

LAW OFFICES OF STUART E. FAGAN
STUART E. FAGAN, State Bar No. 152732
P.O. Box 503741
San Diego, California 92150-3741
Telephone: (858) 220-9601
Facsimile: (858) 676-5339
Email: fairhousinglawyer@sbcglobal.net

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JESSE ROBIDOUX; REGINA
ROBIDOUX; R.R. and J.R., minors, by and
through their GUARDIAN AD LITEM,
REGINA ROBIDOUX; SHAUN
JOHNSON; LORENA LINGENFELTER;
H.B. and M.B, minors, by and through their
GUARDIAN AD LITEM, LORENA
LINGENFELTER, individuals,

Plaintiffs,

v.

WACKER FAMILY TRUST; WAYNE
WACKER, EILEEN WACKER, and
CHRISTINE WACKER, individually and
doing business as VILLA SERRANO
APARTMENTS; BRIAN ROSENGREN,

Defendants.

No. 2:06-CV-02334-LKK-DAD

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF GUARDIANS AD
LITEM TO APPROVE MINORS'
COMPROMISES

Judge: Lawrence K. Karlton
Courtroom: 4
Date: August 1, 2011
Time: 10 a.m.
Trial: December 1, 2009

I.

INTRODUCTION

1
2
3
4 Plaintiffs/Guardians Ad Litem Regina Robidoux and Lorena Lingenfelter respectfully submit
5 the following Memorandum of Points and Authorities in support of their motion to approve the
6 compromise of the claims of their respective children, plaintiffs R.R. and J.R.; and H.B. and M.B.
7 Briefly stated, after nearly three years of litigation and a second session of mediation before the
8 Honorable Raul Ramirez, Ret. Judge, all plaintiffs entered into a legally enforceable settlement
9 agreement with the defendants to settle alleged violations of the Fair Housing Act, 42 U.S.C. §3601 *et*
10 *seq.*, and related federal and state laws.

11
12 As proposed, R.R., shall receive \$10,833.34, and his younger brother, J.R., shall receive
13 \$2,500. Briefly stated, R.R. was five years old at the time of the alleged discriminatory treatment and
14 his play at the complex was impacted, whereas, his younger brother, J.R., was less than one year old at
15 that time and was too young to go outside to play. (Robidoux Dec. ¶13¹.) Neither child required any
16 medical or psychiatric treatment for the injuries they sustained. (Robidoux Dec. ¶13.) What is more,
17 neither child (fortunately) shows any signs of ongoing stress. (Robidoux Dec. ¶13.)

18
19 Meanwhile, H.B. shall receive \$10,833.34, and her younger brother, M.B. shall receive \$2,500.
20 H.B. was three years old at the time of the alleged discriminatory treatment, while her younger brother,
21 M.B., was less than one year old at that time. Neither child required any medical or psychiatric
22 treatment for the injuries they sustained. (Lingenfelter Dec. ¶23.) What is more, neither shows any
23 signs of ongoing stress. (Lingenfelter Dec. ¶23.)

24
25
26

¹Unless otherwise noted, references to declarations herein are to those declarations that
27 were filed on or about April 21, 2009 in conjunction with the original motion to approve the
28 minors' compromises. Plaintiffs hereby request that the Court take judicial notice of said
declarations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

STATEMENT OF FACTS

Plaintiffs are all former tenants of the Villa Serrano Apartments, which were owned by defendants Wacker Family Trust, Eileen Wacker, and Wayne Wacker.² Defendant Christine Wacker is the daughter of defendant Eileen Wacker and served as an onsite manager part of the time that plaintiffs resided at the complex. The facts pertaining to each family will be set forth below.

A. Robidouxes.

On or about November 15, 2003, plaintiffs Jesse Robidoux and Regina Robidoux and their son, R.R. (“R.R.”) moved into the Villa Serrano Apartments. At the time, R.R. was five years old. The Robidouxes later had another son, J.R., in September 2004. (Robidoux Dec. ¶2.)

On or about March 9, 2005, R.R. was riding his bicycle at the Villa Serrano Apartments and one of his friends was playfully chasing him. Plaintiff Regina Robidoux was watching her son from inside her apartment. When R.R.’s friend finally caught him, R.R. yelled with excitement. Defendant Wayne Wacker immediately came outside and told R.R. not to yell. Mr. Wacker then went back indoors. The children continued to play and when Mr. Wacker subsequently heard the children laughing, he came back outside and pointed his finger at each child who was playing and stated, “You go home! You go home! You go home!” Upon hearing these statements, Mrs. Robidoux came outdoors and told Mr. Wacker that R.R. was not going to go inside, for he had every right to be outside. Mr. Wacker then claimed that R.R. was screaming. Mrs. Robidoux informed Mr. Wacker that she had been watching the children from inside her apartment and that R.R. had not yelled a second time. Mrs. Robidoux then told Mr. Wacker that she would tell her son not to yell. Mr. Wacker, clearly upset at Mrs. Robidoux’s actions, angrily replied, “I’m going to evict you. I’m going to give you a 30-Day

²The Wackers sold the Villa Serrano Apartments during the course of the litigation.

1 Notice, just you watch!” Mr. Wacker then left. (Robidoux Dec. ¶3.)
2

3 The following day, Mrs. Robidoux called the Department of Fair Employment and Housing
4 (“DFEH”) to complain about the prior day’s incident involving Mr. Wacker. Mrs. Robidoux left a
5 message for DFEH to call her. Thereafter, Mrs. Robidoux went into the office at the Villa Serrano
6 Apartments and spoke with Mr. Wacker’s wife, Eileen Wacker, about the prior day’s incident. After
7 telling her what had happened, Mrs. Wacker told Mrs. Robidoux, “I’m so sorry. I don’t know what’s
8 wrong with my husband, he’s been acting weird lately. You are not going to be evicted. Your tenancy
9 here is in no jeopardy. He was completely out of line. I do apologize.” Mrs. Robidoux thanked her for
10 the apology and left. When Mrs. Robidoux returned home, DFEH had left her a message. In light of
11 Mrs. Wacker’s apology, Mrs. Robidoux elected not to go forward with a complaint to DFEH.
12 (Robidoux Dec. ¶4.)
13

14 On and after March 11, 2005, however, and continuing through on or about August 6, 2005,
15 R.R. was told on multiple occasions by defendants that he could not be outside playing. On one
16 occasion, R.R. told his mother that “the lady told me to come inside.” In response, Mrs. Robidoux told
17 R.R. that he could play, for she was his mom, and if the lady told him again to have the lady come
18 speak to her. R.R. was frightened, and stated, “No mommy, she scares me because she just watches
19 me.” (Robidoux Dec. ¶5.)
20

21 On and after March 11, 2005, R.R. started to refuse to go outside and play and on several
22 occasions stated, “I don’t want to [go outside and play]; they are going to tell me to come inside.”
23 (Robidoux Dec. ¶5.)
24
25
26
27
28

1 On or about May 25, 2005, defendants gave all tenants a notice that declared:
2

3 **“Effective immediately, all children** under 18 must be accompanied by
4 a parent or **responsible** adult when playing on property.” The notice
5 further declared: “Violation to these [sic] rule will result in warning
6 notices and if the issue is not resolved after two warnings you will be
7 given notice to terminate your lease.” (Robidoux Dec. ¶6.)
8

9 On or about June 2, 2005, plaintiff Regina Robidoux went to the onsite manager to inform her
10 that her son would be getting out of school for summer vacation soon, and that she felt that he should
11 be able to ride his bike at the property as he had always been able to previously. “That’s what the park
12 is for,” responded the onsite manger, “and you need to take him to the park to do that.” Mrs. Robidoux
13 responded, “I’m not going to take him to a park when he’s able to ride here.” Mrs. Robidoux had just
14 had a baby (plaintiff J.R.) and did not want to take the newborn into the summer heat. “Then you need
15 to find another place to live,” replied the onsite manager. Mrs. Robidoux then informed the onsite
16 manager that she had been in contact with DFEH and a lawyer and they had told her that the rule was
17 unlawful. The onsite manager informed Mrs. Robidoux that Mrs. Wacker already had spoken with a
18 lawyer who informed her that the rule was lawful. (Robidoux Dec. ¶7.)
19

20 Four days later, on or about June 6, 2005, R.R. was outside riding his bicycle and Mrs. Wacker
21 asked him, “Is your mom out here?” Mrs. Robidoux, who was outside, waved at her to let her know
22 that she was present. Mrs. Wacker then walked over to Mrs. Robidoux and discussed the conversation
23 that Mrs. Robidoux had had with the onsite manager on or about June 2, 2005. Mrs. Wacker and Mrs.
24 Robidoux disagreed over the legality of the new rule prohibiting bicycle riding. Mrs. Wacker went on
25 to say that the new rule had resulted from another child’s behavior and that it had been implemented
26 for safety’s sake. (Robidoux Dec. ¶8.)
27
28

1 The following day, on June 7, 2005, defendants served upon plaintiffs Jesse Robidoux and
2 Regina Robidoux a Sixty Day Notice of Termination of Tenancy. (Robidoux Dec. ¶9.)
3

4 In or around July 2005, defendants sent out a notice to the tenants at the complex stating that
5 children were no longer permitted to play in the parking lot area. The parking lot area comprises the
6 majority of the common area of the complex and was used by children for riding bicycles and laying
7 with balls, among other things. Plaintiff Regina Robidoux, whose son was affected by the rule,
8 thereafter approached the onsite manager and complained that the rule violated applicable fair housing
9 laws and that she was going to contact DFEH. “Do what you have to do, but you still have to take your
10 kids to the park if they want to play,” the onsite manger replied. (Robidoux Dec. ¶10.)
11

12 **B. Lingenfelter/Burks**
13

14 On or about July 20, 2005, plaintiff Lorena Lingenfelter moved into the Villa Serrano
15 Apartments. On the day following Ms. Lingenfelter’s moving into the complex, on July 21, 2005,
16 defendants gave her a copy of the above-referenced notice, which stated:
17

18 “**All children** under 18 must be accompanied by a parent or **responsible**
19 adult when playing on property.”
20

21 The notice further declared:
22

23 “Violation to these rules will result in warning notices and if the issue is
24 not resolved after two warnings you will be given notice to terminate
25 your lease.” (Lingenfelter Dec. ¶3.)
26
27
28

1 What is more, neither child shows any signs of ongoing stress. (Robidoux Dec. ¶13.)

2
3 Furthermore, under the terms of the proposed settlement, the minor H.B. is to receive
4 \$10,833.34, and her younger brother, M.B. is to receive \$2,500. H.B. was three years old at the time of
5 the alleged discriminatory treatment, while her younger brother, M.B., was less than one year old at
6 that time. Neither child required any medical or psychiatric treatment for the injuries they sustained.
7 (Lingenfelter Dec. ¶23.) What is more, neither shows any signs of ongoing stress. (Lingenfelter Dec.
8 ¶23.)

9
10 The children in this case were frightened and concerned. Fortunately, none of the kids were
11 physically or psychologically injured. In light of the fact that they did not suffer any long-term physical
12 or mental injury, the amount of the recovery provided to them is very reasonable.

13
14 By way of comparison, on December 3, 2007, the Department of Housing and Urban
15 Development (“HUD”) reported in *Fair Housing News* that it had settled a substantially similar case
16 involving seven families who alleged that the managers of an apartment complex subjected residents
17 with children to stricter community rules than residents without children and/or retaliated against
18 residents with children for exercising their fair housing rights. The settlement, therein, called for the
19 seven families (adults and children) to receive less than \$12,000 per family.³ By stark contrast, the
20 children, herein, alone have received a *net* recovery of \$13,333.34, which is more than the *entire*

21
22 ³A copy of the Winter 2008 issue of *Fair Housing News* is attached to the declaration of
23 Stuart E. Fagan as Exhibit No. 4. The document also may be found online at
24 <http://disasterhousing.gov/offices/fheo/library/newsletter-wtr08.pdf>. The total monetary recovery
25 secured by HUD was \$170,000, with \$83,000 going to the seven families; \$15,000 going to a
26 fund for any additional victims; and \$72,000 going to the construction and operation of an after-
27 school program for children who lived at the complex. As with most settlements, the document,
28 unfortunately, does not denote how much each child was receiving. Be that as it may, the
minors’ share, herein, exceeds the monetary share of each of the entire families in the referenced
HUD matter. Moreover, since the defendants, herein, had sold the apartment complex prior to
settlement, there was no opportunity for plaintiffs to secure similar, non-monetary relief.

1 *families* in the HUD case received. In short, the monetary payment to the minors, herein, is reasonable.

2
3 In March 2008, HUD announced a settlement in *Fair Housing News* involving a three-year old
4 autistic child. Therein, the management company refused to accommodate the special needs of a three-
5 year old child, and, eventually, sought to evict the family. In the end, the apartment owner and the
6 management company agreed to pay the parents \$40,000 to settle the matter. The child did not receive
7 any of the settlement funds.⁴ By contrast, the children, herein, are receiving a net recovery of
8 \$13,333.34.

9
10 In another fair housing matter alleging familial status discrimination, *Housing Rights Center v.*
11 *Rivera Townhomes et al*, #CV 02-5163PA(C.D. Cal. Feb. 2003), the plaintiffs (seven families)
12 complained that defendants injured plaintiffs through a policy that limited the families' ability to spend
13 time in the common areas at the complex. A settlement was reached therein calling for each family to
14 receive approximately \$18,500; that figure, however, was a gross figure from which attorney's fees and
15 costs were to be deducted.⁵ With a similar complaint herein, the minor plaintiffs, alone, are receiving a
16 *net* settlement of \$13,333.34 per family.

17
18 More recently, in *Mathews v. Arrow Wood Apartments*, UCDC Case No. EDCB07-1316-SGL
19 (C.D. Cal. 2009), the court approved a minor's compromise in a fair housing case involving eight
20 children, who, similarly, had been prohibited from playing outside at their apartment complex. There
21

22
23 ⁴A copy of the March 2008 issue of Fair Housing News is attached to the Supplemental
24 Declaration of Stuart E. Fagan as Exhibit No. 1. The document also may be found online at
25 <http://archives.hud.gov/news/2008/pr08-068.cfm> (June 10, 2011). In addition to the payment to
the parents, the owner and the management company paid \$2,500 to an autism group and \$2,500
to a designated early childhood development center in the family's school district.

26
27 ⁵A copy of the consent decree entered in *Housing Rights Center v. Rivera Townhomes et*
28 *al*, #CV 02-5163PA(C.D. Cal. Feb. 2003) is attached to the Declaration of Stuart E. Fagan as
Exhibit No. 3. It is unclear from the consent decree entered therein what the net result was to
each family, for it does not spell out the amount of the attorney's fees and costs.

1 was no psychological or physical damage suffered by the children. Each child, therein, received
2 between \$6,108.50 and \$8,620.71.

3
4 And in *Matthis v. John L. Daly*, USDC Case No. CV08-4789 SGL (Rzx) (C.D. Cal. 2009), the
5 court approved a minor's compromise for seven children, with each child receiving between \$2,331.35
6 and \$3,000. Similar to the case at hand, the children, therein, had been prohibited from playing outside
7 at their apartment complex. Likewise, there was no psychological or physical damage suffered by the
8 children.

9
10 In the end, in light of the facts of the case, each minor's claims, and typical recoveries by minor
11 plaintiffs in similar cases, the proposed settlement is fair and reasonable to the minor plaintiffs, R.R.,
12 J.R., H.B., and M.B.

13
14 **IV.**
15 **CONCLUSION**
16

17 For the foregoing reasons, plaintiffs/guardians ad litem Regina Robidoux and Lorena
18 Lingenfelter respectfully request that the Court approve the proposed compromise of the claims of their
19 children, R.R., J.R., H.B., and M.B., for it is fair and reasonable in light of the facts of the case, each
20 minor's claims, and typical recoveries by minor plaintiffs in similar cases.

21
22 If the Court decides that a hearing is necessary, then plaintiffs Regina Robidoux and Lorena
23 Lingenfelter are available to attend. Plaintiffs request, however, that the minors be excused from
24 attending.
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 16, 2011

LAW OFFICES OF
STUART E. FAGAN

By: /s/ Stuart E. Fagan
Stuart E. Fagan
Attorneys for Plaintiffs