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17 IN THE UNITED STATES DISTRICT COURT FOR THE TERRITORY OF GUAM

18 UNITED STATES OF AMERICA,

CIVIL CASE NO. 17-00113

19 Plaintiff,

20 vs.

21 GOVERNMENT OF GUAM; CHAMORRO
22 LAND TRUST COMMISSION; and
23 ADMINISTRATIVE DIRECTOR OF THE
24 CHAMORRO LAND TRUST
COMMISSION,

COMPLAINT

25 Defendants.

26 The United States of America alleges as follows:

1 **Nature of Action**

2 1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of
3 1968, as amended, 42 U.S.C. §§ 3601-3631 (“the Fair Housing Act” or “the FHA”), against the
4 Government of Guam, the Chamorro Land Trust Commission and the Administrative Director of
5 the Chamorro Land Trust Commission for discriminating against non-Chamorros through
6 enforcement of the Chamorro Land Trust Act, 21 GUAM CODE ANN. (“G. C. A.”) ch. 75 (the
7 “CLTA”), and implementing regulations.

8
9 2. Under the CLTA, the Chamorro Land Trust Commission holds and administers
10 approximately 20,000 acres, or 15% of Guam’s total land area. As part of its mission to
11 administer this land, the Commission grants 99-year residential leases for one-acre tracts, at a
12 cost of one dollar per year. Only persons identified as “native Chamorros” are eligible for these
13 leases. In addition, the Commission offers those who hold such leases numerous housing-related
14 benefits, including below-market loans. By contrast, non-Chamorros are barred from obtaining
15 leases and other benefits from the Commission. Moreover, non-Chamorros who lawfully reside
16 on CLTA land as the spouse of a Chamorro beneficiary are evicted from their homes and must
17 vacate CLTA land upon the death of the Chamorro spouse. As detailed below, the provisions of
18 the CLTA and the manner of their implementation by the Commission and its Administrative
19 Director constitute discrimination on the basis of race or national origin in violation of the Fair
20 Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*

21
22 **Jurisdiction and Parties**

23 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and
24 42 U.S.C. § 3614(a).

1 4. Venue is proper under 28 U.S.C. § 1391(b), because the events or omissions giving rise
2 to the claims alleged in this complaint occurred in the United States Territory of Guam.

3 5. Defendant Government of Guam is the territorial government of Guam by virtue of the
4 Organic Act of 1950, as codified and amended under 48 U.S.C. § 1421 *et seq.*, and related
5 federal laws.

6 6. Defendant Chamorro Land Trust Commission (the “Commission”) is an instrumentality
7 of the Government of Guam pursuant to 21 G.C.A. ch. 75. It is composed of five members, at
8 least three of whom must be “native Chamorro,” that are appointed by the Governor and
9 confirmed by the Guam Legislature. 21 G.C.A. § 75102(a).

10 7. The Commission appoints and employs Defendant Administrative Director who has “full
11 charge of and responsibility for the administration and execution of all actions approved by the
12 commission [] in effectuating commission policy” and who “shall be a native Chamorro.” Guam
13 Pub. L 23-38 § 3.2 (1995); 21 G.C.A. §§ 75102.

14 **Guam Demographics**

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16 8. The Organic Act conferred U.S. citizenship to all persons (and children of persons) who
17 inhabited Guam in 1899 or had been born on the island between 1899 and 1950. Organic Act of
18 Guam of 1950, ch. 512, 64 stat. 384-385.

19
20 9. The citizenship provisions of Guam’s Organic Act were repealed and readopted, with
21 slight changes, as part of the Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163,
22 237-238, 280 (codified at 8 U.S.C. § 1407).

23 10. The term “Chamorro” is generally understood as a racial and ethnic term.

24 11. The Organic Act of 1950 states that “no discrimination shall be made in Guam against
25 any person on account of race.” Organic Act of 1950, Bill of Rights § 5(n).

1 12. Guam’s approximate demographics, based on Census 2010 data, are: Chamorro 37.3%
2 (plus an additional 6.1% who identify as two or more races/ethnic origins including Chamorro);
3 Filipino 26.30%; Native Hawaiian and non-Chamorro Pacific Islander 12.0%; non-Filipino
4 Asian 5.9%; White 7.1%; and Black or African-American 1.0%.

5 **Enactment of the Chamorro Land Trust Act and its Implementing Regulations**

6 13. In 1975, the Government of Guam enacted the Chamorro Land Trust Act (“CLTA”),
7 which transferred all unused and unreserved Government of Guam land (public land) to a new
8 Government of Guam agency called the Chamorro Land Trust Commission. Guam Pub. L 12-
9 226 (1975) codified as 21 G.C.A. ch. 75.

10 14. As originally passed in 1975, the CLTA defined “native Chamorro” as “any person who
11 the Commission determines to be of at least one-fourth part of the blood of any person who
12 inhabited the island prior to 1898.” Guam Pub. L. 12-226 (1975).

13 15. One of the primary purposes of the CLTA is to “insure[] that this most valuable resource
14 [land] will always remain within the territory in trust for the use of the descendants of the
15 island’s historic inhabitants.” Report of the Committee on Resources, Development and
16 Agriculture on Bill No. 715 at 3 (1974).

17 16. In 1980, the Guam legislature amended the CLTA’s definition of “native Chamorro” to
18 read “any person who became a U.S. citizen by virtue of the authority and enactment of the
19 Organic Act of Guam or descendants of such person.” Guam Pub. L. 15-118 (1980).

20 17. Approximately 98.6% of all persons made citizens under the Organic Act in 1950 were
21 Chamorro.

22 18. On September 14, 1995, the CLTA implementing regulations were signed into law.
23 Guam Pub. L. 23-38 (1995).

1 19. Under the CLTA's implementing regulations, the definition of "native Chamorro" is "any
2 person who became a U.S. citizen by virtue of the authority and enactment of the Organic Act of
3 Guam or descendants of such person." Guam Pub. L. 23-38 (1995).

4 20. This definition is currently used for all CLTA purposes. 21 G.C.A. § 75101(d).

5 21. The Constitution allocates to Congress "plenary power over Indian affairs." *Alaska v.*
6 *Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 531 n.6 (1998). This power derives from
7 the Constitution's Indian Commerce Clause, Treaty Clause, and Property Clause, among other
8 provisions.

9 22. Congress has taken no official action recognizing the Chamorro as a tribe or nation.

10 23. On September 15, 1995, the Government of Guam transferred to the Commission 4,337
11 lots of real estate from the race-neutral "land for the landless" land grant program (Guam Pub. L.
12 21-60 and 21-72) because it believed the land "rightfully belong[ed] to the indigenous people of
13 Guam." Guam Pub. L. 23-39.

14 24. Congress has not adopted, enacted, or ratified the CLTA. Nor has the federal
15 government otherwise established Guam's authority to legislate preferential treatment for
16 Chamorros in the CLTA. In fact, leading up to the Organic Act of 1950, representatives from
17 Guam urged Congress to permit future local laws designed to "protect the lands and business
18 enterprises of persons of Guamanian ancestry," but Congress rebuffed the idea. *See* H.R. 7273,
19 81st Cong., 2d Sess. Sec. 5(n), 96 Cong. Rec. 7574 (1950); S. Rep. No. 2109 81st Cong., 2d Sess.
20 5 (1950).

21 25. Guam has in the past analogized the CLTA to the Hawaiian Homes Commission Act, Act
22 of July 9, 1921, ch. 42, 42 Stat. 108 ("HHCA"), which designated land for exclusive
23 homesteading by eligible Native Hawaiians. *See* Report of the Committee on Resources,
24
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1 Development and Agriculture on Bill No. 715 at 3 (1974). However, the HHCA was enacted by
2 Congress pursuant to its Indian affairs powers to provide benefits to a Native community. In the
3 Hawaii Admission Act, Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4, Congress required the
4 State of Hawaii to adopt the HHCA as a provision of its constitution, *id.* sec. 4, 73 Stat. 5, while
5 retaining certain federal supervisory authorities over those lands, *id.*; *see also* 43 C.F.R. Parts 47,
6 48; 81 Fed. Reg. 29,779 (explaining that the HHCA retains the character of federal law). By
7 contrast, the CLTA was neither enacted by Congress nor implemented pursuant to authority
8 established by Congress.
9

10 **Implementation of the CLTA by the Commission**

11 26. The Commission has sole authority for the control, use and disposition of all lands
12 received under the CLTA, and such lands have been designated “Chamorro Homelands”
13 (hereinafter, “CLTA Lands”). 21 G.C.A. § 75105.

14 27. The total area of CLTA Lands under the Commission’s control is approximately 20,000
15 acres or 15% of Guam’s total land mass.

16 28. The Commission members administer CLTA Lands in a trustee capacity for CLTA
17 beneficiaries, who are exclusively persons identified as “native Chamorros.” Guam Pub. L. 23-
18 38 (1995).

19 29. The Commission advertises on its public website, as it has for several years, that it “is
20 responsible for the disposition of Chamorro Homelands (public lands) pursuant to mandates to
21 advance the social, cultural and economic development and well-being of the Chamorro people
22 by way of residential, agricultural and commercial land distribution and economic assistance
23 programs.”
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1 30. The Commission advertises on its website, as it has for several years, that it “is
2 committed to carrying on any activities necessary to assist and inform the Chamorro community
3 in obtaining maximum utilization of lands, including development of lands for their highest and
4 best use, in all phases of Residential and Agricultural leasing, and Commercial licensing.”

5 31. The Commission advertises on its public website, as it has for several years, that only “a
6 Native Chamorro or a descendant of a Native Chamorro” can apply for CLTA leases and
7 programs.
8

9 32. Pursuant to its mission and powers, the Commission grants 99-year residential leases of
10 one-acre tracts of CLTA Lands for one dollar per year, exclusively to persons identified as
11 “native Chamorros” and their adult descendants. 21 G.C.A. §§ 75107-75108.

12 33. Pursuant to its mission and powers, the Commission grants 99-year agricultural leases of
13 up to 20 acres of CLTA Lands for one dollar per year, exclusively to persons identified as
14 “native Chamorros” and their adult descendants. 21 G.C.A. §§ 75107-75108. Such lessees may
15 also reside on the agricultural land once at least two-thirds of the lot is cultivated. Guam Pub. L
16 23-38 § 6.6(a).

17 34. Persons identified as “native Chamorros” who hold residential or agricultural leases, as
18 described in paragraphs 32 and 33, are eligible for additional benefits offered by the Commission
19 and unavailable to others, including:
20

- 21 a. leases and/or licenses of additional CLTA Lands for theaters, garages, service
22 stations, markets, stores, and other mercantile establishments, 21 G.C.A. § 75107;
- 23 b. direct below-market-rate loans for home purchase, construction or repair on
24 CLTA Lands, 21 G.C.A. § 75112(b);
25
26

- c. guarantees of loans made by governmental agencies or private lending institutions for residential or for commercial purposes on CLTA Lands in the event of lessee default, death, or cancellation of a lease, 21 G.C.A. § 75112(h);
- d. funds for construction of sewage facilities and roads on CLTA Lands, 21 G.C.A. § 75112(c);
- e. direct below-market-rate loans, in amounts not to exceed \$5,000, for repairs and additions to existing homes on CLTA Lands, 21 G.C.A. § 75112(g);
- f. funds for educational improvement projects for the children of native Chamorro lessees, 21 G.C.A. § 75112(e); and
- g. direct below-market-rate loans for the development of theatres, garages, service stations, markets, stores, and other mercantile establishments on CLTA Lands. 21 G.C.A. § 75112(f). Only native Chamorro lessees may operate such establishments and only native Chamorro lessees may receive these funds. 21 G.C.A. § 75112(f).

35. Pursuant to its mission and powers, the Commission administers approximately 305 acres of CLTA Lands dedicated exclusively to affordable housing for persons identified as “native Chamorros.” 21 G.C.A. § 75105(g).

36. In its 2015 Citizen Centric Report, the Commission stated that during the 2015 fiscal year it “issued a total of 100 residential and agriculture leases bringing total leased properties . . . to 2,846.22 acres.” The Commission continues to accept applicants today.

Implementation of the CLTA by the Administrative Director

37. Defendant Administrative Director exercises such powers and authority as delegated by the Commission to “carry on the work of the Commission.” 21 G.C.A. §§ 75102.

1 38. Within 30 days of submission of an application for a CLTA lease, the Administrative
2 Director is required to “make a determination as to whether the applicant qualifies as an
3 applicant. Such determination shall be based upon the application form, birth, marriage, and
4 death certificates, and any investigation the commission may conduct consistent with the
5 [CLTA] and [its] rules and regulations.” Guam Pub. L. 23-38 § 5.3(b).

6 39. Any applicant who disagrees with any action taken by the Administrative Director on an
7 application for a CLTA lease may petition the Commission for a review and an independent
8 decision on the matter. Guam Pub. L. 23-38 § 5.3(b).

9 40. On or about April 20, 2011, the Administrative Director appeared on a local television
10 show and stated that “the criteria for Chamorro Land Trust is, number one, you have to be a
11 native Chamorro, ok? And you must prove that by submitting birth certificates, your parents’
12 [certificates], and also fill in an application and pay your fees.”

13 41. The Commission and the Administrative Director have together granted thousands of
14 commercial, agricultural and residential leases and licenses under the CLTA exclusively to
15 persons identified as “native Chamorros” since at least 1997.

16 42. The Commission or the Administrative Director have denied lease applications because
17 the applicant “did not meet the definition of ‘Native Chamorro’” in the CLTA.

18 43. At least one non-Chamorro resident of Guam, an African-American man, lost the home
19 he built on a CLTA plot after his wife, a Chamorro resident who received the CLTA plot, passed
20 away. The couple had, over time, built a three-bedroom home while living in a tent on the
21 property. At a public hearing on his claim to the land, the Administrative Director and
22 Commissioners inquired into whether he was “a person that’s qualified to apply,” and
23 specifically, whether he was “blood Chamorro” or an “outsider” who was “married to a local
24
25
26

1 girl.” The Commission subsequently ruled against his application, evicting him from his marital
2 home.

3 CLAIM FOR RELIEF

4 44. By the conduct set forth in paragraphs 1-43 above, the Defendants have:

- 5 a. Refused to negotiate for the rental of, or otherwise made unavailable or denied a
6 dwelling to a person or persons because of race or national origin, in violation of
7 the Fair Housing Act, 42 U.S.C. § 3604(a);
8
- 9 b. Discriminated in the terms, conditions, or privileges of sale or rental of dwellings
10 and/or in the provision of services or facilities in connection therewith because of
11 race or national origin in violation of the Fair Housing Act, 42 U.S.C. § 3604(b);
- 12 c. Made statements and caused to be made, printed or published statements and
13 advertisements with respect to the rental of a dwelling that indicate a preference,
14 limitation or discrimination based on race or national origin, and an intention to
15 make such a preference, limitation or discrimination, in violation of the Fair
16 Housing Act, 42 U.S.C. § 3604(c); and,
- 17 d. Discriminated because of race or national origin in making available, or in the
18 term or conditions of, residential real estate-related transactions in violation of the
19 Fair Housing Act, 42 U.S.C. § 3605(a).

20
21 45. Non-Chamorro applicants and prospective applicants for a CLTA lease, non-Chamorro
22 lessees, and persons associated with non-Chamorro applicants, prospective applicants, and
23 lessees may have been injured by the Defendants’ discriminatory housing practices. Such
24 persons are “aggrieved persons” as defined in 42 U.S.C. § 3602(i) and may have suffered
25 damages as a result of the Defendants’ actions and practices described in this Complaint.
26

1 46. The Defendants' discriminatory actions were intentional, willful, and taken in disregard
2 for the rights of others.

3 47. By the conduct set forth above, the Defendants have:

- 4 a. Engaged in a pattern or practice of resistance to the full enjoyment of rights
5 granted by the Fair Housing Act, in violation of 42 U.S.C. § 3614(a); and,
- 6 b. Denied to a group of person's rights granted by the Fair Housing Act, which
7 denial raises an issue of general public importance, in violation of 42 U.S.C. §
8 3614(a).

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, the United States prays that the Court enter an ORDER that:

12 1. Declares that the Defendants' actions described above constitute violations of the Fair
13 Housing Act, as amended, 42 U.S.C. §§ 3601 *et seq.*, and that the Chamorro Land Trust Act and
14 its implementing regulations are invalid under 42 U.S.C. § 3615 to the extent that they purport to
15 require or permit any action that would be a discriminatory housing practice under the Fair
16 Housing Act;

17 2. Enjoins the Defendants, their officers, employees, agents, successors and all other
18 persons in active concert or participation with them, from further:

- 19 a. Refusing to rent or to negotiate for the rental of, or otherwise make unavailable or
20 deny, a dwelling to any person because of race or national origin;
- 21 b. Discriminating in the terms, conditions, or privilege of sale or rental of dwellings,
22 and/or in the provision of services or facilities in connection therewith, because of
23 race or national origin;
- 24
- 25
- 26

- 1 c. Making, printing, or publishing statements and advertisements with respect to the
2 rental of a dwelling that indicate a preference, limitation or discrimination based
3 on race or national origin;
- 4 d. Discriminating because of race or national origin in the making or purchasing of
5 loans, or the provision of other financial assistance, for the purchasing,
6 constructing, improving, repairing, or maintaining of a dwelling;
- 7 e. Failing or refusing to take such steps that may be necessary to prevent the
8 recurrence of any discriminatory conduct and to eliminate, to the extent
9 practicable, the effects of the Defendants' unlawful practices.

10
11 3. Awards monetary damages, pursuant to 42 U.S.C. § 3614(d)(1)(B), to all persons harmed
12 by the Defendants' discriminatory practices; and

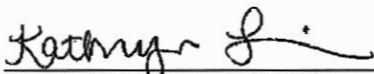
13 4. Assesses a civil penalty against the Defendants in an amount authorized by 42 U.S.C.
14 § 3614(d)(1)(C), to vindicate the public interest.

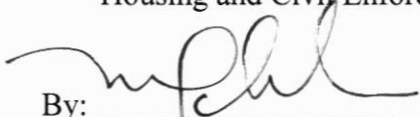
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1 The United States further prays for such additional relief as the interests of justice may
2 require.

3 RESPECTFULLY SUBMITTED this 29th day of September, 2017.

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