

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
BROWARD DIVISION**

Case No. 12-cv-62209-JIC

CARLOS AND ISABEL POMALES,

Plaintiffs,

v.

DANIA BEACH HOUSING AUTHORITY, a Florida
municipal corporation, and ANNMARIE GUNDERSEN,
in her individual capacity,

Defendants.

FIRST AMENDED COMPLAINT

And

JURY DEMAND

Plaintiffs, Carlos and Isabel Pomales, (hereinafter "Plaintiffs") by and through their undersigned attorneys, file this First Amended Complaint for injunctive and declaratory relief, damages, costs, and attorneys' fees against the Defendants, Dania Beach Housing Authority (hereinafter "DBHA") and Annemarie Gundersen, and as good grounds state as follows:

Preliminary Statement

1. This action arises as a result of Defendants' discriminatory actions perpetrated against the Plaintiffs based upon national origin and to provide assistance for persons with Limited English Proficiency (hereinafter "LEP") with regards to the rental of decent, safe, and sanitary units through the use of Tenant Based Housing Choice Vouchers (hereinafter "HCV" or

“Section 8”) and for failing to affirmatively further fair housing. Specifically, Defendants DBHA and Gundersen have violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619, and by among other things:

- a. promulgating, adopting, and enforcing a policy of deterring the rental of units to families based upon national origin for those with a limited English proficiency (LEP);
- b. promulgating, adopting, and enforcing a policy of refusing to provide oral interpretation to LEP families based upon one’s national origin;
- c. making a Section 8 voucher for a dwelling unavailable because of national origin;
- d. failing to affirmatively further fair housing to persons with LEP on the basis of a person’s national origin; and
- e. failing to provide meaningful access to housing for LEP persons based upon national origin.

2. Plaintiffs are indigent and elderly individuals raising their grandchild who are in desperate need of, and are eligible to receive, assistance under Section 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. Defendants have systematically and unjustly denied Plaintiffs housing through the Section 8 Tenant-Based Assistance Housing Choice Voucher Program due to national origin discrimination. As a result of Defendants’ illegal discrimination on the basis of na-

tional origin and unlawful denials, Plaintiffs have been left without the funding they need to secure safe homes.

3. By perpetrating their discriminatory scheme and unlawful denials, Defendants have denied the Plaintiffs housing on basis of national origin discrimination in violation of the Fair Housing Act, as amended, 42 U.S.C. § 3604.

4. Plaintiffs seek a declaration by the Court that Defendants' actions are violations of their rights under the Fair Housing Act and the Civil Rights Act of 1964.

5. Plaintiffs also seek a preliminary and permanent injunction ordering Defendant DBHA to 1) immediately admit Plaintiffs into the Section 8 Program; 2) refrain from taking any further action to deny, limit, or terminate Plaintiffs' participation in the Section 8 Program; 3) to implement limited English proficiency program for the Plaintiffs and others; and 4) to refrain from denying Plaintiffs housing assistance for reasons not authorized by law.

6. Plaintiffs seek damages and their attorneys' fees to the maximum amount allowed by law for their losses that resulted from Defendants' unlawful actions.

Jurisdiction and Venue

7. Jurisdiction is invoked pursuant to 42 U.S.C. § 3613(a), in that Plaintiffs assert their claims of housing discrimination in a civil action, and also pursuant to 28 U.S.C. §§ 1331, 2201 and 1343(a)(4), in that this is a civil action seeking to redress the deprivation of the right to fair housing secured to Plaintiffs by the Fair Housing Act and the Civil Rights Act of 1964.

8. Plaintiffs seek declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

9. Plaintiffs seek preliminary and permanent injunctive relief pursuant to Rule 65, Federal Rules of Civil Procedure.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) in that the events and/or omissions giving rise to the claims herein occurred in this district, and the Defendants conduct business in this district.

Parties

11. Plaintiffs, Carlos and Isabel Pomales, are ethnic minorities born in Puerto Rico, citizens of the United States, and at all times relevant herein resided in Dania Beach, Broward County, Florida. Mr. and Mrs. Pomales have LEP as Spanish is their native language. Mr. and Mrs. Pomales and their grandchild are eligible to participate in the Section 8 Program and had applied to the Defendants' Section 8 Program.

12. Defendant DBHA is a federally-funded independent housing authority established by Florida Statute Chapter 421 doing business in Florida. The DBHA administers a Housing Choice Voucher Program for the City of Dania Beach, Broward County, in the Southern District of Florida.

13. Defendant DBHA receives federal funds to contract with private landlords for housing units that are rented to low-income tenants in the Section 8 program. As such, it contains dwellings within the meaning of 42 U.S.C. § 3602(b).

14. Defendant Annmarie Gundersen is the Chief Operating Officer of the DBHA and acted in the capacity of Informal Review Officer during such time as the alleged discriminatory practices occurred. She is sued in her individual capacity.

Background

Section 8

15. Section 8 was established by Congress in order to aid lower income families in obtaining a decent place to live and to promote economically mixed housing.

16. In order to carry-out Section 8, the United States Department of Housing and Urban Development (hereinafter "HUD") provides funds to a governmental entity or public body to act as a public housing agency (hereinafter "PHA") and to operate housing programs for low-income families.

17. In the City of Dania Beach, the Section 8 Program in question is operated by Defendant, Dania Beach Housing Authority.

18. Eligibility for the Section 8 Program is established under the United States Housing Act of 1937, 42 U.S.C. § 1437f(o)(4) and federal regulations.

19. To be eligible for the Section 8 Program, the applicant must be a family, must be income eligible, and must be a citizen of the United States or a non-citizen who has eligible immigration status. *See* 24 C.F.R. § 982.201.

20. Additionally, the PHA is permitted to establish local preferences, and to give priority to serving families that meet those criteria. *See* 24 C.F.R. § 982.207. In the 2002-2006 Dania Beach Housing Authority Administrative Plan to U.S. HUD, Defendant DBHA stated it would "undertake affirmative measures to ensure access [and provide a suitable living environment for families living in] assisted housing regardless of ... national origin" It further certified to HUD that "the PHA [DBHA] shall not discriminate because of race, color, . . . national or ethnic origin, . . . , in the performance of its obligations in any program under its jurisdiction covered by a contract for annual contributions under the United States Housing Act of 1937, as amended." 2007 DBHA Administrative Plan, page 2.

Improving Access to Services for Persons with LEP

21. On August 11, 2000, President William Jefferson Clinton signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." The Ex-

Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. It is expected that agency plans will provide for such meaningful access consistent with, and without unduly burdening, the fundamental mission of the agency. The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal financial assistance such as the Defendant DBHA provide meaningful access to their LEP applicants and beneficiaries. To assist Federal agencies in carrying out these responsibilities, the U.S. Department of Justice has issued a Policy Guidance Document, "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency" (LEP Guidance). This LEP Guidance sets forth the compliance standards that recipients of Federal financial assistance such as the Defendants DBHA and Gundersen must follow to ensure that their programs and activities normally provided in English are accessible to LEP persons such as the Plaintiffs and thus do not discriminate on the basis of national origin in violation of Title VI's and VIII's prohibition against national origin discrimination.

Factual Allegations

22. Plaintiff, Carlos Pomales, is originally from Puerto Rico. His primary language is Spanish. He is protected from discrimination on the basis of national origin.

23. Plaintiff, Isabel Pomales, is originally from Puerto Rico. Her primary language is Spanish. She is protected from discrimination on the basis of national origin.

24. Plaintiff, Carlos Pomales, has a limited command of English and a limited ability to read English.

25. Plaintiff, Isabel Pomales, has a limited command of English and a limited ability to read English.

26. Plaintiffs, Carlos and Isabel Pomales, applied for a Section 8 voucher for themselves and their grandchild, and were placed on the waiting list for a Housing Choice Voucher (hereinafter "HCV") with Defendant DBHA.

27. Defendant DBHA sent Plaintiffs Carlos and Isabel Pomales a Personal Declaration package to complete and sign which was printed entirely in English.

28. Plaintiff Isabel Pomales completed and signed the forms at their orientation appointment with the DBHA which was scheduled for July 14, 2008.

29. The Personal Declaration package of the Defendant DBHA neither identified the applicants' primary language nor offered language assistance.

30. When Carlos and Isabel Pomales came to the Defendant DBHA for their orientation and issuance of their HCV, an employee of Defendant DBHA, Marielys Barahona Vachier, required Plaintiff Carlos Pomales to sign the English forms in the Personal Declaration package without any explanation or oral interpretation.

31. As a result of Plaintiff Isabel Pomales' inability to read and understand the application which was printed entirely in English, she entered erroneous information regarding the criminal history of Plaintiff Carlos Pomales.

32. DBHA employee Vachier, who speaks Spanish, refused to communicate with Carlos and Isabel Pomales in Spanish on July 14, 2008.

33. On July 23, 2008, Defendant DBHA issued a vaguely written notice of ineligibility to Carlos and Isabel Pomales. The notice solely states that "your placement on the Section 8 Waiting List has been dropped for the following reasons: Provided Inaccurate/Incomplete Infor-

mation on Applications(s).” The notice failed to state the nature of the inaccurate/incomplete information. Moreover, the notice was printed entirely in English.

34. Of additional import, Defendant DBHA later admitted that Carlos Pomales’s criminal record, which occurred over ten (10) years ago, would **not** disqualify him from participation in the HCVP. Therefore, he was denied admission to the program solely on the basis of providing inaccurate and immaterial information on an application that neither he nor his wife understood due to it having been printed in English, and it was not translated for him.

35. Carlos and Isabel Pomales submitted a timely request for an Informal Review.

36. The notice DBHA sent to schedule the Informal Review and describing the review procedures was printed entirely in English.

37. The Informal Review was held on August 8, 2008 in the office of the DBHA with Defendant’s employee, Annmarie Gundersen, serving as the Informal Review Officer.

38. Carlos Pomales asked for the review to be conducted in Spanish due to his LEP. Defendant Gundersen replied that she only speaks English. She stated that, “Ms. Barahona [another DBHA employee present at the hearing] speaks Spanish, but she cannot translate for you. It’s your responsibility ... if you have a problem with English... if you have a problem with understanding English, then you should have brought someone with you to help you translate. The letter is very clear.” Defendants DBHA and Gundersen admitted that Carlos Pomales’s dated criminal record did **not** disqualify him from participation in the Section 8 HCVP. Ms. Gundersen stated, “The only problem I have is that you did not disclose it. And unfortunately if you did not understand what you were signing, then you should have asked someone that does understand before you signed.”

39. Defendant Gundersen affirmed the determination of ineligibility in a decision dated August 15, 2008. The decision of August 15, 2008 was printed entirely in English.

40. In a letter dated July 31, 2009 from Defendant DBHA employee Rita Brown she claimed that:

DBHA provides forms in Spanish if requested and also has bi-lingual employees to converse in Spanish if requested by clients. Mr. Pomales seemed quite proficient in English to the four (4) staff members he has conversed with at DBHA, and has never requested either Spanish forms or Spanish language. Mr. Pomales has an adult bi-lingual daughter and would therefore also have language assistance available in addition to services offered by DBHA.

41. Defendant DCBA employee Rita Brown concluded that:

Mr. Pomales had ample opportunity to request assistance to overcome any language barrier which he claims and his failure to do so leads to the conclusion that he knowingly understood the forms and therefore provided inaccurate/incomplete information on his application for DBHA's Housing Choice Voucher Program; therefore, his application will not be reinstated.

42. Defendants DBHA and Gundersen failed to provide meaningful Spanish language access for Carlos and continued to take the position that the burden rested with Carlos and Isabel Pomales to obtain oral interpretation and written translation services from family or friends despite clear and unambiguous requirements of the Executive Order and the fact that there were Spanish speaking persons on staff who could have provide assistance.

43. Defendants DBHA and Gundersen did not take reasonable steps to provide Carlos and Isabel with meaningful access to the HCVP or to accommodate their limited English proficiency by doing any of the following: document translation, staff training, interpreter services, ways for applicants to easily register their language, posted notices of translation service in the

office, mention of language services in outreach documents, and creation of a Language Assistance Plan.

44. Defendant DBHA does not have a Language Access Plan to address the needs of the LEP persons it serves, or those ethnic minorities whose primary language is not English.

45. Defendant DBHA does not have a formal communication system to make ethnic minorities or LEP persons aware of their language options while conducting business with DBHA.

Finding by U.S. HUD that Defendant DBHA violated the Civil Rights Act of 1964

46. On or about August 3, 2009, as a result of the above discriminatory actions taken by DBHA, Carlos and Isabel Pomales filed an administrative complaint with the U.S. Department of Housing and Urban Development (hereafter referred to as "HUD").

47. On or about April 19, 2011, HUD sent DBHA written notification that it was out of compliance with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 for its failure to ensure that Carlos and Isabel Pomales and other LEP persons had meaningful access to its programs through Spanish translation.

48. In so doing, HUD reiterated that at a minimum, Defendant should have provided Carlos and Isabel Pomales with access to oral interpreter services during both the application process and the grievance hearing back in 2008.

49. HUD's Letter of Finding issued on the Title VI claim on April 19, 2011, found Defendant DBHA to be noncompliant with Title VI of the Civil Rights Act of 1964. Therefore, the four year statute of limitations in which to bring a Title VI claim for the intentional violation

of the Civil Rights Act of 1964 was administratively tolled from August 3, 2009 until April 19, 2011. Any statute of limitations argument which the Defendants might now have as to the bringing of the Title VI claim for intentionally violating the Civil Rights Act of 1963 is barred during the entire time which the HUD was considering the Plaintiffs' administrative complaint.

50. On November 3, 2011, HUD issued a final administrative decision as to the claim of discrimination based on national origin in violation of Section 804(b) of the Fair Housing Act. Therefore, the two year statute of limitations periods for the filing of a private action for alleged violations of Title VIII of the Fair Housing Act was administratively tolled from August 3, 2009 until November 3, 2011. Any statute of limitations argument which the Defendants might now raise as to the Fair Housing Act alleged violation was tolled by 42 U.S.C. § 3613(a)(1)(B) during the entire time which the HUD was considering the Plaintiffs' administrative complaint.

COUNT I

Violations of the Fair Housing Act Against DBHA

51. Plaintiffs repeat and reallege paragraphs 1 through 50 as if fully set forth herein.

52. Count I is brought by Plaintiffs against Defendant Dania Beach Housing Authority.

53. Defendant, the Dania Beach Housing Authority, is liable to the Plaintiffs for all injuries caused by the Fair Housing Act violations committed by Defendant and its agents.

54. Defendant, Dania Beach Housing Authority, violated the Fair Housing Act's prohibition on discrimination based national origin by, among other things:

- a) failing to offer translation services to the Plaintiffs who have a limited proficiency in the English language;

- b) failing to provide translation services when requested by the Plaintiffs who have limited proficiency in the English language;
- c) proceeding with the Informal Review despite Plaintiffs' inability to completely understand the proceedings based on their limited proficiency in English;
- d) ultimately denying Plaintiffs participation in the Section 8 HCV program because of their national origin and LEP;
- e) unilaterally and inaccurately determining that the Plaintiffs were not LEP; claiming that Plaintiffs never requested translation assistance, despite their request for translation assistance; and attempting to shift the burden of translation services from Defendant to the Plaintiffs.

55. Defendant, DBHA's policies, rules, and regulations on LEP disparately impact applicants based on their national origin in violation of the Fair Housing Act by, among other things:

- a) failing to offer translation services for applicants;
- b) failing to offer essential forms in languages other than English;
- c) failing to post signs or notices informing applicants of translations services; and
- d) placing the burden of translation services on applicants.

56. A discriminatory purpose, not any legitimate reason, was a motivating factor behind Defendant DBHA aforementioned discriminatory actions and/or omissions and the promulgation of its discriminatory policies and procedures.

- 57. Defendant DBHA and its agents and employees treated Plaintiffs unequally on the basis of their national origin and LEP, and promulgated policies and practices that were designed to treat unequally applicants who have a limited proficiency in the English language. Such unequal treatment based on national origin caused Plaintiffs to be unable to understand the Section 8-application form, which directly led to an initial determination of ineligibility for the Section 8 HCV program. It also prevented Plaintiffs from being able to adequately represent themselves at the Review Hearing, and ultimately resulted in a final ruling by the Housing Authority that Plaintiffs were ineligible for the Section 8 HCV program.

58. As a result of Defendant's actions, omissions, policies and procedures as described above, Plaintiffs suffered, are continuing to suffer, and will in the future suffer irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional distress, moving expenses, storage expenses, increased rent expenses, and a deprivation of their rights to equal housing opportunities regardless of their national origin.

59. By engaging in this unlawful conduct described above, Defendant DBHA acted with evil intent, malice, wantonness, and lucre to damage the rights and legal entitlements of the Plaintiffs, in violation of the Fair Housing Act. This is evidenced, in part, by the fact that, upon information and belief, Defendant DBHA annually certifies that it "will affirmatively further fair housing by examining their program or proposed programs, to identify any impediments to fair housing." U.S. Department of Housing and Urban Development, *Form HUD-50077PHA, Certifications of Compliance with PHA Plans and Related Regulations* (April 2008). Upon information and belief, its agents are housing professionals, who have been educated, trained, and tested in fair housing laws; and despite such education, training, and testing, chose to engage in unlawful discrimination based on national origin.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. declare the actions, omissions, policies, and procedures of Defendant DBHA complained of herein to be in violation of the federal Fair Housing Act, specifically 42 U.S.C. § 3604, *et seq.*;

B. enter a permanent injunction enjoining Defendant DBHA, its successors, and its servants, agents and employees, and all those acting in concert with it, from discriminating on the basis of national origin in the distribution of Section 8 vouchers;

C. enter a permanent injunction compelling the Defendant DBHA, its successors, and its servants, agents and employees, and all those acting in concert with it, to adopt policies, procedures and practices, which will ensure that all individuals who wish to participate in the Section 8 HCV program may do so without regard to national origin and one's LEP;

D. enter a permanent injunction compelling Defendant DBHA, its successors, and its servants, agents and employees, and all those acting in concert with it, to ask Section 8 HCV program applicants as to their proficiency of the English language and to offer translation services when applicants indicate that they are of a different national origin and have a limited proficiency in the English language;

E. enter a permanent injunction compelling Defendant DBHA, its successors, and its servants, agents and employees, and all those acting in concert with it, to post notices in prominent locations informing applicants of the availability of translation services;

F. enter a permanent injunction compelling Defendant DBHA, its successors, and its servants, agents and employees, and all those acting in concert with it, to make

available to applicants of a different national origin and with a LEP, applications and forms in a language that they are proficient in;

G. Require Defendant DBHA to provide Plaintiffs with a Section 8 housing voucher;

H. award compensatory damages to the Plaintiffs against Defendant DBHA, to compensate Plaintiffs for, among other things, the humiliation, embarrassment, emotional distress, moving expenses, storage expenses, increased rent expenses;

I. award Plaintiffs their costs and reasonable attorneys' fees in this action; and

J. award Plaintiffs such other and further relief as the Court deems just and proper.

COUNT II

Violation of the of the Fair Housing Act Against Gundersen

60. Plaintiffs repeat and reallege paragraphs 1 through 50 as if fully set forth herein.

61. This Count II is brought by Plaintiffs against Defendant Annmarie Gundersen.

62. Defendant Gundersen, acting in her individual capacity, deliberately violated the Fair Housing Act's prohibition of discrimination in the provision of housing based on national origin by, among other things:

- a) Deliberately refusing to provide translation services when requested by the Plaintiff Carlos Pomales who clearly stated his inability to fully comprehend the English language and the ongoing proceedings;

- b) Deliberately attempting to shift the burden of providing translation services from the Defendants DBHA and Gundersen to Plaintiff Carlos Pomales;
- c) Proceeding with the informal hearing to determine Plaintiffs' eligibility for the Section 8 HCV program with the knowledge that the Plaintiff Carlos Pomales was of limited English proficiency and unable to fully comprehend the proceedings;
- d) Deliberately ruling that the Plaintiff Carlos Pomales was ineligible for HCV despite Defendant's knowledge that Plaintiff Carlos Pomales was unable to fully understand the proceedings and was also unable to fully understand the original application which the denial of HCV was based; and
- e) By failing to conduct herself in an impartial and neutral manner during the hearing because of Plaintiff Carlos Pomales' LEP and national origin.

63. A deliberately discriminatory purpose, not any legitimate reason, was a motivating factor behind Defendant Gundersen's aforementioned discriminatory actions and/or omissions.

64. As a result of Defendant Gundersen's actions, omissions, policies and procedures as described above, Plaintiffs suffered, are continuing to suffer, and will in the future suffer irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional distress, moving expenses, storage expenses, increased rent expenses, and a deprivation of their rights to equal housing opportunities regardless of LEP.

65. By deliberately engaging in this unlawful conduct described above, Defendant Gundersen acted with evil intent, malice, wantonness, and lucre to damage the rights and legal entitlements of Plaintiffs, in violation of Title VIII and the requirements of providing assistance for those with LEP as set forth in the Executive Order. This is evidenced, in part, by the fact that, upon information and belief, Defendant DBHA annually certifies that it “will affirmatively further fair housing by examining their program or proposed programs, to identify any impediments to fair housing.” U.S. Department of Housing and Urban Development, *Form HUD-50077PHA, Certifications of Compliance with PHA Plans and Related Regulations* (April 2008). Upon information and belief that Defendant Gundersen is a housing professional, who has been educated, trained, and tested in fair housing laws; and despite such education, training, and testing, deliberately chose to engage in unlawful discrimination.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. declare the actions, omissions, policies, and procedures of Defendant Gundersen complained of herein to be in violation of the Fair Housing Act of 1964, 42 U.S.C. § 3604 *et seq.*;

B. enter a permanent injunction compelling Defendant Gundersen, to adopt policies, procedures and practices, which will ensure that Section 8 HCV applicants receive translation services when they are of limited English proficiency;

C. award compensatory and punitive damages to Plaintiffs against Defendant Gundersen to compensate Plaintiffs for, among other things, the humiliation, embarrassment, emotional distress, moving expenses, storage expenses, increased rent expenses;

D. award Plaintiffs their costs and reasonable attorneys’ fees in this action;
and

E. award Plaintiffs such other and further relief as the Court deems just and proper.

COUNT III

**Violation of the Civil Rights Act of 1964,
42 U.S.C. § 2000d et seq., Against Annmarie Gundersen**

66. Plaintiffs repeat and reallege paragraphs 1 through 50 as if fully set forth herein.

67. This Count III is brought by Plaintiffs against Defendant Annmarie Gundersen.

68. Defendant Gundersen, acting in her individual capacity, deliberately violated the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*'s prohibition of discrimination based on national origin by, among other things:

- a) Deliberately refusing to provide translation services when requested by the Plaintiff Carlos Pomales who clearly stated his inability to fully comprehend the English language and the ongoing proceedings;
- b) Deliberately attempting to shift the burden of providing translation services from the Defendants DBHA and Gundersen to Plaintiff Carlos Pomales;
- c) Proceeding with the informal hearing to determine Plaintiffs' eligibility for the Section 8 HCV program with the knowledge that the Plaintiff Carlos Pomales was of limited English proficiency and unable to fully comprehend the proceedings;
- d) Deliberately ruling that the Plaintiff Carlos Pomales was ineligible for HCV despite Defendant's knowledge that Plaintiff Carlos Pomales was unable to fully understand the proceedings and was also unable to fully understand the original application which the denial of HCV was based; and

e) By failing to conduct herself in an impartial and neutral manner during the hearing because of Plaintiff Carlos Pomaes' LEP.

69. A deliberately discriminatory purpose, not any legitimate reason, was a motivating factor behind Defendant Gundersen's aforementioned discriminatory actions and/or omissions.

70. As a result of Defendant Gundersen's actions, omissions, policies and procedures as described above, Plaintiffs suffered, are continuing to suffer, and will in the future suffer irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional distress, moving expenses, storage expenses, increased rent expenses, and a deprivation of their rights to equal housing opportunities regardless of LEP.

71. By deliberately engaging in this unlawful conduct described above, Defendant Gundersen acted with evil intent, malice, wantonness, and lucre to damage the rights and legal entitlements of Plaintiffs, in violation of Title VI and the requirements of providing assistance for those with LEP as set forth in Executive Order. This is evidenced, in part, by the fact that, upon information and belief, Defendant DBHA annually certifies that it "will affirmatively further fair housing by examining their program or proposed programs, to identify any impediments to fair housing." U.S. Department of Housing and Urban Development, *Form HUD-50077PHA, Certifications of Compliance with PHA Plans and Related Regulations* (April 2008). Upon information and belief that Defendant Gundersen is a housing professional, who has been educated, trained, and tested in fair housing laws; and despite such education, training, and testing, deliberately chose to engage in unlawful discrimination.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. declare the actions, omissions, policies, and procedures of Defendant Gundersen complained of herein to be in violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*;

B. enter a permanent injunction compelling Defendant Gundersen, to adopt policies, procedures and practices, which will ensure that Section 8 HCV applicants receive translation services when they are of limited English proficiency;

C. award compensatory and punitive damages to Plaintiffs against Defendant Gundersen to compensate Plaintiffs for, among other things, the humiliation, embarrassment, emotional distress, moving expenses, storage expenses, increased rent expenses;

D. award Plaintiffs their costs and reasonable attorneys' fees in this action;
and

E. award Plaintiffs such other and further relief as the Court deems just and proper.

COUNT IV

Violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., Against DBHA

72. Plaintiffs repeat and reallege paragraphs 1 through 50 as if fully set forth herein.

73. This Count IV is brought by Plaintiffs against Defendant DBHA.

74. Defendant DBHA deliberately violated the Civil Rights Act of 1964, 42 Title U.S.C. § 2000d *et seq.*'s prohibition of discrimination based on national origin by, among other things:

- a) Deliberately refusing to provide translation services when requested by the Plaintiff Carlos Pomales who clearly stated his inability to fully comprehend the English language and the ongoing proceedings;
- b) Deliberately attempting to shift the burden of providing translation services from the Defendant DBHA to Plaintiff Carlos Pomales;
- c) proceeding with the informal hearing to determine Plaintiffs' eligibility for the Section 8 HCV program with the knowledge that the Plaintiff Carlos Pomales was of limited English proficiency and unable to fully comprehend the proceedings;
- d) Deliberately ruling that the Plaintiff Carlos Pomales was ineligible for HCV despite Defendant's knowledge that Plaintiff Carlos Pomales was unable to fully understand the proceedings and was also unable to fully understand the original application which the denial of HCV was based; and
- e) By failing to conducting herself impartial and neutral manner during the hearing because of Plaintiff Carlos Pomales' LEP.

75. A deliberately discriminatory purpose, not any legitimate reason, was a motivating factor behind Defendant DBHA's aforementioned discriminatory actions and/or omissions.

76. As a result of Defendant DBHA's deliberate and intentional actions, omissions, policies and procedures as described above, Plaintiffs suffered, are continuing to suffer, and will in the future suffer irreparable loss and injury including, but not limited to, humiliation, embarrassment, emotional distress, moving expenses, storage expenses, increased rent expenses, and a deprivation of their rights to equal housing opportunities regardless of LEP.

77. By deliberately engaging in this unlawful conduct described above, Defendant DBHA deliberately acted with evil intent, malice, wantonness, and lucre to damage the rights and legal entitlements of Plaintiffs, in violation of Title VI and the requirements of providing assistance for those with LEP as set forth in Executive Order. This is evidenced, in part, by the fact that, upon information and belief, Defendant Dania Beach Housing Authority annually certifies that it “will affirmatively further fair housing by examining their program or proposed programs, to identify any impediments to fair housing.” U.S. Department of Housing and Urban Development, *Form HUD-50077PHA, Certifications of Compliance with PHA Plans and Related Regulations* (April 2008). Defendant DBHA, a public housing authority with professional staff, who have been educated, trained, and tested in fair housing laws; despite such education, training, and testing, deliberately chose to engage in unlawful discrimination by intentionally refusing to implement the requirements of providing assistance for those with LEP as set forth in Executive Order and Title VI.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. declare the actions, omissions, policies, and procedures of Defendant DBHA complained of herein to be in violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*;

B. enter a permanent injunction compelling Defendant DBHA, to adopt policies, procedures and practices, which will ensure that Section 8 HCV applicants receive translation services when they are of limited English proficiency;

C. award compensatory and punitive damages to Plaintiffs against Defendant DBHA to compensate Plaintiffs for, among other things, the humiliation, embarrassment, emotional distress, moving expenses, storage expenses, increased rent expenses;

- D. award Plaintiffs their costs and reasonable attorneys' fees in this action;
and
- E. award Plaintiffs such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable in this matter.

Dated this 7th day of January, 2013.

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing was furnished via electronic email on the 7th day of January, 2013 to all counsel or parties of record on the service list below.

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