

allowance is then used to set the rent as all tenants pay 30% of their income as their monthly rent net of any utility charge.

3. The CRHA violated and continues to violate this Act by setting and implementing the allowance not in accordance with the federal mandates, by having no documented basis for setting utility allowances for electricity, by not reviewing the allowance that has been set, and by setting an allowance so low that most tenants are assessed excess electric utility charges each month. The lack of basis for imposing excess charges precludes the CRHA from billing residents for such fees and requires that these charges be refunded.

4. As a monthly average, 73% of public housing residents in Charlottesville were billed for excess charges over the last two calendar years, 2010 and 2011 for those 251 units subject to a utility allowance and billing for excess usage. The percent billed for excess charges ran from 50% in March 2010 to 92% in August 2011. *See* Attachment 1, Summary of Electric Surcharge Data.

5. In 2003 the CRHA adopted the current allowance for their units subject to electric utility billing on a monthly basis varying by number of bedrooms. *See* Attachment 2, Resolution No 2058, Revised Public Housing Utility Allowance, July 28, 2003.

6. In the same Resolution, the CRHA also promised an incentive of a \$50 US Savings Bond to residents who keep their utility usage within the allowance but has failed to follow through or recognize this incentive. *See* Attachment 2. In the nine years since the Resolution, no one has received a savings bond.

7. The aggregate billing to CRHA residents for alleged excess electric usage exceeded \$50,000 in each of the past two calendar years.

8. Upon information and belief, the aggregate billing to CRHA residents for alleged excess electric usage has totaled approximately \$400,000 since the imposition of the current allowance in August 2003.

9. As detailed below, the six individual Plaintiffs bring this class action to remedy the unlawful conduct of CRHA

10. The Plaintiffs ask the court to enjoin the CRHA from failing to update its utility allowances and to comply with federal law.

11. The Plaintiffs also ask the court to require the CRHA to provide a refund of illegally charged electric utility fees and award the promised incentive to qualified low-use residents.

JURISDICTION

12. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and 1337. This case arises under the United State Housing Act of 1937, 42 U.S.C. § 1437a *et seq.*, as amended, and 42 U.S.C. § 1983. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the Virginia state law claims in this Complaint.

PARTIES

13. Plaintiff Janyce Lewis is an adult and a public housing resident who lives on Hardy Drive, Charlottesville, VA in the Westhaven site.

14. Plaintiff Deborah Cooper is an adult and a public housing resident who lives on South First Street, Charlottesville, VA in the South First Street site.

15. Plaintiffs Clarissa Smith Folley and Harold Folley, Jr. are married adults who were public housing residents from 1997 until April 2011 where they lived at 812-E Hardy Drive in the Westhaven site, and who are now homeowners in Charlottesville, VA.

16. Plaintiff Earletta Gladden is an adult who lives in public housing located on Hardy Drive, Charlottesville, VA in the Westhaven site.

17. Plaintiff Telambria Tinsley is an adult and a public housing resident who lives on Hardy Drive, Charlottesville, VA in the Westhaven site.

18. Plaintiff Charlottesville Public Housing Association of Residents (PHAR) is an association made up of residents of public housing and other low-income people in Charlottesville, Virginia. PHAR's mission is to empower low-income residents to protect and improve the CRHA-owned housing through community collective action.

19. Defendant Charlottesville Redevelopment and Housing Authority (CRHA) is a duly organized and recognized agency of the State of Virginia under the Code of Virginia, § 36-4 with the power to sue and be sued. The CRHA owns and operates approximately 376 units as public housing in the City of Charlottesville and receives funding provided by the United States Department of Housing and Urban Development under the United States Housing Act of 1937.

20. Defendant Constance Dunn is the Executive Director of the CRHA. She has the duty and full authority over the CRHA to see that the CRHA's policies and practices conform to the law. She is also responsible for the operation and administration of the CRHA. She is sued in her official capacity.

STATUTORY, REGULATORY AND CONTRACTUAL FRAMEWORK

21. Public housing such as the CRHA's sites are operated with substantial federal financial support provided through the United States Department of Housing and Urban Development (HUD) under the United States Housing Act of 1937, 42 U.S.C. § 1437.

22. The receipt of such federal funds requires Defendants to operate the housing complexes in accordance with the requirements of the United States Housing Act of 1937 and applicable HUD regulations. 42 U.S.C. § 1437i.

23. These federal laws prescribe the powers and authority of the Defendants and require Defendants to undertake certain responsibilities or perform certain actions to protect and benefit public housing residents including the Plaintiffs and the class.

24. Under the Brooke Amendment to the National Housing Act, the maximum rent which Defendants may charge residents may not exceed 30% of the family's adjusted gross income.¹ 42 U.S.C § 1437a(a)(1)(A). This maximum-rent figure must include an allowance for the "monthly cost of a reasonable consumption of [tenant-paid] utilities . . . by an energy-conservative household of modest means, consistent with the requirements of a safe, sanitary and healthful living environment." 24 C.F.R. § 965.505(a).

25. Housing Authorities are required to maintain records that "document the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents." 24 C.F.R. § 965.502(b).

1. 42 U.S.C. 1437a(a)(1) provides that the cap on payments is the highest of (A) 30% of the family's adjusted monthly income, (B) 10% of the family's monthly income or (C) an adjusted income based on welfare payments, if applicable. The latter two categories are rarely, if ever, used to compute CRHA resident's rent.-

26. When a Housing Authority properly calculates the utility allowances, the shelter costs of rent plus utilities should not exceed 30% of their income for tenants who consume a reasonable amount of utilities or less.

27. Housing Authorities shall regularly review the basis on which utility allowances have been established and make revisions to the rate if necessary to assure reasonableness. 24 C.F.R. § 965.507.

28. When creating utility allowances, a Housing Authority shall take into consideration at least nine HUD-enumerated factors. 24 C.F.R. § 965.505(d). These factors include the equipment and functions intended to be covered by the allowance; the climate of the location of the project; the size of the unit and the number of occupants per unit; the type of construction and design; the energy efficiency of the Housing Authority supplied appliances; the utility consumption requirements of the appliances supplied by the tenant; the physical condition of the project; temperature levels intended to be maintained in the unit; and the temperature of hot water for domestic use. *Id.*

29. A Housing Authority must also adopt criteria and procedures for granting adjustments to the utility allowance for residents who are elderly, ill, or disabled and whose special needs require them to consume utilities in excess of the allowances, or tenants with special factors affecting utility usage not within the control of the resident. 42 U.S.C. § 1437a and 24 C.F.R. § 965.508.

30. The criteria for granting the relief in 24 C.F.R. § 965.508 must be adopted at the time the Housing Authority adopts its methods and procedures for determining utility allowances. This information must be provided to tenants upon admission and when the authority establishes or adjusts allowances.

31. The standard lease agreement that the CRHA requires its residents to sign states that management shall furnish utilities. *See*, Attachment 3 (“Dwelling Lease”), Section 7.

32. The lease further states that residents may be assessed excess utility surcharges when their usage exceeds their allowance. *Id.* Section 7.A. The lease mandates that “[a]ll rent and unit size determinations and rent adjustments shall be made in accordance with applicable federal regulations” *Id.* Section 8.A.

33. The CRHA has entered into Annual Contributions Contracts (ACC) with HUD that have been in full force and effect at all relevant times. Under the ACC, HUD makes annual contributions to the CRHA to subsidize the cost of operating and managing low-income public housing in Charlottesville, Virginia. 42 U.S.C. §§ 1437c, 1437d, 1437g and 1437i.

34. In consideration for receiving financial assistance from HUD, the CRHA agreed in the ACC to comply with HUD requirements for the development and operations of public housing, including the setting of adequate utility allowances. 24 C.F.R. § 5.403.

35. The public housing tenants in Charlottesville are the intended beneficiaries of the ACC between HUD and the CRHA.

36. Although the above statutes, regulations, and standard lease provide that tenants shall pay a maximum of 30% of their income for housing, Defendants’ inadequate electric utility allowance results in tenants paying more for rent than Congress intended. 42 U.S.C. §§ 1437a(a)(3)(B)(1).

37. The CRHA’s Resolution No 2058, Revised Public Housing Utility Allowance, July 28, 2003, set revised allowances and committed to pay a \$50 saving bonds as an incentive to conserve electricity for any households that did not exceed its annual electrical consumption. This promise is actionable under Virginia Code § 8.01-27. *See*, Attachment 2.

STATEMENT OF FACTS

38. The CRHA owns and manages various public housing sites in the City of Charlottesville comprising some 376 units.

39. Crescent Hall, a single building with 105 units for the elderly and disabled, is excluded because all standard utilities are part of the rent and not individually metered. On information and belief, twenty units at Westhaven are exempted from excess billing by CRHA policy. A total of approximately 251 CRHA-owned units are at issue in this case.

40. The units affected by this action include Westhaven (106 units), South First Street (58 units), Riverside Avenue (16 units), Sixth Street (25 units), Madison Avenue (18 units), Michie Drive (23 units) and four detached residential structures, one of which is a duplex (5 units).

41. Westhaven was built in the mid-1960s as a result of the then-popular urban renewal, after the CRHA devised a plan for total clearance of Vinegar Hill, a thriving area of black-owned businesses and homes. Some renters and home-owners from Vinegar Hill were relocated to Westhaven. The rest of the CRHA housing was all built in excess of thirty years ago. As a product of the architecture and low-energy prices of the time, none of the subject properties were designed or constructed with an eye to modern energy conservation principles or standards.

42. The majority of the properties at issue are “check metered” projects, which means that each building has a master meter to measure the overall utility usage to the building, as well as individual check meters for each unit, which measure the amounts of utilities used by that unit. CRHA personnel read the check meters, usually on a monthly basis. The measurement for electricity is in kilowatt hours. A minority of units have Dominion Power meters. Dominion

reads and bills the CRHA for these units. Where the monthly usage exceeds the allowance, the CHRA bills the tenant as it does with the check metered properties, just as it does for the check metered properties.

43. The individual check meters are of many different ages, brands and reliability. Tenants have concerns about accuracy and the lack of response by the CRHA in response to complaints.

44. The check meters permit the CRHA to monitor utility usage on a household basis. The CRHA pays the utility bills of the entire development based on the master meters, which meter the total usage of a building. Each building has a number of separate apartments. The check meter measures the usage for the individual apartments. There is no known reconciliation or proofing between the check meters and the master meters.

45. Each tenant is allocated a utility allowance in energy units (kilowatt hours) which should be based on reasonable consumption for the size of the family and the thermal characteristics of the unit. The standard allowance is based on an alleged 2003 study contracted for by the CRHA. The study has not been produced, reviewed or updated.

46. If the usage in any one month exceeds the allowance, the CRHA bills the tenant for the excess kilowatt hours times the approved rate, which has been \$.0694/kwH and unchanged since 2003.

47. In the units subject to the utility allowance, the cost of reasonable utilities should be covered by the tenant's utility allowance, so that the sum of rent and utilities should not exceed 30% of the tenant's adjusted gross income.

48. The CRHA has not updated its utility allowances since 2003 to determine whether they are reasonable nor is there any documented history of substantive review since the initial adoption in 2003.

49. The alleged 2003 study was never received or reviewed by CRHA and instead CRHA received only an allowance schedule and an explanation given in a phone call about the underlying study.

50. Without the actual study, it is impossible to review the methodology or the assumptions used to create the current utility allowances.

51. CRHA has no basis to show that the allowances used since August 2003 approximate “a reasonable consumption of utilities,” as required by HUD regulations. 24 C.F.R. §§ 965.505(a) and 965.507(b) and Section 8.A of the lease

52. Although rents for public housing tenants are limited to 30% of their income, the failure of the CRHA to provide a reasonable electric utility allowance as part of the rent means that the Plaintiffs have paid amounts for rent plus reasonable quantities of utilities that exceed the statutory maximum tenant contribution.

53. The CRHA has known, at least since the summer of 2010, that the study allegedly conducted in 2003 was missing or never provided. Even in light of that information and without performing a new study, the CRHA has not stopped assessing fees based on the old analysis, which means that tenants have been and are still being billed and paying for such fees without any opportunity to review and comment on the basis and methodology used to determine those fees.

54. HUD’s public housing guidance states that consumption that routinely exceeds the allowance constitutes evidence of the insufficiency of the allowance. These guidelines

promulgated by HUD encourage allowances based on actual consumption data. HUD Public Housing Occupancy Guidebook, June 2003.

55. The CRHA requires incoming tenants to sign a lease that warrants that the CRHA will comply with federal regulations, will provide utilities and that any utility usage beyond the tenant's allowance becomes the tenant's responsibility. *See*, Attachment 3, Section 7.A and 8.A. The lease is a contract which binds both the CRHA and the tenant.

56. Since July 2003 the CRHA has never promulgated criteria or procedures for adjusting utility allowances for tenants when the utility amounts are beyond the tenant's control.

57. At no time since 2003 have Defendants conducted an analysis, study or professional review to determine if the excess utility surcharges assessed against a resident were beyond the tenant's control.

58. Although Section 7.D of the Lease states that excess utility fees "shall be due and payable on the first day of the month after the Authority has given the Resident 14 days written notice of the charge," from 2003 until February 2011, the CRHA billed residents in the same month that notice of charges was given. This allowed no time for the resident to query the accuracy of the meter reading or the billing.

59. If the tenant did not pay in full by the tenth day of the month, a late or administrative fee of \$10.00 was imposed for each occurrence for each resident. Continued failure to pay the accelerated utility charges could lead to the issuance of a Summons for Unlawful Detainer, involving a charge to the resident and possible eviction.

60. Each year the CRHA has entered into an ACC with HUD. The CRHA represents in this contract that the CRHA is complying with HUD's guidelines in order to be eligible for HUD funds to operate the CRHA's public housing units. The ACC specifically requires that the

CRHA operate its program in compliance with the U.S. Housing Act. This contract is drafted to ensure that the residents are receiving their appropriate benefits under the U.S. Housing Act, thus, making the residents a third party beneficiary. By failing to provide adequate utility allowances, the Defendants are in breach of the ACC.

61. Despite the commitment in Resolution No. 2058 (Attachment 2) to provide households with a \$50.00 savings bond if they do not exceed their annual electrical consumption, CRHA has never provided any qualifying household that incentive.

INDIVIDUAL PLAINTIFF'S FACTS

62. Ms. Janyce Lewis

63. Plaintiff Janyce Lewis has been a resident on Hardy Drive in Westhaven since February 2005.

64. She lives in a two-bedroom apartment with her son, Travis, a student who graduated from Charlottesville High School in June 2012. She is currently working as an organizer for City of Promise.

65. She has been billed for excessive usage for many months for the past several years, including at least five times in 2008, two times in 2009, four times in 2010 and 11 times in 2011.

66. Her commitment to paying her rent led her to take out a payday loan at 161% interest per year.

67. Her inability to pay the loan has caused her substantial stress and required her to forego some basic necessities, such as groceries for her and her son, household items, toiletries, and necessary car maintenance.

68. Ms. Lewis personally initiated, wrote and circulated a petition in the fall of 2010, which protested the excess utility fees. The petition was signed by approximately forty residents and presented to the CRHA board at their November 2010 meeting.

69. In 2010 Ms. Lewis was billed for more than \$220 in excess electric utility charges.

70. In 2011 she was billed for and paid more than \$260.

71. This is a total of more than \$480 over the past two years.

72. In at least seven months when the CRHA was assessing the excess utility charges, Ms. Lewis was unable to pay the presented billings by the 10th of the month and a late fee was imposed.

73. She later paid the late fee to avoid additional late fees and possible eviction.

74. Ms. Deborah Cooper

75. Plaintiff Deborah Cooper currently resides at the South First Street site which is at the intersection of South First Street and Elliott Avenue.

76. Ms. Cooper has been a tenant of CRHA for more than 20 years.

77. She has raised a number of foster children during this time but as they have grown or moved out, she now resides only with her 17-year-old granddaughter.

78. As a result, in the past year Ms. Cooper downsized from a 4-bedroom unit to a 2-bedroom unit.

79. Ms. Cooper currently pays \$432 in rent each month, though in the past, when her household income was higher and she had a larger unit, she paid more than \$750 per month in rent.

80. Ms. Cooper has been charged for excess electric utilities each year since 2007.

81. In 2010 Ms. Cooper was billed for and paid in excess of \$566 in excess electric utility charges.

82. In 2011 she was billed for and paid in excess of \$531, totaling more than \$1,097 over the past two years.

83. Ms. Cooper sometimes uses a prescribed C-pap machine during the night to help her breathe due to her sleep apnea.

84. CRHA has never adjusted Ms. Cooper's utility charges to reflect her usage of this machine.

85. Although the charges mean that she has had to stretch her limited budget to pay for rent and utility charges, Ms. Cooper has paid the excess utility charges each month because she felt that they were an unavoidable part of her financial obligation to CRHA, and she did not want to get into trouble with CRHA.

86. **Ms. Clarissa (Smith) Folley and Mr. Harold Folley, Jr.**

87. Plaintiffs Clarissa (Smith) Folley and Harold Folley, Jr. lived in a three-bedroom apartment at 812-E Hardy Drive in Westhaven, from 1997 until they moved out in April 2011.

88. They now own their own home in Charlottesville. Their new home was acquired through the "sweat equity" program of Habitat for Humanity on the site of the former Sunrise Trailer Park.

89. The Follies have five children between the ages of eight and twenty-one.

90. Harold himself was born in Westhaven in 1971 and lived there with his parents until he was an adult.

91. He works at Virginia Organizing and is very proud of his status as a homeowner.

92. As their income rose over the years, the Foleys' base rent rose in proportion as the rent was calculated as 30% of income. Their rent increased from approximately \$150/month to approximately \$850/month.

93. The Foleys were billed for varying amounts of alleged excess electricity utility consumption during their years at Westhaven.

94. In 2010 the Foleys were billed for and paid more than \$148 in excess electric utility charges.

95. In 2011 they were billed for and paid more than \$97 for the three months they lived in Westhaven before moving out.

96. The Foleys understood that their obligation to pay the CRHA came first because the consequence of not paying might mean losing their apartment home.

97. The Foleys knew that the cost of receiving a Summons for Unlawful Detainer was high as a percentage of their rent, so they did everything possible to avoid court fees.

98. This required them to avoid or delay purchasing family and personal necessities such as groceries and medicine in order to pay the excess electric utility charges that pushed the rent beyond 30% of the family income.

99. Mr. Folley is a diabetic and a migraine-sufferer over the course of his time in CRHA housing. The increased stress from financial pressures negatively affected his health. Mr. Folley's increased sugar levels often caused blurred vision.

100. In some months during their tenancy, when the CRHA assessed the excess utility charges, the Foleys were unable to pay the presented billings by the tenth of the month and a late fee was imposed, which was an additional burden but had to be paid.

101. Ms. Earletta Gladden

102. Plaintiff Earletta Gladden has lived on Hardy Drive in Westhaven since October 2005.

103. She lives in a three-bedroom apartment with her daughter, age 13, and her grandson, age 15.

104. She has lived in her present apartment since August 2009.

105. Ms. Gladden has been regularly assessed excess utility charges for electricity almost since she moved into Westhaven, and from June 2007 to July 2012 was assessed this charge 42 times.

106. The excess charges have ranged to a high of \$140.88 per month.

107. Her rent without the excess electricity charges is \$298 per month.

108. In 2010, Ms. Gladden was billed for and paid more than \$575 in excess electric utility charges.

109. In 2011, she was billed for and paid more than \$820.

110. This is a total of more than \$1,395 over the past two years alone.

111. Because she does not want to receive an eviction notice and to be assessed court fees, Ms. Gladden pays the excess electricity surcharges in addition to her monthly rent.

112. Ms. Gladden had to stop working at the end of 2005 under doctor's orders. She suffers from multiple sclerosis, fibromyalgia and from asthma and allergies.

113. When the weather changes or when it is warm outside, she is likely to experience severe breathing problems. To relieve these symptoms, she uses a nebulizer and a vaporizer.

114. The poor air circulation in the apartment also aggravates her asthma, and she frequently runs her air conditioner year around.

115. These medical problems necessitate her periodic use of more electricity.

116. Ms. Gladden's grandson suffered brain damage due to meningitis at age six months, and he is disabled. He also suffers from asthma.

117. When the weather changes or when it is warm outside, he is likely to experience severe breathing problems. To relieve these symptoms, he, too, requires a nebulizer and a vaporizer.

118. When he experiences more than the usual problems with breathing in the winter, a fan is run in his room.

119. Thus, his medical problems necessitate periodic use of more electricity.

120. Ms. Gladden has repeatedly asked the CRHA about why she is receiving excess utility charges.

121. The staff almost always responded by saying that they "will look into it". No one has provided Ms. Gladden any explanation.

122. Many months Ms. Gladden must borrow money from her adult children to meet the costs of household necessities. She would be able to manage her bills from month to month if she did not have to pay an electricity surcharge.

123. Ms. Telambria Tinsley

124. Plaintiff Telambria Tinsley lives on Hardy Drive in the Westhaven site. She has been a resident since January 2011. She lives with her one child.

125. Being on a very tight budget Ms. Tinsley is very conscious of the possible burden of excess electric fees, so she has developed and stuck to conservative usage habits to avoid them.

126. Her household consumption of electricity has been less than the utility allowance since she has been under lease with the CRHA.

127. Ms. Tinsley has not received the \$50 saving bond offered to residents whose usage is under the allotment for a twelve month period.

128. The Charlottesville Public Housing Association of Residents (PHAR)

129. The Charlottesville Public Housing Association of Residents (PHAR) is a non-profit organization founded in 1998 and incorporated under the laws of the Commonwealth of Virginia.

130. Every adult resident in CRHA properties is a member of PHAR. PHAR has an elected Board of Directors.

131. The CRHA acknowledges PHAR as a representative of the public housing residents pursuant to applicable federal housing regulations, 24 C.F.R. § 964.

132. In its regular outreach to residents about the problems they experience and which they want PHAR to address, members have described the hardships they are facing because of excess utility surcharges.

133. PHAR supported the circulation of a petition in 2010 requesting that the CRHA address the issue of the high rates of excess utilities surcharges. PHAR representatives have testified before the CRHA Board about the problems its members face in paying the excess utilities surcharges. No response from CRHA was received by PHAR.

134. PHAR has expended time and resources on the issue of the burden that inappropriate and excessive utility billing has imposed on its membership.

135. PHAR's outreach and organizing work has improved public housing neighborhoods, including obtaining playground renovations; improvements to maintenance, customer service and safety; and incorporated residents into redevelopment planning. As the citywide public housing resident association, PHAR works on a variety of neighborhood improvement issues, as well as pioneering a successful Internship Program.

136. All of PHAR's resident members are negatively affected by CRHA's improper utility allowance setting.

CLASS ACTION ALLEGATIONS

137. The individual Plaintiffs bring this action pursuant to Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

138. The named individual Plaintiffs seek to represent the following classes of present and former public housing tenants of the CRHA.

139. Under Rule 23(b)(2), Plaintiffs Janyce Lewis, Earletta Gladden, Deborah Cooper, and Telambria Tinsley represent the following class:

- a. current public housing tenants of CRHA,
- b. who are subject to the utility allowances set forth in the July 2003 schedule.

140. Under Rule 23(b)(3), Plaintiffs Janyce Lewis, Earletta Gladden, Deborah Cooper, Clarissa Smith Folley, and Harold Folley represent the following class:

- a. current and former public housing tenants of CRHA,
- b. who have been charged excessive utility fees and have paid them,
- c. since June 7, 2007,
- d. pursuant to the utility allowances set forth in the July 2003 schedule.

141. Under Rule 23(b)(3), Plaintiff Telambria Tinsley represents the following class:

- a. current and former public housing tenants of CRHA,
- b. whose household did not exceed its annual electrical consumption at least once from June 2007 through the present,
- c. who were subject to the utility allowances set forth in the July 2003 schedule, and
- d. whose household was not given a \$50.00 saving bond by CRHA.

142. All of these Plaintiffs' claims meet the requirements of Rule 23(a), Fed. R. Civil Pro.

143. The number of individuals in the (b)(2) class exceeds 200 individuals. The class is comprised of persons who are current and former residents of public housing since June 7, 2007. The CRHA has acted on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

144. The number of individuals in the first (b)(3) class is comprised of persons who are or were residents of public housing. Some continue to live in the CRHA housing and some now reside elsewhere. The CRHA has acted on grounds that apply generally to the class. The relatively small size of the individual claims, the geographical dispersion of the class, and the financial circumstances of the class members make the maintenance of separate actions by each class member economically infeasible. The class is so numerous that joinder of all members is impracticable.

145. The number of individuals in the second (b)(3) class is comprised of persons who are or were residents of public housing. Some continue to live in the CRHA housing and some now reside elsewhere. The CRHA has acted on grounds that apply generally to the class. The relatively small size of the individual claims, the geographical dispersion of the class, and the

financial circumstances of the class members make the maintenance of separate actions by each class member economically infeasible. The class is so numerous that joinder of all members is impracticable.

146. Questions of law and fact common to the (b)(2) and the first (b)(3) class include:
- a. Whether the CRHA's utility allowances since August 2003 have been sufficient to ensure that tenants do not spend more than 30% of their income for rent including a reasonable amount for utilities;
 - b. Whether the CRHA has reviewed the sufficiency of the allowances and made appropriate adjustments, including maintaining records regarding the bases for the decisions on annual utility allowance adjustments;
 - c. Whether the CRHA failed to promulgate criteria and procedures for adjusting utility allowances for disabled, elderly or ill residents with special needs in compliance with the U.S. Housing Act;
 - d. Whether the CRHA failed to notify public housing residents of the availability of such adjustments;
 - e. Whether the CRHA failed to provide such other adjustments as required by governing law;
 - f. Whether the CRHA breached Section 7.D of the Dwelling Lease by accelerating excess utility charges a full month prematurely for the period August 2003 through February 2011; and

147. Questions and law and fact common to the second (b)(3) class include whether the CRHA had a legally binding obligation under the Resolution it adopted on July 28, 2003, to give a \$50 United States Savings Bond annually to each household that did not exceed its annual

electrical allowance, and whether the CRHA has failed to pay the amounts due to tenants under that incentive program.

148. The claims of the named Plaintiffs are typical of the claims of the identified classes.

149. The named Plaintiffs have the same interests as the other members of their identified classes and will vigorously pursue these interests on behalf of the classes.

150. Plaintiffs will fairly and adequately represent the interests of the classes. Plaintiffs know of no conflicts of interest among members of the classes.

151. Plaintiffs are represented by attorneys who are experienced litigators and who have handled numerous actions in the federal courts, including complex class actions, and who will adequately represent the interests of each of the classes.

152. A class action is appropriate under Rule 23(b)(2) because the Defendants have acted on grounds generally applicable to the class by failing and refusing to provide adequate utility allowances, making injunctive and declaratory relief appropriate with respect to the class as a whole.

153. A class action is appropriate under Rule 23(b)(3) because both classes pose questions of law and fact common to class members that predominate over any questions affecting only individuals and to Plaintiffs' knowledge there is no current litigation of individual claims pending in any forum. A class action therefore will allow these claims to be efficiently adjudicated in a single forum and is preferable to individual litigation.

FIRST CLAIM FOR RELIEF: 42 USC § 1983

VIOLATION OF THE U.S. HOUSING ACT

154. CRHA has failed to update its electric utility allowance since 2003 and did not properly set that allowance in 2003.

155. CRHA charged an average of 73% of residents for excess electric utilities each month, and has charged as many as 92% of residents for excess electric utilities in a single month over the past two calendar years.

156. Under HUD policies, the extremely high proportion of residents charged has been prima facie evidence of the inadequacy of CRHA's current excess electric utility billing scheme.

157. A documented basis for setting and imposing electric utility allowances is a condition precedent to the CRHA charging residents excess utility charges.

158. The CRHA's failure to provide adequate electric utility allowances has required residents to pay in excess of 30% of their income for shelter costs and to incur inappropriate late fees.

159. These actions have deprived Plaintiffs and the class of the benefits of CRHA's public housing program and as result CRHA assessing fees when it had no right to assess any fees.

160. Such acts violate the United States Housing Act, as amended, 42 U.S.C. §1437a (a)(3)(B)(1), and the federal regulations at 24 C.F.R. § 965.501, et. seq..

161. The CRHA's violation of the Plaintiff's rights under the Housing Act and the Brooke Amendment is actionable under 42 U.S.C. § 1983.

162. As a result of Defendants' violations of the U.S. Housing Act in charging tenants more rent than is allowed under federal law, Plaintiffs and the classes they seek to represent have suffered harm and are entitled to declaratory, injunctive and monetary relief.

SECOND CLAIM FOR RELIEF: VIOLATION OF RESIDENTIAL LEASE

163. The CRHA's failure to provide adequate electric utility allowances and to manage the provision of electric utilities and properly impose excess fees as stated in the residential lease violates the federal requirements mandated by the leases with Plaintiffs and the class.

164. Defendants' failure to conform the language and practices of enforcing its lease provisions regarding adequate utility allowances for class members to the requirements of the Housing Act and regulations of the U.S. Department of Housing and Urban Development and the CRHA violates the lease provisions.

165. The Defendants further violated the lease by accelerating alleged excess electric utility fees prior to the proper time allowable under the standard lease.

166. Because Defendants inappropriately billed tenants without first notifying them in writing of the electric charges as required by the lease, tenants were deprived of an opportunity to question or challenge the fees before they became due.

167. This inappropriate accelerated billing also caused some tenants, to incur late fees and, in some instances, court costs and eviction.

168. Defendants' violations of the lease provisions have harmed Plaintiffs and the class members by causing them routinely to pay in excess of 30% of their income for rent.

169. PHAR is a proper plaintiff to bring this claim individually to protect its own interests and the interest of its members.

THIRD CLAIM FOR RELIEF: VIOLATION OF THE ANNUAL CONTRIBUTIONS

CONTRACT (ACC)

170. Plaintiffs are the intended third party beneficiaries of the CRHA's contractual agreements in the Annual Contributions Contract with HUD to abide by the requirements of the Housing Act of 1937 and implementing regulations.

171. The ACC requires the CRHA to comply with HUD guidelines and regulations for the operation of public housing, including the setting of adequate utility allowances.

172. The CRHA has failed to set adequate electric utility allowances as required by the ACC.

173. The CRHA also failed to comply with HUD regulations requiring the implementation of a hardship plan to waive or reduce charges for families with disabled individuals requiring accommodations for increased electricity use due to their disabilities.

174. As a direct and proximate result of Defendants' breach of the contractual provisions of the ACC with HUD, Plaintiffs have paid more rent than required by law, and some Plaintiffs and class members will be required to pay additional excess rent in the future.

175. PHAR is a proper plaintiff to bring this claim individually to protect its own interests and the interest of its members.

FOURTH CLAIM FOR RELIEF: VIOLATION OF CRHA POLICY RESOLUTION No. 2058, Revised Public Housing Utility Allowance, July 28, 2003 and VIOLATION OF VA.

CODE § 8.01-27

176. The Board's action in POLICY RESOLUTION No. 2058 established a contract with the residents with the Board's promise of a \$50 US Savings Bond being offered in exchange

for the tenants' willingness and effort to conserve electricity consumption to the standard set forth by the Resolution.

177. The Defendant has failed to keep or deliver the commitment of a \$50 US Saving Bond to Plaintiff TelambriaTinsley and other class members, whose household did not exceed their annual electrical consumption.

178. The CRHA has made no efforts to identify, recognize or compensate those who fulfilled the criterion.

179. Plaintiffs may maintain an action under Virginia Code § 8.01-27 "upon any note or writing by which there is a promise, undertaking, or obligation to pay money, if the same be signed by the party who is to be charged thereby, or his agent."

180. CRHA Policy Resolution No. 2058 is a writing promising to pay money in the amount of a \$50 savings bond to any tenant household not exceeding the utility allowance in a 12 month period and was signed by a representative of the CRHA Board.

181. Plaintiff TelambriaTinsley, for herself and for all members of the class she represents of those people whose households did not exceed their annual electrical consumption after the passage of Resolution No. 2058 may therefore maintain an action against the CRHA for payment of the \$50 bond and for declaratory and injunctive relief requiring a process to be implemented to honor this commitment in the future.

182. PHAR is a proper plaintiff to bring this claim individually to protect its own interests and the interest of its members.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court will:

1. Assume jurisdiction of this case;
2. Certify the identified classes pursuant to F.R.C.P. 23(a), (b)(2) and (b)(3);
3. Issue a declaratory judgment that:

A. Defendants violated the United States Housing Act of 1937, the lease provisions which Plaintiffs and the class were required to sign, the Annual Contributions Contract which the CRHA enters into with HUD by its failure to improperly set and administer electric utility allowances and 42 U.S.C. § 1983.;

B. Defendants violated CRHA Policy Resolution No. 2058 and Code of Virginia §8.01-27 by its failure to award the \$50 bonds to tenants whose household did not exceed their annual electrical consumer

4. Enter preliminary and permanent injunctions enjoining Defendants from failing to comply with the U.S. Housing Act, the residential lease, and the Annual Contributions Contract by:

A. Constructing new utility allowances and keeping such allowances up to date sufficient to ensure that tenants' rent, including reasonable electric utilities, do not exceed 30% of income;

B. Promulgating and implementing procedures to adjust electric utility allowances when a tenant demonstrates that a higher allowance is needed because a member of the household is disabled, elderly or ill or that the higher usage is due to factors beyond the tenant's control;

C. Repairing tenants' check meters in a timely manner;

- D. Including in the lease notice of the tenants' electric utility allowances;
 - E. Including in the lease notice of the available administrative procedure to contest utility surcharges; and
 - F. Ceasing to evict tenants for failing to pay excess electric utility charges prior to the annual updating of the allowances; and
5. Requiring the Defendants to reimburse Plaintiffs and class members for all excess utility changes imposed and collected because these charged violated federal law and the Dwelling Lease;
6. Enter preliminary and permanent injunctions enjoining Defendants from failing to comply with the commitment to provide a \$50 savings bond to eligible households and require it to promulgating and implementing procedures for how this is accomplished;
7. Requiring the Defendants to provide \$50 saving bonds to eligible tenants and inform all tenants how to make a claim for payment of the bond(s);
8. Award the Plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. §1988;
9. Award prejudgment interest on the monetary relief provided to Plaintiffs and the members of the classes; and
10. Grant the Plaintiffs such other relief as may be just and equitable.

Respectfully submitted this 12th day of September, 2012.

/s/ **John Conover**

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CERTIFICATE

I certify that on September 12, 2012, I electronically filed the foregoing with the Clerk of the Court of the US District Court, Virginia, Western District, using the CM/ECF system, which will send notice to the following:

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