

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LISA S. SMITH

Plaintiff,

v.

94TH AVENUE JAMAICA, LLC,

94TH AVENUE JAMAICA LI, LLC,

HP JAMAICA 94TH AVENUE HOUSING
DEVELOPMENT FUND COMPANY, INC.

K&R REALTY MANAGEMENT, INC.,

THE NEW YORK CITY HOUSING
DEVELOPMENT CORPORATION, a New
York governmental agency

ERIC ENDERLIN, President of the NEW
YORK CITY HOUSING DEVELOPMENT
CORPORATION,

and

THE CITY OF NEW YORK, acting through
its Department of Housing Preservation and
Development,

Defendants.

Case No. _____

ECF Case

May 27, 2021

COMPLAINT

New Yorkers face numerous challenges in finding safe and secure housing, from high housing costs, to extreme racial and socioeconomic segregation and discrimination on the basis of race and national origin. For the hundreds of thousands of New Yorkers who have a criminal record, the challenge of finding a safe home is even greater. Landlords commonly refuse to

admit tenants who have been convicted of a crime, and such policies have an overwhelming disparate impact on African-American and Hispanic New Yorkers.

Plaintiff Lisa S. Smith is one of those New Yorkers who, while searching for an apartment she could afford on her modest income, was denied housing because of her felony record. Ms. Smith was qualified for an apartment in every way — she had strong credit, a steady income, an excellent record for paying the rent — but she was denied a home in a New York City’s affordable apartment program because of a nine and a half-year-old felony conviction that had no bearing on her suitability as a tenant. Moreover, Ms. Smith’s application was denied not just by a private landlord, but by the City of New York and a state-created agency that finances affordable housing development, entities whose missions are to expand housing opportunities for low-income New Yorkers.

The policy at issue in this civil rights action — Defendants’ absolute ban on all applicants with felony records — constitutes unlawful discrimination under federal, state and local laws. It has a severe discriminatory impact on African-American and Hispanic tenants, and cannot be justified by any rational, nondiscriminatory reason. Ms. Smith seeks damages and injunctive relief against all rental property Defendants at 146-20 94 Jamaica Avenue, including the owners, 94th Avenue Jamaica LLC, 94th Avenue Jamaica LI LLC, HP Jamaica 94th Avenue Housing Development Fund Company, Inc., and the managing agent, K&R Realty Management, Inc., as well as the City of New York and the New York City Housing Development Corporation for their involvement in setting the discriminatory policy.

BACKGROUND

1. As part of its mission to create low- and middle-income housing in diverse neighborhoods, New York City offers financing and technical support to residential housing

developers who agree to develop buildings with income-restricted affordable apartment units in their buildings. In exchange for government financing, private developers must agree to close supervision by New York City agencies, compliance with numerous regulations, and in many cases, a form of shared management with New York City over new residential developments. The goal of these public-private partnerships is to increase the housing supply and serve working-class New Yorkers in an increasingly unaffordable city.

2. The New York City Housing Development Corporation and the New York City Department of Housing Preservation and Development oversee the marketing of new units and approve the screening policies for new applicants in certain City-financed developments, including the properties' criminal background check policies.

3. In May 2019, Plaintiff Lisa S. Smith was in the final stages of securing an apartment in Alvista Towers, a new development in Jamaica, Queens that is part of New York City's publicly financed affordable housing programs. In all ways, Ms. Smith is and was an ideal candidate for housing in a City-financed program. A single working mother with a modest but steady income, Ms. Smith is a medical health professional who is currently employed as an operations manager for a city contractor conducting COVID-19 testing operations and staffing at dozens of sites throughout New York City. Ms. Smith has overcome adversity both before and after the terrible mistake that resulted in her felony record. While a victim in an abusive domestic relationship in 2008, Ms. Smith overdosed on antidepressants and tragically struck and killed a pedestrian as she sought to escape her abuser, resulting in a prison sentence and a felony record. After she was released in 2012, Ms. Smith completed therapy, earned emergency medical technician and security guard licenses, and was employed as a staffing manager for critical healthcare sites, all while volunteering regularly in her community teaching basic medical skills

in part to atone for the guilt she felt about her crime. Ms. Smith at all times remained gainfully employed, earning an income that allowed her to send one of her children to college and support her disabled daughter and her mother.

4. Because of her felony record, however, Ms. Smith's determination and sense of responsibility did not matter when she applied for an affordable apartment in Alvista Towers that was available and matched her income range. On May 29, 2019, after she had provided all other necessary paperwork and was on the cusp of receiving keys and a move-in date to her new apartment, Defendants rejected Ms. Smith's application because she informed the building's leasing agent that she had a felony, namely, the nine-and-half-year old conviction related to the car crash.

5. In rejecting Ms. Smith, Defendants applied a blanket ban against applicants with felony records. They did not inquire into the age of Ms. Smith's felony, nor into the nature of her offense, and instead denied her application for housing outright and within days of when she expected to move into her new apartment. For Ms. Smith, this denial of housing was personally painful and financially costly. Because she had opted not to renew her lease on her existing apartment in reliance on her communications with Defendants, she lost her apartment and nearly became homeless.

6. After becoming aware of Ms. Smith's rejection, the Legal Aid Society engaged testers at the Fair Housing Justice Center ("FHJC") to inquire about apartments at Alvista Towers. An investigation by an FHJC tester confirmed that Defendants' policy was to automatically deny applicants with felony records without asking any subsequent questions about mitigating factors or an applicant's qualifications.

7. On paper, Defendants’ “official” criminal background check policy, as approved by the New York City Housing Development Corporation, was to reject any applicant for housing who had been convicted of a felony within the previous ten years.

8. In practice, however, Defendants’ “actual” policy was to reject *all* applicants with felony records, without inquiring into the age or severity of the conviction. Like FHJC’s tester, Ms. Smith was rejected as soon as she mentioned she had a felony on her record, without having been asked the age of her felony conviction.

9. Both the official policy and the actual policy result in automatically denying applicants like Ms. Smith housing because of their criminal histories.

10. Both policies are discriminatory, plain and simple. They have an obvious and dramatic disparate impact on African Americans like Ms. Smith, and on Hispanics. The disproportionate rate of conviction and incarceration of African Americans and Hispanics as compared to whites is well-documented, as are the structural inequalities in the criminal justice system; in New York City, African Americans and Hispanics who otherwise meet eligibility requirements are five to twelve times more likely than whites to be excluded from housing because of Defendants’ practices. Defendants make no assessment of how long ago applicants’ convictions occurred, or whether they are otherwise a good candidate for an apartment, or whether their conviction bears any relationship whatsoever on their suitability for housing. Even if Defendants actually employed a ten-year bar on felonies, such a policy is far too punitive and inflexible and does not involve the kind of individualized assessment required by federal, state and local civil rights laws. For people like Ms. Smith, Defendants’ automatic ban on tenants with felony records is stigmatizing and harmful, and an unreasonable barrier to obtaining safe and secure housing.

11. The private defendants are liable for discrimination under federal, state and local civil rights laws for enforcing a total ban on felony convictions at Alvista Towers. The City of New York and the Housing Development Corporation are liable for discrimination under the same civil rights laws for approving the “official” policy — the ten-year ban on felony convictions — and for their participation and oversight in the project applying the “actual” policy — the total ban on felony convictions.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 3613. This Court has supplemental jurisdiction over the City and State law claims pursuant to 28 U.S.C. § 1367.

13. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)(1) because Defendants are residents within this District in the State of New York.

PARTIES

14. Plaintiff Lisa S. Smith is an African-American resident of New York City. She currently resides in the neighborhood of South Ozone Park, Queens.

15. Defendant 94th Avenue Jamaica LLC is a New York limited liability corporation that, at all relevant times, possessed the equitable and beneficial interest in Alvista Towers. Its address for service of process on file with the New York State Department of State is 28 Liberty Street, New York, NY 10005.

16. Defendant 94th Avenue Jamaica LI LLC is a New York limited liability corporation that, beginning in November 2018, was responsible for leasing affordable units in Alvista Towers in accordance with the rules of HDC and the City of New York.

17. HP Jamaica 94th Avenue Housing Development Fund Company, Inc. is a New York not-for-profit corporation that at all relevant times held legal title to Alvista Towers.

18. Defendant K&R Realty Management, Inc. (“K&R Realty”) is a New York corporation headquartered in New York County. At all relevant times, K&R Realty was the managing agent and processed applications to Alvista Towers.

19. Defendant New York City Housing Development Corporation (“HDC”) is a corporate governmental agency created under New York State law that finances the development and construction of new housing in New York City. HDC consists of seven governing members: two appointed by the mayor of the City of New York, two appointed by the governor of the State of New York, and three officials of the City of New York.

20. Defendant Eric Enderlin (“Enderlin”) is the President of HDC and oversees HDC’s operations, sets agency priorities, and supervises affordable housing developments and financing in New York City. He is sued in his official capacity.

21. Defendant the City of New York (the “City”) is a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York. At all relevant times, the City was responsible for overseeing and regulating its affordable housing programs, as well as setting and enforcing the policies related to leasing units in Alvista Towers. The New York City Department of Housing Preservation and Development (“HPD”) is a municipal agency of the City responsible for aiding and overseeing the construction, rehabilitation, alteration or improvement of residential buildings and the regulation of rents in housing built with state and local financing.

22. In acting or omitting to act as alleged herein, each Defendant was acting through its employees and/or agents, and is liable on the basis of the acts and omissions of its employees and/or agents.

23. In acting or omitting to act as alleged herein, each employee or officer of each Defendant was acting in the course and scope of his or her actual or apparent authority pursuant to such agencies, or the alleged acts or omissions of each employee or officer as agent were subsequently ratified and adopted by each Defendant as principal.

FACTUAL ALLEGATIONS

I. DEFENDANTS' REFUSAL TO RENT HOMES TO ANY PERSON WITH A FELONY RECORD

A. Ms. Smith's Eligibility for Housing

24. Ms. Smith is an operations and staffing manager at a New York City contractor coordinating COVID-19 testing and logistics throughout the five boroughs. As a mother of four, she supported her children through college and graduate and nursing degrees, and is caring for a daughter with physical and mental disabilities.

25. Between 1998 and 2008, Ms. Smith was the victim in a longstanding abusive domestic relationship. On May 31, 2008, Ms. Smith's batterer physically assaulted her. Ms. Smith tried to escape her batterer's violence by driving to her friend's house. Before she started driving, Ms. Smith, in an effort to numb her feelings, took an overdose of the antidepressant pills a doctor had recently prescribed to her for postpartum depression. The overdose of antidepressant pills caused Ms. Smith to lose control of her faculties while she was driving, and she hit and killed a man who was changing his tire on the side of the road. Every day since the tragic crash, Ms. Smith has thought about the man whose life she took.

26. On August 4, 2009, Ms. Smith was convicted of Manslaughter in the Second Degree for recklessly causing the death of another person in violation of Penal Law § 125.15(1), a class C felony. Ms. Smith's violation of Penal Law § 125.15(1) was the direct result of her experience as a victim of domestic violence.

27. Ms. Smith was released to parole supervision in July 2012 and received an early discharge from parole in July 2013. While coping with extreme remorse for having taken a life, Ms. Smith set about rehabilitating herself and atoning for her offense through public service. She underwent extensive counseling to avoid reentering an abusive domestic relationship and to address the trauma she suffered at the hands of her batterer. As a result, the New York State Department of Corrections and Community Supervision issued Ms. Smith a Certificate of Relief from Disabilities. A Certificate of Relief from Disabilities is intended to reduce barriers to employment and obtaining various licenses in permits as part of New York's aim to reduce the automatic rejection and community isolation that often accompany conviction of crimes and "create a presumption of rehabilitation" by public agencies. N.Y. Correct. Law § 753.

28. Two other agencies, the New York State Department of Health and the New York State Department of State, issued Ms. Smith licenses that authorize her to provide medical services to vulnerable populations and access controlled substances. When she earned a security license from the New York State Department of State in 2017, the Department of State found that Ms. Smith "provided substantial evidence that she is fit to serve as a security guard, and that her service would not present a threat to the safety and well-being of the general public." She was also able to earn back her driver's license.

29. Since her release from incarceration, Ms. Smith has been gainfully employed in the medical and medical training fields. She worked as counselor for the mentally disabled at the

Federation of Multicultural Programs, and was subsequently at MedPrep Consulting Group, where she used her EMT certification to manage medical services that are offered at marathons and other sporting competitions, including the New York City Marathon. From 2013 onward, she worked as a part-time Community Outreach Specialist and Junior Instructor for the Universal Medical Training Center. After co-founding Health & Safety Training Associates, LLC in 2013, Ms. Smith worked part-time through the organization as a Basic Life Support Instructor affiliated with the American Heart Association.

30. Ms. Smith has been a long-time volunteer at soup kitchens and nursing homes, offering free blood pressure screenings at the Fort Greene Senior Citizens Council, and teaching free First Aid, Automated External Defibrillator, Cardiopulmonary resuscitation and lifesaving workshops. Ms. Smith developed a workshop called What To Do Until Help Arrives, and taught free classes on medical aid.

31. Ms. Smith has four daughters: the eldest is a teacher whom Ms. Smith supported and helped pay for a bachelor's degree and a masters; the second daughter, whom Ms. Smith supported through nursing school; a third who has severe developmental disability and Ms. Smith supports; and a fourth, a teenager.

32. At the time Ms. Smith applied for housing in Alvista Towers, she was employed as a MedPrep Consulting Group as a staffing manager for medical services at public events, and along with her partner, had a total household income of \$69,000. Ms. Smith's credit score at the time she applied for housing in Alvista Towers was around 770.

B. Defendants' Denial of Ms. Smith's Application for Housing

33. In or around 2013, Ms. Smith signed up for NYC Housing Connect ("Housing Connect"), New York City's online portal to find and apply for affordable housing opportunities

in New York City. She was attracted by Housing Connect's promise of affordable housing for lower- and moderate-income range households in brand-new buildings, a part of New York City's efforts to expand affordable housing opportunities to all New Yorkers.

34. The Housing Connect portal, which is managed and maintained by HDC and HPD, allows prospective tenants to apply for lotteries in HDC- and HPD-financed developments. For the vast majority of prospective tenants, it is the only way to apply for affordable housing in these publicly financed and supervised developments.

35. The demand for affordable apartments through the NYC Housing Connect portal is high, and housing opportunities are scarce. Since 2013, there have been more than 25 million applications submitted for roughly 40,000 units. Applicants must wait years, often through personal financial hardship, for a chance to rent a City-financed apartment at a cost that is usually much lower than what they would pay elsewhere.¹

36. Beginning in 2013 and in the years following, Ms. Smith applied to dozens of affordable housing properties in New York City through Housing Connect, including an apartment in Alvista Towers, a 25-story, 380-unit mixed-income, multifamily development located at 147-20 94th Avenue in the Jamaica neighborhood of Queens, New York. During the years that she was applying for housing through Housing Connect, Ms. Smith was struggling to support her family and afford the rent on her apartment in Queens, New York.

37. In or around April 2018, Defendant 94th Jamaica Avenue LLC contacted Ms. Smith by email, notifying her that her application for an apartment in Alvista Towers through the NYC Housing Connect lottery had been randomly selected for further processing, and requested an in-person interview. During the in-person interview in May 2018, Ms. Smith was told by a

¹ Matthew Haag, *25 Million Applications: The Scramble for N.Y.C. Affordable Housing*, N.Y. TIMES (June 15, 2020), available at <https://www.nytimes.com/2020/06/15/nyregion/nyc-affordable-housing-lottery.html>.

leasing agent that, because her family structure had changed as a result of her daughter's marriage engagement, she would not be eligible for the unit that she has originally applied for.

38. In or around April 2019, however, Ms. Smith was notified by K&R Realty, then acting as agent for 94th Jamaica Avenue LLC, that she was still in the housing lottery and would be notified if another eligible apartment became available. As the managing agent for Alvista Towers, K&R Realty was at all times acting as an agent for 94th Jamaica Avenue LLC.

39. Soon afterward, in an email dated May 8, 2019, a K&R Realty agent, Adam Stowe, informed Ms. Smith that based on her income and her lottery number, apartments were available to her in Alvista Towers, and that she needed to submit additional documentation verifying her household income. Mr. Stowe wrote in his email that, "Now that you qualify for units we have remaining, I am taking you off of the waiting list and will start your document request phase of the process."

40. In or around the middle of May 2019, Ms. Smith made two visits to the offices of K&R Realty, 94th Avenue Jamaica LLC, and the developer of the project, Artimus Construction Inc., all of which share an address at 316 W 118th Street in Harlem, New York, in order to provide paperwork. During a phone call with a leasing agent at K&R Realty, Ms. Smith was told that she was a few steps away from getting a letter with a move-in date and the keys to her apartment in Alvista Towers. Ms. Smith was also informed that as part of the last stage in the application process, she was required to provide a money order for a criminal background check and a credit check.

41. Because of her communications with K&R Realty and Mr. Stow, Ms. Smith anticipated that she would move into a new apartment in Alvista Towers in or around the next ten days. As a result, Ms. Smith agreed to allow her then-landlord renovate her apartment for the

tenant Ms. Smith believed would replace her in her current apartment, and Ms. Smith moved her furniture and possessions into storage, and did not renew her lease.

42. In or around the middle of May 2019, Ms. Smith and her then-partner made a final visit to the K&R Realty's offices in Harlem, New York to submit the money order for a credit check and criminal history check. When Ms. Smith asked the receptionist where she could find a bank, she told the receptionist she had a felony record and asked whether her record would be a barrier to getting an apartment. The receptionist told Ms. Smith that she should not tell K&R Realty she had a felony.

43. When Ms. Smith returned with a money order, she began speaking with the K&R Realty leasing agent, Mr. Stowe. Mr. Stowe began explaining reasons for denying applications. Ms. Smith interjected and said to Mr. Stowe, "I have a felony on my record, I just wanted to make sure you wouldn't have a problem with that," or words to that effect. In response, Mr. Stowe stood up and walked into a back office telling her he would return shortly after speaking with his supervisor.

44. When Mr. Stowe returned around ten minutes later, he said to Ms. Smith, "I'm sorry, we can't process your paperwork because you have a felony," or words to that effect. Ms. Smith asked what kind of felony would disqualify for housing. Mr. Stowe responded, "Any felony," or words to that effect. Mr. Stowe declined to accept Ms. Smith's money order to run a criminal history screening or credit check.

45. Ms. Smith was humiliated and upset at having been treated like a criminal despite all of her efforts over the previous nearly ten years to commit herself to an upstanding and productive life and career. Ms. Smith's lease for her apartment at the time was scheduled to expire shortly after her conversation, and Ms. Smith had no other home to turn to.

46. Having applied for affordable housing through New York City's Housing Connect website, Ms. Smith was particularly upset about what she perceived to be the City's involvement in denying her housing.

47. On May 29, 2019, K&R Realty issued a rejection letter to Ms. Smith by email, explaining the reason for the rejection of her application. The letter stated that K&R Realty "received Ms. Smith's application for residency in the project" and "[b]ased on the guidelines for eligibility for this project, your application has been rejected for the following reason(s)." In the body of the letter, precisely one item was marked, and one explanation was given, namely, "Criminal background check" with a line noting that "Applicant stated felony on record."

48. The letter was signed by "94th Avenue Jamaica, LLC, Owner/Manager" and was written on K&R Realty letterhead.

49. Defendants denied Ms. Smith's application for housing solely because of her felony conviction, and did not inquire or consider the time elapsed since her conviction, the nature of the crime, nor any factors that might mitigate Ms. Smith's conviction.

50. Ms. Smith was able to stay at her cousin's apartment and then find a short-term rental in New Jersey, and then finally found an apartment at the cost of \$1,800 per month, plus utilities. Meanwhile, she had to pay for storage at a cost of \$200. She ultimately paid out of pocket many thousands of dollars more than she would have had she obtained the apartment in Alvista Towers.

51. Ms. Smith currently lives at an apartment where she pays more than \$2000 per month for rent and utilities, a cost that is outside of her budget and more than 50% of her income, qualifying her as severely rent-burdened according to standards set by the Department of

Housing and Urban Development. She is struggling to afford the rent and is currently falling behind because of loss of income during the COVID-19 pandemic.

52. In addition to her pecuniary damages, Ms. Smith suffered emotional distress, shame, anger, and profound disappointment that her history of accomplishments and rehabilitation were irrelevant and her 2008 crime—for which she has struggled to atone—was not.

C. The Fair Housing Justice Center’s Testing Confirmed the Defendants’ Discriminatory Policy

53. In March 2021, the Fair Housing Justice Center conducted civil rights testing on Alvista Towers in order to assess the types and severity of the barriers individuals with criminal histories face when seeking housing in New York City.

54. The Fair Housing Justice Center investigates housing discrimination through a variety of means, including civil rights testing. Civil rights testers are persons who query housing providers to test the housing providers’ compliance with applicable fair housing laws.

55. On March 12, 2021, an FHJC tester, posing as a prospective tenant, called MNS Real Estate NYC about an apartment advertised in Alvista Towers at 147-20 94th Avenue, Queens, apartment 11G. An MNS Real Estate NYC licensed real estate broker, Monifa Charles, answered the telephone and indicated that apartment 11G was unavailable, but that a studio apartment, 22C, was still available and renting for \$1,750 a month. Ms. Charles stated that there was a strict income requirement for the apartments and that the tester would need to meet those requirements.

56. The FHJC tester asked whether Alvista Towers screened applicants with background checks. Ms. Charles responded, “So, they are strict on the backgrounds, so if there are any, um, criminal offenses, they will deny your application.” The tester asked if this was a

policy across the board, no matter how long ago the crime occurred. Ms. Charles responded, “If it’s a misdemeanor, it’s something they’ll probably overlook, but if it’s a felony of any sort, they don’t overlook that.” The tester asked, “Oh, of any sort?” Ms. Charles replied, “Yup, yeah, which is sad.” Ms. Charles went on to state that she had processed applications where the applicant had a felony record and was rejected. “If that’s your case, I could help you find another building that does not have those restrictions,” Ms. Charles said.

57. In March 2021, MNS Realty was responsible for leasing units in the building as an agent of 94th Avenue Jamaica LLC, and Agent Monifa Charles was a licensed real estate broker employed by MNS Realty.

58. As principals, 94th Avenue Jamaica LLC, 94th Avenue Jamaica LI LLC, and HP Jamaica 94th Avenue Housing Development Fund Company, Inc., are liable for MNS Realty’s discriminatory conduct.

59. The policy the FHJC tester discovered confirmed what Ms. Smith experienced: that Alvista Towers maintains an automatic ban against any applicant with a felony conviction. Moreover, the policy applies no matter how long ago the felony conviction occurred or whether the felony has any bearing on an applicant’s qualification for housing.

D. HDC and HPD’s Control Over Alvista Towers and Its Policies

60. In order to meet its goal of building affordable housing for low- and middle-income New Yorkers in diverse neighborhoods, New York City has established a number of financing programs for private residential developments. In exchange for financing, private developers agree to build in close partnership with the City, sharing effective control over their projects with City and State agencies and allowing those agencies to set many of the policies on

their properties. The City's purported goal is to create affordable housing units and serve low-income New Yorkers.

61. The two agencies most closely involved in the development of affordable housing in New York City are the New York City Housing Development Corporation ("HDC"), created by the New York State legislature in 1971 to finance affordable housing independent from the City's capital budget, and the Department of Housing Preservation and Development ("HPD"), a City agency tasked with financing and preserving affordable housing and shares some governing members with HDC. These agencies control numerous aspects of project development, provide financing and tax credits, set leasing, affordability and management requirements and oversee aspects of day-to-day operations.

62. One of these affordable housing developments is Alvista Towers, a 25-story, 380-unit mixed-income, multifamily development located at 147-20 94th Avenue in the Jamaica neighborhood of Queens, New York. Alvista's construction and marketing was financed by New York City's Mixed Income: M2 (Mixed-Middle) Program, a financing program for low-, moderate-, and middle-income families with annual incomes up to 165% of Area Median Income ("AMI"). The M2 Program requires a building developer to comply with certain requirements in exchange for significant financing from New York City's HDC and HPD.

63. HDC supplied three subsidized loans in the amounts of \$65.6 million, \$30.4 million, and \$30.4 million to 94th Avenue Jamaica LLC and 94th Avenue Jamaica LI LLC in order to finance the development of Alvista Towers, with one loan funded by a grant of City Capital funds from HPD to HDC. Additionally, New York City provided tax abatements and awarded tax credits for the project through its municipal agency HPD.

64. In June 2016, 94th Avenue Jamaica LLC, 94th Avenue Jamaica LI LLC, and HP Jamaica 94th Avenue Housing Development Fund Company, Inc., (collectively, the “Defendant-Owners”) entered into a regulatory agreement (“Regulatory Agreement”) with HDC and HPD that governed the terms and conditions for the construction and operation of Alvista Towers.

65. At all times, adherence to the Regulatory Agreement was a condition for public financing of Alivista Towers.

66. According to the Regulatory Agreement, Alvista Towers was required to reserve 15 units for rent under \$920 per month for applicants at or below 50% of AMI; 80 units for applicants at 60% of AMI; 110 units for applicants making 120% of AMI; 40 units for applicants making 130% of AMI; and 134 units for applicants at 165% of AMI.

67. In order to benefit from tax exemptions and city financing, the ownership, management and legal title to Alvista Towers were divided between 94th Avenue Jamaica LLC, 94th Avenue Jamaica LI LCC and HP Jamaica 94th Avenue Housing Development Fund Company, Inc. At all relevant times, HP Jamaica 94th Avenue Housing Development Fund Company, Inc. held record or legal fee title to the building, 94th Avenue Jamaica LLC possessed all equitable and beneficial interest in the property and the unconditional right to develop residential units and possess the property and the project, and 94th Avenue Jamaica LI LLC executed a lease to the low-income units in the property.

68. In October 2018, 94th Avenue Jamaica LI LLC executed an agreement with HPD, 94th Avenue Jamaica LLC and HP Jamaica 94th Avenue Housing Development Corporation, Inc. to become the administering agent responsible for renting apartments in Alvista Towers in compliance with the Regulatory Agreement beginning in October 2018.

69. Upon information and belief, 94th Avenue Jamaica LI LLC shared managing members and an address at all times with 94th Avenue Jamaica LLC.

70. Pursuant to the Regulatory Agreement and other conditions for the public financing of Alvista Towers, and in order to further the City's goal of producing affordable housing, HDC and HPD exercised extensive and direct control over the construction, leasing, management and operations of the project, including the power to take possession of the property, approve and reject leases, set marketing and leasing policies, approve or deny managing agents, add or remove private board members, set rents, inspect the premises, and determine easements over the project. Specifically:

- The Defendant-Owners were prohibited from leasing units or allowing any resident to move into Alvista Towers without first receiving approval from HDC;
- Prior to the rental of any unit, the Defendant-Owners were required to submit to HDC a certification of annual income and household size provided by the applicant, along with verification documents, to allow HDC and HPD to perform independent reviews of applicant eligibility;
- HDC and HPD established all the procedures and requirements pertaining to the marketing and rent-up of units in Alvista Towers, including the use of HDC forms and leases;
- HDC could and did participate in planning meetings, review construction contracts and plans, and inspect the premises to ensure the affordable housing units in Alvista Towers were complying with HDC's mandate;

- The Defendant-Owners were prohibited from designating a managing agent without approval from HDC and HPD, and the managing agent could not designate any subagent without approval from the agencies;
- HDC or HPD could, at any time, terminate the managing agent selected by the private defendants to operate the premises and lease the units;
- The Defendant-Owners could not subdivide any unit without prior approval from HDC and HPD;
- Easements to telecommunications firms and the installation of satellite antennas required approval by HDC;
- Upon any violation of the Regulatory Agreement, HDC could at any time remove any partner or shareholder of the Defendant-Owners, prohibit the occupancy of unoccupied units, commence foreclosure of its mortgages, or take possession of the property;
- The Defendant-Owners were only permitted to set rents within a narrow set of parameters established by HDC and HPD for each unit, both at the initial lease-up of the building and in subsequent years;
- The Defendant-Owners were not permitted to change their ownership interests without prior written consent of both HDC and HPD;
- The Defendant-Owners were not permitted to sell or lease any portion of the property without the prior written consent of HDC and HPD.

71. In order to advertise units to the public, review applicants' eligibility and lease units in Alvista Towers, the Defendant-Owners were first required, pursuant to the Regulatory Agreement, to select a managing agent responsible for submitting a proposed marketing plan to

the agency overseeing the project. The appointment of the managing agent and approval of the marketing plan were at all times subject to the discretion of HPD or HDC.

72. In addition, the Defendant-Owners were required to comply with HDC's Marketing Handbook. The Marketing Handbook sets out HDC and the City's policies, procedures and requirements for leasing any unit in an agency-assisted project.

73. As principals, HDC and HPD exerted far-ranging control over the Defendant-Owners' development, marketing, and operations of Alvista Towers in order to further the housing goals of the City.

E. HDC and K&R Realty's "Official" Discriminatory Criminal Background Policy

74. The Defendant-Owners selected as the project's marketing agent K&R Realty, a residential property management company that rents and manages apartment units throughout Manhattan, including in Harlem, Chelsea, the East Village and the Upper West Side. K&R Realty at all times shared management members and a business address with 94th Avenue Jamaica LLC and Artimus Construction, the developer of Alvista Towers.

75. HDC and HPD approved K&R Realty Management as the managing agent for Alvista Towers in or before June 2016. As the managing agent, K&R Realty was responsible for reviewing applications from all prospective tenants.

76. K&R Realty reviewed and processed the application of Ms. Smith.

77. As part of the marketing plan, HPD and HDC require all entities leasing units in City-financed buildings to obtain a criminal background check for every member of an applicant household 18 years or older, as well as set a criminal background check policy establishing what information discovered through a criminal background check will or will not adversely impact an

applicant's eligibility. HDC or HPD is required to approve the criminal background check policy as part of the marketing plan.

78. On September 22, 2017, K&R Realty Management Inc. submitted its marketing plan summary sheet to HDC for approval. The marketing plan included K&R Realty's proposal for community contacts and advertising as well as its resident selection criteria.

79. K&R Realty Management Inc. proposed the following criminal background criteria (the "official" policy) as part of its marketing plan to HDC:

"Applicants who have been convicted of prior felonies within the last 10 years will be rejected for this project. Applicants who have been convicted of prior violent misdemeanors within the last 5 years will be rejected for this project. A violent misdemeanor will be classified as use or threat of physical force against any person or property of another, or that involves a risk of physical force against the person or property of another. If an applicant is convicted of 3 or more misdemeanors within the last 10 years they will be rejected. Registered sex offenders will also be rejected for this project."

80. On April 4, 2018, an HDC staff member, Denita Edwards reviewed and approved K&R Realty's marketing plan, including the criminal background criteria banning any applicants with a felony in the preceding ten years (the "official" policy).

81. Ms. Smith was ineligible for an apartment in Alvista Towers under the "official" policy.

82. The criminal background criteria has a discriminatory impact on African-American and Hispanic applicants for housing and fails to conduct a meaningful individualized assessment of each applicants' record.

83. As a result of HDC's approval of the discriminatory "official" policy, Ms. Smith was ineligible for housing in Alvista Towers because she was convicted nine-and-a-half years before her application was processed.

F. Ms. Smith Was Ineligible for an Apartment Under the Official Policy and the Actual Policy

84. As described above, Defendants’ “official” policy was to reject the application of every prospective tenant who had a felony conviction in the preceding ten years. It was this official policy that HDC approved.

85. But as Ms. Smith experienced and FHJC’s tester confirmed, Defendants’ “actual” policy was to reject the application of *every* prospective tenant who had a felony conviction. Defendants denied Ms. Smith’s housing applications without giving her the opportunity to undergo a background check, explain the nature of her felony, or describe any mitigating circumstances. Instead, Ms. Smith was told that applicants with felonies would not be processed. Similarly, the Defendants’ agent informed FHJC’s tester that applicants with a felony, no matter how old, would not be processed, but that “other buildings” might be more suitable.

86. Ms. Smith was ineligible for Alvista Towers under both the official and the actual policies.

87. Defendant-Owners applied the actual policy to all new applicants while acting as agents for HDC and the City of New York. The agencies hosted the application platform, NYC Housing Connect, reviewed each acceptance, set the policies and ultimately controlled the Alvista project. HDC and the City of New York are liable for the actual policy as principals, and separately, for directly approving the official policy as part of the marketing plan.

II. DEFENDANTS’ POLICIES DISCRIMINATE ON THE BASIS OF RACE

A. Defendants’ Criminal History Screening Policies Have an Unlawful Disparate Impact on the Basis of Race and National Origin

88. Facially neutral housing policies that have a disparate impact on the basis of race are unlawful under the Fair Housing Act unless they are necessary to accomplish a legitimate

business purpose that cannot be satisfied through a less discriminatory alternative practice. Criminal background check policies that automatically deny people housing on the basis of a felony record, like the actual and the official policies of the Defendants, are among such unlawful policies.

89. Screening policies that bar all applicants with a felony history from securing basic needs — like housing, or employment — have a predictable and adverse disparate impact on African Americans and Hispanics. Nationwide, 1,446 out of every 100,000 African-American adults were incarcerated in state or federal facilities at the end of 2019, compared with just 263 out of every 100,000 whites, making African Americans nationwide 5.5 times more likely to be currently incarcerated than whites.² Similarly, 757 out of every 100,000 Hispanics were incarcerated at the end of 2019, making Hispanics 3 times more likely to be currently incarcerated.

90. Based on national incarceration data, the U.S. Department of Justice estimated that as of 2001, 1 in 3 African-American men could expect to go to prison at some point in their lifetime. For Hispanic men, the rate of expected incarceration is 1 in 6. For white men, the figure is 1 in 17.³

91. Over 95% of inmates are eventually released.⁴ For individuals who are released from prisons and jails, the ability to access safe and affordable housing is critical to their successfully re-entry, yet they encounter significant barriers to securing housing because of their criminal histories.

² E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, Prisoners in 2019 (Oct. 2020) at 10, available at <https://www.bjs.gov/content/pub/pdf/p19.pdf>.

³ Marc Mauer, Addressing Racial Disparities in Incarceration, 91 *supp. 3 The Prison Journal* 87S, 88S (Sept. 2011). <https://sentencingproject.org/wp-content/uploads/2016/01/Addressing-Racial-Disparities-in-Incarceration.pdf>

⁴ Bureau of Justice Statistics, U.S. Dep't of Justice, *Reentry Trends in the United States*, at 1, <http://www.bjs.gov/content/pub/pdf/reentry.pdf>.

92. As a result, the Equal Employment Opportunity Commission (“EEOC”) has released guidance finding that, based on national criminal records, that blanket bans on applicants with criminal records have a disparate impact on the basis of race, and any disqualification on the basis of criminal record must be related to the requirements of a particular job.⁵

93. In 2016, the Department of Housing and Urban Development (“HUD”) issued guidance interpreting the Fair Housing Act’s application to criminal background checks. HUD determined that, because African Americans and Hispanics were arrested and incarcerated at disproportionate rates compared with whites, a housing provider’s policy or practice of denying housing on the basis of criminal records tends to have a disparate impact on the basis of race. HUD determined that where a criminal records screening policy has a discriminatory effect, a housing provider must make an individualized assessment of the nature and severity of each applicant’s conviction in order to avoid running afoul of the Fair Housing Act.⁶

94. In New York State, the racial disparities in incarceration are even more pronounced than at the national level. Between 2010 and 2013, 112 out of every 100,000 white New Yorkers was incarcerated, compared with 896 out of every 100,000 African-Americans New Yorkers, and 351 out of every 100,000 Hispanics.⁷

95. African Americans in New York State were therefore 8 times more likely than whites to be incarcerated, and Hispanics were 2.6 times more likely to be incarcerated.⁸ One out

⁵ U.S. Equal Employment Opportunity Commission, *EEOC Enforcement Guidance*, Number 915.002 (Apr. 25, 2012), http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

⁶ U.S. Department of Housing and Urban Development, Office of General Counsel, *Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, April 4, 2016.

⁷ *The Color of Injustice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project, June 2016, available at <https://perma.cc/U9J6-LBK7>.

⁸ *Id.*

of every 40 African-American men in New York State are incarcerated. Some 48% of all prisoners are African American, even though 15% of the total population of New York State is African American.

96. In New York City in 2018, African Americans received 54% of all prison sentences, while just 22% of the City's population was African American; Hispanics received 35% of prison sentences, even though Hispanics made up 29% of the City's population. Meanwhile, whites received just 8% of prison sentences, even though 32% of the City's population is white.⁹

97. These racial disparities in felony records have persisted for decades. As a result, generations of people leaving prison have overwhelmingly been more likely to be African American or Hispanic than white.

98. Between 1985 and 2012, African Americans made up 335,198 (50%) of all prisoners released from New York State prisons. Hispanics made up 197,275 (30%) of prisoners released during that period,⁴ and whites made up 124,027 (19%). By comparison, statewide, New York State's population in 2010 was made up of 2,784,857 African-Americans (14% of the population), 3,416,922 Hispanics (17% for the population), compared with 11,304,247 whites (58% of the population).¹⁰

99. As a result, assuming those who are released from prison in New York State remain in the state, in 2012, approximately 12% of all African Americans had a felony conviction, as did 6% of Hispanics, while just 1% of whites had a felony record.

⁹ New York State Division of Criminal Justice Services, NYS Arrests and Prison Sentences by Race/Ethnicity, Aug. 27, 2019, available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-population-arrests-prison-demographics/2018%20Population%20Arrests%20Prison%20by%20Race.pdf>; American Community Survey 2018.

¹⁰ New York State Department of Corrections, Division of Program Planning, Three Year Post-Release Follow-Up, Dec. 2016, available at https://doccs.ny.gov/system/files/documents/2019/09/2012_releases_3yr_out.pdf.

100. These racial disparities in the population of those released from prison have remained relatively consistent over time. In 2018, 43%, or 5,909, of all prisoners released from New York State prisons in 2018 were African American; 29% of all released prisoners, or 3,946, were white; and 25% of prisoners released, or 3,458 were Hispanics.¹¹

101. The disparities also exist in the current prison population. In New York State as of April 2021 the prison population was 51% African American, 23% Hispanic, and 23% white, even while those groups made up 14%, 19%, and 55% of the population of New York State respectively.¹²

102. By any measure, the disparate impact of Defendants' felony record ban is overwhelming. The fact that African Americans and Hispanics are far more likely than whites to have a felony record means both that African Americans and Hispanics are much more likely than whites to be barred from housing by automatic exclusions of people with felony records and that the absolute number of African Americans and Hispanics excluded is very large.

103. Assuming that individuals with felonies of different racial groups are similarly likely to remain in New York after release from incarceration and have similar mortality rates, the Defendants' ban on applicants with felony records is about 12 times more likely to result in a denial for African American applicants as it is for white applicants, and 5 times more likely to result in a denial for Hispanic applicants as it is for white applicants. The disparate impact of Defendants' policies exists at the income levels eligible for an apartment in Alvista Towers.

¹¹ New York State Department of Corrections and Supervision, Program Planning Releases and Discharges from Incarceration Report, March 2019, available at <https://doccs.ny.gov/system/files/documents/2019/09/Releases-andDischarges-fromIncarcerationReport.pdf>

¹² Vera Institute of Justice, Empire State of Incarceration, available at <https://www.vera.org/empire-state-of-incarceration-2021#people-in-prison-in-new-york-state>, American Community Survey Data 2019.

B. Individually Considering Each Applicant’s Circumstances is a Less Discriminatory Alternative that Would Satisfy Legitimate, Non-Discriminatory Concerns

104. Defendants' policies are not necessary to achieve a legitimate, nondiscriminatory business purpose, and other less discriminatory alternatives exist. Giving individualized consideration to each potential resident’s circumstances is a less discriminatory alternative to a blanket ban on felony records or to a ban on any felony records, and would serve any legitimate, nondiscriminatory justification for the policy. As HUD noted in its 2016 guidance, even where a housing provider implements “a more tailored policy or practice that excludes individuals with only certain types of convictions,” the provider “must still prove that its policy is necessary to serve a ‘substantial, legitimate, nondiscriminatory interest.’”¹³

105. To the extent that public safety or protection of property at Alvista Towers is a legitimate, nondiscriminatory justification, the Defendants could have accomplished the protection of safety and property through the use of individual assessments that consider the nature of an individual’s conviction, the severity of the offense, the amount of time since the conviction or release, and evidence of rehabilitation, among other factors. An individualized assessment allows people who have a felony record, but who pose no realistic current or future threat to the community, to obtain housing. This more targeted and narrower approach both protects public safety and property and is less discriminatory and exclusionary because it reduces the number of minority applicants who are banned from Alvista.

106. The New York State Department of Homes and Community Renewal (“HCR”) in 2016 issued a memo providing that housing companies that screen residents/shareholders with a

¹³ *supra* n. 4.

criminal conviction must make an individualized assessment of each applicant, considering factors such as the seriousness of the crime and whether the crime has any bearing on the applicant's danger to neighbors or property. The guidance by HCR mirrors the HUD 2016 guidance in requiring housing providers to make individualized assessments about the danger an individual applicant might pose to the safety of the property, and consider, also, the time which has elapsed since the criminal conviction, the age of the person at the time of the conviction, the seriousness of the conviction, and any information about the rehabilitation of the household member with a conviction.

107. Alvista Towers' actual policy — the total ban on felony records — bars numerous prospective renters who would pose no threat to safety or property, including applicants, for example, who have never been convicted of a violent crime. In 2018, just 35% of all releases from New York State facilities were of prisoners convicted of violent offenses,¹⁴ and of the 665,118 prisoners released between 1985 and 2012, only 33% were convicted of violent offenses.¹⁵

108. Alvista Towers' official policy, as approved by HDC, which imposed an ten-year absolute ban on felony records, similarly fails to accomplish a legitimate, nondiscriminatory business purpose. Like a total felony ban, a ten-year felony ban sweeps up numerous prospective tenants who pose no danger to the health and safety of other residents or to the property. And while a ten-year felony ban purports to take into account the time elapsed since a conviction, the ten-year ban also sets an arbitrary timeframe that may or may not be appropriate depending on the individual circumstance. Recidivism rates decrease dramatically in the two to

¹⁴ *Id.*

¹⁵ New York State Department of Corrections, Division of Program Planning, Three Year Post-Release Follow-Up, Dec. 2016, available at https://doccs.ny.gov/system/files/documents/2019/09/2012_releases_3yr_out.pdf.

three years after incarceration. A ten-year ban fails to take into account individual circumstances, rehabilitation, the severity of the conduct, and time elapsed as required under the HUD and HCR rules.

109. Bans on all felony records not only have a disparate impact on African-American and Hispanic New Yorkers; such bans are irrational and incommensurate with housing providers' interests in providing safe living conditions to their tenants. Even the Real Estate Board of New York ("REBNY"), New York City's leading real estate trade association, has recognized that housing providers do not benefit from automatic bans, and housing providers should perform an assessment of any applicant with a criminal record that takes into account the nature of a conviction.¹⁶

C. The Policy Prevents Formerly Incarcerated Individuals from Obtaining Safe and Stable Housing

110. Discriminatory blanket bans on felony records in housing have devastating effects on individuals trying to re-enter society. The use of felony records bans makes it more difficult for individuals leaving jail or prison to find housing and avoid long-term homelessness.

111. New Yorkers leaving incarceration are uniquely at risk of homelessness, in large part because of criminal background screening policies like the one employed by Defendants. Of the 9,300 people released from State prisons to New York City in 2014, 23% of them went directly into the City shelter system; in 2017, 54% of the people released to New York City, or

¹⁶ The Real Estate Board of New York to the Committee of Civil and Human Rights on General Welfare of the New York City Council, Sept. 15, 2020, available at <https://www.rebny.com/content/dam/rebny/Documents/PDF/News/testimony/REBNY%20to%20City%20Council%20re%20Rental%20Assistance%20and%20Criminal%20Background%20Checks%20September%2015%202020.pdf>

4,122 individuals, entered the shelter system.¹⁷ A 2006 study of 7,000 individuals in the City's public shelter system found that nearly a quarter had been incarcerated in the previous two years.

112. Relatedly, people experiencing homelessness are at increased risk of recidivism and encounters with law enforcement: Those who have experienced homelessness make up more than 15% of the national jail population, and are about 10 times more likely to be in jail.¹⁸ When housing providers discriminate on the basis of criminal records, they exacerbate the City's homelessness crisis at a time when the City is seeking to make it easier for New Yorkers to find housing, not harder.

113. An Urban Institute study found a causal connection between the inability to find permanent housing and recidivism. According to the study, reentrants often did not succeed in the community if they could not find a safe and stable place to live.¹⁹

114. The Vera Institute of Justice found that parolees released from incarceration who entered New York City homeless shelters were seven times more likely to abscond from post-release supervision than those with more stable housing. It also found that reentrants in temporary shelter housing had more difficulty resisting drugs and finding work.

115. HDC and the City's involvement in barring individuals with felony records from obtaining affordable housing is irrational and undermines the purpose of the affordable housing program.

¹⁷ Courtney Gross, *The New York prison-to-shelter pipeline*, Spectrum News NY1 (Feb. 27, 2018) <https://www.ny1.com/nyc/all-boroughs/politics/2018/02/27/ny1-investigation-more-inmates-released-upstate-prisons-going-into-nyc-shelter-system>; Jacquelyn Simone, *Today's Video: The New York Prison-to-Shelter Pipeline*, Coalition for the Homeless (Feb. 28, 2018), <https://www.coalitionforthehomeless.org/todays-video-new-york-prison-shelter-pipeline/>

¹⁸ Greg A. Greenberg and Robert A. Rosenheck, *Jail Incarceration, Homelessness, and Mental Health: A National Study*, Psychiatric Services, Feb. 2008, available at <https://homelesshub.ca/sites/default/files/Greenberg.pdf>.

¹⁹ Jeremy Travis and Caterina G. Roman, Urban Inst., *Taking Stock: Housing, Homelessness, and Prisoner Reentry* 7-10 (2004), <http://www.urban.org/publications/411096.html>.

CAUSES OF ACTION

Count I – The “Actual” Policy (Race Discrimination—42 U.S.C. § 3604)

116. Plaintiff repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 115 above.

117. Defendants’ policy and practice of denying housing to all people with felony records has an adverse and disproportionate impact on African Americans and Hispanics in New York City as compared to similarly situated whites. This adverse and disproportionate impact is the direct result of Defendants’ blanket policy of automatically refusing housing to all people with felony records with no consideration of their individual characteristics and circumstances. This policy and Defendants’ related acts and practices are not necessary to serve any substantial legitimate, nondiscriminatory interest, and any such interest can be satisfied by another practice — providing individualized assessment of applicants for housing — that would have a less discriminatory effect.

118. Defendants’ acts, policies, and practices constitute discrimination and violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3604, and its implementing regulations, in that Defendants’ acts, policies, and practices have made and continue to make housing unavailable because of race and/or color, in violation of 42 U.S.C. § 3604(a).

119. Defendants’ conduct has harmed Plaintiff, an African-American New York resident, by denying Plaintiff affordable housing for low- to moderate-income individuals such as Plaintiff and perpetuating unreasonable tenant selection policies and practices.

Count II – The “Official” Policy (Race Discrimination—42 U.S.C. § 3604)

120. Plaintiff repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 115 above.

121. Defendants’ “official” policy of denying housing to all people with felony records within the last ten years has an adverse and disproportionate impact on African Americans and Hispanics in New York City as compared to similarly situated whites. This adverse and disproportionate impact is the direct result of Defendants’ blanket policy of automatically refusing housing to all people with felony records in the last ten years with no consideration of their individual characteristics and circumstances. This policy and Defendants’ related acts and practices are not necessary to serve any substantial legitimate, nondiscriminatory interest, and any such interest can be satisfied by another practice — providing individualized assessment of applicants for housing — that would have a less discriminatory effect.

122. Defendants’ acts, policies, and practices constitute discrimination and violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3604, and its implementing regulations, in that Defendants’ acts, policies, and practices have made and continue to make housing unavailable because of race and/or color, in violation of 42 U.S.C. § 3604(a).

123. Defendants’ conduct has harmed Plaintiff, an African-American New York resident, by denying Plaintiff affordable housing for low- to moderate-income individuals such as Plaintiff and perpetuating unreasonable tenant selection policies and practices.

Count III – The “Actual” Policy (Race Discrimination—N.Y. Exec. Law § 296 (5))

124. Plaintiff repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 115 above.

125. Defendants’ policy and practice of denying housing to all people with felony records has an adverse and disproportionate impact on African Americans and Hispanics in New York City as compared to similarly situated whites. This adverse and disproportionate impact is the direct result of Defendants’ blanket policy of automatically refusing housing to all people

with felony records with no consideration of their individual characteristics and circumstances. This policy and Defendants' related acts and practices are not necessary to serve any substantial legitimate, nondiscriminatory interest, and any such interest can be satisfied by another practice — providing individualized assessment of applicants for housing — that would have a less discriminatory effect.

126. Defendants' acts, policies, and practices constitute discrimination and violate the N.Y. Exec. Law § 296 (5), in that Defendants' acts, policies, and practices have made and continue to make housing unavailable because of race and/or color, in violation of N.Y. Exec. Law § 296 (5).

127. Defendants' conduct has harmed Plaintiff, an African-American New York resident, by denying Plaintiff affordable housing for low- to moderate-income individuals such as Plaintiff and perpetuating unreasonable tenant selection policies and practices.

Count IV – The “Official” Policy (Race Discrimination—N.Y. Exec. Law § 296 (5))

128. Plaintiff repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 115 above.

129. Defendants' “official” policy of denying housing to all people with felony records within the last ten years has an adverse and disproportionate impact on African Americans and Hispanics in New York City as compared to similarly situated whites. This adverse and disproportionate impact is the direct result of Defendants' blanket policy of automatically refusing housing to all people with felony records in the last ten years with no consideration of their individual characteristics and circumstances. This policy and Defendants' related acts and practices are not necessary to serve any substantial legitimate, nondiscriminatory interest, and

any such interest can be satisfied by another practice — providing individualized assessment of applicants for housing — that would have a less discriminatory effect.

130. Defendants’ acts, policies, and practices constitute discrimination and violate the N.Y. Exec. Law § 296 (5), in that Defendants’ acts, policies, and practices have made and continue to make housing unavailable because of race and/or color, in violation of N.Y. Exec. Law § 296 (5).

131. Defendants’ conduct has harmed Plaintiff, an African-American New York resident, by denying Plaintiff affordable housing for low- to moderate-income individuals such as Plaintiff and perpetuating unreasonable tenant selection policies and practices.

Count V – The “Actual” Policy (Race Discrimination—Admin. Code of City of NY § 8-107(5))

132. Plaintiff repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 115 above.

133. Defendants’ policy and practice of denying housing to all people with felony records has an adverse and disproportionate impact on African Americans and Hispanics in New York City as compared to similarly situated whites. This adverse and disproportionate impact is the direct result of Defendants’ blanket policy of automatically refusing housing to all people with felony records with no consideration of their individual characteristics and circumstances. This policy and Defendants’ related acts and practices are not necessary to serve any substantial legitimate, nondiscriminatory interest, and any such interest can be satisfied by another practice — providing individualized assessment of applicants for housing — that would have a less discriminatory effect.

134. Defendant’s acts, policies, and practices constitute discrimination and violate the New York City Human Rights Act, Administrative Code of City of NY § 8-107(5), in that

Defendants' acts, policies, and practices have made and continue to make housing unavailable because of race and/or color, in violation of Administrative Code of City of NY § 8-107(5).

135. Defendants' conduct has harmed Plaintiff, an African-American New York resident, by denying Plaintiff affordable housing for low- to moderate-income individuals such as Plaintiff and perpetuating unreasonable tenant selection policies and practices.

Count VI – The “Actual” Policy (Race Discrimination—Admin. Code of City of NY § 8-107(5))

136. Plaintiff repeats and incorporates by reference all allegations set forth in Paragraphs 1 through 115 above.

137. Defendants' “official” policy of denying housing to all people with felony records within the last ten years has an adverse and disproportionate impact on African Americans and Hispanics in New York City as compared to similarly situated whites. This adverse and disproportionate impact is the direct result of Defendants' blanket policy of automatically refusing housing to all people with felony records in the last ten years with no consideration of their individual characteristics and circumstances. This policy and Defendants' related acts and practices are not necessary to serve any substantial legitimate, nondiscriminatory interest, and any such interest can be satisfied by another practice — providing individualized assessment of applicants for housing — that would have a less discriminatory effect.

138. Defendants' acts, policies, and practices constitute discrimination and violate the New York City Human Rights Act, Administrative Code of City of NY § 8-107(5), in that Defendants' acts, policies, and practices have made and continue to make housing unavailable because of race and/or color, in violation of Administrative Code of City of NY § 8-107(5).

139. Defendants' conduct has harmed Plaintiff, an African-American New York resident, by denying Plaintiff affordable housing for low- to moderate-income individuals such as Plaintiff and perpetuating unreasonable tenant selection policies and practices.

DEMAND FOR JURY TRIAL

140. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury on all issues triable as of right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court grant it the following relief:

- (1) Enter a declaratory judgment finding that the foregoing actions of Defendants violate 42 U.S.C. § 3604, New York Executive Law § 296(5), and Administrative Code of City of NY § 8-107(5);
- (2) Enter an injunction enjoining Defendants and their directors, officers, agents and employees from continuing to publish, implement, and enforce the illegal, discriminatory conduct described herein and directing Defendants and their directors, officers, agents and employees to take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent additional instances of such conduct or similar conduct from occurring in the future;
- (3) Award compensatory damages to Plaintiff in an amount to be determined by the jury that would fully compensate Plaintiff for its injuries caused by the conduct of Defendants alleged herein;
- (4) Award punitive damages to Plaintiff in an amount to be determined by the jury that would punish Defendants for the willful, malicious, and reckless conduct alleged herein and that would effectively deter similar conduct in the future; Award Plaintiff its

reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 3613(c)(2), NY Executive Code § 297(10), and Administrative Code of City of NY § 8-502(g).

Dated: May 27, 2021

Respectfully submitted,

/s/ Robert Desir
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Judith Goldiner(JAG 3602)
Lilia Toson(LT 4727)
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