

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

| | | |
|--|---|------------------|
| MILDRED TAYLOR, |) | |
| JUANITA OLIVAS, |) | |
| RAMSAY DECKER III, |) | |
| NORMA FRY, ROBERT VIGUE, |) | Civil Action No. |
| MARTHA HILSTAD, and |) | 02-cv-1120-AA |
| BEATRICE MORGAN, on behalf |) | |
| of themselves and all others similarly |) | |
| situated, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| ALPHONSO JACKSON, in his official |) | |
| capacity as Secretary of the Department |) | |
| of Housing and Urban Development; and |) | |
| UNITED STATES DEPARTMENT OF |) | |
| HOUSING and URBAN DEVELOPMENT, ¹ |) | |
| |) | |
| Defendants. |) | |

CONSENT DECREE

WHEREAS the parties desire to resolve amicably all the claims raised in this suit without admission of liability; and

WHEREAS plaintiffs and defendants Alphonso Jackson, Acting Secretary of Housing and Urban Development, and the Department of Housing and Urban Development (HUD) have agreed upon mutually satisfactory terms for the complete resolution of all the claims that have,

¹ Alphonso Jackson became the Secretary of Housing and Urban Development on March 31, 2004. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Alphonso Jackson should be substituted, therefore, for Mel Martinez as a defendant in this suit.

or could have, been asserted by the plaintiffs in this litigation;

WHEREAS defendants' ability to act in accordance with the terms of this Consent Decree are subject to the availability of appropriated funds that may be used for such purposes;

NOW THEREFORE, the plaintiffs and defendants hereby consent to the entry of this decree with the following terms.

1. **Class Certification** The parties stipulate to the certification of a class, pursuant to Fed. R. Civ. P. 23(b)(2), composed of all persons in the United States who received enhanced Section 8 vouchers as a result of a mortgage prepayment or voluntary termination of mortgage insurance in the FYs 1997 - 1999 and whose vouchers have not covered all rent increases as a result of HUD's policy of applying the enhanced voucher payment standard feature only to the first rent increase within a year following mortgage prepayment or voluntary termination of mortgage insurance.

2. **Issuance of Directive By Defendants** Within sixty (60) days of the date of the entry of the Consent Decree, the defendants will issue the directive attached to this agreement as Exhibit 1, to all public housing authorities, and to all other agencies that administer or have administered Section 8 vouchers. HUD will issue this directive through the usual means that it issues such directives to PHAs.

3. **Attorney Fees** In full and final settlement of any and all claims for attorneys' fees, expenses and/or costs by the plaintiffs against defendants in this action, defendants shall pay \$30,000 to the undersigned counsel for the plaintiffs.

4. **Releases** The plaintiffs and all of the class members, and each of them, and their heirs, administrators, successors, or assigns (together, the "Releasers"), hereby release and

forever discharge defendants and any component, division, agency, or establishment of HUD, and all HUD officials, administrators, employees, agents, attorneys, or successors thereof (together the "Releasees"), from any and all claims and causes of action, known or unknown, which plaintiffs have asserted, or could have been asserted, by reason of, or with respect to, or in connection with, or which arises out of, any of the matters alleged at any time in this action, including any of the matters alleged in the Complaint. The plaintiffs and all of the class members, and each of them, are hereby forever barred and enjoined from prosecuting any claims or causes of action that are described in the preceding sentence.

5. **Authority of Class Counsel** Class counsel who are signatories hereto hereby represent, warrant, and guarantee that they are duly authorized to execute this Order on behalf of the plaintiffs, the class members, and all of their counsel.

6. **Defendants' Duty Consistent With Law and Regulations** Nothing contained in this Consent Decree or in the Final Judgment shall impose on the defendants any duty, obligation or requirement, the performance of which would be inconsistent with federal statutes or federal regulations in effect at the time of such performance.

7. **No Admission of Liability** Notwithstanding anything in this Order or its attachments, this Order and attachments are not and shall not be construed as an admission by defendants of the truth of any allegation or the validity of any claim asserted at any time in this action, or of defendants' liability in connection with any matter set forth in any document served or filed by the plaintiffs, nor is this Order a concession or an admission of any fault or omission or failure to act, or in any statement, written document, or report heretofore issued, filed or made by defendants, nor shall any of the terms hereof, or any statement made or document written by

any party in the settlement negotiations pertaining hereto, be offered or received in evidence or in any way referred to in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to consummate or enforce this Order, nor shall they be construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing on the part of defendants, nor an admission by defendants that the consideration to be given hereunder represents the relief which could be recovered after trial.

8. **Entire Terms of Agreement** The terms of the numbered paragraphs of this Order, which includes references to the directive at Exhibit 1, constitute the entire agreement of the parties, and no statement, remark, agreement, or understanding, oral or written, which is not contained herein, shall be recognized or enforced, nor does the Order reflect any agreed-upon purpose other than the desire of the parties to reach a full and final conclusion of this action as between the parties and to resolve this matter without the time and expense of further litigation. Each party has entered into this Order after consultation with its attorneys and after an independent investigation of any relevant facts, and no party has relied upon the representations of any other party except those set forth herein.

9. **No Guarantor** Nothing in this Order shall make, or should be construed to make, defendants responsible for the performance of any other entity, including PHAs. It is expressly agreed among the parties to this Order that defendants are not, and shall not be, responsible for ensuring that PHAs comply with the attached directive or that every class member receives the relief to which they may be eligible pursuant to the attached directive.

10. **Filing of Joint Motion for Approval of Consent Decree** Contemporaneously with the execution hereof, the parties shall file a joint motion for the approval and entry of this Order

pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

11. **Procedures For Fairness Hearing and Notice to Class of Proposed Settlement**

a. The parties request this Court to schedule a Fairness Hearing pursuant to Fed. R. Civ. P. 23(e) sixty (60) days after the Court preliminarily approves this Consent Decree, or as soon thereafter as possible.

b. Any person who wishes to object to the terms of this Consent Decree shall, not less than ten (10) calendar days prior to the Fairness Hearing, submit a written statement to the Court, with copies to counsel for the parties. The statement shall contain the individual's name and address along with a statement of his or her objection(s) to the proposed Consent Decree and the reason(s) for the objection(s).

c. After the entry of the Order granting preliminary approval of this Consent Decree, defendants will direct PHAs to post the Notice of Proposed Class Settlement, which is attached hereto as Exhibit 2. in a public place at their offices. Also if a PHA has a apartment complex identified in Attachment A to Exhibit 1 with their jurisdiction, defendants will direct the PHA to distribute the notice to managers of that apartment complex and request that the notice be posted in a public place at the complex.

12. **Effective Date and Effect of Consent Decree if Not Approved** This Order, the entry of which is a condition precedent to any obligation of any party hereunder, shall be effective upon the approval, execution, and entry hereof by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. The date of such entry shall be the "effective date" of this Order. If this Order is finally disapproved by any court, or in the event that it fails to become

effective or is modified for any reason whatsoever without the consent of defendants, or if it is finally reversed or modified on appeal, this Order shall be null and void, shall have no further force and effect, and shall not be used in this action or in any other action or proceeding, and this Order and all court proceedings pursuant to Rule 23(e), Fed. R. Civ. P., and all negotiations, filings, and statements made in connection herewith shall be without prejudice to any person or party, shall not be deemed or construed to be an admission by any party of any fact, matter, or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in this action or in any other action, whether judicial or administrative.

13. **Jurisdiction** The performance of the specific obligations undertaken by defendants pursuant to paragraphs 2 and 3 of this Order shall constitute full and final performance of any and all of defendants' obligations in this action and shall terminate the jurisdiction of this Court over defendants.

13. **Dismissal of Case with Prejudice** This action shall immediately be fully and finally dismissed with prejudice as against defendants. Accordingly, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, the above-captioned action, as against defendants, is hereby dismissed with prejudice and, except as specifically set forth herein, without attorneys' fees, expenses or costs. The Clerk is hereby directed immediately to enter Judgment in accordance with this paragraph.

Respectfully submitted,

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Attorneys for Defendants

SO ORDERED.

Date: _____

ANN AIKEN
UNITED STATES DISTRICT JUDGE