

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

THE INCLUSIVE COMMUNITIES PROJECT,  
INC.,

Plaintiff,

3:07-cv-945-O-BD

v.

UNITED STATES DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT,

Defendant.

**DEFENDANT'S ANSWER**

Defendant United States Department of Housing and Urban Development (“Defendant” or “HUD”), by and through the undersigned counsel, hereby Answers plaintiff’s First Amended Complaint (“Complaint”) as follows:

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

In addition, defendant hereby responds to each allegation in the numbered paragraphs in plaintiff’s Complaint as follows:<sup>1</sup>

1. First sentence: defendant admits that it administers the Housing Choice Voucher Program (“Voucher Program”) pursuant to 42 U.S.C. § 1437f(o), and regulations codified at 24 C.F.R. Parts 888 and 982, which speak for themselves and to which the Court is respectfully referred for a full and accurate statement of their contents. The remainder of Paragraph 1 of the Complaint contains plaintiff’s characterization of this action and conclusions of law, to which no response is required; to the extent a response is deemed required, defendant denies the allegations.

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<sup>1</sup> Plaintiff’s Complaint omits Paragraphs 5 and 15. Defendant’s Answer follows the numbering used in plaintiff’s Complaint.

2. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in the first sentence of Paragraph 2 of the Complaint. Second, third, fourth, and fifth sentences: defendant denies the allegations.

3. Paragraph 3 contains conclusions of law, to which no response is required.

4. Defendant admits that the Inclusive Communities Project is the plaintiff in the present case. Defendant is without knowledge or information sufficient to admit or deny the remaining allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that it is an executive agency in the United States government.

7. Paragraph 7 contains plaintiff's characterizations of federal law and regulations, to which no response is required.

8. The first and second sentences contain plaintiff's characterizations of federal law and regulations, to which no response is required. Third sentence, including Subparagraphs A and B: defendant denies the allegations.

9. First, second, and third sentences: defendant denies the allegations. Fourth sentence: defendant admits.

10. First, second, and third sentences: defendant admits the allegations. Fourth sentence: defendant denies the allegations.

11. Defendant denies the allegations.

12. Defendant is currently without knowledge or information sufficient to admit or deny the information in the cited report, but further avers that, according to the website of the Dallas Housing Authority ("DHA"), DHA serves approximately 86 percent African Americans, 6 percent Hispanics, 7 percent Anglo Americans, and 1 percent Asian Americans. *See* Dallas Housing Authority, DHA Fact Sheet, <http://www.dhadal.com/GI/facts.html>.

13. First sentence: defendant admits. Second and third sentences: defendant denies

the allegations. Fourth sentence: defendant is currently without knowledge or information sufficient to admit or deny the information in the cited report, but denies that the cited data is relevant to defendant's obligations in its administration of the Voucher Program under 42 U.S.C. § 1437f(o).

14. First, second, third, fourth, fifth and sixth sentences: defendant denies the allegations. Seventh and eighth sentences: defendant admits the allegations. Defendant avers that the method by which it sets the Fair Market Rents ("FMR") for the Dallas HUD Metro FMR Area is set forth in its Final Fair Market Rents for Fiscal Year 2010 for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program, 74 Fed. Reg. 50,552, 50,552-664 (Sept. 30, 2009), which speaks for itself and to which the Court is referred for a full and accurate statement of its contents.

16. Defendant denies the allegations.

17. Defendant admits the existence of OMB Bulletin No. 04-03, which speaks for itself and to which the Court is respectfully referred for a full and accurate statement of its contents. *See* Office of Mgmt. & Budget, Executive Office of the President, OMB Bull. No. 04-03, Update of Statistical Area Definitions and Guidance on Their Uses (2004).

18. First sentence: defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term "rental housing market." Second and third sentences: defendant admits. Fourth sentence: defendant denies the allegations. Fifth and sixth sentences: defendant admits. Seventh sentence: defendant denies the allegations.

19. Paragraph 19 contains plaintiff's characterization of the report "U.S. Housing Market Conditions," which speaks for itself and to which the Court is respectfully referred for a full and accurate description of its contents. *See* U.S. Dep't of Hous. & Urban Dev., Office of Policy Dev. & Research, "U.S. Housing Market Conditions" (2007). Defendant denies that the

Comprehensive Housing Analysis identifies the relevant market area that defendant must use to determine FMR under the U.S. Housing Act. *See* 42 U.S.C. § 1437f(o).

20. Defendant denies the allegations.

21. First sentence: defendant denies the allegations. Second, third, and fourth sentences: defendant admits. Fifth sentence: defendant denies the allegations. Sixth sentence: defendant denies that the Comprehensive Housing Analysis identifies the relevant market area that HUD must use to determine FMR under the U.S. Housing Act, 42 U.S.C. § 1437f(o).

22. First sentence: defendant denies the allegations. The second and third sentence contains plaintiff's characterization of HUD's criteria for identifying a "market area" under the U.S. Housing Act, 42 U.S.C. § 1437f(o), and HUD regulations, 24 C.F.R. Part 888, which speak for themselves and to which the Court is respectfully referred for a full and accurate statement of their contents; to the extent a response is deemed required, the defendant denies the allegations.

23. First and second sentences: defendant denies the allegations. Sentences three through ten: defendant denies the relevance of median income to the determination of the Dallas HUD Metro FMR Area but admits the accuracy of the median family incomes in each listed county according to the 2000 Decennial Census.

24. First sentence: defendant denies the allegations. Second sentence: defendant admits the allegations. Third through sixth sentences: defendant denies the allegations.

25. First sentence: defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term "market areas." Second sentence: defendant admits. Third sentence: defendant denies the allegations.

26. First sentence: defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term "housing markets." Sentence sentence: defendant admits.

27. Defendant denies the allegations. Defendant avers that plaintiff has not defined its

use of the terms “housing markets” or “market areas.”

28. Defendant denies the allegations.

29. Defendant denies the allegations.

30. Defendant admits the existence of a comment from Michael M. Daniel, dated July 31, 2006, regarding a proposed FMR. *See* Administrative Record at 5055–66. Defendant also admits the existence of correspondence between its officials concerning a comment on a proposed FMR. *See* Administrative Record at 5047–48. The remainder of Paragraph 30 contains plaintiff’s characterizations of this correspondence, not allegations of facts, and thus no response is required; to the extent a response is deemed required, defendant denies the allegations and respectfully directs the Court’s attention to the correspondence for a full and accurate statement of their contents.

31. Defendant denies the allegations.

32. The first and second sentences contain plaintiff’s characterization of the cited report, “Major Changes are Needed in the New Leased Housing Program,” U.S. Comptroller General Report to Congress, January 28, 1977, to which the Court is respectfully directed for a full and accurate statement of its contents. Defendant denies that the 1977 report identified the relevant criteria that defendant must use to set the “market area” in determining FMR under the U.S. Housing Act. *See* 42 U.S.C. 1437f(o). Last sentence: defendant denies the allegations.

33. The first, second and third sentences contains plaintiff’s characterization of the cited report, U.S. Gen. Accounting Office, Rental Housing: Use of Smaller Market Areas to Set Rent Subsidy Levels Has Drawbacks (1994), to which the Court is respectfully directed for a full and accurate statement of its contents. Defendant denies that the report identified the relevant criteria that defendant must use to set the “market area” in determining Fair Market Rents under the U.S. Housing Act. *See* 42 U.S.C. 1437f(o). Last sentence: defendant denies the

allegations.

34. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “housing markets.”

35. Defendant denies the allegations.

36. Defendant denies the allegations, except to admit that Dallas, Collin, and Denton counties include the suburban cities of Plan, McKinney, Frisco, Allen, Coppell, Denton, and Lewisville.

37. Defendant denies the allegations.

38. Defendant denies the allegations.

39. Defendant denies the allegations.

40. Defendant denies the allegations.

41. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “rental housing markets.”

42. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “market areas.”

43. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “market areas.”

44. Defendant denies the allegations.

45. Paragraph 45 contains plaintiff’s characterizations of the Voucher Program, to which no response is required.

46. Defendant denies the allegations.

47. Defendant denies the allegations.

48. Defendant denies the allegations.

49. First sentence: defendant denies the allegations. Second sentence: defendant

admits. Third sentence: defendant denies the allegations. Fourth sentence: defendant admits. Fifth sentence: defendant denies the allegations.

50. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “market areas.”

51. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “market areas.”

52. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “market area.”

53. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “market area.”

54. Defendant denies the allegations.

55. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “rental housing markets.”

56. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “rental housing markets.”

57. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “market areas.”

58. Defendant denies the allegations. Defendant avers that plaintiff has not defined its use of the term “market areas.”

59. Defendant denies the allegations.

60. Defendant denies the allegations. Defendant avers that it served the Administrative Record on plaintiff on August 19, 2009, which speaks for itself and to which the Court is respectfully referred for a full and accurate representation of its contents.

61. Defendant admits that, on August 19, 2009, it served on plaintiff the Administrative

Record, which speaks for itself and to which the Court is referred for a full and accurate statement of its contents. Defendant denies the remainder of the allegations in this paragraph.

62. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 65 of the Complaint.

66. Defendant denies the allegations, including those in Subparagraphs A–C.

67. Paragraph 67 contains conclusions of law, to which no response is required; to the extent a response is deemed required, defendant denies the allegations

68. Paragraph 68 contains conclusions of law, to which no response is required; to the extent a response is deemed required, defendant denies the allegations

69. Paragraph 69 contains conclusions of law, to which no response is required; to the extent a response is deemed required, defendant denies the allegations

70. Paragraph 70 contains conclusions of law, to which no response is required; to the extent a response is deemed required, defendant denies the allegations

71. Paragraph 71 contains plaintiff's characterizations of the legal relief available to it on the claims filed, to which no response is required; to the extent a response is deemed required, defendant denies that plaintiff is eligible for the relief requested in Subparagraphs A–D.

Defendant specifically denies all allegations in plaintiff's Complaint not otherwise admitted or denied herein. In addition, defendant denies that plaintiff is entitled to the relief



requested, or to any relief whatsoever.

WHEREFORE, defendant demands judgment dismissing the complaint in its entirety with prejudice, and that this Court grant such other and further relief as it deems proper, including costs and disbursements.

Dated: November 23, 2009

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 23, 2009, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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