

1 LEGAL SERVICES OF NORTHERN CALIFORNIA
ANNE PEARSON, State Bar No. 201625
2 MONA TAWATAO, State Bar No. 128779
515 - 12th Street
3 Sacramento, California 95814-1418
Telephone: (916) 551-2150
4 Facsimile: (916) 551-2196

5 HOUSING PRESERVATION PROJECT
ANN M. NORTON, MN State Bar No. 7987X
6 JOHN CANN, MN State Bar No. 174841
CHRISTINE R. GOEPFERT, MN State Bar No. 0303252
7 TIMOTHY L. THOMPSON, MN State Bar No. 0109447
570 Asbury Street, Suite 103
8 St. Paul, Minnesota 55103-1852
Telephone: (651) 642-0102
9 Facsimile: (651) 642-0051

10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13

14 KENNETH ARMS TENANT ASSOCIATION,
MANZANITA ARMS TENANT
15 ASSOCIATION, CALIFORNIA COALITION
FOR RURAL HOUSING PROJECT,
16 VIRGINIA BREIMANN, RITA JANSSEN,
SHERRY LAUTSBAUGH, and KATHY
17 POUNDS,

18 Plaintiffs,

19 -v-

20 MEL MARTINEZ, in his official capacity as
Secretary of the Department of Housing and
Urban Development; KENNETH ARMS
21 LIMITED PARTNERSHIP; RANCHO ARMS
LIMITED PARTNERSHIP; SAN JUAN
22 LIMITED PARTNERSHIP; MANZANITA
ARMS LIMITED PARTNERSHIP;
23 NATIONAL HOUSING PARTNERSHIP; and
DOES I - XX, Inclusive,

24 Defendants.
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CASE NO.
COMPLAINT

DATE:
TIME:
DEPT:

1 COMPLAINT

2 INTRODUCTION

3 1. This dispute arises in the Sacramento Metropolitan Area where the rental housing vacancy
4 rate is less than 3 percent, the average rent is \$770, and where nearly 35,000 families are on a waiting list
5 for rental subsidy vouchers. In such a tight rental market, many low-income families are not able to afford
6 a roof over their heads, unless they are amongst the lucky few who reside in subsidized housing.

7 2. Plaintiffs in this action are elderly and disabled residents of four federally subsidized housing
8 developments in the Sacramento area, the organized tenant associations of two of those developments,
9 and the California Coalition for Rural Housing, a nonprofit corporation whose mission is to build the
10 capacity of low-income residents to participate in and affect the outcome of changes that may occur in
11 their housing. Plaintiffs seek declaratory and injunctive relief to prevent the termination of federal rental
12 subsidy contracts ("project-based section 8 contracts") and prepayment of federally subsidized mortgages
13 in the four Sacramento area housing developments. Plaintiffs also seek declaratory and injunctive relief to
14 halt the sale of these four developments until such time as the property Owners ("the Owners") have
15 provided tenants and public entities with lawful notice of their intended actions, and comply with legal
16 obligations to afford a right of first refusal to qualified purchasers who are committed to maintaining the
17 affordability of the complexes.

18 3. The project-based Section 8 contracts in the four developments are scheduled to terminate
19 between May 31, 2001 and November 30, 2001, and the Owners have announced their intention not to
20 renew the contracts. Federal law does not provide for issuance of new project-based Section 8
21 contracts, so once the current contracts are terminated, the 168 rent-subsidized units will be permanently
22 lost from Sacramento's stock of affordable housing. Loss of the project-based contracts will cause
23 irreparable harm to current tenants, prospective applicants to the developments, and the surrounding
24 neighborhoods.

25 4. The federally subsidized mortgages which finance the four developments are not scheduled
26 to mature until the year 2013, at the earliest. However, the Owners have announced their intention to
27 prepay their mortgages by May 31, 2001, so as to remove the obligation to maintain the affordability of
28 the units. Because federal law does not provide for issuance of new subsidized mortgages to replace

1 those that are paid in full, once the mortgages are prepaid, the 351 units that are subsidized by those
2 mortgages will be permanently lost from Sacramento's stock of affordable housing. This 351 unit total
3 includes the same 168 units described in Paragraph 3, above, which are both rent-subsidized and
4 mortgage-subsidized. Loss of the subsidized mortgages will cause irreparable harm to current tenants,
5 prospective applicants to the developments, and the surrounding neighborhoods.

6 5. Upon prepayment of the mortgages and termination of the project-based section 8
7 contracts, the tenants who are then in residence at the four developments will be entitled to apply for
8 Section 8 vouchers which are called "enhanced vouchers." While these vouchers may help to alleviate
9 some of the immediate displacement of low-income tenants that would occur were they not provided, the
10 vouchers are not a true replacement for the subsidies that are being lost. For example, not all of the
11 current residents will qualify for enhanced vouchers, as some applicants will fail to meet the more stringent
12 eligibility requirements. For those residents who do receive vouchers there is a concern that landlords
13 will accept them for only one year, and will then raise rents to a level at which a voucher cannot be used.
14 Finally, the issuance of vouchers does nothing to replace the loss of the subsidized units from
15 Sacramento's already short supply of affordable housing.

16 6. In addition to declaring their intent to terminate their Section 8 contracts and prepay their
17 mortgages, the Owners of the four properties have taken steps towards selling those properties. To
18 facilitate that purchase, the Department of Housing and Urban Development (HUD) has entered into a
19 use agreement with the prospective purchaser which, among other things, would allow the purchaser and
20 any successors in interest to charge current tenants a basic rent that is up to 30 percent of 80 percent of
21 Area Median Income (AMI). This rent is several hundreds of dollars above the current rents and well
22 above market rate, and would render the units unaffordable to very low-income tenants.

23 7. The Owners' proposed termination of the project-based contracts and prepayment of their
24 mortgages is unlawful because the Owners have failed to provide notice of the contract terminations and
25 prepayments to tenants and public entities, as required by federal and state law. Additionally, the
26 Owners' proposed sale of their developments is unlawful because they have not afforded a right of first
27 refusal to qualified purchasers who are committed to maintaining the affordability of the developments,
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1 prior to negotiating a sale of the properties to a purchaser who has already negotiated a use agreement
2 which will permit it to set rents that are far above market rate.

3 8. HUD has acted unlawfully and facilitated the potential loss of the subsidized units referred to
4 herein by: 1) failing to enforce federal and state notice requirements; 2) failing to ensure that the Owners
5 do not interfere with the efforts of tenants to obtain rent subsidies; 3) approving the Owners' requests to
6 sell the properties under terms that will render the properties unaffordable to low-income persons; 4)
7 failing to affirmatively further fair housing; and 5) taking all the actions alleged herein without considering
8 their conformance with the national housing goals and policies.

9 9. The Plaintiffs ask this Court to issue a temporary restraining order, a declaration, and
10 preliminary and permanent injunctions enjoining the Owners from prepaying their mortgages; opting out of
11 their Section 8 contracts and selling the developments. Plaintiffs also ask this Court to issue a temporary
12 restraining order, a declaration, and preliminary and permanent injunctions enjoining HUD from failing to
13 enforce federal and state notice requirements and from acting in any way to further facilitate the unlawful
14 pre-payments, opt-outs and sale referred to herein.

15 JURISDICTION

16 10. This Court has jurisdiction pursuant to 28 U.S.C. §§1331(a) and 1343 because this action
17 arises under the Constitution and laws of the United States, and jurisdiction over state law claims pursuant
18 to 28 U.S.C. §1367.

19 11. Plaintiffs' cause of action for declaratory relief and further necessary or proper relief is
20 authorized by 28 U.S.C. §§2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

21 12. The action against federal defendants is authorized by 5 U.S.C. § 702.

22 PARTIES

23 13. Plaintiff Kenneth Arms Tenants Association (KATA) is an unincorporated association
24 formed for the purpose of preserving the Kenneth Arms Apartments for low-income residents of the
25 Sacramento Area. KATA was formed in 1996. All Kenneth Arms residents over the age of 18 are
26 members of KATA. Currently, approximately one third of the members are immigrants from Russia,
27 Armenia and the Ukraine, and speak little or no English.
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1 14. Plaintiff Manzanita Arms Tenants Association (MATA) is an unincorporated association
2 formed for the purpose of preserving the Manzanita Arms Apartments for low-income residents of the
3 Sacramento Area. MATA was formed in 1996. All Manzanita Arms residents over the age of 18 are
4 members of MATA. Currently, approximately two thirds of the members are of immigrants from Russia,
5 Armenia and the Ukraine, and speak little or no English.

6 15. Plaintiff Virginia Breimann is a disabled, low-income tenant who has resided at the Kenneth
7 Arms Apartments for 21 years. Ms. Breimann receives \$843 per month in Social Security benefits, of
8 which she pays \$179 in rent. Ms. Breimann's unit is subsidized by the building's federally subsidized
9 mortgage ("Section 236 mortgage") and by a project-based Section 8 contract.

10 16. Sherry Lautsbaugh is a low-income tenant who has resided at the Rancho Arms Apartments
11 since 1990. Ms. Lautsbaugh is legally blind and is therefore eligible for and receives disability benefits.
12 Ms. Lautsbaugh's sole sources of income are Supplemental Security Income and Social Security benefits,
13 totaling \$825 per month, of which she pays \$180 in rent. Ms. Lautsbaugh's unit is subsidized by the
14 development's Section 236 mortgage and by a project-based Section 8 contract.

15 17. Plaintiff Kathy Pounds is a low-income tenant who has resided at the Rancho Arms
16 Apartments since May 2000. Ms. Pounds is disabled by fibromyalgia and Chronic Fatigue Syndrome
17 and is therefore eligible for and receives Supplemental Security Income benefits in the amount of \$712 per
18 month, of which she pays \$328 in rent. Ms. Pounds' unit is subsidized by the building's Section 236
19 mortgage.

20 18. Plaintiff Rita Janssen is a disabled, elderly, low-income tenant who has resided at the San
21 Juan Apartments for 15 years. She resides in a unit which is subsidized by both the property's Section
22 236 mortgage and a project-based Section 8 contract. Ms. Janssen's sole sources of income are
23 Supplemental Security Income and Social Security benefits, of which she receives \$732 per month. Ms.
24 Janssen currently pays \$203 in rent per month.

25 19. Plaintiff California Coalition for Rural Housing Project (CCRHP) is a non-profit entity.
26 CCRHP's mission is to build the capacity of low-income residents, with a special focus on those residing
27 in housing receiving assistance from the U.S. Department of Housing and Urban Development (HUD), to
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1 participate in and/or affect the outcome of changes that may occur in their housing. CCRHP carries out
2 its mission in several ways including the following: educating low-income residents of HUD-financed
3 housing and other types of affordable housing regarding their rights as tenants and their right to participate
4 in the housing programs that benefit them, increasing resident participation in these programs through
5 resident organizing and the establishment of resident associations, and helping residents and resident
6 associations to form partnerships with housing agencies and community groups to promote resident
7 participation and to preserve development undergoing or at high-risk of the loss of HUD affordability
8 programs.

9
10 20. Defendant Kenneth Arms Limited Partnership is the owner of the Kenneth Arms
11 Apartments, a 97-unit rental housing development located at 5945 Kenneth Avenue in Carmichael,
12 California. The sole general partner of the Limited Partnership is the National Housing Partnership,
13 located at 2000 South Colorado Boulevard, Denver, Colorado.

14 21. Defendant Rancho Arms Limited Partnership is the owner of the Rancho Arms Apartments,
15 a 95-unit rental housing development located at 11020 Coloma Road in Rancho Cordova, California.
16 The sole general partner of the Limited Partnership is the National Housing Partnership, located at 2000
17 South Colorado Boulevard, Denver, Colorado.

18 22. Defendant San Juan Limited Partnership is the owner of the San Juan Apartments, a 70-unit
19 rental housing development located at 4440 San Juan Avenue in Fair Oaks, California. The sole general
20 partner of the San Juan Limited Partnership is the National Housing Partnership, located at 2000 South
21 Colorado Boulevard, Denver, Colorado.

22 23. Defendant Manzanita Arms Limited Partnership is the owner of the Manzanita Arms
23 Apartments, an 89-unit rental housing development located at 5701 Manzanita Avenue in Carmichael,
24 California. The sole general partner of the Limited Partnership is the National Housing Partnership,
25 located at 2000 South Colorado Boulevard, Denver, Colorado.

26 24. Defendant National Housing Partnership is the General Partner of the aforementioned
27 Limited Partnerships. The National Housing Partnership is located at 2000 South Colorado Boulevard,
28 Denver, Colorado.

25. Defendant Martinez is Secretary of the United States Department of Housing and Urban Development (HUD) and is sued in his official capacity. He is responsible for ensuring HUD's compliance with the laws of the United States.

26. Defendants Does I through XX, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend this Complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiffs' damages herein alleged were proximately caused by those Defendants.

FACTS

A. Background Allegations Regarding the Developments and Statutory Programs

27. Between 1972 and 1973, the four Owners and HUD entered into regulatory agreements governing their respective mortgages that were insured by HUD through the Section 236 program. A Section 236 mortgage requires that the rents be set at a rate that is below market.

28. The regulatory agreements that were executed between HUD and the Owners provided that the Owners could not convey, transfer or encumber the property without the prior written approval of the HUD Commissioner.

29. The Section 236 mortgages of the four properties are to mature at varying dates between 2013 and 2015.

30. Between 1975 and the present, the Owners and HUD have executed numerous successive Housing Assistance Payment (HAP) Contracts wherein HUD has agreed to provide “project-based” Section 8 assistance payments to the Owners to cover the difference between the rent contributed by the tenant and the maximum approved contract rent for the unit.¹ 24 C.F.R. Part 880.

¹ “Project-based” Section 8 assistance, in which the subsidy is attached to a building, is distinguishable from “tenant-based” Section 8 assistance (or Section 8 “vouchers”) in which the subsidy moves with the tenant. Both forms of assistance are authorized under Section 8 of the United States Housing Act, 42 U.S.C. §1437f.

1 31. The tenants of the subsidized buildings are the third party beneficiaries of these HAP
2 contracts.

3 32. The project-based Section 8 assistance provides an additional subsidy for the units covered
4 by the contracts (Section 8 units). Specifically, the tenants residing in those units (Section 8 tenants) pay
5 30 percent of their adjusted gross income as their share of the rent and HUD pays the balance.

6 33. The Section 8 contracts executed between the Kenneth Arms Limited Partnership and HUD
7 subsidize a total of 71 of the 97 rental units at Kenneth Arms.

8 34. The Section 8 contracts between the Rancho Arms Limited Partnership and HUD subsidize
9 a total of 44 of the 95 rental units at Rancho Arms.

10 35. The Section 8 contracts between the San Juan Limited Partnership and HUD subsidize all
11 70 of the rental units at the San Juan Apartments.

12 36. The Section 8 contracts between the Manzanita Arms Limited Partnership and HUD
13 subsidize a total of 47 of the 89 rental units at Manzanita Arms.

14 37. The individual Plaintiffs and the other tenants residing in Section 8 units are the third party
15 beneficiaries of the HAP contracts between the Owners and HUD.

16 38. All four properties are managed by the NHP Management Company, which is an indirectly
17 owned subsidiary of Apartment Investment and Management Company (AIMCO), an affiliate of the
18 general partner of each of the four Partnerships. All four properties have management agreements with
19 NHP Management Company to provide services related to leasing vacant units, billing and collection of
20 rents and preparing financial data on the day-to-day site operations.
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1 **B. The Owners' Notices of Intent to Terminate their Section 8 contracts**

2 39. Pursuant to the United States Housing Act, an owner is required to provide written notice to
3 tenants at least one year prior to terminating or "opting-out" of a Section 8 contracts. 42 U.S.C. §
4 1437f(c)(8)(A).

5 40. Additionally, notices of an owner's intent to terminate a Section 8 contract must comply with
6 any additional requirements established by the HUD Secretary. 42 U.S.C. §1437f(c)(8)(C).

7 41. The Secretary has established a number of "additional requirements." First, a notice of
8 intent to opt-out be on the Owner's or duly authorized representative's letterhead and signed, and must
9 be served by delivery directly to each unit in the project or mailed to each tenant. *Section 8 Renewal*
10 *Policy: Guidance for the Renewal of Project-Based Section 8 Contracts*, HUD Office of Multifamily
11 Housing, Section 11-4-B. Second, the Renewal Policy notes that "if the population of the property
12 speaks a language other than English, Owners are strongly encouraged to provide the notification letters in
13 the appropriate language(s)." *Id.* Third, a project owner's issuing notices of intent to terminate Section 8
14 contracts "must also comply with any State or local notification requirements." HUD Directive 99-36,
15 XVI-G.

16 42. Under California state law, an owner of an assisted housing development who seeks to
17 terminate a project-based Section 8 contract must provide at least nine months notice of the proposed
18 change to each affected tenant household residing in the assisted housing development at the time the
19 notice was provided. Govt. Code § 65863.10(b) (amended 2001).

20 43. Specifically, the notice to tenants of an owner's intent to terminate a federal subsidy must
21 contain all of the following information:

- 22
- 23 a. the anticipated date of the prepayment of the federal program, and the identity of the
24 federal program;
 - 25 b. the current rent and anticipated new rent for the unit on the date of the prepayment or
26 termination of the federal program;
 - 27 c. a statement that a copy of the notice will be sent to the city or county, or city and
28 county, where the assisted development is located, to the appropriate local public

housing authority, if any, and to the California Department of Housing and Community Redevelopment;

- d. a statement of the possibility that the housing may remain in the federal program after the proposed date of termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's offer;
- e. a statement of the owner's intention to participate in any current replacement federal program after the proposed date of subsidy termination made available to the affected tenants;
- f. the name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

Cal. Govt. Code § 65863.10(b)(1)-(6) (amended 2001).

44. An owner's notice to tenants must also be filed at the same time with a number of public entities, including the chairperson of the Board of Supervisors of the County and the Department of Housing and Community Development. Cal. Govt. Code § 65863.10(c)(1) (amended 2001).

45. Between October 23 and October 30, 2000, the Owners sent notices to the residents of the four properties advising them that they did not intend to renew their Section 8 contracts. *See* Kenneth Arms Limited Partnership's Notice to Tenants of Intent to Opt Out of Section 8 contract, dated October 30, 2000, attached as Exhibit "A"; San Juan Limited Partnership's Notice to Tenants of Intent to Opt Out of Section 8 contract, dated October 23, 2000, attached as Exhibit "B"; Rancho Arms Limited Partnership's Notice to Tenants of Intent to Opt Out of Section 8 contract, dated October 30, 2000, attached as Exhibit "C"; Manzanita Arms Limited Partnership's Notice to Tenants of Intent to Opt Out of Section 8 contract, dated October 23, 2000, attached as Exhibit "D".

1 46. These notices:

- 2 a. were not on the Owners' or duly authorize representatives' letterhead;
- 3
- 4 b. were not signed, except for the notice to the residents of Manzanita Arms, which was
- 5 signed by someone named "Tammy";
- 6
- 7 c. were not translated into any language other than English;
- 8
- 9 d. did not include: 1) the current rent and anticipated new rent for the unit on the date of
- 10 the termination of the federal program; 2) a statement that a copy of the notice will be
- 11 sent to the city or county, or city and county, where the assisted development is
- 12 located, to the appropriate local public housing authority, if any, and to the Department
- 13 of Housing and Community Redevelopment; 3) the name and telephone number of the
- 14 county, the appropriate local public housing authority, the Department of Housing and
- 15 Community Development, and the legal services organization that can be contacted to
- 16 request additional written information about an owner's responsibilities and the rights
- 17 and options of an affected tenant;
- 18
- 19 e. were not filed simultaneously with the California Department of Housing and
- 20 Community Development.

21 47. The Owners' violation of state notice requirements also constitutes a violation of 42 U.S.C.

22 § 1437f(c)(8)(c), insofar as compliance with state and local notice requirements is "an additional

23 requirement established by the Secretary."

24

25 **C. The Notices of Owners' Intent to Prepay Subsidized Mortgages**

26 48. In California, an owner of an assisted housing development who seeks to prepay a federally

27 insured or federally held mortgage must give nine months notice of such intent. Cal. Govt. Code §

28 65863.10(b) (amended 2001). That owner must also comply with the notice requirements imposed by

state law described *supra* in Paragraphs 43 and 44. Cal. Govt. Code § 65863.10.

On or around November 30, 2000, AIMCO/NHP, acting as the management company on behalf of Owners, sent notices to the residents of the four properties advising them that the project owners intended to prepay their HUD mortgages and sell the properties at some date between April 29, 2001 and August 27, 2001. *See* Kenneth Arms Limited Partnership's Notice to Tenants of Intent to Prepay

1 Mortgage, dated November 30, 2000, attached as Exhibit "E"; San Juan Limited Partnership's Notice to
2 Tenants of Intent to Prepay Mortgage, dated November 30, 2000, attached as Exhibit "F"; Rancho Arms
3 Limited Partnership's Notice to Tenants of Intent to Prepay Mortgage, dated November 30, 2000,
4 attached as Exhibit "G"; and Manzanita Arms Limited Partnership's Notice to Tenants of Intent to
5 Prepay Mortgage, dated November 30, 2000, attached as Exhibit "H".

6 50. These notices:

- 7
- 8 a. failed to give nine month's notice of the Owners' intent to prepay the mortgages, as
9 required by Cal. Govt. Code § 65863.10(b);
- 10 b. failed to: 1) advise tenants of the current rent and anticipated rent for their units on the
11 date of prepayment; 2) notify tenants that a copy of the notice would be sent to the
12 local public housing authority and to the Department of Housing and Community
13 Development; 3) state the possibility that the housing may remain in the federal
14 program after the proposed date of prepayment if the owner elects to do so under the
15 terms of the federal government's offer; 4) provide tenants with the name and
16 telephone number of the county, the housing authority, the Department of Housing and
17 Community Development, and the legal services organization that can be contacted to
18 request additional information about an owner's responsibilities and the rights and
19 options of affected tenants;
- 20 c. were not filed simultaneously with the Department of Housing and Community
21 Development.

22 **D. The Owners' Notices to Public Entities**

23 51. In addition to notifying residents of the affected properties of their intent to opt out of Section
24 8 contracts or prepay subsidized mortgages, in California the Owners are required to send written notice
25 to the mayor of the city in which the assisted housing development is located, or if located in an
26 unincorporated area, with the chairperson of the board of supervisors of the county, with the appropriate
27 local public housing authority, if any, and with the Department of Housing and Community Development.
28 Cal. Govt. Code § 65863.10(c)(1) (amended 2001).

52. The notice to public entities is required to contain the following additional information:

- a. the number of affected tenants in the project;

- b. the number of units that are government assisted and the type of assistance;
- c. the number of the units that are not government assisted;
- d. the number of bedrooms in each unit that is government assisted;
- e. the ages and income of the affected tenants;
- f. a brief description of the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained;
- g. the reason the owner seeks to terminate the subsidy contract or prepay the mortgage; and
- h. any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice.

Cal. Govt. Code § 65863.10(c)(2) (amended 2001).

53. The required notice to public entities is critical because state law requires that a jurisdiction include in the housing element of its General Plan an analysis of existing housing developments that are eligible to change from very low-income housing units during the next ten years due to termination of subsidy contracts, mortgage prepayment or expiration of restrictions on units. Cal. Govt. Code § 65583(a)(8). Therefore, unless a jurisdiction receives notice of the owner's intent to opt out of a Section 8 contract or prepay a subsidized mortgage, that jurisdiction will be unable to comply with its obligation to develop an accurate housing element which sets forth the housing needs of its residents by income category and serves as the basis for adoption of plans and policies to meet those needs.

54. On information and belief, the Owners have not sent to the chairperson of the board of supervisors of Sacramento county, the Sacramento Housing and Redevelopment Agency, or the Department of Housing and Community Development any notices containing the required substantive information listed *supra* in Paragraph 52.

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1 **E. The Tenants' Application for Enhanced Vouchers**

2 55. On information and belief, numerous tenants at the four properties have already been invited
3 to apply for enhanced vouchers.

4 56. The Owners' failure to provide tenants with lawful notice of their intent to terminate their
5 federal subsidies has caused tenants great confusion. In particular, the Owners' failure to include in those
6 notices the name and phone number of the local legal services organization, the local housing authority,
7 and the California Department of Housing and Community Development has inhibited tenants' ability to
8 obtain necessary information concerning the replacement vouchers. Likewise, the Owners' failure to
9 translate those notices into a language spoken by a large percentage of the tenants has inhibited the non-
10 English speaking tenants' ability to apply for replacement vouchers. Therefore, these defects have
11 interfered with Plaintiffs' and other tenants' efforts to obtain rent subsidies, in violation of Section 202 of
12 the Housing and Community Development Amendments of 1978. 12 U.S.C. Sec. 1715z-1(b)(2).
13

14 57. On information and belief, HUD has taken no steps to enforce the notice requirements and
15 therefore has not assured that the Owners have not interfered with tenants' efforts to obtain rent subsidies.

16 **F. The Owners' Notices Providing for a Right of First Refusal**

17 58. On information and belief, the property Owners have taken steps to sell the four properties
18 to an entity called "U.S. Housing Partners" which is also known as "Bridge Partners." On information
19 and belief, that sale is scheduled to take place on or around May 31, 2001.

20 59. Under California law, the Owners are not permitted to sell or otherwise dispose of their
21 developments in a manner which would result in either (1) discontinuance of their use as assisted housing
22 developments, or (2) the termination of any low-income use restrictions which apply to the developments,
23 unless the owners *first* provide an opportunity to purchase the developments to the tenant association of
24 the developments; local nonprofit organizations and public entities; regional or national nonprofit
25 organizations and regional or national public entities, and profit-motivated organizations and individuals.
26 Cal. Govt. Code § 65863.11(b)-(c) (amended 2001.)
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1 60. Specifically, the Owners are required to give notice of their bona fide intention to sell or
2 otherwise dispose of the properties to the aforementioned entities at least nine months prior to the
3 anticipated date of termination of the federal subsidies. Id. at § 65863.11(f). The bona fide notice to sell
4 is required to contain such information as: the sales price; the terms of assumable financing; the terms of
5 the subsidy contract; and proposed improvements to the property to be made by the owner in connection
6 with the sale; and a statement that each of the type of notified entities listed had the right to purchase the
7 development in the order and according to the priorities established in Cal. Govt Code § 65863.11(h).
8 Id. at § 65683.11(g)(1)-(5).
9

10 61. On information and belief, the owners have not given the statutorily required notice of their
11 bona fide intention to sell or otherwise dispose of the properties to the tenants associations of the four
12 properties, at least nine months prior to the anticipated date of termination of the federal subsidies, in
13 violation of Cal. Govt. Code § 65863.11(f).

14 62. On information and belief, the owners have not given the statutorily required notice of their
15 bona fide intention to sell or otherwise dispose of the properties to local nonprofit organizations and public
16 entities, at least nine months prior to the anticipated date of termination of the federal subsidies, in violation
17 of Cal. Govt. Code § 65863.11(f).

18 63. On information and belief, the owners have not given the statutorily required notice of their
19 bona fide intention to sell or otherwise dispose of the properties to regional or national nonprofit
20 organizations and regional or national public entities, at least nine months prior to the anticipated date of
21 termination of the federal subsidies, in violation of Cal. Govt. Code § 65863.11(f).

22 64. On information and belief, the owners have not given the statutorily required notice of their
23 bona fide intention to sell or otherwise dispose of the properties to profit-motivated organizations and
24 individuals, at least nine months prior to the anticipated date of termination of the federal subsidies, in
25 violation of Cal. Govt. Code § 65863.11(f).

26 **G. HUD's Approval of the Sale of the Four Properties**

27 65. In an effort to facilitate the Owners' sale of their properties to U.S. Housing Partners, in
28 September 2000, HUD entered into 30-year use agreements with U.S. Housing Partners. *See e.g.* Use

1 Agreement between HUD and U.S. Partners governing the use of the Rancho Arms Apartments,
2 attached as Exhibit "T". These agreements govern U.S. Housing Partners' use of the four properties.

3 66. On information and belief, the terms of the use agreements governing the Kenneth Arms
4 Apartments, the San Juan Apartments and the Manzanita Arms Apartments are identical to those
5 contained in Exhibit "T".

6 67. One of the terms of those use agreements is that the rents charged to current tenants will not
7 exceed 30 percent of 80 percent of the Adjusted Median Income for the unit type.

8 68. Rents set at 30 percent of 80 percent of Area Median Income will amount to approximately
9 \$900 for a one bedroom apartment, \$1,126 for a two bedroom apartment, and \$1,306 for a three
10 bedroom apartment, based on an average of two persons per bedroom. By contrast, market rents for
11 comparable units are \$450 - \$650 for a one bedroom apartment, \$500 - \$750 for a two bedroom
12 apartment, and \$700 - 950 for a three bedroom apartment.

13 69. According to the use agreements, new tenants will be charged no more than 80 percent of
14 AMI, or the comparable market rent as determined by the landlord, whichever is less.

15 70. HUD has committed to executing new short term Section 8 contracts that will subsidize a
16 portion of the units at each of the four developments through October 2001. *See* the Owners' Notices of
17 Intent to Terminate Section 8 Contracts, attached *supra* as Exhibits "A", "B", "C", and "D".

18 71. Because the sale of the properties is scheduled to take place in or around May 2001,
19 Defendants HUD and Martinez will be paying the benefits of the short term Section 8 contracts to the new
20 owner after the sale has taken place.

21 72. Section 203 of the Housing and Community Development Amendments of 1978, as
22 amended by Section 181(g) of the Housing and Community Development Act of 1987 provides that the
23 Secretary of HUD may not approve the sale of any subsidized project if the transfer of physical assets
24 involves *the provision of any additional subsidy funds by the Secretary* unless such sale is made as a
25 part of a transaction that will ensure that the project will continue to operate, at least until the maturity date
26 of the loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to
27
28

1 existing and future tenants as the terms required by the program under which the loan or mortgage was
2 made or insured prior to the proposed sale of the project. 12 U.S.C. § 1701z-11(k)(2) (emphasis
3 added).

4
5 73. Because the proposed sale will involve the provision of additional project-based Section 8
6 subsidies, HUD is prohibited from approving the sale unless the terms of the transaction will ensure that
7 the project continues to operate on terms at least as advantageous as those required by the current
8 subsidized loan program.

9
10 74. In executing a use agreement which permits rents to be set at or above market rate, HUD
11 has failed to ensure that the project will continue to operate on terms that are at least as advantageous as
12 those under the Section 236 program, in violation of the Housing and Community Development Act of
13 1987.

14
15 75. Established HUD procedures require that owners wishing to sell a HUD insured project
16 must complete a Transfer of Physical Assets (TPA) application. HUD is then required to engage in careful
17 consideration of such an application, including a review of transferee's suitability to participate in HUD
18 programs, an evaluation of the current and proposed management, a physical inspection and
19 determination of needs for repair, a check on the availability of repair/replacement funds, and a
20 determination whether the proposed action complies with HUD Legislative, Regulatory and
21 Administrative requirements. HUD Directive No. 4350.1, Chapter 13; 24 C.F.R. 200.217. On
22 information and belief, no such review was conducted by HUD staff.

23
24 76. On information and belief, HUD has approved the sale of the properties without first
25 considering the effect of such sale on the racial and socioeconomic composition of the surrounding area.

26
27 77. On information and belief, HUD has approved the Owners' sale of their properties and
28 entered into long term use agreements with the buyers without first considering the effect of these actions
on the statutory goal of provision of "a decent home and a suitable living environment for every American
Family" under the National Housing Act.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION (AGAINST THE OWNERS)**

3 **Violation of Federal Notice Requirements Governing Termination of Section 8**
4 **Contracts**
5 **(42 U.S.C. § 1437f)**

6 78. Plaintiffs incorporate each and every allegation in the preceding paragraphs number 1
7 through 77 as if fully set forth herein.

8 79. The Owners have violated federal law governing notice requirements for property owners
9 who wish to opt out of their Section 8 contracts by failing to comply with additional notice requirements
10 established by the Secretary (i.e. complying with state and local law, putting notices on letterhead; signing
11 notices signed, and translating notices for non-English speaking tenants), in violation of 42 U.S.C.
12 §1437f(c)(8)(C).

13 **SECOND CAUSE OF ACTION (AGAINST THE OWNERS)**

14 **Violation of Section 202 of the Housing and Community**
15 **Development Amendments of 1978, as amended**
16 **(12 U.S.C. § 1715z-1b)**

17 80. Plaintiffs incorporate each and every allegation in the preceding paragraphs numbered 1
18 through 79 as if fully set forth herein.

19 81. By giving tenants legally defective notice of their intents to prepay their subsidized mortgages
20 and opt out of their Section 8 contracts, the Owners have interfered with Plaintiffs' and other tenants'
21 efforts to obtain rent subsidies, in violation of the Section 202 of the Housing and Community
22 Development Amendments of 1978, as amended. 12 U.S.C. § 1715z-1b(b)(2).

23 **THIRD CAUSE OF ACTION (AGAINST THE OWNERS)**

24 **Violation of California Opt-Out and Prepayment Notice Requirements**
25 **(Cal. Govt. Code § 65863.10)**

26 82. Plaintiffs incorporate each and every allegation in the preceding paragraphs number 1
27 through 81 as if fully set forth herein.

28 83. Through numerous acts and omissions, the Owners have violated the law of the state of
California, California Government Code § 65863.10, governing notice requirements for property owners

1 who wish to opt out of their Section 8 contracts or prepay their subsidized mortgages, including the
2 following:

3 a. sending written notices of intent to prepay subsidized mortgages which gave tenants
4 less than nine month's notice of the owner's intent to prepay;

5 b. sending notices of intent to opt out and prepay which did not state the rent at the time
6 of the notice or what the rent would be after the opt out / prepayment process was completed;

7 c. sending notices of intent to opt out and prepay which did not advise tenants that those
8 notices would also be sent to the California State Department of Housing and Community Development,
9 the Sacramento County Board of Supervisors or the Sacramento Housing and Redevelopment Agency;

10 d. sending notices of intent to opt out and prepay which did not state the telephone
11 numbers of the local legal services office, the California State Department of Housing and Community
12 Development, the Sacramento County Board of Supervisors or the Sacramento Housing and
13 Redevelopment Agency.

14 e. sending notices of intent to prepay which did not state the possibility that the housing
15 may remain in the federal program after the proposed date of prepayment if the owner elects to do so
16 under the terms of the federal government's offer.

17 f. failing to send copies of the notices to tenants to public entities;

18 g. failing to send independent notices containing the required additional information to
19 public entities.
20

21 84. Plaintiffs are "affected tenants" and "aggrieved parties" within the meaning of 65853.10 and
22 are thus entitled to injunctive relief thereunder.

23 **FOURTH CAUSE OF ACTION (AGAINST THE OWNERS)**
24 **Violation of California Right of First Refusal Requirements**
25 **(Cal. Govt. Code § 65863.11)**

26 85. Plaintiffs incorporate each and every allegation in the preceding paragraphs number 1
27 through 84 as if fully set forth herein.

28 86. The Owners have engaged in numerous acts and omissions which violate the law of the state
of California governing the right of first refusal which must be afforded to "qualified" purchasers by a

1 property owner who intends to sell or otherwise dispose of a subsidized housing development in a manner
2 which would result in either (1) discontinuance of its use as an assisted housing development, or (2) the
3 termination of any low-income use restrictions which apply to the development, including the following:

4 a. failing to give nine month's notice of their bona fide intention to sell or otherwise
5 dispose of the properties to the tenants associations of the developments, local nonprofit organizations and
6 public entities, or regional or national nonprofit organizations and public agencies, in violation of Cal.
7 Govt. Code § 65683.11(f) (amended 2001).

8 **FIFTH CAUSE OF ACTION (AGAINST THE OWNERS)**
9 **Unlawful Business Practice**
10 **(California Business and Professions Code Sec. 17200 *et seq.*)**

11 87. Plaintiff incorporates each and every allegation in the preceding paragraphs numbered 1
12 through 86 as if fully set forth herein.

13 88. Defendant Owners engaged in numerous acts and omissions in violation of the United States
14 Housing Act (failing to provide adequate notice of their intent to opt out of Section 8 contracts); Section
15 202 of the Housing and Community Development Amendments of 1978, as amended (interfering with
16 tenants' efforts to obtain rent subsidies); California Government Code Section 65863.10 (issuing
17 inadequate notice of intent to terminate Section 8 rental assistance and prepay subsidized mortgages); and
18 California Government Code Section 65863.11 (failing to provide a right of first refusal to qualified
19 purchasers) and other relevant laws have caused and will continue to cause harm to Plaintiffs and the
20 general public.

21 89. The harm caused by Defendants' business practices described above outweighs the utility of
22 Defendants' business conduct, and, consequently, those actions constitute unfair business acts or practices
23 with the meaning of Business and Professions Code Section 17200 *et. seq.*

24 90. Defendants' business practices described above present a continuing threat to members of
25 the public. Plaintiffs are informed and believe and thereon allege that Defendants will continue these
26 unlawful practices by completing the opt out and prepayment process and selling the developments to a
27 purchaser who is not committed to maintaining the affordability of the units. Such practices will cause
28 great and irreparable injury to the general public in that it will suffer injury similar to that of Plaintiffs.

1 91. Injunctive relief is proper because Plaintiffs and the general public have no adequate remedy
2 at law. Damages alone cannot compel Defendants to cease to engage in the unfair business practices
3 described in this action. Plaintiffs allege that the benefit to the public good, as well as to Plaintiffs, far
4 outweighs the inconvenience to the Defendants of ceasing to engage in the unfair and unlawful practices.

5 92. As a direct and proximate result of the practices described above, Plaintiffs have suffered
6 restitution and actual damages.

7 **SIXTH CAUSE OF ACTION (AGAINST DEFENDANTS MARTINEZ AND HUD)**
8 **Violation of the Administrative Procedure Act**
9 **28 U.S.C. § 701 et seq.**

10 93. Plaintiffs incorporate each and every allegation in the preceding paragraphs number 1
11 through 92 as if fully set forth herein.

12 94. Defendants Martinez and HUD have engaged in acts or omissions which were arbitrary,
13 capricious, an abuse of discretion, or otherwise not in accordance with law, including the following:

14 a. failing to enforce federal and state notice requirements governing prepayment of
15 subsidized mortgages and opt-outs of Section 8 contracts;

16 b. failing to assure that the Owners do not interfere with the efforts of tenants to obtain
17 rent subsidies or other public assistance, in violation of the Section 202 of the Housing and Community
18 Development Amendments of 1978. 12 U.S.C. § 1715z-1b(b)(2);

19 c. approving the Owners' requests to sell their properties without ensuring that the
20 projects will continue to operate, at least until the maturity date of the loan or mortgage, in a manner that
21 will provide rental housing on terms at least as advantageous to existing and future tenants as the terms
22 required by the program under which the loan or mortgage was made or insured prior to the proposed
23 sale of the project, in violation of 12 U.S.C. § 1701z-11(k)(2)

24 d. approving the Owners' requests to sell the properties without requiring submission of a
25 transfer of physical assets application, and without completing the detailed evaluation of the proposal
26 required by HUD directives;

27 e. approving the Owners' requests to sell the properties without complying with the
28 procedural requirements of a transfer of physical assets;

1 f. entering into a use agreement with the prospective owner which permits the Owners to
2 charge current tenants up to 30 percent of 80 percent Area Median Income, and charge new tenants
3 market rate;

4 g. taking the actions set forth in subparagraphs a through f above without
5 first considering the racial and socioeconomic effects of these actions, in violation of the Defendants'
6 affirmative duties to further fair housing pursuant to 42 U.S.C. § 3608(e)(5); and

7 h. taking the actions set forth in subparagraphs a through f above without first considering
8 their conformance with the national housing goals and policies.

9 **SEVENTH CAUSE OF ACTION (AGAINST ALL DEFENDANTS)**

10 **Declaratory Judgment Act**

11 **(28 U.S.C. §§ 2201-2202)**

12 95. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs
13 numbered 1 through 94 as if fully set forth herein.

14 96. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs contend that
15 Defendant Owners are acting in violation of federal and state law by proceeding to opt-out of the project-
16 based Section 8 contracts and prepay their notices upon improper, monolingual notices, by interfering
17 with Tenants access to replacement rent subsidies, and by proceeding to sell their properties without first
18 affording a right of first refusal to qualified purchasers. Likewise, Plaintiffs contend that Defendants HUD
19 and Martinez are acting in violation of federal and state law by failing to enforce applicable notice
20 requirements, by approving the sale without engaging in a TPA process and without ensuring the ongoing
21 affordability of the complexes, and by taking these actions without first considering the racial and
22 socioeconomic effect of these actions in violation of the Fair Housing Act. Defendants contend in all
23 respects to the contrary.

24 97. Plaintiffs have no adequate remedy at law for Defendants' unlawful acts and will suffer
25 irreparable harm if injunctive and declaratory relief is not granted.

26 98. Plaintiffs seek injunctive and declaratory relief as set forth in the prayer below.

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3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs pray that this Court:

5 1. Enter a declaratory judgment that:

- 6 a. the actions and omissions of Defendants HUD and Martinez as set forth in the Sixth
7 Cause of Action violate the Administrative Procedure Act, 28 U.S.C. § 701 et seq.;
- 8 b. the actions and omissions of the Owners as set forth in the First through Fifth Causes
9 of Action violate the United States Housing Act; Section 202 of the Housing and
10 Community Development Amendment of 1978, as amended; California Government
11 Code Section 65863.10; California Government Code 65863.11; and California
12 Business and Professions Code §§ 17200, *et seq.*;

13 2. Enter a temporary restraining order and preliminary and permanent injunction:

- 14 a. enjoining the Owners from prepaying their subsidized mortgages and opting out of their
15 Section 8 contracts and selling their developments until such time as they have
16 provided tenants with lawful and adequate notice of those actions;
- 17 b. enjoining the Owners from prepaying their subsidized mortgages and opting out of their
18 Section 8 contracts and selling their developments until such time as they have
19 provided a right of first refusal to entities who are required to receive such notice under
20 state law;
- 21 c. enjoining HUD and Martinez from accepting the Owners' requests to prepay their
22 subsidized mortgages and opt out of their Section 8 contracts until such time as HUD
23 has enforced the applicable federal and state notice requirements; and
- 24 d. enjoining HUD and Martinez from approving the sale of the properties until such time
25 as they have engaged in a formal TPA process, have considered the racial and
26 socioeconomic effect of the sale, and ensured that the projects will continue to
27 operate, at least until the maturity date of the loan or mortgage, in a manner that will
28

1 provide rental housing on terms at least as advantageous to existing and future tenants
2 as the terms required by the program under which the loan or mortgage was made or
3 insured prior to the proposed sale of the project;

- 4 3. Award Plaintiffs compensatory damages;
5 4. Award Plaintiffs their costs incurred herein; and
6 5. Grant Plaintiffs such other and further relief as the Court deems just and proper.

7 Dated: April 30, 2001

8 LEGAL SERVICES OF NORTHERN CALIFORNIA

9
10
11 By _____

Anne Pearson
Attorneys for Plaintiffs