IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CIVIL ACTION NO.: 1:14-CV-422

KHRISTEN SELLERS, ALFREDA CROWDER, LATOYA HASTY, SHANNON BASS, ANGELA ALLBROOKS, LATINA COVINGTON, JUDY MCKOY, *and* **ANGELA MOOREHOUSE,** *Plaintiffs*, **v.** **FOUR-COUNTY COMMUNITY SERVICES INCORPORATED, JOHN WESLEY,** *and* **ERIC PENDER,** *Defendants*.	**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

STATEMENT OF THE CASE

Plaintiffs filed the instant complaint in the Superior Court Division of Scotland County, North Carolina, on September 10, 2012. Plaintiff's complaint alleged sexual harassment and extortion for sexual acts by Defendants while Plaintiffs sought low-income housing benefits pursuant to 42 USC § 1437f ("Section 8 benefits"), as well as Defendants' acts of retaliation against Plaintiffs, other potential plaintiffs, and witnesses in the matter. Defendants John Wesley ("Wesley"), Four-County Community Services ("FCCS"), and Eric Pender ("Pender") each filed timely Answers to that Complaint.

Plaintiffs filed an Amended Complaint on February 15, 2013, and a Second Amended Complaint and Demand for Trial by Jury on April 21, 2014. Defendants each filed a timely Answer to each Amended Complaint.

Plaintiffs' Second Amended Complaint included a proposed new cause of action, alleging violations under the Federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.* On May 22, 2014, Defendants filed a Notice of Removal in the United States District Court for the Middle District of North Carolina, based on the introduction of this claim and the fact that it raised an issue of Federal question. Defendants served all parties with Defendants' Notice of Removal to Federal Court on May 23, 2014.

BACKGROUND

1 STATEMENT OF THE FACTS

Plaintiffs are eight women who all are or were applicants to the Section 8 Voucher program or voucher recipients. (See, generally, D.E. 14.) All Plaintiffs accuse Eric Pender and/or John Wesley of FCCS of using their authority within the Section 8 Voucher program to extort sex from the Plaintiffs. Some of the Plaintiffs accepted this offer; some did not. *Id.* The Plaintiffs divide straight down racial lines as to whom they accuse of this

sexual extortion. Eric Pender extorted the African-American Plaintiffs. John Wesley extorted the non-African-American Plaintiffs[1]. *Id.*

As detailed below, several Plaintiffs and witnesses further accuse FCCS of retaliation for participation in this action, or for their relationship to participants in this action. (D.E. 14 ¶ 34.)

Pender and Wesley committed this sexual extortion while operating in their capacity as officers of FCCS. (D.E. 14 ¶ 39.) FCCS knew or should have known about the actions of Pender and Wesley. (D.E. Both Pender and Wesley remain employed by FCCS. (D.E. 14 ¶ 41.)

As discussed in significantly more detail below, FCCS is presently attempting to retaliate against Plaintiff Khristen Sellers by revoking her Section 8 voucher in a manner that directly conflicts with their regulatory directives. FCCS provides as pretext for this revocation housing safety and quality issues regarding Sellers's rented home that predate Sellers's tenancy. These issues were not "noticed" by FCCS prior to Sellers's move-in or prior to her filing of the instant lawsuit. (See, generally, Sellers Aff. (Ex. 6), Windsor Aff. (Ex. 8), Exhibits 11-16.)

[1] This holds true for Samantha Oxendine, who is a recent client of the undersigned and will seek to join as a Plaintiff after the scheduling conference set to occur before July 9, 2014.

Plaintiffs' claims include negligence, intentional infliction of emotional distress, civil conspiracy, violations of the Fair Housing Act, assault, and battery. (D.E. 14 ¶¶ 42-64.)

2 MECHANICS OF THE SECTION 8 VOUCHER PROGRAM

2.1 Overview

The Voucher Program is one of several rent subsidy programs aiding lower income families commonly known as "Section 8." Pursuant to 42 U.S.C. § 1437f(a), the purpose of Section 8 programs, including the Voucher program, is to aid "lower income families in obtaining a decent place to live and of promoting economically mixed housing . . ." *Id*. The Voucher Program is designed to aid low-income families by providing rent subsidies to enable them to rent units in the existing private rental housing market. The United States Department of Housing and Urban Development ("HUD") allocates funds to local public housing agencies ("PHAs" or "PHA") throughout the nation to administer the Voucher Program. The administration of the Voucher Program is governed by federal regulations promulgated by HUD pursuant to its rule-making authority under 42 U.S.C. §§ 1437c-1437d.

When a person applies for the Voucher Program with a PHA, her application is generally placed on a waiting list. It is not uncommon for an application to be on this list for a long period of time before a voucher becomes available for the applicant. *Young v. Maryville Hous. Auth.,* No. 3:09-CV-37, 2009 U.S. Dist. LEXIS 56539, at **10, 11, 30, & 31

(E.D. Tenn. July 2, 2009); *Dews v. Town of Sunnyvale*, 109 F.Supp.2d 526, 538 (N.D. Tex. 2000). Once the PHA issues a Section 8 applicant a voucher off the waiting list, the now Section 8 participant has protected property interest that cannot be terminated by the PHA without due process of law. *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919, 925 (11th Cir. 1982); *Guerrero v. City of Kenosha Hous. Auth.,* No. 10 Civ. 1090, 2012 U.S. Dist. LEXIS 5813 *11 (E.D. Wis. Jan. 18, 2012); *McCall v. Montgomery Hous. Auth*., 809 F.Supp. 2d 1314, 1324 (M.D. Ala. 2011); *Stevenson v. Willis*, 579 F. Supp.2d 913, 919 (N.D. Ohio 2008). A PHA may deny or terminate assistance based only on the grounds set forth in 24 C.F.R. §§ 982.552(c)(1)(i)-(xi) and 982.551(b)-(m).

Once the Section 8 applicant learns she can receive a Voucher, the PHA will give her a written Voucher on HUD Form 52646. This form describes the unit size the participant qualifies for and the date when the Voucher expires. Generally, she has at least 60 days (or more if the PHA grants any extension) to find a place to lease. Housing Choice Voucher Program Guidebook, Chapter 8, Housing Search and Leasing, p. 8-11. The PHA and Section 8 participant both sign HUD Form 52646 and it is considered a contract, whereby the PHA is obligated to provide housing assistance to the Section 8 participant if she finds an approvable unit and complies with HUD's rules concerning family obligations. *Id.*

HUD requires, before any subsidies related to the Voucher are paid, that the unit the Section 8 participant has selected pass HUD's Housing Quality Standards ("HQS").

The purpose of the HQS is to accomplish the goal of the Voucher Program, which is to provide "decent, safe and sanitary" housing to low-income families. Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards, p.10-1[2]. The HQS requirements are described in 24 C.F.R. § 982.401 and in more detail in Chapter 10 of the Housing Choice Voucher Program Guidebook, Housing Quality Standards; HUD Notice PIH 2011-29(HA); HUD's Housing Inspection Manual, Section 8 Existing Housing Program; and the various audits performed by HUD's Office of Inspector General about PHA conducted by HQS Inspections.[3] (Attached as Exhibits 11, 12, 13, and 14).

The HQS consist not only of performance requirements but also of acceptability criteria. 24 C.F.R. § 982.401(2)(i)(A)(B). The owner or private landlord is responsible for making sure the unit meets the HQS. 24 C.F.R. § 982.404(a). If the unit does not ultimately pass inspection, the Section 8 participant must find another unit that does.

Once a unit passes the HQS inspection, the Section 8 participant and landlord then enter into a lease agreement. At the same time, the landlord enters into a Housing Assistance Payment contract (hereinafter referred to as the "HAP contract") with the PHA. According to this arrangement, the Section 8 participant pays a portion of the contract rent calculated pursuant to the program regulations, while the PHA pays the

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[2]http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook

[3] When construing a regulation, controlling weight is given to the administrative interpretation, unless this interpretation is "plainly erroneous or inconsistent with the regulation." *Thorpe v. Housing Auth. City of Durham*, 393 U.S. 268, 276, 89 S.Ct. 518, 523 (1969).

balance pursuant to the HAP contract. It is through the HAP contract that the federally funded subsidies are paid; the actual Section 8 benefits only begin to "work" for the Section 8 participant once the PHA and landlord execute the HAP contract. According to the HAP contract, the Section 8 participant pays to the landlord the portion of the rent the PHA has determined is her responsibility based on her income. The PHA then pays then remaining portion (or in some circumstances all of the rent if no income) of the rent to the landlord from the funds supplied by HUD. The PHA's payment to the landlord is often called the "HAP payment." Housing Choice Voucher Program Guidebook, Chapter 11, Housing Assistance Payment Contracts, pp. 11-1 to 11-19.

The HAP contact consists of three parts: Part A, B, and Part C. Part A contains identifying information about the private landlord and the Section 8 participant and her household members if any, the contract rate of rent, the amount of that rent the PHA will pay to the private landlord, the amount of the rent the Section 8 participant will pay to the landlord based on her income, and the beginning and end dates of the HAP contract. Part B is the body of the contract; it spells out the responsibilities of the owner or private landlord. Part B requires that owner to maintain the unit. By its terms, the Section 8 participant is not considered a third party beneficiary to Part B of the HAP contract; she therefore cannot sue to enforce this part. Part C of the HAP contract is known as the Tenancy Addendum. The Addendum automatically becomes a part of every lease agreement the Section 8 participants have with their landlords. Part C trumps any

inconsistency between the lease agreement and the Addendum. In contrast to Part B, the Section 8 participant may sue to enforce or defend under Part C of the HAP contract, generally only against the landlord for such actions like breach of lease. *Id.*

The HAP contract may be terminated for a variety of reasons, including when the residence the participant leases no longer meets HUD's HQS standards. 24 C.F.R. §982.404(a)(2); Housing Choice Voucher Program Guidebook, Chapter 15, Termination of Assistance and HAP Contracts, p. 15-4. The HAP contract also automatically terminates if 180 days elapses from the last HAP payment to the owner or landlord. 24 C.F.R. § 982.555; Housing Choice Voucher Program Guidebook, Chapter 15, Termination of Assistance and HAP Contracts, p. 15-3. The PHA must always issue a Voucher to the Section 8 participant if the Section 8 participant and her family are living in unsafe housing and the landlord refuses to make the necessary repairs. Housing Choice Voucher Program Guidebook, Chapter 8, Housing Search and Leasing, p. 8-10. A family may move when the PHA chooses to terminate the HAP contract for the owner's breach. 24 C.F.R. §§ 982.314(b)(1)(i) and 982.403(c)(3). A participant may also move one or more times with continued assistance either within or outside the PHA's jurisdiction. 24 C.F.R. § 982.314(b)(3)(c).

2.2 After the initial inspection and move-in.

Section 8 participants are required to complete at least an annual reexamination process to assess continuing eligibility and to determine the amount of the participant's

share of the rent. 24 C.F.R. § 982.516. This process involves the submission of information and documentation relating to such matters as the nature and amount of family income, and assets, family size and composition. The annual reexamination should occur 90-120 days before the date the results of the reexamination are to "take effect." HUD Choice Voucher Program Guidebook, Chapter 12, Reexaminations, p. 12-2. At the same time of the annual reexamination, HUD also requires the PHA to conduct an annual inspection of the participant's unit. 24 C.F.R. § 982.405. The annual inspection is generally conducted at this time, i.e., well before the lease renewal date, to give the landlord sufficient time to make any repairs to the property. HUD's Home Inspection Manual, Section 8 Existing Housing Program, p. 25.

Again, the unit must pass HUD's HQS for the rental subsidy to be paid on behalf of the Section 8 participant. If the unit does not pass at the annual inspection, depending on the severity of the repairs, the PHA may require the landlord to make the necessary repairs within 24 hours (life threatening ones), 30 days, or any other extension the PHA may grant. 24 C.F.R. § 982.404(a). The PHA must give the landlord written notification of the HQS violations. The PHA must not make any HAP payments to the landlord for the unit that fails the HQS requirements, unless the landlord or owner corrects the defects within a specified time and the PHA verifies these necessary repairs. *Id.*

PHA may also reduce, suspend, or stop paying the HAP payments to the landlord or owner. 24 C.F.R. 982. § 404(a)(2). If the PHA abates or stops the HAP payment, it

must give the landlord 30 days written notice of the abatement. Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards, p. 10-29. In this notice, HUD requires that the PHA give the exact date when the abatement will begin so to comply with the 30 day notice requirement. *Id.* Abatement of the HAP payment to the landlord must occur the first month upon the landlord's failure to comply. *Id.* at p. 10-27. During this period of abatement, the tenant is required to continue to pay her portion of the rent, if any, to the landlord. The HAP contract automatically terminates if 180 days lapses from when the last HAP payment was issued to the private landlord. Housing Choice Voucher Program Guidebook, Chapter 15, Termination of Assistance and HAP Contracts, p. 15-3.

If the repairs are still not made, then the PHA may also elect to terminate the HAP contract with the private landlord. Like with abatement of the PHA's portion of the rent, HUD requires that the PHA give the landlord 30 day written notice of when the HAP contract terminates. Before this termination, however, HUD requires the PHA to issue another Voucher to the Section 8 participant (who is otherwise eligible) and allow her enough time to move with it. Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards, p.10-27 ("The PHA should not terminate the contract until the family finds another unit provided the family do so in a reasonable time.") In this scenario, the Section 8 participant does not have to reapply for the Voucher Program all over again and have her application sit on a waiting list. Once the PHA elects to terminate

the HAP contract, the Section 8 participant is to be notified that she will be issued another Voucher so she can move. HUD considers both the abatement of the HAP payments and termination of the HAP contract to be the "last resort" remedies the PHA should take after asking the landlord or owner to correct the HQS violations. HUD OIG Audit Report, HUD Lacked Controls over the Physical Condition of Section 8 Voucher Program Housing Stock, No. 2008-AT-0003, p. 17.

2.3 The timing of the HAP contract termination for HQS violations.

This requirement to issue another otherwise eligible Section 8 Voucher participant another Voucher in advance of the termination of the HAP contract is vital; it allows for the housing assistance that is Voucher provides to remain uninterrupted and thereby provides the Section 8 participant and her family stability. If the HAP contract terminates before the participant is issued a new one but not given enough time to move, she, in effect, will be without the benefits of any Voucher. Once the HAP contract terminates, the only relationship that will exist is the one between the landlord and Section 8 participant. That means if the Section 8 participant stays in the unit after the date when the HAP contract terminates, she is then responsible for the full amount of rent from then onwards. Unable to pay the full rent, the Section 8 participant faces eviction and homelessness. Adding insult to injury, she also faces the prospect of receiving a money judgment entered against her for past due rent. Adverse information like an eviction judgment and/or

money judgment will certainly become part of the Section 8 participant's credit history and known to any prospective landlord who performs background checks.

And, it is not good enough for the PHA to just issue the Section 8 participant another Voucher before the HAP contract terminates; it must do so within a reasonable time before the termination. The new Voucher will not be "in effect" so to speak, until the Section 8 participant finds a new until and it passes the required HQS inspection. If the Section 8 participant moves into the unit before it passes the HQS inspection, she is responsible for the full rent. The subsidy in this instance will only be active from the date the unit passes the HQS inspection, if it does so at all, not upon move-in.

As for inspections, they are not quickest things to get on the PHA's scheduling calendar. For a PHA with "up to 1, 250 budgeted units," the HQS inspection must occur within 15 days from when the Section 8 participant or owner submits the necessary paperwork requesting approval of the unit. Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards, p.10-25. For the PHA with more than 1,250 budgeted units, the PHA must conduct the HQS inspections within a "reasonable" amount of time, although the overall preference is the same 15 days is possible. *Id.* Whenever the inspection takes place there is always the possibility that it will not pass upon the initial inspection; repairs may be needed, which calls for more time and then even more time to schedule the follow up inspection.

The timing of all of this—when the HAP contract terminates, when the new Voucher to move is issued, and when the new unit passes inspection—is therefore critical. If not timed correctly, the Section 8 participant has no other options but to (1) incur a debt that she should never have to if she stays in the HQS deficient unit or moves into a new one that has yet to pass inspection, (2) have a judgment for possession rendered against her, or worse, (3) face imminent homelessness. Neither of these options furthers the overarching goal of the Voucher Program: to help low-income families live in decent and safe places by providing rental subsidies. These options also run afoul to what HUD requires and the constitutional protections that attach to the property interests created by these Vouchers.

RELIEF SOUGHT

Plaintiff seeks an order granting injunctive relief in three forms:

1 Forcing FCCS to abide by the regulations governing the Section 8 Voucher program by granting Sellers a new voucher and extending the Housing Assistance Payment ("HAP") contract with her landlord for sufficient time (Plaintiffs suggest three months) for Sellers to find a new location in which to use her voucher;

2 Preventing the Defendants from engaging in any contact whatsoever with Sellers, such that all communication between Defendants and Sellers is through counsel; and

3 Preventing Defendants from adversely affecting the benefits received by any plaintiff in this action or any person disclosed by the Plaintiffs as having knowledge relevant to this action, now or in the future, without prior approval from the Court.

ARGUMENT

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008)(internal citations omitted). "[T]he substantive standard for granting a temporary restraining order is the same as the standard for entering a preliminary injunction." *Tchienkou v. Net Trust Mortgage*, CIV.A 3:10-CV-00023, 2010 WL 2375882 (W.D. Va. June 9, 2010), *see also Com. of Va. v. Kelly,* 29 F.3d 145, 147 (4th Cir. 1994). The party seeking the injunction must show that the remedy is warranted by a "clear showing." *Winter*, 555 U.S. at 22, 129 S. Ct. at 376.

Injunctive motions are evaluated on a "sliding scale" that allows for a strong showing on one element to overcome a weaker showing on another. *Winter*, 555 U.S. at 51, 129 S. Ct. at 392. For example, if a plaintiff makes a strong showing on likelihood for success, the Court may apply a correspondingly lower standard to likelihood of harm. *Id.*

The federal Fair Housing Act ("FHA") prohibits discrimination housing based on, *inter alia*, sex. 42 U.S.C.A. § 3604 (West). Prohibited activities include:

- Creating a hostile work environment because of sex;
- Imposing different terms, conditions, or privileges, or denying or limiting services or facilities in connection with an individual's rental of a residence based on sex;

- Making statements to individuals indicating a limitation, preference, or discrimination, or the intent to discriminate, based on sex;

- Threatening, intimidating, or interfering with individuals in their enjoyment of a residence based on sex;

- Coercing individuals to deny or limit the benefits provided in connection with the individuals' rental of a residence based on sex or retaliation;

- Engaging in unwelcome sexual advances, requests for sexual favors, or any other verbal or physical conduct of a sexual nature, such that submission to that conduct is made a term or condition of an individual's residence; and

- Interference, coercion, threats, or intimidation directed toward an individual because such individual has exercised a right protected by the FHA.

42 U.S.C.A. § 3604, 3617 (West).

A corporation and its officers may be held liable for compensatory damages for their failure to ensure the corporation's compliance with the Fair Housing Act (FHA), whether or not the officers directed or authorized the particular discriminatory acts that occurred. *Holley v. Crank*, C.A.9 (Cal.) 2001, 258 F.3d 1127, certiorari granted 122 S.Ct. 1959, 535 U.S. 1077, 152 L.Ed.2d 1020, vacated 123 S.Ct. 824, 537 U.S. 280, 154 L.Ed.2d 753, on remand 386 F.3d 1248. 42 U.S.C.A. § 3604 (West).

1 PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

To show a substantial likelihood of success on the merits, Plaintiffs must make a "clear showing" that they are likely to succeed at trial, but do *not* have to show that it is *certain* that they will win at trial. *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013).

1.1 Plaintiffs have a substantial likelihood of success on the merits as to their non-retaliation claims.

1.1.1 The large number of plaintiffs is probative of the Plaintiffs' likelihood of success on the merits.[4]

The sheer number of plaintiffs in this action is probative as to the strength of their claims. There are currently eight named plaintiffs in the instant action and the undersigned also represents a ninth individual who will seek to join as a plaintiff after the scheduling conference. Nine women *currently* accuse Pender and/or Wesley of violating the FHA by using their authority and influence to extort sex in exchange for benefits.

1.1.2 The number of witnesses is probative of the Plaintiffs' likelihood of success on the merits.

Plaintiffs have numerous supporting witnesses in this matter. Just prior to the filing of this motion, the Plaintiffs produced seven individuals with relevant knowledge in addition to the many previously identified through discovery responses and depositions. The witnessed produced **just today** include:

- A woman who is believed to have knowledge that Wesley directed her to a psychiatrist who would provide psychological diagnoses in exchange for sex, raising her position on the waiting list. This individual has also been intimidated by Wesley and received threats from Pender that he would "beat [Plaintiff Shannon Bass]'s ass for running her mouth about him;"

[4] Due to the emergency nature of the instant action, the lack of physical proximity between counsel and Plaintiffs, and the sheer number of plaintiffs and witnesses, Plaintiffs are only able to produce a limited number of affidavits in support of this motion at this time.

- A landlord who formerly worked with FCCS and who, herself, received lewd advances from Wesley;

- A woman who Wesley propositioned for sex in exchange for a Section 8 voucher and who has knowledge that Wesley abuses illegal drugs;

- A woman who previously worked at a rental agency and received a proposition from Wesley that he would pass an inspection on any property she was renting if she "took it out in trade" (referring to sex);

- A woman to whom Plaintiff Angela Allbrooks is a nurse, who has received retaliatory treatment for her connection with Allbrooks, including monetary demands from FCCS and alteration of her benefits;

- A woman who confronted Wesley about his advances on Shannon Bass, only to have Wesley tell her "I don't do that ***ANY MORE***" (lots of emphasis added); and

- A woman who Wesley attempted to coerce into sex in exchange for continued benefits, who refused, and who received a reduction in benefits as retaliation.

With the number of plaintiffs and witnesses who will or are expected to testify that FCCS, Wesley, and Pender are sexual predators worthy of their own Dateline NBC episode, Plaintiffs have met their burden of proving that they have a substantial likelihood of success on the merits.

1.1.3 The Plaintiffs have knowledge for which there is no other reasonable explanation.[5]

[redacted]

[5] There is sufficient evidence that Plaintiffs expect this matter to require a two-week trial. It is therefore impossible to cover the entire width and breadth of even just the small amount that has come through discovery to date. Plaintiffs will necessarily limit themselves to hitting some select "high notes" for purposes of this motion.

1.1.4 Two Plaintiffs have recordings proving that Pender propositioned them in violation of the Fair Housing Act.

Khristen Sellers has recorded a conversation between herself and Pender where Pender asked her if she had complained to his boss because he "asked for [her] pussy." (Sellers Aff. ¶ 30, attached as Exhibit 6.)

Judy McKoy has recorded Pender telling her that he wants to take her out to dinner, that he wants her to walk around in her negligee with the blinds of his house open, and that she knew "how he like[s] to lick it" (referring to oral sex). (McKoy Tr. pp 160-161, 165-166, attached as Exhibit 7.)

Plaintiffs assert that these recordings are highly probative on their likelihood of success.

1.2 Plaintiff Khristen Sellers has a substantial likelihood of success on the merits as to her claim of unlawful retaliation specifically.

1.2.1 FCCS put Sellers in a deficient house, sexually extorted her to see it pass inspection, ignored her warnings that it was deficient, and then, after her filing of a lawsuit, threatened to stop her benefits for the exact issues that she had warned FCCS about prior to moving in.

Upon receiving her Section 8 voucher, Sellers located a house and put down a deposit through Associated Realty with Christy Leviner. (Sellers Aff. ¶ 7.) Wesley told her that she could not rent that house because of a problem between him and Christy Leviner. (Sellers Aff. ¶ 8.) Wesley told Sellers that Pender had found a house for her to rent. (Sellers Aff. ¶ 9.) The house was filthy and had rotting food, old furniture, old clothing,

roaches, and even animal feces. (Sellers Aff. ¶¶ 10, 15.) Sellers entered into an agreement with the landlord, Andrew Windsor, and Pender that she would clean the house and Windsor would make necessary repairs for her to live there. (Sellers Aff. ¶¶ 11, 16.)

Sellers diligently cleaned the house, using her refunded deposit from the house she had previously planned to rent to afford supplies. (Sellers Aff. ¶¶ 16-18.) However, Pender told her that if she wanted the house to pass inspection, she would have sex with him, and made several other sexual comments. (Sellers Aff. ¶¶ 12, 20-23, 26.) Pender asked Sellers if she had ever "sucked dick" and told her "men will pass ten pussies to get one head." (Sellers Aff. ¶ 21.) He told her that the voucher, and therefore his signature on it, was worth $600 times 12 months per year, or over $6,000 per year, and that she would never find anyone else willing to "pay [her] that much for [her] ass." (Sellers Aff. ¶ 22.) During one inspection, he pulled her into the bathroom by her hips, exposed his penis, and told her that she "kn[ew] what she had to do." (Sellers Aff. ¶ 23.) Sellers rebuffed all of Pender's advances, despite significant anxiety about how that would affect her benefits. (Sellers Aff. ¶ 24, 28.)

After Pender learned that Sellers had discussed his actions with others, and out of fear for the ramifications that might have, Pender passed the house. (Sellers Aff. ¶¶ 29-33.) At the time, Sellers noted that the house had serious issues, including:

- Cracks in the fascia boards;
- Nails sticking out of the floor;

- Vinyl in the kitchen that was pulled up;
- Mold on the walls;
- No rails on the porches or along the exterior stairs;
- A leaking septic tank;
- A leaking showerhead in the master bathroom;
- Weak floors in the master bathroom; and
- A crack in the front window.

(Sellers Aff. ¶ 34.) Pender told Sellers that the issues were cosmetic and that she should let go of the issue. (Sellers Aff. ¶ 35.) She reported those issues to Windsor, who said that he would fix whatever Pender or FCCS told him to fix in writing. (Sellers Aff. ¶¶ 36-37.)

In 2013, the house passed recertification without the requisite inspection. (Sellers Aff. ¶ 37.)

On April 12, 2013, Sellers went to the FCCS office to turn in a lease agreement and to discuss recertification. (Sellers Aff. ¶ 39.) While there, Wesley pushed himself into her presence, stood behind her, fingered her purse, and asked her questions about the instant lawsuit. (Sellers Aff. ¶ 40-41.)

In early April 2014, FCCS inspected Sellers's house again. (Sellers Aff. ¶ 44.) FCCS noted that the house failed inspection and made a list of repairs to complete within less than two weeks, threatening that she would lose her voucher if she did not complete the repairs in that short timeframe. (Sellers Aff. ¶ 44, Ex. A.) Moreover, the letter

instructed her to report to Pender, *the person she was presently accusing of sexual harassment.* (Ex. 8.) FCCS never sent a copy of this letter to Windsor, the landlord. (Windsor Aff. ¶ 16, attached as Exhibit 8.) Most of these repairs consisted of the issues that Sellers had noted to Pender before moving into the house, which he had claimed were "cosmetic" at the time. (Sellers Aff. ¶ 45.) Sellers contacted Windsor for assistance and, after discussions between counsel, FCCS agreed to another inspection of the home. (Sellers Aff. ¶ 47.)

On or about May 30, 2014, FCCS failed Sellers's house for a second time. (Sellers Aff. ¶ 48.) Sellers later learned that the reasons for this failed inspection were the fascia boards and sewage leak about which she had given notice to Pender before moving in. (Sellers Aff. ¶¶ 48-49.) FCCS stopped payment to Sellers's landlord on May 31, 2014. (Sellers Aff. ¶ 50.)

On June 16, 2014, James Walters, a licensed home inspector and general contractor, inspected Sellers's house. (Sellers Aff. ¶ 52) (Walters Aff. ¶¶ 2-3, attached as Exhibit 9.) Walters found that the fascia boards pre-dated Sellers's move-in. (Walters Aff. ¶ 12.) Walters also found a smelly avalanche of additional problems, many of which would cause the house to fail an inspection and/or constituted serious safety issues, and all of which FCCS had missed in its inspection. (Walters Aff. ¶¶ 5-10.) He noted that many of those problems pre-dated Sellers's move-in. (Walters Aff. ¶¶ 12-13.)

In short, FCCS put Sellers in a deficient house, sexually extorted her with the promise of a passed inspection, ignored her warnings that it was deficient, and then, after her filing of a lawsuit, threatened to stop her benefits for the **exact issues** that she had warned FCCS about prior to moving in. This is retaliatory under any interpretation of the word and gives Sellers's claims a sufficient likelihood of success on the merits. Any contention otherwise, in light of the forecast of evidence presented with this motion, screams pretext.

1.2.2 Sellers has suffered harassment and retaliation by FCCS in several other instances.

Not only has FCCS threatened to revoke Sellers's benefits, but also Pender himself has approached Sellers to harass her on several incidents, outside of those discussed above. At a Christmas parade in 2013, Pender was riding a horse and rode it directly up to Sellers. (Sellers Tr. 2 pp 40-41). He looked down at her with a smirk and said "Hey, Ms. Sellers." (Sellers Tr. 2 p 41.) He also goes out of his way to approach her to make some sort of comment to her every time she enters the FCCS offices. *Id*. He stares at her at public functions to the point where other people notice it and point it out to her. (Sellers Tr. 2 pp 161-164.)

At one point shortly after commencement of litigation, FCCS called Windsor to ask him unusual questions about Sellers as a tenant, seemingly searching for an answer that she was a problem tenant. (Windsor Aff. ¶ 14.)

Again, the Defendants have gone out of their way to harass Sellers since learning that she filed a lawsuit. She has a sufficient likelihood of succeeding the merits of her case.

2 PLAINTIFFS AND WITNESSES WILL SUFFER IRREPARABLE HARM IF THE COURT REFUSES TO GRANT THE REQUESTED RELIEF.

Plaintiffs need not show that irreparable harm is "certain," but must show that there is more than "a possibility" of irreparable harm. *Winter*, 555 U.S. at 21-22, 129 S. Ct. at 375. Instead, the Plaintiffs must show that irreparable harm is likely in the absence of an injunction. *Id*.

2.1 Khristen Sellers is staring down the barrel of homelessness.

Should the Court not grant the requested injunctive relief, Sellers and her children will become homeless. (Sellers Aff. ¶¶ 55-57.) A lapse of her voucher would force her to pay the full rent of $630 per month and will be unable to do so. *Id.* She has no other stable place to go with her children. (Sellers Aff. ¶ 57.) This clearly constitutes irreparable harm. *Young v. Maryville Hous. Auth.*, No. 3:09-CV-37, 2009 U.S. Dist. LEXIS 56539, at **26-30 (E.D.Tenn. July 2, 2009)(The court found irreparable harm prong met because without issuance of temporary voucher by PHA, tenant would be unable to meet full rental obligation and would "face imminent eviction."); *McNeill v. New York City Hous. Auth.,* 719 F. Supp. 233, 254 (S.D.N.Y. 1989)(In a voucher case involving the termination of a HAP contract by a PHA for HQS violations, the court stated, "The threat of eviction and

the realistic prospect of homelessness constitute a threat of irreparable injury and satisfies the first prong of the test for preliminary injunctive relief.").

2.2 Plaintiffs and witnesses will be intimidated and scared to come forward if FCCS is allowed to continue its retaliatory streak.

As discussed above, Defendants have exhibited a flagrant disregard for any laws prohibiting retaliation against individuals involved with a civil suit or even against individuals *associated* with those involved in a civil suit. Such retaliation has a chilling effect on both victims and witnesses.

If the Court allows this behavior to continue, it is nearly certain that this chilling effect will prohibit individuals who have a claim from asserting their rights and individuals who have relevant information from coming forward. The Plaintiffs are therefore seeking injunctive relief prohibiting FCCS from adversely altering the benefits of any Plaintiff, or any individual disclosed by the Plaintiffs, without prior court approval.

This chilling effect will inevitably lead to irreparable harm. FCCS has already proved that it will retaliate against Plaintiffs and attempt to affect their Section 8 benefits. Plaintiffs will further see their case harmed, as witnesses afraid of reprisal will be willing to lend their knowledge to the matter. Victims will be unwilling to step forward for fear of losing their benefits. Witnesses who are brave enough to come forward will see their benefits ripped away, as is the case with Laura Monley, the recently-disclosed individual who has seen her benefits evaporate because of her connection with Angela Allbrooks.

This injunction—only requiring judicial supervision of the Defendants to require them to do what they are legally obligated (but stubbornly unwilling) to do—would prevent all of the above harm. That harm is irreparable for plaintiffs, victims, and witnesses alike.

3 THE BALANCE OF EQUITIES GREATLY FAVORS THE PLAINTIFFS.

In when ruling on a preliminary injunction, the Court "must weigh the equities and conveniences of the parties and decide whose interests would be the more seriously prejudiced by the granting or withholding of the injunction." *Williams v. Transcon. Gas Pipe Line Corp.*, 89 F. Supp. 485, 486 (W.D.S.C. 1950)

3.1 At stake for Khristen Sellers is homelessness, both for her and her children.

As previously discussed, Khristen Sellers will be rendered homeless without injunctive relief. This is clearly the greater weight on the balance of equities, especially when compared to the fact that…

3.2 At stake for FCCS in the Sellers injunctions is an amount constituting 0.03% of FCCS spending "questioned" by a recent state audit (or 0.09% of the amount found to be improperly spent by FCCS).

FCCS has a massive budget. A recent state audit found that FCCS spent $15 million to $21 million in state and federal money in fiscal years 2009 through 2012.

Financial Related Audit and Investigative Report, Office of the State Auditor, Beth A. Wood, CPA (published February 2014) (Attached as Exhibit 10). Among the key findings of that audit are the following:

- FCCS had $4,862,192 in questioned costs.
- The former Executive Director of FCCS received more than 215,000 in questionable payments, while employees received nearly $641,000 in improperly paid bonuses.
- FCCS improperly spent $670,000 intended for its Head Start and More at Four programs for expenses unrelated to the programs.
- FCCS improperly spent $670,000 intended for its Head Start and More at Four programs for expenses unrelated to the programs.
- FCCS improperly contracted for vehicles, copiers, cleaning services, and other items and services by violating conflict of interest, nepotism, and bidding policies and procedures.
- FCCS improperly used grant money to pay for employees' gym memberships, to help purchase a car, and to provide unallowed tuition reimbursements. Board members improperly received travel reimbursements and electronic equipment.
- FCCS paid the primary contractor for its Weatherization Assistance Program for work that was not performed, allowed the contractor inappropriate access to the program's computer system, and did not complete final inspections for all work.

Id.

Even using only the enumerated figures described as "questionable" (Richard Greene's $215,000 payments) and "improper" ($641,000 in bonuses, $670,000 intended

for the Head Start and More at Four), FCCS's misappropriated $1,526,000 is over *a thousand times greater* than what FCCS would be required to pay if the Court allowed Sellers three entire months to perform her search for a new home to which she could apply her Section 8 voucher.

The balance of equity clearly is weighted in favor of Sellers.

3.3 At stake for Plaintiffs and witnesses in the general injunction is the right to pursue legal remedies without fear of reprisal.

Plaintiffs' larger injunction request—that FCCS not be allowed to adversely affect the benefits of those participating in the lawsuit as plaintiffs or witnesses—is likely to be the only reassurance that will persuade victims and witnesses to come forward. Absent such protection, many will certainly pass on the opportunity to right a terrible wrong done to them by Defendants, simply because they fear reprisal and would be, like Sellers, facing homelessness should Defendants choose to retaliate.

3.4 At stake for FCCS in the general injunction is *nothing*.

Plaintiffs' request for an injunction preventing FCCS from altering the benefits of plaintiffs or witnesses without prior court approval will cost FCCS nothing outside of minor attorney's fees. Plaintiffs do not seek to enjoin FCCS from exercising their duties under the various statutes by which they operate. Plaintiffs merely seek to have the Court act as a preventative measure for Defendants' proven retaliatory tendencies. If FCCS has

a valid reason to take an adverse action toward a witness or victim, nothing in Plaintiffs' request will prevent it from doing so.

The balance of equities clearly favors Plaintiffs.

4 THE PUBLIC INTEREST FAVORS GRANTING PLAINTIFFS THE REQUESTED RELIEF.

Courts must give "particular regard" for the public consequences of granting an injunction. *Winter,* 555 U.S. at 24, 129 S. Ct. at 376-377. For purposes of a request for injunction, public interest is most strongly served by enforcement of the law; it is also served by termination of ongoing illegal enterprises. *United States v. Any & All Assets of That Certain Bus. Known As Shane Co.*, 816 F. Supp. 389, 399 (M.D.N.C. 1991).

4.1 The public interest favors agencies acting within the scope of their guidelines.

"[T]he public interest is furthered when agencies act within the scope of their authority and in a manner required by the applicable rules." *International Labor Mgmt. Corp. v. Perez*, No.1:14CV231, 2014 U.S. Dist. LEXIS 57803, at *41 (M.D.N.C. April 25, 2014).

In at least 8 different ways related to Sellers, FCCS has not acted with the scope of the guidelines set forth by HUD, the federal agency that oversees the entire Voucher Program nationwide. FCCS, as the local PHA, is required to "toe the line" drawn by HUD in the administration of this program. FCCS has failed to do so repeatedly.

First, FCCS, through Pender, should never have determined that the residence Pender "found" for Sellers, owned by Andrew Winsor, met HUD's HQS requirements in 2012. The HQS consist not only of performance requirements but also of acceptability criteria. 24 C.F.R. § 982.401(2)(i)(A)(B). The HQS address these specific areas: (A) sanitary facilities; (B) food preparation and refuse disposal; (C) space and security; (D) thermal environment; (E) illumination and electricity; (F) structure and materials; (G) interior air quality; (H) water supply; (J) access; (K) site and neighborhood; (L) sanitary condition; and (M) smoke detectors. 24 C.F.R. § 982.401(2)(ii). The owner or private landlord is responsible for making sure the unit meets the HQS. 24 C.F.R. § 982.404(a). Any one HQS violation will cause the unit to fail inspection. HUD's Housing Inspection Manual, Section 8 Existing Housing Program, p.11 ("If any item fails, the unit also fails the minimum standards.")(emphasis in original).

In the notice sent by FCCS sometime in the beginning of April 2014 following the first inspection of Seller's residence located it noted at least 3 pages worth of repairs that were HQS deficiencies, causing the Seller's residence to fail this mandatory inspection. (Sellers Aff. Ex. A.) Excepting a missing or broken light globe, according to Sellers, these HQS violations were present when FCCS approved her voucher at the property in April 2012. (Sellers Aff. ¶¶34-37) (Sellers Tr. 2 pp 42-49.) Andrew Windsor, Sellers, landlord, also corroborates Sellers that FCCS, through Pender, was playing fast and loose with the HQS requirements at this time. Windsor noted that for Sellers, Pender did not require

Windsor to put up rails around the front porch such as he had for another Section 8 participant who lived at the property prior to Sellers. (Windsor Aff. ¶ 12.) As part of the HQS, HUD requires these rails because without them, a safety hazard exists. Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards, p.10-10; HUD's Housing Inspection Manual, Section 8 Existing Housing Program, pp 97-98 . The independent inspection conducted licensed home inspector and general contractor Jim Walters further corroborated that several of the HQS violations noted by FCCS in April 2014 existed at the time FCCS approved Sellers to use her voucher at this property in 2012, including the deteriorating fascia boards. (Walters Aff. ¶¶12-13.)

Second, **based on the above, FCCS should not have been using HUD monies for the payment of rent since 2012 forward**. The PHA must not make any HAP payments to the landlord for the unit that fails the HQS requirements, unless the landlord or owner corrects the defects within a specified time and the PHA verifies these necessary repairs. 24 C.F.R. § 982.404(a). In May 2008, HUD's Office of Inspector General performed a nationwide audit of several PHAs to determine whether HUD had adequate controls in place to determine if the Section 8 housing stock complied with the HQS. It found that HUD did not. HUD Office of Inspector General Audit Report, No. 2008-AT-0003 (May 2008), pp 1-19. In the event a PHA passes a unit, despite the existing HQS violations, the PHA may be required to repay HUD the subsidies that were paid on the deficient unit from non-federal funds. HUD Office of Inspector General Audit, No. 2012-

LA-1009 (August 3, 2012), p.10. Here, since the residence Sellers lived in should never have been approved by FCCS, it may be liable to repay HUD from no-federal funds the monies HUD provided for Sellers tenancy with Windsor.

Third, FCCS did not perform the required annual inspection of Sellers' residence in 2013. HUD requires that the PHA conduct an annual inspection of the participant's unit. 24 C.F.R. § 982.405. Sellers attests that FCCS did not inspect her residence in 2013 and Windsor never received any notice of a failed inspection in 2013. (Sellers Aff. ¶ 37)(Windsor Aff. ¶ 15.)

Fourth, FCCS did not give the Windsor enough notice in April 2014 to fix those pre-existing repairs it finally noted in the first inspection in 2014, nearly 2 years after Sellers moved into the residence. If the unit does not pass at the annual inspection, depending on the severity of the repairs, the PHA may require the landlord to make the necessary repairs within 24 hours (life threatening ones), 30 days, or any other extension the PHA may grant. 24 C.F.R. § 982.404(a). The PHA must give the landlord written notification of the HQS violations. *Id.* Here, they may be a dispute between the parties over when the first inspection by FCCS in 2014 took place, but Sellers and Windsor are both certain that FCCS only gave Windsor, in an undated written notice signed by Pender, about a week from when the notice was received to perform the 3 pages worth of repairs. (Sellers Aff. ¶ 44, Ex. A)(Windsor Aff. Ex. A.) This notice stated that Windsor had until Saturday, April 12, 2014 to make these repairs and that no further

notices would be sent. Id. This notice is did not give at least the requisite 30 day notice. Given the pre-existing issues with this residence, some of these repairs had the potential to require a great deal more of work, like replacing the fascia boards or fixing the septic system leak. Nowhere in Pender's April 2012 notice did he suggest that the repairs were life-threatening which would necessitate a shorter notice period. 24 C.F.R. § 982.404(a); (Sellers Aff. Ex. A.)

Fifth, FCCS did not give Windsor the proper notice in abating the HAP payment and termination of the HAP contract. If the PHA does this, it must give the landlord 30 days written notice of the abatement. Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards, p 10-29. In this notice, HUD requires that the PHA give the exact date when the abatement will begin so to comply with the 30 day notice requirement. *Id.* Abatement of the HAP payment to the landlord must occur the first month upon the landlord's failure to comply. *Id.* at p 10-27. HUD is very clear in the Guidebook about the timing of the abatement. In one example, HUD provides the following example:

> - The owner receives a notice of violation in May to correct deficiencies by June 20, but the notice does not contain language that abatement of payment will occur on July 1. The owner must be given a 30-day notice before the abatement can occur. Abatement may not be placed before August 1.

Id. at p 10-29 (emphasis added). In the first undated notice sent in April 2014, FCCS says the repairs have to be made by Saturday, April 12, 2014, and that abatement and termination of the HAP contract will take place if the repairs are not made. No date for either is specified in this notice as required. (Sellers Aff. Ex. A.) FCCS also says in this notice that no further notices will be sent. Again, more is required by HUD. After a second inspection is conducted by FCCS on May 30, 2014, a notice by FCCS dated the very same day states that the HAP payment to Windsor will be abated as of May 31, 2014, thereby only giving one day notice of the abatement. (Sellers Aff. Exhibit B.) According the example above, FCCS could not even begin abating the HAP payment until July 1, 2014 and then only terminate the HAP contract 30 days after that. FCCS has not followed the proper procedure in abating the HAP payment or terminating the HAP contract.

Sixth, **FCCS continued to miss other HQS violations, including those posing significant safety and fire hazards, even at the second HQS inspection conducted on May 30, 2014.** The independent inspection by Walter noticed many areas of concerns to Sellers residence, even as of June 16, 2014, a little over 2 weeks since the last HQS inspection. Although Walter's inspection was governed by the North Carolina Standards of Practice and not HUD's HQS requirements, when the two are compared to each other, it is clear that with all HUD's guidance about the HQS requirements,[6] many of Walter's

[6] 24 C.F.R. § 982.401; Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards; HUD Notice PIH 2011-29 (HA); HUD Housing Inspection Manual, Section 8 Existing Housing Program;

findings would also constitute HQS violations. Mr. Walters also noted that many of the unsatisfactory conditions he noted pre-dated Sellers move into the property. (Walters Aff. ¶¶ 12, 13.) The HQS violations would include those issues Walters noted concerning the: (1) the roof, particularly the badly worn shingles and area of the roof covered by a tarp; (2) the hot water heater;[7] (3) main service panel; (4) the uncovered wire in the crawl space; (5) the lack of porch rails on the front and back porches given the height of them; (6) the decayed section of the master bedroom floor; and (7) the open and accessible entrances to the crawl spaces under the house, allowing pests to get into the space and potentially cause damage. These additional HQS violations only go to corroborate the housing opportunity Pender and FCCS forced on Sellers. She should have never have been allowed to lease this residence in the first place without substantial and comprehensive repairs being made and a reasonable amount of time to given to the owner to make them.

Seventh, FCCS has yet to notify Sellers that she will receive another Voucher to find another place to live or even to issue her one as required. The PHA must issue a Voucher to the Section 8 participant if the Section 8 participant and her family are living in unsafe housing and the landlord refuses to make the necessary repairs. Housing Choice

[7] If it impossible to view the hot water heater, the HQS inspector is supposed to check the "Inconclusive" box. HUD Housing Inspection Manual, Section 8 Existing Housing Program, p. 115. According to Walters' report, the water heater, which he noted to pose a potential fire hazard, is located inside a cavity in the back bedroom. (Walter Aff., Exhibit A.) Pictures demonstrating the location of the water heater and the easy accessibility of it) are attached as Exhibit 15. Either FCCS did not access the portion of the back bedroom to inspect the water heater when it should have, or it examined it and missed the hazard the water heater posed.

Voucher Program Guidebook, Chapter 8, Housing Search and Leasing, p. 8-10. A family may move when the PHA chooses to terminate the HAP contract for the owner's breach. 24 C.F.R. §§ 982.314(b)(1)(i) and 982.403(c)(3). A participant may also move one or more times with continued assistance either within or outside the PHA's jurisdiction. 24 C.F.R. § 982.314(b)(3)(c). FCCS has not notified Sellers that she will be issued another voucher in light of the HGS deficiencies. Instead it has sent her a confusing notice, which is addressed to her and not Winsor, that the HAP contract is going to terminate and that she is to contact Pender for more assistance. (Sellers Aff., Exhibit B.) FCCS is required to issue Sellers another Voucher and given the past and present circumstances, counsel for Sellers believe it would be best not to involve Pender at all in this process.

Eighth, **FCCS is terminating the HAP contract before it has given Sellers to the requisite time to move with continued assistance.** Before terminating the HAP contract, requires the PHA to issue another Voucher to the Section 8 participant (who is otherwise eligible) and allow her enough time to move with it. Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards, p.10-27 ("The PHA should not terminate the contract until the family finds another unit provided the family do so in a reasonable time.") By way of a notice dated May 30, 2014, FCCS essentially gave Sellers less than 30 days to move with continued assistance. The HAP contract can automatically terminate 180 days from the last HAP payment made to the landlord. The last HAP payment made by FCCS to Windsor according to its notices was May 1, 2014. (Sellers

Aff., Exhibit B.) There is therefore more time on the clock for Sellers to be moved with continued assistance if FCCS would adhere to the proper procedures and guidelines and those available to it.

By way of this motion, Sellers simply asks the Court to make FCCS follow the rules and regulations it is required to follow and those guidelines that provide the boundaries of its administration of the Voucher program. That is all.

4.2 The public interest favors protecting Plaintiffs and witnesses from retaliation in whistleblower-type claims, such as those brought under the Fair Housing Act.

"It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title." 42 U.S.C.A. § 3617 (West).

The Fair Housing Act *itself* states that retaliation for acting as a plaintiff or witness in a claim brought pursuant to its protections is unlawful. Therefore, Plaintiffs' request that the Court prevent Defendants from retaliating against plaintiffs and witnesses in this claim is clearly in line with the public interest.

4.3 The public interest favors preventing homelessness.

As a matter of public policy, "though a citizen may be overtaken by reverses of fortune, he and those of his household shall not be homeless, without shelter, raiment, and food." *Richardson v. Woodward*, 104 F. 873, 875 (4th Cir. 1900).

Here, Sellers is requesting that the Court not sign off on Defendants' attempts to leave her and her children homeless. As stated in *Richardson*, preventing homelessness is in the public interest.

4.4 The public interest favors upholding constitutional rights

"[U]pholding constitutional rights in in the public interest." *Stuart v. Huff*, 834 F. Supp. 2d 424, 428 (M.D.N.C. 2011). The Fourth Circuit has held that in the context of a request for preliminary injunction, "upholding constitutional rights surely serves the public interest." *Doe v. Pittsylvania Cnty., Va.*, 842 F.Supp.2d 927, 936 (W.D. Va. 2012), citing *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002).

It is clear that Sellers, as a Section 8 participant, has a property interest in continuing to receive her Section 8 benefits and that due process protections apply to them. *Jeffries v. Georgia Residential Fin. Auth.*, 678 F.2d 919, 925 (11th Cir. 1982); *Guerrero v. City of Kenosha Hous. Auth.*, No. 10 Civ. 1090, 2012 U.S. Dist. LEXIS 5813 *11 (E.D. Wis. Jan. 18, 2012); *McCall v. Montgomery Hous. Auth.*, 809 F. Supp. 2d 1314, 1324 (M.D. Ala. 2011); *Stevenson v. Willis*, 579 F. Supp.2d 913, 919 (N.D. Ohio 2008). The due process protections articulated by the Supreme Court in *Goldberg v. Kelly*, 397 U.S. 254,

266, 90 S.Ct. 1011 (1970) for welfare recipients also apply to Section 8 participants. *Basco v. Machin*, 514 F.3d 1177, 1182 n.7 (11th Cir. 2008) (*Goldberg* "applies with equal force to public housing provided pursuant to Section 8, where eligible participant rely on subsidies to meet their basic needs for housing.") . In light of *Goldberg*, HUD has promulgated regulations that PHAs like FCCS must follow before terminating a Section 8 participant's voucher. 24 C.F.R. §§ 982.554-555. The Section 8 participant is entitled to written notice, informal review, and an informal hearing conducted by any person designated by the PHA, who is other than the person who made or approved the decision or a subordinate of that person, and a written decision. *Id.*[8]

FCCS has not given Sellers any of due process protections contemplated by *Goldberg* or HUD. The last notice FCCS sent out, dated May 30, 2014, is addressed to Sellers, who is not party to the HAP contract. (Sellers Aff., Ex. B.) That alone is very confusing, as the notice should be addressed to the owner, Windsor, and then copied to Sellers, given who is responsible for maintaining the property and the terms of the HAP

[8] Cases that have reported that the constitutional protections afforded a Section 8 participant cease to exist when the vouchers expires are inapposite to this particular case. In the reported cases, the PHA had discretion to extend the term of the voucher after it has been issued to the Section 8 participant to find a place to live, *Burgess v. Alameda Hous. Auth.*, No. 03-15235, 2004 U.S. App. LEXIS 8786, at **5, 6, (9th Cir. May 3, 2004); *Chesir v. Hous. Auth. of City of Milwaukee*, 801 F. Supp. 244, 248 (E.D. Wis. 1992). In this instance, PHA must a new voucher to the Section 8 participant and it is to occur before the HAP contract terminates. Housing Choice Voucher Program Guidebook, Chapter 8, Housing Search and Leasing, p. 8-10, and Housing Choice Voucher Program Guidebook, Chapter 10, Housing Quality Standards, p.10-27 ("The PHA should not terminate the contract until the family finds another unit provided the family does so in a reasonable time.") Here, FCCS has not even issued the required new voucher, let alone, extended it.

contract. This notice states the HAP contract will end as of June 30, 2014. *Id*. It goes on to say that if Sellers stays in the unit after June 30, 2014, she will be responsible for the entire rent. Not only does the notice say that Sellers she should contact the very person who sexually assaulted, harassed and intimidated her and whom she has filed a lawsuit against, i.e., Pender, but it also is signed by him. *Id*. Anyone in her shoes would obviously be scared and hesitant to contact Pender. Nowhere does the notice inform Sellers that she will be allowed to move with continued assistance. *Id*. Even if it had said that, FCCS probably would have required Sellers to still contact Pender. Even still, the amount of time given to Sellers by way of this notice to receive a new Voucher, find a new place, and get the new place approved via HUD's HQS—less than 30 days—is not enough. By leaving Sellers in the lurch, i.e, terminating the HAP contract without giving her enough time to move using a new voucher, FCCS essentially *is* terminating Sellers' voucher assistance, whether it intends to or not. *See McNeill v. New York City Hous. Auth.*, 719 F. Supp. 233, 254-255 (S.D.N.Y. 1989) (In issuing a preliminary injunction, the court noted plaintiffs raise "several sufficient serious questions…, including, …that the local housing authority's "…termination of Section 8 assistance for tenants' current apartments, without an opportunity to challenge the proposed termination, violates due process of law…"). Because of this, in addition to the procedures we assert Sellers is entitled to per the HUD regulations and HUD's own interpretations of them, Sellers is also entitled to due process contemplated by the Supreme Court in *Goldberg* and by HUD before her housing

assistance terminates de facto on June 30, 2014. The injunction Sellers seeks by way of this motion would serve the public interest in upholding her constitutional rights.

5 THE COURT SHOULD GRANT INJUNCTIVE RELIEF WITHOUT REQUIRING THE PLAINTIFFS TO POST BOND.

> Rule 65(c) of the Federal Rules of Civil Procedure provides in part that "[n]o restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper." Although the rule speaks in mandatory terms, an exception to the bond requirement has been crafted for, inter alia, cases involving the enforcement of "public interests" arising out of "comprehensive federal health and welfare statutes."

Pharm. Soc. of State of New York, Inc. v. New York State Dep't of Soc. Servs., 50 F.3d 1168, 1174 (2d Cir. 1995) citing *Crowley v. Local No. 82, Furniture & Piano Movers*, 679 F.2d 978, 1000 (1st Cir.1982), rev'd on other grounds, 467 U.S. 526, 104 S.Ct. 2557, 81 L.Ed.2d 457 (1984).

Bond waiver also exists in cases where the party seeking injunction is an indigent plaintiff. *Id. See also Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 211 (3d Cir. 1990) *holding modified by Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421 (3d Cir. 1994). "Although Federal Rule of Civil Procedure 65(c) generally provides that a preliminary injunction will not issue except upon the giving of security, it is not required where plaintiffs are indigent or where considerations of public policy make waiver of a bond appropriate." *Miller v. Carlson*, 768 F. Supp. 1331, 1340 (N.D. Cal. 1991).

"In such circumstances, courts have waived bond on the ground that to require it would effectively deny access to judicial review for indigent people." *Id.*

5.1 Plaintiffs are categorically indigent and requiring that they post bond would go against the public interest.

"All Plaintiffs are women who, at different times, have applied for Section 8 benefits through FCCS, and who currently receive or are attempting to secure such benefits." (D.E. 14 ¶ 17.) Categorically, Plaintiffs exist at the level of poverty that requires that they rely on government assistance for even such a basic need as housing. It is this very indigency that made it possible for Defendants to prey on them by offering them needed assistance for extorted sexual favors.

Meanwhile, the above-discussed audit's findings conclude that FCCS has wasted more money than any individual plaintiff is likely to earn in her lifetime. Requiring Plaintiffs to forfeit a bond to protect the interests of a corporation through which multiple millions of dollars flow serves no legitimate public interest. Further, it would be discordant to the public interest should Court deny Plaintiffs access to critical injunctive relief for the unforgivable sin of not being a multi-million dollar corporation wearing the tattered skin of a community services organization as a disguise.

Without the necessary injunctive relief requested herein, Plaintiffs such as Khristen Sellers—who cannot afford $630 a month for a roof over her and her children's heads—will experience irreparable harm. Plaintiffs therefore request that the Court,

considering the indigency of the Plaintiffs, waive the bond requirement imposed by Rule 65(c).

CONCLUSION

Defendants' regard for the law to date has been similar to the regard an intoxicated Godzilla holds for parked cars and property values. They have run roughshod over the protected rights of the Plaintiffs and their witnesses. They have threatened physical assault to Plaintiffs, attempted to render them homeless in violation of their governing policies, and have even stripped witnesses of their benefits for merely being *associated* with the Plaintiffs. The injunctions requested by the Plaintiffs are simple requests that the Court step in and let Defendants know that they must abide by the law. Nothing more.

For the foregoing reasons, the Plaintiffs respectfully request that this Court grant the requested relief and issue an order enjoining Defendants from participating in any of the activities described above.

This, the 30th day of June, 2014.

/S/ CRAIG HENSEL
Attorney for Plaintiffs
NC State Bar No. 40852
HENSEL LAW, PLLC
Post Office Box 39270
Greensboro, North Carolina 27438
Phone: (336) 218-6466
Fax: (336) 218-6467
craig.hensel@hensellaw.com

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2014, I electronically filed the foregoing MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION with the Clerk of Court using the CM/ECF system, which will send notification of filing to the following:

Rodney Pettey
YATES, MCLAMB, & WEYHER, LLP
P.O. Box 2889
Raleigh, NC 27602
RPETTEY@ymwlaw.com
Attorney for Four-County Community Services, Inc.

Brian Williams
YATES, MCLAMB, & WEYHER, LLP
P.O. Box 2889
Raleigh, NC 27602
bwilliams@ymwlaw.com
Attorney for Four-County Community Services, Inc.

Kenneth Kyre, Jr.
PINTO COATES KYRE & BROWN, PLLC
3203 Brassfield Rd.
Greensboro, NC 27410
kkyre@pckb-law.com
Attorney for John Wesley

Kurt Schmidt
THOMAS AND FARRIS, P.A.
P.O. Box 2848
Wilson, NC 27894-2848
kds@thomasandfarris.com
Attorney for Eric Pender

Timothy Wilson
POYNER SPRUILL LLP
P.O. Box 353
Rocky Mount, NC 27802-0353
TWilson@poynerspruill.com
Attorney for Eric Pender

Lenneka H Feliciano
PINTO COATES KYRE & BROWN, PLLC
3203 Brassfield Rd.
Greensboro, NC 27410
nfeliciano@pckb-law.com
Attorney for John Wesley

/S/ CRAIG HENSEL
Attorney for Plaintiffs
NC State Bar No. 40852
HENSEL LAW, PLLC
Post Office Box 39270
Greensboro, North Carolina 27438
Phone: (336) 218-6466
Fax: (336) 218-6467
craig.hensel@hensellaw.com