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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FAIR HOUSING JUSTICE CENTER, INC.,

Plaintiff,

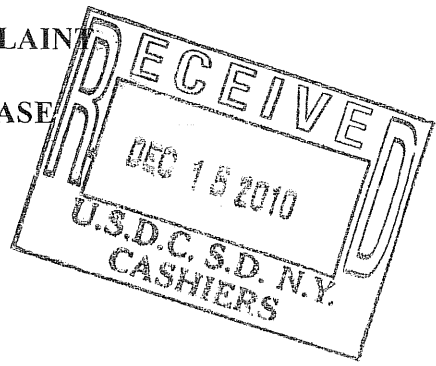
-against-

TOWN OF YORKTOWN and COLETTE  
RODGERS in her official capacity as Director  
of the Yorktown Section 8 Program,

Defendants.  
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\_\_\_ Civ. \_\_\_\_\_ ( )

COMPLAIN  
ECF CASE



Plaintiff Fair Housing Justice Center, Inc. (“FHJC” or “Plaintiff”), by its attorneys, Emery Celli Brinckerhoff & Abady LLP, for its Complaint against defendants Town of Yorktown (“Yorktown” or the “Town”) and Colette Rodgers (“Rodgers”) (collectively “Defendants”) alleges as follows:

**INTRODUCTION**

1. This is a housing discrimination action that seeks to enjoin Defendants from systematically and unlawfully discriminating against African Americans and Hispanics in the operation of the Yorktown Section 8 Housing Voucher Program, a federally-funded rental assistance program administered by Defendants.

2. Defendants operate the Yorktown Section 8 program in a way that ensures that the Town is not open and inclusive, but rather, closed and restrictive. For example, the Town, where 90% of households are white and non-Hispanic, applies a residency preference in distributing its Section 8 vouchers that excludes most eligible African American and Hispanic renters, especially those with children. The Town’s Section 8

program also discourages most African Americans and Hispanics in Westchester County from even applying by, among other things, a) stating on program documents there is an 8 to 15 year wait for non-residents; b) telling African Americans and Hispanics to apply to other Section 8 programs in communities with a higher minority population even when those programs' waiting lists are closed; c) encouraging and assisting elderly white renters even if they do not live in Yorktown to move to the Town to obtain a higher preference on the Town's waiting list; and d) failing to conduct affirmative outreach to Westchester County organizations serving minorities who may be eligible to apply to the Town's Section 8 program.

3. The Town's discriminatory efforts to restrict access to federally funded housing assistance based on race and national origin is evident from the composition of the applicants on the Town's Section 8 waiting list. As of October 2008, 50% of the waiting list applicants were non-white, but 80% of the Town's voucher holders were white households.

4. This is but the latest chapter in Yorktown's long history of attempting to preserve its majority white racial composition and deny minorities the opportunity to live in Yorktown. In 1994, the Town cancelled its short-lived affordable housing program and adopted an ordinance requiring that future re-sales and re-rentals of any current affordable housing units be subject to a residency requirement.

5. Finally, the Town has failed to consider its obligations to affirmatively further fair housing, including the discriminatory impact of its residency preference scheme and its duty not to maintain residential segregation, even when specifically warned by the Plaintiff and even though aware that it is a community that meets the

criteria for developing affordable housing under the consent decree in *United States ex rel. Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County*, Docket No. 1:06-cv-02860-DLC.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 3613. This Court has supplemental jurisdiction over the New York State law claims pursuant to 28 U.S.C. § 1367.

7. The acts complained of occurred in the Southern District of New York, and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

### **THE PARTIES**

8. Plaintiff FHJC is a non-profit organization dedicated to ensuring that all people have equal access to housing opportunities in the greater New York City region by eliminating housing discrimination and creating open and inclusive communities. FHJC's principal office is located in the Southern District of New York.

9. Among other things, FHJC a) provides information to the public and other nonprofit organizations in the New York City regional area about fair housing laws; b) provides intake counseling to individuals and organizations with allegations of housing discrimination; c) conducts testing and other investigations of allegations of housing discrimination; d) makes legal referrals to cooperating attorneys; e) assists with the preparation and filing of administrative housing discrimination complaints; and f) provides post-referral litigation support services. FHJC provides these services free of

charge and without regard to income.

10. FHJC also conducts testing investigations for government law enforcement agencies, provides technical assistance to nonprofit organizations engaging in fair housing enforcement activities, and engages in policy initiatives that further FHJC's mission, including the publication and dissemination of reports and educational materials.

11. FHJC employs individuals as "testers," who are persons that pose as renters or homebuyers for the purpose of obtaining information about the conduct of local governments, landlords, real estate companies, agents, and others to determine whether illegal housing discrimination is taking place.

12. FHJC expended staff time and other resources to investigate and respond to Defendant's discriminatory operation of its Section 8 rental assistance program, which diverted resources away from other FHJC activities. Furthermore, Defendant's discriminatory practices frustrated FHJC's mission to ensure that all people have equal access to housing opportunities in the greater New York City region by, among other things, making housing unavailable because of race, color, and national origin.

13. Defendant Town of Yorktown is a municipal corporation organized under the laws of the State of New York, with its principal offices at 363 Underhill Avenue, Yorktown Heights, New York 10598. It is located in Westchester County, 35 miles north of New York City, within the Southern District of New York. The Town is governed by the Town Supervisor and the Town Board. Upon information and belief, the Town's Section 8 Rental Assistance Program is operated by the Yorktown Housing Agency. All references to defendant Town include any individual acting on behalf of, or under the

authority derived from, the Town.

14. Defendant Colette Rodgers is a white woman who is the Program Director for Yorktown's Section 8 Program. Defendant Rodgers is sued in her official capacity.

## **FACTUAL ALLEGATIONS**

### **The Section 8 Program**

15. 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. § 1437f and Housing Community and 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 to obtain a decent place to live through the use of vouchers to subsidize their rent in the private housing market.

16. Low income families and individuals may apply for Section 8 at any authorized Section 8 housing agency in New York when the waiting lists are open. Each Section 8 program is open to all applicants, not just local residents.

17. The United States Department of Housing and Urban Development ("HUD") enters into annual contracts with local housing agencies to fund Section 8 vouchers.

18. With Section 8 rental assistance, renters pay approximately 1/3 of their incomes for rent, and federal funding pays the remaining amount of rent to landlords. Local housing agencies operating Section 8 programs must administer their programs in accordance with rules prescribed by HUD.

19. Local housing agencies, such as Yorktown, have limited discretion to develop local “preferences,” including residency preferences, based on local housing needs and priorities, for applicants for the Section 8 program. Section 8 housing programs cannot, however, use residency “requirements” and all preferences must comply with the non-discrimination and equal opportunity obligations of federal housing laws, federal civil rights laws, and the United States Constitution and cannot have the purpose or the effect of denying admission to the program on the basis of race, color, or national origin.

20. Local housing agencies, such as Yorktown, must adopt a written administrative plan that establishes local policies for administration of the agency’s Section 8 program in accordance with HUD requirements. The administrative plan provides the housing agency’s policies for the selection of applicants from the waiting list, as well as the agency’s procedures for closing and reopening the waiting list. The housing agency is required to administer its Section 8 program in accordance with its administrative plan and must advise HUD of any revisions to its plan.

21. In Westchester, 16 municipalities—including Yorktown—administer their own Section 8 programs, while the rest of Westchester is served by the Westchester County Section 8 program.

22. Yorktown has participated in the Section 8 program since 1978.

### **Background on Yorktown’s Racial Composition**

23. As of the 2000 Census, 90% of the Town’s housing units were occupied by white, non-Hispanic households, while only 2% of households in Yorktown were African American and only 4% were Hispanic.

24. By comparison, in 2000, 70% of Westchester County's households were White, non-Hispanic, 14% were African American, and 11% were Hispanic.

25. The comparison is even starker when only renter-occupied housing units are considered. In 2000, 88% of Yorktown's renter units were occupied by white, non-Hispanic households—but in Westchester as a whole, 50% of renter units were occupied by White, non-Hispanic households. Similarly, while only 2% of Yorktown's renter units were occupied by African American households and only 4% by Hispanic households, in Westchester, 23% of renter units were occupied by African American households and 21% by Hispanic households.

### **Yorktown's Section 8 Program**

26. Yorktown's Section 8 Program has, since its inception, favored people who live or work in Yorktown. The Town's press release announcing the start of Yorktown's Section 8 program in 1978 stated that the program was for people who "live or work in Yorktown."

27. Upon the recommendation of the Yorktown Community Housing Board, the Town Board adopted the current residency preferences scheme on July 1, 1997. Upon information and belief, substantially the same scheme remains in place today.

28. Yorktown's system of residency preferences establishes the order in which individuals or families will be taken from its waiting list and given a Section 8 voucher.

Those preferences are as follows:

- First Elderly or disabled who live in Yorktown.
- Second Families of two or more persons who are paying more than 50% of their income on rent and live in Yorktown.
- Third Veterans, or surviving spouses of veterans, who reside

or work in Yorktown.

- Fourth Elderly or disabled who live outside of Yorktown.
- Fifth Veterans, or surviving spouses of veterans, who live outside of Yorktown.
- Sixth Others who live or work in Yorktown.
- Seventh All others.

29. According to Yorktown's Administrative Plan, the Town may close and open its waiting list at any time. Even when the waiting list is closed, the Town expressly reserves the right to accept applications from those who claim a local preference. Pursuant to this policy and the local preferences referenced above, those who live or work in Yorktown are served before non-residents, irrespective of the length of time the non-residents have been on the waiting list for a voucher.

30. At present, the Town estimates that non-residents will have to wait eight (8) to fifteen (15) years before receiving a voucher as compared to elderly or disabled households who already live in Yorktown and have an estimated wait of only six (6) months.

31. As of October 1, 2008, 80% of the Town's Section 8 voucher holders were white, non-Hispanic households, 12% were African American, and 6% were Hispanic. In contrast, as of October 1, 2008, 34% of the households on the Town's Section 8 waiting list were African American, and 13% were Hispanic.

32. Because Yorktown is approximately 90% White, non-Hispanic, the Town's Section 8 Administrative Plan maintains and reinforces the Town's racially segregated housing patterns and has an adverse disparate impact on African American and Hispanic residents of Westchester County who do not live in Yorktown.

33. Furthermore, the Town's First and Fourth Preferences are limited to elderly or disabled households. By weighting the list to favor elderly or disabled households who are residents and non-residents before all other non-residents, the Town imposes an added burden on minority families with children who live outside of Yorktown.

**Yorktown's Discriminatory Operation of its Section 8 Program is Intentional**

34. If non-residents remain undeterred by the Town's warning that it will take 8 to 15 years to receive a voucher and attempt to submit an application, the Town actively discourages non-residents from applying to Yorktown's Section 8 program. For example, the cover letter to Yorktown's Section 8 application states that "[i]f you live in a municipality with its own local Section 8 office, you will not have a residency preference with the Yorktown office and therefore, we strongly suggest you contact your local office for assistance."

35. On July 28, 2008, a white female FHJC tester over the age of 60 and posing as a woman with a sister living in Yorktown telephoned the Yorktown Section 8 office. The tester spoke to Defendant Rodgers who asked the tester over the phone whether she presently rented in Yorktown. When the tester replied that she was in the process of deciding whether to move to Yorktown, Defendant Rodgers responded: "I can't accept an application . . . Well, let's put it this way. You have to be a resident of Yorktown." Once the tester explained that she could first move in with her sister who was a Yorktown resident, then Defendant Rodgers said "if you live in Yorktown, you can apply. If you live outside Yorktown, you have to be either elderly, disabled, or a veteran." Defendant Rodgers explained that to be elderly, someone had to be at least 62 years old.

When the tester replied that she was age 63, Defendant Rodgers said ‘ok you are good to go’ and offered to mail the tester an application. The application that the white tester later received by mail states that the Town is “[n]ot accepting” applications for the Seventh Preference category, the only category open to all non-residents, “at this time”—although all other preference categories remained open. In addition, Defendants enclosed information in the mailing to the white tester about apartment complexes in Yorktown.

36. On September 24, 2009, an African American non-elderly female FHJC tester visited Yorktown’s Section 8 office to obtain a Section 8 voucher application. While at the office, the tester spoke to Defendant Rodgers. During that conversation, the tester told Defendant Rodgers that she was from White Plains, a Westchester city with an approximately 16% African American population as of 2000. At that point, Defendant Rodgers immediately asked the tester if she had applied to White Plains’ Section 8 program. When the tester explained that Yorktown would be closer to her work, Defendant Rodgers responded, “you also might want to apply to the White Plains office and the County office. They give vouchers, usually, based on where you live.” The application that the tester received from Defendant Rodgers warned her that the wait time for the Seventh Preference category was “15 years +” and stated that the wait time for elderly or disabled Yorktown residents was only “3+ months.” At this time, Defendant Rodgers knew, or reasonably should have known, as a Section 8 Program director who participated in monthly meetings of Westchester County Section 8 administrators, that the wait list for the White Plains Section 8 program was closed and not accepting applications, therefore it would have been impossible for the tester to apply in White Plains. Defendant Rodgers did not encourage the tester to move first to Yorktown and

then apply for a Section 8 voucher.

37. On September 17, 2009, a Latina non-elderly FHJC tester using a Spanish surname telephoned the Yorktown Section 8 office, posing as a mother with two children who lived in Yonkers, a Westchester city with a 26% Hispanic population as of the 2000 Census. The tester spoke with a man named Dan who said he worked in the Section 8 Program office for the Town. The tester told Dan her name and inquired about the process for obtaining a voucher. The tester also told Dan that she had children and was interested in moving to Yorktown for better schools for her children. Dan asked the tester whether she lived in Yorktown and whether she was elderly or disabled. When the tester told Dan that she lived in Yonkers and was not elderly or disabled, he informed her that she would fall under the Seventh Preference category for the waiting list which had an approximate wait time of fifteen years. Dan did not encourage the tester to move first to Yorktown and then apply for a Section 8 voucher.

38. In contrast, on September 23, 2009, a white male FHJC tester, telephoned the Yorktown Section 8 office, posing as a man whose elderly mother lived in Yorktown and was interested in applying for a Section 8 voucher. The tester spoke with Defendant Rodgers, who encouraged the tester's mother to apply, and sent the tester an application packet along with a list of senior apartment complexes and a note advising the tester to have his mother apply for a specific senior apartment complex in Yorktown.

39. In summary, the Defendants themselves or by their agents encouraged white elderly individuals to apply for a Yorktown Section 8 voucher and discouraged non-white non-elderly women from submitting an application. Even more telling is that Defendant Rodgers encouraged a white elderly tester to move to Yorktown first and then

submit an application so that she would be in the First Preference on the waiting list, but did not provide this same advice to a non-white tester. In fact, African American and Hispanic testers with children were discouraged from applying to Yorktown's Section 8 program and steered to Section 8 programs with closed waiting lists in communities with a more substantial minority population or not provided any suggestions at all.

### **Yorktown's Manipulation of its Waiting List**

40. Yorktown has taken similar steps in the past to try to ensure that it does not run out of local resident applicants on its waiting list, which would require it to award some of its vouchers to non-residents. For example, on October 1, 1998, Yorktown reopened its Section 8 waiting list (which had been closed since October 30, 1994)—but specified that it would not accept applications from those qualifying for the Seventh Preference (non-residents), because the current waiting list already had an adequate pool of applicants in that category. Yorktown sought only applicants who would qualify for the local residency preferences, thereby ensuring that applicants from outside Yorktown, who were more likely to be racial or ethnic minorities, would have to wait even longer before receiving a voucher from the Town.

41. In 2008, Yorktown's Section 8 voucher stated that the Town was “[n]ot accepting” applications for the Seventh Preference category, the only category open to all non-residents, “at this time.”

42. The Town has drafted its Administrative Plan to allow for the manipulation of the waiting list to favor people who live in Yorktown at the expense of minorities, especially minority families with children. The Administrative Plan provides that: “If the Town of Yorktown Is [*sic*] Housing Agency is not otherwise accepting

additional applications, Yorktown's Housing Agency will not accept applications from applicants who claim a local preference unless it has been determined that the waiting list already contains an adequate pool of applicants who are likely to qualify for a local preference." This language enables the Defendants to determine at any time and without any objective standard when to accept applications solely from Yorktown residents, including the discretion to operate the list so that only local residents may apply and receive Section 8 vouchers.

43. Although the Town's waiting list appears to presently be open in all preference categories, since 2009, the Town's Section 8 application form has listed the approximate wait times next to each preference category. Next to all but the First Preference category, Defendants have indicated that the approximate wait time is "8 years+" or "15 years +."

44. Defendants have therefore either refused to accept applications from non-residents entirely, or deliberately discouraged non-residents from applying by warning them on the initial application that they cannot hope to receive a voucher for eight years, fifteen years, or more.

#### **Yorktown Has Failed to Affirmatively Market Its Section 8 Program To Minorities**

45. In addition, upon information and belief, Defendants have failed to analyze or assess the impact of its residency preference scheme, as Yorktown is required to do as a condition of receiving federal funds and pursuant to its duty as a Section 8 administrator to affirmatively further fair housing.

46. Upon information and belief, Defendants have failed to a) evaluate the impact of Yorktown's Section 8 residency preferences on racial and ethnic residential

segregation; b) adopt an action plan to reduce or eliminate impediments to minorities accessing affordable housing in the Town; and c) keep records to show what efforts, if any, they have undertaken to affirmatively further fair housing.

47. As a Section 8 housing administrator, Yorktown is required to adopt and follow an affirmative marketing plan, including, among other things, by advertising the availability of Section 8 housing vouchers to populations that are less likely to apply (including minorities), and conducting outreach to individuals and organizations about the availability of Section 8 housing vouchers.

48. The Town's Section 8 Administrative Plan recognizes that "there are no significant low income or minority population concentrations within the [Town] housing agency's jurisdiction" but notes that "there are income eligible minorities in the housing market area and special efforts will be required to attract these groups to the program and inform them of the availability of housing opportunities." Yorktown's Administrative Plan states that the Town will place newspaper advertisements and issue press releases at the beginning of the application period and "as required." The Plan does not, however, describe with any specificity what "special efforts" the Town plans to undertake to attract minorities to the program or what the Town will do to encourage them to apply since the application form indicates that nonresidents have an 8 to 15 year wait.

49. Yorktown's Administrative Plan further provides that "other suitable means" to convey information may include "maintain[ing] contact" with certain local governmental programs and community programs and "periodically" distributing "posters, letters, and posted notices . . . to community organizations, landlords, churches, school districts and other local organizations." Appendix I of the Plan includes a list of

these organizations, most of which are located in Yorktown, Northern Westchester County, or Putnam County where minority population is limited.

50. Upon information and belief, contrary to the Town's obligations as a Section 8 housing administrator, Defendants have not kept records documenting whether they have actually undertaken any "special efforts" that they acknowledged in the Yorktown Administrative Plan are needed to affirmatively market the Town's Section 8 program to minorities. In 2009, Defendant Rodgers stated in response to a FOIL request by Plaintiff FHJC that she did not have any documents related to the outreach and recruitment of applicants for the Yorktown Section 8 Program. Upon information and belief, Defendants in fact engage in no meaningful efforts to affirmatively market the Town's Section 8 program to minority households in Westchester County.

51. Instead, as detailed *supra*, Defendants discourage minorities from applying to its Section 8 program by using residency preferences and by warning applicants of the 8 and 15 year waiting periods and otherwise discouraging non-residents from even applying. In combination with Defendants' failure to affirmatively market the Town's Section 8 program, Defendants have succeeded in suppressing minority participation in the Town's Section 8 waiting list and have thereby perpetuated the residential racial segregation that characterizes the Town and denied housing opportunities to African Americans and Hispanics.

#### **Yorktown's History of Limiting the Availability of Affordable Housing**

52. Defendants' discriminatory administration of the Town's Section 8 Program is but the latest chapter in the long history of Yorktown's efforts to preserve the Town's racial segregation. Previous efforts to increase the availability of affordable

housing in Yorktown have been thwarted, often for discriminatory reasons.

53. For example, in 1977, when the Westchester Planning Board recommended that new HUD-assisted housing be built in and around Yorktown, the proposal was attacked by a Yorktown elected official and denigrated in an editorial in the Town's local paper, *The Yorktownier*, which explained the Town's opposition to the plan in the following terms: "Westchester suffers from a rather dramatic split in its personality that occurs somewhere around the Cross-Westchester Expressway, and is most obvious when one thinks of Mount Vernon or Yonkers and Somers." The editorial continued by stating that "[e]specially frightening is the requirement that there be no less than 4 units an acre, but as many as 128 units per acre. In short, that means high-rise public housing"; and concluded that "some rather large gaps exist here and we would feel safer knowing that a document, an official document, supporting this thinking is not on file somewhere in Washington."

54. During the same period, Yorktown's Town Supervisor emphasized that any subsidized housing in Yorktown should be for "middle and lower income people who reasonably should expect to live here either *because their jobs are here or because* they were once part of the *single-family-house life style.*" (italics added) He emphasized that he did not want to "urbanize Yorktown" and proclaimed that "it was not Yorktown or any other northern Westchester community's responsibility to alleviate overcrowding conditions down county by transporting groups of residents up here."

55. Similarly, in 1988, when Yorktown's Town Board adopted a law that would award density bonuses to attract developers to provide affordable residential units, the Town restricted the eligibility for such units using seven residency preferences which,

like the Town's Section 8 residency preferences described above, prioritized housing for people who were already living or working in Yorktown.

56. In 1994, only six years later, the Board eliminated Yorktown's power to award density bonuses to developers, but maintained a residency preference system for those units that had already been constructed. At present, therefore, if a household has no association with Yorktown (as a resident, former resident, or employee), that household will not be able to purchase or rent a designated affordable housing unit in Yorktown. Similar to the way it administrates its Section 8 program, therefore, Yorktown has designed its affordable housing program to keep out non-residents, thus helping to preserve the Town's overwhelmingly white population and residential segregation.

57. In 2007, Yorktown Community Housing Board minutes reveal that there was opposition in the Town to the possible construction of two affordable housing units in a proposed new development of 22 units. The Community Housing Board ultimately decided to exempt the development in question from the Town's requirement that 10% of new developments be set aside for affordable housing. Upon information and belief, Yorktown no longer has an affordable housing set-aside provision.

58. At a 2007 meeting, members of Yorktown's Community Housing Board also expressed concern at the idea that Yorktown might need to participate in a regional Section 8 program, because it would entail the loss of local preferences.

59. Defendants are aware of the discriminatory impact of the Town's administration of its Section 8 Program. In 2010, Yorktown solicited public comment on its website as to the Town's use of residency preferences in its Section 8 program. FHJC's Field Services Director posted a comment informing the Town that its use of

preferences systematically discriminated against African Americans and Hispanics and recommending that the Town abandon the preferences. In response, on March 11, 2010, Defendant Rodgers sent a letter to FHJC opining that Yorktown's residency preferences were not discriminatory because they had been approved by HUD and similar residency preferences were used by other communities. On March 16, 2010, FHJC's Field Services Directors wrote back, explaining that neither HUD approval nor the use of similar preferences by other communities justified the discriminatory impact of Yorktown's residency preferences. Despite being put on notice, however, Yorktown continues to use residency preferences that make housing opportunities unavailable to African Americans and Hispanics.

60. Notwithstanding the discriminatory impact of the Defendants' administration of the Yorktown Section 8 Program, the Defendants being put on notice of the discriminatory impact of the Program, and the Town's history of restricting access to affordable housing in Yorktown, the Defendants continue to use a residency preference system today.

61. By reason of the foregoing, Plaintiff FHJC has suffered injury in the form of diversion of its resources and frustration of its mission. Since 2008, FHJC has expended significant staff time and funds to investigate Yorktown's Section 8 and affordable housing programs—both of which appear to have been used to deny access to federally-funded housing assistance to minorities and to perpetuate residential racial segregation in Yorktown. As part of its investigative efforts, FHJC staff, including its Field Services Director, expended time drafting multiple FOIL requests. Staff time was used to review and analyze the documents obtained from those requests. Other FHJC

staff members conducted historical research from on-line, library, and other public sources into the Town's Section 8 and affordable housing programs. FHJC also expended staff time and funds to conduct both phone and in-person tests.

62. Because Defendants operate Yorktown's Section 8 program in a way that ensures that the Town is not open and inclusive, but rather, closed and racially restrictive as described above, Defendants are frustrating FHJC's mission to foster open and inclusive communities and eliminate housing discrimination throughout the New York City region.

63. As described above, Defendants have intentionally discriminated on the basis of race, color, and national origin in the operation of the Town's Section 8 program in a manner to make housing opportunities unavailable and to continue to maintain racially segregated housing patterns in Yorktown. Additionally, Yorktown's Section 8 program policies have a disparate impact on African Americans and Hispanics based on race, color, and national origin.

**FIRST CAUSE OF ACTION**  
(Fair Housing Act, 42 U.S.C. § 3601 et seq.)

64. Plaintiff repeats and re-alleges the foregoing paragraphs of its complaint as though fully set forth herein.

65. Defendants' policy and practice of using residency preferences and otherwise discouraging minorities from applying to the Town's 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).

66. Defendants' policy and practice of using residency preferences and otherwise discouraging minorities from applying to the Town's 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).

67. Plaintiff has been injured by Defendants' discriminatory conduct and has suffered damages as a result.

68. Defendants' conduct was intentional, willful, and made in reckless disregard for the rights of others.

**SECOND CAUSE OF ACTION**  
(42 U.S.C. § 1983 and 42 U.S.C. § 3608(e)(5))

69. Plaintiff repeats and re-alleges the foregoing paragraphs of its complaint as though fully set forth herein.

70. Defendants' policy and practice of using residency preferences and otherwise discouraging minorities from a) applying to the Town's Section 8 Program; b) receiving Section 8 vouchers; and c) having access to affordable housing units located in the Town when they are re-sold or re-rented, combined with the Defendants' failure to analyze the discriminatory and residentially segregative impact of its policies and practices and failure to affirmatively market the Town's Section 8 and affordable housing programs violates the Town's duty to administer HUD programs in a manner so as to affirmatively further fair housing in violation of 42 U.S.C. § 3608(e)(5).

71. Acting under color of State law, Defendants have deprived Plaintiff of its rights, remedies, privileges, and immunities in violation of 42 U.S.C. § 1983, including, but not limited to, the right to open and inclusive communities guaranteed by 42 U.S.C. § 3608(e)(5).

72. Plaintiff has been injured by Defendants' discriminatory conduct and has suffered damages as a result.

73. Defendants' conduct was intentional, willful, and made in reckless disregard for the rights of others.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendants as follows:

- a. Declaring that Defendants' actions violate the Federal Fair Housing Act, 42 U.S.C. § 3601 *et seq.* and the Civil Rights Act 1871, 42 U.S.C. § 1983;
- b. Permanently enjoining Defendant Yorktown from utilizing residency preferences in the Town's Section 8 program;
- c. Enjoining Defendant Yorktown to:
  - i. Make all necessary modifications to its policies, practices, and procedures to comply with fair housing and nondiscrimination laws;
  - ii. Make all necessary modifications to its Section 8 voucher waiting list to allocate future vouchers based on the original date of application and not based on residency in the Town;
  - iii. Train all Town officials, personnel, and employees on fair housing and nondiscrimination laws;
  - iv. Adopt and implement an affirmative marketing plan for the Town's Section 8 program;
  - v. Retain records of Yorktown's efforts to affirmatively market the Town's Section 8 program.
- c. Awarding damages to Plaintiff;
- d. Awarding reasonable attorneys' fees and costs under 28 U.S.C. §

2412, 42 U.S.C. § 1988, 42 U.S.C. § 3613(c); and

e. Awarding such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
December 15, 2010

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

By: *Diane L. Houk*  
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