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RAYMOND T. BALVAGE and DEBORAH A. BALVAGE, husband and wife, and CHARLES E. WEAVER and SUSAN M. WEAVER, husband and wife, on their own behalf and on behalf of a class of similarly situated individuals, Plaintiff, v. RYDERWOOD IMPROVEMENT AND SERVICE ASSOCIATION, INC., a Washington non-profit corporation, Defendant.

ASE NO. C09-5409BHS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION

2009 U.S. Dist. Ct. Motions 628017; 2010 U.S. Dist. Ct. Motions LEXIS 44242

March 11, 2010

Motion for Summary Judgment

VIEW OTHER AVAILABLE CONTENT RELATED TO THIS DOCUMENT: U.S. District Court: Motion(s)

COUNSEL: [*1] Joseph E. Lynam, WSBA No. 12728, Abraham K. Lorber, WSBA No. 40668, Attorneys for Plaintiffs, Lane Powell PC, Seattle, WA.

JUDGES: THE HONORABLE BENJAMIN H. SETTLE

TITLE: Plaintiffs' Motion For Partial Summary Judgment Re Defendant's Violation Of FHA And Non-Compliance With HOPA Exception

TEXT: I. RELIEF REQUESTED

Plaintiffs Raymond T. Balvage, Deborah A. Balvage, Charles E. Weaver, and Susan M. Weaver (collectively, "Plaintiffs") hereby move the Court for an order granting partial summary judgment on the following issues:

1. Defendant Ryderwood Improvement and Service Association, Inc. ("RISA") has discriminated in the sale and rental of housing on the basis of familial status, which is a type of discrimination prohibited by the Fair Housing Act, *42 U.S.C. 3601*, et. seq. ("FHA");
2. RISA has not complied with the Housing for Older Persons Act ("HOPA") exception to the FHA (which exception is contained in *42 U.S.C. § 3607(b)* and detailed in related regulations); and
3. RISA has therefore violated the FHA.

Alternatively, in the event the Court does not grant all three parts of the requested relief, Plaintiffs request that the [*2] Court grant one or more parts of the requested relief.

II. SUMMARY OF ARGUMENT

For the Court's convenience, Plaintiff's respectfully submit the following summary of their legal argument. n1

n1 Citations to all statements of fact and law contained in this summary are contained in the Material Facts and Legal Argument sections below.

RISA admits it discriminates in the sale and rental of housing on the basis of familial status. This is a type of discrimination prohibited by the FHA. RISA contends the HOPA exception applies to allow it to engage in such discrimination. However, as explained below, the HOPA exception is not applicable in this case.

HOPA provides an exception to the FHA's prohibition of discrimination on the basis of familial status for communities which satisfy certain requirements and take certain actions related to 80% of the occupied units being occupied by at least one person 55 years of age or older. RISA bears the burden of proving that it timely satisfied these requirements [*3] and timely took such actions. The bedrock public policy considerations behind the FHA's prohibitions on discrimination require that any exceptions to the FHA be narrowly construed. In order to comply with HOPA, a community must, among other things, develop procedures that provide for regular age-verification surveys in order to document the community's attainment of the 80% threshold.

HOPA provided a "Transition Period" during which non-compliant communities could discriminate on the basis of familial status during their conversion to HOPA compliance. This Transition Period ended on May 3, 2000. RISA was not HOPA compliant by the end of the Transition Period.

RISA admits it did not decide to try to become HOPA compliant until spring 2006. RISA admits its first allegedly sufficient age-verification survey was not completed until April 2006. 24 C.F.R. 100.305 and memos from HUD make clear that, if a housing community is not HOPA compliant before the end of the Transition Period, it may not discriminate after the Transition Period in an effort to convert to HOPA compliance. It is undisputed that RISA engaged in discrimination after the Transition Period and before it decided to try [*4] to become HOPA compliant. Thus, RISA's attempted conversion to HOPA compliance failed. Because of this failure, RISA has never been HOPA compliant and thus its discriminatory conduct violates the FHA.

III. EVIDENCE RELIED UPON

In bringing this Motion, Plaintiffs rely upon the Declaration of Charles E. Weaver In Support of Plaintiffs' Motion For Partial Summary Judgment and attached exhibits ("Weaver Decl."); the Declaration of Joseph E. Lynam In Support of Plaintiffs' Motion For Partial Summary Judgment and attached exhibits ("Lynam Decl."); and the pleadings and files herein. A proposed Order is filed herewith.

IV. ISSUES

1. Should the Court grant partial summary judgment that RISA has engaged in discrimination on the basis of familial status?

2. Should the Court grant partial summary judgment that RISA has failed to comply with the HOPA exception to the FHA?

3. Should the Court grant partial summary judgment that RISA has therefore violated the FHA?

V. STATEMENT OF FACTS

A. Background Information on RISA.

1. Ryderwood is an unincorporated area in Cowlitz County, Washington, which currently is comprised of approximately 270 single [*5] family homes. Weaver Decl. P 3; RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A-10 (p. 48, ll. 18-24).

2. In July 1953, RISA was incorporated to provide certain utilities and services for the Ryderwood community. Articles of Incorporation (Exh. B to Lynam Decl.), at B-11.

3. Now, RISA purports to govern the community of Ryderwood as though it were a homeowners' association. RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A-5 (p. 10, ll. 22-25).

4. In its Answer, RISA stated: "defendant admits that sales of property within Ryderwood are limited to persons who are 55 years or older." Dkt. 6, at p. 3, P 18, ll. 19-20. In its answers to interrogatories in answer to Interrogatory No. 6, RISA stated: "Sales of property have been limited to those persons who are 55 years of age or older since 1975." Interrog. Answers (Exh. C to Lynam Decl.), at C-17.

B. Between December 1992 and April 2006, RISA Knew About the FHA and HOPA but Chose Not to Comply with Their Provisions.

1. In a letter dated December 30, 1992, HUD advised RISA that its discrimination on the basis of familial status would be illegal unless it met the FHA's requirements for housing for older [*6] persons. 1992 HUD Letter (Exh. A to Weaver Decl.), at A-7.

2. In a letter dated July 21, 1993, HUD further advised RISA that "The Fair Housing Act applies to private housing and private housing providers regardless of how long they have been in existence." 1993 HUD Letter (Exh. B to Weaver Decl.), at B-8.

3. In a November 19, 1996 letter to a RISA Board of Directors ("Board") candidate, then Board member Theda Williamson made clear that RISA had not heeded HUD's advice. 1996 Williamson Letter (Exh. C to Weaver Decl.), at C-10 to C-11. Ms. Williamson wrote: "These [FHA] conditions have not been adhered to by the present board because they assume it isn't in their domain. IF NOT THEM, WHO?" *Id.*, at C-11.

4. In 1998, amendments were passed which clarified the requirements of housing communities which sought to qualify for the HOPA exception to the FHA. 24 CFR 100.300, et seq. These amendments became effective April 2, 1999. *Id.* These amendments provided that, if a housing community was not HOPA compliant as of the effective date of the amendments, the housing community would be given a "Transition Period" of one year to become HOPA compliant. 24 C.F.R. 100.305(e)(5). This [*7] Transition Period expired May 3, 2000. 2006 HUD Memo (Exh. D to Lynam Decl.), at D-20. During this Transition Period, a housing community could discriminate on the basis of familial status while converting to HOPA compliant status. 24 C.F.R. 100.305(e)(5); 2006 HUD Memo (Exh. D to Lynam Decl.), at D-20. However, for housing communities which failed to convert to HOPA compliance by the end of the Transition Period, such communities could not discriminate after the Transition Period in an effort to later convert to HOPA compliance. 2006 HUD Memo (Exh. D to Lynam Decl.), at D-21.

5. On May 3, 2000, the Transition Period ended. *Id.* RISA continued to engage in discriminatory conduct but took no further steps towards HOPA compliance. Dkt. 6, at p. 3, P 18, ll. 19-20; Interrog. Ans. (Exh. C to Lynam Decl.), at C-17; 2006 Mulkey Letter (Exh. E to Weaver Decl.), at E-19. Indeed RISA did not even decide to try and comply with HOPA until six years after the Transition Period ended. RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at

A-9 (p. 31, ll. 13-19). Board member Les Mulkey explained that RISA's longtime policy was knowing non-compliance with HOPA: "I will always say that I do [*8] not agree with having HOPA involved with our corporation. Back in 1993 when our secretary inquired to the Government the board decision was made at that time we were not to be involved with HOPA." 2006 Mulkey Letter (Exh. E to Weaver Decl.), at E-19.

6. On November 4, 2005, RISA was served with a subpoena duces tecum in a lawsuit in which it later became a party. Subpoena (Exh. D to Weaver Decl.), at D-13 to D-18. This subpoena demanded that RISA produce all documents in its possession relating to its status regarding HOPA compliance. *Id.*

7. In the spring of 2006, RISA first decided to try to become HOPA compliant. RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A-9 (p. 31, ll. 13-19).

8. RISA contends that in April 2006 it completed its first allegedly sufficient age-verification survey. n2 RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A-7 to A-8 (p. 18, l. 20 - p. 19, l. 9). A housing community cannot be HOPA compliant unless it regularly performs such surveys. 24 C.F.R. 100.307.

n2 Plaintiffs adamantly dispute that such a survey took place, was completed, or was legally adequate. However, the Court's determination of the occurrence or adequacy of this survey is not necessary for the Court's determination of this Motion.

[*9]

9. In June 2006, Mr. Mulkey ended his tenure as a RISA board member over RISA's April 2006 decision to become HOPA compliant. 2006 Mulkey Letter (Exh. E to Weaver Decl.), at E-19.

10. RISA continues to discriminate on the basis of familial status up through the present day. Dkt. 6, at p. 3, P 18, ll. 19-20; Interrog. Answers (Exh. C to Lynam Decl.), at C-17; RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A-6 (p. 14, ll. 2-4).

VI. LEGAL ARGUMENT

A. Summary Judgment Standard

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The burden is on the moving party to show conclusively that no genuine issue of material fact exists, and the Court must view the facts and all inferences to be drawn therefrom in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

Once the moving party presents evidence sufficient to support a motion under Fed.R.Civ.P. 56, the nonmoving party is not entitled to a trial merely on the basis [*10] of allegations. The nonmoving party is required to come forward with some significant probative evidence which makes it necessary to resolve the factual dispute at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322- 23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party is entitled to summary judgment if the nonmoving party fails to make a sufficient showing on an essential element of the nonmoving party's case with respect to which the nonmoving party has the burden of proof. *Celotex*, 477 U.S. at 323, 106 S.Ct. 2548. The issue of whether or not a housing community is HOPA compliant may properly be decided on summary judgment. *U.S. v. Fountainbleau Apartments, L.P.*, 566 F.Supp.2d 726, 738 (E.D. Tenn. 2008).

B. RISA Discriminates Against Families With Children. This Type of Discrimination is Prohibited by the FHA.

The federal Fair Housing Act, contained in *42 U.S.C. § 3601*, et seq. (the "FHA") prohibits discrimination in the sale or rental of housing on the basis of, among other things, familial status. *42 U.S.C. §§ 3604(a)-(e)*. Familial status means:

one or [*11] more individuals (who have not attained the age of 18 years) being domiciled with - (1) a parent or another person having legal custody of such individuals; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

Simply put, the FHA does not allow discrimination in the sale or rental of housing against families with children. The statute includes a private cause of action so that aggrieved individuals may enforce its provisions. *42 U.S.C. 3613*.

RISA admits it discriminates on the basis of familial status. In its Answer, Affirmative Defenses, and Counterclaim, RISA stated that "defendant admits that sales of property within Ryderwood are limited to persons who are 55 years or older." Dkt. 6, at p. 3, P 18, ll. 19-20. In its answers to Plaintiffs' interrogatories, RISA stated that "Sales of property have been limited to those persons who are 55 years of age or older since 1975." Interrog Answers (Exh. C to Lynam Decl.), at C-17. RISA has continuously engaged in such discrimination from 1975 through the present. *Id.*

Based on these admissions, Plaintiffs request that the Court [*12] grant partial summary judgment that RISA has engaged in discrimination on the basis of familial status, which is a type of discrimination prohibited by the FHA.

C. RISA Has Failed to Comply with the HOPA Exception.

1. Background on HOPA

Although the FHA prohibits discrimination on the basis of familial status, it provides an exception in certain situations for housing for older persons. *42 U.S.C. § 3607(b)(1)*. Housing for older persons is a defined term under the FHA, which, as it relates to this lawsuit, means,

[H]ousing. . . (C) intended and operated for occupancy by persons 55 years of age or older, and - (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older; (ii) the housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and (iii) the housing facility or community complies with rules by the Secretary for verification of occupancy, which shall - (I) provide for verification by reliable surveys and affidavits; and (II) include examples of the types of policies and procedures relevant [*13] to a determination of compliance with the requirement of clause (ii). Such surveys and affidavits shall be admissible in administrative and judicial proceedings for the purposes of such verification.

42 U.S.C. § 3607(b)(2)(C). This exception was added to the FHA in 1988 and is commonly known as the Housing for Older Persons Act ("HOPA"). *Id.* Thus, in order to satisfy the requirements of this exception, it is not enough that a community merely has at least 80 percent of the occupied units occupied by at least one person who is 55 years of age or older. The community must do a number of other things, such as publish policies and procedures demonstrating an intent to limit residency to persons 55 years of age or older, develop procedures for routinely conducting age-verification surveys, and actually conduct such surveys on a regular (every two years) basis. *Id.*; 24 C.F.R. 100.306-100.307.

Specifically speaking, one of the requirements for HOPA compliance is that a housing community "develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age [*14] or older." 24 C.F.R. 100.307(b). The housing community "must be able to produce, in response to a complaint filed under [the FHA], verification of compliance with Sec. 100.305 through reliable surveys and affidavits." 24 C.F.R. 100.307(a). Thus, HOPA requires that communities which wish to discriminate on the basis of familial status must develop procedures for conducting age-verification surveys, must

actually conduct the surveys on a regular basis, and must be able to prove that reliable surveys were actually conducted.

2. RISA Bears the Burden of Proving it Qualifies for the HOPA Exception

Federal courts are clear that a party wishing to qualify for an exception under the FHA bears the burden of proving compliance. *See Fair Housing Advocates Ass'n, Inc. v. City of Richmond Heights, Ohio*, 209 F.3d 626, 635 (6th Cir. 2000) (holding that city asserting FHA exemption bore burden of proving compliance therewith). The reasoning behind this allocation of burden derives its force from the public policy underpinning the FHA. "Exemptions from the Fair Housing Act are to be construed narrowly, in recognition of the important goal of preventing housing discrimination. [*15] " *Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc.*, 3 F.3d 1472, 1475 (11th Cir. 1993) (reversing district court's conclusion that homeowners association qualified for HOPA exemption).

If RISA contends that it is entitled to discriminate on the basis of familial status because of the exception to the FHA created by HOPA, then RISA bears the burden of proving it complies with HOPA. Moreover, the Court should narrowly construe the HOPA exception so as not to frustrate Congress's important public policy objective of ensuring equality in the rental and sale of housing.

3. The HOPA Transition Period

In 1998, HUD promulgated regulations whose aim was to "effectuate the exemption in the Fair Housing Amendments Act of 1988 that relates to housing for older persons." 24 C.F.R. 100.300. These regulations were promulgated pursuant to authority granted to the Secretary of Housing and Urban Development in 42 U.S.C. 3607(b)(2)(iii) and 42 U.S.C. § 3608. In issuing these regulations, HUD provided for a one year "Transition Period" during which non-HOPA compliant communities could become HOPA compliant without running afoul [*16] of the law. 24 C.F.R. 100.305(e)(5). This Transition Period ended May 3, 2000. 2006 HUD Memo (Exh. D to Lynam Decl.), at D-20.

Communities which were not HOPA compliant at the time the 1998 amendments took effect were given one year to become HOPA compliant. 24 C.F.R. 100.305(e)(5). In reaching the statutorily required 80% threshold, these communities were allowed to advertise themselves as 55 and older communities and set aside available housing for persons 55 and older; i.e., the communities were allowed to discriminate during the Transition Period. *Id.*

In a Memorandum dated March 6, 2006 issued by the U.S. Department of Housing and Urban Development on the subject of "Conversion to Housing for Older Persons Under the Fair Housing Act and the Housing for Older Persons Act of 1995 (HOPA)" ("2006 HUD Memo"), HUD gave its interpretation of its regulations on the question of how a community could become HOPA compliant after the end of the Transition Period. 2006 HUD Memo (Exh. D to Lynam Decl.), at D-20 to D-21. HUD's interpretation of its own regulations commands considerable deference by a reviewing court. *Harris v. Itzhaki*, 183 F.3d 1043, 1051-1052 (9th Cir. 1999) [*17] (holding that the Secretary of Housing and Urban Development ordinarily commands considerable deference in interpreting the FHA because HUD is the federal agency primarily assigned to implement and administer Title VIII) (citing *Pfaff v. HUD*, 88 F.3d 739, 747 (9th Cir. 1996); *Chevron USA, Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)).

The 2006 HUD Memo stated that:

[A]n existing community can convert to 'housing for older persons' if 80 percent of its occupied units become occupied by at least one person 55 years of age or older. Unlike during the transition period, housing providers cannot discriminate against families with children in order to achieve 80% occupancy. In other words, a community or facility cannot reserve unoccupied units for persons 55 or older, advertise itself as housing for older persons, or evict families with children in order to meet the 80 percent threshold.

Id. n3 Only if

the community or facility achieves the 80 percent threshold, ***without discriminating against families with children***, may it then publish and adhere to policies [*18] and procedures which demonstrate an intent to provide housing for persons 55 years or older and comply with verification of occupancy rules.

Id. (emphasis in original). Thus, an existing community which is not HOPA compliant by the end of the Transition Period that later wishes to become HOPA compliant must naturally achieve the 80% threshold before it engages in discrimination. HUD's clarification of 24 C.F.R. 100.305(e)(5) makes perfect sense and is the only logical approach to implementing the intent of the relevant statutes and regulations. If communities are allowed to discriminate after the Transition Period ends for some extended period of time before actually trying to become HOPA compliant, why have a transition period at all? 24 C.F.R. 100.305(e)(5) and the HUD Memo articulate a policy limiting discrimination consistent with case law holdings and Congress' intent that exceptions to the FHA be narrowly construed.

n3 The only other way to become HOPA complaint after the transition period is to "construct a new housing community or facility." *Id.*

[*19]

Here, it is undisputed that RISA did not convert to HOPA compliant status during the Transition Period. 2006 Mulkey Letter (Exh. E to Weaver Decl.), at E-19. Indeed, RISA did not make the decision to try and become HOPA compliant until April 2006. RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A-9 (p. 31, ll. 13-19). Also, RISA did not complete its first allegedly sufficient age-verification survey until April 2006, n4 so there is no way that it could have been HOPA compliant before that time. RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A-7 (p. 18, l. 20 - p. 19, l. 9). Despite not being HOPA compliant, RISA continuously engaged in discrimination on the basis of familial status before, during, and after the Transition Period. Dkt. 6, at p. 3, P 18, ll. 19-20; Interrog. Answers (Exh. C to Lynam Decl.), at C-17.

n4 Plaintiffs adamantly dispute that such a survey took place, was completed, or was legally adequate. However, the Court's determination of the occurrence or adequacy of this survey is not necessary for the Court's determination of this Motion.

[*20]

4. RISA's Attempted April 2006 Conversion to HOPA Compliant Status Failed

Here, RISA admits it did not make the decision to attempt to become HOPA compliant until April 2006. RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A-9 (p. 31, ll. 13-19). RISA's decision to attempt to become HOPA compliant was made only after receipt of the subpoena duces tecum in the *Bichler* litigation which demanded that RISA's produce its HOPA related documents. Subpoena (Exh. D to Weaver Decl.), at D-13 to D-18; Weaver Decl. P 12. Where HOPA compliance efforts are initiated in response to pending or threatened litigation, Courts will not hesitate to minimize the import of those efforts. *Simovits v. Chanticleer Condominium Assoc.*, 933 F.Supp. 1394, 1403 (N.D. Ill. 1996) (citing *Massaro*, 3 F.3d at 1478).

Since RISA continuously discriminated after the Transition Period ended, it did not comply with the post-Transition Period conversion rules. Only those communities who achieve the 80% threshold without discriminating

are entitled to convert to HOPA compliance after the Transition Period ends. 2006 HUD Memo (Exh. D. to Lynam Decl.), at D-21. The undisputed [*21] facts clearly show that RISA did not achieve the threshold naturally, that is, without discrimination. Thus, RISA's attempted conversion failed and the HOPA exception does not apply.

Here, starting in December 1992, the federal government warned RISA and made it very clear that it could not engage in discrimination in violation of the FHA unless it complied with HOPA. RISA chose to ignore these warnings and blatantly acted in disregard of federal law. It is now too late for RISA to try to claim the benefits of federal law concerning HOPA when it intentionally chose to ignore the requirements of HOPA for so many years. The public policy of non-discrimination cannot be brushed aside lightly. RISA's day-late, dollar-short efforts to become HOPA compliant clearly fall outside the narrow construction accorded to HOPA by federal law.

Because RISA failed to successfully convert to HOPA compliant status, Plaintiffs request that the Court grant partial summary judgment that RISA has failed to qualify for the HOPA exception to the FHA.

D. RISA's Discriminatory Conduct Violates the FHA Because the HOPA Exception is Inapplicable

Because RISA has engaged in discrimination on the [*22] basis of familial status and because RISA has never successfully converted to HOPA compliance, RISA's discriminatory conduct constitutes a violation of the FHA. Plaintiffs therefore respectfully request that the Court grant partial summary judgment that RISA has violated the FHA.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that Plaintiffs' Motion for Partial Summary Judgment Re Defendant's Violation of FHA and Non-Compliance with HOPA Exception be granted.

DATED: March 11, 2010

LANE POWELL PC

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on March 11, 2010, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk [*23] of the Court will send e-mail notification of such filing to the following persons:

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DECLARATION OF JOSEPH E. LYNAM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

I, Joseph E. Lynam, hereby declare as follows:

1. I am an attorney representing the Plaintiffs in above-captioned lawsuit. I am a citizen of the United States of America, am over 18 years old, am competent to testify herein, and have personal knowledge of the facts stated below.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from the transcript [*24] of the Rule 30(b)(6) deposition of defendant Ryderwood Improvement and Service Association, Inc. ("RISA"), whose designated representative was RISA Board of Directors member Sally Gene De Briae and which deposition occurred on February 12, 2010.

3. Attached hereto as Exhibit B is a true and correct copy RISA's Articles of Incorporation, filed with the Washington Secretary of State on July 1, 1953, and produced by RISA in response Plaintiffs' First Set of Discovery Requests.

4. Attached hereto as Exhibit C is a true and correct copy of excerpts from Defendant's Answers to Plaintiffs' First Set of Discovery Requests, dated January 7, 2010.

5. Attached hereto as Exhibit D is a true and correct copy of a Memorandum dated March 6, 2006 issued by the U.S. Department of Housing and Urban Development which stated its "SUBJECT" as "Conversion to Housing for Older Persons Under the Fair Housing Act and the Housing for Older Persons Act of 1995 (HOPA)."

I hereby declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

SIGNED this 11th day of March, 2010 at Seattle, King County, Washington.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on March 11, 2010, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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[SEE [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE DEFENDANT'S VIOLATION OF FHA AND NON-COMPLIANCE WITH HOPA EXCEPTION IN ORIGINAL]

[SEE DECLARATION OF CHARLES E. WEAVER IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT IN ORIGINAL]

[SEE EX A IN ORIGINAL]

[SEE EX B IN ORIGINAL]

[SEE EX C IN ORIGINAL]

[SEE EX D IN ORIGINAL]

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