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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH
WALKER, MARIA VALLADARES, on
behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

JACK KEMP, Secretary of the
DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT; and HERBERT
and ROSELLE SOMMER and LOUIS
and ISOBEL LEVENTHAL; JACKSON
TERRACE APARTMENTS, a
California Limited Partnership

Defendants, and

FIDELITY FEDERAL SAVINGS AND
LOAN ASSOCIATION,

Defendant-Intervenor

CIV. NO. 84-4370 RSWL

ORDER OF FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
OF FOURTH, FIFTH AND SIXTH
CAUSES OF ACTION

On September 16, 1991, this Court preliminarily approved a
class settlement regarding the fourth, fifth and sixth causes of
action in the above captioned case. The Court also ordered that a

1 hearing be held on final confirmation of the settlement on
2 November 25, 1991, and that all objections to the Stipulation of
3 Settlement by class members be submitted no later than November
4 18, 1991. Filing an objection was a pre-condition to any class
5 member appearing at the hearing.

6 Based upon the joint representations of the plaintiffs'
7 counsel and the undersigned Assistant United States Attorney, the
8 Court makes the following findings:

9 1. Notice has been given by the plaintiffs' attorneys to the
10 class members in accordance with the provisions of Paragraph
11 26(B)(4) of the Stipulation of Settlement.

12 2. No written objections were filed to the proposed
13 settlement pursuant to paragraph 26(B)(3) of the Stipulation of
14 Settlement. Accordingly, the hearing previously scheduled for
15 November 25, 1991 is not required and is hereby vacated.

16 3. The Court finds that the class action settlement of the
17 fourth, fifth and sixth causes of action embodied in the
18 Stipulation of Settlement filed on September 12, 1991 is fair,
19 just and equitable, and hereby grants final approval of the
20 settlement.

21 Dated:

NOV 22 1991

RONALD S. W. LEW
UNITED STATES DISTRICT JUDGE

1 ROBERT L. BROSIO
United States Attorney
2 FREDERICK M. BROSIO, JR.
Assistant United States Attorney
3 Chief, Civil Division
BONNIE E. MacNAUGHTON
4 Assistant United States Attorney
1400 United States Courthouse
5 312 North Spring Street
Los Angeles, California 90012
6 Telephone: (213) 894-4208

7 Attorneys for Federal Defendant

8 UNITED STATES DISTRICT COURT

9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 RICHARD WALKER, ELIZABETH WALKER,)
MARIA VALLADARES, on behalf of)
11 themselves and all others)
similarly situated,)

12 Plaintiff,)

13 v.)

14 JACK KEMP, Secretary of the)
15 UNITED STATES DEPARTMENT OF)
HOUSING AND URBAN DEVELOPMENT;)
16 HERBERT and ROSELLE SOMER;)
LOUIS and ISOBEL LEVENTHAL; and)
17 JACKSON TERRACE APTS., a)
California Limited Partnership,)

18 Defendants,)

19 FIDELITY FEDERAL SAVINGS)
20 AND LOAN,)

21 Defendant-Intervenor.)
22

LODGE

FILED

JUL 18 1990

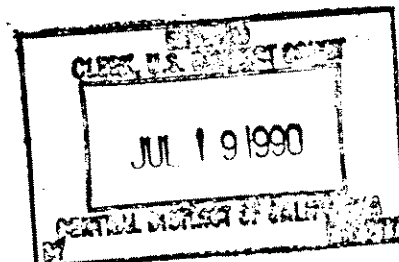
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

NO. CV 84-4370-RSWL(Bx)

ORDER OF FINAL APPROVAL

OF CLASS ACTION SETTLEMENT

RE UTILITIES ISSUES



23 On June 5, 1990, this Court preliminarily approved a class
24 settlement regarding the utilities issues in this case. The
25 Court also ordered that a hearing be held on final confirmation
26 of the settlement on July 16, 1990, and that all objections to
27 the Settlement Agreement by class members be submitted no later
28

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THIS CONSTITUTES NOTICE OF ENTRY
AS RETURNED BY REC'D, RULE 77d.

1 than July 9, 1990. Filing an objection was a pre-condition to
2 any class member appearing at the hearing.

3 Based upon the joint representations of the plaintiffs'
4 counsel and the undersigned Assistant United States Attorney, the
5 Court makes the following findings:

6 1. Notice has been given by the plaintiffs' attorneys to
7 the class members in accordance with the provisions of paragraph
8 15 of the Settlement Agreement.

9 2. No written objections were filed to the proposed
10 settlement pursuant to paragraph 15(b) of the Settlement
11 Agreement. Accordingly, the hearing previously scheduled for
12 July 16, 1990 is not required and is hereby vacated.

13 3. The Court further finds that the class action settlement
14 of the utilities issues embodied in the Settlement Agreement Re

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1 Utilities Issues filed on June 4, 1990 is fair, just and
2 equitable, and hereby grants final approval of the settlement.

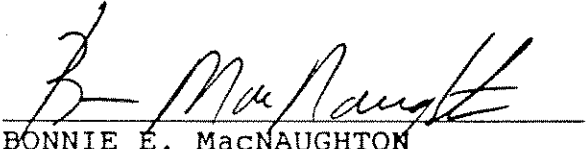
3 DATED: 1 7 JUL 1990

4
5 RONALD S. W. LEW

6 UNITED STATES DISTRICT JUDGE

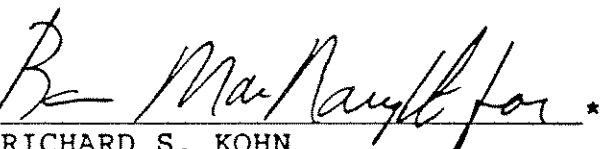
7 PRESENTED BY:

8 ROBERT L. BROSIO
9 United States Attorney
10 FREDERICK M. BROSIO, JR.
11 Assistant United States Attorney
12 Chief, Civil Division

13 
14 BONNIE E. MacNAUGHTON
15 Assistant United States Attorney

16 Attorneys for Federal Defendant

17 CALIFORNIA RURAL LEGAL ASSISTANCE

18 
19 RICHARD S. KOHN
20 (* Pursuant to telephonic
21 authorization of July 12, 1990)

22 Attorneys for Plaintiffs
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ATTACHMENT TO CERTIFICATE OF SERVICE

Eileen McCarthy, Esquire
California Rural Legal Assistance
1030 - 6th Street, No. 6
Post Office Box 35
Coachella, CA 92236-0035

Richard S. Kohn, Esquire
Law Office of California
Rural Legal Assistance
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1 ROBERT L. BROSIO
2 United States Attorney
3 FREDERICK M. BROSIO, JR.
4 Assistant United States Attorney
5 Chief, Civil Division
6 BONNIE E. MacNAUGHTON
7 Assistant United States Attorney
8 1400 United States Courthouse
9 312 North Spring Street
10 Los Angeles, California 90012
11 Telephone: (213) 894-4208

12 Attorneys for Federal Defendant

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 RICHARD WALKER, ELIZABETH WALKER,) NO. CV 84-4370-RSWL(Bx)
16 MARIA VALLADARES, on behalf of)
17 themselves and all others) SETTLEMENT AGREEMENT
18 similarly situated,) RE UTILITIES ISSUES

19 Plaintiffs,)

20 v.)

21 JACK KEMP, Secretary of the)
22 UNITED STATES DEPARTMENT OF)
23 HOUSING AND URBAN DEVELOPMENT;)
24 HERBERT and ROSELLE SOMER;)
25 LOUIS and ISOBEL LEVENTHAL; and)
26 JACKSON TERRACE APTS., a)
27 California Limited Partnership,)

28 Defendants,)

29 FIDELITY FEDERAL SAVINGS)
30 AND LOAN,)

31 Defendant-Intervenor.)
32

33 IT IS HEREBY STIPULATED by and between defendant Jack Kemp,
34 in his official capacity as Secretary of the United States
35 Department of Housing and Urban Development, ("Federal
36 Defendant") and plaintiffs, Richard Walker, Elizabeth Walker and
37 Maria Valladares, on behalf of themselves and all others
38

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1 similarly situated, by and through their respective counsel of
2 record as follows:

3 1. Plaintiffs commenced this action against the Federal
4 Defendant, and others, on June 11, 1984. On August 12, 1988, the
5 plaintiffs' First Amended Complaint was deemed filed. The First
6 Amended Complaint asserts six separate claims or causes of action
7 and seeks, inter alia, declaratory and injunctive relief and
8 restitution. In the First Cause of Action of plaintiffs' First
9 Amended Complaint, plaintiffs allege that the conversion of
10 electrical utilities at the Jackson Terrace housing project
11 ("Jackson Terrace") from project-paid to tenant-paid and the
12 utility allowances set by the United States Department of Housing
13 and Urban Development ("HUD") violated federal statutes,
14 regulations and contracts, and the due process clause of the
15 Fifth Amendment of the United States Constitution. In the Second
16 Cause of Action of plaintiffs' First Amended Complaint,
17 plaintiffs allege that HUD failed to establish a reasonable
18 electrical utility allowance for Jackson Terrace by failing to
19 take into account the cost of air conditioning. In the Third
20 Cause of Action of plaintiffs' First Amended Complaint,
21 plaintiffs allege that the conversion of electrical utilities at
22 Jackson Terrace from project-paid to tenant-paid violated various
23 procedural and substantive rights of the non-Section 8 tenants at
24 Jackson Terrace.

25 2. On October 7, 1988, Federal Defendant filed an Answer to
26 plaintiffs' First Amended Complaint denying the material
27 allegations therein and asserting certain affirmative defenses.
28

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1 3. On August 14, 1989, a Pre-Trial Conference Order was
2 filed which superseded the pleadings in this action. The
3 Pre-Trial Conference Order sets forth certain legal issues to be
4 litigated at trial which pertain to the conversion of electrical
5 utilities at Jackson Terrace from project-paid to tenant-paid and
6 the amount of the electrical utility allowances set by HUD in
7 paragraphs 97 through 99 and 112 through 114. The Pre-Trial
8 Conference Order also sets forth stipulated facts pertaining to
9 these legal issues in paragraphs 34 through 49 and 54, and facts
10 to be litigated which pertain to these issues in paragraphs 76
11 through 85.

12 4. It is the intention of the Federal Defendant and
13 plaintiffs to settle all disputes in this case relating to the
14 electrical utilities at Jackson Terrace without trial or
15 adjudication of any issue of fact or law under the terms set
16 forth herein.

17 5. HUD will approve the implementation of monthly utility
18 allowances to commence on July 1, 1990 which include air
19 conditioning for the Section 8 units at Jackson Terrace in the
20 following amounts:

21 1 bedroom units	\$55.00
22 2 bedroom units	\$61.00
23 3 bedroom units	\$65.00
24 4 bedroom units	\$69.00

25 These utility allowances will apply regardless of
26 whether a Section 8 tenant actually owns or operates an air
27 conditioner.
28 ////

1
2 6. In the event that the owners of Jackson Terrace refuse
3 to implement the new utility allowances effective July 1, 1990,
4 HUD will specifically instruct the managing agent for the project
5 to reduce the portion of the rents paid by the Section 8 tenants
6 by the new utility allowances and will ensure that the allowances
7 are implemented under its supervisory powers, including those
8 contained in the Housing Assistance Payments Contract for Jackson
9 Terrace.

10 7. Federal Defendant further stipulates and agrees that in
11 approving any future utility allowances at Jackson Terrace for
12 the Section 8 units, it will include in its calculations the cost
13 of operating one air conditioner in each unit.

14 8. It has recently been discovered by the Federal Defendant
15 and plaintiffs that the managing agent for Jackson Terrace failed
16 to implement, in whole or in part, the utility allowances at
17 Jackson Terrace which were approved by HUD in 1984, and further
18 that the managing agent failed, in whole or in part, to bill HUD
19 for said utility allowances. In order to correct this failure
20 expeditiously, HUD has agreed herein to pay the tenants directly
21 the utility allowances that should have been administratively
22 passed through to the tenants by the owners of the project. The
23 owners of the project have consented to these direct tenant
24 payments by HUD in lieu of billing HUD for the past utility
25 allowances and distributing the proper amounts of those
26 allowances to the past and present tenants who failed to receive
27 them. Accordingly, Federal Defendant stipulates and agrees that,
28 through the procedures outlined in paragraph 10 below, HUD shall
pay to any Section 8 tenant who resided at Jackson Terrace

1 between April 1, 1984 and June 30, 1990 the following sums for
2 each month said tenant resided at the project in which the tenant
3 failed to receive a utility allowance:

4	Tenants occupying 1 bedroom units	\$24.00 per month
5	Tenants occupying 2 bedroom units	\$28.00 per month
6	Tenants occupying 3 bedroom units	\$30.00 per month
7	Tenants occupying 4 bedroom units	\$32.00 per month

8 In the event that HUD determines that any tenant or
9 tenants have received utility allowances between April 1, 1984
10 and June 30, 1990, HUD will provide the information upon which it
11 based such determination to counsel for plaintiffs within 30 days
12 of its discovery. In addition, during the time period of this
13 Agreement, if HUD comes into possession of any Tenant
14 Recertification Forms, including Form HUD-50059, used at Jackson
15 Terrace, HUD will provide copies of said forms to counsel for
16 plaintiffs within 30 days of discovery.

17 9. (A) Upon the final approval of this Settlement
18 Agreement by the Court as provided for in paragraph 14 below,
19 counsel for plaintiffs shall employ methods reasonably calculated
20 to notify the Section 8 tenants who resided at Jackson Terrace
21 between April 1, 1984, and June 30, 1990 that the payments
22 provided for in the immediately preceding paragraph may be due
23 and owing to them from HUD.

24 (B) Plaintiffs' counsel shall also notify the Section 8
25 tenants who resided at Jackson Terrace between April 1, 1984 and
26 June 30, 1990 that in order to receive payment from HUD they are
27 required to submit a claim form to counsel for plaintiffs in the
28 form attached hereto as Exhibit A no later than nine months from

1 the date that the Settlement Agreement is finally approved.
2 Plaintiffs' counsel will collect any claim forms submitted to
3 them for payment by the Section 8 tenants and provide them to
4 HUD's Office of Regional Counsel, care of Rosemarie Fernandez
5 within ten months from the date of the final approval of this
6 Settlement Agreement.

7 (C) HUD shall not be required to pay claims to any
8 tenant unless a completed claim form is received by HUD within
9 ten months from the date of final approval of the Settlement
10 Agreement by the Court.

11 10. (A) HUD shall review all tenant claims submitted by
12 plaintiffs' counsel. After this review has been completed, but
13 in any event no later than 13 months from the date of final Court
14 approval of this Settlement Agreement, HUD shall deliver to
15 counsel for plaintiffs a check made payable to California Rural
16 Legal Assistance in the total aggregate amount of all claims
17 submitted. This shall constitute the claim fund. HUD shall
18 concurrently deliver a copy of all approved claim forms to
19 counsel for plaintiffs.

20 (B) The determination of the legitimacy, accuracy and
21 timeliness of any claim shall be made by HUD. If HUD decides to
22 reject or reduce any claim, it shall notify the claimant involved
23 and counsel for plaintiffs of its decision no later than
24 13 months from the date of final approval of this Settlement
25 Agreement by the Court. The claimant and counsel for plaintiffs
26 shall have the opportunity to present further evidence concerning
27 any rejected or reduced claim within 60 days from the date of the
28 notification of HUD's decision. In the event of a dispute

1 concerning the rejection of any claim, in whole or in part, the
2 dispute shall be resolved by the Court with notice and hearing.

3 (C) It shall be the duty of CRLA to distribute from the
4 claim fund provided by HUD all payments to the tenants in
5 accordance with the HUD approved claim forms and any claims
6 approved by the Court. Any portion of the claim fund not
7 distributed by CRLA in accordance with HUD or Court approval
8 shall be returned to HUD within a reasonable time after
9 resolution of all claims.

10 11. It is the intent of the Federal Defendant and of the
11 undersigned attorneys for plaintiffs that the payments provided
12 for in paragraphs 7 through 10 will not have an adverse effect on
13 plaintiffs' eligibility and/or continued participation in any
14 other governmental benefit program based on need. It is further
15 agreed that any payments made pursuant to this Settlement
16 Agreement shall not be included as income, resources or assets
17 under any HUD program where eligibility and/or continued
18 eligibility is defined in terms of a family's or individual's
19 income, resources, or assets.

20 12. In consideration for the promises made by Federal
21 Defendant in paragraphs 5 through 11 above, plaintiffs agree to
22 dismiss the First, Second and Third Causes of Action of their
23 First Amended Complaint and the portions of the prayer for relief
24 relating thereto which appear in the prayer at paragraphs 1(e),
25 (f) and (i) and paragraphs 2(f) and (g). The parties also agree
26 that paragraphs 97 through 99, 112 through 114, 34 through 49,
27 54, and 76 through 85 of the Pre-Trial Conference Order shall be
28 stricken. Upon final approval of this Settlement Agreement by

1 the Court, a Stipulation to Dismiss the foregoing causes of
2 action, provisions, and paragraphs shall be executed by counsel
3 for plaintiffs and the Federal Defendant and filed with the
4 Court. The Court shall enter an order in accordance with the
5 terms of this paragraph and shall retain continuing jurisdiction
6 over this action to enforce this Settlement Agreement until such
7 time as the provisions of the Agreement have been fully satisfied
8 by all parties hereto. Upon full and complete performance by all
9 parties, counsel for the Federal Defendant and plaintiffs shall
10 jointly notify the Court in writing.

11 13. As partial consideration for this Settlement Agreement,
12 plaintiffs hereby release and forever discharge the Federal
13 Defendant and HUD from any and all claims, debts, damages,
14 liabilities, demands, obligations, costs, expenses, actions and
15 causes of action of every nature, whether known or unknown, which
16 plaintiffs now hold or have at anytime heretofore held against
17 Federal Defendant and HUD by reason of the conversion of
18 electrical utilities from project-paid to tenant-paid at Jackson
19 Terrace and the allowances for electrical utilities approved by
20 HUD between the time of said conversion and July 1, 1990,
21 including the amounts of original allowances set by HUD and the
22 new allowances established pursuant to this Agreement. This
23 release will not apply to any obligations of the parties imposed
24 by this Agreement.

25 14. Upon final approval of this Settlement Agreement, HUD
26 shall pay California Rural Legal Assistance (CRLA) \$15,000.00 in
27 attorney's fees. If the Federal Defendant fails to pay these
28 attorney's fees within 60 days of the final approval of the

1 Settlement Agreement, interest shall begin to accrue at the legal
2 rate. Federal Defendant and plaintiffs stipulate and agree that
3 neither party shall seek to recover from each other any other
4 costs of suit or attorneys' fees incurred solely in connection
5 with the litigation of the above-described utilities issues in
6 this case. The payment of the attorney's fees provided for in
7 this paragraph shall not be construed as an admission by HUD that
8 any other attorney's fees are payable to plaintiffs in connection
9 with this lawsuit. The foregoing waiver does not apply to any
10 enforcement actions that may be required to enforce this
11 Settlement Agreement subsequent to the date the Settlement
12 Agreement is approved by the Court.

13 15. (A) Preliminary Approval

14 After signature by all parties, this Settlement
15 Agreement shall be submitted to the United States District Court
16 for the Central District of California in order for the Court to
17 determine whether to grant preliminary approval.

18 (B) Fairness Hearing

19 1. Upon the Court's preliminary approval of this
20 Settlement Agreement, the parties will request the Court to
21 schedule a fairness hearing during which class members may raise
22 any objections to this Agreement.

23 2. This hearing shall be scheduled at the earliest
24 practical time, but no sooner than 15 court days after the date
25 upon which the Court grants preliminary approval of the
26 Settlement Agreement.

27 3. Any class member who wishes to raise an objection
28 at the fairness hearing shall file the objection, in writing,

1 with the United States District Court for the Central District of
2 California, Clerk's Office, 312 North Spring Street, Los Angeles,
3 California 90012, with copies to counsel for defendants and
4 counsel for the class.

5 4. Counsel for plaintiffs shall be responsible for
6 notifying the class members. The Notice which is attached as
7 Exhibit B shall be translated into Spanish and a Spanish and
8 English version shall be provided to any Section 8 tenant who
9 currently resides at Jackson Terrace. This notice shall also be
10 published twice in the DAILY NEWS (Indio) and EL INFORMADOR DEL
11 VALLE.

12 (C) Approval

13 After holding the fairness hearing, the Court shall
14 determine whether this Settlement Agreement is fair, reasonable
15 and adequate. If it so finds, it shall reject any objections and
16 approve the Settlement Agreement pursuant to Fed.R.Civ.P. 23(e).
17 In the event that the Court does not approve this Settlement
18 Agreement as written and instead issues an order that differs in
19 any substantial respect from the Settlement Agreement executed by
20 the parties, this Settlement Agreement shall be voidable in its
21 entirety at the option of either party. This Settlement
22 Agreement shall take effect upon final approval by this Court
23 following the fairness hearing. Plaintiffs and Federal Defendant
24 shall jointly use their best efforts to obtain prompt judicial
25 approval of this Agreement.

26 16. This Settlement Agreement affects the settlement of
27 claims and defenses which are denied and contested, and no
28 provision contained herein shall be construed as an admission by

1 any party hereto of any liability of any kind to any other party.

2 17. No provision hereof may be waived unless in writing
3 signed by all parties hereto. Waiver of any one provision herein
4 shall not be deemed to be a waiver of any other provision
5 herein. This Agreement may be modified or amended only by
6 written agreement executed by all of the parties hereto.

7 18. This Agreement contains the sole and entire agreement
8 and understanding of the parties with respect to the entire
9 subject matter hereof, and any and all prior discussions,
10 negotiations, commitments or understandings related hereto, if
11 any, are hereby merged herein. No representations, oral or
12 otherwise, express or implied, other than those contained herein
13 have been made by any party hereto. No other agreements not
14 specifically contained herein, oral or otherwise, shall be deemed
15 to exist or to bind any of the parties hereto.

16 19. Counsel for plaintiffs warrant and represent that they
17 have the full legal authority to execute this Agreement on behalf
18 of the plaintiff class. It is understood and agreed that Federal
19 Defendant has not conducted an independent investigation or

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1 evaluation of the authority of plaintiffs' counsel to enter into
2 this Agreement on behalf of the plaintiff class.

3
4 ROBERT L. BROSIO
United States Attorney
5 FREDERICK M. BROSIO, JR.
Assistant United States Attorney
6 Chief, Civil Division

7 DATED: June 1, 1990.

8 
9 BONNIE E. MacNAUGHTON
Assistant United States Attorney
Attorneys for Federal Defendant

10 DEPARTMENT OF HOUSING AND
11 URBAN DEVELOPMENT
OFFICE OF REGIONAL COUNSEL

12
13 DATED: June 1, 1990.

14 
15 BEVERLY AGEE
Attorneys for Federal Defendant

16 LAW OFFICE OF CALIFORNIA
17 RURAL LEGAL ASSISTANCE

18 DATED: June 1, 1990.

19 
20 RICHARD S. KOHN

21 DATED: June 1, 1990.

22 
23 EILEEN MCCARTHY
Attorneys for Plaintiffs

24 NATIONAL HOUSING LAW PROJECT

25 DATED: June 1, 1990.

26 
27 CATHERINE M. BISHOP
Attorneys for Plaintiffs

CLAIM FORM FOR UTILITY ALLOWANCE REFUND

1. Name _____

Current mailing Address:

Street _____ Apt. No. _____

City _____ State _____

Telephone No. _____

2. State the year and month that you moved into Jackson Terrace:

Month: _____ Year: _____

3. Are you still a tenant at Jackson Terrace? Yes _____ No _____

If no, state the year and month that you moved out of Jackson Terrace:

Month: _____ Year: _____

4. Did you receive the benefits of the project-based Section 8 program? Yes _____ No _____

5. If yes, list the apartment, number of bedrooms and dates of occupancy for all apartments you lived in while receiving project-based Section 8 at Jackson Terrace.

Apart. No. _____ No. of Bedroom(s) _____ Dates of Occupancy _____ to _____

Apart. No. _____ No. of Bedroom(s) _____ Dates of Occupancy _____ to _____

Apart. No. _____ No. of Bedroom(s) _____ Dates of Occupancy _____ to _____

6. Are you still receiving project-based Section 8 at Jackson Terrace? Yes _____ No _____

7. Attach a copy of your identification, such as a driver's license, social security number, green card, California identification card, etc.

I declare under penalty of perjury that the above statements are true and correct.

Signature: _____

Date: _____

Please return this form by _____, 1990 to:

Eileen McCarthy
CALIFORNIA RURAL LEGAL ASSISTANCE
Migrant Farmworker Project
1030 - 6th Street, #6/P. O. Box 35
Coachella, California 92236-0035

EXHIBIT A
- Over -

This claim form will be sent to the Department of Housing and Urban Development (HUD). No payments will be made until HUD has reviewed and approved all the claims. If HUD rejects or reduces your claim, you will be notified by _____ and will have an opportunity to present further evidence to contest the determination by _____.

FOR OFFICIAL USE ONLY

1. Section 8 Apartment Nos. _____
2. Size of Section 8 Unit (1BR-\$24, 2BR-\$28, 3BR-\$30, 4BR-\$32)* _____
3. Number of months a Section 8 resident (*see* Question 5) X _____
4. Total amount due \$ _____

* This figure may vary if tenant lived in more than one Section 8 unit. *See* Question 5.

EILEEN MCCARTHY
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1950 Addison Street
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(415) 548-9400

Attorneys for Plaintiffs/Intervenors

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH WALKER,
MARIA VALLADARES, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

JACK KEMP, Secretary of
HOUSING AND URBAN DEVELOPMENT, and
HERBERT and ROSELLE SOMER, and
LOUIS and ISOBEL LEVENTHAL,
JACKSON TERRACE APTS., a California
Limited Partnership,

Defendants,

And

FIDELITY FEDERAL SAVINGS AND LOAN,
Defendant-Intervenor.

CV-84-4370-RSWL (Bx)

NOTICE OF PROPOSED
SETTLEMENT OF CLASS
ACTION AND HEARING

EXHIBIT B

TO ALL CURRENT AND FORMER SECTION 8 TENANTS AT
JACKSON TERRACE OF PROPOSED SETTLEMENT:

1. A proposed, partial Settlement Agreement has been reached in Walker v. Kemp, No. CV-84-4370-RSWL (C.D. Cal. 1990). In Walker, the tenants sued the Department of Housing and Urban Development (HUD), the project owner and other parties. Tenants challenged the change over of electrical utilities from project-paid to tenant-paid and objected to the amount of the utility allowance because it did not allow for air conditioning.

2. The Agreement proposes to settle all claims that the tenants have against HUD concerning the electrical utilities. It provides that the current utility allowance for all Section 8 tenants will be increased on July 1, 1990, to the following amounts:

	Old Utility Allowance	New Utility Allowance
One Bedroom	\$24.00	\$55.00
Two Bedrooms	28.00	61.00
Three Bedrooms	30.00	65.00
Four Bedrooms	32.00	69.00

For every Section 8 tenant, the utility allowance is subtracted from the rent you pay.

3. The proposed Settlement Agreement also provides that every Section 8 tenant who lived at Jackson Terrace between April 1, 1984, and June 30, 1990, is entitled to a lump-sum payment for the past failure of HUD and the owners of Jackson Terrace to subtract from your rent the old utility allowance. The amount that tenants will receive will depend upon the length of time they were a Section 8 tenant at Jackson Terrace, whether the utility allowance was deducted from the tenant's rent in the past, and the size of your apartment.

1 4. If the proposed Settlement Agreement is approved by the
2 Court, all eligible Section 8 tenants who are entitled to the lump-
3 sum payment MUST FILE A CLAIM FORM. No money will be distributed
4 unless a claim form is filed. If the proposed Settlement Agreement
5 is approved, claim forms will be available at the California Rural
6 Legal Assistance (CRLA) office, 1030 Sixth Street, No. 6/P. O. Box
7 35, Coachella, California 92236-0035.

8 5. The terms of the Settlement are more fully described in
9 the proposed Settlement Agreement. You may review the proposed
10 Settlement Agreement at the CRLA office in Coachella. Copies of the
11 proposed Settlement Agreement are also on file with the Clerk of
12 the Court, U.S. District Court for the Central District of
13 California, 312 N. Spring Street, Los Angeles, California 90012,
14 Telephone: _____.

15 6. If you object to the terms of this proposed Settlement,
16 you should follow the procedures set out in Paragraphs 7-8.

17
18 Fair Hearing and Procedures for Objection

19 7. The Court has not finally approved the proposed Settlement
20 Agreement. The Court will review the proposed Settlement and hold
21 a hearing. The purpose of the hearing will be for the Court to
22 determine whether the proposed Settlement Agreement is fair,
23 reasonable and adequate. At the hearing, any member of the class
24 or subclass may appear and state why the proposed Settlement should
25 not be approved and may present relevant evidence. If you want to
26 appear at the hearing, you must, on or before
27 _____, submit to the:

28 //

1 United States District Court for the
2 Central District of California
3 312 North Spring Street
Los Angeles, CA 90012

4 your written objections to the proposed Settlement Agreement and
5 send copies to:

6 Eileen McCarthy
7 California Rural Legal Assistance
8 Migrant Farmworker Project
1030 - 6th Street, #6/P.O. Box 35
Coachella, California 92236-0035

9 Counsel for Plaintiffs

10 Bonnie E. MacNaughton
11 Assistant U.S. Attorney
12 U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012

13 Counsel for Defendant Jack Kemp, Secretary
14 of United States Department of Housing and
Urban Development

15 You must write the case name and number on any objection you
16 wish to file. The case name and number is Walker v. Kemp, No.
17 CV 84-4370-RSWL(Bx).

18 8. If you have any questions about the proposed Settlement
19 Agreement, you may contact Eileen McCarthy, California Rural
20 Legal Assistance, Migrant Farmworker Project, 1030 - 6th Street,
21 #6/P.O. Box 35, Coachella, California 92236-0035, (800)
22 322-2752, Counsel for Plaintiffs. If you call, please state that
23 you are calling with respect to Jackson Terrace.
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1
2 CERTIFICATE OF SERVICE BY MAIL

3 I, Dina L. Holley, declare:

4 That I am a citizen of the United States and resident or
5 employed in Los Angeles County, California; that my business
6 address is Office of United States Attorney, United States
7 Courthouse, 312 North Spring Street, Los Angeles, California
8 90012; that I am over the age of eighteen years, and am not a
9 party to the above-entitled action;

10 That I am employed by the United States Attorney for the
11 Central District of California who is a member of the Bar of the
12 United States District Court for the Central District of
13 California, at whose direction the service by mail described in
14 this Certificate was made; that on June 4, 1990, I deposited in
15 the United States mails in the United States Courthouse at
16 312 North Spring Street, Los Angeles, California, in the
17 above-entitled action, in an envelope bearing the
18 requisite postage, a copy of:

19 SETTLEMENT AGREEMENT RE UTILITIES ISSUES
20 addressed to:

21 SEE ATTACHMENT TO CERTIFICATE OF SERVICE
22 at their last known address, at which place there is a delivery
23 service by United States mail.

24 This Certificate is executed on June 4, 1990, at Los Angeles,
25 California.

26 I certify under penalty of perjury that the foregoing is true
27 and correct.

28

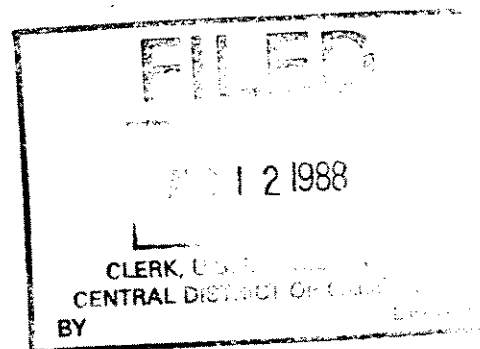
DINA L. HOLLEY

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ATTACHMENT TO CERTIFICATE OF SERVICE

Philip D. Dapeer, Esquire
George & Dapeer
3002 Midvale Avenue
Los Angeles, CA 90034

Burton S. Levinson, Esquire
Wendy Y. Watanabe, Esquire
Levinson & Lieberman, Inc.
9401 Wilshire Blvd., Ste. 1250
Beverly Hills, CA 90212



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH
WALKER, MARIA VALLADARES,
on behalf of themselves and
other similarly situated,

Plaintiffs,

v.

SAMUEL PIERCE, Secretary of
the U.S. DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT; HERBERT AND
ROSSELLE SOMMER; LOUIS AND
ISABEL LEVENTHAL; JACKSON
TERRACE APARTMENTS, a Calif.
Limited Partnership,

Defendant(s).

NO. CV 84-4370-RSWL

ORDER

The Court having read and considered all the papers
filed by the parties, IT IS HEREBY ORDERED that plaintiffs' Ex
Parte Application for Sanctions As To Non-Federal Defendant for
Non-Compliance With the Court's Order, and In the Alternative,

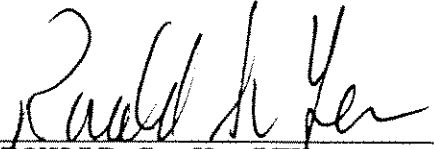
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1 For An Amendment of the Reply Briefing Schedule, filed March 27,
2 1987, is DENIED with respect to the request for sanctions and
3 granted with respect to the amended reply briefing schedule.

4 IT IS FURTHER ORDERED that plaintiffs' Reply Brief
5 filed April 9, 1987 is deemed timely filed.

6 DATED: August 4, 1988

7
8 
9 RONALD S. W. LEW
United States District Judge

1 EILEEN MCCARTHY
2 CALIFORNIA RURAL LEGAL ASSISTANCE
3 Migrant Farmworker Project
4 1030 Sixth Street, #6 / P.O. Box 35
5 Coachella, California 92236-0035
6 (619) 398-7261

7 RICHARD S. KOHN
8 CALIFORNIA RURAL LEGAL ASSISTANCE
9 Migrant Farmworker Project
10 2111 Mission Street, Suite 401
11 San Francisco, California 94110
12 (415) 864-3405

13 CATHERINE M. BISHOP
14 NATIONAL HOUSING LAW PROJECT
15 1950 Addison Street
16 Berkeley, California 94704
17 (415) 548-9400

18 Attorneys for Plaintiffs

19 UNITED STATES DISTRICT COURT

20 CENTRAL DISTRICT OF CALIFORNIA

21 RICHARD WALKER, et al.,)	
)	
22 Plaintiffs,)	
	)	CIV. NO. 84-4370 RSWL
23)	
24 v.)	
	)	<u>STIPULATION OF SETTLEMENT</u>
25 JACK KEMP, Secretary of the	)	<u>RE: FOURTH, FIFTH AND SIXTH</u>
26 DEPARTMENT OF HOUSING AND	)	<u>CAUSES OF ACTION AND RELATED</u>
27 URBAN DEVELOPMENT, et al.,	)	<u>MATTERS AND ORDER PURSUANT</u>
	)	<u>THERE TO</u>
28 Defendants.)	

29 IT IS HEREBY STIPULATED by and between plaintiffs, Richard
30 Walker, Elizabeth Walker and Maria Valladares, on behalf of
31 themselves and all other similarly situated; defendant Jack Kemp,
32 in his official capacity as Secretary of the United States
33 Department of Housing and Urban Development ("Federal Defendant"
34 or "Secretary"); the Jackson Terrace Apts., a California limited
35 partnership, Herbert and Roselle Sommer and Louis and Isobel

1 Leventhal ("owners"); and Fidelity Federal Savings and Loan
2 Association ("Fidelity"); by and through their respective counsel
3 of record, as follows:

4 1. This case concerns a certain multifamily housing complex
5 known as the Jackson Terrace Apartments (hereinafter "Jackson
6 Terrace") located at 46-211 South Jackson Street, Indio,
7 California, the legal description of which is included in Exhibit
8 1 attached hereto and incorporated herein by reference as though
9 fully set forth. Title is recorded in Book 1983 Page 195819-195826
10 of records of the County Recorder in Riverside County, California.

11 2. Plaintiffs commenced this class action against the
12 Federal Defendant, and others, on June 11, 1984. By Order dated
13 September 25, 1986, the Court certified the case as a class action
14 pursuant to F.R. Civ.P. 23(b)(2). The class is defined as follows:

15 Current and future tenants of Jackson Terrace
16 who are eligible, or will be eligible, for
17 benefits of Section 8 Housing Assistance Payments
18 program, whether or not they receive, or will
19 receive, said Section 8 benefits. This class consists
20 of the following two (2) subclasses: First subclass
21 consisting of class members who receive, or will
22 receive, Section 8 benefits; Second subclass consisting
23 of class members who do not receive, or will not receive,
24 Section 8 benefits.

25 3. On August 12, 1988, the Plaintiffs' First Amended
26 Complaint was deemed filed. In the Fourth and Fifth causes of
27 action, plaintiffs alleged that the sale of the mortgage and
28 cancellation of the Regulatory Agreement violated the due process

1 clause of the Fifth amendment; federal statutory rights and
2 contractual rights, and the Administrative Procedures Act.

3 In the Sixth Cause of Action, the plaintiffs alleged that the
4 disposition of Jackson Terrace was arbitrary and capricious,
5 violated statutes and regulations designed to ensure the continued
6 availability of low income housing and that the Federal Defendant
7 had violated its own procedures and notice requirements regarding
8 dispositions.

9 4. On October 7, 1988, Federal Defendant filed an Answer to
10 plaintiffs' First Amended Complaint denying the material
11 allegations therein and asserting certain affirmative defenses.
12 On August 31, 1988, Herbert and Roselle Sommer and Louis and
13 Isobel Leventhal filed an answer to the First Amended Complaint.
14 On March 8, 1989, Fidelity Federal Savings and Loan Association
15 filed an answer which contained counterclaims against the
16 plaintiffs and cross claims against the Federal Defendant. The
17 plaintiffs filed an answer to Fidelity's counterclaims and the
18 Federal Defendant filed an answer to Fidelity's cross-claims.

19 5. The purpose of this Stipulation of Settlement is to
20 resolve the Fourth, Fifth and Sixth Causes of Action, and the
21 counterclaims and cross-claims pertinent thereto and related
22 matters without the necessity of further litigation. It is the
23 intention of the parties that in order to effectuate the terms of
24 this Stipulation of Settlement, the Federal Defendant and the
25 Jackson Terrace Apts. shall execute a Section 8 Housing Assistance
26 Payments contract (hereinafter "Section 8 HAP contract") and a
27 Regulatory Agreement and Declaration of Restrictive Covenants to
28 Run With Certain Land, (hereinafter "Regulatory Agreement and

1 Declaration of Covenants"), and that the aforesaid documents shall
2 be recorded in the land records of Riverside County as set forth
3 in paragraph 15 below. Copies of the Section 8 HAP contract
4 between the owners and Federal Defendant and the Regulatory
5 Agreement and Declarations of Covenants are attached hereto as
6 Exhibits 2 and 3 and are expressly incorporated herein.

7 6. The parties stipulate and agree that fee title to the
8 Jackson Terrace Apartments located at 46-211 S. Jackson Street,
9 Indio, California, is vested in the Jackson Terrace Apts., a
10 California limited partnership and subject to a valid and
11 enforceable first deed of trust, securing a promissory note debt
12 in favor of Fidelity Federal Savings and Loan Association. Said
13 title and first deed of trust shall be free and clear of any
14 claims, rights, liens or encumbrances alleged or created by
15 plaintiffs' within action with the exception of those matters
16 specifically provided for herein.

17 7. The parties stipulate and agree that upon the final
18 approval of this Stipulation by the Court after notice to the
19 class, the Federal Defendant and the Jackson Terrace Apts. shall
20 execute a Section 8 HAP contract on HUD's standard form currently
21 in use that will supersede the existing Section 8 HAP contract and
22 provide Property Disposition Section 8 subsidy for 90 units at
23 Jackson Terrace for a period of ten (10) years. The Section 8 HAP
24 contract shall be executed within thirty (30) days of final
25 approval of this agreement and said Section 8 HAP contract shall
26 take effect within sixty (60) days of the said final approval.

27 8. Jackson Terrace Apts. agrees that it will accept the
28 Section 8 HAP contract offered by the Federal Defendant and

1 execute any documents reasonably necessary to effectuate this
2 provision.

3 9. The Federal Defendant and Jackson Terrace Apts. agree
4 that the level of rents at Jackson Terrace authorized by the
5 Section 8 HAP contract shall be as follows:

6	1 bedroom	\$425
7	2 bedroom	450
8	3 bedroom	475
9	4 bedroom	525

10 These rents shall become effective upon the effective date of the
11 Section 8 HAP contract. Subsequent increases in the Section 8
12 rents will be calculated by application of the Annual Adjustment
13 factors (AAF's) provided for in 24 C.F.R. Sec. 886.312 and the
14 AAF's published annually in the Federal Register. Additionally,
15 the Federal Defendant agrees that it will accept documentation
16 from the owners to evaluate in good faith whether or not rent
17 increases should have been approved at the project under the
18 budget basis analysis for the years 1987, 1988, 1989 and 1990.
19 The Federal Defendant shall in good faith review any documentation
20 submitted by the owners and shall decide whether rent increases
21 would have been justified under the budget basis analysis. If such
22 rent increases would have been justified, the Federal Defendant
23 will reimburse Jackson Terrace for the amount of the rent
24 increases which they did not receive during the years 1987, 1988,
25 1989 and 1990.

26 10. Upon the final approval of this Stipulation by the
27 Court, the Federal Defendant will pay to the plaintiff class the
28 sum of \$23,000 as restitution for members of the class. A check in

1 the amount of \$23,000 made payable to the law offices of
2 California Rural Legal Assistance shall be delivered by the
3 Federal Defendant as soon as practicable but, in any event, no
4 later than one hundred and twenty (120) calendar days after the
5 final approval of this stipulation by the Court. This sum shall be
6 held in trust by the law offices of California Rural Legal
7 Assistance for the benefit of the class until it is distributed to
8 the individual members of the class. After distribution, any
9 residual amount that is so small as to be impractical for
10 distribution to the class shall be retained by California Rural
11 Legal Assistance. Federal Defendant assumes no responsibility for
12 allocating the foregoing sum among class members or for
13 distributing payments to class members, this being the sole
14 responsibility of the plaintiffs' counsel. The owners shall have
15 no liability with respect thereto.

16 11. In addition, Federal Defendant will make available
17 twenty (20) Section 8 certificates to the Riverside County Housing
18 Authority for use by members of the plaintiff class who would have
19 been eligible for a subsidy at any time between June 3, 1981 and
20 the present; who are presently eligible for a subsidy; and who are
21 not residing at Jackson Terrace. The Federal Defendant agrees that
22 the allocation of these certificates shall not diminish the
23 Riverside County Housing Authority's allocation of Section 8
24 certificates for this or future years and further agrees that the
25 assignment of these certificates for the use of class members in
26 this lawsuit shall not violate any federal preferences or
27 priorities. The duration of the aforesaid Section 8 certificates
28 shall be for as long as the class member is eligible for Section 8

1 assistance or for a ten (10) year period, whichever is shorter,
2 subject to availability of appropriations. HUD will give priority
3 to funding for such certificates subject to HUD's obligations
4 under previously entered court orders or court-approved
5 settlements in other cases. The Section 8 certificates shall be
6 made available by Federal Defendant for use by Riverside County
7 Housing Authority within sixty (60) days of final approval of this
8 stipulation by the Court. Class members claiming the Section 8
9 Certificates must make application to the Riverside County Housing
10 Authority within twelve (12) months of the date that the Federal
11 Defendant makes such certificates available to the Riverside
12 County Housing Authority. The Federal Defendant assumes no
13 responsibility for identifying the class members eligible for the
14 certificates provided by this paragraph, this being the sole
15 responsibility of the plaintiffs' counsel. If any of the twenty
16 (20) certificates provided by the Federal Defendant pursuant to
17 this paragraph are not awarded to a class member within twelve
18 (12) months of the date that such certificates are made available
19 to the Riverside County Housing Authority, the unused certificates
20 shall be returned to HUD and the number of certificates that HUD
21 shall be required to provide pursuant to this settlement will be
22 reduced by the number of certificates not awarded to class members
23 within the referenced twelve (12) month period. The owners shall
24 have no duty or obligation pursuant to this paragraph.

25 12. HUD's ability to perform any of its obligations
26 specified in this Stipulation of Settlement is subject to the
27 availability of funding from Congress for any purpose for which
28 such funding is required and to the existence of statutory

1 authority generally authorizing acts necessary for performance by
2 HUD. HUD shall not be held in contempt of this Court, or
3 otherwise punished, for non-compliance with this Stipulation on
4 account of failure to perform resulting from the unavailability of
5 funding from Congress necessary for compliance, or from the
6 modification or revocation of statutory authority necessary for
7 compliance. Notwithstanding the foregoing, if at any time before
8 the termination of HUD's obligations under this Stipulation,
9 Congress fails to appropriate funds necessary for compliance, or
10 revokes or substantially modifies any statutory authority of HUD
11 necessary for compliance so as to prevent HUD from providing the
12 relief specified in the Stipulation, plaintiffs and the owners
13 shall be entitled to receive alternative relief comparable to that
14 specified herein and consistent with HUD's revised funding or
15 statutory authority for assisted housing. In such event, HUD,
16 plaintiffs' counsel and the owners' counsel shall consult in an
17 effort to agree upon a proposed modification of this stipulation
18 to provide such relief. If the parties agree upon a proposed
19 modification, they shall promptly submit the same to the Court for
20 approval. If after a reasonable time the parties cannot agree,
21 the entire matter shall at the instance of HUD, the plaintiffs or
22 the owner be submitted to the Court for adjudication. In no
23 event, however, shall such a revision in HUD's funding or
24 statutory authority constitute grounds for reopening this
25 Stipulation for any purpose other than providing such alternative
26 relief comparable to that specified herein. Where HUD has agreed
27 in this Stipulation solely to consult with plaintiffs' counsel or
28 the owners' counsel or consider or explore taking any action not

1 specifically required hereunder, HUD shall undertake such
2 consultation, consideration or exploration in good faith, but its
3 failure actually to take the action which is the subject of such
4 consultation, consideration or exploration shall not be grounds
5 for contempt.

6 13. If, during the notice period provided for by this
7 agreement, additional claimants of whom plaintiffs' counsel are
8 presently unaware submit claims for restitution, the Federal
9 Defendant shall consider a request by plaintiffs' counsel to
10 increase the settlement amount above \$23,000 and/or to increase
11 the number of certificates. However, this provision shall not
12 obligate the Federal Defendant to agree to any such requested
13 increase and the decision whether to increase either said \$23,000
14 or the numbers of certificates shall be wholly within the Federal
15 Defendant's discretion.

16 14. The parties stipulate and agree that Jackson Terrace
17 Apts. and the Federal Defendant shall execute a Regulatory
18 Agreement and Declaration of Covenants that shall run until June
19 3, 2021 and which shall include the following provisions
20 (designated subparagraphs a-s) which shall run with the land and
21 bind the present owners, their successors and assigns:

22 (a) That Fidelity is the beneficiary of a valid and
23 enforceable first deed of trust securing the principal amount of
24 \$1,400,000.00 and all accrued interest, late charges or
25 foreclosure costs, and duly recorded on September 28, 1983 and
26 encumbering the property known as 46-211 Jackson Street, Indio,
27 California 92201, which first deed of trust is acknowledged to be
28 senior to any and all other liens and encumbrances created and

1 recorded on or after September 28, 1983 including any liens or
2 encumbrances created by this instrument.

3 (b) That any default by the owners in their loan from
4 Fidelity or other loan secured by the property described in
5 Exhibit 1 shall also constitute a default of the Section 8 HAP
6 contract entered into between the owners and the Federal Defendant
7 in accordance with the terms of that contract. In addition, a
8 default in the loan payments shall constitute a violation of the
9 Regulatory Agreement and Declaration of Covenants. In the event
10 of such a default, the Federal Defendant shall have the right
11 under the Regulatory Agreement to take any of the corrective
12 actions provided for in the Section 8 HAP contract entered into
13 between the owners and Federal Defendant except the right to take
14 possession of the property.

15 For purposes of this subsection, the term "default" shall
16 mean a monetary default.

17 (c) Jackson Terrace shall remain a multifamily rental
18 project until at least June 3, 2021 and no other use shall be
19 substituted for that use until that date. No part of the land and
20 no building or structure thereon shall be used in any manner or
21 for any purpose except in accordance with the Regulatory Agreement
22 and Declaration of Covenants and the Section 8 HAP contract
23 between Jackson Terrace Apts. and the Federal Defendant entered
24 into pursuant to this agreement.

25 (d) Jackson Terrace Apts. further agrees that on or
26 prior to the termination of the Section 8 HAP contract between it
27 and Federal Defendant entered into pursuant to this agreement or
28 any extensions thereof, it will accept any offer by the Federal

1 Defendant to renew the Section 8 HAP contract. The owners'
2 obligation to renew any Section 8 HAP contract offered by the
3 Federal Defendant shall be binding until June 3, 2021, at which
4 time any such contract shall terminate for all purposes. The
5 decision whether to offer to renew the Section 8 HAP contract for
6 any additional periods of time is subject to the availability of
7 funds and within the discretion of the Federal Defendant and said
8 discretion shall be exercised in a manner consistent with the
9 Federal Defendant's statutory obligations.

10 (e) Jackson Terrace Apts. further agrees to accept an
11 offer by the Federal Defendant to provide any other rental
12 assistance, in lieu of a Section 8 HAP contract, designed to
13 provide families affordable decent, safe and sanitary housing
14 pursuant to Section 8 or any other successor legislation. Whether
15 to offer any other rental assistance is subject to the
16 availability of funds and within the discretion of the Federal
17 Defendant unless such obligation is otherwise imposed by statute.

18 (f) Jackson Terrace Apts. agrees not to refuse
19 unreasonably to lease a vacant dwelling unit, evict any person or
20 otherwise discriminate in the terms of tenancy because such a
21 person is the holder of, or eligible to hold, a Voucher or
22 Certificate of Family Participation under Section 8 of the United
23 States Housing Act of 1937 (42 USC 1437f), or under the terms of
24 any similar rental assistance program enacted pursuant to any
25 successor legislation.

26 (g) Jackson Terrace Apts. further agrees that the
27 eviction regulations set forth at 24 C.F.R. § 247, or any
28 comparable successor regulations, shall be applicable to all

1 tenants and binding on the operations and management of Jackson
2 Terrace.

3 (h) Jackson Terrace Apts. shall make dwelling
4 accommodations and services of the project available to occupants
5 at charges not exceeding those established in accordance with a
6 rental schedule approved in writing by HUD. The project shall
7 remain a multifamily rental project. The units shall not be
8 rented for a period of less than thirty (30) days.

9 (i) During the time that the Section 8 contract between
10 Jackson Terrace Apts. and Federal Defendant is in effect, the
11 maximum rent for each Section 8 unit shall be as stated in the
12 Section 8 HAP contract and adjustments in such rents shall be made
13 in accordance with the terms of the Section 8 HAP contract and
14 paragraph 9 of this Stipulation.

15 (j) During any period of time covered by this agreement
16 for units not subject to the Section 8 HAP contract between
17 Jackson Terrace Apts. and Federal Defendant, the Federal Defendant
18 will at any time entertain a written request for a rent increase
19 supported by substantiating evidence and within a reasonable time
20 shall: (a) approve a rental schedule that is necessary to
21 compensate for any net increase occurring since the last approved
22 rental schedule, in taxes (other than income taxes) and operating
23 and maintenance costs over which the owners have no reasonable
24 control, or (b) deny the requested increase stating the reasons
25 therefore.

26 (k) Jackson Terrace Apts. shall not, without the prior
27 written approval of the Federal Defendant, require as a condition
28 of the occupancy or leasing of any unit in the project any

1 consideration or deposit other than the prepayment of the first
2 month's rent, plus a security deposit in an amount not in excess
3 of one month's rent (the gross family contribution in Section 8
4 units) to guarantee the performance of the covenants of the lease.
5 Any funds collected as security deposits shall be kept separate
6 and apart from all other funds of the project in a trust account
7 the amount of which shall at all times equal or exceed the
8 aggregate of all outstanding obligations under said account.

9 (l) Jackson Terrace Apts. agrees to maintain the
10 project premises, accommodations and the grounds and equipment
11 appurtenant thereto, in good repair and condition.

12 (m) (i) Jackson Terrace Apts. agrees that any
13 management contract entered into by it involving the project shall
14 contain a provision that, in the event of default under the
15 Regulatory Agreement and Declaration of Covenants, it shall be
16 subject to termination without penalty upon written request by the
17 Federal Defendant. Upon such request, Jackson Terrace Apts. shall
18 immediately arrange to terminate the contract within a period of
19 not more than thirty (30) days and shall make arrangements
20 satisfactory to the Federal Defendant for continuing proper
21 management of the project.

22 (ii) Payment for services, supplies, or
23 materials shall not exceed the amount ordinarily paid for such
24 services, supplies or materials furnished.

25 (iii) The property, equipment, buildings, plans,
26 offices, apparatus, devices, books, contracts, records, documents,
27 and other papers relating thereto shall at all times be maintained
28 in reasonable condition for proper audit and subject to

1 examination and inspection at any reasonable time by the Federal
2 Defendant or duly authorized agents of the Federal Defendant.
3 Jackson Terrace Apts. shall keep copies of all written contracts
4 or other instruments which affect the property, all or any of
5 which may be subject to inspection and examination by the Federal
6 Defendant or duly authorized agents of the Federal Defendant.

7 (iv) The books and accounts of the operations of
8 the property shall be kept in accordance with the requirements of
9 the Federal Defendant.

10 (v) Within sixty (60) days following the end of
11 each fiscal year, the Federal Defendant shall be furnished with a
12 complete annual financial report based upon an examination of the
13 books and records of the property prepared in accordance with the
14 requirements of the Federal Defendant, certified to by an officer
15 or responsible owner and, when required by the Federal Defendant,
16 prepared and certified by a Certified Public Accountant, or other
17 person acceptable to the Federal Defendant.

18 (vi) At the request of the Federal Defendant, or
19 duly authorized agents of the Federal Defendant, Jackson Terrace
20 Apts. shall furnish monthly occupancy reports and shall give
21 specific answers to questions upon which information is desired
22 from time to time relative to the income, assets, liabilities,
23 contract, operation, and condition of the property.

24 (n) Jackson Terrace Apts. agrees to comply with the
25 provisions of any Federal, State, or local law prohibiting
26 discrimination in housing on the grounds of race, color, religion
27 or creed, sex, handicap, familial status or national origin,
28 including Title VI of the Civil Rights Act of 1964 (Public Law 88-

1 352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968
2 (Public Law 90-284, 82 Stat. 73) Executive Order 11063, and all
3 requirements imposed by or pursuant to the regulations of the
4 Department of Housing and Urban Development implementing these
5 authorities (including 24 C.F.R. Parts 1.100 and 110 and Subparts
6 I and M of Part 200).

7 (o) Upon a violation of any of the provisions of the
8 Regulatory Agreement and Declaration of Covenants, the non-
9 breaching party may give written notice thereof to the breaching
10 party, via certified mail, postage prepaid, return receipt
11 requested, or express delivery service with a delivery receipt and
12 the notice will be effective on delivery or on the date delivery
13 is refused, as shown on the delivery receipt, addressed to the
14 address stated herein, or such other address as may subsequently
15 be designated. The owners' present legal address is:

16 Jackson Terrace Apts
17 c/o Sommer Realty Co.
18 4050 Katella Avenue
Los Alamitos, California 90720

19 Notice to the Federal Defendant should be sent to:

20 U.S. Department of Housing
21 and Urban Development
1615 West Olympic Boulevard
Los Angeles, California 90015

22 If such violation is not corrected within thirty (30) days after
23 the date such notice is effective or within such further time as
24 is reasonably necessary to correct the violation, without further
25 notice the non-breaching party may declare a default under the
26 Regulatory Agreement and Declaration of Covenants effective on the
27 date of such declaration of default. In the event that a default
28 is declared by the Federal Defendant against the Jackson Terrace

1 Apts., the Federal Defendant may, in its discretion, take any or
2 all of the following actions:

3 (i) Collect all rents and charges in connection
4 with the operation of the project and use such collections to pay
5 any outstanding note and mortgage and the necessary expenses of
6 preserving the property and operating the project.

7 (ii) Apply to any court, State or Federal, for
8 specific performance of the Regulatory Agreement and Declaration
9 of Covenants, for an injunction against any violation of the
10 aforesaid Regulatory Agreement and Declaration of Covenants, for
11 the appointment of a receiver to take over and operate the project
12 in accordance with the terms of the Section 8 Housing Assistance
13 Payments contract between the owners and Federal Defendant and/or
14 Regulatory Agreement and Declaration of Covenants, or for such
15 other relief as may be appropriate.

16 (p) As used in the Regulatory Agreement and Declaration
17 of Covenants, the term

18 (i) "Owners" refers to the Jackson Terrace Apts, a
19 California limited partnership; and its successors in office or
20 interest, heirs, executors, administrators, legal representatives
21 and assigns.

22 (ii) "Default" means a default declared by the
23 Secretary when a violation of the Regulatory Agreement and
24 Declaration of Covenants is not corrected to the reasonable
25 satisfaction of the Federal Defendant within the time allowed by
26 the foregoing provisions or such further time as may be allowed by
27 the Federal Defendant after written notice.

28

1 (iii) "Section 8 units" refers to units assisted
2 under Section 8 of the United States Housing Act of 1937 pursuant
3 to a Housing Assistance Payments contract.

4 (iv) "Section 8 Housing Assistance Payments
5 contract (HAP contract)" refers to a written contract between the
6 owners and the Federal Defendant, for the purpose of providing
7 housing assistance payments to the Owners on behalf of eligible
8 families under Section 8 of the United States Housing Act of 1937.

9 (q) The Regulatory Agreement and Declaration of
10 Covenants shall bind, and the benefits shall inure to, and be
11 enforceable by Jackson Terrace Apts., the owners, their heirs,
12 legal representative, executors, administrators, successors in
13 office or interest, and assigns, and the Secretary and successors
14 of the Secretary until the year 2021.

15 (r) Jackson Terrace Apts. warrants that it has not, and
16 will not, execute any other agreement with provisions
17 contradictory to, or in opposition to, the provisions hereof, and
18 that in any event the requirements of the Regulatory Agreement and
19 Declaration of Covenants are paramount and controlling as to the
20 rights and obligations set forth and supersede any other
21 requirements in conflict therewith.

22 (s) The invalidity of any clause, part or provision of
23 the Regulatory Agreement and Declaration of Covenants shall not
24 affect the validity of the remaining portions thereof. The failure
25 of the Federal Defendant to enforce or demand compliance with any
26 of the foregoing covenants shall not constitute a waiver of such
27 provisions.

1 15. The Federal Defendant agrees to record the Section 8 HAP
2 contract between Jackson Terrace Apts. and Federal Defendant,
3 Regulatory Agreement and Declaration of Covenants, Stipulation of
4 Settlement and Final Judgment in the land records of Riverside
5 County. This agreement does not preclude any other party from
6 recording the aforesaid documents or applying to the Court for an
7 order requiring the Federal Defendant to comply with this
8 provision.

9 16. This Stipulation is without prejudice to whatever rights
10 the owners and Jackson Terrace Apts. may have to seek a rejection
11 or avoidance of the Section 8 HAP contract, the Regulatory
12 Agreement and Declaration of Restrictive Covenants, and this
13 Stipulation between the owners and Federal Defendant in the United
14 States Bankruptcy Court in accordance with the Bankruptcy Code and
15 the Bankruptcy Rules. The owners agree that in the event that a
16 bankruptcy petition is filed they shall, without prejudice,
17 stipulate to the lifting of the automatic stay so that this
18 Settlement may proceed to completion. The owners further agree
19 that they shall not oppose the immediate implementation of the
20 settlement pending completion of any bankruptcy proceedings so
21 that the owners and tenants will have the immediate benefit of the
22 subsidies conferred by the Section 8 HAP contract.

23 A material consideration for the owners and Jackson Terrace
24 Apartments to enter into this Stipulation of Settlement, the
25 Section 8 HAP contract and the Regulatory Agreement and
26 Declaration of Restrictive Covenants referred to herein is the
27 preservation of the right of the owners and Jackson Terrace
28 Apartments to seek a rejection and/or avoidance of the Section 8

1 HAP contract, the Regulatory Agreement and Declaration of
2 Restrictive Covenants and this Stipulation of Settlement in an
3 appropriate bankruptcy forum should the owners and/or Jackson
4 Terrace Apartments seek to file a petition for relief under the
5 Bankruptcy Code. It is expressly understood and agreed between the
6 parties to this settlement stipulation that all such rights are
7 expressly preserved and the making, execution, and delivery of
8 this Stipulation of Settlement, the Section 8 HAP contract, and
9 the Regulatory Agreement and Declaration of Restrictive Covenants
10 shall in no way be prejudicial thereto. It is expressly
11 acknowledged by the parties that during the pendency of this civil
12 litigation, Jackson Terrace Apartments had filed a petition for
13 relief under chapter 11 of the Bankruptcy Code by which petition
14 Jackson Terrace Apartments intended to seek a bankruptcy court
15 determination of its right to reject the Section 8 HAP contract
16 which was then existing with respect to the property. The fact
17 that the owners and Jackson Terrace Apartments now enter into this
18 Stipulation of Settlement, the Section 8 HAP contract and the new
19 Regulatory Agreement and Declaration of Restrictive Covenants
20 shall in no way be prejudicial to the right of the owners and
21 Jackson Terrace Apartments to again seek such a judicial
22 declaration from the Bankruptcy Court of its right to reject or
23 avoid the Section 8 HAP contract, the new Regulatory Agreement and
24 Declaration of Restrictive Covenants and this Stipulation of
25 Settlement. Further, the owners and Jackson Terrace Apartments
26 shall not be prejudiced by the fact that the prior bankruptcy
27 petition of Jackson Terrace Apartments was dismissed without
28 prejudice and that a new Section 8 HAP contract, a new Regulatory

1 Agreement and Declaration of Restrictive Covenants and this
2 Stipulation of Settlement has been entered into subsequent to that
3 dismissal.

4 It is expressly understood and agreed to between the parties
5 that in the event that Jackson Terrace Apts. should seek to reject
6 the Stipulation of Settlement, the Section 8 HAP contract, the
7 Regulatory Agreement and Declaration of Restrictive Covenants in
8 the Bankruptcy Court, the plaintiffs preserve any and all rights
9 which they may have to object to the rejection or avoidance of the
10 said agreements and to seek full enforcement of said agreements.

11 17. Jackson Terrace Apts. expressly warrants and agrees that
12 it will acknowledge its secured debt to Fidelity in any pending or
13 future bankruptcy petition.

14 18. Federal defendant agrees to pay the plaintiffs their
15 recoverable costs, expenses and attorneys' fees under the Equal
16 Access to Justice Act, 28 U.S.C. Sec. 2412 for work performed in
17 connection with the Fourth, Fifth and Sixth Causes of Action of
18 the First Amended Complaint. The Federal Defendant further agrees
19 that the only issue to be resolved by an application for fees and
20 expenses by the plaintiffs shall be the amount of the costs, fees
21 and expenses to which the plaintiffs are entitled, and that the
22 Federal Defendant will not contend that the position of the United
23 States was "substantially justified" or that "special
24 circumstances make an award unjust." Any dismissal of the
25 plaintiffs' claims as set forth herein will not prejudice their
26 claim for reasonable costs, attorneys' fees and expenses. The
27 issue of whether the owners and/or Jackson Terrace Apts. are
28 entitled to costs and attorneys' fees against the Federal

1 Defendant and, if so, the amount of the award, is specifically
2 reserved for further proceedings and forms no part of this
3 stipulation.

4 19. The parties further stipulate and agree that except as
5 set forth in paragraph 18 herein, none of the parties shall seek
6 to recover from each other their costs of suit and/or attorneys'
7 fees incurred in connection with the litigation of the above-
8 described issues in this case.

9 20. The agreement between Plaintiffs and the Federal
10 Defendant regarding the Fourth, Fifth and Sixth Causes of Action
11 shall not impose any financial obligations upon Fidelity. The
12 owners and Jackson Terrace Apts. shall not be obligated in any
13 fashion to pay the attorneys' fees or other financial
14 consideration being paid by the federal defendant in order to
15 settle this case.

16 21. In consideration for the promises made by the parties in
17 paragraphs 5-20 of this instrument and in the Settlement Agreement
18 Re Utilities Issues, plaintiffs agree, as described below, to join
19 with the other parties in asking the Court to enter a Final
20 Judgment dismissing this action.

21 Upon completion of the following occurrences under the two
22 settlement agreements, counsel for all parties shall jointly
23 notify the Court in writing and request the Court to enter a Final
24 Judgment dismissing with prejudice the plaintiffs' action against
25 the defendants, Fidelity's counterclaims against the plaintiffs
26 and Fidelity's cross claims against the Federal Defendant and the
27 owners. These occurrences are:
28

1 (a) Execution and recording of this Stipulation, the
2 Section 8 HAP contract between the owners and Federal Defendant
3 and the Regulatory Agreement and Declaration of Covenants as
4 provided in paragraphs 5 and 15 of this Stipulation;

5 (b) Payment by the Federal Defendant to the plaintiffs
6 of \$23,000.00 as provided in paragraph 10 of this Stipulation.

7 (c) The transfer of the agreed upon number of Section 8
8 certificates by the Federal Defendant to the Riverside County
9 Housing Authority for the use by class members as provided in
10 paragraph 11 of this Stipulation.

11 (d) The payment by the Federal Defendant to the
12 plaintiffs' attorneys of costs, expenses and reasonable attorneys'
13 fees as determined in accordance with paragraph 18 of this
14 Stipulation.

15 (e) The resolution of any disputes that must be
16 resolved by the Court regarding payment of claims for retroactive
17 utility allowances as provided for in Paragraph 10(B) of the
18 Settlement Agreement Re Utilities Issues.

19 Plaintiffs also agree to expunge the Notice of Pending Action
20 recorded by the Plaintiffs on June 23, 1988 in the Riverside
21 County land records upon entry of the Final Judgment in this case.
22 The Court shall retain continuing jurisdiction over the action
23 after its dismissal to enforce the terms of the Stipulation of
24 Settlement.

25 22. As partial consideration for this Stipulation for
26 Settlement, and except as stated in paragraph 18 above, the
27 parties mutually release and forever discharge one another from
28 any and all claims, debts, damages, liabilities, demands,

1 obligations, costs, expenses, actions and causes of action of
2 every nature, whether known or unknown, which any party now holds
3 or have at any time heretofore held against each other by reason
4 of the sale of Jackson Terrace on June 3, 1981 and the sale of the
5 mortgage on Jackson Terrace and the cancellation of the Regulatory
6 Agreement on September 30, 1983, and/or which are asserted in the
7 Fourth, Fifth and Sixth Causes of Action of the Plaintiffs' First
8 Amended Complaint, the counterclaims of Fidelity against the
9 plaintiffs, and the cross-claims of Fidelity against the Federal
10 Defendant and the owners. This release shall not be construed to
11 waive any claims now held or at any time hereafter held, whether
12 known or unknown, by the Federal Defendant or the Jackson Terrace
13 Apts. or the owners against each other arising from the Section 8
14 HAP contract entered into on June 3, 1981 by and between the
15 Federal Defendant and the owners and the Section 8 HAP contract to
16 be entered into by owners and Federal Defendant pursuant to this
17 settlement.

18 23. This Stipulation for Settlement affects the settlement
19 of claims and defenses which are denied and contested, and no
20 provision contained herein shall be construed as an admission by
21 any party hereto of any liability of any kind to any other party.

22 24. No provision hereof may be waived unless in writing
23 signed by all parties hereto. Waiver of any one provision herein
24 shall not be deemed to be a waiver of any other provision herein.
25 This stipulation may be modified or amended only by written
26 agreement executed by all of the parties hereto.

27 25. This stipulation together with the Section 8 Housing
28 Assistance Payments contract between Jackson Terrace Apts. and

1 Federal Defendant and the Regulatory Agreement and Declaration of
2 Covenants contain the sole and entire agreement and understanding
3 of the parties with respect to the entire subject matter hereof,
4 and any and all prior discussions, negotiations, commitments, or
5 understandings related hereto, if any, are hereby merged herein.
6 No representations, oral or otherwise, express or implied, other
7 than those contained herein have been made by any party hereto. No
8 other agreements not specifically contained or incorporated by
9 reference herein, oral or otherwise, shall be deemed to exist or
10 to bind any of the parties hereto.

11 26. (A) Preliminary Approval

12 After signature by all parties, this Stipulation of
13 Settlement shall be submitted to the United States District Court
14 for the Central District of California in order for the Court to
15 determine whether to grant preliminary approval pursuant to Rule
16 23(e), F.R. Civ.P.

17 (B) Fairness Hearing

18 1. Upon the Court's preliminary approval of this
19 Stipulation of Settlement, the parties will request the Court to
20 schedule a fairness hearing during which class members may raise
21 any objections to this Stipulation.

22 2. This hearing shall be scheduled at the
23 earliest practical time, but no sooner than forty-five (45) court
24 days after the date upon which the Court grants preliminary
25 approval of the Stipulation of Settlement.

26 3. Any class member who wishes to raise an
27 objection at the fairness hearing shall file the objection, in
28

1 writing, in accordance with a procedure to be approved by the
2 Court.

3 4. Counsel for the plaintiffs shall be
4 responsible for notifying the class members. The Notice which is
5 attached as Exhibit 4 shall be translated into Spanish and a
6 Spanish and English version shall be provided to all tenants who
7 currently reside at Jackson Terrace. This notice shall also be
8 published twice in the DAILY NEWS (Indio) and EL INFORMADOR DEL
9 VALLE.

10 (C) Approval

11 After holding the fairness hearing, the Court shall
12 determine whether this Stipulation of Settlement is fair,
13 reasonable and adequate. If it so finds, it shall reject any
14 objections and approve the Stipulation of Settlement pursuant to
15 F.R.Civ.P. 23(e). In the event that the Court does not approve
16 this Stipulation of Settlement as written and instead issues an
17 Order that differs in any substantial respect from the Stipulation
18 executed by the parties, this Stipulation shall be voidable in its
19 entirety at the option of any party. This Stipulation of
20 Settlement shall take effect upon final approval by this Court
21 following the fairness hearing. Plaintiffs and defendants shall

22 ///

23 ///

24 ///

25 ///

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27 ///

28 ///

1 jointly use their best efforts to obtain prompt judicial approval
2 of this Stipulation, compliance with the agreement and the entry
3 of a Final Judgment.

6 LAW OFFICE OF CALIFORNIA
7 RURAL LEGAL ASSISTANCE

8 DATED:

July 9, 1991

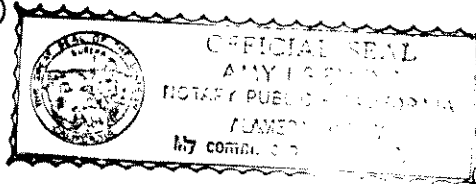
Richard S. Kohn
RICHARD S. KOHN
EILEEN MCCARTHY
Attorneys for the Plaintiffs

11 State of California
12 County of Alameda

13 On this 9th day of July, 1991, before me, a
14 Notary Public in and for said County and State, personally
15 appeared RICHARD S. KOHN, personally known to me or proved to me
16 on the basis of satisfactory evidence to be the person whose name
is subscribed to this instrument, and acknowledged that he
executed it.

17 In witness whereof, I have hereunto set my hand and affixed
18 my official seal the day and year in the certificate first above
written.

19 (SEAL)



Amy J. Summers
Notary Public

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

NATIONAL HOUSING LAW PROJECT

DATED:

July 9, 1991

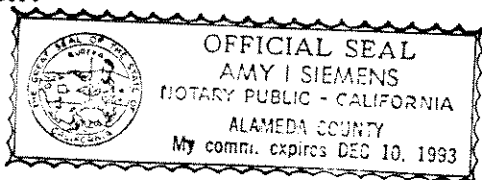
Catherine M. Bishop
CATHERINE M. BISHOP
Attorney for Plaintiffs

State of California
County of ALAMEDA

On this 9th day of July, 1991, before me, a Notary Public in and for said County and State, personally appeared CATHERINE M. BISHOP, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

(SEAL)



Amy I. Siemens
Notary Public

DATED:

7-15-91

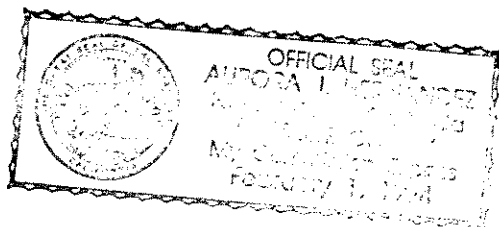
Richard Walker
RICHARD WALKER
Plaintiff

State of California
County of RIVERSIDE

On this 15 day of July, 1991, before me, a Notary Public in and for said County and State, personally appeared RICHARD WALKER, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

(SEAL)



Aurora L. Hernandez
Notary Public


7.15.91

September 18

State of California
County of Orange

On this 15 day of June, 1991, before me, a Notary Public in and for said County and State, personally appeared ELIZABETH WALKER, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.


 OFFICIAL SEAL
 AURORA J. HERNANDEZ
 National Wildlife Inspector
 R. A. 125, P. 0. Box 1
 My Commission Expires
 February 1, 1994

William J. Barron
Notary Public


7-15-91

17. 1994
MARIA VALLADARES
Plaintiff

State of California
County of RIVERSIDE

On this 15 day of July, 1991, before me, a Notary Public in and for said County and State, personally appeared MARIA VALLADARES, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.


 OFFICIAL SEAL
 AURORA J. HERMANDEZ
 Notary Public - California
 RIVERSIDE COUNTY
 My Commission Expires
 February 1, 1994

Amara L. Hernandez
Notary Public

///

DATED: 9/12/91

DATED: 9/10/91

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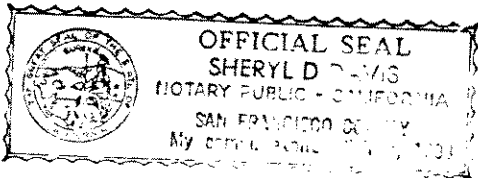
STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On this 10th day of September, 1991, before me, a Notary Public, personally appeared BEVERLY AGEE, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it in her authorized capacity as the duly appointed Regional Counsel of the Department of Housing and Urban Development-Region IX and that by her signature on the instrument the person or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Sheryl D. Davis
Notary Public



1
2 DATED:

7/1/91

DAPEER & HIRSCH

PHILIP D. DAPEER
Attorney for Defendants,
Jackson Terrace Apartments,
A California Limited Partnership;
Herbert and Roselle Sommer; and
Louis and Isobel Leventhal

6 State of California
County of LOS ANGELES

7 On this 1st day of July, 1991, before me, a
8 Notary Public in and for said County and State, personally
9 appeared PHILIP D. DAPEER, personally known to me or proved to me
10 on the basis of satisfactory evidence to be the person whose name
is subscribed to this instrument, and acknowledged that he
executed it.

11 In witness whereof, I have hereunto set my hand and affixed
12 my official seal the day and year in the certificate first above
written.

13 (SEAL)



Carol Reinstein
Notary Public

15 JACKSON TERRACE APTS., a California
16 Limited Partnership,

17 By, The Sommer Family Trust
General Partner

18 DATED: June 28, 1991 By,

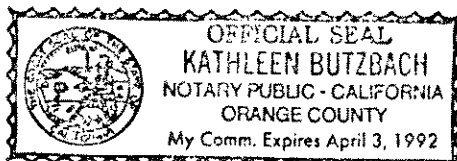
Roselle L. Sommer
ROSELLE L. SOMMER
Trustee of the Sommer Family Trust

20 State of California
21 County of ORANGE

22 On this 28th day of JUNE, in the year of 1991,
23 before me, a Notary Public in and for said county and State,
24 personally appeared ROSELLE L. SOMMER, personally known to me or
25 proved to me on the basis of satisfactory evidence, to be the
person that executed this instrument, on behalf of the Jackson
Terrace Apts., a California limited partnership, and acknowledged
to me that the partnership executed it.

26 WITNESS my hand and official seal.

27 (SEAL)



Kathleen Butzbach
Notary Public

1
2 DATED: June 28, 1991

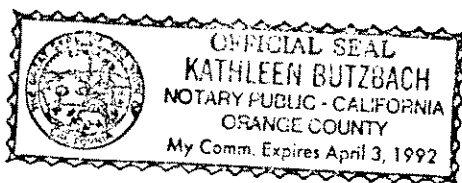
Louis Leventhal
LOUIS LEVENTHAL
Defendant

3
4
5 State of California
6 County of ORANGE

7 On this 28th day of June, 1991, before me, a
8 Notary Public in and for said County and State, personally
9 appeared LOUIS LEVENTHAL, personally known to me or proved to me
10 on the basis of satisfactory evidence to be the person whose name
11 is subscribed to this instrument, and acknowledged that he
12 executed it.

13 In witness whereof, I have hereunto set my hand and affixed
14 my official seal the day and year in the certificate first above
15 written.

16 (SEAL)



Kathleen Butzbach
Notary Public

17 DATED: June 28, 1991

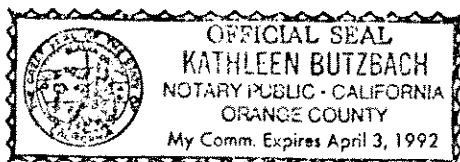
Isobel Leventhal
ISOBEL LEVENTHAL
Defendant

18
19 State of California
20 County of ORANGE

21 On this 28th day of JUNE, 1991, before me, a
22 Notary Public in and for said County and State, personally
23 appeared ISOBEL LEVENTHAL, personally known to me or proved to me
24 on the basis of satisfactory evidence to be the person whose name
25 is subscribed to this instrument, and acknowledged that she
26 executed it.

27 In witness whereof, I have hereunto set my hand and affixed
28 my official seal the day and year in the certificate first above
written.

(SEAL)



Kathleen Butzbach
Notary Public

FIDELITY FEDERAL SAVINGS
AND LOAN ASSOCIATION
Glendale, California

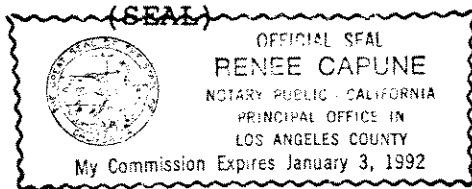
DATED:

By, Wallace E. Bowen

STATE OF CALIFORNIA)
COUNTY OF)

On this 19th day of July, in the year 1991, before me,
a Notary Public, personally appeared Wallace E. Bowen,
personally known to me or proved to me on the basis of
satisfactory evidence to be the person who executed the within
instrument as Executive Vice President (Title)
on behalf of Fidelity Federal Savings and Loan Association and
acknowledged to me that the said Association executed it.

WITNESS my hand and official seal.



Renee Capune
Notary Public

LEVINSON & LIEBERMAN, INC.

DATED:

Lawrence Lieberman
LAWRENCE LIEBERMAN

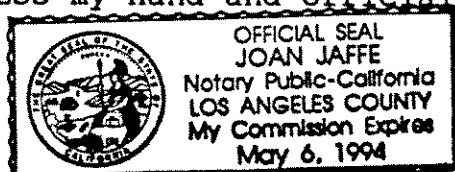
Attorneys for Defendant, Cross-Claimant,
and Counterclaimant Fidelity Federal
Savings and Loan Association

STATE OF CALIFORNIA)
COUNTY OF)

On this 18TH day of July, 1991, before me, a
Notary Public in and for said County and State, personally
appeared LAWRENCE LIEBERMAN, personally known to me or proved to
me on the basis of satisfactory evidence to be the person whose
name is subscribed to this instrument, and acknowledged that he
executed it.

WITNESS my hand and official seal.

(SEAL)



Joan Jaffe
Notary Public

IT IS SO ORDERED.

DATED:

HON. RONALD S.W. LEW
United States District Judge

The pertinent elements of the Order
requested as required by Local Rule 14.7

The pertinent elements of the Order requested are:

(1) Title to the Jackson Terrace Apartments is vested in the Jackson Terrace Apts., a California limited partnership and shall be subject to a valid and enforceable first deed of trust securing a promissory note in favor of Fidelity Federal Savings and Loan Association. (§ 6).

(2) Upon the final approval of the Stipulation for Settlement, the Federal Defendant and the Jackson Terrace Apts. shall execute a Section 8 HAP contract that will supersede the existing Section 8 contract and provide Property Disposition Section 8 subsidy for ninety (90) units for a period of ten (10) years. (§ 7)

(3) The rent levels authorized by the Section 8 HAP contract, to become effective on the effective date of the HAP contract, shall be: \$425 1-bedroom; \$450 2-bedroom; \$475 3-bedroom; \$525 4-bedroom. Subsequent increases and the availability of retroactive rent increases shall be in accordance with § 9 of the Stipulation.

(4) The Federal Defendant and Jackson Terrace Apts. shall execute a Regulatory Agreement and Declaration of Covenants that shall run with the land and bind the present owners, their successors and assigns until June 3, 2021. (§ 14) The Regulatory Agreement and Declaration of Restrictive Covenants accompanies the Stipulation and is part of the proposed settlement.

(5) The Federal Defendant will pay the Law Offices of California Rural Legal Assistance \$23,000 as restitution for the benefit of certain members of the plaintiff class. (§ 10) In

1 addition, the Federal Defendant shall make 20 Section 8
2 certificates available through the Riverside County Housing
3 Authority for use by members of the plaintiff class.

4 (6) The Stipulation of Settlement shall be without prejudice
5 to whatever rights the owners and Jackson terrace Apts. may have
6 to seek a rejection or avoidance of the Section 8 HAP contract,
7 the Regulatory Agreement and Declaration of Restrictive Covenants,
8 and the Stipulation of Settlement in the U.S. Bankruptcy Court.

9 (§ 16)

10 (7) Jackson Terrace Apts. expressly warrants and agrees that
11 it will acknowledge its secured debt to Fidelity Federal Savings
12 and Loan Association in any pending or future bankruptcy petition.

13 (§ 17)

14 (8) The Federal Defendant agrees to pay the plaintiffs their
15 recoverable costs, expenses and attorneys' fees under the Equal
16 Access to Justice Act, 28 U.S.C. § 2412 for work performed in
17 connection with the Fourth, Fifth and Sixth Causes of Action of
18 the First Amended Complaint.

19 (9) Upon the completion of certain occurrences set forth in ¶
20 21, the parties shall jointly notify the Court and request the
21 Court to enter a Final Judgment dismissing, with prejudice, the
22 plaintiffs' action against the defendants and Fidelity's cross-
23 claims against HUD and Fidelity's counterclaims against the
24 plaintiffs.

25
26 DATED:

27 UNITED STATES DISTRICT JUDGE
28

1 EILEEN MCCARTHY
2 CALIFORNIA RURAL LEGAL ASSISTANCE
3 Migrant Farmworker Project
4 1030 Sixth Street, #6 / P.O. Box 35
5 Coachella, California 92236-0035
6 (619) 398-7261

7 RICHARD S. KOHN
8 CALIFORNIA RURAL LEGAL ASSISTANCE
9 Migrant Farmworker Project
10 2111 Mission Street, Suite 401
11 San Francisco, California 94110
12 (415) 864-3405

13 CATHERINE M. BISHOP
14 NATIONAL HOUSING LAW PROJECT
15 1950 Addison Street
16 Berkeley, California 94704
17 (415) 548-9400

18 Attorneys for Plaintiffs

19 UNITED STATES DISTRICT COURT

20 CENTRAL DISTRICT OF CALIFORNIA

21 RICHARD WALKER, et al.,)

22 Plaintiffs,)

23)

24 v.)

25 JACK KEMP, Secretary of the)
26 DEPARTMENT OF HOUSING AND)
27 URBAN DEVELOPMENT, et al.,)

28 Defendants.)

CIV. NO. 84-4370 RSWL

STIPULATION OF SETTLEMENT
RE: FOURTH, FIFTH AND SIXTH
CAUSES OF ACTION AND RELATED
MATTERS AND ORDER PURSUANT
THERE TO

21 IT IS HEREBY STIPULATED by and between plaintiffs, Richard
22 Walker, Elizabeth Walker and Maria Valladares, on behalf of
23 themselves and all other similarly situated; defendant Jack Kemp,
24 in his official capacity as Secretary of the United States
25 Department of Housing and Urban Development ("Federal Defendant"
26 or "Secretary"); the Jackson Terrace Apts., a California limited
27 partnership, Herbert and Roselle Sommer and Louis and Isobel
28

1 Leventhal ("owners"); and Fidelity Federal Savings and Loan
2 Association ("Fidelity"); by and through their respective counsel
3 of record, as follows:

4 1. This case concerns a certain multifamily housing complex
5 known as the Jackson Terrace Apartments (hereinafter "Jackson
6 Terrace") located at 46-211 South Jackson Street, Indio,
7 California, the legal description of which is included in Exhibit
8 1 attached hereto and incorporated herein by reference as though
9 fully set forth. Title is recorded in Book 1983 Page 195819-195826
10 of records of the County Recorder in Riverside County, California.

11 2. Plaintiffs commenced this class action against the
12 Federal Defendant, and others, on June 11, 1984. By Order dated
13 September 25, 1986, the Court certified the case as a class action
14 pursuant to F.R. Civ.P. 23(b)(2). The class is defined as follows:

15 Current and future tenants of Jackson Terrace
16 who are eligible, or will be eligible, for
17 benefits of Section 8 Housing Assistance Payments
18 program, whether or not they receive, or will
19 receive, said Section 8 benefits. This class consists
20 of the following two (2) subclasses: First subclass
21 consisting of class members who receive, or will
22 receive, Section 8 benefits; Second subclass consisting
23 of class members who do not receive, or will not receive,
24 Section 8 benefits.

25 3. On August 12, 1988, the Plaintiffs' First Amended
26 Complaint was deemed filed. In the Fourth and Fifth causes of
27 action, plaintiffs alleged that the sale of the mortgage and
28 cancellation of the Regulatory Agreement violated the due process

1 clause of the Fifth amendment; federal statutory rights and
2 contractual rights, and the Administrative Procedures Act.

3 In the Sixth Cause of Action, the plaintiffs alleged that the
4 disposition of Jackson Terrace was arbitrary and capricious,
5 violated statutes and regulations designed to ensure the continued
6 availability of low income housing and that the Federal Defendant
7 had violated its own procedures and notice requirements regarding
8 dispositions.

9 4. On October 7, 1988, Federal Defendant filed an Answer to
10 plaintiffs' First Amended Complaint denying the material
11 allegations therein and asserting certain affirmative defenses.
12 On August 31, 1988, Herbert and Roselle Sommer and Louis and
13 Isobel Leventhal filed an answer to the First Amended Complaint.
14 On March 8, 1989, Fidelity Federal Savings and Loan Association
15 filed an answer which contained counterclaims against the
16 plaintiffs and cross claims against the Federal Defendant. The
17 plaintiffs filed an answer to Fidelity's counterclaims and the
18 Federal Defendant filed an answer to Fidelity's cross-claims.

19 5. The purpose of this Stipulation of Settlement is to
20 resolve the Fourth, Fifth and Sixth Causes of Action, and the
21 counterclaims and cross-claims pertinent thereto and related
22 matters without the necessity of further litigation. It is the
23 intention of the parties that in order to effectuate the terms of
24 this Stipulation of Settlement, the Federal Defendant and the
25 Jackson Terrace Apts. shall execute a Section 8 Housing Assistance
26 Payments contract (hereinafter "Section 8 HAP contract") and a
27 Regulatory Agreement and Declaration of Restrictive Covenants to
28 Run With Certain Land, (hereinafter "Regulatory Agreement and

1 Declaration of Covenants"), and that the aforesaid documents shall
2 be recorded in the land records of Riverside County as set forth
3 in paragraph 15 below. Copies of the Section 8 HAP contract
4 between the owners and Federal Defendant and the Regulatory
5 Agreement and Declarations of Covenants are attached hereto as
6 Exhibits 2 and 3 and are expressly incorporated herein.

7 6. The parties stipulate and agree that fee title to the
8 Jackson Terrace Apartments located at 46-211 S. Jackson Street,
9 Indio, California, is vested in the Jackson Terrace Apts., a
10 California limited partnership and subject to a valid and
11 enforceable first deed of trust, securing a promissory note debt
12 in favor of Fidelity Federal Savings and Loan Association. Said
13 title and first deed of trust shall be free and clear of any
14 claims, rights, liens or encumbrances alleged or created by
15 plaintiffs' within action with the exception of those matters
16 specifically provided for herein.

17 7. The parties stipulate and agree that upon the final
18 approval of this Stipulation by the Court after notice to the
19 class, the Federal Defendant and the Jackson Terrace Apts. shall
20 execute a Section 8 HAP contract on HUD's standard form currently
21 in use that will supersede the existing Section 8 HAP contract and
22 provide Property Disposition Section 8 subsidy for 90 units at
23 Jackson Terrace for a period of ten (10) years. The Section 8 HAP
24 contract shall be executed within thirty (30) days of final
25 approval of this agreement and said Section 8 HAP contract shall
26 take effect within sixty (60) days of the said final approval.

27 8. Jackson Terrace Apts. agrees that it will accept the
28 Section 8 HAP contract offered by the Federal Defendant and

1 execute any documents reasonably necessary to effectuate this
2 provision.

3 9. The Federal Defendant and Jackson Terrace Apts. agree
4 that the level of rents at Jackson Terrace authorized by the
5 Section 8 HAP contract shall be as follows:

6	1 bedroom	\$425
7	2 bedroom	450
8	3 bedroom	475
9	4 bedroom	525

10 These rents shall become effective upon the effective date of the
11 Section 8 HAP contract. Subsequent increases in the Section 8
12 rents will be calculated by application of the Annual Adjustment
13 factors (AAF's) provided for in 24 C.F.R. Sec. 886.312 and the
14 AAF's published annually in the Federal Register. Additionally,
15 the Federal Defendant agrees that it will accept documentation
16 from the owners to evaluate in good faith whether or not rent
17 increases should have been approved at the project under the
18 budget basis analysis for the years 1987, 1988, 1989 and 1990.
19 The Federal Defendant shall in good faith review any documentation
20 submitted by the owners and shall decide whether rent increases
21 would have been justified under the budget basis analysis. If such
22 rent increases would have been justified, the Federal Defendant
23 will reimburse Jackson Terrace for the amount of the rent
24 increases which they did not receive during the years 1987, 1988,
25 1989 and 1990.

26 10. Upon the final approval of this Stipulation by the
27 Court, the Federal Defendant will pay to the plaintiff class the
28 sum of \$23,000 as restitution for members of the class. A check in

1 the amount of \$23,000 made payable to the law offices of
2 California Rural Legal Assistance shall be delivered by the
3 Federal Defendant as soon as practicable but, in any event, no
4 later than one hundred and twenty (120) calendar days after the
5 final approval of this stipulation by the Court. This sum shall be
6 held in trust by the law offices of California Rural Legal
7 Assistance for the benefit of the class until it is distributed to
8 the individual members of the class. After distribution, any
9 residual amount that is so small as to be impractical for
10 distribution to the class shall be retained by California Rural
11 Legal Assistance. Federal Defendant assumes no responsibility for
12 allocating the foregoing sum among class members or for
13 distributing payments to class members, this being the sole
14 responsibility of the plaintiffs' counsel. The owners shall have
15 no liability with respect thereto.

16 11. In addition, Federal Defendant will make available
17 twenty (20) Section 8 certificates to the Riverside County Housing
18 Authority for use by members of the plaintiff class who would have
19 been eligible for a subsidy at any time between June 3, 1981 and
20 the present; who are presently eligible for a subsidy; and who are
21 not residing at Jackson Terrace. The Federal Defendant agrees that
22 the allocation of these certificates shall not diminish the
23 Riverside County Housing Authority's allocation of Section 8
24 certificates for this or future years and further agrees that the
25 assignment of these certificates for the use of class members in
26 this lawsuit shall not violate any federal preferences or
27 priorities. The duration of the aforesaid Section 8 certificates
28 shall be for as long as the class member is eligible for Section 8

1 assistance or for a ten (10) year period, whichever is shorter,
2 subject to availability of appropriations. HUD will give priority
3 to funding for such certificates subject to HUD's obligations
4 under previously entered court orders or court-approved
5 settlements in other cases. The Section 8 certificates shall be
6 made available by Federal Defendant for use by Riverside County
7 Housing Authority within sixty (60) days of final approval of this
8 stipulation by the Court. Class members claiming the Section 8
9 Certificates must make application to the Riverside County Housing
10 Authority within twelve (12) months of the date that the Federal
11 Defendant makes such certificates available to the Riverside
12 County Housing Authority. The Federal Defendant assumes no
13 responsibility for identifying the class members eligible for the
14 certificates provided by this paragraph, this being the sole
15 responsibility of the plaintiffs' counsel. If any of the twenty
16 (20) certificates provided by the Federal Defendant pursuant to
17 this paragraph are not awarded to a class member within twelve
18 (12) months of the date that such certificates are made available
19 to the Riverside County Housing Authority, the unused certificates
20 shall be returned to HUD and the number of certificates that HUD
21 shall be required to provide pursuant to this settlement will be
22 reduced by the number of certificates not awarded to class members
23 within the referenced twelve (12) month period. The owners shall
24 have no duty or obligation pursuant to this paragraph.

25 12. HUD's ability to perform any of its obligations
26 specified in this Stipulation of Settlement is subject to the
27 availability of funding from Congress for any purpose for which
28 such funding is required and to the existence of statutory

1 authority generally authorizing acts necessary for performance by
2 HUD. HUD shall not be held in contempt of this Court, or
3 otherwise punished, for non-compliance with this Stipulation on
4 account of failure to perform resulting from the unavailability of
5 funding from Congress necessary for compliance, or from the
6 modification or revocation of statutory authority necessary for
7 compliance. Notwithstanding the foregoing, if at any time before
8 the termination of HUD's obligations under this Stipulation,
9 Congress fails to appropriate funds necessary for compliance, or
10 revokes or substantially modifies any statutory authority of HUD
11 necessary for compliance so as to prevent HUD from providing the
12 relief specified in the Stipulation, plaintiffs and the owners
13 shall be entitled to receive alternative relief comparable to that
14 specified herein and consistent with HUD's revised funding or
15 statutory authority for assisted housing. In such event, HUD,
16 plaintiffs' counsel and the owners' counsel shall consult in an
17 effort to agree upon a proposed modification of this stipulation
18 to provide such relief. If the parties agree upon a proposed
19 modification, they shall promptly submit the same to the Court for
20 approval. If after a reasonable time the parties cannot agree,
21 the entire matter shall at the instance of HUD, the plaintiffs or
22 the owner be submitted to the Court for adjudication. In no
23 event, however, shall such a revision in HUD's funding or
24 statutory authority constitute grounds for reopening this
25 Stipulation for any purpose other than providing such alternative
26 relief comparable to that specified herein. Where HUD has agreed
27 in this Stipulation solely to consult with plaintiffs' counsel or
28 the owners' counsel or consider or explore taking any action not

1 specifically required hereunder, HUD shall undertake such
2 consultation, consideration or exploration in good faith, but its
3 failure actually to take the action which is the subject of such
4 consultation, consideration or exploration shall not be grounds
5 for contempt.

6 13. If, during the notice period provided for by this
7 agreement, additional claimants of whom plaintiffs' counsel are
8 presently unaware submit claims for restitution, the Federal
9 Defendant shall consider a request by plaintiffs' counsel to
10 increase the settlement amount above \$23,000 and/or to increase
11 the number of certificates. However, this provision shall not
12 obligate the Federal Defendant to agree to any such requested
13 increase and the decision whether to increase either said \$23,000
14 or the numbers of certificates shall be wholly within the Federal
15 Defendant's discretion.

16 14. The parties stipulate and agree that Jackson Terrace
17 Apts. and the Federal Defendant shall execute a Regulatory
18 Agreement and Declaration of Covenants that shall run until June
19 3, 2021 and which shall include the following provisions
20 (designated subparagraphs a-s) which shall run with the land and
21 bind the present owners, their successors and assigns:

22 (a) That Fidelity is the beneficiary of a valid and
23 enforceable first deed of trust securing the principal amount of
24 \$1,400,000.00 and all accrued interest, late charges or
25 foreclosure costs, and duly recorded on September 28, 1983 and
26 encumbering the property known as 46-211 Jackson Street, Indio,
27 California 92201, which first deed of trust is acknowledged to be
28 senior to any and all other liens and encumbrances created and

1 recorded on or after September 28, 1983 including any liens or
2 encumbrances created by this instrument.

3 (b) That any default by the owners in their loan from
4 Fidelity or other loan secured by the property described in
5 Exhibit 1 shall also constitute a default of the Section 8 HAP
6 contract entered into between the owners and the Federal Defendant
7 in accordance with the terms of that contract. In addition, a
8 default in the loan payments shall constitute a violation of the
9 Regulatory Agreement and Declaration of Covenants. In the event
10 of such a default, the Federal Defendant shall have the right
11 under the Regulatory Agreement to take any of the corrective
12 actions provided for in the Section 8 HAP contract entered into
13 between the owners and Federal Defendant except the right to take
14 possession of the property.

15 For purposes of this subsection, the term "default" shall
16 mean a monetary default.

17 (c) Jackson Terrace shall remain a multifamily rental
18 project until at least June 3, 2021 and no other use shall be
19 substituted for that use until that date. No part of the land and
20 no building or structure thereon shall be used in any manner or
21 for any purpose except in accordance with the Regulatory Agreement
22 and Declaration of Covenants and the Section 8 HAP contract
23 between Jackson Terrace Apts. and the Federal Defendant entered
24 into pursuant to this agreement.

25 (d) Jackson Terrace Apts. further agrees that on or
26 prior to the termination of the Section 8 HAP contract between it
27 and Federal Defendant entered into pursuant to this agreement or
28 any extensions thereof, it will accept any offer by the Federal

1 Defendant to renew the Section 8 HAP contract. The owners'
2 obligation to renew any Section 8 HAP contract offered by the
3 Federal Defendant shall be binding until June 3, 2021, at which
4 time any such contract shall terminate for all purposes. The
5 decision whether to offer to renew the Section 8 HAP contract for
6 any additional periods of time is subject to the availability of
7 funds and within the discretion of the Federal Defendant and said
8 discretion shall be exercised in a manner consistent with the
9 Federal Defendant's statutory obligations.

10 (e) Jackson Terrace Apts. further agrees to accept an
11 offer by the Federal Defendant to provide any other rental
12 assistance, in lieu of a Section 8 HAP contract, designed to
13 provide families affordable decent, safe and sanitary housing
14 pursuant to Section 8 or any other successor legislation. Whether
15 to offer any other rental assistance is subject to the
16 availability of funds and within the discretion of the Federal
17 Defendant unless such obligation is otherwise imposed by statute.

18 (f) Jackson Terrace Apts. agrees not to refuse
19 unreasonably to lease a vacant dwelling unit, evict any person or
20 otherwise discriminate in the terms of tenancy because such a
21 person is the holder of, or eligible to hold, a Voucher or
22 Certificate of Family Participation under Section 8 of the United
23 States Housing Act of 1937 (42 USC 1437f), or under the terms of
24 any similar rental assistance program enacted pursuant to any
25 successor legislation.

26 (g) Jackson Terrace Apts. further agrees that the
27 eviction regulations set forth at 24 C.F.R. § 247, or any
28 comparable successor regulations, shall be applicable to all

1 tenants and binding on the operations and management of Jackson
2 Terrace.

3 (h) Jackson Terrace Apts. shall make dwelling
4 accommodations and services of the project available to occupants
5 at charges not exceeding those established in accordance with a
6 rental schedule approved in writing by HUD. The project shall
7 remain a multifamily rental project. The units shall not be
8 rented for a period of less than thirty (30) days.

9 (i) During the time that the Section 8 contract between
10 Jackson Terrace Apts. and Federal Defendant is in effect, the
11 maximum rent for each Section 8 unit shall be as stated in the
12 Section 8 HAP contract and adjustments in such rents shall be made
13 in accordance with the terms of the Section 8 HAP contract and
14 paragraph 9 of this Stipulation.

15 (j) During any period of time covered by this agreement
16 for units not subject to the Section 8 HAP contract between
17 Jackson Terrace Apts. and Federal Defendant, the Federal Defendant
18 will at any time entertain a written request for a rent increase
19 supported by substantiating evidence and within a reasonable time
20 shall: (a) approve a rental schedule that is necessary to
21 compensate for any net increase occurring since the last approved
22 rental schedule, in taxes (other than income taxes) and operating
23 and maintenance costs over which the owners have no reasonable
24 control, or (b) deny the requested increase stating the reasons
25 therefore.

26 (k) Jackson Terrace Apts. shall not, without the prior
27 written approval of the Federal Defendant, require as a condition
28 of the occupancy or leasing of any unit in the project any

1 consideration or deposit other than the prepayment of the first
2 month's rent, plus a security deposit in an amount not in excess
3 of one month's rent (the gross family contribution in Section 8
4 units) to guarantee the performance of the covenants of the lease.
5 Any funds collected as security deposits shall be kept separate
6 and apart from all other funds of the project in a trust account
7 the amount of which shall at all times equal or exceed the
8 aggregate of all outstanding obligations under said account.

9 (l) Jackson Terrace Apts. agrees to maintain the
10 project premises, accommodations and the grounds and equipment
11 appurtenant thereto, in good repair and condition.

12 (m) (i) Jackson Terrace Apts. agrees that any
13 management contract entered into by it involving the project shall
14 contain a provision that, in the event of default under the
15 Regulatory Agreement and Declaration of Covenants, it shall be
16 subject to termination without penalty upon written request by the
17 Federal Defendant. Upon such request, Jackson Terrace Apts. shall
18 immediately arrange to terminate the contract within a period of
19 not more than thirty (30) days and shall make arrangements
20 satisfactory to the Federal Defendant for continuing proper
21 management of the project.

22 (ii) Payment for services, supplies, or
23 materials shall not exceed the amount ordinarily paid for such
24 services, supplies or materials furnished.

25 (iii) The property, equipment, buildings, plans,
26 offices, apparatus, devices, books, contracts, records, documents,
27 and other papers relating thereto shall at all times be maintained
28 in reasonable condition for proper audit and subject to

1 examination and inspection at any reasonable time by the Federal
2 Defendant or duly authorized agents of the Federal Defendant.
3 Jackson Terrace Apts. shall keep copies of all written contracts
4 or other instruments which affect the property, all or any of
5 which may be subject to inspection and examination by the Federal
6 Defendant or duly authorized agents of the Federal Defendant.

7 (iv) The books and accounts of the operations of
8 the property shall be kept in accordance with the requirements of
9 the Federal Defendant.

10 (v) Within sixty (60) days following the end of
11 each fiscal year, the Federal Defendant shall be furnished with a
12 complete annual financial report based upon an examination of the
13 books and records of the property prepared in accordance with the
14 requirements of the Federal Defendant, certified to by an officer
15 or responsible owner and, when required by the Federal Defendant,
16 prepared and certified by a Certified Public Accountant, or other
17 person acceptable to the Federal Defendant.

18 (vi) At the request of the Federal Defendant, or
19 duly authorized agents of the Federal Defendant, Jackson Terrace
20 Apts. shall furnish monthly occupancy reports and shall give
21 specific answers to questions upon which information is desired
22 from time to time relative to the income, assets, liabilities,
23 contract, operation, and condition of the property.

24 (n) Jackson Terrace Apts. agrees to comply with the
25 provisions of any Federal, State, or local law prohibiting
26 discrimination in housing on the grounds of race, color, religion
27 or creed, sex, handicap, familial status or national origin,
28 including Title VI of the Civil Rights Act of 1964 (Public Law 88-

1 352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968
2 (Public Law 90-284, 82 Stat. 73) Executive Order 11063, and all
3 requirements imposed by or pursuant to the regulations of the
4 Department of Housing and Urban Development implementing these
5 authorities (including 24 C.F.R. Parts 1.100 and 110 and Subparts
6 I and M of Part 200).

7 (c) Upon a violation of any of the provisions of the
8 Regulatory Agreement and Declaration of Covenants, the non-
9 breaching party may give written notice thereof to the breaching
10 party, via certified mail, postage prepaid, return receipt
11 requested, or express delivery service with a delivery receipt and
12 the notice will be effective on delivery or on the date delivery
13 is refused, as shown on the delivery receipt, addressed to the
14 address stated herein, or such other address as may subsequently
15 be designated. The owners' present legal address is:

16 Jackson Terrace Apts
17 c/o Sommer Realty Co.
18 4050 Katella Avenue
Los Alamitos, California 90720

19 Notice to the Federal Defendant should be sent to:

20 U.S. Department of Housing
21 and Urban Development
1615 West Olympic Boulevard
Los Angeles, California 90015

22 If such violation is not corrected within thirty (30) days after
23 the date such notice is effective or within such further time as
24 is reasonably necessary to correct the violation, without further
25 notice the non-breaching party may declare a default under the
26 Regulatory Agreement and Declaration of Covenants effective on the
27 date of such declaration of default. In the event that a default
28 is declared by the Federal Defendant against the Jackson Terrace

1 Apts., the Federal Defendant may, in its discretion, take any or
2 all of the following actions:

3 (i) Collect all rents and charges in connection
4 with the operation of the project and use such collections to pay
5 any outstanding note and mortgage and the necessary expenses of
6 preserving the property and operating the project.

7 (ii) Apply to any court, State or Federal, for
8 specific performance of the Regulatory Agreement and Declaration
9 of Covenants, for an injunction against any violation of the
10 aforesaid Regulatory Agreement and Declaration of Covenants, for
11 the appointment of a receiver to take over and operate the project
12 in accordance with the terms of the Section 8 Housing Assistance
13 Payments contract between the owners and Federal Defendant and/or
14 Regulatory Agreement and Declaration of Covenants, or for such
15 other relief as may be appropriate.

16 (p) As used in the Regulatory Agreement and Declaration
17 of Covenants, the term

18 (i) "Owners" refers to the Jackson Terrace Apts, a
19 California limited partnership; and its successors in office or
20 interest, heirs, executors, administrators, legal representatives
21 and assigns.

22 (ii) "Default" means a default declared by the
23 Secretary when a violation of the Regulatory Agreement and
24 Declaration of Covenants is not corrected to the reasonable
25 satisfaction of the Federal Defendant within the time allowed by
26 the foregoing provisions or such further time as may be allowed by
27 the Federal Defendant after written notice.

28

1 (iii) "Section 8 units" refers to units assisted
2 under Section 8 of the United States Housing Act of 1937 pursuant
3 to a Housing Assistance Payments contract.

4 (iv) "Section 8 Housing Assistance Payments
5 contract (HAP contract)" refers to a written contract between the
6 owners and the Federal Defendant, for the purpose of providing
7 housing assistance payments to the Owners on behalf of eligible
8 families under Section 8 of the United States Housing Act of 1937.

9 (q) The Regulatory Agreement and Declaration of
10 Covenants shall bind, and the benefits shall inure to, and be
11 enforceable by Jackson Terrace Apts., the owners, their heirs,
12 legal representative, executors, administrators, successors in
13 office or interest, and assigns, and the Secretary and successors
14 of the Secretary until the year 2021.

15 (r) Jackson Terrace Apts. warrants that it has not, and
16 will not, execute any other agreement with provisions
17 contradictory to, or in opposition to, the provisions hereof, and
18 that in any event the requirements of the Regulatory Agreement and
19 Declaration of Covenants are paramount and controlling as to the
20 rights and obligations set forth and supersede any other
21 requirements in conflict therewith.

22 (s) The invalidity of any clause, part or provision of
23 the Regulatory Agreement and Declaration of Covenants shall not
24 affect the validity of the remaining portions thereof. The failure
25 of the Federal Defendant to enforce or demand compliance with any
26 of the foregoing covenants shall not constitute a waiver of such
27 provisions.
28

1 15. The Federal Defendant agrees to record the Section 8 HAP
2 contract between Jackson Terrace Apts. and Federal Defendant,
3 Regulatory Agreement and Declaration of Covenants, Stipulation of
4 Settlement and Final Judgment in the land records of Riverside
5 County. This agreement does not preclude any other party from
6 recording the aforesaid documents or applying to the Court for an
7 order requiring the Federal Defendant to comply with this
8 provision.

9 16. This Stipulation is without prejudice to whatever rights
10 the owners and Jackson Terrace Apts. may have to seek a rejection
11 or avoidance of the Section 8 HAP contract, the Regulatory
12 Agreement and Declaration of Restrictive Covenants, and this
13 Stipulation between the owners and Federal Defendant in the United
14 States Bankruptcy Court in accordance with the Bankruptcy Code and
15 the Bankruptcy Rules. The owners agree that in the event that a
16 bankruptcy petition is filed they shall, without prejudice,
17 stipulate to the lifting of the automatic stay so that this
18 Settlement may proceed to completion. The owners further agree
19 that they shall not oppose the immediate implementation of the
20 settlement pending completion of any bankruptcy proceedings so
21 that the owners and tenants will have the immediate benefit of the
22 subsidies conferred by the Section 8 HAP contract.

23 A material consideration for the owners and Jackson Terrace
24 Apartments to enter into this Stipulation of Settlement, the
25 Section 8 HAP contract and the Regulatory Agreement and
26 Declaration of Restrictive Covenants referred to herein is the
27 preservation of the right of the owners and Jackson Terrace
28 Apartments to seek a rejection and/or avoidance of the Section 8

1 HAP contract, the Regulatory Agreement and Declaration of
2 Restrictive Covenants and this Stipulation of Settlement in an
3 appropriate bankruptcy forum should the owners and/or Jackson
4 Terrace Apartments seek to file a petition for relief under the
5 Bankruptcy Code. It is expressly understood and agreed between the
6 parties to this settlement stipulation that all such rights are
7 expressly preserved and the making, execution, and delivery of
8 this Stipulation of Settlement, the Section 8 HAP contract, and
9 the Regulatory Agreement and Declaration of Restrictive Covenants
10 shall in no way be prejudicial thereto. It is expressly
11 acknowledged by the parties that during the pendency of this civil
12 litigation, Jackson Terrace Apartments had filed a petition for
13 relief under chapter 11 of the Bankruptcy Code by which petition
14 Jackson Terrace Apartments intended to seek a bankruptcy court
15 determination of its right to reject the Section 8 HAP contract
16 which was then existing with respect to the property. The fact
17 that the owners and Jackson Terrace Apartments now enter into this
18 Stipulation of Settlement, the Section 8 HAP contract and the new
19 Regulatory Agreement and Declaration of Restrictive Covenants
20 shall in no way be prejudicial to the right of the owners and
21 Jackson Terrace Apartments to again seek such a judicial
22 declaration from the Bankruptcy Court of its right to reject or
23 avoid the Section 8 HAP contract, the new Regulatory Agreement and
24 Declaration of Restrictive Covenants and this Stipulation of
25 Settlement. Further, the owners and Jackson Terrace Apartments
26 shall not be prejudiced by the fact that the prior bankruptcy
27 petition of Jackson Terrace Apartments was dismissed without
28 prejudice and that a new Section 8 HAP contract, a new Regulatory

1 Agreement and Declaration of Restrictive Covenants and this
2 Stipulation of Settlement has been entered into subsequent to that
3 dismissal.

4 It is expressly understood and agreed to between the parties
5 that in the event that Jackson Terrace Apts. should seek to reject
6 the Stipulation of Settlement, the Section 8 HAP contract, the
7 Regulatory Agreement and Declaration of Restrictive Covenants in
8 the Bankruptcy Court, the plaintiffs preserve any and all rights
9 which they may have to object to the rejection or avoidance of the
10 said agreements and to seek full enforcement of said agreements.

11 17. Jackson Terrace Apts. expressly warrants and agrees that
12 it will acknowledge its secured debt to Fidelity in any pending or
13 future bankruptcy petition.

14 18. Federal defendant agrees to pay the plaintiffs their
15 recoverable costs, expenses and attorneys' fees under the Equal
16 Access to Justice Act, 28 U.S.C. Sec. 2412 for work performed in
17 connection with the Fourth, Fifth and Sixth Causes of Action of
18 the First Amended Complaint. The Federal Defendant further agrees
19 that the only issue to be resolved by an application for fees and
20 expenses by the plaintiffs shall be the amount of the costs, fees
21 and expenses to which the plaintiffs are entitled, and that the
22 Federal Defendant will not contend that the position of the United
23 States was "substantially justified" or that "special
24 circumstances make an award unjust." Any dismissal of the
25 plaintiffs' claims as set forth herein will not prejudice their
26 claim for reasonable costs, attorneys' fees and expenses. The
27 issue of whether the owners and/or Jackson Terrace Apts. are
28 entitled to costs and attorneys' fees against the Federal

1 Defendant and, if so, the amount of the award, is specifically
2 reserved for further proceedings and forms no part of this
3 stipulation.

4 19. The parties further stipulate and agree that except as
5 set forth in paragraph 18 herein, none of the parties shall seek
6 to recover from each other their costs of suit and/or attorneys'
7 fees incurred in connection with the litigation of the above-
8 described issues in this case.

9 20. The agreement between Plaintiffs and the Federal
10 Defendant regarding the Fourth, Fifth and Sixth Causes of Action
11 shall not impose any financial obligations upon Fidelity. The
12 owners and Jackson Terrace Apts. shall not be obligated in any
13 fashion to pay the attorneys' fees or other financial
14 consideration being paid by the federal defendant in order to
15 settle this case.

16 21. In consideration for the promises made by the parties in
17 paragraphs 5-20 of this instrument and in the Settlement Agreement
18 Re Utilities Issues, plaintiffs agree, as described below, to join
19 with the other parties in asking the Court to enter a Final
20 Judgment dismissing this action.

21 Upon completion of the following occurrences under the two
22 settlement agreements, counsel for all parties shall jointly
23 notify the Court in writing and request the Court to enter a Final
24 Judgment dismissing with prejudice the plaintiffs' action against
25 the defendants, Fidelity's counterclaims against the plaintiffs
26 and Fidelity's cross claims against the Federal Defendant and the
27 owners. These occurrences are:
28

1 (a) Execution and recording of this Stipulation, the
2 Section 8 HAP contract between the owners and Federal Defendant
3 and the Regulatory Agreement and Declaration of Covenants as
4 provided in paragraphs 5 and 15 of this Stipulation;

5 (b) Payment by the Federal Defendant to the plaintiffs
6 of \$23,000.00 as provided in paragraph 10 of this Stipulation.

7 (c) The transfer of the agreed upon number of Section 8
8 certificates by the Federal Defendant to the Riverside County
9 Housing Authority for the use by class members as provided in
10 paragraph 11 of this Stipulation.

11 (d) The payment by the Federal Defendant to the
12 plaintiffs' attorneys of costs, expenses and reasonable attorneys'
13 fees as determined in accordance with paragraph 18 of this
14 Stipulation.

15 (e) The resolution of any disputes that must be
16 resolved by the Court regarding payment of claims for retroactive
17 utility allowances as provided for in Paragraph 10(B) of the
18 Settlement Agreement Re Utilities Issues.

19 Plaintiffs also agree to expunge the Notice of Pending Action
20 recorded by the Plaintiffs on June 23, 1988 in the Riverside
21 County land records upon entry of the Final Judgment in this case.
22 The Court shall retain continuing jurisdiction over the action
23 after its dismissal to enforce the terms of the Stipulation of
24 Settlement.

25 22. As partial consideration for this Stipulation for
26 Settlement, and except as stated in paragraph 18 above, the
27 parties mutually release and forever discharge one another from
28 any and all claims, debts, damages, liabilities, demands,

1 obligations, costs, expenses, actions and causes of action of
2 every nature, whether known or unknown, which any party now holds
3 or have at any time heretofore held against each other by reason
4 of the sale of Jackson Terrace on June 3, 1981 and the sale of the
5 mortgage on Jackson Terrace and the cancellation of the Regulatory
6 Agreement on September 30, 1983, and/or which are asserted in the
7 Fourth, Fifth and Sixth Causes of Action of the Plaintiffs' First
8 Amended Complaint, the counterclaims of Fidelity against the
9 plaintiffs, and the cross-claims of Fidelity against the Federal
10 Defendant and the owners. This release shall not be construed to
11 waive any claims now held or at any time hereafter held, whether
12 known or unknown, by the Federal Defendant or the Jackson Terrace
13 Apts. or the owners against each other arising from the Section 8
14 HAP contract entered into on June 3, 1981 by and between the
15 Federal Defendant and the owners and the Section 8 HAP contract to
16 be entered into by owners and Federal Defendant pursuant to this
17 settlement.

18 23. This Stipulation for Settlement affects the settlement
19 of claims and defenses which are denied and contested, and no
20 provision contained herein shall be construed as an admission by
21 any party hereto of any liability of any kind to any other party.

22 24. No provision hereof may be waived unless in writing
23 signed by all parties hereto. Waiver of any one provision herein
24 shall not be deemed to be a waiver of any other provision herein.
25 This stipulation may be modified or amended only by written
26 agreement executed by all of the parties hereto.

27 25. This stipulation together with the Section 8 Housing
28 Assistance Payments contract between Jackson Terrace Apts. and

1 Federal Defendant and the Regulatory Agreement and Declaration of
2 Covenants contain the sole and entire agreement and understanding
3 of the parties with respect to the entire subject matter hereof,
4 and any and all prior discussions, negotiations, commitments, or
5 understandings related hereto, if any, are hereby merged herein.
6 No representations, oral or otherwise, express or implied, other
7 than those contained herein have been made by any party hereto. No
8 other agreements not specifically contained or incorporated by
9 reference herein, oral or otherwise, shall be deemed to exist or
10 to bind any of the parties hereto.

11 26. (A) Preliminary Approval

12 After signature by all parties, this Stipulation of
13 Settlement shall be submitted to the United States District Court
14 for the Central District of California in order for the Court to
15 determine whether to grant preliminary approval pursuant to Rule
16 23(e), F.R. Civ.P.

17 (B) Fairness Hearing

18 1. Upon the Court's preliminary approval of this
19 Stipulation of Settlement, the parties will request the Court to
20 schedule a fairness hearing during which class members may raise
21 any objections to this Stipulation.

22 2. This hearing shall be scheduled at the
23 earliest practical time, but no sooner than forty-five (45) court
24 days after the date upon which the Court grants preliminary
25 approval of the Stipulation of Settlement.

26 3. Any class member who wishes to raise an
27 objection at the fairness hearing shall file the objection, in
28

1 writing, in accordance with a procedure to be approved by the
2 Court.

3 4. Counsel for the plaintiffs shall be
4 responsible for notifying the class members. The Notice which is
5 attached as Exhibit 4 shall be translated into Spanish and a
6 Spanish and English version shall be provided to all tenants who
7 currently reside at Jackson Terrace. This notice shall also be
8 published twice in the DAILY NEWS (Indio) and EL INFORMADOR DEL
9 VALLE.

10 (C) Approval

11 After holding the fairness hearing, the Court shall
12 determine whether this Stipulation of Settlement is fair,
13 reasonable and adequate. If it so finds, it shall reject any
14 objections and approve the Stipulation of Settlement pursuant to
15 F.R.Civ.P. 23(e). In the event that the Court does not approve
16 this Stipulation of Settlement as written and instead issues an
17 Order that differs in any substantial respect from the Stipulation
18 executed by the parties, this Stipulation shall be voidable in its
19 entirety at the option of any party. This Stipulation of
20 Settlement shall take effect upon final approval by this Court
21 following the fairness hearing. Plaintiffs and defendants shall

22 ///

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1 jointly use their best efforts to obtain prompt judicial approval
2 of this Stipulation, compliance with the agreement and the entry
3 of a Final Judgment.

6 LAW OFFICE OF CALIFORNIA
7 RURAL LEGAL ASSISTANCE

8 DATED:

July 9, 1991

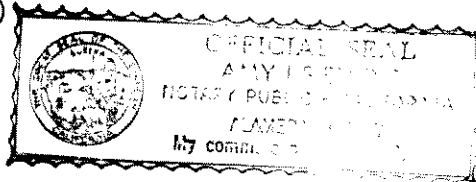
Richard S. Kohn
RICHARD S. KOHN
EILEEN MCCARTHY
Attorneys for the Plaintiffs

11 State of California
12 County of Alameda

13 On this 9th day of July, 1991, before me, a
14 Notary Public in and for said County and State, personally
15 appeared RICHARD S. KOHN, personally known to me or proved to me
16 on the basis of satisfactory evidence to be the person whose name
is subscribed to this instrument, and acknowledged that he
executed it.

17 In witness whereof, I have hereunto set my hand and affixed
18 my official seal the day and year in the certificate first above
written.

19 (SEAL)



Amy J. Siemens
Notary Public

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NATIONAL HOUSING LAW PROJECT

DATED: July 9, 1991

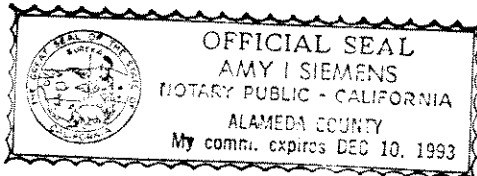
Catherine M. Bishop
CATHERINE M. BISHOP
Attorney for Plaintiffs

State of California
County of Alameda

On this 9th day of July, 1991, before me, a Notary Public in and for said County and State, personally appeared CATHERINE M. BISHOP, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

(SEAL)



Amy I. Siemens
Notary Public

DATED: 7-15-91

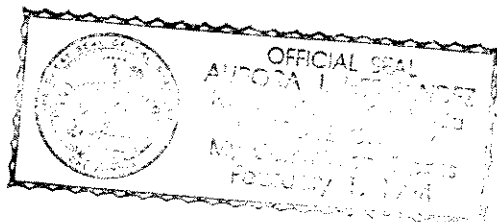
Richard Walker
RICHARD WALKER
Plaintiff

State of California
County of RIVERSIDE

On this 15th day of July, 1991, before me, a Notary Public in and for said County and State, personally appeared RICHARD WALKER, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

(SEAL)



Aurora L. Henderson
Notary Public


7591

Longfellow, 18

State of California
County of Orange

On this 18 day of July, 1991, before me, a Notary Public in and for said County and State, personally appeared ELIZABETH WALKER, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.


 OFFICIAL SEAL
 AUCTION J. HERFENDEZ
 National Numismatic Collection
 Rm 205, Smithsonian
 My Collection Expires
 February 1, 2004

William J. Barnard
Notary Public


7-15-91

1. 1994
Maria Valladares
MARTA VALLADARES
Plaintiff

State of California
County of RIVERSIDE

On this 15 day of July, 1991, before me, a Notary Public in and for said County and State, personally appeared MARIA VALLADARES, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

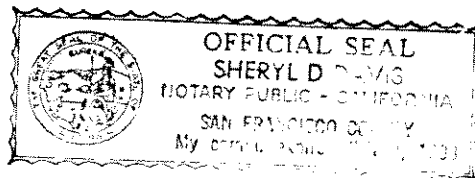

 OFFICIAL SEAL
 AURORA J. HERNANDEZ
 Notary Public - On Florida
 RIVERDUE COUNTY
 My Commission Expires
 February 1, 1994

Carole L. Kennedy
Notary Public

On this 10th day of September, 1991, before me, a Notary Public, personally appeared BEVERLY AGEE, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that she executed it in her authorized capacity as the duly appointed Regional Counsel of the Department of Housing and Urban Development-Region IX and that by her signature on the instrument the person or entity upon behalf of which the person acted, executed the instrument.

(SEAL)

Sheryl W. Davis
Notary Public



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DAPEER & HIRSCH

DATED:

7/1/91

PHILIP D. DAPEER
Attorney for Defendants,
Jackson Terrace Apartments,
A California Limited Partnership;
Herbert and Roselle Sommer; and
Louis and Isobel Leventhal

State of California
County of LOS ANGELES

On this 1st day of July, 1991, before me, a
Notary Public in and for said County and State, personally
appeared PHILIP D. DAPEER, personally known to me or proved to me
on the basis of satisfactory evidence to be the person whose name
is subscribed to this instrument, and acknowledged that he
executed it.

In witness whereof, I have hereunto set my hand and affixed
my official seal the day and year in the certificate first above
written.

(SEAL)



Carol Reinstein
Notary Public

JACKSON TERRACE APTS., a California
Limited Partnership,

By, The Sommer Family Trust
General Partner

DATED: June 28, 1991 By,

Roselle L. Sommer
ROSELLE L. SOMMER
Trustee of the Sommer Family Trust

State of California
County of ORANGE

On this 28th day of JUNE, in the year of 1991,
before me, a Notary Public in and for said county and State,
personally appeared ROSELLE L. SOMMER, personally known to me or
proved to me on the basis of satisfactory evidence, to be the
person that executed this instrument, on behalf of the Jackson
Terrace Apts., a California limited partnership, and acknowledged
to me that the partnership executed it.

WITNESS my hand and official seal.

(SEAL)



Kathleen Butzbach
Notary Public

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3 DATED:

June 28, 1991

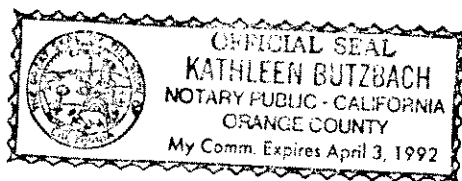
Louis Leventhal
LOUIS LEVENTHAL
Defendant

4
5 State of California
6 County of ORANGE

7 On this 28th day of June, 1991, before me, a
8 Notary Public in and for said County and State, personally
9 appeared LOUIS LEVENTHAL, personally known to me or proved to me
10 on the basis of satisfactory evidence to be the person whose name
11 is subscribed to this instrument, and acknowledged that he
12 executed it.

13 In witness whereof, I have hereunto set my hand and affixed
14 my official seal the day and year in the certificate first above
15 written.

(SEAL)



Kathleen Butzbach
Notary Public

16 DATED:

June 28, 1991

Isobel Leventhal
ISOBEL LEVENTHAL
Defendant

19 State of California
20 County of ORANGE

21 On this 28th day of JUNE, 1991, before me, a
22 Notary Public in and for said County and State, personally
23 appeared ISOBEL LEVENTHAL, personally known to me or proved to me
24 on the basis of satisfactory evidence to be the person whose name
25 is subscribed to this instrument, and acknowledged that she
26 executed it.

27 In witness whereof, I have hereunto set my hand and affixed
28 my official seal the day and year in the certificate first above
written.

(SEAL)



Kathleen Butzbach
Notary Public

FIDELITY FEDERAL SAVINGS
AND LOAN ASSOCIATION
Glendale, California

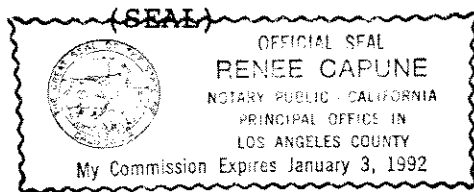
DATED:

By, Wallace E. Bowen

STATE OF CALIFORNIA)
COUNTY OF)

On this 19th day of July, in the year 1991, before me,
a Notary Public, personally appeared Wallace E. Bowen,
personally known to me or proved to me on the basis of
satisfactory evidence to be the person who executed the within
instrument as Executive Vice President (Title)
on behalf of Fidelity Federal Savings and Loan Association and
acknowledged to me that the said Association executed it.

WITNESS my hand and official seal.



Renee Capune
Notary Public

LEVINSON & LIEBERMAN, INC.

DATED:

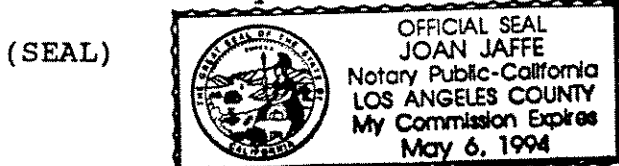
Lawrence Lieberman
LAWRENCE LIEBERMAN

Attorneys for Defendant, Cross-Claimant,
and Counterclaimant Fidelity Federal
Savings and Loan Association

STATE OF CALIFORNIA)
COUNTY OF)

On this 18TH day of JULY, 1991, before me, a
Notary Public in and for said County and State, personally
appeared LAWRENCE LIEBERMAN, personally known to me or proved to
me on the basis of satisfactory evidence to be the person whose
name is subscribed to this instrument, and acknowledged that he
executed it.

WITNESS my hand and official seal.



Joan Jaffe
Notary Public

IT IS SO ORDERED.

DATED:

HON. RONALD S.W. LEW
United States District Judge

The pertinent elements of the Order
requested as required by Local Rule 14.7

The pertinent elements of the Order requested are:

(1) Title to the Jackson Terrace Apartments is vested in the Jackson Terrace Apts., a California limited partnership and shall be subject to a valid and enforceable first deed of trust securing a promissory note in favor of Fidelity Federal Savings and Loan Association. (§ 6).

(2) Upon the final approval of the Stipulation for Settlement, the Federal Defendant and the Jackson Terrace Apts. shall execute a Section 8 HAP contract that will supersede the existing Section 8 contract and provide Property Disposition Section 8 subsidy for ninety (90) units for a period of ten (10) years. (§ 7)

(3) The rent levels authorized by the Section 8 HAP contract, to become effective on the effective date of the HAP contract, shall be: \$425 1-bedroom; \$450 2-bedroom; \$475 3-bedroom; \$525 4-bedroom. Subsequent increases and the availability of retroactive rent increases shall be in accordance with § 9 of the Stipulation.

(4) The Federal Defendant and Jackson Terrace Apts. shall execute a Regulatory Agreement and Declaration of Covenants that shall run with the land and bind the present owners, their successors and assigns until June 3, 2021. (§ 14) The Regulatory Agreement and Declaration of Restrictive Covenants accompanies the Stipulation and is part of the proposed settlement.

(5) The Federal Defendant will pay the Law Offices of California Rural Legal Assistance \$23,000 as restitution for the benefit of certain members of the plaintiff class. (§ 10) In

1 addition, the Federal Defendant shall make 20 Section 8
2 certificates available through the Riverside County Housing
3 Authority for use by members of the plaintiff class.

4 (6) The Stipulation of Settlement shall be without prejudice
5 to whatever rights the owners and Jackson terrace Apts. may have
6 to seek a rejection or avoidance of the Section 8 HAP contract,
7 the Regulatory Agreement and Declaration of Restrictive Covenants,
8 and the Stipulation of Settlement in the U.S. Bankruptcy Court.

9 (§ 16)

10 (7) Jackson Terrace Apts. expressly warrants and agrees that
11 it will acknowledge its secured debt to Fidelity Federal Savings
12 and Loan Association in any pending or future bankruptcy petition.

13 (§ 17)

14 (8) The Federal Defendant agrees to pay the plaintiffs their
15 recoverable costs, expenses and attorneys' fees under the Equal
16 Access to Justice Act, 28 U.S.C. § 2412 for work performed in
17 connection with the Fourth, Fifth and Sixth Causes of Action of
18 the First Amended Complaint.

19 (9) Upon the completion of certain occurrences set forth in §
20 21, the parties shall jointly notify the Court and request the
21 Court to enter a Final Judgment dismissing, with prejudice, the
22 plaintiffs' action against the defendants and Fidelity's cross-
23 claims against HUD and Fidelity's counterclaims against the
24 plaintiffs.

25
26 DATED:

27 UNITED STATES DISTRICT JUDGE
28

APR 27 '91 12:17

BLUMBERG FARBER SMITH

PAGE 81
Project No. 127-33089
Kson Terrace
Indio, California

SCHEDULE "A"

Situated in the City of Indio, County of Riverside, State of California,
and more particularly described as follows:

That portion of the Northeast quarter of Section 26, Township 5 South, Range 7 East, San Bernardino Base and Meridian, according to the Official Plat thereof, described as follows:

Beginning at the Northeast corner of the South half of the Northeast quarter of the Northeast quarter of Section 26; thence South on the East line of said Section, 331.71 feet to the center line of a 10 inch pipe line referred to in Deed recorded April 6, 1923 in Book 580 Page 257 of Deeds; thence West on the center line of said pipe line 663.57 feet to a point; thence North parallel with the East line of said Section 332.1 feet to the North line of said South half of the Northeast quarter of the Northeast quarter and thence East 664.05 feet to the point of beginning;

EXCEPTING the Easterly 40 feet as decided to the County of Riverside, March 3, 1948 in Book 899 Page 63 of Official Records;

ALSO EXCEPTING that portion conveyed to "Continental V", a California corporation by Deed recorded November 21, 1967 as Instrument No. 108267, described as:

"The Easterly 290.4 feet of the Southerly 75 feet of the following described property:

The North half of the Southeast quarter of the Northeast quarter of the Northeast quarter of Section 26, Township 5 South, Range 7 East, San Bernardino Base and Meridian excepting the East 40 feet thereof."

Also known as:

Parcel 1 of Parcel Map filed in Book 1, page 93 of Parcel Maps, Records of Riverside County, California.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM
DISPOSITION OF PREVIOUSLY HUD-OWNED PROJECTS

PART I OF THE

HOUSING ASSISTANCE PAYMENTS CONTRACT

Type of Project: Private-Owner _____ or FHA-Owner _____
Partly Assisted Project _____ or Totally Assisted Project _____
Substantial Rehabilitation _____ or Moderate Rehabilitation _____ or Neither _____

Type of Financing: _____

[For example: HUD-insured; GNMIA tandem; purchase money mortgage;
not HUD-insured.]

ACC/MAP CONTRACT LIST NUMBER AND DATE: _____

SECTION 8 PROJECT NUMBER: _____

FHA PROJECT NUMBER (if applicable): _____

This Housing Assistance Payments Contract (Contract) is entered into between the United States of America acting through the Department of Housing and Urban Development (HUD) and _____

_____, (Owner) pursuant to the U.S. Housing Act of 1937 (Act), 42 U.S.C. 1437, et seq., and the Department of Housing and Urban Development Act, 42 U.S.C. 3531, et seq. The purpose of this Contract is to provide housing assistance payments on behalf of Eligible Families leasing decent, safe and sanitary units from the Owner.

1.1 SIGNIFICANT DATES AND OTHER ITEMS: CONTENTS AND SCOPE OF CONTRACT.

(a) Effective Date of Contract: _____, 19____.

(b) Fiscal Year. The ending date of each Fiscal Year shall be _____

_____. [Insert March 31, June 30, September 30, or December 31, as approved by HUD.] The Fiscal Year for the project shall be the 12-month period ending on this date. However, the first Fiscal Year for the project is the period beginning with the effective date of the Contract and ending on the last day of the Fiscal Year which is not less than 12 months after the effective date. If the first Fiscal Year exceeds 12 months, the maximum total annual housing assistance payment in section 1.1(c) will be adjusted by the addition of the pro rata amount applicable to the period of operation in excess of 12 months.

(c) Maximum Annual Contract Commitment. The maximum annual amount of the commitment for housing assistance payments under this Contract (see section 2.3) is the amount of contract authority identified in Exhibit 3.

(d) Project Description.

EXHIBIT 2-1

(a) STATEMENT OF SERVICES, MAINTENANCE AND UTILITIES PROVIDED BY THE OWNER.

(1) Services and Maintenance:

(2) Equipment:

(3) Utilities:

(4) Other:

(f) Contents of Contract. This Contract consists of Part I, Part II (except as indicated in section 1.4), and the following exhibits:

Exhibit 1: The schedule showing the number of units by size (Contract Units) and their applicable rents (Contract Rents).

Exhibit 2: Daily Debt Service (for substantial rehabilitation projects only). (If the project is not permanently financed when the Contract is executed, this exhibit should be added when the necessary information becomes available.)

Exhibit 3: The schedule showing contract and budget authority.

Exhibit 4: The Affirmative Fair Housing Marketing Plan, if applicable.

Exhibit 5: The approved Purchase and Use Plan including a project description and the tenant selection factors. Exhibit 5 may incorporate these items by reference, specify the location of the items, and list them, including any amendments.

Exhibit 6: HUD standards for decent, safe and sanitary housing.

Additional exhibits: [Specify additional exhibits, if any, such as Special Conditions for Acceptance. If none, insert "None."]

(a) Scope of Contract. This Contract, including the exhibits, whether attached or incorporated by reference, comprises the entire agreement between the Owner and HUD with respect to the matters contained in it. Neither party is bound by any representations or agreements of any kind except as contained in this Contract, any applicable regulations, and agreements entered into in writing by the parties which are not inconsistent with this Contract.

1.2 TERM OF CONTRACT: OBLIGATION TO OPERATE PROJECT FOR FULL TERM.

(a) Term of Contract. The term of this Contract for any unit shall be _____ years, beginning with the effective date of this Contract for such unit. [Insert number approved by HUD in accordance with the HUD regulations.] If the project is completed in stages, the term shall be separately related to the units in each stage. However, the

total Contract term for all the stages, beginning with the effective date of the Contract for the first stage, shall not exceed the Contract term for any unit, plus two years.

- (b) Obligation to Operate Project for Full Term. The Owner agrees to continue operation of the project in accordance with this Contract for the full term specified in paragraph (a).

1.3 HUD ASSURANCE.

The execution of this Contract by HUD is an assurance by HUD to the Owner that:

- (a) The faith of the United States is solemnly pledged to the payment of housing assistance payments pursuant to this Contract, and
(b) HUD has obligated funds for these payments.

1.4 APPLICABILITY OF CERTAIN PROVISIONS OF THIS CONTRACT. Applicable. Not Applicable.

- | | | |
|--|-------|----------|
| (a) 2.4(1). <u>Payments to Trustee by FHA as Lender.</u>
Applicability: Not applicable. | _____ | <u>X</u> |
| (b) (1) 2.7(f). <u>Adjustment of Contract Rents Based on Cost Certification.</u> Applicability: Applicable. If the Contract Rents are adjusted under section 2.4 of the Agreement, section 2.7(f) should be changed to "not applicable" when the Contract is executed. | _____ | <u>X</u> |
| (2) 2.7(g). <u>Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Financing Not Subject to Part III or Paragraph (f).</u> Applicability: Not applicable. | _____ | <u>X</u> |
| (3) 2.7(h). <u>Adjustment of Contract Rents: Part III.</u> Applicability: Not applicable. | _____ | <u>X</u> |
| (c) 2.13. <u>Training, Employment and Contracting Opportunities.</u> Applicability: All projects for which the total initial Contract Rents over the term of the Contract exceed \$500,000. | _____ | _____ |
| (d) 2.14. <u>Flood Insurance.</u> Applicability: All projects in special flood hazard areas. | _____ | _____ |
| (e) 2.15. <u>Clean Air and Federal Water Pollution Control Acts.</u> Applicability: All projects for which the total initial Contract Rents over the term of the Contract exceed \$100,000. | _____ | _____ |

EXHIBIT

2-3

1.3 OWNER'S FAIL TO COMPLY WITH CONTRACT.

In addition to other remedies available to HUD under this Contract, the Agreement to Enter into Housing Assistance Payments Contract, or the Regulatory Agreement for a default by the Owner, the Owner and HUD agree that if the Owner fails to comply with the requirements of this Contract, HUD may rescind the sale of the project or take other appropriate action in accordance with section 1.21.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

OWNER _____

By _____

*

(Official Title)

Date _____, 19____

United States of America
Secretary of Housing and
Urban Development

By _____

*

(Official Title)

Date _____, 19____

* Type name of signatory under signature line.

[If the project is to be completed and accepted in stages, execution of the Contract with respect to the several stages appears on the following pages of this Contract.]

EXHIBIT

2-4

40

EXECUTION OF CONTRACT WITH RESPECT TO
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 1

This Contract is hereby executed with respect to the units described in Exhibit 1a.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1a is _____, 19____.

United States of America
Secretary of Housing and
Urban Development

OWNER _____

By _____

By _____

(Official Title)

(Official Title)

Date _____, 19____

Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 2

This Contract is hereby executed with respect to the units described in Exhibit 1b.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1b is _____, 19____.

United States of America
Secretary of Housing and
Urban Development

OWNER _____

By _____

By _____

(Official Title)

(Official Title)

Date _____, 19____

Date _____, 19____

EXECUTION OF CONTRACT WITH RESPECT TO
CONTRACT UNITS COMPLETED AND ACCEPTED IN STAGES

Stage 1

This Contract is hereby executed with respect to the units described in Exhibit 1c.

EFFECTIVE DATE: The effective date of this Contract with respect to the units described in Exhibit 1c is _____, 19____.

United States of America
Secretary of Housing and
Urban Development

by _____

(Official Title)

Date _____, 19____

OWNER _____

By _____

(Official Title)

Date _____, 19____

EXHIBIT 1

SCHEDULE OF CONTRACT UNITS AND CONTRACT RENTS¹

Number of Bedrooms	Number of Units ²	Household Type (elderly, non- elderly family, large nonelderly family)	Contract Rent
--------------------	------------------------------	--	------------------

1/ This Exhibit must be completed and attached to the Contract at the time the Agreement is executed. It may, however, be amended in accordance with program rules before the Contract is executed. When Contract Rents are amended (e.g. at the time of an annual adjustment) this format should be used.

2/ If less than 100 percent of the units in the project are covered by this Contract, identify specific units to be leased at initial rent-up to eligible families. See section 2.8(c)(6).

EXHIBIT 2
DAILY DEBT SERVICE

<u>Number of Bedrooms</u>	<u>Number of Units</u>	<u>Daily Debt Service</u>
0	_____	\$ _____
1	_____	\$ _____
2	_____	\$ _____
3	_____	\$ _____
4	_____	\$ _____
5	_____	\$ _____

This information is used for computing assistance payments for vacant units under section 2.4(a).

Exhibit 3

This Exhibit shows the initial and subsequent amounts of contract and budget authority obligated for project number: _____. (The Housing Division shall furnish the Legal Division with the information necessary to complete this Exhibit, with appropriate supporting documentation including an ACC/MAP Contract List.)

	<u>Contract Authority</u>	<u>Budget Authority</u>
As of the Effective Date of Agreement	_____	_____
Effective Date of Agreement Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____
Effective Date of Agreement Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____

	<u>Contract Authority</u>	<u>Budget Authority</u>
As of the Effective Date of Contract		
Effective Date of Contract Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____
Effective Date of Contract Amendment: _____		
Show Increase or Decrease	_____	_____
Revised Total	_____	_____

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

PART II OF THE

HOUSING ASSISTANCE PAYMENTS CONTRACT

By and between _____ (CA) and

(Owner).

Check Type of Project: Private-Owner/HUD _____ or FRA-Owner/HUD _____
(HUD is the Contract Administrator or "CA.") _____
or Private-Owner/FRA _____
(The FRA is the CA)

NEW CONSTRUCTION or SUBSTANTIAL REHABILITATION or PREVIOUSLY
Part 880 _____ Part 881 _____ HUD-COMPLETED
Part 885 _____ Part 885 _____ Part 886, Subpart C _____

SECTION 8 PROJECT NUMBER: _____

FRA PROJECT NUMBER (if applicable): _____

2.1 OWNER'S WARRANTIES: AMENDMENTS.

- (a) Legal Capacity. The Owner warrants that it has the legal right to execute this Contract and to lease dwelling units covered by this Contract.
- (b) Completion of Work. The Owner warrants that the project as described in section 1.1 is in good and tenantable condition and that the project has been completed in accordance with the terms and conditions of the Agreement to Enter into Housing Assistance Payments Contract (Agreement) or will be completed in accordance with the Special Conditions for Acceptance (see attached exhibit, where applicable). The Owner further warrants that it will remedy any defects or omissions covered by this warranty if called to its attention within 12 months of the effective date of this Contract. The Owner and the CA agree that the continuation of this Contract shall be subject to the Owner meeting any Special Conditions for Acceptance.

2.2 FAMILIES TO BE HOUSED: CONTRACT ADMINISTRATOR (CA) ASSISTANCE.

- (a) Families To Be Housed. The Contract Units are to be leased by the Owner to eligible Lower-Income Families (Families) for occupancy by such Families solely as private dwellings and as their principal place of residence. (See also section 2.10.)
- (b) CA Assistance.
- (1) The CA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable the Families to lease Decent, Safe, and Sanitary housing pursuant to section 8 of the Act.
- (2) If there is a Utility Allowance and if the Allowance exceeds the total Family contribution, the Owner shall pay the Family the amount of the excess. The CA will pay funds to the Owner in trust solely for the purpose of making this payment. Any pledge by the Owner of payments properly payable under this Contract shall not be construed to include payments covered by this paragraph (b)(2). (See 24 CFR section 880.501(e), 881.501(e), or 886.309(a).)

2.3 MAXIMUM HOUSING ASSISTANCE COMMITMENT: PROJECT ACCOUNT.

- (a) Maximum Annual Contract Commitment. Notwithstanding any other provisions of this Contract (other than paragraph (b)(2) of this section) or any provisions of any other contract between the CA and the Owner, the CA shall not be obligated to make and shall not make any housing

assistance payments (or pay any fees where a CA is a party to this Contract for the purpose of authorizing terminations in the case of previously HUD-owned projects) under this Contract in excess of the amount identified in section 1.1(e). However, this amount may be reduced commensurately with any reduction in the number of Contract Units or in the Contract Rents or pursuant to any other provisions of this Contract.

(b) Project Account.

- (1) A project account will be established and maintained by HUD, consistent with its responsibilities under section 8(c)(6) of the Act, as a specifically identified and segregated account for the project. The account will be established and maintained, in an amount determined by HUD, out of the amounts by which the Maximum Annual Contract Commitment under section 1.1(e) (for Private-Owner/HUD or PHA-Owner/HUD Projects) or Maximum ACC Commitment (for Private-Owner/PHA Projects) exceeds the amount actually paid out under the Contract or ACC each fiscal year. Payments will be made from the account for housing assistance payments (and fees for PHA administration) when needed to cover increases in Contract Rents or decreases in tenant rents and for other costs specifically approved by the Secretary.
- (2) If funds are available in the project account, the maximum annual contribution payable for any fiscal year will be increased by the amount, if any, as may be required for housing assistance payments (and fees where the CA is a PHA) to cover increases in Contract Rents or decreases in rents payable by Families and other costs approved by HUD.
- (3) Whenever a HUD-approved estimate of the required annual contribution for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum annual commitment, HUD will, within a reasonable period of time, take such additional steps authorized by section 8(c)(6) of the U.S. Housing Act of 1937 as may be necessary to assure that payments under the Contract and ACC (if applicable) will be adequate to cover increases in Contract Rents and decreases in rents payable by Families, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts, or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."
- (4) Any amount remaining in the account after payment of the last annual contribution with respect to the project shall be applied by HUD in accordance with law.

2.4 HOUSING ASSISTANCE PAYMENTS TO OWNERS.

(a) Housing Assistance Payments on Behalf of Families.

- (1) Housing assistance payments shall be paid to the Owner for units under lease for occupancy by Families in accordance with the Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of the rent payable by the Family as determined in accordance with the HUD-established schedules and criteria.
 - (2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by the Family shall be subject to change by reason of changes in Family Income, Family composition, extent of exceptional medical or other unusual expenses or program rules in accordance with the HUD-established schedules and criteria; or by reason of a change in any applicable Utility Allowance approved or required by the CA. Any such change shall be effective as of the date stated in a notification of the change to the Family, which need not be at the end of the Lease term.
- (b) Vacancies During Rent-Up. If a Contract Unit is not leased as of the effective date of the Contract (or within 15 days of the effective date of this Contract in the case of previously HUD-owned projects), the Owner is entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period

not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) commenced marketing and otherwise complied with section 2.2(d) of the Agreement, (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on its waiting list, if any, requesting the FMA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit in a manner specifically designed to reach eligible families, (3) has not rejected any eligible applicant, except for good cause acceptable to the CA and (4) has with prior CA approval solicited for rental of one or more units to ineligible families if temporarily unable to lease all units for which assistance is committed under the Contract.

- (c) Vacancies after Rent-Up. If an eligible family vacates a unit, the owner is entitled to housing assistance payments in the amount (except as provided in paragraph (d) of this section) of 80 percent of the Contract Rent for the first 60 days of vacancy if the Owner:
- (1) Certifies that it did not cause the vacancy by violating the lease, the Contract or any applicable law or by moving a family to another unit;
 - (2) Notified the CA of the vacancy or prospective vacancy and the reasons for it immediately upon learning of the vacancy or prospective vacancy;
 - (3) Has fulfilled and continues to fulfill the requirements specified in paragraphs (b)(1), (2), and (3) and (4) of this section; and
 - (4) Certifies that any eviction resulting in a vacancy was carried out in compliance with section 2.9.
- (d) Payments for Vacancies after Initial Occupancy in Previously HUD-Owned Projects. In the case of previously HUD-owned projects, the Owner may receive housing assistance payments for so much of the month in which the family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month. However, if the Owner collects any of the family's share of the rent for this period, the payment for the vacancy period must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. Paragraphs (c)(1) through (4) apply.
- (e) Vacancies for Longer than 60 Days. Except for previously HUD-owned projects not requiring substantial rehabilitation, if an assisted unit continues to be vacant after the period specified in paragraph (b), (c) or (d) of this section, the Owner may apply to receive additional payments for the vacancy period in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (see Exhibit 2) for up to 12 additional months for the unit if:
- (1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;
 - (2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b), (c) or (d) of this section, as appropriate; and
 - (3) The owner has demonstrated to the satisfaction of HUD that:
 - (i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and
 - (ii) The project can achieve financial soundness within a reasonable time.

(f) Prohibition of Double Compensation for Vacancies. The owner is not entitled to payments for vacant units to the extent it can collect for the vacancy from other sources (such as security deposits, other amounts collected from the Family, payments from the CA under section 2.8(b), and governmental payments under other programs). If the Owner collects any of the Family's share of the rent for a vacancy period in an amount which, when added to the vacancy payment, results in more than the Contract Rent, the excess must be reimbursed as HUD directs.

(g) CA Not Obligated for Family Rent. The CA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with section 2.8(b) of this Contract.

The financial obligation of the CA is limited to making housing assistance payments on behalf of Families in accordance with this Contract.

(h) Owner's Monthly Requests for Payments.

- (1) The Owner shall submit monthly requests to the CA or as directed by the CA for housing assistance payments. Each request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of each unit, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit 1 for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with section 2.2(b)(2)); and (v) the total amount of housing assistance payments requested by the Owner.
- (2) Each of the Owner's monthly requests shall contain a certification by it that to the best of its knowledge and belief (i) the dwelling units are in Decent, Safe, and Sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this Contract and is payable under the Contract, (iv) none of the amount claimed has been previously claimed or paid under this Contract, and (v) the Owner has not received and will not receive any payments or other consideration from the Family, the FMA, HUD, or any other public or private source for the unit beyond that authorized in this Contract and the lease.
- (3) If the Owner has received an excessive payment, the CA (or HUD where the CA is a FMA), in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.
- (4) The Owner's monthly requests for housing assistance payments are subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.
- (i) Payments to Trustee by FMA Where It Is the Lender. (See section 1.4 for applicability of this paragraph.) The amount of the housing assistance payment determined in accordance with the provisions of this Contract, up to the amount of the mortgage repayments due the FMA from the Owner pursuant to the mortgage loan made by the FMA for the project, shall be credited to the Owner and transferred monthly by the FMA from the account maintained under the General Depositary Agreement pursuant to the ACC to the trustee under the note or bond resolution of the FMA under which the notes or bonds to provide the mortgage loan were issued. Any amount of the housing assistance payment in excess of such credit shall be paid by the FMA directly to the Owner.

2.5 MAINTENANCE, MAJOR AND INSPECTION.

- (a) Maintenance and Operation. The Owner agrees to maintain and operate the Contract Units, unassisted units, if any, and related facilities to provide Decent, Safe, and Sanitary housing including the provision of all the services, maintenance and utilities set forth in section 1.1(a). The Owner also agrees to comply with the lead-based paint regulations at 24 CFR Part 35. If the CA determines that the Owner is not meeting one or more of these obligations, the CA shall have the right to take action under section 2.21(b).
- (b) Inspection.
- (1) Prior to occupancy of any Contract Unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed or approved by the CA, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the forms. The Owner shall keep copies of these reports on file for at least three years.
 - (2) The CA shall inspect or cause to be inspected the Contract Units and related facilities at least annually and at such other times (including prior to initial occupancy and rearing of any unit) 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. The CA 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.
- (c) Units Not Decent, Safe, and Sanitary. If the CA notifies the Owner that it has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, the CA may exercise any of its rights or remedies under the Contract, including reduction or suspension of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the CA does not have other section 8 funds for such purposes, the CA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. If the Family continues to occupy the unit, it will do so in accordance with the terms of its lease, including the termination date and amount of rent payable by the Family.
- (d) Notification of Abatement. Any reduction or suspension of housing assistance payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Family of any such abatement.
- (e) Overcrowded and Underoccupied Units. Where the CA determines a unit is larger or smaller than appropriate for an eligible family, the Owner agrees to correct the situation in accordance with HUD regulations and requirements in effect at the time of the determination.

2.6 FINANCIAL REQUIREMENTS.**(a) Submission of Financial and Operating Statements.**

The Owner must submit to the CA:

- (1) Within 60 days after the end of each fiscal year of the project, financial statements for the project audited by an independent Public Accountant in the form required by HUD, and
- (2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(b) Use of Project Funds.

- (1) Project funds must be used for the benefit of the project, to make mortgage payments, to pay operating expenses, to make required deposits to the replacement reserve in accordance with paragraph (c) of this section and to provide distributions

to the Owner as provided in paragraph (d). To the extent HUD determines that project funds are more than needed for these purposes, the surplus project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only with the approval of HUD and for project purposes, including the reduction of housing assistance payments. Upon termination of the Contract, any excess funds must be remitted to HUD.

- (2) In the case of HUD-insured projects, the provisions of this paragraph (b) will apply instead of the otherwise applicable mortgage insurance requirements, except in the case of partially assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance requirements.

(c) Replacement Reserve.

- (1) The Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with applicable regulations.
 - (i) The obligation of the Owner to deposit into the replacement reserve shall commence upon the effective date of the Contract. For staged projects, the obligation shall commence on a pro rata basis for units in each stage on the effective date of the Contract for that stage. The amount of the deposit to the replacement reserve will be adjusted each year by the amount of the automatic annual adjustment factor. See 24 CFR Part 886.
 - (ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.
 - (iii) All earnings including interest on the reserve must be added to the reserve.
 - (iv) Funds will be held by the Owner, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.
- (2) In the case of HUD-insured projects, the provisions of this paragraph (c) will apply instead of the otherwise applicable mortgage insurance requirements, except in the case of partially-assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance requirements.

(d) Limitation on Distributions.

- (1) Nonprofit owners are not entitled to distributions of project funds.
- (2) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:
 - (i) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. HUD may provide for increases in subsequent years' distributions in accordance with applicable HUD regulations and requirements.
 - (ii) For projects for nonelderly families, the first year's distribution will be limited to 10 percent on equity. HUD may provide for increases in subsequent years' distributions in accordance with applicable HUD regulations and requirements.

(3) For the purpose of determining the allowable distribution, an Owner's equity investment shall be computed in accordance with HUD regulations and requirements.

(4) any short-fall in return may be made up from surplus project funds (see paragraph (b)(1)) in future years.

(5) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program regulations, except in the case of small, partially assisted or previously HUD-owned, insured projects which are subject to the applicable mortgage insurance regulations.

2.7 RENT ADJUSTMENTS.

(a) Funding of Adjustments. Housing assistance payments will be made in amounts commensurate with Contract Rent adjustments under this section up to the maximum amount authorized under section 2.3(a) of this Contract.

(b) Annual Adjustments.

(1) Upon request from the Owner to the CA, Contract Rents will be adjusted on the anniversary date of the Contract in accordance with 24 CFR 888 and this Contract. See, however, paragraph (d).

(2) In the case of previously HUD-owned projects, the Contract Rents shall be adjusted in accordance with 24 CFR 886, Subpart C and this Contract.

(3) Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the annual adjustment result in Contract Rents less than the Contract Rents on the effective date of the Contract.

(c) Special Additional Adjustments. Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, assessments, and utilities not covered by regulated rates. The Owner must demonstrate that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by annual adjustments. The Owner shall submit to HUD supporting data, financial statements and certifications which clearly support the increase. See, however, paragraph (d).

(d) Overall Limitation. Notwithstanding any other provision of this Contract, adjustments after Contract execution or cost certification, where applicable, shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD; except to the extent that the differences existed with respect to the Contract Rents set at Contract execution or cost certification, where applicable.

(e) Incorporation of Rent Adjustment. Any adjustment in Contract Rents shall be incorporated into Exhibit 1 by a dated addendum to the exhibit establishing the effective date of the adjustment.

(f) Adjustment of Contract Rents based on Cost Certification. (See section 1.4 for applicability of this paragraph.)

(1) Submission by Owner. Within 60 days after HUD accepts the project (or accepts the last stage, where applicable), or any extensions approved by HUD for good cause, the Owner will certify the actual costs estimated in the Final Proposal or Purchase and Use Plan of the replacement cost, operating expenses, income, and debt service, and submit a cost certification including the certificate of an Independent Public Accountant to HUD in the manner and form prescribed by HUD, based on the following guidelines:

- (1) Projects which involve HUD mortgage insurance will be subject to the cost certification requirements of the applicable insurance program;
- (11) For projects not insured by HUD, a simplified form of cost certification as prescribed by HUD will be completed and submitted.
- (2) HUD Review. Cost certifications will be subject to review by HUD. As part of this review, the Owner and/or contractor may be required to submit additional documentation.
- (3) Reduction of Contract Rents. If the Owner's certified costs provided in accordance with paragraph (f)(1) of this section, as approved by HUD, are less than the cost estimates provided in the Final Proposal or Purchase and Use Plan, the Contract Rents will be reduced accordingly.
- (4) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (f)(3) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PMA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.
- (g) Adjustment of Contract Rents to Reflect Actual Cost of Tax Exempt Obligations Issued by a Participating State Agency Not Subject to Part 811. (See section 1.4 for applicability of this paragraph.) After the project is permanently financed, the financing agency shall submit a certification to HUD specifying the actual financing terms. If the actual debt service to the Owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents or the Contract Rents then in effect shall be reduced commensurately and the amount of savings credited to the project account. The maximum annual Contract commitment (and the maximum annual ACC commitment, in the case of Private-Owner/PMA projects) will not be reduced.
- (h) Adjustment of Contract Rents to Reflect Actual Cost for Projects Subject to Part 811. (See section 1.4 for applicability of this paragraph.)
- (1) Submission by Owner and Financing Agency. The Owner and the financing agency shall submit certified statements as to the financing and other costs as required by Part 811 prior to final endorsement. Based on the certified statements, HUD will determine whether any reduction in initial Contract Rents is required under Part 811. Promptly after HUD notification, the Owner and the financing agency agree to amend the Contract to reduce the initial Contract Rents to the extent required by HUD. See sections 2.3(b)(3) and (6) of the Agreement, as appropriate.
- (2) Reduction of Maximum Annual Commitment. If the Contract Rents are reduced pursuant to paragraph (h)(1) of this section, the maximum annual Contract commitment (and the maximum ACC commitment, in the case of Private-Owner/PMA projects) will be reduced. If Contract Rents are reduced based on certification after Contract execution, any overpayment since the effective date of the Contract will be recovered from the Owner by the CA.
- (4) Adjustment of Contract Rents Due to Property Tax Exemption or Similar Savings. The Contract Rents may be reduced to reflect real property tax exemption or similar savings where the initial Contract Rents were approved on the assumption that the project would not receive the benefit of tax abatement or similar savings. The Owner agrees to notify the CA in the event such a project begins to receive such an exemption or similar savings so that the initial Contract Rents or the Contract Rents then in effect may be reduced.

- (a) Compliance with Equal Opportunity Requirements. Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan (if required), shown as an exhibit, and with all regulations relating to fair housing advertising. Projects shall be managed and operated without regard to race, color, religion, creed, sex, handicap, or national origin and in the case of previously HUD-owned projects in accordance with the tenant selection factors shown as Exhibit 6.
- (b) Security Deposits. The Owner agrees to comply with applicable section 8 regulations and other requirements, as revised from time to time, regarding security deposits and to comply with all State and local law.
- (c) Eligibility, Selection and Admission of Families.
- (1) Except for those families in previously HUD-owned projects determined by HUD at the time of the sale of the project to be eligible for section 8, the Owner shall be responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible, computation of the amount of housing assistance payments on behalf of each selected Family and of total Family contributions and recordkeeping in accordance with applicable HUD regulations and requirements.
 - (2) The Owner shall not charge any applicant or assisted Family any amount in excess of the total Family contribution except as authorized by HUD.
 - (3) In the initial leasing of the Contract Units, the Owner must lease at least 30 percent to Very Low-Income Families (determined in accordance with HUD-established schedules and criteria). However, if this requirement cannot be met for substantial rehabilitation or previously HUD-owned projects because of families already residing in the project, HUD may permit the leasing of less than 30 percent of the units to Very Low-Income Families. Thereafter the Owner shall exercise best efforts to maintain (or achieve and maintain) at least 30 percent occupancy of the Contract Units by Very Low-Income Families. In addition, at all times, the Owner will use its best efforts to achieve leasing to Families with a range of incomes so that the average of incomes of all Families in occupancy is at or above 40 percent of the median income in the area.
 - (4) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by HUD.
 - (5) (i) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family at least as often as required by HUD regulations or other requirements, and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with applicable HUD regulations and requirements.
 - (ii) If a family reports a change in income or other circumstances that would result in a decrease of total family contribution between regularly scheduled reexaminations, the Owner, upon receipt of verification of the change, must promptly make appropriate adjustments in the total family contribution. The Owner may require in its lease that families report increases in income or other changes between scheduled reexaminations.
 - (iii) In connection with the reexamination, the Owner shall determine what percentage of Families in occupancy are Very Low-Income Families and what the average Family income is. If there are fewer than 30 percent Very Low-Income Families in occupancy, or the average income is below 40 percent of the median, the Owner shall report the fact to HUD and shall adopt appropriate changes in its admission policies.
 - (iv) A Family's eligibility for housing assistance payments continues until its total Family contribution equals the total housing expense for the unit it occupies. The termination of

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eligibility at this point will not affect the Family's other rights under the lease nor preclude resumption of payments as a result of later changes in income or other circumstances during the term of this Contract.

(6) Where fewer than 100 percent of the units in the project are covered by this Contract, assisted Families shall be dispersed throughout. At initial rent-up, the Owner shall lease the units identified in Exhibit 1 to eligible Families. Thereafter, the Owner may lease other units of appropriate size and type to eligible Families in accordance with Exhibit 1. For projects with units for both elderly and non-elderly Families, the respective family types may be grouped together.

(7) The Owner shall maintain as confidential all information relating to section 8 applicants and assisted Families; the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Rent Redetermination after Adjustment in Utility Allowance. In the event that the Owner is notified of a CA determination approving or requiring an adjustment in the Utility Allowance applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.

(e) Processing of Applications and Complaints. The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable HUD and FMA regulations and requirements and shall maintain records and furnish such copies of other information as may be required by HUD or the FMA.

(f) Review: Incorrect Payments. In making housing assistance payments to Owners, the FMA or HUD will review the Owner's determinations under this section. If as a result of this review, or other reviews, audits or information received by the FMA or HUD at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the FMA or HUD shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery.

2.9 TERMINATION OF TENANCY OR SECTION 8 ASSISTANCE BY THE OWNER.

The Owner agrees not to terminate any tenancy of or assistance on behalf an assisted Family except in accordance with all HUD regulations and other requirements in effect at the time of the termination, and any State and law.

2.10 REDUCTION OF NUMBER OF UNITS FOR FAILURE TO LEASE TO ELIGIBLE FAMILIES.

(a) Limitation on Leasing to Ineligible Families. Except in the case of previously HUD-owned projects, the Owner may not at any time during the term of this Contract lease more than 10 percent of the assisted units in the project to families which are ineligible under section 8 requirements at initial occupancy without the prior approval of HUD. Failure on the part of the Owner to comply with this prohibition is a violation of the Contract and grounds for all available legal remedies including specific performance of the Contract, suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section. (See also section 2.71.)

(b) Reduction for Failure to Lease to Eligible Families - New and Rehab Projects. If, at any time beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by families eligible under section 8 requirements at initial occupancy, HUD (or the FMA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the Contract. HUD or the FMA may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be if the failure to lease units to eligible families is permitted in writing by HUD under paragraph (a) of this section.

- (c) Reduction -- Previously HUD-leased Properties.
 If, at any time beginning six months after the effective date of the Contract, the Owner fails for a contiguous period of six months to have all of the assisted units leased or available for leasing by families eligible under section 8 requirements at initial occupancy, HUD may, on 30 calendar days' notice, reduce the number of Contract units to not less than the number of Contract units under lease, plus 10 percent of such number if the number is 10 or more, rounded up. Failure by the Owner to make a reasonable effort to lease the units to eligible Families shall be a violation of the Contract and grounds for all legal remedies including those specified in paragraph (a) and section 2.11.
- (d) Restoration. HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) or (c) of this section if:
- (1) HUD determines that the restoration is justified by demand,
 - (2) The Owner otherwise has a record of compliance with its obligations under the Contract, and
 - (3) Contract authority is available. HUD will take such steps authorized by section 8(c)(6) of the Act as may be necessary to carry out its agreement.

2.11 NONDISCRIMINATION.

- (a) General. The Owner shall not in the selection of Families, in the provision of services, or in any other manner, discriminate against any person on the grounds of race, color, creed, religion, sex, national origin, or handicap.
- (b) Members of Certain Classes. The Owner shall not automatically exclude anyone from participation in, or deny anyone the benefits of, the Housing Assistance Payments Program because of membership in a class, such as unmarried mothers, recipients of public assistance, handicapped persons.
- (c) Title VIII of the Civil Rights Act of 1968. The Owner shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, which prohibits discrimination in the sale, rental, financing and advertising of housing on the basis of race, color, religion, sex, or national origin, and any related rules and regulations.
- (d) Title VI of the Civil Rights Act of 1964 and Executive Order 11043. The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. et seq.; the HUD Regulations issued thereunder, 24 CFR, Subtitle A, Part 1; the HUD requirements pursuant to these regulations; and Executive Order 11043 and any regulations and requirements issued thereunder, to the end that, in accordance with that Act, Executive Order 11043, and the regulations and requirements of HUD, no person in the United States shall, on the grounds of race, color, creed, or national origin, be excluded from participation in, or be denied the benefits of, the Housing Assistance Payments Program, or be otherwise subjected to discrimination. This provision is included pursuant to the regulations of HUD, 24 CFR, Subtitle A, Part 1 issued under Title VI of the Civil Rights Act of 1964, HUD regulations issued pursuant to Executive Order 11043 and the HUD requirements pursuant to the regulations. The obligation of the Owner to comply therewith inures to the benefit of the United States of America, HUD, and the FHA (where the CA is a FHA), any of which shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Owner.
- (e) Section 304 of the Rehabilitation Act of 1973. The Owner shall comply with all the requirements imposed by section 304 of the Rehabilitation Act of 1973, as amended, and any related rules and regulations. Section 304 provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. Accordingly, the Owner (1) shall not discriminate against any qualified handicapped person on the basis of handicap and (2) shall

be incorporated into all contracts executed in connection with this project a provision requiring compliance with rules and regulations issued pursuant to section 504.

(5) Non-discrimination.

- (1) In carrying out the obligations under this Contract, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, handicap or national origin. The Owner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this non-discrimination clause. The Owner will in all solicitations or advertisements for employees placed by or on behalf of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, handicap or national origin. The Owner will incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.
- (3) Age Discrimination Act of 1975. The Owner shall comply with any rules and regulations issued or adopted by HUD under the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

2.12 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS.

The Owner and the FRA (where the CA is a FRA) agree to cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to or permitted by all applicable civil rights statutes, Executive Orders, and rules and regulations.

2.13 TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR BUSINESS AND LOW- INCOME PERSONS. (See section 1.4 for applicability of this section.)

- (a) The project assisted under this Contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- (b) Notwithstanding any other provision of this Contract, the Owner shall carry out the provisions of section 3 and the regulations issued by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Contract. The requirements of the regulations include, but are not limited to, development and implementation of an affirmative action plan for utilizing business concerns located within, or owned in substantial part by persons residing in, the area of the project; the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by section 3; and incorporation of the "section 3 clause" specified by section 135.20(b) of the regulations and paragraph (d) of this section in all contracts for work in connection with the project. The Owner certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.

- (c) Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders issued by HUD thereunder prior to execution of this Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to the sanctions specified by this Contract, and to such sanctions as are specified by 24 CFR, Section 135.135.
- (d) The Owner shall incorporate or cause to be incorporated into any contract or subcontract for work pursuant to this Agreement in excess of \$50,000 cost, the following clause:

EMPLOYMENT OF PROJECT AREA RESIDENTS AND CONTRACTORS

- "A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given lower-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.
- "B. The parties to this Contract will comply with the provisions of section 3 and the regulations issued pursuant thereto by HUD as set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- "C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of his commitments under this section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- "D. The contractor will include this section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by HUD, 24 CFR, Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR, Part 135, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- "E. Compliance with the provisions of section 3, the regulations set forth in 24 CFR, Part 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of the Housing Assistance Payments Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the Owner, its contractors and subcontractors, its successors, and assigns. Failure to fulfill these requirements shall subject the Owner, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the Housing Assistance Payments Contract, and to such sanctions as are specified by 24 CFR, Section 135.135."
- (e) The Owner agrees that it will be bound by the above section 3 clause with respect to its own employment practices when it participates in federally assisted work.

2.14 FLOOD INSURANCE. (See section 1.4 for applicability.)

The Owner agrees that the project will be covered, during its anticipated economic or useful life, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.15 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT. (See section 1.4 for applicability of this section.)

In compliance with regulations issued by the Environmental Protection Agency ("EPA"), 40 CFR, Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251, et seq., and Executive Order 11738, the Owner agrees:

- (a) Not to utilize any facility in the performance of this Contract or any nonexempt subcontract which is listed on the EPA List of Violating Facilities pursuant to section 15.20 of the regulations;
- (b) Promptly to notify the CA of the receipt of any communication from the EPA indicating that a facility to be utilized for the Contract is under consideration to be listed on the EPA List of Violating Facilities;
- (c) To comply with all the requirements of section 114 of the Air Act and section 306 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Air Act and section 306 of the Water Act, and all regulations and guidelines issued thereunder; and
- (d) To include or cause to be included the provisions of this Contract in every nonexempt subcontract and take such action as HUD may direct as a means of enforcing such provisions.

2.16 REPORTS AND ACCESS TO PREMISES AND RECORDS.

- (a) The Owner shall furnish any information and reports pertinent to this Contract as reasonably may be required from time to time by HUD and the FHA (where the CA is a FHA).
- (b) The Owner shall permit HUD and the FHA (where the CA is a FHA) or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this Contract, including the verification of information pertinent to the housing assistance payments.

2.17 DISPUTES.

(a) For Private-Owner/FHA Projects:

- (1) Any dispute concerning a question of fact arising under this Contract which cannot be resolved by the FHA and the Owner may be submitted by either party to the HUD Field Office which will promptly make a decision and furnish a written copy to the Owner and the FHA.
- (2) The decision of the Field Office will not be reviewable unless, within 30 calendar days from the date of receipt of the Field Office's determination, either party mails or otherwise furnishes to HUD a written appeal with written justification addressed to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the Field Office pending resolution of the appeal.

(b) For Private-Owner/HUD or FHA-Owner/HUD Projects:

Any dispute concerning a question of fact arising under this Contract which cannot be resolved by agreement between the HUD Field Office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the Contract and in accordance with the decision of the Field Office, pending resolution of the appeal.

2.18 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF FHA, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS.

- (a) No person or entity in the following classes shall have an interest, direct or indirect, in this Agreement or in any proceeds or benefits arising from it, during his or her tenure or for one year thereafter.
- (1) any member or officer of the FHA (where it is the CA or the Owner), except where his or her interest is as tenant;
 - (2) (i) any employee of the FHA (where it is the CA or the Owner) who formulates policy or influences decisions with respect to the section 8 project;
(ii) any other employee of the FHA (where it is the CA or the Owner), except where his or her interest is as a tenant;
 - (3) any member of the governing body or the executive officer of the locality (city or county) in which the project is situated;
 - (4) any member of the governing body or executive officer of the locality (city or county) in which the FHA (where it is the CA or the Owner) was activated;
 - (5) any other State or local public official (including State legislators), who exercises any functions or responsibilities with respect to the section 8 project;
 - (6) any FHA (which is not the CA), where any of its members, officers, or employees has a personal interest in the project, including an interest by reason of membership on the board of the FHA which is the CA (except an employee who does not formulate policy or influence decisions with respect to the section 8 project may have an interest as a tenant).
- (b) Members of the classes described in paragraph (a) who involuntarily acquire an interest in the section 8 program or in a section 8 project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or prospective interest to the FHA (where it is the CA or the Owner) and the HUD Field Office, and may, with appropriate justification, if consistent with State law, apply to the HUD Field Office (through the FHA where it is the CA) for a waiver. Any other requests for waivers of paragraph (a) must be referred to the HUD Headquarters, with appropriate recommendations from the Field Office, for a determination of whether a waiver will be granted.
- (c) No person to whom a waiver is granted shall be permitted (in his or her capacity as member of a class described in paragraph (a)) to exercise responsibilities or functions with respect to an Agreement or a Contract executed, or to be executed, on his or her behalf, or with respect to an Agreement or a Contract to which this person is a party.
- (d) The Owner shall insert in all contracts, subcontracts, and arrangements entered into in connection with the project or any property included or planned to be included in the project, and shall require its contractors and subcontractors to insert in each of the subcontracts, the provisions of paragraphs (a) through (d).
- (e) The provisions of paragraphs (a) through (d) of this section shall not apply to a utility service if the rates are fixed or controlled by a governmental agency or applicable to the Depositary Agreement.

2.19 INTEREST OF MEMBER OF OR DELEGATE TO CONGRESS.

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Contract or to any benefits which may arise from it.

2.20 ASSIGNMENT, SALE OR FORECLOSURE.

- (a) The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion, of this Contract, the Agreement, the ACC (if applicable), or the project or any part of them or any of its interest in them, without the prior written consent of HUD (and the FMA where it is the CA). However, in the case of an assignment as security for the purpose of obtaining financing of the project, HUD (and the FMA where it is the CA) shall consent in writing if HUD has approved the terms of the financing.
- (b) The Owner agrees to notify HUD (and the FMA where it is the CA) promptly of any proposed action covered by paragraph (a) of this section. The Owner further agrees to request the prior written consent of HUD (and the FMA where it is the CA).
- (c) (1) For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:
 - (i) A transfer by the Owner, in whole or in part,
 - (ii) A transfer by a party having a substantial interest in the Owner,
 - (iii) Transfers by more than one party of interests aggregating a substantial interest in the Owner,
 - (iv) Any other similarly significant change in the ownership of interests in the Owner, or in the relative distribution of interests by any other method or means, and
 - (v) Any refinancing by the Owner of the project.
- (2) An assignment by the Owner to a limited partnership, in which no limited partner has a 25 percent or more interest and of which the Owner is the sole general partner, shall not be considered an assignment, conveyance, or transfer. An assignment by one or more general or limited partners of a limited partnership interest to a limited partner, who will have no more than a 25 percent interest, shall not be considered an assignment, conveyance, or transfer.
- (3) The term "substantial interest" means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.
- (d) The Owner and the party signing this Contract on behalf of the Owner represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect to it.
- (e) Except where otherwise approved by HUD, this Contract, the Agreement, and the ACC (if applicable) shall continue in effect and housing assistance payments will continue in accordance with the terms of the Contract in the event:
 - (1) Of assignment, sale, or other disposition of the project or this Contract, the Agreement, or the ACC,
 - (2) Of foreclosure, including foreclosure by HUD,
 - (3) Of assignment of the mortgage or deed in lieu of foreclosure,
 - (4) The FMA or HUD takes over possession, operation or ownership,
 - (5) The Owner prepaies the mortgage.

2.21 DEFAULTS BY FMA AND/OR OWNER.

(a) Rights of Owner if FMA Defaults under Contract (for Private-Owner/
FMA Projects).

(1) Events of Default. The occurrence of any of the following events, if the Owner is not in default, is defined as a default under the ACC:

- (i) If the FMA fails to perform or observe any term or condition of this Contract;
- (ii) If the Contract is held to be void, voidable, or ultra vires;
- (iii) If the power or right of the FMA to enter into the Contract is drawn into question in any legal proceeding; or
- (iv) If the FMA asserts or claims that the Contract is not binding upon the FMA for any such reason.

(2) Owner Request for HUD Determination of Default.

If the Owner believes that an event as specified in paragraph (a)(1) has occurred, and the Owner is not in default, the Owner may, within 30 days of the initial occurrence of the event:

- (i) Notify HUD of the occurrence of the event;
- (ii) Provide supporting evidence of the default and of the fact that the Owner is not in default; and
- (iii) Request HUD to determine whether there has been a default.

(3) HUD Determination of Default and Curing of Default.

HUD, after notice to the FMA giving it a reasonable opportunity to take corrective action, or to demonstrate that it is not in default, shall make a determination whether the FMA is in default and whether the Owner is not in default. If HUD determines that the FMA is in default and that the Owner is not, HUD shall take appropriate action to require the FMA to cure the default. If necessary for the prompt continuation of the project, HUD shall assume the FMA's rights and obligations under the Contract, including any funds. HUD shall continue to pay annual contributions with respect to the units covered by this Contract in accordance with the ACC and this Contract until reassigned to the FMA. All rights and obligations of the FMA assumed by HUD will be returned as constituted at the time of the return:

- (i) When HUD is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements, or
- (ii) When the Contract is at an end, whichever occurs sooner.

(4) Enforcement by Owner. The provisions of this paragraph (a) are made for the benefit of the Owner, the lender, the FMA where it is the lender and then only in its capacity as lender, and the Owner's other assignees, if any, who have been specifically approved by HUD prior to the assignment. These provisions shall be enforceable by these parties against HUD by suit at law or in equity.

(b) Rights of FMA and HUD if Owner Defaults under Contract.

(1) Events of Default.

A default by the Owner under this Contract shall result if:

- (i) The Owner has violated or failed to comply with any provision of, or obligation under, this Contract or of any Lease, including failure to correct any deficiencies

identified by the CA in connection with any annual or other inspection; or

- (ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this Contract or under any Lease; or
- (iii) For projects with mortgages insured by HUD or loans made by HUD, the Owner has violated or failed to comply with the regulations for the applicable insurance or loan program, with the insured mortgage, or with the regulatory agreement; or the Owner has filed any false statement or misrepresentation with HUD in connection with the mortgage insurance or loan.

(2) CA Determination of Default.

Upon a determination by the CA that a default has occurred, the CA shall notify the Owner and the lender, with a copy to HUD where the CA is a FMA, of

- (i) The nature of the default,
- (ii) The actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner and/or the lender to cure the default), and
- (iii) The time within which the Owner and/or the lender shall respond with a showing that all the required actions have been taken.

If the Owner and/or lender fail to respond or take action to the satisfaction of the CA (and HUD where the CA is a FMA), the CA shall have the right to take corrective action to achieve compliance, in accordance with paragraph (b)(3) or to terminate this Contract with HUD approval, in whole or in part, or to take other corrective action to achieve compliance in its discretion, or as directed by HUD (where the CA is a FMA).

(3) Corrective Actions.

Pursuant to paragraph (b)(2) of this section the CA, in its discretion or as directed by HUD (where the CA is a FMA), may take the following corrective actions either directly or in conjunction with or acting through a FMA:

- (i) Take possession of the project, bring any action necessary to enforce any rights of the Owner growing out of the project operation, and operate the project in accordance with the terms of this Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with this Contract. If the CA takes possession, housing assistance payments shall continue in accordance with the Contract.
- (ii) Collect all rents and charges in connection with the operation of the project and use these funds to pay the necessary expenses of preserving the property and operating the project and to pay the Owner's obligations under the note and mortgage or other loan documents.
- (iii) Apply to any court, State or Federal, for specific performance of this Contract, for an injunction against any violation of the Contract, for the appointment of a receiver to take over and operate the project in accordance with the Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to the FMA and/or HUD arising from a default under any of the terms of this Contract could be irreparable and the amount of damage would be difficult to ascertain.

- (iv) Reduce or suspend housing assistance payments.
- (v) Recover any overpayments.
- (4) HUD Rights.

(For Private-Owner/PHA projects where the PHA is the lender.)

- (i) Notwithstanding any other provisions of this Contract, in the event HUD determines that the Owner is in default of its obligations under the Contract, HUD shall have the right, after notice to the Owner, the trustee, if any, and the PHA giving them a reasonable opportunity to take corrective action, to proceed in accordance with paragraph (b) (3).
- (ii) In the event HUD takes any action under this section, the Owner and the PHA hereby expressly agree to recognize the rights of HUD to the same extent as if the action were taken by the PHA. HUD shall not have the right to terminate the Contract except by proceeding in accordance with paragraphs (b) (1), (2), and (3) of this section and with the ACC.
- (c) Remedies Not Exclusive and Non-Waiver of Remedies. The availability of any remedy under this Contract or the ACC, where applicable, shall not preclude the exercise of any other remedy under this Contract or the ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.22 RELATIONSHIP OF PARENT ENTITY PHA AS OWNER TO AGENCY OR INSTRUMENTALITY PHA UNDER PART III.

The Parent Entity PHA agrees to perform the functions with regard to the Agency or Instrumentality PHA required by the HUD regulations pursuant to which the relationship between the two PHAs was established and to which HUD approved the Agency or Instrumentality PHA.

CERTIFICATION OF DISCLOSURE

TO: FHA Commissioner

RE: Project Name :
Project Number :
Project Location:

- ☐ 1. I will not use any other government assistance in the acquisition, rehabilitation or operation of this project other than the Section 8 assistance being provided by HUD. (Other government assistance includes but is not necessarily limited to, any loan, grant, guarantee, insurance, payment, rebate subsidy, credit, tax benefit, or any other form of direct or indirect assistance).

If during the term that HUD assistance is being provided (or is expected to be provided under the provisions of an Agreement to Enter into a (Section 8) Housing Assistance Payments Contract (AHAP)), I apply for, and receive other government assistance, I will revise this Certification of Disclosure and submit to HUD the information required in section 2 below within 30 days of the expected or actual receipt of other government assistance.

- ☐ 2. The project will receive or is expected to receive other government assistance that is identified on the Sources and Uses Statement, which I have attached. The Sources and Uses Statement describes the source, use and total amount of each form of other government assistance that is expected to be used in the project at this time.

Within 30 days of any changes in circumstances occurring at any time before or during the term of the Section 8 Contract that affects the accuracy of this Certification of Disclosure, I will submit to HUD a revision to the Certification reflecting such changes.

I certify that the information supplied herein is true and correct to the best of my knowledge.

WARNING: It is a crime to knowingly make false statements to a Federal agency. I understand that penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S. code, Sections 1001, 1010, and 1012, which penalties may be not more than \$10,000 or five years imprisonment, or both, per offense.

Signature

Date

Name

Title

Project Name: _____

Project No.: _____

AMENDMENT TO

HOUSING ASSISTANCE PAYMENTS CONTRACT (HUD 52522C&D 8/80)

The Housing Assistance Payments Contract, dated _____, between the
U.S. Department of Housing and Urban Development and _____

is amended as follows:

1. Paragraph 1.4(b)(1) is amended to read:

(b)(1) 2.7(f) - Adjustment of Contract Rents Based on
Cost Certification: Applicability: Not
Applicable.

Applic. Not Applic.

----- X

2. Paragraph 2.7(f) is DELETED.

3. Insert New Paragraph 2.7(j) - Adjustment Based on Other Governmental Assistance.

2.7(j) - Adjustment Based on Other Governmental Assistance.

1. Disclosure. Purchaser agrees to disclose (a) any Federal, State or local governmental assistance, other than the Section 8 Assistance provided under the contract(s) described in paragraph C.1. above, that will receive or reasonably expects to receive prior to or during the term of the Section 8 HAP Contract; and (b) in cases where the purchaser will receive or reasonably expects to receive such other assistance, the expected sources and uses of all funds that are to be made available to the Project. Such other assistance includes any loan, grant guarantee, insurance, payment, rebate, subsidy, credit, tax benefit or other form of direct or indirect governmental assistance. In order to comply with this requirement, the Purchaser has completed and executed the Certification of Disclosure form attached hereto. The Secretary will take the information in the Certification of Disclosure into account in his final computation of the amount of Section 8 assistance that will be provided for the project.
2. Changed Circumstances. Within 30 days of any changes in circumstances occurring at any time before or during the term of the Section 8 HAP contract that affect the accuracy of the Certification of Disclosure, the Purchaser shall submit to the Secretary a revision of such Certification. The Secretary shall reduce the amount of Section 8 assistance provided for the Project to compensate in whole or in part, as the Secretary deems appropriate, for any increases in other assistance.

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
TO RUN WITH CERTAIN LAND

This Regulatory Agreement and Declaration of Restrictive Covenants to Run with Certain Land (hereinafter "Agreement") is made by JACKSON TERRACE APARTMENTS, a California Limited Partnership, (hereinafter "Covenantor") and THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (hereinafter "HUD") for the benefit of the Covenantor, HUD and the present and future tenants.

WITNESSETH:

WHEREAS, Covenantor is the owner of certain lands located in Indio, California, and the certain multifamily apartment complex located thereon, commonly known as the Jackson Terrace Apartments (hereinafter "Jackson Terrace") a legal description of which is included in Exhibit 1 attached hereto and incorporated herein by reference as though fully set forth; and

WHEREAS, on March 13, 1981 Herbert and Roselle Sommer executed a Contract of Purchase and Sale for the purchase of Jackson Terrace from HUD, which contract included a document identified as Appendix A which provided that, inter alia, the owners of Jackson Terrace would agree to a contract, if offered, for more rental assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f) as amended, that the tenants of Jackson Terrace could not be evicted except for good cause and that rental assistance in the form of Section 8 Certificates or Vouchers be accepted for any unit not subject to a Project-based Section 8 HAP contract; and

WHEREAS, Herbert and Roselle Sommer and Louis and Isobel Leventhal purchased Jackson Terrace from HUD in June, 1981, and agreed to accept a project-based Housing Assistance Payments Contract under Section 8 of the United States Housing Act of 1937 ("Section 8") (42 U.S.C. § 1437f), hereinafter "Former HAP Contract" for 36 units (40 percent of the project) and HUD held a purchase money mortgage on Jackson Terrace pursuant to that transaction; and

WHEREAS, Herbert and Roselle Sommer and Louis and Isobel Leventhal subsequently transferred title to Jackson Terrace to a limited partnership (hereinafter "Partnership") of which Herbert and Roselle Sommer were the general partners; and

WHEREAS, on November 23, 1990 Herbert Sommer and Roselle Sommer duly assigned their interests as general partners to the Sommer Family Trust of which Roselle Sommer is the sole surviving trustee and;

WHEREAS, Jackson Terrace was, until September 30, 1983, the subject of a regulatory agreement (hereinafter "Former Agreement")

with HUD which was not to expire until June 3, 2021, which agreement provided that, inter alia, rent levels at Jackson Terrace would be set at levels acceptable to HUD and that the terms of the former HAP Contract must be complied with; and

WHEREAS Paragraph 21 of the Contract of Purchase and Sale incorporated Appendix A by reference and,

WHEREAS Appendix A provided that its terms were to be included in the Former Agreement,

WHEREAS, the purpose of the Former Agreement and Appendix A of the Purchase and Sale Contract was to benefit the lands of Covenantors and to effectuate the public purposes of HUD, which are to provide families with decent, safe and sanitary housing pursuant to Section 8 of the United States Housing Act of 1937, as amended; to preserve and dispose of property in a manner that makes it available to and affordable by low- and moderate-income families, pursuant to the Property Disposition Statute, 12 U.S.C. § 1701z-11, as amended; as well as to benefit the leasehold interests of the present and future tenants of Jackson Terrace under the Former Agreement; and

WHEREAS, the Former Agreement was cancelled when Herbert and Roselle Sommer and Louis and Isobel Leventhal purchased the mortgage on the property from HUD in September, 1983; and

WHEREAS, Covenantor entered into a loan agreement with Fidelity Federal Savings and Loan Association (hereinafter "Fidelity") in September, 1983, and gave Fidelity a deed of trust on Jackson Terrace; and subsequently used the proceeds of its loan with Fidelity in order to pay for the purchase of the mortgage from HUD; and

WHEREAS, the present and future tenants of the Jackson Terrace Apartments filed suit as a class against Covenantor and HUD to protect their rights under the Former Agreement and Appendix A; said lawsuit being entitled Walker v. Kemp, Docket No. CV-84-4370-RSWL (Bx) in the United States District Court for the Central District of California; and

WHEREAS, the present and future tenants were certified on September 25, 1986, as a class of affected plaintiffs with standing to bring the above action; and

WHEREAS, plaintiffs alleged that the aforesaid Appendix A to the Purchase and Sale Contract was inadvertently omitted from the Former Agreement by the parties during the closing on Jackson Terrace that took place on June 3, 1981 and that, but for the inadvertant omission, the Former Agreement would have included the provisions of Appendix A; and

WHEREAS, plaintiffs alleged that the premature cancellation of the Former Agreement was contrary to applicable federal law and regulations governing the Former Agreement; and

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WHEREAS, plaintiffs alleged that the tenants who resided at Jackson Terrace after the cancellation of the Former Agreement lost benefits which were provided by the Former Agreement including HUD rent control and other provisions of the Former Agreement, and sought the reformation of the Former Agreement to include the provisions of Appendix A; and

WHEREAS, the Covenantor and HUD and the present and future tenants desire a settlement of the aforementioned suit in lieu of further litigation; and

WHEREAS, Covenantor and HUD wish to enter into this Agreement for the benefit of the Covenantor's land and to effectuate the public purposes of HUD, and for the protection of current and future tenants at Jackson Terrace; and

WHEREAS, whether title to Jackson Terrace was legally vested in the Partnership was an issue in Walker v. Kemp, and Covenantor, HUD and the present and future tenants desire to quiet title in the Partnership; and

WHEREAS, the Covenantor and HUD desire that the Agreement include many provisions of the Former Agreement and Appendix A, including those requiring the acceptance of more project-based Section 8 if offered, establishing good cause eviction rights, and approving rent levels at Jackson Terrace; and

WHEREAS, the Covenantor and HUD will enter into a new project-based Section 8 HAP Contract for all ninety (90) units (one hundred percent (100%) of the project), said contract to have a term of ten (10) years; and

WHEREAS, Covenantor and HUD desire that this Agreement be binding upon Covenantor and all subsequent owners of Jackson Terrace, until June 3, 2021, consistent with the provisions of the Former Agreement and Appendix A which would have been in effect but for the premature cancellation of the Former Agreement and inadvertent omission of Appendix A to the Purchase and Sale contract at closing;

NOW, THEREFORE, Covenantor does hereby make the following declarations of the limitations, restrictions and uses to which Covenantor's land may be put pursuant to this Agreement hereby specifying that such declarations shall constitute covenants to run with all of said lands as prescribed by law, and shall be binding on all parties or persons claiming under them and for the benefit of and as limitations upon, all future owners of said land. This declaration of restrictions is designed for the purpose of effectuating this Agreement and to protect the rights of HUD and the present and future tenants of Jackson Terrace, and but for this declaration of restrictions the parties to the aforementioned suit would not enter into this Agreement and the HAP contract. Nothing stated in this Agreement shall be deemed to limit the generality of the foregoing.

Section 1. Use

(a) Jackson Terrace shall remain a multifamily rental project until at least June 3, 2021, and no other use shall be substituted for that use until that date.

(b) No part of the Covenantor's land and no building or structure thereon shall be used in any manner or for any purpose except in accordance with this Agreement until June 3, 2021.

(c) The Jackson Terrace Apts. agrees that on or prior to the termination of the Section 8 HAP contract entered into pursuant to this agreement and any extensions thereof, it will accept any offer by HUD to renew the Section 8 HAP contract. The owners' obligation to renew any Section 8 HAP contract offered by the Federal Defendant shall be binding until June 3, 2021 at which time any such contract shall terminate for all purposes and this agreement shall be deemed void and terminated.

(d) The Covenantor further agrees to accept an offer by HUD to provide any other rental assistance, in lieu of a Section 8 HAP contract, designed to provide families with affordable, decent, safe and sanitary housing pursuant to Section 8 or any other successor legislation.

(e) Covenantor is not obligated by this Agreement to accept any extension of the Section 8 HAP contract that would extend the covenants and restrictions contained in this Agreement past the expiration date of June 3, 2021.

(f) The Covenantor agrees that the eviction regulations set forth at 24 C.F.R. § 247, or any comparable successor regulations, shall be applicable to all tenants and binding on the operations and management of Jackson Terrace.

Section 2. Tenant Selection

(a) In accordance with the terms of the new project-based Section 8 HAP Contract, Covenantor will offer to lease a unit in Jackson Terrace only to an applicant or tenant who receives, or is eligible for, rental assistance in accordance with Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, or any other substantially identical rental assistance program enacted pursuant to any successor legislation.

(b) Covenantor agrees not to refuse unreasonably to lease a vacant dwelling unit, evict any person or otherwise discriminate in the terms of tenancy against prospective lessees or tenants who are holders of or eligible to hold Section 8 Certificates or Vouchers pursuant to Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. Sec. 1437(f)) as amended or any similar rental assistance program enacted pursuant to any successor legislation.

Section 3. Management

(a) Covenantor shall make dwelling accommodations and services of Jackson Terrace available at monthly rental charges not exceeding those established in accordance with a rental schedule approved in writing by HUD. The project shall remain a multifamily rental project. The units shall not be rented for a period of less than thirty (30) days.

(b) Covenantor shall not require, without the prior written approval of HUD, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the pre-payment of the first month's rent, plus a security deposit in an amount not in excess of one month's rent (the gross family contribution in Section 8 units) to guarantee the performance of the covenants in the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account.

(c) Covenantor agrees that for the time that the Section 8 HAP contract is in effect, the maximum rent for each Section 8 unit shall be as stated in the HAP contract and adjustments in such rents shall be made in accordance with the HAP contract and by application of the Annual Adjustment Factors (AAF's) provided for in 24 C.F.R. Sec. 886.312 and the AAF's published annually in the Federal Register.

During any period of time covered by this Agreement for units not subject to the Section 8 HAP contract, HUD will, at any time, entertain a written request for a rent increase supported by substantiating evidence and within a reasonable time shall either approve a rent schedule that is necessary to compensate for any net increase occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance costs over which Covenantor have no reasonable control, or deny the requested increase stating the reasons therefore.

(d) Covenantor agrees that any management contract entered into by it involving the project shall contain a provision that, in the event of default under this Agreement, it shall be subject to termination without penalty upon written request by HUD. Upon such request, owners shall immediately arrange to terminate the contract within a period of not more than (30) days and shall make arrangements satisfactory to HUD for continuing proper management of Jackson Terrace.

(e) Covenantor agrees that payment for services, supplies, or materials used at Jackson Terrace shall not exceed the amount ordinarily paid for such services, supplies or materials furnished.

(f) The property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents and other papers relating thereto shall be maintained in reasonable condition

for proper audit and are subject to examination and inspection at any reasonable time by HUD. Covenantor agrees to keep copies of all written contracts or other instruments which affect the property, all or any of which may be subject to inspection and examination by HUD or duly authorized agents of HUD.

(g) The books and accounts of the operations of Jackson Terrace shall be kept in accordance with HUD requirements.

(h) Within sixty (60) days following the end of each fiscal year, HUD shall be furnished with a complete annual financial report based upon an examination of the books and records of the property prepared in accordance with HUD requirements, certified to by an officer or responsible member of Jackson Terrace Apts. and, when required by HUD, prepared by a Certified Public Accountant or other person acceptable to HUD.

(i) At the request of HUD, Covenantor shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contract, operation and condition of the property.

(j) Covenantor agrees to maintain the premises and accommodations of Jackson Terrace, and the grounds and equipment appurtenant thereto, in good repair and condition.

Section 4. Restrictions Against Discrimination

(a) Covenantor further agrees that, for any unit not subject to the HAP Contract, it will not refuse to lease a vacant dwelling unit, evict any person, or discriminate in the terms of tenancy because such person is the holder of, or eligible to hold, a Voucher or Certificate of Family Participation under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or under the terms of any similar rental assistance program enacted pursuant to any successor legislation.

(b) Covenantor further agrees to comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, religion or creed, sex, handicap, familial status or national origin, including Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968 (Pub. L. No. 90-284, 82 Stat. 73), Executive Order 11063, and all requirements imposed by or pursuant to HUD regulations implementing these authorities (including 24 C.F.R. Parts 1.100 and 110, and Subparts I and M of 200).

Section 5. Liens

(a) Fidelity is hereby acknowledged to have a lien on Covenantor's land herein described in Exhibit 1, and senior to all other liens and encumbrances created either by this instrument or subsequent to the recording of this instrument.

(b) In the event that Covenantor defaults in its loan with Fidelity, or any other loan secured by the property described in Exhibit 1, this shall be a default under this Agreement as well as a default under the HAP contract. In the event of said default, HUD shall have the right under this Agreement to take any of the corrective actions provided in this Agreement or in the HAP contract, except for the right to take possession of the property as set forth in the HAP Contract. For purposes of this subsection, the term "default" shall mean a monetary default.

Section 6. Incorporation in Deeds and Collateral Agreements

All of the covenants and other restrictions in this Agreement shall be contained or expressly incorporated by reference in every title document affecting any part of Covenantor's land whether such title document shall be executed by Covenantor or any subsequent owner of any interest in said land. However, the failure to include or incorporate by reference said covenants and restrictions in any document shall not prevent the same covenants and restrictions from running with the land.

Section 7. Enforcement and Effect

(a) The Covenantor or HUD shall have the right to bring an action in any court of competent jurisdiction to prevent, or abate, any breach of, or require adherence to, any of the covenants or other restrictions of this Agreement.

(b) Upon a violation of any of the above provisions of this Agreement, written notice thereof may be given by the non-breaching party to the breaching party via certified mail, postage prepaid, return receipt requested, or express delivery service with a delivery receipt and the notice will be effective on delivery or on the date delivery is refused, as shown on the delivery receipt. The notice shall be addressed to the breaching party at the address stated herein or such other address as may subsequently be designated as the party's address pursuant to this agreement.

Notice to the covenantors shall be sent to:

Jackson Terrace Apts.
c/o Sommer Realty Co.
4050 Katella Avenue
Los Alamitos, California 90720

Notice to HUD shall be sent to:

U.S. Department of Housing
and Urban Development
1615 West Olympic Boulevard
Los Angeles, California 90015

(c) If such violation is not corrected within thirty days after the date such notice is effective or within such further time

as is reasonably necessary to correct the violation, the non-breaching party may, without further notice, declare a default under this Agreement effective on the date of such declaration of default.

(d) In the event that a default is declared by HUD against the covenantor, HUD may, in its discretion, take any or all of the following actions:

(i) Collect all rents and charges in connection with the operation of the project and use such collections to pay any outstanding note and mortgage and the necessary expenses of preserving the property and operating the project;

(ii) Apply to any court for specific performance of this Agreement, for an injunction against violation of this Agreement or the appointment of a receiver to take over and operate Jackson Terrace in accordance with the terms of this Agreement, or for such relief as may be appropriate.

(e) The provisions of this Agreement shall run with and bind Covenantor's land and each part thereof, and shall inure to the benefit of, and be enforceable by, HUD and Covenantor and their respective heirs, legal representatives, successors and assigns, and failure by any of the above-mentioned parties to enforce any covenant or other restriction in this Agreement shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one accruing prior or subsequent thereto.

(f) In the event that HUD shall be abolished or its designation changed by, or pursuant to law, its powers, rights and functions under this Agreement may be transferred by, or pursuant to law, to any other governmental officer or agency, provided that in the event of such abolition of HUD without specific provision of law for such transfer of powers, duties, rights and functions, then the Government of the United States shall succeed to same.

(g) Covenantor shall not enter into any other agreement with provisions contradictory to, or in opposition to, the provisions in this Agreement, and that in any event the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth, and supersede any other requirements in conflict herewith.

(h) The covenants and restrictions herein shall continue with full force and effect against each part of Covenantor's land and the owners thereof until June 3, 2021. In no event shall this Agreement be binding on Covenantor after June 3, 2021, unless mutually agreed upon in writing by the parties to this agreement.

(i) The invalidation of any one of the covenants or restrictions herein contained by judgment or order of court shall not in any manner affect any of the other covenants, restrictions or provisions hereof which other covenants, restrictions or provisions shall remain in full force and effect.

Section 8. Rules of Construction

(a) As used within this Agreement, "Covenantor" shall include the heirs, successors and assigns of the present owner of Jackson Terrace, including any persons holding less than a fee simple interest in Jackson Terrace but not including Fidelity.

(b) As used within this Agreement, "HUD" shall include the Secretary of the Department of Housing and Urban Development and/or any duly authorized representative of the Secretary, as well as the successors and assigns of HUD and the Secretary.

Section 9. Recording

Covenantor and HUD agree to record this Agreement, the HAP contract and the Stipulation of Settlement in the land records of Riverside County, State of California, no later than forty-five days after final approval of the Stipulation of Settlement. This Agreement does not preclude any other party from recording the aforesaid documents or applying to the Court for an order requiring Covenantor or HUD to comply with this provision.

Dated at Los Angeles, California, this 28th day of June 1991.

Jackson Terrace Apts., A
California Limited Partnership

By, The Sommer Family Trust
General Partner

By, Roselle L. Sommer
Roselle L. Sommer
Trustee of the Sommer
Family Trust

Dated at San Francisco, California this 10th day of
September, 1991.

Robert J. DeMonte
Robert J. DeMonte
Regional Administrator
Regional Housing Commissioner
U.S. Dept. of Housing and Urban
Development-Region IX
San Francisco, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.

On this 28th day of JUNE A.D. 1991, before me, a Notary Public in and for said County and State, personally appeared ROSELLE L. SOMMER, personally known to me or proved to me on the basis of satisfactory evidence, to be the person that executed this instrument, on behalf of the Jackson Terrace Apts., A California limited partnership, and acknowledged to me that the partnership executed it.

WITNESS my hand and official seal.

(SEAL)

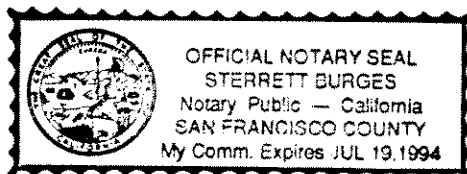


Kathleen Butzbach
Notary Public

STATE OF CALIFORNIA)
COUNTY OF San Francisco)

On this 10th day of September, A.D. 1991, before me, a Notary Public in and for the State of California, personally appeared Robert J. DeMonte, personally known to me or proved to me on the basis of satisfactory evidence to be the duly appointed Regional Administrator/Regional Housing Commissioner, of the Department of Housing and Urban Development-Region IX, and the person whose name is subscribed to the within instrument and acknowledged that he executed the same by virtue of the authority vested in him by law for and on behalf of Jack Kemp, Secretary of Housing and Urban Development of Washington, D.C.

WITNESS my hand and official seal.



Sterrett Burges
Notary Public

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PAGE 81
Project No. 122-55089
Kason Terrace
Indio, California

SCHEDULE "A"

Situated in the City of Indio, County of Riverside, State of California,
and more particularly described as follows:

That portion of the Northeast quarter of Section 26, Township 5 South, Range 7 East, San Bernardino Base and Meridian, according to the Official Plat thereof, described as follows:

Beginning at the Northeast corner of the South half of the Northeast quarter of the Northeast quarter of Section 26; thence South on the East line of said Section, 331.7 feet to the center line of a 10 inch pipe line referred to in Deed recorded April 6, 1923 in Book 580 Page 257 of Deeds; thence West on the center line of said pipe line 653.57 feet to a point; thence North parallel with the East line of said Section 332. feet to the North line of said South half of the Northeast quarter of the Northeast quarter and thence East 664.05 feet to the point of beginning;

EXCEPTING the Easterly 40 feet as deduced to the County of Riverside, March 3, 1948 in Book 899 Page 63 of Official Records;

ALSO EXCEPTING that portion conveyed to "Continental V", a California corporation by Deed recorded November 21, 1967 as Instrument No. 108267, described as:

"The Easterly 290.4 feet of the Southerly 75 feet of the following described property

The North half of the Southeast quarter of the Northeast quarter of the Northeast quarter of Section 26, Township 5 South, Range 7 East, San Bernardino Base and Meridian; excepting the East 40 feet thereof."

Also known as:

Parcel 1 of Parcel Map filed in Book 1, page 23 of Parcel Map, Records of Riverside County, California.

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1 NOTICE TO ALL CURRENT AND FORMER TENANTS
2 AT JACKSON TERRACE OF PROPOSED SETTLEMENT

3 1. A proposed partial Settlement Agreement has been reached
4 in Walker v. Kemp. No. CIV 84-4370 RSWL (C.D.Cal. 1991). In
5 Walker, the tenants sued the Department of Housing and Urban
6 Development (HUD), the owners of Jackson Terrace and other
7 parties. The tenants challenged the fact that when Jackson Terrace
8 was sold in 1981, HUD provided a Section 8 subsidy for only 36 of
9 the 90 apartments. Plaintiffs claimed that because the subsidy was
10 limited to 36 apartments, many families who would otherwise be
11 eligible for Section 8 could not get on the subsidy program. The
12 plaintiffs wanted 100 % Section 8 at Jackson Terrace, repayment
13 for those tenants who were eligible for Section 8 but who could
14 not get it because there was not enough, and other relief.

15 The plaintiffs also challenged HUD's sale of the mortgage to
16 the owners in 1983 as being in violation of various laws. The sale
17 led to the cancellation of a Regulatory Agreement between the
18 owners and HUD that gave important protections to the tenants. The
19 plaintiffs asked the Court to restore the Regulatory Agreement.
20 The issues involving the utility allowance for the Section 8
21 tenants at Jackson Terrace have already been settled.

22 2. The Settlement Agreement proposes to settle all remaining
23 claims that the tenants have against HUD, the Jackson Terrace
24 Apts., and the other parties. It provides:

25 (a) The amount of Section 8 at Jackson Terrace shall increase
26 from 36 to 90 units. A new Section 8 contract between the owners
27 and HUD will be signed within 30 days after the Court grants final
28 approval of the settlement. The new Section 8 contract for 100 %

1 of the units will be in effect for ten (10) years. On or before
2 the ten years are up, if HUD offers to renew the Section 8
3 contract, the owners must accept it.

4 (b) HUD will pay California Rural Legal Assistance (CRLA)
5 \$23,000 for the benefit of certain tenants. This money is for
6 Jackson Terrace tenants who would have been eligible for Section 8
7 in the past but who could not get it because there was not enough
8 to go around. CRLA will be responsible for distributing this
9 money.

10 In addition, HUD is making twenty (20) Section 8
11 certificates available for use by tenants who no longer live at
12 Jackson Terrace, who are eligible for Section 8, and who could not
13 get a subsidy while they lived there. These Section 8 certificates
14 can be used for a ten year period or until the family is no longer
15 eligible, whichever first occurs. The certificates will be
16 available from the Riverside County Housing Authority.

17 (c) HUD and the owners will enter into a new Regulatory
18 Agreement and Declaration of Restrictive Covenants which contains
19 many provisions for the protection of the tenants. The new
20 Regulatory Agreement will remain in effect until June 3, 2021.
21 Some of the provisions are that tenants cannot be evicted without
22 good cause; the owners must renew the Section 8 contract at the
23 end of ten years if HUD offers to renew it; the owners must get
24 HUD approval of any rent increases, even if the Section 8 contract
25 is no longer in effect; Jackson Terrace will remain a multifamily
26 housing project until June 3, 2021; and the owners will not
27 discriminate against tenants because they may hold a Section 8
28 certificate.

1 3. HUD has agreed to pay the plaintiffs' attorneys an
2 unspecified amount of money representing their reasonable costs,
3 expenses and attorneys' fees.

4 4. The terms of settlement were explained by attorneys from
5 CRLA and the National Housing Law Project at a meeting of tenants
6 held on February 27, 1991. The terms of the settlement are more
7 fully described in the proposed Settlement Agreement. You may
8 review the proposed Settlement Agreement at the CRLA office in
9 Coachella. Copies of the proposed Settlement Agreement are also on
10 file with the Clerk of the United States District Court for the
11 Central District of California, 312 North Spring Street, Los
12 Angeles, California 90012.

13 5. If you object to the terms of this proposed Settlement
14 Agreement, you should follow the procedures set out in paragraphs
15 6 and 7.

16 Fair Hearing and Procedure for Objection

17 6. The Court has not finally approved the proposed
18 Settlement Agreement. The Court will review the proposed
19 Settlement Agreement and hold a hearing on _____, 1991,
20 at ____ a.m. in Courtroom 21 located in the United States
21 Courthouse at 312 North Spring Street, Los Angeles, California.
22 The purpose of the hearing will be for the Court to determine
23 whether the proposed Settlement Agreement is fair, reasonable and
24 adequate. At the hearing, any member of the class or subclass may
25 appear and state why the proposed Settlement Agreement should not
26 be approved and may present relevant evidence. If you want to
27 appear at the hearing, you must, on or before _____,
28

1 1991, submit written objections to the proposed Settlement

2 Agreement to:

3 Arturo Rodriguez
4 California Rural Legal Assistance
5 Migrant Farmworker Project
6 1030 Sixth Street No. 6
7 P.O. Box 35
8 Coachella, California 92236-0035

Counsel for Plaintiffs

and

9 Stan Blumenfeld
10 Assistant U.S. Attorney
11 U.S. Courthouse
12 312 North Spring Street
13 Los Angeles, California 90012

Counsel for Defendant Jack Kemp, Secretary
of United States Department of Housing and
Urban Development

14 You must write the case name and number on any objection you
15 wish to file. The case name and number is Walker v. Kemp, No. CV
16 84-4370 RSWL (Bx).

17 7. If you have any questions about the proposed Settlement
18 Agreement, you may contact Arturo Rodriguez, California Rural
19 Legal Assistance, Migrant Farmworker Project, 1030-Sixth Street,
20 No. 6/P.O.Box 35, Coachella, California 92236-0035. Telephone: 1-
21 800-322-2752, Counsel for Plaintiffs. If you call, please state
22 that you are calling with respect to Jackson Terrace.

23

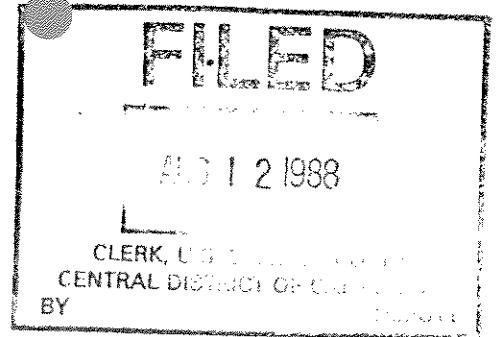
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH
WALKER, MARIA VALLADARES, on
behalf of themselves and others
similarly situated,

Plaintiffs,

v.

SAMUEL PIERCE, Secretary of the
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT; AND HERBERT
AND ROSSELLE SOMMER AND LOUIS
AND ISABEL LEVENTHAL; JACKSON
TERRACE APARTMENTS, A California
Limited Partnership,

Defendants.

No. CV 84-4370-RSWL

MEMORANDUM AND ORDER
GRANTING PLAINTIFFS' MOTION
TO AMEND COMPLAINT, DENYING
FEDERAL AND NON-FEDERAL
DEFENDANTS' MOTIONS TO
DISMISS

FACTUAL BACKGROUND

This is a class action filed on behalf of five individuals or named plaintiffs all of whom are current residents of the Jackson Terrace Apartments, a 90-unit multifamily project located in Indio, California, and formerly subsidized under Section 221(d)(3) of the National Housing Act. Two of the named plaintiffs, Richard and Elizabeth Walker, are residents of the project who received the benefits of Section 8 rental subsidies. There are currently no named plaintiffs representing residents not currently receiving Section 8 rental subsidies who claim they are eligible for such subsidies, but a

1 motion to add such a plaintiff is pending before the court.

2 Plaintiffs allege that various statutory, regulatory,
3 contractual and constitutional rights were violated when the
4 U.S. Department of Housing and Urban Development ("HUD" or
5 "federal defendant") sold the Jackson Terrace Apartments to the
6 present owners, the Sommers and Leventhals ("Sommers and
7 Levanthals" or "non-federal defendants"),^{1/} with 36 units of
8 Section 8 rental assistance and then subsequently sold the
9 mortgage on the property to the owners. Specifically,
10 plaintiffs allege that they were denied access to relevant
11 documentation, an opportunity to comment on such documentation,
12 and adequate notice of the level of rent, the amount of utility
13 allowance and the proposed utility conversion ultimately
14 approved by HUD. Plaintiffs further allege that their statutory
15 rights were violated when they were not provided notice and an
16 opportunity to comment upon the sale of the mortgage on the
17 project to non-federal defendants, the Sommers and Leventhals,
18 which sale had the effect of canceling the then existing
19 Regulatory Agreement.

20 Plaintiffs ask the court to declare the sale of
21 Jackson Terrace invalid and order additional Section 8 subsidies
22 for 54 units at Jackson Terrace. In the alternative, plaintiffs
23

24 ^{1/} There remains some question as to whether the Sommers and
25 Leventhals still own the property. They contend that the
26 property is owned by the Jackson Terrace Ltd. Partnership.
27
28

1 request that the court order that the sale of Jackson Terrace be
2 rescinded and the property returned to HUD's inventory. Lastly,
3 plaintiffs request that the court declare the subsequent sale of
4 the mortgage to non-federal defendants invalid, rescind the sale
5 and reinstate the 1981 Regulatory Agreement.

6 In the present motions, plaintiffs move for leave to
7 amend their complaint, and in separate motions non-federal
8 defendants move for dismissal on the grounds that plaintiffs
9 have failed to join an indispensable party, and federal
10 defendants move to dismiss plaintiffs' complaint on the ground
11 that plaintiffs have failed to establish the requisite waiver of
12 sovereign immunity.

13 DISCUSSION

14 1. Plaintiffs' Motion To Amend Complaint

15 On October 2, 1987, Plaintiffs' filed a motion to
16 amend their complaint in four ways: (1) to add a claim for
17 restitution; (2) to add Jackson Terrace Ltd. Partnership as a
18 defendant; (3) to add Maria Valladares as a subclass
19 representative; (4) to add certain factual allegations.

20 Although the determination as to whether leave to
21 amend should be granted lies within the sound discretion of the
22 court, Komie v. Buehler Corp., 449 F.2d 644 (9th Cir. 1971),
23 Federal Rule of Civil Procedure 15(a) indicates that after a
24 responsive pleading has been filed leave to amend "shall be
25 freely given when justice so requires." Moreover,

26 [i]n the absence of any apparent or
27 declared reason -- such as undue delay, bad
28 faith or dilatory motive on the part of the
movant, repeated failure to cure
deficiencies by amendments previously

1 allowed, undue prejudice to the opposing
2 party by virtue of allowance of the
 amendment, etc. -- the leave sought should,
 as the rules require, be "freely given."

3 Foman v. Davis, 371 U.S. 178, 182 (1962). The purpose of
4 pleadings is to facilitate a decision on the merits, Hurn v.
5 Retirement Trust Fund of Plumbing, Etc., 648 F.2d 1252 (9th Cir.
6 1981), and a motion for leave to amend should be evaluated in
7 light of whether the amendment furthers that end. Below, each
8 of plaintiffs' proposed amendments are taken in turn.

9 (a) Addition of Claim For Restitution

10 Plaintiffs first seek to add restitution to their
11 prayer for relief. HUD insists that a claim for restitution
12 would be subject to dismissal under the doctrine of sovereign
13 immunity. For reasons set forth more fully below, the court
14 rejects that conclusion. Defendant's second argument, although
15 variously stated, can be distilled to the contention that an
16 amendment at this time will cause undue delay and otherwise
17 prejudice defendant.

18 Although plaintiffs advance no reason for the delay in
19 bringing this motion to amend, delay alone generally is not a
20 sufficient ground for denying leave to amend. The Ninth Circuit
21 has held that where no prejudice is shown by the opposing party
22 and the amended complaint is obviously not frivolous, or made as
23 a dilatory maneuver in bad faith, it is an abuse of discretion
24 to deny such a motion. Hurn, supra at 1254, quoting Howey v.
25 United States, 481 F.2d 1187, 1190-1 (9th Cir. 1973). The court
26 is aware that, on occasion, delay has been a sufficient reason
27 to deny leave to amend. However, such cases generally have
28

1 involved amendments which would lead to substantial additional
2 discovery or add entirely new legal theories. See e.g. Jordan
3 v. County Board of Los Angeles, 669 F.2d 1311, 1324 (9th Cir.
4 1982) (amendment to add a new cause of action one year and nine
5 months after the complaint filed denied where substantial new
6 issues of state law raised and substantial additional discovery
7 required).

8 HUD has failed to show that "undue prejudice" would
9 result. Plaintiffs' amendment would merely add to the prayer
10 for relief and would add no substantial new legal issues. It
11 may require minimal additional discovery, but no inordinate
12 delay will result. Therefore, the amendment to add restitution
13 to the prayer for relief will be granted.

14 (b) Addition of Jackson Terrace Ltd. As Defendant

15 Plaintiffs further request that they be allowed to add
16 as a named defendant the Jackson Terrace Ltd. Partnership, which
17 defendants Sommers and Leventhals claim is the true owner of the
18 property. Non-federal defendants argue that they are not now
19 and, during the pendency of this action, never have been the
20 owners of Jackson Terrace. They insist that plaintiffs have
21 been on constructive notice of the actual ownership of the
22 building since the onset of the case.

23 The court is not persuaded by defendants' averments.
24 On November 27, 1984, non-federal defendants answered the
25 complaint and therein admitted that they owned the disputed
26 property. Having no reason to believe to the contrary,
27 plaintiffs reasonably relied upon that admission. Additionally,
28 although the court has been provided with certain partnership

1 papers, the court has yet to see documentation reflecting the
2 alleged transfer of ownership in the property from non-federal
3 defendants to Jackson Terrace Ltd. Finally, allowing the
4 amendment would work no injustice or unfair advantage because
5 the non-federal defendants are the general partners of the
6 entity which they claim is the true owner of the property. They
7 were therefore on notice as to the pendency of this action.
8 Finding sufficient basis for plaintiffs belief that they had
9 sued the proper party, and no evidence of prejudice to
10 defendants, the motion to add Jackson Terrace Ltd. as a
11 defendant will be granted.

12 (c) Addition of Maria Valladares As A Plaintiff

13 The class in this suit is comprised of two subclasses:
14 tenants receiving section 8 subsidies, and those eligible for
15 section 8 subsidies but not receiving them. Plaintiffs claim
16 that the status of the subclass representatives has changed such
17 that one representatives no longer represents the class she was
18 originally chosen to represent. Therefore, plaintiffs seek to
19 add Maria Valladares as a new subclass representative.
20 Defendants contend only that they will be prejudiced by such an
21 amendment because they have not had an opportunity to conduct
22 discovery to determine whether she is a proper class
23 representative.

24 It is inevitable in complex and lengthy class action
25 litigation such as this that over time the circumstances of the
26 class representatives may change. In such cases, the proper
27 response is to permit the amendment and, if necessary, reopen
28 discovery for the limited purpose of discovering whether the

1 substituted class representative is proper. Finding no undue
2 prejudice to the defendants, the amendment will be permitted.

3 (d) Addition of Certain Factual Allegations

4 Plaintiffs also seek leave to add to its complaint
5 various facts and claims to conform to discovery, including:

- 6 • that the sale was made without required
7 notice to the tenants,
- 8 • that the disposition committee was
9 improperly constituted and failed to keep
10 required minutes,
- 11 • that the utility allowance was
12 unreasonable because no consideration was
13 given to the fact that some tenants used
14 air conditioners.

15 Having opposed only the third of these proposed
16 amendments, defendants may be deemed to have consented to the
17 remaining portions. See Central District of California, Local
18 Rule 9. As to the disputed allegation, defendants assert that
19 they will be prejudiced because they have not had an opportunity
20 to discover which tenants used air conditioners.

21 Defendants' concern is unfounded. The proposed
22 amendment raises an issue of law, and not fact, as to whether
23 HUD improperly excluded any consideration of air conditioners.
24 If the court concludes that such exclusion was improper, the
25 court would likely direct HUD to correctly calculate the
26 figures. In any event, it is unlikely that additional discovery
27 would ever be required on this issue. Finding no undue
28 prejudice to the defendants, the request to add additional
factual allegations will be granted.

2. Motion to Dismiss For Failure To Join
An Indispensable Party

1 In a motion filed February 23, 1987, non-federal
2 defendants urge the court to dismiss plaintiffs' complaint for
3 failure to join as parties Jackson Terrace Ltd., the alleged
4 true owner of the property, and Fidelity Savings and Loan
5 Association ("Fidelity"), the mortgage-holder. Because the
6 court has permitted plaintiffs to amend their complaint to add
7 Jackson Terrace Ltd. as a defendant, non-federal defendants'
8 motion is moot to the extent it deals with Jackson Terrace Ltd.
9 The court therefore considers the averments only as they relate
10 to Fidelity.

11 According to non-federal defendants Sommers and
12 Leventhals, they transferred their interest in Jackson Terrace
13 to the Jackson Terrace Ltd. Partnership. Partnership papers
14 have been recorded, as have deeds from the partnership members
15 conveying their interests to the partnership itself. However,
16 the record does not contain documentation reflecting the
17 transfer of interests from Sommers and Leventhals to the
18 partnership or its members. Plaintiffs alleged in their
19 original complaint that Sommers and Leventhals were the owners
20 of the property, and non-federal defendants admitted this fact
21 in their answer filed November 26, 1988. Apparently, it was not
22 until this motion that defendants alleged that Sommers and
23 Leventhals were not the true owners.

24 Federal Rule of Civil Procedure 12 establishes that
25 within 20 days a defendant must answer a complaint or file a
26 responsive pleading, which may include a motion for failure to
27 join a party under Rule 19. It is not clear from the plain
28

1 language of the rule whether failure to raise a joinder issue
2 prevents a party from later raising it. However, Rule 12(h)(2)
3 provides that the "defense of failure to join an indispensable
4 party under Rule 19 ... may be made in any pleading permitted or
5 ordered under Rule 7(a), or by motion for judgment on the
6 pleadings, or at the trial on the merits." Thus, while the
7 rules expressly preserve the right to raise the failure to join
8 an indispensable party, the rules are silent as to the
9 consequence of failing to raise the failure to join a party who
10 is not indispensable.

11 In determining the timeliness of defendants' present
12 motion, the court must first determine whether either party is
13 indispensable. Joinder under Rule 19 entails a two-step
14 inquiry. First, the court must determine whether the absent
15 party is a necessary party. This requires an examination of
16 whether: (1) in the person's absence complete relief cannot be
17 accorded to those already parties; (2) the person claims an
18 interest relating to the subject of the action and is so
19 situated that the disposition of the action in the persons
20 absence may (i) as a practical matter impair or impede the
21 person's ability to protect his interest or (ii) leave any of
22 the persons already parties to a substantial risk of incurring
23 double, multiple, or otherwise inconsistent obligations by
24 reason of the claimed interest. If the court concludes that the
25 party is necessary but cannot be joined, i.e. the party is not
26 subject to service or whose joinder would destroy the
27 jurisdiction of the court, the court must determine whether to
28 nevertheless proceed in the absence of the party. If the court

1 concludes that the party is indispensable the court may dismiss
2 the action.

3 Plaintiffs argue, and it is not disputed, that both
4 Jackson Terrace and Fidelity can be made parties. Both are
5 subject to service and neither would deprive the court of
6 jurisdiction over the case because jurisdiction is based upon
7 the presence of a federal question. Therefore, neither party
8 may be considered "indispensable" under Rule 19. Consequently,
9 Rule 12(h)(2), which preserves the right to raise the issue of
10 indispensable parties, is inapplicable.

11 Although Jackson Terrace and Fidelity are not
12 indispensable parties, defendants may nevertheless argue that
13 they are necessary parties under Rule 19 and in whose absence
14 the court should not proceed. However, the court need not reach
15 that question because a motion to dismiss for failure to join a
16 party who is merely "necessary" would be barred here as
17 untimely.

18 In Citibank N.A. v. Oxford Properties & Finance Ltd.,
19 688 F.2d 1259, 1262-3 n.4 (9th Cir. 1982), the Ninth Circuit
20 observed that

21 "failure to join necessary parties is
22 waived if objection is not made in
23 defendant's first responsive pleading; it
24 is only the absence of an indispensable
25 party which may (possibly) be raised later.
26 Fed. R. Civ. P. 12, esp. 12(h); Provident
27 Tradesmens Bank & Trust Co. v. Patterson,
28 390 U.S. 102, 110-11; Sierra Club v.
Hathaway, 579 F.2d 1162, 1166-67 (9th Cir.
1978).

27 Having failed to raise the issue of failure to join a necessary
28 party in its first responsive pleading, defendants waived their

1 right to subsequently raise that issue. The present motion is
2 therefore barred as untimely and should be denied.

3 3. Motion To Dismiss For Failure to Show
4 Waiver of Sovereign Immunity

5 In a separate motion filed December 1, 1987, HUD asks
6 for dismissal of plaintiffs' complaint, contending that
7 plaintiffs have failed to establish the requisite waiver of
8 sovereign immunity.

9 It is well settled that the United States is immune
10 from suit except to the extent that it may consent to be sued
11 and the terms of its consent to be sued in any court define the
12 court's jurisdiction to entertain the suit. Kansas v. United
13 States, 204 U.S. 331, 342-43; United States v. Testan, 424 U.S.
14 392 (1976). A waiver of sovereign immunity cannot be implied
15 and must be unequivocally expressed by Congress. United States
16 v. Mitchell, 445 U.S. 535, 538 (1980). Thus, a party suing the
17 United States, its agencies or officers, must allege both a
18 basis for the court's jurisdiction, Fed. R. Civ. P. 8(a)(1), and
19 a specific statute containing a waiver of the government's
20 immunity from suit. Furthermore, any waiver must be strictly
21 construed in favor of the sovereign and not enlarged beyond what
22 the statutory language requires. Ruckelshaus v. Sierra Club,
23 463 U.S. 680, 685-6 (1983). The plaintiff who sues the United
24 States bears the burden of showing that the government has
25 consented to suit. Cominotto v. United States, 802 F.2d 1127,
26 1129 (9th Cir. 1986); Cole v. United States, 657 F.2d 107, 109
27 (7th Cir.), cert. denied, 454 U.S. 1083 (1981).

28 It is not disputed here that the relief sought is

1 against the sovereign. An action which is brought nominally
2 against a federal official acting in his official capacity is
3 normally considered to be one against the United States. Dugan
4 v. Rank, 372 U.S. 609 (1963). That being so, plaintiff's must
5 demonstrate a statutory basis for waiver of sovereign immunity.

6 Plaintiffs premise jurisdiction upon several
7 statutes, including: 28 U.S.C. § 1331, 1361, 1337; 28 U.S.C. §
8 2201 and § 2202; and, 5 U.S.C. § 701-706. Although plaintiffs
9 argue that a waiver of sovereign immunity can be based upon any
10 of the statutes, to prevail against this motion plaintiffs need
11 only find one statute which waives immunity and authorizes the
12 action and relief sought. Finding, as the court does below,
13 that a waiver may be found in 5 U.S.C. § 703, the court need not
14 reach the remaining contentions of the parties.

15 In 1976, Congress made two statutory changes which
16 were intended to broaden the avenues for judicial review of
17 agency action by eliminating the defense of sovereign immunity.
18 First, Congress eliminated the amount in controversy requirement
19 previously required by 28 U.S.C. § 1331 in cases brought against
20 the United States, any agency thereof, or any officer or
21 employee sued in his official capacity. Second, the same act
22 amended 5 U.S.C. § 702 to provide that an action:

23 seeking relief other than money damages and
24 stating a claim that an agency or officer
25 or employee thereof acted or failed to act
26 in an official capacity or under color of
27 legal authority shall not be dismissed nor
relief therein denied on the grounds that
it is against the United States or that the
United States is an indispensable party.

28 (emphasis added). The critical question is thus whether

1 plaintiffs seek relief "other than money damages."

2 Plaintiffs' first amended complaint, which the court
3 has permitted above, prays for both declaratory and injunctive
4 relief. Plaintiffs first request a declaratory judgment that:

5 (a) HUD's sale of Jackson Terrace
6 without 100 percent of Section 8 subsidies
violated plaintiffs' statutory rights.

7 (b) HUD's failure to give the tenants
8 notice and an opportunity to comment on the
disposition violated statutes, regulations
9 and the due process clause.

10 (c) HUD's decision to sell Jackson Terrace
with less than 100% subsidy was arbitrary
11 and capricious.

12 (d) The disposition is null and void
because the Property Disposition Committee
13 failed to keep minutes of its activities
and the Committee was not properly
14 constituted.

15 (e) HUD's approval of utility conversion
and allowance for section 8 tenants
16 violated statutes and violated tenants' due
process rights.

17 (f) HUD's failure to include the cost of
18 air conditioning into accounting rendered
the allowance unreasonable.

19 (g) HUD's sale of the mortgage and
20 cancellation of the Regulatory Agreement
violated federal law and the Constitution.

21 (h) HUD's sale of the mortgage and
22 cancellation of the Regulatory Agreement
violated tenants' statutory and third party
23 beneficiary contractual rights.

24 (i) Setting of non-section 8 tenants'
25 rents higher than necessary to compensate
owners for operating and maintenance costs
violated federal law and the constitution.

26 Plaintiffs further request that the court grant the following
27 injunctive relief:
28

1 (a) Order HUD to provide, and the
2 non-federal defendants to accept and use,
3 Section 8 subsidies for an additional 54
4 units and all eligible tenants for a
5 fifteen year period from the date of
6 judgment.

7 (b) Alternatively, order that the sale of
8 Jackson Terrace be rescinded and the
9 property be returned to HUD's property
10 inventory.

11 (c) Grant restitution of monetary relief
12 or prospective rent reduction to those
13 members of the class who, since June 3,
14 1981, have been harmed by the
15 unavailability of Section 8.

16 (d) Grant restitution in the form of
17 monetary damages, vouchers or Section 8
18 certificates to those members of the class
19 who have left Jackson Terrace, to make them
20 whole for the period of time which they
21 were harmed due to the unavailability of
22 section 8.

23 (e) Direct HUD to reinstate the 1981
24 Regulatory Agreement and to rescind the
25 sale of the mortgage to the non-federal
26 defendants.

27 (f) Direct the non-federal defendants to
28 rescind the conversion of utilities from
project-paid to tenant-paid.

(g) Direct HUD to establish a reasonable
utility allowance taking the additional
cost of air conditioning into consideration
and make restitution to those tenants who
have suffered harm due to the unreasonable
utility allowance established by HUD.

(h) Direct HUD to rescind rent increases
for non Section 8 tenants so that they are
no greater than those in effect for Section
8 units and grant restitution to those
tenants who were harmed by the cancellation
of the Regulatory Agreement.

Sovereign immunity does not bar plaintiffs' action
insofar as it seeks injunctive relief or declaratory relief with
a prospective effect, even if it may require the expenditure of

1 government funds at some future date. Edelman v. Jordan, 415
2 U.S. 651, 666-7 (1974). An action seeking an order that will
3 prevent the wrongful disallowance of future claims is an action
4 seeking specific relief and not damages, since no damages have
5 yet occurred. United States v. Testan, 424 U.S. 392, 403 (1976)
6 (distinguishing "between prospective reclassification, on the
7 one hand, and retroactive reclassification resulting in money
8 damages, on the other."); Bowen v. Massachusetts, 56 U.S.L.W.
9 4878, 4890 (June 29, 1988) (Scalia, J., dissenting).

10 With the possible exception of the request for a
11 declaration that the disposition of Jackson Terrace is "null and
12 void," the declaratory relief sought here would simply declare
13 the rights and obligations of the parties and would not, in and
14 of itself, require an expenditure of funds from the federal
15 treasury. § 702 would thus allow such relief.

16 At the time defendant's motion was filed, it was less
17 clear whether plaintiffs' prayer for injunctive relief,
18 including restitution, was a request for "money damages" as
19 that term is used in 5 U.S.C. § 702. However, in light of the
20 Supreme Court's recent decision in Bowen v. Massachusetts,
21 supra, it appears that all additional relief sought by the
22 plaintiff is permissible under 5 U.S.C. § 702 as being "other
23 than money damages."

24 The fact that a judicial remedy may require one party
25 to pay money to another is not a sufficient reason to
26 characterize the relief as "money damages." Bowen v.
27 Massachusetts, 56 U.S.L.W. 4878, 4882 (June 29, 1988). It has
28 long been recognized that there is a distinction between an

1 action at law for damages -- which are intended to provide a
2 victim with monetary compensation for an injury to his person,
3 property, or reputation -- and an equitable action for specific
4 relief -- which may include an order providing for reinstatement
5 of an employee with back pay, or for "the recovery of specific
6 property or monies, ejectment from land, or injunction either
7 directing or restraining the defendant officer's actions."
8 Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 688
9 (1949) (emphasis added).

10 Although the parties here devote much attention to the
11 meaning of "money damages" as used in 5 U.S.C. § 702, after
12 their briefs were filed in this case, the Supreme Court took up
13 that precise issue in Bowen v. Massachusetts, 56 U.S.L.W. 4878
14 (June 29, 1988), and, in my view, resolved the immunity
15 questions presented by this case. 2/

16 In Bowen, supra, the state of Massachusetts sought
17 declaratory and injunctive relief and asked the court to "set
18 aside" a decision disallowing certain Medicaid reimbursements to
19 the state, and ordering monetary reimbursement. The court held
20 that the federal district courts, rather than the Court of
21 Claims, have jurisdiction to review a final Department of Health
22 and Human Services' order refusing to reimburse a state for a
23 category of expenditures under its Medicaid program. Id. at
24 4887. Moreover, the "monetary damages" aspects of the relief

25 2/ Bowen was an opinion of the court agreed to by only four
26 justices, but Justice White concurred in the result, including
27 the court's conclusion that the district court's order was not a
28 judgment for "money damages" within the meaning of 5 U.S.C. §
702.

1 sought by the state were held not to be "money damages" within
2 the meaning of § 702.

3 The State's suit to enforce § 1396b(a) of
4 the Medicaid Act, which provides that the
5 Secretary "shall pay" certain amount for
6 appropriate Medicaid services, is not a
7 suit seeking money in compensation for the
8 damages sustained by the failure of the
9 Federal Government to pay as mandated;
10 rather, it is a suit seeking to enforce the
11 statutory mandate itself, which happens to
be one for the payment of money. [citation
omitted] The fact that the mandate is
one for the payment of money must not be
confused with the question whether such
payment, in these circumstances, is a
payment of money damages or as specific
relief.

12 Id. at 4884. (emphasis in original). The court thus viewed the
13 state's suit as in the nature of an equitable action for
14 specific relief seeking reimbursement to which the state was
15 allegedly already entitled, rather than money in compensation
16 for losses suffered as a result of the disallowance.

17 The court finds no basis for distinguishing the relief
18 sought in the case at bar from the relief awarded in Bowen. The
19 primary relief sought here is to require HUD to rectify alleged
20 errors in selling Jackson Terrace with a subsidy for only 36
21 units, and later selling the mortgage such that all section 8
22 subsidies were terminated. Plaintiffs also seek reimbursement
23 for certain disallowances of utility allowance to which they
24 were entitled by statute. Plaintiffs do not seek consequential
25 damages, but rather seek restoration of subsidies that they
26 believe were illegally withheld.

27 On occasion, the relief sought is described by
28 plaintiffs so as to sound like damages. For example, plaintiffs

1 ask for "restitution in the form of monetary damages, vouchers
2 or Section 8 certificates" for tenants who were deprived of
3 subsidies but subsequently left Jackson Terrace. However, the
4 court must look to the basis for the relief sought, and not the
5 particular parlance or terminology used. "Damages are given to
6 the plaintiff to substitute for a suffered loss, whereas
7 specific remedies 'are not substitute remedies at all, but
8 attempt to give the plaintiff the very thing to which he was
9 entitled.'" Bowen, supra at 4882 (quoting Maryland Department
10 of Human Resources v. Department of HHS, 763 F.2d 1441 (1985).
11 Here, Section 8 subsidies and utility allowances are the very
12 things to which plaintiffs claim they were entitled. That the
13 court may have to fashion different remedies tailored to
14 restoring the varied plaintiffs back to their rightful positions
15 does not change the restitutionary basis for the relief.

16 In light of the court's conclusion that the relief
17 sought in this case is not "money damages" within the meaning of
18 5 U.S.C. § 702, and that sovereign immunity has been waived, it
19 is unnecessary to reach the alternative bases advanced by the
20 plaintiffs for waiving sovereign immunity. Nor is it necessary
21 to reach defendant's argument that plaintiffs must identify a
22 segregated fund to pay out any award of damages because
23 defendant's argument is premised on the assumption that
24 plaintiffs seek "money damages."

25 ~~Had the parties been aware of the Supreme Court's~~
26 holding in Bowen, supra, HUD may nevertheless have insisted, as
27 it did in its briefs filed before Bowen was decided, that the
28 court follow Thomas v. Pierce, 662 F. Supp. 519 (D. Kan. 1987),

1 which involved facts nearly identical to those here. However,
2 in spite of Thomas's factual similarity with this case, the
3 court's result here would remain the same.

4 In Thomas, plaintiffs alleged that HUD's sale of an
5 apartment complex to private individuals without Section 8
6 subsidies on 100% of the units was arbitrary, capricious and
7 otherwise contrary to law. In a motion to dismiss, the
8 defendants argued that the action was barred by the doctrine of
9 sovereign immunity and that 5 U.S.C. § 702 was insufficient to
10 waive such immunity. The court agreed, rejecting plaintiffs'
11 claim that the relief sought was in the nature of "equitable
12 restitution."

13 In reaching its conclusion, the court relied upon New
14 Mexico v. Regan, 745 F.2d 1318 (11th Cir. 1984), wherein the
15 11th Circuit held that an action seeking reimbursement to a
16 state of improperly withheld mineral royalties, though framed in
17 terms of declaratory and mandamus relief, was in reality one for
18 "money damages" not protected by § 702. The New Mexico court
19 read the legislative history of section 702 as supporting a
20 broader view of "damages," and as requiring the court to look to
21 the "thrust of the suit" to see if the plaintiff is seeking
22 money from the United States, and if so, the claim is barred.
23 Id. at 1322. The Thomas court thus concluded:

24 "[T]he thrust of plaintiffs' suit goes
25 beyond mere injunctive and declaratory
26 relief. Plaintiffs' prime objective is to
27 have HUD subsidize all of the units of the
28 project, which would require extensive
expenditure of public funds. We conclude
that this suit is essentially one designed
to reach government monies and is a claim
for which the United States has not

consented to suit under the Administrative Procedure Act.

Thomas, 662 F. Supp. at 525.

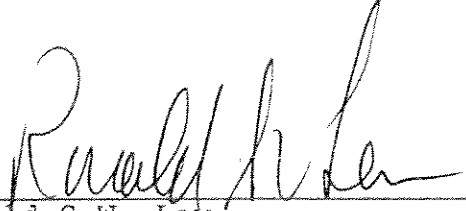
The Thomas decision is of no assistance to defendant's contentions in this case. First, to the extent that Thomas is inconsistent with Bowen, the latter obviously should control. Second, Bowen examined extensively the legislative history of § 702 and concluded, contrary to Thomas, that "money damages" should not be broadened beyond its plain language. Bowen at 4884. Third, the court's analysis was both minimal and premised upon an error of law. The court's application of law to facts is essentially contained in one paragraph and states in a conclusory manner that the "thrust of plaintiffs' suit goes beyond mere injunctive and declaratory relief." The court's further conclusion that the suit is designed to "reach government monies" states the standard for determining whether the suit is against the sovereign, not whether sovereign immunity is waived. Nor is there any authority suggesting that the substantiality of the government funds affected has any relevance to whether the relief sought is "money damages." Thus, although Thomas is factually nearly identical to the case at bar, it does not alter the court's conclusion that Bowen is controlling.

On balance, because all of the relief requested by plaintiffs can be classified as "other than money damages" within the meaning of 5 U.S.C. § 702, sovereign immunity has been waived, and HUD's motion to dismiss should be denied.

Accordingly, IT IS HEREBY ORDERED that Plaintiffs'

1 Motion To Amend, filed October 2, 1987, is GRANTED and
2 plaintiffs' First Amended Complaint lodged with this court on
3 October 2, 1987, is DEEMED FILED. IT IS FURTHER ORDERED that
4 non-federal defendants' Motion to Dismiss and Request For
5 Sanctions, filed February 23, 1987, and HUD's Motion to Dismiss,
6 filed December 1, 1987, are hereby DENIED.

7 Date: August 4, 1988

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10 _____
11 Ronald S.W. Lew
12 United States District Judge
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FILED

MAR 13 1989

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH WALKER,)
MARIA VALLADARES, on behalf of)
themselves and all others)
similarly situated,)

Plaintiffs,)

v.)

SAMUEL PIERCE, Secretary of)
HOUSING AND URBAN DEVELOPMENT;)
and HERBERT and ROSELLE SOMMER)
and LOUIS and ISOBEL LEVENTHAL;)
JACKSON TERRACE APARTMENTS, a)
California Limited Partnership,)

Defendants.)

NO. CV 84-4370-RSWL(Bx)

ORDER CONTINUING HEARING

ON PLAINTIFFS' MOTION

FOR RECONSIDERATION

[Proposed]

Based upon the Ex Parte Application of defendant Samuel R.
Pierce, Jr. and the accompanying Declaration of Assistant United
States Attorney Bonnie E. MacNaughton, it appears that good cause
exists for a continuance of the hearing on plaintiffs' Motion for
Reconsideration, etc. Therefore,

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////

////

1 IT IS HEREBY ORDERED that the hearing on plaintiffs' Motion
2 for Reconsideration, etc., be continued from March 27, 1989 at
3 9:00 a.m. to April 17, 1989 at 9:00 a.m.

4 DATED: This 15th day of March, 1989.

5
6 RONALD S. LEE

UNITED STATES DISTRICT JUDGE

7 PRESENTED BY:

8 ROBERT C. BONNER
9 United States Attorney
10 FREDERICK M. BROSIO, JR.
11 Assistant United States Attorney
12 Chief, Civil Division

13 Bonnie E. MacNaughton
14 BONNIE E. MacNAUGHTON
15 Assistant United States Attorney
16
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27
28 Attorneys for Federal Defendant

I, DINA L. HOLLEY, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction the service by mail described in this Certificate was made; that on March 10, 1989, I deposited in the United States mails in the United States Courthouse at 312 North Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of: ORDER CONTINUING HEARING ON PLAINTIFFS' MOTION FOR RECONSIDERATION [Proposed] addressed to:

Eileen McCarthy, Esq.
California Rural Legal
Assistance
1030 - 6th Street, No. 6
Post Office Box 35
Coachella, CA 92236-0035

Richard S. Kohn, Esq.
Law Office of California
Rural Legal Assistance
2111 Mission Street, Suite 401
San Francisco, CA 94110

Catherine R. Bishop, Esq.
National Housing Law Project
1950 Addison Street
Berkeley, CA 94704

at their last known address, at which place there is a delivery service by United States mail.

This Certificate is executed on March 10, 1989, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

Dina L. Holley

DINA L. HOLLEY

FILED

APR 12 1988

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH
WALKER, MARIA VALLADARES,
on behalf of themselves and
other similarly situated,

Plaintiffs,

v.

SAMUEL PIERCE, Secretary of
the U.S. DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT; HERBERT AND
ROSSELLE SOMMER; LOUIS AND
ISABEL LEVENTHAL; JACKSON
TERRACE APARTMENTS, a Calif.
Limited Partnership,

Defendant(s).

NO. CV 84-4370-RSWL

ORDER

The Court having read and considered all the papers
filed by the parties, IT IS HEREBY ORDERED that plaintiffs' Ex
Parte Application For An Order Striking The Government's Briefs
filed April 13, 1987, filed April 15, 1987, is DENIED.

/

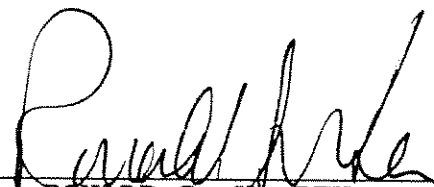
/

1 IT IS FURTHER ORDERED that no party to this proceeding
2 shall file a surreply or other supplemental pleading not provided
3 for by the Federal Rules of Civil Procedure, the Local Rules of
4 the Central District of California, or an order of this Court.

5 IT IS FURTHER ORDERED that all subsequent pleadings
6 filed by the parties in this action shall be clearly labeled to
7 identify the relief sought, the pleadings to which it is
8 directed, if any, and the date upon which such pleadings were
9 filed.

10 IT IS FURTHER ORDERED that all subsequent pleadings
11 filed by the parties in this action shall be self-contained such
12 that no other pleading, or portion thereof, is incorporated by
13 reference. For purposes of this order, "pleading" does not
14 include exhibits which may be attached to pleadings.

15 DATED: August 4, 1988

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19 RONALD S. W. LEW
20 United States District Judge
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28

FILED

AUG 12 1988

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH
WALKER, MARIA VALLADARES, on
behalf of themselves and others
similarly situated,

Plaintiffs,

v.

SAMUEL PIERCE, Secretary of the
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT; AND HERBERT
AND ROSSELLE SOMMER AND LOUIS
AND ISABEL LEVENTHAL; JACKSON
TERRACE APARTMENTS, A California
Limited Partnership,

Defendants.

No. CV 84-4370-RSWL

MEMORANDUM AND ORDER
GRANTING PLAINTIFFS' MOTION
TO AMEND COMPLAINT, DENYING
FEDERAL AND NON-FEDERAL
DEFENDANTS' MOTIONS TO
DISMISS

FACTUAL BACKGROUND

This is a class action filed on behalf of five individuals or named plaintiffs all of whom are current residents of the Jackson Terrace Apartments, a 90-unit multifamily project located in Indio, California, and formerly subsidized under Section 221(d)(3) of the National Housing Act. Two of the named plaintiffs, Richard and Elizabeth Walker, are residents of the project who received the benefits of Section 8 rental subsidies. There are currently no named plaintiffs representing residents not currently receiving Section 8 rental subsidies who claim they are eligible for such subsidies, but a

1 motion to add such a plaintiff is pending before the court.

2 Plaintiffs allege that various statutory, regulatory,
3 contractual and constitutional rights were violated when the
4 U.S. Department of Housing and Urban Development ("HUD" or
5 "federal defendant") sold the Jackson Terrace Apartments to the
6 present owners, the Sommers and Leventhals ("Sommers and
7 Levanthals" or "non-federal defendants"),^{1/} with 36 units of
8 Section 8 rental assistance and then subsequently sold the
9 mortgage on the property to the owners. Specifically,
10 plaintiffs allege that they were denied access to relevant
11 documentation, an opportunity to comment on such documentation,
12 and adequate notice of the level of rent, the amount of utility
13 allowance and the proposed utility conversion ultimately
14 approved by HUD. Plaintiffs further allege that their statutory
15 rights were violated when they were not provided notice and an
16 opportunity to comment upon the sale of the mortgage on the
17 project to non-federal defendants, the Sommers and Leventhals,
18 which sale had the effect of canceling the then existing
19 Regulatory Agreement.

20 Plaintiffs ask the court to declare the sale of
21 Jackson Terrace invalid and order additional Section 8 subsidies
22 for 54 units at Jackson Terrace. In the alternative, plaintiffs
23

24 ^{1/} There remains some question as to whether the Sommers and
25 Leventhals still own the property. They contend that the
26 property is owned by the Jackson Terrace Ltd. Partnership.
27
28

1 request that the court order that the sale of Jackson Terrace be
2 rescinded and the property returned to HUD's inventory. Lastly,
3 plaintiffs request that the court declare the subsequent sale of
4 the mortgage to non-federal defendants invalid, rescind the sale
5 and reinstate the 1981 Regulatory Agreement.

6 In the present motions, plaintiffs move for leave to
7 amend their complaint, and in separate motions non-federal
8 defendants move for dismissal on the grounds that plaintiffs
9 have failed to join an indispensable party, and federal
10 defendants move to dismiss plaintiffs' complaint on the ground
11 that plaintiffs have failed to establish the requisite waiver of
12 sovereign immunity.

13 DISCUSSION

14 1. Plaintiffs' Motion To Amend Complaint

15 On October 2, 1987, Plaintiffs' filed a motion to
16 amend their complaint in four ways: (1) to add a claim for
17 restitution; (2) to add Jackson Terrace Ltd. Partnership as a
18 defendant; (3) to add Maria Valladares as a subclass
19 representative; (4) to add certain factual allegations.

20 Although the determination as to whether leave to
21 amend should be granted lies within the sound discretion of the
22 court, Komie v. Buehler Corp., 449 F.2d 644 (9th Cir. 1971),
23 Federal Rule of Civil Procedure 15(a) indicates that after a
24 responsive pleading has been filed leave to amend "shall be
25 freely given when justice so requires." Moreover,

26 [i]n the absence of any apparent or
27 declared reason -- such as undue delay, bad
28 faith or dilatory motive on the part of the
movant, repeated failure to cure
deficiencies by amendments previously

1 allowed, undue prejudice to the opposing
2 party by virtue of allowance of the
amendment, etc. -- the leave sought should,
as the rules require, be "freely given."

3 Foman v. Davis, 371 U.S. 178, 182 (1962). The purpose of
4 pleadings is to facilitate a decision on the merits, Hurn v.
5 Retirement Trust Fund of Plumbing, Etc., 648 F.2d 1252 (9th Cir.
6 1981), and a motion for leave to amend should be evaluated in
7 light of whether the amendment furthers that end. Below, each
8 of plaintiffs' proposed amendments are taken in turn.

9 (a) Addition of Claim For Restitution

10 Plaintiffs first seek to add restitution to their
11 prayer for relief. HUD insists that a claim for restitution
12 would be subject to dismissal under the doctrine of sovereign
13 immunity. For reasons set forth more fully below, the court
14 rejects that conclusion. Defendant's second argument, although
15 variously stated, can be distilled to the contention that an
16 amendment at this time will cause undue delay and otherwise
17 prejudice defendant.

18 Although plaintiffs advance no reason for the delay in
19 bringing this motion to amend, delay alone generally is not a
20 sufficient ground for denying leave to amend. The Ninth Circuit
21 has held that where no prejudice is shown by the opposing party
22 and the amended complaint is obviously not frivolous, or made as
23 a dilatory maneuver in bad faith, it is an abuse of discretion
24 to deny such a motion. Hurn, supra at 1254, quoting Howey v.
25 United States, 481 F.2d 1187, 1190-1 (9th Cir. 1973). The court
26 is aware that, on occasion, delay has been a sufficient reason
27 to deny leave to amend. However, such cases generally have
28

1 involved amendments which would lead to substantial additional
2 discovery or add entirely new legal theories. See e.g. Jordan
3 v. County Board of Los Angeles, 669 F.2d 1311, 1324 (9th Cir.
4 1982) (amendment to add a new cause of action one year and nine
5 months after the complaint filed denied where substantial new
6 issues of state law raised and substantial additional discovery
7 required).

8 HUD has failed to show that "undue prejudice" would
9 result. Plaintiffs' amendment would merely add to the prayer
10 for relief and would add no substantial new legal issues. It
11 may require minimal additional discovery, but no inordinate
12 delay will result. Therefore, the amendment to add restitution
13 to the prayer for relief will be granted.

14 (b) Addition of Jackson Terrace Ltd. As Defendant

15 Plaintiffs further request that they be allowed to add
16 as a named defendant the Jackson Terrace Ltd. Partnership, which
17 defendants Sommers and Leventhals claim is the true owner of the
18 property. Non-federal defendants argue that they are not now
19 and, during the pendency of this action, never have been the
20 owners of Jackson Terrace. They insist that plaintiffs have
21 been on constructive notice of the actual ownership of the
22 building since the onset of the case.

23 The court is not persuaded by defendants' averments.
24 On November 27, 1984, non-federal defendants answered the
25 complaint and therein admitted that they owned the disputed
26 property. Having no reason to believe to the contrary,
27 plaintiffs reasonably relied upon that admission. Additionally,
28 although the court has been provided with certain partnership

1 papers, the court has yet to see documentation reflecting the
2 alleged transfer of ownership in the property from non-federal
3 defendants to Jackson Terrace Ltd. Finally, allowing the
4 amendment would work no injustice or unfair advantage because
5 the non-federal defendants are the general partners of the
6 entity which they claim is the true owner of the property. They
7 were therefore on notice as to the pendency of this action.
8 Finding sufficient basis for plaintiffs belief that they had
9 sued the proper party, and no evidence of prejudice to
10 defendants, the motion to add Jackson Terrace Ltd. as a
11 defendant will be granted.

12 (c) Addition of Maria Valladares As A Plaintiff

13 The class in this suit is comprised of two subclasses:
14 tenants receiving section 8 subsidies, and those eligible for
15 section 8 subsidies but not receiving them. Plaintiffs claim
16 that the status of the subclass representatives has changed such
17 that one representatives no longer represents the class she was
18 originally chosen to represent. Therefore, plaintiffs seek to
19 add Maria Valladares as a new subclass representative.

20 Defendants contend only that they will be prejudiced by such an
21 amendment because they have not had an opportunity to conduct
22 discovery to determine whether she is a proper class
23 representative.

24 It is inevitable in complex and lengthy class action
25 litigation such as this that over time the circumstances of the
26 class representatives may change. In such cases, the proper
27 response is to permit the amendment and, if necessary, reopen
28 discovery for the limited purpose of discovering whether the

1 substituted class representative is proper. Finding no undue
2 prejudice to the defendants, the amendment will be permitted.

3 (d) Addition of Certain Factual Allegations

4 Plaintiffs also seek leave to add to its complaint
5 various facts and claims to conform to discovery, including:

- 6 • that the sale was made without required
7 notice to the tenants,
- 8 • that the disposition committee was
9 improperly constituted and failed to keep
10 required minutes,
- 11 • that the utility allowance was
12 unreasonable because no consideration was
13 given to the fact that some tenants used
14 air conditioners.

15 Having opposed only the third of these proposed
16 amendments, defendants may be deemed to have consented to the
17 remaining portions. See Central District of California, Local
18 Rule 9. As to the disputed allegation, defendants assert that
19 they will be prejudiced because they have not had an opportunity
20 to discover which tenants used air conditioners.

21 Defendants' concern is unfounded. The proposed
22 amendment raises an issue of law, and not fact, as to whether
23 HUD improperly excluded any consideration of air conditioners.
24 If the court concludes that such exclusion was improper, the
25 court would likely direct HUD to correctly calculate the
26 figures. In any event, it is unlikely that additional discovery
27 would ever be required on this issue. Finding no undue
28 prejudice to the defendants, the request to add additional
factual allegations will be granted.

2. Motion to Dismiss For Failure To Join
An Indispensable Party

1 In a motion filed February 23, 1987, non-federal
2 defendants urge the court to dismiss plaintiffs' complaint for
3 failure to join as parties Jackson Terrace Ltd., the alleged
4 true owner of the property, and Fidelity Savings and Loan
5 Association ("Fidelity"), the mortgage-holder. Because the
6 court has permitted plaintiffs to amend their complaint to add
7 Jackson Terrace Ltd. as a defendant, non-federal defendants'
8 motion is moot to the extent it deals with Jackson Terrace Ltd.
9 The court therefore considers the averments only as they relate
10 to Fidelity.

11 According to non-federal defendants Sommers and
12 Leventhals, they transferred their interest in Jackson Terrace
13 to the Jackson Terrace Ltd. Partnership. Partnership papers
14 have been recorded, as have deeds from the partnership members
15 conveying their interests to the partnership itself. However,
16 the record does not contain documentation reflecting the
17 transfer of interests from Sommers and Leventhals to the
18 partnership or its members. Plaintiffs alleged in their
19 original complaint that Sommers and Leventhals were the owners
20 of the property, and non-federal defendants admitted this fact
21 in their answer filed November 26, 1988. Apparently, it was not
22 until this motion that defendants alleged that Sommers and
23 Leventhals were not the true owners.

24 Federal Rule of Civil Procedure 12 establishes that
25 within 20 days a defendant must answer a complaint or file a
26 responsive pleading, which may include a motion for failure to
27 join a party under Rule 19. It is not clear from the plain
28

1 language of the rule whether failure to raise a joinder issue
2 prevents a party from later raising it. However, Rule 12(h)(2)
3 provides that the "defense of failure to join an indispensable
4 party under Rule 19 ... may be made in any pleading permitted or
5 ordered under Rule 7(a), or by motion for judgment on the
6 pleadings, or at the trial on the merits." Thus, while the
7 rules expressly preserve the right to raise the failure to join
8 an indispensable party, the rules are silent as to the
9 consequence of failing to raise the failure to join a party who
10 is not indispensable.

11 In determining the timeliness of defendants' present
12 motion, the court must first determine whether either party is
13 indispensable. Joinder under Rule 19 entails a two-step
14 inquiry. First, the court must determine whether the absent
15 party is a necessary party. This requires an examination of
16 whether: (1) in the person's absence complete relief cannot be
17 accorded to those already parties; (2) the person claims an
18 interest relating to the subject of the action and is so
19 situated that the disposition of the action in the persons
20 absence may (i) as a practical matter impair or impede the
21 person's ability to protect his interest or (ii) leave any of
22 the persons already parties to a substantial risk of incurring
23 double, multiple, or otherwise inconsistent obligations by
24 reason of the claimed interest. If the court concludes that the
25 party is necessary but cannot be joined, i.e. the party is not
26 subject to service or whose joinder would destroy the
27 jurisdiction of the court, the court must determine whether to
28 nevertheless proceed in the absence of the party. If the court

1 concludes that the party is indispensable the court may dismiss
2 the action.

3 Plaintiffs argue, and it is not disputed, that both
4 Jackson Terrace and Fidelity can be made parties. Both are
5 subject to service and neither would deprive the court of
6 jurisdiction over the case because jurisdiction is based upon
7 the presence of a federal question. Therefore, neither party
8 may be considered "indispensable" under Rule 19. Consequently,
9 Rule 12(h)(2), which preserves the right to raise the issue of
10 indispensable parties, is inapplicable.

11 Although Jackson Terrace and Fidelity are not
12 indispensable parties, defendants may nevertheless argue that
13 they are necessary parties under Rule 19 and in whose absence
14 the court should not proceed. However, the court need not reach
15 that question because a motion to dismiss for failure to join a
16 party who is merely "necessary" would be barred here as
17 untimely.

18 In Citibank N.A. v. Oxford Properties & Finance Ltd.,
19 688 F.2d 1259, 1262-3 n.4 (9th Cir. 1982), the Ninth Circuit
20 observed that

21 "failure to join necessary parties is
22 waived if objection is not made in
23 defendant's first responsive pleading; it
24 is only the absence of an indispensable
25 party which may (possibly) be raised later.
26 Fed. R. Civ. P. 12, esp. 12(h); Provident
Tradesmens Bank & Trust Co. v. Patterson,
390 U.S. 102, 110-11; Sierra Club v.
Hathaway, 579 F.2d 1162, 1166-67 (9th Cir.
1978).

27 Having failed to raise the issue of failure to join a necessary
28 party in its first responsive pleading, defendants waived their

1 right to subsequently raise that issue. The present motion is
2 therefore barred as untimely and should be denied.

3 3. Motion To Dismiss For Failure to Show
4 Waiver of Sovereign Immunity

5 In a separate motion filed December 1, 1987, HUD asks
6 for dismissal of plaintiffs' complaint, contending that
7 plaintiffs have failed to establish the requisite waiver of
8 sovereign immunity.

9 It is well settled that the United States is immune
10 from suit except to the extent that it may consent to be sued
11 and the terms of its consent to be sued in any court define the
12 court's jurisdiction to entertain the suit. Kansas v. United
13 States, 204 U.S. 331, 342-43; United States v. Testan, 424 U.S.
14 392 (1976). A waiver of sovereign immunity cannot be implied
15 and must be unequivocally expressed by Congress. United States
16 v. Mitchell, 445 U.S. 535, 538 (1980). Thus, a party suing the
17 United States, its agencies or officers, must allege both a
18 basis for the court's jurisdiction, Fed. R. Civ. P. 8(a)(1), and
19 a specific statute containing a waiver of the government's
20 immunity from suit. Furthermore, any waiver must be strictly
21 construed in favor of the sovereign and not enlarged beyond what
22 the statutory language requires. Ruckelshaus v. Sierra Club,
23 463 U.S. 680, 685-6 (1983). The plaintiff who sues the United
24 States bears the burden of showing that the government has
25 consented to suit. Cominotto v. United States, 802 F.2d 1127,
26 1129 (9th Cir. 1986); Cole v. United States, 657 F.2d 107, 109
27 (7th Cir.), cert. denied, 454 U.S. 1083 (1981).

28 It is not disputed here that the relief sought is

1 against the sovereign. An action which is brought nominally
2 against a federal official acting in his official capacity is
3 normally considered to be one against the United States. Dugan
4 v. Rank, 372 U.S. 609 (1963). That being so, plaintiff's must
5 demonstrate a statutory basis for waiver of sovereign immunity.

6 Plaintiffs premise jurisdiction upon several
7 statutes, including: 28 U.S.C. § 1331, 1361, 1337; 28 U.S.C. §
8 2201 and § 2202; and, 5 U.S.C. § 701-706. Although plaintiffs
9 argue that a waiver of sovereign immunity can be based upon any
10 of the statutes, to prevail against this motion plaintiffs need
11 only find one statute which waives immunity and authorizes the
12 action and relief sought. Finding, as the court does below,
13 that a waiver may be found in 5 U.S.C. § 703, the court need not
14 reach the remaining contentions of the parties.

15 In 1976, Congress made two statutory changes which
16 were intended to broaden the avenues for judicial review of
17 agency action by eliminating the defense of sovereign immunity.
18 First, Congress eliminated the amount in controversy requirement
19 previously required by 28 U.S.C. § 1331 in cases brought against
20 the United States, any agency thereof, or any officer or
21 employee sued in his official capacity. Second, the same act
22 amended 5 U.S.C. § 702 to provide that an action:

23 seeking relief other than money damages and
24 stating a claim that an agency or officer
25 or employee thereof acted or failed to act
26 in an official capacity or under color of
27 legal authority shall not be dismissed nor
relief therein denied on the grounds that
it is against the United States or that the
United States is an indispensable party.

28 (emphasis added). The critical question is thus whether

1 plaintiffs seek relief "other than money damages."

2 Plaintiffs' first amended complaint, which the court
3 has permitted above, prays for both declaratory and injunctive
4 relief. Plaintiffs first request a declaratory judgment that:

5 (a) HUD's sale of Jackson Terrace
6 without 100 percent of Section 8 subsidies
violated plaintiffs' statutory rights.

7 (b) HUD's failure to give the tenants
8 notice and an opportunity to comment on the
disposition violated statutes, regulations
9 and the due process clause.

10 (c) HUD's decision to sell Jackson Terrace
with less than 100% subsidy was arbitrary
11 and capricious.

12 (d) The disposition is null and void
because the Property Disposition Committee
13 failed to keep minutes of its activities
and the Committee was not properly
14 constituted.

15 (e) HUD's approval of utility conversion
and allowance for section 8 tenants
16 violated statutes and violated tenants' due
process rights.

17 (f) HUD's failure to include the cost of
18 air conditioning into accounting rendered
the allowance unreasonable.

19 (g) HUD's sale of the mortgage and
20 cancellation of the Regulatory Agreement
violated federal law and the Constitution.

21 (h) HUD's sale of the mortgage and
22 cancellation of the Regulatory Agreement
violated tenants' statutory and third party
23 beneficiary contractual rights.

24 (i) Setting of non-section 8 tenants'
25 rents higher than necessary to compensate
owners for operating and maintenance costs
violated federal law and the constitution.

26 Plaintiffs further request that the court grant the following
27 injunctive relief:
28

1 (a) Order HUD to provide, and the
2 non-federal defendants to accept and use,
3 Section 8 subsidies for an additional 54
4 units and all eligible tenants for a
5 fifteen year period from the date of
6 judgment.

7 (b) Alternatively, order that the sale of
8 Jackson Terrace be rescinded and the
9 property be returned to HUD's property
10 inventory.

11 (c) Grant restitution of monetary relief
12 or prospective rent reduction to those
13 members of the class who, since June 3,
14 1981, have been harmed by the
15 unavailability of Section 8.

16 (d) Grant restitution in the form of
17 monetary damages, vouchers or Section 8
18 certificates to those members of the class
19 who have left Jackson Terrace, to make them
20 whole for the period of time which they
21 were harmed due to the unavailability of
22 section 8.

23 (e) Direct HUD to reinstate the 1981
24 Regulatory Agreement and to rescind the
25 sale of the mortgage to the non-federal
26 defendants.

27 (f) Direct the non-federal defendants to
28 rescind the conversion of utilities from
project-paid to tenant-paid.

(g) Direct HUD to establish a reasonable
utility allowance taking the additional
cost of air conditioning into consideration
and make restitution to those tenants who
have suffered harm due to the unreasonable
utility allowance established by HUD.

(h) Direct HUD to rescind rent increases
for non Section 8 tenants so that they are
no greater than those in effect for Section
8 units and grant restitution to those
tenants who were harmed by the cancellation
of the Regulatory Agreement.

Sovereign immunity does not bar plaintiffs' action
insofar as it seeks injunctive relief or declaratory relief with
a prospective effect, even if it may require the expenditure of

1 government funds at some future date. Edelman v. Jordan, 415
2 U.S. 651, 666-7 (1974). An action seeking an order that will
3 prevent the wrongful disallowance of future claims is an action
4 seeking specific relief and not damages, since no damages have
5 yet occurred. United States v. Testan, 424 U.S. 392, 403 (1976)
6 (distinguishing "between prospective reclassification, on the
7 one hand, and retroactive reclassification resulting in money
8 damages, on the other."); Bowen v. Massachusetts, 56 U.S.L.W.
9 4878, 4890 (June 29, 1988) (Scalia, J., dissenting).

10 With the possible exception of the request for a
11 declaration that the disposition of Jackson Terrace is "null and
12 void," the declaratory relief sought here would simply declare
13 the rights and obligations of the parties and would not, in and
14 of itself, require an expenditure of funds from the federal
15 treasury. § 702 would thus allow such relief.

16 At the time defendant's motion was filed, it was less
17 clear whether plaintiffs' prayer for injunctive relief,
18 including restitution, was a request for "money damages" as
19 that term is used in 5 U.S.C. § 702. However, in light of the
20 Supreme Court's recent decision in Bowen v. Massachusetts,
21 supra, it appears that all additional relief sought by the
22 plaintiff is permissible under 5 U.S.C. § 702 as being "other
23 than money damages."

24 The fact that a judicial remedy may require one party
25 to pay money to another is not a sufficient reason to
26 characterize the relief as "money damages." Bowen v.
27 Massachusetts, 56 U.S.L.W. 4878, 4882 (June 29, 1988). It has
28 long been recognized that there is a distinction between an

1 action at law for damages -- which are intended to provide a
2 victim with monetary compensation for an injury to his person,
3 property, or reputation -- and an equitable action for specific
4 relief -- which may include an order providing for reinstatement
5 of an employee with back pay, or for "the recovery of specific
6 property or monies, ejectment from land, or injunction either
7 directing or restraining the defendant officer's actions."

8 Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 688
9 (1949) (emphasis added).

10 Although the parties here devote much attention to the
11 meaning of "money damages" as used in 5 U.S.C. § 702, after
12 their briefs were filed in this case, the Supreme Court took up
13 that precise issue in Bowen v. Massachusetts, 56 U.S.L.W. 4878
14 (June 29, 1988), and, in my view, resolved the immunity
15 questions presented by this case. 2/

16 In Bowen, supra, the state of Massachusetts sought
17 declaratory and injunctive relief and asked the court to "set
18 aside" a decision disallowing certain Medicaid reimbursements to
19 the state, and ordering monetary reimbursement. The court held
20 that the federal district courts, rather than the Court of
21 Claims, have jurisdiction to review a final Department of Health
22 and Human Services' order refusing to reimburse a state for a
23 category of expenditures under its Medicaid program. Id. at
24 4887. Moreover, the "monetary damages" aspects of the relief

25 2/ Bowen was an opinion of the court agreed to by only four
26 justices, but Justice White concurred in the result, including
27 the court's conclusion that the district court's order was not a
28 judgment for "money damages" within the meaning of 5 U.S.C. §
702.

1 sought by the state were held not to be "money damages" within
2 the meaning of § 702.

3 The State's suit to enforce § 1396b(a) of
4 the Medicaid Act, which provides that the
5 Secretary "shall pay" certain amount for
6 appropriate Medicaid services, is not a
7 suit seeking money in compensation for the
8 damages sustained by the failure of the
9 Federal Government to pay as mandated;
10 rather, it is a suit seeking to enforce the
11 statutory mandate itself, which happens to
be one for the payment of money. [citation
omitted] The fact that the mandate is
one for the payment of money must not be
confused with the question whether such
payment, in these circumstances, is a
payment of money damages or as specific
relief.

12 Id. at 4884. (emphasis in original). The court thus viewed the
13 state's suit as in the nature of an equitable action for
14 specific relief seeking reimbursement to which the state was
15 allegedly already entitled, rather than money in compensation
16 for losses suffered as a result of the disallowance.

17 The court finds no basis for distinguishing the relief
18 sought in the case at bar from the relief awarded in Bowen. The
19 primary relief sought here is to require HUD to rectify alleged
20 errors in selling Jackson Terrace with a subsidy for only 36
21 units, and later selling the mortgage such that all section 8
22 subsidies were terminated. Plaintiffs also seek reimbursement
23 for certain disallowances of utility allowance to which they
24 were entitled by statute. Plaintiffs do not seek consequential
25 damages, but rather seek restoration of subsidies that they
26 believe were illegally withheld.

27 On occasion, the relief sought is described by
28 plaintiffs so as to sound like damages. For example, plaintiffs

1 ask for "restitution in the form of monetary damages, vouchers
2 or Section 8 certificates" for tenants who were deprived of
3 subsidies but subsequently left Jackson Terrace. However, the
4 court must look to the basis for the relief sought, and not the
5 particular parlance or terminology used. "Damages are given to
6 the plaintiff to substitute for a suffered loss, whereas
7 specific remedies 'are not substitute remedies at all, but
8 attempt to give the plaintiff the very thing to which he was
9 entitled.'" Bowen, supra at 4882 (quoting Maryland Department
10 of Human Resources v. Department of HHS, 763 F.2d 1441 (1985)).
11 Here, Section 8 subsidies and utility allowances are the very
12 things to which plaintiffs claim they were entitled. That the
13 court may have to fashion different remedies tailored to
14 restoring the varied plaintiffs back to their rightful positions
15 does not change the restitutionary basis for the relief.

16 In light of the court's conclusion that the relief
17 sought in this case is not "money damages" within the meaning of
18 5 U.S.C. § 702, and that sovereign immunity has been waived, it
19 is unnecessary to reach the alternative bases advanced by the
20 plaintiffs for waiving sovereign immunity. Nor is it necessary
21 to reach defendant's argument that plaintiffs must identify a
22 segregated fund to pay out any award of damages because
23 defendants' argument is premised on the assumption that
24 plaintiffs seek "money damages."

25 ~~Had the parties been aware of the Supreme Court's~~
26 holding in Bowen, supra, HUD may nevertheless have insisted, as
27 it did in its briefs filed before Bowen was decided, that the
28 court follow Thomas v. Pierce, 662 F. Supp. 519 (D. Kan. 1987),

1 which involved facts nearly identical to those here. However,
2 in spite of Thomas's factual similarity with this case, the
3 court's result here would remain the same.

4 In Thomas, plaintiffs alleged that HUD's sale of an
5 apartment complex to private individuals without Section 8
6 subsidies on 100% of the units was arbitrary, capricious and
7 otherwise contrary to law. In a motion to dismiss, the
8 defendants argued that the action was barred by the doctrine of
9 sovereign immunity and that 5 U.S.C. § 702 was insufficient to
10 waive such immunity. The court agreed, rejecting plaintiffs'
11 claim that the relief sought was in the nature of "equitable
12 restitution."

13 In reaching its conclusion, the court relied upon New
14 Mexico v. Regan, 745 F.2d 1318 (11th Cir. 1984), wherein the
15 11th Circuit held that an action seeking reimbursement to a
16 state of improperly withheld mineral royalties, though framed in
17 terms of declaratory and mandamus relief, was in reality one for
18 "money damages" not protected by § 702. The New Mexico court
19 read the legislative history of section 702 as supporting a
20 broader view of "damages," and as requiring the court to look to
21 the "thrust of the suit" to see if the plaintiff is seeking
22 money from the United States, and if so, the claim is barred.
23 Id. at 1322. The Thomas court thus concluded:

24 "[T]he thrust of plaintiffs' suit goes
25 beyond mere injunctive and declaratory
26 relief. Plaintiffs' prime objective is to
27 have HUD subsidize all of the units of the
28 project, which would require extensive
expenditure of public funds. We conclude
that this suit is essentially one designed
to reach government monies and is a claim
for which the United States has not

consented to suit under the Administrative Procedure Act.

Thomas, 662 F. Supp. at 525.

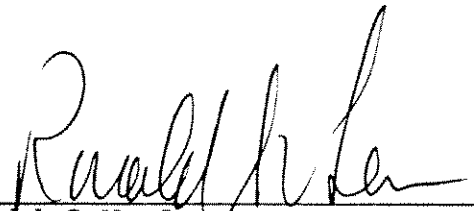
The Thomas decision is of no assistance to defendant's contentions in this case. First, to the extent that Thomas is inconsistent with Bowen, the latter obviously should control. Second, Bowen examined extensively the legislative history of § 702 and concluded, contrary to Thomas, that "money damages" should not be broadened beyond its plain language. Bowen at 4884. Third, the court's analysis was both minimal and premised upon an error of law. The court's application of law to facts is essentially contained in one paragraph and states in a conclusory manner that the "thrust of plaintiffs' suit goes beyond mere injunctive and declaratory relief." The court's further conclusion that the suit is designed to "reach government monies" states the standard for determining whether the suit is against the sovereign, not whether sovereign immunity is waived. Nor is there any authority suggesting that the substantiality of the government funds affected has any relevance to whether the relief sought is "money damages." Thus, although Thomas is factually nearly identical to the case at bar, it does not alter the court's conclusion that Bowen is controlling.

On balance, because all of the relief requested by plaintiffs can be classified as "other than money damages" within the meaning of 5 U.S.C. § 702, sovereign immunity has been waived, and HUD's motion to dismiss should be denied.

Accordingly, IT IS HEREBY ORDERED that Plaintiffs'

1 Motion To Amend, filed October 2, 1987, is GRANTED and
2 plaintiffs' First Amended Complaint lodged with this court on
3 October 2, 1987, is DEEMED FILED. IT IS FURTHER ORDERED that
4 non-federal defendants' Motion to Dismiss and Request For
5 Sanctions, filed February 23, 1987, and HUD's Motion to Dismiss,
6 filed December 1, 1987, are hereby DENIED.

7 Date: August 4, 1988

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11 Ronald S.W. Lew
12 United States District Judge
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1 ROBERT L. BROSIO
United States Attorney
2 FREDERICK M. BROSIO, JR.
Assistant United States Attorney
3 Chief, Civil Division
BONNIE E. MacNAUGHTON
4 Assistant United States Attorney
1400 United States Courthouse
5 312 North Spring Street
Los Angeles, California 90012
6 Telephone: (213) 894-4208

7 Attorneys for Federal Defendant

8 UNITED STATES DISTRICT COURT

9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 RICHARD WALKER, ELIZABETH WALKER,)
MARIA VALLADARES, on behalf of)
11 themselves and all others)
similarly situated,)

12 Plaintiffs,)

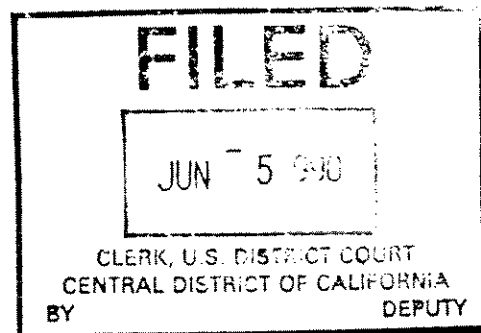
13 v.)

14 JACK KEMP, Secretary of the)
15 UNITED STATES DEPARTMENT OF)
HOUSING AND URBAN DEVELOPMENT;)
16 HERBERT and ROSELLE SOMER;)
LOUIS and ISOBEL LEVENTHAL; and)
17 JACKSON TERRACE APTS., a)
California Limited Partnership,)

18 Defendants,)

19 FIDELITY FEDERAL SAVINGS)
20 AND LOAN,)

21 Defendant-Intervenor.)
22



NO. CV 84-4370-RSWL(Bx)

ORDER GRANTING PRELIMINARY

APPROVAL OF CLASS ACTION

SETTLEMENT AGREEMENT RE

UTILITIES ISSUES

23 The Court having considered the Settlement Agreement Re
24 Utilities Issues submitted by and between defendant Jack Kemp, in
25 his official capacity as Secretary of the United States
26 Department of Housing and Urban Development, and plaintiffs,
27 Richard Walker, Elizabeth Walker, and Maria Valladares, on behalf
28 of themselves and all others similarly situated, by and through

1 their respective counsel of record herein, it appears that good
2 cause exists to grant preliminary approval of said Settlement
3 Agreement. Accordingly,

4 IT IS HEREBY ORDERED that preliminary approval of the
5 Settlement Agreement is granted and the hearing for final
6 approval of the Settlement Agreement Re Utilities Issues shall be
7 held on July ¹⁶~~23~~, 1990 at 9:00 a.m. in the courtroom of the

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1 Honorable Ronald S.W. Lew. All objections to the Settlement
2 Agreement shall be submitted no later than July ⁹~~16~~, 1990.

3
4 DATED: 5 JUN 1990

RONALD S. W. LEW
UNITED STATES DISTRICT JUDGE

5 PRESENTED BY:

6 ROBERT L. BROSIO
United States Attorney
7 FREDERICK M. BROSIO, JR.
Assistant United States Attorney
8 Chief, Civil Division

9 B- MacNaught
10 BONNIE E. MacNAUGHTON
Assistant United States Attorney
11 Attorneys for Federal Defendant

12 DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
13 OFFICE OF REGIONAL COUNSEL

14 B- MacNaught for *
15 ROSEMARIE FERNANDEZ
Attorneys for Federal Defendant

16
17 LAW OFFICE OF CALIFORNIA
RURAL LEGAL ASSISTANCE

18 B- MacNaught for *
19 RICHARD S. KOHN

20 B- MacNaught for *
21 EILEEN MCCARTHY
Attorneys for Plaintiffs

22
23 NATIONAL HOUSING LAW PROJECT

24 B- MacNaught for *
25 CATHERINE M. BISHOP
Attorneys for Plaintiffs

26 (* Pursuant to authorization
27 on June 1, 1990)

1
2 CERTIFICATE OF SERVICE BY MAIL

3 I, Dina L. Holley, declare:

4 That I am a citizen of the United States and resident or
5 employed in Los Angeles County, California; that my business
6 address is Office of United States Attorney, United States
7 Courthouse, 312 North Spring Street, Los Angeles, California
8 90012; that I am over the age of eighteen years, and am not a
9 party to the above-entitled action;

10 That I am employed by the United States Attorney for the
11 Central District of California who is a member of the Bar of the
12 United States District Court for the Central District of
13 California, at whose direction the service by mail described in
14 this Certificate was made; that on June 4, 1990, I deposited in
15 the United States mails in the United States Courthouse at
16 312 North Spring Street, Los Angeles, California, in the
17 above-entitled action, in an envelope bearing the
18 requisite postage, a copy of:

19 ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
20 ACTION SETTLEMENT AGREEMENT RE UTILITIES ISSUES

21 addressed to:

22 SEE ATTACHMENT TO CERTIFICATE OF SERVICE
23 at their last known address, at which place there is a delivery
24 service by United States mail.

25 This Certificate is executed on June 4, 1990, at Los Angeles,
26 California.

27 I certify under penalty of perjury that the foregoing is true
28 and correct.

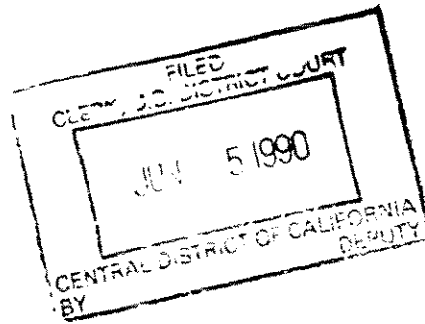

DINA L. HOLLEY

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ATTACHMENT TO CERTIFICATE OF SERVICE

Philip D. Dapeer, Esquire
George & Dapeer
3002 Midvale Avenue
Los Angeles, CA 90034

Burton S. Levinson, Esquire
Wendy Y. Watanabe, Esquire
Levinson & Lieberman, Inc.
9401 Wilshire Blvd., Ste. 1250
Beverly Hills, CA 90212



1 ROBERT L. BROSIO
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2 FREDERICK M. BROSIO, JR.
Assistant United States Attorney
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1400 United States Courthouse
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6 Telephone: (213) 894-4208

7 Attorneys for Federal Defendant

8 UNITED STATES DISTRICT COURT

9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 RICHARD WALKER, ELIZABETH WALKER,)	NO. CV 84-4370-RSWL(Bx)
MARIA VALLADARES, on behalf of)	
11 themselves and all others)	<u>REVISED EXHIBIT B TO</u>
similarly situated,)	<u>SETTLEMENT AGREEMENT</u>
12 Plaintiffs,)	<u>RE UTILITIES ISSUES</u>
13 v.)	
14 JACK KEMP, Secretary of the)	
15 UNITED STATES DEPARTMENT OF)	
HOUSING AND URBAN DEVELOPMENT;)	
16 HERBERT and ROSELLE SOMER;)	
LOUIS and ISOBEL LEVENTHAL; and)	
17 JACKSON TERRACE APTS., a)	
California Limited Partnership,)	
18 Defendants,)	
19 FIDELITY FEDERAL SAVINGS)	
20 AND LOAN,)	
21 Defendant-Intervenor.)	
22	

23 Exhibit B to the Settlement Agreement Re Utilities Issues,
24 attached hereto, has been revised by plaintiffs and the federal

25 ////

26 ////


27 ////

28 ////

1 defendant pursuant to the Court's instructions and should be
2 substituted in place of the original Exhibit B.

3 DATED: June 5, 1990.

4 ROBERT L. BROSIO
5 United States Attorney
6 FREDERICK M. BROSIO, JR.
7 Assistant United States Attorney
8 Chief, Civil Division

9 
10 BONNIE E. MacNAUGHTON
11 Assistant United States Attorney

12 Attorneys for Federal Defendant
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Migrant Farmworker Project
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(415) 864-3405

CATHERINE M. BISHOP
NATIONAL HOUSING LAW PROJECT
1950 Addison Street
Berkeley, California 94704
(415) 548-9400

Attorneys for Plaintiffs/Intervenors

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH WALKER,
MARIA VALLADARES, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

JACK KEMP, Secretary of
HOUSING AND URBAN DEVELOPMENT, and
HERBERT and ROSELLE SOMER, and
LOUIS and ISOBEL LEVENTHAL,
JACKSON TERRACE APTS., a California
Limited Partnership,

Defendants,

And

FIDELITY FEDERAL SAVINGS AND LOAN,

Defendant-Intervenor.

CV-84-4370-RSWL (Bx)

NOTICE OF PROPOSED
SETTLEMENT OF CLASS
ACTION AND HEARING

EXHIBIT B

1 TO ALL CURRENT AND FORMER SECTION 8 TENANTS AT

2 JACKSON TERRACE OF PROPOSED SETTLEMENT:

3 1. A proposed, partial Settlement Agreement has been reached
4 in Walker v. Kemp, No. CV-84-4370-RSWL (C.D. Cal. 1990). In
5 Walker, the tenants sued the Department of Housing and Urban
6 Development (HUD), the project owner and other parties. Tenants
7 challenged the change over of electrical utilities from project-
8 paid to tenant-paid and objected to the amount of the utility
9 allowance because it did not allow for air conditioning.

10 2. The Agreement proposes to settle all claims that the
11 tenants have against HUD concerning the electrical utilities. It
12 provides that the current utility allowance for all Section 8
13 tenants will be increased on July 1, 1990, to the following amounts:

	Old Utility Allowance	New Utility Allowance
16 One Bedroom	\$24.00	\$55.00
17 Two Bedrooms	28.00	61.00
18 Three Bedrooms	30.00	65.00
19 Four Bedrooms	32.00	69.00

20 For every Section 8 tenant, the utility allowance is subtracted from
21 the rent you pay.

22 3. The proposed Settlement Agreement also provides that every
23 Section 8 tenant who lived at Jackson Terrace between April 1, 1984,
24 and June 30, 1990, is entitled to a lump-sum payment for the past
25 failure of HUD and the owners of Jackson Terrace to subtract from
26 your rent the old utility allowance. The amount that tenants will
27 receive will depend upon the length of time they were a Section 8
28 tenant at Jackson Terrace, whether the utility allowance was
deducted from the tenant's rent in the past, and the size of your
apartment.

1 4. If the proposed Settlement Agreement is approved by the
2 Court, all eligible Section 8 tenants who are entitled to the
3 lump-sum payment **MUST FILE A CLAIM FORM.** No money will be
4 distributed unless a claim form is filed. If the proposed
5 Settlement Agreement is approved, claim forms will be available
6 at the California Rural Legal Assistance (CRLA) office, 1030
7 Sixth Street, No. 6/P.O. Box 35, Coachella, California
8 92236-0035.

9 5. The terms of the Settlement are more fully described in
10 the proposed Settlement Agreement. You may review the proposed
11 Settlement Agreement at the CRLA office in Coachella. Copies of
12 the proposed Settlement Agreement are also on file with the Clerk
13 of the Court, U.S. District Court for the Central District of
14 California, 312 N. Spring Street, Los Angeles, California 90012,
15 Telephone: (213) 894-5697.

16 6. If you object to the terms of this proposed Settlement,
17 you should follow the procedures set out in Paragraphs 7-8.

18 Fair Hearing and Procedures for Objection

19 7. The Court has not finally approved the proposed
20 Settlement Agreement. The Court will review the proposed
21 Settlement and hold a hearing on July 16, 1990 at 9:00 a.m. in
22 Courtroom 21 located in the United States Courthouse at 312 North
23 Spring Street, Los Angeles, California. The purpose of the
24 hearing will be for the Court to determine whether the proposed
25 Settlement Agreement is fair, reasonable and adequate. At the
26 hearing, any member of the class or subclass may appear and state
27 why the proposed Settlement Agreement should not be approved and
28 may present relevant evidence. If you want to appear at the

1 hearing, you must, on or before July 9, 1990, submit written
2 objections to the proposed Settlement Agreement to:

3 Eileen McCarthy
4 California Rural Legal Assistance
5 Migrant Farmworker Project
6 1030 - 6th Street, #6/P.O. Box 35
7 Coachella, California 92236-0035

8 Counsel for Plaintiffs

9 and

10 Bonnie E. MacNaughton
11 Assistant U.S. Attorney
12 U.S. Courthouse
13 312 North Spring Street
14 Los Angeles, California 90012

15 Counsel for Defendant Jack Kemp, Secretary
16 of United States Department of Housing and
17 Urban Development

18 You must write the case name and number on any objection you
19 wish to file. The case name and number is Walker v. Kemp, No.
20 CV 84-4370-RSWL(Bx).

21 8. If you have any questions about the proposed Settlement
22 Agreement, you may contact Eileen McCarthy, California Rural
23 Legal Assistance, Migrant Farmworker Project, 1030 - 6th Street,
24 #6/P.O. Box 35, Coachella, California 92236-0035, (800)
25 322-2752, Counsel for Plaintiffs. If you call, please state that
26 you are calling with respect to Jackson Terrace.
27
28

SERVICE BY MAIL

United States and resident of California; that my business Attorney, United States Court, Los Angeles, California eighteen years, and am not a

United States Attorney for the District is a member of the Bar of the Central District of California. The service by mail described in this June 5, 1990, I deposited in the United States Courthouse at Los Angeles, California, in the envelope bearing the

STATEMENT
ISSUES

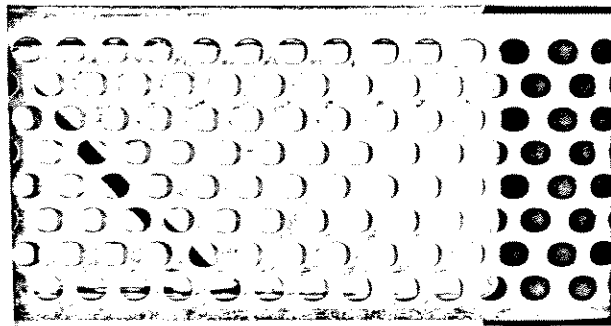
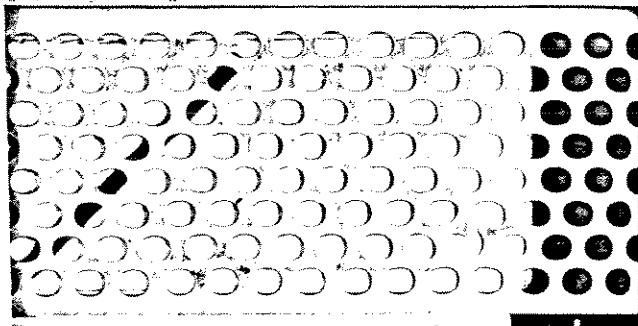
CERTIFICATE OF SERVICE

At which place there is a delivery

on June 5, 1990, at Los Angeles,

under penalty of perjury that the foregoing is true

Dina L. Holley
DINA L. HOLLEY



ATTACHMENT TO CERTIFICATE OF SERVICE

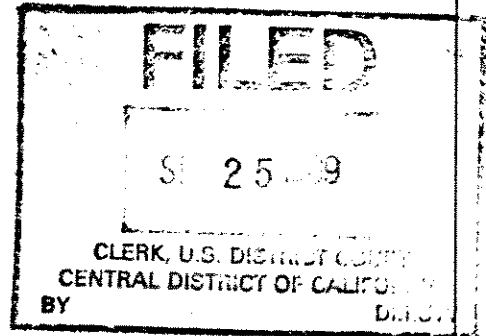
Eileen McCarthy, Esquire
California Rural Legal Assistance
1030 - 6th Street, No. 6
Post Office Box 35
Coachella, CA 92236-0035

Richard S. Kohn, Esquire
Law Office of California
Rural Legal Assistance
2111 Mission Street, Suite 401
San Francisco, CA 94110

Catherine R. Bishop
National Housing Law Project
1950 Addison Street
Berkeley, CA 94704

Philip D. Dapeer, Esquire
George & Dapeer
3002 Midvale Avenue
Los Angeles, CA 90034

Burton S. Levinson, Esquire
Wendy Y. Watanabe, Esquire
Levinson & Lieberman, Inc.
9401 Wilshire Blvd., Ste. 1250
Beverly Hills, CA 90212



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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 RICHARD WALKER, et al.,) NO. CV 84-4370-RSWL
12 Plaintiffs,)
13 v.)
14 JACK KEMP, Secretary of) ORDER
15 DEPARTMENT OF HOUSING AND)
16 URBAN DEVELOPMENT, et al.,)
17 Defendants.)
18

19 On August 14, 1989, this Court heard oral argument on
20 (1) plaintiffs' motion for summary judgement on plaintiffs' claim
21 that the sale of the mortgage on Jackson Terrace by HUD violated
22 the Administrative Procedures Act, and (2) federal defendants'
23 motion for summary judgement as to the available remedies for the
24 improper sale of Jackson Terrace by HUD. The Court took these
25 matters under submission, and now hereby rules on these motions.

26 ///

27 ///

1 I. PLAINTIFFS' MOTION FOR SUMMARY JUDGEMENT ON PLAINTIFFS' CLAIM
2 THAT THE SALE OF THE MORTGAGE VIOLATED THE ADMINISTRATIVE
3 PROCEDURE ACT.

4 Plaintiffs' motion for summary judgement on their claim
5 that the sale of the mortgage violated the Administrative
6 Procedure Act is DENIED.

7 This Court in its July 10, 1989 order noted that while
8 the provisions of the U.S. Code upon which HUD relies do indeed
9 vest great discretion in the Secretary to dispose of HUD assets
10 on "terms as he may fix", none of the statutory language suggests
11 that the Secretary may act in a manner that is inconsistent with
12 the broad statements of congressional intent which are included
13 in the National Housing Act.

14 Plaintiffs contend that the sale of the mortgage by
15 federal defendant violated the Administrative Procedure Act, 5
16 USC §706(2)(a) (which prohibits HUD from acting in an arbitrary
17 or capricious manner) in that federal defendant cancelled the
18 Regulatory Agreement without considering the impact of doing so
19 on low-income families, and congressional intent included in the
20 National Housing Act (12 USC 1701 et seq). Plaintiffs contend
21 that federal defendant's sole purpose and consideration in
22 selling the mortgage and cancelling the Regulatory Agreement was
23 to allow the property to be sold for as much money as possible
24 to aid in balancing the federal budget. Plaintiffs further
25 contend that federal defendant failed to explore other feasible
26

1 alternatives.

2 Federal defendant contends it did consider the
3 congressional desire to provide housing for low-income families,
4 and determined that that interest was adequately protected even
5 though the Regulatory Agreement was cancelled because the owners
6 of the property were still bound by the Section 8 Housing
7 Assistance Payments contract, which provided Jackson Terrace
8 tenants with adequate protection. Federal defendant also
9 contends that plaintiffs do not have standing because (1) they
10 are not intended third party beneficiaries of the Regulatory
11 Agreement between the new owners (Somers and Levantals), and (2)
12 they have not suffered any injury by the cancellation of the
13 Regulatory Agreement because the Section 8 assistance contract
14 was still in place. Federal defendant also requested that we
15 construe its opposition to plaintiffs' motion as a cross-summary
16 judgement motion.

17 Standing

18 Federal defendant contends that plaintiffs have no
19 standing because they are not intended third party beneficiaries
20 of the Regulatory Agreement between federal defendant and the
21 Somers and Levantals, and cite a number of cases in support.
22 However, this argument is misplaced. Plaintiffs are not suing to
23 enforce the terms of the Regulatory Agreement; thus, whether they
24 have standing to do so is irrelevant. Rather, plaintiffs contend
25 that the cancellation of the Agreement violated the
26

1 Administrative Procedure Act. Thus, federal defendant's
2 argument here is without merit.

3 Federal defendant also contends that plaintiffs have
4 suffered no "injury in fact". However, this argument is also
5 meritless because the Regulatory Agreement provided a much
6 broader range of protections than the Section 8 contract, and
7 both were in effect prior to the sale whereas only one was in
8 effect after the sale. Thus, plaintiffs have indeed been
9 injured.

10 Federal Defendant's Violation of the APA

11 The reviewing court shall hold unlawful and set aside
12 agency action found to be arbitrary, capricious, and abuse of
13 discretion, or otherwise not in accordance with law.
14 Administrative Procedure Act, 5 USC §706(2)(a).

15 Congress has affirmed the national goal of making
16 available a decent home and suitable living environment for every
17 American. National Housing Act, 12 USC §1701t.

18 In exercising his discretion to dispose of HUD-acquired
19 property, the Secretary must act, whenever possible, in a manner
20 which is consistent with the objectives and priorities of the
21 National Housing Act. Actions taken without consideration of
22 these policies will not stand. However, the Secretary has no
23 obligation to dispose of property he acquires as low-income
24 housing. Russell v. Landrieu, 621 F.2d 1037 (9th Cir. 1980).

25 In Walker v. Pierce, 665 F.Supp. 831 (N.D.Cal. 1987),
26

1 Judge Peckham stated that although HUD enjoys broad discretion in
2 choosing the means for achieving national housing objectives, the
3 Secretary's actions must be invalidated if he acts only to obtain
4 maximum financial return for HUD and he fails to consider and
5 implement alternatives that would have enabled him to effect the
6 objectives and priorities of the National Housing Act.

7 In the instant case, plaintiffs contend that federal
8 defendant's sole goal in selling the mortgage was to raise as
9 much money as possible to help cut the federal deficit. On the
10 other hand, federal defendant admits that the reason the mortgage
11 was sold was to help balance the federal deficit, but that they
12 did so only after concluding that the low-income tenants would be
13 adequately protected by the Section 8 contract left in place.
14 Thus federal defendant in essence contends it did in fact
15 consider the policies of the National Housing Act, and concluded
16 such policies would not be hampered by its acts. In reply,
17 plaintiffs contend that federal defendant is only now justifying
18 its actions ("post hoc rationalization") and that it did not
19 decide to sell the mortgage only after deciding the tenants were
20 adequately protected by the Section 8 contract.

21 Thus, there is a question of fact as to whether federal
22 defendant considered how the cancellation of the Regulatory
23 Agreement and the retention of the Section 8 contract would
24 protect and promote the National Housing Act's objectives before
25 selling the mortgage, and whether federal defendant considered
26

1 alternative courses of action. Therefore, summary judgement is
2 not proper here.

3 **II. FEDERAL DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT ON THE**
4 **AVAILABILITY OF REMEDIES FOR THE IMPROPER SALE OF JACKSON**
5 **TERRACE.**

6 Federal defendant's motion for summary judgement on the
7 availability of remedies for the improper sale of Jackson Terrace
8 is DENIED.

9 Federal defendant's motion is brought in response to
10 this Court's previous grant of summary judgement wherein we ruled
11 that the sale of Jackson Terrace with 40% Section 8 assistance
12 was arbitrary and capricious in violation of the Administrative
13 Procedure Act. Federal defendant brings this motion on the
14 ground that notwithstanding the foregoing ruling, plaintiffs are
15 not entitled to any relief because they they have not suffered
16 any injury as a result of federal defendant's wrongful acts.

17 The Administrative Procedure Act, 5 USC §702, provides
18 that a person suffering legal wrong because of agency action, or
19 adversely affected or aggrieved by agency action, is entitled to
20 judicial review thereof.

21 A person aggrieved by agency action has standing under
22 §702 to challenge that action if it caused him "injury in fact"
23 and the alleged injury is to an interest arguably within the zone
24 of interests to be protected by the statute the agency is claimed
25 to have violated. To show "injury in fact", plaintiff must
26

1 allege a particularized injury concretely and demonstrably
2 resulting from defendant's action, which injury will be redressed
3 by the remedy sought. Starbuck v. San Francisco, 556 F.2d 450
4 (9th Cir. 1977); American Motorcyclists Assoc. v. Watt, 534
5 F.Supp. 923 (C.D. Cal. 1981); Association of Data Processing
6 Organizations v. Kamp, 397 U.S. 150 (1970); Sierra Club v.
7 Morton, 405 U.S. 727 (1972); Barlow v. Collins, 397 U.S. 159
8 (1969); Glacier Park Foundation v. Watt, 663 F.2d 882 (9th Cir.
9 1981). A plaintiff must show threatened or actual distinct and
10 palpable injury, fairly traceable causal connection between the
11 injury and the challenged conduct, and substantial likelihood that
12 the relief requested will redress the injury. Preston v.
13 Heckler, 734 F.2d 1359 (9th Cir. 1984); Walker v. Pierce, 665
14 F.Supp. 831 (N.D.Cal. 1987).

15 HUD originally planned to sell Jackson Terrace subject
16 100% (all 90 units) to Section 8 assistance contracts. At that
17 time 78 of the 90 units were occupied by people receiving Section
18 8 assistance. However, prior to the sale, John Citso (whose
19 declaration is attached to federal defendant's motion), an
20 employee of HUD, caused a study to be done on Jackson Terrace.
21 This study allegedly showed a drastic decrease in the number of
22 Section 8 people living at Jackson Terrace, i.e. only 25-30 units
23 occupied by Section 8 recipients, and concluded that 40% (36
24 units) reserved for Section 8 recipients would be sufficient.
25 Accordingly, Jackson Terrace was sold to its new owners (the
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1 Somers and the Levanthals) with only 40% (36 units) required to
2 be reserved for Section 8 recipients.

3 In the years following the sale, John Citso caused the
4 usage of Section 8 assistance at Jackson Terrace to be monitored.
5 Attached to Mr. Citso's declaration are HUD internal control
6 sheets which show that from June 1981 to December 1985 not all of
7 the 36 Section 8 units were consistently utilized for two, or
8 even four, years from the date of the sale. Thus, federal
9 defendant contends, no one entitled to Section 8 assistance was
10 or has been denied a Section 8 unit at Jackson Terrace, and so no
11 one was harmed.

12 Conversely, plaintiffs contend that they were in fact
13 injured in two ways. First, plaintiffs argue that they suffered
14 injury to their statutory rights. Plaintiffs argue that since
15 their statutory rights have been violated, they need not show
16 actual injury, and cite several cases purportedly supporting this
17 position. However, this argument is meritless because the cases
18 cited do not provide that mere violation of a statute without
19 injury in fact entitles one to a remedy. Rather, those cases
20 provide that injury in fact must be shown.

21 Second, plaintiffs argue that they have indeed suffered
22 economic injury. Plaintiffs attach to their initial opposition 6
23 declarations from Jackson Terrace tenants or former tenants with
24 which they attempt to show that people receiving Section 8
25 assistance have been denied Section 8 units at Jackson Terrace.
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1 However, these declarations fail to do that job. The
2 declarations merely state the declarant's yearly income over a
3 period of years, the monthly rate of rent they paid at Jackson
4 Terrace, and whether and when they occupied a Section 8 unit at
5 Jackson Terrace. The declarations do not state that the
6 declarants were denied a Section 8 unit or that they cannot now
7 get a Section 8 unit at Jackson Terrace because none are
8 available.

9 At the August 14, 1989 hearing, the Court indicated to
10 plaintiffs' counsel that the declarations were insufficient to
11 rebut federal defendant's claims, and so took the matter under
12 submission and allowed plaintiffs to file supplemental
13 declarations, and federal defendant a reply thereto. The
14 supplemental declarations and reply thereto were so filed.
15 Unlike the declarations in plaintiffs' initial opposition,
16 plaintiffs' supplemental declarations state that the declarants,
17 during the relevant time period, were eligible for Section 8
18 units, asked the management at Jackson Terrace if they could be
19 placed in a such a unit, and were told that no units were

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1 available at the time but that their names would be placed on a
2 waiting list. Such allegations create a material issue of fact
3 and render summary judgement improper here. Accordingly, federal
4 defendant's motion is denied.

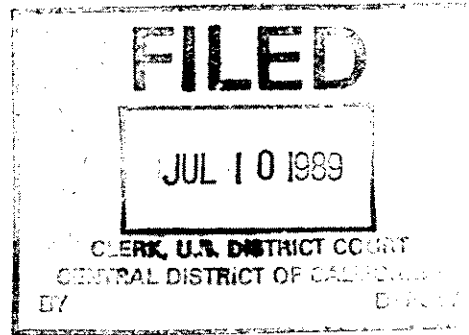
5 IT IS SO ORDERED.

6 DATED: September 18, 1989

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8 
9 RONALD S. W. LEW
10 United States District Judge

11 Walker v. HUD, CV-84-4370-RSWL

12 (1) Plaintiffs' motion for summary judgement re sale of mortgage
13 violate APA; (2) Federal defendant's motion for summary judgement
14 re remedies available for wrongful sale of property.
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Richard Walker, et al.,) NO. CV-84-4370-RSWL
Plaintiffs,)
v.)
JACK KEMP, Secretary) ORDER
of HOUSING AND URBAN)
DEVELOPMENT, et al.)
Defendants.)

On January 26, 1989 this Court issued an Order in which it ruled upon all of the then pending motions in the case with the exception of plaintiffs' motion for partial summary judgment on the claim that the sale of Jackson Terrace must be set aside because the Property Disposition Committee had not kept minutes of the meeting at which it authorized the sale of Jackson Terrace with only 40% Section 8 subsidy. In that Order, the Court determined that HUD had not provided sufficient materials concerning the deliberations of the Property Distribution Committee and remanded to HUD to collect and provide

1 to the Court all material that the property distribution
2 Committee used in making the decision to sell Jackson Terrace
3 with the limited subsidy. The Court indicated that it would
4 consider plaintiff's motion for partial summary judgment when
5 that record was provided.

6 During the period in which HUD was preparing the
7 supplemental material, plaintiffs filed a motion for
8 reconsideration and clarification of several other aspects of the
9 Courts January 26, 1989 Order. In particular, plaintiffs' asked
10 the Court to (1) restore paragraph 2(a) of the Prayer for Relief;
11 (2) grant plaintiffs previously denied motion for summary
12 judgment on the allegation that HUD violated 12 U.S.C. §1715z-1b
13 when it sold Jackson Terrace without notice and comment; (3)
14 vacate the grant of summary judgment to HUD on the issue of the
15 "reasonableness" of the utility allowances; (4) vacate the grant
16 of summary judgment to HUD on the issue of reasonable access to
17 utility information; and (5) clarify the Court's order relating
18 to the mortgage sale. Following the filing of that motion,
19 plaintiffs filed a motion to strike the affirmative defenses of
20 Intervenor Fidelity Federal Savings and Loan Association and a
21 motion to bifurcate the trial. All of these motions were taken
22 under submission without oral argument pursuant to Fed. R. Civ.
23 P. 78. In this Order, the Court will rule on the motion left
24 undecided in the January 26, 1989 Order and all of the
25 subsequently filed motions.
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1 I. Plaintiffs Motion For Summary Judgment on the Allegation
2 that the Sale of Jackson Terrace With Forty Percent Section
3 Eight Subsidy Must be Vacated Because the Property
4 Distribution Committee Failed to Keep Minutes

5 Plaintiffs' Motion is GRANTED IN PART AND DENIED IN
6 PART. Plaintiffs' motion is GRANTED as to the allegation that
7 the Property Disposition Committee failed to keep minutes of its
8 deliberations concerning Jackson Terrace in violation of its
9 delegation of authority as set forth in 35 Fed. Reg. 4022-23
10 (March 3, 1970) and 41 Fed. Reg. 26946-47 (June 30, 1976).
11 Summary judgment is further granted as to the allegation that
12 such a failure cannot be described as "merely procedural" or
13 "poor housekeeping." The law is clear that the minutes which
14 should have been kept by the committee were an integral and
15 necessary aspect of the sale of Jackson Terrace. Indeed, the law
16 is clear that the failure to keep minutes is a sufficient basis
17 for the Court to vacate the sale in its entirety.¹ However, to
18 the extent that plaintiffs' motion seeks to impose upon the Court

19
20 ¹The argument put forth by non-federal defendants that the
21 Court is without the authority to vacate the sale is without
22 merit. While vacating the sale would create difficult and novel
23 problems concerning the non-federal defendants, both those
24 involved in the case at the outset and those who later
25 intervened, the Court is not convinced that the rights of those
26 parties present a legal impediment to vacating the sale. Rather,
27 at this stage in the litigation, the Court sees the issue of the
28 rights of the non-federal defendants as relevant only to the
equitable considerations relevant to fashioning relief, and not
to the underlying authority of the Court to set aside HUD actions
which were taken in violation of clearly established law.

1 a mandatory duty to vacate the sale, the motion is DENIED. The
2 Administrative Procedures Act generally limits the authority of
3 this Court to grant relief which is other than vacating the
4 unlawful agency action and remanding to the agency for further
5 proceedings. However, and as noted in the Court's January 26,
6 1989 Order, the APA allows the Court, in exercising equitable
7 discretion, to order such relief as is required by the exigencies
8 of the case. Asarco, Inc. v. Occupational Safety & Health Ad.,
9 647 F.2d 1 (9th Cir. 1981). Thus, in a case such as this where
10 the inclusion of innocent parties in the dispute has created
11 "exigencies" that are largely independent of the relief
12 originally sought by plaintiffs, the Court may vary the relief
13 available and attempt to fashion relief that will protect the
14 rights of all parties involved. This, may or may not include an
15 order vacating the agency action. Thus, while plaintiffs are
16 entitled to summary judgment on their claim that the sale of
17 Jackson Terrace with less than 100% Section 8 subsidies was
18 unlawful, the Court will not, at this point, vacate and set
19 aside the sale.²

20 ²While the Court is not yet willing to state that the sale
21 must be set aside, the Court's unwillingness to do so should not
22 be taken as an indication that the Court has adopted the position
23 of Intervenor Defendant Fidelity Federal Savings and Loan
24 Association that the sale is merely "voidable" and "not" void.
25 To the contrary, if the Court determines that the sale need be
26 set aside, this will be done based on a finding that the Property
27 Disposition Committee did not lawfully authorize the sale. Thus,
28 the sale was "void" from the outset. The Court, at this point,
holds only that the relief to be granted at the conclusion of
this case need not include a declaration that the sale is void
if other relief can be fashioned which will vindicate the rights
of the plaintiffs.

1 The Court's Findings of Fact and Conclusions of Law in
2 support of the grant of summary judgment to plaintiffs follow:

3 Plaintiffs filed their Second Motion for Summary
4 Judgment on February 25, 1987. In that motion plaintiffs asked
5 the Court to declare that the sale of Jackson Terrace with only
6 40% Section 8 subsidy was unlawful and must be vacated.
7 Plaintiff argued that the Property Disposition Committee, a
8 committee of HUD officials charged with reviewing the propriety
9 of all HUD property dispositions, had been improperly constituted
10 and had failed to comply with various HUD regulations in
11 reviewing the proposed sale of Jackson Terrace. In particular
12 plaintiffs argued that the failure of the Committee to keep
13 minutes of their meetings or to review tenant comments made the
14 approval of the Jackson terrace sale "arbitrary, capricious, an
15 abuse of discretion, or otherwise not in accordance of the law."
16 5 U.S.C. §706(2) (A).³ Both Federal and non-federal defendant
17 properly opposed the motion.

18 On January 26, 1989 the Court issued an order which
19 disposed of plaintiffs' motion in part. The Court denied
20 plaintiffs' motion for summary judgment on the claim that,
21 because the Committee had been improperly constituted, the sale
22 of Jackson Terrace was invalid. The Court held, in essence, that
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25 ³In the February 25, 1987 motion Plaintiffs also moved for
26 summary judgment on a separate issue not relevant to this order.

1 in the absence of a clear violation of a statutory or regulatory
2 mandate concerning the composition of the Committee, the Court
3 would defer to the discretion of the Agency in formulating
4 policies for designating members of the committee. January 26,
5 1989 Order pp. 20-21. The Court then declined to rule on
6 plaintiff's motion in so far as it concerned the failure to keep
7 minutes and other procedural violations. The Court determined
8 that the failure to keep minutes was not necessarily indicative
9 of arbitrary or capricious action and that a thorough review of
10 the entire record relative to the Committee's decision was
11 necessary before the Court could properly consider the motion for
12 summary judgment. The Court thus ordered HUD to assemble all
13 "materials that the committee used in making [the] decision" to
14 sell Jackson Terrace with a 40 percent Section 8 subsidy and file
15 them with the Court no later than March 31, 1989. Plaintiffs
16 were allowed until April 17, 1989 to file comments on these
17 materials.

18 The materials assembled by HUD and plaintiffs'
19 comments in response thereto were timely filed and have now been
20 considered by the Court together the papers originally filed in
21 support of and in opposition to the motion. Having reviewed all
22 of these materials the Court has concluded that the decision to
23 sell Jackson Terrace with 40% Section 8 subsidy was indeed
24 "arbitrary and capricious, an abuse of discretion, or otherwise
25 not in accordance with the law." First, the decision
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1 of the Committee, to the extent that it actually operated as a
2 committee, was made in violation of very specific statutory
3 directives concerning its proper functioning. While the
4 violations are legion, the most serious of them appears to be
5 the failure of the Committee to keep minutes--or any other record
6 of its deliberations or the thoughts or concerns of the
7 individual committee members. As noted, this failure does not
8 necessarily establish arbitrary or capricious conduct. However,
9 the papers filed by HUD in response to the January 26, 1989 order
10 demonstrate that HUD is unable to present a record which
11 establishes that the Committee carefully considered the facts
12 relevant to a sale with only 40 % Section 8 subsidy. Rather,
13 the papers indicate that the decision to sell with a limited
14 subsidy--a radical departure from that Committee's decision of
15 only ten months earlier to sell with 100 percent subsidy--was
16 not carefully considered. The Committee members appear to have
17 been presented with a highly conclusory report which radically
18 changed the description of the tenant population at Jackson
19 Terrace. However, despite the report's conclusory nature and
20 without any discussion, objection, or inquiry the committee
21 unanimously approved the amendment. This cannot be described
22 as anything other than arbitrary and capricious conduct.

23 The Property Distribution Committee is a creation of
24 the Secretary of HUD. Pursuant to 42 U.S.C. 3535, the Secretary

25 "may delegate any of his function, powers, and duties
26 to such officers and employees of the department as he
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1 may delegate, may authorize such successive
2 redelegations of such functions, powers, and duties, as
3 he may deem desirable and may make such rules and
4 regulations as may be necessary to carry out his
5 functions powers and duties.

6 Since 1970, the Secretary's responsibility to approve
7 dispositions of HUD owned multifamily housing projects has been
8 delegated to the Property Disposition Committee. Pursuant to a
9 Redelegation of Authority and Assignment of Function published at
10 35 Fed. Reg. 4022 (March 3, 1970), the Property disposition
11 Committee was created and assigned various functions. Section
12 B(4) of the Delegation provided:

13 the Committee shall meet at the call of the Chairman
14 and shall maintain minutes of each meeting. Such
15 minutes shall be dated, consecutively numbered, and
16 shall be signed by each member who attended the
17 meeting. The original of the minutes shall be retained
18 in the official records of the department.

19 On June 30, 1976, HUD published a Redelegation of Authority of
20 the Property Disposition Committee. 41 Fed. Reg. 26946-47 (June
21 30, 1976). Section E of the Redelegation provides, in pertinent
22 part:

23 Sec. E. Procedures

24 The following procedures shall apply to the Central
25 Office Committee and to each Regional Office, Area
26 Office and Insuring Office Committee (herein called
27 the Committee):

28 1. The Committee shall meet at the call of the
chairman or Acting Chairman. Any Committee action must
be taken at a meeting of the Committee and must be
approved by a majority vote of all members of the
Committee, whether present or not. The Committee shall
maintain written minutes of each meeting. Such minutes
shall be dated, consecutively numbered, and shall be
signed by each member attending the meeting, indicating

1 either an affirmative or negative vote. Copies of all
2 executed minutes together with a copy of each approved
3 disposition program shall be submitted to the Director,
4 Office of Property disposition, Office of Housing,
5 within three working days following the meeting of the
6 Committee, and to the Regional Administrator for the
7 disposition program approved by other than the Regional
8 Office Committee.

9 2. The minutes of the meeting and disposition shall
10 constitute the basis for the public offering and
11 acceptance or rejection of bids and the execution of
12 all documents and instruments relating and incident
13 thereto, including instruments of conveyance.

14 (emphasis added).⁴ The record currently before the Court
15 demonstrates that the Property Disposition Committee failed to
16 conform to the terms of its delegation and assignment of
17 function. No minutes of the meetings were kept and HUD has
18 proved incapable of presenting to the Court any form of record
19 which indicates that the Property Distribution Committee
20 carefully considered the sale of Jackson Terrace. Rather HUD has
21 submitted to the Court the declarations of four members of the
22 Committee each of whom state that they have no independent
23 recollection of the sale of Jackson Terrace and the declaration
24 of a fifth who states only that he has no reason to believe
25 proper procedures were not followed during the course of the
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29 ⁴The Redelelegation of authority to the Property Disposition
30 Committee was amended several times after 1976. However, None of
31 the amendments altered the Property Disposition Committee's
32 mandatory duty to take minutes which were to serve as a basis
33 for any action to be taken by the Committee. See Memorandum of
34 Points and Authorities In Support of Plaintiffs' Second Motion
35 for Partial Summary Judgment filed February 25, 1987, p.8.

1 approval of the sale of Jackson Terrace.⁵ Thus, even if the
2 Court were to hold that the obligations specifically imposed on
3 the Committee by regulation were in some way waivable if the
4 actions taken by the Committee were shown to have been reasonably
5 considered, here HUD has produced nothing to show the Committee
6 fully considered the sale of Jackson Terrace with only 40%
7 Section 8 subsidy. Thus, the sale must be held to be arbitrary
8 and capricious.⁶

9 The Court's review of the record presented by HUD also
10 indicates that there are other gaps in the administrative record
11 which dictate holding HUD's action to be arbitrary and
12 capricious. First, the record indicates that at the time of the
13 original 100 % Section 8 recommendation, notice of the impending
14 sale was given to the City of Indio and other governmental
15 entities pursuant to 24 C.F.R. §290.33(a)(2). The purpose of
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18 ⁵The four committee members are Conrad Egan, Kenneth Moul,
19 D. Carlyle Blevins, and George O. Hipps. The fifth is Robert P.
20 Kalish.

21 ⁶HUD's longstanding argument that the decision to sell with
22 only 40% Section 8 subsidies is supportable based on a tenant
23 survey conducted prior to the authorization of the sale does not
24 alter the Court's holding. Even if the Court assumes that a
25 second tenant survey was conducted and that the survey would
26 properly support the decision, the fact remains that the
27 Committee authorization was fatally flawed in that no minutes
28 were kept and there is no evidence that the Property Disposition
Committee carefully considered the sale of Jackson Terrace.
Thus, even if HUD had accurately measured the income of the
project tenants and other relevant factors, the decision to sell
with only 40% Section 8 subsidies was not lawfully made.

1 this notice was to determine whether those entities had an
2 interest in acquiring the project. However, no notice was given
3 to these same entities that HUD was considering selling the
4 project with only 40 % Section 8 Subsidy. This was not done
5 despite the fact that at least one government entity, the City of
6 Indio, had expressed an interest in purchasing the property with
7 less than 100 % Section 8 subsidy. This failure to give notice
8 is a direct breach of HUD's obligation under 24 C.F.R.
9 §290.33(a)(2) and, like the failure to keep minutes, establishes
10 arbitrary and capricious conduct. Second, 24 C.F.R. §290.35
11 requires that the disposition analysis presented to the Committee
12 must include "[a] summary of comments received from the tenants,
13 the public, the local Public Housing Agency and any other
14 governmental agencies regarding the disposition of the project."
15 The record presented to the Court contains no such summary and
16 does not even indicate that comment was solicited from the
17 tenants or the public. This, like the failure to keep minutes
18 or act in accordance with 24 C.F.R. §290.33(a)(2), established
19 arbitrary and capricious conduct.

20 II. Plaintiffs' Motion for Reconsideration--The Restoration of
21 Paragraph 2(a) of the Prayer for Relief

22 Plaintiff's motion to restore paragraph 2(a) of the
23 First Amended Complaint is GRANTED. As the Court held in the
24 January 26, 1989 Order, the Administrative Procedures Act, 5
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1 U.S.C. §§ 701-706 permits the Court to engage in the requested
2 judicial review and provide relief in accordance with the
3 "exigencies of the case" and equitable principles. Asarco, Inc.
4 v. Occupational Safety & Health Ad., 647 F.2d 1 (9th Cir. 1981).

5 Upon reconsideration, the Court has concluded that the relief
6 requested in paragraph 2(a), or a limited variant of such relief,
7 could conceivably be found in the exigencies of the case and thus
8 could be ordered by the Court after a full hearing on the merits
9 of plaintiffs' claims. As such, the Court's order striking that
10 paragraph was entered in error and must be vacated.⁷

11 III. Plaintiffs' Motion For Reconsideration: The Grant of
12 Summary Judgment to Defendants on the Issue of Reasonable
13 Access to Utility Information

14 Plaintiff's motion to vacate the grant of summary
15 judgment on the issue of reasonable access to utility information
16 is GRANTED. Upon reconsideration the Court has determined that
17 genuine issues of material fact remain to be resolved before the
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20 ⁷The Court has considered HUD's argument that such relief is
21 unavailable to plaintiffs as it would interfere with the contract
22 rights of the non-federal defendants and, as a preliminary
23 matter, found this argument to be unpersuasive. First, any harm
24 that non-federal defendants may suffer as a result of the order
25 may give rise to a legally distinct claim which can be
26 adjudicated after the rights of the present plaintiffs are
vindicated. Second, and as this order indicates, the rights of
the non-federal defendants under the purchase agreement and
related documents are not at all clear at present. Thus, any
order striking a prayer for relief based on the rights of non-
federal defendants is necessarily premature.

1 Court can determine the "reasonableness" of the access to utility
2 information provided by HUD to plaintiffs. In doing so, the
3 Court is particularly mindful that the report prepared by Mr.
4 Karr, a report HUD seems not to dispute relying upon in
5 determining plaintiffs' utility allowances, appears not to have
6 been made available to plaintiffs despite repeated requests for
7 documents relevant to the determination of utility allowances at
8 Jackson Terrace.

9
10 IV. Plaintiffs' Motion for Reconsideration--The Refusal to
11 Grant Plaintiffs' Motion for Summary Judgment on the Claim
12 that HUD violated 12 U.S.C. 1715z-1b When it sold Jackson
13 Terrace without Giving Notice and Opportunity to Comment

14 Plaintiff's motion to reconsider the refusal to grant
15 summary judgment to plaintiffs on the allegation that HUD sold
16 Jackson Terrace without the notice to tenants and opportunity to
17 comment required by 12 U.S.C. 1715z-1b is GRANTED. The failure
18 to provide the tenants at Jackson Terrace with notice of the sale
19 and timely opportunity to comment constitutes arbitrary and
20 capricious conduct which renders the subsequent sale of Jackson
21 Terrace unlawful. While 12 U.S.C. 1715z-1b provides that notice
22 of proposed property dispositions be given as the "Secretary
23 deems it appropriate" the purpose of the statute is clear:

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1 Notice is to be given in all situations in which active tenant
2 participation may inform the disrection of the Secretary as to
3 the effects of the proposed sale. Here, HUD has provided the
4 Court with no rationale upon which the Secretary could have
5 determined that notice to the tenants of Jackson Terrace was not
6 appropriate. Thus, the failure of HUD to give notice and accept
7 comment constitutes arbitrary and capricious conduct."⁸

8 IV. Plaintiffs's Motion for Reconsideration--The Mortgage Sale
9 Issues

10 Plaintiff has requested that the Court reconsider two
11 distinct aspects of its January 26, 1989 order concerning the
12 mortgage sale. First, plaintiffs seek clarification that they
13 will be allowed to proceed to trial on the claim that because the
14 Secretary did not consider all relevant factors before
15 determining to sell the Jackson Terrace mortgage, the sale of the
16 mortgage must be set aside as arbitrary and capricious. Second,
17 plaintiff seeks clarification as to whether or not they will be
18 permitted to proceed to trial on the claim that the Deed, Deed of
19 Trust, or Regulatory Agreement must be reformed so as to include
20 Appendix A. Each of these issues will be addressed separately.

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25 ⁸As discussed in Section I above the Court holding that HUD
26 acted unlawfully in selling Jackson Terrace does not necessarily
require that the sale be set aside.

1 A. The Failure to Consider All relevant Factors In Determining
2 to Sell the Mortgage

3 In their motion for partial summary judgment filed on
4 January 20, 1989 Plaintiff urged the Court to amend the sale of
5 the Mortgage to non-Federal defendants because the sale had been
6 approved by the Secretary without proper consideration of all
7 relevant factors. Essentially, Plaintiffs argued that the
8 the Secretary had determined to sell the Jackson Terrace
9 mortgage solely for the purpose of raising funds and did not
10 consider any of the purposes of the National Housing Act as
11 required by statute and significant case law. See Walker v.
12 Pierce, 665 F. Supp. 831 (N.D. Cal. 1987) (and cases cited
13 therein). Federal defendants opposed the motion arguing that
14 there was no direct limitations on the Secretary's discretion to
15 authorize the sale of the mortgage and cited provisions of the
16 United States Code which appear to grant the Secretary broad
17 discretion in disposing of a variety of HUD assets. See January
18 26, 1989 Order at 32. In the January 26, 1989 Order the Court
19 adopted HUD'S view of the sale of the mortgage stating that "in
20 the absence of any statutory or regulatory directives restricting
21 the Secretary' decision to sell the mortgage, [the Court] must
22 conclude that there was no abuse of discretion."

23 Plaintiffs now ask the Court to reconsider that ruling
24 and allow plaintiff to proceed to trial on the claim that the
25 Secretary failed to properly consider "all" (plaintiffs really
26

1 mean "any") of the factors that, under the National Housing Act,
2 should have been considered prior to selling the mortgage.
3 Plaintiffs rely heavily on the opinion of Judge Peckham in
4 Walker v. Pierce cited above. In that case, Judge Peckham
5 temporarily enjoined HUD from proceeding with a large mortgage
6 sale, preliminarily holding that the sales would be unlawful
7 because HUD had not considered the objectives of the National
8 Housing Act but had simply determined to sell the mortgages as a
9 deficit reducing measure. Having now reviewed Judge Peckham's
10 opinion the Court has determined that the Court's January 26,
11 1989 Order was in error. While the provisions of the U.S. Code
12 upon which HUD relies do indeed vest great discretion in the
13 Secretary to dispose of HUD assets on "terms as he may fix," none
14 of the statutory language suggests that the Secretary may act in
15 a manner that is inconsistent with the broad statements of
16 congressional intent which are included in the National Housing
17 Act. As such, plaintiffs are entitled to prove at trial that the
18 Secretary failed in his statutorily mandated duty to follow the
19 policies of the National Housing Act.⁹
20

21
22 ⁹The Court recognizes that such a determination might well
23 be appropriate for determination on summary judgment as it
24 depends upon what is or is not contained in the administrative
25 record. While the fast approaching trial date might normally
26 preclude a summary judgment motion, the Court has determined that
intervening trials may result in this case being placed on
trailing status for several weeks. As such, if plaintiff's seek
to file such a motion--fully briefed-- the Court will entertain
that motion.

1 B. Plaintiff's Motion for Reconsideration--The Reformation of
2 the Deed, Deed of Trust and or Regulatory Agreement

3 Plaintiffs seek clarification or reconsideration of the
4 Court's Order concerning the claim that the terms of the sale to
5 non-federal defendants must be reformed to include the
6 "protective clauses" contained in Appendix A to the Contract of
7 Sale and Purchase. The Court has previously held that the
8 written documents of sale could not be reformed "without evidence
9 of mistake or oversight on the part of the parties entering into
10 the agreement" and that plaintiffs had presented no evidence of
11 such mistake or oversight. Plaintiffs have now moved for
12 reconsideration and have presented to the Court evidence which
13 indicates that the parties may have understood that the terms of
14 Appendix A were to be incorporated into the terms of the sale.
15 Based on this evidence, plaintiffs have now clearly established a
16 genuine issue of fact which entitles them to a trial on the
17 reformation issue.

18 C. The Due Process Issue

19 Finally, Plaintiffs have moved for reconsideration of
20 that aspect of the Court's January 26, 1989 Order which dismissed
21 plaintiffs' due process claims contained in the Fourth and Fifth
22 Claims for relief. That request is DENIED.

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1 V . Plaintiffs' Motion to Strike the Affirmative Defenses of
2 Defendant Fidelity Federal Savings and Loan Association

3 Plaintiffs' motion to strike the ten affirmative
4 defenses put forward by Fidelity Federal Savings and Loan
5 Association ("Fidelity") is hereby GRANTED IN PART AND DENIED IN
6 PART. The motion is GRANTED as to the FIRST, SECOND, THIRD,
7 FOURTH, EIGHTH, and TENTH affirmative defenses. The motion is
8 DENIED as to the FIFTH, SIXTH, and SEVENTH, and NINTH defenses.

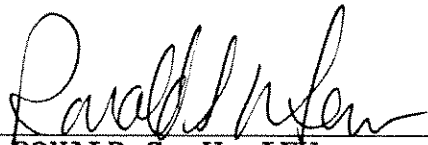
9 The motion is granted as to the First (failure to
10 state a claim), Second (lack of subject matter jurisdiction), and
11 Third (no standing) defenses for three reasons. First, the Court
12 has already issued orders which dispose of the defenses in large
13 part. Second, the Court is unable to envision any set of
14 circumstances such that any of the above defenses will be
15 successful. Third, all of the above defenses may be raised at
16 any time. Thus, defendant Fidelity suffers no prejudice from a
17 dismissal of these defenses at this time. The motion is granted
18 as to the Eighth defense (plaintiff's claims amount to an
19 "unconstitutional taking") and Tenth defense (Fidelity is
20 entitled to be placed in the position of HUD prior to the time
21 that its mortgage was satisfied by the Fidelity loan proceeds) as
22 the Court has determined they are not properly affirmative
23 defenses. If the those defenses are relevant to this litigation
24 at all it is purely in the context of the relief to be awarded.
25 They would not defeat plaintiffs' underlying claim.
26

1 VI. Plaintiff's Motion For Bifurcation

2 Plaintiff's Motion for Bifurcation is DENIED. When
3 plaintiffs were permitted to amend their complaint in order to
4 seek restitution plaintiff represented to the Court that such a
5 claim would not cause additional delay in bringing this case to
6 trial on the merits. Bifurcation would entail such delay and
7 plaintiffs should be ready to go to trial on all of their claims
8 on the date set by the Court.

9 IT IS SO ORDERED.

10 DATED: July 9, 1989.

11 
12 RONALD S. W. LEW
13 United States District Judge
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18 Walker v. Kemp CV-84-4370 1) SJ re Failure to Keep Minutes
19 2) Recon. of 1/26/89 order
20 3) Strike Fidelity Aff. Defenses
21 4) Bifurcate Trial
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FILED

JAN 26 1989

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH
WALKER, MARIA VALLADARES, on
behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

SAMUEL PIERCE, Secretary of the
U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, HERBERT AND
ROSSELLE SOMMER, LOUIS AND ISABEL
LEVENTHAL, JACKSON TERRACE
APTS., a Calif. Ltd, Partnership,

Defendants.

) NO. CV-84-4370-RSWL

) ORDER

The non-federal defendants in the above captioned
matter have filed a motion to dismiss this action for failure to
join a necessary party as required by Fed. R. Civ. P. 19.
Plaintiffs have filed a motion to strike the affirmative defenses
in non-federal defendants' answer to the first amended

//

//

1 complaint. These motions were originally set for oral argument
2 on Monday November 14, 1988 but were removed from the Court's law
3 and motion calender for disposition based on the papers filed
4 pursuant to Fed. R. Civ. P. 78.

5 Now, having read and considered all of the papers filed
6 in support of and in opposition to the motions, the Court hereby
7 issues the following orders:

8 Non-federal defendants' motion to dismiss for failure
9 to join a necessary party pursuant to Fed. R. Civ. P. 19 is
10 DENIED. The Court finds that Fidelity Savings and Loan
11 Association not to be a necessary party to this action. This
12 case concerns, inter alia, the validity of an assignment of
13 property from federal defendant HUD to non-federal defendants.
14 Fidelity currently holds a mortgage on that property. As such,
15 it is certain that Fidelity has an interest in the property at
16 issue. However, it is equally certain that Fidelity's interest
17 are represented by the presence of the non-federal defendants.
18 Fidelity's interest, like that of any mortgagee, cannot possibly
19 be any greater than those of the mortgagor, the non-federal
20 defendants. Thus, the Court finds that Fidelity's interests are
21 protected by the presence of the non-federal defendants. See
22 Ionian Shipping Co. v. British Law Insurance Co., 426 F.2d 186,
23 189 (2d Cir. 1970).

24 //

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1 Plaintiff's motion to strike the eleven affirmative
2 defenses pursuant to Fed. R. Civ. P. 12 (f) is GRANTED IN PART
3 AND DENIED IN PART. The SECOND, THIRD, SIXTH, and SEVENTH
4 affirmative defenses are hereby stricken as legally insufficient.
5 Rule 12 (f) permits the trial judge to strike insufficient
6 defenses or redundant, immaterial, impertinent, or scandalous
7 matter. Here, it is beyond question that the second, third,
8 sixth, and seventh affirmative defenses are insufficient within
9 the meaning of Rule 12 (f).¹

10 As to the other affirmative defenses, the Court finds
11 that the FOURTH, FIFTH, EIGHTH, and NINTH affirmative defenses
12 have not been pleaded in conformity with Fed. R. Civ. P. 8 (e)
13 as they do not provide plaintiffs with fair notice of the nature
14 of the defense. As such, the Court hereby strikes those
15 defenses.

16 //

17 //

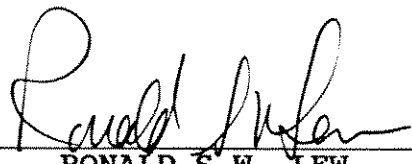
18
19 ¹The second affirmative defense (lack of subject matter
20 jurisdiction) is legally insufficient as federal question
21 jurisdiction has been established. Also, non-federal defendants
22 are free to raise the defense of lack of subject matter
23 jurisdiction even after it has been stricken from the answer. The
24 third affirmative defense (lack of standing) is legally
25 insufficient as this Court has already ruled that plaintiffs have
26 properly alleged a legally cognizable harm. The sixth affirmative
27 defense (failure to join a necessary party) is legally
28 insufficient as it has been dealt with dispositively in the order
above. The seventh affirmative defense (statute of limitations)
is legally insufficient as non-federal defendants are incapable
of presenting to the Court any set of facts to support this
defense.

1 Non-Federal Defendants may file an amended answer
2 curing the insufficiency of the FOURTH, FIFTH, EIGHTH, and NINTH
3 affirmative defenses on or before February 6, 1989.

4 No other amendments to the answer will be permitted.

5 IT IS SO ORDERED.

6 DATED: January 25, 1989.

7 
8 RONALD S.W. LEW
9 United States District Judge

FILED

JAN 26 1989

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD WALKER, ELIZABETH
WALKER, MARIA VALLADARES,
on behalf of themselves and
other similarly situated,

Plaintiffs,

v.

SAMUEL PIERCE, Secretary of
the U.S. DEPARTMENT OF
HOUSING AND URBAN
DEVELOPMENT; HERBERT AND
ROSSELLE SOMMER; LOUIS AND
ISABEL LEVENTHAL; JACKSON
TERRACE APARTMENTS, a Calif.
Limited Partnership,

Defendants.

NO. CV 84-4370-RSWL

ORDER

I. FACTUAL BACKGROUND

This is a class action filed on behalf of current residents of the Jackson Terrace Apartments, a 90 unit multifamily housing project located in Indio, California and formerly owned by defendant U.S. Department of Housing and Urban

1 Development ("HUD"). Plaintiffs allege that various statutory,
2 regulatory, contractual, and constitutional rights were violated
3 when federal defendant HUD sold the Jackson Terrace Apartments
4 and the underlying mortgage to the non-federal defendants
5 Sommer and Leventhal. Essentially, plaintiffs complain that
6 these sales resulted in the wrongful termination of their
7 federal housing subsidies. Specifically, plaintiffs allege that
8 they were denied access to and an opportunity to comment on
9 relevant documentation concerning the sales, denied an
10 opportunity to comment on the sales themselves, and denied
11 opportunities to comment ~~the~~ on the rent level and utility
12 allowances provided to the new owners.

13 Plaintiffs seek to have the sales declared void and to
14 have further subsidies provided at Jackson Terrace.
15 Alternatively, they request that the sales be rescinded and the
16 property returned to HUD's inventory.

17 Presently, both plaintiffs and defendant HUD seek
18 partial summary judgment on a multitude of issues. Each of the
19 claims made by the respective parties are treated separately
20 below. For more details on the factual history, please refer to
21 Memorandum and Order dated August 4, 1988 and filed by this Court
22 on August 12, 1988.

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2 II. JURISDICTION AND SCOPE OF REVIEW UNDER THE MANDAMUS ACT
3 AND THE ADMINISTRATIVE PROCEDURE ACT

4 A. Mandamus Act

5 First Amended Complaint ¶ 4 alleges jurisdiction under
6 the "Mandamus Act," 28 U.S.C. § 1361. The cited section of that
7 act gives Federal District Courts original jurisdiction in a
8 mandamus actions involving the wrongful refusal of a government
9 office or official to perform a duty owed to the plaintiffs. The
10 Ninth Circuit has interpreted this statute "to provide
11 jurisdiction to define and to compel compliance with due process
12 requirements or 'to compel officials to comply with the law when
13 the claim is clear and certain and the duty of the officer is
14 ministerial and so plainly prescribed as to be free from doubt."
15 Lee Pharmaceutical v. Kreps, 577 F.2d 610, 618 (9th Cir. 1978).

16 In this case, the remedies demanded in ¶¶ 2(a)-(h) of
17 the remedies section of the First Amended Complaint cannot be
18 said to involve the compelled compliance with due process
19 requirements or the performance of ministerial functions. The
20 relief demanded, the issuance of various substantive orders
21 relating to the rights of plaintiffs, can not be so narrowly
22 described. For this reason, the Mandamus Act cannot serve as a
23 proper basis for jurisdiction to the First Amended Complaint.
24 Paragraph 4, in so far as it purports to rely on 28 U.S.C. § 1361
25 to confer jurisdiction on the Court, is HEREBY DISMISSED.
26 

1 B. Administrative Procedures Act

2 Paragraphs 5 and 6 of the First Amended Complaint
3 invoke the Administrative Procedures Act ("APA"), 5 U.S.C. §§
4 701-706 as providing the Court with the authority to engage in
5 the requested judicial review and provide the requested
6 declaratory and injunctive relief. Defendant HUD objects to the
7 use of §§ 701-706 as the basis for the relief sought.
8 Essentially, HUD claims that the only relief that may
9 appropriately be granted under those sections are orders vacating
10 the agency action in question and remanding the case to the
11 agency for further consideration.

12 Defendant HUD's claim that the relief sought in the
13 complaint is outside the scope of remedies authorized by
14 § 706 is based on an erroneous interpretation of Asarco, Inc. v.
15 Occupational Safety & Health Ad., 647 F.2d 1 (9th Cir. 1981). HUD
16 urges the Court to view that case as narrowing the remedies
17 available under the APA solely to vacating the agency's decision
18 and remanding for further consideration. However, Asarco clearly
19 indicates that review of agency action is not so narrowly
20 defined:

21 . . . while we must act within the bound
22 of the statute and without intruding upon
23 the administrative province, we may adjust

24 //

25 //

1 our relief to the exigencies of the case in
2 accordance with the equitable principles
3 governing judicial action.

4 Id., at 2.

5 After reviewing the injunctive relief sought under ¶ 2
6 of the complaint's Prayer for Relief, the Court finds that all
7 subparts are within the scope of relief permissible with the
8 exception of subparts (a) and (g). The request in subpart (a)
9 for a grant of additional subsidies for 15 years finds no
10 support from the "exigencies" of this case. Also, granting the
11 request in subpart (g) for an order that HUD take air
12 conditioning into account in determining a "reasonable" utility
13 allowance would constitute an impermissible intrusion into the
14 administrative province. If appropriate, the Court may strike
15 down unreasonable calculations (as discussed more fully below);
16 but it will not substitute its judgment concerning what amount a
17 proper utility allowance should be for that of the agency.

18 For the reasons set forth above, ¶¶ 2(a) and 2(g) of
19 the Prayer for Relief section in the complaint are HEREBY
20 DISMISSED.

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1 **III. DEFENDANT HUD'S MOTIONS FOR DISMISSAL UNDER RULE 12(B)(6)**

2 **A. Private Cause of Action**

3 Defendant HUD has moved for dismissal under Fed. R.
4 Civ. P. 12(b)(6) on the grounds that no private cause of action
5 arises under the United States Housing Act of 1937, 42 U.S.C.A.
6 §§ 1401, et seq. Plaintiffs counter and HUD concedes that the
7 Supreme Court, in the recently decided case of Wright v. Roanoke
8 Redevelopment & Housing Authority, 93 L. Ed. 2d 781 (1987),
9 squarely held that a private cause of action impliedly existed in
10 a § 1983 action against a Public Housing Authority ("PHA"). In
11 Wright, low-income tenants brought suit against defendant PHA in
12 Virginia for allegedly imposing excessive utility costs against
13 them in violation of their rights under the Brooke Amendment, 42
14 U.S.C.A. § 1437a. After analyzing the legislative history of the
15 Housing Act and the Brooke Amendment, the Court held that:

16 Not only are the Brooke Amendment and
17 its legislative history devoid of any
18 express indication that exclusive
19 authority was vested in HUD, but there
20 have also been both congressional and
21 agency actions indicating that enforcement
22 authority is not centralized and that
23 private actions were anticipated.

24 [Emphasis added.] Neither in our view,
25 are the remedial mechanisms provided
26

1 sufficiently comprehensive and effective
2 to raise a clear inference that Congress
3 intended to foreclose a § 1983 cause of
4 action for the enforcement of tenants'
5 rights secured by federal law.

6 Id., at 789.

7 Defendant HUD urges the Court to distinguish the
8 holding of Wright, supra, from the case at bar on the grounds
9 that Wright was limited to § 1983 actions against Public Housing
10 Authorities. However, the reasoning and analysis of that opinion
11 are equally applicable to the facts of this case. Even though
12 Wright held that a § 1983 action existed against a state entity,
13 there is no question of the Court's intent to uphold a private
14 cause of action in Housing Act or Brooke Amendment cases.

15 As such, plaintiffs have a private cause of action and
16 defendant HUD's motion for dismissal must be DENIED.

17 B. Third-Party Beneficiary Contract Action: The Utilities

18 Issue

19 Defendant HUD urges that plaintiffs do not have a
20 contract action since they are not third-party beneficiaries
21 under the § 8 Housing Assistance Payments ("HAP") Contract
22 between HUD and private defendants. For reasons set forth below,
23 the Court holds that plaintiffs do have standing as third-party

24 //

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1 beneficiaries but that the first cause of action for breach of
2 contract should nevertheless be dismissed for failure to specify
3 which specific contractual duty was breached.

4 The federal common law test for third-party
5 beneficiaries turns upon the intent of the contracting parties;
6 whether the contract was made for the third-party's direct
7 benefit. Crumady v. The Joachim Hendrik Fisser, 358 U.S. 423,
8 428, 79 S. Ct. 445, 448, 3 L. Ed. 2d 413 (1959). If the
9 agreement was not intended to benefit the third party, the third
10 party is viewed as an "incidental" beneficiary, having no
11 legally cognizable rights under the contract. German Alliance
12 Insurance Co. v. Home Water Supply Co., 226 U.S. 220, 33 S. Ct.
13 32, 57 L. Ed. 195 (1912).

14 In applying the facts of this case plaintiffs urge,
15 and this Court agrees, that the most analogous case is Holbrook
16 v. Pitt, 643 F.2d 1261 (7th Cir. 1981). In Pitt, housing project
17 tenants were held to have standing as third-party beneficiaries
18 to a HUD-project owner contract. The Court rejected HUD's
19 argument that the contract was not intended to benefit the
20 tenants stating that such a holding would display "an
21 astonishing lack of perspective about government social welfare
22 programs." Id., at 1271. Clearly, § 8 payments were designed to
23 aid lower-income families; to hold that they are not the primary
24 beneficiaries would, in the words of the Seventh Circuit, put the
25 multi-billion dollar § 8 program in "grave doubt." Id.

1 Finding no Ninth Circuit authority contradicting the
2 reasoning in Pitt, supra, the Court adopts the reasoning and
3 analysis of that case and thus finds that plaintiffs have
4 standing to pursue this case as third-party beneficiaries.

5 Turning to the question of whether the third-party
6 beneficiaries have stated a claim upon which relief can be
7 granted, the Court holds that plaintiffs have failed to specify
8 which provisions of the HUD contract have been violated.
9 Nowhere in the First Cause of Action do plaintiff's specify the
10 provisions that would prohibit HUD's approval of the challenged
11 utility conversion. Nor does the complaint indicate where
12 "reasonable fees" are referred to and what standards determine
13 reasonableness. The First Cause of Action simply does not state
14 a cause of action for breach of contract and as such is
15 DISMISSED WITHOUT PREJUDICE insofar as it alleges a third-party
16 beneficiary contract claim.

17
18 C. Fifth Amendment Due Process Claim

19 In ¶ 60 of the First Amended Complaint plaintiffs
20 allege violation of their Fifth Amendment due process rights
21 through the approval by defendant HUD of the utility conversion (1)
22 and allowance change. In ¶ 74 of the First Amended Complaint,
23 plaintiffs allege the same Fifth amendment violation but with
24 regard to the procedure employed by HUD for the sale of the (2)
25 mortgage and the cancellation of the 1981 regulatory agreement.
26

1 HUD attacks the due process allegations on two grounds:
2 HUD first claims that the due process claims are barred by
3 sovereign immunity. This argument was found to be without merit
4 in the Memorandum and Order filed August 12, 1988 and will not be
5 considered again here. HUD also argues that no Fifth Amendment
6 due process claim has been properly alleged here. For reasons
7 set forth below the Court accepts this claim.

8 In support of their claim that a private right of
9 action for violation of the Due Process Clause exists in cases
10 such as this Plaintiffs cite the case of Geneva Tower Tenants
11 Org. v. Federated Mortgage Investors, 504 F.2d 483 (9th Cir.
12 1974). In that case the court held that tenants of a housing
13 project insured and subsidized by HUD at the time HUD approved a
14 rent increase had a legitimate expectation, created by the
15 National Housing Act, that they would continue to receive the
16 benefits of low-income housing. The court held that the
17 entitlement was sufficient to invoke the protection of the due
18 process clause.

19 However, Geneva is not controlling here. Jackson
20 Terrace was not subsidized by HUD at the time of the decisions
21 to sell the project and convert the utilities. In fact, Jackson
22 Terrace was acquired by HUD through foreclosure when the
23 original mortgagors defaulted and assigned the mortgage to the
24 Secretary. Thus, the expectations of those who lived in Jackson
25 Terrace are not the same as those which have been found to be
26

1 worthy of Due Process protection. The Ninth Circuit case of
2 Russell v. Landrieu, 621 F.2d 1037 (9th Cir. 1980), illustrates
3 this point. That case holds that when a project is acquired by
4 HUD through foreclosure, any mortgage assistance payments which
5 would have been paid by HUD must be suspended, and that § 236 of
6 the National Housing Act no longer requires, nor allows, the
7 Secretary to continue to operate such projects as low-income
8 housing. Russell, at 1040. In fact, the court concluded, "the
9 plaintiffs' interest in the continuation of the Apts. as low-
10 income housing after foreclosure rises to no more than a
11 unilateral expectation which is insufficient to fall within the
12 protection of the due process clause." Id.

13 As such, under Russell, supra, no due process argument
14 may be sustained in this case and the first and fourth causes of
15 action are DISMISSED WITHOUT PREJUDICE to that extent.

16
17 D. Utility Conversion & Allowance Under Agency Discretion

18 HUD has also asserted that the complaint fails to
19 state which legal provisions or statutes were violated by the
20 decision to approve the utility conversion and the subsequent
21 rate allowance. As such, HUD argues that such action was
22 entirely within their discretion and, hence, unreviewable.

23 //

24 //

25 //

1 This argument must be rejected summarily in light of
2 the Ninth Circuit decision in Clary v. Mabee, 709 F.2d 1307 (9th
3 Cir. 1983), and the Supreme Court decision in Wright v. Roanoke
4 Redevelopment Authority, supra.

5 In Clary, the plaintiff was also a § 8 low-income
6 subsidized tenant who paid his own utility bills. As in the
7 case at bar, plaintiff Clary complained that his monthly utility
8 allowance was too low and he prayed for further subsidization
9 from HUD to the extent that his utility bills exceeded his
10 allowance. The Ninth Circuit held that plaintiff's allowance was
11 "reasonable" under HUD regulations since it was based upon actual
12 usage in the apartment complex. In doing so, the Court flatly
13 rejected the same argument regarding discretion as its presented
14 here:

15 We do not accept the government's
16 position, however, that we should refuse
17 to conduct any review of plaintiff's
18 contentions on the theory that this matter
19 has been so committed to agency discretion
20 that there is 'no law to apply.' The
21 Supreme Court has construed this exception
22 to judicial review very narrowly . . .
23 [Citations Omitted.] Since the gist of
24 Clary's argument is that the utility
25 allowance is contradictory to the statutory
26

1 IV. SUMMARY ADJUDICATION OF THE UTILITY ISSUES

2 A. Procedural Requirements for Utility Conversion &
3 Allowances

4 The first cause of action in the First Amended
5 Complaint alleges violations of "Procedural Protection Regarding
6 the Conversion of Utilities and Establishment of Reasonable
7 Utility Allowances." Both plaintiffs and HUD move for summary
8 adjudication on this issue. The two questions which must be
9 answered to resolve this are:

- 10 1. What are the procedural rights of § 8 tenants
11 regarding utility conversion and allowances; and
12 2. Were those procedural rights violated?

13 After a review of the rights of § 8 tenants and the
14 facts of this case, the Court finds no violation of the
15 plaintiffs' procedural rights and, for reasons set forth below,
16 the Court GRANTS summary adjudication on this issue to defendant
17 HUD.

18 1. What Are the Rights of §8 Tenants Rights
19 Regarding Utility Conversion and Allowances?

20 12 U.S.C.A. § 1715z-1b(b)(1) mandates that certain
21 procedural guidelines be followed during a utility conversion:

22 The Secretary shall assure that -

- 23 (1) where the Secretary's written approval
24 is required with respect to an owner's
25 request for rent increase, conversion of
26

1 residential rental units to any other use,
2 . . . tenants have adequate notice of,
3 reasonable access to relevant information
4 about, and an opportunity to comment on
5 such actions (and in the case of a project
6 owner by the Secretary, any proposed
7 disposition of the project) and that such
8 comments are taken into consideration by
9 the Secretary.

10 Id., in 1988 Supp.

11 While defendant HUD correctly points out that this
12 provision makes no mention of utility conversions, there is
13 persuasive authority that HUD itself considers such conversions
14 to be rent increases. Such authority can be found in the
15 legislative history of HUD's regulation entitled "Tenant
16 Participation in Multifamily Housing Projects," 24 C.F.R. §§
17 245.405-245.435, 1987. Subpart E of that regulation sets forth
18 Procedures for Requesting Utility Conversion Approval, including
19 notice to tenants and opportunity to comment by them. The
20 legislative history of this regulation is contained in the
21 "Supplementary Information" section of 50 Fed. Reg. 32396 (August
22 12, 1985):

23 The Department does not believe that
24 this rule will cause any significant increase
25 in administrative costs to project owners.
26

1 These owners already must follow tenant
2 participation procedures for rent increases,
3 including rent increases triggered by
4 conversion to tenant-paid utilities.

5 Id., at 32397. Thus, HUD has treated requests for conversions to
6 tenant-paid utilities and reductions in utility allowances as
7 equivalent to requests for rent increases. HUD has also stated
8 that tenant participation in reviewing rent and utility rates is
9 important and contributes to the success of the projects and that
10 HUD has attempted, in the interests of efficiency, to limit such
11 participation but that utility conversions were still subject to
12 tenant participation because "such conversions are equivalent to
13 requests or rent increases." Id., at 32397-98.

14 Given these statements, the Court is unwilling to
15 accept HUD's claim that the procedural protection mandated for
16 rent increases are not applicable to utility conversions. As
17 such, this Court holds that the procedural requirements set out
18 in 12 U.S.C.A. § 1715z-1b(b)(1) (West Supp. 1988) apply to
19 utility conversions.

20 //

21 //

22 //

23 //

1 2. Did Plaintiffs Receive Adequate Notice of, and
2 Reasonable Access to Relevant Information About, and an
3 Opportunity to Comment on the Utility Conversion and
4 Allowances?

5 (a) Notice:

6 The evidence is uncontroverted that tenants received
7 notice on September 27, 1983 via letters posted throughout the
8 building listing proposed rent increases due to the utility
9 conversion. [See Exhibit 3 to Plaintiff's Motion Brief Filed
10 February 25, 1987.] Similarly, notice was also given December
11 7, 1983 stating that preliminary approval had been given by HUD
12 for the utility conversion and that documents used to support
13 such conversion were available for inspection and comment until
14 January 6, 1984. [See Plaintiffs' Brief, Exhibit 8, dated
15 February 25, 1987.]

16 The above going being uncontroverted, this Court holds
17 that adequate notice had been given.

18 (b) Reasonable Access to Relevant Information:

19 Plaintiffs submit various letters which were sent to
20 HUD requesting specific information regarding the utility
21 conversion. Plaintiffs argue that such documentation were never
22 provided to them from HUD.

23 However, reasonable access was available to plaintiffs
24 through the Freedom of Information Act ("FOIA") which plaintiffs'
25 counsel apparently failed to utilize until 1986. Prior to that
26

*Requested only
3 documents*

1 time, plaintiffs had different counsel who apparently requested
2 only three documents since the original notice had been given in
3 1983.

4 The exhibits submitted show that in December, 1983,
5 plaintiffs' attorney, Mario Rodriguez, sent requests for specific
6 documentation to HUD and that such request was granted via a
7 letter dated December 12, 1983 from Malcolm Finley, a director of
8 HUD. Similar requests and approvals were submitted to the Court
9 in defendant HUD's Exhibit 1 of their Reply Brief. These
10 include approval of attorney Eileen McCarthy's request dated May
11 1, 1986; Alfonso Oliva's request dated March 5, 1984; and Ms.
12 McCarthy's request of January 13, 1986.

13 In light of this evidence, it is apparent that
14 reasonable access had been given. In fact, no evidence has been
15 submitted by plaintiffs to assert any denial of a properly
16 submitted request under the FOIA. Thus, the Court holds that
17 plaintiffs were given reasonable access.

18 (c) Opportunity to Comment:

19 There is no dispute that plaintiffs had in fact
20 commented through counsel on the utility conversion via a letter
21 dated January 5, 1984. Furthermore, after reviewing the letter
22 sent by CRLA Attorney Carole Harper and the reply letter of
23 Malcolm Finley, dated April 26, 1984, this Court is satisfied
24 that such comment was knowledgeable and sufficient for purposes
25 of satisfying § 1715z-1b(b)(1).
26

1 Thus, having found that plaintiffs were entitled to and
2 received the procedural safeguards enumerated in 12 U.S.C.A. §
3 1715z-1b(b)(1), this Court hereby DENIES plaintiffs' Motion for
4 Partial Summary Judgment as to plaintiffs' first cause of action
5 and GRANTS defendant HUD's counter motion on the same issue.

6 B. Defendant HUD's Motion for Summary Judgment on the
7 Second Cause of Action: § 8 Tenants' Substantive
8 Rights to a Reasonable Utility Allowance

9 As stated at the outset, the appropriate standard of
10 review to be applied under the APA is whether the agency's
11 decision was "arbitrary, capricious, an abuse of discretion, or
12 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).
13 Georgia Pacific Corp. v. U.S. Environmental Protection Agency,
14 671 F.2d 1235 (9th Cir. 1982).

15 The decision to be reviewed at bar is HUD's
16 determination of the utility allowances that apply to plaintiffs.
17 Both parties are in agreement that the standard for estimating
18 the allowances is reasonableness.

19 Despite plaintiffs' arguments to the contrary, this
20 Court cannot hold that the estimates here were unreasonable.
21 There is ample evidence that the figures calculated by HUD
22 engineer William D. Karr were adequately supported. Further,
23 evidence that HUD had recommended that the evaporative coolers be
24 replaced with refrigeration air conditioning does not, per se,
25 mean that the utility allowances are unreasonable. While the
26

1 allowances may be lower than what the plaintiffs would like,
2 this Court does not have sufficient evidence to find that they
3 are unreasonably low or that the estimates were arrived at
4 arbitrarily or capriciously.

5 Defendant HUD's Motion on the Second Cause of Action is
6 GRANTED.

7
8 V. PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT THAT
9 AUTHORIZATION FOR THE SALE OF JACKSON TERRACE WAS INVALID

10 A. Authorization of Property Disposition Committee

11 Plaintiff moves for partial summary judgment on the
12 grounds that the Property Disposition Committee which approved
13 the sale of the Jackson Terrace Apartments was improperly
14 constituted under 24 C.F.R. § 290.55 (1987). That provision
15 states that specific HUD officials "or their designees" should
16 comprise the Property Disposition Committee. Plaintiffs contend
17 that three officials were absent during the disposition decisions
18 for the Jackson Terrace Apartment: (i) the Director of the
19 Office of Multifamily Housing Development, (ii) the General
20 Counsel, and (iii) the Deputy Assistant Secretary for Public
21 Housing and Indian Programs. 24 C.F.R. §§ 290.55(b)(4), (5), &
22 (6) (1987).

23 //

24 //

25 //

1 HUD admits that these officials were not in attendance,
2 but urges that their designees attended instead. Plaintiffs take
3 issue with their designation by claiming that there was no formal
4 written designation.

5 It is clear that a formal designation is required as
6 stated in § E4 of HUD's Redlegation of Authority, 41 F.R. 26946-
7 47 (June 30, 1976). However, this Court finds no authority that
8 requires such designation to be written. This Court also rejects
9 plaintiffs' reliance on Brennan v. Occupational Safety & Health
10 Review Commission, 491 F.2d 1340 (2nd Cir. 1974) to set forth the
11 procedural requirements for a "formal designation." That Court
12 held that to insure safe working conditions, the designation of
13 an inspector must be told of his responsibilities. The case at
14 bar is distinguishable in that the designees are to serve a
15 decision making function rather than a supervisory one. In
16 addition, unlike Brennan, supra, there is no indication that the
17 designees who served here were not aware of their
18 responsibilities; in fact, judging from the positions which they
19 held at HUD, it is quite certain that they had the expertise with
20 which to adequately serve as decision makers.

21 Absent authority with which to define a "formal
22 designation," this Court defers to the discretion of the agency
23 to manage its internal affairs and finds that the Committee was
24 properly authorized. Plaintiffs' Motion for Summary Judgment in
25 re authorization of the sale is hereby DENIED.

1 B. The Committee's Failure to Keep Minutes

2 HUD admits that they failed to maintain minutes for the
3 Property Disposition Committee in violation of § E.1 of 41 Red.
4 Reg. 26946-47 (June 30, 1976). This Court agrees with plaintiffs
5 that keeping minutes constitutes an important function beyond
6 merely recording the meeting. This is apparent from the
7 language in that regulation and the detailed description of how
8 the minutes should be kept.

9 However, this Court is reluctant to grant the remedies
10 that the plaintiffs request because the violation does not
11 necessarily mean that the decision made by the Committee was
12 "arbitrary, capricious" or an "abuse of discretion." 5 U.S.C. §
13 706(2)(A). At most, it only indicates an incomplete record from
14 which to make an adjudication.

15 As such, this Court believes that a better remedy would
16 be to remand to HUD directing them to assemble all relevant
17 materials that the Committee used in making its decision. This
18 information should include declarations and properly tabulated
19 exhibits. This document should be served and filed no later than
20 March 31, 1989. Plaintiffs shall file a reply by April 17, 1989.
21 A fact-finding hearing may be held if necessary.

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1 VI. HUD'S DUTY TO SELL WITH 100% § 8 ASSISTANCE

2 Plaintiffs also move for summary adjudication on the
3 issue of HUD's duty to sell Jackson Terrace with 100% § 8
4 assistance. They contend that such a duty is set forth in 12
5 U.S.C. § 1701z-11, which was enacted in 1978 as part of the
6 Housing and Community Development Amendments to the National
7 Housing Act, and in regulations promulgated by HUD for the
8 disposition of HUD-owned multifamily projects, contained in 24
9 C.F.R. Part 290.

10 Section 1701z-11 authorizes the Secretary to manage and
11 dispose of multifamily housing projects owned by the Secretary in
12 a manner that is consistent with the National Housing Act and
13 that will i) protect the financial interest of the federal
14 government, ii) and will be less costly than other reasonable
15 alternatives, while still furthering certain housing goals. At
16 the time Jackson Terrace was sold in 1981, these goals were:

- 17 (1) preserving the housing units so that at least
18 those units which are occupied by low-and-moderate
19 income persons or which are vacate, at the time of
20 acquisition, are available to and affordable by
21 such persons;
22 (2) preserving and revitalizing residential
23 neighborhoods;
24 (3) maintaining the existing housing stock in a
25 decent, safe and sanitary condition;
26

- (4) minimizing the involuntary displacement of tenants;
- (5) minimizing the need to demolish projects; and
- (6) maintaining the project for the purpose of providing rental or cooperative housing. (12 U.S.C. § 1701z-11(a)).

The section also provides:

"The Secretary, in determining the manner by which a project shall be managed or disposed of, may balance competing goals relating to individual projects in a manner which will further the achievement of the overall purpose of this section."

The Court is in agreement with HUD that nothing in this statutory language sets forth a mandatory duty on the part of the Secretary to dispose of HUD-owned housing projects with 100% § 8 subsidies. Were the duties of the Secretary intended to be mandatory, the Secretary would not have been authorized to "balance competing goals . . . in a manner which will further the achievement of the overall purpose of this section."

Nor do the regulations in effect at the time of HUD's decision to sell Jackson Terrace mandate this duty upon the Secretary. 24 C.F.R. § 290.27(b) (1980) provides:

A former subsidized project shall be allocated subsidy pursuant to 24 C.F.R. Part 886, Subpart B or C, sufficient to

1 assist 100% of the units. Provided,
2 however, that the Director may recommend
3 disposition for less than 100% of the
4 units if the Director makes a written
5 finding that such a sale will promote
6 a racially mixed or mixed income tenancy
7 and the amount of subsidy provided is at
8 least sufficient to assist all eligible
9 tenants residing in the project.

10 HUD Notice 79-122(HUD), § 2-2e.(7)(f)(1)(ii), also
11 provided that a project must be sold with 100% § 8 assistance
12 "unless the Area Manager makes a written determination that sale
13 with less than 100% will promote a racially mixed or mixed income
14 tenancy and the amount of § 8 recommended by the field office is
15 at least sufficient to assure all eligible families in the
16 project within two years after sales closing.

17 As these regulations allow the Secretary to sell a
18 project with less than 100% § 8 assistance under certain
19 circumstances, the Court finds that the mandatory duty plaintiffs
20 seek to impose upon HUD does not exist.

21 Plaintiffs' Motion for Summary Adjudication on 100%
22 subsidy issue is DENIED.

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1 VII. PROCEDURAL DUTIES TO PROVIDE NOTICE OF THE MORTGAGE SALE,
2 THE CANCELLATION OF THE DEED OF TRUST, AND THE RESCISSION
3 OF THE 1981 REGULATORY AGREEMENT

4 Plaintiffs make two arguments in support of their
5 position that HUD had mandatory duty to provide notice of the
6 mortgage sale, the cancellation of the deed of trust, and the
7 rescission of the 1981 agreement: 1) they have a protectable
8 property right in the benefits conferred on them by
9 the mortgage, deed of trust, and Regulatory Agreement, and
10 (2) the statute which provides for tenant participation in
11 multifamily housing projects, 12 U.S.C. § 1715z-1b, requires that
12 HUD allow for such participation when selling the mortgage on a
13 project.

14 Plaintiffs' first argument is predicated upon a finding
15 that the interest they claim is indeed protectable. For the
16 reasons set forth below in the discussion of whether HUD's
17 decision should be set aside under 12 U.S.C. § 706(2), this Court
18 finds that plaintiffs were not entitled to such protection.

19 Plaintiffs' second argument also fails, as they have
20 failed to establish that the procedural requirements set forth in
21 this statute apply to a sale by HUD of a purchase money mortgage
22 to the owner of a property, and that their implementation is
23 mandatory.

24 //

25 //

1 As is pointed out by HUD, the legislative history of
2 the statute reveals that Congress intended to limit the tenant
3 comment procedure to the owner requests listed in the statute.
4 The mortgage on Jackson Terrace was not sold at the request of
5 the property's owner. Rather, it was done pursuant to HUD's
6 decision to accept bids for the purchase of numerous multifamily
7 mortgages at an announced "HUD-Project Mortgage Auction."
8 Furthermore, that the decision to allow for the commenting
9 procedure was to remain within the Secretary's discretion is
10 supported not only by the statute's legislative history, but by
11 the language of the statute itself: ". . . and the Secretary
12 deems it appropriate"2

13 //

14 //

15 //

16 _____
17 2 At the time of the sale of the HUD-held mortgage on
18 Jackson Terrace in 1983, 12 U.S.C. § 1715z-1b(b)(1) provided:
19 The Secretary shall assure that -- (1)
20 where the Secretary's written approval
21 is required with respect to an owner's
22 request for rent increase, conversion of
23 residential rental units to any other use
24 (including commercial use or use as a unit
25 in any condominium or cooperative project),
26 partial release of security, or major physical
27 alterations and the Secretary deems it
28 appropriate tenants have adequate notice of,
 reasonable access to relevant information
 about, and an opportunity to comment on such
 actions (and in the case of a project owned
 by the Secretary, any proposed disposition of
 the project) and that such comments are taken
 into consideration by the Secretary.

Therefore, the Court concludes that the mandatory relief which plaintiffs seek pursuant to 5 U.S.C. § 706(1) is unavailable as a matter of law.

Summary adjudication on procedural issue is DENIED.

VIII. 706(2) ABUSE OF DISCRETION: SALE OF PROPERTY & MORTGAGE

Lastly, plaintiffs move for summary adjudication with regard to HUD's decision to sell Jackson Terrace and the mortgage. Defendant HUD opposes the motions and counter-moves for summary adjudication on the propriety of HUD's sale of the mortgage.

A. The Propriety of the Sale of Jackson Terrace

The sale of Jackson Terrace with only 40% § 8 assistance was permitted under HUD regulations in effect at the time of the sale, provided that a written finding was made that such a sale would promote a racially mixed or mixed income tenancy, and the amount of subsidy provided would be sufficient to assist the eligible tenants residing in the project. See discussion, supra, of HUD's duties regarding the sale of HUD-owned projects.

Plaintiffs contend that HUD's decision to sell the project with less than 100% assistance is unsupported by the administrative record, and thus must be set aside. They argue that the absence of any written documentation in the record to

1 support HUD's position that a second tenant survey conducted at
2 Jackson Terrace revealed that only 40% of the residents were
3 eligible for § 8 assistance, clearly establishes that the
4 Secretary made his recommendation on a "scant or non-existent
5 factual basis." They also contend that the Secretary failed to
6 consider that the current rents were substantially below market
7 and that they would be increased; in the alternative, they
8 contend that he reached the incorrect conclusion that 60% of the
9 tenants were over-income and, thus, ineligible for § 8 assistance
10 because he relied on these low rents in making his decision.

11 HUD maintains that a second tenant survey was in fact
12 conducted, the results of which provided the basis for its
13 determination that less than 100% of the units should be sold
14 with § 8 assistance. It concedes that no written document was
15 introduced into the record which set forth the results, but
16 contends that such a document was prepared by the management
17 company responsible for Jackson Terrace at the request of a HUD
18 official, and that the results of the survey were conveyed orally
19 to HUD officials, who then made the recommendation that the
20 project be sold.

21 HUD also disputes plaintiffs' contention that no
22 written finding was made, pursuant to the regulations, that the
23 sale as proposed would promote a mixed income tenancy and be
24 sufficient to assist all eligible tenants. Plaintiffs contend
25 that the required findings were not made, because the person
26

1 whose name appeared on the letter setting forth HUD's conclusion
2 that a mixed income tenancy would be promoted by the proposed
3 sale with 40% assistance, did not actually prepare and sign it
4 himself.

5 While the Court is limited to reviewing the existing
6 record, it may also consider those materials which explain the
7 agency decision which are outside of the record. Bunker Hill v.
8 Environmental Protection Agency, 572 F.2d 1286, 1292 (9th Cir.
9 1977). Thus, this Court is permitted to consider those
10 declarations of the HUD officials which state that the second
11 survey was conducted, and that the results were relied upon when
12 the decision to sell was made. The Court may also consider the
13 declarations of the management company employees which contradict
14 HUD's assertion that the survey was requested and conducted. In
15 doing so, it is apparent to this Court that a factual dispute
16 exists as to whether HUD actually obtain the information it
17 contends it did in order to make its decision.

18 As the determination of the reasonableness of HUD's
19 decision will depend on whether a second survey, with the claimed
20 results, was in fact conducted, this Court cannot, as a matter of
21 law, decide that issue at this time.

22 Therefore, plaintiffs' motion for partial judgment must
23 be DENIED.

24 //

25 //

1 B. The Propriety of the Sale of the Mortgage

2 In contending that this Court must set aside the
3 Secretary's decision to sell the mortgage to the owners of
4 Jackson Terrace, plaintiffs argue that (1) the Secretary failed
5 to consider relevant factors (i.e. the national housing
6 objectives of providing a decent home an suitable living
7 environment for every American family); (2) the Secretary failed
8 to give them notice of the sale, and the opportunity to comment
9 on it, in violation of their fifth amendment right to due
10 process; and (3) the Secretary failed to consider the effect the
11 sale had on their contractual rights under the Contract of Sale
12 and Purchase for Jackson Terrace ("Contract"), the Deed of Trust
13 Note, and the Regulatory Agreement.

14 In contending that the Secretary's decision to sell the
15 mortgage was properly arrived at, and was not done in violation
16 of any of plaintiffs' claimed statutory, constitutional, or
17 contractual rights, HUD argues that (1) there were no statutory
18 or regulatory limitations or directives imposing upon the
19 Secretary a duty to consider those factors plaintiffs contend
20 should have been considered; (2) plaintiffs did not have a
21 property right protectable by the Due Process clause; and (3)
22 plaintiffs had no contractual rights or protection which flow
23 from either the Contract, the Deed of Trust Note, or the
24 Regulatory Agreement.

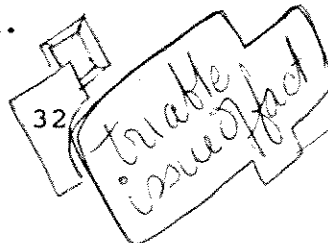
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1 (1) Was there a failure to consider all relevant
2 factors?

3 The Court is persuaded by HUD's argument that in the
4 absence of any statutory or regulatory directives restricting the
5 Secretary's discretion to sell the mortgage, it must conclude
6 that there was no abuse of this discretion. The Secretary's
7 authority to sell purchase money mortgages is found at 42 U.S.C.
8 § 3535(i)(3), which provides that the Secretary is authorized to
9 "... sell or exchange at public or private sale, or lease, real
10 or personal property, or sell or exchange any securities or
11 obligations upon such terms as he may fix"

12 Plaintiffs' contend that the Ninth Circuit has
13 "repeatedly rejected the Secretary's claims of unbridled
14 discretion," citing Russell v. Landrieu, 621 F.2d 1037, 1041 (9th
15 Cir. 1980). Plaintiffs failed to recognize that Russell, and
16 those cases cited by the court, did not address the authority
17 granted the Secretary under 42 U.S.C. § 3535(i)(3), but instead
18 dealt with the disposal of HUD-acquired projects (12 U.S.C. §
19 12131; the payment of operating subsidies (23 U.S.C. § 1701z-1);
20 and the payment of rent supplements (12 U.S.C. § 1701s).

21 The mere contention, for that is what it amounts to,
22 by plaintiffs that it was inappropriate that the primary focus
23 for the mortgage sale program was the financial benefit to be
24 gained, does not warrant a finding that the Secretary's decision
25 was an abuse of his discretion.



1 (2) Due Process Clause:

2 As stated earlier, under Russell v. Landrieu, supra,
3 plaintiffs cannot assert such a claim, and thus, there cannot be
4 any actionable abuse of discretion on this issue.

5 (3) Plaintiffs' right as third-party beneficiaries:

6 Having previously addressed the issue of third-party
7 beneficiary standing, the Court now turns to the specific
8 contractual provisions regarding the sale of the mortgage.

9 Unlike the arguments made on the utilities issue,
10 plaintiffs have referenced specific contractual provisions
11 sufficient to withstand a 12(b)(6) motion. Specifically,
12 plaintiffs claim that the contract of Sale and Purchase, the Deed
13 of Trust Note, and the 1981 Regulatory Agreement conferred upon
14 them certain rights which were impermissibly eliminated when HUD
15 sold the purchase money mortgage to Jackson Terrace's owners.
16 They contend that because they were the intended third-party
17 beneficiaries of each of these agreements, the Secretary was
18 obligated to have done the following:

- 19 1) consider taking protective actions such as the
20 imposition of certain use restrictions on the
21 project as a condition of the sale;
22 2) require a corrective deed that insured against
23 discrimination against § 8 certificate holders;
24 3) permit the sale, which amounted to a prepayment of
25 the mortgage, only if the conditions required
26

1 under HUD's policy on mortgage prepayment were all
2 met.

3 Plaintiffs contend that they were the intended beneficiaries of
4 certain clauses which appear in Appendix A of the Contract such
5 that they had the right to expect that they would continue to
6 receive the protection provided by these provisions. These
7 three clauses provided that the property owners were obligated to
8 accept an offer to renew the § 8 contract (when the offer was
9 made by the Secretary); that holders of a § 8 certificate
10 (entitling the hold to receive rental assistance payments, not
11 to live in a § 8 assisted unit) would not be discriminated
12 against; and that there would be rent control and "good cause
13 only" eviction protection.

14 As is argued by HUD, under well-established California
15 law, a deed executed in consummation of an agreement between the
16 parties merges all prior negotiations and agreements, unless that
17 deed makes special reference to any conditions or protection in
18 the Contract.

19 In this instance, no such reference was made to
20 Appendix A of the Contract, which contained those provisions upon
21 which plaintiffs have based their argument. Thus, the Court
22 finds that as a matter of law, the merger doctrine extinguished
23 these provisions, and plaintiffs can no longer claim those rights
24 and protection, as they were not incorporated into the Deed.

25 //

1 The Deed of Trust Note is, as HUD points out, "merely
2 an instrument evidencing a debt owned as between the borrower and
3 the lender." However, plaintiffs claim that the provision in the
4 note which precludes prepayment without the consent of the
5 Secretary was intended to benefit the tenants at Jackson Terrace.

6 Plaintiffs' argument appears to be that because a
7 mortgage prepayment and a purchase of a mortgage by the mortgagor
8 are "different names for the same result depending upon which
9 party initiates the action," the Secretary's unpublished policy as
10 to when prepayment would be approved should have been considered
11 when the mortgage was sold; furthermore, as this policy called
12 for the Secretary to do such things as verify that suitable
13 subsidized housing at similar rental rates was available in the
14 area, determine that the area had an overabundance of subsidized
15 housing, and determine that no additional subsidized housing
16 would be insured until market conditions improved, its purpose
17 must have been to benefit the tenants and allow them to enforce
18 the restriction.

19 The Court is in agreement with HUD that HUD's
20 "unpublished policy" on mortgage prepayments, which consists of
21 the statements of two HUD officials, and the documents relied
22 upon by plaintiffs, cannot be considered, as they are not part of
23 the administrative record. The Court also agrees with HUD that
24 plaintiffs have failed to address the factual distinctions
25 between the situation presented here by Jackson Terrace, a

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1 formerly subsidized 221(g)(3) project now utilizing the § 8
2 Housing Assistance Payment Program, and those presented in the
3 stipulated settlement, various affidavits, and HUD documents
4 relied upon by plaintiffs (prepayment of a § 202 mortgage, where
5 HUD is the lender rather than the insurer; prepayment of
6 221(d)(3) mortgage after assignment to FNMA without the approval
7 of the Secretary). Plaintiffs are thus left with nothing to
8 support their argument that the restriction was, in HUD's words,
9 a "guarantee that the underlying security for the note, the
10 project, would remain low and moderate income in character," and
11 the Court finds that they are not entitled to this protection
12 under the Deed of Trust Note.

13 This Court has already rejected plaintiffs' contention
14 that the protective clauses contained in Appendix A to the
15 Contract of Sale and Purchase survived the merger with the Deed.
16 Plaintiffs claim that these clauses should be "read into" the
17 Regulatory Agreement because the Secretary's policy "dictated
18 that such clauses must be included in the Deed or the Regulatory
19 Agreement;" they alternatively argue that the Regulatory
20 Agreement must be reformed to include the clauses because they
21 were omitted as a result of the "mere oversight or negligence of
22 HUD officials."

23 //

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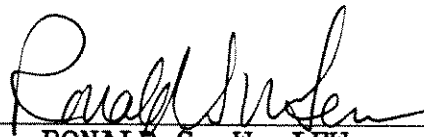
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1 In the absence of evidence of mistake or oversight on
2 the part of the parties entering into the agreement, a written
3 document cannot be reformed to express the true intent of the
4 parties. Plaintiffs have presented no evidence, other than their
5 bare assertion that "the purchasers knew the clauses were to be
6 included." Nor do plaintiffs offer any coherent explanation of
7 which policy derived from what statutory authority, mandated the
8 inclusion of such clauses in either the Deed or the Regulatory
9 Agreement.

fact issue

10 In summary, plaintiffs fail to establish breach of
11 contract regarding the Contract of Sale, the Deed of Trust, nor
12 the Regulatory Agreement. Furthermore, reformation is
13 inappropriate here, and as such, plaintiffs' Motion for Summary
14 Adjudication must be DENIED; and the defendant's Motion for
15 Summary Adjudication must be DENIED.

16 DATED: January 25, 1989.

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18 
19 RONALD S. W. LEW
20 United States District Judge
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28

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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 RICHARD WALKER, et al.,)	
)	
15 Plaintiffs,)	
	)	CIV. NO. 84-4370 RSWL
16)	
17	)	NOTICE OF MOTION AND
	)	MOTION FOR ATTORNEYS'
18 v.	)	FEES, COSTS AND EXPENSES
	)	UNDER THE EQUAL ACCESS TO
19 JACK KEMP, Secretary of the	)	JUSTICE ACT
DEPARTMENT OF HOUSING AND)	
20 URBAN DEVELOPMENT, et al.,)	
	)	Date: January 27, 1992
21 Defendants.	)	Time: 10:00 a.m.
)	

22 TO THE DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

23 Please take notice that on January 27, 1992 at 10:00 a.m.
24 plaintiffs' Motion for Attorneys' Fees, Costs and Expenses will be
25 heard before the Hon. Ronald S.W. Lew at the United States
26 Courthouse, 312 N. Spring Street, Los Angeles, California.

27 Plaintiffs move this Court for an award of attorneys' fees,
28 costs and expenses under the Equal Access to Justice Act, (EAJA),

1 28 U.S.C. Sec. 2412, based upon the record before this Court, the
2 Memoranda in Support of Plaintiffs' Motion, and such declarations
3 and exhibits as are submitted in support thereof.

4 Plaintiffs allege that they are the prevailing parties, that
5 they are eligible to receive an award under EAJA, and that the
6 position of the United States was not justified. The amount sought
7 is set forth in the accompanying memorandum of points and
8 authorities in support of the plaintiffs' motion.

9 It is plaintiffs' desire to negotiate a settlement of fees,
10 costs and expenses with the Federal Defendant. However, as the
11 plaintiffs are obliged to meet the jurisdictional filing deadline
12 for an application under EAJA, this motion is noticed at this
13 time. Contemporaneously herewith, the plaintiffs and the Federal
14 Defendant are presenting a stipulation to continue the hearing on
15 the plaintiff's motion until April 27, 1992. The parties have
16 agreed that in the event that the settlement negotiations fail,
17 this application may be amended and/or supplemented by other
18 declarations and exhibits at a later date, with full opportunity
19 for a response by the Federal Defendant before this motion is
20 actually heard by the Court. The parties ask the Court to approve
21 the stipulation.

22 DATED: December 18, 1991

23 Respectfully submitted,

24 CALIFORNIA RURAL LEGAL ASSISTANCE

25 NATIONAL HOUSING LAW PROJECT

26 Attorneys for the Plaintiffs

27 By, Richard S. Kohn

28 Richard S. Kohn

PROOF OF SERVICE BY MAIL

I hereby certify that I am a citizen of the United States. I am over the age of eighteen years and not a party to the above-entitled action. My business address is 2111 Mission Street, Suite 401, San Francisco, California 94110.

On December 19, 1991, I served the attached:

**NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT;**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS AND
EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT;
AND EXHIBITS**

**DECLARATIONS OF RICHARD S. KOHN, CATHERINE BISHOP,
EILEEN MCCARTHY, ALFONSO OLIVA, HARMILA TREVINO SAUCEDA,
M. DAVID KROOT, MARCO ANTONIO ABARCA, EMANUEL BENITEZ,
AND DARA L. SCHUR IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, AND**

**STIPULATION TO CONTINUE PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS AND EXPENSES UNDER THE EQUAL
ACCESS TO JUSTICE ACT AND ORDER THEREON**

by placing a true copy thereof in an envelope to the persons named below via United States Mail, first class postage prepaid and addressed to:

Philip D. Dapeer
Dapeer & Hirsch
4929 Wilshire Blvd., Ste. 600
Los Angeles, CA 90010

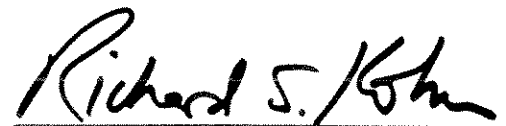
Lawrence Lieberman
Levinson & Lieberman
9401 Wilshire Bl. #1250
Beverly Hills, CA 90212

Rosemarie Fernandez
Office Fair Housing
US Department of HUD
450 Golden Gate Avenue
San Francisco, CA 94102

Stan Blumenfeld
Assistant United States
Attorney Ste., 7516
300 No. Los Angeles St.,
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of December, 1991, at San Francisco, California.



RICHARD S. KOHN

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19 Attorneys for Plaintiffs

20 UNITED STATES DISTRICT COURT

21 CENTRAL DISTRICT OF CALIFORNIA

22 RICHARD WALKER, et al.,)
23)
24 Plaintiffs,)
25)
26)
27)
28 v.)
29)
30 JACK KEMP, Secretary of the)
31 DEPARTMENT OF HOUSING AND)
32 URBAN DEVELOPMENT, et al.,)
33)
34 Defendants.)

CIV. NO. 84-4370 RSWL

MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF PLAINTIFFS' MOTION FOR
AWARD OF ATTORNEYS' FEES
COSTS AND EXPENSES UNDER
EAJA AND EXHIBITS

Date: January 27, 1992
Time: 10:00 a.m.

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1 prevailing party in that they have achieved a settlement which, in
2 the Court's words, is "far superior than a judgment that the court
3 can give you in this action,..." Transcript of Proceedings, June
4 1, 1990, p. 24. The plaintiffs achieved the relief they desired
5 on each of the fourth, fifth and sixth claims for relief. In the
6 course of the litigation, the plaintiffs established that the sale
7 of Jackson Terrace in 1981 with less than 100% Section 8 subsidy
8 was "arbitrary and capricious" in violation of the APA. The remedy
9 that was achieved in settlement was a new Section 8 contract for
10 all ninety units to run for ten years. Plaintiffs also challenged
11 the sale of the mortgage in 1983. It was the sale of the mortgage
12 that triggered the cancellation of a regulatory agreement (which
13 would have run until the year 2021) which contained many
14 protections for the tenants. Plaintiffs also sought to reform the
15 regulatory agreement to include an "Appendix A" that had been
16 inadvertently omitted from the regulatory agreement in 1981. One
17 provision of Appendix A would have required the owners to accept a
18 renewal of the Section 8 contract, if offered by HUD, upon the
19 expiration of the existing contract. In the settlement, the
20 parties agreed to a new regulatory agreement and declaration of
21 restrictive covenants that will run with the land and remain in
22 effect until the year 2021. The provisions of "Appendix A" are
23 included in the new regulatory agreement. Plaintiffs sought
24 restitution for members of the plaintiff class who would have been
25 eligible for Section 8 during their tenancies but who could not
26 obtain a subsidized apartment because there was not enough Section
27 8 for all eligible tenants. The settlement provides for a sum of
28 \$23,000 as restitution and twenty Section 8 certificates that can

1 be used by former Jackson Terrace tenants. The Section 8
2 certificates are valid for as long as the recipient is eligible or
3 for ten years. Plaintiffs have been advised by HUD that the value
4 of the settlement is approximately \$8 million.

5 II. The Position of the Federal Defendant was not
6 "Substantially Justified" nor do Special Circumstances Make
7 an Award of Fees Unjust

8 As required by EAJA, plaintiffs herewith allege that the
9 position of the Federal Defendant was not substantially justified.
10 28 U.S.C. Sec. 2412(d)(1)(B). "The burden is on the government to
11 prove substantial justification." Barry v. Bowen, 825 F.2d 1324,
12 1330 (9th Cir. 1987). The Federal Defendant has conceded the point
13 in this case: As part of the settlement of the fourth, fifth and
14 sixth claims, the Federal Defendant expressly agreed not to
15 contend that the position of the United States was "substantially
16 justified" or that "special circumstances make an award unjust."
17 Settlement Agreement Par. 18. The Federal Defendant agreed to pay
18 the plaintiffs their recoverable costs, expenses and attorneys'
19 fees under EAJA. The Federal Defendant further agreed that the
20 only issue to be resolved by an application for fees and expenses
21 under EAJA shall be the amount of the fees, costs and expenses to
22 which the plaintiffs are entitled.

23 III. The Plaintiffs are Parties Entitled to Receive
24 a Fee Award Under 28 U.S.C. Sec. 2412(d)(2)(B)

25 A party is entitled to fees and other expenses under
26 subsection (d) of Section 2412 if it is:

27 (1) an individual whose net worth did not exceed \$2,000,000
28 at the time the civil action was filed, (11) ...[an] association

1 or organization whose net worth did not exceed \$7,000,000 at the
2 time the civil action was filed and which had not more than 500
3 employees at the time the civil action was filed... 28 U.S.C. Sec.
4 2412(d)(2)(B).

5 At the time this action was commenced, none of the
6 individually named plaintiffs or class members had a net worth
7 which exceeded, or ever approached, \$2,000,000. (See Declaration
8 of Richard S. Kohn). Under the Legal Services Corporation Act,
9 CRLA and the National Housing Law Project are precluded from
10 representing any person who does not meet the federal poverty
11 income guidelines. Each of the named plaintiffs was screened
12 under these guidelines by CRLA and was found to be financially
13 eligible for legal services. The class that was certified by the
14 Court was limited to tenants who were eligible to receive the
15 benefits of the Section 8 Housing Assistance Program. These are,
16 by definition, low income persons.

17 There are no organizational plaintiffs in this case.

18 IV. Calculation of the Lodestar

19 The Equal Access to Justice Act provides that a party seeking
20 an award of fees shall submit an application which includes an
21 itemized statement of time spent on the case and a proposed hourly
22 rate. 28 U.S.C. Sec. 2412(d)(1)(B). The Act further provides that
23 fee awards shall be based upon "prevailing market rates" but with
24 the limitation that "attorneys fees shall not be awarded in excess
25 of \$75 per hour unless the court determines that an increase in
26 the cost of living or a special factor, such as the limited
27 availability of qualified attorneys for the proceedings involved,
28 justifies a higher fee." In this case, the plaintiffs seek

1 compensation for three attorneys who shared the major
2 responsibility for litigation of the case, Richard Kohn, Catherine
3 Bishop and Eileen McCarthy. Plaintiffs also seek attorneys fees
4 for M. David Kroot, who assisted the plaintiffs counsel in
5 drafting the Regulatory Agreement and Declaration of Restrictive
6 Covenants, and for Marco Antonio Abarca who assisted with trial
7 preparation. Plaintiffs do not claim attorneys' fees for time
8 spent by two other attorneys who spent a substantial amount of
9 time on the case, Carole Harper and Alfonso Oliva, although
10 plaintiffs do seek reimbursement for their travel expenses.

11 (a) Hourly rates

12 The plaintiffs seek the \$75 per hour EAJA statutory rate
13 increased to take the cost of living into account for Richard S.
14 Kohn and Eileen McCarthy. Catherine Bishop should be compensated
15 at market rate because of the presence of special factors. But
16 for Ms. Bishop's profound knowledge of the federal housing
17 programs, this case could not have been brought to a successful
18 conclusion. That knowledge is a specialty that would not have
19 been available from any other source to assist in these
20 proceedings at the EAJA rate. Indeed, the national support
21 centers such as the National Housing Law Project were created out
22 of a recognition that the specialized knowledge that would be
23 developed there would not be available to legal services programs
24 from any other source.

25 (1) Kohn, McCarthy and Abarca: Calculation of the EAJA rate

26 Plaintiffs seek the statutory rate of \$75 per hour as
27 adjusted by the CPI for the work performed by Richard Kohn and
28 Eileen McCarthy. Richard Kohn is a graduate of the Boston

1 University School of Law and has been admitted to the practice of
2 law since 1968. According to the Ninth Annual Southern California
3 Compensation and Benefits Survey Report (Oct. 1, 1991) (hereinafter
4 "Survey")¹/, (Exhibit 1) the median hourly rate for a partner
5 admitted to practice in 1969 or earlier is \$265 per hour with the
6 low end of the interquartile range at \$220.

7 Ms. McCarthy is a graduate of the University of California,
8 Berkeley School of Law (Boalt Hall) and was admitted to practice
9 law in 1981. According to the Survey, she would qualify for a
10 rate substantially in excess of \$75 per hour. The median hourly
11 rate in the Los Angeles area for an associate admitted to practice
12 in 1981 is \$172 with the low end of the interquartile range at
13 \$125. A partner's rate would be significantly higher. (Exhibit 1)

14 Marco Antonio Abarca is a graduate of Yale College and
15 Stanford University Law School. He has been admitted since 1989.
16 Plaintiffs seek \$80 per hour for his time. According to the
17 Survey, the median rate for associates admitted in 1989 is \$125
18 with the low end of the interquartile range at \$110. (Exhibit 1)

19 There is presently a split of authority over whether the
20 appropriate CPI rate is that for "all items" or that for "legal"
21 services. See, DeWalt v. Sullivan, 756 F. Supp. 195 (D. N.J.
22 1991) The CPI in October 1981 was 93.4. According to the the
23 most recent data available from the U.S. Department of Labor, the
24 CPI for "all items" as of November 1991 is 137.8 (Exhibit 2) For
25 purposes of this fee petition, we have used the conventional "all
26

27 1. This Court has found the Survey to be a reliable guide
28 as to the prevailing market rates in the community.
Motion Picture Industry Pension Plan v. Klages Group,
757 F. Supp. 1082, 1087 (C.D. Cal. 1991).

1 items" rate. We have also used the "all items" rate for all U.S.
2 consumers instead of the rate for Los Angeles which is higher. By
3 following the directions given to us by the Department of Labor,
4 we have determined that the statutory EAJA rate, adjusted for the
5 CPI, is currently \$110.66. See Declaration of Richard Kohn.

6 (2) The Court Should Award Fees to Catherine Bishop Based
7 Upon Market Rates Because of Her Special Expertise

8 EAJA provides that the court may award fees in excess of the
9 statutory rate where special factors, such as the limited
10 availability of qualified attorneys for the proceedings involved,
11 justifies a higher fee. 28 U.S.C. Sec. 2412(d)(1)(B). In Pirus v.
12 Bowen, 869 F.2d 536 (9th Cir. 1989), the Ninth Circuit ruled that
13 higher fees are warranted where the attorney possesses distinctive
14 knowledge and skills developed through a practice specialty; those
15 skills were needed in the litigation; and such skills are not
16 available elsewhere at the statutory rate.

17 The instant case was complex and required an extensive
18 knowledge of federal housing law. It required a knowledge of how
19 HUD functions, and the various housing statutes and how they
20 interrelate. In particular, knowledge of the following statutes
21 and HUD programs was indispensable: the National Housing Act, 12
22 U.S.C. 1701 et seq., the United States Housing Act, 42 U.S.C. Sec.
23 1437 et seq; the Section 8 programs, 42 U.S.C. Sec. 1437f, 24
24 C.F.R. Sec. 886 (Section 8 property disposition) and 24 C.F.R.
25 Sec. 882 (Section 8 certificate program); the property disposition
26 program, 12 U.S.C. Sec. 1701-z-11 and 24 C.F. R. Sec. 290, and the
27 HUD mortgage sale program.

28 The mortgage sale issue was novel. No court had addressed the

1 legality of HUD's practice of selling mortgages and terminating
2 the tenant protection. The analysis of this issue required a
3 knowledge of HUD's practice and familiarity with unpublished HUD
4 documents. There are no published regulations outlining HUD's
5 mortgage sale policy and practice. Ms. Bishop's experience as lead
6 counsel in another case, Walker v. Pierce, 665 F. Supp. 831 (N.D.
7 Cal. 1987), which challenged HUD's sale of mortgages in a
8 different context, was relevant to the issues raised in the
9 instant case. The disposition issue also raised novel questions
10 concerning the intricacies of HUD's property disposition program.

11 Ms. Bishop qualifies for an enhanced rate under Pirus due to
12 special factors. (1) She possesses distinctive knowledge and
13 skills developed through a practice specialty. She has
14 approximately eighteen years of experience dealing with the
15 federal housing programs. (2) Those skills were needed in this
16 litigation. Like all legal services programs, CRLA provides a
17 broad range of legal services to a large population of low income
18 people. It is impossible to develop expertise in every area, let
19 alone an area as complex as the federal housing programs. Without
20 the special expertise of Ms. Bishop, it is virtually certain that
21 the property disposition and mortgage sales issues would not even
22 have been perceived as legal issues by our beleaguered staff
23 attorneys. It would also have been impossible to navigate through
24 the host of programmatic and jurisdictional issues involved in the
25 litigation without Ms. Bishop's participation. (3) Ms. Bishop's
26 skills would not have been available elsewhere at the statutory
27 EAJA rate. There are few lawyers in private practice who would
28 have a grasp of the complexities of the federal housing statutes

1 that were at issue in this case. As attested by the declaration of
2 Dara L. Schur submitted in support of the plaintiffs' motion, a
3 case of this nature is not economically attractive to a private
4 law firm because of the contingent nature of the fee issue, and
5 the prospects of finding a private attorney with the necessary
6 breadth of knowledge would be problematic.

7 Because Catherine Bishop satisfies the standard set forth in
8 Pirus, plaintiffs ask the court to award her fees at market rate.
9 Plaintiffs have calculated an appropriate hourly rate on a
10 historical basis from 1984 to the present by utilizing the survey
11 of attorneys' hourly rates in the Los Angeles area. The
12 calculations are set forth in the Declaration of Catherine Bishop.

13 (3) David Kroot Should be Awarded Fees Based Upon
14 Special Factors

15 An essential part of the settlement of this case required the
16 plaintiffs to draft a Regulatory Agreement and Declaration of
17 Restrictive Covenants to run with the land. This required the
18 special expertise of a lawyer skilled in real estate transactions.
19 The law firm of Goldfarb & Lipman of San Francisco agreed to
20 assist the plaintiffs in the drafting of the document. In
21 accordance with the declaration of M. David Kroot and supporting
22 documents, plaintiffs seek fees and costs of \$3303.20. Goldfarb &
23 Lipman possesses distinctive knowledge and skills developed
24 through a practice specialty; those skills were needed in this
25 litigation; and such skills would not be available elsewhere at
26 the statutory rate. Pirus v. Bowen, 869 F.2d 536 (9th Cir. 1989).
27 It is noteworthy that only 6.10 hours are billed at Mr. Kroot's
28 rate of \$173.77. The bulk of the time spent--29.10 hours--is

1 billed at the associate's rate of \$75.00 per hour which is the
2 statutory EAJA rate without any adjustment for the CPI.

3 (B). The Hours Claimed

4 Each of the principal attorneys for whom hours are claimed
5 was essential to the litigation of the case. There was a natural
6 division of responsibility among these attorneys: Richard Kohn as
7 lead counsel was responsible for managing the litigation, briefing
8 numerous issues and preparing the case for trial. But he could not
9 have litigated the case without Ms. McCarthy's direct involvement
10 with the class members. Eileen McCarthy had day to day
11 responsibility for the case from May 1986 forward and was the
12 attorney in contact with the clients. As a staff attorney in a
13 two-attorney legal services office serving a four county area, it
14 would have been impossible for her to have litigated the case
15 without support from Kohn and Bishop. Catherine Bishop brought her
16 profound knowledge of the federal housing programs to the case.
17 Without this expertise, Kohn and McCarthy could not have
18 negotiated their way through the intricacies of the housing
19 programs and statutes that were involved in the case. Thus, this
20 was not an overstaffed case.

21 On a number of occasions, all three of plaintiffs' counsel
22 attended settlement meetings, status conferences and scheduled
23 motions. Because each of plaintiffs' counsel had a discrete role
24 in the litigation, this participation was necessary and did not
25 represent a duplication of effort. In this connection, it is
26 significant that the same meetings were attended by the Assistant
27 United States Attorney and the Assistant Regional Attorney for
28 HUD. In addition, the HUD General Counsel for HUD Region IX

1 participated in all of the settlement negotiations and attended
2 several other status conferences and motions before the Court.

3 In addition, after settlement was achieved, it was
4 imperative to enlist the services of a law firm with a specialty
5 in real estate transactions to draft the Regulatory Agreement and
6 Declaration of Restrictive Covenants. None of the plaintiffs'
7 counsel had the expertise to draw the documents to ensure that the
8 covenants would run with the land and bind successors in interest.
9 As noted above, David Kroot of the law firm of Goldfarb and
10 Lipman, had such expertise and was an essential participant to
11 ensure that the settlement would be viable.

12 Marco Antonio Abarca provided critical support to the
13 plaintiffs' litigation team on the eve of trial. His ability to
14 speak Spanish enabled him to communicate with the clients directly
15 in preparing them to testify (See declaration of Marco Antonio
16 Abarca). Between May 27 and May 31, 1990, he spent 47.50 hours
17 preparing clients for trial. Plaintiffs have not made any claim
18 for the substantial time spent on the case by Carole Harper or
19 Alfonso Oliva, who preceeded Eileen McCarthy as attorneys of
20 record. The total hours and fees claimed by each attorney are as
21 follows:

22	Kohn	3227.09	\$357,109.77
23	Bishop	1041.00	\$256,454.32
24	McCarthy	932.95	\$103,240.24
25	Abarca	47.50	\$3800
26	Kroot	35.00	\$3303.20 (incl. costs)

27 V. Expert Witnesses

28 EAJA provides for recoupment of the costs of retaining expert

1 witnesses. Plaintiffs seek reimbursement for three expert
2 witnesses and one consultant who were necessary to the litigation
3 of the case. Matthew Suddleson is an expert in real estate
4 conveyancing and title searches. He was retained by the plaintiffs
5 to provide expert testimony with regard to the remedial aspects of
6 the case. He was prepared to testify that the limited
7 partnership's title to Jackson Terrace was defective, that the
8 owners were not bona fide purchasers and that the conveyance of
9 Jackson Terrace from HUD to the owners was void.

10 Morton Levy is a Certified Public Accountant who was prepared
11 to testify that the tenants were financially harmed by the
12 cancellation of the Regulatory Agreement that accompanied the sale
13 of the mortgage on Jackson Terrace. He was also prepared to
14 testify on remedial questions based upon his examination of the
15 financial statements and tax returns of the Jackson Terrace
16 limited partnership.

17 Richard Devine is a principal in Devine and Gong, real estate
18 syndicators. Mr. Devine was prepared to testify concerning the
19 financial incentives involved in real estate syndications in
20 general and to remedial questions regarding Jackson Terrace based
21 upon his examination of financial statements and tax returns of
22 the Jackson Terrace limited partnership.

23 Lupe Chacon de Gonzalez is a housing specialist who assisted
24 the plaintiffs in compiling and evaluating information provided by
25 class members regarding claims for restitution.

26 The total cost of experts is \$7,764.00 (included as a cost
27 below). Supporting documentation for the experts is attached to
28 the Declaration of Richard S. Kohn, submitted in support of the

1 plaintiffs' motion.

2 VI. Community Worker Time

3 Hermila Trevino Saucedá was employed by CRLA throughout the
4 course of this litigation as a community worker in the Coachella
5 office. She served an indispensable role in maintaining
6 communication between class counsel and the class. Because Eileen
7 McCarthy does not speak Spanish and because many of the class
8 members were monolingual in Spanish, Millie Trevino had to serve
9 as translator. In addition, she carried out many tasks (such as
10 calculating the tenants' claims for restitution) normally
11 performed by a paralegal. Included herein are her hours which
12 total 890.55 (her total number of hours has been reduced by one
13 hour to eliminate time spent on the utility issue) Her rate of
14 compensation should be similar to that received by paralegal. A
15 reasonable hourly rate would be \$50.00. According to the Eighth
16 Annual Southern California Compensation and Benefits Survey
17 Report, (Oct. 1, 1990), the average billing rate for a legal
18 assistant in a firm of 36-50 attorneys would be \$50 for legal
19 assistants with between three to six years of experience and \$95
20 per hour for legal assistants with six or more years of
21 experience. California Rural Legal Assistance employs
22 approximately fifty attorneys. (Exhibit 3)

23 Emanuel Benitez is a community worker employed by CRLA in our
24 Oxnard office. In May 1991, he and Marco Antonio Abarca went to
25 Coachella at Eileen McCarthy's request to assist her in preparing
26 the class members for trial. Mr. Benitez spent a total of 42 hours
27 between May 27 and May 29 translating and preparing documents. A
28 reasonable hourly rate for him would be \$50 per hour. (See Abarca

1 and Benitez declarations submitted in support of the plaintiffs'
2 motion).)

3 Millie Trevino \$ 44,527.50

4 Emanuel Benitez \$ 2,100.00

5 It was also necessary to hire additional community workers to
6 assist with the gathering of information from class members. These
7 individuals were paid an hourly rate and are accounted for
8 separately below as an expense of litigation.

9 VII. Costs and Expenses:

10 Plaintiffs have incurred substantial costs and expenses in
11 this case which are related to the settlement of the fourth, fifth
12 and sixth causes of action. These include the hiring of
13 consultants and expert witnesses, travel, photocopying,
14 depositions, telephone, mailing and service fees. These are
15 recoverable costs. International Woodworkers of America, AFL-CIO
16 Local v. Donovan, 769 F.2d 1388, 1392 (9th Cir. 1985). These costs
17 are summarized here and in the Bishop and Kohn declarations
18 submitted in support of the plaintiffs' motion).

19 These totals are as follows:

20 NATIONAL HOUSING LAW PROJECT:

21	Travel	\$ 3,721.89
22	Telephone	\$ 680.50
23	Photocopying	\$ 1,040.00
24	TOTAL:	\$5442.39

25 Mailing:

26	Certified Mail	\$ 15.05
27	Federal Express	\$ 527.61
28	Western Messenger	\$ 93.50

1	TOTAL Mailing	\$ 636.16
2	TOTAL NHLP Costs	\$ 6,078.55
3	CALIFORNIA RURAL LEGAL ASSISTANCE:	
4	Travel:	
5	McCarthy	\$ 2,935.18
6	Kohn	\$ 7,167.96
7	Oliva	\$ 2,169.60
8	Harper	\$ 40.75
9	TOTAL	\$12,313.49
10	Cert. mail	\$ 349.30
11	UPS	\$ 20.90
12	Depositions	\$ 3,011.85
13	Court Interpreting	\$ 600.00
14	Transportation to get class members to trial	\$ 2,626.00
15	Miscellaneous	\$ 993.16
16	Service of Process	\$ 419.00
17	Western Messenger	\$ 336.60
18	Photocopying	\$ 5,710.80
19	TOTAL	\$ 14,067.61
20	Community Workers (interview class members re standing and calc. amt. of restitution)	\$ 2,970.12
21	Federal Express	\$ 3,785.41
22	Telephone.....	\$ 1,084.20
23	Abarca/Benitez expenses	\$ 511.44
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25		
26		
27	Experts and consultants.....	\$7764.00
28	TOTAL CRLA Cost	\$ 42,496.27

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TOTAL OF EXPENSES: \$ 48,574.82

Plaintiffs' total claim for attorneys' fees, costs and expenses is \$ 819,109.85, \$ 48,574.82 of which is out-of-pocket expenses. Plaintiffs understand from HUD that the total value of the Section 8 and vouchers is approximately eight million dollars. Thus, plaintiffs' claim represents approximately ten per cent of the value of the settlement. In cases involving the recovery by plaintiffs of a fund for distribution to a class, the courts have found fees in the amount of 25% of the recovery to be reasonable.

Plaintiffs request that based upon the record in this case, the stipulation of settlement, the attached exhibits and the supporting declarations submitted herewith, the Court award them the above stated fees and expenses.

Pursuant to the settlement agreement, final judgment in this case will not be entered until the completion of certain occurrences set forth in Par. 21 of the Stipulation of Settlement. Any additional time expended and costs incurred in connection with this case between now and the entry of the final judgment will be addressed in a supplemental application.

DATED: *December 19, 1991*

Respectfully submitted,

CALIFORNIA RURAL LEGAL
ASSISTANCE

NATIONAL HOUSING LAW PROJECT

Attorneys for the Plaintiffs

By, *Richard S. Kohn*
Richard S. Kohn

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10 Berkeley, California 94110
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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA

14 RICHARD WALKER, et al.,)	
)	
15 Plaintiffs	)	CIV. NO. 84-4370 RSWL
)	
16	)	STIPULATION TO CONTINUE
17 v.	)	PLAINTIFFS' MOTION FOR
	)	ATTORNEYS' FEES, COSTS
18	)	AND EXPENSES UNDER THE
JACK KEMP, Secretary of the	)	EQUAL ACCESS TO JUSTICE
19 DEPARTMENT OF HOUSING AND	)	ACT AND ORDER THEREON
URBAN DEVELOPMENT, et al.,)	
20)	
Defendants.	)	Date: none
	)	Time: none

22 In order to enable the parties to have sufficient time to
23 negotiate a settlement of the plaintiffs claim for attorneys' fees
24 under the Equal Access to Justice Act, 28 U.S.C. Sec. 2412,

25 It is hereby stipulated by and between the parties through
26 their undersigned attorneys of record, to continue the hearing in
27 this matter from January 27, 1992 to April 27, 1992. at 10:00
28 a.m. in the courtroom of the Hon. Ronald S.W. Lew, United States

1 District Judge. It is further stipulated that if the parties are
2 unable to reach a settlement, they shall jointly notify the court
3 immediately.

4 It is further stipulated that the plaintiffs will have the
5 opportunity to amplify, amend or supplement their initial filing
6 before the government is required to file its brief in opposition
7 to the motion. It is expressly understood by the parties that the
8 plaintiffs must satisfy the jurisdictional filing requirements of
9 EAJA in their initial motion and that the purpose of this
10 agreement is not to alter those jurisdictional filing
11 requirements. Rather, the purpose of this agreement is to avoid
12 the unnecessary expenditure of time by the Court and both parties
13 on the plaintiffs' fee application at this time if the fee issue
14 can be settled by mutual agreement.

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1 In the event that the parties cannot achieve a settlement, the
2 parties have agreed to the following briefing schedule in
3 accordance with Local Rule 7.8:

4 Plaintiffs' supplemental motion: File by March 30, 1992

5 Federal Defendants' Opposition: File by April 13, 1992

6 Plaintiffs' Reply Brief: File by April 20, 1992

7 DATED: December 18, 1991

8 CALIFORNIA RURAL LEGAL ASSISTANCE

9 NATIONAL HOUSING LAW PROJECT

10 BY, Richard S. Kohn
11 Richard S. Kohn
Attorneys for the Plaintiffs

12 DATED: December 18, 1991

13 LOURDES G. BAIRD

United States Attorney

14 LEON W. WEIDMAN

Assistant United States Attorney

15 Chief, Civil Division

16 BY, Stan Blumenfeld /RSK *
Stan Blumenfeld

17 Assistant United States Attorney

Attorneys for the Defendant

18 * (By authorization Dec. 18, 1991)

19 ORDER

20 IT IS SO ORDERED.

21 DATED: _____

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23 UNITED STATES DISTRICT JUDGE
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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA

14 RICHARD WALKER, et al.,)
15)
Plaintiffs,)

16) CIV. NO. 84-4370 RSWL

17) NOTICE OF MOTION AND
18) MOTION FOR ATTORNEYS'

18 v.) FEES, COSTS AND EXPENSES
19) UNDER THE EQUAL ACCESS TO
JACK KEMP, Secretary of the) JUSTICE ACT
20 DEPARTMENT OF HOUSING AND)

20 URBAN DEVELOPMENT, et al.,)

21) Date: January 27, 1992

21 Defendants.)

Time: 10:00 a.m.

22 TO THE DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

23 Please take notice that on January 27, 1992 at 10:00 a.m.
24 plaintiffs' Motion for Attorneys' Fees, Costs and Expenses will be
25 heard before the Hon. Ronald S.W. Lew at the United States
26 Courthouse, 312 N. Spring Street, Los Angeles, California.

27 Plaintiffs move this Court for an award of attorneys' fees,
28 costs and expenses under the Equal Access to Justice Act, (EAJA),

1 28 U.S.C. Sec. 2412, based upon the record before this Court, the
2 Memoranda in Support of Plaintiffs' Motion, and such declarations
3 and exhibits as are submitted in support thereof.

4 Plaintiffs allege that they are the prevailing parties, that
5 they are eligible to receive an award under EAJA, and that the
6 position of the United States was not justified. The amount sought
7 is set forth in the accompanying memorandum of points and
8 authorities in support of the plaintiffs' motion.

9 It is plaintiffs' desire to negotiate a settlement of fees,
10 costs and expenses with the Federal Defendant. However, as the
11 plaintiffs are obliged to meet the jurisdictional filing deadline
12 for an application under EAJA, this motion is noticed at this
13 time. Contemporaneously herewith, the plaintiffs and the Federal
14 Defendant are presenting a stipulation to continue the hearing on
15 the plaintiff's motion until April 27, 1992. The parties have
16 agreed that in the event that the settlement negotiations fail,
17 this application may be amended and/or supplemented by other
18 declarations and exhibits at a later date, with full opportunity
19 for a response by the Federal Defendant before this motion is
20 actually heard by the Court. The parties ask the Court to approve
21 the stipulation.

22 DATED: December 18, 1991

23 Respectfully submitted,

24 CALIFORNIA RURAL LEGAL ASSISTANCE

25 NATIONAL HOUSING LAW PROJECT

26 Attorneys for the Plaintiffs

27 By, Richard S. Kohn

28 Richard S. Kohn

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On December 19, 1991, I served the attached:

STIPULATION TO CONTINUE PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS AND EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT AND ORDER THEREON

Stan Blumenfeld
Assistant United States
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300 No. Los Angeles St.,
Los Angeles, CA 90012

Executed on this 19th day of December, 1991, at San Francisco, California.

RICHARD S. KOHN

1 EILEEN MCCARTHY
ARTURO RODRIGUEZ
2 CALIFORNIA RURAL LEGAL ASSISTANCE
Migrant Farmworker Project
3 1030 Sixth Street, #6 / P.O. Box 35
Coachella, California 92236-0035
4 (619) 398-7261

5 RICHARD S. KOHN
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6 Migrant Farmworker Project
2111 Mission Street, Suite 401
7 San Francisco, California 94110
(415) 864-3405

8 CATHERINE M. BISHOP
9 NATIONAL HOUSING LAW PROJECT
1950 Addison Street
10 Berkeley, California 94110
(415) 548-9400

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA

14 RICHARD WALKER, et al.,)	
)	
15 Plaintiffs	)	CIV. NO. 84-4370 RSWL
)	
16)	
17 v.	)	STIPULATION TO CONTINUE
	)	PLAINTIFFS' MOTION FOR
18	)	ATTORNEYS' FEES, COSTS
	)	AND EXPENSES UNDER THE
19 JACK KEMP, Secretary of the	)	EQUAL ACCESS TO JUSTICE
DEPARTMENT OF HOUSING AND	)	ACT AND ORDER THEREON
20 URBAN DEVELOPMENT, et al.,)	
)	
21 Defendants.	)	Date: none
	)	Time: none

22 In order to enable the parties to have sufficient time to
23 negotiate a settlement of the plaintiffs claim for attorneys' fees
24 under the Equal Access to Justice Act, 28 U.S.C. Sec. 2412,

25 It is hereby stipulated by and between the parties through
26 their undersigned attorneys of record, to continue the hearing in
27 this matter from January 27, 1992 to April 27, 1992. at 10:00
28 a.m. in the courtroom of the Hon. Ronald S.W. Lew, United States

1 District Judge. It is further stipulated that if the parties are
2 unable to reach a settlement, they shall jointly notify the court
3 immediately.

4 It is further stipulated that the plaintiffs will have the
5 opportunity to amplify, amend or supplement their initial filing
6 before the government is required to file its brief in opposition
7 to the motion. It is expressly understood by the parties that the
8 plaintiffs must satisfy the jurisdictional filing requirements of
9 EAJA in their initial motion and that the purpose of this
10 agreement is not to alter those jurisdictional filing
11 requirements. Rather, the purpose of this agreement is to avoid
12 the unnecessary expenditure of time by the Court and both parties
13 on the plaintiffs' fee application at this time if the fee issue
14 can be settled by mutual agreement.

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1 In the event that the parties cannot achieve a settlement, the
2 parties have agreed to the following briefing schedule in
3 accordance with Local Rule 7.8:

4 Plaintiffs' supplemental motion: File by March 30, 1992

5 Federal Defendants' Opposition: File by April 13, 1992

6 Plaintiffs' Reply Brief: File by April 20, 1992

7 DATED: December 18, 1991

8 CALIFORNIA RURAL LEGAL ASSISTANCE

9 NATIONAL HOUSING LAW PROJECT

10 BY, Richard S. Kohn
11 Richard S. Kohn
Attorneys for the Plaintiffs

12 DATED: December 18, 1991

13 LOURDES G. BAIRD
14 United States Attorney
15 LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division

16 BY, Stan Blumenfeld /RSK *
17 Stan Blumenfeld
Assistant United States Attorney
Attorneys for the Defendant

18 * (By authorization Dec. 18, 1991)

19 ORDER

20 IT IS SO ORDERED.

21 DATED: _____

22
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28

PROOF OF SERVICE BY MAIL

I hereby certify that I am a citizen of the United States. I am over the age of eighteen years and not a party to the above-entitled action. My business address is 2111 Mission Street, Suite 401, San Francisco, California 94110.

On December 19, 1991, I served the attached:

NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT;

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS AND
EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT;
AND EXHIBITS

DECLARATIONS OF RICHARD S. KOHN, CATHERINE BISHOP,
EILEEN MCCARTHY, ALFONSO OLIVA, HARMILA TREVINO SAUCEDA,
M. DAVID KROOT, MARCO ANTONIO ABARCA, EMANUEL BENITEZ,
AND JARA L. SCHUR IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, AND

STIPULATION TO CONTINUE PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, COSTS AND EXPENSES UNDER THE EQUAL
ACCESS TO JUSTICE ACT AND ORDER THEREON

by placing a true copy thereof in an envelope to the persons named below via United States Mail, first class postage prepaid and addressed to:

Philip D. Dapeer
Dapeer & Hirsch
4929 Wilshire Blvd., Ste. 600
Los Angeles, CA 90010

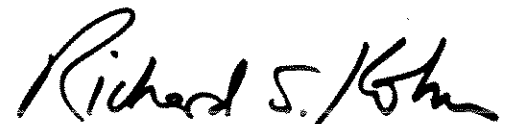
Lawrence Lieberman
Levinson & Lieberman
9401 Wilshire Bl. #1250
Beverly Hills, CA 90212

Rosemarie Fernandez
Office Fair Housing
US Department of HUD
450 Golden Gate Avenue
San Francisco, CA 94102

Stan Blumenfeld
Assistant United States
Attorney Ste., 7516
300 No. Los Angeles St.,
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19th day of December, 1991, at San Francisco, California.



RICHARD S. KOHN

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16 1950 Addison Street
17 Berkeley, California 94704
18 (415) 548-9400

19 Attorneys for Plaintiffs

20 UNITED STATES DISTRICT COURT
21
22 CENTRAL DISTRICT OF CALIFORNIA

23 RICHARD WALKER, et al.,)
24)
25 Plaintiffs,)

26 CIV. NO. 84-4370 RSWL

27 v.)
28)
29 JACK KEMP, Secretary of the)
30 DEPARTMENT OF HOUSING AND)
31 URBAN DEVELOPMENT, et al.,)

32 MEMORANDUM OF POINTS
33 AND AUTHORITIES IN SUPPORT
34 OF PLAINTIFFS' MOTION FOR
35 AWARD OF ATTORNEYS' FEES
36 COSTS AND EXPENSES UNDER
37 EAJA AND EXHIBITS

38 Defendants.)

39 Date: January 27, 1992
40 Time: 10:00 a.m.

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STATUTES and REGULATIONS

Equal Access to Justice Act, 28 U.S.C. § 2412	<u>passim</u>
National Housing Act, 12 U.S.C. 1701	7
United States Housing Act, 42 U.S.C. 1437	7
42 USC § 1437f	7
12 USC § 1701 -z- 11	7
2 24 CFR § 886	7
2 24 § CFR 882	7
2 § CFR 290	7

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1 prevailing party in that they have achieved a settlement which, in
2 the Court's words, is "far superior than a judgment that the court
3 can give you in this action,..." Transcript of Proceedings, June
4 1, 1990, p. 24. The plaintiffs achieved the relief they desired
5 on each of the fourth, fifth and sixth claims for relief. In the
6 course of the litigation, the plaintiffs established that the sale
7 of Jackson Terrace in 1981 with less than 100% Section 8 subsidy
8 was "arbitrary and capricious" in violation of the APA. The remedy
9 that was achieved in settlement was a new Section 8 contract for
10 all ninety units to run for ten years. Plaintiffs also challenged
11 the sale of the mortgage in 1983. It was the sale of the mortgage
12 that triggered the cancellation of a regulatory agreement (which
13 would have run until the year 2021) which contained many
14 protections for the tenants. Plaintiffs also sought to reform the
15 regulatory agreement to include an "Appendix A" that had been
16 inadvertently omitted from the regulatory agreement in 1981. One
17 provision of Appendix A would have required the owners to accept a
18 renewal of the Section 8 contract, if offered by HUD, upon the
19 expiration of the existing contract. In the settlement, the
20 parties agreed to a new regulatory agreement and declaration of
21 restrictive covenants that will run with the land and remain in
22 effect until the year 2021. The provisions of "Appendix A" are
23 included in the new regulatory agreement. Plaintiffs sought
24 restitution for members of the plaintiff class who would have been
25 eligible for Section 8 during their tenancies but who could not
26 obtain a subsidized apartment because there was not enough Section
27 8 for all eligible tenants. The settlement provides for a sum of
28 \$23,000 as restitution and twenty Section 8 certificates that can

1 be used by former Jackson Terrace tenants. The Section 8
2 certificates are valid for as long as the recipient is eligible or
3 for ten years. Plaintiffs have been advised by HUD that the value
4 of the settlement is approximately \$8 million.

5 II. The Position of the Federal Defendant was not
6 "Substantially Justified" nor do Special Circumstances Make
7 an Award of Fees Unjust

8 As required by EAJA, plaintiffs herewith allege that the
9 position of the Federal Defendant was not substantially justified.
10 28 U.S.C. Sec. 2412(d)(1)(B). "The burden is on the government to
11 prove substantial justification." Barry v. Bowen, 825 F.2d 1324,
12 1330 (9th Cir. 1987). The Federal Defendant has conceded the point
13 in this case: As part of the settlement of the fourth, fifth and
14 sixth claims, the Federal Defendant expressly agreed not to
15 contend that the position of the United States was "substantially
16 justified" or that "special circumstances make an award unjust."
17 Settlement Agreement Par. 18. The Federal Defendant agreed to pay
18 the plaintiffs their recoverable costs, expenses and attorneys'
19 fees under EAJA. The Federal Defendant further agreed that the
20 only issue to be resolved by an application for fees and expenses
21 under EAJA shall be the amount of the fees, costs and expenses to
22 which the plaintiffs are entitled.

23 III. The Plaintiffs are Parties Entitled to Receive
24 a Fee Award Under 28 U.S.C. Sec. 2412(d)(2)(B)

25 A party is entitled to fees and other expenses under
26 subsection (d) of Section 2412 if it is:

27 (1) an individual whose net worth did not exceed \$2,000,000
28 at the time the civil action was filed, (11) ...[an] association

1 or organization whose net worth did not exceed \$7,000,000 at the
2 time the civil action was filed and which had not more than 500
3 employees at the time the civil action was filed... 28 U.S.C. Sec.
4 2412(d)(2)(B).

5 At the time this action was commenced, none of the
6 individually named plaintiffs or class members had a net worth
7 which exceeded, or ever approached, \$2,000,000. (See Declaration
8 of Richard S. Kohn). Under the Legal Services Corporation Act,
9 CRLA and the National Housing Law Project are precluded from
10 representing any person who does not meet the federal poverty
11 income guidelines. Each of the named plaintiffs was screened
12 under these guidelines by CRLA and was found to be financially
13 eligible for legal services. The class that was certified by the
14 Court was limited to tenants who were eligible to receive the
15 benefits of the Section 8 Housing Assistance Program. These are,
16 by definition, low income persons.

17 There are no organizational plaintiffs in this case.

18 IV. Calculation of the Lodestar

19 The Equal Access to Justice Act provides that a party seeking
20 an award of fees shall submit an application which includes an
21 itemized statement of time spent on the case and a proposed hourly
22 rate. 28 U.S.C. Sec. 2412(d)(1)(B). The Act further provides that
23 fee awards shall be based upon "prevailing market rates" but with
24 the limitation that "attorneys fees shall not be awarded in excess
25 of \$75 per hour unless the court determines that an increase in
26 the cost of living or a special factor, such as the limited
27 availability of qualified attorneys for the proceedings involved,
28 justifies a higher fee." In this case, the plaintiffs seek

1 compensation for three attorneys who shared the major
2 responsibility for litigation of the case, Richard Kohn, Catherine
3 Bishop and Eileen McCarthy. Plaintiffs also seek attorneys fees
4 for M. David Kroot, who assisted the plaintiffs counsel in
5 drafting the Regulatory Agreement and Declaration of Restrictive
6 Covenants, and for Marco Antonio Abarca who assisted with trial
7 preparation. Plaintiffs do not claim attorneys' fees for time
8 spent by two other attorneys who spent a substantial amount of
9 time on the case, Carole Harper and Alfonso Oliva, although
10 plaintiffs do seek reimbursement for their travel expenses.

11 (a) Hourly rates

12 The plaintiffs seek the \$75 per hour EAJA statutory rate
13 increased to take the cost of living into account for Richard S.
14 Kohn and Eileen McCarthy. Catherine Bishop should be compensated
15 at market rate because of the presence of special factors. But
16 for Ms. Bishop's profound knowledge of the federal housing
17 programs, this case could not have been brought to a successful
18 conclusion. That knowledge is a specialty that would not have
19 been available from any other source to assist in these
20 proceedings at the EAJA rate. Indeed, the national support
21 centers such as the National Housing Law Project were created out
22 of a recognition that the specialized knowledge that would be
23 developed there would not be available to legal services programs
24 from any other source.

25 (1) Kohn, McCarthy and Abarca: Calculation of the EAJA rate

26 Plaintiffs seek the statutory rate of \$75 per hour as
27 adjusted by the CPI for the work performed by Richard Kohn and
28 Eileen McCarthy. Richard Kohn is a graduate of the Boston

1 University School of Law and has been admitted to the practice of
2 law since 1968. According to the Ninth Annual Southern California
3 Compensation and Benefits Survey Report (Oct. 1, 1991) (hereinafter
4 "Survey")^{1/}, (Exhibit 1) the median hourly rate for a partner
5 admitted to practice in 1969 or earlier is \$265 per hour with the
6 low end of the interquartile range at \$220.

7 Ms. McCarthy is a graduate of the University of California,
8 Berkeley School of Law (Boalt Hall) and was admitted to practice
9 law in 1981. According to the Survey, she would qualify for a
10 rate substantially in excess of \$75 per hour. The median hourly
11 rate in the Los Angeles area for an associate admitted to practice
12 in 1981 is \$172 with the low end of the interquartile range at
13 \$125. A partner's rate would be significantly higher. (Exhibit 1)

14 Marco Antonio Abarca is a graduate of Yale College and
15 Stanford University Law School. He has been admitted since 1989.
16 Plaintiffs seek \$80 per hour for his time. According to the
17 Survey, the median rate for associates admitted in 1989 is \$125
18 with the low end of the interquartile range at \$110. (Exhibit 1)

19 There is presently a split of authority over whether the
20 appropriate CPI rate is that for "all items" or that for "legal"
21 services. See, DeWalt v. Sullivan, 756 F. Supp. 195 (D. N.J.
22 1991) The CPI in October 1981 was 93.4. According to the the
23 most recent data available from the U.S. Department of Labor, the
24 CPI for "all items" as of November 1991 is 137.8 (Exhibit 2) For
25 purposes of this fee petition, we have used the conventional "all
26

27 1. This Court has found the Survey to be a reliable guide
28 as to the prevailing market rates in the community.
Motion Picture Industry Pension Plan v. Klages Group,
757 F. Supp. 1082, 1087 (C.D. Cal. 1991).

1 items" rate. We have also used the "all items" rate for all U.S.
2 consumers instead of the rate for Los Angeles which is higher. By
3 following the directions given to us by the Department of Labor,
4 we have determined that the statutory EAJA rate, adjusted for the
5 CPI, is currently \$110.66. See Declaration of Richard Kohn.

6 (2) The Court Should Award Fees to Catherine Bishop Based
7 Upon Market Rates Because of Her Special Expertise

8 EAJA provides that the court may award fees in excess of the
9 statutory rate where special factors, such as the limited
10 availability of qualified attorneys for the proceedings involved,
11 justifies a higher fee. 28 U.S.C. Sec. 2412(d)(1)(B). In Pirus v.
12 Bowen, 869 F.2d 536 (9th Cir. 1989), the Ninth Circuit ruled that
13 higher fees are warranted where the attorney possesses distinctive
14 knowledge and skills developed through a practice specialty; those
15 skills were needed in the litigation; and such skills are not
16 available elsewhere at the statutory rate.

17 The instant case was complex and required an extensive
18 knowledge of federal housing law. It required a knowledge of how
19 HUD functions, and the various housing statutes and how they
20 interrelate. In particular, knowledge of the following statutes
21 and HUD programs was indispensable: the National Housing Act, 12
22 U.S.C. 1701 et seq., the United States Housing Act, 42 U.S.C. Sec.
23 1437 et seq.; the Section 8 programs, 42 U.S.C. Sec. 1437f, 24
24 C.F.R. Sec. 886 (Section 8 property disposition) and 24 C.F.R.
25 Sec. 882 (Section 8 certificate program); the property disposition
26 program, 12 U.S.C. Sec. 1701-z-11 and 24 C.F. R. Sec. 290, and the
27 HUD mortgage sale program.

28 The mortgage sale issue was novel. No court had addressed the

1 legality of HUD's practice of selling mortgages and terminating
2 the tenant protection. The analysis of this issue required a
3 knowledge of HUD's practice and familiarity with unpublished HUD
4 documents. There are no published regulations outlining HUD's
5 mortgage sale policy and practice. Ms. Bishop's experience as lead
6 counsel in another case, Walker v. Pierce, 665 F. Supp. 831 (N.D.
7 Cal. 1987), which challenged HUD's sale of mortgages in a
8 different context, was relevant to the issues raised in the
9 instant case. The disposition issue also raised novel questions
10 concerning the intricacies of HUD's property disposition program.

11 Ms. Bishop qualifies for an enhanced rate under Pirus due to
12 special factors. (1) She possesses distinctive knowledge and
13 skills developed through a practice specialty. She has
14 approximately eighteen years of experience dealing with the
15 federal housing programs. (2) Those skills were needed in this
16 litigation. Like all legal services programs, CRLA provides a
17 broad range of legal services to a large population of low income
18 people. It is impossible to develop expertise in every area, let
19 alone an area as complex as the federal housing programs. Without
20 the special expertise of Ms. Bishop, it is virtually certain that
21 the property disposition and mortgage sales issues would not even
22 have been perceived as legal issues by our beleaguered staff
23 attorneys. It would also have been impossible to navigate through
24 the host of programmatic and jurisdictional issues involved in the
25 litigation without Ms. Bishop's participation. (3) Ms. Bishop's
26 skills would not have been available elsewhere at the statutory
27 EAJA rate. There are few lawyers in private practice who would
28 have a grasp of the complexities of the federal housing statutes

1 that were at issue in this case. As attested by the declaration of
2 Dara L. Schur submitted in support of the plaintiffs' motion, a
3 case of this nature is not economically attractive to a private
4 law firm because of the contingent nature of the fee issue, and
5 the prospects of finding a private attorney with the necessary
6 breadth of knowledge would be problematic.

7 Because Catherine Bishop satisfies the standard set forth in
8 Pirus, plaintiffs ask the court to award her fees at market rate.
9 Plaintiffs have calculated an appropriate hourly rate on a
10 historical basis from 1984 to the present by utilizing the survey
11 of attorneys' hourly rates in the Los Angeles area. The
12 calculations are set forth in the Declaration of Catherine Bishop.

13 (3) David Kroot Should be Awarded Fees Based Upon
14 Special Factors

15 An essential part of the settlement of this case required the
16 plaintiffs to draft a Regulatory Agreement and Declaration of
17 Restrictive Covenants to run with the land. This required the
18 special expertise of a lawyer skilled in real estate transactions.
19 The law firm of Goldfarb & Lipman of San Francisco agreed to
20 assist the plaintiffs in the drafting of the document. In
21 accordance with the declaration of M. David Kroot and supporting
22 documents, plaintiffs seek fees and costs of \$3303.20. Goldfarb &
23 Lipman possesses distinctive knowledge and skills developed
24 through a practice specialty; those skills were needed in this
25 litigation; and such skills would not be available elsewhere at
26 the statutory rate. Pirus v. Bowen, 869 F.2d 536 (9th Cir. 1989).
27 It is noteworthy that only 6.10 hours are billed at Mr. Kroot's
28 rate of \$173.77. The bulk of the time spent--29.10 hours--is

1 billed at the associate's rate of \$75.00 per hour which is the
2 statutory EAJA rate without any adjustment for the CPI.

3 (B). The Hours Claimed

4 Each of the principal attorneys for whom hours are claimed
5 was essential to the litigation of the case. There was a natural
6 division of responsibility among these attorneys: Richard Kohn as
7 lead counsel was responsible for managing the litigation, briefing
8 numerous issues and preparing the case for trial. But he could not
9 have litigated the case without Ms. McCarthy's direct involvement
10 with the class members. Eileen McCarthy had day to day
11 responsibility for the case from May 1986 forward and was the
12 attorney in contact with the clients. As a staff attorney in a
13 two-attorney legal services office serving a four county area, it
14 would have been impossible for her to have litigated the case
15 without support from Kohn and Bishop. Catherine Bishop brought her
16 profound knowledge of the federal housing programs to the case.
17 Without this expertise, Kohn and McCarthy could not have
18 negotiated their way through the intricacies of the housing
19 programs and statutes that were involved in the case. Thus, this
20 was not an overstaffed case.

21 On a number of occasions, all three of plaintiffs' counsel
22 attended settlement meetings, status conferences and scheduled
23 motions. Because each of plaintiffs' counsel had a discrete role
24 in the litigation, this participation was necessary and did not
25 represent a duplication of effort. In this connection, it is
26 significant that the same meetings were attended by the Assistant
27 United States Attorney and the Assistant Regional Attorney for
28 HUD. In addition, the HUD General Counsel for HUD Region IX

1 participated in all of the settlement negotiations and attended
2 several other status conferences and motions before the Court.

3 In addition, after settlement was achieved, it was
4 imperative to enlist the services of a law firm with a specialty
5 in real estate transactions to draft the Regulatory Agreement and
6 Declaration of Restrictive Covenants. None of the plaintiffs'
7 counsel had the expertise to draw the documents to ensure that the
8 covenants would run with the land and bind successors in interest.
9 As noted above, David Kroot of the law firm of Goldfarb and
10 Lipman, had such expertise and was an essential participant to
11 ensure that the settlement would be viable.

12 Marco Antonio Abarca provided critical support to the
13 plaintiffs' litigation team on the eve of trial. His ability to
14 speak Spanish enabled him to communicate with the clients directly
15 in preparing them to testify (See declaration of Marco Antonio
16 Abarca). Between May 27 and May 31, 1990, he spent 47.50 hours
17 preparing clients for trial. Plaintiffs have not made any claim
18 for the substantial time spent on the case by Carole Harper or
19 Alfonso Oliva, who preceeded Eileen McCarthy as attorneys of
20 record. The total hours and fees claimed by each attorney are as
21 follows:

22	Kohn	3227.09	\$357,109.77
23	Bishop	1041.00	\$256,454.32
24	McCarthy	932.95	\$103,240.24
25	Abarca	47.50	\$3800
26	Kroot	35.00	\$3303.20 (incl. costs)

27 **V. Expert Witnesses**

28 EAJA provides for recoupment of the costs of retaining expert

1 witnesses. Plaintiffs seek reimbursement for three expert
2 witnesses and one consultant who were necessary to the litigation
3 of the case. Matthew Suddleson is an expert in real estate
4 conveyancing and title searches. He was retained by the plaintiffs
5 to provide expert testimony with regard to the remedial aspects of
6 the case. He was prepared to testify that the limited
7 partnership's title to Jackson Terrace was defective, that the
8 owners were not bona fide purchasers and that the conveyance of
9 Jackson Terrace from HUD to the owners was void.

10 Morton Levy is a Certified Public Accountant who was prepared
11 to testify that the tenants were financially harmed by the
12 cancellation of the Regulatory Agreement that accompanied the sale
13 of the mortgage on Jackson Terrace. He was also prepared to
14 testify on remedial questions based upon his examination of the
15 financial statements and tax returns of the Jackson Terrace
16 limited partnership.

17 Richard Devine is a principal in Devine and Gong, real estate
18 syndicators. Mr. Devine was prepared to testify concerning the
19 financial incentives involved in real estate syndications in
20 general and to remedial questions regarding Jackson Terrace based
21 upon his examination of financial statements and tax returns of
22 the Jackson Terrace limited partnership.

23 Lupe Chacon de Gonzalez is a housing specialist who assisted
24 the plaintiffs in compiling and evaluating information provided by
25 class members regarding claims for restitution.

26 The total cost of experts is \$7,764.00 (included as a cost
27 below). Supporting documentation for the experts is attached to
28 the Declaration of Richard S. Kohn, submitted in support of the

1 plaintiffs' motion.

2 VI. Community Worker Time

3 Hermila Trevino Saucedo was employed by CRLA throughout the
4 course of this litigation as a community worker in the Coachella
5 office. She served an indispensable role in maintaining
6 communication between class counsel and the class. Because Eileen
7 McCarthy does not speak Spanish and because many of the class
8 members were monolingual in Spanish, Millie Trevino had to serve
9 as translator. In addition, she carried out many tasks (such as
10 calculating the tenants' claims for restitution) normally
11 performed by a paralegal. Included herein are her hours which
12 total 890.55 (her total number of hours has been reduced by one
13 hour to eliminate time spent on the utility issue) Her rate of
14 compensation should be similar to that received by paralegal. A
15 reasonable hourly rate would be \$50.00. According to the Eighth
16 Annual Southern California Compensation and Benefits Survey
17 Report, (Oct. 1, 1990), the average billing rate for a legal
18 assistant in a firm of 36-50 attorneys would be \$50 for legal
19 assistants with between three to six years of experience and \$95
20 per hour for legal assistants with six or more years of
21 experience. California Rural Legal Assistance employs
22 approximately fifty attorneys. (Exhibit 3)

23 Emanuel Benitez is a community worker employed by CRLA in our
24 Oxnard office. In May 1991, he and Marco Antonio Abarca went to
25 Coachella at Eileen McCarthy's request to assist her in preparing
26 the class members for trial. Mr. Benitez spent a total of 42 hours
27 between May 27 and May 29 translating and preparing documents. A
28 reasonable hourly rate for him would be \$50 per hour. (See Abarca

1 and Benitez declarations submitted in support of the plaintiffs'
2 motion).)

3 Millie Trevino \$ 44,527.50

4 Emanuel Benitez \$ 2,100.00

5 It was also necessary to hire additional community workers to
6 assist with the gathering of information from class members. These
7 individuals were paid an hourly rate and are accounted for
8 separately below as an expense of litigation.

9 **VII. Costs and Expenses:**

10 Plaintiffs have incurred substantial costs and expenses in
11 this case which are related to the settlement of the fourth, fifth
12 and sixth causes of action. These include the hiring of
13 consultants and expert witnesses, travel, photocopying,
14 depositions, telephone, mailing and service fees. These are
15 recoverable costs. International Woodworkers of America, AFL-CIO
16 Local v. Donovan, 769 F.2d 1388, 1392 (9th Cir. 1985). These costs
17 are summarized here and in the Bishop and Kohn declarations
18 submitted in support of the plaintiffs' motion).

19 These totals are as follows:

20 NATIONAL HOUSING LAW PROJECT:

21 Travel \$ 3,721.89

22 Telephone \$ 680.50

23 Photocopying \$ 1,040.00

24 TOTAL: \$5442.39

25 Mailing:

26 Certified Mail \$ 15.05

27 Federal Express \$ 527.61

28 Western Messenger \$ 93.50

1	TOTAL Mailing	\$ 636.16
2	TOTAL NHLP Costs	\$ 6,078.55
3	CALIFORNIA RURAL LEGAL ASSISTANCE:	
4	Travel:	
5	McCarthy	\$ 2,935.18
6	Kohn	\$ 7,167.96
7	Oliva	\$ 2,169.60
8	Harper	\$ 40.75
9	TOTAL	\$12,313.49
10	Cert. mail	\$ 349.30
11	UPS	\$ 20.90
12	Depositions	\$ 3,011.85
13	Court Interpreting	\$ 600.00
14	Transportation to get	
15	class members to trial	\$ 2,626.00
16	Miscellaneous	\$ 993.16
17	Service of Process	\$ 419.00
18	Western Messenger	\$ 336.60
19	Photocopying	\$ 5,710.80
20	TOTAL	\$ 14,067.61
21	Community Workers	
22	(interview class members	
23	re standing and calc. amt.	
24	of restitution)	\$ 2,970.12
25	Federal Express	\$ 3,785.41
26	Telephone.....	\$ 1,084.20
27	Abarca/Benitez expenses	\$ 511.44
28	TOTAL:	\$8330.17
	Experts and consultants.....	\$7764.00
	TOTAL CRLA Cost	\$ 42,496.27

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TOTAL OF EXPENSES: \$ 48,574.82

Plaintiffs' total claim for attorneys' fees, costs and expenses is \$ 819,109.85, \$ 48,574.82 of which is out-of-pocket expenses. Plaintiffs understand from HUD that the total value of the Section 8 and vouchers is approximately eight million dollars. Thus, plaintiffs' claim represents approximately ten per cent of the value of the settlement. In cases involving the recovery by plaintiffs of a fund for distribution to a class, the courts have found fees in the amount of 25% of the recovery to be reasonable.

Plaintiffs request that based upon the record in this case, the stipulation of settlement, the attached exhibits and the supporting declarations submitted herewith, the Court award them the above stated fees and expenses.

Pursuant to the settlement agreement, final judgment in this case will not be entered until the completion of certain occurrences set forth in Par. 21 of the Stipulation of Settlement. Any additional time expended and costs incurred in connection with this case between now and the entry of the final judgment will be addressed in a supplemental application.

DATED: *December 19, 1991*

Respectfully submitted,

CALIFORNIA RURAL LEGAL
ASSISTANCE

NATIONAL HOUSING LAW PROJECT

Attorneys for the Plaintiffs

By, *Richard S. Kohn*
Richard S. Kohn

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13 CATHERINE M. BISHOP
14 NATIONAL HOUSING LAW PROJECT
15 1950 Addison Street
16 Berkeley, California 94704
17 (415) 548-9400

18 Attorneys for Plaintiffs

19 UNITED STATES DISTRICT COURT

20 CENTRAL DISTRICT OF CALIFORNIA

21 RICHARD WALKER, et al.,)
22)
23 Plaintiffs,)

24 CIV. NO. 84-4370 RSWL

25 v.)
26)
27 JACK KEMP, Secretary of the)
28 DEPARTMENT OF HOUSING AND)
29 URBAN DEVELOPMENT, et al.,)

30 DECLARATION OF
31 CATHERINE M. BISHOP
32 IN SUPPORT OF ATTORNEYS'
33 FEES AND COSTS

34 Defendants.)
35)
36)
37)
38)

39 I, CATHERINE M. BISHOP, declare:

40 1. I am one of the attorneys of record for the plaintiffs
41 in Walker v. Kemp, CIV 84-4370 RSWL. The matters stated herein
42 are within my personnel knowledge, and if called as a witness, I
43 could competently testify thereto.

44 //

1 2. I am a 1973 graduate of Catholic University School of
2 Law. As a law student, I clerked for the National Housing Law
3 Project (NHLP) in the Washington, D.C. office. Upon graduation I
4 was offered a job as a staff attorney with NHLP and I have held
5 that position for the last 18 years. I am a member of the state of
6 California and District of Columbia bars. I am admitted to
7 practice before the United States Supreme Court, the United States
8 Court of Appeals for the Fourth, Sixth, Ninth, and Tenth Circuits
9 and the United States District Courts for the Northern, Eastern
10 and Central Districts of California.

11 3. Throughout my tenure at NHLP, I have been involved as
12 co-counsel in many class action cases involving the rights of
13 low-income tenants residing in federally assisted housing. Some
14 of the reported cases include: Abrams v. Hills, 415 F. Supp. 550
15 (C.D. Cal. 1976), 547 F.2d 1062 (9th Cir. 1976), cert. granted sub
16 nom. Harris v. Abrams, 431 U.S. 928 (1977), remanded for
17 consideration of settlement, 439 U.S. 1001 (1978); Perry v.
18 Housing Authority of Charleston, 664 F.2d 1210 (4th Cir. 1981);
19 and Walker v. Pierce, 665 F. Supp. 831 (N.D. Cal. 1987). There
20 are many other cases that I have been involved in as of counsel,
21 amicus curia and advisory. (In our office we have defined
22 advisory assistance to include legal assistance provided to
23 another attorney that requires more than four hours of work.)

24 4. The National Housing Law Project, a Legal Services
25 support center, was established in 1968 for the purpose of
26 providing backup to Legal Services attorneys who have low-income
27 clients with housing problems. NHLP is one of sixteen (16)
28 support centers located throughout the country that specialize in

1 various aspect of poverty law. While a staff attorney at NHLP, I
2 have further specialized in the area of the rights of low-income
3 tenants and applicants in HUD-assisted housing. There are
4 currently three other staff attorneys who specialize in the same
5 area. Together we handle a variety of requests for assistance
6 from local Legal Services attorneys. For example we respond
7 annually to between 2500-3000 telephone and letter requests for
8 assistance regarding issues involving the HUD housing programs.
9 Because of these request we are particularly well positioned to
10 determine what are the pressing issues facing HUD assisted low-
11 income tenants. When issues arise that are of particular
12 significance to HUD-assisted tenants nationwide, we focus on the
13 issue and try to resolve the problem. The resolution of the
14 problems often involves litigation, legislation and administrative
15 advocacy.

16 5. As a staff attorney, I was one of the authors of the
17 Legal Services practice manual HUD Housing Programs: Tenants'
18 Rights (1981 and 1985 Supplement). I also contribute to the
19 Housing Law Bulletin, a bi-monthly publication that is made
20 available free to every Legal Services office and for a fee to
21 other subscribers. Upon occasion I have also written articles for
22 Clearinghouse Review, a legal journal and pleading clearinghouse
23 for Legal Services attorneys. On annual basis, at the request of
24 individual congressional leaders, our staff critiques and prepares
25 testimony in support of legislative proposals relating to
26 federally-assisted housing. I am involved in that process. At
27 the request of Legal Services attorneys and clients, I have also
28 submitted comments to HUD in response to proposed regulations

1 published for comment in the Federal Register. Upon occasion we
2 are also contacted by HUD officials and asked to participate in
3 policy development discussions. In 1977-78 I was an official
4 observer for the HUD Tenant Participation Task Force.

5 6. In 1983 I was contacted by Carole Harper, a Legal
6 Services attorney working for California Rural Legal Assistance
7 (CRLA) in Coachella. Initially her case appeared to be a rent
8 increase case. Certain types of federally assisted apartment
9 complexes are subject to a federal rent control. It soon became
10 apparent that the case was complicated by utility issues and a
11 sale of the HUD-held mortgage to the owners of the project.
12 Because I was aware in 1983 that HUD had resumed in 1982 a
13 national policy of selling HUD-held mortgages and that this policy
14 had an adverse impact upon very-low income tenants who resided in
15 projects the mortgages for which were being offered for sale, our
16 office agreed to co-counsel the case. After that decision was
17 made, we also discovered that project had been formerly HUD
18 insured, foreclosed upon and sold by HUD. Issues involving the
19 adverse impact upon low-income tenants of the disposition of
20 multifamily projects in the HUD inventory were also a matter of
21 national concern.

22 7. The mortgage sale and disposition issues are complex and
23 are not ones that are readily apparent to the average Legal
24 Services attorney who may be quite familiar with other aspects of
25 the HUD programs. An understanding of the issues involved in
26 these claims require a knowledge of HUD's practice as well as the
27 statutes, the legislative history, regulations and a significant
28 number of unpublished HUD handbooks, memorandum and circular. In

1 1983 the mortgage sale issue was novel. To my knowledge, no court
2 had addressed the issue of the legality of HUD's practice of
3 selling mortgages and terminating the tenant protections. The
4 disposition issue was not quite so novel. In 1984, I was aware
5 that nationwide six other cases had been filed on behalf of
6 tenants in individual projects to enforce the 1978 statutory
7 amendments regarding HUD's property disposition process. But none
8 of these cases raised the issue of the composition of the
9 committee that approved the disposition of the project. In
10 addition, in none of these cases or any of the cases that have
11 been subsequently filed have the plaintiffs obtained a settlement
12 as favorable as obtained in this case.

13 8. In 1987 HUD altered its mortgage sale policy and offered
14 over 300 HUD-held mortgages for sale in bulk. When I became aware
15 of this policy, I contacted a number of Legal Services attorneys
16 and informed them of the adverse impact that this policy would
17 have on their clients. A suit, on which I was co-counsel, was
18 filed to challenge this policy in May of 1987. See Walker v.
19 Pierce, 665 F. Supp. 831 (N.D. Cal. 1987). Judge Peckham in
20 Walker issued a preliminary injunction finding that HUD's mortgage
21 sale policy had violated the National Housing Act and the
22 Administrative Procedure Act. This Walker case is the only other
23 case that I am aware of that challenges HUD's mortgage sale
24 policy.

25 9. It is my opinion based upon eighteen years of work in
26 the area of applicants and tenants rights in HUD assisted housing
27 that there are very few attorneys who have the necessary
28 experience, specialized skills, financial backing and

1 institutional inclination to handle cases similar to the case at
2 bar. Those attorneys who do handle similar type cases are
3 invariably Legal Services attorneys. There is not a private bar
4 that specializes in the area of tenants rights in HUD-assisted
5 housing. Nevertheless, upon occasion it is possible to get an
6 attorney from a large law firm to handle such a case on a pro bono
7 basis. In my opinion, it would have been impossible to have found
8 such a pro bono attorney in this case because of the complexity of
9 the legal issues, and the fact that the clients were primarily
10 monolingual (i.e., Spanish speaking) and resided in Indio which is
11 located approximately 140 miles from Los Angeles.

12 10. I am fairly fluent in Spanish. My Spanish is adequate
13 so that I can speak to those plaintiffs who are monolingual about
14 complicated legal issues without the necessity of a translator.

15 11. I am aware that the Bar Associations of Beverly Hills,
16 Orange County and Los Angeles County annually conduct a survey and
17 compile information on the compensation of attorneys in the Los
18 Angeles area based upon year of graduation from law school. See
19 Association of Legal Administrators, Compensation and Benefits
20 Survey Report (1984) through (1991). (I graduated from law school
21 in 1973 and began work on this case in 1983.)

22 12. The Reports show the following billing rates for
23 partners by year.

	1984			
<u>Class year</u>	<u>Average</u>	<u>Median</u>	<u>Highest</u>	<u>Lowest</u>
1973	\$145.82	\$155.00	\$200.00	\$ 45.00

27 Source: 1984 Compensation and Benefits Survey Report (Oct. 1,
28 1984).

1985				
<u>Class year</u>	<u>Average</u>	<u>Median</u>	<u>Highest</u>	<u>Lowest</u>
1973	\$155.53	\$160.00	\$225.00	\$ 45.00
Source: <u>1985 Compensation and Benefits Survey Report</u> (Oct. 1, 1985).				
1986				
<u>Class year</u>	<u>Average</u>	<u>Median</u>	<u>Highest</u>	<u>Lowest</u>
1973	\$165.58	\$175.00	\$225.00	\$ 72.00
Source: <u>1986 Compensation and Benefits Survey Report</u> (Oct. 1, 1986).				
1987				
<u>Class year</u>	<u>Average</u>	<u>Median</u>	<u>Highest</u>	<u>Lowest</u>
1973	\$178.30	\$190.00	\$250.00	\$ 73.00
Source: <u>1987 Compensation and Benefits Survey Report</u> (Oct. 1, 1987).				
1988				
<u>Class year</u>	<u>Average</u>	<u>Median</u>	<u>Highest</u>	<u>Lowest</u>
1973	\$193.00	\$200.00	\$275.00	\$ 90.00
Source: <u>1988 Compensation and Benefits Survey Report</u> (Oct. 3, 1988).				
1989				
<u>Class year</u>	<u>Average</u>	<u>Median</u>	<u>Highest</u>	<u>Lowest</u>
1973	\$209.00	\$225.00	\$310.00	\$ 97.00
Source: <u>Compensation and Benefits Survey Report</u> (Oct. 1989).				
1990				
<u>Class year</u>	<u>Average</u>	<u>Median</u>	<u>Highest</u>	<u>Lowest</u>
1973	\$225.00	\$237.00	\$325.00	\$100.00
//				

Source: Eighth Annual Southern California Compensation and Benefits Survey Report (Oct. 1, 1990).

1991

<u>Class year</u>	<u>Average</u>	<u>Median</u>	<u>Highest</u>	<u>Lowest</u>
1973	\$232.00	\$250.00	\$330.00	\$ 90.00

Source: Ninth Annual Southern California Compensation and Benefits Survey Report (Oct. 1, 1991).

I was unable to locate the survey information for 1983, so I have used the 1984 survey for work performed in November and December of 1983. See Attachment A, excerpts from Reports 1984 through 1991.

13. If you assume, due to my housing expertise and my ability to speak Spanish, that my billing rate was fifteen percent (15%) above the median, my billing rate for each year since 1983 would be:

1983	\$178.25
1984	\$178.25
1985	\$184.00
1986	\$201.25
1987	\$218.50
1988	\$230.00
1989	\$258.75
1990	\$272.55
1991	\$287.50

14. Attached to this Declaration, is a summary of the time that I spent on this case. See Attachment B. This summary is based primarily upon contemporaneous time records. I also reviewed my personal calendar, the case files, correspondence

1 files and the time records of Richard Kohn, the lead counsel.
2 These attached time summary sheets reflect a few adjustments to my
3 contemporaneously recorded time. When transcribing my time from
4 my contemporaneous time sheets, I have, for example, spelled out
5 the precise name of the memorandum or motion that I was working
6 on. My contemporaneous time sheets, for example, on December 23,
7 1986, show work in response to Motion to Dismiss and the time
8 summary attached to this Declaration show that the motion that I
9 was working on was the Federal Defendants' Motion to Dismiss for
10 Failure to Join a Necessary Party. Also, if I contemporaneously
11 recorded a block of time and upon review of my files I determined
12 that I worked on more than one thing, I have expanded the
13 description of how I spent my time. I have also purged any time
14 that I spent exclusively on issues relating to plaintiffs' first,
15 second and third causes of action. In a few situations I have
16 added time that was not reflected on my contemporaneous time
17 sheets. For example, I have no contemporaneous time records for
18 May 30-31, 1990, yet I know that I was in Los Angeles at that time
19 in settlement negotiations with the defendants and reporting to
20 the Court on the progress of those talks. There are also a few
21 other examples where the time summaries do not reflect the
22 contemporaneous time records. When I found documents in my file
23 that I prepared and for which I did not contemporaneously record
24 time, I have estimated my time for the preparation of these
25 documents and added it to my time summary.

26 15. In general, I believe that the hours reported are
27 reasonable. By reviewing the telephone bills from my office and
28 from California Rural Legal Assistance and Richard Kohn's time

1 summaries, I know for a fact that I did not report many telephone
2 conversations that I had with my co-counsel. In recording my
3 time, I tended to record time when I spent large blocks of time on
4 a case, and I do not generally record the time spent on short
5 letters or phone calls. My system of recording time translates
6 into an appropriate billing judgment for this case.

7 16. The time that I spent on this case for each year since
8 1983 times by billing rate is as follows:

9	1983	10.50	x	178.25	=	1,871.62
10	1984	41.75	x	178.25	=	7,441.94
11	1985	39.50	x	184.00	=	7,268.01
12	1986	162.75	x	201.25	=	32,753.44
13	1987	208.50	x	218.50	=	45,557.25
14	1988	11.00	x	230.00	=	2,530.00
15	1989	296.00	x	258.75	=	76,590.00
16	1990	216.25	x	272.55	=	58,938.94
17	1991	81.75	x	287.50	=	<u>23,503.12</u>
18						<u>\$256,454.32</u>

19 17. The costs that my organization incurred in this case are
20 itemized in the attached document. See Attachment C. The cost
21 includes travel: \$3,721.89; telephone: \$680.50; photocopying:
22 \$1040.00 and mail which included messenger, Federal Express and
23 certified mail: \$636.16. All these expenses except for
24 photocopying were contemporaneously recorded. The photocopying
25 was reconstructed by counting the pages of the documents that were
26 filed and in most cases multiplying that number by 10 to represent
27 copies retained by me and sent to co-counsel, opposing counsel,
28 and the court. In some cases, I knew that our office did not make

1 ten copies, so less than ten are accounted for. This method of
2 reconstruction grossly underestimates the number of copies of
3 documents that my office copied for the case. I estimated a cost
4 of 20 cents per page for a total photocopying cost of \$1040.00.

5 I declare under penalty of perjury under the laws of the
6 state of California, that the foregoing is true and correct and
7 that this Declaration is executed on this 18th day of December,
8 1991.

9
10 
Catherine M. Bishop

ATTACHMENTS

- A Excerpts from Compensation and Benefits Survey Report
1984 through 1991
- B Summary of Catherine M. Bishop's Time
- C Costs of National Housing Law Project

CATHERINE M. BISHOP: TIME SPENT ON WALKER v. KEMP
(For Use in Calculating Attorney Fees)

<u>DATE</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
<u>1983</u>		
BREAKDOWN OF TIME SPENT:		
11/29/83	Letter re Jackson Terrace	1.00
12/01/83	Letter re Coachella case	1.00
12/06/83	Telephone conversation (TC) w/Carol Harper re Coachella case	0.50
12/12/83	Letter to Harper re Jackson Terrace (JT)	1.00
12/19/83	Complaint	4.25
12/20/83	"	2.00
12/24/83	Letter to Carole Harper	.25
12/28/83	TC w/Harper (JT)	.50
Total 1983 Time :		10.50 hours

1984

BREAKDOWN OF TIME SPENT:

01/26/84	TC w/Harper (JT)	.50
02/01/84	Letter to Carole Harper	.25
02/05/84	Review documents in JT case	1.00
02/06/84	Complaint	4.50
02/07/84	Complaint	2.75

02/08/84	"	6.00
02/09/84	"	2.50
05/07/84	TC w/Harper re JT & discussion w/David Bryson re same	1.25
05/08/84	Complaint; TC w/Harper re facts, meeting w/Bryson R facts	5.25
05/10/84	Meeting w/Plaintiff's Counsel [Carol Harper and Richard Kohn]	3.00
05/14/84	Review Complaint and TRO memo; TC w/Kohn	3.50
05/17/84	TC re JT, Discovery, In forma pauperis	1.00
05/29/84	Letter to Alfonso Oliva	.25
07/26/84	Letter to Mario Rodriquez re discovery request on property disposition and mortgage sale	1.00
10/18/84	Hernandez answer to Defendant's Motion to Strike, TC w/Kohn & local counsel	.75
10/23/84	JT	1.00
11/17/84	Letter to Richard Kohn on tenant recertification forms; utilization of Section 8 and reimbursement for Section 8 payments	.25
12/16/84	JT Discovery on class action	1.50
12/17/84	Travel to city, meeting on JT w/Kohn & Al Olivia, <u>i.e.</u> , case advice	4.00
12/17/84	JT send materials	1.00
12/19/84	TC re JT	.50

Total 1984 Time: 41.75 hours

1985

BREAKDOWN OF TIME SPENT:

03/10/85	Coachella case JT review papers discovery	2.50
06/25/85	Hernandez JT preparation; review papers filed	1.00
06/25/85	Hernandez/discovery	3.00
06/26/85	Hernandez preparation, meeting w/Olivia, Harper, & Kohn	9.00
10/07/85	Review Pleadings in JT to help reevaluate strategies in the case	3.00
10/31/85	JT review Discovery	7.00
11/15/85	Talk w/Bryson re JT	.50
11/18/85	Talk w/Kohn re JT, discuss status of case	.75
11/19/85	Discovery; TC w/Kohn re Discovery, Amended Complaint, conference call strategy	1.25
11/20/85	Conference call re Settlement w/Kohn, Jimmie(HUD) and Olivia	1.25
11/20/85	Review interrog of Feds/ and listing of discovery documents; TC w/Kohn re same	1.50
11/21/85	TC w/Kohn re Federal Defendants' first set of interros and review	1.50
12/03/85	Interros JT; review and comment upon	4.00

12/03/85 Conference call w/Olivia & Kohn on interrogs 1.75

12/04/85 Letter on class & interrogs, TC w/Kohn;
Non-retroactive nature of regulations &
class definition 1.50

Total 1985 Time: 39.5 hours

1986

BREAKDOWN OF TIME SPENT:

01/28/86 TC w/Kohn re JT on depositions of HUD
officials, interpretation of regulations .50

01/28/86 Research on Handbook & regulations,
of purchase money mortgage; TC w/ Kohn;
discuss above issues 3.00

02/04/86 Read & digest depositions of plaintiffs
in JT 2.00

02/05/86 " 3.00

02/06/86 TC re Discovery & class action memo in JT;
research on the Discovery issues of con-
tention, interrogs, old HUD memos 1.25

02/07/86 TC w/Kohn re discovery privileges claimed .25

02/12/86 TC w/Olivia re class action .25

04/02/86 JT .50

06/19/86 TC w/ Kohn re discovery eviction of §8
eligible tenants; what to do w/ rent
increase analysis 1.25

06/20/86 TC w/ Kohn on evictions of eligible
tenants; begin analysis of rent increase 2.00

06/23/86	Analyze the rents at Jackson Terrace and the underlying documentation in support of rent increase requests	3.00
06/24/86	"	5.00
06/25/86	Rents/Section 8 FMR for Riverside	2.00
06/25/86	Memo to the file (22 pages) how tenants have been harmed due to the cancellation of the regulatory agreement	8.00
06/27/86	Rents, review individual tenant files; TC w/ Kohn re harm to tenants	2.00
06/30/86	Read class action memo & think about response Fed's opposition and review individual files; TC w/Kohn	5.00
07/01/86	JT facts; review tenant files and dictate a summary; try and determine who should have gotten § 8 by reviewing income recertifications, etc.	5.50
07/02/86	" (and TC w/Kohn re findings)	3.75
07/03/86	"	4.00
07/07/86	Walker JT disc, review for class action memo	3.00
07/10/86	Walker TC re class action affidavit	.50
08/21/86	TC w/Eileen McCarthy re class certification and plaintiffs' brief in response to the Court's order for further briefing and TC w/ Kohn	1.00
08/26/86	Plaintiff's brief in response to court order for further briefing	1.00

09/08/86	Travel to HUD in SF, review JT documents, to CRLA to discuss case w/Kohn & McCarthy	9.50
09/15/86	Read & review depositions and dictate summary memo	5.00
09/17/86	"	3.00
09/22/86	"	5.00
09/24/86	"	2.00
10/21/86	Read deposition, review record, draft settlement letter	8.00
10/27/86	Begin thinking about Summary Judgment re research and outlining	2.00
10/28/86	"	4.00
10/29/86	Think about Summary Judgment & organize facts research on prepayment of mortgage and draft letter on settlement proposal for HUD	4.00
11/03/86	TC w/Kohn re settlement, outline of Summary Judgment issues	1.00
11/05/86	Summary Judgment (motion, revisions to settlement offer)	4.00
11/06/86	"	8.00
11/07/86	"	4.75
11/11/86	TC w/Kohn & McCarthy re settlement agreement	.50
11/12/86	Revise settlement letter offer	1.00

12/03/86	TC w/Kohn & McCarthy re JT Summ Judg, etc.	.50
12/09/86	Summary Judgment motion	8.00
12/10/86	SJ and meeting w/Kohn & McCarthy re JT Discovery, SJ preparation	10.00
12/16/86	Consider issue on Motion to Compel discovery in JT, review materials	.50
12/22/86	Summary Judgment motion	1.00
12/23/86	Response to Motion to Dismiss; Federal Defendant's Motion for Failure to Joint a Necessary Party	5.00
12/24/86	" & TC w/McCarthy	1.50
12/24/86	Sign check and mail response to Motion to Dismiss	.25
12/29/86	Summary judgment motion and check depositions	11.50
12/29/86	"	2.00
12/30/86	Summary judgment	3.00

Total 1986 Time: 162.75 hours

1987

BREAKDOWN OF TIME SPENT:

01/05/87	TC w/McCarthy & Kohn re Motion to Dismiss	1.00
01/06/87	TC w/Kohn on Nec. Party Motion to Dismiss, TC w/McCarthy on additional discovery needs	1.25
01/06/87	Summary Judgment motion	4.50

01/07/87	Summary Judgment Motion	4.00
01/08/87	Review draft of Motion to Dismiss; SJ Motion	8.25
01/13/87	TC w/ Kohn; review depositions	2.00
01/14/87	Summary Judgment	11.00
01/15/87	Summary Judgment	3.00
01/16/87	TC re Summary Judgment from Kohn	.25
01/22/87	TC w/Kohn re settlement & stipulations as to response time & problems w/filing motion	.50
01/26/87	TC w/Kohn on composition of P.D. committee	.25
02/02/87	2nd Summary Judgment draft to CRLA	10.50
02/04/87	2nd Summary Judgment/review draft for final	4.00
02/14/87	Rent section of the second Summary Judgment motion filed by Plaintiffs	5.00
02/20/87	" & TC w/Kohn re his part of the motion	1.50
02/21/87	TC w/McCarthy re the motion & organizing it	.25
02/22/87	TC w/McCarthy re motion, finalize it	.25
02/23/87	TC w/Kohn on the wording: order in JT for second Summary Judgment motion	.50
03/02/87	JT-the Memo in Support of Cross-Motion for Summary Judgment on the mortgage sales issue; review the materials and attachments	4.50

03/09/87	TC w/Kohn & McCarthy, Oppose Federal Defendant's SJ motion	3.75
03/10/87	Opposition to Summary Judgment motion	8.50
03/11/87	"	9.50
03/12/87	Plaintiffs' Memorandum in Opposition to Federal Defendant's Cross Motion for Summary Judgment on the Mortgage Sale and review Plaintiffs' Memo in Opposition to Motion in Limine	11.00
03/13/87	"	4.00
03/18/87	TC w/Kohn re reply in JT	.25
03/25/87	JT reply to the Federal Defendant's Opposition to Plaintiffs' Motion for Summary Judgment on the Disposition Issue	8.50
03/26/87	" and TC w/Kohn	11.50
03/27/87	Plaintiffs' Reply to Federal Defendant's Opposition to Plaintiffs' Motion for SJ is mailed	.25
04/03/87	Review Federal Defendant's Reply to Plaintiffs' Memo on Mortgage Sale Issue and Federal Defendant's Reply on the Composition of the Disposition Comm.	.50
04/08/87	My contribution to reply brief mailed to Kohn and McCarthy and TC w/Kohn	.50
05/21/87	Meeting w/McCarthy & Kohn re settlement negotiations, prep for meeting w/HUD, meet with HUD re settlement, evaluate meeting and travel to and from San Francisco	7.50

06/16/87	TC w/McCarthy re letter to be sent to atty re settlement conference	.25
06/19/87	Meeting counsel at HUD, discuss strategies w/McCarthy & Kohn and travel to and from San Francisco	9.25
06/21/87	Leave for Los Angeles for hearing on Monday, meet Kohn & McCarthy at airport, discuss strategies of settlement	4.00
06/22/87	Meet for breakfast w/McCarthy & Kohn, 9:30am court hearing, travel home	9.50
06/26/87	Rent determination materials for McCarthy	.50
07/15/87	TC w/ McCarthy re tenant surveys, what conditions can we set if we provide the materials in discovery	.50
09/08/87	TC w/McCarthy & Kohn re settlement meeting	.50
09/09/87	Settlement conference w/HUD & Plaintiff attorneys in San Francisco and travel to and from San Francisco	6.00
09/13/87	Travel to Los Angeles for settlement hearing	3.00
09/14/87	Hearing at 2:30pm, chambers at 4:00pm, home	11.00
10/01/87	Review Amend Compl't, TC w/Kohn re changes	3.00
10/19/87	Review 2nd draft of Complaint	1.00
10/20/87	TC w/Kohn re Complaint & settlement & hearing on Motion to Amend Complaint	.75

11/03/87	Review Defendant's Brief on objection to Amended Complaint & draft language for sovereign immunity argument on fund available for relief	1.50
11/03/87	TC w/Kohn re above, TC w/John Steward re Sect. 223f for settlement background information	1.00
11/04/87	TC w/Bill Harrison re Section 223 loans for settlement	.75
11/08/87	Travel to Los Angeles for settlement hearing	5.00
11/09/87	Hearing on settlement, discuss future of case w/Kohn & McCarthy & travel time	9.00
11/10/87	Talk w/Bryson re Walker settlement hearing	.25
11/16/87	Review Fed Defendant's Supplemental Memo objecting to Plaintiffs' Amended complaint, TC w/Kohn	1.50
11/17/87	Review Fed Defendant's Supplemental Memo in Opposition to Plaintiffs' Motion to Amend	1.00
11/18/87	Letter to Kohn re Defendant's Brief and wrong Handbook cite	.50
12/14/87	Travel to Los Angeles court conference and return	10.50

Total 1987 Time: 208.50 hours

1988

BREAKDOWN OF TIME SPENT:

01/19/88	TC w/ Kohn re sovereign immunity issue	.50
03/10/88	TC re Walker	.25

03/14/88	Walker	4.50
07/05/88	Review files for response to Court's letter re pending motions	1.00
07/06/88	TC w/Kohn re above & discussion of <u>Bowen</u>	.50
08/01/88	Review Court's order dated 8/12/88	.25
09/20/88	Review Kohn's memo	.50
12/06/88	TC w/McCarthy re status w/counsel	.50
12/14/88	TC w/McCarthy & Kohn on early meeting of counsel, conference call w/opposing counsel, call w/Kohn & McCarthy to determine how to respond to conf. call, re-read opinion	3.00

Total 1988 Time: 11.00 hours

1989

BREAKDOWN OF TIME SPENT:

01/10/89	Status report and Joint Report of Early Meeting of Counsel TC w/Kohn & McCarthy, review of final draft of report	1.00
01/11/89	Review rent increase file; meeting with Carole Harper	2.00
01/12/89	Meeting w/ Carole Harper re rent increase (travel to SF); talked w/ Kohn re possible deposition of Harper	7.00
02/26/89	TC re sale of mortgage program in 1981 w/ Marilyn Melkonian and Conrad Egan former HUD employees	.50
02/08/89	Read opinion & research events for our reply ordered by Court	4.00

02/08/89	TC w/McCarthy & Kohn on effect of response and motion for reconsideration of court's order	2.25
02/09/89	TC w/Kohn, talk w/Firehawk re Disposition Committee composition and workings of HUD	2.00
03/09/89	Letter to Kohn re HUD Handbook provision on contract of sale	1.00
03/12/89	Research the contract of sale & what's nec at closing and needed for Section 8; reviewed HUD Handbooks	8.00
03/22/89	Research the intervention issue, TC w/Kohn re response to the Motion to Intervene by Fidelity	2.00
03/29/89	Intervention motion, research the 9th cir. intervention cases, TC w/Kohn	4.00
03/30/89	Intervention motion	4.00
03/31/89	Review Kohn's memo, TC w/Kohn re Plaintiffs' Reply to federal Defendant's Opposition to Plaintiffs' Motion for Reconsideration	3.25
04/04/89	Review tenant files, organize & dictate memo to McCarthy & Kohn	1.50
04/13/89	Research & review papers for the hearing; read defendant's brief re property disposition recision	3.00
04/14/89	Travel to Los Angeles for hearing	5.00
04/17/89	Hearing in L.A. status	3.00
04/18/89	Research bifurcation of trial issue/bif for Discovery, draft memo, TC w/Kohn (3x)	4.00

04/19/89	" (and TC w/Kohn)	3.00
04/20/89	" (and TC w/Kohn)	4.00
04/21/89	"	4.00
04/27/89	Review response to govt filing on the disposition in response to court order to produce survey/record, TC w/Kohn re my changes	2.00
05/02/89	Response to Motion to Reconsider and TC w/ Kohn	5.00
05/03/89	Response to Motion to Reconsider & research & draft argument on the duty of HUD to offer subsidies	5.00
05/04/89	" (and TC w/Kohn)	5.00
05/05/89	" and review HUD's correction to clarification of Supplemental Opposition to Plaintiffs' Motion for Reconsideration and TC w/ Kohn	5.00
05/26/89	Plaintiffs' Reply to Federal Defendant's Motion in Opposition to Plaintiffs' Motion to bifurcate prepared file	3.00
07/05/89	Review draft of memo of facts & legal contentions, TC w/Kohn, TC w/McCarthy, wait for conference call that never happened	1.50
07/12/89	TC w/Kohn re proposed facts & Rule 16 document & summary of judge's order	1.00
07/12/89	Summary Judgment motion on mortgage sale & read court opinion of 7/10 reviewing admin record	7.00
07/13/89	Summary Judgment motion on mortgage sale	7.00

07/14/89	" & get together exhibits	7.00
07/18/89	TC w/Kohn & McCarthy re next steps, TC w/clerk re tabs for exhibits, TC w/Margaret Weitkamp re witness, pretrial order prepare review, TC w/Bill Harrison re witness/press release for tenant notice, definition of income	1.00
07/19/89	Letter to Bonnie McNaughton re Pretrial Conference Order	.25
07/20/89	Make changes to Pretrial Conference Order per Watanabe request	1.00
07/24/89	Read Fed's Summary Judgment motion & partial Summary Judgment on remedies, talk w/Kohn re response	2.00
07/25/89	Prepare for meeting of counsel, Rule 10 witness lists, marking deposition	5.00
07/27/89	" (and TC w/ Kohn)	2.00
07/28/89	"	2.00
07/31/89	Reply Brief for Plaintiff on Summary Judgment on the Mortgage Sales	7.00
08/01/89	Rule 10 trial brief, local Rule 10/reply finalized on Summ Jdgmt & filed/mailed	5.00
08/04/89	Review Kohn's draft of Plaintiff's opposition to Federal Defendant's motion for Summary Judgment as to availability of remedies and TC w/ Kohn .	2.00
08/10/89	Talk w/McCarthy on rent recertification, help formulate what to ask for, review regs	2.00

EXHIBIT B-16

08/11/89	Talk w/Kohn re recertification and additional information for tenants	1.00
08/13/89	Leave for Los Angeles hearing	3.00
08/14/89	Hearing on Summary Judgment motions & pretrial conference & issuing of order; return home	8.00
08/15/89	TC w/McCarthy & Kohn re facts due on stating notice, what to compile, to oppose standing motion and complaint w/ court directive	1.00
08/16/89	Notice issues & standing fact reply to certification request	1.00
09/22/89	Talk w/McCarthy re Alejos, class member, facing eviction and eligible for §8	1.00
09/22/89	Talk w/Kohn re bankruptcy	1.00
09/25/89	Prepare Alejos TRO papers memo/order, declarations, TC w/McCarthy on client declarations for Alejos	8.00
09/26/89	TC w/Kohn & McCarthy re TRO, TC w/McCarthy re state court defense of eviction/retaliation motive and work on papers	5.00
09/27/89	TC w/McCarthy re declaration of client, clean up TRO, re-send, TC on issues of TRO	2.00
09/28/89	Read judge's most recent opinion (9/25/89), TC w/Kohn & McCarthy on stay in bankruptcy and effect of court ruling of 9/25/89; and review Federal Defendant's Reply to Supplemental As to Available Remedies	4.00
09/28/89	TC w/McCarthy on TRO, re-draft TRO & re-read opinion of court (9/25/89)	1.50

10/04/89	Review Discovery cut-off & what else to do for discovery	5.00
10/05/89	TC w/McCarthy re trial & eviction defense Alejo	2.00
10/05/89	TC w/Kohn re trial and effect of court ruling on witnesses	1.00
10/10/89	TC w/Kohn on trial, send/read <u>McNeil</u> opinion	1.75
10/11/89	TC w/Kohn & McCarthy and letter to McCarthy re Alejos	1.00
10/12/89	TC w/Kohn re Matt Suttleson testimony on title issue; Regulatory Agreement & imposing Section 8 contract	1.00
10/22/89	Trial Prep/review Discovery of Feds; TC w/ Kohn re Carole Harper Deposition and review Kohn's reply to witness list memo and give comments	8.00
10/23/89	Research on witness list, put together mortgage sales admin record, 3 TC's w/Kohn re witness list & opposition to adding witnesses filed by govt	4.00
10/25/89	Review documents & compile admin record cross check w/the duplicate exhibits & dictate summary & review	4.00
10/26/89	"	4.00
10/27/89	" (and TC w/Kohn)	3.00
10/31/89	Discovery/evidence issues; review draft of motion to reconsideration on witness list issue	6.00
11/07/89	Sect 8 difference between 1981-89 in setting rents, send information to Kathy Mitchum	4.00

11/13/89	Begin to develop formulas for recertification & the motion	2.00
11/15/89	Travel to Coachella to assist w/the rent recertification & interview tenants	8.00
11/16/89	"	8.00
11/17/89	"	8.00
11/26/89	Finalize formulas for 1981-89 on the rent-income ratio, TC w/McCarthy re formulas	12.00
11/29/89	Talk w/Kohn re trial & recent rent-income formulas	.50
12/01/89	Meet w/Kathy Mitchum re testimony for possible trial	1.00
12/04/89	TC w/Kohn & review the formulas	2.00
Total 1989 Time: 269.00 hours		

1990

BREAKDOWN OF TIME SPENT:

01/07/90	TC w/Kohn re future of case & Defendant's possible offer of settlement	1.00
01/19/90	TC w/Kohn on trial prep, review documents on admin record & mortgage sale	3.00
01/22/90	Trial prep, review docs, research evidence	4.00
01/23/90	TC w/McCarthy on prep of witness, correct files, and declarations filed w/court; what to do w/unusual cases, t prep	4.00
01/24/90	TC w/Kohn, trial prep	4.00

01/25/90	Trial prep	6.00
01/26/90	Travel to CRLA in SF to discuss case, pick-up Housing Elemts, review the evidence, discuss Mort Levy's testimony, trial prep, review documents	6.00
01/29/90	Read Housing Elemts for city of Coachella	3.00
02/07/90	TC w/McCarthy on damages and burden of proof necessary to establish damages	.50
02/08/90	TC w/Kohn on trial damages issue	.50
03/07/90	Recertification forms for tenants of JT on offset issue, experts rebuttal witnesses, TC w/Kohn	2.00
03/07/90	Trial prep, review documents (conference call w/ Kohn and McCarthy re expert testimony)	3.00
03/08/90	Trial prep; review documents	4.00
03/09/90	TC w/McCarthy & Kohn on pretrial brief, the effect on relief, read & comment on Kohn's draft of pretrial brief	2.00
03/12/90	Review financial data/the IRS forms for JT, are the costs reasonable? TC w/Kohn on remedies	3.00
03/13/90	Talk w/Margaret Weitkamp re JT on financial information & management costs, TC w/Kohn re the same, trial prep	2.00
03/15/90	Trial prep	1.00
03/16/90	Trial prep; review Kohn's memo on best evidence rule	1.00

03/20/90	Review Housing Elemts Indio, Riverside cnty	5.00
03/21/90	Review documents, books, discuss remedies; talk w/Kohn in San Francisco (travel home)	7.00
03/22/90	Review docs, memo on remedies & Sect 8 prgms	4.25
03/23/90	" (TC w/ McCarthy re remedies and with Kohn)	4.00
03/26/90	Revise remedies memo on Section 8	3.50
03/27/90	Travel to San Francisco, review documents in the exhibits books; prepare for trial	7.00
03/28/90	" " "	7.00
05/02/90	TC w/Catherine Ritchie re trial prep & Mitchum testimony, TC w/Kathy Mitchum re testimony, TC w/Lucy Buchbinder & Ken Neiswarner, legal history research on <u>Rainer</u> issue, right of private owners to get AAF	3.00
05/03/90	Meet w/Rick Devine re the financial stability of JT need for Section 8	4.00
05/04/90	TC w/Jim Tahash re AAF & project's (JT) ability to qualify for	1.75
05/07/90	Prepare intervention papers (named plaintiff anticipates moving)	4.00
05/26/90	Trial prep, TC w/Mitchum	9.50
05/27/90	Trial prep	7.00
05/27/90	TC w/Kohn re bankruptcy, Dapeer wave fees	.50
05/28/90	Fair Market rates for trial, leave for Los Angeles, travel time	4.00

05/29/90	Trial (includes travel to Coachella to get files for restitution issues evening of first day of trial)	15.50
05/30/90	Trial settlement discussions	7.00
05/31/90	Trial settlement discussions	7.00
06/01/90	Trial (in court or settlement negotiations), talk w/Kohn & McCarthy, return home	13.50
06/12/90	Letter to David Kroot re his participation in the case on enforceability	2.00
06/15/90	TC w/Kohn re bankruptcy, TC w/Kroot, TC w/Kohn on effect of bankruptcy on settlement	2.25
06/24/90	TC w/Kohn re bankruptcy	1.50
06/27/90	Review Kroot's covenants & talk w/Kohn re bankruptcy	1.00
06/28/90	"	1.50
07/06/90	Review 2nd draft to covenants by Goldfarb; draft letter re changes and talk to Kohn & McCarthy	5.00
07/15/90	Ltr to Rosenburger HA of Riverside re SA and his input	.50
07/15/90	Third draft of covenants received and reviewed	3.00
07/16/90	TC w/Kroot & Kohn on covenants; review and redraft of covenants	1.00
07/18/90	TC w/ McCarthy re certificate and vouchers; letter to Bonnie and maximum number	.50

07/19/90	Research on attorney fee Issue; stipulation revision; letter to Kohn re fees and changes in stipulation	2.00
07/23/90	TC McNaughton/Watanable re recap of SA	.50
07/24/09	TC Dapeer	.25
07/30/90	Call Dapeer, left message	.25
08/02/90	TC w/Kohn & McCarthy re: settlement status	.50
08/02/90	TC w/Dapeer	.25
08/02/90	Atty fees	.50
08/03/90	TC w/Dapeer re his failure to receive covenants	.50
08/05/90	Called Dapeer - left message	.25
08/08/90	Made 2 calls to Dapeer	.25
08/08/90	Conf. call w/MacNaughton, Fernandez, Kohn & McCarthy re the SA/Stipulations/ covenants	2.25
08/09/90	Review time sheets and mark hours to be compiled for Atty fees	2.00
08/10/90	Review SA & final judgement & covenants that Richard has redrafted; TC w/ McNaughton and Fernandez	2.00
08/10/90	Atty fees - time sheets	.25
08/13/90	Spoke w/Dapeer's sect.	.25
09/05/90	TC Richard Kohn	.25

09/06/90	TC Richard Kohn re: Dapeer's failure to respond to S.A.	.50
09/06/90	TC Eileen/Richard; TC w/ Dapeer	.75
09/10/90	Tried to get Dapeer	.25
09/11/90	Spoke w/Dapeer's secretary	.25
09/12/90	Tried Dapeer again - TC w/ Rose Marie re: atty fees - & HUD changes to S.A.- & TC Eileen; TC Dapeer	1.25
09/12/90	W/Eileen & Richard on notice to class	2.00
09/14/90	TC w/ Kroot re: availability to speak to Dapeer on his concerns with covenants; TC w/Eileen re Dapeer	.75
09/17/90	Letter to Dapeer re: S.A. and TC w/Bonnie McNaughton re HAP contract; TC w/ Kathy Mitchum re number of certificates and no vouchers	5.50
09/24/90	Letter to Wendy Watanabe	.25
09/27/90	TC Rose Marie	.50
09/27/90	TC Richard	.50
09/27/90	Review HAP K	.50
10/10/90	Send letters; review (redlining)	.75
10/12/90	Review redlining letter to Rose Marie on changes	1.50
10/23/90	Settlement agreement	1.00

10/24/90	Settlement agreement rewrite	.50
10/25/90	TC Rose Marie re changes	.25
10/25/90	Letter from Dapeer; TC w/ Kohn	.25
11/05/90	Walker I Settlement Agreement change	.50
11/07/90	TC w/Kohn re: progress of SA and Dapeer	.50
11/08/90	TC w/Rose Marie Fernandez re status of memo from Bonnie to Lourdes Baird	.50
11/09/90	Revise language of Settlement Agmt ¶ 11	.25
11/19/90	TC Rose Marie & Richard Kohn re status of SA	.50
11/26/90	TC Kohn review Dapeer letter on SA	.25
12/09/90	To Rose Marie re: status of SA w/ HUD	.50
12/09/90	To Richard Kohn re: what to do re: Dapeer & Sommers illness	1.00

Total 1990 Time: 216.25 hours

1991

BREAKDOWN OF TIME SPENT:

01/06/91	TC Bonnie re status of SA; TC w/ Richard 2X re status of SA	2.00
01/08/91	TC Richard	.50
01/16/91	TC Bonnie - TC Rose Marie	.50

01/23/91	TC Kohn	.25
01/28/91	TC Eileen	.25
02/01/91	TC w/Rose Marie & Richard Kohn on status of HUD settlement agreement	.25
02/04/91	Atty. fees; collect information	.50
02/05/91	TC Rose Marie re: status of SA w/ HUD	.25
02/06/91	TC w/ Kohn re SA and attorneys fees	2.00
02/11/91	TC w/Richard & Rose Marie re SA & real property appraisal	1.75
02/15/91	TC Richard & Rose Marie - property assessment	.50
02/27/91	Travel to Indio - meet w/ Mrs. Walker to explain SA - review purchase agreement - meet w/tenants from 6:30-8:00	11.00
02/28/91	Return from Indio	8.00
04/05/91	TC w/Richard re Settlement; no response from Dapeer/what to do/get final response from HUD on escrow agreement between HUD and Dapeer	1.00
04/12/91	TC w/Rose Marie on rent figures, what HUD is doing to get approvals of escrow language	1.00
04/16/91	TC w/Richard re letters to Dapeer to get response, and move case to Settlement	1.00
04/18/91	TC w/Richard re Dapeer letter on not available for 6 weeks and letter on changes that he wants to Agreement; TC w/Rose Marie, no answer	1.00

04/18/91	Research on enforcement of SA review of cases	4.00
04/24/91	TC w/Ben Logan re bankruptcy; redraft the SA to send to him; TC w/Richard re content of letter to Dapeer	2.00
04/25/91	Get files together for hearing; leave for Los Angeles at 2:40, arrive at 6:40	5.00
04/26/91	Hearing at 10:00 a.m.: meet and discuss at 9:00; over at 11:00 and discuss what to do to get SA signed by all parties; travel home (2:00 to 5:30)	8.00
04/27/91	TC w/Richard re what to send and do; get papers together to send to Dapeer for SA signatures; get description of land	2.00
05/31/91	TC w/Helena Fagin (left message)	.25
06/04/91	TC w/Richard re how to get court to act on our motion for telephone conference	.25
06/05/91	TC w/Rose Marie re Mort Lieberman's proposal to purchase JT	.25
06/11/91	TC w/Bonnie re Attorney Fees; TC w/Helena Fagin (Galespi) re status conf; TC w/Richard re motion to enforce SA and 3-Day Notice to Quit for named plaintiff Valadarez	1.75
06/13/91	TC w/Helena Fagin (2x) re status conf and Richard and Bonnie and Rose Marie	1.00
06/17/91	TC w/Richard re status conf and consents of the private parties	.50
06/18/91	Set up conference call instructions for secretary; letter to Dapeer and TC w/Richard	1.00

06/21/91	Telephone status conf; review the consent and authorization forms sent by Sommers' counsel	2.00
06/24/91	Notary for documents/acknowledgements; how to deal w/ law change	2.00
06/27/91	Attorney fees review and make intelligible the time sheets	4.00
06/28/91	Attorney fees (2 hours); get files ready for filing (2 hours)	4.00
07/03/91	enforcement of SA; TC w/Richard re sanctions against Dapeer	.50
07/05/91	sanctions, review papers that Richard drafted; talk with him	2.00
07/08/91	TC w/ Kohn re failure of Dapeer to sign document in counterparts	.50
07/09/91	Notarize and sign SA	.75
07/24/91	Walker notice review (.50); TC w/Richard re notice to class (.50)	1.00
07/30/91	TC w/Stam Bloomfeld re status of SA and Justice Department approval; left message with Bonnie	.25
08/16/91	talk w/Richard re authorization; releases of Sommer children	1.00
08/22/91	TC w/Stam Bloomfeld re approvals by private parties and HUD	.50
09/03/91	TC re notice to the opposing counsel required by local rule	1.00
09/05/91	review draft summary for stip and order; review notice	.75

09/11/91	Walker on death of Sommer; implication of research; research on death	2.00
09/13/91	research on death of agent	.75
09/16/91	Research on the notice issue	.50
09/30/91	Order problems with Walker	.50

Total 1991 Time: 81.75 hours

TOTAL TIME (NOVEMBER 1983 - OCTOBER 1991): 1041.00 HOURS

WALKER 1 FEES
CMB:djh:112691

UNITED STATES DISTRICT COURT
IN THE DISTRICT OF NEW JERSEY

CAPE -ATLANTIC LEGAL SERVICES

BY: JOEL SOLOW

106 North Main Street

Cape May Court House, New Jersey 08210 NOV 22 1975

(609) 465-3001

Attorney for Plaintiffs.

RECEIVED

NATIONAL CLEARINGHOUSE
FOR LEGAL SERVICES

CONSTANCE WALKER, and,
CHARLES A. WALKER, her husband and SPYROS
SPYROPOULOS and DELORES SPYROPOULOS, his
wife,

Civil Action No.

76-1515

Plaintiffs

vs.

EARL BUTZ, in his capacity as Secretary of the
DEPT. OF AGRICULTURE, RICHARD KETTLER,
in his capacity as Cape May County Supervisor of
the FARMERS HOME ADMINISTRATION, and the
UNITED STATES OF AMERICA,
Defendants

TO: SUSAN P. ENGELMAN, ESQ.
JONATHAN L. GOLDSTEIN
UNITED STATES ATTORNEY
Post Office Building
Federal Street
Camden, New Jersey

PLEASE TAKE NOTICE that the plaintiffs demand answers
to the following interrogatories, under oath, by the defendant,
Richard Kettler, in the time and manner prescribed by the
rules of Court.

1. State the date of sale and the purchase price of
the property located at 111 Brookdale Road, Town Bank, Lower
Township, New Jersey.

Answer:

18,945
D
35p

6. Was the construction of the property financed by the Farmer's Home Administration?

Answer:

7. If so, describe, in detail, the specifics of the construction financing, and attach herewith copies of any documents pertaining to same.

Answer:

8. Did the Farmer's Home Administration supervise the construction of this property?

Answer:

11. List every date on which an on site inspection was made.

Answer:

12. Attach herewith all documents, memoranda, and instructions to construction inspectors of the Farmer's Home Administration detailing their duties.

Answer:

13. Describe in detail how all Farmer's Home Administration construction inspectors are trained.

Answer: .

17. If so, state dates and names of inspection
and inspectors.

Answer:

18. Attach herewith copies of all inspection
reports made on the property herein.

Answer:

19. List the date and amount of every mortgage
payment made by the Walkers.

Answer:

23. If so, state when, and attach a copy
herewith.

Answer:

24. List the dates, amounts, and County
offices of all 504 grants made in the last five years.

Answer:

27. State the action taken by the Farmer's
Home Administration with regard to each specific complaint.

Answer:

37. If so, attach herewith a copy.

38. Attach herewith a copy of the builder's response.

39. Attach herewith a copy of any Farmer's Home Administration follow up letters to the builder.

40. Was the Walkers complete file ever forwarded to the District Supervisor?

Answer:

41. If so, state when, and with what results.

Answer:

42. Has the State Director ever reviewed the Walkers complaints?

Answer:

43. If so, state when, and with what results.

Answer:

50. State the names and addresses of all expert witnesses, their fields of expertise, and their qualifications, intended to be called at trial.

Answer:

54. State the name and address of any real estate broker involved therein.

Answer:

55. State the name and address of the builder of 110 Fire Lane , Schooner Landing, New Jersey.

Answer:

56. State the date of completion of construction?

Answer:

57. Did the seller have a Farmer's Home Administration Mortgage?

Answer:

58. Was the construction financed by the Farmer's Home Administration?

Answer:

62. Describe, in detail the specifics of the Spyropoulos' mortgage, including amount financed, amount of interest, monthly payments, amount of downpayment and attach herewith a copy of the mortgage.

Answer:

66. State the qualifications of every person
who supervised said construction.

Answer:

71. List the date and amount of every mortgage payment made by the Spyropoulos'.

Answer:

72. Did the Spyropoulos' ever complain to the Farmer's Home Administration of defects in their property?

Answer:

74. State the action taken by the Farmer's
Home Administration with regard to each specific complaint.

Answer:

82. If so, attach herewith a copy.

83. Attach herewith copies of any responses.

84. Attach herewith copies of any Farmer's Home Administration follow up letters.

85. Was the Spyropoulos' complete file ever forwarded to the District Supervisor?

Answer:

86. If so, state when, and with what results.

Answer:

89. Attach herewith copies of all memoranda, decisions and determinations made by the District Supervisor and the State Director in the Spyropoulos' matter.

90. Have formal proceedings for suspension or debarment ever been instituted by the Farmer's Home Administration with regard to 110 Fire Lane, Schooner Landing, New Jersey.

Answer:

91. If so, state when and with what results.

Answer:

98. Attach copies of all correspondence regarding same.

99. Have the Spyropoulos' ever applied for a moratorium on mortgage payments?

Answer:

100. If so, state when and with what results.

Answer:

105. Attach copies of their reports.

106. Have the Walkers ever applied for a 504

grant?

Answer:

107. If so, state when and with what results.

Answer:

108. Have the Spyropoulos' ever applied for a

504 grant?

Answer:

111. State the total number of complaints of defective housing made to the Farmer's Home Administration, nationally in a) 1976 b) 1975 c) 1974 d) 1973 e) 1972.

Answer:

- A)
- B)
- C)
- D)
- E)

112. State the names and addresses of all complainants in Cape May County during that period of time.

Answer:

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF NEW JERSEY

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CONSTANCE WALKER, CHARLES A.
WALKER, SPYROS SPYROPOULOS, AND
DELORES SPYROPOULOS,

Plaintiffs

v.

EARL BUTZ, SECRETARY OF THE UNITED
STATES DEPARTMENT OF AGRICULTURE,
RICHARD KETTLER, COUNTY SUPERVISOR,
FARMERS HOME ADMINISTRATION, AND
THE UNITED STATES OF AMERICA,

Defendants

NATIONAL CLEARINGHOUSE
FOR LEGAL SERVICES

CIVIL ACTION NO. 76-1515

ANSWER

Defendants, Earl Butz, Richard Kettler, and the United States of America come forward by and through their attorney, the United States Attorney for the District of New Jersey, and answer the Complaint of Plaintiffs as follows:

1. The Defendants deny the allegations contained in paragraph 1 of the Complaint.
2. The Defendants deny the allegations contained in paragraph 2 of the Complaint.
3. The Defendants deny the allegations contained in paragraph 3 of the Complaint.
4. The Defendants deny the allegations contained in paragraph 4 of the Complaint.
5. The Defendants deny the allegations contained in paragraph 5 of the Complaint.
6. The Defendants affirm the allegations contained in paragraph 6 of the Complaint with the exception that the allegation naming the Farmers Home Administration as a defendant to this action is denied.

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ANGELO W. LOCASCIO, CLERK

7. The Defendants affirm the allegations contained in paragraph 7 of the Complaint with the exception that the allegation naming the Farmers Home Administration as a defendant to this action is denied.

8. The Defendants affirm the allegation contained in paragraph 8 of the Complaint.

9. The Defendants affirm the allegation contained in paragraph 9 of the Complaint.

10. The Defendants affirm the allegation contained in paragraph 10 of the Complaint.

11. The Defendants affirm the first sentence of paragraph 11 of the Complaint with the exception that the Rural Housing Program is not restricted to low income people. Defendants deny the second sentence of paragraph 11 of the Complaint. Defendants have not sufficient knowledge of the allegations contained in third and fourth sentences of paragraph 11 of the Complaint and therefore can neither affirm nor deny those allegations.

12. The Defendants affirm the allegations contained in paragraph 12 of the Complaint.

13. The Defendants deny the allegations contained in paragraph 13 of the Complaint.

14. The Defendants deny the allegation contained in paragraph 14 of the Complaint.

15. The Defendants affirm the allegation contained in the first sentence of paragraph 15 of the Complaint. Defendants are without sufficient knowledge of the allegation contained in the second sentence of paragraph 15 of the Complaint to form an opinion and thus, can neither affirm nor deny the allegation.

16. The Defendants deny the allegation contained in paragraph 16 of the Complaint.

17. The Defendants affirm the allegation contained in paragraph 17 of the Complaint.

18. The Defendants affirm the allegation contained in paragraph 18 of the Complaint.

19. The Defendants deny the allegation contained in paragraph 19 of the Complaint.

20. The Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. The Defendants deny the allegation contained in paragraph 21 of the Complaint.

22. The Defendants affirm the allegation contained in the first sentence of paragraph 22 of the Complaint. Defendants are without sufficient knowledge of the allegation contained in the second sentence of paragraph 22 of the Complaint to form an opinion and thus, neither affirms nor denies that allegation.

23. The Defendants deny the allegation contained in paragraph 23 of the Complaint.

24. The Defendants affirm the allegation contained in paragraph 24 of the Complaint.

25. The Defendants deny the allegation contained in paragraph 25 of the Complaint.

26. The Defendants affirm the allegation contained in the first sentence of paragraph 26 of the Complaint. The second sentence of paragraph 26 of the Complaint is not an allegation and is therefore not answered.

27. The Defendants deny the allegations contained in paragraph 27 of the Complaint.

28. The Defendants deny the allegation contained in paragraph 28 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the subject matter of this action because it is in effect a suit against the United States to which it has not consented.

THIRD AFFIRMATIVE DEFENSE

Mandamus will not lie against the named defendants to control their exercise of administrative judgment and discretion.

FOURTH AFFIRMATIVE DEFENSE

The Court lacks jurisdiction for the reason that any claim based upon the facts alleged in the Complaint falls within the exception to the jurisdiction of this Court set forth at 28 U.S.C. Sections 2680(a) and (h).

FIFTH AFFIRMATIVE DEFENSE

The Court lacks jurisdiction because the plaintiffs failed to exhaust their administrative remedy prior to filing suit as is required by law. 28 U.S.C., Section 2675(a).

SIXTH AFFIRMATIVE DEFENSE

In the event the Court finds defendants negligent, which negligence defendants deny, the negligence of plaintiffs was equal to or greater than that of defendants and any recovery is barred.

SEVENTH AFFIRMATIVE DEFENSE

The injuries and/or damages alleged in the complaint were not proximately caused by a negligent or wrongful act or omission of an employee of the United States.

WHEREFORE, the Defendants, Earl Butz, Richard Kettler, and the United States of America pray that the court dismiss Plaintiffs' Complaint with prejudice, or in the alternative, that the Honorable Court find that the Defendants have done nothing contrary to the law, and for such further relief to which the Defendants may be justly entitled.

COUNTERCLAIM AGAINST
CONSTANCE WALKER AND
CHARLES A. WALKER

1. The Court has jurisdiction to entertain this counterclaim pursuant to 28 U.S.C., Sections 1345 and 1346(c).
2. Plaintiffs Constance Walker and Charles A. Walker executed a promissory note to the Farmers Home Administration (on March 5, 1975) in the principal sum of \$24,800.00 plus interest on the unpaid principal of eight and one-eighth percent (8 1/8%) per annum.

UNITED STATES DISTRICT COURT
IN THE DISTRICT OF NEW JERSEY

CAPE -ATLANTIC LEGAL SERVICES

BY: JOEL SOLOW

106 North Main Street

Cape May Court House, New Jersey 08210 NOV 22 1976

(609) 465-3001

Attorney for Plaintiffs.

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NATIONAL CLEARINGHOUSE
FOR LEGAL SERVICES

CONSTANCE WALKER, and,
CHARLES A. WALKER, her husband and SPYROS
SPYROPOULOS and DELORES SPYROPOULOS, his
wife,

Civil Action No.

76-1515

Plaintiffs

vs.

EARL BUTZ, in his capacity as Secretary of the
DEPT. OF AGRICULTURE, RICHARD KETTLER,
in his capacity as Cape May County Supervisor of
the FARMERS HOME ADMINISTRATION, and the
UNITED STATES OF AMERICA,
Defendants

TO: SUSAN P. ENGELMAN, ESQ.
JONATHAN L. GOLDSTEIN
UNITED STATES ATTORNEY
Post Office Building
Federal Street
Camden, New Jersey

PLEASE TAKE NOTICE that the plaintiffs demand answers
to the following interrogatories, under oath, by the defendant,
Richard Kettler, in the time and manner prescribed by the
rules of Court.

1. State the date of sale and the purchase price of
the property located at 111 Brookdale Road, Town Bank, Lower
Township, New Jersey.

Answer:

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35p.

2. State the name and address of the seller.

Answer:

3. State the name and address of the builder.

Answer:

4. Was this transaction financed by a Farmers Home

Administration Mortgage?

Answer:

5. Describe, in detail, the specifics of the financing.

including amount financed, amount of interest, monthly payments,

amount of down payment, and attach herewith a copy of the

Walkers' mortgage.

Answer:

6. Was the construction of the property financed by the Farmer's Home Administration?

Answer:

7. If so, describe, in detail, the specifics of the construction financing, and attach herewith copies of any documents pertaining to same.

Answer:

8. Did the Farmer's Home Administration supervise the construction of this property?

Answer:

9. If so, state the names and addresses of every person who supervised said construction.

ANSWER:

10. State the qualifications of every person who supervised said construction.

ANSWER:

11. List every date on which an on site inspection was made.

Answer:

12. Attach herewith all documents, memoranda, and instructions to construction inspectors of the Farmer's Home Administration detailing their duties.

Answer:

13. Describe in detail how all Farmer's Home Administration construction inspectors are trained.

Answer: .

16. Was such an arrangement used with the property at 111 Brookdale Road, Town Bank, New Jersey.

Answer:

15. If so, please give details of any such arrangement.

Answer:

14. Has the Farmer's Home Administration ever used employees or agents of the State of New Jersey to do Farmer's Home Administration inspections?

Answer:

17. If so, state dates and names of inspection
and inspectors.

Answer:

18. Attach herewith copies of all inspection
reports made on the property herein.

Answer:

19. List the date and amount of every mortgage
payment made by the Walkers.

Answer:

22. Has the Farmer's Home Administration
ever promulgated regulations under the 504 grant program?

Answer:

21. If so, describe in detail and attach

copies.

Answer:

20. Have the Walkers and the Farmer's
Home Administration entered into any mortgage subsidy agreements?

Answer:

23. If so, state when, and attach a copy
herewith.

Answer:

24. List the dates, amounts, and County
offices of all 504 grants made in the last five years.

Answer:

25. Did the Walkers ever complain to the

Farmer's Home Administration of defects in their property?

Answer:

26. If so, state dates and all complaints,

if in writing attach herewith and if oral describe nature thereof.

Answer:

27. State the action taken by the Farmer's
Home Administration with regard to each specific complaint.
Answer:

28. Was there a warranty agreement between the Walkers and the Seller and/or builder?

Answer:

29. If so, attach a copy herewith.

30. Attach herewith a copy of Form FMHA 424-19.

31. Did the Farmer's Home Administration ever notify the Walkers by letter of the expiration date of any warranty period?

Answer:

32. If so, attach herewith a copy.

33. Was an inspection report ever recorded on Form

FMHA 424-12?

Answer:

34. If so, attach herewith a copy.

35. If not, attach herewith a copy of FMHA Form

424-12 in blank.

36. Did the Farmer's Home Administration ever notify the builder of the Walkers' complaints, by letter?

Answer:

37. If so, attach herewith a copy.

38. Attach herewith a copy of the builder's response.

39. Attach herewith a copy of any Farmer's Home Administration follow up letters to the builder.

40. Was the Walkers complete file ever forwarded to the District Supervisor?

Answer:

41. If so, state when, and with what results.

Answer:

42. Has the State Director ever reviewed the Walkers complaints?

Answer:

43. If so, state when, and with what results.

Answer:

44. Attach herewith copies of all memoranda,

decisions and determinations made by the District Supervisor and the State Director in the Walker matter.

45. Have formal proceedings for suspension or

debarment ever been instituted by the Farmer's Home Administration, against the builder of 111 Brookdale Road, Town Bank, New Jersey.

Answer:

46. If so, state when and with what results.

Answer:

47. Attach herewith copies of all memoranda, de-

cisions and determinations in any such proceedings.

48. Attach herewith copies of the contents of the

entire complaint file of the builder of 111 Brookdale Road,

Town Bank, New Jersey.

49. State the names and address of all witnesses

intended to be called at the trial.

Answer:

50. State the names and addresses of all expert witnesses, their fields of expertise, and their qualifications, intended to be called at trial.

Answer:

Answer:

53. State the name and address of the seller.

Answer:

52. State the date of sale and the purchase price of the property located at 110 Fire Lane, Schooner Landing, Lower Township, New Jersey.

Witness' reports.

51. Attach herewith copies of all expert

54. State the name and address of any real estate broker involved therein.

Answer:

55. State the name and address of the builder of 110 Fire Lane , Schooner Landing, New Jersey.

Answer:

56. State the date of completion of construction?

Answer:

57. Did the seller have a Farmer's Home Administration Mortgage?

Answer:

58. Was the construction financed by the Farmer's Home Administration?

Answer:

59. Did the seller ever complain to the Farmer's Home Administration about defects in the housing?

Answer:

60. If so, state dates of complaints, nature thereof and attach herewith a copy of any that were in writing.

Answers:

61. Detail the Farmer's Home Administration's responses thereto, attaching herewith a copy of anything

in writing.

Answer:

62. Describe, in detail the specifics of the Spyropoulos' mortgage, including amount financed, amount of interest, monthly payments, amount of downpayment and attach herewith a copy of the mortgage.

Answer:

63. If the construction of 110 Fire Lane, Schooner Landing, New Jersey was financed by the Farmer's Home Administration, attach herewith copies of all documents pertaining thereto.

64. Did the Farmer's Home Administration supervise the construction of this property?

Answer:

65. If so, state the names and addresses of every person who supervised said construction.

Answer:

66. State the qualifications of every person
who supervised said construction.

Answer:

67. Did any employees or agents of the State of

New Jersey participate in the supervision and/or inspection

of the construction of 110 Fire Lane, Schooner Landing, N.J.?

Answer:

68. Attach herewith copies of all inspection

reports made on 110 Fire Lane, Schooner Landing, N.J.

69. Have the Spyropoulos' and the Farmers Home

Administration entered into any mortgage subsidy agreements?

Answer:

70. If so, describe in detail and attach copies.

Answer:

71. List the date and amount of every mortgage payment made by the Spyropoulos'.

Answer:

72. Did the Spyropoulos' ever complain to the Farmer's Home Administration of defects in their property?

Answer:

73. If so, state dates of all complaints, if in
writing attach herewith and if oral describe the nature thereof.
Answer:

74. State the action taken by the Farmer's
Home Administration with regard to each specific complaint.

Answer:

75. Was there a warranty agreement between the Spyropoulos' and the sellers?

Answer:

76. If so, attach a copy herewith.

77. Did the Farmer's Home Administration ever notify the Spyropoulos' by letter of the expiration date of any warranty period?

Answer:

78. If so, attach herewith a copy.

79. Was an inspection report ever recorded on Form FHA 424-12 with regard to 110 Fire Lane, Schooner Landing, New Jersey.

Answer:

80. If so, attach herewith a copy.

81. Did the Farmers Home Administration ever notify the seller, the builder, or the real estate broker, of the Spyropoulos' complaint by letter?

Answer:

82. If so, attach herewith a copy.

83. Attach herewith copies of any responses.

84. Attach herewith copies of any Farmer's Home Administration follow up letters.

85. Was the Spyropoulos' complete file ever forwarded to the District Supervisor?

Answer:

86. If so, state when, and with what results.

Answer:

Answer:

88. If so, state when, and with what results.

Answer:

Spytopoulos matter?

87. Has the State Director ever reviewed the

89. Attach herewith copies of all memoranda, decisions and determinations made by the District Supervisor and the State Director in the Spyropoulos' matter.

90. Have formal proceedings for suspension or debarment ever been instituted by the Farmer's Home Administration with regard to 110 Fire Lane, Schooner Landing, New Jersey.

Answer:

91. If so, state when and with what results.

Answer:

92. Attach herewith copies of all memoranda,

decisions and determinations in any such proceedings.

93. Attach herewith copies of the entire

complaint file of the builder of 110 Fire Lane, Schooner Landing,
New Jersey.

94. State the date on which the Spyropoulos'

loan was approved.

Answer:

95. Attach herewith a copy of the inspection

report on which said approval was based.

96. Have the Walkers' ever applied for a

moratorium on mortgage payments?

Answer:

97. If so, state when and with what results.

Answer:

98. Attach copies of all correspondence regarding same.

99. Have the Spyropoulos' ever applied for a moratorium on mortgage payments?

Answer:

100. If so, state when and with what results.

Answer:

101. Attach copies of all correspondence regarding

same.

102. When, if ever, did the Farmer's Home

Administration determine that 110 Fire Lane, Schooner Landing,
N.J. was "adequate" housing within the meaning of 42 U.S.C. § 1472?

Answer:

103. Was any such determination based on inspections?

Answer:

104. If so, state dates of inspections and names

and addresses of inspectors.

Answer:

105. Attach copies of their reports.

106. Have the Walkers ever applied for a 504

grant?

Answer:

107. If so, state when and with what results.

Answer:

108. Have the Spyropoulos' ever applied for a

504 grant?

Answer:

- E.
- D.
- C.
- B.
- A.

Answer:

e) 1972.

110. State the total number of complaints of defective housing made to the Cape May County Farmer's Home Administration office in a) 1976; b) 1975 c) 1974 d) 1973

Answer:

109. If so, with what results.

111. State the total number of complaints of defective housing made to the Farmer's Home Administration, nationally in a) 1976 b) 1975 c) 1974 d) 1973 e) 1972.

Answer:

- A)
- B)
- C)
- D)
- E)

112. State the names and addresses of all complainants in Cape May County during that period of time.

Answer:

113. In your opinion is the Farmer's Home
Administration adequately staffed?

Answer:

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF NEW JERSEY

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NATIONAL CLEARINGHOUSE
FOR LEGAL SERVICES

CONSTANCE WALKER, CHARLES A.
WALKER, SPYROS SPYROPOULOS, AND
DELORES SPYROPOULOS,

Plaintiffs

v.

EARL BUTZ, SECRETARY OF THE UNITED
STATES DEPARTMENT OF AGRICULTURE,
RICHARD KETTLER, COUNTY SUPERVISOR,
FARMERS HOME ADMINISTRATION, AND
THE UNITED STATES OF AMERICA,

Defendants

CIVIL ACTION NO. 76-1515

ANSWER

Defendants, Earl Butz, Richard Kettler, and the United States of America come forward by and through their attorney, the United States Attorney for the District of New Jersey, and answer the Complaint of Plaintiffs as follows:

1. The Defendants deny the allegations contained in paragraph 1 of the Complaint.
2. The Defendants deny the allegations contained in paragraph 2 of the Complaint.
3. The Defendants deny the allegations contained in paragraph 3 of the Complaint.
4. The Defendants deny the allegations contained in paragraph 4 of the Complaint.
5. The Defendants deny the allegations contained in paragraph 5 of the Complaint.
6. The Defendants affirm the allegations contained in paragraph 6 of the Complaint with the exception that the allegation naming the Farmers Home Administration as a defendant to this action is denied.

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OCT 8 1976

ANGELO W. LOCASCIO, CLERK

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7. The Defendants affirm the allegations contained in paragraph 7 of the Complaint with the exception that the allegation naming the Farmers Home Administration as a defendant to this action is denied.

8. The Defendants affirm the allegation contained in paragraph 8 of the Complaint.

9. The Defendants affirm the allegation contained in paragraph 9 of the Complaint.

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16. The Defendants deny the allegation contained in paragraph 16 of the Complaint.

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FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the subject matter of this action because it is in effect a suit against the United States to which it has not consented.

THIRD AFFIRMATIVE DEFENSE

Mandamus will not lie against the named defendants to control their exercise of administrative judgment and discretion.

FOURTH AFFIRMATIVE DEFENSE

The Court lacks jurisdiction for the reason that any claim based upon the facts alleged in the Complaint falls within the exception to the jurisdiction of this Court set forth at 28 U.S.C. Sections 2680(a) and (h).

FIFTH AFFIRMATIVE DEFENSE

The Court lacks jurisdiction because the plaintiffs failed to exhaust their administrative remedy prior to filing suit as is required by law. 28 U.S.C., Section 2675(a).

SIXTH AFFIRMATIVE DEFENSE

In the event the Court finds defendants negligent, which negligence defendants deny, the negligence of plaintiffs was equal to or greater than that of defendants and any recovery is barred.

SEVENTH AFFIRMATIVE DEFENSE

The injuries and/or damages alleged in the complaint were not proximately caused by a negligent or wrongful act or omission of an employee of the United States.

WHEREFORE, the Defendants, Earl Butz, Richard Kettler, and the United States of America pray that the court dismiss Plaintiffs' Complaint with prejudice, or in the alternative, that the Honorable Court find that the Defendants have done nothing contrary to the law, and for such further relief to which the Defendants may be justly entitled.

COUNTERCLAIM AGAINST
CONSTANCE WALKER AND
CHARLES A. WALKER

1. The Court has jurisdiction to entertain this counterclaim pursuant to 28 U.S.C., Sections 1345 and 1346(c).
2. Plaintiffs Constance Walker and Charles A. Walker executed a promissory note to the Farmers Home Administration (on March 5, 1975) in the principal sum of \$24,800.00 plus interest on the unpaid principal of eight and one-eighth percent (8 1/8%) per annum.

3. The aforementioned principal and interest are payable in 396 installments in the amount of \$180.00 per month beginning on the fifth day of April, 1975 and \$180.00 thereafter on the fifth day of each month until the principal and interest are fully paid.

4. The above-mentioned promissory note was secured by a mortgage and recorded on the 5th day of March, 1975 in Book 879 pg. 1087 Cape May County Clerk's Office, Cape May, New Jersey.

5. Plaintiffs have failed and refused to make payment pursuant to the terms of the promissory note dated March 5, 1975 since the date of their last payment on August 9, 1976.

WHEREFORE, Defendants pray for judgment in the amount of \$320.00, or in the alternative, for judgment in the amount that remains due and owing to defendants on the date of the judgment herein.

UNITED STATES OF AMERICA,

JONATHAN L. GOLDSTEIN
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY

BY: 

SUSAN P. ENGELMAN
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
IN THE DISTRICT OF NEW JERSEY

CAPE-ATLANTIC LEGAL SERVICES
BY: JOEL SOLOW
106 North Main Street
Cape May Court House, N.J. 08210
(609) 465-3001
Attorney for plaintiffs.

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NATIONAL CLEARINGHOUSE
FOR LEGAL SERVICES

CONSTANCE WALKER, and,
CHARLES A. WALKER, her husband and SPYROS
SPYROPOULOS and DELORES SPYROPOULOS, his
wife,

Plaintiffs

vs.

Civil Action No.
76-1515

TO
ANSWER AND COUNTER-
CLAIM

EARL BUTZ, in his capacity as Secretary of
the DEPT. OF AGRICULTURE, RICHARD KETTLER,
in his capacity as Cape May County Super-
visor of the FARMERS HOME ADMINISTRATION,
and the UNITED STATES OF AMERICA,
Defendants.

Plaintiffs, Constance Walker and Charles A. Walker, her
husband, by way of answer to defendants counterclaim, says:

1. They admit the allegations contained in paragraph
1 of the counterclaim.
2. Said plaintiffs are without sufficient information
or belief to affirm or deny the allegations of paragraph 2 of the
counterclaim.
3. Said plaintiffs deny the allegations contained
in paragraph 3 of the counterclaim.
4. Said plaintiffs admit that they executed a
mortgage to defendants but they are without sufficient information
or belief to affirm or deny that said mortgage was to secure a
promissory note.

5. Said plaintiffs deny the allegations of paragraph 5 of the Counterclaim.

FIRST SEPARATE DEFENSE

1. Plaintiffs, Constance and Charles Walker and defendants have executed an interest credit agreement pursuant to 42 U.S.C. § 1490 (a).

2. By virtue of said agreement, plaintiffs', Constance and Charles Walker, monthly payments are \$80.00 and not \$180.00.

WHEREFORE, said plaintiffs demand judgment that defendants' Counterclaim be dismissed.

/s/ Joel Solow

JOEL SOLOW
Attorney for plaintiffs.

because the original copy was not xeroxable.

ORIGINAL

UNITED STATES DISTRICT COURT
IN THE DISTRICT OF NEW JERSEY

CAPE-ATLANTIC LEGAL SERVICES
BY: JOEL SOLOW
106 North Main Street
Cape May Court House, New Jersey 08210
(609) 465-3001
Attorney for Plaintiffs

Civil Action No.

18,945
A
7p.

CONSTANCE WALKER, and,
CHARLES A. WALKER, her husband and SPYROS
APYROPOULOS and DELORES SPYROPOULOS, his
wife,

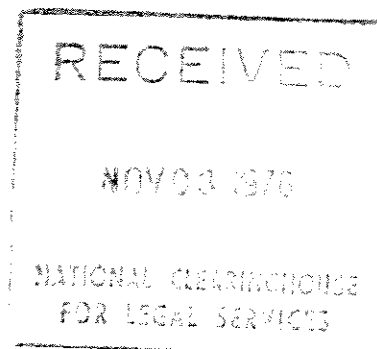
COMPLAINT

Plaintiffs

vs.

EARL BUTZ, in his capacity as Secretary of the
DEPT. OF AGRICULTURE, RICHARD KETTLER,
in his capacity as Cape May County Supervisor of
the FARMERS HOME ADMINISTRATION, and the
UNITED STATES OF AMERICA,

Defendants



Plaintiffs, CONSTANCE WALKER and CHARLES A. WALKER,
her husband, residing at 111 Brookdale Road, Town Bank, Lower Township,
New Jersey and SPYROS SPYROPOULOS and DELORES SPYROPOULOS,
his wife, residing at 110 Fire Lane, Schooner Landing, Lower Township,
New Jersey, by way of complaint against defendants, say:

1-JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to
Title 28, United States Code, Sections 1346 (a)(2), 1491, this being an
action against the United States not exceeding \$10,000., founded upon
contract with defendants and founded upon Title 42, United States Code,

2. The jurisdiction of this Court is also invoked pursuant to Title 5 United States Code Sections 701-706 and Title 42 United States Code Sections 1471, et seq., this being an action to review the decisions and determinations of the Farmer's Home Administration an agency of the United States of America, said decisions and determinations being unfavorable to plaintiffs as hereinafter more fully appears.

3. The jurisdiction of this Court is also invoked pursuant to Title 28 United States Code Section 1331, this being an action against the United States of America where the matter in controversy exceeds \$10,000.00 and arises under Title 42 United States Code, Sections 1471, et seq., as hereinafter more fully appears.

4. The jurisdiction of this Court is also invoked pursuant to Title 28 United States Code, Section 1361, this being an action in the nature of mandamus to compel the defendants to make a grant to plaintiffs pursuant to Title 42 United States Code Section 1474 and to compel defendant to promulgate regulations under Title 42 United States Code §1474 with reference to grants for repairs or improvements of rural dwellings as hereinafter more fully appears.

II-PARTIES

6. Plaintiffs, CONSTANCE WALKER and CHARLES A. WALKER, her husband, purchased a home and property commonly designated as 111 Brookdale Road, Town Bank, Lower Township, New Jersey on March 5, 1975 at a purchase price of \$24,800.00. The mortgage for said property was

provided by the defendant, FARMER'S HOME ADMINISTRATION, pursuant to 42 U.S.C. § 1471, et seq.

7. Plaintiffs, SPYROS SPYROPOULOS, and DELORES SPYROPOULOS, his wife, purchased a home and property commonly designated as 110 Fire Lane, Schooner Landing, Lower Township, New Jersey on June 16, 1975 at a purchase price of \$25,000.00. The mortgage for said property was provided by defendant, FARMER'S HOME ADMINISTRATION, pursuant to 42 U.S.C. § 1471, et. seq.

8. The defendant, EARL BUTZ, is Secretary of the Dept. of Agriculture, and as such is entrusted with the administration of the rural housing programs under 42 U.S.C. § 1471, et seq.

9. The defendant, FARMER'S HOME ADMINISTRATION is the agency under the Department of Agriculture which is entrusted with the actual administration of the rural housing programs under 42 U.S.C. § 1471, et. seq., and 7 C.F.R. § 1822, et. seq.

10. The defendant, RICHARD KETTLER, is the County Supervisor of the FARMER'S HOME ADMINISTRATION of the County of Cape May, the jurisdiction of all the transactions herein, and, as such, is in charge of the local office which administered all the transactions he in.

III-STATEMENT OF FACTS

11. The farmers housing program under 42 U.S.C. § 1471, et. seq., is a federally funded housing assistance program targeted for rural home ownership by low income people. Pursuant to this legislation the Farmer's Home Administration is authorized to grant mortgages and make grants for rural housing for low income families.

The Farmer's Home Administration program is the major form of public assistance for housing in Cape May County, New Jersey, and in other predominantly rural areas. Approximately seventy per cent of the residents of Cape May County, New Jersey are homowners.

12. Plaintiffs, Constance Walker and Charles A.

Walker, her husband purchased property located at 111 Brookdale Road, Town Bank, New Jersey on March 5, 1975 at a purchase price of \$24,8000.00. The mortgage for said property was provided by the defendant, Farmer's Home Administration. Said property was newly constructed.

13. 42 U.S.C. § 1476 and the regulations promulgated thereunder, 7 C.F.R. § 1822.9 and § 1804 require that the defendant, Farmer's Home Administration Supervise and inspect such new construction. Said supervision and inspection was negligently conducted by the Farmer's Home Administration, in that, subsequent to the plaintiffs, Constance Walker and Charles A. Walker, her husband assuming residence they found defects in the property, including, but not limited to:

A. Joists are inadequate according to Building Code of Lower Township, New Jersey.

B. Center beam was not leveled and shimmed, causing the center of the house to settle irregularly.

C. Linoleum lifting, causing air bubbles.

D. Leaks in doors.

E. Doors out of line.

F. Leaks in bathroom.

G. Poor painting.

14. Plaintiffs have on numerous occasions complained to defendants about said problems, but to no avail.

15. On March 12, 1976, plaintiffs applied to defendants for a grant from defendants, pursuant to 42 U.S.C. § 1474 so that they could effect repairs on said problems. Plaintiffs would not be able to qualify for a loan under 42 U.S.C. § 1474 to effect said repairs because their eligibility had already been exhausted by the mortgage.

16. Defendants response to said application was that they cannot identify this program by the designation 42 U.S.C.A. § 1474.

17. No regulations have ever been promulgated to effect the provisions of 42 U.S.C. § 1474 to provide grants for rural homeowners.

18. Plaintiffs, Spyros Spyropoulos and Delores Spyropoulos, his wife purchased a home and property located at 110 Fire Lane Schooner Landing, Lower Township, New Jersey on June 16, 1975 at a purchase price of \$25,000.00. The mortgage for said property was provided by defendant, FARMER'S HOME ADMINISTRATION.

19. The defendants negligently inspected said property. 42 U.S.C. § 1471 and 42 U.S.C. § 1472 require that defendants only make loans for "adequate" housing to provide "decent, safe and sanitary living conditions".

20. Shortly after plaintiffs, Spyros Spyropoulos and Delores Spyropoulos, his wife assumed residency of said premises they found defects in the property, including, but not limited to:

A. Steps are in state of disrepair.

B. Ceiling in closet in need or repair.

C. Underlayment and tile in kitchen in need of repair.

D. Tub and toilet falling apart.

21. Plaintiffs have on numerous occasions complained to defendants about said problems, but to no avail.

22. On March 12, 1976, plaintiffs applied to defendants for a grant from defendants, pursuant to 42 U.S.C § 1474 so that they could effect repairs on said problems. Plaintiffs would not be able to qualify for a loan under 42 U.S.C. § 1474 to effect said repairs because their eligibility had already been exhausted by the mortgage.

23. Defendants' response to said application was that "they cannot identify this program by the designation 42 U.S.C.A. § 1474.

24. No regulations have ever been promulgated to effect the provisions of 42 U.S.C. § 1474 to provide grants to rural homeowners.

IV-CAUSES OF ACTIONS

25. Defendants have violated their contracts with plaintiffs to provide them with "decent, safe and sanitary living conditions."

26. Defendants have failed to promulgate regulations and administer the grant program under 42 U.S.C. § 1474 for minor improvements. Defendants effective denial of plaintiff's applications for grants is herewith appealed.

27. Defendants tortiously and negligently conducted inspections of plaintiffs property and granted mortgages on substandard properties.

28. Defendants have violated the provisions of 42 U.S.C. § 1471, et. seq., to provide "decent, safe and sanitary living conditions for plaintiffs".

WHEREFORE, plaintiffs demand judgment against defendants,

A. For reasonable damages, costs of suit and reasonable attorney's fees.

B. Ordering defendants to give plaintiffs a grant to effect repairs on their property.

C. Ordering defendants to promulgate regulations to effect the grants for minor improvements under 42 U.S.C. § 1474.

D. Enjoining defendants from requiring plaintiffs to make their monthly mortgage payments until all repairs necessary to effectuate "decent, safe and sanitary living conditions" are made.

E. Enjoining defendants from granting mortgages for housing which will not provide "decent, safe and sanitary living conditions".

F. Such other relief as the Court deems equitable and just.

/s/ Joel Solow

JOEL SOLOW
Attorney for Plaintiffs

**Common Ground Community
Economic Development Corporation**

RECEIVED FEB 18 1987

5405 EAST GRAND • DALLAS, TEXAS 75223 • (214) 827-2632

February 17, 1987

Roberta Youmans
National Housing Law Project
509 C St., NE, Stanton Park
Washington, DC 20002

Dear Roberta,

I am sending you a fairly complete package of materials relating to the public housing desegregation/demolition case here in Dallas. We have discussed this case previously--last fall--and you sent me some useful materials on demolition/deprogramming/conversion of public housing.

We have been in a real bind here engaging an attorney who knows class action law, something about housing, and who is willing to take on Julian & Daniel. We are going to file an appeal even if it means that a number of tenants file pro se. If we have to do this pro se, the outcome is easy to predict.

I am sending you this material overnight mail because the filing deadline is February 20th, and I might need to talk with you by phone on procedural matters.

We have two basic theories concerning the appeal. The first is that a significant number of class members, from West Dallas, are objecting to the settlement order; in effect, because the demolition is so peripheral to desegregation, the residents of West Dallas form a subset of the class. The second point is that, based upon statements of DHA board members at the fairness hearing, in the press, and in board meetings, we think we can show that this is not simply a demolition case, but is rather a disposition case. For instance, the order states that the cleared land cannot be used for low-income or assisted housing; since the DHA is not chartered to develop any other land uses, and since the order also states that the land shall be prepared for redevelopment, the property is likely to be sold subsequent to demolition--therefore it's actually a disposition case, and vouchers cannot be used as replacement. More explicitly, the board chairman has stated that the land will eventually be sold to developers with the proceeds being used in some undefined way for low-income housing.

Fullinwider/Youmans
February 17, 1987

page 2

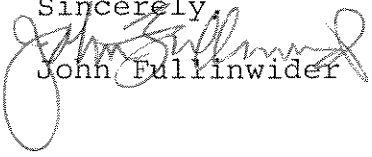
We believe the main fight to be political, anyway,
but without at least buying time via an appeal, we
can't organize the political challenge.

I'm sure that given all present trends in this Administration
you are swamped with work, but it would be most helpful to
us if you could review this set of materials and be available
for telephone consultation as we go ahead with the appeal.

I'll try to call you tomorrow.

Thanks.

Sincerely,


John Fullinwider

/enclosures

PUBLIC HOUSING DEMOLITION IN DALLAS, TEXAS

Materials related to the proposed demolition of up to 2,600 public housing units in Dallas, Texas, as the result of an agreed court order in the case of Walker v. HUD in the U.S. District Court for the Northern District of Texas/Dallas Division.

- I. Plaintiffs Second Amended Complaint (filed 4/4/86).
- II. Memorandum from Committee to Save Public Housing (filed in advance of public hearing, 12/4/86).
- III. Correspondence from West Dallas Residents and Supporters to Judge Jerry Buchmeyer (1/2/87) in opposition to the proposed demolition order.
- IV. Findings of Fact and Conclusions of Law Approving the Proposed Consent Decree (filed by Judge Buchmeyer, 1/20/87).
- V. Consent Decree, Walker v. HUD, entered 1/20/87.
- VI. Selected Press Reports, June 1986 through January 1987.

I. Plaintiffs Second Amended Complaint
Walker v. HUD, CA3-85-1210-R.