

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

LONG ISLAND HOUSING SERVICES,
INC.; SUFFOLK INDEPENDENT LIVING
ORGANIZATION, INC.; DOREEN
KERNOZEK, LORI GERARDI, and others
similarly situated,

Plaintiffs,

INDEX NO. Case No. 18-CV-3583-JMA-AYS

**SECOND AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY
TRIAL**

vs.

NPS HOLIDAY SQUARE LLC;
NORTHWOOD VILLAGE, INC.;
BRIGHTWATERS GARDENS, INC.;
LAKESIDE GARDEN APARTMENTS
LLC; SOUTH SHORE GARDENS, LLC;
AND NPS PROPERTY CORP.,

Defendants.

Plaintiffs Long Island Housing Services, Inc., Suffolk Independent Living Organization, Inc., Doreen Kernozek, and Lori Gerardi, by and through their undersigned attorneys, allege as follows:

I. NATURE OF ACTION

1. In open defiance of federal, state and county fair housing laws, the owner and/or manager of at least nine apartment complexes in Suffolk County limits the availability of apartments to African American renters, renters with disabilities, and renters with public sources of income.

2. Plaintiffs seek to end Defendants' discriminatory housing practices and remove the illegal barriers preventing Suffolk County residents from renting Defendants' apartments.

3. Plaintiffs Doreen Kernozek and Lori Gerardi (“named Plaintiffs” or “individual Plaintiffs”), bring their claims on behalf of themselves and a class of all others similarly situated who, due to the discriminatory housing policies and practices of Defendants, have been denied the ability to rent apartments at Defendants’ properties.

II. INTRODUCTION

4. This action is brought by a fair housing organization, a disability rights organization, and two individuals with disabilities. Plaintiff Long Island Housing Services, Inc., the fair housing organization, conducted extensive testing at four properties owned and/or operated by Defendant NPS Property Corp., and uncovered egregious intentional discrimination towards African Americans, individuals with disabilities, and those on public sources of income.

5. Separately, Plaintiff Suffolk Independent Living Organization, Inc., the disability rights organization, attempted to obtain housing for individuals with disabilities at one of the apartments owned and/or operated by Defendant NPS Property Corp., but was turned away because the prospective renters had disabilities and participated in housing voucher programs dedicated to serving persons with disabilities.

6. Separately, Plaintiff Doreen Kernozek, a woman with disabilities living in Suffolk County, New York, attempted to rent an apartment at a complex owned and/or operated by Defendant NPS Property Corp. The property’s representative not only turned Ms. Kernozek away because of her disability, but also made disparaging remarks about people with disabilities, and stated that an effort was being made to limit the number of tenants in the apartment who had disabilities.

7. Separately, Plaintiff Lori Gerardi, a woman with disabilities living in Suffolk County, New York, attempted to rent an apartment at South Shore Gardens, a complex owned and/or operated by Defendant NPS Property Corp. The apartment complex’s representative told

Ms. Gerardi that she could not rent the apartment because Ms. Gerardi was using a housing subsidy for individuals with disabilities, and the complex would not accept such subsidies. Ms. Gerardi subsequently attempted to apply again for this complex and was told that her income was insufficient to rent the apartment, despite the fact that her income was over three times the amount that the housing subsidy required her to pay towards the rent (*i.e.*, her personal contribution towards the rent).

8. All four plaintiffs witnessed nearly-identical discriminatory behavior at the properties owned and/or operated by Defendant NPS Property Corp. Specifically, NPS Property Corp. maintains a policy of using a quota system to limit the number of apartments it will make available to individuals with disabilities. The facts uncovered by the professional testers at Long Island Housing Services, Inc. are consistent with the discriminatory treatment Plaintiffs Doreen Kernozek and Lori Gerardi experienced, as well as the discriminatory behavior witnessed by Suffolk Independent Living Organization, Inc.

9. By these and other discriminatory and illegal acts, Defendants have violated Plaintiffs' rights under the Fair Housing Act, 42 U.S.C. § 3604 *et seq.*, the New York State Human Rights Law, N.Y. Exec. Law § 296(5), and the Suffolk County Human Rights Law, Suffolk County Code § 528 *et seq.*

III. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over Plaintiffs' federal Fair Housing Act claims pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 3613. This Court has supplemental jurisdiction over Plaintiffs' New York State Human Rights Law and Suffolk County Human Rights Law claims pursuant to 28 U.S.C. § 1367.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants are located in and conduct business in this District, the events or omissions giving

rise to the claims herein occurred in this District, and the properties at issue are situated in this District.

IV. PARTIES

Plaintiffs

12. Plaintiff **Long Island Housing Services, Inc. (“LIHS”)** is a non-profit fair housing organization serving Long Island, New York and is organized under the laws of New York. Its principal place of business is in Bohemia, Suffolk County, New York.

13. LIHS’s mission is to (a) promote equal housing opportunity and racial and economic integration, and (b) reduce and eliminate housing discrimination. This mission includes ensuring that people of all races and ages, as well as those with disabilities, have equal access to housing in Long Island. LIHS pursues these goals by providing counseling services to individuals and families about fair housing, fair lending, landlord/tenant rights, homelessness prevention, mortgage default, mortgage rescue scams, pre-purchase and rental strategies, and government assisted housing programs. LIHS also provides foreclosure prevention counseling and legal services.

14. LIHS promotes compliance with fair housing laws by (a) conducting fair housing investigations, including testing, gathering evidence, and assessing claims; (b) assisting victims of discrimination to file administrative complaints or judicial complaints and making referrals for legal representation; (c) providing education and outreach for both housing consumers and industry-related providers; and (d) serving as a clearinghouse for housing-related information.

15. LIHS employs individuals as “testers”: persons who pose as prospective renters or homebuyers for the purpose of obtaining information about the conduct of landlords, real estate agents, and property owners to determine whether illegal housing discrimination is taking place.

16. During all times relevant to this Complaint, the testers described below were employed by LIHS. Prior to conducting the tests described below, they received training from LIHS, which included instructions on conducting tests, preparing tester report forms, and using concealed digital audio recorders during tests.

17. LIHS has expended time and resources to monitor and counteract the effects of Defendants' discriminatory conduct, including but not limited to conducting fair housing testing at Defendants' properties and investigating the circumstances under which Defendants deny housing opportunities on the basis of race, disability, or lawful source of income.

18. Defendants' actions have frustrated LIHS's mission by interfering with the rights of people in Suffolk County to equal housing opportunity and racially integrated housing. LIHS's mission has been directly harmed by Defendants' continued efforts to unlawfully prevent African Americans, individuals with disabilities, and those individuals on housing assistance programs from residing at Defendants' properties.

19. Plaintiff **Suffolk Independent Living Organization, Inc. ("SILO")** is a non-profit disability rights organization serving Suffolk County, New York and is organized under the laws of New York. Its principal place of business is in Holtsville, Suffolk County, New York.

20. SILO's mission is to provide programs and services to people with disabilities in Suffolk County, and to ensure that people with disabilities have the same rights and responsibilities as their peers who do not have disabilities. SILO provides comprehensive services to individuals with disabilities in communities throughout Suffolk County. As an advocacy agency, SILO works with individuals, businesses, and other government and private agencies to promote equal access and equal housing opportunities for people with all disabilities.

21. SILO provides a multitude of services to individuals with disabilities, including (a) addressing benefit needs associated with independent living options, such as housing voucher programs to assist individuals with disabilities; (b) consultation on support services for those transitioning into independent living; (c) providing housing advocacy for those on governmental housing programs because of their disabilities; (d) finding available and affordable housing opportunities for persons with disabilities.

22. SILO has expended time and resources addressing Defendants' discriminatory conduct, including but not limited to attempting to place individuals with disabilities into Defendants' properties, even though Defendants had no intention of permitting these individuals to live at these properties because of their disabilities. SILO must therefore spend more money and resources in order to place these individuals with disabilities into other properties where they are not turned away because of their disabilities.

23. Defendants' actions have frustrated SILO's mission by interfering with the rights of people with disabilities in Suffolk County to equal housing opportunity. SILO's mission has been directly harmed by Defendants' continued efforts to unlawfully prevent individuals with disabilities, and those individuals using housing assistance programs dedicated to serving persons with disabilities, from residing at Defendants' properties.

24. Plaintiff **Doreen Kernozek** is a 60-year-old woman with disabilities who resides in Suffolk County, New York. Ms. Kernozek suffers from severe osteoporosis and high blood pressure, as well as other physical health issues. Since early 2016, Ms. Kernozek has used a subsidy under the Nursing Home Transition and Diversion Medicaid Waiver ("NHTD") program to rent an apartment.

25. Plaintiff **Lori Gerardi** is a 54-year-old woman with disabilities who resides in Suffolk County, New York. Ms. Gerardi suffers from osteoarthritis, vascular disease, epilepsy, cancer, and ruptured spinal discs. Since around 2005, Ms. Gerardi has used a housing subsidy under the Mainstream Program, a subset of the federal Housing Choice Voucher Program that is provided to individuals with disabilities, to rent an apartment.

Defendants

26. Defendant **NPS Holiday Square LLC** is a New York corporation with its principal place of business located within the Eastern District of New York, at 789 North Monroe Avenue, Lindenhurst, Suffolk County, New York. Upon information and belief, NPS Holiday Square LLC is the owner of Holiday Square, a residential rental building with 144 units located at 10 Muncy Avenue, West Babylon, Suffolk County, New York, during all times relevant to this complaint. Holiday Square is owned and/or managed by Defendant NPS Property Corp.

27. Defendant **Northwood Village, Inc.**, is a New York corporation with its principal place of business located within the Eastern District of New York, at 789 North Monroe Avenue, Lindenhurst, Suffolk County, New York. Upon information and belief, Northwood Village, Inc., is the owner of Northwood Village, a residential rental building with 65 units located at 167 Weeks Road, North Babylon, Suffolk County, New York, during all times relevant to this complaint. Northwood Village is owned and/or managed by Defendant NPS Property Corp.

28. Defendant **Brightwaters Gardens, Inc.**, is a New York corporation with its principal place of business located within the Eastern District of New York, at 789 North Monroe Avenue, Lindenhurst, Suffolk County, New York. Upon information and belief, Brightwaters Gardens, Inc., is the owner of Brightwaters Gardens, a residential rental building

with 24 units located at 9-15 Hiawatha Drive, Brightwaters, Suffolk County, New York, during all times relevant to this complaint. Brightwaters Gardens is owned and/or managed by Defendant NPS Property Corp.

29. Defendant **Lakeside Garden Apartments LLC** is a New York corporation with its principal place of business located within the Eastern District of New York, at 789 North Monroe Avenue, Lindenhurst, Suffolk County, New York. Upon information and belief, Lakeside Garden Apartments LLC is the owner of Lakeside Garden Apartments, a residential rental building with 55 units located at 25 Cedar Court, Copiague, Suffolk County, New York, during all times relevant to this complaint. Lakeside Garden Apartments is owned and/or managed by Defendant NPS Property Corp.

30. Defendant **South Shore Gardens, LLC**, is a New York corporation with its principal place of business located within the Eastern District of New York, at 789 North Monroe Avenue, Lindenhurst, Suffolk County, New York. Upon information and belief, South Shore Gardens, LLC is the owner of South Shore Gardens, also known as South Shore Commons, a residential rental building located at 204 Farmingdale Road, West Babylon, Suffolk County, New York, during all times relevant to this complaint. South Shore Gardens is owned and/or managed by Defendant NPS Property Corp.

31. Defendant **NPS Property Corp.** is a New York corporation with its principal place of business located within the Eastern District of New York, at 789 North Monroe Avenue, Lindenhurst, Suffolk County, New York. Upon information and belief, NPS Property Corp. is the owner of NPS Holiday Square LLC, Northwood Village, Inc., Brightwaters Gardens, Inc., South Shore Gardens, LLC, and Lakeside Garden Apartments LLC, during all times relevant to this complaint.

32. NPS Property Corp. and/or Northwood Village, Inc. employed a man named “Agim” as the superintendent of the Northwood Village apartment complex in at least April through October 2016. Agim has authority to show apartments at Northwood Village to prospective tenants and to provide rental application information.

33. NPS Property Corp. and/or Lakeside Garden Apartments LLC employed a man named “Shaban” as the superintendent of the Lakeside Garden apartment complex in at least September through October 2016. Shaban has authority to show apartments at Lakeside Garden to prospective tenants and to provide rental application information.

34. NPS Property Corp. and/or NPS Holiday Square LLC employed a woman named “Linda” in at least October through November 2016, who had authority to provide information regarding apartments at the Holiday Square apartment complex to prospective tenants and to provide rental application information.

35. NPS Property Corp. and/or NPS Holiday Square LLC employed a woman named “Deirdre” in at least May through September 2017, who had authority to provide information regarding apartments at the Holiday Square apartment complex to prospective tenants and to provide rental application information.

V. FACTS

36. Defendant NPS Property Corp. manages at least nine residential apartment buildings in Suffolk County, New York, including the Holiday Square, Northwood Village, Brightwaters Gardens, South Shore Gardens and Lakeside Garden Apartments complexes. NPS Property Corp. employs a staff of rental agents, property managers and superintendents who, among other duties, provide information to prospective tenants regarding vacant or soon-to-be available apartments owned by NPS Property Corp.

A. LIHS Uncovers Race Discrimination at Northwood Village and Brightwaters Gardens

37. Northwood Village is a residential apartment building with 65 units in North Babylon, Suffolk County, New York. Brightwaters Gardens is a residential apartment building with 24 units in Brightwaters, Suffolk County, New York. Both Northwood Village and Brightwaters Gardens are owned and managed by Defendant NPS Property Corp.

38. Due to Plaintiff LIHS's concern with eliminating discriminatory practices related to racial segregation and race discrimination and the impact of such practices on prospective home seekers and Long Island communities, LIHS periodically monitors housing industry practices for race discrimination. In March 2016, LIHS began testing the Northwood Village apartments to determine whether African Americans seeking housing at Northwood Village were being treated any differently than White prospective renters.

1. Testers A and B

39. Protected Tester A. On April 19, 2016, Protected Tester A, an African American female, went to Northwood Village to inquire about a one-bedroom apartment. She could not locate a rental office and called the telephone number on the sign posted in the complex. The number went directly to a recording stating that the number was not in service. The recording stated that various leasing agents could be reached, but none of the information provided was for Northwood Village.

40. Protected Tester A encountered an individual believed to be a tenant and was told to talk to the superintendent who lived in the apartment next to the laundry room. Protected Tester A rang the doorbell of the superintendent's apartment. A Caucasian woman spoke to Protected Tester A through the upstairs window and informed Protected Tester A that the superintendent was unavailable, and began giving Protected Tester A the superintendent's cell

phone number. While Protected Tester A was writing the number down, a man who identified himself as the superintendent spoke to Protected Tester A. He told Protected Tester A his name was “Agim.” Protected Tester A asked if there were any available one-bedroom units in the complex, and he informed her there were none. When Protected Tester A asked for an application, Agim abruptly told her that he does not give out applications if there are no apartments available.

41. Comparison Tester B. On April 20, 2016—one day after Protected Tester A’s visit—Comparison Tester B, a White female, went to Northwood Village to inquire about a one-bedroom apartment. Upon entering the complex, she approached an open laundry room and found the superintendent, Agim. She asked him whether there was a one-bedroom apartment available and he replied in the negative, but immediately, and without prompting, began telling her about an available studio apartment in a complex in Brightwaters. Comparison Tester B asked if there was a number she could call to inquire about the apartment, and Agim looked up a telephone number from his cell phone and provided it to Comparison Tester B.

42. That same day, April 20, 2016, Comparison Tester B called the leasing agent regarding the Brightwaters apartment. The leasing agent, named “Linda,” told Comparison Tester B she should make the appointment to see the apartment with Agim, and gave her Agim’s telephone number. Comparison Tester B asked if there were any other available units, and Linda told her about an apartment located in West Babylon, as well as another apartment in Copiague. Linda confirmed that Comparison Tester B was speaking to the office of Defendant NPS Property Corp.

43. Immediately following the conversation with the leasing agent, Comparison Tester B called Agim to set up an appointment to see the Brightwaters Gardens apartment. Agim

informed her that she could see the apartment that day. Agim texted Comparison Tester B the address of the Brightwaters Gardens apartment complex.

44. Comparison Tester B and Agim met at the Brightwaters Gardens complex, and Agim showed her the apartment, describing in detail the advantages of the apartment. He answered all of Comparison Tester B's questions, provided her with information about the application process, and retrieved an application from his car for her to fill out.

45. Treatment of Protected Tester A vs. Comparison Tester B. Agim was unresponsive to Protected Tester A, refusing to provide her an application or additional information regarding the Brightwaters Gardens apartment, or to refer Protected Tester A to the leasing agent who could provide information on several other available apartments.

46. In contrast Agim without hesitation informed Comparison Tester B about the Brightwaters Gardens apartment and provided the number of the leasing agent for Defendant NPS Property Corp.

2. Testers C and D

47. Comparison Tester C. On September 1, 2016, Comparison Tester C, a White female, went to Northwood Village to inquire about a one-bedroom apartment. Upon arrival at the property, Comparison Tester C was directed to superintendent Agim's apartment.

48. Upon arriving at Agim's apartment, Agim informed Comparison Tester C that there would be a one-bedroom apartment available in a couple of weeks, and he proceeded to give her information about the one-bedroom apartment. Agim then volunteered to show Comparison Tester C a two-bedroom apartment to give her a sense of the space of the one-bedroom apartment. Agim gave Comparison Tester C a tour of the two-bedroom apartment, describing in detail various renovations and how the apartment compared to the one-bedroom unit. Without prompting, Agim told Comparison Tester C about an available two-bedroom

apartment in the Brightwaters Gardens complex. Comparison Tester C asked if she should call the number posted at the front of the apartment complex. Agim said no, and provided Comparison Tester C his cell phone number to call regarding the Brightwaters apartment.

49. Comparison Tester C called Agim later that day to inquire about the two-bedroom apartment in Brightwaters. Agim stated that the rent for the two-bedroom apartment in Brightwaters cost less than the one-bedroom in Northwood Village because the two-bedroom apartment was smaller. Agim also stated that the Lakeside Garden complex in Copiague was very nice. Agim then handed his cell phone to the person who was with him, a man named “Shaban” (the superintendent at the Lakeside Garden apartment complex, *see* ¶ 60, below). Shaban told Comparison Tester B about the Lakeside Garden apartments, describing the complex’s renovations, convenient location, and amenities. When Comparison Tester C asked about the amount of the rent, Shaban asked whether she was renting under Section 8. When she answered no, Shaban stated the amount of the rent. Shaban then provided his cell phone number.

50. Protected Tester D. On September 2, 2016—a day after Comparison Tester C’s visit—Protected Tester D, an African American female, arrived at Northwood Village to inquire about the availability of a one-bedroom apartment. Protected Tester D asked a tenant regarding the location of the superintendent and was directed towards an apartment. Protected Tester D found Agim at that apartment and asked him about an available one-bedroom apartment in the complex. Agim replied that nothing was available. Protected Tester D then inquired whether any other apartments were available, but Agim said no and told her to call the office number on the sign. When Protected Tester D asked for a card or a telephone number, Agim repeated his earlier statement about calling the office number on the sign, which was not functional.

51. Treatment of Comparison Tester C vs. Protected Tester D. Agim, without hesitation, provided Comparison Tester C with information regarding a one-bedroom apartment at Northwood Village that would be available in a couple of weeks, and then showed Comparison Tester C a two-bedroom apartment, even though it was not the apartment she had been looking for. Agim also provided unsolicited information regarding a two-bedroom apartment in Brightwaters Gardens.

52. In contrast, Agim did not mention any available apartments to Protected Tester D, and was not forthcoming with any additional information. Agim intentionally misrepresented the availability of housing when he told Protected Tester D that no apartments were available when, given what he told Comparison Tester C, there were in fact apartments becoming available at Northwood Village and currently available in Lakeside Garden and Brightwaters Gardens.

3. Testers E and F

53. Comparison Tester E. On October 5, 2016, Comparison Tester E, a White female, visited Northwood Village to inquire about an available one-bedroom apartment. Comparison Tester E found Agim, who told her that the apartment had been rented the day before. Agim seemed sympathetic towards Comparison Tester E for not inquiring about the apartment sooner. Comparison Tester E then asked about a two-bedroom apartment in Brightwaters, and Agim replied that it would be available in about 40-45 days. Agim also stated that there would be a two-bedroom apartment available at Northwood Village in a couple of weeks. When Comparison Tester E asked Agim for his cell phone number, he willingly provided it.

54. Protected Tester F. On October 6, 2016—the day after Comparison Tester E's visit—Protected Tester F, an African American female, went to Northwood Village to ask about

a one-bedroom apartment. Upon arrival, Protected Tester F saw an open apartment door next to the laundry room and saw Agim sitting at the top of the stairs. She asked Agim to direct her toward the leasing office, and Agim responded that they did not have any available apartments. Protected Tester F told Agim she was looking for either a one- or two-bedroom apartment, or any other available apartments in other locations. Agim did not answer her questions and stated she should call the office number. Protected Tester F requested a business card, and Agim again told her to call the office; he did not offer his cell phone number.

55. On the same day, October 6, 2016, Protected Tester F called the office number provided by Agim and spoke with a woman named “Deirdre.” Protected Tester F asked whether there was an apartment available at Northwood Village, and Deirdre responded that Protected Tester F should check with superintendent Agim because there might be a one-bedroom available. Deirdre gave Protected Tester F Agim’s cell phone number so that she could inquire into the availability of apartments.

56. Treatment of Comparison Tester E vs. Protected Tester F. Agim provided information to Comparison Tester E regarding two soon-to-be-available apartments at Northwood Village and Brightwaters Gardens. In direct contrast, Agim did not volunteer any information regarding the upcoming availability of any apartments to Protected Tester F, but instead merely stated that nothing was available. When Protected Tester F inquired about other possible locations for a one- or two-bedroom apartment, Agim was unresponsive, and misrepresented the availability of housing when he failed to disclose the information he provided Comparison Tester E about apartments at Northwood Village and Brightwaters Gardens. In addition, Agim did not offer his cell phone number to Protected Tester F, even though she had asked him for his contact information.

57. In sum, Protected Testers A, D and F were provided false or misleading information regarding the availability of housing. Protected Testers A, D and F were similarly-situated to Comparison Testers B, C and E in their desire and willingness to rent an apartment at Northwood Village, except for the fact that the Protected Testers are African American and the Comparison Testers are White.

B. LIHS Uncovers Race Discrimination at Lakeside Garden Apartments

58. Lakeside Garden Apartments is a residential apartment building with 55 units in Copiague, Suffolk County, New York. Lakeside Garden Apartments is owned and managed by Defendant NPS Property Corp.

59. Because Agim, the superintendent at the Northwood Village apartments, steered a White tester to Lakeside Garden Apartments, LIHS began testing at Lakeside Garden Apartments in October 2016 to determine whether African Americans seeking housing at Lakeside Garden Apartments were being treated differently than White prospective renters.

60. Comparison Tester A. On October 26, 2016, Comparison Tester A, a White male, went to Lakeside Garden Apartments to inquire about renting an apartment. He met with a man named “Shaban” who introduced himself as the superintendent of the complex. Comparison Tester A asked Shaban about any available apartments, and Shaban immediately informed Comparison Tester A about a one-bedroom apartment at the complex. They immediately went to view the unit together. While doing so, Shaban asked Comparison Tester A whether he was in the Section 8 housing subsidy program, to which Comparison Tester A responded in the negative.

61. As soon as they entered the apartment, Shaban described the apartment in detail to Comparison Tester A without any prompting. Upon request, Shaban informed Comparison

Tester A about the rental price and the application process. Shaban stated that, with a good enough credit score, he would accept a deposit of *one month's security and one month's rent*.

62. After taking a tour of the apartment, Shaban escorted Comparison Tester A to the clubhouse, describing the clubhouse lounge and highlighting its positive attributes. Shaban was talkative and continuously described the various amenities that the complex offered to its residents.

63. While Comparison Tester A was leaving the complex, Shaban stated that the apartment would be taken quickly and encouraged Comparison Tester A to submit an application as soon as possible so that Shaban could hold it for him. Shaban then went back to his apartment and provided Comparison Tester A with an application. Shaban voluntarily gave Comparison Tester A his cell phone number and encouraged Comparison Tester A to call him with any questions or to make an appointment for any future apartment tours.

64. Protected Tester B. On October 26, 2016—the same day as Comparison Tester A's visit—Protected Tester B, an African American female, also went to Lakeside Garden to inquire about any available apartments. Protected Tester B knocked on a screen door which was opened by Shaban's wife. She gave Protected Tester B Shaban's phone number, and Protected Tester B went back to her car, called Shaban, confirmed that a one-bedroom apartment was available, and arranged to meet Shaban at the apartment later that day.

65. Shaban arrived at the complex at the arranged time and proceeded to look in the passenger side window of Protected Tester B's vehicle. When Protected Tester B introduced herself as the caller, Shaban did not respond but started to walk around the car and peer into the window of the passenger seat. He then proceeded to walk away, and Protected Tester B followed Shaban down the sidewalk and into the available one-bedroom apartment.

66. Shaban did not describe the apartment. He did not introduce himself, and only spoke when asked questions about the apartment. Shaban informed Protected Tester B that the deposit would require *two month's security and one month's rent* (while Comparison Tester A was told he only needed one month's security, *see* ¶ 61 above).

67. Shaban did not volunteer any information to Protected Tester B; Protected Tester B was the only one who made comments regarding the apartment and the complex. When Protected Tester B inquired about a way to reach him directly with a card or a phone number, Shaban did not provide her with his phone number or any further information. When they were leaving the apartment, Shaban stated that the apartment had a pending application.

68. Comparison Tester C. On October 27, 2016—the day after Comparison Tester A's and Protected Tester B's visits—Comparison Tester C, a White male, called Shaban regarding the availability of an apartment at Lakeside Garden. Comparison Tester C spoke directly with Shaban and was informed that there was an available apartment and that Comparison Tester C should come view the apartment as soon as possible. When Comparison Tester C repeatedly asked questions about the availability of the apartment, Shaban clearly stated that the apartment was available now and that Comparison Tester C should come see the apartment at any time during the week. Approximately 10 minutes after the first call to Shaban, Comparison Tester C called him again to inquire about the details of the rental price. Shaban did not state that there was a pending application for the apartment.

69. Treatment of Comparison Tester A vs. Protected Tester B. While Shaban volunteered unsolicited information to Comparison Tester A, he did not volunteer any information to Protected Tester B. Nor did Shaban inform Protected Tester B of the possibility

of a smaller security deposit, information he provided without prompting to Comparison Tester A.

70. Furthermore, Shaban told Protected Tester B that the unit may be unavailable because there was a pending application. However, when Protected Tester B had spoken with Shaban on the phone before meeting in person and asked if the apartment was available, Shaban had not mentioned the pending application. Only after seeing Protected Tester B did Shaban say anything about the apartment becoming unavailable. And in fact, the day after Comparison Tester A's and Protected Tester B's site visits at Lakeside Garden, Comparison Tester C confirmed that the unit was available for rent.

71. Both testers were similarly-situated in their desire and willingness to rent an apartment at Lakeside Garden, except for the fact that Comparison Tester A is White and Protected Tester B is African American.

C. LIHS Uncovers Source-of-Income Discrimination at Holiday Square

72. Holiday Square is a residential apartment building with 144 units in West Babylon, Suffolk County, New York. Holiday Square is owned and managed by Defendant NPS Property Corp.

73. In 2016, an employee of Plaintiff LIHS was informed that Holiday Square was discriminating against prospective renters based on source of income. In October 2016, LIHS began testing the Holiday Square apartments to determine whether those seeking housing who used public sources of income were being treated any differently than those not using such programs.

74. Protected Tester A. On October 27, 2016, Protected Tester A called Holiday Square apartments. Protected Tester A spoke with rental agent "Linda" to inquire about an apartment for her mother. Linda informed Protected Tester A that units were available at

Holiday Square, and that Protected Tester A's mother would need \$1,324 for the security deposit. Protected Tester A informed Linda that she would need to go to the Suffolk County Department of Social Services ("DSS") to obtain the security deposit as a "one-shot deal"—a one-time grant issued by DSS to assist low-income persons with the cost associated with a rental security deposit fee. Linda informed Protected Tester A that Holiday Square would not accept the "one-shot deal" for a security deposit.

75. Protected Tester B. On November 3, 2016, Protected Tester B called Holiday Square and spoke with Linda about renting an apartment. Protected Tester B explained that she would need to move by mid-December 2016. Protected Tester B volunteered that she had a Section 8 voucher, and also that she had been told by the Community Development Corporation of Long Island ("CDC") that DSS would pay her security deposit (the "one-shot deal"). At that point, Linda interrupted Protected Tester B to say that there was a hold on renting to any Section 8 voucher holders while the property awaited a building inspection. Linda stated that she did not know if anything would become available by mid-December, but that Protected Tester B would not be able to move in at that time because the building inspection would not take place until after mid-December.

76. Linda suggested looking for an apartment elsewhere because Holiday Square could not process rental applications from Section 8 voucher holders, but said she did not know of any other properties that would accept Section 8 payments. Linda stated that the problem was the amount of the Section 8 voucher compared to the fair market value of the apartment. Protected Tester B recited the voucher amount, which was more than the rent for a unit at Holiday Square (*see* Comparison Tester C, ¶ 79, below).

77. Protected Tester B was not directed to contact Defendant NPS Property Corp. or directed to any other complexes owned by NPS Property Corp. such as Lakeside Garden, Northwood Village or any of the nine residential properties owned by NPS Property Corp.

78. Comparison Tester C. On November 15, 2016, Comparison Tester C called Holiday Square and spoke with Linda. Comparison Tester C was not using a “one-shot deal” or a Section 8 voucher. Like Protected Tester B, Comparison Tester C stated that she was looking to move by mid-December. Linda told Comparison Tester C that she had just received some notices from people who were moving out of other complexes and that there would be units available in January 2017.

79. Linda told Comparison Tester C that the rent for an upstairs apartment at Holiday Square was \$1,324, and \$1,424 for a ground-floor unit. Linda invited Comparison Tester C to come to the complex to see a model apartment, and described the application process and requirements.

80. Linda did not say anything to Comparison Tester C about a building inspection or rental permit. In fact, Plaintiff LIHS contacted the Town of Babylon Department of Planning and Development, and was informed that no one in that department would have told Defendant NPS Property Corp. that they could not rent to a person with a Section 8 voucher at Holiday Square during the course of an inspection and renewal of a rental permit.

81. Thus, Linda provided false information to Protected Testers A and B regarding the availability of apartments at Holiday Square, both by stating that Holiday Square could not rent to voucher holders during the rental permit renewal process, and that no other apartments were available.

D. Plaintiff Doreen Kernozek Is Denied Housing at Holiday Square Because of Her Disability and Source of Income

82. Plaintiff Doreen Kernozek is a resident of Suffolk County who has disabilities and participates in the Nursing Home Transition and Diversion Medicaid Waiver (“NHTD”) program to rent an apartment. In November 2016, Ms. Kernozek visited the Holiday Square apartment complex to inquire about an apartment. Ms. Kernozek was accompanied by a service coordinator who, through the SILO network of service providers, was helping Ms. Kernozek obtain an apartment. Ms. Kernozek has a number of debilitating health issues, but does not immediately appear to have any physical disabilities. After being shown the apartment by a Holiday Square rental agent, Ms. Kernozek and her service coordinator went to the rental office to fill out an application. The rental agent appeared eager to rent the apartment to Ms. Kernozek.

83. While filling out the application, and before the rental agent was aware that Ms. Kernozek was a person with disabilities, the rental agent stated that tenants at Holiday Square with disabilities “bring their own set of problems” to the complex, and stated that efforts were being made to limit the number of individuals with disabilities living there.

84. The rental agent then looked at Ms. Kernozek’s application and realized that Ms. Kernozek was a person with disabilities and using a NHTD housing voucher. The rental agent’s attitude immediately changed, and she stated that the voucher would not be enough to pay the rent on the apartment. In fact, Ms. Kernozek’s voucher, along with her income, was sufficient to pay the rent. The next day, Holiday Square contacted Ms. Kernozek’s service coordinator to tell her Ms. Kernozek was not approved for the apartment.

85. Ms. Kernozek was deeply affected by the treatment she experienced at Holiday Square due to her disability. Ms. Kernozek was unable to find and move into a new apartment

for three months after the incident at Holiday Square, and during that time remained in housing that had significant obstacles to her mobility.

86. In its Answer to Plaintiffs' Initial Complaint, Defendant Holiday Square stated that Ms. Kernozek's application "was declined because her income, even with a voucher, was insufficient" to rent the apartment. Dkt. 23, ¶ 30.

87. Defendants maintain a policy at their apartment complexes whereby an applicant must have an income of double the full posted rent in order to qualify as having sufficient income to rent any of Defendants' apartments. This policy is applied without regard to any housing subsidies an applicant may have. *See infra* at ¶¶ 105-06.

88. The rent for the apartment Ms. Kernozek sought was listed at \$1,324 per month. Under Defendants' policy—that the applicant must have an income of two times the posted rent in order to qualify for the apartment—Ms. Kernozek would have needed an income of \$2,648 per month ($\$1,324 \times 2$) to qualify for the apartment.

89. Ms. Kernozek's income comes from social security, the sum total of which was \$1,119 per month. Her NHTD subsidy would have paid for the entire rent, except for \$172, which Ms. Kernozek was required to contribute from her own income. Ms. Kernozek's income was therefore more than six times the amount she would have been required to contribute towards the rent.

90. In addition, the application Ms. Kernozek filled out states that the apartment complex could reject any applicant whose weekly income does not equal the monthly rent for the apartment sought (*i.e.*, if the applicant's monthly income is not over four times the rent).

91. This statement on the application was made for the purpose, and had the effect, of serving as an obstacle for applicants who use housing subsidies from applying to live at Defendants' properties.

E. LIHS Uncovers Disability Discrimination at Holiday Square

92. In early 2017, SILO contacted LIHS to assist in addressing issues involving Holiday Square's treatment of renters with disabilities. Holiday Square had been ticketing vehicles of the home health aides who parked at the complex to assist individuals with disabilities living there. SILO had also received complaints that renters with disabilities were having difficulty renewing their leases. LIHS subsequently received complaints that Holiday Square had refused to accept applications from prospective tenants with disabilities, explaining that the complex had "reached its quota" on accepting such applications.

93. In response, LIHS initiated testing at Holiday Square in May 2017 to determine whether people with disabilities seeking housing at Holiday Square were being treated differently than individuals without disabilities.

94. Protected Tester A. On May 11, 2017, Protected Tester A called Holiday Square and spoke to a representative named "Deirdre" about renting an apartment. Deidre informed Protected Tester A that apartments were available. Protected Tester A then informed Deidre that the apartment would be for his mother who would be transitioning from a nursing home. Deidre asked if Protected Tester A's mother was on any programs, to which Protected Tester A responded that his mother was on a waiver program for head injury and nursing home transition. Deidre responded that she was familiar with the program, and stated that Holiday Square would not accept an application from Protected Tester A's mother because they had "met their quota" for such programs.

95. Comparison Tester B. On May 12, 2017—the day after Protected Tester A called Holiday Square—Comparison Tester B called Holiday Square to inquire about renting an apartment. Comparison Tester B spoke with Deidre, and was told that units were available. Comparison Tester B stated that he was searching on behalf of an uncle. Comparison Tester B did not describe his uncle as having disabilities or using any housing voucher programs for individuals with disabilities. Deidre told Comparison Tester B about available apartments at Holiday Square and South Shore Gardens (another NPS Property Corp. apartment complex). Comparison Tester B then made an appointment to meet with Deidre.

96. Thus, Deidre, acting on behalf of and with direction from NPS Property Corp., stated that Holiday Square has a “quota” on the number of tenants it will accept who have disabilities and who rely on government assistance programs dedicated to serving persons with disabilities. This quota system was undertaken with an intent to discriminate and had an adverse effect in individuals with disabilities.

F. SILO Attempts to Obtain Housing at Holiday Square for Individuals with Disabilities

97. Plaintiff SILO is contracted to administer grants for the New York State Education Department, the New York State Office for the Aging, and the New York State Department of Health. For the New York State Department of Health, SILO provides oversight and supervision through its Regional Resource and Development Center (“RRDC”) for two waiver services: the Nursing Home Transition and Diversion Medicaid Waiver (“NHTD”), and the Traumatic Brain Injury Waiver (“TBI”). SILO also subcontracts with the New York Association for Independent Living (“NYAIL”) to administer the Olmsted Housing Subsidy (“OHS”) in the Long Island Region. Under these programs, SILO is responsible for identifying suitable rental housing for individuals with disabilities, and to assist those individuals through

the rental application process. In fulfilling this obligation, SILO saves the State of New York millions of dollars each year: these individuals are able to move into private housing with the assistance of various subsidy programs, which is far less expensive for the state than having them remain in state-run facilities.

98. In or around July 2017, the SILO employee in charge of finding housing for individuals with disabilities on the OHS program contacted Holiday Square to inquire about the availability of units. She spoke with an individual named “Deirdre,” and was informed that she would need to call back in September or October because the apartment complex had “reached its quota” for admitting tenants who rely on public assistance dedicated to serving persons with disabilities.

99. Around one month after making this call, the same SILO employee called Holiday Square to inform their office that they had an obligation under Suffolk County law to accept applicants regardless of their participation in any housing voucher programs. The representative of Holiday Square responded that they had no available apartments.

100. SILO seeks housing for approximately 60 individuals through the OHS program at any given time, and Holiday Square’s denial of housing to individuals with disabilities caused SILO to expend additional resources finding properties that would grant housing to people with disabilities.

101. In or around February 2018, another SILO employee tasked with finding housing for individuals with disabilities on the OHS program contacted Holiday Square, this time to inquire about available apartments for a specific individual with a disability who would use the DSS “one-shot deal” for assistance in paying the security deposit. This SILO employee was told

that Holiday Square does not accept applicants who use the “one-shot deal.” SILO is still attempting to locate appropriate housing for this individual.

G. Plaintiff Lori Gerardi Is Denied Housing at South Shore Gardens Because of Her Disability and Source of Income

102. Plaintiff Lori Gerardi is a resident of Suffolk County, has a disability, and has been approved for a Mainstream Program housing subsidy used for individuals with disabilities. Ms. Gerardi has also been approved for a live-in aid, due to her disability.

103. Ms. Gerardi’s income comes from social security and state disability benefits, the sum total of which is \$810 per month. Under the Mainstream Program housing subsidy, Ms. Gerardi is required to pay 30% of her income towards rent, and the subsidy pays the remainder, so long as the rent is less than \$1,585 for a one-bedroom apartment, or \$1,956 for a two-bedroom apartment.

104. In or around September 2017, Ms. Gerardi applied for an apartment at the South Shore Gardens apartment complex and stated that she would be using a subsidy for individuals with disabilities to pay a portion of her rent. Ms. Gerardi was told by a representative of South Shore Gardens that the complex had “reached its quota” on the number of individuals using such subsidies it would allow into the complex.

105. In or around August 2018, Ms. Gerardi applied again for a two-bedroom apartment at South Shore Gardens for her and her live-in aid. The apartment was priced at \$1,750. Ms. Gerardi was told that her income needed to be at least double the posted rental amount in order to be approved for the apartment.

106. Upon hearing this, Ms. Gerardi explained that she had a subsidy through the Mainstream Program that paid for the rent, as long as Ms. Gerardi contributed 30% of her

income. Ms. Gerardi was told that this was irrelevant. Ms. Gerardi was told that her application was denied because her income was not at least double the posted rental amount.

107. Because Ms. Gerardi was required to pay 30% of her income towards rent, her income was over three times the portion of the rent that the subsidy required her to pay.

108. In February 2019, Ms. Gerardi moved into a new apartment, but this apartment is a long distance from the facility where she has received medical treatment for approximately 20 years. The medical transportation service that takes her to this treatment center has informed Ms. Gerardi that, because of the distance, it will no longer provide transportation.

109. In addition, the application Ms. Gerardi filled out for the South Shore Gardens apartment states that the property can reject any applicant if the applicant's weekly income does not equal the monthly rent for the apartment sought (*i.e.*, if the applicant's monthly income is not over four times the rent).

110. This statement on the application was made for the purpose, and had the effect, of serving as an obstacle for applicants who use housing subsidies from applying to live at Defendants' properties.

H. Allegations Regarding Defendants' Policies and Practices

111. All rental housing subsidy programs, including the NHTD program and the Mainstream Program, evaluate whether a tenant is income eligible for the program. The programs then place a limit on both the price of a rental unit the tenant may acquire and the amount of the tenant's share of the rent.

112. Housing Choice Voucher Program holders, including Mainstream Program holders, are typically required to pay no more than 30% of their monthly income towards rent, with the remainder of the rent paid through the subsidy.

113. When enacting the Suffolk County Human Rights Law to ban source-of-income discrimination, the Suffolk County legislature made clear that one of the purposes of the law was to prevent discrimination against persons using the Housing Choice Voucher Program whose income was derived from social security or any other form of federal, state or local public assistance.¹

114. In light of this express purpose, a landlord maintaining a minimum income policy in compliance with Suffolk County law should calculate an applicant's income based on the amount of the applicant's required monthly contribution towards the total rent, rather than the total rent being charged.

115. Defendant NPS Property Corp., which owns and/or operates all Defendant properties, applies a policy in all of its properties whereby an applicant must have an income of double the rent (a "double-income-to-rent" policy) that is based on the total rent being charged for the property, and does not take into account the fact that applicants using housing subsidies are required to pay only a portion of the total rent, with the remainder of the rent paid through the subsidy.

116. The amount of income Defendants demanded each individual Plaintiff have in order to rent an apartment at their properties is in violation of the Suffolk County Human Rights Law.

117. NPS Property Corp. is a large rental management company operating at least nine apartment complexes with hundreds of apartments throughout Suffolk County. It knew or should have known that its implementation of an income-to-rent requirement that is based on the

¹ See Suffolk County Human Rights Law, § 528-6, Definitions, Lawful Source of Income, <https://ecode360.com/14946803>.

total rent being charged, rather than the applicant's monthly contribution towards the total rent, violates the Suffolk County Human Rights Law because it discriminated against individuals based on source of income.

118. Under HUD guidelines, at least 75% of the households admitted into the Housing Choice Voucher Program must have an "extremely low income," which in Suffolk County means an annual income in an amount not to exceed \$24,500 per year.²

119. Upon information and belief, the least expensive rent for an apartment at Holiday Square is around \$1,300 per month. Under Defendant's policy, an individual would need to have an income of \$31,200 per year ($\$1,300/\text{month} \times 2 \times 12/\text{months}$) in order to qualify for Holiday Square's least expensive apartment. Therefore, Defendants' double-income-to-rent policy precludes all individuals with "extremely low income" under HUD guidelines from qualifying for an apartment, even if these individuals have vouchers under which they pay only 30% of their income towards rent.

120. Defendant NPS Property Corp. also knew or should have known that its failure to implement its income-to-rent ratio to account for the portion of the rent paid by the applicant, rather than the entire rent, violates the federal Fair Housing Act, the New York State Human Rights Law, and the Suffolk County Human Rights Law because it discriminates against individuals with disabilities.

121. Many individuals with disabilities, such as Plaintiff Lori Gerardi, earn the majority of their income through Supplemental Security Income ("SSI"), which is designed

² Center on Budget and Policy Priorities, *Policy Basics: The Housing Choice Voucher Program*, <https://www.cbpp.org/research/housing/policy-basics-the-housing-choice-voucher-program> (last updated May 3, 2017); HUD User, *Section 8 Income Limits FY2018*, <https://www.huduser.gov/portal/datasets/il/il18/Section8-IncomeLimits-FY18.pdf> (last visited Mar. 21, 2019).

specifically for individuals who are disabled, blind, or age 65 or older.³ The maximum SSI payment for an individual is \$771 per month, and is \$1,157 for a couple.⁴ Thus, those whose incomes come primarily from SSI, even if they have a voucher requiring payment of only 30% of their income towards rent, will almost always be rejected from apartments such as Holiday Square due to the double-income-to-rent ratio, which requires a minimum income of at least around \$2,600 per month (\$1,300/month for the least expensive apartment X 2).

122. While only 6% of the population of Suffolk County has a disability,⁵ a far greater percentage of those who use housing subsidies, including subsidies designed specifically for those with disabilities such as the NHTD, TBI or OHS housing subsidies, are individuals with disabilities.⁶ Suffolk County has historically dedicated the vast majority of its federal homeless funding to support housing for single adults with disabilities.⁷

³ See Social Security Administration, *Understanding Supplemental Security Income (SSI) Overview – 2019 Edition*, <https://www.ssa.gov/ssi/text-over-ussi.htm> (last visited Mar. 21, 2019).

⁴ Social Security Administration, *SSI Federal Payment Amounts for 2019*, <https://www.ssa.gov/oact/cola/SSI.html> (last visited Mar. 21, 2019).

⁵ United States Census Bureau, *QuickFacts: Suffolk County, New York*, <https://www.census.gov/quickfacts/fact/table/suffolkcountynewyork/DIS010217#DIS010217> (last visited Mar. 21, 2019)

⁶ See, e.g., Center on Budget and Policy Priorities, *Large Majority of Housing Voucher Recipients Work, are Elderly, or Have Disabilities* (Dec. 2, 2011), <https://www.cbpp.org/research/large-majority-of-housing-voucher-recipients-work-are-elderly-or-have-disabilities>; ADA Participatory Action Research Consortium, *Percentage of Residents with a Housing Choice Voucher (Section 8) with a Disability, 2017*, http://centerondisability.org/ada_parcs/utills/indicators.php?id=78 (last visited Mar. 21, 2019).

⁷ Welfare to Work Commission, *Finding Homes for Our Most Vulnerable Neighbors: The Need for Supportive and Affordable Housing in Suffolk County*, A Report to the Suffolk County Legislature at 10 (June 2018), <https://www.scnylegislature.us/DocumentCenter/View/52587/06082018-Welfare-to-Work-Commission-Report-on-the-Need-for-Affordable-and-Supportive-Housing-in-Suffolk-County-PDF>.

123. Defendants knew or should have known that a disproportionate number of the subsidy users that would be excluded by its double-income-to-rent ratio requirement would be persons with disabilities.

124. Defendant NPS Property Corp. representatives have also told applicants using housing subsidies that the properties either do not accept subsidies or have a quota on the number of subsidies the properties will allow. *See supra* ¶¶ 74, 92, 94, 98, 101, 104. This “no subsidies” or “quota on subsidies” policy is implemented with the purpose, and has the effect, of discriminating against individuals based on their source of income and/or disabilities.

125. Plaintiffs allege that Defendants have maintained a pattern or practice of discrimination towards applicants with disabilities and applicants using housing subsidies, and that its rental application policies and practices have had an unlawful disparate impact on applicants with disabilities and applicants using housing subsidies.

I. LIHS Files HUD Complaints

126. On August 8, 2017, LIHS filed a complaint with the Department of Housing and Urban Development (“HUD”) charging Defendants NPS Property Corp. and NPS Holiday Square LLP with disability discrimination.

127. On August 9, 2017, LIHS filed a complaint with the Suffolk County Human Rights Commission, charging Defendants NPS Property Corp. and NPS Holiday Square LLP with source-of-income discrimination.

128. On August 14, 2017, LIHS filed a HUD complaint charging Defendants NPS Property Corp., Northwood Village, Inc., and Brightwaters Gardens, Inc. with race discrimination.

129. Also on August 14, 2017, LIHS filed a HUD complaint charging Defendants NPS Property Corp. and Lakeside Garden Apartments LLC with race discrimination.

130. In September 2017, HUD referred these complaints to the New York State Division of Human Rights.

131. Because LIHS has elected to bring its claims in this Court, it made a formal request to withdraw the complaints on June 7, 2018 from the Suffolk County Human Rights Commission, and on June 8, 2018 from the New York State Division of Human Rights and HUD.

VI. CLASS ALLEGATIONS

132. Plaintiffs Doreen Kernozek and Lori Gerardi bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of:

All individuals who sought but were discouraged from seeking or denied housing at any of Defendants' properties at any time on or after June 20, 2015, and who had a disability or who used a government-approved housing subsidy.

133. Plaintiffs Doreen Kernozek and Lori Gerardi are members of the class they seek to represent.

134. The members of this class are sufficiently numerous that joinder of all members is impracticable.

135. There are questions of law or fact common to the class. Such questions include, without limitation: (a) whether Defendants have a policy or practice of using an income-to-rent ratio that is based on the total rent being charged for an apartment, rather than the applicant's monthly contribution towards the total rent, in determining the eligibility of an applicant for an apartment; and (b) whether such a policy violates federal, state or local law.

136. The claims alleged by the named Plaintiffs are typical of the claims of the class. Each named Plaintiff applied for an apartment owned and/or operated by Defendant NPS Property Corp. and was rejected due to NPS Property Corp.'s unlawful policies and practices.

137. The named Plaintiffs will fairly and adequately represent and protect the interests of the class.

138. Plaintiffs are represented by counsel experienced in class action litigation and will adequately represent the class.

139. The class is properly certifiable because questions of law or fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this case.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION Fair Housing Act, 42 U.S.C. § 3604 *et seq.* LIHS Against All Defendants

**SILO and Doreen Kernozek Against Defendants NPS Property Corp. and NPS
Holiday Square LLC
SILO and Lori Gerardi Against Defendants NPS Property Corp. and South Shore
Gardens, LLC**

140. Plaintiffs repeat and reallege the allegations in the paragraphs above as if fully set forth herein.

141. As described above, Defendants' acts, policies and practices have made and continue to make housing unavailable because of race or color in violation of the Fair Housing Act, 42 U.S.C. § 3604(a), and because of disability in violation of 42 U.S.C. § 3604(f).

142. As described above, Defendants' conduct constitutes a deprivation of the terms, conditions and privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of race or color in violation of the Fair Housing Act, 42 U.S.C. § 3604(b), or on the basis of disability in violation of 42 U.S.C. § 3604(f).

143. As described above, Defendants' conduct constitutes the making of statements with respect to rental of a dwelling that indicates a preference, limitation, or discrimination based on race, color or disability, or an intention to make such preference, limitation or discrimination, in violation of the Fair Housing Act, 42 U.S.C. § 3604(c).

144. As described above, Defendants' conduct constitutes representations made because of race, color or disability that a dwelling is not available for inspection or rent when such dwelling is in fact so available, in violation of the Fair Housing Act, 42 U.S.C. § 3604(d).

145. Plaintiffs are aggrieved person as identified in 42 U.S.C. § 3602(d) and (i), have been injured by the Defendants' discriminatory conduct, and have suffered damages as a result.

146. Defendants' conduct as described above was intentional, willful, and made in disregard for the rights of others.

SECOND CAUSE OF ACTION
New York State Human Rights Law, N.Y. Exec. Law § 296(5)
LIHS Against All Defendants
SILO and Doreen Kernozek Against Defendants NPS Property Corp. and NPS
Holiday Square LLC
SILO and Lori Gerardi Against Defendants NPS Property Corp. and South Shore
Gardens, LLC

147. Plaintiffs repeat and reallege the allegations in the paragraphs above as if fully set forth herein.

148. As described above, Defendants' conduct constitutes an unlawful discriminatory practice to refuse to sell, rent, or otherwise deny or withhold from any person a housing accommodation because of race, color, disability or source of income,⁸ or to falsely represent

⁸ The New York State Human Rights Law was amended in April 2019 to include source of income, including use of a housing voucher, as a protected class. Plaintiffs bring a claim of source-of-income discrimination under the New York State Human Rights Law to the extent Plaintiffs seek injunctive relief.

that a housing accommodation is not available for rental based on race, color, disability or source of income in violation of § 296(5)(a)(1) of the New York Human Rights Law.

149. As described above, Defendants' conduct constitutes an unlawful discriminatory practice to discriminate in the terms, conditions, or privileges of a rental on the basis of race, color, disability or source of income in violation of § 296(5)(a)(2) of the New York Human Rights Law.

150. As described above, Defendants' conduct constitutes the making of statements or application forms with respect to the rental of a dwelling that expresses a limitation or discrimination on the basis of race, color, disability or source of income in violation of § 296(5)(a)(3) of the New York Human Rights Law.

151. As described above, Defendants' conduct above was intentional, willful, and made in disregard for the rights of others.

THIRD CAUSE OF ACTION
Suffolk County Human Rights Law, Suffolk County Code § 528 *et seq.*
LIHS Against All Defendants
SILO and Doreen Kernozek Against Defendants NPS Property Corp. and NPS
Holiday Square LLC
SILO and Lori Gerardi Against Defendants NPS Property Corp. and South Shore
Gardens, LLC

152. Plaintiffs repeat and reallege the allegations in the paragraphs above as if fully set forth herein.

153. As described above, Defendants' conduct constitutes a denial of or withholding from any individual or group of individuals any housing accommodation because of race, color, disability or lawful source of income in violation of § 528-9(A)(1) of the Suffolk County Code.

154. As described above, Defendants' conduct constitutes discrimination in the terms, conditions or privileges of the rental or lease of a housing accommodation and in the furnishing

of facilities or services in connection therewith because of race, color, disability or lawful source of income in violation of § 528-9(A)(2) of the Suffolk County Code.

155. As described above, Defendants' conduct constitutes discrimination in making available a residential real estate transaction because of race, color, disability or lawful source of income in violation of § 528-9(A)(3) of the Suffolk County Code.

156. As described above, Defendants' conduct constitutes the making of statements which express, directly or indirectly, a limitation, specification, or discrimination based on race, color, disability or lawful source of income in violation of § 528-9(A)(7) of the Suffolk County Code.

157. Defendants' unlawful conduct was intentional, willful, and made in disregard for the rights of others.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against Defendants as follows:

158. Declaring Defendants' discriminatory practices violate the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*; the New York State Human Rights Law, N.Y. Exec. Law § 296(5); and the Suffolk County Human Rights Law, § 528 *et seq.*;

159. Enjoining Defendants, Defendants' agents, employees and successors, and all other persons in active concert or participation from:

- a. Withholding housing, or otherwise making housing unavailable on the basis of race, color, disability or lawful source of income;
- b. Representing to any person that a dwelling is not available for inspection or rental when such dwelling is in fact so available, or will become available in the future, because of race, color, disability or lawful source of income;

- c. Refusing to rent to individuals or households using Section 8 vouchers, the Suffolk County Department of Social Services “one-shot” deal, the New York State Medicaid Waiver Program, the Nursing Home Transition and Diversion Medicaid Waiver, and the Traumatic Brain Injury Waiver, the Olmsted Housing Subsidy, or any other type of lawful public sources of income as defined by the Suffolk County Human Rights Law;
- d. Aiding, abetting, inciting, compelling or coercing the doing of any of the acts forbidden by the federal Fair Housing Act, the New York State Human Rights Law, or the Suffolk County Human Rights Law;

160. Enjoining Defendants and their agents, employees, and successors, and all other persons in active concert or participation to:

- a. Make all necessary modifications to their policies, practices and procedures to comply with fair housing laws;
- b. Train all management, agents and employees on fair housing laws;
- c. Advertise apartments available for rent in a non-discriminatory manner, including displaying an Equal Housing Opportunity logo (or statement to that effect) on all print and internet advertisements and displaying in all offices and rental buildings appropriate fair housing law posters;
- d. Allow monitoring of their application and rental process;
- e. Retain advertising and rental records to allow for appropriate monitoring;
- f. Develop written procedures on rental process and fair housing policy to be distributed to all employees, agents, tenants and rental applicants; and

g. Establish a system for testing agents and employees for unlawful discriminatory practices;

161. Awarding such damages to Plaintiffs LIHS and SILO as will fully compensate for the diversion of resources and frustration of mission caused by Defendants' unlawful practices;

162. Awarding compensatory damages, including damages for emotional distress, to Plaintiffs Doreen Kernozek and Lori Gerardi;

163. Awarding punitive damages to Plaintiffs;

164. Awarding Plaintiffs reasonable attorneys' fees, costs and expenses incurred in prosecuting this action; and

165. Granting Plaintiffs such other further relief as may be just and proper.

IX. JURY DEMAND

166. Plaintiffs hereby demand a trial on the merits by jury pursuant to Federal Rule of Civil Procedure 38.

Dated: November 5, 2020

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