

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

CARMEN THOMPSON, <u>et al.</u>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: MJG-95-309
)	
UNITED STATES DEPT. OF HOUSING AND URBAN DEVELOPMENT, <u>et al.</u>,)	
)	
Defendants.)	

**PLAINTIFFS' STATEMENT OF MATERIAL FACTS
SUBMITTED IN SUPPORT OF THEIR PRE-TRIAL MEMORANDUM**

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I. BALTIMORE’S PUBLIC HOUSING IS NOW AND ALWAYS HAS BEEN RACIALLY SEGREGATED AND CONCENTRATED IN POOR, DISTRESSED NEIGHBORHOODS.

1. Baltimore’s public housing system is racially segregated and has been racially segregated since its inception. Ex. 1, maps appended to Expert Report of Karl Taeuber (“Maps”); Ex. 2, Expert Report of Karl Taeuber at 1 (“Taeuber”); Ex. 3, Expert Report of Arnold Hirsch (“Hirsch”) at 3-8; Ex. 4, Expert Report of John A. Powell (“Powell”) at 1-3; Ex. 5, Pendall Exec. Sum. at 1.¹ At present, the racial composition of Baltimore’s public housing is over 97 % black. Taeuber at Table 5. The family projects are 97% black and the overwhelming majority of them are located in high poverty black neighborhoods. Ex. 5, Pendall Exec. Sum. at 2-3; Ex. 2, Taeuber at 86-90, Table 5. The scattered site program is 98% black, and the overwhelming majority of scattered site units are located in high poverty black neighborhoods. Ex. 5, Pendall Exec. Sum. at 3-4; Ex. 2, Taeuber at Table 5. And the overwhelming majority of Section 8 voucher users live in high poverty, minority-concentrated neighborhoods. Ex. 5, Pendall Exec. Sum. at 4-5.

2. Statistical analyses document the unbroken high degree of segregation in Baltimore’s public housing since 1954. During de jure segregation, the segregation index was 100 – indicating a completely segregated system. Ex. 2, Taeuber at 64-65. Directly after the

¹ The expert reports of Rolf Pendall are collected as Exhibit 5 and are cited in the following manner: The Ghettoization of HABC-Assisted Tenants in Baltimore City: Executive Summary (“Pendall Exec. Sum.”); Family Public Housing neighborhoods in Baltimore: Ghettos in Ghettos (“Pendall Family Projects”); The Baltimore Scattered Site Program: An Unrealized Opportunity to Provide Housing outside the Ghetto (“Pendall Scattered Site”); Racial Segregation, Poverty, and Distress: The Neighborhood Conditions of Metropolitan Baltimore’s Section 8 Voucher Users (“Pendall Section 8”); The Ghettoization of Hollander Ridge’s Family Housing Relocatees (“Pendall Hollander Ridge”).

Brown v. Board of Education decision – that is, from 1954 to 1970 – when HABC claimed to be “desegregating” its public housing, the segregation index was 86, indicating a very high degree of segregation, and far higher than for schools that were simultaneously undergoing desegregation. Id. at 4, 65-70. By 2002, nearly fifty years after Brown, the segregation index had fallen only an additional 7 points to 79, which is still a very degree of segregation. Id. at 4, 65-68. These numbers demonstrate an extraordinary failure to accomplish desegregation. Id. at 4.

3. At the national level, HUD officials – including HUD Secretaries, Fair Housing and Equal Opportunity Assistant Secretaries, General Counsel, and Directors of Program Compliance – have consistently and explicitly admitted that the policies and practices implemented by HUD and its predecessor agencies have fostered, encouraged, and maintained racial segregation in public housing. Ex. 27, Secretary Henry G. Cisneros, Testimony before the Housing and Community Opportunity Subcommittee of the House Banking & Financial Services Committee (Oct. 13, 1995) (HUD 01720-33 at HUD 01722); Ex. 28, Statement of George Romney, Secretary, Department of Housing and Urban Development, Before the Senate Select Committee on Equal Educational Opportunity, at 2 (Aug. 26, 1970) (PL 0360033-49 at PL036036); Ex. 29, Secretary Andrew Cuomo, Statement Before the Senate Committee on Banking, Housing and Urban Affairs Subcommittee on housing Opportunity and Community Development (April 9, 1997) (HUD 01548-57 at HUD 01549-50); Ex. 30, Roberta Achtenberg, Keynote Address, 143 U. Pa. L. Rev. 1191, 1193 (1995) (PL 080139-44 at PL 080139-40); Ex. 31, Transcript of speech given by Elizabeth Julian at Seton Hall in the fall of 1996, at 7 (fall 1996) (Julian Dep. Ex. 36); Ex. 10, Deposition of Elizabeth Julian (April 2, 2002) (“Julian Dep.”) at 7, 19-25, 27-36; Ex. 32, John J. Knapp, General Counsel, U.S. Dep’t of Hous. & Urban

Dev., Submission to the Hearing of the House Subcommittee on Housing and Community Development, Committee on Banking, Housing and Urban Affairs, on Discrimination in Assisted Housing (“Knapp Congressional Testimony”) at 12 (Nov. 1985) (HUD 31200-402 at HUD 31200); Ex. 34, John Goering et al., Poverty Concentration, Racial Segregation, and Public Housing in the United States (Draft) at 2, 20 (Mar. 1995) (Adker 079319-079349 at Adker 079339); Ex. 35, Memorandum from Peter Kaplan, Office of HUD Program Compliance to Gordon H. Mansfield, Assistant Secretary for FHEO (“Kaplan Memorandum”) (Sept. 16, 1991) (PL 036152-60 at PL 036153-54); Ex. 36, HUD Notice on Site-Based Waiting Lists, 62 Fed. Reg. 1026, 1027 (Jan. 7, 1997); Ex. 37, HUD Rule to Deconcentrate Poverty and Promote Integration in Public Housing, 65 Fed. Reg. 20686 (April 17, 2000).

4. As for Baltimore in particular, HUD has explicitly admitted that Baltimore’s public housing is among the most highly segregated in the nation. HUD’s own internal analysis found a segregation index of 76 for Baltimore’s public housing system as of 1993, and concluded that that index was one of the highest in the nation. Ex. 33, John Goering et al., The Location and Racial Composition of Public Housing in the United States (Dec. 1994) (HUD 00038-147 at HUD 00106). Looking just at family housing developments within Baltimore’s public housing system, HUD found the segregation index to be an even higher 85. Id. By contrast, the segregation index for projects built for elderly and mixed family/elderly projects was only 51. Id. These HUD findings bear out the statistical analyses and conclusions of Dr. Taeuber. See supra, ¶ 2, Ex. 2, Taeuber at 1-4, 64-68, Table 2.

5. The official policies of racial discrimination practiced by HUD and HABC created a totally segregated public housing system in Baltimore from its inception to 1954, and this

official segregation is a direct cause of the current racial segregation. Ex. 2, Taeuber at 1; Ex. 3, Hirsch at 4-8; Ex. 5, Pendall Exec. Sum. at 1-5; Ex. 4, Powell at 2-4, 10-37. Actions taken by HUD and HABC since 1954 with respect to site selection and tenant assignment have perpetuated and intensified the racial segregation. Ex. 2, Taeuber at 1-3, 85-97; Ex. 3, Hirsch at 3-15; Ex. 5, Pendall Exec. Sum. at 2-3; Ex. 4, Powell at 2-4, 10-37.

6. During the years 1940-1954, HUD and HABC sited, constructed, maintained, and operated 14 public housing projects with more than 7,000 units. In 1954, the public housing system in Baltimore served roughly equal numbers of black and white families – seven projects were built for and occupied solely by blacks and seven projects were built for and occupied solely by whites. Ex. 2, Taeuber at 2, 6, 8. Because of the segregative siting and tenant assignment practices of HUD and HABC, occupancy of Baltimore public housing became heavily (85%) black by 1970 and today is nearly exclusively black. Id. at 2, 7, 49-61.

7. Prior to 1954, seven projects were designated for, and occupied solely by, blacks. All but one of these projects were sited in areas of minority concentration. Ex. 1, Maps. The exception, Cherry Hill, was sited in an isolated vacant land site. Id.; Ex. 2, Taeuber at 2, 21. These public housing projects remained exclusively black to the present. Ex. 2, Taeuber at 1, 8, 36, Table 2. No attempt was made to desegregate them. Id. at 1, 36. No actions taken by HUD or HABC ever changed their status as uniraical black projects. Id. at 1, 36. These projects have never been less than 100% black since their inception. Id. at Tables 2, 5, 6.

8. The seven public housing projects built before 1954 and officially designated for whites were sited in non-minority concentrated areas or in racially mixed areas that were cleared of black occupants. Ex. 1, Maps; Ex. 2, Taeuber at 2. They never experienced stable

integration. Ex. 2, Taeuber at 1. Four of these projects underwent a deliberate racial transition and became uniracial black projects almost immediately. Id. at 1, 3, 8, 36-39, Table 2; Ex. 3, Hirsch at 59-64. Once HABC permitted blacks to move into these projects, nearly all move-ins were black, even though the waiting list had many white applicants. Ex. 2, Taeuber at 3. Three projects that opened as designated-white projects (Claremont, Brooklyn and O'Donnell Heights) remained "white preserves" – that is, 100% white – until 1966-67 and two (Brooklyn and O'Donnell Heights) continued to be majority white until the mid-1990s, despite a majority-black waiting list and even though there were many other housing projects with no white tenants. Id. at 1, 2, 36-39; Ex. 3, Hirsch at 64-68, 71. These disparities resulted from the segregative housing practices of federal and local government agencies. Ex. 2, Taeuber at 1; Ex. 4, Powell at 10-37.

9. During the period 1955-70, HUD and HABC opened eight new projects. Ex. 2, Taeuber at 2, 42-47. Seven were sited in minority-concentrated areas and opened with 97% black occupancy. Id. at 2; Ex. 1, Maps. Six of the seven reached 100% black occupancy and the seventh was 95% black by 1970; all seven continued to be uniracial black to the present or until closed and demolished. Ex. 1, Maps; Ex. 2, Taeuber at 2, 42-47, Table 2. Of the 10,290 total units that existed in 1970, 6600 were in census tracts that were more than 80% black. Ex. 5, Pendall Family Projects at 5. An additional 2000 units were in majority black census tracts. Id. Indeed, 84% of all existing units were in census tracts of at least 50% black and more than 80% were in extreme poverty tracts. Id. at 5-7. During the same period, the three formerly de jure white projects – Claremont, O'Donnell Heights, and Brooklyn – were in tracts which had fewer than 20% black residents. Id. at 5. These actions by HUD and HABC intensified and

exacerbated racial segregation in Baltimore's public housing. Ex. 2, Taeuber at 2-3; Ex. 5, Pendall Exec. Sum at 2-3; Ex. 5, Pendall Family Projects 1-3.

10. From 1971-1995, HUD and HABC opened nine new projects. Ex. 2, Taeuber at 3, 73. Of the nine, seven were placed in overwhelmingly black census tracts and have had 99-100% black occupancy since opening and until the present or demolition (Ex. 2, Taeuber at 2, 73; Ex. 5, Pendall Exec. Sum at 2-5; Ex. 5, Pendall Family Projects at 6), and five of the nine were in tracts that were already extreme poverty tracts and six were in quarter-mile buffer zones with high poverty rates, Ex.5, Pendall Family Projects at 2. Broadway was placed in a racially mixed census tract on the border of an area of minority concentration and across from one of the original black projects (Douglass Homes). Ex. 2, Taeuber at 2, 74; Ex. 5, Pendall Family Projects at 6. And Hollander Ridge was placed in an isolated zone and immediately became its own self-contained ghetto. Ex. 2, Taeuber at 2, 74; Ex. 5, Pendall Family Projects at 2, 6. *No* new housing was placed in white residential areas. Ex. 5, Pendall Exec. Sum. at 2. These actions by HUD and HABC intensified and exacerbated racial segregation in Baltimore's public housing. Ex. 2, Taeuber 2-3; Ex. 5, Pendall Exec. Sum at 2-3; Ex. 5, Pendall Family Projects 1-3.

11. By 1990, 89% of all public housing was in majority-black neighborhoods and nearly 60% was in neighborhoods which were more than 90% black. Ex. 5, Pendall Family Projects at 8. Moreover, 88% was in extreme poverty tracts, and 87% was in tracts experiencing multiple indicators of distress. Ex. 5, Pendall Family Projects at 9, 11.

12. During this same time period, there were low-minority, low-poverty census tracts located away from the inner-city ghettos that were available to HUD and HABC for family

public housing. Specifically, from 1970 to 1985, 16 housing projects containing nearly 3,000 units were built for the elderly and disabled. Ex. 1, Maps; Ex. 2, Taeuber at 2, 77-80. Unlike the family public housing projects, these elderly projects were more dispersed around the city and were not sited exclusively in minority-concentrated or isolated parts of the city. Ex. 2, Taeuber at 2, 77-80; Ex. 1, Maps. There is no reason why family public housing could not have been sited in these areas. Ex. 2, Taeuber at 80.

13. From 1970-1995, HUD and HABC opened over 2800 units of scattered site public housing. The scattered site program presented an opportunity for federal and local government agencies to achieve a substantial amount of desegregation of public housing, but that opportunity was wasted. Ex. 2, Taeuber at 3-4; Ex. 5, Pendall Exec. Sum. at 3-4, 10; Ex. 4, Powell at 3-4. This program used ordinary row housing and small buildings, thereby allowing housing agencies to “scatter” public housing throughout a city. Ex. 2, Taeuber at 3-4; Ex. 5, Pendall Scattered Sites at 10.

14. The overwhelming majority of these units were sited in minority-concentrated areas and neighborhoods already in racial transition. Ex. 1, Maps; Ex. 2, Taeuber at 3, 8, 74-77; Ex. 5, Pendall Exec. Sum at 3-4; Ex. 5, Pendall Scattered Sites at 1, 4-8. Moreover, 31% of those units were sited within a quarter-mile of an existing public housing project. Ex. 5, Pendall Exec. Sum. at 3-4; Ex. 5, Pendall Scattered Sites at 1. Consequently, as of 2000, almost 90 % of all scattered site units were in neighborhoods with 90% black residents and more than 90% of the units were located in high poverty areas. Ex. 5, Pendall Exec. Sum. at 3-4; Ex. 5, Pendall Scattered Sites at 2-3. Less than 1% of all scattered site units were located in tracts with few (i.e., less than 25.9%) blacks and low (i.e., less than 10%) poverty rates. Ex. 5, Pendall Scattered

Sites at 4. Finally, the percentage of black occupants residing in the scattered site units from 1970 to the present has never been less than 98%. Ex. 2, Taeuber at 48.

15. In 1980 when the program had been running for at least 8 years and was about to enter its most productive decade, there were 37 tracts available in which minority population was less than 25.9% and the poverty rate was less than 10%. Ex. 5, Pendall Scattered Sites at 10. In total, these tracts held over 2,000 vacant dwellings. Yet, not a single scattered site unit was sited in any of these 37 tracts. Id.

16. These actions by HUD and HABC intensified and exacerbated racial segregation in Baltimore's public housing. Ex. 2, Taeuber 2-3; Ex. 5, Pendall Exec. Sum at 2-3; Ex. 5, Pendall Family Projects 1-3.

17. The Section 8 voucher program also presented, in theory, another opportunity to desegregate and deconcentrate public housing. Ex. 5, Pendall Exec. Sum. at 1, 4-5; Ex. 5, Pendall Section 8 at 1; Ex. 4, Powell at 3-4. However, under HUD and HABC leadership, this program only exacerbated and intensified racial segregation and concentrations in public housing. Ex. 5, Pendall Section 8 at 1. In 1998, the vast majority of Section 8 users lived in census tracts in which most residents were black and poor. Ex. 5, Pendall Exec. Sum at 4-5. Over 80% of the voucher users lived in majority-black census tracts and over 70% lived in high poverty tracts. Ex. 5, Pendall Section 8 at 2. Moreover, 30% lived in census tracts with multiple indicators of distress. Ex. 5, Pendall Exec. Sum. at 4-5; Ex. 5, Pendall Section 8 at 2. Less than 1% of all voucher users lived in low poverty (<10%) and low minority (<25.9%) census tracts. Ex. 5, Pendall Section 8 at 4.

18. Today's segregation was a foreseeable and foreseen result of the practices, policies, and actions of the federal and local government agencies. Ex. 2, Taeuber at 3; Ex. 3, Hirsch at 6-8; Ex. 5, Pendall Family Projects at 2; Ex. 5, Pendall Scattered Sites at 1; Ex. 5, Pendall Section 8 at 5-6; Ex. 4, Powell at 2-4. Siting public housing in close proximity to formerly de jure black projects and/or in minority concentrated areas guaranteed a transition of the racial composition of public housing from racially mixed to nearly all black. Ex. 3, Hirsch at 6-7; Ex. 5, Pendall Exec. Sum at 3; Ex. 5, Pendall Family Projects at 2; Ex. 5, Pendall Scattered Sites at 1; Ex. 2, Taeuber at 3. This result was foreseeable and foreseen. Ex. 3, Hirsch at 6-8; Ex. 5, Pendall Exec. Sum. at 1; Ex. 5, Pendall Family Projects at 2; Ex. 5, Pendall Scattered Sites at 1; Ex. 5, Pendall Section 8 at 5-6; Ex. 2, Taeuber at 3. HABC has consistently operated racially identifiable housing projects (Ex. 2, Taeuber at 9, 49-64); and HUD has consistently made such a finding throughout the 1980s and 1990s and yet done nothing to correct this condition. Ex. 4, Powell at 31-33; Ex. 38, HUD, Occupancy Audit, Housing Authority of Baltimore City, March 30-April 22, 1981 (June 30, 1981) (HADBAL 001131-54 at HADBAL 001137); Ex. 256, Letter from Thomas Hobbs to M. J. Brodie (Mar. 19, 1982) (HUD3341-3342) (1981 finding that the majority of HABC's public housing projects were racially identifiable); Ex. 39, HUD, Fair Housing and Equal Opportunity Monitoring Report, Housing Authority of Baltimore City (Sept. 28, 1988) (0632-37 at 0634); Ex. 257, Letter from Harold Jackson to Robert Hearn with attached Fair Housing and Equal Opportunity Monitoring Review (Sept. 30, 1991) (HUD27553-27561) (HUD 1991 finding that HABC continued to operate racially identifiable projects, and that 45 of HABC's 48 public housing developments were racially identifiable); Ex. 40, HUD, Limited Management Review, Housing Authority of Baltimore City,

April 21- June 3, 1992 (0178-0187); Ex. 41, HUD, Preliminary Letter of Finding, Housing Authority of Baltimore City, Title VI Case Number: 03-97-07-003 (Sept. 24, 1997) (HUD 04078-82 at HUD 04079).

II. HUD AND HUD OFFICIALS HAVE REPEATEDLY ADMITTED HUD'S ACTIVE ROLE IN ESTABLISHING AND PERPETUATING RACIALLY SEGREGATED PUBLIC HOUSING.

19. Through the years, HUD and HUD officials have made dozens of admissions that the agency and its predecessor agencies have implemented segregative policies and practices. HUD has further admitted that it has long known that its policies have been ineffective in eradicating segregation, and that its actions and inactions were misguided and ineffective.

20. In 1977, the Office of the Assistant Secretary for Housing admitted that “the early standards” of the Public Housing Administration and other early HUD predecessors “did not reflect a concern for the impact of site selection on housing opportunity for minority families. By the mid-1960s, it became evident that much of the public housing available to minorities was being constructed in areas of minority concentration.” Ex. 42, Department of Housing and Urban Development, Notice of Proposed Rule Making on Site and Neighborhood Standards for Subsidized newly-Constructed or Substantially Rehabilitated Housing, 42 Fed. Reg. 4296 at 4296 (Jan. 24, 1977).

21. Twenty years later, in 1997, HUD’s Proposed Deconcentration Rule acknowledged that “[f]or the first 25 years of [the United States Housing Act of 1937], the Federal government permitted, if not encouraged, segregation by race in public housing developments.” Ex. 36, 62 Fed. Reg. 1026, 1027; see also Ex. 37, 65 Fed. Reg. 20686 at 20686 (explaining that purpose of proposed rule is to eradicate the “persistently high levels of racial

segregation and poverty concentration that have too long characterized public housing in many of our Nation's communities.”).

22. Senior HUD officials have made similar admissions ever since the agency's creation in 1965. Indeed, no less than the first HUD Secretary, Robert Weaver, recognized early on that the federal government's "racial equity" policy directly contributed to the segregation in HUD's housing system. Ex. 43, Letter from Robert Weaver to the Vice President (July 14, 1965) (PL 035622). In a letter to the Vice President, Secretary Weaver identified several "problem areas," the "most critical" of which was "the previously acceptable practice of many local authorities in providing housing on a segregated basis. For approximately 25 years, this practice was sanctioned by the Agency." Ex. 44, HHFA, Inventory of Progress and Activity under Title VI of the Civil Rights Act of 1964 (1965), Attachment to Letter from Robert Weaver to the Vice President (July 14, 1965) (PL 035623-40 at PL 035627).

23. In 1970, Secretary George Romney admitted that "the Federal government – through past or present policies – has contributed to the creation of segregated housing patterns," and that past federal housing policies were "clearly indefensible." Ex. 28, Statement of George Romney, Secretary, Department of Housing and Urban Development, Before the Senate Select Committee on Equal Educational Opportunity ("Romney Statement"), at 2 (Aug. 26, 1970) (PL 036033-036049 at PL 036036).

24. Secretary Romney admitted, moreover, that the FHA had engaged in "both official and informal Federal encouragement of racial segregation" by doing such things as refusing to provide insurance in integrated neighborhoods, promoting the use of racially restrictive covenants, and red-lining practices which denied insurance coverage in central city areas. Ex.

28, Romney Statement at 3, PL 036037; see also Ex. 45, Memorandum from Joseph R. Ray, Racial Relations Service, to Albert M. Cole, Administrator, re: Racial Policy to Govern Administration of HHFA Programs (Aug. 13, 1954) (PL 035421-24) (before 1947, FHA provided a model covenant and “explicitly fostered racial covenants” to ensure “homogeneous and harmonious neighborhoods” and the “prohibition of the occupancy of properties except by the race for which they are intended”).

25. Secretary Romney also admitted that “Urban Renewal, the interstate highway network and other Federal programs have contributed to the segregation and isolation of the poor and minority groups in our cities,” and that subsequent changes in FHA policies “have thus far had little practical effect on the pattern of residential segregation which has come to characterize our great metropolitan areas.” Ex. 28, Romney Statement at 4.

26. Two decades later, Secretary Jack Kemp observed that, at the time of his writing, local housing authorities were “using tenant selection and assignment practices which include project or locational preferences” in violation of the civil rights laws and departmental regulations with the approval of HUD officials. Ex. 46, Memorandum from Secretary Jack Kemp to All Regional Administrators (April 25, 1989) (PL 035677-80).

27. A few year later, Secretary Henry Cisneros testified to Congress that “public housing is itself concentrated in high poverty neighborhoods. Due to deliberate siting decisions, public housing tends to be located in areas lacking jobs, economic opportunities and basic amenities.” Ex. 27, Secretary Henry G. Cisneros, Testimony before the Housing and Community Opportunity Subcommittee of the Banking & Financial Services Committee, House of Representatives (Oct. 13, 1995) (HUD 1720-33). Secretary Cisneros also has acknowledged that

the agency had been “complicit in creating isolated, segregated, large-scale public housing” and that “HUD has traditionally been part of the problem.” Ex. 47, News Conference, HUD Secretary Holds News Conference to Discuss the Transformation of Public Housing, 1996 WL 158456 at 7 (April 3, 1996). Secretary Cisneros also recognized that whereas poor African-Americans have been concentrated in segregated, inner-city areas, poor whites mostly live in middle-class, suburban neighborhoods. Ex. 27A, Henry Cisneros, HUD, Regionalism: The New Geography of Opportunity (March 1999) (PL 071856-74 at PL 071862). (“The most extreme poverty in America is now found in geographically isolated, economically depressed, and racially segregated inner cities and older declining suburbs.” However, while “three out of every four poor whites live in middle-class, mostly suburban neighborhoods” three out of four poor African-Americans live in “inner-city ‘poverty neighborhoods.’”).

28. Finally, Secretary Cisneros admitted that “America is not a Third World country where the poor are many and the middle class are few. In America the middle class are many and the poor are few. *What this country lacks is not the capacity to end the isolation of the minority poor; it lacks the will*” (emphasis in original). Ex. 27A, Henry Cisneros, HUD, Regionalism: The New Geography of Opportunity (March 1999) (PL 071856-74 at PL 071863).

29. A year later, Secretary Andrew Cuomo testified that “we have made mistakes with public housing. In the past, public housing has been purposefully racially segregated. . . None of us would justify allowing our children to live in these conditions: segregated, dangerous, dense, isolated. Literally a world apart.” Ex. 29, Secretary Andrew Cuomo, Statement Before the Senate Committee on Banking, Housing and Urban Affairs Subcommittee on Housing Opportunity and Community Development (April 9, 1997) (HUD 01548-57 at 01549). See also

Ex. 29A, Speech by HUD Secretary Andrew Cuomo, NAHRO 1998 Annual Conference (October 25-28, 1998) (HUD 01668-75 at HUD 01673) (“It was the mentality that saw the West Dallas Housing Authority site, and said ‘Let’s get all the poor people we can, round them up from all over, and put them all in one place. We’ll get it all done right away. Clean our hands, done. One location, one site.’ That was the mistake. That could not have worked out well or right. Don’t now, 20 years later, condemn the people who lived in those buildings or condemn the people who tried to run those buildings for your mistake. It was society’s mistake, it was the city’s mistake, it was the county’s mistake, it was the federal government’s mistake, it was not the resident’s mistake.”); Ex. 29B, Remarks by Secretary Andrew Cuomo, HOPE VI Conference (Jan. 12, 1999) (HUD 01676-78 at HUD 01676) (admission of “[t]he concentration, the isolation, the segregation” of public housing).

30. And, in 1995, Roberta Achtenberg, the Assistant Secretary for Fair Housing and Equal Opportunity admitted that HUD continued to support and fund discrimination and segregation in public housing despite full knowledge of the discrimination. Ex. 30, Roberta Achtenberg, 143 U. Pa. L. Rev. 1191, 1193 (May, 1995) (PL 080139-44 at PL 080139-40). She explained: “That the federal government, including HUD, has a long history of having precipitated and perpetuated housing discrimination, there can be no question. At their inception, federal housing programs incorporated many of the prevailing practices of the private housing market and were explicitly discriminatory as a result. And as new housing programs have evolved, successive administrations, Democratic and Republican, have repeatedly missed opportunities to combat discrimination. . . . Federal programs to assist low-income renters have helped concentrate poor, minority families in poor, minority neighborhoods, limiting housing

choice and fostering social division. Originally, public-housing regulations and handbooks encouraged the assignment of families to projects on the basis of their race and the racial composition of the surrounding neighborhoods. And since the passage of civil rights legislation in the 1960s, efforts to desegregate existing projects, ensure equal access to new HUD programs, and open up subsidized housing opportunities in a wider variety of settings have been largely ineffective.” Id.

31. Her successor, Elizabeth Julian, concurred, acknowledging in 1996 that “HUD has, through decades of decision and indecision, action and inaction, created and perpetuated racial segregation in its public housing and other assisted programs.” Ex. 31, Transcript of speech made by Elizabeth Julian at Seton Hall in the fall of 1996, at 7 (Julian Dep., Ex. 10). She testified in deposition that HUD had engaged in segregative or discriminatory practices with respect to its public housing programs. Ex. 10, Julian Dep., at 19-36. She also testified that HUD acknowledged that it had engaged in segregative practices with respect to public housing in Baltimore. Id.

A. HUD Admissions Regarding the Segregative Policies and Practices of HUD’s Predecessor Agencies.

32. In 1933, President Franklin D. Roosevelt and Congress created, through a large statutory appropriation, the Federal Emergency Administration of Public Works, also known as the Public Works Administration (“PWA”). The PWA’s responsibility was to build projects or otherwise support the construction of projects by making loans and awarding grants to state or local housing agencies.

33. In 1934, Congress passed the National Housing Act and created the Federal Housing Administration (“FHA”). This legislation essentially created a mortgage underwriting program through which the FHA was to encourage and insure loans made by banks or other private organizations or associations to build housing. The federal government expanded its support and development of public housing with the passage of the Housing Act of 1937. That statute essentially broadened the powers of the FHA, authorizing that agency to manage “slum clearance” and to make low interest loans to local and state governments for the construction of public housing projects. The rents in these projects were to be fixed and affordable to low income families. Congress also decentralized the PWA structure and created the United States Housing Authority (“USHA”), located in the Department of the Interior, to administer the 1937 Act and assume the public housing responsibilities of the PWA.

1. HUD’s Segregative Underwriting Policies.

34. HUD officials have expressly acknowledged that specific policies and practices of the agency’s earliest predecessors were discriminatory. Assistant Secretary Achtenberg admitted that, in addition to segregation in public housing, “[t]he federal government’s home-ownership programs also reinforced discrimination and separation by income and race in our housing markets. The earliest Federal Housing Administration (FHA) mortgage insurance programs enabled and encouraged middle-class white families to obtain financing for new housing in the burgeoning suburbs, while lending institutions denied loans to older, inner-city neighborhoods and appraisal practices discouraged racial mixing.” Ex. 30, Roberta Achtenberg, 143 U. Pa. L. Rev. at 1193 (May, 1995) (PL 08139-44 at PL 080140). Later FHA programs which expanded credit to older neighborhoods and less affluent borrowers “played a role in the abandonment of

urban neighborhoods by white homeowners. Black families, whose other options were severely constrained by discrimination in the private market, often bought homes in neighborhoods with depressed or declining property values and were sometimes encouraged by unscrupulous lenders and real-estate agents to borrow more than they could afford. Thus, in some communities, FHA programs contributed to residential resegregation, high foreclosure rates [for Black families], and neighborhood disinvestment.” Id.

35. Richard Stearns of HUD provides even more detail about the FHA’s discriminatory underwriting policies and practices. He acknowledged in 1983 that, from the beginning of the federal government’s involvement in public housing to the early 1960s, the FHA consistently advised recipients of federal assistance through its underwriting manuals that certain racial groups would inevitably cause property values to decline. Ex. 48, Memorandum from Richard Stearns to Jenkins File (Sept. 13, 1983) (PL 034638-50 at PL 034639, PL 034645-49). He went on to explain that, in assessing property value, the FHA explicitly considered the racial demographics of the community surrounding the subject property. Id. at PL 034639-40. For example, the agency awarded higher underwriting ratings to neighborhoods with “zoning and deed restrictions” which prevented the “ingress” of racial minorities and “protect[ed] and preserv[ed]” “the desirable neighborhood character.” Id. at PL 034639-40.

36. He further found that, although the FHA had modified its choice of words, this federal policy of preserving the racial homogeneity of neighborhoods remained in force until 1962. Ex. 48, Stearns Memorandum (PL 034638-50 at PL 034644-45). For example, the FHA asserted that the introduction of certain “user groups” – no longer called “inharmonious racial groups” – in otherwise “stable” residential neighborhoods would affect the “quality” of those

neighborhoods and cause property values to decline. *Id.* at PL 034647 (citing Section 1302(i) of the 1947 Underwriting Manual (“new and old residential districts undergo a change in quality which is directly related to the changing user groups that come successively into occupancy”) and Section 1303(7) of the Underwriting Manual (“neighborhoods tend to decline in investment quality over a substantial period of time. Usually, when occupancy is passing from one user group to another, the successor group exhibits a lower income level than its predecessor group. Transition, therefore, gradually results in poorer maintenance of properties and lower owner-occupancy appeal.”)).

37. Stearns determined, moreover, that, despite the Supreme Court’s Shelley v. Kramer decision barring the judicial enforcement of racial covenants and a subsequent statement in FHA’s 1949 underwriting manual that race would not be a factor in property valuation by the FHA, the “FHA made no particular immediate effort to carry out its anti-discrimination policies and, consequently, its new policies had little effect in reversing the impact of its former practices.” *Id.* at PL 034644-45.

2. HUD’s Segregative Urban Renewal and Slum Clearance Policies.

38. HUD officials, and HUD itself, also have acknowledged that during the three decades before 1962, the “urban renewal” and “slum clearance” policies of HUD’s predecessors were segregative. The Assistant Secretary for Housing Management and the Assistant Secretary for Equal Opportunity, for example, stated in a joint 1971 memorandum that the segregation of public housing was exacerbated by “urban renewal” policies through which “black neighborhoods were uprooted, and their former residents often provided with no real alternative to public housing as a new place to move.” Ex. 49, Assistant Secretary for Housing

Management, Assistant Secretary for Equal Opportunity, HUD, Tenant Selection in the Public Housing Program (1971) (Adker 057982-93 at Adker 057984).

39. Almost 25 years later, Assistant Secretary Achtenberg made similar admissions, stating that HUD's predecessors' urban renewal policies actually "accelerated" the deterioration of minority neighborhoods. Ex. 30, Roberta Achtenberg, 143 U. Pa. L. Rev. at 1193-94 (PL 08139-44 at PL 080139-41) (explaining that the FHA allowed its urban renewal policies to be used for "the displacement of poor and minority families. In many instances, these projects resulted in the destruction of established minority communities while utterly failing to expand affordable housing opportunities outside traditional areas of minority concentration.").

3. HUD's Segregative Site Selection and Tenant Assignment Policies.

40. HUD and HUD officials have repeatedly acknowledged that their predecessors promulgated and implemented segregative policies during the three decades after the Act of 1933 was enacted. A 1995 HUD report on minority- and poverty-concentrated neighborhoods observed, for example, that the agency's predecessors carried out a policy based on a "neighborhood composition rule" which required relocation of displaced families in a manner that would not "disturb[] the prevailing de jure or neighborhood racial pattern." Ex. 34, John Goering, Ali Kamely, Todd Richardson, Office of Policy Development and Research, U.S. Department of Housing and Urban Development and the Department of Economics, Catholic University, Poverty Concentration, Racial Segregation, and Public Housing in the United States (Mar. 1995) (Adker 079319-49 at Adker 079321); see generally Ex. 50, Office of the Administrator, Racial Relations Service, Policy Questions: Staff Discussion or Staff Papers (Apr. 6, 1953) (PL 035026-28) (Racial Relations Service's conclusion that "racial equity" policy

“allows local authorities . . . To restrict occupancy in these projects on the basis of race if they so desire”).

41. This “‘neighborhood composition rule’ solidified earlier, historical patterns of racial segmentation and added a federal imprimatur to the convention that ‘Negroes and whites do not mix.’” Ex. 34, Goering et al., Poverty Concentration, Racial Segregation, and Public Housing in the United States (Adker 079319-49 at Adker 079321). These segregated conditions, the report concluded, continue to the present to the detriment of African-Americans: “[t]he data confirm that African-American residents living in family projects are housed in segregated projects in deeply poor neighborhoods. The principal finding of this paper is that the majority of African-Americans living in public housing projects in the United States are living in poverty-concentrated areas, while the majority of public housing white tenants – both families and the elderly – are living in neighborhoods with substantially lower poverty rates.” Id. at Adker 079321; see also Ex. 51, Office of Development and Research, U.S. Department of Housing and Urban Development, An Historical and Baseline Assessment of Hope VI, Vol. I, Cross-site Report (August 1996) at 3-2, 3-18, 4-1, 4-2 (PL 067839-068060) (discussing “neighborhood history” and segregationist site selection approach of Baltimore, Maryland in development of the Lafayette Courts project).

42. And, in the wake of the Brown v. Board of Education decision, internal memoranda recognized that, “[f]rom its inception, the public housing program accepted the separate-but-equal doctrine and, through its racial equity policy, undertook to insist upon uniform enforcement of the ‘equal’ while allowing among the PHA officials that the sanction of locally enforced segregation by race had no supportable legal authority but rather reflected political

expediency.” Ex. 45, Ray Memorandum (PL 0354408-09); see also Ex. 54, Racially Integrated Public Housing Programs: Highlighting 15 Years of Experience (Draft No. 3, Feb. 1952) at 48 (PL 035261-339 at PL 035312) (internal memorandum concluding that “racial equity” policy led to discriminatory treatment of blacks and recommending integration of projects by use of centralized waiting list on a ‘first come, first served’ basis, and recommending that “site selection offers an ideal opportunity to provide the kind of situation requiring a minimum of special attention” to achieving racial integration. Best site is either an interracial neighborhood or a ‘white’ neighborhood near an interracial neighborhood. The difficulty of recruiting and retaining the white group when it feels itself to be in the minority must be realistically appraised.).

43. In his testimony in November of 1985 to the Sub-Committee on Housing and Community Development of the Committee on Banking Finance and Urban Affairs in the U.S. House of Representatives, John Knapp, the then-General Counsel of HUD, outlined the manner in which HUD and its predecessors had addressed or failed to address racial segregation in public housing. Ex. 32, Knapp Congressional Testimony at HUD 31237-38. He explained that, “[i]n the years between the beginning of the [federal housing] program” in 1937 to the 1960s, the federal policy “was that the ‘character’ of a neighborhood was not to be changed by the placement of public housing projects. Implicit in the idea that public housing in a locality would not be the agent of change, but should meld with existing patterns of racial occupancy.” Id. at HUD 31238. Knapp observed that the segregated occupancy patterns in the nation’s cities were largely “attributable” to “national housing and redevelopment policies.” Id. at HUD 31237-38. These early policies, he testified, “did not reflect a concern for the impact of site selection on housing opportunities for minority families. By the mid-1960s, it had become evident that much

of the public housing available to minorities was being constructed in areas of minority concentration.” Id. at HUD 31242.

B. HUD Admissions Regarding HUD’s Post-1962 Segregative and Discriminatory Policies and Practices.

44. Significantly, HUD’s admissions are not limited to the agency’s activities during the period before the civil rights enactments of the 1960s. Indeed, HUD and HUD officials have acknowledged explicitly that, even since the passage of the 1960s civil rights legislation, HUD’s efforts to desegregate existing projects, ensure equal access to new HUD programs, and open up subsidized housing opportunities in a wider variety of settings have been ineffective. Ex. 30, Roberta Achtenberg, 143 U. Pa. L. Rev. at 1193 (May, 1995) (PL 080139-40).

45. On November 20, 1962, President Kennedy signed Executive Order No. 11063. Ex. 31A, Executive Order (Nov. 20, 1962) (PL 032112-117). This Executive Order recognized the harmful effects of racial discrimination in public housing and the duty of the federal government to eradicate those effects. Id. (“granting . . . Federal assistance for the provision, rehabilitation, or operation of housing . . . from which Americans are excluded because of their race . . . is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its constitution and laws”; “discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness”; “the executive branch of the Government, . . . is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to

their race,” at PL 032112). The Executive Order also specifically provided: “I hereby direct the Housing and Home Finance Agency and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property . . . provided with Federal financial assistance.” *Id.* at PL 032113. Despite this mandatory language, federal officials interpreted the Executive Order as applying only to new public housing development. *See* Ex. 36, 62 Fed. Reg. 1026, 1027 (Jan. 7, 1997) (The Order “sought to end discrimination in existing developments only through persuasion and voluntary activity.”).

46. In 1964, Congress passed Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, *et seq.*, which prohibited racial discrimination in all programs that receive federal funding, including, of course, public housing. HHFA promulgated regulations pursuant to the enactment of Title VI. As drafted by federal housing officials those regulations had no teeth; they failed to provide any substantive guidelines to housing authorities advising them of necessary actions to remedy segregation. Ex. 35, Kaplan Memorandum (PL 036153) (admission that the Title VI regulations “provided no substantive guidelines for housing authorities.”); *see also* Ex. 49, Tenant Selection in the Public Housing Program (1971) (Adker 057982-92 at Adker 057989). And, in 1968, Congress passed Title VIII of the Civil Rights Act, or the Fair Housing Act. This provision sought to assure, among other things, that federal housing policy affirmatively furthered fair housing.

47. In 1991, long-time HUD official and Director of the Office of Program Compliance, Peter Kaplan, recounted the history of the agency’s tenant selection and assignment

policies. See Ex. 35, Kaplan Memorandum (PL 036152-036160). He admitted that, from the beginning, public housing was generally segregated and that integration was avoided. Id. at PL 03152-53. He explained that HUD did not change the tenant selection and assignment policies until after the issuance of Executive Order 11063 in 1962 when it issued “guidance” which “described a freedom of choice plan.” Id. at PL 03153. Moreover, the regulations implementing the Civil Rights Act of 1964 contained no specific provisions regarding tenant selection and assignment policies. Id.

48. HUD first announced a freedom of choice policy, under which housing applicants could apply for housing in a development of their choice, and their placement was to be based on the number of available units in the development that they selected and their place on the waiting list. Ex. 36, 62 Fed. Reg. 1026, 1027. The “freedom of choice” policy did not ever diminish – much less eradicate – segregation and HUD itself acknowledged, “freedom of choice plans were often handled by local administrators in such a way as to preclude both freedom and choice.” Ex. 49, Assistant Secretary for Housing Management, Assistant Secretary for Equal Opportunity, HUD, Tenant Selection in the Public Housing Program (1971) (PL 057982-93 at 057986); Ex. 55, Robert Covell, Management Control Assessment of the HUD Tenant Selection and Assignment Policy (1984) (PL 036959-88 at 036964); Ex. 77, Civil Rights Act of 1964, Public Law 88-352, July 2, 1964, 78 Stat. 241 (12-30-64); see also Ex. 36, 62 Fed. Reg. 1026; Ex. 11, Deposition of Laurance D. Pearl in Adker (Jan. 26-27, 1998) (“Pearl Dep.”) at 61-63. Indeed, in 1991, Peter Kaplan explained that “the freedom of choice TSAPs perpetuated the segregated character of public housing.” Ex. 35, Kaplan Memorandum (PL 036152-160 at PL 036153).

49. A 1997 HUD notice published in the Federal Register stated, furthermore, that the “freedom of choice” policy had no “appreciabl[e]” effect on segregation in public housing because it “did not address the effects of the site selection process, by which developments had been located in all-white and all-black areas with tenants assigned accordingly. In many cases, the choice for tenants after these patterns were established was between an all-black development in a black neighborhood or an all-white development in a white neighborhood. An integrated development, much less an integrated neighborhood, was rarely an option. Even assuming fair administration of the policy, which was not always the case, it did not effectively address the complexities of the legacy of segregation.” Ex. 36, 62 Fed. Reg. 1026, 1027.

50. Upon realizing the failures of its freedom of choice policy, HUD implemented a second tenant selection and assignment policy, through which offers for public housing were to be made on a ‘first-come, first-served’ basis to applicants on a community-wide waiting list. That policy provided that, depending on the local authority, public housing tenant applicants could be offered either one or three units in the projects with the highest number of vacancies. Applicants were to be moved to the bottom of the waiting list if, under either the one- or three-offer plan, the applicant refused the offer(s). Ex. 56, HUD, Low-Rent Housing Administration Program Handbook ch. 9, §1, app. 2, § 1d(1)-(7) (June 1969) (PL 036235-39 at PL 036235-42).

51. HUD soon had to acknowledge that the ‘first-come, first-served’ policy was equally ineffective in reducing segregation. A 1984 memorandum by the Office of HUD Program Compliance explained that policy assumed that “offers of units in white projects would overcome the reluctance of blacks to move into such projects.” Ex. 55, Robert Covell, Management Control Assessment of the HUD Tenant Selection and Assignment Policy (1984)

(PL 036958-88 at PL 036965); see also Ex. 11, Pearl Dep., at 75 (admitting that “HUD at that time knew that black projects would essentially remain black projects”). However, HUD acknowledged, that assumption was incorrect because “white projects were not as underutilized as had been assumed.” Ex. 55, Covell at PL 036965. Since the white projects were not desegregating, and the policy was “not designed to desegregate black projects,” the pace of “desegregation was slowed.” Id.

52. Indeed, HUD was aware in as early as 1971 that ‘first-come, first-served’ would result in black projects remaining black and white projects becoming more black. Ex. 11, Pearl Dep., at 67-68. In that year, HUD’s report on “Tenant Selection in the Public Housing Program” found that, although “[t]he overwhelming majority of local housing authorities have adopted tenant selection plans in accordance with HUD’s policy[,] . . . experience has shown that, in most instances, the adoption and implementation of those plans have not led to desegregation or to a decline in discrimination.” Ex. 49, Assistant Secretary for Housing Management, Assistant Secretary for Equal Opportunity, HUD, Tenant Selection in the Public Housing Program (1971) (Adker 057982-93 at Adker 057984). HUD found, moreover, that many authorities were not actually implementing their plans, and, most notably, that the ‘first-come, first-served’ policy would never be an effective way of desegregating public housing or assuring that authorities comply with Title VI. Id. at Adker 057986, Adker 057989.

53. A later internal 1980 HUD report evaluating the unrevised and still-in-place 1967 ‘first-come, first-served’ policy determined that it was inadequate at desegregating public housing, and moreover, concluded that the 1967 policy was “not legally sufficient to meet the requirements of Title VIII” or Title VI. Ex. 57, Larry Pearl paper for Sterling Tucker, Tenant

Selection and Assignment in Low-Income Public Housing (1980) (Adker 058164-69 at Adker 058166-67); see also Ex. 58, Ted Miller, Mildred DePallo, Kathy Rotendaro, Final Report: Feasibility Research for Public Housing Desegregation Demonstration (May 15, 1985) (Adker 079861-957 at Adker 079867-69, 079951-54).

54. Aside from concerns over the policy itself, HUD and HUD officials also have admitted that the ineffectiveness of its tenant selection and assignment policy has been exacerbated by the agency's failure to enforce the policy. In 1985, then-General Counsel John Knapp testified that the agency's Title VI and Title VIII enforcement efforts had been an obstacle to desegregation efforts for federally funded public housing. See Ex. 32, Knapp Congressional Testimony at HUD 31252-31254.

55. These enforcement problems have persisted although HUD officials have acknowledged that in their opinion tenant selection and assignment policies are "the principal source of authority through which" segregation or past segregation can be addressed. Ex. 32, Knapp Congressional Testimony at HUD 31247.

56. The agency has long been aware, for example, that a one-offer policy – which reduces the opportunity for individuals to wait until they receive an offer at a project whose occupants are predominantly of the same race as the applicant – has a "greater desegregative effect." Ex. 11, Pearl Dep., at 89; see also Ex. 32, Knapp Congressional Testimony at HUD 31292. Nevertheless, HUD officials have admitted that the agency has failed to require local housing authorities with segregated housing systems, including Baltimore, to implement a one-offer policy. See Ex. 11, Pearl Dep., at 89-92.

57. Moreover, HUD acknowledged that, at least until the middle of 1989, it did little to address public housing authorities' failure actually to follow the policy. Secretary Jack Kemp recognized that many public housing authorities, not unlike HABC, were allowing applicants to identify project or "locational preferences" in violation of HUD's tenant selection and assignment regulations. Ex. 46, Memorandum from Secretary Jack Kemp to All Regional Administrators (April 25, 1989) (PL 035676-80 at PL 035676). Indeed, Secretary Kemp singled out as illegal the very kind of locational preferences policy employed by Baltimore's housing authority, explaining that preferences that are "expressed in terms of east side or west side, north quadrant or south quadrant," were illegal even though they had been approved by local HUD officials. *Id.* at PL 035676-77.

C. HUD Admissions of Its Present Affirmative Duty to Eradicate Segregation and Possible Desegregative Remedies.

58. Ironically, HUD officials have recognized that the agency has an affirmative duty to eradicate segregation, and cannot just stand by and knowingly watch public housing projects become or remain segregated as a result of the agency's own policies. Secretary Samuel R. Pierce, Jr. stated, for example, that "the Constitution as well as statutory authorities which the Department is called upon to enforce" are violated any time "official action" helps to create racially segregated public housing systems. Ex. 191, Memorandum of Samuel R. Pierce, Jr. to Dick Eudaly (Feb. 28, 1984) (PL 035682-83 at PL 035682). He explained, furthermore, that "[t]he duty to disestablish a dual public housing system and to effect a transition to a unitary system is in most significant respects similar to, and no less than, the duty to disestablish dual school systems." *Id.* Similarly, in his report submitted to Congress, former General Counsel

Knapp plainly stated that “[t]he general principle of Constitutional law in the area of racial discrimination is that the remedial obligation is not only to cease the discrimination but to remedy, insofar as practicable, the results of prior discrimination.” Ex. 32, Knapp Congressional Testimony at HUD 31249 [31237-38]. And, in 1996, the Assistant Secretary for FHEO concurred, observing that the Department’s knowledge and continued funding of discrimination in public housing “gave rise to HUD’s obligation” under Title VI. Ex. 10, Julian Dep., at 24. “The federal government is unquestionably liable for either tacitly or overtly supporting the segregation of conventional and assisted housing over the last fifty years. HUD and its predecessor agencies often became hostage to local practices of segregation and discrimination.” Ex. 34A, Goering, Housing Desegregation and Federal Policy at 331 (1985) (Adker 58208-58554).

59. And, putting aside HUD’s affirmative legal obligation to eradicate racial segregation, HUD also has recognized, as it must, that allowing public housing residents to live in neighborhoods with high rates of concentrated poverty and isolation can have very real long-term adverse consequences. Ex. 59, Hope VI: Best Practices and Lessons Learned 1992-2002, Submitted to the Committee on Appropriations, U.S. House of Representatives, and Committee on Appropriations U.S. Senate in House Report 107-272, Title II (June 14, 2002) at 25-26 (HUD 30170-256 at HUD 30204-05); see also Ex. 60, HUD Office of Policy Development and Research, Housing Choice Voucher Location Patterns: Implications for Participant and Neighborhood Welfare at Chs. 3, 4 (PL 080806-936 at PL 080839-74); Ex. 61, Council of State Community Development Agencies, prepared for HUD Office of Policy Development and Research, Making Housing Affordable: Breaking Down Regulatory Barriers, A Self Assessment

for States (Mar. 1994) at 7 (PL 080709-805 at PL 080720) (“Simply put, access to decent housing in decent neighborhoods provides us with access to good jobs, access to good schooling and education, and access to physically safe and secure living more so than we often realize. And the opposite is often true as well: if housing choice is limited to very poor, low quality neighborhoods, the chances of children raised in this housing and these neighborhoods having good jobs, education, and physically safe and secure living environment diminish, perhaps substantially.”).

60. Indeed, the agency has recognized that “[l]iving in high-poverty neighborhoods increases the likelihood for teen parenthood, youth delinquency, dropping out of school and drug and alcohol abuse,” as well as “deficiencies in school performance” by children, “low health indicators,” the lack of “employed role models” for young children, and unemployment or “underemployment” due to limited skills. Ex. 59, Hope VI: Best Practices and Lessons Learned 1992-2002 at 25-26 (HUD 30170-256 at HUD 30204-05).

61. It stands to reason then that, as HUD has recently acknowledged, “the isolation of poor minority families in areas of concentrated urban poverty” caused by federal and local government actions will only cause the various harms experienced by those families living in segregated public housing to be exacerbated. Ex. 62, HUD Urban Policy Brief, Residential Mobility Programs, Sept. 1994, at 1-2 (PL 045252-57 at PL 045252-53); Ex. 60, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Housing Choice Voucher Location Patterns: Implications for Participant and Neighborhood Welfare (Aug. 2002), at ix, 25 (PL 080806-936 at PL 080808); see also Ex. 4, Powell at 39-44.

62. HUD accordingly has repeatedly made it clear in policy papers and publications that the most beneficial desegregation efforts are those that locate tenants or encourage tenants to live in neighborhoods with lower rates of poverty and that are “scattered across a city or metropolitan area.” Ex. 63, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Cityscape: A Journal of Policy Development and Research: Commemorating the 30th Anniversary of the Fair Housing Act, Vol. 4, No. 3 (1999), at 142-43 (PL 080483-708 at PL 080630-31).

63. The agency has stated, for example, that “[o]ne rationale behind encouraging families to rent in lower-poverty neighborhoods is that such neighborhoods are supposed to be better environments for those attempting to move to self-sufficiency. Lower-poverty neighborhoods appear to be associated with greater job opportunities, better schools, lower-crime rates, etc.” Ex. 60, Housing Choice Voucher Location Patterns: Implications for Participant and Neighborhood Welfare (Aug. 2002), at 43, 53 (PL 080806-936 at PL 080856-66); see also Ex. 64, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Moving to Opportunity for Fair Housing Demonstration Program: Current Status and Initial Findings (Sept. 1999), at Foreword by Xavier de Souza Briggs, Deputy Assistant Secretary for Research, Evaluation, and Monitoring (PL 081238-317 at PL 081238) (“allowing residents to move from highly concentrated areas of poverty leads to wider opportunities for themselves and their children”); see generally Ex. 65, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Regional Housing Opportunities for Lower Income Households: A Resource Guide to Affordable Housing and Regional Mobility Strategies (Mar. 1994), at ix, 68-71 (PL 081215-24 at PL 081221-24)

(discussing various mobility strategies, and concluding that “HUD has a role as a facilitator, financier, and participant in regional mobility and affordable housing strategies”; identifying several activities that HUD can undertake to play out this role, including facilitating “regional mobility” strategies and increasing “Section 8 Portability Policy”).

64. Of course, “[t]he primary program” that allows “low-income households to secure shelter in private-market rental housing” in low poverty areas is the federal Section 8 program. Ex. 63, Cityscape: A Journal of Policy Development and Research: Commemorating the 30th Anniversary of the Fair Housing Act, Vol. 4, No. 3 (1999), at 143 (PL 080483-708 at PL 080630). However, HUD’s own internal research arm has concluded that the program “has had only limited, if any success in promoting integration.” Id. This is because voucher holders generally are likely to know little about how to navigate the rental housing market, or, more significantly, are likely to encounter intense hostility from landlords and private tenants. See id.; see also Ex. 65, Regional Housing Opportunities for Lower Income Households: A Resource Guide to Affordable Housing and Regional Mobility Strategies (Mar. 1994), at vi (PL 081215-24 at PL 081218) (“Often mobility is limited by a lack of knowledge about – and/or a lack of availability of – affordable housing. . . . Affordable housing is frequently zoned out of suburban neighborhoods because it contributes less property tax revenue than more expensive housing or commercial development. An equal, if not stronger, motivation is prejudice – excluding minorities and those of a different socioeconomic class from prime residential areas.”). These conclusions jibe with HUD’s findings that, in Baltimore, “race and class were underlying factors throughout the local debate on housing policy. The popularly perceived vehicle of this ‘invasion’ [of minorities] was the City’s Section 8 and MTO programs. And for many [neighboring]

County residents, the City's Section 8 and MTO programs were synonymous with 'poor and Black.'" Ex. 66, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, Assessing Property Value Impacts of Dispersed Housing Subsidy Programs: Final Report (May 1999), at 3-24 (PL 081326-46 at PL 081330). The difficulty in penetrating the private rental market is worsened by the tightening rental housing market in Baltimore, see Ex. 67, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, U.S. Housing Market Conditions (May 2001) at (PL 081235-37 at PL 081236-37), as well as the shrinking supply of privately owned HUD assisted housing in the region, Ex. 68, U.S. Department of Housing and Urban Development, Waiting in Vain: An Update on America's Rental Housing Crisis (Mar. 1999) at v, 17 (PL 081225-31, PL 081230-31).

65. For all of these reasons, HUD's research arm determined that the implementation of "[i]ntensive counseling," comprehensive mobility programs that allow for "portability," and systems that control for "clustering" are "critical" to achieving integration and "enabling inner-city families to pursue housing opportunities outside their own neighborhoods." Ex. 62, HUD Urban Policy Brief (Sept. 1994) (PL 045252-57 at PL 045252-53); Ex. 63, Cityscape: A Journal of Policy Development and Research: Commemorating the 30th Anniversary of the Fair Housing Act, Vol. 4, No. 3 (1999), at 143 (PL 080483-708 at PL 080630); Ex. 59, Hope VI: Best Practices and Lessons Learned 1992-2002, at 66 (HUD 30170-256); Ex. 69, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, State and Metropolitan Administration of Section 8: Current Models and Potential Resources, Final Report (Apr. 1997), 3-1 to 3-15 (PL 081199-214 at PL 081209-14).

III. BALTIMORE CITY’S PUBLIC HOUSING SYSTEM WAS DEVELOPED AS A SYSTEM OF DE JURE SEGREGATION BY FEDERAL AND LOCAL DEFENDANTS ACTING IN CONCERT.

A. Early Segregative Efforts by Local and Federal Defendants.

66. Prior to any public housing development in Baltimore City, both local and federal officials adopted housing policies that were designed to segregate the races and “protect” white residents from encroachment by black residents.

67. In the early 1900s, the Mayor and City Council of Baltimore began to play an active role in establishing a de jure segregated residential pattern in the City. A racial zoning ordinance – the first of its kind in the country – was enacted in 1910. Ex. 3, Hirsch at 12-14; Ex. 70, Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 Md. L. Rev. 289 (1983) (PL 007707-48 at PL 007708, 007718-007727).

68. In 1917, the Supreme Court declared all such ordinances unconstitutional in Buchanan v. Warley, 245 U.S. 60 (1917), and the Maryland Court of Appeals promptly thereafter struck down the Baltimore segregation ordinance in Jackson v. State, 132 Md. 311 (1918). Ex. 70, Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 Md. L. Rev. 289 (1983) (PL 007707-48 at PL 007733). Baltimore City officials then turned to other means of promoting residential segregation. Mayor James H. Preston was particularly concerned about the “unhealthy state of the negro race” and proposed a new residential racial segregation ordinance based on alleged public health concerns. Mayor Preston also actively promoted racially restrictive residential covenants as a way of achieving the same segregative purpose. Ex. 3, Hirsch at 14-15; Ex. 71, New Segregation Plan, Baltimore Sun (July 2, 1918) (PL 044015); see also Ex. 70, Garrett Power, *Apartheid Baltimore Style: The*

Residential Segregation Ordinances of 1910-1913, 42 Md. L. Rev. 289 (1983) (PL 007707-48 at PL 007733-35).

69. Federal housing officials also adopted segregative housing policies. In the 1930s, pursuant to the National Housing Act of 1934, the federal government embarked on a program of underwriting mortgage insurance on private properties. The mortgage underwriting policies adopted by the FHA awarded higher ratings to private homes in neighborhoods with racially restrictive covenants. The FHA's Underwriting Manual stated: "Areas surrounding a location are investigated to determine whether incompatible racial and social groups are present, for the purpose of making a prediction regarding the probability of the location being invaded by such groups. If a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values." Ex. 72, FHA, Underwriting Manual (Feb. 1938) (PL 032645-52); see generally Ex. 48, Stearns Memorandum (PL 34637-50).

70. Federal housing officials also issued a Residential Security Map, sometimes referred to as the "red-lining" map, for Baltimore in 1937. This map divides the City's residential areas into four grades, with the fourth and worst grade marked in red. Ex. 72A, Residential Security Map, Division of Research and Statistics with Cooperation of Appraisal Dept. Home owners Loan Corp. (May 1, 1937) (PL 061872). The purpose of the map is to "graphically reflect the trend of desirability in neighborhoods" for purposes of issuing mortgages, with red, the least desirable, being "characterized by detrimental influences in a pronounced degree, undesirable population or an infiltration of it." Ex. 72B, Explanation of Residential Security Map, Baltimore, Maryland (undated) (PL 048001-02); Ex. 72C, Real Estate Situation

(undated) (PL 048008-21). The red sections of the “red-lining” map cover the areas of the City then available to black residents of the City, including Baltimore’s East and West ghettos, the Sharpe-Leadenhall area of South Baltimore and the all-black Fairfield neighborhood.

71. In addition, FHA provided a model racially restrictive covenant to ensure “homogenous and harmonious neighborhoods” and the “prohibition of the occupancy of properties except by the race for which they are intended.” Ex. 45, Memorandum from Joseph R. Ray, Racial Relations Service, to Albert M. Cole, Administrator, re: Racial Policy to Govern Administration of HHFA Programs (Aug. 13, 1954) (PL 034730-36).

72. HUD has been fully aware of the lasting effects of this discrimination. In 1955, HUD knew that “[t]he effects of a long history of rejections by FHA and by FHA mortgagees prior to the evolvment of more favorable attitudes toward Negro purchasers cannot be easily eradicated. For years, Negro brokers ‘understood’ that FHA was not for them or their clients.” Ex. 73, Memorandum from Frank Horne to William Ulman (May 9, 1955) (PL 35341-43); Ex. 30, Roberta Achtenberg, 143 U. Pa. L. Rev. at 1193 (PL 080139-44 at PL 080139-40). In 1970, HUD Secretary George Romney, calling past federal housing policy “clearly indefensible,” admitted that federal housing policy, including FHA “red-lining,” “contributed to the creation of segregated housing patterns.” Ex. 28, Romney Statement at PL 36032-49. Twenty-five years later, HUD’s Assistant Secretary for FHEO, admitted that FHA policies “enabled and encouraged middle-class white families to obtain financing for new housing in the burgeoning suburbs, while lending institutions denied loans to older, inner-city neighborhoods and appraisal practices discouraged racial mixing.” As a whole, FHA policies “contributed to residential segregation, high foreclosure rates, and neighborhood disinvestment.” Ex. 30, Roberta Achtenberg.

B. The Federal and Local Defendants' Segregative Selection of Original Slum Clearance and Low-Rent Public Housing Sites -- 1933 to World War II.

73. Between 1937 and 1943, the federal and local defendants built eight de jure segregated low-rent housing projects in Baltimore. Five of the projects were designated as "Negro housing" (Poe, McCulloh, Douglass, Gilmore and Somerset Homes) and three were set aside exclusively for whites (Latrobe Homes, Perkins Homes and Armistead Gardens). Ex. 2, Taeuber at 17-20; Ex. 1, Map 2; Ex. 74, Federal Defendants' Answer, ¶ 43 (April 28, 1995); Ex. 75, Answer of the Housing Authority of Baltimore City and its Executive Director Paul W. Graziano to Plaintiffs' Amended and Supplemental Complaint and Answer of the Mayor and City Council of the City of Baltimore to Plaintiffs' Amended and Supplemental Complaint (hereinafter "Local Defendants' Answer") at ¶ 48.

74. Beyond operating separate projects designated for white or black occupancy, the local defendants also, in concert with the federal housing agencies, aggressively used the federal slum clearance and the actual siting of public housing projects to foster, shape and reinforce patterns of housing segregation in the market. Infra ¶¶ 70-76, 109-115. Local defendants themselves admitted at the time that in 1954 public housing was "more segregated than the rest of the community." Ex. 137, Oliver C. Winston, Executive Director, HABC, Desegregation Address to HABC Employees (June 30, 1954) (PL 030173-030188 at PL 030176).

75. HUD's predecessor agencies, the Federal Works Agency and the USHA, directed local governments and housing authorities in their written policy manuals that public housing site selection and tenant selection policies should aim to preserve community social structures and racial segregation surrounding project sites. Ex. 76, Federal Works Agency, United States

Housing Authority, Site Selection Bulletin at 7-8 (Feb. 13, 1939) (PL 34731-36); Ex. 76A, National Housing Agency, Federal Public Housing Authority, Low Rent Housing Bulletin 18, (Dec. 1, 1945) (HUD 36084-36097); Ex. 3, Hirsch at 22-23; Walker v. United States Dep't of Hous. & Urban Dev., 734 F. Supp. 1289, 1297 n.27 (N.D. Tex. 1989) (citing Hearing Before the U.S. Commission on Civil Rights, June 1959, "HUD had accepted segregated public housing under a 'separate but equal policy'"); Heyward v. PHA, 238 F.2d 689, 697 (5th Cir. 1956); and Cohen v. Public Hous. Admin., 257 F.2d 73, 74 n.5 (5th Cir. 1958)); see also Young v. Pierce, 628 F. Supp. 1037, 1045 (E.D. Tex. 1985) (same).

76. The USHA closely monitored the racial occupancy of its projects, requiring approval from the Washington office for "change[s] in predominant racial occupancy." Ex. 78, Federal Works Agency/USH Authority, Procedure for Securing Approval from the Washington Office of a Major Change in a Project, Order No. 267 (Dec. 20, 1939) (PL 34742-43). Local housing authorities were also directed to "[r]ecord race or nationality depending upon whether or not a special racial or nationality group is to be rehoused in a given project." Ex. 79, FHA, USHA, Suggested Proceures for Initial Tenant Selection and Renting (Bulletin No. 31) at 24-25 (Dec. 17, 1939) (PL 034696-729 at PL 034720-21).

77. Local and federal defendants deliberately went beyond these federal requirements of maintaining segregation in order to increase segregation. Defendants selected sites for the first "white" projects in racially mixed areas on the border of the African-American ghetto for the explicit purpose of "reclaiming" the areas for white occupancy and providing a barrier against African-American migration. "Negro housing" was deliberately sited in areas deemed

appropriate for Negro occupancy, thereby containing African-Americans within the existing “ghetto.” Ex. 3, Hirsch at 16-25; Ex. 2, Taeuber at 17-32.

78. Three of Baltimore’s first public housing projects, Latrobe and Perkins Homes (white) and McCulloh Homes (black), were built on slum clearance sites chosen by the City of Baltimore in concert with a state agency, the Maryland Emergency Park and Housing Commission, between 1933 and 1935. Ex. 3, Hirsch at 16-25; Ex. 80, Maryland Emergency Housing and Park Commission, Report of the Joint Committee on Housing in Baltimore (Mar. 19, 1934) (PL 29615-32); Ex. 81, Report of the Associated Architects of Baltimore to the Maryland Emergency Housing and Park Comm’n (undated) (NA 00222-29).

79. Federal officials were fully aware of the segregative purpose of these sites. Ex. 3, Hirsch at 16-25; Ex. 82, Memorandum from Homer Phillips to H. Tudor Morsell, Inspection and Study of Project #2700--Baltimore, Md., at 1 (July 30, 1934) (PL 29043-44) (construction of McCulloh Homes “would offer a splendid barrier against the encroachment of colored”); Ex. 83, Memorandum from W.E. Trevett to E.H. Klaber, Trip to Baltimore on March 31, 1934, (Apr. 2, 1934) (PL 29550-55). See also Ex. 83A, Memorandum from Ackerman and Hamilton to Robert D. Kohn, Conference with Housing Commission in Baltimore (Feb. 28, 1934) (PL 029411-18) (summing up understanding concerning application to the Public Works Administration reached after meeting of Maryland Emergency Housing and Park Commission, members of the City Planning Board:

“Emphasis is to be placed upon the facts that disclose the movement of the white and colored population . . .”). One federal official reported in 1934 that “the areas [proposed for public housing] did not seem to be slums. I feel that their purpose is not slum clearance but rather using

the projects to block the negro from encroaching upon white territory.” Ex. 83, Memorandum from W.E. Trevett to E.H. Klaber, Trip to Baltimore on March 31, 1934, (Apr. 2, 1934) (PL 29556-59 at PL 029559).

80. Latrobe Homes (white) was intentionally sited by local and federal officials to block the northward expansion of the black population of East Baltimore and to protect property values in white residential areas. Federal officials required that local defendants remove a Negro school from the site. African-Americans living on that site protested the closure of a Negro school and displacement of black families to accommodate Latrobe. Ex. 3, Hirsch at 24; Ex. 84, Plan Up Today in Removal of Negro School, Baltimore Sun (Aug. 1, 1939) (PL 28912) (Federal Housing Authority required that black school be removed before the white Latrobe Homes was built; “In explaining why the authority decided to develop the area populated mostly by negroes, the housing official said the body was actuated by the idea of enhancing the value of the white residential neighborhood north of Eager street, one of the boundaries of the tract.”); Ex. 85, City Negroes Crowded Into Small Living Areas, Baltimore Sun (Feb. 12, 1940) (PL 31004) (“Some Negro leaders voice a suspicion that the [Latrobe] site was selected deliberately to halt the northward expansion of the East Baltimore Negro district.”). Ex. 80, Report of the Joint Committee on Housing in Baltimore (PL 29615-32 at PL 29617) (site currently “occupied by colored people living in extremely bad buildings. . . . Health conditions are bad as indicated by the tuberculosis rate, which is the highest in the city per assessed area. . . . The tract should be reused for a white low rental group of clerical and technical employees, as is peculiarly susceptible to replanning of streets and alleys.”)

81. Perkins Homes, opened in 1940, was intended by local and federal officials to remove blacks from an area of East Baltimore that they deemed inappropriate for “Negro” occupancy and to provide housing for “foreign born whites.” An evaluation of the site undertaken by the State Commission and City defendants in 1934 reported: “This area by its location should house lower income industrial employees, and from a point of view of city wide balance of racial areas should be occupied by white families probably largely foreign born. It is not naturally a negro area but has through obsolescence, been partly repopulated with Negroes immigrating to Baltimore The Negro inhabitants which would be evacuated from this area should form a part of similar development for low rental families in a more desirable location.” That “more desirable” location was the Douglass Homes Negro project, built several blocks north in the Caroline Street corridor, the center of the East Baltimore black ghetto. Ex. 80, Report of the Joint Committee on Housing in Baltimore (PL 029615-32 at PL 029621); Ex. 3, Hirsch at 24-25.

82. Federal and local officials developed McCulloh Homes on the northwest side of the central business district in a site identified by the State Commission. According to the State Commission, the site was “emphatically a colored area.” Ex. 80, Report of the Joint Committee on Housing in Baltimore (PL 029615-32 at PL 029618) Adjacent white and “Negro” housing projects were originally planned to “offer a splendid barrier against the encroachment of colored” into an adjacent “good white residential neighborhood,” the Bolton Hill area, according to a federal inspection and study of the sites done in 1934. Ex. 82, Memorandum to H. Tudor Morsell from Homer Phillips (July 30, 1934) (PL 029039-44).

83. The two projects built as “white” housing, Latrobe and Perkins Homes, were placed by federal and local officials in what had been mixed race areas, thus reducing the land area available for African-American residence. The five projects built as “Negro” housing, Poe, McCulloh, Gilmore, Somerset and Douglass Homes, were all placed by federal and local defendants in existing African-American neighborhoods. Ex. 1, Maps; Ex. 2, Taeuber at 19; Ex. 3, Hirsch at 24.

84. The availability and proximity of “Negro” schools, parks and recreation facilities, were also considered by federal and local defendants in selecting sites for “Negro housing.” Sites outside areas of concentrated black population were rejected because they were miles away from schools accepting “colored pupils” and no funds were available for constructing “colored schools.” Ex. 86, Memorandum from Roger D. Black, Chief, Management Branch, to Chief, Branch 1, Subject: Project No. H-2704, Baltimore, Recreational, Educational and Social Facilities and Program (May 20, 1935), with attached memorandum from Lewis R. Barrett, Management Supervisor, Subject: Field Trip to Baltimore, Maryland, May 28, 1935 (June 5, 1935) (PL 32627-31) (recommending against location of a project for Negro tenancy because of lack of schools serving “colored pupils” and lack of playgrounds and parks (park is restricted against use by “colored People”)); Ex. 87, Memorandum from Philip Darling to Oliver Winston (July 16, 1951) (PL 31528-31) (considers absence of Negro schools in evaluating sites for Negro housing).

85. Suburban sites proposed for black housing by the publisher of the Afro-American newspaper and several landowners, were not considered even though public housing could be built more cheaply on these vacant land sites than on slum clearance sites. Ex. 3, Hirsch at 24;

Ex. 88, Letter from Carl Murphy, President of the Baltimore Afro-American, to Federal Housing Division of Public Works Administration (Sept. 6, 1935) (PL 29069-70) (stating that Murphy had previously suggested three suburban sites but had not heard back from the agency); Ex. 89, Redevelopment of Blighted Residential Areas in Baltimore, Commission on City Plan (July 1, 1945) (PL 31589-623) (average cost of site per acre \$716 for Cherry Hill, vs approximately \$60,000 for slum clearance sites).

86. Initially, no “Negro” housing project was built on vacant land. One project was planned by HABC in the Washington Boulevard area of southwest Baltimore. That site was abandoned by local defendants in 1939 as the result of white community opposition. Ex. 3, Hirsch at 25-26; Ex. 90, Board Approves Housing Project, Baltimore Sun (June 28, 1939) (PL 33668-71) (of five sites being considered, “[one] of the vacant sites was in the Washington Boulevard section and was intended for Negro occupancy. It was abandoned after many protests had been filed against it.” White vacant land site at Philadelphia Road and Horner’s lane approved); Ex. 91, Housing Authority Proposes Negro Slum-Clearance Plan, Baltimore Sun (July 19, 1939) (PL 33672) (article about HABC proposal for housing at the Gilmore site -- “It was proposed at first to construct low-cost Negro housing units on vacant land in the Washington Boulevard neighborhood. However, many protests were filed against the plan and the project was abandoned.”); Ex. 92, Negro Housing Site Approved by Board, Baltimore Sun (July 26, 1939) (PL 28908) (article about approval of Gilmore Homes site for black occupancy -- “Some time ago it was proposed to construct low-cost housing units for Negroes on a vacant tract in the Washington Boulevard neighborhood, but the project was abandoned after protests had been filed against it.”).

87. Instead of building the planned black project on the vacant land site in the Washington Boulevard area, land was cleared in the black neighborhood of Sandtown to build the all-black project now known as Gilmor Homes. Federal and local defendants deliberately designed Gilmor Homes for the highest possible density because they considered it politically impossible to acquire vacant land sites for “Negro housing.” Ex. 3, Hirsch at 26; Ex. 91, Housing Authority Proposes Negro Slum-Clearance Plan, Baltimore Sun (July 19, 1939) (PL 33672-73); Ex. 92, Negro Housing Site Approved by Board, Baltimore Sun (July 26, 1939) (PL 28907-08).

88. At the same time, HABC planned Armistead Gardens on vacant land in an outer city area as a white de jure segregated project. When it was completed in 1941, local and federal defendants sold it to the federal government as white war housing, and subsequently conveyed to a cooperative of its tenants. It remains a highly segregated white community that was found in the late 1980s to practice racial discrimination in sales and admissions. Ex. 3, Hirsch at 26; Ex. 93, Estimates Board Gets Slum Plans, Baltimore Sun (June 1, 1939) (PL 33660) (vacant land site in Philadelphia Road site designed for white occupancy); Ex. 94, Armistead Sale Okay, Baltimore Evening Sun (Mar. 13, 1941) (PL 30996); Ex. 95, Going Up Fast, Baltimore Evening Sun (Mar. 21, 1941) (PL 30996) (200 dwellings at Armistead Gardens to be available for defense workers in the next several weeks); Pinchback v. Armistead Homes Corp., 689 F. Supp. 541 (D. Md. 1988), aff’d, 907 F.2d 1447 (4th Cir. 1990).

89. The eight de jure segregated projects were all approved by and funded by federal defendants with full knowledge of their segregative purpose and effect. See supra at ¶¶ 66-88.

90. The defendants' policy and practice was to build roughly equivalent numbers of "white" and "Negro" housing units even though the vast majority of the homes destroyed were occupied by African-Americans. Because fewer units were built for African-American occupancy than were demolished, the rents for many displaced families who did not move into public housing doubled and the shortage of housing open to African-Americans became even more severe. Ex. 3, Hirsch at 23; Ex. 96, Tenants of Slums Hard Hit in Moving, newspaper article (no date) (PL 31003) (Executive Director of Housing Authority reports that tenants being moved to make way for slum clearance have had their rent double); Ex. 97, Editorial, Plight of the Non-Defense Workers, Baltimore Evening Sun (Sept. 26, 1941) (PL 42779-80) (Negro population has increased in decade 1930 to 1940 by 23,861; Housing Authority has evicted 2000 families for slum clearance, but housed only 486 families in new housing).

C. The Federal and Local Defendants' Segregative Site Selection and Disposition of War Housing.

91. Four of the HABC public housing projects currently in use, Cherry Hill Homes, O'Donnell Heights, Brooklyn Homes, and Westport Homes, as well as the now closed Fairfield Homes, were built during World War II as de jure segregated housing for defense workers. Ex. 74, Federal Defendants' Answer, ¶ 56.

92. In 1940, Congress enacted the Lanham Act, authorizing the federal government as well as local housing authorities, to construct housing for defense workers. Ex. 3, Hirsch at 26-27. The federal government had the authority to develop units for blacks on vacant land without explicit local approval. Id.

93. Federal and local defendants built permanent de jure segregated white war housing on vacant land sites with little or no controversy. Ex. 3, Hirsch at 27. Brooklyn Homes was constructed on vacant land in the white Brooklyn neighborhood in south Baltimore. O'Donnell Homes was built on vacant land in east Baltimore near the Baltimore County line. Fairfield Homes was built on vacant land in a census tract containing both black and white residents. Ex. 1, Map 2; Ex. 2, Taeuber at 27-28; Ex. 3, Hirsch at 26-27.

94. By contrast, the only proposal to develop white war housing in a slum clearance site in a white neighborhood (Locust Point) was opposed. When white neighbors and politicians protested the clearance of white homes in Locust Point, this white war housing project was moved by federal and local defendants to a vacant land site in southwest Baltimore, to what is now Westport Homes. Ex. 98, HA proposes \$1,400,000 New Slum Clearance, Evening Sun (Oct. 22, 1940), Residents' Protests End 'Slum' Project (Oct. 31, 1940), Westport Site is Chosen for BHA Project (PL 044824). The site was adjacent to a black neighborhood. Ex. 1, Map 2; Ex. 2, Taeuber at 27-28; Ex. 99, Memorandum from Charles C. Beckett to Richard H. Kline, Report of Field Trip to Baltimore, Maryland, March 19-22, 1951, at 4 (April 25, 1951) (HUDBAL 000471-88 at HUDBAL 000474); see also Ex. 99A, Edwin Dunn to A. R. Clas (June 10, 1935) (PL 032554-56) (Westport area "is inhabited almost exclusively by Negroes at the present time...").

95. During the war years, the African-American population of Baltimore increased dramatically as thousands of families moved from the rural south to work in defense plants. Little new private market housing was constructed for these "in-migrant" defense workers. Ex. 97, Editorial, Plight of the Non-Defense Workers, Baltimore Evening Sun (Sept. 26, 1941) (PL

42779-80); Ex. 100A, Baltimore Urban League, Civil Rights in Baltimore, A Community Audit (January 1950) (PL 030631-38) (“In the period from 1940-44 the proportion of dwelling units built for whites as compared to those built for colored was . . . 16.4 to 1 by private builders. Since 1944 private building for negro occupancy has virtually ceased.”) However, federal and local officials’ plans to make undeveloped areas in the City and counties available as “Negro expansion areas”, as was being done for white war workers, were dropped in the face of objections of white property owners. Ex. 100, Baltimore Housing Authority Yields to Racial Opposition, Baltimore Afro-American (Mar. 27, 1943) (PL 42770-71); Ex. 100A, Baltimore Urban League, Civil Rights in Baltimore, A Community Audit (January 1950) (PL 030631-38).

96. By 1943, despite the need for housing for blacks and funds to build that housing, the only black war housing that had been approved was Banneker Homes, 400 temporary units of inferior quality in the Fairfield area. Ex. 3, Hirsch at 29; Ex. 100, Baltimore Housing Authority Yields to Racial Opposition, Baltimore Afro-American (Mar. 27, 1943) (PL 42770-71); Ex. 100B, Memorandum from Ellis Ash to Oliver Winston, Banneker Homes Disposition Plan (April 21, 1952) (PL 032461-64) (“Because of the isolated location of the project, the inadequate transportation, the structural deterioration, and lack of community facilities, the structure is very unpopular.”).

97. Vacant land sites for permanent black war housing identified by federal officials were repeatedly and vehemently opposed by local officials and white residents. Ex. 3, Hirsch at 28-30. The question of permanent black war housing was termed a “political football loaded with dynamite.” Ex. 100C, Negro Housing Foes Cancel Protest, Baltimore Evening Sun (July 26, 1943) (PL 044863-65).

98. Federal officials abandoned plans to use a site at North Point Road and Eastern Avenue in Baltimore County in the face of opposition by white residents and HABC officials. Ex. 3, Hirsch at 28; Ex. 100D, Seek New Site for Location of 1400 Homes (Baltimore Afro-American) (PL 042791-92) (April 17, 1943); Ex. 100E, Protest Set, Baltimore Sun (April 24, 1943) (PL 042795-96) (The site was abandoned “after vigorous protests had ben lodged against the possible selection of a location at Eastern avenue and North Point road for the construction of about 1,400 dwelling units for Negro war workers.”).

99. However, the substitute site in Northeast Baltimore known as the Herring Run site proposed by the Commission on the City Plan ignited a firestorm of opposition. More than 800 opponents turned out for a meeting called to protest “Negro war housing” planned for the site. Ex. 101, Crowd of 800 Boos Mayor for Favoring Colored War Homes, Baltimore Afro-American (July 17, 1943) (PL 45131-35).

100. This opposition to the permanent black war housing was explicitly racial and included threats of mob violence. Ex. 3, Hirsch at 28-30; Ex. 102, Baltimore Housing Authority Yields to Racial Opposition, Baltimore Afro-American (Mar. 27, 1943) (PL 42770-71) (“Main reason for this delay is hesitancy on the part of [local agencies] in bucking the opposition of biased residents who object to location of the homes near them.”); Ex. 103, Are Housing Opponents Aligned with Hitler?, News Article (May 23, 1943) (PL 45152) (“They’re saying, in effect, that the color of the war worker who lives next door to them is of much more importance than the fact that he is needed to get out ships, arms and ammunition for our soldiers on the fighting front.”). The opposition to the site was contrary to the expectations of Commission on

City Plan Chairman J.D. Steele, who thought the site was ideal because it was located on the edge of an industrial area and far from any white neighborhoods. Hirsch at 28.

101. In response, the City actively moved to prevent the development of black war housing on the Herring Run site and other white areas. First, the City Council enacted legislation requiring that any sites be submitted to it for approval. Ex. 52, Council to Get War Housing Site Bill, Baltimore Sun (July 22, 1943) (PL 44021-22). This prevented HABC from moving forward on its own with selected sites. Second, the City intervened in a federal condemnation action, seeking to halt the federal government's acquisition of land for the Herring Run site for black housing. Ex. 104, Housing Hearing Slated Sept. 23, news article (Sept. 14, 1943) (PL 44027-28).

102. Federal officials eventually withdrew the Herring Run site from consideration and reached an accommodation with Baltimore City and County officials. Ex. 106, FPHA Approves 4 Sites Recommended by HAB in Housing of Negroes, Baltimore Sun (Oct. 26, 1943) (PL 45144-47). The agreed-upon package of sites proposed by the opponents of housing for black tenants on the previously proposed sites included permanent housing for blacks limited to Cherry Hill and temporary housing for blacks permitted in Turners Station, Sollers Point and Holabird Avenue. Id.; Ex. 106A, Map, Baltimore Low Rent and Defense Housing (PL 033966) (map showing locations of war housing projects Ernest Lyon, Banneker, Holabird, Sollers and Turner Homes); Ex. 106B, Housing Programs in Baltimore, 1950 (PL 031640) (showing war housing locations).

103. These sites agreed to by federal and local defendants were opposed by civil rights leaders and housing activists who complained that the sites were too isolated and were subject to

industrial pollution and other adverse environmental conditions. Ex. 105, Pressure for Better Housing Will Continue, Baltimore Afro-American (Oct. 20, 1943) (PL 45120) (“The Holabird Avenue area, where 400 homes are planned, is bounded on the west by a polluted stream. . . . On the south are oil refineries and on the west is a railroad. The Turners Station area, for which 200 to 300 homes are planned, is all low land, infested with mosquitoes from standing water. The Municipal Airport hems it in on one side and the Patapsco River on the other. Cherry Hill, only one of the four sites where permanent homes (600 to 700) will be built, is bounded on the south by a city incinerator, the north by Patapsco River, the west by the B. and O. Railroad and the east by Hanover Street. When the wind is southeast, the mal-odors are nauseating. This site has long been recommended for industrial purposes only.”).

104. The only site outside the “ghetto” that was politically acceptable for the permanent introduction of “Negro housing” was Cherry Hill, an isolated peninsula adjacent to a city landfill and incinerator, that had long been recommended solely for industrial purposes because of its problems. Ex. 2, Taeuber at 21; Ex. 3, Hirsch at 30-32; Ex. 105, Pressure for Better Housing Will Continue, Baltimore Afro-American (Oct. 20, 1943) (PL 45120). This site was picked, according to local officials, “after exhaustive study of all available sites.” Ex. 107, Letter from C.A. Mohr to Cleveland R. Bealmear (Oct. 3, 1943) (PL 29095). The site was the only proposal for permanent black war housing that did not ignite vehement white opposition. Ex. 105, Pressure for Better Housing Will Continue, Baltimore Afro-American (Oct. 20, 1943) (PL 45120) (“It looks as though the plan is designed to satisfy a small group of race haters and selfish real estaters.”) Again, federal officials declined to exercise their powers to override the local authority and instead yielded to local pressures. Hirsch at 31-32. Cherry Hill was not

opened until December 1945, after the end of the war. Ex. 106C, HABC, Semi-Annual Statistical Bulletin (June 30, 1991) (PL 026759-916) at 2. Cherry Hill was segregated black when it opened and has remained highly segregated to the present.

105. After the war, HABC acquired four of the white war housing projects, O'Donnell Heights, Brooklyn Homes, Fairfield Homes and Westport, for use as segregated white low-rent public housing. Ex. 108, Cooperation Agreement Between the Housing Authority of Baltimore City, and the Mayor and City Council of Baltimore (June 17, 1953) (HUD 19929-33) (agreement conveying Fairfield Homes, Brooklyn Homes and Westport Homes to HABC).

106. With the exception of Cherry Hill, the "Negro" war housing projects located in outer-city and suburban areas were demolished, displacing thousands of African-American tenants. Ex. 3, Hirsch at 32; Ex. 106D, Letter from Charles L. Levy to Mayor D'Alesandro (Oct. 30, 1953) (PL 031650) (holabird demolition); Ex. 106E, Memorandum from Victor C. Adler to Burdon O. Young, Proposal to Recommend Disposition of Banneker Homes (July 3, 1952) (PL 031964-65).

D. The Federal and Local Defendants' Segregative Public Housing Post-War Site Selection under the Housing Act of 1949.

1. HABC's Post-War Housing Plan.

107. By the end of the war, blacks in Baltimore faced a serious housing crisis. Baltimore's African-American population had surged during the war, but housing available to the African-American population had not increased commensurately. As expressed by the Citizens Planning and Housing Association: "Weekly some Negroes are coming into the city. No new homes are being built for them. No vacant homes are available for them. They must pile up on

and share accommodations with those who already live in these densely populated and segregated areas. Where one family lived a few years ago, there now live three or four.” Ex. 109, CPHA, Negro Housing (PL 45107-18); see also Ex. 110, CPHA Memorandum on Negro Housing in Metropolitan Baltimore (Aug. 1944) (PL 42858-62); Ex. 111, Summary of Meeting re Sollers and Turner Homes (Feb. 16, 1954) (PL 32504) (acknowledges “acute shortage of housing for Negroes in Baltimore.”); Ex. 111A, Ralph H. Weese, FHA, Report on the Housing Market: Baltimore, Maryland Standard Metropolitan Area (Sept. 1, 1953) (PL 047139-163); Ex. 116, Development Program, Project No. MD 2-14 (Armistead) (Sept. 27, 1950) (PL 30644-54 at PL 30648).

108. In April 1945, HABC announced its post-war housing plan to raze black inner-city neighborhoods and to build higher density public housing projects on the slum clearance sites. According to an official HABC statement issued in 1945, the plan was explicitly intended to arrest “racial and group movements within the city,” and to prevent “very violent neighborhood resistance to any in-migration of Negroes.” Ex. 113, Effects of the Post-War Program on Negro Housing, The Housing Authority of Baltimore City (Sept. 25, 1945) (PL 29085-88 at PL 029086, 029088). The chairman of HABC commented that “[u]nder the American idea we can’t shoot or poison the slum dweller; we are being forced to either rehouse him or pay the cost of keeping him where he is.” Ex. 112, Cleveland R. Bealmear, Post-War Housing Program for Baltimore: General Statement, (Jan. 1944) (PL 044791-99 at PL 044796). He stated further, “close attention must be given to racial distribution in order to comply with the existing social and economic structure of the city and avoid dislocations of satisfactory habitual ways of living, or be destructive to real property values by increasing rather than decreasing

neighborhood blight.” Id at PL 044798. Ex. 3, Hirsch at 32-34; Ex. 113, Effects of the Post-War Program on Negro Housing, The Housing Authority of Baltimore City (Sept. 25, 1945) (PL 29085-88); Ex. 89, Redevelopment of Blighted Residential Areas in Baltimore, Commission on City Plan (July 1, 1945) (PL 31589-623); see also Ex. 114, Plan For 7,400 Housing Units Announced, Baltimore Evening Sun (April 28, 1945) (PL 27227-28).

109. The intent and effect of this public housing construction was to concentrate African-Americans from throughout the city in large, high density public housing projects in exclusively black neighborhoods. Ex. 114A, Report of the Urban Renewal Study Board to Mayor Thomas D’Alesandro, Jr. (Sept. 12, 1956) (HA 86065-182 at HA 86115) (Report recognizing that the “use of slum clearance sites to the degree [previously] practiced by the public housing agency locally is open to serious question.” Recommends that in the future “public housing should be located on vacant sites to help meet relocation and other low-rent needs. . . The past policy of extensive use of clearance sites, although popular in this community as elsewhere, has limited additions to the housing supply and therefore indirectly contributed to the continuance of the [housing] shortage.”) HUD admitted in 1996 that “[f]ollowing World War II, there was a very high demand for adequate housing at all income levels. For public housing, this demand was aggravated by urban renewal, which destroyed housing which was then available to the poor. Additionally, in the public housing program, a fad for high-rises clearly influenced housing design in the late 1940’s and 1950’s, allowing for the construction of many more units on the same piece of land. . . At the same time, many large, high-density, low-rise projects for families were also constructed during this period. . .” Ex. 51, Office of Development and Research, U.S. Department of Housing and Urban Development, An Historical and Baseline

Assessment of Hope VI, Vol. I, Cross-site Report (August 1996) at 1-3 (PL 067839-068060 at PL 067861).

2. The Federal and Local Defendants' Segregative Selection of Vacant Land Sites.

110. The Federal Housing Act of 1949 provided the funding for Baltimore to implement its post-war housing plan. That law, as passed, failed to prohibit racial segregation and discrimination, and contained , in the words of Robert Weaver, a “triple threat” to minorities -- planning and redevelopment could be used “as a guise for displacing minorities from desirable areas,” for “breaking up established racially democratic neighborhoods,” and “to reduce even further the already inadequate supply of living space available” to African-Americans. Local and federal defendants succeeded in doing all three of these in Baltimore. Ex. 3, Hirsch at 35.

111. The City seized this opportunity to shape Baltimore’s public housing policy, particularly its siting decisions. In 1950, the City Council enacted an Ordinance authorizing HABC and the City to develop up to 10,000 units of additional public housing under the federal Housing Act. As eventually passed, the Ordinance incorporated the requirement of City Council approval of all future public housing sites (still in effect today) first adopted during the 1943 war housing controversy in order to control the location of housing for African-Americans. Ex. 115, Baltimore City Council, Ordinance No. 1077 (Council No. 1772) (Mar. 20, 1950) (PL 33507-12). See also Ex. 115A, [Dr. Fenn Quits H.A.B., Blames City Council](#), Sunpapers (May 2, 1950) (PL033973) (Dr. Fenn quits as chair of Housing Authority Board in part because of City Council veto of any site proposed in the future by the authority).

112. The Ordinance also put explicit restrictions on the construction of public housing on vacant land in white areas of the City. The Ordinance allowed only 1550 units of public housing on pre-selected vacant land sites. All future sites were required to be slum clearance sites. Ex. 115, Baltimore City Council, Ordinance No. 1077 (Council No. 1772) (Mar. 20, 1950) (PL 33507-12). See also Ex. 115B, The Fight for Public Housing in Baltimore (April 1, 1950) (PL 021041-1109). Although HABC had authority under state law to operate within a 10 mile radius of the City, the ordinance limited all future public housing sites to the City. Ex. 3, Hirsch at 38-41; Ex. 115, Baltimore City Council, Ordinance No. 1077 (Council No. 1772) (Mar. 20, 1950) (PL 33507-12).

113. The restrictions were added by the City in response to racially motivated white opposition to HABC's plans to construct the first three projects on vacant land in the outer-city white neighborhoods of Violetville and Belair-Edison. In the wake of the Supreme Court's 1948 decision invalidating restrictive covenants, Shelley v. Kramer, 334 U.S. 1 (1948), opponents feared that "white" projects built in these areas would eventually be opened up to African-American tenants. Ex. 3, Hirsch at 38-41; Ex. 115B, The Fight for Public Housing in Baltimore at 9 (April 1, 1950) (PL 021041-1109) ("There was also a fear that the project would actually be occupied by Negroes despite the Authority's statement that it was intended for white occupancy. An ingenious variation on this theme was the allegation that in view of the Supreme Court's recent decision barring enforcement of restrictive covenants, it would only be a very short step to a similar Supreme Court decision barring segregation in public housing projects."); see also id. at PL 021069-74 (letter from James Rouse to Philip Darling, Nov. 30, 1949, discussing likelihood that public housing would be required to desegregate).

114. In the face of this community opposition, HABC substituted the Westport Extension site, adjacent to Westport Homes, and the Claremont Homes site, adjacent to the Armistead Gardens project, for the Violetville and Belair-Edison sites. Federal and local officials restricted these two sites to white occupancy. Ex. 116, Development Program, Project No. MD 2-14 (Armistead) (Sept. 27, 1950 (PL 30644-54); Ex. 117, Development Program, Project No. MD 2-13 (Westport Extension) (Sept. 8, 1950) (PL 30660-71).

115. HABC was aware that the City Council would not approve the Cooperation Agreement without a provision permitting the Council to approve sites. As a compromise, it initiated a proposal to limit the Cooperation Agreement to the three vacant sites and require that the Cooperation Agreement could only be extended by future Council action. The City Council, however, went on record as opposing further consideration of vacant site projects, and indicated that future low-rent projects in Baltimore must be restricted to slum sites. Ex. 115B, The Fight for Public Housing in Baltimore at 9 (April 1, 1950) (PL 021041-1109) at 14.

116. The Mayor signed the legislation only after obtaining HABC's assurance that the two vacant land projects in white areas, Westport Extension and Claremont Homes, would be limited to white occupancy. Ex. 3, Hirsch at 38-41; Ex. 116, Development Program, Project No. MD 2-14 (Armistead) (Sept. 27, 1950 (PL 30644-54); Ex. 117, Development Program, Project No. MD 2-13 (Westport Extension) (Sept. 8, 1950) (PL 30660-71); Ex. 118, Sinclair Project Rumor Denied By Mayor, Baltimore Sun (1950) (PL 33783).

117. The Cherry Hill vacant land site, adjacent to the Cherry Hill war housing project, was approved for African-American occupancy. Ex. 3, Hirsch at 38-41; Ex. 119, Development Program, Project No. MD 2-12 (Cherry Hill) (Sept. 8, 1950) (PL 30489-99). Ex. 119A,

Development Program, Project No. MD 2-17 (Cherry Hill) (July 19, 1951) (PL 080293-302)

(“Another weighty reason for the selection is the fact that this site is at the present time the only politically acceptable vacant negro site in the City.”).

118. Federal and local housing officials were fully aware that the Cherry Hill site and the slum clearance sites approved by the City Council in the early 1950s were grossly inadequate to even rehouse the thousands of African-Americans displaced by urban renewal projects in other areas of the city, much less meet the needs for “Negro housing.” Federal officials were aware that many of these displaced African-Americans would be forced out into a housing market in which pervasive discrimination and the severe shortage of housing open to African-Americans would make it difficult for them to secure other housing. Ex. 3, Hirsch at 37-38; Ex. 120, J. Hugh Rose, FHA Housing Analyst, Report on the Current Housing Situation in the Baltimore Housing Market (Jan. 10, 1950) (PL 31778-812); Ex. 99, Memorandum from Charles C. Beckett to Richard H. Kline, Report of Field Trip to Baltimore, Maryland, March 19-22, 1951, at 3 (April 25, 1951) (HUDBAL 000471-88 at HUDBAL 00473) (federal official acknowledging that “the availability of housing for either rental or sale which would be available for the economic level of the ineligible [for public housing] non-white families is practically non-existent in the private housing market in Baltimore.”).

119. The federal government funded the development of FHA-subsidized rental housing limited to white occupancy in Baltimore and its suburbs while acknowledging, in a 1950 report on the housing situation in Baltimore, the urgent need for “Negro housing” the “shortage of land that can be used for new housing for non-white occupancy,” and the roots of the shortage in “opposition to changing land use in the market.” Ex. 120, J. Hugh Rose, FHA Housing

Analyst, Report on the Current Housing Situation in the Baltimore Housing Market (Jan. 10, 1950) (PL 031778-031812 at PL 031805, 031778-79). They acquiesced to the segregative land use practices of local governments, concluding “land on which housing for the Negro population can be developed is much more difficult to obtain [than for white occupancy]. Traditional land use can be changed only gradually in this respect in Baltimore as in other cities.” Id. at PL 031806.

120. The defendants knew that the restriction of public housing to these inner-city slum clearance sites, in areas of predominant African-American residency, would create and perpetuate residential segregation in Baltimore. Ex. 3, Hirsch at 38-41; Ex. 122, Edward Rutledge, Housing Director, NYS Commission Against Discrimination, at 9 (Dec. 2, 1955) (NA 00050-59 at NA 53) (observing that “[s]egregation is bound to result” when public housing is “built mostly in racial ghettos”).

121. Despite this knowledge, the local defendants, in order to avoid another controversy with white neighborhoods, abandoned efforts to obtain approval for another vacant land site for Negro housing in addition to the Cherry Hill site approved by the City Council. After considering 39 possible vacant land sites, HABC concluded in a 1951 memorandum that “[a]ny other [vacant land] sites within the City would either be highly undesirable from a planning point of view or would precipitate a major political controversy,” i.e., white opposition. Ex. 3, Hirsch at 38; Ex. 87, Memorandum from Philip Darling to Oliver C. Winston (July 18, 1951) (PL 31528-31 at PL 031528) (“Detailed investigation of each of three possibilities indicated that Numbers 1 and 34, both in the Cherry Hill neighborhood, were the only ones which could be selected for negro occupancy with some degree of assurance that a political storm

would not ensue. The southern half of Site #27, for example, would appear to be about as thoroughly isolated from surrounding development as is possible within the City limits, and yet this is the area that precipitated the well known Herring Run controversy during the war.”).

122. As the result, between 1950 and 1956, Cherry Hill Extensions I and II were erected, adding 993 segregated African-American units to the 600 unit existing segregated war housing project in the all-African-American community of Cherry Hill. Ex. 2, Taeuber at Table 4; Ex. 119, Development Program, Project No. MD 2-12 (Cherry Hill) (Sept. 8, 1950) (PL 30489-99); Ex. 119A, Development Program, Project No. MD 2-17 (Cherry Hill) (July 19, 1951) (PL 080293-302).

123. The 1950 ordinance is still in effect and governs the selection and approval of sites for public housing. Since 1950, each new public housing site has required City Council approval “extending” the Cooperation Agreement to the site and, for any project located on vacant land, a lifting of the slum site requirement. The City Council’s refusal to introduce or pass an ordinance functions effectively as a pocket veto of a given site. The 1950 ordinance is a continuing vestige of de jure segregation. In 1989, HABC’s counsel Thomas Perkins advised HUD’s Office of General Counsel that the 1950 ordinance’s purpose was “to provide for councilmanic oversight of the location of public housing units in various parts of the city,” and further admitted that “this practice [of councilmanic oversight] has subsequently become questionable constitutionally.” Ex. 123, Letter from Thomas Perkins to Betty Parker with attached ordinances (July 26, 1989) (HUD 20006-12); Ex. 124, Legal Basis for Housing Authority of Baltimore City (undated) (HA 05824-26).

3. The Federal and Local Defendants' Segregative Uses of Urban Renewal Projects.

124. Despite the housing shortage for African-Americans, beginning in 1950, the federal defendants approved the local defendants' urban renewal projects that used federal funds to demolish black housing in areas near white neighborhoods or institutions, and replaced that housing with government buildings, private businesses and segregated housing for whites. Ex. 51, Office of Development and Research, U.S. Department of Housing and Urban Development, An Historical and Baseline Assessment of Hope VI, Vol. I, Cross-site Report (August 1996) at 1-3 (PL 067839-068060 at 067940) (“As the city grew after the war, some of these ‘negro’ communities were razed to make room for government buildings and other businesses. Simultaneously, the African-American populations continued to increase as the housing opportunities continued to decrease.”).

125. In 1950, Baltimore's first urban renewal projects, Waverly and Hopkins-Broadway, were approved by the City Council and funded by the federal defendants. Both projects displaced African-Americans in favor of redevelopment restricted to white occupancy over vigorous protests that the projects were segregative. Ex. 3, Hirsch at 35-37; Ex. 125A, HABC Monthly Report (June 1950) (map showing locations of Broadway and Waverly urban renewal projects).

126. The Baltimore Urban League advised the Mayor and City Council by memorandum that the two projects “require the City council to give official sanction to segregation in the name of redevelopment,” and further that “[t]he establishment of segregation by official sanction and with the use of public funds is abhorrent.” Ex. 125, Memorandum to the

Mayor and City Council from the Baltimore Urban League at 2, 3 (July 6, 1950) (PL 33809-12 at PL 033811, 033812); see also Ex. 126, City Warned on Two Housing Programs, Baltimore Sun (June 30, 1950) (PL 33807) (Urban League testified that the “plan will mean a further contraction of land available in the city for the housing of Negroes.” Also, “[i]n the Waverly area, I tell you, that for 50 years white and colored families have lived side by side harmoniously.”).

127. The Waverly and Hopkins projects stirred protests from national civil rights organizations which feared that federal approval of the projects in Baltimore would set a dangerous precedent for other cities. The NAACP complained directly to the federal government, and asked federal officials to halt the Waverly and Broadway urban renewal projects and to adopt policies that would prevent the use of federal funds to increase segregation. Ex. 3, Hirsch 35-37. The NAACP advised federal defendants that “[t]he Baltimore redevelopment program is also a backward step because it clears an area where the population is interracial at this time, but requires racial segregation when the new dwellings are constructed.” Ex. 127, Letter to Nathaniel S. Keith, Director, Division of Slum Clearance and Urban Development, from Clarence Mitchell, Director, Washington Bureau, NAACP (Dec. 17, 1951) (NA 00162-65 at NA 00162); Ex. 3, Hirsch at 35-37.

128. The Racial Relations Office within the federal Housing and Home Financing Agency (HHFA) recognized the segregative nature of the Baltimore projects, and concluded that the projects would fulfill Weaver’s triple threat: “the two projects together will effect: (1) ‘Negro clearance’; (2) the conversion of a racially flexible area to one of racial exclusion; and (3) the reduction of land areas available to Negro residence.” Ex. 128, Memorandum to N.S. Keith,

Director, DSCUR, from George B. Nesbitt, Special Assistant (Racial Relations), Racial Policy in the Delineation of Project Areas at 1 (Aug. 30, 1951) (NA 166-71); Ex. 3, Hirsch at 36.

129. Despite its knowledge of the segregative intent and effect of the Waverly and Hopkins/Broadway projects, HHFA approved the Baltimore projects and rejected the policy changes sought by civil rights organizations and its own Racial Relations office. As a result, the federal government's urban renewal program was used by Baltimore to displace thousands of African-Americans, with many relocated to racially segregated public housing projects. Ex. 3, Hirsch at 37; Ex. 128A, Letter from R. L. Steiner to Berl I. Bernhard (June 27, 1961) (PL030881-030902) (showing that between 1951 and 1960 3,722 non-white households and only 252 white households were displaced by specified urban renewal projects).

130. The Waverly project involved removing 100 African-American families from an area that had been racially balanced and replacing them with 291 segregated white housing units. Broadway involved removing 956 African-American families and 106 white families, and replacing them with 178 proposed units for African-Americans and 478 segregated white units. Ex. 3, Hirsch at 35-36; Ex. 99, Memorandum from Charles C. Beckett to Richard H. Kline, Report of Field Trip to Baltimore, Maryland, March 19-22, 1951, at 3, Exhibit II (April 25, 1951) (HUDBAL 000471-88 at HUDBAL 00473).

131. Public housing was transformed under HHFA Administrator Albert Cole from a program serving blacks and white moderate income tenants to one which massively displaced blacks without replenishing their housing needs. As the result, public housing became identified as a "black program," while new suburban private housing was developed for white occupancy. Ex. 3, Hirsch at 47-51.

132. HUD admitted in a 1997 Notice that federal urban renewal policies and their dependence on public housing as a relocation resource were a major factor causing the tenant population of urban public housing authorities to become predominantly minority. Ex. 36, HUD Notice on Site-Based Waiting Lists, 62 Fed. Reg. 1026, 1027 (Jan. 7, 1997) (PL 49053-57). HUD admitted in congressional testimony in 1985 that “[t]he link [of public housing] with urban renewal was explicit, in that the Act required housing authorities to give priority to families displaced by urban renewal and highway construction. Moreover, siting policies promoted the provision of replacement housing in the same general area as that from which the displacement occurred. . . . The inevitable result of these directions was that a large portion of public housing units built during the 50’s and 60’s predominantly by minorities.” HUD also admitted in the same testimony that “[i]t is largely because of progressive urban renewal policies and their dependence upon public housing as a relocation resource that the tenant population of our urban public housing authorities became predominantly minority.” Ex. 32, Knapp Congressional Testimony at HUD 31238-39, 31260. See also Ex. 35A, Report of the Urban Renewal Study Board to Mayor Thomas D’Alessandro, Jr. (Sept. 12, 1956) (HA 86065-182 at HA 86115) (“Public housing has carried a substantial part of the relocation load in the past and it may be expected to carry a similar proportion in the future.”).

4. The Federal and Local Defendants’ Segregative Development of the High Rise Projects.

133. In the 1950s and 1960s the defendants built four large high-rise public housing projects next to six older public housing projects in the central city area to house thousands of families displaced for white housing and non-residential purposes and the closure of “Negro” war

housing projects in Baltimore County and City. These high rise projects created a large and unreasonably dense cluster of poverty and segregation around downtown Baltimore. Ex. 3, Hirsch at 41-43; see also Ex. 54, Racially Integrated Public Housing Programs: Highlighting 15 Years of Experience (Draft No. 3, Feb. 1952) (PL 035261-339) (defendants were aware that racial integration could not be maintained when public housing had more black occupants than white occupants -- “So long as the proportion of racial minority group families to be housed in the public housing program does not exceed forty to fifty percent of the total, it appears that the programs retain their interracial character with little or no difficulty,” at PL 035314; “A more serious issue in the opinions of many observers is that of creating an excessive demand - and preferential eligibility - among racial minorities for public housing by the excessive clearance of minority group occupied sites,” at PL 035316).

134. The federal and local defendants designed the high density, high rise structures in order to reduce the land cost per dwelling unit and to maximize the amount of housing that could be built on the few sites approved for Negro housing. Ex. 3, Hirsch at 41; Ex. 51, Office of Development and Research, U.S. Department of Housing and Urban Development, An Historical and Baseline Assessment of Hope VI, Vol. I, Cross-site Report (August 1996) at 4-2 (PL 067839-068060 at PL 067940) (“Lafayette Courts is located in what has long been an industrial area. This is consistent with Baltimore’s series of attempts to ‘maintain’ the increasing population of African-Americans within certain neighborhoods by building public housing developments designed as ‘Negro housing.’”).

135. Three of the high rise housing projects were designed as “Negro” housing (Lafayette Courts, Lexington Terrace and Murphy Homes), while one project (Flag House

Courts) was designated as “white” housing. Ex. 3, Hirsch at 41-43; Ex. 129, Development Program, Parts I-VII, Project No. MD 2-19, Program Reservation No. MD 2-A, Fremont Avenue, Baltimore 2, Maryland, submitted by Housing Authority of Baltimore City at 2 (May 29, 1952) (HA 12673-744 at HA 12673-77) (identifies projects MD 2-15 Lafayette, MD 2-18 Murphy and MD 2-19 Lexington as “Non-White” and project MD 2-16 Flag as “White”).

136. Flag House Courts, the segregated white project, was built in a racially mixed area. 213 white families and 75 black families were cleared from the site, to make way for 490 planned white units. The displaced black families were to be relocated to the Lafayette Courts project or Cherry Hill, both planned for black occupancy. HUD’s Racial Relations Service reported that the plans for the Flag House site “call for changing the racial pattern of the neighborhood.” They further reported that the proposed project “violates two of the major principles of the PHA: (a) An occupied site should not be selected for development of a project excluding any of the racial groups comprising the present site occupancy. (b) Sites which would result in reducing the total land area available to racial minorities for residential use in the locality should be avoided.” Despite the fact that the project violated the federal defendants’ own policies, it was approved and developed. Ex. 99, Memorandum from Charles C. Beckett to Richard H. Kline, Report of Field Trip to Baltimore, Maryland, March 19-22, 1951, at 3, Exhibit II (April 25, 1951) (HUSBAL 000471-88 at HUSBAL 000473, HUSBAL 00482); Ex. 130, HABC, Development Program for MD 2-16 (Flag House) (Mar. 14, 1951) (PL 080282-92).

137. The Racial Relations Service was concerned about the “reduction of land area available for non-white occupancy,” and particularly the effect on families ineligible for public housing. They warned: “Such a trend spells an excessive and disproportionate displacement of

racial minority group families ineligible for public housing, despite the discriminatory limitation of dwellings in the private enterprise housing supply available to such families and the problems incident to their enforced movement into this restrictive supply. These problems will naturally include the spread of blight and slums, tensions, in addition to the exposure of the minority group families to discriminatory exploitation by real estate operators and personal hostility.” Ex. 99, Memorandum from Charles C. Beckett to Richard H. Kline, Report of Field Trip to Baltimore, Maryland, March 19-22, 1951, at 3, Exhibit II (April 25, 1951) (HUDBAL 000471-488 at HUDBAL 000473, HUDBAL 000482).

138. Lafayette Courts, six high rise buildings of 11 stories each and seventeen low rise buildings, was to accommodate 805 families, more than one-third larger than the 582 families that had formerly lived on the site. Ex. 131, HABC, Development Program MD 2-17 (Lafayette), at 17 (Aug. 24, 1951) (PL 080168-244 at 080187) The Racial Relations Service pointed out that Lafayette Courts would not provide living conditions equal to those to be provided at the all-white Flag House development. Lafayette Courts, unlike Flag, also contained a disproportionate number of 3-bedroom apartments. The Racial Relations Service warned of the “resultant chaotic living conditions and management problems which would be created by families with three to five children being located in 3-BR units of a 10-story structure.” Ex. 99, Memorandum from Charles C. Beckett to Richard H. Kline, Report of Field Trip to Baltimore, Maryland, March 19-22, 1951 (April 25, 1951) (HUDBAL 000471-88 at HUDBAL 000472).

139. The sites for HABC’s third and fourth high rises, Lexington Terrace and Murphy Homes, were approved by the City Council in 1952. Lexington Terrace, built on an urban renewal site adjacent to Poe Homes, was designed to house 677 black families in five high rise

and several low rise buildings. Ex. 129, Development Program, Parts I-VII, Project No. MD 2-19, Program Reservation No. MD 2-A, Fremont Avenue, Baltimore 2, Maryland, submitted by Housing Authority of Baltimore City at 2 (May 29, 1952) (HA 12673-744 at HA 12673-77).

140. Murphy Homes was built on the George Street urban renewal site, on fifteen acres sandwiched between McCulloh Homes and the Lexington Terrace high rises. At the urging of federal officials, HABC increased the size of the project from 643 to 758 units, an unreasonable density, and far more than the 539 families that had been displaced from the site. Ex. 132, Housing Officials Begin Plans for Final Project, Baltimore Sun (June 8, 1957) (PL 33870) (federal officials rejected “experimental” plan which would have put larger families into homes with yards, because it provided for a density of only 35 families to an acre, rather than the federally approved 50); Ex. 133, Agency Approves Home Plan Shift, Baltimore Sun (Oct. 4, 1958) (PL 28904) (Federal government insisted that project size be increased from the originally planned 643 to 750 units); Ex. 133A, New Home Project Due in the Fall, Baltimore Sun (March 19, 1963) (PL 017024-25) (Murphy Homes “expected to serve as an important source for the relocation of families displaced from the proposed Madison-Park North renewal project”).

IV. BETWEEN 1954 AND PASSAGE OF THE CIVIL RIGHTS ACT OF 1964, FEDERAL AND LOCAL DEFENDANTS FAILED TO TAKE ANY STEPS TO DISESTABLISH THE DE JURE SEGREGATED PUBLIC HOUSING; TO THE CONTRARY, THEIR ACTIONS CONTINUED AND EXACERBATED RACIAL SEGREGATION IN BALTIMORE’S PUBLIC HOUSING.

A. Between 1954 and the Passage of the Civil Rights Act of 1964, Defendants Used Tenant Selection and Assignment Policies To Selectively and Deliberately Convert Undesirable White Public Housing Projects to Uniracial Black Projects.

141. The federal defendants did not change their tenant selection and assignment policies or site selection policies after the Supreme Court’s decision in 1954. They took no steps to dismantle the dual system of public housing in Baltimore. They did not direct local defendants to dismantle the results of the prior discrimination. Ex. 3, Hirsch at 43-52; Ex. 11, Pearl Dep., at 55 (admits HUD imposed no tenant selection and assignment policy until after the 1962 Executive Order No. 11,063); Ex. 35, Memorandum from Peter Kaplan, Office of HUD Program Compliance to Gordon H. Mansfield, Assistant Secretary for FHEO (Sept. 16, 1991) (PL 01955-63) (admits that HUD took no action regarding desegregation until after the issuance of Executive Order 11063 in 1962). As late as 1958, the official federal policy was that public housing could be provided on a “separate but equal” basis. Ex. 35B, Memorandum from Julian Zimmerman, General Counsel to Albert Cole (June 27, 1958) ADKER 68207-68211.

142. In 1954, the federal and local defendants operated seven segregated black public housing projects in Baltimore City comprising 3369 units -- McCulloh Homes (434 units), Poe Homes (298 units), Douglass Homes (393 units), Gilmor Homes (587 units), Somerset Homes (420 units), Cherry Hill Homes (600 units) and Cherry Hill Extension I (637 units). Defendants took no steps to desegregate these projects and they remain segregated to this day. Ex. 2,

Taeuber at 1, 36. The former “Negro projects” were 100% black occupied in 1954 and have remained 99-100% black ever since. Id. at 1, 36, Tables 2, 5, 6.

143. In 1954, defendants operated (or in the case of Westport Extension were in the process of developing) seven de jure white public housing projects in Baltimore City -- Perkins Homes (688 units), Latrobe Homes (701 units), Brooklyn Homes (500 units), O’Donnell Heights (900 units), Claremont Homes (292 units), Fairfield (300 units), Westport Homes (200 units) and Westport Extension (232 units). After the Supreme Court decision of May 17, 1954 in Brown v. Board of Education, defendants employed a “freedom of choice” tenant selection policy to selectively convert the two inner-city slum clearance projects adjacent to black residential areas (Perkins and Latrobe) and the three outer-city projects built on vacant land near black residential areas (Fairfield, Westport, and Westport Extension) to uniraical black projects. Ex. 2, Taeuber at 1, 3, 8, 36-39, Table 2; Ex. 3, Hirsch at 59-64.

144. Defendants took no steps to integrate the three white projects in white outer-city areas (Brooklyn Homes, O’Donnell Homes and Claremont Homes), which remained 100% white in 1966. Ex. 2, Taeuber at 1-5, 35-39; Ex. 3, Hirsch at 57-64; Ex. 12, Deposition of William Tamburrino (Nov. 21, 2002) (“Tamburrino Dep.”) at 185 (admitting that segregation in Baltimore did not diminish during the freedom of choice period); Ex. 36, HUD Notice on Site-Based Waiting Lists, 62 Fed. Reg. 1026, 1027 (Jan. 7, 1997) (PL 049053-57) (admits that the freedom of choice tenant selection and assignment policies “did not address the effects of the site selection process, by which developments had been located in all white and all-black areas.”).

B. HABC Established, with HUD Approval, the Segregative “Freedom of Choice” Tenant Selection Policy in Baltimore.

145. HABC initially concluded that the Brown decision did not itself specifically require desegregation of public housing. However, HABC did recognize that it would ultimately have “to embark, at the very least, on a policy of limited integration.” Ex. 3, Hirsch at 55-57; Ex. 134, HABC Counsel, Segregation in Public Housing, at 8 (June 16, 1954) (PL 030609-18 at 030614) (“Thus, there is no rule of law which would prohibit segregation, as such, in public housing unless it can be found as a factual matter that the effect of segregation is so detrimental to the occupants of public housing that they have been deprived of the ‘Equal Protection of the Laws.’ Whether or not the Supreme Court is prepared to make such a factual finding is something that only time will tell.”); see also Ex. 135, HABC, Racial Occupancy Policy Report (June 24, 1954) (PL 030505-34 at PL 030511) (“Notwithstanding the lack of legal rulings which require a policy of integration, the ‘handwriting is on the wall,’ and it is believed that conclusive legal findings outlawing segregation are a possibility in the near future.”).

146. HABC’s counsel recognized that regardless of whether “separate but equal” would be ruled unconstitutional in the public housing context, HABC was not providing equal accommodations for African-American public housing applicants -- white applicants with less urgent housing needs were being served before African-American applicants. Ex. 134, HABC Counsel, Segregation in Public Housing, at 8 (June 16, 1954) (PL 030609-18 at 030615). However, HABC’s counsel put forth a proposal to maintain segregated public housing by increasing the public housing developments available to African-Americans. Under this proposal, the City would have been broken down into a number of neighborhoods, each with

black and white public housing. Applicants would be permitted to indicate a preference for a location or neighborhood, but not a specific project. In order to eliminate the existing disparity in access to public housing, counsel estimated that “each section would have to be at least three parts negro to one part white.” Ex. 135, HABC, Racial Occupancy Policy Report (June 24, 1954) (PL 030505-34 at PL 030525) For the Eastern sector of this City, “[t]his might be accomplished by transferring all of Latrobe, all of Perkins, and all of Flag House Courts to Negro occupancy, leaving only O’Donnell Heights and Claremont for white occupancy.” Id. While this plan was not officially adopted by HABC, this is in fact what HABC subsequently did. See infra at 154-61.

147. On June 25, 1954, the Baltimore Housing Authority announced an official policy of “desegregation” and the Commissioners of HABC nominally adopted a policy of “open occupancy.” The policy was not put into effect immediately and in any event, according to HABC’s Executive Director, was not to be applied “promiscuously.” Ex. 136, Racial Relations Service and Office of the General Counsel, Nondiscrimination Clauses in Regard to Public Housing, Private Housing and Urban Development Undertakings (Oct. 1957) (NA 00041-42); Ex. 137, Oliver C. Winston, Executive Director, HABC, Desegregation Address to HABC Employees (June 30, 1954) (PL 030173-88) (policy not to be immediately effective); Ex. 161, Memorandum from Oliver Winston, Meeting with Community Agencies, with attached HABC Meeting of Staff on Visiting Community Agencies (Nov. 3, 1954) (“It must be pointed out that the policy is not to be applied promiscuously or that it will have application for every family. We are not going to require anyone to live anywhere against their wishes.”) (PL 31509-27); Ex. 138, Letter from Oliver Winston to Charles L. Levy, Director (Nov. 16, 1954) (PL 030326-28) (“In

view of the segregated cultural pattern prevailing in the City, we decided that implementation of this policy could not be undertaken without thorough and carefully planned training of the local staff in the philosophy of desegregation and the techniques required for a successful operation.”); Ex. 138A, Memorandum from Edgar M. Ewing to Ellis Ash, Further Steps on Implementating Desegregation (April 5, 1955) (PL030535-030560) (admission that in April 1955 HABC still not “operat[ing] on the premise that every applicant will be advised of the availability of any project according to his preference.”).

148. HABC’s “freedom of choice” policy was not intended to disestablish the racially segregated dual public housing system. It did not provide for the assignment of prospective tenants to vacant units without regard to race. From the outset, HABC’s “freedom of choice” policy was intended to result in only “limited integration” that would not damage existing segregated residential patterns in Baltimore. Id.; see also Ex. 139, Ellis Ash, Director of Management, HABC, The Baltimore Story: An Account of the Experience of the Housing Authority of Baltimore City in Developing and Applying a Desegregation Policy to its Low-Rent Public Housing Program at 12 (Dec. 9, 1955) (PL 030440-53 at PL 030451) (“The Baltimore Authority has not applied its policy on the premise that integration must be achieved throughout the program, if this means that families are required to either live in particular projects or sacrifice their opportunities for housing.”).

149. HUD and HABC were aware that whites would not choose to move to the historically “Negro housing” projects and that those projects would remain all black. Ex. 140, Open Occupancy in Public Housing Report (1953) (Adker 056919-51 at Adker 056935) (“When occupied sites are to be used, it is apparent that racial integration in the completed projects would

be hampered to the degree that site occupants represent only one racial group. Indeed, the greatest difficulties are to be anticipated – especially in the face of the acute housing shortage – when only slum sites are chosen for project development or when those occupied predominantly by racial minorities are the only occupied sites selected.”); Ex. 11, Pearl Dep., at 75 (HUD anticipated that whites would not move into the existing predominantly black public housing developments). Nevertheless, neither HUD nor HABC ever contemplated assignment or transfer of whites to these projects.

150. HUD and HABC were aware that selective application of the “freedom of choice” policy to the less desirable projects, coupled with the greater demand for public housing by black tenants than white tenants, would result in racial conversion of the white projects chosen for “desegregation.” Ex. 53, Edward Rutledge, Racial Relations Field Officer, PHA, Integration of Racial Minorities in Public Housing Projects, at 2 (May 1951) (PL 030454-62 at PL 030456) (“[T]here are Authorities that have attempted to practice integration but by the selection of sites and policy of permitting tenants to show preference for certain projects, have facilitated the creation of all-Negro projects.”); Ex. 54, Racially Integrated Public Housing Programs: Highlighting 15 Years of Experience (Draft No. 3, Feb. 1952) (PL 035261-339) (“In many instances, both new and existing project are located on sites that do not naturally lend themselves to racial integration. Nevertheless, the integrity and acceptability of a non-segregation policy may well depend upon the resourcefulness of the local housing authority in effecting racial integration, at least to some degree, in every project under its program in spite of location,” at PL 035298; “Acceptance of units as assigned is greatly enhanced then the non-segregation policy is uniformly applied throughout the program. In this situation no family can be given a guarantee

about the race, religion, or creed of its neighbors,” at PL 035306; “Centralized tenant selection from a city-wide pool of applications contributes to objective application of the racial integration policy throughout the program. it assures selections based solely upon legal priorities and relative need, referrals to projects on objective bases, and where necessary, standardized ‘screening’ of induction families,” at PL 035312).

C. HABC Converted Fairfield from White to Uniracial Black.

151. In 1953, local defendants acquired Fairfield Homes, the white war housing project built on vacant land in Fairfield, located in what was otherwise an isolated black enclave. At the time the project was acquired, local defendants determined to convert it from white to black occupancy because of the pressing need for black housing and because they anticipated no opposition from whites to the conversion of such an unattractive site to black occupancy. Ex. 3, Hirsch at 59; Ex. 141, Edgar Ewing, Untitled Report (Mar. 6, 1953) (PL 031580-87, at PL 031582-83, 031586) (report notes that the area immediately adjacent to Fairfield “is almost entirely occupied by Negroes” and “[t]he area around Fairfield Homes is primarily industrial.” The report concludes: “It is difficult to conceive an organized group of white residents in the area protesting the shift to Negro tenancy in the project. There are too few whites living there to protest, and the area around the project is of such poor housing that there would seem to be no reason for protesting that a Negro-occupied Fairfield would tend to make the surrounding area more completely Negro. From the viewpoint of the Negro groups, while the area surrounding the project is a poor housing environment, the central point is still that the accession of 300 units of good quality, permanent low-rent public housing for Negroes is a valuable and needed addition to the city’s limited supply of decent housing open to Negro low-income families.”).

152. A careful plan was developed for this conversion. At the time of acquisition in October 1953, HABC announced that the project would be converted to black occupancy in October 1954. That gave white occupants one year to arrange to relocate. Ex. 142, Draft letter to “Mrs. Smith” (undated) (PL 31569); Ex. 143, Memorandum from Ellis Ash to Oliver Winston, Fairfield Situation (Oct. 26, 1954) (PL 31570-71); Ex. 144, Letter from Oliver Winston to Honorable Thomas D’Alesandro, Jr. (Aug. 14, 1953) (PL 31572-73).

153. Before the year was up, in May 1954 the United States Supreme Court announced its decision in Brown v. Board of Education (1954). After the decision in Brown, HABC selected Fairfield as its first project for “desegregation” by transparently changing its plans for Fairfield from a plan to “convert” it from white to black occupancy, to a plan to “desegregate” it. Irrespective of the label, the effect was the same, and Fairfield was converted from white to black occupancy by 1955. Ex. 2, Taeuber at 37; Ex. 138, Letter to from Oliver Winston to Charles L. Levy, Director, Washington Field Office, PHA, from Oliver Winston, Executive Director (Nov. 16, 1954) (PL 030326-28); Ex. 145, HABC, Notes on Management Division Staff Meeting (Nov. 3, 1954) (PL 030319-21); Ex. 146, Tabulation by Cost Center (Dec. 31, 1955, June 30, 1956 and Dec. 31, 1956) (PL 030436-38); Ex. 147, Memorandum from Harry Weiss to Edgar Ewing (Feb. 1, 1957) (PL 030736-42); Ex. 147A, Memorandum from Maulsby (Sept. 11, 1964) (PL 031204-06) (HABC document admitting that Fairfield not part of the “real desegregation program,” but rather was a deliberate change in racial occupancy).

D. HABC Converted Latrobe, Perkins and Westport from White to Uniracial Black.

154. In May 1955, the “desegregation” policy was extended to Latrobe and Perkins, the two original white public housing projects sited in “slum” areas. Ex. 138A, Memorandum from Edgar M. Ewing to Ellis Ash, Further Steps on Implementating Desegregation (April 5, 1955) (PL 030537-38) (identifying Latrobe and Perkins as next projects to “desegregate,” directing personnel of the two projects to “sit down and develop a plan for the application of the desegregation policy to their particular project”); Ex.138B, Jacob Fisher to Dear Resident (May 23, 1955) (PL 030547) (notifying residents of Latrobe that “both white and Negro families will be moving into the project this week.”).

155. Both sites had had significant black populations prior to clearance and construction of the de jure segregated projects and were adjacent to black areas. See supra at ¶¶ 78-83. By December 1955, 44 units at Latrobe and 30 units at Perkins were occupied by black families. A year later, 194 units at Latrobe and 139 units at Perkins were occupied by black families. Ex. 2, Taeuber at 37-38; Ex. 146, Tabulation by Cost Center (Dec. 31, 1955, June 30, 1956 and Dec. 31, 1956) (PL 030436-38).

156. In May, 1956, the “desegregation” policy was extended to Westport Homes, also a de jure white project located in proximity to the black Mt. Winans neighborhood. Ex. 148, Memorandum from Edgar Ewing to Ellis Ash, Planning Meeting on Westport Desegregation (May 22, 1956) (PL 030434-35 at 030434) (HABC meeting in May 1956 “for a preliminary discussion of the application of the desegregation program in Westport Homes.”) By December 1956, 51 units, or 29% of the total at Westport were occupied by black families. Ex. 2, Taeuber

at 38; Ex. 146, Tabulation by Cost Center (Dec. 31, 1955, June 30, 1956 and Dec. 31, 1956) (PL 030436-38 at 030438).

157. By 1964, the racial conversion for the projects chosen for “desegregation” was virtually complete. Westport and Westport Extension were both over 95% black. Fairfield was 100% black. Perkins was 78% black. Latrobe was 56% black. Ex. 149, Letter from Sara Hartman to Margaret King, with attached occupancy tables (April 17, 1964) (PL 030744-47).

158. Significantly, O’Donnell, Brooklyn and Claremont, the three outer-city white projects in white areas, were not selected for “desegregation.” And, in fact, not only did no desegregation occur, but these three projects remained exclusively 100% white until 1967. Ex. 149, Letter from Sara Hartman to Margaret King with attached tables (April 17, 1964) (PL 030744-47); Ex. 2, Taeuber at Tables 1, 2, 5, 6.

E. HABC’s Opening of the High Rise Projects and the Racial Conversion of Flag House Courts.

159. In 1955, at the same time that the local defendants were racially converting the low-rise Fairfield, Latrobe, Perkins and Westport projects, HABC opened the first two high rise projects (Flag and Lafayette). Both were purportedly opened under a “desegregation” or “open occupancy” policy, yet both projects opened with a racial composition that reflected their planned occupancy before Brown. Lafayette Courts opened with 99% African-American tenants in April 1955. Flag House, planned as de jure segregated white, opened three months later a few blocks away with 70% white occupancy. Moreover, HABC quickly converted Flag to black occupancy; by 1964 it was 75% black. Ex. 2, Taeuber at 42-45; Ex. 146, Tabulation by Cost Center (Dec. 31, 1955, June 30, 1956 and Dec. 31, 1956) (PL 030436-38).

160. Lexington Terrace had been planned as an all black project. It opened with all-black occupancy and remained uniraical until it was demolished in 1996. See Ex. 2, Taeuber at Tables 2-5.

161. A 1959 HABC memorandum warned that Murphy Homes, the last high-rise project to open, would be segregated black because of its location in an area of “substantial Negro occupancy.” It opened in 1963 under the “freedom of choice” policy as virtually all black and remained so until its demolition in 1998. See Ex. 2, Taeuber at Tables 2-5; Ex. 150, Memorandum from Harry B. Weiss, Director of Housing Management to Edgar Ewing, Subject: Status of Desegregation, with attached handwritten statistics (Nov. 5, 1959) (PL 30752-53).

V. AFTER ENACTMENT OF TITLE VI IN 1964 AND UP TO THE PRESENT, DEFENDANTS PERPETUATED AND EXACERBATED SEGREGATION IN BALTIMORE’S PUBLIC HOUSING AND FAILED TO TAKE ANY STEPS TO DISESTABLISH THE EXISTING SEGREGATION.

162. In 1964, Congress passed Title VI of the Civil Rights Act of 1964. In the years following the enactment of this statute, the local and federal defendants failed to remedy the effects of their policies and practices of funding, siting and operating racially segregated public housing. Instead, the defendants continued to operate HABC’s tenant selection and assignment plan to assign white applicants to the former de jure white projects. In addition, the defendants’ practice of restricting new public housing to minority areas and sites adjacent to existing public housing projects became even more pronounced and aggravated the patterns of residential segregation. Finally, despite the extent of the need for assisted housing by Baltimore’s poorest African-American residents, HUD and HABC are currently engaged in demolishing thousands of units of scarce public housing and have no plans to replace this lost inventory.

163. Moreover, from 1964 to the present, HUD has continued to fund HABC's operation of segregated public housing, to finance and approve HABC's acquisition and construction of additional housing, and to finance demolition of public housing with full knowledge that the intent and effect of local defendants' site selection policies and practices were to restrict public housing and its residents to African-American areas. HUD has repeatedly approved new sites in minority areas and failed to require local defendants to comply with legal mandates requiring the development of new public housing in non-minority areas.

A. From 1964 to the Present, Defendants Have Used Tenant Selection Policies To Maintain Segregation in Baltimore's Public Housing.

164. Between 1954 and the passage of the Civil Rights Act of 1964, defendants transformed HABC's public housing system from a segregated dual-race system, to a segregated one-race system. On a national as well as a local level, public housing had become the housing program for blacks, while housing opportunities were created for whites in the suburbs. Locally, HABC used the tool of the "freedom of choice" tenant assignment policy to maintain segregation in its public housing developments by converting its less desirable white projects to black occupancy, while keeping its three most desirable white projects located in white residential areas as all-white enclaves. Ex. 3, Hirsch at 50. After 1964 and up to the present, HABC continued to use a combination of "freedom of choice" tenant selection practices combined with its HUD approved "four location" tenants assignment policy to maintain a limited number of white enclaves in prior de jure white developments, in what was otherwise a uni-racial African-American public housing system.

165. HUD's first tenant selection policies under Title VI issued in 1965 permitted local housing authorities to adopt either a "freedom of choice" tenant selection and assignment policy, or a "community-wide waiting list" policy. Ex. 151, Basis for Revised Requirements for Administration of Low-Rent Housing Under Title VI of the Civil Rights Act of 1964, including attached PHA Circular, Title VI of Civil Rights Act of 1964 (Aug. 27, 1965) (PL 036139-50). By the time this policy was issued, Baltimore officials had already used the "freedom of choice" plan to selectively convert Baltimore's less desirable de jure white projects from white to black occupancy. White tenants had been consolidated into Brooklyn Homes, Claremont Homes and O'Donnell Heights. These three formerly de jure segregated white projects, developed on vacant land in white areas, remained all white. All of the de jure black projects remained all black.

166. By 1966, HABC admitted that its public housing remained overwhelmingly segregated, with only three projects breaking the pattern of all-white or all-black tenancy. Ex. 152A, Memorandum from R.L. Steiner to Saul M. Perdue, Interim Report - Recommended Procedures for Filling Standing Vacancies (July 19, 1966) (PL 030346-48 at 030346) ("To date, there are but three projects that reflect an integrated tenancy: Latrobe Homes, Flag House Courts, and Perkins Homes. The others are either totally white or Negro.").

167. HUD and HABC adhered to the "freedom of choice" policy to avoid assigning blacks to the three white projects in white neighborhoods. They did this despite the long waiting list of black families and vacancies in white projects. While black families waited for housing, Claremont Homes, O'Donnell Heights and Brooklyn Homes remained all white and consistently experienced the highest vacancy rates in the HABC system. In 1966, vacancies at O'Donnell Heights and Brooklyn Homes accounted for half of the vacancies in all HABC projects. Ex.

152A, Memorandum from R.L. Steiner to Saul M. Perdue, Interim Report - Recommended Procedures for Filling Standing Vacancies (July 19, 1966) (PL 030346-48 at 030346); Ex. 152, Memorandum from R. L. Steiner to E. R. Pierson and Saul M. Perdue, Interim Report - Recommended Procedures for Filling Standing Vacancies (July 29, 1966) (HA 22686-87); Ex. 149, Letter from Sara Hartman to Margaret King, with attached occupancy tables (April 17, 1964) (PL 030744-47 at 030746) (shows that 89% of the waiting list as of 6/30/64 was black, although only 66% of the applicants during 1959 to 1963 were black); Ex. 149A, BURHA Quarterly Statistical Bulletin, First Quarter 1967 (PL 030936-44) (shows that 89 or more than half of the 173 total vacancies in public housing were in O'Donnell and Brooklyn, at 3; shows that in 1966 73% of applicants were black, at 7).

168. It was not until 1966 that HABC began to take affirmative efforts to fill vacancies in the white projects with black applicants, including security measures to assure the safety of black tenants. When HABC finally began taking these affirmative measures to desegregate Claremont Homes, Brooklyn Homes and O'Donnell Heights, black families accepted housing in the three all white projects. Ex. 153, Letter to Residents from R.L. Steiner, BURHA Director (Dec. 22, 1966) (PL 031509-27) (notifying residents of Brooklyn Homes that to date no non-white family had asked to move to Brooklyn Homes, but that "it is possible that some Negro families may request housing in Brooklyn Homes," and reminding residents of BURHA's obligations under the Civil Rights Act of 1964); Ex. 154, Letter to Van Story Branch from Esther Frank Siegel (Dec. 5, 1967) at 3 (recognizing that blacks would only move into projects they are affirmatively shown) (PL 030329-50 at PL 030333); Ex. 155, File maintained by Eugene Feinblatt labeled: "Race Relations - Public Housing Integration" (including Letter from R. L.

Steiner, Director, BURHA to Donald D. Pomerleau, Commissioner of Police (undated); Resident Says Her Eviction Is Forced by Picketing Kin, Baltimore Sun (Jan. 10, 1967) (HA 22698-700); Ex. 156, Letter from R. L. Steiner, Director, BURHA to Dear Resident with handwritten markings (Dec. 20, 1966) (HA 22701); Ex. 157, Memorandum entitled Negroes and O'Donnell Heights (undated); Handwritten Flyer directed to "People of O'Donnell Heights" from the Ad Hoc Committee for Sound Government) (HA 22702-03).

169. HABC opened the three de jure white projects to African-Americans only after Baltimore civil rights activists complained to the media and HUD Secretary Robert Weaver that HABC remained racially segregated, citing the all white occupancy of the three de jure white projects and the continued restriction of new public housing to minority areas. Ex. 158, Thomas Edsall, D.C. Won't Give Data on Bias Report, Baltimore Sun (Mar. 11, 1967) (PL 033901) (HUD refusing to release evaluation of charges of discrimination made the previous year by the Activists for Fair Housing); Ex. 159, Edgar Ewing, Notes on Meeting with the Secretary (Nov. 21, 1966) at 2-3 (HA 09311-16).

170. During the first five months of desegregation at Brooklyn Homes, black families were met by an escalating campaign of violence directed by the Ku Klux Klan and white supremacist groups. Ex. 53, Letter from Van Story Branch to Harry Glanz, with attached chronology (Sept. 28, 1967) (PL 031512-031527) (chronology sets out Klan and other racist group actions directed to new black tenants at Brooklyn Homes from May 1967 through September 1967). See also Ex. 155, File maintained by Eugene Feinblatt labeled: "Race Relations - Public Housing Integration" (including Letter from R. L. Steiner, Director, BURHA to Donald D. Pomerleau, Commissioner of Police (undated); newspaper article Resident Says

Her Eviction Is Forced by Picketing Kin, Baltimore Sun (Jan. 10, 1967) (HA 22698-700); Ex. 156, Letter from R. L. Steiner, Director, BURHA to Dear Resident with handwritten markings (Dec. 20, 1966) (HA 22701); Ex. 157, Memorandum entitled Negroes and O'Donnell Heights (undated); handwritten flyer directed to "People of O'Donnell Heights" from the Ad Hoc Committee for Sound Government (HA 22702-03) (showing racist activity at O'Donnell Heights in response to plan to introduce African-American tenants)).

171. Despite this harassment, once HABC began to actively assist black families to move to the all-white projects in all-white neighborhoods, they did so. By August 30, 1968, there were 53 black families in residence at O'Donnell, 19 at Brooklyn, and 18 at Claremont. Ex. 162, Memorandum from Van Story Branch to R. C. Embry, Requirements for Administration of Low-Rent Housing Under Title VI of the Civil Rights Act of 1964 – Selection of Applicants and Assignment of Dwelling Units (Oct. 16, 1968) (HUD 01637-47 at HUD 01641).

172. In 1966, two years after endorsing the "freedom of choice" policy, HUD repudiated it, admitting that it perpetuated segregation. "It was . . . the experience of the Department . . . that in many instances so-called freedom of choice types of tenant assignment plans did not afford freedom of choice in fact. Under these plans, the entire burden for expressing a choice of project or location was upon the individual applicants, who were to make this choice in many communities in which segregated housing patterns have been traditional. . . . The existence of a segregated pattern of occupancy was in itself a major obstacle to true freedom of choice, since few applicants have the courage to make a choice by which they would be the first to change the pattern. . . The plans tended to perpetuate patterns of racial segregation and consequent separate treatment and other forms of discrimination prohibited [by] the Department

regulations.” Ex. 151, Basis for Revised Requirements for Administration of Low-Rent Housing under Title VI of the Civil Rights Act of 1964 (PL 036138-50); see also Ex. 35, Kaplan Memorandum from Peter Kaplan to Gordon Mansfield (Sept. 16, 1991) (PL 036152-60).

173. Consequently, HUD issued a new tenant selection and assignment policy which required local housing authorities to establish a community-wide waiting list for all applicants, and assignment under either “Plan A” (tenant must accept the first vacancy offered or be moved to the bottom of the waiting list) or “Plan B” (tenant offered up to three separate vacancies, then moved to the bottom of the waiting list if the tenant rejects all three). Ex. 160, Low Rent Housing Administration of Program Handbook (July 1967) (PL 036655-60).

174. HUD did not design this tenant selection and assignment plan to desegregate existing all-black projects. Instead, this plan was intended only to assign black applicants to existing white projects, leaving the existing all-black projects all black occupied. In developing this plan, HUD “assumed that in many cities local housing authorities had overcrowded black projects with long (black) waiting lists and underutilized white projects with no waiting list at all. It was further assumed that if offers of units in white projects were made to blacks that their need for housing might overcome any reluctance to move into such projects, and that the operation of the policy would result in the integration of previously white projects. There was simply not as much concern over whether whites would accept offers of units in black projects, or how those would be integrated.” Ex. 57, Laurance Pearl, Tenant Selection and Assignment in Low-Income Public Housing (1980) (Adker 058164-69); see also Ex. 11, Pearl Dep., at 66-79.

175. In response to this new HUD tenant selection and assignment directive, in 1967 HABC applied to HUD for a waiver, asking to be able to keep its “freedom of choice” tenant

selection and assignment plan. HUD denied that waiver request. Ex. 162, Memorandum from Van Story Branch to R. C. Embry, Requirements for Administration of Low-Rent Housing Under Title VI of the Civil Rights Act of 1964 – Selection of Applicants and Assignment of Dwelling Units (Oct. 16, 1968) (HUD 01637-47 at HUD 01638, 01642); (“On 9/2/67, the Chairman of [HABC] wrote to the Assistant Regional Administrator for Housing Assistance in Philadelphia, requesting a waiver of the plans, and asked that we be allowed to continue our existing non-discriminatory plan of tenant selection.” “. . . [T]he Regional Administrator’s letter to you dated 8/16/68, in which our request for waiver was at long last denied. . .”).

176. HABC then submitted to HUD its “three choice” tenant assignment plan which was intended to continue to allow applicants to exercise choice without penalty. The plan grouped HABC’s family projects into four “locations” (Northwest, Central, East and Southeast), with the Southeast “location” consisting of two predominantly white projects, Claremont Homes and O’Donnell Heights, situated miles apart and in different parts of the city. The plan on its face allows applicants to choose one or more “locations,” and to reject two offers of housing without penalty in order to wait for a preferred project. Ex. 162, Memorandum from Van Story Branch to R. C. Embry (Oct. 16, 1968) (HUD 01637-47 at HUD 01638, 01642).

177. The explicit purpose of the plan articulated by HABC was to continue to operate what was in practice a “freedom of choice” tenant selection plan. HABC explained “[b]y broadening the location base, we broaden the applicant’s opportunities for housing. He has already defined the areas in which he will live, and he can still exercise choice. The prediction is that he will not find it necessary to reject three areas, whereas he might well reject three individual projects. Therefore, he is allowed a choice, and in this manner vacancy loss is

reduced.” Ex. 162, Memorandum from Van Story Branch to R. C. Embry (Oct. 16, 1968) (HUD 01637-47 at HUD 01643).

178. Under this “four location” Plan B version, white applicants were virtually assured of being offered a unit in Claremont, Brooklyn or O’Donnell, the three formerly de jure white projects in outer-city white neighborhoods. Ex. 2, Taeuber at 49-53.

179. The federal defendants approved HABC’s “three choice” tenant selection and assignment plan, and explicitly approved the grouping of the projects into the four “locations,” notwithstanding its intent and foreseeable effect of facilitating the ability of white tenants to choose one of the three historically white projects. HABC maintained this same tenant selection and assignment plan, which, as operated by HABC, was essentially equivalent to the barred “freedom of choice” plan, up until at least 1992. Ex. 163, Letter from Vincent A. Marino to Robert C. Embry (Jan. 17, 1969) (0197-98).

180. The effect of HABC’s tenant selection and assignment practice was predictable – HABC’s tenant assignments continued to perpetuate the occupancy patterns established under de jure segregation. Ex. 12, Tamburrino Dep. (Nov. 21, 2002) at 188 (admitting that Baltimore’s TSAP has not been successful in promoting integration).

181. In 1981, HUD confirmed that HABC’s tenant selection and assignment plan in practice operated as a “freedom of choice” plan. According to HUD, where the applicant selected a geographic location, the “applicant can be offered and may decline an unlimited number of units” within that geographic location without losing his/her place on the waiting list. The applicant “can also request preference for specific projects and may rate those preferences if desired.” The effect was therefore the same as under the barred “freedom of choice” policy. Ex.

164, Letter from Thomas R. Hobbs to Michael Kelly (June 30, 1981) (HUDBAL 001131-54); see Ex. 169A, Application of Carmen Thompson for HABC Housing (March 31, 1987) (HA 01479-80 at HA 01480) (showing that as late as 1987 HABC was inviting applicants to indicate a preference not only for one of the four locations, but also to indicate a preference for a specific project); Ex. 8, Deposition of Lyle Schuman (Vol. 3) at 515-516 (admitting that HABC public housing application allowed applicants to indicate a preference for specific projects as late as the early 1990s); Ex. 169D, HABC Application for Public Housing and Section 8 Programs for Johnny Lee Jones (Sept. 23, 1991) (HA 83658) (showing use of application in 1991 inviting applicants to indicate a preference for a specific project).

182. According to HUD, “[t]he tenant assignment plan, where refusal of three satisfactory units would result in the placement of the applicant at the bottom of the waiting list, is only practiced if no geographic preference is requested and the applicant is offered and refuses units in three separate geographic areas.” Ex. 164, Letter from Thomas R. Hobbs to Michael Kelly (June 30, 1981) (HUDBAL 001131-54). HUD allowed HABC to continue using this policy and practice long after acknowledging in 1981 that it perpetuated segregation.

183. In 1992, HUD found that HABC’s tenant selection and assignment practices still allowed applicants to turn down offers until the applicant is offered the development of his/her choice, i.e., that HABC was still operating what was in effect a “freedom of choice” policy. Ex. 165, Letter from Maxine S. Saunders, Manager, Public Housing Division, to Reginald Thomas, Chairperson, Board of Commissioners, HABC, at 1, with attached result of Limited Management Review Report of the Public Housing Program, Apr. 21-June 3, 1992, at 4 (Sept. 14, 1992) (PL 033376-405); Ex. 166, Letter from Barry C. Anderson, Regional Director, FHEO to Robert

Hearn, Executive Director, HABC (April 24, 1990) (HUD 02898-99) (notifying HABC that use of locational preferences violated HUD regs and Title VI; must immediately cease using, send current TSAP within 30 days).

184. HABC's statistical reports reflect the fact that whites received preferential treatment over African-Americans in tenant selection for vacancies in the predominantly white projects. For instance, during the first half of 1988, all 43 new families assigned to O'Donnell Heights were white. Only three of the 88 new families admitted to O'Donnell Heights during that year were African-American. Ex. 167, HABC Semi-Annual Statistical Bulletin (June 1988) (PL 026185-234); Ex. 168, HABC Semi-Annual Statistical Bulletin (Dec. 1988) (PL 036335-387).

185. For the period of July to December 1991, 75% of the 43 white families assigned to HABC's family and mixed elderly/family public housing developments were assigned to a former de jure white development. Ex. 169, HABC Semi-Annual Statistical Bulletin (Dec. 1991) (PL 026918-70).

186. At the end of 1991, 86% of the 2388 whites in HABC's family public housing developments lived in either O'Donnell Heights, Brooklyn Homes or Claremont Homes. Ex. 169, HABC Semi-Annual Statistical Bulletin (Dec. 1991) (PL 026918-70). Whites were not assigned to the high rise projects and other formerly de jure "negro housing" projects which remained virtually 100% black. Id.

187. HABC continued to use locational preferences for tenant assignment long after 1992. In 1995, although the public housing waiting list had been over 90% black for several decades, the three formerly de jure white developments sited in white neighborhoods remained

disproportionately white: Brooklyn Homes remained 62% white (310 out of 500 units), O'Donnell remained 33% white (292 out of 887 units) and Claremont remained 22% white (97 out of 444 units). HABC has admitted that this disparity was caused at least in part by HABC's use of locational preferences. Ex. 169B, Housing Authority of Baltimore City, Division of Housing Management, Race of Families by Development (Aug. 21, 1995) (HUD 01616-01617); Ex. 8, Deposition of Lyle Schuman (Vol. 3) at 445-493.

188. HABC continued to use locational preferences even after 1995, and continued to assign a disproportionate number of white tenants to O'Donnell and Claremont. HABC assigned 27 out of the 75 non-African-American tenants currently residing at O'Donnell after 1995. HABC assigned 10 of the 40 non-African-American tenants currently residing at Claremont/Claremont Ext. after 1995. These tenants assignments can be explained only by the continued use of the locational preferences. Ex. 169C, Letter from Dana Peterson Moore to Judry Subar (July 8, 2003) with attached Non-African-American in Claremont, O'Donnell Heights, Brooklyn [Ex. 24 to Schuman Depo]; Ex. 8, Deposition of Lyle Schuman (Vol. 3) (HABC designee unable to explain this tenant assignment pattern).

B. After 1964, Federal and Local Defendants Perpetuated and Exacerbated Segregation by Concentrating Public Housing Development in Already Minority-Concentrated Areas.

189. By 1964, Federal and Local defendants had transformed HABC's public housing system into a uni-racial system of housing for poor black tenants. After 1964, new public housing developed for this poor black population was concentrated in existing black neighborhoods, and none was developed in an existing white neighborhood.

1. Federal Siting Policies and Regulations after 1964 have Continued and Exacerbated Racial Segregation.

190. By the mid-1960s, the federal defendants were aware that “much of the public housing available to minorities was being constructed in areas of minority concentration.” Ex. 32, Knapp Congressional Testimony at HUD 31242. Nevertheless, they took no action in the years immediately following the issuance of Executive Order 11063 in 1962 or Title VI in 1964 to change federal site selection practice.

191. The federal defendants also were aware and had been aware since at least 1952 that locating public housing in minority concentrated and slum sites made integration difficult if not impossible. Ex. 54, Racially Integrated Public Housing Programs: Highlighting 15 Years of Experience (Draft No. 3, Feb. 1952) at 48 (PL 035261-339) (“Site selection offers an ideal opportunity to provide the kind of situation requiring a minimum of ‘special attention’ to achieving racial integration. Opinions of housing officials summarized in the Deutsch-Collins survey on this subject indicated the ‘the best site choice is either an interracial neighborhood or a ‘white’ neighborhood near an interracial or Negro neighborhood’”; arguing further that siting in integrated neighborhoods is important because 1) it is essentially dishonest to site new project where one or the other group will have either physical or psychological difficulties to overcome; 2) “[t]he difficulty of recruiting and retaining the white group when it feels itself to be in the minority must be realistically appraised”; and 3) there are usually services for both black and white in interracial area. “Open sites” located equidistant from or in reasonable proximity to established concentrations of both racial groups are highly desirable. “Indeed, the greatest difficulties [for creating integration] are to be anticipated - especially in face of the acute housing

shortage - when only slum sites are chosen for project development or when those occupied predominantly by racial minorities are the only occupied sites selected,” at PL 035296-97). Nevertheless, they took no action in the years immediately following the issuance of Executive Order 11063 in 1962 or Title VI in 1964 to change federal site selection practices.

192. It was not until 1967 that HUD added a siting requirement that provided for a “balanced” distribution of public housing projects, and required that housing opportunities be developed both outside as well as inside areas of minority concentration. Ex. 32, Knapp Congressional Testimony at HUD 31242. At that time, HUD Secretary Weaver advised local housing authorities “that development programs which propose to locate the [public] housing only in areas of non-white racial concentration are prima facie unacceptable.” Ex. 171, Memorandum from Robert C. Weaver to the Honorable Harry C. McPherson, Jr., Accomplishments and Problems in Achieving Compliance with Title VI at 5 (May 27, 1967) (PL 035662-75 at PL 035666).

193. Later that year, Weaver issued a memorandum clarifying HUD’s site selection policies. He stated that HUD sought a “balanced distribution” of HUD assisted low income housing in order to “afford members of minority groups the opportunity and choice of locating outside the areas of their own minority group concentration” with some housing “in all the different types of areas.” He further stated “any proposal to locate housing only in areas of racial concentration will be prima facie unacceptable.” Ex. 172, Memorandum from Robert C. Weaver to Edward Baxter, HUD Site Selection Policy Regulations for Low-Rent Public Housing (Sept. 25, 1967) (1146-47).

194. HABC's practice of placing public housing in minority areas actually became even more pronounced after 1964 than it had been prior to 1964. During the post-war public housing construction period of 1951 to 1964, 86% of the families already living on the sites identified for public housing construction and who were therefore displaced by the public housing construction were African-American. During the period of 1965 to 1971, that percentage rose to approximately 97%. Ex. 173, Department of Housing and Community Development, Residential Displacement Activity Analysis 1951-1971 (May 1971) at 7 (PL 031032-42). For all intents and purposes, all HABC's public housing constructed in residential neighborhoods after the passage of Title VI was all constructed in African-American neighborhoods.

195. In 1972, HUD modified its site selection standards with the issuance of its Project Selection Criteria. See Ex. 121, 37 Fed. Reg. 203 (Jan. 7, 1972). These criteria provided that new construction public housing could be developed in minority concentrated areas only if there existed "sufficient, comparable opportunities . . . for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration." Ex. 174, Gary J Kopff, Implementation of HUD Project Selection Criteria for Subsidized Housing (Dec. 1972) (HUD 05147-286).

196. However, these Project Selection Criteria did not apply to rehabilitation projects. Therefore, although the new Project Selection Criteria were intended to create a "stronger presumption against locating Federally-subsidized housing projects in areas of minority concentration" than had existed under the previous standard, Ex. 32, Knapp Congressional

Testimony at HUD 31242, HUD implemented the criteria so as to give authorities including HABC great latitude to develop public housing in racially impacted areas.

197. In 1980, HUD adopted the site and neighborhood standards which, with minor revisions, remained in effect until 1996. These regulations contained a strict provision limiting new construction development of public housing in minority neighborhoods. Such construction was allowed only where “(i) sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project, outside areas of minority concentration, or (ii) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area.” Ex. 175, 45 Fed. Reg. No. 179 at HUD 03072 (Sept. 12, 1980) (HUD 03068-78).

198. Just as with the Project Selection Criteria, this strict provision did not apply to public housing development using existing structures. Instead, the regulation generally required, for all public housing development, at 24 CFR 841.202(b) that “[t]he site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto,” as well as the requirement at 24 CFR 841.202(d) that “[t]he site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.” *Id.* As implemented by HUD in Baltimore, this regulation also allowed local public housing authorities including HABC great latitude to develop public housing in racially impacted areas.

199. HABC seized on HUD's Project Selection Criteria and the site and neighborhood regulations as a ready mechanism for developing public housing in highly segregated neighborhoods by focusing exclusively on public housing development through rehabilitation of existing structures, even though HUD had questioned whether such rehabilitation was an ideal strategy for the siting of public housing. Ex. 12, Deposition of William Tamburrino (11/21/02), at 142. After HUD issued the Project Selection Criteria with its limits on new construction of public housing in minority areas, Baltimore City abandoned new construction for development of additional public housing. All of Baltimore's public housing development after 1972 involved rehabilitation of existing structures in minority and poverty impacted neighborhoods. During the post-1972 period, HABC developed, with HUD site approval and funding, the 122 unit Charles K. Anderson Village in the Cherry Hill neighborhood, and thousands of scattered site units that were concentrated in a few, minority-impacted, neighborhoods.

2. In Baltimore, Defendants Continued to Locate New Public Housing in Areas of Minority Concentration, Thereby Perpetuating and Exacerbating Segregation.

200. Since 1964, HABC developed, with HUD site approval and funding, nine family and family/elderly public housing developments comprising 2453 units – McCulloh Extension (516 units), The Broadway (429 units), Spencer Gardens and Julian Gardens (43 units), Mt. Winans (140 units), Rosemont and Dukeland (136 units), Oswego Mall (35 units), Somerset Extension (60 units), Hollander Ridge (1000 units) and Charles K. Anderson Village (121). Ex. 2, Taeuber at 42, 73. During the same period, the federal defendants also approved and funded approximately 2800 units of "scattered site" family public housing units contained in 18 separate

developments. Id. at 74-77. These 5200-plus new public housing units were placed overwhelmingly in minority concentrated areas. Id. at 42-49, 73-80.

201. Six of the 9 developments (comprised of 1290 units) – McCulloh Extension, The Broadway, Spencer Gardens and Julian Gardens, Mt. Winans, Somerset Extension and Charles K. Anderson – were developed as extensions to older de jure segregated projects or placed in the same neighborhoods as and within four blocks of the older de jure segregated projects. See Ex. 2, Taeuber at 42, 73.

202. None of the remaining three developments was sited in white residential areas. Rosemont and Dukeland and Oswego Mall were sited in existing minority concentrated areas. Hollander Ridge, the lone development sited outside existing areas of minority concentration, was sited in an isolated vacant land area, and quickly developed into an isolated area of minority concentration. See Ex. 2, Taeuber at 74.

203. The 2800 scattered site units provided a ready opportunity to provide desegregative housing units by scattering small numbers of units in a wide variety of non-impacted areas. Instead, the units were placed overwhelmingly in minority concentrated neighborhoods which also had high poverty rates. In addition, almost one-third of the units were placed within one-quarter mile of an existing family housing project. Placement of these units in these minority and poverty impacted neighborhoods assured that they would be occupied exclusively by minority tenants. See Ex. 5, Pendall Scattered Sites at 1.

3. Rather Than Developing in Non-Impacted Sites, Defendants Continued To Focus Family Developments in Heavily Minority, Blighted Neighborhoods.

a. Defendants Extended the De Jure Negro McCulloh Homes.

204. The Development Program for McCulloh Extension, which added 516 units of public housing adjacent to McCulloh Homes, a former de jure segregated “Negro housing” project, was submitted to HUD in December 1964. HABC and HUD knew that the site was next to five existing public housing projects housing 2,754 families, and that “all of these projects currently house Negro families.” Ex. 176, HABC, McCulloh Extension Development Program MD 2-23 (Dec. 1, 1964) (HA 12648-72 at HA 12661). They further knew that the site was in an area of minority concentration – all residents of the site prior to clearance were African-American, and the site was in a census tract that was 99% African-American in 1970. Ex. 2, Taeuber at 74; Ex. 176, HABC, McCulloh Extension Development Program MD 2-23 (Dec. 1, 1964) (HA 12648-72 at HA12660). HABC’s development application contemplated that up to 60% of the African-American occupants of the site would be relocated to public housing, further increasing the African-American demand for public housing. HUD approved this site with full knowledge that its location and intended use as relocation housing for urban renewal displacees would cause it to be racially segregated. Ex. 176, HABC, McCulloh Extension Development Program MD 2-23 (Dec. 1, 1964) (HA 12648-72 at HA12660-61).

205. A local official commented that “[t]his is a good site for development provided there is no objection to the growing concentration of public housing in this area.” Ex. 177, Memorandum from Edward Minor to Ellick Maslan (Aug. 12, 1960) (HA 09236-38 at 09237).

206. The NAACP filed a formal complaint with the Secretary of HUD on behalf of African-American residents who were being forced off the site. Nevertheless, HUD allowed the project to go forward, demolishing an existing African-American neighborhood and replacing it with segregated public housing. Ex. 178, Complaint Filed with Department of Housing and Urban Development, McCulloh Homes Extension Public Housing project, Baltimore, Maryland (HA 22439-66); Ex. 178A, NAACP News Release (June 24, 1966) (HA 13328-13329); Ex. 179, Relocation Fault Found, Baltimore Sun (Feb. 7, 1967) (HA 22247-50 at 22249).

b. Defendants Placed the Broadway Homes in a Known Slum Site.

207. In August 1965, HABC submitted the development application for The Broadway Homes, MD 2-25. The site was just east of Broadway, and just south of the 1950 Broadway Urban Renewal Project. HABC and HUD knew that the site was in the vicinity of six existing public housing projects. The site was characterized as a slum site. Additionally, the site was an existing black neighborhood and all of the residents of the site at the time of the application were black. Ex. 180, Development Program, Project No. MD 2-25 (Aug. 10, 1965) (HA 12580-625).

c. Mt. Winans Was Placed in an Isolated All-African-American Neighborhood.

208. The development program for Mt. Winans was submitted to HUD in October 1966. HABC and HUD knew that the area was an existing African-American neighborhood. All 135 families residing on the site at the time the development program was submitted were African-American. Ex. 181, Development Program, Project No. MD 2-29 (Oct. 4, 1966) at 7 (PL 031490-507 at PL 031494). According to a BURHA Report, practically all residents of the

neighborhood were “Negro.” Ex. 180A, The People of Mount Winans, BURHA (undated) (PL 031482-84).

209. HABC and HUD knew that the Mt. Winans site was in an isolated area, separated from other residential areas by railroad tracks, industry and Russell Street. They further knew that two formerly de jure white housing projects built on vacant land, Westport and Westport Extension, which had, by 1966, been converted by defendants through use of the “freedom of choice” tenants selection policy into segregated black housing developments, were adjacent. Ex. 181, Development Program, Project No. MD 2-29 (Oct. 4, 1966) at 2-3 (PL 031490-507 at PL 031492-93).

210. Although HUD originally questioned whether the site met fair housing requirements, it ultimately approved the site. Ex. 182, Letter from Eugene Feinblatt to Don Hummell, with attachments (Mar. 28, 1967) (HA 22796-803 at HA 22802) (“It is our understanding that this project is being delayed only because the site is being questioned from a race relations viewpoint.”).

211. As of 1970, and up to the present, all 140 Mt. Winans public housing units have been occupied by African-American tenants. Ex. 2, Taeuber at Tables 3-6.

d. Defendants Abandoned Requirements for Balanced Siting and Placed Oswego Mall in Another Predominantly Black Neighborhood.

212. In August 1967, the Baltimore City Council approved the extension of the 1950 cooperation agreement to the Oswego Mall site. Oswego Mall was the first public housing project HABC developed using the “turnkey” method, whereby public housing was built by a private developer on land controlled by the private developer, and then sold to HABC. See Ex.

183, HABC Response to Neal Request for Admission No. 24; Ex. 184, Ordinance No. 1099 (Aug. 7, 1967) (PL 033571-73).

213. Local defendants characterized the site as being “racially mixed.” In fact, it was in an area of lower Park Heights that was undergoing rapid racial transition, and, by 1970, was 94% minority. Ex. 5, Pendall Family Projects at Table 1; Ex. 185, Memorandum from Edgar Ewing, Map Showing Turn-Key Locations (Dec. 13, 1967) (HA 22723-44).

214. In September 1967, the HUD Regional Office gave tentative site approval. Pursuant to the HUD Title VI site selection criteria then in effect, the tentative site approval was conditioned on the site being coupled with a site in a white area – either the proposed Colmar Park Apartments site in Medfield or the Belle Vista site in Northeast Baltimore. Ex. 186, Letter from Vincent A. Marino, HUD to Richard L. Steiner (Sept. 11, 1967) (HA 16897-98); Ex. 187, Memorandum from Steiner to As Listed, with attached materials re Belle Vista site (July 24, 1967) (PL 046215-20); Ex. 188, Memorandum from Edgar Ewing to As Listed, with attached materials including Colmar (Dec. 13, 1967) (PL 046222-43).

215. HUD and HABC both knew that the site was in a predominantly black area. Local defendants complained to HUD’s Assistant Secretary about HUD’s requirement that segregated sites be balanced with desegregative sites. Ex. 189, Letter from Eugene Feinblatt to Don Hummell (undated) (PL 029254-56) (complaining that “[t]he inter-group relations [fair housing] section of the Housing Assistance Administration’s regional office in Philadelphia has insisted that a turnkey project must either be in an all white neighborhood, or, if in a predominantly non-white neighborhood, must be paired with one in an all white neighborhood.”). HUD’s Assistant Secretary immediately reversed the regional office’s decision, and allowed

local defendants to go forward with the project without requiring that either desegregative site also be developed. Ex. 190, Letter from Don Hummel to Eugene Feinblatt (Sept. 20, 1967) (PL 029257).

216. The Oswego Mall site was developed and, by 1977, all 35 units were occupied by African-American tenants. Ex. 193, Report on Occupancy (Aug. 5, 1977) (HUD 1574-1613 at HUD 1600). HUD never required that either of the two white sites, Belle Vista or Colmar Park Apartments, be acquired for public housing.

e. After Abandoning Proposals for White Areas, Defendants Extended Former De Jure Black Somerset Court.

217. In 1969, the City Council approved the extension of the cooperation agreement of 1950 to the Somerset Extension site. When Somerset Extension (MD-42) opened, it added sixty units to the 257 units at Somerset Court (a former “Negro” housing project) near Douglass Homes, Lafayette Courts, Flag House Courts and Perkins Homes. As of 1977, all 60 units were occupied by African-Americans and it has remained all black ever since. Ex. 192, Ordinance No. 646 (Dec. 15, 1969) (PL 050105-08); Ex. 193, Letter from Van Story Branch to Dean Reger, with attached Report on Occupancy (Aug. 23, 1977) (HUD 01574-1613 at HUD 01606).

218. These units were originally proposed for a predominantly white area of Southwest Baltimore. After HABC was unable to obtain City Council approval of that site, HUD authorized the transfer of the units to the Somerset site, expanding this former de jure segregated project. Ex. 185, Memorandum from Edgar Ewing, Map Showing Turn-Key Locations (Dec. 13, 1967) (HA 22723-44); Ex. 194, letter from R. C. Embry to Vincent Marino, HUD (June 26, 1969) (PL 053004-05); Ex. 183, HABC Response to Neal Request for Admission No. 21.

f. Defendants Also Targeted Rosemont and Dukeland Neighborhoods, Known as All-Black and Unattractive, for Family Projects.

219. In 1975, the construction of the Rosemont and Dukeland projects, in Rosemont, a West Baltimore community of African-American homeowners, added another 136 units in a 98% black neighborhood. They were selected despite reservations about the suitability of the site – “They are three odd pieces of land overlooked when the surrounding areas were improved because of their unattractiveness. . . . Mr. Embry said he has misgivings because the projects would be difficult to maintain after completion due to bad terrain problems (hills, railroad tracts, etc.)” Ex. 195, HABC Summary of Commission-Staff Discussion (Feb. 17, 1970) (HA 16938-43).

220. African-American residents of Rosemont opposed development of public housing in this all-black neighborhood. The Rosemont Neighborhood Improvement Association wrote to city officials asking that they withdraw this site because of the “fostering of ‘de facto’ segregation” and the “[e]stablishment of a ghetto.” Ex. 196, Letter Joseph Wiles, President, Rosemont Neighborhood Improvement Association to Robert Embry, DHCD (Mar. 6, 1970) (HA 13645-46 at HA 13646). When this was not effective, they asked HUD to stop the project, asserting that “[t]he building of a public housing project on this site, located in the heart of a black community, would be perpetuating de facto segregation since these units would only house black citizens. This act would be in strict violation of federal statutes governing the selection of sites for building such projects, and demands an immediate test of legality in a court of law.” Ex. 197, Letter to Robert C. Embry, Jr., Commissioner, HUD, from Joseph S. Wiles, President, Rosemont Neighborhood Improvement Association (July 27, 1970) (HA 3614-19 at HA 3614-

15). Despite being explicitly warned that they were creating segregation, HUD and HABC moved forward with this development.

g. Defendants Abandoned Projects Aimed for All-White Areas, Then Placed Those Units at Emerson Julian Gardens and Albert Spencer Gardens.

221. In 1969, HABC developed, and HUD approved and funded, a site located near Hilton Street, bordering the then predominantly white Irvington neighborhood, as part of the Rosemont/Dukeland package. After HABC purchased the Hilton site property and obtained City Council approval of the site, the project met strong opposition from neighborhood residents and elected officials. Ex. 198, Letter from Carl Friedler, State Senator to Donald Hummel (Jan. 10, 1969) (PL 050443-44).

222. HABC defended the site and argued the importance of locating some public housing outside of the inner-city. HUD took no stand, telling a state senator in 1969 that the issue was a matter of “local concern.” Immediately thereafter, the Baltimore City Council withdrew its earlier approval of the site, and deleted the site from the cooperation agreement. Ex. 199, Letter from R. C. Embry to Donald Hummel (Jan. 17, 1969) (PL 050445-46); Ex. 200, Letter from R. C. Embry to William Donald Schaefer (Feb. 6, 1969) (PL 050449-50); Ex. 201, Ordinance No. 583 (PL 050447-48); Ex. 202, Letter from Don Hummel to Carl Friedler (Jan. 24, 1969) (HA 13544).

223. Upton was at the time a minority impacted area. In 1979, HUD FHEO recommended against placing an assisted housing project in the Upton area because of the high minority concentration and high low-income concentration. “The subject site is located in West Baltimore, in an area of high minority and low-income concentration, with over half of the

population earning under 80% of the mean family income. Upton presently has over 700 units of assisted rental units occupied almost exclusively by minorities. . . [T]here are six Section 236 projects in close proximity to the Upton project. The six projects have a 99.2% minority occupancy. It can therefore be anticipated that the occupancy of the proposed project could mainly attract minorities.” Ex. 203, Memorandum from Maxine Cunningham to Thomas Hobbs, FHEO Site Review - Upton - Section 236 - 180 units (Mar. 13, 1979) (HUDBAL 000512-14).

224. Nevertheless, HUD authorized HABC to transfer 43 of the outer-city Hilton public housing units to urban renewal lots in the minority concentrated community of Upton. The 43 units were developed as Emerson Julian Gardens and Spencer Gardens. HABC and HUD knew that they were located in an all African-American neighborhood adjacent to the segregated Murphy Homes, McCulloh Homes, and McCulloh Homes Extension public housing developments. Ex. 204, Robert Orser to R. C. Embry (July 26, 1976) (HA 13541).

225. Barely twenty years later, citing the blighting influence of Murphy Homes, HABC asked HUD for permission to tear down Emerson Julian Gardens along with the larger Murphy project. HUD approved the demolition application. Ex. 205, Excerpts from Murphy Homes/Emerson Julian Gardens HOPE VI Revitalization Grant Proposal (July 18, 1997) (HA 38657-757) (admitting that Emerson Julian Gardens was located “next to Murphy Homes”); *id.* at HA 38754 (admitting that Emerson Julian was in the “historic black neighborhood of Upton” and describing defendants’ involvement in the neighborhood’s decline: “Residents left to take advantage of opportunities created by desegregation. Urban renewal shifted around others. Between 1951 and 1971, about 25,000 families were displaced by highway construction and

slum clearance. Low-income families were shunted into high-rise buildings such as Murphy Homes and the low-rise Emerson Julian Gardens. Garden apartments sprung up on Pennsylvania Avenue during the 1970s, walling-off the Murphy/Julian community. This effect was compounded by the creation of dead-end streets and a buffer wall built along Martin Luther King Boulevard. Murphy/Julian area, once part of a bustling black community, became an isolated packet of poverty marked by decrepit towers”).

h. Defendants Ghettoized and Fenced Off Hollander Ridge.

226. The isolated Hollander Ridge site was selected by defendants as the only site not located in an existing minority concentrated area, and the only vacant land site for public housing development in Baltimore City after enactment of Title VI. Although the Hollander Ridge site was not located in the existing “ghetto,” like Cherry Hill 30 years earlier, it quickly formed a new, self-contained “ghetto.”

227. HUD authorized HABC to develop 1000 units of public housing on this single site as “balancing” units for sites developed in minority concentrated areas, thus clearing the way for HABC to avoid placing any of its other new developments in non-minority areas. Ex. 206, Letter from Vincent Marino to Robert Embry (Feb. 25, 1970) (HA 12512-13). HABC explained that “HUD has not been granting approval for any new public housing unit in an area that is even arguably black until that unit has been balanced by a unit in a predominantly white neighborhood. As our urban renewal effort is presently devoted almost exclusively to inner city areas where our city’s worst housing is located, and as we try to provide housing for the same economic group which is being displaced . . . , there is a great need for new public housing units in these areas. Because of the HUD’s requirement, it was necessary . . . to find a site in a white

neighborhood for a large number of units to balance the significant amount of housing to be built on urban renewal lots (particularly in the Gay Street, Oldtown and Upton projects, already in execution).” Ex. 207, Rosedale Farms (MD 2-45) (HA 3585-89 at HA 3589). See also Ex. 208, Memorandum from Milt Smeekle (DHCD) to Sterling Keyes re: Rosedale Farms (Mar. 19, 1970) (HA 16733-34 at) (“[P]art of the reason for HCD wanting to move quickly on developing this site [Rosedale Farms] is so other sites can be purchased. This site is ‘white’ and has to be developed so another ‘black’ site may be purchased.”); Ex. 209, Letter from R. C. Embry to Vincent Marino (Nov. 10, 1969) (PL 053011-13 at 053011) (“we expected to have a surplus for Equal Opportunity purposes of 522 family-type and 204 elderly-type swelling units from the Rosedale Farms site . . . for which we would be requesting your approval of additional sites in predominantly Black neighborhoods”).

228. HABC selected this site because it was the only site not located in a minority impacted area for which they were able to obtain City Council approval. “Recent experience, in Baltimore as well as in other cities, indicates increasing opposition to public housing from neighborhood groups, often resulting in City Council disapproval; the Ordinances for several promising local developments have been withdrawn, after a considerable investment by the HABC, developers and HUD staff, because of such opposition. The point is that numerous sites maximize the opportunity for opposition, delay and possible defeat in contrast to Rosedale Farms, which has already received City Council approval.” Ex. 207, Rosedale Farms (MD 2-45) (3585-3589 at 3585); Ex. 210, Ordinance No. 643 (Dec. 8, 1969) (PL 033589-92) (Baltimore City Council Ordinance approving the Hollander Ridge site and granting exception to

requirement in Section 3A of the 1950 Ordinance adopting the Cooperation Agreement that public housing be developed on slum sites).

229. The Hollander Ridge project was approved by HUD and built by HABC despite concerns noted by HUD staff about the suitability of the Hollander Ridge site for public housing. Federal officials specifically expressed “concern with the concentration of low-income families on a single site.” Ex. 211, Letter from Harold Finger to R. C. Embry (May 28, 1970 (HA 12504-05 at 12505)). They were also concerned about the isolation of the site from services and other residential neighborhoods, environmental concerns, drainage problems and erosion issues. Ex. 212, Letter from Allen T. Clapp to Robert C. Embry, with attached Memorandum (Dec. 26, 1972) (HA 12412-26).

230. From the beginning, the Hollander Ridge development was opposed by Baltimore county elected officials and Rosedale residents. Ex. 213, Robert N. Young, Review and Comment Transmittal Memorandum, Metropolitan Clearinghouse (HA 16647-73). Even before it was opened, Rosedale residents called for construction of “a new fence around the entire apartment complex.” Ex. 214, Memorandum from Tunji Oyenusi to Suzanne Graham, Hollander Ridge Research - History, with attachments (Nov. 4, 1997) (HR 007155-59 at HR 007158) (newspaper article documenting that Rosedale residents “want a permanent fence constructed around the complex to keep the new neighbors out of their backyards. . .”); Ex. 215, Memorandum from Suzanne Kirby to Stanley Campbell (April 1, 1976) (HA 16721) (among the questions the community asked: “Is it possible to replace the temporary fence with some type of permanent barrier?” and “Is there any possibility that the City would buy those homes where the backyards are adjacent to the complex?” “The residents adjoining the complex expressed

concern over the proximity of the complex to their community. They feel it infringes on their privacy and changes the rural atmosphere of the community. The residents are also very concerned about the project's impact on the marketability of their homes"); Ex. 215A, Project's Neighbors Torn Between Fear, Envy, Baltimore Sun (Feb. 20, 1977) (PL025712-025713) (Rosedale residents "wanted to have a 12-foot brick wall built around" Hollander Ridge. "At meetings with public officials and in talks among themselves, residents expressed fears about what would happen when about 3,377 low-income persons -- mostly black -- would move next to their all-white working-class area.").

231. Once constructed and occupied, the site quickly became an isolated, minority impacted community. As described by HUD's consultant: "Hollander Ridge is located on the far northeast edge of the City of Baltimore on a parcel of land bounded by expressways on two sides and a major arterial road (Route 40) to the south. . . .The property is approximately four miles from downtown Baltimore, but effectively cut off from the rest of the city by Interstate 95. Although technically a non-impacted site, it is an extremely isolated location that is inconvenient to schools, churches, shopping, laundry facilities, or other services, especially for those without cars. Vehicular access to the site is provided by a guarded checkpoint on the north side of Pulaski Highway (Route 40). Originally, the property was also accessible through residential streets that served the Rosedale community to the northeast. However, because of crime problems over the years, these access points have been blocked by barricades. A bus route runs into the property." Ex. 216, Abt Report, Public Housing Stock Viability Assessment, Hollander Ridge (September 24, 1996), at 8 (HUD 02148-254 at HUD 02157); Ex. 217, HABC's

Responses to Plaintiffs' Requests for Admissions Concerning Facts No. 15; Ex. 218, Email from Harold Jackson to Candace Simms (Sept. 6, 1996) (HUD 06374-75).

i. Defendants Also Acquired the All-African-American Charles K. Anderson Village, Located Next to the All-African-American Cherry Hill Homes.

232. In 1980, HABC applied to HUD to acquire and convert to public housing the Patapsco Park Apartments, a 120-unit federally subsidized failed apartment complex in Cherry Hill. This application was approved by HUD, and resulted in the 120-unit Charles K. Anderson Village public housing development. See Ex. 2, Taeuber at Map 6; Ex. 219, Letter from M. J. Brodie to Thomas R. Hobbs (Nov. 28, 1980) (HUD 03907); Ex. 220, Memorandum of Understanding, Patapsco Park Apartments (April 6, 1981) (HUD 03881-90).

233. The plan was to acquire the apartment complex lock, stock and barrel, and convert existing tenants to public housing tenants. Ex. 220, Memorandum of Understanding, Patapsco Park Apartments (April 6, 1981) (HUD 03881-90). Acquisition of this apartment complex did not increase the housing opportunities available to minority tenants. At the time of acquisition, its residents were already 100% African-American. Id. at HUD 038876. It was located directly adjacent to the existing all-African-American occupied Cherry Hill Homes, Cherry Hill Extension, and Cherry Hill Extension II public housing developments, and brought the total number of segregated public housing units in that former "Negro housing" community to 1,718. Charles K. Anderson was 100% African-American occupied until it was recently emptied by HABC. See Ex. 2, Taeuber at 74-75.

234. At the same time that HUD approved development of Charles K. Anderson as minority family public housing in the minority- and poverty-concentrated Cherry Hill

neighborhood, HUD disapproved the development of elderly public housing in Cherry Hill. HUD determined that the Cherry Hill site “is located in an area containing an undue concentration of assisted families. . . . According to our best estimates, 66% of the families of the proposed area qualify as low-income and 55% of all housing units are HUD assisted.” Therefore, according to HUD, the site failed to comply with the requirement that “[t]he site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.” Instead of the elderly development in Cherry Hill, defendants developed the Primrose Place senior public housing project near St. Agnes Hospital. Primrose Place, located in a majority white area, remained majority-white, while Charles K. Anderson, developed in an all black neighborhood, never had any white tenants. See Ex. 2, Taeuber at Tables 4-6; Ex. 221, Letter from Thomas R. Hobbs to M. J. Brodie (Feb. 4, 1981) (HUDBAL 037030-37).

2. The Section 23 Leased Housing Program Was Also Used To Maintain the Segregated Status Quo.

235. In 1967, HABC began using the new HUD program Section 23 Leased Housing. This program provided HABC with the opportunity to “scatter” housing units in areas outside of minority and poverty-concentrated areas. Ex. 236, City of Baltimore, Planning Grant Application: Title I of the Demonstration Cities and Metropolitan Act of 1966 (PL 081999-082030 at PL 082014-15); Ex. 237, HUD, Low-Rent Housing: Leased Housing Handbook (Nov. 1969) at 4 (HA 8943-9005) (“In adding Section 23 to the United States Housing Act, Congress intended that dwelling units assisted under this provision be dispersed as widely as practicable throughout the community.”).

236. The Leased Housing program permitted HABC to lease private units from owners under contracts that allowed HABC to sublease the units to low-income families. Ex. 238, Van Story Branch, Progress Report for Leased Housing (Oct. 25, 1968) (PL 030810-18). HUD approved funding for 250 leased housing units in Baltimore. Ex. 238A, Memorandum from Marie McGuire to Vincent Marino (March 15, 1967).

237. Instead of using the Leased Housing program to disperse assisted housing, in 1966 the Mayor and City Council restricted the area of operation for the Leased Housing program to inner-city urban renewal areas, thus concentrating housing units in racially segregated areas of high poverty and frustrating the purposes of the program. Ex. 238, Van Story Branch, Progress Report for Leased Housing (Oct. 25, 1968) at 1 (PL 030810-18 at PL 030810) (“On March 17, 1966, the Mayor and City Council of Baltimore City approved a resolution authorizing the application of leased housing to designated renewal areas in the City of Baltimore. This restriction was contrary to the wishes of this Department and undeniably not in the best interest of the Baltimore community.”); Ex. 239, BURHA, Leased Housing Program Overview and Operating Order (June 29, 1966) (PL 030766-71).

238. In 1967, HUD temporarily withheld approval of funding for HABC’s participation in the Section 23 Leased Housing program in response to the City Council’s geographic restriction of the program’s area of operation. Ex. 240, Memorandum from Marie C. McGuire, Acting Deputy Assistant Secretary to Don Hummel, Assistant Secretary (Jan. 23, 1967) (PL 029258).

239. On February 15, 1967, with full knowledge that the units were to be restricted to urban renewal areas, and with full knowledge that urban renewal areas were overwhelmingly

minority impacted, Secretary Robert Weaver approved the application for 250 units. Ex. 241, Memorandum from Robert Weaver to Don Hummel (Feb. 15, 1967) (PL 029259).

240. In its letter to local defendants approving the application for 250 units, HUD's Assistant Secretary Don Hummel stated that he was accepting BURHA's statements as "complete assurance" that the restriction to urban renewal areas would not "result in violations of the site selection criteria under Title VI." He also warned local housing officials: "You are expected to be constantly alert to prevent leasing only in areas which will perpetuate negro concentration." Ex. 242, Letter from Don Hummel to Richard L. Steiner (Mar. 10, 1967) (PL 029260-62).

241. HUD approved the application despite the objection of civil rights groups that the restrictions imposed by the City Council would perpetuate discrimination and segregation. Ex. 242A, Recommendations and Analysis: Baltimore Urban Renewal and Housing Agency and Department of Housing and Urban Development, The Activists for Fair Housing (August 1966) at 2 (PL 049008-21) ("Leased housing . . . should not be confined to urban renewal areas.").

242. A city housing official subsequently remarked that "Baltimore City is the only locality in the United States having a Leased Housing Program where the area of operation is restricted to certain confines of the locality." Ex. 243, Van Story Branch, Experience to Date with Leased and Used Housing Programs, Draft and Comments (June 18, 1970) at 2 (PL 030828-36).

243. HABC itself recognized that "the program was considerably hampered by the restriction of the area of operation to the designated renewal areas of the city. Generally, housing that was offered was located in blighted areas or was in a dilapidated condition which would

require extensive rehabilitation.” HABC also recognized the need for housing to be offered in “areas in which Negro concentrations are not predominant.” Ex. 238, Van Story Branch, Progress Report for Leased Housing (Oct. 25, 1968) at 2, 7 (PL 030810-27 at PL 030811, PL 030816); see also Ex. 243, Van Story Branch, Experience to Date with Leased and Used Housing Programs, Draft and Comments (June 18, 1970) (PL 030828-36).

244. On June 27, 1968, HUD found the local defendants in violation of Title VI of the Civil Rights Act of 1964 based on evidence that all of the 75 units under lease after one year were located in areas ranging from 80% to 99% black. Ex. 244, Letter from Marino to Moyer (June 27, 1968) (PL 030788-95).

245. HABC subsequently conceded that the restriction to urban renewal areas prevented it from securing sites in non-minority areas, and its allocation of Leased Housing was reduced from 250 to 150 units. HUD, however, allowed HABC to continue to operate the segregated units already under lease without requiring any desegregative actions by HABC. Ex. 238, Van Story Branch, Progress Report for Leased Housing (Oct. 25, 1968) at 1 (PL 030810-27).

246. HABC phased out the Leased Housing program in 1976. At that time, HABC admitted that the program was “mediocre” and that “the basic problem was the inability to obtain units in better areas of the city.” Ex. 243A, Memorandum from Van Story Branch to R. C. Embry, Phase-Out of the Leased Housing Program, MD 2-30 (April 12, 1976) (PL 030864-70).

3. Scattered Site Developments Were Handled No Differently, Appearing Almost Exclusively in African-American Neighborhoods.

247. From 1964 (when HABC submitted its application for MD 2-24) to the early 1990s (when defendants closed out Project Uplift), defendants developed approximately 2800 units of “scattered site” public housing as part of 18 separate developments. Although the scattered site nature of these developments provided an excellent opportunity to place small amounts of public housing in a wide variety of neighborhoods, defendants instead packed these units in poor, minority-concentrated neighborhoods. Ex. 1, Maps, map 9e; Ex. 2, Taeuber at 47-49, 74-77; Ex. 5, Pendall Scattered Sites at 1.

248. The City Council Ordinance authorizing the scattered site developments specifically limited the development to vacant structures. Ex. 222A, Ordinance No. 459 (May 21, 1969) (PL 033579); Ex. 222, Ordinance No. 293 (Mar. 16, 1977) (PL 033614). Because vacant houses are concentrated in neighborhoods undergoing disinvestment, this requirement was essentially equivalent to the Leased Housing requirement that the units be in “urban renewal areas” and served to restrict the new public housing units to minority-impacted neighborhoods. However, although HUD prevented HABC from expanding the Leased Housing program, HUD allowed HABC to continue to do through the scattered site program exactly what HUD would not let them do through the Leased Housing program.

249. These units were all developed by rehabilitating existing structures instead of using new construction. Therefore HUD did not apply its strict site and neighborhood standards which would have resulted in significant development outside minority concentrated neighborhoods. See, e.g., Ex. 223A, Memorandum from Rheba G. Gwaltney to Thomas R.

Hobbs, FHEO Review - Preliminary Site Reports, Vacant House Program - Acquisition with Rehabilitation MD 2-69 and MD 2-72 (April 22, 1983) (HUDBAL 003918-003966) (“Because the subject sites are slated for rehabilitation purposes, the Project Selection Criteria do not apply. The sites are therefore recommended for approval.”).

250. Technically, HUD did attempt to apply some very minimal requirements regarding siting of units in what it deemed to be non-minority neighborhoods. For instance, for a number of the projects, HUD purported to require that 21% of the units be in neighborhoods with less than 60% minority concentration while allowing the remaining 79% of the units to be developed in areas with more than 60% minority concentration areas. However, as admitted by the Manager of the HUD office during the 1980s when many of these units were completed, HABC did not comply with even this minimal requirement. Ex. 13, Deposition of Thomas Hobbs (Mar. 6, 2002) (“Hobbs Dep.”) at 123 - 125.

251. HUD also explicitly waived site and neighborhood standards for some of the projects. See, e.g. Ex. 223, Memorandum from Lawrence Simons to Thomas Hobbs (Nov. 22, 1978) (1356-1359) (providing waiver for scattered site project MD 2-63); Ex. 229, Memorandum from Lawrence B. Simons to Thomas Hobbs, Request for Waivers - Public Housing Program Acquisition with Rehabilitation Projects MD-2-64, MD-2-65, MD-2-66, MD-2-67, MD-2-68 (Aug. 30, 1979) (1356-1359) (providing waivers for scattered site projects MD 2-64, MD 2-65, MD 2-66, MD 2-67 and MD 2-68).

252. HABC and HUD were fully aware during the entire time these units were developed that they were located in poor, minority-concentrated neighborhoods. HABC’s applications to HUD for the scattered site projects included identification of the location of

potential properties to be acquired. See, e.g., Ex. 230, Letter from M. J. Brodie to Thomas R. Hobbs, with attached documents (Mar. 3, 1980) (1360-1398) (includes list of possible sites for MD 2-69 at 1395-1397; also includes chart showing racial composition of census tracts in Baltimore City at 1391-94, as well as chart showing number of units in each census tract at 1398); Ex. 232, Letter from M. J. Brodie to Thomas R. Hobbs with attachments (Oct. 21, 1980) (HUDBAL 000123-163) (forwarding Preliminary Site Report for MD 2-72 including chart showing racial composition of census tracts (at HUDBAL 000140-143) and list of possible sites for MD 2-72 (at HUDBAL 000145-162)). HABC supplied HUD with monthly status reports listing addresses of units completed and under construction. See, e.g., Ex. 232A, Letter from M.J. Brodie to Thomas Hobbs with attachment (Jan. 16, 1980) (HUDBAL 001227-001231) [part of D5154] (monthly status report for scattered site projects MD 2-63 and 2-65 showing address and census tract of units started and completed); Ex. 232B, Scattered Site Monthly Status Reports (HUDBAL 003554-003669) (monthly status reports for various dates for scattered site developments MD 2-62, 2-64, 2-66, 2-67, 2-68, 2-69, 2-73 and 2-74 showing address and census tract of units started and completed). HABC provided certificates of completion, also listing the units in the project. See, e.g., Ex. 232C, Letter from M. J. Brodie, Executive Director to Thomas R. Hobbs, HUD (July 2, 1982) (HUD 1303-1307) (enclosing Certificate of completion for MD 2-62 and a list of all properties included in the development); Ex. 232D, Letter from M. J. Brodie, Executive Director to Thomas R. Hobbs, HUD (April 15, 1983) (HA9091-9099) (enclosing Certificate of Completion for MD 2-67 and a list of all properties included in the development). All these reports to HUD demonstrated clearly that the units were in poor, minority-concentrated areas.

a. MD 2-24.

253. The Development Program for MD 2-24, HABC's first scattered site public housing project, was submitted to HUD in October 1965. It planned 100 units of public housing in the Harlem Park urban renewal area. Ex. 224, Development Program, Project No. MD 2-24, Harlem Park (Oct. 5, 1965) (HA 12626-47 at HA 12629).

254. The project was developed in an area of minority concentration. All of the existing families that were relocated to make way for the project were African-American. All of the units were developed in census tracts that were over 90% black in 1970. Ex. 5, Pendall Scattered Sites at 11, Table 11; Ex. 224, Development Program, Project No. MD 2-24, Harlem Park (Oct. 5, 1965) (HA 12626-47 at HA 12636).

b. MD 2-76.

255. MD 2-76, the "Baltimore Demonstration Project," was the model for many of the subsequent scattered site projects. The development program for MD 2-76 was submitted in 1976. Ex. 225, Letter from R. C. Embry to Everett Rothschild (Aug. 9, 1976) (HUD 01897-930). According to the Memorandum of Understanding between HUD and HABC for this project, vacant City-owned properties, in most cases properties the City had acquired through tax sale, were to be used for this development. Ex. 228, Letter from M. J. Brodie to Thomas Hobbs with attached Report (July 13, 1979) (HADBAL 001674-726 at HADBAL 001720-21). The development program includes maps showing the location of vacant houses available for the project; these units are concentrated in neighborhoods identified as West Baltimore and East Baltimore, the existing black ghettos. Ex. 225, Letter from R. C. Embry to Everett Rothschild (Aug. 9, 1976) (HUD 01897-930 at HUD 01911-12). HUD FHEO approved the project saying it

“meets all applicable Civil Rights and equal opportunity requirements.” Ex. 226, Memorandum from Jackson Cronk to Maxine Cunningham (Sept. 10, 1976) (HUDBAL 3481).

256. Two years later, HABC wrote to HUD, stating that the Baltimore Demonstration Project, MD 2-76, and other projects developed under its Memorandum of Understanding had resulted in “the successful rehabilitation of more than 1400 scattered site units throughout Baltimore.” Based on this “success,” HABC asked for additional waivers of HUD requirements for additional projects. Ex. 227, Letter from M. J. Brodie to Everette H. Rothschild (Aug. 1, 1978) (HUD 03511-14). HUD replied, granting a waiver of the Minority Housing Opportunities siting requirements for one project, but stating that further waivers would not be granted until HUD reviewed the Final Evaluation Report of the Demonstration Project. Ex. 227A, Letter from Thomas R. Hobbs to M. J. Brodie (Dec. 5, 1978) (1282-1284).

257. In 1979, HABC submitted its Final Report for the Demonstration Project. Buried in the report are figures showing that, of the 239 units, at least 158 were in census tracts that are more than 95% black and an additional 70 were in census tracts that were 88% black as of the 1970 census. Ex. 228, Letter from M. J. Brodie to Thomas Hobbs with attached Report (July 13, 1979) (HUDBAL 001674-726 at HUDBAL 001701, 001703) Thus, 95% of the units of this “Demonstration Project,” according to HABC’s own report to HUD, were in census tracts at least 88% minority as of the 1970 census. HUD took no steps to sanction HABC for failing to comply with HUD’s siting requirements. HUD appears to have had absolutely no concern that this project, and others based on it, were continuing to pack additional public housing units in the same minority concentrated neighborhoods. See also Ex. 5, Pendall Scattered Sites at 11, Table 11.

c. MD 2-64; MD 2-65; MD 2-66; MD 2-67; and MD 2-68.

258. In August 1979, HUD's Assistant Secretary rewarded HABC by again granting site and neighborhood waiver requests for projects MD 2-64, MD 2-65, MD 2-66, MD 2-67 and MD 2-68 based on the purported "success" of the Demonstration Project. This waiver request was granted just one month after HUD received the Final Report for the Demonstration Project which showed that at least 95% of the units for that project were developed in overwhelmingly minority concentrated census tracts. HUD's waiver for these five scattered site developments again included a specific requirement "that at least 21 percent of the units to be selected will be located outside areas of minority concentration." Ex. 229, Memorandum from Lawrence B. Simons to Thomas Hobbs, Request for Waivers - Public Housing Program Acquisition with Rehabilitation Projects MD-2-64, MD-2-65, MD-2-66, MD-2-67, MD-2-68 (Aug. 30, 1979) (1354-59).

259. Just as HUD did not actually require that HABC meet the 21% condition for the Demonstration Program, HUD did not actually require that HABC meet this requirement for a single one of these five projects. Instead, the units were overwhelmingly concentrated in highly segregated areas. For four of the projects, over 90% of the units were in census tracts that, as of 1980, were over 80% black; for the remaining project, over 86% of the units were in census tracts that were over 80% black in 1980. Ex. 5, Pendall Scattered Sites at 11, Table 11. HUD nevertheless funded these units and took no action at all to sanction HABC for failing to comply with HUD's siting requirements, or to require that HABC take any desegregative compensatory measures.

d. MD 2-69.

260. In March 1980, HABC submitted the Development Program for MD 2-69. Ex. 230, Letter from M. J. Brodie to Thomas R. Hobbs, with attached documents (Mar. 3, 1980) (1360-1398). The attached Memorandum of Understanding from HABC again characterizes it as “a continuation of the very successful Vacant House Program under which over 2000 units have already been completed or are being developed.” HABC again on paper assured HUD that “[a] minimum of 21% of the selected units will be outside minority impacted areas.” *Id.* at 1370. The submission includes lists of potential properties and census tract information, showing the properties are concentrated in minority concentrated areas. *Id.* at 1391-1398.

261. HUD’s Fair Housing Division (“FHEO”) recommended approval of this project: “The City of Baltimore has stated in this submission that it will select a minimum of 21% of the selected units outside minority impacted areas unless the PHA demonstrates that less than 21% of housing suitable for use in the program is located outside minority areas.” Ex. 231, Memorandum from Rheba Milberry to Thomas Hobbs, FHEO Review-- MD 2-69 (May 21, 1980) (HUDBAL 03075). However, when MD 2-69 was completed in 1988, 97% of the units were in census tracts that were over 80% black. Ex. 5, Pendall Scattered Sites at 11, Table 11. Once again, HUD funded these units, and took no action at all to sanction HABC or require HABC to take any desegregative compensatory measures.

e. MD 2-72.

262. In October 1980, HABC submitted the Preliminary Site Report for MD 2-72, including lists of possible properties and information regarding the racial demographics of census tracts where the properties were located. In December 1980, HUD FHEO again recommended

approval of the project “with the stipulation that 21% of all proposed units be located outside areas of minority concentration.” Ex. 232, Letter from M. J. Brodie to Thomas R. Hobbs with attachments (Oct. 21, 1980) (HUDBAL 123-63); Ex. 233, Memorandum from Rheba Milberry to Thomas Hobbs, Preliminary Site Report Review (Dec. 15, 1980) (HUDBAL 000165).

263. In September 1981, HUD FHEO took another look at MD 2-72 in light of the recent HUD FHEO finding that HABC’s public housing was racially identifiable. HUD FHEO conditionally approved the project with the caveat that “it appears that the Authority’s tenant selection criteria may have been a contributing factor to this situation.” HUD approved MD 2-72 “conditioned upon receipt of an adequate tenant selection policy that would result in public housing tenant populations more reflective of the City’s total racial composition.” When MD 2-72 was completed, over 98% of the units were located in census tracts that were over 80% black, effectively assuring that all tenants in this project would be black regardless of the tenant selection criteria. One again, HUD took no action at all to require HABC to take any desegregative compensatory measures for HABC’s failure to comply with HUD’s minimal site selection requirements. Ex. 5, Pendall Scattered Sites at 11, Table 11; Ex. 234, Memorandum from Rheba Gwaltney to Thomas Hobbs, Review of Development Program, Baltimore City, MD 2-72 (Sept. 15, 1981) (HUDBAL 000108-20); Ex. 235, Letter from Thomas R. Hobbs to M. J. Brodie (Sept. 30, 1981) (HUDBAL 000105-07).

f. Project Uplift, MD 2-77 and 2-89.

264. By 1984, HUD was aware that HABC’s public housing was racially segregated and that HABC had repeatedly failed to comply with HUD’s requirements regarding siting in non-minority neighborhoods for HABC’s scattered site developments. Yet when Baltimore

sought to expand its scattered site program, HUD facilitated the program's continued concentration in minority communities, imposing only minimal de-segregative criteria – and then eviscerated those criteria by considering many units placed in minority neighborhoods to have been placed in non-minority neighborhoods.

265. Project Uplift, or Baltimore Uplift, was the last scattered site project developed in Baltimore before the search for Fairfield replacement housing. It was still ongoing at the time that HABC applied for funding for Fairfield replacement housing and the time HUD approved funding for Fairfield replacement housing.

266. The sites acquired by HABC for Project Uplift were purchased by HABC from private individuals. The properties were owned by Lyn Nofzinger, an official in the Reagan Administration, and other Washington investors who had purchased sight unseen poor real estate investments in Baltimore. The project was initiated at the Secretary level by HUD Secretary Samuel Pierce. See Ex. 13, Hobbs Dep., at 168-170; Ex. 269, HABC Responses to Harris Request for Admissions No. 4.

267. On April 6, 1984, HUD sent HABC an Invitation for Low Rent Public Housing Application, specifically for acquisition of existing housing. Ex. 270, Letter from Thomas R. Hobbs to Marion Pines (April 6, 1984) (HA 13904-11). Within three weeks, HABC submitted two applications, Project MD 2-77 for 210 units and Project MD 2-78 for 80 units identifying 229 properties for these projects which were overwhelmingly located in minority impacted areas. Ex. 271, Letter from Marion Pines to Thomas R. Hobbs (April 24, 1984) (HA 13903); Ex. 272, Application MD 2-77 and MD 2-78 (April 24, 1984) (HA 13912-42).

268. On July 24, 1984, HUD notified HABC of a reservation of funds for MD 2-77. MD 2-78 was never developed. Although HUD was aware that the identified properties for this project were overwhelmingly located in minority areas, and although HUD was aware that HABC had not developed scattered site units in non-minority areas even when HUD had given HABC specific numerical requirements, HUD's fund reservation contained no specific requirements regarding development of units in non-impacted areas. Instead, the fund reservation merely states: "Every effort should be made to locate buildings for acquisition with or without rehabilitation outside areas of minority concentration." The fund reservation also states "[t]he units must not be located in areas with large concentrations of subsidized housing and low income residents, but be utilized to deconcentrate low-income residents into neighborhoods with little or no subsidized housing." It was clear from the beginning that HUD had no intention of actually requiring that HABC develop the Project Uplift units in non-impacted areas. Attached to HUD's notification is a list of 186 properties which are overwhelmingly located in minority impacted areas. Ex. 273, Fund Reservation from Thomas Hobbs to Marion Pines (July 24, 1984) (HA 13883-87).

269. On August 10, 1984, HUD requested a complete list of the Project Uplift properties. On August 24, 1984, HABC sent HUD a list of 215 properties, once again overwhelmingly located in minority concentrated areas. Ex. 274, Letter from Thomas R. Hobbs to Marion Pines (Aug. 10, 1984) (HA 13880-82); Ex. 275, Letter from Marion Pines to Thomas R. Hobbs (Aug. 24, 1984) (HA 13869-79).

270. Almost one year later, in June 1985, HUD informed HABC that 123 of the identified properties were acceptable because they are located "outside areas of minority

concentration” or were in “revitalizing neighborhood areas.” Ex. 276, Letter from Thomas R. Hobbs to Marion W. Pines (June 3, 1985) (HA 13891-902).

271. Finally, in June 1985, HUD advised HABC that it must have “a 3:1 ratio of minority versus non-minority locations” in order to satisfy the site and neighborhood standards for Project Uplift. However, HUD also advised HABC that HUD would consider sites in “revitalizing neighborhood areas” regardless of the minority concentration in those neighborhoods for purposes of this requirement. Therefore, although virtually all of the identified sites were in minority concentrated areas, HUD advised HABC that 123 of the 214 identified properties met applicable site and neighborhood standards. Ex. 276, Letter from Thomas Hobbs to Marion Pines (June 3, 1985) (HA 13891-902).

272. Project Uplift did not expand housing choices available to African-American tenants. In fact, they were already occupied by African-Americans. One-hundred and five of the 108 Project Uplift sites that were occupied prior to acquisition were occupied by African-American tenants. Ex. 278, Memorandum from Stan Campbell to Robert Ferguson, with attached Relocation Plan (Feb. 5, 1986) (HA 13686-707 at HA 13689).

273. By January 1989, HABC had make little progress in developing the Project Uplift units. HUD took no steps to sanction HABC for failing to develop the units or for failing to place them in non-minority areas. Instead, HUD actively moved to assist HABC in developing this project. HUD advised HABC that HUD was in the process of dividing Project Uplift into two projects to assist HABC in reaching the Date of Full Availability (DOFA) on the first 110 units, and allowing additional time for HABC to complete the remaining 66 units. Ex. 278A, Letter from St. George I.B. Crosse to Robert Hearn (Jan. 9, 1989) (HA14019-21).

274. By March 1989, HABC was finally making progress on the Project Uplift units. HABC reported that 41 of the Project Uplift units had been completed, another 37 had been started, that 19 had not yet been started, and that 3 were on hold. In June 1990, HABC reported that it was working on or had completed 18 additional Project Uplift properties, none of which was on the March 1989 list. Ex. 278B, Weekly Rehabilitation -- Progress Report, March 1989 (HA 13952-59); Ex. 278C, Weekly Rehabilitation -- Progress Report, June 1990 (HA 13758-60).

275. In November 1990, HABC had still not taken the minimal steps of completing the paperwork necessary for HUD to reformulate the 66 unfinished Project Uplift properties into a separate project -- MD 2-89. Nevertheless, instead of taking steps to rescind funding for the units not yet developed or require that the units be placed in non-impacted areas, HUD merely continued to advise HABC that it was attempting to facilitate development of the units by reformulating the not yet completed units in a separate project, MD 2-89. Ex. 278D, Letter from Michael Janis to William Schmidt (Nov. 16, 1990) (HA14025-26 at HA14025-14026).

276. HUD allowed HABC to use \$2 million in Community Development Block Grant (CDBG) funds to develop Project Uplift units in minority areas during 1989, and an additional \$500,000 in CDBG funds for Project Uplift units in minority areas during 1990. Ex. 278E, Baltimore City CDBG Program, 1989 Performance Report (MCC 000526-000731 at 000607); Ex. 278F, Baltimore City CDBG Program 1990 Performance Report (MCC 000732-000915 at 000774-000775).

277. In December, 1992, HUD approved HABC's Development Cost Budget/Cost Statement for Project Uplift MD 2-77. Ex. 278G, Development Cost Budget/Cost Statement, Project MD 2-77 (Dec. 31, 1992) (HA14027-29).

278. Project Uplift was not finally completed and closed out until January 1993. Ex. 279, Letter from Maxine Saunders to Robert Hearn (Jan. 6, 1993); Ex. 269, HABC Responses to Harris Request for Admissions No. 10.

279. As with the previous scattered site developments, the Project Uplift units were placed in overwhelmingly segregated areas. Almost 90% of the units were in census tracts that were more than 80% African-American in 1990. Only 5 of the units were in census tracts that were majority white in 1990. See Ex. 5, Pendall Scattered Site at Table 11.

280. The sites for Project Uplift were so poorly selected that only five years later, HABC was proposing to demolish 26 units in MD 2-77 (out of a total of 110 units) and proposing to demolish 16 units of MD 2-89, out of a total of 66 units. Four years later, in 2002, HABC reported that only 56 units of the 110 units in MD 2-77 were occupied. Ex. 280, Fax from Yves Djoko to Cassandra Loving, with attachment Units Proposed for Demolition (Dec. 10, 1998) (HUD 07012-13); Ex. 281, Disposition Application for Holy Nativity and St. John's Development Corporation at HA 44009 (April 2002) (HA 43992-44066).

C. From 1987 to the Present, Federal and Local Defendants Jointly Planned and Began to Construct Replacement Housing for Fairfield Concentrated in Minority Areas.

281. HUD and HABC began to develop plans for the replacement of Fairfield Homes in 1987. At that time, defendants had completed most of the 18 scattered site developments which had resulted in 2800 units of public housing placed overwhelmingly in minority concentrated areas. Project Uplift was still under development at that time, and would not be closed out until 1993. HUD's actions with respect to Fairfield replacement housing should be

viewed against HUD's repeated failure to require that HABC comply with HUD's minimal requirements for development of scattered site units outside areas of minority concentration.

282. Throughout the Fairfield Home relocation, HUD's conditions and statements indicate that it was aware of the segregation in the Baltimore public housing system, and HABC's promises indicate that it was aware of its obligations. But rather than making any real effort toward desegregation, the defendants packed more replacement units into areas already crowded from the Project Uplift placements.

1. HUD's Initial Fund Reservation for Fairfield Replacement Housing, and Its Acquiescence in HABC's Continued Obstinacy.

283. On April 6, 1987, HABC filed an application with HUD for public housing development funds to replace Fairfield's 300 housing units. On September 30, 1987, HUD reserved funds for 100 units, Public Housing Project Number MD06-P002-081 ("MD 2-81"). In the fund reservation sent to HABC, HUD specifically provided that the funds could not be used for school conversions or scattered site public housing. Additionally, the fund reservation explicitly provided that site approval for the project must occur within 12 months of the reservation, or by September 30, 1988. See Ex. 283, Letter from St. George I.B. Crosse, Manager, HUD to Marion Pines, Commissioner, Neighborhood Progress Administration (Sept. 30, 1987) (HUD 20167-69).

284. HUD did not require, in the initial fund reservation, that Fairfield replacement units be placed in non-minority areas, although it was aware that HABC had failed to comply with its requirements for placement of scattered site units outside areas of minority concentration and although it had taken no actions to sanction HABC for these failures. The fund reservation

instead merely states: “Every effort should be made to locate buildings for acquisition with or without rehabilitation outside areas of minority concentration.” Ex. 283, Letter from St. George I.B. Crosse, Manager, HUD to Marion Pines, Commissioner, Neighborhood Progress Administration (Sept. 30, 1987) (HUD 20167-69).

285. The fund reservations for Fairfield replacement units were conditioned on the local defendants’ assurances of compliance with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, and bind the local defendants to make affirmative efforts to locate replacement units outside areas of minority or poverty concentration and to help low- income residents move into neighborhoods with little or no subsidized housing.

286. Despite this Title VI requirement, the first seven potential sites identified by HABC by March 1988 were all in impacted areas. Consistent with HABC’s prior siting practices (and approved by HUD), three of these sites were adjacent to existing HABC public housing developments; the remaining four were all in minority concentrated neighborhoods. By May 1988, all seven sites had been disapproved by HUD under the site and neighborhood standards either because they were in an area of minority concentration or because of an undue concentration of assisted housing. Ex. 284, Memorandum from James S. Kelly to St. George I.B. Crosse (Mar. 3, 1988) (PL 032753-54); Ex. 285, Chart: Fairfield Replacement Housing Sites (Mar. 31, 1993) (PL 033158-67).

287. HABC then proposed scattered site properties for MD 2-81. Although HUD’s funding reservation stated the funds could not be used for scattered site development, and although HUD knew that HABC had consistently located scattered site public housing in minority concentrated neighborhoods, HUD reviewed these sites. Ex. 286, Memorandum from

Rheba G. Gwaltney, Director FHEO Division, to St. George I.B. Crosse, Manager (Sept. 8, 1988) (HUD 4154); Ex. 287, Memorandum from Rheba G. Gwaltney, Director FHEO, to St. George I.B. Crosse, Manager (Feb. 27, 1989) (HUD 20217-18).

288. HUD's initial review demonstrated that HABC planned once again to place the units in minority impacted areas. HUD determined in September 1988 that of the 92 sites currently proposed by HABC for MD 2-81, 80% were located in areas of minority concentration. However, in February 1989, HUD's FHEO Division knowingly recommended approval of 80 sites proposed by HABC for MD 2-81, even though 86% of those sites were located in minority concentrated areas. Ex. 286, Memorandum from Rheba G. Gwaltney, Director FHEO Division, to St. George I.B. Crosse, Manager (Sept. 8, 1988) (HUD 4154); Ex. 287, Memorandum from Rheba G. Gwaltney, Director FHEO, to St. George I.B. Crosse, Manager (Feb. 27, 1989) (HUD 20217-18).

2. HUD's Reservation of Additional Funding in 1989.

289. As of September 1989, HABC had failed to identify sites necessary sites in non-impacted areas and site approval for MD 2-81 had not occurred, despite the requirement in the original reservation that site approval must occur by September 1988. Although HABC had failed to comply with the terms of HUD's fund reservation, HUD took no action to sanction HABC for the failure to identify sites in non-impacted areas. Instead, HUD rewarded HABC, and on September 26, 1989, reserved funding for another 20 units of Fairfield replacement housing, reservation MD 2-84. As with the reservation for MD 2-81, this reservation again required that sites for all the units be approved within 12 months of the reservation, i.e., by September 1990. The reservation also required that every effort be made to locate sites outside

areas of minority concentration, and that the units not be located in areas with large concentrations of subsidized housing and low-income families. HUD reserved these funds despite its knowledge that HABC had not submitted sites for the 100 units previously reserved outside areas of minority concentration. Ex. 288, Letter from Robert W. Hearn, Executive Director HABC to St. George I.B. Crosse, Manager HUD (April 14, 1989) (HUDBAL 014286-90); Ex. 289, Letter from St. George I.B. Crosse, Manager, Baltimore HUD to Robert W. Hearn, Executive Director HABC (September 26, 1989) (PL 032943-46).

3. HUD Granted HABC Permission To Place Most of the Fairfield Units in Impacted Areas.

290. Throughout this period, HABC represented in submissions to HUD that all replacement units would be in non-impacted areas. Ex. 290, Letter from Robert W. Hearn, Executive Director HABC to St. George I.B. Crosse, HUD (July 31, 1989) (PL 032934-36) (“We will locate Fairfield replacement housing in census tracts and neighborhoods that are not areas of minority concentration or areas with a concentration of assisted families.”); Ex. 291, Memorandum from Harry W. Staller, Acting Regional Administrator, HUD to Kirk Gray, Director, Office of Public Housing, HUD (Sept. 25, 1989) (“The HABC will undertake to put all replacement units on unimpacted sites meeting the Site and Neighborhood Standards.”) (HUD 19999-20001); see also Ex. 292, City of Baltimore, Resolution No. 24 (Jan. 18, 1990) (HUDBAL 13540-46) (Baltimore City Council Resolution approving attached Fairfield Homes Replacement Housing Plan: “It is also our intent to provide replacement housing in census tracts which do not have a concentration of low-income or minority families or concentrations of

assisted housing in order to assure that full choices and real opportunities exist for families to find housing in and outside areas of minority and assisted housing concentration.”).

291. Baltimore City assured HUD that it would site all Fairfield replacement units in non-impacted areas in connection with resolving HUD’s CDBG monitoring finding that Baltimore lacked public housing units in non-minority concentrated neighborhoods.

292. There is no evidence that HUD questioned these assurances, even though it knew that almost all of the sites submitted by HABC for HUD approval were located in minority concentrated areas, and even though it knew that HABC’s most recent public housing developments, Project Uplift and Charles K. Anderson, had been in minority impacted areas.

293. Instead, HUD explicitly allowed HABC to place 200 of the 300 Fairfield replacement units in minority impacted neighborhoods -- the same neighborhoods where HABC had already placed the bulk of the 2800 scattered site units. HUD required that only 100 of the units be in non-minority areas. Ex. 286, Memorandum from Rheba G. Gwaltney, Director FHEO Division to St. George I.B. Crosse, Manager (Sept. 8, 1988) (HUD 4154).

294. HUD also advised HABC that, for purposes of identifying those 100 units placed in “non-minority” areas, units placed in minority concentrated areas that were urban renewal or “Neighborhood Strategy Areas” would count as sites in non-impacted areas. HUD had used this same process to approve units resulting in the highly segregated Project Uplift units. Based on this standard, FHEO recommended approval of a package of sites of which 86% were in minority concentrated areas. Ex. 287, Memorandum from Rheba G. Gwaltney, Director FHEO to St. George I.B. Crosse, Manager (Feb. 27, 1989) (HUD 20217-18); Ex. 293, HABC Response to Harris Request for Admission No. 16.

295. In November 1989, although HABC had failed to propose sites acceptable to HUD, and although HUD had internal disagreement about what were approvable sites, HUD advised HABC that the “current procedure in use for determining the acceptability of scattered-site units is satisfactory.” Ex. 294, Letter from St. George I.B. Crosse, Manager to Robert W. Hearn, Executive Director, HABC (Nov. 30, 1989) (PL 032950-51).

4. HUD Allowed HABC To Use Neighborhood, Census Tract, and Census Tract Block Group To Review Proposed Fairfield Replacement Sites While Fully Aware of HABC’s Segregative Plans.

296. When HABC finally put together a map identifying areas in which the replacement units could be placed, it did not identify by neighborhood, which would have given the most accurate picture of where the units would actually be placed. Instead, HUD permitted HABC to identify areas by tract, the largest and least informative unit considered – even while believing that HABC would manipulate its identifications to concentrate units in the minority pockets of non-minority areas.

297. In May 1993, when HABC had failed to propose acceptable sites more than five years after the initial fund reservation for Fairfield replacement units, Michael Janus, HUD General Deputy Assistant Secretary, suggested that HUD and HABC develop together “a map by census tract or, preferably, by neighborhood indicating areas within the City” which satisfied HUD’s “non-impaction” requirements. Ex. 295, Memorandum from William Tamburrino to Maxine Saunders (May 7, 1993) (HUDBAL 013721-22).

298. The proposal was made in an effort to eliminate “guesswork” by HABC when proposing sites and also in an attempt to maximize the areas where Fairfield replacement units could be sited. Ex. 296, Memorandum from William Tamburrino to Maxine Saunders (May 17,

1993) (HUDBAL 013723-24) (“It was suggested that such a map could eliminate any ‘guesswork’ on the part of HABC in identifying non-impacted sites and might increase the number of smaller, non-impacted areas in which to develop replacement housing.”).

299. Census tract, block group (a subdivision of a census tract), block (a subdivision of block group) and neighborhood were all considered. HABC proposed using “block” as that would provide HABC with the most potential sites. HUD FHEO proposed using “neighborhood” because that “would best satisfy the site and neighborhood standards, and that block groups and, especially, blocks could allow selective additions of public housing units in neighborhoods which are already minority-impacted.” The decision was made to develop a map using block group. Ex. 296, Memorandum from William Tamburrino to Maxine Saunders (May 17, 1993) (HUDBAL 013723-24).

300. The Baltimore City Planning Department ended up mapping both by census tract and by block group, and additional maps comparing the two. This way, local defendants could analyze the areas that were considered “non-impacted” by using block groups, and analyze the areas considered “non-impacted” by using census tracts. They looked at the number of abandoned houses in the areas available if block group was used, compared to the number of abandoned houses in the areas available if census tract was used, to see which approach was “preferable.” Baltimore’s City Planner determined that “we would be marginally better off” (i.e. there were more available abandoned houses) using census tract rather than block group. This analysis was forwarded to HUD. Ex. 297, Letter from Alexander to Simms, with attached Memorandum from Steve Janes, Impact Study, Follow-up materials (June 11, 1993) (HUD 4205-15).

301. At a meeting regarding this issue on June 16, 1993, it was concluded that “HABC benefits to keep census tract but under certain circumstances, they’d like to use non-impacted block groups.” Ex. 298, Handwritten Meeting notes (June 16, 1993) (PL 033210-12).

302. Based on this analysis, HABC proposed to use census tract, supplemented with “non-impacted block groups on a case by case basis.” The explicit purpose was to develop the system that would allow HABC the greatest latitude in identifying sites. Ex. 299, Letter from Daniel Henson to Maxine Saunders, with attachments (June 16, 1993) (HUD 4194-98).

303. HUD FHEO cautioned about HABC’s motivations: “I would not allow the City to use block group in some instances and census tract in others. I favor the use of block group because it gives a clearer picture of what the actual neighbor[hood] is all about. The census tract may be non-minority, however, due to the City’s lack of fair housing efforts, I think they would search for the minority pockets within those census tract to place assisted housing. However, by restricting the City to census tract, we have more of a chance to get 100 units in census tracts and neighborhoods that are not minority concentrated. It is the City’s argument that using block group would lessen the universe of properties that they may be able to acquire. I think that is another attempt to circumvent the principles of fair housing.” Ex. 300, Memorandum from Rodney Camphor to Harold Jackson (June 17, 1993) (HADBAL 3021).

304. Despite this knowledge that HABC was attempting to “circumvent the principles of fair housing,” HUD approved HABC’s request to use census tract, supplemented with “non-impacted” block groups located within otherwise minority impacted census tracts. HUD told HABC “[w]e believe that expanding the opportunities to find additional sites will facilitate the development process.” Ex. 301, Memorandum from Harold Jackson to Melissa Peters (June 28,

1993 (PL 033219); Ex. 302, Letter from Maxine Saunders to Daniel Henson, with attachment (July 7, 1993) (PL 033220-29).

305. As predicted by HUD FHEO, HABC identified, and HUD approved, sites in the “minority pockets” of census tracts considered by HUD to be non-impacted.

5. HUD Defined “Minority” To Permit HABC To Continue To Site in Minority Neighborhoods.

306. HUD itself admits that, for purposes of Fairfield replacement housing, it considered an area to be racially impacted only if it was more than 60% black. Therefore, HABC could have placed all the Fairfield “non-impacted” units in areas that were majority black, but less than 60% black, and satisfy HUD’s criteria. Ex. 303, Fed. Defs’ Motion to Dismiss, or, in the Alternative, for Summary Judgment at 21-22.

6. HUD Approved HABC’s Fairfield Demolition Application.

307. In August 1990, HABC had still not proposed approvable sites for the first 100 units of replacement housing awarded almost three years earlier, or the 40 units awarded subsequently. HUD took no steps to sanction HABC for failing to comply with HUD fair housing requirements. Instead, once again, HUD rewarded HABC by approving the Fairfield demolition application (based on HABC’s statement that it “intended” to locate the units in non-minority areas), and at the same time agreeing to fund the remaining 160 units of replacement housing. Ex. 304, Memorandum from Michael B. Janis, General Deputy Assistant Secretary PIH to Marry W. Staller, Deputy Regional Administrator (Aug. 20, 1990) (HUD 19965-68).

308. HUD was required to take into account HABC’s “past performance in selecting sites that provide housing opportunities outside areas of minority concentration” in reviewing

HABC's application. Ex. 305, HUD Transmittal, Handbook No.: 7417.1 REV-1 CHG 8 (May 4, 1990) (PL 036258-68 at PL 036259). HUD failed to comply with this requirement when it approved HABC's application in the face of HABC's repeated failures to comply with siting requirements.

309. On October 10, 1990, HUD informed HABC that the Fairfield demolition application had been approved. HUD made no mention of any expectations with respect to site selection for replacement housing, or with respect to HABC's obligations to use this replacement housing for desegregative purposes. Ex. 306, Letter from Maxine Saunders, Manager HUD to Robert W. Hearn, Executive Director, HABC (Oct. 10, 1990) (HUD 19940).

7. HUD Allowed HABC To Withdraw the School 47 Site While Approving the East Preston Street Sites.

310. In at least one relocation site, HUD and HABC capitulated to race-based opposition to relocation, abandoning an otherwise suitable site when no other sites had yet been approved.

311. As of January 1992, four and a half years after the reservation of the first 100 units of Fairfield replacement housing, HUD and HABC had still not agreed on any sites for any Fairfield replacement units. At that time, HABC finally submitted the School 47 site in Canton. This site was in a non-minority neighborhood and in a census tract that was 97.5% white at the time of the 1990 census. On January 16, 1992, the FHEO Division recommended that the site be approved. On April 1, 1992, HUD notified HABC that this site was approved. Ex. 307, Memorandum from Harold S. Jackson, Director FHEO Division to Maxine Saunders, Manager (Jan. 16, 1992) (PL 33062); Ex. 308, Letter from Maxine S. Saunders, Manager to Robert W.

Hearn, Executive Director, HABC (April 1, 1992) (HA 18661-63). This was the first time since the 1950 vacant land controversy, see supra at ¶¶ 110-23, that HABC had proposed developing any public housing in a white residential neighborhood.

312. In September 1992, responding to racially motivated community opposition, the local defendants dropped plans to use School 47 for Fairfield replacement housing. Ex. 309, Letter from Robert W. Hearn, Executive Director, HABC to John Cain, Nicholas D'Adamo and Perry Sficas, Baltimore City Council (Sept. 10, 1992) (HA 06026).

313. On September 10, 1992, citing community opposition to the use of the School 47 site for Fairfield replacement housing, HABC requested a waiver of HUD's site and neighborhood standards to allow all of the Fairfield replacement units to be developed in minority areas. The waiver request contends that sites acceptable to HUD have been, and will continue to be, opposed by neighborhoods, and that placement of public housing in those neighborhoods would cause "middle class flight." Ex. 310, Letter from Robert W. Hearn, Executive Director, HABC to Joseph G. Schiff, Assistant Secretary, HUD (Sept. 8, 1992) (PL 33095-98).

314. At a meeting on October 16, 1992, HUD advised HABC that it was denying the waiver request. However, signaling once again that it would not hold HABC to the requirement that it develop Fairfield replacement housing units in non-impacted areas, HUD rewarded HABC by giving final approval to proceed with development of MD 2-84, the 20 units on the East Preston Street sites. HUD agreed to these sites even though it knew that, with the withdrawal of the School 47 site, HABC had no prospective sites in non-minority areas. Ex. 311,

Memorandum from Michael A. Smerconish, Regional Administrator to Joseph G. Schiff, Assistant Secretary (Oct. 27, 1992) (PL 33102-04).

315. At a follow-up meeting in December involving HUD Regional FHEO and HABC personnel, instead of requiring that HABC proceed with the School 47 site, HUD advised HABC that “HUD understood the [housing] authority’s dilemma.” Indicating that HUD was fully aware that the community opposition to the School 47 site was motivated by racial biases and stereotypes of public housing residents, HUD FHEO advised HABC to “utilize the enforcement authority of the Fair Housing Act to eliminate community opposition to sites that are available in nonminority neighborhoods.” Instead of taking any fair housing enforcement action, HUD abdicated responsibility, merely advising HABC that “HUD is willing to back the authority on this issue.” As additional recognition that HABC was able to locate non-impacted sites, but failed to pursue them, Baltimore’s HUD FHEO staff commented that “in some instances, however, when vacant schools and other properties were available [in non-minority areas], the authority did not select the sites because the community groups were not in favor.” Ex. 312, Minutes of Meeting, HUD Manager’s Conference Room (Dec. 18, 1992) (PL 033121-22).

8. Having Capitulated to White Opposition at the School 47 Site, Defendants Chose the East Preston Street Site Overrun by Violence and Drugs.

316. After agreeing not to relocate Fairfield Homes residents in the predominantly white School 47 site, HUD and HABC began relocation to an apparently more suitable area: East Preston Street, an all-black, high crime, highly-violent neighborhood.

317. After agreeing not to relocate Fairfield Homes residents in the predominantly white School 47 site, HUD and HABC began relocation to an apparently more suitable area: East Preston Street, an all-black, high crime, highly-violent neighborhood.

318. In approving the East Preston Street sites, HUD also knew, and disregarded, the fact that its own staff had already rejected the sites because they did not meet HUD criteria for site approval. In a 1990 review of proposed sites on East Preston Street, HUD FHEO had recommended disapproval of the sites based on the sites' location "in a 100 percent minority concentrated area" and the absence of comparable housing opportunities in non-minority areas. Ex. 313, Memorandum from LaVerne L. Brooks, Acting Director, FHEO Division to Dean K. Reger, Acting Manager (May 16, 1990) (HUDBAL 019853).

319. In 1993, HUD's Public Housing Division also recommended rejection of the Preston Street sites because it was found to be a "very undesirable area" with a lot of suspected drug activity. Ex. 314, HUD internal memorandum from Candace Simms to Mary Ann Henderson and Melissa Peters (Feb. 12, 1993) (PL 033147).

320. In 1992, based on inspections of several scattered site units, including one immediately adjacent to the Preston Street sites, HUD's Baltimore staff recommended that unsafe areas with heavy drug activity be rejected from consideration for future locations of public housing. Regarding that unit, 1301 Homewood Avenue, HUD's inspector reported: "The biggest problem with this unit was its very poor location. There were three boarded up units directly across the street. The resident said there was so much shooting (of guns) that she had to put her children on the floor, and that people run up and down the street shooting at one another." Ex. 315, Letter from Maxine Saunders, Manager to Robert W. Hearn, Executive Director, HABC

(Sept. 30, 1992) (HA 36381-89 at HA 36388); Ex. 316, Declaration of LaRaye Holcomb (April 1, 2001).

321. Construction was started on the 20 East Preston Street units in December 1993. However, only 10 of the 20 proposed units were ever completed, at a cost of \$160,000 per completed unit. In 1998, HABC Executive Director Daniel P. Henson III, admitted that the sites never should have been selected: “Just so we are all clear on how I stand on this. If we were looking at starting Preston Street today, I would demo the entire block rather than to start this project. This is a textbook example of everything that is wrong about how we used to do business. The only good thing about it is that we can learn what not to do in the future. Design plans that were outdated before we started; immediate change orders due to shifting site conditions vs. the plans; poor and delayed decisions all along the way; poor documentation of problems; the absolute wrong neighborhood, selected primarily because of the lack of resistance (easy since there was no one living there at the time), etc.” Ex. 317, Memorandum from Carnelious Harrison to Steve Broach with attachments (July 13, 2001) (PL 082039-46).

9. Other Sites Selected by HABC and Approved by HUD Were No Better.

322. On April 2, 1993, HUD informed HABC that an additional package of sites – 15 of the 17 sites for MD 2-85 – was acceptable. The acceptable sites included 1706 and 1802 Ashland Avenue, 504 Baker Street, 1812 W. Baltimore Street, 108 S. Calverton Street, 1825, 2205 and 2355 Druid Hill Avenue, 1709 E. Eager Street, 1058 W. Fayette Street, 107 N. Gilmore Street and 2039 W. Lanvale Street, all of which were identified by HUD as being in minority concentrated census tracts. Only two of the approved sites, 1925 and 1929 W. Baltimore Street

were identified by HUD as being in non-minority census tracts. Although these two sites are in census tract 2003 which was majority white at the time, they are both in the heavily minority concentrated northern portion of that census tract which abuts all-black neighborhoods to the north. Moreover, both sites are in a census tract block group that was more than 75% black as of the 1990 census. Ex. 405, Map of Additional Public Housing Sites Located in Minority Concentrated Areas; Ex. 318, Letter Maxine S. Saunders, Manager to Daniel P. Henson, Acting Executive Director, HABC (April 2, 1993) (PL 033168-70); Ex. 285, Memorandum from Harold S. Jackson to Candace Simms (April 2, 1993) with attached Chart of Fairfield Replacement Housing Sites (Mar. 31, 1993) (PL 033158-67); Ex. 319, Internal HUD Memorandum from Harold S. Jackson to Candace Simms (Aug. 16, 1993) (PL 033236); Ex. 320, Fed. Defs' Response to Plaintiffs' Request for Admissions No. 11.

323. By July 1993, HABC had added additional sites in tract 2003 to the MD 2-85 package – 1931 W. Baltimore Street, 436 S. Payson and 31 South Pulaski. All were in the northern portion of the census tract which was heavily minority. HUD FHEO approved the sites while admitting that “the street where the site is located may be distressed and impacted.” Ex. 319, Internal HUD Memorandum from Harold S. Jackson to Candace Simms (Aug. 16, 1993) (PL 033236); Ex. 405, Map.

324. HUD aggressively pushed HABC to proceed with MD 2-85. In April 1994, HUD granted another extension of the construction start deadline until July 31, 1994, stating that HUD “does not wish to delay this project any further.” By June 1994, HUD had reviewed plans and specifications for these sites – one of the last steps before they went out to bid. Ex. 321, Letter from Candace Simms to Daniel Henson (April 4, 1994) (HUDBAL 014042); Ex. 322, Letter

from Bill Tamburrino, Director Public Housing Division, HUD to Daniel P. Henson, Executive Director, HABC (June 13, 1994) (HUDBAL 014342-46); Ex. 405, Map.

325. In July 1994, HUD granted HABC an extension until September 30, 1994 for construction start, stating: "This should provide sufficient time to finalize the construction bid documents, bid the project and award the contract." Ex. 323, Letter from Bill Tamburrino to Daniel P. Henson (July 1994) (HUDBAL 014626).

326. As of August 1994, according to HUD's Production Control Chart, all the units for MD 2-85 had been selected and all the design documents had been approved by HUD. Also, that month, HUD forwarded the executed Annual Contribution Contract for MD 2-85 to HABC. Ex. 324, Production Control Chart (Aug. 5, 1994) (HUDBAL 021986-998); Ex. 325, Letter from Candace Simms, Director, Housing Development Division to Daniel P. Henson (Aug. 31, 1994) (HUDBAL 013352-55).

327. By November 1994, HABC had received bids for the work to develop MD 2-85, had forwarded information on those bids to HUD, and had received permission from HUD to negotiate with a single bidder. Ex. 326, Letter from Daniel Henson to William Tamburrino (Sept. 30, 1994) (HUDBAL 022002-03); Ex. 327, Letter from William Tamburrino to Daniel Henson (Nov. 17, 1994) (HUDBAL 022081-82).

328. On February 9, 1994, HUD wrote HABC approving 23 properties in the 800 and 900 blocks of Jack and Stoll Streets in Brooklyn as non-minority sites. These sites were immediately adjacent to the 500 unit Brooklyn Homes public housing development. By August 1994, having approved the sites, HUD was reviewing appraisals for these sites. Ex. 328, Letter from David K. Elam, HABC to Candace Simms, HUD (December 10, 1993), with attached map

(PL 033253-54); Ex. 329, Letter from Candace Simms, HUD to David Elam (Feb. 9, 1994) (PL 033275); Ex. 330, Memorandum from Candi Simms to Bill Tamburrino (Aug. 24, 1994) (HUDBAL 014428).

329. In April 1994, HUD notified HABC that six sites in the 1700 block of Lemmon Street and the 100 block of S. Mount Street had been approved as non-minority sites. Those sites are all in the northern portion of census tract 1903. Although that census tract was considered non-minority by HUD (it is 36% minority), the minority population in the census tract is concentrated in the northern portion where these sites are located. Ex. 331, Memorandum from Harold Jackson, Director, FHEO Division to Candace S. Simms, Director, HUD (April 8, 1994) (HUDBAL 013407); Ex. 332, Letter from Candace S. Simms, Director HDD to David Elam, HABC (April 21, 1994) (HUDBAL 013410); Ex. 405, Map.

330. HUD and HABC continued to press forward on the Lemmon Street package. By July 1994, HUD was reviewing appraisals for the sites. Ex. 333, Draft letter from William Tamburrino, Director to David Elam, HABC, with attached appraisals and transmittal memo from HABC (July 25, 1994) (HUDBAL 014437-53).

331. HUD also gave HABC preliminary approval on the Holabird Park Apartments site. Although it is technically in a non-impacted site by HUD standards, the site was within several blocks of the 900-unit O'Donnell Heights public housing development. HUD notes of a May 2, 1994 meeting indicate how far along HUD was in approving this site: "City will hire an architect after our review of appraisal is completed -- then they can negotiate w/ owner and begin discussions on relocation. 30 days needed w/ owner." Ex. 282, Fairfield Replacement proposed Locations (Feb. 4, 1994) (HUDBAL 016242-66); Ex. 334, Fairfield handwritten meeting notes

(May 2, 1994) (HUDBAL 013386); Ex. 335, Rapid Reply letter from Candace Simms to Jim Kintz (April 8, 1984) (HUDBAL 013390-94); Ex. 405, Map.

10. HUD Sale of Minority Impacted Montpelier Apartments to HABC for Public Housing Development.

332. On February 24, 1995, HUD sold to HABC the Montpelier Apartments for the sum of \$1.00 (one dollar). The purpose of the acquisition was for HABC to develop public housing with funds from the Maryland State Partnership Rental Housing Program. HUD sold the Montpelier Apartments to HABC for the explicit purpose of development of public housing units despite the fact that the apartments were located in a minority-concentrated area, and had been disapproved by HUD FHEO for replacement housing on May 27, 1988. Ex. 285, Chart: Fairfield Replacement Housing Sites (Mar. 31, 1993) (PL 033158-67); Ex. 336, Memorandum from Daniel P. Henson, Executive Director, HABC to Eric C. Brown, Deputy Executive Director, HABC (Feb. 10, 1995) (HA 5334-35); Ex. 337, Settlement Statement (HA 5331-32); Ex. 338, Letter from Donna Poggi Keck, HABC to Yvonne Johnson, Maryland (PL 49101); Ex. 405, Map.

D. In 2000, HABC and Baltimore City Withdrew Plans To Place 15 Scattered Site Units in a Predominantly Non-Minority Area in the Face of White Community Opposition.

333. In April 2000, HABC and Baltimore City identified sites for 15 scattered site public housing units in the primarily white Hamilton neighborhood. Ex. 408, Memorandum from Patricia Payne, Commissioner HCD to Laurie Schwartz, Deputy Mayor, HABC 15 Property Board Letter Submittal Summary (Oct. 10, 2000) (BW 00021-22); Ex. 409, Letter from Mayor Martin O'Malley to Patricia Payne, HABC (July 27, 2000) (BW 00029) (approving of the units

as they will “restore vacant houses to desirable placed to live . . . I heartily support and approve the Housing Authority’s plan.”). These units were to be developed using HUD owned homes, and HABC and HUD signed contracts for the sale to HABC of the majority of the units. Ex. 410, Executed sales contracts for various properties (BW 00356-366).

334. In August 2000, approval of the funding of these units was placed on the agenda of the Baltimore City Board of Estimates. Ex. 411, Memorandum from Patricia Payne, Commissioner to President and Members of the Board of Estimates, HABC 40 Replacement Housing Units in Non-Impacted Areas (Aug. 14, 2000) (BW 00026-00027.01).

335. Just as had happened in 1943 when defendants proposed Negro public housing in a non-minority neighborhood, and in 1950 when defendants again proposed public housing in a non-minority neighborhood, and in 1992 when defendants next proposed public housing in a non-minority neighborhood, a firestorm of racially motivated opposition broke out. Ex. 25, Kramer Deposition (3/19/03, vol. 2 at 310:5 - 314:10); Ex. 412, Videotape of newscasts relating to the 40 Hamilton units; Ex. 413, Public Housing Strategy Riles Baltimore Neighbors, Washington Post (Nov. 9, 2000) (PL 075128-075129) (quoting counsel for local defendants: “The people that spoke tried to deemphasize race, but there were a lot of buzzwords. . . Those meetings were horrible.”).

336. As the result of these community protests, decided not to proceed with these units. In January 2001 HABC notified HUD that it had decided not to proceed with these sites. Ex. 414, Letter from Paul Graziano, HABC to Harold Young, HUD (Jan. 2, 2001) (BW 00353); Ex. 25, Kramer Deposition (3/19/03, vol. 2 at 310:5 - 314:10). HUD agreed to cancel the contracts

for purchase of the proposed units. Ex. 415, Letter from Harold Young, HUD, to Denise Duval, HABC (Jan. 11, 2001) (BW 00350).

E. Although Desegregated Sites Were Identified and Available, HUD and HABC Did Not Develop Any Public Housing In These Areas.

337. In the early 1960s, at the same time that defendants were planning the development of McCulloh Extension and other segregated public housing sites, they were also looking at two vacant land sites in white areas. One site was referred to as the “Brooklyn Extension” or “Brooklyn” site, near the all-white Brooklyn Homes. Brooklyn Homes was at that time 100% white occupied, and the entire Brooklyn neighborhood was over 98% white. The second site was identified as the City Hospital site. In 1960, the residential neighborhoods surrounding City Hospital were over 95% white. Ex. 245, Memorandum from Harry Weiss to Ellick Maslan (April 28, 1961) (HA 09217); Ex. 246, Potential Public Housing Sites, Baltimore, Maryland (Aug. 19, 1960) (HA 09227); Ex. 247, MCC Responses to Neal’s Request for Admission Nos. 7 and 8; Ex. 406, Map of Sites Available in Non-Minority Concentrated Areas.

338. Both sites were evaluated by local defendants as “favorable.” Ex. 246, Potential Public Housing Sites, Baltimore, Maryland (Aug. 19, 1960) (HA 09227). In May 1961, both sites were submitted to HUD along with two sites in segregated areas (identified as “Somerset” and “McCulloh”) as part of an “unofficial” Development Program. Ex. 246A, R. C. Orser, Chronology - Development Program - 741 DUs (March 9, 1965) (HA 22549). As planned, these two vacant land sites in non-impacted areas would have brought down the land acquisition costs and therefore the total development costs for the planned public housing. Ex. 246B, Letter from

R. L. Steiner to Walter A. Simon, Public Housing Administration (August 19, 1960) (HA 09228-09229). Neither site was ever developed for public housing.

339. In 1968, when defendants were identifying the Oswego Mall turnkey site in a black neighborhood, several turnkey sites in white neighborhoods were also under consideration. These included the Belle Vista site in northeast Baltimore and the Colmar Gardens site in Medfield which HUD originally tied to site approval for Oswego Mall. Both sites were characterized by local defendants as being in “predominantly white” neighborhoods. Other sites under consideration at the same time that were characterized by local defendants as being in “predominantly white” neighborhoods were a site at 6000 Bowleys Lane in northeast Baltimore, a site at Athol and Davis Avenues in Irvington, and a site on DeSoto Road off Georgetown Road in the white neighborhood of Morrell Park. Ex. 185, Memorandum from Edgar Ewing, Map Showing Turn-Key Locations (Dec. 13, 1967) (HA 22723-44 at HA 22733-34, HA 22739-42); Exhibit 406, Map of Available Sites.

340. As of December 1967, HABC had proceeded so far with plans for these sites that City Council Ordinances for the DeSoto Road site, the Colmar Gardens site, and the Athol and Davis Avenue sites had been prepared. Ex. 185, Memorandum from Edgar Ewing, Map Showing Turn-Key Locations (Dec. 13, 1967) (HA 22723-44 at HA 22743). In June 1969, without explanation, HABC advised HUD that it wished to withdraw the “previously approved” DeSoto Road site. This request was granted. Ex. 403, Letter from R. C. Embry to Vincent Marino, HUD (June 26, 1969) (PL 053004-05). Although all five sites were approved by the BURHA Commission, the parent organization of HABC, none were approved by the City

Council. City Council ordinances were prepared for three, but none was ever developed for public housing.

341. Additional turnkey sites that were identified by local defendants as being in “predominantly white” neighborhoods under consideration at around the same time were 2400 Patapsco Avenue, in the southwest Baltimore white neighborhood of Lakeland; the 4900 block of Wetheredsville Road in the Dickeyville neighborhood; Buena Vista Avenue near 41st Street in the white neighborhood of Hamden; and Forest Park Avenue and Pickwick Road, in the Dickeyville neighborhood. Ex. 406, Map of Available Sites. As of May 1968, the Buena Vista site was listed by local defendants as “recommended.” However, none of these sites was developed for public housing. Ex. 248, Vacant Turnkey Public housing Sites for Review, with attachments (date unreadable) (HA 14766-79); Ex. 249, Memorandum from R. S. Moyer, Recommended Vacant Sites for Turnkey Public Housing (May 17, 1968) (HA 14780-82).

342. In 1969, HABC requested site approval from HUD for the “Upland Site” MD 2-48 at Old Frederick and Swann. The site was characterized by HABC as “located in a predominantly White area.” In 1970, HABC expressed concern about getting City Council approval because the City Council President was opposed to public housing on the site. This site was never developed for public housing. Ex. 250, HABC Summary of Commission-Staff Discussion (Feb. 17, 1979) (HA 16938-43); Ex. 251, Letter from R. C. Embry to Vincent Marino (Nov. 10, 1969) (HA 13344-52); Ex. 406, Map of Available Sites.

343. In 1970, HABC was considering a site which it characterized as “predominantly white” at Frederick and Millington Avenues in the Stuart Hill Conservation District. This project was planned for 120 low rise family units. Ex. 250, HABC Summary of Commission-

Staff Discussion (Feb. 17, 1979) (at HA 16941); Ex. 406, Map of Available Sites. This site was never developed for public housing.

344. In 1968, HABC was considering a site in Anne Arundel County within the HABC's 10 mile area of operation. This proposal was dropped. Ex. 252, Letter from Henry R. Lord to Joseph Burstein (August 12, 1968) (HA 16976-78); Ex. 406, Map of Available Sites.

345. In 1968, the City of Baltimore bypassed an opportunity to acquire a property on the 2500 block of Lakeland Avenue in a white neighborhood. Ex. 253, Minutes, Board of Estimates (Feb. 8, 1968) (PL 049833-35) (recommendation by City Solicitor not to proceed to acquire by eminent domain “[d]ue to the total absence of present plans by the City to use the property.”); Ex. 406, Map of Available Sites.

346. From 1964 to the present, Baltimore City has owned property appropriate for residential development in non-minority neighborhoods and/or predominantly white census tracts but has not developed public housing on any of these properties. See Ex. 6, Nathanson Report at 4-5 of Overview; Ex. 247, MCC Responses to Neal's Requests for Admission No. 21.

347. During the period 1979 to 1990, when HABC was developing hundreds of scattered site public housing sites in Baltimore's most distressed neighborhoods, and at the same time that HABC was consistently failing to comply with HUD's requirement that that a small percent of these units be developed in non-minority neighborhoods, local defendants were disposing of large numbers of vacant residential units in the Montgomery Urban Renewal Area in Federal Hill/South Baltimore located in Census Tract 2201. Ex 416, Excerpts from Baltimore City Land Disposition Records for Montgomery Urban Renewal Area. Those vacant units were all sold for private residential use. See, e.g., Ex. 417, Memorandum from M. J. Brodie to

Honorable President and Members of the Board of Estimates, Recommendation to Approve Disposition Agreement, 708 S. Sharp Street, Montgomery Urban Renewal Area, and attached Agreement (Nov. 3, 1982) (BC 001457-001487 at BC 001461) (agreement requiring the purchaser to occupy the property for at least three years); Ex. 406, Map of Available Sites. Despite their availability, none were used for public housing development. HABC has never developed any public housing in Census Tract 2201.

348. During the 1970s, Baltimore City also disposed of property in the same census tract for senior apartments. Ex. 6, Nathanson Dep., at 1.6. In the early 1980s, local defendants disposed of another property in the same census tract for private condominiums. Ex. 6, Nathanson Dep., at 1.7. Census Tract 2201, which had been approximately 50% African-American in 1970, was less than 20% African-American as of the 2000 census, as the result of local defendants' urban renewal efforts. Id.

349. In the mid-1980s, Baltimore City disposed of nine blocks of properties in the Canton Waterfront Urban Renewal Area which was developed as 133 private, high-end market townhouses. Ex. 6, Nathanson Dep., at 1.3; Ex. 418, Ordinance No. 80, Urban Renewal - Canton Waterfront - Renewal Area (June 5, 1984) (PL 076768-74) (establishing the Canton Waterfront Urban Renewal Area and authorizing the City to acquire multiple properties); Ex. 419, Land Disposition Agreement between the Mayor and City council of Baltimore and A & R/Waterford Joint Venture (Nov. 26, 1986) (PL 076777-825) (sale of property to private developer). These units are in a census tract that has negligible African-American population (2.5%). Ex. 6, Nathanson Dep., at 1.3. As with the Montgomery Urban Renewal Area dispositions, this sale was made at the same time that HABC was developing hundreds of units of scattered site public

housing in racially segregated areas and failing to comply with HUD's requirements that units be developed in non-impacted areas. HABC did not develop any public housing units on any of the Canton Waterfront Urban Renewal Area lots acquired by the City. The City did not require that the private developer create any public housing units as part of the newly developed townhouses. HABC has no scattered site public housing in Canton. Ex. 420, HABC Scattered Sites Assessments, Executive Summary (Jan. 31, 2002) (HA 74791-74797 at HA 74794).

350. In 1988, at the same time that local defendants were obligated to identify Fairfield replacement public housing units in non-impacted areas, Baltimore City sold property in northwest Baltimore for the sum of one dollar to a private entity to develop a senior center. This property was a portion of a parcel of land Baltimore City had acquired in 1959 and never developed. Ex. 421, Deed between Mayor and City Council of Baltimore, and Northwest Senior Center, Grantee (May 2, 1988) (PL077218-077223). In 1989, Baltimore City sold another piece of the same property to a private entity for the sum of \$40,000. Ex. 422, Deed between Mayor and City Council, Grantor, and Mikva of Baltimore, Grantee (April 26, 1989) (PL 077224-077227). In 1998 Baltimore City sold the last portion of this parcel for \$25,000 for development of senior housing. Ex. 6, Nathanson Dep., at 1.2; Ex. 423, Deed between Mayor and City Council of Baltimore, Grantor, and Harry and Jeanette Weinberg Woods, Inc., and Plat (Aug. 7, 1998) (PL 077228-077234, PL 077214). These properties are located in Census Tract 2720.02 in the Cheswold neighborhood of Baltimore. HABC has never developed any public housing in this neighborhood. Ex. 420, HABC Scattered Sites Assessments, Executive Summary (Jan. 31, 2002) (HA 74791-74797 at HA 74794); Ex. 406, Map of Available Sites.

351. Brightleaf is a 30 townhouse private development in Mount Washington. It was developed on property owned by the City of Baltimore. Ex. 6, Nathanson Dep., at 1.1; Ex. 424, Baltimore City Land Disposition Records for Rogene Drive and Ivymount Road (BC 002200-002285); Ex. 406, Map of Available Sites. Baltimore City began looking for a purchaser for this 5.550 acre parcel in around 1979. See Ex. 424, Baltimore City Land Disposition Records for Rogene Drive and Ivymount Road (BC 002200-002285 at BC 002260). In 1984, after getting input from the local City councilpersons and the neighborhood association, id. at BC 002233-002237, the property was sold for \$42,000 to a private developer. Id. at BC 002203. The conveyance included provisions that the community association would have input in the development. Id. at BC 002207-002208. HABC has never developed any public housing in the Mount Washington neighborhood.

352. In March 1986 the Urban Renewal Plan for the Key Highway Area was approved. Ex. 425, Ordinance No. 622, The Approval of an Urban Renewal Plan for the Key Highway Area (March 12, 1986) (PL 076915-76918). Baltimore City never developed any property in this urban renewal area for scattered site public housing, although the census tract in which it is located has a negligible African-American population. Instead, in 1998, Baltimore City sold City-owned property in the Key Highway Urban Renewal Area to a private developer for development of market rate townhouses. Ex. 6, Nathanson Dep., at 1.4; Ex. 426, Land Disposition Agreement between Department of Housing and Community Development and 840 Key Highway Limited Liability Company (Oct. 7, 1998) (PL 076952-077019); Ex. 406, Map of Available Sites.

353. In the mid to late 1990's Baltimore City disposed of a vacant parcel of City-owned land at 1351 S. Clinton Street for development of AHEPA (American Hellenic Educational Progressive Association) Senior Apartments, in Canton. Baltimore's Greek community was involved in this development. The City sold the land "on very generous terms." In addition to subsidizing the sale through reduced land cost, HUD allowed Baltimore City to subsidize this development with \$1,066,000 in HOME funds for this senior housing project. Baltimore City did not offer this property to HABC for development of family public housing. Ex. 6, Nathanson Dep., at 3.6; Ex. 9, Deposition of Stephen Janes (7/18/03) at 81:18 - 85:16; Ex. 406, Map of Available Sites. HABC has no family or scattered site public housing in the Canton neighborhood.

354. In addition to disposing of the above large tracts of land, Baltimore City has failed to develop public housing on numerous City-owned smaller tracts of land in areas considered non-impacted by HABC and HUD (African-American population less than 60%), including: 700 block of Singer Ave. in Hamden sold in 1983 (Census Tract 1306)(BC 002338-80); 531 S. Lakewood in Canton sold in 1986 (Census Tract 103) (BC 003374); 4517-21 Schenley in Roland Park sold in 1986 (Census Tract 2714) (BC 002306-36); 1229 S. Charles St. in Federal Hill sold in 1990 (CT) (LD 014438); 400 Millington Ave. in 1990 (CT 2005) (LD 014436); 1426 E. Fort Ave. in Locust Point in 1991 (CT 2401) (LD 005231-32, LD 014944--46); 1317 S. Hanover Street in Federal Hill in 1992 (CT 2301) (BC 003357); 2947-49 Hudson St. in Canton in 1993 (CT 101) (BC 003368); 3320 Southern Ave. in Watherson sold in 1996 (Census Tract 2703.02) (BC 002381-89); 1414-1416 Lyman Ave in the Guilford/Homeland area (Census Tract 2712) (LD 005242-58); 2913 Echodale Ave. in Lauraville (Census Tract 2703.01) (LD 010886); 2639

Fait Ave in Canton in 2001 (CT 104) (BC 001975); 606 Ann St. in Fells Point in 2001 (CT 203) (find doc reference); 1300 Bayliss St. in Canton in 2001 (CT 2606.05) (BC 001975); 1312-40 Towson St. in Locust Point (CT 2401) (BC 6415-17). Ex. 427, Selections from Baltimore City Land Disposition Records; Ex. 406, Map of Available Sites.

355. Privately owned vacant land was also available in non-impacted areas for residential development. During this period, the Heather Ridge Development at Red Cedar Place and Baneberry Court in Cheswold, The Towers in Cheswold, Roland Springs in Roland Park, Cross Keys, the Foster Avenue Townhouses in Canton, the S. Luzerne Avenue Townhouses in Canton, Washingtonville Addition in Lake Falls, Cambridge Walk in Canton, Canton Gables in Canton, Greenberry Woods in Mount Washington, Mount Washington Court in Mount Washington, Deer Ridge in Roland Park, Fireside Circle in Homeland and Villages of Homeland East in Homeland Southway, were all developed in non-impacted areas of the City. Defendants made no effort to develop public housing on any of these sites. Ex. 6, Nathanson Dep., at 2.1-2.15.

F. HABC Was Not Prevented from Developing Public Housing in Non-Impacted Areas by the Cost of Such Development.

356. The properties described in paragraphs 346-355 were City-owned. The cost of acquisition did not prevent local defendants from developing these properties for public housing. In addition, defendants cannot show that cost was a barrier to development of public housing on non-impacted sites that were privately owned.

357. PHAs are limited in the amount of public housing development dollars they can spend to develop public housing by HUD's Total Development Cost (TDC). The TDC is set by

HUD by regulation. See, e.g., Ex. 428, Amendment to Calculation of Total Development Cost, Interim Rule, 58 FR 62522 (Nov. 29, 1993) (HUDBAL 002866-69); Ex. 429, Public Housing Total Development Cost, Final Rule, 67 FR 76096 (Dec. 10, 2002) (PL 058433-40).

358. While the TDC limits the amount of public housing dollars than can be spent to develop each unit of public housing, there is no limit on the use of other funds to supplement this, such as CDBG, HOME, low-income tax credits, private donations and private financing. Id. In addition, HUD itself has stated that that its current TDC is not a barrier to development of public housing in non-impacted areas. Ex. 429, Public Housing Total Development Cost, Final Rule, 67 FR 76096 (Dec. 10, 2002) (PL 058433-40 at PL ?????) (responding to comment that the TDC would restrict development to impacted areas, HUD responded that the TDC imposed no such restrictions); cf. Ex. 430, Letter from Paul Graziano to Unabyrd Ervin-Jones, with attachments (May 8, 2002) (HA 69647-87) (acknowledging the difficulties of urban development, and that the hard cost of urban “redevelopment might exceed the cost of building at the periphery”).

359. HABC has never advised HUD that it was unable to develop public housing in non-impacted areas because of the TDC limits, and has never requested a waiver of the TDC limits to allow public housing development in non-impacted areas. In contrast, HABC has requested, and HUD has granted, waivers of the TDC limits for public housing development in impacted areas. Ex. 431, Letter from Christopher Hornig, HUD, to Daniel Henson, HABC (Sept. 4, 1996) (HUD 17419-21) (waiving TDC for Lafayette redevelopment by 58%); Ex. 432, Letter from Kevin Marchman, HUD, to Estella Alexander, HABC (Dec. 15, 1997) (HUD 13901-13903) (waiving TDC for Lexington development).

G. It Is Baltimore City’s Policy To Concentrate Assisted Housing in Inner-City Areas as Well as Requiring Community Support for Development of Assisted Housing.

360. In its planning documents, Baltimore City has routinely planned to concentrate assisted housing in its most distressed neighborhoods. For instance, in its current Consolidated Plan July 2000 - June 2005 (the HUD-required planning document for use of HUD funds), Baltimore City identifies the “Inner Core of the city” as that area of the city with large numbers of abandoned houses, unoccupied houses, vacant lots, poor condition of the occupied housing, generally very low household incomes, and very high level of social problems. Ex. 433, Baltimore City Department of Housing and Community Development, Consolidated Plan, July 2000 - June 2005 (HA 62209-393 at HA 62222). One of the objectives for the distressed “Inner Core of the city” under this plan is to “provide affordable rental opportunities for low-income households” *Id.* at HA 62292. The Plan also defines the “Middle Ring” of the city (area with increasing problems but without the degree of problems found in the “Inner Core”) and the “Outer Ring” (area with a tight housing market and rising property values). *Id.* at HA 62223-62224. In sharp contrast to the plan for the distressed “Inner Core,” the Plan does not call for any affordable rental opportunities for low-income households in these more desirable neighborhoods. *Id.* at HA62294-62299. See also Ex. 436, City of Baltimore, Comprehensive Housing Affordability Strategy, 1994-1998 (Dec. 30, 1993) (HA 71784-71906 at HA 71886) (City Plan admitting that “activities serving very-low- and low-income households are concentrated in the inner-city areas” whereas “[h]omeownership activities affecting moderate

income households tend to have a citywide distribution, although the concentration is in outer city areas.”).

361. In addition, it is Baltimore City’s policy to require community support prior to development of assisted housing for low income persons. Ex. 434, Baltimore Department of Housing and Community Development, Developer’s Funding Guide (BW 00436-00448 at BW 00441) (requirement that developers wishing to develop low-income housing “include letters of community support” as part of the development proposal); Ex. 9, Janes Deposition (7/18/03) at 17-20 (application goes no further if developer fails to provide evidence of community support).

H. HUD Has Concentrated Its Assisted Housing in the Baltimore Housing Market in Baltimore City.

362. HUD defines the “housing market area” as the Metropolitan Statistical Area. See, e.g., Ex. 435, HOPE VI Programs Application, 2001 (PE6 6524-6625). Baltimore is part of the Metropolitan Statistical Area including Anne Arundel, Baltimore, Carroll, Harford, Howard and Queen Anne’s county. Ex. 436, City of Baltimore, Comprehensive Housing Affordability Strategy, 1994-1998 (Dec. 30, 1993) (HA 71784-71906 at HA 71790). While Baltimore City is currently 64% African-American, the metropolitan area is only 28% African-American. Ex. 436A, Expert Report of Federal Defendants’ Expert Shelby Lapkoff, at 5. HUD has not only concentrated public housing in the most racially impacted areas of Baltimore City. In addition, HUD has concentrated the subsidized housing in the metropolitan area in its most racially impacted jurisdiction, Baltimore City.

363. Only 32% of the metropolitan area’s households live in Baltimore City. Ex. 436, City of Baltimore, Comprehensive Housing Affordability Strategy, 1994-1998 (Dec. 30, 1993)

(HA 71784-71906 at HA 71793). However, HUD has concentrated 89% of the area's public housing in Baltimore City, and has concentrated 50% of the housing area's Section 8 housing in Baltimore City. Id. at HA 71794. In total, almost 72% of the subsidized rental units in the metropolitan area are in Baltimore City. Id.; see also Ex. 437, Memorandum from Earl W. Cole to Thomas R. Hobbs, with attachments (Nov. 6, 1980) (HUD 4444-4461) (shows that HUD decided the "fair share" of assisted housing for the jurisdictions in the Baltimore housing market area and distributed subsidies accordingly); Ex. 13, Deposition of Thomas Hobbs at 33-37.

364. In addition, although up until 1990 HABC was authorized to operate public housing outside the limits of Baltimore City itself, HUD never required that HABC do so, and never assisted HABC to do so. Ex. 438, Letter from Thomas P. Perkins to Stanley Campbell (May 6, 1992) (LD 004935-37 at LD 004936) (explaining that HABC's area of operation had included the 10 mile radius around the City up until 1990); Ex. 439, HABC Application for a Low-Rent Housing Program (Sept. 1966) (HA09274-09292 at HA 09287) (defines legal "area of operation" as including 10 mile radius around the City); Ex. 12, Deposition of William Tamburrino (11/21/02) at 162-163. Since 1990, HABC has had authority to administer rent subsidies and housing assistance programs without regard to its territorial boundaries and beyond the ten-mile radius. See Md. Ann. Code, Article 44A, Section 1-103(b). HUD has produced no evidence that it ever even attempted to assist HABC to exercise this right and develop public housing in the surrounding counties.

365. As a result, Baltimore City has become a "regional magnet" for families unable to afford housing on the private market. Ex. 436, City of Baltimore, Comprehensive Housing Affordability Strategy, 1994-1998 (Dec. 30, 1993) (HA 71784-71906 at HA 71795). According

to Baltimore City, “[l]iving in the City does not cause people to be poor. But being low income does cause people to concentrate in the City because virtually no where else in the metropolitan [area] is there housing they can afford!” Ex. 440, Census News 1990, Baltimore City Department of Planning (July 1992) (PL 079453-079462 at PL 079462) (see also at PL 079453, “A word from the Mayor” -- “What I find particularly interesting, however, is what the data suggests about why the City’s population is on average poorer than in the suburbs. It is not that living in the City makes one poorer. Rather, the majority of ‘affordable’ housing in the metropolitan areaa is in Baltimore City. The costs of housing in the suburban counties assures that most lower income households in the metropolitan area will be found in the City.”).

I. As a Result of Defendants’ Siting Practices and Policies, HABC’s Public Housing Is Concentrated in Distressed Neighborhoods.

366. As a result of HUD and HABC siting decisions, HABC’s inventory of public housing units are concentrated in distressed neighborhoods. Ex. 5, Pendall Family Projects, at 1; Pendall Scattered Site at 1.

367. In 1970, more than four-fifths of Baltimore’s public housing units were located in extreme poverty census tracts, and 95% were located in high-poverty tracts. Ex. 5, Pendall Family Projects, at 7, Table 1. Of the nine projects opened after 1970, five projects, with 1,048 units, were located in extreme poverty tracts. Id. Four projects (with 1,257 units) were located in areas with poverty rates below 20 percent. Id. However, the vast majority of these units originally located outside high poverty areas (1000 units at Hollander Ridge and 121 units at Charles K. Anderson) have subsequently been demolished by HABC and HUD. See *Infra* at ¶¶ 458, 469.

368. As of 1990, HABC's public housing was concentrated in extreme poverty census tracts. Eighty-eight percent (or 11,065) of HABC's family public housing units (other than scattered site) were in extreme-poverty census tracts. An additional 926 units were in high poverty census tracts. The remaining two projects, Brooklyn (500 units) and Rosemont (106 units) were in tracts with between ten and twenty percent poverty. Ex. 5, Pendall Family Projects, at 9, Table 2.

369. In addition, all of HABC's public housing developments (other than scattered site) were located in distressed census tracts in 1990. Sixteen of the public housing developments in 1990 were in severely distressed tracts (Albert Spencer Gardens, Charles K. Anderson, Cherry Hill/Cherry Hill Ext./Cherry Hill Ext. II, Fairfield, Flag House, Latrobe, Lexington Terrace, McCulloh Homes, McCulloh Extension, Mt. Winans, O'Donnell Heights, Perkins, Poe Homes, Somerset Courts Extension, The Broadway and Westport/Westport Extension). The remaining developments (Brooklyn, Claremont, Douglass, Dukeland, Emerson Julian Gardens, Murphy Homes, Gilmore, Hollander Ridge, Lafayette Courts, Oswego Mall, Rosemont, and Somerset) were located in moderately distressed census tracts. Ex. 5, Pendall Family Projects, at 11, Table 3.

370. HABC does not contest that the vast majority of its public housing developments are in distressed neighborhoods. According to HABC, twenty of HABC's twenty-six family public housing developments are in neighborhoods which local defendants characterize as distressed. Ex. 441, Baltimore Department of Housing and Community Development, Consolidated Plan, July 2000-June 2005 (HA 62209-62393 at 62280); see also Ex. 8, Schuman Deposition (3/24/03), at 76:4-76:17, 143:21-147:22 (listing developments where HABC has

difficulty attracting tenants because of neighborhood conditions and crime); Ex. 19A, Graziano Dep. at 235:18-239:9.

371. Of the other six developments, five are in neighborhoods characterized as “neutral” by HABC (O’Donnell, Brooklyn, Rosemont/Dukeland, Oswego Mall and Hollander Ridge). HABC characterizes only one, Claremont, as being in a “stable” neighborhood. Ex. 441, Baltimore Department of Housing and Community Development, Consolidated Plan, July 2000-June 2005 (HA 62209-62393 at 62280). Three of these six developments are the three de jure white projects developed in white, outer-city neighborhoods. Another, Hollander Ridge, has subsequently been completely demolished by HABC. See infra at ¶ 458. The remaining two, Rosemont/Dukeland and Oswego Mall, are two smaller developments in outer-city African American neighborhoods containing a total of 171 units. Ex. 441, Baltimore Department of Housing and Community Development, Consolidated Plan, July 2000-June 2005 (HA 62209-62393 at 62280); see also Ex. 441A, HUD Office of Policy Development and Research, Public Housing in a Competitive Market: An Example of How it Would Fare (April 1996) (PL 045639-045685) (HABC’s public housing “is distinctive in comparison to the metropolitan area’s private rental housing stock.” The “most dramatic” difference is location. “Large numbers of [public housing] developments and scattered-site units are concentrated in several areas adjacent to the downtown business district. These are areas with a high incidence of crime, vandalism, and neighborhood decay.”).

372. Baltimore’s scattered site inventory is also located in distressed neighborhoods. The scattered site units were originally developed in neighborhoods with very high poverty rates. Eighty-five percent of those developed before 1980 were in census tracts with over 20% poverty;

99% of those developed during the 1980s were in census tracts with over 20% poverty, and 92% of those developed during the 1990s were in census tracts with over 20% poverty. Ex. 5, Pendall Scattered Site, at Table 4 (p. 5), Table 6 (p. 6) and Table 8 (p.7). As of 2000, over 90% of the scattered site inventory was in high poverty census tracts (over 20% poverty) and nearly 40% of the units are in extreme poverty census tracts (over 40% poverty). Id. at 3.

373. HABC and HUD agree that HABC's scattered site units are concentrated in distressed tracts. HABC has admitted that its scattered site units are "decrepit" and "located in neighborhoods where people (yes, even public housing residents) do not want to live anymore. Most were purchased and rehabbed in the early 1970's, in communities where disinvestment was already taking place. Things got worse, not better in the intervening years." Ex. 442, Letter from Daniel Henson, HABC to Harold Lucas, HUD (Aug. 23, 1999) (HUD 06935-06938 at HUD 06938). HUD has admitted that many of the scattered site units "are located in very distressed, non-viable neighborhoods." Ex. 443, Letter from William Tamburrino, HUD to Ainars Rodins, HUD (Aug. 23, 1999) (HUD 09857-09858 at HUD 09857). See also Ex. 19A, Graziano Dep. at 48:19-57:1; 249:3-249:16.

374. Baltimore City has developed a "Neighborhood Housing Market Typology" which classifies Baltimore's neighborhoods into four types. "Preservation" neighborhoods are defined as "[h]ealthy, attractive areas with high property values and high owner occupancy rates." "Stabilization" neighborhoods are defined as "[s]olid homeownership areas showing initial signs of stress." "Reinvestment" neighborhoods are defined as neighborhoods with "[v]isible signs of decline, but not highly concentrated." The most distressed neighborhoods, identified as "Redevelopment" neighborhoods, have "[s]ignificant deterioration of housing stock with dense

concentrations of abandoned buildings and vacant lots.” Ex. 444, Baltimore’s Neighborhood Housing Market Typology, City of Baltimore, Department of Planning (May 2002) (Exhibit 4 to Ex. 7, Conrad Deposition); Ex. 7, Conrad Dep., at 140:5-149:2. The redevelopment neighborhoods are primarily located in East and West Baltimore (the old black East Ghetto and West Ghetto), and the Park Heights corridor. Ex. 444, Baltimore’s Neighborhood Housing Market Typology, City of Baltimore, Department of Planning (May 2002) (Exhibit 4 to Conrad Deposition); Ex. 7, Conrad Dep., at 167:10 - 168:4. Most of Baltimore’s residential neighborhoods fall into the two middle categories. Out of 237 neighborhoods total, 105 are “Stabilization” and 71 are “Reinvestment.” Another 40 are in the highest category, “Preservation.” Only 21 neighborhoods fall into the most distressed, “Redevelopment,” category. Ex. 444, Neighborhood Typology Chart (BC 000380-388 at BC 000391).

375. Baltimore’s scattered site inventory is concentrated in these 21 “Redevelopment” neighborhoods. Of the 2,872 scattered site units developed by HABC, over 72% (2076 units), are located in “Redevelopment” neighborhoods. Sixty percent of the total units (1729 units) are further concentrated in nine neighborhoods, Barclay (118 units), Broadway East (133 units), Franklin Square (173 units), Harlem Park (227 units), Johnston Square (268 units), Middle East (255 units), Oliver (137 units), Sandtown-Winchester (302 units) and Upton (116 units). Ex. 420, HABC Scattered Sites Assessments, Executive Summary (Jan. 31, 2002) (HA 74791-74797) (Executive Summary lists all scattered site units developed by neighborhood); Ex. 444, Neighborhood Typology Chart (BC 000380-388) (lists residential neighborhoods and identifies by typology); Ex. 7, Conrad Deposition, 149:5-157:3.

376. Another 25% (727 units) of the units are located in the second most distressed type of neighborhood, “Reinvestment” neighborhoods. Only a handful (fewer than 40 units) are in “Stabilization” neighborhoods. No scattered site units at all were ever developed in any of Baltimore’s 40 most stable neighborhoods, the “Preservation” neighborhoods. Id.

377. As the result of the poor siting of these scattered site units, many are no longer viable. Of the total 2,872 scattered site units, HABC has determined that 923 are no longer viable. These non-viable units are more concentrated in “Redevelopment” neighborhoods than the scattered site units as a whole; Over 90% (833 units) of the non-viable units are in “Redevelopment” neighborhoods. Id.

J. HUD Has Full Authority To Require that HABC Comply with Federal Requirements, Including Federal Fair Housing Mandates.

378. It is the function of the Baltimore Field Office of HUD to enforce federal housing laws. Ex. 12, Tamburrino Deposition (Nov. 21, 2002), at 56. Compliance with federal law, including federal Civil Rights laws, is a condition of receiving federal funds to operate HABC’s programs. Id. at 14-16. HUD has a wide range of sanctions it can impose on HABC to carry out this task, ranging from requiring that HABC receive approval from HUD before taking any action in any area HUD considered to be a problem, to declaring HABC ineligible to receive certain new funds, to rescinding existing funds, to imposing a receivership. Id. at 56-101; Ex. 445, GAO Report, Information on Receiverships at Public Housing Authorities (Feb. 2003) (PL 91877-91931); Ex. 11A, Kaplan Dep., at 51 (explains that HUD chose to focus fair housing enforcement efforts on public housing because it was “the program where the Department’s involvement, direct involvement, was the greatest because the public housing program was a

highly regulated program with a great deal of direction by HUD and a great deal of involvement by the Department in the activities of each public housing authority.”).

379. HUD has full knowledge of HABC’s activities. HUD admits that it has had a “constant presence at HABC,” and that it has “continually scrutinized” HABC’s activities. Ex. 12A, Tamburrino Declaration submitted in support of Federal Defendants’ Motion to Dismiss, or, in the alternative, for Summary Judgment, at 2.

K. HUD Never Exercised Its Authority To Require that Local Defendants Develop PH in Non-Minority Areas.

380. Through its own monitoring and review of local defendants’s federally funded public housing activities, HUD has known for more than two decades that Baltimore’s family public housing is concentrated in areas of minority concentration, and that “sufficient comparable assisted housing opportunities” do not exist outside areas of minority concentration within the meaning of HUD’s site and neighborhood standards. Ex. 203, Memorandum from Maxine Cunningham to Thomas Hobbs, FHEO Site Review - Upton - Section 236 - 180 units (Mar. 13, 1979) (HUDBAL 000512-14) (HUD determined that about two thirds of all assisted family housing units in Baltimore were in census tracts that were over 60 percent black, and that only 4 percent of all assisted housing units were in census tracts that were integrated or between 40 and 60 percent black); Ex. 254, Letter from Robert Hearn to Dean Reger (Jan. 5, 1990) (HUD 027562-85) (HUD monitoring review of Baltimore’s Community Development Block Grant (CDBG) program found that Baltimore lacked public housing units in non-minority concentrated neighborhoods and was failing to affirmatively further fair housing); Ex. 255, Memorandum from LaVerne Brooks to Dean Reger, FHEO Site Review (May 16, 1990) (PL 32976) (HUD

FHEO review denying site approval in minority impacted area because there are not comparable assisted units outside areas of minority concentration). In fact, HUD has never found that “sufficient comparable housing opportunities” do exist outside areas of minority concentration in Baltimore City.

381. HUD has also repeatedly found that the vast majority of HABC’s public housing is racially identifiable. Ex. 256, Letter from Thomas Hobbs to M. J. Brodie (Mar. 19, 1982) (HUD3341-3342) (1981 finding that the majority of HABC’s public housing projects were racially identifiable); Ex. 39, Letter from St. George I. Crosse to Robert Hearn, with attached Fair Housing and Equal Opportunity Monitoring Report (Sept. 30, 1988) (632-37 at 634) (1988 HUD finding that 44 of HABC’s 48 public housing developments were racially identifiable); Ex. 257, Letter from Harold Jackson to Robert Hearn with attached Fair Housing and Equal Opportunity Monitoring Review (Sept. 30, 1991) (HUD27553-27561) (1991 HUD finding that HABC continued to operate racially identifiable projects, and that 45 of HABC’s 48 public housing developments were racially identifiable). HUD’s Rule 30(b)(6) designees also have testified that a housing authority is “not in compliance with Title VI” when the authority operates racially identifiable projects. See Ex. 16, Deposition of Rheba Gwaltney (Jan. 29, 2003) at 81-82; see also Ex. 14, Deposition of Laverne Brooks (Feb. 6, 2003) (“Brooks Dep.”) at 267; Ex. 33, John Goering et al., The Location and Racial Composition of Public Housing in the United States at 64 (Dec. 1994) (HUD 00038-147) (finding that Baltimore’s public housing is among the most highly segregated in the nation).

L. HUD Took No Action Despite CDBG Monitoring Findings That Baltimore Was Not Affirmatively Furthering Fair Housing.

382. HUD conducted monitoring reviews of Baltimore CDBG activities through the 1980s and found several violations. See Ex. 263, Memorandum of Laverne Brooks to Dudley Gregory (Apr. 13, 1990) (0773); Ex. 264, Memorandum of Harold Jackson to Laverne Brooks (Apr. 30, 1990) (0774). These reviews resulted in findings that “the City has failed to carry out the fair housing requirements of the CDBG program.” Id.

383. In September 1989, HUD conducted a review of Baltimore City’s CDBG activities for the prospective fiscal year. Pursuant to that review, HUD found that Baltimore City lacked available public housing units in non-minority concentrated neighborhoods, and that this constituted an impediment to fair housing choice in Baltimore. Ex. 265, Letter from Robert Hearn to St. George I.B. Crosse, with attachments (Oct. 16, 1989) (0661-88 at 0666). See also Ex. 446, Letter from St. George Crosse to Robert Hearn with attached Monitoring Report (Sept. 11, 1989) (HUD 277795-27800 at HUD 27797) (monitoring report acknowledges report documenting impediments to fair housing including the impediment of “lack of available public housing units in nonminority concentrated neighborhoods”).

384. In response to this monitoring finding, Baltimore City stated that it would “target areas identified in the census tracts of communities with little or no minority representation for public and all other types of housing activities to provide a choice of housing opportunities throughout Baltimore City.” Ex. 265, Letter from Robert Hearn to St. George I.B. Crosse, with attachments (Oct. 16, 1989) (0661-88 at 0666). In addition, HABC provided documentation to HUD of the efforts it would take to achieve this goal, which included assurances that HABC

would “locate Fairfield replacement housing in census tracts and neighborhoods that are not areas of minority concentration or areas with a concentration of assisted families.” Id. at 0666, 0678. HABC did not locate replacement housing in neighborhoods that were not areas of minority concentration; HUD took no enforcement action against HABC.

385. In February 1990 HUD FHEO advised HUD internally that Baltimore City still had not demonstrated that it was complying with the requirements to affirmatively further fair housing, and recommended that the City again be requested to develop a written action plan documenting actions to be taken to affirmatively further fair housing, including actions to address “Site Selection Policies.” Ex. 447, Memorandum from LaVerne Brooks to Harold Young (Mar. 15, 1990) (HUD27645-27647 at HUD 27646). In April 1990, HUD required HABC to provide a written action plan with goals and milestones, describing each action the City would take to remove the six impediments to fair housing choice identified earlier by the City, including the impediment of the lack of available public housing units in non-minority concentrated neighborhoods. Ex. 266, Letter from Dean Reger to Robert Hearn (Apr. 13, 1990) (0764-72 at 0770-71).

386. In May 1990, the City merely repeated that it would target communities with little or no minority representation, but did nothing to implement its “promise.” Ex. 267, Letter from Robert Hearn to Dean Reger with attached Response to HUD’s Annual In-House Audit Review (May 18, 1990) (0775-0814 at 0784). In November 1990, HUD issued CDBG monitoring findings that Baltimore City’s CDBG program was in “substantial noncompliance with applicable laws and regulations.” Ex. 448, Letter from Maxine Saunders, HUD to Robert Hearn, HABC, with attached Monitoring Report (Nov. 13, 1990) (HUD 27709-27787 at HUD 27710).

The Monitoring Report found that HABC was out of compliance with fair housing requirements in that HABC had failed to provide goals and milestone for each action that will be taken to remove the identified impediments to fair housing choice, including site selection issues. Id. at HUD 277777-78.

387. Two years later, HUD “reminded” Baltimore City about “the open CDBG monitoring finding” regarding the “important requirement” of the obligation to affirmatively further fair housing. Ex. 449, Letter from Maxine Saunders to Robert Hearn (July 15, 1992) (LD 005745-005747 at LD 005745). In the same letter, HUD advised the City that HUD was “pleased to inform” the City that HUD’s review of the HOME program “has been completed and that the program description has been approved.” Id. HUD took no enforcement action against Baltimore City for failing to comply with its obligation to affirmatively further fair housing.

388. In the spring of 1995, HUD notified Baltimore City of the requirement that Baltimore City develop an Analysis of Impediments to fair housing, identify actions to eliminate any identified impediments, and maintain of records regarding Affirmatively Furthering Fair Housing, by February 6, 1996. On February 27, 1996, when HUD had not received the mandated Analysis of Impediments, HUD took no enforcement action against Baltimore City. Instead, it merely advised the City to request an extension of time to complete the Analysis of Impediments. Ex. 450, Letter from Harold Jackson, HUD to Stephen Janes, DHCD (Feb. 27, 1996) (HUDBAL 002537-002539).

389. Baltimore eventually completed an Analysis of Impediments later that year. Its 1996 Analysis of Impediments to Fair Housing identifies racial segregation in public housing as an impediment to fair housing in the Baltimore area. Ex. 268, Analysis of Impediments to Fair

Housing in the Baltimore Metropolitan Area (Nov. 1996) (HA 61919-90). HABC has never prepared its own Analysis of Impediments to Fair Housing. Ex. 19B, Deposition of Amy Wilkinson (2/25/03) at 146:19-147:3.

390. In 1996, HUD conducted an on-site fair housing and equal opportunity monitoring review of Baltimore City's CDBG program. The review found that although Baltimore City had developed an Analysis of Impediments to Fair Housing, it had not "developed and documented actions to remove the identified impediments to fair housing choice" identified in the Analysis of Impediments. HUD took no enforcement action against Baltimore City for this fair housing violation. Ex. 451, Letter from Harold Jackson to Daniel Henson with attached Monitoring Review (Dec. 17, 1996) (HUDBAL 003458-003463 at HUDBAL 003463).

391. In 1998, HUD reminded Baltimore City that it has a statutory duty to affirmatively further fair housing, and that HUD had determined to enforce this by requiring grantees to develop action plans to address identified impediments to fair housing. At the same time, HUD advised Baltimore City that it had failed, in both its FY 1997 and FY 1998 Action Plans, to address the activities that City would take to affirmatively further fair housing. HUD further stated "[i]t appears that the City is not proceeding with a sense of urgency to develop and implement a strategy which would address the impediments described in the region-wide analysis of impediments." Ex. 452, Letter from Joseph J. O'Connor, HUD to Daniel P. Henson (Sept. 28, 1998) (HUD 29995-30004 at HUD 29999-30000). HUD took no enforcement action against Baltimore City for this fair housing violation.

392. In 2000 HUD again reminded Baltimore City of its obligation to develop an Action Plan including "planned actions to overcome impediments which will be taken during the

consolidated program year.” Ex. 453, Letter from Joseph O’Conner, HUD to Patricia Payne (March 31, 2000) (HA 74085-74102 at HA 74088-89).

393. In September 2000 HUD undertook a monitoring review of Baltimore’s CDBG program with primary focus on financial and economic development activities, and a “limited review” of fair housing and equal opportunity issues. Ex. 454, Letter from Joseph O’Connor, HUD to Patricia Payne (Sept. 27, 2000) (HUD 30111-30137). The results, if any, of the fair housing monitoring are not included in the monitoring report. Id.

394. In June of 2001 HUD reviewed HABC’s performance with respect to use of HUD funds for the 1999 Program year. As the result of that review, HUD advised Baltimore City that it remained out of compliance with HUD’s requirements that the City identify actions it is taking to overcome the effects of fair housing impediments. However, although Baltimore City had no actions to address the impediment of segregation in public housing, HUD did not identify this as a problem area. Instead, HUD advised Baltimore City that it was in compliance with HUD requirements and “congratulate[d] the City on its many accomplishments.” Ex. 455, Joseph O’Connor, HUD to Paul Graziano (June 11, 2001) (HUD 29986-29994 at HUD 299992-94).

395. In August 2002 HUD performed an on-site monitoring of Baltimore City CDBG program, including a “limited civil rights review.” HUD determined that it was unable to ascertain whether Baltimore City provided “sufficient housing choice to displacees in neighborhoods outside of areas of minority concentration” and recommended that the Fair Housing Program Center follow up in this area. HUD took no further enforcement action regarding this fair housing violation. Ex. 456, Memorandum from Charles Halm, HUD to LaVerne Brooks, HUD (Aug. 9, 2002) (HUD 30083-098).

396. HUD never performed a Title VI review of Baltimore City's failure to provide public housing outside areas of minority concentration.

M. Despite HUD's Repeated Findings That HABC's Occupancy Patterns Violated Fair Housing Requirements, HUD Did Not Determine that HABC Was Violating Title VI Until 1998 and HUD has Never Reviewed HABC's Site Selection Practices.

397. Pursuant to its programmatic obligation to conduct monitoring reviews of federally assisted public housing authorities, HUD repeatedly has found that HABC violates Fair Housing requirements and operates racially segregated public housing. However, HUD has never required that HABC take steps to remedy these problems, and despite HABC's long practice of siting public housing in minority concentrated areas, has never performed a formal Title VI compliance review of HABC's siting practices.

398. In April 1981, HUD performed an "Occupancy Audit" of, among other things, HABC's "occupancy practices and policies," including the authority's tenant selection and assignment practices and policies. See Ex. 164, Letter from Thomas R. Hobbs to Michael Kelly, with attached Occupancy Audit (June 30, 1981) (HUDBAL 001131-52). That review found that, in Baltimore, applicants had been allowed to "specify their housing preference by geographic area and . . . may decline an unlimited number of units within [the one preferred] geographic area without losing his/her application status." Id. at HUDBAL 001137. The letter memorializing the findings of the audit observed that this practice was inconsistent with the tenant selection and assignment plans that had been approved by HUD, and concluded that HABC's tenant selection and assignment practice "pose[d] a potential problem in *that it could tend to exacerbate existing*

racially segregated conditions within HABC's projects." Id. at HUDBAL 001137-38 (emphasis added).

399. The audit did not even mention, much less make any findings or recommendations regarding, HABC's site selection practices.

400. A few months later, in a December 1981 Monitoring Finding, HUD found that the majority of the public housing projects owned and managed by HABC were racially identifiable. Ex. 256, Letter from Thomas Hobbs to M. J. Brodie (Mar. 19, 1982) (HUD3341-3342). However, HUD did not mandate that HABC desegregate projects by requiring that new public housing development be in non-impacted areas. Id.

401. Instead, HUD continued to approve public housing development in minority concentrated areas.

402. In the spring of 1988, HUD performed a Title VI monitoring review of HABC in which it determined that, since "[f]orty-four of the forty-eight projects consists of more than 90 percent minority occupants," HABC "continue[d] to operate racially identifiable projects." Ex. 39, Letter from St. George I.B. Crosse to Robert Hearn, with attached Fair Housing and Equal Opportunity Monitoring Report (Sept. 30, 1988) (632-637 at 634); see also Ex. 14, Brooks Dep. (Feb. 6, 2002) at 202.

403. Accordingly, HUD suggested that, by way of "Corrective Action," HABC could seek the "recertification of the waiting list or changing from tenant selection assignment plan B (three-offer plan) to plan A (one-offer plan) to achieve racial balance in some of your projects." Ex. 39, Letter from St. George I.B. Crosse to Robert Hearn, with attached Fair Housing and Equal Opportunity Monitoring Report (Sept. 30, 1988) (632-637 at 634).

404. The 1988 monitoring review did not address HABC's site selection practices. HABC did not change its tenant selection and assignment plan.

405. At about the same time, in 1988, HUD's Regional Office conducted a Title VI compliance review of HABC. Those findings were not finalized or published to HABC. See Ex. 258, Memorandum from Maxine Saunders to Barry Anderson (Nov. 6, 1990) (HUDBAL 000291-93 at HUDBAL 000293). If a record of the review exists, it has not been produced by HUD or HABC.

406. Two years later, HUD notified HABC by letter that, pursuant to a request from the Secretary, HUD had conducted a review of "tenant selection and assignment policies and practices" of various authorities, and had concluded that HABC's tenant selection and assignment policies and practices violated "the Department's Regulations and handbooks" because the authority allowed tenants to express locational preferences without agency approval. Ex. 259, Letter from Barry C. Anderson to Robert Hearn (Aug. 24, 1990) (199-200 at 199). This tenant selection and assignment plan had been expressly approved by HUD in 1969. Ex. 163, Letter from Vincent A. Marino to Robert C. Embry (Jan. 17, 1969) (0197-98). Additionally, HUD was aware from its 1981 monitoring review that HABC allowed applicants to specify locational preferences and to turn down an unlimited number of units without losing their place on the waiting list. Id.

407. This 1990 letter was silent as to HABC's site selection practices.

408. In November 1990, the Manager of HUD's Baltimore Area Office recommended to the HUD Regional Office in Philadelphia that HUD perform a Title VI Compliance Review on HABC. See Ex. 258, Memorandum from Maxine Saunders to Barry Anderson,

Recommendation for FY 1991 Title VI compliance Review (Nov. 6, 1990) (HUDBAL 000291-93 at HUDBAL 000291). No such review was performed pursuant to this recommendation.

This memorandum was silent as to HABC's site selection practices.

409. Instead, HUD conducted a monitoring review of, among other things, HABC's occupancy patterns pursuant to HUD's obligations under Title VI. See Ex. 257, Letter from Harold Jackson to Robert Hearn, Fair Housing and Equal Opportunity Monitoring Review (Sept. 30, 1991) (HUD27553-27561). HUD did not make any "negative findings" regarding HABC's tenant selection and assignment policies and practices, only observing that "[t]he Authority maintained records regarding the number of times units had been offered to applicants on the waiting list. . . . A review of the Authorities records indicated that the Authority had updated its waiting list to establish the federal selection preferences as mandated by HUD." Id. at 0113.

410. However, HUD found again in 1991 that "[t]he Housing Authority of Baltimore City continues to operate racially identifiable projects." See Ex. 257, Letter from Harold Jackson to Robert Hearn (Sept. 30, 1991) (HUD27553-27561 at 27560). HUD's first suggested "Corrective Action" was that "the Authority should consider" changing its tenant selection and assignment plan from the three-offer plan to the one-offer plan. Id. These findings were eventually cleared even though HABC did not change its tenant selection and assignment policies. See Ex. 14, Brooks Dep., at 214-15.

411. The 1991 monitoring review did not address HABC's site selection practices.

412. In September 1992, HUD determined that HABC was not properly implementing its HUD-approved tenant selection and assignment, but instead was allowing families to turn down offers until they are offered the development of their choosing. Ex. 165, Letter from

Maxine Saunders to Reginald Thomas, with attached Limited Management Review, HABC, April 22 - June 3, 1992 (Sept. 14, 1992) (PL03376-405 at PL03378, PL03381-85). Still, no compliance review followed as a result of these conclusions.

413. Finally – nearly twenty years after the 1981 occupancy audit – in 1997, HUD conducted its first formal Title VI compliance review of HABC. The review confirmed earlier monitoring reports that HABC was failing to comply with HUD’s Title VI civil rights record-keeping regulations. Ex. 260, Letter from Walter Valentine, Director of Program Operations and Compliance, Office of FHEO, to Daniel Henson, Preliminary Letter of Finding (Sept. 25, 1997) (0393-97). HUD concluded that HABC was failing to maintain data required for civil rights compliance purposes, and that without the required records and data, it could not determine whether HABC was otherwise in compliance with Title VI. Id. In 1998, HABC signed a Voluntary Compliance Agreement, promising again to correct the record-keeping violations. Ex. 261, Voluntary Compliance Agreement Between HUD and HABC (April 20, 1998) (HUD 04086-94).

414. In 2001 HUD continued to express concerns about HABC’s compliance with Fair Housing laws, but took no action to sanction HABC. Ex. 457, Email from LaVerne Brooks to Nathaniel Smith (Feb. 13, 2001) (HUD 11229) (“I think that FHEO Headquarters Enforcement staff as well as PIH and OGC staff [should] also attend any meetings to let the authority know that Fair Housing noncompliance findings have as much importance as PIH findings. In the past, this authority [HABC] has not made fair housing a priority and consequently, no emphasis has been placed on resolving our issues.”); Ex. 458, Email from William Tamburrino to Milan

Ozdinec (March 5, 2001) (HUD 26151) (“Given concerns regarding HABC’s compliance with Fair Housing laws, if the Plan were ready for review, we would not be able to approve it.”).

415. More than five years after the Voluntary Compliance Agreement was signed, in August 2003, HUD FHEO finally recommended that HUD close the Voluntary Compliance Agreement. Ex. 459, Memorandum from LaVerne Brooks for Wanda Nieves (Aug. 19, 2003) (HUD 36965-981). However, HUD has taken no action with respect to HABC’s failure to provide public housing outside areas of minority concentration.

416. The 1997/1998 Title VI compliance review was limited to tenant selection and assignment practices. Ex. 262, Letter from Walter Valentine, Director of Program Operations and Compliance, Office of FHEO, to Daniel Henson, HABC Title VI Case Number 03-97-07-009 (340) (July 11, 1997) (1014-17). Despite HUD’s prior findings that HABC is operating racially identifiable projects, its knowledge that HABC’s public housing development is limited almost exclusively to minority areas, and the findings of the HUD monitoring review of Baltimore’s CDBG program, HUD has never conducted a Title VI review of HABC’s site selection activities.

417. HUD has withheld monies from HABC temporarily because of deficiencies in its PHA Plan. See, e.g., Ex. 460, Letter from Unabyrd Ervin-Jones to Paul Graziano (Nov. 2, 2001) (HUDBAL 033375-77); Ex. 461, Letter from Unabyrd Ervin-Jones to Paul Graziano (Feb. 28, 2002) (HUD 29295-96) (releasing final one-third of previously withheld monies). HUD has also prevented HABC for applying for Section 8 Mobility funding because of “major program management findings or compliance problems.” Ex. 400, Letter from Unabyrd Ervin-Jones, HUD to Paul Graziano, HABC (Sept. 18, 2001) (HUD 1274-75); Ex. 19A, Graziano Dep. at

71:15-78:7. However, HUD has never used or even threatened to use these sanctions against HABC for site selection violations or for failing to provide public housing outside areas of minority concentration.

418. David Enzel, HUD's Rule 30(b)(6) designee on HUD policies and practices regarding Title VI monitoring and compliance reviews, testified that monitoring findings that an authority is operating racially identifiable projects and that a housing authority has a pattern of locating projects in areas of minority concentration should generally trigger a Title VI compliance review of that housing authority's site selection policies and practices. See Ex. 15, Deposition of David H. Enzel (Mar. 6, 2003) ("Enzel Dep.") at 135-137. See, also, Ex. 462, Office of Fair Housing and Equal Opportunity, U. S. Department of Housing and Urban Development, Fair Housing Planning Guide (March 1996) (PL 067478-067642) (recognizes that concentrations of low-income create a fair housing violation).

419. In addition, David Enzel testified that "the only method that comes to mind" to address racially identifiable projects where both projects and waiting lists are 90 percent minority, "would be the creation of projects in areas that are not in areas of minority concentration." Ex. 15, Enzel Dep., at 150. Despite this, HUD has never conducted a Title VI review of HABC's site selection activities.

N. Despite the Severe Lack of Available Housing, HABC and HUD Have Embarked Upon and Continued a Practice of Demolishing Thousands of Units of Public Housing Units Without Replacement.

420. During the period 1995 to the present, HUD has been aware of the housing shortfall faced by Baltimore's low-income African American residents. HABC's PHA Plans have consistently identified a need for additional affordable housing. Ex. 463, HABC PHA

Plans, Plan for Fiscal years 2003-2007, Annual Plan for Fiscal Year 2003 (April 8, 2003) (HUD 35137-35313 at HUD 35140, 35151, 35154); Ex. 390, HABC PHA Plans, 5 year Plan for FY 2000-2004 (HA25251, 25262-67, 25419 at HA 25262-65, 25419); Ex. 464, City of Baltimore, Comprehensive Housing Affordability Strategy, 1994-1998 (Dec. 30, 1993) (HA 71784-71906 at HA 71795, 71824-33) (“[t]hose with middle and upper incomes have a range of housing choices while those lacking such resources are limited to an ever shrinking portion of the private market, depend on subsidized housing, live in substandard housing, or have no housing at all. . . The consequence . . . is that over one third of Baltimore’s households are in need of affordable decent housing.”); see also Ex. 359, Letter from Daniel P. Henson to Louis L. DePazzo (Oct. 20, 1997) (B4:01405-06 at B4:01405) (HABC admission that “the region’s supply of affordable rental and ownership housing is decreasing at the same time that the need is increasing”). HABC reported that 69,866 black households and 22,442 white households in the City with incomes at or below 80% of the area median had housing needs. Of these households, 49,914 were considered extremely low income (i.e., at or below 30% of the area median). HABC also reported that its waiting list for public housing contained 12,305 households, of which 95.98% were black and 98.95% were extremely low income. HABC’s Section 8 waiting list contained 24,527 households, 94.69% of which were black and 97.48% of which were extremely low income. Ex. 390, HABC PHA Plans, 5 year Plan for FY 2000-2004 (PHA Plan 2000) (HA 25251, 25262-67, 25419).

421. Baltimore’s Analysis of Impediments to Fair Housing identifies “the lack of sufficient affordable housing to meet the demands of the population . . . as one of the primary impediments to fair housing choice.” Ex. 268, Analysis of Impediments to Fair Housing in the

Baltimore Metropolitan Area (Nov. 1996) (HA 61919-90 at HA 61992). HUD considers the Baltimore metropolitan area to have a tight housing market that makes it very difficult, even for families with vouchers, to secure housing. Ex. 476, Harold Young, HUD Baltimore Field Office, The Electronic Dispatch, August 2002 (PL 058428-058440 at PL 58428) (describing tight market); Ex. 25, Kramer Dep. at 282:14-283:6 (calling “extremely limited” number of viable multi-family housing units a barrier to utilization of Section 8 vouchers in the City); id. at 339:12-340:14 (recognizing that Baltimore City does not have enough “quality multi-family housing”).

422. HUD recognizes the severity of the shortage of affordable housing units. Ex. 27, Secretary Henry G. Cisneros, Testimony before the Housing and Community Opportunity Subcommittee of the Banking & Financial Services Committee, House of Representatives (Oct. 13, 1995) (HUD 01720-33 at 01721) (“For these people [public housing tenants], public housing provides a real, tangible response to the failure of the private market to provide sufficient housing at affordable rents. Nationally, the supply of affordable housing units falls well short of the demand -- by about 4.7 million units. That gap would be far greater without public housing or other forms of federal housing assistance.”); Ex. 29, Secretary Andrew Cuomo, Statement Before the Senate Committee on Banking, Housing and Urban Affairs Subcommittee on Housing Opportunity and Community Development (April 9, 1997) (HUD 01548-57 at 01550) (“In Baltimore, it [public housing] represents nearly one-quarter (23.4%) of the rental housing affordable to these families.”). When public housing is being demolished, as under the HOPE VI program, HUD directs that PHAs “should ensure that the amount of public housing being rebuilt, either on or off-site, is adequate given local demand for this resource.” Ex. 59, Hope VI: Best

Practices and Lessons Learned 1992-2002, Submitted to the Committee on Appropriations, U.S. House of Representatives, and Committee on Appropriations U.S. Senate in House Report 107-272, Title II (June 14, 2002) (HUD 30170-256 at HUD 30202). One of the “lessons learned” from the HOPE VI program is that housing vouchers are “not viable replacement housing options” in tight housing markets like Baltimore’s. Id. at HUD 30202-03.

423. In the face of this shortage of affordable housing, federal and local defendants have launched a campaign to demolish over 2800 of units of public housing, without any plans to replace these units with new housing units. This demolition has made the scarce resource of affordable housing unavailable to Baltimore’s low-income African American population.

424. Many of the units were built in already poor and black neighborhoods. Federal and local defendants now consider those neighborhoods to be so distressed and unsuitable that the units are being demolished at a rapid pace. Far fewer units are being rebuilt than are being destroyed. The new units are limited to the same failed sites and surrounding neighborhoods. Infra at ¶¶ 476-86. These actions are not consistent with the City’s Constituted Plan, which recognizes both the need for more affordable housing and the futility of the City’s practice of addressing that need by developing subsidized housing primarily in the “inner core” areas: “Any development that takes place in these neighborhoods must be very carefully thought through if we are not to find ourselves in the same predicament that we have been in before – namely, with a lot of new ‘vacants’ in a neighborhood. . . . Lately, when development has taken place, many households that lived in relatively good blocks have moved to the new, subsidized development (newly constructed or rehabilitated – it doesn’t matter) and because of lack of demand for the neighborhood, their former houses have become unoccupied and, later, abandoned. A relatively

sound block thus becomes unsound.” Ex. 433, Baltimore City Department of Housing and Community Development, Consolidated Plan, July 2000 - June 2005 (HA 62209-393 at 62292).

O. HUD Has Failed to Encourage and to Require that HUD Funds be used to Develop Public Housing Outside Areas of Minority Concentration.

425. Local defendants receive, annually, significant formula funds from HUD. Ex. 465, HUD Funding Received by Local Defendants FY 1995-2003. In addition to the public housing annual operating subsidy, local defendants receive Comprehensive Grant Funds (now Capital Funds) in the amount of approximately \$30 million per year. HABC has been eligible to receive Replacement Housing Factor Funds (RHFF) as the result of demolition of public housing units, for a total of approximately \$20 million total since 1998. HABC also plans to use a portion of its annual Capital Funds allocation to service \$80 to \$100 million in “revenue anticipation bonds.” Ex. 463, HABC PHA Plans, Plan for Fiscal years 2003-2007, Five Year and Annual Plan for Fiscal Year 2003 (April 8, 2003) (HUD 35137-35313 at HUD 35163). The City receives Community Development Block Grants funds of approximately \$30 million per year, HOME funds in the amount of close to \$10 million per year, and additional Housing Opportunity for Persons with Aids (HOPWA) and Emergency Shelter Grant (ESG) funds. Ex. 465, HUD Funding Received by Local Defendants FY 1995-2003. In total, HABC and the City of Baltimore have received over a billion dollars from HUD since 1995, not including the additional funding HABC receives for Section 8. HUD has failed to require that local defendants use these resources to create affordable housing units in non-minority areas.

426. In addition to the formula funds available to HABC from HUD, HOPE VI public housing development funds have been available by competitive application. However, HUD has not encouraged or required that PHAs use these funds for desegregative purposes.

427. In 1994, HUD adopted special site selection standards for the HOPE VI program. These standards allowed new public housing to be built on the site of existing projects, or in the same neighborhoods. Such production would not have been allowed under the 1980 site and neighborhood policies and regulations. Ex. 17, Deposition of Chris Hornig (Sept. 7, 1995) at 31-32.

428. Congress subsequently adopted legislation ratifying HUD's new site selection policy for all public housing development that allowed new construction on former public housing sites in minority concentrated areas and in the same neighborhood, on condition that the number of units be substantially reduced. HUD expansively applied the "same site and neighborhood" exception, defining "same neighborhood" to extend three miles from an existing site. Ex. 339, FY 2001 HOPE VI Revitalization and Demolition Application Kit at 39.

429. HUD's HOPE VI site and neighborhood standards do not require any comparable units to exist in other neighborhoods outside areas of poverty and minority concentration. HUD acknowledges that off-site housing "is desirable to lessen the concentration of low-income residents on site," it does not require that any be included in a HOPE VI project. Indeed, out of a universe of 102 points, HUD awards only one point for developing "off-site housing that will lessen the concentration of low-income residents on-site and create opportunities for desegregated, mixed-income communities by locating such off-site housing in neighborhoods with low levels of poverty and/or low concentrations of minorities." Moreover, in order to

receive that one point, the PHA must show that “community acceptance is likely” as to the proposed desegregative housing. Ex. 339, FY 2001 HOPE VI Revitalization and Demolition Application Kit at 63; see also Ex. 466, HOPE VI Revitalization Grant Application, HUD (2002) (HUD 29016-29118); Ex. 21, Blom Dep., at 60-70.

P. HUD and HABC Failed To Use the Hollander Ridge HOPE VI Funding To Replace the 1000 "Balancing Units" Lost Through Demolition.

1. Hollander Ridge Site.

430. By 1996, an assessment by HUD’s Baltimore field office had found that the poor site conditions at Hollander Ridge had taken their toll. As a result of the steeply sloping topography of the site, “severe land erosion and difficulties with the sanitary lines have been historical problems,” having caused, for example, utility lines to buckle and break. Routine repairs were not made and units were allowed to remain vacant. Ex. 341, Letter from Bill Tamburrino to Daniel P. Henson (June 26, 1996) (PL 048970-048992). Hollander Ridge was in a shameful state of disrepair. See Thompson v. HUD, 220 F.2d 241, 245 (4th Cir. 2000).

431. Hollander Ridge had also become the focus of anxieties about crime, class and race in the adjacent predominantly white Baltimore County community of Rosedale – and for some Baltimore County elected officials over the next several years it became a target of racially motivated community opposition, resulting in a series of discriminatory actions by HUD, the City and HABC officials. HUD was, by 1996, well aware of the hostility on the east side of Baltimore County directed toward assisted housing generally and specifically toward HABC public housing families. Only two years before, racial opposition had flared in eastern Baltimore County in response to the plans of HUD and HABC to implement the ‘Moving To Opportunity’

(“MTO”) program in Baltimore. Although this opposition was often couched as fear of crime, HUD has acknowledged that race and class were underlying factors throughout the local debate over MTO: “underlying assumptions about who lives in city public housing made it possible for local politicians and community leaders in Baltimore County to build on a fear of forced integration. Accelerated community decline through a mass influx of poor minorities would, it was argued, erode community standards and increase social ills.” Ex. 66, HUD, Office of Policy Development and Research, Assessing Property Value Impacts of Dispersed Housing Subsidy Programs: Final Report (May 1999) at 3-24, 28 (PL 081326-46 at PL 081330, 081334).

432. HUD Inspector General Susan Gaffney, in a March 1996 memorandum to then-Secretary Henry Cisneros, blamed HABC’s deficient maintenance, tenant screening, and security practices at Hollander Ridge for exacerbating these racial tensions: she wrote that, “ with our funds, the Baltimore Housing Authority is sending a powerful message that having poor, minority people in your neighborhood means crime, drugs, and badly maintained housing; and the best thing to do about it is to put the existing problem people on reservations, and keep any additional such persons out.” Ex. 342, Memorandum by Susan Gaffney to Henry G. Cisneros, Kevin E. Marchman, Elizabeth K. Julian (Mar. 19, 1996) (F2:02348-52 at F2:02349).

2. Hollander Ridge Fence.

433. Baltimore County and Rosedale pushed for construction of a perimeter fence to completely surround Hollander Ridge, with a single entrance at Pulaski Avenue, the farthest point from Rosedale, ostensibly to address security concerns. Ex. 343, Letter from C.A. Dutch Ruppertsberger to Henry G. Cisneros (July 9, 1996) (offering to pay \$350,000 toward construction of the fence) (Julian Dep. Ex. 34); Ex. 12, Tamburrino Dep. (Nov. 4, 1998) at 119.

434. Baltimore County did in fact contribute \$350,000 of its own federal Community Development Block Grant Funds to HABC for construction of the fence. HUD's community Planning and Development Division understood this as an activity benefitting Baltimore County, not a contribution to HABC. Ex. 18, Deposition of Joseph O'Connor (Jan. 22, 2003) ("O'Connor Dep.") at 145-49; Ex. 344, Notice of Intent to Request Release of Funds, Baltimore County, Maryland (Jan. 28, 1997) (PL 044989). HUD, HABC and Hollander Ridge residents all viewed the fence as racially motivated. HABC's then-Executive Director Daniel P. Henson initially resisted the fence, believing that Baltimore County elected officials wanted the fence to keep Hollander Ridge residents in, not to protect them from crime. Ex. 19, Deposition of Daniel Henson (Nov. 12, 1998) ("Henson Dep.") at 36-37.

435. HUD staff similarly rejected the idea that the fence was a necessary or desirable security measure. The 1996 assessment by HUD's Baltimore Field Office found that there was a misperception among Rosedale residents that crime was increasing at Hollander Ridge, when, in fact, crime there had dropped significantly in the preceding three years, and the crime rate was half that of the City as a whole. Ex. 341, Letter from Bill Tamburrino to Daniel P. Henson (June 26, 1996) (PL 048970-048992). Noting the isolation of the site, and tensions between Hollander Ridge and Rosedale, the HUD report concluded that "the need for a perimeter fence surrounding the community should be reassessed as it may serve to further isolate the residents of this development." *Id.* at 20. High level HUD officials in Washington also questioned the fence from a fair housing perspective and viewed it as insulting to Hollander Ridge residents. Ex. 10, Julian Dep., at 103-04.

436. However, HUD was coming under “tremendous pressure” from Rosedale and its elected officials to finance part of the cost of the fence. Ex. 10, Julian Dep., at 103-04; Ex. 343, Letter from C.A. Dutch Ruppertsberger to Henry Cisneros (July 9, 1996) (Julian Dep. Ex. 34); Ex. 345, Letter from Barbara A. Mikulski to Henry Cisneros (Sept. 3, 1996) (threatening HUD budget) at 1. Senator Mikulski and then-Congressman Ehrlich were similarly pressuring the Governor and state housing officials to pay a portion of the cost. Ex. 346, Memorandum from Patricia Payne to Fred Puddester, Re: “Hot News” Items Regarding DHCD Activity (April 17, 1996) (PX 13). Eventually, HUD acquiesced and awarded \$300,000 to HABC for the fence, characterizing the funds as a HOPE VI “planning grant.” Ex. 347, U.S. Department of Housing and Urban Development, HOPE VI Assistance Award-Amendment (Jan. 10, 1997) (F2:00513-20 at F2:00513, 00519); Ex. 21, Deposition of Dominique Blom (Jan. 30, 2003) (“Blom Dep.”) at 99-100.

437. According to HUD General Deputy Secretary Milan Ozdinec, then-director of the office that runs the HOPE VI program, the order to award the \$300,000 planning grant for a fence was so unusual that it generated questions within HUD as to why a planning grant was being used for that purpose. Ex. 20, Deposition of Milan Ozdinec (Mar. 20, 2002) (“Ozdinec Dep.”) at 125-126. Ozdinec was unable to recall any other instance in which HUD had used planning grant monies for a fence or other physical improvements. *Id.* at 103-104. Two years later, as plans for senior housing on the Hollander site were proceeding, HUD staff and consultants continued to express reservations that the Hollander Ridge fence and gated entrance would “contribute to a continued sense of isolation from the mainstream.” Ex. 21, Blom Dep., at

102-103; Ex. 348, E-mail from Dominique Blom to Marsha Cayford and Sharon Scharf with attached “Comments and Questions on Hollander Ridge RP,” (Aug. 20, 1999) (HUD 26428-29).

3. Hollander Ridge HOPE VI Grant and Abt Report.

438. After a tour of Hollander Ridge in the summer of 1996, HUD Secretary Henry Cisneros and HABC Executive Director Daniel Henson decided that HABC should submit an application to HUD for Hollander Ridge instead of Murphy Homes. Ex. 19, Henson Dep., at 51-52. The plan, as submitted on September 10, 1996, was to modernize Hollander Ridge, by among other things, reducing the population density in the development through demolition and reconfiguration of existing units, and upgrading housing units and amenities. Thompson v. HUD, 220 F.3d 241, 245 (4th Cir. 2000); Ex. 349, Hollander Ridge HOPE VI Application (Sept. 10, 1996) (HA 40238-444).

439. Baltimore’s proposal did not rank highly enough to be funded. In deciding to use its discretionary authority to elevate the Hollander Ridge application over one that was more highly rated, HUD noted that the racial conflict surrounding Hollander Ridge had reached the highest levels of the federal government: “Hollander Ridge lies on the border between a city increasingly populated by low-income minorities, and a county with a greater representation of working-class and middle-class whites. Hollander Ridge has been the focus of county anxieties about crime, class and race, while public housing residents feel they have been unfairly stigmatized. The conflict has drawn the attention of politicians of national stature, and is emblematic of conflicts dividing many minority urban cores from their white suburbs. A successful solution will be a model nationally for a problem which must be solved if America’s cities are to survive and prosper.” Ex. 350, Memorandum For Henry Cisneros, Secretary from

Kevin Emanuel Marchman, Acting Assistant Secretary, Office of Public and Indian Housing, Re: Recommendations for 1996 HOPE VI Grants (Oct. 21, 1996) (F2:00086-90 at F2:00088).

440. Shortly after HABC submitted its HOPE VI Application, HUD commissioned a viability assessment of Hollander Ridge conducted by Abt Associates, Inc. The September 1996 assessment report noted the poor physical condition of the site, its difficult topography, and its isolation: “Although the subject property is technically located in a non economically impacted neighborhood at the city’s northeast border with Baltimore county, the property is extremely isolated and bounded on two sides by expressways. It is inconvenient for a range of services (such as, schools, shopping, and health care), and a fence and barricades effectively cut it off from the only residential neighborhood that abuts it. As such, the property offers few of the social benefits that generally accrue to properties that are located within non-impacted residential areas.” Ex. 216, Abt Associates, Public Housing Stock Viability Assessment: Hollander Ridge, Baltimore, MD, prepared for U.S. Department of Housing and Urban Development (September 24, 1996) (HUD 02148 at 2). The report questioned Hollander Ridge’s viability even if rehabilitated with \$20 million in HOPE VI funding awarded to HABC. Id. at 1-2. Indeed, HUD’s expert recommended that the site not be redeveloped for public housing and instead that “the funds for HOPE VI be used to demolish the site and acquire/build replacement housing in other areas of the city (as is permitted under the HOPE VI program) that would offer greater leverage from a community development perspective or offer a more desirable location for ‘non-impacted housing.’” Id. at 1.

441. HABC vigorously resisted this recommendation. Ex. 351, Letter from David P. Henson to Rod Solomon, Re: Viability Assessment, Hollander Ridge (Mar. 24, 1997) (HUD

18312-13); Ex. 352, Letter from Daniel P. Henson to Honorable Louis DePazzo (Oct. 20, 1997) (B4:01405-06 at B4:01405); Ex. 353, Letter from Daniel P. Henson to Kevin Emanuel Marchman, Re: Hollander Ridge HOPE VI Grant Agreement (Nov. 12, 1997) (F2:00061-63).

442. Meanwhile, political pressure from Baltimore County was mounting against the Hollander Ridge redevelopment plan. Rosedale residents and their elected officials voiced their objections to the plan to both HUD and HABC. Ex. 354, Letter from Robert L. Ehrlich to Andrew Cuomo (Nov. 14, 1997) (F2:01471-01473 at F2:01471-72); Ex. 355, Letter from Nancy M. Leiter to Mayor Kurt Schmoke (Dec. 12, 1997) (HR 007134); Ex. 22, Deposition of Daniel Sowell (Nov. 9, 1998) (“Sowell Dep.”) at 100; Ex. 23, Deposition of Steven Broache (Nov. 10, 1998) (“Broache Dep.”) at 74-75. Although approval by Baltimore County was not required by law or HOPE VI program rules, and despite its awareness of the racially charged conflict surrounding Hollander Ridge, HUD imposed pressure upon HABC to reach consensus with Rosedale and Baltimore County. Ex. 404, E-mail from Donna Keck to Daniel Henson, Alexander Estella, Re: Hollander Ridge - Selection of Mediator (July 15, 1997) (PX 217); Ex. 23, Broache Dep., at 40, 67; Ex. 356, Federal Defendants’ Response to Plaintiffs’ Post-Hearing Memorandum in Opposition to Local Defendants’ Motion to Amend Section XII of the Partial Consent Decree at 1; Ex. 357, Declaration of Deborah Vincent (Dec. 18, 1988) at 1- 2; Blom Dep. at 92 (housing authority is not required to show that it has reached consensus with neighboring community). HUD also advised HABC that any revitalization plan for Hollander Ridge had to demolish all of the units because Hollander had failed HUD’s viability test. Ex. 358, Letter from Deborah Vincent to Daniel Henson (Nov. 24, 1998) (HUDA 00041-43).

443. Faced with HUD's directive and growing political pressure, Mayor Schmoke convened a meeting in December 1997 with HABC officials and Baltimore County officials at which he proposed a "senior village" for the Hollander Ridge site. Ex. 23, Broache Dep., at 39-40. Mayor Schmoke proposed the senior village idea because "he had at that point been hearing so many opposing voices to spending HOPE VI money out at Hollander Ridge for family use that he thought the only way of silencing those voices was to make this kind of suggestion." Id.

444. Despite HABC's admission that "the region's supply of affordable rental and ownership housing is decreasing at the same time that the need is increasing," Ex. 359, Letter from Daniel P. Henson to Louis L. DePazzo (Oct. 20, 1997), B4:01405-06 at B4:01405), HABC's plan did not call for any of the \$20 million in HOPE VI funds, or the \$32 million in other public funds proposed for the senior village to be used to replace any of the 522 family public housing units that would be demolished at Hollander Ridge. Nor did HABC consider using any of the HOPE VI funds to acquire or build replacement housing for Hollander Ridge off-site. Ex. 23, Broache Dep., at 57.

445. The Hollander Ridge residents and tenant council were not involved in the decision to develop housing for the elderly only; indeed, the tenant council president testified that she learned about it from television news reports. Ex. 360, Testimony of Linda Walker (Dec. 1, 1998) at 198-199. Mayor Schmoke did not meet with the Hollander Ridge resident leaders until April 3, 1998 to hear their concerns about the HOPE VI planning process, including their belief that Rosedale wielded disproportionate influence, and that Rosedale's opposition to Hollander Ridge was racially motivated. The residents also requested that the money allocated for constructing the fence be used instead for other projects to help residents of the Hollander Ridge

community. Ex. 361, Mayor's Meeting Agenda, Hollander Ridge Resident Council (April 3, 1998) (HR 007437-41 at 007437).

446. Despite the tenants' concerns, HABC submitted the senior village plan to HUD because it was the only proposal for the site that could win the support of Baltimore County. Ex. 23, Broache Dep., at 39-40, 75-76.

4. HUD Permitted HABC To Relocate Hollander Ridge Residents Without a Plan and Without Adequate Support.

447. HABC began moving residents out of Hollander Ridge in January 1998. Ex. 24, Deposition of Ruth Gamble ("Gamble Dep.") (Nov. 18, 1998) at 19-20. Housing authorities are required to develop a plan for relocation and submit it to HUD for approval before beginning to move residents. Ex. 22, Sowell Dep., at 68. Because a relocation plan had not yet been prepared or submitted to HUD, HABC did not provide relocation notices, counseling or services under the Uniform Relocation Act to residents leaving Hollander Ridge, and did not take any steps to identify housing resources to be utilized in the relocation of Hollander residents. Ex. 24, Gamble Dep., at 9-10, 41-44, 50.

448. HUD allowed HABC to move families out of Hollander Ridge without an approved relocation plan and without providing relocation services under the Uniform Relocation Act. HUD did not even request a formal relocation plan until April 1999, despite its knowledge that HABC was moving families out of Hollander Ridge. Ex. 362, E-mail from William D. Tamburrino to Sharon L. Scharf, Re: Relocation at Hollander Ridge (April 2, 1999), HUD 26241-42 (advising that "given ...the movement of most families already and no approved

Relocation Plan in place during the period of movement... HABC needs to rationalize the movement of families up to this point...”); see also Ex. 24, Gamble Dep., at 9-10, 41-44, 50.

449. In February 1999, HABC submitted an application to HUD seeking approval to demolish all 1000 units at Hollander and to relocate the 311 residents then remaining. Ex. 363, Demolition/Disposition Application submitted by HABC to U.S. Department of Housing and Urban Development, Office of Public and Indian Housing (Feb. 5, 1999) (HUDA 00044-72 at HUDA 00048). The application included a cursory relocation plan in which HABC represented that it would emphasize relocation to housing outside areas of minority concentration. Id. at HUDA 00065.

450. HABC did nothing of the kind. Rather, remaining Hollander residents were notified on May 25, 1999 that they would have to move within 120 days. Ex. 364, Daniel P. Henson to Helen Fair, Notice of Displacement (May 25, 1999) (PL 052771-75 at PL 052771). The residents remaining as of October 15, 1999 were told that they would be moved on an emergency basis to a unit chosen for them by HABC. Ex. 340, Daniel P. Henson to Current Resident of Hollander Ridge, Re: Emergency Temporary Moves (Oct. 15, 1999) (PL 052776). By the time that HUD approved the Hollander demolition application more than a year later, on March 28, 2000, Hollander was empty. Ex. 365, Memorandum from Harold Lucas to William Tamburrino (Mar. 28, 2000) (HUDA 00027-35 at HUDA 00032).

451. Despite the proximity of Hollander Ridge to predominantly white neighborhoods in Baltimore County, the overwhelming majority of Hollander families moved *in* to Baltimore City rather than *out* to Baltimore County; and most families moved to high poverty census tracts in which the majority of residents were black. Ex. 5, Pendall Hollander Ridge at 1. From the

beginning, Hollander Ridge residents expressed fears that this would be the result. In July 1997, HABC staff reported on a meeting in which residents were “very upset about relocation, believing that they will have to move to the inner city where life is very dangerous.” Ex. 366, E-mail from Donna Keck to various HABC staff (July 31, 1997) (PX 213).

452. HABC’s so-called efforts to “emphasize housing outside minority concentration” areas and produce a different result were ineffectual. Based on data contained in relocation logs produced by HABC, nearly 80% of the 248 relocated families moved to tracts in which over 60% of the residents were black in 2000, and nearly 75% were in high poverty census tracts. Ex. 5, Pendall Hollander Ridge at 2. The 114 families relocated to other assisted housing, usually other HABC public housing developments in the inner-city, fared the worst with more than 90% in high poverty census tracts and 60% in extreme poverty tracts, and 82% in tracts where over 80% of residents were black in 2000. Id. at 2. Even the 23 families who moved to Baltimore County with Section 8 vouchers located in census tracts with relatively high black populations. Id. at 2. All told, only three family households moved to tracts with fewer than 25.9 percent black residents and poverty rates below 10%. Id. at 2.

453. The Hollander families moving with Section 8 vouchers clustered in the Patterson Park area, contributing to existing concentrations of Section 8 in that neighborhood. Ex. 5, Pendall Hollander Ridge at 2 Map 1; Ex. 25, Deposition of Michael Kramer (Mar. 4, 2003) (“Kramer Dep.”) at 102, 105-106; Ex. 367, HUD, Section 8 Tenant-Based Housing Assistance: A Look Back After 30 Years (Mar. 2000) (HUD 01215-73 at HUD 01215, 01243). Worse, a significant number of the Hollander families were relocated to properties owned by two landlords implicated in the federal investigation of real estate “flipping” in the Patterson Park

neighborhood. Ex. 25, Kramer Dep., at 109-114. According to HABC's Associate Deputy Director in charge of the Section 8 program, HABC's relocation program became an area ripe for unscrupulous investors who bought properties cheaply in the Patterson Park area, made limited repairs and rented them through the Section 8 program. Id. at 113-114. HABC removed these landlords from the Section 8 program, requiring the Hollander families living in their properties to move again. Id. at 113.

454. As of June 2, 2002, HUD had approved, at the national level, demolition of 144,000 public housing units, 71,902 under the HOPE VI program. 82,000 units had actually been demolished. Ex. 368, HUD, HOPE VI Best Practices and Lessons Learned 1992-2002, Submitted to Committee on Appropriations, U.S. House of Representatives, Committee on Appropriations, U.S. Senate, Pursuant to House Report, Title II (June 14, 2002) at 107-272 (PL 081380-468). Despite this high level of demolition and displacement, HUD's HOPE VI office does not have a relocation specialist. Ex. 21, Blom Dep. at 22. HUD does not require housing authorities to track or report the number of families moving to non-minority areas or non-poor areas, the quality of the housing to which families are relocated, or the number of families making multiple moves, and does not assess their performance in this regard. Only 2% of HOPE VI funds are budgeted for relocation. Ex. 368, "HOPE VI Best Practices and Lessons Learned 1992-2002." The HOPE VI grant administrators do not verify that staff are in place to provide the services described in HOPE VI relocation plans, and do not monitor the relocation activities of HOPE VI grantees. HUD also does not require HOPE VI grantees to demonstrate the availability of other housing to absorb families being relocated from HOPE VI sites. Ex. 21, Blom Dep., at 22, 48-49, 199-200, 202.

455. Relocation is one topic that field offices may review in the course of HOPE VI monitoring. Ex. 21, Blom Dep., at 200. However, there is no training or protocol provided for field office staff reviewing relocation activity. Id. at 196. Although more than 4800 public housing units have been demolished since 1995, the HUD Baltimore office has not had a relocation specialist position since before 1995. Ex. 18, O'Connor Dep., at 158-160. The Community Planning and Development Division of HUD, the office with overall responsibility for relocation, was not involved in monitoring relocation for HOPE VI projects in Baltimore. Id. at 162-163.

456. At the time that Hollander Ridge relocation was occurring, residents were also being relocated from two other HABC HOPE VI projects. In considering demolition applications for individual projects, HUD does not consider whether multiple projects are being closed, demolished or vouchered. Ex. 12, Tamburrino Dep. (Nov. 22, 2002) at 188. In addition, HUD was relocating residents from an FHA foreclosure project, Freedom Apartments, at the time of the Hollander Ridge relocation. HUD did not coordinate, or consider the effect of, the Freedom relocation activities on Hollander Ridge residents searching for housing. As a result, Hollander residents were competing with other displaced households for a limited supply of housing. Ex. 26, Deposition of Mary Ann Henderson (Feb. 14, 2003) at 120-24.

457. HUD failed to exercise any of its considerable enforcement powers to require that HABC offer desegregative housing opportunities to tenants relocated from Hollander Ridge. Although HUD finally notified HABC in a December 1999 HOPE VI monitoring report, that HABC must provide Uniform Relocation Act assistance to Hollander Ridge residents relocated between October 1996 and March 1999, HUD merely ordered HABC to pay a \$50 dislocation

allowance to each household relocated before March 1999. HUD failed to require that HABC provide any other services to the previously relocated Hollander Ridge tenants. Ex. 369, Letter from Unabyrd L. Ervin-Jones to M. Jay Brodie (Dec. 30, 1999) (HUD 04301 at HUD 04319); Ex. 370, Letter from Unabyrd L. Ervin-Jones to Paul Graziano, with attachments (Nov. 19, 2001) (HUD 21520-28).

458. HUD approved HABC's demolition application for Hollander Ridge on March 28, 2000. In July 2000, the entire complex was demolished. With the demolition of Hollander Ridge, all 1000 "balancing units" of public housing built since the passage of Title VI outside existing areas of minority housing have been demolished. These balancing units have not been replaced. Ex. 371, Letter from Harold Lucas to Patricia Payne (Mar. 28, 2000) (HA 31218-20); Ex. 372, Letter from Patricia Payne to Harold Young (June 27, 2000) (HUD 06005-09) (inviting HUD to view demolition of Hollander on July 8, 2000).

459. That same month, following the Fourth Circuit's ruling that the Partial Consent Decree cannot be modified to allow the development of HABC's on site plans, HUD advised HABC that the Hollander Ridge HOPE VI grant was in default. HUD further advised HABC that it was required to submit a default resolution plan and that failure to submit an acceptable plan could result in recapture of the HOPE VI funds. Ex. 373, Letter from Harold Lucas to Patricia Payne (July 31, 2000) (HUD 05999-06004).

460. HUD failed to require that HABC's default resolution plan include the development of desegregative housing opportunities. HUD included no provision for the replacement of the "balancing units" that were lost when Hollander was demolished. In fact, HUD did nothing at that time or any other time to require that HABC use Hollander Ridge HOPE

VI funds to provide replacement public housing units outside areas of minority and assisted housing concentration. Ex. 12, Tamburrino Dep. (Nov. 22, 2002) at 35.

461. Instead, HUD explicitly erected barriers to allowing HABC to use the grant to develop desegregative housing opportunities. HUD required that HABC obtain “written commitments from every party whose cooperation is needed for the implementation of the Revitalization Plan.” HUD made this an explicit requirement of the grant with the full knowledge that community opposition to public housing has long been a barrier to developing public housing in non-minority areas in Baltimore and elsewhere in the country. Ex. 373, Letter from Harold Lucas to Patricia Payne (July 31, 2000) (HUD 05999-06004 at HUD 06000); Ex. 374, GAO Report to Congress, Public Housing Funding and Other Constraints Limit Housing Authorities’ Ability to Comply with One-for-One Rule (Mar. 1995) at 22-23 (PL 050726-050757 at PL 050749, 050750); Ex. 375, “Not in My Back Yard,” Removing Barriers to Affordable Housing, Report to President Bush and Secretary Kemp by the Advisory Commission on Regulatory Barriers to Affordable Housing (1991) at 8 (PL 050478-632) (recognizing that “[p]erhaps the most potent and, to date, intractable cause of regulatory barriers to affordable housing is NIMBY sentiment at the individual, neighborhood, and community levels. . . The personal basis of NIMBY involves fear of change in either the physical environment or composition of a community. . . Its more perverse manifestations reflect racial or ethnic prejudice masquerading under the guise of these other concerns.”).

462. In February 2001, HABC submitted its default resolution plan for the Hollander HOPE VI grant. The plan provided for the development of desegregative housing opportunities for HABC’s African American tenants including funding for a limited number of public housing

replacement units on the Hollander site, total rehabilitation of Claremont Homes, a former de jure white project built in what was at the time a stable white neighborhood, and development of off-site replacement public housing units in non-impacted areas or “inclusionary areas,” i.e., areas experiencing “private investment or dynamic growth.” Ex. 376, Letter from Paul Graziano to Milan Ozdinec with attached Plan for Hollander Ridge Funds (Feb. 28, 2001) (HUD 03028-38).

463. On April 18, 2001, HUD rejected HABC’s default resolution plan and advised that it was recapturing the Hollander Ridge HOPE VI grant. HUD gave no reason for the rejection, other than the broad statement that it “is generally not consistent with the spirit and requirements of the HOPE VI program.” Ex. 377, Letter from Gloria Cousar to Paul Graziano (April 18, 2001) (HUD 03039-40).

464. HUD has subsequently stated that the failure to obtain the written agreement of the Rosedale community is one of the reasons that the Plan did not meet HOPE VI requirements. Ex. 378, Declaration of Milan Ozdinec (Mar. 20, 2002) (“Ozdinec Dec.”) ¶ 15. However, as HUD admitted in 1998, the HOPE VI statute includes no such requirement, Ex. 356, Federal Defendants’ Response to Plaintiffs’ Post-Hearing Memorandum in Opposition to Local Defendants’ Motion to Amend Section XII of the Partial Consent Decree at 1, and HUD is aware that the “NIMBY” syndrome, including racial prejudice, makes obtaining written agreement from a predominantly white community for the development of public housing virtually impossible. Ex. 375, “Not in My Back Yard,” Removing Barriers to Affordable Housing, Report to President Bush and Secretary Kemp by the Advisory Commission on Regulatory Barriers to Affordable Housing (1991) (PL 050478-632).

465. HUD has also subsequently stated that the Plan did not meet HOPE VI requirements because only 10 of the 52 on-site units were to be public housing units. Ex. 378, Ozdinec Dec. at ¶ 16. However, there is no requirement in the HOPE VI statute that there be any specific number of public housing units rebuilt on site. Ex. 20, Ozdinec Dep., at 205.

466. Finally, a HUD official has stated that, in his opinion, one of the purposes of the HOPE VI program is to get around the Fair Housing site and neighborhood standards by allowing construction of public housing in what would otherwise be impermissible impacted areas. Ex. 20, Ozdinec Dep., at 80-81. Most surprisingly, he stated that promoting racial integration is not a goal of HOPE VI. *Id.* at 73-74. In rescinding the HOPE VI grant to redevelop the Hollander fair housing “balancing units” in areas that would provide some desegregative housing units, HUD was clearly not attempting to promote racial integration.

467. The Hollander Ridge grant funds were promptly restored by Congress and earmarked for the uses in the plan agreed upon by the plaintiffs and local defendants. HABC has yet to take any action to produce the desegregative off-site housing units included in the plan. Ex. 19A, Graziano Dep. 384:9-391:1; Ex. 21, Blom Dep. 109:25-111:16; 115:18-116:1.

Q. Defendants Failed To Use Available Funds To Replace Demolished Cherry Hill 17 Units Outside Areas of Minority Concentration.

468. HUD and HABC also demolished units occupied by African American families at Cherry Hill and failed to use the resources available for replacement housing to create new desegregative public housing opportunities. As a result, HUD and HABC made housing unavailable to the displaced families and other African American families in need of housing.

469. In March 1997, HABC submitted an application to HUD for the demolition of 192 units of public housing at Cherry Hill 17. HABC's plan was to use public housing Comprehensive Grant Program (CGP) funds already set aside for the improvement of those units to, instead, demolish the units, and replace them with homeownership units and senior units solely on the Cherry Hill site. Ex. 379, Cherry Hill 17 Partial Demolition/Disposition Request (Mar. 24, 1997) (PL 045057-105). The plan included spending \$7.4 million of the total \$30,136,702 CGP funds available to HABC for FFY 1997 on development of the homeownership units. Ex. 380, Letter from Bill Tamburrino to Daniel P. Henson (Oct. 17, 1997) (HUD 04505-06).

470. In October 1997, citing an excessive density of public housing in Cherry Hill, HUD approved the demolition request, and approved in principal the plan to dispose of that property for homeownership and senior housing. Ex. 381, Letter from Kevin Emanuel Marchman, Acting Assistant Secretary, to Daniel P. Henson (Oct. 14, 1997) (HUD 14671-81).

471. In February 1998, HABC requested HUD approval for its plans to redirect public housing funds to a private developer for the purpose of constructing houses that would be offered for sale to persons with incomes substantially above those of the displaced Cherry Hill public housing residents and other HABC tenants and applicants. Ex. 382, Letter from Daniel P. Henson, Executive Director, HABC to Elinor Bacon, Deputy Assistant Secretary (Feb. 2, 1998) HUD 18824-27).

472. HABC has, to date, rejected requests by the Cherry Hill Homes Tenant Council that the homes constructed with these public housing funds be made available and affordable to displaced families and other public housing residents. Ex. 383, Letter from Loretta Johnson,

President, Cherry Hill Tenant Council to Deborah Vincent, Assistant Secretary, HUD (April 19, 1999) (HUD 14159-63); Ex. 384, Letter from Daniel P. Henson, Executive Director, HABC to Deborah Vincent, Assistant Secretary, HUD (May 3, 1999) (HUD 14154-58).

473. While concurrently acknowledging and agreeing with a number of the objections raised by the Cherry Hill Homes Tenant Council, HUD has approved the partial demolition of Cherry Hill 17, has authorized the modernization funds to be used to build for-sale housing, and has approved the project proposed by HABC and the private developer. Ex. 385, Memorandum from Charlotte Sobel to Dominique Blom, David Sowell, Regarding Letter to Deborah Vincent from CHTC (May 6, 1999) (HUD 25990-91); Ex. 381, Letter from Kevin Emanuel Marchman, Acting Assistant Secretary to Daniel P. Henson (Oct. 14, 1997) (HUD 14671-14681); Ex. 386, Memorandum from Robert S. Kenison, Associate General Counsel, HUD to Elinor Bacon, Deputy Assistant Secretary, HUD (April 23, 1998); Ex. 303, Federal Defendants' Motion to Dismiss, or, in the Alternative, for Summary Judgement, Exhibit A, No. 38 (F2:00035-41); Ex. 387, Memorandum from Ainars Rodins, Special Applications Center, HUD to David Sowell, Director, OPHP (Sept. 30, 1999) (HUD 18463); Ex. 348, E-mail from Dominique Blom to Marsha Cayford and Sharon Scharf with attached "Comments and Questions on Hollander Ridge RP" (Aug. 20, 1999) (HUD 26428-29); Ex. 21, Blom Dep. at 149:12-151:18.

R. HUD Has Approved HABC's Demolition Without Replacement of 122 Units at Charles K. Anderson.

474. In 2000, HABC closed the 122-unit Charles K. Anderson project and included plans to demolish it in the agency's capital plan. HABC did not obtain HUD's approval to demolish the project and relocate the residents. Instead, HABC allowed the project to fall into

severe disrepair and then moved the residents to other highly segregated public housing projects within Cherry Hill. HUD approved the demolition application in November 2002. Ex. 388, Charles K. Anderson Demolition/Disposition, submitted By HABC to Paul Graziano (June 2002) (HUD 30297-390); Ex. 389, Letter from Ainars Rodins, Director, to Paul Graziano (Nov. 8, 2002) (HUD 30281-82).

S. HUD and HABC Have Demolished Without Replacement Units at Emerson Julian Gardens in Upton.

475. HUD also approved the demolition of Emerson Julian Gardens in Upton. This 23-unit public housing development had been placed directly adjacent to Murphy Homes, and HUD approved its demolition at the same time the Murphy Homes demolition was approved. However, neither HUD nor HABC provided any replacement public housing for the demolished Emerson Julian units. Ex. 205, Excerpts from Murphy Homes/ Emerson Julian Gardens HOPE VI Revitalization Grant Proposal, HABC (July 18, 1997) (HA 38657-39113); Ex. 396, Letter from Deborah Vincent, General Deputy Assistant Secretary to Daniel Henson (Sept. 3, 1998) (HUDBAL 025453-55).

T. HABC Is Planning To Demolish and Not To Replace Over 1000 Units of Scattered Site Public Housing.

476. HABC's current policy is to allow scattered site units to stay vacant as they become vacant. Ex. 19A, Deposition of Paul Graziano ("Graziano Dep.") (3/31/03), at 251-252. Currently, over 50% of the scattered site units are vacant. Id. at 180. HABC has no plans to replace any of the scattered site units. Id. at 271-272.

477. In 1998, HABC submitted an application to HUD for the demolition of 1000 units of scattered site public housing, or over one-third of its scattered site public housing inventory.

HUD approved demolition of 297 of these units. No replacement public housing has been provided for these demolished units. Ex. 391, Application for Demolition of Scattered Site Units, HABC (Sept. 1, 1998) (HA 43397-488); Ex. 392, Memorandum from Harold Lucas to William D. Tamburrino (Oct. 7, 1999); Ex. 392, Letter from Harold Lucas to Daniel Henson (Oct. 7, 1999) (HUD 06939-67); Ex. 467, Letter from Unabyrd Ervin-Jones to Paul Graziano (April 1, 2003) (HUD 34140-34163).

478. HUD has subsequently approved HABC's requests to dispose of an additional 65 scattered site public housing properties, and several smaller scattered site demolition/disposition applications. Ex. 393, Letter from M. Liu to Paul Graziano (Jan. 28, 2002) (HADBAL 24465-70); Ex. 394, Letter from Michael Liu to Paul Graziano (Dec. 5, 2001) (HUD 10632-37) (approving disposal of 3 properties); Ex. 395, Letter from Joseph Shuldiner, Assistant Secretary, to Daniel Henson (Sept. 29, 1995) (HUD 06615-21) (approving disposal of an additional three properties).

479. HABC has plans to dispose of at least an additional 712 scattered site units. Ex. 464, HABC PHA Plans, Plan for Fiscal years 2003-2007, Annual Plan for Fiscal Year 2003 (April 8, 2003) (HUD 35137-35313 at HUD 35191-92); Graziano Dep. at 243:6-247:13, 263:18-264:9.

480. Baltimore City currently has ambitious urban renewal plans for the development: a Bio-Tech Park adjacent to Johns Hopkins Hospital that will necessitate the condemnation of approximately 3,000 buildings, including 800 occupied dwellings. This planned redevelopment will include new residential development, as well as 2 million square feet of biotech space. Ex. 468, Broadway East Amendment #2, Draft (Apr. 25, 2002) (MCC 005275-82); Ex. 469, Draft

HABC Disposition Application, BioTech -- Phase II and Vacant Land (undated) (MCC 00455-00523 at MCC 000494-95).

481. The buildings that will be demolished include HABC scattered site public housing units. HABC has already submitted an application to HUD to dispose of 9 units of public housing in the Bio-Tech park area, and has plans to dispose of 133 additional Units. HABC has no plans to replace those units. Ex. 470, HABC Disposition Application, East Baltimore Redevelopment Project (Oct. 2002) (MCC 000258-454); Ex. 469, Draft HABC Disposition Application, BioTech -- Phase II and Vacant Land (undated) (MCC 00455-00523 at MCC 00047).

482. HABC's planned demolition application for the Bio-Tech park also includes a planned request to dispose of an additional 200 public housing scattered sites. Ex. 469, Draft HABC Disposition Application, BioTech -- Phase II and Vacant Land (undated) (MCC 00455-00523 at MCC 000467). The scattered site units proposed for demolition, or already demolished, are located in the neighborhoods that have high concentrations of HABC scattered site properties. See infra at ¶¶ 483-86. In contrast, the 149 properties scattered in neighborhoods with less than 10 units, and the 211 properties in neighborhoods with less than 20 units, are still deemed to be viable and appropriate for renovation for rental to public housing residents. Id.; Ex. 469, Draft HABC Disposition Application, BioTech -- Phase II and Vacant Land (undated) (MCC 00455-523 at MCC 00519).

U. HABC Plans to Demolish all 292 Units At Claremont.

483. Claremont was a de jure white, vacant land development sited in a white neighborhood. Since it has been occupied by African American tenants, HABC has allowed it to deteriorate to the point that it is no longer habitable. Ex. 471, HABC, Scattered Sites and Conventional Statistical Report, 1,630 Non-Viable Units (March 12, 2003) (HUD 34983-34990 at HUD at 34984) (description of the state of disrepair at Claremont); Ex. 472, Claremont Emergency Move Referrals (HA 82740-82920) (group of more than 80 emergency transfer requests because of uninhabitable conditions of units). Claremont is located in one of the better neighborhoods available to HABC's tenant population. It is the only HABC development located in a neighborhood characterized by Baltimore City as "stable." Ex. 441, Baltimore Department of Housing and Community Development, Consolidated Plan, July 2000-June 2005 (HA 62209-62393 at 62280).

484. HABC plans to demolish the entire development and rebuild fewer public housing units, limited to the Claremont site and the adjoining Freedom Apartments parcel acquired from HUD. Ex. 463, HABC PHA Plans, Plan for Fiscal years 2003-2007, Annual Plan for Fiscal Year 2003 (April 8, 2003) (HUD 35137-35313 at HUD 35195).

V. HABC Plans to Demolish O'Donnell Heights.

485. The 900 unit O'Donnell Heights development was also a de jure white vacant land development sited in a white residential neighborhood. It became majority African American in the mid-1990s. Ex. 2, Taeuber, at Table 5, 6. O'Donnell also is located in one of the better neighborhoods available to HABC's tenants. It is one of the few developments in a neighborhood characterized by Baltimore City as "neutral." Ex. 441, Baltimore Department of

Housing and Community Development, Consolidated Plan, July 2000-June 2005 (HA 62209-62393 at 62280).

486. HABC has plans to demolish 98 units at O'Donnell. Ex. 463, HABC PHA Plans, Plan for Fiscal years 2003-2007, Annual Plan for Fiscal Year 2003 (April 8, 2003) (HUD 35137-35313 at HUD 35196). HABC has engaged in a Master Planning process for O'Donnell. That planning process has recommended complete demolition, and replacement with fewer units on site. Ex. 473, O'Donnell Heights Master Plan - Final Version (March 2003) (HA 81432-81522).

VI. THE SECTION 8 VOUCHER PROGRAM HAS FALLEN FAR SHORT OF ITS PROMISE

A. Opportunities through the Section 8 Program.

487. HABC operates a Section 8 voucher program that has the potential to provide expanded housing opportunities for minorities. The tenant-based Section 8 housing certificate and voucher programs, 42 U.S.C. § 1437f, are intended to disperse federally-assisted housing and to allow low income minority families to obtain housing in neighborhoods of their choice throughout the metropolitan area and state. Ex. 397, John Goering, U.S. Department of Housing and Urban Development, Promoting Housing Choice in HUD's Rental Assistance Programs, A Report to Congress (April 1995) (PL 046930-7033). However, as designed and administered by HUD, and operated through HABC, the Section 8 program has not been an effective means of providing desegregative housing opportunities for public housing residents and other low income African American families.

1. Public Housing Residents Have Been Denied Access to Section 8 Vouchers That Would Enable Them to Access Desegregative Housing.

488. HABC has established admission priorities that effectively limit the access of public housing residents to the Section 8 program. In selecting families to receive vouchers, Federal law prohibits HABC from excluding or penalizing a family solely because the family resides in a public housing project. 42 U.S.C. 1437f(s). As a matter of policy and practice, however, HABC has denied or delayed Section 8 certificates and vouchers to the mostly African-American public housing residents, including those who originally applied for both programs and accepted the earlier offer of public housing. Ex. 398, Letter Maxine Saunders to Robert W. Hearn (May 5, 1992), with attached Management Review, Section 8 Certificate and Voucher Programs (Feb. 18-21, 1992) (HA 06083-112 at 06090). In 1990, Congress required housing authorities to allow families to apply for both public housing and Section 8, and if the families were offered a public housing unit first, to retain their place and preferences on the Section 8 waiting list. 42 U.S.C.A. § 1437f(s). Ex. 399, U.S. Department of Housing and Urban Development, Notice of Final Rule Governing Admission to the Section 8 Certificate and Voucher Programs (Aug. 31, 1994) (PL 046290-96) (requiring public housing tenants admitted to public housing on or after April 26, 1993 who were also on Section 8 waiting list to retain federal preference for Section 8).

489. HABC, however, discouraged public housing residents from applying for Section 8. Until the statute was suspended and eventually repealed in 1995, HABC was required by federal law to give preference to certain applicants with urgent housing needs, one of which identifies those who live in substandard housing. HABC routinely advised public housing

residents that they were unlikely to ever receive Section 8 assistance because they did not qualify for one of the “federal preferences” accorded to families with urgent housing needs. 42 U.S.C. § 1437d(c)(4)(A)(i). In fact, many public housing residents could qualify for a federal preference because of the substandard condition of their housing. Ex. 12, Tamburrino Dep. 132-138; Ex. 398, Letter from Maxine Saunders to Robert W. Hearn (May 5, 1992), with attached Management Review, Section 8 Certificate and Voucher Programs (Feb. 18-21, 1992) (HA 06083-112).

490. In 1992, HUD found that HABC was using a special code to flag Section 8 applicants from public housing. HUD instructed HABC that federal law permits public housing residents to apply for Section 8 assistance and directed HABC to stop using the special code. However, HUD permitted HABC to deny preferences to public housing residents, and encouraged HABC to advise them that they would probably not qualify for a federal preference, even though HUD knew HABC was operating distressed projects, and that many residents were living in severely substandard conditions that would entitle them to a substandard housing preference. Ex. 398, Letter from Maxine Saunders to Robert W. Hearn (May 5, 1992), with attached Management Review, Section 8 Certificate and Voucher Programs (Feb. 18-21, 1992) (HA 06083-112); Ex. 12, Tamburrino Dep. 137:4-139:8.

491. Federal preferences have since been repealed, but HABC continues to make it difficult for public housing residents to obtain vouchers. HABC’s local preference policy does not give public housing tenants a preference to obtain a voucher, even if they are seeking the voucher to move to a non-minority or low-poverty neighborhood or to move out of distressed or substandard public housing. Ex. 25, Kramer Dep. 447:16-448:7. HABC continues to assume, in

the face of all evidence, that its housing meets HUD quality standards and that public housing residents are “generally ineligible” for a Section 8 preference. Ex. 25, Kramer Dep. 75:10-76:6; id. at 447-48. In fact, many of developments and scattered site units are so distressed that HABC is planning to demolish them. Even residents who are required to move so that their units can be modernized are not offered Section 8 vouchers as a relocation option. Ex. 26A, Schumann Dep. 177:5-178:4.

492. HABC staff are not required to inform residents people seeking a transfer from their current unit of the alternative to apply for a Section 8 voucher. Ex. 26A, Schumann Dep. 206:3-206:9. If a family has not already applied for Section 8 assistance, it generally will no longer be able to do so. HABC closed its waiting list for Section 8 effective February 14, 2003. Ex. 25, Kramer Dep. 71:4-6. New applications are being accepted only for emergencies and certain categories of persons (such as the disabled, veterans, crime victims and displaced persons). The Section 8 waiting list is not open for public housing residents who do not meet these criteria, even if they live in distressed or substandard public housing. Id. at 73:3-76:6, 479:3-479:8.

2. The Section 8 Voucher Program Does Not Effectively Foster Desegregation and Instead Reinforces Patterns of Segregation in the Baltimore Housing Market.

493. Public housing residents and other low-income families are not assured the choice to make a desegregative move just because they succeed in obtaining a voucher from HABC. As a result of the design and operation of the Section 8 voucher program, most Baltimore City voucher holders do not have an opportunity to live in desegregative areas. Instead, the vast majority live in census tracts in which most residents are black and poor. Over 80% of city

voucher users live in census tracts where the majority of residents are black. In addition, those who live in low-minority census tracts, live disproportionately in census tracts going through rapid racial transition. Ex. 5, Pendall Section 8 at 1-2. Moreover, 70% of Baltimore's voucher holders live in high poverty census tracts, and fully 30% live in tracts that not only have high levels of poverty, but also multiple indicators of neighborhood distress. Id. at 2.

a. The Section 8 Program Replicates and Exceeds Patterns of Segregation in the Market.

494. The conclusions of Plaintiffs' expert, Rolf Pendall, and HUD's expert, William Clark, are in accord, both showing that the voucher program replicates patterns of segregation in the housing market. Ex. 474, Report of Federal Defendants' Expert William A.V. Clark (Clark Rep.) at 3 ("Vouchers, while a useful tool for integration, will not change the large scale patterns of racial separation which exist in American cities in general and Baltimore in particular."); Ex. 5, Pendall Section 8, at 1 (noting markets constraints on vouchers' effectiveness and adding, "[v]ouchers and certificates do not by themselves end discrimination in housing markets or resolve racial segregation problems").

495. Both Dr. Pendall and HUD's expert, Dr. Clark, find that in certain respects the Section 8 program is actually more segregated than the market. Dr. Clark, for example, finds that "voucher holders are more likely to be in black tracts than would be predicted solely on the basis of the proportion of such neighborhoods." Ex. 474, Clark Rep. at 21 & Table 10. More than 67% of the City's voucher holders live in census tracts that are 70-100% black, as compared to 53% of the City's rental units, 56% of units renting for \$800 or less, and 53% of City neighborhoods. Ex. 474 Clark Rep. at Table 10. Voucher holders are disproportionately located

in heavily black tracts even in suburban Baltimore County, where 16.2% of voucher holders live in census tracts that are 75-100% black, even though only 9.6% of all Baltimore County rental units are located in such tracts. Id.

496. At the other end of the spectrum, Dr. Pendall and Dr. Clark agree that voucher users are virtually absent from City census tracts with black populations of 25% or less. Only 6.0% of voucher holders live in such tracts, while 20.6% of all City rental units are located in such tracts. Id.²

b. The Housing Choices of Voucher Users Are Constrained By Barriers in the Administration of the Section 8 Program and the Market.

497. The patterns of racial and economic segregation in the Section 8 program are not the product of unfettered, informed choice by households searching for housing with a voucher. The choices of voucher holders in the Baltimore metropolitan housing market are limited, and many are not able to find housing at all. Ex. 475, Housing Authority of Baltimore City, FY 2003 PHA Plan, and Supporting Document 3: Fair Housing Documentation, Baltimore Regional Fair Housing Action Plan (HA 69627-HA 69646 at HA 69639) (noting market constraints on choice, identifying “rent levels below much of the market, a very tight rental market, decreased production of affordable units, and an increased number of vouchers” as among the obstacles, and recognizing an all-time low rental vacancy rate in much of the region); Ex. 476, Harold Young, HUD Baltimore Field Office, The Electronic Dispatch, August 2002 (PL 058428-058440

² Dr. Clark’s text states at p. 21 that “It is notable that nearly 12 percent of voucher holders in the City of Baltimore are in tracts that are in the range of 0-25 percent black and there are 12 percent of the neighborhoods (tracts) with this characteristic.” This appears to be an error, as his Table 10 correctly indicates that only 6% of voucher users are located in these 0-25% Black tracts.

at PL 58428) (explaining how tight Baltimore market features selective landlords, high rents, and low availability, all working against Section 8 voucher holders).

498. After waiting for years, a family that obtains a voucher is not guaranteed to secure housing, and many do not. Fewer than 40% of the families who are issued an HABC voucher succeed in finding and leasing a home. Ex. 477, Paul Graziano to William Tamburrino, August 9, 2001 (HUD 08852); Ex. 25, Kramer Dep. 160:17-161:9. Even in 1993, when success rates were at an all time high of 83%, HUD admitted that a Section 8 family hoping to find a unit that meets program requirements (and a willing landlord) would often find its housing choices limited to a Section 8 “submarket.” Ex.478, Michael A. Stegman, Assistant Secretary for Policy Development and Research, Forward, Section 8 Rental Voucher and Rental Certificate Utilization Study, October 1994 (PL 070312-PL 070532 at PL 070315) (recognizing that “the effectiveness of Section 8 has been constrained by the inability of many enrollees to obtain housing using certificates and vouchers” in “‘Section 8 submarket’ of units whose landlords are generally familiar with the program and have previously rented to Section 8 tenants”).

499. African-American voucher holders encounter barriers to choice not faced by whites in competing for the affordable units that exist in the mainstream market. Ex. 479, HUD Office of Policy Development and Research, Issue Brief No. 5, May, 1995 Federal Rental Assistance Should Promote Mobility and Choice (PL 049807-PL 049812 at PL 049809) (reporting that 55% of white recipients, compared to only 36%, of black recipients live in neighborhoods that are less than 10 percent poor). Consistent with national data, Dr. Pendall found that across all of the suburban counties in the Baltimore housing market, 47.7% of voucher holders live in census tracts that are 25% black or less. However, most of the voucher holders in

these tracts are white. Only 27.2% of black suburban voucher holders live in tracts 0-25% black, a significant improvement over black voucher holders in Baltimore City, but still less than their white counterparts. Ex. 5, Pendall Section 8, Table 9.

500. Even when African American voucher holders find housing in majority white areas, it is often in neighborhoods transitioning from majority white to majority black. Ex. 5, Pendall Section 8, at 3. This is true even in Baltimore County, where 56% of black voucher holders who lived in tracts that had a minority of black residents lived in transitional tracts. Id. at p. 8

501. HUD has continued to fund HABC to operate the Section 8 program despite knowing that the program has concentrated voucher holders in low-income, segregated minority neighborhoods and Section 8 submarkets undergoing racial transition. HUD and HABC concede that many voucher users concentrated in the Patterson Park neighborhood, where speculators had “changed its character from homeownership to primarily rental. The speculators were buying properties and renting them exclusively to Section 8 households because the PHA was not doing a good job of determining rent reasonableness. Thus, an owner could charge a higher rent to a Section 8 family than he might otherwise receive in the market.” Ex. 367, HUD Report, Section 8 Tenant-Based housing Assistance: A Look Back after 30 Years (Mar. 2000) (HUD 1215-73); see also Ex. 25, Kramer Dep. 105:17-106:19, 112:13-114:12 (describing speculators who “bought properties, probably for very cheap in the Patterson Park area, made limited repairs and put them on the Section 8 program”).

502. As designed and administered by HUD, the basic structure of the Section 8 program further constrains the market choices of voucher holders and contributes to the existence

of Section 8 submarkets. In theory, Section 8 is based on a private market model free in which low-income families are free “to choose where to live and to apply to that choice the same priorities that motivate other families, such as access to work, quality schools for their children, and safe neighborhoods.” Ex. 69, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, State and Metropolitan Administration of Section 8, Current Models and Potential Resources: Final Report, HUD, April 1997, at Foreword (PL 81199-81214). However, even now with “portable” vouchers that can travel across geo-political boundaries, the process of transferring administration of the voucher from one housing agency to another is complex and “not transparent” to the voucher holder or to the landlord. Ex. 12, Tamburrino Dep. 166:1-167:10. Ex. 69, State and Metropolitan Administration of Section 8, Current Models and Potential Resources: Final Report, HUD, April 1997 (describing “basic structural mismatch between the predominantly local administration of the program and the metropolitan scope of urban housing markets”).

503. A voucher holder who receives a voucher from HABC cannot simply extend her search for an apartment along the Route 40 corridor from Edmondson Village to Catonsville or Ellicott City. Before she can lease an apartment, she must decide whether to “port out” by transferring her application to either Baltimore County or Howard County, wait for an appointment to undergo a second screening and orientation, and obtain a county voucher. Ex. 12, Tamburrino Dep. 166:1-167:10. HUD recognizes that portability, as it is administered in the Baltimore housing market, makes the free movement of Baltimore City voucher holders throughout the market more difficult. Id.; Ex. 480, HUD Office of Policy Development and Research, Case Studies of Vouchered-Out Assisted Properties, May, 1998 (PL 070944-PL

071322) (acknowledging that policy seems “unreasonable” and “discriminatory”). HABC has the ability to avoid the barriers imposed by the portability process because state law allows housing agencies to administer rent subsidies outside of their political boundaries. See MD Code Ann., Art. 44A § 1-103(b)(1)(i); Ex. 12, Tamburrino Dep. 162:13-163:7. However, outside of the Section 8 programs under the Partial Consent Decree, HUD, HABC, and other housing agencies have chosen not to utilize this flexibility.

504. In addition, HUD discourages HABC from assisting HABC Section 8 voucher holders to locate outside Baltimore City, despite the fact that non-minority and non-poor neighborhoods are more plentiful outside the City. Currently, as the Section 8 program is administered by HUD, with respect to HABC’s compliance with HUD’s voucher utilization requirements, HABC gets no credit for voucher users who locate outside Baltimore City. Ex. 25, Kramer Dep. 170:12-171:15. Therefore, HABC has a disincentive to assist tenants to move out of the City. HABC’s “primary interest is compliance with utilization and getting my vouchers utilized within the City.” Id. In the twelve month period preceding May 2003, only 60 voucher families “ported out” of Baltimore City to other jurisdictions. Ex. 481, CitiStat Report, Housing Authority of Baltimore City, May 16, 2003 (HABC 008289-HABC 008309 at HABC 008308).

505. The portability barrier is significant because the suburban areas of the Baltimore housing market offer many more choices for decent housing in non-distressed, non-poor and non-minority neighborhoods than does Baltimore City alone. Ex. 5, Pendall Section 8 at 7-9. Few black voucher holders in the suburbs experience the extremes of racial concentration common to voucher holders within the City; only about 10.5 percent live in tracts that are at least 80% black. Vouchers can work in the Baltimore housing market, but only if voucher users have

much better access to the entire metropolitan market than is the norm for Baltimore City's voucher users. Id. at 9.

c. HUD, HABC, and the City Fail To Administer Section 8 So As To Overcome Barriers to Market Choice in the Section 8 Program.

506. HUD acknowledges that the Section 8 program, if it is to serve as an effective tool for fair housing choice and desegregation, must do more than send minority families out to compete in a segregated housing market. It must incorporate affirmative methods of administration, such as mobility counseling, to overcome the many barriers to effective choice. Ex. 482, HUD, Urban Policy Brief, September, 1994 (PL 051665-PL 051674 at PL 051670) (suggesting that obstacles to considering relocating to suburbs, such as “fears of racial discrimination, attachment to existing social networks and lack of information and transportation,” can be overcome with “[t]he constant involvement of a counselor”).

507. From time to time, HUD has provided funding for experimental programs that help voucher users move to low poverty or suburban areas (and only indirectly to non-minority areas). HUD's expert, Dr. Clark, admits that these programs have had success in providing opportunities for some families to move away from poor inner city neighborhoods, and that families have benefitted as a result. Ex. 474, Clark Rep. at 2, 3. In Baltimore, HUD and HABC have dismantled or terminated programs that facilitate regional mobility. For example, HABC has asked HUD to dissolve a special regional Section 8 program that offered certificates to families wishing to move from one jurisdiction to another, instead asking that certificates be issued directly to metropolitan jurisdictions. Ex. 483, Robert W. Hearn, HABC, to Philip Katzung, Maryland Department of Housing and Community Development, April 8, 1992

(LD14869-LD14870). HUD then effectuated the dissolution of the Regional Certificate program, without requiring that the certificates be affirmatively used to promote portability or for any similar fair housing or desegregation purpose. Ex. 12, Tamburrino Dep. 153:19-162:161:1; id. at 8:5-10:21.

508. Mobility programs that HABC has identified as actions that affirmatively further fair housing in applications for funding and in its PHA Plan have all been terminated or exhausted their funding. Ex. 25, Kramer Dep. 185:8-187:18; Ex. 12, Tamburrino Dep. 116 -119. HABC does not currently operate a mobility program for families participating in its regular Section 8 programs. Ex. 25, Kramer Dep. 185:8-187:18; Ex. 12, Tamburrino Dep. 116 -119. HABC's Section 8 office does not make targeted efforts to recruit owners in non-impacted suburban areas in order to expand housing opportunities for its voucher families. Ex. 25, Kramer Dep. 221:7-15.

B. Mismanagement of the HABC Section 8 Program Has Impeded Its Effective Use In Non-Minority Areas And As a Tool for Desegregation.

509. HUD and HABC's dysfunctional administration of its Section 8 program has adversely affected the program's ability to promote desegregation and expand housing opportunities in non-minority and non-poor neighborhoods. HUD has continued to fund HABC to operate the Baltimore Section 8 program despite being aware that it was horrendously administered and was perpetuating segregation. HUD did not require HABC to operate its Section 8 program in a manner to promote fair housing choice and desegregation.

510. HABC's Section 8 director, Michael Kramer, describe a program in complete disarray when he arrived in early 2001. Ex. 25, Kramer Dep 123:8 - 129:13; 133:9-138:3;

141:7-150:8. Mr. Kramer describes a “decade of mismanagement” by HABC during which Section 8 was treated as the agency’s “stepchild.” Ex. 484, “Kramer, Section 8 Concerns,” undated (HA 69599). The agency was unable to account for the number of units it had under lease, was unable to pay owners in a timely manner, and was not utilizing approximately 4500 vouchers. Id.

511. HUD monitoring reviews conducted in 1992 and again in 1999 make clear that HUD was aware of the on-going problems with HABC’s administration of the Section 8 program. Ex. 398, Letter from Maxine Saunders to Robert W. Hearn (May 5, 1992) (HA 06083); Ex. 485, Letter from Unabyrd Ervin-Jones to Patricia J. Payne, 1999 Management Review of Section 8 Programs, February 4, 2000 (HUD 09085). The problems were allowed to fester until 2001, when HUD’s Inspector General issued a scathing audit of HABC’s Section 8 program. The audit concluded that “[t]he HABC’s Section 8 Program is barely functional, and the HABC continues to mismanage and waste scarce resources intended to provide housing opportunities to its low-income residents.” Ex. 401, OIG Audit Report, Housing Authority of Baltimore City, Section 8 Certificate and Voucher Programs (Mar. 28, 2001) (HUD 09265-326).

512. The Inspector General found that the HABC had failed to timely and accurately pay owners for units in its Section 8 Program. In March 2000 alone, HABC had failed to make payments for over 3,000 families, one third of its program participants. Id. at HUD 09282. HABC was overstating the number of units leased and failing to fully utilize its Section 8 funding. This mismanagement led to HUD’s recapturing of \$74 million of unused Section 8 funds in 1997-98. Id. at HUD 09280. The recaptured funds were not returned to HABC and were lost to Baltimore. Ex. 25, Kramer Dep. at 141:21-146:14. By 2001, another \$50 million of

unused resources had accrued in HABC's reserve accounts. Ex. 401, OIG Audit Report, Housing Authority of Baltimore City, Section 8 Certificate and Voucher Programs (Mar. 28, 2001) (HUD 09265-326 at 9300); Ex. 25, Kramer Dep. at 145:20-146:14.

513. In the Inspector General's view, these unspent funds were due not to sound financial practices. In fact, quite to the contrary, the Inspector General concluded, "We believe the HABC does not fully utilize its Section 8 funding because it simply does not have the financial and operational capacity to effectively administer its Section 8 program...In our opinion, the HABC is not meeting its program mission of providing affordable housing to its low-income families in the City of Baltimore." The program's lack of credibility with rental property owners is a barrier to its use in non-minority areas and throughout the market. Ex. 12, Tamburrino Dep. 136:15-137:6.

514. HABC also failed the Section 8 Management Assessment (SEMAP) for the fiscal years ending June 30, 2001, earning a performance rating of "troubled" with a score of fifteen (15) points out of a possible total of 120 points. Ex. 486, Unabryd Ervin-Jones to Paul T. Graziano, Final Score Letter, November 29, 2001 (HUD 11553). HABC's Section 8 program did even worse the following year, earning only twelve points. Ex. 487, Unabryd Ervin-Jones to Paul T. Graziano, April 30, 2003 (HUD 34666-HUD 34779). As a result of this failure, HABC was barred from applying for new Section 8 funds under a HUD Notice of Funding Availability. Ex. 12, Tamburrino Dep. at 102:13-102:18.

515. One of the indicators on which HABC's administration of the Section 8 program is evaluated specifically examines policies and practices that expand housing opportunities in non-minority and non-poor neighborhoods. HABC has received a zero or failing score on this

indicator for fiscal years 2001 and 2002. Contrary to claims in earlier SEMAP certifications, HABC admitted in its fiscal year 2001 certification that it that it did not have a written policy regarding actions it would take to encourage participation by owners of units outside areas of poverty or minority concentration; that it could not provide documentation that it had taken such actions; and that voucher holders were not given listings of owners who are willing to lease housing outside areas of minority concentration. Ex. 488, Paul Graziano to William Tamburrino, HABC SEMAP Certification, November 5, 2001, Indicator G (HABC 00553, 005573). HABC admits that claims that it had made in prior certifications that it had implemented such procedures could not have been correct. Ex. 25, Kramer Dep. 156:20-157:11, 179:15-181:16; Ex. 489, Gary Markowski, HABC, to Candace Simms, HUD, Section 8 Management Assessment (SEMAP) Certification, August 25, 1999 (HA 24740-51).

516. However, at the same time that HABC was admitting its failure to meet even the minimal SEMAP minimum performance requirements for expanding housing opportunity, HUD was allowing HABC to disband a Section 8 mobility program. Ex. 25, Kramer Dep. 186:16-187:18. And even while HABC's "Regional Opportunity Counseling" program was due to expire, leaving HABC voucher holders without an alternate source of mobility counseling services, in September of 2001 HUD also barred HABC from applying for housing counseling funds to operate a Section 8 mobility program. Ex. 400, Letter from Unabyrd Ervin-Jones, HUD to Paul Graziano, HABC (Sept. 18, 2001) (HUD 1274-75); Ex. 12, Tamburrino Dep. 111:3-111:20. And while barring HABC from requesting funds for mobility counseling programs, HUD was asking HABC to provide mobility counseling to hundreds of families that HUD was pouring into the market while vouchering out an FHA apartment complex. Ex. 490,

Letter from Mary Ann Henderson, HUD, to Paul Graziano, HABC, (July 25, 2002) (HUD 30879-30880).

517. Without a functioning mobility program for its regular voucher holders, only 55 voucher holders leased in non-impacted areas of city, during the latest 12-month period for which data is available, compared to 1,173 in impacted areas. Ex. 481, CitiStat Report, Housing Authority of Baltimore City, May 16, 2003 at HABC 008308. While only 60 voucher families “ported out” of Baltimore City to other jurisdictions during this period, 209 voucher families moved into Baltimore City, all but seven to impacted areas. Id. HABC’s Section 8 office does not make targeted efforts to recruit owners in non-impacted suburban areas in order to expand leasing opportunities for its voucher families. Ex. 25, Kramer Dep. 221:7-15.

518. Notwithstanding HABC’s focus on leasing Section 8 vouchers within Baltimore City, families issued vouchers have a great deal of difficulty finding homes, and HABC struggles to use the Section 8 funds allotted to it. During the twelve-month period preceding May 2003, an average of 12,774 families were waiting for Section 8 assistance, while an average of 1,665 regular vouchers remained unused. Ex. 481, CitiStat Report, Housing Authority of Baltimore City, May 16, 2003 at HABC 008307.