

Of Counsel:

BAYS LUNG ROSE & VOSS

BRUCE D. VOSS 6532-0

Attorney at Law

A Law Corporation

MATTHEW C. SHANNON 9043-0

Attorney at Law

A Law Corporation

JAI W. KEEP-BARNES 10787-0

Topa Financial Center

700 Bishop Street, Suite 900

Honolulu, Hawaii 96813

Telephone: (808) 523-9000

Facsimile: (808) 533-4184

Email: [bvoss@legalthawaii.com](mailto:bvoss@legalthawaii.com)  
[mshannon@legalthawaii.com](mailto:mshannon@legalthawaii.com)  
[jkeep-barnes@legalthawaii.com](mailto:jkeep-barnes@legalthawaii.com)

Attorneys for Defendants

ISLAND PALM COMMUNITIES, LLC

AND HICKAM COMMUNITIES, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MICHAEL CASEY, PAYTON  
LAMB, and JAMIE WILLIAMS,  
on behalf of themselves and all  
similarly situated,

Plaintiffs,

vs.

) CIVIL NO. \_\_\_\_\_  
)  
) DEFENDANTS ISLAND PALM  
) COMMUNITIES, LLC AND  
) HICKAM COMMUNITIES, LLC'S  
) NOTICE OF REMOVAL;  
)  
) (*caption continued on next page*)  
)  
)

OHANA MILITARY	)	DECLARATION OF PHILLIP
COMMUNITIES, LLC; HUNT MH	)	CARPENTER; EXHIBITS A-B;
PROPERTY MANAGEMENT,	)	CERTIFICATE OF SERVICE
LLC; ISLAND PALM	)	
COMMUNITIES, LLC; HICKAM	)	
COMMUNITIES, LLC; and DOE	)	
Defendants 1-10,	)	
	)	
Defendants.	)	
_____	)	

DEFENDANTS ISLAND PALM COMMUNITIES, LLC  
AND HICKAM COMMUNITIES, LLC’S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1442, 1446, and 1453

Defendants Island Palm Communities, LLC (“IPC”) and Hickam Communities, LLC (“Hickam”) (IPC and Hickam shall be referred to collectively herein as, the “Defendants”), by and through their attorneys, Bays Lung Rose & Voss, hereby provide notice of the removal of the above-captioned state court action, 1CCV-21-0001618, from the Circuit Court of the First Circuit, State of Hawaii to the United States District Court for the District of Hawaii. As a class action, removal is warranted pursuant to 28 U.S.C. § 1453(b) and this Court’s original jurisdiction is established pursuant to 28 U.S.C. §§ 1332 and 1442.

I. PROCEDURAL HISTORY

On December 31, 2021, Plaintiffs Michael Casey, Payton Lamb, and Jamie Williams, on behalf of themselves and all similarly situated (collectively,

“Plaintiffs”), initiated an action in State Court by filing the above-captioned Class Action Complaint (“Complaint”) in the Circuit Court of the First Circuit, State of Hawaii, Civil No. 1CCV-21-0001618 (the “Class Action”). The Complaint alleges the following counts: (1) Breach of Contract; (2) Breach of Implied Warranty of Habitability; (3) Violation of Hawaii Revised Statute Chapter 521 – Landlord Tenant Code; (4) Unfair & Deceptive Trade Practices/Unfair Methods of Competition; (5) Nuisance; and (6) Wrongful Eviction.

With the Complaint, Plaintiffs also included a Summons and a Demand for Jury Trial. See Exhibit A. Plaintiffs served the Defendants with their Complaint on January 3, 2022. See Exhibit B. Therefore, this Notice of Removal, filed on January 24, 2022, is timely pursuant to 28 U.S.C. §§ 1446(b) and 1453(b).

Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Defendants are attached hereto as Exhibits A and B.

## II. NOTICE TO ADVERSE PARTIES AND STATE COURT

Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice shall be promptly served on Plaintiffs’ counsel of record and will be filed with the Circuit Court of the First Circuit, State of Hawaii.

### III. JURISDICTION AND VENUE

As set forth more fully below, this case is properly removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1453(b) because the Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(d) and 1442.

Venue lies in the United States District Court for the District of Hawaii pursuant to 28 U.S.C. §§ 1441(a) and 1446(a).

### IV. GROUND FOR REMOVAL

As declared by the Ninth Circuit Court of Appeals:

To invoke a federal court’s subject-matter jurisdiction, a plaintiff need to provide only “a short and plain statement of the grounds for the court’s jurisdiction.” Fed. R. Civ. P. 8(a)(1). The plaintiff must allege facts, not mere conclusions, in compliance with the pleading standards established by Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1995, 167 L. Ed. 2d 929 (2007), and Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). See Harris v. Rand, 682 F.3d 846, 850-51 (9th Cir. 2012). Assuming compliance with those standards, the plaintiff’s factual allegations will ordinarily be accepted as true unless challenged by the defendant. See 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1363, at 107 (3d ed. 2004).

Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. April 25, 2014).

#### A. Removal Is Warranted Pursuant To 28 U.S.C. § 1453(b)

This is a civil class action which Defendants may remove to this Court pursuant to Class Action Fairness Act (“CAFA”). Pursuant to 28 U.S.C. § 1453 –  
Removal of Class Actions:

(b) In General. A class action may be removed to a district court of the United States in accordance with section 1446 (Except that the 1-year limitation under section 1446(c)(1) shall not apply), without regard to whether any defendant is a citizen for the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

In considering 28 U.S.C. § 1453(b), the United States Supreme Court affirmed that the “CAFA also includes a removal provision specific to class actions.” Home Depot U.S.A., Inc. v. Jackson, 139 S. Ct. 1743, 1746-47 (2019).

Accordingly, removal of this class action is warranted pursuant to 28 U.S.C. § 1453(b).

B. This Court Has Original Jurisdiction Pursuant to 28 U.S.C. § 1332

This Court has original jurisdiction over this Class Action pursuant to 28 U.S.C. §§ 1332(d)(2), 1332(d)(2)(A), and 1332(d)(5). More specifically, this Court has original jurisdiction over this Class Action because: (1) the amount in controversy more than likely exceeds the sum or value of \$5 million, exclusive of interest and costs; (2) a member of the class of plaintiffs is a citizen of a state different from at least one of the Defendants; (3) the number of all proposed plaintiff class members in the aggregate is more than 100; and (4) the primary defendants are not states, state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief. As the foregoing pre-requisites are met, any party that seeks remand “bears the burden to prove an

exception to CAFA’s jurisdiction.” See Serrano v. 180 Connect, Inc. 478 F.3d 1018, 1021-22 (9th Cir. Feb. 22, 2007).

1. The amount in controversy more than likely exceeds the sum or value of \$5 million
- 

First, it is more likely than not that amount in controversy in this Class Action exceeds the sum or value of \$5 million. To determine whether the amount in controversy threshold has been met, the claims of the individual class members are aggregated, exclusive of interest and costs but inclusive of punitive damages and attorneys’ fees under a fee-shifting statute or contract. See e.g. Fritsch v. Swift Transp. Co. of Ariz., LLC 899 F.3d 785, 793 (9th Cir. Aug. 8, 2018); see also 28 U.S.C. § 1332(d)(6). Where the complaint fails to plead a specific amount of damages, the defendant(s) seeking removal “must demonstrate by a preponderance of the evidence that the amount in controversy is satisfied.” See Decosta v. Headway Workforce Sols., 2020 U.S. Dist. LEXIS 64905, \* 6 (D. Haw. April 10, 2020). “This ‘burden is not daunting,’ as courts recognize that under this standard, a removing defendant is not obligated to ‘research, state, and prove the plaintiff’s claims for damages.’” See Apuakehau v. Mut. Of Omaha Ins. Co., 2021 U.S. Dist. LEXIS 95941, \* 4 (D. Haw. July 11, 2012) (quoting Miyasato v. Hyatt Corp., 2012 U.S. Dist. LEXIS 33345, \* 9 (D. Haw. Feb. 16, 2012)). Further, Defendants are not required to submit evidence in order to establish that the amount in controversy

requirement has been met. See Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 84 (2014).

Here, it is more likely than not that the amount placed in controversy by the Complaint exceeds the jurisdictional minimum. As alleged in their Complaint, Plaintiffs seek general, special, consequential, treble, and punitive damages for, among other claims, damage to property, overpayment for rent and services, and loss of use and enjoyment in their homes and community, See Exhibit A, ¶¶ 34, 43, 52, 58, 59, 64, 68 and pp. 14-15. In addition, Plaintiffs are requesting their reasonable attorneys' fees, presumably under Hawaii Revised Statutes § 607-14 and Hawaii Revised Statutes § 480-2. See id. at p. 14. As alleged by Plaintiffs, more than 2000 "tenants" are seeking the foregoing damages. See id. ¶ 24.

A proposed class consisting of (at a minimum) 2,000 "tenants" means that each individual class member would only need a claim for \$2,500 in order to meet the \$5 million amount in controversy threshold. Accordingly, the broad scope of damages as claimed in the Complaint, which includes treble and punitive damages, as well as Plaintiffs' claim for attorneys' fees, multiplied by the number of each potential member of the proposed class, establishes that it is more likely than not that the \$5 million threshold set forth in 28 U.S.C. § 1332(d)(2) has been met.

2. Minimal diversity is satisfied

In order to meet the minimal diversity requirements of 28 U.S.C. § 1332(d)(2), the party seeking removal must establish that any member of a class of plaintiffs is a citizen of a state different from any defendant. “For purposes of [28 U.S.C. § 1332] and section 1441 of this title – (1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business . . .” See 28 U.S.C. § 1332(c)(1). In this case, minimal diversity is readily established.

As alleged in the Complaint, the proposed class consists of “tenants who have leased residential housing within the City and County of Honolulu from Defendants . . .” See Exhibit A, ¶ 5. Although the Complaint fails to assert the citizenship of the proposed class members, minimal diversity is established by the fact that Defendants are **not** citizens of the State of Hawaii. In other words, if one were to assume that at least **one** of the “tenants” was a citizen of the State of Hawaii, minimal diversity is satisfied as both of the Defendants are: (1) incorporated in the State of Delaware; and (2) have their principal place of business in Nashville, Tennessee. See generally Declaration of Philip Carpenter.

3. The proposed class consists of more than 100 members

As alleged in the Complaint, “The class is so numerous that joinder of all members is impracticable, as required by HRCP Rule 23(a)(1). Upon



information and belief, more than 2000 tenants have been forcibly evicted by Defendants.” See Exhibit A, ¶ 24 (emphasis added). Based upon Plaintiffs’ express allegations, the number of members of all proposed plaintiff classes in the aggregate is greater than 100. Accordingly, 28 U.S.C. § 1332(d)(5)(B) is satisfied.

4. None of primary defendants are states, state officials, or other governmental entities

Finally, none of the named defendants in this action are states, state officials, or other governmental entities whom the district court may be foreclosed from ordering relief. Accordingly, 28 U.S.C. § 1332(d)(5)(A) is satisfied.

C. This Court Has Original Jurisdiction Pursuant To 28 U.S.C. § 1442(a)(1)

In addition to this Court having original jurisdiction pursuant to 28 U.S.C. § 1332(d), this Court also has original jurisdiction pursuant to 28 U.S.C. § 1442 (the “Federal Officer Removal Statute”). More specifically, the Federal Officer Removal Statute allows for removal of an action against “any officer (or any person acting under that officer) of the Unites States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office . . .” See 28 U.S.C. § 1442(a)(1). As affirmed by the Ninth Circuit Court of Appeals:

To invoke § 1442(a)(1) removal, a defendant in a state court action “must demonstrate that (a) it is a ‘person’ within the meaning of the statute; (b) there is a causal nexus between its actions, taken pursuant

to a federal officer's directions, and plaintiff's claims; and (c) it can assert a 'colorable federal defense.'”

See Fidelitad, Inc. v. Insitu, Inc., 904 F.3d 1095, 1109 (9th Cir. Sept. 25, 2018) (quoting Durham v. Lockheed Martin Corp., 445 F.3d 1247, 1251 (9th Cir. April 26, 2006)). In this case, each of the foregoing elements are met, and therefore, this Court has original jurisdiction over the Class Action pursuant to 28 U.S.C. § 1442(a)(1).

1. Defendants are both a “person” within the meaning of the statute

The Complaint alleges that both Defendant IPC and Defendant Hickam are corporations. See Exhibit A, at p. 3, ¶¶ 7(c) and 7(d). Both the Ninth Circuit Court of Appeals, as well as courts within the Ninth Circuit, have affirmed that corporations qualify as “persons” under 28 U.S.C. § 1442. See e.g. Leite v. Crane Co., 749 F.3d 1117, 1122, n. 4 (9th Cir. April 25, 2014); see also Arness v. Boeing North Am., 997 F. Supp. 1268, 1272 (C. D. Cal. Jan. 26, 1998) (acknowledging that “recent decisions from courts within the Ninth Circuit (Fung, Overly, and Blackman) have found “person” to include defendant corporations[,]” and that “[b]ased on the Court’s reading of the authority supporting corporations as ‘persons’ and the reasoning behind them,” finding that the defendant corporation was a “person” under 28 U.S.C. § 1442(a)(1)). Accordingly, the first element of the Federal Officer Removal statute is satisfied.

2. There is a casual nexus between the Defendants’ actions, taken pursuant to a federal officer’s directions, and Plaintiffs’ claims

In this case, the casual nexus requirement under the Federal Officer Removal statute is met because the government exerted some subjection, guidance, or control over Defendants’ actions and because Defendants engage in “an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior.” See *Watson v. Philip Morris Cos.*, 551 U.S. 142, 151-52 (2007). The United States Supreme Court has emphasized that, “The words ‘acting under’ [in the Federal Officer Removal statute] are broad, and this Court has made clear that the statute must be ‘liberally construed.’” See *id.* at p. 147. To meet this requirement, a defendant’s conduct need only “relat[e] to any act under color” of a federal office. See 28 U.S.C. § 1442(a)(1). The Ninth Circuit Court of Appeals has affirmed that, “[T]he hurdle erected by [the causal-connection] requirement is quite low[,]” and has further described this prong as having a “low bar.” See *Goncalves v. Rady Children’s Hosp. San Diego*, 865 F.3d 1237, 1245 (9th Cir. Aug. 2, 2017) (alterations in original and internal quote omitted)<sup>1</sup>.

---

<sup>1</sup> As further acknowledged by the Ninth Circuit Court of Appeals:

But in 2011, Congress passed the Removal Clarification Act to amend § 1442 because Congress felt that the courts were construing the statute too narrowly. Pub. L. No. 112-51, 125 Stat. 545; see H. R. Rep. No. 112-17(I) (2011); *In re Commonwealth’s Motion*, 790 F.3d at 467 (noting that the amendments “intended to broaden the universe of acts that enable Federal

In this case, Plaintiffs' Complaint explicitly alleges the following:

- “Defendant Landlords[, which include the Defendants,] manage and lease residential housing within communities located within the City and County of Honolulu **under agreements with the United States Department of the Navy** (“Navy”).” See Exhibit A, at p. 4, ¶ 11 (emphasis added).
- “The services provided by Defendant Landlords include the provision of potable water through the Joint Base Pearl Harbor-Hickam Water System, **which is maintained by United States Navy.**” See id. at p. 4, ¶ 13 (emphasis added).
- Plaintiffs' Complaint further alleges that there have been “leaks of petroleum fuel **from the United States Department of the Navy's Red Hill Bulk Fuel Storage Facility** (“Red Hill”)” (see id. at p. 5, ¶ 16 (emphasis added)), and that as a result of these alleged leaks, they have been injured.  
See generally id.

---

officers to remove to Federal Court” (citation omitted)). Congress expanded the language to allow removal of a “civil action . . . that is against *or directed to*” a federal officer “for *or related to* any act under color of [federal] office,” 28 U.S.C. § 1442(a) (emphasis added) – removing altogether the requirement that the officer be “sued.”

See Goncalves, 865 F.3d at 1250 (9th Cir. 2017) (ellipsis and emphasis in original).

Stated differently, Plaintiffs' Complaint alleges that to the extent they were injured, it was the result of "leaks of petroleum fuel from the United States Department of the Navy's Red Hill" fuel storage facility into the water system "maintained by United States Navy." Indeed, as recognized by Plaintiffs' attorney, Plaintiffs filed a case against the Defendants and, according to Plaintiffs, "In turn, they **have** to bring in the Navy[.]" See Michelle Broder Van Dyke, [Class-action Lawsuit filed by residents against Navy for water contamination](https://spectrumlocalnews.com/hi/hawaii/environment/2022/01/03/class-action-lawsuit-filed-by-residents-against-navy-for-water-contamination), Spectrum News (Jan. 3, 2022, 10:36 PM), [https://spectrumlocalnews.com/hi/hawaii/environment/2022/01/03/class-action-lawsuit-filed-by-residents-against-navy-for-water-contamination-?cid=app\\_share](https://spectrumlocalnews.com/hi/hawaii/environment/2022/01/03/class-action-lawsuit-filed-by-residents-against-navy-for-water-contamination-?cid=app_share) (quoting lead Class Counsel Michael Green, Esq.) (emphasis added).

Based on the allegations of the Complaint, there is no dispute that the Navy exercises complete control over Red Hill and the water from the Joint Base Pearl Harbor-Hickam Water system. Because Plaintiffs' Complaint arises entirely over allegations that a leak from Red Hill contaminated the Joint Base Pearl Harbor-Hickam Water system, to the extent Defendants are even implicated by Plaintiffs' claims, it can only be in Defendants' capacity as an officer or agent of the United States Navy. This is because the Navy exercised complete control over the quality of the water, the information shared with Defendants regarding the water, and Defendants' ability to provide the water that Plaintiffs now complain of.

Simply put, to the extent that Plaintiffs are alleging that Defendants supplied, and are therefore responsible for, the Navy's water, Defendants were necessarily only acting in their capacity as an officer or agent of the Navy. Accordingly, the second element of the Federal Officer Removal statute is satisfied.

3. Defendants have a colorable federal defense

In order to satisfy the final element of the Federal Officer Removal statute, Defendants is not required to prove that it will prevail on a federal defense, or even that it is meritorious, rather, Defendants are only required to demonstrate that it is colorable. See Mesa v. California, 489 U.S. 121, 129 (1989). As this Court has affirmed:

The Supreme Court has stated that:

In construing the colorable federal defense requirement, we have rejected a “narrow, grudging interpretation” of the statute, recognizing that **“one of the most important reasons for removal is to have the validity of the defense of official immunity tried in a federal court.”** [Willingham v. Morgan,] 395 U.S. [402,] 407, 89 S. Ct. 1813, 23 L. Ed. 2d 396 [(1969)]. We therefore **do not require the officer virtually to “win his case before he can have it removed.”** Ibid.

Jefferson Cnty., Ala. v. Acker, 527 U.S. 423, 431, 119 S. Ct. 2069, 144 L. Ed. 2d 408 (1999) (emphasis added). The Supreme Court has also noted, in the context of § 1442(a)(1) removal of a criminal prosecution that:

No question of guilt or innocence arises and **no determination of fact is required** but it must fairly

appear from the showing made that petitioner's claim is **not without foundation and is made in good faith.**

...

Colorado v. Symes, 286 U.S. 510, 519, 52 S. Ct. 635, 76 L. Ed. 1253 (1932) (emphasis added) (some alterations in original); see also, e.g., Culver, 2010 U.S. Dist. LEXIS 125130, 2010 WL 5094698, at \* 6 (recognizing that “[p]ursuant to the Durham policy favoring removal for federal officers, a defendant does not need to show a valid or likely successful federal defense, but merely a colorable one” (citing Durham, 445 F.3d at 1252)); Olschewske v. Asbestos Defendants (B-P), No. C 10-1729 PJH, 2010 U.S. Dist. LEXIS 91961, 2010 WL 3184317, at \* (N.D. Cal. Aug. 11, 2010) (noting that a “colorable” defense “is not the same thing as establishing that a defense applies to bar asserted claims”).

Thompson v. Crane Co., 2012 U.S. Dist. LEXIS 53755, \*55-57 (D. Haw. April 17, 2012) (alterations in original, emphasis in original, ellipsis added). In this Class Action, Defendants have a colorable federal defense.

Based upon the allegations of the Complaint, Defendants have the colorable federal defense of derivative sovereign immunity. More specifically, “[G]overnment Contractors obtain certain immunity in connection with work which they do pursuant to their contractual undertakings with the United States.” See Campbell-Ewald Co. v. Gomez, 577 U.S. 153, 166 (2016) (alteration in original) (quoting Brady v. Roosevelt S. S. Co., 317 U.S. 575, 583 (1943)). In construing the federal government contractor defense under the colorable federal defense element of the Federal Officer Removal Statute, this Court affirmed the following, in relevant part:

This Court, however, disagrees with Holdren's characterization of the government contractor defense as placing limitations on the general standards applicable to federal officer removal. The primary purpose of the federal officer removal statute is

To protect the Federal Government from the interference with its "operations" that would ensue were a State able, for example, to "arres[t]" and bring "to trial in a State court[t] for an alleged offense against the law of the State," "officers and agents" of the Federal Government "acting . . . within the scope of their authority."

Watson, 551 U.S. at 150 (quoting Willingham, 395 U.S. at 406, 89 S. Ct. 1813) (alterations in Watson). . . . the United States Supreme Court recognized in Boyle that cases involving private contractors implicate the same uniquely federal interests as cases involving federal employees – "getting the Government's work done." 487 U.S. at 505 & n.1.

Thompson, 2012 U.S. Dist. LEXIS 53755, \* 59-60. Stated succinctly, "If the federal government can't guarantee its agents access to a federal forum if they are sued or prosecuted, it may have difficulty finding anyone willing to act on its behalf." See Durham v. Lockheed Martin Corp., 445 F.3d 1247, \*1253 (9th Cir. April 26, 2006).

The Yearsley v. W. A. Ross Constr. Co. case is instructive. In Yearsley, the United States Supreme Court was considering a dispute that had arisen over the construction of dikes in the Missouri River that were built pursuant to a contract with the United States Government. See 309 U.S. 18, 19 (1940). As alleged by the petitioner, respondent had produced artificial erosion in order to



build the dikes and that as a result, part of petitioner's land had been washed away.

See id. In affirming the Circuit Court of Appeal's reversal of the petitioner's judgment, the United States Supreme Court declared the following, in relevant part:

[I]t is clear that if this authority to carry out the project was validly conferred, that is, if what was done was within the constitutional power of Congress, there is no liability on the part of the contractor for executing its will. See Murray's Lessee v. Hoboken Land & Improvement Co., 18 How. 272, 283; Lamar v. Browne, 92 U.S. 187, 199; The Paguete Habana, 189 U.S. 453, 465. Where an agent or officer of the Government purporting to act on its behalf has been held to be liable for his conduct causing injury to another, the ground of liability has been found to be either that he exceeded his authority or that it was not validly conferred. Philadelphia Company v. Stimson, 223 U.S. 605, 619, 620. See United States v. Lee, 106 U.S. 196, 220, 221; Noble v. Union River Logging R. Co., 147 U.S. 165, 171, 172; Tindal v. Wesley, 167 U.S. 204, 222; Scranton v. Wheeler, 179 U.S. 141, 152; American School of Magnetic Healing v. McAnnulty, 187 U.S. 94, 108, 110.

See id. at 20-21.

In this Class Action, Plaintiffs' Complaint explicitly alleges that Defendants, among others, "manage and lease residential housing within communities located within the City and County of Honolulu under agreements with the United States Department of the Navy ("Navy")." See Exhibit A, at p. 4, ¶ 11. As established above, Plaintiffs generally complain that they suffered injuries from water that was under the care, custody, and control of the Navy. See e.g. Exhibit A, at p. 4, ¶ 13, p. 5, ¶¶ 16-17, and p. 6, ¶ 21. Plaintiffs' Complaint

further alleges that, “The services provided by Defendant Landlords include the provision of potable water through the Joint Base Pearl Harbor-Hickam Water System, which is maintained by United States Navy,” See id. at p. 4, ¶ 13. As set forth in the Complaint, to the extent Plaintiffs are claiming that Defendants are responsible for the Navy’s water, Plaintiffs’ claims are being asserted against the Defendants in their capacity as a government contractor “under [their] agreements with the United States Department of the Navy” to provide the Navy’s “potable water.” At a minimum, this establishes that Defendants have the colorable federal defense of derivative sovereign immunity. Accordingly, the final element under the Federal Officer Removal Statute is satisfied and this Court has original jurisdiction over the Class Action pursuant to 28 U.S.C. § 1442.

V. CONCLUSION

By removing this action to this Court, Defendants do not waive any defenses, objections, or motions available under state and/or federal law.

Defendants expressly reserve their right to move for dismissal of Plaintiffs’ claims pursuant to Rule 12 of the Federal Rules of Civil Procedure and/or any other applicable rule.

WHEREFORE, Defendants respectfully remove this action from the Circuit Court of the First Circuit, State of Hawaii, as Civil No. 1CCV-21-0001618, to the United States District Court for the District of Hawaii.

DATED: Honolulu, Hawaii, January 24, 2022.

*/s/ Jai W. Keep-Barnes*

BRUCE D. VOSS  
MATTHEW C. SHANNON  
JAI W. KEEP-BARNES

Attorneys for Defendants  
ISLAND PALM COMMUNITIES,  
LLC AND HICKAM  
COMMUNITIES, LLC

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

MICHAEL CASEY, PAYTON	)	CIVIL NO. _____
LAMB, and JAMIE WILLIAMS,	)	
on behalf of themselves and all	)	
similarly situated,	)	DECLARATION OF PHILLIP
	)	CARPENTER
Plaintiffs,	)	
	)	
vs.	)	
	)	
OHANA MILITARY	)	
COMMUNITIES, LLC; HUNT MH	)	
PROPERTY MANAGEMENT,	)	
LLC; ISLAND PALM	)	
COMMUNITIES, LLC; HICKAM	)	
COMMUNITIES, LLC; and DOE	)	
Defendants 1-10,	)	
	)	
Defendants.	)	
_____	)	

DECLARATION OF PHILLIP CARPENTER

I, PHILLIP CARPENTER declare that:

1. I am the Chief Operating Officer (“COO”) of Lendlease (US) Public Partnerships Holdings LLC (“Lendlease”).
2. I am competent to testify in the matters set forth herein and I make this declaration based upon my personal knowledge and/or the business records of Lendlease, Defendant Island Palm Communities LLC (“IPC”) and

Defendant Hickam Communities LLC (“Hickam” and collectively with IPC, “Defendants”) and in support of Defendants’ Notice of Removal (“Notice”).

3. My responsibilities as COO of Lendlease include, but are not limited to, overseeing the administrative and operational functions of Lendlease.

4. As the COO of Lendlease, I have access to and control over Lendlease’s business records, including the business records of Lendlease’s subsidiaries and joint ventures, and am personally familiar with the corporate structure of Lendlease.

5. Both IPC and Hickam are operated, controlled, and majority owned by Lendlease, all of which are run out of Lendlease’s Nashville office, located at 1201 Demonbreun Street, Suite 800, Nashville, Tennessee 37203 (“Principal Office”).

6. More specifically, Lendlease’s military housing operations are run from its Principal Office, including IPC and Hickam. As such, the policies, procedures, corporate strategy, and long-term planning for IPC and Hickam all occur at the Principal Office.

7. I, along with Lendlease’s military housing leadership team, are based out of the Principal Office.

8. Accordingly, both IPC and Hickam’s principal place of business is located in Nashville, Tennessee.

9. In addition, both IPC and Hickam were incorporated in the State of Delaware.

I, PHILLIP CARPENTER, declare under penalty of law that the foregoing is true and correct to the best of my knowledge.

DATED: Nashville, Tennessee, January 24, 2022.

  
\_\_\_\_\_  
PHILLIP CARPENTER

REVERE & ASSOCIATES, LLLC  
TERRANCE M. REVERE 5857  
JAMES W. ROONEY 11361  
Pali Palms Plaza  
970 North Kalaheo Ave., #A301  
Kailua, HI 96734  
Telephone No: 808-791-9550  
terry@revereandassociates.com  
james@revereandassociates.com

**Electronically Filed  
FIRST CIRCUIT  
1CCV-21-0001618  
31-DEC-2021  
09:34 AM  
Dkt. 1 CMP**

MICHAEL JAY GREEN & ASSOCIATES, INC.  
MICHAEL JAY GREEN 4451  
841 Bishop St., #2201  
Honolulu, HI 96813  
Telephone No.: 808-521-3336  
michael@michaeljaygreen.com

LAW OFFICE OF KYLE SMITH  
P. KYLE SMITH 9533  
604 Ilimano St.  
Kailua, HI 96734  
Telephone No.: 808-799-5104  
kyle@smithlawhawaii.com

Attorneys for Plaintiffs  
MICHAEL CASEY, PAYTON LAMB, and  
JAMIE WILLIAMS, on behalf of  
themselves and all similarly situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MICHAEL CASEY, PAYTON LAMB, and  
JAMIE WILLIAMS, on behalf of themselves  
and all similarly situated,

Plaintiffs,

vs.

OHANA MILITARY COMMUNITIES, LLC;  
HUNT MH PROPERTY MANAGEMENT,  
LLC; ISLAND PALM COMMUNITIES,  
LLC; HICKAM COMMUNITIES, LLC; and  
DOE Defendants 1-10,

Defendants.

Civil No.: \_\_\_\_\_

(Other Non-Vehicle Tort)

**PLAINTIFFS' MICHAEL CASEY,  
PAYTON LAMB, and JAMIE  
WILLIAMS, on behalf of themselves and  
all similarly situated, CLASS ACTION  
COMPLAINT; DEMAND FOR JURY  
TRIAL; SUMMONS**

**EXHIBIT A**

**PLAINTIFFS' MICHAEL CASEY, PAYTON LAMB and JAMIE WILLIAMS, on behalf of themselves and all similarly situated, CLASS ACTION COMPLAINT**

PLAINTIFFS MICHAEL CASEY, PAYTON LAMB and JAMIE WILLIAMS, on behalf of themselves and all similarly situated, allege the following class action against Defendants OHANA MILITARY COMMUNITIES, LLC; HUNT MH PROPERTY MANAGEMENT, LLC; ISLAND PALM COMMUNITIES, LLC; HICKAM COMMUNITIES, LLC; and DOE Defendants 110 (collectively, "Landlords")

**JURISDICTION AND VENUE**

1. This Court has jurisdiction and venue over the above Defendants under Hawaii Revised Statutes § 634-35, because the causes of action arise as the result of Defendants' business transactions within this state, Defendants' commission of alleged tortious acts and injuries within this state, and the Defendants' and Plaintiffs' use and possession of real property within this state. Defendants are subject to the jurisdiction of this Court because they reside and conduct business in this Circuit.

2. Further, this Court has jurisdiction and venue under the terms of Defendants' lease agreements with Plaintiffs, which agree that Lease and contractual relationship between the parties will be construed exclusively in accordance with, and shall be exclusively governed by the substantive laws of the State of Hawaii, including but not limited to Hawaii State Revised Statutes, chapter 521, and the common law interpreting those statutes.

3. This Court has subject matter jurisdiction over this action under Hawai'i Revised Statute § 603-21.5.

4. Venue is proper before this Court under Hawai'i Revised Statute § 603-36.

**PARTIES**

5. Plaintiffs are tenants who have leased residential housing within the City and



County of Honolulu from Defendants and have been forcibly evicted from their homes due to contaminated drinking water caused by fuel leaks associated with the Red Hill Bulk Fuel Storage Facility (“Red Hill”) maintained by the United States Department of the Navy.

6. Plaintiffs are collectively referred to herein as “Tenants.”

7. Defendants are landlords and/or property managers who include:

a. Defendant Ohana Military Communities, LCC (“Ohana”) is and has been at all relevant times a Hawaii corporation, having its principal place of business in the City and County of Honolulu, State of Hawaii.

b. Defendant Hunt MH Property Management, LLC (“Hunt”) acts as Ohana’s agent for the lease of residential housing to tenants during all relevant times and is authorized to manage residential housing on Ohana’s behalf under the terms of Ohana’s leases.

c. Defendant Hickam Communities, LLC, is and has been at all relevant times a Hawaii corporation, having its principal place of business in the City and County of Honolulu, State of Hawaii.

d. Defendant Island Palm Communities, LLC, is and has been at all relevant times a Hawaii corporation, having its principal place of business in the City and County of Honolulu, State of Hawaii.

8. Defendants are collectively referred to herein as “Landlords.”

9. Plaintiffs allege that Defendants and their respective property managers are joint tortfeasors, co-conspirators, alter egos, agents of the other, co-venturers, and engaged in the joint-enterprise of marketing and sales of residential leases, sales of renter’s insurance policies,

providing property management and maintenance services, as well as the conduct and acts alleged herein.

10. Plaintiffs have reviewed records that were made available to them to ascertain the true and full names and identities of all defendants in this action, but no further knowledge or information regarding the parties responsible is available at this time and Plaintiffs are unable to ascertain the identity of the defendants in this action designated as DOE DEFENDANTS 110 (“Doe Defendants”). Doe Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiffs except that they may be connected in some manner with Defendants and may be agents, attorneys, servants, employees, employers, representatives, co-venturers, coconspirators, associates, or independent contractors of Defendants and/or were in some manner responsible for the injuries or damages to Plaintiff and their true names, identities, capacities, activities and responsibilities are presently unknown to Plaintiff or their attorneys.

### **FACTUAL ALLEGATIONS**

11. Defendant Landlords manage and lease residential housing within communities located within the City and County of Honolulu under agreements with the United States Department of the Navy (“Navy”).

12. Defendant Landlords, by and through their agents, provide services to tenants related to the marketing, sale, and management of residential leases in these communities.

13. The services provided by Defendant Landlords include the provision of potable water through the Joint Base Pearl Harbor-Hickam Water System, which is maintained by United States Navy.

14. Upon information and belief, Defendant Landlords have entered thousands of leases with tenants for the lease of residential housing including the provision of potable water.

15. Under the terms of their leases, tenants agree to pay rent in exchange for the services provided by Defendant Landlords including the provision of potable water and safe and habitable housing in compliance with all state and local laws for health and safety.

16. The water supply for residential housing leased to Plaintiffs, however, has not been sufficiently protected from the risk of fuel contamination associated with repeated leaks of petroleum fuel from the United States Department of the Navy's Red Hill Bulk Fuel Storage Facility ("Red Hill").

17. Red Hill is an underground storage tank ("UST") system on the Island of Oahu in the State of Hawaii, approximately 2.5 miles northeast of Pearl Harbor, and consists of twenty USTs as well as pipelines and other infrastructure associated with the storage and distribution of marine diesel and jet fuel.

18. Red Hill sits directly above Oahu's sole-source groundwater aquifer, the Southern Oahu Basal Aquifer, which is irreplaceable and the principal source of drinking water for Oahu supplying ~77% of the water supply for the island including water for the Joint Base Pearl Harbor-Hickam Water System.

19. Red Hill is estimated to have leaked more than 178,434 gallons of fuel since its inception and presents an undisputed risk to the aquifer that furnishes potable water to the communities leased by Defendant Landlords.

20. Defendant Landlords possess knowledge of the risk of water contamination from Red Hill by and through their relationships with the Navy and sale of water from the Joint Base Pearl Harbor-Hickam Water system.

21. Recently, in November 2021, fuel leaks from the Red Hill facility resulted in contamination of drinking water supplied to Plaintiffs' communities and forcing the unreasonable eviction of thousands of Plaintiff Tenants without cause.

22. Plaintiff Tenants seek to represent a class of all similarly situated tenants forcibly evicted by Defendant Landlords' failure to provide clean, safe, and healthy water and pursue this action to recover all economic damages guaranteed by Hawaii law and statute including but not limited to the repayment of rent.

### **CLASS ACTION ALLEGATIONS**

23. Plaintiffs bring this action under the provisions of Rule 23(a) and Rule 23(b) of the Hawaii Rules of Civil Procedure ("HRCP"). The requirements of both sections are satisfied.

24. The class is so numerous that joinder of all members is impracticable, as required by HRCP Rule 23(a)(1). Upon information and belief, more than 2000 tenants have been forcibly evicted by Defendants.

25. There are questions of law or fact common to the class as required by HRCP Rule 23(a)(2), which include but are not limited to: a) whether Plaintiffs have been forcibly evicted by due to the provision of contaminated and unpotable water by Defendants in violation of their leases and HRS §521; and whether Defendants' wrongful eviction of Plaintiffs constitutes an unfair or deceptive trade practice that has been substantially injurious to Plaintiffs under HRS §480.

26. The proposed class representatives have claims typical of the class as required by HRCP Rule 23(a)(3). These typical claims and the underlying facts are described below.

27. Plaintiffs will fairly and adequately protect the interests of the class, as required by HRCP Rule 23(a)(4). Neither Plaintiffs nor their counsel have interests antagonistic to those of the

proposed class. Moreover, Plaintiffs' attorneys are competent and experienced in litigation matters and have resolved multiple class actions within both federal and state courts of Hawaii.

28. A class action is proper under HRCF Rule 23(b) as Defendants have acted or refused to act on grounds generally applicable to the class, which has included the forcible eviction of Plaintiffs from their homes due to their failure to provide potable water. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual members of the class and could establish incompatible standards of conduct for the party opposing the class as required by HRCF Rule 23(b)(1)(A), and/or risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interest of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests as required by HRCF Rule 23(b)(1)(B). Further, 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 any other methods for the fair and efficient adjudication of the controversy, as required by HRCF Rule 23(b)(3).

### **CAUSES OF ACTION**

#### **FIRST CLAIM FOR RELIEF** **(Breach of Contract)**

29. Plaintiffs repeat and incorporate all factual allegations stated within their Complaint.

30. Valid contracts have been entered between Plaintiffs and Defendants for the lease of residential housing.

a. Under the terms of their lease contracts, Plaintiffs agreed to pay rent in exchange for safe, clean, and habitable residential housing for themselves

and their families, which includes the provision of clean, safe, and healthy potable water.

- b. Under the terms of their lease contracts, the parties agreed that their lease obligations and responsibilities would be construed under the substantive laws of the State of Hawaii, including, but not limited to, Hawaii Revised Statutes Chapter 521 and the common law interpreting those statutes.

31. Under the terms of their leases and Hawaii law, Defendants have a duty of good faith and fair dealing and a duty to maintain fit premises.

32. Notwithstanding their contractual duties, Defendants have breached their lease agreements with Plaintiffs. Specifically, Defendants have failed to maintain and provide safe and habitable housing by failing to provide safe, clean, and healthy drinking water to Plaintiffs.

33. Due to Defendants' breaches of contract, it has been necessary for Plaintiffs to incur expenses and other special damages in an amount to be proven at trial.

34. Because of Defendants' conduct, Plaintiffs have sustained harm, expenses and other damages in an amount to be proven at trial, which include, but are not limited to:

- a. Overpayment for rent for services for Defendants' failure to provide the safe and healthy home and community represented by Defendants;
- b. Loss of use and enjoyment in their homes and community;

35. Under the terms of their lease, Plaintiffs are entitled as the prevailing party to reasonable attorneys' fees and costs required to pursue this action.

36. As a proximate and legal result of Defendants' breaches of contract, Plaintiffs have been compelled to resort to litigation and therefore request an award of all consequential damages,

including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Implied Warranty of Habitability)**

37. Plaintiffs repeat and incorporate all factual allegations stated within their Complaint.

38. Defendants owe a duty to Plaintiffs to provide safe and healthy residential housing, which includes the provision of clean, safe potable water for the purpose of drinking, cleaning, and bathing.

39. Under the terms of their lease contracts, Plaintiffs agreed to pay rent in exchange for safe and healthy residential housing, which includes the provision of clean, safe potable water for the purpose of drinking, cleaning, and bathing.

40. Defendants breached their duty to provide safe and healthy residential housing.

41. As explained above, Defendants failed to warn Plaintiffs of the existence, nature and extent of risks of Red Hill fuel leaks to Plaintiffs and thereafter allowed Plaintiffs and their families to be exposed to adverse health risks and other adverse health outcomes without their knowledge and against their will by the provision of contaminated water.

42. Specifically, Defendants failed to disclose risks associated with water contamination and failed to provide clean, safe, and healthy potable water rendering Plaintiffs' communities uninhabitable.

43. Because of Defendants' conduct, Plaintiffs have sustained harm, expenses and other damages in an amount to be proven at trial, which include, but are not limited to:

- a. Overpayment for rent for services for Defendants' failure to provide the safe and healthy home and community represented by Defendants;

b. Loss of use and enjoyment in their homes and community;

44. As a proximate and legal result of Defendants' conduct, Plaintiffs have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

**THIRD CLAIM FOR RELIEF**  
**(Violation of Hawaii Revised Statute Chapter 521 – Landlord Tenant Code)**

45. Plaintiffs repeat and incorporate all factual allegations stated within their Complaint.

46. Hawaii Revised Statute §521-10 imposes upon landlords an obligation of good faith in the performance of their obligations under the lease.

47. Hawaii Revised Statute §521-42(a)(1) obligates Defendants to supply housing that complies with all applicable building and housing laws materially affecting health and safety.

48. Despite their obligation to provide healthy and safe housing to tenants,<sup>1</sup> Defendants negligently, reckless, or knowingly exposed Plaintiffs and their families to contaminated water without their knowledge and against their will.

49. As described above, despite their obligation to act in good faith, Defendants failed to disclose and failed to protect Plaintiffs and their families from contaminated drinking water within their communities.

50. Further, Plaintiffs have been evicted from their homes without cause due to contaminated drinking water.

---

<sup>1</sup> See Hawaii Landlord Tenant Code Handbook, Landlord Obligations, at 15 (“Provide safe and healthy premises as required by law. Section 42(a)(1) and (2)”).



51. Defendants have therefore violated the Hawaii Landlord Tenant Code and Plaintiffs are entitled to all rights and remedies afforded tenants under Chapter 521, which includes their reasonable attorneys' fees and costs and the payment of rent to Plaintiffs.

52. Because of Defendants' violation of Chapter 521 of the Hawaii Revised Statutes, Plaintiffs have sustained harm, expenses and other damages in an amount to be proven at trial, which include, but are not limited to:

- a. Overpayment for rent for services for Defendants' failure to provide the safe and healthy home and community represented by Defendants;
- b. Loss of use and enjoyment in their homes and community;

53. As a proximate and legal result of Defendants' conduct, Plaintiffs have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

**FOURTH CLAIM FOR RELIEF**  
**(Unfair & Deceptive Trade Practices/Unfair Methods of Competition)**

54. Plaintiffs repeat and incorporate all factual allegations stated within their Complaint.

55. Hawaii Revised Statutes § 480-2(a) provides, in relevant part: “[U]nfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.”<sup>2</sup>

- a. The sale of residential leases and services by Defendants constitute “any trade or commerce” within the meaning of Hawaii Revised Statutes chapter 480.

---

<sup>2</sup> HAW. REV. STAT. §480-2.

56. Plaintiffs are “consumers” under Hawaii Revised Statute 480-1 who have purchased goods or services or who have personally invested their resources to lease residential housing from Defendants.<sup>3</sup>

- a. Hawaii Revised Statutes § 480-1 clarifies that the term “purchase” or “buy” includes “contract to buy”, “lease”, “contract to lease”, “license” and “contract to license”.<sup>4</sup>
- b. The purchase of leases from licensed real estate agents falls within conduct regulated by Hawaii Revised Statutes Chapter 480.
- c. Further, the provision of potable water in association with the provision of residential housing is a service purchased by Plaintiffs from Defendants.

57. Defendants’ failure to warn and sale of contaminated drinking water as part of leases sold to Plaintiffs constitutes an unfair or deceptive act and practice in the conduct of trade and commerce that has the tendency to mislead and is substantially injurious to Plaintiffs.

58. Defendants’ failure to disclose the risks associated with its water supply and sale of contaminated water also constitutes unfair competition that has injured Plaintiffs’ property.

59. Because of Defendants’ conduct, Plaintiffs have incurred expenses and other special damages in an amount to be proven at trial, which include, but are not limited to:

- a. Overpayment for rent for services for Defendants’ failure to provide the safe and healthy home and community represented by Defendants;
- b. Loss of use and enjoyment in their homes and community;

---

<sup>3</sup> HAW. REV. STAT. § 480-1.

<sup>4</sup> *Id.*

60. As a proximate and legal result of Defendants' conduct, Plaintiffs have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

**FIFTH CLAIM FOR RELIEF**  
**(Nuisance)**

61. Plaintiffs repeat and incorporate all factual allegations stated within their Complaint.

62. During the relevant time period, Defendants allowed the release of contaminated water into Plaintiffs leased residences, which interfered with Plaintiffs' ability to use and enjoy their homes and resulted in harm, inconvenience, and unlawfully annoyed and disturbed Plaintiffs' free use, possession, and enjoyment of their property.

63. Defendants are liable for damages that are the legal and proximate result of the nuisance created by their conduct.

64. Because of Defendants' conduct, Plaintiffs have incurred expenses and other special damages in an amount to be proven at trial, which include, but are not limited to:

- a. Overpayment for rent for services for Defendants' failure to provide the safe and healthy home and community represented by Defendants;
- b. Loss of use and enjoyment in their homes and community;

65. As a proximate and legal result of Defendants' conduct, Plaintiffs have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

**SIXTH CLAIM FOR RELIEF**  
**(Wrongful Eviction)**

66. Plaintiffs repeat and incorporate all factual allegations stated within their Complaint.

67. The above-described conduct constitutes wrongful eviction in violation of Hawaii law.

68. Because of Defendants' conduct, Plaintiffs have incurred expenses and other special damages in an amount to be proven at trial, which include, but are not limited to:

- a. Overpayment for rent for services for Defendants' failure to provide the safe and healthy home and community represented by Defendants;
- b. Loss of use and enjoyment in their homes and community;

69. As a proximate and legal result of Defendants' conduct, Plaintiffs have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

WHEREFORE, Plaintiffs pray for judgment against Defendants and in favor of the Plaintiffs as follows:

1. General, special, treble, and consequential damages in an amount to be proven at trial;
2. Reasonable attorneys' fees and costs;
3. Disgorgement of profits due to Defendants' unjust enrichment;
4. Return of all rents and other remedies guaranteed by HRS §521.
5. Any prejudgment interest provided by statute;
6. Punitive damages for Defendants' wanton, reckless, and grossly negligent conduct;

7. All available injunctive relief including the right to rescission of leases under equity and statute;
8. For such other and further relief at law or equity as the Court may deem just and proper.

DATED: Kailua, Hawai'i, December 31, 2021.

/s/ Terrance M. Revere  
TERRANCE M. REVERE  
JAMES W. ROONEY  
MICHAEL JAY GREEN  
P. KYE SMITH  
Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

Electronically Filed  
FIRST CIRCUIT  
1CCV-21-0001618  
31-DEC-2021  
09:34 AM  
Dkt. 2 DJT

MICHAEL CASEY, PAYTON LAMB, and  
JAMIE WILLIAMS, on behalf of themselves  
and all similarly situated,

Plaintiffs,

vs.

OHANA MILITARY COMMUNITIES, LLC;  
HUNT MH PROPERTY MANAGEMENT,  
LLC; ISLAND PALM COMMUNITIES,  
LLC; HICKAM COMMUNITIES, LLC; and  
DOE Defendants 1-10,

Defendants.

Civil No.: \_\_\_\_\_  
(Other Non-Vehicle Tort)


**DEMAND FOR JURY TRIAL**

**DEMAND FOR JURY TRIAL**

Plaintiffs request a trial by jury on all issues triable of right by jury in this case. This demand is made pursuant to Rule 38, Hawaii Rules of Civil Procedure.

DATED: Kailua, Hawai'i, December 31, 2021.

/s/ Terrance M. Revere  
TERRANCE M. REVERE  
JAMES W. ROONEY  
MICHAEL JAY GREEN  
P. KYE SMITH  
Attorneys for Plaintiffs

<b>STATE OF HAWAII</b> <b>CIRCUIT COURT OF THE</b> <b>FIRST CIRCUIT</b>		<b>SUMMONS</b> <b>TO ANSWER CIVIL COMPLAINT</b>		<b>Electronically Filed</b> <b>FIRST CIRCUIT</b> <b>1CCV-21-0001618</b> <b>31-DEC-2021</b> <b>09:34 AM</b> <b>Dkt. 3 CMPS</b>
CASE NUMBER				
PLAINTIFF'S NAME & ADDRESS, TEL. NO. REVERE & ASSOCIATES, LLLC TERRANCE M. REVERE 5857 / JAMES W. ROONEY 11361 970 N. Kalaheo Avenue, Suite A301, Kailua, HI 96734 808-791-9550				
PLAINTIFF MICHAEL CASEY, PAYTON LAMB and JAMIE WILLIAMS, on behalf of themselves and all similarly situated		VS. DEFENDANT(S) OHANA MILITARY COMMUNITIES, LLC; HUNT MH PROPERTY MANAGEMENT, LLC; ISLAND PALM COMMUNITIES, LLC; HICKAM COMMUNITIES, LLC; CP IV WATERFRONT LLC DBA KAPILINA BEACH HOMES, and DOE Defendants 1-10		
<p><b>TO THE ABOVE-NAMED DEFENDANT(S)</b></p> <p>You are hereby summoned and required to file with the court and serve upon                  REVERE &amp; ASSOCIATES, LLLC, TERRANCE M. REVERE and JAMES W. ROONEY                  970 N. Kalaheo Avenue, Suite A301, Kailua, HI 96734                  808-791-9550</p> <hr/> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within                  20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default                  will be taken against you for the relief demanded in the complaint.</p> <p><b>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON                  PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED                  COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</b></p> <p><b>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT                  JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</b></p>				
DATE ISSUED		CLERK		CIRCUIT COURT CLERK
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: <a href="http://www.courts.state.hi.us">http://www.courts.state.hi.us</a>				
 In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402; MAUI- Phone No. 808-244-2929, FAX 808-244-2777; HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411; KAUAI- Phone No. 808-482-2365, TTY 808-482-2533, FAX 808-482-2509, at least ten (10) working days prior to your hearing or appointment date.				

## NOTICE OF ELECTRONIC FILING

**Electronically Filed**  
**FIRST CIRCUIT**  
**1CCV-21-0001618**  
**31-DEC-2021**  
**09:34 AM**  
**Dkt. 4 NEF**

An electronic filing was submitted in Case Number 1CCV-21-0001618. You may review the filing through the Judiciary Electronic Filing System. Please monitor your email for future notifications.

**Case ID:** 1CCV-21-0001618

**Title:** MICHAEL CASEY, PAYTON LAMB, and JAMIE WILLIAMS, on behalf of themselves and all similarly situated v. OHANA MILITARY COMMUNITIES, LLC; HUNT MH PROPERTY MANAGEMENT, LLC; ISLAND PALM COMMUNITIES, LLC; HICKAM COMMUNITIES, LLC; and DOE Defendants 1-10

**Filing Date / Time:** FRIDAY, DECEMBER 31, 2021 09:34:38 AM

**Filing Parties:** MICHAEL CASEY  
PAYTON LAMB  
JAMIE WILLIAMS

**Case Type:** Circuit Court Civil

**Lead Document(s):** 1-Complaint

**Supporting Document(s):** 2-Demand for Jury Trial  
3-Complaint and Summons

**Document Name:** 1-PLAINTIFFS' MICHAEL CASEY, PAYTON LAMB, and JAMIE WILLIAMS, on behalf of themselves and all similarly situated, CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL  
2-DEMAND FOR JURY TRIAL  
3-SUMMONS

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

---

This notification is being electronically mailed to:  
Patrick Kyle Smith ( *kyle@smithlawhawaii.com* )  
Michael Jay Green ( *michael@michaeljaygreen.com* )  
James Rooney ( *james@revereandassociates.com* )



Terrance M. Revere ( *terry@revereandassociates.com* )

The following parties need to be conventionally served:

HICKAM COMMUNITIES, LLC

ISLAND PALM COMMUNITIES, LLC

HUNT MH PROPERTY MANAGEMENT, LLC

OHANA MILITARY COMMUNITIES, LLC

---

This filing type incurs a fee of \$515.00. You must pay by credit card or in person.



**Service of Process  
Transmittal**

01/03/2022  
CT Log Number 540823625

**TO:** Heather Niemeyer  
Lendlease  
200 Park Ave Fl 9  
New York, NY 10166-0900

**RE: Process Served in Hawaii**

**FOR:** Island Palm Communities LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** MICHAEL CASEY, PAYTON LAMB, and JAMIE WILLIAMS, on behalf of themselves and all similarly situated vs. OHANA MILITARY COMMUNITIES, LLC

**DOCUMENT(S) SERVED:** --

**COURT/AGENCY:** None Specified  
Case # 1CCV210001618

**ON WHOM PROCESS WAS SERVED:** The Corporation Company, Inc., Honolulu, HI

**DATE AND HOUR OF SERVICE:** By Process Server on 01/03/2022 at 15:10

**JURISDICTION SERVED :** Hawaii

**APPEARANCE OR ANSWER DUE:** None Specified

**ATTORNEY(S) / SENDER(S):** None Specified

**ACTION ITEMS:** CT will retain the current log  
Image SOP  
Email Notification, Thomas Giordano thomas.giordano@lendlease.com  
Email Notification, Michael Serafino michael.serafino@lendlease.com  
Email Notification, Erica Young erica.young@lendlease.com  
Email Notification, Heather Niemeyer Heather.Niemeyer@lendlease.com  
Email Notification, Cory Benjamin cory.benjamin@lendlease.com

**REGISTERED AGENT ADDRESS:** The Corporation Company, Inc.  
1136 Union Mall  
Suite 301  
Honolulu, HI 96813  
866-203-1500  
DealTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other

**EXHIBIT B**



**Service of Process  
Transmittal**

01/03/2022

CT Log Number 540823625

**TO:** Heather Niemeyer  
Lendlease  
200 Park Ave Fl 9  
New York, NY 10166-0900

**RE: Process Served in Hawaii**

**FOR:** Island Palm Communities LLC (Domestic State: DE)

advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

**CT**

---

**PLEASE NOTE:**

**SERVICE TAKEN FOR:**

**ISLAND PALM COMMUNITIES LLC**



**Service of Process  
Transmittal**

01/03/2022  
CT Log Number 540824706

**TO:** Heather Niemeyer  
Lendlease  
200 Park Ave Fl 9  
New York, NY 10166-0900

**RE: Process Served in Hawaii**

**FOR:** Hickam Communities LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Michael Casey, Payton Lamb and Jamie Williams, on Behalf of Themselves and All Similarly Situated vs. Hickam Communities LLC

**DOCUMENT(S) SERVED:** --

**COURT/AGENCY:** None Specified  
Case # 1CCV210001618

**ON WHOM PROCESS WAS SERVED:** The Corporation Company, Inc., Honolulu, HI

**DATE AND HOUR OF SERVICE:** By Process Server on 01/03/2022 at 15:10

**JURISDICTION SERVED :** Hawaii

**APPEARANCE OR ANSWER DUE:** None Specified

**ATTORNEY(S) / SENDER(S):** None Specified

**ACTION ITEMS:** CT will retain the current log  
Image SOP  
Email Notification, Thomas Giordano thomas.giordano@lendlease.com  
Email Notification, Michael Serafino michael.serafino@lendlease.com  
Email Notification, Erica Young erica.young@lendlease.com  
Email Notification, Heather Niemeyer Heather.Niemeyer@lendlease.com  
Email Notification, Cory Benjamin cory.benjamin@lendlease.com

**REGISTERED AGENT ADDRESS:** The Corporation Company, Inc.  
1136 Union Mall  
Suite 301  
Honolulu, HI 96813  
866-203-1500  
DealTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other



**Service of Process  
Transmittal**

01/03/2022

CT Log Number 540824706

**TO:** Heather Niemeyer  
Lendlease  
200 Park Ave Fl 9  
New York, NY 10166-0900

**RE: Process Served in Hawaii**

**FOR:** Hickam Communities LLC (Domestic State: DE)

advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

**CT**

---

**PLEASE NOTE:**

**SERVICE TAKEN FOR:**

**HICKAM COMMUNITIES LLC**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

MICHAEL CASEY, PAYTON	)	CIVIL NO. _____
LAMB, and JAMIE WILLIAMS,	)	
on behalf of themselves and all	)	CERTIFICATE OF SERVICE
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
OHANA MILITARY	)	
COMMUNITIES, LLC; HUNT MH	)	
PROPERTY MANAGEMENT,	)	
LLC; ISLAND PALM	)	
COMMUNITIES, LLC; HICKAM	)	
COMMUNITIES, LLC; and DOE	)	
Defendants 1-10,	)	
	)	
Defendants.	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served on the following parties electronically via CM/ECF, on January 24, 2022, addressed as set forth below:



TERRANCE M. REVERE, ESQ.  
(*terry@revereandassociates.com*)  
JAMES W. ROONEY, ESQ.  
(*james@revereandassociates.com*)  
Revere & Associates, LLLC  
Pali Palms Plaza  
970 North Kalaheo Avenue, #A301  
Kailua, HI 96734

-AND-

MICHAEL JAY GREEN, ESQ.  
(*michael@michaeljaygreen.com*)  
Michael Jay Green & Associates, Inc.  
841 Bishop Street, #2201  
Honolulu, HI 96813

-AND-

P. KYLE SMITH, ESQ.  
(*kyle@smithlawhawaii.com*)  
604 Ilimano Street  
Kailua, HI 96734

Attorneys for Plaintiffs  
MICHAEL CASEY, PAYTON LAMB  
AND JAMIE WILLIAMS, on behalf of  
themselves and all similarly situated

JOACHIM P. COX, ESQ.  
(*jcox@cfhawaii.com*)  
RANDALL C. WHATTOFF, ESQ.  
(*rwhattoff@cfhawaii.com*)  
KAMALA S. HAAKE, ESQ.  
(*khaake@cfhawaii.com*)  
Cox Fricke  
800 Bethel Street, Suite 600  
Honolulu, HI 96813

Attorneys for Defendants  
OHANA MILITARY COMMUNITIES, LLC and  
HUNT MH PROPERTY MANAGEMENT, LLC

DATED: Honolulu, Hawaii, January 24, 2022.

*/s/ Jai W. Keep-Barnes* \_\_\_\_\_

BRUCE D. VOSS  
MATTHEW C. SHANNON  
JAI W. KEEP-BARNES

Attorneys for Defendants  
ISLAND PALM COMMUNITIES,  
LLC AND HICKAM  
COMMUNITIES, LLC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
MICHAEL CASEY, PAYTON LAMB, and JAMIE WILLIAMS, on behalf of themselves and all similarly situated

DEFENDANTS
ISLAND PALM COMMUNITIES, LLC
AND HICKAM COMMUNITIES, LLC

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Terrance M. Revere/James Rooney (Revere & Associates)
808.791.9550; Michael Jay Green 908.521.3336;
Kyle Smith 808.799-5104

Attorneys (If Known)
Bruce D. Voss/Matthew C. Shannon/Jai W. Keep=Barnes
Bays Lung Rose & Voss
700 Bishop Street, Ste. 900, Honolulu, HI 96813 808.523.9000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 28 U.S.C. §§ 1332(d) (Class Action Fairness Act) and 28 U.S.C. § 1442 (Federal Officer Removal)
Brief description of cause:
The complaint contains claims for Breach of Contract, Breach of Implied Warranty Liability, Etc.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/24/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Jai W. Keep-Barnes

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Navy Water Crisis: Landlords Hit with Class Action in Hawaii Over Alleged Failure to Protect Properties' Water Supply](#)

---