

CD DAB

ORIGINAL

314875.1

WATANABE ING & KOMEIJI LLP
A Limited Liability Law Partnership

JOHN T. KOMEIJI #2498-0
GREGG M. USHIRODA #5868-0
KAREN Y. ARIKAWA #7684-0
First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, Hawaii 96813
Telephone No. (808) 544-8300
Facsimile No. (808) 544-8399
E-Mail Address: karikawa@wik.com

BUCK IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

APR 26 2006
at 2 o'clock and 57 min. M
SUE BERTIA, CLERK

Attorneys for Defendants
SUSANNA F. CHEUNG, ANN K. HIGA, MARY REAVIS,
and OPPORTUNITIES FOR THE RETARDED, INC.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

HAWAII DISABILITY RIGHTS	)	CIVIL NO. CV05-00557 DAE-LEK
CENTER, a Hawaii corporation,)	
)	
Plaintiff,	)	DEFENDANTS SUSANNA F. CHEUNG,
	)	ANN K. HIGA, MARY REAVIS, AND
vs.	)	OPPORTUNITIES FOR THE RETARDED,
SUSANNA F. CHEUNG, in her	)	INC.'S CONCISE STATEMENT OF
capacity as President and	)	FACTS IN SUPPORT OF THEIR MOTION
Chief Executive Officer of	)	FOR SUMMARY JUDGMENT;
Opportunities for Retarded,	)	DECLARATION OF GREGG M.
Inc.; ANN K. HIGA, in her	)	USHIRODA; DECLARATION OF ANN
capacity as Vice President of	)	HIGA; DECLARATION OF MARY
Opportunities for the	)	REAVIS; EXHIBITS "A" - "I";
Retarded, Inc.; MARY REAVIS,	)	CERTIFICATE OF COMPLIANCE;
in her capacity as Waiver	)	CERTIFICATE OF SERVICE
Program Director of	)	<u>HEARING</u>
Opportunities for the)	
Retarded, Inc.; and	)	DATE:
OPPORTUNITIES FOR THE	)	TIME:
RETARDED, INC., a Hawaii	)	JUDGE: Honorable David Alan Ezra
corporation,)	
Defendants.	)	TRIAL DATE:
)	

DEFENDANTS SUSANNA F. CHEUNG, ANN K. HIGA, MARY REAVIS, AND
OPPORTUNITIES FOR THE RETARDED, INC.'S CONCISE STATEMENT OF FACTS
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Comes now Defendants Susanna F. Cheung, Ann K. Higa, Mary Reavis, and Opportunities for the Retarded, Inc., by and through undersigned counsel, and hereby submit their concise statement of facts pursuant to Local Rule 56.1 of the Rules of the United States District Court for the District of Hawaii.

UNDISPUTED FACT	EVIDENCE
Plaintiff HAWAII DISABILITY RIGHTS CENTER ("Plaintiff") claims to be the State's designated protection and advocacy system.	<u>See</u> Complaint for Declaratory and Injunctive Relief filed on August 25, 2005 ("Complaint") attached hereto as Exhibit "A" at ¶7.
OPPORTUNITIES FOR THE RETARDED, INC. ("ORI") was founded in 1980 to address the needs of adults with developmental disabilities.	<u>See</u> Declaration of Ann Higa ("Higa Dec.") at ¶ 3
Sometime before August 4, 2005, the Office of the Public Guardian ("OPG") issued blanket consent forms to Plaintiff for five of ORI's clients.	<u>See</u> Complaint at ¶ 18
The blanket consent forms did not specify an expiration date.	<u>See</u> Declaration of Mary Reavis ("Reavis Dec."); Consent Forms attached as Exhibit "B".
The five clients Plaintiff sought access to were not Immediate Care Facilities ("ICF") clients, but rather, participants of the Medicaid waiver program.	<u>See</u> Complaint at ¶ 18; Reavis Dec. at

The ICF program is an entirely separate program from the Medicaid waiver program and is not governed by the same regulations and reviews.	<u>See</u> Reavis Dec.
Plaintiff alleges that on August 4, 2005, it was denied access to five of ORI's clients and their individual records, to records relevant to the CMS audit, and to the facility.	<u>See</u> Complaint at ¶ 21
Plaintiff was provided access to four out of the five clients it requested to see on August 4, 2005.	<u>See</u> Reavis Dec.
The only client Plaintiff did not have access to on August 4, 2005 was the client who was absent that day.	<u>See</u> Reavis Dec.
ORI currently has a contract with the State of Hawaii to provide Medicaid waiver services to individuals admitted into Hawaii's Home and Community Based Services for Persons with Developmental Disabilities/Mental Retardation Medicaid Waiver Program.	<u>See</u> Higa Dec. at ¶ 8; State Contract attached as Exhibit "E"
In March, 2004, ORI began the process of obtaining clearance to enter into a contract with the military for the performance of services.	<u>See</u> Higa Dec. at ¶ 10
ORI obtained interim clearance from the military in August 2004, and final clearance in August, 2005.	<u>See</u> Higa Dec. at ¶ 10
ORI entered into a contract with the military, and is now subject to the regulations set forth in the National Industrial Security Program Operating Manual ("Manual"), authored by the Department of Defense.	<u>See</u> Higa Dec. at ¶ 11; Manual attached as Exhibit "I"

DATED: Honolulu, Hawaii, April 26, 2006.



John T. Komeiji
JOHN T. KOMEIJI
GREGG M. USHIRODA
KAREN Y. ARIKAWA
Attorneys for Defendants
SUSANNA F. CHEUNG, ANN K. HIGA,
MARY REAVIS, AND OPPORTUNITIES FOR THE
RETARDED, INC.