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RAYMOND T. BALVAGE and DEBORAH A. BALVAGE, husband and wife, and  
CHARLES E. WEAVER and SUSAN M. WEAVER, husband and wife, on their own  
behalf and on behalf of a class of similarly situated individuals, Plaintiff, v.  
RYDERWOOD IMPROVEMENT AND SERVICE ASSOCIATION, INC., a  
Washington non-profit corporation, Defendant.

ASE NO. C09-5409BHS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON, TACOMA DIVISION

*2009 U.S. Dist. Ct. Motions 628017; 2010 U.S. Dist. Ct. Motions LEXIS 44244*

April 1, 2010

Motion for Summary Judgment

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**COUNSEL:** [\*1] LANE POWELL PC, Joseph E. Lynam, WSBA No. 12728, Abraham K. Lorber, WSBA No. 40668,  
Attorneys for Plaintiffs, Seattle, WA.

**JUDGES:** THE HONORABLE BENJAMIN H. SETTLE

**TITLE: Plaintiffs' Reply In Support Of Motion For Partial Summary Judgment Re Defendant's Violation Of  
FHA And Non-Compliance With HOPA Exception**

**TEXT: I. INTRODUCTION**

Plaintiffs' Motion raises three specific issues upon which Plaintiffs' seek partial summary judgment. The first issue, that RISA engaged in discrimination on the basis of familial status, is not disputed in RISA's Opposition and has previously been admitted to by RISA. Accordingly, the Court should grant partial summary judgment for Plaintiffs on the first issue. Of the remaining issues, resolution of the second issue, that RISA does not qualify for the FHA's HOPA exception (the "HOPA Issue"), is the main purpose of Plaintiff's Motion.

In the Joint Status Report, RISA stated to the Court the "parties agree that the HOPA issues should be resolved first in this matter and largely involve questions of law." Dkt. 8, at p. 3. In the Joint Status Report, the parties submitted a plan to the Court which called for resolution of the HOPA Issue first. *Id.* [\*2] In Plaintiffs' Motion, Plaintiffs assert RISA is not HOPA compliant presently because it wrongfully discriminated against families with children while attempting to convert to HOPA compliance. As explained below, Plaintiffs have met their burden for the Court to grant

partial summary judgment on the HOPA Issue. RISA attempts to confuse the Court with a recitation of irrelevant factual allegations. For example, RISA includes historical information about certain bylaws and covenants which it alleges govern real property in Ryderwood. These bylaws and covenants, however, are unenforceable if they violate the FHA. Whether they violate the FHA depends on resolution of the HOPA Issue.

In its Opposition, RISA refers to possible ultimate defenses to Plaintiffs' claims that RISA violated the FHA (the third issue in Plaintiffs' Motion). These defenses are a lack of standing and the statute of limitations. As discussed below, these defenses are without merit. However, final resolution of the application of these defenses is not necessary for the Court's determination regarding the HOPA Issue. Thus, while Plaintiffs contend they are entitled to partial summary judgment regarding all three issues [\*3] raised in Plaintiffs' Motion, Plaintiffs' reiterate the importance of the Court addressing the HOPA Issue, as discussed in the Joint Status Report.

## II. PLAINTIFFS' REPLY

### A. RISA Is Not Presently HOPA Compliant Because Its Discrimination During Its Attempted Conversion Rendered Such Conversion Unsuccessful.

In its Opposition, RISA does not dispute that from 1992 until 2006 it deliberately ignored the instructions it received from HUD regarding FHA and HOPA compliance. It is against this backdrop of willful non-compliance that RISA's claim of HOPA compliance must be judged.

#### 1. RISA Has Never Successfully Converted to HOPA Compliant Status.

It is undisputed that it was not until the spring of 2006 that RISA decided to try to become HOPA compliant. Not having been HOPA compliant up until this point, how might RISA properly go about converting to HOPA compliant status? Prior to May 3, 2000, a non-compliant community could engage in familial status discrimination while attempting to fulfill the statutory and regulatory requirements of HOPA. 24 C.F.R. §§ 100.305; 2006 HUD Memo (Exh. D to Lynam Decl.), at D20-D21. However, after May 3, 2000 when this transition [\*4] period ended, the conversion rules became much stricter. 2006 HUD Memo (Exh. D to Lynam Decl.), at D20-D21. A community which wishes to become HOPA compliant after the transition period ended can do so, but during its conversion it cannot discriminate. *Id.*

A community must organically achieve or maintain the 80% threshold before it begins to discriminate. In other words, a community cannot discriminate while converting to HOPA compliant status. Plaintiffs have demonstrated that RISA was not HOPA compliant before the spring of 2006. Thus, RISA's attempt to convert to HOPA compliant status was governed by the stricter, post-transition period rules. As it is undisputed that RISA engaged in familial status discrimination before, during, and after its attempted conversion, that conversion failed as a matter of law. Because RISA never successfully converted to HOPA compliance in 2006, its continued discrimination renders it non-compliant today. Thus, Plaintiffs respectfully request that the Court grant partial summary judgment in favor of Plaintiffs on the HOPA Issue. n1

n1 RISA contends Plaintiffs' arguments regarding the HOPA transition period renders it impossible for a community to become HOPA compliant after the transition period ends. Dkt. 17, at p. 18. This contention is without merit. Both the HUD Memo and the court in the *Simovits* case explain how a community can become HOPA compliant after the transition period. 2006 HUD Memo (Exh. D to Lynam Decl.), at D20-D21; *Simovitz V. Chanticleer Condominium Assoc.*, 933 F.Supp. 1394, 1403 (N.D. ILL. 1996). As suggested by the remedy fashioned by the *Simovits* court, RISA should have ceased all discrimination for two years (the statutory limitations period) and then conducted an age-verification survey. *Simovits*, 933 F.Supp. at 1403. If after this period of non-discrimination, Ryderwood was still 80% 55 and older, RISA could then publish policies and

procedures limiting residency to persons 55 years of age or older and begin complying with the other requirements of HOPA.

[\*5]

## 2. RISA Did Not Comply With HOPA Before 2006.

Despite RISA's failure to dispute that beginning in 1992 it deliberately ignored instructions it received from HUD regarding FHA and HOPA compliance, RISA attempts to argue that it was in fact HOPA compliant before 2006. Dkt. 17, at p. 20. RISA contends that its pre-2006 policies "met the spirit and intent of the rule." n2 Dkt. 17, at 20. These contentions by RISA fail. Exceptions to the FHA are strictly construed. *Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc.*, 3 F.3d 1472, 1475 (11th Cir. 1993) If RISA is to qualify for HOPA, it is obligated to meet the letter of the rule and not just its spirit.

n2 RISA quotes *Massaro* quoting Learned Hand for the proposition that statutes should be construed with "some imagination of the purposes which lie behind them." Dkt. 17, at p. 18. Plaintiffs note that the "imagination" referred to by the *Massaro* court was its decision to allow defendant, which was not technically a homeowner's association, to attempt to qualify for the HOPA exception. The *Massaro* court expressed no permissiveness, however, with respect to defendant's actual compliance with provisions of HOPA. *Massaro*, 3 F.3d at 1477.

[\*6]

Though RISA admits it never attempted to comply with HOPA and did not complete an allegedly sufficient age-verification survey until at the earliest 2006 (and Plaintiffs adamantly dispute RISA has ever completed a valid survey), RISA contends it complied with HOPA's age-verification requirements before this time through a hodgepodge of half measures such as phone book updates and the keeping of a rolodex. Dkt. 17, at p. 23. However, 24 C.F.R. § 100.307(a) requires that a community responding to a complaint under the FHA must produce verification of compliance with the 80% requirement through "reliable surveys and affidavits." RISA has failed to do this. RISA admits it did not complete its first allegedly sufficient survey until April 2006. RISA Rule 30(b)(6) Deposition (Exh. A to Lynam Decl.), at A7-A8 (p. 18, l. 20 - p. 19, l. 9). As for reliable affidavits, the Declaration of Sally Gene De Briare submitted in support of RISA's Opposition provides no competent evidence that reliably verifies that RISA met the 80% requirement. *See generally* Dkt. 19. Although RISA may have obtained age-verification information when new residents officially purchased property in Ryderwood, this [\*7] initial inquiry cannot, as a matter of law, fulfill HOPA's requirement that a housing community "provide for regular updates . . . [which] must take place at least once every two years." 24 C.F.R. § 100.307(c). RISA's pre-2006 "procedures" provide no allowance for renters, change of owner by inheritance, etc. Dkt. 19, at PP 18-21, pp. 4-5.

Indeed, a review of the information submitted by RISA demonstrates that, even if initial age information was taken down, no regular and reliable updates were performed. *Id.* Quite simply, prior to 2006, RISA made no attempt to create a documentary record which would allow an objective reviewer to verify that, at any given point prior to 2006, 80% of the households in Ryderwood were actually occupied by someone 55 years of age or older. Because RISA bears the burden of proving HOPA compliance, this failure to generate a record means RISA could not have been compliant prior to 2006 as a matter of law.

## **B. Plaintiffs' Have Standing to Bring FHA Claims Against RISA.**

1. Plaintiffs' Burden to Prove Standing for the HOPA Issue is Different from its Burden to Prove Standing for Issue 3.

As RISA states in its Opposition, HOPA [\*8] is a defense to a claim of familial status discrimination under the FHA. Dkt. 17, at p. 3. With their second claim for relief, Plaintiffs seek summary judgment ruling that this defense does not apply (the "HOPA Issue"). Dkt. 14, at 3. Although a plaintiff ultimately has the burden of proving standing at trial, "allegations of injury resulting from the defendant's conduct may be sufficient to meet standing requirements, at least at the pleading stage." 15 *Moore's Federal Practice*, § 101.31 (Matthew Bender 3d ed.) (citing *Lujan v. Defenders of Wildlife*, 497 U.S. 871, 889, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990)). RISA has not asked the Court for an affirmative ruling that Plaintiffs lack standing, they have only raised it as a defense to Plaintiffs' Motion. *See generally* Dkt. 17. Thus, while Plaintiffs certainly need to prove standing as a matter of law to prevail on Issue 3 (that RISA has violated the FHA), Plaintiffs need only meet the pleading requirements of standing to obtain summary judgment on the HOPA Issue.

Plaintiffs have clearly pled facts sufficient to give them standing to seek partial summary judgment on the HOPA Issue. Plaintiffs have pled [\*9] a long list of injuries, including but not limited to:

- . RISA wrongfully filed improper and inaccurate liens and bylaws on Plaintiffs' real property. Dkt. 11, at 7, P 37.
- . RISA prevented Plaintiffs from selling their homes. *Id.*
- . RISA incited other residents of Ryderwood to harass plaintiffs and retaliate against them. *Id.*, P 40.
- . RISA posted Plaintiffs' names and addresses on a community bulletin board, further subjecting Plaintiffs to harassment. RISA Rule 30(b)(6) Deposition (Exh. B to Second Lynam Decl.), at B13 (p. 62, l. 19-p. 63, l. 7)
- . RISA forbid Plaintiff Chuck Weaver's son from living with him in Ryderwood. Plaintiffs Discovery Responses (Exh. A to Second Lynam Decl.), at B13-14

Not only have Plaintiffs met the standing requirements to obtain partial summary judgment on the HOPA Issue, as shown below, Plaintiffs have proven standing as a matter of law sufficient for the Court to grant partial summary judgment on the FHA Violation Issue as well.

2. RISA Admits in the Joint Status Report That an Actual Controversy Exists as to Whether Or Not it is HOPA Complaint.

Title 28 section 2201 of the United States Code provides that: [\*10]

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

Here it is undisputed that an actual controversy exists as to whether or not RISA is HOPA compliant. Indeed, in the parties' Joint Status Report, RISA states:

The dispute between the parties has existed for several years . . .

Defendant asserts that [its discrimination on the basis of familial status] is permitted under the HOPA amendment to the FHA and also asserts that it qualifies for this exception. Plaintiffs assert that Defendant is not compliant with HOPA and is not entitled to discriminate. The parties agree that the HOPA issues should be resolved first in this matter and largely involved questions of law.

Dkt. 8, at 3. Plaintiffs contend RISA "incit[es] its members to harass Plaintiffs and the prospective class for attempting to exercise their rights under the FHA." *Id.*, at p. 2. RISA, stated in the Joint Status Report:

[D]efendant has not [\*11] incited anybody to harass plaintiffs, but that plaintiffs and their organization, SWIFFT, have harassed RISA members and damaged the community as a whole by falsely claiming to prospective buyers and others that they do not have to pay RISA dues and that RISA is not a retirement community . . . .

Dkt. 8, at p. 2.

Surely there is an "actual controversy" here worthy of the Court granting declaratory relief. Based on the parties' representations to the Court in the Joint Status Report, it is abundantly clear that an actual controversy exists as to whether or not RISA is HOPA compliant and that resolution of this controversy is of substantial importance to the parties.

### 3. Standing Under the FHA is Broadly Construed to Effectuate the Act's Important Public Policy Purposes.

In furtherance of the public policy purposes behind the FHA, a plaintiff bringing an FHA claim must only prove the Article III *minima* elements of standing. *Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004). The Article III test for standing is: (1) an injury in fact; (2) which is attributable to the defendant's conduct; and (3) which is capable of redress. *Id.* (citing [\*12] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992)) (other citing references omitted). Where a plaintiff seeks declaratory relief, the injury in fact plaintiff must prove is the likelihood of suffering a future injury. 15 *Moore's*, § 101.61[6][b] (citing *Roe v. Operation Rescue*, 919 F.2d 857, 864 (3d Cir. 1990)).

"In light of the clear congressional purpose in enacting the FHA, and the broad definition of 'person aggrieved,' persons who claim to have been injured by a discriminatory housing practice, have standing to litigate violations of the FHA." *Comer v. Cineros*, 37 F.3d 775, 789 (2nd cir. 1994) (quoting *Warth v. Seldin*, 422 U.S. 490, 501, 512-513, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975)) (internal quotation marks omitted). "In order to have standing to sue under the FHA, the [plaintiffs] need not be victims of discrimination." *Simovitz v. Chanticleer Condominium Assoc.*, 933 F. Supp. 1394, 1400 (N.D. Ill. 1996); see also *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 93 S.Ct. 364 (1972) (holding white [\*13] tenants have standing to sue for discrimination against nonwhites). "Congress intended to establish a broad set of rights to be free from housing discrimination, and that as a general rule, courts should not erect standing barriers - other than the *minima* required by Article III - to those seeking to vindicate these rights." *Smith v. Pacific Properties & Development Corp.*, 358 F.3d 1097, 1102 (9th Cir. 2003) (holding that testers have standing to sue for violations of FHA prohibition on handicap discrimination).

### 4. Plaintiffs Suffer Ongoing Injuries Arising Out of Their Inability to Sell Their Homes.

Plaintiffs have suffered a long list of injuries that give them standing to bring claims against RISA. These injuries include, but are not limited to, the fact that Plaintiffs and members of the putative class have attempted to list their homes for sale to the general public but have been rebuffed by real estate agents who will only list their homes as being available to persons 55 years of age or older. Discovery Responses (Exh. A to Second Lynam Decl.), at B14-15. This is an example of the conundrum Plaintiffs find themselves in with respect to any efforts [\*14] to sell their homes. Plaintiffs believe RISA is not HOPA compliant and any potential buyer needs to be told the truth regarding RISA's status. The real estate agents are told by RISA to tell potential buyers that RISA is HOPA compliant. Plaintiffs believe potential buyers are being told misrepresentations. What do the Plaintiffs tell potential buyers? Either way they open themselves up to liability. Can Plaintiffs only sell to buyers who are 55 and older? There is complete disagreement on this issue. RISA is saying one thing and having real estate agents repeat it, but Plaintiffs believe another thing and the real estate agents refuse to say it. This is one example of how there clearly is an "actual controversy" which is appropriate for declaratory relief.

There can be little doubt that these injuries are "fairly traceable to the challenged action of the defendant." *Tandy*, 380 F.3d at 1283. In its Opposition, RISA admits that it makes "regular disclosures to real estate agents that work in the area" regarding Ryderwood's purported 55 and older status. Dkt. 17, at p. 5. Indeed, the named plaintiffs have been injured by this practice. In September 2007, the Weavers [\*15] attempted to list their property for sale with local real estate agents. Plaintiffs' Discovery Responses (Exh. A to Second Lynam Decl.) at B14-15. Although the Weavers wished to advertise their home to all potential buyers, the real estate agents refused to list the home as being available to families with children. *Id.* The Weavers' home subsequently failed to sell. *Id.*

Thus, Plaintiffs suffered a real and palpable injury as result of RISA's discriminatory conduct. Until the Court grants or denies the declaratory relief requested by Plaintiffs, Plaintiffs will be faced with the conundrum of not knowing to whom they might sell their homes and what accurate representations to make to potential buyers. Plaintiffs have standing to seek declaratory relief because this injury, and the resulting conundrum, continuously threaten to be repeated anytime a Ryderwood resident (including Plaintiffs) attempts to sell his or her home to a member of the public. As such, Plaintiffs have satisfied their burden of proving standing for the purposes of their Motion.

#### 5. Plaintiffs Suffer Ongoing Injuries Arising Out of RISA's Retaliatory Conduct.

In their Complaint, Plaintiffs allege that [\*16] they and the putative class members have suffered harassment and retaliation at the hands of RISA and its members arising out of Plaintiffs' assertion that, among other things, RISA is not actually HOPA compliant. Dkt. 11, at 7-8, P 40. The injuries complained of by Plaintiffs are sufficient to give them standing to sue for relief under the FHA.

At the Rule 30(b)(6) deposition of RISA conducted by Plaintiffs, RISA designee Sally Gene De Briae testified that a RISA board member posted on a RISA controlled community bulletin board a document containing the names and addresses of Ryderwood residents who withdrew from RISA and questioned its ability to restrict residency. RISA Rule 30(b)(6) Deposition (Exh. B to Second Lynam Decl.), at A8-9 (p. 62, l. 19-p. 63, l. 7); Plaintiffs' Discovery Responses (Exh. A to Second Lynam Decl.), at B13. The document is dated March 3, 2008. Bulletin Board Posting (Exh. C to Second Lynam Decl.), at C23. When asked why the document was posted, Ms. De Briae testified that:

I think the board discussed it to some degree, and we were getting questions from other residents, wanting to know if their neighbors were resigning or if they were not paying [\*17] dues and who they were. And we thought that we could, you know - could let them know who that was. The next day we were told we couldn't by our attorney, and we removed it, and it has not been done since.

*Id.*, at p. (p. 64, ll. 6-15).

Regardless of whether the document was immediately taken down, the cat was let out of the bag. RISA published a list of names of Ryderwood residents who asserted what they believed to be their rights under the FHA and those residents subsequently suffered harassment and retaliation as a result. Plaintiffs' Discovery Responses (Exh. A to Second Lynam Decl.), at B13. For the purposes of this Motion, the Balvages suffered a particularly cruel form of harassment: they were driven out of their local church by a pastor who whipped up the congregation in retaliation against those parishioners who claimed RISA was unlawfully discriminating. Plaintiffs' Discovery Responses (Exh. A to Second Lynam Decl.), at B22. This pastor's statements included such things as anyone who challenged RISA was to be shunned from the community and the Church (which is what in fact occurred) and these persons were "parasites to the community." Plaintiffs' Discovery Responses [\*18] (Exh. A to Second Lynam Decl.), at B12. Additionally, plaintiff Chuck Weaver was forbidden by RISA from having his son live with him at Ryderwood because his son was not 55 years old. *Id.*, at B14-15.

The posting of the list of names and the ensuing harassment continue to cause ongoing injuries to Plaintiffs. Declaratory relief is necessary to clear up the uncertainty as to the legality of RISA's discriminatory policies and to prevent further harassment and retaliation against Plaintiffs and the putative class members.

### C. Plaintiffs' Claims Are Not Barred by the Statute of Limitations

The FHA provides that "[a]n aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice." 42 U.S.C. § 3613(a)(1)(A). The Supreme Court has held "where a plaintiff, pursuant to the Fair Housing Act, challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within [the statutory period, running [\*19] from] the last asserted occurrence of that practice." *Garcia v. Brockway*, 503 F.3d 1092, 1097 (9th Cir. 2007) (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380-81, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982)). Here, RISA has admitted that it continues to discriminate on the basis of familial status through the present day. Dkt. 17., at 4-5. Indeed, RISA admits that its discriminatory policies are "conditions of title." *Id.*, at 4. As such, Plaintiffs injuries arising out of this discrimination are ongoing and are not barred by the statute of limitations.

Additionally, the specific injuries which Plaintiffs have suffered (which give them standing to sue) occurred within the limitations period. In its Opposition, RISA mistakenly states that Plaintiffs filed their complaint on November 10, 2009. Dkt. 17, at 16. Plaintiffs' complaint was actually filed July 8, 2009. Dkt. 1.

Plaintiffs' injuries occurred well within the limitations period. The Weavers were rebuffed by real estate agents in September 2007. Plaintiffs' Discovery Responses (Exh. A to Second Lynam Decl.), at B14-15. RISA posted the names of Plaintiffs and the putative class on bulletin [\*20] boards on March 3, 2008. RISA Rule 30(b)(6) Deposition (Exh. B to Second Lynam Decl.), at A8-9 (p. 62, l. 19-p. 63, l. 7); Bulletin Board Posting (Exh. C to Second Lynam Decl.), at C23. Plaintiffs' ongoing injuries include their inability to live with their family members, the harassment they suffer at the hands of RISA members, the continuing clouds on their title, further imposition of liens, etc. Accordingly, Plaintiffs' injuries occurred within the statutory period and/or are ongoing injuries. Thus, RISA's statute of limitations defense fails.

### III. CONCLUSION

The main issue presented by Plaintiffs' Motion is whether or not RISA can claim the HOPA exception as a defense to Plaintiffs' claims that RISA violated the FHA. Plaintiffs have shown that RISA cannot claim HOPA as a defense because it wrongfully discriminated during its attempted conversion to HOPA compliance. Plaintiffs assert that they have proven standing and have disproved RISA's statute of limitations defense in such a manner as to allow the Court to grant partial summary judgment on all issues presented in Plaintiffs' Motion, including that RISA violated the FHA. If the Court concludes that RISA may not [\*21] obtain partial summary judgment on the FHA violation issue at this time, Plaintiffs respectfully request that the Court grant summary judgment on the other issues presented by Plaintiffs' Motion, including the HOPA issue.

DATED: April 1, 2010

LANE POWELL PC

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### **CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on April 1, 2010, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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### **SECOND DECLARATION OF JOSEPH E. LYNAM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Joseph E. Lynam, hereby declare as follows:

1. I am an attorney representing the Plaintiffs in the above-captioned lawsuit. I am a citizen of the United States of America, am over 18 years old, am competent to testify herein, and have personal knowledge of the facts stated below. This declaration is submitted in support of Plaintiffs' Motion For Partial Summary Judgment Re Defendant's Violation of FHA and Non-Compliance With HOPA. This second declaration supplements my prior declaration submitted in support of Plaintiffs' Motion.

2. Attached hereto as Exhibit A is a true and correct copy of additional excerpts from the transcript [\*23] of the Rule 30(b)(6) deposition of defendant Ryderwood Improvement and Service Association, Inc. ("RISA"), whose designated representative was RISA Board of Directors member Sally Gene De Briae and which deposition occurred on



February 12, 2010.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from Plaintiffs' Responses To Defendant's First Interrogatories and Requests for Production to Plaintiffs dated December 29, 2009. Included as the last page of Exhibit B is a true and correct copy of a letter dated April 18, 2008 from plaintiffs Raymond T. Balvage and Deborah A. Balvage, which letter was produced by plaintiffs to defendant in response to these discovery requests and is bates stamped as "PLA297."

4. Attached hereto as Exhibit C is a true and correct copy of the first page of Exhibit 2 to the RISA Rule 30(b)(6) deposition (which deposition is referenced above in paragraph 2), and which is discussed in the excerpts from the deposition attached hereto as Exhibit A on deposition pages 62 and 63.

I hereby declare under penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

SIGNED [\*24] this 1st day of April, 2010 at Seattle, King County, Washington.

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#### **CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on April 1, 2010, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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[SEE EX A IN ORIGINAL]

[SEE EX B IN ORIGINAL]

[SEE EX C IN ORIGINAL]