

EXHIBIT

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL FAIR HOUSING ALLIANCE,
et al.

Plaintiffs,

v.

BEN CARSON, *et al.*,

Defendants.

Civ. Action No. 1:18-cv-1076-BAH

SECOND DECLARATION OF DEBORAH GOLDBERG

1. My name is Deborah Goldberg. I am over the age of eighteen and am competent to make this declaration. I have personal knowledge of the matters set forth herein. I joined the NFHA staff in 2005 as Director of the Hurricane Relief Project, and I am currently the Vice President of Housing Policy and Special Projects at the National Fair Housing Alliance (NFHA). In that capacity, I have led NFHA's policy and advocacy work to promote the fulfillment of the promise of the Fair Housing Act's affirmatively furthering fair housing mandate since 2008.
2. Since the 1990s, NFHA has been deeply involved in working nationally and locally through its members to assure that grantees funded by HUD affirmatively further fair housing. NFHA members have worked with local jurisdictions for years, providing information for Analyses of Impediments ("AI(s)"), assisting jurisdictions to develop AIs, reviewing and commenting on AIs, and watching jurisdictions implement, or not implement, AIs. NFHA and its members saw jurisdictions adopt poor quality AIs with little or no content dealing with fair housing issues. NFHA and its members saw jurisdictions hire contractors who

wrote AIs that were completely inadequate to address deeply entrenched challenges of segregation and inequitable access to community resources. NFHA and its members saw jurisdictions adopt well-crafted AIs—then ignore their contents and take no action to overcome the impediments to fair housing choice they identified. NFHA saw jurisdictions ignore local fair housing advocates and their recommendations, in favor of exclusionary and discriminatory practices. NFHA and its members even saw local jurisdictions deliberately exclude fair housing advocates and community members from the Affirmatively Furthering Fair Housing (“AFFH”) planning process. NFHA therefore learned long before the 2010 publication of the Government Accountability Office (GAO) report on the inadequacy of the AI system that the AI system was not adequate to fulfill HUD’s statutory obligation to affirmatively further fair housing and that significant regulatory changes were necessary.

3. NFHA advocated aggressively for HUD to engage in rulemaking to modernize and clarify its grantees’ obligation to affirmatively further fair housing, participating in listening sessions convened by HUD prior to the publication of the Proposed AFFH Rule in 2013. We met with senior HUD staff and consultants to discuss the importance of the Rule, and organized meetings of the Leadership Conference for Civil and Human Rights Fair Housing Task Force to plan and attend meetings with then Secretaries Shaun Donovan and Julian Castro and Assistant Secretaries under their direction in which we and others stressed the importance of HUD promulgating an updated AFFH Rule that would remedy the failings of the existing AI process.
4. During the rulemaking process that led to the promulgation of the 2015 AFFH Rule and during the Paperwork Reduction Act review processes for the AFFH Assessment Tools, I prepared and signed onto several comment letters on behalf of NFHA and worked with

NFHA members and coalition allies to ensure that the resulting AFFH Rule and the AFH Assessment tool provided a robust basis for sound and ambitious fair housing planning informed by community participation, particularly by our members and the populations they serve. NFHA staff and members also advocated for a strong AFFH Rule and supporting tools in meetings with U.S. Department of Housing and Urban Development (HUD) staff and through strategic communications efforts to build support for the rule.

5. NFHA trained its members and allies on the obligation to affirmatively further fair housing for many years, elevating the issue in conferences going back at least as far as 2008, and focusing in on what we anticipated would be the outlines of the Rule once the proposed Rule was published in 2013. We had webinars (and spoke on webinars sponsored by other organizations), in-service trainings, included a variety of AFFH-related sessions at our national conferences, spoke at the conferences of other organizations, and developed written materials, among other things. In fact, in order to emphasize the importance of AFFH to the work of fair housing organizations and their communities, we chose the theme of “Making Your Zip Code = Opportunity” for our 2014 conference, reflecting the basic concept of expanding access to opportunity that is the foundation of the AFFH principle.
6. After the AFFH Rule became final in 2015, I provided training, technical assistance, and support to NFHA members that were engaging in the community participation process for Assessments of Fair Housing (“AFHs”) in their communities. Many of the resources we developed have been made publicly available on our website, at <http://nationalfairhousing.org/affirmatively-furthering-fair-housing/>. These efforts helped our members build the capacity to effectively leverage the specific procedural and substantive protections of the AFFH Rule to advocate for the inclusion of strong goals and

meaningful strategies in AFHs that would address systemic patterns of housing discrimination and other barriers to residential integration and access to opportunity. The AFFH Rule's requirements and the AFH tool specifically, when in effect, made NFHA's efforts more efficient and effective. Not only did the Rule and the AFH tool provide NFHA and its members greater ability to inject fair housing considerations into municipal planning, but its community participation process, consistent template in the AFH tool, common data sources and maps, and formalized rules made it much simpler for NFHA to advise and assist its members. Although the AFH tool and HUD-provided data were not perfect from our point of view, using them improved the fair housing analysis enormously from the previous AI process. The tool also required local communities to follow an organized, data-driven process that guided them to focus on key fair housing issues without dictating any particular outcome.

7. One particularly important part of the AFFH Rule was the requirement that there be an accepted AFH as a condition of approval of a Consolidated Plan, making an accepted AFH effectively a condition of continued funding for CDBG-funded entities. Assuring that HUD would examine Assessments to assure that they were substantially complete, consistent with the data, and that uniform community participation processes were followed was critical to make sure that jurisdictions took the AFH process seriously. The requirement of an accepted AFH as a condition of continued funding provided valuable leverage to advocates like NFHA members who could encourage local jurisdictions to consider more robust and effective strategies. Another particularly important part of the AFFH Rule was the requirement that the goals, metrics, and timelines adopted be incorporated into the jurisdiction's Consolidated Plan, that the Consolidated Plan specify strategies and designate resources for achieving

those goals, and that jurisdictions report on their progress toward meeting those goals in their annual performance reports. This provision created an additional mechanism for holding local officials accountable, and by directing the use of housing and community development resources, would have led to concrete action to lessen segregation and mitigate its harmful effects in communities that adopted AFHs, thus furthering the mission of NFHA and its members.

8. Since the January 5, 2018 suspension of the AFFH Rule, I have led and coordinated the efforts of NFHA's staff in (1) reading and analyzing the notice and its implications; (2) consulting with partner organizations at the national level about the notice's implications and how to combat its effects; (3) meeting with multiple HUD officials to seek clarification regarding the unlawful action and HUD's intentions; (4) preparing and submitting two Freedom of Information Act requests to HUD seeking records necessary for a full understanding of HUD's action and intentions; (5) identifying which local government program participants may have submitted AFHs prior to January 5, 2018 but not have received HUD's acceptance of their submissions as of that date; and (6) conducting affirmative outreach to NFHA members in HUD's ten regions to learn how HUD was applying the notice on the ground. Each of these steps has been time- and resource-intensive, but they have been necessary for NFHA to effectively educate and counsel its members and other civil rights and affordable housing stakeholders in the face of the uncertainty created by HUD's action.
9. When HUD suspended the AFFH rule in January 2018 and then removed the AFH tool from use in May 2018, HUD removed all of the benefits of efficiency and thought that had gone into the AFH process and the development of the AFH tool and returned to the previous AI

process which is deeply flawed and lacks the AFH's organized process, consistent template in the AFH tool, and common data sources and maps. That action has significantly affected NFHA's ability to address issues through its members across the country because all of the common assumptions and information built into the AFH process and the thoughtful analytical process tied to a consideration of local data contained in the AFH tool are no longer in effect. This has dramatically increased the burden on NFHA's resources to deal with a variety of community based issues without a common template, and halted the momentum of NFHA members in advocating for, and achieving, fair housing goals. The suspension has directly harmed NFHA's ability to achieve actions that will advance fair housing principles and undo long-standing patterns of segregation and exclusion, and to help its members to do the same.

10. As a result of the suspension of the AFFH Rule and the removal of the AFH tool, NFHA has had to undertake actions to try to counter HUD's actions. NFHA provided extensive comments in response to HUD's January notice, which can be viewed at <http://nationalfairhousing.org/2018/03/07/the-national-fair-housing-alliances-comments-on-huds-announcement-to-suspend-the-affirmatively-furthering-fair-housing-rule/>. NFHA is developing written materials to help members continue advocating for effective AFFH activities in their communities and counseling and providing technical support to individual members, many of which were working with localities in some stage of the AFH process at the time of HUD's January 5, 2018 action.
11. Because of our expertise with respect to the AFFH Rule and knowledge of fair housing law and policy, allied civil rights, affordable housing, and consumer protection organizations looked to us for advice and counsel about how to most effectively respond to HUD's

unlawful action. My colleagues and I have given presentations concerning the notice and the bases for countering it to the Fair Housing Association of Connecticut, whose members include fair housing officers from towns across that state, to the Leadership Conference on Civil and Human Rights Fair Housing Taskforce, to Americans for Financial Reform Housing and Foreclosure Working Group; and to the Affirmatively Furthering Fair Housing Working Group of NFHA's members. Because of the amount of time taken up by efforts to respond to the January 5 notice, I had to cancel plans to give a presentation about AFFH and the impact of that notice at a conference sponsored by the Inland Fair Housing and Mediation Board, one of NFHA's members in San Bernardino County, California.

12. I and others at NFHA have had to inform NFHA's members about the impact of the January notice through a detailed e-mail on the day of its issuance; the release of a public statement posted on NFHA's website the following week and disseminated by e-mail; and individualized e-mail outreach and, in some cases, follow-up phone calls with key NFHA members located in HUD's ten regions. We have had to take similar steps to inform NFHA's members about HUD's May Notices. Between my colleagues and me, these efforts, which reached all of NFHA members as well as many supportive stakeholders, required the investments of dozens of hours of staff time.

13. In future months, the extent to which my colleagues and I will have to devote time to counteracting the adverse effects of HUD's notice will only increase. This is the product of the fact that, under the AFFH Rule, a majority of local government program participants would have their AFHs due from April 2019 through January 2020. These grantees are currently making decisions about whether to proceed with a full AFH on the timeline of the AFFH Rule, whether to conduct an Analysis of Impediments to Fair Housing Choice (AI) on

that same timeline, whether to conduct an AI at some later date, the extent to which to utilize some of the resources associated with the AFFH Rule in completing an AI, and whether to conduct an AI at all. These grantees will also have to make decisions about whether to conduct a robust community participation process, as required under the AFFH rule but not under the AI rule, whether to incorporate specific goals, metrics, and timelines in their AI/AFH, as many failed to do under the AI system, and then whether to incorporate those goals, metrics and timelines into their Consolidated Plan and/or PHA plan. If grantees fail to include the information from their AI or AFH into the Consolidated Plan, which would have been required before HUD took its actions, measurable reductions in segregation, expansion of housing opportunities, or strategic investment in extremely poor communities of color will be diminished. NFHA's members must advocate to affect this decision-making process and promote the completion of full AFHs and inclusion into Consolidated Plans of actions to implement the AFHs in order to effectively advance their own missions. Without the AFH tool to organize their planning process, grantees will be unsure what should be contained in a fair housing analysis and how they should shape their analysis. It is also most certain that the absence of the AFH tool will result in many grantees ignoring patterns of segregation, disparities in access to opportunity, key issues affecting people with disabilities and the other important components of the AFH tool. It is also certain that many grantees will fail to identify and commit to taking specific actions to reduce segregation and increase access to opportunity. Moreover, because of HUD's actions that adversely affect the required community participation in the AFFH rule, it will be necessary for NFHA members to develop new strategies and find new allies to create local community participation processes, to get a seat at the table for local communities' planning processes which HUD is no longer

mandating, and to remain engaged to assure that jurisdictions take the actions that are necessary to address the fair housing issues that are identified in an AI. These members have already begun and will continue to turn to NFHA staff, including myself, for advice and counsel about how to most effectively carry out this work.

14. By engaging in efforts to counteract HUD's actions, NFHA diverted its resources away from other important fair housing activities including its preparations for the 50th anniversary of the passage of the Fair Housing Act and the publication of its annual Fair Housing Trends report. NFHA has also had to delay or scale back its plans to provide assistance to NFHA members on disaster recovery plans in Florida, Texas, and California, work with other partners to increase access to FEMA disaster data that could benefit fair housing related improvements in disaster recovery, analyze and work on improving the resources and protections available through the GSEs to address the language needs of non-English-speaking borrowers in mortgage originations and servicing, analyze the Federal Housing Finance Agency's proposed changes to regulations affecting the affordable housing programs of the Federal Home Loan Banks, and informing our members about and engaging with the GSEs on their efforts to promote residential economic diversity as detailed in their Duty to Serve plans.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate. Further, I certify that I am qualified and authorized to file this declaration.

Executed within the United States on June 25, 2018.



 DEBORAH GOLDBERG