

IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

EQUAL RIGHTS CENTER
11 Dupont Circle NW
Suite 450
Washington, DC 20036,

Plaintiff,

v.

**THE LENKIN COMPANY
MANAGEMENT, INC.**
4922A Saint Elmo Avenue
Bethesda, Maryland 20814

**THE LENKIN COMPANY
MANAGEMENT/RESIDENTIAL, INC.**
4922A Saint Elmo Avenue
Bethesda, Maryland 20814

THE LENKIN COMPANY
3313 14th Street NW
Washington, DC 20814;
4922A Saint Elmo Avenue
Bethesda, Maryland 20814

**LENKIN ASSOCIATES LIMITED
PARTNERSHIP**
4922A Saint Elmo Avenue
Bethesda, Maryland 20814

LENKIN-N LIMITED PARTNERSHIP
4922A Saint Elmo Avenue
Bethesda, Maryland 20814

**BUZ PARTNERSHIP THE LENKIN
COMPANY**
4922A Saint Elmo Avenue
Bethesda, Maryland 20814

LENCSHIRE ASSOCIATES LLC
4922A Saint Elmo Avenue
Bethesda, Maryland 20814

GARFIELD ASSOCIATES LLC
4922A Saint Elmo Avenue

Case No. 2017 CA 002547 B
Jury Trial Demanded

Bethesda, Maryland 20814

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF,
AND MONETARY DAMAGES**

Plaintiff, the Equal Rights Center (the “ERC”), by its attorneys, WilmerHale and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs for its complaint against The Lenkin Company Management, Inc., The Lenkin Company Management/Residential, Inc., The Lenkin Company, Lenkin Associates Limited Partnership, Lenkin-N Limited Partnership, Buz Partnership The Lenkin Company, Lencshire Associates LLC, and Garfield Associates LLC (collectively, “Defendants”) states and alleges as follows:

Defendants have engaged in unlawful source of income and racial discrimination by refusing to lease available rental units at their Northwest, District of Columbia (“D.C.” or “the District”) properties—The Garfield House, The Lencshire House, The Yorkshire, and The Parkhill—to prospective tenants who seek to rent units with Housing Choice Vouchers as a source of payment for a portion of their monthly rent. Housing Choice Vouchers are government subsidies that enable low-income individuals and families to offset their rent with vouchers, allowing them to choose affordable housing outside of areas of concentrated poverty and in areas of the District that may offer greater access to jobs and schools. Housing Choice Vouchers are a protected source of income under the District of Columbia Human Rights Act (“D.C. Human Rights Act” or “DCHRA”). Defendants’ employees and/or agents told ERC testers who called their properties that they do not accept Housing Choice Vouchers. Defendants’ policy or practice of refusing to accept Housing Choice Vouchers and Defendants’ statements in connection with such refusals therefore constitute unlawful source of income discrimination

under the DCHRA. Defendants' conduct also constitutes unlawful racial discrimination under the DCHRA and the federal Fair Housing Act because excluding Housing Choice Voucher holders disproportionately adversely affects prospective African-American tenants.

PRELIMINARY STATEMENT

1. The ERC brings this civil rights action pursuant to the DCHRA and the Fair Housing Act ("FHA") to remedy unlawful source of income and racial discrimination.

2. Defendants own and operate residential real estate properties—The Garfield House, The Lencshire House, The Yorkshire, and The Parkhill (collectively, the "Subject Properties")—located in the Northwest quadrant of the District of Columbia.

3. Although the D.C. Human Rights Act requires Defendants to consider vouchers as a lawful source of income to help voucher recipients pay for the rent, Defendants have a policy or practice of unlawfully refusing to rent apartments to Housing Choice Voucher holders.

4. On multiple occasions, Defendants' agents and/or employees told the ERC and its testers that the properties do not accept Housing Choice Vouchers.

5. Housing Choice Vouchers are subsidies administered by local housing authorities and offered through a larger federal program. Housing Choice Vouchers are designed, among other things, to allow very low-income families to rent safe, decent, and affordable privately-owned housing. Vouchers are especially important in D.C. where the rate of homelessness is double what it is for many other major U.S. cities.

6. The overwhelming majority of D.C. renters who use Housing Choice Vouchers are African Americans.

7. By refusing to accept Housing Choice Vouchers, and through their statements in connection with such refusals, Defendants have engaged in illegal discrimination on the basis of

source of income and race in violation of the D.C. Human Rights Act, D.C. Code §§ 2.1401.01, *et seq.*, and the Fair Housing Act, codified in Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-3631 and 3604(a) and (c).

8. Defendants' discrimination has harmed and continues to harm the ERC. As a result of Defendants' wrongdoing, the ERC has committed, is committing, and will continue to commit scarce resources to identify and counsel complainants, investigate complaints, engage in an education and outreach campaign, and develop and disseminate educational materials to ameliorate the effects of Defendants' discrimination against Housing Choice Voucher holders and to prevent the recurrence of discrimination in the future. Accordingly, the ERC brings this action to vindicate civil rights protections under the DCHRA and the FHA and to obtain an injunction and damages.

NATURE OF THIS ACTION

9. This is a civil rights action under the DCHRA, D.C. Code §§ 2.1401.01, *et seq.*, and the FHA, 42 U.S.C. §§ 3601-3631 and 3604(a) and (c), 24 C.F.R. § 100.500, for declaratory, injunctive, and monetary relief.

10. The Voucher Program, a successor to the Section 8 Rental Voucher or Rental Certificate Program, is a federally funded housing subsidy program designed to allow low-income families to obtain safe, decent, and affordable housing. Currently assisting more than two million American families, including over 10,500 families in the District of Columbia, the Voucher Program is the largest rental-assistance program administered by the U.S. Department of Housing and Urban Development ("HUD"). In the District, the designated housing authority administering the Voucher Program is the District of Columbia Housing Authority (the "DCHA").

11. Housing Choice Vouchers are administered under the Voucher Program. Housing Choice Vouchers are tenant-based subsidies that are not linked to any particular housing complex, building, or unit, but rather enable families with a Housing Choice Voucher to rent housing in the private market, at market rates, provided the rent does not exceed the Program's limitations (*i.e.*, the rental rates or payment standards set by the DCHA). The Voucher Program thus removes some of the barriers that would otherwise restrict low-income families to traditional project-based public housing. One of the primary goals of the Voucher Program is to provide low-income families with the opportunity to obtain rental housing outside of areas of concentrated poverty.

12. The voucher issued to each family subsidizes rent in privately owned rental housing of the voucher holder's choice, subject to minimum standards of health and safety.

13. At all times relevant to this Complaint, the monthly rent charged by Defendants at each of the Subject Properties did not exceed the Program's payment standards.

14. Despite the stated goals of the Program, Housing Choice Voucher holders in the District are mainly concentrated in various high-poverty neighborhoods, with the majority (70%) located East of the Anacostia River. As the DCHA has stated, the largest concentration of Housing Choice Voucher holders in the District are found in Wards 8 (43%) and 7 (27%)—East of the River neighborhoods. Although a primary goal of the Program is to expand housing choice to low-income families by enabling Housing Choice Voucher holders to obtain rental housing throughout the District and outside of areas of concentrated poverty, the significantly small ratio of Housing Choice Voucher holders who reside in Northwest Wards 1 (2%), 2

(0.5%), and 3 (0.5%)—which tend to be majority white¹ or have low numbers of African-American residents—suggest the Program’s intent is being thwarted.

15. In the instant case, Defendants’ policy or practice of making apartments unavailable to Housing Choice Voucher holders diminishes African Americans’ ability to obtain affordable housing opportunities in areas of the District in which they should otherwise be able to live. Many of the communities where the Subject Properties are located have been historically occupied by mostly whites and/or racial/ethnic groups other than African Americans. For example, in the Observatory Circle neighborhood and the Cleveland Park neighborhood, where The Garfield House and The Leneshire House are located, respectively, whites constitute the majority of residents. Indeed, whites represent 75% of the population, whereas African Americans represent only 7% of the population in each neighborhood. By contrast, African Americans represent approximately 48.3% of the District’s overall population.²

16. Participants in the District’s Voucher Program are overwhelmingly African American. According to HUD, 62% of Housing Choice Voucher holders nationwide are designated as racial minorities. Though African Americans represent 48.3% of the District’s overall population, 92% of Housing Choice Voucher holders in the District are African American.³

¹ The term “white” is used to refer to white non-Hispanic households throughout this Complaint. On the other hand, the term “African-American” is used to refer to black non-Hispanic households throughout this Complaint.

² See U.S. Census Bureau, *Quick Facts: 2015 Vintage Year Estimate for the District of Columbia*, <https://www.census.gov/quickfacts/table/PST045216/11> (last visited April 9, 2017); see also U.S. Census Bureau, *Population Estimates Program*, <https://factfinder.census.gov/faces/nav/jsf/pages/programs.xhtml?program=pep> (last visited April 9, 2017) (“[T]he Population Estimates Program utilizes current data on births, deaths, and migration to calculate population change since the most recent decennial census, and produces a time series of estimates of population.”).

³ See HUD Picture of Subsidized Housing 2015 report for the District of Columbia Public Housing Authority [hereinafter HUD 2015 Picture of Subsidized Housing] (describing data on the Housing Choice Voucher Program).

17. There are approximately 10,790 African American voucher households in the District as compared to only 117 white voucher households.⁴ This represents a 92 to 1 disparity in the number of Housing Choice Voucher holders who are African American as compared to those who are white.

18. It is unlawful under the DCHRA for Defendants to discriminate based on source of income, including where that source of income is a Housing Choice Voucher. Defendants' policy or practice of refusing to accept Housing Choice Vouchers violates the DCHRA. D.C. Code §§ 2.1401.01, *et seq.*

19. Similarly, it is unlawful under both the DCHRA and the FHA for Defendants to discriminate based on race. Because Defendants' policy or practice of refusing to accept Housing Choice Vouchers has an adverse and discriminatory effect on African Americans, Defendants' failure to accept vouchers as a source of income, and their related statements, constitute prohibited racial discrimination. D.C. Code § 2-1402.68; 42 U.S.C. § 3604(a) and (c); 24 C.F.R. § 100.500(a).

20. Accordingly, the ERC brings this action under the DCHRA and the FHA to remedy Defendants' unlawful discrimination.

PARTIES

21. **Equal Rights Center.** The ERC is a national non-profit civil rights membership corporation organized under the laws of D.C. Its principal place of business is 11 Dupont Circle Northwest, Suite 450, Washington, D.C. 20036. The ERC provides a multidisciplinary program dedicated to furthering the advancement of, *inter alia*, fair housing and equal access to public accommodations throughout the United States. The ERC's various programs provide guidance,

⁴ HUD 2015 Picture of Subsidized Housing.

information, and assistance to members of classes protected under federal, state, and local laws who are seeking housing.

22. **The Lenkin Company Management, Inc.** Defendant The Lenkin Company Management, Inc. is a property management company, located at 4922A Saint Elmo Avenue, Bethesda, Maryland 20814, which manages residential and commercial properties in the District of Columbia. Upon information and belief, at all times relevant to this Complaint, Defendant The Lenkin Company Management, Inc. managed the Subject Properties.

23. **The Lenkin Company Management/Residential, Inc.** Defendant The Lenkin Company Management/Residential, Inc. is a residential property management company, located at 4922A Saint Elmo Avenue, Bethesda, Maryland 20814, which manages residential properties in the District of Columbia. Upon information and belief, at all times relevant to this Complaint, Defendant The Lenkin Company Management/Residential, Inc. managed the Subject Properties.

24. **The Lenkin Company.** Defendant The Lenkin Company is a full service construction and real property management company, with its principal office located at 3313 14th Street, NW, Washington, D.C. 20814, and its mailing address at 4922A Saint Elmo Avenue, Bethesda, Maryland 20814. Defendant The Lenkin Company manages several residential and commercial properties in the District of Columbia. Upon information and belief, at all times relevant to this Complaint, Defendant The Lenkin Company managed the Subject Properties.

25. **Lenkin Associates Limited Partnership.** Defendant Lenkin Associates Limited Partnership is a limited partnership, located at 4922A Saint Elmo Avenue, Bethesda, Maryland 20814, which manages commercial and residential properties in the District of Columbia. Upon

information and belief, at all times relevant to this Complaint, Defendant Lenkin Associates Limited Partnership managed the Subject Properties.

26. **Lenkin-N Limited Partnership.** Defendant Lenkin-N Limited Partnership is a real estate management company, located at 4922A Saint Elmo Avenue, Bethesda, Maryland 20814, which manages commercial and residential properties in the District of Columbia. Upon information and belief, at all times relevant to this Complaint, Defendant Lenkin-N Limited Partnership managed the Subject Properties.

27. **Buz Partnership the Lenkin Company.** Defendant Buz Partnership the Lenkin Company is a rental property owner, located at 4922A Saint Elmo Avenue, Bethesda, Maryland, 20814, and is owned by The Lenkin Company. Upon information and belief, at all times relevant to this Complaint, Defendant Buz Partnership the Lenkin Company owned The Parkhill.

28. **Lencshire Associates LLC.** Defendant Lencshire Associates LLC is a rental property owner located at 4922A Saint Elmo Avenue, Bethesda, Maryland 20814. Upon information and belief, at all times relevant to this Complaint, Defendant Lencshire Associates LLC owned The Lencshire House.

29. **Garfield Associates LLC.** Defendant Garfield Associates LLC is a rental property owner located at 4922A Saint Elmo Avenue, Bethesda, Maryland 20814. Upon information and belief, at all times relevant to this Complaint, Defendant Garfield Associates LLC owned The Garfield House.

JURISDICTION AND VENUE

30. This Court has jurisdiction over this action pursuant to D.C. Code § 11-921 and 42 U.S.C. § 3613(a)(1)(A).

31. This Court has jurisdiction over Defendants pursuant to D.C. Code § 13-423 because Defendants transact business and manage real property in the District of Columbia. The discriminatory conduct arises out of these business activities.

FACTUAL BACKGROUND

A. Defendants' Rental Operations

32. Defendants own, operate, control, supervise, and/or manage, either directly or indirectly through parent-subsidiary or other business affiliations, the Subject Properties, all of which are located in the District of Columbia: (1) The Lencshire House, 3140 Wisconsin Avenue, NW, Washington, D.C. 20016; (2) The Yorkshire, 3355 16th Street, NW, Washington, D.C. 20010; (3) The Parkhill, 1610 Park Road, NW, Washington, D.C. 20010; and (4) The Garfield House, located at 2844 Wisconsin Avenue, NW, Washington, D.C. 20007.

33. The Subject Properties are residential real estate that is offered for rent in the District. The Subject Properties offer studio and one-bedroom apartments with various amenities and include utilities.

34. The Subject Properties are located in various neighborhoods and wards of the District. The Lencshire House is located in the Cleveland Park neighborhood of Northwest D.C., which is in Ward 3 of the District. The Yorkshire is located in the Columbia Heights neighborhood of Northwest D.C., which is in Ward 1 of the District. The Parkhill is located in the Mount Pleasant neighborhood of Northwest D.C., which is in Ward 1 of the District. Finally, The Garfield House is located in the Observatory Circle neighborhood of Northwest D.C., which is in Ward 3 of the District.⁵

⁵ U.S. Census Bureau, *American Community Survey 2011-2015 5 year estimates*, American Fact Finder.

35. The U.S. Bureau of Statistics records demographics in “census tracts,” which are similar to neighborhoods. The residents in the census tract where The Lencshire House and The Garfield House properties are located are 75% white, 7% African American, 4% Hispanic, and 14% other. These residents have a median household income of \$80,223.⁶

36. The residents in the census tract where The Yorkshire is located are 25% white, 20% African American, 47% Hispanic, and 8% other. These residents have a median household income of \$49,338.⁷

37. The residents in the census tract where The Parkhill is located are 53% white, 16% African American, 27% Hispanic, and 4% other. These residents have a median household income of \$87,043.⁸

38. As operators of residential real estate, Defendants are required to comply with anti-discrimination laws under the DCHRA and the FHA.

39. The DCHRA requires that rental properties be made available to prospective tenants irrespective of their source of income and expressly provides that Housing Choice Vouchers are a source of income. D.C. Code §§ 2.1401.01, *et. seq.* The DCHRA also prohibits statements with respect to actual or proposed transactions in real property that indicate a preference, limitation, or discrimination based on source of income. *See id.* at § 2.1402.21(a)(5). In addition, federal and local laws require that rental properties be made available to prospective tenants without regard to race and prohibit policies and practices that have a disproportionate adverse impact on racial minorities. D.C. Code §§ 2.1401.01, *et. seq.*; 24 C.F.R. § 100.500.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

40. Defendants' employees and/or agents stated to the ERC's agents during multiple phone calls that Defendants would not accept Housing Choice Vouchers as a source of payment for rent at the Subject Properties. Defendants' acts, policies, and practices constitute impermissible source of income discrimination.

41. Moreover, Defendants' acts, policies, and/or practices of refusing to accept Housing Choice Vouchers have an adverse impact on African American renters. There are approximately 74,270 African American renter households and only 57,435 white renter households in the District.⁹ Because 15% (10,790 out of 74,270) of African American renter households use vouchers for rental assistance, whereas only 0.2% (117 out of 57,435) of white renter households use vouchers,¹⁰ Defendants' policy or practice of refusing to rent to Housing Choice Voucher holders at the Subject Properties is 71 times more likely to exclude and adversely impact African American renter households than white renter households.

42. Comparing the demographics of the current population of Housing Choice Voucher holders further illustrates the racial disparity. There are approximately 10,790 African-American voucher households in the District as compared to only 117 white voucher households. This represents a 92 to 1 disparity in the number of Housing Choice Voucher holders who are African American as compared to those who are white. By excluding Housing Choice Voucher holders, Defendants' acts, policies, and practices constitute unlawful racial discrimination.

B. ERC Mission, Testing, and Discovery of Defendants' Discriminatory Policies

⁹ See U.S. Census Bureau, *2011-2015 American Community Survey Public Use Microdata Sample ("PUMS")*, <http://www.census.gov/program-surveys/acs/data/pums.html> (last visited March 14, 2017) [hereinafter 2011-2015 District of Columbia Renter Households PUMS Data] (providing data for renter households in the District).

¹⁰ See HUD 2015 Picture of Subsidized Housing (reflecting the total number of African American and white voucher households); see also 2011-2015 District of Columbia Renter Household PUMS Data (analyzing renter household demographics in the District).

43. The ERC is a civil rights organization dedicated to promoting equal opportunity in the provision of housing, employment, and public accommodations. In connection with its multi-disciplinary Fair Housing program dedicated to furthering the advancement of equal housing opportunities in the District of Columbia and throughout the United States, the ERC also conducts and participates in programs to educate the real estate industry about its obligations under federal, state, and local fair housing laws.

44. The ERC's education and outreach activities have increased awareness of fair housing issues and generated numerous telephone calls and other communications from individuals who have a variety of needs regarding fair housing opportunities. Many of these calls are complaints of housing discrimination.

45. The ERC investigates housing discrimination through a variety of means, including civil rights testing. By using testers, persons who query housing providers in order to test the housing providers' compliance with applicable fair housing laws, the ERC often uncovers unlawful discrimination.

46. Through testing, the ERC found that Defendants have a policy or practice of refusing to rent to Housing Choice Voucher holders. This policy or practice discriminates against Housing Choice Voucher holders based on their source of income, in violation of the DCHRA, D.C. Code § 2-1402.21(a)(1).

47. During the ERC's tests, Defendants expressed their policy or practice by making statements indicating Defendants' preference, limitation, and/or discrimination against renting property to Housing Choice Voucher holders. These statements discriminated against Housing Choice Voucher holders based on their source of income, in violation of the DCHRA, D.C. Code § 2-1402.21(a)(5).

48. The policy or practice of refusing to rent to Housing Choice Voucher holders has a disproportionately adverse effect on prospective tenants based on race, especially on prospective African-American tenants, in violation of the FHA, 42 U.S.C. § 3604(a) & (c) and the DCHRA, D.C. Code § 2-1402.68.

49. In nine separate instances, agents of the ERC placed telephone calls to The Lenkin Company, the managing entity for the Subject Properties, inquiring about the availability of apartments for rent at certain properties and whether the properties accept Housing Choice Vouchers.

50. Two of the phone calls reached an automated voice message service; a third call ended after Defendants' representative informed the ERC tester that no one-bedroom apartments were available.

51. In six instances, in response to direct questions, Defendants' representatives told ERC testers that, although apartments were available for rent, Housing Choice Vouchers were not accepted as payment towards rent at the Subject Properties.

52. On July 31, 2015 (the "first call"), an ERC tester, posing as a prospective tenant, called The Leneshire House at (202) 362-3140, the phone number listed on The Lenkin Company website at <http://www.lenkin.com/residential/the-leneshire-house>. The ERC tester spoke with a representative who identified herself as "Courtney." The ERC tester stated that she wished to use a Housing Choice Voucher to rent a one-bedroom apartment. Defendants' representative told the ERC tester that, although a one-bedroom apartment was available, the property did not accept vouchers.

53. On November 9, 2015 (the "second call"), a second ERC tester, posing as a prospective tenant, called The Leneshire House at (202) 362-3140, the phone number listed on

The Lenkin Company website and an advertisement posted on <http://www.Craigslist.com>. The ERC tester spoke with a representative who identified herself as "Sheila." The ERC tester asked whether a studio or a one-bedroom apartment was available for rent and whether the property accepted Housing Choice Vouchers. Defendants' representative told the ERC tester that, although both types of apartments were available, "as of right now we don't" accept vouchers.

54. On February 11, 2016 (the "third call"), a third ERC tester, posing as a prospective tenant, called The Lenshire House at (202) 362-3140, the phone number listed on The Lenkin Company website and an advertisement posted on <http://www.Craigslist.com>. The ERC tester spoke with a representative who identified herself as "Tony." The ERC tester asked whether a one-bedroom apartment was available for rent and asked whether the property accepted Housing Choice Vouchers. Defendants' representative responded that an apartment was available and, regarding accepting vouchers, responded "[T]hey do, but they're not accepting them at the moment."

55. Having conducted three preliminary calls, the ERC made additional calls in March of 2016 to further assess the breadth of Defendants refusal to make available rental properties to individuals who rely on housing choice vouchers.

56. Accordingly, on March 25, 2016 (the "fourth call"), a fourth ERC tester, posing as a prospective tenant, called The Garfield House at (301) 280-0870, the phone number listed on the Lenkin Company website at <http://www.lenkin.com/residential/the-garfield-house>. The ERC tester received an automated voice message.

57. On March 25, 2016 (the "fifth call"), a fifth ERC tester, posing as a prospective tenant, called The Garfield House at (301) 280-0870, the phone number listed on the Lenkin Company website. The ERC tester received an automated voice message.

58. On March 25, 2016 (the "sixth call"), a sixth ERC tester, posing as a prospective tenant, called The Yorkshire at (202) 387-3090, the phone number listed on the Lenkin Company website at <http://www.lenkin.com/residential/the-yorkshire> and an advertisement posted on <http://www.Craigslist.com>. The ERC tester spoke with a representative who identified himself as "Michael." The representative placed the ERC tester on hold. A second representative, who did not identify herself, then assisted the ERC tester. The ERC tester asked whether a studio or a one-bedroom apartment was available for rent and whether the property accepted Housing Choice Vouchers. The Defendants' representative told the ERC tester that an apartment was available but said, "No we do not" accept vouchers.

59. On March 25, 2016 (the "seventh call"), a seventh ERC tester, posing as a prospective tenant, called The Parkhill at (202) 332-1300, the phone number listed on The Lenkin Company website at <http://www.lenkin.com/residential/the-parkhill> and an advertisement posted on <http://www.Craigslist.com>. The ERC tester spoke with a representative who identified herself as "Brooks." When the ERC tester asked if the property accepted Housing Choice Vouchers, Defendants' representative said:

No ma'am. I think you just called one of our other buildings...
We don't accept Housing Choice Vouchers. I'm the same person
you just spoke with about probably 20 minutes ago.

The ERC tester asked, "So do any of your buildings accept them?" The Defendants' representative responded: "No we don't accept vouchers at all."

60. On March 28, 2016 (the "eighth call"), an eighth ERC tester, posing as a prospective tenant, called The Garfield House at (301) 280-0870, the phone number listed on the Lenkin Company website. The ERC tester spoke with a representative who identified himself as "Tony." The Defendants' Representative provided the ERC tester with the phone number for the

leasing office at (202) 362-3140 and said that the property did not have a one-bedroom apartment available for rent.

61. On March 28, 2016 (the “ninth call”), a ninth ERC tester, posing as a prospective tenant, called The Garfield House at (202) 362-3140, the phone number for the leasing office provided by the Defendants’ representative during the eighth call. The ERC tester spoke with a representative who did not identify himself. When the ERC tester asked whether a one-bedroom apartment was available for rent, the Defendants’ representative told the ERC tester that a one-bedroom apartment was not available and only efficiency apartments were available. The ERC tester then asked whether the property accepted Housing Choice Vouchers. The Defendants’ representative responded affirmatively but when the ERC tester asked whether there was an income requirement, the representative placed the ERC tester on hold to consult with a colleague. A second representative then picked up the phone to assist the ERC tester and did not identify herself. The ERC tester asked the Defendants’ second representative whether the property accepted Housing Choice Vouchers, and the second representative said that it did not. When the ERC tester asked about the application process, the second representative said that she would email the ERC tester an electronic copy of the application. To date, the ERC has not received an application at the email address the ERC tester provided the second representative.

62. Upon information and belief, and based on the statements made to ERC testers during the calls described above, the representative who answered each phone call was, and/or is, an employee, representative, or agent of Defendants.

63. Upon information and belief, and based on the statements Defendants’ representatives made to ERC testers during the calls described above, Defendants have a policy

or practice of refusing to accept Housing Choice Vouchers at the Subject Properties, which Defendants own or manage.

64. By their acts, policies, and practices, Defendants refuse to rent to individuals who intend to use Housing Choice Vouchers at any properties they own or manage. In so doing, Defendants unlawfully discriminate against renters in the District of Columbia based on their source of income.

65. Upon information and belief, Defendants and/or their owners, subsidiaries, and affiliates designed, participated in, supervised, controlled, and/or approved the discriminatory policy or practice the representative or representatives expressed on the phone calls described above. As a result, each of the Defendants is liable for the unlawful conduct described herein.

66. Defendants' unlawful acts as described above were, and are, intentional and willful, and have been, and are, implemented with callous and reckless disregard for the statutorily protected rights of renters who intend to use Housing Choice Vouchers as a source of income to help pay for the rent.

HARM TO THE ERC AND THE COMMUNITIES IT SERVES

67. Defendants' unlawful discrimination has harmed ERC and the communities that it serves.

68. One purpose of the ERC's rental housing testing program is to monitor compliance with federal, state, and local civil rights laws that prohibit discrimination against members of legally protected classes—including race, religion, national origin, gender, family status, and source of income, among others. If the ERC discovers housing discrimination, the ERC undertakes broad remedial efforts to eliminate it.

69. When the ERC finds discrimination, it is compelled to divert scarce resources to address the problem through education and outreach, advocacy, training, intake assistance, collaboration, and if necessary, through enforcement. Because it is important not only to remedy the past discrimination, but to take steps to prevent similar future discrimination from occurring, the activities used in this effort may include outreach and education directed at affected or potentially affected populations, the public at large, and the owners and employees of the entities engaged in the discriminatory activity. The ERC also monitors the persons or entities engaged in discriminatory conduct for future compliance with applicable laws. With respect to source of income discrimination, the ERC uses several, and sometimes all, of these measures.

70. The ERC has fought to eliminate discrimination against Housing Choice Voucher holders since at least 2003, when the ERC first began receiving complaints that D.C. Housing Choice Voucher holders were experiencing discriminatory barriers to their use of vouchers as they sought rental housing. As a result of these initial complaints and information, the ERC began an investigation of area rental housing providers to determine the existence and scope of any discrimination against Housing Choice Voucher holders in the District. During the course of these investigations, the ERC conducted tests to inquire about the practices and policies of various landlords throughout D.C. In some instances, the investigation revealed a policy or practice of refusing to accept vouchers or of imposing different terms and conditions on Housing Choice Voucher holders, which prompted the ERC to take steps to address such violations of the law.

71. In instances where the ERC uncovers discriminatory conduct against Housing Choice Voucher holders, it is forced to divert and expend considerable time and scarce financial resources to fully investigate and identify the extent of such housing providers' unlawful

practices and to determine how to counteract them. This discriminatory activity by housing providers, including Defendants, has also caused the ERC to divert and expend resources on extensive education and outreach efforts targeting housing providers, Housing Choice Voucher holders, and the public in general.

72. Defendants' discrimination against Housing Choice Voucher holders has required the ERC to divert and expend considerable time and scarce financial resources. For example, the ERC expended time and resources on identifying the extent of the Defendants' unlawful practices. Defendants' refusal to accept vouchers as a form of payment for available units at the Subject Properties required the ERC to divert resources to conducting additional testing of the remaining Subject Properties. The testing revealed that Defendants' practices extended to the other Subject Properties in Defendants' control and constituted a policy or practice of refusing to accept vouchers as a source of income at the Subject Properties.

73. Prior to and at the time of the filing of this Complaint, Defendants' wrongdoing has injured, injures, and will continue to injure the ERC by frustrating its mission, efforts, and programs that are intended to promote equal opportunity in housing.

74. Prior to and at the time of the filing of this Complaint, the ERC has diverted, and continues to divert, scarce and valuable financial and human resources to the tasks of identifying and counteracting Defendants' unlawful discriminatory practices through testing, investigation, education, and outreach targeting housing providers, Housing Choice Voucher holders, and the public in general.

75. **Testing & Investigation.** As a result of Defendants' wrongdoing, the ERC has devoted substantial staff time to identifying the extent of Defendants' discriminatory actions.

For example, the ERC devoted scarce resources to investigating Defendants' multiple properties in the District of Columbia to identify potential fair housing violations or complainants.

76. **Increased Educational Efforts.** Defendants' conduct has required the ERC to increase its educational efforts. As a result of Defendants' wrongdoing, the ERC has diverted, and continues to divert, resources to educating community leaders and other members of the community.

77. For example, members of the ERC staff attended Advisory Neighborhood Council ("ANC") meetings in the areas where the Subject Properties are concentrated and the adjoining areas to alert community leaders to Defendants' discriminatory practice and to provide education on source of income anti-discrimination protections.

78. **The Education and Outreach Letter.** Defendants' wrongdoing required the ERC to divert scarce resources to (a) educating The Lenkin Company and its agents and (b) attempting to persuade The Lenkin Company to bring itself into compliance with anti-discrimination laws.

79. On April 21, 2016, the ERC sent an "Education and Outreach" letter to Defendant The Lenkin Company. The letter was designed to address and resolve Defendants' practice of denying housing access to Housing Choice Voucher holders. In the letter, the ERC brought Defendants' discriminatory practices to their attention, provided Defendants with educational materials regarding their obligations under the DCHRA, notified Defendants of their non-compliance with such laws, and offered Defendants the opportunity to reach a resolution that would address the ERC's concerns and further Defendants' business interests.

80. With the letter, the ERC enclosed a copy of the applicable portions of the DCHRA.

81. The United States Postal Service confirmed that the letter was delivered to The Lenkin Company, located at 4922A Saint Elmo Avenue, Bethesda, Maryland 20814, on April 25, 2016.

82. To date, Defendants have not responded to the Education and Outreach letter.

83. **Outreach: Increased Counseling Efforts.** As a result of Defendants' wrongdoing, the ERC has also increased its counseling efforts for Housing Choice Voucher holders in the District of Columbia by providing anti-discrimination information to local agencies who provide vouchers and rental assistance to home-seekers.

84. In an effort to counteract Defendants' discriminatory policies or practices, the ERC contacted housing advocates and agencies in the areas of the Subject Properties to alert them to Defendants' discriminatory policies or practices. For example, the ERC devoted staff time to: (a) compile a list of agencies that provide vouchers and rental assistance to qualifying home seekers in the areas of the Subject Properties; (b) provide information to these agencies about source of income protections; (c) make these agencies aware that Defendants currently engage in discrimination based on the source of an applicant's income; and (d) encourage these agencies to contact the ERC or HUD if they encounter source of income discrimination when trying to find housing for clients.

85. By devoting staff time to address Defendants' discriminatory policies or practices, the ERC has diverted scarce resources from other planned anti-discrimination efforts.

86. If Defendants' discriminatory conduct had not required the ERC to divert its scarce resources to investigating and counteracting Defendant's discrimination, the ERC would have spent its resources toward activities in which it routinely takes part, including: (1) consulting with and advising staff regarding victim intakes and assistance and advocacy issues;

(2) preparing for, attending, and participating in a wide variety of education and outreach activities; (3) identifying and making contact with prospective funding sources for ERC activities, including individual donors, foundations, and grant opportunities; (4) preparing and presenting fundraising proposals to various donors; and (5) participating in collaboration building with a variety of advocacy groups.

87. Defendants' policies or practices have significantly frustrated the ERC's purpose of promoting equal opportunity in housing and have impaired the ERC's programs. Defendants' pattern of discrimination has made the ERC's mission of ensuring that all individuals (regardless of source of income) have equal access to housing in the District of Columbia more difficult. Defendants' conduct directly decreases the effectiveness of the ERC's efforts to educate the community about laws prohibiting discrimination in housing. As a result of Defendants' wrongdoing, the ERC has committed, is committing, and will continue to commit scarce resources, including staff time, to identify and counsel complainants, investigate complaints, engage in an education and outreach campaign, and develop and disseminate educational materials to ameliorate the effects of Defendants' discrimination against Housing Choice Voucher holders and to prevent the recurrence of discrimination in the future.

88. Defendants' acts, policies, and practices discriminate against Housing Choice Voucher holders in violation of the DCHRA and have a discriminatory effect based on race, in violation of the FHA.

89. The ERC has no plain, adequate, or complete remedy at law. It has suffered, is suffering, and will continue to suffer irreparable injury as a result of Defendants' continuing discriminatory conduct. Unless enjoined, Defendants will continue to engage in the unlawful acts and practices described above.

90. Defendants' actions, policies, and practices described above constitute an ongoing, continuing pattern or practice of discrimination.

DCHRA: COUNT I

Source of Income Discrimination in Violation of the D.C. Human Rights Act

91. The ERC realleges and incorporates herein by reference all of the allegations set forth in paragraphs 1 through 90.

92. Under the DCHRA, it is an "unlawful discriminatory practice" to "refuse or fail to initiate or conduct any transaction in real property" if such a practice is "wholly or partially...based on the actual or perceived...source of income...of any individual." D.C. Code § 2-1402.21(a)(1).

93. Further, the DCHRA makes it an "unlawful discriminatory practice" to make any "statement...with respect to a transaction, or proposed transaction, in real property, or financing related thereto" that indicates "any preference, limitation, or discrimination based on" the "source of income...of any individual." D.C. Code § 2-1402.21(a)(5).

94. Source of income includes federal payments for housing assistance, such as Housing Choice Vouchers. D.C. Code § 2-1402.02(29) (defining "source of income" to include "federal payments"); *see also* D.C. Code § 2-1402.21(e) ("The monetary assistance provided to an owner of a housing accommodation under section 8 of the United States Housing Act of 1937...shall be considered a source of income under this section.").

95. Defendants' refusal to accept Housing Choice Vouchers for rental units at the Subject Properties is unlawful discrimination based on the actual or perceived source of income of individuals, in violation of D.C. Code § 2-1402.21(a)(1).

96. Defendants' statements that Housing Choice Vouchers are not accepted towards payment of rent at the Subject Properties additionally constitute unlawful discrimination. Defendants' statements express an unlawful preference, limitation, and/or discrimination based on the actual or perceived source of income of individuals, in violation of D.C. Code § 2-1402.21(a)(5).

97. As a direct and proximate result of Defendants' conduct, the ERC has suffered injuries and monetary damages in an amount to be determined at trial.

DCHRA: COUNT II

Race Discrimination in Violation of the D.C. Human Rights Act

98. The ERC realleges and incorporates herein by reference all of the allegations set forth in paragraphs 1 through 97.

99. The ERC tested all four of the Subject Properties and found that Defendants were violating the DCHRA by refusing to accept holders of Housing Choice Vouchers as renters.

100. Under the "Effects Clause" of the DCHRA, D.C. Code § 2-1402.68, "despite the absence of any intention to discriminate, practices are unlawful if they bear disproportionately on a protected class and are not independently justified for some nondiscriminatory reason." *Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 29 (D.C. 1987) (en banc).

101. African Americans make up 92% (10,790 of 11,728 households) of all Housing Choice Voucher holders in the District. Further, because 15% of African-American renter households use vouchers for rental assistance (10,790 out of 74,270), whereas only 0.2% of white renter households use vouchers (117 out of 57,435), Defendants' policy or practice of refusing to rent to Housing Choice Voucher holders at the Subject Properties is 71 times more

likely to exclude and adversely impact African-American renter households than white renter households. Accordingly, Defendants' policy or practice of refusing to accept Housing Choice Vouchers towards rent at the Subject Properties has an unlawful discriminatory effect on African Americans because it "bear[s] disproportionately on" African Americans and is not "independently justified for nondiscriminatory reason[s]." *See id.*

FHA: COUNT III

Race Discrimination in Violation of the Fair Housing Act

102. The ERC realleges and incorporates herein by reference all of the allegations set forth in paragraphs 1 through 101.

103. The ERC tested all four of the Subject Properties and found that Defendants were violating the DCHRA by refusing to accept holders of Housing Choice Vouchers as renters.

104. The Subject Properties are buildings that are occupied as, or designed or intended for occupancy as, residences by one or more families. As a result, the Subject Properties are "dwelling[s]" within the meaning of the FHA. 42 U.S.C. § 3602(b).

105. The FHA makes it unlawful to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of...a dwelling" to any person due to the person's "race." 42 U.S.C. § 3604(a).

106. In addition, the FHA makes it unlawful to "make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race." 42 U.S.C § 3604(c).

107. Liability may be established under the FHA "based on a practice's discriminatory effect...even if the practice was not motivated by a discriminatory intent." 24 C.F.R. § 100.500.

108. African Americans make up 92% (10,790 of 11,728 households) of all Housing Choice Voucher holders in the District. Further, because 15% of African American renter households use vouchers for rental assistance (10,790 out of 74,270), whereas only 0.2% of white renter households use vouchers (117 out of 57,435), Defendants' policy or practice of refusing to rent to Housing Choice Voucher holders at the Subject Properties is 71 times more likely to exclude and adversely impact African American renter households than white renter households.

109. Defendants' policy or practice of refusing to accept Housing Choice Vouchers towards rent at the Subject Properties has a discriminatory effect on African Americans because it actually or predictably results in a disparate impact on African Americans. *See* 42 U.S.C. § 3604(a); 24 C.F.R. § 100.500(a).

110. Defendants' statements that Housing Choice Vouchers would not be accepted towards rent at the Subject Properties have a discriminatory effect on African Americans because they actually or predictably result in a disparate impact on African Americans. *See* 42 U.S.C § 3604(c); 24 C.F.R. § 100.500(a).

111. To the ERC's knowledge, Defendants have no justification for their policy or practice of refusing access to Housing Choice Voucher holders or for their statements expressing such policy or practice. Defendants' policy or practice is not necessary to achieve any legitimate, nondiscriminatory interest. Even if Defendants could claim such an interest, that interest could be served by another policy or practice with less discriminatory effect.

112. Defendants' discriminatory conduct has been intentional, willful, and taken in disregard for the rights of others.

113. As a result of Defendants' wrongful conduct, the ERC has been injured by a discriminatory housing practice and is therefore an "aggrieved person," as defined by the FHA, 42 U.S.C. § 3602(i)(1).

PRAYER FOR RELIEF

WHEREFORE Plaintiff, the ERC, respectfully requests that the Court:

- (a) Enter judgment declaring that Defendants' acts, policies, practices, and statements of willfully refusing to rent apartment units to Housing Choice Voucher holders constitute source of income discrimination in violation of the DCHRA, D.C. Code § 2-1402.21, and have an unlawful discriminatory effect based on race in violation of the DCHRA, D.C. Code § 2-1402.68;
- (b) Enter judgment declaring that Defendants' acts, policies, practices, and statements of willfully refusing to rent apartment units to Housing Choice Voucher holders have an unlawful discriminatory effect based on race in violation of the FHA, 42 U.S.C. §§ 3601-3631 and 3604(a) and (c), 24 C.F.R. § 100.500;
- (c) Enter judgment for appropriate permanent injunctive relief, including an order that Defendants abandon its policy or practice of refusing to rent to Housing Choice Voucher holders and instead accept tenants without regard to source of income, and such remedial actions as are necessary to ameliorate Defendants' past illegal discriminatory conduct;
- (d) Award the ERC monetary damages in an amount to be determined at trial;
- (e) Award the ERC reasonable attorneys' fees and costs;

- (f) Award the ERC punitive damages in an amount to be determined at trial;
and
- (g) Grant such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Superior Court Rules of Civil Procedure, Plaintiff the ERC demands a trial by jury of all issues so triable as of right.

Dated: April 12, 2017

Respectfully submitted,

/s/ Jonathan Smith

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