

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

Colatta Dean *
4418 Old Frederick Road *
Apt. B *
Baltimore, MD 21229 *

Lavinia Dean *
4605 Manordene Road *
Apt. D *
Baltimore, MD 21229 *

Lena Boone *
4604 Lawn Park *
Baltimore, MD 21229 *

Civil Action No: CB-03-1381

Ralph G. Jefferson *
4601 Old Frederick Road *
Apt. B *
Baltimore, MD 21229 *

Theo Jefferson *
4601 Old Frederick Road *
Apt. B *
Baltimore, MD 21229 *

Ann Jones *
307 Edsdale Road *
Apt. B *
Baltimore, MD 21229 *

Roncia Lewis *
4601 Manordene Road *
Apt. D *
Baltimore, MD 21229 *

Sandra Lee *
4611 Old Frederick Road *
Apt B *
Baltimore, MD 21229 *

Linda D. Brice *
4657 Manordene Road *
Apt A *
Baltimore, Maryland 21229 *

Sandra Smith *
4602 Manordene Road, Apt. 1 *
Baltimore, Maryland 21229 *

Nicole Sewell *
4600 Manordene Road, Apt. D *
Baltimore, Maryland 21229 *

Daisy L. Robinson *
3208 Gulfport Drive *
Baltimore, Maryland 21225 *

Katrina Minor *
3231 Gulfport Drive *
Baltimore, Maryland 21225 *

and *
Uplands Apartments Tenants Association *
500 East Lexington St. *
Baltimore, MD 21202, *

Plaintiffs *

v. *
*

MEL MARTINEZ, in his official capacity as Secretary, *
U.S. Department of Housing and Urban Development *
451 Seventh Street, S.W. *
Washington, DC 20410 *

and *
*

UNITED STATE DEPARTMENT OF *
HOUSING AND URBAN DEVELOPMENT *
451 Seventh Street, S.W. *
Washington, DC 20410 *

Serve On: Thomas M. DiBiagio *
United States Attorney *
Allen F. Loucks *
Tamara Fine *
Assistant United States Attorneys *
United States Courthouse *

101 W. Lombard St., Room 6625
Baltimore, MD 21201 *

Defendants

* * * * *

AMENDED COMPLAINT

For their Amended Complaint against defendants, plaintiffs allege, upon information and belief, as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are tenants or former tenants in "project-based" "236" subsidized housing in Baltimore City. They bring this action to prevent defendant United States Department of Housing and Urban Development (HUD) from illegally displacing them from their homes to a motel without comparable decent, safe and sanitary housing and without following state and federal law. The plaintiffs also seek to prevent HUD from disposing of their apartment complex without affording them their statutory right to participate meaningfully in the disposition planning process.

2. Plaintiffs are residents or former residents of the Uplands Apartments ("Uplands"), a 979-unit apartment complex located on over 56 acres of land on the western border of Baltimore City. Defendant HUD has scheduled a foreclosure sale of the Uplands Apartment complex on June 2, 2003. HUD intends to purchase the property at the sale and then immediately transfer it to the City of Baltimore (the "City") at nominal cost, under terms that require the demolition of all 979 units. HUD then intends

to provide funds to help the City rebuild residential units on the site, most of which are unlikely to be available to or affordable by the Plaintiffs.

3. The City has told HUD that it will only accept title to the property if it is vacant when conveyed. On April 28, 2003, HUD informed plaintiffs that they would be removed from the premises no later than May 9, 2003 (later extended to May 14) and relocated to a motel. HUD further informed plaintiffs that, if plaintiffs do not find alternative housing within 30 days of the date of their removal, they will forfeit their rights to relocation assistance from HUD.

4. HUD has failed to offer comparable replacement dwellings to plaintiffs. Despite their diligent efforts, plaintiffs have been unable to find replacement housing that is safe, sanitary and decent and comparable to their homes and community at Uplands. Other members of the Uplands Apartments Tenants Association ("UATA") have been moved by HUD to housing that is substandard and/or located in areas of poverty and minority concentration. Plaintiffs and other members of UATA have been pressured to move to housing and neighborhoods not of their choice so that HUD can transfer the property in a vacant condition.

5. HUD's planned disposition of the Uplands fails to conform to federal law. HUD failed to determine the availability of low income housing and the consequences of displacement of Uplands tenants prior to making a decision to sell and demolish the property and to issue vouchers to eligible Uplands tenants. HUD failed to consult Uplands residents in connection with its development of a disposition plan. HUD has also refused to provide tenants with a realistic opportunity to return to rebuilt units on the Uplands property.

6. The demolition of a scarce subsidized housing resource from a racially and economically diverse neighborhood, the removal of plaintiffs and other members of the UATA from Uplands and the neighborhood, the relocation of Uplands tenants to areas of minority concentration and the planned construction of housing that is not affordable to the plaintiffs and other very low income persons will have a segregative and discriminatory effect.

7. Plaintiffs bring this action against HUD and HUD Secretary Mel Martinez, in his official capacity, to prevent defendants from removing them from the premises in violation of federal and state law and to redress HUD's failure to adhere to legal requirements in disposing of the property. Specifically, plaintiffs ask this Court to declare that HUD's plan to remove them from their premises, place them in a motel for thirty days and provide them no further assistance thereafter violates the Uniform Relocation Assistance Act, the leases into which HUD entered and the Fair Housing Act. They seek to enjoin HUD from proceeding with its illegal relocation plan. Plaintiffs also seek a declaration from this Court that HUD's impending foreclosure of the Uplands complex violates the Multifamily Disposition Reform Act, the Fair Housing Act and the Mortgage Foreclosure Act. They ask this Court to enjoin HUD from proceeding with its scheduled foreclosure sale until and unless it complies with the law.

JURISDICTION

8. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 (federal question); 42 U.S.C. § 3613(a)(1)(A)(fair housing); and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. (authorizing review of agency actions). Jurisdiction over plaintiffs' state law claim is conferred pursuant to the doctrine of pendent jurisdiction.

9. Plaintiffs seek declaratory and injunctive relief against the defendants pursuant to 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PARTIES

11. Plaintiff Colatta Dean has had her own apartment in the Uplands Apartment complex for the past ten years. She lives at 4418 Old Frederick Road. Before that time, she lived at Uplands with her mother, plaintiff Lavinia Dean.

12. Ms. Dean is an African-American single mother of five children. One of her children is severely disabled. She is not currently working because she must care for her disabled child. Her share of the rent for her apartment is \$100 per month.

13. Plaintiff Lavinia Dean has lived at the Uplands Apartments for 27 years. She currently resides at 4605 Manordene Road, Apt. D. She is the mother of Colatta Dean. She shares an apartment with her adult son. Ms. Dean works on a seasonal basis at Camden Yards, earning \$8.55 per hour. Her share of the rent for her apartment at Uplands is \$25 per month. Ms. Dean is African-American.

14. Plaintiff Lena Boone has been an Uplands resident for eight years. She lives at 4604 Lawn Park, Apartment A with her 10 year-old daughter. Ms. Boone has serious medical problems, including those associated with a kidney transplant she received in 1997. Since April, 2003, Ms. Boone has paid \$25 per month toward her Uplands rent; prior to April, her share of the rent was \$187 per month. Ms. Boone is African-American.

14. Plaintiff Ralph Jefferson is a 55 year old African American who lives with his mother, plaintiff Theo Jefferson. He and his mother have lived at 4601 Old Frederick

Road, Apt. B at the Uplands Apartments for the past three years. Mr. Jefferson is employed and earns approximately \$9.00 per hour.

16. Plaintiff Theo Jefferson is an 80 year old African American woman who lives with her son, plaintiff Ralph Jefferson, at the Uplands Apartment complex. She has lived at Uplands with her son for the past three years. Plaintiffs Ralph and Theo Jefferson together pay \$215 per month toward the rent on their apartment.

17. Plaintiff Ann Jones is a 64 year old African American woman who has lived at the Uplands complex for 27 years. She currently resides at 307 Edsdale Road #B, Baltimore, MD 21229. She pays \$120 per month for her Uplands townhouse, which she shares with her four grandchildren between the ages of 5 and 14.

18. Plaintiff Ronicia Lewis lives at 4601 Manordene Road, Apt D, Baltimore, MD, in the Uplands apartments with her eleven year old son. Her share of the rent for her apartment is \$158. She is African American.

19. Plaintiff Sandra Lee resides at 4611 Old Frederick Road, Apartment B, Baltimore, MD 21229 in the Uplands complex. She has lived at Uplands for eight years with her two children who are now 7 and 8. Her share of her Uplands rent is \$131 per month. She is African American.

20. Plaintiff Linda D. Brice resides at 4657 Manordene Road, Apartment A, Baltimore, MD 21229 in the Uplands complex. She has lived at Uplands since 1997. Her share of the rent is \$74 per month. She is African American.

21. Plaintiff Saundra Smith resides with her disabled son at 4602 Manordene Road, Apartment 1, Baltimore, MD 21229 in the Uplands complex. She pays rent of \$149 per month. She is African American.

22. Plaintiff Nicole Sewell lives with her four children at 4600 Manordene Road Apartment D, Baltimore, MD 21229 in the Uplands Apartments. She has lived in Uplands for eight years. Her rent is \$102 per month. She is African American.

23. Plaintiff Daisy L. Robinson lived at Uplands until December 2002 when she was forced to moved to 3208 Gulfport Drive, Baltimore, MD 21225 in Cherry Hill. Her home in Cherry Hill is infested with mice. Cherry Hill, a community in Baltimore, is a predominately African American community. Ms. Robinson is African American.

24. Plaintiff Katrina Minor lived at Uplands until December 2002 with her granddaughter. She lived at 4603 Manordene Road for six years. She was moved to 3231 Gulfport Drive in the predominately African American community of Cherry Hill. Ms Minor is African American.

25. Plaintiff UATA is an unincorporated association formed by current and former tenants of Uplands. UATA was established to represent the interest of its members.

26. Defendant Mel Martinez is Secretary of HUD. He is responsible for the oversight and administration of all federal housing programs for eligible low-income residents of the United States. Defendant Martinez is sued in his official capacity.

27. Defendant HUD is the mortgagee-in-possession of Uplands. HUD became responsible for the operation of Uplands when it assumed the status of mortgagee-in-possession, on or about January 1, 2001. It is therefore responsible for the conditions at, and maintenance of, the premises.

FACTS

28. The Uplands Apartments were built in 1949 and rehabilitated in 1973. The Uplands is a project subsidized under section 236 of the National Housing Act with housing assistance payments made under section 8 of the United States Housing Act of 1937 (project based section 8). A project-based subsidy is one which attaches to units in the complex enabling a low-income tenant to pay a reduced rent (calculated according to HUD regulations on the basis of income) while HUD pays the difference between the tenant's share and the "market" rent for the unit. 583 of its 979 units were so subsidized; all of the units are subsidized under the Section 236 program. 12 U.S.C. 1715z-1. Under the Section 236 program HUD pays lenders a subsidy which reduces the interest on the mortgage and reduces the monthly mortgage payments for the owner.

29. The Uplands abuts middle and upper-middle class neighborhoods that are ethnically diverse. Almost all of Uplands tenants from 2001 through the present have been African American.

30. As residents of project-based subsidized units, Uplands tenants are entitled to the right of continued occupancy as long as they do not breach the terms of their leases.

31. Plaintiffs reside at Uplands pursuant to a standard lease entered into with HUD. The standard lease (and relevant addenda, the most recent of which was executed on April 1, 2003) provide that the lease agreement is for successive one month terms unless terminated pursuant to the provisions of the lease. Paragraph 22 of the lease and relevant addenda provide that project management may terminate the tenancy for the resident's material noncompliance with the terms of the lease, his or her material failure

to carry out a legal obligation, or "other good cause". If the termination is for "other good cause", it "may only be effective as of the end of any initial or successive term." Tenants must be provided with 30 days notice of a termination made pursuant to the "other good cause" provision and the notice must contain information about the tenant's rights, as set forth in the lease and addenda.

32. Plaintiffs have not been served with a notice of lease termination.

33. Over the years, the owners of Uplands allowed the premises to deteriorate. HUD declared the owners in default, because the owner failed to maintain the property in good repair and condition and failed to manage the property, physically and financially, in a manner satisfactory to HUD. On January 1, 2001, HUD became mortgagee-in-possession and assumed the responsibility for operating and maintaining the premises.

34. On or about February 11, 2002, HUD decided to relocate residents, allegedly to safeguard their health, safety and security. The deadline for relocation was initially September 1, 2002 and has been extended several times.

35. After HUD became mortgagee-in-possession of Uplands, it decided to dispose of the property. Sometime in 2001 or 2002, pursuant to 12 U.S.C. § 1701z-11(i), HUD notified the City of Baltimore (the City) that the City could exercise a right of first refusal to purchase the property.

36. Baltimore City informed HUD that it would accept title to the Uplands property under certain specified conditions. On November 26, 2002, the City informed HUD that it would accept conveyance of the property in September 2003 and demolish all units on the site. It also advised HUD it would accept the property with tenants remaining on the property, if HUD were to use its best efforts and resources to vacate the

property prior to conveyance and provide tenant-based assistance and relocation resources necessary to meet the requirements of the Uniform Relocation Act. The City proposed to redevelop the site with 850 affordable rental units, 50 affordable homeownership units and 100 market rate units.

37. On or about January 23, 2003, HUD asked the City to justify its proposal for what it viewed as the high density of rental units, asked for detailed budgets and home sales pricing for both rental and homeownership units. HUD told the City it would have to accept the units on June 2, 2003 and asserted that the tenants would be relocated by April 30, 2003. HUD also told the City that, if any tenants had not been relocated, the City could use a portion of the funds that HUD would provide to it for demolition and rebuilding to pay for the relocation of remaining residents.

38. Approximately two months later, the City submitted a dramatically different proposal. It informed HUD in a letter dated March 19, 2003 that, because of meetings held in the community (but not with Uplands residents), the City had changed its proposal. Its new plan would now provide for development of 381 units on the site, of which 333 would be for sale units and 48 would be cooperative units, subject to possible revision. The City stated its new position that it would not accept the property if any residents remained on the date of conveyance.

39. On April 28, 2003, the Director of HUD's Atlanta Multifamily Property Disposition Center issued a notice to the remaining tenants that HUD intended to "close" Uplands and move them to a motel by May 9, 2003 (subsequently extended to May 14), place their goods in storage and provide them with a meal allowance. HUD indicated that this temporary housing, related benefits and relocation assistance would terminate thirty

days thereafter. The notice stated that HUD had "determined that allowing the residents to remain at the property poses an immediate threat to their health, safety and security."

40. On April 29, 2003, HUD's Director of Multifamily Housing for the Baltimore region convened a meeting for the remaining Uplands residents. He told them that HUD was about to execute a contract to sell the property to the City. He stated that, since HUD would no longer own the property following the foreclosure sale and subsequent transfer of the property to the City, residents would have to move into a motel no later than May 9, 2003, because HUD would not be able to spend funds to maintain essential services.

41. Uplands residents were not afforded the opportunity to participate in the process of developing a disposition plan. They were not notified of the terms and conditions for the disposition of the Uplands Apartments. They were not apprised of the alternative uses of the Upland's site considered by HUD in its discussions with the City. They were not given information regarding any disposition recommendations, analyses or other information concerning HUD's proposed disposition. Upland residents have not been provided with HUD's initial or final disposition plan, despite their repeated requests. Indeed, HUD claimed that it had not prepared a disposition plan in connection with the Uplands Apartments. Uplands residents have not been provided with any market studies HUD may have conducted to determine whether sufficient habitable, affordable rental housing is available in the market area in which the project is located. In response to plaintiffs' requests, HUD stated that it had not performed any such studies.

42. On or about April 28, 2003, HUD publicly announced its intention to foreclose on the Uplands Apartments and issued the terms and conditions of the sale for

prospective bidders (hereinafter referred to as the "bid package"). In the bid package, HUD states that it is in the process of relocating all residents and "intends that the project be vacant at the time of closing". The closing is to occur within thirty days of the date HUD notifies a bidder that it has been approved to purchase the project, unless the closing date is extended pursuant to the requirements specified in the bid package. While HUD views a purchase by a third party other than the City as unlikely and contrary to its current plans, any such purchase would not close until late June or early July, and, if the time period is extended, perhaps thereafter.

43. The bid package provides use restrictions to which a purchaser must adhere for twenty years, absent prior authorization from HUD to change the restrictions. Those restrictions purport to maintain the "affordability" of a percentage of any newly constructed units. The bid package does not specify the number of new units to be constructed, nor does it specify the percentage of newly constructed units that are to be maintained as rental, as opposed to homeownership, housing. Despite the apparent protections designed to maintain some new units as affordable, the application of the formulas in the bid package will substantially reduce the number of units available to low and very low income persons, including plaintiffs and members of UATA, from the 979 units receiving the mix of mortgage and project-based subsidies following disposition to the City.

44. HUD has been assisting Uplands tenants with their relocation to alternative housing. Although many Uplands tenants have received Section 8 vouchers, hundreds of vouchers made available for the use of Uplands tenants have not been used. The Section 8 vouchers are housing subsidies that the tenants may use to help pay for

private housing, if they are able to find a landlord who will accept them as subsidized tenants. Some former Uplands residents have not been able to secure safe, sanitary and affordable housing with their vouchers, despite extensive and exhaustive efforts. Other residents were forced to move from the neighborhood in which Uplands is located to predominantly black neighborhoods with high rates of poverty, which are not comparable in terms of amenities and services, quality of schools, or public safety. Among those former residents are Ms. Robinson and Ms. Minor both of whom felt their relocation benefits were about to be cut off and relocated against their wishes to Cherry Hill a community with high rates of poverty, without the amenities present in the Upland community and with issues of public safety. Both feel they were forced to move to Cherry Hill. Ms. Robinson's new home in Cherry Hill is infested with mice. Since being relocated, both have to travel miles to get to work. Their children, in order to prevent the disruption of their education, must also make a two hour trip to get to school, which is located in the Uplands neighborhood.

45. HUD has provided relocation assistance to some former Uplands tenants. Other former Uplands residents have left their Uplands apartment because, based on information they received from HUD or Arco, its managing agent for the property, they believed they were required to do so, without receiving relocation assistance or relocation benefits.

46. Approximately 26 families or individuals continue to occupy units at the Uplands Apartments. They have not been able to relocate elsewhere, as follows:

a. Colatta Dean: Plaintiff Colatta Dean is a single mother of five children, ranging in age from 9 to 19. The children's father is deceased. One of her children has

cerebral palsy and cannot move without assistance. He needs a special bed, must be transferred by others to his wheelchair and cannot bathe or toilet himself. He is fed a special diet through a feeding tube. Ms. Dean receives nursing assistance to care for her son.

b. Ms. Dean has been looking for replacement housing but has been unsuccessful. Prospective landlords lose interest in her when they learn that she has five children, one of whom is severely disabled. Her voucher has been extended four times and is now due to expire in early June. She has been told that it will not be extended any further. The properties to which HUD's relocation staff has directed her have been in unsafe neighborhoods and were in substandard condition. They have been in neighborhoods that have high concentrations of African Americans. Ms. Dean has exhausted the relocation assistance she was provided for application fees. She has been forced to pay additional application fees to prospective landlords out of her own limited resources. Her current Uplands residence is livable, given the size of her family and her son's special needs and she wishes to remain there until she can find comparable replacement housing.

c. Lavinia Dean: Ms. Dean is a 27 year resident of Uplands and is the mother of Colatta Dean. She works seasonally at Camden Yards. Ms. Dean's efforts to find replacement housing have not been successful. She has been rejected because of her credit history and has been told that landlords did not have available apartments or had a long waiting list. Her current housing is adequate and is not a threat to her health and safety. The places to which she was referred by HUD were in terrible condition. She has been steered to potential housing in neighborhoods that have a high concentration of African-Americans. Ms. Dean is African American.

d. Ralph and Theo Jefferson: The Jeffersons are African American Uplands residents. Ms. Jefferson, who is 80 years old, has poor eyesight and cannot manage steps; her housing options are accordingly limited. They searched extensively for housing and, out of fear, have decided to accept an apartment that does not meet the needs of Ms. Jefferson who has trouble walking up steps. Most of the neighborhoods to which they have been sent by HUD's relocation staff have a high concentration of African American residents. The conditions at their current Uplands apartment do not threaten their health or safety.

e. Lena Boone: Ms. Boone is a single mother of a 10 year old child. She has significant medical problems. She has looked hard for alternative housing. The list of apartments HUD's staff provided was out of date. The apartments on the list were substandard. The apartments on the list included those that were next to boarded up or abandoned homes, rat infested and dilapidated. They would have been unsafe for herself and her child. They were located in predominately African American neighborhoods. They were worse than her current residence at Uplands, which does not pose an immediate threat to her health and safety or that of her daughter.

f. Ann Jones: Ms. Jones is a 27 year resident of Uplands. She currently lives with her four grandchildren in an Uplands townhouse. She needs at least a three bedroom residence. Ms. Jones has searched extensively but unsuccessfully for replacement housing. Some landlords have told her that they do not take Section 8 tenants.

g. Ronicia Lewis: Ms. Lewis and her eleven year old son are Uplands residents. She has looked unsuccessfully for replacement housing. The apartments to which HUD's relocation staff have sent her have been in very bad condition. They were in

predominantly African-American neighborhoods. There are no problems with her current apartment that would require her to move.

h. Sandra Lee: Ms. Lee lives at Uplands with her 7 and 8 year old daughters. She has lived there for eight years. Despite her efforts, she has not found replacement housing. Landlords have rejected her because of her credit history. She does not drive and therefore needs to be near a grocery store. HUD's relocation staff has been pushing her to move to Cherry Hill. She does not want to move to Cherry Hill because the housing she saw there was in poor condition, there was drug use in the area and she does not think her daughter would be safe. She wants to live in a racially mixed neighborhood but the areas to which HUD is sending her are predominantly African American.

i. Linda Brice : Ms. Brice has not been able to find suitable replacement housing. The relocation staff has sent her to look in places like Cherry Hill. The neighborhood was unfit because it seemed dangerous. It is an African American neighborhood and not diverse. The places she has looked for on her own have been terrible. Ms. Brice wants to return to Uplands after it is rebuilt because it is important to her to live in a racially diverse neighborhood.

j. Saundra Smith : Ms. Smith lives at Uplands with her son, who is severely disabled. She lost a lot of places because she was not given the relocation monies on time.

k. Nicole Sewell : Ms. Sewell lives with her four children. She has located a house that meets the needs of her family but has been waiting for months for the owner to finish repairing it.

47. HUD has used an on-site manager to assist residents with relocating. Its first such manager was Arco, which was recently replaced by NHG. HUD and its managers are aware of the reasons plaintiffs have not been able to find alternative housing.

48. If HUD is permitted to move the remaining Uplands tenants from their apartments in the manner contemplated in its notice of April 28, 2003, plaintiffs will suffer severe and irreparable injury. Those injuries include, but are not limited to, the loss of specialized equipment needed by disabled household members, the inability to prepare food needed for specialized and medically required diets, the loss of privacy for family members, including children, loss of proximity to schools, doctors, and social services upon which plaintiffs depend and the inability to access transportation. Following thirty days in the motel, plaintiffs are facing homelessness. Moreover, the threatened deprivation of relocation assistance after tenants spend thirty days in a motel will deprive plaintiffs of assistance that is critical to their ability to obtain comparable safe and sanitary replacement housing.

THE STATUTORY FRAMEWORK

The National Housing Act

49. The National Housing Act of 1937 (the "Act") is the backdrop for the various statutes that govern HUD's disposition of multifamily housing. The Act declares that it is "the policy of the United States to promote the general welfare of the Nation by employing its funds and credit. . .to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of lower income. . ." 42 U.S.C. § 1437.

Multifamily Housing Property Disposition Act and 24 C.F.R. § 290

50. The Multifamily Housing Property Disposition Act (MHPDA or "Disposition Act"), found at 12 U.S.C. § 1701z-11 et. seq. and regulations promulgated thereunder at 24 CFR Part 290, set forth the rights of residents in subsidized housing such as Uplands when their housing is disposed of by HUD, either as the owner or to a purchaser pursuant to a foreclosure sale.

51. The Disposition Act requires the HUD Secretary to dispose of the property in a manner that addresses Congress' goals set forth at 12 U.S.C. 1701z-11(a). Specifically, the HUD Secretary is charged with disposing of multifamily housing projects in a manner that –

- 1) is consistent with the National Housing Act [12 U.S.C. § 1701 et seq.] and this section;
- 2) will protect the financial interests of the Federal Government; and,
- (3) will, in the least costly fashion among reasonable alternatives, address the goals of:
 - (a) preserving certain housing so that it can remain available to and affordable by low-income persons;
 - (b) preserving and revitalizing residential neighborhoods;
 - (c) maintaining existing housing stock in a decent, safe, sanitary condition;
 - (d) minimizing the involuntary displacement of tenants;
 - (e) maintaining housing for the purpose of providing rental housing, cooperative housing, and homeownership opportunities for low-income persons;
 - (f) minimizing the need to demolish multifamily housing projects;
 - (g) disposing of such projects in a manner consistent with local housing market conditions;
 - (h) while protecting the financial interests of the federal government.

52. The Secretary is charged with balancing competing goals relating to individual projects in a manner that will further the purposes of the section.

53. The Disposition Act requires that, prior to the sale of a property owned by the Secretary, the Secretary shall develop an initial disposition plan...that specifies the minimum terms and conditions of the Secretary for disposition... the initial sales price and the assistance the Secretary plans to make available to a prospective purchaser. 12 U.S.C. § 1701z-11(c)(2)(A).

54. The act requires the Secretary to develop procedures to obtain appropriate and timely input into disposition plans from the tenants of the project, as well as officials of the unit of general local government affected and the community in which the project is situated. 12 U.S.C. § 1701z-11 (c) (2)(D). This requirement for tenant involvement is also explicitly set forth at 12 U.S.C. § 1715z-1b, which guarantees tenants a right to adequate notice of, reasonable access to relevant information about, and an opportunity to comment on HUD's disposition of a project owned by the Secretary and that such comments be taken into consideration by the Secretary. 12 U.S.C. § 1715z-1b.

55. Congress required the Secretary to provide assistance which may include any of the following: (1) "contracting with the owner for project based assistance" for at least the number of units covered by subsidies immediately before the sale; (2) require that the same number of units in unsubsidized units in the same market area be subject to use and rent restrictions and be available and affordable by very low-income persons; or (3) provide project-based assistance for such units to be occupied by only very low-income persons.

56. The Disposition Act does permit the Secretary, under certain circumstances, to authorize alternative uses for a small percentage¹ of units disposed of by the Secretary to be used “in any manner” if the Secretary and unit of local government determine that such use will “further fair housing, community development or neighborhood revitalization goals.” The HUD Secretary may only elect an “alternative use” that does not preserve the property if the Secretary determines that “sufficient habitable, affordable rental housing is available in the market area in which the project is located to ensure use of ...[section 8 voucher] assistance.” 12 U.S.C. § 1701z-11(f)(6)(A), § 1701z-11(f)(6)(B)(ii).

57. Sufficient habitable, affordable, rental housing means HUD has determined there is an adequate supply of habitable affordable housing for low and very low income families in the market area. HUD’s determination must be made using established market analysis techniques and must consider information that demonstrates the rental housing vacancy rate; the number of rental units being produced; high rents; and significant under utilization of vouchers. 24 C.F.R. §290.3.

The Uniform Relocation Assistance Act

58. Congress' intentions to protect persons, particularly low-income persons, who are displaced by actions of the federal government, is reflected in the Uniform Relocation Assistance Act (URA). 42 U.S.C. § 4601 et. seq. The URA insures that displaced persons, as defined in the act, shall receive a variety of types of assistance, as set forth below. Its "primary purpose" is to insure that displaced persons "shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such

¹ “...not more than ... 5 percent of the total number of units in multifamily housing projects that are disposed of by the Secretary during any fiscal year...” 12 U.S.C. 1701z-11(f)(6)(A)(ii).

persons." 42 U.S.C. § 4621(b); 24 CFR § 290.17(b). In fact, the URA declares that minimizing the hardship associated with displacement is "essential to maintaining the economic and social well-being of communities." 42 U.S.C. § 4621(a)(4).

59. Among the URA's explicit statements of intent is a policy to improve housing conditions of economically disadvantaged persons "to the maximum extent feasible". 42 U.S.C. § 4621(c)(3).

60. The URA requires the displacing agency to determine and make timely recommendations on the needs and preferences of displaced persons for relocation assistance. 46 U.S.C. § 4625(c)(1).

61. The URA also places limits on the circumstances under which individuals will be required to move from their existing dwellings. The URA unequivocally protects individuals from being forced to move to housing that is not comparable:

No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

42 U.S.C. § 4626(b). The URA also provides that the displacing agency -- HUD in this case -- shall provide comparable replacement housing using funds authorized for the displacing project when comparable replacement housing is not available. Funds in excess of those provided under other provisions of the statute may be made available for this purpose on a case-by-case basis. *Id.* at 4626(a).

62. Pursuant to 42 U.S.C. § 4625(c)(3), relocation assistance advisory programs shall ensure that a person must have a reasonable opportunity to relocate to a

comparable replacement dwelling, except in the case of an emergency which requires the person to move immediately to avoid a substantial danger to the person's health or safety.

63. "Comparable replacement dwelling" under the URA "means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment." 42 U.S.C. § 4601(10).

64. Regulations promulgated pursuant to the URA provide that "[w]henver possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means." 24 C.F.R. § 24.205(c)(2)(ii)(C).

65. Under the URA, displaced persons are entitled to their actual, reasonable moving expenses. 42 U.S.C. § 4622. In addition, displaced persons are entitled to payments, not to exceed \$5,250, to enable them to lease or rent a comparable dwelling for a period not to exceed 42 months. 42 U.S.C. § 4624(a).

66. Even where a person is displaced because of an emergency (as defined in the statute), any temporary dwelling must be decent, safe and sanitary. In such a circumstance, the individual remains entitled to relocation assistance following the move to temporary housing and the displacing agency must make available at least one comparable replacement dwelling. 49 C.F.R. § 24.204(c)(3).

The Fair Housing Act

67. Title VIII of the Civil Rights Act of 1968 ("The Fair Housing Act"), 42 U.S.C. § 3601 et. seq. prohibits discrimination on the basis of race, color, sex, familial status and handicaps. 42 U.S.C. § 3604(a). The Act makes it illegal to, inter alia, "make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin." Id.

68. The anti-discrimination provision of the Fair Housing Act also protects members of families to whom HUD provides housing-related services or facilities. 42 U.S.C. § 3604(f). Discrimination within the meaning of the Fair Housing Act includes a failure to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to enable a handicapped individual to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3).

69. The Fair Housing Act further requires HUD to administer its programs and activities relating to housing in a manner that affirmatively furthers fair housing. 42 U.S.C. § 3608(e)(5).

Section 504 of the Vocational Rehabilitation Act

70. The Vocational Rehabilitation Act ("VRA") provides that no qualified individual with a disability "shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency. . ." 29 U.S.C. § 794.

FIRST CAUSE OF ACTION
(Violation of Uniform Relocation Assistance Act)

71. Plaintiffs reallege the allegations set forth in paragraphs 1 through 70 of this Complaint and incorporate them herein by reference.

72. Plaintiffs are displaced persons within the definition of the URA 42 U.S.C. § 4601(6)(A). Each plaintiff is being forced to move from his or her Uplands apartment "as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance."

73. Plaintiffs have not been able to relocate to a comparable replacement dwelling despite their efforts to find comparable, safe, sanitary and decent replacement housing.

74. Defendants have failed to adequately assess plaintiffs' needs and preferences in connection with their relocation.

75. Defendants have failed to provide plaintiffs with a reasonable opportunity to find comparable safe, decent and sanitary replacement housing.

76. Defendants' plan to relocate plaintiffs and their families to a motel room for thirty days violates the URA's requirement that replacement housing must be comparable, safe, sanitary and decent.

77. Defendants have failed to afford plaintiffs, all of whom are African American, a reasonable opportunity to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, in violation of URA regulations.

78. Defendants' insistence that plaintiffs relocate from their current Uplands units violates the requirement of 42 U.S.C. § 4626(b) that no person shall be required to move from his dwelling unit unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

79. By conditioning receipt of URA assistance on plaintiffs' securing alternative housing within thirty days of the date they are forced to vacate their current residence, defendants are violating HUD's own regulations and thwarting the purposes of the Act.

80. Defendants' violations of the URA have and continue to cause irreparable harm to plaintiffs and the members of their households.

81. Defendants' conduct is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with law. It is therefore also actionable pursuant to the Administrative Procedures Act. 5 U.S.C. § 706.

SECOND CAUSE OF ACTION
(Violations of HUD Relocation Regulations)

82. Plaintiffs reallege the allegations set forth at paragraphs 1 through 81 of this Complaint and incorporate them herein by reference.

83. HUD's regulations require that "relocation assistance at the levels described in, and in accordance with the requirements of the URA" must be provided to persons displaced in connection with the purchase, demolition or rehabilitation of a multifamily property by a third party, whenever federal financial assistance is involved in that activity. 24 C.F.R. § 290.17(d).

84. Plaintiffs are being displaced from their Uplands residences because of the anticipated demolition of a multifamily property by the City of Baltimore that will be undertaken with federal financial assistance.

85. Defendants' failure to adhere to the terms of the URA in relocating plaintiffs from their Uplands units violates HUD's own regulations.

86. Defendants' failure to adhere to their own regulations is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, in violation of the Administrative Procedures Act. 5 U.S.C. § 706.

THIRD CAUSE OF ACTION
(Breach of Lease)

87. Plaintiffs reallege the allegations set forth in paragraphs 1 through 86 of this Complaint and incorporate them herein by reference.

88. HUD has entered into a standard lease agreement with plaintiffs. It also required plaintiffs to execute a lease addendum on April 1, 2003. As set forth in the lease and in the addendum effective April 1, 2003, the tenancy continues for successive one month terms unless terminated, with a one-month term beginning on the first of the month. The leases and the addendum set forth the terms upon which defendants may terminate the lease. The lease provides that it may only be terminated by HUD for the resident's material noncompliance with its terms, the resident's material failure to carry out legal obligations, or "other good cause".

89. In order to terminate for "other good cause" HUD must provide the tenant with 30 days notice and the notice must contain specified information about the tenant's rights.

90. Plaintiffs have not been served with a lease termination notice since they executed the April 1, 2003 addendum. By moving plaintiffs to a motel, defendants are effectively terminating the lease. Defendants have therefore not complied with the procedures to which they agreed, as recently as April 1, 2003, for terminating plaintiffs' tenancies.

91. By forcing current Uplands residents to relocate to a motel for thirty days, after which they will receive no further relocation assistance from defendants, defendants are violating the provisions of their lease agreements. Such breach violates Maryland's common law of contracts.

92. Defendants' breach of their lease obligations has and continues to harm plaintiffs. Such harm is irreparable.

FOURTH CAUSE OF ACTION
(Violation of the Fair Housing Act As to Certain Plaintiffs)

93. Plaintiffs Colatta Dean and Lena Boone reallege the allegations set forth in paragraphs 1 through 92 of this Complaint and incorporate them herein by reference.

94. Plaintiffs Colatta Dean and Lena Boone are handicapped individuals within the meaning of the Fair Housing Act or have household members who are handicapped individuals within the meaning of that Act. 42 U.S.C. § 3602(h).

95. HUD has informed all plaintiffs, including plaintiffs Colatta Dean and Lena Boone, that they must move to a motel by May 9, 2003 (extended to May 14). Both Ms. Dean's young son and Ms. Boone have disabilities that require specialized equipment, food and/or care, which cannot be met in motel housing.

96. Defendants have failed to provide Ms. Dean and Ms. Boone with comparable replacement housing that can accommodate their special needs.

97. Ms. Boone and Ms. Dean have been unable to find comparable replacement housing that can accommodate the special needs of the disabled persons in their families.

98. Defendants' plan to relocate Ms. Dean and Ms. Boone and their families to a motel room for a limited 30 day period and then to deny them further relocation assistance is not a reasonable accommodation.

99. Plaintiffs have, and will continue to suffer harm as a result of defendants' failure to provide them with comparable replacement dwellings that reasonably accommodate their special needs.

100. Defendants' failure to provide reasonable accommodations for plaintiffs Dean and Boone violates the Fair Housing Act.

FIFTH CAUSE OF ACTION
(Violation of Vocational Rehabilitation Act As to Certain Plaintiffs)

101. Plaintiffs Colatta Dean and Lena Boone reallege the allegations set forth in paragraphs 1 through 100 of this Complaint and incorporate them herein by reference.

102. Defendant HUD's management and disposition of the Uplands, including the relocation of Uplands tenants, constitutes a program or activity conducted by an Executive agency of the U.S. Government. Defendants are therefore subject to the requirements of the Vocational Rehabilitation Act and must make reasonable accommodations to plaintiffs with respect to the relocation of Uplands tenants.

103. Defendants plan to relocate plaintiffs Colatta Dean and Lena Boone and their families in a motel for thirty days fails to reasonably accommodate the needs of

disabled persons in plaintiffs' households, in violation of Section 504 of the Act. 29 U.S.C. § 794.

104. Plaintiffs have and continue to suffer harm as a result of defendants' violations of the Vocational Rehabilitation Act.

SIXTH CAUSE OF ACTION
(Violation of Fair Housing Act)

105. Plaintiffs, including plaintiff UATA, reallege the allegations set forth in paragraphs 1 through 104 of this Complaint and incorporate them herein by reference.

106. The membership of UATA consists of current and former Uplands tenants. Virtually all of the UATA membership is African American.

107. Defendants' relocation of current and former Uplands tenants has steered and forced a disproportionate number of them to housing in impoverished, African-American neighborhoods.

108. Both defendants' plan to transfer the Uplands to the City and the restrictions it has imposed on any successful bidder at the foreclosure sale require the demolition of the property, including its 583 units of project based subsidized rental units. Neither its plan for the transfer of the property to the City nor its requirements for the successful bidder provide for the replacement of those units at rents that are affordable to the plaintiffs and other low and very low income African American members of the UATA. By vacating the Uplands Apartments and removing the residents, by imposing restrictions on a subsequent purchaser and/or by disposing of the property on the terms under consideration between HUD and the City which will substantially reduce the number of rental units available to low and very low income African Americans on the Uplands site and in the surrounding racially diverse

neighborhood, defendants are making housing unavailable to the plaintiffs, other members of the UATA, and other very low income African Americans on account of their race and are discriminating in the terms and conditions of sale or rental of a dwelling. In so doing, defendants are also violating their statutory duty to further fair housing.

109. The failure to require that the City or another bidder for the Uplands property preserve units as affordable rental units for low and very low Baltimore residents denies replacement housing for these former Uplands tenants, all of whom are African American. It deprives them of the opportunity to continue to reside in or adjacent to ethnically diverse neighborhoods and forces them to live in neighborhoods of high minority concentration.

110. HUD's disposition plans for Uplands have a discriminatory effect on plaintiffs and perpetuate patterns of segregative housing. HUD's disposition plans also fail to affirmatively further fair housing.

111. By engaging in the foregoing actions, defendants have violated the Fair Housing Act. In addition the foregoing conduct of the Defendant is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with the law, in violation of the Administrative Procedures Act. 5 U.S.C. § 706.

SEVENTH CAUSE OF ACTION
(Violation of the Multifamily Housing Property Disposition Reform Act of 1994)

112. Plaintiffs reallege the allegations set forth in paragraphs 1 through 111 of this Complaint and incorporate them herein by reference.

113. Defendants have violated the Multifamily Housing Property Disposition Reform Act of 1994, 12 U.S.C. § 1701z-11 and regulations promulgated at 24 C.F.R. Part 290, in the following respects:

- a. By failing to determine whether there was sufficient habitable affordable rental housing available before Issuing vouchers to the residents and approving the demolition of Uplands.
- b. By contracting to sell the property to the City of Baltimore without developing a disposition plan that included or considered tenant input.
- c. By developing and instituting a plan to dispose of the property without providing notice to tenants of both the initial and final plan for disposition and failing to provide tenants with information as to the general terms and conditions of the sale, future use and operation of the project, the time by which comments must be submitted and providing access to the full disposition recommendation and any other information concerning the sale.
- d. By failing to provide that at least the number of units required to receive project based assistance in the project be available and affordable to lower-income persons in other projects in certain units in the market area.

114. As a direct and proximate result of HUD's violations of law its decision to authorize and fund the demolition of Uplands, plaintiffs will suffer irreparable harm because transfer of the property will result in demolition of their homes and their involuntary displacement. Defendant's conduct in failing to follow the law and in also not adhering to their own regulations is arbitrary and capricious, an abuse of discretion and otherwise not in accordance with the law, in violation of the Administrative Procedures Act. 5 U.S.C. § 706.

WHEREFORE, plaintiffs respectfully request that this Court:

Issue a declaratory judgment that:

(a) HUD's plan to relocate plaintiffs temporarily in a motel and then deprive them of future relocation benefits violates the Uniform Relocation Assistance Act, 42 U.S.C. § 4601 et. seq. and its own regulations;

(b) HUD's plan to relocate plaintiffs temporarily in a motel violates the terms of its lease agreement with plaintiffs;

© HUD's plan to relocate plaintiffs Dean and Boone in a motel temporarily and thereafter deprive them of further relocation benefits fails to reasonably accommodate the disabled members of their households and therefore violates the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3604(a)-(c).

(d) HUD's decision to foreclose on the Uplands property and sell it to the City of Baltimore without providing tenants with a meaningful opportunity to participate in the development of a disposition plan violates the Multifamily Housing Property Disposition Reform Act of 1994, 12 U.S.C. § 1701z-11 and regulations promulgated thereunder and is arbitrary, capricious and not otherwise in accordance with law as required by 5 U.S.C. § 706(2)(A);

(e) HUD's decision to foreclose on the Uplands property, issue vouchers to the residents and dispose of it without restrictions as to its availability and affordability to very low income tenants was made without conducting a market study to determine whether there exists an adequate supply of affordable rental housing and therefore violated the Multifamily Housing Property Disposition Reform Act of 1994 and is arbitrary, capricious and not otherwise in accordance with law as required by 5 U.S.C. § 706(2)(A);

(f) HUD's removal of Uplands tenants from the premises, its failure to assure them of the opportunity to return to a rebuilt Uplands and its relocation of those residents to racially segregated neighborhoods constitute violations of the Fair Housing Act;

(g) HUD's decision to force plaintiffs to move to a motel for thirty days and then deprive them of further relocation assistance is arbitrary, capricious, and not otherwise in accordance with law, as required by 5 U.S.C. § 706(2)(A);

(h) HUD's decision to proceed to foreclose on the Uplands Apartments without developing a disposition plan with the meaningful input of Uplands tenants, is arbitrary, capricious and otherwise not in accordance with law, as required by 5 U.S.C. § 706(2)(A);

(i) HUD's disposition plan for the Upland Apartments violates the Fair Housing Act in that it fails to affirmatively further fair housing, perpetuates segregative housing, has a discriminatory effect on plaintiffs and is also arbitrary, capricious and not otherwise in accordance with law as required by 5 U.S.C. § 706(2)(A);

Issue a preliminary and permanent injunction as follows:

(a) enjoining defendants from proceeding with their current plan to move plaintiffs and their families to a motel by May 14;

(b) enjoining defendants from curtailing relocation assistance beyond thirty days in a motel;

(c) enjoining defendants from forcing plaintiffs to move to housing that is not comparable to their Uplands residence and is not safe, sanitary and decent.

(d) enjoining defendants from proceeding with the foreclosure of Upland Apartments unless and until they comply with the provisions of the Multifamily Housing Property Disposition Reform Act of 1994 and the regulations promulgated thereunder and the Fair Housing Act;

(e) enjoining defendants from proceeding with the foreclosure of Upland Apartments until and unless they do so pursuant to a plan, acceptable to this Court, that will provide at least 979 units of affordable replacement housing in a manner that furthers HUD's obligations under the Fair Housing Act.

Award plaintiffs any and all additional relief as the Court deems fit and proper.

Dated: May____, 2003

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