

litigation (Cabrini LAC v. CHA, et al., 96 C 6949), which is still pending before him. Habitat became involved in that litigation for the limited purpose of seeing if the suit could be settled on terms that were acceptable to all the parties in that case (the CHA, the City, and the LAC) and to Habitat, which exercises the CHA's authority to build new, non-elderly public housing under this Court's 1987 Receivership Order. Despite numerous meetings in the last year, and mediation sessions chaired by Professor Rubinowitz as a court-appointed special master, no acceptable agreement has been reached. Habitat's current efforts to develop a redevelopment plan for Cabrini-Green, without the concurrence of the LAC, cannot contribute to the resolution of Judge Coar's case. Therefore, that justification for Habitat's efforts has evaporated. In the absence of a comprehensive settlement, Habitat's efforts to devise its own redevelopment plan under this Court's aegis can only impede the resolution of Judge Coar's case.

Second, Habitat has no other authority to embark on the broad task of making new plans for Cabrini-Green. The CHA applied for and received a HOPE VI grant for Cabrini-Green in 1993 and 1994; the City and the CHA together agreed to fold the Cabrini-Green HOPE VI redevelopment project into the larger Near North Redevelopment Initiative in 1996; CHA submitted an amended HOPE VI Revitalization Plan, and obtained HUD's approval, in 1997. The fate of Cabrini-Green raises Gautreaux issues only because there is a specific plan to build new, non-elderly public housing back on site, which means (a) that this Court must decide whether the site is a "revitalizing" area, and (b) that Habitat is responsible for the new construction under the Receivership Order. Nothing in the long history of the Gautreaux litigation, or the more recent history of redevelopment efforts at Cabrini-Green justifies Habitat's attempt to spearhead the entire Cabrini-Green planning process.

I. Habitat's Efforts To Develop A New Plan For Cabrini-Green Can Only Impede, Not Resolve, The Lawsuit Pending Before Judge Coar.

In 1996 and 1997, the Cabrini-Green LAC sued the CHA and the City to enjoin the implementation of a plan to demolish eight Cabrini-Green high-rises (and more than 1300 apartments) as part of a plan to "revitalize" Cabrini-Green and the surrounding area. (The Amended Complaint in Cabrini LAC v. CHA, et al., 96 C 6949, is attached hereto as Exhibit A; see ¶ 4.) The plan called for the construction of only 650-700 replacement public housing units, half of them reserved for families making 50% to 80% of area median income. (Id. ¶ 5.)¹ That is a figure far in excess of the median Cabrini family income. (Id. ¶ 40.) Thus, the plan contemplated eliminating 1000 units of housing for very low-income families. At the same time, it contemplated building 1000 new units of "market rate" housing, and several hundred units of "affordable" housing (i.e., homes for families earning 80% to 120% of AMI). (Id. ¶ 69.)

The LAC's complaint charged (inter alia) that this plan violated the Fair Housing Act because it had a disproportionately adverse effect on African-Americans, households headed by women, and children, and because it denied displaced black families the opportunity to live in an integrated neighborhood. The LAC also alleged that the plan violated the Civil Rights Act of 1964, the HOPE VI statute, HOPE VI grant requirements, the Uniform Relocation Act, the Housing and Community Development Act of 1974, and specific undertakings given by CHA to the residents. The LAC's complaint sought to enjoin implementation of the plan, not to require the construction of any specific number or type of replacement housing units. (Id. at pp. 45-48.)²

¹ The income requirement was later amended in CHA's 1997 HOPE VI Revitalization Plan to eliminate the requirement that half of the public housing units be set aside for families with incomes at 50% to 80% of AMI, and replace it with a requirement that half of the units be set aside for working families.

² One count (XIV) did ask for limited construction of units as an alternate form of relief, based on CHA's 1995 commitment not to demolish 1150-1160 N. Sedgwick before 262

If Judge Coar ordered all the relief the LAC sought, there would be nothing for Habitat as Receiver to do because all demolition of Cabrini-Green highrises would be halted, and no replacement units would be built until a proper plan was developed.

It is true that, when the parties sat down to try to settle Judge Coar's case, it became clear that the CHA and the City were willing to increase the number of new public housing units available to very low-income and welfare-to-work families, to do the development in phases, and to give the LAC a co-development role in the housing to be built on CHA land -- if the LAC dropped its objections to the Near North Redevelopment Initiative. The parties therefore negotiated the proposed consent decree, which did raise Gautreaux issues. The proposed consent decree, in turn, led to this Court's August 12, 1998 order and the prolonged but unsuccessful attempts to reach agreement with Habitat.

Those negotiations appear now to have ended unsuccessfully. The LAC has asked this Court to approve the plan the parties originally proposed, insofar as it raises Gautreaux issues, and to allow a developer other than Habitat to serve as the development manager. Habitat opposes the LAC's motion. The LAC has also asked the Court to involve itself in settlement negotiations, at least on a couple of discrete issues where its input would be helpful. That motion is pending and unresolved. If neither of those motions is granted, then the parties, Habitat, Judge Coar, and this Court will be -- or should be -- back where we began. The LAC will have to continue its litigation against the CHA and the City, recognizing that the CHA cannot make any commitments on new construction without Habitat's concurrence. Therefore, the chances that the litigation will produce an outcome that conflicts with Gautreaux are even less likely now than they were when Judge Coar first rejected CHA's argument that all the LAC's claims needed to be

replacement units for that building were built. Judge Coar enjoined the demolition of 1150-1160 N. Sedgwick, and so the alternative relief was never ordered. See Judge Coar's December 20, 1996 Order (Exhibit B hereto).

brought in the Gautreaux Court. See the decision on CHA's motion to dismiss the LAC's original complaint, 1997 U.S. Dist. LEXIS 625 at *42-*45 (Jan. 21, 1997) (Exhibit C hereto).

Accordingly, if this Court denies the LAC's waiver motion and declines the LAC's request to help the parties overcome particular obstacles to settlement, then it should also wait to see how Judge Coar's case is resolved, rather than involve itself or Habitat in further, unnecessary conflict.

Habitat's attempt to forge a new plan for Cabrini-Green invites such unnecessary conflict in several significant ways. First, Habitat proposes to devise its plan in conjunction with the City and the CHA, but without any involvement by the LAC. (Habitat Report at 3.) Such a strategy would violate HOPE VI, the terms of the HOPE VI grant, and Section 18 of the U.S. Housing Act, 42 U.S.C. § 1437p(b)(1), all of which call for "resident participation" in the planning process. "Resident participation" means more than presenting the residents with a plan that has been developed without their input. Second, Habitat intends to have a "Working Group" issue requests for proposals for the project, while CHA "take[s] steps" to demolish the three large high-rises on North Larrabee Street. (Habitat Report at 3-4.) That can only undermine the practical effect of the injunction Judge Coar has already entered, which prevents CHA from "taking any steps" to demolish the one building it already had on its demolition schedule "without further order of this Court." See Exhibit B (relating to 1150-1160 N. Sedgwick). This Court should not invite "checkerboard" demolition at Cabrini-Green.

In summary, the litigation the LAC brought nearly three years ago involves issues that are largely distinct from the issues in Gautreaux. The settlement negotiations that caused the two cases to collide are at an impasse. If that impasse persists, the litigation before Judge Coar should go forward. This Court has no reason to encourage Habitat's efforts to put forward a new plan for the redevelopment of the Cabrini-Green area, when such a plan can only undermine, not settle, Judge Coar's case.

II. Habitat's Status as CHA's Receiver Gives It No Authority To Propose Or Broker A New Plan For Cabrini-Green.

As court-appointed Receiver for CHA, Habitat is responsible for any new, non-elderly public housing CHA elects to construct at Cabrini-Green. Habitat is not responsible for consulting with public housing residents, conducting viability studies, deciding which public housing buildings will be demolished and on what timetable, setting relocation and readmission policies for displaced residents, deciding whether any public housing will be built back on site, receiving the federal funds allocated for HOPE VI demolition and community support efforts, or overseeing the expenditure of those funds. In other words, the Cabrini-Green redevelopment effort involves many aspects that have nothing to do with Gautreaux or with Habitat's role as Receiver. As a result, Habitat is not charged with the broad mission it proposes to undertake -- namely "advanc[ing] the process for redeveloping the Cabrini-Green area in the wake of the unsuccessful mediation" of Judge Coar's lawsuit (Habitat Report at 1) or laying out the guidelines under which Habitat "believes it is appropriate and desirable to proceed with the development process" (id. at 2).

Even if it had such broad authority (which it does not), Habitat would have no need to "report" to the Court on its efforts now, or to seek "instructions" about a plan that is, by Habitat's own admission, too amorphous to present in the usual way -- that is, by outlining the details that would justify seeking a waiver to allow specific numbers and types of public housing units to be built in identified "impacted" but "revitalizing" areas in and around Cabrini-Green. Habitat thinks this Court should not even consider the LAC's waiver motion, although it is based on the concrete proposal put forth a year ago by the City, the CHA, and the LAC; but Habitat

does not hesitate to ask the Court to put its seal of approval on Habitat's own inchoate plans.³ In effect, Habitat is asking this Court for an advisory opinion, which the Court should decline to give.

Conclusion

Last summer, when the parties were about to present their proposed consent decree for approval, first by Judge Coar and then by this Court, Habitat persuaded this Court to enjoin CHA from doing so, in part because Habitat did not want to find itself cast in the role of "naysayer." Now Habitat is trying to cast the LAC in that role, suggesting that the City, the CHA, and the Gautreaux plaintiffs are (or soon will be) ranged on Habitat's side in support of an as-yet-unspecified redevelopment proposal. Such "us versus them" rhetoric can only complicate what is already a difficult situation. If this Court cannot resolve the parties' disagreements by ruling on the LAC's waiver motion, or narrow the areas of disagreement by granting the LAC's

³ Habitat acknowledges that it does not yet have the concurrence of the City and CHA, but states that it will "promptly seek" their assent if the LAC's waiver motion is denied. (Habitat Report at 3.) Habitat also states that "[t]he Gautreaux plaintiffs are in accord with [its] approach." (Id.)

pending motion for a settlement conference, it should let the litigation before Judge Coar run its course. Habitat's Report and Request for Instructions should not be allowed to impede that process.

Dated: September 10, 1999

By: 

One of the Attorneys for the
Cabrini-Green Local Advisory
Council

Richard M. Wheelock
Lawrence D. Wood
Brenda Grauer
Diana White
LEGAL ASSISTANCE FOUNDATION
OF CHICAGO
111 West Jackson Blvd., 3rd Fl.
Chicago, IL 60604
312/341-1070

Robert D. Whitfield
LAW OFFICES OF ROBERT D. WHITFIELD
10 South LaSalle Street, Suite 1301
Chicago, IL 60603
312/917-8888

Stanley L. Hill
STANLEY HILL & ASSOCIATES
10 South LaSalle Street, Suite 1301
Chicago, IL 60603
312/ 917-8888

Lester L. Barclay
BARCLAY & DIXON
39 South LaSalle Street, Suite 900
Chicago, IL 60603
312/553-0123

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

CABRINI-GREEN LOCAL ADVISORY
COUNCIL,

Plaintiff,

v.

CHICAGO HOUSING AUTHORITY
("CHA"), an Illinois Municipal
Corporation; JOSEPH SHULDINER,
In His Official Capacity As
Executive Director of the CHA;
CITY OF CHICAGO, an Illinois
Municipal Corporation; and
RICHARD M. DALEY, In His
Official Capacity As Mayor of
the City of Chicago,

Defendants.

APR -3 1997

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

No. 96 C 6949

The Honorable David H. Coar
Complaint For Declaratory
and Injunctive Relief

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1. This is a civil rights action brought by the Cabrini-Green Local Advisory Council ("LAC") which represents all public housing residents of Cabrini Homes, Cabrini Extension and Green Homes (collectively referred to herein as "Cabrini-Green" or the "Cabrini-Green development") located on the north side of Chicago. Cabrini-Green is owned by defendant Chicago Housing Authority ("CHA") and is operated by defendant CHA and defendant Joseph Shuldiner, the CHA's Executive Director (collectively, "the CHA defendants" or "the CHA").

2. The complaint alleges that the CHA has worked with defendant City of Chicago ("City") and defendant Richard M. Daley

EXHIBIT

A

(collectively "the City defendants") to develop a plan to demolish 1,324 housing units at Cabrini-Green. The plan will, in effect, eliminate a thousand units of housing now desperately needed by impoverished families in Chicago, in clear disregard of the statutory and contractual rights of an entire community of poor families to have a meaningful voice in the decisions affecting their future. The clear effects of the defendants' actions in reducing affordable housing opportunities and increasing homelessness will be felt most acutely by African-Americans, women, and children.

3. On May 5, 1993, the CHA filed with the U.S. Department of Housing and Urban Development ("HUD") an application under the HOPE VI Urban Revitalization Demonstration Program for \$50 million to revitalize Cabrini-Green. The application called for the demolition of three residential buildings, totalling 660 units, and the renovation of another. Consistent with federal law concerning the displacement and dislocation of public housing residents that would be caused by the proposed redevelopment, the plan provided for one decent, safe, sanitary and affordable rental dwelling unit for each such unit that would be demolished. This one-for-one replacement plan was the highest priority for the LAC in its consultations with the defendants concerning the plan.

4. On June 27, 1996, after a series of meetings from which the LAC and any residents of Cabrini-Green were completely excluded, the City and CHA defendants radically changed the

original plan for redevelopment of Cabrini-Green, and entered into what is hereinafter referred to as "the new plan." The new plan increased to eight the number of residential buildings to be demolished, and to 1,324 the total number of rental units to be destroyed, all of which serve "very low-income" residents, defined as persons whose income is 0%-50% of the median area income.

5. Unlike the original plan, the new plan does not require one-for-one replacement of demolished units for very low income residents. Instead, it requires that only 325-350 units will be built to serve this population, a net loss of approximately 1000 very low-income rental units which will have a disproportionate impact on African-Americans, women, and children.

6. The LAC brings this action directly under the provisions of:

a. Title VIII of the Civil Rights Act of 1968, known as the Fair Housing Act, codified at 42 U.S.C. §§ 3601 et seq.,

b. Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000d, and

c. Title I of the Housing and Community Development Act of 1974, codified at 42 U.S.C. §§ 5301 et seq.

7. The LAC also sues under 42 U.S.C. § 1983 to enforce rights secured by:

a. Section 18 of the United States Housing Act of 1937, concerning Demolition and Disposition of Public Housing, codified at 42 U.S.C. § 1437p;

b. The Urban Revitalization Demonstration Program amendments to the United States Housing Act of 1937, known as the HOPE VI program, Pub. L. 102-389, Title II, 106 Stat. 1579, reprinted at 42 U.S.C. § 14371, note; and

c. The Uniform Relocation Assistance and Real Property Acquisition Policies For Federal and Federally Assisted Programs Act ("Uniform Relocation Act"), codified at 42 U.S.C. §§ 4601 et seq.

8. The LAC invokes the supplemental jurisdiction of this court to enforce its state law claims that the new plan violates:

a. the contractual agreements between the LAC and the CHA, entered into on May 28, 1993 and May 13, 1995, as well as other representations by the CHA relied upon by the LAC and its members, concerning the replacement of housing for Cabrini-Green residents who are to be displaced by implementation of the new plan, renovation of the Cabrini Lower North Community Center, and forcible relocation of residents prior to construction of replacement housing; and

b. the Community Development Block Grant agreement entered into between the City and HUD.

9. Plaintiff seeks an order declaring the new plan unlawful and seeks injunctive relief prohibiting its implementation.

II. JURISDICTION AND VENUE

10. This court has jurisdiction over plaintiff's claims under 28 U.S.C. §§ 1331 and 1367. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

III. PARTIES

Plaintiff Cabrini-Green LAC

11. Plaintiff Cabrini-Green Local Advisory Council is a tenant organization representing the residents of Cabrini-Green. The membership of the LAC is composed of lessees and authorized residents 18 years of age or older residing in the Cabrini-Green development. The LAC board is composed of elected representatives from each residential building in Cabrini-Green.

12. The purposes and powers, among others, of the LAC are:

- a. to act for and on behalf of the residents who live in the Cabrini-Green development;
- b. to improve the quality of life and resident satisfaction and participate in self-help initiatives to enable residents to create a positive living environment for families living in public housing;
- c. to take such steps or actions as may be necessary to effect change in rules, regulations, practices or policies of the CHA management if such rules, regulations, practices or policies are found to be unfair or inequitable to residents of the Cabrini-Green development;

d. to take such steps as may be necessary for protection of the life or property of residents of the Cabrini-Green development;

e. to engage in all activities as will promote the educational, cultural and economic welfare of the residents of the Cabrini-Green development; and

f. to negotiate, agree upon and execute contracts, agreements or other binding relationships, on behalf of the tenants of the development with the Chicago Housing Authority, other social agencies, and as otherwise deemed necessary and appropriate.

13. The CHA recognizes that the LAC represents the interests of current and former Cabrini-Green residents, especially as those interests relate to the redevelopment of Cabrini-Green, and, further, the CHA recognizes the LAC as the sole representative of the residents of Cabrini-Green, as required by federal regulation. See 24 C.F.R. § 964.18(a)(1).

14. Under federal housing statutes and regulations discussed infra, tenant organizations such as the LAC are to be afforded a meaningful opportunity to participate in the planning, development, implementation and monitoring of local urban revitalization programs, such as the plan for redevelopment of Cabrini-Green.

15. The LAC has acted as the organized advocate for residents and former residents of Cabrini-Green who have been displaced by demolition, rehabilitation or construction

activities at Cabrini-Green; is responsible to give such individuals a meaningful voice in and opportunity to participate in the planning and implementation of HOPE VI and other projects which are intended to revitalize public housing in the Cabrini Green area; is involved in efforts to prevent and address discrimination against Cabrini-Green residents; and works with residents and the CHA and other governmental entities to promote access to and retention of opportunities for residents to obtain safe, decent and affordable housing.

16. All the LAC board members are African-American and are very low-income.

Defendants Chicago Housing Authority and Joseph Shuldiner

17. Defendant CHA is an Illinois municipal corporation, created and existing under the Housing Authorities Act, 310 ILCS 10/1 et seq. The CHA is a Public Housing Agency ("PHA") within the meaning of 42 U.S.C. § 1437 and administers federally subsidized and assisted low-rent housing as authorized by the United States Housing Act and implementing federal regulations.

18. Defendant Joseph Shuldiner is the Executive Director of the CHA. He is charged with establishing and administering the policies of the CHA, including those relating to the daily operation, administration and maintenance of all public housing in the City of Chicago.

Defendants City of Chicago and Mayor Richard M. Daley

19. Defendant City of Chicago is a municipal corporation created and existing under the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.

20. Defendant Richard M. Daley is the Mayor of the City of Chicago. He is the City's chief executive officer and as such is responsible for establishing and administering the policies of the City of Chicago, including those policies relating to the redevelopment of the north side of the city surrounding and including Cabrini-Green.

IV. STATUTORY AND REGULATORY SCHEME

21. The United States Housing Act of 1937 (the "Act") declares that it is "the policy of the United States to promote the general welfare of the Nation by employing its funds and credit . . . to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of lower income" 42 U.S.C. §1437.

22. The national housing goal is the realization as soon as feasible of "a decent home and suitable living environment for every American family." 42 U.S.C. §§1441, 1441a; 12 U.S.C. §1701t.

23. Section 24 of the Act, 42 U.S.C. § 1437v, entitled "Revitalization of Severely Distressed Public Housing," authorizes the Secretary of the United States Department of Housing and Urban Development to make grants to public housing authorities to carry out "revitalization programs for severely

distressed public housing, including ... the redesign, reconstruction, or redevelopment of the severely distressed public housing development, including the site on which the development is located." 42 U.S.C. § 1437v(d)(2).

24. Section 24 of the Act also provides that:

For projects revitalized under this section, a public housing agency may select tenants pursuant to a local system of preferences, in lieu of selecting tenants pursuant to the preferences specified under Section 1437d(c)(4)(A)(i) of this title. Such local system shall be established in writing and shall respond to local housing needs and priorities as determined by the public housing agency. The public housing agency shall hold 1 or more public hearings to obtain the views of low-income tenants and other interested parties on the housing needs and priorities of the agency's jurisdiction.

§ 1437v(e)(2).

25. In October 1992, Congress created the Urban Revitalization Demonstration Program ("URD"), otherwise known as HOPE VI, which provides grants of up to \$50 million "to carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects to be administered by public housing agencies" Pub. L. 102-389, Title II, 106 Stat. 1579, reprinted at 42 U.S.C. § 1437l, note.

26. HOPE VI (42 U.S.C. § 1437l, note) provides, in pertinent part, that:

a. "each participating community shall submit a plan for program implementation which is consistent with the local comprehensive housing affordability strategy [now referred to as the "consolidated plan"] prepared pursuant to Section 105 of the

Cranston-Gonzalez National Affordability Housing Act [42 U.S.C. § 12705] and which has the approval of the local governing body";

b. funds may be used "for the replacement of public housing units pursuant to Section 18 of the Act [42 U.S.C. § 1437p]" and

c. "persons displaced by the reconstruction activities provided for herein shall be eligible for these replacement units."

27. Section 18 of the Act provides that:

a. no public housing project or portion thereof shall be demolished unless it can be demonstrated that it "is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes, and no reasonable program of modifications is feasible to return the project or portion of the project to useful life; or in the case of an application proposing the demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project" 42 U.S.C. § 1437p(a) (1);

b. any application from the public housing authority for the demolition of public housing must be "developed in consultation with tenants and tenant councils, if any, who will be affected by the demolition" 42 U.S.C. § 1437p(b) (1); and

c. "all tenants to be displaced as a result of the demolition or disposition will be given assistance by the public housing agency and are [to be] relocated to other decent, safe,

sanitary, and affordable housing, which is, to the maximum extent practicable, housing of their choice, including housing assisted under Section 1437f [known as the Section 8 Certificate housing program] of this title" 42 U.S.C. § 1437p(b)(2).

28. On March 29, 1993 HUD issued a notice of funding availability for the HOPE VI program which requires participating PHAs to "develop a process which assures that residents are fully briefed and meaningfully involved in developing, implementing, and monitoring the urban revitalization program." 58 FR 16593.

29. Title VIII of the Civil Rights Act of 1968 ("The Fair Housing Act"), 42 U.S.C. §§ 3601 et seq., provides that:

a. "it shall be unlawful . . . [t]o . . . make unavailable or deny . . . a dwelling to any person because of race, color, . . . sex, [or] familial status" 42 U.S.C. § 3604(a); and

b. "it shall be unlawful . . . [t]o discriminate against any person in the terms, conditions, or privileges of . . . rental of a dwelling, or in the provision of services of facilities in connection therewith, because of race, color, [or] familial status" 42 U.S.C. § 3604(b).

30. Title VI of the Civil Rights Act of 1964 provides that "[n]o person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

31. The U.S. Department of Housing and Urban Development (HUD) has promulgated regulations implementing Title VI which are set forth at 24 C.F.R. Part 1. Those regulations provide, in pertinent part, that:

A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of person to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin.

24 C.F.R. § 1.4(b)(2) and (3) (emphasis added).

32. The Uniform Relocation Act, and its implementing regulations, provide as follows:

a. A displacing agency, before approving a project, must assess the characteristics and needs of the households to be displaced, 42 U.S.C. § 4625(c)(1), 49 C.F.R. § 24.205(c)(2)(i), and determine whether qualified replacement housing is available to meet those needs. 49 C.F.R. § 24.205(a)(2), 24 C.F.R. § 970.8(d)(3); HUD Handbook 1378, ¶ 2-2(e).

b. The displacing agency shall assure that a person not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling. 42 U.S.C. § 4625(c)(3). Comparable replacement housing is defined as housing that is decent, safe and sanitary, adequate in size to accommodate the occupants, within the

financial means of the displaced person, functionally equivalent, in an area not subject to unreasonable adverse environmental conditions, and in a location generally not less desirable than the location of the dwelling from which the person is being displaced with respect to public utilities, facilities, services, and the displaced person's place of employment. 42 U.S.C. § 4601(10).

c. Wherever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. 49 C.F.R. § 24.205(c)(2)(C); HUD Handbook 1-29(c)(3).

33. The Community Development Block Grant ("CDBG") Program was created pursuant to Title I of the Housing and Community Development Act ("HCDA"), as amended, codified at 42 U.S.C. §§ 5301 et seq. The primary objective of the HCDA is "the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 42 U.S.C. § 5301(c). For purposes of the HCDA, "low income" is defined as 0 to 50% of median area income, and "moderate income" is defined as 50 to 80% of median area income. 24 C.F.R. § 570.3.

34. In any development project assisted under the CDBG Program, the grant recipient must have a residential

antidisplacement and relocation assistance plan that provides, among other things, that:

- a. "governmental agencies or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low and moderate income dwelling units demolished or converted to a use other than for housing for low and moderate income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under section 1437f of this title." 42 U.S.C. § 5304(d)(2)(A)(i).
- b. "such comparable replacement dwellings shall be designed to remain affordable to persons of low and moderate income for 10 years from the time of initial occupancy." 42 U.S.C. § 5304(d)(2)(A)(ii).
- c. "in the case of displaced persons of low and moderate income, provide . . . compensation sufficient to ensure that, for a 5-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds 30 percent." 42 U.S.C. § 5304(d)(2)(A)(iii)(I)
- d. "persons displaced shall be relocated into comparable replacement housing that is--
 - (I) decent, safe and sanitary;
 - (II) adequate in size to accommodate the occupants;
 - (III) functionally equivalent;
 - (IV) in an area not subject to unreasonably adverse environmental conditions." 42 U.S.C. § 5304(d)(2)(A)(iv).

35. The HCDA provides that "[n]o person in the United States shall on the ground of race, color, . . . or sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part with funds made available under [the CDBG Program]." 42 U.S.C. § 5309(a).

36. Federal regulations promulgated pursuant to the HCDA provide that:

A recipient may not use criteria or methods of administration which have the effect of subjecting persons to discrimination on the basis of race, color, religion, national origin, or sex

A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds under this part, may not make selections of such site or location which have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, religion, national origin, or sex

24 C.F.R. § 570.602(b)(2) & (3).

37. The HCDA provides that the CDBG grant "will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C.A. § 2000a et seq.] and the Fair Housing Act [42 U.S.C.A. § 3601 et seq.], and the grantee will affirmatively further fair housing." 42 U.S.C. § 5304(b)(2).

38. Upon information and belief, the City has entered into a grant agreement with HUD for the receipt of CDBG monies ("CDBG grant contract") which incorporates the statutory and regulatory obligations of the HCDA set forth in 42 U.S.C. § 5309(a), (b) & (d) and 24 C.F.R. § 570.602(b)(2) & (3).

V. STATEMENT OF FACTS

39. HUD establishes income limits for very low-income and low-income families under the Act. The definition of "very low-income" is 0 to 50 per cent of the median income of the area, and the definition of "low-income" is 50 to 80 per cent of the median income for the area. The income limit for a very low-income

family of four (4) for Chicago, IL is \$27,050 per year. The income limit for a low-income family of four (4) for Chicago, IL is \$41,600.

40. Cabrini-Green is a family public housing development which contains 3606 dwelling units. Approximately 6,000 residents live in the development with an average annual per capita income of \$2,379 as of May 1993. The average household size is 2.9 persons. Therefore, virtually all families residing in Cabrini-Green are very low-income (0 - 50% of median area income).

41. Approximately 94% of the heads of households at Cabrini-Green are African-American.

42. Approximately 63% of the residents of Cabrini-Green are female and 56% of the residents are 19 years of age or younger.

43. In fall of 1992 the CHA vacated the buildings located at 1117-1119 N. Cleveland (272 units) and 1157-1159 N. Cleveland (136 units). Before the buildings were vacated, approximately 40 families resided at 1117 - 1119 N. Cleveland and approximately 65 families resided at 1157 - 1159 N. Cleveland.

The CHA Applies For HOPE VI Grant

44. On May 5, 1993, the CHA filed with HUD an application under the HOPE VI Program ("original HOPE VI application") for \$50 million to revitalize the Cabrini-Green development. CHA proposed to demolish three buildings, 1117-1119 N. Cleveland (262 units), 1150-60 N. Sedgwick (262 units) and 1157-1159 N. Cleveland (136 units), for a total loss of 660 units. See map of

Cabrini Extension, attached hereto as Exhibit A. CHA proposed to replace the 660 units on a one-for-one basis with 493 new construction public housing units and 167 Section 8 Certificates. The HOPE VI grant would fund 303 of the new construction units, and public housing development grants would fund the balance of the new construction units. The CHA also proposed to renovate 1158 N. Cleveland (65 units) at a cost of \$5.7 million and the Cabrini Lower North Community Center ("community center").

45. At the time the CHA submitted its original HOPE VI application to HUD, 229 families resided in 1150-1160 N. Sedgwick, 52 families resided in 1158 N. Cleveland, and no one resided in the other two buildings.

The CHA Agrees To Negotiate With The LAC

46. On May 28, 1993 the CHA and plaintiff entered into a Memorandum of Agreement which provided, among other things, that:

- a. "Subject to HUD regulations, waiver requests and Federal Court guidelines under Gautreaux as detailed in the [HOPE VI] application, the preferences for housing options made available or created by this [HOPE VI] grant shall be as follows in order of priority:
 - a. Those leaseholders to be displaced by the rehabilitation or demolition of their current housing;
 - b. Those families who are leaseholders in the Cabrini-Green complex as of the date of application of the [HOPE VI] Grant, May 5, 1993;
 - c. All other public housing eligible families."
- b. "Residents impacted by the rehabilitation and demolition of the Cabrini Extension will be provided relocation opportunities within the general planning area [defined as North Avenue to the north, Wells Street to the east, Chicago

Avenue to the south, and the north branch of the Chicago River to the west]."

- c. "The CHA is committed to the rehabilitation and expansion of the Cabrini Lower North Community Center as described on pages 63 and 64 of the draft application. ... Should the CHA be unable to obtain funding, either public or private, to fill the Four Point One Million (\$4,100,000.00) Dollar shortfall budgeted for the expansion and rehabilitation of the Cabrini Lower North Community Center, the C.H.A covenants to provide the funds to meet said shortfall."
- d. "The C.H.A. agrees to meet with the L.A.C. and its chosen Counsel at the earliest possible time for the purpose of developing a 'master-plan' covering all subsequent phases of the area development; including but not limited to commercial development, rehabilitation of physical plant, economic opportunities for residents and re-design requirements."
- e. "All parties hereto agree that this memorandum of agreement does not reflect all the issues outstanding between the parties, and that all subsequent issues shall be negotiated in a timely manner by the parties, recognizing that the welfare of the residents and the revitalization of the Cabrini-Green area are the primary concerns of all parties."

This agreement remains in full force and effect, and is a contract between the LAC and the CHA. A true copy of the Memorandum of Agreement is attached hereto as Exhibit B.

47. On August 11, 1993, in connection with its HOPE VI application the CHA filed with HUD its application to demolish 1117-1119 N. Cleveland. In its demolition application CHA submitted a replacement housing plan for the 262 units targeted for demolition. CHA proposed that the replacement units be funded through a combination of two HUD funding sources: 190

units through the Public Housing Development Program and the remaining 72 units through the HOPE VI Program.

48. On November 19, 1993, HUD approved CHA's HOPE VI grant application for \$50 million. However, HUD conditioned disbursement of the grant funds upon CHA's submission of an approvable demolition application and replacement housing plan.

49. On November 14, 1994 HUD and CHA signed a HOPE VI grant agreement which required CHA to file within 120 days a revised revitalization plan for the Cabrini-Green development and within 180 days a supplemental replacement housing plan, subject to approval by HUD.

50. On March 1, 1995, HUD approved CHA's request to demolish 1117-1119 N. Cleveland, provided that the HOPE VI grant would fund 72 of the 262 replacement units. In approving the application for demolition, HUD agreed to provide public housing development funding for the remaining 190 replacement units.

51. On March 13, 1995, CHA, through its Chairman, Vincent Lane, agreed in writing with the plaintiff that (1) the residents of 1150-1160 N. Sedgwick would not be relocated and the building would not be demolished until replacement housing was built on existing CHA-controlled land, and (2) 1158 N. Cleveland would be vacated for rehabilitation. That understanding is hereinafter referred to as the "March 13, 1995 Agreement."

52. On March 15, 1995, CHA submitted to HUD the "HOPE VI Revised Plan To Revitalize Cabrini-Green" ("Revised Plan") which included a replacement housing plan. As in CHA's original HOPE

VI application, CHA proposed to demolish 660 units to be replaced by 493 new construction public housing units and 167 Section 8 Certificates.

53. By letter dated May 15, 1995 from HUD to CHA, HUD refused to either approve or deny CHA's Revised Plan.

54. On May 18, 1995, in connection with its HOPE VI application the CHA filed with HUD its application to demolish 1150-1160 N. Sedgwick and 1157-1159 N. Cleveland, for a total of 398 units. In its demolition application CHA submitted a replacement housing plan providing for one-for-one replacement for the 398 demolished units. CHA proposed that of the 398 replacement units, up to 167 units would be Section 8 Certificates and the balance, 231 units, would be new construction units funded by HOPE VI.

55. On or about May 30, 1995 the CHA Board, including its chairman, Vince Lane, resigned and HUD took over administrative control of CHA, installing Joseph Shuldiner, HUD's Assistant Secretary for Public and Indian Housing, as the CHA's acting head.

56. On June 23, 1995 HUD approved the demolition of 1157-59 N. Cleveland and 1150-60 N. Sedgwick, totaling 398 units. HUD's approval was based, in part, on CHA's proposal to replace the 398 units on a one-for-one basis. To replace the 398 units, HUD approved 231 new construction units to be funded by HOPE VI and 167 Section 8 Certificates.

57. In 1995 the CHA demolished 1117-1119 N. Cleveland and 1157-1159 N. Cleveland.

58. On October 17, 1995 Joseph Shuldiner resigned his position as HUD's Assistant Secretary for Public and Indian Housing and assumed the position of Executive Director of the CHA.

59. On or about October 20, 1995, the CHA issued through its agent, The Habitat Company, a "Request For Proposals - Step Two and Developer's Packet For The Planning, Design & Development of Mixed Income Housing For The Cabrini HOPE VI Urban Revitalization Demonstration Program" ("RFP"). The RFP solicited proposals for the planning, design, construction, and development of 493 housing units for families eligible for public housing plus additional market rate units to be constructed and financed separately, all in a mixed-income development. The purpose of the RFP was to assist the CHA in developing a replacement housing plan, which would be submitted to HUD for its approval, for the 660 units to be demolished at 1117-1119 N. Cleveland (262 units), 1150-1160 N. Sedgwick (262 units) and 1157-1159 N. Cleveland (136 units). All proposals were due on or before December 20, 1995.

The City Becomes Involved

60. On November 15, 1995 the City submitted its 1995 Consolidated Plan/Action Plan ("Consolidated Plan") to HUD. The Consolidated Plan replaced the Comprehensive Housing Affordability Strategy mandated under the Section 105 of the Cranston-Gonzalez National Affordability Housing Act. Local

governments receiving federal funds from HUD are required to submit a comprehensive plan or update that presents the local government's community development priorities and strategies.

61. The City's Consolidated Plan included the following priorities, including, among others, specific strategies to implement those priorities:

- a. "Serve the Full Range of Constituencies Among Low- and Moderate-income Populations.
Coordinate affordable housing activities with new CHA initiatives to improve public housing and the quality of life for low-income public housing residents [defined as persons earning 0-50% median family income] by creating stable communities that not only provide decent shelter but also social and economic opportunities for residents"
- b. "Promote Community Revitalization and Stability through a Range of Development Activities.
Place primary emphasis on the preservation of affordable housing units and rehabilitation of existing housing stock"
- c. "Provide for Special Needs Populations.
Increase the supply and availability of resources to address the needs of Chicago's homeless population"

62. In January 1996 the CHA created the HOPE VI Development Screening Committee ("screening committee"), an advisory committee whose role was to make recommendations to the CHA regarding development proposals submitted pursuant to the RFP. The screening committee was composed of four Cabrini-Green residents appointed by the plaintiff, two community representatives, a City representative, and two CHA representatives. The screening committee was chaired by a representative of The Habitat Company.

63. The CHA and The Habitat Company convened the screening committee on three occasions: January 26, 1996, February 3, 1996, and February 22, 1996.

LAC Is Excluded From The Planning Process For The Redevelopment of Cabrini-Green

64. Between early March 1996 and the end of June 1996, the CHA and the City held a series of closed-door meetings to create their own plan for the redevelopment of Cabrini-Green. Neither the CHA nor the City invited plaintiff or any resident of Cabrini-Green to attend those meetings. When plaintiff became aware of the meetings, plaintiff requested that its representatives be allowed to attend and participate. The City, through Roseanna Marquez, the Director of Programs of the Office of the Mayor, refused plaintiff's request, and the CHA agreed to meet with the City without plaintiff.

The City And The CHA Unveil Their Plan.

65. The closed meetings between the CHA and the City culminated in a joint press conference held on June 27, 1996 where the CHA and the City unveiled their new redevelopment plan for Cabrini-Green. Under this new plan, eight buildings totalling 1324 units will be demolished, rather than just the three buildings (660 units total) called for under the original HOPE VI application.

Buildings To Be Demolished	Height	Total Units
1015-1017 N. Larrabee	10 stories	136
1121 N. Larrabee	7 stories	65
1159-1161 N. Larrabee	10 stories	136
500-502 N. Oak	7 stories	262
*1117-1119 N. Cleveland	19 stories	262
*1157-1159 N. Cleveland	10 stories	136
*1150-60 N. Sedgwick	19 stories	262
1158 N. Cleveland	7 stories	65

Total Units: 1324

* Buildings targeted for demolition under original HOPE VI application.

66. In exchange for additional land owned or controlled by the City to assist in building the 493 public housing units under the original HOPE VI application, including the 303 funded by the HOPE VI grant, the CHA agreed with the City to demolish five more buildings in addition to the three planned under the original HOPE VI application.

67. Unlike the one-for-one replacement plan under the original HOPE VI application, the new plan will replace only 650 to 700 of the 1324 public housing units. Of the 650 to 700 replacement units, only 325 to 350 will be available for very low-income (those with incomes of 0-50% of median area income) public housing residents, resulting in a net loss of approximately 1000 very low-income public housing units.

68. Three hundred three (303) of the replacement units will be funded under the HOPE VI grant.

69. Under the new plan, over 2000 units of housing will be built on land currently owned by private developers, the City or the CHA, of which:

- a. 50% will be market rate units;
- b. 20% will be for persons earning up to 120% of median area income;
- c. 15% will be for persons earning 50-80% of median area income; and
- d. only 15% will be for very low-income public housing residents.

70. Upon information and belief, the City has used CDBG funds in developing the new plan and will fund, in part, the implementation of the new plan with monies received through the Community Development Block Grant Program.

71. At least 926 occupied and vacant occupiable very low income units will be demolished as part of the new plan.

72. Approximately 780 families either have been displaced or will be displaced ("displaced families") from the eight buildings designated for demolition under the new plan.

The New Plan Adversely Impacts African-Americans, Women, and Children

73. The net loss of approximately 1000 units of public housing for very low-income persons will have a disproportionate impact upon African-Americans, female-headed households, and children. This is due to the fact that these groups are disproportionately eligible for public housing as compared to

their representation in the general population. According to the 1990 Census in the City of Chicago:

a. African-American households constitute 63% of the households living below the poverty level, but only 35% of all households.

b. Female-headed households constitute 66% of the households living below the poverty level, but only 31% of all households.

c. Related children under the age of 18 constitute 40% of the people living below the poverty level, but only 26% of the general population.

The New Plan Violates CHA's Promise To Renovate 1158 N. Cleveland And Community Center

74. One of the buildings designated for demolition is 1158 N. Cleveland, which was designated for renovation under the original HOPE VI application.

75. In reliance upon the CHA defendants' promise to renovate 1158 N. Cleveland, the families residing in that building voluntarily moved out. Said reliance was reasonable and justified, and expected and foreseeable by the CHA defendants.

76. The last family moved out of 1158 N. Cleveland on July 26, 1996.

77. By letter dated September 9, 1996, the CHA submitted to HUD its application to demolish 1158 N. Cleveland. In its demolition application, the CHA asserted that the building's obsolete physical condition makes it unusable for housing purposes, and no reasonable program of modifications is feasible

to return the building to useful life. The CHA further asserted that the cost of rehabilitation of the building would be \$7.02 million. However, in its original HOPE VI application the CHA argued that the building was not obsolete and could be rehabilitated for \$5.7 million.

78. The CHA defendants have failed to relocate all the families who resided at 1158 N. Cleveland to comparable units which are in decent, safe and sanitary condition and are located in the HOPE VI general planning area.

79. Unlike the original HOPE VI application, the new plan does not provide for the renovation of the community center.

The New Plan Violates CHA's Promise To Build Replacement Housing Prior To The Vacating and Demolition of 1150-1160 N. Sedgwick

80. At meetings with representatives of the plaintiff during the summer of 1996, the CHA through Joseph Shuldiner stated that it would require all tenants to vacate 1150-1160 N. Sedgwick before the onset of winter and that it would issue 90-day notices to vacate to current residents.

81. None of the new replacement units announced under the new plan will be built prior to the vacating and demolition of 1150-1160 N. Sedgwick.

82. On September 23, 1996, the CHA served the families residing in 1150-1160 N. Sedgwick with 90-day notices to vacate.

83. The CHA removed all the remaining families residing at 1150-1160 N. Sedgwick in early 1997.

84. The CHA defendants failed to relocate all the families who resided to comparable units which are in decent, safe and

sanitary condition and are located in the HOPE VI general planning area.

VI. INJURY TO THE PLAINTIFF AND ITS MEMBERS

85. The defendants' actions complained of herein will cause and have caused irreparable injury to the LAC in that:

a. defendants have denied the LAC participation in the planning process that produced the new plan, which provides for the demolition of residential units and the relocation and provision of permanent housing for those displaced; and

b. the LAC has been forced to divert its limited resources from its other organizational purposes and goals and direct these resources to discovery of and discussions about defendants' new plan, to advocacy against the new plan, to monitoring the defendants' implementation of the new plan as it pertains to the demolition of Cabrini-Green buildings and the displacement of Cabrini-Green residents, to informing its members about the new plan and how it would affect Cabrini-Green residents, and to initiating this litigation to redress the lost opportunity to participate in the formulation and implementation of the new plan.

86. Many of the LAC's members, all of whom are Cabrini-Green residents, will suffer irreparable injury because of the actions complained of herein, including destruction of the community in which they have lived and established personal ties. Many LAC members will lose their homes, will suffer displacement,

will be denied eligibility to reside in the replacement housing currently proposed by the defendants, and/or will be denied the opportunity to reside in units targeted for demolition. By initiating this suit, the LAC seeks to further its purposes and protect the interests of these LAC members.

87. LAC members have been irreparably injured in that the CHA defendants have used a closed-door process, which excluded LAC members, to promulgate a plan for the redevelopment of Cabrini-Green, thereby effectively denying the resident consultation and participation which are required by HOPE VI, Section 18 of the Act, and the Memorandum of Agreement.

88. At all times relevant to this action, the defendants have been aware that the LAC represents the interests of African-American households, female-headed households, and households with children who meet the definition of very low income.

89. In their closed-door meetings, the defendants developed a plan which changes the Cabrini-Green area from a very low-income public housing area to a "mixed income community," which they believe will revitalize the area. Defendants' plan contemplates supplanting most of the current very low-income households, virtually all of whom are African-American, with households earning at least 50% of the median area income, the majority of which will consist of non-African-Americans who have never lived in Cabrini-Green before.

90. At all times relevant to this action, the defendants have been aware of the fact that the adverse impact of their

decision to permanently eliminate approximately 1000 units of housing for families of very low income would fall predominately upon African-American households, female-headed households, and families with children, many of whom are LAC members. Therefore, despite their stated intentions to "revitalize" the Cabrini-Green area, the defendants will disproportionately exclude low income African-Americans, female-headed households, and children under the age of 18 from the benefits of federally-supported safe, decent and affordable housing in the Cabrini-Green area and in the City of Chicago.

91. Plaintiff has no adequate remedy at law.

VII. CLAIMS FOR RELIEF AGAINST ALL DEFENDANTS

Claims Under Title VIII of the Civil Rights Act of 1968
- The Fair Housing Act

COUNT I

92. The new plan, which will result in the net loss of approximately 1000 public housing units that serve persons with very low incomes, will have a disproportionately adverse impact upon African-Americans and therefore constitutes a violation of the Fair Housing Act, 42 U.S.C. § 3604(a), which provides in part that "it shall be unlawful . . . [t]o make unavailable or deny . . . a dwelling to any person because of race"

COUNT II

93. The new plan, which will result in the net loss of approximately 1000 public housing units that serve persons with very low incomes, will have a disproportionately adverse impact

upon women and therefore constitutes a violation of the Fair Housing Act, 42 U.S.C. § 3604(a), which provides in part that "it shall be unlawful . . . [t]o make unavailable or deny . . . a dwelling to any person because of . . . sex"

COUNT III

94. The new plan, which will result in the net loss of approximately 1000 public housing units that serve persons with very low incomes, will have a disproportionately adverse impact upon children and therefore constitutes a violation of the Fair Housing Act, 42 U.S.C. § 3604(a), which provides in part that "it shall be unlawful . . . [t]o make unavailable or deny . . . a dwelling to any person because of . . . familial status"

COUNT IV

95. The new plan, which provides that 50% of the 650 to 700 replacement public housing units will not be available to very low income public housing residents, will deny over 50% of the displaced families, all of whom are African-American, replacement housing in a racially integrated neighborhood, and therefore the new plan constitutes a violation of the Fair Housing Act, 42 U.S.C. § 3604(a) & (b).

Claim under Title VI of the Civil Rights Act of 1964

COUNT V

96. The new plan, which will result in the net loss of approximately 1000 public housing units that serve persons with very low incomes, will have a disproportionately adverse impact

upon African-Americans and therefore violates the plaintiff's rights secured by Title VI, which provides that "[n]o person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

VIII. CLAIMS FOR RELIEF AGAINST THE CHA DEFENDANTS ONLY

Claims Under Section 1983 and HOPE VI

COUNT VI

97. The defendants are each "persons" within the meaning of 42 U.S.C. § 1983, and their actions described herein were taken under color of state law. HOPE VI and the Revitalization of Severely Distressed Public Housing Program, 42 U.S.C. § 1437v(d)(2), provide for grants for the "revitalization" of public housing communities. Under the defendants' new plan, approximately 1000 units of very low-income public housing will be permanently lost and 50% of the displaced families will be ineligible for newly constructed replacement housing. As such, the new plan violates HOPE VI (42 U.S.C. § 1437l, note) and 42 U.S.C. § 1437v(d)(2) because the plan would result in the dismantling and relocation, rather than the revitalization, of the Cabrini-Green development.

COUNT VII

98. The defendants are each "persons" within the meaning of 42 U.S.C. § 1983, and their actions described herein were taken under color of state law. The defendants' new plan, which will result in the net loss of approximately 1000 public housing units that serve persons with very low incomes, is inconsistent with the City's Consolidated Plan, described in ¶ 61, supra, to preserve affordable housing units. Therefore the new plan violates HOPE VI (42 U.S.C. § 1437l, note) which requires that plans developed under HOPE VI be consistent with the Consolidated Plan.

COUNT VIII

99. The defendants are each "persons" within the meaning of 42 U.S.C. § 1983, and their actions described herein were taken under color of state law. The defendants' new plan, which provides that 50% of the replacement public housing units will not be available to very low-income public housing residents, is inconsistent with the City's Consolidated Plan, described in ¶ 61, supra, that provides for new CHA initiatives that improve the quality of life for very low-income public housing residents. Therefore the new plan violates HOPE VI (42 U.S.C. § 1437l, note) which requires that plans developed under HOPE VI be consistent with the Consolidated Plan.

Claims under Section 1983 and Section 18 of the Act

COUNT IX

100. The defendants are each "persons" within the meaning of 42 U.S.C. § 1983, and their actions described herein were taken under color of state law. As described in ¶¶ 64-71, supra, the defendants failed to meaningfully consult with plaintiff in developing the new plan in violation of Section 18 of the Act, 42 U.S.C. § 1437p(b)(1), and the HOPE VI grant requirements described in ¶ 26, supra.

Claim under Section 1983 and Section 24 of the Act

COUNT X

101. The defendants are each "persons" within the meaning of 42 U.S.C. §1983, and their actions described herein were taken under color of state law. The new plan to create a local preference whereby 325-350 replacement public housing units will be available only for families making 50-80% of median income without first holding one or more public hearings to obtain the views of low-income tenants and other interested parties on the housing needs and priorities of the CHA constitutes a violation of Section 24 of the Act, § 1437v(e)(2).

Claim under Section 1983 and the Uniform Relocation Act

COUNT XI

102. The defendants are each "persons" within the meaning of 42 U.S.C. § 1983, and their actions described herein were taken

under color of state law. With respect to defendants' relocation efforts of families residing in 1158 N. Cleveland and 1150-60 N. Sedgwick, described in ¶¶ 77 & 83, supra, the defendants have violated the Uniform Relocation Act and regulations promulgated thereunder by:

a. failing to adequately assess the needs and preferences of the displaced families. 42 U.S.C. § 4625(c)(1); 49 C.F.R. § 24.205(c)(2)(i);

b. failing to give the displaced families reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an areas of African-American concentration, that are within their financial means. 49 C.F.R. § 24.205(c)(2)(C); HUD Handbook 1-29(c)(3).

c. failing to provide the displaced families comparable replacement housing, including housing that is decent, safe and sanitary. 42 U.S.C. §§ 4625(c)(3), 4630(3); 49 C.F.R. § 24.2(d) & (f).

Contractual Claims

COUNT XII

103. As described in ¶¶ 64-71, supra, the defendants failed to meet and negotiate with the plaintiff in developing the new plan, thereby breaching the Memorandum of Agreement, described in ¶ 46, supra.

COUNT XIII

104. Under the new plan the HOPE VI grant will fund 303 replacement units, 50% of which will not be available to very

low-income public housing residents. Consequently, the former very low-income residents of 1150-1160 N. Sedgwick (229 families) and 1158 N. Cleveland (52 families), totalling two hundred eighty-one (281) families, as well as all other resident families of Cabrini-Green, will be ineligible for one half of the replacement housing. The new plan therefore violates the Memorandum of Agreement, described in ¶ 46(a), supra, entered into between the parties which provides for the following priority ranking for the HOPE VI replacement housing:

- a. Those leaseholders to be displaced by the rehabilitation or demolition of their current housing;
- b. Those families who are leaseholders in the Cabrini-Green complex as of the date of application of the [HOPE VI] Grant, May 5, 1993;
- c. All other public housing eligible families.

COUNT XIV

105. Defendants actions, as described in ¶¶ 79-83, supra, to forcibly relocate the residents of 1150-1160 N. Sedgwick and demolish said building prior to the construction of replacement housing constitute a breach of the March 13, 1995 Agreement, described in ¶ 51, supra.

COUNT XV

106. As described in ¶¶ 77 & 83, supra, the defendants failed to provide families displaced from 1158 N. Cleveland and 1150-60 N. Sedgwick with relocation opportunities within the general planning area, thereby breaching the Memorandum of Agreement, described in ¶ 46(b), supra.

COUNT XVI

107. The new plan fails to provide for the renovation of the community center and therefore violates the Memorandum of Agreement, described in ¶ 46(c), supra.

COUNT XVII

108. Defendants actions, as described in ¶¶ 73-77, supra, to demolish, rather than renovate, 1158 N. Cleveland, constitute a breach of the March 13, 1995 Agreement, described in ¶ 51, supra.

Promissory Estoppel

COUNT XVIII

109. As described in ¶¶ 44, 51, 73-76, supra, the defendants promised to rehabilitate 1158 N. Cleveland and to allow the families residing in that building to return after the work was completed. The families detrimentally relied upon this promise and moved out of 1158 N. Cleveland. Therefore, defendants are now estopped from demolishing, rather rehabilitating, 1158 N. Cleveland.

IX. CLAIMS FOR RELIEF AGAINST THE CITY DEFENDANTS ONLY

Claims under Title I of Housing and Community
Development Act of 1974

COUNT XIX

110. The new plan, which will result in the net loss of approximately 1000 public housing units that serve persons with very low incomes, will have a disproportionately adverse impact upon African-Americans and therefore violates the plaintiff's

rights secured by the HCDA (including regulations promulgated thereunder at 24 C.F.R. § 570.602(b)(2) & (3)), which provides that "[n]o person in the United States shall on the ground of race [or] color . . . be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part with funds made" available under [the CDBG Program]". 42 U.S.C. § 5309(a).

COUNT XX

111. The new plan, which will result in the net loss of approximately 1000 public housing units that serve persons with very low incomes, will have a disproportionately adverse impact upon women and therefore violates the plaintiff's rights secured by the HCDA (including regulations promulgated thereunder at 24 C.F.R. § 570.602(b)(2) & (3)) which provides that "[n]o person in the United States shall on the ground of . . . sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part with funds made available under [the CDBG Program]". 42 U.S.C. § 5309(a).

COUNT XXI

112. The new plan, which provides that 50% of the 650 to 700 replacement public housing units will not be available to very low income public housing residents, will deny over 50% of the displaced families, all of whom are African-American, replacement housing in a racially integrated neighborhood, and therefore the new plan constitutes a violation of the HCDA, 42 U.S.C. §

5309(a), and regulations promulgated thereunder at 24 C.F.R. § 570.602(b)(2) & (3) prohibiting discrimination on the basis of race and color.

COUNT XXII

113. The new plan, which will (a) result in the loss of over 1000 public housing units that serve persons with very low incomes who are predominately African-American, female heads of household, and children and (b) deny over 50% of the displaced families, all of whom are African-American, replacement housing in a racially integrated neighborhood, is a violation of the HCDA which requires the City defendants, as a CDBG grantee, to affirmatively further fair housing. 42 U.S.C. § 5304(B)(2).

COUNT XXIII

114. The new plan provides for only 650 to 700 very low income and low income replacement housing units. The new plan therefore fails to provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable very low and low income dwelling units demolished in violation of 42 U.S.C. § 5304(d)(2)(A)(i).

COUNT XXIV

115. The new plan provides for only 325 to 350 very low income replacement housing units, whereas the number of families displaced by the plan far exceeds that number. Therefore, the plan violates 42 U.S.C. § 5304(d)(2)(A)(i) & (iv) which requires

that the displaced families shall be relocated to comparable replacement housing within the same community.

Contractual Claims

COUNT XXV

116. Plaintiff is one of the intended beneficiaries of the CDBG grant contract between the City and HUD.

117. The new plan, which will result in the net loss of approximately 1000 public housing units that serve persons with very low incomes, will have a disproportionately adverse impact upon African-Americans and female-headed households. Therefore, the new plan breaches the CDBG grant contract between the City and HUD which incorporates the HCDA's statutory and regulatory obligations set forth in 42 U.S.C. § 5309(a) and 24 C.F.R. § 570.602(b)(2) & (3) prohibiting discrimination on the basis of race, color, and sex.

118. The breaches of the CDBG grant contract set forth above are material and are the proximate cause of injury to the plaintiff.

COUNT XXVI

119. Plaintiff is one of the intended beneficiaries of the CDBG grant contract between the City and HUD.

120. The new plan, which provides that 50% of the 650 to 700 replacement public housing units will not be available to very low-income public housing residents, will deny over 50% of the displaced families, all of whom are African-American, replacement housing in a racially integrated neighborhood. Therefore, the

new plan breaches the CDBG grant contract between the City and HUD which incorporates the HCDA's statutory and regulatory obligations set forth at 42 U.S.C. § 5309(a) and 24 C.F.R. § 570.602(b)(2) & (3), prohibiting discrimination based on race and color.

121. The breaches of the CDBG grant contract set forth above are material and are the proximate cause of injury to the plaintiff.

COUNT XXVII

122. Plaintiff is one of the intended beneficiaries of the CDBG grant contract between the City and HUD.

123. The new plan provides for only 650 to 700 very low income and low income replacement units. Therefore, the new plan breaches the CDBG grant contract between the City and HUD which incorporates the HCDA's statutory obligation set forth at 42 U.S.C. § 5304(d)(2)(A)(i) requiring the one-for-one replacement of occupied and vacant occupiable very low and low income dwelling units demolished.

124. The breach of the CDBG grant contract set forth above is material and is the proximate cause of injury to the plaintiff.

COUNT XXVIII

125. Plaintiff is one of the intended beneficiaries of the CDBG grant contract between the City and HUD.

126. The new plan provides for only 325 to 350 very low income replacement housing units, whereas the number of families

displaced by the plan far exceeds that number. Therefore, the new plan breaches the CDBG grant contract between the City and HUD which incorporates the HCDA's statutory obligations set forth at 42 U.S.C. § 5304(d)(2)(A)(i) & (iv) requiring that the displaced families be relocated to comparable replacement housing within the same community.

127. The breach of the CDBG grant contract set forth above is material and is the proximate cause of injury to the plaintiff.

X. RELIEF REQUESTED WITH RESPECT TO THE CHA DEFENDANTS

WHEREFORE, plaintiffs pray that this Court:

A. Declare that the actions and omissions of the CHA defendants, as set forth in Counts I - XVIII, violate Title VIII, Title VI, HOPE VI, Sections 18 and 24 of the Act, and the URA, as well as contractual agreements entered into between the parties;

B. Enter a preliminary and permanent injunction:

1. Enjoining the defendants from implementing the new plan, including any and all efforts to:

- a. relocate the residents of 1150-1160 N. Sedgwick and 1158 N. Cleveland in violation of the URA;
- b. demolish 1150-1160 N. Sedgwick prior to the construction of replacement housing; and
- c. demolish 1158 N. Cleveland, 1015-1017 N. Larrabee, 1121 N. Larrabee, 1159-1161 N. Larrabee, and 500-502 N. Oak.

2. Enjoining the defendants from failing to negotiate and consult with the plaintiff in planning and implementing the revitalization of the Cabrini-Green development.

3. Ordering the defendants to specifically perform on its contractual agreements with plaintiff as described in ¶ 46 & 51, supra; including the defendants' promise to rehabilitate 1158 N. Cleveland and the community center.

4. Enjoining the issuance of a request for proposal to private developers in connection with the new plan.

C. Enter an order that the plaintiff shall not be required to post bond as security for the issuance of a temporary restraining order or preliminary injunction; and

D. Grant plaintiff such further relief as this Court deems just and proper.

XI. RELIEF REQUESTED WITH RESPECT TO THE CITY DEFENDANTS

WHEREFORE, plaintiffs pray that this Court:

A. Declare that the actions and omissions of the City defendants as set forth in Counts I-V, XIX-XXVIII, violate Title VIII, Title VI, and Title I of the HCDA, as well as the CDBG grant contract between the City and HUD;

B. Enter a preliminary and permanent injunction enjoining the expenditure of any CDBG funds on the new plan;

C. Enter a preliminary and permanent injunction enjoining the defendants from implementing the new plan, including any and all efforts to:

1. demolish 1150-1160 N. Sedgwick prior to the construction of replacement housing;

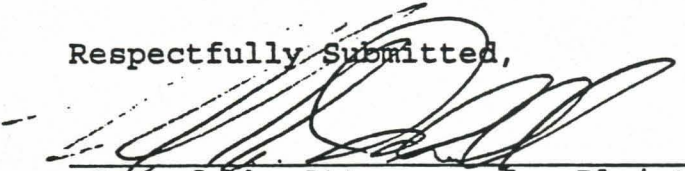
2. demolish 1158 N. Cleveland, 1015-1017 N. Larrabee, 1121 N. Larrabee, 1159-1161 N. Larrabee, and 500-502 N. Oak;

3. issue a request for proposal to private developers in connection with the new plan.

D. Enter an order that the plaintiff shall not be required to post bond as security for the issuance of a temporary restraining order or preliminary injunction; and

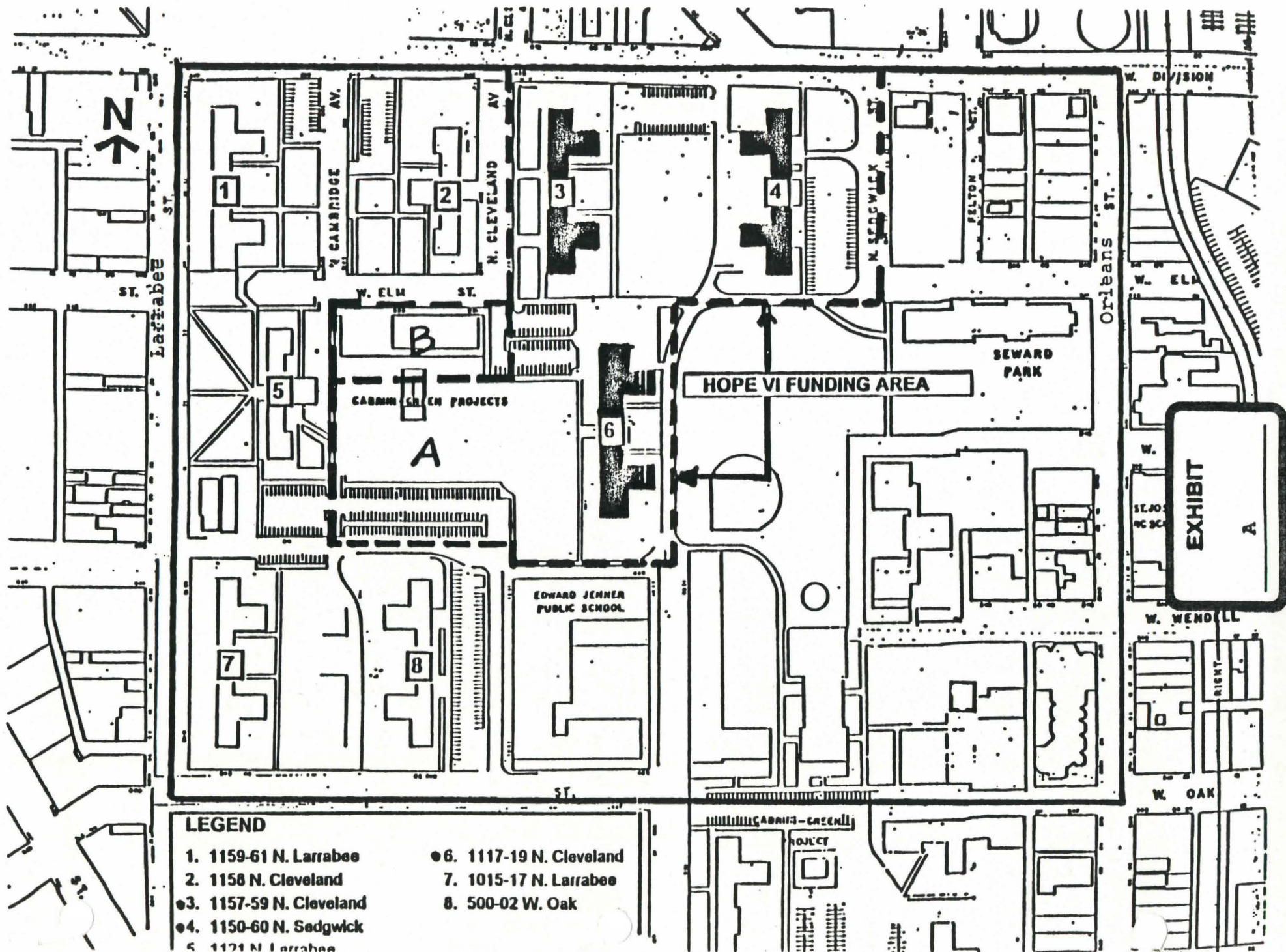
E. Grant plaintiff such further relief as this Court deems just and proper.

Respectfully Submitted,


One of the Attorneys for Plaintiff

RICHARD M. WHEELOCK
IRA RHEINGOLD
BRENDA GRAUER
Legal Assistance Foundation
of Chicago
343 S. Dearborn St., Suite 700
Chicago, Illinois 60604
(312) 341-1070

Attorneys for Plaintiff



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MEMORANDUM OF AGREEMENT

THIS AGREEMENT made this 28th day of May, 1993 between the CABRINI-GREEN LOCAL ADVISORY COUNCIL (hereinafter referred to as the "L.A.C.") and the CHICAGO HOUSING AUTHORITY (hereinafter referred to as the "C.H.A.").

WHEREAS: The United States Department of Housing and Urban Development (hereinafter referred to as "H.U.D."). has announced (Vol. 58 Fed. Reg. no. 2, January 5, 1993 at 436), the availability of funds under the Urban Revitalization Demonstration (U.R.D.).

WHEREAS: The C.H.A. intends to apply for an implementation grant pursuant to the U.R.D. for the purpose of rehabilitating, demolishing, and/or redeveloping a portion of those C.H.A. housing complexes which taken in the aggregate is commonly known as Cabrini-Green.

WHEREAS: The Federal Regulations for receipt of a grant under the U.R.D. require resident consultation and involvement in the preparation of the application for and the implementation of said grant.

WHEREAS: The L.A.C. has propounded a series of questions to the C.H.A. concerning the Federal Regulations, the process of creating the application; the proposed renovations, redevelopment and supportive and community services.

WHEREAS: The C.H.A. has responded to said questions.

WHEREAS: The C.H.A. has prepared a draft application, requesting an implementation grant to be funded by H.U.D. under the U.R.D.

WHEREAS: The C.H.A.'s draft application calls for:

- A) Demolition of certain buildings comprising a portion of the Cabrini-Extension;
- B) Purchase of certain property within the general planning area and the development of that land under a Mixed Income New Neighborhood Community strategy including both very low income and market rate housing;
- C) Rehabilitation of a mid-rise building in the Cabrini-Extension, and rehabilitation and conversion of that building into mixed income housing;

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- D) Rehabilitation of the physical plant for Cabrini-Green and expansion and renovation of the Wood North Community Center;
- E) Utilization of "Section 8" certificates to provide up to One Hundred Sixty-Seven (167) units of housing;
- F) Development of forty-eighty (48) properties on scattered sites; and
- G) Various supportive and community service programs for the residents of Cabrini-Green.

WHEREAS: The L.A.C., through its counsel, has delivered to the C.H.A. an extensive commentary, objecting to the priorities expressed in the draft application, certain programs proposed by the C.H.A., and the extent of resident involvement in the implementation of the grant proposal.

WHEREAS: The L.A.C., through its President and Counsel, have entered into negotiations with the C.H.A., through its Chairman, Vincent Lane, and these negotiations have resulted in the agreement written below.

WHEREAS: The parties hereto agree that there are other significant issues outstanding between them regarding this application and its implementation, and the parties will resolve these issues through on going negotiation and cooperation.

THEREFORE, the parties hereto do hereby covenant and agree that:

RELOCATION HOUSING

- 1) Residents impacted by the rehabilitation and demolition of the Cabrini Extension will be provided relocation opportunities within the general planning area.
- 2) The C.H.A. shall inform the residents in writing of their relocation options in a timely fashion.
- 3) Subject to H.U.D. regulations, waiver requests and Federal Court guidelines under Gautreaux as detailed in the U.R.D. application, the preferences for housing options made available or created by this grant shall be as follows in order of priority:
 - a) Those leaseholders to be displaced by rehabilitation or demolition of their current housing;

- b) Those families who are leaseholders in the Cabrini-Green complex as of the date of application of the U.R.D. Grant, May 5, 1993;
- c) All other public housing eligible families

CABRINI LOWER NORTH COMMUNITY CENTER

- 1) The C.H.A. is committed to the rehabilitation and expansion of the Cabrini Lower North Community Center as described on pages 63 & 64 of the draft application.
- 2) Should the C.H.A. be unable to obtain funding, either public or private, to fill the Four Point One Million (\$4,100,000.00) Dollar shortfall budgeted for the expansion and rehabilitation of the Cabrini Lower North Community Center, the C.H.A. covenants to provide the funds to meet said shortfall.
- 3) The C.H.A. shall consult with the L.A.C. to determine the timetable and order of renovations and expansion to be carried out at the Cabrini Lower North Community Center.

MANAGEMENT

- 1) The C.H.A. agrees to work jointly and cooperatively with the L.A.C. to identify appropriate forms of management for each of the properties in the development area, giving first consideration to resident or mixed management.
- 2) The C.H.A. will consult with the L.A.C. to evaluate the private management firm(s), if any, retained to manage any of the properties contained in the general planning area, and the C.H.A. agrees that all management contracts so entered into shall contain a grievance procedure for adjudication of tenant complaints, and such contracts shall be terminable upon showing of cause by the Chicago Housing Authority on behalf of the tenants.

PUBLIC SAFETY

- 1) The C.H.A. agrees to meet with the L.A.C. and its representatives prior to the deployment of the C.H.A.P.D. under U.R.D. at the Cabrini complex and to facilitate, to the best of its ability, cooperation and communication between the C.H.A.P.D., the Chicago Police Department and the Resident Patrols in order to provide the greatest

degree of security for the persons and property of Cabrini-Green residents through the cooperative and effective allocation of resources and personnel.

DEVELOPMENT CONTRACTS

1. The L.A.C. through its chosen Counsel shall participate in the creation of all solicitations for bids, bid packages, and development, construction, and other contracts relating, either directly or indirectly to the expenditure of any and all funds received under the U.R.D. grant and any extensions, continuations or enhancements of same, for the purpose of insuring:

- a) That all bids are evaluated with community benefit as a significant criteria,
- b) Minority Women Business enterprise goals consistent with H.U.D. and C.H.A. policy are achieved,
- c) Affirmative Action goals are set for minority employment especially the employment of Cabrini-Green residents in all phases of the U.R.D.,
- d) To the greatest extent possible, contractors will be required to train and employ residents in conjunction with U.R.D. activities,
- e) Each parcel to be developed (Application Exhibit 6) shall contain a percentage of 25% very low income housing units in perpetuity to seventy-five percent (75%) of market rate units; and
- f) Rent subsidies are granted only on an as-needed basis to those market rate housing units constructed on the less desirable parcels.

SUPPORTIVE SERVICES

- 1) Funds not expended for the line items budgeted shall be reallocated by the CHA in the area of supportive and community services. CHA shall consult with the L.A.C. regarding such reallocation of funds. There shall be no reallocation without prior consultation with the L.A.C.
- 2) With the exception of the C.H.A. Community Police Unit, none of the supportive or community service programs shall be funded or implemented without the consultation of the L.A.C.

3) The L.A.C. shall investigate programs currently operating in the Cabrini area, as well as programs available from other sources, be those sources public or private, so as to avoid redundancy in services, and to meet the real needs of the residents.

4) Programs chosen or developed by the L.A.C. will be designed or purchased with the following priorities in mind.

A) Health Care:

- 1) Pre-natal Care
- 2) Vaccination and Infant Nutrition
- 3) Drug & Alcohol Abuse Prevention and Treatment
- 4) Screening for breast cancer and Cardiovascular related illness

B) Day care including Infant care in the home with stipends for residents.

C) Early Childhood Development including Home-Teachers and resident mentors.

D) Education:

- 1) Ongoing Adult Literacy and G.E.D. classes
- 2) Early Intervention for troubled students

E) Job Training and Placement:

- 1) Coordination, training and placement for Young Adults with contractors profiting from the U.R.D.'s grant.
- 2) Creation of stipend level employment wherever possible within the community.
- 3) Identification of future employment patterns in the area, and training designed to prepare residents for those employment patterns.
- 4) Job registry and placement for those residents prepared for placement.

F) Anti-Gang Intervention:

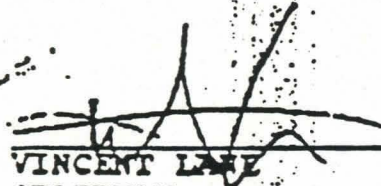
- 1) Directed at both male and female gang members.
- 2) Providing constructive outlets for this energy including, but not limited to:

- a) Performing Arts
- b) Recreational Activity

3) Victim and Witness Assistance Program

- 5) The C.H.A. agrees to meet with the L.A.C. and its chosen Counsel at the earliest possible time for the purpose of developing a "master-plan" covering all subsequent phases of the area development; including but not limited to commercial development, rehabilitation of physical plant, economic opportunities for residents and re-design requirements.
- 6) The C.H.A. will supply to the L.A.C. through its Counsel, copies of all filings made pursuant to this grant application in a timely fashion.
- 7) All parties hereto agree that this memorandum of agreement does not reflect all the issues outstanding between the parties, and that all subsequent issues shall be negotiated in a timely manner by the parties, recognizing that the welfare of the residents and the revitalization of the Cabrini-Green area are the primary concerns of all parties.

Entered into this 28th day of May, 1993.


VINCENT LANE
CHAIRMAN,
CHICAGO HOUSING AUTHORITY


HATTIE CALVIN
PRESIDENT, CABRINI-GREEN
LOCAL ADVISORY COUNSEL

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	David H. Coar	Sitting Judge if Other Than Assigned Judge	
Case Number	96 C 6949	Date	January 3, 1997
Case Title	Cabrini-Green Local Advisory Council v. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1)	☐	Filed motion of [use listing in "MOTION" box above]		
(2)	☐	Brief in support of motion due _____		
(3)	☐	Answer brief to motion due _____ Reply to answer brief due _____		
(4)	☐	☐ Ruling on _____ set for _____ at _____ ☐ Hearing		
(5)	☐	Status hearing ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____		
(6)	☐	Pretrial conf. ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____		
(7)	☐	Trial ☐ Set for ☐ re-set for _____ at _____		
(8)	☐	☐ Bench Trial ☐ Jury Trial ☐ Hearing held and continued to _____ at _____		
(9)	☐	This case is dismissed ☐ without ☐ with prejudice and without costs ☐ by agreement ☐ pursuant to ☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)		
(10)	☒	[Other docket entry] Enter Order nunc pro tunc December 20, 1996. The Court enters oral findings of fact and conclusion of law. For the reasons stated on the record, the Plaintiff's Motion for Preliminary injunction is Denied to the extent that it seeks to enjoin the removal of residents from the 1150-1160 Sedgwick Building. CHA is enjoined, however, from taking any steps to demolish the 1150-1160 Building without further order of this Court. The other aspects of the motion of preliminary injunction will be addressed in future proceedings. Injunction hearing concluded.		
(11)	☐	For further detail see ☐ order on the reverse of ☐ order attached to the original minute order form.]		
☐ No notices required, advised in open court. ☐ No notices required. ☐ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☒ Docketing to mail notices. ☐ Mail AO 450 form. ☐ Copy to judge/magistrate Judge.		EXHIBIT tabbles B	number of notices date docketed docketing dpty. initials date mailed notice mailing dpty. initials	Document #
<i>Parf</i> courtroom deputy's Initials		Date/time received in central Clerk's Office		

1997 U.S. Dist. LEXIS 625 printed in FULL format.

CABRINI-GREEN LOCAL ADVISORY COUNCIL, Plaintiff, v. CHICAGO HOUSING AUTHORITY and JOSEPH SHULDINER, Defendants.

No. 96 c 6949

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

1997 U.S. Dist. LEXIS 625

January 21, 1997, Decided

January 22, 1997, DOCKETED

DISPOSITION: [*1] Defendants' motion to dismiss plaintiff's complaint granted in part and denied in part. Counts 9, 10, 12, and 15 of plaintiff's complaint dismissed with prejudice.

COUNSEL: For CABRINI-GREEN LOCAL ADVISORY COUNCIL, plaintiff: Richard M. Wheelock, Legal Assistance Foundation of Chicago, Chicago, IL. Ira Rheingold, Legal Assistance Foundation of Chicago, Chicago, IL. John Warren Whitcomb, Legal Assistance Foundation of Chicago, Chicago, IL. Brenda L. Grauer, Legal Assistance Foundation of Chicago, Chicago, IL.

For CHICAGO HOUSING AUTHORITY, THE, CHA, an Illinois municipal corporation, JOSEPH SHULDINER, in his official capacity as executive director of the CHA, defendants: Thomas Edward Johnson, Anne Megan Davis, Leslie Ann Jones, Johnson, Jones, Snelling & Gilbert, Chicago, IL.

JUDGES: David H. Coar, U.S. District Judge

OPINIONBY: David H. Coar

OPINION: MEMORANDUM OPINION AND ORDER

Defendants Chicago Housing Authority and its Executive Director Joseph Shuldiner (collectively, "CHA" or "defendants") have moved to dismiss plaintiff Cabrini-Green Local Advisory Council's ("LAC" or "plaintiff") twenty-two-count complaint seeking declaratory and injunctive relief. For the following reasons, defendants' [*2] motion is granted in part and denied in part.

I. Allegations of the Complaint

A. Cabrini-Green Housing Development and the Parties

The Cabrini-Green public housing development in Chicago, Illinois ("Cabrini-Green"), is a family public housing development containing approximately 3606 dwelling units and housing some 6000 residents. Virtually all of the families residing in Cabrini-Green are "very low income," a term that is defined by the U.S. Department of Housing and Urban Development ("HUD") to mean 0% to 50% of the median area income. (Compl., PP 32-33). In addition, 94% of the heads of households at Cabrini-Green are African-American, 63% of the residents are female, and 56% of the residents are younger than nineteen years of age. (Id. P 34).

Plaintiff LAC is a tenant organization that represents the tenants of Cabrini-Green. Membership in LAC is composed of lessees and other authorized residents of Cabrini-Green. LAC has the power to act for and on behalf of the residents of Cabrini-Green and to take steps to effect changes in rules, regulations, practices, and policies on behalf of the residents. LAC also has the power to enter into contracts on behalf [*3] of the residents. (Compl., P 12).

Defendant Chicago Housing Authority is an Illinois municipal corporation that administers federally subsidized and assisted low-income housing. (Compl., P 17). Defendant Joseph Shuldiner is the Executive Director of the Chicago Housing Authority and is charged with establishing and administering the Authority's policies. (Id. P 18)

B. Initial HOPE VI Application and the LAC-CHA Agreements

On May 5, 1993, CHA filed an application with HUD under the HOPE VI Urban Revitalization Demonstration Program ("HOPE VI") for \$ 50 million to revital-

EXHIBIT

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ize Cabrini-Green. The application called for the demolition of three residential buildings with 660 dwelling units and the renovation of another. The plan also provided for one-to-one replacement of each dwelling unit to be demolished, either by constructing new units or by providing "Section 8" certificates to those displaced by the demolition. (Compl., PP 3, 36).

On May 28, 1993, CHA and LAC entered into a memorandum of agreement that provided, among other things, that "residents impacted by the rehabilitation and demolition . . . will be provided relocation opportunities within the general planning [*4] area [of the Cabrini-Green development]," (Compl., P 38(b)), and that CHA would meet with LAC "for the purpose of developing a 'master-plan'" for Cabrini-Green, (id. 38(d)). LAC alleges that this agreement remains in full force and effect and is a contract between LAC and CHA. (Id. P 38).

On November 19, 1993, HUD approved CHA's HOPE VI grant application. Disbursement of funds, however, was conditioned upon CHA's submission of an approvable demolition application and replacement housing plan. (Compl., P 40). On March 1, 1995, HUD approved CHA's request to demolish the building at 1117-1119 N. Cleveland, provided that the HOPE VI grant would fund 72 of the 262 replacement units. (Id. P 42). On March 13, 1995, CHA, through its Chairman, Vincent Lane, agreed in writing with LAC (1) that the residents of 1150-60 N. Sedgwick would not be relocated and that the building would not be demolished until replacement housing was built and (2) that 1158 N. Cleveland would be vacated for rehabilitation. (Id. P 43). On March 15, 1995, CHA submitted to HUD the "HOPE VI Revised Plan to Revitalize Cabrini-Green" ("Revised Plan"), which included a replacement housing plan. The Revised [*5] Plan provided for one-to-one replacement of dwelling units. (Id. P 44). In a letter dated May 15, 1995, HUD refused to either approve or deny the Revised Plan. (Id. P 45). On June 23, 1995, HUD approved CHA's demolition application for 1157-59 N. Cleveland and 1150-60 N. Sedgwick. HUD's approval for these demolitions was based in part on CHA's proposal to replace the units in those buildings on a one-for-one basis. (Id. P 48). Later in 1995, CHA demolished 1117-19 N. Cleveland and 1157-59 N. Cleveland. (Id. P 49).

In October 1995, CHA issued a "Request for Proposals -- Step Two and Developer's Packet For The Planning, Design & Development of Mixed Income Housing For The Cabrini HOPE VI Urban Revitalization Demonstration Project" ("RFP"). The purpose of the

RFP was to assist CHA in developing a replacement housing plan for the 660 units scheduled to be demolished. (Compl., P 51). In November 1995, the City of Chicago ("City") submitted to HUD its 1995 Consolidated Plan/Action Plan ("Consolidated Plan"). That plan presents the City's community development priorities and strategies. Local governments receiving HUD funds are required to submit or update such a plan annually. [*6] (Id. P 52). n1

n1 The City's Consolidated Plan provides that the City will:

(1) Serve the Full Range of Constituencies among Low- and Moderate-income Populations

Coordinate affordable housing activities with new CHA initiatives to improve public housing and the quality of life for low-income public housing residents by creating stable communities that not only provide decent shelter but also social and economic opportunities for residents. . . .

(2) Promote Community Revitalization and Stability through a Range of Development Activities.

Place primary emphasis on the preservation of affordable housing units and rehabilitation of existing housing stock. . . .

(3) Provide for Special Needs Populations.

Increase the supply and availability of resources to address the needs of Chicago's homeless population. . . .

(Compl., P 53).

C. Development of the CHA Plan

In January 1996, CHA created the HOPE VI Development Screening Committee, an advisory committee whose purpose [*7] it was to make recommendations to CHA regarding development proposals submitted pursuant to the RFP. Four Cabrini-Green residents were appointed by plaintiff to serve on this committee. (Compl., P 54). However, plaintiff alleges that between March 1996 and June 1996, CHA and the City held a series of closed-door meetings to create their own plan for the redevelopment of Cabrini-Green. Plaintiff was excluded from these meetings. (Id. P 56). The meetings between CHA and the City culminated in a joint press conference held on June 27, 1996, in which a new plan for the redevelopment of Cabrini-Green was announced ("CHA Plan" or "Plan"). Under the Plan, CHA will demolish eight buildings totaling 1324 units, rather than just the three buildings with 660 units called for under the original HOPE VI application. (Id. P 57). The CHA Plan does not require one-for-one replacement of demolished units

for very low-income residents. In fact, the Plan call for only 300-325 such units to be built, a net loss of approximately 1000 very low-income dwelling units. (Id. P 58).

Plaintiff alleges that the CHA Plan will have a disproportionate impact on African-Americans, women, and children [*8] due to the fact that all of the 675 families that have either been displaced or will be displaced from the eight buildings designated for demolition under the CHA Plan are considered "low income." (Compl., PP 60, 62, 89). In addition, LAC alleges that the building designated for renovation under the original HOPE VI application is now slated for demolition. In reliance on CHA's promise to renovate this building, the families residing in that building moved out. (Id. PP 63-64). Finally, plaintiff alleges that CHA has violated its promise to build replacement housing prior to vacating and demolishing 1150-60 N. Sedgwick. (Id. PP 68-69).

D. Injury to LAC and its Members

As a result of defendants' actions, LAC alleges that it has suffered injury because it has been denied participation in the planning process leading up to the CHA Plan. (Compl., P 73(a)). LAC also alleges that it has been forced to divert resources from its other organizational purposes in order to discover and discuss the CHA Plan, to advocate against the Plan, to monitor defendants' implementation of the Plan, to inform its members about the Plan, and to initiate this lawsuit. (Id. P 73(b)). Plaintiff [*9] also alleges that many of its members will suffer irreparable injury due to the destruction of their community. Particularly, plaintiff alleges that LAC members will be denied eligibility to reside in replacement housing at Cabrini-Green. (Id. P 74). Further, LAC members have been injured because the CHA Plan was developed without the consultation and participation of LAC members, as required by HOPE VI, Section 18 of the U.S. Housing Act of 1937 (codified at 42 U.S.C. § 1437p), and the May 28, 1993 agreement between the parties. (Compl., P 75).

E. LAC's Complaint

LAC filed a twenty-two count complaint for declaratory and injunctive relief. Counts 1-4 are brought under Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. In those counts, plaintiff alleges that the CHA Plan will have a disproportionate impact upon African-Americans, women, and children. (Compl., PP 80-83). Count 5 is brought under Title VI of the Civil

Rights Act of 1964 and alleges that the CHA Plan will have a disproportionately adverse impact upon African-Americans. (Id. P 84). Counts 6-10 are brought under 42 U.S.C. § 1983 and HOPE VI, 42 U.S.C. § 1437l, note. [*10] Count 6 seeks to enforce the "revitalization" provisions of HOPE VI. (Compl., P 85). Counts 7 and 8 seek to enforce the requirement in the HOPE VI statute that all plans developed under HOPE VI be consistent with the City's Consolidated Plan. (Id. PP 86-87). Counts 9 and 10 seek to enforce statutory provisions that, when read together, "require that persons displaced by HOPE VI reconstruction activities shall be eligible for replacement units of their choice, to the maximum extent practicable. (See id. P 88). Counts 11 and 12 are brought under 42 U.S.C. § 1983 and Section 18 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437p. In Count 11, plaintiff alleges that the defendants have failed to "meaningfully consult" with plaintiff in developing the CHA Plan, in violation of Section 18 and the HOPE VI grant requirements. (Compl., P 90). Count 12 alleges that one of the buildings scheduled for demolition is not obsolete and that a reasonable program of modifications is feasible to return it to "useful life." Plaintiff thus alleges that the building's demolition violates Section 18, which governs the demolition of public housing. (Id. P 91). Count 13 alleges that the CHA Plan violates [*11] Section 24 of the U.S. Housing Act of 1937, 42 U.S.C. § 1437v(e)(2), because the Plan creates a local preference whereby 300-325 replacement public housing units will be available for families making 50-80% of median area income without first holding one or more public hearings to obtain the views of low-income tenants. Plaintiff alleges in Count 14 that defendants have violated the Uniform Relocation Act, 42 U.S.C. § 4625(c), and regulations promulgated thereunder. In particular, plaintiff alleges that defendants have (1) failed to adequately assess the needs and preferences of displaced families; (2) failed to give displaced families reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings that are not located in areas of African-American concentration; and (3) failed to provide displaced families comparable replacement housing. (Compl., P 93).

Plaintiff has also brought eight state law claims. Count 15 alleges that the CHA Plan exceeds the powers conferred upon CHA by the Illinois Housing Authorities Act, 310 ILCS 10/2. (Compl., P 94). Counts 16-21 allege various breaches of the agreements between CHA and LAC. (Id. P 95-100). Finally, Count [*12] 22 alleges that the families living at 1158 N. Cleveland detrimentally relied on

CHA's promise to rehabilitate that structure when they moved out. Plaintiff therefore claims that defendants are estopped from demolishing 1158 N. Cleveland. (Id. P 101).

Defendants have moved to dismiss all of the counts in plaintiff's complaint that challenge the legality of the CHA Plan because those counts are not ripe for adjudication. In addition, defendants have moved to dismiss other counts because plaintiff has sued on its own behalf and lacks standing to assert the claims of its individual members. Defendants also argue that plaintiff's state law claims must be dismissed because the court lacks jurisdiction to enter relief against a local government agency based on state law claims. Furthermore, defendants contend that plaintiff has failed to state a cause of action for many of the federal and state counts. n2

n2 Plaintiff also filed a motion for a preliminary injunction on November 8, 1996, asking the court to enjoin: (1) the demolition of 1158 N. Cleveland, including an order upon CHA to withdraw the demolition application that CHA recently submitted to HUD; (2) the demolition of 1150-60 N. Sedgwick prior to the construction of replacement housing; and (3) the unlawful relocation of the residents from 1150-60 N. Sedgwick. On December 19, 1996, the court held a hearing on that motion. The only issue considered by the court at that time was the request to enjoin the relocation of the residents from 1150-60 N. Sedgwick. On December 20, 1996, the court declined to issue an injunction prohibiting that relocation.

[*13]

II. Standards

A motion to dismiss pursuant to Rule 12(b)(6) does not test whether the plaintiff will prevail on the merits but instead whether the claimant has properly stated a claim. See *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 1686, 40 L. Ed. 2d 90 (1974). The court may dismiss a complaint for failure to state a claim under Rule 12(b)(6) only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232, 81 L. Ed. 2d 59 (1984); see also *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957). The court must accept as true all well-pleaded allegations and draw all reasonable inferences in favor of the plaintiff. *Antonelli v. Sheahan*, 81 F.3d 1422, 1427 (7th

Cir. 1996). However, the court need not strain to find favorable inferences which are not apparent on the face of the complaint. *Coates v. Illinois St. Bd. of Educ.*, 559 F.2d 445, 447 (7th Cir. 1977). Similarly, the court is not required to accept legal conclusions either alleged or inferred from pleaded [*14] facts. *Northern Trust Co. v. Peters*, 69 F.3d 123, 129 (7th Cir. 1995) (citing *Nelson v. Monroe Reg'l Med. Ctr.*, 925 F.2d 1555, 1559 (7th Cir.), cert. denied, 502 U.S. 903, 112 S. Ct. 285, 116 L. Ed. 2d 236 (1991)). Finally, the complaint need not specify the correct legal theory nor point to the right statute to survive a Rule 12(b) motion to dismiss, provided that "relief is possible under any set of facts that could be established consistent with the allegations." *Bartholet v. Reishauer A.G.*, 953 F.2d 1073, 1078 (7th Cir. 1992). The complaint must, however, state either direct or inferential allegations concerning all material elements necessary for recovery under the chosen legal theory. See *Glatt v. Chicago Park Dist.*, 847 F. Supp. 101, 103 (N.D. Ill. 1994).

III. Discussion

CHA has moved to dismiss LAC's claims on a number of grounds. The court will consider each of these arguments in turn.

A. Ripeness of Claims

CHA first contention in its motion to dismiss is that there is "no concrete, fully developed and final CHA Plan . . . which has ever been submitted to HUD for approval, a necessary precondition for CHA expenditure [*15] of HOPE VI funds." (Def. Mem., at 12). Rather, CHA argues that there has simply been a press conference announcing a "skeletal outline" of a potential plan and that the court should therefore not prematurely adjudicate the legality of a plan that is only a possibility. CHA has therefore moved to dismiss plaintiff's claims in Counts 1-13, 15-17, and 20 that challenge the CHA Plan on the ground that the court lacks subject matter jurisdiction because the claims are not yet ripe.

The ripeness doctrine has both a constitutional component based on Article III "case or controversy" concepts and a prudential component based on the discretionary power of the court to refuse review for policy reasons. In its most elemental form, the doctrine of ripeness is invoked to determine whether a particular dispute has developed to a point that merits decision. "The central concern [of the ripeness doctrine] is whether the case involves uncertain or contingent future events that may not occur as antic-

ipated, or indeed may not occur at all." 13A Wright, Miller & Cooper, Federal Practice & Procedure: Civil 2d § 3532, at 112 (1984). The Supreme Court has noted that ripeness turns upon "the [*16] fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 201, 103 S. Ct. 1713, 1720-21, 75 L. Ed. 2d 752 (1983).

There is some merit to CHA's contention that the CHA Plan is not "final" and thus not ripe for review. No HOPE VI funds will be dispersed until the plan is submitted and approved by HUD. Nor may CHA actually raze any buildings without HUD approval. However, "the label an agency attaches to its action is not determinative." *Continental Air Lines v. CAB*, 173 U.S. App. D.C. 1, 522 F.2d 107, 124 (D.C. Cir. 1974) (en banc). The fact that there are uncertain contingencies, such as what the plan ultimately submitted to and approved by HUD will look like, does not mean that there is no case or controversy before the court or that the plaintiff and the individuals that it represents will not be irreparably injured during the time that it takes those contingencies to become certain. Rather, the court must accept as true all well-pleaded allegations in the plaintiff's complaint. *Antonelli*, 81 F.3d at 1427. [*17]

Plaintiff alleges that, in developing and implementing the Plan, defendants have failed to consult with the residents of Cabrini-Green. (Compl., PP 56, 73(a)). This injury has already occurred and is not dependent upon HUD approval of a HOPE VI application. The complaint also alleges that defendant has adopted a plan that details steps to be taken in regard to the Cabrini-Green development. (See *id.* PP 57-61). Plaintiff alleges that defendants have begun implementing this meticulous plan by, for example, taking concrete steps to demolish a building that had been scheduled for rehabilitation under the previous plan. (*Id.* PP 63-66). While HUD has not yet approved this demolition, CHA's taking of steps in compliance with some new design when residents of that building have already moved out in reliance on CHA's promise to renovate the building makes the inevitability of demolition appear that much more likely to this court. Other courts have recognized the notion of "de facto demolition" of housing developments, see, e.g., *Henry Horner Mothers Guild v. Chicago Hous. Auth.*, 824 F. Supp. 808, 817 (N.D. Ill. 1993) ("By their inaction defendants have . . . accomplished [*18] the constructive or de facto demolition of the Horner developments."); *Gomez v. Housing Auth. of City of El Paso*, 805 F. Supp. 1363, 1374-75 (W.D. Tex. 1992)

(recognizing plaintiffs' right to sue for de facto demolition), and this court finds that the facts of the instant case support recognition of that notion here. Withholding court consideration of this case could cause significant hardship to plaintiff's members if housing becomes uninhabitable and unavailable through CHA's creation of vacant buildings coupled with its inaction in maintaining and securing those buildings. Beyond the notion that CHA may be implementing a de facto demolition is the fact that plaintiff has simply alleged that its members have already been injured by moving out of buildings in reliance on CHA's promise to provide replacement housing.

Defendants' effort to apply *Pacific Gas* to the facts of this case is not persuasive. *Pacific Gas* dealt with a legal challenge to two sections of a California statute that regulated nuclear power plants. The first section established an absolute moratorium on the construction of nuclear power plants. The Court found ripeness in [*19] regard to that section because it threatened impending injury. See *Pacific Gas*, 461 U.S. at 201, 103 S. Ct. at 1720-21 (stating that "one does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough." (citations omitted)). The second section of the statute concerned a provision that required a state agency to decide on a case-by-case basis whether adequate storage existed for spent nuclear fuel before a nuclear power plant could be built. The Court found that the challenge to this section of the statute was not ripe because further administrative events were required to demonstrate whether there was a factual basis for the challenge. *Id.* at 203, 103 S. Ct. at 1721-22.

Despite CHA's efforts to demonstrate otherwise, plaintiff's arguments in this case are not "identical" to the rejected claim in *Pacific Gas*. Plaintiff's complaint fairly contains allegations that "administrative events" have already taken place that are in furtherance of the CHA Plan. The fact that the CHA Plan has not been submitted to or approved by HUD does not mean that the injury alleged is not imminent [*20] or has not already occurred. Furthermore, in other cases regarding public housing, courts have held that HUD approval is not a prerequisite to the determination of ripeness. For example, in *Jackson v. Okaloosa County, Fla.*, 21 F.3d 1531 (11th Cir. 1994), the court found that a Fair Housing Act ("FHA") claim was ripe, even though HUD had not yet given final approval for site selection. The court noted that the plaintiffs had alleged that the process of site selection itself was flawed, be-

cause all of the sites ranked and submitted for approval were in racially impacted areas. The court found that if these allegations were true, the site selection process would have a segregative result -- in violation of the law -- regardless of HUD's decision. Jackson, 21 F.3d at 1541 & n.15. So too in this case. For example, plaintiff's complaint alleges that CHA's process for developing CHA has already violated consultative provisions in the law, and that the CHA Plan threatens imminent injury to federal or state rights or violates federal or state law. Thus, plaintiff need not wait for the Plan to be submitted to HUD for approval in order to bring this suit. See [*21] Jackson, 21 F.3d at 1541 n.15 ("HUD decisions need not be final where an injury is imminent."); accord *Sierra Club v. Morton*, 169 U.S. App. D.C. 20, 514 F.2d 856, 868-69 n.20, 880-82 (D.C. Cir. 1975) (holding that claims that plans for development of coal resources had proceeded far enough to require environmental impact statement were ripe despite lack of formal, "final" agency action), reversed on other grounds, 427 U.S. 390, 96 S. Ct. 2718, 49 L. Ed. 2d 576 (1976) (not questioning ripeness determination of lower court).

Plaintiff has alleged that as a result of a series of secret meetings, CHA has agreed with the City on a "plan." Whether that plan is merely in outline or final form is not the crucial issue. Plaintiff has alleged that the necessary outcome of the process culminating in the "plan" is to deny it an opportunity to participate and will result, inevitably, in the violations alleged in the complaint. The allegations in plaintiff's complaint, if true, raise a justiciable case or controversy and entitle plaintiff to relief; therefore, defendants' motion to dismiss plaintiff's complaint on grounds of ripeness is denied.

B. Plaintiff's Standing [*22] to Sue

CHA's next contention is that the court lacks jurisdiction over Counts 1-5, 9, 10, 14, and 22 because LAC does not have standing to sue to bring the claims. In Counts 1-5, plaintiff alleges that the CHA Plan discriminates against African-Americans, women, and families with children. (Compl., PP 80-84). In Counts 9, 10, 14, and 22, plaintiff alleges that certain families did not receive their choice of replacement housing and have not received adequate assessments, reasonable opportunities for decent housing, or comparable replacement housing, or that those individuals detrimentally relied on CHA actions. (Compl., PP 88, 89, 93, 101). CHA argues that, because plaintiff has not identified any one of its members with independent standing to bring

all of these claims, and because the determination of the validity of these claims requires a case-by-case factual inquiry of the particularities of each family, LAC lacks standing to bring the claims.

To support its argument, CHA cites to the Supreme Court's holdings in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441, 53 L. Ed. 2d 383 (1977) and *United Food & Commercial [*23] Workers v. Brown Group, Inc.*, U.S. , 134 L. Ed. 2d 758, 116 S. Ct. 1529 (1996), in which the Court identified a three-prong test to determine an association's standing to sue based on injury to its members. The elements of that test are as follows: (1) the association's members would otherwise have standing to sue in their own right; (2) the interests the association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested require participation in the lawsuit by individual members of the association. See *Hunt*, 432 U.S. at 343, 97 S. Ct. at 2441. By limiting representational standing in this way, the Court has ensured that both the constitutional and prudential restrictions on standing are applied to organizations as well as to individuals. The first prong of the test ensures that there has been some injury in fact to the party who appears in court. The second requirement establishes that the representative appearing is entitled to represent the injured party on a particular issue. The final requirement assures the court that allowing the parties to proceed in a representational capacity [*24] will not harm the individual interests allegedly protected by the representative. *MPiRG v. Selective Serv. Sys.*, 557 F. Supp. 925, 931 (D. Minn. 1983) (Alsop, J.).

CHA argues that the first prong of this test has not been satisfied in regard to Counts 1-5, 9, 10, 14, and 22 because LAC has sued only on behalf of itself and not as a representative acting on behalf of its members and has not identified even one member with standing to assert the claims. For example, CHA notes that, in Counts 1-5, plaintiff alleges that some LAC members will not receive some of the HOPE VI replacement units they desire but has not identified any LAC member who desires to receive a replacement unit and who will not be able to do so under the alleged plan. CHA also contends that LAC's claims also fail under the third prong of the *Hunt* test, because the court will have to make particularized determinations as to whether any individual family that is displaced by HOPE VI activities wants to return to Cabrini-Green and will be unable to do so under the CHA Plan; whether any individual family received its choice of

replacement housing and received the full panoply of relocation benefits; [*25] or whether any individual family detrimentally relied on CHA actions when that family moved. The court will now apply CHA's two arguments to plaintiff's claims brought under the Fair Housing Act (Counts 1-4) and to its claims brought under other statutory provisions and under the theory of promissory estoppel (Counts 5, 9, 10, 14, and 22).

1. Counts 1-4

In determining whether LAC has standing to sue under Counts 1-4 of its complaint, the Supreme Court's decision in *United Food & Commercial Workers v. Brown Group*, U.S. , 116 S. Ct. 1529, 134 L. Ed. 2d 758, 64 U.S.L.W. 4330 (1996), is significant. In *Brown Group*, the Court noted that the third prong of the test set out in *Hunt* is a prudential impediment that Congress may abrogate. In *Brown Group*, this meant that a union could sue on behalf of its members for their monetary damages, since such action was authorized by the WARN Act. *Brown Group*, U.S. , 116 S. Ct. at 1532-33. In an earlier case, the Supreme Court held that, in suits brought under the Fair Housing Act, courts lacked the authority to create prudential barriers to standing. *Havens Realty Corp. v. Coleman*, 455 [*26] U.S. 363, 372-74, 102 S. Ct. 1114, 1120-21, 71 L. Ed. 2d 214 (1982). Therefore, under Counts 1-4, brought pursuant to the Fair Housing Act, no prudential limits, such as determining the need for individual participation of LAC members, can be used to determine plaintiff's standing. The relevant issue is therefore whether plaintiff has alleged "distinct and palpable injuries" that can be traced to defendants' actions. *Id.* at 376, 102 S. Ct. at 1122.

Plaintiff alleges that it has been denied participation in the planning process that produced the CHA Plan and that it has been forced to divert its limited resources from other organizational purposes and goals and to direct these resources to discover and discuss with defendants the CHA Plan, to advocate against the CHA Plan, and to monitor implementation of the CHA Plan. (Compl., P 73). In *Havens Realty*, the Supreme Court held that the injury the organization alleged, namely, that the defendant's steering practices had frustrated the organization in its efforts to assist equal access to housing and had caused it to devote significant resources to identify and counteract the discrimination, was a sufficient allegation [*27] of injury for standing purposes. The Court found that these effects established a concrete and demonstrable injury that was "far more than simply a setback to the organization's abstract social

interests." *Havens Realty*, 455 U.S. at 379 & n.20, 102 S. Ct. at 1124 & n.20; see also 13 Wright, Miller & Cooper, *Federal Practice & Procedure: Jurisdiction & Related Matters* 2d § 3531.9, at 604 (1984) ("An organization can assert standing to protect against injury to its own organizational interests."). In this case, plaintiff alleges the same type of injury as that alleged by the organization in *Havens Realty*: "[it] has been forced to divert its limited resources from its other organizational purposes." (Compl., P 73(b)). The court finds that plaintiff has properly alleged an organizational injury, which is causally related to defendants' alleged activities. Because the court can redress this injury through the requested relief, plaintiff has standing to sue under Counts 1-4.

2. Counts 5, 9, 10, 14, and 22

The next question is whether plaintiff can satisfy the standing requirements under Counts 5, 9, 10, 14, and 22, which are not brought under the Fair [*28] Housing Act and thus require plaintiff to meet both the constitutional and the prudential requirements for standing. An association meets the prudential requirements for standing if (1) it has standing in its own right because it alleges injury to itself or (2) it alleges that its members have been injured. *Warth v. Seldin*, 422 U.S. 490, 510-11, 95 S. Ct. 2197, 2211, 45 L. Ed. 2d 343 (1975). As noted supra, plaintiff has properly alleged an organizational injury: it has been forced to divert its limited resources from its other organizational purposes and goals. Plaintiff thus meets the prudential requirements for standing in regard to Counts 5, 9, 10, 14, and 22. n3

n3 In addition to its allegations that it has suffered organizational injury, LAC has alleged harm to its members. (See Compl., PP 74-75). *Hunt* suggested that individual participation of an organization's members is not normally necessary (and thus the third prong of the *Hunt* test would be satisfied) when an association seeks only prospective or injunctive relief, as opposed to monetary damages. *Hunt*, 432 U.S. at 343, 97 S. Ct. at 2441; see also *United Steelworkers of Am. v. University of Alabama*, 599 F.2d 56, 59 (5th Cir. 1979) (holding that union had standing to seek declaratory and injunctive relief for benefit of itself and its individual members); cf. *Warth*, 422 U.S. at 515, 95 S. Ct. at 2213 ("If in a proper case the association seeks a declaration, injunction, or some other form of prospec-

tive relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured."). In this case, plaintiff is merely seeking declaratory and injunctive relief, suggesting that participation in the case by LAC members is not required.

[*29]

3. Must LAC Identify Individuals with Independent Standing?

CHA nevertheless contends that plaintiff's allegations of organizational injury are not enough to give it standing under Counts 1-5, 9, 10, 14, and 22 to assert the claims of its members. Even if it has standing to sue on behalf of itself, CHA suggests that LAC must still identify individuals having independent standing to assert the claims. CHA has cited cases in which courts found organizations to have standing, but in which individual members of those organizations were also identified and had independent standing. This court finds, however, those cases do not impose a requirement to identify individuals with independent standing to sue. Furthermore, CHA's efforts to distinguish the cases cited by plaintiff in its response to the motion to dismiss are not convincing. For example, *Chicano Police Officer's Association v. Stover*, 526 F.2d 431 (10th Cir. 1976), does not stand for the proposition that an association must allege a specific type of injury in order to have standing. The fact that the association in that case gained standing because it demonstrated that, "in challenging barriers against employment[,] [*30] it might well enhance its membership and resources to attain its goals," *id.* at 431, does not mean that LAC can only have standing to assert the claims of its members if it alleges that its challenge to the CHA Plan will enhance its membership or resources. Rather, *Chicano Police Officer's* stands for the proposition that an association must simply allege some injury to itself and/or its members.

Nor does the Seventh Circuit's holding in *Minority Police Officers Association of South Bend v. City of South Bend*, 721 F.2d 197 (1983), contradict the holding of *Chicano Police Officer's*. In *Minority Police Officers*, the court found that individual police officers and the association that represented them did not have standing to challenge a city police force's hiring practices. However, the court based its decision regarding lack of standing on the fact that all of the individuals named as plaintiffs in the suit, as well as all of the members of the association,

had already been hired. In the instant case, however, LAC is challenging a plan that allegedly discriminates against its members and that will deny its members replacement housing. [*31] Unlike the situation in *Minority Police Officers*, in which there was no possibility that the plaintiffs would be harmed by the defendant's actions, this case presents a situation in which LAC and its members are facing imminent injury.

Finally, the court notes that LAC has standing to assert the rights of its members. Courts have consistently held that, if the same activity injures both the interests of the organization as well as the interests of its members, the organization can assert the rights of its members. For example, in *Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 2211, 45 L. Ed. 2d 343 (1975), the Court observed that "in attempting to secure relief from injury to itself the association may assert the rights of its members, at least so long as the challenged infractions adversely affect its members' associational ties." In this case, LAC is the recognized, duly elected tenant council for the residents of Cabrini-Green. (Compl., P 13). Neither HUD nor CHA may recognize a competing resident council once such a duly elected council has been established. See 24 C.F.R. § 964.18(a)(7) and (b)(iv). Plaintiff's purposes and powers are defined [*32] by federal law and its own charter. (See Compl., P 12; 24 C.F.R. § 964.100). In a very real sense, therefore, LAC represents the residents of Cabrini-Green and provides them with the voice through which they "express their collective views and protect their collective interests." *Hunt*, 432 U.S. at 345, 97 S. Ct. at 2442. Furthermore, because plaintiff's membership is drawn from those who reside at Cabrini-Green, any change in the makeup of Cabrini-Green public housing necessarily affects LAC members' associational ties to that organization.

The allegations in plaintiff's complaint, if true, demonstrate that plaintiff has standing to challenge defendants' actions in developing the CHA Plan: plaintiff has alleged injury to itself and its members, it has met the constitutional and, where necessary, prudential requirements for standing, and it has standing to assert the rights of its members. Therefore, defendants' motion to dismiss plaintiff's complaint on grounds of standing is denied. n4

n4 The court reiterates that it may only dismiss this suit based on lack of standing if it is clear that no relief could be granted under any set of facts that could be proved consistent with

the allegations. *Hishon*, 467 U.S. at 73, 104 S. Ct. at 2232. The court's decision, therefore, is based on reasonable inferences that the plaintiff must prove at trial. The standing inquiry can be revisited at trial if it appears that facts necessary for standing are not supported by the evidence adduced at trial. See *Jackson*, 21 F.3d at 1536 n.5 (citing *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 116 n.31, 99 S. Ct. 1601, 1616 n.31, 60 L. Ed. 2d 66 (1979)).

[*33]

C. Jurisdiction over State Law Claims

CHA's next contention is that plaintiff's state law claims in Counts 15-22 must be dismissed because the court lacks jurisdiction to enter relief against the defendants on them, citing *Evans v. City of Chicago*, 10 F.3d 474, 481 (7th Cir.1993) (en banc), cert. denied, 128 L. Ed. 2d 460, 114 S. Ct. 1831 (1994). In *Evans*, the Seventh Circuit refused to enter an injunction against the City of Chicago for violating a consent decree in which the City of Chicago had agreed to abide by state law concerning the prompt payment of tort claims against municipal governments. *Id.* at 480. The plurality of the court in *Evans* indicated that the consent decree had to be set aside because a district court may not require a unit of state or local government to abide by a consent decree that does not serve any federal interest. The plurality opinion explained:

The [district] court must ensure that there is a substantial federal claim, not only when the decree is entered but also when it is enforced, and that the obligations imposed by the decree rest on this rule of federal law rather than the bare consent [*34] of the officeholder.

* * *

Entry and continued enforcement of a consent decree regulating the operation of a governmental body depend on the existence of a substantial claim under federal law. Unless there is such a claim, the consent decree is no more than a contract, whose enforcement cannot be supported by the diversity jurisdiction and that has in court no more force than it would have outside of court.

Id. at 479-80. The court further stated that "litigants aggrieved by Chicago's failure to adhere to state law must take their claims to state court. The Constitution does not authorize federal judges to

superintend state and local governments' compliance with their own laws." *Id.* at 481 (citations omitted).

It is not clear to this court that the *Evans* holding applies to the facts of the instant case. This case does not deal with the enforcement of a consent decree. *Evans* would not appear to apply to situations in which a court is simply asked to issue an injunction against a state or city governmental agency directing it to comply with state law or to comply with the terms of agreements it has made with other parties, especially [*35] when there are "substantial federal claims." Because there are such claims in this case, plaintiff argues that the court may exercise supplemental jurisdiction over Counts 15-22. The supplemental jurisdiction statute provides that, in any civil action in which the federal district court has original jurisdiction, court also has supplemental jurisdiction over all related claims that form part of the same case or controversy. See 28 U.S.C. § 1367(a); *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S. Ct. 1130, 1138, 16 L. Ed. 2d 218 (1966). In this case, plaintiff's complaint contains several claims that are based solely upon federal law. (See Compl., Counts 1-14). The court has found that it has jurisdiction over those federal claims. (See *supra* Parts III.A and III.B). The court also finds that plaintiff's state law claims arise out of the same case or controversy as do its federal claims (i.e., events related to the development and implementation of the CHA Plan). In the past, courts have also found that supplemental jurisdiction may be exercised over state law claims against governmental defendants. See *Board of Educ. of Community High Sch. Dist. No. 218 v. Illinois State Bd. of Educ.*, [*36] 940 F. Supp. 1321, 1327 (N.D. Ill. 1996) (noting that court had supplemental jurisdiction of state law claim against Illinois Department of Mental Health and Development Disabilities deriving from the same nucleus of operative fact as federal IDEA claim); *Contreras v. City of Chicago*, 920 F. Supp. 1370 (N.D. Ill. 1996) (noting that court had discretion to exercise supplemental jurisdiction over claims that requested declaratory and injunctive relief and that only raised questions of state and municipal law); see also *Myers v. County of Lake, Ind.*, 30 F.3d 847 (7th Cir. 1994) (upholding district court's exercise of supplemental jurisdiction over plaintiff's state law negligence claim against county). This court therefore adopts the reasoning of those cases and concludes that it has discretion to exercise supplemental jurisdiction over plaintiff's state law claims.

D. Plaintiff's Claims Under Fair Housing Act and Title VI of Civil Rights Act of 1964

CHA contends that Counts 1-4 of plaintiff's complaint fail to state a claim under § 3604(a) of the Fair Housing Act ("FHA") because those counts [*37] fail to allege that CHA has either (1) denied black residents replacement housing in a racially integrated neighborhood (Count 4), or (2) otherwise discriminated against them in the provision of housing because of their race, sex, or familial status (Counts 1-4). n5 CHA also contends that Count 5, brought under Title VI of the Civil Rights Act of 1964, should be dismissed for lack of standing.

n5 Section 3604(a) of the FHA states that it is unlawful

to refuse to sell or rent . . . or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

42 U.S.C. § 3604(a).

1. Denying Black Residents Replacement Housing

LAC's complaint alleges that the CHA Plan provides for the demolition of several structures containing over 1300 units public housing units and that this will displace 675 very low-income Cabrini-Green families. Plaintiff also alleges that the CHA Plan for Cabrini-Green [*38] only provides for 300-325 very low-income replacement units. (Compl., PP 60, 62, 89). Thus, the face of plaintiff's complaint contains allegations that over 300 Cabrini-Green families will be denied replacement housing, the majority of whom are African-American. The complaint can also fairly be read to allege that, because the Cabrini residents will be denied housing in their newly revitalized neighborhood and because those residents have very low incomes, they will be forced to live in a non-racially integrated area. While plaintiff may not ultimately be able to prove that current LAC members will be moved into segregated neighborhoods against their will, this court cannot say that plaintiff has not at this point adequately alleged a violation of the FHA in Count 5.

2. Sufficiency of Allegations of Discrimination

The court now turns to CHA's second argument as to why plaintiff's FHA counts fail to state a claim. CHA argues that plaintiff's allegations of

disparate impact, unaccompanied by allegations that CHA acted with intent to discriminate, are insufficient to state a per se claim under the FHA. CHA bases this argument on the court's decision in *Metropolitan Housing [*39] Development Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977), in which the Seventh Circuit stated that there are four critical factors to be examined in determining whether conduct that produces discriminatory impact violates § 3604(a). Those factors are: (1) how strong the showing of discriminatory effect is; (2) whether there is some evidence of discriminatory intent; (3) what the defendant's interest is in taking the action complained of; and (4) whether the plaintiff seeks affirmative relief that would compel the defendant to provide housing for minority groups. *Id.* at 1290. CHA contends that LAC has failed to satisfy at least three of the four factors because (1) there is no allegation that defendants are acting with intent to discriminate; (2) defendants' interest is to improve Cabrini-Green housing and open it to a wider range of residents; and (3) plaintiff seeks to require defendants to take affirmative action to build or rehabilitate housing in Cabrini-Green, which represents a collateral attack on *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969).

The court initially notes that the four-factor test set [*40] out in *Arlington Heights* for determining whether conduct producing discriminatory impact but taken without discriminatory intent violates the FHA is more properly applied to a motion for summary judgment or by the factfinder at trial. *Cf. Arlington Heights*, 558 F.2d at 1290-93 (applying four factors to a record developed after trial); *Gomez v. Chody*, 867 F.2d 395 (7th Cir. 1989) (determining whether a genuine issue of triable fact existed in order to defeat motion for summary judgment). At the motion-to-dismiss stage of the proceedings, the more appropriate question is whether plaintiff's allegations of disparate impact are sufficient to establish a prima facie case under the FHA.

In any event, defendants are incorrect in their assertion that *Arlington Heights* and its progeny make clear that "some showing of discriminatory intent is required" to establish a Fair Housing Act violation. (See Def. Mem., at 22). Defendants' reliance on cases such as *Burrell v. City of Kankakee*, 815 F.2d 1127 (7th Cir. 1987) and *Gomez v. Chody*, 867 F.2d 395 (7th Cir. 1989), is not persuasive. For example, the court in *Burrell* [*41] specifically stated that "a showing of discriminatory intent is not required under § 3604(a)." 815 F.2d at 1131. Likewise,

Gomez is explicit that "discriminatory effect, without discriminatory intent, may constitute a violation of the [Fair Housing Act]." 867 F.2d at 402 (emphasis omitted). Thus, despite defendants' contention, plaintiff need not allege that defendants were acting with intent to discriminate to state a claim under § 3604(a). Cf. *Arlington Heights*, 558 F.2d at 1290 ("A strict focus on intent permits racial discrimination to go unpunished in the absence of evidence of overt bigotry. As overtly bigoted behavior has become more unfashionable, evidence of intent has become harder to find."). The court finds that plaintiff's allegations of discriminatory effects are enough to state a claim for relief under the FHA. n6

n6 CHA also argues that its interest in adopting the CHA Plan is to improve Cabrini-Green housing and open it to a wider range of residents, therefore suggesting that LAC has failed to state a claim for relief under the FHA. (See, e.g., *Def. Reply*, at 11-12). However, as stated previously, an argument based on one of the *Arlington Heights* factors is more properly considered at summary judgment or at trial. At this stage of the proceedings, such an argument cannot defeat the allegations in a well-pleaded complaint that properly state a claim for relief under the FHA.

Furthermore, the court rejects CHA's argument that allowing plaintiff to go forward with its FHA claims based in part on its allegations of discriminatory effect will necessarily mean "any housing strategy CHA proposes [for Cabrini-Green] will violate the FHA." (*Def. Reply*, at 11). This is not the case. At this stage of the proceedings, the issue is simply whether plaintiff has properly stated a claim. Plaintiff still has the burden to prove the alleged violations of the FHA.

[*42]

3. Standing to Sue Under Count 5

Defendants also argue that plaintiff does not have standing to sue under Count 5 of its complaint. In that count, plaintiff alleges that the CHA Plan will result in the net loss of 1000 public housing units, the impact of which will fall disproportionately on African-Americans, in violation of Title VI of the Civil Rights Act of 1964. n7 Defendants assert that plaintiff does not have standing to assert a claim under Title VI because it has failed to allege that it is injured by a reduction in dwelling units. In addition, defendants argue that plaintiff has failed to state a claim under Title VI because it has failed

to allege that defendants are proposing the CHA Plan "on the ground of" race. Furthermore, defendants argue that while plaintiff may have an interest in this case as a representative of the residents of Cabrini-Green, the black residents of Cabrini-Green are "already well-represented by their class counsel in *Gautreaux v. Chicago Housing Authority*." See 304 F. Supp. 736 (N.D. Ill. 1969). Defendants have therefore requested that the court transfer this count to the judge of this court that is overseeing *Gautreaux* [*43]. The court will treat each of these arguments in turn.

n7 Title VI provides that:

No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
42 U.S.C. § 2000d.

First of all, the court notes that it has already addressed defendants' standing arguments in Part III.B, *supra*. Second, the court finds that plaintiff's complaint is sufficient to establish a *prima facie* case of discrimination under Title VI because it has alleged disparate impact. In *Guardians Association v. Civil Service Commission*, 463 U.S. 582, 584 n.2, 103 S. Ct. 3221, 3223, 77 L. Ed. 2d 866 (1983), the Supreme Court held that a plaintiff may use a theory of disparate impact to vindicate rights secured by agency regulations promulgated pursuant to Title VI and which incorporate an "effects" standard. See also [*44] *Gomez v. Illinois St. Bd. of Educ.*, 811 F.2d 1030, 1044-45 (7th Cir. 1987) (noting that disparate impact claim could be maintained under regulations promulgated pursuant to Title VI). Because HUD has promulgated such regulations, see 24 C.F.R. § 1.4(b)(2)(i) (barring recipients of HUD funds "from utilizing criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color or national origin" (emphasis added)), plaintiff has stated a claim under Title VI by alleging disparate impact.

Finally, the court finds that plaintiff's allegations in Count 5 cannot necessarily be read as a collateral attack on *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969). *Gautreaux* prohibits CHA from building housing in racially segregated communities without court approval. CHA notes that one element of the relief

requested by LAC is the construction of replacement housing and argues that this claim for relief brings the case "squarely within the scope of Gautreaux." (Def. Reply, at 15). The court disagrees. It is not clear that granting plaintiff's requested relief [*45] -- i.e., ordering CHA to specifically perform on its contractual agreements with LAC and its members -- will necessarily bring this case within the scope of Gautreaux. This conclusion is based on the fact that the agreement that plaintiff seeks to have enforced specifically states that the agreement is "subject to . . . Federal Court guidelines under Gautreaux." (Compl., P 38). Any relief that this court directs must necessarily take this provision into account.

E. Do Plaintiff's Claims Rely upon Statutes that Create Enforceable Rights?

Defendants also argue that Count 6-12 of plaintiff's complaint do not rely upon statutes that create enforceable rights with the meaning of 42 U.S.C. § 1983, and that plaintiff has therefore failed to state a claim for each of those counts. In particular, defendants argue that the wording relied upon by the plaintiffs in those statutes is "too amorphous" to be judicially enforceable.

In *Suter v. Artist M.*, 503 U.S. 347, 357, 112 S. Ct. 1360, 1367, 118 L. Ed. 2d 1 (1992), the Supreme Court stated that, when determining whether enforceable rights are created by language in a statute, the court must perform a [*46] critical analysis of the statute and must particularly examine that which is required by the statute. The statute at issue in *Artist M.* provided that the State make "reasonable efforts" to reunite foster children with their biological families, but merely required that a plan detailing such reasonable efforts be submitted to and approved by the federal government. The Court found that, without further statutory or regulatory definition of "reasonable efforts," the plaintiffs could not bring an action under 42 U.S.C. § 1983 to enforce the provision. *Id.* at 363, 112 S. Ct. at 1370. The court will examine Counts 6-12 in turn to determine whether the statutory language upon which each of those counts relies provides an objective benchmark for the court to apply.

1. Count 6

Count 6 alleges that under the CHA Plan, 1000 units of very low-income public housing will be permanently lost and 50% of the displaced families will be ineligible for the newly constructed replacement housing. Plaintiff alleges that this violates HOPE VI, 42 U.S.C. § 1437l, note, and the Revitalization of

Severely Distressed Public Housing Program, 42 U.S.C. § 1437v(d)(2), which provide [*47] for grants for the "revitalization" of public housing communities, because the Plan would result in the dismantling and relocation, rather than the revitalization, of Cabrini-Green. (Compl., P 85). CHA argues that neither Congress nor HUD have defined "revitalization," and that Congress has given no indication that it intended to create a private remedy for parties such as LAC.

HOPE VI provides for \$ 300 million to be used to "carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects." 42 U.S.C. § 1437l, note. Other provisions of HOPE VI state a desire to assist "troubled housing authorities" and "severely distressed projects." HOPE VI further provides that funded activities should include "capital costs of major reconstruction, rehabilitation and other physical improvements" and "capital costs of replacement units." It seems apparent, therefore, that while HOPE VI may not define "revitalization" as such, the language of the statute indicates what results Congress would not consider to be "revitalization." For example, HOPE VI funds could not be used for a project that simply [*48] obliterated a public housing development. In addition, some HOPE VI funds must be used to improve existing public housing structures. Furthermore, HOPE VI does not allow a public housing authority to turn its back on "severely distressed projects," such as Cabrini-Green. The court finds, therefore, that the language of HOPE VI gives the court sufficient guidance in determining whether the CHA Plan complies with that statute's "revitalization" requirements. n8

n8 CHA has also argued that Count 6 should be dismissed because the CHA Plan is not required to comply with 42 U.S.C. § 1437v(d)(2), as alleged by plaintiff. The court declines to decide whether a "revitalization" requirement exists in § 1437v(d)(2), because it finds that Count 6 states a claim based solely on a violation of HOPE VI.

2. Counts 7 and 8

Counts 7 and 8 allege that the net loss of 1000 public housing units (Count 7) and the fact that 50% of the newly constructed replacement housing will be unavailable to very low-income public housing residents [*49] (Count 8) are inconsistent with the City of Chicago's Consolidated Plan, see *supra* note 1, to preserve affordable public housing units and to im-

prove the quality of life for very low-income public housing residents. As such, plaintiff alleges that the CHA Plan violates HOPE VI, 42 U.S.C. § 1437l, note, which requires that plans developed under HOPE VI be consistent with the Consolidated Plan. (Compl., PP 86-87). CHA argues that there is "no objective benchmark from which this court could create its own scale to determine if the CHA Plan is inconsistent with the City's Consolidated Plan." (Def. Mem., at 31). CHA further argues that the City's Consolidated Plan cannot be used to create federal rights for the plaintiff and that HOPE VI's requirement of consistency with the Consolidated Plan is solely for the benefit of cities.

The court finds that the Consolidated Plan is even more explicit than the HOPE VI statute in defining what is required regarding the "revitalization" and "rehabilitation" of public housing. The Consolidated Plan is directly addressed to the needs of low- and moderate-income residents. It speaks of "creating stable communities." It explicitly associates [*50] "revitalization" with "preservation of affordable housing units and rehabilitation of existing housing stock." Thus, the court finds that the Consolidated Plan provides an appropriate benchmark by which to assess any HOPE VI-funded projects. The court further finds that HOPE VI's requirement of consistency with the Consolidated Plan does create enforceable rights on the part of LAC and its members. As plaintiff points out, Congress created HOPE VI

for the empowerment of residents of severely distressed and obsolete public housing. . . . For too long, these areas have been the victim of either gross neglect by government or the victim of large bureaucracies that have wasted limited resources in an attempt to impose top down strategies to do good to the residents of these areas. Neither approach has worked. . . . [HOPE VI] is a program that calls upon both the residents and political leaders of America's large cities to join together to develop strategies that will transform these distressed areas into productive residential and commercial centers.

S. Rep. No. 102-356, 102d Cong., 2d Sess. p.40 (1992). It would be inconsistent with the purposes of HOPE VI to allow a [*51] Consolidated Plan to be developed (with input from public housing residents), but then to allow a public housing authority to simply ignore that plan. Giving the residents of public housing projects enforceable rights against CHA to comply with the Consolidated Plan will further the purposes of HOPE VI.

3. Counts 9 and 10

In Counts 9 and 10, plaintiff alleges that the CHA Plan violates HOPE VI, 42 U.S.C. § 1437l, note, and 42 U.S.C. § 1437p(b)(2) which, when read together, require that persons displaced by HOPE VI reconstruction activities shall be eligible for replacement units of their choice, to the "maximum extent practicable." (Compl., PP 88-89). The court agrees with defendants that this language is "too amorphous and vague" to be enforced by the court. Exactly what the "maximum extent" is would vary from case to case and would depend on what was "practicable" in a particular instance. It seems unlikely that Congress would leave this determination to courts without giving them greater guidance. Unlike the language that it used to flesh out the term "revitalization," Congress has done little to give courts direction as to how many replacement units should be built to replace [*52] those that will be demolished or exactly how much deference is to be given to resident "choice." For these reasons, the court finds that plaintiff does not have a cause of action to enforce the "maximum extent practicable" provisions of HOPE VI and § 1437p(b)(2). Counts 9 and 10 are dismissed.

4. Count 11

Count 11 of plaintiff's complaint alleges that 42 U.S.C. § 1437p(b)(1), providing that housing authorities must "meaningfully consult" with local advisory councils, and the language of the Notice of Fund Availability, providing that "residents be fully briefed and meaningfully involved," create federally enforceable rights. (See Compl., PP 90, 26).

As noted in *Concerned Tenants Association of Father Panik Village v. Pierce*, 685 F. Supp. 316, 320 (D. Conn. 1988), the creation of a right to consultation under § 1437p is clear. The court in that case discussed *Edwards v. District of Columbia*, 261 U.S. App. D.C. 163, 821 F.2d 651 (D.C. Cir.1987), in which § 1437p was found not to have created an enforceable right that might be violated by a de facto demolition. Congress promptly amended § 1437p by adding § 1437p(d), which now reads:

A public [*53] housing agency shall not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining the approval of the Secretary and satisfying the conditions [regarding tenant consultation] specified in subsection [b]. . . .

42 U.S.C.A. § 1437p(d) (pocket part). When adding this provision, Congress stated:

This provision is intended to correct an erroneous interpretation of the existing statute by the United States Court of Appeals for the D.C. Circuit in *Edwards v. District of Columbia* and shall be fully enforceable by tenants of and applicants for the housing that is threatened.

H.R. Conf. Rep. No. 426, 100th Cong., 1st Sess. 172 (1987), reprinted in, U.S. Code Cong. & Admin. News pp.3317, 3458. The Congressional disagreement with the *Edwards* court, and the reference to enforceability, manifest intent to create a private right of action. Furthermore, the obvious purpose of the statute is to benefit low-income tenants; therefore, permitting a private right to enforce it is consistent with the purpose of the statute. See *Wright v. Roanoke Redev. & Hous. Auth.* [*54], 479 U.S. 418, 430, 107 S. Ct. 766, 773, 93 L. Ed. 2d 781 (1987); see also, *Cannon v. University of Chicago*, 441 U.S. 677, 703, 99 S. Ct. 1946, 1961, 60 L. Ed. 2d 560 (1979).

Because § 1437p provides a federal right enforceable by tenants, plaintiff may enforce its provisions under 42 U.S.C. § 1983. See *Maine v. Thiboutot*, 448 U.S. 1, 4, 100 S. Ct. 2502, 2504, 65 L. Ed. 2d 555 (1980) (Section 1983 encompasses claims based purely on federal statutory law); *Henry Horner Mothers Guild v. Chicago Hous. Auth.*, 780 F. Supp. 511, 513-15 (N.D. Ill. 1991); *Concerned Tenants*, 685 F. Supp. at 318-21. n9

n9 CHA contends that there is no requirement that plans for disbursement of HOPE VI funds comply with the tenant consultation provisions found in 42 U.S.C. § 1437p. The court rejects this argument. HOPE VI cannot be read in a vacuum. Section 1437p specifically deals with the demolition of public housing. It is clear to the court that if HOPE VI funds are to be used to demolish public housing, then the plan submitted pursuant to HOPE VI must also comply with the tenant consultation provisions of § 1437p.

[*55]

5. Count 12

Plaintiff alleges in Count 12 that CHA's plan to demolish 1158 N. Cleveland violates 42 U.S.C. § 1437p(a)(1), which governs the demolition of public housing and states a desire to preserve housing with a "useful life." Plaintiff alleges that the building is neither obsolete nor is its demolition necessary

to assure the useful life of the remaining portion of Cabrini-Green. (Compl., P 91). As with the "maximum extent practicable" language in Counts 9 and 10, the court finds that Congress has given little direction as to what factors should be considered in determining a public housing project's "useful life." However, even beyond the difficulties in applying this standard to the facts of the instant case, the court notes that § 1437p(a)(1) merely states a "desire" that housing with a useful life be preserved and does not create a requirement that such housing be preserved. For these reasons, the court finds that Count 12 should be dismissed.

F. Implied Cause of Action for Violation of Illinois Housing Authorities Act

Defendant also moves to dismiss plaintiff's claim under the Illinois Housing Authorities Act, 310 ILCS 10/2 (Count 15). In that count, plaintiff [*56] alleges that the CHA Plan will result in the net loss of 1000 public housing units and thus exceeds the powers conferred upon the CHA by the Act "to relieve the shortage of decent, safe, affordable, and sanitary dwellings." 310 ILCS 10/2. Defendant contends that this count should be dismissed because there is no implied cause of action under Illinois law for violations of such "vague and ambiguous statutory language." (Def. Mem., at 38).

The Illinois Housing Authorities Act contains no express provision conferring upon individuals a cause of action to enforce the provisions of the statute. And while it is true that Illinois courts routinely find implied private rights of action in statutes, such private rights of action are commonly found in statutes that also provide for specific criminal or administrative penalties. See, e.g., *Rodgers v. St. Mary's Hosp. of Decatur*, 149 Ill. 2d 302, 309, 597 N.E.2d 616, 619-20, 173 Ill. Dec. 642 (1992); *Corgan v. Muehling*, 143 Ill. 2d 296, 315, 574 N.E.2d 602, 610, 158 Ill. Dec. 489 (1991); *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 391, 432 N.E.2d 849, 854-55, 59 Ill. Dec. 905 (1982); *Kelsay* [*57] *v. Motorola, Inc.*, 74 Ill. 2d 172, 185, 384 N.E.2d 353, 358-59, 23 Ill. Dec. 559 (1978). Though the Illinois Housing Authorities Act is not such a statute, finding an implied private right of action is not foreclosed.

In *Sawyer*, 89 Ill. 2d at 391, 432 N.E.2d at 854-55, the court set out the elements of a test that has subsequently been used by Illinois courts to determine whether there is an implied right of action under a statute. Such an implied right of action has

been found when the following circumstances exist:

1. The plaintiff is a member of the class of persons for whose benefit the statute was enacted;
2. The plaintiff's injury is one which the statute was designed to prevent;
3. A private right of action is consistent with the underlying purpose of the statute; and
4. A private right of action is necessary to effectuate the purposes of the act.

See *id.*

First of all, the court notes that no Illinois court has found an implied private right of action under the Act. While this is not dispositive of the issue of whether such a right of action does indeed exist, consideration of the third and fourth factors set out [*58] in *Sawyer* counsels against finding a private right of action. In regard to the third factor, the court finds that the Illinois Housing Authorities Act was not enacted in order to regulate housing authorities, but to create them and to vest them with powers to address housing problems. The court finds that a private right of action would be inconsistent with this underlying purpose. In addition, the general mandate of the Illinois Housing Authorities Act does not provide the court with enough guidance as to how the Act's provisions should be enforced. For similar reasons, the court finds that the fourth element of the *Sawyer* test is not satisfied. The Illinois General Assembly, by enacting the Act, has taken on the responsibility of monitoring housing authorities in the execution of their general powers; thus, a private right of action is not necessary to effectuate the purposes of the act. Count 15 of plaintiff's complaint is dismissed.

G. Contract Claims

CHA also moves to dismiss Counts 16-21. CHA argues that LAC is not a party to the March 13, 1995 agreement that is the basis of Counts 16, 17, 19, and 20 and therefore has no right to enforce [*59] the document. Furthermore, CHA contends that LAC has failed to allege facts that show that either the March 13, 1995 agreement or the May 28, 1993 agreement are enforceable for the following reasons: (1) conditions precedent to both alleged agreements did not occur (i.e., HUD failed to approve the original CHA Plan) and the agreements therefore were impossible to perform; (2) Vincent Lane lacked authority to bind CHA;

and (3) the March 13, 1995 agreement is not a contract because its terms are unascertainable.

LAC's complaint, however, contains allegations sufficient to state a claim for breach of contract. First, LAC has alleged that it is a party to both the May 28, 1993 and the March 13, 1995 agreements and that those agreements are enforceable. (See Compl., PP 38, 43 (stating that "CHA and plaintiff entered into a Memorandum of Agreement" and that "CHA, through its Chairman, Vincent Lane, agreed in writing with the plaintiff")). Second, the pleadings in this case do not establish that the agreements were impossible to perform because of conditions precedent that did not occur. Finally, the court finds that the terms of the March 13, 1995 agreement are not unascertainable. [*60] Evidence may be produced during discovery or trial that fleshes out any ambiguity in that document.

H. Promissory Estoppel Claim

In Count 22, plaintiff alleges that some families moved out of 1158 N. Cleveland in detrimental reliance on CHA's promise to rehabilitate that building. (Compl., P 101). Defendants argue that this promissory estoppel claim must be dismissed because it fails to establish an unambiguous promise to families that they could return to 1158 N. Cleveland after it was rehabilitated. The court finds, however, that plaintiff has adequately pled such a promise. Plaintiff relies on the fact that the original HOPE VI application provided for the rehabilitation of 1158 N. Cleveland. Furthermore, plaintiff alleges that the March 15, 1995 agreement between LAC and CHA called for such rehabilitation. Moreover, at this stage of the proceedings, the court cannot say that CHA's promise was not directed to the individual tenant families. For these reasons, the court finds that plaintiff has properly stated a promissory estoppel claim.

IV. Conclusion

WHEREFORE, for the foregoing reasons, defendants' motion to dismiss plaintiff's complaint is granted in part [*61] and denied in part. Counts 9, 10, 12, and 15 of plaintiff's complaint are dismissed with prejudice.

ENTER:

David H. Coar

U.S. District Judge

Dated: January 21, 1997