

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEAN MASSIE, SHIRLEY SOWELL,
DALE PEOPLES, LOUISE BRANDON,
ZETTA BRANDON, ALINE REID,
YUGONDA ALICE and YEVORN
GASKINS on behalf of themselves and all
others similarly situated, and THIRD EAST
HILLS PARK, Inc.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, and its
Secretary, ALPHONSO JACKSON,

Defendants.

Civil Action No.

Class Action

EMERGENCY COMPLAINT

I. PRELIMINARY STATEMENT

1. This suit is brought to enjoin the U.S. Department of Housing and Urban Development from unlawfully divesting the resident-shareholders of Third East Hills Park, Inc. of their ownership interests in their homes via

foreclosure, unlawfully proceeding to transfer ownership of the property without the continuation of housing assistance payments, unlawfully displacing shareholders from their homes and failing to provide shareholders with relocation assistance and services required by Federal law.

2. Plaintiffs are shareholders in Third East Hills Park, Inc. (“the Coop”), the non-profit, corporate owner of Third East Hills Park, one of four long-time Federally-assisted residential housing developments in the East Hills neighborhood of Pittsburgh.
3. For thirty (30) years, Third East Hills Park has been operated as a housing cooperative, whereby residents entering the property have had the opportunity to purchase ownership shares in the property. From the beginning, virtually all shareholders (and non-shareholder families) residing at Third East Hills Park have been African-American.
4. During the Coop’s tenure, Third East Hills Park has provided affordable housing to generations of low-income families, whereby rents have been subsidized pursuant to a project-based Section 8 housing assistance payment (“HAP”) with the U.S. Department of Housing and Urban Development (“HUD”).
5. Without technical assistance or professional training, the Coop has occasionally struggled to monitor the management of the property, but the

property has remained sound, and the Coop has never missed a mortgage payment.

6. During their tenure at Third East Hills Park, however, shareholders have witnessed decades of public and private disinvestment in the East Hills area generally. The neighboring Federally-assisted properties of First East Hills and Second East Hills steadily declined over time, as did the nearby public housing high-rise likewise and the former East Gate Shopping Center.
7. In recent years, however, directed efforts have been made to bring substantial reinvestment back into the East Hills neighborhood. From 2002 to 2003, each of the troubled, multifamily properties underwent a transfer of ownership. Two national development companies—Winn Companies and Telesis Corporation—purchased First East Hills and Second East Hills, respectively, via negotiated sale from HUD. During this same period, Petra Ministries and its development arm, Operation Nehemiah, acquired the former East Gate Shopping Center site.
8. In coordination with Telesis Corporation, Winn Companies and Petra Ministries, the Urban Redevelopment Authority of Pittsburgh (“Urban Redevelopment Authority”) funded the development of a comprehensive plan to revitalize the entire East Hills neighborhood. Dubbed “East Hills Visioning,” this plan calls for the comprehensive revitalization and/or

redevelopment of each of the three federally-assisted multifamily housing developments (including Third East Hills Park), redevelopment of the vacant public housing high-rise, and redevelopment of the former East Gate Shopping Center site, among other things. Many facets of the East Hills Visioning plan have already been put into action.

9. Among other things, the Visioning Plan calls for the demolition and redevelopment of Third East Hills as mixed-income, mixed-tenure housing.
10. Pursuant to the plan, the Urban Redevelopment Authority has acted to acquire Third East Hills Park from HUD, and, if acquired, the Urban Redevelopment Authority has agreed to convey the property to Telesis Corporation, at a nominal value, along with substantial public funds, to accomplish the demolition and redevelopment of the property.
11. However, current deed restrictions on the property require a long-term obligation that the real estate to be operated under its current configuration as affordable housing. In order for demolition and redevelopment to occur, as envisioned, the deed (and its use restrictions) would have to be extinguished.
12. HUD has acted to create conditions which would constitute a default under HUD-owned mortgages and has initiated such foreclosure proceedings

which will result in the extinguishment of the existing deed and the divestment of the vested ownership/equity interests of shareholders.

13. In doing so, HUD unlawfully redirected the project-based Section 8 HAP contract and spent funds, without terminating the contract, to displace shareholders.

14. To date, HUD has displaced the majority of the shareholder community. HUD did so without providing relocation assistance and services required by Federal law.

15. HUD has set the foreclosure sale for July 27, 2006 at 10:00 a.m. At that time, HUD will convey Third East Hills Park to the Urban Redevelopment Authority (without continued project-based Section 8 housing assistance payments) for one dollar (\$1.00) and provide the Authority with a Federal grant summing approximately three million dollars (\$3,000,000.00) for demolition and redevelopment activities. The Urban Redevelopment Authority, in turn, will immediately convey the property, along with the Federal grants, for one dollar (\$1.00) to Telesis Corporation.

16. HUD's facilitation, through foreclosure, of the redevelopment of Third East Hills Park under new ownership will result in irreparable harm to Third East Hills Park, Inc. shareholders.

17. The Plaintiffs bring this class action under the Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 42 U.S.C. § 3601 *et seq.*, and its implementing regulations; Public Law 109-115, Section 311; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Relocation Act), 42 U.S.C. §§ 4601 *et seq.*, and its implementing regulations; the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; the Due Process Clause of the Fifth to the U.S. Constitution; and the common law.

II. JURISDICTION AND VENUE

18. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1343(a)(4) (civil rights); 42 U.S.C. § 3613(a)(1)(A) (fair housing); 28 U.S.C. § 1346(a)(2) (contract); and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* (authorizing review of agency actions).

19. The plaintiffs seek declaratory and injunctive relief against the defendants pursuant to 28 U.S.C. §§ 2201 and 2202.

20. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

III. PARTIES

A. PLAINTIFFS

21. Plaintiff Jean Massie has been a shareholder and resident of Third East Hills Park since 1980, when she and six of her children moved into the development. Since moving into Third East Hills Park, Ms. Massie's household has grown and changed. In all, Ms. Massie has raised two generations of children at Third East Hills Park. Ms. Massie is currently the primary caregiver for two of her grandchildren, one of whom she has raised since birth. Ms. Massie's sons, James and Mark currently reside with her, helping around the house and providing medical-related assistance. At age 73, Ms. Massie does not want to leave the East Hills community. She knows the neighborhood, feels safe in the neighborhood and relies on neighborhood conveniences, such as public transportation, which will only improve in the future. It is important to Ms. Massie that she, and her family, retain their ownership interest as shareholder in Third East Hills Park.

22. Plaintiff Shirley Sowell purchased a shareholder interest in Third East Hills Park when she move into the property with her then fourteen-year-old (14) daughter in 1989. After several years apart, Ms. Sowell's daughter and granddaughter, now eleven (11), have rejoined her household. Ms. Sowell wishes to remain in the community and wants maintain her shareholder interest in Third East Hills Park, in hopes of realizing equity in her investment.

23. Plaintiff Dale Peoples resides at Third East Hills Park with her two sons and grandson. She has been a shareholder at the property from the beginning of the Coop's tenure as owner. Over her thirty (30) years in the community, Ms. Peoples has contributed significantly to the vitality of her community. Ms. Peoples was a founding member of the Coalition of Community Affairs, a community-based organization which for years organized children-focused activities and events, including daily meal programs, discounted clothing programs, field trips, group trips to Kennywood and other attractions and summer camps. Since HUD initiated foreclosure proceedings and began displacing shareholders and residents in November of 2004, Ms. Peoples has witnessed the disappearance of many other pillars of the community, which she sees as a severe loss. Ms. Peoples wishes to remain in her community and continue to have an ownership interest in Third East Hills Park.

24. Plaintiff Louise Brandon is a twenty-five (25) year shareholder of Third East Hills Park, Inc. She became a shareholder in 1981, when she, her husband (now deceased), along with the two youngest of their children, Francis and Zetta, moved into the property. In recent years, Ms. Brandon, who is 85, has survived a series of health impediments, which have restricted her mobility. Her daughter, Zetta, and two grandsons, still live at Third East Hills Park, upon whom Ms. Brandon relies for necessities. Ms. Brandon wishes to

remain at Third East Hills, where she knows the community and feels safe.

It is important to Ms. Brandon that she remain a shareholder in the development.

25. Plaintiff Aline Reid moved into Third East Hills Park with her mother, brother and niece nearly 30 years ago. After living in Maryland for several years, Ms. Reid returned to Third East Hills, where she has resided as a shareholder since 1989. Since that time, Ms. Reid has raised five children at Third East Hills Park, the youngest currently thirteen (13) years old, who will be attending Colfax school in the fall, about which the family is excited. After her daughter's passing a few years ago, Ms. Reid has also shouldered the responsibility of rearing her granddaughter, who is also a current member of the household. During her years as a shareholder, Ms. Reid has been a strong contributor to the East Hills community, among other things, coaching neighborhood little league basketball and softball teams. Ms. Reid believes it is important for her family to stay rooted in East Hills as a shareholder of Third East Hills Park, Inc.

26. Plaintiff Yugonda Alice resides at Third East Hills Park with her five children, ages thirteen (13) to eighteen (18). Ms. Alice was born and has grown up at in the East Hills neighborhood, as have her children. Her oldest daughter recently graduated from Alderdice high school and will be

enrolling in Clarendon College in the Fall. Ms. Alice wants her other children to complete their secondary educations at Alderdice. Ms. Alice feels comfortable living and raising her children in her childhood community. She is close to many of her neighbors, upon whom she has come to rely. Her mother and brother also live at Third East Hills Park. Ms. Alice is a shareholder at Third East Hills Park and wished to remain so.

27. Third East Hills Park has been home to Plaintiff Yevorn Gaskins since the incorporation of Third East Hills Park, Inc. She has raised five children and contributed in raising ten grandchildren at the property, where her daughter (Plaintiff Alice) and son still reside. During her years at Third East Hills Park, Ms. Gaskins has been intensely involved in the civic health of her community. She worked as a daycare provider and then headed up the lunch program at the (former) East Hills School. Ms. Gaskins has been a leader in programming and activities at Third East Hills Park, organizing recreational activities for neighborhood kids, including group outings to Idlewild Park and the old White Swan Park. Ms. Gaskins has been a Committee woman in East Hills for years and is currently the local judge of elections. Ms. Gaskins also sits on a committee of the Housing Authority of the City of Pittsburgh to coordinate jobs for local youth and young adults related to the demolition and redevelopment of the nearby (vacant) public housing high-

rise. Ms. Gaskins' commitment to her community and to the shareholders (and residents) of Third East Hills Park, Inc. has been consistently evidenced by the time and energy she dedicates to the development. A shareholder from the beginning, Ms. Gaskins believes it vital that long-time shareholders of Third East Hills Park, Inc. remain stakeholders in this evolving community.

28. Plaintiff Third East Hills Park, Inc. is a non-profit corporation, incorporated under Pennsylvania law in 1976 for the purpose of owning Third East Hills Park as a resident-owned cooperative housing development providing affordable housing opportunities for low-income shareholders and non-shareholder residents.

B. DEFENDANTS

29. Defendant HUD is the Federal agency charged with administration of all federal laws and contracts relating to the operation, administration, maintenance, rehabilitation and disposition of multifamily properties. With respect to the Plaintiff class members, HUD has initiated foreclosure proceedings and displaced the majority of shareholders and residents from Third East Hills Park.

30. Defendant Alphonso Jackson is the Secretary of HUD and, as such, is charged with the administration and enforcement of all functions, powers

and duties of HUD, including the responsibility to ensure that HUD and its employees comply with federal laws, regulations, contracts and constitutional provisions.

IV. CLASS ACTION ALLEGATIONS

31. The class representatives bring this action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure on their own behalf and on behalf of a class consisting of all shareholders of Third East Hills Park, Inc.

32. The class is so numerous that joinder of all members is impracticable. The class is comprised of approximately 80 low-income families, most or all of whom are African-American, who face imminent divestment of their ownership interests in Third East Hills Park, displacement or who have already been displaced by HUD in connection with the foreclosure and redevelopment of Third East Hills Park.

33. There are questions of law and fact common to the class, including, but not limited to:

- a. Have the Defendants acted so as to deny class members, virtually all of whom are African-American, of continued housing opportunities, in violation of the Fair Housing Act?

- b. Have the Defendants failed to evaluate the impact of their planned foreclosure on minority shareholders, in violation of the Fair Housing Act?
- c. Have the Defendants acted in violation of their statutory duty to affirmatively further fair housing?
- d. Have the Defendants failed to provide for the continuance of project-based Section 8 rental subsidy following any foreclosure sale, in violation of Public Law 109-115, Section 311?
- e. Have the Defendants, through their displacement activities, acted so as to deny class members a choice of living in areas within the City of Pittsburgh that are not racially-impacted, in violation of the Fair Housing Act?
- f. Have the Defendants, through their displacement and relocation activities, acted so as to perpetuate segregated housing patterns, in violation of the Fair Housing Act?
- g. Have the Defendants, through their displacement activities, failed to minimize the involuntary displacement of class members, in violation of the Uniform Relocation Act?

- h. Have the Defendants failed to determine the relocation needs and preferences of individual class members, in violation of the Uniform Relocation Act?
- i. Have the Defendants failed to provide class members with comparable replacement housing options, and fair housing options, prior to displacement, or the threat of displacement, in violation of the Uniform Relocation Act?
- j. Have the Defendants failed to provide information to class members on the availability, purchase prices and rental charges of comparable replacement dwellings, in violation of the Uniform Relocation Act?
- k. Have the Defendants failed to provide required relocation assistance and services, in violation of the Uniform Relocation Act?
- l. Have the Defendants failed to provide class members with required notices, in violation of the Uniform Relocation Act?
- m. Have the Defendants failed to establish a process for meaningful resident participation in the planning and decision-making of foreclosure and redevelopment activities, in violation of the Uniform Relocation Act?
- n. Have the Defendants failed to provide notice of a hearing prior to displacement, or the threat of displacement, to protect against the

erroneous deprivation of vested property interests, in violation of the due process clause of Fifth Amendment to the Federal Constitution?

- o. Have the Defendants unlawfully abated and redirected the project-based Section 8 housing assistance payments in violation of their contracts and agreements with the Coop?
34. The claims of the representative parties are typical of the claims of the class.
35. The representative parties will fairly and adequately protect the interests of the class, and class counsel, who have extensive experience in housing and class action litigation, will zealously prosecute this action.
36. The Defendants have acted or refused to act on grounds generally applicable to the class thereby making declaratory and injunctive relief appropriate with respect to the class as a whole.

V. STATUTORY AND REGULATORY FRAMEWORK

A. THE FAIR HOUSING ACT

37. The Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, embodies Congress' policy "to provide...for fair housing throughout the United States." 42 U.S.C. § 3601.
38. The Fair Housing Act makes it illegal to take actions which, in effect, "make unavailable or deny a [housing opportunity] to any person because of race [or] color," or to "To discriminate against any person in the terms,

conditions, or privileges of sale...of a dwelling, or in the provision of services or facilities in connection therewith, because of race [or] color.” 42 U.S.C. §§ 3604(a) and 3604(b).

39. The Fair Housing Act also makes it unlawful to coerce or interfere with any person in the exercise or enjoyment of rights granted or protected by the Act. 42 U.S.C. § 3617.

40. The Department of Housing and Urban Development has promulgated regulations implementing these provisions. *See* 24 CFR § 5.105 (applicability of the Fair Housing Act); 24 CFR Part 100 (guidance on fair housing requirements, in general).

41. HUD regulations make clear that it is unlawful for HUD to take actions which, in effect, “[d]iscriminate in the terms, conditions or privileges of sale...of a dwelling, or in the provision of services or facilities in connection with sales...” because of race or color. 24 CFR § 100.50(b)(2).

42. HUD regulations clarify that it is unlawful HUD to “[e]ngage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons” in effect on the basis of race or color. 24 CFR § 100.50(b)(3).

43. HUD regulations make clear that it is unlawful for HUD to carry out activities in a way which, in effect, “obstruct choices in a community,

neighborhood or development” on the basis of race or color. 24 CFR § 100.70(a).

44. HUD regulations make it clear that HUD may not “engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons,” in effect, because of race or color. 24 CFR § 100.70(b).

45. Likewise, HUD regulations make reiterate the statutes prohibition against activities which, in effect, coerce or interfere with persons in the exercise or enjoyment of fair housing rights. 24 CFR § 100.400(b).

46. More than that, however, the Fair Housing Act provides that HUD shall administer its programs and activities relating to housing and urban development in a manner which affirmatively to further fair housing. 42 U.S.C. § 3608(e)(5). In other words, not only must HUD do no harm to persons of minority race or color, HUD must conduct its business in a manner which provide affirmative fair housing benefit to affected persons.

B. PUBLIC LAW 109-115, Section 311

47. On November 30, 2005, Congress enacted legislation requiring the U.S. Department of Housing and Urban Development to maintain any project-based Section 8 housing assistance payments when it sells or otherwise disposes of any property during fiscal year 2006. 109 P.L. 115, § 311

(“Notwithstanding any other provision of law, in fiscal year 2006, in managing and disposing of any multifamily property that is owned or held by the Secretary of Housing and Urban Development, the Secretary shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 that are attached to any dwelling units in the property.”).

48. The statute delineates a limited exception to the requirement to maintain every project-based subsidy as a condition of any sale or disposition during fiscal year 2006. If HUD, after evaluating the costs and similar factors of maintaining the subsidy, determines it to be infeasible to maintain the subsidy, the Secretary may “contract for project-based rental assistance payments with an owner or owners of other existing housing properties, or provide other rental assistance,” but only “in consultation with the tenants of that property.” *Ibid.*

49. This law is dramatic, in that it ensures that any affordable housing development sold by HUD during this fiscal year will continue to be utilized, and assisted, as affordable rental housing following the sale. It provides protections for residents against the deprivation of their leasehold interests, as well as preserves scarce affordable housing resources.

C. THE UNIFORM RELOCATION ACT

50. Congress enacted The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq.*, to create a uniform policy for the fair and equitable treatment of persons displaced as a result of programs or projects undertaken with Federal financial assistance. 42 U.S.C. § 4621(b).

51. The primary purpose of the Uniform Relocation Act is to minimize displacement. The secondary purpose of the Act is to ensure that persons who must be displaced shall not be made to suffer disproportionate injuries as a result. 42 U.S.C. § 4621(b); *See also* 49 CFR 24.1(b).

52. Moreover, Congress declared that the Uniform Relocation Act must “be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII...[of] the Civil Rights Act of 1968 [the Fair Housing Act].” 42 U.S.C. § 4621(c)(4).

53. Pursuant to Congressional mandate, 42 USCS § 4604(b)(1), the Federal Department of Transportation has promulgated regulations to implement the Uniform Relocation Act. *See generally* 49 CFR Part 24.

54. All HUD-assisted programs and projects are subject to the Uniform Relocation Act and the Department of Transportation Regulations. 24 CFR 42.1(a). HUD also has developed and transmitted a relocation Handbook setting out the Department’s internal interpretation of the basic statutory and

regulatory requirements that must be followed by the agency in the administration of its activities which result in displacement. *See* HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition, Chapter 1, § 1-1.

55. In its relocation Handbook, HUD describes the requirement to minimize displacement in the following manner:

“Agencies shall assure that they take all reasonable steps to minimize displacement as a result of a project. For example, if feasible, residential occupants of buildings to be rehabilitated shall be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling unit in the building/complex following completion of the project (*see* Chapter 8). If necessary to accomplish this goal, the Agency should consider the feasibility of carrying out the project in stages.”

HUD Handbook 1378, Chapter 2, § 2-2. In other words, HUD and other entities to which the Uniform Relocation Act applies must take all steps feasible to minimize displacement.

56. To this effect, the Uniform Relocation Act requires that any program or project undertaken with Federal financial assistance “be planned in a manner that (1) recognizes, at an early stage in the planning...and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals..., and (2) provides for the

resolution of such problems in order to minimize adverse impacts on displaced persons....” 42 U.S.C. § 4625(a); *See also* 49 CFR § 24.205(a).

57. Generally, this statutory mandate requires early coordination and planning with affected residents to identify problems and develop solutions in any proposed activity which might result in displacement. *See* 49 CFR 24.205(a); *See also* HUD Handbook 1378, Chapter 2, § 2-2(a)-(d). Such planning must precede any action which will cause displacement, 42 U.S.C. § 4625(a), and it should be scoped to the complexity and nature of the anticipated displacing activity. 49 CFR 24.205(a). To this end, early planning should involve a relocation survey or study to determine, among other things: the number of households which might be displaced; tenant incomes, tenure and family characteristics, paying special attention to adverse impacts on minorities, the elderly, large families and the handicapped; relocation advisory services for persons facing temporary relocation or displacement; the number of comparable replacement dwellings in the area (including purchase price ranges and rental rates) that are expected to be available to fulfill the needs of households which may be displaced; consideration of housing of last resort measures to be instituted, if an adequate supply of comparable housing is not expected to be available in

the area (*See* Paragraph 40 below). 49 CFR 24.205(a); HUD Handbook 1378, Chapter 2, § 2-2(e).

58.If, after all steps have been taken to minimize displacement, it is necessary that some displacement occur, then the Uniform Relocation Act obligates HUD to provide a minimum level relocation assistance and services to each person facing displacement.

59.If displacement is to occur, HUD is required carry out a relocation assistance advisory program to ensure that advisory services are made available to each affected person. 42 U.S.C. § 4625(b); 49 CFR § 24.205(c); HUD Handbook 1378, Chapter 2, § 2-5.

60.These advisory services must include such measures, facilities or services as may be necessary or appropriate to determine, and make timely recommendations on, the individualized relocation needs and preferences of each person to be displaced. 42 U.S.C. § 4625(c)(1); 49 CFR 24.205(c)(2)(i); HUD Handbook 1378, Chapter 2, § 2-5(b). This shall include a personal interview with each person. 49 CFR 24.205(c)(2)(i).

61.As soon as feasible, HUD must make available to each person, in writing, at least one, specific “comparable replacement dwelling” to which the person can relocate. 42 U.S.C. § 4625(c)(3); 49 CFR 24.205(c)(2)(ii)(A); HUD

Handbook 1378, Chapter 2, § 2-5(d). To qualify as a “comparable replacement dwelling,” any unit offered must be:

- a. Decent, safe and sanitary, 42 U.S.C. § 4601(10)(A), as defined at 49 CFR 24.2; *See also* HUD Handbook 1378, Chapter 1, § 1-7;
- b. Adequate in size to accommodate the occupants, 42 U.S.C. § 4601(10)(B); 49 CFR 24.2;
- c. Within the financial means of the displaced person, 42 U.S.C. § 4601(10)(C), which means that after receiving rental assistance under the Uniform Relocation Act (discussed in Paragraph 48 below), the person’s average monthly cost for rent and utilities at the replacement dwelling would not exceed the resident’s current costs, 49 CFR 24.2; HUD Handbook 1378, Chapter 1, § 1-6(g);
- d. Functionally equivalent to the displacement dwelling, 42 U.S.C. § 4601(10)(D), which means, among other things, that it performs the same function, provides the same utility, contains the same principle features and is capable of contributing to a comparable style of living, 49 CFR 24.2; 49 CFR Part 24 APPENDIX A, Subpart A; HUD Handbook 1378, Chapter 1, § 1-6(b);

- e. In an area not subject to unreasonable adverse environmental conditions, 42 U.S.C. § 4601(10)(E); 49 CFR 24.2; HUD Handbook 1378, Chapter 1, § 1-6(c);
- f. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, commercial and public facilities, services, and the displaced person's place of employment, 42 U.S.C. § 4601(10)(F); 49 CFR 24.2; HUD Handbook 1378, Chapter 1, § 1-6(d);
- g. On a site that is typical in size for residential development with normal site improvements, including customary landscaping, 49 CFR 24.2; HUD Handbook 1378, Chapter 1, § 1-6(e);
- h. Currently available to the displaced person, 49 CFR 24.2; HUD Handbook 1378, Chapter 1, § 1-6(f).

62. Where possible, three or more comparable replacement dwellings shall be made available to each displaced person. 49 CFR 24.204(a); *See also* 49 CFR Part 24 APPENDIX A (“...§ 24.204(a) requires that, ‘Where possible, three or more comparable replacement dwellings shall be made available.’ Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not

contain three comparable dwellings) may the Agency make fewer than three referrals.”).

63. Where feasible, HUD shall inspect any comparable replacement dwelling made available prior to making the referral to assure that it meets applicable standards. 49 CFR 24.205(c)(2)(ii)(B); HUD Handbook 1378, Chapter 2, § 2-5(f)(2).

64. HUD must also provide each resident with current and continuing information on the availability, purchase prices, and rental costs of other comparable replacement dwellings. 42 U.S.C. § 4625(c)(2); 49 CFR 24.205(c)(2)(ii); HUD Handbook 1378, Chapter 2, § 2-5(f)(1). Such information must be provided on a continuing basis until the person selects the replacement dwelling to which he or she will relocate. *Ibid.*

65. If sufficient comparable replacement housing is not available in the area (i.e. in the neighborhood in which the displacement dwelling is located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher, *See* 49 CFR 24.403(a)(4)), then HUD “may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for [the] project.” 42 U.S.C. § 4626(a); 49 CFR § 24.404; HUD Handbook 1378, Chapter 3, § 3-6. Such action includes, but is not limited to: increasing of the maximum replacement housing payment;

purchasing (or leasing) comparable replacement dwellings and making them available to displaced persons; or constructing new comparable replacement dwellings to be made available. 49 CFR § 24.404(c). Under no circumstance, however, may a person be forced to relocate unless at least one comparable replacement dwelling has been made available to the person. 42 U.S.C. § 4626(b); 49 CFR § 24.204(b); HUD Handbook 1378, Chapter 2, § 2-5(a).

66. The displacing agency must offer all persons transportation to inspect housing to which they are referred. 49 CFR 24.205(c)(2)(ii)(D); HUD Handbook 1378, Chapter 2, § 2-5(f)(5).

67. HUD must supply each resident with information concerning other Federal and State programs which may be of assistance to displaced persons, and provide technical assistance to such persons in applying for assistance under such programs. 42 U.S.C. § 4625(c)(5); 49 CFR 24.205(c)(2)(v); HUD Handbook 1378, Chapter 2, § 2-5(f)(3).

68. HUD must provide counseling, advice as to other sources of assistance that may be available (e.g. childcare, job training, drug or alcohol treatment), and such other help as may be appropriate in order to minimize hardships to such persons in adjusting to relocation. 42 U.S.C. § 4625(c)(6); 49 CFR 24.205(c)(2)(iv); HUD Handbook 1378, Chapter 2, § 2-5(g)(3).

69. And HUD must coordinate the relocation activities performed by it with other Federal, State, or local governmental entities (e.g. school districts) in the community which could affect the efficient and effective delivery of relocation assistance and related services. 42 U.S.C. § 4625(d); HUD Handbook 1378, Chapter 2, § 2-2(c).

70. In addition to carrying out a relocation assistance advisory program, the Uniform Relocation Act requires the displacing agency to provide a minimum level of financial assistance to each displaced person. *See generally* 42 U.S.C. §§ 4622 and 4624; 49 CFR 24.301, 302, 402-404; HUD Handbook 1378, Chapter 3.

71. HUD must provide a payment to the displaced person for all actual, reasonable expenses in moving his or her family, 42 U.S.C. § 4622(a)(1), including expenses for: transportation of the displaced person and personal property; packing, crating, unpacking and uncrating of the personal property; disconnecting, dismantling, removing, reassembling and reinstalling household appliances and other personal property; storage of the personal property for a period not to exceed 12 months, unless the agency determines that a longer period is necessary; insurance for the replacement value of the property in connection with the move and necessary storage; the replacement value of property lost, stolen, or damaged in the process of

moving where insurance covering such loss, theft, or damage is not reasonably available; utility hook-ups, including reinstallation of telephone and cable television service; credit checks; and other necessary and reasonable moving-related expenses (e.g. security deposits). *See* 49 CFR 24.301; *See also* HUD Handbook 1378, Chapter 3, § 3-2.

72. At his or her discretion, however, any displaced person may elect to receive a fixed moving expense and dislocation allowance as an alternative to payment for actual moving and related expenses. 42 U.S.C. § 4622(b); 49 CFR 24.302; *See* HUD Handbook 1378, Chapter 3, § 3-2(b)(1). This fixed allowance is determined according to a schedule established by the Federal Department of Transportation, 42 U.S.C. § 4622(b), and reflects the number of rooms in the displacement dwelling. *See* HUD Handbook 1378, Chapter 3, § 3-2(b)(1). The schedule currently applicable in Pennsylvania is as follows: a \$420.00 fixed allowance for a one-room unit; \$680.00 for two rooms; \$940.00 for three rooms; \$1110.00 for four rooms; \$1280.00 for five rooms; \$1450.00 for six rooms; \$1620.00 for seven rooms; \$1790.00 for eight rooms; and an additional \$170.00 for each room beyond eight.

<http://www.fhwa.dot.gov/realestate/fixsch96.htm>.

73. In addition, HUD must provide rental assistance to each displaced person as necessary to enable such person to occupy a comparable replacement unit

for forty-two (42) months at a cost that is not greater than the cost at the resident's current unit. *See generally* 42 U.S.C. § 4624; 49 CFR 24.402; HUD Handbook 1378, Chapter 3, § 3-4. This "replacement housing payment" is calculated by subtracting the average monthly cost of rent plus utilities at the current unit from the same costs at the comparable replacement dwelling made available to the resident, then multiplying the difference by forty-two. *See* 49 CFR 24.402(b); HUD Handbook 1378, Chapter 3, § 3-4(b). This replacement housing payment is capped at a maximum of \$5250.00. 42 U.S.C. § 4624(a). Any displaced person may elect to apply this payment to a down payment (including related expenses) on the purchase of a replacement dwelling. 42 U.S.C. § 4624(b); 49 CFR 24.402(c); HUD Handbook 1378, Chapter 3, § 3-4(c).

74. Finally, the Uniform Relocation Act requires HUD to provide each affected resident with a series of notices to make sure each resident is timely informed of the possibility of displacement and of his or her consequent rights under the Act.

75. As soon as feasible, the agency must provide each resident with a "general information notice" which explains that the project has been proposed and, if no displacement is expected to occur, cautions the person not to move, explaining that the person will not be displaced. *See* HUD Handbook 1378,

Chapter 2, § 2-3(a). A suggested guideform notice is attached in Appendix 2 of HUD's relocation Handbook. If displacement may result from the project, then the general information notice must: explain that the project has been proposed and caution the person not to move until the project is approved and the person receives a notice of eligibility for relocation assistance (*See* Paragraph 51 below); inform the person of the relocation assistance advisory program to be carried out by the agency, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate; describe the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s); inform the person that at least one comparable replacement dwelling will be made available, in writing; inform the person that he or she will not be required to move earlier than 90 days after such comparable replacement dwelling(s) is made available; and describe the person's right to appeal the Agency's determination as to a person's application for assistance. *See* 49 CFR 24.203(a); HUD Handbook 1378, Chapter 2, § 2-3(a)(2)(a). A guideform for this type of notice is attached in Appendix 3 of the HUD relocation Handbook.

76. Promptly after the initiation of negotiations, the agency must provide each resident with either a “notice of non-displacement” or a “notice of eligibility for relocation assistance.” *See* 49 CFR 24.203(b); HUD Handbook 1378, Chapter 2, § 2-3(b). The notice of non-displacement shall explain the reasonable terms and conditions under which the person may lease and occupy the property upon completion of the project. *See* HUD Handbook 1378, Chapter 2, § 2-3(b)(1). A guideform notice of non-displacement is attached in Appendix 4 of the HUD relocation Handbook. The notice of eligibility for relocation assistance shall notify each occupant of his or her eligibility for relocation assistance, effective on the date of the initiation of negotiations, and again describe the relocation assistance and services to which the person is entitled. 49 CFR 24.203(b); HUD Handbook 1378, Chapter 2, § 2-3(b)(2). A guideform notice of eligibility for relocation assistance is contained in Appendix 6 of the HUD Handbook.

77. Additionally, the agency must provide each resident with written notification of the comparable replacement dwelling(s) being made available to the resident, explaining the replacement housing payment to which the person is entitled, and informing the resident of his or her right to appeal these determinations if he or she disagrees. *See* Paragraphs 36, 37 and 48 above.

This information may be included in the written notice of eligibility for relocation assistance. *See* HUD Handbook 1378, Appendix 6.

78. And the displacing agency must issue each resident with a “90-day notice” stating: either a specific date as the earliest date by which the occupant may be required to move; or stating that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. 49 CFR 24.203(c)(3); HUD Handbook 1378, Chapter 2, § 2-3(c)(3). The 90-day should not be given before the person is issued the notice of eligibility for relocation assistance, nor should the notice be issued prior to at least one comparable replacement dwelling being made available to the resident. 49 CFR 24.203(c)(3); *Compare* HUD Handbook 1378, Chapter 2, § 2-3(c)(2) (“The 90-day shall not be given before the person is issued a notice of eligibility...and a comparable replacement dwelling has been made available.”). “If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available.” 49 CFR 24.203(c)(3).

79. Each notice which the Agency is required to provide under the Uniform Relocation Act must be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files.

Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. 49 CFR 24.5; HUD Handbook 1378, Chapter 2, § 2-3(d).

VI. STATEMENT OF FACTS

80.Paragraphs 1-17 are incorporated herein by reference.

A. Third East Hills Park

81.Plaintiffs are shareholders in Third East Hills Park, Inc., the non-profit, corporate owner of Third East Hills Park.

82.Third East Hills Park is one of four long-time Federally-assisted residential housing developments in the East Hills neighborhood of Pittsburgh.

83.Since 1976, Third East Hills Park has been operated as a resident-owned housing cooperative, whereby each resident, upon entry to the property, has had the opportunity to purchase an ownership interest in the property by becoming a shareholder in Third East Hills Park, Inc. (“the Coop”).

84.From the beginning, virtually all shareholders (and non-shareholder families residing) at Third East Hills Park have been African-American.

85. During the Coop's tenure as owner of Third East Hills Park, the property has provided affordable housing to generations of families with limited incomes.
86. During the Coop's ownership, rents at Third East Hills Park have been subsidized pursuant to a project-based Section 8 housing assistance payment ("HAP") contract between the Coop and the U.S. Department of Housing and Urban Development ("HUD").
87. Under the HAP contract, each shareholder household (as well as each non-shareholder household renting a unit at Third East Hills Park) generally has contributed thirty percent (30%) of adjusted household income toward the cost of rent and utilities, the balance paid by Federal funds allocated to HUD for use under the HAP contract.
88. Although the Coop, without technical assistance or professional training, has occasionally struggled to monitor management companies responsible for the operation of the property, the property has remained sound, and the Coop has never missed a mortgage payment during its thirty (30) year tenure as owner. This has ensured steady progress toward the realization of the shareholders' goal of debt-free ownership.

B. Foreclosure, Redevelopment and Displacement

89. During their tenure at Third East Hills Park, however, shareholders have witnessed decades of public and private disinvestment in the East Hills area generally.

90. While Third East Hills Park remained sound in structure and community, the neighboring Federally-assisted multifamily properties of First East Hills and Second East Hills steadily declined over time.

91. The nearby public housing high-rise likewise withered and has sat vacant in recent years.

92. Shareholders witnessed the effect of years of disinvestment in the neighborhood public school, which has ultimately resulted in its closure.

93. And the once vibrant East Gate Shopping Center, a past cornerstone of commerce situated uphill from Third East Hills Park, weathered years of decline before shutting its doors.

94. In recent years, however, directed efforts have been made to bring substantial reinvestment back into the East Hills neighborhood.

95. From 2002 to 2003, each of the troubled, neighboring multifamily properties underwent a transfer of ownership. Two national development companies—Winn Companies and Telesis Corporation—purchased First East Hills and Second East Hills, respectively, via negotiated sale from HUD.

96. During this same period, Petra Ministries and its development arm, Operation Nehemiah, acquired the former East Gate Shopping Center site.
97. In coordination with Telesis Corporation, Winn Companies and Petra Ministries, the Urban Redevelopment Authority of Pittsburgh (“Urban Redevelopment Authority”) funded the development of a comprehensive plan to revitalize the entire East Hills neighborhood.
98. Dubbed “East Hills Visioning,” this plan calls for the comprehensive revitalization and/or redevelopment of each of the three federally-assisted multifamily housing developments (including Third East Hills Park), redevelopment of the vacant public housing highrise, and redevelopment of the former East Gate Shopping Center site, among other things.
99. Many facets of the East Hills Visioning plan have already been put into action. Telesis Corporation and Winn Companies, with assistance from the Urban Redevelopment Authority, have obtained and committed upwards of sixty million dollars (\$60,000,000) in public and private funding to redevelop First East Hills and Second East Hills.
100. The vacant public housing high-rise has been slated for demolition and redevelopment as for-sale housing, also using public funds to leverage private investment.

101. Petra Ministries and Operation Nehemiah are in the process of rebuilding the former East Gate Shopping Center site to provide commercial space for retailers and have solicited development proposals from big box retailers, including Wal-Mart.
102. The Vision plan calls for Third East Hills Park is to be demolished and redeveloped as lesser-dense rental and for-purchase housing.
103. Coop Shareholders were not at the table negotiating this plan.
104. Pursuant to the plan, the Urban Redevelopment Authority has acted to acquire Third East Hills Park from HUD.
105. If acquired, the Urban Redevelopment Authority has agreed to convey the property to Telesis Corporation, at a nominal value, along with substantial public funds, to accomplish the demolition and redevelopment of the property.
106. However, the current deed to the Third East Hills Park imposes long-term use restrictions on the site, whereby the real estate is required to be operated under its current configuration as affordable housing. In order for demolition and redevelopment to occur, as envisioned, the deed (and its use restrictions) would have to be extinguished.
107. HUD has unlawfully initiated such foreclosure proceedings against the Coop.

108. Such foreclosure will result in the extinguishment of any use restrictions of the existing deed.
109. Such foreclosure will result in the divestment of the vested ownership/equity interests of shareholders.
110. Between October 2002 and September 2004, HUD issued failing reports on four (4) consecutive physical inspections to Third East Hills Park.
111. HUD then declared the Coop to be in “technical default” (as opposed to monetary default) under its mortgages, regulatory agreement and HAP contract.
112. HUD quickly then abated the project-based Section 8 subsidy to the property (a tool whereby housing assistance payments are suspended in order to encourage owners with other recourses to use those recourses to affect a cure) and began a process of displacing shareholders (and non-shareholder families) from the property.
113. In doing so, HUD never terminated the HAP Contract. However, HUD effectively accomplished the same end by unlawfully spending the suspended HAP funds to provide (legally deficient levels of) relocation assistance.

114. In addition, HUD exercised control over the finances and management of the properties, canceling existing work orders and freezing funds for capital improvements to the property.
115. This effectively removed any ability of the Coop to cure the alleged default, as tenant rent contributions were needed to cover regular operating expenses.
116. HUD, in effect, combined the harshest portions of each remedy available to it under the mortgages, regulatory agreement and project-based Section 8 contract to direct its course of action once declaring default, creating an draconian remedy resulting the divestment of all ownership and leasehold interests of shareholders.
117. In November of 2004, HUD began displacing shareholders and non-shareholders residents from the property.
118. To date, HUD has displaced the majority of the shareholder community; approximately sixty-five (65) shareholders (and twenty-two non-shareholder families) have been displaced from the property. Currently, approximately fifteen (15) shareholders (and eight non-shareholder residents) remain at Third East Hills Park.
119. In doing so, the Defendants have failed to involve the residents in a process to recognize, at an early stage in the planning, the problems

associated with the displacement and providing for the resolution of such problems in order to minimize adverse impacts.

120. The Defendants have failed to take steps under the mortgages and other agreement which could have prevented displacement while curing any alleged defaults.
121. Had HUD desired to do so, under the mortgages, regulatory agreement and HAP contract, HUD could have (and should have) taken over the property as Mortgagee in Possession, in order redirect the management and capital expenditures of the property, fix alleged defaults and steward the project in the right direction. Rather, HUD took away the vast majority of project funds, denied the Coop's attempts to secure new management, and steered the project into the ground, resulting in the deprivation of ownership interests and leasehold interests and displacement for shareholders.
122. Additionally, the Defendants have failed to develop and carry out a relocation assistance advisory program which meets the requirements of the Uniform Relocation Act.
123. The Defendants have failed to conduct personal interviews with shareholders to determine, and resolve, their individualized relocation needs and preferences.

124. The Defendants have failed to make available to each household, in writing, at least one, specific comparable replacement dwelling to which the person can relocate, including dwelling presenting opportunities to live in racially mixed areas.

125. The offer of a Section 8 voucher does not satisfy Defendants' duty to make available to each family a specific, comparable replacement dwelling to which they can relocate. A Section 8 unit is not the functional equivalent of a public housing unit in that a family in a Section 8 unit is not protected from lease termination without a landlord having to establish good cause. In addition, subsidized rent under the Section 8 program addresses only one component of comparability, i.e. affordability, and it does not provide the same depth of affordability as that which is provided under the project-based HAP contract.

126. The Defendants have failed to provide each resident with current and continuing information on the availability, purchase prices, and rental costs of other comparable replacement dwellings in the area.

127. The Defendants have failed to supply each resident with information concerning other Federal and State programs which may be of assistance to the resident.

128. The Defendants have failed to provide counseling, advice as to other sources of assistance that may be available to replace the childcare, job training, and other services which the residents stand to lose if displaced from Washington Plaza.
129. The Defendants have failed to coordinate the relocation activities performed by it with other Federal, State, or local governmental entities in the community, including its failure to participate in early coordination with the Pittsburgh School District to ensure the educational continuity of the children.
130. Furthermore, the Defendants have failed to notify each resident of the full range of options available to him or her for the payment of moving and related expenses, including each resident's right to choose a fixed moving expense and dislocation allowance.
131. The Defendants have failed to notify each resident of the replacement housing payment to which he or she may be entitled, and which may be used as a down payment toward the purchase of a replacement home.
132. Prior to applying for Federal financial assistance, the Defendants failed to issue each resident a general information notice explaining the possibility of displacement and the assistance and services to be provided.

133. The Defendants inappropriately issued immediate notices, and set up a relocation office onsite, creating pressure for residents to relocate, prior to making available to each resident at least one comparable replacement dwelling and prior to explaining the spectrum of relocation assistance and services to which he or she is entitled. This had the effect of coercing shareholders off of the property, depriving them of that housing opportunity.
134. The Defendants have failed to provide class members with notice and the opportunity for a hearing prior to the deprivation of vested ownership and leasehold interests.
135. HUD has scheduled the foreclosure for July 27, 2006 at 10:00 a.m.
136. HUD has executed an agreement to convey Third East Hills Park to the Urban Redevelopment Authority at that time (without the aforesaid use restrictions and without continued project-based Section 8 housing assistance payments) for one dollar (\$1.00) and provide the Authority with a Federal grant summing approximately three million dollars (\$3,000,000.00) for demolition and redevelopment activities.
137. The Urban Redevelopment Authority, in turn, has executed an agreement to immediately convey the property, along with the Federal grants, for one dollar (\$1.00) to Telesis Corporation.

138. HUD's facilitation, through foreclosure, of the redevelopment of Third East Hills Park under new ownership will result in irreparable harm to Third East Hills Park, Inc. shareholders.
139. HUD's course of action in taking away the Coop's ability to cure the alleged technical default and proceeding with foreclosure has the effect of depriving shareholders, all of whom are African-American, of their unique, vested ownership interests in Third East Hills Park, thereby depriving shareholders of housing opportunities in a community which, by all accounts, is on the verge of rebirth.
140. In addition, HUD's extinguishment of the deed and failure to include continued project-based housing assistance payments in the terms of the sale, permitting the demolition and redevelopment of the property as a lesser dense, mixed income rental and for-purchase housing make it impossible for shareholders to return to their community after any such redevelopment.
141. Moreover, HUD's course of action, in taking away the Coop's ability to cure the alleged technical default, proceeding with foreclosure and displacing shareholders without a pre-deprivation opportunity to protect against the erroneous deprivation of their property interest results in the irreparable deprivation of those property interests without due process of law.

VII. CAUSES OF ACTION

142. The facts alleged in the above paragraphs state causes of action as follows.

- A. Count I—Violation of the Fair Housing Act, 42 U.S.C. § 3604.
- B. Count II—Violation of Fair Housing Act, 42 U.S.C. § 3608.
- C. Count III—Violation of Fair Housing Act, 42 U.S.C. § 3617.
- D. Count IV—Violation of 109 P.L. 115, § 311.
- E. Count V—Violation of Uniform Relocation Act, 42 U.S.C. §§
4621(b) and 4625(a).
- F. COUNT VI—Violation of the Uniform Relocation Act, 42 U.S.C. §§
4625(b) and (c)(1).
- G. COUNT VII—Violation of the Uniform Relocation Act, 42 U.S.C. §§
4625(c)(3) and 4626(b).
- H. COUNT VIII—Violation of the Uniform Relocation Act, 42 U.S.C.
§§ 4625(b) and (c)(2).
- I. COUNT IX—Violation of the Uniform Relocation Act, 42 U.S.C. §§
4625(b) and (c).
- J. COUNT X—Violation of the Uniform Relocation Act, 42 U.S.C. §§
4625(b) and (c)(5).
- K. COUNT XI—Violation of the Uniform Relocation Act, 42 U.S.C. §§
4625(b) and (c)(6).

L. COUNT XII—Violation of the Uniform Relocation Act, 42 U.S.C. § 4625(d).

M. COUNT XIII—Violation of the Uniform Relocation Act, 42 U.S.C. §§ 4622(a)(1) and (b).

N. COUNT XIV—Violation of the Uniform Relocation Act, 42 U.S.C. §§ 4624.

O. COUNT XV—Violation of the Uniform Relocation Act (minimize displacement), 42 U.S.C. §§ 4601 et seq.

P. COUNT XVI—Violation of the Due Process Clause, U.S. Const. Amend. V.

Q. COUNT XVII—Breach of contract.

WHEREFORE, the Plaintiffs petition this Court to:

143. Assume jurisdiction over this case;

144. Certify this case as a class action;

145. Enter a declaratory judgment on behalf of the class that the actions and omissions of the Defendants, as set forth above and as are otherwise proven, violate the Fair Housing Act, 109 P.L. 115, § 311, the Uniform Relocation Act and the due process clause of the Fifth Amendment to the U.S. Constitution;

146. Enter a preliminary injunction, later to be made permanent, enjoining the

Defendants from:

- a. Carrying out the foreclosure of Third East Hill Park;
- b. Failing to require the continuation of the Section 8 contract following any proposed foreclosure sale;
- c. Terminating the project-based Section 8 housing assistance payments agreement;
- d. Failing to take over management responsibilities at the property in order to cure any alleged deficiencies, fill vacancies and assist the Coop in finding new, suitable management;
- e. Displacing any further shareholders;
- f. Failing to provide shareholders with Uniform Relocation Act level relocation assistance and services;

147. Enter an order granting nominal security under Rule 65(c);

148. Award Plaintiffs attorneys' fees, costs and expenses;

149. Award the Plaintiffs such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Kevin Quisenberry
Kevin Quisenberry, Esq.

Date: 7/26/06

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 2006 a true and correct copy of the foregoing pleading is being served via Facsimile and Hand Delivery upon counsel of record as follows:

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