

as CHAIRMAN OF THE BOARD OF)
LAND AND NATURAL RESOURCES,)
JAMES J. NAKATANI, in his official)
capacity as DIRECTOR OF THE)
DEPARTMENT OF AGRICULTURE,)
SEIJI F. NAYA, in his official capacity as)
DIRECTOR OF THE DEPARTMENT OF)
BUSINESS, ECONOMIC)
DEVELOPMENT AND TOURISM, BRIAN)
MINAAL in his official capacity as)
DIRECTOR OF THE DEPARTMENT OF)
TRANSPORTATION,)

State Defendants,)

HAUNANI APOLIONA, Chairman, and)
ROWENA AKANA, DONALD B.)
CATALUNA, LINDA DELA CRUZ,)
CLAYTON HEE, COLETTE Y.P.)
MACHADO, CHARLES OTA, OSWALD)
STENDER, and JOHN D. WAIHE`E, IV in)
their official capacities as trustees of the)
Office of Hawaiian Affairs,)

OHA Defendants,)

RAYNARD C. SOON, Chairman, and)
WONDA MAE AGPALSA, HENRY CHO,)
THOMAS P. CONTRADES, ROCKNE C.)
FREITAS, HERRING K. KALUA, MILTON)
PA, and JOHN A.H. TOMOSO, in their)
official capacities as members of the)
Hawaiian Homes Commission,)

HHCA/DHHL Defendants,)

THE UNITED STATES OF AMERICA,)
and JOHN DOES 1 through 10,)

Defendants.)

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(RE: CONSTITUTIONALITY OF OFFICE OF HAWAIIAN AFFAIRS,
HAWAIIAN HOMES COMMISSION AND RELATED LAWS)
AND FOR AN INJUNCTION

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**COMPLAINT FOR DECLARATORY JUDGMENT
(RE: CONSTITUTIONALITY OF OFFICE OF HAWAIIAN AFFAIRS,
HAWAIIAN HOMES COMMISSION AND RELATED LAWS)
AND FOR AN INJUNCTION**

INTRODUCTION

1. The Office of Hawaiian Affairs. This suit challenges the validity under the Constitution of the United States of:

a. Article XII, ' 4 of the Hawaii State Constitution, which, among other things, requires that the lands granted to the State of Hawaii by the Admission Act shall be held as a public trust for native Hawaiians and the general public. (This provision is challenged only to the extent that it gives or is construed or implemented to give native Hawaiians any protection, entitlements, rights, privileges or immunities not given equally to other beneficiaries of the public land trust.).

b. Article XII, ' 5 of the Hawaii State Constitution, which, among other things, establishes the Office of Hawaiian Affairs (AOHA), and requires that OHA hold property in trust for native Hawaiians and Hawaiians.

c. Article XII, ' 6 of the Hawaii State Constitution, which, among other things, requires the OHA board to manage, administer and control income and proceeds from a pro rata share of the public land trust for native Hawaiians and other property for Hawaiians.

d. Chapter 10 of the Hawaii Revised Statutes (H.R.S.) entitled AOOffice of Hawaiian Affairs@ which governs OHA and, among other provisions, defines AHawaiian@ by ancestry and Anative Hawaiian@ explicitly by race, i.e., Adescendants of not less than one-half part of the races inhabiting the Hawaiian Islands previous to

1778@ (' 10-2), requires that OHA act for the betterment of Hawaiians and native Hawaiians (' ' 10-3 through 10-6) and requires, or may require, that 20% of revenues from the public land trust be expended for the betterment of native Hawaiians (' 10-13.5).

e. Chapter 13D H.R.S. entitled aBoard of Trustees, Office of Hawaiian Affairs@ which governs the OHA board.

f. ' ' 11-1, 15 and 17 H.R.S. to the extent that they define "Hawaiian" and govern OHA elections.

g. ' 171-18 H.R.S. which requires that the lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation in 1898 and returned to the State of Hawaii by the Admission Act in 1959 shall be held as a public trust for the support of public schools and other public educational institutions and for other purposes including athe betterment of native Hawaiians@. (This provision is challenged only to the extent that it gives or is construed or implemented to give native Hawaiians any protection, entitlements, rights, privileges or immunities not given equally to other beneficiaries of the public land trust.)

h. All other provisions of the constitutional law, statutes, regulations, case law and all actions, customs and usages of the state of Hawaii which create, establish, authorize, implement, fund, give public lands or public moneys to, or otherwise aid, assist or benefit OHA. (The foregoing constitutional provisions, statutes and other laws and actions, customs and usages are sometimes hereinafter referred to collectively as athe OHA laws@.)

2. The Hawaiian Homes Commission. This suit also challenges the validity under the Constitution of the United States of:

a. Article XII, ' ' 1, 2 and 3 of the Hawaii State Constitution, which adopt the Hawaiian Homes Commission Act, 1920 (ΔHHCA@) enacted by Congress, accept the compact imposed by the United States as a condition of admission, prohibit the amendment or repeal of HHCA without the consent of the United States, and mandate that the Hawaii legislature fund the programs, administration and operation of the Department of Hawaiian Home Lands.

b. ' 4 of the Admission Act of March 18, 1959, Pub L 86-3, 73 Stat 4 (the ΔAdmission Act@) which requires, as a compact with the United States, that the HHCA shall be adopted as a provision of the Constitution of the State of Hawaii and, among other things, prohibits the amendment or repeal of the HHCA without the consent of the United States;

c. The Hawaiian Homes Commission Act, 1920, Act of July 9, 1921, c 42, 42 Stat 108, as amended, (HHCA) which, among other things, sets aside approximately 200,000 acres of the public lands of Hawaii for the benefit of persons defined explicitly by race, i.e., Δdescendants of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.@

d. Act 14 of the Special Session Laws of Hawaii 1995 which, among other things, established the Hawaiian home lands trust fund and required that the State make twenty annual deposits of \$30 million or their discounted value equivalent,

into the trust fund. Also HHCA §213.6 which is the codification of Section 7 of said Act 14.

e. Continuation of existing Homestead leases under terms that require or permit future governmental action based on the racial classification in the HHCA or deny to Plaintiffs in the future the equal protection of the laws and the benefit of the lands covered by the leases.

f. All other provisions of the constitutional law, statutes, regulations, case law and all actions, customs and usages of the State of Hawaii which create, establish, authorize, implement, fund, or otherwise carry out the HHCA or give public lands or public moneys to or otherwise aid, assist or benefit the Hawaiian Homes Commission or the department of Hawaiian home lands. (The foregoing constitutional provisions, statutes and other laws and actions, customs and usages are sometimes hereinafter referred to collectively as the HHCA laws.)

3. **Note: Equitable accommodation between the public need and the needs of existing Homesteaders.** Plaintiffs recognize the practical reality that the HHCA laws have been in effect for 81 years; many persons of native Hawaiian ancestry have reasonably relied on them and have become Homesteaders (7,281 Homestead leases were outstanding as of 1/31/02); in reliance on the HHCA laws, many of the Homesteaders have built homes and improvements and made other commitments with respect to their Homestead lots; and invalidating the Hawaiian homes program may have serious financial consequences for those existing Homesteaders. Plaintiffs therefore seek an equitable decree to accommodate both the public need (to end this

racial discrimination by the State government) and the private needs of the existing Homesteaders (to avoid inequitable financial consequences to them merely because they acted on the basis of laws they thought were valid). *Lemon v. Kurtzman* 411 U.S.192 (1973). (An unconstitutional statute is not absolutely void, but is a practical reality upon which people rely. Courts recognize that reality. Pp. 197-199. A trial court has wide latitude in shaping an equitable decree and reaching an accommodation between public and private needs. Pp. 200-201. A State and those with whom it deals are not to be subjected to harsh, retrospective relief merely because they act on the basis of presumptively valid legislation, in the absence of contrary judicial direction. Pp. 208-209.)

Specifically Plaintiffs ask the Court, as part of its judgment invalidating the HHCA laws to order the State Defendants and HHC/DHHL Defendants to negotiate with the existing Homesteaders for the State's exercise of its right to withdraw the lands demised in a way that is fair to the Homesteaders but does not further violate the rights of Plaintiffs and others similarly situated. Such negotiations could result in a global settlement under which the fee simple interest is conveyed to the Homesteader in exchange for no or a reduced payment and a complete release of all claims by the Homesteader and his or her heirs and assigns against all parties, including all claims against the State of Hawaii and the United States arising out of or related to the Homestead leases, the HHCA laws, the OHA laws and any other claims for Hawaiian entitlements.

Plaintiffs seek no retroactive application of the Court's declaratory judgment or retrospective relief of any kind.

4. The Admission Act, ' 5(f). This suit also challenges the validity under the Constitution of the United States of:

a. ' 5(f) of the Admission Act, which requires that the lands granted to the State of Hawaii shall be held as a public trust for one or more of five purposes, including Afor the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act@. (This provision, ' 5(f), is challenged only to the extent that it gives or is construed or implemented to require or authorize the State of Hawaii to give native Hawaiians any right, title or interest in the Aceded lands@ or public lands of Hawaii, or the proceeds or income therefrom, not given equally to other beneficiaries of the public land trust.)

b. All other provisions of the statutes, regulations, case law and all actions, customs and usages of the United States which enforce, implement or carry out ' 5(f) of the Admission Act so as to require or authorize the State of Hawaii to give, native Hawaiians any protection, right, title or interest in the Aceded lands@ or public lands of Hawaii, or the proceeds or income therefrom, not given equally to other beneficiaries of the public land trust.

JURISDICTION AND VENUE

5. Jurisdiction is invoked pursuant to 28 U.S.C. ' ' 1331 (federal question), 1343(3) and 1343(4) (civil rights) and 2201 and 2202 (declaratory judgment).

6. Venue is in this judicial district pursuant to 28 U.S.C. ' 1391(b) because the acts giving rise to this action occurred in this district and the property that is the subject of this action is situated in this district.

PARTIES

Plaintiffs

7. All 16 Plaintiffs are residents and citizens of the State of Hawaii and of the United States.

8. Included among Plaintiffs are persons of Japanese, English, Filipino, Portuguese, Hawaiian, Irish, Chinese, Scottish, Polish, Jewish, German, Spanish, Okinawan, Dutch, French and other ancestries.

9. Each and every Plaintiff has a material financial interest in the subject matter of this action as a taxpaying citizen of the State of Hawaii and the United States and as a beneficiary of the public land trust created in 1898 when the public lands of the government of Hawaii were ceded to the United States with the requirement that all revenues or proceeds, with certain exceptions, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes@.

State Defendants

10. Defendant Benjamin J. Cayetano is a resident and Governor of the State of Hawaii.

11. Defendant Neal Miyahira is a resident of the State of Hawaii and the Director of the State of Hawaii Department of Budget and Finance. In that capacity, he is charged with the responsibility of allocating, remitting and/or transferring revenue to

the Trustees of OHA to be used by OHA as provided in Art. XII, §§ 5 and 6 and HRS Chapter 10, including the racially discriminatory provisions of HRS § 10-2; and allocating, remitting and/or transferring revenues to the Defendant Hawaiian Homes Commissioners.

12. Defendant Glenn Okimoto is a resident of the State of Hawaii and the State Comptroller, and the Director of the Department of Accounting and General Services. In those capacities he is charged with the responsibility of allocating, remitting and/or transferring revenue to the Trustees of OHA to be used by OHA as provided in Art. XII, §§ 5 and 6 and HRS Chapter 10, including the racially discriminatory provisions of HRS § 10-2; and allocating, remitting and/or transferring revenues to the Defendant Hawaiian Homes Commissioners.

13. Defendant Gilbert Coloma-Agaran is a resident of the State of Hawaii and the Chair of the Board of Land and Natural Resources and the Director of the State of Hawaii Department of Land and Natural Resources. In that capacity, he is charged with the responsibility of allocating, remitting and or transferring revenue to the Trustees of OHA to be used by OHA as provided in Art. XII, §§ 5 and 6 and HRS Chapter 10, including the racially discriminatory provisions of HRS § 10-2.

14. Defendant James J. Nakatani is a resident of the State of Hawaii and the Director of the State of Hawaii Department of Agriculture. In that capacity, he is charged with the responsibility of allocating, remitting and or transferring revenue to the Trustees of OHA to be used by OHA as provided in Art. XII, §§ 5 and 6 and HRS Chapter 10, including the racially discriminatory provisions of HRS § 10-2.

15. Defendant Seiji Naya is a resident of the State of Hawaii and the Director of the State of Hawaii Department of Business, Economic Development and Tourism. In that capacity, he is charged with the responsibility of allocating, remitting and or transferring revenue to the Trustees of OHA to be used by OHA as provided in Art. XII, §§ 5 and 6 and HRS Chapter 10, including the racially discriminatory provisions of HRS § 10-2.

16. Defendant Brian Minaai is a resident of the State of Hawaii and the Director of the State of Hawaii Department of Transportation. In that capacity, he is charged with the responsibility of allocating, remitting and or transferring revenue to the Trustees of OHA to be used by OHA as provided in Art. XII, §§ 5 and 6 and HRS Chapter 10, including the racially discriminatory provisions of HRS § 10-2

OHA Defendants

17. Defendants Huanani Apoliona, Chairperson and Rowena Akana, Donald B. Cataluna, Linda Dela Cruz, Clayton Hee, Collette Y.P. Machado, Charles Ota, Oswald Stender, and John D. Waihe`e IV are residents of the State of Hawaii and are the Trustees of the Office of Hawaiian Affairs (AOHA), an agency of the State of Hawaii, and are officials of the State of Hawaii.

HHC/DHHL Defendants

18. Defendants Raynard C. Soon, Chairman, and Wonda Mae Agpalsa, Henry Cho, Thomas Contrades, Rockne Freitas, Herring Kalua, Milton Pa, and John Tomoso are residents of the State of Hawaii and are the commissioners of the

Hawaiian Homes Commission, an agency of the State of Hawaii, and are officials of the State of Hawaii.

Other Defendants

The United States of America is named as a party because the constitutionality of two acts of Congress affecting the public interest (The HHCA and ' ' 4 and 5(f) of the Admission Act) are drawn in question. 28 U.S.C. ' 2403. HHCA was originally a federal statute but is now a State law incorporated into the State Constitution by reference, Art. XII, §§ 1, 2 & 3. See also page 12 of this Court=s order of July 12, 2001 in *Barrett v. State of Hawaii*, CV. No. 00-00645 DAE KSC. (Plaintiff challenged HHCA but did not name United States as party. Court granted summary judgment against Plaintiff. “In the absence of the United States as a party to this action, this court is unable to redress Plaintiff’s injury in any meaningful way.”) Plaintiffs do not believe that their claims are adverse to the interests of the United States in upholding the Constitution of the United States. Two presidents have expressed doubts as to the constitutionality of the express racial classification of Anative Hawaiian@ as used by HHCA and certain other bills. (Statement by President Ronald Reagan upon signing H.J. Res 17 in 1986 (HHCA “employs an express racial classification”...”raises serious equal protection questions”; and Statement by President George H.W. Bush upon signing S. 566 on November 28, 1990 (Affordable Housing Act defines “native Hawaiian” in a “race-based fashion”... “cannot be derived from the constitutional authority granted to the Congress and the executive branch to benefit native Americans as members of tribes.”; then President Bush expressed similar convictions in S.J. Res. 23 on October 6, 1992; S. 2044 on

October 26, 1992; and H.R. 939 on October 28, 1992). Plaintiffs therefore believe it is possible that the U.S. may chose not to defend or support the constitutionality of the HHCA laws or the OHA laws or the challenged interpretation of a portion of §5(f) of the Admission Act.

19. The ADoe Defendants@ are persons whose identities are unknown to Plaintiffs but who are believed to be residents of the State of Hawaii and to be agents, employees or officials of the State of Hawaii and are and will be engaged in the performance of their duties as agents, employees or officials of the State of Hawaii and further will be acting pursuant to directives, instructions, or orders from or with the permission of the Defendants, or those acting in concert with them or at their direction or under their control.

20. Each individual Defendant is sued only in his or her official capacity. Relief is sought against each Defendant as well as his or her or its agents, assistants, successors, employees, attorneys, and all persons acting in concert or cooperation with them or at their direction or under their control.

LEGAL HISTORY

(With notations showing applicability to Plaintiffs= claims in this action.)

1898 - The public land trust established for inhabitants of the Hawaiian Islands

21. In 1898, the Republic of Hawaii ceded its public lands (about 1.8 million acres formerly called the Crown lands and Government lands) to the United States with the requirement that all revenue from or proceeds of these lands except for those used for civil, military or naval purposes of the U.S. or assigned for the use of local

government "shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes". *Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, Resolution No. 55, known as the Newlands Resolution*, approved July 7, 1898; Annexation Act, 30 Stat. 750 (1898) (reprinted in 1 Rev. L. Haw. 1955 at 13-15).

22. The Newlands Resolution established the public land trust. Such a special trust was recognized by the Attorney General of the United States in Op. Atty. Gen. 574 (1899); *State v. Zimring* 58 Haw. 106, 124, 566 P.2d 725 (1977) and *Yamasaki* 69 Haw. 154, 159, 737 P.2d 446, 449 (1987); see also Hawaii Attorney General Opinion July 7, 1995 (A.G. Op. 95-03) to Governor Benjamin J. Cayetano from Margery S. Bronster, Attorney General, Section 5 [Admission Act] essentially continues the trust which was first established by the Newlands Resolution in 1898, and continued by the Organic Act in 1900. Under the Newlands Resolution, Congress served as trustee; under the Organic Act, the Territory of Hawaii served as Trustee.

23. In 1898, about 31% of the inhabitants of Hawaii were of Hawaiian ancestry and the remaining 69% were of other ancestry. Robert C. Schmitt, *Demographic Statistics of Hawaii, 1778-1965* (Honolulu, 1968).

24. In 1900, the Organic Act, 31 Stat. 141 (1900), § 73(e) reiterated that "All funds arising from the sale or lease or other disposal of public land shall be...applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation approved July 7, 1898." (Emphasis added.)

25. **Note:** The public land trust, from its inception in 1898, required the ceded lands and proceeds and revenues derived from them, to be held solely for the benefit of the inhabitants of the Hawaiian Islands[@], not just for those of Hawaiian ancestry. (Emphasis added.)

26. **Note:** Nor did persons of Hawaiian ancestry, merely by virtue of their ancestry, have any special entitlement to the use, income or proceeds of the public lands of the Kingdom of Hawaii. The King conducted his government for the common good and not for the private interest of any one man, family or class of men among his subjects. Constitution of 1852, Article 14. Every adult male subject, whether native or naturalized, was entitled to vote. Id, Section 78. Everyone born in the Kingdom (except children of foreign diplomats) was a native-born subject of the Kingdom. In the last half of the 19th century, the government of the Kingdom actively encouraged immigration and offered immigrants easy naturalization and full political rights. For example, the Civil Code of 1858 provided that Every foreigner so naturalized shall be deemed to all intents and purposes a native of the Hawaiian Islands ... and ... shall be entitled to all the rights, privileges and immunities of an Hawaiian subject.[@]

1921 - The Hawaiian Homes Commission Act

27. In 1921, Congress enacted the Hawaiian Homes Commission Act, 42 Stat. 108 (1921) ("HHCA") which set aside about 200,000 acres of the ceded lands and provided for long term leases of Homestead lots (at one dollar per year) to "native Hawaiian" persons, defined in ' 201(7) as "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778."

28. Congress, by enacting the HHCA and limiting its benefits to a group selected on the basis of race or ancestry, caused the United States to violate the equal protection requirement implicit in the Fifth Amendment to the U.S. Constitution and also to violate its fiduciary duty as trustee of the public land trust to all the citizens of Hawaii who had none or less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

1959 - The Admission Act

29. In 1959, when Hawaii became a state, the United States transferred title to the ceded lands (less those parts retained by the U.S. for national parks, military bases and other public purposes) back to Hawaii with the requirement in the Admission Act '4 that the State adopt the HHCA and in '5(f) that the State hold the ceded lands "as a public trust" for "one or more" of five purposes ("for the support of public schools and other public educational institutions", "for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act" (i.e., "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778"), "for the development of farm and home ownership", "for the making of public improvements" and "for the provision of lands for public use."

30. Congress, by requiring as a condition of statehood, that the HHCA be adopted and that a race-based component, (for the betterment of the conditions of native Hawaiians as defined in the HHCA, i.e., "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.") be added to the purposes of the public land trust:

- a. violated the equal protection implicit in the Fifth Amendment to the U.S. Constitution;
- b. also violated the "equal footing doctrine" which prohibits Congress from imposing, as a condition of statehood, any restriction on a state's constitutional powers not required of other states;
- c. also caused the United States to violate its fiduciary duty as trustee of the public land trust to all the citizens of Hawaii who had none or less than "one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778."

1978 - Hawaii Constitution purportedly amended, creates OHA, further breach of public land trust and violation of U.S. Constitution

31. In 1978, Hawaii's Constitution was purportedly amended to establish an Office of Hawaiian Affairs ("OHA"). Amended Article XII, Section 6 provides that the board of trustees of OHA "shall exercise power as provided by law; to manage and administer the proceeds from the sale...and income...including all income and proceeds from that pro rata portion of the trust referred to in Section 4 of this article for native Hawaiians." Section 4 does not specify any pro rata portion.

32. **Note: 1978 votes not tallied legally. 18,833 voters disenfranchised. Doubtful that majority ratified OHA Amendments.** The ballots for the 1978 ratification election were not tallied as requested by the Constitutional Convention or in compliance with the common law rule that a ballot must be counted if the voter's intent can be reasonably ascertained from the ballot. As a result of the illegal manner of

tallying, 18,833 voters who attempted to vote on the proposed amendments were disenfranchised. These rejected, uncounted 18,833 ballots (6.4% of the total votes cast) were more than enough to change the outcome on the amendments that established OHA and DHHL, the two least popular of all the thirty-four proposed amendments. Furthermore, only about 18% of the voters specifically marked their ballots "Yes." A plurality of about 45% was recorded in favor of the OHA and DHHL amendments by counting ballots that did not mark "Yes" or "No" regarding the amendments as affirmative votes. The Hawaii Constitution in effect at the time of the Nov. 7, 1978 general election provided in the relevant part that proposed constitutional "amendments shall be effective only if approved at a general election by a majority of all the votes tallied upon the question..." Hawaii Constitution January 1969 Article XV, Section 2. Since 18,833 ballots, enough to change the outcome, were wrongfully rejected from the tally, it was impossible to accurately determine that the amendments were approved by the necessary majority.

33. In 1980, the Hawaii Legislature enacted Section 10-13.5 H.R.S. "Twenty per cent of all funds derived from the public land trust, described in Section 10-3, shall be expended by the office [OHA], as defined in section 10-2, for the purposes of this chapter."

34. By changing the terms of the public land trust so as to permanently give 20% of the funds generated by the trust to a group selected only on the basis of their race or ancestry and who make up less than 5% of the trust beneficiaries, the Hawaii Legislature in 1980:

a. Required the State to violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution; and

b. Required the State, as trustee of the public land trust, to violate its fiduciary duty to Plaintiffs and to over 95% of the beneficiaries, i.e., the about 1.1 million citizens of Hawaii who have less than 50% or no Hawaiian blood;

**1990 - Legislature defines "revenues" retroactively,
mandates Budget & Finance and OHA to negotiate.**

35. In 1990 the Hawaii Legislature in Act 304 defined "revenue" from which OHA is to share, retroactive to 1980, as "all proceeds, fees, charges, rents or other income ... derived from any ... use or activity, that is situated upon and results from the actual use of lands comprising the public land trust".

36. Act 304, which was interpreted to calculate OHA's "pro rata share" on the gross revenues, (rather than on income as provided in the Hawaii Constitution or on net income after expenses as required under trust law), further compounded the breach of the State's fiduciary duty to 95% of Hawaii's citizens, including Plaintiffs.

37. Act 304 also mandated that OHA and the State Department of Budget and Finance (B&F) negotiate the amounts payable to OHA for the years 1980 through 1991.

38. In 1993, after extensive discussions, a proposal for payment of about \$130 million, including interest, for the years 1980 through 1991, supported by both OHA and the State, was submitted to the Legislature. State officials, including the then Director of the Department of Budget and Finance, testified that such amount would

"settle" or constitute "paying the full amount" of OHA's claims to revenues from the ceded lands for 1980-1991. OHA did nothing to dispel this understanding but rather confirmed it. The Legislature, by Act 35, then authorized and appropriated the amount in general obligation bond funds to be paid to OHA for this purpose.

39. In April 1993, after Act 35 was enacted, OHA and an official from the Office of State Planning ("OSP") signed a Memorandum which stated in part "OSP and OHA recognize and agree that the amount specified in Section 1 hereof does not include several matters regarding revenues which OHA has asserted is due to OHA and which OSP has not accepted and agreed to."

40. In June 1993 the approximately \$130 million was paid to OHA for its share of the ceded lands revenues for 1980 through 1991.

1994 - OHA sues for more for same period, 1980 - 1991

41. In January 1994, OHA commenced a lawsuit, *OHA v. State of Hawaii*, seeking payment of additional amounts going back to 1980 arising from receipts of the Waikiki duty-free shop, public housing, the Hilo Hospital and investment earnings on unpaid "revenue."

42. In October 1996, Circuit Court Judge Daniel G. Heely granted OHA's motion for partial summary judgment, ruling that OHA is entitled to a 20% share of each of the items in question. The State appealed and the Hawaii Supreme Court until 1999 deferred ruling while the State and OHA discussed settlement.

43. Media accounts estimated that, if Judge Heely's decision was affirmed, between \$300 million and \$1.2 billion may be payable to OHA for the period 1980 through 1991 in addition to the \$130 million already paid to settle OHA's claims for that period.

1999 - Some of Plaintiffs here file amicus brief in *OHA v. State*

44. On May 29, 1999, some of Plaintiffs here filed in the Hawaii Supreme Court an amicus curiae brief in *OHA v. State* arguing on behalf of the Defendant State of Hawaii that the OHA laws are based on racial classifications and therefore presumptively invalid and subject to strict scrutiny. Also, Hawaiians have no special or political relationship, comparable to that of Indian tribes, which would exempt the OHA laws from strict scrutiny analysis.

February 23, 2000 - *Rice v. Cayetano* decided by high court

45. On February 23, 2000, the Supreme Court of the United States in *Rice v. Cayetano*, 528 U.S. 495, struck down OHA's Hawaiians-only voting restriction. In applying the Fifteenth Amendment, the Court rejected the arguments to the contrary by OHA and the State and held that the definitions of "Hawaiian" and "Native Hawaiian" are racial classifications.

46. Those definitions, which the highest court in the land has now determined to be racial classifications, are the foundation and the only reason for the existence of OHA and HHCA.

March 2000 - Some of Plaintiffs here sought to intervene in *OHA v. State*

47. On March 28, 2000, a diverse, multi-ethnic group of 23 Hawaii men and women, some of whom are Plaintiffs in this case, moved to intervene in the Hawaii Supreme Court in *OHA v. State* arguing, among other things, that the *Rice* decision together with the Supreme Court's other decisions holding all racial classifications presumptively invalid, if applied in a case challenging OHA itself, will require that OHA be invalidated and its claims be dismissed.

48. On May 8, 2000, the Hawaii Supreme Court denied the motion to intervene in *OHA v. State*. No reason was stated.

September 2001 - Hawaii Supreme Court dismisses *OHA v. State*

49. On September 12, 2001, the Hawaii Supreme Court in *OHA v. State*, reversed the 1996 Heely decision and dismissed the case for lack of justiciability. The Court said that, because it conflicts with federal legislation, "Act 304 B by its own terms B is effectively repealed."

50. The Hawaii Supreme Court did not rule on or mention the federal constitutional question raised in the amicus brief and in the motion to intervene. It nevertheless did say, "the State's obligation to native Hawaiians is firmly established in our constitution" and "it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust." *OHA v. State*, Appeal Nos. 20281 & 20216 Decision, September 12, 2001.

51. Following the Hawaii Supreme Court's decision, OHA trustee Clayton Hee was quoted in the media that OHA had cut its own throat by walking away from a settlement offer by the State of \$251 million and 360 acres of ceded lands.

52. New bills are presently pending before the current Legislature of the State of Hawaii that would “reinstate Act 304-style funding” or, as an interim measure, appropriate \$17 million to OHA. Some legislative leaders have said that interim funding in some amount would probably be favorably considered in the current session.

STATEMENT OF CLAIMS

Exhaustion of administrative remedies

53. Plaintiffs have no administrative remedy for challenging the constitutionality of the OHA laws or the HHCA laws or for enforcing their rights as beneficiaries of the public land trust.

Need for equitable relief

54. Plaintiffs have no adequate remedy at law and will continue to have their rights as beneficiaries of the public land trust and as taxpayers and their constitutional and civil rights violated as a result of the OHA laws and the HHCA laws and the ongoing acts of Defendants in implementing and enforcing them unless immediate and permanent injunctive relief is rendered.

Harm to Plaintiffs and others similarly situated

55. From July 7, 1898, when the public lands of Hawaii were ceded to the United States until enactment of the Hawaiian Homes Commission Act in 1921 the United States held title and the Territory of Hawaii remained in the possession, use and control of the public lands of Hawaii (except for those used for civil, military or naval

purposes of the U.S.), hereinafter called the ceded lands, and their revenues and proceeds, for the benefit of the inhabitants of Hawaii. This was in compliance with the public land trust and the Constitution of the United States.

56. From 1921, when Congress enacted the Hawaiian Homes Commission Act (HHCA) and set aside about 200,000 acres of the public lands of Hawaii for the exclusive benefit of native Hawaiians, to the present, some of Plaintiffs' ancestors and, ultimately, all of Plaintiffs have been deprived of the equal opportunity to use and benefit from those about 200,000 acres as well as thirty percent of the state receipts derived from the leasing of cultivated sugarcane lands and from water licenses and from the proceeds from other dispositions of those sugarcane lands, solely because they (Plaintiffs) are not of the favored race, i.e., because they are not descendants of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

57. In 1995, based on a memorandum of understanding signed by the previous governor and enacted in the Special Session of 1995, Governor Cayetano signed Act 14 which established the "Hawaiian home lands trust fund" (now provided for in HCCA §213.6.) to be used for capital improvements and other purposes in furtherance of HHCA and provided for the State to make twenty annual deposits of \$30 million each into that fund. As of June 30, 2000, the State had paid DHHL \$158 million and had appropriated another \$15 million for these deposits.

58. As a result of the HHCA laws, and the issuance of Homestead leases pursuant to the racial classification in the HHCA laws and the ongoing acts of

Defendants in implementing and enforcing the HHCA laws, Plaintiffs and over one million of Hawaii's other citizens similarly situated, have been and continue to be harmed as follows:

a. **Diversions of public land trust lands and revenues to DHHL harm Plaintiffs as trust beneficiaries.** As beneficiaries of the public land trust Plaintiffs, and others similarly situated, are entitled to impartial treatment, equal access to all programs funded by public land trust revenues, and equal opportunity to use or benefit from the public lands. But as a result of the diversion of the about 200,000 acres of public lands and thirty percent of the State receipts from the sugarcane lands and water licenses and other diversions of public lands and revenues to DHHL and the issuance of Homestead leases pursuant to the racial classification in the HHCA laws, each Plaintiff has been and continues to be deprived of the equal protection of the laws and his or her full and equal share of the use or benefits of the public land trust;

b. **Existing Homestead leases require the HHC/DHHL Defendants to continue to enforce and administer racially discriminatory provisions for over 100 more years. They inflict ongoing and continuing harm on Plaintiffs.** As of January 31, 2002 there were 7,281 Homestead leases outstanding (including 5,823 residential, 1076 agricultural and 382 pastoral) covering some 42,000 or more acres from the public land trust. Each of these Homestead leases is required to have an initial term of 99 years "unless sooner terminated as hereinafter provided", extendable by DHHL for an additional term of 100 years, at rent of \$1 per year. The original lessee is required to swear under oath that the lessee is a native Hawaiian. Upon the death of

a lessee the lessee's interest may vest in certain relatives who are at least one-quarter Hawaiian. The lessee is not permitted to transfer or hold the premises for any other person except a native Hawaiian or Hawaiians, and then only upon the approval of DHHL. The lessee's interest is not subject to attachment, levy or sale upon court process, except pursuant to agreement with a native Hawaiian or Hawaiians or for any indebtedness due to or assured by DHHL. The lessee may mortgage or pledge his or her interest only with the consent and approval of the HHC. In the case of residential Homestead leases, the lessee is required to occupy the lot as the lessee's home and to continue to occupy and use the lands on lessee's own behalf. The agricultural Homestead leases require the lessee to practice "good husbandry" and, should DHHL deem advisable and so require, the lessee shall adopt a farm or ranch plan prepared by the U.S. Soil Conservation Service. Also, "The primary purpose of the Act being the successful rehabilitation of native Hawaiians under the guidance and tutelage of the Lessor [DHHL], it is deemed necessary and in furtherance of said Act and the purpose thereof that the Lessor retain, and it does hereby so retain, the right to approve in advance any proposed agreement between the Lessee and another relating in any way to the use of the agricultural lot." Pastoral Homestead leases have similar provisions for good husbandry and the rehabilitation of native Hawaiians under DHHL's guidance and tutelage. The result of each of those Homestead leases is to deprive Plaintiffs of the benefit of some part of the public lands. A prudent trustee would and could obtain fair market lease rents substantially higher than \$1 per year. The HHC/DHHL Defendants, by complying with the Homestead leases and performing the duties and exercising the rights of Lessor under those leases, deprive and continue to deprive

Plaintiffs, and others similarly situated, of the benefit of over 42,000 acres of lands in the public land trust, and the equal protection of the laws, solely because Plaintiffs are not of the favored race.

c. **DHHL has the right to withdraw the whole or any part of the lands demised by the Homestead leases as may be required for a public use and purpose. Compliance with the 14th Amendment and the State's fiduciary duty as trustee of the public land trust are public uses and purposes.** Under the Homestead leases, the DHHL reserves "The right to withdraw from the operation of this lease the whole or any part or portion of the lands demised hereby, and any interest therein as in the exclusive judgment of the Lessor [DHHL] may be required for a public use and purpose ...". The HHC/DHHL Defendants and the State Defendants are all required to take an oath of office to support and defend the Constitution of the United States. (Hawaii State Constitution, Art.XVI §4; §202 HHCA; §26-34 HRS). Under the Constitution of the United States, state officials, including the HHC/DHHL Defendants and the State Defendants, are forbidden from denying to any person the equal protection of the laws on account of race. Their duty to support and defend the Constitution of the United States is a public purpose which overrides any inconsistent duties arising under state law or federal statutes. Also, both federal and state trust laws require the HHC/DHHL Defendants and the State Defendants to comply with the State's fiduciary duty and public purpose to act impartially in administering the public land trust.

d. **Appropriations for DHHL harm Plaintiffs as taxpayers.** Part of the State of Hawaii's tax revenues (which include taxes Plaintiffs pay to the State of Hawaii) are appropriated to the Department of Hawaiian Home Lands (DHHL) and part also may go to pay principal and interest on bonds that generated funds that have been appropriated to DHHL. For instance, for Fiscal Year 2001 at least \$7,154,969 was appropriated to DHHL in general and special funds paid by the Plaintiffs and other taxpayers of Hawai'i. 2000 Sess. L. Act 281. The Legislature also approved \$25,000,000 in revenue bonds. The Hawaiian Homes Commissioners administer DHHL's funds and decide how those funds will be spent. The HHCA laws require the Hawaiian Homes Commissioners to work solely for the benefit of the racial class of native Hawaiians and to promote the interests of people in that class, particularly the people who have qualified for Homesteads based on their racial ancestry. If the state tax revenues (including taxes Plaintiffs pay) were not diverted to DHHL, Plaintiffs' taxes could be reduced or funding for racially neutral programs that Plaintiffs could qualify for could be increased. Although each Plaintiff's tax burden is increased by the appropriations to DHHL, and by any appropriations to pay principal and interest on bonds that generated funds that have been appropriated to DHHL, every Plaintiff is denied any benefit of those appropriations solely because of his or her ancestry, i.e., he or she is not "native Hawaiian" since none of Plaintiffs have the required one half part of the favored racial ancestry. Every Plaintiff is injured in that he or she is denied the equal protection of the laws and is forced to pay taxes for unconstitutional racially discriminatory programs.

59. From 1959 to 1978 the practice of the State of Hawaii was to channel the income of the ceded lands, except for the parts set aside under the HHCA, by and large to the Department of Education. Final Report of the Public Land Trust, Legislative Auditor, Dec. 1985.

60. This use of the income from the ceded lands, except for the parts set aside under the HHCA, complied with the public land trust because the primary purpose of the public land trust from the inception has been public education. It also complied with the Admission Act because the support of the public schools was one of the five permitted purposes. It also complied with the Constitution of the United States because it benefited all children of Hawaii who attended public schools without regard to their race or ancestry. Children of Hawaiian ancestry, who make up about 25% of the public school student body, shared fully in that benefit.

61. In 1978, through the Constitutional Convention and subsequent legislation, the State of Hawaii shifted this priority. It purportedly ordered the diversion of a pro rata share of ceded lands revenues and proceeds to the betterment of native Hawaiians through a newly created agency, the Office of Hawaiian Affairs (AOHA). One consequence of these events was to take substantially all of the net income from the ceded lands and divert it from public education to OHA. Another consequence was to convert what had been (except for the HHCA) a race-neutral public land trust and convert it to one which treated beneficiaries differently based on their ancestry.

62. As a result of the OHA laws and the ongoing acts of Defendants in implementing and enforcing them, Plaintiffs and about one million of Hawaii=s other citizens similarly situated have been and continue to be harmed as follows:

a. **Diversions of public land trust revenues to OHA harm Plaintiffs as beneficiaries of the public land trust.** At least \$250 million in ceded lands revenues, or appropriations “equivalent to” such revenues, have been diverted to OHA for the exclusive benefit of the racial class defined as “native Hawaiian”. OHA is legally obliged to segregate and earmark funds from the public land trust for “native Hawaiians”. According to OHA’s financial report of November 30, 2002, OHA holds investments of over \$304 million and total fund equity of over \$337 million. Plaintiffs believe that most of those investments and funds are derived from public land trust revenues diverted to OHA. If the public land trust revenues were not diverted to OHA, funding for the racially neutral purposes of the public land trust, such as public education, could be increased; or that revenue could be spent on racially neutral programs now funded by tax revenues and Plaintiffs’ taxes could be reduced; or funding for racially neutral programs that each Plaintiff could qualify for could be increased. As a beneficiary of the public land trust each Plaintiff is entitled to impartial treatment and equal access to or benefit of all programs funded by public land trust revenues. But as a result of the diversion of the public land trust assets to OHA exclusively for “native Hawaiians”, each Plaintiff is and continues to be denied the equal protection of the laws and continues to be deprived of his or her full and equal share of the benefits of the public land trust;

b. **Appropriations for OHA harm Plaintiffs as taxpayers.** Part of the State of Hawaii's tax revenues (which include taxes each Plaintiff pays to the State of Hawaii) are appropriated to the Office of Hawaiian Affairs (OHA) and part also go to pay principal and interest on bonds that generated funds that have been appropriated to OHA. The trustees of the OHA administer OHA's funds and decide how those funds will be spent. The OHA laws require the OHA trustees to work solely for the benefit of the racial classes of Hawaiians and native Hawaiians and to promote the interests of people in those racial classes. If the state tax revenues (including taxes each Plaintiff pays) were not diverted to OHA, each Plaintiff's taxes could be reduced or funding for racially neutral programs that each Plaintiff could qualify for could be increased.

Although each Plaintiff's tax burden is increased by the appropriations to OHA, and the appropriations to pay principal and interest on bonds that generated funds that have been appropriated to OHA, each Plaintiff is denied any benefit of the portions set aside for "native Hawaiians" solely because of his or her ancestry, i.e., none of the Plaintiffs have the required one half part of the favored racial ancestry. All except three of the Plaintiffs are also denied any benefit of the portions set aside for "Hawaiians" because they have none of the favored ancestry. Every Plaintiff is harmed in that he or she is denied the equal protection of the laws and is forced to pay taxes for unconstitutional racially discriminatory programs.

c. **The exemption of Homestead lots from real property taxes also harms Plaintiffs as taxpayers.** The City and County of Honolulu and the County of Maui both exempt Hawaiian Homesteads from paying real property taxes. To be

awarded a Hawaiian Homestead one must be native Hawaiian or the child of a native Hawaiian Homesteader. As a result of this racially discriminatory tax exemption, taxes imposed on the owners of other property, including every Plaintiff, in order to pay the costs of the government are higher than they otherwise would be.

CLAIMS FOR RELIEF

First Claim for Relief Equal Protection Clauses of Fourteenth and Fifth Amendments

63. Plaintiffs reallege paragraphs 1 through 62 as if set forth fully.
64. The Fourteenth Amendment of the Constitution of the United States

provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall and State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

65. The Supreme Court of the United States held, in *Rice v. Cayetano*, 528 U.S. 495, 514 (2000) that the definitions of “Hawaiian” and “native Hawaiian” in the OHA laws, which specifically incorporate the HHCA definition, are racial classifications. “Ancestry can be a proxy for race. It is that proxy here.” “The State, in enacting the legislation before us, has used ancestry as a racial definition and for a racial purpose.” *Id* at 515. “The State=s electoral restriction enacts a race-based voting qualification.” *Id* at 517.

66. Giving status, entitlements, privileges, preferences and benefits exclusively to people who meet those definitions are the foundation and the only reason for the existence of OHA, HHCA and DHHL.

67. The Supreme Court held in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 222 (1995) that “equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment” and at 226, “Accordingly, we hold today that all racial classifications, imposed by whatever federal, state or local governmental actor must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests.”

68. The OHA laws and the HHCA laws cannot pass strict scrutiny because: (a) neither the State of Hawaii nor the United States has a compelling interest in dividing its citizens into two classes based on race and discriminating against those citizens in one class and favoring those in the other; and (b) even if some compelling interest existed, neither the OHA laws nor the HHCA laws are narrowly tailored.

69. To the extent that the Admission Act requires the State of Hawaii to adopt the HHCA and to the extent that it is construed as requiring or compelling the State to give native Hawaiians rights to the ceded lands, or revenues or proceeds thereof, not shared equally by other citizens, those parts of the Admission Act are invalid under the Fifth and Fourteenth Amendments and the Equal Footing doctrine.

70. The OHA laws, the HHCA laws, the Homestead leases issued pursuant to the racial classification in the HHCA laws, and the ongoing acts, customs and usages

of the State Defendants, the HHC/DHHL Defendants and the OHA Defendants in implementing and enforcing the OHA laws and the HHCA laws deny and continue to deny to Plaintiffs the equal protection of the laws and are ongoing violations of the Fourteenth Amendment.

71. If and to the extent that the OHA laws or the HHCA laws are defended, implemented or authorized by any acts, customs or usages of the United States or its officials, they deny and continue to deny to Plaintiffs the equal protection of the laws and are ongoing violations of the Fifth Amendment.

**Second Claim for Relief
Violation of the Civil Rights Act, 42 U.S.C. § 1983**

72. Plaintiffs reallege paragraphs 1 through 71 as if set forth fully.

73. The Civil Rights Act, 42 U.S.C. § 1983, provides,

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

74. The OHA laws, the HHCA laws, the Homestead leases issued pursuant to the racial classification in the HHCA laws and the ongoing acts, customs and usages of the State Defendants, the HHC/DHHL Defendants and the OHA Defendants under color thereof deny and continue to deny to Plaintiffs the equal protection of the laws and rights, privileges and immunities secured to them by the Constitution and laws of the United States and are ongoing violations of the Civil Rights Act, 42 U.S.C. § 1983.

Third Claim for Relief

Breach of Public Land Trust

75. Plaintiffs reallege paragraphs 1 through 74 as if set forth fully.

76. The public land trust was created by federal law: The Newlands Resolution in 1898 expressly accepting the terms offered by the Republic of Hawaii (including the requirement that, with the exceptions noted, proceeds and revenues of the ceded lands “shall be used solely for the benefit of the Inhabitants of the Hawaiian Islands for educational and other public purposes.”) and the Organic Act in 1900 (reiterating that “All funds arising from the sale or lease or other disposal of public land shall be applied to such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the Joint Resolution of Annexation approved July 7, 1898.”)

77. Having accepted the duties of a trustee of the public land trust for the benefit of the people of Hawaii, the United States is (or at least through the time it returned the ceded lands to Hawaii in 1959, was) obliged to treat all of the inhabitants of Hawaii, including the Plaintiffs, with the strict equality that is required of a trustee who is obliged to protect the interests of multiple beneficiaries.

78. The scope of the U.S. fiduciary duty in administering trust property is a question of federal law. *U.S. v. Mason*, 412 U.S. 391, 397 (1973). Congress’s power to change the public land trust is limited by the Fifth Amendment, the equal footing doctrine and the fiduciary duty under federal law of the United States as trustee of the public land trust, at least through the time it returned most of the ceded lands to Hawaii in 1959. The power of the United States to act as trustee of the public land trust is, like

all of its powers, limited by the Fifth Amendment. The equal protection component of the Fifth Amendment and the obligations of a public trustee require that the United States in all its actions related to the public lands trust treat all beneficiaries equally, without regard to race.

79. The United States neither had nor has any constitutional power to authorize, permit or require the State as trustee of the public land trust to discriminate for or against beneficiaries on grounds of race or ancestry.

80. The State's role and the scope of its duties as trustee is likewise limited by federal law, including the Newlands Resolution, the Admission Act, the United States Constitution, the Fourteenth Amendment and other federal laws. The State has accepted the duties of a trustee of the public lands trust and has recognized that its fiduciary obligations to the beneficiaries are governed by the same strict standards applicable to private trustees. "The State owes this same high standard to the beneficiaries of the ceded lands trust and, as stated in the text, the beneficiaries of this trust should not be left powerless to prevent the State from allegedly neglecting its obligations." *Pele Defense Fund v. Paty*, 73 Haw. 578, 604, 837 P.2d 1247, 1264 (1992). The trustee must deal impartially when there is more than one beneficiary. *Ahuna v. Dept. Hawaiian Home Lands*, 64 Haw. 327, 340 (1982) citing federal authorities including *Mason*, supra.

81. As beneficiaries of the public land trust, Plaintiffs have federally created rights under the Newlands Resolution and the Admission Act and have standing to invoke 42 U.S.C. § 1983 to sue state officials who violate the terms of the federally

created trust (as limited by the requirements of the United States Constitution) or who violate other federal laws in their administration of that trust.

82. The OHA laws, the HHCA laws and the ongoing acts of the State Defendants, the HHC/DHHL Defendants and the OHA Defendants in implementing and enforcing them and the Homestead leases issued only to people who satisfy the racial classification in the HHCA laws, breach the fiduciary duty those Defendants, as State officials, owe to Plaintiffs as beneficiaries of the public land trust and are ongoing violations of federal laws.

83. If and to the extent that the OHA laws or the HHCA laws are defended, supported, implemented or authorized by any acts, customs or usages of the United States or its officials, they breach the fiduciary duty the United States owes to Plaintiffs as beneficiaries of the public land trust and are ongoing violations of federal laws.

Prayer

Wherefore, Plaintiffs pray that this Court:

A. Declare:

1. The OHA laws and the HHCA laws are invalid under the Constitution of the United States, effective as of the date of the Court's Judgment;

2. All moneys, investments, lands and property of any kind, and all earnings thereon and growth thereof, held by or for OHA, HHC or DHHL, are general funds and property of the State of Hawaii;

a. All such property is free of any trust or other encumbrance which restricts its use to the benefit of any racial classification or prevents it from being used for the benefit of all of the people of Hawaii; and

b. All such property is within the care and control of the Defendant Governor to be used for such constitutional and non-discriminatory purposes as the State deems appropriate and in compliance with the public land trust for the inhabitants of the State of Hawaii; and

3. Continued management, administration and enforcement of the existing Homestead leases by HHC/DHHL Defendants would be an ongoing and continuing violation of federal law (the equal protection clause of the Fourteenth Amendment and the Civil Rights Act) and a continuing breach of the State's fiduciary duty, under federal law, as trustee of the public land trust;

B. Order the HHC/DHHL Defendants and/or the State Defendants to negotiate with the existing Homesteaders for the State's exercise of its right to withdraw the lands demised in a way that is fair to the Homesteaders but does not further violate the rights of Plaintiffs and others similarly situated.¹

¹ Such negotiations could result in a global settlement under which, for example, the fee simple interest in the demised land is conveyed to the Homesteader in exchange for no or a reduced payment and a complete release of all claims by the Homesteader and his heirs and assigns against all parties, including all claims against the State of Hawaii and the United States and anyone else arising out of or related to the Homestead leases, the HHCA laws, the OHA laws and any other claims for Hawaiian entitlements. If the fair market value of the land demised were, say, \$50,000, the fee might be conveyed with no payment required. If the fair market value was \$200,000 the Homesteader might be required to pay \$150,000 within ten years or earlier if the Homesteader sells or mortgages the land or ceases to occupy it as the Homesteader's residence. These are just examples showing how plaintiffs believe a fair settlement might be reached. Plaintiffs do not ask the court to order such a settlement. Plaintiffs do believe that any settlement reached should be subject to this court's approval, to ensure that the interests of plaintiffs and others similarly situated are protected. If no settlement is reached by the State and Homesteaders within a reasonable time, plaintiffs believe the court should order the State Defendants and the HHC/DHHL Defendants to withdraw the lands demised by the Homestead leases. In that event, and if the Homesteaders intervene in this action, plaintiffs believe the court should adjudicate the manner in

C. Permanently enjoin the HHC/DHHL Defendants from issuing any further Homestead leases, making any further grants, loans, guarantees, transfers, contracts or expenditures or doing any further developments relating to the HHCA laws, or from otherwise further implementing, enforcing or carrying out the HHCA laws;

D. Permanently enjoin the OHA Defendants from making any further grants, loans, guarantees, transfers, contracts or expenditures relating to the OHA laws or from otherwise further implementing, enforcing or carrying out the OHA laws;

E. Permanently enjoin the State Defendants from making or agreeing to make any further transfers of public moneys, investments, lands or property of any kind to or for OHA or to or for HHCA or DHHL and from otherwise carrying out, implementing or enforcing the OHA laws or the HHCA laws;

F. Order the OHA Defendants to transfer to the State Defendants all moneys, investments, lands and property of any kind, and all earnings thereon and growth thereof, held by or for OHA;

G. Order the HHCA/DHHL Defendants to transfer to the State Defendants all moneys, investments, lands and property of any kind, and all earnings thereon and growth thereof, held by or for HHC and DHHL;

H. Retain jurisdiction to exercise its equitable powers and issue such further orders in aid of execution of its judgment, to resolve disputes as to settlements between the State Defendants and the individual Homesteaders and to accomplish, to the greatest extent possible, either a global settlement or final adjudication of all related

which the demised lands are withdrawn so that it is fair to the Homesteaders and does not further violate the rights of plaintiffs and others similarly situated.

claims.

I. Allow Plaintiffs their costs herein, including reasonable attorney=s fees,
and such other and further relief as is just.

Dated: Honolulu, Hawaii this _____ day of March, 2002.

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