IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BEATRICE B. MCWATERS, ET AL.	:	
PLAINTIFFS,	:	**CIVIL ACTION NO.: 05-5488**:
- VERSUS -	:	**SECTION "K" (3)**
FEDERAL EMERGENCY MANAGEMENT AGENCY, ET AL.	:	
DEFENDANTS.	:	

PLAINTIFFS' REPLY TO DEFENDANTS' POST-TRIAL BRIEF

INTRODUCTION

Defendants' Post-Trial Brief ("Defs. Post-Trial Br.") itself provides the clearest evidence that this Court needs to retain oversight of FEMA through a permanent injunction. More than six months after Hurricane Katrina – in the face of excoriating reports by the White House and Congress – FEMA continues to maintain that it distributed Assistance fairly to evacuees. As a fallback position, Defendants argued at the February hearings that any existing problems result from inadequate funding. FEMA seeks to use these assertions (woven together with the position that even if its actions are unconstitutional, they are beyond judicial review) to divest itself of any independent court scrutiny.

The evidence adduced at trial proves that many problems do remain. Moreover, partial resolution of long-standing issues have come about only under the threat of Court intervention, often on the eve of Court hearings, fueled by the need to comply with Court orders. For example, hundreds of thousands of applications remained "pending" for months until the Court urged FEMA to make "substantial progress." Similarly, FEMA changed its SBA loan requirements only after the Court issued a Temporary Restraining Order ("TRO") ("Dec. 12, 2005 Order"). And incredibly,

FEMA's plans to implement the extension of the planned December 15 deadline for hotel evictions did not begin in earnest until Plaintiffs initiated a conference call with the Court on December 14, 2005. Two hours later, FEMA modified its website and a top FEMA official held a news conference announcing the changes for the first time.

Even when Plaintiffs merely suggested Court scrutiny, progress occurred by FEMA. Major changes in the Shared Household Rule ("SHR") resulted from a court-sanctioned conference in November and further remediation followed the December 12 Order. FEMA had failed to make any post-disaster adjustment to the Fair Market Rent ("FMR") guidelines until Plaintiffs' pre-hearing submission noted that it would be a focus of the hearing, after which FEMA made a 20% adjustment for Louisiana.

Each of the problems mentioned above continue to pervade in some form or another. FEMA provides no reason to believe that it will ever equitably and impartially administer Assistance guaranteed by the Stafford Act absent Court involvement. Indeed, a permanent injunction may well reduce further judicial intervention, as it will force FEMA to address new problems as they arise to avoid new litigation.

Similarly, a plea of lack of resources, far from excusing compliance with the law, underlines the need for judicial intervention. The failure to revise FMR tables suggest that FEMA lacks leadership rather than money. When FEMA thought it could evade scrutiny on this issue, it devoted no time, money or energy to addressing this systemic problem. Continuing Court oversight on the FMR issue is essential to providing evacuees with adequate Temporary Housing Assistance wherever they have been relocated, or in New Orleans if they wish to return. In the end, this case does not request that the Court micromanage a federal agency. Rather, Plaintiffs simply seek an Order that FEMA obey the law, in the hope that it will thereafter resolve problems without the need for further Court intervention.

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE NOT PRECLUDED BY SOVEREIGN IMMUNITY.

Defendants' claim that they are protected by sovereign immunity has been briefed and argued on numerous occasions.[1] This Reply Brief will not address those contentions, nor address all of the allegations that Defendants repeat in their Post-Trial Brief.[2] Plaintiffs must, however, address a few assertions, including the continuing claim that all of FEMA's actions are shielded from judicial review because they involve "'the exercise or performance of or the failure to exercise or perform a discretionary function or duty.'" (Defs. Post-Trial Br. at 2 (quoting 42 U.S.C. § 5148).) On the contrary, Plaintiffs' challenges are focused to Defendants' non-discretionary acts. (*See* Pls. Opp. Mem. at 8.)

At the February 22, 2006 oral argument Defendants argued that sovereign immunity eliminated judicial review of constitutional claims, even where sovereign immunity is subject to a waiver on other bases. (*See, e.g.*, Mot. Lim. Hr'g Tr. at 21-22, Feb. 22, 2006.) Furthermore, by citing *American Federation of Government Employees v. Stone*, 146 Fed.Appx. 704 (5th Cir. 2005), Defendants suggest that determinations of who receives aid is discretionary, immunizing them from judicial review. However, once the President and Congress directed FEMA to provide Katrina victims with benefits after the disaster, compliance was no longer discretionary. A mandatory duty cannot morph into a discretionary one solely because Defendants treat it as such.

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[1] Written submissions include, *inter alia*, Plaintiffs' Third Amended Complaint, Memorandum accompanying Request for a Temporary Restraining Order, Opposition to Motion to Dismiss ("Pls. Opp. Mem."), and Post Hearing Brief ("Pls. Post Hr'g Br.").

[2] Only four of the eleven cases Defendants cite in their Post-Trial Brief are new and these cases are neither persuasive nor on point. (Defs. Post-Trial Br. at 4-6.) Although these four cases discuss suit against the United States, none involve circumstances analogous to the case at bar. *See Maricopa County v. Valley Nat'l Bank,* 318 U.S. 357 (1943) (holding Congress was within its power to grant, and later withdraw, the states' power to collect taxes on shares of preferred stock); *Duisberg. v. United States*, 89 F.Supp. 1019 (Ct. Cl. 1950) (holding the Court of Claims lacked jurisdiction because the Trading With the Enemy Act provided "sole relief"); *Lehman v. Nakshian*, 453 U.S. 156 (1981) (finding the Age Discrimination in Employment Act does not provide the right to a jury trial for a federal employee); and *Laeger v. United States*, No. Civ. A. 96-2145, 1997 WL 244417, at *1 (W.D. La. Feb. 7, 1997) (finding the court lacked jurisdiction over plaintiff's claims, which included whether the Sixteenth Amendment (Congressional power to collect taxes) was properly ratified and whether wages qualify as income under the Internal Revenue Code).

Contrary to Defendants' contention, a government agency has no discretion to ignore the Constitution. In *Rosas v. Brock*, 826 F.2d 1004 (11th Cir. 1987), the court examined the Disaster Relief Act of 1974, a precursor to the Stafford Act, and stated:

> Congress had no such intention [of precluding judicial review of allegedly unconstitutional agency action] when it enacted 42 U.S.C.A. Sec. 5148. That statute prohibits judicial review of discretionary actions. There is no reason to believe that Congress ever intended to commit to an agency's discretion the question of whether or not to act constitutionally. The law now, as when section 5148 was enacted, is that adherence to constitutional guidelines is not discretionary; it is mandatory.

Id. at 1008. While Defendants maintain that their actions are not subject to any Constitutional restraints, they have not argued that if this Court holds to the contrary, their actions are not violative of the Constitution.[3]

In addition, Defendants contend they "should not be faulted or penalized for [their] efforts to provide housing assistance to the hardest-hit evacuees as quickly as possible – indeed, this is yet another illustration of the wisdom of the Stafford Act's non-liability provision." (Defs. Post-Trial Br. at 24.) However, this action is not about assessing damages for liability fault or blame; it is, rather, about ensuring FEMA complies with its Constitutional and statutory obligations to protect and provide for Hurricane Katrina victims. Plaintiffs have neither sought monetary damages nor punitive relief; they rightly seek judicial oversight for the tens of thousands of evacuees who have

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[3] During oral arguments for Defendants' Motion to Dismiss Hearing on February 23, 2006, the Court invited Defendants to argue that their actions do not violate the Constitution:

> THE COURT: If they do have a property interest, do you get to the point where an alternatively, your Honor, we haven't violated the Constitution and this is why, do you have any argument there?
> MR. SIMPSON: At this point, no, we have not made that argument. In post hearing briefs --

(Defs. Mot. to Dismiss Hr'g Tr. at 22, Feb. 23, 2006.) The Court further suggested to Defendants, "I'm really interested in, assuming a constitutional claim exists, tell me as concisely as you can why you think due process was not met here . . . .You might also want to focus [in the Post-Trial Brief] on why, even if [Defendants' jurisdiction and property interest arguments] falls [sic], there is no constitutional violation regardless." (Court, Inj. Hr'g Tr. at 485-86, Feb. 24, 2006.) There was no mention of the constitutional propriety of Defendants' actions either at trial or in their Post-Trial Brief. Thus, Defendants have not countered Plaintiffs' contention that their actions have, in fact, violated the Constitution, as set forth in Plaintiffs' Third Amended Complaint and at the hearing of February 22-24, 2006.

borne the consequences of bureaucratic incompetence and indifference. Plaintiffs seek to have Defendants follow their statutory obligations and provide the assistance the law requires to protect and aid victims of a national disaster.

II. PLAINTIFFS' CLAIMS FOR RELIEF SHOULD BE GRANTED.

A. FEMA Has Repeatedly Required Katrina Victims To Apply For An SBA Loan As A Prerequisite To Receiving Housing Assistance In Direct Violation Of The Law And The Court's Order.

Previously, this Court found that "FEMA has violated a mandatory duty through the mis-communication or inartful communication of the protocol for receiving Temporary Housing Assistance by causing some applicants to believe that an SBA loan application is a necessary prerequisite to receiving Temporary Housing Assistance." (Dec. 12, 2005 Order at 17.) Plaintiffs have shown that FEMA has not complied with the Order, and that confusion reigns both within the agency and in the public. (Pls. Post Hr'g Br. at 10; Pls. Ex. 4.)

There is enormous irony, therefore, when Defendants challenge Plaintiffs' witness Cameron Eaton by saying, "Ms. Eaton's testimony also suggests that some applicants simply misunderstand when an SBA loan application is required and when it is not." (Defs. Post-Trial Br. at 19.) That is exactly the point. The Order of December 12 intended to force FEMA to clear up such confusion, yet on February 13, 2006, Defendants promulgated a press release informing evacuees that an "SBA [l]oan [a]pplication [is n]ecessary for [a]ssistance. The release specifically states, "[e]ven if the applicant feels they [sic] would not qualify for a loan, filling out the [SBA] application is the first necessary step to being considered for other forms of disaster assistance or grants." (Pls. Ex. 4.)

Defendants concede that "the [Stafford] Act prohibits FEMA from denying housing assistance for failure to apply for a loan," but now argue that "the Act does not require the agency to publicize that fact or to notify all applicants for housing assistance that they need not complete an SBA loan application." (Defs. Post-Trial Br. at 3.) Again, Defendants miss the point. The Court

ordered that the information FEMA distributes must be clear. Indeed, at the February 23, 2006 hearing, Donna Dannels continuously insisted that all communication was clear, and that the most recent press release was in compliance with the Court's Order. (Dannels, Inj. Hr'g Tr. at 103-104, Feb. 23, 2006.) Even with a Temporary Restraining Order in place, FEMA cannot, or will not, obey the clear requirements of the Stafford Act and this Court.

As such, it is still necessary that the Court make permanent the protections it first granted in its December 12, 2005 Order. The Court must enjoin FEMA from failing to notify those applicants who were previously and wrongfully denied Assistance for which they are now eligible, and must immediately reprocess their applications. Furthermore, the Court must prohibit Defendants from promoting SBA loans unless it is concurrently represented that Temporary Housing Assistance is not dependent on an SBA application.

B. FEMA Must Pay Assistance Based Upon Actual Fair Market Rent.

FEMA has failed in its statutory duty to provide FMR to all eligible disaster victims, as required under the both a Presidential directive and 42 U.S.C. § 5174. In their Post-Trial Brief, Defendants attempt to couch the argument in confusing terms and seek to frame Plaintiffs' claim as incomprehensible and ludicrous, stating,

> [t]he claim appears to be either that FEMA violated the Stafford Act by failing to provide 'fair market rent' in the first tranche of assistance to some victims of Hurricane Katrina, or that the amount of FEMA's assistance for victims in Louisiana (or maybe the entire Gulf Coast) is inadequate, or that the amount of FEMA's assistance nation-wide is inadequate — or perhaps all of the above.

(Defs. Post Trial Br. at 20-21.) Rather, Plaintiffs contend, simply, that (1) Defendants are statutorily obligated to provide fair market rent; (2) Defendants based their rent rates on a national average-- $2,358 for three months or less than $26/day-- which they knew to be insufficient for many areas to which victims were sent; and (3) prior to this litigation, Defendants undertook no actions to remedy the burdens placed on Katrina evacuees in areas where the pre-disaster FMR was

severely insufficient.[4] Indeed, Defendants do not even pretend that these amounts were accurate FMRs. (Defs. Post Trial Br. at 24.)

Defendants provided new administrative material with their Post-Trial Brief purporting to show that the rent levels they are paying are adequate. FEMA's latest written guidance to its field staff and applicants, however, demonstrates the arbitrary and inconsistent nature of the relief. Defendants for the first time provide a written policy saying it will pay 120% of HUD's published FMR, but only for Louisiana parishes, ignoring the extensive and decimating destruction to communities in Alabama and Mississippi. (*See* AR 6032). Evacuees and advocates are largely unaware of this updated policy because FEMA has not centrally announced it. (Dannels, Inj. Hr'g Tr. at 137, Feb. 23, 2006; Dannels, Inj. Hr'g Tr. at 331, Feb. 24, 2006.)[5] HUD specifically acknowledged that at least 120% of FMR must be permitted in all areas affected by Katrina.[6] The Stafford Act, through its mandate in 42 U.S.C. § 5151(a), requires that FEMA administer its disaster relief "in an equitable and impartial manner." In conflict with HUD's guidance, FEMA limits the increase to only Louisiana, again acting arbitrarily.

FEMA's February 16, 2006 notice, referencing the adjustment HUD made October 3, 2005, belatedly acknowledges that the published FY2006 FMR amounts are inadequate. FEMA acted

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[4] On February 23, 2006, Ms. Dannels repeatedly testified that FEMA was in the process of re-evaluating the FMR rates and hoped to revise them shortly. (*See, e.g.*, Dannels, Inj. Hr'g Tr. at 139-142, 158.) However, to date, Defendants have neither officially provided such revised figures, nor have they undertaken or acknowledged their obligation to pay any discrepancy between the pre-revision estimate and actual fair market rate retroactively. Instead, FEMA has only adjusted rents pursuant to HUD's notice on March 3, 2006 for New Orleans and Baton Rouge. (AR 6041.)

[5] On February 23, Ms. Dannels testified that an announcement of the rent increase to 120% of FMR would be "done by the field." (Dannels, Inj. Hr'g Tr. at 137.) However, FEMA's central office guidance to the field on March 8, 12, and 13, 2006, makes no mention of the 120% adjustment. To the contrary, the notice sets rents at only HUD published FMR, specifically failing to direct payment at 120% of that amount for affected Louisiana parishes. (*See, e.g.,* AR 6046, AR 6066; AR 6075.)

[6] When HUD issued its notice setting FY 2006 FMR rates, it issued a separate notice allowing payment of 120% of the FMR for housing assistance paid through HUD administering entities "located in the areas declared a federal disaster area as a result of Hurricane Katrina." 70 Fed. Reg. 57716, 57717 (Oct. 3, 2005) By failing to similarly increase rents in all affected areas, FEMA acts inconsistently with HUD's guidance.

arbitrarily by denying sufficient adjustments to evacuees who received the inadequate amounts for the first six months.

Defendants state that their regulations require FEMA to use HUD rates as the basis for the FMR. Nonetheless, FEMA may make adjustments, particularly where HUD acknowledges that its published FMR rates do not reflect the substantial effects of disaster. (70 Fed. Reg. 57654, 57659 (Oct. 3, 2005).) Ms. Dannels acknowledged that FEMA has not made adequate adjustments. (Inj. Hr'g Tr. at 141-42, Feb. 23, 2006.) Defendants have demonstrably refused or have not followed the mandate of 42 U.S.C. § 5174(c)(1)(A). Consequently, a court order is necessary to enjoin FEMA from failing to adjust Temporary Housing Assistance to reflect the current post-disaster fair market rent based upon family size and geographic region in which the housing is located, even without first receiving requests from individual evacuees.

Defendants argue that Plaintiffs did not "lay an adequate factual foundation for" their FMR claim and that "[m]ost of [Plaintiffs' evidence introduced at trial] was hearsay." (Defs. Post-Trial Br. at 24-25.) Defendants are wrong. Ms. Dannels acknowledged that the FMR numbers FEMA has been using are inadequate, but due to a lack of Congressional funding, FEMA could not undertake a survey to remedy the situation. (Inj. Hr'g Tr. at 466-67, Feb. 24, 2006.) This admission is not hearsay. It is, however, astonishing. It is unacceptable for a federal agency with a mission under law to aid the most impoverished victims of a natural disaster to actually distribute inadequate amounts of aid, in violation of law, because it has failed to ascertain the correct amounts.

In addition, Plaintiffs' witnesses Patricia Mauldin and Maryann Russ testified about their attempts to find housing at FMR rates using the resource, DHROnline.org, a link to which FEMA directs evacuees. Calling it hearsay (Defs. Post-Trial Br. at 25 n.18) misses the point. Their testimony was offered for proof of what FEMA was representing to be the cost of available housing to the thousands of internet users. Those exposed to this official link were led to believe by FEMA

that a search for an apartment on the money FEMA would provide would be fruitless. FEMA cannot claim hearsay and walk away with clean hands from the information it provided. Similarly, Plaintiffs introduced the New Orleans newspaper's real estate ads at trial not for the truth of the matter - that is, to show that any specific advertisement was true and correct - but rather, to show the perception of the market that any reasonable evacuee would have when searching for housing.

Finally, in violation of the law, FEMA continues to insist that evacuees cannot pay for utilities using Temporary Housing Assistance grants, even when the definition of housing costs in FEMA's regulations include utilities. *See* 44 C.F.R. § 206.111 ("*Housing costs* means rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, *and utility costs*." (emphasis added)); 24 C.F.R. § 888.113(a) ("Fair Market Rents (FMRs) are estimates of rent *plus the cost of utilities*. . . " (emphasis added)). As explained in Plaintiff's Post Hearing Brief, HUD calculations of FMR include utilities, and FEMA's regulations indicated to allow such use. (Pls. Post Hr'g Br. at 11-13.) The Court should order FEMA to interpret its own guidance to allow for the payment of utility costs in cases where the evacuee has insufficient funds.

C. FEMA's Continuing Rental Assistance Criteria Are Overly Vague, Leaving Unfettered Discretion To Deny Assistance.

FEMA lacks clear, promulgated standards, readily ascertainable by FEMA workers and evacuees alike, for Continuing Rental Assistance ("CRA"). Despite the opportunity to introduce any evidence of these standards at trial, or thereafter, FEMA has failed to do so. Indeed, Ms. Dannels acknowledged that even in the face of a pressing Congressional mandate to issue such standards, the agency chose to instead have discussions with Congress about its failure to meet the deadline. (Dannels, Inj. Hr'g Tr. at 153, Feb. 23, 2006.) The inevitable result of FEMA's intransigence is that it has exercised, under overly vague standards, unfettered discretion to improperly deny CRA for thousands of evacuees, indeed finding only about 20% eligible. (*See* Def. Exs. 3 & 7.)

In the post-trial Administrative Record supplement, Defendants submitted an internal memorandum, dated February 22, 2006, purporting to provide guidance on CRA recertification ("February 22 Memo"). (AR 6033-6036.) Far from providing ascertainable standards, the February 22, 2006 Memo further reveals the extent to which FEMA's CRA system remains vague, inconsistent, and problematic.

At trial, Ms. Dannels testified that, while FEMA's CRA regulation[7] appears to require exhaustion of FEMA rent funds as a condition of CRA, FEMA does not, in fact, require that evacuees apply for recertification only after exhausting their rent funds. (Dannels, Inj. Hr'g Tr. at 145, Feb. 23, 2006; Dannels, Inj. Hr'g Tr. at 359-60, 395-97, and 468-71, Feb. 24, 2006.) Yet, FEMA's February 22, 2006 Memo fails to state when evacuees should seek re-certification and, to the contrary, requires evacuees to declare they will submit receipts "to show that I have exhausted the FEMA rent funds."[8] Such a standard unavoidably leads to gaps of time in assistance in violation of the continuing assistance requirement in the Stafford Act. *See* 42 U.S.C. § 5121(b); 44 C.F.R. § 206.3. This bureaucratic delay results in funding gaps leading to eviction and homelessness, as this Court heard through the trial testimony of Plaintiff Cameron Eaton. (Eaton, Inj. Hr'g Tr. at 218, Feb. 24, 2006.) She was evicted despite clear communication with FEMA workers and a landlord who was willing to accept that some delay was inevitable when dealing with government agencies. In the end, the landlord could not extend Ms. Eaton's tenancy indefinitely without receiving payment for a lucrative apartment.

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[7] 44 C.F.R. § 206.114(b)(2) states that: Applicants requesting continued rent assistance must submit rent receipts to show that they have exhausted the FEMA rent funds, and provide documentation identifying the continuing need.

[8] Likewise, the "self-sufficiency" requirement imposed by the Memo and the vague "income" standard are simply too vague and likely to allow FEMA to run afoul of the Stafford Act's purpose of alleviating suffering. 42 U.S.C. § 5121.

Beyond these harmful gaps in assistance, the February 22, 2006 Memo imposes a vague "self-sufficiency" requirement[9] which is not once mentioned in the Stafford Act or FEMA regulations. *Cf.* 42 U.S. C. § 5174(a)(1); 44 C.F.R. § 206.114 (referring to "need"). This vague criteria may allow discontinuances to Assistance to evacuees unable to work or "to increase their income to self sufficiency levels," which may mean pre-disaster income levels despite loss of work. The requirement to submit a "realistic housing plan to promote self-sufficiency" may also prevent evacuees from returning to their pre-disaster communities without jobs contrary to the Stafford Act purpose of alleviating suffering. 42 U.S.C. § 5121.

While the February 22, 2006 Memo requires evacuees to submit extensive income information, it provides no income test to guide FEMA staff or evacuees. The only income standard in FEMA's regulations is that the "applicant will be deemed capable of paying 30 percent of gross post disaster income for housing," but this so-called standard remains vague and confusing. 44 C.F.R. § 206.111 (defining "financial ability").[10] No less confusing is the term "housing costs." FEMA's Memo excludes from housing costs "all utilities and deposits, except where utilities are included in rent payments." (AR 6034). Nonetheless, its Declaration asks the evacuee to report "current monthly housing cost (excluding utilities)," both of which are inconsistent with FEMA's definition of "housing cost" in 44 C.F.R. § 206.111 which properly includes utilities as part of housing costs.[11]

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[9] Requirement of the second recertification is the submission of a realistic housing plan "to promote self sufficiency." AR at 6034. Awards for subsequent recertifications are contingent upon "[d]ocumentation of efforts to reestablish income (if unemployed), or to increase income to self-sufficing levels." *Id.; see also* AR at 6035 (additional documentation requirements are "designed to promote self-sufficiency."

[10] *See Aiken v. District of Columbia Department of Housing and Urban Development,* 515 A.2d 712, 719 (D.C. Cir. 1986) (termination of section 8 housing assistance based upon a vague rule requiring income verification for recertification violates due process).

[11] FEMA's Memo states that awards for the third and any future recertification will be contingent on the applicant's "[d]emonstration of increased housing cost" by submitting "pre-disaster *and* current rent/mortgage statements." (AR 6034.) Yet, neither the Stafford Act nor its implementing regulations authorize a requirement that evacuees have higher post-disaster, than pre-disaster, housing costs in order to be eligible for CRA. This could encourage evacuees to live in more expensive housing just to become CRA eligible.

Moreover, FEMA's income standard in 44 C.F.R. § 206.111 only applies to evacuees whose post-disaster incomes have decreased. For evacuees whose post-disaster incomes have not changed, FEMA determines their financial ability based on their pre-disaster housing costs, which is prejudicial to evacuees in areas where post-disaster housing costs have sky rocketed. The income standard must apply impartially and uniformly to all evacuees. *See* 42 U.S.C. § 5151(a); 44 C.F.R. § 206.11(b).

Without published guidelines on criteria for CRA eligibility, there is no way to know if FEMA is meeting the requirements of the Stafford Act. Therefore, the Court should enjoin Defendants from failing and refusing to adopt and implement written ascertainable, CRA standards to guide FEMA staff from denying CRA denials to qualified evacuees.

D. FEMA Has Failed To Consistently Apply And Effectively Disseminate Its Modification Of The Shared Household Rule.

FEMA claims that it has resolved the SHR problem by revising the rule and disseminating information about the change. (Defs. Post-Trial Br. at 15-17.) However, the alleged changes do not go far enough. FEMA has never rescinded the continued requirement of a geographic separation – even for unrelated persons living together before the storm or for roommates before the storm who have evacuated to the same city but are now living separately. (*See* AR 00302.) Therefore, those who applied for housing assistance "second" still remain denied. (*See, e.g.,* Def. Exs. 5-8 (showing that 44.7% of all denials of pending cases were due to denial categories, such as duplicative status, related to the SHR).)

FEMA still refuses to grant thousands of evacuees, denied under the rules that it modified, the benefits to which they are entitled. The "auto dialer remedy" and the letters sent after the modification required the second applicant to meet an impossible condition in order for him to secure benefits. Evacuees "had to submit either rent receipts or a 'separate lease,' along with a letter explaining why the household separated as a result of the disaster." (Defs. Post-Trial Br. at 16-17

n.14 (emphasis omitted).) Apparently FEMA still does not understand that, by definition, a second household that has received no Assistance cannot produce a rent receipt or a lease. Hence FEMA's "remedy" offers no cure.

As such, it is necessary that the Court enjoin Defendants from denying Assistance to qualified evacuee members of a pre-disaster shared household who were displaced by Hurricane Katrina and are living apart from other members of such household, and from failing and refusing (1) to notify applicants who were denied Assistance due to the Shared Household Rule, and (2) to reprocess their applications without the Shared Household Rule.

CONCLUSION AND REQUESTED RELIEF

Both parties share an interest in the pragmatic resolution of the problems encountered by evacuees,[12] but the scope of this disaster has given rise to problems not easily resolvable by traditional remedies.[13] Plaintiffs believe they can obtain the most effective relief if this Court, after determining its jurisdictional, factual and legal bases for liability, afforded the parties an opportunity to craft mutually acceptable relief or, to the extent they cannot, propose their own relief, before an Order is finalized. This flexible approach should help avoid any micromanagement of FEMA's programs and maximize the effective relief for the 1.7 million affected households.

Accordingly, Defendants' should be preliminarily and permanently enjoined as set forth herein and in Plaintiff's Post Hearing Brief.

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12 The Court should narrowly define the class of people represented by counsel, according to the issues actually litigated and discussed in the Post Trial Memoranda.

13 For example, FEMA could not implement a prior TRO because it could not identify the evacuees in hotels.

Respectfully Submitted,

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Dated: New York, New York
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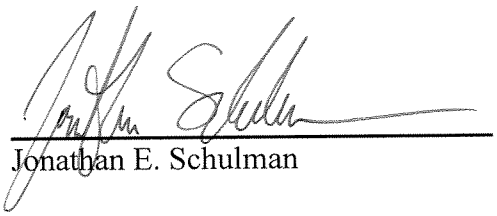
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing documents was served on all counsel of record by electronic mail on this 31st day of March, 2006.



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