

Acosta v. Vilsack SETTLEMENT AGREEMENT

Plaintiffs Claudette Acosta, Joann Sawvell, Sanjuanita Gomez Palacio, Dallas Jones, and Janet Johnson (“Plaintiffs”), Defendants Thomas Vilsack, Justin Maxson, Joaquin Altoro (the “Federal Defendants”), and Defendants Northpark Apts LLC (“Northpark”) and J & M Property Management, Inc. (the “Private Defendants”) (individually, “Party,” and collectively, the “Parties”) hereby enter into this Settlement Agreement (“Agreement”).

WHEREAS, on October 11, 2021, Plaintiffs, tenants of Northpark Apartments (the “Property”) in Storm Lake, Iowa, filed the lawsuit captioned *Acosta et al. v. Vilsack et al.*, Case Number 21-cv-4045, in the U.S. District Court for the Northern District of Iowa (the “Litigation”), challenging: (1) the U.S. Department of Agriculture Rural Development’s (RD) approval of a request to prepay a Multifamily Housing Program loan on the Property issued by RD pursuant to Section 515 of the Housing Act of 1949, 42 U.S.C. § 1485 (“Section 515”); (2) the Private Defendants’ management of the Property following prepayment; and (3) RD’s prepayment approval processes and administration of the Rural Development Voucher Program (“RDVP”).

WHEREAS, the Parties have conducted good-faith settlement negotiations to resolve the Litigation; and

WHEREAS, the Parties wish to avoid the further expense and risk of litigation and believe it is in their best interests to enter into this Agreement;

NOW THEREFORE, the Parties hereby mutually and voluntarily agree as follows:

1. No Admission of Liability or Wrongdoing. This Agreement is the result of the Parties compromising and settling disputed claims. Neither this Agreement nor any representations made by any Party in the course of negotiating this Agreement shall constitute or

be construed as any admission of liability or wrongdoing by any Party, or by their officers, employees, agents, successors, assigns, or representatives, related to any claims or defenses that were raised (or could have been raised) with regard to the Litigation.

2. Satisfaction and Discharge of all Claims and/or Potential Claims.

a. This Agreement is in full and complete satisfaction of any claim, including interest, fees, and costs, that Plaintiffs raised (or could have raised) in the Litigation. Plaintiffs hereby release and forever discharge the Federal Defendants and their successors, the United States of America, any department, agency, or establishment of the United States, and any past or present officers, employees, agents, successors, assigns, or representatives of the United States or any department, agency, or establishment thereof, from any and all claims, whether presently known or unknown, that have been raised (or could have been raised) in the Litigation.

b. Plaintiffs hereby release and forever discharge the Private Defendants and their successors and any past or present officers, directors, members, managers, employees, agents, successors, assigns, or representatives, from any and all claims, whether presently known or unknown, that have been raised (or could have been raised) in the Litigation.

c. The Private Defendants, on behalf of themselves and their successors, any past or present officers, directors, members, managers, employees, agents, successors, assigns, or representatives, hereby release and forever discharge the Federal Defendants and their successors, the United States of America, any department, agency, or establishment of the United States, and any past or present officers, employees, agents, successors, assigns, or representatives of the United States or any department, agency, or establishment thereof, from any and all claims, whether presently known or unknown, that have been raised (or could have been raised) in the Litigation.

d. The Private Defendants, on behalf of themselves and their successors, any past or present officers, directors, members, managers, employees, agents, successors, assigns, or representatives, hereby release and forever discharge the Plaintiffs (including household members) and any other Northpark residents, from any and all claims, whether presently known or unknown, that have been raised (or could have been raised) in the Litigation, other than the tenant's portion of the rent under the use restriction.

e. The United States of America hereby releases and forever discharges Defendant Northpark and its successors, and any past or present officers, directors, members, managers, employees, agents, successors, assigns, or representatives, from any and all claims for civil money damages, whether presently known or unknown, that have been raised (or could have been raised) in the Litigation, in connection with Defendant Northpark's application for a transfer and an assumption of indebtedness under Section 515. This release and discharge does not waive any claims involving false claims, fraud, or misrepresentation and does not waive, and shall not otherwise affect, the authority of the United States Department of Agriculture to enforce or ensure program compliance with applicable statutes and regulations governing Federal programs in which Defendant Northpark participates. This release and discharge further does not release any liability arising under Title 26, U.S. Code (Internal Revenue Code), any criminal liability, and any administrative liability or enforcement right of any other Federal agency.

3. Fees, Costs, and Expenses. Each Party will bear its own costs, expenses, and attorney's fees for all aspects of the Litigation, and/or any settlement negotiations related to the Litigation. In entering into this Agreement, the Parties mutually waive any additional claims either Party may have against any other Party for any fees, costs, or expenses related to the

Litigation, and/or any settlement negotiations related to the Litigation. This Agreement may not be construed as a determination or admission that any Party is a prevailing party or substantially prevailed in any aspect of events or matters that are at issue in this Litigation.

4. Relief.

a. Entry of Property into Section 515 Program.

i. Subject to the issuance by RD of one or more letters to Defendant Northpark setting forth the conditions under which RD will approve a transfer and assumption of indebtedness from the previous owner of the Property, Northpark Apartments LLLP, to Defendant Northpark, and subject to the acceptance of said conditions by Defendant Northpark, and further subject to the execution of any and all documentation needed to accomplish said transaction by Northpark Apartments LLLP, the Parties agree that RD will reinstate the Section 515 loan to Northpark Apartments LLLP and Defendant Northpark will assume said loan on the rates and terms established in RD's letter(s) of conditions. This assumption shall be evidenced by an assumption agreement or other debt instrument executed by Defendant Northpark relating to the Property, and, in conjunction therewith, the Property will enter RD's Section 515 program. Defendant Northpark agrees to execute any and all documentation, including a new 20-year Restrictive Use Covenant, needed to accomplish said transaction, time being of the essence.

A. Rental Assistance.—Subject to Paragraph 4.a.i above, the Parties agree to the following regarding the payment of Rental Assistance:

I. RD and Defendant Northpark will execute, on the Closing Date (as defined in Paragraph 4.a.iv below), a Rental Assistance Agreement covering 24 units at the Property.

II. Within 45 days after the Closing Date, RD will make retroactive Rental Assistance payments for all eligible units at the Property, conditioned upon timely receipt of documentation establishing eligibility for each month beginning July 1, 2021, and processing of the monthly project worksheets. On or before the Closing Date, RD will provide an estimate of the amount of Rental Assistance retroactive for the period from July 1, 2021 through the Closing Date, and also for the period from the Closing Date to June 30, 2023. The estimate will include an estimated calculation of both the gross amount of Rental Assistance, as well as the net amount that reflects the deductions for the monthly loan payments owed by Defendant Northpark under the assumption agreement, in accordance with 7 C.F.R. § 3560.256.

III. For such retroactive Rental Assistance payments covering any portion of the period from July 1, 2021, to June 30, 2022, for any tenant-occupied unit as of June 7, 2021, for which Defendant Northpark is unable to provide a fully executed Form RD 3560-8, Tenant Certification, covering such period and RD cannot confirm that it currently has it in its possession, RD may accept, for purposes of the annual tenant recertification requirement of 7 C.F.R. § 3560.152(e), an alternative formulation of documentation consisting of: (1) a fully executed Form RD 3560-8, Tenant Certification, that was valid as of June 7, 2021; (2) a written statement from Defendant Northpark that it is not aware of any material change to such tenant's annual household income since execution of the most recent Tenant Certification that was valid as of June 7, 2021; and (3) a written statement from Defendant Northpark that the unit was actually occupied

by the tenant for the period for which Rental Assistance is sought; *Provided*, That for any individual who moved into the Property during such period, Defendant Northpark will be required to obtain a fully executed Form RD 3560-8, Tenant Certification, for the payment of any Rental Assistance for such unit; and *Provided further*, That for any Rental Assistance payments for the period beginning July 1, 2022, and thereafter, Defendant Northpark will be required to obtain a fully executed Form RD 3560-8, Tenant Certification, for the payment of Rental Assistance for such unit; and *Provided further*, That RD will not make Rental Assistance payments for any unit for any month for which the tenant receives or received a U.S. Department of Housing and Urban Development (HUD) Housing Choice (Section 8) voucher.

IV. Defendant Northpark agrees to execute any and all documentation required by RD for the payment of any Rental Assistance pursuant to this Paragraph.

B. Further Obligations of Defendant Northpark.—Defendant Northpark also agrees to ensure that all eligible residents of the Property as of July 1, 2021, including those who left the Property after July 1, 2021, receive all credit or reimbursement for any rent overpayments, late payment fees, as well as any adjustments to their Utility Allowances for the period between July 1, 2021, as is set forth in Exh. A, and the Closing Date (as defined in Paragraph 4.a.iv below). Defendant Northpark further agrees that it will actively work to lease up vacant units and admit residents in accordance with 7 C.F.R. § 3560.154. Defendant Northpark further agrees that it will give Plaintiff Sanjuanita Gomez-Palacio an opportunity to apply for a vacant unit at the Property.

Assuming that her application meets the requirements of the applicable regulations, including income eligibility requirements and wait list requirements, Defendant Northpark will admit her as a tenant to the Property.

ii. To facilitate the transfer of the Property to Defendant Northpark as described in Paragraph 4.a.i above, the Administrator of the Rural Housing Service shall provide an exception pursuant to 7 C.F.R. § 3560.8 to allow the down payment made by Defendant Northpark to purchase the Property to be used to calculate the permitted return on investment under 7 C.F.R. § 3560.68. Defendant Northpark agrees to accept the permitted return on investment so calculated.

iii. To facilitate the payment of retroactive Rental Assistance as described in Paragraph 4.a.i.A above, RD will seek an exception from the Administrator of the Rural Housing Service pursuant to 7 C.F.R. § 3560.8 to accept an alternative formulation of documentation for purposes of the annual tenant recertification requirement of 7 C.F.R. § 3560.152(e). The Administrator of the Rural Housing Service shall grant the exception.

iv. The Parties agree that any and all obligations of the Federal Defendants and Private Defendants under the provisions of this Paragraph 4.a will terminate on the date that the loan closes on the Property (the “Closing Date”), except as otherwise provided in this Paragraph 4.a.

b. Additional Non-Monetary Relief by the Federal Defendants. The Federal Defendants agree that RD will do the following:

i. Within 90 days of dismissal of the Litigation, RD will submit to the Office of Management and Budget, for Office of Information and Regulatory Affairs (OIRA) review under Executive Order 12866, a proposed rulemaking governing the RDVP. The proposed rulemaking will include in the preamble a proposed information collection and request for comments under the Paperwork Reduction Act of 1995 for a new RDVP contract form.

ii. Within 90 days of dismissal of the Litigation, RD will hold a stakeholder listening session to solicit feedback on revisions to tenant notification letters issued in connection with the prepayment of a Section 515 loan to make clear to the tenants whether or not there is a use restriction at the property and to address the effect of any existing or new restrictive-use provisions applicable to the property. Within 180 days of dismissal of the Litigation, RD will initiate the clearance process for a revision of the tenant notification letters issued in connection with the prepayment of a Section 515 loan, through a revision to the Multifamily Housing (MFH) Project Servicing Handbook (HB-3-3560), to address the effect of any existing or new restrictive-use provisions applicable to the property, and will notify Plaintiffs' counsel that the clearance process has been initiated. The revision to the MFH Project Servicing Handbook will be issued upon conclusion of the clearance process. RD will use its best efforts to complete the clearance process within 270 days of dismissal of the Litigation. Plaintiffs acknowledge and agree that this Paragraph 4.b.ii does not afford them or their counsel any right or privilege to provide input on the content of the revisions to the tenant notification letters, beyond that offered to all stakeholders through the listening session described above, nor does this Paragraph provide a right to sue for breach of this Agreement on the basis that Plaintiffs or their counsel disagree with the content of said revisions.

iii. Within 90 days of dismissal of the Litigation, RD will hold a stakeholder listening session to solicit feedback on interim revisions to tenant notification letters issued in connection with the RDVP to address the effect of any existing or new restrictive-use provisions applicable to the property, including the effect of such provisions on the rights of tenants with RD vouchers residing at the property. Within 180 days of the dismissal of the Litigation, RD will initiate the clearance process for an interim revision to the RDVP Guide modifying the

tenant notification letters issued in connection with the RDVP to address the effect of any existing or new restrictive-use provisions applicable to the property, including the effect of such provisions on the rights of tenants with RD vouchers residing at the property, and will notify Plaintiffs' counsel that the clearance process has been initiated. The interim revision to the RDVP Guide will be issued upon conclusion of the clearance process. RD will use its best efforts to complete the clearance process within 270 days of dismissal of the Litigation. Plaintiffs acknowledge and agree that this Paragraph 4.b.iii does not afford them or their counsel any right or privilege to provide input on the content of the revisions to the tenant notification letters, beyond that offered to all stakeholders through the listening session described above, nor does this Paragraph provide a right to sue for breach of this Agreement on the basis that Plaintiffs or their counsel disagree with the content of said revisions. The Plaintiffs and RD agree that RD may combine the stakeholder listening sessions, identified in paragraphs 4.b.ii and 4.b.iii, into one listening session.

iv. Within 90 days of dismissal of the Litigation, RD will:

- A. Issue an Unnumbered Letter, with an expiration date of two years, to MFH Directors and Field Operations Division Regional Directors reminding MFH program staff and borrowers of the responsibility to provide meaningful access to Limited English Proficiency ("LEP") persons, including the four-factor analysis as referenced in Departmental Regulation 4330-005, "Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA" (June 4, 2013), and the "Guidance to Federal Financial Assistance Recipients

Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Persons with Limited English Proficiency,” 79 Fed. Reg. 70771 (Nov. 28, 2014).

- B. To the extent that the forms of RD’s tenant notification letters have not already been translated, translate such forms into Spanish.
- C. Plaintiffs acknowledge and agree that this Paragraph 4.b.iv does not afford them or their counsel any right or privilege to provide input on the content of such Unnumbered Letter or translations, nor does this Paragraph provide a right to sue for breach of this Agreement on the basis that Plaintiffs or their counsel disagree with the content of such Unnumbered Letter or translations.

v. RD will use its best efforts to accomplish the nonmonetary relief set forth in this Paragraph 4.b within the timeframes set forth above. However, the Parties acknowledge and agree that, in the event that RD requires an additional, reasonable period of time of not more than an additional 180 days beyond the timeframes set forth therein to complete this nonmonetary relief, Plaintiffs shall not unreasonably withhold their consent.

5. No Precedent or Evidence. No warranty, representation, term, or provision of this Agreement may be offered or received in evidence or have any precedential effect in any civil, criminal, or administrative action against the Federal Defendants or their successors, or against the United States, any department, agency, or establishment of the United States, and any past or present officers, employees, agents, successors, assigns, or representatives of the United States or any department, agency, or establishment thereof.

6. **Dismissal of Litigation.** In exchange for the Federal Defendants and the Private Defendants agreeing to the terms identified in Paragraph 4 of this Agreement, Plaintiffs shall file a stipulation of dismissal of the Litigation with prejudice, signed by all Parties, within 10 days of the Closing Date (defined above), pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure.

7. **Integrated Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties regarding the Litigation. Any statement, representation, remark, agreement, or understanding, in oral or written form, that is not contained in this Agreement shall not be enforced, recognized, or used to interpret this Agreement.

8. **Severability.** Should it be determined that any term of this Agreement is unenforceable, it is the Parties' intention that the term shall be deemed to be deleted and the validity and enforceability of the remaining terms remain intact.

9. **Jointly Drafted Agreement.** This Agreement shall be considered a jointly drafted agreement and shall not be construed against any Party as the drafter.

10. **No Third Party Beneficiaries or Rights.** This Agreement is not intended to create, and does not create, any third-party beneficiary rights or any other kind of right or privilege for any person, group, or entity.

11. **Modification.** The Parties may modify this Agreement only by written agreement signed by each Party.

12. **Execution.** This Agreement may be executed in counterparts, by undersigned representatives of the Parties.

SIGNED:

Claudette M Acosta
Claudette Acosta
Plaintiff

9-2-22
Date

Joann Sawvell
Joann Sawvell
Plaintiff

10/3/2022
Date

Sanjuanita Gomez Palacio
Sanjuanita Gomez Palacio
Plaintiff

09/20/2022
Date

Dallas Jones
Dallas Jones
Plaintiff

09/30/22
Date

Janet Johnson
Janet Johnson
Plaintiff

09/29/2022
Date

Counsel for Plaintiffs

/s/Katherine E. Walz
Katherine E. Walz
Gideon Anders
Marcus Segura
Natalie Maxwell
NATIONAL HOUSING LAW PROJECT

10/12/22
Date

Alexander Vincent Korya
Ericka Petersen
Grant D. Beckwith
IOWA LEGAL AID

Counsel for the Federal Defendants

TIMOTHY T. DUAX
United States Attorney

By: _____
Melissa A. Carrington
Assistant United States Attorney
United States Attorney's Office
Northern District of Iowa

Date

Defendant Northpark Apts LLC

By: _____
Ryan Winter, Member-Manager

Date

Counsel for Defendant Northpark Apts LLC

John Gray
HEIDMAN LAW FIRM

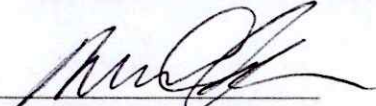
Date

Defendant J & M Property Management, Inc.

By: 
Brandi Jorgensen, Principal

10/12/22
Date

Counsel for Defendant J & M Property Management, Inc.


Daniel E. Dekoter
DEKOTER, THOLE, DAWSON,
ROCKMAN & KRIKKE P.L.C.

10/12/22
Date

Counsel for the Federal Defendants

TIMOTHY T. DUAX
United States Attorney

By: _____
Melissa A. Carrington
Assistant United States Attorney
United States Attorney's Office
Northern District of Iowa

Date

Defendant Northpark Apts LLC

By: Ryan Winter
Ryan Winter, Member-Manager

10/12/2022
Date

Counsel for Defendant Northpark Apts LLC

John Gray
John Gray
HEIDMAN LAW FIRM

10/14/2022
Date

Defendant J & M Property Management, Inc.

By: Brandi Jorgensen
Brandi Jorgensen, Principal

10/12/22
Date

Counsel for Defendant J & M Property Management, Inc.

Daniel E. Dekoter
DEKOTER, THOLE, DAWSON,
ROCKMAN & KRIKKE P.L.C.

Date