SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK, IAS PART

----------X

SAFE HORIZON, INC., BVRULZIN BLEU, CARDY BULLY, ARKIRA PITTMAN, LAUREN MILLER, AUSTIN MOORE, and CHRISTOPHER PORTALATIN-TRINIDAD,

Plaintiffs,

-against-

3823 CARPENTER AVE LLC, ALEKSANDER KALAJ, and, LISA BOVA-HIATT, as chairperson of the NEW YORK CITY HOUSING AUTHORITY,

Defendants.

Premises: 3823 Carpenter Avenue, Bronx, NY 10467

----------X

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

THE LEGAL AID SOCIETY
BY: STEPHANIE RUDOLPH, ESQ.
199 Water Street
3rd Floor
New York, NY 10038
(646) 988-0997
Attorneys for Plaintiffs

TABLE OF CONTENTS

PRELIMINARY STATEMENT……..1-2

STATEMENT OF FACTS……2-8

ARGUMENT……8-18

I. LEGAL STANDARD…….10

II. PLAINTIFF WILL BE IRREPERABLY HARMED IF WITHOUT A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION……...8-13

III. PLAINTIFFS DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS……..…14-17

IV. THE BALANCE OF THE EQUITIES FAVORS PLAINTIFF AND AN ORDER RESTRAINING THE PETITIONER MAINTAINS THE STATUS QUO……...17-18

CONCLUSION……18

PRELIMINARY STATEMENT

Plaintiffs Bvrulzin Bleu, Cardy, Lauren Miller, Austin Moore, Arkira Pittman, and Christopher Portalatin-Trinidad (collectively, "Tenant Plaintiffs") are participants in the Emergency Housing Voucher ("EHV") program and have been issued Section 8 Vouchers administered by Defendant New York City Housing Authority ("NYCHA"). Plaintiffs are homeless and unstably housed youth who receive services from Plaintiff Safe Horizon, Inc. ("Safe Horizon"). Safe Horizon is a non-profit organization that runs the Streetwork Project ("Streetwork"). Streetwork is funded to assist homeless and unstably housed youth with all aspects of basic survival. Safe Horizon, through its Streetwork Project, also helps its clients locate, apply, and move into stable housing. In the fall of 2022, Streetwork helped more than a dozen of its EHV clients apply to studio apartments at 3823 Carpenter Avenue, Bronx, NY 10467 ("Subject Building"). The Subject Building, owned and/or controlled by Defendants 3823 Carpenter Ave LLC and Aleksander Kalaj (collectively, "Landlord Defendants") was constructed in 2022 and contains between 13 and 14 studio apartments in the Olinville area of the Bronx, on the east side of the Bronx Botanical Gardens.

On December 8, 2022, after submitting 14 rental applications on behalf of its clients, Plaintiff Safe Horizon learned that nine (9) of its clients had been accepted to the Subject Building. On December 15, 2022, Landlord Defendants submitted Landlord Packets to NYCHA, connecting Plaintiffs Bleu and Pittman to apartments at the Subject Building for $2,179 per month.

But, by late December, staff at Safe Horizon started to receive mixed messages, including requests that Tenant Plaintiffs each provide more proof of employment. Even after Safe Horizon

reached out to its clients and provided such proof, on December 27, 2022, Safe Horizon's Housing Navigator learned that Landlord Defendants had changed their minds and only wished to rent to people with employment income, in violation of the New York City Human Rights Law ("NYCHRL") § 8-107(5) or Local Law 10 of 2008 and the New York State Human Rights Law ("NYSRHL") or New York Consolidated Laws, Executive Law ("NY Exec. Law") § 290 *et. seq*.

In January 2023, the NYC Department of Buildings ("DOB") confirmed that the Subject Building lacked a Certificate of Occupancy ("CO"). Further, NYCHA confirmed it would not approve rental units in a building without of a CO. As of January 2023, units at the Subject Building were listed on Zillow.com for $2,000 — $179 below the rent quoted to Plaintiff Safe Horizon's clients. Upon information and belief, Landlord Defendants intend to rent the 13 or 14 studio units to people with employment income only. Plaintiffs Safe Horizon and Tenants Plaintiffs brings this Order to Show Cause for a temporary restraining order and preliminary injunction against Defendant Landlords staying the rental of the building's apartments.

Tenant Plaintiffs are not seeking an emergency injunction against the NYCHA at this time.

STATEMENT OF FACTS

Tenant Plaintiffs Bleu, Bully, Miller, Moore, Pittman, and Portalatin-Trinidad (collectively, "Tenant Plaintiffs") are participants in the EHV program, and recipients of Section 8 vouchers administered by Defendant NYCHA. Each Tenant Plaintiff has a studio or "0" bedroom voucher with a current payment standard in zip code 10467 $2,335.[1] (*See*, Affidavits of Bvrulzin Bleu ("Bleu Aff.") ¶ 2, Lauren Miller ("Miller Aff.") ¶ 2 Austin Moore ("Moore Aff.")

[1] payment-standards.pdf (nyc.gov) (retrieved February 5, 2023).

¶ 2, Arkira Pittman ("Pittman Aff.") ¶ 3, and Christopher Portalatin-Trinidad ("Portalatin-Trinidad Aff.") ¶ 3; Affirmation of Stephanie Rudolph ("Rudolph Aff." ¶ 5).

Tenant Plaintiffs are homeless or unstably housed and seeking an apartment of their own. (*See*, Bleu Aff. ¶ 1; Moore Aff. ¶ 1; Pittman Aff. ¶ 1; Portalatin-Trinidad Aff. ¶ ¶1-2; Rudolph Aff. ¶ 5). Each Tenant Plaintiff has depended on Plaintiff Safe Horizon to assist them for a period of months or years. Safe Horizon's Streetwork Project provides holistic services to unstably housed and homeless youth, offering a food pantry, hot meals, shelter, a space of respite, individualized counseling, peer mentors, group activities, personal hygiene items, clothes, and more. (*See*, Affidavit of Johannah Westmacott ("Westmacott Aff.") ¶¶ 11-13; Affidavit of Jiyoung Lee ("Lee Aff.") ¶¶ 4-10). Safe Horizon's Streetwork Project also assisted nearly 300 clients in their applications for the EHV program between 2021-2022 and has since helped approximately 150 of its EHV clients search for housing. (*See*, Westmacott Aff. ¶¶ 14-15). The housing search process from beginning to end, involves dozens of steps and can take months or, in extenuating circumstances, even years. (*See*, Westmacott Aff. ¶ ¶18-20; Lee Aff. ¶ 8).

In the fall of 2022, each Tenant Plaintiff, with the help of Plaintiff Safe Horizon's Housing Navigator Jiyoung Lee, applied for a studio apartment at 3823 Carpenter Avenue, Bronx, NY 10467 ("Subject Building). (*See*, Lee Aff. ¶¶ 14). Safe Horizon, on behalf of their clients, worked on the applications and paid the application fees for each of their clients. (*See*, **Exhibit A**: Email from Landlord Defendants' broker Joseph Armato dated November 17, 2022 with attached application for the Subject Building; Lee Aff. ¶¶ 14-16). At first, Mr. Armato told Ms. Lee that there were eight (8) available studios, but Ms. Lee later learned that the Subject Building had at least 13 vacant units. (*See*, Lee Aff. ¶ 12-13). Ms. Lee and some of her clients

visited the building on November 23, 2022 and December 9, 2022. (*See*, Lee Aff. ¶ 17). The fee was initially $16.90 and increased in late November to $25.90 (*See*, **Exhibit B**: Email regarding application fees; Lee Aff. ¶16). The following clients of Safe Horizon submitted applications with the help of Ms. Lee. Safe Horizon paid the application fees for all its clients listed below.[2] (*See*, Lee Aff. ¶ 17).

	Date	Name or Initial
1	August 28, 2022	DW
2	October 8, 2022	Lauren Miller
3	November 18, 2022	Christopher Portalatin-Trinidad
4	November 23, 2022	Bvrulzin Bleu
5	November 23, 2022	TMC
6	November 23, 2022	IH
7	November 23, 2022	KR
8	November 23, 2022	Cardy Bully
9	November 28, 2022	JP
10	November 28, 2022	MP
11	December 2, 2022	SD
12	December 2, 2022	Austin Moore
13	December 5, 2022	Arkira Pittman
14	December 7, 2022	AR

Plaintiffs Bleu, Bully, Miller, Moore, and Pittman were all approved for an apartment at the Subject Building on December 8, 2022, along with four (4) other clients of Safe Horizon. (*See*, **Exhibit C**: Email to Ms. Lee dated December 8, 2022; Lee Aff. ¶ 18). Plaintiff Portalatin-Trinidad, despite being among the first to apply, never heard back on his application and never received a rejection.. Several other clients of Safe Horizon also never received rejections but also did not receive an apartment. (*See*, Lee Aff. ¶ ¶17-18).

[2] Clients of Plaintiff Safe Horizon who have not individually joined the complaint at this time are identified by initials only to protect their privacy. Their names and identifying information have also been redacted from exhibits.

Unit	Name
2A	Bvrulzin Bleu
2B	IH
2C	KR
2D	Cardy Bully
3A	Lauren Miller
3B	Arkira Pittman
3D	JP
4B	Austin Moore
4D	SD

On December 15, 2022, Landlord Defendants submitted rental paperwork, known as a "Landlord Packet" to NYCHA for Plaintiffs Bleu and Pittman whose rental vouchers were about to expire. (*See*, **Exhibit D**: Landlord Packets for Plaintiffs Bleu and Pittman; Bleu Aff. ¶ 13; Pittman Aff. ¶ 15; Lee Aff. ¶ 19).

Approximately one week later, on December 21, 2022, Ms. Lee of Plaintiff Safe Horizon received concerning communications from Landlord Defendants' broker who asked for additional proof of employment income for all of nine (9) clients approved for an apartment at the Subject Building. (*See*, **Exhibit E**: December 21, 2022 texts between Ms. Lee and Landlord Defendants' broker; Lee Aff. ¶ 20). Ms. Lee helped her clients provide updated information. (*See*, Lee Aff. ¶ 21).

On December 27, 2022, Landlord Defendants' broker contacted Ms. Lee via phone, stating that the landlord had a change of heart and would only rent units to working tenants. (*See*, Lee Aff. ¶ 22). On that date, the broker told Ms. Lee that the Landlord Defendants were willing to move forward with her client, JP because he had significant employment income. (*See*, Lee Aff. ¶ 22). The broker was very apologetic that he could not convince Landlord Defendants to move forward with Safe Horizon's other clients. (*See*, Lee Aff. ¶ 22).

After December 27, 2022, Ms. Lee tried to reach Landlord Defendants' broker via phone, email and text message. (*See*, Lee Aff. ¶ 23). However, he did not respond to her about the Subject Building, and did not move forward with any of her clients, including JP. (*See*, Lee Aff. ¶ 22). The broker continued to work with Ms. Lee and Safe Horizon on other buildings. (*See*, Lee Aff. ¶ 23).

On January 11, 2023, attorneys for Plaintiffs spoke with Landlord Defendants' broker who denied the landlord had discriminated against clients of Plaintiff Safe Horizon but stated the Subject Building had a "violation" and did not yet have a Certificate of Occupancy ("CO"). (*See*, Rudolph Aff. ¶ 7). Because a building without a CO could not pass the mandatory Housing Quality Standards ("HQS") inspection required for NYCHA to approve an apartment for a Section 8 rental, Landlord Defendants could not move forward at this time due to (*see* NYC Admin Code §§ -118.1 -28-118.15; *See also* **Exhibit F**: List of building-wide violations that result in automatic HQS failures). Despite requesting to speak with Landlord Defendants and providing a list of clients of Safe Horizon wishing to move forward, Attorneys for Plaintiffs did not hear back. (*See*, Rudolph Aff. ¶ 7).

In an email dated January 13, 2023, the NYC Department of Buildings ("DOB") confirmed that the Subject Building did not have even a temporary Certificate of Occupancy and would likely not have one for some time. (*See*, **Exhibit G:** Email from DOB dated January 13, 2023. A DOB permit approved in February 2022 shows the construction of a 13-unit building. (*See*, **Exhibit H:** DOB permit approved February 23, 2022).[3]. Further, as of February 2023, the

[3]In a news article published on May 22, 2022, a reporter described that the building as not yet constructed but as having14 studio units. However, DOB permits report 13 units. Upon information and belief, the Subject Building will have between 13 and 14 studio units but this will only be certain once a CO has been obtained. https://newyorkyimby.com/2020/05/permits-filed-for-3823-carpenter-avenue-in-olinville-the-bronx.html (retrieved February 5, 2023).

Subject Building is not registered on the HPD website as a multiple dwelling. (*See* **Exhibit J**: HPD registration for Subject Building). Finally, a Satisfaction of Mortgage recorded on ACRIS dated April 2022 showed the building as a vacant residential lot. *(See*, **Exhibit I).**

As of late January 2023, units for the Subject Building are posted on Zillow.com for $2,000—$179 below the rent for which Plaintiff Safe Horizon's clients would have rented the units. *(See*, **Exhibit K**: Zillow listing). The rent drop of $179 demonstrates Landlord Defendants' eagerness to begin renting units on more favorable terms and conditions to those without vouchers as compared to Tenant Plaintiffs and Plaintiff Safe Horizon's clients. (*See*, **Exhibit K**: Zillow listing; Rudolph Aff. ¶ 9). Based on Landlord Defendants' acts and omissions, it appears Landlord Defendants intend to rent the studio units to employed people who do not have housing vouchers.

All of Safe Horizon's EHV clients have a 300-day search period to find an apartment. If they fail to find an apartment in the search window, they risk losing their housing vouchers. If they lose their housing vouchers, they have no way of evading the irreparable harms associated with chronic homelessness. (*See* Lee Aff. ¶ 9; Westmacott Aff. ¶ 16; Bleu Aff. ¶¶ 17-22; Miller Aff. ¶ ¶16-19; Moore Aff. ¶¶14-17; Pittman Aff. ¶¶ 20-23; Portalatin-Trinidad Aff. ¶¶ 14-18).

Once an EHV client loses their voucher, they will have no foreseeable future opportunity to obtain a Section 8 voucher. Because the EHV funding will not be available after this year, and Section 8 waitlists are closed in New York City,[4] the EHV program represents a once-in-a-lifetime opportunity for Tenant Plaintiffs and Safe Horizon's clients.

Specifically, several of Tenant Plaintiffs and Plaintiff Safe Horizon's clients have exceeded the 300-day search period and risk losing their vouchers forever. They are now

[4] Microsoft Word - Applicants FAQ 4.1.19 (nyc.gov) (Retrieved February 5, 2023)

searching on borrowed time. For example, Plaintiff Miller has had her voucher for 444 days and Plaintiff Bully has had his voucher for 251 days. Plaintiff Bleu and Pittman are both stuck in limbo with Landlord Packets linking them to apartments in the Subject Building (*See,* Rudolph Aff. ¶ 8; **Exhibit D**). Accordingly, all Tenant Plaintiffs and all EHV clients of Safe Horizon are under tremendous pressure to find a place to live.

Plaintiff now brings this emergency motion seeking a temporary injunction and preliminary injunction enjoining the Defendant Landlords or any of its agents, employees, brokers, or anyone acting on their behalf to rent apartment units at 3823 Carpenter Avenue, Bronx, NY 10467.

ARGUMENT

I. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs seek herein a temporary restraining order pending the outcome of this motion and preliminary injunction. To obtain a preliminary injunction, the moving party must show that she will be irreparably harmed if the injunctive relief is not granted, that she has a likelihood of prevailing in this proceeding, and that the balance of the equities favors an injunction. (*See, W.T. Grant Co. v Srogi*, 52 NY2d 496 [1981]). As explained below, Plaintiffs satisfy all of the above criteria, and the Court should grant a preliminary injunction pursuant to CPLR § 6301.

II. PLAINTIFFS WILL BE IRREPERABLY HARMED WITHOUT A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Tenant Plaintiffs

Tenant Plaintiffs will suffer irredeemable, irreparable harm if a temporary restraining order and preliminary injunction are not granted herein. New York courts have repeatedly found that the threat of homelessness and/or homelessness itself constitutes irreparable injury

warranting injunctive relief. In *Wendling v 136 E. 64th Street Assoc.*, the Court upheld an injunction to prevent the irreparable harm that would be caused by the eviction of a doctor from his cooperative apartment of ten years. (*See*, 128 AD2d 419, 513 NYS2d 119 [1st Dept 1987]; *See also, Abed v Zach Assoc.*, 124 AD2d 531, 507 NYS2d 676 [2d Dept 1986]). In *Crown Gardens Housing v Simmons*, the Court granted a stay pending the tenant's Article 78 proceeding, noting that a stay "is appropriate where the tenant may be irreparably harmed by the threat and possibility of homelessness." (*See*, NYLJ. Apr. 16, 1990 at 31, col 1 [Civ Ct Kings County 1990]; *See also, Woltall Apartments, Inc. v Byrd*, NYLJ Apr. 2, 1993 at 26, col 3 [Civ Ct NY County 1993]; *Cohen v Felix*, NYLJ Nov. 7, 1990 at 23, col 3 [Civ Ct Bronx County 1990]; *176 West 87th Street Equities v Amador*, 151 Misc.2d 234, 573 NYS2d 221 [Civ Ct NY County 1991]; *Brusco West 78 Street Associates v Pederson*, NYLJ Nov. 6, 1989 at 24, col 3 [App Term, 1st Dept 1989]).

Tenant Plaintiffs are seeking apartments on borrowed time. All Tenant Plaintiffs have been diligently searching for an apartment, all the while knowing that their vouchers could expire without use[5] (*See*, Rudolph Aff ¶ 7). Defendant Landlords accepted applications for Tenant Plaintiffs Bleu, Bully, Miller, Moore, and Pittman, but then abruptly pulled out the rug from under them, purporting to want only "working tenants." (*See* **Exhibit D:** Landlord Packets for Plaintiffs Bleu and Pittman; Lee Aff. ¶ 22). For Plaintiff Portalatin-Trinidad, he was one of the first to apply but never heard back about his application and received no explanation as to why Landlord Defendants had not moved forward with his tenancy. (*See*, Lee Aff. ¶ 17).

Since the Defendant Landlords are unwilling to rent these apartment Tenants Plaintiffs, this Court must enjoin the Defendants from renting the apartment pending determination of this

[5] EHV Program - Provider Resources (nyc.gov) (retrieved February 5, 2023)

motion. Further, pursuant to Multiple Dwelling Law ("MDL") § 301 it is unsafe and therefore illegal for Landlord Defendants to collect rent from anyone at this time. **This Court's injunction would simply enjoin Defendant Landlords from doing what the law already prohibits them from doing.** (*See*, MDL §301(2), "Except as above provided, no dwelling constructed as or altered or converted into a multiple dwelling after April eighteenth, nineteen hundred twenty-nine, shall be occupied in whole or in part until the issuance of a certificate of compliance or occupancy").

Without such relief from this Court, the Tenant Plaintiffs will suffer irreparable harm. Absent an injunction, Tenant Plaintiffs and clients of Safe Horizons will never have an opportunity to rent apartments at the Subject Building because Landlord Defendants will have rented them to tenants who rely solely on employment income. The consequence of being unlawfully denied from the Subject Building could be the loss of the benefits of the EHV program, and thus the irreparable harms of chronic homeliness (*See*, Rudolph Aff. ¶¶ 5 & 7 Westmacott Aff. ¶¶19[b]-[d], 25; Lee Aff. ¶¶ 22, 24; Bleu Aff. ¶ 5; Miller Aff. ¶ 5 Moore Aff. ¶ 5; Pittman Aff. ¶ 6 ; Portalatin-Trinidad Aff. ¶ 6). As courts in New York have identified repeatedly, the threat of homelessness or homelessness itself is undeniably an irreparable harm, and Tenant Plaintiffs have demonstrated they face irreparable harm and are in dire need of injunctive relief from this Court.

Plaintiff Safe Horizon

Safe Horizon has been harmed by the Landlord Defendants' actions. Plaintiff Safe Horizon will now have to offer each of the clients who applied to the Subject Building services while they remain homeless, as well as additional services to start their housing search anew—a process that can take months or even years. (*See*, Westmacott Aff ¶¶ 19, 25[c]). New clients and

current clients of Plaintiff Safe Horizon, with no connection to the Subject Building, will need to wait to receive individualized housing search and application services due to Landlord Defendants' discrimination. (*See,* Westmacott Aff ¶¶ 25-27). Accordingly, other clients of Safe Horizon will risk exceeding their 300-day search period and losing their vouchers. (*See*, Westmacott Aff ¶¶ 25[b]). Further, clients with other housing vouchers like CITYFHEPS and HASA as well as clients with other housing-related needs, such as submitting applications for supportive housing, will receive less individualized attention. (*See,* Westmacott Aff ¶ 26[b]-[c]; Lee Aff. ¶ 26).

Plaintiff Safe Horizon has standing to bring its claims against Landlord Defendants based on state and federal precedents and black letter law. The NYCHRL and NYSHRL permit "any person claiming to be a person aggrieved by a discriminatory practice" to bring a cause of action in a court of competent jurisdiction. (*See*, NYCHRL § 8-502 [a]; Executive Law § 297 [9]; *See also,* NYCHRL § 8-102 (defining "person aggrieved" as including a person whose "only injury is the deprivation of a right granted or protected" by the NYCHRL)).

Further, the NYCHRL and NYSHRL broadly define the term "person" as including associations, organizations, and corporations. (*See*, NYCHRL § 8-102; Executive Law § 292 [1]). As a not-for-profit corporation, Plaintiff Safe Horizon is a person under the NYCHRL and NYHRL. Therefore, under the plain language of the NYCHRL and NYSHRL, any person—including Safe Horizon—may bring a claim based on source of income discrimination.

This broad definition of "person" comports with the legislative mandates that federal caselaw serve merely as a "floor" for the NYCHRL and NYSHR. (*See*, NYCHRL § 8-130; NYS Executive Law § 300). Because federal courts have uniformly recognized the standing of housing rights organizations in analogous cases, precluding Safe Horizon from bringing this

action would contradict the NYCHRL and NYSHRL's legislative purposes. (*See e.g., Hollandale Apts. & Health Club, LLC v Bonesteel*, 173 AD3d 55, 64-65 [3d Dept 2019], citing *Matter of Aurecchione v New York State Div. of Human Rights*, 98 NY2d 21, 26 [2002] (stating that "New York courts attempt to resolve state discrimination cases consistently with case law applying the federal statutes"); *Williams v New York City Housing Authority*, 61 AD3d 62 at 72-73 [1st Dept 2009] (holding that continuing violation doctrine under 9 the NYCHRL was not limited by a subsequent United States Supreme Court decision related to continuing violation doctrine under federal law)). Accordingly, no federal court in New York has questioned a fair housing organization's ability to bring claims pursuant to federal law and the NYCHRL and NYSHRL (*See e.g., Fair Hous. Justice Ctr., Inc. v 203 Jay St. Assocs. LLC*, 2022 US Dist LEXIS 138975, *28 [ED NY Aug. 4, 2022, No. 21CV1192 (NGG/JRC)]; *Fair Hous. Justice Ctr., Inc. v Allure Rehab. Servs. LLC*, 2017 WL 4297237, 2017 US Dist LEXIS 157882, *6-7 [ED NY Sept. 26, 2017, No. 15CV6336 (RJD/LB)]). It would be illogical for the more protective NYCHRL and NYSHRL to have stricter standing requirements than the federal statutes.

Further, this Court recently recognized the non-profit Housing Right's Initiative ("HRI")'s organizational standing to sue in *Housing Rights Initiative, Inc. v Elliman* (2023 WL 137445 at *4 [Sup Ct NY County Jan 9, 2023 No. 154472/2022] ("Based on precedent and the explicit statutory mandate that the NYSHRL and NYCHRL have a broader remedial reach than the Fair Housing Act, and organizational standing based on diversion of resources is recognized under the Fair Housing Act, then organizational standing in cases of housing discrimination under the NYSHRL and NYCHRL must exist")).

Standing in New York courts is grounded in the common law, not the constitution (*Socy. of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 772 [1991]). Still, the state and federal

requirements of an "injury in fact—an actual legal stake in the matter being adjudicated" are similar. (*id*. at 772-73). An organization may show that it suffered an injury in fact due to the "drain on the organization's resources" or frustration of its mission created by a housing provider's discriminatory act. (*See e.g., Havens Realty Corp. v Coleman*, 455 US 363 [1982]; *Olsen v Stark Homes, Inc.*, 759 F3d 140, 158 [2d Cir 2014]; *Mixon v Grinker*, 157 AD2d 423, 426-27 [1st Dept 1990];

While many organizational standing cases involve fair housing testers, courts have also recognized the rights of organizations representing the interest of impacted members or clients. In *Mixon v Grinker* (157 AD2d 423 [1st Dep't 1990], *revd on other grounds* 88 NY2d 907 [1996]), the Appellate Division found that the Coalition for the Homeless had standing to challenge the City's failure to provide adequate housing:

> In alleging that their resources have not only been spent on advocating on behalf of the homeless but on providing non-congregate housing and in essence, medical assistance to HIV-infected homeless people, the Coalition has sufficiently alleged a specific burden on its resources, caused by defendants' failure to provide appropriate housing. These allegations are sufficient to establish injury in fact and, therefore, standing.
>
> *Id*. at 426.

Here, not only has Plaintiff Safe Horizon borne witness to Landlord Defendants' discriminatory conduct as testers might but, as in *Mixon*, Safe Horizon's work and their clients are deeply impacted by discriminatory actions. (*See*, Westmacott Aff. ¶¶ 25-28; Lee Aff. ¶¶ 24-25). Further, Plaintiff Safe Horizon's has clearly had their mission of helping homeless youth find stable housing frustrated by Landlord Defendant's illegal discriminatory conduct. (*See*, Westmacott Aff ¶ ¶3, 26-28; Lee Aff. ¶¶ 24-25).

III. PLAINTIFFS DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS

In order to justify injunctive relief, Plaintiffs do not need to establish a certainty of success on their claims, but only need to make a *prima facie* showing of their likelihood of success. (*See, Parkmed Co. v. Pro-Life Counselling, Inc.*, 91 A.D.2d 551, 552 [1982]; *Tucker v. Toia*, 54 AD2d 322 [4th Dept 1976]).

Source of Income Discrimination: Disparate Treatment

The Local Law 10 amendment to the New York City Human Rights Law forbids landlords from discriminating on the basis of "any lawful source of income" in housing, including "income derived from . . . any form of federal, state or local public assistance or housing assistance including section 8 vouchers". (NYC Admin. Code § 8-102[25]). And any person claiming to be aggrieved by an unlawful discriminatory practice may commence an action in Supreme Court seeking injunctive relief and compensatory and punitive damages. (*Id.* at § 8-502).

The law is clear – and the courts have consistently held – that a landlord's refusal to accept a legitimate Section 8 voucher constitutes unlawful discrimination under Local Law 10. (*See, Florentino v Nokit Realty Corp.*, 29 Misc 3d 190 at *196, 906 NYS2d 689, 694 [Sup Ct, NY County 2010]; *Timovsky v 56 Bennett*, 23 Misc.3d 997 at *1004, 881 NYS2d 823 [Sup Ct, NY County 2009] (finding Local Law 10 is "violated when a landlord refuses to accept a Section 8 voucher"); *667 E. 187th St. LLC v Walker,*, 23 Misc.3d 1118(A), 2009 N.Y. Slip Op. 50830(U), 2009 WL 1153294 [Civ Ct Bronx County 2009] ("after March 26, 2008 ... [a] landlord. . . would not be able to decline payment by Section 8 voucher without running afoul of Local Law 10")).

In *Tapia v Successful Mgmt. Corp.* (79 AD3d 422, 915 NYS2d 19 [1st Dept 2010]),

tenants in rent-stabilized buildings, who had been approved for Section 8 benefits, brought an action against landlords, seeking declaratory and injunctive relief declaring that antidiscrimination clauses of New York City's J-51 law, which allowed for tax benefits for landlords, and Local Law 10, which prohibits discrimination against any person or group of persons by virtue of their lawful source of income, prohibits landlords from refusing to accept Section 8 benefits from tenants. The Supreme Court, New York County, granted declaratory and injunctive relief and the landlords appealed. (*See id.*). The Supreme Court, Appellate Division, held that landlords were required to accept Section 8 rent subsidy benefits from tenants, notwithstanding that tenants were current rather than prospective, and notwithstanding that their leases did not require landlords to accept Section 8 benefits. (*See id.*).

In *Florentino v Nokit Realty Corp.* (29 Misc 3d 190, 906 NYS2d 689 [Sup Ct NY County 2010]), a tenant filed an action seeking an injunction ordering her landlord to accept her Section 8 voucher and declaring that the landlord's refusal to accept voucher violated Local Law 10, prohibiting discrimination against tenants based on their lawful source of income, and seeking award of compensatory damages. (*See id.*). The Supreme Court, New York County, held that landlord's refusal to accept tenant's Section 8 voucher constituted discrimination under Local Law 10. (*See id.*).

Most recently in *Rodriguez v 308 Hull LLC* (2018 NY Slip Op 32457[U], 2018 WL 4698012 [Sup Ct NY County 2018]), the New York State Supreme Court granted a temporary restraining order, enjoining a landlord from re-letting the unit in question after a broker leasing the unit denied a Section 8 voucher holder by stating the landlord wanted “working Section 8” only in contravention of Local Law 10. (NYCHRL § 8-107[5]).

Source of Income Discrimination & Administrative Delay

Courts have consistently held that the administrative delay associated with renting to people with vouchers is not an excuse to refuse to rent to people with vouchers like Section 8. (*See, Short v Manhattan Apartments, Inc.*, 916 F. Supp. 2d 375, 379 (S.D.N.Y. 2012). In *Rakhman v. Alco Realty I, L.P.* (81 AD3d 424, 916 NYS2d 581 [1st Dept 2011]), a tenant already in place qualified for a Section 8 voucher. The tenant sued their landlord for not want to complete specific forms required by Section 8 for declaratory and injunctive relief, seeking, among other relief, to compel the landlord to accept their Section 8 subsidy and execute all necessary documents. (*See id*). On appeal, the Supreme Court, Appellate Division, held that landlord's refusal to complete lead paint disclosure form required to process tenant's Section 8 voucher violated anti-discrimination provisions of local tax abatement and human rights laws. (*See id*).

Here, even though obtaining a CO may delay Landlord Defendants rental of the Subject Building, the administrative delay is not an excuse to discriminate against people with vouchers. Further, MDL §§301 and 302 unequivocally prohibit renting the property to anyone and collecting rent from tenants—regardless of their sources of income. Both Safe Horizon and Tenant Plaintiffs have made a *prima facie* showing that Landlord Defendants have violated the law by refusing to rent to applicants with Section 8 vouchers or renting to only working tenants.

Tenant Plaintiffs and other clients of Plaintiff Safe Horizon were accepted for units at the Subject Building but later told that Landlord Defendants only wanted to rent to working tenants. Even if Landlord Defendants do not have any animus against tenants with vouchers but simply cannot pass NYCHA’s HQS inspection without a CO, the discriminatory impact is the same---all EHV clients of Safe Horizon, including Tenant Plaintiffs—are left with nowhere to live.

Accordingly, all Plaintiffs have all demonstrated a likelihood of success on the merits of

her claims for establishing *prima facie* causes of action of discrimination on the basis of source of income in violation of Section 8-107(5) of the NYCHRL and NY Exe. Law § 296. A TRO would simply memorialize in a court order conduct that the law already prohibits pursuant to MDL §§ 301 & 302.

THE BALANCE OF THE EQUITIES FAVORS PLAINTIFF AND AN ORDER RESTRAINING THE PETITIONER MAINTAINS THE STATUS QUO

As explained above, without a preliminary injunction, Tenant Plaintiffs are homeless and in danger of becoming permanently homeless by losing their NYCHA Section 8 Vouchers. (*See*, Rudolph Aff. ¶¶ 5 & 8; Westmacott Aff. ¶¶19[b]-[d], 25; Lee Aff. ¶¶ 22, 24; Bleu Aff. ¶ 5;; Miller Aff. ¶ 5 Moore Aff. ¶ 5; Pittman Aff. ¶ 6 ; Portalatin-Trinidad Aff. ¶ 6). Tenant Plaintiffs will therefore be irreparably harmed unless Defendant Landlords and all their agents, employees, and other are enjoined from renting apartment at 3823 Carpenter Avenue, Bronx, NY 10467. Further, Plaintiff Safe Horizon has demonstrated that both current and future clients would be irreparably harmed if their clients did not have an opportunity to move into the Subject Building.

Further, MDL § 301 (2) unequivocally prohibits Landlord Defendants from renting the Subject Premises without a valid CO. In addition MDL§302(1)(a) and (b) provide that if a multiple dwelling is occupied without a certificate of occupancy, "[n]o rent shall be recovered by the owner of such premises for said period, and no action or special proceeding shall be maintained therefor, or for possession of said premises for nonpayment."

Because MDL§§ 301-302 prohibits any person from renting or paying for an apartment in the Subject Building, a temporary restraining order in no way prejudices Landlord Defendants; it simply memorializing in a court order what Landlord Defendants are already legally enjoined from doing.

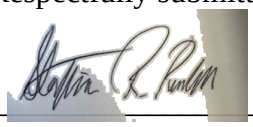
A temporary restraining order in this instance would preserve the status quo, and preserve the availability of the apartments in the Subject Building pending the outcome of this action. Further, a failure to grant this preliminary injunction would set a dangerous precedent that allows landlords to 1) avoid compliance with the law and discriminate openly against Section 8 voucher holders; 2) harm tenants and prospective tenants who are in receipt or participate in Section 8 voucher subsidy programs; and 3) benefit financially from renting the apartments to tenants with employment income before obtaining a CO and ensuring the building's safety.

CONCLUSION

Plaintiffs seeking declaratory, injunctive, and monetary damages from Landlord Defendants. This basis of the foregoing has established that this Court should grant a temporary restraining order and preliminary injunction enjoining the Landlord Defendants from renting or leasing rental units at the Subject Buildings known as 3823 Carpenter Avenue, Bronx, NY 10467 pending the resolution of this action.

Dated: February 6, 2023
New York, New York

Respectfully submitted,



Stephanie R. Rudolph, Esq.