

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

PARK HILL TENANTS COUNCIL,
LOW INCOME TENANTS ASSOCIATION,
GERTRUDE MYERS, AND ANGELIQUE WOODS,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ANDREW M. CUOMO,
Secretary of the U.S. Department of Housing and Urban Development, in his official capacity,
COLORADO HOUSING AND FINANCE AUTHORITY, DAVID HERLINGER, Executive
Director of the Colorado Housing and Finance Authority, in his official capacity,
HORN CREEK DEVELOPMENT CO., LLLP, formerly known as Horn Creek Development Co,
Ltd. and PHG ACQUISITIONS, CORP., general partner of Horn Creek Development Co., Ltd.

Defendants.

**THIRD AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

PRELIMINARY STATEMENT

1. Plaintiffs are low-income tenants and persons waiting for tenancy at Park Hill Gardens West, a federally-subsidized housing complex, as well as organizations representing the interests of those individuals. Current tenants have been given notice that subsidies on the complex will soon terminate, and that the tenants must vacate their homes, or they will be evicted.
2. Defendants have caused the subsidies on the complex to fail to be renewed, thereby precipitating the impending eviction of tenants and removal of the apartment building from the stock of

subsidized housing in violation of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; the National Housing Act, 12 U.S.C. § 1715z-15; the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended; the 21ST Century Act; the United States Housing Act, 42 U.S.C. § 1437f(c)(8)(A); the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*; 42 U.S.C. § 1983; and the parties' obligations under a regulatory agreement entered into in 1984 when rehabilitation of the property was completed with public financing.

3. Defendants have further informed tenants that they will not accept the tenant-based Section 8 vouchers issued to them, as the owner is required to do pursuant to the United States Housing Act, 42 U.S.C. § 1437f(t)(1)(B).
4. Plaintiffs seek declaratory and injunctive relief to prevent defendants from terminating subsidies and evicting tenants at Park Hill Gardens West. In the alternative, Plaintiffs seek declaratory and injunctive relief ordering the owner of Park Hill Gardens West to accept tenants' Section 8 vouchers at the property.

JURISDICTION AND VENUE

5. Plaintiffs' claims present federal questions and civil rights claims which vest jurisdiction in the District Court pursuant to 28 U.S.C. §§ 1331(a) and 1343. The court has jurisdiction over pendent claims pursuant to 28 U.S.C. § 1367.
6. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b).

PARTIES

7. Plaintiff Park Hill Tenants Council (“Tenants Council”) is an unincorporated organization of low-income tenants who currently live at Park Hill Gardens West and will be forced to move as a result of defendants’ actions. The Tenants Council was organized to take measures to preserve Park Hill Gardens West as subsidized housing. The Tenants Council includes families and senior citizens, working persons and disabled persons on fixed incomes, persons who have received Section 8 vouchers and those that have been denied same. Some members of the Tenants Council have only lived at the complex for a year while others have resided there for more than 20 years.
8. Plaintiff Low Income Tenants Association (“LITA”) is an unincorporated organization of low-income tenants who advocate for housing opportunities for low-income tenants. Members of LITA are on the waiting list for Park Hill Gardens West or are otherwise eligible to live at the complex and would like to live at Park Hill Gardens West, but will be unable to move to the complex if subsidies at the property are discontinued.
9. Plaintiff Gertrude Myers is a tenant at Park Hill Gardens West and is a leader of the Tenants Council. Ms. Myers is a 65-year-old African-American woman who has lived at Park Hill Gardens West since 1993. Ms. Myers’ sole income is \$563 per month, which is a combination of payments from Social Security Disability, Supplemental Security Income, and Old Age Pension.
10. Plaintiff Angelique Woods is a low-income person who submitted an application for housing at Park Hill Gardens West, believes she is on a waiting list, is otherwise eligible for housing at Park Hill Gardens West, wants to reside at the complex and is a member of LITA. Ms. Woods currently lives in Denver, Colorado.

11. Defendant United States Department of Housing and Urban Development (“HUD”) is the federal agency charged with the administration and enforcement of the United States Housing Act, including the Section 8 program; the National Housing Act, the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended, the 21st Century Act, the United States Housing Act, and the Fair Housing Act.
12. Defendant Andrew M. Cuomo is the Secretary of HUD and, as such, is charged with the administration and enforcement of all functions, powers, and duties of HUD including those relating to the Section 8 program, the National Housing Act, the Multifamily Assisted Housing Reform and Affordability Act of 1997, as amended, the 21st Century Act, the United States Housing Act, and the Fair Housing Act.
13. Defendant Colorado Housing Finance Authority (“CHFA”) is a State of Colorado public entity authorized by C.R.S. § 29-4-701 *et seq.* Pursuant to the authority granted to CHFA in the state enabling act, the agency issues bonds to raise capital for affordable housing projects, and uses the capital to make mortgage loans to developers seeking to develop such housing. Furthermore, Defendant is a public housing authority as defined at 24 C.F.R. § 5.100. In its role as a public housing authority, CHFA administers Section 8 housing subsidies to eligible housing complexes on behalf of HUD. In addition, CHFA has contracted with HUD to act as its designated Participating Administrative Entity to administer the federal multifamily mortgage restructuring program in Colorado, and as such is charged with administering the provisions of MAHRAA, as amended, and the 21st Century Act on behalf of HUD for eligible projects in the state of Colorado.

14. Defendant David Herlinger is the Executive Director of CHFA and, as such, is charged with the administration and enforcement of all functions, powers and duties of CHFA including those relating to its mortgage financing program, its administration of Section 8 subsidies, its actions as HUD's designated Participating Administrative Entity for Colorado, and the Fair Housing Act.
15. Defendant Horn Creek Development Co., LLLP ("Owner" or "Horn Creek") is a Colorado limited liability limited partnership, formerly known as Horn Creek Development Co., Ltd. Horn Creek has been the owner of Park Hill Gardens West since March 23, 2000.
16. PHG Acquisitions Corp. ("PHG") is the general partner of Horn Creek Development Co., Ltd. The president of PHG is Christopher Downs. Mr. Downs was a principal of Bankers Property Group, Inc., the general partner in Park Hill Gardens West, Ltd., the owner of Park Hill Gardens West from prior to 1984 until March 23, 2000.

FACTUAL ALLEGATIONS

17. Park Hill Gardens West Apartments is a forty-unit apartment complex located in the Park Hill neighborhood of Denver. The apartments are all two-bedroom units.
18. Park Hill Gardens was originally purchased and rehabilitated by Park Hill Gardens West, Ltd., in 1984, with benefits provided under a number of public programs. CHFA provided financing for the purchase and rehabilitation using proceeds of a tax-exempt bond issuance pursuant to 26 U.S.C. §§ 103 and 142, HUD provided insurance for the mortgage under Section 221(d)(4) of the National Housing Act, 12 U.S.C. § 1715l(d)(4), and tenant rents were subsidized under the Section 8 Moderate Rehabilitation ("Mod Rehab") program, authorized by Section 8(e) of the

United States Housing Act of 1937, 42 U.S.C. 1437f(e)(since limited by Section 289 of the Cranston-Gonzalez National Affordable Housing Act). The purpose of each of these programs was to facilitate production or rehabilitation of decent, affordable housing for low-income, or low- and moderate-income, households. 26 U.S.C. § 142(d)(1); 12 U.S.C. § 1715l(a); 24 C.F.R. § 882.101(b).

19. As part of the financing of this complex, Park Hill Gardens West, Ltd., executed a Regulatory Agreement with HUD (“HUD Regulatory Agreement”) that was binding on its successors and assigns.
20. As an additional part of the financing of this complex, Park Hill Gardens West, Ltd. gave CHFA a deed of trust (hereinafter referred to as the “mortgage”) and executed a Regulatory Agreement with CHFA (“CHFA Regulatory Agreement”). Park Hill Gardens West, Ltd., also entered into a Section 8 Housing Assistance Payments contract (“HAP” contract”) with CHFA to provide Section 8 rental assistance for all 40 units at Park Hill Gardens. The HAP contract had a fifteen year term, expiring July 14, 1999. CHFA receives the funds specifically for the subsidies to this complex via an Annual Contributions Contract entered into by CHFA and HUD.
21. Both the owner and CHFA agree in paragraph 3 of the CHFA Regulatory Agreement that
“[o]nce available for occupancy, each residential unit in the Development . . . will be rented or held available for rental to the public on a continuous nontransient basis until (a) the final stated maturity of the Authority’s Bonds or (b) the expiration of the Qualified Project Period, whichever is later, and may not be converted to condominiums or other use.”

22. The CHFA Regulatory Agreement states at paragraph 4(b) that “The Mortgagor shall enter into and maintain in effect for the maximum 20-year term thereof the HAP Contract.” The same paragraph requires that, with respect to residential units which must be occupied by persons or families of low income, the Mortgagor “will seek to extend the HAP Contract for up to an additional twenty (20) years, if any such extension may be obtained under applicable law . . .”
23. The CHFA Regulatory Agreement states, at paragraph 13, that: “[t]his Agreement and the covenants contained herein shall run with the land . . .”, and the Agreement binds, among others, “all subsequent owners of the Development or any interest therein . . .”
24. The Deed of Trust to CHFA, dated March 19, 1984, was for \$1,297,600, and extended until November 1, 2014, or a thirty-year period.
25. The Deed of Trust states, in part, “The debt evidenced by this Note may not be prepaid in whole or in part at any time without the prior written consent of the Colorado Housing Finance Authority and the Federal Housing Commissioner.”
26. In April, 1999, prior to the July 14, 1999, expiration of the HAP contract, Park Hill Gardens West, Ltd., sought to renew the HAP contract at increased rent levels to cover claimed increases in operating expenses. Rents were \$740 per unit per month, and Park Hill Gardens, Ltd., sought to increase the rents to \$800 per unit per month. Rather than increasing rents to reflect the claimed increases in costs, HUD and CHFA determined that they would only renew the contract at rent levels of \$615 per month, the level CHFA determined to be the rents for comparable units in the private market.

27. Upon information and belief, after being informed that HUD and CHFA intended to reduce its Section 8 contract rent levels upon renewal, Park Hill Gardens West, Ltd., requested the opportunity to refinance or restructure its HUD-insured mortgage in order to lower its monthly mortgage payments and to ensure that it could meet operating expenses for the development with the lowered Section 8 rent levels. Upon information and belief, CHFA told Park Hill Gardens West, Ltd., that the development was not eligible for mortgage restructuring and did not thereafter provide an opportunity for restructuring.
28. On July 5, 1999, Park Hill Gardens West, Ltd., notified HUD, CHFA, and the building residents of its intent not to renew the HAP contract upon its expiration on July 14, 2000.
29. The notice that the owner would not renew did not contain a reason for Park Hill Gardens West, Ltd.'s decision not to renew the HAP contract.
30. On January 26, 2000, Park Hill Gardens West, Ltd. requested the approval of HUD and CHFA to prepay the mortgage.
31. By letter dated February 28, 2000, CHFA informed Park Hill Gardens West Ltd. that approval was contingent upon HUD granting approval of the prepayment.
32. Upon information and belief, CHFA did not undertake an analysis to determine the current need for the property to remain as affordable housing, did not undertake an analysis to determine the racial impact of allowing the owner to prepay the contract, and did not consider any alternatives to allowing the Owner to prepay the mortgage and opt out of the Section 8 program that would have preserved the complex as affordable housing.

33. HUD approved the prepayment in a letter dated March 16, 2000.
34. Upon information and belief, HUD did not undertake an analysis to determine the current need for the property to remain as affordable housing, did not undertake an analysis to determine the racial impact of allowing the owner to prepay the contract, and did not consider any alternatives to allowing the Owner to prepay the mortgage and opt out of the Section 8 program that would have preserved the complex as affordable housing.
35. HUD did not provide tenants with notice and an opportunity to comment on the proposed prepayment, and did not take tenants' comments into consideration before approving the prepayment.
36. Thereafter, CHFA approved the prepayment of the mortgage, and the mortgage was paid on or about March 27, 2000.
37. The Owner of the complex informed tenants that they would be evicted if they did not vacate their units on or before July 14, 2000.
38. Defendants subsequently agreed to temporary extensions of the HAP contract, through October 31, 2000, and are currently negotiating a further extension. Nonetheless, the tenant Plaintiffs are still threatened with eviction as well as the financial and emotional costs of having to relocate as a direct result of the Defendants' actions.
39. Upon information and belief, over 90% of the tenants at Park Hill Gardens West are African-American.

40. In contrast, according to the latest data available, from the 1990 Census, 12.3% of the Denver population is African-American and 61.4% is white.
41. Upon information and belief, persons of color have greater difficulty than whites in obtaining rental housing due to discrimination in the housing market. Therefore, the burden of displacement from current housing will be greater upon persons of color than upon whites.
42. In addition, the removal of subsidized Mod Rehab units from Denver's housing stock has a disparate adverse impact upon persons of color, because persons of color disproportionately have income below the poverty level and therefore are in need of subsidized housing.
43. According to 1990 U.S. Census data, 26.7% of all African Americans in Denver had incomes below the poverty level, while only 9.3% of whites had income below the poverty level. Almost 15% of all African Americans had incomes of less than 50% of the poverty level, while the comparable figure for whites was just over 4%. Put another way, despite the disproportionate number of whites to African Americans in the total population, the total number of African Americans below 50% of the poverty level in 1990 equaled nearly 76% of the total number of whites.
44. Further, according to tabulations of 1990 Census affordability data commissioned by HUD, 43% of African-American households and 46% of Latino households in Denver suffer from housing affordability problems, compared to 28% of non-minority Denver households.
45. Defendants have indicated that they are not willing to renew the subsidy contract for the full term as specified in the CHFA Regulatory Agreement.

46. Upon information and belief, the Owners will convert the units to owner-occupied townhomes.
47. Upon information and belief, the for-sale units will be affordable to a smaller percentage of persons of color than the percentage of white persons able to purchase the units.
48. After Plaintiffs sent Defendant CHFA a demand letter on June 16, 2000, outlining the claims in this lawsuit, CHFA “released” the CHFA Regulatory Agreement on June 30, 2000.
49. Tenants have relied upon the CHFA Regulatory Agreement, to their detriment. Their reliance includes, but is not limited to, establishing themselves in their homes at Park Hill Gardens West, rejecting monetary inducements for them to move, and remaining in their homes throughout the course of this action.
50. Most, but not all, tenants have been provided with tenant-based Section 8 vouchers by the Denver Housing Authority. Under the Section 8 tenant-based voucher program, tenants often must pay a greater percentage of their income towards rent than the amount that they were obligated to pay at Park Hill Gardens West.
51. The Owner has informed tenants that they may not use the vouchers to rent a unit at Park Hill Gardens West.

LEGAL FRAMEWORK

52. In October, 1997, in order to deal with the potential loss of thousands of affordable housing units nationwide, like those at Park Hill Gardens West, as a result of the expiration of multi-year Section 8 contracts in hundreds of developments across the country, Congress enacted the Multifamily Assisted Housing Reform and Affordability Act of 1997 (“MAHRAA”). MAHRAA expressed

Congress's clear intent "to preserve low-income rental housing affordability and availability while reducing the long-term costs of project-based assistance" and "to encourage owners of eligible multifamily housing projects to restructure their FHA-insured mortgages" where necessary, consistent with MAHRAA. MAHRAA, Section 511(b)(1).

53. MAHRAA required HUD to designate "Participating Administrative Entities" in each state to administer a mortgage restructuring program, known as the "mark-to-market" program. The mark-to-market program was intended to ensure the continued viability of developments whose Section 8 rent levels were reduced pursuant to provisions of MAHRAA.
54. In October, 1999, Congress enacted the "Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act," Title V of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2000, Pub. L. No. 106-74, 113 Stat. 1047, 1100 (October 20, 1999) ("21st Century Act"), to provide explicit guidance on rent levels for contract renewals, including a mandate to increase rent levels where necessary to preserve developments, to make corrections in the mark-to-market program, and to authorize special "enhanced" vouchers for tenants as a last resort in the event of an unavoidable non-renewal of a subsidy contract. The 21st Century Act and MAHRAA expressed the strong intent of Congress that HUD make every effort to preserve the viability and affordability of HUD-assisted housing, and to ensure the renewal of Section 8 contracts wherever possible.
55. Section 250(a) of the National Housing Act also manifests a strong Congressional intent to preserve affordable housing, and mandates that HUD "shall not accept" prepayment of a HUD-

insured mortgage unless HUD determines that the housing project “is no longer meeting a need for rental housing for lower income families in the area.” 12 U.S.C. § 1715z-15(a)(1).

56. The National Housing Act further requires that, before HUD authorize prepayment, it must provide the affected tenants notice and an opportunity to comment, and take the tenants’ comments into consideration. 12 U.S.C. § 1715z-15(a)(2).

57. In July 1999, 42 U.S.C. § 1437f(c)(8)(A) provided:

Not less than 1 year before terminating any contract under which assistance payments are received under this section . . . an owner shall provide written notice to the Secretary [of Housing and Urban Development] and the tenants involved of the proposed termination, **specifying the reasons for the termination with sufficient detail to enable the Secretary to evaluate whether the termination is lawful and whether there are additional actions that can be taken by the Secretary to avoid termination.** The owner’s notice shall include a statement that the owner and the Secretary may agree to a renewal of the contract, thus avoiding the termination.

(Emphasis added).

58. HUD Notice PIH 99-22 (HA) requires that such notice be submitted to the local housing authority--in this case, CHFA--rather than to HUD.
59. The Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, makes it unlawful to refuse to sell, rent, or otherwise make unavailable or deny housing to any person because of race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a).
60. The Fair Housing Act makes unlawful those actions or policies which, although neutral on their face, have a disparate impact upon members of a protected class. *See* 42 U.S.C. § 3604(a).

61. Further, the Fair Housing Act mandates that HUD “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of the Act.” 42 U.S.C. § 3608(e)(5).
62. As a contractor and agent of HUD in administering the Section 8 program and the mortgage insurance program, and as HUD’s designated Participating Administrative Entity charged with administering the federal mortgage restructuring program in Colorado, and as a recipient of HUD funding, CHFA is also required to administer its programs and activities in a manner that affirmatively furthers the goal of fair housing. *See* 42 U.S.C. § 3608(e)(5).
63. HUD regulations implementing Executive Order 11063 (1962), 24 C.F.R. § 107, *et seq.*, forbid HUD, CHFA, and the Owner from engaging in any “discriminatory practice ...[including] any arrangement, criterion or other method of administration which has the effect of denying equal housing opportunity or which substantially impairs the ability of persons to apply for or receive the benefits of assistance because of race.” 24 C.F.R. § 107.20(a).
64. In addition, Executive Order 11063 regulations impose upon HUD, CHFA, and the Owner not only duties to refrain from discriminatory practices but also affirmative duties “to take all action necessary and proper to prevent discrimination on the basis of race....” 24 C.F.R. § 107.21, including any use of arrangements, criterion or other methods of administration that have the effect of denying equal housing opportunity. 24 C.F.R. § 107.20(a).
65. In the Annual Contributions Contract it annually enters into with HUD, CHFA specifically agrees to “comply with...regulations issued pursuant to Executive Order 11063.” ACC Part II, ¶ 2.5(a).

66. In the Annual Contributions Contract, CHFA also agrees to “comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968 [the Fair Housing Act], and any related rules and regulations. ACC Part II, ¶ 2.5(b).
67. In the HUD Regulatory Agreement, the CHFA Regulatory Agreement, and its Section 8 subsidy (HAP) contract, the Owner specifically agreed to “comply with ...regulations issued pursuant to Executive Order 11063.” HUD Regulatory Agreement at ¶ 13, CHFA Regulatory Agreement at ¶ 9, HAP Contract ¶ 1.19(c).
67. The United States Housing Act, 42 U.S.C. § 1437f(t)(1)(B) indicates that a tenant may stay at the complex and use the Section 8 tenant-based voucher when it states that an “assisted family may elect to remain in the same project in which the family was residing on the date of the eligibility event....” Although this is language was added by amendment pursuant to Pub. L. No. 106-246, § 2801 (July 13, 2000) (H.R. 4425, FY 2001 Military Construction and FY 2000 Emergency Supplemental Appropriations), the legislative history indicates that the amendment is *aclarification* of existing law: “inserts language as proposed by the House and Senate clarifying the intent of Title V, subtitle C, section 538 of Public Law 106-74.” H. Rep. 106-710 (June 29, 2000).
68. HUD does not have sovereign immunity, as it has the power to sue and be sued. 12 U.S.C. § 1702; 42 U.S.C. § 1404(a). Furthermore, the Administrative Procedures Act states that actions against federal agencies and officials should not be dismissed on the ground that the actions are against the United States. 5 U.S.C. § 702.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
VIOLATION OF THE NATIONAL HOUSING ACT
AND THE ADMINISTRATIVE PROCEDURES ACT

69. Defendant HUD's approval of prepayment of the mortgage without making a determination that Park Hill Gardens West "is no longer meeting a need for rental housing for lower income families in the area", and without providing affected families with notice and an opportunity to comment, and without taking tenants' comments into consideration, violates the National Housing Act, 12 U.S.C. § 1715z-15, and violates the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*
70. Plaintiffs were severely prejudiced by HUD's failure to ensure that they had notice and an opportunity to comment on the owner's request to prepay because the project is clearly meeting a need for rental housing for lower income families in Denver and the owner proposes to displace all of the current low-income tenants of the development from their homes.
71. Plaintiffs seek declaratory and injunctive relief as to Defendant HUD's acts and failures to act, including a declaration that HUD's approval of the prepayment was contrary to law, and the prepayment and release of the mortgage and regulatory agreement were unlawful, void and of no effect.

SECOND CAUSE OF ACTION
VIOLATION OF MAHRAA, THE 21ST CENTURY ACT
AND THE ADMINISTRATIVE PROCEDURES ACT

72. Defendant HUD and Defendant CHFA, as administrator of Park Hill Gardens' Section 8 contract and HUD's designated Participating Administrative Entity, acted in a manner that was directly contrary to the intent of Congress expressed in MAHRAA, the 21st Century Act, and the National Housing Act when they failed to pursue alternatives to ensure the continued affordability and viability of Park Hill Gardens and instead approved the prepayment of the 221(d)(4) mortgage, release of the HUD and CHFA Regulatory Agreements, and conversion of the development to market-rate condominiums.
73. Rather than permit the conversion of Park Hill Gardens to market-rate housing, contrary to the intent of Congress, HUD and CHFA had at least the following alternatives available to preserve Park Hill Gardens as affordable housing:
- (a) Renew Park Hill Gardens Section 8 contract at the rents requested by Park Hill Gardens West, Ltd., pursuant to Section 405(a) of the Balanced Budget Downpayment Act of 1996 and 24 C.F.R. § 882.408;
 - (b) Ensure the continued viability of the development at reduced rents by providing refinancing at a lower interest rate, subject to the continuation of the affordability agreements in HUD's and CHFA's Regulatory Agreements, and/or restructuring the HUD-assisted mortgage under MAHRAA.
74. Park Hill Gardens West, Ltd., was an "eligible multifamily project" pursuant to Section 512(2) of MAHRAA, and was not exempted from restructuring pursuant to Section 514(h) of MAHRAA, upon its amendment by Section 531(c) of the 21st Century Act in October, 1999. Mortgage restructuring under MAHRAA was not in conflict with any applicable law or agreement governing the development's financing.

75. HUD's actions, and CHFA's actions on behalf of HUD as HUD's designated Participating Administrative Entity and Section 8 administrator, in failing to pursue alternatives to preserve Park Hill Gardens as affordable housing, in direct conflict with Congressional intent, was arbitrary, capricious, an abuse of discretion and not in accordance with law and is therefore actionable under the Administrative Procedures Act.
76. Plaintiffs seek declaratory and injunctive relief as to Defendant HUD's and Defendant CHFA's failure to pursue alternatives to preserve Park Hill Gardens as affordable housing, contrary to the intent of Congress in MAHRAA, the 21st Century Act and the National Housing Act.

THIRD CAUSE OF ACTION
THE FAIR HOUSING ACT, 42 U.S.C. § 3604;

77. Defendant HUD's course of conduct, including its approval of the prepayment of the mortgage, its failure to pursue alternatives to preserve the development as affordable housing, and its failure to take action to prevent the Owner from refusing to renew the subsidy contract, despite the fact that the Owner had not complied with the requirement that it provide notice of the reason for the nonrenewal to tenants, has in the past and continues to have a disparate adverse impact upon persons of protected classes in violation of the anti-discrimination provisions of the Fair Housing Act, 42 U.S.C. § 3604.
78. Defendant CHFA's course of conduct, including its failure to enforce the CHFA Regulatory Agreement with the owners of Park Hill Gardens West, its release of the CHFA Regulatory Agreement, its approval of the prepayment of the mortgage, its failure to preserve the

development as affordable housing, and its failure to take action to prevent the Owner from refusing to renew the subsidy contract, despite the fact that the Owner had not complied with the requirement that it provide notice of the reason for the nonrenewal to tenants, has in the past and continues to have a disparate adverse impact upon persons of protected classes, in violation of the Fair Housing Act, 42 U.S.C. § 3604.

79. Defendant Owner's course of conduct, in prepaying its mortgage, failing to comply with the CHFA Regulatory Agreement, and threatening current tenants at Park Hill Gardens West with eviction after July 14, 2000, has had and continues to have a disparate adverse impact upon persons of protected classes in violation of the Fair Housing Act, 42 U.S.C. § 3604.
80. Plaintiffs seek declaratory and injunctive relief as to all defendants' acts and failures to act.

FOURTH CAUSE OF ACTION
VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. § 3608
AND THE ADMINISTRATIVE PROCEDURES ACT

81. Defendant HUD's course of conduct, including its approval of the prepayment of the mortgage and its failure to preserve the development as affordable housing and to take action to prevent the Owner from refusing to renew the subsidy contract, despite the fact that the Owner had not complied with the requirement that it provide notice of the reason for the nonrenewal to tenants and its failure to require that CHFA (as a HUD agent, contractor, and funding recipient) affirmatively further fair housing, in addition to Defendant HUD's failure to have in place a procedure pursuant to which it evaluates the racial impact of mortgage prepayments and HAP contract opt-outs, violates its obligation to affirmatively further fair housing under the Fair

Housing Act, 42 U.S.C. § 3608(e)(5) and 3608(d), and violates the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*

82. Defendant CHFA's course of conduct, including its failure to enforce the CHFA Regulatory Agreement with the owners of Park Hill Gardens West, its release of the CHFA Regulatory Agreement, its approval of the prepayment of the mortgage, its failure to preserve the development as affordable housing and its failure to take action to prevent the Owner from refusing to renew the subsidy contract, despite the fact that the Owner had not complied with the requirement that it provide notice of the reason for the nonrenewal to tenants, in addition to Defendant CHFA's failure to consider the impact of its actions upon racial segregation and its failure to have in place a procedure pursuant to which it evaluates the racial impact of mortgage prepayments and HAP contract opt-outs, violates its obligation to affirmatively further fair housing under the Fair Housing Act, 42 U.S.C. § 3608(e)(5) and 3608(d).
83. Defendant HUD's and Defendant CHFA's actions are part of an ongoing pattern of failure by HUD and its designated Participating Administrative Entities and Section 8 contract administrators to fail to take all actions intended by Congress to preserve the continued viability and affordability of developments with expiring Section 8 contracts, especially those with Section 8 Mod Rehab contracts, and developments where HUD approval is required prior to a mortgage prepayment pursuant to Section 250(a) of the National Housing Act. HUD's actions, and actions on its behalf by its designated Participating Administrative Entities and Section 8 contract administrators, have had a disparate impact on members of classes protected under

the Fair Housing Act and have failed to affirmatively further fair housing in the Section 8 program.

84. Plaintiffs seek declaratory and injunctive relief as to all defendants' acts and failures to act.

FIFTH CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1437f(c)(8)(A)

85. Defendant Owner's failure to provide tenants with one-year notice of the reason for its decision not to renew its Section 8 contract violated the law in effect at the time that the one-year notice was required, 42 U.S.C. § 1437f(c)(8)(A).
86. The action of defendants HUD and CHFA, in accepting the Owner's deficient one-year notice, violated the law in effect at the time the one-year notice was required, 42 U.S.C. § 1437f(c)(8)(A), and severely prejudiced the plaintiffs by depriving them of the opportunity to take action to preserve their homes prior to HUD's approval of the mortgage prepayment and release of the HUD and CHFA Regulatory Agreements.
87. Plaintiffs seek declaratory and injunctive relief as to all defendants' acts and failures to act.

SIXTH CAUSE OF ACTION
VIOLATION OF THE CHFA REGULATORY AGREEMENT

88. The failure of the Owner and CHFA to abide by the express term of the Regulatory Agreement, renew the Section 8 contract for the term provided in the CHFA Regulatory Agreement, failure to obtain HUD approval before modifying the agreement and to limit the use and occupancy of the premises constitutes a breach of that agreement.
89. The Plaintiffs are third-party beneficiaries of the CHFA Regulatory Agreement.
90. The Plaintiffs materially changed their position in reliance on the CHFA Regulatory Agreement, before CHFA and the Owner modified that Agreement by waiving the preclusion on prepayment of the loan and renewal of the HAP contract, and before CHFA “released” that Agreement.
91. The Plaintiffs’ detrimental reliance on the CHFA Regulatory Agreement precludes discharge or modification of that Agreement without Plaintiffs’ consent.
92. The Plaintiffs did not consent to the modification of the CHFA Regulatory Agreement, and that modification is ineffective against the Plaintiffs.
93. Plaintiffs seek declaratory and injunctive relief as to defendant Owner’s acts and failures to act.

SEVENTH CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1437f(t)(1)(B)

94. The Owner’s failure to allow current tenants to remain at Park Hill Gardens West with their Section 8 tenant-based vouchers violates 42 U.S.C. § 1437f(t)(1)(B).
95. Plaintiffs seek declaratory and injunctive relief as to all defendants’ acts and failures to act.

EIGHTH CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1983

96. The actions of the defendants HUD and CHFA, by acting under color of law to deprive Park Hill Gardens West tenants of their rights and privileges under federal law, constitute violations of 42 U.S.C. § 1983.
97. Plaintiffs seek declaratory and injunctive relief as to defendants HUD's and CHFA's acts and failures to act.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

1. That with respect to the Owner of Park Hill Gardens West, the Court grant preliminary injunctive relief ordering the owner to refrain from evicting current tenants, to continue to fill vacancies from the waiting list, to continue to accept housing subsidies on behalf of eligible tenants, to continue to perform needed maintenance at the property, and, in all other respects to maintain the status quo at the property until all issues are resolved in this action;
2. That with respect to HUD and CHFA, the Court grant preliminary injunctive relief ordering these agencies to enter into renewal contracts for housing subsidies and continue paying such subsidies on behalf of eligible tenants until all issues are resolved in this action;
3. That with respect to the Owner of Park Hill Gardens West the Court issue permanent injunctive relief ordering the property to remain subsidized through 2004, and that the Owner seek subsidies for an additional twenty years after 2004;

4. That with respect to HUD and CHFA, the Court issue permanent injunctive relief ordering the payment of rental subsidies on behalf of tenants at Park Hill Gardens West through 2004, and, if allowed under applicable law, for an additional twenty years after 2004;
5. That, with respect to the Owner, CHFA and HUD, the Court declare that the prepayment of the mortgage and release of the HUD Regulatory Agreement and CHFA Regulatory Agreement are void and of no effect, and issue injunctive relief ordering the Owner to keep the property subsidized through 2004, and to seek additional subsidies for a period of twenty years after 2004;
6. That, with respect to CHFA and HUD, in the event that the Court orders that the parties enter into a new mortgage and/or insurance agreement, the Court issue injunctive relief ordering that such mortgage may not be prepaid or mortgage insurance canceled without permission of HUD and CHFA, and that such permission shall not be given unless the agencies perform analysis and make a finding that the effect of the prepayment or mortgage cancellation will not have a disparate impact upon persons of color or otherwise perpetuate racial segregation, and HUD determines that the property is no longer meeting a need for rental housing for lower income families in the area, and HUD provides tenants with notice and an opportunity to comment;
7. That, with respect to the Owner, in the event that the Court does not issue permanent injunctive relief ordering the property to remain subsidized through 2004, and ordering the Owner to seek additional subsidies for an additional twenty years after 2004, that the Court issue preliminary

and permanent injunctive relief ordering, in the alternative, that the Owner allow current tenants to remain in their units with the Section 8 tenant-based vouchers that they have been issued;

8. An Order awarding plaintiffs their costs; and
9. Such other relief as the Court deems appropriate.

Dated: July 23, 2001

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CERTIFICATE OF SERVICE

I certify that on the 23rd day of October 2000, I served a true and correct copy of the foregoing Third Amended Complaint by hand-delivering same to all of the Defendants' attorneys at the addresses indicated below:

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