

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

CIV-89-1570

JESSIE COMER  
ROSEMARY COMER  
JEWEL CULVERHOUSE  
HAZEL GRIMES  
ANNETTE McCUTCHEON  
YVONNE PRIMM  
MATILDA SANTIAGO  
ROSETTA WEEDEN,

Civil Action No. \_\_\_\_\_

individually and on behalf of  
all persons similarly situated,

and

BUFFALO LEAGUE OF PUBLIC HOUSING  
TENANTS,

Plaintiffs

v.

CLASS ACTION COMPLAINT

JACK KEMP, in his official  
capacity as Secretary of the  
United States Department of  
Housing and Urban Development,

and

UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT,

and

BUFFALO MUNICIPAL HOUSING AUTHORITY,

and

LAWRENCE A. GRISANTI, individually  
and in his official capacity as  
Executive Director of the Buffalo  
Municipal Housing Authority,

and

CITY OF BUFFALO, NEW YORK,

and

JAMES D. GRIFFIN, in his official  
capacity as Mayor of the City of  
Buffalo, New York,

and

RICHARD L. HIGGINS, individually  
and in his official capacity as  
Commissioner of the New York State  
Division of Housing and Community  
Renewal,

and

RENTAL ASSISTANCE CORPORATION OF  
BUFFALO,

and

TOWN OF AMHERST, NEW YORK,

and

BELMONT SHELTER CORPORATION,

Defendants

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## I. PRELIMINARY STATEMENT

1. This is a class action to remedy defendants' policies, practices and procedures which, for decades, have deliberately created and perpetuated race discrimination within the federal and state funded low-income housing programs which defendants administer in the city of Buffalo and in Erie County, New York.

2. Defendants' intentionally discriminatory policies and practices which resulted in segregation of Buffalo's public housing projects so pervasive that 23 of the 26 public housing projects under defendants' purview are occupied almost exclusively by either minority or white residents.

3. Defendants have systematically impeded minorities' opportunity to move to, or reside in, predominantly white neighborhoods by instituting and administering separate Section 8 rental housing programs for suburban and city residents. Specifically, the suburban Section 8 rental housing programs grant preferences to suburban residents, while the Section 8 rental housing programs for city residents restrict participants to rental housing within the city of Buffalo.

4. Defendants have neither affirmatively promoted fair housing, nor taken action to remedy or avoid the effects of racial discrimination and segregation, despite legal obligations to do so.

5. Plaintiffs have suffered loss of economic, educational, social and employment opportunities, as well as humiliation and embarrassment, through the denial of equal housing opportunities caused by defendants' policies, practices and procedures and the stigma of racial discrimination.

## II. JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. §1331 because this action arises under the Constitution and laws of the United States.

7. This Court has jurisdiction pursuant to 28 U.S.C. §1343(3) and (4) because plaintiffs seek to redress the deprivation, under color of state law, of rights, privileges and immunities secured to them by the Constitution and laws of the United States providing for equal rights, and to secure equitable relief and recover damages under laws of the United States providing for the protection of civil rights.

8. This Court has pendent jurisdiction over plaintiffs' claims of state law violations, which claims arise from the same nucleus of operative facts as plaintiffs' federal claims.

9. This Court has jurisdiction pursuant to 28 U.S.C. §1361, because plaintiffs seek to compel the federal defendants to perform specific statutory duties owed to plaintiffs.

10. Plaintiffs' cause of action for declaratory relief is authorized pursuant to 28 U.S.C. §§2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

11. Venue of this action is in the Western District of New York pursuant to 28 U.S.C. §1391(b) because the actions complained of arose in this district.

### III. PARTIES

#### A. Plaintiffs

12. Plaintiff Jessie Comer is a black resident of Kenfield Apartments, a federally funded public housing project owned, maintained and administered by defendant Buffalo Municipal Housing Authority ("BMHA"), which project is 92% minority occupied.

13. Plaintiff Rosemary Comer is a black former resident of Langfield Homes, a federally funded public housing project owned, maintained and administered by defendant BMHA, which project is 92% minority occupied. Ms. Rosemary Comer currently resides in private housing in Buffalo, New York. Ms. Rosemary Comer's name is on the waiting list for federally subsidized rental housing administered by defendant Rental Assistance Corporation of Buffalo ("RAC").

14. Plaintiff Jewel Culverhouse is a black resident of Kenfield Apartments, a federally funded public housing project owned, maintained and administered by defendant BMHA, which project is 92% minority occupied.

15. Plaintiff Hazel Grimes is a black resident of Langfield Homes, a federally funded public housing project owned, maintained and administered by defendant BMHA, which project is 92% minority occupied.

16. Plaintiff Annette McCutcheon is a black resident of Commodore Perry Homes, a federally funded public housing project owned, maintained and administered by defendant BMHA, which project is 94% minority occupied.

17. Plaintiff Yvonne Primm is a black resident of Buffalo, New York, residing in federally subsidized rental housing administered by defendant RAC.

18. Plaintiff Matilda Santiago is an Hispanic resident of Lakeview Apartments, a federally funded public housing project owned, maintained and administered by defendant BMHA, which project is 77% minority occupied.

19. Plaintiff Rosetta Weeden is a black resident of Kenfield Apartments, a federally funded public housing project owned, maintained and administered by defendant BMHA, which project is 92% minority occupied. Ms. Weeden's name is also on the waiting list for federally subsidized rental housing administered by defendant RAC.

20. Plaintiff Buffalo League of Public Housing Tenants is a membership association of public housing tenants in Buffalo, New York. The Buffalo League of Public Housing Tenants is dedicated to improving the living conditions and representing the interests of public housing tenants in Buffalo, New York.

#### B. Defendants

21. Defendant Jack Kemp is the Secretary of defendant United States Department of Housing and Urban Development ("HUD"). As such, he is directly responsible for ensuring defendant HUD's adherence to all applicable constitutional provisions, laws and regulations.

22. Defendant United States Department of Housing and Urban Development ("HUD") is an executive department of the United States



government established pursuant to 42 U.S.C. §3532. Defendant HUD is directly responsible for the administration, funding, and supervision of the federal government's low-income housing programs, including the public housing projects operated by defendant BMHA, and the rental housing assistance programs operated by defendants RAC and Belmont Shelter Corporation ("Belmont").

23. Defendant Buffalo Municipal Housing Authority ("BMHA") is a body corporate and politic created by Article XIII, Title 2, of the New York State Public Housing Law, which since 1934 has had primary responsibility for administering state and federal public housing projects for low income individuals and families in Buffalo, New York. Defendant BMHA is directly responsible for the creation and implementation of policies, practices and procedures regarding its public housing program, including but not limited to, development, tenant selection, occupancy and maintenance.

24. Defendant Lawrence A. Grisanti is the Executive Director of defendant BMHA. Since January 1986, defendant Grisanti has been directly responsible for the creation and implementation of defendant BMHA's policies, practices and procedures regarding its public housing program, including but not limited to, development, tenant selection, occupancy and maintenance.

25. Defendant City of Buffalo is a municipal corporation which receives funds from defendant HUD to operate the Section 8-Existing Housing programs and the Community Development Block Grant ("CDBG") program in the Buffalo, New York area. Defendant City of Buffalo is directly responsible for, inter alia, selection of

Section 8-Existing Housing program participants pursuant to federal and state law, and for the administration, monitoring and supervision of the city's Section 8 and CDBG programs.

26. Defendant James D. Griffin is the Mayor of Buffalo, New York. In that capacity, defendant Griffin is directly responsible for ensuring that all municipal departments, agencies and instrumentalities comply with applicable law, and for implementing policies, practices and procedures which will ensure such compliance.

27. Defendant Richard L. Higgins is the Commissioner and chief executive officer of the New York State Division of Housing and Community Renewal ("DHCR"). As such, he is directly responsible for the creation and implementation of defendant DHCR's policies, practices and procedures regarding housing programs funded and administered by DHCR, including but not limited to development, tenant selection, occupancy and maintenance.

28. Defendant Rental Assistance Corporation of Buffalo ("RAC") (formerly known as, and successor in interest to, the "Housing Council of the Niagara Frontier, Inc.") administers defendant HUD's Section 8-Existing Housing programs for defendant City of Buffalo. As a Section 8 program administrator, defendant RAC is directly responsible for, inter alia, selection of Section 8-Existing Housing program participants pursuant to federal and state law, and for the daily administration of defendant City of Buffalo's Section 8 programs.

29. Defendant Town of Amherst, New York is a municipal

corporation which receives funds from defendant HUD to operate Section 8-Existing Housing programs, as lead agency for a consortium of approximately 41 municipalities surrounding the city of Buffalo in Erie County, New York. Defendant Town of Amherst, as a Section 8 housing program funds grantee, is directly responsible for, inter alia, selection of Section 8-Existing Housing program participants pursuant to federal and state law, and for the administration, monitoring and supervision of the Erie County consortium's Section 8 programs.

30. Defendant Belmont Shelter Corporation ("Belmont") administers defendant HUD's Section 8-Existing Housing programs for defendant Town of Amherst on behalf of the participating municipalities of the Erie County consortium. As a Section 8 program administrator, defendant Belmont is directly responsible for, inter alia, selection of Section 8-Existing Housing program participants pursuant to federal and state law, and for the daily administration of the Erie County consortium's Section 8 programs.

#### IV. CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action on behalf of a class of all named plaintiffs, and on behalf of all other persons similarly situated, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

32. The class that plaintiffs seek to represent consists of all current, former and future residents of the Buffalo metropolitan statistical area who have been, who are being, or who

may be, denied equal access to state and federally funded low-income housing programs, attendant services and other benefits of equal and racially integrated housing, on account of their race or color.

33. This class includes:

- a. approximately 10,200 people currently residing in state and federally funded public housing projects in the city of Buffalo;
- b. approximately 3,000 households currently on waiting lists for state and federally funded public housing projects in the city of Buffalo;
- c. approximately 5,500 households participating in the Section 8 rental housing assistance programs administered by defendants;
- d. approximately 8,000 households currently on waiting lists for Section 8 rental housing assistance programs administered by defendants;
- e. approximately 71,000 households with incomes at or below 50% of the median income within Erie County, New York, who are eligible for, but not being served by, Section 8 rental housing assistance programs administered by defendants.

34. This class is so numerous that joinder of all class members is impracticable.

35. There are questions of law and fact common to all class members, namely, whether defendants' policies, practices and

procedures with respect to state and federally funded low-income housing programs discriminate against plaintiffs on the basis of plaintiffs' race, color or national origin, in violation of the Constitution and laws of the United States and the State of New York.

36. The claims of the named plaintiffs are typical of the claims of the class members.

37. The named plaintiffs will fairly and adequately protect and represent the interests of the class members. Plaintiffs are represented by counsel experienced in federal court class action litigation involving housing matters and race discrimination matters.

38. Defendants have acted on grounds generally applicable to the class members; namely, defendants have implemented and perpetuated policies, practices and procedures which unconstitutionally and illegally discriminate against the class members on the basis of the class members' race, color or national origin, in violation of the Constitution and laws of the United States and the State of New York.

39. Accordingly, final injunctive and declaratory relief with respect to the class members as a whole is appropriate in this action.

V. FACTS RELATED TO BUFFALO'S PUBLIC HOUSING PROGRAM

A. Policies of Racial Discrimination

40. Twenty-two of the twenty-five federally funded public housing projects owned, operated and administered by defendants

BMHA, City of Buffalo and Grisanti are racially identifiable.

41. Two of the four state funded public housing projects owned, operated and administered by defendants BMHA, City of Buffalo, Grisanti and Higgins are racially identifiable. They are Frederick Douglass Towers and Ferry-Grider Homes.

42. Two state funded public housing projects stand vacant. They are Kensington Heights and Ellicott Mall.

43. Two of the public housing projects have nearly 100% minority populations. They are Frederick Douglass Towers and Scattered Site B, also known as Woodson Gardens.

44. Three of the public housing projects have nearly 100% white populations, and in fact may have never housed a minority tenant. They are Mullen Manor, Slater Courts and Elmherst Apartments.

45. Nine of the public housing projects have minority populations between 90% and 100%. They are Kenfield Apartments, A.D. Price Court, A.D. Price Court Extension, Commodore Perry Homes, Commodore Perry Homes Extension, Langfield Homes, Ferry-Grider Homes, Kelly Gardens and Scattered Site A, also known as Redwood Village.

46. Eight of the public housing projects have white populations in excess of 82%. They are LaSalle Courts, Monsignor Geary Apartments, Stuyvesant Apartments, Frank A. Sedita Apartments, Holling Homes, Kowal Apartments, Camden Apartments and Scattered Site C (various locations).

47. Two of the public housing projects have minority populations between 70% and 80%. They are Lakeview Apartments and Schwab Terrace.

48. The racially identifiable minority public housing projects are located in racially identifiable minority neighborhoods.

49. The racially identifiable white public housing projects are located in racially identifiable white neighborhoods.

50. From the late 1940s until 1985, defendants BMHA and City of Buffalo have perpetuated public housing segregation, in part, by maintaining separate waiting lists for individual public housing projects, which were used for the purpose and effect of assuring that minority applicants were directed to particular public housing projects in a racially discriminatory manner.

51. Defendants BMHA and City of Buffalo continued to use separate waiting lists for individual public housing projects until 1985, when a "community-wide" waiting list was adopted, purportedly establishing one waiting list for all defendant BMHA public housing projects.

52. The failure of defendants BMHA and City of Buffalo to implement a community-wide waiting list for public housing applicants until 1985 reinforced and increased the historical racial segregation of defendant BMHA's public housing projects.

53. When defendant BMHA implemented the community-wide waiting list in 1985, it also incorporated a "preferred placement" policy which allowed public housing applicants to identify three

public housing projects in which they would accept an available apartment.

54. This preferred placement policy had the purpose and effect of perpetuating racial segregation in defendant BMHA's public housing projects.

55. In 1987, with defendant HUD's approval, defendant BMHA purportedly adopted a "vacancy-driven" placement system based upon a community-wide waiting list.

56. This vacancy-driven placement system remains in effect today.

57. Under the vacancy-driven placement system, a public housing applicant who reaches the top of defendant BMHA's waiting list is offered an apartment in the public housing project with the largest number of vacancies.

58. If the applicant rejects the first-offered apartment, defendant BMHA will offer that applicant an apartment in the public housing project with the next greatest number of vacancies.

59. A public housing applicant may refuse up to three apartments before being placed at the bottom of defendant BMHA's public housing waiting list.

60. Defendants BMHA and Grisanti have also incorporated a variety of exceptions to the vacancy-driven placement system based upon factors such as employment, education and medical hardship, which have been applied subjectively and in a racially discriminatory manner.

61. Despite the adoption of the vacancy-driven placement



system, white public housing applicants continue to be placed in low vacancy, predominantly white public housing projects.

: 62. Conversely, minority public housing applicants continue to be placed in high vacancy, predominantly minority public housing projects.

63. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins knew or should have known of the racially discriminatory purpose and effect of defendant BMHA's policies.

64. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins failed to eradicate the discriminatory impact of defendant BMHA's policies of racial discrimination.

65. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins' policies instead have continued to create, maintain and perpetuate racially segregated public housing in Buffalo, New York.

B. Racially Discriminatory Practices  
in Tenant Selection and Placement

66. Defendants BMHA, City of Buffalo and Grisanti have created, and have continued, a variety of practices which place applicants for state and federally funded public housing into housing projects in which the overwhelming majority of the residents are of the same race or color as that of the applicant.

67. From the early 1970s until the late 1970s, defendant BMHA staff verbally informed prospective public housing tenants of available apartments.

68. Defendant BMHA staff told white public housing applicants about apartment vacancies in predominantly white public housing

projects but not about vacancies in predominantly minority public housing projects.

69. Minority applicants were told about apartment vacancies in predominantly minority public housing projects or in particular projects located in neighborhoods shifting from white to minority concentration.

70. Minority public housing applicants were discouraged by defendant BMHA staff from applying for apartments in certain predominantly white public housing projects.

71. From the late 1970s until 1985, the vacancy lists which were distributed by defendant BMHA staff to prospective public housing tenants did not include all available apartments.

72. White public housing applicants were told by defendant BMHA staff of vacancies in predominantly white public housing projects which did not appear on the published lists.

73. During this time, defendant BMHA also allowed white public housing applicants to have their names placed on waiting lists for public housing projects not available to minority applicants.

74. Defendant BMHA also solicited applications from white persons and households for new public housing projects in predominantly white neighborhoods prior to public announcement of the availability of apartments in those public housing projects.

75. Defendant BMHA also used a policy of "priority admissions" which had the purpose and effect of placing white public housing applicants in predominantly white public housing

projects out of chronological order on the waiting lists, ahead of minority applicants for the same public housing projects.

76. Defendants BMHA, City of Buffalo and Grisanti have also permitted non-financially eligible white public housing applicants to be certified for placement in public housing by failing to verify their financial eligibility.

77. Since 1987, defendant BMHA policies, practices and procedures have required that public housing tenants transferring from one apartment to another will be assigned to a new apartment within his or her current public housing project only, unless appropriate apartments do not exist in their current project.

78. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins knew or should have known of the racially discriminatory purpose and effect of defendant BMHA's practices.

79. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins have failed to eradicate the impact of defendant BMHA's racially discriminatory practices.

80. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins' practices instead have continued to create, maintain and perpetuate racially segregated public housing in Buffalo, New York.

### C. Racially Disparate Conditions and Services

81. The condition of the housing and the levels of the amenities and services provided in predominantly minority public housing projects are substantially inferior to those provided in predominantly white public housing projects.

82. Many of the apartments in the older, predominantly minority public housing projects lack basic amenities such as showers and standard size stoves and refrigerators.

83. Many of the apartments in the older, predominantly minority public housing projects contain exposed lead-based paint, posing a danger to the resident children.

84. The predominantly minority public housing projects typically have barren lawns, broken and boarded up windows, dirty and graffiti-covered common halls and stairways, grounds dominated by garbage-filled dumpsters and power transformers protected only by chain link fences.

85. In sharp contrast, newer, predominantly white public housing projects are neatly landscaped by defendant BMHA and contain attractive community areas for the tenants.

86. These newer, predominantly white public housing projects' apartments also contain various amenities such as showers, standard size appliances, air conditioners and carpeting.

87. Defendants BMHA, City of Buffalo and Grisanti fail to inspect and maintain predominantly minority public housing projects routinely and adequately.

88. Security in defendant BMHA's predominantly minority public housing projects is inadequate, rendering these public housing projects unsafe and unsuitable for normal use.

89. In sharp contrast, a sufficient level of security is provided to ensure the safety of the residents in defendant BMHA's predominantly white public housing projects.

90. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins knew or should have known of the racially identifiable disparities in conditions and services at defendant BMHA's public housing projects.

91. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins have failed to eradicate these racially identifiable disparities in conditions and services at defendant BMHA's public housing projects.

D. Racial Discrimination in Public Housing for the Elderly

92. There are seventeen defendant BMHA public housing projects which contain apartments designated for the elderly.

93. Thirteen of these seventeen projects are designated exclusively for the elderly; the remaining four projects are combinations of family and elderly.

94. Nine of the thirteen projects designated exclusively for the elderly have white populations in excess of 92%. They are Elmherst Apartments, Camden Apartments, Holling Homes, Kowal Apartments, Frank A. Sedita Apartments, Monsignor Geary Apartments, Stuyvesant Apartments, Slater Courts and Mullen Manor.

95. Three of the remaining four projects designated exclusively for the elderly have minority populations in excess of 70%. They are A.D. Price Court Extension (99%), Kelly Gardens (88%), and Schwab Terrace (71%).

96. Two of the four combined elderly/family projects are over 96% minority. They are Frederick Douglass Towers (100%) and

Commodore Perry Homes Extension (96%).

97. A third combined elderly/family project, Lakeview Apartments, is 77% minority.

98. The fourth combined elderly/family project, Shaffer Village, is 67% white.

99. Defendants BMHA, City of Buffalo and Grisanti, with the approval of defendant HUD and the predecessor of defendant Higgins, converted numerous units within these family housing projects for use as apartments designated for the elderly.

100. With the exception of Shaffer Village, these converted elderly units are located in predominantly minority neighborhoods and in public housing projects which are overwhelmingly minority.

101. With the exception of Shaffer Village, defendants BMHA, City of Buffalo and Grisanti have placed elderly minority public housing applicants, but not white applicants, in these converted elderly/family projects.

102. Defendants BMHA, City of Buffalo and Grisanti have placed elderly white public housing applicants in public housing projects built and designated exclusively for the elderly, located in predominantly white neighborhoods.

103. These elderly public housing projects are overwhelmingly occupied by white tenants.

104. According to defendant HUD records, one of the public housing projects built and designated exclusively for the elderly, Mullen Manor, has had no minority individuals or households as residents, although fifty-two minority individuals and households

had applied for admission to that particular public housing project.

105. Defendant HUD did not pursue the denial of these fifty-two minority public housing applications for defendant BMHA's Mullen Manor.

106. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins knew or should have known of the racially discriminatory purpose and effect of defendant BMHA's policies and practices with respect to defendant BMHA's public housing for the elderly.

107. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins have failed to eradicate the discriminatory impact of the racially discriminatory policies and practices with respect to defendant BMHA's public housing for the elderly.

108. Defendants BMHA, City of Buffalo, Grisanti, HUD and Higgins' policies instead have continued to create, maintain and perpetuate racially segregated public housing for the elderly.

E. Facts Related to Defendant HUD's Acts and Omissions

109. Defendant HUD has long known or should have known of the racially discriminatory purpose and effect of the policies, practices and procedures of defendants BMHA, City of Buffalo and Grisanti with respect to public housing, but has not stopped or corrected them.

110. On or about July 28, 1970, defendant HUD issued a report reviewing defendant BMHA's practices, policies, and procedures.

111. In that report, defendant HUD noted that tenant selection procedures being followed by defendant BMHA had not been approved by defendant HUD, and recommended that defendant BMHA obtain approval for the plan in use.

112. By 1970, defendant HUD knew or should have known that defendant BMHA's tenant selection procedures were racially discriminatory in purpose and effect.

113. At that time, defendant HUD failed to order defendants BMHA or City of Buffalo to terminate their racially discriminatory tenant selection procedures, to remedy the effects of prior racial discrimination, or otherwise to act itself to stop racial discrimination in defendant BMHA public housing.

114. In 1983, defendant HUD conducted a Compliance Review of defendant BMHA pursuant to Title VI of the Civil Rights Act of 1964.

115. In its Compliance Review Report, defendant HUD found that defendant BMHA's tenant selection procedures created and perpetuated racial segregation in public housing projects.

116. At that time, defendant HUD failed to order defendants BMHA or City of Buffalo to terminate their racially discriminatory tenant selection procedures, to remedy the effects of prior racial discrimination, or otherwise to act itself to stop racial discrimination in defendant BMHA public housing.

117. On or about May 20, 1985, defendant HUD published an Occupancy Audit reviewing defendant BMHA's practices, policies and procedures.



118. In its Occupancy Audit, defendant HUD again found that defendant BMHA's tenant selection plan created and perpetuated racial segregation in public housing projects.

119. Again, defendant HUD failed to order defendants BMHA or City of Buffalo to terminate their racially discriminatory tenant selection procedures, to remedy the effects of prior racial discrimination, or otherwise to act itself to stop racial discrimination in defendant BMHA public housing.

120. In mid-1987, defendant HUD issued a Fair Housing and Equal Opportunity Report reviewing defendant BMHA's practices, policies and procedures.

121. In that report, defendant HUD once again found that defendant BMHA's tenant selection procedures created and perpetuated racial segregation in public housing.

122. Once again, defendant HUD failed to order defendants BMHA or City of Buffalo to terminate their racially discriminatory tenant selection procedures, to remedy the effects of prior racial discrimination, or otherwise to act itself to stop racial discrimination in defendant BMHA public housing.

123. On or about April 19, 1988, defendant HUD released an Occupancy Audit reviewing defendant BMHA; the audit had been conducted between September 1987 and February 1988. The audit purported to include a Title VI Compliance Review of defendant BMHA's tenant selection procedures.

124. Despite the Title VI Compliance Review component of the 1987-1988 audit, defendant HUD made no findings concerning

defendant BMHA's racially discriminatory tenant selection procedures.

125. On April 25, 1989, defendant HUD notified defendant BMHA that its tenant selection policies, practices and procedures from at least 1976 until 1985 unlawfully discriminated against minority public housing applicants and tenants.

126. Defendant HUD's notification letter failed to specify that defendant BMHA'S policies, practices and procedures from 1985 until the present created and perpetuated racial segregation in public housing.

127. Nevertheless, defendant HUD did notify defendant BMHA that the tenant selection policies, practices and procedures it had adopted in 1987 were inadequate to address the extreme racial segregation created in prior years.

128. Defendant HUD's notification letter listed several steps defendant BMHA could voluntarily take to remedy the segregation resulting from its racially discriminatory policies and practices from 1976 until 1985.

129. These proposed voluntary actions are insufficient to end current racially discriminatory practices and to remedy existing racial segregation and discrimination in Buffalo's public housing program.

130. According to defendant HUD's April 25, 1989 notification letter, a "Compliance Agreement" was required to be executed by defendants HUD and BMHA within 60 days of the date of the letter.

131. On September 25, 1989, more than 150 days after the date of defendant HUD's April 25, 1989 notification letter to defendant BMHA, defendant HUD sent a "Voluntary Compliance Agreement" to defendant BMHA for its review.

132. The Voluntary Compliance Agreement is wholly inadequate in numerous respects, including but not limited to:

(a) it fails to provide sufficient notice to affected public housing applicants and tenants;

(b) it fails to mandate procedures sufficient to create a racially non-discriminatory public housing tenant selection system;

(c) it fails to mandate procedures which eliminate racial discrimination in public housing facility condition, maintenance, repair, and security;

(d) it fails to mandate affirmative remedial actions to remedy consequences and effects of prior racially discriminatory policies, practices and procedures in Buffalo's public housing program.

133. Without explanation, the proposed Voluntary Compliance Agreement from defendant HUD dated September 25, 1989 omits remedies proposed in defendant HUD's notification letter of April 25, 1989 to defendant BMHA.

134. As of the date of this complaint, no Voluntary Compliance Agreement has been executed or put into effect between defendants HUD and BMHA.

135. As of the date of this complaint, defendant HUD continues

to fund defendant BMHA while defendants BMHA, City of Buffalo, and Grisanti continue to implement their racially discriminatory policies, practices and procedures in Buffalo's public housing program.

136. As of the date of this complaint, defendant HUD has failed to stop defendant BMHA's racially discriminatory policies and practices.

F. Facts Related to the Mayor of the City of Buffalo

137. The Mayor of the city of Buffalo is directly responsible for ensuring that all municipal departments, agencies and instrumentalities comply with applicable law, and for implementing policies, practices and procedures which will ensure such compliance.

138. As Mayor of the city of Buffalo, defendant Griffin has appointed five of the seven commissioners who govern defendant BMHA.

139. Under New York Public Housing Law §34, defendant Griffin has the statutory authority to remove his appointed commissioner's for inefficiency, neglect of duty, or misconduct in office.

140. Defendant Griffin has assumed a direct role in the policies and operations of defendant BMHA.

141. Defendant Griffin knew or should have known of the racially discriminatory policies, practices and procedures implemented and perpetuated by defendant BMHA.

142. Defendant Griffin has failed to remove any of the

defendant BMHA commissioners responsible for implementing and perpetuating defendant BMHA's racially discriminatory policies, practices and procedures.

143. As Mayor of the city of Buffalo, defendant Griffin has failed to take any action to ensure that defendant BMHA prevents and remedies racial segregation in its public housing program.

G. Facts Related to Individual Plaintiffs' Public Housing Claims

144. Each of the plaintiffs named in this action has been denied the opportunity for fair housing by defendants' acts, omissions, policies, practices and procedures as described above, and more particularly as described below.

145. Plaintiff Jessie Comer is black.

- a. Ms. Jessie Comer applied for public housing with defendant BMHA in 1983.
- b. At that time, Ms. Jessie Comer was given the choice of residing in one of three BMHA public housing projects, namely, Frederick Douglass Towers, Commodore Perry Homes, or Langfield Homes.
- c. Each of these public housing projects was and is occupied predominantly by minorities.
- d. Ms. Jessie Comer was eventually placed by defendant BMHA in Langfield Homes.
- e. In 1987, due to the deplorable physical conditions and increasing drug and criminal activities at Langfield Homes, Ms. Jessie Comer requested that

defendant BMHA transfer her to another apartment or public housing project.

- f. Ms. Jessie Comer was subsequently transferred to the Kenfield Apartments, a BMHA public housing project predominantly occupied by minorities.
- g. Kenfield Apartments are also in deplorable physical condition, and are the site of considerable drug and criminal activities.

146. Plaintiff Rosemary Comer is black.

- a. Ms. Rosemary Comer applied for public housing with defendant BMHA in 1987.
- b. At that time, Ms. Rosemary Comer was given the choice of residing in one of three BMHA public housing projects, namely, Frederick Douglass Towers, Commodore Perry Homes, or Langfield Homes.
- c. Each of these public housing projects was and is occupied predominantly by minorities.
- d. Ms. Rosemary Comer was eventually placed by defendant BMHA in Langfield Homes, over her objection.
- e. In 1989, due to the deplorable physical conditions and increasing drug and criminal activities at Langfield Homes, Ms. Rosemary Comer requested a transfer to another BMHA apartment or public housing project.
- f. When Ms. Rosemary Comer's requests for a transfer

were rejected, she vacated Langfield Homes, and was forced into the private housing market.

- g. Because of Ms. Rosemary Comer's limited income and the size of her family, the only housing available to her in the private housing market was and is grossly substandard.
- h. Ms. Rosemary Comer has subsequently applied for Section 8 subsidized rental housing, and is currently on defendant RAC's waiting list.

147. Plaintiff Jewel Culverhouse is black.

- a. Ms. Culverhouse applied for public housing with defendant BMHA in 1988.
- b. At that time, Ms. Culverhouse was given the choice of residing in one of five defendant BMHA public housing projects, namely, Frederick Douglass Towers, A.D. Price Court, Commodore Perry Homes, Kenfield Apartments or Langfield Homes.
- c. Each of these public housing projects was and is occupied predominantly by minorities.
- d. Ms. Culverhouse specifically requested to be placed at Shaffer Village, a predominantly white public housing project owned and operated by defendant BMHA, where, upon information and belief, there were at that time, numerous apartments vacant and available for occupancy.

- e. Ms. Culverhouse's requests were ignored or rejected by defendant BMHA.
- f. Ms. Culverhouse was eventually placed at Kenfield Apartments.
- g. Ms. Culverhouse has on numerous occasions requested that defendant BMHA transfer her to another apartment or public housing project, but each request has either been ignored or refused by defendant BMHA.

148. Plaintiff Hazel Grimes is black.

- a. Ms. Grimes applied for public housing with defendant BMHA in 1966.
- b. At that time, Ms. Grimes was given the choice of residing in one of four defendant BMHA public housing projects, namely, Ferry-Grider Homes, Lakeview Apartments, Commodore Perry Homes or Langfield Homes.
- c. At that time, Ferry-Grider Homes had a 94% white population, Lakeview Apartments had a 77% white population, Commodore Perry Homes had an 81% white population and Langfield Homes had a 94% white population.
- d. In 1966, Langfield Homes was located in a neighborhood that was predominantly white.
- e. Ms. Grimes was placed by defendant BMHA at Langfield Homes, where she was one of the first minority



residents. Ms. Grimes has lived at Langfield Homes since that time.

- f. Between 1966 and the present, the population of the neighborhood where Langfield Homes is located has shifted from predominantly white to overwhelmingly minority.
- g. Between 1966 and the present, the population of Langfield Homes has shifted from 94% white to 92% minority.
- h. Between 1966 and the present, the population of Ferry-Grider Homes shifted from 94% white to 98% minority; the population of Commodore Perry Homes has shifted from 81% white to 94% minority; and the population of Lakeview Apartments has shifted from 77% white to 77% minority.
- i. Ms. Grimes has repeatedly complained about the deplorable physical conditions and increasing drug and criminal activities at Langfield Homes.
- j. Over the years, Ms. Grimes has contacted her project managers at Langfield Homes to request a transfer to another BMHA apartment or public housing project, and for information regarding how to apply for Section 8 subsidized rental housing in the city of Buffalo and in the suburbs surrounding the city.

- k. On each occasion, Ms. Grimes' requests for a transfer and information about Section 8 rental housing were ignored or rejected by defendant BMHA.
- l. Ms. Grimes has been told by defendant BMHA that she cannot transfer to another public housing apartment or project until she is 60 years old and thus qualifies for elderly public housing with defendant BMHA.

149. Plaintiff Annette McCutcheon is black.

- a. Ms. McCutcheon applied for public housing with defendant BMHA in 1980.
- b. At that time, Ms. McCutcheon was given the choice of residing in one of four BMHA public housing projects, namely, Lakeview Apartments, Commodore Perry Homes, A.D. Price Court and Kenfield Apartments.
- c. Each of these public housing projects was and is occupied predominantly by minorities.
- d. Ms. McCutcheon was eventually placed by defendant BMHA at Commodore Perry Homes, where she resided until 1985.
- e. In 1985, Ms. McCutcheon moved out of public housing because of the deplorable conditions and increasing drug and criminal activities at Commodore Perry Homes.

- f. Ms. McCutcheon was unable to afford private housing, and she subsequently re-applied for public housing with defendant BMHA in 1987.
- g. At that time, Ms. McCutcheon was given the choice of residing at Commodore Perry Homes, Kenfield Apartments or Lakeview Apartments.
- h. Each of these public housing projects was and is predominantly occupied by minorities.
- i. Ms. McCutcheon was eventually placed at Commodore Perry Homes.
- j. In 1989, Ms. McCutcheon requested a transfer to a larger dwelling unit, due to an increase in her family size.
- k. After lengthy discussions with defendant BMHA, Ms. McCutcheon was informed by defendant BMHA that she could transfer to a larger apartment, but only within Commodore Perry Homes.

150. Plaintiff Matilda Santiago is Hispanic.

- a. Ms. Santiago applied for public housing with defendant BMHA in 1979.
- b. Ms. Santiago was placed by defendant BMHA at Lakeview Apartments, a predominantly minority occupied public housing project.
- c. Ms. Santiago has complained to defendant BMHA frequently over the years regarding the deplorable physical conditions in her apartment and in her

apartment building, and she has repeatedly requested an apartment transfer because of the situation.

- d. However, defendant BMHA has ignored or refused Ms. Santiago's requests for a transfer.

151. Plaintiff Rosetta Weeden is black.

- a. Ms. Weeden applied for public housing with defendant BMHA in 1978.
- b. At that time, Ms. Weeden was given the choice of residing in one of five BMHA public housing projects, namely, Commodore Perry Homes, Lakeview Apartments, Kenfield Apartments, Langfield Homes and Frederick Douglass Towers.
- c. Each of these public housing projects was and is occupied predominantly by minorities.
- d. Ms. Weeden was eventually placed by defendant BMHA at Kenfield Apartments.
- e. Due to the deplorable physical conditions and increasing drug and criminal activities at Kenfield Apartments, Ms. Weeden has requested a transfer to another apartment or public housing project with defendant BMHA on a number of occasions over the years.
- f. However, defendant BMHA has ignored or refused Ms. Weeden's requests for a transfer.

VI. FACTS RELATED TO THE CONVERSION OF STATE FUNDED PUBLIC HOUSING TO PRIVATELY OWNED HOUSING

152. The Kensington Heights and Ellicott Mall public housing projects are funded and supervised by defendant Higgins, and administered by defendants City of Buffalo, BMHA and Grisanti, as housing for low-income residents.

153. The six high-rise buildings of Kensington Heights and the eight high-rise buildings of Ellicott Mall include a total of 960 apartments.

154. When they were occupied, the populations of Kensington Heights and Ellicott Mall were overwhelmingly minority.

155. Due to their failure to maintain Kensington Heights adequately, defendants City of Buffalo, BMHA and Higgins allowed the project to become uninhabitable.

156. Due to their failure to maintain Ellicott Mall adequately, defendants City of Buffalo, BMHA and Higgins allowed the project to become uninhabitable.

157. Defendants City of Buffalo and BMHA closed Kensington Heights to residents in 1980 because of the project's uninhabitable conditions.

158. Defendants City of Buffalo and BMHA closed Ellicott Mall to residents in 1981 because of the project's uninhabitable conditions.

159. Since 1980 and 1981 respectively, the Kensington Heights and Ellicott Mall housing projects have stood vacant.

160. Despite the uninhabitable condition of Kensington Heights and Ellicott Mall housing projects, defendant Higgins has continued

to fund defendants City of Buffalo and BMHA for the operation of these projects.

161. Before and since Kensington Heights and Ellicott Mall were vacated, defendants City of Buffalo, BMHA and Grisanti failed to make these housing projects habitable for low-income residents.

162. Before and since Kensington Heights and Ellicott Mall were vacated, defendant Higgins failed to require defendants City of Buffalo and BMHA to make these housing projects habitable for low-income residents.

163. For the past several years, defendant BMHA has maintained a waiting list of over 2000 low-income households seeking habitable and affordable public housing.

164. The low-income households on defendant BMHA's waiting list are overwhelmingly minority.

165. In 1989, defendant Higgins initiated steps to transfer the Kensington Heights and Ellicott Mall public housing projects to private ownership.

166. Defendants City of Buffalo, BMHA, and Grisanti have approved the selection of private developers to whom Kensington Heights and Ellicott Mall will be transferred.

167. The proposals for converting Kensington Heights and Ellicott Mall from public to private housing include no provisions to ensure that the apartments will be made affordable and available to low-income residents who financially qualify for public housing, including the households on defendant BMHA's waiting list.

168. The proposals for converting Kensington Heights and

Ellicott Mall from public to private housing will permanently remove these public housing projects from the inventory of affordable housing available to low-income residents in Erie County.

169. Defendants Higgins, City of Buffalo, BMHA and Grisanti know or should know that the low-income residents to whom the Kensington Heights and Ellicott Mall apartments will no longer be affordable or financially available upon their conversion to private housing, including the households on defendant BMHA's waiting list, are predominantly minority.

VII. FACTS RELATED TO THE HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

170. The Housing and Community Development Act of 1974 ("HCDA"), P.L. 93-383, created two programs which are relevant to plaintiffs' claims. Title I of the HCDA, §101, et seq., created the Community Development Block Grant ("CDBG") program. Title II of the HCDA, §201, et seq., amended the United States Housing Act of 1937 to add a new "Section 8", which created a program popularly known as the Section 8-Existing Housing program.

A. The Section 8-Existing Housing Program

1. Section 8 Program Framework

171. Under the Section 8-Existing Housing program, defendant HUD authorizes local agencies, called PHA's, to issue "certificates" and "vouchers" to eligible low-income families, which entitle them to have the PHA pay a portion of their rent

maximum rent for a particular market area.

177. Defendant HUD has adopted the use of metropolitan statistical areas ("MSAs") which establish the boundaries of a particular market area upon an evaluation of "the geographic area in which housing units are in mutual competition," and includes commuting patterns and population densities in its evaluation. 53 Fed.Reg. 36701.

178. Under this system, defendant HUD has identified all of Erie County, including the city of Buffalo, as a single housing market.

179. There are two distinct Section 8-Existing Housing programs operating in Erie County.

180. Defendant HUD has authorized the city of Buffalo, as a PHA, to operate the Section 8 housing program within the city of Buffalo.

181. Defendant City of Buffalo entered an agreement with defendant RAC to administer the city of Buffalo's Section 8 housing program.

182. Defendant HUD has authorized defendant Town of Amherst, as a PHA, to operate the Section 8 housing program on behalf of a consortium of approximately 41 municipalities encircling the city of Buffalo.

183. Defendant Town of Amherst has entered an agreement with defendant Belmont to administer the suburban Section 8 housing program.



2. Statutory and Regulatory Framework with Respect to Geographic Areas of Operation in the Section 8 Program

184. When a PHA submits an application to defendant HUD to administer a local Section 8 housing program, it must include a description of the geographic area its program will serve. 24 C.F.R. §§882.203-4.

185. In addition, an applicant PHA must submit an Equal Opportunity Housing Plan ("EOHP") prior to executing an ACC with defendant HUD. 24 C.F.R. §882.204(b)(1).

186. The EOHP must describe how the PHA will achieve participation of landlords owning suitable units both "outside areas of low income or minority concentration," and "outside the local jurisdiction in any area where the PHA is not legally barred from entering into Contracts." 24 C.F.R. §882.204(b)(1)(B). (Emphasis added).

187. Defendant HUD explains statutory and regulatory requirements to PHAs through "Transmittals" and "Handbooks". The Handbook applicable to the Section 8-Existing Housing program is No. 7420.7.

188. Handbook No. 7420.7, Chapter 7, entitled "Mobility" describes the required procedures for identifying the geographic areas of operation within which a PHA may enter rent subsidy contracts with private landlords.

189. Paragraph 7-1 of the Handbook states in pertinent part:

One unique aspect of the Section 8-Existing Housing program is that it encourages and provides a wide range of housing choices for families participating in the program. This opportunity for mobility is to be extended

both to Certificate Holders who are seeking eligible units and to participating families who wish to move to another unit or jurisdiction and continue to receive Section 8 Existing assistance. Emphasizing mobility in this program promotes a greater choice of housing opportunities for lower income families and discourages the concentration of such families in any community or neighborhood.

190. As explained by defendant HUD, "The Section 8 regulations require the PHA to determine the geographic area where it is not barred from entering into Contracts with landlords," Handbook No. 7420.7, Paragraph 7-2(a). (Emphasis in original).

191. Defendant HUD further requires the PHA to submit an opinion of counsel stating whether or not the PHA is legally prohibited from entering into contracts with landlords on an "extra-territorial basis", i.e., outside the PHA's primary geographic areas of operation. Handbook No. 7420.7, Paragraph 7-2(a).

192. Defendant HUD's regulations and paragraphs 7-2(b) and (c) of the Handbook require PHAs which have "extra-territorial jurisdiction" to seek participation of property owners in such areas, and to advise families "of their opportunity to lease housing in all such areas". 24 C.F.R. §882.103(c)(1) and (2). (Emphasis added.)

193. Defendant HUD specifically states that, "the PHA must not (per Section 882.103(b) of the regulations) directly or indirectly reduce a family's opportunity to choose among the available units. Instead, all PHA efforts should be aimed at

broadening the family's choice of housing possibilities." Handbook No. 7420.7, Paragraph 7-2(c). (Emphasis added.)

194. In 1987, Congress enacted §145 of Public Law 100-242 to ensure that the Section 8-Existing Housing certificate and voucher programs are administered in a manner that offers participating families the widest possible geographic choice in the selection of housing. 42 U.S.C. §1437f(r).

195. 42 U.S.C. §1437f(r) provides that a certificate or voucher holder looking for housing "may receive such assistance to rent an eligible apartment if the apartment to which the family moves is within the same, or a contiguous metropolitan statistical area as the metropolitan statistical area within which is located, the area of jurisdiction of [a PHA] approving such assistance." (Emphasis added.)

3. Facts with Respect to Illegal Restrictions on Geographic Areas of Operation in the Buffalo/RAC Section 8 Program

196. In 1976, defendant City of Buffalo submitted a legal opinion to defendant HUD which states that defendant City of Buffalo may legally execute Section 8 contracts anywhere within the state of New York.

197. Contrary to the statutory, regulatory and Handbook provisions described above, defendants HUD, City of Buffalo and RAC have entered into various agreements, including but not limited to their Annual Contributions Contracts, Administrative Plans, Equal Opportunity Housing Plans, and Housing Assistance Payments contracts, which together act to restrict housing choice within the Buffalo/RAC Section 8 program in a manner that has the purpose and effect of promoting racial segregation of minorities.

198. Specifically, at some point after the submission of a revised Equal Opportunity Housing Plan by defendant City of Buffalo in April 1985, which described its area of operation as the entire state of New York, the Buffalo/RAC's Section 8 housing program Administrative Plan restricted the use of housing certificates to the city of Buffalo.

199. Sometime between April 1985 and the present, the Buffalo/RAC Section 8 housing program adopted a policy permitting families holding Section 8 vouchers to use them outside city of Buffalo, but continued to restrict use of certificates to the city.

200. Families who had previously obtained housing certificates and who had found apartments in the suburbs surrounding the city of Buffalo, were advised that if their tenancies were terminated for any reason, they would be restricted to finding apartments within the city of Buffalo if they wished to continue their participation in the Section 8 housing program.

201. The current Administrative Plan and Equal Opportunity Housing Plan for the Buffalo/RAC Section 8 housing program does not permit families holding its certificates to use them in the suburbs surrounding the city of Buffalo.

202. The current Administrative Plan and Equal Opportunity Housing Plan for the suburban/Belmont Section 8 housing program similarly makes no accommodation for Buffalo/RAC Section 8 housing program certificate holders to use their certificates in the suburban areas, nor is there a cooperative agreement between the

by a local PHA and, if approved by defendant HUD, are incorporated into the PHA's Administrative Plan. 24 C.F.R. §882.209(a)(3) and (4). An example of a commonly used non-federal preference is a "residency preference".

211. Defendant HUD requires that non-federal preferences be subordinate to the statutory federal preferences. 24 C.F.R. §882.219.

212. Defendant HUD permits that for 10% of the PHA's housing certificates and vouchers, families with non-federal preferences may be selected ahead of families with federal preferences. 24 C.F.R. §882.219.

213. Defendant HUD's definition of a "residency preference" includes any applicant residing "in the area where the PHA determines that it is not legally barred from entering into Contracts." 24 C.F.R. §882.209 (a)(4)(ii).

214. Overriding all of the preference categories is the requirement that such preferences or priorities must be administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d and Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§3601-19, as amended, as well as various Executive Orders and related discrimination laws. 24 C.F.R. §882.219(b)(3).

215. Similarly, all such preferences and priorities are to be administered in a manner that is consistent with defendant HUD's affirmative fair housing obligations. 42 U.S.C. §3608(e)(5); 24 C.F.R. §882.219(b)(3).

5. Facts with Respect to the Use of Preferences by the Suburban/Belmont Section 8 Program

216. In October 1976, the suburban/Belmont Section 8 housing program obtained a legal opinion from the associate counsel of the New York State Comptroller's office advising that the Section 8 housing program was not legally prohibited from entering into rental assistance contracts outside the geographical area of the consortium's approximately forty-one participating municipalities.

217. The suburban/Belmont Section 8 housing program includes a local residency preference for families who live or intend to work in one of the consortium's approximately forty-one municipalities.

218. The suburban/Belmont Section 8 housing program's local residency preference does not comply with the requirements of 24 C.F.R. §882.209 (a)(4)(ii) insofar as it does not extend to the entire area where the PHA has determined that it is "not legally barred from entering into Contracts." 24 C.F.R. §882.209(a)(4)(ii).

219. Although the suburban/Belmont Section 8 housing program is not legally barred from entering into contracts in the city of Buffalo, its Administrative Plan does not extend the residency preference to residents of the city of Buffalo.

220. The approximate racial composition of the municipalities comprising the suburban consortium is 97% white and 3% minority.

221. The city of Buffalo has a minority population of 30%.

222. The suburban/Belmont Section 8 housing program administers approximately 2800 housing certificates and housing vouchers.

223. Approximately 4% of these rental subsidies are held by minority families; approximately 96% of these rental subsidies are held by white families.

224. Approximately 21% of the families on the suburban/Belmont Section 8 housing program's waiting list of over 3,800 households are minorities.

225. By providing a preference to the residents of the consortium's approximately 41 municipalities, nearly all of whom are predominantly white, and by denying a preference to eligible residents of the city of Buffalo, a greater proportion of whom are minorities, the suburban/Belmont Section 8 housing program has denied minorities an equal opportunity for participation in the program, and has thus made housing unavailable to them.

226. Defendants HUD, City of Buffalo, RAC, Town of Amherst and Belmont knew or should have known of the racially discriminatory purpose and effect of their Section 8-Existing Housing program policies.

227. Defendants HUD, City of Buffalo, RAC, Town of Amherst and Belmont have failed to take any action to terminate these racially discriminatory policies or to remedy their effects.

228. As a result of the suburban/Belmont Section 8 housing program's restricted residency preference, plaintiffs have suffered economic and social injury in the form of lost rent subsidies, lost educational, employment, health care and housing opportunities, the humiliation of discrimination, and the denial of the benefits of living in a racially integrated society.

6. Facts with Respect to Defendants' Failures to Conduct Affirmative Outreach in the Section 8 Programs

229. PHAs administering Section 8-Existing Housing programs have an obligation to identify households which, because of such factors as race or ethnicity, are less likely to participate in the program, and a corresponding obligation to conduct affirmative outreach to such households. 24 C.F.R. §882.207.

230. This affirmative outreach requirement is coupled with an obligation that the PHA identify rental housing in areas outside of those with high minority concentrations both within and beyond the PHA's primary area of jurisdiction, in any areas in which the PHA is not legally barred from entering into contracts, and to notify Section 8 housing certificate holders and Section 8 housing applicants of the availability of such housing. 24 C.F.R. §882.103 (c); 24 C.F.R. §882.204(b)(1)(i)(B); 24 C.F.R. §882.209 (a)(4)(ii)(c).

231. In addition, occupants of and applicants for public housing must be notified by the Section 8 housing program PHAs of the availability of Section 8 rental subsidies, Section 8 application procedures and informed that applying to the Section 8 housing program will not jeopardize their status as occupants of and applicants for public housing. 24 C.F.R. §882.207; 24 C.F.R. §882.204(b)(1)(i)(A).

232. Both the suburban/Belmont Section 8 housing program and the Buffalo/RAC Section 8 housing program serve residents of the city of Buffalo and include the city of Buffalo within their areas of operation.



233. Since the inception of their respective Section 8 housing programs, defendants HUD, City of Buffalo, Town of Amherst, Belmont and RAC have known or should have known about the racially segregated residency patterns in the city of Buffalo, in defendant BMHA's public housing projects and in the suburbs surrounding the city of Buffalo.

234. Since the inception of the Section 8 housing programs in Erie County, defendants HUD, City of Buffalo, Town of Amherst, Belmont and RAC have known or should have known that there are substantial numbers of minority households in the city of Buffalo, including those on defendant BMHA's occupancy and waiting lists, which, without special outreach and notice regarding the Section 8-Existing Housing programs, would be unlikely to apply for Section 8 housing certificates or vouchers, and would be unlikely to know that they could use the certificates outside the city of Buffalo or in other non-segregated areas within the city.

235. Defendants City of Buffalo, Town of Amherst, Belmont and RAC have failed to conduct special outreach or to distribute notices regarding the Section 8-Existing Housing programs to minority families on defendant BMHA's occupancy and waiting lists.

236. Defendants City of Buffalo, Town of Amherst, Belmont and RAC have failed to include in their Equal Opportunity Housing Plans and Administrative Plans any identification of BMHA occupants and applicants for affirmative outreach.

237. Contrary to its obligations to administer its programs in a manner which promotes the desegregation of housing, defendant

HUD has failed to require defendants City of Buffalo, Town of Amherst, Belmont and RAC to conduct affirmative outreach to minority households within the city of Buffalo, including affirmative outreach to minority occupants of defendant BMHA's public housing projects.

238. Defendant HUD has funded and continues to fund Section 8 housing programs in Erie County which have the purpose and effect of promoting racial segregation and discrimination.

7. Facts Related To Individual Plaintiffs' Section 8 Claims

239. Plaintiff Hazel Grimes is black.

- a. Ms. Grimes has resided at defendant BMHA's Langfield Homes public housing project from 1966 until the present.
- b. During that time, Ms. Grimes has never been advised that she could apply for Section 8 rental housing administered by defendants Belmont and RAC.
- c. In addition, Ms. Grimes has never been advised that a Section 8 subsidy could be used to rent housing in areas outside of those with high minority concentrations, either within the city of Buffalo or in the suburbs surrounding the city.
- d. When Ms. Grimes has asked for information regarding the Section 8 rental housing program, defendant BMHA has told her she is ineligible for Section 8 rental housing because her income is too low.

240. Plaintiff Yvonne Primm is black.

- a. Ms. Primm applied for Section 8 rental housing assistance administered by defendant RAC in 1982.
- b. In early 1987, Ms. Primm was contacted by defendant RAC and was informed that her application had reached the top of the Section 8-Existing Housing program waiting list.
- c. Defendant RAC advised Ms. Primm that she could be given either a Section 8 certificate or a Section 8 voucher.
- d. Defendant RAC advised Ms. Primm that if she chose a certificate she could only use it within the city of Buffalo, whereas if she chose a voucher she would be allowed to use it anywhere within Erie County.
- e. Ms. Primm chose the Section 8 certificate because it meant obtaining immediate assistance, whereas choosing a Section 8 voucher would mean an additional wait for rental housing assistance, since there were no vouchers available at that time.
- f. Because she is still interested in obtaining housing outside the city of Buffalo, Ms. Primm has requested a housing voucher from defendant RAC when one becomes available.

- g. Ms. Primm has never been advised by defendant RAC that she can apply for Section 8 rental housing administered by defendant Belmont.
- h. In addition, as an applicant for Section 8 rental housing, Ms. Primm has never been advised by defendant RAC of the availability of Section 8 housing in areas outside of those with high minority concentrations, either within the city of Buffalo or the suburbs surrounding the city.

241. Plaintiff Matilda Santiago is Hispanic.

- a. Ms. Santiago has resided since 1981 in Lakeview Apartments, a predominantly minority occupied public housing project administered by defendant BMHA.
- b. Ms. Santiago has never been advised that she can apply for Section 8 rental housing administered by defendants Belmont and RAC.
- c. In addition, Ms. Santiago has never been advised that a Section 8 subsidy can be used to rent housing in areas outside of those with high minority concentrations, either within the city of Buffalo or in the suburbs surrounding the city.

242. Plaintiff Rosetta Weeden is black.

- a. Ms. Weeden has resided since 1979 in Kenfield Apartments, a predominantly minority public housing project administered by defendant BMHA.

- b. Ms. Weeden applied for Section 8 rental housing assistance with defendant RAC in 1979.
- c. Ms. Weeden has been on defendant RAC's waiting list for approximately ten years.
- d. Ms. Weeden has never been advised of the availability of Section 8 rental housing in areas outside of those with high minority concentrations, either within the city of Buffalo or in the suburbs surrounding the city.
- e. In addition, Ms. Weeden has never been advised that she can apply for Section 8 rental housing administered by defendant Belmont.
- f. Defendant RAC has informed Ms. Weeden that if she receives rental housing assistance from defendant RAC she must find housing within the city of Buffalo.
- g. Defendant RAC has discouraged Ms. Weeden from pursuing her Section 8 housing program application, informing Ms. Weeden that because she is already a public housing resident she should remain in public housing.

**B. The Community Development Block Grant Program**

**1. CDBG Fair Housing Requirements**

243. Since 1975, defendant City of Buffalo has received in excess of \$269 million from defendant HUD as a grantee under the Community Development Block Grant ("CDBG") program.

244. As a condition to receipt of CDBG funds, a grantee must "affirmatively further fair housing." 42 U.S.C. §5304(b)(2).

245. Defendant City of Buffalo is responsible for the racially discriminatory practices of defendants BMHA and RAC, as instrumentalities of local government within the meaning of §2000d-4a of Title VI of the Civil Rights Act of 1964.

246. Defendant City of Buffalo has failed to correct or remedy the effects of the racially discriminatory practices of defendants BMHA and RAC, either through expenditure of CDBG funds or otherwise.

247. As a further condition to receipt of CDBG funds, a grantee must administer the grant in conformity with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act of 1968, as amended, 1988.

248. Defendant City of Buffalo has violated Title VI with respect to the direct administration of its CDBG grant.

249. From 1975 to the present, defendant City of Buffalo has used CDBG funds to pay for all or part of its housing code enforcement program.

250. During this period, defendant City of Buffalo has refused to conduct housing code enforcement inspections in public housing projects administered by defendant BMHA.

251. During this period, defendant City of Buffalo has refused to conduct housing code enforcement inspections on

properties in the Section 8-Existing Housing programs located in the city of Buffalo.

252. The resident population in defendant BMHA administered public housing projects and in Section 8 rental housing within the city of Buffalo is disproportionately minority.

253. Defendant City of Buffalo's refusal to inspect these properties has disproportionately affected minorities by denying them access to the city of Buffalo's administrative housing code enforcement procedures and by obstructing their access to judicial review, both of which are available to white residents of the city.

254. As a consequence, minority plaintiffs have been forced to reside in housing which is substandard and inferior to housing available to white citizens.

## 2. CDBG Performance Review

255. The Housing and Community Development Act ("HCDA") requires that each recipient of CDBG funds submit, and that defendant HUD review, an annual performance report. 42 U.S.C. §5304(e).

256. The annual performance report must specifically address a recipient's accomplishments with respect to compliance with Title VI and Title VIII, and the recipient's efforts at meeting its statutory obligations affirmatively to further fair housing pursuant to 42 U.S.C. §5304(b)(2).

257. Each recipient of CDBG funds must conduct an analysis to determine impediments to fair housing choice in its housing

activities. 24 C.F.R. §570.904(c)(1).

258. A recipient's analysis of impediments to fair housing choice must include a review of its' "administrative policies concerning . . . housing activities . . . which affect opportunities of minority households to select housing inside or outside areas of minority concentration." 24 C.F.R. §570.904(c)(1)(v).

259. "When there has been a determination of unlawful segregation or other housing discrimination by a court or a finding of noncompliance by HUD regarding assisted housing within a recipient's jurisdiction," the analysis of impediments to fair housing choice must additionally include an itemization "of the actions which could be taken by the recipient to help remedy the discriminatory condition, including actions involving the expenditure of funds made available under [the CDBG program]." 24 C.F.R. §570.904(c)(1)(vi).

260. Determinations have been made by this Court and by defendant HUD that unlawful segregation and other housing discrimination have occurred with respect to assisted housing within the city of Buffalo.

261. In Arthur v. Nyquist, this Court made a determination after trial that, "[t]he evidence proves that the residential segregation in Buffalo was caused, in substantial part, by the policies and practices of the Federal Government, the BMHA, the private real estate industry and the Common Council of the city of Buffalo." 415 F.Supp. 904, 968 (W.D.N.Y. 1976).



262. In addition to its finding of unlawful segregation and discrimination reported in 1970, 1983 and 1985, defendant HUD on April 25, 1989, issued a determination that defendant BMHA's admissions policies from 1976 until 1985 had resulted in racial segregation, and that "the probability that these racial occupancy patterns occurred by chance is nonexistent."

263. Defendant HUD has further determined that defendant BMHA's actions since 1985 have failed to remedy the resulting segregation.

264. In the event a CDBG recipient fails to take corrective or remedial actions with respect to correcting past violations of Title VI and Title VIII, or fails to act in a manner which affirmatively furthers fair housing, defendant HUD is authorized to adjust, reduce, or withdraw its grants, or to take other appropriate remedial action. 42 U.S.C. §5304(e).

265. In its annual performance reports, defendant City of Buffalo has failed to identify impediments to fair housing choice, including but not limited to, the racial segregation in defendant BMHA's public housing projects and the geographic restrictions within defendant City of Buffalo's Section 8 housing programs or to itemize actions which could be taken to remedy the discriminatory conditions.

266. Defendant HUD has failed to require defendant City of Buffalo to identify impediments to fair housing choice and has failed to require defendant City of Buffalo to remedy those impediments.

267. Despite the existence of judicial and administrative determinations that racial segregation exists in defendant BMHA's public housing projects, defendant HUD has failed to require defendant City of Buffalo to identify the steps it will take to remedy this racial segregation.

268. Despite the existence of judicial and administrative determinations that racial segregation exists in defendant BMHA's public housing projects, defendant HUD has failed to condition defendant City of Buffalo's CDBG grants upon appropriate remedial action.

#### VIII. CLAIMS FOR RELIEF

##### CLAIM 1: UNLAWFUL SEGREGATION AND RACIAL DISCRIMINATION IN BUFFALO'S PUBLIC HOUSING PROGRAM

269. Defendants BMHA, Grisanti, City of Buffalo, Griffin, HUD, Kemp and Higgins have established, administered, funded, approved and failed to remedy policies and practices of unlawful segregation and racial discrimination in Buffalo's public housing program, including but not limited to the following:

- a) policies of racial segregation from the inception of the public housing program in the 1930s until the present;
- b) practices of racial discrimination in the selection, placement and transfer of public housing tenants;

- c) racial discrimination in the site selection, conversion and operation of public housing for the elderly; and
- d) racially disparate levels of housing quality and services in the public housing program.

270. In pursuit of these policies and practices, defendants BMHA, Grisanti, City of Buffalo, Griffin, HUD, Kemp and Higgins have intentionally deprived minority plaintiffs of their right to be free from racial discrimination in the making of contracts and have thus intentionally denied them the full and equal benefit of the law, as is enjoyed by white citizens, in violation of the Civil Rights Act of 1870, 42 U.S.C. §1981.

271. In pursuit of these policies and practices, defendants BMHA, Grisanti, City of Buffalo, Griffin, HUD, Kemp and Higgins have intentionally deprived minority plaintiffs of their right to be free from racial discrimination in the leasing of real property, in violation of the Civil Rights Act of 1866, 42 U.S.C. §1982.

272. In pursuit of these policies and practices, defendants BMHA, Grisanti, City of Buffalo, Griffin and Higgins have, under color of state law, intentionally deprived plaintiffs of their property interests protected by the United States Constitution without due process and have intentionally denied them equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution, as made actionable by the Civil Rights Act of 1871, 42 U.S.C. §1983.

273. Defendants HUD and Kemp by funding, approving and failing to remedy racial discrimination in public housing in the city of Buffalo, have intentionally deprived plaintiffs of their property rights protected by the United States Constitution without due process and have intentionally denied them equal protection of the law, in violation of the Fifth Amendment to the United States Constitution.

274. Defendants BMHA, Grisanti, City of Buffalo, Griffin, HUD, Kemp and Higgins have denied or otherwise made rental housing unavailable to plaintiffs, and have discriminated against plaintiffs in the terms, conditions and privileges of the rental of said housing, because of plaintiffs' race, color or national origin, in violation of Title VIII of the Civil Rights Acts of 1968, 42 U.S.C. §3604, also known as the Fair Housing Act of 1968, as amended, 1988.

275. Defendants HUD and Kemp have violated their affirmative obligation to administer programs and activities relating to housing in a manner which prevents and eliminates discriminatory housing practices as required by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§3608(d) and (e)(5), by their continued funding and approval of defendant BMHA's public housing projects while they were aware, or should have been aware, of the racially discriminatory policies and practices described above, and by their failure to remedy these policies and practices.

276. By virtue of their failure to remedy the effects of racial segregation in their public housing programs, defendants

City of Buffalo, Griffin, BMHA and Grisanti have violated their affirmative obligation to administer programs and activities relating to housing in a manner which prevents and eliminates discriminatory housing practices, as required by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3608.

277. Defendants BMHA, Grisanti, City of Buffalo, Griffin and Higgins have excluded plaintiffs from participation in, denied them the benefits of, and subjected them to discrimination under programs receiving federal financial assistance, because of plaintiffs' race, color or national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

278. Defendants HUD and Kemp have failed to ensure that the public housing program in the city of Buffalo was and is operated and administered in a nondiscriminatory manner, as required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

279. Defendants HUD and Kemp have violated federal policy enacted to assure decent housing and equal housing opportunities to all Americans as required by the United States Housing Act of 1937, 42 U.S.C. §§1437, 1441 and 1441a, and the Fair Housing Act of 1968, 42 U.S.C. §3601, et seq., by virtue of their failure to eradicate racial segregation in the public housing program in the city of Buffalo.

280. The acts and omissions of defendants HUD and Kemp are reviewable under the Administrative Procedure Act, 5 U.S.C. §701, et seq.

281. Defendants BMHA, Grisanti, City of Buffalo, Griffin and Higgins have, under color of state law, deprived plaintiffs of their rights under the laws of the United States, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and the United States Housing Act of 1937, as made actionable by 42 U.S.C. §1983.

282. By their actions described above, one or more of defendants BMHA, Grisanti, City of Buffalo, Griffin and Higgins have violated provisions of state law, including Executive Law §296, subd. 5, Public Housing Law §223, Public Housing Law §34, Civil Rights Law Article 18-a, Real Property Law §235-b, and the Constitution of the State of New York, Article I, §11.

283. As a consequence of the above violations, plaintiffs have suffered economic loss, have been forced to endure substandard housing conditions, have been denied access to educational and employment opportunities, have suffered the humiliation of racial discrimination and have been denied the social and psychological advantages of living in an integrated community.

284. By virtue of the foregoing, plaintiffs are entitled to compensatory and punitive damages, declaratory and injunctive relief, as requested below.

**CLAIM 2: UNLAWFUL SEGREGATION AND RACIAL DISCRIMINATION IN THE SECTION 8 HOUSING PROGRAMS**

285. Defendants HUD, Kemp, City of Buffalo, Griffin, RAC, Town of Amherst, and Belmont have established, administered,

funded, approved and failed to remedy policies and practices within the Section 8 housing programs in Erie County in a manner which denies minorities equal access to rental housing subsidies, and which unlawfully restricts their choices for rental housing, including but not limited to the following:

- a) the Buffalo/RAC Section 8 housing program unlawfully restricts the use of rental housing subsidies in its certificate program to the city of Buffalo;
- b) the suburban/Belmont Section 8 housing program incorporates local residency preferences which have the purpose and effect of excluding minorities from participation in the program; and
- c) both Buffalo/RAC and the suburban/Belmont Section 8 housing programs have failed to conduct affirmative outreach to minority occupants in, and applicants for, defendant BMHA public housing, and to other minority families as required by law and regulations.

286. In pursuit of these policies and practices, defendants HUD, Kemp, City of Buffalo, Griffin, RAC, Town of Amherst, and Belmont have intentionally deprived minority plaintiffs of their right to be free from racial discrimination in the making of contracts and have thus intentionally denied them the full and equal benefit of the law, as is enjoyed by white citizens, in violation of the Civil Rights Act of 1870, 42 U.S.C. §1981.

287. In pursuit of these policies and practices, defendants HUD, Kemp, City of Buffalo, Griffin, RAC, Town of Amherst, and Belmont have intentionally deprived minority plaintiffs of their right to be free from racial discrimination in the leasing of real property, in violation of the Civil Rights Act of 1866, 42 U.S.C. §1982.

288. In pursuit of these policies and practices, defendants City of Buffalo, Griffin, RAC, Town of Amherst, and Belmont have, under color of state law, intentionally deprived plaintiffs of their property interests protected by the United States Constitution without due process and have intentionally denied them equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution, as made actionable by the Civil Rights Act of 1871, 42 U.S.C. §1983.

289. Defendants HUD and Kemp by funding, approving, and failing to remedy racial discrimination in Section 8 rental housing programs in Erie County, have intentionally deprived plaintiffs of their property rights protected by the United States Constitution without due process and have intentionally denied them equal protection of the law, in violation of the Fifth Amendment to the United States Constitution.

290. Defendants HUD, Kemp, City of Buffalo, Griffin, RAC, Town of Amherst, and Belmont have denied or otherwise made rental housing unavailable to plaintiffs, and have discriminated against plaintiffs in the terms, conditions and privileges of the rental of said housing, because of plaintiffs' race, color, or national



origin, in violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604, also known as the Fair Housing Act of 1968, as amended, 1988.

291. Defendants HUD and Kemp have violated their affirmative obligation to administer programs and activities relating to housing in a manner which prevents and eliminates discriminatory housing practices, as required by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§3608(d) and (e)(5), by their continued funding and approval of the Section 8 rental housing programs while they were aware, or should have been aware, of the racially discriminatory policies and practices described above, and by their failure to remedy these policies and practices.

292. By virtue of their failure to remedy the effects of racial segregation and discrimination in their Section 8-Existing Housing programs, defendants City of Buffalo, Griffin, RAC, Town of Amherst and Belmont have violated their affirmative obligation to administer programs and activities relating to housing in a manner which prevents and eliminates discriminatory housing practices, as required by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3608.

293. Defendants City of Buffalo, Griffin, RAC, Town of Amherst and Belmont have excluded plaintiffs from participation in, denied them the benefits of, and subjected them to discrimination under programs receiving federal financial assistance, because of plaintiffs' race, color or national origin,

in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

294. Defendants HUD and Kemp have failed to ensure that the Buffalo/RAC and suburban/Belmont Section 8 rental housing programs are administered in a non-discriminatory manner, as required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

295. Defendants HUD and Kemp by failing to administer the Section 8 rental housing programs in Erie County in a manner which ensures decent housing and equal housing opportunities to all Americans, and by failing to eradicate racial segregation in the Section 8 rental housing programs in Erie County, have violated federal housing policy established by the United States Housing Act of 1937, 42 U.S.C. §§1437, 1441 and 1441a, and the Fair Housing Act of 1968, 42 U.S.C. §3601, et seq.

296. The acts and omissions of defendants HUD and Kemp are reviewable under the Administrative Procedure Act, 5 U.S.C. §701, et seq.

297. Defendants City of Buffalo, Griffin, RAC, Town of Amherst, and Belmont have, under color of state law deprived plaintiffs of their rights under the laws of the United States, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and the United States Housing Act of 1937, as made actionable by 42 U.S.C. §1983.

298. By their actions as described above, one or more of defendants City of Buffalo, Griffin, RAC, Town of Amherst, and Belmont have violated provisions of state law, including Executive

Law §296, subd. 5, Civil Rights Law Article 18-a, and the Constitution of the State of New York, Article I, §11.

299. As a consequence of the above violations, plaintiffs have suffered economic loss, have been forced to endure substandard housing conditions, have been denied access to educational and employment opportunities, have suffered the humiliation of racial discrimination and have been denied the social and psychological advantages of living in an integrated community.

300. By virtue of the foregoing, plaintiffs are entitled to compensatory and punitive damages, declaratory and injunctive relief, as requested below.

**CLAIM 3: VIOLATIONS OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM REQUIREMENTS**

301. By virtue of their failure to remedy the effects of racial segregation in Buffalo's public housing program, and by virtue of their failure to remedy the racially discriminatory restrictions in Buffalo's Section 8 rental housing programs, defendants City of Buffalo and Griffin have violated the statutory duty imposed upon the city of Buffalo as a recipient of Community Development Block Grant ("CDBG") funds affirmatively to further fair housing as required by the Housing and Community Development Act of 1974, 42 U.S.C. §5304(b)(2).

302. By virtue of their use of CDBG funds for housing code enforcement in the city of Buffalo that is carried out in a racially discriminatory manner, defendants City of Buffalo and

Griffin have violated the statutory duty imposed upon the city of Buffalo requiring it to administer its CDBG grant in a manner consistent with Title VI and Title VIII. 42 U.S.C. §5304(b)(2).

303. By virtue of their failure to identify and remedy racial segregation in defendant BMHA's public housing projects, and by virtue of their failure to identify and remedy impediments to fair housing choice within the city and suburban Section 8 rental housing programs, defendants City of Buffalo and Griffin have violated CDBG program regulatory requirements imposed upon them by defendant HUD. 24 C.F.R. §570.904.

304. The acts and omissions of defendants City of Buffalo and Griffin with respect to CDBG program requirements have been carried out under color of state law, and have deprived plaintiffs of constitutionally protected property interests without due process of law and have intentionally denied them equal protection of law, in violation of the Fourteenth Amendment to the United States Constitution, and of plaintiffs' rights under the laws of the United States, namely, the Housing and Community Development Act of 1974, as made actionable by 42 U.S.C. §1983.

305. The acts and omissions of defendants HUD and Kemp as described above violate their affirmative obligation to administer programs and activities related to housing in a manner so as to prevent and eliminate discriminatory housing practices. 42 U.S.C. §§3608(d) and (e)(5).

306. The acts and omissions of defendants HUD and Kemp are reviewable under the Administrative Procedure Act, 5 U.S.C. §701, et seq.

307. As a consequence of the above violations, plaintiffs have suffered economic loss, have been forced to endure substandard housing conditions, have been denied access to educational and employment opportunities, have suffered the humiliation of racial discrimination and have been denied the social and psychological advantages of living in an integrated community.

308. By virtue of the foregoing, plaintiffs are entitled to compensatory and punitive damages, declaratory and injunctive relief, as requested below.

**CLAIM 4: UNLAWFUL ACTIONS WITH RESPECT TO THE KENSINGTON HEIGHTS AND ELLICOTT MALL PUBLIC HOUSING PROJECTS**

309. By their failure to maintain the Kensington Heights and Ellicott Mall public housing projects in a habitable condition, and by their plan to convert these public housing projects to privately owned apartment complexes, defendants Higgins, City of Buffalo, BMHA and Grisanti have intentionally deprived minority plaintiffs of their right to be free from racial discrimination in the making of contracts and have thus intentionally denied them the full and equal benefit of the law, as is enjoyed by white citizens, in violation of the Civil Rights Act of 1870, 42 U.S.C. §1981.

310. By their failure to maintain the Kensington Heights and Ellicott Mall public housing projects in a habitable condition, and by their plan to convert these public housing projects to privately owned apartment complexes, defendants Higgins, City of

Buffalo, BMHA and Grisanti have intentionally deprived plaintiffs of their right to be free from racial discrimination in the leasing of real property, in violation of the Civil Rights Act of 1866, 42 U.S.C. §1982.

311. By their failure to maintain the Kensington Heights and Ellicott Mall public housing projects in a habitable condition, and by their plan to convert these projects to privately owned apartment complexes, defendants Higgins, City of Buffalo, BMHA and Grisanti have, under color of state law, intentionally deprived plaintiffs of property interests protected by the United States Constitution without due process and have intentionally denied them of equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution, as made actionable by the Civil Rights Act of 1871, 42 U.S.C. §1983.

312. By their failure to maintain the Kensington Heights and Ellicott Mall public housing projects in a habitable condition, and by their plan to convert these public housing projects to privately owned apartment complexes, defendants Higgins, City of Buffalo, BMHA and Grisanti have denied or otherwise made rental housing unavailable to plaintiffs, and have discriminated against plaintiffs in the terms, conditions and privileges of the rental of housing, because of plaintiffs' race, color or national origin, in violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3604, also known as the Fair Housing Act of 1968, as amended, 1988.

313. By their failure to maintain the Kensington Heights and Ellicott Mall public housing projects in a habitable condition, and by their plan to convert these projects to privately owned apartment complexes, defendants Higgins, City of Buffalo, BMHA and Grisanti have excluded plaintiffs from participation in, denied them the benefits of, and subjected them to discrimination under programs receiving federal financial assistance, because of plaintiffs' race, color or national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

314. By their failure to maintain the Kensington Heights and Ellicott Mall public housing projects in a habitable condition, and by their plan to convert these projects to privately owned apartment complexes, defendants Higgins, City of Buffalo, BMHA and Grisanti have, under color of state law, deprived plaintiffs of their rights under laws of the United States, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and the United States Housing Act of 1937, as made actionable by 42 U.S.C. §1983.

315. The proposed conversion of the Kensington Heights and Ellicott Mall public housing projects to privately owned apartment complexes by defendants Higgins, City of Buffalo, BMHA, and Grisanti would have the effect of denying plaintiffs the residency preference they are entitled to under Article XVIII, §6 of the New York State Constitution and New York Public Housing Law §17. Accordingly, defendants Higgins, City of Buffalo, BMHA, and Grisanti are violating plaintiffs' rights under Title VIII of the

Civil Rights Act of 1968, 42 U.S.C. §3604, also known as the Fair Housing Act of 1968, as amended, 1988, by denying or otherwise making rental housing unavailable to plaintiffs, and by discriminating against plaintiffs in the terms, conditions and privileges of the rental of housing, because of plaintiffs' race, color or national origin.

316. By their failure to maintain the Kensington Heights and Ellicott Mall public housing projects in a habitable condition, and by their plan to convert these public housing projects to privately owned apartment complexes, one or more of defendants Higgins, City of Buffalo, BMHA and Grisanti have violated provisions of state law, including Executive Law §296, subd. 5, Public Housing Law §17, Public Housing Law §223, Civil Rights Law Article 18-a, Real Property Law §235-b, and the Constitution of the State of New York, Article I, §11 and Article XVIII, §6.

#### IX. REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

1. Certify this action as a class action on behalf of class plaintiffs pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure;

2. Pursuant to 28 U.S.C. §§2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure, declare that defendants' policies, practices, procedures, acts and omissions have deprived



plaintiffs of their rights under the Constitution and laws of the United States and the Constitution and laws of New York State, as enumerated in Claims 1 through 4 above;

3. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, enter permanent injunctive relief ordering defendants to cease immediately their violations of plaintiffs' rights, and to remedy the invidious effects of their violations. Plaintiffs request that the injunctive relief ordered by this Court include, but not be limited to, the following:

(a) Order all defendants to cease immediately their racially discriminatory and illegal policies, practices and procedures;

(b) Order defendants City of Buffalo, Griffin, BMHA, Grisanti and Higgins to rehabilitate, modernize, improve and make safe all of defendant BMHA's public housing projects, including Ellicott Mall and Kensington Heights;

(c) Order defendants City of Buffalo, Griffin, BMHA, Grisanti and Higgins to create magnet housing projects to encourage racially balanced occupancy in defendant BMHA's public housing projects;

(d) Order defendants City of Buffalo and Griffin to enforce the housing codes within defendant BMHA's public housing projects and within the city of Buffalo's Section 8 housing, using procedures identical to those available to owners and tenants of non-government assisted housing in the city of Buffalo;

(e) Order defendants City of Buffalo, Griffin, BMHA, Grisanti, Higgins, RAC, Town of Amherst and Belmont to implement and administer tenant selection, assignment and transfer policies and procedures which do not have the purpose or effect of creating or maintaining existing racial segregation and discrimination;

(f) Order defendants City of Buffalo, Griffin, BMHA, Grisanti, Higgins, RAC, Town of Amherst and Belmont to implement and administer tenant selection, assignment and transfer policies and procedures which will remedy racial segregation and discrimination which have been created by defendants' past policies, practices and procedures;

(g) Order defendants HUD and Kemp to allocate and make available additional Section 8-Existing Housing program rental subsidies to minority households on the defendant BMHA, defendant RAC and defendant Belmont waiting lists, for use anywhere within Erie County and the contiguous metropolitan statistical areas in a number sufficient to achieve desegregation;

(h) Order defendants HUD, Kemp, City of Buffalo, Griffin, RAC, Town of Amherst and Belmont to provide a priority Section 8-Existing Housing program "Equal Opportunity Housing Preference" to all minority households currently residing in segregated defendant BMHA public housing projects, and to all minority households on the defendant BMHA, defendant RAC and defendant Belmont waiting lists;

(i) Order defendants BMHA, Belmont and RAC to consolidate their application procedures and waiting lists, and to reorder all households on the current waiting lists so that rental subsidies are provided from a single chronologically ordered list subject to all permissible preferences;

(j) Order defendants Town of Amherst and Belmont to eliminate their Section 8-Existing Housing programs' non-federal local residency preference, with respect to all households currently on their waiting list and all future applicants;

(k) Order defendants City of Buffalo, Griffin and RAC to eliminate their Section 8-Existing Housing programs' restriction on the use of rental subsidies to the city of Buffalo;

(l) Order defendants City of Buffalo, Griffin, BMHA, Grisanti, RAC, Town of Amherst and Belmont to notify all class members of the availability of Section 8-Existing Housing program rental subsidies, which can be used throughout Erie County and the contiguous metropolitan statistical areas;

(m) Order defendants HUD and Kemp to condition all funding and grants, including CDBG funds, made to defendants City of Buffalo, BMHA, RAC, Town of Amherst, Belmont and Higgins upon defendants' compliance with federal and state fair housing laws and the relief ordered by this Court;

(n) Order defendants HUD and Kemp to take all other steps necessary to ensure the other defendants' immediate compliance with the relief ordered by this Court;

(o) Enjoin defendants City of Buffalo, Griffin, BMHA, Grisanti and Higgins from transferring the Ellicott Mall and Kensington Heights public housing projects to private ownership, or, in the alternative, to order defendants City of Buffalo, Griffin, BMHA, Grisanti and Higgins to condition the transfer of the Ellicott Mall and Kensington Heights public housing projects to private ownership upon ensuring that the apartments in these projects are available to class members at public housing rent levels;

(p) Order defendants City of Buffalo, Griffin, BMHA, Grisanti and Higgins to make all vacant units, including those in the Ellicott Mall and Kensington Heights public housing projects, available for the affirmative relief this Court orders;

4. Pursuant to Rule 53 of the Federal Rules of Civil Procedure, appoint a special master to implement and administer the relief ordered by this Court and, if necessary, to act as a receiver to administer defendant BMHA and ensure defendant BMHA's compliance with the relief this Court orders;

5. Order defendants City of Buffalo, BMHA, and Grisanti to provide the named class representatives compensatory and punitive damages;

6. Pursuant to 28 U.S.C. §2412 and 42 U.S.C. §3612, order defendants HUD and Kemp to pay plaintiffs reasonable attorneys' fees;

7. Pursuant to 42 U.S.C. §§1988 and 3612, order defendants City of Buffalo, Griffin, BMHA, Grisanti, RAC, Town of

Amherst and Belmont to pay plaintiffs reasonable attorneys' fees;

8. Order defendants to pay plaintiffs the costs of this litigation; and

9. Order any and all other relief this Court deems proper under the circumstances.

Dated: December 4, 1989  
Buffalo, New York

Respectfully submitted,

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