

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AION MANAGEMENT, LLC; LELAND
POINT OWNER, LP; AP
COSMOPOLITAN, LLC; AP
GREENSPRING, LLC; AP LIVINGSTONE,
LLC; AION UNIVERSITY VILLAGE, LLC;
AP EAST POINTE, LLC; and AP
HUNTERS CROSSING, LLC,

Defendants.

Case No. 1:23-cv-00742-GBW

DEMAND FOR JURY

AMENDED COMPLAINT OF THE UNITED STATES OF AMERICA

The United States of America (United States), by and through its undersigned counsel, hereby alleges as follows:

INTRODUCTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (Fair Housing Act), 42 U.S.C. §§ 3601–3631. This action is brought on behalf of the Fair Housing Partnership of Greater Pittsburgh, the Housing Equality Center of Pennsylvania, and the National Fair Housing Alliance. This action is brought against AION Management, LLC; Leland Point Owner, LP; AP Cosmopolitan, LLC; AP Greenspring, LLC; AP Livingstone, LLC; AION University Village, LLC; AP East Point, LLC; and AP Hunters Crossing, LLC (collectively, Defendants) and seeks to enjoin Defendants' discriminatory conduct and recover damages suffered as a result of Defendants' unlawful conduct.

JURISDICTION

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o) because a substantial part of the events or omissions giving rise to the United States' claims occurred there and several of the Defendants reside there.

PARTIES AND THE SUBJECT PROPERTIES

4. Plaintiff is the United States of America.

5. Defendant AION Management, LLC, is a property management company. Defendant AION's address is 1209 Orange Street, Wilmington, Delaware 19801. At all relevant times, Defendant AION managed each of the subject properties listed below. Defendant AION, in its capacity as property manager for each of the subject properties, performed functions such as marketing, tenant application processing, personnel hiring and development, financial management, facilities operations, and providing legal compliance guidance.

6. Subject property Alden South Hills Apartment Homes is located at 5492 Youngridge Drive, Pittsburgh, Pennsylvania 15236. At all relevant times, Defendant Leland Point Owner, LP owned the Alden South Hills Apartment Homes.

7. Subject property Cosmopolitan Apartment Homes is located at 3001 McKnight East Drive, Pittsburgh, Pennsylvania 15237. At all relevant times, Defendant AP Cosmopolitan, LLC owned Cosmopolitan Apartment Homes.

8. Subject property Greenspring Apartment Homes is located at 100 Bridlewood Way, York, Pennsylvania 17402. At all relevant times, Defendant AP Greenspring, LLC owned Greenspring Apartment Homes.

9. Subject property Livingstone Apartment Homes is located at 240 East County Line Road, Hatboro, Pennsylvania 19040. At all relevant times, Defendant AP Livingstone, LLC owned Livingstone Apartment Homes.

10. Subject property Liberty Pointe Apartment Homes is located at 207 Mederia Circle, Newark, Delaware 19702. At all relevant times, Defendant AION University Village, LLC owned Liberty Pointe Apartment Homes.

11. Subject property Hillside Pointe Apartment Homes is located at 2610 Philadelphia Pike, Claymont, Delaware 19703. At all relevant times, Defendant AP East Pointe, LLC owned Hillside Pointe Apartment Homes.

12. Subject property Hunters Crossing Apartment Homes is located at 41 Fairway Road, Newark, Delaware 19711. At all relevant times, Defendant AP Hunters Crossing, LLC owned Hunters Crossing Apartment Homes.

13. The properties identified in this Complaint are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

FACTUAL ALLEGATIONS

HUD COMPLAINANTS

14. The Fair Housing Partnership of Greater Pittsburgh (FHP) is a nonprofit organization based in Pittsburgh, Pennsylvania, that focuses on promoting equal housing choice in southwestern Pennsylvania. FHP engages in fair housing advocacy and enforcement, community education and outreach, and Fair Housing Act training support for housing providers and government officials. FHP’s activities include investigating housing discrimination claims, assisting clients with filing fair housing complaints, and referring fair housing complaints to attorneys.

15. The Housing Equality Center of Pennsylvania (HECP) is a nonprofit organization based in Fort Washington, Pennsylvania. HECP is dedicated to promoting fair and equal access to housing opportunities throughout Pennsylvania. HECP provides services for victims of housing discrimination that include fair housing counseling, guidance on filing housing discrimination complaints, and referrals to social service agencies, government agencies, and attorneys. HECP also investigates fair housing claims; conducts testing to help housing discrimination victims; provides education and training programs for housing professionals, nonprofits, and housing authorities; and publishes fair housing resources to assist the public and housing professionals. HECP provides services for Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton, and Philadelphia Counties in Pennsylvania.

16. The National Fair Housing Alliance (NFHA) is a national fair housing rights organization based in Washington, DC, dedicated to eliminating housing discrimination and ensuring equitable housing opportunities. NFHA's activities include education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs. NFHA also conducts intake of discrimination allegations and connects individuals with fair housing organizations and other resources who will provide investigation and advocacy services.

COMPLAINANTS' INVESTIGATION

17. In the fall of 2019, FHP received a report of a tenant who was allegedly forced to move out of a subject property by AION employees after the tenant's request for accommodation was denied.

18. FHP, HECP, and NFHA agreed to jointly investigate the subject properties to evaluate Defendants' reasonable accommodations process. Specifically, FHP, HECP, and NFHA

sought to determine if Defendants were making units available to tenants or applicants who have a disability-related need for an assigned parking space.

19. From January 2020 through December 2020, FHP, HECP, and NFHA conducted multiple telephone, email, and in-person tests to determine if Defendants would allow tenants with a disability-based need for an assigned parking spot to obtain one as a reasonable accommodation at Alden South Hills Apartment Homes, Cosmopolitan Apartment Homes, Greenspring Apartment Homes, Livingstone Apartment Homes, Liberty Pointe Apartment Homes, Hillside Pointe Apartment Homes, and Hunters Crossing Apartment Homes. As described below, Defendants told testers that they would not assign parking spots to tenants with disabilities. During the tests, no AION employee responded to a tester's reasonable accommodation request by asking questions about the tester's or their family member's individual disability-related needs or circumstances.

20. A regulation promulgated by the United States Department of Housing and Urban Development (HUD) in 1989 provides that “[i]t shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.”¹ 24 C.F.R. § 100.204(a).

21. The same HUD regulation further provides that “application of this section may be illustrated by the following examples,” including the following:

¹ The Fair Housing Act and its implementing regulations use the term “handicap,” *see* 42 U.S.C. § 3602(h), but consistent with modern usage, the government uses the term “disability” in this Complaint, except when it is alleged that either testers or AION representatives themselves used the term “handicap” or related terms. The government’s use of term “disability” is intended to cover the term “handicap” as it is used in the Act and its regulations.

Progress Gardens is a 300 unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of § 100.204 for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

Id. § 100.204(b)(2).

ALDEN SOUTH HILLS APARTMENT HOMES

22. On January 15, 2020, an FHP tester took an in-person tour of Alden South Hills Apartment Homes, posing as a prospective applicant for rental housing. An AION-employed leasing agent who identified herself as “Emily” provided the tour. The tester communicated to Emily that the tester’s husband suffered from physical impairments that limited his ability to walk long distances and affected his dexterity.

23. On January 28, 2020, the same FHP tester called Alden South Hills and asked to speak with Emily, who was unavailable. The tester received a return call from an AION employee who identified herself as “Angela.” The tester explained that she had toured the apartments with Emily and now had follow-up questions. The tester told Angela that her husband had limited dexterity and mobility, and that, as a result, she and her husband needed to know if Alden South Hills would be able to provide an assigned parking space close to the entrance to any unit they might rent and to install a keypad to enable access to an apartment door. Angela responded that the apartment’s parking lots were first come, first served, while the keypad would require completion of a document and submission to the corporate office for approval. Angela said that she was a new employee and would have to verify her answers.

24. About thirty minutes later, Emily, the original AION employee with whom the FHP tester met, called the tester back. The tester reiterated to Emily that she needed to know whether a keypad could be installed, and a parking space assigned for her husband, to address his dexterity and mobility problems. Consistent with Angela's answers, Emily responded that the keypad request would have to be approved by the corporate office and that parking spaces were not assigned and were available only on a first-come, first-served basis.

25. On May 1, 2020, a second FHP tester called Alden South Hills. The call was answered by Angela. The tester informed Angela that she was looking for a rental unit for herself and her sister, and that her sister has a disability and would need a parking spot close to the entrance. Angela stated they could not assign a specific parking spot to one person, but that handicapped parking spots were available in carports at two specific units at Alden South Hills that soon would be available.

COSMOPOLITAN APARTMENT HOMES

26. On August 28, 2020, an FHP tester called Cosmopolitan Apartment Homes and spoke to an AION-employed leasing associate who identified herself as "Janine." The tester stated that she was looking for a rental unit for herself and her husband. The tester informed Janine that her husband had a disability, he at times used a walker, and was unable to walk more than 100 feet without needing to rest. The tester asked if it would be possible to assign her husband a parking space near the entrance of the building. Janine responded that there were handicapped parking spaces outside and that tenants could rent assigned parking spaces in an indoor garage for a fee.

27. On September 2, 2020, the same tester made another call to Cosmopolitan. The call was answered by another AION employee who identified himself as "Bobby." After

explaining that she had already spoken to Janine, the tester noted she had a few follow-up questions. During this call, the tester again explained that her husband has a disability that prevents him from walking more than 100 feet at a time and that he often needs to take breaks, use a walker, or both. The tester stated she understood that reserved parking spaces near the building's entrance could be rented in the garage, but she wanted to clarify whether an outdoor spot could be reserved near an entrance free of cost. Bobby responded that outside handicapped parking spots were available on a first-come, first-served basis and that outdoor spaces could not be assigned to one person.

28. On September 17, 2020, a second FHP tester called Cosmopolitan and was connected with Janine. The tester informed Janine that she was looking for a unit to share with her husband who has a disability that makes him use crutches or a walker, and that her husband was unable to walk more than 100 feet at a time without rest. The tester asked if it would be possible to reserve a parking spot for her husband close to the entrance of Cosmopolitan. Janine responded that they had a couple of handicapped parking spots outside, but that she could not guarantee one would always be open. Janine noted that there were also spots inside a garage that could be reserved, but only for a fee.

GREENSPRING APARTMENT HOMES

29. On December 8, 2020, an FHP tester called Greenspring Apartment Homes and spoke to an AION employee identifying herself as "Janette." The tester said that she and her husband were looking to rent an apartment, but she informed Janette that her husband has a disability that limits his mobility, that he sometimes uses crutches or a walker, and that he is limited to walking 100 feet. The tester asked if she and her husband could have a parking space assigned to them near Greenspring's entrance. Janette responded that if a resident has a

handicapped placard, or plate, Greenspring could put up an “ADA sign.” Janette also noted that there is a satellite parking lot with many spaces near one of the Greenspring buildings. The tester understood Janette’s response to mean that assigned parking was not available.

LIVINGSTONE APARTMENT HOMES

30. On September 14, 2020, an HECP tester called Livingstone Apartment Homes and spoke to an AION employee named “Eric.” The tester expressed interested in renting an apartment and asked about parking. Eric responded that Livingstone had off-street parking that was first come, first served. The tester then explained that they were calling on behalf of their nephew, who has difficulty walking due to an auto accident. The tester asked whether Livingstone had handicapped parking; Eric responded the property has a few handicapped spaces. The tester then asked if a parking space could be specifically designated for an apartment tenant. In response, Eric said that Livingstone would not be able to reserve a specific handicapped spot, since those spaces were available only on a first-come, first-served basis.

LIBERTY POINTE APARTMENT HOMES

31. On November 17, 2020, a NFHA tester called Liberty Pointe Apartment Homes and was connected with an AION employee identifying herself as “Jo.” The tester asked for information about upcoming vacancies for a two-bedroom apartment rental for herself and her husband. The tester explained that her husband has a physical disability, uses a walker, and has difficulty walking long distances.

32. The tester asked Jo if Liberty Pointe could assign a parking spot to her husband as near as possible to the entry of the building with an upcoming vacancy, regardless of whether the space was labeled as a handicapped space or not. Jo responded that Liberty Pointe did not assign

parking spots and that parking was available only on a first-come, first-served basis. Jo also noted that there were handicapped spaces near the front of the apartment building.

33. In response, the tester expressly asked Jo whether Liberty Pointe could grant an exception to allow her husband an assigned spot due to his disability. Jo answered that the only option would be to get a handicapped tag and use the available handicapped spots.

34. After further conversation, Jo put the tester on hold to discuss the request with her manager. Jo then returned to the call and informed the tester that, according to her manager, Liberty Pointe would be able to add a handicapped spot in front of the apartment building, and the tester's husband could use that spot so long as he had a handicapped parking tag. Jo clarified, however, that the spot would not be reserved for the tester's husband specifically and that anyone with a handicapped parking tag could use it.

HILLSIDE POINTE APARTMENT HOMES

35. On November 17, 2020, a NFHA tester called Hillside Pointe Apartment Homes and spoke to an AION employee identifying herself as "Jamie." The tester explained that she wanted to obtain information about upcoming vacancies for a two-bedroom apartment rental for herself and her husband. The tester noted that her husband had a physical disability requiring the use of a cane, crutches, and a walker. The tester asked if Hillside Pointe could assign them a parking space as close as possible to the apartment unit they might rent, because her husband gets fatigued by walking. Jamie responded that the property could add another handicapped space, but she noted that the space could not be assigned specifically to her husband and thus anyone with the proper tags would be able to use the spot.

36. The tester then asked whether an exception could be made to allow the tester and her husband to be issued an assigned spot; the tester also clarified that the parking space need not

be designated as a “handicapped” space. Jamie responded that she did not know the answer to the tester’s question and would check with her attorney. The next day, Jamie emailed the tester, writing that her attorney had confirmed that Hillside Pointe would be able to designate an additional space near the entry of the building as a handicapped space, but that Hillside Pointe would not be able to assign a parking space to a specific apartment number.

37. On November 19, 2020, a NFHA employee responded from the tester’s email account, assuming the identity of the tester, and wrote: “Hi Jamie, I relayed this to my husband and he is still concerned someone’s guest or another tenant may park there not realizing that it is meant for him. We appreciate you looking into this for us, but since we cannot get a reserved parking space for him, we won’t be able to rent an apartment here.” The email went unanswered.

HUNTERS CROSSING APARTMENT HOMES

38. On December 3, 2020, a NFHA tester called Hunters Crossing and reached an AION employee identified as “Tess.” The tester expressed interest in upcoming vacancies for a two-bedroom apartment rental for herself and her husband. The tester explained that her husband has a physical disability and uses crutches and a walker, and that walking far distances makes him very fatigued. The tester asked whether Hunters Crossing could reserve a parking spot for them as close as possible to the apartment unit they might rent. Tess responded that other residents at the property had previously contacted the Delaware Division of Motor Vehicles (DMV) to purchase handicapped spots specifically assigned to their apartment numbers. The tester asked whether there were costs associated with the DMV request, and Tess responded that there was a cost but that this was handled between residents and the DMV.

39. The tester then explained that she and her husband did not need a parking space designated as accessible but instead simply needed a spot reserved for them. The tester asked

whether Hunters Crossing could do this without the tester and her husband having to go to the DMV. In response, Tess said, “We will not do that.”

EFFECTS OF INVESTIGATION

40. FHP, HECP, and NFHA suffered injuries as a result of Defendants’ actions. These injuries include, but are not limited to, diversion of resources from organizational activities that Complainants would have otherwise performed. Complainants trained and instructed testers regarding the testing of Defendants’ properties; prepared and assigned tester profiles; planned, organized, and coordinated tests and appropriate follow-up tests; obtained reports from testers; and analyzed the information in the testers’ reports. Because of this diversion of resources, Complainants were unable to engage in other activities they had planned, including taking steps to develop and disseminate resources to enhance their outreach capabilities; conducting additional testing and outreach in their service areas; developing grant proposals; and developing training curricula.

41. Defendants’ statements denying reasonable accommodations also frustrated the missions of FHP, HECP, and NFHA to promote and ensure equal access to housing, resulting in their need to expend resources to conduct additional education, outreach, and remediation activities to counteract Defendants’ discriminatory conduct and correct any confusion or misunderstanding of the right to reasonable accommodations under fair housing laws throughout the region.

HUD ADMINISTRATIVE PROCESS

42. On April 7, 2021, FHP, HECP, and NFHA filed a timely complaint of discrimination with HUD.

43. In accordance with 42 U.S.C. § 3610, the Secretary of HUD completed an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. After reviewing the information gathered in the investigation, the Secretary determined under 42 U.S.C. § 3610(g)(1) that reasonable cause existed to believe Defendants had violated the Fair Housing Act.

44. On February 24, 2023, the Secretary issued a Charge of Discrimination under 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory housing practices on the basis of disability. Specifically, HUD's Charge of Discrimination alleged that Defendants' denials of requests for reasonable accommodations involving assigned parking spaces violated 42 U.S.C. §§ 3604(c), 3604(f)(1), 3604(f)(2), and 3604(f)(3)(B) and their implementing regulations.

45. On March 9, 2023, Defendants AION Management, LLC; Leland Point Owner, LP; AP Cosmopolitan, LLC; AP Greenspring, LLC; AP Livingstone, LLC; AION University Village, LLC; AP East Pointe, LLC; and AP Hunters Crossing, LLC, elected under 42 U.S.C. § 3612(a) to have the claims in the HUD Charge resolved in a civil action filed in federal district court. On March 10, 2023, the HUD Administrative Law Judge issued a Notice of Election to Proceed in United States District Court.

46. Following the Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action under 42 U.S.C. § 3612(o). The Defendants and the United States entered into a tolling agreement extending the deadline for the United States to commence a civil action to July 7, 2023.

CAUSE OF ACTION

47. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 46, above.

48. By the actions and statements referred to in the foregoing paragraphs, all Defendants have:

- a. discriminated in the rental or otherwise made unavailable or denied a dwelling to a renter (or prospective renter) because of a disability, in violation of 42 U.S.C. § 3604(f)(1);
- b. discriminated in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);
- c. refused to make reasonable accommodations in rules, policies, practices, or services, when such an accommodation may be necessary to afford a person with a disability equal opportunity to use and enjoy the dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B); and
- d. made, printed, or published, or caused to be made, printed or published statements with respect to the rental of a dwelling that indicated a preference, limitation or discrimination based on disability, or an intention to make any such preference, limitation, or discrimination, in violation of 42 U.S.C. § 3604(c).

49. As a result of Defendants' actions as set forth above, FHP, HECP, and NFHA have been injured and suffered damages, and are "aggrieved persons" within the meaning of 42 U.S.C. § 3602(i).

50. FHP, HECP, and NFHA's resources were diverted and their missions were frustrated due to Defendants' discriminatory actions alleged above.

51. Defendants' actions were willful and intentional, and in reckless disregard for the law.

PRAYER FOR RELIEF

WHEREFORE, the United States requests relief as follows:

1. A declaration that Defendants' discriminatory conduct violates the Fair Housing Act;
2. An injunction prohibiting Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from:
 - a. discriminating on the basis of disability, in violation of the Fair Housing Act;
 - b. discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of disability;
 - c. stating any preference, limitation, or discrimination on the basis of disability; and
 - d. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future;
3. An award of monetary damages to FHP, HECP, and NFHA under 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and
4. An award of such additional relief as the interests of justice may require.

DEMAND FOR JURY TRIAL

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: October 10, 2023

Respectfully submitted,

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