

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of)
Roberto Guerrero, III, and Zinia Guerrero,)
and their minor children, and)
Elvira Reyna and her minor child,)
Charging Party,)
v.)
Kacy Grotjan, Creek Point LP,)
Picerne Development Corporation, and)
Picerne Creek Point, LLC,)
Respondents.)

November 9, 2011

HUD ALJ No. 11-F-073-FH-33

HUD ALJ No. 11-F-074-FH-34

INITIAL DECISION AND CONSENT ORDER

I. BACKGROUND

On or about November 4, 2010, Roberto Guerrero, III and Zinia Guerrero, and their minor children filed a verified complaint with the United States Department of Housing and Urban Development (HUD), alleging that Kacy Grotjan and Creek Point LP violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the Act), by discriminating based on familial status, in violation of 42 U.S.C. § 3604(b). Complainants' children, Roberto Guerrero, IV, and Maritza I. Guerrero, are identified as aggrieved parties, as defined under the Act. On March 24, 2011, the complaint was amended to identify Kacy Grotjan as the manager of Creek Point Apartments, Creek Point LP as the owner, Picerne Development Corporation as the management company, and Picerne Creek Point, LLC, as the general partner of Creek Point LP. On August 26, 2011, the complaint was again amended to add a violation of 42 U.S.C. § 3604(c). In addition, the August 26, 2011 amendment corrected the spelling of the names of Roberto Guerrero, III, and Roberto Guerrero, IV, and updated the name of the respondents' counsel, which is James T. Muska at Hoover Slovacek LLP.

On or about November 23, 2010, Elvira Reyna filed a verified complaint with the United States Department of Housing and Urban Development, alleging that Kacy Grotjan and Creek Point LP violated the Fair Housing Act as amended in 1988, 42 U.S.C. § 3601 *et seq.* (the Act), by discriminating based on familial status, in violation of 42 U.S.C. § 3604(b). On November 23, 2010, the Texas Workforce Commission Civil Rights Division (TWCCRD), a substantially

equivalent agency, received the complaint from HUD for investigation. On July 18, 2011, HUD reactivated the complaint from the TWCCRD for processing. On August 26, 2011, Complainant amended her complaint to identify her daughter, Margarita Reyna, as an aggrieved person as defined under the Act, and to identify Creek Point LP as the owner of Creek Point Apartments, Picerne Development Corporation as the management company of Creek Point Apartments, and Picerne Creek Point, LLC, as the general partner of Creek Point LP. The amended complaint also removed an 804(a) allegation and added an 804(c) allegation. Finally, the amended complaint also updated the name of the respondents' counsel, which is James T. Muska at Hoover Slovacek LLP.

On September 23, 2011, the Department issued two Charges of Discrimination (Charges). The Charging Party alleged that Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, (collectively "Respondents") subjected Complainants Roberto (a.k.a. Robert) Guerrero, III, and Zinia Guerrero and their two minor children, Roberto (a.k.a. Robert) Guerrero, IV, and Maritza I. Guerrero, and Elvira Reyna, and her minor child, Margarita Reyna (collectively "Complainants") to an overly restrictive policy that did not allow their minor children to leave their apartment without an adult present, and by charging a fine for any violation of said policy, Respondents subjected Complainants to more restrictive terms and conditions than tenants of the subject property who do not reside with minor children, in violation of 42 U.S.C. § 3604(b) of the Act. The Charging Party also alleged that Respondents verbally communicated to Complainants that children were not allowed outside unless supervised by an adult and posted notices and signs throughout the subject property that indicated a limitation or discrimination against families with children, in violation of 42 U.S.C. § 3604(c) of the Act.

This Initial Decision and Consent Order (Consent Order or solely Order) resolves the Department's Charge on behalf of Complainants Roberto (a.k.a. Robert) Guerrero, III, and Zinia Guerrero and their two minor children, Roberto (a.k.a. Robert) Guerrero, IV, and Maritza I. Guerrero, and Elvira Reyna and her minor child, Margarita Reyna.

II. ADMINISTRATION

1. This Consent Order is entered pursuant to Section 812(g)(3) of the Act and the regulations codified at 24 C.F.R. § 180.450 and shall become final upon the expiration of thirty days or affirmance by the Secretary within that time. *See*, 42 U.S.C. § 3612(h); 24 C.F.R. § 180.680. The signatures of the parties to this Consent Order constitute a waiver of any right to withdraw their consent during the thirty day Secretarial review period and a waiver of any right to challenge the validity of this Order at any time. *See* 24 C.F.R. § 180.450.

2. The parties agree that the execution of this Consent Order may be accomplished by separate execution of consents to this Order, the original executed signature pages to be attached to the body of the Consent Order to constitute one document.

3. The term of this Consent Order shall be two (2) years from the effective date of this Consent Order, however, the releases contained in Section III of this Consent Order will survive the term of this Consent Order and be binding on the parties forever.

4. The parties agree that the Charging Party's counsel will file with the Office of Administrative Law Judges a Joint Motion of Entry of an Initial Decision and Consent Order, after the Consent Order is executed by all parties.

III. MUTUAL WAIVERS AND RELEASES

5. The United States Department of Housing and Urban Development shall regard the entry of this Initial Decision and Consent Order as a complete disposition of any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the complaints that were the basis of the Charges of HUD Case Numbers 06-11-0171-8 and 06-11-0259-8, or which could have been filed in any action or suit arising from said subject matter.

6. In consideration of the execution of this Consent Order, and other good and valuable consideration, Complainants Roberto Guerrero, III, and Zinia Guerrero, both individually, and on behalf of their minor children Roberto Guerrero, IV, and Maritza I. Guerrero, and Elvira Reyna, both individually, and on behalf of her minor child, Margarita Reyna, hereby forever waive, release, and covenant not to sue Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, their affiliates, parent or subsidiary companies, insurers, attorneys, agents, directors, officers, shareholders, partners, employees, successors, and assigns, with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 06-11-0171-8 and 06-11-0259-8, or which could have been filed in any action or suit arising from said subject matter, including all claims relating to, arising out of, or, in any way, connected with, Complainants' lease agreements, the leased premises, the condition of the leased premises or common areas in the apartment community, any security deposits, the actions of owner or its managing agents, the termination or cancellation of the lease agreement, or, in any way, the use or occupancy of the leased premises by Complainants, Complainants' occupants or guests.

7. In consideration of the execution of this Consent Order, Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, hereby forever waive, release, and covenant not to sue Complainants Roberto Guerrero, III, Zinia Guerrero, and Elvira Reyna, or their heirs, successors, executors, agents, attorneys, and assigns, with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 06-11-0171-8 and 06-11-0259-8, or which could have been filed in any action or suit arising from said subject matter.

8. In consideration of the execution of this Consent Order, Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, and Complainants Roberto Guerrero, III, and Zinia Guerrero, both individually, and on behalf of their minor children, Roberto Guerrero, IV, and Maritza I. Guerrero, and Elvira Reyna, both

individually, and on behalf of her minor child, Margarita Reyna, hereby forever waive, release, and covenant not to sue the United States Department of Housing and Urban Development, or its employees, heirs, successors, agents, attorneys, and assigns, with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 06-11-0171-8 and 06-11-0259-8, or which could have been filed in any action or suit arising from said subject matter.

IV. GENERAL PROVISIONS

9. It is understood that the signing of this Agreement by the Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, does not constitute an admission of any violation of the Fair Housing Act by Respondents or any of their agents. Complainants Roberto Guerrero, III, Zinia Guerrero, and Elvira Reyna and Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, agree that in signing this Agreement, there is no admission of guilt or innocence by Respondents to the allegations of this complaint, and Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, expressly deny all allegations in the complaint and that Respondents reserve their right to defend any future claims for alleged discrimination brought by any other complainant.

10. The parties acknowledge that this Consent Order is a voluntary and full settlement of the disputed complaint. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Consent Order.

11. The parties acknowledge that the terms set forth herein are contractual and not merely a recital of the parties' intentions. The parties acknowledge that they have read and fully understand the significance of the provisions of this Initial Decision and Consent Order and their obligations hereunder.

12. It is understood that pursuant to 24 C.F.R. §180.680, this Consent Order is a public document.

13. This Consent Order does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, or Picerne Creek Point, LLC, made pursuant to the Fair Housing Act, or any other complaint within the Department's jurisdiction, except as provided in ¶ 5.

14. No amendment to, modification of, or waiver of any provisions of this Consent Order shall be effective unless: (a) all signatories or their successors to the Consent Order agree in writing to the amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the Fair Housing and Equal Opportunity Regional Director, Region VI.

V. RELIEF FOR COMPLAINANT

15. Respondents Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, shall waive any and all debt owed to Respondents by Complainants Roberto Guerrero, III, and Zinia Guerrero, as of the date of the Consent Order, including, but not limited to \$2,291.75 assessed to Complainants for early lease termination fees and apartment cleaning fees. Within thirty (30) days from the date that this Consent Order becomes effective, Respondents Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, shall notify any collection agencies and credit reporting agencies previously notified of this debt of the removal of this debt from Respondents' ledgers.

16. Respondents Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, shall waive any and all debt owed to Respondents by Complainant Elvira Reyna, as of the date of the Consent Order, including, but not limited to \$700.00 assessed to Complainant for apartment damage, and pet deposit fees. Within thirty (30) days from the date that this Consent Order becomes effective, Respondents Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, shall notify any collection agencies and credit reporting agencies previously notified of this debt of the removal of this debt from Respondents' ledgers.

17. Within thirty (30) days of the date that this Consent Order becomes effective, Respondent Creek Point LP shall tender to Complainants Roberto Guerrero, III, and Zinia Guerrero a total of \$10,000.00 in certified funds made payable to Roberto Guerrero and Zinia Guerrero. Within thirty (30) days of the date that this Consent Order becomes effective, Respondent Creek Point LP shall tender to Complainant Elvira Reyna a total of \$5,000.00 in certified funds made payable to Elvira Reyna.

All checks and correspondence should be sent to the following addresses:

Roberto and Zinia Guerrero
1018 Inwood Drive
McKinney, TX 75069

Elvira Reyna
2700 N. Brook St. #L133
McKinney, TX 75070

VI. RELIEF IN THE PUBLIC INTEREST

Injunctive Relief

18. Respondents Kacy Grotjan, Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, their agents, employees, successors, and all persons in active concert or participation with them are permanently prohibited from engaging in any discriminatory

housing practice on the basis of familial status or any other protected basis under 42 U.S.C. §§3601, *et seq.*

19. Respondents shall remove immediately, upon execution of the Consent Order, any and all policies still in place which generally restrict children from moving about the subject property without adult supervision.

20. Respondents shall remove immediately, upon execution of the Consent Order, any signage that generally restricts children from using the subject property's facilities and/or amenities without adult supervision. Respondents may use signage which advises residents that children should be supervised by an adult because of safety concerns.

21. Respondents, their agents, employees, members, successors, and assigns, and all other persons in active concert or participation with any of them are enjoined from retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in this litigation. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Consent Order and a statutory violation of the Act.

Notice of Policy Withdrawal

22. Within ten (10) days of the date of entry of this Consent Order, Respondents shall notify residents that there is no policy restricting children from generally moving about the subject property without adult supervision, and any previous policy on the matter is no longer in effect. Respondents may include in this notification a statement that all residents, including children, must act in a reasonable manner and not interfere with the other residents' peaceful enjoyment of the property.

Mandatory Education and Training

23. Within thirty (30) days of the entry of this Consent Order, Respondents shall provide a copy of this Consent Order to the following principals, agents, and employees involved in showing, renting or managing of any and all units at Creek Point Apartments, specifically: Leslie Dickerson, Isabelle Renteria, Parish Stone and Cesar Mejia. Respondents shall secure a signed statement from each person listed above acknowledging that he or she received and read the Consent Order (see Appendix A).

24. Within one year of the date of entry of this Consent Order, Respondents' employees involved in showing, renting or managing any and all units at Creek Point Apartments, specifically, Leslie Dickerson, Isabelle Renteria, Parish Stone and Cesar Mejia, shall attend a minimum of three (3) hours of training pertaining to their obligations under the Fair Housing Act and applicable state and local non-discrimination laws. The Fair Housing training will be conducted by HUD's Office of Fair Housing and Equal Opportunity or another state or local agency or organization approved by HUD. HUD has represented that it will provide this training free of charge. Respondents shall contact Regional Director, Region VI (address below) to schedule the training. If Respondents wish to engage a trainer other than HUD, they must obtain

written approval of such from Regional Director, Region VI at least thirty (30) days prior to the commencement of training, and will pay all costs of this alternative training.

25. Within one year of the date of entry of this Consent Order, Respondent Kacy Grotjan shall attend a minimum of three (3) hours of training pertaining to their obligations under the Fair Housing Act and applicable state and local non-discrimination laws. The Fair Housing training will be conducted by HUD's Office of Fair Housing and Equal Opportunity or another state or local agency or organization approved by HUD. HUD has represented that it will provide this training free of charge. Respondent Kacy Grotjan shall contact Regional Director, Region VI (address below) to schedule the training. If Respondent Kacy Grotjan wishes to engage a trainer other than HUD, she must obtain written approval of such from Regional Director, Region VI, at least thirty (30) days prior to the commencement of training, and will pay all costs of this alternative training.

26. Within fourteen (14) months of the date of entry of this Consent Order, Respondents shall submit the signed statements verifying receipt of the Consent Order specified in ¶23 and documentation of compliance with fair housing training requirements specified in ¶24 to Garry Sweeney, FHEO Regional Director for Region VI in the Fort Worth, Texas HUD office. Within fourteen (14) months of the date of entry of this Consent Order, Respondent Kacy Grotjan shall submit documentation of compliance with fair housing training requirements specified in ¶25 to Garry Sweeney, FHEO Regional Director for Region VI in the Fort Worth, Texas HUD office.

27. All required signed statements verifying receipt of the Consent Order and documentation of compliance with fair housing training requirements must be submitted to:

Garry Sweeney, FHEO Regional Director, Region VI
U.S. Department of Housing and Urban Development
801 Cherry St., Unit #45, Ste. 2500
Fort Worth, Texas 76102
Telephone: 817-978-5868
Facsimile: 817-978-5876

VII. COMPLIANCE

28. HUD shall determine compliance with the terms of this Consent Order. During the term of this Consent Order, HUD, after affording Creek Point LP, Picerne Development Corporation, or Picerne Creek Point, LLC, 24-hour notice, may review compliance with this Consent Order, subject to and in accordance with HUD regulations. Respondents Creek Point LP, Picerne Development Corporation, and Picerne Creek Point, LLC, agree to provide full cooperation in any compliance review undertaken by HUD to ensure compliance with this Consent Order.

VIII. REMEDIES FOR BREACH

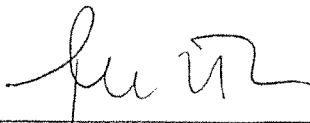
29. Upon a breach of any provision of this Consent Order, HUD may refer this matter to the Department of Justice to petition the United States Court of Appeals for the Fifth Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. §3612(j).

IX. SIGNATURES

RESPONDENTS:

Kacy Grotjan

Date



Creek Point LP

10 | 27 | 11
Date



Picerne Development Corporation

10 | 27 | 11
Date



Picerne Creek Point, LLC

10 | 27 | 11
Date

COUNSEL FOR RESPONDENTS:



Paul Pilibosian
Hoover Slovacek LLP
5847 San Felipe, Ste. 2200
Houston, Texas 77057-3198

Date

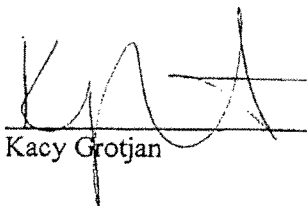
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VIII. REMEDIES FOR BREACH

29. Upon a breach of any provision of this Consent Order, HUD may refer this matter to the Department of Justice to petition the United States Court of Appeals for the Fifth Circuit to enforce the Consent Order and for any other appropriate relief in accordance with 42 U.S.C. §3612(j).

IX. SIGNATURES

RESPONDENTS:



Kacy Grotjan

11/8/11

Date

Creek Point LP

Date

Picerne Development Corporation

Date

Picerne Creek Point, LLC


Date

COUNSEL FOR RESPONDENTS:

Paul Pilibosian
Hoover Slovacek LLP
5847 San Felipe, Ste. 2200
Houston, Texas 77057-3198

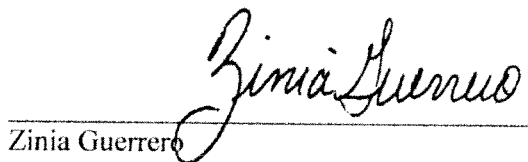
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COMPLAINANTS:



Roberto Guerrero

10-27-11
Date



Zinia Guerrero

10-27-11
Date

Elvira Reyna

Date

COUNSEL FOR THE CHARGING PARTY, UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT:

Allyssa D. Wheaton-Rodriguez, Trial Attorney
Office of Regional Counsel for Region VI
801 Cherry St., Unit #45, Ste. 2500
Fort Worth, Texas 76102

Date

William Daley, Regional Counsel
Office of Regional Counsel for Region VI
801 Cherry St., Unit #45, Ste. 2500
Fort Worth, Texas 76102

Date

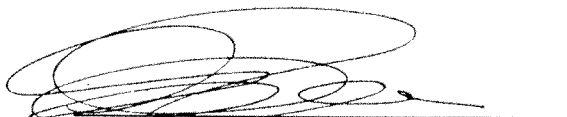
COMPLAINANTS:

Roberto Guerrero

Date

Zinia Guerrero

Date


Elvira Reyna

10/27/11
Date

COUNSEL FOR THE CHARGING PARTY, UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT:

Allyssa D. Wheaton-Rodriguez, Trial Attorney
Office of Regional Counsel for Region VI
801 Cherry St., Unit #45, Ste. 2500
Fort Worth, Texas 76102

Date

William Daley, Regional Counsel
Office of Regional Counsel for Region VI
801 Cherry St., Unit #45, Ste. 2500
Fort Worth, Texas 76102

Date

COMPLAINANTS:

Roberto Guerrero

Date

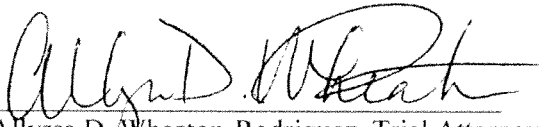
Zinia Guerrero

Date

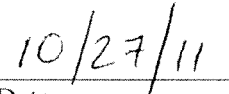
Elvira Reyna

Date

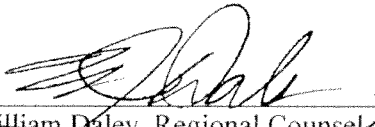
COUNSEL FOR THE CHARGING PARTY, UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT:



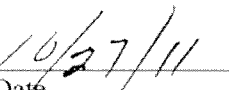
Allyssa D. Wheaton-Rodriguez, Trial Attorney
Office of Regional Counsel for Region VI
801 Cherry St., Unit #45, Ste. 2500
Fort Worth, Texas 76102



Date



William Daley, Regional Counsel
Office of Regional Counsel for Region VI
801 Cherry St., Unit #45, Ste. 2500
Fort Worth, Texas 76102



Date

XI. ORDER OF THE COURT

The hearing in this matter was set for December 19, 2011. On 11/9/11, the parties filed a motion for entry of this Consent Order, incorporating the terms of their agreement. The agreement appears to be in the public interest and all parties have signed it. Accordingly, the terms of the Consent Order are hereby entered.

So Ordered this 9th day of November, 2011

A handwritten signature in cursive script, appearing to read "Alexander", followed by a large, loopy flourish that extends to the right.

Alexander Fernández
Administrative Law Judge

Appendix A

Employee Acknowledgement of Receiving and Reviewing Consent Order

I acknowledge on _____, I received a copy of the
Consent Order entered into in HUD v. Kacy Grotjan, Creek Point LP, et al, 11-F-073-FH-
33 and 11-F-074-FH-34. I have read and understood the Consent Order.

Signature

Printed Name

Job Title

Date