

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.
	*	
v.	*	
	*	
The United States Department of	*	
Housing and Urban Development,	*	
Coppertree Village Holdings LLC,	*	
and	*	
Coppertree Apartments, LLC	*	
Defendants.	*	

COMPLAINT

Introduction

1. Plaintiffs are current tenants at Coppertree Village Apartments located at 1415 West Gulf Bank Road, Houston, Texas, 77088. This apartment complex is a U.S. Department of Housing and Urban Development (HUD) funded low income rental housing project through the Project Based Rental Assistance (PBRA) program. HUD provides approximately \$2.6 million in annual rent subsidies for the 263 PBRA units at the complex. The PBRA tenants pay approximately \$500,000 in annual rent for the 263 PBRA units. The apartment complex also receives Low Income Housing Tax Credits from the Texas Department of Housing and Community Affairs (TDHCA).

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 has violated the law by not providing Plaintiffs with either decent, safe, and sanitary housing at Coppertree Village or a housing choice voucher and the related assistance needed to obtain housing in better conditions with the voucher. This complaint requests judicial relief requiring HUD to provide each plaintiff with a housing choice voucher and the related assistance needed to obtain housing in better conditions with the voucher.

3. 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.

4. The unit, project, and neighborhood living conditions violate the HUD contract with the owner. The conditions give HUD the clear right to end the contract and provide plaintiffs a housing choice voucher and the assistance to obtain decent, safe, and sanitary housing with the voucher. HUD has taken no action to provide plaintiffs and the other tenants with a housing choice voucher or the necessary assistance to obtain decent, safe, and sanitary housing with the voucher.

5. HUD's refusal to provide the voucher assistance perpetuates racial segregation and imposes severe injuries on a Black or African-American population, the tenants at the complex. HUD's actions violate the discriminatory intent standard of the Fair Housing Act and the 5th

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.

6. HUD's refusal to provide plaintiffs with tenant-based voucher assistance is a final agency action that violates HUD's legal obligations to provide habitable units and conditions at Coppertree Village Apartments or to provide tenant-based voucher assistance to obtain another unit in better conditions.

7. Plaintiffs seek injunctive and declaratory relief requiring HUD to provide plaintiffs with the vouchers and other assistance necessary to obtain housing in decent, safe, and sanitary conditions. Plaintiffs seek declaratory relief that HUD's actions perpetuate racial segregation in violation of 42 U.S.C. § 3604(a), 42 U.S.C. § 3608(e)(5), and the Fifth Amendment to the Constitution of the United States of America.

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 and the waiver of sovereign immunity is pursuant to 5 U.S.C. § 702.

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. Defendant's refusal to provide the tenant based voucher assistance is a final agency action for which there is no other adequate remedy in a court. Defendant's refusal to issue the voucher to plaintiff is final agency action. Only the Defendant can cause the issuance of a voucher and the other assistance for plaintiffs to leave the Coppertree Village Apartments and obtain decent, safe, and sanitary housing using the voucher. A lawsuit against the owner cannot provide this relief.

12. Defendant Coppertree Village Holdings LLC is the current assignee of the PBRA contract providing for the rental subsidies at Coppertree Village Apartments and 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.

Dangerous and unfit conditions

High number of crimes at the Apartment

13. The high number of violent and serious crimes committed on the Coppertree Village

Apartment premises victimizes the apartment residents. HUD’s designated agent, The Southwest Housing Compliance Corporation (SHCC), conducted a review of the operation and conditions at the Coppertree Village Apartments. This onsite review was 9/29/2016. The review 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: Chapter 2, (5)(c-e). The review 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.”

14. 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.

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

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

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

17. The condition of crime has not changed. The HUD Contract Administrator, Southwest Housing Compliance Corporation, made the following findings in its report dated 7/26/2018 based upon the 6/28/2018 on site review.

Based on the 767 calls for service over the course of one year, the criminal prevention methods in place are not effective as this is an increase from the 567 calls for service from 9/1/15-8/31/16 (2016 MOR). Currently HPD courtesy officers patrol at the property only 18 hours per week during varying hours, but this is the same frequency as when SHCC last visited in 2016. The property's safety program needs to be assessed, reevaluated, and updated to not only address crime that has/is occurring, but also to prevent/deter future criminal events. Note: This is a repeat Finding from the 2016 MOR.

In response to the 2016 MOR, the Owner/ Agent certified a Security Enhancement plan would be completed by May 31, 2017. This included: repair existing lighting, utilizing the guard house, repair of inoperable cameras, repair of the perimeter fence, and implementing a parking sticker requirement. A plan was not provided for the 2018 review nor could SHCC confirm the promised 2016 plan was ever implemented/ created. During the 2018 site visit, the only observed improvements by SHCC were the addition of floodlights and a parking sticker requirement, though towing is only enforced between 10 P.M and 7 A.M.

18. These 2018 findings were based on the following summary of the crime afflicting the Plaintiffs and the other residents of Coppertree Village Apartments.

Condition: The effectiveness of the safety program at Texas Coppertree Apartments is of concern.

Review of law enforcement data from 5/21/17 to 5/19/18 revealed 767 calls for service to the Houston Police Department (HPD); 495 of which were significant and criminal in nature.

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

- 8 calls for “person down”
- 8 warrants
- 61 calls for personal assaults
- 54 calls for thefts/ burglary/ robbery
- 11 calls for narcotics
- 111 calls for suspicious persons/ events
- 112 calls for disturbances
- 37 calls for criminal mischief
- 40 calls due to the alarm system

In addition to the calls above, there were 4 calls requesting an escort and 37 calls because of a suicide attempt/ threat to life by phone. These calls reflect the residents’ concerns for safety.

...

As discussed in Finding #1, the property is fenced but the two controlled access vehicular gates leading in and out of the property are non-functioning. Both gates are permanently open, allowing for free-flowing traffic into and out of the property. The guard shack at the main entrance is not in use.

According to the Property Operations guide, the manager is required to review and sign the patrol logs on a daily basis, but there are no signatures on the logs that were provided to SHCC or any notations about follow-up to the officers’ observations.

HUD’s Contract Administrator made the same recommendations that it made in the 2016 report finding that the project was not safe.

Cause: The condition occurred because previously certified crime prevention measures have not been implemented and those that have are proving insufficient or ineffective.

Effect: The effect is a property that is unsafe.

Corrective Action: Within 30 days from the date of this report, the Owner/ Agent must:

Perform an assessment of the safety measures and concerns at the property to include, but not limited to, reviewing and responding to the concerns outlined in the Condition portion of this Finding.

Create and implement a Crime Prevention Plan, based upon this assessment, to improve the safety at the property and decrease the level and severity of criminal activity occurring on -site. The plan should address key participants including the Owner/ Agent, the HPD, residents, and local agencies or resources, as well as a timeline for implementation. The plan must include the start dates for any additional or revised safety measures or equipment that have or will be implemented or repaired, and supporting documentation. For example, a plan to

maintain the limited access vehicular gates so that they remain operable and/ or a plan to add and maintain working security cameras, etc.

Provide a signed certification stating, “The Owner/ Agent’ s assessment has been completed and a Crime Prevention Plan has been implemented. It will be reviewed and adjusted for effectiveness on a regular basis (minimum quarterly).” Provide a copy of the Crime Prevention plan.

Many of units cannot be made physically secure

19. 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.

20. The 2018 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

21. HUD requires the units and common areas where it and the tenants pay rent to be free from mold in order to be decent, safe, and sanitary.

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).

22. The units and common areas at Coppertree Village Apartments have open and obvious colonies of mold with the resulting foul odor. Two photographs of current mold colonies are

exhibits 1 and 2 to this complaint. The mold colonies were found to be a open violation of the decent, safe, and sanitary regulation in a 2011 inspection by TDHCA.

23. 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.

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

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.

25. 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:

- 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 SHCC'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.
- Inadequate or no oversight of tenant files to ensure proper verification of hardship exemptions, and proper verification and calculation of subsidy and tenant rent.
- 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

26. HUD has not met its obligation to provide decent, safe, and sanitary housing. The housing units at Coppertree Village Apartments are not free of health and safety hazards. The 2018 report states:

As a result of these noted deficiencies, the property's condition and curb appeal has suffered and tenants have not been provided decent, safe and sanitary housing.

....

The effect is the property not meeting HUD's definition of decent, safe and sanitary condition.

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

27. HUD and PBRA tenants have been paying substantial amounts of rent to the present and past owners of the Coppertree Village Apartment Complex since 1986. Despite the rent payments and the Low Income Housing Tax Credits allocated to the Apartment Complex, HUD has not met its obligation to provide decent, safe, and sanitary housing.

28. The HUD and the TDHCA inspections consistently find the presence of inoperable, unrepaired, inadequate unit, project and site conditions that violate the obligation to provide decent, safe, and sanitary housing.

29. HUD approved a rent increase immediately after the TDHCA gave the Coppertree Village Apartments a failing score on the 2017 housing quality standards inspection.

30. 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.

31. 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 41.

Plaintiffs' facts

32. 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.

33. 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's 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. 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 housing choice voucher.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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. 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.

40. 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.

41. 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.

42. 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.

43. 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 obligation is to provide decent, safe, and sanitary housing

44. The conditions of the units, the project, and the site at Coppertree Village Apartments pose imminent health and safety hazards to residents in violation of 24 C.F.R. § 5.703.

45. These conditions have been open and obvious and are undeniable notice of the existence of the hazards. The owner had many opportunities to cure but did not.

46. HUD has consistently renewed the contract with the current and previous owners of the Coppertree Village Apartments.

47. HUD has the legal and contractual obligation to either provide units that are decent, safe, sanitary, in good repair, and in compliance with housing quality standards or to provide the tenants with a housing voucher to move to another unit if the tenants choose. The legal obligation includes the obligation to determine whether the owner has materially failed to maintain the property according to the required housing quality standards. MAHRA Sec. 516 (a)(1)(A), (a)(2)(A) - (I). Material failure includes materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure. MAHRA Sec. 516 (a)(1)(A), (a)(2)(H). The housing quality standards are set out for various programs. 24 C.F.R. § 5.703(a) - (f).

48. The ongoing contractual obligations require HUD to

inspect or cause to be inspected the Contract Units and related facilities at least annually and at such other times ... as may be necessary to assure that the Owner is meeting its obligation to maintain the units in Decent, Safe, and Sanitary condition, including the provision of the agreed upon utilities and other services. [HUD] shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination. 24 C.F.R. § 886.323(d).

49. Once the owner is in default of the obligation to provide habitable units, HUD must require a remedy. That remedy includes the issuance of tenant-based vouchers and other assistance to the tenants choosing to move to another unit. 24 C.F.R. § 886.323(e); CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115 141, March 23, 2018, 132 Stat 348.

50. HUD has the obligation to issue vouchers:

" to provide tenant-based assistance for families occupying units formerly assisted under a terminated PBRA contract. 42 U.S.C. § 1437f(z)(1)(A).

" after notice that owner has failed to maintain a dwelling unit in decent, safe, and sanitary condition and the owner fails to take corrective action within the time specified. HUD shall provide assistance in finding such a unit for a family that wishes to be rehoused in another dwelling. 24 C.F.R. § 886.323(e). " after the owner has engaged in material adverse financial or managerial actions or omissions with regard to such project and HUD has refused to renew the contract. MAHRA Sec. 516 (a)(1)(A). Material adverse financial or managerial actions or omissions include

(B) materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937, after receipt of notice and an opportunity to cure;

...

(H) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure. MAHRA Sec. 516(a)(2).

51. HUD has breached its obligation to either provide units that are decent, safe, sanitary, in good repair and in compliance with housing quality standards or to provide the tenants with a housing voucher to move to another unit if the tenants choose. 24 C.F.R. § 886.307 [24 C.F.R. § part 5 subpart G]; 24 C.F.R. § 5.703; 24 C.F.R. § 886.318, 24 C.F.R. § 886.323, HUD, Section 8

Renewal Policy Guidebook, Issued: 06/30/2017, " 11-1(c), 11-2(B), 11-3. The remedies include providing the tenants such as plaintiffs with tenant based assistance (a voucher) or other assistance.

42 U.S.C. 1437f(z)(1)(A);.

52. HUD's refusal to take these remedial actions is the refusal to take actions required by law.

53. HUD's renewals of the PBRA contracts are final agency actions that are arbitrary, capricious, an abuse of discretion, not in accordance with law, contrary to constitutional right, and short of statutory right.

54. HUD's refusal to provide Plaintiffs with the tenant-based voucher and other assistance necessary to obtain assisted housing is final agency action that is unlawfully withheld, arbitrary, capricious, an abuse of discretion, not in accordance with law, contrary to constitutional right, and short of statutory right.

Prima facie case of disparate treatment based on race

55. Plaintiffs will show the following facts to make out a prima facie case of discrimination by presenting the facts to give rise to an inference of discrimination by HUD.

56. HUD contracts with private landlords to provide affordable housing to low income tenants through the Project Based Rental Assistance program (PBRA). 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.

57. 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 did not provide Plaintiffs with decent, safe, and sanitary housing.

58. 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.

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

60. 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.

61. HUD does provide similarly situated, predominantly White non-Hispanic low income tenants in majority White non-Hispanic census tracts with PBRA housing that is free from conditions that adversely affect the health, safety, and general welfare of the area residents. These PBRA units are in the six PBRA projects in The Woodlands.

62. 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 visibly and plainly better than the conditions at Coppertree

Village Apartments. The number and violence of the crimes in the neighborhoods in which The Woodlands PBRA projects are located are substantially less than the number and violence of the crimes in the Coppertree Village neighborhood.

HUD's refusal to provide Plaintiffs with PBRA housing equal to that provided to White non-Hispanic tenants is not based on any legitimate, non-discriminatory reason

63. HUD has no statutory or regulatory authority for failing to provide Plaintiffs with the decent, safe, and sanitary housing required by the relevant housing quality standards. HUD has no statutory or regulatory authority for failing 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 *Arlington Heights* factors supports the finding of intentional discrimination

64. 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. *Village 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.

HUD's refusal to provide Plaintiffs and the other residents of PBRA housing with equal housing and living conditions has the discriminatory effect of perpetuating racial segregation in PBRA units in the City of Houston

65. 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.

66. HUD's refusal to provide Plaintiffs and the other residents of PBRA housing with equal housing and living conditions has the second discriminatory effect adversely affecting a disproportionately Black or African American group, the residents of PBRA in Houston.

67. 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

68. 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.

69. 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.

70. 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.

71. 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

72. HUD has made several decisions to enter into, renew and to approve the assignment of the PBRA contracts for Coppertree Village since 1981. Each of those decisions was 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.

73. The Houston Housing Authority (HHA) refused to approve the use of its housing voucher project based assistance program at Coppertree Village because the location did not meet HUD neighborhood standards.

The NHP Foundation/Urban Atlantic (Coppertree) proposal did not meet threshold requirements and was therefore not scored. HHA determined that the development does not meet federal Site Selection requirements as described in 24 CFR 983.57 and as also summarized in HHA' Request for Proposals. Specifically, there is insufficient evidence that the proposal for PBV assistance is consistent with the goal of deconcentrating poverty and expanding housing opportunities.

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

74. 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:

- 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. *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.

75. HUD is aware of the history of de jure and de facto segregation in affordable housing in the City of Houston. HUD knows that Houston is one of the most racially segregated cities in the United States and in 2012 was the most racially segregated city in Texas. HUD knows that

Plaintiffs and other minority residents face challenges in seeking affordable housing outside areas of minority concentration. HUD letter to James D. Noteware, City of Houston, Director of Housing and Community Development, November 30, 2011 (City Analysis of Impediments to Fair Housing incomplete and unacceptable).

76. Despite this knowledge, HUD has not taken meaningful action to affirmatively further fair housing in the PBRA program as administered with regard to the Coppertree Village Apartments project. HUD's implementation of its legal obligation requires HUD to provide Plaintiffs with PBRA housing in neighborhood living conditions free from the high crime and other conditions that adversely affect the health, safety, and welfare of Plaintiffs and their families. If HUD had used its legal and contractual authority to require the provisions of equal quality housing at Coppertree Village Apartments, one effect of the racial segregation would have been eliminated. If HUD had used its legal and contractual authority to provide Plaintiffs with a tenant based voucher, Plaintiffs could use the voucher to obtain housing in housing with equal unit conditions and with fewer adverse neighborhood living conditions. Plaintiffs could at least move to an area that was less prone to criminal activity. HUD took neither action to comply with its legal obligation to affirmatively further fair housing. HUD's violation of this obligation is consistent with discriminatory intent.

77. The PBRA contract was renewed in June 2013. The neighborhood, unit, project, and site conditions violated the decent, safe, and sanitary housing requirements of 24 C.F.R. § 5.703. These violations were continuous, open, and obvious. These conditions justified a refusal to renew the contract. MAHRA, 516, 524. HUD renewed the PBRA contract for 20 years.

Claims for relief

78. HUD's final agency action refusing to provide plaintiffs and the other project residents with Housing Choice Vouchers and the other assistance needed to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions violates 42 U.S.C. § 3604(a). HUD's actions prevent plaintiffs from using vouchers to obtain dwellings in violation of 24 C.F.R. § 100.70(a).

79. HUD's final agency action failing or delaying maintenance or repairs and the provision of units that fail to meet the standards of 24 C.F.R. § 5.703 rental dwellings because of race, color, religion, sex, handicap, familial status, or national origin violates 42 U.S.C. § 3604(b) and 24 C.F.R. § 100.65(b)(2).

80. HUD's final agency action refusing to provide plaintiffs and the other project residents with Housing Choice Vouchers and the other assistance needed to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions violates HUD's obligation to affirmatively further fair housing. 42 U.S.C. § 3608(e)(5).

81. HUD's final agency action refusing to provide plaintiffs and the other project residents with Housing Choice Vouchers and the other assistance needed to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions violates the equal protection principle of the Fifth Amendment to the U.S. Constitution.

82. HUD's action refusing to provide plaintiffs and the other project residents with Housing Choice Vouchers and the other assistance needed to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions is final agency action that violates HUD legal obligations under MAHRA Sec. 516 (a)(1)(A), (a)(2).

83. Relief for Plaintiffs' claims is available under 5 U.S.C. § 706.

Prayer for relief

84. Plaintiffs request the following relief:

A. a preliminary injunction ordering HUD to temporarily abate the Section 8 contract with the owner of the project for plaintiffs' units and provide plaintiffs with a housing choice voucher and the other assistance necessary to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions;

B. a final judgment ordering HUD to continue to provide plaintiffs with a housing choice voucher and the other 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. a declaratory judgment that HUD's refusal to provide plaintiffs with a housing choice voucher and the other assistance necessary to obtain affordable decent, safe, and sanitary housing in neighborhoods without substandard conditions violated HUD's legal obligations pursuant to 42 U.S.C. § 1437f(z)(I)(A); CONSOLIDATED APPROPRIATIONS ACT, 2018, PL 115 141, March 23, 2018, 132 Stat 348 the Consolidated Appropriations Act, 2018 (Public Law 115 141); MAHRA Sec. 516(a)(1)(A), (a)(2); 24 C.F.R. § 886.323(e). 42 U.S.C. § 3604(a); 24 C.F.R. § 100.70(a); 42 U.S.C. § 3604(b); 24 C.F.R. § 100.65(b)(2), 42 U.S.C. § 3608(e)(5); and the Fifth Amendment to the United States Constitution.

E. any other appropriate relief; and

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

Respectfully Submitted,

/s/Kimberly Brown Myles

Kimberly Brown Myles
Attorney in charge
State Bar No. 24071805
Fed ID No.1098722
Martha Orozco
State Bar No. 00795569
Fed ID No. 24971
Velimir Rasic
State Bar No. 24065948
Fed ID No. 982815
LONE STAR LEGAL AID
P.O. Box 398
Houston, Texas 77001 0398
Telephone: (713) 652-0077 ext.
1206
Facsimile: (713) 652-3141
Email: kbrown@lonestarlegal.org
Email: vasic@lonestarlegal.org
Email: morozco@lonestarlegal.org

Of Counsel:

Michael M. Daniel
State Bar No. 05360500
Fed ID No. 20079
Laura B. Beshara
State Bar No. 02261750
Fed ID No. 20080
DANIEL & BESHARA, P.C.
3301 Elm Street
Dallas, Texas 75226 1637
214 939 9230
Fax 214 741 3596
E mail: daniel.michael@att.net
E mail: laurabeshara@swbell.net

Attorneys for Plaintiffs