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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,

Plaintiff,

v.

CITY OF SUNNYSIDE; AL
ESCALERA, in his official and
individual capacities; MELISSA
RIVAS, in her official and
individual capacities;
CHRISTOPHER SPARKS, in his
official and individual capacities;
JOEY GLOSSEN, in his official
and individual capacities; and
JAMES RIVARD, in his official
and individual capacities

Defendants.

NO. 19-cv-03174-RMP

AMENDED COMPLAINT
FOR DECLARATORY
RELIEF, INJUNCTIVE
RELIEF, AND DAMAGES

1 **I. INTRODUCTION**

2 The State of Washington (the State) brings this civil action as parens
3 patriae against the City of Sunnyside (Sunnyside) and five of its employees for
4 declaratory and injunctive relief, and for damages to redress Sunnyside’s policy
5 or practice of evicting residents without due process in violation of federal and
6 state law.

7 **II. PARTIES**

8 2.1 Plaintiff is the State of Washington. The Attorney General is authorized to
9 commence this action pursuant to Wash. Rev. Code § 43.10.030(1).

10 2.2 Plaintiff Washington has quasi-sovereign interests in protecting the health,
11 safety and well-being of its residents, and in ensuring that its residents are not
12 excluded from the benefits that flow from participation in the federal system,
13 including the rights and privileges provided by the U.S. Constitution and federal
14 law. A significant number of Washington residents live in cities with Crime Free
15 Rental Housing Programs (CFRHPs). In addition to Sunnyside, Tacoma,
16 Bellingham, Spokane, Pasco, Yakima, Prosser, Tukwila, Kent, Walla Walla,
17 University Place, Othello, and Port Orchard all currently have some form of
18 CFRHP. Other cities, such as Shelton and Moses Lake, are considering
19 implementing such a program. Since many Washington cities have CFRHPs, the
20 State has a compelling interest in protecting its residents – especially its most
21 vulnerable – from enforcement of these programs in ways that deprive residents
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1 of their federal and state constitutional and statutory rights and adversely impact
2 their health and well-being.

3 2.3 Defendant City of Sunnyside, Washington, is a municipal corporation,
4 with over 16,000 residents. Sunnyside operates the Sunnyside Police
5 Department. Sunnyside police officers are Sunnyside employees.

6 2.4 Defendant Al Escalera is the chief of police of the City of Sunnyside.
7 Defendant Escalera is sued in both his official and individual capacities.

8 2.5 Defendant Melissa Rivas is a police officer employed by the City of
9 Sunnyside. Defendant Rivas is sued in both her official and individual capacities.

10 2.6 Defendant Christopher Sparks is a police officer employed by the City of
11 Sunnyside. Defendant Sparks is sued in both his official and individual
12 capacities.

13 2.7 Defendant Joey Glossen is a police officer employed by the City of
14 Sunnyside. Defendant Glossen is sued in both his official and individual
15 capacities.

16 2.8 Defendant Jim Rivard is a code enforcement officer employed by the City
17 of Sunnyside. Defendant Rivard is sued in both his official and individual
18 capacities.

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III. PREREQUISITES TO SUIT

On or about May 13, 2019, the State served a claim for damages on Sunnyside pursuant to Wash. Rev. Code § 4.96.020(2). More than 60 days have lapsed since that filing.

IV. JURISDICTION AND VENUE

4.1 The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343, which confer original jurisdiction upon this Court of any civil action involving a federal question and to recover damages to secure equitable relief under any Act of Congress providing for the protection of civil rights. This action is authorized and instituted pursuant to 42 U.S.C. §§ 1983 and 3613.

4.2 This Court has supplemental jurisdiction over Washington’s state law claims pursuant to 28 U.S.C. § 1367.

4.3 Venue is proper in this district because Defendant resides in Yakima County, Washington, and all of the events that support Washington’s allegations occurred there. 28 U.S.C. §§ 1391(b)(1) and (2).

V. FACTS

5.1 In 2010, Sunnyside established and has continued to implement through its police department a CFRHP. Sunnyside Municipal Code (SMC) § 5.02.030(A). The stated intent of the CFRHP is to reduce crime in rental housing through a partnership between police, residents, and landlords. *Id.*

1 5.2 Sunnyside officials describe the CFRHP as mandatory, applying to every
2 landlord, every residential rental property, and every residential rental tenant in
3 the city.

4 5.3 Sunnyside waives a required annual residential rental housing license fee
5 of between \$100 and \$750 for landlords who participate in the CFRHP, but
6 reimposes that fee plus ten percent and revokes the rental license if the landlord
7 fails to comply with the CFRHP. SMC §§ 5.02.020, .060.

8 5.4 Any landlord who receives two notices from the Sunnyside police of
9 criminal activity on any of the landlord's rental properties must participate in the
10 CFRHP, unless the landlord makes a good faith effort to deter the criminal
11 activity. SMC § 5.02.040(A).

12 5.5 Sunnyside provides training for landlords and property managers who
13 participate in the CFRHP. SMC § 5.02.030(A)(1). The training covers rental
14 applications, rental agreements, resident screening, evictions, subsidized Section
15 8 housing (24 C.F.R. § 982), working with the police, criminal activity
16 identification, drug use in rental properties, gang activity identification, and
17 crime prevention through environmental design. *Id.*

18 5.6 Sunnyside does not provide training on enforcing the CFHRP to any
19 Sunnyside employees, including its police officers, who enforce the CFRHP.

20 5.7 The CFRHP imposes duties on both landlords and Sunnyside police
21 officers. Under the program, a landlord or property manager must require
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1 residents to sign a Crime Free Lease/Rental Agreement Addendum (Addendum).
2 SMC § 5.02.030(A)(3) provides a model Addendum. It lists crimes that constitute
3 a material breach of the lease if permitted or committed by the resident on or near
4 the rental property.

5 5.8 If Sunnyside police determine that any resident, household member, guest,
6 or other person under the resident’s control has engaged in or permitted any of
7 the crimes listed in the Addendum on or near the premises, the CFRHP directs
8 Sunnyside police to issue a notice of noncompliance to the landlord.
9 SMC § 5.02.030 F.

10 5.9 Within five business days of receiving a notice of noncompliance, the
11 CFRHP directs a landlord to issue a notice to the resident to “comply or quit” the
12 premises “(if required by law) and pursue all remedies against the residents
13 available to the owner/licensee under the Residential Landlord-Resident Act of
14 1973 and the Manufactured/Mobile Home Landlord-Resident Act, as applicable,
15 and all other remedies provided by law to terminate the tenancy and evict the
16 residents.” *Id.*

17 5.10 The comply-or-quit notice must include: “1. The date and location of the
18 noncompliance; 2. The nature of the noncompliance; 3. The name of the person
19 or persons engaged in the noncompliance[;]” and 4. “[C]opies of any public
20 records of activities of noncompliance on or about the owner/licensee’s property
21 occupied by the residents.” *Id.*

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1 5.11 The CFRHP allows the landlord to appeal the notice of noncompliance in
2 a hearing before the Sunnyside Police Chief. *Id.* The ordinance provides no
3 appeal process for residents who are the subjects of a notice of noncompliance.

4 5.12 On information and belief, Defendants have issued over 100 notices under
5 the CFRHP since the program began in 2010.

6 5.13 Participants in the CFRHP, including Sunnyside employees, must comply
7 with the Residential Landlord Tenant Act (RLTA). Wash. Rev. Code §
8 59.18.230(1) (RLTA procedures must be followed and cannot be waived).

9 5.14 In Washington, the RLTA imposes certain duties upon residents in
10 addition to timely paying the rent. For example, residents may not permit
11 nuisance or waste upon the property or engage in or permit any drug- or gang-
12 related activity on or near the rental property. A resident who violates a statutory
13 duty may be evicted.

14 5.15 To evict a resident for violating a statutory duty, a landlord must follow
15 the procedures specified in the RLTA and the Unlawful Detainer Act (UDA),
16 Wash. Rev. Code Chs. 59.18 and 59.12, respectively. Those procedures vary
17 depending on how the resident has failed to comply. For example, where the
18 resident has committed or permitted waste or a nuisance on the premises, the
19 landlord must first issue a three-day notice to quit. Wash. Rev. Code §
20 59.12.030(5). By contrast, no notice is required where the resident has engaged
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1 in drug-related activity, criminal activity that results in the resident's arrest, or
2 gang-related activity. Wash. Rev. Code § 59.18.180(3)-(5).

3 5.16 If a resident continues to occupy the rental property after a three-day notice
4 to quit has expired or after engaging in criminal activity that results in the
5 resident's arrest, for example, the resident is guilty of unlawful detainer. Wash.
6 Rev. Code §§ 59.12.030(4), (5), and (7).

7 5.17 The landlord may not then engage in self-help to remove the resident from
8 the property or ask law enforcement to do it. Rather, the landlord must commence
9 an unlawful detainer action in court to evict the resident.

10 5.18 If a court determines that possession of the property should be returned to
11 the landlord, it will issue a writ of restitution, which the sheriff shall serve on the
12 resident. Wash. Rev. Code §§ 59.12.090 and .100. The sheriff must wait at least
13 three days after service of the writ before executing it and returning possession
14 of the property to the landlord. Wash. Rev. Code § 59.12.100.

15 5.19 From at least 2015 and continuing to the present, Sunnyside employees
16 have enforced the CFRHP in violation of the legal requirements above.

17 5.20 In one incident in 2017, Sunnyside police evicted a Latina mother, a
18 grandmother, and seven children without a judicial eviction order. After the
19 mother repeatedly refused the landlord's sexual advances, the landlord accused
20 the mother and her son of stealing, and called the Sunnyside police to evict the
21 family. Without providing any written notice, Defendants Rivas, Sparks and
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1 | Glossen came to the home and told the family that they had two days to leave.
2 | The family complied, and as a result were separated between the father's home,
3 | a relative's home, and a hotel. The family has been unable to find replacement
4 | housing where they can live together.

5 | 5.21 In a second incident, in 2016, Sunnyside police evicted a pregnant Latina
6 | mother with three children who had been living in low-income housing for seven
7 | months without incident. A single fight occurred near the home, and although no
8 | charges were pressed against anyone involved in the fight and no eviction
9 | proceedings were ever initiated, the Defendant Rivas ordered the mother to
10 | vacate the apartment in three days. The family initially stayed in a hotel, then
11 | with the mother's brother, and ended up without a permanent home for over a
12 | year.

13 | 5.22 In a third incident, in 2015, Defendants Rivas and Rivard required a
14 | landlord to send a couple a three-day notice to vacate after their home had been
15 | searched by Sunnyside police pursuant to a search warrant. No arrests or charges
16 | resulted from the search. Three days after the eviction notice was served,
17 | Defendant Rivas came to the home and ordered the couple to leave the property
18 | by midnight of that day, giving them approximately eight hours to move out. No
19 | court eviction proceedings had been initiated. Defendant Rivas ordered the
20 | couple to leave Sunnyside altogether, stating that the couple could not relocate
21 | elsewhere in the city. The couple was homeless for more than a year.

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1 5.23 The examples above are illustrative. Sunnyside’s policy or practice of
2 enforcing the CFRHP using extrajudicial evictions has been Sunnyside’s official
3 policy for years, has affected numerous residents, and constitutes an ongoing and
4 continuing violation.

5 5.24 Sunnyside has a policy or practice of enforcing the CFRHP against
6 residents without evidence that the residents engaged in criminal activity.

7 5.25 Sunnyside police reports concerning residents in CFRHP housing often
8 fail to state what crime is alleged to have occurred in or around the rental unit, if
9 any, and whether the police enforced the CFRHP in those cases. Other police
10 reports reference domestic violence situations, but do not indicate the resolution.

11 5.26 Most of the Sunnyside residents unlawfully evicted have been Latino/as,
12 residents with children, and women.

13 5.27 Sunnyside’s policies and practices are the direct and proximate cause of
14 extrajudicial police evictions of Hispanics, women, and families with children
15 under the CFRHP.

16 5.28 Defendants Escalera, Rivas, Sparks, Glossen, and Rivard acted with
17 reckless indifference for Sunnyside residents’ federally protected rights.

18 5.29 Defendant Escalera is the highest ranking officer in the Sunnyside Police
19 Department. He is responsible for policy development, control, supervision, and
20 program implementation in the Department.

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1 5.30 Defendant Escalera knew or should have known of the actions of
2 Defendants Rivas, Sparks, Glossen, and Rivard, as described above, and failed to
3 act to prevent future harm.

4 5.31 Defendant Escalera ratified the actions of Defendants Rivas, Sparks,
5 Glossen, and Rivard.

6 5.32 Defendant Escalera possesses final authority to establish Sunnyside's
7 custom or policy with respect to the actions complained of herein.

8 **VI. FIRST CAUSE OF ACTION**
9 **(42 U.S.C. § 1983 – Denial of Right to Procedural Due Process Under Color**
10 **of Law)**

11 6.1 Washington incorporates the allegations set forth above as if fully set forth
12 here.

13 6.2 At all times relevant, Defendants acted under color of law.

14 6.3 Washington residents have a property interest in retaining possession of
15 their rented homes, which is protected by the Due Process Clause of U.S. Const.
16 amend. XIV, § 1.

17 6.4 Sunnyside's policy or practice of having its police evict residents or
18 requiring landlords to evict residents where residents had no prior opportunity to
19 be heard, no one was arrested, no judicial eviction proceeding was initiated,
20 and/or no judicial eviction order was ever issued, deprives residents in CFRHP
21 housing of their property interest in their tenancies without due process of law.
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1 6.5 Defendants are liable under 42 U.S.C. § 1983 when they deprive residents
2 of their constitutional right to due process.

3 6.6 As a proximate result of these unlawful acts, Washington and its residents
4 suffered and continue to suffer injury.

5 **VII. SECOND CAUSE OF ACTION**
6 **(42 U.S.C. § 1983 – Denial of Right to Substantive Due Process Under**
7 **Color of Law)**

7 7.1 Washington incorporates the allegations set forth above as if fully set forth
8 here.

9 7.2 At all times relevant, Defendants acted under color of law.

10 7.3 Under federal law, the right to family integrity is a fundamental right
11 protected by the Due Process Clause of U.S. Const. amend. XIV, § 1.

12 7.4 Defendants' policy or practice of depriving residents of their right to
13 family integrity without sufficient government justification deprives residents of
14 their right to due process of law.

15 7.5 Defendants are liable under 42 U.S.C. § 1983 when they deprive residents
16 of their right to due process of law.

17 7.6 As a proximate result of these unlawful acts, Washington and its residents
18 suffered and continue to suffer injury.

19 **VIII. THIRD CAUSE OF ACTION**
20 **(42 U.S.C. § 3604 – Housing Discrimination)**

21 8.1 Washington incorporates the allegations set forth above as if fully set forth
22 here.

1 8.2 Most of the unlawfully evicted residents have been Latino/as, families with
2 children, or women.

3 8.3 Defendants' policy or practice of enforcing the CFRHP makes housing
4 unavailable and imposes different terms, conditions, and privileges in the rental
5 of a dwelling because of national origin, familial status, and sex in violation of
6 42 U.S.C. §§ 3604(a)-(b).

7 8.4 As a proximate result of these unlawful acts, Washington and its residents
8 suffered and continue to suffer injury.

9 **IX. FOURTH CAUSE OF ACTION**
10 **(Wash. Const. Art. I, § 3 – Denial of Right to Due Process Under Color of**
11 **Law)**

12 9.1 Washington incorporates the allegations set forth above as if fully set forth
13 here.

14 9.2 At all times relevant, Defendants acted under color of law.

15 9.3 Washington residents have a property interest in retaining possession of
16 their rented homes, which is protected by Wash. Const. Art. I, § 3.

17 9.4 Defendants' policy or practice of evicting residents or requiring landlords
18 to evict residents where residents had no prior opportunity to be heard, no one
19 was arrested, no judicial eviction proceeding was initiated, and/or no judicial
20 eviction order was ever issued, deprives residents in CFRHP housing of their
21 property interest in their tenancies without due process of law.
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1 9.5 As a proximate result of these unlawful acts, Washington and its residents
2 suffered and continue to suffer injury.

3 **X. FIFTH CAUSE OF ACTION**
4 **(Wash. Rev. Code §§ 49.60.030(1) and 49.60.222 – Housing Discrimination)**

5 10.1 Washington incorporates the allegations set forth above as if fully set forth
6 here.

7 10.2 Most of the unlawfully evicted residents have been Latino/as, families with
8 children, or women.

9 10.3 Defendants’ policy or practice of enforcing the CFRHP violates residents’
10 rights to engage in real estate transactions without discrimination on the basis of
11 national origin, status as a family with children, and sex, in violation of Wash.
12 Rev. Code § 49.60.030(1)(c).

13 10.4 Defendants’ policy or practice of enforcing the CFRHP discriminates in
14 the terms and conditions of a real estate transaction, and makes unavailable or
15 denies a dwelling, because of national origin, status as a family with children,
16 and sex, in violation of Wash. Rev. Code §§ 49.60.222(b), (f).

17 10.5 As a proximate result of these unlawful acts, Washington and its residents
18 suffered and continue to suffer injury.

19 **XI. SIXTH CAUSE OF ACTION**
20 **(Wash. Rev. Code § 59.18.290 – Evicting Residents without a Court Order)**

21 11.1 Washington incorporates the allegations set forth above as if fully set forth
22 here.

1 11.2 Defendants' policy or practice of enforcing the CFRHP by having police
2 officers evict residents or requiring landlords to evict residents where no judicial
3 eviction proceeding was initiated or no judicial eviction order issued violates
4 Wash. Rev. Code § 59.18.290.

5 11.3 As a proximate result of these unlawful acts, Washington and its residents
6 suffered and continue to suffer injury.

7 **XII. SEVENTH CAUSE OF ACTION**

8 **(Wash. Rev. Code § 59.18.580(2) – Evicting Residents Because They Were
9 Victims of Domestic Violence or Sexual Assault)**

10 12.1 Washington incorporates the allegations set forth above as if fully set
11 forth here.

12 12.2 Defendants' policy or practice of enforcing the CFRHP by having police
13 officers evict residents or requiring landlords to evict residents who are victims
14 of domestic violence or sexual assault violates Wash. Rev. Code
15 § 59.18.580(2).

16 12.3 As a proximate result of these unlawful acts, Washington and its
17 residents suffered and continue to suffer injury.

18 **XIII. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, State of Washington, prays that the Court:

20 1. Adjudge and decree that Sunnyside has engaged in the conduct complained
21 of in this complaint;
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- 1 2. Adjudge and decree that Sunnyside’s policy and practice of enforcing the
2 CFRHP violates U.S. Const. amend. XIV, § 1;
- 3 3. Adjudge and decree that Sunnyside’s policy and practice of enforcing the
4 CFRHP violates Wash. Const. art 1, § 3;
- 5 4. Adjudge and decree that Sunnyside’s policy and practice of enforcing the
6 CFRHP violates the Fair Housing Act, 42 U.S.C. §§ 3604(a)-(b);
- 7 5. Adjudge and decree that Sunnyside’s policy and practice of enforcing the
8 CFRHP violates the Washington Law Against Discrimination, Wash. Rev. Code
9 §§ 49.60.030(1) and 49.60.222;
- 10 6. Adjudge and decree that the CFRHP and Sunnyside’s policy and practice
11 of enforcing the CFRHP violates the RLTA, Wash. Rev. Code §§ 59.18.290 and
12 .580(2);
- 13 7. Permanently enjoin Sunnyside and its representatives, successors, assigns,
14 officers, agents, servants, employees, and all other persons acting or claiming to
15 act for, on behalf of, or in active concert or participation with Sunnyside, from
16 continuing or engaging in the unlawful conduct complained of in this complaint;
- 17 8. Award compensatory and punitive damages and other make-whole relief
18 in the amount to be proven at trial;
- 19 9. Make such orders to provide that Sunnyside shall reimburse the State its
20 reasonable costs incurred in this action, including reasonable attorneys’ fees;

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10. Award pre- and post-judgment interest at the maximum rate allowed by law; and
11. Award such other and further relief as the Court deems just and proper.

DATED this 12th day of August, 2019.

Respectfully Submitted,

s/Mitchell A. Riese
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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I electronically filed the foregoing with the Clerk of the Court using the Court’s CM/ECF system which will send notification of such filing to the following:

Attorney for Defendant City of Sunnyside
KIRK A. EHLIS
Menke Jackson Beyer, LLP
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DATED this 12th day of August, 2019.

s/Mitchell A. Riese
Mitchell A. Riese