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FILED JUN 06 11 04 AM '03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MILDRED TAYLOR, JUANITA OLIVAS,)
RAMSAY DECKER III, NORMA FRY,)
ROBERT VIGUE, MARTHA HILSTAD,)
and BEATRICE MORGAN, on behalf)
of themselves and all others)
similarly situated,)
Plaintiffs,)

Civ. No. 02-1120-AA

v.

OPINION AND ORDER

MEL MARTINEZ, in his official)
capacity as Secretary of the)
Department of Housing and Urban)
Development; and UNITED STATES)
DEPARTMENT OF HOUSING AND URBAN)
DEVELOPMENT,)
Defendants.

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1 AIKEN, Judge:

2 On August 16, 2002, plaintiffs filed a class action complaint
3 alleging violations of the United States Housing Act of 1937, 42 U.S.C.
4 § 1437 et seq., and the Fair Housing Act (as codified under Title VII
5 of the Civil Rights Act of 1968), 42 U.S.C. § 3601 et seq., against the
6 United States Department of Housing and Urban Development (HUD) and its
7 Secretary. Plaintiffs allege that housing subsidies to which they were
8 entitled were less than the amount mandated by federal law, thus
9 resulting in plaintiffs paying excessive rent. Pursuant to the
10 Administrative Procedure Act (APA), 5 U.S.C. § 706, plaintiffs seek a
11 declaration that HUD's policies for calculating the amount of the
12 subsidies were unlawful and an injunction that requires HUD to reimburse
13 plaintiffs for the unlawfully withheld subsidies. Defendants move to
14 dismiss plaintiff's Complaint on grounds that sovereign immunity bars
15 the relief sought, and that plaintiffs fail to state a claim upon which
16 relief may be granted. Defendants' motion is granted, in part.

17 STATUTORY AND REGULATORY BACKGROUND

18 In the 1950s and 1960s, Congress enacted legislation to fund low-
19 income housing projects. Under Section 221(d)(3) of the Housing Act,
20 housing project owners obtained HUD-insured mortgages and in most cases
21 signed a deed of trust with a private lending institution. Owners and
22 developers of housing projects received below-market interest rates.
23 12 U.S.C. § 1715l(d)(3). In exchange for the HUD-insured mortgage, the
24 owner entered into a "regulatory agreement" with HUD which included
25 certain "affordability restrictions," including limits on tenant income
26 levels, rental rates, and the rate of return.

27 Under the Rental Supplement program, HUD provided rental assistance
28 to owners of Section 221(d)(3) housing. 12 U.S.C. § 1701s. Project

1 owners with Rental Supplements contracts generally could not prepay
2 their HUD-insured mortgage for twenty years without HUD approval. By
3 prepaying the mortgage, a project owner could terminate the
4 affordability restrictions. Many Section 221(d)(3) owners subsequently
5 converted their Rental Supplement contract to the Section 8 Loan
6 Management Set-Aside Program. 24 C.F.R. Part 886, Subpt. A. Under the
7 Set-Aside program, HUD directly paid project owners the difference
8 between the actual rental rate, i.e., the "contract rent" and the
9 tenant's share of the rent. 24 C.F.R. § 866.109(a). This program is
10 project-based rather than tenant-based, meaning that the subsidy funds
11 vouchers for qualified housing projects rather than for individual
17 tenants.

13 The Section 8 Moderate Rehabilitation Program was enacted as part
14 of the Housing Act of 1937. See 42 U.S.C. § 1437f. Unlike the Loan Set
15 Aside Program which HUD administers directly, the Section 8 tenant-based
16 subsidies are administered through local public housing authorities
17 (PHAs). HUD provides the funding and enters into annual contributions
18 contracts with PHAs to fund a specified number of Section 8 vouchers for
19 individual tenants. 42 U.S.C. § 1437f(b).

20 To participate in the Section 8 tenant-based program, an eligible
21 family submits an application to the PHA. The PHA awards the subsidies,
22 in the form of vouchers, as they become available. If the tenant finds
23 an eligible dwelling unit, the PHA enters into a Housing Assistance
24 Payment contract with the landlord. The landlord then receives a
25 monthly voucher from the PHA for a portion of the tenant's contract
26 rent. Contract rent is calculated in accordance with HUD regulations.
27 So long as the rent does not exceed the payment standard, the tenant's
28 contribution is the greatest of: 1) thirty percent of the tenant's

1 monthly adjusted income; 2) ten percent of the monthly income, or 3) the
2 designated amount of housing welfare benefits received by the tenant.
3 42 U.S.C. § 1437f(o) (2) (A). The PHA then pays the landlord the
4 difference between the monthly rent and the tenant's contribution.

5 In 1996, Congress enacted the Housing Opportunity Program Extension
6 Act, Pub. L. 104-120, 110 Stat. 834. This act allowed Section 221(d)(3)
7 project owners to prepay their mortgages without HUD approval, as long
8 as the owner agreed to forbear rent increases for 60 days after the
9 prepayment was effective and to provide notice to residents who could
10 be affected by rent increases.

11 In the late 1990s, various appropriation acts enabled PHAs to make
12 "enhanced" Section 8 subsidies to owners who had prepaid Section
13 221(d)(3) mortgages. See Pub. L. 104-134, § 101(e), 110 Stat. 1321
14 (1996); Pub. L. 104-204, Title II, 110 Stat. 2883-85 (1996); Pub. L.
15 106-65, 111 Stat. 1351 (1997); Pub. L. 105-276, 112 Stat. 2469 (1998).
16 The enhanced Section 8 vouchers were intended to offset rent increases
17 occurring within one year after mortgage prepayment, if the increase
18 resulted in a tenant paying in excess of 30 percent of monthly adjusted
19 income. These appropriation acts also provided that if the contract
20 rent exceeded the payment standard by which the amounts of enhanced
21 vouchers were calculated, the actual rent was deemed to be the
22 applicable standard.

23 Under HUD's interpretation of these acts, adjustments to the
24 payment standard were limited to the owner's first rent increase made
25 within one year after mortgage prepayment. In other words, the first
26 rent increase following prepayment of the mortgage became the voucher
27 payment standard which determined the amount of subsidy paid to a
28 project owner on behalf of the tenant. However, the payment standard

1 and the amount of the enhanced vouchers would not be adjusted to offset
2 further rent increases. Notice PIH 98-19 (Apr. 3, 1998). In such
3 situations, HUD determined that "the family must decide whether to move
4 to a less expensive unit or pay for the increase in rent out of pocket."
5 Id. at p. 17; see also Notice PIH 99-16 (Mar. 12, 1999).

6 On October 20, 1999, Congress enacted the Preserving Affordable
7 Housing for Senior Citizens and Families into the 21st Century Act,
8 which provided permanent statutory authority for enhanced vouchers to
9 tenants impacted by mortgage prepayments. Pub. L. 106-74, § 538, 113
10 Stat. 1122 (1999). This act made enhanced payment standards applicable
11 to all rent increases implemented after mortgage prepayment. Further,
17 the Act reiterated that if the rent exceeds the applicable payment
13 standard, the voucher payments must be calculated using a payment
14 standard that is equal to the actual rent of the dwelling unit. 42
15 U.S.C. § 1437f(t)(1)(B).

16 To implement the Act, HUD directed the PHAs to make the necessary
17 adjustments to the payment standard as of the first regular annual
18 recertification date for each family rather than as of the effective
19 date of the Act. Notice PIH 2000-9, pp. 35-36 (Mar. 7, 2000). HUD
20 subsequently directed that PHAs use the actual rent amount to calculate
21 the enhanced voucher amount. Notice PTH 2001-41, pp. 34-35 (Nov. 14,
22 2001).

23 FACTUAL ALLEGATIONS

24 Plaintiffs Mildred Taylor, Robert Vigue and Beatrice Morgan are
25 current tenants of Washington Plaza Apartments in Portland, Oregon, and
26 plaintiff Ramsay Decker is a former tenant at Washington Plaza.
27 Plaintiffs Juanita Olivas, Norma Fry and Martha Hilstad are current
28 tenants of Park Genesee Apartments in San Diego, California.

1 Until March 7, 1997, Washington Plaza was financed through a HUD-
2 insured mortgage bearing market interest rate under Section 221(d)(3).
3 Rentals were made available to low and moderate-income tenants and
4 required HUD-approved rents that were substantially below market rates.
5 The Washington Plaza project received assistance under a Rent Supplement
6 contract that was later converted to a project-based contract under the
7 Section 8 Loan Management Set Aside program. All 75 housing units at
8 Washington Plaza were covered under the Section 8 contract.

9 In March 1997, the owner of Washington Plaza prepaid the Section
10 221(d)(3) mortgage, eliminating restrictions for low and moderate-income
11 occupancy and permitting the owner to increase each tenant's rent to
12 market rates upon expiration of the Section 8 contract. The project-
13 based Section 8 contract for Washington Plaza expired in August 1997 and
14 was not renewed by the owner and rents were subsequently raised.

15 The Housing Authority of Portland, a PHA, issued enhanced tenant-
16 based vouchers to residents of Washington Plaza who had lived in the
17 building before the prepayment of the Section 221(d)(3) mortgage and the
18 expiration of the Section 8 contract. Plaintiffs allege that from
19 January 1999 through August 2000, HUD policies prevented additional rent
20 and utility increases at Washington Park Plaza to be deemed the
21 applicable payment standard. As a result, plaintiffs Taylor, Decker,
22 Morgan, and Vigue were required to pay the rent and utility increases
23 in excess of 30 percent of their income.

24 Until December 18, 1996, Park Genesee was financed through a HUD-
25 insured mortgage bearing market interest rate under Section 221(d)(3).
26 Like Washington Park Plaza, rentals were made available to low and
27 moderate-income tenants and required HUD-approved rents that were
28 substantially below market rates. The Park Genesee project received

1 assistance under a Rent Supplement contract that was converted to a
2 contract under the Section 8 Loan Management Set Aside program. All 170
3 housing units at Park Genesee were covered under the Section 8 contract.

4 In December 1996, the owner of Park Genesee prepaid the Section
5 221(d)(3) mortgage, eliminating the restrictions for low and moderate-
6 income occupancy and allowing the owner to increase each tenant's rent
7 to market rates upon expiration of the Section 8 contract. The project-
8 based Section 8 contract for Park Genesee expired in August 1997 and was
9 not renewed by the owner.

10 On September 1, 1997, the San Diego Housing Commission issued
11 enhanced tenant-based vouchers to residents of Park Genesee who had
12 lived there before the prepayment of the Section 221(d) (3) mortgage and
13 the expiration of the Section 8 contract. Plaintiffs allege that on
14 September 1, 1997, the Park Genesee owner raised the rent in excess of
15 the monthly voucher payment standard by \$117. As a result of HUD
16 policies preventing the rent increase to be deemed the payment standard,
17 Plaintiffs Olivas, Fry, and Hilstad were required to pay \$117 per month
18 in addition to their contribution equaling 30% of their monthly income.

19 Plaintiffs seek a declaration that HUD's policies violated federal
20 law. Plaintiffs claim that as a result of HUD policies preventing the
21 gross rent increases from being considered the payment standard, their
22 rent was not fully subsidized as required by federal. Plaintiffs also
23 seek injunctive relief requiring HUD to identify each class member whose
24 subsidy was unlawfully withheld, locate and notify each class member of
25 his or her right to reimbursement, and reimburse each class member in
26 the amount of the unlawfully withheld subsidy.

27 DISCUSSION

28 Defendants move to dismiss on the ground that the APA's waiver of

7 - OPINION AND ORDER

1 sovereign immunity is limited to actions "seeking relief other than
2 money damages." See 5 U.S.C. § 702. Defendants emphasize that
3 plaintiffs do not challenge the current amounts of their enhanced
4 vouchers, but that plaintiffs seek reimbursement for previously
5 inadequate voucher payments. Thus, defendants argue that plaintiffs
6 essentially seek money damages to compensate them for the excess rent
7 they paid. As such, defendant argues plaintiff's claims are barred by
8 sovereign immunity.¹

9 In determining what constitutes "money damages" under § 702, the
10 Supreme Court has held a plaintiff may recover only "specific relief"
11 in the form of a statutory or contractual entitlement rather than
12 "substitute relief" in the form of money damages. See Department of
13 Army v. Blue Fox, Inc., 525 U.S. 255, 262 (1999); Bowen v.
14 Massachusetts, 487 U.S. 879, 895 (1988).

15 [T]he term 'money damages' . . . we think, normally refers to
16 a sum of money used as compensatory relief. Damages are
17 given to the plaintiff to substitute for a specific loss,
18 whereas specific remedies are not substitute remedies at all,
19 but attempt to give the plaintiff the very thing to which he
20 was entitled.

21 Bowen, 487 U.S. at 895 (internal quotation marks and citations omitted).

22 In Bowen, the State of Massachusetts challenged a final order of
23 the Secretary of Health and Human Services which issued a ruling of

24 'Defendants also argue that plaintiff cannot rely on 42 U.S.C. §
25 1404a to establish a waiver of sovereign immunity. This section
26 provides that HUD "may sue or be sued only respect to its functions
27 under this chapter, and sections 1501 to 1505 of this title." 42 U.S.C.
28 § 1404a. Section 1404a has been interpreted to waive sovereign immunity
in suits based on HUD's functions under the Housing Act of 1937, 42
U.S.C. § 1437, et seq. United States v. Adams, 634 F.2d 1261 (10th Cir.
1980). Here, plaintiffs' allegations pertain to HUD's functions under
the Housing Act. However, defendants contend and plaintiffs concede
that plaintiffs enjoy no private cause of action under the Housing Act
or under Title VII with respect to their Fair Housing Act claim.
Therefore plaintiffs must seek recovery pursuant to the APA. See
Plaintiff's Response to Defendant's Motion to Dismiss, p. 21.

1 disallowance and refused to reimburse the State for certain Medicaid
2 expenditures. The State sought declaratory and injunctive relief,
3 including reimbursement for the expenditures. Bowen, 487 U.S. at 888-
4 89. The district court set aside the Secretary's decision of
5 disallowance and the First Circuit affirmed. In upholding the decision,
6 the Supreme Court explained that the district court did not award money
7 damages, but rather an "adjustment . . . in the size of the federal
8 grant payable to the State." Id. at 893. Therefore, the Court found
9 that the State's suit did not seek "money in compensation for the damage
10 sustained by the failure of the Federal Government to pay as mandated;
11 rather, it [sought] to enforce the statutory mandate itself, which
12 happens to be one for the payment of money." Id. at 900. Even though
13 the ruling would ultimately result in reimbursement for the state, the
14 **Court reasoned that this result was "a mere by-product" of "reviewing**
15 **the Secretary's interpretation of federal law."** Id. at 910.

16 In Blue Fox, a contractor defaulted on a contract with a
17 subcontractor to pay for work performed on an Army project. 525 U.S.
18 at 257-58. The subcontractor sought to enforce an equitable lien
19 against the Army to recover the amount owed by the contractor. Id. at
20 258. The Supreme Court found that the equitable lien constituted "a
21 claim for money damages; its goal is to seize or attach money in the
22 hands of the Government as compensation for the loss resulting from the
23 **default of the prime contractor."** Id. at 264. Accordingly, the Court
24 held that the subcontractor's attempt to enforce an equitable lien
25 "falls outside of § 702's waiver of sovereign immunity." Id.

26 Defendants contend that plaintiffs' claims do not seek specific
27 relief for which they were originally entitled. Defendants argue that,
28 unlike Bowen, plaintiffs do not seek to enforce a statutory or

1 regulatory provision which mandates the payment of money. Rather, like
2 Blue Fox, defendants argue that plaintiffs seek reimbursement to
3 compensate them for out-of-pocket rental expenses incurred as a result
4 of HUD's unlawful payment standard policy. Defendants maintain that the
5 most plaintiffs could claim entitlement to is increased voucher payments
6 from the PHAs to their landlords. Thus, defendants argue that the
7 monetary reimbursement plaintiffs seek from HUD is more akin to money
8 damages to substitute for their specific loss.'

9 In response, plaintiffs argue that defendants' motion to dismiss
10 should be denied solely by fact that they seek a declaratory judgment
11 authorized by the APA. Plaintiffs emphasize that a declaratory judgment
12 does not implicate sovereign immunity and suggest that if the court
13 finds HUD's actions violate the APA, the court may then fashion whatever
14 relief it finds appropriate. Plaintiffs suggest that "rather than order
15 HUD to reimburse plaintiffs for illegally withheld enhanced voucher
16 subsidies, the court could order HUD to issue directives to all affected
17 PHAs to provide such reimbursement from funds under their control and
18 to monitor compliance with this directive." Plaintiff's Memorandum in

19
20 'Defendants rely upon the Ninth Circuit's ruling in Cal-Almond, Inc.
21 v. Department of Agriculture, 67 F.3d 874 (9th Cir. 1995), which held
22 that sovereign immunity barred a claim brought by almond handlers
23 against the USDA. **The handlers sought reimbursement for monies paid for**
24 **third-party advertising under a USDA marketing order that was found to**
25 **violate the handlers' First Amendment rights. The Ninth Circuit found**
26 **that the relief sought constituted money damages and could not be**
27 **recovered under the APA. Cal-Almond, 67 F.3d at 878-79.**

24 However, the Supreme Court vacated this decision and remanded the
25 case back to the Ninth Circuit. Department of Agriculture v. Cal-
26 Almond, Inc., 521 U.S. 1113 (1997). On remand, the Ninth Circuit found
27 that the USDA marketing order did not violate the handlers' First
28 Amendment rights and did not revisit the issue of whether sovereign
immunity barred the relief sought. Cal-Almond Inc. v. U.S. Dept. of
Agr., 192 F.3d 1272 (9th Cir. 1999). Even though the Ninth Circuit's
ruling on the sovereign immunity issue was not overruled explicitly, the
ruling was vacated and cannot be considered binding precedent.

1 Opposition to Defendant's Motion to Dismiss, pp. 5-6.

2 It is true that plaintiffs seek a declaratory judgment that HUD's
3 payment standard policy for enhanced Section 8 vouchers was unlawful.³
4 However, plaintiffs' Complaint does not seek an order directing HUD to
5 order the PHAs to provide reimbursement to plaintiffs through funds
6 under their control. It remains an open question whether the court
7 could order alternative forms of relief upon a finding that HUD's
8 policies were unlawful. Regardless, plaintiffs' Complaint explicitly
9 seeks relief in the form of monetary reimbursement from HUD, and I find
10 it appropriate to determine whether sovereign immunity bars the
11 injunctive relief sought at this stage of the proceedings.

17 Plaintiffs also argue that their claims for injunctive relief fall
13 within § 702's waiver of sovereign immunity, because they merely seek
14 to enforce a statutory mandate that they pay no more than 30 percent
15 of their income in rent. Plaintiffs rely on the Third Circuit's ruling
16 in Zellous v. Broadhead Associates, 906 F.2d 94 (3rd Cir. 1990), where
17 the court found that the APA waived sovereign immunity in a case seeking
18 reimbursement for inadequate Section 8 utility allowances.

19 In Zellous, plaintiffs were tenants in a privately-owned and
20 managed housing projects with rents subsidized directly by HUD. Id. at
21 95. The tenants claimed that HUD, together with the housing project's
22 owners, violated the Housing Act and implementing regulations by failing
23 to make timely adjustments in their utilities allowance. Id.

24
25 ³HUD's directive that the enhanced payment standard applies only to
26 the first rent increase after mortgage prepayment was held to be
27 arbitrary and capricious in 215 Alliance v. Cuomo, 61 F. Supp. 2d 879
28 (D. Minn. 1999). There, the district court found that "HUD's Policy
Statement violates the plain meaning of the statutory language.
Specifically, HUD's Policy Statement relies upon a tortured definition
of 'rent' which cannot be rationalized in the context of the rest of the
statutory language." Id. at 888.

1 Consequently, HUD did not provide the project owners with enhanced
2 vouchers to which plaintiffs claimed they were entitled. Id. The
3 tenants sought reimbursement from HUD for the amount of utility
4 allowance they should have received. Id.

5 As defendants do here, the defendants in Zellous argued that the
6 plaintiffs' claims fell outside the APA's waiver sovereign immunity,
7 because they sought monetary damages. Id. at 96. Citing Bowen, the
8 Third Circuit disagreed: "In our case, the tenants do not seek
9 compensatory damages for injuries they allegedly suffered as a result
10 of HUD's failure to make timely adjustments in the utilities allowance.
11 They seek to enforce both prospectively and retrospectively the mandate"
12 that tenants pay no more than thirty percent of their income toward
13 rent. Id. at 98. The court reasoned that monetary reimbursement merely
14 required HUD to pay expenses that it would have paid had it "implemented
15 timely utility allowance adjustments." Id. at 99 (citing Bowen, 487
16 U.S. at 894 (quoting School Committee of Burlington v. Department of
17 Education of Massachusetts, 471 U.S. 359, 370-71 (1985))).⁴

18 I decline to apply the reasoning in Zellous to the facts of this
19 case. Unlike Zellous, here HUD did not provide the voucher payments
20 directly to the project owners. Rather, HUD provided funding to the
21

22 ⁴In School Committee, the Court ruled that the Education of the
23 Handicapped Act authorized a court to order school authorities to
24 reimburse parents for their expenditures on private special education
25 for a child if the school's individualized education program was
26 inadequate. 471 U.S. 369-70. However, in that case the Act provided
27 that a reviewing court "shall grant such relief as the court determines
28 is appropriate." Id. at 369; 20 U.S.C. § 1415(e) (2). Further, the
Supreme Court relied on legislative history that "[s]uch a post hoc
determination of financial responsibility was contemplated"
School Committee, 471 U.S. at 370. Here, the APA does not confer broad
discretion to award "appropriate relief" and plaintiffs present no
authority suggesting that direct reimbursement from HUD for inadequate
vouchers was contemplated under the Housing Act.

1 PHAs, which then calculated and issued the voucher payments. The fact
2 that HUD is not statutorily required to provide subsidies directly to
3 plaintiffs or their landlords necessarily "transforms the character of
4 the relief they seek into a substitute remedy." Zellous, 906 F.2d at
5 98. Although plaintiffs were entitled by statute to pay a limited
6 amount in rent, I cannot find that enforcement of this statute under
7 these facts "happens to" result in monetary reimbursement from HUD.
8 Bowen, 487 U.S. at 900.

9 Plaintiffs emphasize that the PHAs' calculations were made pursuant
10 to HUD policy, and that the PHAs must comply with HUD policy. However,
11 plaintiffs do not seek a form of relief that is "a mere by-product" of
12 judicial review of such policy. *Id.* at 910. For example, plaintiffs
13 do not request an injunction requiring HUD to amend the effective date
14 of the "correct" payment standard and to direct the PHAs to recalculate
15 payment vouchers accordingly. See Katz v. Cisneros, 16 F.3d 1204, 1208
16 (Fed. Cir. 1994) (holding that sovereign immunity did not bar claims of
17 housing developer who sought to compel HUD to recalculate contract rents
18 in accordance with HUD regulations and reimburse the developer monies
19 under the proper calculation; claims were not for money damages but for
20 compliance with applicable regulations).

21 Rather, as pleaded in their Complaint, plaintiffs seek an order
22 requiring HUD to reimburse plaintiffs for the increased rents they paid
23 as a result of HUD's unlawful payment standard. No matter how the court
24 views it, plaintiffs do not seek injunctive relief to which they were
25 specifically entitled; rather, they seek money damages to substitute for
26 their inadequate voucher payments. Accordingly, I find that plaintiffs'
27 claims for injunctive relief are barred by sovereign immunity.

28 Defendants also move to dismiss for failure to state a claim under

1 Federal Rule of Civil Procedure 12 (b)(6). Defendants argue that
2 plaintiffs cannot obtain relief under the APA, because plaintiffs fail
3 to identify the statutory authority that mandates or even authorizes
4 direct voucher payments from HUD to individual tenants.

5 The APA authorizes judicial review of a "final agency actions" or
6 an agency's alleged failure to act. 5 U.S.C. § 704; see also 5 U.S.C.
7 § 551(13) (defining agency action as including the failure to act);
8 Ecology Center, Inc. v. United States Forest Service, 192 F.3d 922, 924-
9 25 (9th Cir. 1999). A court may "compel agency action unlawfully
10 withheld or unreasonably delayed," 5 U.S.C. § 706(1), or "declare
11 unlawful and set aside agency actions" which are arbitrary and
12 capricious or not in accordance with law. Id. § 706(2).

13 I agree that plaintiffs fail to establish that direct reimbursement
14 by HUD is an agency action which the court may compel as unlawfully
15 withheld. However, plaintiffs assert a cause of action for declaratory
16 relief, and - in response to defendants' motion - identify alternative
17 forms of equitable relief should they prevail. Whether the court could
18 compel forms of relief other than monetary reimbursement is not properly
19 **before it. Therefore, I decline to dismiss plaintiffs' case.**

20 CONCLUSION

21 Defendant's Motion to Dismiss (doc. 19) is GRANTED, in part.
22 Plaintiffs' claims for injunctive relief are HEREBY DISMISSED.
23 IT IS SO ORDERED.

24 Dated this 6th day of June, 2003.

25
26 

27 Ann Aiken
28 United States District Judge