

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, 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 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)
WAUKEGANHOUSING 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.: 13C08444

Judge: John J. Tharp, Jr.

JURY TRIAL DEMANDED

FIFTH AMENDED CLASS ACTION COMPLAINT
FOR INJUNCTIVE AND COMPENSATORY RELIEF

Now come 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 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, by their attorneys

Anna Elizabeth Finn Vinson, and Amy Lynn Lonergan of Finn & Finn, Ltd.; Jed Stone of Stone & Associates, Ltd; and Jeffrey Lipman of Lipman Law Firm, P.C., and for their Fourth Amended Complaint of Defendants, 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, individual and as Property Manager of Harry Poe Manor, 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”).

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.

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.

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.

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.

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.

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.

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, Willie C. Banks, Jr., 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.

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.

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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”).

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).

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).

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, Willie C. Banks, Jr., 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).

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).

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).

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).

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).

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).

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).

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.

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.

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.

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.

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.

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.

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....”.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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

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

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.

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.

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.

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.

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.

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.

JURY TRIAL

Plaintiffs, individually, and on behalf of Residents, 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.

Respectfully submitted,

/s/ Amy Lynn Lonergan

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