 15 - 05</u> <b>EEH</b>
behalf of all persons similarly situated, )	(Contract)
)	
Plaintiff, )	<b>COMPLAINT; SUMMONS</b>
)	<b>Class Action</b>
v. )	
)	
HOUSING AND COMMUNITY )	
DEVELOPMENT CORPORATION OF )	
HAWAII, a duly organized and )	
recognized agency of the State of )	
)	

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

Clerk, Circuit Court, First Circuit

**SUMMONS  
DENIED**  
LEGAL DOCUMENTS BR

Hawai'i; HHA WILIKINA )  
APARTMENTS, INC., DOES 1-25 )  
 )  
Defendants. )  
\_\_\_\_\_ )

**COMPLAINT**

**I. INTRODUCTION**

1. Defendants Housing and Community Development Corporation of Hawaii ("HCDCH"), HHA Wilikina Apartments, Inc., and DOES 1-25 (hereinafter collectively referred to as "Defendants") own, operate and/or administer federally subsidized housing projects under the "project-based Section 8 program."

2. Plaintiff JACK WATERS and the class he seeks to represent (hereinafter "Plaintiff class") are tenants of project-based Section 8 programs owned, operated and/or administered by one or more of the above-named Defendants.

3. Pursuant to the United States Housing Act, 42 U.S.C. § 1437a(a)(1), rent, including utilities, for tenants residing in project-based Section 8 developments cannot exceed 30 percent of tenant income. Where tenants are directly responsible for the payment of utility service (i.e. where tenants must pay a utility provider directly), the supporting federal regulations require that tenants are provided with a "utility allowance" so that their rent

plus utilities does not exceed 30 percent of their income. *See* 24 C.F.R. § 5.603(d).

4. The utility allowance provided to tenants takes the form of a rent credit that must be equal to an amount that tenants are estimated to pay for a reasonable consumption of utilities. *Id.*

5. Where utility rates increase by 10 percent or more since the most recently approved utility allowance, the utility allowances must be increased to account for the utility rate increase to ensure that tenants are not charged more than 30 percent of their income for rent. *See e.g.* 24 C.F.R. § 880.610.

6. Though utility rates have increased in excess of 10 percent since the utility allowances were last updated, Defendants have failed to revise or request revisions to the utility allowances for the project-based Section 8 developments that Defendants own, operate and/or administer.

7. Defendants actions are in violation of federal law and U.S. Department of Housing and Urban Development (“HUD”) requirements regarding the setting of rents for project-based Section 8 tenants.

8. Defendants violations of federal law and HUD requirements amount to a material breach of the rental agreements for tenants residing in project-based Section 8 developments owned, operated and/or administered by Defendants.

9. The Plaintiff class seeks reimbursement for rent overcharges and inadequate utility reimbursements resulting from Defendants' violations of law and breaches of tenants' rental agreements.

10. Additionally, the Plaintiff class seeks declaratory and injunctive relief directing Defendants to comply with federal law, HUD requirements, and the terms of the Plaintiff class's rental agreements by updating the utility allowances to account for increases in utility rates since the allowances were last updated, and barring any eviction proceedings based on rent delinquencies until tenants are credited with rent overcharges resulting from Defendants' failure to adjust the utility allowances.

## **II. JURISDICTION AND VENUE**

11. This Court has jurisdiction pursuant to Haw. Rev. Stat. § 603-21.5(a)(3), which affords jurisdiction of all civil actions other than where otherwise expressly provided by statute. The amount in controversy in this case exceeds \$20,000.

12. Jurisdiction is also appropriate under Haw. Rev. Stat. § 661-1(1), which affords jurisdiction for all claims against the State founded upon any contract with the State.

13. Venue is appropriate pursuant to Haw. Rev. Stat. § 603-36(5).

### III. PARTIES

14. Plaintiff JACK WATERS is a tenant of project-based Section 8 subsidized housing and a citizen and resident of the State of Hawaii. Plaintiff brings this action on his own behalf and, pursuant to Rule 23 of the Hawaii Rules of Civil Procedure, on behalf of all others who are similarly situated.

15. Plaintiff represents present and past project-based Section 8 tenants in the State of Hawaii for whom HCDCH, HHA Wilikina Apartments Inc., and/or DOES 1-25 pay or should have paid utility allowances and whose rights have been violated by HCDCH, HHA Wilikina Apartments Inc., and/or DOES 1-25 as set forth herein.

16. The class is so numerous that joinder of all members is impracticable.

17. There are questions of law and/or fact common to the class, as set forth below.

18. Plaintiff's claims are typical of the claims of the class as a whole.

19. Plaintiff will fairly and adequately represent the interest of the class. Plaintiff knows of no conflicts of interest among members of the class.

20. Plaintiff is represented by attorneys who are experienced class action litigators and will adequately represent the interest of the entire class.

21. A class action is appropriate in this case for one or more of the following reasons:

a. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

b. Defendants have acted on grounds generally applicable to the class, making appropriate injunctive or declaratory relief with respect to the class as a whole.

c. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

22. Questions of law and fact common to the Plaintiff class include:

a. Whether the Defendants failed to increase or request an increase of the utility allowances where a utility rate change would have resulted in a cumulative increase of 10 percent or more in the most recently approved utility allowance;

b. The extent of the increases in utility rates since Defendants last adjusted the allowances;

c. The amounts of the adjustments that should have been made to correspond with utility rate increases.

23. HCDCH is a duly organized and recognized agency of the State of Hawaii with the power to sue and be sued.

24. HHA Wilikina Apartments Inc. is a non-profit corporation incorporated in the State of Hawaii with the power to sue and be sued.

25. The board of directors of HHA Wilikina Apartments is comprised entirely of members of the board of directors of HCDCH and HCDCH holds itself out as the owner, operator, and/or administrator of Wilikina Apartments.

26. DOES 1-25 are owners, operators, and/or administrators of project-based Section 8 developments (other than HCDCH and HHA Wilikina Apartments Inc.) located within the State of Hawaii who are required by federal law to provide utility allowances to members of the Plaintiff class, and who have failed to adjust, or request adjustments to, the utility allowances though utility rates have increased in excess of 10 percent since the allowances were last revised. Plaintiff does not know the true names of these defendants and therefore sues them by these fictitious names.

#### **IV. FACTUAL ALLEGATIONS**

27. Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

28. Plaintiff JACK WATERS has been a head of household and tenant of a project-based Section 8 development for over seven years.

29. Plaintiff resides in a two-bedroom rental unit in the Wilikina Apartments housing project located at 730 Wilikina Drive, Wahiawa, Hawaii 96786.

30. Defendants HCDCH and HHA Wilikina Apartments Inc. own, operate and/or administer Wilikina Apartments, or hold themselves out as doing such.

31. As a resident of Wilikina Apartments, Plaintiff pays his own electric utilities. Defendants HCDCH and HHA Wilikina Apartments Inc. provide a monthly utility allowance to Plaintiff in the amount of \$56, which is deducted from his rent balance.

32. On information and belief, utility rates have increased by more than 10 percent since Defendants last revised the utility allowances provided to the Plaintiff class.

33. As a result, Plaintiff and the class he represents have been required to pay amounts for utility bills in excess of the utility allowance provided and thereby have been forced to pay an amount for rent in excess of 30% of their income.

34. With knowledge of the falsity of their statements, or in reckless disregard whether the statements were true or false, Defendants have certified that the rents for the members of the Plaintiff class were no more than 30% of their income when in fact they were not. In reliance on Defendants'

statements, Plaintiff and the Plaintiff class failed to take action earlier to enforce their rights.

#### **V. FIRST CLAIM FOR RELIEF: BREACH OF RENTAL AGREEMENT**

35. The Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

36. On information and belief, the lease for project-based Section 8 tenants requires the Landlord to calculate tenant rents in accordance with the HUD requirements.

37. Defendants' actions with regard to the calculation of tenant rents and the revision of utility allowances have not been in accordance with HUD requirements, thereby breaching the rental agreements with the members of the Plaintiff class.

38. As a direct result of Defendants' breach, Plaintiff and the class he represents have been damaged in an amount to be determined at trial. Additionally, HCDCH has taken action to evict Plaintiff and other members of the Plaintiff class from their apartments for alleged rent delinquencies. Plaintiff and the class he represents are entitled to declaratory and injunctive relief to enforce the terms of the rental agreement and Defendants' corresponding obligations pursuant to the U.S. Housing Act and HUD requirements, and to prevent irreparable harm resulting from their evictions or other adverse actions.

**V. SECOND CLAIM FOR RELIEF: VIOLATION OF THE U.S. HOUSING ACT AND ITS SUPPORTING OBLIGATIONS**

39. The Plaintiff realleges and incorporates by reference each and every allegation contained in the above paragraphs.

40. On information and belief, Defendants have charged the Plaintiff class rents in excess of those permitted by the U.S. Housing Act, 42 U.S.C. § 1437a(a)(1) and its supporting regulations.

41. On information and belief, Defendants have failed to comply with the federal regulations governing project-based Section 8 housing that require Defendants to increase, or request increases to, utility allowances where utility rates have increase by 10 percent or more since the utility allowances were last revised.

42. As a direct result of Defendants' violations of the U.S. Housing Act and its supporting regulations, Plaintiff and the class he represents have been damaged in an amount to be determined at trial. Additionally, Plaintiff and the class he represents are entitled to declaratory and injunctive relief to enforce compliance with the U.S. Housing Act and its supporting regulations.

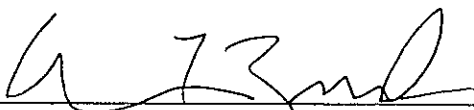
**VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

1. Assume jurisdiction of this case.
2. Certify the Plaintiff class.

3. Declare that Defendants have violated Plaintiff's rights as set forth herein.
4. Enter preliminary and permanent injunctions requiring Defendants to comply with the terms of the rental agreements of the plaintiff class, the U.S. Housing Act and HUD requirements, and barring Defendants from initiating or proceeding with eviction actions against members of the Plaintiff class based on rent delinquencies until rent overcharges resulting from Defendants unlawful actions are credited to the tenants' rent payments.
5. Award damages and pre-judgment interest to each member of the plaintiff class for amounts charged for rent by Defendants in excess of 30% of tenant income resulting from inadequacies in the utility allowances.
6. Award Plaintiff costs and attorneys' fees.
7. Grant Plaintiff and the Plaintiff class such other relief as maybe just and proper.

DATED: Honolulu, Hawaii, May 6, 2005.

  
\_\_\_\_\_  
SHELBY ANNE FLOYD  
THOMAS E. BUSH  
GAVIN K. THORNTON  
ATTORNEYS FOR PLAINTIFFS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

JACK WATERS, individually, and on	)	CIVIL NO. _____
behalf of all persons similarly situated,	)	(Contract)
	)	
Plaintiffs,	)	<b>SUMMONS</b>
v.	)	
	)	
HOUSING AND COMMUNITY	)	
DEVELOPMENT CORPORATION OF	)	
HAWAI'I, a duly organized and recognized	)	
agency of the State of Hawai'i; HHA	)	
WILIKINA APARTMENTS, INC.	)	
	)	
Defendants.	)	
_____	)	

**SUMMONS**

STATE OF HAWAI'I

To the above-named Defendant(s):

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

SHELBY ANNE FLOYD  
THOMAS E. BUSH  
Alston Hunt Floyd & Ing  
65-1230 Mamalahoa Hwy,  
Kamuela, Hawai'i 96743

-or-

GAVIN K. THORNTON  
Lawyers for Equal Justice  
PO Box 37952  
Honolulu, HI 96837

an answer to the complaint which is herewith served upon you, within 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.

Dated: Honolulu, Hawaii \_\_\_\_\_

**SUMMONS  
DENIED**

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