

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEBRA WALKER, et al.,)
)
 Plaintiffs,)
)
 v.)
) Civil Action No.
 UNITED STATES DEPARTMENT OF) CA-3-85-1210-R
 HOUSING AND URBAN)
 DEVELOPMENT, et al.,)
)
 Defendants.)
 _____)

DEFENDANT UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT MEMORANDUM IN SUPPORT
OF FINAL CLASS ACTION SETTLEMENT

Defendant United States Department of Housing and Urban Development (HUD) submits this memorandum in support of the proposed class action settlement between the plaintiffs and HUD.

See Settlement Stipulation and Order, filed January 19, 2001 (the "settlement"). The settlement is fair, reasonable, and adequate, and is a comprehensive, final resolution of all pending matters as between the plaintiffs and HUD. Accordingly, the settlement should be approved by the Court.

BACKGROUND

This suit has been pending for 16 years. In its current phase, since the entry of the Modified Remedial Order Affecting HUD on December 5, 1997, this action has been mired in litigation. To illustrate the scale of that litigation, from the entry of the Modified Remedial Order to the present, there have been more than 440 entries in the docket sheet, which itself now approaches 400 pages. The current stage of litigation emanated from three sources: disputes between the parties, various actions in intervention, and the intervening Fifth Circuit proceeding based on a third-party action that resulted in the decision in Walker v. City of Mesquite, 169 F.3d 973 (5th Cir. 1999). As of March 1, 2001, cross-motions by HUD and the plaintiffs filed in 1999 concerning the appropriate form of relief under the 1997 Modified Remedial Order are still pending before the Court.

The protracted litigation of this case does not serve the interests of the plaintiffs, the federal government, or the public, and it plainly disserves the interests of judicial economy. Accordingly, counsel for HUD and the plaintiffs have entered into a new settlement which is designed to benefit the class immediately, and to provide a resolution of this action for HUD.

1. HUD will provide funding authorization to DHA for 3,205 Section 8 vouchers to be used by class members in a "predominantly white area."^{1/} Of the 3,205 vouchers, 2,100 will be authorized within 90 days of the entry of the settlement. The remainder of the vouchers will be provided by December 5, 2007. (Settlement ¶¶ 1-5.)

2. HUD will authorize DHA to increase the Section 8 payment standard amounts up to 125% of the Fair Market Rent ("FMR") for each settlement voucher. This authorization will be issued by

^{1/} The settlement defines the term "predominantly white area" as "A census tract that, according to the most recent decennial census, (i) has a black population at or below the average black population of the City of Dallas, (ii) has no public housing, and (iii) has a poverty rate at or below the average for the City of Dallas." (Settlement ¶ 5(A).) In Walker v. City of Mesquite, the Fifth Circuit said: "The emphasis should . . . be directed toward placing public housing participants in neighborhoods of their choice through a vigorous Section 8 program, non-black neighborhoods, census tracts in which no public housing currently exists, or non-poor neighborhoods." 169 F.3d at 987. The Fifth Circuit's language produces an apparent anomaly, i.e., only about 20 out of more than 400 census tracts in Dallas would not be defined as "predominantly white" and, consequently, many minority or poverty impacted census tracts would be considered "predominantly white." This anomaly results from the Fifth Circuit's use of the disjunctive in listing the criteria that define an impacted area. For purposes of this settlement, we have changed the disjunctive to the conjunctive to produce a common-sense result that identifies census tracts that are not black or poverty impacted, subject to the proviso that the plaintiffs and DHA may agree that a census tract "should be treated as a predominantly white area." (Settlement ¶ 5(B).)

HUD within 90 days of the entry of the settlement. (Settlement ¶ 6.) This is intended to address the prospect of high rents in the areas in which the settlement vouchers will be used by class members.

3. HUD will provide a total of \$4.8 million to DHA for mobility counseling to class members. Of this amount, \$300,000 has already provided been provided to DHA. The remaining \$4.5 million will be made available by HUD within 90 days of the entry of the settlement. (Settlement ¶ 7.)

4. HUD will release the \$1.9 million remaining in DHA's outstanding Regional Opportunity Counseling ("ROC") grant, subject to the proviso that it is also to be used for mobility counseling for class members. The \$1.9 million in ROC funds will be made available by HUD within 90 days of the entry of the settlement. (Settlement ¶ 8.)

5. HUD will grant DHA a one-time payment of an additional \$1000 in extraordinary administrative fees to DHA for each of the 3,205 vouchers provided by the settlement agreement after a voucher has been used to place a class member in a designated area. These extraordinary administrative fees will be made available to DHA in the same manner as administrative fees, *i.e.*, in conjunction with DHA's year-end application process.

(Settlement ¶ 9.)^{2/}

In general, the foregoing mobility counseling and ROC funds, and the extraordinary administrative fees, are provided to DHA to enable it to address the obstacles to moving a large number of class members into the designated areas, to assist class members in the leasing process, to assist class members in moving to units in the designated areas, and to provide the means to encourage landlords in such neighborhoods to participate in the Section 8 program.

Finally, to resolve all outstanding issues, the settlement also contains a final settlement of attorney's fees. The government will make a final payment of \$72,000 to plaintiffs' counsel in full and final settlement of all claims for attorney's fees against HUD in this action. (Settlement ¶ 27.)

DISCUSSION

A. Standards for Assessing Fairness of A Class Action Settlement

^{2/} These extraordinary fees may be used by DHA to pay per-unit bonuses to landlords of units in a predominantly white area who agree to participate, for the first time, in the Section 8 voucher program, to assist class members in the payment of apartment lease application fees, or to pay for mobility counseling for class members. Settlement ¶ 9. DHA may also use its Section 8 administrative fee reserves to assist class members with security deposits, moving expenses, and utility deposits. Id. ¶ 10.

"A class action shall not be dismissed or compromised without the approval of the Court...." Fed. R. Civ. P. 23(e). However, the voluntary resolution of class actions is strongly favored by the courts and as a matter of public policy. 2 H. Newberg, Newberg on Class Actions § 11.41 (3d ed. 1992). In determining whether a class settlement should be approved, a court's function is to decide whether, as a whole, the proposal is fair, adequate, and reasonable for the class members. See Ibarra v. Texas Employment Comm'n, 823 F.2d 873, 878 (5th Cir. 1987); Reed v. General Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983).

B. Arm's-Length Negotiations

There is a strong threshold presumption that a proposed settlement is fair and reasonable when it is recommended by class counsel after arm's-length negotiations. South Carolina Nat'l Bank v. Stone, 749 F.Supp. 1419, 1424 (D.S.C. 1990); see also Newberg on Class Actions § 11.42. That requirement has been met here. Counsel for plaintiffs and for HUD have been in constant contact, exchanged written materials, and engaged in extensive settlement negotiations, beginning in the Fall of 2000. Plaintiffs' counsel has met with Justice Department and HUD

officials in Washington, D.C., and Justice Department and HUD officials have met with the plaintiffs' counsel in Ft. Worth.^{2/}

The product of these negotiations has been a comprehensive settlement of this action as between the plaintiffs and HUD.

C. The Settlement is in the Public Interest

Continuation of protracted litigation in this Court and in the Court of Appeals portends the expenditure of enormous additional resources by the parties and the courts.

Concomitantly, the parties recognize that both sides face uncertainty as to the outcome of such litigation. However, by virtue of this settlement the plaintiff class will simultaneously avoid the uncertainty of litigation and benefit by obtaining an opportunity to live in desirable areas in and around Dallas. The settlement will infuse a large number of Section 8 vouchers into the system for the use and benefit of the class, and will provide enormous financial resources to aid in the placement of members of the class in the designated areas. Significantly, the settlement will permit the relief to flow to and for the benefit of the class within a matter of months (e.g., 2,100 vouchers and

^{3/} Justice Department and HUD officials also met with DHA officials and their counsel to discuss DHA's views concerning certain elements of the settlement.

all of the mobility counseling and ROC funds will be made available within 90 days). In contrast, the alternative to this settlement could be years of additional litigation. Hence, settlement of this matter serves the public interest.

D. The Notice Requirements Have Been Met

Rule 23(e) requires notice of a proposed settlement to be given to all class members "in such manner as the court directs."

The purpose of the notice is to protect class members by enabling them to participate in the fairness hearing process in the event they believe that their interests were not adequately considered during settlement negotiations. In re Jiffy Lube Securities Litigation, 927 F.2d 155, 158 (4th Cir. 1991).

The parties have met the notice requirements set forth in Rule 23(e). On January 19, 2001, this Court approved a "Notice of Pending Settlement of Class Action" and ordered HUD to publish it in the Black Economic Times and seven other newspapers. See Agreed Order Preapproving "Settlement Stipulation and Order", Setting Hearing Date, and Granting Motion for Approval of Notice, at 2 & Exhibit B. As required by the order, the notice was published at least twice in each of the eight prescribed newspapers. See Declaration of Susan J. Jordan, Paralegal Specialist, HUD Office of Counsel for the Southwest, filed

herewith, at ¶ 3.

In addition, DHA has informed HUD that it has posted the notice at all of the DHA public housing sites, and at the DHA Central Administration Office, Multipurpose Buildings, and the Resident Employment Training Center. See id. ¶ 4.

Publication of the notice at least sixteen times in a wide range of newspapers reaching an array of readers in Dallas, along with the posting of notice in DHA facilities, constitutes notice reasonably calculated to inform the class of the settlement and the fairness hearing.

E. The Objections to the Settlement Lack Merit

As of March 1, 2000, HUD has received notice of two objections to the settlement.^{4/} Neither objection is valid.

(1) By letter to the Court dated February 21, 2001, the West Dallas Neighborhood Corporation (WDNC) asserts that "We fear that resolving the issues of this community [West Dallas]

^{4/} In addition, Ms. Debra Freeman sent correspondence, dated February 14, 2001, to HUD counsel. While a copy of the notice of the hearing on the settlement scheduled for March 8, 2001, is attached to the correspondence, it appears that the substance of this correspondence is unrelated to the proposed settlement. HUD counsel has filed Ms. Freeman's letter with the Court by a Notice of Filing on March 1, 2001, and has requested that DHA respond to the letter because the substance of the letter seems to fall within DHA's purview.

will not have the same... level of priority if HUD is no longer an active participant in the case." Id. at 1. That assertion evidently rests on WDNC's activities "[t]hrough HUD funded programs that have passed through the City of Dallas...." Id. As an example, WDNC cites "the Housing Department's implementation of the Walker Consent Decree... [via] the Target Neighborhood Planning (TNP) Section [of the consent decree]...." Id.

WDNC is laboring under a misapprehension. HUD has no obligations under the 1997 Revised Remedial Order Affecting HUD, or any other order of this Court, relating to the funding of programs such as those identified by WDNC. Indeed, the only specific program identified in the WDNC letter is the TNP program concerning West Dallas, and that appears in the September 24, 1990, City of Dallas Consent Decree, at ¶ 5.13. HUD is not a party to that consent decree.

In addition to the absence of any obligation of HUD in this action in connection with the matters raised by WDNC, the objection of WDNC is based on an incorrect premise. In fact, there is nothing in the settlement that alters HUD's grant programs vis-a-vis the City of Dallas. Furthermore, the settlement does not alter, affect or modify the City of Dallas

Consent Decree. Therefore, the WDNC objection to the settlement lacks merit.

(2) DHA's Objections to Proposed Settlement Order, filed February 22, 2001, asserts that "the providing of funding for more than two thousand additional vouchers in a single fiscal year will materially alter DHA's baseline number of vouchers and significantly reduce DHA's lease-up rate, which in turn could adversely affect DHA's performance ratings under HUD regulations and result in a reduction of HUD funding to DHA."

DHA's objection also contains a "prayer" for relief, although no motion has been made and no attempt to confer with HUD or HUD's counsel concerning this objection was made prior to its filing.^{1/}

DHA's objection is particularly inapt inasmuch as it will be the primary beneficiary of the vast sums of money provided in the proposed settlement, and it will benefit from an expansion of its Section 8 program by 3,205 vouchers, an increase of more than 25%

^{2/} As relief, "DHA prays that HUD be required to waive or grant other relief from all regulatory requirements that could cause an adverse impact on DHA's performance rating as a result of HUD's providing additional funding for Section 8 vouchers." Such wide-ranging intrusion on Executive Branch regulatory authority would be beyond the power of the judiciary even in a proceeding appropriately initiated by DHA. Here, there is no such proceeding.

of its current program. DHA's objection is also inapt because DHA has no capacity in which to object; DHA is not a class member, and its obligations are a function of statutory and regulatory requirements, and the exercise of HUD's discretion pursuant thereto. It thus has no cognizable interest upon which to seek broad exemptions from regulatory requirements by means of a court order in this action.

In any event, DHA's speculative objection lacks merit. As a preliminary matter, it is important to note that HUD has not counted vouchers previously added to DHA's baseline in this action. See Declaration Roman R. Palomares, Deputy Director, Office of Public Housing, HUD Texas State Office, filed herewith (Palomares Declaration), at ¶ 5. In fact, DHA Section 8 units funded by HUD in connection with this case, along with associated mobility counseling funds, are currently excluded from such calculations because they have been designated by HUD as Walker litigation units. Id. ¶¶ 5, 6.

Under currently published policies, HUD similarly will not count vouchers provided under the settlement in calculating DHA's lease-up rate. HUD's pertinent policy with respect to the calculation of the lease-up rates to which DHA refers is set forth in a HUD Notice published in the Federal Register on April

19, 2000, entitled "Tenant-Based Section 8 Program: Procedures for Determining Baseline Unit Allocations, Verifying Unit Allocations, Accessing, Using, Restoration of and Recapture of Program Reserves and Transfers of Baseline Unit Allocations."

That policy provides that:

In performing the assessment [of a public housing authority's leasing rate and use of budget authority], HUD will exclude units (and their associated budget authority) awarded to the PHA for... litigation purposes....

65 Fed. Reg. 21088, 21091 (April 19, 2000).

In addition, HUD's policy with respect to public housing authorities applying and competing for future vouchers on a fair share allocation basis under the Section 8 Housing Choice Voucher Program are set forth in the current HUD Notice of Funding Availability (NOFA). HUD's "Methodology for Calculating Lease-Up and Budget Authority Utilization Percentage Rates" also excludes funding awarded by HUD for special purposes, such as litigation.

The NOFA provides:

Active funding increments awarded by HUD for special purposes such as litigation... were excluded from the contract units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

65 Fed. Reg. 13222, 13230 (March 10, 2000).

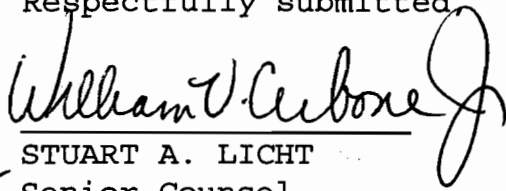
Consequently, under current HUD policies, the Section 8 units newly allocated for class members under the proposed settlement would not, standing alone, adversely affect DHA's performance ratings or access to funding. Palomares Declaration ¶ 8. Hence, DHA's objection to the settlement is unfounded.

CONCLUSION

For the foregoing reasons, the Court should approve the class action settlement.

Dated: March 1, 2001

Respectfully submitted

For 

STUART A. LICHT
Senior Counsel
N.Y. Bar (no number)
United States Department of
Justice
Civil Division
Federal Programs Branch
Room 1004
901 E Street, N.W.
Washington, D.C. 20004
Telephone No. (202) 514-4265
Fax No: (202) 616-8470

ATTORNEYS FOR DEFENDANT UNITED
STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

OF COUNSEL:

BILL DALEY
Assistant General Counsel
WILLIAM V. CERBONE, JR.
Associate Field Counsel
United States Department of
Housing and Urban
Development
Office of Counsel
801 North Cherry Street
Fort Worth, TX 76102
Telephone No. (817)978-5987
Fax No. (817)978-5563

CAROLE W. WILSON
Associate General Counsel
for Litigation
HOWARD SCHMELTZER
Assistant General Counsel
for Litigation
C. ALLEN VILLAFUERTE
Trial Attorney
Office of General Counsel
United States Department of
Housing and Urban
Development
451 7th Street, S.W.
Room 10258
Washington, D.C. 20410
Telephone No. (202) 708-0300
Fax No. (202) 708-3351

Stuart E. Schiffer
Acting Assistant Attorney
General

RICHARD H. STEPHENS
United States Attorney

MICHAEL SITCOV
Assistant Branch Director
DC Bar # 308682

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2001, I caused a copy of the foregoing Defendant United States Department of Housing and Urban Development Memorandum in Support of Final Class Action Settlement, and the Declarations of Susan J. Jordan and Roman R. Palomares, to be served upon counsel of record by fax and by first class mail, postage pre-paid, as follows:

Michael M. Daniel, Esq.
MICHAEL M. DANIEL, P.C.
3301 Elm Street
Dallas, TX 75226
Fax: (214) 939-9229

Joseph G. Werner, Esq.
Haynes & Boone
3100 NationsBank Plaza
901 Main Street
Dallas, TX 75202
Fax: (214) 651-5940

Chris G. Wittmayer, Esq.
Assistant City Attorney
City Hall, Room 7B North
1300 Marilla Street
Dallas, TX 75201
Fax: (214) 670-3515



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DEBRA WALKER, ET AL.,	*	
	*	CIVIL ACTION NO.
v.	*	
	*	3:85-CV-1210-R
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,	*	CLASS ACTION

DECLARATION OF SUSAN J. JORDAN

I, Susan J. Jordan, do hereby declare:

1. I am presently employed by the United States Department of Housing and Urban Development (“HUD”), as a Paralegal Specialist in the Office of Counsel for the Southwest, Fort Worth, Texas. I have been employed as a Paralegal Specialist with HUD since February, 1990. At all times relevant to this case, I was employed in this capacity.

2. In my capacity as a Paralegal Specialist, I serve as litigation support for the Chief Litigation Attorney for the Southwest Office of Counsel. I am currently providing litigation support and assistance to HUD in the above-captioned case. As a Paralegal Specialist I had the responsibility of coordinating the placement of advertisements entitled “Notice of Pending Settlement of Class Action” with the eight

(8) newspapers identified in the January 19, 2001, Agreed Order Preapproving “Settlement Stipulation And Order” Setting Hearing Date, And Granting Motion For Approval Of Notice” (Agreed Order) in the above-captioned case. As required, those advertisements were prepared and I arranged for their publication by each of the eight newspapers in the form attached to the Agreed Order as Exhibit “B”.

3. I have been informed by representatives of each of the eight (8) newspapers that their respective publications published the required notice twice during a two-week period beginning at least four weeks before the date of the fairness hearing. In addition to receiving confirmation by telephone from each of the eight (8), I have also received copies of the actual publications from five (5) of the eight (8) newspapers containing the required Notice. Copies of same are attached to this Declaration as Exhibit A.

4. In addition, DHA has informed HUD, through this office, that it has posted copies of Exhibits A and B to the Agreed Order at all DHA public housing sites, at the DHA Central Administration Office, at DHA’s Multipurpose Centers and the Resident Employment Training Center.

5. The matters set forth above are based on personal knowledge or information provided to me in my official capacity as a Paralegal Specialist for the Southwest Office of Counsel.

I declare under penalty of perjury that the foregoing is true and correct.

March 1, 2001


SUSAN J. JORDAN

Paralegal Specialist
Office of Counsel for the Southwest
U. S. Department of Housing
and Urban Development
801 Cherry Street, 28th Floor
Fort Worth, Texas 76102

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEBRA WALKER, ET AL.

V.

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, ET AL.

* CIVIL ACTION NO.
*
* 3:85-CV-1201-R
*
* CLASS ACTION
*

NOTICE OF PENDING SETTLEMENT OF CLASS ACTION:

TO all African American persons who, in the past, currently, or in the future: (i) lived or live in public housing, or (ii) received or receive Section 8 assistance, or (iii) applied or will apply for public housing or Section 8 assistance pursuant to a program administered by the Housing Authority of the City of Dallas:

You are a member of the proposed class described above. This case involves the desegregation of DHA's housing programs. The plaintiffs in the case and the U.S. Department of Housing and Urban Development (HUD) have proposed a final settlement of the part of the case involving HUD. If approved by the Court, this settlement will be a relief you or any other class member can obtain from HUD for its actions related to this lawsuit. The settlement will replace the "Modified Remedial Order Affecting HUD" that currently applies to HUD.

In return, HUD will provide an addition 3,205 Section 8 vouchers to DHA for use by class members in this case and other resources for the use of these vouchers in predominantly white areas. HUD will authorize DHA to use an increased fair market rent payment standard for these vouchers. HUD will provide money for DHA to give class members assistance in finding housing in the predominantly white areas that will accept the Section 8 vouchers. The assistance may include the payment of application fees for class members. HUD will authorize DHA to help class members with security deposits, moving expenses, and utility deposits.

HUD will provide 2,100 of the Section 8 vouchers this year. HUD will provide the remaining 1,105 during the next six years. HUD will provide this year the additional resources for assistance in finding and using the vouchers in predominantly white areas.

You are entitled to know about the settlement, give the Court your comments, and object to or oppose the settlement. If the Court approves the settlement, then HUD's duties and your rights in connection with the claims in this lawsuit would be those described in the settlement. In exchange for the benefits of this settlement, the members of the class will release HUD from all claims in this lawsuit. The Court has set a hearing on the proposed settlement for March 8, 2001 at 9:00am in Judge Buchmeyer's courtroom, 1100 Commerce, Dallas, Texas.

THIS NOTICE DOES NOT DESCRIBE THE ENTIRE SETTLEMENT AND IS NOT AUTHORITY FOR ANY INTERPRETATION OF THE REQUIREMENTS OF ANY COURT ORDER. You are entitled to see and review the documents associated with the settlement and this case. The original documents are available from the U.S. District Clerk but it will be easier for you to see and get copies of the documents at the plaintiffs' attorney's office, listed below.

If you have an objection to the certification of the class described at the top of the notice, or to this settlement, and want to testify or give other evidence at the hearing, you must do the following: put the objection in writing, put "Walker v. HUD, 3:85-CV-1201-R" at the top, and at least 14 days before the hearing, send a copy to these three addresses:

Plaintiffs' attorney: Michael M. Daniel, 3301 Elm St., Dallas, TX ph: 214-741-3594.

HUD's attorney: Stuart A. Licht, U.S. Dept. of Justice, Civil Division, P.O. Box 883, Washington, D.C. 20044.

The Court: U.S. District Clerk, Room 14A20, 1100 Commerce, Dallas, TX 75242.

If you have questions, call the plaintiffs' attorney, not the Judge or the Clerk. Exhibit B



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEBRA WALKER, ET. AL.,

v.

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, ET. AL.,

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HUD's attorney: Stuart A. Licht, U.S. Dept. of Justice, Civil Division, P. O. Box 883, Washington, D.C. 20044

The Court: U.S. District Clerk, Room 14A20, 1100 Commerce Street, Dallas, TX: 75242.

If you have questions, call the plaintiffs' attorney, not the Judge or the Clerk.

Exhibit B

February 16, February 21, 2001

The Black Community Times - Dallas

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEBRA WALKER, ET. AL.,

v.

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AND URBAN DEVELOPMENT, ET. AL.,

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HUD's attorney: Stuart A. Licht, U.S. Dept. of Justice, Civil Division, P. O. Box 883, Washington, D.C. 20044

The Court: U.S. District Clerk, Room 14A20, 1100 Commerce Street, Dallas, TX 75242.

If you have questions, call the plaintiffs' attorney, not the Judge or the Clerk.

Exhibit B

February 8 - February 14, 2001

The Black Economic Times - Dallas

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEBRA WALKER, ET AL.

v.

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, ET AL.,

NOTICE OF PENDING SETTLEMENT OF CLASS ACTION

TO all African-American persons who, in the past, currently, or in the future: (i) lived or live in public housing, or (ii) received or receive Section 8 assistance, or (iii) applied or will apply for public housing or Section 8 assistance pursuant to a program administered by the Housing Authority of the City of Dallas.

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HUD will provide 2,100 of the Section 8 vouchers this year. HUD will provide the remaining 1,105 during the next six years. HUD will provide this year the additional resources for assistance in finding and using the vouchers in predominantly white areas.

You are entitled to know about the settlement, give the Court your comments, and object to or oppose the settlement. If the Court approves the settlement, then HUD's duties and your rights in connection with the claims in this lawsuit would be those described in the settlement. In exchange for the benefits of this settlement, the members of the class will release HUD from all claims in this lawsuit. The Court has set a hearing on the proposed settlement for March 8, 2001 at 9:00 a.m. in Judge Buchmeyer's courtroom, 1100 Commerce, Dallas, Texas.

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Plaintiff's attorney: Michael M. Daniel, 3301 Elm Street, Dallas, TX ph: 214-741-3594.

HUD's attorney: Stuart A. Licht, U.S. Dept. of Justice, Civil Division, P.O. Box 883, Washington, D.C. 20044.

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Exhibit B

February 8, 2001

The Dallas Examiner

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DEBRA WALKER, ET AL.

v.

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, ET AL.,

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The Court: U.S. District Clerk, Rom 14A20, 1100 Commerce Street, Dallas, TX 75242.

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Exhibit B

February 15, 2001

The Dallas Examiner

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**DEBRA WALKER, ET. AL. * CIVIL ACTION NO.
*
V. * 3:85-CV-1210-R
*
U.S. DEPARTMENT OF HOUSING * CLASS ACTION
AND URBAN DEVELOPMENT, ET AL ***

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The Court: U.S. District Clerk, Room 14A20, 1100 Commerce Street, Dallas, TX 75242.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DEBRA WALKER, ET. AL. * CIVIL ACTION NO.
*
V. * 3:85-CV-1210-R
*
U.S. DEPARTMENT OF HOUSING * CLASS ACTION
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11-20-85

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DEBRA WALKER, ET AL.

v.

**U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, ET AL.**

CIVIL ACTION NO.

3:85-CV-1210-R

CLASS ACTION

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DEBRA WALKER, ET AL.

v.

**U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT, ET AL.**

CIVIL ACTION NO:

3:85-CV-1210-R

CLASS ACTION

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DEBRA WALKER, ET AL.,	*	
	*	CIVIL ACTION NO.
v.	*	
	*	3:85-CV-1210-R
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,	*	CLASS ACTION

DECLARATION OF ROMAN R. PALOMARES

I, **Roman R. Palomares**, do hereby declare:

1. I am presently employed by the United States Department of Housing and Urban Development (“HUD”), as a Deputy Director in the Office of Public Housing for the Texas State Office, Fort Worth, Texas. I have been employed as a Deputy Director with HUD since approximately 1998. At all times relevant to this case, I was employed in this capacity.

2. In my capacity as a Deputy Director, I serve as the Director of the Operations Division. My responsibilities include overseeing staff review of the management performance of Public Housing Authorities under all aspects of the Public Housing Program, as well as the management of Section 8 agencies. In this capacity, I am familiar with the HUD rules, regulations and notices concerning both the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP). More specifically, with regard to DHA’s objection to the pending proposed settlement of the above-captioned action, I am familiar with, and oversee,

my office's conduct and review of performance appraisals, which includes the review of section 8 baseline units and lease-up rates.

3. In that capacity, I have been asked to review the Dallas Housing Authority's (DHA) Objection to The Proposed Settlement Stipulation and Agreement in the above-captioned case. In substance, I understand DHA to claim that its receipt of funding for more than two thousand additional vouchers in a single fiscal year will materially alter DHA's baseline number of vouchers and significantly reduce DHA's lease-up rate, which in turn could adversely affect their performance ratings and result in a reduction of HUD funding to DHA. For the reasons which follow, DHA's claims are without merit.

4. First, HUD policy with respect to the calculation of the lease-up rates to which DHA refers, for potential recapture purposes, is set forth in a HUD Notice published in the Federal Register on April 19, 2000, entitled "Tenant-Based Section 8 Program: Procedures for Determining Baseline Unit Allocations, Verifying Unit Allocations, Accessing, Using, Restoration of and Recapture of Program Reserves and Transfers of Baseline Unit Allocations." That policy provides that:

In performing the assessment [of a public housing authority's leasing rate and use of budget authority], HUD will exclude units (and their associated budget authority) awarded to the PHA for... litigation purposes....

65 Fed. Reg. 21088, 21091 (April 19, 2000).

5. Second, consistent with the above-styled notice as well as general HUD policy, HUD has not counted vouchers previously added to DHA's baseline in this

action, for purposes of determining lease-up rates as it relates to the potential recapture of units. To date, all Section 8 units and budget authority previously awarded to DHA in connection with the Walker case have been excluded by HUD in calculating DHA's lease-up rate and use of budget authority. In fact, DHA Section 8 units funded by HUD in connection with this case, along with associated mobility counseling funds, are currently excluded from such calculations because they have been designated by HUD as Walker litigation units. Under currently published policies, HUD similarly will not count vouchers provided under the proposed settlement in calculating DHA's lease-up rate.

6. Third, for the purposes of determining a PHA's management performance ratings under SEMAP, HUD also does not count litigation units in its assessment of lease-up rates. In this regard, to date, HUD has excluded all litigation units previously awarded to DHA in connection with the Walker case in its assessment of lease-up rates for the purpose of determining DHA's management performance ratings under SEMAP.

7. In addition, HUD's policy with respect to public housing authorities applying and competing for future vouchers on a fair share allocation basis under the Section 8 Housing Choice Voucher Program are set forth in the current HUD Notice of Funding Availability (NOFA). HUD's "Methodology for Calculating Lease-Up and Budget Authority Utilization Percentage Rates" also excludes funding awarded by HUD for special purposes, such as litigation. The NOFA provides:

Active funding increments awarded by HUD for special purposes such as litigation... were excluded from the

contract units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

65 Fed. Reg. 13222, 13230 (March 10, 2000).

8. Consequently, under current HUD policies, the Section 8 units newly allocated for class members under the proposed settlement would not, standing alone, adversely affect DHA's performance ratings or access to funding.

9. All of the matters set forth above are based on personal knowledge or information provided to me in my official capacity as the Deputy Director in the Office of Public Housing for the Texas State Office.

I declare under penalty of perjury that the foregoing is true and correct.

March 1, 2001



ROMAN R. PALOMARES
Deputy Director
Office of Public Housing for the Texas
State Office
U. S. Department of Housing
and Urban Development
801 Cherry Street, 28th Floor
Fort Worth, Texas 76102