

1 BAY AREA LEGAL AID  
LISA GREIF, State Bar No. 214537  
2 PHILLIP MORGAN, State Bar No. 99979  
3 BOB CAPISTRANO, State Bar No. 70382  
405 14th Street, 11th Floor  
4 Oakland, California 94612  
Telephone: 510-663-4744  
5 Facsimile: 510-663-4740  
6 Email: lgreif@baylegal.org  
pmorgan@baylegal.org  
7 bcapistrano@baylegal.org

8 NATIONAL HOUSING LAW PROJECT  
9 JAMES R. GROW, State Bar No. 083548  
614 Grand Avenue, Suite 320  
10 Oakland, California 94610  
Telephone: 510-251-9400  
11 Facsimile: 510-451-2300  
12 Email: jgrow@nhlp.org

13 Attorneys for Plaintiffs PARK VILLAGE APARTMENTS TENANTS ASSOCIATION, et al.

14 **E-FILING**

15  
16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
18 **OAKLAND DIVISION**

19 PARK VILLAGE APARTMENTS  
TENANTS ASSOCIATION, WILLIAM  
20 FOSTER, SHIRLEY SMITH, and  
CORNELIUS WEEKLEY,

21  
22 Plaintiffs,

23 v.

24 MORTIMER HOWARD TRUST,  
MORTIMER R. HOWARD and DOES  
25 1-20,

26 Defendants.  
27  
28

Case No. C 06-7389 SBA

NOTICE OF MOTION AND  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT OR SUMMARY  
ADJUDICATION

Date: April 22, 2008

Time: **1:00 p.m.**

Judge: Hon. Sandra B. Armstrong

1 TO DEFENDANTS, MORTIMER HOWARD TRUST AND MORTIMER R. HOWARD AND  
2 ITS ATTORNEY OF RECORD:

3 NOTICE IS HEREBY GIVEN that on **April 22, 2008 at 1:00 p.m.** or as soon thereafter  
4 as counsel may be heard by the above-entitled court, located at 1301 Clay Street, Courtroom 3,  
5 3<sup>rd</sup> Floor, Oakland, California, in the courtroom of Judge Sandra B. Armstrong, plaintiffs will  
6 and hereby do move the Court for summary judgment/ summary adjudication on the ground that  
7 there is no genuine issue as to any material fact and that the plaintiffs are entitled to judgment as  
8 a matter of law.

9 This motion is based on this Notice of Motion and Motion, the Memorandum of Points  
10 and Authorities filed herewith, the declarations in support of this Motion from Plaintiff Shirley  
11 Smith and LeeAnn Farner of California Affordable Housing Initiatives, Inc., the pleadings and  
12 papers filed herein and upon such other matters as may be presented to the Court at the time of  
13 the hearing.

14  
15  
16 Dated this day 19<sup>th</sup> of March, 2008

BAY AREA LEGAL AID

17  
18 By: /s/ Lisa S. Greif  
19 LISA GREIF  
20 Attorneys for Plaintiffs  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION ..... 1

II. PROCEDURAL HISTORY ..... 2

III. STATEMENT OF FACTS ..... 2

IV. ARGUMENT ..... 3

A. LEGAL STANDARD FOR SUMMARY JUDGMENT ..... 3

B. DEFENDANT NEVER GAVE PROPER FEDERAL NOTICE TO TENANTS OF EXPIRATION OR TERMINATION OF THE HAP CONTRACT..... 3

1. This Court has already determined that the September 9, 2004, November 18, 2005, and March 6, 2006 letters did not satisfy federal notice requirements ..... 5

2. Defendant’s May 17, 2007 letter also failed to meet federal statutory notice requirements ..... 5

C. DEFENDANT IMPROPERLY TERMINATED THE SUBSIDY CONTRACT IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §65863.10. .... 9

1. Defendant was obligated to comply with the notice requirements of California Law because he caused the subsidy contract to terminate ..... 9

2. Defendant failed to provide one-year and six-month notices as required by state law .. 11

D. DEFENDANT DID NOT PROVIDE NOTICE OF THE OPPORTUNITY TO SUBMIT AN OFFER TO PURCHASE TO QUALIFIED ENTITIES AS REQUIRED BY CALIFORNIA GOVERNMENT CODE § 65863.11..... 12

V. CONCLUSION..... 14

TABLE OF AUTHORITIES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Cases**

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) .....3  
*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) .....3  
*Wasatch Prop. Mgmt. v. Degrate*, 35 Cal. 4th 1111, 1121 (2005).....9

**Statutes**

42 U.S.C. § 1437f ..... *passim*  
42 U.S.C. § 1437f(c)(8) .....4  
42 U.S.C. § 1437f(c)(8)(A) .....2  
§ 1437f(c)(8)(C) .....4  
§ 1437f(c)(8)(D) .....4  
42 U.S.C. §1437f(t), enacted by Pub. L. No. 106-74, §538, 113 Stat.1122 (1999), as amended by  
Pub. L. No. 106-246, §2801, 114 Stat. 569 (2000) (enhanced voucher protections).....6  
Pub. L. No. 106-74, §535, 113 Stat. 1121 (1999) (§ 1437f(c)(8) notice revisions) .....6  
California Civil Code Section 1954.535 .....9  
CAL. GOV. CODE § 65863.10(a)(8). .....9  
§ 65863.10(b)(1),(2).....9  
§ 65863.10(c).....9  
§ 65863.10(b)(2).....11  
§§ 65863.10(b)(1)(I), 65863.10(b)(2).....11  
§ 65863.10(c)(1). .....11  
CAL. GOV. CODE § 65863.11(b).....12  
§ 65863.11(d).....13  
§ 65863.11(e).....13  
§ 65863.11(g).....13  
§ 65863.11(i).....13

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Other Authorities**

HUD, SECTION 8 RENEWAL POLICY, §11-4.C(1) (2005).....4  
RENEWAL POLICY, § 11-3.A .....4  
RENEWAL POLICY, § 11-4.C .....4  
RENEWAL POLICY, APPENDIX 11-1 AND 11-2. ....4

**Rules**

Fed. R. Civ. P. 56(c) .....3

1 Plaintiffs Park Village Apartments Tenants Association, William Foster, Shirley Smith,  
2 and Cornelius Weekley move this Court to grant Plaintiffs Motion for Summary Judgment /  
3 Summary Adjudication on the ground that there is no genuine issue as to any material fact and  
4 that the plaintiffs are entitled to judgment as a matter of law.

### 5 I. INTRODUCTION

6 Plaintiffs are three low-income senior citizen tenants at Park Village Apartments and an  
7 unincorporated association of Park Village Apartments tenants. The Defendants are the Mortimer  
8 Howard Trust, the current owner of Park Village Apartments, and Mortimer R. Howard  
9 (collectively "Defendant"), who transferred ownership of Park Village Apartments to the Trust  
10 in 2006 and who controls the Trust and acts on its behalf.

11 Plaintiffs allege that Defendant has violated state and federal statutes by not providing the  
12 required notice prior to the nonrenewal of its government subsidy contract with the U.S.  
13 Department of Housing and Urban Development (HUD). Federal law expressly prohibits an  
14 owner from increasing rents or evicting tenants until one year after legally compliant notice is  
15 provided, and state law expressly requires both 12-month and 6-month notice of the contract  
16 nonrenewal, as well as notice of an opportunity to submit a purchase offer to preserve the  
17 property as affordable housing..

18 Park Village Apartments, a rental housing community for low-income senior citizens in  
19 Oakland, was developed in 1978 with federal project-based rental subsidies pursuant to a  
20 housing assistance payments ("HAP") contract with the United States Department of Housing  
21 and Urban Development ("HUD") under Section 8 of the United States Housing Act of 1937, 42  
22 U.S.C. § 1437f. This first rental assistance contract term was for 20 years. HUD and Defendant  
23 entered into three subsequent contracts for varying terms until the final one-year contract expired  
24 on November 20, 2005. California Affordable Housing Initiatives (CAHI) was the agency in  
25 charge of administering and processing the renewal contract for HUD.

26 Defendant has received millions of dollars in public subsidies over the past three decades,  
27 but has refused to comply with basic legal obligations that accompany these subsidies. At no  
28 time before or after the expiration of the Housing Assistance Payments (HAP) contract did

1 Defendant provide Plaintiffs with a legally sufficient notice of contract termination, under either  
2 federal or state law. Nor has Defendant provided notice of an opportunity to submit an offer to  
3 purchase Park Village Apartments to qualified organizations as required by the California  
4 Government Code. Despite his failure to comply with the federal and state notice requirements,  
5 and despite the Court's Order that Defendant comply with the federal notice requirements before  
6 seeking a rent increase from Plaintiffs, Defendant seeks to charge Plaintiffs the full contract rent  
7 beginning May 17, 2008.

8 As clearly demonstrated by this Court's order granting the preliminary injunction on  
9 February 14, 2007, this is a simple case about a subsidized owner's persistent refusal to follow  
10 the clear legal requirements established by Congress and the California legislature prior to  
11 exiting the project-based Section 8 program. Because there is no genuine dispute of material fact  
12 that Defendant failed to satisfy these federal and state notice requirements, Plaintiffs are entitled  
13 to judgment as a matter of law.

## 14 **II. PROCEDURAL HISTORY**

15 Plaintiffs filed suit for declaratory and injunctive relief on November 3, 2006 in Alameda  
16 County Superior Court to enjoin the threatened rent increases and eviction proposed by  
17 Defendant. On December 1, 2006, Defendant removed this case to this Court. On February 14,  
18 2007, the Court granted Plaintiffs's Motion for Preliminary Injunction. The Court enjoined  
19 Defendant from demanding rent payments in excess of the amount Plaintiffs were paying as of  
20 November 2005 for the duration of this action or until Defendant provided the notice required by  
21 42 U.S.C. § 1437f(c)(8)(A) and one year has elapsed. Defendant then appealed, and the Ninth  
22 Circuit Court of Appeals affirmed this court's order on October 24, 2007, in an unpublished  
23 ruling. On March 14, 2008 Plaintiffs filed a First Amended and Supplemental Complaint for  
24 Declaratory and Injunctive Relief. Trial is currently set for June 16, 2008.

## 25 **III. STATEMENT OF FACTS**

26 The term of the initial Park Village Apartments Section 8 HAP contract was for a period  
27 of twenty years. HUD and Defendant executed several renewal Section 8 HAP contracts until  
28 the expiration of the final contract on November 20, 2005. Order on Pls.'s Mot. for Prelim. Inj. at

1 2. On September 9, 2004, Defendant sent a letter to Plaintiffs stating that the HAP contract had  
2 been renewed through November 2005. *Id.*

3 Due to Defendant's delay in providing CAHI with the information and documents  
4 required to process the renewal contract, the parties could not execute a renewal contract before  
5 the contract's expiration on November 20, 2005 (Decl. of LeeAnn Farner in Support of  
6 Plaintiffs Motion ¶ 13.) CAHI sent Defendant the renewal contract for his signature on  
7 December 7, 2005. (*Id.*) On January 20, 2006, CAHI received a letter from Defendant stating  
8 that he would not sign the contract because he disagreed with its language. (*Id.* ¶ 16.)

9 In March 2006, Defendant sent a letter to Plaintiffs informing them of the expiration of the  
10 HAP contract and demanding that Plaintiffs either move within 30 days or pay the full HAP  
11 contract rent. Order on Pls.'s Mot. for Prelim. Inj. at 3.

12 On May 17, 2007, Defendant sent a letter to Plaintiffs informing them that they would  
13 have one year to find alternate housing since the HAP contract was not renewed. (Ex. A to  
14 Smith Decl. ¶5.) The letter also states that Defendant does not intend to participate in any  
15 Section 8 program. (*Id.*) On January 14, 2008, Plaintiffs received a letter demanding that  
16 Plaintiffs pay the full contract rent of \$1,192 per month beginning May 17, 2008. (Ex. E to Smith  
17 Decl. ¶9)

#### 18 IV. ARGUMENT

##### 19 A. LEGAL STANDARD FOR SUMMARY JUDGMENT

20 Summary Judgment is appropriate where there is no genuine dispute as to any material  
21 fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c);  
22 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party must demonstrate that  
23 there is no dispute as to the material facts of the case. Courts will focus on the facts that might  
24 affect the outcome and will disregard all facts that are irrelevant or unnecessary. *Anderson v.*  
25 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

##### 26 B. DEFENDANT NEVER GAVE PROPER FEDERAL NOTICE TO TENANTS OF 27 EXPIRATION OR TERMINATION OF THE HAP CONTRACT

28

1 Federal law requires an owner to provide a specific notice to all tenants one year prior to  
2 the expiration or termination of a HAP contract with HUD. 42 U.S.C. § 1437f(c)(8). This statute  
3 provides that “[n]ot less than one year before termination of any [project-based Section 8  
4 assistance contract], an owner shall provide written notice to the [HUD] Secretary and the  
5 tenants involved of the proposed termination.” § 1437f(c)(8)(A). The statute defines termination  
6 as “the expiration of the assistance contract or an owner’s refusal to renew the assistance  
7 contract, and such term shall include termination of the contract for business reasons.”  
8 § 1437f(c)(8)(D). The one-year notice expressing an owner’s intention must include a statement  
9 regarding the possibility of contract renewal and the availability of tenant-based rental assistance  
10 to affected tenants. § 1437f(c)(8)(D). It must also comply with any additional requirements  
11 imposed by HUD. § 1437f(c)(8)(C). At no time before or after the expiration of the last HAP  
12 contract for Park Village Apartments did Defendants provide statutorily adequate notice.

13 Beyond the requirements enumerated in the statute, § 1437f(c)(8)(C) incorporates  
14 supplemental HUD guidelines by stating, “Any notice under this paragraph shall also comply  
15 with any additional requirements established by the Secretary [of HUD].” The primary guideline  
16 incorporated into the statutory requirements is language included in sample letters provided by  
17 HUD which “owners must use.” HUD, SECTION 8 RENEWAL POLICY, §11-4.C(1)  
18 (2005)(“RENEWAL POLICY”). The Renewal Policy provides that such one year notices must  
19 include sample language specified by HUD and a statement that the owner will honor tenants’  
20 right to remain in their units with tenant-based assistance. RENEWAL POLICY, § 11-4.C. The  
21 purpose of these notices is to alleviate the “worry and fear” that a conversion from project-based  
22 to tenant-based assistance can cause in tenants. RENEWAL POLICY, § 11-3.A. In order to  
23 ameliorate this potential anxiety “care must be taken to make sure the process is completed  
24 correctly and information is made clear and available for all families, Owners, and PHAs.” *Id.*  
25 The Renewal Policy provides sample letters for owners and requires that notices served on  
26 tenants include the information in the sample letters. RENEWAL POLICY, APPENDIX 11-1 AND 11-  
27 2.

1 This Court has already found that the purported notices that Defendant gave to Plaintiffs  
2 on September 9, 2004, November 18, 2005, and March 6, 2006, fail to satisfy the statute and the  
3 HUD provisions. Order on Pls. Mot. for Prelim. Inj. at 9. In response to the Court's Order, on  
4 May 17, 2007 Defendant gave Plaintiffs yet another defective letter that fails to satisfy the statute  
5 and the HUD notice provisions. Because the language of all four letters fails to comply with the  
6 statute and the HUD notice provisions, summary judgment is appropriate on Plaintiffs' federal  
7 law claims.

8 1. This Court has already determined that the September 9, 2004, November 18,  
9 2005, and March 6, 2006 letters did not satisfy federal notice requirements

10 In its Order granting Plaintiffs' Motion for Preliminary Injunction, this Court found that  
11 none of the letters that Defendant gave to Plaintiffs on September 9, 2004, November 18, 2005,  
12 or March 6, 2006 satisfied the federal notice requirements. *Id.* at 9, 11. The Court found that the  
13 letter Defendant gave to Plaintiffs on September 9, 2004 is insufficient because it did not  
14 indicate Defendant's intention to renew or not to renew the HAP contract. *Id.* at 9. The Court  
15 found that the November 18, 2005 letter also fails to satisfy the notice requirements because it  
16 did not contain the required language notifying tenants of [Defendant's] intent to opt-out of the  
17 contract. *Id.* Finally, the Court found that the March 6, 2006 letter also does not conform to  
18 the statutory notice language of 42 U.S.C. § 1437f(c)(8)(A) and later reiterated that this notice  
19 failed to meet federal statutory notice requirements. *Id.* at 9, 11. The Court has already found,  
20 as a matter of law, that the September 9, 2004, November 18, 2005, and March 6, 2006 letters  
21 did not satisfy the federal notice requirements. As a result, there is no genuine dispute of  
22 material fact that these letters omitted the statutorily required language.

23 2. Defendant's May 17, 2007 letter also failed to meet federal statutory notice  
24 requirements

25 On May 17, 2007 Defendant served on Plaintiffs a letter which purports to be a one-year  
26 notification of an owner's intention to opt-out of the HAP contract. (Exhibit A to Smith Decl. in  
27 Support of Plaintiffs Motion for Summary Judgment, ¶5). The May 17, 2007 letter states that it  
28 is intended to provide a one-year opportunity to find alternate housing, or to apply for a tenant-

1 based voucher.ö (*Id.*) Defendant's letter further states that it is "notification that I do not intend  
2 to participate in any Section 8 program.ö (*Id.*) The letter goes on to state that "[f]ederal law  
3 allows you to elect to continue living at this property provided that the unit, the rent, and I, the  
4 owner meet the requirements, *which is not likely since I will not enter into any contract thus far  
5 provided by HUD.*ö (*Id.* (emphasis added)) However, the letter later states that Defendant will  
6 honor the tenant's right to remain at the property. (*Id.*) In sum, the letter advises tenants that  
7 they have a right to remain, but that tenants likely cannot exercise that right because Defendant  
8 will not "participate in any Section 8 program" and will not "enter into any contract thus far  
9 provided by HUD.ö (*See id.*)

10 Federal law requires that notice of termination of a HAP contract include a statement that  
11 "in the event of termination [HUD] will provide tenant-based rental assistance to all eligible  
12 residents, enabling them to choose the place they wish to rent, which is likely to include the  
13 dwelling unit in which they currently reside.ö 42 U.S.C. § 1437f(c)(8)(A). Additionally, HUD  
14 guidelines require the statement, "Federal law allows you to elect to continue living at this  
15 property provided that the unit, the rent, and we, the owners, meet the requirements of the  
16 Section 8 tenant-based assistance program. As an Owner, we will honor your right as a tenant to  
17 remain at the property on this basis..." RENEWAL POLICY, APPENDIX 11-1. The notice must also  
18 state, "[T]here will be no immediate change to your rental assistance," and, "Please remember  
19 that project-based Section 8 rental assistance will continue to be provided on your behalf for one  
20 year.ö *Id.* ¶¶ 2, 4. Finally, the notice must inform tenant that "you will be contacted by the local  
21 [PHA] to determine your household's eligibility for tenant-based assistance.ö *Id.* ¶ 6. As recited  
22 in Section 1-1 of the guidance, HUD adopted these guidelines in 2001 to implement both the  
23 1999 amendments to the notice statute and the tenant protections for conversions (enhanced  
24 vouchers) that had been enacted by Congress. See Pub. L. No. 106-74, §535, 113 Stat. 1121  
25 (1999) (§ 1437f(c)(8) notice revisions) and 42 U.S.C. §1437f(t), enacted by Pub. L. No. 106-74,  
26 §538, 113 Stat.1122 (1999), as amended by Pub. L. No. 106-246, §2801, 114 Stat. 569 (2000)  
27 (enhanced voucher protections).

28

1           There is no genuine dispute of material fact that the May 17, 2007 letter does not satisfy  
2 the notice requirements of the federal statute or HUD guidelines and, in fact, undermines their  
3 purpose. The May 17, 2007 letter impermissibly modifies the language set forth in 42 U.S.C. §  
4 1437f(c)(8)(A) and the HUD guidelines and fails to provide tenants with the required notice of  
5 their right to remain. As noted above, HUD guidelines require the statement, "Federal law  
6 allows you to elect to continue living at this property provided that the unit, the rent, and we, the  
7 owners, meet the requirements of the Section 8 tenant-based assistance program." RENEWAL  
8 POLICY, APPENDIX 11-1. The May 17, 2007 letter directly violates this requirement by  
9 impermissibly modifying the statement to read, "Federal law allows you to elect to continue  
10 living at this property provided that the unit, the rent, and I, the owner meet the requirements,  
11 *which is not likely since I will not enter into any contract thus far provided by HUD.*" (Exhibit A  
12 to Smith Decl. (emphasis added)). Not only does the letter impermissibly modify HUDs  
13 required language, it also fails to satisfy the purpose of those requirements. Instead of assuring  
14 Plaintiffs that they will be able to use a tenant-based voucher to remain in their homes, the notice  
15 states the exact opposite. In addition, Defendant makes it clear that he has no intention of  
16 honoring Plaintiffs' federal statutory right to remain by stating "this notice is intended to provide  
17 a one-year opportunity to find alternate housing, or to apply for a tenant-based voucher." (*Id.*)  
18 The letter further states that Defendant "[does] not intend to participate in any Section 8  
19 program," a statement that also contradicts Defendant's obligation to provide notice of the right  
20 to remain. (*Id.*) In fact, Defendant has encouraged Plaintiffs to move, as manifested in a letter  
21 he sent on October 24, 2007 entitled "Available Transferable Housing Vouchers." (Exhibit B to  
22 Smith Decl. in Support of Plaintiffs Motion for Summary Judgment ¶6). The October 24, 2007  
23 letter also makes no mention of the fact that Defendant must accept Section 8 vouchers if  
24 Plaintiffs wish to remain at Park Village Apartments. The proper opt-out notice is supposed to  
25 reassure tenants that there is a strong possibility they will be able to stay in their current units and  
26 that they are not compelled to move. The modified statement in the May 17, 2007 letter suggests  
27 the opposite – that Plaintiffs will likely be forced to leave their current units and that they have  
28 little control over that situation.

1 The May 17, 2007 letter also impermissibly modifies HUD's required language by  
2 referring to rent changes in the past tense. The letter does not state "[T]here will be no  
3 immediate change to your rental assistance," and "Please remember that project-based Section 8  
4 rental assistance will continue to be provided on your behalf for one year," as required by HUD.  
5 See RENEWAL POLICY, APPENDIX 11-1 at ¶¶ 2, 4. Instead, the letter states, "There has been no  
6 change in your rent..." and "Please remember that ...your rent has not been increased." (Exhibit  
7 A to Smith Decl.) Again, the purpose of the opt-out notice is to notify tenants that they will be  
8 able to remain in their units for another year, and that there will be no changes to their rent or  
9 rental assistance for that year. By referring to rent changes in the past tense, the May 17, 2007  
10 letter failed to notify Plaintiffs that their rent would not change in the future.

11 Finally, the May 17, 2007 letter impermissibly modifies HUD's required language by  
12 stating that tenants "should contact the local Public Housing Authority (PHA) to determine your  
13 household's eligibility for tenant-based assistance." *Id.* The letter does not state, "you will be  
14 contacted by the local [PHA] to determine your household's eligibility for tenant-based  
15 assistance," as required by HUD. See RENEWAL POLICY, APPENDIX 11-1 at ¶ 6. The  
16 modification places the burden on the resident to contact the PHA and obtain tenant-based  
17 assistance. The modification therefore makes it appear more troublesome for residents to obtain  
18 tenant-based assistance and, thereby, discourages them from doing so

19 Defendant cannot dispute that the May 17, 2007 letter stated that Plaintiffs would have  
20 one year "to find alternative housing," that Defendant would not "participate in any Section 8  
21 Program," and that it was "not likely" that Plaintiffs would be allowed to continue to live at the  
22 property. (See Exhibit A to Smith Decl.) In sum, there can be no genuine dispute of material  
23 fact that the language of the May 17, 2007 letter failed to inform tenants of their right to remain,  
24 as required by federal statute and the HUD guidelines.

25 As established above, none of the letters Defendant sent to Plaintiffs satisfied federal law.  
26 Despite the Court's Order enjoining Defendant from raising Plaintiffs' rents until Defendant has  
27 provided the notice required by 42 U.S.C. § 1437f(c)(8)(A), Defendant now seeks to raise  
28 Plaintiffs' rents beginning May 17, 2008. (See Exhibit E to Smith Decl.) Because there is no

1 genuine dispute of material fact that the letters did not contain the requisite language, Plaintiffs  
2 are entitled to judgment as a matter of law on their federal notice claims, and Defendant must be  
3 enjoined from raising Plaintiffs' defenses.

4 **C. DEFENDANT IMPROPERLY TERMINATED THE SUBSIDY CONTRACT IN**  
5 **VIOLATION OF CALIFORNIA GOVERNMENT CODE §65863.10.**

6 There is no genuine dispute of material fact that Defendant has failed to comply with state  
7 law notice requirements. The California Government Code provides that prior to termination of  
8 a subsidy contract, an owner must comply with the federal one-year resident notice provisions.  
9 CAL. GOV. CODE § 65863.10(b)(1),(2). California law further requires that owners provide  
10 additional notice to affected residents at least six months prior to the termination of an assistance  
11 contract. § 65863.10(c). Because Defendant terminated the subsidy contract without providing  
12 either a one-year or six-month notice to Plaintiffs, Plaintiffs are entitled to judgment as a matter  
13 of law on their state law notice claims.

14 1. Defendant was obligated to comply with the notice requirements of California  
15 Law because he caused the subsidy contract to terminate

16 Because Defendant's conduct caused the subsidy contract's termination, Defendant was  
17 required to provide notice pursuant to California Government Code § 65863.10. As noted above,  
18 the Government Code requires that project-based Section 8 owners provide a one-year notice and  
19 a six-month notice prior to the termination of a subsidy contract. *See* § 65863.10(b), (c). As  
20 defined in the Government Code, "[t]ermination means an owner's decision not to extend or  
21 renew its participation in a federal, state, or local government subsidy program or private,  
22 nongovernmental subsidy program for an assisted housing development í either at or prior to  
23 the scheduled date of the expiration of the contract." CAL. GOV. CODE § 65863.10(a)(8). In  
24 analyzing Civil Code Section 1954.535, which also requires owners to provide notice to tenants  
25 if they fail to renew a contract with a governmental agency, the California Supreme Court found  
26 that notice is required not only when an owner directly terminates a subsidy contract with the  
27 government, but also where the owner knowingly causes the termination (i.e. non-renewal) of the  
28 contract. *Wasatch Prop. Mgmt. v. Degrate*, 35 Cal. 4th 1111, 1121 (2005).

1 On May 3, 2005, CAHI requested certain documents from Defendant to process the  
2 renewal contract. (Decl. of LeeAnn Farner in Support of Plaintiffs Motion, ¶ 3.) On July 27,  
3 2005, Defendant submitted incomplete documents. (*Id.* ¶ 4.) The next day, CAHI requested the  
4 missing information. (*Id.*) Over a month later, Defendant responded to CAHI's request, but the  
5 information he provided was incorrect. (*Id.* ¶ 5.) On September 8, 2005, Defendant still had not  
6 provided the necessary information to renew the contract. (*Id.*) On September 27, CAHI still  
7 had not received the missing information and sent another letter to Defendant. (*Id.*) On October  
8 12, 2005, CAHI sent yet another request for the missing information. (*Id.*) On November 2,  
9 2005, Defendant responded to CAHI's request, but the information provided was still  
10 incomplete. (*Id.* ¶ 8.) On November 10, 2005, CAHI made arrangements to obtain the missing  
11 information from Defendant via email. (*Id.* ¶ 9.) On November 18, 2005, CAHI was finally able  
12 to review Defendant's renewal contract. (*Id.* ¶ 10.) On November 23, 2005, CAHI sent a rent  
13 schedule to Defendant for his approval. (*Id.* ¶ 11.) However, Defendant requested a \$3.00  
14 adjustment to the rents. (*Id.* ¶ 12.) On December 7, 2005, CAHI sent the renewal contract to  
15 Defendant for his signature. (*Id.* ¶ 13.) On January 20, 2006, CAHI received a letter from  
16 Defendant stating that he disagreed with the contract's language and would not sign it. (*Id.* ¶  
17 16.)

18 As previously noted in the Court's February 14, 2007 Order, the expiration of an  
19 assistance contract can also constitute a termination of that contract. Order on Pls.'s Mot. for  
20 Prelim. Inj. at 8. The Court also noted that the expiration of an assistance contract does not  
21 automatically excuse an owner from his statutory notice obligations. *Id.* Here, Defendant's  
22 actions caused the nonrenewal of the subsidy contract and therefore constituted a termination.  
23 Defendant repeatedly delayed in responding to CAHI's requests for information. (*Id.* ¶¶ 4, 6, 7.)  
24 When Defendant eventually responded to these requests, he provided incorrect and incomplete  
25 information. (*Id.* ¶¶ 4, 5, 8.) As a result of Defendant's repeated delays, the parties could not  
26 execute the renewal contract by the November 20, 2005 expiration date. (*Id.* ¶ 13.) Defendant's  
27 delays and failure to provide complete information made it impossible to execute a renewal  
28 contract before the expiration date and had the same effect as if Defendant had affirmatively

1 ended the contract. Defendant's failure to timely complete the renewal process therefore  
2 constituted a decision not to renew or extend the contract. Because Defendant failed to take the  
3 necessary steps to renew the contract, he had a statutory obligation to provide Plaintiffs with one-  
4 year and six-month notices pursuant to § 65863.10.

5 2. Defendant failed to provide one-year and six-month notices as required by state law

6 As stated above, the California Government Code requires subsidized owners to provide  
7 tenants with a one-year notice prior to termination of a subsidy contract. CAL. GOV. CODE  
8 § 65863.10. The Government Code's one-year notice requirement may be satisfied by providing  
9 copies of a notice *meeting federal requirements* to each affected tenant household residing in  
10 the assisted housing development at the time the notice is provided and to the affected public  
11 entities. § 65863.10(b)(2). In addition to the federal requirements, the one-year notice must  
12 also contain a statement of notice of opportunity to submit an offer to purchase the assisted  
13 housing development. §§ 65863.10(b)(1)(I), 65863.10(b)(2).

14 The Government Code also requires an assisted owner to provide tenants with a six-  
15 month notice prior to termination of a subsidy contract:

16 At least six months prior to the anticipated date of termination of a subsidy  
17 contract . . . the owner of an assisted housing development in which there will be  
18 the expiration of rental restrictions shall provide a notice of the proposed change to  
19 each affected tenant household residing in the assisted housing development at the  
20 time the notice is provided and to the affected public entities.

21 § 65863.10(c)(1). This six month notice must contain all of the following: an identification of  
22 the relevant assistance program and the anticipated date of the termination of assistance; the  
23 current rent and the anticipated rent for the resident's unit for the twelve months following the  
24 termination date; a statement that copies of the notice will be sent to state and local housing  
25 agencies; a statement of the possibility that the housing may remain in the project-based Section  
26 8 program after the termination date; a statement of the owner's intention to participate in any  
27 subsidy replacement program; and the name and telephone numbers of various local and state  
28 housing agencies. § 65863.10(c)(2).

1 None of the purported notices Defendant gave to Plaintiffs satisfied California's one-year  
2 notice requirement. As established in Section B of this Motion, there is no genuine dispute of  
3 material fact that Defendant has failed to meet the federal statutory requirements, as none of the  
4 letters Defendant gave to Plaintiffs contained the language required by 42 U.S.C. §  
5 1437f(c)(8)(A) or HUD's guidelines. Because none of the letters satisfied the federal notice  
6 requirement as a matter of law, it necessarily follows that the letters did not meet California's  
7 one-year notice requirement. Additionally, it is without dispute that none of the letters contained  
8 notice of the opportunity to submit an offer to purchase Park Village Apartments, as required by  
9 Government Code Sections 65863.10(b)(1)(I) and 65863.10(b)(2). Finally, Defendant has never  
10 provided a six-month notice to any Plaintiff at Park Village Apartments. Accordingly, there is  
11 no genuine dispute of material fact that Defendant has failed to satisfy California's notice  
12 requirements, and Plaintiffs are entitled to summary adjudication of their state law notice claims.

13 **D. DEFENDANT DID NOT PROVIDE NOTICE OF THE OPPORTUNITY TO**  
14 **SUBMIT AN OFFER TO PURCHASE TO QUALIFIED ENTITIES AS**  
15 **REQUIRED BY CALIFORNIA GOVERNMENT CODE § 65863.11**

16 California has adopted several policies designed to maximize the opportunities to  
17 preserve affordable housing. The state requires advance notice of impending conversions and  
18 purchase opportunities to affected tenants (as described in Section C.2 of this Motion concerning  
19 Gov't Code §65863.10) and public entities; advance notice of opportunities to make a purchase  
20 offer to qualified entities; and advance notice of rights of first refusal for preservation purchasers  
21 to match other offers where owners propose to sell affordable housing. These policies, codified  
22 in Government Code §65863.11, specifically include the following procedural requirements.

23 An owner of an assisted housing development shall not terminate a subsidy contract or  
24 sell the property unless the owner first provides specified entities an opportunity to submit an  
25 offer to purchase the development. CAL. GOV. CODE § 65863.11(b) (terminate) and 65863.11(c)  
26 (sell). The entities designated to receive this opportunity are the tenant association of the  
27 development, local nonprofit organizations and public agencies, regional or national nonprofit  
28 organizations and regional or national public agencies, and profit-motivated organizations or

1 individuals. § 65863.11(d). Qualified entities must, *inter alia*, be capable of managing the  
2 housing and agree to maintain the affordability of the assisted housing development for  
3 households of very low, low, or moderate income for at least 30-years. § 65863.11(e). If an  
4 owner proposes to terminate a subsidy contract or to sell the development, the owner must first  
5 give notice of the opportunity to offer to purchase to each qualified entity on the list provided to  
6 the owner by the Department of Housing and Community Development, as well as to those  
7 qualified entities that directly contact the owner. § 65863.11(g). This notice must be given either  
8 prior to or concurrently with the one-year termination notice required by Section 65863.10. §  
9 65863.11(g). During the first 180 days from the date of an owner's notice of the opportunity to  
10 submit an offer to purchase, an owner can accept an offer to purchase only from a qualified  
11 entity and no one else. § 65863.11(i). If a qualified organization does not purchase within the  
12 first 180-day period, during the following 180-day period the owner may accept a purchase offer  
13 from another entity, but must first provide each qualified entity that made a bona fide offer to  
14 purchase 30 days to purchase the property on the same terms and conditions. § 65863.11(l).

15 Section 65863.11 was specifically amended in 2004 to strengthen the requirement that  
16 owners seeking to sell affordable housing developments must provide notice of the opportunity  
17 to make a purchase offer to preservation purchasers, if the proposed sale occurs within five years  
18 of the date that the affordability restrictions or subsidies expire. *See* SB 1328, enacted as Ch.  
19 110 of the Laws of 2004, [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_1301-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1301-1350/sb_1328_bill_20040706_chaptered.pdf)  
20 [1350/sb\\_1328\\_bill\\_20040706\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1301-1350/sb_1328_bill_20040706_chaptered.pdf) (amending Cal. Gov't Code §65863.11(c)). Prior  
21 law had only required such notice where the terms of the proposed sale would specifically  
22 terminate the property's affordable status, a showing that was apparently difficult to sustain and  
23 thus easy to avoid. *See id.*

24 In combination with § 65863.11's other requirements that qualified entities have the  
25 exclusive right to submit offers within the first 180 days after service of the required notice, as  
26 well as a right of first refusal to match any sale offer made by a non-qualified entity during the  
27 second 180 days after the notice, this amendment ensures that any affordable housing  
28 development being sold during the period before the subsidy is lost has a specific opportunity to

1 be purchased in a manner that preserves its affordable housing status and subsidies. By failing to  
2 provide the notices required by California law when proposing to terminate the Section 8  
3 contract or executing the current contract of sale, Defendant has directly thwarted that policy.

4 Defendant could not lawfully terminate the subsidy contract or sell Park Village without  
5 first providing the notice of the opportunity to submit a purchase offer to entities such as Plaintiff  
6 Park Village Apartments Tenants Association (PVATA) and the City of Oakland. As established  
7 in Section C.2 of this Motion, none of the letters Defendant issued to Plaintiffs informed them of  
8 the opportunity to submit an offer to purchase Park Village Apartments. Because there is no  
9 genuine dispute of material fact that Defendant failed to provide notice of an opportunity to  
10 submit an offer to purchase Park Village Apartments to the statutorily specified qualified entities,  
11 Plaintiffs are entitled to judgment as a matter of law on this claim

## 12 **V. CONCLUSION**

13 For all these reasons, Plaintiffs submit that this Court grant this Motion for Summary  
14 Judgment since there are no material fact in dispute and Plaintiffs are entitled to a judgment as  
15 matter of law. Plaintiffs request that the Court provide the following relief:

16 1. Plaintiffs request that the Court enter a declaratory judgment that:

- 17 a. Defendant has violated 42 U.S.C. § 1437f(c)(8);
- 18 b. Defendant has violated CAL. GOV. CODE § 65863.10; and
- 19 c. Defendant has violated CAL. GOV. CODE § 65863.11.

20 2. Plaintiffs request that the Court enter an injunction:

- 21 a. Compelling Defendant to rescind all prior notices to vacate, notices of lease  
22 termination, and demand letters;
- 23 b. Prohibiting Defendant, any persons acting in concert with Defendant, and any  
24 subsequent owners of Park Village Apartments from evicting any tenant at Park  
25 Village Apartments for reasons unrelated to violation of the material terms of their  
26 leases, or increasing any Park Village Apartments tenants' rent payment until one  
27 year after the Defendant provides notices that comply with 42 U.S.C. § 1437f(c)(8)  
28 and California Government Code § 65863. 10;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- c. Compelling Defendant to provide notice in accordance with Cal. Gov. Code § 65863.10;
- d. Compelling Defendant to provide notice of the opportunity to purchase Park Village Apartments in accordance with CAL. GOV. CODE § 65863.11; and
- e. Prohibiting Defendant from selling Park Village Apartments until Defendant complies with the notice and right of first refusal provisions of CAL. GOV. CODE § 65863.11.

DATED: March 19, 2008

Respectfully submitted,

By: /s/ Lisa S. Greif  
BAY AREA LEGAL AID  
LISA S. GREIF