

15/3009

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TIMOTHY PHILLIPS, GILBERTO COLON,)
CHANDRA THOMAS , KEVIN DUTY, TROY)
THOMPSON, DENNIS HALTER, SHONDIS)
ADAMS, SHIMON MERRIWEATHER,)
CEDRIC REAMS, LANIQUA KUYKENDALL,)
CHARLOTTE A. DAVIS, ALICIA ROSS,)
CARYN E. PRICE, LATASHA GATLIN,)
CHRISTOPHER SEALS, RONALD ANDERSON)
TONYA ESKILSON, ALVIN ARREAGA,)
WALTER ORI, and CAROL WILL,)
individually and on behalf of the class of)
all persons who currently reside in Harry Poe)
Manor or formerly resided therein at any)
time from January 2011 to date,)

Plaintiffs,

vs.

WAUKEGAN HOUSING AUTHORITY, a body)
politic and corporate; CHARLES CHAMBERS,)
individually and as Executive Director of)
WAUKEGAN HOUSING AUTHORITY;)
RENWICK CORNELIOUS, individually and as)
Property Manager of Harry Poe Manor; and)
TARA DANIEL, individually and as Property)
Manager of Harry Poe Manor.)

Defendants.

Case No.: 13-cv-08444

Honorable John J. Tharp, Jr.

JURY TRIAL DEMANDED

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS’ FIFTH AMENDED CLASS ACTION COMPLAINT**

NOW COME Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL (hereinafter referred to collectively as “DEFENDANTS,” unless otherwise individually identified) by and through one of their attorneys, ERIKA G. BALDONADO of SCHAIN, BANKS, KENNY & SCHWARTZ,

LTD., and for their answer and affirmative defenses to Plaintiffs' Fifth Amended Class Action Complaint, state as follows:

INTRODUCTION

1. As more fully appears below, this is a Rule 23 class action brought by current and former residents of Harry Poe Manor ("Poe Manor") serving as Plaintiffs on behalf of themselves and as representatives of the class of all persons who currently reside in Poe Manor or formerly resided therein at any time from January 2011 to date ("Residents").

ANSWER: Defendants generally admit the allegations as contained in Paragraph 1, but deny that class certification is warranted in this case.

2. Plaintiffs are seeking injunctive and compensatory relief from Defendants, a public housing authority and two of its executive officers, for willful and wanton conduct in violation of their 5th and 14th Amendment due process rights under the Constitution of the United States and federal health and safety regulations established by the U.S. Department of Housing and Urban Development ("HUD"), with pendent claims also being pled under the statutory and common law of the State of Illinois.

ANSWER: Defendants admit that Plaintiffs are seeking both injunctive and compensatory relief from Defendants, but deny that Defendants violated Plaintiffs' 5th and 14th Amendment due process rights under the Constitution of the United States, as well as deny the violations of any statutes or common law.

3. Residents are low-income persons, including those with physical and/or mental disabilities, who currently reside in Poe Manor or formerly resided therein at any time from January 2011 to date.

ANSWER: Defendants admit only that residents of Poe Manor are “income eligible” and deny the remaining allegations in Paragraph 3.

4. Poe Manor is a ten-story multifamily apartment building in Waukegan, Illinois, which building participates in the HUD Section 8 program and is owned and/or managed by Defendants.

ANSWER: Defendants admit that Poe Manor is a ten-story multifamily apartment building in Waukegan, Illinois, which is managed by Defendants, but deny the remaining allegations as contained in Paragraph 4.

5. The gist of this action is Defendants’ concealment from Residents of a severe bedbug infestation of Poe Manor and Defendants’ failure to use the best practices and most effective methods to eradicate this infestation, thereby allowing the infestation to continue and spread building-wide and to become entrenched into the physical structure of the building, creating and exacerbating a real and present danger to Residents’ health, safety, and welfare.

ANSWER: Defendants admit that the gist of Plaintiffs’ Complaint is as stated in Paragraph 5, but deny all of the allegations of Paragraph 5.

JURISDICTION AND VENUE

6. This Court has jurisdiction of Plaintiffs’ claims under 28 U.S.C. Sections 1331, 1343, and 1367; and venue is proper under 28 U.S.C. Section 1391, since the individual parties reside, and the corporate defendant is located, in this judicial district, and the conduct complained of herein was committed in this judicial district.

ANSWER: Defendants admit the allegations as contained in Paragraph 6.

7. Moreover, federal disposition of the claims raised in this proceeding, which may impact directly or indirectly the enforcement of federal rules and the expenditure of federal

funds, would avoid potential conflicts and controversies concerning the interplay between federal and state powers which might arise in were such disposition to be made in state court.

ANSWER: Defendants deny to the allegations as contained in Paragraph 7.

PARTIES

8. At all times complained of herein, Plaintiffs, Timothy Phillips, Gilberto Colon, Chandra Thomas , Kevin Duty, Troy Thompson, Dennis Halter, Shondis Adams, Shimon Merriweather, Cedric Reams, Laniqua Kuykendall, Charlotte A. Davis, Alicia Ross, Caryn E. Price, Latasha Gatlin, Christopher Seals, Ronald Anderson, Tonya Eskilson, Alvin Arreaga, Walter Ori, and Carol Will, currently reside or have resided in Poe Manor since January of 2011 and have been endangered and damaged by the severe and continuing bedbug infestation thereof, suffering bedbug attacks on their bodies and bedbug invasions of their personal property and apartments, interrupting their quiet enjoyment of their home, and rendering their home unsafe for occupancy and uninhabitable.

ANSWER: Upon information and belief, Defendants admit that the listed class representatives reside or have resided in Poe Manor since January 2011, but deny the remaining allegations as contained in Paragraph 8.

9. At all times complained of herein, Defendant, Waukegan Housing Authority (WHA), owned and/or managed Poe Manor as part of its corporate functions as a public housing authority, organized and existing under Illinois statute 20 ILCS 3805/1 et seq.

ANSWER: Defendants admit the allegations as contained in Paragraph 9.

10. At all or most times complained of herein, Defendant, Charles Chambers, was employed by Defendant WHA as its Executive Director; with regard to Defendants Renwick Cornelious and Tara Daniel, each were employed by Defendant WHA as Property Managers of

Poe Manor (Defendant Cornelious having recently been replaced by Defendant Tara Daniel, while remaining employed by Defendant WHA and continuing to assist with management of Poe Manor from time to time).

ANSWER: Defendants admit that Charles Chambers is the Executive Director of the WHA and that Renwick Cornelious and Tara Daniel were formerly employed by the WHA and managed Poe Manor, but deny the remaining allegations as contained in Paragraph 10.

COMMON FACTS

11. Poe Manor has approximately 155 apartments and is located at 300 Lake Street in the downtown area of Waukegan, Illinois, approximately half a block north of Defendant WHA's administrative offices located at 215 S. Martin Luther King Drive.

ANSWER: Defendants admit the allegations as contained in Paragraph 11.

12. Poe Manor consists of 9 nearly identical floors consisting of 17 one-bedroom apartments each, and a bottom floor consisting of 2 two-bedroom apartments and various common areas including a meeting area, a kitchen, security desk, laundry area, and dumpster area.

ANSWER: Defendants deny the allegations as contained in Paragraph 12.

13. Defendant WHA collects rents for these apartments based upon a HUD financing program for Section 8 public housing buildings, whereby fair market rental values for Poe Manor apartments are computed using data from Lake County, Illinois, and Residents pay in or around 30% of their income toward these rental values, the remainder being subsidized in whole or in part by federal funds.

ANSWER: Defendants deny that the Harry Poe Manor is Section 8 public housing, and generally admits the remaining allegations as contained in Paragraph 13.

14. At all times complained of herein, HUD health and safety regulations required that all Section 8 buildings like Poe Manor be decent, safe, sanitary and in good repair; that all areas and components of the housing be free of vermin; that there be no evidence of infestation by vermin; and that the housing also comply with local building and maintenance codes. A copy of 24 CFR 5.703, being one such regulation was attached to the Original Complaint as Exhibit A and is incorporated by reference herein.

ANSWER: Defendants deny that Harry Poe Manor is a Section 8 building, but admit the remaining allegations as contained in Paragraph 14.

15. At all times complained of herein, the City of Waukegan had in effect a Property Maintenance and Housing Code, which required that the interior of structures be maintained in a clean and sanitary condition; that all structures be kept free from insect infestation; that any such infestation be promptly exterminated by approved processes not injurious to human health; that proper precautions be taken to prevent re-infestation; and that the owner of any structure be responsible for extermination within the structure prior to its being rented or leased. A copy of the relevant portion of this code was attached to the Original Complaint as Exhibit B and is incorporated by reference herein.

ANSWER: Defendants admit the allegations as contained in Paragraph 15.

16. From February 2010 and continuing to date, departments and agencies of the United States government—HUD, the U.S. Environmental Protection Agency (EPA), and the Centers for Disease Control and Prevention (CDC)—put public housing authorities including Defendant WHA on official notice concerning the resurgence of bedbugs as a national health

concern and describing the best practices and most effective methods to eradicate bedbug infestations in multifamily buildings, including those like Poe Manor that provide public housing to poor, elderly, and/or disabled persons and families.

ANSWER: Defendants admit generally that they were made aware of the resurgence of bedbugs, deny that they were put on “official notice”, and deny the remaining allegations as contained in Paragraph 16.

17. These federal notices included, but were not limited to, a *Joint Statement on Bed Bug Control* (promulgated in 2010 by the CDC and the EPA); a report entitled *What’s Working for Bed Bug Control in Multifamily Housing* (a National Center for Healthy Housing study, funded and published in 2010 by the EPA); HUD Notice PIH-2011-22; an *EPA Bed Bug Update* (issued October 2011); HUD Notice H 2012-5; and HUD Notice PIH-2012-17. Copies of portions of these notices and reports were attached to the Original Complaint as Group Exhibit C and are incorporated by reference herein.

ANSWER: Defendants admit the contents of Exhibit C.

18. These federal notices were in agreement about the best practices and most effective methods to eradicate bedbug infestations in multifamily buildings and were directly distributed and/or made available to governmental bodies providing public housing, including Defendant WHA, and to their executive officers, including Defendants Chambers, Cornelious, and Daniel.

ANSWER: Defendants admit generally that federal notices were sent to the WHA, deny all notices were in exact agreement about the practices.

19. The information and guidance contained in these federal notices, of which Defendants were aware or should have been aware, included without limitation the following:

- a. The last several decades have seen a nationwide resurgence of bedbugs, which are now officially recognized as a significant risk to public health, safety, and welfare.
- b. Bedbugs feed almost exclusively on human blood, preying upon people while they are asleep and injecting them with both an anticoagulant and an anesthetic to increase the speed at which the bedbugs can gorge on blood, while preventing the victims from feeling the bites or being aware of the feeding process.
- c. Because of their small flat bodies, bedbugs can fit into extremely small spaces and are adept at hiding in areas such as mattresses, box springs, other bedding, bed frames, headboards, dressers and other furniture, household objects and clutter, electrical fixtures and outlets, baseboards, moldings, window and door frames, picture frames, utility ducts and conduits, carpeting and rugs, wall cracks and crevices, and even behind wallpaper.
- d. Bedbugs are able to travel over 100 feet in one night and can readily spread throughout a building, moving through cracks or apertures in walls and floors, migrating through common utility ducts and conduits, and also by human dispersal as items of infested personal property are moved through hallways and common areas, leaving a trail of bedbug eggs, larva, or mature insects that were “hitching a ride.”
- e. Research continues as to whether bedbugs can directly transmit diseases or viruses, but their bites are known to produce severely itching, highly visible red marks or streaks (with occasional scarring) on the face, neck, arms, legs, and other parts of the body; mild to severe allergic reactions; secondary skin

infections; insomnia; anxiety; fear; shame; humiliation; and other mental and emotional distress.

- f. There is no chemical silver bullet for bedbug eradication nor is there one in the pesticide development pipeline, due to a variety of factors including the speed at which bedbugs develop resistance to pesticides, the impossibility of systemic treatment because of the bedbug's virtually exclusive diet of human blood; and the problem that pesticides alone usually do more to disperse bedbugs than to eradicate them.
- g. Eradication of bedbugs becomes even more challenging in large multifamily buildings, especially when these buildings are occupied by residents with infirmities such as physical or mental disabilities, old age, and/or poverty.
- h. When bedbugs have infested such a building, the best practice and most effective method to eradicate them, other than building-wide evacuation and fumigation, is an Integrated Pest Management Plan ("IPM"), a multifaceted approach focused not primarily on pesticides but rather on the education and motivation of the building's residents to work as members of a team, with the building's management and a professional pest management service ("PPM"), to implement a comprehensive set of proactive, nonchemical treatments, which are designed to isolate bedbugs and inhibit or prevent them from feeding.
- i. An IPM must begin with the building's management using resident meetings, question and answer sessions, written materials, audio-visual presentations, one-on-one counseling (when necessary) and similar forms of communication and outreach to make residents fully aware of the bedbug infestation, train them to

observe signs of bedbug activity, urge them to immediately report all such activity by removing any stigma associated with having bedbugs invade one's apartment, and clearly explain the nature of the IPM approach and what residents are expected to do to assist in the plan's implementation.

- j. IPM implementation then requires the building's management, working with residents and the PPM, to undertake a series of proactive, nonchemical treatments such as sealing all cracks, crevices, wall voids, baseboards, and other potential avenues of bed migration; encasing mattresses and box springs throughout the building in puncture-proof plastic covers; having infested areas (and nearby areas above, below, and to the sides) vacuumed with pest control vacuums that have crevice tools and other special attachments for small spaces; employing efficacious temperature treatments such as steaming, flash freezing, and ambient heat; furnishing residents with onsite washers and dryers dedicated solely to bedbug control, while instructing residents about the times for washing and drying and the heat settings necessary to kill bedbugs; furnishing residents with disposable and dissolvable plastic bags for the transportation of laundry, while instructing residents to segregate and seal all properly laundered items; and encouraging and/or assisting residents to move their beds into island positions and use petroleum jelly to coat the bottoms of the legs.
- k. IPM implementation in a multifamily building additionally requires management to create and enforce rules and policies designed to prevent infested property from entering the building, being moved around inside the building, or being recycled through the building by residents, for example, retrieving infested property that

other residents have put into the trash disposal area; while management also imposes an appropriate bedbug monitoring and inspection period before any vacant apartment is reoccupied.

- l. In conjunction with this teamwork approach, management may consider supplementing an IPM with the judicious use of safe and approved pesticides to be applied by a PPM, ensuring that residents are informed about the pesticides and where they have been applied, and providing medical contact information should there be side effects or adverse events caused by the chemicals.
- m. Throughout all phases of an IPM in a multifamily public housing building, management should offer assistance, through staff or social service agencies, to elderly or disabled residents who might encounter difficulty in preparing for implementation procedures or performing other responsibilities required of them; while management maintains complete and accurate records of all information and communications pertaining to the IPM and the infestation, making necessary and appropriate reports to governmental agencies, such as HUD, which monitor bedbug issues.

ANSWER: Defendants admit generally the information contained in the Federal Notices, but deny the remaining allegations in Paragraph 19, including subparagraphs a through m, inclusively.

20. In or around 2010, Defendants began to receive complaints from Poe Manor Residents that they were being bitten by bedbugs, and no later than January of 2011, Defendants knew for certain that Poe Manor had a severe infestation, bedbugs having been detected in some

36 apartments, a level of infestation severe enough to threaten every apartment in the building and become entrenched into the physical structure of the building.

ANSWER: Defendants deny the allegations as contained in Paragraph 20.

21. Yet for the next two and one-half years, until the summer of 2013, while the Poe Manor bedbug infestation did indeed spread to the point where bed bugs were detected in 80 or more apartments and did indeed become entrenched into the physical structure of the building, Defendants, as a matter of official policy express or implied, attempted to conceal the infestation from Residents, including those renewing leases or moving into the building for the first time, by not only omitting disclosure but also actively suppressing any mention of bedbugs in Resident meetings, notices, or other communications, and by telling Residents who complained about bedbugs to keep silent about them, which intentional course of conduct by Defendants foreclosed any possibility of forming an IPM team with Residents to make an effective, adequate, necessary, and appropriate response to the Poe Manor infestation.

ANSWER: Defendants deny the allegations contained in Paragraph 21.

22. Instead of forming an IPM team with Residents and a PPM focused on comprehensive nonchemical treatments, as described in the aforesaid official notices, Defendants chose to do precisely the opposite, and instead to rely solely or largely upon intermittent, ad hoc applications of pesticides by two local exterminators, Smithereen and Orkin, using chemicals unidentified to Residents, with the foreseeable result that the infestation was not only not eradicated, but instead, bedbugs were dispersed into other apartments and areas of the building, exacerbating a severe infestation to the point of it becoming building-wide and entrenched into the physical structure of the building.

ANSWER: Defendants deny the allegations as contained in Paragraph 22.

23. Meanwhile, Residents had to become aware on their own that their building had a serious bedbug problem that was moving from apartment to apartment, as Residents continued to observe bedbugs, continued to have their bodies attacked by them, continued to have their personal property invaded by them, and continued to talk to each other, often surreptitiously due to their fear of threatened sanctions for such speech by Defendant WHA, about what they were having to experience and endure.

ANSWER: Defendants deny the allegations as contained in Paragraph 23.

24. Residents became afraid to go sleep at night because bedbugs might crawl out and feed upon their blood; became afraid that in the morning they would find itchy, inflamed red bite marks or streaks on various parts of their bodies; became apprehensive about the risk of infections, allergic reactions, and/or scarring from these bedbug bites; felt shame and humiliation about the presence of bedbugs in their apartments and/or their building; and lived under constant fear and anxiety that bedbugs would remain in their apartments or invade them.

ANSWER: Defendants are without sufficient information to form a belief as to the truth of the averments as contained in Paragraph 24.

25. Because of being so bitten or afraid of being so bitten, Residents sometimes had to leave their homes and sleep elsewhere; had sometimes to experience becoming personal carriers of bedbugs by finding them crawling on their bodies or in their hair or on their clothing; had to often find bedbugs, their exoskeletons (shed skins), or their fecal remains of human blood in bedding, furniture, clothes, and other items of their personal property; and then had to immediately dispose of those infested property items while often lacking sufficient funds to promptly and adequately replace them.

ANSWER: Defendants are without sufficient information to form a belief as to the truth of the averments as contained in Paragraph 25.

26. Moreover, Residents had to live in perpetual anxiety about allowing family members or friends to visit their apartments and/or their building and perhaps themselves become new carriers of bedbugs, while also living with similar anxiety about visiting others outside of their building and inadvertently spreading the bedbug infestation to new locations.

ANSWER: Defendants are without sufficient information to form a belief as to the truth of the averments as contained in Paragraph 26.

27. After repeated oral reports to Defendants of observing and being bitten by bedbugs in his apartment, having had his personal property invaded and ruined, having suffered from unrelenting fear and anxiety because of the ongoing bedbug attacks and invasions, and no longer being able or willing to continue to live under such dangerous and unhealthy conditions, Former Plaintiff John Stewart, now deceased, delivered to Defendants, on or about April 30, 2013, a written complaint about the bedbug problem at Poe Manor, asking for effective action to eradicate the bedbugs in his apartment and suggesting that other apartments were similarly affected. A copy of this complaint was attached to the Original Complaint as Exhibit D and is incorporated by reference herein.

ANSWER: Defendants deny the allegations as contained in Paragraph 27, and further request that the Court disregard said allegations, as John Stewart was not deposed in this cause of action and is no longer a Plaintiff in this cause of action.

28. When his written complaint proved unavailing, and he continued to observe and be bitten by bed bugs in his apartment and continued to have his personal property invaded and ruined, Former Plaintiff John Stewart, now deceased, directed his legal counsel, in early June of

2013, to write a letter to Defendants about the Poe Manor bedbug infestation, urging that appropriate steps be taken to eradicate it. A copy of this letter, dated June 19, 2013, was attached to the Original Complaint as Exhibit E and is incorporated by reference herein.

ANSWER: Defendants deny the allegations as contained in Paragraph 28, and further request that the Court disregard said allegations, as John Stewart was not deposed in this cause of action and is no longer a Plaintiff in this cause of action.

29. Yet even after receiving this complaint and this letter, Defendants persisted in their intentional course of conduct to conceal the severe extent of the infestation from current Residents, to conceal from new Residents the fact that there was any bedbug problem in Poe Manor, to discourage and suppress communication by Residents about the bedbug problems they were experiencing, and to refuse to educate, motivate, and organize Residents to work as part of an IPM implementation team to control and eradicate the bedbug infestation, although the aforesaid complaint and letter apparently did help prompt Defendants to begin to acknowledge to Residents—albeit in a grossly understated and minimizing manner—that there were some bedbugs in Poe Manor and to provide some elementary written information about bedbugs.

ANSWER: Defendants deny the allegations as contained in Paragraph 29.

30. Meanwhile, Defendants continued to have pesticides, again unidentified to Residents, applied even more intensively in Residents' apartments and other areas of the building, which only served to exacerbate the infestation by spreading bedbugs into other areas of the building and become further entrenched into the building's physical structure.

ANSWER: Defendants admit only that it continued to eradicate the bedbug problem by employing professional exterminators who employed various methods of

remediation, including the use of pesticides, and deny the remaining allegations as contained in Paragraph 30.

31. Additionally, the aforesaid willful and wanton course of conduct by Defendants commencing in January of 2011 and continuing to date, was undertaken to enable and facilitate the collection of excessive, unjust, and confiscatory rental payments from Residents to Defendant WHA, as said Residents were deceptively trapped and manipulated into having to provide monthly compensation to Defendant WHA for apartments which no longer reflected the fair market values of similar apartments in Lake County, Illinois, as determined by HUD, but instead had been reduced, by virtue of Defendants' reckless and/or deliberate misconduct, to dangerous and virtually uninhabitable living units with no more than nominal values.

ANSWER: Defendants deny the allegations as contained in Paragraph 31.

32. At the time of the filing of this amended complaint, now approaching four and one-half years from Defendants' certain knowledge of the severe bedbug infestation, Poe Manor remains infested and overrun with bedbugs in all manners afore-described, and current Residents are renewing leases and new Residents are entering into initial leases without being informed by Defendants of the nature and extent of the massive, ongoing bedbug infestation of Poe Manor and without being given any warning whatsoever that Residents' bodies are subject to bedbug attack, their personal property subject to bedbug invasion and ruin, and their apartments rendered dangerous, unhealthy, unsafe, and uninhabitable because of Defendants' reckless and/or intentional conduct in failing to responsibly treat-- and in deliberately covering up and concealing--what is essentially a takeover of an entire multifamily building by rapidly proliferating predators that feast on human blood.

ANSWER: Defendants deny the allegations as contained in Paragraph 32.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this class action under Rule 23(a) and (b)(1)(2)(3) of the Federal Rules of Civil Procedure on behalf of a proposed class consisting of all persons who currently reside in Harry Poe Manor or formerly resided therein at any time from January 2011 to date (“Residents”).

ANSWER: Defendants admit that Plaintiffs bring the class action under Rule 23(a) and (b)(1)(2)(3) of the Federal Rules of Civil Procedure, but deny that this matter is suitable for class action status.

34. Poe Manor has approximately 155 apartments, which have been at all times complained of herein fully or almost fully occupied, making Residents so numerous that joinder of all class members is impracticable, as required by Rule 23(a)(1).

ANSWER: Defendants admit that Poe Manor has approximately 155 apartments, and deny the remaining allegations as contained in Paragraph 34.

35. Residents have been or are being endangered and damaged in the same manners by the same bedbug infestation in the same multifamily building, all of said endangerment and damage being attributable to and exacerbated by the same willful and wanton course of conduct by Defendants in deliberately concealing, suppressing communication about, totally ignoring for two and one-half years, and thereafter—continuing to date for the following two years while this class action lawsuit has been pending—refusing to take appropriate and effective measures, known by Defendants to be necessary, to control and eradicate the Poe Manor bedbug infestation, thereby demonstrating that there are questions of law or fact common to the class, as required by Rule 23(a)(2).

ANSWER: Defendants deny the allegations as contained in Paragraph 35.

36. Plaintiffs Timothy Phillips, Gilberto Colon, Chandra Thomas, Kevin Duty, Troy Thompson, Dennis Halter, Shondis Adams, Shimon Merriweather, Cedric Reams, Laniqua Kuykendall, Charlotte A. Davis, Alicia Ross, Caryn E. Price, Latasha Gatlin, Christopher Seals, Ronald Anderson, Tonya Eskilson, Alvin Arreaga, Walter Ori, and Carol Will, having been and/or continuing to be Residents at all times complained of herein, and having been and/or continuing to be endangered and damaged by the Poe Manor bedbug infestation in all of the manners set forth above—including having their bodies attacked, their personal property invaded and ruined, and their apartments invaded and rendered unsafe and uninhabitable—present claims as representative parties that are typical of the claims of Residents as a class, as required by Rule 23(a)(3).

ANSWER: Defendants deny the allegations as contained in Paragraph 36.

37. Plaintiffs intend to prosecute this action vigorously to secure both injunctive and compensatory relief for Residents; are being represented by a team of attorneys with experience in federal civil rights litigation, class actions, injunctions, environmental law, governmental law, nuisance abatement, and code violation litigation; have no interests that are contrary to or in conflict with the class; and will in all respects fairly and adequately protect the interests of Residents, as required by Rule 23(a)(4).

ANSWER: Defendants deny the allegations as contained in Paragraph 37.

38. Were separate actions able to be brought against Defendants by the hundreds of individual Residents, inconsistent or varying adjudications could establish incompatible standards for Defendants' conduct, or lack thereof, in response to the bedbug infestation of Poe Manor, which might substantially impair or impede the abilities of both plaintiffs and defendants to protect their interests in separate but similar actions, satisfying Rule 23(b)(1)(A)(B).

ANSWER: Defendants deny the allegations as contained in Paragraph 38.

39. Defendants' course of conduct in response to the bedbug infestation of Poe Manor generally applies to all Residents who have been or currently are being endangered and damaged by the infestation, now exacerbated so as to become building-wide and entrenched into the physical structure of the building, so that final relief against Defendants in the form of building-wide injunctive relief and/or compensatory damages would be appropriate to all Residents, satisfying Rule 23(b)(2).

ANSWER: Defendants deny the allegations as contained in Paragraph 39.

40. Among the numerous questions of law and fact common to Residents and predominating over questions affecting only individuals are:

- (a) Whether Poe Manor became infested by bedbugs and, if so, when Defendants became aware of it;
- (b) Whether Residents were endangered and/or damaged by this infestation;
- (c) Whether Defendants exacerbated this danger and damage;
- (d) Whether the conditions at Poe Manor were rendered less than habitable due to the infestation of bedbugs;
- (e) What, if anything, Defendants told Residents about this infestation;
- (f) Whether Residents renewed leases or signed new leases without being informed of this infestation;
- (g) Whether Poe Manor charged proposed class members excessive rent in light of the bedbug infestation so as to constitute unjust enrichment;

- (h) Whether Defendants unlawfully allowed a dangerous or unsafe condition to exist, and then exacerbated it, unreasonably subjecting proposed class members to bedbug attacks of the persons and invasions of their property;
- (i) What Defendants knew or should have known about the best practices and most effective methods of bedbug eradication in multifamily buildings;
- (j) Whether Defendants followed those best practices and most effective methods;
- (k) If not, whether this failure by Defendants allowed the bed bug infestation to spread to the point of becoming building-wide and entrenched into the physical structure of the building;
- (l) Whether Defendants' course of conduct violated Residents' 5th and 14th Amendment due process rights protecting them from willful and wanton governmental conduct that puts them into danger and then exacerbates that danger;
- (m) Whether Defendants maintained Poe Manor in compliance with HUD health and safety regulations;
- (n) If not, whether their failure to do so, while at the same time concealing the bed bug infestation from Residents, was willful and wanton and/or intentional misconduct;
- (o) Whether the conduct by Defendants constitutes deceptive acts or practices under Illinois law;
- (p) Whether Residents received rental assistance through the HUD Section 8 program and whether Defendants were paid excessive rent for substandard housing which they caused to become substandard;

- (q) Whether Residents are entitled to restitution of these excessive payments and to other monetary compensation for the endangerment and damages they suffered; and
- (r) Whether building-wide injunctive relief is necessary and appropriate to eradicate this building-wide and physically entrenched bedbug infestation; all of which common questions of law and fact together meet the requirements of Rule 23(b)(3).

ANSWER: Defendants deny that the numerous questions of law and fact are common to all residents warranting class certification. Defendants deny the remaining allegations in Paragraph 40, including subparagraphs a through r, inclusively.

41. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy for the above stated reasons and for the additional reasons that Residents are low income, elderly, and/or disabled individuals who likely lack the financial resources to litigate individual actions against Defendants; that consequently, according to information and belief, there have been no such individual actions filed concerning this bedbug infestation; and that concentrating the hundreds of such claims of Residents against Defendants in one single class action would serve the best interests of Residents, permit Defendants to obtain closure of numerous current and potential claims, and promote the public policy of judicial efficiency, further satisfying Rule 23(b)(3).

ANSWER: Defendants deny the allegations as contained in Paragraph 41.

42. Moreover, the difficulties of managing this class action would be substantially alleviated by official records kept by Defendants in the course of business, which records should identify (a) all Residents who comprise the class and their last known addresses; (b) what

Defendants knew about the infestation and when they knew it; (c) what information about the infestation was provided to Residents by Defendants and how and when it was provided; (d) what steps Defendants took or failed to take to address the infestation and when they were taken; (e) what pesticides have been used in Poe Manor, and where they were used, in response to the bedbug infestation; (f) what information about pesticides was provided to Residents by Defendants and how and when it was provided; (g) what reports Defendants have or have not made to HUD or other governmental agencies concerning this infestation of public housing; and (h) other information from Defendants' official records that will simplify and expedite the litigation of Residents' claims; which alleviation of class action management difficulties, together with the facts set forth in preceding allegations, result in full compliance with Rule 23(b)(3).

ANSWER: Defendants deny the allegations as contained in Paragraph 42.

COUNT I: WILLFUL AND WANTON VIOLATIONS
OF CONSTITUTIONAL RIGHTS AND FEDERAL HEALTH AND SAFETY
REGULATIONS

43. Plaintiffs re-allege and incorporate Paragraphs 1 through 42 of the Fourth Amended Complaint as Paragraphs 1 through 42 of Count I.

ANSWER: Defendants adopt and incorporate their answers to Paragraphs 1 through 42, as if more fully set forth herein, as their answers to Paragraphs 1 through 42, in Count I.

44. Illinois statute 720 ILCS 5/12-5.1, entitled "Criminal Housing Management," provides that it is a misdemeanor (first offense) or a felony (repeat offense) when a person who has management or control of residential real estate "recklessly permits the physical condition or facilities of the residential real estate to become or remain in any condition which endangers the

health or safety of a person other than the defendant.” A copy of this statute was attached to the Original Complaint as Exhibit F and is incorporated by reference herein.

ANSWER: Defendants generally admit the existence of the statute as indicated in Paragraph 44, but deny any violations of same. Defendants deny the remaining allegations as contained in Paragraph 44.

45. Illinois statute 720 ILCS 5/12-5 provides similar criminal penalties when a person “by any means, lawful or unlawful, recklessly performs an act or acts that cause bodily harm to or endanger the safety of another person.” A copy of this statute was attached to the Original Complaint as Exhibit G and is incorporated by reference herein.

ANSWER: Defendants generally admit the existence of the statute as indicated in Paragraph 45, but deny any violations of same. Defendants deny the remaining allegations as contained in Paragraph 45.

46. Illinois statute 720 ILCS 5/4-6 defines recklessness to include conscious disregard of “a substantial and unjustifiable risk that circumstances exist or that a result will follow...and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation,” with this statute further providing that “an act performed recklessly is performed wantonly.” A copy of this statute was attached to the Original Complaint as Exhibit H and is incorporated by reference herein.

ANSWER: Defendants generally admit the existence of the statute as indicated in Paragraph 46, but deny any violations of same. Defendants deny the remaining allegations as contained in Paragraph 46.

47. The 5th and 14th Amendments to the Constitution of the United States prohibit, as a denial of due process of law, governmental action which intentionally and foreseeably puts

vulnerable people into a position of threat and endangerment created and then exacerbated by that governmental body, and which foreseeably results in substantial injury to their persons and property and/or impairment of their liberty interests of mobility to come and go as they like, to raise their families without governmentally-caused interference and threat, and to enjoy ordinary and necessary human contact with family, friends, and society in general.

ANSWER: Defendants admit generally that both the 5th and 14th Amendments prohibit the deprivation of a person's liberty or property without due process of law, but deny the remaining allegations as contained in Paragraph 47.

48. The aforesaid conduct by Defendants, from January 2011 to date, (a) to fail to disclose to Residents the fact and/or severity of the bedbug infestation of Poe Manor; (b) to lull new Residents and their families—often including infants, young children, the elderly, and the disabled—into leasing apartments in a building infested and overrun with bedbugs which Defendants knew would attack their persons and invade their personal property; (c) to refuse to form with Residents and a PPM an IPM implementation team to address the bedbug infestation, an IPM team which Defendants knew was an absolutely necessity to begin to address such an infestation in a multifamily building; (d) and to fail otherwise to use or even approximate the best practices and most effective methods of bedbug control and eradication in multifamily buildings of which Defendants had official notice, knowledge, and information; which course of action and inaction allowed the bedbug infestation to spread over a four and one-half year period from one-quarter, to more than one-half, and then to the entirety of Poe Manor and become entrenched into the physical structure of the building, constitutes recklessness, willful and wanton, and/or intentional conduct in violation of the aforesaid constitutional guarantees, HUD

health and safety regulations, and other standards established by Illinois criminal statutes as afore-described.

ANSWER: Defendants deny the allegations as contained in Paragraph 48.

49. 42 U.S.C. Section 1983 provides that “every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....”.

ANSWER: Defendants admit the allegation as contained in Paragraph 49, but deny any violation thereof.

COUNT II: STATUTORY DECEPTIVE ACTS AND PRACTICES

50. Plaintiffs re-allege and incorporate Paragraphs 1 through 49 of the Fourth Amended Complaint as Paragraphs 1 through 49 of Count II.

ANSWER: Defendants adopt and incorporate their answers to Paragraphs 1 through 49 in Count I as their answers to Paragraphs 1 through 49 in Count II, as if more fully set forth herein.

51. Illinois statute 815 ILCS 505/2 et seq. provides that deceptive acts or practices include “the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact...in the conduct of any trade or commerce....” A copy of this statute was attached to the Original Complaint as Exhibit I and is incorporated by reference herein.

ANSWER: Defendants admit the existence of the statute as pled in Paragraph 51, but deny any violation thereof.

52. Defendants' failure since January 2011 to inform Residents of the material fact of the severe bedbug infestation of Poe Manor, including Defendants' recent attempts to understate or minimize the presence of bedbugs in the building, with the intent that Residents remain in the building, renew their leases, or move into the building, in reliance upon this concealment and misrepresentation, constitutes deceptive acts or practices under Illinois law.

ANSWER: Defendants deny the allegations as contained in Paragraph 52.

COUNT III: UNJUST ENRICHMENT

53. Plaintiffs re-allege and incorporate Paragraphs 1 through 52 of the Fourth Amended Complaint as Paragraphs 1 through 52 of Count III.

ANSWER: Defendants adopt and incorporate by reference their answers to Paragraphs 1 through 52 above, as their answers to Paragraphs 1 through 52 under Count III, as if more fully set forth herein.

54. Defendants' failure, since January 2011, to maintain Poe Manor in a habitable condition by responsibly eradicating a severe bedbug infestation, while continuing to collect full rent from Residents, constitutes unjust enrichment under Illinois law.

Wherefore, Plaintiffs, individually, and on behalf of Residents, respectfully pray for redress from Defendants as set forth in the Relief and Damages section of this Complaint.

ANSWER: Defendants deny the allegations as contained in Paragraph 54.

COUNT IV: BREACH OF WARRANTY OF HABITABILITY

55. Plaintiffs re-allege and incorporate Paragraphs 1 through 54 of the Fourth Amended Complaint as Paragraphs 1 through 54 of Count IV.

ANSWER: Defendants adopt and incorporate by reference their answers to Paragraphs 1 through 54 above, as their answers to Paragraphs 1 through 54 under Count IV, as if more fully set forth herein.

56. Defendants' failure, since January 2011, to maintain Poe Manor in a habitable condition by responsibly eradicating a severe bedbug infestation, which having initially infested one-third of the building and now affects the entire Poe Manor building and has become entrenched into the physical structure of the building, constitutes the breach of an implied warranty of habitability provided to Residents under Illinois law.

ANSWER: Defendants deny the allegations as contained in Paragraph 56.

COUNT V: BREACH OF CONTRACT

57. Plaintiffs re-allege and incorporate Paragraphs 1 through 56 of the Fourth Amended Complaint as Paragraphs 1 through 56 of Count V.

ANSWER: Defendants adopt and incorporate by reference their answers to Paragraphs 1 through 56 above, as their answers to Paragraphs 1 through 56 under Count V, as if more fully set forth herein.

58. Defendants' lease form for Poe Manor provides that management's obligations, inter alia, are "to maintain the Premises and the development in a decent, safe and sanitary condition, (and) to comply with the requirements of applicable building and housing codes and regulations of the U.S. Department of Housing and Urban Development materially affecting health and safety...." A copy of a portion of this lease form was attached to the Original Complaint as Exhibit J and is incorporated by reference herein.

ANSWER: Defendants admit the allegations as contained in Paragraph 58, but deny any violation thereof.

59. Defendants' Resident Handbook further provides that when an apartment has been treated by an exterminator, a "Notice of Completed Treatment" will be left in the apartment, which "names the chemicals used, identifies the location where the pesticides were applied and provides phone numbers or emergency medical information." A copy of a portion of this handbook was attached to the Original Complaint as Exhibit K and is incorporated by reference herein.

ANSWER: Defendants admit the allegations as contained in Paragraph 59, but deny any violations thereof.

60. Defendants' failures to maintain Poe Manor in a decent, safe and sanitary condition so as to comply with HUD regulations and local building codes; and to have a "Notice of Completed Treatment" left in Residents' apartments after pesticides were applied therein, constitute breaches of contract under Illinois law.

ANSWER: Defendants deny the allegations as contained in Paragraph 60.

COUNT VI: PREMISES LIABILITY

61. Plaintiffs re-allege and incorporate Paragraphs 1 through 60 of the Fourth Amended Complaint as Paragraphs 1 through 60 of Count VI.

ANSWER: Defendants adopt and incorporate by reference their answers to Paragraphs 1 through 60 of Counts I through V, as their answers to Paragraphs 1 through 60 of Count VI as if more fully set forth herein.

62. Defendants, as owners and/or managers of the Poe Manor, have, at all times complained of herein, had the duty to exercise reasonable care in the maintenance of their premises for the protection of Residents as well as visitors.

ANSWER: Defendants admit only those duties imposed by Illinois and Federal Law, and deny the remaining allegations as contained in Paragraph 62.

63. Defendants had certain knowledge of the existence of a bedbug infestation in their building no later than January 2011, and at that time either foresaw should have foreseen the likelihood of harm to Residents and visitors.

ANSWER: Defendants deny the allegations as contained in Paragraph 63.

64. The purpose for which the Plaintiffs and Residents entered the premises of Poe Manor was to occupy both their individual living units and the common areas as contemplated in their written and/or verbal lease agreements.

ANSWER: Upon information and belief, Defendants admit the allegations as contained in Paragraph 64.

65. Plaintiffs entered, occupied and made use of the premises of Poe Manor in the time, manner and circumstances contemplated under these lease agreements.

ANSWER: Defendants deny the allegations as contained in Paragraph 65.

66. The use to which the premises were put or were expected to be put was residential.

ANSWER: Defendants admit the allegations as contained in Paragraph 66.

67. Defendants acted unreasonably with respect to inspection, maintenance, repair, or warning to Residents or visitors about the bedbug infestation.

ANSWER: Defendants deny the allegations as contained in Paragraph 67.

68. Defendants had the opportunity and ability to repair and maintain the premises by controlling and eradicating the infestation, as well as the opportunity and ability to give adequate warning about it.

ANSWER: Defendants admit that it both had the opportunity and took the opportunity to remediate the bedbug infestation on the premises, and deny the remaining allegations as contained in Paragraph 68.

69. The burden on Defendants in terms of inconvenience or cost in providing this protection to Residents and visitors was outweighed by the associated harm of not doing so.

ANSWER: Defendants deny the allegations as contained in Paragraph 69.

70. Defendants, in failing to exercise reasonable care in the maintenance of the premises for the protection of Plaintiffs and Residents, proximately caused harm and damages to Plaintiffs and Residents as aforesaid.

ANSWER: Defendants deny the allegations as contained in Paragraph 70.

71. Defendants' conduct was willful, wanton, and indifferent to the rights, health and safety of the Plaintiffs so as to justify an award for punitive damages.

ANSWER: Defendants deny the allegations as contained in Paragraph 71.

RESERVATION OF RIGHTS

Pursuant to the Rules of Pleading and Practice, Plaintiffs and Residents reserve the right to assert additional violations of federal and state law, to add additional parties to this cause, to create subclasses should the Court so require, and to seek additional relief.

ANSWER: Defendants deny that Plaintiffs have rights in perpetuity to assert additional violations of federal and state law, and to add additional parties to this cause of action.

JURY TRIAL

Plaintiffs, individually, and on behalf of Residents, demand a trial by jury on all issues so triable.

ANSWER: Defendants demand a trial by jury on all issues so triable.

RELIEF AND DAMAGES

Plaintiffs, Timothy Phillips, Gilberto Colon, Chandra Thomas , Kevin Duty, Troy Thompson, Dennis Halter, Shondis Adams, Shimon Merriweather, Cedric Reams, Laniqua Kuykendall, Charlotte A. Davis, Willie C. Banks, Jr., Alicia Ross, Caryn E. Price, Latasha Gatlin, Christopher Seals, Ronald Anderson, Tonya Eskilson, Alvin Arreaga, Walter Ori, and Carol Will, individually and as class representatives of Residents, pray that Judgments be entered in their favor and against Defendant WHA, against Defendant Chambers individually and as Executive Director of Defendant WHA, against Defendant Cornelious individually and as Property Manager of Defendant WHA, and against Defendant Daniel individually and as Property Manager of Defendant WHA, in the following respects:

- A. That all necessary findings be made and orders be entered pursuant to Rule 23 certifying this proceeding as a class action; defining the class as all persons who currently reside in Poe Manor or formerly resided therein at any time from January 2011; authorizing the named Plaintiffs to represent this class (including any subclass); appointing their attorneys as attorneys for this class (including any subclass); and otherwise providing in all respects that this action proceed as a class action under Rule 23.
- B. That temporary and permanent injunctions be entered requiring Defendant WHA, and Defendants Chambers, Cornelious, and Daniel in their official capacities, (1) to immediately disclose to Residents and to HUD the history of the bedbug infestation of Poe Manor from January 2011 to date, including, but not limited to, its present scope and level of severity, which shall be ascertained, at Defendants'

expense, by a building-wide inspection by a PPM, other than Smithereen or Orkin, as agreed to by the parties or determined by the Court; (2) depending upon the results of this inspection, to forthwith create and implement an IPM for Poe Manor with the active participation of current Residents and an appropriate PPM, or alternatively, to have the building evacuated and fumigated, at Defendants' expense, in accord with HUD rules and policies and subject to further supervision by the Court; (3) to make periodic reports to the Residents and to the Court of the progress of the eradication efforts; and (4) to refrain from any retaliatory conduct whatsoever, including even the appearance thereof, toward Plaintiffs and/or Residents for their seeking of this judicial relief.

- C. That compensatory damages be itemized and assessed on all counts herein against Defendant WHA, and Defendants Chambers, Cornelious, and Daniel in their individual and official capacities, said damages to include, as appropriate under each count, recovery for Residents' deprivation of constitutional rights, excessive rental payments; for rent diminution and abatement; and deprivation of quiet enjoyment of their homes caused them by Defendants' course of conduct as afore-described, including Residents' recovery from Defendants of all costs of suit, attorneys' fees, expert witness fees, and further expenses of litigation as the Court deems justified and appropriate.
- D. That punitive damages also be awarded on Counts I, II, and VI herein against Defendants Chambers, Cornelious, and Daniel, in their individual capacities, in sufficient amounts to deter repetition of the same or similar conduct by other managers of Section 8 public housing or other similar multifamily buildings, and

that, pursuant to Illinois statute 745 ILCS 10/9-102, Defendant WHA be required to indemnify all such punitive damage awards, including costs of suit, expert witness fees, and attorneys' fees.

- E. That the Court retain jurisdiction of this cause until Poe Manor is shown to be bedbug free, and that Plaintiffs and Residents be provided with such other and further relief as the Court or Jury deems just and proper.

ANSWER: Defendants deny that Plaintiffs are entitled to any relief and damages, including, but not limited to: compensatory damages; damages derived from deprivation of constitutional rights and excessive rental payments; damages due to rent diminution and abatement; damages for claims of deprivation of quiet enjoyment of Plaintiffs' homes; all costs of suit, attorneys' fees, expert witness fees; claims for indemnity, and any and all claims for punitive damages, as well as all other claims for relief in subparagraphs A – E, above.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: QUALIFIED IMMUNITY

NOW COME Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL, by and through their attorneys SCHAIN, BANKS KENNY & SCHWARTZ, LTD., and plead the following as their first affirmative defense to Plaintiffs' Fifth Amended Complaint:

1. At all times relevant to the matters alleged in Plaintiffs' Fifth Amended Complaint, these Defendants, and each of them, performed no act which violated any clearly established and Constitutional right of Plaintiffs, of which a reasonable person would have known.

2. As a result, these Defendants, and each of them, are entitled to be clothed with official, qualified immunity from suit for money damages relative to the claims alleged in Plaintiffs' Fifth Amended Complaint.

WHEREFORE, the Defendants respectfully pray that this Honorable Court enter judgment in their favor, as a matter of law.

SECOND AFFIRMATIVE DEFENSE: 745 ILCS 10/2-201 AND 745 ILCS 10/2-109

NOW COME Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL, by and through one of their attorneys, ERIKA G. BALDONADO of SCHAIN, BANKS KENNY & SCHWARTZ, LTD., and for their Second Affirmative Defense to Plaintiffs' action herein, pursuant to Sections 2-201 and 2-109 of the Tort Immunity Act (745 ILCS 10/2-201), state as follows:

1. Plaintiffs have filed their Fifth Amended Complaint against Defendants alleging that Defendants acted willfully and wantonly in addressing a bed bug problem in their residence at Harry Poe Manor (hereinafter referred to as "POE MANOR").

2. Defendants have answered Plaintiffs' Fifth Amended Complaint, denying all allegations of wrongdoing, including but not limited to: denying all allegations of negligence and willful and wanton conduct in their handling of the bed bug problem at POE MANOR.

3. At all pertinent times as alleged in Plaintiffs' Fifth Amended Complaint, as part of their bed bug remediation treatment plan and to help eradicate the bed bug problem at HARRY POE, Defendants engaged various discretionary judgment calls on how to best treat and control the bed bug problem at HARRY POE, which required Defendants to balance various interests that compete for the time and resources of the property managers and custodial staff, (*e.g.*,

efficiency and safety; resources; time; each custodial staff member's capabilities vs. more expensive retention of extermination professionals, *etc.*).

4. Based on the balancing of these competing interests, Defendants engaged the professional services of two different exterminating companies – Orkin and Smithereen, each of whom touted their skill and expertise in bed bug treatment and control.

5. All Defendants are local public entities and/or local public employees that are entitled to all of the protections and immunities afforded to them under the Illinois Tort Immunity Act, 745 ILCS 10/1-*et seq*).

6. Pursuant to Section 2-201, discretionary immunity, of the Tort Immunity Act, Defendants are immune from allegations for both negligence and willful and wanton conduct for their discretionary judgment calls and exercises of their discretion in deciding how to best to handle, address, and treat the bed bug problem at HARRY POE.

7. Specifically, Section 2-201 states as follows:

§2-201. Determination of policy or exercise of discretion

Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion (745 ILCS 10/2-201).

8. So, too, Section 2-109 states as follows:

2-109. Public Employee

A local public entity is not liable for an injury resulting from an act or omission of its employees where the employee is not liable. (745 ILCS 10/2-109).

9. Because the Defendants exercised their discretion in making policy decisions and judgment calls regarding the handling, treatment and control of bed bugs at HARRY POE, they

are entitled to absolute immunity under Sections 2-201 (745 ILCS 10/2-201) and 2-109 (745 ILCS 10/2-109) of the Tort Immunity Act.

WHEREFORE, the Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL assert they are immune from liability to Plaintiffs and that Plaintiffs are not entitled to the relief they seek and that Plaintiffs are not entitled to recover any sum of money whatsoever.

THIRD AFFIRMATIVE DEFENSE: CONTRIBUTORY NEGLIGENCE

NOW COME Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL, by and through one of their attorneys, ERIKA G. BALDONADO of SCHAIN, BANKS KENNY & SCHWARTZ, LTD., and plead the following as their third affirmative defense to Count VI of Plaintiffs' Fifth Amended Complaint:

1. That at the times and places alleged by the Plaintiffs herein, Plaintiffs were under a duty to exercise reasonable care and caution for their own safety.

2. Notwithstanding said duty, and in violation of same, Plaintiffs committed the following negligent acts or omissions:

- a. carelessly and negligently failed to properly dispose of bedbug infested furniture and household items after being advised to do so;
- b. carelessly and negligently failed to abide by and adhere to the extermination checklist of how to properly prepare their units for bedbug inspections and/or treatments;

- c. carelessly and negligently failed to bag their clothing and other items in their units to prevent the re-infestation and/or spread of bedbugs, despite having been advised to do so;
- d. carelessly and negligently failed to heat and/or dry their clothing to a certain temperature and/or degree in the dryer, despite having been advised to do so;
- e. carelessly and negligently failed to repack cleaned and/or treated clothing in new bags, to prevent re-infestation, despite having been advised to do so;
- f. carelessly and negligently allowed into their units bedbug infested clothing, furniture and/or belongings of others; and/or
- g. carelessly and negligently brought into their units previously discarded clothing, furniture and/or belongings of others.

3. As a direct and proximate result of Plaintiffs' own negligence, they caused or contributed to the bedbug infestation in their units and throughout Harry Poe Manor.

4. That § 2-1116 of the Illinois Code of Civil Procedure specifically provides that a Plaintiff shall be barred from recovering damages if the trier of fact finds that the Plaintiff's contributory negligence is more than fifty percent (50%) of the proximate cause of the injury or damage for which recovery is sought.

5. Because Plaintiffs' own negligence amounts to more than fifty percent (50%) of the proximate cause of their claimed damages, Plaintiffs' recovery is barred.

WHEREFORE, the Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL assert they are not liable to the Plaintiffs in any amount whatsoever and further request that the costs of this action be assessed against the Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE - COMPARATIVE NEGLIGENCE

NOW COME Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL, by and through one of their attorneys, ERIKA G. BALDONADO of SCHAIN, BANKS KENNY & SCHWARTZ, LTD., and plead the following as their fourth affirmative defense to Count VI of Plaintiffs' Fifth Amended Complaint:

1. Defendants reallege paragraphs 1 through 3 of its Third Affirmative Defense as paragraphs 1 through 3 of its Fourth Affirmative Defense, as if the same were again fully set forth herein.

4. That, if the Plaintiffs should obtain any judgment for damages against Defendants in this matter, such judgment for damages should be limited because Plaintiffs are guilty of comparative negligence in proximately causing their own injuries.

5. That §2-1116 of the Illinois Code of Civil Procedure provides that where a plaintiff's comparative negligence is fifty percent (50%) or less of the proximate cause of injury or damages for which recovery is sought, any damages allowed will be diminished in direct proportion to the amount of fault attributable to the plaintiff.

6. That that if the trier of fact finds that Plaintiffs' comparative fault is fifty percent (50%) or less, then Plaintiffs' recovery shall be diminished in direct proportion to Plaintiffs' degree of fault.

WHEREFORE, the Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL assert they are not liable to the Plaintiffs in any amount whatsoever and further request that the costs of this action be assessed against the Plaintiffs.

FIFTH AFFIRMATIVE DEFENSE
SUPERVISION IMMUNITY SECTION 3-108(b)

NOW COME Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL, by and through one of their attorneys, ERIKA G. BALDONADO of SCHAIN, BANKS KENNY & SCHWARTZ, LTD., and for their Fifth Affirmative Defense to Plaintiffs' action herein, pursuant to Section 3-108 of the Tort Immunity Act (745 ILCS 10/3-108), state as follows:

1. Plaintiffs have filed their Fifth Amended Complaint against Defendants alleging that Defendants acted willfully and wantonly in addressing a bed bug problem in their residence at Harry Poe Manor (hereinafter referred to as "POE MANOR").

2. Defendants have answered Plaintiffs' Fifth Amended Complaint, denying all allegations of wrongdoing, including but not limited to: denying all allegations of negligence and willful and wanton conduct in their handling of the bed bug problem at POE MANOR.

3. At all pertinent times as alleged in Plaintiffs' Fifth Amended Complaint, as part of their bed bug remediation treatment plan and to help eradicate the bed bug problem at HARRY POE, Defendants engaged the professional services of two different exterminating companies – Orkin and Smithereen, each of which had touted its experience and expertise in bed bug treatment and control.

4. All Defendants are local public entities and/or local public employees that are entitled to all of the protections and immunities afforded to them under the Illinois Tort Immunity Act, 745 ILCS 10/1-*et seq*).

5. Here, all Defendants are immune from liability for failing to supervise the inspections conducted and/or the exterminating work performed by Orkin and Smithereen during

their treatment for bed bugs at HARRY POE. Section 3-108, supervision immunity, of the Tort Immunity Act provides as follows:

3-108. Supervision Immunity

§ 3-108(a). Except as otherwise provided in this Act, neither a local public entity nor a public employee who undertakes to supervise an activity on or the use of any public property is liable for an injury unless the local public entity or public employee is guilty of willful and wanton conduct in its supervision proximately causing such injury.

§ 3-108(b). Except as otherwise provided in this Act, neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation, and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury. (745 ILCS 10/3-108(b)). (Effective 12/02/98).

5. Section 3-108, immunity for negligent supervision or for a failure to supervise, is applicable to this case. Section 3-108 grants immunity for the negligent supervision of any activity on or the use of public property and also grants immunity for failure to supervise any activity on or the use of public property unless the common law/case law or a statute, code or regulation mandates supervision.

6. In this case, either and/or both Sections 3-108(a) and 3-108(b), immunity for negligent supervision and for failure to supervise, cloak all Defendants in immunity for any inadequate supervision and/or for the failure to supervise the bed bug inspections conducted by Orkin and Smithereen and for any failure to supervise the bed bug extermination treatments performed by Orkin and Smithereen during all relevant times as pled in Plaintiffs' Fifth Amended Complaint.

WHEREFORE, Defendants, WAUKEGAN HOUSING AUTHORITY, CHARLES CHAMBERS, RENWICK CORNELIOUS, and TARA DANIEL, deny that the Plaintiffs are entitled to any damages whatsoever, and ask that the cost of this action be assessed against the Plaintiffs.

Respectfully submitted,

WAUKEGAN HOUSING AUTHORITY,
CHARLES CHAMBERS, RENWICK
CORNELIOUS AND TARA DANIEL

By: s/Erika G. Baldonado
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