

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF RHODE ISLAND**

PEOPLE TO END HOMELESSNESS, INC.	)	
and DEVELCO TENANTS ASSOCIATION	)	
	)	
Plaintiffs	)	
	)	
V.	)	C.A. No. 01-0269T
	)	
MEL MARTINEZ, in his official capacity as	)	
Secretary of the United States Department of	)	
Housing and Urban Development; the UNITED	)	
STATES DEPARTMENT OF HOUSING AND	)	
URBAN DEVELOPMENT; DEVELCO	)	
SINGLES APARTMENTS ASSOCIATES;	)	
DEVELCO MODERN APARTMENTS	)	
ASSOCIATES; DEVELCO APARTMENTS,	)	
INC.; DEVELCO FAMILY APARTMENTS	)	
ASSOCIATES; HEDCO LTD; and the	)	
WOONSOCKET HOUSING AUTHORITY	)	
	)	
Defendants	)	

**AMENDED COMPLAINT**

**INTRODUCTION**

1. Plaintiffs challenge the unlawful termination of seven project based Section 8 contracts covering 171 low income apartments in Woonsocket, Rhode Island, and the planned issuance of tenant-based Section 8 vouchers to residents of those apartments. The contracts are due to expire on May 31, 2001, and vouchers will be issued to tenants deemed eligible to receive them effective June 1, 2001. The residents only learned of these two events after April 16, 2001 when they received a notice from the Woonsocket Housing Authority (“WHA”). Under federal law and the Section 8 contracts presently in effect the residents were entitled to a one year notice, from the Owner stating that the Section 8 contracts would be terminated. Under state law, the residents were entitled to receive a two year notice from the Owner of the Section 8 contract termination. However, in this instance the Owner **never** sent a notice to the tenants stating that the Section 8 contracts were going to be terminated. The six weeks notice provided by WHA to the residents does not come close to satisfying

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2 the requirements of federal and state law. Neither did the Owner or WHA inform the tenants of their  
3 right to apply for various forms of “tenant protection assistance” that are designed to cushion the effects  
4 of a Section 8 contract termination. Moreover, the conversion of 171 low income apartments from  
5 project based Section 8 assistance to tenant based assistance as is now planned, will immediately  
6 reduce the supply of subsidized low income housing units in Woonsocket at a time when rents and utility  
7 costs have been skyrocketing.

8           2. Plaintiff People to End Homelessness, Inc., is a nonprofit corporation whose mission  
9 is to preserve and expand the supply of low income housing and build the capacity of low-income  
10 residents to participate in and affect the outcome of changes that may occur in their housing. Plaintiff  
11 Develco Tenants Association (DTA) is an unincorporated association of residents of the four Develco  
12 owned properties formed for the purpose of preserving these properties as project based subsidized  
13 housing for low-income households. Plaintiffs seek declaratory and injunctive relief to prevent the  
14 termination of federal rental subsidy contracts (“project-based section 8 contracts”) covering the four  
15 developments and the issuance of tenant-based Section 8 vouchers to the residents of those  
16 developments.

17           3. The four subsidized housing developments affected by the illegal Section 8 contract  
18 terminations are each owned by a separate entity: Develco Singles Apartments Associates, Develco  
19 Modern Apartments Associates, Develco Apartments, Inc., and Develco Family Apartments  
20 Associates (collectively, the “Develco entities.”) Defendant HEDCO, Ltd. is the sole general partner  
21 of the Develco entities, and serves as the property manager for the four developments. Hereafter, the  
22 Develco Entities and HEDCO are referred to collectively as the “Owners.”

23           4. The project-based Section 8 contracts in the four developments are scheduled to  
24 terminate on May 31, 2001 and the Owners have announced their intention not to renew the contracts.  
25 Federal law does not provide for issuance of new project-based Section 8 contracts, so once the  
26 current contracts are terminated, the 171 rent-subsidized units will be permanently lost from  
27 Woonsocket’s stock of affordable housing. Loss of the project-based contracts will cause irreparable  
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1  
2 harm to plaintiffs and other current tenants, prospective applicants to the developments, and the  
3 surrounding neighborhoods.

4           5.     Upon termination of the project-based section 8 contracts, the tenants who are then  
5 in residence at the four developments will be entitled to apply for tenant-based Section 8 vouchers  
6 which are called “enhanced vouchers.” While these vouchers may help to alleviate some of the  
7 immediate displacement of low-income tenants that would occur were they not provided, the vouchers  
8 are not a true replacement for the subsidies that are being lost. For example, not all of the current  
9 residents will qualify for enhanced vouchers, as some applicants may fail to meet the more stringent  
10 eligibility requirements. For those residents who do receive vouchers there is a concern that landlords  
11 will accept them for only one year, and will then raise rents to a level where the rents are no longer  
12 affordable to low income tenants or to a level at which a voucher cannot be used. Finally, the issuance  
13 of vouchers does nothing to replace the loss of the subsidized units from Woonsocket’s already short  
14 supply of affordable housing.

15           6.     The Owners’ proposed termination of the project-based contracts is unlawful  
16 because the Owners have failed to provide notice of the contract terminations to tenants and public  
17 entities, as required by federal and state law.

18           7.     HUD has acted unlawfully and facilitated the potential loss of the subsidized units  
19 referred to herein by: 1) permitting the Owner to rely on a notice of intent to renew its Section 8  
20 contracts dated May 1, 1999 to satisfy federal and state notice requirements for a Section 8 opt out; 2)  
21 failing to ensure that the Owners do not interfere with the efforts of tenants to obtain rent subsidies; 3)  
22 failing to affirmatively further fair housing; and 4) taking all the actions alleged herein without considering  
23 their conformance with national housing goals and policies.

24           8.     Plaintiffs ask this Court to issue a temporary restraining order, a declaration, and  
25 preliminary and permanent injunctions enjoining the Owners from opting out of their Section 8 contracts;  
26 enjoining HUD from allowing the existing Section 8 contracts to expire on May 31, 2001 by extending  
27 the contracts for such time as necessary to allow the Owners to comply with federal and state notice  
28 requirements; and enjoining WHA from issuing tenant-based Section 8 vouchers to the residents of the

1  
2 developments. Plaintiffs also ask this Court to issue a temporary restraining order, a declaration, and  
3 preliminary and permanent injunctions enjoining HUD from accepting the Owners' opt out of the  
4 Section 8 contracts until such time as the Owner has complied with federal and state notice  
5 requirements and from acting in any way to further facilitate the unlawful opt-outs referred to herein.

## 6 **JURISDICTION**

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

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

12 11. The action against the federal defendants is authorized by 5 U.S.C. § 702, and as  
13 such, sovereign immunity against the federal defendants has been waived.

14 12. Venue is proper in the District of Rhode Island pursuant to 28 U.S.C. § 11391(b)  
15 as the Plaintiffs' claims arose in this district.

## 16 **PARTIES**

17 13. Plaintiff People to End Homelessness, Inc. (PEH) is a grassroots non-profit  
18 corporation whose members are low income individuals who have at some point in their lives have  
19 experienced homelessness or are currently homeless. A majority of PEH's formerly homeless members  
20 live in housing subsidized by the U.S. Department of Housing and Urban Development. PEH's mission  
21 is to protect and expand the supply of decent, safe and affordable housing for low and very low income  
22 Rhode Islanders. PEH carries out its mission in several ways including: providing transitional housing for  
23 homeless men and families, helping homeless persons and families find permanent housing, educating  
24 low-income residents of HUD-financed housing and other types of affordable housing regarding their  
25 rights as tenants and their right to participate in the housing programs that benefit them, increasing  
26 resident participation in these programs through resident organizing and the establishment of resident  
27 associations, and helping residents and resident associations to form partnerships with housing agencies  
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1  
2 and community groups to promote resident participation and to preserve development undergoing or at  
3 high-risk of the loss of HUD affordability programs.

4           14. Plaintiff Develco Tenants Association (DTA) is an unincorporated association  
5 formed for the purpose of preserving the four Develco owned properties for low-income residents of  
6 the Woonsocket area. DTA was formed in 2001. All of DTA members live in the properties owned  
7 by the Develco Entities. A sizable number of DTA's members speak little or no English.

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

11           16. Defendant HUD is the agency of the federal government charged with regulating and  
12 administering federal housing programs, such as the Section 8 program.

13           17. Defendant Develco Singles Apartments Associates ("Develco Singles") is a Rhode  
14 Island limited partnership which owns 52 apartments in 8 separate buildings in Woonsocket. The  
15 buildings are located at 147 Rebekah Street, 371 Third Avenue, 381 Third Avenue, 383 Third Avenue,  
16 391 Third Avenue, 89 Chestnut Street, 219 River Avenue and 128 Willow Street.

17           18. Defendant Develco Modern Apartments Associates ("Develco Modern") is a  
18 Rhode Island limited partnership which owns 49 apartments in 9 separate buildings in Woonsocket. The  
19 buildings are located at 471 Pond Street, 485 Pond Street, 18 Laundry Street, 404 Second Avenue,  
20 440 Second Avenue, 464 Second Avenue, 392 Second Avenue, 20 Jeffers Street and 55 Paradis  
21 Avenue.

22           19. Defendant Develco Apartments, Inc. ("Develco Apartments") is a Rhode Island  
23 corporation which owns 23 apartments in 7 separate buildings in Woonsocket. The buildings are  
24 located at 203 River Street, 209 River Street, 103 Hope Street, 71 Center Street, 81 Center Street, 36  
25 Jeffers Street and 52 Jeffers Street.

26           20. Defendant Develco Family Apartments Associates ("Develco Family") is a Rhode  
27 Island limited partnership which owns a total of 47 apartments in 9 separate buildings in Woonsocket.  
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2 The buildings are located at 219 Manville Road, 38 Fountain Street, 351 East Scholl Street, 365 East  
3 School Street, 136 Fourth Avenue, 156 Fourth Avenue, 160 Fourth Avenue, 160 Fourth Avenue and  
4 75 Chestnut Street.

5 21. Defendant HEDCO, Ltd. ("HEDCO") is a Rhode Island Corporation and is the  
6 sole general partner of each of the separate Develco Entities. HEDCO serves as the property  
7 management agent for the developments owned by the Develco Entities.

8 22. At all relevant times the Develco Entities and HEDCO operated under color of state  
9 law.

10 23. Defendant Woonsocket Housing Authority is the public housing authority created  
11 under state law to operate and administer various low income housing programs in the City of  
12 Woonsocket. WHA is responsible for administering tenant based Section 8 assistance in the City of  
13 Woonsocket. At all relevant times defendant WHA has operated under color of state law.  
14

## 15 **FACTS**

### 16 **A. Background Allegations Regarding the Developments and Statutory Programs**

17 24. Sometime in the early 1970's, each of the Develco Entities received financing for the  
18 acquisition and rehabilitation of 171 apartments in Woonsocket.

19 25. Upon information and belief, beginning sometime in the mid-1970's, each of the  
20 Develco Entities obtained a Section 8 housing assistance payment contract ("HAP Contract") from  
21 HUD. Since at least the mid-1970's and up through the present, the Develco Entities and HUD have  
22 executed numerous successive HAP Contracts.

23 26. Upon information and belief, sometime in 1995, defendant HEDCO acquired the  
24 Develco Entities pursuant to an order of the Bankruptcy Court of the District of Rhode Island.

25 27. At the present time, there are seven separate HAPs covering the developments  
26 owned by the Develco Entities. HAP Contract number RI43-M000-060 covers Develco Singles.  
27 HAP Contract number RI43-M000-085 covers Develco Modern. HAP Contracts numbers RI43-  
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1  
2 L000-014 and RI43-M000-061 cover Develco Apartments. HAP Contracts numbers RI43-L000-  
3 028, RI43-L000-065 and RI43-M000-093 cover Develco Family.

4 28. The HAP Contracts executed between Develco Singles and HUD subsidize all 52  
5 apartments owned by Develco Singles.

6 29. The HAP Contracts executed between Develco Modern and HUD subsidize all 49  
7 apartments owned by Develco Modern.

8 30. The HAP Contracts executed between Develco Apartments and HUD subsidize all  
9 23 apartments owned by Develco Apartments.

10 31. The HAP Contracts executed between Develco Family and HUD subsidize all 47  
11 apartments owned by Develco Family.

12 32. The most recent HAP Contracts were entered into between HUD and the Develco  
13 Entities on or about March 16, 2001, for a term commencing March 1, 2001 and expiring on May 31,  
14 2001. Copies of said contracts are attached hereto as Exhibit 1.

15 33. The HAP Contracts provide for rental subsidies in return for the agreement by the  
16 Develco Entities to: (i) rent to very low income families (as such term is defined by HUD); (ii) charge  
17 such families no more than 30% of their adjusted income as rent; and (iii) be subject to additional  
18 regulation by HUD. The rental subsidy takes the form of a monthly cash payment for each apartment  
19 covered by the HAP Contract in an amount equal to the difference between 30% of the tenant's  
20 adjusted gross income and rent levels determined by HUD.

21 34. Plaintiff DTA and the individual tenants residing in the four developments owned by  
22 the Develco Entities are the third party beneficiaries of the HAP contracts between the Develco Entities  
23 and HUD.

24 35. Plaintiff DTA and the individual tenants residing at the four developments owned by  
25 the Develco Entities have a protected property interest in the individual leases and the HAP contracts  
26 under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution.  
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28 **B. The Owners' Notices of Intent to Terminate their Section 8 contracts**

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

5           37. Additionally, notices of an owner’s intent to terminate a Section 8 contract must  
6 comply with any additional requirements established by the HUD Secretary. 42 U.S.C.  
7 §1437f(c)(8)(C).

8           38. The Secretary has established a number of “additional requirements.” First, a notice  
9 of intent to opt-out be on the Owner’s or duly authorized representative’s letterhead and signed, and  
10 must be served by delivery directly to each unit in the project or mailed to each tenant. *Section 8*  
11 *Renewal Policy: Guidance for the Renewal of Project-Based Section 8 Contracts*, HUD Office of  
12 Multifamily Housing, Section 11-4-B. Second, the Renewal Policy notes that “if the population of the  
13 property speaks a language other than English, Owners are strongly encouraged to provide the  
14 notification letters in the appropriate language(s).” *Id.* Third, a project owner’s issuing notices of intent  
15 to terminate Section 8 contracts “must also comply with any State or local notification requirements.”  
16 *Id.*, at Section 11-4-G; HUD Notice 99-36, XVI-G; HUD Notice 98-34, V.

17           39. The current HAP Contracts between HUD and the Develco Entities that are due to  
18 expire on May 31, 2001 also require the owner to provide to both HUD and the tenants a one year  
19 written notice of the termination of said contracts. Moreover, said notice shall “comply with HUD  
20 regulations and other requirements, including any amendments or changes in the law or HUD  
21 requirements.” Complaint Exhibits 1a-1g, each exhibit at ¶9.

22           40. Under Rhode Island state law, an owner of an assisted housing development who  
23 seeks to terminate a project-based Section 8 contract must provide at least two years notice of the  
24 termination to the Rhode Island Housing and Mortgage Finance Corporation (“RIHMFC”).  
25 Additionally, within 24 hours of giving notice to RIHMFC the owner must also (1) send a copy of the  
26 notice, by registered or certified mail, return receipt requested, to the tenant association of the  
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2 development, and (2) post a copy of the notice in a conspicuous place in common areas of the  
3 development. R.I.G.L. § 34-45-5.

4 41. The required two year state law notice to RIHMFC to terminate a Section 8  
5 contract must specify the reasons for the termination with sufficient detail to enable RIHMFC to  
6 evaluate whether the termination is lawful and whether there are additional actions that can be taken by  
7 the corporation to avoid the termination.

8 42. After evaluating the notice, RIHMFC is directed by state law to review the owner's  
9 notice, and shall consider whether there are additional actions that can be taken by the corporation to  
10 avoid the termination.

11 43. Within thirty (30) days of the owner's notice RIHMFC shall issue a written finding of  
12 the legality of the termination and the reasons for the termination, including the actions considered or  
13 taken to avoid the termination.

14 44. In cases where a Section 8 contract termination goes forward after the owner has  
15 given a proper the two year notice, Rhode Island law requires the owner to give the affected tenants a  
16 second "notice of intent" 90 days before the effective date of the termination. R.I.G.L. § 34-45-11(c).

17 45. The required "notice of intent" is designed to inform the tenants of their rights to  
18 apply for "tenant protection assistance." Under Rhode Island law, tenants who live in federally assisted  
19 housing covered by Section 8 contracts are entitled to receive various forms of assistance from the  
20 owner of the assisted housing, such as cash relocation assistance and new Section 8 type leases for their  
21 present apartments.

22 46. For any tenant who decides to move out of the assisted housing development, the  
23 owner shall provide the tenant with relocation assistance equal to the lesser of \$500, or a sum equal to a  
24 security deposit and first and last month's rent (the latter if required by a new landlord), plus an  
25 additional \$450 for moving expenses. R.I.G.L. § 34-45-11(d)(1).

26 47. For any tenant who decides to remain in the assisted housing development, and who  
27 is current in rent payments and has not violated any other material term of the lease, the owner is  
28 required to offer the tenant a one year lease (and in certain instances a two year lease) where the tenant

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2 continues to pay as rent 30% of their income, and beyond the first year rent can be increased only as  
3 much as the increase in the consumer price index. R.I.G.L. §§ 34-45-11(d)(2), (e), (f).

4 48. The “notice of intent” shall include: (i) A summary statement of the assisted  
5 household's rights and obligations to receive tenant protection assistance; (ii) Notice that RIHMFC may  
6 have additional information regarding the anticipated assistance required action; and (iii) The name,  
7 address, and phone number of the owner's agent to whom the assisted household may apply for tenant  
8 protection assistance. R.I.G.L. § 34-45-11(c)(2).

9 49. On information and belief, the Develco Entities only sent one notice to tenants living  
10 at the four subsidized housing complexes regarding the future status of the Section 8 contracts. That  
11 notice was allegedly sent on or about May 1, 1999. Seven identical notices were allegedly sent on May  
12 1, 1999, one for each of the seven separate HAP contracts covering the Develco Entities. A set of the  
13 seven identical notices allegedly sent on May 1, 1999 is attached as Exhibit 2.

14 50. The May 1, 1999 notices:

- 15 a. Fail to inform the tenants that the Develco Entities would not renew its Section 8  
16 contracts upon the expiration of the contract  
17 b. were not signed;  
18 c. were not translated into any language other than English; and  
19 d. were not, on information and belief, sent to RIHMFC by the Owners at the same  
20 time they were allegedly sent to the tenants.  
21

22 51. On or about April 16, 2001, the WHA sent a notice to the tenants who live at the  
23 Develco Entities' developments. A copy of that notice is attached as Exhibit 3.  
24

25 52. The April 16, 2001 notice was the first and only notice received by the tenants  
26 regarding the Owners' decision to opt out of their Section 8 contracts. The April 16, 2001 notice states  
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2 only that HEDCO “has chosen not to renew its Contract with the Department of HUD.” No mention is  
3 made of any Section 8 Contract in the April 16, 2001 notice.

4 53. Although the words “NOTA IMPORTANTE” appear in bold at the top of the  
5 April 16, 2001 notice, that notice was not translated into any language other than English.  
6

7 54. The April 16, 2001 notice states that tenants at the Develco Entities’ developments  
8 would be eligible to receive Section 8 Housing Choice Vouchers so long as the tenants met certain  
9 eligibility requirements. However, the eligibility requirements were not listed in the April 16, 2001  
10 notice.  
11

12 55. The April 16, 2001 notice warns tenants that if they did not attend a meeting on  
13 April 21, 2001 that they would be “responsible for your entire rent.”

14 56. The April 16, 2001 notice contains no information for tenants on how to apply for  
15 “tenant protection assistance” that the Owners are required to make available to the tenants under  
16 Rhode Island law. Nor does the April 16, 2001 notice give the tenants the required two years notice of  
17 the Owner’s decision to opt out of their Section 8 contracts.  
18

19 57. As of the date of this complaint, the Owners have never sent any written notice to  
20 the tenants at the four developments owned by the Develco Entities stating that the Owners decided to  
21 opt out of the Section 8 contracts covering those four developments.  
22

23 58. Since the Owners intentions to opt out of the Section 8 contracts only became  
24 known after April 16, 2001, neither plaintiffs, HUD, nor RIHMFC had any time to pursue any  
25 alternative course of action to the opt out, such as purchase of the Develco Entities’ developments by a  
26 buyer committed to keeping the Section 8 contracts in place.  
27  
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2           59. Upon information and belief, HUD has approved the Owners' decisions not to  
3 renew the HAP Contracts.

4           60. Upon information and belief, HUD has approved the plan for WHA to issue tenant-  
5 based Section 8 Housing Choice Vouchers to the tenants of the four developments owned by the  
6 Develco Entities.  
7

8           61. By letter dated May 29, 2001, HUD informed plaintiffs' counsel that HUD deemed  
9 the May 1, 1999 notices to the tenants of the four Develco Entities' developments "sufficient." HUD  
10 also acknowledged in the May 29, 2001 letter that it had been working with the Owners for over a year  
11 to keep the Owner in the Project-Based Section 8 program, even though no new notices were sent by  
12 the Owners to the Develco tenants during that time period. A copy of the May 29, 2001 letter is  
13 attached to the Complaint as Exhibit 4.  
14

15           62. In approving both the decision of the Owners not to renew the Section 8 contracts  
16 and the plan to issue tenant-based Section 8 Housing Choice Vouchers to the tenants at the four  
17 developments owned by the Develco entities HUD failed to:  
18

- 19           a. apply the correct law and allowed the Owner to rely on a notice of intent to renew  
20 its Section 8 contracts dated May 1, 1999 to satisfy federal and state notice  
21 requirements for a Section 8 opt out;  
22  
23           b. ascertain whether the Owners complied with federal and state notice requirements  
24 and require the Owners to send a new notice to the tenants at the four developments  
25 if the Owners failed to so comply;  
26  
27           c. prohibit the Owners and WHA from interfering with the Develco tenants' efforts to  
28 obtain rent subsidies;

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- 2 d. consider the socioeconomic, racial, and disability-related impact of said decision and
- 3 plan on the tenants and the surrounding neighborhood;
- 4 e. consider the goals and objectives of national housing policy.
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6 63. Plaintiffs will suffer irreparable harm once the termination of the Section 8 contracts

7 at the four developments owned by the Develco Entities and the plan to issue the tenants of those

8 developments Section 8 Housing Choice Vouchers is effectuated.

9 64. Plaintiffs have no adequate remedy at law to redress the irreparable harm they will

10 suffer once the termination of the Section 8 contracts at the four developments owned by the Develco

11 Entities and the plan to issue the tenants of those developments Section 8 Housing Choice Vouchers is

12 effectuated.

13

14 65. Plaintiffs were aggrieved by defendant Martinez and HUD's actions and inactions

15 regarding the termination of the Section 8 contracts at the four developments owned by the Develco

16 Entities and the plan to issue the tenants of those developments Section 8 Housing Choice Vouchers.

17

## 18 CAUSES OF ACTION

### 19 **FIRST CAUSE OF ACTION (AGAINST THE OWNERS)**

#### 20 **Violation of Federal Notice Requirements Governing Termination of Section 8 Contracts** 21 **(42 U.S.C. § 1437f)**

22 66. Plaintiffs incorporate each and every allegation in the preceding paragraphs number

23 1 through 65 as if fully set forth herein.

24 67. The Owners have violated federal law governing notice requirements for property

25 owners who wish to opt out of their Section 8 contracts by failing to give the tenants at the four

26 developments one year's notice of its decision not to renew the Section 8 contracts covering the four

27 developments, in violation of 42 U.S.C. §1437f(c)(8)(A).

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2           68. The Owners have violated federal law governing notice requirements for property  
3 owners who wish to opt out of their Section 8 contracts by failing to comply with additional notice  
4 requirements established by the Secretary (i.e. complying with state and local law; signing the notices,  
5 and translating notices for non-English speaking tenants), in violation of 42 U.S.C. §1437f(c)(8)(C).  
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7           **SECOND CAUSE OF ACTION (AGAINST THE OWNERS AND WHA)**  
8           **Violation of Section 202 of the Housing and Community**  
9           **Development Amendments of 1978, as amended**  
              **(12 U.S.C. § 1715z-1b)**

10           69. Plaintiffs incorporate each and every allegation in the preceding paragraphs  
11 numbered 1 through 68 as if fully set forth herein.

12           70. By giving tenants legally defective notice of their decision to opt out of their Section  
13 8 contracts, the Owners and WHA have interfered with the tenants' efforts to obtain rent subsidies, in  
14 violation of the Section 202 of the Housing and Community Development Amendments of 1978, as  
15 amended. 12 U.S.C. § 1715z-1b(b)(2).  
16

17           **THIRD CAUSE OF ACTION (AGAINST THE OWNERS)**  
18           **Violation of Rhode Island Opt-Out Notice Requirements**  
              **(R.I.G.L. § 34-45-1 et seq.)**

19           71. Plaintiffs incorporate each and every allegation in the preceding paragraphs number  
20 1 through 70 as if fully set forth herein.

21           72. Through numerous acts and omissions, the Owners have violated the law of the state  
22 of Rhode Island, R.I.G.L. §34-45-1 et seq., governing notice requirements for property owners who  
23 wish to opt out of their Section 8 contracts.

24           **FOURTH CAUSE OF ACTION (AGAINST DEFENDANTS MARTINEZ AND HUD)**  
25           **Violation of the Administrative Procedure Act**  
              **28 U.S.C. § 701 et seq.**

26           73. Plaintiffs incorporate each and every allegation in the preceding paragraphs number  
27 1 through 72 as if fully set forth herein.  
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2 74. Defendants Martinez's and HUD's actions and inactions regarding the termination of  
3 Section 8 contracts of the Develco Entities and the issuance of Section 8 Housing Choice Vouchers to  
4 the tenants of the Develco Entities were arbitrary, capricious, an abuse of discretion, or otherwise not in  
5 accordance with law, in violation of the Administrative Procedures Act, 28 U.S.C. § 701 et seq.

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7 **FIFTH CAUSE OF ACTION (AGAINST DEFENDANTS MARTINEZ, HUD AND**  
8 **WHA)**  
9 **Failure to Affirmatively Further Fair Housing**  
10 **42 U.S.C. § 3608(e)(5)**

11 75. Plaintiffs incorporate each and every allegation in the preceding paragraphs number  
12 1 through 74 as if fully set forth herein.

13 76. Defendants Martinez, HUD and WHA failed to consider the socioeconomic, racial,  
14 and disability-related effects of the termination of the Develco Entities' Section 8 contracts and WHA's  
15 plan to issue Section 8 Housing Choice Vouchers to the affected tenants in violation of the Fair Housing  
16 Act's duty to affirmatively further fair housing. 42 U.S.C. § 3608(e)(5). Defendants Martinez's and  
17 HUD's failure to affirmatively further fair housing is reviewable pursuant to the Administrative  
Procedures Act, 28 U.S.C. § 701 et seq.

18 **SIXTH CAUSE OF ACTION (AGAINST ALL DEFENDANTS)**  
19 **Denial of Procedural Due Process**  
20 **Fifth and Fourteenth Amendments of the U.S. Constitution**

21 77. Plaintiffs incorporate each and every allegation in the preceding paragraphs number  
22 1 through 76 as if fully set forth herein.

23 78. Defendants' actions and inactions regarding the termination of Section 8 contracts of  
24 the Develco Entities and the issuance of Section 8 Housing Choice Vouchers to the tenants of the  
25 Develco Entities deprived plaintiff DTA and individual tenants of the Develco Entities' developments of  
26 property without procedural due process of law guaranteed by the Fifth and Fourteenth Amendments to  
the United States Constitution, actionable pursuant to 42 U.S.C. § 1983.

27 **SEVENTH CAUSE OF ACTION (AGAINST ALL DEFENDANTS)**  
28 **Declaratory Judgment Act**  
**(28 U.S.C. §§ 2201-2202)**

1  
2 79. Plaintiffs incorporate each and every allegation contained in the preceding  
3 paragraphs numbered 1 through 78 as if fully set forth herein.

4 80. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs contend  
5 that the Owners are acting in violation of federal and state law by proceeding to opt-out of the project-  
6 based Section 8 contracts upon improper, monolingual notices, and by interfering with Tenants access  
7 to replacement rent subsidies. Likewise, Plaintiffs contend that Defendants HUD and Martinez are  
8 acting in violation of federal law by failing to enforce applicable notice requirements, and by approving  
9 the termination of the Section 8 contracts and issuance of Section 8 vouchers to the affected tenants  
10 without first considering the racial and socioeconomic effect of these actions in violation of the Fair  
11 Housing Act. Finally, Plaintiffs contend that Defendant WHA interfered with the Develco tenants'  
12 efforts to obtain rent subsidies and failed to consider the socioeconomic and racial effect of the plan to  
13 issue Section 8 Housing Choice Vouchers to the affected tenants in violation of the Fair Housing Act.  
14 Defendants contend in all respects to the contrary.

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

17 82. Plaintiffs seek injunctive and declaratory relief as set forth in the prayer below.  
18

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs prays that this Court:

21 1. Enter a declaratory judgment that:

22 a. the actions and omissions of Defendants HUD and Martinez as set forth in the  
23 Fourth, Fifth and Sixth Causes of Action violate the Administrative Procedure Act,  
24 28 U.S.C. § 701 et seq., the Fair Housing Act, 42 U.S.C. § 3608(d)(5); and the  
25 Fifth Amendment to the U.S. Constitution.

26 b. the actions and omissions of the Owners as set forth in the First through Third  
27 Causes of Action violate the United States Housing Act, 42 U.S.C. §1437 et  
28 seq.; Section 202 of the Housing and Community Development Amendment of



1  
2 1978, as amended; R.I.G.L. § 34-45-1 et seq; and the 14<sup>th</sup> Amendment to the  
3 United States Constitution;

- 4 c. the actions and omissions of WHA as set forth in the Second, Fifth and Sixth Causes  
5 of Action violate Section 202 of the Housing and Community Development  
6 Amendment of 1978, as amended; the Fair Housing Act, 42 U.S.C. § 3608(d)(5);  
7 and the 14<sup>th</sup> Amendment to the United States Constitution

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

- 9 a. enjoining the Owners from opting out of their Section 8 contracts until such time as  
10 they have provided tenants with lawful and adequate notice of those actions;  
11 b. enjoining Martinez and HUD from accepting the Owners' request to opt out of their  
12 Section 8 contracts until such time as the Owners have complied with the applicable  
13 federal and state notice requirements and HUD has considered the socioeconomic,  
14 racial and disability-related effects of the opt out;  
15 c. enjoining defendants Martinez and HUD from allowing the Section 8 contracts with  
16 the Owners to expire and require them to keep those contracts in full force and  
17 effect until such time as the Owners and have complied with the applicable federal  
18 and state notice requirements and HUD has considered the socioeconomic, racial  
19 and disability-related effects of the opt out; and  
20 d. enjoining WHA from issuing Section 8 Housing Choice Vouchers to the tenants of  
21 the Develco Entities and from taking any further actions to qualify said tenants for  
22 those Section 8 vouchers.  
23

24 3. Award Plaintiffs their costs incurred herein; and

25 4. Grant Plaintiffs such other and further relief as the Court deems just and proper.

26 PLAINTIFFS

27 BY THEIR ATTORNEYS,  
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