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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

CARA BARBER, et al.,)	CIVIL NO. 14-00217HG-KSC
)	
Plaintiffs,)	Honolulu, Hawaii
)	June 26, 2014
vs.)	10:00 A.M.
)	
OHANA MILITARY COMMUNITIES)	Defendants Motion to Dismiss
LLC, et al.,)	Plaintiff's Class Action
)	Complaint For Damages
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HELEN GILLMOR,
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:	Patrick Kyle Smith
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1 that's specifically taken from that disclosure that talks about
2 the U.S., chlordane in the U.S., and this kind of thing, that
3 specific language. Yes.

4 THE COURT: But where are your damages?

5 MR. SMITH: The damages are that if I'm a military
6 tenant and I want to go get an apartment with my family or,
7 pardon me, a house with my family, I get a basic housing
8 allowance that I can spend on the open market. I can go to
9 Kailua, Kaneohe, wherever.

10 THE COURT: Are you saying that it's just the rent
11 that got paid? That's what I'm trying to determine right now
12 is are you attempting to look at this like an asbestos case, or
13 you've mentioned the HIV case, et cetera, you know, the damage
14 in terms of the carcinogens, that's a lot harder to prove. And
15 we don't really have, in this complaint, a sufficiently
16 articulated cause of action that relates to those kinds of
17 damages.

18 If you're just talking about they wished they'd spent
19 their money some place where they weren't worried, yeah, you've
20 articulated that, but I'm trying to figure out --

21 MR. SMITH: Yes, Your Honor.

22 THE COURT: -- what you're articulating with respect
23 to the damages that flow from carcinogens in the soil. That's
24 where I don't see --

25 MR. SMITH: Sure.

1 THE COURT: -- a connection.

2 MR. SMITH: Let me be crystal clear on that. This
3 complaint does not seek personal injury on behalf of individual
4 military families, children, spouses, et cetera. We're not
5 trying to prove that pesticide contamination at a certain house
6 caused cancer in little Johnny, okay? This complaint seeks for
7 damages. It is the rent that these -- this community paid to
8 this company that didn't disclose to all of these thousands of
9 military families, and that's the primary monetary damages.

10 THE COURT: But why -- you still come over to the same
11 other question, what is their damage? You have to deal with
12 what being in that location, what caused them, is it just
13 intentional infliction or negligent infliction of mental?

14 MR. SMITH: Well, with respect to contract, it's they
15 didn't get what they paid for. It's no different than if I
16 want to buy a car.

17 THE COURT: So that's the habitability aspect.

18 MR. SMITH: Yes, the habitability.

19 THE COURT: And that's where you're going to have to
20 prove the inhabitability in order to collect on the rent.

21 MR. SMITH: Sure. With respect to the specific point
22 of inhabitability, even if you look at the unfair and deceptive
23 trade practices, it's not that you have to prove that harm in
24 order for there to be a remedy and for there to be damages,
25 it's that it was deceptive. That's the key. And the measure