

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LATASHA JONES, WILFREDO RIVAS,
YESENIA RIVAS, DENISE LUCAS, TENISHA
RAMOS, LUCILLE REID, KATHERINA
YANEZ, MARTHA CARTER, JULISSA
BALDERA, DORYN COAXUM, MARY
CUELLO, VERONICA FIGUEROA, HECTOR
HENRY, MAYRA PENA, ARIEL MONTILLA,
JOSE MEJIA, MARIELA MORALES, MIREYA
NIVAR, ALVIN PERDOMO, JIAN LI, THOMAS
ABREU, KINGSFORD ASIEDU, MIGUEL
CAMPANA, KARLA CASTELLANOS, LIZ
DIAZ, THERESA MCTAGGERT, YEDULKA
MENCIA, FELICIA OBIRI, RUTH PROSPER,
QAZI RAZZAK, MARISOL ROSARIO, GRINI
SANTOS, NANCY STONE, SHARNETTE
TUCKER, CLARA ZHANAY, SONIA NASSER,
On Behalf Of Themselves And All Others Similarly
Situated,

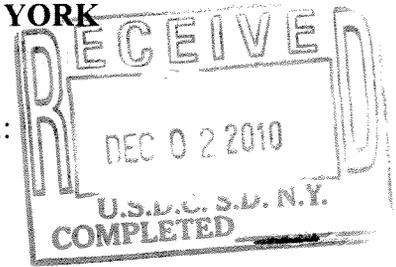
Plaintiffs,

-against-

CITY OF YONKERS, YONKERS COMMUNITY
DEVELOPMENT AGENCY, YONKERS
HOUSING PARTNERSHIP DEVELOPMENT
FUND CORPORATION, HOUSING ACTION
COUNCIL, INC., ROSE NOONAN, individually
and as an employee and agent of HOUSING
ACTION COUNCIL, TERRI FLEISCHMAN,
individually and as an employee and agent of
HOUSING ACTION COUNCIL, YONKERS
GREEN REALTY, LLC, JOBCO, INC., ROBERT
PASCUCCI, individually and as an employee and
agent of YONKERS GREEN REALTY, LLC and
JOBCO, INC., TAST AND CLEMENCY, PC,

Defendants.

CASE No.:



CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, residents of the Father Pat Carroll Green affordable housing development (“FPCG”), located in a predominantly minority neighborhood in the City of Yonkers, New York, bring this action on behalf of themselves and others similarly situated (the “Class”), by and through their attorneys, Harwood Feffer LLP, as and for their Complaint, allege, upon knowledge, information and/or belief, as follows:

PRELIMINARY STATEMENT

1. This is an action for compensatory damages, punitive damages, and injunctive relief for the deprivation of rights secured to Plaintiffs and the Class under the Fourteenth Amendment to the United States Constitution, the Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq.*, and 42 U.S.C. §§ 1981, 1982, and 1983.

2. Plaintiffs also seek on behalf of themselves, and the Class, compensatory damages, punitive damages, and injunctive relief for the deprivation of rights secured under New York State statutory law, including, but not limited to, New York Executive Law, §290, *et seq.*, and General Business Law §777. Plaintiffs also seek damages for the violation of New York common law, including, but not limited to nuisance, breach of contract, breach of implied and/or express warranties, and/or negligence.

3. In sum, Plaintiffs allege that Defendants, acting individually and/or in concert, took actions that resulted in, or were intended to continue, the perpetuation of residential segregation in the City of Yonkers. Plaintiffs allege that by the deliberate actions of the Defendants, individually and/or acting in concert, they, and others similarly situated, were denied an opportunity to live in an integrated community on account of their race, color or national origin, in violation of the aforementioned provisions of federal and state law.

4. Plaintiffs further allege that as a result of the actions of the Defendants, jointly and/or severally, the homes that they purchased were negligently and recklessly planned, designed and constructed, using substandard materials and containing numerous latent defects, and that hazardous materials, including, but not limited to, automobile parts, tires, pipes, demolition and construction debris, glass, and potentially toxic and hazardous materials were buried and exposed on their FPCG properties without Plaintiffs' knowledge or consent.

5. Plaintiffs purchased what they were led to believe were well constructed, safe and affordable homes only to learn later that their homes were defect-prone, under-insulated, grossly lacking in energy efficiency, leaky, suffering from rapid deterioration due to faulty siding and misaligned window and door frames, and that the grounds were unlevel and unsafe with buried and protruding debris, including pipes, tires, and glass. Plaintiffs' children cannot safely play outside their homes and Plaintiffs have spent thousands of their own hard earned dollars to make their living environments tolerable, more efficient, and safer. Still, problems and defects abound and will continue to cause turmoil for the residents of FPCG.

6. Defendants, having constructed these units in a grossly negligent manner and then having steered the minority Plaintiffs to them in a discriminatory manner through misrepresentations, concealment, and false promises, must be held accountable for their conduct. This action seeks to remedy those violations of law to the fullest extent possible in law and equity.

JURISDICTION AND VENUE

7. Jurisdiction of this Court is invoked under 28 U.S.C. §1331, §1343, and 42 U.S.C. §3613.

8. The Court is requested to exercise supplemental jurisdiction over Plaintiffs' other

claims arising under state and local law pursuant to 28 U.S.C. §1367.

9. Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

PARTIES

10. Plaintiff LATASHA JONES is an African-American woman and FPCG resident residing at 29 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

11. Plaintiffs WILFREDO RIVAS and YESENIA RIVAS are Hispanic persons and FPCG residents residing at 22 McFadden Circle, Yonkers, N.Y., and were the original purchasers of that property.

12. Plaintiff DENISE LUCAS is an African-American woman and FPCG resident residing at 4 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

13. Plaintiff TENISHA RAMOS is a Hispanic woman and FPCG resident residing at 49 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

14. Plaintiff LUCILLE REID is an African-American woman and FPCG resident residing at 14 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

15. Plaintiff KATHERINA YANEZ is a Hispanic woman and FPCG resident residing at 18 Monsignor Lane, Yonkers, N.Y., and was the original purchaser of that property.

16. Plaintiff MARTHA CARTER is an African-American woman and FPCG resident residing at 67 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

17. Plaintiff JULISSA BALDERA is a Hispanic woman and FPCG resident residing at 12 Monsignor Ling Lane, Yonkers, N.Y., and was the original purchaser of that property.

18. Plaintiff DORYN COAXUM is a Hispanic woman and FPCG resident residing at 14 Monsignor Ling Lane, Yonkers, N.Y., and was the original purchaser of that property.

19. Plaintiff MARY CUELLO is a Hispanic woman and FPCG resident residing at 42 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

20. Plaintiffs VERONICA FIGUEROA is a Hispanic woman and FPCG resident residing at 5 McFadden Circle, Yonkers, N.Y., and was the original purchasers of that property.

21. Plaintiff HECTOR HENRY and MAYRA PENA are Hispanic persons and FPCG residents residing at 31 McFadden Circle, Yonkers, N.Y., and were the original purchasers of that property.

22. Plaintiff ARIEL MONTILLA is a Hispanic woman and FPCG resident residing at 17 McFadden Circle, Yonkers, N.Y. and was the original purchaser of that property.

23. Plaintiff JOSE MEJIA is a Hispanic man and FPCG resident residing at 11 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

24. Plaintiff MARIELA MORALES is a Hispanic woman and FPCG resident residing at 10 Monsignor Lane, Yonkers, N.Y., and was the original purchaser of that property.

25. Plaintiff MIREYA NIVAR is a Hispanic woman and FPCG resident residing at 57 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

26. Plaintiff ALVIN PERDOMO is a Hispanic man and FPCG resident residing at 26 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

27. Plaintiff JIAN LI is an Asian-American woman and FPCG resident residing at 16 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

28. Plaintiff THOMAS ABREU is a Hispanic man and FPCG resident residing at 18 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

29. Plaintiff KINGSFORD ASIEDU is an African-American man and FPCG resident residing at 48 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

30. Plaintiff MIGUEL CAMPANA is a Hispanic man and FPCG resident residing at 20 Monsignor Ling Lane, Yonkers, N.Y. and was the original purchaser of that property.

31. Plaintiff KARLA CASTELLANOS is a Hispanic woman and FPCG resident residing at 20 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

32. Plaintiff LIZ DIAZ is a Hispanic woman and FPCG resident residing at 55 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

33. Plaintiff THERESA MCTAGGERT is an African-American woman and FPCG resident residing at 12 McFadden Circle and was the original purchaser of that property.

34. Plaintiff YEDULKA MENCIA is a Hispanic woman and FPCG resident residing at 2 Monsignor Ling Lane, Yonkers, N.Y. and was the original purchaser of that property.

35. Plaintiff FELICIA OBIRI is an African-American woman and FPCG resident residing at 24 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

36. Plaintiff RUTH PROSPER is an African-American woman and FPCG resident residing at 16 Monsignor Ling Lane, Yonkers, N.Y., and was the original purchaser of that property.

37. Plaintiff QAZI RAZZAK is an Indian-American man and FPCG resident residing at 27 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

38. Plaintiff MARISOL ROSARIO is a Hispanic woman and FPCG resident residing at 3 McFadden Circle, Yonkers, N.Y. and was the original purchaser of that property.

39. Plaintiff GRINI SANTOS is a Hispanic woman and FPCG resident residing at 65 McFadden Circle, Yonkers, N.Y. and was the original purchaser of that property.

40. Plaintiff NANCY STONE is an African-American woman and FPCG resident residing at 51 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

41. Plaintiff SHARNETTE TUCKER is an African-American woman and FPCG resident residing at 35 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

42. Plaintiff CLARA ZHANAY is a Hispanic woman and FPCG resident residing at 61 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

43. Plaintiff SONIA NASSER is a Hispanic woman and FPCG resident residing at 53 McFadden Circle, Yonkers, N.Y., and was the original purchaser of that property.

44. Defendant CITY OF YONKERS (hereinafter “YONKERS”) was and is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York. YONKERS, working through its municipal departments and agencies, develops, sponsors, and/or oversees the development of affordable subsidized housing projects within YONKERS. YONKERS, through its municipal departments and agencies, approves the plans for the construction and development of such projects, and issues building permits, and other permits, licenses, etc., in connection with affordable housing projects located within YONKERS.

45. Defendant YONKERS COMMUNITY DEVELOPMENT AGENCY (hereinafter “YCDA”) was and is a municipal agency established by YONKERS for the purpose, *inter alia*, of encouraging and facilitating development projects in YONKERS, including, but not limited to, affordable subsidized housing projects such as the FPCG project.

46. Defendant YONKERS HOUSING PARTNERSHIP DEVELOPMENT FUND CORPORATION (hereinafter “YHPDFC”) was and is a domestic non-profit corporation located at 87 Nepperhan Avenue, Yonkers, N.Y. It was created by YONKERS to assist in the urban redevelopment of the City of Yonkers. YHPDFC was listed in records maintained by the County of Westchester as the owner of the land upon which the FPCG homes were constructed.

47. Defendant HOUSING ACTION COUNCIL, INC. (hereinafter “HAC”) was and is a domestic non-profit corporation located at 55 South Broadway, Tarrytown, N.Y. On information and belief, HAC has contracts or agreements with developers, municipalities, and municipal agencies, including, but not limited to, YONKERS, YCDA, YHPDFC, and/or Defendants YONKERS GREEN REALTY LLC (hereinafter “YONKERS GREEN”) and JOBCO, INC. (hereinafter “JOBCO”) to market affordable housing projects to prospective home buyers, identify potential buyers, and qualify such buyers with respect to financing for the purchase of such homes. HAC performed said functions in connection with the sale of the FPCG homes. At all times relevant to the complaint, HAC, acted as and continues to act as the agent for the foregoing Defendants, by engaging in the following actions: recommending mortgage lenders, attorneys, and otherwise assisting potential home buyers with respect to the purchase of their homes, monitoring the conditions of the FPCG homes, arranging for meetings with home owners with agents of JOBCO and YONKERS GREEN regarding defects in said homes, and by transmitting such complaints from home owners to JOBCO and YONKERS GREEN.

48. Defendant JOBCO, INC. (hereinafter “JOBCO”) was and is a construction and development company incorporated in the State of New York and located at 277 Northern Boulevard, Great Neck, New York 11021. JOBCO has constructed or renovated over 10,000 units of affordable housing in the New York Tri-State area. JOBCO was described in advertising literature for the FPCG homes as the developer of the homes.

49. Defendant YONKERS GREEN REALTY, LLC (hereinafter “YONKERS GREEN”) was and is a company incorporated in the State of New York and located at 277

Northern Boulevard, Great Neck, New York 11021. YONKERS GREEN is described in FPCG purchase agreements as the developer and seller of the homes.

50. Defendant ROBERT PASCUCCI was and is chairman of JOBCO and president of YONKERS GREEN. He is a professional engineer, attorney, and licensed real estate broker. PASCUCCI applied for all building and construction permits as well as authorized building construction. Furthermore, PASCUCCI also authorized YONKERS GREEN, JOBCO, and HAC to act as his agents in constructing and marketing the homes at FPCG.

51. Defendant TAST AND CLEMENCY, PC (hereinafter "TAST AND CLEMENCY") was and is an architectural firm located at 70 Glen Street, Glen Cove, New York, 11542. TAST AND CLEMENCY specializes in multi-family dwellings. Its principal, William Clemency, is a registered architect with the state of New York and performed a substantial role in designing and approving the designs of the FPCG homes, and oversaw the construction of the homes on behalf JOBCO and YONKERS GREEN.

52. Defendant ROSE NOONAN is the Executive Director of HAC. At all times relevant to the Complaint, she acted as an agent and employee of HAC in connection with HAC's activities regarding the marketing and sale of the FPCG homes and other affordable subsidized housing rentals and sales in certain communities located in Westchester, New York.

53. Defendant TERRI FLEISCHMAN is the Home Ownership Director of HAC. At all times relevant to the Complaint, she acted as an agent and employee of HAC in connection with HAC's activities regarding the marketing and sale of the FPCG homes and other affordable subsidized housing rentals and sales in certain communities located in Westchester, New York.

CLASS ALLEGATIONS

54. In their representative capacity, Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a), (b)(1), (b)(2), and (b)(3) on behalf of the Class, consisting of all original purchasers of FPCG units.

55. Members of the Class have all been subjected to the same harms, including:

- a. discrimination in that they are minorities who were steered, expressly or impliedly, into a minority housing community when integrated housing was available;
- b. discrimination in that they continue to be, or in the future may be improperly denied the right to live in an integrated community;
- c. they were all sold homes that were built on and remain located in an unsafe environment where the grounds are riddled with demolition and construction debris, refuse, glass, tires and other pollutants and where the common structures were constructed in a shoddy manner and remain defect prone, and where their individual units have had and continue to have multiple similar defects such as improper and insufficient insulation, ill-fitting window and door frames, water leakage problems, electrical problems, and plumbing problems; heating system problems, and
- d. they were all victims of the Defendants' negligence, breaches of express and implied warranties, and other violations of law.

56. Plaintiffs are members of the Class they seek to represent.

57. Numerosity is satisfied in that the number of Class members, including spouses and family members, is in excess of 100 persons which would make joinder impracticable,

unreasonable and unnecessary.

58. There are questions of law and/or fact common to the Class that predominate over any questions affecting only individual members, including, but not limited to:

- a. Whether Defendants violated the Fair Housing Act, 42 U.S.C. §3601 *et seq.*, by siting and building FPCG in a predominately minority area and by steering the Plaintiffs and members of the Class to FPCG thereby perpetuating minority segregation in the City of Yonkers;
- b. Whether Defendants violated 42 U.S.C. §1981 by intentionally and maliciously subjecting Plaintiffs and members of the Class to discrimination based on their minority status in violation of their rights;
- c. Whether Defendants violated 42 U.S.C. §1982 by depriving Plaintiffs and members of the Class the same rights enjoyed by non-minorities with regard to property rights;
- d. Whether Defendants violated 42 U.S.C. §1983 by acting individually, severally or jointly, to violate the rights of Plaintiffs and others members of the Class in derogation of rights secured under the Fourteenth Amendment to the United States Constitution;
- e. Whether Defendants violated the Executive Law of the State of New York, §290 *et seq.*, by conducting themselves in a manner that constituted a willful, intentional and reckless disregard of their civil rights secured to the Plaintiffs and members of the Class by;
- f. Whether Defendants breached their implied covenant of good faith and fair dealing to Plaintiffs and members of the Class in connection with their purchase

of FPCG homes;

- g. Whether Defendants breached express and implied warranties owed to Plaintiffs and members of the Class in connection with their purchase of FPCG homes; and
- h. Whether Defendants' conduct amounted to negligence and/or recklessness under the common law.

59. The claims of the Plaintiffs are typical of the claims of the Class.

60. The Plaintiffs are well organized and will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have retained counsel competent and experienced in complex class actions and civil rights litigation.

61. Class certification is also appropriate under:

- a. Fed. R. Civ. P. 23(b)(1) because prosecuting separate actions by individual Class members would create a risk of (a) inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the parties; and (b) adjudications with respect to any individual Class member may be dispositive of the interests of the other members of the Class not party to an individual adjudication and would substantially impair or impede their ability to protect their interests;
- b. Fed. R. Civ. P. 23(b)(2) because Defendants have acted, continue to act, or otherwise refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole; and
- c. Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the

Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Each member of the Class has been damaged and is entitled to recovery by reason of the common discriminatory practices, policies, and procedures of Defendants.

FACTUAL ALLEGATIONS

United States of America vs. City of Yonkers

62. In 1980, the United States Department of Justice filed a civil rights suit against, *inter alia*, YONKERS and YCDA, in which it was alleged that these Defendants had unlawfully segregated by race YONKERS' subsidized housing programs and public schools. In 1985, the United States District Court Judge Leonard B. Sand found the existence of a pattern and practice of intentional discrimination by City officials with respect to both housing and schools. *See United States v. Yonkers Bd. Of Educ.*, 624 F. Supp. 1276 (S.D.N.Y. 1985), *aff'd*, 837 F.2d 1181 (2^d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988). The district court found that "the record clearly demonstrates that race has had a chronic and pervasive influence on decisions relating to the location of subsidized housing in Yonkers." 624 F. Supp. at 1376.

63. In his decision Judge Sand found that as of 1949, the City had two subsidized housing projects, both of which were located in Southwest Yonkers. *Id.* at 1290. The Court found that between 1949 and 1982, thirty-six more subsidized housing projects were developed, thirty-four of which were in Southwest Yonkers. *Id.* Judge Sand also found that since 1982, at least three additional subsidized housing projects had been approved for development, two of which were in Southwest Yonkers. Judge Sand concluded that as of 1985 Southwest Yonkers contained 6,787, or 97.1 % of the City's units of subsidized housing. *Id.*

64. The Court found that the “extreme concentration of subsidized housing that exists in Southwest Yonkers today is matched by an extreme concentration of the City’s [] minority population.” *Id.* at 1291. According to the 1980 census figures, Southwest Yonkers accounted for 37.5% of the City’s total population, but contained 80.7% of the City’s minority population (blacks and Hispanics). *Id.* at 1291.

65. In light of its review of the evidence in its entirety, the Court concluded that

The extreme concentration of subsidized housing that exists in Southwest Yonkers [] is the result of a pattern and practice of racial discrimination by City officials, pursued in response to constituent pressures to select or support only sites that would preserve existing patterns of racial segregation, and to reject or oppose sites that would threaten existing patterns of segregation. This pattern of discriminatory actions is evident as early as the first selection of sites for public housing under the National Housing Act of 1949, and it has continued, unbroken, through the attempted sale of School 4 in 1982.

Id. at 1373.

66. In 1986, Judge Sand issued a permanent injunction (“Housing Remedy Order”) against the City of Yonkers, its officers, agents, employees, successors and all persons in active concert or participation with any of them, enjoining the Defendants, *inter alia*, from confining public or subsidized housing to Southwest Yonkers on the basis of race or national origin, otherwise intentionally promoting racial residential segregation in Yonkers, or taking any action intended to deny or make unavailable housing to any person on account of race or national origin. *U.S. v. Yonkers Bd. Of Educ.*, 635 F. Supp. 1577 (S.D.N.Y. 1986); *aff’d*, 837 F.2d. 1181 (2d Cir 1987), *cert. denied*, 486 U.S. 1055 (1988).

67. Under the Housing Remedy Order, Yonkers was required to adopt a Fair Housing Policy to assure equal housing opportunities and nondiscrimination in the provision of housing

throughout the entire City. Additionally, the City was required to establish a Fair Housing Office (“FHO”) *Id.* Under the Housing Remedy Order, the FHO had certain functions and responsibilities, including, but not limited to, the following: a. Ensuring that all housing receiving City, state or federal assistance, including housing in the southwest quadrant, be affirmatively marketed either through the FHO’s own efforts or by review, approval and monitoring of the affirmative marketing plans of persons providing such housing; b. Ensuring that persons, who, based on past experience, have been least like to occupy housing in a particular area of the City are fully informed of all housing opportunities there; c. Informing persons, seeking information about available housing resources, as to their rights to equal housing opportunities under the City’s fair housing policy, state law and the Federal Fair Housing Act of 1968; d. Ensuring that all persons who request its assistance in obtaining housing were made aware of housing opportunities in all areas of the City. *Id.* at 1579.

68. On or about September 9, 1988, Yonkers adopted an Affordable Housing Ordinance. Under the terms of Affordable Housing Ordinance, YONKERS entered into a contract with HAC to manage the City’s affordable housing program.

69. On or about May 1, 2007, the United States and YONKERS entered into an agreement settling the longstanding litigation over housing and school segregation in the City. The agreement was approved by Judge Sand and an order of dismissal was entered on or about July 5, 2007.

70. Under the terms of the Settlement Agreement (“Agreement”) after entry of an order dismissing the case, local control over housing issues, including, but not limited to affordable housing, reverted back to YONKERS.

71. Under the terms of the Settlement Agreement (“Agreement”), YONKERS

acknowledged that the Agreement did not relieve the City of its obligations to comply with state and federal housing law and procedures. Under the terms of the Agreement, the Defendants therein affirmatively declared their belief that Yonkers public and assisted housing was presently free of de jure segregation and their good faith intent not to engage in any unlawful acts of segregation.

The FPCG Development

72. The FPCG project is an affordable housing development, consisting of 62 multifamily homes, located in Southwest Yonkers, which continues to be a predominantly minority community.

73. The FPCG project was financed with twenty-five million dollars of local, state, and federal funds.

74. From 1980 to 1990, the property on which the FPCG homes would be constructed contained abandoned and dilapidated buildings that were littered with debris and hazardous materials, including, but not limited to used tires, automobile batteries, automobile parts, glass, and oil tanks.

75. During the late 1980s, YONKERS approved the demolition of the buildings on the site.

76. Prior to the construction of the FPCG homes, the site was a vacant lot that was littered with garbage, automobile parts, automobile batteries, tires, pipes, glass, and other hazardous materials.

77. On or about January 2002, Defendant YCDA obtained ownership of the site upon which the FPCG homes would later be constructed. Working with YONKERS and HAC, YCDA acquired funding from local, state, and federal sources for the construction of a large residential

project of affordable two-family unit homes called the FPCG homes. Funds to support the project were obtained from a variety of sources, including, but not limited to, the Westchester County Housing Implementation Fund, New York State Affordable Housing Commission, and Federal HOME funding through the city of Yonkers.

78. On or about December 2, 2002, YCDA authorized PASCUCCI to act as agent for YCDA to develop and construct the FPCG homes.

79. On or around December 2002, PASCUCCI and JOBCO hired TAST AND CLEMENCY to design the homes that would become the FPCG development in Yonkers, New York. TAST AND CLEMENCY designed the house specifications and continued to amend specifications and designs of the homes until the homes were completed. TAST AND CLEMENCY poorly and negligently designed the houses resulting in significant defects including, but not limited to, poor fitting windows and doors, lack of insulation, poor fitting siding, and improperly engineered heating and water systems.

80. On or around January 2004, YONKERS GREEN and JOBCO began construction on two-family unit homes in the FPCG development. YONKERS GREEN and JOBCO excavated the site for construction preparation.

81. During the excavation process, YONKERS GREEN, JOBCO and/or their subcontractors, acting as agents for said Defendants, discovered debris, garbage, automobile parts, tires, batteries, pipes, construction materials, demolition debris and other hazardous and potentially hazardous materials on the site.

82. Said Defendants and/or their subcontractors failed to remove materials from the site, and, instead, buried these materials and other debris on the site underground in an unsafe and dangerous manner.

83. YONKERS GREEN and JOBCO erected and constructed the two-family units in a poor and substandard condition, leaving material defects in the structures and on and or in the grounds surrounding the homes. YONKERS GREEN and JOBCO failed, *inter alia*, to correctly install windows and doors, failed to install proper insulation, failed to properly install and erect walls and ceilings, and failed to install proper heating systems.

84. PASCUCCI acted as an agent of YONKERS GREEN, JOBCO, YPHDFC, YCDA or YONKERS during the construction of the FPCG homes, and knew or should have known of the defects in the construction of the home, and the fact that garbage, debris and/or hazardous materials had been buried on the site.

85. TAST oversaw the construction of the homes in a negligent manner and failed to properly monitor the construction to ensure that the homes were built free from material defects.

86. TAST knew or should have known that debris, garbage and hazardous materials had been buried on the sight

87. Said defects were of a latent nature.

88. At no time did any representative or agent of YONKERS GREEN, JOBCO, YPHDFC, YCDA or YONKERS reveal or advise the plaintiffs of the latent defects or that garbage, debris, and/or hazardous materials had been buried on the site.

89. HAC, NOONAN, and FLEISCHMAN (“HAC Defendants”), acting as agents for YONKERS GREEN, JOBCO, YPHDFC, PASCUCCI, YCDA and YONKERS, marketed and managed the sale of FPCG homes to prospective buyers. Through drawings and other representations, the HAC Defendants promoted the purchasing of new and well built homes that would have, *inter alia*, a full size driveway, landscaped green space, and lot sizes that would match the deeds and titles filed with the City of Yonkers.

90. HAC intended the representations to be relied upon by plaintiffs to induce them to purchase a FPCG home.

91. While managing the sale of FPCG homes, HAC was also managing the marketing and sale of other affordable housing units throughout Yonkers and Westchester County, including, but not limited to, Cross Street Condominium on Tuckahoe Road in Yonkers, N.Y., and the Sprain Lake Estate on East Grassy Sprain Rd, in Yonkers, New York.

92. HAC Defendants distributed information about the FPCG homes only in predominantly minority communities, including Southwest Yonkers.

93. HAC Defendants failed to distribute similar information regarding the FPCG development in predominantly white communities, including East Yonkers.

94. HAC Defendants maintained a list of persons who expressed an interest in being considered for the purchase or rental of affordable housing homes or apartments.

95. HAC Defendants failed to advise minority persons on said list of the availability of affordable housing opportunities in predominantly white communities in Westchester County, including, but not limited to, predominantly white areas of Yonkers, N.Y.

96. HAC Defendants failed to advise nonminority persons on said list of the availability of affordable housing opportunities in predominantly minority communities in Westchester County, including, but not limited to, predominantly minority communities in Yonkers, N. Y.

97. The failure of the HAC Defendants to market the FPCG development in all communities in YONKERS, and elsewhere, and to all persons seeking affordable housing had the purpose and/or effect to ensuring that such housing was not made available to all persons regardless of race or national origin.

98. The failure of the HAC Defendants to market the FPCG development in a nondiscriminatory fashion ensured that persons, who based on past experience, had been least likely to occupy housing in a particular area of YONKERS were not fully informed of all housing opportunities in YONKERS and elsewhere.

99. At no time did the HAC Defendants advise plaintiffs or others similarly situated of their rights to equal housing opportunities under YONKERS' fair housing policy, state law or the Fair Housing Act of 1968.

100. The manner of marketing of the FPCG development by the HAC Defendants had the purpose and/or effect of perpetuating residential segregation in Westchester County, including, but not limited to, the City of Yonkers.

101. The failure of the HAC Defendants to apprise minority persons on the affordable housing or other lists maintained by the HAC Defendants of the availability of such housing in predominantly white communities had the purpose and/or effect of perpetuating residential segregation in Westchester County, including, but not limited to, the City of Yonkers, N.Y.

102. The failure of the HAC Defendants to apprise nonminority persons on the affordable housing or other lists maintained by the HAC Defendants of the availability of such housing in predominantly minority communities had the purpose and/or effect of perpetuating residential segregation in Westchester County, including, but not limited to, the City of Yonkers.

103. At all times relevant to the Complaint, the HAC Defendants were acting as agents of YONKERS GREEN, JOBCO, YPHDFC, PASCUCCI, YCDA and YONKERS.

104. Prior to executing purchase agreements for homes in the FPCG development, several Plaintiffs, including, but not limited to, JONES, YANEZ, FIGUEROA, DE LOS SANTOS, BALDERA, CUELLO, LUCAS, and REID, made inquiries of the HAC Defendants as

to the availability of affordable housing developments in Westchester County, including, but not limited to, YONKERS. When such inquiries were made, Plaintiffs were not informed about affordable housing developments other than the FPCG project, despite the fact that other such projects, some of which were located in predominantly white areas, were available in Westchester County and the HAC Defendants were, on information and belief, aware of such projects. In fact, said Plaintiffs and others similarly situated were told that the only development available or for which they qualified was the FPCG project.

105. When JONES, YANEZ, and REID asked the HAC Defendants about the Sprain Lake Estates development, located in a predominantly white section of YONKERS, said Plaintiffs and others similarly situated were told that either they did not qualify for that project or that others were ahead of them on the list. REID was advised that only Yonkers' residents qualified for the Sprain Lake Estates development.

106. The HAC Defendants pressured Plaintiffs and others similarly situated to execute purchase agreements for the FPCG homes by stating that the waiting list for these homes was long and that prospective buyers should act immediately on purchasing these homes or lose the opportunity to purchase affordable housing all together.

107. Starting in or about June 2009, prior to the completion of the construction of the FPCG project, the HAC Defendants, on behalf of YONKERS GREEN, JOBCO, YPHDFC, and YCDA, assisted in the preparation and execution of purchase agreements between Plaintiffs and YONKERS GREEN, and YPHDFC for homes located in the FPCG project.

108. Pursuant to the purchase agreements with the Plaintiffs, YPHDFC and YONKERS GREEN agreed to construct the homes in accordance with all applicable federal, state, and local building codes.

109. Pursuant to the purchase agreements with Plaintiffs, YPHDFC and YONKERS GREEN provided warranties to protect home buyers from faulty or defective construction.

110. Pursuant to the purchase agreements, for a period of forty years, Plaintiffs, and others similarly situated, must obtain the approval of YPHDFC prior to resale of their homes.

111. Beginning in 2009, Plaintiffs closed on the purchase of their homes.

112. Upon moving in to their homes, Plaintiffs discovered latent defects, including, but not limited to, improperly installed siding, faulty window installation resulting in leaks and water damage; faulty heating systems and insulation resulting in cold and inhabitable rooms, improper masonry resulting in cracked walls and ceilings; a lack of privacy due to a failure to install sound insulation; and dangerous and hazardous outdoor space due to the dumping of garbage, automobile tires, automobile batteries, pipes and/or construction debris on and under the rear yards of their homes, lack of proper grading, and complete failure to clear the rear yards of rocks and other debris.

113. Plaintiffs timely notified JOBCO, YONKERS GREEN and/or HAC of defects and performed all necessary and appropriate conditions precedent under the contract and the implied and expressed warranties. However, defendants did not and have not properly and effectively remedied the defects pursuant to their agreements and guarantees. Plaintiffs, therefore, suffer and will continue to suffer from the defects in the home, while the defects continue to damage the quality and value of the homes.

114. Said defects and conditions have resulted and will continue to result in the diminution in the value of the homes of Plaintiffs and others similarly situated.

115. As a result of the defects and conditions aforesaid, Plaintiffs and others similarly situated have expended funds, and in the future will continue to expend funds, to repair or

rehabilitate the conditions of their homes.

Defendants Dump Dangerous Fill at FPCG

116. After numerous complaints by Plaintiffs and members of the Class concerning the unlevel and unsafe conditions of the grounds in and about the FPCG properties, on or about August 11, 2010, YONKERS notified residents that the city had surplus “topsoil” that it would deliver to FPCG and spread as needed. The notification came via email from Joseph D’Lando, Director of Special Projects for the City of Yonkers. In the email to Plaintiff Latasha Jones, Mr. D’Lando stated:

I am e-mailing to let you know that we finally have gotten a contractor who has excess topsoil that we can use on Pat Carroll. He will begin delivery to the rear of the two buildings on McFadden Circle that overlook Nepperhan Avenue **this Friday, August 13, 2010**. We are arranging for our site contractor to then spread and seed the topsoil behind these buildings. Some people expressed an interest in relocating some of the topsoil by hand to their property, so this may be possible if enough is left after spreading.

117. Contrary to the promise of “topsoil” made by Mr. D’Lando, on or about August 13, 2010, YONKERS caused to be delivered several hundred cubic yards of construction “fill,” dangerously laden with debris, glass, and other hazardous material, that was dumped in numerous mounds or “hills” on and about the yards, properties, and common areas of the FPCG homes.

118. Since that time, despite numerous inquiries and complaints from Plaintiffs and members of the Class, Defendants have made no attempts or efforts to replace the fill with non-dangerous top soil, as was originally represented, to screen or decontaminate the fill, spread and seed as represented, fence it off, put up “KEEP OFF” warning signs, or any other steps to protect the residents and children of the FPCG homes.

119. On November 11, 2010, after more than three months of nothing being done to remove the unsightly and dangerous fill, Plaintiff Latasha Jones emailed Defendants with an offer

that Plaintiffs and members of the Class would find their own landscaper to take care of the problem. To date, she has received no response and the fill remains.

120. Defendants are aware that many families with children live in the FPCG community and that other children are likely to visit frequently.

121. Defendants are also aware that children play in and about the yards and common grounds of the FPCG homes.

122. In fact, children can be seen regularly playing on and around the mounds of dangerous fill that are located all around the FPCG community.

123. Although it is presently unknown whether children have yet been injured playing on the dangerous fill, there remains an imminent threat of such injuries unless something is done.

FEDERAL CLAIMS

FIRST CLAIM FOR RELIEF

(Fair Housing Act – 42 U.S.C. §3601 *et seq.*)

124. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

125. As a result of all of the Defendants' above-described actions, Plaintiffs and others similarly situated have suffered, are continuing to suffer, and will in the future suffer, great and irreparable loss and injury, including, but not limited to, their right to live in an integrated community, humiliation, embarrassment, emotional distress, and a deprivation of their right to equal housing opportunities regardless of race.

126. The actions of the Defendants herein have had and continue to have the effect of perpetuating segregation in the City of Yonkers.

127. The actions complained of herein regarding the Defendants, individually or acting in concert or as agents of and/or behalf of the other Defendants, constitute a pattern and practice

of discriminating against persons on account of their race, color, or national origin by denying such persons equal opportunities to seek and obtain housing in integrated communities.

128. The actions of each of the Defendants complained of herein constitute a continuing violation of the rights of Plaintiffs and others similarly situated secured under the Fair Housing Act.

129. In engaging in the unlawful conduct described above, Defendants acted intentionally and maliciously to damage the rights and feelings of Plaintiffs and others similarly situated in violation of the Fair Housing Act of 1968.

130. As a result of the foregoing actions and/or inactions of Defendants, Plaintiffs and others similarly situated were deprived of their rights secured by the Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq.*

SECOND CLAIM FOR RELIEF

(42 U.S.C. §1981)

131. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

132. The actions complained of herein regarding the Defendants, individually or acting in concert or as agents of and/or behalf of the other Defendants, constitute a pattern and practice of discriminating against persons on account of their race, color, or national origin by denying such persons equal opportunities to seek and obtain housing in integrated communities.

133. The actions of each of the Defendants complained of herein constitute a continuing violation of the rights of Plaintiffs and others similarly situated secured under 42 U.S.C. §1981.

134. In engaging in the unlawful acts described above, the Defendants, individually and acting in concert or as agents for the other Defendants, acted intentionally and maliciously to damage the rights and feelings of Plaintiffs and others similarly situated in violation of 42 U.S.C.

§ 1981.

135. As a result of the foregoing actions and/or inactions of Defendants, Plaintiffs and others similarly situated were deprived of their rights secured by 42 U.S.C. §1981.

THIRD CLAIM FOR RELIEF

(42 U.S.C. §1982)

136. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

137. The actions complained of herein regarding the Defendants, individually or acting in concert or as agents of and/or behalf of the other Defendants, constitute a pattern and practice of discriminating against persons on account of their race, color, or national origin by denying such persons equal opportunities to seek and obtain housing in integrated communities.

138. The actions of each of the Defendants complained of herein constitute a continuing violation of the rights of Plaintiffs and others similarly situated secured under 42 U.S.C. §1982.

139. In engaging in the unlawful acts described above, the Defendants, individually and acting in concert or as agents for the other Defendants, acted intentionally and maliciously to damage the rights and feelings of Plaintiffs and others similarly situated in violation of 42 U.S.C. § 1982.

140. As a result of the foregoing actions and/or inactions of Defendants, Plaintiffs and others similarly situated were deprived of their rights secured by 42 U.S.C. §1982.

FOURTH CLAIM FOR RELIEF

(42 U.S.C. §1983)

141. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

142. The Defendants, acted severally or jointly, to violate the rights of Plaintiffs and others similarly situated in derogation of rights secured to Plaintiffs under the Fourteenth

Amendment to the United States Constitution.

143. The deprivation of the rights secured to Plaintiffs and others similarly situated was affected by the joint participation of the private Defendants with the governmental Defendants.

144. At all times relevant to the actions complained of herein, the private Defendants acted as agents of the governmental Defendants with respect to the deprivations of constitutional rights complained of herein.

145. As a result of the Defendants' above described acts, Defendants deprived Plaintiffs and others similarly situated of rights secured by the Fourteenth Constitution to the United States Constitution and 42 U.S.C. §1983.

STATE LAW CLAIMS

FIFTH CLAIM FOR RELIEF

(New York Executive Law §290 *et seq.*)

146. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

147. Defendants' conduct was willful, intentional and in reckless disregard of the civil rights, secured by the Executive Law of the State of New York, §290 *et seq.*, of Plaintiffs and others similarly situated.

148. As a direct and proximate result of the Defendants' unlawful conduct, Plaintiffs sustained the damages alleged herein, including, but not limited to, the violation of their civil rights, pain and suffering, mental anguish, humiliation, degradation, emotional distress, and the loss of an opportunity to live in an integrated housing setting.

149. The actions complained of herein regarding the Defendants, individually or acting in concert or as agents of and/or behalf of the other Defendants, constitute a pattern and practice of discriminating against persons on account of their race, color, or national origin by denying

such persons equal opportunities to seek and obtain housing in integrated communities.

150. The actions of each of the Defendants complained of herein constitute a continuing violation of the rights of Plaintiffs and others similarly situated secured under New York State's Executive Law, §290 *et seq.*

SIXTH CLAIM FOR RELIEF

(Breach of Covenant of Good Faith and Fair Dealing)

151. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

152. Defendants have a duty of good faith and fair dealing that is implied in each of purchase agreements entered into between them and Plaintiffs and other members of the Class, including the duty to perform their obligations to provide safe and non-defective homes and properties.

153. Defendants breached their duties of good faith and fair dealing by engaging in the conduct described in detail herein.

154. Based upon the foregoing, Plaintiffs and other members of the Class are entitled to a judgment that Defendants breached their duty of good faith and fair dealing implied in their purchase agreements.

155. As a result of Defendants' breach, Plaintiffs and members of the Class have been damaged in an amount equal to the costs of achieving safe and non-defective homes and properties.

SEVENTH CLAIM FOR RELIEF

(Breach of Warranties)

156. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

157. As a result of the defendants' above described actions and/or inactions,

Defendants' violated the rights of the Plaintiffs guaranteed under N.Y. Gen. Bus. Law § 777-a and express and/or implied warranties contained in the purchase agreements or other documents pertaining to the sale and purchase of their homes.

158. Plaintiffs have complied with all conditions precedent for the enforcement of rights arising under statutory or common law warranties.

159. As a result of the defendants' above described actions and/or inactions, Plaintiffs suffered, continue to suffer and will continue to suffer in the future harm from the conditions described herein with regards to the defects complained of herein and other latent defects that may be discovered during the course of the litigation.

EIGHTH CLAIM FOR RELIEF

(Negligence)

160. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

161. As a result of the Defendants' actions and/or inactions complained of herein, Plaintiffs and others similarly situated have suffered and will continue to suffer from the diminution in the value of their homes, due to the defects complained of herein and other latent defects that may be discovered during the course of the litigation.

162. As a result of the foregoing, Plaintiffs and others similarly situated have been and will continue to be exposed to environmental hazards due to the improper disposal of waste, debris and garbage on and under their homes and yards.

163. As a result of the foregoing, Plaintiffs and others similarly situated have and will continue to suffer from the diminution in the value of their homes, have suffered and will continue to suffer special damages to effectuate repairs due to the defects in and substandard construction of their homes.

NINTH CLAIM FOR RELIEF

(Attractive Nuisance)

164. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

165. Defendants' dumping, abandoning, and ignoring numerous "hills" of dangerous, construction fill, chock-full of miscellaneous debris and glass, on and about the properties of Plaintiffs and members of the class constitute an inherently dangerous and particularly enticing element on which the children of FPCG play.

166. Defendants having caused the fill to be dumped and abandoned on the FPCG properties, knew or should have known said hills were inherently dangerous and likely to entice children to play on and about. Defendants also knew or should have known that many children live in and play around the FPCG properties.

167. Despite their duty to take reasonable steps to protect children from the attractive nuisance (*i.e.*, through removal, fencing off, posting warning signs, etc.), Defendants have done nothing to eliminate or minimize the danger.

168. Because the burdens of eliminating the danger are slight as compared with the great risk to the children involved, Defendants must be held liable.

169. As a result of the foregoing, Plaintiffs and members of the Class have and will continue to suffer damage until the condition is remedied.

PUNITIVE DAMAGES

170. Plaintiffs incorporate the above allegations by reference as if fully set forth herein.

171. The actions of the Defendants, and each of them, were committed with reckless disregard, intentionally, wantonly, and with malice warranting the imposition of punitive damages.

172. As a result of the actions of the Defendants, and each of them, Plaintiff has suffered and will continue to suffer economic losses, emotional distress, humiliation, degradation, the loss of their civil rights and the right to reside in an integrated community as secured by both federal and state law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief:

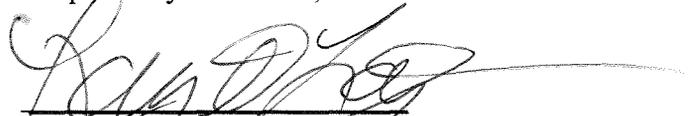
- A. An order declaring the Defendants' actions complained of herein to be in violation of 42 U.S.C. §§ 1981, 1982; 1983, and 3601 *et seq.*
- B. An order directing Defendants to take appropriate affirmative action to ensure that the activities complained of above are not engaged in again by them or any of their agents;
- C. An order permanently enjoining the Defendants, their agents, employees and successors from discriminating on the basis of race or color against any person in violation of 42 U.S.C. §§ 1981, 1982; 1983, and 3601 *et seq.*
- D. An order permanently enjoining the Defendants, their agents, employees and successors from discriminating on the basis of race or color against any person in violation of New York Executive Law §290 *et seq.*
- E. An order awarding Plaintiffs compensatory damages against the Defendants, jointly and severally.
- F. An order awarding punitive and against the Defendants, jointly and severally;
- G. Costs, disbursements, expert fees and attorneys' fees pursuant to 42 U.S.C. §1988;
- H. Any and all other relief that the Court deems proper and just.

JURY TRIAL DEMANDED

Plaintiffs demand a jury trial

Dated: New York, New York
December 1, 2010

Respectfully submitted,



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