

HOECKER

Tinsley Amended Complaint (Watkins Class)

2/9/89 Yb S/ld

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DOLETHA TINSLEY, CORINE)
BATTS, BERTHA DOSS, LORINE)
DAWKINS, MARY VANN, AND LINDA)
ROBINSON, ON BEHALF OF THEM-)
SELVES AND THOSE SIMILARLY)
SITUATED,)

Plaintiffs,)

v.)

JACK L. KEMP, 1 SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; MIKE FISHER, EXECUTIVE DIRECTOR OF HOUSING AUTHORITY OF KANSAS CITY, MISSOURI AND THE HOUSING AUTHORITY OF KANSAS CITY, MISSOURI.)

Defendant.)

Case No. 89-0023-CV-W-1 CLASS ACTION

Tinsley v. Kemp



PH-MO-002-001

FIRST AMENDED COMPLAINT

I. INTRODUCTORY STATEMENT

1. This is a class action for declaratory and injunctive relief on behalf of all residents of T.B. Watkins Homes, (T.B. Watkins), a public housing development operated by defendants, Housing Authority of Kansas City, Missouri, and Mike Fisher (hereinafter referred to collectively as "HAKC"), and on behalf of all applicants to public housing operated by HAKC who have been placed on a waiting list for public housing.

1. Plaintiffs are automatically substituting the name of Jack L. Kemp as Secretary of HUD pursuant to Fed. R. Civ. P. 25(d)(1).

2. Plaintiffs who are residents of T.B. Watkins and the class they represent are living in substandard conditions. Over the years, HAKC has failed to respond to plaintiffs' requests for repairs. As a result, the units are frequently in a state of disrepair, and at all times relevant hereto, the common areas of the buildings at T.B. Watkins have been dilapidated and dangerous.

3. Currently, there are approximately 118 vacancies at T.B. Watkins out of 288 units. HAKC has boarded up most of these 118 vacant units. However, they have not been properly secured. Trespassers and drug dealers have entered many of these vacant units and have threatened and frightened the residents of T.B. Watkins.

4. HAKC has taken little action to protect the residents of T.B. Watkins. Moreover, HAKC has taken no action to repair and make occupiable the 118 vacant units.

5. This complaint is also filed on behalf of applicants to public housing who have been placed on a waiting list. Some of these applicants are living in overcrowded conditions. Some are homeless. Many of these applicants would not be waiting for low-income housing if HAKC had performed its duties and made the necessary repairs to ready the vacant units for occupancy.

6. Plaintiffs seek an order requiring HAKC to immediately repair and make occupiable all of the units at T.B. Watkins. Plaintiffs also seek an order requiring HAKC to immediately fill all vacant units after said units have been made occupiable. Plaintiffs seek to enjoin defendants from causing the deteriora-

tion and de facto demolition of T.B. Watkins. Plaintiffs challenge defendants' actions as violative of 42 U.S.C. § 1437p, the Administrative Procedure Act, and the Annual Contributions Contract entered into by defendants HAKC, HUD and Kemp. Plaintiffs also challenge defendants' actions as violative of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 et seq. and Title VI 42, U.S.C. § 2000d et seq. because their actions discriminate against and have an adverse impact upon the nonwhite residents of T.B. Watkins and the nonwhite applicants for public housing.

II. JURISDICTION

7. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), as this is an action to redress the deprivation, under color of state law, regulation, custom and usage, of rights, privileges and immunities secured by the Constitution of the United States, and by an Act of Congress, 42 U.S.C. § 1983, providing for the protection of civil rights.

8. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, as this is an action arising under the laws and Constitution of the United States.

9. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1337, as this action arises under the United States Housing Act of 1937 as amended, 42 U.S.C. § 1437 - § 1437s (hereinafter referred to as the "Housing Act"), an Act of Congress regulating commerce.

10. Jurisdiction is also conferred upon this Court by 42 U.S.C. § 3610 and 42 U.S.C. § 3612.

11. This Court is authorized to grant declaratory judgments by 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedures.

12. This Court is authorized to grant injunctive relief by 28 U.S.C. § 2202 and Rule 65 of the Federal Rules of Civil Procedure.

III. PARTIES

13. Plaintiff Doletha Tinsley has been a tenant at T.B. Watkins since 1984. She resides at 1606 E. 12th Terrace, Apt. 3, Kansas City, Jackson County, Missouri. Ms. Tinsley is a black, adult citizen of the United States of America.

14. Plaintiff Corine Batts has been a tenant at T.B. Watkins since 1983. She resides at 1606 E. 12th Terrace, Apt. 2, Kansas City, Jackson County, Missouri. Ms. Batts is a black, adult citizen of the United States of America.

15. Plaintiff Bertha Doss has been a tenant at T.B. Watkins since 1981. She resides at 1305 Paseo, Apt. 5, Kansas City, Jackson County, Missouri. Ms. Doss is a black, adult citizen of the United States of America.

16. Plaintiff Lorine Dawkins has been a tenant at T.B. Watkins since 1985. She resides at 1233 Highland, Apt. 4, Kansas City, Jackson County, Missouri. Ms. Dawkins is a black, adult citizen of the United States of America.

17. Plaintiff Mary Vann has been a tenant at T.B. Watkins since 1970. She resides at 1320 Highland, Apt. 7, Kansas City, Jackson County, Missouri. Ms. Vann is a black, adult citizen of the United States of America.

18. Plaintiff Linda Robinson is an applicant to public housing operated by HAKC. She has been on a waiting list for a three bedroom unit since April, 1988. Ms. Robinson has four children. Ms. Robinson has been homeless since October, 1987. She has lived at various times in shelters or with relatives. She is desirous of moving into T.B. Watkins. Ms. Robinson is a resident of Kansas City, Jackson County, Missouri and a black, adult citizen of the United States of America.

19. Defendant Jack L. Kemp is the Secretary of the United States Department of Housing and Urban Development (HUD) in Washington, D.C. Defendant Kemp is sued in his official capacity. His presence in this action is necessary and indispensable for the provision of the relief requested by the plaintiffs.

20. Defendant HUD is the federal administrative agency responsible for fulfilling its statutory obligations, duties, and responsibilities under the Housing Act. Defendant HUD, is also responsible for implementing and enforcing any of its regulations promulgated to effectuate its statutory responsibilities.

21. Defendant Housing Authority of Kansas City, Missouri is a municipal corporation, created and existing under the laws of the State of Missouri, Mo. Rev. Stat. §§ 99.010-99.225, and is, pursuant to said statutes, an agency and instrumentality of the State of Missouri. The Housing Authority is within the territorial jurisdiction of this Court, and is a Public Housing Agency within the meaning of 42 U.S.C. § 1437, which administers federally subsidized and assisted low-rent housing programs as authorized by the Act and regulations promulgated thereto.

22. Defendant, Mike Fisher, is the Interim Executive Director of the Housing Authority of Kansas City, Missouri, and is sued in his official capacity as Interim Executive Director. Defendant Mike Fisher resides within the territorial jurisdiction of this Court. As Interim Executive Director, he is charged with the overall responsibility for the operation and administration of all the projects and programs of the Housing Authority of Kansas City, Missouri, including the administration of public housing programs.

IV. CLASS ACTION REQUIREMENTS

23. The named plaintiffs bring this suit individually and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of a class consisting of all residents of T.B. Watkins and all applicants for public housing operated by HAKC who have been placed on a waiting list for public housing.

24. The requirements of Rule 23 are met in that the class, upon information and belief, consists of more than one hundred seventy (170) residents of T.B. Watkins and more than one thousand fifty (1050) applicants for public housing operated by defendant HAKC who have been placed on a waiting list. The class is so numerous that joinder is impracticable. There are questions of law and fact common to the class including whether defendant HAKC's failure to repair and maintain T.B. Watkins violates rights secured to plaintiffs and all class members; the claims of the named plaintiffs are typical of the claims of the class; the named plaintiffs will fairly and adequately protect the interests of the class; and the defendants have acted and re-

fused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

STATUTORY AND REGULATORY BACKGROUND

25. The Housing Act was intended to provide a remedy for the shortage of decent, safe, and sanitary dwellings for low-income individuals. This legislation, in pertinent part, authorizes a variety of federal subsidies to Public Housing Authorities ("PHAs") to assist in the development and operation of housing projects.

26. The national housing goal was affirmed in the Housing and Community Development Act of 1968, 12 U.S.C. § 1701t, which stated that the goal of "a decent home and a suitable living environment for every American family" had not been fully "realized for many of the Nation's lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal."

Congress went on to provide that:

The Congress declares that in the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; and in the carrying out of such programs there should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques.

27. The Federal Government, through the mechanism of the Annual Contributions Contract (ACC), to which a PHA is a party, has

the authority to make annual contributions to subsidize the cost of operating and managing low-income public housing projects. 42 U.S.C. §§ 1437c and g. The operation of each local PHA is subject to extensive regulation by HUD including, but not limited to, the following areas: admission requirements, 24 C.F.R. part 960; maintenance and operation, 24 C.F.R. part 965; lease and grievance procedures, 24 C.F.R. part 966; energy conservation and utilities, 24 C.F.R. part 965; and the demolition and disposition of public housing units or projects, 24 C.F.R. part 970.

28. The Secretary of HUD is authorized to assist in the financing of the construction, acquisition and operation of low-rent housing developments on behalf of low-income individuals and families by a PHA such as HAKC. 42 U.S.C. § 1437b.

29. The demolition or disposition of a public housing project or unit is covered under 42 U.S.C. § 1437p. In 42 U.S.C. § 1437p(a), the Secretary of HUD may not approve an application by a public housing authority for demolition or disposition unless the Secretary determines that:

(1) in the case of an application proposing demolition of a public housing project or a portion of a public housing project, the project or portion of the project is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes and no reasonable program of modification is feasible to return the project or portion of the project to useful life; or in the case of an application proposing the demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project; (Emphasis added).

30. The statute continues to define specific requirements that must be met before an application for demolition can be approved:

(b) The Secretary may not approve an application or furnish assistance under this section or under this Act unless--

(1) the application from the public housing agency has been developed in consultation with tenants and tenant councils, if any, who will be affected by the demolition or disposition and contains a certification by appropriate local government officials that the proposed activity is consistent with the applicable housing assistance plan;

(2) all tenants to be displaced as a result of the demolition or disposition will be given assistance by the public housing agency and are relocated to other decent, safe, sanitary, and affordable housing, which is, to the maximum extent practicable, housing of their choice, including housing assisted under Section 8 of this Act; and

(3) the public housing agency has developed a plan for the provision of an additional decent, safe, sanitary, and affordable dwelling unit for each public housing dwelling unit to be demolished or disposed under such application which plan--

(A) provides for the provision of such additional dwelling units through--

(i) the acquisition or development of additional public housing dwelling units;

(ii) the use of 15-year project-based assistance under Section 8;

(iii) the use of not less than 15-year project-based assistance under other Federal programs;

(iv) the acquisition or development of dwelling units assisted under a State or local government program that provides for project-based assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years) to assistance under Section 8(b)(1);

(v) the use of 15-year tenant-based assistance under Section 8 (excluding vouchers under Section 8(o); or

(vi) any combination of such methods;

Under 42 U.S.C. § 1437p(d), a public housing agency "shall not take any action to demolish or dispose of a public housing

project or a portion of a public housing project without obtaining the approval of the Secretary and satisfying the conditions specified in subsections (a) and (b)."

(Emphasis added).

31. Title 42 U.S.C. § 3604(a) makes it unlawful to "refuse to sell or rent after the making of a bona fide offer, . . . or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex or national origin."

32. Title 42 U.S.C. § 3608(d) states that "[a]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this title and shall cooperate with the Secretary to further such purposes."

33. Title 42 U.S.C. § 2000(d) provides that: "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

FACTUAL STATEMENT

34. Plaintiffs Doletha Tinsley, Corine Batts, Bertha Doss, Lorine Dawkins and Mary Vann are tenants of T.B. Watkins. All of their units have had defective conditions at various times during their tenancy. Frequently, their requests for repairs have been ignored by HAKC. When repairs have been made, they have usually been made improperly by unskilled maintenance workers.

35. Although these plaintiffs have had individual habitability problems with their units, the more serious risk of harm

to plaintiffs and their children comes from the dangerous conditions in the common areas of each building at T.B. Watkins and the existence of 118 vacant units among the 288 total units at the project.

36. The vacant units have exposed plaintiffs and the class they represent to drug dealers, arsonists and trespassers. These vacant units have not been properly secured by HAKC thereby enabling trespassers and drug dealers to enter the units and inhabit them. These units have become dilapidated and uninhabitable due to HAKC's failure to repair the units as repairs were needed. As a result, these vacant units are unoccupiable and have been left unsecured. Many of these units have been stripped of window frames, appliances, cabinets and countertops. They are full of trash and infested with rats and insects.

37. The legitimate residents of T.B. Watkins are fearful for their lives. They are frequently exposed to open drug dealing in the vacant units and in the hallways of their buildings. The common areas are full of trash, human waste, broken glass and filth. Many of the windows in the common areas are broken. The buildings are unsecured and dangerous.

38. Since May, 1988 the number of vacancies at T.B. Watkins has increased from 35 to 118 units. The vacancies at T.B. Watkins are growing at an astonishing rate.

39. HAKC has a history of failing to make repairs to its public housing units and buildings to such an extent that buildings at T.B. Watkins and other public housing projects have been demolished.

40. In 1983, T.B. Watkins had 348 units. HAKC requested the demolition of 48 units "because of the delay in making relatively simple repairs." Fiscal Year 1983 Comprehensive Improvement Assistance Program Preliminary Application Narrative, p. 12. HAKC felt that it would be more cost effective to demolish the units than to rehabilitate them at \$4,500.00 per unit. Id.

41. Defendants HUD and Pierce approved the demolition of these 48 units to be funded under the Fiscal Year 1984 Comprehensive Improvement Assistance Program (CIAP). Consequently T.B. Watkins went from 348 units to 300 units.

42. In 1984, HAKC again requested permission from HUD to demolish 12 units at T.B. Watkins due to poor maintenance and substandard conditions. Again, Defendants HUD and Pierce approved the demolition and T.B. Watkins was reduced from 300 units to 288 units.

43. HAKC is fully aware that its failure to make repairs and to remedy defective conditions has caused the de facto demolition of the affected units and buildings at T.B. Watkins.

44. In the summer of 1988, HUD assigned a member of its staff to be officed full-time at the central office of HAKC in order to oversee and monitor HAKC's management and operation of its public housing projects.

45. HUD has refused to take any action to force HAKC to remedy the defects and rehabilitate the vacant units at T.B. Watkins. Additionally, HUD has recently refused to grant funds for the rehabilitation of T.B. Watkins.

46. Currently, 99% of the residents at T.B. Watkins are nonwhite. Historically, T.B. Watkins has been predominately occupied by nonwhites.

47. All of the plaintiffs are nonwhite. The de facto demolition of T.B. Watkins has a greater adverse effect upon nonwhite people than upon white people.

48. Currently there are approximately 1,050 people on a waiting list to get into public housing. Plaintiff Linda Robinson is one of those persons.

49. The waiting list for public housing operated by defendant HAKC contains a larger percentage of nonwhite applicants than white applicants.

50. Most people on the waiting list for public housing are either living in substandard or overcrowded conditions, facing eviction because of their inability to pay the rent or are homeless.

51. Plaintiff Linda Robinson has lived in various shelters and is currently living with ten other people in a three bedroom house.

52. There are approximately 12,000 homeless people in the Kansas City, Missouri metropolitan area.

53. HAKC has a pattern and practice of deferring maintenance until units and buildings are beyond repair, thereby leading to demolition.

54. Plaintiffs and the class they represent have been injured by defendants' de facto demolition of T.B. Watkins.

55. Plaintiffs and the class they represent will be irreparably harmed if HAKC is not enjoined from taking any further steps to demolish units at T.B. Watkins.

56. Plaintiffs and the class they represent will be irreparably harmed if HAKC and HUD are not enjoined from deferring or neglecting to perform necessary maintenance and rehabilitation of all the units and common areas at T.B. Watkins.

57. Plaintiffs and the class they represent will be irreparably harmed if HAKC, HUD and Kemp are not enjoined from taking any action concerning T.B. Watkins that will have a discriminatory impact on plaintiffs and their class.

58. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

COUNT I (42 U.S.C. § 1983 against HAKC)

59. Plaintiffs reallege and incorporate by reference as if fully pled herein paragraphs 1 through 58 of their Complaint.

60. Defendants, Housing Authority of Kansas City, Missouri and Mike Fisher are each "persons" within the meaning of that term as it is used in 42 U.S.C. § 1983.

61. Defendant HAKC has failed to maintain and properly manage T.B. Watkins to such an extent that many of its occupied units are in disrepair and the 118 unoccupied vacant units are dilapidated and unfit for occupancy.

62. HAKC has failed to preserve the 118 vacant units by failing to repair and maintain these units in decent, safe and sanitary condition and by removing tenants from certain units.

63. HAKC's actions have caused the 118 vacant units at T.B. Watkins to become unoccupiable and have created a de facto demolition of these units.

64. The Housing Act requires that HAKC before undertaking any action, including the omission or failure to act, that would result in the destruction or demolition of any existing T.B. Watkins unit, must secure approval from defendants Kemp and HUD. 42 U.S.C. § 1437p. Such approval shall not be given unless certain conditions have been met, including the submission of an application that has been "developed in consultation with tenants . . . who will be affected by the demolition or disposition . . .", 42 U.S.C. § 1437p(b)(1), and provides that "all tenants to be displaced as a result of the demolition or disposition will be given assistance by the public housing agency and are relocated to other decent, safe, sanitary and affordable housing, which is, to the maximum extent practicable, housing of their choice" 42 U.S.C. § 1437p(b)(2).

65. HAKC has not consulted with tenants regarding the future of T.B. Watkins and has not developed their plans after consultation with tenants.

66. HAKC has failed to provide adequate relocation assistance and has not developed a plan for relocation of displaced tenants.

67. The actions and omissions of HAKC under color of state law deprived plaintiffs and the class they represent of the

rights they enjoy under 42 U.S.C. § 1437p.

COUNT II

(Civil Remedy Against Kemp and HUD)

68. Plaintiffs reallege and incorporate by reference as if fully pled herein paragraphs 1 through 58 of their complaint.

69. Plaintiffs and the class they represent fall within the class of persons intended by Congress to be benefitted by 42 U.S.C. § 1437p and federal regulations at 24 C.F.R. Part 970.

70. Title 42 U.S.C. § 1437p and 24 C.F.R. Part 970 create certain rights and remedies for plaintiffs and the class they represent which mandate that no action be taken to demolish a public housing unit or project without satisfying all the statutory and regulatory requirements preceding HUD approval.

71. The actions of defendants HUD and Kemp have caused a de facto demolition without meeting the statutory and regulatory requirements.

72. As a proximate result of the actions of defendants HUD and Secretary Kemp, plaintiffs and the class they represent have suffered irreparable damage in the form of the unsafe and substandard environment in which they live.

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COUNT III

(A.P.A. Against HUD)

73. Plaintiffs reallege and incorporate by reference as if fully pled herein paragraphs 1 through 58 of their Complaint.

74. Defendant HUD is an agency within the definition set out in 5 U.S.C. § 701(b)(1) of the Administrative Procedure Act (hereinafter referred to as the "APA").

75. Title 5 U.S.C. § 702 of the APA authorizes an action to be brought by persons adversely affected, aggrieved or suffering legal wrong by agency action.

76. Plaintiffs and the class they represent are persons adversely affected, aggrieved or suffering legal wrong by the actions of defendant HUD as these terms are defined under the APA. There are no administrative remedies for plaintiffs and the class they represent to pursue in order to redress the claims raised herein.

77. The actions of defendants HUD and Kemp in approving of the de facto demolition of 118 units at T.B. Watkins were in violation of 42 U.S.C. § 1437p and were arbitrary, capricious and an abuse of discretion.

COUNT IV

(Contract Claim Against HUD, Kemp and HAKC)

78. Plaintiffs reallege and incorporate by reference as if fully pled herein paragraphs 1-58 of their Complaint.

79. Defendants HUD, Kemp and HAKC entered into an ACC pursuant to 42 U.S.C § 1437c which has been and is in full force and effect during all proceedings mentioned in this Complaint.

80. In consideration for their mutual promises, HUD has agreed in the ACC to provide financial assistance to HAKC for its operation and management of its programs. In said contract, HAKC has agreed to comply with HUD requirements and regulations for the development and operation of public housing projects. 24 C.F.R. § 964.7.

81. Public housing tenants and applicants for public housing are the intended beneficiaries of the ACC between HUD and HAKC.

82. Defendants HUD and Kemp have breached the ACC by failing and refusing to enforce the terms and conditions of the ACC requiring proper maintenance of public housing units and prohibiting the de facto demolition of public housing units.

83. Defendant HAKC has breached the ACC by failing and refusing to maintain T.B. Watkins and by its de facto demolition of T. B. Watkins without following the statutory and regulatory requirements.

84. Defendants HUD, Kemp and HAKC have breached the ACC to the detriment and injury of applicants for public housing and tenants of public housing operated by HAKC.

COUNT V

(Title VIII claim against HAKC, Kemp and HUD)

85. Plaintiffs reallege and incorporate by reference as if fully pled herein paragraphs 1 through 58 of their Complaint.

86. The acts and conduct of defendants HAKC, HUD and Kemp complained of herein, to wit, that defendants have failed to repair, rehabilitate and make occupiable 118 vacant units at T.B. Watkins, and have failed to maintain and secure the common areas of the buildings at T.B. Watkins constitute violations of 42 U.S.C. § 3604. These actions have made said units unavailable to plaintiffs and have created a discriminatory impact upon plaintiffs and the class they represent.

COUNT VI

(Title VIII claim against Kemp and HUD)

87. Plaintiffs reallege and incorporate by reference as if fully pled herein paragraphs 1 through 58 and 86 through 87 of their Complaint.

88. The failure of defendents HUD and Kemp to protect plaintiffs and the class they represent from racially discriminatory treatment violates the duty of HUD and Kemp under 42 U.S.C. § 3608(d) to affirmatively further the purpose of Title VIII in its administration of all programs and activities relating to housing and urban development.

COUNT VII

(Title VI claim against HUD, Kemp and HAKC)

89. Plaintiffs reallege and incorporate by reference as if fully pled herein paragraphs 1 through 58 and 86 through 88 of their Complaint.

90. Federal financial assistance is provided to defendent HAKC from defendants HUD and Kemp to administer and operate the public housing program in Kansas City, Missouri.

91. Plaintiffs and the class they represent are the intended beneficiaries of the federal public housing program and federal funds for said program.

92. The acts and conduct of defendents HAKC, Kemp and HUD have denied plaintiffs and the class they represent the benefits of living in safe, decent and sanitary housing and have subjected plaintiffs and the class they represent to discrimination under the federal public housing programs.

*Dismissed against Kemp HUD & HAKC for failure to allege intentional dischm
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93. As a result of their actions and inactions, defendants HAKC, Kemp and HUD have violated 42 U.S.C § 2000(d) and 24 C.F.R. § 1.4, thereby creating a discriminatory impact upon plaintiffs and the class they represent.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

1. Assume jurisdiction of this action and retain jurisdiction until the full relief prayed for has been provided.

2. Enter an order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure that this action may be maintained as a class action.

3. Certify the class as all residents of T.B. Watkins and all applicants for public housing in Kansas City, Missouri, who have been placed on a waiting list for public housing.

4. Enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the actions and omissions of defendants HAKC, HUD and Kemp that contribute to and cause the de facto demolition of T.B. Watkins constitute violations of 42 U.S.C. § 1437p which plaintiffs are permitted to enforce.

5. Enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the actions of defendants HUD and Kemp in contributing to and approving the de facto demolition of T.B. Watkins are arbitrary and capricious acts and constitute an abuse of discretion under 5 U.S.C. § 706(2)(A).

6. Enter a declaratory judgment pursuant to 28 U.S.C.

§§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the actions of defendants HUD and Kemp infailing to properly administer the ACC between defendants HUD and HAKC constitute a breach of the ACC.

7. Enter a preliminary and permanent injunction:

- a. Enjoining the further de facto demolition, destruction and deterioration of T.B. Watkins.
- b. Mandating the immediate rehabilitation of all vacant units so that they are occupiable and habitable.
- c. Mandating the immediate rental of all vacant units upon the completion of their rehabilitation.
- d. Mandating the immediate repair of all defective conditions in all occupied units.
- e. Mandating the provision of security and protection at T.B. Watkins.
- f. Mandating the repair and cleaning of all common areas both inside the buildings and on the grounds.

8. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring that defendants HAKC, HUD and Kemp have violated 42 U.S.C. § 3604, and 42 U.S.C. § 2000(d) and that defendants HUD and Kemp have violated 42 U.S.C. § 3608.

9. Grant preliminary and permanent relief enjoining defendants HAKC, HUD and Kemp and their agents and employees from making housing unavailable to plaintiffs and the class they represent and from engaging in conduct that creates a discriminatory

impact upon plaintiffs and the class they represent.

10. Enter an order that plaintiffs and the class they represent shall not be required to post bond as security for the issuance of a preliminary injunction.

11. Award plaintiffs the costs and disbursements of this action and reasonable attorney's fees.

12. Award plaintiffs such further and other relief as the Court deems proper.

Julie E. Levin

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Attorneys for Plaintiffs
and the Class

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above and foregoing was mailed, postage-prepaid, this 9th day of February, 1989, to:

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Attorney for Defendant HUD & KEMP

Julie Sevin
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