

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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Mary E. Scott, Candice K. Herzog,

Civil Action No. \_\_\_\_\_

Plaintiffs,

v.

U.S. Department Of Housing And Urban  
Development, Housing And  
Redevelopment Authority Of Douglas  
County, a body corporate and politic,  
Jeffrey Schiffman, in his official capacity  
as Executive Director of Housing and  
Redevelopment Authority of Douglas  
County,

**COMPLAINT**

Defendants.

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**I. INTRODUCTION**

1. Plaintiffs, Mary E. Scott and Candice K. Herzog, are recipients of rental subsidies under the Section 8 voucher program, wherein they pay a portion of their rent based upon income and the Housing and Redevelopment Authority of Douglas County (HRADC) pays the remaining portion through the rental subsidy provided by defendant U.S. Department of Housing and Urban Development (HUD). Both plaintiffs received notices dated August 30, 2010 stating their rents would increase substantially effective October 1, 2010 due to immediate changes in the HRADC's rent payment standards that decreased the rental subsidy amount. Ms. Scott received notice that her rent would increase even further next March due to a change by HRADC in its voucher occupancy standard, making her household eligible for only a one-bedroom unit where previously she and her son were eligible for two bedrooms.

2. The HRADC's actions are purportedly motivated by shortfalls in voucher funding received from HUD. But the HRADC will receive more than enough funding from HUD to cover the costs of its voucher program without the program changes which will result in rent increases for plaintiffs and virtually every other recipient of vouchers from HRADC. However, HRADC intends to keep a significant portion of this funding for itself. HRADC's actions amount to an attempt to build a surplus of approximately \$62,000 from its operation of the HUD Section 8 voucher program at the expense of its extremely low income clients.

3. Both HRADC policy changes required HUD approval. HUD's approval was arbitrary, capricious and a violation of federal law because HRADC did not consider the impact on residents as required by federal policy and has failed to take steps to address any financial issues which have less impact on voucher holders, as required by HUD policy; because the changes would result in a substantial additional number of voucher holders paying more than 30% of income when the number is already above the threshold at which HUD is to consider an order to HRADC to increase, rather than decrease, the HUD subsidy; and because the policy changes were not reviewed by a resident advisory board, as required by federal statute. For the same reasons, HRADC's imposition of the changes is a violation of federal Section 8 voucher policy. Finally, the HRADC's own documents indicate that, even if the payment and occupancy standard changes are not implemented, the voucher program will generate a surplus of about \$36,000 for 2010.

4. The HRADC is able to impose this rent increase immediately only because of HUD's waiver of its regulations which would ordinarily require more than a year's notice. HUD's waiver was arbitrary and capricious because it failed to consider factors required by its own policies in making the decision to grant the waiver and because of HRADC's failure to

comply with HUD policy in addressing a shortfall. The HRADC's notice of an October rent increase is thus a violation of the federal regulations. It is also a violation of federal Section 8 voucher policy.

5. Plaintiffs bring this action for declaratory, injunctive, and other necessary or proper relief against U.S. Department of Housing and Urban Development (hereinafter "HUD"), HRADC, and HRADC's Executive Director, Jeffrey Schiffman in his official capacity. Defendants' actions have led to an immediate increase in Plaintiffs rent to take effect on October 1, 2010. Plaintiffs request that this court issue a temporary restraining order and preliminary injunction to enjoin HRADC from altering their rental subsidy until a final determination on the merits.

## **II. JURISDICTION**

6. Jurisdiction over plaintiffs' federal claims is conferred upon this court by 28 U.S.C. § 1331 and by 28 U.S.C. § 1343(a)(3) and (4), and over state law claims by 28 U.S.C. § 1367.

7. This court is empowered to grant declaratory relief pursuant to 28 U.S.C. § 2201, and further necessary or proper relief pursuant to 28 U.S.C. § 2202 and by 5 U.S.C. § 706. plaintiffs are also entitled to relief pursuant to 42 U.S.C. § 1983, which provides redress for the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution and laws of the United States to all citizens and persons within the jurisdiction of the United States.

8. To the extent sovereign immunity is applicable to defendant HUD, it has been waived by 5 U.S.C. § 702.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because plaintiff's claims arose in this district.

### **III. PARTIES**

10. Plaintiff, Mary E. Scott, is a 64-year-old citizen of Minnesota who currently resides at 1311 Hawthorne Street, Alexandria, MN 56308. She is a recipient of federal rental assistance through the Section 8 Voucher Program administered by Defendant HRADC.

11. Plaintiff, Candice K. Herzog, is a 58-year-old citizen of Minnesota who currently resides at 301 8<sup>th</sup> Avenue West, Osakis, MN 56360. She is a recipient of federal rental assistance through the Section 8 Voucher Program administered by Defendant HRADC.

12. Defendant HRADC maintains its principal place of business at 1224 North Nokomis Street, PO Box 965, Alexandria MN 56308. Defendant HRADC is a federally-funded public housing authority established and organized pursuant to state enabling legislation, Minn. Stat. § 469.004 for the purpose of providing adequate, safe, and sanitary low-cost housing to low and moderate income resident families and individuals. Pursuant to Minn. Stat. § 469.004, Defendant HRADC is deemed to be a body corporate and politic, exercising public and essential governmental functions, and constituting an agency and instrumentality of Douglas County. Defendant HRADC is subject to the provisions and requirements of federal law governing the Section 8 Voucher Program of the United States Housing Act of 1937, 42 U.S.C. § 1437f and the regulations promulgated thereunder at 24 C.F.R. Part 982.

13. Defendant Jeffrey Schiffman was at all times relevant to this action and currently is the Executive Director of Defendant HRADC. Defendant Jeffrey Schiffman is responsible for the overall management and operation of Defendant HRADC, and he is responsible for ensuring

the Housing Authority's compliance with federal law governing the Section 8 Voucher Program set forth under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f and the regulations promulgated thereunder at 24 C.F.R. Part 982. Defendant Jeffrey Schiffman is responsible for the policy, custom, or practice authorizing the decrease of plaintiffs' rental subsidy and/or improperly training HRADC personnel in the proper policy, custom, or practice authorizing an immediate decrease in payment standards and a decrease in rental subsidies. Defendant Jeffrey Schiffman is sued in his official capacity.

14. Defendant HUD is subject to the provisions and requirements of federal law governing the Section 8 Voucher Program of the United States Housing Act of 1937, 42 U.S.C. § 1437f and the regulations promulgated thereunder at 24 C.F.R. Part 982.

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

15. The Section 8 Voucher Program is part of the United States Housing Act of 1937 (the Act) and is codified at 42 U.S.C. § 1437f(o). In general, the goal of the Act is to provide housing for low income persons which is affordable at 30% of their incomes. 42 U.S.C. § 1437a(1). The United States Department of Housing and Urban Development (HUD) has promulgated regulations implementing the program at 24 C.F.R. Part 982. The Section 8 Voucher Program is one of several rent subsidy programs aiding low-income individuals and families under the Act. Pursuant to 42 U.S.C. § 1437f(a), the purpose of all of the Section 8 programs, including the Section 8 Voucher Program, is to aid "lower income families in obtaining a decent place to live and of promoting economically mixed housing" by making payments to owners of existing housing.

16. The federal government, through HUD, allocates funds to local public housing agencies (PHAs) throughout the nation to administer the Section 8 Voucher Program. 24 C.F.R. § 982.101. Under the regulations, the local PHA enters into a Housing Assistance Payments (HAP) contract with a property owner on behalf of an eligible individual or family and agrees to subsidize the rent owed the owner. 24 C.F.R. § 982.451.

17. The PHA sets occupancy standards dictating the number of bedrooms which each size and type of household is entitled. 24 C.F.R. § 982.402(a). The PHA also sets voucher payment standards for each size apartment unit. 24 C.F.R. § 982.503(a). The HUD subsidy makes up the difference between the tenant's rent payment (including tenant-paid utilities) and the rent charged by the owner, up to the voucher payment standard. 42 U.S.C. § 1437f(o)(2). If the tenant's rent plus the utility allowance do not exceed the payment standard, the tenant pays 30% of income for housing costs. If rent plus utilities exceed the payment standard, the tenant pays the excess in addition to 30% of income. 42 U.S.C. § 1437f(o)(2)(A) and (B).

18. Therefore, if a PHA decreases the payment standard, the amount of the decrease will generally be added to the tenant's rent, contrary to the tenant's expectations when selecting the unit. To address this problem, 24 C.F.R. § 982.505(c)(5) sets the time frame for implementing a voucher payment standard change. A payment standard change that decreases the tenant's rental subsidy and increases the tenant's rent portion does not take effect until the second annual reexamination after the change. 24 C.F.R. § 982.505(c)(3).

19. HUD Notice 2009-44 "provides guidance on actions public housing agencies...may take to address financial shortfalls by reducing costs" in the voucher program.

Section 2 of the Notice provides:

In determining which actions to take, a PHA should carefully consider the impact such actions will have on program applicants and participants. Implementing

cost-savings measures that create an additional burden on families should only be taken after careful consideration and a determination by the PHA that all other viable options have been exhausted.

Section 4 of the Notice sets out similar directives, including that if an action being considered would adversely impact families' rent burdens, "then the PHA should take all other actions having no impact or less impact on families first."

20. Section 4.j. of the Notice provides that a PHA experiencing financial difficulties may, for good cause, request a waiver of 24 C.F.R. § 982.505(c)(3) "so that reduced payment standards may be applied sooner than provided by regulation." The request must include the calculation used to arrive at the projected shortfall and describe other cost-saving measures taken. Section 4.j. also provides that in determining whether to approve such a waiver request "HUD will review and take into consideration the PHA's current rent burden and the impact of the proposed change on the PHA's participants."

21. HUD is required to monitor the rent burdens experienced by voucher holders under each PHA's program and "review any payment standard that results in a significant percentage of the families...paying more than 30% of adjusted income for rent." 42 U.S.C. § 1437f(o)(1)(E). HUD may order the PHA to increase the payment standard based on the review. *Id.* HUD's regulations set the "significant percentage" at 40%. 24 C.F.R. § 982.503(g)(1). HUD's Guidebook for the program emphasizes that payment standards "should be high enough to allow families a reasonable selection of modest, decent, sanitary housing." Housing Choice Voucher Guidebook, Section 7-1 (available at <http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm>).

22. PHAs must have a public housing agency administrative plan which includes a statement of policies regarding rental contributions and occupancy of voucher-assisted housing.

42 U.S.C. Sections 1437c-1(d)(3) and (4). The plan and amendments must be approved by HUD. 42 U.S.C. Section 1437c-1(g)(1)(B). 42 U.S.C. Sections 1437c-1(c), (e) and (g) require that each PHA establish a resident advisory board, representing assisted residents, which is to assist and make recommendations regarding the agency's public housing agency plan and any amendments.

23. HUD is required by 42 U.S.C. Section 3608 to administer its programs so as to affirmatively further the policies and purposes of the Federal Fair Housing Act. The Fair Housing Act prohibits discrimination based on, among other things, disability. 42 U.S.C. § 3604(f)(2). Pursuant to Section 3608, HUD is required to consider the fair housing implications of its actions and to consider alternatives in light of their fair housing implications.

## V. FACTS

24. Plaintiff Scott and her adult son, who is disabled, have received Section 8 voucher assistance since March, 2001. They have resided in a 2-bedroom apartment at 1311 Hawthorne Street, Alexandria, Minnesota since July, 2005. Their adjusted household income is \$4,904 annually. Ms. Scott received a rental subsidy in the amount of \$498 per month in September 2010. Her portion of housing costs for September 2010 was \$102 per month in rent to the landlord, plus utilities. The HRADC calculated utility allowance for her unit was \$134 per month. So before the HRADC reduced the payment standard, her monthly housing costs were \$236, or 57.7% of her income. After the reduction in payment standard, effective October 1, 2010, her rent to the owner will increase by \$62 to \$164, and her total housing costs will increase to \$298, or 72.9% of her monthly income.

25. Plaintiff Herzog is physically disabled. She is the custodian of her minor grandson and has received Section 8 voucher assistance through HRADC since approximately



September 2008. Her adjusted household income is \$10,592. Ms. Herzog received a rental subsidy in the amount of \$356 per month in September 2010. Her portion of housing costs for September 2010 was \$294 per month in rent to the landlord, plus utilities. The HRADC calculated utility allowance for her unit was \$90 per month. So before the HRADC reduced the payment standard, her monthly housing costs were \$384, or 43.5% of her income. After the reduction in payment standard, effective October 1, 2010, her rent to the owner will increase by \$62 to \$356, and her total housing costs will increase to \$446, or 50.5% of her monthly income.

26. HUD's data on the demographics of HRADC voucher holders as of 2008 indicates that 30% of all voucher households had a disabled head-of-household. See, <http://www.huduser.org/portal/picture2008/index.html>.

27. HRADC ended 2009 with a surplus of \$57,952 from its operation of the Section 8 voucher program, consisting of \$16,296 in housing assistance dollars and \$41,656 of administrative dollars. The former are restricted to provision of voucher subsidies; the latter may under some circumstances be used for the provision of voucher subsidies. See, Notice 2009-44, Section 4.

28. Beginning in January 2010, the HUD funds provided monthly specifically for, and restricted in use to, payment of voucher subsidies were inadequate to cover the actual subsidy costs. HRADC took the two steps at issue in this litigation in order to address the shortfall in HUD restricted funds.

29. On May 13, 2010, HRADC Board of Commissioners (hereinafter "Board") signed resolution #5-13-10B decreasing the rent payment standard from 100% of Fair Market Rent (FMR) to 90% of FMR. The Board minutes reflected no evidence of discussion regarding the magnitude of the effect of this action on voucher holders. There was no analysis or discussion of

the number of households who would suffer a rent increase, of the distribution of the magnitude of the increases, of the resulting percentages of income in excess of the federal standard of 30% which voucher recipients would have to pay as a result, nor of the availability of an available supply of adequate housing affordable within the lower payment standard for all of the voucher holders needing to move to avoid the adverse effects of the resulting substantial rent increases. Nor was there discussion of possible cost-saving measures which might have less impact on voucher holders, including the use of administrative fees to pay voucher subsidy expenses.

30. HRADC requested from HUD a waiver of 24 C.F.R. Section 982.505(c)(3) which requires that decreased payment standards not apply until the second regular (annual) reexamination of residents' eligibility after the standard is lowered.

31. HUD sent a letter to Director Schiffman dated June 9, 2010 regarding the payment standard waiver request it received from HRADC on May 11, 2010. The letter granted a waiver of 24 CFR 982.505(c)(3). The letter noted that 42 percent of HRADC's participants were paying more than 30 percent of monthly adjusted gross income toward their share of gross rent during the 16-month period ending April 30, 2010. That percent is already over the threshold at which HUD is required to consider whether too many households are paying too much for rent because the payment standard is too low. The substantial reduction of the payment standard under these circumstances could have no other effect than to greatly increase the percentage of households paying more than 30% of their income for rent and greatly increase the amount by which rent exceeds the 30% level. HUD nevertheless ignored the requirement of 42 U.S.C. § 1437f(o)(1)(E) that HUD review the adequacy of the payment standard to determine whether it needed to be increased, and instead permitted a decrease, with obvious adverse consequences, and deferred the required review.

32. Further, on information and belief, contrary to the requirements of Notice 2009-44(4)(j), HUD did not consider the effects of the PHA's proposed reduction on voucher recipients. There was no analysis or consideration of the number of households who would suffer a rent increase, the distribution of the magnitude of the increases, of the resulting percentages of income in excess of the federal standard of 30% which voucher recipients would have to pay as a result, nor of the availability of a supply of adequate housing affordable within the lower payment standard for all of the voucher holders needing to move to avoid the adverse effects of the resulting substantial rent increases.

33. Further, on information and belief, HUD, in violation of its obligations under 42 U.S.C. § 3608, did not consider the effects of its waiver on the large percentage of HRADC's voucher holders who are disabled, nor did it consider alternatives which would have a lesser effect on disabled voucher holders. Not only are disabled persons likely to have a greater difficulty in moving than non-disabled persons, but their choice of housing is often more limited.

34. On June 10, 2010 HRADC Board of Directors (hereinafter "Board") signed resolution #6-10-10 changing the occupancy standards. The Board minutes reflected no evidence of discussion regarding an alleged budget shortfall, the number of residents affected, the nature of any adverse effects including substantial rent increases on residents who would be "overhoused" as a result of the action, or possible cost-saving measures with less impact on residents.

35. On August 30, 2010, the HRADC board acted to amend the public housing agency administrative plan in order to implement these changes.

36. At no time relevant was there a resident advisory board. Therefore, the plan changes were made in violation of the requirements of 42 U.S.C. Section 1437c-1(g)(2).

37. HUD's approval of such plan changes is required by 42 U.S.C. Section 1437c-1(g)(1)(B). HUD immediately approved the plan changes, permitting the payment and occupancy standard changes to go into effect, in spite of the HRADC's non-compliance of the requirement for resident advisory board review and in spite of the HRADC's failure to comply with the preconditions set out in Notice 2009-44 for taking actions which would have an adverse effect on voucher holders.

38. HUD, in violation of its obligations under 42 U.S.C. § 3608, did not consider the effects of its approval of the HRADC's proposed changes on the large percentage of HRADC's voucher holders who are disabled, nor did it consider alternatives which would have a lesser effect on disabled voucher holders.

39. Between the HRADC's request for a regulatory waiver in May and the board action approving the policy changes in August, a number of participants left the voucher program. As a result, there was no longer a monthly shortfall in HUD's operating subsidies. Based on projections produced by HRADC in September, 2010, it is clear that the total amount of funds for the Section 8 program to be received from HUD during 2010 (including both restricted subsidy funds and unrestricted administrative fees), combined with the surplus remaining from 2009 will be more than enough to cover all of the agency's Section 8 program expenses (for subsidy and administrative expenses) even if the HRADC does not implement the payment standard and occupancy standard changes at all during the year. The September projections indicated that, with the implementation of the payment standard changes, the voucher program would leave HRADC with a surplus of approximately \$62,000 at year end.

40. Plaintiffs' counsel sent letters to the HRADC on September 3, 2010 and to HUD on September 9, 2010 setting out the failures by both agencies to consider the factors required by

Notice 2009-44 prior to implementing or approving the changes in the payment and occupancy standards and waiving the provisions of 24 C.F.R. Section 982.505(c)(3). The letters also demonstrated, based on the HRADC's own projections, that these changes were unnecessary to achieve break-even operations for the year.

41. The response of the HRADC amounted to an assertion that, contrary to the provisions of Notice 2009-44(4), the agency would prefer to keep surplus administrative funds for itself rather than use the funds to avoid significant financial hardship for its extremely low income clients. In a September 15, 2010, letter Defendant Schiffman stated, "HUD does not require and the HRA is not required to use unrestricted administrative dollars for housing assistance payments. That decision is at the discretion of the HRA Board of Commissioners."

42. HUD has not retracted its waiver of 24 C.F.R. Section 982.505(c)(3), for which there is no longer good cause, nor its approval of the plan changes which permitted the HRADC to implement these policies.

43. On August 30, 2010, Defendant HRADC sent a notice to plaintiff Scott stating her rent would increase by \$176 per month effective October 1, 2010 because of changes in both the rent and occupancy standards, with \$114 of the change attributable to the change in occupancy standards. Her payment standard, with the change in occupancy standard, would be \$445 per month rather than \$621 per month. As the result of her lawyer's complaint that federal rules do not permit immediate implementation of the occupancy standard change, the HRADC conceded that the occupancy standard increase in rent of \$114 per month will be implemented on Ms. Scott's next annual reexamination, set for March 2011.

44. On September 9, 2010, Defendant HRADC sent plaintiff Scott a notice that her rent would increase by \$62 under the change in payment standards which would take effect

October 1, 2010. A letter from Defendant Schiffman clarified that plaintiff Scott's occupancy standard would be addressed at the time of her March 2011 annual examination.

45. On August 30, 2010, Defendant HRADC sent a notice to plaintiff Herzog stating her rent would increase by \$62 effective October 1, 2010 because of changes in the rent payment standard. Her payment standard would be \$559 per month rather than \$621 per month. Ms. Herzog's next annual reexamination is August 2011.

46. HUD data on the demographics of HRADC voucher holders indicate that 30% are disabled. The federal Fair Housing Act, at 42 U.S.C. 3604(f)(2) includes persons with disabilities among those protected by the Act. HUD is required by Section 3608 of the Act to administer its programs so as to affirmatively further the policies and purposes of the Fair Housing Act.

47. Plaintiffs face an imminent, substantial and unaffordable increase in their housing costs on October 1. They have no adequate remedy at law and seek injunctive and declaratory relief.

### **CLAIMS FOR RELIEF**

#### **FIRST CAUSE OF ACTION**

##### **Arbitrary, Capricious, and unlawful action by HUD**

48. Defendant HUD violated its obligations under the United States Housing Act of 1937, 42 U.S.C. § 1437f *et seq.*, and its implementing regulations at 24 C.F.R. Part 982, and the Fair Housing Act, 42 U.S.C. § 3608, and violated its own policies and acted arbitrarily and capriciously when it a) granted a waiver of 24 C.F.R. Section 982.505(c)(3) without reviewing and taking into consideration the adverse impact on the tenants caused by a change in rent payment standards, even though the HRADC had failed to comply with the requirements of

Notice 2009-44 for an analysis of such impacts, without requiring HRADC to utilize its administrative fee surplus to mitigate adverse effects on residents; without consideration of its affirmative obligations under 42 U.S.C. § 3608; and in spite of the fact that the changes would subject more than 40% of voucher recipients to a rent burden in excess of 30% of income; b) approved the changes in the HRADC's public housing agency plan which implemented the subsidy and occupancy standard changes in spite of HRADC's failure to comply with Notice 2009-44 in proposing the changes, in spite of the fact that the changes would subject more than 40% of voucher recipients to a rent burden in excess of 30% of income; without consideration of its affirmative obligations under 42 U.S.C. § 3608, and in spite of the failure of HRADC to have a resident advisory board which could review and comment on the changes as required by 42 U.S.C. Section 1437c-1(g)(2); and c) failed to retract its approval of the HRA plan change and to retract its waiver to HRADC allowing it to implement subsidy standard changes prior to the second annual reexamination in spite of the fact that the HRADC's own projections indicate that it has more than enough Section 8 funds to break even in 2010 without implementing policy changes which will impose hardship on residents and the refusal by the HRADC to utilize its administrative fee surplus rather than impose such burdens, contrary to the provisions of Notice 2009-44(4). Plaintiffs are entitled to declaratory and injunctive relief pursuant to 5 U.S.C. Section 706 and 42 U.S.C. Section 2201.

## **SECOND CAUSE OF ACTION**

### **Violation of the United States Housing Act of 1937, 42 U.S.C. § 1437f *et seq.* and the Regulations Promulgated Thereunder at 24 C.F.R. Part 982 by HRADC**

49. Defendant HRADC and Defendant Jeffrey Schiffman violated the United States Housing Act of 1937, 42 U.S.C. § 1437f *et seq.*, and its implementing regulations at 24 C.F.R.

Part 982, when they a) implemented the subsidy standard change immediately contrary the regulations at 24 C.F.R. 982.505(c)(3), b) failed to consider the adverse impact on the tenants caused by a change in rent payment standards and occupancy standards, c) failed to use any administrative fee reserves before implementing changes in the rent payment and occupancy standards, and d) failed to establish a resident advisory board and to submit agency plan changes to the resident advisory board as required by 42 U.S.C. Section 1437c-1(g)(2). Plaintiffs are entitled to declaratory and injunctive relief pursuant to 42 U.S.C. Section 1983.

## **VI. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this court issue the following relief:

1. Enter a temporary restraining order and preliminary injunction, pursuant to Fed. R. Civ. P. 65, requiring Defendants to reinstate plaintiffs' full monthly voucher payments immediately to levels in effect prior to the HRADC's changes in occupancy and rental payment standard levels, and further ordering Defendants to continue such voucher payments until a final decision on the merits;

2. Enter a declaratory judgment against Defendants, pursuant to 28 U.S.C. § 2201 and 5 U.S.C. § 706, that HRADC's conduct in changing the rental payment and occupancy standards under the Section 8 Voucher Program and HUD's conduct in approving the changes were arbitrary and capricious and violated 42 U.S.C. §§ 1437 *et seq.* and the regulations promulgated thereunder and that HUD's conduct violated its affirmative obligations under 42 U.S.C. § 3608;

3. Enter a declaratory judgment against Defendants, pursuant to 28 U.S.C. § 2201, that HRADC's conduct in changing the rental payment standard prior to the second annual reexamination under the Section 8 Voucher Program violated 42 U.S.C. §§ 1437 *et seq.* and the



regulations promulgated thereunder and that HUD's waiver of applicable federal regulations was arbitrary and capricious and violated its affirmative obligations under 42 U.S.C. § 3608;

4. Enter a permanent injunction requiring Defendant HRADC to reinstate plaintiffs' full monthly voucher payments to levels in effect prior to the HRADC's changes in occupancy and rental payment standard levels.

5. Retain jurisdiction until the Court finds that Defendants have complied with the Order of the Court;

6. Award plaintiffs' attorney costs and fees pursuant to 5 U.S.C. § 504; and

7. Grant plaintiffs such other and further relief as the Court deems necessary and proper.

**Respectfully submitted,**

Dated: October 1, 2010

/s/ John Cann

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