

JANE DOE No. 1, et al.,  
Plaintiffs,

v.

THE CITY OF BOSTON and  
THE BOSTON HOUSING AUTHORITY,  
Defendants.

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CONSOLIDATED WITH

UNITED STATES OF AMERICA,  
Plaintiff,

v.

THE BOSTON HOUSING AUTHORITY,  
Defendant.

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### **SETTLEMENT AGREEMENT AND ORDER**

#### **I. INTRODUCTION**

Between February and June 1996, Named Plaintiffs (defined below) filed thirteen administrative complaints against the Boston Housing Authority ("BHA") with the United States Department of Housing and Urban Development ("HUD") alleging violations of the Fair Housing Act, 42 U.S.C. 3601, *et seq.* (the "HUD Administrative Action"). Named Plaintiffs, who are Haitian, Hispanic, Trinidadian, Nigerian, St. Thomian, Black, black African American, and Hispanic, alleged that they, their families, and their visitors were repeatedly subject to racial violence, harassment and intimidation because of their race, color and national origin by white tenants and others during Named Plaintiffs' tenancies at two predominantly white BHA developments -- Old Colony in South Boston and Bunker Hill in Charlestown. This alleged harassment includes racially motivated acts of physical violence and threats of physical violence, destruction of property, racist graffiti, and racist name-calling. Named Plaintiffs alleged that they repeatedly complained about this racial harassment to the BHA, and that the BHA failed to adequately investigate or respond to their complaints.

On December 17, 1996, Named Plaintiffs filed a class action in this Court against the BHA and the City of Boston (the "City"), entitled Jane Doe No. 1, et al., v. The City of Boston and The Boston Housing Authority (Civil Action No. 96-12540 RCL). Jane Doe No. 1 v. City of Boston asserted claims against the BHA and the City for violations of the Fair Housing Act as well as the Civil Rights Act of 1866 (42 U.S.C. § 1981), the Civil Rights Act of 1871 (42 U.S.C. § 1983), Title VI of the Civil Rights Act of 1964 (42

U.S.C. § 2000d), the Thirteenth and Fourteenth Amendments of the United States Constitution, the Massachusetts Civil Rights Act (M.G.L. c. 12, §11I), the Massachusetts Anti-Discrimination Law (M.G.L. c. 151B, §4(6)), the Massachusetts Equal Rights Law (M.G.L. c. 93, §102), and Article I of the Declaration of Rights of the Inhabitants of the Commonwealth of Massachusetts. As in the HUD Administrative Action, Named Plaintiffs alleged that the BHA and the City failed to take effective measures to protect Named Plaintiffs and similarly situated public housing tenants from chronic acts of racial violence and intimidation.

On February 16, 1999, after an investigation into the thirteen administrative complaints, HUD issued a Determination of Reasonable Cause and Charge of Discrimination on behalf of nine Named Plaintiff families. HUD concluded that it had reasonable cause to believe that the BHA had discriminated against these nine families on the basis of race, color or national origin. HUD issued Determinations of No Reasonable Cause as to the remaining four Named Plaintiff families.<sup>(1)</sup> The Determination of Reasonable Cause, Charge of Discrimination, and Determinations of No Reasonable Cause are attached as Exhibit 1 to this Settlement Agreement and Order ("Agreement and Order").

On March 8, 1999, the BHA and Named Plaintiffs elected to have the HUD Charges of Discrimination decided in federal court, pursuant to 42 U.S.C. 3612(a).

HUD conducted a further review of the Boston Housing Authority and as a result, on May 15, 1999, issued a report entitled "Assessment of the Boston Housing Authority's Response to Racial and Ethnic Harassment," a copy of which is attached hereto as Exhibit 2.

Pursuant to its authority under 42 U.S.C. 3612(o) and 3614(a), the United States Department of Justice, on July 26, 1999, filed a civil action in this Court against the BHA entitled United States v. Boston Housing Authority (Civil Action No. 99-11587-RCL), and moved to consolidate with Jane Doe No. 1 v. City of Boston. United States v. Boston Housing Authority asserted claims against the BHA for violations of the Fair Housing Act. The United States alleged that the BHA has engaged in a pattern or practice of resistance to the full enjoyment of rights guaranteed by the Fair Housing Act by tolerating pervasive and severe harassment of tenants on the basis of race, color and national origin in two of its Developments. Specifically, the United States' complaint charges that the BHA's failure to act has made housing unavailable because of race, color, and national origin in violation of 42 U.S.C. § 3604(a); has discriminated in the terms, conditions, privileges, services and facilities of rental housing in violation of 42 U.S.C. § 3604(b); and has coerced, intimidated, threatened, and interfered with individuals' exercise and enjoyment of equal housing conditions in violation of 42 U.S.C. § 3617.

The BHA and the City deny the allegations contained in the Civil Actions and the HUD Administrative Action. However, the Parties agree that, in order to avoid protracted and costly litigation, the Civil Actions should be resolved on terms and conditions set forth in this Agreement and Order.

Accordingly, as indicated by the signatures appearing below, the parties have consented to entry of this Settlement Agreement and Order.

## II. **PURPOSES OF THIS AGREEMENT AND ORDER**

The Parties have agreed to this Agreement and Order for the following purposes:

1. To ensure, by the means set forth in this Agreement and Order, that all present and future tenants of the BHA are accorded housing on equal terms, conditions, and privileges regardless of race, color, and national origin.
2. To provide prospective relief in furtherance of the public interest, and monetary relief to the Named Plaintiffs and all members of the Plaintiff Class whom they represent by means of the terms and conditions set forth in this Agreement and Order.

## **AGREEMENT AND ORDER**

IT IS HEREBY AGREED AND ORDERED as follows:

## III. **CERTAIN DEFINITIONS**

The following terms when used in this Agreement and Order, in addition to the terms defined elsewhere in this Agreement and Order, will have the following meanings:

1. "Boston Housing Authority" or "BHA" will refer to the Boston Housing Authority and its employees, agents, and any and all persons or entities acting in concert or participation with the Boston Housing Authority.
2. "City of Boston" or the "City" will refer to the City of Boston and its employees, agents, and any and all persons or entities acting in concert or participation with the City of Boston.
3. "Civil Actions" will refer to Jane Doe No. 1 v. City of Boston and United States v. Boston Housing Authority.
4. "Civil Rights Protection Plan" or "CRPP" will refer to the Boston Housing Authority Civil Rights Protection Plan as amended and approved by this Agreement and Order. A copy of the CRPP is attached hereto as Exhibit 3.
5. "Claim Form" will refer to the form, to be attached to the Mail Notice (defined below) for delivery to the Class (defined below) by the BHA, which members of the Class will be required to complete and submit in order to determine their eligibility to share in the Class Fund (defined below). "Claim Form" will also refer to any equivalent form or document that contains substantially all of the information sought in the printed form. A copy of the Claim Form is attached hereto as Exhibit 4.
6. "Claim Period" will refer to the period of time in which potential Class Members may file a claim. The Claim Period runs from this Court's Preliminary Approval of this Agreement and Order (defined below) and for ninety (90) days thereafter.

7. "Claims Administrator" will refer to the individual or entity, appointed by the Court, who will administer the collection and distribution of the Class Fund (defined below).
8. "Class" will refer to all black African-American, Black (including but not limited to Trinidadian, Haitian, St. Thomian, and Nigerian), Hispanic, Asian or Pacific Islander, and Native American tenants, which includes residents and members of the resident's household listed on the BHA Public Housing Lease and/or the Tenant Status Review, who reside or have resided in any of the Developments (defined below) between 1989 and the date of the Court's Preliminary Approval of this Agreement and Order. Membership in the Class is not conditioned upon the existence of records indicating that such tenants have complained of racial violence, harassment, threats, intimidation, or coercion.
9. "Class Counsel" will refer to the law firm of Testa, Hurwitz & Thibault, LLP (including David S. Godkin, Esq. and Inez H. Friedman, Esq.) and the Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association (including Ozell Hudson, Jr., Esq., Barbara J. Dougan, Esq., and Nadine Cohen, Esq.).
10. "Class Fund" will refer to the cash recovery paid by the BHA for the benefit of the Class.
11. "Class Member" will refer to any member of the Class.
12. "Date of Preliminary Approval of the Agreement and Order" will refer to the date the Court enters an order initially approving the Agreement and Order, prior to the fairness hearing and final approval of this Agreement and Order.
13. The "Developments" will refer to the BHA's Old Colony, Mary Ellen McCormack, West Broadway and Bunker Hill housing developments.
14. "Effective Date of the Agreement and Order" will refer to the date the Court gives final approval to and enters this Agreement and Order.
15. "Eligible Class Member" will refer to all members of the Class (other than Named Plaintiffs) who timely submit complete and accurate Claim Forms, and who are determined by the Claims Administrator to be eligible to share in the Class Fund.
16. "Fair Housing Compliance Coordinator" will refer to the person hired by the BHA to monitor the BHA's compliance with this Agreement and Order and provide assistance in its implementation.
17. "HUD" will refer to the United States Department of Housing and Urban Development.
18. "Mail Notice" will refer to the notice of the proposed settlement of the Civil Actions to be sent by the BHA by first class mail to as many members of the Class as can be located as set forth in this Agreement and Order. The Mail Notice will describe the proposed settlement and inform Class Members of the procedures and deadlines for filing a claim, objecting to the proposed settlement, and opting out of the Class, and will provide the date, time and location of the fairness hearing. A copy of the Mail Notice is attached hereto as Exhibit 5.
19. "Named Plaintiffs" will refer to the Plaintiffs named in the caption of Jane Doe No. 1 v. City of Boston, whether identified by name or by pseudonym.
20. "Objection Period" will refer to the period during which potential Class Members may deliver to the clerk of the Court or have postmarked for delivery thereto a written objection to this Agreement and Order. The Objection period runs from

- this Court's Preliminary Approval of this Agreement and Order until seven (7) days before the fairness hearing.
21. "Opt Out Period" will refer to the period of time in which potential Class Members may remove themselves from ("opt out" of) the Class. The Opt Out Period runs from this Court's Preliminary Approval of this Agreement and Order for one hundred five (105) days thereafter.
  22. "Plaintiffs" will refer to the Private Plaintiffs (defined below) and the United States (defined below).
  23. "Private Plaintiffs" will refer to the Named Plaintiffs and the members of the Class whom they represent.
  24. "Publication Notice" will refer to the notice of the proposed settlement of these Civil Actions to be published by the BHA in The Boston Globe, The Boston Herald, The Bay State Banner, El Mundo, The Sampan, The Haiti Observer, and Vifao. The Publication Notice will summarize the information in the Mail Notice. A copy of the Publication Notice is attached hereto as Exhibit 6.
  25. "USA" or "United States" will refer to the United States Department of Justice, which includes the Civil Rights Division of the United States Department of Justice and the Office of the United States Attorney for the District of Massachusetts.

#### IV. **JURISDICTION, SCOPE AND TERM OF ORDER**

1. The parties stipulate and the Court finds that the Court has personal jurisdiction over the BHA and the City of Boston for purposes of these Civil Actions, and subject matter jurisdiction over the claims in these Civil Actions pursuant to 28 U.S.C. §§ 1331, 1343(a), 1345 and 1367; and/or 42 U.S.C. §§ 1983, 3612(o), 3613(a) or 3614(a).
2. This Agreement and Order applies to and addresses discriminatory actions or inactions based on race, color, or national origin taken against members of the Class involving claims alleged in the Civil Actions that may have occurred at the Developments from January 1, 1989, through the date of preliminary approval of this Agreement and Order.
3. The provisions of this Agreement and Order apply to the BHA, its employees, agents and any and all persons or entities acting in concert or participation with the BHA.
4. The Agreement and Order will be effective for a period of three (3) years from the Effective Date of the Agreement and Order, unless the Agreement and Order is extended as provided in the next paragraph.
5. In the event the United States or Private Plaintiffs determine that there has been substantial, or repeated and material, failure by the BHA to satisfy the terms or provisions of the Agreement and Order, the United States and/or Private Plaintiffs may file a motion ("Plaintiffs' motion") with the Court requesting that this Agreement and Order not terminate until such time as the Court determines that the terms and provisions of the Agreement and Order have been substantially satisfied. Before filing such motion, the United States and/or Private Plaintiffs will give the BHA thirty (30) days written notice setting forth in detail the specific provision(s) of the Agreement and Order with which the BHA has allegedly not complied, along with a detailed itemization of the grounds for the alleged

noncompliance. During this thirty (30) day period, the parties will endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with the Agreement and Order, and the BHA will in good faith confer with the Plaintiffs to attempt to resolve the compliance issues. If the United States and/or Private Plaintiffs have not previously filed a motion to enforce the Agreement and Order pursuant to the Procedural Order, attached as Exhibit 9, then the BHA will have an additional thirty (30) days after the thirty (30) day notice period to cure the alleged noncompliance. Plaintiffs' motion must be filed no later than thirty (30) days prior to the expiration of the Agreement and Order. If, after hearing, the Court finds that the BHA is in substantial, or repeated and material, noncompliance with the terms or provisions of this Agreement and Order, the Court may continue the term of this Agreement and Order for an additional appropriate period of time, although such time is not to exceed six (6) years from the Effective Date of the Agreement and Order. In such event, the BHA retains the right to move the Court to terminate the Agreement and Order, although in no event will the BHA file such a motion more than once per calendar year.

V. **GENERAL NONDISCRIMINATION PROVISIONS**

The BHA will not:

1. Deny or otherwise make unavailable a BHA dwelling because of race, color or national origin;
2. Discriminate in the terms, conditions or privileges of the rental of a BHA dwelling, or in the provision of services or facilities in connection therewith, because of race, color or national origin;
3. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right protected by the Fair Housing Act;
4. Deny any BHA tenant the right to the full and equal benefit and enjoyment of goods, services, facilities, privileges and advantages with respect to the right to lease and hold his property without regard to race, color, or national origin.

VI. **COMPLIANCE PROVISIONS**

The BHA will take the following steps to ensure that its developments are operated in a nondiscriminatory manner free from racial harassment:

A. **POLICIES**

1. **Compliance with the Civil Rights Protection Plan and Other Civil Rights Laws and Policies**

- a. The BHA will comply with all provisions of the Civil Rights Protection Plan ("CRPP," defined above). A copy of the CRPP is attached as Exhibit 3 and will be enforced pursuant to the terms of this Agreement and Order. By agreeing to this Agreement and Order, the United States hereby approves the modifications to the

CRPP attached as Exhibit 3 to the Agreement and Order. In the event that the BHA determines that modifications to the CRPP are warranted, the BHA will notify counsel for the United States in writing.<sup>(2)</sup> The United States will have thirty (30) days from the date of its receipt in writing of the proposed revisions to the CRPP in which to respond to any proposed change(s). If the United States does not object to the BHA's proposed change(s) within the thirty (30) day time period, the change(s) may be incorporated into the CRPP by the BHA. If the United States objects to the proposed change(s), the change(s) will not be made and the parties will confer in a good faith effort to resolve their differences.

- b. The BHA will consider an employee's compliance with this Agreement and Order (which includes compliance with the CRPP) and other civil rights policies and laws in exercising its regular and customary functions and prerogatives, including, but not limited to, promotion and disciplinary actions including, but not limited to, discharge, suspension, and written warning notice. Failure to comply with the obligations of this Agreement and Order or other applicable civil rights policies or laws may subject an employee to disciplinary action including, but not limited to, discharge, suspension, and written warning notice.

2. **"Zero Tolerance" of Civil Rights Violations**

- a. >The BHA will continue to implement and enforce its policy of "Zero Tolerance" for civil rights violations. The "Zero Tolerance" policy is hereby incorporated into the CRPP, attached hereto as Exhibit 3.
- b. Beginning no later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will communicate its "Zero Tolerance" policy orally and in writing to all BHA tenants at the time they sign their lease, and in writing each subsequent year when they re-certify their income and household composition. At the time they sign their lease and each subsequent year when they re-certify, the BHA will ask each tenant to sign a statement certifying that he or she understands and agrees to comply with the "Zero Tolerance" policy. On or before July 1, 2000, the BHA will seek to amend its lease agreement to require tenants to certify that they understand and agree to comply with the "Zero Tolerance" policy on an annual basis. The BHA will maintain these tenant certifications in the tenants' files.

3. **CRPP Response Procedures**

- a. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will implement and adhere to the Response Procedures as set forth in the CRPP, attached hereto as Exhibit 3.

- b. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will amend the job description of the Regional Property Manager to include the responsibility of working with the Office of Civil Rights staff to oversee development managers' compliance with the CRPP.
- c. No later than one (1) year from the Effective Date of this Agreement and Order, the BHA will develop and implement a tracking system for reports of bias incidents to assist the Office of Civil Rights in monitoring compliance with the CRPP. The system will provide authorized persons from the BHA Office of Civil Rights, Departments of Public Safety and Occupancy, and authorized development and regional property managers ready access to the status of BHA administrative inquiries into bias incidents and the ability to track final actions -- evictions in particular.

4. **Graffiti Removal**

No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will implement and adhere to its Graffiti Removal policy as set forth in the CRPP, attached hereto as Exhibit 3.

5. **Transfer Requests**

No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will implement and adhere to the Transfer Policy as set forth in the CRPP, attached hereto as Exhibit 3.

6. **Inclusive Tenant Task Forces**

The BHA will continue to implement and adhere to its Local Tenant Organization ("LTO") policy, attached hereto as Exhibit 7.

B. **ADDITIONAL STAFF AND POLICE PATROLS**

1. **Heightened Police Patrols**

By August 30, 1999, the BHA will develop and implement a plan for increasing the number and frequency of police patrols in the Developments to deter racial violence and harassment. The plan will provide for:

- a. Daily, consistent police presence at Old Colony and Bunker Hill, with particular emphasis on enhanced patrols during nonschool hours;
- b. Enhanced police visibility;
- c. Daily communication between the police officers patrolling the Developments and Development management;

- d. Communication between the police officers patrolling the Developments and Tenant Task Forces;
  - e. To the greatest extent possible, the requirement that officer(s) assigned to patrol a particular Development also investigate the civil rights-related transfer requests from that Development referred to the BHA Department of Public Safety;
  - f. To the greatest extent possible, the assignment of police officers to patrol the Developments who are fluent in both English and another language spoken by tenants in the Developments, including Spanish, Haitian Creole, or Portuguese. To this end, the plan will include a recruitment plan to assist in recruiting a diverse pool of applicants for the police force.
2. **Office of Civil Rights Staffing**

- a. No later than one hundred fifty (150) days from Preliminary Approval of this Agreement and Order, the BHA will cause its Office of Civil Rights to hire two (2) new staff persons with professional investigative or other appropriate experience. Their duties will be similar to those of the Fair Housing Assistants currently employed by the Office of Civil Rights and will include fact-gathering during administrative inquiries, attending civil rights-related private conferences scheduled by the development managers, and responding to complaints from the Developments.
- b. The BHA will also hire one Civil Rights Outreach Coordinator, contingent on receiving HUD funding for the position. The BHA will apply for this funding at least twice before the expiration of the first three years of this Agreement and Order, including the application submitted on June 30, 1999.
- c. **Public Safety Department Staffing**

By the Effective Date of this Agreement and Order, the BHA will cause its Public Safety Department to hire one (1) additional officer and will use best efforts to seek HUD funding for a second officer. The new officer(s) will be dedicated to furthering the purposes of this Agreement and Order.

C. **EMPLOYEE NOTICE, TRAINING AND PERFORMANCE REVIEWS**

1. **Employee Notice**

- a. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will send each of its management personnel assigned to each of the Developments and all employees of the BHA's Office of Civil Rights and Departments of Public Safety and Occupancy a copy of this Agreement and Order (including the CRPP attached as Exhibit 3 and excluding the other Exhibits), along with a notice summarizing the Agreement and

Order and an explanation of the employees' obligations under this Agreement and Order and other applicable civil rights policies and laws which includes the information set forth in Exhibit 8.

- b. The BHA will request and, subject to the applicable Collective Bargaining Agreement, will require each employee receiving the above-described notice, within seven (7) days of its receipt, to execute a statement acknowledging that he or she has received, read and understands the notice, and that he or she agrees to act in accordance therewith. In the event that an employee refuses to execute the statement, the BHA will record that the employee was asked and refused to execute the statement. The BHA will maintain these statements in accordance with the Record Keeping provisions of this Agreement and Order, Section VII.B.
- c. With respect to all new employees assigned to the aforementioned positions, the BHA will comply with the provisions of paragraphs VI.C.1.a and VI.C.1.b. above within fourteen (14) days of commencement of employment or reassignment.
- d. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will provide a copy of this Agreement and Order along with a letter summarizing the Agreement and Order and other applicable civil rights policies and laws to the Commissioner of the Boston Police Department ("BPD") and the Commanding Officer of the BPD Community Disorders Unit.

## 2. **Training**

- a. The BHA will continue to implement a Civil Rights Training Program for BHA management staff at the Developments, BHA police officers, Office of Civil Rights staff responsible for CRPP compliance, and all Occupancy Department staff. One of the purposes of this training is to educate those BHA employees with respect to the requirements of this Agreement and Order, the CRPP, and federal, state and local civil rights laws.
- b. The new managers at the Old Colony and Bunker Hill developments will complete this Training Program as soon as possible. The new Office of Civil Rights staff persons and the new Public Safety Department staff person(s) hired pursuant to this Agreement and Order will complete this Training Program within forty-five (45) days of their hire;
- c. No later than one hundred twenty (120) days from the Effective Date of this Agreement and Order, the BHA will cause all BHA employees identified in paragraph 2.a., above, to complete this Training Program.
- d. Thereafter, the BHA will cause each employee newly hired or assigned to the above positions to complete this Training Program

within forty-five (45) days of the new employee's commencement date.

- e. The BHA will require each employee who receives training required by this Agreement and Order to sign an attendance sheet which indicates the date and type of training received. No later than six months from the Effective Date of this Agreement and Order, the BHA will develop and implement a department-wide tracking system through which each department head will be able to tell who has been trained on which program and when.

3. **Performance Reviews**

- a. The BHA will continue to implement and adhere to its current Employee Performance Evaluation, to which all BHA management employees and administrative staff are subject, including all development managers, assistant development managers, and all employees of the BHA's Civil Rights, Public Safety, and Occupancy Departments.
- b. Under this system of Performance Evaluation, all management employees and administrative staff will be explicitly evaluated in detail and reviewed on an annual basis for compliance with this Agreement and Order, the CRPP, and federal, state and local civil rights laws ("civil rights compliance"). In preparing these Performance Evaluations, supervisors (evaluators) will consult with the Fair Housing Compliance Coordinator and the Director of Civil Rights to obtain relevant information regarding the evaluatee's civil rights compliance and will consider this information in completing the evaluation.

D. **TENANT NOTICE AND OUTREACH**

1. **Tenant Notice**

- a. No later than six (6) months from the Effective Date of this Agreement and Order, and periodically thereafter as the Director of the Office of Civil Rights may determine, the BHA will conduct at each Development a community meeting for all tenants, at which the BHA will describe its procedures for tenants to report incidents of racial violence, harassment, and intimidation; its procedures for tenants to report complaints regarding civil rights enforcement; its procedures for investigating and resolving such complaints; its policy of "Zero Tolerance" for civil rights violations; and its LTO policy highlighting strategies for achieving reasonable racial and ethnic diversity on all LTO Boards.
- b. The BHA will post conspicuous notices for each meeting in each building in the Development no fewer than two weeks before the scheduled date of the meeting. Such notices will be posted in English, Spanish, and any other languages that are spoken by more

than five percent (5%) of the population of tenants of the respective Development.

2. **Tenant Outreach**

- a. No later than forty-five (45) days from the Effective Date of this Agreement and Order, the BHA will develop a brochure describing the BHA's civil rights policies, including: the "Zero Tolerance" policy; the procedures for reporting civil rights incidents to the BHA including the Civil Rights Hotline; the procedures for following up on civil rights complaints to the BHA that are not resolved promptly; and the procedures for filing a HUD administrative complaint. The brochure will be widely distributed throughout the BHA; in particular, during new applicant processing, in recertification packages, in site management offices, and at tenant task force and development community meetings. In addition, within one hundred twenty (120) days of the Effective Date of this Agreement and Order, the brochure will be slipped under the door of each housing unit in the Old Colony and Bunker Hill developments. The brochure will be in English, Spanish, and any other language that is spoken by more than five percent (5%) of the population of tenants of the respective development.
- b. No later than one (1) year from the Effective Date of this Agreement and Order, and on an annual basis thereafter for the duration of this Agreement and Order, and contingent on HUD funding for a Civil Rights Outreach Coordinator or other HUD funding, the BHA will conduct door-to-door civil rights outreach to the tenants at the Bunker Hill and Old Colony developments. Subject to HUD funding, BHA staff will visit each housing unit at the two developments and attempt to speak to at least one adult member of the household and as many other members of the household as possible. Subject to HUD funding, BHA staff will describe the BHA's civil rights policies, including each element specified for inclusion in the brochure described in paragraph D.2.a., above, and distribute the brochure to the household. Subject to HUD funding, the BHA staff will also attempt to solicit suggestions from the tenants on ways to create and/or maintain a racially harmonious community in the development.

3. **Language Services**

- a. Beginning no later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will post at the Development management offices the existence of the civil rights hotline in English as well as Spanish, Haitian Creole, Portuguese, Vietnamese, Chinese, Khmer and Laotian.
- b. No later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will add conferencing capability to

the civil rights hotline and where appropriate use a telephone language service to take in reports of racial and ethnic harassment reported by non-English speaking BHA tenants.

- c. Beginning no later than thirty (30) days from the Effective Date of this Agreement and Order, the BHA will maintain at each Development a roster of interpreters available for hearings, private conferences, and community meetings. The BHA will also provide interpretive services at BHA-sponsored Development meetings for speakers of any language spoken by more than five percent (5%) of the population of tenants of the respective Development.

4. **Tenant Training and Community Events**

- a. Within three (3) months of the Effective Date of this Agreement and Order, the BHA will develop and implement a plan for appropriate diversity training and other violence-prevention programs for BHA tenants at the Developments.
- b. Beginning in 1999, and every year thereafter for the duration of this Agreement and Order, the BHA will hold one Development-specific, interracial/ethnic community event/social activity at the Old Colony development and one at the Bunker Hill development.

5. **QUARTERLY COORDINATION MEETINGS**

Commencing six (6) months after the Effective Date of this Agreement and Order, and every three months thereafter for the duration of this Agreement and Order, the BHA will conduct, and the Fair Housing Compliance Coordinator will attend, quarterly meetings to discuss civil rights compliance in the Developments, including any BHA tenant concerns regarding security at the Developments, and to coordinate responses of various federal and state agencies. BHA tenants will be invited and encouraged to attend these quarterly meetings, as will representatives of the BPD, Class Counsel, the United States Department of Justice, HUD, the Massachusetts Attorney General's Office, and the Suffolk County District Attorney's Office.

E. **COMPLIANCE COORDINATION, RECORD KEEPING, AND REPORTING**

A. **COMPLIANCE COORDINATOR**

1. The BHA will hire a Fair Housing Compliance Coordinator ("Compliance Coordinator") within ninety (90) days of preliminary approval of this Agreement and Order. The purpose of the Compliance Coordinator is to assist the BHA to implement and comply with this Agreement and Order. The Compliance Coordinator will report to the Administrator of the BHA and will meet at least quarterly with the BHA Director of the Office Civil Rights, Class Counsel, and the United States to apprise them of the

status of the BHA's compliance with and to discuss implementation of this Agreement and Order. The Compliance Coordinator will, in conjunction with the Office of Civil Rights, compile the semi-annual reports, as described in paragraph VII.C. of this Agreement and Order.

2. If, after one (1) year of the Effective Date of this Agreement and Order, Class Counsel or the United States determine that the BHA is in substantial, or repeated and material, noncompliance with the terms of this Agreement and Order, either Class Counsel or the United States may seek from the Court a modification of this Agreement and Order to appoint an Independent Monitor. Before filing such motion to appoint an Independent Monitor, Class Counsel and/or the United States will give the BHA thirty (30) days written notice setting forth in detail the specific provision(s) of the Agreement and Order with which the BHA is allegedly not in compliance, along with a detailed itemization of the grounds for the alleged noncompliance. During this thirty (30) day period, the parties will endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with the Agreement and Order, and the BHA will in good faith confer with the Plaintiffs to attempt to resolve the compliance issues. If Class Counsel and/or the United States have not previously filed a motion to enforce the Agreement and Order pursuant to the Procedural Order, attached as Exhibit 9, then the BHA will also have a reasonable period of time after the thirty (30) day notice period to cure the alleged noncompliance. If, after a hearing, the Court finds that the BHA is in substantial, or repeated and material, noncompliance with the terms or provisions of the Agreement and Order, the Court will appoint an Independent Monitor for a period not to exceed the duration of this Agreement and Order. The purpose of the Independent Monitor will be to ensure that this Agreement and Order is implemented effectively and to assist the United States and Class Counsel in monitoring the BHA's compliance with the Agreement and Order. The Independent Monitor will report to Class Counsel, the United States, the BHA, and the Court. The duties of the Independent Monitor will be agreed upon by the parties or determined by the Court, and the salary, fees, and expenses incurred by the Independent Monitor will be borne by the BHA; provided, however, that in no event will the BHA be required to pay more than a total of sixty thousand dollars (\$60,000.00) per annum for such salary, fees, and expenses.

**B. RECORD KEEPING**

The BHA will maintain the following records throughout the duration of this Agreement and Order:

1. All records of complaints of racial violence, harassment, or intimidation, including civil rights transfer requests, received by any BHA personnel from any tenant of any of the Developments;
2. All records of investigations conducted by the BHA into such complaints;
3. All records of actions taken by the BHA in response to such complaints;
4. All records relating to training required by this Agreement and Order;
5. All signed statements, certifications, and attendance sheets required by this Agreement and Order;
6. All records relating to implementation of any provision of this Agreement and Order.

Upon ten (10) days notice, the United States Department of Justice and Class Counsel will have the opportunity to inspect and copy any records listed in paragraphs B.1-B.6, above. The parties will seek from the Court a protective order for this material to the extent necessary to comply with state privacy laws.

#### **C. SEMI-ANNUAL REPORTING**

Commencing six (6) months after the Effective Date of this Agreement and Order, and every six (6) months thereafter for the duration of this Agreement and Order, the BHA will write and deliver a report to Class Counsel, the United States Department of Justice, and HUD<sup>(3)</sup> detailing the following information:

1. The substance of each record of each complaint of racial violence, harassment, or intimidation, including civil rights transfer requests, received by any BHA personnel from any BHA tenant during the preceding six (6) months;
2. Any actions taken by the BHA in response to such complaints during the preceding six (6) months;
3. The current status of all such complaints from prior reporting periods; and
4. Actions taken to fulfill the BHA's obligations under each specific section of this Agreement and Order.

The Plaintiffs and the BHA will seek from the Court a protective order for this material to the extent necessary to comply with state privacy laws.

#### **B. MONETARY RELIEF**

##### **A. CERTIFICATION OF CLASS**

The Parties agree that these Civil Actions are most appropriately maintained as a class action and agree and stipulate that for purposes of settlement of monetary relief claims these cases will be certified under Federal Rule of Civil Procedure 23(a) and 23(b)(3), and for purposes of settlement of injunctive relief claims, these cases will be certified under Federal Rule of Civil Procedure 23(a) and 23(b)(2). The Parties agree and stipulate that the requirements in Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3) have been met.

**B. SETTLEMENT CONSIDERATION**

As set forth below, the BHA will pay a total of one million dollars (\$1,000,000.00) in the aggregate to settle all claims of the Plaintiffs and all Class Members, with the exception of claims for attorneys' fees and costs.

**C. COMPENSATION TO NAMED PLAINTIFFS**

1. No later than thirty (30) days after the Court's preliminary approval of this Agreement and Order, the BHA will deposit into an interest bearing escrow account (the "Escrow Account") to be held by Nutter, McClennen, & Fish, LLP (the "Escrow Agent") the sum of six hundred fifty thousand dollars (\$650,000.00) for the benefit of the Named Plaintiffs, to be divided as determined by the Named Plaintiffs and paid out to the Named Plaintiffs within thirty (30) days after the Effective Date of this Agreement and Order. The interest from the Escrow Account will be spent by Class Counsel, after notice to the BHA, on efforts to notify Class Members of this proposed settlement beyond the efforts required of the BHA under this Agreement and Order. In the event that the Court does not finally approve the Agreement and Order, all money contained in the Escrow Account will be returned to the BHA, minus such sums from the interest thereon as were expended by Class Counsel pursuant to this paragraph.
2. All payments made to the Named Plaintiffs pursuant to this Agreement and Order are compensation for physical injury and diminution of the value of their rental property. Receipt of any payment pursuant to this Agreement and Order will not affect any Named Plaintiff's eligibility for public housing, nor will such payments be treated as income for the purposes of determining rental payments to the BHA within the meaning of 24 C.F.R. § 5.609 or 760 C.M.R. § 7.04.
3. The BHA will make available to Named Plaintiffs thirteen (13) Section 8 certificates for use by Named Plaintiffs and their families, as soon after the Effective Date of this Agreement and Order as the certificates become available. Any Section 8 certificates not used by Named Plaintiffs and their families will be

distributed among Class Members as determined by Class Counsel and the BHA.

**D. COMPENSATION TO CLASS**

1. No later than thirty (30) days after the Court's preliminary approval of this Agreement and Order, the BHA will deposit three hundred fifty thousand dollars (\$350,000.00) into the Escrow Account for the benefit of the remaining Class members. This payment will establish the Class Fund. The interest from the Escrow Account will be spent by Class Counsel, after notice to the BHA, on efforts to notify Class Members of this proposed settlement beyond the efforts required of the BHA under this Agreement and Order. In the event that the Court does not finally approve the Agreement and Order, all money contained in the Escrow Account will be returned to the BHA, minus such sums from the interest thereon as were expended by Class Counsel pursuant to this paragraph.
2. The Class Fund will be administered by the Claims Administrator, who will be appointed by the Court upon joint motion of the BHA and Class Counsel as of this date, who will administer the Class Fund under the Class Counsel's supervision and the BHA's oversight, subject to the jurisdiction of the Court, and whose salary, fees, and expenses will be paid by the BHA; provided, however, that in no event will the BHA be required to pay more than a total of forty thousand dollars (\$40,000.00) for such salary, fees, and expenses. Within ten (10) days of the Court's appointment of the Claims Administrator, the BHA and Class Counsel will agree to a contract for the Claims Administrator which will set forth in detail the function of the Claims Administrator, the scope of his/her services, and the terms and method of his/her compensation.
3. Unless otherwise agreed by the BHA and Class Counsel or ordered by the Court, during the forty-five (45) days after the Effective Date of this Agreement and Order the Claims Administrator will distribute payments to each Eligible Class Member in a manner to be determined by Class Counsel. The BHA will have no involvement in reviewing or challenging any claims made by Class Members or determining how payments are distributed to eligible Class Members.
4. This is not a claims-made settlement. The BHA will have no ability to recover any of the settlement monies after the Effective Date of this Agreement.
5. Any residual funds remaining in the Escrow Account after all Eligible Class Members have been identified and paid will be used to benefit Class Members living in the Developments as determined by Class Counsel and the BHA.
6. All payments made to the Class Members pursuant to this Agreement and Order are compensation for physical injury and

diminution of the value of their rental property. Receipt of any payment pursuant to this Agreement and Order will not affect any Class Member's eligibility for public housing, nor will such payments be treated as income for the purposes of determining rental payments to the BHA within the meaning of 24 C.F.R. § 5.609 or 760 C.M.R. § 7.04.

**E. NOTICE TO CLASS**

1. Within twenty (20) days after the Court's preliminary approval of this Agreement and Order, the BHA will send the Mail Notice via First Class mail, along with a Claim Form, to Class Members at the last address known to the BHA. Where the last known address of former BHA tenants in the BHA's records is less than six months old, the BHA may use that address. Where the last known address of former BHA tenants in BHA records is more than six-months old or otherwise known to be inaccurate, the BHA will secure the most recent available address from Class Counsel and will send the Mail Notice to that address. The BHA will bear the costs of preparing and delivering the Mail Notice and Claim Form to the Class Members. The parties will seek from the Court a protective order for these activities to the extent necessary to comply with state privacy laws.
2. The Mail Notice will be translated into Spanish and will state in Haitian Creole, Portuguese, Vietnamese, Chinese, Khmer and Laotian: "Important! If you were a tenant of the Boston Housing Authority after 1989, this may affect your rights. Please have this notice translated immediately." A copy of the Mail Notice is attached hereto as Exhibit 5.
3. By the Date of Preliminary Approval of this Agreement and Order, the BHA will provide Class Counsel with the names, last known addresses and social security numbers of all potential Class members for the purpose of notification. Such information may only be used by Class Counsel in furtherance of efforts to locate Class members, and shall otherwise be treated as "highly confidential" and subject to the Stipulation and Agreement of Confidentiality entered by the Court on November 25, 1997, as modified by the Amendment to Stipulation and Protective Order entered by the Court on May 2, 1998. The parties will also seek from the Court a protective order for this material to the extent necessary to comply with state privacy laws.
4. Within ten (10) days after the Court's preliminary approval of this Agreement and Order, and again forty (40) days later, the BHA will submit for publication the Publication Notice, as detailed in paragraph VIII.E.5. below. A copy of the Publication Notice is attached hereto as Exhibit 6.
5. The Publication Notice will be published by the BHA as advertisements in The Boston Globe, The Boston Herald, The Bay

State Banner, El Mundo, The Sampan, The Haiti Observator, and Vifao. At least one of the two Publication Notices appearing in The Boston Globe and one of the two Publication Notices appearing in The Boston Herald will be published as quarter-page advertisements in the Sunday edition of those newspapers. The Publication Notice appearing in The Boston Globe, The Boston Herald, and The Bay State Banner will state in Spanish, Haitian Creole, Portuguese, Vietnamese, Chinese, Khmer and Laotian: "Important! If you were a tenant of the Boston Housing Authority after 1989, this may affect your rights. Please have this notice translated immediately." The Publication Notice appearing in El Mundo will be in Spanish. The BHA will bear the costs of preparing and publishing the Publication Notice in these publications.

6. Nothing will prohibit Class Counsel or the United States from notifying Class Members of the proposed settlement at their own expense, whether by placing additional advertisements, conducting additional outreach efforts, or otherwise; provided, however, that Class Counsel will not solicit Class Members to request that they be excluded from the Class.

**F. CLAIM PROCESS FOR CLASS MEMBERS**

1. In order to share in the Class Fund, Class Members will be required to complete, sign, and submit Claim Forms. Claim Forms must be returned by Class Members to the Claims Administrator.
2. The deadline for submitting Claim Forms to the Claims Administrator (the "Claim Period") will be the last day of the Claim Period, unless Class Counsel and the BHA agree to extend the deadline.
3. During the Claim Period, the Claims Administrator will mail a Claim Form to a potential Class Member within seven (7) days after receiving a written or telephone request for a Claim Form, except that during the last thirty (30) days of the Claim Period, the Claims Administrator will mail a Claim Form within one (1) business day of receiving such a request. Anyone who contacts one of the Parties or their attorneys regarding a Claim Form will be referred to the Claims Administrator within one (1) business day.
4. In any instance where more than one person in a household claims a share of the Class Fund, a panel consisting of the Claims Administrator and a representative of the Class Counsel will determine if the household will split the share of the Class Fund or if a full share of the Class Fund will be paid to one or more of the claimants individually. The Claims Administrator will resolve all other questions regarding who is an Eligible Class Member, including, without limitation, who qualifies as a member of the Class and who has timely submitted accurate and complete Claim Forms.

5. Upon request by the Claims Administrator and subject to a protective order if necessary to comply with state privacy laws, the BHA will assist the Claims Administrator in verifying that a claimant is a member of the Class.
6. During the Claims Administrator's appointment, the books and records of the Claims Administrator will remain open to inspection by the Parties during regular business hours on reasonable notice. The Claims Administrator will give the parties a final, detailed accounting of the claims process at the conclusion of the Claims Administrator's engagement.

**G. FAIRNESS HEARING**

1. Approximately one hundred twenty (120) days following preliminary approval of this Agreement and Order, the Court will hold a fairness hearing for the purpose of determining whether to finally approve the Agreement and Order. The hearing date, time, and location will be provided in the Mail Notice and the Publication Notices, and Class Members may appear at the fairness hearing and object to final approval of this Agreement and Order.
2. Within seven (7) days after the close of the Opt Out Period, the BHA may file a motion to withdraw from this Agreement and Order, such motion to be heard at the fairness hearing. If such a motion is filed, the Plaintiffs will have at least seven (7) days from receipt of such motion to respond. The Court may grant such motion only if it determines that the BHA has demonstrated to the Court that the potential claims of Class Members who timely opt-out will frustrate one of the BHA's primary purposes in entering into this Agreement and Order, which is to bring closure to litigation arising from the conduct alleged in the complaints. If no timely motion to withdraw is filed, or a timely motion to withdraw is filed and denied, this Agreement and Order will become Effective on the date the Court gives final approval to and enters this Agreement and Order, the Effective Date of the Agreement and Order.

**II. PRIVATE PLAINTIFFS' COSTS AND ATTORNEYS' FEES**

On the Effective Date of this Agreement and Order, the BHA will pay to Class Counsel five hundred thousand dollars (\$500,000.00) to cover the costs and attorneys' fees incurred in connection with their prosecution of Jane Doe No. 1 v. City of Boston and the related HUD Administrative Action. The costs and attorneys' fees are to be divided among the Class Counsel in a manner to be determined by Class Counsel. The Parties acknowledge that payments made pursuant to this paragraph constitute full and complete payment of any and all claims for attorneys' fees and costs made or to be made by the Private Plaintiffs, Class Counsel, or any Eligible Class Member who does not opt out of the Class against the BHA pursuant to Jane Doe No. 1 v. City of Boston or the HUD Administrative Action; provided, however, after the Effective Date of the Agreement and Order, that Private Plaintiffs reserve the right to claim additional reasonable attorneys'

fees in connection with a subsequent motion to seek enforcement of this Agreement and Order in Court, where Private Plaintiffs and/or Class Counsel are determined to be a "prevailing party" under the Fair Housing Act, 42 U.S.C. 3613(c)(2); and provided further that no party will be entitled to any fees or costs incurred during any good faith negotiation to resolve any dispute arising under this Agreement and Order.

Aside from the exception noted in the above paragraph, each party will bear its own costs and attorneys' fees associated with this litigation.

### III. **COOPERATION, JURISDICTION, ENFORCEMENT AND MODIFICATIONS**

1. The parties and their attorneys agree to work cooperatively with one another and in good faith and to use their best efforts to seek the Court's approval of this Agreement and Order, to resolve informally any differences regarding interpretation of and compliance with this Agreement and Order prior to bringing such matters to the Court for resolution, and to effectuate the purposes of this Agreement and Order.
2. The parties will file a joint motion asking the Court to approve and enter the Procedural Order attached hereto as Exhibit 9. As detailed in the attached Procedural Order, the Court will retain jurisdiction over these Civil Actions for the duration of this Agreement and Order for the purpose of enforcing any of its provisions and terms.
3. The BHA will continue working to further streamline and improve its civil rights enforcement efforts and procedures toward the goal of ensuring that all tenants are accorded housing on equal terms and conditions regardless of race, color, or national origin.
4. The parties will have the right to seek relevant modifications of the Agreement and Order to ensure that its purposes are fully satisfied, provided that any request for modification has been preceded by good faith negotiations between the parties.

### IV. **RELEASES**

Prior to receiving any payment hereunder, each Named Plaintiff who will be paid a settlement award under this Agreement and Order will execute a complete and binding general release of the BHA and a complete and binding specific release of the City in the form attached hereto as Exhibit 10. Prior to receiving any payment hereunder, each Class Member who will be paid a settlement award under this Agreement and Order will execute a complete and binding specific release of the BHA and the City in the form attached hereto as Exhibit 11.

### V. **PUBLIC STATEMENTS**

The Private Plaintiffs and the BHA will issue a public statement attached hereto as Exhibit 12.

### VI. **DISMISSAL OF THE CITY**

Immediately upon payment to Class Counsel of attorneys' fees pursuant to Section IX above, the Private Plaintiffs will file an executed stipulation of dismissal with prejudice of the City from Jane Doe No. 1 v. City of Boston in the form of Exhibit 13 hereto.

The parties consent to the entry of this Agreement and Order as indicated by the signatures of counsel below:

For Plaintiffs Jane Doe No. 1, et al., Individually and On Behalf Of All Others Similarly Situated:

\_\_\_\_\_  
Dated: \_\_\_\_\_  
David S. Godkin (BBO# 196530)  
Inez H. Friedman (BBO# 630910)  
Lori A. Mihalich (BBO# 637493)  
Testa, Hurwitz & Thibeault, LLP  
High Street Tower  
125 High Street  
Boston, Massachusetts 02110  
(617) 248-7000

\_\_\_\_\_  
Dated: \_\_\_\_\_  
Ozell Hudson, Jr. (BBO# 556269)  
Barbara J. Dougan (BBO# 558392)  
Lawyers' Committee for  
Civil Rights Under Law  
of the Boston Bar Assn.  
294 Washington Street  
Suite 940  
Boston, Massachusetts 02108  
(617) 482-1145

\_\_\_\_\_  
Dated: \_\_\_\_\_  
Nadine Cohen (BBO# 090040)  
Law Offices of Sherwin Kantrovitz  
100 Franklin Street, 6th Floor  
Boston, Massachusetts 02110  
(617) 426-7779

For Plaintiff United States:

BILL LANN LEE  
Acting Assistant Attorney General

\_\_\_\_\_  
Dated: \_\_\_\_\_  
BRIAN F. HEFFERNAN  
MICHELLE ARONOWITZ

Attorneys  
Civil Rights Division  
Housing and Civil Enforcement Section  
P.O. Box 65998  
Washington, D.C. 20035-5998

\_\_\_\_\_ Dated: \_\_\_\_\_

DONALD K. STERN  
United States Attorney  
JOHN A. CAPIN  
Assistant U.S. Attorney  
District of Massachusetts  
United States Courthouse  
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One Courthouse Way  
Boston, MA 02210  
(617) 748-3400

For Defendants:

\_\_\_\_\_ Dated: \_\_\_\_\_

M. Hollis Young (BBO# 537720)  
General Counsel  
BOSTON HOUSING AUTHORITY  
52 Chauncy Street  
Boston, Massachusetts 02111  
(617) 988-4000  
ATTORNEY FOR DEFENDANT THE BOSTON HOUSING AUTHORITY

\_\_\_\_\_ Dated: \_\_\_\_\_

Merita A. Hopkins, Corporation Counsel  
Kevin S. McDermott, Assistant Corporation Counsel (BBO# 544513)  
CITY OF BOSTON LAW DEPARTMENT  
Boston City Hall, Room 615  
Boston, Massachusetts 02201  
(617) 635-4936  
ATTORNEY FOR DEFENDANT THE CITY OF BOSTON

\_\_\_\_\_ Dated: \_\_\_\_\_

ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
REGINALD C. LINDSAY  
United States District Court Judge