

PHA Settles Garbage Collection Suit for \$3.3 Million

By Jessie Cassella, Law Clerk, National Housing Law Project*

On October 2, 2014, Federal District Judge George H. Wu preliminarily approved a \$3.3 million settlement between Los Angeles public housing residents and the Housing Authority of the City of Los Angeles (HACLA).¹ The lawsuit, filed March 21, 2012, was brought on behalf of an estimated 9,000 current and former public housing tenants in 14 Los Angeles public housing developments.² Tenants claimed HACLA had been overcharging rents for years—and violating federal law—by failing to include garbage collection fees paid by the tenants in rent and utility allowance calculations.³ The tenants also claimed that HACLA had breached their leases by not directly providing for “rubbish removal.”⁴ The tenants’ federal law claims were brought both through Section 1983, and directly as an implied right of action under the Brooke Amendment rent limitations.⁵ After extensive discovery, several pre-trial rulings, and prolonged mediated negotiations, the parties reached a settlement agreement. The terms of the agreement distribute the \$3.3 million gross settlement fund to class members based on both the rent method and garbage rate charged during the four-year period before HACLA began including garbage collection in utility allowances.

Background and Prior Rulings

Tenants first discovered that HACLA had never paid for garbage collection when the City of Los Angeles changed its billing practices and detailed the specific utility services it was providing and charging to tenants. Accordingly, in February 2012, HACLA prospectively included garbage collection fees in tenants’ monthly utility allowances. HACLA refused, however, to compensate tenants (via refunds or rent credits) for past overcharges. HACLA tenants then sought declaratory and injunctive relief, specific performance of the lease, and damages for past overcharges and efforts to reduce the cost of garbage collection.⁶

In July 2012, the court certified two separate classes.⁷ First, for the federal statutory claims, the court certified a class of all persons who: (1) have resided or will reside in HACLA public housing on or since March 21, 2008; and (2) have been, or will be, required to pay garbage collection fees, except if they have chosen or will choose to pay rent pursuant to the flat rent option.⁸ Second, for the contract claim, the court certified all persons who have resided in HACLA public housing on or since March 21, 2008, and have been or will be required to pay for garbage collection. This second class excluded households that HACLA had previously notified

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¹ Galindo v. Hous. Auth. of City of Los Angeles, No. CV12-2449 (C.D. Cal. filed Mar. 21, 2012), order granting preliminary approval of settlement (C.D. Cal. Sept. 29, 2014). The text of the actual settlement agreement, as amended, is attached to a Stipulation (Doc. 238), filed Aug. 22, 2014.

² *Id.*

³ The complaint included claims based on the Brooke Amendment, 42 U.S.C. § 1437a(a), which generally limits tenant rents to 30% of a tenant’s adjusted income. *Id.*

⁴ *Id.*

⁵ See *supra* note 3.

⁶ Complaint, Galindo v. Hous. Auth. of City of Los Angeles, No. CV12-2449 (C.D. Cal. filed Mar. 21, 2012).

⁷ Tentative Ruling on Motion for Class Certification, Galindo v. Hous. Auth. of City of Los Angeles, No. CV12-2449 (C.D. Cal. July 16, 2012). For more detail on this ruling, see NHLP, *Public Housing Tenants File Two New Utility Allowance Cases*, 42 HOUS. L. BULL. 203, 210 (Oct. 2012).

⁸ Flat rent levels already consider and account for utilities for purposes of applying the statutory rent limit.

as in material breach of the lease for non-payment of rent.⁹ The 2008 look-back period, delimiting both classes, reflects the parties' understanding of the applicable statute of limitations.

Since plaintiffs primarily sought monetary relief, the court certified these classes under Rule 23(b)(3),¹⁰ noting that HACLA's prospective policy shift, providing utility allowances for rubbish removal, largely answers plaintiffs' call for specific performance.¹¹

Following class certification, the court denied HACLA's motion to decertify the classes and granted partial summary judgment to the tenants on their federal law claims.¹² In finding that HACLA had violated federal law, the court ruled that trash collection was a necessary utility. Accordingly, if trash was tenant-paid, HACLA was obligated to provide a compensatory and reasonable utility allowance in establishing rents under the statutory limitation; zero was not a reasonable amount.¹³ These rulings left only federal claim damages and contract liability and damages unresolved.

Settlement Agreement Terms

Monetary Relief for HACLA Public Housing Tenants

The \$3.3 million settlement fund will be distributed to class members based on the rent calculation method (flat rate or percentage of income) and type of unit (multifamily apartment, duplex, triplex, etc.) occupied from March 2008 to February 2012. Because the actual garbage rate for tenants increased September 1, 2008, the corresponding refund amounts reflect two different garbage rates during the applicable reimbursement period.¹⁴

Tenants who paid income-based rent in a multifamily apartment will receive \$24.33 for each month rent was paid from September 1, 2008, through February 1, 2012, and \$17.16 for each month rent was paid from March 21, 2008, until September 1, 2008. Tenants who paid an income-based rent in a duplex or triplex will receive \$36.32 for each month rent was paid from September 1, 2008, through February 1, 2012, and \$26.00 for each month rent was paid from March 21, 2008, through September 1, 2008.¹⁵

Tenants who paid flat rents will receive the amount actually paid to the City for trash collection services for each month from March 21, 2008, through April 30, 2014.¹⁶

⁹ Subsequently, the court narrowed this exclusion as applying to "those households whom HACLA had notified before the initiation of this lawsuit that they were in material breach of the lease for non-payment of rent and (i) remain in full arrears for said breach or (ii) have not repaid or entered into any repayment plan for the amounts owed pursuant to said breach." *Galindo v. Hous. Auth. of City of Los Angeles*, No. CV12-2449 (C.D. Cal. Oct. 21, 2013) (Order Re Giving New Notice to Affected Class Members).

¹⁰ Tentative Ruling on Motion for Class Certification, *Galindo v. Hous. Auth. of City of Los Angeles*, No. CV12-2449 (C.D. Cal. July 16, 2012). The court rejected Rule 23(b)(2) certification because, in light of HACLA's policy change, it found no need for injunctive or declaratory relief for the class as a whole, as required by that rule. *Id.* Thus, it certified the classes under Rule 23(b)(3), which permits certification where the primary claims are monetary.

¹¹ *Id.*

¹² Tentative Rulings on Defendants' Motion to Decertify Class and Defendants' Motion for Partial Summary Judgment, *Galindo v. Hous. Auth. of City of Los Angeles*, No. CV12-2449 (C.D. Cal. July 18, 2013).

¹³ *Id.* at 9.

¹⁴ *Galindo v. Hous. Auth. of City of Los Angeles*, No. CV12-2449 (C.D. Cal. Aug. 22, 2014) (amended Settlement Agreement attached to Stipulation Re: Filing of Fully Executed Settlement Agreement and Change in Paragraph 31 of the Agreement (Doc. 238) filed that day).

¹⁵ *Id.*

¹⁶ *Id.*

A Claims Administrator must verify timely claims as accurate and compliant with the claim submission process. If the total amount of all valid claims exceeds the net settlement fund, plus any accrued interest, the payment to each class member will be proportionately reduced. If, on the other hand, the total amount of all valid claims is less than the net settlement fund, plus accrued interest, tenants will receive full claims and any remaining funds will revert to HACLA.¹⁷

Non-Monetary Relief for HACLA Public Housing Tenants

No later than 30 days after the settlement is finalized, HACLA must make reasonable and economically feasible efforts to switch trash collection services from the Los Angeles City Bureau of Sanitation to a company that charges HACLA residents less for garbage collection.¹⁸ Alternatively, HACLA can directly contract for trash collection services.¹⁹ This obligation is subject to HACLA obtaining reimbursement from HUD.²⁰

For flat rent class members, HACLA must assume direct responsibility for paying for trash collection provided by the Los Angeles City Bureau of Sanitation and charged to tenants by the Department of Water and Power. HACLA has 30 days from the effective date of the final settlement to implement this change. HACLA will pay trash collection costs by directly reimbursing flat rent class members and will continue these payments as long as HACLA is required to provide trash collection services under the lease.²¹

Finally, if HACLA proposes any future changes relating to the monthly utility allowances for trash collection, it must give class members and their attorneys written notice at least 60 days prior to implementing the change.²²

Next Steps

The terms of the settlement agreement are expected to undergo a final approval hearing in early 2015, after allowing class members time to submit any objections. The Claims Administrator will mail the Notice and Claim Form to all class members, who can then mail any written objections to the Claims Administrator by a specified deadline.²³

The Claims Administrator will also activate a website, describing settlement terms, from which class members can download relevant forms such as the Class Notice, the Settlement Agreement, the Court's Preliminary Approval Order, and Class Counsel's Motion for Final Approval. The website will include a toll-free number for settlement inquiries and must remain active until settlement payments are completely distributed.²⁴

To receive a claim payment, a class member must sign the Claim Form and mail it to the Claims Administrator, postmarked no later than 70 days after the Notice and the Individual Claim Notice were both mailed.²⁵

¹⁷ *Id.*

¹⁸ To implement this switch, HACLA must obtain permission from the appropriate governing or regulatory entity.

Id.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Within 45 days after mailing of the Notice and Claim Form, the Claims Administrator must send a reminder postcard to any class member who has *not* yet: (1) submitted their signed and completed claim form; or (2) requested exclusion from the settlement.²⁶

Within 15 days after entry of the final approval order, the Claims Administrator must make a final determination of the Net Settlement Fund by deducting the Claims Administrator's final fees and expenses from the \$3.3 million, and by adding all accumulated interest. The Administrator must then prepare a final calculation for each class member stating the class member's share of the net fund.²⁷

The parties have agreed to continue negotiations about attorney's fees, costs, and litigation expenses. If the parties are unable to reach agreement on some or all of these issues, the Court will decide these issues following a hearing. Any service award to the class representative and any award of attorney's fees, costs, and litigation expenses will not be paid from the settlement fund.²⁸

Lead counsel for the tenants was the Western Center on Law and Poverty, with assistance from co-counsel NHLP, Arnold & Porter LLP, and the Los Angeles Center for Law & Justice.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*