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

VILLAS AT PARKSIDE PARTNERS d/b/a VILLAS AT PARKSIDE, LAKEVIEW AT PARKSIDE PARTNERS, LTD. d/b/a LAKEVIEW AT PARKSIDE, and CHATEAU RITZ PARTNERS d/b/a CHATEAU DE VILLE,	§	
Plaintiffs,	§	**CIVIL ACTION NO. 3-06cv2371-L**
v.	§	**ECF**
THE CITY OF FARMERS BRANCH, TEXAS,	§	
Defendant.	§	

PLAINTIFFS' SECOND AMENDED COMPLAINT

Plaintiffs Villas at Parkside Partners d/b/a Villas at Parkside ("Villas"), Lakeview at Parkside Partners, Ltd. d/b/a Lakeview at Parkside ("Lakeview"), and Chateau Ritz Partners d/b/a Chateau de Ville ("Chateau") file this Second Amended Complaint against defendant The City of Farmers Branch, Texas (the "City" or "Farmers Branch").

I.

PRELIMINARY STATEMENT

On Monday, November 13, 2006, the City Council of Farmers Branch ("City Council"), comprising Mayor Bob Phelps and City Councilmen Tim O'Hare ("O'Hare"), Bill Moses ("Moses"), Charlie Bird ("Bird"), James Smith ("Smith"), and Ben Robinson ("Robinson") adopted Ordinance No. 2892 (the "Original Ordinance"), a politically-charged and highly-controversial law targeting members of the City's immigrant population (the overwhelming

majority of whom are Hispanic) and requiring apartment owners and managers to police the citizenship or immigration status of their tenants and others living within their dwelling units. The Original Ordinance was patterned largely after similar laws adopted in Hazelton, Pennsylvania and Escondido, California — both of which were the subject of litigation and initially enjoined by federal district courts.[1]

Faced with substantial opposition to the Original Ordinance – reflected by a citizen petition drive and a presentation of a petition with over 1,200 verified signatures, several lawsuits, and a state-court restraining order – the City compounded its errors. On January 22, 2007, the City enacted Ordinance No. 2903 (the "New Ordinance") a slightly modified version of the Original Ordinance which purported to repeal and replace the Original Ordinance. The amendment did not change the fundamental character of the Original Ordinance nor cure its multiple constitutional and other defects.

Pursuant to the New Ordinance, the City has deputized itself as an unofficial junior partner to federal authorities in the enforcement of the federal immigration laws. In that self-appointed and unauthorized role, the City has involuntarily conscripted apartment owners, including plaintiffs, to perform the duty of checking their tenants' and prospective tenants' citizenship and/or immigration "papers" – or else suffer criminal penalties for any failure or inability to do so. Indeed, the New Ordinance *prohibits* plaintiffs and other apartment landlords from entering into or renewing any lease agreements with persons who, for whatever reason, are unable to establish their citizenship or residency status by producing satisfactory proof thereof.

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[1] *Garrett v. City of Escondido*, No. 06-CV-2434-JAH (NLS) (S.D. Cal. December 15, 2006) (order granting stipulated final judgment and permanent injunction); *Lozano v. City of Hazleton*, No. 6-CV-56-JMM (M.D. Penn. October 31, 2006) (order granting temporary

Put simply, the New Ordinance creates a presumption of ineligibility to enter into rental contracts, thereby imposing an impermissible burden on the lawful pursuit of plaintiffs' business.

The New Ordinance has unfairly placed plaintiffs in a political maelstrom having nothing to do with the legitimate municipal regulation of health and safety issues related to the housing provided by plaintiffs. Rather, the real intent, and certain effect, of the New Ordinance is to discourage members of the Hispanic population, whether citizens or immigrants (legal or illegal), from taking up residence in Farmers Branch. That intent is further reflected by other recent city ordinances and resolutions specifically directed at the Hispanic population, including one "declaring English as the official language of the City of Farmers Branch." The New Ordinance's adoption, together with the adoption of the Original Ordinance, has already had an injurious impact upon plaintiffs' leasing activities – resulting in a significant loss of income. Unless this Court enjoins the enforcement of the New Ordinance, the harm to plaintiffs will multiply once it takes effect.

It is not the function of the City to attempt to enforce federal immigration laws, particularly in the unauthorized and ham-fisted manner represented by the New Ordinance. Nor is it lawful for the City to impair, restrict, and harm citizens' rights to enter into contracts and do business with others, including aliens residing in this country – particularly when the City's actions are aimed *solely* at apartment owners and do not purport to affect the commercial relations and contract rights of *any other* business or provider of goods or services located within Farmers Branch. In sum, not only is the New Ordinance, like its predecessor, ill-advised in the extreme, it is an invalid and unconstitutional intrusion into, and deprivation of, plaintiffs'

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restraining order). The Escondido ordinance has since been voluntarily repealed in response to the constitutional challenges.

fundamental rights. Furthermore, the City's actions have damaged plaintiffs' businesses. Accordingly, plaintiffs respectfully request that this Court issue a declaratory judgment invalidating the New Ordinance, and enter an order preliminarily and permanently enjoining defendant's enforcement thereof, and award plaintiffs damages.

II.

PARTIES

A. Plaintiffs

1. Villas is a Texas general partnership which owns and operates the Villas at Parkside, a 207-unit apartment complex built in 1999 and located at 4000 Park Side Center Blvd. in Farmers Branch, Texas.

2. Lakeview is a Texas limited partnership which owns and operates Lakeview at Parkside, a 573-unit apartment complex built in 1996 and 1998 and located at 3950 and 3990 Spring Valley Rd. in Farmers Branch, Texas.

3. Chateau is a Texas general partnership which owns and operates the Chateau De Ville, a 161-unit apartment complex built in 2002 and located at 4040 Spring Valley Rd. in Farmers Branch, Texas.

B. Defendant

4. The City is a municipal corporation located in Dallas County, Texas. The City has appeared in this action and is already a party before the Court. The City was properly served through service on Mayor Phelps.

III.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343; 42 U.S.C. §§ 1981 and 1983; and the Declaratory Judgment Act, 28 U.S.C.

§§ 2201 and 2202. This Court has supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over defendant, and venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391(b), because the City is located in this District.

IV.

FACTS

A. Plaintiffs: Substantial Contributors To The Farmers Branch Economy

7. The apartment complexes owned by plaintiffs are well-maintained and professionally-managed properties offering a host of amenities in each unit and a number of fitness, clubhouse, and other attractive facilities for the common use of their tenants. Monthly rents among plaintiffs' three complexes range from $690 for one-bedroom units to $2,322 for two-bedroom units.

8. Plaintiffs rent their units not only to individuals and families, but also to corporations on either a short-term or long-term basis. Corporate renters, in turn, make their units available to employees, actual or prospective customers and clients, consultants, and other invitees. Plaintiffs have substantial competition in the form of renters of single-family properties, hotels and motels (including, but not limited to, "extended stay" facilities), and other apartment complexes located in Farmers Branch and other municipalities. None of those competitors (other than apartment complexes in Farmers Branch) is subject to the New Ordinance at issue in this action.

9. Plaintiffs' apartment complexes require and utilize the paid services of a number of rental agents, management personnel, maintenance workers, employees, and independent contractors, many of whom live in Farmers Branch. Moreover, plaintiffs' tenants purchase a

substantial portion of the goods and services they require from businesses located within Farmers Branch – and many of those tenants are themselves employed by such businesses. In short, plaintiffs and the apartment complexes they own and operate have a beneficial economic impact on the City, and plaintiffs have conducted themselves as good citizens and significant contributors to the local community.

B. Farmers Branch: A City In Transition At The Outset Of The Twenty-First Century

10. Farmers Branch was founded in 1841 and was formally incorporated as a city on February 2, 1856. It is a home rule municipality that operates in accordance with a "council-manager" form of government.

11. Since 1970, the City of Farmers Branch has grown from a small, predominantly Anglo suburban community with a declining population into a growing city of almost 30,000 people. Today it is centrally located in the North Dallas Metroplex with approximately 80 corporations and more than 2,600 businesses making their home there.

12. According to the U.S. 2000 Census figures, the racial composition of the City is 55.8% White, 37.2% Hispanic/Latino, and 7% other races. Approximately 25% of the City's population is comprised of foreign-born individuals, of which 82% are reported as being born in Latin America. Without regard to lawful immigration status, the Census identifies over 5,500 persons in the City as being non-U.S. citizens. Since 2000, the ratio of Hispanics/Latinos to Anglos has continued to increase in Farmers Branch. It is against that backdrop that the City Council set out to affect the ethnic composition of the City.

C. The O'Hare Proposal: An Unsupported And Inappropriate Response To Ethnic Diversity In Farmers Branch.

13. In August 2006, Councilman O'Hare, who never received more than 261 votes in a City election, proposed that the City undertake a "crack down" on illegal immigration by, *inter*

alia, penalizing businesses that employ illegal aliens, making English the City's official language, eliminating subsidies for City-funded youth programs that involve the children of illegal immigrants, and prohibiting landlords from leasing to illegal aliens. Without any empirical data to support his assertions, O'Hare declared that the City "suffered" a poor reputation of its public schools, a lack of "acceptable appreciation" in property values, and a high crime rate. Lacking any proof, O'Hare nonetheless concluded that an invasion of illegal Mexican immigrants into the City was responsible for those "problems."

14. Tellingly, Mayor Phelps responded to O'Hare's rhetoric by publicly disputing O'Hare's conclusions: "[They're] not true . . . Our crime rate is down, our schools have moved up . . . property values are up." Indeed, Mayor Phelps appropriately described O'Hare's proposals as "misguided" and "a ploy to gain personal recognition." Mayor Phelps' comments were well-grounded. A February 10, 2007 article in the *Dallas Morning News* reported that crime statistics reflect a 7.3% drop in crime in Farmers Branch between 2005 and 2006. Additionally, property values in Farmers Branch have been increasing.

15. Despite the fact that a substantial portion, and perhaps even a majority, of the citizens of Farmers Branch had similar misgivings about O'Hare's proposal, the City Council (no member of which has ever garnered more than 750 votes in a City election) pressed forward with transforming O'Hare's political agenda into law.

D. The First Illegal Landlord Conscription Act: Ordinance No. 2892.

16. On November 13, 2006, despite the dearth of factual support for his position, O'Hare, along with the other members of the City Council, adopted, as a so-called "emergency measure," Ordinance No. 2892, entitled:

> AN ORDINANCE AMENDING CHAPTER 26, BUSINESSES, ARTICLE IV APARTMENT COMPLEX RENTAL, MANDATING A CITIZENSHIP CERTIFICATION REQUIREMENT PURSUANT TO 24 C.F.R. 5 ET SEQ.;

PROVIDING FOR ENFORCEMENT; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

17. The Original Ordinance had at least five express references to Title 24 of the Code of Federal Regulations § 5, *et seq.* Indeed, the very title of the Original Ordinance (set forth above) declared that the "citizenship certification requirement" established therein is "pursuant to 24 C.F.R. § 5, *et seq.*" However, those regulations do not purport to control, affect, or govern rental agreements between private landlords and their tenants which are unrelated to any federal housing assistance program. Thus, contrary to the language of the Original Ordinance, it did not comport with federal housing law but, instead, imposed new and extraordinary citizenship and immigration restrictions on purely private residential lease agreements. Indeed, even with respect to government-supported housing programs, 24 C.F.R. § 5, *et seq.* does not absolutely prohibit all so-called "illegal immigrants" from receiving federal assistance.

18. Nevertheless, the Original Ordinance provided, as a condition to entering into any "apartment complex" lease or rental agreement, including any renewals or extensions thereof, that "the owner and/or property manager" shall require the submission of satisfactory "evidence" of citizenship or eligible immigration status for each tenant family other than minors and seniors.

19. In addition, the Original Ordinance required plaintiffs and other owners and/or managers of apartment complexes located within Farmers Branch to "request and review original documents of eligible citizenship or immigration status," to "retain photocopies of the documents for [their] own records and return the original documents to the family," and to hold such records "for a period of not less than two (2) years after the end of the family's lease or rental." As evidence of U.S. citizenship, new and renewing tenants were required to provide "a signed declaration of U.S. citizenship or U.S. nationality," to be "confirmed by requiring presentation of

a United States passport or other appropriate documentation in a form designated by ICE [the Immigration and Customs Enforcement Department] as acceptable evidence of citizenship status." As evidence of "eligible immigration status," new and renewing non-citizen (*i.e.*, alien) tenants must submit: (1) a "signed declaration of eligible immigration status," (2) a "form designated by ICE as acceptable evidence of immigration status;" and (3) a "signed verification consent form." In short, the Original Ordinance conscripted plaintiffs and other similarly-situated Farmers Branch multi-family apartment owners as unwilling citizenship and immigration officers, for the apparent purpose of gathering information for the City's unauthorized and unofficial "enforcement" of the federal immigration laws.

20. To compound the inappropriate burden placed on plaintiffs, the Original Ordinance further provided that any failure by the owner and/or property manager to comply with the provisions of the ordinance results in a misdemeanor carrying fines of up to $500 per day per violation. Separate offenses were deemed committed on each day a violation occurred or continued.

21. Although the City Council declared that an "emergency" existed, the Original Ordinance was adopted without public deliberation, consideration, or debate. In fact, the City passed the Original Ordinance without placing into the public record *any* evidence demonstrating the necessity or utility of the Original Ordinance, let alone the existence of any alleged "emergency." Furthermore, the City failed to provide public notice of the City Council's intent to vote on the Original Ordinance.

E. The Referendum Petition: Substantial Doubt Exists Whether The City Ordinance Has The Voters' Support.

22. Given the suspicious nature of its adoption, following the passage of the Original Ordinance, citizens of Farmers Branch organized to challenge the new law. Pursuant to the City

Charter, if five percent (5%) of the City's registered voters petition the City, the Ordinance must be either: (1) repealed by the City Council; or (2) submitted to the voters of the City for approval or disapproval. On December 13, 2006, a petition was filed with the City protesting the "adoption, application and enforcement of the Ordinance in the absence of voter approval." The petition contained over 1,700 signatures, including those of over 1,200 Farmer Branch registered voters (well in excess of the threshold to force repeal or a vote).

23. Pursuant to the City Charter, upon receipt of the petition on December 13, 2006, the City Secretary was required to "[i]mmediately . . . present said petition to the Council," upon which the Council was to "immediately reconsider such ordinance . . . and, if it does not entirely [repeal] the same, shall submit it to a proper vote . . ." Notwithstanding the foregoing, the City refused to comply with its obligations. Following an action for a writ of mandamus directing action by the City on the Petition, the City called a meeting for January 8, 2007 to present the petition to the City Council. At that meeting, the City Council declined to repeal the Original Ordinance. Instead, it adopted Ordinance No. 2900, which put the Original Ordinance on the ballot for the next City election to permit the City's residents to vote in favor or against the Original Ordinance.

24. In addition to the petition, during December 2006, several lawsuits (including this one) were commenced that challenged the City Council's actions. One of those (styled *Guillermo Ramos v. City of Farmers Branch et. al.*) contested the validity of the Original Ordinance based upon the City Council's failure to comply with the Texas Open Meetings Act ("TOMA").

25. On January 11, 2007, the court in that action (Hon. Bruce Priddy of the 116th Judicial District Court) issued a temporary restraining order enjoining the enforcement of the

Original Ordinance. In doing so, Judge Priddy found that plaintiffs had established, among other elements, a likelihood of ultimate success on the merits of their claim that the Original Ordinance was enacted in violation of TOMA.

F. The Second Illegal Landlord Conscription Act: Ordinance No. 2903 Fails to Cure Major Constitutional and Other Defects.

26. In response to its recognition of the merit of the TOMA challenge, the City reacted. Following an evidentiary hearing in the TOMA action, wherein the numerous defects were clearly highlighted, the City decided to call a City Council meeting for January 22, 2007. At that meeting, the City Council adopted the New Ordinance – Ordinance No. 2903 – which purported to repeal both the Original Ordinance and Ordinance No. 2900.

27. The New Ordinance also purported to modify slightly the Original Ordinance in three respects. First, the New Ordinance adds an exemption for minors and seniors over 62. Second, it undertakes to change the documentation requirements of the Original Ordinance to more closely resemble those of regulations promulgated by the United States Department of Housing and Urban Development regarding eligibility for federal housing subsidies (including implementation of the so-called "mixed family" rule). Finally, the New Ordinance adds to the Original Ordinance a right to a hearing before a "City Building Official" for any would-be tenant who is denied a lease because of a question regarding his or her immigrant status verification. The New Ordinance also submits its terms and provisions for a vote on May 12, 2007.

28. These superficial changes to the Original Ordinance do not address, let alone cure, the multiple fundamental legal defects of the Original Ordinance. In fact, it is essentially the same ordinance, re-enacted merely to overcome the defects resulting from the City Council's violations of TOMA in enacting the Original Ordinance.

29. The New Ordinance is equally defective and in violation of the law. For example, the New Ordinance still imposes extraordinary citizenship and immigration restrictions on purely private residential lease agreements. It continues to rely on Title 24 of the Code of Federal Regulations § 5, *et seq.* It still requires citizenship and immigration status verification, with original documentation, as a mandatory pre-requisite to entering into any "apartment complex" lease or rental agreement. Furthermore, the New Ordinance continues to impose criminal penalties for any failure by a property owner or manager.

G. The Regulation Of Citizenship And Immigration Matters: The Exclusive Province Of The Federal Government.

30. Pursuant to Article I, Section 8, Clauses 3 and 4 of the United States Constitution, the federal government has the power to "establish a uniform Rule of Naturalization" and to "regulate Commerce with foreign Nations." In fact, the Supreme Court of the United States has held that the federal government's power to control immigration is inherent in the nation's sovereignty.

31. Pursuant to its exclusive power over matters of immigration, the federal government has established a comprehensive system of administrative agencies, statutes, regulations, and procedures to determine, subject to judicial review, whether and under what conditions aliens may enter, live, work in the United States – and, if desired, become citizens thereof.

32. The federal government has chosen to allow certain non-citizens to remain in the United States, even though such persons may not have valid immigrant (permanent) or non-immigrant (temporary) status and/or may otherwise be removable or subject to deportation under the Federal Immigration and Nationality Act. For instance, under federal law, various categories of persons can receive federal permission to work, and implicitly to stay and reside, in the United

States even though they may be violating immigration laws. Moreover, persons with pending applications to adjust to a lawful status are often permitted to remain in the United States despite a lack of valid immigrant status. Of course, determinations of who may continue living here are within the exclusive province of the United States Government – and any attempt by state or local officials to usurp that function constitutes an inappropriate interference with a federal function.

33. Pursuant to 31 U.S.C. § 1342, officers of the United States Government may not accept voluntary services in connection with the performance of a governmental function unless authorized by law. In the field of immigration, the circumstances under which the federal government authorizes the voluntary assistance of states and municipalities are limited. Pursuant to 8 U.S.C. § 1357, the U.S. Attorney General may enter into a written agreement with a state, or any political subdivision thereof, permitting "qualified" employees "to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States."

34. The Original Ordinance recited that its "sole intention . . . is for the purposes of assisting the United States Government in its enforcement of the Federal Immigration Laws." That stated intention endures with respect to the New Ordinance. However, there exists no agreement between Farmers Branch and the United States Attorney General (or any other federal governmental official or agency) permitting the City or any of its employees (including the City's Building Inspector, who will be responsible for enforcing the New Ordinance) to perform the function of an immigration officer or otherwise assist in the enforcement of the U.S. immigration laws. Thus, as with the Original Ordinance, the New Ordinance was also adopted

without authority and for purposes unrelated to the City's legitimate interests as a municipal government.

H. The Consequence Of The City's Unlawful Ordinances: Plaintiffs Have Suffered and Will Continue to Suffer Injury In The Absence Of This Court's Intervention And The Issuance Of Appropriate Relief.

35. Since enactment of the Original Ordinance, plaintiffs have suffered damages including a loss of leases with new tenants and renewals of leases with existing tenants. This is a direct consequence of the burdensome and illegal requirements imposed initially by the Original Ordinance, and now furthered by the New Ordinance.

36. Indeed, the Apartment Association of Greater Dallas reports that apartment occupancy in Farmers Branch during the quarter following enactment of the Original Ordinance fell by 10%. Moreover, the Apartment Association attributes the fall in occupancy to the City's enactment of the Original Ordinance and the New Ordinance, and projects that its members, including plaintiffs, will suffer millions of dollars in lost revenues as a result of the City's conduct.

37. Plaintiffs' business of leasing multi-family housing is extremely competitive. Plaintiffs compete with a number of comparable apartment complexes in nearby municipalities (such as Addison, Carrollton, and Dallas) that are not subject to the onerous requirements of the New Ordinance. Consequently, as reflected in the Apartment Association's reports, many of plaintiffs' existing and prospective new tenants have already sought (and will likely continue to seek) alternative apartments or housing in these other jurisdictions.

38. The New Ordinance imposes a substantial burden on most, if not all, of plaintiffs' existing and prospective tenant base. In particular, however, there are two specific sub-populations of that tenant base that is most affected by the New Ordinance. They are: (a)

"transitional tenants" who are transitioning between homes; and (b) tenants from outside Texas who enter into lease agreements through Internet-based transactions.

39. One of the largest sources of plaintiffs' tenant base are tenants who are in transition between homes. Many of plaintiffs' leases are with persons who have just moved to the area and/or are in the process of purchasing a home. For example, nearly one-fourth of Lakeview's tenants are from out of state.

40. As set forth above, plaintiffs face substantial competition for transitional tenants in the form of single-family properties, hotels and motels (including, but not limited to, "extended stay" facilities), and other apartment complexes located in Farmers Branch and other municipalities. Plaintiffs have strategically, and successfully, positioned themselves to capitalize on this key market segment by offering short-term leases specifically designed for transitioning tenants' convenience. Plaintiffs' experience has taught them that prospective transitional tenants want to reserve an apartment as soon as possible, both to reserve the availability of the physical unit and to "lock in" the price. Therefore, plaintiffs have streamlined their administrative and application processes to be more efficient (and, thus, more competitive) in closing lease contracts with the least possible inconvenience to their tenants. The New Ordinance, like the Original Ordinance before it, has destroyed that competitive advantage.

41. In addition, a large percentage of plaintiffs' tenants originate through the Internet. For these prospective tenants, often no face-to-face meeting is conducted until the tenant actually takes occupancy. Applications, fees, and necessary documentation are exchanged via telefax or express mail. The New Ordinance forecloses these business operations.

42. Unless this Court declares the New Ordinance to be invalid and enjoins the enforcement thereof, plaintiffs will suffer irreparable injury in addition to the damages plaintiffs

have already suffered as a result of the Original Ordinance. On the one hand, compliance with the New Ordinance will likely result in a substantial loss of plaintiffs' business due to: (1) existing tenants' inability, failure, or refusal to timely produce all the documents required by the New Ordinance in the form specified therein; and (2) prospective tenants' election not to consider plaintiffs' apartment complexes, or other multi-family residential landlords located within Farmers Branch, due to the burden and inconvenience imposed upon them by the documentary requirements of the New Ordinance – and the comparative ease with which other suitable competing accommodations can be obtained in neighboring municipalities or through alternate sources (such as hotels and single-family rental properties). On the other hand, any failure by plaintiffs or their managers to comply with the New Ordinance, however unintentional, will automatically be deemed "misdemeanors" under the New Ordinance, exposing plaintiffs to daily and continuing fines under a law adopted by the City for the clear purpose of assisting, without the authority to do so, the federal government in enforcing U.S. immigration laws.

43. The City Council's adoption and threatened enforcement of the New Ordinance has violated, and will continue to do injury to, plaintiffs' constitutional, statutory, and common law rights. Therefore, judicial intervention and appropriate declaratory and injunctive relief is necessary to prevent further deprivations and violations of plaintiffs' rights and property interests. Additionally, Plaintiffs are entitled to recover damages to compensate them for the injuries they have sustained as a result of the City's enactments of the unlawful Original Ordinance and the New Ordinance.

44. As a result of defendant's conduct, plaintiffs have been required to obtain the undersigned counsel to prosecute and present the claims asserted herein.

V.

CLAIMS

A. Count One: Violation of the Supremacy Clause

45. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

46. Article VI of the United States Constitution provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding."

47. The Supremacy Clause mandates that federal law preempts state regulation of any area over which Congress has expressly or impliedly exercised exclusive authority or which is constitutionally reserved to the federal government. The power to regulate immigration is exclusively a federal power.

48. The federal government has enacted a comprehensive statutory and regulatory scheme governing immigration, including the Immigration and Nationality Act.

49. The New Ordinance, in its entirety, purports to regulate immigration and the incidents thereof. The New Ordinance infringes upon, interferes with, and usurps the federal government's exclusive power over immigration and naturalization and its power to regulate foreign affairs.

50. The New Ordinance is, therefore, preempted because it attempts to legislate in fields occupied by the federal government and because it conflicts with federal laws, regulations, policies, and objectives. The Supremacy Clause of the U.S. Constitution requires that any state law or local regulation the conduct of noncitizens must be invalidated if it: (1) amounts to an

attempt to regulate immigration; or (2) operates in a field occupied by the federal government or stands as an obstacle to federal law. The New Ordinance fails under both standards.

51. By denying plaintiffs the right and ability to rent to any tenant who does not satisfy the extensive documentation requirements prescribed therein, the New Ordinance runs roughshod over this complex system of federal classification and discretion. Ultimately, the effect of the New Ordinance is to upset the system established by Congress by implementing Farmers Branch's own enforcement mechanisms, penalties, and interpretations in place of the federal system.

52. In addition, as a result of the New Ordinance's violation of the Supremacy Clause, plaintiffs will lose current or prospective tenants who may otherwise be permitted by the federal government to live and/or work in the United States, but will nevertheless be barred from renting apartments in Farmers Branch. In addition, the chilling effects of the New Ordinance will generally discourage many prospective tenants of Hispanic descent from even submitting rental applications with plaintiffs.

53. Accordingly, this Court should declare the New Ordinance unconstitutional and preliminarily and permanently enjoin its enforcement.

B. Count Two: Violation of 42 U.S.C. §1981

54. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

55. Plaintiffs have a fundamental right to contract and to enjoy the full and equal benefit of all laws. Pursuant to 42 U.S.C. §1981, "[a]ll persons within the jurisdiction of the United States shall have the same right in every State or Territory to make and enforce contracts . . . and to the full and equal benefit of all laws and proceedings for the security of persons and

property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

56. Congress explicitly prohibits discrimination under the color of law based on alienage and race. Furthermore, Congress deliberately used "all persons" instead of "citizens" in order to reflect the language of the Fourteenth Amendment that extended the guarantee of equal protection under the laws to "any person within the jurisdiction of the United States."

57. Plaintiffs are entitled to the protections and benefits afforded by Section 1981, and the New Ordinance improperly interferes with plaintiffs' fundamental right to contract with "all persons." As with the Original Ordinance, by enacting the New Ordinance, Farmers Branch has violated plaintiffs' fundamental rights under 42 U.S.C. §1981, and prevents plaintiffs from contracting for the rental units they own. Specifically, the New Ordinance impinges upon plaintiffs' right to enter into rental contracts with aliens and citizens alike. Moreover, because the New Ordinance deprives certain aliens and U.S. citizens of the right to enter into lease agreement with owners of apartment complexes located within Farmers Branch, plaintiffs are among those whose rights to contract necessarily suffer as a result.

58. Unless the New Ordinance is permanently enjoined and declared invalid, the fundamental rights of plaintiffs will be violated.

59. Accordingly, this Court should declare the New Ordinance invalid under federal law and preliminarily and permanently enjoin its enforcement.

60. Plaintiffs have also sustained damages as a result of these violations of their rights secured under § 1981.

C. Count Three: Violation of Due Process

61. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

62. The Fourteenth Amendment guarantees each citizen due process of law. The Fourteenth Amendment's guarantee proscribes laws so vague that persons of common intelligence differ as to their application and must necessarily guess at their meaning. A law is unconstitutionally vague if it fails to provide those targeted by the law a reasonable opportunity to know what conduct is prohibited.

63. The New Ordinance is void for vagueness because it fails to define the offense with sufficient definitiveness that ordinary people can understand what conduct is prohibited, and because it fails to establish minimum guidelines to govern law enforcement so as to invite arbitrary and discriminatory enforcement. The New Ordinance provides for criminal penalties for violations, yet is ambiguous and fails to address critical questions relating to the obligations and potential criminal liabilities it creates. Furthermore, as admitted by the City, the New Ordinance contains absolutely no procedures or guidelines for enforcement.

64. Accordingly, this Court should declare the New Ordinance invalid under federal law and preliminarily and permanently enjoin its enforcement.

D. Count Four: Violation of Equal Protection

65. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

66. The Equal Protection Clause of the 14th Amendment prohibits the discriminatory treatment of legal residents of the United States based on alienage, and prohibits discrimination based on race or national origin. However, the New Ordinance would prohibit the leasing of apartments to legal aliens under many different circumstances and scenarios. In addition, the New Ordinance has the purpose and/or effect of discriminating against Hispanics, including those who are American citizens who live with family members who have not yet obtained citizenship status.

67. Accordingly, this Court should declare the New Ordinance invalid under federal law and preliminarily and permanently enjoin its enforcement.

E. Count Six: Violation of 42 U.S.C. § 1983

68. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

69. When it enacted each of the Original Ordinance and the New Ordinance, the City was a "person" acting "under color of state law" within the meaning of 42 U.S.C. § 1983.

70. As detailed above, the New Ordinance violates plaintiffs' "rights, privileges, [and] immunities secured by the Constitution and laws" of the United States. Additionally, for the same reasons, the Original Ordinance, which was substantially the same as the New Ordinance, also violated plaintiffs' "rights, privileges, [and] immunities secured by the Constitution and laws" of the United States.

71. Plaintiffs have sustained injury as a result of the City's violations of their rights and, therefore, are entitled to recover damages pursuant to 42 U.S.C. § 1983.

F. Count Seven: Violation of Section 214.903 Of The Texas Local Government Code

72. Plaintiffs hereby incorporate the allegations in the preceding paragraphs as if fully set forth herein.

73. Section 214.903 of the Texas Local Government Code provides that "the governing body of a municipality *may* adopt fair housing ordinances that provide fair housing rights, compliance duties, and remedies that are *substantially equivalent to those granted under federal law*" (emphasis added).

74. The New Ordinance twice refers to "fair housing" in the preliminary clauses purportedly justifying its adoption. Yet, as demonstrated above, the New Ordinance goes far beyond federal fair housing laws with respect to the leasing of apartment units upon the

presentation of satisfactory proof of citizenship or lawful immigration status. Simply put, the New Ordinance is not "substantially equivalent" to federal law and, thus, violates the applicable provisions of the Texas Local Government Act.

75. Accordingly, this Court should declare the New Ordinance invalid under state law and preliminarily and permanently enjoin its enforcement.

VI.

JURY DEMAND

76. Plaintiffs hereby demand a trial by jury of all issues so triable.

VII.

REQUEST FOR RELIEF

In light of the foregoing, plaintiffs respectfully request that this Court, upon notice to defendant, issue a temporary retraining order and, following any necessary hearing with respect thereto, a preliminary injunction prohibiting the enforcement or threatened enforcement of the New Ordinance pending entry of a final judgment in favor of plaintiffs and against defendant, providing for the following relief:

1. A declaration invalidating the New Ordinance as unconstitutional and otherwise contrary to applicable federal and state law;

2. A permanent injunction prohibiting the enforcement or threatened enforcement of the New Ordinance;

3. An award of money damages;

4. An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b) and any other applicable statute;

5. Costs of Court; and

6. Any other relief, at law or in equity, to which plaintiffs may be entitled and which this Court deems just and proper.

Respectfully submitted,

BICKEL & BREWER STOREFRONT, P.L.L.C.

By: /s/ Michael L. Smith

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2007, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorney of record who has consented in writing to accept this Notice as service of this document by electronic means:

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