

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

EQUAL RIGHTS CENTER

820 First Street, NE,
Suite LL160
Washington, D.C. 20002

Plaintiff,

v.

KETTLER MANAGEMENT, INC.

1401 Fairmont Street, NW,
Washington, DC 20009

Defendant.

Case No. _____

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Housing Choice Vouchers and Rapid Rehousing Subsidies (“Vouchers”) are critically important government benefits that enable low-income renters to offset their rent with a subsidy. Vouchers often reduce racial segregation and enable renters to secure housing outside of areas of racially and ethnically concentrated poverty and in areas that may offer greater access to jobs and better resourced schools. This is the case in the District of Columbia. In the midst of an ongoing affordable housing crisis in D.C., Vouchers play an important role in expanding housing choice and ensuring low-income renters can afford safe and decent housing, so long as housing providers are willing to accept them. In D.C., it is illegal for landlords and brokers to reject rental applicants for using a Voucher, but discrimination against Voucher holders is rampant.

The Equal Rights Center (“ERC”) brings this action against Kettler Management, Inc. (“Defendant” or “Kettler”) to challenge Defendant’s unlawful refusals to accept Vouchers and imposition of unlawful conditions to use Vouchers at its D.C. residential apartment properties,

including the Rise at Temple Courts, Lotus Square, Solstice, Park Kennedy, Union Heights, and Dock 79. Defendant's conduct constitutes unlawful housing discrimination in violation of the D.C. Human Rights Act ("DCHRA") and the D.C. Consumer Protection Procedures Act ("DCCPPA").

NATURE OF THIS ACTION

1. This is a civil rights action under the DCHRA, D.C. Code §§ 2-1401.01, *et seq.*, as well as related claims under the DCCPPA, D.C. Code §§ 28-3901 *et seq.*, for declaratory, injunctive, and monetary relief.

2. Defendant, the manager of multi-family apartment buildings across the District of Columbia ("D.C." or "the District"), has engaged in unlawful source of income discrimination in violation of the DCHRA by setting up unlawful barriers to rental for prospective tenants who seek to use Vouchers as a source of payment for all or a portion of their monthly rent. By violating the DCHRA in the context of a consumer transaction, Defendant further violated the DCCPPA. *District of Columbia v. Evolve, LLC*, 2020 D.C. Super. LEXIS 6, *12 (D.C. Super. Ct. Feb. 25, 2020).

3. Defendant's discrimination has harmed, and continues to harm, the ERC because it frustrated the ERC's mission to end discrimination in the District and led the ERC to redirect significant resources away from its day-to-day activities to address this discrimination. The ERC has committed, is committing, and will continue to commit, scarce resources to counteract the effects of Defendant's discrimination against prospective tenants, and to prevent the recurrence of discrimination against Voucher holders in the future. These resources, by necessity, are diverted away from the ERC's regular activities, further injuring the ERC.

Accordingly, the ERC brings this action to vindicate its civil rights, and the civil rights of those it represents, under the DCHRA, to vindicate consumer protection rights under the

DCCPPA, and to obtain an injunction and damages—including statutory and treble damages under the DCCPPA—to remedy those injuries. The ERC also brings the DCCPPA claims alleged herein on behalf of itself and the interests of a consumer or a class of consumers, namely prospective renters at Defendant’s properties in DC seeking to rent with the assistance of a Voucher.

PARTIES

1. Plaintiff Equal Rights Center is a national non-profit public interest organization and civil rights membership corporation organized under the laws of D.C. Its principal place of business is 820 First Street NE, Suite LL160, Washington, D.C. 20002. The ERC’s mission is to identify and eliminate unlawful and unfair discrimination in housing, employment, and public accommodations in its home community of greater Washington, D.C. and nationwide. The ERC is the only private fair housing organization dedicated to serving the entire greater Washington, D.C. region. It is committed to assisting individuals in the area who believe they have experienced housing discrimination or who need assistance with preparing and/or submitting requests for reasonable accommodations and modifications. The ERC’s various programs and activities provide guidance and information on civil rights to the community, as well as assistance to members of classes protected under federal, state, and local laws who face discrimination.

2. Defendant Kettler Management, Inc. is a Virginia corporation, with its principal place of business in McLean, Virginia. Kettler is registered to do business in Washington, D.C. as a corporation at 1401 Fairmont Street, NW, Washington, D.C. 20009. On information and belief, Kettler manages over 73 residential apartment buildings along the east coast, including in Washington, D.C. During the time period relevant to this action, Kettler managed and continues

to manage the **Rise at Temple Courts**, a residential apartment building located at 2 L Street, NW, Washington, D.C. 20001; **Lotus Square**, a residential apartment building located at 800 Kenilworth Avenue, NE, Washington, D.C. 20019; **Solstice**, a residential apartment building located at 3534 East Capitol Street, NE, Washington, D.C. 20019; **Park Kennedy**, a residential apartment building located at 1901 C Street, SE, Washington, DC 20003; **Union Heights**, a residential apartment building located at 1676 Maryland Avenue, NE, Washington, DC 20002; and **Dock 79**, a residential apartment building located at 79 Potomac Ave SE, Washington, DC 20003 (collectively “the Properties”).

JURISDICTION AND VENUE

3. This Court has original jurisdiction over this matter under D.C. Code § 11-921.
4. This Court has jurisdiction over the Defendant under D.C. Code § 13-423 because Defendant transacts business and manages real property in the District of Columbia. The discriminatory conduct at issue arises out of these business activities.

FACTUAL BACKGROUND

A. Overview of Voucher Programs in Washington, D.C.

5. The Housing Choice Voucher Program (the “Housing Choice 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 16,299 households in the District, the Housing Choice Voucher Program is the largest rental-assistance program administered by the U.S. Department of Housing and Urban Development (“HUD”).

6. 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 payment standards (i.e., limits on the monthly rent that are set by DCHA) and a percentage of the Housing Choice Voucher holder’s income. The Housing Choice Voucher Program thus removes some of the barriers that would otherwise restrict low-income families from the opportunity to obtain rental housing outside of areas of concentrated poverty, allowing families to move to neighborhoods with rich access to public transportation, grocery stores, green spaces, well-performing schools, and cultural enrichment. Obtaining a Housing Choice Voucher can provide a homeless or low-income resident of D.C. with a direct path to housing and enable integration in mixed-income neighborhoods. The success of the Housing Choice Voucher program depends in large part on the ability of renters to obtain housing in integrated neighborhoods, as well as participation of landlords on the private housing market.

7. Housing Choice Vouchers are important in high-cost jurisdictions like D.C. where rent burdens on low-income families are particularly severe. Vouchers afford a meaningful chance for low-income residents to live in neighborhoods that provide access to better resourced schools, additional employment opportunities, and increased safety—all of which can impact a resident’s economic and educational outcomes in the long-term.

8. Housing Choice Vouchers are also time-limited and can generally only be used for a short period after they are issued. Applicants for Housing Choice Vouchers are placed on years-long waiting lists but only have 120 days to find an apartment once they finally receive a Housing Choice Voucher, unless they can obtain an extension on their Housing Choice Voucher expiration date.

9. Housing Choice Vouchers are included in the definition of “source of income” in the DCHRA.

10. The D.C. government also administers various locally funded voucher programs, including the Family Rehousing Stabilization Program (FRSP), the Local Rent Supplement Program (LRSP), and Career Mobility Action Plan (Career MAP) program.

11. A Rapid Rehousing Subsidy is a temporary housing subsidy, administered by the District of Columbia Department of Human Services, designed to assist individuals and families find permanent housing. The District of Columbia Department of Human Services (DHS) administers the Local Rent Supplement Program, which provides Rapid Rehousing subsidies to families experiencing homelessness in Washington, D.C., often for a time period of 12 or more months.

12. Rapid Rehousing Subsidies are also included in the definition of “source of income” in the DCHRA.

13. As a result of widespread Voucher discrimination, Voucher holders must frequently accept subpar housing in segregated neighborhoods, or risk losing their Voucher altogether.

B. Overview of the DCHRA’s Source of Income Protections, and Recent Amendments to the DCHRA.

14. The DCHRA requires that rental properties be made available to prospective tenants, irrespective of their source of income, and expressly provides that Vouchers, by statutory definition, are a protected source of income. D.C. Code § 2-1402.21(a)(1) and D.C. Code § 2-1401.02(29). 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).

15. Housing providers often use various forms of subterfuge to deny housing to Voucher holders without explicitly adopting a “no voucher” policy. Such policies include

minimum income policies that no Voucher holder could ever meet, and credit history requirements that disproportionately and unfairly impact Voucher holders.

16. Recognizing these concerns, in 2022, the D.C. Council amended to the DCHRA as part of the Eviction Record Sealing Authority and Fairness in Renting Amendment Act of 2022 (ERSAFRAA), effective May 18, 2022. As amended, DCHRA Section 2-1402.21(g) prohibits a landlord from refusing to rent to an applicant using a Voucher based on the applicant's income level, credit score, or lack of credit score. Additionally, since a Voucher fundamentally alters the economic reality of its recipient, it also prohibits a landlord from considering prior nonpayment, late payment of rent, or any credit issues that arose during a period in which the applicant did not have a Voucher.

A. Defendant's Policy and Practice of Discriminating Against Voucher Holders.

17. Defendant manages the Rise at Temple Courts, a residential apartment building located at 2 L Street, NW, Washington, D.C. 20001, which on information and belief is owned by the D.C. government; Lotus Square, a residential apartment building located at 800 Kenilworth Avenue, NE, Washington, D.C. 20019, which on information and belief is owned by Kenilworth Avenue Apartments, LLC; Solstice, a residential apartment building located at 3534 East Capitol Street, NE, Washington, D.C. 20019, which on information and belief is co-owned by 3534 East Cap Venture, LLC and 3500 East Cap Venture; Park Kennedy, a residential apartment building located at 1901 C Street, SE, Washington, DC 20003, which on information and belief is owned by 1901 C Street SE, LLC; Union Heights, a residential apartment building located at 1676 Maryland Avenue, NE, Washington, DC 20002, which on information and belief is owned by 1600 MDA 55 Land LLC; and Dock 79, a residential apartment building located at

79 Potomac Ave SE, Washington, DC 20003, which on information and belief is owned by Steuart-Dock 79, LLC.

18. As the operator and manager of residential real estate, Defendant is required to comply with anti-discrimination laws, including the DCHRA, as well as the D.C. Consumer Protection Procedures Act.

19. During the time period relevant to this action, the Rise at Temple Courts offered studio through three-bedroom apartments for rent in the District at monthly rates within the payment standards for which Voucher holders are allowed to rent apartment units.

20. During the time period relevant to this action, Lotus Square offered one-bedroom through three-bedroom apartments for rent in the District at monthly rates within the payment standards for which Voucher holders are allowed to rent apartment units.

21. During the time period relevant to this action, Solstice offered one-bedroom through three-bedroom apartments for rent in the District at monthly rates within the payment standards for which Voucher holders are allowed to rent apartment units.

22. During the time period relevant to this action, Park Kennedy offered studio to two-bedroom apartments for rent in the District at monthly rates within the payment standards for which Voucher holders are allowed to rent apartment units.

23. During the time period relevant to this action, Union Heights offered studio to two-bedroom apartments for rent in the District at monthly rates within the payment standards for which Voucher holders are allowed to rent apartment units.

24. During the time period relevant to this action, Dock 79 offered studio to two-bedroom apartments for rent in the District at monthly rates within the payment standards for which Voucher holders are allowed to rent apartment units.

25. On information and belief, applicants to Defendant's properties submitted documentation verifying evidence of the Voucher at the time of application.

26. Defendant has a policy or practice of knowingly discriminating against Voucher holders in violation of the DCHRA and DCCPPA at the Properties, including but not limited to:

- a. Imposing minimum income requirements on Voucher holders seeking to rent with the assistance of their Voucher, and rejecting such Voucher applicants;
- b. Denying applicants who are Voucher holders based on source of income, including those using Rapid Rehousing Subsidies from the D.C. Department of Human Services;
- c. Denying applicants who are Voucher holders because of poor credit, without distinguishing between credit issues arising prior to receipt of the applicant's Voucher versus issues arising after receipt of the applicant's Voucher;
- d. Unduly delaying the lease up process and prohibiting Voucher holders from securing housing.

B. ERC's Discovery of Defendant's Discriminatory Policies

27. The ERC's mission includes identifying and eliminating discrimination in the Washington, D.C. metro area.

28. ERC has a Fair Housing Program dedicated to advancing equal housing opportunities in the District. The ERC conducts and participates in programs to educate both consumers and the real estate industry about their rights and obligations under federal, state, and local fair housing laws. In addition, the ERC has grants from the U.S. Department of Housing

and Urban Development (“HUD”) to conduct fair-housing-related education and outreach. The ERC often conducts these education and outreach trainings at DCHA briefings for Voucher holders.

29. Through its Fair Housing Program, the ERC also conducts intakes with individuals in the Greater Washington, D.C. region who allege that they have experienced housing discrimination. When an individual contacts the ERC alleging housing discrimination in the ERC’s service area, the ERC counsels the individual about their fair housing rights and offers assistance to try to address the individual’s allegations. This assistance can include conducting advocacy on an individual’s behalf with the housing provider alleged to have discriminated; further investigation, including through civil rights testing; and/or assisting an individual with filing a fair housing administrative complaint, such as with the DC Office of Human Rights (“DCOHR”) or HUD. The ERC receives funding from HUD to conduct these activities in regard to potential discrimination prohibited by the federal Fair Housing Act but does not have a dedicated funding source to support its intake, counseling, investigations, and advocacy work in relation to potential violations of fair housing laws outside of that scope. As a result of its outreach, education, counseling and individual advocacy work on behalf of at least seven voucher holders over the last year, ERC has become familiar with Defendant’s discriminatory policies and has had to divert its resources in order to counteract the harmful impacts of Defendant’s discrimination.

1. Defendant Unlawfully Imposes Minimum Income Requirements on Voucher Holders (DCHRA 2-1402.21(g)(1)(B))

30. In July 2022, a Voucher holder, Applicant No. 1, contacted the ERC through the ERC’s intake and counseling program, reporting that the Rise at Temple Courts refused to rent to her based on her income level. The DCHRA prohibits refusing to rent to a “prospective tenant

seeking to rent with the assistance of an income-based housing subsidy based on . . . [i]ncome level.” DCHRA 2-1402.21(g)(1)(B).

31. In July 2022, the ERC contacted Rise at Temple Courts Community Manager Stephanie Artica, who said that the property had a minimum income requirement, requiring all applicants to have income outside of a voucher or subsidy of at least \$3,600 per year in order to cover the cost of utilities. This refusal to rent to Applicant No. 1 was unlawful.

32. Defendant’s refusal to rent to Applicant No. 1, a Voucher holder, is particularly galling because Rise at Temple Courts, which opened in 2022, is owned by the District of Columbia government and was built using public subsidies as a replacement for the Temple Courts complex, prior public housing that was torn down in 2008.

2. Defendant Unlawfully Refuses to Rent to Applicants Using Rapid Rehousing Vouchers (DCHRA 2-1402.21(a)(1))

33. Kettler’s Rise at Temple Courts Community Manager also informed Applicant No. 1 in July 2022 that Kettler would not rent an apartment to Applicant 1 because she was using a Rapid Rehousing subsidy.

34. Rapid Rehousing subsidies are included in the definition of “source of income” in the DCHRA.

35. It is unlawful to refuse to rent to an applicant based on the applicant relying on a Rapid Rehousing subsidy as source of income for rent payment. *See Equal Rights Ctr. v. Belmont Crossing Apts., LLC*, 2018 D.C. Super. LEXIS 8, *3 (“[T]here is no rational distinction for source-of-income purposes between short and long-term vouchers. Vouchers are vouchers, regardless of source or duration. A voucher provides ‘income’ to a tenant for paying rent, and is treated as a ‘source’ of such income within the meaning of the DCHRA.”).

36. At Applicant No. 1's request, ERC staff contacted Ms. Artica and informed her that it was unlawful to discriminate against Applicant No. 1 based on her using a Rapid Rehousing Voucher. The ERC's intervention had no effect, and Kettler continued to refuse to rent to Applicant No. 1 at Rise at Temple Courts.

37. At the time of Applicant No. 1's application, there was at least one 2-bedroom unit renting for about \$1,763/month and there was at least one market rate 2-bedroom unit that was listed for about \$2,600/month at Rise at Temple Courts. Both units were within the DCHA payment standard for a 2-bedroom in that neighborhood. Applicant No. 1 was never able to apply for a unit because Kettler refused to accept Rapid Rehousing subsidies and illegally stated they would subject Applicant No. 1 to a minimum income requirement despite Applicant No. 1's use of a housing subsidy.

3. Defendant Unlawfully Refuses to Rent to Applicants Using Vouchers Based on Income Level and Prior Credit History (DCHRA 2-1402.21(g)(1))

38. The DCHRA prohibits refusing to rent to a "prospective tenant seeking to rent with the assistance of an income-based housing subsidy based on . . . [i]ncome level." DCHRA 2-1402.21(g)(1)(B). Yet Defendant has repeatedly denied prospective applicants seeking to rent with the assistance of an income-based housing subsidy on the basis of "Insufficient Income to Support Rent" in violation of the DCHRA.

39. The DCHRA also prohibits refusing to rent to a "prospective tenant seeking to rent with the assistance of an income-based housing subsidy based on . . . [a]ny credit issues that arose during a period in which the prospective tenant did not have an income-based housing subsidy if the housing provider could reasonably have known the date of receipt." DCHRA 2-1402.21(g)(1)(C). Yet Defendant has repeatedly denied prospective applicants seeking to rent with the assistance of an income-based housing subsidy on the basis of credit history without

determining whether such credit history may have occurred prior to the prospective tenant's receipt of the subsidy.

40. Defendant uses third-party contractors to run credit checks on prospective renters, including Voucher holders. Those third-party contractors do not differentiate between credit checks for applicants who have rent payments guaranteed by the District and federal government through Vouchers from those who must pay rent based on non-guaranteed personal income. As a result, applicants with Vouchers uniformly are summarily rejected by Defendant based on criteria prohibited by the DCHRA. Examples of summary denials include: "Insufficient Income to Support Rent," "Moderate level of late credit payments," and "No Credit Experience."

41. Defendant's practice or policy of summarily rejecting applicants with Vouchers has required those Voucher holders to seek assistance from ERC staff and has at times resulted in the Voucher holders losing opportunities to rent desirable apartments that they are actually qualified to rent. In some instances, the desirable apartments they sought were rented to non-Voucher holders due to Defendant's delay, leaving the Voucher holder to rent a less-desirable apartment. In other instances, the Voucher applicant was refused an opportunity to rent housing managed by Defendant, altogether.

42. Defendant's policies and practices have caused ERC to divert resources from other advocacy efforts to address Defendant's systemic and ongoing violations of DCHRA.

43. Applicant No. 1 also applied to Defendant's Lotus Square apartments in July 2022. Defendant informed Applicant No. 1 that her application was denied because of "Severe level of Charge-offs[.]" "Insufficient Income to Support Rent[.]" and "Minor level of late credit payments."

44. Applicant No. 1 again sought assistance from ERC staff, who contacted Lotus Square on her behalf. Lotus Square's Assistant Community Manager confirmed that Lotus Square refused to rent to Applicant No. 1 based on her credit history and income.

45. In its communications, the ERC sought to educate Defendant about source of income protections in housing related to income and credit under the DCHRA. The ERC asked, first, that Defendant reconsider Applicant No. 1's application in light of these protections and, second, that Defendant change its policies and practices to ensure compliance with the DCHRA.

46. Through its communications with Lotus Square, ERC determined that Defendant was engaging in unlawful discrimination against Voucher holders attempting to rent units at Lotus Square.

47. After Defendant's staff reportedly escalated this to its corporate office, Applicant No. 1 was eventually offered an apartment in Lotus Square.

48. However, the apartment Defendant rented to Applicant No. 1 at Lotus Square proved to be uninhabitable because of rat infestations and other housing code violations, twice failing DC DHS habitability inspections.¹

¹ "According to the D.C. Department of Buildings' landlord violations tool, inspectors wrote up Lotus Square for 107 violations since 2021. That same dashboard revealed the apartment [(Defendant)] repaired only three of those violations, leaving 104 violations unaddressed. Violations include failing to provide sufficient extermination services, sanitary conditions, and even smoke alarms. Each of these violations had repeat offenses." See <https://wjla.com/news/local/7news-on-your-side-presses-kettler-management-company-for-solutions-to-lotus-square-apartments-problems-kenilworth-avenue-apartments-dc-department-of-buildings-ashanti-narce>, last accessed Aug. 9, 2023.

49. In fact, there was considerable news coverage about the uninhabitable living conditions at Lotus Square, including uncontrolled vermin infestation², plumbing issues³, as well as other health and safety violations.⁴

50. Seeking to move to a habitable Kettler apartment, in February 2023, Applicant No. 1 applied to Defendant's Solstice apartments using a Voucher. Defendant's Solstice refused to rent to Applicant No. 1, relying on credit issues and insufficient income to support such refusal.

51. According to Tamika McDonald, Defendant's Community Manager at Solstice, Applicant No. 1's application to Solstice was denied in March 2023 because "she has derogatory [information] after the time she received / went on the Housing Voucher program in May 2022."

52. Applicant No. 1 again asked ERC staff for assistance. ERC staff discovered that the alleged derogatory information in Applicant No. 1's credit report was that DC DHS refused to make rent payments to Defendant's Lotus Square apartments on Applicant No. 1's behalf because Applicant No. 1's unit had twice failed DHS habitability inspections. Put another way, Defendant refused to rent a habitable unit to Applicant No. 1 using her Voucher because

² See <https://wset.com/news/local/health-risks-dead-rodents-wall-dc-apartment-lotus-square-kettler-management-company-ashanti-narce-kenilworth-avenue-residents-complain-of-smell-living-conditions-respiratory-system>, last accessed Aug. 9 2023.

³ "Neighbors have told 7News that water has cascaded through air vents and from the ceilings every time it rains for the last 10 years. After last week's storms, neighbors are now dealing with musty carpet, rotted wood, and water damage." See <https://wjla.com/news/local/dc-lotus-square-apartments-flooding-residents-call-on-management-to-fix-water-issues-improve-safety-property-management-company-kettler>, last accessed Aug. 9, 2023; <https://wjla.com/news/local/dc-northeast-apartment-residents-water-damage-storms-weather-lotus-square-7news-on-your-side-rain-investigation-washington-consumer-dmv-bowser-contee-results>, last accessed Aug. 9, 2023.

⁴ "Residents at Lotus Square Apartments in Northeast Washington said the health and safety issues have been piling up right along with the mountain of trash bags." See <https://wjla.com/news/local/dc-apartment-trash-backup-rodents-rats-washington-northeast-dcra-garbage-housing-health-lotus-square>, last accessed Aug. 9, 2023.

Defendant's failure to maintain Applicant No. 1's current property in a habitable condition created "bad credit" for her when DHS, as required by law, stopped paying for rent at Applicant No. 1's uninhabitable Lotus Square unit.

53. Defendant's management escalated this absurd situation to Kettler's Executive Vice President and General Counsel Sean Curtin. Mr. Curtin stated via email in April 2023 that Applicant No. 1 was denied due to adverse credit items after she received her Voucher. He also stated that, "even with the voucher covering her rent, [Applicant No. 1] appears to have difficulty managing her debts, which increases her risk profile as a tenant." Kettler's General Counsel's comments finally denying her application underscore that Defendant's policy and practice of discriminating against Voucher holders is not limited to lower-level employees, but is directed from the very top of Kettler's organization.

54. Defendant's policy and practice of discriminating against Voucher holders continued beyond Applicant No. 1. In December 2022, Applicant No. 2 applied to rent an apartment using a Voucher at Defendant's Rise at Temple Courts. Her application was rejected due to a "Severe level of Charge-offs[.]" "Insufficient Income to Support Rent[.]" and "Moderate level of late credit payments[.]"

55. Applicant No. 2 sought assistance from ERC staff, who again contacted Ms. Artica, Community Manager at Rise at Temple Courts. In its communications, the ERC sought to educate Defendant about source of income protections in housing related to income and credit under the DCHRA. The ERC asked, first, that Defendant reconsider Applicant No. 2's application in light of these protections and, second, that Defendant change its policies and practices to ensure compliance with the DCHRA.

56. Despite Plaintiff's efforts to educate Defendant of the DCHRA's prohibitions on discriminating against Voucher holders based on income level and any credit issues arising prior to the applicant receiving a housing Voucher, Rise at Temple Courts refused to rent to Applicant No. 2 because of her income and credit history. Ms. Artica also confirmed that Defendant did not distinguish between credit issues arising before or after an applicant receives their voucher, stating that "the same credit history criteria are applied without regard to the type of income an applicant may receive." Ms. Artica also inquired about how Applicant No. 2 would pay her rent if she lost her Voucher.

57. Through its communications with Rise at Temple Courts, ERC determined that Defendant was engaging in unlawful discrimination against Voucher holders attempting to rent units at The Rise at Temple Courts. During December 2022 and January 2023, ERC staff sought to resolve this unlawful discrimination with Rise at Temple Courts, but did not succeed.

58. Subsequently, Applicant No. 2 filed a DCHOR complaint, which settled in mediation.

59. In November 2022, Applicant No. 3 also sought to rent an apartment using a Voucher at Defendant's Solstice apartments. Defendant refused to rent to Applicant No. 3 because of her credit and income. When Applicant No. 3's housing case manager contacted Defendant on Applicant No. 3's behalf to request more information regarding the denial, Defendant's agents stated they could not provide Applicant No. 3 with further information regarding the reason for denial and recommended she contact the third-party screening service Defendant used when reviewing Applicant No. 3's application.

60. After Applicant No. 3's housing case manager again requested a written notice of denial that included the reason for denial, Defendant provided a written notice of denial in

December 2022, which stated that Applicant No. 3 had been rejected because of “High Level of Collection Items[,]” “Insufficient Income to Support Rent[,]” and “No Credit Experience.”

61. Applicant No. 3 sought assistance from ERC staff, who contacted Defendant on her behalf. In its communications, the ERC sought to educate Defendant about source of income protections in housing related to income and credit history under the DCHRA. The ERC asked, first, that Defendant reconsider Applicant No. 3’s application in light of these protections and, second, that Defendant change its policies and practices to ensure compliance with the DCHRA. ERC staff initially contacted Solstice Community Manager Tamika McDonald, who eventually referred the ERC staff to Defendant’s lawyer William Cannon. Mr. Cannon confirmed that Defendant could not lawfully reject Applicant No. 3 because of her income level but stated that she would still likely be rejected because of her credit issues.

62. Two months after the ERC’s intervention, in February 2023, Applicant No. 3’s application was conditionally approved.

63. But for the ERC's intervention on her behalf, Applicant No. 3 likely would not have been able to obtain housing at the Solstice due to Defendant's discriminatory policies.

64. Applicant No. 4 applied to rent an apartment using a Voucher to Defendant’s Solstice Apartments in May 2023. Applicant No. 4’s application was denied because of a “Severe level of Charge-offs,” “Insufficient Income to Support Rent,” and “Moderate level of late credit payments.”

65. Applicant No. 4 sought assistance from ERC staff, who contacted Defendant on her behalf in June 2023. In their communications, ERC staff again sought to educate Defendant about source of income protections in housing related to income level and credit under the DCHRA. The ERC asked, first, that Defendant reconsider Applicant No. 4’s application in light

of these protections and, second, that Defendant change its policies and practices to ensure compliance with the DCHRA.

66. In response to the ERC's efforts, Defendant's agent Tamika McDonald stated that Applicant No. 4 was "conditionally approved with a one month[']s security deposit."

67. But for the ERC's intervention on her behalf, Applicant No. 4 likely would not have been able to obtain housing at the Solstice due to Defendant's discriminatory policies.

68. Through its communications with Solstice, ERC was able to determine that Defendant was engaging in unlawful discrimination against Voucher holders attempting to rent units at Solstice.

69. Applicant No. 5 applied to rent an apartment using a Voucher at Defendant's Union Heights apartments in July 2023. Defendant informed Applicant No. 5 that her application was denied because of "Insufficient Income to Support Rent."

70. Applicant No. 5 sought assistance from ERC staff, who contacted Union Heights on her behalf on August 3, 2023. In its communications, the ERC sought to educate Defendant about source of income protections in housing related to income under the DCHRA. The ERC asked, first, that Defendant reconsider Applicant No. 5's application in light of these protections and, second, that Defendant change its policies and practices to ensure compliance with the DCHRA.

71. Following ERC's intervention and advocacy on behalf of Applicant No. 5, Defendant later approved Applicant No. 5's application and submitted the lease up package to DCHA, which is pending DCHA's review.

72. But for the ERC's intervention on her behalf, Applicant No. 5 likely would not have been able to obtain housing at Union Heights due to Defendant's discriminatory policies.

73. Through its communications with Union Heights, ERC was able to determine that Defendant was engaging in unlawful discrimination against Voucher holders attempting to rent units at Union Heights. Additionally, Applicant No. 6 applied to rent an apartment using a Voucher at Defendant's Park Kennedy apartments in August 2023. Defendant informed Applicant No. 6 that her application was denied because of "Severe level of Charge-offs" and "Insufficient Income to Support Rent."

74. Applicant No. 6 sought assistance from ERC staff, who contacted Park Kennedy on her behalf on August 11, 2023. In its communications, the ERC sought to educate Defendant about source of income protections in housing related to income and credit under the DCHRA. The ERC asked, first, that Defendant reconsider Applicant No. 6's application in light of these protections and, second, that Defendant change its policies and practices to ensure compliance with the DCHRA.

75. Following ERC's intervention and advocacy on behalf of Applicant No. 6, Defendant approved applicant No. 6's application and set a move-in date.

76. But for the ERC's intervention on her behalf, Applicant No. 6 likely would not have been able to obtain housing at Park Kennedy due to Defendant's discriminatory policies.

77. Through its communications with Park Kennedy, ERC was able to determine that Defendant was engaging in unlawful discrimination against Voucher holders attempting to rent units at Park Kennedy.

78. Applicant No. 7 applied to rent an apartment using a Voucher at Defendant's Dock 79 apartments in August 2023. Defendant informed Applicant No. 7 that his application was denied because of "Insufficient Income to Support Rent" and "Limited Credit Experience."

79. Applicant No. 7 sought assistance from ERC staff, who contacted Dock 79 on his behalf on August 30, 2023. In its communications, the ERC sought to educate Defendant about source of income protections in housing related to income and credit under the DCHRA. The ERC asked, first, that Defendant reconsider Applicant No. 7's application in light of these protections and, second, that Defendant change its policies and practices to ensure compliance with the DCHRA. At the time of this Complaint, Dock 79 has not issued a substantive response to ERC's letter.

80. Through its communications with Dock 79, ERC was able to determine that Defendant was engaging in unlawful discrimination against Voucher holders attempting to rent units at Dock 79.

81. Upon information and belief, Defendant makes no request of Voucher-holder applicants for information concerning how long an applicant has had a Voucher.

82. On behalf of the applicants for which the ERC advocates, the ERC has requested that Defendant produce the credit reports upon which Defendant purports to rely. Defendant has not produced these credit reports despite D.C. law's requirement that—if a landlord denies an applicant—it must provide a written notice including the grounds for the denial and a copy of any third-party information (credit reports, etc.) D.C. Code § 42-3505.10(f)).

83. Defendant has an ongoing policy or practice of refusing to accept Vouchers at the Properties and setting up unlawful barriers to using Vouchers at the Properties.

84. Through its communications with Defendant's management, including its Executive Vice President and General Counsel, the ERC found time and again that Defendant has a policy or practice of refusing to rent to Voucher holders and setting up unlawful barriers to using Vouchers at the Properties. This policy or practice discriminates against Voucher holders

based on their source of income and violates the DCHRA, D.C. Code §§ 2-1402.21(a)(1), (a)(5), (b), and (g)(1).

85. Defendant expressed its policy or practice by making statements to the ERC evidencing Defendant's intent to exclude and discriminate against Voucher holders based on their source of income, in violation of the DCHRA, D.C. Code § 2-1402.21(a)(5).

86. Upon information and belief, Defendant designed, participated in, supervised, controlled, approved and/or ratified the discriminatory policy or practice described above. As a result, Defendant is liable for the unlawful conduct described herein.

87. By its acts, policies, and practices, Defendant refused to rent to individuals who intend to use Vouchers at the Properties. In so doing, Defendant unlawfully discriminated against renters in the District based on their source of income and also committed violations of consumer protection law.

88. Defendant acted intentionally and willfully, and with callous and reckless disregard for the statutorily-protected rights of renters who intend to use Vouchers as a source of income to help pay rent.

C. The Impact of Defendant's Discriminatory Conduct on ERC's Mission

89. Defendant's unlawful discrimination has harmed the ERC and the communities that it serves by (i) frustrating the ERC's mission of eliminating discrimination against members of statutorily-protected classes, and (ii) causing it to divert and redirect scarce resources to counteract Defendant's unlawful discrimination.

90. The ERC has made it part of its mission to eliminate source of income discrimination since at least 2003, when the ERC began receiving complaints that Voucher

holders were experiencing discriminatory barriers to their ability to secure rental housing with a Voucher.

91. Defendant's discriminatory conduct has required the ERC to divert its scarce resources to investigating and counteracting the specific discriminatory practice adopted by Defendant.

92. To counteract Defendant's conduct, the ERC conducted outreach to Voucher holders and social service providers that assist Voucher Holders. Such outreach included:

- a. publishing a blog explaining source of income protections under the ERSAFRAA, which it shared in weekly blasts to its members; and
- b. outreach to various organizations serving individuals with Vouchers to advise them of widespread discrimination related to source of income protections under the ERSAFRAA.

93. To counteract Defendant's conduct, the ERC also undertook steps to educate housing providers. Such steps included:

- a. offering free webinars to educate housing providers on source of income protections under the ERSAFRAA so that housing providers better understand fair housing protections for Voucher holders in the District;
- b. creating a social media campaign and sharing it with ERC members via email to advertise the webinar dates, in order to increase awareness among housing providers of the trainings; and
- c. expending funds to advertise the housing providers' trainings in the Multifamily Housing News' daily newsletter.

94. The ERC has also expended tremendous resources and engaged in a considerable amount of individual intake advocacy above and beyond what is typical. ERC receives no dedicated funding to support its work conducting source of income intakes. However, ERC counseled and assisted all the clients reporting source of income discrimination at Defendant's properties, as well as assisting many with filing DCOHR complaints. ERC has had to undertake the following in order to counteract the harm caused by Defendant's source of income discrimination, including but not limited to:

- a. screening each intake for services and providing them with information about their fair housing rights related to the DCHRA, including ERSAFRAA's amendments to the DCHRA;
- b. assessing whether each intake experienced source of income discrimination at Defendant's properties;
- c. drafting personalized advocacy letters on behalf of each intake to educate Defendant about the DCHRA, including ERSAFRAA's amendments to the DCHRA, and to request appeals for the improper denials;
- d. preparing various letters to advocate on behalf of the intakes based on violations of ERSAFRAA;
- e. engaging Defendant in communications to resolve the improper denials so the intakes can secure housing;
- f. filing DCOHR complaints on behalf of the intakes when communications with Defendant stalled; and
- g. serving as the intake's non-legal representative during the DCOHR complaint process, including but not limited to advising on the procedural

processes, drafting the complaint and other necessary paperwork to pursue the claims, as well as doing damages assessments and other advocacy activities necessary during the DCOHR complaint process.

95. The efforts described above are examples of the efforts the ERC had to take to address Defendant's discriminatory practice. These efforts are beyond those the ERC normally expends.

96. In order to accomplish the above work due to Defendant's discriminatory conduct, ERC had to abandon other initiatives. ERC had to divert its limited resources, including time, finances, and staff, toward other activities in the following ways:

- a. taking time away from advocacy efforts for other clients who were being served by the ERC's fair housing program;
- b. interfering with the ERC's ability to properly train its staff for various community engagement activities, such as "Know Your Rights" presentations;
- c. interfering with the ERC's ability to timely handle administrative tasks necessary to run the organization, such as preparing annual reports and other reports for its Board;
- d. interfering with the ERC's ability to investigate other reports of discrimination due to limited staff capacity resulting from Defendant's actions; and
- e. placing an ad that was more than twice the advertising budget in *Multi-Housing News Daily* to inform housing providers about the upcoming webinar on source of income related protections.

97. The sheer volume of source of income complaints the ERC has received from Defendants' properties alone is unprecedented. The repetition and frequency of the complaints has become untenable for ERC to continue mitigating the harm caused by Defendant's discrimination on a case-by-case basis, which is why the ERC must turn to the court for assistance in addressing the underlying discriminatory practices and policies.

98. As a result, the ERC was directly harmed and injured by Defendant's unlawful and discriminatory policies and practices.

COUNT I:

**Source of Income Discrimination in Violation of the D.C. Human Rights Act, D.C. Code
D.C. Code §2-1402.21(a)(1), (b), (g)(1)**

99. Plaintiff re-alleges and incorporates by reference the allegations set forth in the paragraphs above.

100. Defendant's policy or practice of refusing to accept Vouchers and setting up barriers to the use of Vouchers violates the DCHRA because it subjects Voucher holders to discrimination on the basis of their source of income, namely their government-subsidized Voucher.

101. 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), (b), and (g)(1).

102. Under the DCHRA it is also

an unlawful discriminatory practice to do any of the acts prohibited in subsection (a) or subsection (b) of this section to a prospective tenant seeking to rent with the assistance of an income-based housing subsidy based on:

(A) prior rental history involving nonpayment or late payment of rent if the nonpayment or late payment of rent occurred during a

period in which the prospective tenant did not have an income-based housing subsidy and if the housing provider could reasonably have known the date of receipt;

(B) Income level (other than whether or not the level is below a threshold as required by local or federal law), a credit score, or the lack of credit score, unless such consideration of a credit score or the lack of credit score is required by federal law; or

(C) Any credit issues that arose during a period in which the prospective tenant did not have an income-based housing subsidy if the housing provider could reasonably have known the date of receipt.

D.C. Code § 2-1402.21(g)(1).

103. Under § 2–1402.68 of the DCHRA, any practice which has the effect or consequence of violating any of the provisions of the DCHRA are also deemed to be unlawful discriminatory practices.

104. Defendant’s refusal to accept Vouchers for rental units at The Rise at Temple Courts, Lotus Square, Solstice, Park Kennedy, Union Heights, and Dock 79 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) and (b).

105. Defendant’s discriminatory conduct has frustrated the ERC’s mission by subjecting Voucher holders to unlawful discrimination—the very conduct the ERC actively seeks to eradicate. Additionally, Defendant’s actions have caused the ERC to divert time and resources from its planned activities. Accordingly, the ERC has been injured by Defendant’s discriminatory conduct and has suffered damages as a result.

106. Defendant’s conduct has the effect or consequence of violating the DCHRA’s protections against source of income discrimination.

107. As a direct and proximate result of Defendant’s conduct, Plaintiff has suffered injuries and monetary damages in an amount to be determined at trial.

108. Defendant's conduct was intentional, willful, and made in reckless disregard of the known rights of others.

COUNT II:

Source of Income Discrimination under the D.C. Human Rights Act, D.C. Code §2-1402.21(a)(5)

109. Plaintiff re-alleges and incorporates by reference the allegations set forth above. It is also unlawful 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).

110. Under § 2-1402.68 of the DCHRA, any practice which has the effect or consequence of violating any of the provisions of the DCHRA are also deemed to be unlawful discriminatory practices.

111. Defendant's statements that Vouchers are not accepted towards payment of rent at The Rise at Temple Courts and Defendant's statements erecting unlawful barriers to the use of Vouchers are an attempt to deter Voucher holders that additionally constitute unlawful discrimination. Defendant's 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).

112. Defendant's conduct has the effect or consequence of violating the DCHRA's protections against source of income discrimination.

COUNT III:

**Trade Practices in Violation of the D.C. Consumer Protection Procedures Act
(On Behalf of the ERC and the General Public)**

113. Plaintiff re-alleges and incorporates by reference the allegations set forth above.

114. The purpose of the DCCPPA is to “assure that a just mechanism exists to remedy all improper trade practices[.]” D.C. Code § 28-3901(b)(1).

115. Under the DCCPPA, it is a violation of law “for any person to engage in an unfair or deceptive trade practice[.]” D.C. Code § 28-3904.

116. “Trade practices that violate other laws . . . fall within the purview of the [DCCPPA].” *Dist. Cablevision Ltd. P’shp v. Bassin*, 828 A.2d 714, 723 (D.C. 2003).

Specifically, a violation of the DCHRA in the context of a consumer transaction is a violation of the DCCPPA. *Dist. of Columbia v. Evolve, LLC*, 2020 D.C. Super. LEXIS 6, *12 (D.C. Super. Ct. Feb. 25, 2020) (granting summary judgment to the plaintiff on a DCCPPA claim upon finding that the defendant violated the provisions prohibiting source of income discrimination in the DCHRA).

117. Under the DCCPPA, a trade practice “means any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services[.]” D.C. Code § 28-3901(a)(6).

118. Trade practices arising in the context of landlord-tenant relations are subject to the law. D.C. Code § 28-3905(k)(6).

119. Under the DCCPPA, an action may be brought by a nonprofit organization “on behalf of itself or any of its members, or on any such behalf and on behalf of the general public.” D.C. Code § 28-3905(k)(1)(C).

120. Plaintiff brings this claim on behalf of itself and on behalf of the general public.

121. Under the DCCPPA, an action may also be brought by a public interest organization “on behalf of the interests of a consumer or a class of consumers . . . seeking relief from the use by any person of a trade practice in violation of a law of the District.” D.C. Code § 28-3905(k)(1)(D)(i).

122. Plaintiff brings this claim on behalf of the interests of a consumer or a class of consumers, seeking relief from the use by Defendant of trade practices in violation of a law of the District.

123. As a public interest non-profit organization, the ERC has standing to bring the DCCPPA claims alleged herein. *See Equal Rights Center v. Adams Investment Group, et al.* Case No. 2022-CA-1582-R(RP) (D.C. Sup. September 1, 2023).

124. Under the DCCPPA, goods and services “means any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, franchises, business opportunities, real estate transactions, and consumer services of all types.” D.C. Code § 28-3901(a)(7).

125. Defendant meets the definition of “merchant” under the DCCPPA as “a person . . . organized or operating for profit . . . who in the ordinary course of business does or would . . . lease (to) . . . either directly or indirectly, consumer goods or services, or a person who

in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice.” D.C. Code § 28-3901(a)(3).

126. Defendant’s refusal to accept Vouchers constitutes an unfair trade practice in the context of a real estate transaction in violation of the DCCPPA.

127. Further, by violating the DCHRA in the context of a consumer transaction, Defendant violated the DCCPPA.

128. Defendant’s unfair trade practices also frustrated ERC’s mission of eliminating housing discrimination, discriminated against ERC members by refusing to accept Vouchers, and forced the ERC to divert its scarce resources to address Defendant’s discriminatory conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment in its favor and grant relief against Defendant Kettler Management as follows:

- a) Enter judgment declaring that Defendant’s acts, policies, practices, and statements of willfully refusing to rent apartment units to Voucher holders constitutes source of income discrimination in violation of the DCHRA, D.C. Code § 2-1402.21;
- b) Enter judgment declaring that Defendant’s acts, policies, practices of willfully refusing to rent apartment units to Voucher holders constitutes source of income in violation of the DCHRA, D.C. Code § 2-1402.21, and is a violation of the DCCPPA § 28-3904;
- c) Enter judgment for appropriate permanent injunctive relief, including an order that:

- i. Defendant abandons its policy or practice of refusing to rent to Voucher holders and take appropriate, nondiscriminatory measures to accept Voucher holders as renters;
 - i. Defendant abandons its policy or practice of denying Voucher applicants' housing based on source of income determinations;
 - ii. Defendant abandons its policy or practice of denying Voucher applicants housing based on an applicant's income level.
 - iii. Defendant abandons its policy or practice of denying Voucher applicants housing based on an applicant's credit score or lack of credit score; and
 - iv. Defendant abandons its policy or practice of considering prior nonpayment, late payment of rent, or any credit issues that arose during a period in which the applicant did not have a Voucher.
 - ii. Defendant takes affirmative steps to educate themselves as to their legal obligations under the DCHRA and engage with DCHA or seek expert advice to understand the administrative process for accepting Vouchers in D.C.;
 - iii. Defendant provides training to their employees and agents, and adequately supervises them to prevent future illegal housing discrimination;
 - iv. Defendant participates in outreach and education efforts to promote the use and acceptance of Vouchers, including but not limited to, compliance testing;
- d) Award ERC monetary damages in an amount to be determined at trial;

- e) Award the ERC reasonable attorneys' fees and costs;
- f) Award the ERC statutory and treble damages pursuant to DCCPPA § 28-3905(k)(2);
- g) Award the ERC punitive damages in an amount to be determined at trial; and
- h) Grant such further relief as the Court deems just and proper.

Dated: September 12, 2023

Respectfully Submitted,

/s/ Matthew K. Handley

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