

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Kenneth Wayne Hawkins,	*	
Cheryl Brown Potts, Kimanisha Myles,	*	
Reba Curren Jeffery,	*	
Kenetra Williams, Stephanie Winn,	*	
Loretta Gulley, Jeannie Ware,	*	
Michelle Smith, Olivia Swaizer,	*	
Jamie Wasicek, Shealisha Adams,	*	
Plaintiffs,	*	No. 4:18-CV-03052
	*	
v.	*	
	*	
The United States Department of	*	
Housing and Urban Development,	*	
Coppertree Village Holdings LLC,	*	
and	*	
Coppertree Apartments, LLC	*	
Defendants.	*	

AMENDED COMPLAINT

**Introduction**

1. Plaintiffs are current tenants at Coppertree Village Apartments located at 1415 West Gulf Bank Road, Houston, Texas, 77088. This privately owned apartment complex is subsidized through a contract between the owner and the U.S. Department of Housing and Urban Development (HUD) under HUD's Project Based Rental Assistance (PBRA) program. HUD provides approximately \$2.6 million in annual rent subsidies to the owner for the 263 PBRA units at the complex. The PBRA tenants pay approximately \$500,000 in annual rent for the 263 PBRA units.

2. Despite the federal investment in and subsidies for the owners of the apartment, the unit, project, site, and neighborhood conditions at the Coppertree Village Apartments are

dangerous and unfit for family life and the presence of children. HUD's contract with the owner provides that HUD will only pay the subsidy for units that are decent, safe and sanitary as required by law. HUD has violated the law by withholding the relief necessary to assist the Plaintiffs move to decent, safe, and sanitary housing. This complaint requests judicial relief requiring HUD to provide each plaintiff with the assistance needed to obtain housing in better conditions including a Tenant Protection Voucher. The law does not require that HUD terminate the HAP contract before or as a result of providing the relocation assistance. HUD has the legal authority to continue the HAP contract in effect and provide the relocation assistance<sup>1</sup> which can include the issuance of Tenant Protection Vouchers.<sup>2</sup>

3. HUD has made two determinations in October 2018 that the owner is in default of the owner's obligation to maintain the units and the site in decent, safe, and sanitary conditions. Both determinations were set out in Notices of Default. The owner failed to correct the listed deficiencies in the Notices within the time specified in the Notices. After the Notices were issued the electricity failed at the project and was replaced with a temporary emergency electrical system laid on the ground. The physical conditions that have contributed to the high crime rate at the project including inoperable security cameras, gates, and broken fences remain in place. High percentages of the individual units remain without doors and windows with locks, basic sanitary equipment such as sinks, toilets, showers, heaters, and refrigerators that work. Mold continues to

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<sup>1</sup> CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115-141, March 23, 2018 , 132 Stat 348, Sec. 222(d); 24 C.F.R. § 886.323(e).

<sup>2</sup> CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115-141, Title II, Department of Housing and Urban Development, Tenant Based Rental Assistance (2), March 23, 2018 , 132 Stat 348.

exist on exterior and interior surfaces. The roofs still leak. HUD continues to keep the assistance contract in effect and pay the subsidy for the substandard units. HUD has not provided Plaintiffs with the relief they requested which is the assistance necessary to obtain housing in decent, safe, and sanitary conditions.

4. HUD's withholding any assistance to help Plaintiffs relocate is final agency action in violation of the relevant law. Agency action is defined to include an agency "sanction." 5 U.S.C. § 551(13). The APA defines "sanction" as including an agency's "withholding of relief." 5 U.S.C.A. § 551 (10)(B). "Relief is defined as the "grant of . . . assistance . . . or remedy." 5 U.S.C.A. § 551 (13)(A). The relevant law and regulation require HUD to provide the relief of assistance for relocation once HUD has given Notice of Default, the owner has not corrected the deficiencies set out in the notice, and HUD continues to keep the contract in effect and is paying rent to the owner under the contract.<sup>3</sup> Each of requirements for the provision of relocation assistance is met yet HUD continues to withhold the assistance which is the relief provided by law in these conditions. HUD's withholding the relocation assistance and the relief provided by law is final agency action. 5 U.S.C. § 551(13); 5 U.S.C. § 551 (10)(B), 5 U.S.C. § 13(A).

5. The project is located in a predominantly minority census tract. The tract is 0% White non-Hispanic, 85% Black or African-American, and 12% Hispanic. The project is located in a census tract in which 38 % of people are below poverty as reported by the 2016 U.S. Census American Community Survey data. 63% of the children under 6 years of age are below poverty and 60.1% of all children under 18 years of age are below poverty according to the same report.

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<sup>3</sup> CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115-141, March 23, 2018 , 132 Stat 348, Sec. 222(d); 24 C.F.R. § 886.323(e).

6. HUD's refusal to provide the relocation assistance perpetuates racial segregation and imposes severe injuries on a predominantly Black or African-American and a completely minority population, the tenants at the complex. HUD's actions violate the discriminatory intent standard of the Fair Housing Act and the 5<sup>th</sup> Amendment of the U.S. Constitution. HUD's actions violate its obligation under 42 U.S.C. § 3608(e)(5) to prevent federal funding of low income housing in units, projects, and conditions that perpetuate racial segregation and that are not part of an ongoing and effective housing and community revitalization effort. There is no such effort underway for these units.

7. Plaintiffs seek injunctive relief requiring HUD to provide Plaintiffs with the assistance necessary to obtain housing in decent, safe, and sanitary conditions.

### **Jurisdiction**

8. This Court has jurisdiction under 42 U.S.C. § 1331 and 42 U.S.C. § 3613(a)(1)(A). The right to judicial review of the claim for HUD's violation of 42 U.S.C. § 3608(e)(5) and of the claim that HUD's withholding relief is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and the waiver of sovereign immunity for these claims is pursuant to 5 U.S.C. § 702. The waiver of sovereign immunity for the claim that HUD's withholding relief violates 42 U.S.C. § 3604(a) is pursuant to 5 U.S.C. § 702. The right to judicial review and the absence of sovereign immunity for the claim that HUD officials are violating the equal protection principle included in the Fifth Amendment to the United States Constitution is constitutional. Sovereign immunity does not bar a suit to enjoin unconstitutional actions by a federal officer. *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 690–91 (1948); *Pollack v. Hogan*, 703 F.3d 117, 120 (D.C. Cir. 2012).

**Plaintiffs**

9. The Plaintiffs are: Kenneth Wayne Hawkins, Cheryl Brown Potts, Kimanisha Myles, Kenetra Williams, Reba Curren Jeffery, Stephanie Winn, Loretta Gulley, Jeannie Ware, Michelle Smith, Olivia Swaizer, Jamie Wasicek, Shealisha Adams.

10. Each Plaintiff is a current resident at Coppertree Village Apartments for whom the Defendant United States Department of Housing and Urban Development (HUD) pays a subsidy to the owners of the apartments under the Project Based Rental Assistance (PBRA) program. Each Plaintiff also pays 30% of their adjusted household income as tenant's share of the rent.

**Defendants**

11. The Defendant United States Department of Housing and Urban Development (HUD) is an executive agency of the United States government. HUD's withholding the required relocation assistance is a final agency action for which there is no other adequate remedy in a court. Only HUD is obligated under the law to provide the assistance. A lawsuit against the owner cannot provide this relief. HUD's withholding the relief in the form of the assistance to obtain decent, safe, and sanitary housing is final agency action.

12. Defendant Coppertree Village Holdings LLC is the current assignee of the PBRA Housing Assistance Payment (HAP) contract providing for the rental subsidies at Coppertree Village Apartments and is a record owner of Coppertree Village Apartments. Defendant Coppertree Apartments, LLC is a record owner of Coppertree Village. Disposing of this action in these Defendants' absence may:

(i) as a practical matter impair or impede the persons' ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

**Summary of chronology showing HUD's final agency action by HUD's withholding the required assistance and relief to Plaintiffs and the other tenants who wish to relocate**

13. HUD has issued two Notices of Default to the Coppertree Village owner based on the owner's violations of the obligation to provide decent, safe, and sanitary housing. Each Notice of Default set a time period for the cure of the violations. The Coppertree Village owner did not cure the violations within the specified time periods. HUD continues to leave the project based contract, the Housing Assistance Payment contract, in place. HUD continues to withhold the relief for or assistance to Plaintiffs and the other tenants who wish to relocate. HUD's withholding the relief for or assistance to Plaintiffs and the other tenants who wish to relocate is final agency action.

**Chronology showing HUD final agency action withholding assistance and relief to Plaintiffs**

14. The contract between HUD and the Coppertree Village owner for the payment of the federal subsidy funds is the Housing Assistance Payment contract (HAP).

15. The HAP contract provides that HUD will only make payments to the owner for units occupied by eligible families leasing decent, safe, and sanitary units from the owner. If the Contract Administrator (HUD or a third party acting for HUD) determines that the owner has failed to maintain units in decent, safe, and sanitary condition, HUD may abate the housing assistance payments and use the amounts for the purpose of relocating or rehousing assisted residents in other housing. April 1, 2013 Renewal Contract, d(2), page 5. The original HAP requires the owner to maintain and operate the contract units, unassisted units if any, and related

facilities to provide decent, safe, and sanitary housing and provides for relocation of tenants if the units are not maintained in decent, safe, and sanitary condition. 1990 HAP, ¶ 2.5(a), (c).

16. HUD approved the renewal of the HAP contract for a twenty-year term 2013. Under the Renewal Contract the owner warrants that the units to be leased are in decent, safe, and sanitary. ¶ 8.b. The Renewal Contract is a HAP Contract. ¶ 4.a.(1). Except as specifically modified by the Renewal Contract, all provisions of the Expiring HAP Contract are renewed. ¶ 5.a. The owner warrants that the units to be leased are in decent, safe, ¶ 8.b. The renewal states:

Housing assistance payments shall only be paid to the Owner for contract units occupied by eligible families leasing decent, safe and sanitary units from the Owner in accordance with statutory requirements and with all HUD regulations and other requirements. If the Contract Administrator determines that the Owner has failed to maintain one or more contract units in decent, safe and sanitary condition, and has abated housing assistance payments to the Owner for such units, the Contract Administrator may use amounts otherwise payable to the Owner pursuant to the Renewal Contract for the purpose of relocating or rehousing assisted residents in other housing." 2013 HAP Renewal ¶ 4.d.(2).

17. HUD approved the reassignment of the HAP contract to the current Coppertree Village owner in 2015. The original 1990 HAP and the 2013 HAP renewal are assigned. Page 1. "Effective as of the date of this Agreement the Buyer agrees to assume and to be bound by said HAP Contract as modified" in the assignment agreement. Page 1.

18. The Assignment amends the HAP contract to include the following provision:

Physical Conditions Standards and Inspection Requirements. The Owner shall comply with the Physical Condition Standards and Inspection Requirements of 24 CFR Part 5, Subpart G, including any changes in the regulation and related Directives. In addition, the Owner shall comply with HUD's Physical Condition Standards of Multifamily Properties of 24 CFR Part 200, Subpart P, including any changes in the regulation and related Directives. This obligation shall apply both during the current term of the HAP contract and during each successive renewal term. ¶ 4, page 2.

19. HUD appointed Southwest Housing Compliance Corporation (Southwest) to be the

Project Based Contract Administrator (PBCA) acting on HUD's behalf under the terms of the HAP.

**The 2016 Management and Occupancy Review found conditions that were imminent health and safety risks to residents**

20. Southwest conducted a Management and Occupancy Review of Coppertree Village beginning on 9/26/2016 and issued the report of the Review on 10/28/2016.

21. The Management Review included inspections of the physical conditions, appearance, and security at Coppertree Village Apartments.

22. The Review rated both Security and General Appearance Unsatisfactory and required corrective action within 30 days.

23. The finding of Unsatisfactory Security was based on the criminal activity that had occurred at the property within the previous twelve months. The calls for police assistance included 33 calls for burglary/theft/robbery, 44 for drug activity, 13 for gang activity, 13 for auto theft, 2 for sexual assault, and 6 for shooting/sniper. The guardhouse at the entrance was not utilized. The security cameras had been inoperable for an extended period. The community room was boarded shut because it was being used as a safe haven for criminal activity. The common areas were not adequately lighted. The limited use of off-duty police personnel was not acting as enough of a deterrent "as significant criminal activity continues at the property."

24. The review rated Maintenance as requiring corrective action within 30 days. The conditions did not comply with HUD's requirements for the units and the facility to be decent, safe, and sanitary. The conditions to be corrected included compliance with and adoption of updated written procedures that address maintenance implementation and oversight and work order completion. The units were to be inspected and the inspections were to be documented.



25. The review found insufficient oversight of the property staff by the management agent to ensure the property is maintained in decent, safe, and sanitary condition and HUD's leasing and occupancy requirements were implemented.

**Congress provided additional remedies for noncompliance on March 23, 2018**

26. The 2018 CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115 141, March 23, 2018, 132 Stat 348, Sec. 222 set the range of remedies for HUD to implement once a PBRA owner has failed to cure the violations set out in a Notice of Default. HUD may: replace project management, impose civil penalties, abate the contract, pursue new ownership, transfer the contract to another project, exclude owner from other program, seek a receiver, stabilize the property, or take any other regulatory or contractual remedies available as deemed necessary and appropriate by the Secretary. Sec. 222 (c)(2). But if the remedy chosen leaves the project based contract in place, HUD must exercise the contractual abatement remedies to assist relocation of tenants for major threats to health and safety after written notice to the affected tenants. Sec. 222(d). The Appropriations Act also provides for the issuance of Tenant Protection Vouchers where HUD has given a Notice of Default and the units pose an imminent health and safety risk.<sup>4</sup>

**The 2018 Management and Occupancy Review found conditions that were imminent health and safety risks to residents**

27. Southwest conducted a Management and Occupancy Review of Coppertree Village beginning on 6/28/2018 and issued the report of the Review on 7/26/2018. The overall rating was Unsatisfactory.

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<sup>4</sup> CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115-141, Title II, Department of Housing and Urban Development, Tenant Based Rental Assistance (2), March 23, 2018 , 132 Stat 348.

28. The Management Review included inspections of the physical conditions, appearance, and security at Coppertree Village Apartments.

29. The Review rated both Security and General Appearance Unsatisfactory and required corrective action within 30 days.

30. The Security finding of Unsatisfactory was based on:

- o fallen down fences, non-functioning and permanently open controlled access vehicular gates, an unused guard shack at the front entrance, the criminal activity that had occurred at the property within the previous twelve months. The calls for police assistance in the past twelve months included:

- o 53 calls for shots fired/ weapon-related disturbances, including the accidental shooting death of a 6-year old in January 2018;

- o 8 calls for "person down"

- o 8 warrants

- o 61 calls for personal assaults

- o 54 calls for thefts/ burglary/ robbery

- o 11 calls for narcotics

- o 111 calls for suspicious persons/ events

- o 112 calls for disturbances

- o 37 calls for criminal mischief

- o 40 calls due to the alarm system

- o 4 calls requesting an escort and

- o 37 calls because of a suicide attempt/ threat to life by phone.

The onsite security cameras were not working.

There was no documentation of any police activity on any police logs at the property.

Deficiencies from the 2016 Management and Occupancy Review had not been cured.

The report stated:

This was a repeat finding from the 2016 Management and Occupancy Review. The owner had promised to repair the inoperable cameras, repair the perimeter fence, utilize the guard house, repair the lights, and institute a parking sticker requirement. The only observed improvements were the addition of floodlights and a parking sticker requirement enforced at night. The Review found "The effect is a property that is unsafe." The owner was given 30 days to correct the conditions.

31. The Review found the following Maintenance conditions:

None of the HUD required annual unit inspections had been performed since 3/23/2017.

The only list of repairs did not include any of the units covered by the HAP contract. The Report

included 24 Life Threatening Health & Safety Finding Notifications. The owner/agent stated it would start a preventive maintenance and unit inspection schedule in September 2018. The report found "the effect is units not fully meeting HUD's definition of decent, safe and sanitary condition." The report noted the owner had promised to perform unit inspections after the 2016 review but "this did not occur."

32. The Review found that the owner's lead based paint plan found that lead based paint was most likely present but there was no documentation to show that any of the required abatement or surveillance or notice activities were being performed. The report found that "tenants are unaware of lead-based paint at the property."

33. The review found fires in two buildings had made 11 units unavailable for renting.

34. Corrective actions were required for all of these and other sub-standard conditions.

35. The report found that the owner certifications made after the 2016 Management and Occupancy Review had not been followed.

Condition: Effective policies, controls and oversight are lacking to ensure the success of Texas Coppertree Apartments, as noted and evidenced by the number of Findings outlined in this Report.

Of particular concern:

- The owner certifications from the last MOR have clearly not been followed or observed. There is no formal preventive maintenance program in place at the property and unit conditions remain poor. The community room has been under construction for over 2 years. The repetitive nature of the issues identified in Finding #1 show inaction on the part of the Owner/ Agent to ensure all units are maintained in a decent, safe and sanitary manner.
- Security has not been enhanced and largely remains the same as in 2016. There were 767 calls for service from 5/21/17 to 5/19/18, an increase from the 567 calls for service from 9/1/15-8/31/16. There is an immediate need for more safety patrol, functioning cameras and limited access gates.
- The high amount of calls received by Southwest's call center denotes a need for another way for residents to reach out to management regarding problems at the property.
- The lack of annual unit inspections and +200 open work orders.

- Inadequate training and number of maintenance personnel, evident in the number of substandard repairs and units not ready for occupancy.

36. The report concluded that:

Due to the above, as well as the numerous deficiencies outlined in this Report, it is evident that the Owner/Agent is not providing, and may not be currently capable of providing, acceptable management of the property.

Note: This is a repeat Finding from the 2016 MOR.

**The 9/26/2018 REAC inspection found conditions that were imminent health and safety risks to residents**

37. HUD conducted a Real Estate Assessment Center (REAC) inspection of the Coppertree Village Apartments on September 26, 2018. The HUD REAC inspection process scores and ranks the physical condition of HUD assisted multifamily including PBRA projects. 24 C.F.R. § 200.857. The September 26, 2018 HUD REAC inspection was sixty days after the 7/26/2018 delivery of the Management and Occupancy Review was provided to the Coppertree Village owner.

38. HUD's REAC report for Coppertree Village is 106 pages long. The inspection was conducted on only a sample of the buildings and the units. In the buildings and units sampled, HUD found 117 health and safety deficiencies. HUD stated that based on this sample, it projected that "a total of 875 health and safety deficiencies would apply to the property."

39. The report found the same security fencing and gate deficiencies found in the 6/28/18 Management and Occupancy Review inspection.

40. The report found other serious departures from decent, safe, and sanitary housing conditions:

72% of the units had missing/damaged/inoperable refrigerator;

64% of the units had Damaged walls,

64% of the units had doors with Damaged Surface (Holes/Paint/Rust/Glass);

68% of the units had doors with Damaged Hardware/Locks;

64% of the units had smoke detectors Missing/Inoperable;

44% of the units had damaged/missing bathroom lavatory sinks;

36% of the units had damaged/missing bathroom shower/tub;

36% of the units had dishwashers/garbage disposals Inoperable;

48% of the units had Sharp Edge Hazards.

76% of the buildings had walls with Stained/Peeling/Needs Paint;

62% of the buildings had walls with Missing Pieces/Holes/Spalling;

43% of the buildings had roofs with Missing/Damaged Components; and

38% of the buildings had stairs with Broken/Damaged/Missing Steps;

41. The Site had overgrown/penetrating vegetation; damaged/broken play areas and equipment; and tripping hazards. There was a Lead Hazard Report listed.

42. The property had a failing score of 31c out of a possible 100 points. HUD stated "The inspection report identified serious deficiencies that demonstrate the Owner is in default of the Original HAP and HAP Renewal."

**10/3/2018 HUD Notice of Default to owner of Coppertree Village**

43. HUD sent a Notice of Default to the owner of Coppertree Village Apartments on October 3, 2018. The Notice of Default stated:

This letter constitutes formal notice by the Secretary of the U.S. Department of Housing and Urban Development that Coppertree Village Holdings LLC (DBA Texas: Coppertree Investments, LLC) ("Owner"), owner of the Texas Coppertree Village ("Project"), is in default of the HUD Housing Assistance Payments ("HAP") Contract originally entered into as of November 3, 1990 ("Original HAP") and most recently renewed with a Basic Renewal Contract effective April

1, 2013("HAP Renewal").

44. HUD based this Notice of Default on the June 26, 2018 Management and Occupancy Review finding that the property's overall rating was Unsatisfactory. The Notice of Default also cited the following as serious deficiencies identified in the MOR report: deficiencies related to security, property damage, criminal activity, physical condition, untimely completion of work requests, and resident complaints related to some or all these issues. HUD stated in the Notice that "The Owner was provided time to correct these deficiencies but failed to do so." The MOR deficiencies demonstrated the owner is in default of the HAP requirements that the units be decent, safe, and sanitary.

45. The October 3, 2018 Notice of Default is addressed to Coppertree Village Holdings LLC (DBA Texas: Coppertree Investments I LLC) as the Owner.

Attention: Robert Howe, Owner  
819 Windsor Drive SE  
Sammamish, WA 98074 [NOD 10.3.18.pdf]

**HUD October 9, 2018 Notice of Default**

46. HUD sent another Notice of Default to the entity HUD stated was the owner of Coppertree Village Apartments on October 9, 2018. The Notice of Default stated:

This letter constitutes formal notice by the Secretary of the U.S. Department of Housing and Urban Development that Triumph Housing Management, LLC ("Owner"), owner of the Texas Coppertree Village ("Project"), is in default of the HUD Housing Assistance Payments ("HAP") Contract originally entered into as of November 3, 1980 ("Original HAP") and most recently renewed with a Basic Renewal Contract effective April 1, 2013 ("HAP Renewal").

47. HUD based the October 9, 2018 Notice of Default on the September 27, 2018 Real Estate Assessment Center ("REAC") inspection and the resulting failing score. HUD stated that

the HAP and the HAP Renewal required the owner to provide decent, safe, and sanitary housing including the provisions of all services, maintenance, and utilities. HUD stated "The inspection report identified serious deficiencies that demonstrate the Owner is in default of the Original HAP and HAP Renewal."

48. The October 9, 2018 Notice of Default is addressed to Triumph Housing Management, LLC, Attention: Paul Ponte 5920 Odell Street Cumming, GA 30040 as the Owner. This notice is based on the "On September 27, 2018 the Real Estate Assessment Center ("REAC") inspected the Project and the Project received a failing score of 31c\* . . ."

**HUD October 18, 2018 tenant notice**

49. On October 18, 2018, HUD gave the tenants the following information about the two HUD Notices of Default to the owner.

On October 3, 2018, the U.S. Department of Housing and Urban Development ("HUD") sent a Notice of Default to the owner of Texas Coppertree Village Apartments, Coppertree Village Holdings LLC ("Owner"). This default occurred because on June 28, 2018 the property received an overall Unsatisfactory rating on a Management and Occupancy Review ("MOR"). Serious deficiencies identified in the MOR report included: deficiencies related to security, property damage, criminal activity, physical condition, untimely completion of work requests, and resident complaints related to some or all these issues. The Owner was provided time to correct these deficiencies but failed to do so. See the attached copy of the Notice of Default for more details.

Subsequently, on October 9, 2018, HUD sent a second Notice of Default to the owner. This second default occurred because on September 27, 2018 the property received a score of 31c\* out of 100 on a physical condition inspection conducted by HUD's Real Estate Assessment Center ("REAC"). Some of the deficiencies identified in the REAC report include: missing or inoperable smoke detectors, exposed wires or open panels, blocked emergency exits, broken appliances, holes in the wall, damaged locks, infestation of insects and roaches, and mold and mildew. The Owner now has 60 days to correct these deficiencies. See the attached copy of the second Notice of Default for more details.

**The Notices of Default are the basis for HUD's remedial actions**

50. The Notices of Default are the product of HUD's decision making process including the inspections. The Notices of Default are not merely tentative or interlocutory in nature. HUD states that The Notices of Default are the prerequisites for HUD action to remedy the conditions constituting the default.

Notwithstanding the provisions of Section 222, NOV's/NODs are legal notices required under our business agreements, and they provide the basis for any enforcement action taken by HUD if the compliance requirements in the notices are not met. Therefore, the notices must be accurate and include all elements required under the business agreements, regardless of the minimum requirements stated in this Notice. HUD Notice: H 2018-08, Issued: October 29, 2018, page 4.

51. Even an administrative appeal that results in a higher score does not require HUD to withdraw the Notice of Default. *Id.*

52. The notice is final on its face. The owner is in default and the time for cure has expired. The Notice of Default sets out the legal consequences flowing from the Notice.

If the Owner fails to take the necessary corrective actions required by this Notice of Default of Housing Assistance Payments (HAP) Contract letter, the Secretary will, without further notice, declare the Owner in default of the HAP contract and will seek any and all available remedies, including but not limited to, acceleration of the outstanding principal indebtedness, foreclosure, abatement of the Housing Assistance Payments (HAP) Contract or any other appropriate remedies.

53. HUD had already entered an adverse finding with legal consequences against the owner and the manager of the project based on the findings in the Notice of Default.

As a result of the Unsatisfactory MOR rating, the following entities and their principals were flagged in HUD's Active Partners Performance System (APPS):

- Coppertree Village Holdings LLC (DBA Texas: Coppertree Investments LLC) (473607025) - Owner Entity
- Triumph Housing Management LLC (274589218) - Management Entity

These flags may adversely affect the Owner's and Management Agent's eligibility for participation in HUD programs, under HUD's Previous Participation



Certification procedure, by constituting a standard for disapproval.

54. HUD's regulation also sets out legal consequences flowing from the Notice of Default.

24 C.F.R. § 886.323(e) Failure to maintain decent, safe, and sanitary units. If HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the family continues to occupy the unit) and rescission of the sale. If, however, the family wishes to be rehoused in another dwelling unit, HUD shall provide assistance in finding such a unit for the family. 24 C.F.R. § 886.323(e).

55. The range of remedies authorized by law once an owner has failed to cure a Notice of Default is specified in the 2018 Appropriations Act: replace project management, impose civil penalties, abate the contract, pursue new ownership, transfer the contract to another project, exclude owner from other program, seek a receiver, stabilize the property, or take any other regulatory or contractual remedies available as deemed necessary and appropriate by the Secretary. Sec. 222 (c)(2). However, if the remedy chosen leaves the project based contract in place, HUD must exercise the contractual abatement remedies to assist relocation of tenants for major threats to health and safety after written notice to the affected tenants. Sec. 222(d).

56. In addition to the remedy for Plaintiffs specified in 24 C.F.R. § 886.323(e) and required under the Appropriations Act given HUD's choice to leave the contract in place, the Notice of Default and the subsequent failure of the owner to cure the violations within the specified time period provides a legal basis for a HUD decision to issue Tenant Protection Vouchers for the relocation of the project families. CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115-141, Title II, Department of Housing and Urban Development, Tenant

Based Rental Assistance (2), March 23, 2018, 132 Stat 348.

**The deficiencies in the Notices were not cured within the time specified**

57. The deficiencies set out in the October 3, 2018 and the October 9, 2018 Notices of Default have not been cured within the sixty days required. The deficiencies remain in place.

58. The HUD REAC inspection of the Coppertree Village Apartments on September 26, 2018 occurred sixty days after the 7/26/2018 delivery of the Management and Occupancy Review to the Coppertree Village owner. The deficiencies in the 7/26/2018 Management and Occupancy Review Report were still substantially in place as of the REAC inspection.

59. The deficiencies in the 2018 Management and Occupancy Review Report and the 2018 REAC Report remain in place and continue to subject Plaintiffs and the other tenants to imminent health and safety risks.

60. The measures to ensure safety from crime have not been implemented. The fences are still breached. The gate does not close. There is no one in the gate house. The security cameras are not operable. The burned-out units remain unrepaired and open nuisances.

**Additional imminent health and safety risks continued after the Notices of Default and the time for cure**

61. Three days after the October 9, 2018 Notice of Violation to the Coppertree owner, on October 12, 2018, the electricity went out at Coppertree Village Apartments. Coppertree Village informed residents that Center Point Energy had done all the offsite work and the problem with the lack of electrical service was on the site. The owner had no estimate of when the problem would be fixed. Residents went for several days without electricity. The Coppertree owner's solution to the electrical problem has been to run a temporary electrical line on the ground. This electrical service is not a standard and adequate, safe solution for receiving electricity in an

apartment. The electricity provided to the tenants is erratic. Given the erratic and dangerous electrical service inside the units that already existed before this temporary and unsafe set up, the residents fear a fire will result. Residents often do not have electricity or hot water. This unsafe situation continues to this day.

62. The lack of standard electrical equipment fails to meet HUD's definition of decent, safe, or sanitary housing. 24 C.F.R. § 5.703.

63. On December 8, 2018, after significant rain, many units leaked with water entering through holes in the roof, walls, and through the doors. The water coming into the units causes an already tenuous and dangerous electrical situation to be even worse.

64. There has been no repair or other activity to remedy the mold in the units and on the building exteriors.

65. The heaters do not work in numerous apartments.

**HUD has chosen the enforcement action it will take which is continuation of the contract**

66. HUD has continued to ensure that the project based contract, the Housing Assistance Payment contract, has remained in effect.

67. HUD has not provided any assistance for Plaintiffs or other tenants at Coppertree Village Apartment to relocate.

68. HUD has chosen the enforcement action it is going to take as a consummation of its decision making process by continuing to make payments to the owner under the HAP contract. HUD continues to keep the project based contract at Coppertree Village in effect. This HAP contract is security for the \$17,000,000 loan on the property held by the Federal Home Loan Mortgage Corporation (Freddie Mac), a federal quasi-government corporation under the

conservatorship of the Federal Housing Finance Agency.

69. HUD is not going to provide relocation assistance to Plaintiffs.

70. HUD's withholding of relief for Plaintiffs by not providing any relocation assistance has legal consequences. The owner continues to be paid. The Plaintiffs do not receive relocation assistance.

**HUD's withholding any assistance to help Plaintiffs relocate is final agency action that is arbitrary, capricious, an abuse of discretion and is not in accordance with the relevant law**

71. Agency action is defined to include an agency sanction. 5 U.S.C. § 551(13).<sup>5</sup> The APA defines sanction as including an agency withholding of relief. 5 U.S.C.A. § 551 (10)(B). Relief is defined as the grant of . . . assistance . . . or remedy. 5 U.S.C.A. § 551 (13)(A). *Doe v. United States*, 853 F.3d 792, 798, 800 (5th Cir. 2017), as revised (Apr. 12, 2017).

72. Both the 2018 Appropriations Act Sec. 222(d) and the HUD regulation 24 C.F.R. § 886.323(e) require HUD to provide the relief of assistance for relocation upon the occurrence of specified events. Both authorities include the same three events:

- the issuance of a Notice of Default,
- the failure of the owner to cure the deficiencies set out in the notice, and
- the continuation of the HAP contract. 2018 Appropriations Act, Sec. 222(d), 24 C.F.R.

§ 886.323(e).

73. Under the Appropriations Act if HUD is taking appropriate steps to ensure that project-based contracts remain in effect then HUD can do so only subject to the exercise of HUD's contractual abatement remedies to assist relocation of tenants from the major threats to

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<sup>5</sup> (13) "agency action" includes the whole or a part of an agency rule, order, license, **sanction, relief**, or the equivalent **or denial thereof**, or failure to act; 5 U.S.C.A. § 551 (13). (emphasis added.)

health and safety after written notice to the affected tenants. Sec. 222(d). All three of these events have occurred. HUD has issued Notices of Default. The owner did not remedy the deficiencies within the time specified. HUD continues to make payments under the HAP. Even though the predicate for the relief is satisfied, HUD is withholding the relief of the abatement remedies to assist relocation of tenants.

74. The HUD regulation includes a different fourth event, the choice of the family to relocate. If a family wishes to be rehoused in another dwelling unit, **HUD shall provide assistance in finding such a unit for the family.** 24 C.F.R. § 886.323(e). This event has also occurred. Plaintiffs have clearly expressed their wish to be rehoused with a voucher as have other tenants. Despite the predicate being met, HUD has withheld the assistance. The Plaintiffs and other tenants also requested assistance to relocate including voucher assistance in the tenant comments filed with HUD on November 16, 2018.

75. HUD's sanction, the withholding of relief, is final. HUD's sanction is stated to be the product of HUD's full consideration of the facts and it has legal consequences. *U.S. Army Corps of Engineers v. Hawkes Co., Inc.*, \_\_\_ U.S. \_\_\_ 136 S.Ct. 1807, 1813-1814 (2016) *citing Bennett v. Spear*, 520 U.S. 154, 177-178 (1997).

76. HUD has chosen the enforcement action it is going to take as a consummation of its decision making process. HUD is continuing to keep the project based contract at Coppertree Village in effect. HUD is not going to provide relocation assistance.

77. HUD's action withholding a remedy that provides Tenant Protection Vouchers or other assistance in finding another dwelling unit in decent, safe, and sanitary condition was outside the scope of HUD's discretion. HUD's withholding the remedy is arbitrary, capricious,

an abuse of discretion and otherwise not in accordance with law. *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–16 (1971); *Senate Manor Properties, LLC v. U.S. Dep't of Hous. & Urban Dev.*, 2008 WL 5062784, at \*1 (S.D. Ind. 2008) (HUD decision to abate PBRA subsidies was justified).

78. The range of remedies authorized by law once an owner has failed to cure a Notice of Default is specified: replace project management, impose civil penalties, abate the contract, pursue new ownership, transfer the contract to another project, exclude owner from other program, seek a receiver, stabilize the property, or take any other regulatory or contractual remedies available as deemed necessary and appropriate by the Secretary. Sec. 222 (c)(2). However, if the remedy chosen leaves the project based contract in place, HUD must exercise the contractual abatement remedies to assist relocation of tenants for major threats to health and safety after written notice to the affected tenants. Sec. 222(d).

79. HUD's own regulation similarly limits its discretion once an owner has been given a Notice of Default and has failed to cure the violations. HUD may exercise any of its contract or regulatory agreement rights. But whatever choice HUD exercises, if a family wishes to be rehoused in another dwelling unit, **HUD shall provide assistance in finding such a unit for the family.**" 24 C.F.R. § 886.323(e) (Emphasis added).

**HUD's decision to withhold Tenant Protection Vouchers as a form of relocation assistance is final agency action that violates the Fair Housing Act and the Constitution**

80. HUD also has the authority under the law to provide another specific remedy for Plaintiffs. Because HUD has issued the Notices of Default and the units continue to pose an imminent health and safety risk to residents, HUD can issue Tenant Protection Vouchers to Plaintiffs and the other tenants. CONSOLIDATED APPROPRIATIONS ACT, 2018, PL

115-141, Title II, Department of Housing and Urban Development, Tenant Based Rental Assistance (2), March 23, 2018, 132 Stat 348. The prerequisites are met. HUD issued the Notices of Default. The units pose an imminent health and safety risk to residents. HUD does not have to terminate the HAP in order to provide these vouchers. HUD can pay for the vouchers from the funds already appropriated. *Id.* If the HAP is not terminated, the vouchers are relocation vouchers and sunset when the current participant leaves the voucher program. If the HAP is terminated, the vouchers are replacement vouchers and remain available for re-use in the community. HUD Notice PIH 2018-09.

81. HUD has made the final decision to withhold this relief from Plaintiffs. The decision has legal consequences. Plaintiffs do not receive the voucher assistance that could be used for relocation. The facts show that HUD's decision to withhold the relief is based on the discriminatory purpose to maintain racial segregation and to disadvantage a group of minority households. The use of discretion to accomplish intentional racial discrimination violates both the U.S. Constitution, 42 U.S.C. § 3604(a), and 42 U.S.C. § 3608(e)(5). *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 157 (1st Cir. 1987); *Clients' Council v. Pierce*, 711 F.2d 1406, 1425 (8th Cir. 1983).

82. HUD's withholding the relief of Tenant Protection vouchers or the other assistance in finding another dwelling unit in decent, safe, and sanitary conditions is illegal final agency action based on the following facts.

A. It makes decent, safe, and sanitary housing unavailable because of race as shown by the facts shown in this complaint as summarized below and showing the circumstantial evidence of HUD's intent to discriminate on the basis of race and ethnicity.

1) The action disadvantages a completely minority group, the tenants at Coppertree Village by causing them to live in units, a project, and a neighborhood that poses an imminent health and safety risk to them and to their families. No White non-Hispanic households are in the group.

2) The action subjects the minority group to continued residence in units, a project, and a neighborhood that is substantially unequal to the unit, project, and neighborhood conditions for the majority White non-Hispanic Project Based Rental Assistance projects in the Houston metropolitan area.

3) HUD's action is contrary to the substantive norm requiring it to assure that the tenants residing in Project Based Rental Assistance are receiving decent, safe, and sanitary housing. 24 C.F.R. §§ 886.323 (a), (d), (e).

4) HUD's action is contrary to the substantive norm that once HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition and the owner fails to take corrective action within the time prescribed in the notice, HUD shall provide assistance in finding a unit in decent, safe, and sanitary condition for each family that "wishes to be rehoused in another dwelling. . . . 24 C.F.R. § 886.323(e).

5) HUD's action is contrary to the procedural norm that once HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, further payments for the units violate the Housing Assistance Payment Contract between HUD and the owner.

(2) Housing assistance payments shall only be paid to the Owner for contract units occupied by eligible famines leasing decent, safe and sanitary units from the Owner in accordance with statutory requirements. and with all HUD regulations and other requirements. Project-based Section 8 HOUSING ASSISTANCE



PAYMENTS BASIC RENEWAL CONTRACT MULTI-YEAR TERM.

6) HUD's action is contrary to the procedural norm that if HUD does "take appropriate steps to ensure that project-based contracts remain in effect, it does so subject to the exercise of contractual abatement remedies to assist relocation of tenants from the major threats to health and safety after written notice to the affected tenants. CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115-141, March 23, 2018, 132 Stat 348, Sec. 222(d). HUD is leaving the project based contract in effect but has taken no action to exercise the contractual abatement remedies to assist Plaintiffs relocate from the major threats to health and safety in their units and in the project.

7) HUD's action is contrary to the procedural and substantive HUD obligation in the administration of the HAP contract with Defendant Coppertree Village Holding, LLC to take and require meaningful actions that:

- address significant disparities in housing needs and in access to opportunity,
- replace segregated living patterns with truly integrated and balanced living patterns,
- transform racially and ethnically concentrated areas of poverty into areas of opportunity,

and

- foster and maintain compliance with civil rights and fair housing laws. 42 U.S.C. § 3608(e)(5); *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 156 (1st Cir. 1987); *Shannon v. U.S. Dep't of Hous. & Urban Dev.*, 436 F.2d 809, 819, 821-822 (3d Cir. 1970).

HUD's refusal to provide plaintiffs with the grant of assistance necessary to obtain decent, safe, and sanitary housing in neighborhood conditions substantially equivalent to the conditions in

which majority White non-Hispanic occupied PBRA projects are located is the failure to provide the assistance that would address the significant disparities, segregated living patterns in racially concentrated areas of poverty, and comply with civil rights and fair housing laws.

**Dangerous and unfit conditions**

**High number of crimes at the Apartment**

83. The high number of violent and serious crimes committed on the Coppertree Village Apartment premises victimizes the apartment residents. In 2016, HUD's agent, Southwest found that the failure to provide adequate security from criminal activity violated the HUD 24 C.F.R. § 5.703 housing quality standards, the governing contract requiring the owner to provide decent, safe, and sanitary housing (Section 2.5), HUD Handbook 4350.3REV-1, CHG-4, 8-1, C, and HUD Handbook 7460.4-Security Planning for HUD-Assisted Multifamily Housing Handbook: Chapter2, (5)(c-e). Southwest found the level of criminal activity at the property was a condition in noncompliance with HUD guidelines. The review based its finding on service requests made to the Houston Police Department from 9/1/2015 through 8/31/2016. The review required corrective actions to "improve the safety program at the property and decrease the level and severity of criminal activity occurring on-site."

84. The Coppertree Village Apartment owner did not decrease the level of criminal activity at the property. The comparison for the year covered by the HUD 2016 review compared to the next year shows an increase in the number of Category 1 crimes in the Apartments and the Apartment Parking Lot. The comparison uses the Houston Police Department (HPD) Uniform Crime Report crime categories for which the HPD filed a report indicating a crime had occurred.

<b>Crimes</b>	<b>9/1/2015 - 8/31/2016</b>	<b>9/1/2016 - 8/31/2017</b>	<b>Change</b>
Rape	1	1	No change
Aggravated Assault	14	23	+9
Robbery	7	8	+1
Theft	12	19	+7
Auto Theft	6	5	-1
Total Category 1 crimes	40	56	+16.

85. The owner did not cure the condition of non-compliance.

86. The Plaintiffs continue to be subjected to this violation of the HUD requirement to provide decent, safe, and sanitary housing. The high number of serious crimes constitute a hazard to the tenants and their families.

87. The HUD Multifamily Security Manual finds that the fear of crime is exacerbated by the fear and insecurity caused by the often-justified fear of retaliation by criminals reported to the police or to management. Pages 51-52. Exposure to violence can harm a child's emotional, psychological and even physical development.

**Many of units cannot be made physically secure**

88. HUD requires the units receiving its rental subsidy to keep all doors and windows "functionally adequate, operable, and in good repair . . . ." 24 C.F.R. § 5.703(d)(1). The high crime activity at the Apartments exacerbates the need for functionally adequate, operable, and in good repair doors, windows, door locks, and window locks. The failure to provide operable locks on windows and doors is a consistent finding of non-compliance with the obligation to provide decent, safe, and sanitary housing.

**Lead based paint is present and no action to remove or to inform the tenants of the hazard.**

89. The property was built in 1972. The 2018 Southwest report stated there was lead based paint in the project.

Cause: The condition occurred because the lead-based paint disclosure form contains incorrect information and the lead-based paint operations and maintenance program is not being followed.

Effect: The effect is tenants are unaware of lead-based paint at the property.

**The units and other areas are not free from mold**

90. HUD requires the units and common areas to be free from mold in order to be decent, safe, and sanitary.

91. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. 24 C.F.R. § 5.703(f).

92. The units and common areas at Coppertree Village Apartments have open and obvious colonies of mold with the resulting foul odor. The mold colonies were found to be an open violation of the decent, safe, and sanitary regulation in a 2011 inspection by TDHCA.

93. HUD states that the presence of mold as a serious health and safety issue.

Even a small amount of mold or mildew can be potentially dangerous, especially if it is allowed to increase in size. The presence of mold or mildew should be identified, and the cause should be determined and corrected. Because mold/mildew has been recognized as a serious health and safety issue, it is also recorded as poor air quality. 77 FR 47708, 47713, 8/9/2012.

94. Mold and mildew continue to be present. The 2018 Southwest inspection report found:

95. The buildings in the shadier sections of the property were green with mildew.

**The HUD Contract Administrator admits the Coppertree Village Apartment is not decent, safe, or sanitary**

96. The 2018 HUD Contract Administrator's Report makes the following findings:

Finding #16 - G.25

Condition: Effective policies, controls and oversight are lacking to ensure the success of Texas Coppertree Apartments, as noted and evidenced by the number of Findings outlined in this Report. Of particular concern:

- o The owner certifications from the last MOR have clearly not been followed or observed. There is no formal preventive maintenance program in place at the property and unit conditions remain poor. The community room has been under construction for over 2 years. The repetitive nature of the issues identified in Finding #1 show inaction on the part of the Owner/Agent to ensure all units are maintained in a decent, safe and sanitary manner.
- o Security has not been enhanced and largely remains the same as in 2016. There were 767 calls for service from 5/21/17 to 5/19/18, an increase from the 567 calls for service from 9/1/15- 8/31/16. There is an immediate need for more safety patrol, functioning cameras and limited access gates.
- o The high amount of calls received by SHCC' s call center denotes a need for another way for residents to reach out to management regarding problems at the property.
- o The lack of annual unit inspections and + 200 open work orders.
- o Inadequate training and number of maintenance personnel, evident in the number of substandard repairs and units not ready for occupancy.
- o Inadequate or no oversight of tenant files to ensure proper verification of hardship exemptions, and proper verification and calculation of subsidy and tenant rent.
- o Late voucher submissions and recertifications for the past several months. Similar file deficiencies from the 2016 MOR were noted and have reoccurred. Due to the above, as well as the numerous deficiencies outlined in this Report, it is evident that the Owner/ Agent is not providing, and may not be currently capable of providing, acceptable management of the property. Note: This is a repeat Finding from the 2016 MOR.

97. HUD is paying the owner for units that are not decent, safe, and sanitary housing and that pose imminent health and safety risks to the tenants.

**The housing provided in return for the HUD and tenant rent payments is not decent, safe, and sanitary**

98. HUD and the tenants have been paying substantial amounts of rent to the owner of

the Coppertree Village Apartment. Despite the rent payments, HUD has not assured that the owner provide decent, safe, and sanitary housing.

99. The HUD inspections consistently find the presence of unit, project and site conditions that violate the owner's obligation to provide decent, safe, and sanitary housing.

100. These and other conditions in noncompliance with HUD requirements for decent, safe, and sanitary housing affecting each individual Plaintiff are set out in paragraphs 30 through

**Plaintiffs' facts**

101. Kenneth Wayne Hawkins -Mr. Hawkins is a disabled, project based voucher recipient who lives alone at Coppertree Village Apartments. He has lived there since 2016. Mr. Hawkins' apartment has widespread mold in the living room and bedroom. The mold causes a persistent offensive smell and Mr. Hawkins complains of headaches and nausea due to the issue. In the bathroom, water leaks in the ceiling have damaged the walls and further exacerbate the mold growth. The kitchen sink frequently backs up due to clogged pipes which have not been cleaned despite numerous reports to the management. This backed up sewage creates unpleasant odors; on many occasions, the stench in the apartment is unbearable. When this occurs, Mr. Hawkins is forced to open his bedroom window in order to minimize the nauseating smells inside the apartment. That, in turn, makes the apartment very hot and humid, further perpetuating the problem. Moreover, Mr. Hawkins is concerned that maintenance work orders are not processed in a timely manner. Earlier this year, Mr. Hawkins observed that his air conditioning unit was malfunctioning; he immediately requested that the maintenance department at Coppertree address the issue via its work order system. His requests were ignored for several months. Management did not address the issue until a lawsuit was filed in the Justice of the

Peace court and the parties agreed for management to make the repairs. Mr. Hawkins is also highly apprehensive about the extensive criminal activity that plagues the complex and its surrounding neighborhood. He frequently hears gunshots outside of his unit. About three months ago, a stray bullet entered his bedroom. Mr. Hawkins' modest Supplemental Security Income precludes him from moving to a safer, cleaner environment without the assistance of a tenant based voucher.

102. Cheryl Brown Potts - Ms. Potts is an elderly Coppertree Village Apartments tenant living in a unit with her 13-year-old grandson. She is a project based voucher recipient and has resided at the complex since 2013. Ms. Potts' apartment is in deplorable conditions. The ceiling has partially collapsed and plaster fragments drop to the floor. A ruptured pipe soaked the unit in water, saturating the carpets and damaging furniture beyond repair. Ms. Potts' electrical outlets malfunction and emit sparks when an appliance is connected. The toilet does not flush properly as the water tank is broken. Ms. Potts is forced to manually operate the tank's mechanism in order to get the water to flush. Black mold is rampant throughout the unit and the smell is so persistent in one of the bedrooms that it cannot be occupied. Despite several requests to management, no repairs have been completed in the unit. On or about December 8, 2018, heavy rains pounded the Houston area. The rain water penetrated Ms. Potts' unit and soaked the carpet in her grandson's bedroom. Every time it rains, water enters the home. Ms. Potts placed a work order with management for removal of the wet carpet and to address the issue of water entering the home. After several weeks, no repairs have been completed. Ms. Potts reports that there have also been electrical surges in her home above the light fixtures. One evening, when the fixtures glowed red seemingly from excessive heat, Ms. Potts contacted the fire department out of fear

for her safety. The fire department attributed the issue to improper wiring within the unit. Ms. Potts is highly apprehensive regarding the health and safety of herself and her grandson due to the hazardous maintenance issues present in the unit. In addition to the dreadful conditions present within Ms. Potts' unit, she is highly apprehensive about the crime in the area. She has been subjected to two robbery attempts. Both incidents occurred in the evening as she walked through the complex to her unit after arriving home from work. She was able to escape the first incident by running away from her would-be assailant. She escaped the second incident by screaming for help and one of her neighbors assisted her. These experiences have left Ms. Potts highly concerned about her safety in the complex. While she would strongly prefer moving to a safer, better maintained unit, Ms. Potts's limited employment income precludes her from doing so without a tenant based voucher.

103. Kimanisha Myles - Ms. Myles is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2012. She resides there with her 6 minor children, ages 1, 2, 5, 10, 12 and 13 years old. The 10 and 13 year olds are both severely disabled and receive Supplemental Security Income. The family moved into a 3-bedroom unit in December 2017. The unit is plagued with several outstanding maintenance issues. The bathtub in one of the two bathrooms is cracked and rusted to the degree that it cannot be utilized due to excessive leaks. As a result, the seven member household shares a single bathtub. Moreover, there are significant electrical issues within the unit. The appliances in the kitchen emit sparks when plugged into the outlets. Consequently, meals cannot be safely prepared in the kitchen. The family often utilizes their kitchen appliances in the living room. In addition, the refrigerator regularly leaks. No pest control has been undertaken in months; the complex is infested with



cockroaches and spiders. Despite numerous reports to management regarding the apartment's maintenance issues, no repairs have been completed. Ms. Myles wants a safe apartment for her children and is fearful that conditions in the unit affect the children's health and well-being. In addition to the numerous maintenance issues within the unit, Ms. Myles is apprehensive about her children's safety in the complex. She does not let them go outside alone as the complex has been plagued with shootings and other criminal activity throughout the duration of her time as a resident. As a result of the family's vastly limited income, they are unable to move to a safer, better maintained unit without the assistance of a voucher.

104. Reba Curren Jeffery - Ms. Jeffery is a disabled resident of Coppertree Village Apartments. She is a project based voucher recipient. She has lived there since October 2017. She currently has several maintenance issues plaguing her apartment. Mold growth is rampant in her living room, bedroom, bathroom and kitchen. The stench is overpowering and causes Ms. Jeffery respiratory problems. At times, Ms. Jeffery has to step outside, regardless of heat or cold, just to breathe in some fresh air and escape the mold. There is no hot water in Ms. Jeffery's bath tub. Hence, she is forced to take cold showers even in winter or go to a friend's house for warm water. The apartment is also plagued with electrical issues. Several electrical outlets in the apartment emit sparks when a device is plugged in, rendering them not merely useless but dangerous. Ms. Jeffery avoids these outlets but is apprehensive that there are other, undiscovered electrical problems in the unit that could result in a fire. Despite numerous requests to management to remedy the dangerous conditions within the apartment, no repairs have been made yet. In addition to the persistent maintenance issues, Ms. Jeffery is highly apprehensive of the reoccurring criminal activity in the area. She reports hearing gunshots every night. Most

recently, an assailant was knocking on several apartment doors, including Ms. Jeffery's, with a shotgun. Fortunately, Ms. Jeffery was uninjured during this incident. While Ms. Jeffery remains apprehensive about residing in Coppertree Village Apartments, she cannot afford to move to a safer unit without the assistance of a tenant based voucher.

105. Kenetra Williams- Ms. Williams is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2014. She lives there with her three young children ages 10 years old, 5 years old and 3 years old. Her apartment unit has been plagued with several maintenance issues that remain unaddressed by management. Her bathtub is coated with rust and suspected mold. There are open crevices in one of the bathrooms and in the hallway that allows water to seep through every time it rains. As a result of a lack of consistent pest control, the unit is infested with roaches and spiders. Ms. Williams has informed management of these issues, yet they have not been addressed. Moreover, Ms. Williams is ever-concerned about her family's safety in the complex. She reports hearing gun shots a few times a week in or around the complex's surrounding neighborhood. At these times, she will gather her children and hide with them in a closet to avoid any potential injury from stray bullets. Although Ms. Williams is employed, her limited income precludes her from moving to a safer, better maintained unit without the assistance of a voucher.

106. Stephanie Winn - Ms. Winn is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2017. She lives there with her two-year-old child. Ms. Winn's apartment has been in unsanitary conditions since the date she moved in. Mold has rampantly spread in the bathroom and is present in other areas of the unit. Moreover, she previously struggled with electrical issues within the unit. In the wake of

Hurricane Harvey, the electricity did not function in Ms. Winn's unit for a couple weeks. As a result, she left the apartment until the electricity was operating properly. However, when she moved back into her unit, she discovered it was infested with maggots. The maggots were entrenched in the carpets as well as certain areas of the kitchen. She advised management of the issue but they did not respond. Ms. Winn ultimately attempted to kill the maggots herself but has been unable to completely eradicate the problem. Subsequent to the maggot problem, Ms. Winn's unit was plagued with bedbugs. When that issue was reported to management, they stated that they could not identify that problem. Additionally, Ms. Winn feels increasingly uneasy about the criminal activity present in the area. She describes hearing gunshots almost weekly and is often fearful of the possibility of stray bullets injuring herself or her children. Although Ms. Winn would like to raise her children in a safer, more sanitary environment, she is unable to relocate without the assistance of a tenant based voucher.

107. Loretta Gulley- Ms. Gulley is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2011. She lives alone in a one-bedroom unit. She has resided in three different units within the complex. She is in her most recent unit due to a fire that took place in her prior unit. The fire occurred in a separate unit as a result of candles burning during an electricity outage. There are several outstanding maintenance issues that need to be addressed within Ms. Gulley's unit. The boiler frequently malfunctions leaving the unit without hot water for days. Mold is also rampant throughout the unit. There are also periodic electrical issues; lights often flicker on and off within the unit. Also, the lack of pest control has led to an infestation of cockroaches. Ms. Gulley is also considerably concerned about the violent crime present within the area. She has observed several assaults in and around the

complex. She has also heard gunshots on several occasions. Ms. Gulley's limited Social Security Disability income precludes her from moving to another tenancy without the assistance of a tenant-based voucher.

108. Jeannie Ware- Ms. Ware is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2016. She resides there with her three children, ages 10 years old, 9 years old and 3-year-old. The unit has a myriad of unaddressed maintenance issues. Several of the issues are directly related to the health and safety of Ms. Ware and her family. The drinking water is yellow and has an odor; the family does not feel it is safe to consume. The electricity within the unit consistently malfunctions when appliances are plugged into the outlets; the outlets frequently emit sparks in the children's bedroom and living room areas. There are also several open crevices in the unit and water leaks into the unit when it rains. Ms. Ware has containers placed in certain areas to contain the water. As a result of water infiltrating the unit, mold is readily apparent. Furthermore, the flooring in the apartment is not level and is a trip hazard within the unit. Moreover, as a result of a lack of pest control, there is an infestation of cockroaches. Lastly, the refrigerator and freezer do not cool food properly. Ms. Ware has purchased a deep freezer to ensure the family's food remains safe to consume. In addition to the host of maintenance issues, Ms. Ware continues to be fearful of the widespread violence and criminal activity that takes place in the complex and its surrounding area. Ms. Ware and her children report that they hear shootings frequently. Also, Ms. Ware and her son were accosted by another tenant and their child on the premises. The other tenant was subsequently arrested and charged with assault. In mid-December 2018, Ms. Ware was moved to a new apartment at Coppertree Village, as her previous unit was effectively uninhabitable. Despite

being offered an alternative apartment, the new unit has similar problems as the previous one and is only a marginal improvement compared to the previous residence. The new apartment lacks hot water in the bathtub, there are missing tiles in the bathroom and the floor needs to be replaced because the carpet is severely stained. As the flooring in the apartment is in a state of disrepair, Ms. Ware has not been able to move all of her belongings to the new home. Some of her furniture still remains in the old unit as Ms. Ware awaits repairs to the current apartment to be completed. The new unit also continues to have mold problems. A moldy stench permeates the apartment and is noticeable upon entry. Ms. Ware would prefer to move her children into a safer, more sanitary environment, but her limited employment income precludes her from doing so without the assistance of a tenant-based voucher.

109. Michelle Smith- Ms. Smith is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2006. In December 2017, she was displaced from her unit and left homeless for four months due to a fire on the property grounds. She was relocated to another unit in the spring of 2018 and that unit was plagued with a myriad of maintenance problems. Ms. Smith's air conditioning and toilet periodically did not function. Her cabinets and countertops are infested with pests that have corroded their structure and now need replacement. She also experiences problems with the electrical outlets in the unit. The outlets frequently emit sparks when appliances are plugged into the outlets. The boiler frequently malfunctions periodically leaving the unit without hot water for days. Initially, Ms. Smith's reports to management about these issues yielded no response. Following a demand letter for repairs pursuant to the Texas Property Code, some of the issues were recently addressed. Although Ms. Smith would prefer to move to another tenancy, her limited employment income

precludes her from doing so without the assistance of a tenant-based voucher.

110. Olivia Swaizer- Ms. Swaizer is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2011. She resides there with her 10-year-old child. Ms. Swaizer's unit has several outstanding maintenance issues that require immediate attention. The most significant issue is the widespread mold throughout the apartment unit. The mold has particularly festered in the carpet padding. Moreover, the sink in the bathroom is not securely fixed to wall and has developed a leak; also, the toilet consistently backs up. As a result of a lack of consistent pest control, the unit is infested with roaches. Furthermore, Ms. Swaizer remains apprehensive about the heightened criminal activity in the area. She does not allow her young son to play outside. Ms. Swaizer would prefer to move her child into a safer, more sanitary environment, but her limited employment income precludes her from doing so without the assistance of a tenant-based voucher.

111. Jamie Wasicek- Ms. Wasicek is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2011. She resides there with her three children, ages 4 years old, 5 years old and 8 years old. Ms. Wasicek has resided in two different units within the complex. The first unit had several unaddressed maintenance issues. There was extensive mold, moist carpeting and a malfunctioning stove. As a result of the stove's electrical issues, a fire took place. Ms Wasicek's son immediately alerted her to the fire and she was successfully able to extinguish it. The unit sustained significant water damage and adequate repairs were never completed. About a year later, the family was moved to another unit. Her second unit also has a plethora of maintenance problems. There is widespread mold in the carpet padding and a stench in the unit related to the mold. There are several leaks in the ceiling

throughout the unit. The refrigerator does not cool food properly and Ms. Wasicek has had to purchase a deep freezer to store her own food safely. Moreover, her current stove also has electrical issues. In spite of Ms. Wasicek reporting these problems to management, they remain unaddressed. In addition to the maintenance issues within the unit, Ms. Wasicek is highly apprehensive regarding her family's safety within the complex. She has been repeatedly harassed within the complex and has filed several police reports to address the matter. She is highly concerned that her safety may be in jeopardy if she continues to reside at Coppertree. Although Ms. Wasicek is highly concerned about her family's physical welfare at Coppertree, her limited employment income precludes her from moving to another tenancy without the assistance of a tenant-based voucher.

112. Shealisha Adams - Ms. Adams is a project-based Section 8 voucher recipient and has been a resident of Coppertree Village Apartments since 2015. She resides there with her three children ages 4 years old, 3 years old and 1 year old. There are a number of outstanding maintenance issues that require attention within the unit. The roof of the unit leaks above the bedroom and living room areas; Ms. Adams uses buckets to collect rainwater in storms. As a result, mold is rampant within the unit on the walls and has developed within the carpet. The mold stench permeates every room in the unit. In addition to the water leaks and widespread mold, the apartment has significant electrical issues and the heating and cooling systems consistently malfunction. When the air conditioning system starts, it will trigger an electrical outage in the rest of the unit. Ms. Adams has to consistently adjust the breaker box controls to restore power to the unit. The air conditioning unit also leaks when in use. Moreover, the refrigerator does not cool food properly and Ms. Adams is ever-concerned about food spoilage.

Despite numerous reports to management, these matters have not been adequately addressed. Ms. Adams also has grave concerns about the extensive criminal activity in the area surrounding the complex. She reports hearing gunshots several times a week. During those moments, she will grab her three young children and place them in the bathtub to protect them from potential stray bullets. Although Ms. Adams would like to move her family to a safer, better maintained unit, her limited Social Security Disability income precludes her from moving to another tenancy without the assistance of a tenant-based voucher.

**HUD's breach of its obligation to pay the owner only for units that are decent, safe, and sanitary is based at least in part on the race of Plaintiffs and the other tenants**

113. Plaintiffs will show the following facts that give rise to an inference of discrimination by HUD.

114. HUD contracts with private landlords to provide affordable housing to low income tenants through the PBRA program. Pursuant to the contract, HUD makes payments to the landlord to rent the units to eligible low income tenants. HUD has the contractual authority to require that the landlord comply with the HUD housing quality standards that govern this housing program.

115. Plaintiffs are African American. Coppertree Village is located in a 0% White non- Hispanic census tract. Coppertree Village' units are 87% occupied by Black or African American households. HUD is paying for housing that is provided by the owner to Plaintiffs but which is not decent, safe, and sanitary housing.

116. Plaintiffs entered into a lease for the HUD subsidized PBRA housing at Coppertree Village that, had it met the HUD housing quality standards, would have provided them and their families with decent, safe, and sanitary housing. The Plaintiffs' lease for the HUD subsidized



PBRA housing at Coppertree Village would have provided them and their families with equal neighborhood living conditions without conditions that adversely affect the health, safety, and general welfare of residents.

117. The unit, project, and site conditions that do not comply with minimum standards for decent, safe, and sanitary housing.

118. The living conditions that adversely affect the Plaintiffs and other Coppertree Village tenants are factors that adversely affect the health, safety, and general welfare of residents, and cannot be mitigated by HUD.

119. HUD pays for decent, safe, and sanitary housing for similarly situated, disproportionately White non-Hispanic low income PBRA tenants in majority White non-Hispanic census tracts. These PBRA units include the six PBRA projects in The Woodlands.

120. The rents for the assisted units at the projects in The Woodlands are comparable to the rents for the assisted units at Coppertree Village. The unit, site, and project conditions at The Woodlands' PBRA projects are decent, safe, and sanitary

121. HUD's payments to the owner of Coppertree Village Apartments for units that are not decent, safe, and sanitary is not based on any legitimate, non-discriminatory reason and is final agency action.

122. HUD has no statutory or regulatory authority for paying to provide Plaintiffs with housing that is not the decent, safe, and sanitary housing required by the relevant housing quality standards. HUD has no statutory or regulatory authority for paying to provide Plaintiffs with housing in locations with neighborhood living conditions that are free from high crime and other conditions that adversely affect the health, safety, and general welfare of the area residents.

**The additional evidence showing the existence of Village of Arlington Heights factors supports the finding of intentional discrimination**

123. The U.S. Supreme Court set out a list on non-exclusive factors that may provide circumstantial evidence showing racial discrimination was a motivating factor in government decisions affecting the availability and location of housing. *Vill. of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 265-268 (1977). The following evidence shows the existence of Arlington Heights factors that support the inference of intent. The facts show that HUD intentional support for racial segregation is longstanding in duration and pervades HUD's administration of the PBRA program in the City of Houston.

124. Forty-two of the 44 PBRA projects in the City of Houston are located in predominantly minority census tracts. The 42 PBRA projects in predominantly minority census tracts are adversely affected by various unequal neighborhood living conditions. The 42 PBRA projects in predominantly minority census tracts are disproportionately occupied by Black or African American low income tenants. The only two PBRA projects in White non-Hispanic Houston census tracts that would offer Plaintiffs a racially integrated housing opportunity in equal neighborhood conditions are restricted to elderly tenants only.

125. The tenant population of the 44 PBRA projects in the City of Houston is 71% Black, 8% White non-Hispanic, and 15% Hispanic or Latino. The tenant population of the 42 PBRA projects located in majority non-White census tracts is 74% Black, 6% White non-Hispanic, and 15% Hispanic or Latino.

**The historical background of the racial segregation and unequal conditions affecting PBRA and other HUD assisted housing in Houston reveals a series of actions taken for invidious purposes**

126. The current concentration of PBRA housing in minority areas was originally

approved by HUD in violation of HUD's own site selection regulations prohibiting just such racially segregated results.

127. The unequal neighborhood conditions affecting the HUD PBRA housing in minority concentrated areas include high crime, high poverty including high childhood poverty, distressed neighborhoods, poor drainage, flooding, segregated and unequal schools, and lack of childhood opportunities.

128. The injuries particularly to children from these conditions of racial segregation are foreseeable and were foreseen by HUD.

Racially or ethnically concentrated areas of poverty merit special attention because the costs they impose extend far beyond their residents, who suffer due to their limited access to high-quality educational opportunities, stable employment, and other prospects for economic success. Because of their high levels of unemployment, capital disinvestment, and other stressors, these neighborhoods often experience a range of negative outcomes such as exposure to poverty, heightened levels of crime, negative environmental health hazards, low educational attainment, and other challenges that require extra attention and resources from the larger communities of which they are a part. Consequently, interventions that result in reducing racially and ethnically concentrated areas of poverty hold the promise of providing benefits that assist both residents and their communities. Affirmatively Furthering Fair Housing; Proposed Rule, 78 Fed Reg 43710, 43714, July 19, 2013.

129. HUD's site selection regulations prohibiting the concentration of HUD assisted housing in minority concentrated, low income areas with unequal living conditions were first enacted in 1972. 37 Fed. Reg. 203 (1972). The existing racial segregation in HUD assisted housing in the City of Houston was funded and approved by HUD decisions in violation of HUD's site selection regulations. HUD provided the Coppertree Village Apartments with the original HUD assistance in violation of HUD's site selection regulations.

**HUD's decisions to renew the PBRA contracts for Coppertree Village Apartments were made in violation of HUD substantive standards are consistent with and show the existence of discriminatory intent**

130. HUD has made several decisions to enter into, renew and to approve the assignment of the PBRA contracts for Coppertree Village since 1981. These decisions were made in violation of the HUD regulatory standards for acceptable housing. 24 C.F.R. § 886.307(k)(1), (2); 24 C.F.R. § 5.703. These decisions are consistent with and supportive of the racially segregative purpose to segregate Black or African American families and provide them with unequal facilities.

**HUD's failure to affirmatively further fair housing with regard to the PBRA program and Coppertree Village Apartments is the violation of a substantive standard that is consistent with discriminatory intent**

131. HUD has the legal obligation under 42 U.S.C. § 3608(e)(5) to affirmatively further fair housing in all of its housing programs. This obligation requires HUD to take meaningful actions that:

- o address significant disparities in housing needs and in access to opportunity,
- o replace segregated living patterns with truly integrated and balanced living patterns,
- o transform racially and ethnically concentrated areas of poverty into areas of opportunity, and

- o foster and maintain compliance with civil rights and fair housing laws. *N.A.A.C.P. v. Sec'y of Hous. & Urban Dev.*, 817 F.2d 149, 156 (1st Cir. 1987); *Shannon v. U.S. Dep't of Hous. & Urban Dev.*, 436 F.2d 809, 819, 821-822 (3d Cir. 1970); 24 C.F.R. § 5.150, § 5.152; HUD, *Affirmatively Further Fair Housing*, Final Rule, 80 Fed. Reg. 42272, July 16 2015.

132. HUD is aware of the racially segregated and unequal conditions in the living patterns provided by the PBRA projects located in the City of Houston. HUD obtains detailed Management and Occupancy Review reports as well as REAC reports on each PBRA project in

the City of Houston. These reports include the facts showing failure of units in these projects to provide decent, safe, and sanitary housing. HUD's Picture of Subsidized Households database contains the census tract information showing the minority composition of each PBRA project and of the census tract in which each PBRA is located in the City of Houston. See facts shown at ¶¶ 124 and 125 of this Amended Complaint.

133. Despite this knowledge, HUD has not taken meaningful action to affirmatively further fair housing in the PBRA program as administered at the Coppertree Village Apartments project. HUD's implementation of its legal obligation to provide for fair housing is violated by HUD's breach of its obligation to pay only for Coppertree Village units that are decent, safe, and sanitary housing. HUD's breach leaves in place a pattern of racially segregated and unequal living conditions at Coppertree Village.

#### **Claims for relief**

#### **APA claim for relief based on the final agency action withholding the assistance required by the 2018 Consolidated Appropriations Act, Sec. 222(d) and 24 C.F.R. § 886.323(e)**

134. The legal and factual prerequisites for HUD's provision of relocation assistance to Plaintiffs are met. HUD has issued Notices of Default for the owner's failure to maintain the units and the projects in decent, safe, and sanitary condition. The time for the owner to cure the deficiencies has passed without the deficiencies being cured. HUD continues the HAP contract in effect. Plaintiffs have requested the assistance to relocate to decent, safe and sanitary housing elsewhere. HUD's obligation to provide the assistance and the relief from the owner's breach of its obligation to provide decent, safe, and sanitary housing is an obligation to provide assistance and relief and its withholding the assistance and relief is final agency action under the Administrative Procedure Act, 5 U.S.C. § 551(13); 5 U.S.C.A. § 551 (10)(B); 5 U.S.C.A. § 551

(13)(A). The relevant law and regulation require HUD to provide the relief of assistance for relocation once HUD has given Notice of Default, the owner has not corrected the deficiencies set out in the notice, and HUD continues the contract in effect and pay for units that are not decent, safe, and sanitary.<sup>6</sup> Each of these requirements is met yet HUD continues to withhold the assistance which is the relief provided by law. HUD's withholding the assistance and the relief is final agency action. 5 U.S.C. § 551(13); 5 U.S.C. § 551 (10)(B), 5 U.S.C. § 13(A). HUD's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with Sec. 222(d) and 24 C.F.R. § 886.323(e). The scope of review for this claim is set by 5 U.S.C. § 706.

**APA claim for relief based on the final agency action withholding the Tenant Protection Vouchers assistance authorized by Title II of the 2018 Consolidated Appropriations Act<sup>7</sup>**

135. The 2018 Consolidated Appropriations Act authorizes HUD to issue Tenant Protection Vouchers to tenants in PBRA projects for which HUD has issued Notices of Default and in which the conditions constitute imminent health and safety risks to the residents. See note 6.

136. HUD's final decision to withhold the assistance and relief of Tenant Protection Vouchers given the owner's refusal to provide decent, safe, and sanitary units, the Notices of Default, the failure to cure the deficiencies, and the imminent health and safety risks to Plaintiffs and the other tenants is final agency action. 5 U.S.C. § 551(13); 5 U.S.C.A. § 551 (10)(B); 5

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<sup>6</sup> CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115-141, March 23, 2018 , 132 Stat 348, Sec. 222(d);24 C.F.R. § 886.323(e).

<sup>7</sup> CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115-141, Title II, Department of Housing and Urban Development, Tenant Based Rental Assistance (2), March 23, 2018 , 132 Stat 348 (Tenant Protection Vouchers).

U.S.C.A. § 551 (13)(A).

137. HUD's final decision to withhold the assistance and relief of Tenant Protection Vouchers is arbitrary, capricious, and an abuse of discretion.

138. The scope of review for this claim is set by 5 U.S.C. § 706.

**APA claim for relief based on the final agency action withholding the Tenant Protection Vouchers and the other relocation assistance authorized by the 2018 Appropriations Act and 24 C.F.R. § 886.323(e) that violates HUD's obligations to provide, within constitutional limitations, for fair housing in all of its housing programs as required by 42 U.S.C. § 3608(e)(5)**

139. HUD's final decision to withhold the assistance and relief necessary for Plaintiffs to obtain decent, safe, and sanitary housing elsewhere including the use of Tenant Protection Vouchers continues to subject Plaintiffs to racial segregation and unequal conditions in HUD's Project Based Rental Assistance program. As shown in the Amended Complaint HUD is funding and administering a racially separate and unequal PBRA system that denies Plaintiffs racially integrated and equal housing. HUD's decision to deny the assistance and relief for Plaintiffs to use the federal assistance to obtain racially integrated and equal housing violates HUD's duty to affirmatively further fair housing under 42 U.S.C. § 3608(e)(5).

140. The scope of review for this claim is set by 5 U.S.C. § 706.

**Claim for intentional discrimination in violation of 42 U.S.C. § 3604(a)**

141. For units in PBRA projects in majority White non-Hispanic census tracts, HUD complies with its obligation to pay only for units that are decent, safe, and sanitary. HUD is breaching this obligation by knowingly and voluntarily paying the owner of Coppertree Village Apartments for units that are not decent, safe and sanitary. HUD's breach of this obligation at Coppertree Village is based at least in part on the race of Plaintiffs and the other tenants. The evidence for this claim is shown above. HUD's discriminatory purpose subjects Plaintiffs to the

injuries caused by the breach of HUD's obligation to pay only for decent, safe and sanitary housing.

142. HUD's final decision to withhold the relocation assistance and relief necessary for Plaintiffs to obtain decent, safe, and sanitary housing elsewhere including Tenant Protection Vouchers makes the decent, safe, and sanitary housing that would be available with that assistance unavailable to a group that is predominantly Black or African American and completely minority. This is the group of tenants at Coppertree Village Apartments. This decision continues to subject Plaintiffs to HUD's discriminatory purpose and the resulting effects.

143. The evidence set out in the Amended Complaint shows that HUD's final decision to withhold the assistance and the Tenant Protection Vouchers is intentional discrimination on the basis of race and ethnicity in violation of 42 U.S.C. § 3604(a).

**Claim for intentional discrimination in violation of the Equal Protection component contained in the due process clause of the Fifth Amendment to the Constitution of the United States**

144. For units in PBRA projects in majority White non-Hispanic census tracts, HUD complies with its obligation to pay only for units that are decent, safe, and sanitary. HUD pays for units at Coppertree Village that are not decent, safe, and sanitary. HUD's payments for units at Coppertree Village that are not decent, safe, and sanitary is based at least in part on the race of Plaintiffs and the other tenants. The evidence for this claim is shown in this Amended Complaint. HUD's discriminatory purpose subjects Plaintiffs to the injuries caused by the breach of HUD's obligation to pay only for decent, safe and sanitary housing.

145. HUD's final decision to withhold the assistance and relief of the assistance including Tenant Protection Vouchers as necessary for Plaintiffs to obtain decent, safe, and sanitary



housing elsewhere makes the decent, safe, and sanitary housing that would be available with that assistance unavailable to a group that is predominantly Black or African American and completely minority. This is the group of tenants at Coppertree Village Apartments. This decision continues to subject Plaintiffs to HUD's discriminatory purpose and the resulting effects.

146. The evidence set out in the Amended Complaint shows that HUD's final decision to withhold the assistance and the Tenant Protection Vouchers is intentional discrimination on the basis of race and ethnicity in violation of the Equal Protection component contained in the due process clause of the Fifth Amendment to the Constitution of the United States.

**Prayer for relief**

147. Plaintiffs request the following relief:

A. a preliminary and permanent injunction ordering HUD to provide Plaintiffs with the assistance necessary to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions for so long as plaintiffs remain eligible for the assistance;

B. a preliminary and permanent injunction ordering HUD to provide Plaintiffs with Tenant Protection Vouchers as part of the assistance necessary to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions so long as plaintiffs remain eligible for the Voucher;

C. a final judgment that Plaintiffs' leases with Coppertree Village Apartments are terminated without any default by Plaintiffs and ordering a return of all funds paid by Plaintiffs as rent or deposits;

D. any other appropriate injunctive relief; and

E. an award of plaintiffs' attorney's fees, litigation expenses, and costs.

Respectfully Submitted,

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Certificate of Service

I hereby certify that service of the foregoing document will be accomplished through the notice of electronic filing in accordance with the Federal Rules of Civil Procedure on January 4, 2019, to the following:

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