

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CORINNE VARGAS, KISHA TRENT, ANNIE SMITH	:
and R.G., on behalf of themselves and all others similarly	:
situated,	:
	: Case No.
	:
Plaintiffs,	:
	:
v.	: CLASS ACTION
	: COMPLAINT
	:
TOWN OF SMITHTOWN,	:
	:
Defendant.	: JURY TRIAL REQUESTED
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Plaintiffs Corinne Vargas, Kisha Trent, Annie Smith, and R.G. on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, make the following representations for judicial relief:

I. NATURE OF THE ACTION

1. By this housing discrimination action, Plaintiffs seek redress for ongoing exclusionary housing policies and practices by Defendant Town of Smithtown (the “Town” or “Smithtown” or “Defendant”). This action challenges Defendant’s ongoing discriminatory acts and long-standing practice of unlawfully restricting the ability of Black and Hispanic individuals (“minority individuals” or “minorities”) to obtain federally funded Section 8 rental assistance in Smithtown, New York. By making housing opportunities “unavailable” to minority individuals because of race, color, and national origin and other illegal and discriminatory acts, Defendant has violated Plaintiffs’ rights under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982; the Civil Rights Act of 1871, 42 U.S.C. § 1983;

the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*

II. INTRODUCTION

2. This class action is brought by four low-income minority individuals in need of affordable housing who live and work near Smithtown, New York. The Plaintiffs applied for the Section 8 Housing Voucher Program, a federal housing assistance program administered by Smithtown. They are on Smithtown's Section 8 waiting list to receive such housing vouchers, but are unlawfully being denied an opportunity to obtain a Smithtown Section 8 housing voucher because of their race, color or national origin. They are all United States citizens.

3. Plaintiffs bring this case to enjoin the racially and ethnically exclusionary Section 8 policies and practices that Smithtown has adopted. These policies and practices illegally deny equal access to housing and discriminate on the basis of race, color and national origin in violation of the United States Constitution and federal civil rights laws. Plaintiffs seek declaratory judgment, injunctive and equitable relief, compensatory damages, and attorneys' fees and costs.

4. Since the Section 8 program's inception, Smithtown has included an absolute preference for Town residents regardless of their housing needs (the "residency preference"). This means that a person who does not live or work in Smithtown cannot receive a Section 8 housing voucher through Smithtown's Section 8 program, until *every* person on the waitlist who lives or works in Smithtown has received a voucher.

5. Smithtown's residents are overwhelmingly White and non-Hispanic (over 93%). This is a significantly greater percentage of White, non-Hispanic residents than in most towns in Suffolk County and on Long Island.

6. The residency preference and racial makeup of Smithtown operate to ensure that minorities rarely receive Section 8 housing vouchers from Smithtown.

7. In 1997, after a review of Smithtown's Section 8 program and these facts, the U.S. Department of Housing and Urban Development ("HUD") wrote a letter to Smithtown recommending that Smithtown rescind the residency preference because of its racially exclusionary effect. Smithtown ignored this recommendation.

8. Smithtown has relied on its residency preference and related practices to deny Section 8 housing vouchers to minorities. The Town has improperly managed its Section 8 program to ensure that the waitlist always has a sufficient number of White, non-Hispanic residents to prevent Section 8 vouchers from being given to minority non-residents. In this and other ways, the residency preference has actually operated as a residency requirement.

9. For example, in the summer of 2006, when the number of White, non-Hispanic residents on the Section 8 waitlist began to dwindle, the Community Development Corporation of Long Island ("CDCLI"), which manages the Smithtown program under a contract with Smithtown, reopened the waitlist at Smithtown's direction despite the fact that there were several hundred names on the waitlist at the time, a majority of whom were minorities. The decision to reopen the waitlist was in contravention of Smithtown's written policy indicating that the waitlist will not be reopened unless there are fewer than 100 names on the waitlist.

10. Further, when CDCLI reached the lottery number of a minority non-resident Plaintiff who applied to Smithtown's Section 8 program in the summer of 2006, CDCLI sent a letter to that Plaintiff stating that she "must reside or work within the Town of Smithtown in order to be eligible for this program."

11. Smithtown's use of the residency preference as a residency requirement, as evidenced by its waitlist reopening practices and this letter, is a plain violation of HUD regulation 24 C.F.R. § 982.207(b)(1)(i)'s prohibition on residency requirements in Section 8 waitlists.

12. On October 24 and November 28, 2007, the Lawyers' Committee for Civil Rights under the Law and individual attorneys wrote to the Smithtown Town Council with an offer to explore a mutually acceptable resolution to these discriminatory practices without the burden of litigation. Smithtown refused this offer.

13. Because of these illegal policies and practices, Plaintiffs cannot compete for federally funded Section 8 vouchers on an equal basis with White, non-Hispanic applicants. Plaintiffs and members of the Class have been and will continue to be deprived of the full opportunity to receive a fair share of Section 8 rental assistance as required by federal law.

14. Smithtown's actions violate:

- a) Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*;
- b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*;
- c) The Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982;

- d) The Civil Rights Act of 1871, 42 U.S.C. § 1983; and
- e) The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

III. JURISDICTION AND VENUE

15. This court has jurisdiction pursuant to:
- a) 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States;
 - b) 28 U.S.C. § 1343, which grants jurisdiction over cases brought under 42 U.S.C. § 1983 and any Act of Congress providing for the protection of civil rights; and
 - c) 42 U.S.C. § 3613(a), because Smithtown's actions violate Plaintiffs' federal statutory rights to fair housing.

16. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

17. Venue is proper in this District under 28 U.S.C. § 1391(b), because Smithtown is a municipality located within this jurisdiction and the events giving rise to the claims arose in this district.

IV. PARTIES

18. Plaintiff **Corinne Vargas** is a low-income, Hispanic woman who currently rents a home in Central Islip, New York in Suffolk County. Her current rent is subsidized by the Suffolk County Department of Social Services ("DSS") SHARP Program.

19. Ms. Vargas lives with her two minor children. Her oldest child is disabled. She was born with cerebral palsy and spina bifida. She is quadriplegic, uses a wheelchair, and requires constant assistance.

20. Ms. Vargas originally moved to New York from Florida for a job in Bellport, New York in Suffolk County. She missed work on several occasions in order to care for her daughter and was eventually fired from her job. Ms. Vargas has been unable to find employment that will allow her to care for her children. She remains the sole caregiver for her family.

21. As a result of losing her job, Ms. Vargas and her family became homeless. In December 2005, they entered a homeless shelter located in Suffolk County, where they lived until August 2006.

22. While at the homeless shelter, Ms. Vargas applied for Smithtown's Section 8 program when the waitlist reopened in the summer of 2006. CDCLI informed her at that time that her waitlist number was 79.

23. On December 12, 2007, Ms. Vargas received a letter from CDCLI dated December 6, 2007 stating that the Smithtown Section 8 program was now able to serve her. The letter advised that she was scheduled for a meeting with CDCLI on January 8, 2008 to determine her eligibility.

24. The letter further indicated in bold, highlighted language that she "must reside or work within the Town of Smithtown in order to be eligible for this program."

25. Upon information and belief, Ms. Vargas currently qualifies for a Section 8 voucher notwithstanding this purported residency requirement, which is a plain

violation of HUD regulation 24 C.F.R. § 982.207(b)(1)(i)'s prohibition on residency requirements in Section 8 waitlists.

26. Plaintiff **Kisha Trent** is a low-income, African-American woman with two minor children. Ms. Trent rents a house in Shirley, New York in Suffolk County with a friend. Ms. Trent is currently responsible for her portion of the rent. She was previously receiving rent assistance from the Suffolk County Shelter Supplement Program ("SSP").

27. Ms. Trent became homeless approximately two years ago. She entered a homeless shelter in Suffolk County in spring 2006. While living there, she applied for a Section 8 housing voucher from Smithtown when the waitlist reopened in the summer of 2006. In early October 2006, she received a letter from CDCLI stating she was number 140 on the waitlist. She has received no further communications from Smithtown or CDCLI regarding the program and has not received a voucher. Upon information and belief, Ms. Trent currently qualifies for a Section 8 voucher.

28. Plaintiff **Annie Smith** is a low-income, African-American, disabled woman who currently resides with her adult child in Selden, New York in Suffolk County. Over the past five years, Ms. Smith has lived for periods of time in homeless shelters, including in Suffolk County. Ms. Smith's primary source of income during this time has been federal disability benefits through the Supplemental Security Income ("SSI") program.

29. Ms. Smith applied for a Section 8 housing voucher from Smithtown when the waitlist reopened in summer 2006. In October 2006, she received a letter from CDCLI stating that she was number 205 on the Smithtown waitlist. She has received no

further communications from Smithtown or CDCLI regarding the program and has not received a voucher. Upon information and belief, Ms. Smith currently qualifies for a Section 8 voucher.

30. Plaintiff **R.G.** is a low-income, Hispanic woman who currently lives in Suffolk County with her two minor children. She lived with her children in a homeless shelter in Suffolk County after she fled from her husband who physically abused her. She is identified in this lawsuit only by her initials because she is a victim of domestic violence and fears that her abuser will find and hurt her.

31. Some of R.G.'s rent is currently paid by DSS under the SHARP program. However, R.G. has received notice that DSS is planning to halt her payments under this program. She is currently awaiting her opportunity for a fair hearing.

32. R.G. applied for a Section 8 voucher from Smithtown when the waitlist reopened in summer 2006. In October 2006, she received a letter from CDCLI stating she was number 324 on the Smithtown waitlist. Upon information and belief, R.G. currently qualifies for a Section 8 voucher.

33. Defendant Town of Smithtown is a municipal corporation organized under the laws of the State of New York, having its principal offices located at 99 West Main Street, Smithtown, New York 11787. It is located in Suffolk County within the Eastern District of New York. The Town is governed by the Town Supervisor and the Town Council. Smithtown's Section 8 Voucher Program is supervised by the Town Planning and Community Development Department. All references to defendant Town include any individual or entity acting on behalf of, or under the authority derived from, the Town.

34. As of the 2000 Census, the Town had a population of approximately 116,000. This population was 93% White, non-Hispanic, 1% African-American, and 3% Hispanic.

35. By comparison, Suffolk County's overall population as of 2000 was 79% White, non-Hispanic, 7% African-American, and 11% Hispanic.

CLASS ACTION ALLEGATIONS

36. Plaintiffs seek to maintain this class action under Fed. R. Civ. P. 23(a) and 23(b)(2) and (b)(3).

37. The class that the individual Plaintiffs seek to represent consists of:

All Black and Hispanic individuals who do not live or work inside Smithtown, New York and who applied to or will apply to the Smithtown Section 8 Voucher Program or who were or will be on the Smithtown Section 8 Voucher Program waitlist.

38. This class is so numerous that joinder is impracticable. There are at least 150 minorities currently on the Smithtown Section 8 waitlist who have been harmed by Smithtown's discriminatory Section 8 Voucher Program policies and practices. The future minority applicants who will also be discriminated against are innumerable.

39. There are questions of law or fact common to all members of the class who are harmed by Smithtown's residency preference and exclusionary application procedures.

40. The claims of the named Plaintiffs are typical of the claims of each class member they seek to represent.

41. The named Plaintiffs will fairly and adequately represent the interests of each class member. The named Plaintiffs are all minorities who do not reside or work in Smithtown and who have applied to and are currently on the waitlist for Smithtown's

Section 8 Voucher Program. Plaintiffs are represented by counsel from the Lawyers' Committee for Civil Rights under the Law and individual attorneys who are experienced in representing persons or classes of people in disputes of this nature and who will vigorously prosecute this action. Plaintiffs know of no conflict of interest among class members.

42. Smithtown has acted or refused to act on grounds generally applicable to class members; namely, Smithtown has adopted Section 8 residency preferences and practices that discriminate against or harm all members of the class.

43. Accordingly, final injunctive and declaratory relief is appropriate with respect to the class as a whole.

VI. FACTS

The Section 8 Program

44. Congress established the Section 8 Existing Housing Program, which is the largest rent-subsidy funding source of the federal government, as part of the Housing and Community Development Act of 1974, P.L. 93-383, Title II, § 201(a), 88 Stat. 663, 662-66, now codified at 42 U.S.C. § 11437f and Housing and Community Development Act of 1987, Pub. L. Number 100-242 § 143, 101 Stat. 1814, 1850 (1988), codified as amended at 42 U.S.C. § 1437f (o). Its purpose is to aid low-income families in obtaining decent places to live through the use of vouchers to subsidize their rent in the private market.

45. Low-income families and individuals may apply for Section 8 at any public housing agency ("PHA") in New York when the waiting lists are open. Each PHA's Section 8 program is open to all applicants, not just local residents.

46. PHAs have some discretion to prioritize or award admission “preferences” to applicants for the Section 8 program. This discretion is limited by federal housing laws, federal civil rights laws and the United States Constitution.

47. With Section 8 rental assistance, renters pay approximately 1/3 of their incomes for rent, and the PHA, with federal funding, pays the remaining amount of rent to landlords. PHAs must administer this program within rules prescribed by the United States Department of Housing and Urban Development (“HUD”).

48. The Section 8 program is in many respects superior to other programs that offer rent payment assistance to low-income, including homeless, people in Suffolk County. Section 8 pays a higher percentage of rent and allows higher total rents per apartment than other programs available in Suffolk County, which increases the opportunities for Section 8 recipients to rent decent and affordable housing throughout the county.

49. A wider range of low-income households in varying circumstances are eligible for Section 8 vouchers than are eligible for other rental assistance programs in Suffolk County. This is because the Section 8 program has higher income eligibility limits than other programs available in Suffolk County, which allows families to obtain higher paying jobs while still remaining eligible for the Section 8 subsidy.

50. Likewise, a household may receive Section 8 rental assistance without losing food stamps. The other rental assistance programs in Suffolk County reduce food stamp benefits.

51. Furthermore, unlike some other rental assistance programs in Suffolk County, the Section 8 program is not time-limited. Households that receive a Section 8 voucher may continue to use it for as long as they meet the Section 8 criteria.

52. Although other rental assistance programs in Suffolk County are limited to that county, Section 8 vouchers are also portable, meaning that existing voucher holders have the right to move to any community where a PHA administers a voucher program.

53. Unlike other rental assistance programs available in Suffolk County, Section 8 voucher holders are guaranteed certain federally protected procedural and substantive due process rights. For example, Section 8 voucher holders cannot be evicted because the government erred in a rent payment, whereas recipients of other rental assistance programs available in Suffolk County can be evicted based on the county's non-payment of rent.

54. In addition, one subsidy administered by DSS, the SHARP award, is not even an official government subsidy; instead, it is a subsidy award resulting from an ongoing lawsuit that the court could choose to terminate at any time.

55. For these and other reasons, the Plaintiffs prefer to receive a Section 8 voucher rather than a subsidy from other Suffolk County rental assistance housing programs and are harmed by their inability to receive a Section 8 voucher because of their race, color, or national origin.

Smithtown's Discriminatory Section 8 Residency Preference

56. Since at least 1985, Smithtown has participated in the federal Section 8 program. This program is funded by the federal government through HUD.

57. Smithtown's voucher program is supervised by the Town of Smithtown Planning and Community Development Department ("PCDD") and its administration is subcontracted to the Community Development Corporation of Long Island. CDCLI is a non-profit organization that subcontracts with various municipalities to administer their Section 8 programs according to the towns' administrative plans and instructions.

58. Since Smithtown began participating in the Section 8 program, it has utilized a residency preference for Town residents in the allocation of Section 8 vouchers. Pursuant to this preference, when an opening for a Section 8 voucher occurs, those who live or work in Smithtown are served before non-residents, irrespective of the length of time the non-residents have been waiting for a voucher.

59. Because Smithtown is approximately 93% White, non-Hispanic this preference has the effect of making Smithtown Section 8 vouchers effectively unavailable to minorities.

60. As of July 16, 2006, Smithtown had issued 102 Section 8 vouchers, 92 of which were held by White, non-Hispanic households, 7 of which were held by Black households, and 2 of which were held by Hispanic households. In contrast, minorities made up more than half of the then-current waitlist.

61. The discriminatory impact of the residency preference was known to Smithtown since at least 1997. In 1997, HUD's office of Fair Housing and Equal Opportunity ("FHEO") conducted a review of Smithtown's housing programs, including its Section 8 program. It found that the demographics of the then-current Section 8 voucher holders "strongly suggest[ed] that the residency preference has a decided impact

on the lack of minority participation in and placement” in the Section 8 program. HUD therefore recommended that Smithtown rescind the residency preference.

62. Smithtown nonetheless continues to use the residency preference.

Smithtown’s Intentionally Discriminatory Operation of the Section 8 Program

63. To ensure that Section 8 programs are operated in a consistent and lawful manner, HUD requires that localities develop written Administrative Plans that set forth program eligibility rules, waitlist management policies, affirmative marketing efforts to ensure that underrepresented populations have program access, and other topics. In addition, in order to ensure that Section 8 programs are operated in a manner that affirmatively furthers fair housing and does not discriminate on the basis of race, color, national origin or other federally impermissible bases, HUD requires localities to adopt and implement an Affirmative Marketing Plan.

64. Smithtown operates its Section 8 program to intentionally prevent minorities from receiving Section 8 vouchers.

65. Smithtown’s Affirmative Marketing Plan states that it will reopen its Section 8 waitlist only “when there are fewer than 100 applicants on the waitlist.” In July 2006, there were at least 300 applicants remaining on Smithtown’s Section 8 waitlist. However, in direct contravention of its Affirmative Marketing Plan, Smithtown reopened its Section 8 waitlist to solicit and accept additional applications on July 17, 2006.

66. Smithtown decided to reopen its Section 8 waitlist at a time when the proportion of White, non-Hispanic individuals on the waitlist was dropping. According to Smithtown’s Annual Plan for Fiscal Year 2005, the waitlist was over 2/3 White and less than 1/3 Black and Hispanic at that time. However, by July 2006, when Smithtown

decided to reopen the waitlist, White, non-Hispanic, individuals had decreased from more than 2/3 to less than 1/2 of the waitlist.

67. Smithtown also decided to reopen the waitlist at a time when the number of minorities receiving vouchers was increasing. Prior to the reopening of the waitlist in July 2006, nine of the total 102 Section 8 voucher holders in Smithtown were held by minorities. Yet, four of these nine minority voucher holders, or slightly less than 50% of those minority vouchers holders, received their vouchers between January and July of 2006. Thus, the six-month period before the reopening of the waitlist in July 2006 sustained a significant growth in the absolute number of vouchers issued to minorities by Smithtown.

68. Moreover, as of 2006, the Town's Affirmative Marketing Plan stated that reopening of the Section 8 waitlist would be advertised in *Newsday*, a publication that broadly reaches potential White, non-Hispanic and minority applicants. However, Smithtown ignored its obligation to advertise in *Newsday*, and instead limited its newspaper advertising to the publications that are likely to have a predominantly White, non-Hispanic readership.

69. In addition, instead of informing low-income minorities of the opportunity to apply for Section 8 vouchers, Smithtown recruited more White, non-Hispanic residents into its Section 8 program by targeting its outreach efforts towards applicants on existing waitlists for other Smithtown programs and other Section 8 waitlists with Smithtown residents.

70. Smithtown also intentionally discouraged minorities from applying to its Section 8 program through public representations that applicants were required to live or

work in Smithtown to be eligible for the program. For example, outreach letters advertising the Smithtown Section 8 program included language that the Section 8 program “provides a rental subsidy voucher to help low-income families, who live or work in the Town of Smithtown, with housing costs.”

71. Likewise, e-mails sent to advertise the program to other towns and housing authorities stated in bold type that “preference will be given to families who reside in or whose head of household (or spouse) is employed in the Town of Smithtown.”

72. Furthermore, upon information and belief, shortly after closing the waitlist in 2006, the Town caused a form letter to be sent to applicants on the waitlist who had not yet received a voucher stating that if they did not confirm their current addresses they would be taken off the waiting list. This letter was inconsistent with Smithtown’s policy stated in its Affirmative Marketing Plan that existing applicants will not be removed or required to reapply when the waitlist is reopened. This letter also included a reminder that applicants would receive a Section 8 voucher from Smithtown only after every Smithtown resident on the waitlist had received one.

73. In continuation of its efforts to purge non-resident minorities from the waitlist, CDCLI sent a letter to Plaintiff Vargas on December 6, 2007 indicating that even though it had reached her waitlist number, she would be ineligible to receive a voucher unless she lived or worked in Smithtown.

Smithtown's Long History of Racial Discrimination in Housing and Failure to Affirmatively Further Fair Housing

74. Smithtown must certify compliance with the requirement to affirmatively further fair housing in its Section 8 program in both its 5-Year Plan and the Annual Plan. To be in compliance with this requirement, Smithtown must, at a minimum, examine and identify any impediments to fair housing choice within its Section 8 program, address those impediments in a reasonable fashion in view of the resources available, and maintain records reflecting these analyses and actions.

75. The plain numbers indicate that Smithtown's residency preference restricts the ability of Blacks and Hispanics to obtain Section 8 vouchers from Smithtown. Any analysis of Smithtown's residency preference would identify it as an impediment to fair housing.

76. Further, an independent HUD review of Smithtown's Section 8 program in 1997 revealed that the residency preference was an impediment to fair housing and recommended that Smithtown rescind the residency preference because of its racially exclusionary effect.

77. In derogation of its affirmative fair housing obligations, Smithtown continues to use the residency preference with clear knowledge of its racially exclusionary effect.

78. In derogation of its affirmative fair housing obligations, Smithtown decided to reopen the waitlist in July 2006, when the proportion of White, non-Hispanic individuals on the waitlist was dropping and the number of minorities receiving vouchers

was increasing, to prevent other minorities on the waitlist from receiving Section 8 vouchers.

79. In derogation of its affirmative fair housing obligations, Smithtown has limited the advertisement of the reopening of its Section 8 program to a narrow set of publications less likely to be read by potential minority applicants.

80. In derogation of its affirmative fair housing obligations, Smithtown discouraged minorities from applying to its Section 8 program through its public representations that applicants were required to live or work in Smithtown to be eligible for the program.

81. In derogation of its affirmative fair housing obligations, Smithtown sent letters to minority non-residents on the waitlist indicating that living or working in Smithtown was an eligibility requirement for the Town's Section 8 voucher program.

82. In addition to its use of a discriminatory residency preference and/or requirement in its Section 8 housing program, Smithtown has shown hostility toward minorities seeking housing in Smithtown for decades, in a variety of ways. These have included, but are not limited to, opposition to affordable and subsidized housing in Smithtown, and a long-standing history of violence against minorities looking for housing in the Town.

83. There are few rental housing opportunities, specifically opportunities that are affordable to low-income renters, in Smithtown. The housing stock in the Town is 87% owner-occupied and 13% renter-occupied compared to the countywide level of 80% owner-occupied and 20% renter-occupied housing.

84. Minorities disproportionately rely upon those limited number of rental units in Smithtown when seeking housing as compared to White, non-Hispanic persons. Thirty-three percent of Blacks and 28% of Hispanics in Smithtown live in rental units compared to 13% of White, non-Hispanics in the Town.

85. In 1971, the Smithtown Christian Interfaith Council and the local Smithtown NAACP chapter organized a series of meetings with the Smithtown Town Board to discuss developing a housing authority that could oversee the development of much-needed low- and moderate-income housing. The Board unanimously rejected such proposals citing the “pride of ownership” lacking in low-income housing projects.

86. At the time, Board member Robert Brady explained that he was sympathetic to low-income individuals but “the problems we now have have been created by the new people who have moved here. The only way to solve our problems is if (they) get on (their) bicycles and move back to Jamaica.”

87. A 1978 study of Smithtown conducted by the Smithtown branch of the American Association of University Women found that the lack of adequate low-income housing blocked lower-income, minority families from finding homes or apartments in Smithtown.

88. In 1996, Councilwoman Jane Conway advocated for maintaining strict density requirements that would restrict the development of apartments in Smithtown. At a public meeting on the matter, she said: “I do not want Smithtown to turn into a community similar to that of Western Nassau or Queens.” Both of these communities have much higher minority populations than Smithtown does.

89. In 2004, an editorial in a local newspaper noted that the opposition of local officials to affordable housing appeared to be racially based: “It seems they feel that the township is ‘off limits’ to certain racial and ethnic groups.” The editorial also indicated that one councilperson had recently suggested that affordable housing affects only minorities, such as Hispanics.

90. Upon information and belief, Smithtown is the only town in Long Island not to have asked the Long Island Housing Partnership, an affordable-housing advocacy group, to assist with the development of affordable housing in the Town. Long Island Housing Partnership has helped develop 3,000 affordable-housing units in other communities on Long Island since being incorporated in 1988.

91. Upon information and belief, Smithtown is also the only town in Suffolk County not to participate in the Workforce Housing Commission, which was created to confront the mounting affordable-housing crisis facing Long Island’s workforce. The mission of the Commission is to promote new rental and ownership housing opportunities through the development of various programs and incentives that encourage an expansion of workforce homes in Suffolk County.

92. Not only has Smithtown rejected affordable rental opportunities that may attract new minority residents, it has been consistently hostile to the extremely small percentage of minorities who have been successful in finding residence within the Town.

93. Continuing through at least the 1980s, some Black Smithtown residents were subjected to cross burnings and home arsons that were reported publicly.

94. In 1995, a real estate agent received a death threat for selling a home to an African-American couple. The seller of the home received similar threats.

95. On a Halloween night in the mid-1990s, the Trinity A.M.E. Church in Smithtown was vandalized. The windows were broken, eggs were thrown on the building, and the words “Go away nigger” were spray-painted on the outside of the church.

96. In 2004, minority residents had bricks thrown through their windows and received threatening phone calls and intimidating notes.

97. In 2005, an African-American woman and her family moved away from Smithtown after they received mail on which their last name was replaced with racial epithets and a typed message stating “Where’s Hitler when you need him?” Their neighbors received mail in which their last name was replaced with the word “Niggerlovers.”

98. Within the last 10 years, the Ku Klux Klan identified Smithtown as a potential source of new members and, among other things, proposed that it have a member-recruitment rally at a Smithtown-area mall.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. § 3604(a)

99. Plaintiffs repeat the allegations of paragraphs 1 through 98 as if fully set forth herein.

100. Defendant’s residency preference and practices in connection with the Section 8 program make unavailable and deny rental housing because of race, color and national origin in violation of the Fair Housing Act, 42 U.S.C. § 3604(a).

SECOND CAUSE OF ACTION

VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. § 3604(b)

101. Plaintiffs repeat the allegations of paragraphs 1 through 98 as if fully set forth herein.

102. Defendant's residency preference and practices in connection with the Section 8 program discriminate in the terms, conditions, or privileges of the rental of a dwelling because of race, color, and national origin in violation of the Fair Housing Act, 42 U.S.C. § 3604(b).

THIRD CAUSE OF ACTION

VIOLATION OF THE DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING AND THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983

103. Plaintiffs repeat the allegations of paragraphs 1 through 98 as if fully set forth herein.

104. Defendant's residency preference and practices in connection with the Section 8 program violate the Town's duty to administer HUD programs in a manner so as to affirmatively further fair housing under 42 U.S.C. §§ 3608(d) and (e)(5), Executive Order 11063, 27 Fed. Reg. 11527 (November 20, 1962), Executive Order 12892, 59 Fed. Reg. 2939 (January 20, 1994) and 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

VIOLATION OF THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981

105. Plaintiffs repeat the allegations of paragraphs 1 through 98 as if fully set forth herein.

106. Defendant's residency preference and practices in connection with the Section 8 program deny minority persons the same rights as are enjoyed by White citizens to make and enforce contracts in violation of 42 U.S.C. § 1981.

FIFTH CAUSE OF ACTION

VIOLATION OF THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1982

107. Plaintiffs repeat the allegations of paragraphs 1 through 98 as if fully set forth herein.

108. Defendant's residency preference and practices in connection with the Section 8 program deny minority citizens the same rights as are enjoyed by White citizens to lease, hold and otherwise enjoy real property in violation of 42 U.S.C. § 1982.

SIXTH CAUSE OF ACTION

**VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND THE
CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983**

109. Plaintiffs repeat the allegations of paragraphs 1 through 98 as if fully set forth herein.

110. Defendant's residency preference and practices in connection with the Section 8 program deny minority persons the equal protection of the law by discriminating on the basis of race, color, and national origin in the leasing of real property, in violation of the Fourteenth Amendment and 42 U.S.C. § 1983.

SEVENTH CAUSE OF ACTION

VIOLATION OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000d *et seq.*

111. Plaintiffs repeat the allegations of paragraphs 1 through 98 as if fully set forth herein.

112. Defendant's residency preference and practices in connection with the Section 8 program exclude minorities from participation in the federally funded Section 8 program in Smithtown, deny minorities the benefits of this federally funded program, and discriminate based on race, color, and national origin, in administration of this federally funded program in violation of 42 U.S.C. § 2000d *et seq.*

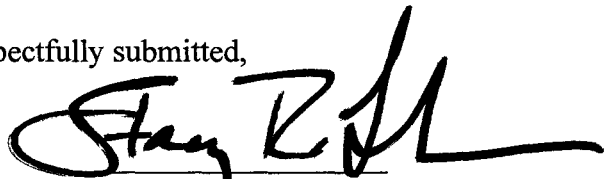
PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- a) Assume jurisdiction of this case;
- b) Certify the class as requested by the Plaintiffs;
- c) Declare that the Defendant's actions violate the Federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982; the Civil Rights Act 1871, 42 U.S.C. § 1983; the Civil Rights Act 1964, 42 U.S.C. § 2000d *et seq.*; and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- d) Enter a permanent injunction forbidding the Defendant from utilizing residency preferences in its Section 8 program;
- e) Award such equitable relief so as to place the Plaintiffs and members of the Class in the position they would have been in but for the Defendant's impermissible conduct, including, but not limited to, the issuance of Section 8 vouchers and other remedial measures;

- f) Award remedial relief in the form of damages to compensate the Plaintiffs and members of the Class;
- g) Award the Plaintiffs and members of the Class their costs and reasonable attorneys' fees as provided by 28 U.S.C. § 2412, 42 U.S.C. § 1988, 42 U.S.C. § 3613(c); and
- h) Grant the Plaintiffs and members of the Class such additional relief as justice may require.

Respectfully submitted,



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*Pro hac vice admission to be sought

December 13, 2007