

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

KARI THOMPSON

Plaintiff,

Case No.

v.

Hon.

**EENHOORN, LLC, Michigan liability
company; LPNH, LLC, Michigan
limited liability company,, GRAND
POINTE LIMITED PARTNERSHIP a
dividend housing association,
EENHOORN LOFTS, LLC, a Michigan
limited liability company, jointly and
severally**

COMPLAINT AND JURY DEMAND

Defendants.

LEGAL AID OF WESTERN MICHIGAN
Attorneys for Plaintiff
John P. Smith (P71368)
jsmith@legalaidwestmich.net
Karen Merrill Tjapkes (P58467)
Katie M. Johnson (P76708)
Attorneys for Plaintiff
89 Ionia Avenue, N.W., Suite 400
Grand Rapids, Michigan 49503
(616) 608-8047

Dickinson Wright, PLLC
Attorneys for Plaintiff
Timothy A. Stoepker (P31297)
tstoepker@dickinsonwright.com
200 Ottawa Ave. NW STE 1000
Grand Rapids, MI 49503-2405
(616) 458-1300

COMPLAINT

NOW COMES Plaintiff Kari Thompson by her attorneys, and states as follows:

PARTIES AND JURISDICTION

- 1) Plaintiff Kari Thompson has been disabled for several years, her primary source of income is social security disability income and she qualifies for low income housing in the State of Michigan pursuant to applicable law.
- 2) In 2011, Ms. Thompson moved into an apartment located at 26 Sheldon Blvd., Grand Rapids, Kent County, Unit 411 (“Lofts Unit 411”) which is located in downtown Grand Rapids, Michigan.
- 3) At all times relevant Ms. Thompson is domiciled at Lofts Unit 411.
- 4) Ms. Thompson chose Lofts Unit 411 because of its convenient location, and because it provided subsidized housing for low-income tenants.
- 5) That Ms. Thompson executed a lease to occupy Lofts Unit 41. **(Lease, attached and incorporated as Exhibit 1).**
- 6) Defendant LPNH, LLC (“LPNH”), is a Michigan limited liability company with an address of 231 W. Fulton, Grand Rapids, Kent County, Michigan.
- 7) LPNH is the current record owner of the property located at 26 Sheldon Blvd., Grand Rapids, Kent County, Michigan (“the Lofts”), having acquired title to the Lofts pursuant to a deed in lieu of foreclosure effective January 1, 2015, **(LPNH Deed, attached and incorporated as Exhibit 2).**
- 8) Defendant Grand Pointe Limited Partnership (“Grand Pointe”) is a Limited Dividend Housing Association established in 1995, and most recently located at 231 W. Fulton, Grand Rapids, Kent County, Michigan. Grand Pointe owned the Lofts at the time Ms. Thompson commenced occupancy of Lofts Unit 411, and conveyed the Lofts to

LPNH pursuant to the LPNH Deed.

9) Defendant Eenhoorn Lofts, LLC (“Eenhoorn Lofts”) is a Michigan limited liability company with an address of 231 W. Fulton, Grand Rapids, Kent County, Michigan.

10) Defendant Eenhoorn, LLC (“Eenhoorn”) is a Michigan limited liability company an address of 231 W. Fulton, Grand Rapids, Kent County, Michigan.

11) This Court has original jurisdiction over Ms. Thompson’s claims arising under 42 U.S.C. § 3602 and 3604(f) and/or under 29 U.S.C. § 794(a).

12) This Court has supplemental jurisdiction over the state law and contract claims under 28 U.S.C. § 1367 because they arise from a common nucleus of operative facts with the federal claims alleged herein and are so related to the federal claims as to form part of the same controversy under Article III of the U.S. Constitution.

13) Venue is proper in the Western District of Michigan under 28 U.S.C. § 1391 because all Defendants reside in this district and because the events or omissions giving rise to Ms. Thompson’s claims occurred in the Western District of Michigan.

FACTS COMMON TO ALL COUNTS

14) Plaintiff incorporates paragraphs 1 through 13 above as though fully set forth herein.

LIHTC Background

15) Since 1986, the federal government has offered low income housing tax credits (“LIHTC”) to owner/developers who build or rehabilitate low-income housing.

16) Section 42 of the Internal Revenue Code establishes the LIHTC program, under which each state must designate an allocating agency. 26 U.S.C. § 42.

17) The Michigan State Housing Development Authority (“MSHDA”) is the

designated LIHTC allocating agency for the State of Michigan.

18) The LIHTC program provides “a dollar for dollar reduction in tax liability” to a developer/owner that agrees to provide a percentage of a project’s units at reduced rental rates to low-income persons (“Low Income Units”) on property developed under the LIHTC program. The benefit to the developer/owner of LIHTC Property is a tax credit, which can be claimed annually for a 10-year period (“Credit Period”).

19) A developer/owner of a proposed LIHTC development must submit an application to MSHDA to receive tax credits, and MSHDA awards tax credit allocations based on what it determines are the state’s housing needs and priorities.

20) After construction of the LIHTC development is complete, the developer/owner is required to provide MSHDA with a cost certification, and MSHDA uses that information to provide an IRS Form 8609 in return. The IRS Form 8609 states the amount of the tax credit, the percentage of low-income required for the building, and which year the development was placed in service for purposes of the Credit Period.

21) Developers/owners of a LIHTC development often sell or convey the tax credits to a limited partner in exchange for a capital infusion. The developer/owner then continues as the general partner of the limited partnership and either manages the development or contracts a property manager to provide management services.

22) Pursuant to the IRC, a developer/owner of LIHTC development must rent the specified percentage of Low Income Units to low-income residents who pay less than market rent. This percentage is often referred to as a “set aside,” and can be as low as 20 percent of the available units, or as high as 100 percent of the available units in the LIHTC development.

23) Residents in Low Income Units of a LIHTC development are protected from rent increases, and cannot be evicted for any reason other than good cause.

24) The tax credit may not be claimed until all the Low Income Units making up the minimum set aside on the LIHTC Property are available to be rented.

25) Though the Credit Period is only 10 years, the developer/owner must provide the Low Income Units for a 15 year period (“Initial Compliance Period”) that begins on or about the commencement date of the Credit Period.

26) Since the early 1990’s, the IRS has required LIHTC developer/owners to agree to an additional compliance period of at least 15 additional years after the Initial Compliance Period often referred to as the “Extended Use Period,” during which the development must continue to provide Low Income Units to qualifying families.

27) As part of the agreement to qualify for the tax credits, a LIHTC developer/owner must execute a “Regulatory Agreement” with MSHDA, which (1) must be recorded in the Register of Deeds of the county where the LIHTC Property is located, (2) runs with the land and (3) requires the developer/owner of the LIHTC Property to provide Low Income Units during the Extended Use Period.

28) The Extended Use Period may not be terminated by transfers in ownership of the LIHTC Property except for a bona fide transfer in ownership due to a lawful, bona fide, and legitimate foreclosure or deed in lieu of foreclosure.

29) For a period of three (3) years commencing at the end of the Extended Use Period the developer/owner of the LIHTC Property is prohibited from evicting an existing tenant in a Low Income Unit other than for good cause and is prohibited from increasing a tenant’s rent of the Low Income Unit.

The Lofts Development

- 30) In 1996 Defendant Grand Pointe purchased the Lofts. Upon information and belief, the Lofts was the only asset owned by Defendant Grand Pointe.
- 31) In 1996 Defendant Grand Pointe received a LIHTC tax credit allocation from MSHDA in an annual amount of \$437,878.00 (“Yearly Tax Credits”) which would commence upon completion of construction of the Lofts, upon renting the Low Income Units in the Loft and as otherwise required by applicable law (“Commencement of the GP LIHTC”).
- 32) In December 1998 Defendant Grand Pointe entered into a Regulatory Agreement with MSHDA, which was recorded in the Kent County Register of Deeds. **(Lofts Regulatory Agreement, attached and incorporated as Exhibit. 3)**. Pursuant to the Lofts Regulatory Agreement, Grand Pointe agreed to provide Low Income Units in all of the rental units in the Lofts for an initial period of 15 years, followed by an Extended Use Period of 30 years.
- 33) Upon information and belief, Defendant Grand Pointe received over \$4 million in total tax credits (“Lofts Tax Credits”) in exchange for its agreement to provide Low Income Units at the Lofts for a total of 45 years as set forth in the Lofts Regulatory Agreement.
- 34) The Lofts Regulatory Agreement states that Defendant Grand Pointe, as the owner of the Lofts, “covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and the provisions of this Agreement.” **Ex. 3, ¶ 12.**
- 35) The Lofts Regulatory Agreement provides that, as a condition of receiving the

Lofts Tax Credits, that Grand Pointe, as the owner, “for itself and all successors in interest . . .,” agrees to have Low Income Units in the Lofts for the 15 year Initial Period, followed by a 30 year Extended Period. **Ex. 3, ¶ 4.**

36) The Lofts Regulatory Agreement provides that the Extended Period “shall terminate, subject to the provisions hereafter regarding low income tenancy and gross rent restrictions, on the date the buildings are acquired by foreclosure (or instrument given in lieu of foreclosure,” subject to a 3-year protection period for tenants of Low Income Units in the Lofts (“Lofts Protection Period”) following any termination of the Extended Period. **Ex. 3, ¶ 6.**

37) The Lofts Regulatory Agreement is enforceable by any “prospective, present, or former occupant(s) of the Project, who meet the income limitation application to the Project” **Ex. 3, ¶ 7.**

38) Pursuant to the Lofts Regulatory Agreement, Defendant Grand Pointe, as the owner of the Lofts, agreed with MSHDA to (a) notify MSHDA any time there was a transfer of any total or partial ownership interest in the Lofts, (b) “enter into any such agreements with the purchaser or transferee as may be prescribed by the Authority, which have the effect of causing such purchaser or transferee to be bound by these restrictions, or any amendments thereto.” **Ex. 3, ¶ 17.**

39) In 1999, Sheldon-Weston, Inc. was added as a general partner of Defendant Grand Pointe, owning 0.5 % of the limited partnership.

40) In 1999, Key Fund, LP (“Key Fund”), became the limited partner of Defendant Grand Pointe, holding 99 percent ownership in the limited partnership.

41) Upon information and belief, Key Fund received the Lofts Tax Credit allocated to

the Lofts by MSHDA pursuant to the Lofts Regulatory Agreement.

42) The publicly available partnership agreement for Defendant Grand Pointe identifies the priority for distribution of any income received by or through Defendant Grand Pointe as follows: 1) payment of an asset management fee; 2) payment of any outstanding principal and interest on a development fee or developer loan until paid off; 3) payment to replenish an operating reserve account for the Lofts; 4) payment of principal and interest on any operating deficit loan; 5) half of the remaining cash flow for the payment of an “incentive partnership management fee;” and 6) remainder of any is to be split between the partners, with 80 percent paid to the general partners and 20 percent paid to the limited partners until the expiration of the LIHTC compliance period, after which the remainder is split 50/50 between general partners and limited partners of Defendant Grand Pointe.

43) In 2005, Defendant Eenhoorn Lofts became the general partner to Defendant Grand Pointe.

44) Defendant Eenhoorn Lofts was formed in Michigan in 2004. Paulus Heule has been identified as a member, manager, and resident agent of Eenhoorn Lofts in various public documents. Since its inception, Defendant Eenhoorn Lofts has maintained the same address as Defendant Eenhoorn. Upon information and belief, Defendant Eenhoorn Lofts is related to or a subsidiary of Defendant Eenhoorn.

45) Defendant Eenhoorn is a real estate company (1) that was founded in 1988 by Carl Heule and Defendant Paulus Heule and (2) which now manages residential real estate in nine states. Paulus Heule is the president and co-founder of Defendant Eenhoorn.

46) Upon information and belief, Defendant Eenhoorn and Defendant Eenhoorn lofts have both managed the Lofts on behalf of Defendant Grand Pointe.

47) In the fall of 2011, Key Fund assigned its limited partnership interest in Grand Pointe to Defendant Eenhoorn Lofts. At that point Grand Pointe owned 99.51 percent of Defendant Grand Pointe.

48) In November 2011, Defendant Grand Pointe granted a mortgage interest in the Lofts to Defendant Eenhoorn Lofts. **(Lofts Mortgage attached and incorporated as Exhibit 4).**

49) The Lofts Mortgage states that it secures debt based on two notes, both dated January 1, 2011; the first in the amount of \$195,093.46, and the second in the amount of \$617,174.20.

50) The Lofts Mortgage was signed by Paulus Heule on behalf of Defendant Grand Pointe.

51) Upon information and belief, no improvements were made to the Lofts in 2011 that would have justified an expenditure of over \$800,000.00, and there is no evidence of any consideration for the debt identified in the Lofts Mortgage.

52) In December 2011 Defendant Eenhoorn Lofts assigned the Lofts Mortgage to Defendant LPNH. Paulus Heule executed the assignment.

53) Defendant LPNH was organized in late 2011 by Paulus Heule, and is located at the same address as Defendants Eenhoorn and Eenhoorn Lofts.

54) Upon information and belief, Defendant LPNH is related to or a subsidiary of Defendant Eenhoorn.

55) In 2014 Defendant Grand Pointe, amended the Loft Mortgage to include an

additional \$1.18 million in debt allegedly owed to LPNH pursuant to a third promissory note. (Amended Loft Mortgage”).

56) Upon information and belief, the Amended Loft Mortgage was signed by Defendant Paulus Heule.

57) Upon information and belief, no improvements were made to the Lofts in 2014 that would have justified an expenditure of over \$1.18 million.

58) On January 7, 2015, Paulus Heule executed the LPNH Deed on behalf of Defendant Grand Pointe, transferring ownership in the Lofts to Defendant LPNH.

59) Upon information and belief, Defendant Eenhoorn and Defendant Eenhoorn Lofts continued managing the Lofts on behalf of Defendant LPNH after the change in ownership.

Plaintiff Kari Thompson's Tenancy

60) Plaintiff Kari Thompson became permanently disabled in 2011, and thereafter, her primary source of income has been social security disability payments.

61) Thompson has lived in subsidized housing for several years, including the Weston Apartments in downtown Grand Rapids, where her rent was approximately 30 percent of her monthly income.

62) Based upon the location of the Lofts and the existence of Low Income Units at the Lofts, Thompson moved to the Lofts Unit 411 in 2012 and pays approximately \$694.00 in rent each month in rent.

63) Thompson has severe anxiety, which forms part of the basis of her disability and is disturbed by loud noises which exacerbates her anxiety.

64) Upon information and belief, at about the time that Thompson moved into Lofts

Unit 411, Defendant Eenhoorn and Defendant Eenhoorn Lofts were informed of her anxiety disorder and physical disability.

65) Thompson has had some particularly loud or troublesome neighbors, and has made several complaints to the Lofts' on-site manager, who was, upon information and belief, an agent of Defendant Eenhoorn and Defendant Eenhoorn Lofts.

66) Thompson also experienced a dark discharge coming from her faucets in Lofts Unit 411; when she reported the problem to management, nothing was done, so she reported the problem to the City of Grand Rapids. After an inspection, a City Inspector informed Ms. Thompson that the dark discharge was normal in older buildings.

67) Thompson's disabilities limited her ability to make many repairs, so she needed maintenance to promptly fix problems she had with the premises.

68) On about December 12, 2014, Thompson sent a complaint letter to Defendant Eenhoorn. In the letter Thompson reminds Defendant Eenhoorn of her disabilities, and complains about Eenhoorn's failure to make repairs or resolve an issue with Thompson's neighbors.

69) On about December 22, 2014, Defendants send Thompson a Notice to Quit, claiming to terminate her tenancy as of January 31, 2015.

70) In February 2015, the Defendant Eenhoorn Lofts and Defendant Eenhoorn, on behalf of LPNH, filed an eviction case against Thompson claiming an alleged good-cause basis for the eviction, because Thompson had violated her Lease. ("First Eviction").

71) The First Eviction was voluntarily dismissed in June 2015 by Defendant Eenhoorn and Defendant Eenhoorn Lofts on behalf of Defendant LPNH on the eve of

trial.

72) In July 2015, Thompson sent a reasonable accommodation request to the property manager the Lofts, asking that she be moved to a different apartment where she would be less likely to be disturbed by neighbors. **(July 20, 2015 Letter, attached and incorporated as Exhibit 5).**

73) Defendant Eenhoorn Lofts and/or Defendant Eenhoorn Lofts, on behalf of Defendant LPNH, declined to accommodate Thompson's request, claiming that none of the other apartments would be any quieter.

74) In the summer of 2015, Defendant Eenhoorn Lofts and/or Defendant Eenhoorn, on behalf of Defendant LPNH, decided not to renew Thompson's lease at the Lofts and sent a Notice to Quit Termination of Tenancy to Ms. Thompson in late July 2015, informing her that she must move by August 31, 2015. The only basis for that Notice to Quit was the termination of her tenancy. **(Notice to Quit, attached and incorporated as Exhibit 6).**

75) Ms. Thompson did not move out of Lofts Unit 411 after receipt of the Notice to Quit, and on September 4, 2015, Defendant Eenhoorn Lofts and/or Defendant Eenhoorn filed a Complaint to Recover Possession of Property on behalf of Defendant LPNH, seeking possession of Lofts Unit 411 because the tenancy had been terminated. **(Eviction Complaint, attached and incorporated as Exhibit 7).** ("Second Eviction").

76) Defendant Eenhoorn Lofts and/or Defendant Eenhoorn, on behalf of Defendant LPNH, voluntarily dismissed the Second Eviction after Thompson's attorneys filed a motion to dismiss the Second Eviction. **(Dismissal, attached and incorporated as Exhibit 8).**

77) In the spring of 2016, Defendant LPNH started a construction project on the garage at the Lofts; Thompson did not receive notice of the construction before it began. The garage is directly below Lofts Unit 411.

78) The construction noise aggravated Thompson's anxiety. On about April 1, 2016, Ms. Thompson's attorney sent a reasonable accommodation request to Defendant Eenhoorn, asking Thompson be moved to an apartment away from the construction noise. Defendant Eenhoorn denied the request on behalf of LPNH, and instead, offered to allow Thompson to terminate her lease without penalty.

79) Thompson continues to reside in Lofts Unit 411 and has noticed several cosmetic improvements that have been made to the building, including improvements to the lobby area, the addition of a fitness room, and the addition of a game room subsequent to the transfer by the LPNH Deed.

80) In the spring of 2016, Defendant Eenhoorn and/or Defendant Eenhoorn Lofts, on behalf of Defendant LPNH, gave notice to Ms. Thompson that her monthly rent had been raised to \$728.00, notwithstanding the prohibition against such rental increase contained in the Lofts Regulatory Agreement and as prohibited by applicable law.

81) Ms. Thompson did not pay the increased amount, and on May 26, 2016, she sent a letter to Defendant Eenhoorn, LLC, through her attorney, explaining that it The Lofts could not increase Ms. Thompson's rent in the middle of her lease. **(May 26, 2016 letter, attached and incorporated as Exhibit 9)**. The letter provides notice to Defendants that the Affordable Housing Lease Addendum that they relied on to increase rent violates the Truth in Renting Act, and is therefore void. **(Addendum, attached and incorporated as Exhibit 10)**. In the letter, Ms. Thompson further

requests that Defendants provide the notice described in MCL 566.635 to all current tenants who have signed the addendum that Defendants relied upon.

82) Upon information and belief, Defendants did not provide a notice to all then-current tenants who had signed the relevant addendum, explaining that Defendants could not rely on the addendum or increase rent.

83) At the same time, Defendant LPNH has advertised its market rate apartments at the Lofts at over \$1,000.00 a month in rent.

84) Ms. Thompson cannot afford to live in Lofts Unit 411 if she is required to pay the market rate for her apartment, which amount exceeds that permitted to be charged pursuant to the Lofts Regulatory Agreement and applicable law.

85) Upon information and belief, in the summer of 2016, Defendant Eenhoorn and/or Defendant Eenhoorn Lofts repeatedly called the Grand Rapids Police Department claiming that there had been complaints about the smell of marijuana smoke emanating from Lofts Unit 411.

86) Upon information and belief, other tenants did make complaint to the Lofts' management about the claimed smell of marijuana smoke.

87) In April 2016, Ms. Thompson obtained a medical marijuana card to help with pain relating to her physical disability. Thompson uses a smokeless device to ingest her medical marijuana.

88) On about September 21, 2016, Ms. Thompson's attorney sent a reasonable accommodation request to Defendant Eenhoorn, requesting that Thompson be allowed to utilize her medical marijuana in her apartment.

89) In a letter dated October 10, 2016, Mike Karel, the District Manager for

Defendant Eenhoorn, responded to the request. In the response, Mr. Karel stated that Defendants were willing to discuss possible accommodations, but that no accommodation would be granted to their strict no-smoking policy.

90) In late October, Thompson received a Notice to Quit Tenancy for Lofts Unit 411 (“Third Notice”) demanding that Thompson vacate her tenancy at Lofts Unit 411 by November 30, 2016 (**Third Notice, attached and incorporated as Exhibit 11**).

91) Upon information and belief, the Third Notice was sent by Defendant Eenhoorn and/or Defendant Eenhoorn Lofts, acting on behalf of Defendant LPNH.

92) Upon information and belief, Defendants sent the Third Notice to Thompson, in part, because Thompson had used medical marijuana on the premises, and because she had made complaints to Defendants and attempted to organize other tenants.

93) Upon information and belief, Defendants sent the Third Notice to Thompson for the purpose of increasing the rent that they can charge for Lofts Unit 411 to an amount which unlawfully exceeds the rent amount which may be charged for Ms. Thompson’s Lofts Unit 411 the same being a Low Income Unit.

COUNT 1: DISCRIMINATION UNDER THE FEDERAL FAIR HOUSING ACT

94) Plaintiff re-alleges and incorporates by reference all previous paragraphs in this complaint as though set forth herein.

95) Upon information and belief, Defendants have discriminated in the terms, conditions, or privileges of the rental of a dwelling to Plaintiff, or in the provision of services or facilities in connection therewith, on the basis of disability, in violation of 42 U.S.C. § 3604(f)(2).

96) Upon information and belief, Defendants have discriminated by refusing to make

reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford Plaintiff equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

97) Upon information and belief, Defendants have coerced, intimidated, threatened, or interfered with Plaintiff on account of her having exercised her rights protected by the Fair Housing Act , in violation of 42 U.S.C. § 3617.

98) As a result of Defendants' conduct, Plaintiff has been injured and is an aggrieved person as defined by 42 U.S.C. § 3602(i).

99) Wherefore Plaintiff requests that judgment be entered: 1) preliminarily and permanently enjoining such discriminatory conduct; 2) granting to Plaintiff such damages and compensation arising from Defendants' discriminatory conduct; 3) granting such further relief as may be equitable and just including, but not limited to attorney fees and costs so wrongfully incurred.

**COUNT 2: DISCRIMINATION UNDER THE MICHIGAN PERSONS WITH
DISABILITIES CIVIL RIGHTS ACT**

100) Plaintiff re-alleges and incorporates by reference all previous paragraphs in this complaint as though fully set forth herein.

101) Upon information and belief, Defendants have discriminated against Plaintiff in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction, in violation of MCL § 37.1502(b).

102) Upon information and belief, Defendants have refused to make reasonable accommodations in rules, practices, or services, when the accommodations may be necessary to afford Plaintiff having a disability, equal opportunity to use and enjoy

residential real property in violation of § 37.1506a(1)(b) and § 37.1102(2).

103) Upon information and belief, Defendants have intimidated, threatened, and interfered with Plaintiff's enjoyment of her rights granted under the PDCRA, in violation of MCL § 37.1602(f).

104) Upon information and belief, Defendants' actions violated and continue to violate the rights of Plaintiff as defined by MCL §37.1102(2); § 37.1502(b); §37.1506a(1)(b); and §37.1602(f).

105) Wherefore Plaintiff request that judgment be entered: 1) preliminarily and permanently enjoining Defendants from violating Plaintiff's civil rights as a disabled person; 2) granting Plaintiff damages and compensation arising from Defendants denial of Plaintiff's civil rights as a disabled person; 3) granting Plaintiff such other and further relief as may be equitable just including attorney fees and costs so wrongfully incurred.

COUNT 3: DISCRIMINATION UNDER SECTION 504 OF THE FEDERAL REHABILITATION ACT

106) Plaintiff re-alleges and incorporates by reference all previous paragraphs in this complaint as though fully set forth herein.

107) Upon information and belief, Defendants have discriminated in the participation in or denied the benefits to and for Plaintiff of any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency in violation of 29 U.S.C. § 794(a).

108) Upon information and belief, Defendants have discriminated by refusing to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford Plaintiff equal opportunity in housing, in violation of 29 U.S.C. § 794(a).

109) Upon information and belief, Defendants took adverse action against Plaintiff because she had previously exercised her rights under Section 504 of the Federal Rehabilitation act, and therefore retaliated against Plaintiff in violation of the Federal Rehabilitation Act.

110) Upon information and belief Defendants' actions, as described above, have violated and continue to violate the rights of Plaintiff as defined by 29 U.S.C. § 794(a).

111) Wherefore Plaintiff request that judgment be entered: 1) preliminarily and permanently enjoining Defendants from violating Plaintiff's civil rights as a disabled person; 2) granting Plaintiff damages and compensation arising from Defendants denial of Plaintiff's civil rights as a disabled person; 3) granting Plaintiff such other and further relief as may be equitable just including attorney fees and costs so wrongfully incurred.

COUNT 4: DECLARATORY JUDGMENT: REGULATORY AGREEMENT REMAINS AN EFFECTIVE RESTRICTION BINDING ON DEFENDANTS

112) The preceding paragraphs of this complaint are incorporated by reference as though fully set forth herein.

113) Upon information and belief Defendant Eenhoorn Lofts had actual and/or constructive knowledge and notice of Defendant Grand Pointe's recorded Lofts Regulatory Agreement with MSHDA when it purchased its interests in Grand Pointe.

114) The Lofts Regulatory Agreement with MSHDA is a recorded public record, and Defendant Eenhoorn Lofts, as the general partner, would have known of the restrictions and requirements proscribed in the Lofts Regulatory Agreement and as provided by law as to the Lofts including, but not limited to, the requirement to maintain Low Income Units for the time period set forth in the Lofts Regulatory Agreement and as provided by law.

115) Upon information and belief, Defendant Eenhoorn Lofts and/or Defendant Eenhoorn, acting on behalf of Grand Pointe, had a duty to maintain the Low Income Units in the Lofts and a duty and obligation for the intended and specified benefit of those persons, such as Plaintiff Kari Thompson, not to take any action to eliminate Low Income Units or any action that would result in a violation of the Lofts Regulatory Agreement and/or Section 42 of the Internal Revenue Code and/or as otherwise required by law.

116) Upon information and belief, the Defendants including, but not limited to Defendant Eenhoorn Lofts and Defendant Eenhoorn, acting on behalf of Grand Pointe, LP, failed to inform MSHDA that Defendant Eenhoorn Lofts had been granted the Lofts Mortgage.

117) Upon information and belief, Defendant Eenhoorn Lofts was not a legitimate creditor of Grand Pointe and/or Grand Pointe was not indebted to Defendant Eenhoorn Lofts, when Eenhoorn Lofts was granted the Lofts Mortgage in 2011.

118) Upon information and belief, any debt owed by Grand Pointe to Eenhoorn Lofts occurred in violation of Grand Pointe's partnership agreement.

119) Upon information and belief, Defendant Eenhoorn Lofts created and executed the Lofts Mortgage with an intent to transfer the Lofts from Grand Pointe to Defendant Eenhoorn to attempt to void Grand Pointe's obligation as mandated in the Lofts Regulatory Agreement and as mandated by law to provide Low Income Units.

120) Upon information and belief, Eenhoorn Lofts caused and/or otherwise participated in the conveyance of the Lofts with the Defendants by means of the LPNH Deed to LPNH in 2015, with the intent to strip the Lofts of any obligation to provide Low

Income Units as required by the Lofts Regulatory Agreement and as otherwise required by applicable law.

121) Upon information and belief, the Defendants, including Defendant Eenhoorn Lofts, violated their duties pursuant to the Lofts Regulatory Agreement when Eenhoorn Lofts created and executed the Lofts Mortgage, including, but not limited to (1) the duty not to take any action that would result in a violation of the Lofts Regulatory Agreement and/or Section 42 of the Internal Revenue Code, (2) the duty to notify MSHDA of any transfers in ownership, (3) the duty to ensure that any and all owners of the Lofts agreed to be bound by the restrictions found in the Lofts Regulatory Agreement, and (4) the duty to preserve and maintain the Low Income Units as mandated by the Lofts Regulatory Agreement and as mandated by law.

122) The Lofts Regulatory Agreement states that, as a condition of receiving the tax credit, the owner, “for itself and all successors in interest . . . ,” agrees to manage the project as low income housing for the 15 year Initial Period, followed by a 30 year Extended Period. **Ex. 3 ¶ 4.**

123) The Lofts Regulatory Agreement was recorded in 1996, and has priority over any subsequently recorded documents.

124) The Lofts Mortgage was executed on December 19, 2011, and recorded on January 18, 2012.

125) At the time LPNH accepted the LPNH Deed, it did so with actual and/or constructive knowledge of the Lofts Regulatory Agreement and accordingly accepted title to the Lofts subject to the terms of the Lofts Regulatory Agreement and subject to applicable law governing the Lofts Regulatory Agreement.

126) The Lofts Deed did not constitute a valid and lawful foreclosure of the Lofts, but was instead an artifice and scheme to attempt to void LPNH's obligation to maintain the Low Income Units in the Lofts as required by the Lofts Regulatory Agreement and applicable law.

127) Wherefore, Plaintiff seeks a declaratory judgment: 1) declaring that the Lofts Regulatory Agreement remains in effect, and that Defendant LPNH and all related parties or successors in interest shall maintain Low Income Units in the Lofts for the Extended Use Period; 2) declaring that Defendant LPNH and all related parties or successors in interest shall be prohibited from denying the Kari Thompson continued occupancy of the her Low Income Unit as provided by applicable law and the Lofts Regulatory Agreement; 3) declaring that Defendant LPNH and all related parties and successors in interest shall be prohibited from evicting the Kari Thompson from the Lofts Unit 411 for failing to pay rent that exceeds the lawful amount that may be charged for a Low Income Unit in the Lofts pursuant to the Lofts Regulatory Agreement and as provided by applicable law and from otherwise evicting the Kari Thompson and/or terminating Kari Thompson's Lease except for good cause wholly unrelated to her right to otherwise occupy a Low Income Unit in the Lofts including, but not limited to Lofts Unit 411; 4) declaring that Kari Thompson shall be entitled to such further and additional relief that may be equitable and just including, but not limited to legal fees and cost so wrongfully incurred.

COUNT 5: BREACH OF RESTRICTIVE COVENANT

128) The preceding paragraphs of the complaint are incorporated by reference as though fully set forth herein.

129) The Lofts Regulatory Agreement contains restrictive covenants running with the land that are binding on the Lofts and the Defendants.

130) Plaintiff has the right to enforce the Lofts Regulatory Agreement as an intended third party beneficiary of the agreement.

131) The Lofts Regulatory Agreement forbids the Grand Pointe and/or the LPNH and/or any other entity having an ownership interest in the Lofts from taking any action, or permitting any action, that would result in a violation of applicable laws LIHTC laws and the Lofts Regulatory Agreement. (See **Ex. 3, ¶ 12**).

132) The Lofts Regulatory Agreement requires any and all owners of the Lofts to notify MSHDA of every transfer in ownership of the Lofts, including a mortgage and including a deed in lieu of foreclosure.

133) The Lofts Regulatory Agreement requires that any owner of the Lofts ensure that any purchaser or transferee of the Lofts agrees to be bound by the Lofts Regulatory Agreement.

134) Upon information and belief, Defendants Grand Pointe and/or Eenhoorn and/or Eenhoorn Lofts and/or LPNH violated the Lofts Regulatory Agreement by taking actions that violate the LIHTC laws and the Lofts Regulatory Agreement, including transferring the Lofts via the LPNH Deed with purpose of unlawfully attempting to void LPNH's obligation to provide Low Income Units including a Low Income Unit to the Plaintiff as a tenant in the Lofts including, but not limited to Lofts Unit 411.

135) Upon information and belief, Defendants LPNH and/or Eenhoorn and/or Grand Pointe and/or Eenhoorn Lofts violated the Lofts Regulatory Agreement and applicable law by failing to notify MSHDA as required by the Lofts Regulatory Agreement and

applicable law in a timely manner of any changes in ownership in the Lofts.

136) Upon information and belief, Defendants LPNH and/or Eenhoorn and/or Eenhoorn Lofts and/or Grand Pointe intentionally failed to advise MSHDA of transfers in the ownership of the Lofts including, but not limited to the Lofts Mortgage, and the details of the LPNH Deed, for the purpose of attempting to void and eliminate the renting of and the providing of Low Income Units in the Lofts including a Low Income Unit for the Plaintiff Kari Thompson.

137) Upon information and belief, the Defendants LPNH and/or Eenhoorn and/or Eenhoorn Lofts and/or Grand Pointe intentionally acted in a manner in violation of the Lofts Regulatory Agreement and applicable law by creating a scheme and artifice through the Lofts Mortgage and LPNH Deed in an attempt to void LPNH's obligation to provide Low Income Units in the Lofts including a Low Income Unit for the Plaintiff Kari Thompson.

138) Upon information and belief, Defendants LPNH, Grand Pointe, Eenhoorn and Eenhoorn Lofts violated the Lofts Regulatory Agreement and applicable law by failing to abide by the Tenant Protection Period, including attempts to wrongfully evict Plaintiff, and by attempting to raise Plaintiff's rent within the Tenant Protection Period.

139) Wherefore, Plaintiff requests the following relief: 1) entry of a judgment specifically enforcing the Lofts Regulatory Agreement and the right of the Plaintiff to continue to occupy a Low Income Unit in the Lofts including, but not limited to Lofts Unit 411, subject to the rent controls and limitations imposed on Defendant Grand Pointe, Defendant LPNH and Defendant Eenhoorn Lofts and Eenhoorn pursuant to the Lofts Regulatory Agreement and applicable law; 2) entry of a judgment enjoining Defendant

LPNH and all related parties and successors in interest from eliminating the Low Income Units in the Loft and from denying the Plaintiff occupancy of a Low Income Unit in the Lofts as required by the Regulatory Agreement applicable law; 3) entry of a judgment granting Plaintiff all damages and compensation arising from Defendant's unlawful acts to deny Plaintiff a Low Income Unit in the Lofts; 4) entry of a judgment granting Plaintiff such other and further relief as may be equitable and just including, but not limited to attorney fees and costs so wrongfully incurred.

COUNT 6: PERMANENT INJUNCTION

140) The preceding paragraphs of this complaint are incorporated by reference as though fully set forth herein.

141) The Lofts Regulatory Agreement includes restrictive covenants running with the land which are binding on the Lofts and Defendants, and which Plaintiff has the right to enforce.

142) Pursuant to the Lofts Regulatory Agreement, Defendant LPNH as owner of the Lofts, and Defendant Eenhoorn as manager of the Lofts, have an ongoing duty not to evict the Plaintiff for other than good cause and have an ongoing duty to provide Plaintiff a Low Income Unit as provided by the Lofts Regulatory Agreement and applicable law.

143) Defendants LPNH and/or Eenhoorn Lofts and/or Eenhoorn have violated their duty to Plaintiff to maintain and provide a Low Income Unit by unlawfully attempting to raise rents contrary to the Lofts Regulatory Agreement and applicable for the Low Income Unit and by attempting to evict Plaintiff during the Tenant Protection Period because Plaintiff has asserted her right to continue to occupy Lofts Unit 411 as a Low Income Unit and to pay only that rent that may be lawfully charged for a Low Income

Unit in the Lofts.

144) Wherefore, Plaintiff requests a judgment that: 1) preliminary and permanently enjoins Defendant LPNH, any related party, or any successor in interest, from evicting the Plaintiff and/or from raising Plaintiffs rent for the Low Income Unit in a manner which would violate the Tenant Protection Period and or the Extended Use Period of the Lofts Regulatory Agreement; and 2) grants Plaintiff such further and other relief as may be equitable and just including, but not limited to attorney fees and cost so wrongfully incurred.

COUNT 7: VIOLATION OF THE TRUTH IN RENTING ACT

145) The preceding paragraphs of this complaint are incorporated by reference as though fully set forth herein.

146) The Lofts Unit 411 is used as a dwelling, home, residence, or living space by Plaintiff, and is therefore a Residential Premises under the Truth In Renting Act (TIRA). See MCL 554.632(b).

147) The Lease, along with all addenda, is a written agreement embodying the terms and conditions concerning the use and occupancy of residential premises, and is therefore a Rental Agreement under the TIRA. See MCL 554.632(a).

148) The Affordable Lease Addendum to the Lease contains provisions that violate Section 3 of the TIRA. See MCL 554.633(1)(l).

149) Defendant LPNH was given notice of the violations, but did not cure the violations in the manner described by section 5. See MCL 554.635.

150) Pursuant to the TIRA, Plaintiff may bring an action to enjoin Defendant from including the illegal provisions in the Affordable Lease Addendum in any subsequent

leases, and to exercise the notice procedure described in Section 5 of the TIRA to cure the violation in all of Defendant's lease agreements. See MCL 554.636.

151) Plaintiff is also entitled to \$500.00 in statutory damages, or actual damages, whichever is greater. *Id.*

152) Plaintiff is also entitled to costs and statutory attorney's fees.

153) Wherefore, Plaintiff requests that this Court enjoin Defendant LPNH, and all related parties or successors in interest, from including the illegal provisions identified by Plaintiff in future leases, that this Court order Defendant LPNH to exercise the notice procedure described in Section 5 of the TIRA, and award Plaintiff her actual damages or \$500.00 whichever is greater, together with statutory attorney's fees and costs.

Wherefore Plaintiff requests that this Court enter a Judgment:

A. Declaring the Regulatory Agreement to be in effect, and that Defendant LPNH and all related parties or successors in interest shall maintain Low Income Units in the Lofts for the Extended Use Period; that Defendant LPNH and all related parties or successors in interest shall be prohibited from denying Plaintiff continued occupancy of the her Low Income Unit as provided by applicable law and the Lofts Regulatory Agreement; and that Defendant LPNH and all related parties and successors in interest shall be prohibited from evicting the Kari Thompson from the Lofts Unit 411 for failing to pay rent that exceeds the lawful amount that may be charged for a Low Income Unit in the Lofts pursuant to the Lofts Regulatory Agreement and as provided by applicable law and from otherwise evicting Plaintiff and/or terminating Plaintiff's Lease except for good cause wholly unrelated to her right to otherwise occupy a Low Income Unit in the Lofts including, but not limited to Lofts Unit 411.

- B. Preliminarily and permanently enjoining Defendant LPNH, any related party, or any successor in interest, from evicting the Plaintiff or any other tenant for other than good cause, and/or from raising Plaintiff's or any other tenant's rent for a Low Income Unit in a manner which would violate the Tenant Protection Period and or the Extended Use Period of the Lofts Regulatory Agreement.
- C. Preliminarily and permanently enjoining Defendant LPNH, any related party, or any successor in interest, from including the illegal provisions identified by Plaintiff in future leases and ordering Defendant LPNH to exercise the notice procedure described in Section 5 of the TIRA.
- D. Awarding Plaintiff her actual damages, including non-economic damages, punitive damages to the extent allowed by law, exemplary damages to the extent allowed by law, in an amount to be determined at trial, and statutory damages.
- E. Awarding Plaintiff her reasonable attorney fees and costs of bringing this action.
- F. Awarding Plaintiff pre-judgment and post-judgment interest, to the extent allowed by law.
- G. Awarding such further and other relief as this Court deems just and equitable.

Respectfully Submitted,

Dated: January 6, 2017

John P. Smith
LEGAL AID OF WESTERN MICHIGAN
John P. Smith (P71368)
Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: January 6, 2017

John P. Smith

LEGAL AID OF WESTERN MICHIGAN

By: John P. Smith (P71368)

Attorneys for the Plaintiff