

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 09-22087-CIV-GOLD/MCALILEY**

GEORGINA DE LEON, MANUEL LOPEZ, et. al.

Plaintiffs,

v.

HIALEAH HOUSING AUTHORITY, et. al.

Defendants

SETTLEMENT AGREEMENT AND CONSENT DECREE

This action was instituted by individual Plaintiffs Georgina De Leon, Manuel Lopez, Aida Flores, Aida Villarta, Michael Wiseman, and Gloria Campos against Defendant Hialeah Housing Authority (“HHA” or “Authority”) and against individual Defendants Alex Morales (as Executive Director), Ben Alvarez (as Commissioner), Julio Ponce (as Commissioner), Alicia Perez (as Commissioner), Jose Luis Paniagua (as Commissioner), and Ana Wydra (as Commissioner). All individual Defendants were sued in their “official capacity.” After the commencement of this litigation these individual Defendants were replaced at the Authority and their replacements have been substituted as the individual Defendants now being sued in their “official capacity.” The individual Defendants in this case are now: Jose Martinez, Interim Executive Director, and Maida Gutierrez, Lourdes Lozano, Barbara Hernandez, Paul Hernandez, and Lucia Rodriguez, as Commissioners, all being sued in their “official capacity.”

The Second Amended Complaint alleges violations of procedural and substantive due process as set forth in the 14th Amendment of the United States Constitution, violations of Sec-

tion 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437f; and the federal regulations governing the Section 8 Program, and with respect to Plaintiffs Aida Villarta, Manuel Lopez, and Michael Wiseman violations of the Fair Housing Act, as amended 42 U.S.C. § 3604, the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (hereinafter "ADA"); and Section 504(a) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 ("Rehabilitation Act"). Throughout the course of this Agreement, the term "Section 8" Program shall be meant to refer specifically to HUD's Housing Choice Voucher Program.

WHEREAS, Plaintiffs and Defendants, having carefully considered the issues of damages, costs, attorneys' fees and affirmative injunctive relief sought by the Plaintiffs, agree that such issues should be resolved without further litigation, and

WHEREAS, Plaintiffs acknowledge that the Defendants understand the need for and believe in a policy of nondiscrimination and fairness in their activities as a housing authority charged with the proper administration of various government housing subsidy programs as well as monitoring compliance with their administrative plans and the various laws and regulations governing the conduct of their activities, and

WHEREAS, the parties further acknowledge that the agreements herein are motivated by the desire of both the Plaintiffs and the Defendants to assure that the goal of nondiscrimination and fairness in the administration of government housing programs is achieved; and

WHEREAS, in their Second Amended Complaint the Plaintiffs recite instances of alleged violations occurring during the administration of former Executive Director Alex Morales and during the tenure of the former individual commissioner Defendants (with the exception of Julio Ponce whose service as commissioner commenced subsequent to the time of the events alleged in the complaint as originally filed and amended) named in the original complaint, and

WHEREAS, all of the original individual Defendants are no longer commissioners of the Authority or, in the case of Alex Morales, no longer Executive Director or otherwise employed by the Authority, and are no longer Defendants in this action, and

WHEREAS, the Plaintiffs recognize and agree that the current Interim Executive Director (Jose Martinez) and the current commissioners (Ms. Gutierrez, Ms. Lozano, Ms. Hernandez, Mr. Hernandez, and Ms. Rodriguez) (all hereinafter referred to as "current individual Defendants") are making good faith efforts to institute appropriate procedures and practices to address and eliminate or minimize the problems alleged by Plaintiffs and that these practices and procedures have served to increase compliance with the various laws, rules, and regulations alleged to have been violated by the former administration under then Executive Director Alex Morales, and

WHEREAS, by agreeing to this Settlement Agreement and Consent Decree (hereinafter described as "Consent Decree"), the Authority and current individual Defendants do not admit to any liability to the Plaintiffs, and

WHEREAS, the Authority promises to carry out the various promises and representations made herein, and

WHEREAS, the parties agree that the current individual Defendants have been joined as Defendants in their "official capacity" only and will, by this agreement and Consent Decree, be dismissed as Defendants in this cause, and

WHEREAS, this agreement includes a general release and upon execution of this agreement and payment of the damages stated herein, the Defendants will be released from all claims and liability as stated in this agreement.

NOW THEREFORE, it is mutually agreed between the Plaintiffs and the Defendants,

subject to approval by the Court and by the United States Department of Housing and Urban Development (HUD) that:

I. GENERAL TERMS

1. Within twenty (20) days after the approval by the court of this Settlement Agreement and Consent Decree, the Authority will deliver to Plaintiffs' counsel a check or series of checks in the total amount of \$ 254,000.00, payable to the Trust Account of the Florida Justice Institute, Inc. (attorneys for Plaintiffs) in full and complete satisfaction of any and all claims in this cause, including attorneys' fees and litigation expenses. These settlement funds shall be for economic damages and attorneys' fees and litigation expenses claimed by Plaintiffs, and will reimburse Plaintiffs for housing assistance that the Plaintiffs contend should have been paid under the United States Housing Act of 1937 with respect to their dwelling units, and therefore are considered unearned income for purposes of determining eligibility for benefits from the Social Security Administration, Medicaid, and/or Food Stamps and will be in full and complete satisfaction of any and all items of recovery sought by Plaintiffs in this cause.

2. After said delivery of the check or checks set forth in para. 1 above and the entry of the Order set forth below approving this document, the Plaintiffs will file with the court a Final Agreed Order of Dismissal of this cause with Prejudice and a dismissal of the individual Defendants as parties with the court to retain jurisdiction to enforce the terms of this Settlement Agreement and Consent Decree.

3. Upon delivery of said funds the Plaintiffs agree that the Defendants are released from any and all liability, claim, action or demand of whatever kind or sort which any of them might have against all or any of the Defendants and that they release Defendants from any and all grievances, suits, causes of action, and claims of any nature whatsoever, whether known or

unknown, including but not limited to all claims asserted in this action together with and any and all charges and complaints and claims, which are based on actions, facts or occurrences prior to the time of the Consent Decree. It is expressly agreed and understood that this release is a full and *general release*.

4. Nothing contained in this Consent Decree nor the facts of its negotiation or execution is deemed to be, nor shall it be construed to be, an admission of any of the allegations in this cause or acceptance or agreement by Defendants of any liability therefor.

5. Upon approval and execution by the parties of this Consent Decree the Defendant Authority will immediately transmit a copy to HUD with a request for expedited approval. Upon approval by the parties, counsel for the parties will petition the court for a continuance of scheduled discovery and other scheduled trial preparation dates pending the receipt of HUD approval. Upon HUD approval the Consent Decree will be promptly submitted to the court for approval.

6. The term of this Settlement Agreement and Consent Decree shall be eighteen (18) months after entry by the court. None of the provisions of this Agreement shall apply or have any effect after the expiration of this time period.

II. SPECIFIC INJUNCTIVE RELIEF

Upon entry by the court of this Consent Decree, the Authority agrees to:

1. Immediately provide Plaintiffs De Leon, Lopez, Villarta, Wiseman, and Flores with Section 8 vouchers. Plaintiff Campos, who during the term of this litigation has been a subsidized tenant in "public housing" of the Authority, has already been issued a Section 8 voucher. Defendants waive the ability to terminate Section 8 participation of Plaintiffs for any event occurring prior to the entry of this Consent Decree of which Defendants had knowledge

or should have had knowledge.

2. The HHA will advertise in various mediums as to notice of opening the waiting lists for Section 8 vouchers, so as to better provide information to persons with disabilities. The HHA will provide persons with disabilities and who notify the Authority of their disability and related inability to apply for Section 8 housing with a "reasonable accommodation" to assist in said application as required by federal, state and local law.

3. Provide current and future Section 8 program applicants with fair and impartial hearings as required by applicable HUD regulations and the Due Process Clause of the United States Constitution. These hearings will not be conducted by a person who is a subordinate of the person who made or participated in the initial decision to deny the application or to terminate participation in the program. If an applicant is being denied for failing to verify information, and they come to the informal review with sufficient verification, the denial for failure to provide information shall be reversed. At an informal review the burden is on HHA to show that an applicant's denial should be upheld based upon a preponderance of the evidence.

4. Audio-record all administrative hearings appealing the denial of a Section 8 applicant. Also, on a monthly basis, provide attorneys at Legal Services of Greater Miami, Inc., with copies of all of Section 8 administrative hearing decisions involving Section 8 applicants issued by the Authority during the month. Defendant HHA shall provide Legal Services of Greater Miami, Inc. with copies of all Section 8 denial notices without charge.

5. Make at least two unsuccessful attempts to obtain third-party verification before using another form of verification when reviewing an application for the Section 8 program and indicate such attempts in the applicant's file. Third-party verification can be written or oral. If third-party verification is not available, HHA must document why it was not available. Third-

party verification must be done by HHA, and the applicant must not be required to contact third-parties.

6. If the third-party verification is unsuccessful Section 8 applicants shall be allowed to provide documents, such as pay stubs, as verification. If such documents are unavailable, then applicants shall be allowed to submit a self-certification which shall serve as a sufficient basis for verification if it addresses the issue involved. HHA must notify applicants that self-certification can serve as verification.

7. When possible HHA is to first use the HUD Enterprise Income Verification system or the HUD Tenant Assessment System to verify a Section 8 program applicant's disability status. ("HUD Systems").

8. In the event the HUD Systems fail to provide the Authority with verification of the applicant's disability, the Authority shall request a SSA benefit verification letter from each family member claiming disability status or either by calling SSA or by requesting it online. Receipt of such disability benefit verification is sufficient verification that an individual qualifies as a person with a disability as of the date indicated.

9. Accept documentation provided by a qualified professional as defined by Defendant HHA's Administrative Plan if it describes the claimed disability as verification of the applicant's disability as of the date indicated, or provide Section 8 applicants with a form for their qualified professional to complete on behalf of the applicant. HHA shall develop and provide forms for qualified professionals for this purpose. This form of verification is only needed if verification of disability from the Social Security Administration is unavailable.

10. Inform Section 8 applicants of the type of documentation needed for verification with sufficient specificity to enable the applicant to determine the type of document needed.

Create forms which will facilitate the verification procedures in the HCV guidebook.

11. Increase ongoing educational and training programs for all tenant selection specialists and supervisors in all relevant areas of their responsibilities including, but not limited to, Fair Housing Act, tenant selection, the Americans with Disabilities Act, the Rehabilitation Act, and verification procedures.

12. Refrain from:

(1) taking any action denying, limiting or terminating Plaintiffs' participation in the Section 8 program without due process and/or compliance with federal law.

(2) requesting documentation from Section 8 applicants that is not reasonably related to an applicant's eligibility.

(3) requesting documents from Section 8 applicants related to the income or assets of persons not on the applicant's application.

(4) once the Authority communicates with the Section 8 applicant in writing and lists "outstanding documents" to be provided by applicant, the Authority shall not require "additional documents" in addition to those listed except in circumstances where the Authority made an administrative error in the initial letter requesting "outstanding documents" or where the documents provided are not responsive to the original request. In said event the Authority will explain the circumstances of the follow-up request in writing to the applicant and most recent document request letter shall list all documents still required.

III. DISPUTE RESOLUTION PROCEDURE

13. The Plaintiffs recognize that questions may arise as to whether the Defendant Authority is fulfilling their obligations as set forth herein. In the spirit of common purpose and cooperation which occasioned this Consent Decree, the parties agree that during the term of this

Consent Decree, in the event that Plaintiffs' counsel believes there is a violation of this Consent Decree, they shall:

(1) Provide the Authority with a written summary of the facts and circumstances known to Plaintiffs' counsel respecting such incident or incidents. This notice shall be delivered to the Authority within ten (10) days following the date that Plaintiffs or their counsel are informed of this incident.

(2) Within ten (10) days after receipt of said notice the Authority will advise Plaintiffs' counsel in writing whether it agrees or disagrees that the incident, or incidents, constitutes noncompliance with a term of this Consent Order. If the Authority agrees it shall describe in writing in said response to Plaintiffs' counsel the remedy it has undertaken or proposes to undertake. If Plaintiffs' counsel is satisfied with such remedy, that fact will be communicated in writing to the Authority within ten (10) days of receipt of the Authority's communication.

(3) If the Authority disagrees with the notice that Plaintiff's counsel believes that an incident of noncompliance has occurred it shall specify the reasons in writing in the aforementioned response and Plaintiffs' counsel shall have ten (10) days from receipt of said communication to advise in writing if they still believe an incident of noncompliance has occurred and why.

(4) If Plaintiffs' counsel are dissatisfied with a remedy proposed by the Authority or continue to believe that this Consent Order has not been complied with and the Authority has expressed a contrary view, a meeting will be arranged within 14 business days between the parties and counsel. The purpose of the meeting will be to resolve the controversy amicably.

(5) If no resolution satisfactory to all parties is obtained at such meeting, Plaintiffs' counsel may then take such appropriate steps as are available to seek relief.

(6) The parties and their counsel agree that no information received by them pursuant to this Section may be used against the other party, its agents, employees or representatives, for any purpose whatsoever, in any judicial, administrative or other proceeding, unless the information is otherwise obtained through other means. The parties also agree that the content of any communications provided pursuant to this Section shall be deemed confidential during the course of the Dispute Resolution Procedure; and if information is provided pursuant to such agreement it shall not be disseminated except upon such terms as the parties may establish. All information provided by a party or its counsel pursuant to such confidentiality agreement shall be regarded as the product of compromise negotiations with the same effect as are accorded such negotiations under the Federal Rules of Evidence.

(7) For the duration of this Consent Decree neither the Plaintiffs nor their counsel may initiate any judicial or administrative action (other than an informal hearing at the Authority in connection with the denial of a Section 8 applicant) or seek relief in any forum against the Authority for an alleged violation of this Consent Order or of any law, rule, or regulation, applicable to the Authority's Section 8 tenant approval process without having first complied with this Section, provided that any applicable statute of limitations shall be tolled pending the conclusion of this Dispute Resolution Procedure. If resolution is not achieved, HHA will reissue the hearing decision with a new date after completion of the dispute resolution procedure.

(8) For purposes of fulfilling the Authority's obligations to provide notice hereunder to "Plaintiffs' counsel" the Plaintiffs will designate in writing a particular attorney to receive said notices.

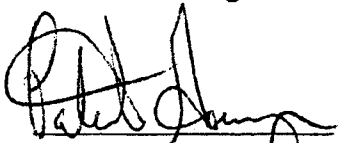
(9) Any party which prevails in a dispute before the Court shall be entitled to attorneys' fees and costs for the time and costs associated with Dispute Resolution and obtain-

ing a judicial resolution.

IV. CONSENT AND EXECUTION BY PARTIES AND COUNSEL

Wherefore the parties and their counsel do hereby agree to the terms and conditions of

the Settlement Agreement and Consent Decree set forth above:



Date: 10/26/10

Patrick H. Gonyea, Esq., (Fla. Bar No.0055042)

Pgonyea@florida-law.com

Vernis & Bowling of Miami

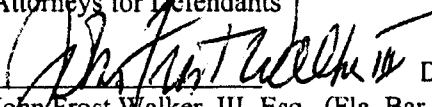
1680 NE 135th Street

North Miami, FL 33181-1748

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Fax: 305-891-1200

Attorneys for Defendants



Date: 10/26/10

John Frost Walker, III, Esq., (Fla. Bar No. 109518)

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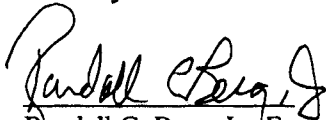
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Miami Beach, FL 33141

Telephone: (305) 669-4488

Facsimile: (305) 284-8460

Attorneys for Defendants



Date: 11/10/10

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Joshua A. Glickman, Esq.

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Florida Justice Institute, Inc.

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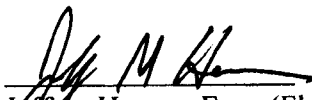
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305-358-2081

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Attorneys for Plaintiffs



Date: 10/29/10

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Legal Services of Greater Miami, Inc.

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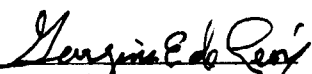
Miami, Florida

305-438-2414

Fax 305-573-5800


Attorneys for Plaintiffs

Individual Plaintiffs:



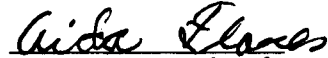
Georgina De Leon

Date: 10-29-10



Manual Lopez

Date: 10-29-10



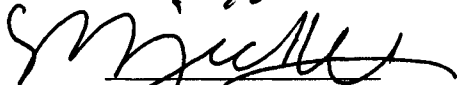
Aida Flores 10-29-10

Date: Aida Flores



Aida Marta

Date: 10-29-10



Michael Wiseman

Date: 10-29-10



Gloria Campos

Date: 10-29-10

Housing Authority Defendant:

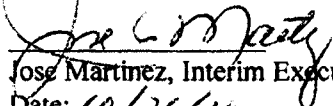
Hialeah Housing Authority

by: 

Jose Martinez, Interim Executive Director

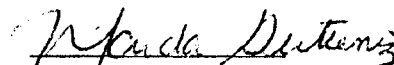
Date: 10/26/10

Individual Defendants:



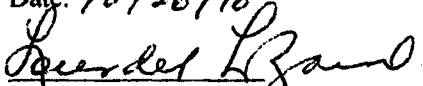
Jose Martinez, Interim Executive Director, Hialeah Housing Authority

Date: 10/26/10



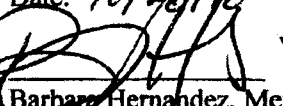
Maida Gutierrez, Chairperson, Board of Commissioners, Hialeah Housing Authority

Date: 10/26/10



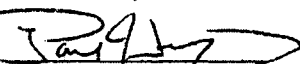
Lourdes Lozano, Member, Board of Commissioners, Hialeah Housing Authority

Date: 10/26/10



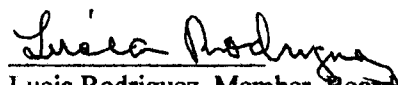
Barbara Hernandez, Member, Board of Commissioners, Hialeah Housing Authority

Date: 10/26/10



Paul Hernandez, Member, Board of Commissioners, Hialeah Housing Authority

Date: 10/26/10



Lucia Rodriguez, Member, Board of Commissioners, Hialeah Housing Authority

10/26/10

V. APPROVAL BY COURT

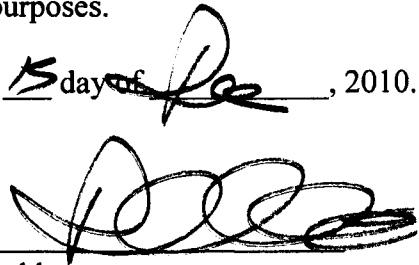
Upon the foregoing approvals by the parties and by their counsel, the court being fully advised in the premises, and having concluded that the foregoing Settlement Agreement and Consent Decree provides a fair and practical resolution of the Plaintiffs' claims, it is hereby ORDERED AND ADJUDGED THAT:

1. The terms and conditions of the Settlement Agreement and Consent Decree are hereby approved and incorporated into this Order by reference;

2. The terms, conditions and implementation of the Settlement and Consent Agreement shall be subject to Federal laws and regulations affecting the subject matter of the Settlement and Consent Agreement and in the event of a conflict between the terms and conditions of the Settlement and Consent Agreement, or its implementation, and Federal laws and regulations, then Federal laws and regulations shall prevail; and

3. The court will retain jurisdiction of this cause during the term of the Consent Decree (eighteen months from the date hereof) for enforcement purposes.

Done and Ordered in chambers at Miami, Florida, this 5 day of Feb, 2010.



Alan S. Gold

United States District Court
Southern District of Florida

cc: Counsel of Record