

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

Newark Coalition for :  
Low Income Housing, :  
Martha Stokes, Doris Singleton, :  
Frances Blackwood, Queen Phillips :  
on behalf of herself and her :  
children, Kesha and Anthony; :  
Dorothy Holden, Laura Foster, :  
Richard Smith, Carol Gordon, :  
Donald Houston, Theresa Williams on :  
behalf of herself and her children, :  
Mark, Jeremy, Corey, Francis; :  
Regina Latirmore, Victoria Bowman, :  
Elaine Williams on behalf of :  
herself and her children, Edward :  
and Tyrone; Aida Guzman on behalf :  
of herself and her children, Eliezer, :  
Nellie, and Jessie; Ernestine Betts, :  
Carmen Olmo on behalf of herself :  
and her children, Debrah, Ruth :  
and Natalie; Oneida Soto, :  
Ulises Maldonado, Gloria Sutton, :  
Fred Graham, James Goodwin, :  
Arthur Walton, :

Plaintiffs,

against

The Newark Redevelopment Housing :  
Authority (NHA), Jack Kemp, :  
Secretary of the Department of :  
Housing and Urban Development, (HUD) :  
Defendants. :

.....:

Plaintiffs by way of complaint state:

CIVIL ACTION

COMPLAINT FOR INJUNCTIVE RELIEF

## PRELIMINARY STATEMENT

1. This action is brought to reverse years of public housing mismanagement by the Newark Housing Authority (NHA), to halt enormous, needless and illegal demolition of an important public housing resource, and to insure that any housing demolished is in fact replaced with other adequate new units, as required by law.

The complaint is prompted by a state of affairs which includes:

- explicit NHA plans to demolish at least 5,752 of an original total of more than 13,000 units controlled by the authority, of which 816 units at Scudder Homes have already been destroyed; in furtherance of these plans, demolition of 372 units in the Kretchmer Homes project and at least 1,506 units in Columbus Homes has been approved by the Department of Housing and Urban Development (HUD), and the NHA is proceeding with steps to carry it out;
- approximately 4,300 out of the total of NHA public housing units held vacant and unoccupied as housing, including 1,400 units which by the NHA's own admission were available and suitable for occupancy as of August 1987;
- abject deterioration and intolerable living conditions in many of the housing projects operated by the NHA;
- thousands of homeless and inadequately housed people in Newark alone, and many more thousands in the surrounding area, the overwhelming majority of whom are Black or Hispanic;
- not a single new unit yet completed, or even close to being completed, on any of the Scudder Homes sites at which public housing

- was previously demolished by the NHA in 1987;
- countless and continuing violations of federal housing law by HUD, the agency responsible for overseeing the nation's public housing programs, by approving NHA proposals for demolition and furnishing other assistance without a legal and sufficient basis, and without insuring that the NHA had a valid one-for-one replacement plan; by allowing the NHA to take steps in furtherance of demolition in violation of federal law; and by acquiescing in and failing to stop the NHA from neglecting its projects, refusing to rent vacant units, and generally mismanaging its affairs.
  - the absence of any realistic assurance that any housing units destroyed will in fact be promptly replaced with at least an equal number of decent, safe, sanitary, and affordable units;
  - the absence of any apparent NHA intention or strategy to preserve and rent out at least the same number of low-income public housing units that it previously operated, let alone to pursue reasonable steps to increase that number of units to help meet Newark's and the region's need for decent and affordable low-income housing;
  - further racial segregation of NHA housing and the City of Newark by the relocation of tenants displaced by the planned demolitions, and the proposed placement of

replacement housing, in the racially segregated and economically impacted Central Ward area.

2. Plaintiffs are applicants for and tenants in Newark public housing, as well as a coalition of such individuals and organizations serving them. All individual named plaintiffs are Black or Hispanic. The defendants are the NHA, HUD, and the Secretary of HUD.

3. Plaintiffs seek first to halt the imminent demolition of portions of Columbus and Kretchmer, pending a determination of their claims that demolition would violate applicable law and that there is in any event no realistic plan insuring one-for-one replacement housing. They also seek to halt and reverse the NHA's pattern of causing or permitting housing conditions to deteriorate to the point where it is tantamount to demolition, including the NHA's failure to properly maintain and rehabilitate and to rent all available units. Finally, plaintiffs seek to bar permanently needless demolition of other NHA housing units.

4. Plaintiffs claim violations of the United States Housing Act, 42 U.S.C. 1437 et seq., the National Environmental Policy Act, 42 U.S.C. 4331 et seq., Title VIII of the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq., Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d), and regulations and guidelines thereunder, and the 5th and 14th Amendments to the United States Constitution, as well as the New Jersey Constitution, the New Jersey enabling statute for public housing authorities, N.J.S.A. 55:14A-1 et seq., and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

#### BASIS OF JURISDICTION

5. This action arises under the laws of the United States, including particularly the national housing acts from 1937 to 1987, 42 U.S.C. 1437 et

seq.; Title VIII of the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq.; Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000(d), as made enforceable by 42 U.S.C. 1983; and the right of judicial review of federal agency actions, 5 U.S.C. 702 et seq. Jurisdiction is conferred by 28 U.S.C. 1331 and 1343(3), and further by 28 U.S.C. 1361. Pendent jurisdiction is sought for claims arising under the laws and Constitution of the State of New Jersey.

#### STATEMENT OF THE CLAIM

##### PARTIES

6. The Newark Coalition for Low Income Housing, c/o Vic DeLuca, 91 Darcey Street, Newark, New Jersey 07105, is a membership organization of individuals and groups. Individual members include the homeless, tenants residing in Newark public housing, tenants residing in overcrowded, unsafe, or other substandard privately owned housing, and people who have applied for but not been admitted to NHA public housing. Groups which are members of the Coalition include, among others: the Essex County Caucus of the New Jersey Black Issues Convention, the Ironbound Community Corporation, the Metropolitan Ecumenical Ministries, Right to Housing, Local 1081 of the Communications Workers of America, Apostles House and the Kretchmer Homes Tenants Association. The Coalition's purposes and activities on behalf of its individual tenant and applicant members include attempting to address the problems of homelessness and the lack of affordable housing in Newark. The Coalition seeks to end the NHA practices of allowing its public housing units to deteriorate and remain vacant, of planning and executing the needless demolition and disposition of public housing units that it has allowed to deteriorate, and of failing to have an effective and realistic plan to replace on a one-for-one basis any units which are in fact demolished. The Coalition's individual members and those similarly situated suffer from a lack

of decent, safe, sanitary, and affordable housing, due in part to the practices of the NHA and HUD challenged in this litigation.

PUBLIC HOUSING TENANT PLAINTIFFS

The names and addresses of the individual public housing tenant plaintiffs in this action are as follows:

7. Plaintiff Martha Stokes resides in the Hayes Homes public housing project owned and operated by the NHA at 54 Boyd Street, Apt. 3F, Newark, New Jersey.
8. Plaintiff Doris Singleton resides at Hayes Homes at 322 Hunterdon Street, Apt. 2B, Newark, New Jersey.
9. Plaintiff Frances Blakewood resides at Hayes Homes at 322 Hunterdon Street, Apt. 4E, Newark, New Jersey.
10. Plaintiff Queen Phillips resides with her two children and a grandchild at Hayes Homes at 322 Hunterdon Street, Apt 9C, Newark, New Jersey.
11. Plaintiff Dorothy Holden resides at the Hayes Homes Project at 322 Hunterdon Street, Apt. 9E, Newark, New Jersey.
12. Plaintiff Laura Foster resides at the Hayes Homes Housing Project at 322 Hunterdon Street, Apt. 8D, Newark, New Jersey.
13. Plaintiff Richard Smith resides at Hayes Homes Housing Project at 326 Hunterdon Street, Apt. 10D, Newark, New Jersey.
14. Plaintiff Carol Gordon resides at the Hayes Homes Housing Project with her son, at 322 Hunterdon Street, Apt. 3C, Newark, New Jersey.
15. Plaintiff Donald Houston resides at the Kretchmer Homes Housing Project at 101 Ludlow Street, Newark, New Jersey.
16. Plaintiff Theresa Williams resides at the Kretchmer Homes Housing Project, 97 Ludlow Street, Apt. 2D, Newark, New Jersey, with her seven children. She has been told by the NHA that she has to move as they are going to close her

building down. She likes living there and does not want to move, having lived at Kretchmer Homes for 23 years.

17. Plaintiff Regina Latimore, resides in Kretchmer Homes at 314 Dayton Street, Apt. 4. She is chairperson of the building captains at Kretchmer, and does not want to move.

18. Plaintiff Victoria Bowman resides with her two children in Kretchmer Homes at 314 Dayton Street, Apt. 8H, Newark, New Jersey.

#### PUBLIC HOUSING APPLICANT PLAINTIFFS

The following people have applied for Newark public housing, but have not been admitted:

19. Plaintiff Elaine Williams and her two children Edward and Tyrone are homeless, and have resided at the Lincoln Motel in East Orange, New Jersey since June, 1987.

20. Plaintiff Aida Guzman resides with her three children at 86 Orchard Street, Newark, New Jersey. Her health and that of her children is suffering because of the conditions in her apartment. Her doctor and her caseworker state that she needs a larger, more suitable apartment.

21. Plaintiff Nereida Varela resides at 603 Broadway in Newark with her three children.

22. Plaintiff Ernestine Betts resides with her two children, and her grandchild at 767 S. 17th Street, Newark, New Jersey.

23. Plaintiff Carmen Olmo resides at 163 Mt. Prospect Avenue, Newark with her three children.

24. Plaintiff Oneida Soto resides at 192 Ridge Street, Newark, New Jersey.

25. Ulises Maldonado resides at 680 North 6th Street, Newark, New Jersey.

26. Plaintiff Gloria Sutton, 59 years old, is currently living in an apartment

in the Stella Wright Housing Project, at 158 Spruce Sreet, Apt. 6A, Newark, New Jersey.

27. Plaintiff Fred Graham is disabled, homeless, and at last word sleeps at the Newark Airport.

28. Plaintiff James Goodwin is disabled and resides at the Carlton Motel.

29. Plaintiff Arthur Walton resides at the Bellevue Men's Shelter, 400 E. 30th Street, New York, New York. He has been there since January, 1988.

#### DEFENDANTS

30. The defendant Newark Redevelopment and Housing Authority (NHA) is a municipal corporation with offices located at 57 Sussex Avenue, Newark, New Jersey 07103. It owns and operates the low-income public housing projects in the city pursuant to the United States Housing Act. It was established pursuant to N.J.S.A. 55:14A-1 et seq., and by Newark municipal ordinance, and under N.J.S.A. 55:14A-7 it has the power to sue and be sued. At all times herein, defendant NHA has acted under the color of the laws, custom, and usage of the State of New Jersey.

31. Defendant Jack Kemp is the Secretary of HUD. The address of defendants Kemp and HUD is the Department of Housing and Urban Development, Office of the Secretary, Washington, D.C. 20410.

32. The defendant Department of Housing and Development (HUD) is the agency of the United States government responsible for administering and supervising the national public housing program pursuant to 42 U.S.C. 1437 et seq.

#### CLASS ACTION

33. Plaintiffs bring this as a class action pursuant to Fed. R.Civ. Proc. 23. There are three classes, as follows:

(a) all applicants to NHA public housing who have not yet



gained admission, and who need and seek decent, safe, sanitary, and affordable housing; and

(b) those tenants of NHA public housing projects, who (i) seek better housing conditions and maintenance than they now experience, (ii) oppose any needless or illegal demolition of public housing, and (iii) seek decent, safe, sanitary, and affordable replacement housing of their own choice if they are relocated because of rehabilitation or demolition.

(c) all other homeless or inadequately housed people who seek admission to NHA public housing.

34. Plaintiffs contend that all of the requirements of Fed. R.Civ. Proc. 23 are met, in that (i) the classes are so numerous that joinder of all members is impossible, (ii) the key questions of law and fact are common to all members of the classes, (iii) the claims of the representative parties are typical of those of the classes as a whole, and (iv) the representative parties will fairly and adequately protect the interests of the classes.

35. Prosecutions of separate actions by the class members would create a risk of inconsistent and varying adjudications which would establish incompatible standards of conduct for the parties opposing the classes. In addition, adjudications with respect to individual members of the classes would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests. The party opposing the classes has acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive relief and corresponding declaratory relief with

respect to the classes as a whole.

#### CAUSES OF ACTION

##### BACKGROUND

##### The Need for Public Housing and the Lack of Affordable Housing in Newark

36. The defendant NHA owns more than 12,000 units of public housing in the city, constructed pursuant to federal and state legislation to provide decent and safe low-income housing for the poor.
37. There is a substantial need and demand for public housing units in Newark, evidenced by an enormous waiting list of families seeking admission. This list was found to be as high as 13,000 by HUD in 1986, and recently conceded by the NHA itself to include over 7,000. Moreover, based on the information and experience of plaintiffs, for at least two years the NHA has been refusing to take new applications for public housing, except for elderly units.
38. Newark's homeless population is further evidence of the severe need for public housing. A reported recent estimate by a Newark city agency cites some 16,000 homeless people in the city, up from an estimated 8,500 in 1984.
39. The critical shortage of housing for the poor in Newark is further indicated by the large number of people living in dilapidated, substandard, unhealthy and hazardous conditions, or in oppressively overcrowded situations. The 1988-1991 Housing Assistance Plan for Newark states that there are 14,055 occupied substandard units of housing in the city.
40. There has been a steady and marked decline in Newark's affordable and decent housing stock for many years, due to speculation, demolition, abandonment, redevelopment, gentrification, construction of freeways, housing

code enforcement, building fires, and other factors. According to one expert: "Newark's housing stock is old, rapidly diminishing, and is in so poor a condition that it clearly qualifies as being one of the worst in the nation."

41. The vast majority of persons who are eligible for and need public housing are welfare recipients. In Newark and Essex County, as well as the rest of New Jersey, the fair market values of private rentals exceed the basic welfare grant levels. As a result, many families live in apartments for which rents and utilities constitute a disproportionate share of their income, preventing them from having necessary funds for other essentials such as food, clothing, and transportation. In sum, welfare recipients and the poor in general simply cannot afford housing in the private market and still have resources for the other basic necessities of life. In contrast, under federal law public housing tenants cannot be required to pay more than 30% of their income for rent and utilities. See 42 U.S.C. 1437a(1). This protection makes public housing affordable to the poor, and for many it is the only housing they can afford.

#### The Racial Impact of Defendants' Conduct

42. A disproportionate number of the classes represented by plaintiffs are minority, predominantly Black and Hispanic. Defendants' actions therefore have a disproportionate and deleterious effect on racial and ethnic minorities, whose opportunities for adequate housing in the private market are already restricted due to persistent racial discrimination.

43. Defendants' actions, and particularly the Columbus and Kretchmer demolitions, will have a devastating impact on racial minorities in several ways. This conduct will reduce the supply of scarce low-income housing resources to thousands of desperately needy, overwhelmingly minority homeless and inadequately housed persons. It will remove thousands of apartment units

from housing sites with particular social and functional value to low-income minority households. Finally, these plans will increase segregation in the city and the NHA by relocating displaced tenants and placing new replacement housing in the racially segregated and economically impacted Central Ward, and by removing thousands of units from more integrated areas.

The NHA's Other Activities to Reduce Low-Income Public Housing

44. In the face of this huge need for safe and decent low-income housing in Newark, the NHA has taken and continues to take numerous steps to reduce the public housing supply. Specifically, the NHA has taken the following actions.

- (a) It has undertaken an extensive plan for demolishing existing NHA housing units in 39 mid-and high-rise buildings, targeting the eventual destruction or disposition of at least 5,752 out of an original 13,133 units, without any provision to create at least one new unit for each unit destroyed; current plans call for replacement of only a fraction of the units which have been or will be destroyed. This is the most sweeping demolition plan of its kind in the country.
- (b) The NHA has actually demolished 816 units.
- (c) The NHA has actively taken steps to prepare the way for more demolitions by vacating still other buildings, which could be utilized to provide public housing. Such steps include (i) relocating tenants; (ii) refusing to rent units in targeted buildings that become vacant and available; (iii) holding units in buildings not targeted for demolition vacant, to be used to relocate tenants

from buildings that it hopes to demolish, instead of renting them to Newark's homeless or inadequately housed people who have applied for public housing; (iv) failing to properly maintain, rehabilitate, and manage individual units, buildings and entire projects in a decent, safe, and sanitary fashion, creating intolerable living conditions which discourage existing tenants and encourage them to leave, in turn creating more vacancies; and (v) failing to properly secure vacated buildings, causing conditions to further deteriorate.

- (d) The NHA has actively planned for and pursued the sale of project sites, thereby reducing the supply of available land and housing, without an equivalent gain in land, units, or compensation.

45. The specific history of the NHA's demolition applications, approvals, and actual destruction is as follows:

- (a) Scudder Homes: In September, 1985, HUD approved the demolition of 816 out of the project's 1,428 units. Pursuant to this approval, these units were demolished during the period May through November, 1987.

In August, 1987, the NHA applied for permission to demolish an additional 612 units. HUD returned this application unapproved because it failed to comply with the provisions of the Housing and Community Development Act (hereafter the 1987), which included, inter alia, important additions to the federal statutory

requirements concerning the demolition and disposition of property. 42 U.S.C. 1437p.

- (b) Hayes Homes: In September, 1985, HUD approved the partial demolition of four buildings, an elimination of 328 out of that project's 1,458 units. There has been no demolition pursuant to this approval.

In August, 1987, the NHA abandoned the above plan, and applied for permission to totally demolish all ten buildings at Hayes Homes, combining it with the second Scudder application described in (a) above: As indicated, HUD returned this application unapproved.

- (c) Kretchmer Homes: In September, 1985, HUD approved the demolition of three buildings containing 372 units. There has been no demolition pursuant to this approval, but the NHA is taking steps to carry out the demolition, including securing the necessary approvals from HUD and bidding and executing contracts for the work.

- (d) Columbus Homes: In November, 1988, HUD approved the demolition of 1,506 units at Columbus Homes. It also approved NHA's "plan" for replacement housing.

- (e) Summary - planned demolition for Scudder, Hayes, Kretchmer, Columbus:

The NHA has received approval to demolish 3,022 units, (including the 816 already demolished). It also sought approval to demolish an additional 1,742 at Hayes and Scudder, for a total planned demolition of 4,764, in

the application that was returned to the NHA by HUD. In contrast, the NHA has received a firm commitment of funding for only 519 units of new construction. Of these, 101 are at the site of the Hayes/Scudder demolition, 124 originally scheduled for the Hayes/Scudder and currently have no site, 100 are located at other sites in the Central Ward, and 194 represent HUD's commitment as a part of the first year of one-for-one replacement for Columbus Homes.

Further, in response to the NHA "replacement plan" for the Columbus demolition, HUD has also agreed to commit funding for an additional 1,312 units, "subject to appropriations."

The net loss of units, in these few projects alone, even if the additional 1,312 units were realized,<sup>1</sup> will be 2,919, a staggering loss of housing capacity.

(f) Additional contemplated demolition and disposition.

In June, 1987 the NHA filed a "Comprehensive Modernization" plan. This announced that "five family high-rise projects comprised of thirty-nine buildings should be demolished and replaced by townhouses or sold to private developers." In March, 1988, a second such comprehensive modernization plan proposed elimination

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<sup>1</sup> The commitment of 1,506 replacement units for Columbus Homes over a six year period, is "subject to appropriations." Given the fact that no replacement units are included in the FY 1990 Bush budget, and given the budget deficit, the reality of these replacement units is tenuous.

of at least 5,252 units, representing several hundred units at Kretchmer and Walsh in addition to those noted above. The comprehensive plans also suggest the possibility of losing still more units, through a possible disposition (i.e., sale) of all of Walsh. The number of lost and unreplaced units would thus rise to at least 3,421. As noted, this is the most sweeping plan of its kind in the history of public housing in this country.

#### FIRST CAUSE OF ACTION - COLUMBUS HOMES DEMOLITION

46. On July 25, 1988, the NHA applied to HUD for approval to demolish all eight buildings at Columbus Homes, comprising 1,506 units. On October 28, 1988, the Secretary of HUD approved this application. This approval violated 42 U.S.C. 1437p and other applicable law in the following respects:

- (a) Based upon the information before the Secretary in the Columbus Homes demolition application, there was not sufficient evidence that Columbus Homes is so obsolete as to physical condition, location or other factors as to make it totally unusable for any housing purposes (42 U.S.C. 1437p(a)(1)); in fact part of Columbus is currently being used for housing, and housing experts have formulated plans under which other portions of Columbus could be used again for housing as well.
- (b) There are reasonable programs of modifications which are feasible to return Columbus Homes or portions thereof



to useful life as housing (42 U.S.C. 1437p(a)(1)).

- (c) The application from the NHA for the demolition of Columbus Homes was not developed "in consultation with" affected Columbus tenants or tenant groups, as required by 42 U.S.C. 1437p(b)(1), but rather was developed by the NHA, and was first disclosed to said tenants only after the application was submitted to HUD. The substance of the application was not changed in any way after the subsequent disclosure and a meeting with tenants, despite their presentation of a petition in opposition to the demolition signed by many of the tenants.
- (d) Not all tenants to be displaced as a result of the demolition are in fact being relocated to other decent, safe, sanitary, and affordable housing of their own choice, as required by 42 U.S.C. 1437p(b)(2); the choices are defined and limited by the NHA.
- (e) The one-for-one housing replacement plan developed by the NHA and approved by HUD is defective and fails to meet the requirements of 42 U.S.C. 1437p(c), and regulations, guidelines and other rules promulgated thereunder. The plan's failings include but are not limited to the following:
  - (i) It fails to specify any of the sites upon which the replacement housing will be built, as required by HUD Notice PIH 88-5(b)(5) and

53 Fed. Reg. 30,989, to be codified at 24 C.F.R. 970.11(h).

- (ii) It fails to assess the suitability of the replacement sites, as required by 24 C.F.R. 970.11(h), and specifically does not contain an assessment as to whether or how these undescribed replacement sites comply with applicable HUD Site and Neighborhood standards relating to full compliance with applicable non-discrimination laws, including not being in areas of minority concentration (unless certain exceptions apply), promoting greater choice of housing opportunities, and avoiding concentration of tenants in areas with a high proportion of low-income people, as required by 24 C.F.R. 941.202(b), (c), and (d), and 53 Fed. Reg. 30,989, made applicable by 24 C.F.R. 970.11(h).
- (iii) It fails to include the required reserved percentage of units accessible to handicapped people, as required by HUD Notice PIH 88-5(e), and 24 C.F.R. 970.11(i) and 8.25.
- (iv) Its schedule fails to include a provision that construction of all replacement units

will in fact be completed within six years of demolition, as required by 42 U.S.C. 1437p(b)(3)(D) and 24 C.F.R. 970.11(d). In fact, there is not even a date specified for the beginning of implementation, as required by the regulation. Both HUD's own construction standards (setting out a norm of 30 months from date of funding to start of construction and made a matter of statute in Section 5(k) of the 1987 Act 42 U.S.C. 1437c(k)), and even more importantly the NHA's own abysmal construction history, suggest that these replacement units cannot possibly be completed during the six-year period set by statute. HUD data shows that NHA has taken on average an astonishing ten years to complete what little new construction it has undertaken since 1977.

- (v) It depends on a commitment by the Secretary of HUD to provide replacement units. This commitment must be considered inadequate as a matter of law since HUD itself proposes no funds specifically for new construction in the latest FY 1990 budget, indicating impossibility if not outright bad faith. Further, the "commitment" is fatally vague:

there is no indication of what specific dollar amount is actually "committed," what would actually be spent by HUD for this project at various appropriation levels, what priority would be assigned the Newark project as compared with other proposals, or even when the money would become available.

- (vi) It fails to include any specifics as to how the same number of individuals and families will be provided housing after demolition, as required by law. (42 U.S.C. 1437p(b)(3)(E))
- (vii) It fails to include specifics as to the requisite provision for payment of actual tenant relocation expenses, or assurances that (A) the new rents paid by tenants will be within allowable amounts (42 U.S.C. 1437p(b)(3)(F)) (the Brooke Amendment), or that (B) no unit will be demolished until the tenant of that unit is in fact relocated to a unit which is decent, safe, sanitary, affordable, and to the extent practicable of that tenant's own choice.
- (viii) It fails in general to provide any description or detail sufficient to support

a conclusion that the plan is credible or realistic, as required by 42 U.S.C. 1437p(b)(3); among the omissions are (A) any mention of the number, source and amount of any rent supplements to be applied to the units, (B) any indication of the state of working drawings or other palpable plans for the new construction, (C) any indication as to what approvals and permits are required, which have been obtained, and when the remainder may be expected, (D) what specific contingency plans for alternative funding exist if HUD is unable to meet its commitment in any year, and (E) specifically how the NHA plans, to overcome past difficulties, whether caused by management problems or other factors, which have prevented it from constructing or rehabilitating units in a timely fashion.

47. As the Columbus demolition application makes clear, the destruction of the buildings is just the first step in a planned disposition of the property. The demolition is simply designed to clear the land so that it is more attractive for private developers. Indeed, before NHA had even filed its demolition application for Columbus, it had already entered into a contract with a private party (a firm led by former Mayor Kenneth Gibson and Peter Macco) to sell the cleared site. Nonetheless, the planned disposition was not part of the

demolition application, even though both the statute and HUD regulations have distinct criteria guiding the Secretary's consideration of whether to approve the proposed disposition of a public housing site.

48. There is no indication that the planned disposition would meet the requirements of 42 U.S.C. 1437p(a)(2), nor did the Secretary of HUD so find. For defendant HUD to have approved a demolition of a project when it was expressly part and parcel of a planned disposition of that project, without any consideration or decision whether the integrally-related disposition itself satisfied the statute and regulations thereunder, was a serious abuse of discretion and violation of applicable law. Without evaluating the demolition and disposition as an integrated scheme, there is no basis to judge, inter alia, the effect on overall availability of public housing land and units in Newark, just one part of the evaluation required by law.

#### SECOND CAUSE OF ACTION - KRETCHMER HOMES DEMOLITION

49. Demolition of three buildings at the Kretchmer Homes housing project of the NHA was approved by the Secretary of HUD on September 20, 1985. These buildings have not been demolished. This approval violated 42 U.S.C. 1437p(a), as it existed at the time of the approval, in that the Kretchmer Homes buildings were not obsolete, reasonable modifications would return the buildings to useful life as housing, and the other statutory criteria were not met.

50. No plan of one-for-one replacement of the housing units to be destroyed was submitted with or was a part of this application, nor has such a plan ever been submitted.

51. Subsequent to HUD's approval, the 1987 Act became law. This statute strengthened part (a) of the prior law by requiring that a showing of both

obsolescence and non-feasibility of modification or repairs was necessary before the Secretary could approve a demolition or disposition; the prior statute required a showing of either obsolescence or non-feasibility. Neither obsolescence nor non-feasibility is present in the case of Kretchmer Homes. Furthermore, the 1985 application was approved partly on the basis that demolition of a portion of Kretchmer would help preserve the rest of the project. In fact, as revealed in the NHA's most recent plans, all of Kretchmer is slated for demolition, no portion is to be preserved, and this ground for approval is invalid.

52. Among the 1987 Act's other provisions is a prohibition against HUD furnishing assistance to or approving an application for demolition unless there is a one-for-one replacement plan which meets the requirements of the law. 42 U.S.C. 1437p(b). Since the effective date of the Act in February 1988, HUD has issued a number of approvals of contracts and actions concerning the planned demolition of the three Kretchmer buildings, and authorized the expenditure of funds in connection with demolition, without requiring a one-for-one replacement plan, in violation of the 1987 Act.

53. The 1987 Act also bars housing authorities from taking any action in furtherance of demolition or disposition without obtaining the approval of the Secretary and satisfying the newly amended 1437p(a) and (b), the one-for-one replacement plan provision. The NHA has taken numerous actions since the effective date of the 1987 Act in furtherance of the planned demolition at Kretchmer, without having satisfied the one-for-one replacement requirement, in violation of 42 U.S.C. 1437p(d).

54. At the time of the Kretchmer demolition approval in 1985, HUD had in effect a regulation requiring one-for-one replacement of any demolished units,

which it arbitrarily and improperly purported to "waive". The regulation originally appeared at 44 Fed. Reg. 65368, codified at 24 C.F.R. 970.6. The one-for-one requirement then applicable must be applied to Kretchmer, as the "waiver" was without legal basis.

THIRD COUNT - ACTIONS IN FURTHERANCE OF  
DEMOLITION AT OTHER PROJECTS

55. Since the effective date of the 1987 Act, the defendant NHA has taken, and continues to take, numerous steps in furtherance of demolition at other high-rise buildings that it operates, including the remaining buildings at Kretchmer, Scudder, and Hayes not covered by the NHA's 1985 demolition application, as well as buildings at Walsh Homes.

56. There has been no HUD approval of demolition or disposition for any of these other buildings, nor are any of these buildings the subject of a pending demolition application.

57. NHA's actions in furtherance of demolition without HUD approval include preparing the way for more demolitions by vacating these other targeted buildings, which could and should be utilized to provide public housing, by taking the actions described in paragraph 44(c) above. For example, the NHA has recently begun wholesale relocation of tenants from the Kretchmer Homes building at 97-101 Ludlow Street in Newark, to empty the building for demolition, even though there is no HUD approval and no one-for-one replacement plan.

58. These actions in furtherance of demolition, without an approved demolition application satisfying legal requirements, constitute continuing violations by the NHA of 42 U.S.C. 1437p(d), to the great injury of plaintiffs and members of their classes that they represent. By taking units and entire buildings out of public housing rental, these actions also constitute de facto or constructive



demolition without HUD approval, and thereby violate 42 U.S.C. 1437p.

59. Defendant HUD has refused to halt these illegal NHA actions in furtherance of demolition, thereby violating its responsibilities under the 1987 Act.

60. Within the past two years the NHA has embarked on a substantial modernization program at 97-101 Ludlow Street of the Kretchmer Homes. There has been substantial modernization of the apartments and common areas of those buildings. 24. C.F.R. 968.6 requires that for each modernization program there must be an amendment to the Annual Contributions Contract (ACC). It further provides that the amendment shall require the low-income use of modernized housing for at least 20 years from the date of the modernization. The plaintiffs are third party beneficiaries of the ACC. The NHA's plans to demolish the modernized buildings, and the emptying out of those buildings within less than a year of the modernization, and indeed before it has been completed, denies plaintiffs their rights under the ACC, and under 24 C.F.R. 968.6.

#### FOURTH CAUSE OF ACTION- MISMANAGEMENT OF PUBLIC HOUSING

61. The defendant NHA has mismanaged in a most serious and fundamental fashion the public housing under its control. A 1984 HUD audit stated:

The NHA has not developed adequate management procedures for overseeing its maintenance program, has not made maximum use of available resources, and has not operated its maintenance programs in an efficient and economical manner. As a result, the housing stock continues to deteriorate, leaving 4,355 unoccupied units which represent 34 percent of the 12,904 units.

62. This mismanagement includes but is not limited to the actions and failures set forth below.

- (a) The NHA has caused or allowed conditions in the high-rise buildings to deteriorate over a long period, and consequently a large number of units are not decent, safe, or sanitary, as required by the United States Housing Act, regulations thereunder, and the Annual Contribution Contract between the NHA and HUD.
- (b) The NHA has not kept the buildings secure, and in most there is the constant threat of crime and physical harm.
- (c) Thousands of apartments have been held vacant for several years, when they could and should have been rented, denying needed housing to low-income people in Newark. The 1984 HUD audit found:

The... percentage of increased vacant units indicate that instead of making decent, safe and sanitary housing units available to low-income families, as required by the ACC, the NHA has continually allowed units to become unavailable for occupancy. In fact, they have intentionally kept them out of service.

- (d) As of December 1, 1987, there were at least 4,302 vacancies, a vacancy rate of at least 37%.
- (e) Because of the NHA's inability to manage public housing properly, and its deliberate strategy of creating vacancies in high-rise public housing as a prelude to demolition, vacancies in Newark's public housing have risen dramatically since 1979. According to a variety of NHA statistical reports over the years, the vacancies have risen from 587 in 1978 to 5,547 in 1987, a rise of

945 percent.<sup>2</sup> The NHA vacancy rate is the highest of any major public housing authority in the United States.

- (f) Notwithstanding these vacancies, the NHA has continued to seek and receive operating subsidies from HUD for such vacant units, thereby building up excessive operating reserves, while also allocating excessive amounts to central administration, instead of utilizing the money to repair and maintain some of the vacant units so that they would be decent, safe, and sanitary and in proper condition for re-renting. Furthermore HUD has found that the NHA ran up excessive administrative expenses for modernization projects, while failing to carry out the modernization itself.
- (g) HUD audits and reviews during the 1980's have detailed a long list of continued deficiencies in NHA management, and it also has been designated an "Operationally

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<sup>2</sup> Fiscal Year	Total Vacancies	Percentage Increase Since 1978
1978	587	---
1979	762	30%
1980	1,030	75%
1981	2,180	271%
1982	2,943	401%
1983	3,790	546%
1984	4,355	642%
1986	5,285	900%
6/30/1987	5,381	917%
9/30/1987	5,547	945%
12/1/1987	4,302	732%*

\* (After the demolition of 813 vacant units in the Fall of 1987)

Troubled" housing authority by HUD.

- (h) The NHA has proceeded with plans to dispose of NHA-owned property, such as the Columbus Homes site, even though the land is badly needed for low-income housing, the reasons for the sale are not related to the goals of the NHA in preserving and expanding low-income housing, and an equivalent or greater amount of low-income housing will not in fact result from the sale.
- (i) The NHA has taken an astonishing average of nearly ten years from approval and funding by HUD just to start badly needed construction of the new housing units.
- (j) As repeatedly documented by HUD, the NHA has failed to utilize modernization funds awarded to it for existing units in a timely manner, frequently exceeding HUD's three-year guideline for completion of modernization projects, and leading to the recapture by HUD of at least \$5 million of unexpended funds. In 1984, a HUD audit found that since the federal modernization program began in 1974, HUD had authorized NHA expenditures of \$145 million, but the NHA had spent only \$76 million, leaving \$69 million unspent. More recent reviews by HUD echo the same theme. This money, if spent, could have had an enormously beneficial effect on the deplorable conditions in NHA housing projects.
- (k) The NHA's practices concerning admissions and the required maintenance of waiting lists have been

criticized by HUD. Combined with a recent reported practice of refusing to take applications from families, these practices illegally harm people seeking admission to public housing.

(l) The NHA has failed to seek or obtain from HUD permission to use high-rise units that the NHA deems unsuitable for families as housing for single individuals. Such single-person usage would be permissible if approved by HUD.

(m) NHA's failings as cited above have in turn made it less able to secure other federal funding that might have been available.

63. The 1984 HUD audit concluded:

[T]he NHRA's primary responsibility is to provide decent, safe and sanitary housing in an efficient and economic manner. We believe that the NRHA has failed in this regard and has not, considering the conditions found, demonstrated the capacity to effectively maintain the projects, implement its long-range plans and market the units accordingly.

64. All of the foregoing constitute serious mismanagement of the NHA and its resources, thereby needlessly denying potential housing opportunities to low-income people in violation of the letter and spirit of the United States Housing Act, 42 U.S.C. 1437 et seq., and regulations thereunder, as well as the obligations of the NHA under the Annual Contributions Contract with HUD, of which plaintiff tenants and applicants are third-party beneficiaries, and the duties and responsibilities of public housing authorities under the letter and spirit of the New Jersey housing authority enabling statute, N.J.S.A. 55:14A-1 et seq.

65. Notwithstanding NHA's continued severe problems, defendant HUD has failed to take sufficient affirmative remedial measures, continued to grant unconditioned operating subsidies and other funds, and granted various other approvals. In thus allowing NHA to carry on with its mismanagement and the resulting loss of low-income housing opportunity in Newark, HUD has abused its discretion and failed to meet its responsibilities of regulation and supervision of public housing authorities, thereby violating its duties under the United States Housing Act.

#### FIFTH CAUSE OF ACTION -

##### DISCRIMINATORY RACIAL EFFECT OF NHA AND HUD ACTIONS

66. A disproportionate share of the plaintiff classes -- Newark's homeless and inadequately housed applicants for public housing, on the one hand, and Newark's public housing tenants, on the other -- are members of racial and ethnic minority groups. Many are disabled. The share of racial and ethnic minorities, and disabled people, is significantly higher in the plaintiff classes than in Newark's population as a whole.

67. As a result of this disproportionate representation, the entire range of defendants' actions described in this complaint, which deny plaintiffs and their class members decent, safe, sanitary, and affordable housing, have an adverse and disproportionate impact on these racial and ethnic minorities and the disabled.

68. The NHA's proposed demolition of Columbus and Kretchmer will result in the relocation of Black and Hispanic tenants into more racially segregated, virtually all minority-occupied public housing in Newark's virtually all-minority Central Ward. Over 70% of the units provided for the relocation of

tenants displaced by the demolitions are in the Central Ward.

69. The NHA's proposed demolitions also will result in the placement of new replacement housing in the Central Ward. While noted the Columbus replacement "plan" mentions nothing about sites for replacement units, the City of Newark's most recent Housing Assistance Plan indicates that 32 of the approximately 44 acres of land listed as available for the placement of replacement housing units are in the Central Ward.

70. The NHA proposed demolitions of Columbus Homes and Kretchmer Homes will results in further racial segregation in the city and in the NHA's housing.

71. The NHA has knowledge of the segregative impact of its proposed demolitions, as well as of the effect that its failure to fill vacant units has on racial minorities.

72. The NHA's conduct violates plaintiffs' rights under Title VII of the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq. and 24 C.F.R. 941.202(c)(1); Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. and 24 C.F.R. 1.4(b)(2)(i); the Equal Protection Clause of the 14th Amendment to the United States Constitution; and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

73. Defendants Secretary of HUD and HUD, in approving the demolitions of Columbus and Kretchmer, have failed to properly weigh the question of racial impact, investigate and determine the social factors involved in the approved housing choice, or weigh appropriate and less discriminatory alternatives.

74. The conduct of the federal defendants violates HUD's affirmative obligation to further the purposes of Title VIII of the Fair Housing Act of 1968, 42 U.S.C. 3608(e)(5), as well as its obligations under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and the Fifth Amendment to

the United States Constitution.

75. Furthermore, defendants conduct, which has the effect of making low-income housing resources unavailable to a plaintiff class disproportionately consisting of disabled and handicapped people violates Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations promulgated thereunder, and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

#### SIXTH CAUSE OF ACTION - FAILURE TO

##### ASSESS ENVIRONMENTAL IMPACT

76. The NHA has embarked on a course of demolition and disposition which, if completed, will result in the destruction of more than 5,000 public housing units. Despite its awareness of the full scope of this destruction, HUD approved the demolition proposals for Kretchmer and Columbus Homes without HUD and NHA preparing an environmental impact statement (EIS), or indeed, as far as plaintiffs are aware, without HUD preparing or publishing locally a finding of no significant [environmental] impact (FONSI).

77. For all of its projects not categorically excluded by applicable regulations, HUD must perform an initial environmental assessment to determine whether the project will have a significant environmental impact. This requirement is imposed on HUD by the National Environmental Policy Act (NEPA), 42 U.S.C. 4331 et. seq.

78. Demolition or disposition of public housing is plainly a major federal action under NEPA. Given the scope of the proposed NHA demolition and disposition, well over 2,500 units, those actions are presumed to have a significant environmental impact under 24 C.F.R. 50.42, and in fact will have such an impact. Failure to prepare, publish, and receive comment on an EIS violates 24 C.F.R. 50.47.



79. This required environmental assessment must include determination of the effect of the proposed demolition on the quality of urban life, including the effect on the low-income housing supply.

80. HUD approval of the demolition of Kretchmer and Columbus must therefore be set aside, and any steps toward demolition enjoined, until a satisfactory environmental assessment is made, an EIS prepared, and public comment received and considered.

#### SEVENTH CAUSE OF ACTION

##### FAILURE TO TAKE REASONABLE STEPS TO

##### PRESERVE AND EXPAND THE SUPPLY OF LOW-INCOME HOUSING

81. Defendant NHA's cumulative actions as set forth in this complaint have reduced significantly the supply of decent, safe, sanitary, and affordable low-income housing in Newark, compounding the desperate shortage of such housing in the private market.

82. Defendant NHA has also failed to take all reasonable steps within its power to preserve and increase the supply of such housing, such as securing and utilizing in a timely fashion all available federal new construction and modernization funding.

83. As a result, thousands of Newark residents have been and are denied a housing opportunity that would otherwise be available, and that the NHA was created to provide.

84. Individually and collectively these actions and failures to act constitute a pattern and practice of reduction and destruction of the supply of affordable housing for low-income people, and violate the duties and responsibilities of the NHA as set forth in the public housing authority enabling legislation,

N.J.S.A. 55:14A-1 et seq. Any municipal public housing authority draws its sole power to act from this enabling statute. A municipal public housing authority is an instrumentality of municipal government, a public entity exercising governmental functions. As a governmental entity, the NHA must conduct itself in a way that is consistent with and furthers the purposes of that legislation.

85. Under the New Jersey Constitution, public housing authorities, just as municipalities themselves, must utilize their delegated powers in a fashion that is consistent with and furthers the general welfare. The NHA's actions to reduce the housing supply affordable to low-income people, to fail to rent and utilize available vacant units, and to fail to take reasonable steps to increase the supply of public housing are in derogation of the general welfare, and therefore violate the NHA's constitutional responsibilities. The actions of the NHA also constitute a pattern of arbitrary and capricious behavior by a public body.

86. All of the foregoing violations arise out of the same actions and, failures to act which give rise to plaintiffs' federal claims, and therefore support and require the exercise of pendent jurisdiction, intervention and remedial action by this Court.

#### PLAINTIFFS' IRREPARABLE HARM AND HARDSHIP

87. Because of their homelessness, or being trapped in unsafe, substandard, overcrowded or other inadequate housing conditions, plaintiffs and the classes they represent are suffering irreparable harm and hardship for which there is no adequate remedy at law. Defendants actions, as described above, have significantly reduced the supply of affordable housing in Newark, and thereby caused irreparable harm and hardship to plaintiffs and the members of their classes.

Specifically, this harm and hardship has at least the following aspects:

- (a) Homelessness is an unbearable situation, and subjects people to life-threatening conditions, with severe adverse effects on their physical and mental health.
- (b) Homelessness has been identified by the Governor's Committee on Children's Services Planning as a major cause of family break-up, resulting in DYFS placement of children in foster care.
- (c) People are forced to live on the streets, or in abandoned buildings, seriously overcrowded or substandard housing, dangerous homelessness shelters, or crowded, squalid welfare hotels.
- (d) Many families who are able to maintain their own private apartments are forced to spend an inordinate amount of their income on rent, and therefore do not have money to meet other vital needs, such as food for their children. This inadequacy of resources is the major cause of the widespread hunger in New Jersey, and a resulting "new phenomenon of children who are growing up chronically hungry," according to the Governor's Committee. Chronic malnutrition, in turn, retards physical and mental development.
- (e) This homelessness and inadequacy of housing adversely affect the physical and mental health of adults and children, as well as the ability of children to develop and perform in school, thus limiting their opportunities

for the rest of their lives.

- (f) The proposed and imminent demolition of Columbus and Kretchmer would remove for many years a potential and essential housing resource that could be made available to individual plaintiffs and members of their classes.

PRAYER FOR RELIEF

Wherefore plaintiffs request that this Court:

- A. Issue an immediate temporary order restraining defendants from taking any additional action in furtherance of the demolition of Columbus and Kretchmer Homes pending final judgment in this action.
- B. Certify this matter as a class action;
- C. Order the NHA to rent immediately all available vacant units;
- D. Issue a preliminary and permanent injunction barring the NHA from taking any further steps in anticipation of or to carry out demolition or disposition of public housing, unless and until all legal obligations under federal and state law have been satisfied. Such prohibited steps include but are not limited to:
  - 1. Relocating tenants from buildings which the NHA hopes to demolish or otherwise dispose

of;

2. Taking any additional steps to vacate buildings, including but not limited to actions such as (i) refusing to rent units that become vacant and available in buildings targeted for demolition; (ii) holding units vacant to serve as a source of relocation for buildings that it hopes to demolish; (iii) failing to properly maintain and manage individual units and buildings and projects as a whole, creating a dangerous situation for existing tenants, and leaving many otherwise vacant and available units in an uninhabitable state;
3. Taking any steps to sell or dispose of public housing buildings or land to private developers, including but not limited to taking bids, or entering contracts, at all projects, including Columbus and

Kretchmer Homes;

- E. Declare HUD's approvals of the demolition of Columbus and Kretchmer Homes to be in violation of federal law, and issue a preliminary and permanent injunction (i) setting aside these approvals, (ii) compelling HUD to follow applicable law, and particularly the provisions of the 1987 Act, in its review of any future demolition or disposition applications, including requiring NHA to prepare replacement and relocation plans which comply in all respects with the legal requirements set forth in this complaint, and (iii) ordering NHA to prepare such plans;
- F. Order the NHA to immediately take all feasible steps to rehabilitate and utilize existing public housing units, restoring them to the required decent, safe, and sanitary state, including improving safety, security, and conditions in all projects and the utilization of tenant management and private management where appropriate;
- G. Order HUD to oversee these steps and insure that they are carried out, including the appointment of HUD or other appropriate

outside personnel as may be necessary to supervise programs of new construction, modernization, reconfiguration, and other remedial action related to public housing in Newark;

- H. Order HUD and the NHA to prepare an environmental impact statement (EIS) and otherwise comply in all respects with the National Environmental Policy Act and all regulations and rules thereunder, in connection with any building or site considered for demolition or disposition;
- I. Order HUD to insure that in any future review of NHA demolition or disposition plans and activities the alternative with the least discriminatory impact on minorities is pursued by the NHA;
- J. Order the NHA to proceed promptly with the construction at the Scudder site, where it has already demolished housing, and to commence construction of the other 224 townhouses for which it has received funding; order the NHA to utilize the vacant land now owned by the NHA or available from the City of Newark for said construction, and for all other new construction that it

plans or undertakes, instead of using land now occupied by existing public housing units; and order the NHA to take all possible steps within its power to plan for and achieve the expansion of the supply of safe and decent low-income housing in Newark;

- K. Order the NHA to immediately request from HUD permission to rent units to single non-elderly individuals up to the statutory and federal regulatory limits.
- L. Restore plaintiffs and the members of their class to their rightful place on the NHA waiting list where appropriate.
- M. Grant such other relief as the court deems just and equitable, including the appointment of such experts, receivers or masters, as may be appropriate to aid in a resolution of this matter; and
- N. Award plaintiffs and their counsel costs and attorneys' fees.



Legal Services of New Jersey  
78 New Street  
New Brunswick, New Jersey 08901

By:

*Melville D. Miller, Jr.*  
Melville D. Miller, Jr.

*Joseph Harris David*  
Joseph Harris David

NAACP Legal Defense and Educational  
Fund, Inc.

By: Julius L. Chambers, John C. Boger, and  
Jon C. Dubin

99 Hudson Street, 16th Floor  
New York, New York 10013

Essex-Newark Legal Services

By: Hugh Heisler and Paul Giordano

8 Park Place

Newark, New Jersey 07102

(201) 624-4500

Puerto Rican Legal Defense and  
Education Fund

By: Ruben Franco and Arthur A. Baer

99 Hudson Street

New York, New York 10013

Margaret Welch

7 South Street

Newark, New Jersey 07102

(201) 292-6542

Michaelene Loughlin

Seton Hall Law School Clinic

1095 Raymond Blvd

Newark, NJ 07102

(201) 642-8848

Attorneys for Plaintiffs