

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

CLAUDETTE ACOSTA,  
SANJUANITA GOMEZ PALACIO,  
JANET JOHNSON,  
DALLAS JONES, and  
JOANN SAWVELL,  
Plaintiffs

vs.

THOMAS VILSACK, Secretary of the  
Department of Agriculture,  
JUSTIN MAXSON, Deputy Under  
Secretary for Rural Development,  
CHAD PARKER, Acting Administrator,  
Rural Housing Service  
NORTHPARK APTS LLC,  
RYAN WINTER,  
J & M  
PROPERTY MANAGEMENT, INC., and  
BRANDI JORGENSON,  
Defendants

**CASE NO:**

**COMPLAINT**

**I. PRELIMINARY STATEMENT**

1. This lawsuit is brought on behalf of very low-income residents of a 24-unit formerly deeply subsidized affordable housing complex, Northpark Apartments (“Northpark”)<sup>1</sup>, in Storm Lake, Iowa, under the United States Department of Agriculture (USDA)’s Rural Development Division’s (“RD”) Section 515 loan program and Section 521 Rental Assistance deep subsidy program. As a direct result of a host of unlawful actions by RD and the private owners of Northpark, the Plaintiffs are now facing rent

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<sup>1</sup> In various documents relevant to this matter, this property is also referenced as North Park Apartments or NorthPark Apartments.

increases, displacement, and homelessness.

2. In contravention of a 30-year use restriction, the Emergency Low-Income Housing Preservation Act, 42 U.S.C. § 1472(c), and the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, RD approved a request to prepay the outstanding 515 loans.

3. RD, as well as the current and past owners, also violated Title VI of the Civil Rights Act and the Fair Housing Act when they failed to adhere to their Limited English Proficiency obligations.

4. RD also violated the Plaintiffs' due process rights guaranteed by 7 U.S.C. § 6991 *et seq.*, 42 U.S.C. § 1480(g), and the 5<sup>th</sup> Amendment Due Process Clause when it failed to provide the Plaintiffs with the opportunity to appeal RD's prepayment approval.

5. The current owner's operation of the development also violates multiple use restrictions, the Plaintiffs' residential leases, and Iowa Landlord Tenant Law.

6. Finally, RD's operation of its voucher program is being administered in violation of federal law and in an arbitrary and capricious manner in violation of the Administrative Procedure Act.

7. Plaintiffs seek injunctive and declaratory relief to ensure that Defendants extend to Plaintiffs all the protections that Congress intended. Plaintiffs also seek to halt the owner's threat of rent increases and removal of utility allowances, as well as the owners' demand the Plaintiffs enter into the RD Voucher program or the U.S. Housing and Urban Development's ("HUD") Section 8 Housing Choice Voucher program, all of which are less advantageous than either the prior protections or the use restriction, and could result in the loss of vital tenant protections and their evictions.

## **II. JURISDICTION AND VENUE**

8. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 1343(a)(3) and (4), 1361, and 1367, in that the Plaintiff's claims arise under the Fifth Amendment to the U.S. Constitution, the Administrative Procedure Act, Title VI of the Civil Rights Act and the Fair Housing Act. The Court has supplemental jurisdiction over the state law claims because they arise out of the same set of facts as Plaintiffs' federal law claims.

Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

9. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims in this action occurred in this judicial district, and the property that is the subject of the action is situated in this judicial district.

## **III. PARTIES**

10. Plaintiff Claudette Acosta is a very low-income resident of Northpark who has lived at the property since 2009. Prior to May 26, 2021, she received Rental Assistance, a RD rental subsidy, which reduced her shelter payment, which includes rent and a utility allowance for tenant paid utilities, to 30% of her adjusted monthly income. The rent that she pays to Northpark is \$140 per month. Her current 12-month lease, which automatically renews annually, renewed on October 1, 2021. NorthPark Apts LLC, the current owner of Northpark, has told her that her new rent will be \$624 per month starting on October 1, 2021. Ms. Acosta is White. Ms. Acosta is disabled and receives \$814 per month in Social Security Disability Insurance ("SSDI"). She is unable to pay the new rent and has applied for and received an RD voucher, which requires her to sign a new lease

that denies her benefits that she has received under the 515 program and does not protect her against eviction.

11. Plaintiff Janet Johnson is a very low-income resident of Northpark who has lived at the property since December of 2020. Ms. Johnson is White. She currently has a 12-month lease, which automatically renews annually, that will expire on December 1, 2021. Prior to May 26, 2021, she received Rental Assistance, which reduced her shelter payment, which includes rent and a utility allowance for tenant paid utilities to 30% of adjusted household income. Her rent payment to Northpark is \$0 per month. NorthPark Apts LLC has told her that her new rent will be \$740 per month starting October 1, 2021. Ms. Johnson recently became employed part-time and is working approximately 15 hours a week at \$9.50 an hour.

12. Plaintiff Dallas Jones is a very low-income resident of Northpark who has lived at the property since August of 2020. Mr. Jones is White. He has a 12-month lease, which automatically renews annually, that will expire on August 1, 2022. Prior to May 26, 2021, he received Rental Assistance, which reduced his portion of the shelter payment, which includes rent and a utility allowance for tenant paid utilities, to 30% of adjusted household income. His rent payment to Northpark is \$134 per month. NorthPark Apts LLC has told him that his new rent will be \$624 per month starting October 1, 2021. Mr. Jones is disabled and receives \$794 per month in SSDI. Mr. Jones has applied for and received an RD voucher, which requires him to sign a new lease that denies him benefits that he has received under the 515 program and does not protect him against eviction.

13. Plaintiff Sanjuanita Gomez Palacio is a very low-income resident of Northpark

who has lived there since March of 2020. Ms. Gomez Palacio is Latina. She has a 12-month lease, which automatically renews annually, that will expire on March 1, 2022. Prior to May 26, 2021, she received Rental Assistance, which reduced her shelter costs, which includes rent and a utility allowance for tenant paid utilities, to 30% of adjusted household income. Her rent payment to Northpark is \$221 per month, representing 30% of her adjusted monthly income. NorthPark Apts LLC has told her that her new rent will be \$624 per month starting October 1, 2021. Ms. Gomez Palacio is disabled and receives \$1,096 per month in SSDI. Ms. Gomez Palacio's primary language is Spanish and has difficulty reading and comprehending documents that are not in Spanish, particularly documents with technical or complex language.

14. Plaintiff Joanne Sawvell is a very low-income resident of Northpark who has lived there since 1994. Ms. Sawvell is White. Her 12-month lease, which automatically renews annually, will expire on August 1, 2022. Prior to May 26, 2021, she received Rental Assistance, which reduced her shelter costs, which includes rent and a utility allowance for tenant paid utilities, to 30% of adjusted household income. Her rent payment to Northpark is \$197 per month. NorthPark Apts LLC has told her that her new rent will be \$748 per month starting October 1, 2021. Ms. Sawvell works and her household monthly gross monthly income is approximately \$1,306.

15. Defendant Thomas Vilsack, the Secretary of the United States Department of Agriculture ("USDA"), is statutorily vested with the authority to operate the rural housing programs authorized by Title V of the Housing Act of 1949, 42 U.S.C. §§ 1471 *et seq.* Defendant Vilsack is sued in his official capacity.

16. Defendant Justin Maxson is the Deputy Under Secretary for Rural Development.

The rural housing programs are administered and overseen by the RD mission area of USDA. Defendant Maxson is sued in his official capacity.

17. Defendant Chad Parker is Acting Administrator of the Rural Housing Service (“RHS”), and is responsible for the day-to-day administration of USDA rural housing programs at the national level. Defendant Parker is sued in his official capacity.<sup>2</sup>

18. Defendant NorthPark Apts LLC, an Iowa LLC, is the current owner of Northpark. It acquired Northpark from Northpark Apartments LLLP on or about May 26, 2021. That transfer became effective on June 1, 2021.

19. Upon information and belief, Defendant Ryan Winter, has a controlling interest in NorthPark Apts LLC.

20. Upon information and belief, Defendant J & M Property Management, Inc. (“J & M”) currently manages Northpark on behalf of NorthPark Apts LLC.

21. Upon information and belief, Defendant Brandi Jorgenson has a controlling ownership interest in J & M Property Management, Inc..<sup>3</sup>

#### **IV. STATUTORY AND REGULATORY FRAMEWORK**

##### **A. USDA Loan Prepayment Requirements**

22. The Section 515 rural rental housing loan program, initially authorized by the Senior Citizens Housing Act of 1962, is a cornerstone of federally assisted affordable housing in rural areas of the United States. The Section 515 program allows RD to make mortgage loans to private owners in order to provide affordable rental housing for very

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<sup>2</sup> Defendants Vilsack, Maxson, and Parker will hereinafter be collectively referred to as the “Federal Defendants.”

<sup>3</sup> Collectively, unless otherwise noted, Defendants Northpark Apts LLC, Ryan Winter, J and M, and Brandi Jorgenson, will hereafter be referred to as “Northpark Apts LLC” or the “Private Defendants.”

low-, low-, and moderate-income families, elderly persons, and persons with disabilities. 42 U.S.C. § 1485. These 30-year loans are provided at an effective 1% interest rate and are amortized over 50 years. *Id.*

23. Until the passage of the Emergency Low-Income Housing Preservation Act of 1987 (“ELIHPA”), there were no use or prepayment restrictions on Section 515 developments prior to December 21, 1979. This allowed owners of 515 developments to leave the program by prepaying their loans at any time without any obligations to residents living in the developments, who were frequently displaced by the loss of subsidies and the resulting rent increases.

24. In 1988, responding to increased prepayments of pre-1979 Section 515 loans and the negative impact of those prepayments had on communities and residents, Congress enacted ELIHPA, P.L. 100 - 242 (Feb. 5, 1988).<sup>4</sup> ELIHPA’s provisions applicable to Section 515 developments were intended to preserve Section 515 projects as affordable housing and protect residents against displacement by restricting the loan prepayment rights of owners who had entered Section 515 loans before December 21, 1979.

25. The express purposes of ELIHPA included the preservation and retention “to the maximum extent practicable as housing affordable to low income families or persons those privately owned dwelling units that were produced for such purpose with Federal assistance; [and,] to minimize the involuntary displacement of tenants currently residing in such housing.” *Id.* at 101 Stat. 1878).

26. In 1989, Congress adopted prepayment restrictions on all new Section 515 loans made after December 15, 1989 for the term of the loan, 42 U.S.C. § 1472(c)(1)(B),

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<sup>4</sup> The rural provisions of ELIHPA, as amended in 1992, are now codified at 42 U.S.C. § 1472(c).

thereby eliminating future prepayments of development financed after 1989.

27. In 1992, Congress extended the ELIHPA prepayment restrictions to all developments financed between December 21, 1979 and December 15, 1989. 42 U.S.C. § 1472(c)(1)(A).

28. RD regulations define a prepayment as “[a]ny mortgage payment that retires a USDA mortgage prior to its original maturity date.” 7 C.F.R. § 3560.11. 93. Once a loan is prepaid all subsidies that reduce the rents to residents, including Interest Credit and Rental Assistance, cease. 42 U.S.C. §§ 1490a(a)(1)(B) and 1490a(2)(A); 7 C.F.R. § 3560.11.

29. Once a complete prepayment request has been submitted by an owner of a Section 515 property, RD has 30 days to notify residents of the owner’s request to prepay the loan, pursuant to 7 C.F.R. § 3560.654, and 60 days to determine the eligibility of the loan for prepayment and whether the borrower has or will comply with applicable prepayment laws and regulations. If the owner’s prepayment request meets these and other requirements, RD must offer incentives to the owner to remain in the program. 42 U.S.C. § 1472(c)(3); 7 C.F.R. § 3560.653(e).

### **1. RD Consideration of Prepayment Impact on Minority Housing Opportunities**

30. If the owner rejects the incentives, RD must determine whether the prepayment will materially affect housing opportunities of minorities. 42 U.S.C. § 1472(c)(5)(G)(ii). When RD determines that prepayment will materially affect housing opportunities of minorities, the owner must, for 180 days, offer to sell the development at its market value to a nonprofit or public agency which would maintain the development as affordable housing. 42 U.S.C. §§ 1472(c)(5)(A), 1472(c)(5)(G).

31. Prior to 2005, RD regulations with respect to making a finding on the impact of the



prepayment on minority housing opportunities mirrored the statute by requiring RD staff to make a negative determination that minorities will not be materially affected as a result of the prepayment. 7 C.F.R. § 1965.215(c)(1)(i)(1993).

32. In 2005, RD modified this to require a finding of whether minorities in the project, on the waiting list or in the community will be *disproportionately adversely* affected by the loss of the affordable rental housing. 7 C.F.R. § 3560.658(b). RD explained this change by stating that comments were received asking for additional information on how the determination of minority impact is reached. In response, RD agreed “that ‘adverse impact’ needed further clarification and has clarified that the adverse impact should be disproportionate. . . . Additional details on how the Agency will review relevant information is available in Agency guidance about program procedures.” 69 Fed. Reg. 69032, 69094 (Nov. 24, 2004).

33. The only guidance that RD has published with respect to making the impact of a prepayment on minority housing opportunities is set out in RD Handbook 3-3560. It requires the RD Civil Rights staff to assess the impact of a prepayment on minority housing opportunities and defines relevant factors to be considered as:

- The percentage of minorities residing in the project and the percentage of minorities residing in the projects in the market area where displaced tenants are most likely to move;
- The impact of prepayment on minority residents in the project and in the market area. Determine whether displaced minority tenants will be forced to move to other low-income housing in areas not convenient to their places of employment, to areas with a concentrated minority population and/or to areas with a concentration of substandard housing;
- The vacancy trends and number of potential minority tenants on the waiting list at the project being prepaid and at other projects in the market that might attract minority tenants; and

- The impact prepayment will have on the opportunity for minorities residing in substandard housing in the market area to have comparable decent, safe and affordable housing, as is offered by the project being prepaid.

RD Handbook 3-3560, ¶ 15.21 (02-24-05) Rev. (11-07-08).<sup>5</sup> These factors only look at the impact of a prepayment on minority housing opportunities without comparing it to the impact on non-minorities.

34. If the prepayment has no adverse effect on minority housing opportunities, RD must next determine if there is adequate comparable affordable housing in the community to which the current residents of the development can relocate. If such housing is available, the owner is free to prepay the loan without restrictions. If, however, RD determines that there is not adequate comparable affordable housing, the owner can only prepay the loan subject to use restrictions, which (in cases where all the residents have Rental Assistance) protect the current residents from rent increases not based upon an increase in a resident's income, as long as they choose to live in the development. 7 C.F.R. §§ 3560.662(a) and (e), 3560.203(a). These restrictions are binding on the prepaying owner as well as any successors in interest and are enforceable by RD and the remaining residents. *Id.* § 3560.662(d).

35. RD may only release existing use restrictions before the termination period if it determines that there is no longer a need for the housing or if the financial assistance provided to the project's residents will no longer be provided due to no fault, action, or lack of action on the part of the borrower. 7 C.F.R. § 3560.662(f).

#### **B. Transfer of Existing Loans**

36. In the case of the transfer of existing loans, which typically requires the

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<sup>5</sup> RD Handbook 3-3560, available at: <https://www.rd.usda.gov/files/hb-3-3560.pdf>.

assumption of an existing loan and a new loan to finance the equity of the existing owner, RD regulations require the execution of a restrictive use agreement that requires the “housing project to be used for program purposes ... for 30 years.” 7 C.F.R. § 3560.604(g). *See also id.* § 3560.662(a) and (b)(3).

**C. Statutory Obligations to Minimize Displacement, Not Discriminate, Further Fair Housing, and Provide for Language Access**

37. In addition to its obligation to correctly adhere to ELIPHA’s mandate to protect minority housing opportunities, RD is bound by other statutory obligations to minimize involuntary displacement, not discriminate, and operate its programs in a manner to comply with and further fair housing, including by ensuring RD owners comply with their civil rights obligations.

38. 42 U.S.C. § 1471(g) obligates RD to administer its programs, such as the Section 515 program “consistent with program goals and objectives, so that the involuntary displacement of families and businesses is avoided.”

39. 42 U.S.C. § 3601, et seq., obligates RD and its owners not to discriminate, by intent or effect, in the conduct of RD housing programs. In addition to the duty not to discriminate, RD is obligated to administer its programs, activities and decisions related to housing in a manner which affirmatively furthers fair housing, including by taking affirmative efforts to overcome the effects of conditions that resulted in limiting housing opportunities for minority individuals. 42 U.S.C. § 3608(d), Executive Order 11063, Equal Opportunity in Housing, 27 Fed. Reg. 11527 (Nov. 20, 1962), Executive Order 12892, Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, 59 Fed. Reg. 2939 (Jan. 17, 1994), RD Instructions 2000-GGG,

Ex. A, ¶ 3 (Jan. 7, 1998).<sup>6</sup>

40. Title VI of the Civil Rights Act, 42 U.S.C. § 2000d et seq., prohibits national origin discrimination based upon failure to provide Limited English Proficiency (“LEP”) assistance.

41. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50121-22 (Aug. 16, 2000), states that:

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency’s programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies’ plans.

42. RD issued LEP guidance in 2016. RD, Limited English Proficiency Strategy for Federally Assisted Programs.<sup>7</sup> This guidance includes a detailed 4 factor test with 13 parts as well as continued monitoring regarding LEP issues.

43. The factors required by RD of recipients of assistance under its programs in its 2016 guidance are also applicable to RD and its notices must comply with Title VI and Executive Order 13166. Owners of projects developed under the 515 program also have an obligation to operate the development in conformance with Title VI as long as the development is operated as a housing development. Accordingly, Title VI applies to Section 515 projects prepaid subject to use restrictions, such as Northpark.

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<sup>6</sup> Available at <https://www.rd.usda.gov/files/2000ggg.pdf>.

<sup>7</sup> U.S.D.A. Rural Development Limited English Proficiency Strategy for Federally Assisted Programs, available at <https://www.rd.usda.gov/files/RDLEPImplementationStrategyforFederallyAssistedPrograms.pdf>.

### **C. The RD Rural Voucher Program**

44. RD operates a rural voucher program (“RD Rural Voucher Program”). 42 U.S.C. § 1490r. When Congress funded the program for the first time in fiscal year 2006, P.L. No. 109-97 (Nov. 10, 2005), 119 STAT. 2120, 2139, it limited the use of RD Vouchers to only assist households facing hardship or displacement from the prepayment of RD Section 515 loans. It also permanently limited the subsidy provided residents to the difference between the market rent of the prepaid unit and the amount that eligible households paid for shelter as of the date of prepayment. Residents who received a utility allowance, such as the Plaintiffs, prior to the prepayment do not receive a utility allowance under the RD Voucher program.

45. The RD Rural Voucher Program provides no financial assistance to residents in properties prepaid subject to use restrictions. For residents who received Rental Assistance prior to the prepayment, as is the case for the Plaintiffs, their shelter payments under the use restrictions, which include rent and a utility allowance, always remain the same as their shelter payments were before the prepayment. Under the RD Rural Voucher Program, the residents, rent payment typically remain the same for the first year after the prepayment. However, if the residents were also receiving a utility allowance, as the Plaintiffs are here, which is not covered by the RD Rural Voucher Program, the household’s total shelter payments will immediately increase beyond 30% of adjusted household income when the household begins to pay tenant-paid utilities entirely on their own. If the owner increases rents after the first year, the resident’s voucher subsidy does not change and the households’ rent payments also increase beyond 30% of their adjusted income.

46. Importantly, Senate and House Conference Committee reports make clear that the vouchers do not “alter prepayment restrictions...” Senate Rep. 109-92, Pgs. 115-116 (June 25, 2005); House Conf. Rep. 109-255, Pg. 92 (Oct. 26, 2005). Congress has continued to fund the RD Rural Voucher Program every year since 2006 maintaining the same general restrictions. *See e.g.* Pub. L. 116-260, \_\_ Stat. \_\_ (Dec. 27, 2020).<sup>8</sup>

47. The RD Voucher Program Guide also underscores that owners who prepay must honor the leases of tenants residing at the property as of the prepayment, including for tenants to continue to pay their previously subsidized rent without the benefit of Rental Assistance.<sup>9</sup> Rural Development Voucher Program Guide, § 2.5 (Sept. 2010)(“Voucher Guide”). The Voucher Guide also notes that because the RD Voucher requires a new lease, it is not possible to provide an RD Voucher during the remaining term of the lease after prepayment. *Id.* Finally, the Guide also makes clear that tenants in the rent-restricted units “may choose to continue with rent restrictions instead of using a voucher...” *Id.* § 1.1.

#### **D. The CARES ACT Notice Requirements for Non-Payment of Rent**

42. Section 4024(c) of Title IV of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) requires housing providers subject to the law to provide 30-day notices to vacate prior to any state court eviction action for nonpayment of rent. Pub. L. 116-136, 134 Stat. 281, 15 U.S.C.A. § 9058 (March 27, 2020).

43. Covered properties subject to the CARES Act include those properties participating in the Low-Income Housing Tax Credit program, 26 U.S.C. § 42. 15

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<sup>8</sup> Available as HR 133 at <https://www.congress.gov/bill/116th-congress/house-bill/133/text>. (*See* HR 133-21)).

<sup>9</sup> Available at <https://www.rd.usda.gov/files/MO-Voucher%20Program%20Guidebook.pdf>.

U.S.C.A. § 9058(a)(2)(A)(i).

44. As described below, because of Northpark's participation in the Low-Income Housing Tax Credit program, it is subject to the CARES Act requirements to provide a 30-day notice in nonpayment of rent cases prior to the filing of an eviction case under Iowa's Forcible Entry and Detainer law, codified in Iowa Code Section 648.

#### **E. Iowa Landlord Tenant Law**

45. The Iowa Uniform Residential Landlord Tenant Act (IURLTA), codified at Iowa Code Chapter 562A, limits a landlord's ability to increase rent.

46. In general, any increase in the rent under Iowa law must comply with Iowa Code § 562A.13(5), which states that:

Each tenant shall be notified, in writing, of any rent increase at least thirty days before the effective date. Such effective date shall not be sooner than the expiration date of original rental agreement or any renewal or extension thereof.

47. This obligation applies to any property or person authorized to enter into a rental agreement on behalf of the property owner. *Id.*

48. Any lease provision that waives a right under Iowa Code chapter 562A is both unenforceable and subjects a landlord to actual and punitive damages, plus attorney fees and costs. Iowa Code § 562A.11.

### **V. FACTS**

#### **A. The Development, Operation, Transfer, and Prepayment of Northpark Apartments**

49. Northpark is a 24-unit development located in Storm Lake, Iowa, that was developed by the Family Park Development Company. LP, with a 50-year \$535,500 USDA loan, made under Section 515 of the Housing Act of 1949, 42 USC § 1485, and

entered into on June 1, 1985. Exhibit 1 – RD Mortgage for Family Park Development.

Under the Section 515 program, occupancy is limited to persons of low and moderate income. 7 C.F.R. § 3560.152.

50. All of the units at Northpark were deeply subsidized before the prepayment under the Rental Assistance program, authorized by Section 521 of the Housing Act of 1949, 42 U.S.C. § 1490a(a)(2)(A), enabling the tenants to pay 30% of their income for shelter, which includes rent and an allowance for tenant paid utilities. 7 C.F.R. § 3560.11. Rental Assistance is only available to low- and very low-income households in Section 515 housing.

51. The development has twelve 1-bedroom and twelve 2-bedroom apartments.

52. Family Park Development sold Northpark on October 1, 2005 to North Park Apartments LLLP, which assumed the balance of the original loan and secured another Section 515 loan from RD for \$502,350. On information and belief, North Park Apartments LLLP used at least part of the new loan to pay off Family Park Development for its equity in the property.

53. In the mortgage securing the 2005 loan, RD imposed a 30-year use restriction on the borrower and any successors in interest, pursuant to 7 CFR §§ 3560.406 and 3560.662(b)(3). The use restriction states:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in title V of the Housing Act of 1949, and Rural Housing Service regulations then in effect. The restrictions are applicable for a term of thirty years from the date this loan was closed. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may seek enforcement of this provision, as well as the Government.



RD Mortgage for Iowa, Northpark Apartments LLLP, Nov. 2, 2005, Pg. 053750 at Pg. 7. Exhibit 2 – October 1, 2005 RD 515 Mortgage.

54. On information and belief, North Park Apartments LLLP agreed to the placement of such restrictions in 2005 and, as part of that agreement, agreed to “[t]o set rents, other charges, and conditions of occupancy in a manner to meet these restrictions.”

55. In 2005, North Park LLLP secured Low-Income Housing Tax Credits (“LIHTC”) for the property, with 19 units designated for households at 60% of the Area Median Income and 5 units designated for households at 40% of the Area Median Income. On information and belief, these LIHTC income-targeting use restrictions remain in effect.

56. On October 20, 2020, NorthPark LLLP applied to RD to prepay its RD Mortgages before their maturity date.

57. On November 16, 2020, RD advised Northpark residents of NorthPark Apartments LLLP’s request to prepay the 1985 and 2005 loans. Exhibit 3 – Nov. 16, 2020 Letter from RD to Northpark residents.

58. On March 26, 2021, RD approved NorthPark Apartments LLLP’s prepayment request, subject to use restrictions, meaning that RD must have found that there was no material impact on minority housing opportunities but that there was a need for comparable affordable housing in the community.

59. Affordable housing, let alone subsidized rental housing, is scarce in Storm Lake and in Buena Vista County, Iowa. Prior to its 2021 prepayment, Northpark was the only RD subsidized development in Storm Lake and it had more deeply subsidized units than the other two projects in the county combined.

60. On March 26, 2021, RD advised the residents of Northpark that it had approved the prepayment of the Northpark loan because the owner of the development had agreed to

the placement of use restrictions against the property that will protect the residents of the development as of the day of prepayment for as long as they remain at Northpark. The letter advised the residents that RD subsidies would be terminated as of the date of prepayment and that the residents can secure RD vouchers to assist them in paying the rent. The letter also stated that "[a]fter prepayment, the rent for your apartment will remain the amount stated on your lease." Exhibit 4 – March 26, 2021 Letter From RD to Northpark Residents.

61. However, the letter did not state that (1) that the RD decision to allow the prepayment was also based on the fact that RD found that the prepayment did not have a material impact on minority housing opportunities; (2) the residents have a right to appeal the RD prepayment decision under 7 U.S.C. § 6991 *et seq.*, 42 U.S.C. § 1489(g), the Fifth Amendment to the U.S. Constitution, and 7 C.F.R. Part 11; (3) the residents are protected against displacement and rent increases by the 2005 and 2021 use restrictions recorded against the property; and, (4) if the residents secured RD Vouchers or HUD Section 8 Housing Choice Vouchers, the use restrictions restrict the owner from raising their rents except in response to increased income.

62. As of May 25, each of the Plaintiffs had a lease in place that was entered into with NorthPark Apartments LLLP and that were identical in all terms relevant to this litigation. Exhibits 5 through 9 – copies of the Plaintiffs' leases. All of the leases include the following provisions that are all consistent with the requirements of the 2005 use restriction recorded against Northpark: (1) should the project be prepaid the lease will be transferred to the new owner for the remaining term and in no case will prepayment cause an increase in tenant contribution during the term of the lease; (2) the lease is an annual

lease renewable on an annual basis except for good cause; (3) if federal subsidies paid to owner on behalf of residents are suspended or canceled during the term of this lease, for whatever reason, the resident's share of the rent shall remain the same as stated in the lease agreement; (4) tenant contribution will not increase if rental assistance is terminated due to fault of the owner; (5) no increase in tenant contribution will occur due to loan prepayment or when rental assistance or interest credit is suspended, canceled, or terminated due to fault of management or the Owner; (6) as a condition of the government's approval of a request to prepay the 515 loan, the resident household is protected against involuntary displacement, except for good cause; (7) the resident households' rents must be consistent with those necessary to maintain the project for low and moderate-income residents; and (8) the owner must give 30 days' advanced written notice of rent increases, which will state the amount the resident is required to pay, the effective date of the increase, the reason for the change, and advise the resident of the right to meet with the owner to discuss the rent increase. Finally, the lease provides that for those 515 projects that are prepaid, resident rent contributions must be set in order to maintain the project as housing for low- to moderate-income households, to protect residents from involuntary displacement, except for good cause, and against having the tenant's portion of the rent materially increased during the term of the use restriction or when the tenant decides to move.

63. On information and belief, RD approved the Plaintiffs' leases when they were first used by the prior owners of Northpark.

64. On information and belief, on or about May 26, 2021, RD, NorthPark Apartments LLLP, and NorthPark Apts LLC participated in an escrow or escrows by which: (1)

NorthPark Apartments LLLP prepaid the balances of the original RD 1985 loan and its RD 2005 loan; (2) RD released its mortgages securing both loans and, in accordance with 7 C.F.R. § 3560.662(b)(2), filed a restrictive use covenant against Northpark protecting the residents of the development as of the date of prepayment against displacement for as long as they reside at the development; (3) NorthPark Apartments LLLP sold Northpark to NorthPark Apts LLC; (4) NorthPark Apts LLC closed a loan with Community Choice Credit Union, the proceeds of which were used to pay part of or all of NorthPark Apartments equity in Northpark. Community Choice Credit Union filed a mortgage against Northpark on June 7, 2021.

65. On information and belief, the 2021 use restriction filed by RD against Northpark is generally consistent with 42 U.S.C. 1472(c)(5)(G)(ii)(I).

66. The sale of Northpark to NorthPark Apts LLC became effective as of June 1, 2021.

#### **B. NorthPark Apts LLC Post Sale Communications with Plaintiffs**

67. On June 23, 2021, J&M Real Estate Group sent a letter to the residents of Northpark on behalf of the new owners reminding them that Northpark is no longer part of the USDA rural development program and that as a result Rental Assistance and the utility allowance previously covered by the program have been terminated. It explained that the residents are responsible for the full rent and utility payments as of July 1, 2021, and will continue to be responsible for both until a RD or HUD Section 8 voucher is issued to them. It stated that residents are “required to apply for rental assistance either through NWIRHA (Northwest Iowa Regional Housing Authority) or USDA Rural Development to assist the Owner operate the property so that such things utilities, lawn care, and maintenance can continue.” The letter also advised the residents that in order to secure a

voucher they must contact USDA immediately and, if they fail to do so, they will not be eligible for an RD voucher in the future. It recommended that they apply to other agencies for any temporary help or assistance that they may need until a voucher is issued. It also stated that while the owners and management do not want to evict anyone for nonpayment of rent they will do so if needed. Exhibit 10 – June 23, 2021 letter from J & M to Northpark residents.

68. The June 23rd letter made no reference to the residents' current leases, did not mention the fact that RD vouchers can provide retroactive assistance to the owner for up to 60-days, and did not advise the residents of their right to grieve the notice, in accordance with 7 C.F.R. § 3560.160.

69. On August 26, 2021 each Plaintiff received a letter from J & M telling them that their rent would be raised as of October 1, 2021 to either \$624 for a one-bedroom apartment, or \$748 for a two-bedroom apartment, "...during the remaining term of your Lease." Exhibit 11 – August 26, 2021 letter from J & M to Northpark residents. The letter states further that the Rental Assistance contract for Northpark expired when the previous owner prepaid the RD loan.

70. On September 10, 2021, Plaintiffs' counsel emailed J & M's counsel, making clear that the threatened October 1, 2021 rent increases were in violation of multiple provisions of the Plaintiffs' leases and asked that Northpark immediately stop taking any further steps to raise the rent on October 1 or evicting them for failing to pay the October 1 rent.

Exhibit 12 – September 10, 2021 email from Plaintiff's counsel to J & M's counsel.

### **C. RD's Unlawful Prepayment Approval of Northpark & Subsequent Actions and Omissions**

71. On information and belief, RD's analysis of the impact of the Northpark

prepayment concluded that there is no material or disproportional impact on minority housing opportunities in the community. It made this finding notwithstanding the fact that a month prior to the prepayment request, RD published data showing that nearly half of the Northpark's 39 residents were racial and ethnic minorities, with ten residents identifying as Black and nine residents identifying as Hispanic.<sup>10</sup> Furthermore, RD's findings contradict city racial demographic and poverty data. According to U.S. Census Bureau estimates for the population of Storm Lake in 2019, of the 10,332 persons residing in Storm Lake, 37.1% were Hispanic, 3.9% were African American, and 18.32% were Asian.<sup>11</sup> Additionally, 19.3% of Storm Lake's Hispanic population, 20.7% of its African American population, and 13.6% of its Asian population live below the federal poverty level.<sup>12</sup> Based upon these factors and ELIPHA, the prepayment of Northpark as an affordable housing option materially affects housing opportunities for minorities in Storm Lake and Buena Vista County.

72. On information and belief, in doing the analysis of material impact on minority households in the community for Northpark, RD's unlawfully added a requirement to ELIHPA, where RD *must find* that the material effect on minority housing opportunities is *worse* than the material effect on non-minority housing opportunities before it can reject the prepayment request. ELIHPA only requires RD to consider if there is a material effect on minority housing opportunities, regardless of the impact on non-minority housing

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<sup>10</sup> The data set, titled USDA\_RD\_MFH\_TENANT\_20-11-17 was posted at *Rural Development Datasets, Multi-Family Section 514 and 515 Management*, available at: [https://www.sc.egov.usda.gov/data/MFH\\_section\\_515.html](https://www.sc.egov.usda.gov/data/MFH_section_515.html). That data set has been replaced with a more current dataset which does not include the Northpark demographics.

<sup>11</sup> U.S. Census Bureau, *ACS Demographic and Housing Estimates*, Storm Lake, Iowa (2019), available at <https://data.census.gov/cedsci/table?q=storm%20lake%20iowa&tid=ACSDP5Y2019.DP05>.

<sup>12</sup> U.S. Census Bureau, *Poverty Status In The Past 12 Months* (2019), available at <https://data.census.gov/cedsci/table?q=storm%20lake%20iowa&tid=ACSST5Y2019.S1701>.

opportunities. These actions and omissions deprived Plaintiffs of the protections they are guaranteed under ELIHPA.

73. In *McFalls v. Purdue*, 3:16-cv-2116-SI (D. Or. Nov. 11, 2016)<sup>13</sup> RD was sued for this very practice after the application of the disproportionate impact standard resulted in RD finding no disproportionate impact and approving the prepayment of a 515 loan. In response to the plaintiffs' challenge of the RD decision and the court's issuance of a tentative opinion on plaintiffs' motion for a preliminary injunction, RD withdrew its original decision, redid its prepayment analysis, and correctly applied ELIHPA's test to determine whether there was a material impact on minority housing opportunities. *Id.*, ECF 38-1 (April 27, 2017). Exhibit 13 – April 24, 2017 Letter of J. Wesley Cochran, Oregon Multi-family Housing Director to Vickey Shiveley. RD found that there was in fact a material impact on minority housing opportunities and reversed its previous decision. *Id.* Thus, RD knew or should have known of the appropriate standard under ELIHPA for determining material impact on minority housing opportunities going forward.

74. On information and belief, RD determined that there is insufficient alternative affordable housing in the Northpark market area to house its residents as of the proposed date of prepayment and, accordingly, that the owners of Northpark could only prepay the Section 515 loans if they were willing to comply with the use restrictions set out at 7 C.F.R. § 3560.662 (a) and (b)(2).

75. On information and belief, NorthPark Apartments LLLP agreed to the placement of such restrictions against Northpark when it prepaid its RD loans in 2021. As part of that

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<sup>13</sup> This case was first filed as *Hilburn v. Purdue*.

agreement NorthPark Apartments LLLP agreed to: (1) to set rents, other charges, and conditions of occupancy in a manner to meet these restrictions; and (2) to post an Agency approved notice of this restriction for the tenants of the property. 7 C.F.R. § 3560.662(e).

76. RD's initial letter to the residents on November 16, 2020 regarding Northpark's prepayment request effectively denied residents their right to appeal any prepayment decisions, by limiting their participation in an appeal to one filed by the property owner, assuming the owner elects to take one. Exhibit 3.

77. On information and belief, RD approved the Northpark prepayment request without notifying the residents, in its March 26, 2021 letter or otherwise, that it had determined that the prepayment will not have a material or disproportional impact on minority housing opportunities and that, because there was inadequate affordable housing in the community, the owner could only prepay the RD loan subject to use restrictions protecting the current tenants. Exhibit 4.

78. In its March 26, 2021 prepayment approval notice to the residents, RD also did not advise them of any actions that RD took with respect to the 2005 recorded use restrictions that obligate the owner and successors in interest to maintain the housing as affordable housing, in conformance with 42 U.S.C. § 1485 and 7 C.F.R. Part 3560 until 2035. *Id.* It also did not advise them of their right to appeal the adverse prepayment decision in accordance with 7 C.F.R. Part 11 and their 5<sup>th</sup> Amendment Due Process Rights. *Id.*

79. On information and belief, RD never held a tenant meeting at Northpark after it approved the prepayment of the RD loans or provided tenants with the Guide.

80. On information and belief, RD never advised the Plaintiffs that as remaining residents who received Rental Assistance prior to prepayment they are entitled to remain



at Northpark at least until their current lease expires and that under RD regulations and the lease terms their lease remains in effect until they voluntarily leave or are evicted for cause.

81. On information and belief RD never advised the Plaintiffs of their right to remain at Northpark under either or both the 2005 or 2021 use restrictions, that if they stay the landlord must operate Northpark as if it remained in the Section 515 program, and that rents, including the utility allowance, must be set accordingly in order to avoid their displacement.

82. On information and belief, more than 50% of the vouchers initially issued by RD are issued to residents who live in Section 515 developments that have been prepaid subject to use restrictions.

83. On information and belief, since the beginning of Fiscal Year 2006, RD has never developed a form letter to residents of developments that have been prepaid subject to use restrictions which explain, in plain language or otherwise, the residents' right to remain in their homes without vouchers and explain the owners' obligations to continue to set rents in accordance with RD regulations that set and maintain shelter costs (rent plus tenant paid utilities) for these residents at 30% of their household income. It has also never advised the Plaintiffs that unless they want to move to other non-RD financed housing, staying in their current homes with RD vouchers or HUD Section 8 Housing Choice vouchers is contrary to their interest.

84. On information and belief, since the beginning of Fiscal Year 2006, RD has never developed a form letter to owners of Section 515 developments that have been prepaid subject to use restrictions that detail their obligation to set and maintain rents for residents

who received Rental Assistance prior to the prepayment in accordance with RD regulations that set and maintain their rents at 30% of adjusted household income.

85. In developments like Northpark that are prepaid subject to use restrictions, the RD Voucher subsidy only assists the owner and not the residents. The owner receives RD Voucher payments that the owner would not have received if the owner were forced, in accordance with the use restrictions and ELIHPA, to maintain rents at the levels that they were under the 515 program, before the prepayment. The residents holding a RD Voucher, on the other hand, bear all the burdens of rent increases, utility increases, and loss of income.

86. Residents who secure HUD Section 8 Housing Choice Vouchers, which are typically operated by area public housing authorities pursuant to 42 U.S.C. § 1437f(o), fare no better. The owner is also receiving HUD Voucher payments rather than being obligated to comply with the use restrictions and ELIHPA and maintain rent levels as if the housing remained in the 515 program. While the owner receives this financial benefit, there are material disadvantages to residents when they are treated as HUD Voucher tenants rather than 515 residents. Residents participating in the HUD Section 8 Housing Choice Voucher program lose, either at the outset or after the end of the initial lease term, a variety of rights guaranteed under the use restrictions and ELIHPA, including the loss of good cause eviction protection outside of a lease term, the loss of rent being capped at 30% of a resident's adjusted monthly income, and the loss of a right to have the lease automatically renew at the end of the term. 42 U.S.C. §§ 1437f(o)(2)(B), (o)(3), (o)(7), (d)(1)(B)(ii), (iii), (v); 24 C.F.R. §§ 982.508, 982.310.

87. RD has never developed a HAP contract or tenancy addendum for use in

developments that are prepaid subject to use restrictions where RD Voucher assistance is extended to remaining residents. Instead, it has been using interlineated HUD Section 8 Housing Choice Voucher program forms that make no reference to the recorded use restrictions and the owners' obligations to continue to operate the housing as if it remained in the 515 program and to follow the regulations set out at 7 C.F.R. § 3560. Both the RD HAP contract and the tenancy addendum, in fact, conflict with the remaining resident use restrictions in a variety of ways, including the type of lease that must be used under the voucher program, the subsequent lease term after the initial lease term, the operating costs that the owner may pass on to the voucher holders, and loss of the good cause termination requirements after the initial lease term.

**D. The Private Defendants' violations of the Plaintiffs' Residential Leases, and Iowa Landlord Tenant Law.**

88. Despite the fact that the residential leases protect the Plaintiffs from, among other things, rent increases during the term of the lease and termination of the lease can only occur for cause, the Private Defendants have relentlessly pursued the Plaintiffs for the full market rent and made clear that they are solely responsible for the cost of tenant-paid utilities.

89. The August 26, 2021 notice specifically says that it seeks to modify rent, "...for the remaining term of your Lease..." despite the fact that paragraph 25 of the lease limits how the lease may be amended, requires prior USDA approval for any lease modification, that changes are only effective at the end of the initial or successive terms, that any changes must be disclosed by notice at least 30 days prior to the proposed change, and that the tenant is offered either a new lease, or lease amendment. The Private Defendants' actions here constitute an unlawful, mid-course change of the lease terms.

90. On information and belief, no proposed increase in rent or other material lease modification by the Private Defendants have received the required prior USDA approval, and no new lease or lease amendment has been issued to the Plaintiffs.

91. The Private Defendants' actions thus violate the various lease provisions by increasing each Plaintiff's rent as a result of prepayment and during their lease terms and failing to inform Plaintiffs right to grieve the increase, pursuant to 7 C.F.R. § 3560.160.

92. The Private Defendants' proposed rent increases also failed to comply with 7 C.F.R. §§ 3560.201-205, 3560.662. This in turn is a violation of paragraph 4G of the respective leases under which "[t]he Owner further agrees to implement changes to the Residents contribution or rental assistance payment only in accordance with the time frames and administrative procedures set forth in Rural Development's handbooks, instructions and regulations related to administration of multi-family housing subsidy programs."

93. The Private Defendants' pursuit of rent increases also contravenes IURLTA's bar on rent increases during the term of Plaintiffs' leases. Iowa Code § 562A.13(5).

94. Paying market rent and utilities without a utility allowance will force all of the Plaintiffs to have to pay several times their prior rent and utilities in order to avoid termination of their leases and eviction from their homes.

95. Plaintiffs have substantially performed and complied with the terms of their leases.

#### **E. Defendants' Violations of Their Limited English Proficiency Obligations**

96. On information and belief, RD has not followed its own 2016 LEP Guidance when it has interacted with the residents of Northpark, some of whom have Limited English Proficiency. For example, Plaintiff Gomez Palacio, who primarily speaks Spanish, did not

fully understand the notices she received from RD or NorthPark LLC. She sought help from a neighbor who was unable to help her understand the notices fully.

97. None of the notices provided by RD to the Plaintiffs in this case regarding prepayment included any LEP instructions, translation or LEP assistance guidance, despite the fact that approximately 30% of Storm Lake residents speak Spanish as their primary language.

98. None of the notices or other vital documents, such as the Plaintiffs' leases, provided by Private Defendants, including the threats of rent increases, have included any LEP instructions, translation or LEP assistance guidance.

99. Plaintiffs have no adequate remedy at law with respect to any of their claims.

## **VI. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **Violation of the Administrative Procedure Act, 5 U.S.C. § 706 (2)**

#### **RD Allowed the 2021 Prepayment in Violation of the 30-year Use Restriction**

#### **Imposed on Northpark in 2005**

100. The Federal Defendants violated 5 U.S.C. § 706(2) by:

- (1) Allowing the prepayment of the Northpark loan without maintaining the 30-year use restriction that was imposed on the property in 2005 in accordance with 7 C.F.R. §§ 3560.406(g) and 3560.662, and by lifting or ignoring that use restriction without complying with 7 C.F.R. § 3560.662(f);
- (2) Allowing Northpark to operate as if it is no longer in the Section 515 program, and thereby breaching their duties under the 2005 use restriction;

- (3) Executing a new use restriction in 2021, to the extent it is in conflict with the 2005 use restriction or sought to invalidate it;
- (4) Federal Defendants' actions are contrary to law and must be set aside because they violate 5 U.S.C. § 706(2).

## **SECOND CLAIM FOR RELIEF**

### **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)**

#### **RD's Determination of Impact of Prepayment on Minority Housing Opportunities is Inconsistent with the Authorizing Statute and Anti-Displacement Requirements.**

101. The Federal Defendants have violated 5 U.S.C. § 706(2) by:
  - (1) Applying regulations that are inconsistent with the requirement of 42 U.S.C. § 1472(c)(5)(G)(ii), which only allow RD to approve an owner's prepayment request upon a determination that the prepayment would not "materially affect" minority housing opportunities;
  - (2) Allowing the approval of an owner's prepayment request upon a determination that the prepayment would not "disproportionally adversely affect" minority housing opportunities 7 C.F.R. 3560.658(b);
  - (3) Applying regulations that fail to incorporate consideration of the implications of its actions or inactions in permitting the prepayment of the Northpark Section 515 loans;
  - (4) Violating their obligation under 42 U.S.C. § 1471 to operate their programs so that involuntary displacement of families is avoided.
102. Federal Defendants' decision here to apply the unlawful regulations is thus contrary to law and must be set aside in accordance with 5 U.S.C. § 706.

### **THIRD CLAIM FOR RELIEF**

#### **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)**

#### **Violation of the Plaintiffs' Regulatory, Statutory and Constitutional Due Process Rights**

103. The Federal Defendants violated 5 U.S.C. § 706(1) and (2) by:
- (1) failing to advise them of all the reasons why they approved the prepayment of Northpark;
  - (2) withholding their right to appeal the agency's decision to approve the Northpark prepayment by not informing them of their due process rights under 7 U.S.C. § 6991 *et seq.*, 42 U.S.C. § 1480(g), and 7 C.F.R, Part 11.
  - (3) failing to provide them with their 5<sup>th</sup> Amendment Constitutional right to due process;
104. Federal Defendants' actions violated plaintiffs' statutory, regulatory and constitutional due process rights, and must be set aside in accordance with 5 U.S.C. § 706.

### **FOURTH CLAIM FOR RELIEF**

#### **Violation of the Administrative Procedure Act, 5 U.S.C. § 706.**

#### **Violation of the Fair Housing Act, 42 U.S.C. §§ 3604(b), 3608(e)(5)**

105. The Federal Defendants violated 5 U.S.C. § 706 by:
- (1) knowingly continuing to apply the higher, more onerous disproportionate standard for determining the impact of a prepayment against minorities than is proscribed under ELIHPA and thereby denying minority households their legal

- rights under ELIHPA to have their RD housing protected from prepayment, so that they have a more secure, affordable, and long-term source of housing;
- (2) applying the higher standard at Northpark in violation of the Fair Housing Act's duty not to discriminate by intent or effect on the basis of race or color;
  - (3) authorizing the prepayment of Northpark under this unlawful elevated standard, which constitutes final agency action for which there is no other adequate remedy; and
  - (4) failing to consider the effects its actions would have on minority households.

106. By acting in this manner, Federal Defendants' breached their duty to affirmatively further fair housing and its duty not to discriminate and deprived Plaintiffs of rights they are guaranteed under those statutory provisions. See 42 U.S.C. §§ 3604(b), and 3608(e)(5).

107. Federal Defendants' actions must be set aside because they are "not in accordance with law." 5 U.S.C. § 706(2)(A).

#### **FIFTH CLAIM FOR RELIEF**

##### **5 U.S.C. § 706(1) and (2)**

#### **RD's Administration of the Rural Voucher Program is Contrary to Law and Arbitrary and Capricious.**

108. The Federal Defendants violated 5 U.S.C. § 706 by:

- (1) engaging in a pattern and practice of offering and issuing vouchers to all residents of developments that are prepaid subject to use restrictions, without regard to whether the remaining residents face displacement or financial hardship by staying in the prepaid development, in violation of ELIHPA's prepayment restrictions by relieving owners of their obligation to financially support remaining residents after



the prepayment and contrary to ELIHPA's intent to preserve 515 housing and discourage prepayments.

- (2) engaging in a pattern and practice of offering vouchers to households that remain in a development prepaid subject to use restrictions, in violation of the purposes of the appropriations acts authorizing the voucher program, the RD Voucher Program Guide and the RD Federal Register Voucher notices because these residents do not face a threat of displacement or financial hardship.
- (3) encouraging prepayments and thereby violating ELIHPA by offering vouchers which, in developments subject to use restrictions, only help the owner and not the residents.
- (4) requiring the use of an interlineated HUD Section 8 voucher HAP contract and tenancy addendum that, in cases of prepayments made subject to use restrictions, violate these restrictions and the rights the residents that are guaranteed under RD regulations codified at 7 C.F.R. §§ 3560.156 -160.

109. The Federal Defendants also operate the voucher program in an arbitrary and capricious manner, in violation of 5 U.S.C. § 706, by:

- (1) not allowing residents to apply for RD vouchers until the prepayment has occurred, leaving them vulnerable to paying market rents, as they are often unable to apply for and receive vouchers within 60 days of the prepayment or to move;
- (2) authorizing RD to issue voucher eligibility notices up to 90 days after they are requested notwithstanding the fact that RD will only allow retroactive payments to owners for 60 days. 61 Fed. Reg. 42309, 42311 (June 29, 2016)

(¶ II 3).

- (3) not providing residents with a copy of the voucher guide or otherwise ensuring that both residents and owners have a clear and full understanding of the options that they have for staying in their homes including the residents' right to remain in their units under their current leases subject to use restrictions;
- (4) not clearly explaining to resident that choosing a voucher may be contrary to their financial and other interests;
- (5) failing to clearly advise owners prior to approving a prepayment that residents may stay in their homes under their current leases at least until their expiration; and
- (6) failing to clearly advise owners prior to approving a prepayment that residents do not need to apply for a voucher to remain in their homes when a prepayment is made subject to use restrictions.

110. The Federal Defendants' practices violate 5 U.S.C. § 706(2) because they are contrary to law and arbitrary and capricious.

### **SIXTH CLAIM FOR RELIEF**

#### **Violation of Limited English Proficiency Requirements**

#### **Title VI and Fair Housing Act**

111. The Federal and Private Defendants violated the mandates against national origin discrimination by:

- (1) failing to comply Limited English Proficiency requirements when issuing leases, notices to the Plaintiffs without any instructions, translation or LEP assistance guidance, in violation of the Plaintiffs' civil rights, including Title VI of the Civil

Rights Act of 1964, 42 U.S.C. § 2000D et seq., and the Fair Housing Act 42 U.S.C. § 3601 et seq and entitling them to relief, including under 5 U.S.C. § 706 against the Federal Defendants.

### **SEVENTH CLAIM FOR RELIEF**

#### **Private Defendants Violation of the Use Restriction, 42 U.S.C. § 1485 and its implementing regulations, Plaintiffs' Leases, Iowa Uniform Residential Landlord Tenant Act**

112. The Private Defendants violated the 2005 and 2021 use restrictions, 42 U.S.C. § 1485 and its implementing regulations (7 C.F.R. 3560 Part 3560, Subpart N), Plaintiffs' leases, and Iowa Landlord Tenant Law when they issued August 26, 2021 notices to the Plaintiffs that increase the Plaintiffs' rents effective October 1, 2021 and repeatedly insisted that the Plaintiffs secure RD Vouchers or HUD Section 8 Housing Choice Vouchers, despite the fact that:

- (1) The 2005 use restriction requires that the Private Defendants continue to operate Northpark as RD Section 515 affordable housing (consistent with 42 U.S.C. § 1485 and its implementing regulations) for very-low, low, and moderate-income residents and applicants and the 2021 use restriction requires the owner to operate the housing as Section 515 affordable housing for the benefit of the residents living at the development as of the date of prepayment;
- (2) The residential leases bar the threatened rent increases or changes in the terms of their tenancies;
- (3) IURLTA, at Iowa Code § 562A.13(5), prohibits rent increases during the term of a lease; and

(4) IURLTA, at Iowa Code § 562A.11, prohibits lease provisions that waive rights under another section of IURLTA.

## **EIGHTH CLAIM FOR RELIEF**

### **Private Defendants Violation of the Use Restriction and No Consideration**

113. The Private Defendants' insistence that each plaintiff must pay the market rent for the apartment or secure a RD Voucher or HUD Section 8 Housing Choice Voucher and sign a new lease and a tenancy addendum violates the 2005 use restriction that requires the Private Defendants to operate the property in compliance with the RD Section 515 affordable housing program and applicable regulations for the purpose of housing very low, low, and moderate-income households as well as the 2021 use restriction which obligates the Private Defendants to operate the housing in the same manner for the benefit of the residents living at the development as of the date of prepayment.

114. As residents of a development prepaid subject to use restrictions, the Plaintiffs gain no benefit from securing a RD voucher or a HUD Section 8 Housing Choice Voucher. Plaintiffs who are forced to secure RD Vouchers or HUD Section 8 Housing Choice Vouchers and enter into new leases subject to the HUD HAP Contract and Tenancy Addendum are financially and otherwise worse off than if they stayed in their homes subject to the use restrictions imposed on Northpark. Any leases entered into by the Plaintiffs and the Private Defendants therefore lack consideration and are void.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for:

A. A declaratory judgment pronouncing that:

i. The actions and omissions of the Federal Defendants are arbitrary,

capricious, and otherwise not in accordance with the law and without observance of procedure required by law under the USDA statutes, implementing regulations, and handbooks, in violation of the Administrative Procedure Act, 5 U.S.C. § 706;

- ii. The Federal Defendants' prepayment regulations applying a disproportionate effect rather than a material effect on minority housing opportunities, are unlawful and invalid as contrary to ELIHPA, 42 U.S.C. § 1472(c)(5), and in violation of the Administrative Procedure Act, 5 U.S.C. § 706;
- iii. The actions and omissions of the Federal Defendants violate the Fifth Amendment to the U.S. Constitution, 7 U.S.C. § 6991, 42 U.S.C. § 1480(g), and 7 C.F.R. Part 11;
- iv. The actions and omissions of the Federal Defendants violate 42 U.S.C. § 1471 and the obligation to operate their programs so that involuntary displacement of families is avoided;
- v. The actions and omissions of the Defendants violate Title VI of the Civil Rights Act and the Fair Housing Act;
- vi. The 2005 use restrictions remain in full force and effect and the 2021 use restrictions remain in full force and effect to the extent that they do not conflict with the terms of the 2005 use restriction;
- vii. The Federal and Private Defendants' actions and omissions are in violation of the 2005 and 2021 use restrictions;
- viii. The Federal Defendants' use of the HUD Section 8 voucher HAP Contract

and tenancy addendum violate owners', who prepay their loans subject to use restrictions, obligations to operate the housing consistent with the requirement of 42 U.S.C. § 1485 and RD Regulations published at 7 C.F.R. Part 3560;

- ix. The Federal Defendants' actions and omissions with respect to the operation of the Voucher Program are contrary to law and otherwise arbitrary and capricious;
- x. The Private Defendants' actions and omissions violate the Plaintiffs' residential lease, and Iowa Code §§ 562A.13(5) (unauthorized rent increases) and 562A.11 (barred lease provisions); and
- xi. The Private Defendants are subject to and obligated to comply with the CARES Act's 30-day termination notice prior to filing any eviction action for non-payment of rent.

B. Enter a preliminary and permanent injunction, without bond, enforcing those declarations and requiring:

- i. the operation of Northpark in conformance with the 2005 use restrictions, the 2021 use restrictions to the extent that they are not in conflict, and all statutes and regulations applicable to Section 515 housing, including regulations set out at 7 C.F.R Part 3560, including complying with setting shelter costs (rent plus tenant-paid utilities) to reflect no more than 30% of the tenant's adjusted monthly income, tenant grievance rights, and other tenant protections;

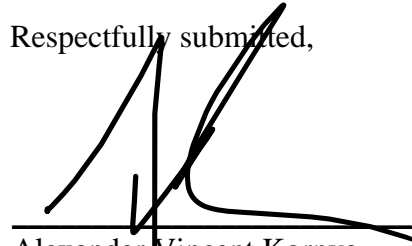
- ii. the Federal Defendants not to apply the standards set forth in the prepayment regulations, 7 C.F.R. § 3560.658(b), to the extent that they are inconsistent with the Federal Defendants' obligations to ensure that there is no material effect on minority housing opportunities as a result of a prepayment;
- iii. compliance with the terms of the Plaintiffs' residential leases, including protecting them from eviction without cause, displacement, termination of utility allowances, and increasing Plaintiffs' rent beyond 30% of adjusted household income for shelter costs (rent plus tenant-paid utilities);
- iv. the Private Defendants to cease mandating that the Plaintiffs secure either a RD Voucher or HUD Section 8 Housing Choice Voucher, or making offers to move the Plaintiffs or execute rental agreements with them at another property owned or managed by the Private Defendants;
- v. If a Plaintiff has been issued a RD Voucher but has not entered into a lease agreement with the Private Defendants, the Federal Defendants shall indefinitely postpone the date by which the Plaintiff must enter into a lease and execute the HUD Tenancy Addendum with the Private Defendants if the Plaintiff chooses to remain in their home;
- vi. the Federal Defendants to cease using HUD's Section 8 HAP Contract and Tenancy Addendum, including requiring the execution of these documents as a condition of the Plaintiffs using a RD Voucher; and
- vii. the Federal Defendants to stop administering the voucher program in a manner that is contrary to law and otherwise arbitrary and capricious.

C. An award of Plaintiffs' costs and reasonable attorney fees; and

D. Such other and further legal and equitable relief as this Court deems just and proper.

DATED this 10<sup>th</sup> day of October, 2021.

Respectfully submitted,



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