IN THE SUPREME COURT OF OHIO

OHIO SUPREME COURT CASE NO. 07-0254

On Appeal From The Ninth Appellate District
Summit County, Ohio
Court of Appeals Consolidated Case Nos. 23056 and 23060

AKRON METROPOLITAN HOUSING AUTHORITY
Appellant
vs.
OHIO CIVIL RIGHTS COMMISSION et al
Appellees

BRIEF OF AMICUS CURIAE THE HOUSING ADVOCATES, INC IN SUPPORT OF THE APPELLEES

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STATEMENT OF THE INTEREST OF THE AMICUS CURIAE

Pursuant to the Ohio Supreme Court Practice Rule VI Section 6, amicus curiae, respectfully files this brief in support of the Appellees Ohio Civil Rights Commission and Fair Housing Advocates, Inc. The Housing Advocates, Inc. has an interest in this litigation because if the lower court's decision is reversed the restrictive interpretation can have a significant impact on the rights of its members and clients.

The Housing Advocates, Inc. is a private non-profit, tax-exempt corporation based in Cleveland, Ohio, and organized under the laws of Ohio for the purpose of assisting in the achievement of equal housing opportunities. The corporation maintains a board of prominent civic leaders and a staff of lawyers and paralegals involved in training, education, testing, and enforcement efforts under the Ohio and Federal Fair Housing Act. Staff lawyers have participated individually in significant local and national equal housing and civil rights litigation, both as counsel and as amicus curiae, including Eva v. Midwest Nat'l Mortg. Banc, Inc., 143 F. Supp. 2d 862 (N.D. Ohio 2001); Groner v. Golden Gate Gardens Apts., 250 F.3d 1039 (6th Cir. 2001); Cleveland v. Ibrahim, 2003 U.S. Dist. LEXIS 26348 (N.D. Ohio 2003); Harrison v. Clemente, 93 F.Supp.2d 856 (N.D.Ohio 2000); Becket v. Our Lady of Angels Apts. Inc., 192 F.3d 601 (6th Cir. 1999); Cuyahoga Metropolitan Housing Authority v. Humphries, Fair Housing-Fair Lending Bulletin, Vol.IX, No. 5 (Cleveland Municipal Ct. 1993);

Eppler v. Cleveland, 753 N.E.2d 986 (Ohio Ct. App. 2001); Hughes v. Peshina, 96 Fed. Appx. 272 (6th Cir. 2004); Smith v. Friendship Vill. of Dublin, 92 Ohio St. 3d 503; 751 N.E.2d 1010 (2001); Warner v. Perrino, 585 F.2d 171 (6th Cir. 1978); Buckeye Community Hope Found. v. City of Cuyahoga Falls, 692 N.E. 2d 997 (Ohio 1998) on rehearing rev'd 697 N.E.2d 181 (Ohio 1998).

The Housing Advocates, Inc. considers a hostile living environment based on race, sex, ethnicity, religion or disability as barriers to fair housing. The organization predicates its interest on the experience in observing and addressing housing discrimination in racially transitional communities in Ohio. The Housing Advocates, Inc has concluded that the decision of the lower court recognizing the claim to a racially hostile housing environment cause of action is consistent to the law and policy of Ohio and crucial to the preservation of fair housing rights for all Ohioans.

Further, while the facts of this case relate to racial harassment, the protections of the act include sex, ethnicity, religion, familial and disability. Any ruling by this Court will provide protection for these other protected groups. The amicus has observed a rise in harassment of older citizens who often are suffering from one or more disabilities. Frequently such harassment is justified as benign and well-intentioned and is intended to intimidate the older person into moving to institutional care; such harassment is grounded in old-fashioned prejudice and is no less

discriminatory. Tenant-on-tenant harassment of elders may be motivated by fear of aging and disability or by active dislike; it can be constant, ongoing and create a negative, hostile and psychologically harmful environment. In extreme cases it can rise to the level of elder abuse.[1] Where abuse of elders in the rental market has been studied, tenant-on-tenant harassment has been found to be an important component. See (Nancy Carlton, Frances Heywood, Misa Izuhara, Jenny Pannell, Tina Fear and Robin Means, THE HARASSMENT AND ABUSE OF OLDER PEOPLE IN THE PRIVATE RENTED SECTOR, (The Policy Press, Great Britain, January 2003).[2]

According to the U.S. Census Bureau there are 300,568 renter-occupied units in Ohio with resident's age 55+ paying cash rent.[3] Thus, the issues addressed in this appeal are critical to this large group of Ohioans,

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[1] The Ohio legislature has defined abuse to be "the infliction upon an adult by self or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish." (Ohio Rev. Code Ann. §§ 2903.33, 3721.21, 3722.12, 5101.60 (West 2001) *citing from* NATIONAL RESEARCH COUNCIL ELDER MISTREATMENT: ABUSE, NEGLECT, AND EXPLOITATION IN AN AGING AMERICA, 219 (2003).

[2] Research in England identified the main forms of abuse and harassment experienced by older tenants in private rented sectors. The study examined the extent in private rented sectors. The study examined the extent of landlord harassment and abuse, and sought to identity unscrupulous practices in order to develop effective prevention strategies. Among the types of harassment identified were irregularities in rent collection (including additional fees for rent collection, changes in fee payment processes, erratically scheduled collections), untimely or inadequate responses to repair requests (or no effort to repair problems), repairs followed by exorbitant rent increases, and disputes over privacy. Recommendations include the need for collaboration among health and social services, public health and housing agencies.

The Housing Advocates, Inc. and its members. Without the ability to hold landlords responsible under the Federal and the Ohio Fair Housing Acts for taking appropriate action when informed of tenant-on-tenant harassment the respective legislative' intent to eliminate discrimination in the housing market will remain unfulfilled.

Finally, the amicus states it provides counseling, training, and operating a discrimination complaint services for many local governments. These services bring the organization into contact with black and white citizens, women, religious minorities and the disabled victimized by harassment and retaliation. The organization has unique experiences and viewpoints which are need to be presented to the Court about this important statewide issue. The agency has represented victims of this type of discrimination for over thirty-two years and therefore has a strong interest in the outcome of this case.

STATEMENT OF THE CASE AND FACTS

The Amicus Curiae adopt the Statement of the Case and Facts set forth in the Brief of the Appellees.

SUMMARY OF ARGUMENTS

The Amicus Curiae urges this Court to affirm the decision of the lower court which simply recognizes the statutory protections accorded to tenants and the legal obligations owed by landlords under the Ohio and Federal Fair Housing laws. The Amicus urge the Court to find a legal duty

by Ohio landlords to take action to stop tenant conduct that creates a hostile housing environment under the Ohio Fair Housing Act.

The common law obligation of a landlord to protect a tenant's right of quiet enjoyment is parallel to the obligation Federal and state courts apply to an employer to respond when on notice of harassment in the workplace. Ohio relies on Federal precedent when interpreting and applying state anti-discrimination laws. Under Federal and Ohio law if an employer does not respond promptly and appropriately to complaints of a hostile work environment created by co-workers, that employer will be liable in negligence for failing to act. Several federal courts have recognized the same hostile environment cause of action when similar harassment takes place in a renters home.

Such a legal duty is consistent with the mandate of the federal government that public housing agencies have an affirmative duty to further fair housing practices and compliance through its policies. Rather than placing an additional administrative and financial burden on the Ohio Civil Rights Commission or the courts amicus believes that recognizing such a legal duty will encourage PHA's to utilize the HUD mandated grievance procedure currently in place at all PHAs as method of adjudicating fair housing allegations by tenants.

Based on these precedents involving the workplace, the positions taken by the U.S. Department of Housing & Urban Development ("HUD") and

the U.S. Department of Justice ("DOJ") in litigating cases against other Public Housing Authorities ("PHA") involving tenant on tenant harassment and the analogous laws and policies this Court should also recognize a hostile housing environment claim under the Ohio Fair Housing Act..

LAW AND ARGUMENT

I. COURTS LOOK TO FEDERAL PRECEDENT ON TITLE VII EMPLOYMENT LAW TO ANALYZE BOTH FAIR HOUSING ACT CLAIMS AND CLAIMS BROUGHT UNDER OHIO REVISED CODE §4112 .

A. Ohio courts use Title VII cases to interpret state employment law.

Long ago the Ohio Supreme Court decided that case precedent of federal courts interpreting and applying Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq, can be utilized to analyze Ohio Revised Code Chapter 4112.[1] A hostile work environment is a cause of action recognized under Title VII Civil Rights Act of 1964, and likewise a hostile work environment is a cause of action in Ohio as a violation of Ohio Revised Code §4112.[2] This cause of action requires the plaintiff to

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[1] Ohio Civil Rights Comm'n v. David Richard Ingram, D.C., 69 Ohio St. 3d 89 (1994) and Plumbers & Steamfitters Joint Apprenticeship Committee v. Ohio Civil Rights Comm'n, 66 Ohio St. 2d 192 (1981); *see also* Waiters v. City of Cleveland, No. 80889, 2002 WL 31087695 (Ohio App. 8th Dist. 2002).

[2] Farris v. Port Clinton City Sch. Dist., 2006 Ohio 1864; Barney v. Chi Chi's, Inc., 84 Ohio App. 3d 40 616 N.E.2d 269 (2nd Dist Ohio 1992); Bell v Cuyahoga Community College, 129 Ohio App.3d 461, 717 N.E.2d 1189 (8th Dist Ohio 1998); Tarver v Calex Corp., 125 Ohio App.3d 468, 708 N.E.2d 1041 (7th Dist 1998) appeal denied 82 Ohio St. 3d 1433 (1998); Farris v. Port Clinton City Sch. Dist., No. OT-05-041, 2006 WL 964719 (Ohio App. 6 Dist. April 14, 2006).

establish: 1) he is a member of a protected class; 2) he is subjected to unwelcomed racial and/or religious harassment; 3) the harassment is based on race or religion; 4) the harassment has the effect of unreasonably interfering with his work performance by creating an intimidating, hostile, or offensive work environment; and 5) the existence of employer liability.[3]

B. Federal courts regularly use Title VII precedent to interpret the Fair Housing Act.

The U. S. Supreme Court has indicated that Title VII employment law precedents are instructive in interpreting the Fair Housing Act. Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 209 (1972). Title VII and the Fair Housing Act "are part of a coordinated scheme of federal civil rights law enacted to end discrimination." Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 935 (2d Cir.), aff'd per curiam, 488 U.S. 15 (1988). Numerous federal courts of appeal have held that Title VII precedents may be used as guidance in the litigation of fair housing cases. Community House, Inc. v. City of Boise, Idaho, 468 F.3d 1118, 1128 (9th Cir. 2006); 2922 Sherman Ave. Tenants' Ass'n v. District of Columbia, 444 F.3d 673, 682 (D.C. Cir. 2006); Mencer v. Princeton Square Apartments, 228 F.3d 631, 634, 2000 FED App. 350P (6th Cir. 2000); Allen v. Muriello, 217 F.3d 517, 520-22 (7th Cir. 2000); Noland v. Commerce Mortg. Corp., 122 F.3d 551, 553 (8th Cir. 1997); Gamble v. City of Escondido, 104 F.3d 300,

[3] Hafford v. Seidner, 183 F.3d 506 (6th Cir. 1999).

305, 19 A.D.D. 740 (9th Cir. 1997); Frazier v. Rominger, 27 F.3d 828, 831–33 (2d Cir. 1994); Cabrera v. Jakabovitz, 24 F.3d 372, 380–85 (2d Cir. 1994); Ring v. First Interstate Mortg., Inc., 984 F.2d 924, 926 (8th Cir. 1993); U.S. v. Badgett, 976 F.2d 1176, 1178 (8th Cir. 1992); Secretary, U.S. Dept. of Housing and Urban Development, on Behalf of Herron v. Blackwell, 908 F.2d 864, 870–71 (11th Cir. 1990); U.S. v. Starrett City Associates, 840 F.2d 1096,1101 (2ndCir 1988); Smith v. Town of Clarkton, 682 F.2d 1055, 1065 (4th Cir.1982); Asbury v. Brougham, 866 F.2d 1276, 1279 (10th Cir. 1989); Selden Apartments v. U.S. Dept. of Housing and Urban Development, 785 F.2d 152, 159 (6th Cir. 1986); Phillips v. Hunter Trails Community Ass'n, 685 F.2d 184, 190 (7th Cir. 1982); Robinson v. 12 Lofts Realty, Inc., 610 F.2d 1032, 1038 (2d Cir. 1979); Smith v. Anchor Bldg. Corp., 536 F.2d 231, 233 (8th Cir. 1976); Resident Advisory Board v. Rizzo, 564 F.2d 126,146-48 (3rdCir 1977); Metro Deve. Corp v. Village of Arlington Heights, 558 F.2d 1283, 1288-89 (7th Cir 1977); Williams v. Matthews Co., 499 F.2d 819, 826 (8th Cir. 1974); United States v. Hunter, 459 F.2d 205, 216-17 & n. 12 (4th Cir.), cert. denied 409 U.S. 934 (1972).

This parallel between Title VII and the Fair Housing Act, as well as the fact that the U.S. Supreme Court has held that both statutes must be construed expansively to implement the goal of the eradication of discrimination, have been remarked upon by commentators. See, e.g., Comment, Applying the Title VII Prima Facie Case to Title VIII Litigation, 11

Harv.C.R.C.L.L.Rev. 128, 158-60 (1976). Thus, the applicability of Title VII case law to FHA case analysis is well-settled.

C. Both Title VII and FHA precedent can be used to interpret Ohio's fair housing law.

Just as they look to federal court decisions for guidance in interpreting Ohio's prohibitions against employment discrimination, Ohio courts look to federal FHA precedent to interpret ORC Chapter 4112's provisions on housing discrimination. Because Ohio's housing discrimination statute and the federal FHA are analogous[4] Ohio courts may evaluate a fair housing claim arising under Chapter 4112 by applying federal court FHA precedent.[5]

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[4] Under the Ohio Revised Code 4112.02 (H)(1) it is unlawful discriminatory practice to "[r]efuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, ancestry, disability, or national origin." Note the similarities between the Ohio Statute and the Federal Statute. Title VIII of the fair housing act, 42 U.S.C.A. §3605(a),(b) ("FHA") reads that it is unlawful to, "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin, or "to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."

[5] See Ohio Civil Rights Comm'n, et al. v. Harlett et al., 132 Ohio App. 3d 341, 344 (1999) (Ohio courts have looked to analogous federal statutes and case law for guidance when interpreting R. C. Chapter 4112.) See also Wooten v. Columbus, Div. of Water, 91 Ohio App.3d 326 (10th Dist. 1993) (it is not inappropriate to look at analogous federal law).

Logically, since federal courts rely on Title VII case precedent in interpreting the FHA, and Ohio courts rely on federal court precedent in analyzing claims under Ohio's anti-discrimination laws, Title VII case law is relevant in interpreting the anti-discrimination provisions of Ohio law found in ORC Chapter 4112 as to both employment and housing. [6]

II. AN EMPLOYER MAY BE LIABLE FOR A HOSTILE WORK ENVIRONMENT CAUSED BY A CO-WORKER UNDER BOTH TITLE VII AND OHIO LAW.

A cause of action for a hostile work environment has long been recognized by the U.S. Supreme Court.[7] While sexual harassment cases are more prevalent, this theory of discrimination actually has its genesis in cases involving harassment on the basis of race. See, Rogers v. EEOC, 454 F. 2d 234 (5th Cir. 1971) (employee of Spanish origin had cause of action against employee for working environment heavily charged with ethnic or racial animosity). Rogers primarily involved harassment by co-ployees. In another early decisison involving harassment by co-workers, Bell v. St. Regis Paper Co., 425 F. Supp. 1126 (N.D. Ohio 1976); Judge Contie, later a Sixth Circuit judge, noted that an employer could be held liable for harassment by its employees for merely "condoning" the employee's conduct.

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[6] The prohibitions against both housing and employment discrimination are contained in the same Ohio Revised Code section, §4112.02.
[7] Meritor Sav. Bank v. Vinson, 477 U.S.57 (1986).

As the case law has developed over the years, an employer's liability for turning a blind eye to a hostile work environment is different depending on whether the wrongful harassment is by a supervisor or a co-worker. An employer is strictly liable for the harassing acts of a supervisor, in terms of tangible job benefit harassment, who has significant control over hiring, firing, promoting, and discipline of employees.[8] Discrimination or harassment coming from a supervisor with significant control, would not parallel the situation with Ms. Harper. In the case at hand, AMHA is more akin to an employer who knew of harassment between employees and did not stop or appropriately address the behavior.

An employer will be held liable for a hostile environment created between co-workers, if it knew or should have known of the harassment and failed to implement prompt and appropriate action.[9] This rule regarding an employer's potential liability for the discriminatory acts of non-supervisory personnel is well-accepted: " . . . this rule is almost uniformly applied by the courts. It is not a controversial area; results in each case simply depend on an interpretation of the facts: whether the employer had sufficient notice, investigated properly, disciplined offenders, and so forth." Lex K. Larson, Employment Discrimination § 46.07[3] (2d ed. 2000). Federal courts regularly apply this standard to

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[8] Faragher v Boca Raton, 524 U.S. 775 at 807 (1998); Burlington Indus. Inc. v Ellerth, 524 U.S. 742, at 756 (1998).
[9] 29 CFR § 1604.11(d).

employers to determine whether they can be held liable for such harassment. [10]

A leading Sixth Circuit case in this regard is Erebia v. Chrysler Products Corp., 772 F. 2d 1250 (6th Cir. 1985). There the Court held that the jury's finding of intentional discrimination by the employer was supported by evidence that Chrysler was aware of the many complaints of harassment but took no steps to remedy the situation. The Court specifically rejected the employer's argument that the plaintiff needed to show that the company treated harassment complaints from white employees differently than it treated complaints from minority employees. Id. at 1258.

The liability of the employer for co-worker harassment is based on the employer's own negligence in not taking affirmative action to remedy the situation once it is put on notice of the problem. It is a negligence standard that closely resembles the "fellow-servant" common law rule, under which an employer could be held liable for injuries in the workplace

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[10] See, eg., Hall v. Gus Construction Co., Inc., 842 F. 2d 1010, 1015 (8th Cir. 1988) (company can be held liable if "management-level employees knew, or in the exercise of reasonable care should have known, about a barrage of offensive conduct.); Hunter v. Allis Chalmers Corp., 797 F. 2d 1417 (7th Cir. 1986) (" . . . failure to take reasonable steps to prevent . . . can make an employer liable . . . "); Leondard v. City of Frankfort Electric and Water Plant Board, 752 F. 2d 189 (6th Cir. 1985) (requirement to maintain working environment free of racial intimidation includes ". . . positive action where positive action is necessary . . "); DeGrace v. Rumsfeld, 614 F. 2d 796 (1st Cir. 1980) (liability premised upon "culpable neglect of supervisory personnel").

prior to the adoption of the workers' compensation system. Guess v. Bethlehem Steel Corp., 913 F. 2d 463, 466 (7th Cir. 1990). Thus, this theory of liability has roots that precede Title VII.

Likewise, in Ohio an employer who fails to take prompt and appropriate action in response to a harassment claim is subject to liability under its own negligence.[11] In such cases, the plaintiff does not need to show acts of discriminatory harassment by the supervisor; the liability can be established by the negligent acts of the employer in failing to stop the harassing behavior.[12]

III. THE NEGLIGENCE STANDARD THAT GOVERNS EMPLOYER LIABILITY FOR DISCRIMINATORY HARASSMENT BETWEEN CO-WORKERS SHOULD ALSO BE UTILIZED IN DETERMINING WHETHER A LANDLORD CAN BE HELD LIABLE FOR CO-TENANT HARASSMENT.

As discussed above, for both Title VII and state claims of co-worker discrimination, where the employer is on notice of the pattern of discriminatory harassment and does not take prompt and appropriate action, the employer can be liable in negligence. Under a hostile work environment standard an employee only needs to show that the employer knew or should have known about the harassment.[13] While in

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[11] Greenwood v. Delphi Automotive Systems Inc., 257 F.Supp 2d 1047 at 1062 (S. D. Ohio 2003); Peterson v. Buckeye Steel Casings, 729 N.E. 2d 813 (Ohio App 10th Dist. Franklin 1999) citing Burlington Indus. Inc. v. Ellerth, 524 U. S. 742 (1998); see also Fenton v. Hisan, 174 F.3d 827, 829 (6th Cir. 1999) (setting forth standards that are applicable under both federal and Ohio law).

[12] Fleenor v. Hewitt Soap Co., 81 F.3d 48 (6th Cir. 1996).

[13] Peterson, 729 N.E. 2d 813 (Ohio Ct. App. 1999).

this case, AMHA and Ms. Davidson may not have overtly taken part in the acts of harassment directed at Ms. Harper, they were on notice that Ms. Kaisks was acting inappropriately and could have taken action to attempt to stop the harassment. Ms. Harper approached Ms. Davidson multiple times to complain about the harassment from Ms. Kaisks. An employer is required under both federal and state law to respond in a prompt and appropriate manner to complaints of harassment and can be held liable for its own negligence if it fails to do so.[14] Just as an employer cannot ignore complaints of constant harassment by one worker of another, a landlord cannot simply ignore the complaints of constant harassment of one tenant by another.

IV. A CAUSE OF ACTION FOR HOSTILE HOUSING ENVIRONMENT IS A NATURAL EXTENSION OF THE LAW GOVERNING THE LANDLORD-TENANT RELATIONSHIP.

A. Under common law a landlord has an obligation to preserve a tenant's right to quiet enjoyment.

In every lease made in Ohio there is an implied covenant of quiet enjoyment.[15] This covenant protects the rights of every tenant to peaceful and undisturbed enjoyment.[16] A breach in this duty occurs when "the landlord ' " ... obstruct[s], interfere[s] with, or take[s] away from the ... [tenant] in a substantial degree the beneficial use ... " ' of the

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[14] Kasprzak v. DaimlerChrysler Corp., 431 F.Supp. 2d 771, 776 (N. D. Ohio 2005).
[15] Dworkin v. Paley, 93 Ohio App. 3d 14, 480 N.E.2d 99 (Cuyahoga Cty. 1984).
[16] Id.

leasehold."[17] The extent of a disturbance required for a breach of a covenant for quiet enjoyment is a matter of fact.[18] A landlord can be found to be in breach of the covenant for "expressly or impliedly" authorizing improper conduct of a third party, including other tenants.[19] Ms. Harper presents an issue of material fact as to whether Ms. Kaisks' constant harassment is a breach of her quiet enjoyment and whether AMHA breached its obligation when it did nothing to stop the behavior.

B. Under Ms. Harper's lease agreement and the Ohio Revised Code there is an obligation of the landlord to preserve the right to quiet enjoyment.

Common law is not the only source for a landlord's obligation to protect a tenant's rights of quiet enjoyment. Ms. Harper's lease agreement and Ohio Revised Code Section 5321.05(A)(8) provide this right as well. The lease agreement states Ms. Harper has a right to quiet enjoyment.[20] The lease states, in relevant part:

> "VII. TENANT OBLIGATIONS
> "The TENANT agrees:
> "***
> "R. To conduct himself/herself and cause other persons who are on the premises with the tenant's consent to conduct themselves in a manner which will not disturb the neighbors' peaceful enjoyment of their accommodations; or to engage in illegal or other activity

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[17] Howard v. Simon, 18 Ohio App. 3d 14, 16, 480 N.E. 2d 99, 102 (Ohio Ct. App. 1984) citing Frankel v. Steman, 92 Ohio St. 197 (Ohio 1915).
[18] Dworkin, 480 N.E.2d 99 at 638. see also Frankel, 92 Ohio St. 197 at 199.
[19] Robert S. Schoshinski, American Law of Landlord and Tenant §3:7 (1980 & Supp. 2002).
[20] Ohio Civil Rights Commission, et al. v Akron Metropolitan Housing Authority, et al., 866 N.E.2d 1127 (2006).

> which impairs the physical or social environment of the development."[21]

First, Ms. Kaisk breached this agreement when she disturbed Ms. Harper's "peaceful enjoyment" of her home. Second, Ms. Kaisk is in violation of Section 5321.05(A)(8) of the Ohio Revised Code, which states, a tenant shall

> [c]onduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises.22

Ohio Revised Code §5321.05(C)(1) provides a landlord with the right to bring an action against a tenant that does not comply with the provisions of this clause.[23] "Therefore the statute [Ohio Revised Code §5321.05(c)(1)] implicitly makes it the landlord's responsibility to oversee the peaceful coexistence of his tenants".24 AMHA should have taken action to remedy this breach to Ms. Harper's lease agreement and the Ohio Revised Code.

C. A person deserves at least as much protection from discrimination in her home as in the workplace.

The importance of the sanctuary of one's home has long been recognized by American courts: "We have, after all, lived our whole national history with an understanding of "the ancient adage that a man's

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[21] Id. at 1131-1132
[22] Ohio Rev. Code Ann. §5321.05(A)(8) (West 2007).
[23] Ohio Rev. Code Ann. §5321.05(C)(1) (West 2007).
[24] Frederic White, Ohio Landlord Tenant Law §5:9 (2006).

home is his castle . . . " Georgia v. Randolph, 547 U.S. 103, 115 (U.S. 2006) *citing,* Miller v. United States, 357 U.S. 301, 307 (1958). Thus, it would seem to be inconsistent with American law to allow one to be subjected to harassment on grounds deemed discriminatory by both federal and state civil rights laws without sufficient recourse. To deny a tenant in the position of Ms. Harper an effective remedy against a landlord who, by ignoring her frequent complaints about racial harassment by another tenant, has negligently permitted the sanctity of her home to be violated, would leave a gap in the fair housing laws that would be inconsistent with the "castle" theory of the home.

Starting with the Constitution of the United States, the home is revered in the law above other locations. The Third Amendment to the Constitution protects against being forced to quarter troops.[25] The Fourth Amendment to the Constitution protects the right of people to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."[26] The Supreme Court guards this concept strictly.[27] In criminal law, a defense to the use of deadly force applies if one is

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[25] U.S. Const. Amend. III.
[26] U.S. Const. Amend. IV.
[27] Katz v. U.S., 389 U.S. 347 (1967) (conduct by government agent which intrudes upon reasonable expectation of privacy is a search and seizure); Payton v New York, 445 U.S. 573 (1980) (Physical entry of home is chief evil against which wording of Fourth Amendment is directed); Minnesota v. Carter, 525 U.S. 83 (1998) (Looking through curtains on window considered a search); See, e.g. U.S. v. Torres, 720 F.2d 1506 (11th Cir. 1983) (houseguests in a home for two days with access to common areas have expectation of privacy in the residence).

attacked in her home. People do not have a duty to retreat when attacked in their homes provided they have not created the harm, and they have a reasonable belief they are in immediate danger.[28]

This issue extends beyond a fight between two neighbors. As a tenant, Ms. Harper has a right to expect quiet enjoyment in her home, and under Title VIII and the Ohio Revised Code she has the right to enjoy her home free from discrimination. If she were harassed at her place of employment, she would be able to expect that her employer would have the duty to remedy the situation so she could experience an environment free from harassment. She should be able to feel even more secure where she lives.

V. APPLYING A HOSTILE HOUSING ENVIRONMENT RESPONSIBILITY ON OHIO LANDLORDS IS JUST GOOD PUBLIC POLICY AND WILL ENCOURAGE PRIVATE RESOLUTIONS OF SUCH GRIEVANCES THEREBY AVOIDING THE NEED TO FILE COMPLAINTS WITH THE OHIO CIVIL RIGHTS COMMISSION OR THE COURTS.

A. Ohio Landlords Are Better Able To Prevent A Hostile Housing Environment Than Their Tenants.

It is good public policy to place a hostile housing environment responsibility on Ohio landlords. A landlord is much better able to take action against one of its tenants illegally harassing another because of race, sex, national origin, religion or disability. After all tenants pay rent to

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[28] State v Thomas, 77 Ohio St. 3d 323 (1997); State v Streight, 2002 WL 23544.

their landlord for, among other reasons, the "quiet enjoyment" of their apartment. Since Ohio landlords renting their properties operate as businesses they have the expertise and financial capacity to either make sure that unlawful fair housing conduct does not occur or at least to prevent its continuation. Recognizing the obligation of Ohio landlords to prevent a hostile housing environment will encourage development of rental rules deterring racial or other harassment and establishing a private means of resolving these types of grievances without the need to resort to the courts.

B. AMHA has further statutory and regulatory obligations to prevent a hostile housing environment than private Ohio landlords.

Placing this obligation on AMHA, as a public housing authority (PHA), to prevent hostile housing environments makes even more sense than in a private rental situation. Providing a further remedy to address co-tenant actions motivated by racial, sexual or ethnic animus is a natural extension of the affirmative duty to promote fair housing with which PHAs are mandated to comply in order to receive federal funds.[29] The U.S. Department of Housing & Urban Development ("HUD") requires PHAs to certify annually that they are furthering fair housing by strategic planning

[29] 24 CFR §903.2(d) (2007).

established in individual PHA plans.[30] Placing a duty to intervene to prevent a hostile housing environment will not unduly burden these agencies like AMHA because they are already required to protect each tenant's rights and status through the HUD-regulated grievance process and leasing provisions. Additionally, as discussed above, state law imposes a duty on landlords to ensure that a tenant enjoys a right to peaceful and quiet enjoyment of the leased premises. A hostile housing environment responsibility provides tenants who are subjected to discriminatory behavior by other tenants on the basis of a protected status a viable method to ensure action on the part of PHAs to address such claims.

A hostile housing environment responsibility has been recognized by the federal government and, thus, should be recognized by the state of Ohio. A PHA is obligated to take effective action to prevent or eliminate a hostile housing environment under the Federal FHA based on lawsuits filed by the federal government. San Francisco Housing Authority (SFHA) and Boston Housing Authority (BHA) have faced complaints brought by the U.S. Department of Justice (DOJ) for failing to act in instances of racial harassment caused by tenants. Both have faced lawsuits brought by the U.S. Department of Justice (DOJ) for failing

[30] Id.

to act in instances where tenant on tenant racial harassment caused a hostile housing environment.

In both instances the aggrieved tenants complained to the appropriate authority and received little to no response from their PHA on the matter. The DOJ brought suit against Boston Housing Authority (BHA) in the matter of United States v. Boston Housing Authority, alleging violation of the individually named plaintiffs' (named as collective class) rights under the Fair Housing Act (hereinafter referred to as FHA). [See Appendix A, I. Introduction] The plaintiff class consisted of the following groups; black tenants from Haitian, Trinidadian, Nigerian, St. Thomian, and African American descent and tenants of Hispanic descent. [See Appendix A, III. Parties] The complaint alleges that the tenants were subjected to widespread racial harassment by tenants in the public housing development ("development")on the basis of their race. [See Appendix A generally] The housing development consisted of predominantly white tenants.

During the time frame of the racial harassment, BHA was aware of the racial tension but failed to take effective steps to alert tenants that racial harassment would not be tolerated on BHA property or to inform tenants of reporting procedures for racial harassment. In addition, BHA employees were not properly trained to recognize or address civil rights violations. BHA employees, including police hired by BHA, also failed to

conduct prompt, thorough investigation of violations of civil rights of the complainants and other tenants of color at the development. [See Appendix A, I¶19-21] Despite BHA's "hands-off" approach, broad authority existed under the lease agreement to terminate the tenancy of any tenant who had "engaged in conduct that threatened the health, safety or peaceful enjoyment of another tenant." BHA even had knowledge of the identity of the harassing tenants yet only brought one eviction action based on racial harassment or assault. [*Id.* at ¶22]

HUD investigated the complaints by the plaintiffs and determined that white BHA tenants and white visitors subjected the complainants and their families to racially and ethnically motivated violence and severe racial and ethnic harassment. HUD found the complainants were subjected to racial slurs and threats of physical violence based on their race, color, and national origin. According to HUD's findings, harassment created a "*hostile housing environment because of race, color or national origin which deprived tenants of the quiet enjoyment of their homes.*" [See Appendix A, ¶32] Further, the BHA knew or should have known of this harassment but failed to take adequate action to resolve the complaints, to diminish the harassment or violence, or to protect plaintiffs from harassment and violence. [*Id.* at ¶33-35] Once HUD certified the complaint, the DOJ and the plaintiff class opted to bring the

action in federal court based on BHA violations of the Fair Housing Act under 42 USC §§3601-3619.

BHA ultimately entered into a settlement agreement with the DOJ and the plaintiff class. The settlement agreement provided the following [See generally Appendix B]:

- BHA would cease discrimination according to the provisions of the FHA. [See Appendix B, V, ¶¶1-4]
- BHA would actively enforce its Zero Tolerance Policy of civil rights violations. [*Id.* at VI, §B, ¶2]
- BHA would provide outreach efforts to tenants through notice of procedures for reporting incidents of racial violence, harassment and intimidation, procedures for investigating and resolving complaints, and a zero tolerance policy for civil rights violations. [*Id.* at VI, §D, ¶¶1-4]

Nor was this an isolated lawsuit against a PHA asserting the federal government's position that action must be taken to prevent tenant-on-tenant racial harassment that would create a racially hostile housing environment. In United States v. San Francisco Housing Authority (SFHA), DOJ filed another lawsuit on behalf of named plaintiffs due to SFHA's violation of the FHA by failing to take reasonable steps to protect its residents from harassment on the basis of race, color, national origin or religion. [See Appendix C generally] The individual plaintiffs included a

mixed-race couple (black husband, white wife) and other residents whose identities included members of the white, black, and Asian race, Hispanic ethnicity, Iraqi ancestry, and followers of the Muslim faith. [*Id.*at ¶¶9, 18, 19] The development consisted predominantly of black tenants. [*Id.* at ¶10] Complainants allege that they were subjected to instances of verbal abuse, racial slurs, threats, assault, attempted assault, vandalism, and the interference with the enjoyment of residents' units and public and common use areas based on their race, color, national origin or religion by black tenants and SFHA employees and contractors. [*Id.* at ¶¶11, 12, 18] Further, complainants alleged that SFHA knew or should have known of the harassment because the plaintiffs complained repeatedly to the SFHA orally and in writing, even identifying the persons who harassed them. [*Id.* at ¶13] In addition, one of the harassers admitted to the use of vulgar language and potentially using racial slurs when speaking to one of the plaintiffs. [*Id.* at ¶14] Despite the complaints filed with SFHA, the harassment continued for six years with no action by SFHA until plaintiffs filed a housing discrimination complaint against them with HUD. [*Id.* at ¶¶15-16]

HUD found reasonable cause existed to believe that discriminatory housing practices occurred on the basis of race, color, national origin, and religion. [*Id.* at ¶24] Based on the reasonable cause finding the DOJ filed in federal court against the SFHA under the Fair Housing Act 42 USC

§§3601-3619. [*Id.* at ¶¶25-29] The relief sought by the plaintiffs included civil penalty awards, actual and punitive damages. SFHA decided to forebear the litigation process and entered into a consent decree with the DOJ and the named plaintiffs based on the following terms [See Appendix C generally]:

- SFHA would cease discrimination according to the provisions of the FHA.[*Id.* at ¶4]
- SFHA would implement nondiscrimination policies and procedures that comply with the Civil Rights Protection Plan, Civil Rights Manual, and other civil rights laws and policies.[*Id.* at §IV]
- SFHA would maintain the lease addendum provision which permits SFHA to evict a tenant who engaged in racial, ethnic or religious harassment or violence against any other tenant or guest that violated the FHA. In addition, if a tenant is found to violate this lease provision, SFHA's remedy is to evict the tenant. [*Id.* at ¶7]
- SFHA would transfer in the named action either the harasser or the harassed from the development to another development. [*Id.* at ¶38]

The aforementioned litigation in federal court bears startling similarities to the matter before the Court. In the federal litigation and the

Harper matter the tenants were subjected to harassment and threats of physical harm based on racial animus by another tenant. The Harpers also filed numerous oral and written complaints with AMHA on the harassment by the white tenants in the development. Further, the Harpers, as was the case with the tenants in both federal actions, received little to no response from the PHA addressing their complaints. AMHA's agent went so far as to discount the racial aspect of the Harpers complaints based on her view that race was not an issue in the housing development. However, the federal cases explicitly recognize a hostile housing environment responsibility for PHAs under the Fair Housing Act and the terms of HUD's model lease agreement. These federal actions lend further credence to the adoption of a hostile housing environment responsibility in Ohio based on common, administrative, and federal law. Recognition by the DOJ that PHAs have a responsibility to address racial harassment by tenants indicates the importance of acknowledgment of a hostile housing responsibility on a local level.

C. The interpretation by HUD and DOJ that the Federal Fair Housing Law mandates PHA's to prevent hostile housing environment is entitled to great deference by this court.

The language of the Federal Fair Housing Act is sweeping; its express purpose is "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601 (2007). In ruling on the constitutionality of the Fair Housing Act, a unanimous U.S. Supreme

Court enunciated the fundamental principles that guide all subsequent Fair Housing Act decisions: the Act as a whole is "broad and inclusive," implements a "policy that Congress considered to be of the highest priority," and such policy can be given effect "only by a generous construction" of the statute. Trafficante v. Metro. Life Ins. Co., 409 U.S. 205, 209, 211-212 (1972). Further, the U.S. Department of Housing and Urban Development's and the U.S. Department of Justice's interpretations of FHA are entitled to great weight since both organizations are recognized in the statute to enforce this law. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984); Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 651-52 (1990). (Practical agency expertise is one of the primary justifications for Chevron administrative deference.) In applying these principles, courts have consistently held that Congress's intent in enacting the Fair Housing Act was to alter the very nature of the housing market and to eliminate all traces of unlawful housing discrimination. See, e.g., Mayers v. Ridley, 465 F.2d 630, 652 (D.C. Cir. 1972) (en banc) (Wiley. J. concurring); Cabrera v. Jakabovitz, 24 F.3d 372, 390 (2nd Cir.), *cert. denied*, 513 U.S. 876 (1994).

D. PHA grievance procedures are currently in place that Could Be Used To Privately Address Hostile Housing Environment Claims

The Appellants and their amici oppose applying hostile housing environment responsibility to PHAs, claiming that such a cause of action

will create an increase in litigation in Ohio courts. However, this claim ignores the fact that PHAs currently are required by HUD to have grievance procedures to adjudicate tenant concerns on a variety of issues. PHAs grievance procedures stem from HUD rules.[31] All PHAs must establish a grievance process to provide tenants a hearing in disputes with the PHA.[32] A grievance is defined by 24 CFR §966.51 as "any dispute that a tenant may have with respect to PHA action or failure to act in accordance with the lease or regulations that adversely affects the individual tenant's rights, duties, welfare, or status. "

Disputes subject to this grievance procedure are those that address PHA action or failure to act concerning lease provisions, local regulations or federal regulations.[33] If a tenant's grievance implicates PHA action or failure to act, then the PHA is obligated to conduct an informal hearing to investigate the allegations in a timely manner.[34] The Kaisk's racially motivated actions against the Harpers and AMHA's failure to act despite numerous complaints made to it could have been originally handled through this private process. It was AMHA's unwillingness to offer the Harpers access to this existing dispute resolution system that resulted in this litigation.

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[31] 24 CFR §966.50-57(2007); HUD, Public Housing Occupancy Guidebook (June 2003).
[32] 24 CFR §966.50 (2007).
[33] 24 CFR §§966.51, 966.53 (2007).
[34] 24 CFR §966.54 (2007).

Nor is the development of such procedures financially or administratively burdensome. Both public and private fair housing agencies in the State of Washington have developed a model procedure and handbook for landlords. A copy of this handbook is attached as Appendix E. It provides instructions to the staff and tenants on the simple procedures to follow and the rights if a complaint of harassment is filed with the landlord. Encouraging the development of such procedures by recognizing a duty upon landlords to take steps to prevent or stop a hostile housing environment can improve the quality of Ohio renters and actually reduce the need for future administrative charges or lawsuits.

The use of the current grievance procedure would alleviate any potential burden on the judicial system. Since the HUD-mandated grievance procedures are currently in place, concerns about creating new litigation or imposing judicial work are unwarranted. The grievance procedure as set up would allow for a claim of racial harassment to be adjudicated by the individual PHA. In this instance the grievance procedure would serve as a method of limiting the amount of potential litigation and provide a private remedy for aggrieved tenants reducing the likelihood of the Courts being burdened by new litigation. Such a policy would also encourage private landlords to adopt such grievance procedures which could even reduce the existing landlord-tenant

litigation in Ohio by promoting this private alternative dispute resolution system.

VI, COMMON LAW CAUSES OF ACTION ARE INEFFECTIVE AND DO NOT ADDRESS THE SERIOUSNESS OF A HOSTILE HOUSING ENVIRONMENT

The Appellants and their amici also criticize applying hostile housing environment responsibility claiming that those who are injured by racial harassment have the option of bringing a claim against the individuals in court under the common law. This possibility is seriously undercut by the fact that common law claims on these issues are ineffective and do not recognize the seriousness of a hostile housing environment.

The lease provisions based on Chapter 17 of HUD's Public Housing Occupancy Handbook (hereinafter referred to as "Handbook") and codified under 24 CFR §966.4(f) direct that tenants have an obligation to assure that no tenant, no member of the tenant's household, guest or other person under the tenant's control engages in criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants. The Kaisk family clearly violated their obligations under the statute by interfering with the peaceful enjoyment of the premises by the Harpers. Admissions by the Sheriff's office suggest that their investigation of the interactions between the Kaisks and Harpers formed a basis for further action on the part of the AMHA, despite Ms. Davidson's failure to follow up with the Sheriff's office. Failure on the part

of AMHA or Ms. Davidson to follow up on the investigation does not negate the fact that evidence exists that the Kasiks engaged in threats of physical harm and other actions, rising to the level of criminal activity.

Further, a tenant's failure to fulfill its household obligations as detailed above gives cause to a PHA to terminate the tenant's tenancy if the violation is of a repetitive or serious nature.[35] The Kaisks documented actions violated the terms of their lease due to both the severity and repetitiveness of their behavior. Despite repeated lease violations of a serious nature, AMHA failed to terminate the lease of the Kaisks based in part on the belief that the Kaisks actions were not of a serious nature. Again, the failure to follow up on numerous complaints by the Harpers regarding the Kaisks behavior demonstrates AMHA's failure to protect the Harper's rights as a tenant to quiet enjoyment, free from harassment based on race.

The case currently before the Court is a prime example of why common law remedies are insufficient to address a hostile housing environment. Placing the hostile housing environment responsibility on PHAs would further extend a tenant's right to quiet enjoyment already acknowledged under HUD rules and state law. HUD rules provide that the grievance process is a forum for tenants to informally adjudicate their disputes with PHA action or inaction that affect tenant rights, duties,

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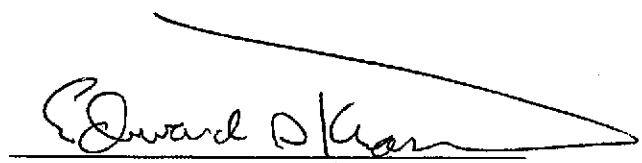
[35] 24 CFR §966.4(l) (2007).

welfare, or status. Tenant status and rights in this instance are also limited by not holding PHAs accountable for tenant actions that are within their control. PHAs have the ability to effectively control the actions of other tenants when faced with complaints by other tenants regarding racial discrimination. Further, PHAs failure to act in instances where race is a motivating factor thereby limiting the affected tenant's rights, implicates the FHA when the tenant is protected based on class status.

CONCLUSION

For the reasons stated in the foregoing brief, we respectfully request that this Court uphold the decision of the Court below and rule in favor of the Appellees.

Respectfully submitted,



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APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
Plaintiff,

v.

BOSTON HOUSING AUTHORITY,
Defendant.

COMPLAINT

The United States of America alleges as follows for its Complaint in this matter:

I. INTRODUCTION

1. The United States alleges that the defendant, Boston Housing Authority, has violated the rights under the Fair Housing Act, as amended, 42 U.S.C. § 3601 et seq., of numerous tenants, and has engaged in a pattern or practice of discrimination by tolerating and failing to protect tenants from pervasive and violent racial harassment at housing developments that the defendant owns and operates. This harassment includes, but is not limited to, racially motivated acts of physical violence and the threat of physical violence, destruction of property, racist graffiti, and racist name-calling. The United States alleges that the defendant - despite its knowledge of pervasive racial harassment in its developments and, in some cases, of the identity of the harassers - failed to adequately document, investigate, or otherwise respond to or address the problem. Through its systemic failure to protect tenants from such harassment, the BHA has, because of race, color, or national origin, (a) made housing unavailable to those tenants; (b) discriminated against those tenants in the terms, conditions or privileges of rental; and (c) coerced, intimidated, threatened, or interfered with those tenants in the exercise or enjoyment of rights granted or protected by the Fair Housing Act. The United States seeks declaratory, injunctive, and monetary relief.

II. JURISDICTION AND VENUE

2. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 - 3619.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 3612(o) and 3614.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1395(a).

III. PARTIES

5. Jane Doe 1, Jane Doe 2, Jane Doe 4, Jane Doe 5, Jane Doe 6, Jane Doe 7, Jane Doe 8, Jane Doe 9, and Jane Doe 12 and their families (hereinafter referred to collectively as

"complainants")[1] are black and Hispanic tenants who at all relevant times resided in rental housing owned and operated by the defendant. Jane Doe 1 is black Haitian, Jane Doe 2 is Hispanic, Jane Doe 4 is black Trinidadian, Jane Doe 5 is black Nigerian, Jane Doe 6 is Hispanic, Jane Doe 7 is Hispanic, Jane Doe 8 is black St. Thomian, Jane Doe 9 is black African American, and Jane Doe 12 is black Haitian. Each timely filed complaints with the Department of Housing and Urban Development ("HUD") alleging that the BHA violated the Fair Housing Act; and each is an aggrieved person within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(i).

6. The defendant, Boston Housing Authority ("BHA"), is a public body politic and corporate, established under the Massachusetts General Laws. The BHA owns, manages, and operates the Old Colony housing development in South Boston and the Bunker Hill housing development in Charlestown, among others. Old Colony, Bunker Hill, and the other housing developments owned, managed or operated by the BHA are dwellings within the meaning of 42 U.S.C. § 3602(b).

IV. FACTS

A. Background: Racial Conflict at the Bunker Hill and Old Colony Housing Developments

7. The Old Colony housing development ("Old Colony"), which is owned and operated by the BHA, consists of approximately 850 public housing units. At all relevant times, Old Colony was occupied predominantly by white tenants. Jane Doe 1, Jane Doe 4, Jane Doe 5, Jane Doe 6, Jane Doe 7, Jane Doe 8, and Jane Doe 9 moved into Old Colony between 1990 and 1993.

8. The Bunker Hill housing development ("Bunker Hill"), also owned and operated by the BHA, consists of approximately 1100 public housing units. At all relevant times, Bunker Hill was occupied predominantly by white tenants. Jane Doe 2 and Jane Doe 12 moved into Bunker Hill in 1993 and 1990, respectively.

9. Prior to 1988, Old Colony and Bunker Hill were occupied almost exclusively by white residents. In 1988, the BHA entered into an agreement with HUD aimed in part at desegregating these developments. As desegregation efforts progressed, violent incidents that appeared to be racially motivated began increasing in number and frequency around 1992 at and around Old Colony and Bunker Hill. The defendant was aware of the racial violence occurring at these developments.

10. Most incidents of the racially motivated violence described above involved violence aimed at tenants of color by white individuals. The media reported many of these incidents.

11. Throughout the period between 1992 and 1996, tenants were subjected to widespread and conspicuous racially and ethnically invidious graffiti at the Old Colony and Bunker Hill developments. The defendant was aware of such graffiti.

12. During the period relevant to this case, numerous tenants, including the complainants, alleged racial harassment and filed housing discrimination complaints against the BHA. The BHA was aware of these complaints of racial harassment at Old Colony and Bunker Hill.

13. In May 1994, the Massachusetts Attorney General, based on testimony by minority tenants

of the Old Colony development, obtained injunctions against 16 South Boston youths to restrain them from harassing minorities. Later in 1994, Asian and white youths clashed at Bunker Hill; South Boston community leaders held a meeting to criticize the BHA's desegregation efforts as "forced housing"; and hundreds of Old Colony residents upset by the integration of the project, many of whom were brandishing hockey sticks and baseball bats, staged a protest. Reports of racially-motivated violence appeared in the media and were reported directly to the defendant throughout 1995 and into 1996.

B. The Experience of the Complainants

14. Beginning early in their tenancies at Old Colony and Bunker Hill, and continuing throughout their tenancies, the complainants were subjected to racial slurs by white tenants and others in and around the developments.

15. The racial epithets and expressions of racist antagonism were also communicated through graffiti on the premises of Old Colony and Bunker Hill. Each of the complainants witnessed such graffiti, which included such messages as "I hate niggers," "Fuck you niggers," "Puerto Ricans stink," "Go back to Roxbury," "a swastika, and the letters "KKK" next to a drawing of a hooded figure. Such graffiti appeared near the complainants' apartments, on their hallways, and on their doors.

16. Accompanying such racist graffiti and verbal harassment were numerous acts of physical violence. During the course of their tenancies, the families of most or all of the complainants were subjected to racially-motivated violence at the hands of white tenants and visitors to Old Colony and Bunker Hill. For example, the children of Jane Doe 1 were beaten by white youth; BB pellets were fired at and through the windows of Jane Doe 1, Jane Doe 6, and Jane Doe 8; rocks or urine were thrown through the windows of Jane Doe 6, Jane Doe 7, Jane Doe 8, and Jane Doe 9; and eggs were thrown at Jane Doe 7. Jane Doe 1, Jane Doe 9, and Jane Doe 12 moved out of their apartments or made efforts to stay away from their apartments as much as possible, to avoid such violence. Jane Doe 2, Jane Doe 4, and Jane Doe 6 stayed indoors and kept their children from going outside to play in order to avoid violence to themselves and their families.

17. In addition to acts of direct physical violence, the complainants and other members of their households were subjected to numerous other acts of physical intimidation on and near BHA property. For example, Jane Doe 6 received threatening notes and telephone calls, including one in which the caller identified himself as a member of the KKK and told the complainant to leave; Jane Doe 2 witnessed a cross burning and a racial melee on BHA property; a member of Jane Doe 2's household was chased by men with weapons; Jane Doe 2 and Jane Doe 12 had fires set in their doorways and near their apartments; Jane Doe 12 had urine and feces thrown near her apartment. In one incident in 1994, white youths spray-painted Jane Doe 1's peephole - making it impossible for her to see out of her apartment; they then pounded on her apartment door, screamed threats and ran away. When she tried to open the door, she discovered that they had tied a rope from her door knob to something else, making it impossible to open the door. Jane Doe 1 and her children were unable to get out of the apartment until the police came and freed them by cutting the rope.

18. In addition to acts of personal violence, the complainants were subjected to racially motivated crimes against their property. For example, Jane Doe 4, Jane Doe 7, and Jane Doe 9's apartments were burglarized; Jane Doe 1, Jane Doe 8, and Jane Doe 9's windows were broken; Jane Doe 5's car tires were slashed and car windows broken. In one instance, a

car belonging to Jane Doe 4 was stolen and crashed into a building.

19. The defendant was aware of numerous acts of racially motivated violence and harassment directed at the complainants and failed to take adequate action to prevent or ameliorate racial harassment and violence at Old Colony and Bunker Hill.

20. Despite its awareness of racial tension and violence at Old Colony and Bunker Hill, the BHA failed to take effective steps to alert tenants that racial harassment would not be tolerated on BHA property or to inform tenants of the procedures for reporting racial harassment. Nor did the defendant properly train BHA employees to recognize or address civil rights violations.

21. The defendant's employees, including police officers employed by the BHA, failed to conduct prompt, thorough investigations of violations of the civil rights of the complainants and other tenants of color in Old Colony and Bunker Hill.

22. Despite broad authority under the lease between the BHA and its tenants to terminate the tenancy of any tenant who has engaged in conduct that threatened the health, safety, or peaceful enjoyment of another tenant - and despite its knowledge of the identity of certain tenants engaged in harassment of tenants of color - the BHA, during the relevant period, brought only one eviction action based on racial harassment or assault. As a general practice, the BHA failed to evict civil rights violators. For example, in 1994, the Massachusetts Attorney General obtained restraining orders against 14 individuals who had engaged in a pattern of race-motivated hate crimes against Old Colony tenants. Many of the defendants were Old Colony tenants, yet the BHA neither evicted nor took any disciplinary action against any of them.

23. In addition to its power to seek to evict wrongdoing tenants, the BHA had the authority to issue no-trespass orders to non-tenant wrongdoers. A no-trespass order is a written warning to a non-tenant that he or she is barred from BHA property, and that if he or she comes onto BHA property, a criminal complaint will be issued. The BHA seldom issued such orders in response to civil rights violations. In those few cases where the BHA did issue no trespass orders in response to civil rights violations, it failed to enforce them.

24. The BHA failed to remove racist graffiti promptly. As a result, such graffiti often remained visible as a constant source of harassment for many months. In several instances, complainants attempted to remove graffiti themselves. A BHA employee informed one complainant that the BHA was no longer removing graffiti.

25. To escape the racial violence and hostility that permeated Old Colony and Bunker Hill, nearly every one of the complainants sought to be transferred to a different development under the BHA's transfer policy. Their requests for transfer informed the BHA that the bases for their requests were the racial violence and harassment to which they had been subjected. Several complainants submitted repeated transfer requests. In some cases, the BHA took no steps whatsoever to investigate the bases of these transfer requests. In others, the BHA failed to investigate with reasonable thoroughness. In every case, the BHA failed to transfer the complainants in a reasonable period of time. In several cases, the BHA waited several months to even begin to process transfer requests based on egregious civil rights violations.

26. An example of the BHA's failure to investigate or promptly process transfer requests is its handling of one of several such requests by Jane Doe 1. Having previously requested a transfer after someone fired a BB gun into the bedroom of her seven-year old son and having endured several months of harassment by white youths who congregated on Old Colony property, called her racially derogatory names, and picked fights with her children, Jane Doe 1 again asked the BHA for a transfer on September 14, 1990. As the reason for her request, Jane Doe 1 stated that "in this building they don't like me to stay over here, my kids are afraid to play out, some times they call them negro and monkey, they broke my windows, house on third floor, when I said hello to someone they don't answer." Although Jane Doe 1 submitted her request to the Old Colony management office on September 14, the BHA did not forward the request to its Occupancy Department, which is responsible for processing all transfer requests, until December 31, 1990, 108 days after it was submitted. During those 108 days, the BHA took no action whatsoever on the request. The Occupancy Department eventually referred the transfer request to the Civil Rights Department.

    Upon information and belief, the BHA never contacted Jane Doe 1 with regard to the request or conducted any inquiry regarding her September 1990 transfer request. The BHA denied the request on January 18, 1991, stating that "other residents look[ing] at [Jane Doe 1] and her children in a 'funny way' . . . does not constitute civil rights violations or substantiate the need for an emergency transfer." The memorandum supporting the denial made no reference to Jane Doe 1's allegations that her children were subjected to racial name calling and were afraid to play outdoors or that her windows had been broken.

COUNT I - SECTION 3612(o)(1)

27. The United States repeats and incorporates by reference the allegations set forth in paragraphs 1-27 above.

28. In 1996, each of the Complainants filed timely complaints of housing discrimination with HUD against the Boston Housing Authority ("BHA") pursuant to 42 U.S.C. § 3610(a).

29. The complainants, as former residents of Old Colony and Bunker Hill, alleged that the BHA failed to adequately address and prevent severe and pervasive racially and ethnically motivated harassment directed at them by white tenants and others in violation of the Fair Housing Act.

30. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), HUD conducted an investigation of the complaints, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in that investigation, HUD, pursuant to 42 U.S.C. § 3610(g)(1), determined that there is reasonable cause to believe that the BHA violated the Fair Housing Act. On February 16, 1999, HUD issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the BHA with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a) and (b). A copy of HUD's Determination of Reasonable Cause and Charge of Discrimination is attached hereto.

31. On or about March 8, 1999, the complainants and the BHA elected to have the claims asserted in the charge resolved in a federal civil action pursuant to Section 812(a) of the Fair Housing Act, 42 U.S.C. § 3612(a), and the Secretary authorized the Attorney General to commence a civil action on behalf of the complainants, pursuant to Section 812(o) of the

Fair Housing Act, 42 U.S.C. § 3612(o).

32. As a result of its investigation, HUD concluded that white BHA tenants and white visitors to BHA property subjected the complainants and their families to racially and ethnically motivated violence and severe racial and ethnic harassment during their tenancies at Old Colony and Bunker Hill. In addition to physical violence, the complainants were subjected frequently to racial slurs, racist graffiti, threats of physical violence, and crimes against their property, all because of race, color, and national origin. The result of this harassment and violence to which the complainants and their families were subjected was to create a hostile housing environment because of race, color, and national origin, thereby depriving these tenants of the quiet enjoyment of their homes. The BHA knew or should have known of this harassment and violence, but failed to take adequate action to resolve the complaints of harassment and violence, to diminish such harassment and violence, or to protect the complainants and other BHA tenants from such harassment and violence.

33. By its actions and failure to act, the BHA has made unavailable or denied dwellings to the complainants because of race, color, or national origin, in violation of 42 U.S.C. § 3604(a).

34. By its actions and failure to act, the BHA has discriminated against the complainants in the terms, conditions or privileges of rental of dwellings because of race, color, or national origin, in violation of 42 U.S.C. § 3604(b).

    a. the BHA's discriminatory actions and failure to act were intentional, willful and taken in disregard for the rights of the complainants;

    b. Alternatively, the BHA's discriminatory actions and failure to act were negligent with respect to complainants because the BHA knew or should have known about the harassment and failed to take adequate measures to stop, prevent or correct the harassment.

35. The complainants are aggrieved persons as defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), who suffered actual injury and damages as a result of the BHA's conduct as described herein.

COUNT II - SECTION 3614(a)

36. The United States repeats and incorporates by reference the allegations set forth in paragraphs 1-37 above.

37. The conduct of the BHA described above constitutes:

    a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. § 3614(a); and

    2. A denial to a group of persons of rights granted by the Fair Housing Act, which denial raises an issue of general public importance, 42 U.S.C. § 3614(a).

38. Specifically, by failing to take adequate action to resolve complaints of racial harassment and violence, to diminish such harassment and violence, or to protect the complainants and other BHA tenants from racially and ethnically motivated harassment and violence, the

BHA:

a. made unavailable or denied dwellings to the complainants and other persons because of race, color, or national origin, in violation of 42 U.S.C. § 3604(a);

2. discriminated against the complainants and other persons in the terms, conditions or privileges of rental of dwellings because of race, color, or national origin, in violation of 42 U.S.C. § 3604(b); and

3. coerced, intimidated, threatened, or interfered with persons, including the complainants, in the exercise or enjoyment of rights granted or protected by 42 U.S.C. §§ 3603, 3604, 3605, or 3606, in violation of 42 U.S.C. § 3617.

39.

a. The discriminatory actions of the BHA were intentional, willful and taken in disregard for the rights of the complainants and other persons who were subjected to the BHA's discriminatory housing practices;

2. Alternatively, the BHA's discriminatory actions and failure to act were negligent with respect to complainants and other persons who were subjected to the BHA's discriminatory housing practices because the BHA knew or should have known about the harassment and violence and failed to take adequate measures to stop, prevent or correct the harassment and violence.

40. The complainants and other persons who were subjected to the BHA's discriminatory housing practices are aggrieved persons as defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), who suffered actual injury and damages as a result of the BHA's conduct as described herein.

WHEREFORE, the United States prays for an Order from this Court that:

1. Declares that the discriminatory housing practices of the BHA, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 - 3619;

2. Enjoins the BHA, its agents, employees and successors, and all other persons in active concert or participation with the BHA, from:

a. refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to any person because of race, color, or national origin;

2. discriminating against any person in the terms, conditions or privileges of rental of a dwelling because of race, color, or national origin; and

3. coercing, intimidating, threatening, or interfering with persons, including the complainants, in the exercise or enjoyment of any right granted or protected by 42 U.S.C. §§ 3603, 3604, 3605, or 3606.

3. Requires such injunctive relief against the BHA as is necessary to effectuate the purposes of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq.;

4. Awards such damages as will fully compensate the complainants and other aggrieved persons for injuries caused by the discriminatory conduct of the BHA pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B);

5. Awards punitive damages to the complainants and other aggrieved persons pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B); and

6. Awards civil penalties to the United States in the amount authorized by 42 U.S.C. § 3614(d)(1)(C) in order to vindicate the public interest.

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

UNITED STATES OF AMERICA

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1. Because of the nature of their complaints and concern for their safety, the complainants requested and were granted leave to proceed as "Jane Does" in proceedings before HUD.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JANE DOE No. 1, et al.,
Plaintiffs,

v.

THE CITY OF BOSTON and
THE BOSTON HOUSING AUTHORITY,
Defendants.

CONSOLIDATED WITH

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE BOSTON HOUSING AUTHORITY,
Defendant.

SETTLEMENT AGREEMENT AND ORDER

I. INTRODUCTION

Between February and June 1996, Named Plaintiffs (defined below) filed thirteen administrative complaints against the Boston Housing Authority ("BHA") with the United States Department of Housing and Urban Development ("HUD") alleging violations of the Fair Housing Act, 42 U.S.C. 3601, et seq. (the "HUD Administrative Action"). Named Plaintiffs, who are Haitian, Hispanic, Trinidadian, Nigerian, St. Thomian, Black, black African American, and Hispanic, alleged that they, their families, and their visitors were repeatedly subject to racial violence, harassment and intimidation because of their race, color and national origin by white tenants and others during Named Plaintiffs' tenancies at two predominantly white BHA developments -- Old Colony in South Boston and Bunker Hill in Charlestown. This alleged harassment includes racially motivated acts of physical violence and threats of physical violence, destruction of property, racist graffiti, and racist name-calling. Named Plaintiffs alleged that they repeatedly complained about this racial harassment to the BHA, and that the BHA failed to adequately investigate or respond to their complaints.

On December 17, 1996, Named Plaintiffs filed a class action in this Court against the BHA and the City of Boston (the "City"), entitled Jane Doe No. 1, et al., v. The City of Boston and The Boston Housing Authority (Civil Action No. 96-12540 RCL). Jane Doe No. 1 v. City of Boston asserted claims against the BHA and the City for violations of the Fair Housing Act as well as the Civil Rights Act of 1866 (42 U.S.C. § 1981), the Civil Rights Act of 1871 (42 U.S.C. § 1983), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), the Thirteenth and Fourteenth Amendments of the United States Constitution, the Massachusetts Civil Rights Act (M.G.L. c. 12, §11I), the Massachusetts Anti-Discrimination Law (M.G.L. c. 151B, §4(6)), the Massachusetts

Equal Rights Law (M.G.L. c. 93, §102), and Article I of the Declaration of Rights of the Inhabitants of the Commonwealth of Massachusetts. As in the HUD Administrative Action, Named Plaintiffs alleged that the BHA and the City failed to take effective measures to protect Named Plaintiffs and similarly situated public housing tenants from chronic acts of racial violence and intimidation.

On February 16, 1999, after an investigation into the thirteen administrative complaints, HUD issued a Determination of Reasonable Cause and Charge of Discrimination on behalf of nine Named Plaintiff families. HUD concluded that it had reasonable cause to believe that the BHA had discriminated against these nine families on the basis of race, color or national origin. HUD issued Determinations of No Reasonable Cause as to the remaining four Named Plaintiff families. (1) The Determination of Reasonable Cause, Charge of Discrimination, and Determinations of No Reasonable Cause are attached as Exhibit 1 to this Settlement Agreement and Order ("Agreement and Order").

On March 8, 1999, the BHA and Named Plaintiffs elected to have the HUD Charges of Discrimination decided in federal court, pursuant to 42 U.S.C. 3612(a).

HUD conducted a further review of the Boston Housing Authority and as a result, on May 15, 1999, issued a report entitled "Assessment of the Boston Housing Authority's Response to Racial and Ethnic Harassment," a copy of which is attached hereto as Exhibit 2.

Pursuant to its authority under 42 U.S.C. 3612(o) and 3614(a), the United States Department of Justice, on July 26, 1999, filed a civil action in this Court against the BHA entitled United States v. Boston Housing Authority (Civil Action No. 99-11587-RCL), and moved to consolidate with Jane Doe No. 1 v. City of Boston. United States v. Boston Housing Authority asserted claims against the BHA for violations of the Fair Housing Act. The United States alleged that the BHA has engaged in a pattern or practice of resistance to the full enjoyment of rights guaranteed by the Fair Housing Act by tolerating pervasive and severe harassment of tenants on the basis of race, color and national origin in two of its Developments. Specifically, the United States' complaint charges that the BHA's failure to act has made housing unavailable because of race, color, and national origin in violation of 42 U.S.C. § 3604(a); has discriminated in the terms, conditions, privileges, services and facilities of rental housing in violation of 42 U.S.C. § 3604(b); and has coerced, intimidated, threatened, and interfered with individuals' exercise and enjoyment of equal housing conditions in violation of 42 U.S.C. § 3617.

The BHA and the City deny the allegations contained in the Civil Actions and the HUD Administrative Action. However, the Parties agree that, in order to avoid protracted and costly litigation, the Civil Actions should be resolved on terms and conditions set forth in this Agreement and Order.

Accordingly, as indicated by the signatures appearing below, the parties have consented to entry of this Settlement Agreement and Order.

II. PURPOSES OF THIS AGREEMENT AND ORDER

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The Parties have agreed to this Agreement and Order for the following purposes:

1. To ensure, by the means set forth in this Agreement and Order, that all present and future tenants of the BHA are accorded housing on equal terms, conditions, and privileges

regardless of race, color, and national origin.

2. To provide prospective relief in furtherance of the public interest, and monetary relief to the Named Plaintiffs and all members of the Plaintiff Class whom they represent by means of the terms and conditions set forth in this Agreement and Order.

AGREEMENT AND ORDER

IT IS HEREBY AGREED AND ORDERED as follows:

III. CERTAIN DEFINITIONS

The following terms when used in this Agreement and Order, in addition to the terms defined elsewhere in this Agreement and Order, will have the following meanings:

1. "Boston Housing Authority" or "BHA" will refer to the Boston Housing Authority and its employees, agents, and any and all persons or entities acting in concert or participation with the Boston Housing Authority.

2. "City of Boston" or the "City" will refer to the City of Boston and its employees, agents, and any and all persons or entities acting in concert or participation with the City of Boston.

3. "Civil Actions" will refer to Jane Doe No. 1 v. City of Boston and United States v. Boston Housing Authority.

4. "Civil Rights Protection Plan" or "CRPP" will refer to the Boston Housing Authority Civil Rights Protection Plan as amended and approved by this Agreement and Order. A copy of the CRPP is attached hereto as Exhibit 3.

5. "Claim Form" will refer to the form, to be attached to the Mail Notice (defined below) for delivery to the Class (defined below) by the BHA, which members of the Class will be required to complete and submit in order to determine their eligibility to share in the Class Fund (defined below). "Claim Form" will also refer to any equivalent form or document that contains substantially all of the information sought in the printed form. A copy of the Claim Form is attached hereto as Exhibit 4.

6. "Claim Period" will refer to the period of time in which potential Class Members may file a claim. The Claim Period runs from this Court's Preliminary Approval of this Agreement and Order (defined below) and for ninety (90) days thereafter.

7. "Claims Administrator" will refer to the individual or entity, appointed by the Court, who will administer the collection and distribution of the Class Fund (defined below).

8. "Class" will refer to all black African-American, Black (including but not limited to Trinidadian, Haitian, St. Thomian, and Nigerian), Hispanic, Asian or Pacific Islander, and Native American tenants, which includes residents and members of the resident's household listed on the BHA Public Housing Lease and/or the Tenant Status Review, who reside or have resided in any of the Developments (defined below) between 1989 and the date of the Court's Preliminary Approval of this Agreement and Order. Membership in the Class is not conditioned upon the existence of records indicating that such tenants have complained of

racial violence, harassment, threats, intimidation, or coercion.

9. "Class Counsel" will refer to the law firm of Testa, Hurwitz & Thibeault, LLP (including David S. Godkin, Esq. and Inez H. Friedman, Esq.) and the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association (including Ozell Hudson, Jr., Esq., Barbara J. Dougan, Esq., and Nadine Cohen, Esq.).

10. "Class Fund" will refer to the cash recovery paid by the BHA for the benefit of the Class.

11. "Class Member" will refer to any member of the Class.

12. "Date of Preliminary Approval of the Agreement and Order" will refer to the date the Court enters an order initially approving the Agreement and Order, prior to the fairness hearing and final approval of this Agreement and Order.

13. The "Developments" will refer to the BHA's Old Colony, Mary Ellen McCormack, West Broadway and Bunker Hill housing developments.

14. "Effective Date of the Agreement and Order" will refer to the date the Court gives final approval to and enters this Agreement and Order.

15. "Eligible Class Member" will refer to all members of the Class (other than Named Plaintiffs) who timely submit complete and accurate Claim Forms, and who are determined by the Claims Administrator to be eligible to share in the Class Fund.

16. "Fair Housing Compliance Coordinator" will refer to the person hired by the BHA to monitor the BHA's compliance with this Agreement and Order and provide assistance in its implementation.

17. "HUD" will refer to the United States Department of Housing and Urban Development.

18. "Mail Notice" will refer to the notice of the proposed settlement of the Civil Actions to be sent by the BHA by first class mail to as many members of the Class as can be located as set forth in this Agreement and Order. The Mail Notice will describe the proposed settlement and inform Class Members of the procedures and deadlines for filing a claim, objecting to the proposed settlement, and opting out of the Class, and will provide the date, time and location of the fairness hearing. A copy of the Mail Notice is attached hereto as Exhibit 5.

19. "Named Plaintiffs" will refer to the Plaintiffs named in the caption of Jane Doe No. 1 v. City of Boston, whether identified by name or by pseudonym.

20. "Objection Period" will refer to the period during which potential Class Members may deliver to the clerk of the Court or have postmarked for delivery thereto a written objection to this Agreement and Order. The Objection period runs from this Court's Preliminary Approval of this Agreement and Order until seven (7) days before the fairness hearing.

21. "Opt Out Period" will refer to the period of time in which potential Class Members may remove themselves from ("opt out" of) the Class. The Opt Out Period runs from this Court's Preliminary Approval of this Agreement and Order for one hundred five (105) days thereafter.

22. "Plaintiffs" will refer to the Private Plaintiffs (defined below) and the United States (defined below).

23. "Private Plaintiffs" will refer to the Named Plaintiffs and the members of the Class whom they represent.

24. "Publication Notice" will refer to the notice of the proposed settlement of these Civil Actions to be published by the BHA in The Boston Globe, The Boston Herald, The Bay State Banner, El Mundo, The Sampan, The Haiti Observator, and Vifao. The Publication Notice will summarize the information in the Mail Notice. A copy of the Publication Notice is attached hereto as Exhibit 6.

25. "USA" or "United States" will refer to the United States Department of Justice, which includes the Civil Rights Division of the United States Department of Justice and the Office of the United States Attorney for the District of Massachusetts.

IV. JURISDICTION, SCOPE AND TERM OF ORDER

1. The parties stipulate and the Court finds that the Court has personal jurisdiction over the BHA and the City of Boston for purposes of these Civil Actions, and subject matter jurisdiction over the claims in these Civil Actions pursuant to 28 U.S.C. §§ 1331, 1343(a), 1345 and 1367; and/or 42 U.S.C. §§ 1983, 3612(o), 3613(a) or 3614(a).

2. This Agreement and Order applies to and addresses discriminatory actions or inactions based on race, color, or national origin taken against members of the Class involving claims alleged in the Civil Actions that may have occurred at the Developments from January 1, 1989, through the date of preliminary approval of this Agreement and Order.

3. The provisions of this Agreement and Order apply to the BHA, its employees, agents and any and all persons or entities acting in concert or participation with the BHA.

4. The Agreement and Order will be effective for a period of three (3) years from the Effective Date of the Agreement and Order, unless the Agreement and Order is extended as provided in the next paragraph.

5. In the event the United States or Private Plaintiffs determine that there has been substantial, or repeated and material, failure by the BHA to satisfy the terms or provisions of the Agreement and Order, the United States and/or Private Plaintiffs may file a motion ("Plaintiffs' motion") with the Court requesting that this Agreement and Order not terminate until such time as the Court determines that the terms and provisions of the Agreement and Order have been substantially satisfied. Before filing such motion, the United States and/or Private Plaintiffs will give the BHA thirty (30) days written notice setting forth in detail the specific provision(s) of the Agreement and Order with which the BHA has allegedly not complied, along with a detailed itemization of the grounds for the alleged noncompliance. During this thirty (30) day period, the parties will endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with the Agreement and Order, and the BHA will in good faith confer with the Plaintiffs to attempt to resolve the compliance issues. If the United States and/or Private Plaintiffs have not previously filed a motion to enforce the Agreement and Order pursuant to the Procedural Order, attached as Exhibit 9, then the BHA will have an additional thirty (30) days after the

thirty (30) day notice period to cure the alleged noncompliance. Plaintiffs' motion must be filed no later than thirty (30) days prior to the expiration of the Agreement and Order. If, after hearing, the Court finds that the BHA is in substantial, or repeated and material, noncompliance with the terms or provisions of this Agreement and Order, the Court may continue the term of this Agreement and Order for an additional appropriate period of time, although such time is not to exceed six (6) years from the Effective Date of the Agreement and Order. In such event, the BHA retains the right to move the Court to terminate the Agreement and Order, although in no event will the BHA file such a motion more than once per calendar year.

V. GENERAL NONDISCRIMINATION PROVISIONS

The BHA will not:

1. Deny or otherwise make unavailable a BHA dwelling because of race, color or national origin;

2. Discriminate in the terms, conditions or privileges of the rental of a BHA dwelling, or in the provision of services or facilities in connection therewith, because of race, color or national origin;

3. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Fair Housing Act;

4. Deny any BHA tenant the right to the full and equal benefit and enjoyment of goods, services, facilities, privileges and advantages with respect to the right to lease and hold his property without regard to race, color, or national origin.

VI. COMPLIANCE PROVISIONS

The BHA will take the following steps to ensure that its developments are operated in a nondiscriminatory manner free from racial harassment:

A. POLICIES

1. Compliance with the Civil Rights Protection Plan and Other Civil Rights Laws and Policies

a. The BHA will comply with all provisions of the Civil Rights Protection Plan ("CRPP," defined above). A copy of the CRPP is attached as Exhibit 3 and will be enforced pursuant to the terms of this Agreement and Order. By agreeing to this Agreement and Order, the United States hereby approves the modifications to the CRPP attached as Exhibit 3 to the Agreement and Order. In the event that the BHA determines that modifications to the CRPP are warranted, the BHA will notify counsel for the United States in writing.(2) The United States will have thirty (30) days from the date of its receipt in writing of the proposed revisions to the CRPP in which to respond to any proposed change(s). If the United States does not object to the BHA's proposed change(s) within the thirty

(30) day time period, the change(s) may be incorporated into the CRPP by the BHA. If the United States objects to the proposed change(s), the change(s) will not be made and the parties will confer in a good faith effort to resolve their differences.

b. The BHA will consider an employee's compliance with this Agreement and Order (which includes compliance with the CRPP) and other civil rights policies and laws in exercising its regular and customary functions and prerogatives, including, but not limited to, promotion and disciplinary actions including, but not limited to, discharge, suspension, and written warning notice. Failure to comply with the obligations of this Agreement and Order or other applicable civil rights policies or laws may subject an employee to disciplinary action including, but not limited to, discharge, suspension, and written warning notice.

2. **"Zero Tolerance" of Civil Rights Violations**

a. >The BHA will continue to implement and enforce its policy of "Zero Tolerance" for civil rights violations. The "Zero Tolerance" policy is hereby incorporated into the CRPP, attached hereto as Exhibit 3.

b. Beginning no later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will communicate its "Zero Tolerance" policy orally and in writing to all BHA tenants at the time they sign their lease, and in writing each subsequent year when they re-certify their income and household composition. At the time they sign their lease and each subsequent year when they re-certify, the BHA will ask each tenant to sign a statement certifying that he or she understands and agrees to comply with the "Zero Tolerance" policy. On or before July 1, 2000, the BHA will seek to amend its lease agreement to require tenants to certify that they understand and agree to comply with the "Zero Tolerance" policy on an annual basis. The BHA will maintain these tenant certifications in the tenants' files.

3. **CRPP Response Procedures**

a. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will implement and adhere to the Response Procedures as set forth in the CRPP, attached hereto as Exhibit 3.

b. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will amend the job description of the Regional Property Manager to include the responsibility of working with the Office of Civil Rights staff to oversee development managers' compliance with the CRPP.

c. No later than one (1) year from the Effective Date of this Agreement and Order, the BHA will develop and implement a tracking system for reports of bias incidents to assist the Office of Civil Rights in monitoring compliance with the CRPP. The system will provide authorized persons from the BHA Office of Civil Rights, Departments of Public Safety and Occupancy, and authorized development and regional property managers ready access to the

status of BHA administrative inquiries into bias incidents and the ability to track final actions -- evictions in particular.

4. **Graffiti Removal**

No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will implement and adhere to its Graffiti Removal policy as set forth in the CRPP, attached hereto as Exhibit 3.

5. **Transfer Requests**

No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will implement and adhere to the Transfer Policy as set forth in the CRPP, attached hereto as Exhibit 3.

6. **Inclusive Tenant Task Forces**

The BHA will continue to implement and adhere to its Local Tenant Organization ("LTO") policy, attached hereto as Exhibit 7.

B. **ADDITIONAL STAFF AND POLICE PATROLS**

1. **Heightened Police Patrols**

By August 30, 1999, the BHA will develop and implement a plan for increasing the number and frequency of police patrols in the Developments to deter racial violence and harassment. The plan will provide for:

a. Daily, consistent police presence at Old Colony and Bunker Hill, with particular emphasis on enhanced patrols during nonschool hours;

b. Enhanced police visibility;

c. Daily communication between the police officers patrolling the Developments and Development management;

d. Communication between the police officers patrolling the Developments and Tenant Task Forces;

e. To the greatest extent possible, the requirement that officer(s) assigned to patrol a particular Development also investigate the civil rights-related transfer requests from that Development referred to the BHA Department of Public Safety;

f. To the greatest extent possible, the assignment of police officers to patrol the Developments who are fluent in both English and another language spoken by tenants in the Developments, including Spanish, Haitian Creole, or Portuguese. To this end, the plan will include a recruitment plan to assist in recruiting a diverse pool of applicants for the police force.

2. **Office of Civil Rights Staffing**

a. No later than one hundred fifty (150) days from Preliminary Approval of this Agreement and Order, the BHA will cause its Office of Civil Rights to hire two (2) new staff persons with professional investigative or other appropriate experience. Their duties will be similar to those of the Fair Housing Assistants currently employed by the Office of Civil Rights and will include fact-gathering during administrative inquiries, attending civil rights-related private conferences scheduled by the development managers, and responding to complaints from the Developments.

b. The BHA will also hire one Civil Rights Outreach Coordinator, contingent on receiving HUD funding for the position. The BHA will apply for this funding at least twice before the expiration of the first three years of this Agreement and Order, including the application submitted on June 30, 1999.

c. **Public Safety Department Staffing**

By the Effective Date of this Agreement and Order, the BHA will cause its Public Safety Department to hire one (1) additional officer and will use best efforts to seek HUD funding for a second officer. The new officer(s) will be dedicated to furthering the purposes of this Agreement and Order.

C. **EMPLOYEE NOTICE, TRAINING AND PERFORMANCE REVIEWS**

1. **Employee Notice**

a. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will send each of its management personnel assigned to each of the Developments and all employees of the BHA's Office of Civil Rights and Departments of Public Safety and Occupancy a copy of this Agreement and Order (including the CRPP attached as Exhibit 3 and excluding the other Exhibits), along with a notice summarizing the Agreement and Order and an explanation of the employees' obligations under this Agreement and Order and other applicable civil rights policies and laws which includes the information set forth in Exhibit 8.

b. The BHA will request and, subject to the applicable Collective Bargaining Agreement, will require each employee receiving the above-described notice, within seven (7) days of its receipt, to execute a statement acknowledging that he or she has received, read and understands the notice, and that he or she agrees to act in accordance therewith. In the event that an employee refuses to execute the statement, the BHA will record that the employee was asked and refused to execute the statement. The BHA will maintain these statements in accordance with the Record Keeping provisions of this Agreement and Order, Section VII.B.

c. With respect to all new employees assigned to the aforementioned positions, the BHA will comply with the provisions of paragraphs VI.C.1.a and VI.C.1.b. above within fourteen (14) days of commencement of employment or

reassignment.

d. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will provide a copy of this Agreement and Order along with a letter summarizing the Agreement and Order and other applicable civil rights policies and laws to the Commissioner of the Boston Police Department ("BPD") and the Commanding Officer of the BPD Community Disorders Unit.

2. **Training**

a. The BHA will continue to implement a Civil Rights Training Program for BHA management staff at the Developments, BHA police officers, Office of Civil Rights staff responsible for CRPP compliance, and all Occupancy Department staff. One of the purposes of this training is to educate those BHA employees with respect to the requirements of this Agreement and Order, the CRPP, and federal, state and local civil rights laws.

b. The new managers at the Old Colony and Bunker Hill developments will complete this Training Program as soon as possible. The new Office of Civil Rights staff persons and the new Public Safety Department staff person(s) hired pursuant to this Agreement and Order will complete this Training Program within forty-five (45) days of their hire;

c. No later than one hundred twenty (120) days from the Effective Date of this Agreement and Order, the BHA will cause all BHA employees identified in paragraph 2.a., above, to complete this Training Program.

d. Thereafter, the BHA will cause each employee newly hired or assigned to the above positions to complete this Training Program within forty-five (45) days of the new employee's commencement date.

e. The BHA will require each employee who receives training required by this Agreement and Order to sign an attendance sheet which indicates the date and type of training received. No later than six months from the Effective Date of this Agreement and Order, the BHA will develop and implement a department-wide tracking system through which each department head will be able to tell who has been trained on which program and when.

3. **Performance Reviews**

a. The BHA will continue to implement and adhere to its current Employee Performance Evaluation, to which all BHA management employees and administrative staff are subject, including all development managers, assistant development managers, and all employees of the BHA's Civil Rights, Public Safety, and Occupancy Departments.

b. Under this system of Performance Evaluation, all management employees and administrative staff will be explicitly evaluated in detail and reviewed on an annual basis for compliance with this Agreement and Order, the CRPP, and federal, state and local civil rights laws ("civil rights compliance"). In preparing

these Performance Evaluations, supervisors (evaluators) will consult with the Fair Housing Compliance Coordinator and the Director of Civil Rights to obtain relevant information regarding the evaluatee's civil rights compliance and will consider this information in completing the evaluation.

D. TENANT NOTICE AND OUTREACH

1. Tenant Notice

a. No later than six (6) months from the Effective Date of this Agreement and Order, and periodically thereafter as the Director of the Office of Civil Rights may determine, the BHA will conduct at each Development a community meeting for all tenants, at which the BHA will describe its procedures for tenants to report incidents of racial violence, harassment, and intimidation; its procedures for tenants to report complaints regarding civil rights enforcement; its procedures for investigating and resolving such complaints; its policy of "Zero Tolerance" for civil rights violations; and its LTO policy highlighting strategies for achieving reasonable racial and ethnic diversity on all LTO Boards.

b. The BHA will post conspicuous notices for each meeting in each building in the Development no fewer than two weeks before the scheduled date of the meeting. Such notices will be posted in English, Spanish, and any other languages that are spoken by more than five percent (5%) of the population of tenants of the respective Development.

2. Tenant Outreach

a. No later than forty-five (45) days from the Effective Date of this Agreement and Order, the BHA will develop a brochure describing the BHA's civil rights policies, including: the "Zero Tolerance" policy; the procedures for reporting civil rights incidents to the BHA including the Civil Rights Hotline; the procedures for following up on civil rights complaints to the BHA that are not resolved promptly; and the procedures for filing a HUD administrative complaint. The brochure will be widely distributed throughout the BHA; in particular, during new applicant processing, in recertification packages, in site management offices, and at tenant task force and development community meetings. In addition, within one hundred twenty (120) days of the Effective Date of this Agreement and Order, the brochure will be slipped under the door of each housing unit in the Old Colony and Bunker Hill developments. The brochure will be in English, Spanish, and any other language that is spoken by more than five percent (5%) of the population of tenants of the respective development.

b. No later than one (1) year from the Effective Date of this Agreement and Order, and on an annual basis thereafter for the duration of this Agreement and Order, and contingent on HUD funding for a Civil Rights Outreach Coordinator or other HUD funding, the BHA will conduct door-to-door civil rights outreach to the tenants at the Bunker Hill and Old Colony developments. Subject to HUD funding, BHA staff will visit each housing unit at the two

developments and attempt to speak to at least one adult member of the household and as many other members of the household as possible. Subject to HUD funding, BHA staff will describe the BHA's civil rights policies, including each element specified for inclusion in the brochure described in paragraph D.2.a., above, and distribute the brochure to the household. Subject to HUD funding, the BHA staff will also attempt to solicit suggestions from the tenants on ways to create and/or maintain a racially harmonious community in the development.

3. **Language Services**

   a. Beginning no later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will post at the Development management offices the existence of the civil rights hotline in English as well as Spanish, Haitian Creole, Portuguese, Vietnamese, Chinese, Khmer and Laotian.

   b. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will add conferencing capability to the civil rights hotline and where appropriate use a telephone language service to take in reports of racial and ethnic harassment reported by non-English speaking BHA tenants.

   c. Beginning no later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will maintain at each Development a roster of interpreters available for hearings, private conferences, and community meetings. The BHA will also provide interpretive services at BHA-sponsored Development meetings for speakers of any language spoken by more than five percent (5%) of the population of tenants of the respective Development.

4. **Tenant Training and Community Events**

   a. Within three (3) months of the Effective Date of this Agreement and Order, the BHA will develop and implement a plan for appropriate diversity training and other violence-prevention programs for BHA tenants at the Developments.

   b. Beginning in 1999, and every year thereafter for the duration of this Agreement and Order, the BHA will hold one Development-specific, interracial/ethnic community event/social activity at the Old Colony development and one at the Bunker Hill development.

5. **QUARTERLY COORDINATION MEETINGS**

Commencing six (6) months after the Effective Date of this Agreement and Order, and every three months thereafter for the duration of this Agreement and Order, the BHA will conduct, and the Fair Housing Compliance Coordinator will attend, quarterly meetings to discuss civil rights compliance in the Developments, including any BHA tenant concerns regarding security at the Developments, and to coordinate responses of various federal and state agencies. BHA tenants will be invited and encouraged to attend these quarterly meetings, as will representatives of the BPD, Class Counsel, the United States Department of Justice, HUD, the Massachusetts Attorney General's Office, and the Suffolk County District Attorney's Office.

E. COMPLIANCE COORDINATION, RECORD KEEPING, AND REPORTING

A. COMPLIANCE COORDINATOR

1. The BHA will hire a Fair Housing Compliance Coordinator ("Compliance Coordinator") within ninety (90) days of preliminary approval of this Agreement and Order. The purpose of the Compliance Coordinator is to assist the BHA to implement and comply with this Agreement and Order. The Compliance Coordinator will report to the Administrator of the BHA and will meet at least quarterly with the BHA Director of the Office Civil Rights, Class Counsel, and the United States to apprise them of the status of the BHA's compliance with and to discuss implementation of this Agreement and Order. The Compliance Coordinator will, in conjunction with the Office of Civil Rights, compile the semi-annual reports, as described in paragraph VII.C. of this Agreement and Order.

2. If, after one (1) year of the Effective Date of this Agreement and Order, Class Counsel or the United States determine that the BHA is in substantial, or repeated and material, noncompliance with the terms of this Agreement and Order, either Class Counsel or the United States may seek from the Court a modification of this Agreement and Order to appoint an Independent Monitor. Before filing such motion to appoint an Independent Monitor, Class Counsel and/or the United States will give the BHA thirty (30) days written notice setting forth in detail the specific provision(s) of the Agreement and Order with which the BHA is allegedly not in compliance, along with a detailed itemization of the grounds for the alleged noncompliance. During this thirty (30) day period, the parties will endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with the Agreement and Order, and the BHA will in good faith confer with the Plaintiffs to attempt to resolve the compliance issues. If Class Counsel and/or the United States have not previously filed a motion to enforce the Agreement and Order pursuant to the Procedural Order, attached as Exhibit 9, then the BHA will also have a reasonable period of time after the thirty (30) day notice period to cure the alleged noncompliance. If, after a hearing, the Court finds that the BHA is in substantial, or repeated and material, noncompliance with the terms or provisions of the Agreement and Order, the Court will appoint an Independent Monitor for a period not to exceed the duration of this Agreement and Order. The purpose of the Independent Monitor will be to ensure that this Agreement and Order is implemented effectively and to assist the United States and Class Counsel in monitoring the BHA's compliance with the Agreement and Order. The Independent Monitor will report to Class Counsel, the United States, the BHA, and the Court. The duties of the Independent Monitor will be agreed upon by the parties or determined by the Court, and the salary, fees, and expenses incurred by the Independent Monitor will be borne by the BHA; provided, however, that in no event will the BHA be required to pay more than a total of sixty thousand dollars ($60,000.00) per annum for such salary, fees, and expenses.

B. RECORD KEEPING

The BHA will maintain the following records throughout the duration of this

Agreement and Order:

1. All records of complaints of racial violence, harassment, or intimidation, including civil rights transfer requests, received by any BHA personnel from any tenant of any of the Developments;

2. All records of investigations conducted by the BHA into such complaints;

3. All records of actions taken by the BHA in response to such complaints;

4. All records relating to training required by this Agreement and Order;

5. All signed statements, certifications, and attendance sheets required by this Agreement and Order;

6. All records relating to implementation of any provision of this Agreement and Order.

Upon ten (10) days notice, the United States Department of Justice and Class Counsel will have the opportunity to inspect and copy any records listed in paragraphs B.1-B.6, above. The parties will seek from the Court a protective order for this material to the extent necessary to comply with state privacy laws.

C. **SEMI-ANNUAL REPORTING**

Commencing six (6) months after the Effective Date of this Agreement and Order, and every six (6) months thereafter for the duration of this Agreement and Order, the BHA will write and deliver a report to Class Counsel, the United States Department of Justice, and HUD[3] detailing the following information:

1. The substance of each record of each complaint of racial violence, harassment, or intimidation, including civil rights transfer requests, received by any BHA personnel from any BHA tenant during the preceding six (6) months;

2. Any actions taken by the BHA in response to such complaints during the preceding six (6) months;

3. The current status of all such complaints from prior reporting periods; and

4. Actions taken to fulfill the BHA's obligations under each specific section of this Agreement and Order.

The Plaintiffs and the BHA will seek from the Court a protective order for this material to the extent necessary to comply with state privacy laws.

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F. **MONETARY RELIEF**

A. **CERTIFICATION OF CLASS**

The Parties agree that these Civil Actions are most appropriately maintained as a class action and agree and stipulate that for purposes of settlement of monetary relief claims these cases will be certified under Federal Rule of Civil Procedure 23(a) and 23(b)(3), and for purposes of settlement of injunctive relief claims, these cases will be certified under Federal Rule of Civil Procedure 23(a) and 23(b)(2). The Parties agree and stipulate that the requirements in Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) have been met.

B. SETTLEMENT CONSIDERATION

As set forth below, the BHA will pay a total of one million dollars ($1,000,000.00) in the aggregate to settle all claims of the Plaintiffs and all Class Members, with the exception of claims for attorneys' fees and costs.

C. COMPENSATION TO NAMED PLAINTIFFS

1. No later than thirty (30) days after the Court's preliminary approval of this Agreement and Order, the BHA will deposit into an interest bearing escrow account (the "Escrow Account") to be held by Nutter, McClennen, & Fish, LLP (the "Escrow Agent") the sum of six hundred fifty thousand dollars ($650,000.00) for the benefit of the Named Plaintiffs, to be divided as determined by the Named Plaintiffs and paid out to the Named Plaintiffs within thirty (30) days after the Effective Date of this Agreement and Order. The interest from the Escrow Account will be spent by Class Counsel, after notice to the BHA, on efforts to notify Class Members of this proposed settlement beyond the efforts required of the BHA under this Agreement and Order. In the event that the Court does not finally approve the Agreement and Order, all money contained in the Escrow Account will be returned to the BHA, minus such sums from the interest thereon as were expended by Class Counsel pursuant to this paragraph.

2. All payments made to the Named Plaintiffs pursuant to this Agreement and Order are compensation for physical injury and diminution of the value of their rental property. Receipt of any payment pursuant to this Agreement and Order will not affect any Named Plaintiff's eligibility for public housing, nor will such payments be treated as income for the purposes of determining rental payments to the BHA within the meaning of 24 C.F.R. § 5.609 or 760 C.M.R. § 7.04.

3. The BHA will make available to Named Plaintiffs thirteen (13) Section 8 certificates for use by Named Plaintiffs and their families, as soon after the Effective Date of this Agreement and Order as the certificates become available. Any Section 8 certificates not used by Named Plaintiffs and their families will be distributed among Class Members as determined by Class Counsel and the BHA.

D. COMPENSATION TO CLASS

1. No later than thirty (30) days after the Court's preliminary approval of this Agreement and Order, the BHA will deposit three hundred fifty thousand dollars ($350,000.00) into the Escrow Account for the benefit of the remaining

Class members. This payment will establish the Class Fund. The interest from the Escrow Account will be spent by Class Counsel, after notice to the BHA, on efforts to notify Class Members of this proposed settlement beyond the efforts required of the BHA under this Agreement and Order. In the event that the Court does not finally approve the Agreement and Order, all money contained in the Escrow Account will be returned to the BHA, minus such sums from the interest thereon as were expended by Class Counsel pursuant to this paragraph.

2. The Class Fund will be administered by the Claims Administrator, who will be appointed by the Court upon joint motion of the BHA and Class Counsel as of this date, who will administer the Class Fund under the Class Counsel's supervision and the BHA's oversight, subject to the jurisdiction of the Court, and whose salary, fees, and expenses will be paid by the BHA; provided, however, that in no event will the BHA be required to pay more than a total of forty thousand dollars ($40,000.00) for such salary, fees, and expenses. Within ten (10) days of the Court's appointment of the Claims Administrator, the BHA and Class Counsel will agree to a contract for the Claims Administrator which will set forth in detail the function of the Claims Administrator, the scope of his/her services, and the terms and method of his/her compensation.

3. Unless otherwise agreed by the BHA and Class Counsel or ordered by the Court, during the forty-five (45) days after the Effective Date of this Agreement and Order the Claims Administrator will distribute payments to each Eligible Class Member in a manner to be determined by Class Counsel. The BHA will have no involvement in reviewing or challenging any claims made by Class Members or determining how payments are distributed to eligible Class Members.

4. This is not a claims-made settlement. The BHA will have no ability to recover any of the settlement monies after the Effective Date of this Agreement.

5. Any residual funds remaining in the Escrow Account after all Eligible Class Members have been identified and paid will be used to benefit Class Members living in the Developments as determined by Class Counsel and the BHA.

6. All payments made to the Class Members pursuant to this Agreement and Order are compensation for physical injury and diminution of the value of their rental property. Receipt of any payment pursuant to this Agreement and Order will not affect any Class Member's eligibility for public housing, nor will such payments be treated as income for the purposes of determining rental payments to the BHA within the meaning of 24 C.F.R. § 5.609 or 760 C.M.R. § 7.04.

E. **NOTICE TO CLASS**

1. Within twenty (20) days after the Court's preliminary approval of this Agreement and Order, the BHA will send the Mail Notice via First Class mail, along with a Claim Form, to Class Members at the last address known to the BHA. Where the last known address of former BHA tenants in the BHA's records is less than six months old, the BHA may use that address. Where the

last known address of former BHA tenants in BHA records is more than six-months old or otherwise known to be inaccurate, the BHA will secure the most recent available address from Class Counsel and will send the Mail Notice to that address. The BHA will bear the costs of preparing and delivering the Mail Notice and Claim Form to the Class Members. The parties will seek from the Court a protective order for these activities to the extent necessary to comply with state privacy laws.

2. The Mail Notice will be translated into Spanish and will state in Haitian Creole, Portuguese, Vietnamese, Chinese, Khmer and Laotian: "Important! If you were a tenant of the Boston Housing Authority after 1989, this may affect your rights. Please have this notice translated immediately." A copy of the Mail Notice is attached hereto as Exhibit 5.

3. By the Date of Preliminary Approval of this Agreement and Order, the BHA will provide Class Counsel with the names, last known addresses and social security numbers of all potential Class members for the purpose of notification. Such information may only be used by Class Counsel in furtherance of efforts to locate Class members, and shall otherwise be treated as "highly confidential" and subject to the Stipulation and Agreement of Confidentiality entered by the Court on November 25, 1997, as modified by the Amendment to Stipulation and Protective Order entered by the Court on May 2, 1998. The parties will also seek from the Court a protective order for this material to the extent necessary to comply with state privacy laws.

4. Within ten (10) days after the Court's preliminary approval of this Agreement and Order, and again forty (40) days later, the BHA will submit for publication the Publication Notice, as detailed in paragraph VIII.E.5. below. A copy of the Publication Notice is attached hereto as Exhibit 6.

5. The Publication Notice will be published by the BHA as advertisements in The Boston Globe, The Boston Herald, The Bay State Banner, El Mundo, The Sampan, The Haiti Observator, and Vifao. At least one of the two Publication Notices appearing in The Boston Globe and one of the two Publication Notices appearing in The Boston Herald will be published as quarter-page advertisements in the Sunday edition of those newspapers. The Publication Notice appearing in The Boston Globe, The Boston Herald, and The Bay State Banner will state in Spanish, Haitian Creole, Portuguese, Vietnamese, Chinese, Khmer and Laotian: "Important! If you were a tenant of the Boston Housing Authority after 1989, this may affect your rights. Please have this notice translated immediately." The Publication Notice appearing in El Mundo will be in Spanish. The BHA will bear the costs of preparing and publishing the Publication Notice in these publications.

6. Nothing will prohibit Class Counsel or the United States from notifying Class Members of the proposed settlement at their own expense, whether by placing additional advertisements, conducting additional outreach efforts, or otherwise; provided, however, that Class Counsel will not solicit Class Members to request that they be excluded from the Class.

F. **CLAIM PROCESS FOR CLASS MEMBERS**

1. In order to share in the Class Fund, Class Members will be required to complete, sign, and submit Claim Forms. Claim Forms must be returned by Class Members to the Claims Administrator.

2. The deadline for submitting Claim Forms to the Claims Administrator (the "Claim Period") will be the last day of the Claim Period, unless Class Counsel and the BHA agree to extend the deadline.

3. During the Claim Period, the Claims Administrator will mail a Claim Form to a potential Class Member within seven (7) days after receiving a written or telephone request for a Claim Form, except that during the last thirty (30) days of the Claim Period, the Claims Administrator will mail a Claim Form within one (1) business day of receiving such a request. Anyone who contacts one of the Parties or their attorneys regarding a Claim Form will be referred to the Claims Administrator within one (1) business day.

4. In any instance where more than one person in a household claims a share of the Class Fund, a panel consisting of the Claims Administrator and a representative of the Class Counsel will determine if the household will split the share of the Class Fund or if a full share of the Class Fund will be paid to one or more of the claimants individually. The Claims Administrator will resolve all other questions regarding who is an Eligible Class Member, including, without limitation, who qualifies as a member of the Class and who has timely submitted accurate and complete Claim Forms.

5. Upon request by the Claims Administrator and subject to a protective order if necessary to comply with state privacy laws, the BHA will assist the Claims Administrator in verifying that a claimant is a member of the Class.

6. During the Claims Administrator's appointment, the books and records of the Claims Administrator will remain open to inspection by the Parties during regular business hours on reasonable notice. The Claims Administrator will give the parties a final, detailed accounting of the claims process at the conclusion of the Claims Administrator's engagement.

G. FAIRNESS HEARING

1. Approximately one hundred twenty (120) days following preliminary approval of this Agreement and Order, the Court will hold a fairness hearing for the purpose of determining whether to finally approve the Agreement and Order. The hearing date, time, and location will be provided in the Mail Notice and the Publication Notices, and Class Members may appear at the fairness hearing and object to final approval of this Agreement and Order.

2. Within seven (7) days after the close of the Opt Out Period, the BHA may file a motion to withdraw from this Agreement and Order, such motion to be heard at the fairness hearing. If such a motion is filed, the Plaintiffs will have at least seven (7) days from receipt of such motion to respond. The Court may grant such motion only if it determines that the BHA has demonstrated to the Court that the potential claims of Class Members who timely opt-out will frustrate

one of the BHA's primary purposes in entering into this Agreement and Order, which is to bring closure to litigation arising from the conduct alleged in the complaints. If no timely motion to withdraw is filed, or a timely motion to withdraw is filed and denied, this Agreement and Order will become Effective on the date the Court gives final approval to and enters this Agreement and Order, the Effective Date of the Agreement and Order.

VII. PRIVATE PLAINTIFFS' COSTS AND ATTORNEYS' FEES

On the Effective Date of this Agreement and Order, the BHA will pay to Class Counsel five hundred thousand dollars ($500,000.00) to cover the costs and attorneys' fees incurred in connection with their prosecution of Jane Doe No. 1 v. City of Boston and the related HUD Administrative Action. The costs and attorneys' fees are to be divided among the Class Counsel in a manner to be determined by Class Counsel. The Parties acknowledge that payments made pursuant to this paragraph constitute full and complete payment of any and all claims for attorneys' fees and costs made or to be made by the Private Plaintiffs, Class Counsel, or any Eligible Class Member who does not opt out of the Class against the BHA pursuant to Jane Doe No. 1 v. City of Boston or the HUD Administrative Action; provided, however, after the Effective Date of the Agreement and Order, that Private Plaintiffs reserve the right to claim additional reasonable attorneys' fees in connection with a subsequent motion to seek enforcement of this Agreement and Order in Court, where Private Plaintiffs and/or Class Counsel are determined to be a "prevailing party" under the Fair Housing Act, 42 U.S.C. 3613(c)(2); and provided further that no party will be entitled to any fees or costs incurred during any good faith negotiation to resolve any dispute arising under this Agreement and Order.

Aside from the exception noted in the above paragraph, each party will bear its own costs and attorneys' fees associated with this litigation.

VIII. COOPERATION, JURISDICTION, ENFORCEMENT AND MODIFICATIONS

1. The parties and their attorneys agree to work cooperatively with one another and in good faith and to use their best efforts to seek the Court's approval of this Agreement and Order, to resolve informally any differences regarding interpretation of and compliance with this Agreement and Order prior to bringing such matters to the Court for resolution, and to effectuate the purposes of this Agreement and Order.

2. The parties will file a joint motion asking the Court to approve and enter the Procedural Order attached hereto as Exhibit 9. As detailed in the attached Procedural Order, the Court will retain jurisdiction over these Civil Actions for the duration of this Agreement and Order for the purpose of enforcing any of its provisions and terms.

3. The BHA will continue working to further streamline and improve its civil rights enforcement efforts and procedures toward the goal of ensuring that all tenants are accorded housing on equal terms and conditions regardless of race, color, or national origin.

4. The parties will have the right to seek relevant modifications of the Agreement and Order to ensure that its purposes are fully satisfied, provided that any request for modification has been preceded by good faith negotiations between the parties.

IX. RELEASES

Prior to receiving any payment hereunder, each Named Plaintiff who will be paid a settlement award under this Agreement and Order will execute a complete and binding general release of the BHA and a complete and binding specific release of the City in the form attached hereto as Exhibit 10. Prior to receiving any payment hereunder, each Class Member who will be paid a settlement award under this Agreement and Order will execute a complete and binding specific release of the BHA and the City in the form attached hereto as Exhibit 11.

X. PUBLIC STATEMENTS

The Private Plaintiffs and the BHA will issue a public statement attached hereto as Exhibit 12.

XI. DISMISSAL OF THE CITY

Immediately upon payment to Class Counsel of attorneys' fees pursuant to Section IX above, the Private Plaintiffs will file an executed stipulation of dismissal with prejudice of the City from Jane Doe No. 1 v. City of Boston in the form of Exhibit 13 hereto.

The parties consent to the entry of this Agreement and Order as indicated by the signatures of counsel below:

For Plaintiffs Jane Doe No. 1, et al., Individually and On Behalf Of All Others Similarly Situated:

_____ Dated: _____

David S. Godkin (BBO# 196530)
Inez H. Friedman (BBO# 630910)
Lori A. Mihalich (BBO# 637493)
Testa, Hurwitz & Thibeault, LLP
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125 High Street
Boston, Massachusetts 02110
(617) 248-7000

_____ Dated: _____

Ozell Hudson, Jr. (BBO# 556269)
Barbara J. Dougan (BBO# 558392)
Lawyers' Committee for
Civil Rights Under Law
of the Boston Bar Assn.
294 Washington Street
Suite 940
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(617) 482-1145

_____ Dated: _____

Nadine Cohen (BBO# 090040)
Law Offices of Sherwin Kantrovitz
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For Plaintiff United States:

BILL LANN LEE
Acting Assistant Attorney General

_____ Dated: _____

BRIAN F. HEFFERNAN
MICHELLE ARONOWITZ
Attorneys
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Housing and Civil Enforcement Section
P.O. Box 65998
Washington, D.C. 20035-5998

_____ Dated: _____

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United States Attorney
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District of Massachusetts
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For Defendants:

_____ Dated: _____

M. Hollis Young (BBO# 537720)
General Counsel
BOSTON HOUSING AUTHORITY
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(617) 988-4000
ATTORNEY FOR DEFENDANT THE BOSTON HOUSING AUTHORITY

_____ Dated: _____

Merita A. Hopkins, Corporation Counsel
Kevin S. McDermott, Assistant Corporation Counsel (BBO# 544513)
CITY OF BOSTON LAW DEPARTMENT
Boston City Hall, Room 615
Boston, Massachusetts 02201
(617) 635-4936
ATTORNEY FOR DEFENDANT THE CITY OF BOSTON

_____ Dated: _____

ORDERED this _____ day of _____, 1999.

REGINALD C. LINDSAY
United States District Court Judge

---

1. Private Plaintiffs have formally requested HUD to reconsider its Determinations of No Reasonable Cause.

2. Notice will be sent to:

3. These semi-annual reports will be sent to:

Ozell Hudson, Jr., Esq.
Lawyers' Committee for Civil Rights Under Law of the Boston Bar Assn.
294 Washington Street, Suite 940
Boston, Massachusetts 02108

David S. Godkin, Esq
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APPENDIX C

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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAN FRANCISCO HOUSING AUTHORITY;

Defendant.

Civil No.:

COMPLAINT

The United States of America alleges:

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1. Jurisdiction. The United States brings this action to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C.§§ 3601 - 3619 ("Fair Housing Act"). This Court has jurisdiction over this action pursuant to 28 U.S.C.§ 1345; 42 U.S.C.§ 3612(o);

and 42 U.S.C.§ 3614(a).

2. Defendant San Francisco Housing Authority (SFHA) has violated the Fair Housing Act by failing to take reasonable steps to protect its residents from harassment on the basis of race, color, religion, and national origin.

3. Defendant SFHA is a corporate and politic public body, established under the laws of the State of California. It operates within the City and County of San Francisco with the purpose of providing decent, safe and sanitary dwellings to persons of low income.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). Defendant SFHA is located in the Northern District of California; the events or omissions giving rise to this claim occurred in the Northern District of California; and the property that is the subject of the action is situated in the Northern District of California.

5. Intradistrict Assignment: Assignment to the San Francisco/Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d). The events or omissions which give rise to this claim occurred in San Francisco County, and the property that is the subject of this action is situated in San Francisco County.

6. At all times relevant to this action, Defendant SFHA owned, operated, and managed various residential properties used as housing for persons of low income (the "subject properties") in the City and County of San Francisco.

7. The subject properties are dwellings within the meaning of 42 U.S.C.§ 3602(b).

8. Roosevelt and Stella Scott at all relevant times have resided in a dwelling unit owned, operated, and managed by the SFHA. Their unit is located in an SFHA development known as "Potrero Annex," in the City and County of San Francisco, California.

9. Roosevelt and Stella Scott are a mixed race couple. Roosevelt Scott is black and Stella Scott is white.

10. Approximately 76% of the residents of Potrero Annex are black.

11. Since approximately 1994, Stella Scott has been the target of racial harassment by neighboring residents of Potrero Annex because she is white. The harassment has included verbal abuse, racial slurs, threats, assaults or attempted assaults of Mrs. Scott or her family, and vandalism of the Scotts' dwelling unit, car, and other property.

12. The harassment has, among other things, caused the Scotts to fear for Mrs. Scott's and their grandchildren's safety; to avoid going outside their unit as much as possible; to forego the use of outdoor space and common space in the Potrero Annex which they had formerly enjoyed; and to ensure that, whenever possible, Mrs. Scott is in the company of Mr. Scott when she is in or around their unit.

13. The SFHA knew or should have known of this harassment because the Scotts have complained repeatedly to the SFHA about it, both orally and in writing. In their

complaints, the Scotts have identified the persons who have harassed them.

14. One of the persons who has harassed Mrs. Scott on the basis of race is Andrea Jones, a black neighbor of the Scotts who lives in the Potrero Annex. Around April 2000, Andrea Jones admitted to SFHA staff that she had used vulgar language and may also have used racial slurs when speaking to Mrs. Scott.

15. Although the harassment of the Scotts had been ongoing for six years, the SFHA took no action to address the harassment, other than to speak to Ms. Jones and the Scotts, until after the Scotts filed a housing discrimination complaint against the SFHA with HUD and wrote a letter to their Senator about the SFHA's inaction.

16. More than a year after the Scotts filed a complaint with HUD, the SFHA moved Ms. Jones to a new unit located about 70 yards from the Scotts' unit. The SFHA's measures were not effective in ending the harassment by Ms. Jones, which is still ongoing.

17. The SFHA is aware that its measures were not effective, and it knew or should have known at the time that moving Jones to a unit 70 yards away from the Scotts would not be effective in ending the harassment.

18. Other residents of the subject properties, including residents who are white, black, Iraqi, Asian, Hispanic, and residents of the Muslim faith, are and have been the victims of harassment on SFHA property, by other SFHA residents, by SFHA employees, and/or by SFHA contractors, on the basis of race, color, religion, or national origin. The harassment has included but not been limited to verbal abuse, racial epithets, threats, assaults, interference with the enjoyment of residents' units and the public and common use areas of the subject properties in which they live, vandalism, and robbery.

19. The harassment of the residents of Iraqi descent and residents of the Muslim faith has increased following the terrorist attacks of September 11, 2001.

20. The harassment is severe and pervasive; it denies and makes housing unavailable; it discriminates in the terms, conditions, and privileges of the rental of dwellings and in the provision of services and facilities in connection therewith; it is taken in retaliation for the exercise of rights granted or protected by the Fair Housing Act; and it coerces, intimidates, threatens, and interferes with the exercise and enjoyment rights granted or protected by the Fair Housing Act.

21. The SFHA knew, should have known of, and/or was deliberately indifferent to the harassment.

22. The SFHA failed to take reasonable steps to protect residents from the harassment.

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COUNT I - SECTION 3612(o)(1)

23. On or about March 8, 1999, Roosevelt and Stella Scott filed a timely complaint of housing discrimination with the United States Department of Housing and Urban

Development ("HUD") against the SFHA pursuant to 42 U.S.C. § 3610(a). The complaint alleged that the SFHA failed to adequately investigate or respond to the Scotts' complaints of racial harassment directed at them by neighboring SFHA residents, in violation of the Fair Housing Act.

24. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaint filed against the SFHA, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C.§ 3610 (g)(1), determined that reasonable cause exists to believe that a discriminatory housing practice had occurred based on race. Accordingly, on or about September 27 and 28, 2001, HUD issued a Determination of Reasonable Cause and Charge of Discrimination under 42 U.S.C. § 3610(g)(2)(A), charging the SFHA with discriminating against the Scotts on the basis of race in violation of 42 U.S.C. §§ 3604(b) and 3617.

25. On or about October 11, 2001, Roosevelt and Stella Scott made a timely election to have the Charge resolved in a civil action filed in federal court, pursuant to 42 U.S.C. § 3612(a), and the Secretary of HUD authorized the United States Attorney General to commence a civil action pursuant to 42 U.S.C. §3612(o).

26. The parties subsequently agreed that the statutory deadline to file this action under 42 U.S.C. 3612(o) was extended until July 11, 2002. Accordingly, this action is timely.

27. By its actions and failure to act, the SFHA has:

a. discriminated against the Scotts in the terms, conditions and/or privileges of rental of a dwelling, and/or in the provision of services or facilities in connection therewith, because of race, in violation of 42 U.S.C. §3604(b); and

b. interfered with the Scotts in the exercise or enjoyment of, and/or on account of having exercised or enjoyed, and/or on account of having aided and/or encouraged any other person in the exercise and/or enjoyment of, any right granted or protected by 42 U.S.C. §§ 3604, in violation of 42 U.S.C. § 3617.

28. The SFHA's discriminatory actions and failure to act were intentional, willful and/or taken in disregard for, and/or with deliberate indifference to, the rights of the Scotts.

29. The Scotts are aggrieved persons as defined in Section 802(i) of the Fair Housing Act, 42 U.S.C. § 3602(i), who suffered actual injury and damages as a result of the SFHA's conduct.

COUNT II - SECTION 3614(a)

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30. Other residents of dwellings operated by the SFHA, including residents who are white, black, Iraqi, Asian, Hispanic, and residents of the Muslim faith, have been victims of harassment by SFHA tenants, employees and/or contractors based on their race, color, religion, and/or national origin.

31. Although the SFHA knew or should have known this harassment was occurring, the SFHA failed to take effective action to stop it.

32. The SFHA's conduct constitutes:

a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, pursuant to 42 U.S.C. § 3614(a); and

b. A denial to a group of persons of rights granted by the Fair Housing Act, which denial raises an issue of general public importance, pursuant to 42 U.S.C. § 3614(a).

33. Specifically, by failing to take adequate action to resolve complaints of racial harassment and violence, to diminish such harassment and violence, and/or to protect the Scotts and other SFHA residents from harassment on the basis of race, color, religion, and/or national origin, the SFHA:

a. made unavailable and/or denied dwellings to persons because of race, color, religion, and/or national origin, in violation of 42 U.S.C. § 3604(a);

b. discriminated against persons in the terms, conditions and/or privileges of rental of a dwelling, and/or in the provision of services or facilities in connection therewith, because of race, color, religion, and/or national origin in violation of 42 U.S.C. § 3604(b); and

c. interfered with persons in the exercise and/or enjoyment of, and/or on account of having exercised or enjoyed, and/or on account of having aided and/or encouraged any other person in the exercise and/or enjoyment of, any rights granted or protected by 42 U.S.C.§§ 3604, in violation of 42 U.S.C. § 3617.

34. The SFHA's discriminatory actions and failures to act were intentional, willful and taken in disregard for, and/or with deliberate indifference to, the rights of persons who were subjected to the SFHA's discriminatory housing practices.

35. The persons who were subjected to the SFHA's discriminatory housing practices suffered actual injury and damages as a result of the SFHA's conduct.

WHEREFORE, the United States prays for an Order from this Court that:

(1) Declares that the discriminatory housing practices of the SFHA, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 - 3619;

(2) Enjoins the SFHA, its agents, employees and successors, and all other persons in active concert or participation with the SFHA, from:

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a. refusing to negotiate for the rental of, or otherwise making unavailable or denying, a dwelling to any person because of race, color, religion, or national origin;

b. discriminating against any person in the terms, conditions or privileges of rental of a dwelling because of race, color, religion, or national origin; and

c. coercing, intimidating, threatening, or interfering with persons, including the complainants, in the exercise or enjoyment of any right granted or protected by 42 U.S.C. §§ 3603, 3604, 3605, or 3606.

(3) Requires such injunctive relief against the SFHA as is necessary to effectuate the purposes of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq.;

(4) Awards such damages as will fully compensate the complainants and other persons for injuries caused by the discriminatory conduct of the SFHA pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B);

(5) Awards punitive damages to the complainants and other persons harmed by the SFHA's discriminatory actions pursuant to 42 U.S.C. §§3612(o)(3), 3613(c)(1), and 3614(d)(1)(B); and

(6) Awards civil penalties to the United States in an amount authorized by 42 U.S.C. §3614(d)(1)(C) in order to vindicate the public interest.

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

JOHN ASHCROFT
Attorney General

By: _____

RALPH F. BOYD, JR.
Assistant Attorney General
Civil Rights Division

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Chief, Housing and Civil
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Document Filed: September 18, 2002

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiffs,

and

CONSENT DECREE IN FULL RESOLUTION OF LAWSUITS

NAJAT AL-ABAS, et. al.

Plaintiff-Intervenors,

v.

SAN FRANCISCO HOUSING AUTHORITY,

Defendant.

CONSENT DECREE IN FULL RESOLUTION OF LAWSUITS

I. INTRODUCTION

The United States initiated this action on September 18, 2002, to enforce the provisions of the Fair Housing Act ("FHA"), Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, *et seq.* The United States' complaint contains two causes of action: (1) a claim on behalf of Stella and Roosevelt Scott which was referred to the Justice Department pursuant to 42 U.S.C. § 3612(o), and (2) a claim that the San Francisco Housing Authority ("SFHA") has engaged in a pattern or practice of discrimination in violation of 42 U.S.C. § 3614 by failing to take reasonable steps to protect its residents from harassment on the basis of race, color, religion, and national origin. The SFHA denies these allegations and contends that it has taken effective steps to address and prevent racial, ethnic, and religious harassment against its residents.

On April 24, 2003, a Complaint in Intervention (*Al-Abas, et al. v. San Francisco Housing Authority*) was filed by six Iraqi-Muslim families ("Plaintiffs-Intervenors") pursuant to 42 U.S.C. § 3614(e). Plaintiffs-Intervenors' First Amended Complaint in Intervention ("FACI") contains two counts. Count I alleges that SFHA permitted a hostile housing environment to exist that interfered with Plaintiffs-Intervenors' use and enjoyment of their housing in violation of 42 U.S.C. §§ 3604(a) and (b). Count II alleges that SFHA engaged in a pattern or practice of discrimination in violation of 42 U.S.C. § 3614, by failing to take adequate action to resolve complaints of violence and harassment directed at Iraqi-Muslim residents, and to protect these residents from further harassment and violence. The SFHA denies the allegations in the FACI.

The United States, the SFHA, and Plaintiffs-Intervenors desire to avoid costly and protracted litigation and agree that the claims against SFHA should be settled without further litigation or an evidentiary hearing. Therefore, the SFHA, Plaintiffs-Intervenors, and the United States have agreed to the entry of this Consent Decree.

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

II. JURISDICTION AND SCOPE

1. The Court has subject matter jurisdiction over the claims in the civil action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3614(a). The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the United States' Complaint and the First Amended Complaint in Intervention shall be dismissed with prejudice.

2. The provisions of this Consent Decree apply to the San Francisco Housing Authority, its employees, officials, and officers, as well as its agents to the extent they act as property managers or provide security

services to SFHA developments.[1]

3. This Consent Decree is a settlement of disputed claims. The Consent Decree is entered into without any admission whatsoever by SFHA of having engaged in any discriminatory practices proscribed by the FHA or any other federal or state statute or constitutional provision. Neither the SFHA's agreement to enter into this Consent Decree nor the provisions of the Consent Decree shall be offered or described in any situation or context as constituting a finding, evidence of, or an admission that the SFHA has violated the FHA, or any other statute or constitutional provision. This provision shall not limit the United States' ability to proffer evidence of the SFHA's non-compliance in any context or situation. The parties reserve the right to contest the admissibility of such evidence in any context or situation.

III. GENERAL NONDISCRIMINATION PROVISIONS

4. For the duration of this Consent Decree, the San Francisco Housing Authority shall not act or fail to act with respect to incidents of harassment or violence based on race, color, religion, or national origin against its residents in a manner that violates any of the following sections of the Fair Housing Act:

   a. 42 U.S.C. § 3604(a) - denying or otherwise making a dwelling unavailable to any person because of race, color, religion, or national origin;

   b. 42 U.S.C. § 3604(b) - discriminating in the terms, conditions or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, national origin; and

   c. 42 U.S.C. § 3617 - coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Fair Housing Act.

IV. NONDISCRIMINATION POLICIES AND PROCEDURES

A. The SFHA will maintain and continue to implement the Civil Rights Policy and the corresponding Manual of Guidelines and Procedures ("Civil Rights Manual"), which were adopted in 2002. (Attached as Exhibit A). The SFHA will supplement its policy by adding the following time deadlines to the following provisions of its Manual of Guidelines and Procedures:

   1.1: report to be made to Office of Fair Housing within two (2) business days of the incident being reported by the tenant to the property management office or other management personnel (excluding maintenance management personnel).

   1.2: the term "immediately"as used in this section means not later than one business day.

   1.4: the term "immediately" as used in this section means not later than one business day.

   1.5: the term "immediately" as used in this section means not later than one business day. However, if the tenant leaves a message (as opposed to talking in person with an SFHA employee) the referral shall be made no later than the end of the next business day. See also ¶ 18 of the Consent Decree.

   1.8: the Administrative Report Form shall be completed and placed in the resident's file within fourteen (14) business days of the incident being reported. The resident will be informed of his/her right to apply for a transfer at the time the report is received by the Office of Fair Housing or a property manager.

   Page 16: a term will be added which states that a transfer application request will be responded to within fourteen (14) business days of its receipt by a Property Management Office and ten (10) business days of its receipt by the Eligibility Department.

B. Within thirty (30) days of the entry of this Decree, the SFHA shall provide a written notice to all entities

that manage housing developments for SFHA (including managers of Hope VI developments) or provide security services for SFHA developments which shall inform the entity that it is SFHA policy that they should refer complaints of harassment based on any of the protected classes in the Civil Rights Manual to the SFHA Office of Fair Housing and to otherwise implement the SFHA Civil Rights Policy as directed by the SFHA. The notice shall also inform the entity that when it is reviewed for contract compliance, the SFHA will assess the degree to which the entity has met this objective.

6. In the event that the SFHA determines that modification of the Civil Rights Manual is warranted, the SFHA will notify counsel for the United States in writing by overnight mail.(2) The United States will have thirty (30) days from the date of its receipt in writing of the proposed revisions to the Civil Rights Manual in which to respond to any proposed change(s). If the United States does not object in writing to the SFHA's proposed change(s) within the thirty (30) day time period, the change(s) may be incorporated into the Civil Rights Manual by the SFHA. If the United States objects to the proposed change(s), the change(s) will not be made and the parties will confer in a good faith effort to resolve their differences. If the parties cannot resolve their differences, the matter shall be resolved by the Court.

7. *Dwelling Lease Addendum.* The SFHA shall maintain Sections 13(K) and 13(L) of its current Dwelling Lease, which permit the SFHA to evict a tenant who engages in racial, ethnic, or religious harassment or violence against any other tenant or guest that violates the Fair Housing Act. If a court finds that, as a matter of law, the current SFHA Dwelling Lease does not permit the SFHA to evict a tenant who engages in racial, ethnic, or religious harassment or violence against any other tenant or guest that violates the Fair Housing Act, the SFHA shall notify the United States in writing within ten (10) days. If a court makes such a ruling, the United States and the SFHA shall work to amend the Dwelling Lease to make it explicit that the SFHA may evict a tenant who engages in racial, ethnic, and/or religious harassment or violence that violates the Fair Housing Act and is directed against any other tenant or guest. In addition, if the United States concludes during the term of the Decree that the lease provisions are inadequate with respect to eviction of such tenants, the United States and the SFHA shall negotiate in good faith in an effort to agree on new lease provisions that make it explicit that the SFHA may evict a tenant who engages in such harassment or violence. If the United States and the SFHA are unable to agree on new lease provisions, the matter shall be decided by the Court.

   A. The SFHA may seek to evict a tenant for engaging in racial, ethnic, or religious harassment or violence that violates the Fair Housing Act against any other tenant or guest where a preponderance of the evidence supports such a finding. SFHA shall, in its discretion, determine whether the evidence in a particular instance meets this standard and whether an eviction should be sought.

   B. Beginning no later than thirty (30) days from the Date of the Decree, the SFHA shall communicate orally and in writing to all SFHA tenants at the time they sign their lease, and in writing each subsequent year when they re-certify their income and household composition, that race-, national origin-, ethnic-, and/or religious-based harassment or violence that violates the Fair Housing Act and is directed against any other tenant or guest will not be tolerated and that such conduct by any member of the household constitutes a violation of the lease which may result in eviction. At the time tenants sign their lease and each subsequent year when they re-certify, the SFHA will require each tenant to sign a statement certifying that he or she understands and agrees to comply with this eviction policy. This annual certification requirement shall be included in the SFHA's Civil Rights Manual. SFHA will maintain these tenant certifications in the tenant's files. No later than fifteen (15) days from the entry of Decree, SFHA shall provide the United States with the written notice required by this section. If the United States concludes that the notice is inadequate, the parties shall negotiate in good faith in an effort to agree on the notice. If this effort fails, the matter shall be decided by the Court.

   C. The notice described in the preceding paragraph shall be published in English, Spanish, Chinese, Vietnamese, and Arabic, and any other language that is spoken by more than five percent (5%) of the households in a development.

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V. SECURITY

8. Within six (6) months of the entry of the Decree, the SFHA will develop and implement a plan that has the primary objectives of (a) increasing, to the extent fiscally feasible, the number and frequency of private security patrols or, in the alternative, patrols by the SFPD(3) at Targeted Developments(4) during

non-school hours (3:00 p.m. to 11:00 p.m.) to deter racial, ethnic, and religious violence and harassment, and (b) ensuring communications, as needed but not less than monthly, between private security personnel and property managers, maintenance supervisors, tenants, and tenant organizations relating to the prevention of civil rights violations. The plan will be developed in consultation with the United States Department of Justice and will require that private security firms use their best efforts to recruit a pool of applicants for assignment to SFHA developments who are fluent in the languages spoken by more than 5% of the tenants at the developments.

9. The SFHA will use its best efforts to arrange extra security patrols by SFPD at the Targeted Developments; have communications, as needed but no less than monthly, with SFPD officers assigned to Targeted Developments regarding racial, ethnic, and religious violence at those developments; have regular communications with the SFPD's Hate Crimes Unit regarding racial, ethnic, and religious violence and harassment at the Targeted Developments; and coordinate the enforcement responsibilities set forth in the preceding paragraph with the SFPD, to the extent the SFPD is willing to coordinate these responsibilities.

10. No later than six (6) months from the entry of the Decree, the Management, Services, and Support Department ("MSSD") will have one employee who has skills in basic investigation techniques. If no employee presently has those skills, training will be provided to ensure that an employee obtains these skills. The employee will have responsibility for supervising and coordinating the MSSD's participation in the investigation of complaints of harassment, violence, or intimidation that are covered by and subject to the SFHA Civil Rights Manual, including coordination and liaison with the SFHA Office of Fair Housing (OFH), the Development Management Offices, private security firms, and the SFPD. As set forth in Section VI below, the OFH (not the MSSD) shall have overall responsibility for implementation of the SFHA's Civil Rights Policy and corresponding Civil Rights Manual.

VI. SUPERVISION OF CIVIL RIGHTS COMPLIANCE

11. The SFHA will continue to maintain and staff an Office of Fair Housing to ensure that the SFHA administers all aspects of its housing free from illegal discrimination. The head of the Office will report directly to the Executive Director of the SFHA. Among other things, the OFH will conduct or monitor the progress of all civil rights Administrative Inquiries undertaken pursuant to the procedures set forth in the Civil Rights Manual, whether initiated through complaints, grievances, or transfer requests; conduct meetings between tenants and SFHA staff regarding civil rights incidents; monitor the appropriateness and timeliness of staff responses regarding civil rights enforcement; implement staff training and tenant outreach on civil rights compliance; and conduct site visits to ensure that development management offices are in compliance with all civil rights procedures (e.g., poster display, brochure availability).

12. No later than six (6) months from the entry of the Decree, at least one employee of the OFH will have completed training in basic investigation techniques. Thereafter, that employee will be primarily responsible for implementation of the Civil Rights Policy, including responding to and investigating civil rights complaints and attending civil rights-related meetings with staff and tenants scheduled by the development managers.

13. No later than thirty (30) days from the entry of the Decree, the SFHA will amend the job description of District Directors (or equivalent SFHA personnel with regional oversight over SFHA property managers) to include the responsibility of working with the Office of Fair Housing to oversee compliance with the SFHA's Civil Rights Manual by the property managers and other development staff.

VII. NOTICE AND TRAINING

14. Employee Notice:

    A. The SFHA will send senior executives, property managers, district directors, administrative clerks who work at residential developments, resident trainees, management staff from the Departments of Management Services and Public Housing Operations Department, all employees at the Department of Eligibility, all employees of the Office of Fair Housing and Security Departments, any employee whose primary job duties include regular contact with SFHA tenants, non-SFHA employees working as property managers at Hope VI public housing developments, and all private security firms a notice summarizing ("summary notice") the Consent Decree and an explanation of

the SFHA employee's obligations under the Decree. The notice will also inform employees that the performance of their responsibilities related to the implementation of the Civil Rights Policy will be taken into consideration in their performance evaluation.[5] No later than 30 days after the entry of the Decree, the SFHA will provide the United States with the written notice required by this section. If the United States concludes that the notice is inadequate, the parties shall negotiate in good faith in an effort to agree on the notice. If this effort fails, the matter shall be decided by the court. The summary notice will be distributed within 15 days of agreement by the parties on its terms, or within 15 days of the Court's determination of the notice's terms.

B. The SFHA will require all SFHA employees identified in paragraph 14.A. receiving the notices described above to execute a statement acknowledging that he or she has received, read and understands the notice, and that he or she agrees to act in accordance with the notice, within fourteen (14) days of receipt of the notice. The SFHA will maintain these statements in accordance with the Record Keeping provisions of this Consent Decree.

C. The performance evaluation of employees identified in paragraph 14.A. shall contain a section covering the employee's performance with respect to his/her obligations under the Civil Rights Policy

D. The Manual of Guidelines and Procedures shall be amended to require that with respect to employees hereafter assigned to any of the positions set forth in paragraph 14A., the SFHA will comply with the provisions of paragraphs 14.A. and 14.B., above, within fourteen (14) days of the assignment.

E. No later than thirty (30) days from the entry of the Decree, the SFHA will provide a copy of this Consent Decree and the summary notice to the Chief of the SFPD, the Commanding Officer of the SFPD Hate Crimes Unit, and the Commanding Officer of district police stations serving neighborhoods containing a Targeted Development.

15. Employee Training:

A. The SFHA will implement a mandatory Civil Rights Training Program for SFHA employees according to the schedule set forth below. The training will be tailored to the particular job categories. The SFHA must submit its Civil Rights Training plans and training materials to the Department of Justice for review. The purpose of this training is to educate SFHA employees on their particular roles in implementing the requirements of this Consent Decree, the Civil Rights Policy, and the Fair Housing Act. The SFHA will also offer training to and strongly encourage participation by Hope VI management staff and employees of private security firms which is designed to train individuals on the identification of civil rights complaints and the necessity of referring such complaints to the OFH.

B. Training for management staff and SFHA staff responsible for civil rights enforcement, including but not limited to senior executives, property managers (including non-SFHA employees working as property managers at Hope VI public housing developments), district directors, administrative clerks who work at residential developments, management staff from the Departments of Management Services and Public Housing Operations Department, all employees at the Department of Eligibility, all employees of the Office of Fair Housing and Security Departments, any employee whose primary job duties include regular contact with SFHA tenants, and personnel from the private security firms, shall be conducted within three (3) months of the entry of this Decree.

C. With respect to SFHA employees hereafter assigned to any of the positions set forth in paragraph 15.B, the SFHA will comply with the provisions of paragraph 15.A. within three (3) months of commencement of the assignment.

D. The SFHA will require each individual who receives training pursuant to this Consent Decree to sign an attendance sheet which indicates the date and type of training received, and that he/she received and understands the instruction and written materials received during the training. The SFHA will also request that any non-SFHA employee who receives training sign such an attendance sheet.

E. No later than six (6) months from the entry of the Decree, the SFHA will develop and implement a department-wide tracking system through which each department head will be able to identify which SFHA employee, who is required to be trained, has been trained and when.

F. No later than six (6) months from the entry of the Decree, the Director of the Office of Fair Housing shall consult with the Office of Civil Rights at the Boston Housing Authority (BHA) for assistance in improving the investigation, outreach, tracking, filing, and records-keeping methods of the SFHA Office of Fair Housing.

VIII. TENANT NOTICE AND OUTREACH

16. *Community Meetings*

A. No later than three (3) months from the entry of the Decree, and one time per year thereafter for the duration of the Decree, the SFHA will conduct at each of the Targeted Developments a community meeting for all tenants, at which the SFHA will describe its procedures for tenants to report potential civil rights violations; its procedures for tenants to report complaints regarding civil rights enforcement; its procedures for investigating and resolving such complaints; and its civil rights eviction policy. The SFHA will use its best efforts to encourage a strong turn out for each meeting, and will post conspicuous notices for each meeting in each building in the development no fewer than two weeks before the scheduled date of the meeting. Such notices will be posted in English, Spanish, Chinese, Vietnamese, and Arabic, and any other language that is spoken by more than five percent (5%) of the households of the respective Development. The SFHA will require its private security firms to participate in the meetings and will also invite and encourage the SFPD to participate.

B. *Tenant Workshops.* If Plaintiffs-Intervenors or other qualified individuals identify trainers who will provide tenant workshops on violence prevention and diversity issues at the Targeted Developments without any cost or charge to the SFHA, and such trainers are approved by the SFHA, the SFHA will work with tenant associations in an effort to put on the workshop(s).

17. *Publicity Materials.* No later than forty-five (45) days from the entry of the Decree, the SFHA will develop a brochure describing the SFHA's civil rights policies, including: the Eviction Policy for Civil Rights Violations; the procedures for reporting civil rights incidents to the SFHA including the Civil Rights Complaint Line; the procedures for finding out the status of civil rights complaints filed with the SFHA; and the procedures for filing a HUD administrative complaint. The brochure will be widely distributed throughout the SFHA; in particular, in rent statements, during new applicant processing, in re-certification packages, at development management offices, and at tenant task force and development community meetings. The Civil Rights Manual will be amended to include the above provisions relating to distribution of the Brochure. In addition to the brochure, the SFHA shall display a poster at the Development management offices advertising the existence of the Civil Rights Complaint line. The brochure and the poster will be published in English, Spanish, Chinese, and Arabic, and any other language that is spoken by more than five percent (5%) of the households in the respective development. Prior to distribution, SFHA will submit the proposed brochure to the Department of Justice for comment and review. If SFHA and the Justice Department are unable to agree on the language of the brochure, the matter shall be resolved by the Court.

IX. SERVICES FOR LIMITED ENGLISH PROFICIENT TENANTS

18. No later than thirty (30) days from the entry of the Decree, all telephones used to answer the Civil Rights Complaint Line must have the capacity to use a foreign language translation line, and all Office of Fair Housing staff must be trained in the use of the language line service. At all times, the Complaint Line must be answered by Office of Fair Housing Staff, either in person or by voice mail. Messages left on voice mail shall be returned not later than the end of the next business day. The Civil Rights Manual will be amended to include a requirement that the SFHA maintain a Civil Rights Complaint Line with the capacity to use foreign language translation line.

X. COMPLIANCE, RECORD KEEPING, AND REPORTING

19. If, after one (1) year of the entry of this Consent Decree, the United States determines that the SFHA is in

material and substantial noncompliance with the terms of this Consent Decree, the United States may seek from the Court a modification of this Consent Decree to appoint an Independent Monitor. Before filing such motion to appoint an Independent Monitor, the United States will give the SFHA thirty (30) days written notice setting forth in detail the specific provision(s) of the Consent Decree with which the SFHA is allegedly not in compliance, along with a detailed itemization of the grounds for the alleged noncompliance. During this thirty (30) day period, the United States and the SFHA will endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with the Consent Decree. If these conciliation efforts fail and if, after a hearing, the Court finds that the SFHA is in material and substantial noncompliance with the terms the Consent Decree, the Court will appoint an Independent Monitor for a period not to exceed the duration of this Consent Decree. The purpose of the Independent Monitor will be to ensure that this Consent Decree is implemented effectively and to assist the United States in monitoring the SFHA's compliance with the Consent Decree. The Independent Monitor will report to the United States, the SFHA, and the Court. The duties of the Independent Monitor will be agreed upon by the parties or determined by the Court and the salary, fees, and expenses incurred by the Independent Monitor will be borne by the SFHA. The total salary, fees, expenses, and costs paid by the SFHA for the Independent Monitor shall not exceed sixty thousand ($60,000) dollars per year, provided that if after the initial appointment of the Independent Monitor, the United States establishes to the satisfaction of the Court that SFHA has failed to take reasonable steps to come into compliance, the Court may order the SFHA to pay in excess of sixty thousand ($60,000) dollars per year for the Independent Monitor.

20.

A. In the event that the Court orders the appointment of an Independent Monitor, the SFHA will propose a person or entity, to be approved by the United States, to serve as Monitor. The SFHA shall submit the name and *curriculum vitae* of the proposed Monitor to the United States within thirty (30) days of the entry of the Court's order requiring the appointment of a Monitor. The entity proposed as Monitor must have, at a minimum, the following qualifications: (a) substantial work experience in the civil rights field, specifically in the areas of race and ethnicity; and (b) familiarity with public housing. The Monitor selected must be wholly independent of the SFHA.

B. The selection of the Independent Monitor shall be subject to the approval of the United States. If the United States has any objection to the SFHA's proposed selection, it shall notify the SFHA within twenty (20) days of receipt of the name and *curriculum vitae*. If no objection is made within the twenty (20) days, the SFHA's candidate shall be appointed. If the United States timely objects and the parties are not able to resolve the dispute through good faith negotiations, the selection of the Independent Monitor shall be made by the Court.

21. If appointed by the Court, the Independent Monitor, after consultation with the United States, shall periodically throughout the term of this Decree, schedule local meetings or teleconferences at times and places designated by the Monitor for the purpose of assessing the progress of the Decree, discussing any outstanding disputes or other issues regarding the Decree's implementation, and devising ways that the Decree's goals can be more effectively achieved.

22. Within six months of the appointment of the Independent Monitor and every six months thereafter, the Monitor shall file a report with the Court reporting on the SFHA's compliance with each provision of the Decree.

23. The Monitor shall have full and direct access to all SFHA employees that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Consent Decree.

24. The Monitor shall have full and direct access to all SFHA documents that the Monitor reasonably deems necessary to carry out the duties assigned to the Monitor by this Consent Decree, except as to any such documents protected by the attorney-client privilege. Should the SFHA decline to provide the Monitor with access to a document based on attorney-client privilege, the SFHA shall provide the Monitor and the United States with a log describing the document.

25. The Independent Monitor shall provide the SFHA with reasonable notice of a request for copies of documents. Upon such request, the SFHA shall provide the Monitor with copies (electronic, where readily available, or hard copy) of any documents that the Monitor is entitled to access under this Consent Decree.

26. *Fair Housing Complaint Tracking System.* No later than four (4) months from the entry of the Decree, the SFHA will develop and implement a computerized tracking system for complaints of harassment, intimidation, or violence that are sufficient to trigger an Administrative Inquiry pursuant to the section of the Civil Rights Manual entitled "Identifying a Civil Rights Incident," to assist the Office of Fair Housing in monitoring compliance with the Civil Rights Manual. The system will provide authorized persons from the Office of Fair Housing, Office of Counsel, Management Services and Support Department, Eligibility Department, Public Housing Department, Security Department, and senior SFHA Management Staff ready access to the status of SFHA Administrative Inquiries into bias incidents and the ability to track final actions.

27. The SFHA will maintain the following records throughout the duration of this Consent Decree:

    A. All records of complaints of violence, harassment, or intimidation that are sufficient to trigger an Administrative Inquiry pursuant to the section of the Civil Rights Manual entitled "Identifying a Civil Rights Incident," including transfer requests and grievances, received by the SFHA from a SFHA tenant;

    B. All records of investigations conducted by the SFHA into such complaints;

    C. All records of actions taken by the SFHA in response to such complaints;

    D. All records relating to training required by this Consent Decree;

    E. All signed statements, certifications, and attendance sheets required by this Consent Decree;

    F. All records related to the community meetings and tenant workshops provided for in this Decree; and

    G. The SFHA will maintain in one file a copy of all transfer requests, organized by development and date.

28. The United States Department of Justice will have the opportunity, upon reasonable notice to inspect and copy the records identified above, for the duration of the Consent Decree. The SFHA will produce other records relevant to assessing compliance with the Decree upon the written request of the United States; provided, that if the SFHA contends that the requested records are not properly subject to production, the parties shall meet and confer in good faith in an effort to resolve the disputed. If this effort fails, the matter shall be decided by the Court. The United States will pay reasonable costs associated with the copying of records.

29. *Semi-Annual Compliance Reports.* Commencing three (3) months after the entry of the Decree, and every six (6) months thereafter for the duration of this Consent Decree, the SFHA will write and deliver a report to the United States Department of Justice and HUD Office of Fair Housing and Equal Opportunity[6] detailing the following information:

    A. All records related to complaints of violence, harassment, or intimidation that are sufficient to trigger an Administrative Inquiry pursuant to the section of the Civil Rights Manual entitled "Identifying a Civil Rights Incident," including civil rights priority transfer requests and grievances, received by any SFHA personnel from any SFHA tenant during the reporting period;

    B. Any actions taken by the SFHA during the reporting period in response to the complaints identified in the preceding paragraph;

    C. The current status of the complaints identified in subparagraph a above, made during prior reporting periods;

    D. A summary statement of actions taken by the SFHA with respect to:

        - notice to tenants under paragraph 6;
        - the development and implementation of the security plan under paragraph 7;

- coordination efforts with the SFPD under paragraph 8;
- training and assignment of an MSSD employee under paragraph 9;
- training and assignment of an OFH employee under paragraph 12;
- giving of employee notices under paragraph 14;
- providing employee training under paragraph 15;
- holding of community meetings and tenant workshops under paragraph 16.
- preparation and distribution of publicity materials under paragraph 17;
- implementation of Complaint Line under paragraph 18; and
- implementation of Fair Housing Complaint Tracking System under paragraph 27.

Any of the above actions which are finally completed in any reporting period do not need to be reported on in subsequent reports.

E. A list of eviction actions commenced pursuant to the Housing Authority's anti-harassment civil rights policy;

F. A list of tenants that the SFHA has decided not to evict pursuant to Section IV(6)(A) and (B) of this Decree, i.e., instances where the SFHA has concluded that a preponderance of the evidence shows that a tenant has engaged in racial, ethnic, and/or religious harassment or violence against any other tenant or guest that violates the Fair Housing Act, but nonetheless has, in its discretion, decided not to seek to evict.

XI. MONETARY RELIEF FOR ALLEGEDLY AGGRIEVED PERSONS

30. Payments made by the SFHA pursuant to this Section of the Consent Decree are made for purposes of settlement only and shall, in no circumstance whatsoever, be deemed or construed to be an admission or evidence of liability or wrongdoing by the SFHA.

31. SFHA shall pay a total of one-hundred and eighty thousand dollars ($180,000.00) ("Settlement Amount") to resolve the United States' claims and the claims of each and every Plaintiff-Intervenor,

32. Within ten (10) days of the entry of this Decree, the SFHA shall make the payments set forth below. This amount shall be paid by certified check or by trust account check. Prior to and as a condition of receiving the check, each person deemed to be aggrieved by the United States, as set forth below, and each Plaintiff-Intervenor who is to receive a settlement amount through the payment to Bay Area Legal Aid, as set forth below, shall execute and deliver to the SFHA a release that has been agreed upon by the parties. The requirement to execute and deliver a release arises only if a settlement check is tendered.

Roosevelt & Stella Scott	$22,000
Jawad Al-GazawiM	$14,000
Gilda Butler	$20,000
Shenandoah Toomey	$12,000
Aura Espina	$3,000
Ignacio & Teresa Nuno	$14,000
Katie Nelson	$12,000
Norma Fierro	$3,000

Bay Areal Legal Aid (to settle the claims of Najat Al-Abas, Banan Al Tuwarish, Abas Al Tuwarish, Hanian Al Tuwarish, Fatima Al Tuwarish, Halima Al Ajeeb, Samira Al Dhewalem, Sadiyah Al Haji, Mona Al Shahbawi, Fazaa Al Tuwarish, Angham Al Zayadi, Hawraa Zaedi, Malak Zaedi, Zabra Zaedi, Ibrahim Zaedi): $80,000

33. Within ten (10) days of the entry of this Decree, the SFHA shall deposit twenty thousand dollars ($20,000.00) ("Settlement Fund") in an interest bearing account for the purpose of finally settling all claims of persons, other than those persons named in the preceding paragraph, who are deemed by the United States to be aggrieved persons. Any interest accruing to the fund shall become a part of the fund

and be utilized as set forth herein. All expenses related to the establishment of the account shall be borne by the SFHA.

34. The United States shall investigate the claims of allegedly aggrieved persons and, within 180 days from the entry of this Decree, shall make a preliminary determination of which persons are aggrieved and an appropriate amount of damages that should be paid to the each such persons. The United States will inform the SFHA in writing of its preliminary determinations, together with a copy of a sworn declaration from each allegedly aggrieved person setting forth the factual basis of the claim. The SFHA shall have fourteen (14) days to review the declaration and provide to the United States any documents or information that they believe may refute the claim.

35. After receiving the SFHA's comments, the United States shall submit its final recommendations to the Court for approval, together with a copy of the declarations and any additional information submitted by the SFHA. When the Court issues an order approving or changing the United States's proposed distribution of funds for allegedly aggrieved persons, the SFHA shall, within 10 days of the Court's order, deliver to the United States checks payable to the aggrieved persons in the amounts approved by the Court. In no event shall the aggregate of all such checks exceed the amount of the Settlement Fund ($20,000), plus any accrued interest. No aggrieved person shall be paid until he/she has executed and delivered to counsel for the United States and the SFHA a release.

36. In the event that less than the total amount in the Settlement Fund including accrued interest is distributed to persons deemed to be aggrieved by the United States, the Court shall distribute the remainder in a manner consistent with the purposes of this Consent Decree and the Fair Housing Act. The SFHA shall make a proposal to the Court regarding disbursal of the remainder of the fund. When the Court issues an order approving or changing the proposed disbursal of funds, the SFHA shall distribute the funds in the manner directed by the Court within twenty (20) days of the Court's determination.

37. The SFHA shall permit the United States, upon reasonable notice, to review any relevant records that may facilitate its determinations regarding the claims of alleged aggrieved persons.

XIII. TRANSFER OF SFHA TENANT

38. Within thirty (30) days of the entry of this Decree, the SFHA shall offer Andrea Jones the opportunity to transfer to a unit outside of the Potrero Annex/Terrace Development. If Ms. Jones declines the offer to transfer, the SFHA shall offer Roosevelt and Stella Scott the opportunity to transfer to a unit no smaller than two-bedrooms in a location approved by the Scotts ("appropriate unit") within fifteen (15) days of Ms. Jones declining the unit or within sixty (60) days of the entry of this Decree, whichever comes first; provided that an appropriate unit is available to be offered to the Scotts. If no appropriate unit is available within the time periods set herein, the SFHA shall offer the Scotts the first appropriate unit that thereafter becomes available.

XIV. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION

39. This Consent Order shall remain in effect for three (3) years after the date of its entry, provided that the terms shall automatically be extended to four years if an Independent Monitor is appointed.. In addition, in the event that there is a material and substantial failure by the SFHA to satisfy the terms or provisions of the Consent Decree, the United States may file a motion requesting that the term of the Consent Decree be extended. A motion to extend the Consent Decree must be filed no later than sixty (60) days prior to the expiration of the Consent Decree. At least thirty (30) days prior to filing such a motion, the United States and the SFHA shall meet and confer in good faith in an effort to resolve any allegations of material and substantial noncompliance.

40. Prior to instituting any court enforcement proceeding or prior to bringing a motion to extend the term of the Decree, the United States shall provide the SFHA with a written statement that details the nature and basis of any dispute relating to the interpretation, implementation, or enforcement of the Decree. The parties shall then meet and confer in good faith in an effort to resolve the dispute. The meet and confer period shall not be less than thirty (30) days.

XV. RIGHTS OF PLAINTIFFS-INTERVENORS

41. The United States shall meet and confer with Plaintiffs-Intervenors to discuss concerns Plaintiffs-Intervenors have about provisions in this Consent Decree relating to SFHA training, brochures, notices, and proposed changes to the Civil Rights Manual.

42. This Decree places no obligation on the SFHA to meet or confer with Plaintiffs-Intervenors with respect to the implementation and/or enforcement of the provisions of this Decree.

43. The Plaintiffs-Intervenors shall have no right under any circumstances to judicially enforce this Decree or to seek an extension of the Decree. These rights rest solely with the United States. Nothing herein shall prevent the Plaintiffs-Intervenors from being witnesses in any proceeding involving the implementation or enforcement of this Decree.

44. Plaintiffs-Intervenors shall be entitled to receive the following documents through the United States. The SFHA is not required to provide any of the documents directly to the Plaintiffs-Intervenors or their counsel, but instead will provide the information to the United States in a format which segregates the information which the Plaintiffs-Intervenors may obtain hereunder.

    A. A semi-annual report showing the number of complaints of harassment, violence, or intimidation covered by and subject to the Civil Rights Manual, the residential development where the complaint arose, and the alleged basis for the harassment or violence, e.g, race, religion, national origin. For example, three complaints from Hunter's View, one based on race, two based on religion.

    B. The summary reports provided pursuant to Paragraph 29.D.; and

    C. SFHA training, brochures, notices, and changes to the Civil Rights Manual that Plaintiffs-Intervenors have a right to meet and confer about with the United States.

XV. TIME FOR PERFORMANCE

45. Any time limits for performance imposed by this Consent Decree may be extended by the mutual written agreement of the parties.

THE PARTIES CONSENT TO THE ENTRY OF THIS CONSENT DECREE AS INDICATED BY THE SIGNATURES OF COUNSEL BELOW:

FOR PLAINTIFF UNITED STATES:

Dated: January 14, 2003

KEVIN V. RYAN

JOANN M. SMITH
Chief, Civil Division
450 Golden Gate Av., 10th fl.
San Francisco, CA 94102
Tel: (415) 436-7198
Fax: (415) 436-6748

R. ALEXANDER ACOSTA
ASSISTANT ATTORNEY GENERAL

_____/s/_____
STEVEN H. ROSENBAUM
Chief
JEANINE M. WORDEN
Deputy Chief
ERIC I. HALPERIN
(CA 198178)
DONALD W. TUNNAGE
ALBERTO J. RUISANCHEZ
Attorneys
Housing and Civil
Enforcement Section - G St.
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Tel: (202) 353-9706
Fax: (202) 514-1116

FOR DEFENDANT SAN FRANCISCO HOUSING AUTHORITY:

Dated: January 14, 2004

_____/s/_____
HENRY HEWITT, No, 40851
ERICKSON, BEASLEY, HEWITT & WILSON

FOR PLAINTIFFS-INTERVENORS, NAJAT AL ABAS, individually and on behalf of her minor children BANAN AL TUWARISH, ABAS AL TUWARISH, HANIAN AL TUWARISH & FATIMA AL TUWARISH; HALIMA AL AJEEB;SAMIRA AL DHEWALEM; SADIYAH AL HAJI, MONA AL SHAHBAWI; FAZAA AL TUWARISH; ANGHAM AL ZAYADI, individually and on behalf of her minor children HAWRAA ZAEDI, MALAK ZAEDI, & ZABRA ZAEDI; IBRAHIM ZAEDI:

Dated: January 14, 2004

_____/s/_____
MINOUCHE KANDEL No. 157098
BAY AREA LEGAL AID

ORDERED this _____ day of _____, 2004.

_____
Hon. Claudia Wilken
United States District Court Judge

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1. The objective of this clause, in conjunction with other provisions of this Decree, is to ensure that private management companies and security firms receive notice and are offered appropriate training designed to ensure that they can identify civil rights complaints and understand the necessity of such complaints being referred to the SFHA's Office of Fair Housing. It is not the intent to require that such companies establish their own separate procedure to handle such complaints.

2. Overnight mail notice will be sent via common carrier to:

Chief, Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
1800 G Street, N.W., Suite 7002
Washington, D.C. 20530

3. The parties recognize and agree that the SFHA may cease contracting with private security firms and instead, to the extent fiscally feasible, contract with the SFPD for security services. Such a change, if made, shall not be deemed a violation of this Decree.

4. Targeted Developments are Hunter's Point East, Hunter's Point West, Potrero Annex, Potrero Terrace, Westside Courts, Westbrook, Plaza East, Ping Yuen North, Ping Yuen, 939 Eddy Street, Alice Griffith, Sunnydale, Hunter's View, and 320 Clementina. Other developments may be deemed "Targeted Developments" by agreement of the parties or, upon a showing of good cause, by court order.

5. The parties recognize and agree that adding this provision relating to performance evaluations may require approval of the employees' union. If the union objects, that parties will meet and confer in good faith to resolve the issue.

6. These semi-annual reports to the Department of Justice will be sent by overnight mail via common carrier to:

Chief, Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
1800 G Street, N.W., Suite 7002
Washington, DC 20530

The semi-annual report to HUD FHEO will be hand-delivered to:

Director, Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
450 Golden Gate Ave., 9th Floor
San Francisco, CA 94102

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APPENDIX E

SAMPLE POLICY:
TENANT ON TENANT HARASSMENT

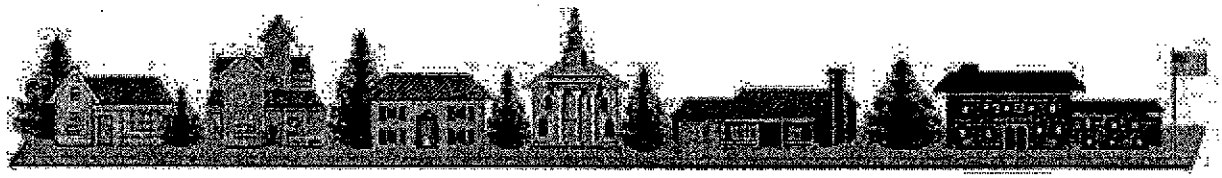
Prepared by:

FAIR HOUSING AGENCIES OF WASHINGTON STATE

Rev 1-03

Sample Tenant on Tenant Harassment Policy

This sample tenant on tenant harassment policy is designed to assist you and your staff in addressing harassment or intimidation of a tenant, staff person or guest becausH RI WaWSHUsRn's UaFH, naWRnaO origin or other protected class. This packet includes sample guidelines for your staff and sample guidelines to give to your tenants.



The fair housing agencies of Washington State would like to partner with you in affirmatively furthering your fair housing efforts by providing sample policies for your use. You may duplicate these policies or use them as a guideline in drafting your own. They are also available on the web at http://www.metrokc.gov/dias/ocre or http://www.cityofseattle.net/civilrights/outreach.htm. Please feel free to contact your local fair housing agency for technical assistance. If you have comments about this sample policy, please contact the h ing County Office of Civil Rights, 206-296-7592, TTY 296-7596, e-mail: civil-rights.ocr@metrokc.gov.

FAIR HOUSING AGENCIES OF WASHINGTON STATE

Washington State Human Rights Commission
h ing County Office of Civil Rights
Seattle Office for Civil Rights
Tacoma Human Rights and Human Services a epartment
Fair Housing Center of South Puget Sound
Northwest Fair Housing Alliance

This information does not constitute legal advice. The fair housing laws are subject to change. If you have questions about this topic or other fair housing issues, feel free to contact one of the listed agencies.

AVAILABLE IN ALTERNATE FORMATS UPON REQUEST -- CONTACT KING COUNTY OFFICE OF CIVIL RIGHTS, 206-296-7592, 296-7596 TTY.

TENANT ON TENANT HARASSMENT POLICY

GUIDELINES FOR STAFF

BACKGROUND

Under Fair Housing laws, "Discriminatory e arassment or intimidation" includes abusive, foul or threatening language or behavior directed at a tenant, staff person or guest because of their protected class. Protected classes include a person's race, color, national origin, religion, sex, disability, familial status, **(insert additional protected classes depending on the location of your property)**. It is recommended that the harassment policy below be included in your written rules for tenants.

HARASSMENT POLICY

It is the policy of **[insert name of company here]** that harassment or intimidation of a tenant, staff person or guest because of that person's race, color, national origin, religion, sex, disability, familial status, **(insert additional protected classes depending on the location of your property)** will not be tolerated and could be grounds for termination of tenancy.

a iscriminatory harassment and intimidation are violations of the fair housing laws and are specifically prohibited. e arassment and intimidation include abusive, foul or threatening language or behavior. All staff shall model appropriate non-discriminatory behavior and strive to cultivate and maintain a living environment that is free from discriminatory harassment or intimidation. All staff shall be trained in detecting and addressing discriminatory harassment or intimidation.

p taff who witness or learn of possible discriminatory harassment or intimidation or receive a complaint from a tenant must take it seriously and respond promptly according to the procedures outlined in this policy.

Note: In situations where a tenant who complains of harassment does not speak English, an arrangement should be made with an interpreter so the tenant's concerns are clearly understood.

RESOURCES/QUESTIONS

If you have any questions regarding your rights and responsibilities under the fair housing laws, contact a fair housing agency in your area listed on the attached sheet.

PROCEDURES

In cases of emergency, such as immediate threat of bodily harm, call 911.

t hen a tenant complains of discriminatory harassment, tell the tenant that you take the complaint seriously and will be looking into the matter.

Conduct a prompt investigation to determine whether a violation of this policy has occurred based on all facts and circumstances, the nature of the allegation, and the context in which the alleged incidents occurred.

- t hen discussing the allegations with the alleged harasser, tell them that harassment is not tolerated and that you will be investigating the allegation.
- a ocument all information gathered.

If you are unable to verify a violation of the policy following the investigation:

- a ocument the complaint and results of the investigation in both the complaining party's and alleged harasser's liles.
- o emind each individual alleged to have engaged in discriminatory harassment about P anageP ent's serious coP P itP ent to a housing environment free of harassment and that retaliation against the complaining party will not be tolerated.
- Promptly inform the complaining party of the results of the investigation and the actions taken.
- c or ongoing tenant conflict that cannot be verified as motivated by discrimination, staff may wish to refer tenants to the local a ispute o esolution Center or other local mediation services, or hire an outside consultant/mediator.

If the investigation supports a violation of this policy:

- a ocument the complaint and results of the investigation in both the complaining party's and alleged harasser's liles.
- Proceed with progressive disciplinary action up to and including eviction if necessary for ongoing or serious violations. c or example, if the allegation involves an isolated incident of a single derogatory statement, it may be appropriate to issue a 10-day notice to comply with a stern written warning that additional incidents could result in termination of tenancy. I n the other hand, if the allegation involves a single incident of highly offensive language along with threats, a notice to terminate tenancy may be appropriate.
- Promptly inform the complaining party of the results of the investigation and the actions taken.
- o emind all parties that retaliation against the complaining party or others involved in the investigation will not be tolerated.

o etaliation: p taff shall monitor for retaliation against any person involved in the filing or investigation of a complaint of discriminatory harassment or intimidation. p taff shall deal with retaliation by the alleged harasser in the same manner as we deal with allegations of discriminatory harassment under this policy. o etaliation by staff against any tenant complaining of harassment will not be tolerated.

TENANT ON TENANT HARASSMENT POLICY

GUIDELINES FOR TENANTS

BACKGROUND

Under Fair Housing laws, "Discriminatory e arassment or Intimidation" includes abusive, foul or threatening language or behavior directed at a tenant, staff person or guest because of their protected class. Protected classes include a person's race, color, national origin, religion, sex, disability, familial status, **(insert additional protected classes depending on the location of your property)**.

HARASSMENT POLICY

It is the policy of **[insert name of company here]** that harassment or intimidation of a tenant, staff person or guest because of that person's race, color, national origin, religion, sex, disability, familial status, **(insert additional protected classes depending on the location of your property)** will not be tolerated and could be grounds for termination of tenancy.

Tenants who experience or witness such conduct are strongly encouraged to report it to **[insert name, phone number and address of designated staff person]**.

o etaliation: t e will not tolerate retaliation by staff or tenants against
(1Fany tenant who complains of discriminatory harassment or intimidation or
(2Fany witness who supports a claim of discriminatory harassment or intimidation.

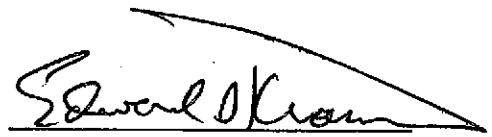
PROCEDURES

If you experience or witness what may be discriminatory harassment or intimidation, you are strongly encouraged to address or report any incident according to the following procedures:

- In cases of emergency, such as immediate threat of bodily harm, call 911.
- If you are the victim of a hate crime such as vandalized property or a threat of harm to yourself or your property, contact your local police departP ent's hate crime unit.
- If you feel safe doing so, ask the person doing the harassing to stop the behavior.
- o eport the problem to **[insert name, phone number and address of designated staff person]**.
- p taff will take your complaint seriously and get back to you after looking into the matter.
- If you believe staff is failing to take appropriate action regarding your complaints of discriminatory harassment or intimidation contact **[property management company contact, address and phone number]** or a fair housing agency in your area listed on the attached sheet.
- If you believe that the tenant you complained about or any other tenant or guest is treating you badly because you complained about discriminatory harassment or intimidation, report that behavior to staff immediately.
- If you believe staff is treating you unfairly after reporting discriminatory harassment or intimidation, contact **[property management company contact, address and phone number]** or a fair housing agency in your area listed on the attached sheet.
- If you have any questions regarding your rights and responsibilities under the fair housing laws contact a fair housing agency in your area listed on the attached sheet.

CERTIFICATE OF SERVICE

A copy of the foregoing Brief of Amici Curiae, THE HOUSING ADVOCATES, INC ~~and AARP~~, was sent by U.S. mail on this 2nd day of OCTOBER, 2007 to all counsel of record.



EDWARD G. KRAMER