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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI'I

KUKUI GARDENS ASSOCIATION,)	Civil No.
FAITH ACTION FOR COMMUNITY)	
EQUITY)	COMPLAINT; EXHIBITS "A" -
)	"F"; SUMMONS
Plaintiffs,)	
)	
v.)	
)	
ALPHONSO JACKSON, in his)	
capacity as SECRETARY OF THE)	
UNITED STATES DEPARTMENT OF)	
HOUSING AND URBAN)	(Continued on next page)

DEVELOPMENT, KUKUI GARDENS)
CORPORATION, CARMEL PARTNERS,)
INC.)
)
Defendants.)
_____)

COMPLAINT

I. INTRODUCTION

1. Kukui Gardens is an 857 unit low-income housing project that meets a critical need for low-income rental housing in the area. The project is subsidized by a U.S. Department of Housing and Urban Development ("HUD") insured mortgage pursuant to the section 221(d)(3) program. Absent the Court's intervention, in violation of federal law, HUD will soon authorize the owner of Kukui Gardens to prepay its mortgage. Prepayment will effectively terminate contract protections keeping Kukui Gardens affordable for its low income tenants and will lead to the diversion of over \$100 million in funding that would otherwise be spent on affordable housing. Plaintiffs bring this action seeking declaratory and injunctive relief to challenge HUD's prepayment policy and enjoin the application of the policy to Kukui Gardens.

II. PARTIES

2. Plaintiff Kukui Gardens Association ("the Association") is an association of Kukui Gardens residents organized in the

1970's. The members of the Association are all Kukui Gardens residents. The purposes of the Association include: (1) serving to improve the living environment and quality of life for residents of Kukui Gardens; (2) ensuring that Kukui Gardens is a safe, healthy, and well-kept place for its residents to live; (3) seeking to preserve the affordability of Kukui Gardens for its current and future residents and applicants; (4) providing social and recreational activities for Kukui Gardens residents; and (5) educating Kukui Gardens residents regarding their tenant rights and advocating on their behalf.

3. Plaintiff Faith Action for Community Equity ("FACE") is an Internal Revenue Code 501(c)(3) corporation, incorporated in the State of Hawaii on June 10, 1998. FACE's membership is comprised of over 25 institutions located in the State of Hawaii which primarily consist of religious organizations, but also includes a local union and the Association. FACE's mission is to allow its members to advocate for change in systems that perpetuate poverty and injustice to improve the quality of life for local communities in Hawaii. One of FACE's primary purposes is to preserve and increase the availability of affordable rentals in the State of Hawaii and to house the homeless. FACE began advocating on behalf of the Association and Kukui Gardens residents for the preservation of Kukui Gardens in early 2006

and has had to divert a significant portion of its resources towards preventing the sale and prepayment of Kukui Gardens.

4. Defendant Alphonso Jackson is Secretary of the United States Department of Housing and Urban Development ("HUD") and is sued in his official capacity. He is responsible for ensuring HUD's compliance with the Laws of the United States.

5. Defendant Kukui Gardens Corporation ("KGC") is an Internal Revenue Code 501(c)(4) corporation incorporated in the State of Hawaii. KGC is the developer and owner of Kukui Gardens.

6. Defendant Carmel Partners, Inc. ("Carmel Partners") is a for-profit California corporation that, on information and belief, has entered into an agreement with KGC to purchase Kukui Gardens.

III. JURISDICTION

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1442(a), 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3), and 42 U.S.C. § 3616. This action is authorized against the federal Defendants by 5 USC § 702.

8. Declaratory relief is authorized pursuant to 28 U.S.C. §§ 2201 and 2202.

9. To the extent sovereign immunity is applicable to Defendant HUD, it has been waived by virtue of 5 USC § 702 and

12 USC § 1702.

IV. JOINDER

10. Defendants KGC and Carmel Partners are joined as necessary parties pursuant to Rule 19 of the Federal Rules of Civil Procedure:

a. Complete relief cannot be accorded among Plaintiffs and Defendant HUD in the absence of KGC and Carmel Partners, which must be bound by the Court's decision in order to effectuate any injunctive relief awarded in this case regarding the prepayment or sale of Kukui Gardens; and

b. KGC, as owner of Kukui Gardens, the subject matter of this litigation, and Carmel Partners, as buyer of Kukui Gardens, have interests relating to the subject of this action and are so situated that the disposition of the action in their absence would impair or impede their ability to protect their interests in Kukui Gardens.

V. STATUTORY FRAMEWORK

11. Congress enacted the National Housing Act of 1937 "to remedy...the acute shortage of decent, safe, and sanitary dwellings for families of low income." As part of that Act, Congress provided that HUD and the Federal Housing Administration (FHA) would issue insurance to lenders who provided financing to enable the construction of multifamily

rental housing projects. These insurance programs were "designed to assist private industry in providing housing for low and moderate income families and displaced families." 12 USC § 17151(a). Operation of insured projects is intensively and comprehensively regulated by HUD, pursuant to Regulatory Agreements with the owners as well as federal statutes and regulations, in order to ensure achievement of national housing goals and protection of federal and resident interests.

12. Among the mortgage insurance programs authorized by 12 USC § 17151 is the section 221(d)(3) program (codified at 12 USC § 17151(d)(3)).

13. By 1983, Congress had become concerned that multifamily rental projects could be lost as a low income housing resource when owners prepaid their mortgages and escaped restrictions imposed by HUD. In Section 250(a) of the National Housing Act, added by Section 433 of the Housing and Urban-Rural Recovery Act of 1983 and codified at 12 USC 1715z-15, Congress provided that HUD could only permit such prepayments in limited circumstances. Although this provision has been amended several times since 1983, the key language of the current provision prohibiting acceptance of prepayment if the project is meeting a need for rental housing for lower income families, remains unchanged:

Sec. 1715z-15. Limitation on prepayment of mortgages on multifamily rental housing

(a) Acceptance of offer to prepay; qualifications. During any period in which an owner of a multifamily rental housing project is required to obtain the approval of the Secretary for prepayment of the mortgage, the Secretary shall not accept an offer to prepay the mortgage on such project or permit a termination of an insurance contract pursuant to section 1715t of this title unless -

- (1) the Secretary has determined that such project is no longer meeting a need for rental housing for lower income families in the area;
- (2) the Secretary (A) has determined that the tenants have been notified of the owner's request for approval of a prepayment; (B) has provided the tenants with an opportunity to comment on the owner's request; and (C) has taken such comments into consideration; and
- (3) the Secretary has ensured that there is a plan for providing relocation assistance for adequate, comparable housing for any lower income tenant who will be displaced as a result of the prepayment and withdrawal of the project from the program...

14. By its terms, Section 1715z-15 ("Section 250") applies to all multifamily rental housing projects including section 221(d)(3) projects such as Kukui Gardens.

15. In addition to the specific requirements of Section 250, pursuant to 12 USC § 1701t of the U.S. Housing Act, HUD is obligated to administer its programs to best meet the needs of families with incomes so low that they could not otherwise decently house themselves. Further, 42 USC § 3608(3)(5) of the Fair Housing Act requires that HUD must also administer its programs, including the section 221(d)(3) program, in a manner that affirmatively furthers fair housing.

VI. FACTS

16. Kukui Gardens is a multifamily housing project located in Honolulu, Hawaii, which provides 857 affordable units to low income individuals. The project was built in 1970 by the Kukui Gardens Corporation ("KGC"), an Internal Revenue Code 501(c)(4) Corporation. KGC was formed by the trustees of The Clarence T.C. Ching Foundation in the 1960s for the explicit purpose of securing funding and overseeing the development of Kukui Gardens. Were Kukui Gardens ever to be sold, the KGC incorporation documents provide that any revenue from the sale would go into Ching Foundation trust.

17. To finance the project, in 1969 KGC obtained a 42-year \$16,101,100.00 mortgage from the Ford Foundation, which paid for the entire cost of development of the project. Pursuant to section 221(d)(3), HUD insured the mortgage. As a condition of securing the mortgage, HUD required KGC to enter into a "Regulatory Agreement for Non Profit and Public Mortgagors Under § 221(d)(3) of the National Housing Act, as Amended" (hereinafter "Regulatory Agreement", attached hereto as Exhibit "A"). The Regulatory Agreement was executed between HUD and KGC on February 11, 1969 (the same date that the mortgage note was executed) and does not expire until 2011.

18. Pursuant to the Regulatory Agreement KGC agreed, *inter*

alia, that admission to the project shall be limited solely to families of low or moderate income. The Regulatory Agreement further provided that KGC could not convey, transfer, or encumber any of the mortgaged property without the prior written approval of HUD.

19. To maintain affordability for Kukui Gardens' low and moderate income tenants, Section 4 of the Regulatory Agreement provided that a rent schedule would be approved by HUD, and that subsequent rent increases would be regulated by HUD and only permitted to the extent needed to cover operating cost increases. Section 5 of the Regulatory Agreement established a preference for renting to lower income families. The Regulatory Agreement for Kukui Gardens remains in effect.

20. The terms of the mortgage note (attached hereto as Exhibit "B"), executed at the same time as the Regulatory Agreement, provided that prepayment is prohibited before maturity in 2011 without the prior written approval of HUD.

21. The Regulatory Agreement for Kukui Gardens including the rent schedule and budget-based rent increase limitations on rent, along with other federal controls over the operation of the project, will terminate upon prepayment of the mortgage. Pursuant to Section 250 of the National Housing Act, such a prepayment can only be approved where the project no longer

fulfills a need for rental housing for low-income families.

22. Kukui Gardens continues to fulfill a critical need for low-income rental housing in the Honolulu area. The rents for the low-income families currently residing at Kukui Gardens are capped at \$444, \$555, \$720, and \$818 for one, two, three, and four-bedroom units respectively. Also, the 2006-2010 Honolulu Consolidated Plan created by the City and County of Honolulu indicates that there are 51,038 renter households in Honolulu with incomes at 30-80% of median (lower income families likely to afford Kukui Garden rents) with unmet housing needs. HUD's own data, which local governments are required to use for housing planning purposes, indicates 50,653 renter households currently paying more than they can afford for rent or living in overcrowded units or units without basic facilities. A 2003 "Hawaii Housing Policy Study" created for a number of state and local agencies involved in housing projected increasing demand for rental housing with "very low or no" production of new rental units, causing "low-income households to be squeezed out of the market altogether." Thus Section 250 does not permit HUD approval of the prepayment of the Kukui Gardens mortgage.

23. On August 8, 2006, HUD issued Notice H-2006-11 (hereinafter "the Notice") regarding "Prepayments Subject to

Section 250(a) of the National Housing Act.”¹ The policy promulgated in the Notice allows HUD to approve prepayments for projects that continue to meet a need for rental housing for lower income families in spite of the Section 250(a) restriction that prohibits such prepayments. Under the policy, such prepayments will be permitted “if the owner of a subsidized project can show that the regulatory agreement executed by the owner as part of the mortgage insurance transaction is no longer needed by assuring that the building will continue to provide low-income housing in the absence of any regulatory agreement.” HUD Notice-2006-11 at 4. The Notice further states that “HUD will permit a prepayment in order to recapitalize the project if the owner agrees to execute a Use Agreement that ensures that the project will continue to be maintained as rental housing for lower income families in the area until at least the date the original mortgage would have terminated had it not been prepaid.” *Id.* The policy promulgated in the notice was never subject to public notice and comment.

24. The standard form Use Agreement used by HUD in the context of prepayments authorized under Notice H-2006-11 permits substantially higher rent increases than the Regulatory

¹ Notice H-2006-11 extended a policy that was originally promulgated on August 31, 2004 when HUD issued Notice H-2004-17. The content of the two notices is nearly identical.

Agreement for Kukui Gardens allows.

25. On or about January 11, 2006, KGC publicly announced that it intended to sell Kukui Gardens "to ensure the continued viability of the Clarence T.C. Ching Foundation." On information and belief KGC did not intend to use the proceeds of the sale for affordable housing purposes.

26. On or about April 18, 2006, the Star Bulletin reported that Carmel Partners Inc., a private real estate firm based in San Francisco was going to pay about \$130 million to purchase Kukui Gardens. On May 3, 2006, Carmel Partners issued a statement confirming that it was the buyer.

27. Pursuant to the terms of the Regulatory Agreement, Kukui Gardens cannot be sold without prior HUD approval. Further, HUD can only approve the sale of a section 221(d)(3) project if certain conditions are met under HUD's rules regarding Transfers of Physical Assets ("TPA"). HUD's TPA requirements are set forth in Chapter 13 of HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing (hereinafter "HUD Handbook 4350.1").

28. Included among the TPA rules is a requirement that, where a non-profit owner is seeking to transfer the property based on a lack of capability or willingness to continue to own and operate the property successfully, the property must first

be offered to a non-profit. HUD Handbook 4350.1, Section 13-18A. On information and belief KGC originally sought to transfer Kukui Gardens based on a lack of capability or willingness to continue to own and operate the project successfully. On information and belief, KGC did not make legitimate offers to sell Kukui Gardens to non-profits prior to soliciting bids from for profit entities.

29. Also included among the TPA rules is a requirement that any proceeds from the sale be put into a third party trust, the funds of which can only be used to promote the expansion of the supply of low and moderate income housing. HUD Handbook 4350.1, Section 13-19C.

30. As reported by the Star Bulletin, these two TPA requirements were raised in a June 7, 2006 meeting hosted by U.S. Rep. Neil Abercrombie and involving HUD and state officials, Kukui Gardens tenants and tenant advocates, and representatives of KGC and Carmel Partners. Were the affordable housing trust requirement enforced, the Ching Foundation would not be able to use the funds from the sale for the general purpose of funding the Clarence T.C. Ching Foundation as it initially indicated it wished to do, but instead would be limited to use the funds solely for expanding the supply of affordable housing.

31. On or about July 24, 2006, KGC issued a notice to Kukui Gardens tenants informing them of KGC's intent to prepay the mortgage on or after December 22, 2006 (attached hereto as Exhibit "C"). After prepayment of the mortgage is approved, HUD approval for the sale of Kukui Gardens will no longer be required and the affordable housing trust requirement and the requirement that the property be offered to a non-profit seller will no longer be applicable.

32. Section 250 requires that tenants be provided with a prepayment notice, that tenants be given an opportunity to comment, and that the tenants' comments be considered prior to approval of the prepayment. 12 USC § 1715z-15(a)(2). HUD's prepayment policy set forth in Notice H-2006-11 merely requires that tenants be given notice of the owner's intention to prepay and does not require tenants to be provided with critical information such as the initial rents proposed under the Use Agreement that will be adopted once the prepayment takes place. Failure to require the inclusion of such information deprives tenants of any meaningful opportunity to comment regarding the prepayment.

33. The KGC notice to Kukui Gardens tenants included HUD's standard form Use Agreement (attached hereto as Exhibit "D"), which contained provisions for substantially higher rents than

would be permitted by the Regulatory Agreement and did not specify the initial rents proposed under the Use Agreement. Without information regarding the initial rents, Kukui Gardens tenants were unable to provide meaningful comment regarding a critical aspect of a proposed prepayment.

34. On information and belief, KGC's attempt to prepay the mortgage was made in order to circumvent HUD's TPA requirements so that KGC can proceed with the sale of Kukui Gardens to Carmel Partners after prepayment is approved, at which point HUD's TPA requirements would not longer be applicable. KGC would thus avoid the requirements to first seek a non-profit buyer and that proceeds of the sale be put in trust to advance affordable housing.

35. Pursuant to HUD's policy regarding prepayment as set forth in Notice H-2006-11 issued on August 8, 2006, HUD will approve the prepayment of the mortgage on Kukui Gardens in spite of the fact that Kukui Gardens continues to meet a need for rental housing for lower income families in the area. The policy described in the Notice directly contradicts the clear and unambiguous commands of Section 250, and any HUD approval of the prepayment application for Kukui Gardens pursuant to the policy and Notice will likewise violate the requirements of the statute.

36. HUD's adoption of the policies underlying Notice H-2006-11 also violates its duty to administer its programs to best meet the needs of low-income families in need of decent housing because it has a number of consequences contrary to that goal including: (1) circumvention of TPA requirements designed to preserve and expand the availability of affordable housing; (2) rent increase that would not otherwise be permitted; (3) loss of tenant protections provided for in the federal regulations and requirements regarding monitoring of a project's physical condition, which are not applicable under HUD's standard prepayment Use Agreement; and (4) loss of affordable housing trust monies that would otherwise be available to expand the supply of low and moderate income housing.

37. Additionally, HUD's adoption of Notice H-2006-11, violates HUD's duties under 42 USC §§ 3604 and 3608(3)(5) of the Fair Housing Act, which requires that HUD must administer its programs in a manner that affirmatively furthers fair housing because the adverse affects listed above will fall disproportionately on non-white households.

38. HUD's approval of the prepayment for Kukui Gardens will cause Plaintiffs FACE and the Association and its members to suffer significant irreparable harm for which there is no adequate remedy at law, including the following consequences of

prepayment:

a. KGC would circumvent HUD's TPA policy, which continues to apply as long as Kukui Gardens is a HUD-insured project. Under this policy, the seller must first attempt to find a non-profit buyer and the proceeds of a sale by a non-profit owner must be placed in a trust to provide for additional lower income housing. Application of these policies would provide an opportunity for long term preservation of Kukui Gardens through purchase by a non-profit or, at least, to fund replacement of units which will otherwise be lost. The TPA restrictions are a significant aspect of the project's operation as an insured project, for which the proposed Use Agreement is not a substitute;

b. Currently, rent increases are permitted only to cover actual increases in operating expenses. The Use Agreement permits a higher rent schedule and much higher rent increases than the Regulatory Agreement currently in place and actually mandates annual rent increases based on an "Operating Cost Adjustment Factor" derived statistically by HUD, without reference to actual costs at the project;

c. Kukui Gardens residents would lose current tenant protections provided for throughout HUD's regulations governing insured projects that are not provided for in the proposed Use

Agreement ;

d. Currently, the project is subject to annual physical inspection under HUD's Real Estate Assessment Center ("REAC") program. The Use Agreement does not provide for such monitoring;

e. Kukui Gardens residents would be deprived of a meaningful opportunity to comment on the prepayment as required by Section 250(a) since the notice omits an absolutely essential piece of information: the "Initial Rents" under the proposed Use Agreement. Without this information, there is no possibility of informed or critical comment on one of the most significant potential effects of the proposed prepayment;

f. HUD would effectively guarantee the loss of over \$100 million which would otherwise be available to replace the Kukui units when the Regulatory Agreement expires in five years. HUD would thus deliberately contribute to a substantial worsening of the housing crisis for lower income families, in violation of its obligations under Section 12 U.S.C. § 1701t of the National Housing Act.

g. Kukui Gardens' 857 affordable housing units will be lost within six years with no replacement funding available. This will have a disproportionate adverse effect on non-white renters in Honolulu where non-white renters are low income

households with housing problems at nearly 1.5 times the rate of white renter households.

39. Approval of the prepayment and the resulting increases in Kukui Gardens' rents and the loss of sale proceeds that will be diverted from the production of affordable housing will interfere with FACE's mission and efforts to promote more affordable housing by reducing the available supply from what it otherwise would be. The mission of the Association to preserve the affordability of Kukui Gardens will be similarly frustrated.

40. On September 15, 2006, counsel for Plaintiffs sent a letter demanding that by September 22, 2006, HUD indicate its intent to abandon the provisions of Notice H-2006-11 that do not comply with federal law and, further, indicate its intent to deny KGC's request to prepay the mortgage on Kukui Gardens. See letter attached hereto as Exhibit "E". Counsel for Plaintiffs have not received a response from HUD to the letter.

41. In a letter dated September 26, 2006 from Beverly Miller, the Director of the HUD Office of Asset Management, HUD indicated that it would not abandon the prepayment policy set forth in Notice H-2006-11 and would apply its policy to the prepayment of Kukui Gardens. See letter attached hereto as Exhibit "F".

42. Should the Court fail to enjoin the prepayment prior to

the prepayment and the following sale of Kukui Gardens occurring, the ability of the Court to grant effective relief will be greatly complicated as a number of innocent third parties would become involved in the transactions.

VII. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF: VIOLATION OF THE NATIONAL HOUSING ACT AND THE ADMINISTRATIVE PROCEDURES ACT IN PROMULGATING NOTICE 2006-11.

43. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

44. Defendant Jackson's and HUD's failure to comply with the requirements of Section 250(a) of the National Housing Act in adopting a mortgage prepayment policy allowing prepayments for projects that continue to meet a need for rental housing for lower income families and in issuing HUD Notice-2006-11 is arbitrary and capricious, an abuse of discretion and contrary to law.

45. Defendant Jackson's and HUD's failure to act consistently with the national housing goals set forth in 42 U.S.C. § 1441, 12 U.S.C. § 1701(t) and 42 U.S.C. § 1441(a) in adopting the mortgage prepayment policy set forth in HUD Notice-2006-11, which contributes to the worsening of the housing crisis for lower income families is arbitrary and capricious, an abuse of discretion and contrary to law.

46. Plaintiffs will be severely and irreparably harmed with no adequate remedy at law by HUD's failure to comply with Section 250(a) and failure to take into consideration the national housing goals in adopting the policy set forth in HUD Notice-2006-11. The policy unlawfully permits the prepayment of Kukui Gardens. If the Court does not enjoin the prepayment before it occurs, the prepayment and the adverse effects that it will have on Plaintiffs cannot be undone.

47. As a result of these violations, Plaintiffs are entitled to declaratory and injunctive relief under the Administrative Procedures Act, 5 USC § 706.

SECOND CLAIM FOR RELIEF: THREATENED VIOLATION OF THE NATIONAL HOUSING ACT IN REVIEW OF KUKUI GARDENS PREPAYMENT REQUEST.

48. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

49. HUD's mortgage prepayment policy set out in Notice 2006-11 requires that HUD approve the pending prepayment request for Kukui Gardens without complying with the requirements of Section 250(a) of the National Housing Act.

50. Plaintiffs are threatened with severe and irreparable injury with no adequate remedy at law by HUD's processing the Kukui Gardens prepayment request pursuant to Notice 2006-11, entitling Plaintiffs to declaratory pursuant to 28 U.S.C.

§§ 2201 and 2202 and injunctive relief.

THIRD CLAIM FOR RELIEF: VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT FOR ADOPTION OF A NOTICE POLICY CONTRARY TO THE NATIONAL HOUSING ACT

51. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

52. Defendant Jackson's and HUD's failure to comply with the requirements of Section 250(a)(2) of the National Housing Act by adopting a mortgage prepayment policy set forth in HUD Notice 2006-11 which does not require adequate notice to affected residents is arbitrary and capricious, an abuse of discretion and contrary to law.

53. Plaintiffs will be severely and irreparably harmed with no adequate remedy at law by HUD's failure to comply with Section 250(a) in adopting the policy set forth in HUD Notice-2006-11.

54. As a result of these violations, Plaintiffs are entitled to declaratory and injunctive relief under the Administrative Procedures Act, 5 USC § 706

FOURTH CLAIM FOR RELIEF: VIOLATION OF ADMINISTRATIVE PROCEDURES ACT RULEMAKING REQUIREMENTS

55. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

56. The Administrative Procedures Act at 5 USC § 553 requires that HUD provide notice to the public and an

opportunity to provide meaningful comment prior to adopting a rule.

57. The mortgage prepayment policy promulgated in HUD Notice-2006-11 constitutes a rule subject to the rule making requirements of 5 USC § 553 and 24 CFR part 10.

58. Defendant Jackson's and HUD's failure to submit the mortgage prepayment policy promulgated in HUD Notice-2006-11 for public notice and comment prior to adopting the policy violates the provisions of 5 USC § 553.

59. Plaintiffs are entitled to declaratory and injunctive relief under the Administrative Procedures Act, 5 USC § 706.

FIFTH CLAIM FOR RELIEF: VIOLATION OF FAIR HOUSING LAWS BY FAILING TO AFFIRMATIVELY FURTHER FAIR HOUSING IN PROMULGATING NOTICE 2006-11

60. Plaintiffs reallege and incorporate by reference each and every allegation contained in the above paragraphs.

61. Pursuant to 42 U.S.C. Section 3608, HUD is obligated to affirmatively further fair housing in the administration of its programs.

62. Defendant Jackson and HUD adopted the mortgage prepayment policy set forth in HUD Notice-2006-11 without regard to the requirements of Section 3608.

63. Plaintiffs are entitled to declaratory and injunctive relief under the Administrative Procedures Act, 5 USC § 706.

SIXTH CLAIM FOR RELIEF: THREATENED VIOLATION OF FAIR HOUSING LAWS IN REVIEW OF KUKUI GARDENS PREPAYMENT REQUEST

64. Prepayment of the Kukui Gardens mortgage threatens the loss of 857 affordable units at Kukui Gardens and \$130 million in resources for affordable housing, and will have a disproportionate adverse effect on non-white renter households in the area, a larger percentage of which are lower income than white renter households. HUD's approval of this prepayment pursuant to Notice 2006-11 will thus violate 42 U.S.C. § 3604.

65. Plaintiffs are entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 3613.

VIII. PRAYER FOR RELIEF

66. WHEREFORE, Plaintiffs seek the following relief:

1. A declaratory judgment issued pursuant to 28 USC § 2201:

a. That by adopting a mortgage prepayment policy allowing prepayments for projects that continue to meet a need for rental housing for lower income families and in issuing HUD Notice-2006-11, which promulgated the policy, Defendants Jackson and HUD acted arbitrarily and capriciously and contrary to law;

b. That by following the policies set out in Notice 2006-11 in reviewing the prepayment of the mortgage at Kukui Gardens, Defendants Jackson and HUD will violate Section 250(a)

of the National Housing Act;

c. That by adopting a mortgage prepayment policy set forth in HUD Notice 2006-11 which does not require adequate notice to affected residents Defendants Jackson and HUD acted arbitrarily and capriciously and contrary to law;

d. That by failing to provide notice and opportunity to provide meaningful comment prior to adopting the rule regarding mortgage prepayments promulgated by HUD Notice-2006-11, Defendants Jackson and HUD acted contrary to law;

e. That by adopting the mortgage prepayment policy set forth in HUD Notice-2006-11, Defendants Jackson and HUD violated HUD's duty to administer its programs in a manner so as to affirmatively further fair housing pursuant to the Fair Housing Act, 42 USC § 3608(e)(5) and acted arbitrarily and capriciously and contrary to law;.

f. That in permitting the prepayment of the mortgage at Kukui Gardens, Defendants Jackson and HUD will violate 42 U.S.C. § 3604.

2. For a preliminary and permanent injunction directing HUD to cease application of its mortgage prepayment policy, retract HUD Notice-2006-11, and refuse the prepayment request for Kukui Gardens.

3. For an award of costs and disbursements and

attorneys' fees pursuant to 28 USC § 2412 and 42 U.S.C. § 3613.²

4. For such other relief as the court may deem just and equitable, including any relief available pursuant to 28 USC §§ 2201 and 2202.

DATED: Honolulu, Hawaii, October 2, 2006

JOHN CANN*
JAMES GROW*
GAVIN K. THORNTON

ATTORNEYS FOR PLAINTIFFS
KUKUI GARDENS ASSOCIATION
FAITH ACTION FOR COMMUNITY EQUITY

*Subject to admission pro hac vice

² The request for attorneys' fees is made only with respect to the Housing Preservation Project and the National Housing Law Project. The Legal Aid Society of Hawaii is an LSC-funded legal services program and cannot accept attorneys' fees awards based on common law or statute. Legal Aid can accept awards for costs incurred.

UNITED STATES DISTRICT COURT

District of Hawaii

KUKUI GARDENS ASSOCIATION,
FAITH ACTION FOR COMMUNITY
EQUITY

SUMMONS IN A CIVIL ACTION

Plaintiffs,

v.

ALPHONSO JACKSON, in his capacity as
SECRETARY OF THE UNITED STATES
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, KUKUI
GARDENS CORPORATION, CARMEL
PARTNERS, INC.

CASE NUMBER:

TO: The Above-Named Defendant(s)

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFFS' ATTORNEYS

GAVIN K. THORNTON
LEGAL AID SOCIETY OF HAWAII
924 Bethel Street
Honolulu, Hawaii 96813

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on 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. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK