

The United States of America alleges as follows:

NATURE OF THE ACTION

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, 42 U.S.C. §§ 3601-3619 (“Fair Housing Act”). This action is brought on behalf of Melissa Edgeworth, her minor child, and the Disability Law Center, pursuant to 42 U.S.C. § 3612(o), and is also brought pursuant to 42 U.S.C. § 3614(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 3612(o) and 3614(a).

3. Venue is proper under 28 U.S.C. § 1391(b) because the actions or omissions giving rise to the United States’ allegations occurred in the District of Utah and Defendants reside and/or do business in this judicial district.

PARTIES AND PROPERTY

4. Defendant NALS Apartment Homes, LLC (“NALS”) is a limited liability corporation that, at all times relevant to this action, provided property and asset management services to more than 15,000 apartment homes throughout the United States, including the four subject apartment buildings at issue in this litigation: Pinnacle Highland, Cobble Creek, Sky Harbor, and Thornhill Park (“the subject properties”).

5. Defendant N/A Pinnacle Highland-80 L.P., d/b/a Pinnacle Highland Apartments (“Pinnacle Highland”), is a limited partnership that, at all times relevant to this action, owned

and operated a multi-family apartment complex located at 7673 S. Highland Drive, Cottonwood Heights, Utah.

6. Defendant NALS Utah, LLC is a limited liability corporation that operated, at all times relevant to this action, as the general partner of Defendant Pinnacle Highland.

7. Defendant N/A Cobble Creek-36 L.P., d/b/a Cobble Creek Apartments (“Cobble Creek”), is a limited partnership that, at all times relevant to this action, owned and operated a multi-family apartment complex located at 5251 Cobble Creek Road, Salt Lake City, Utah.

8. Defendant Nevins-Adams 40 L.P., d/b/a Sky Harbor Apartments (“Sky Harbor”), is a limited partnership that, at all times relevant to this action, owned and operated a multi-family apartment complex, with rental units and hotel suites, located at 1876 W. North Temple Road, Salt Lake City, Utah.

9. Defendant Nevins/Adams Properties, Inc. is a corporation that operated, at all times relevant to this action, as the general partner of Defendants Cobble Creek and Sky Harbor.

10. Defendant Thornhill-29 L.P., d/b/a Thornhill Park Apartments (“Thornhill Park”), is a limited partnership that, at all times relevant to this action, owned and operated a multi-family apartment complex, with rental units and hotel suites, located at 1680 Thornhill Drive, Salt Lake City, Utah.

11. Defendant Nevins/Adams Properties of Utah, LLC is a limited liability corporation that operated, at all times relevant to this action, as the general partner of Defendant Thornhill Park.

12. The subject properties and the other residential properties owned or managed by Defendants are “dwelling[s]” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

FACTUAL ALLEGATIONS

HUD Complainants

13. Melissa Edgeworth is the mother of a seven-year-old son (“W.E.”). At all relevant times, Ms. Edgeworth and W.E. were tenants of Defendant Pinnacle Highland.

14. W.E. is a person with a disability. In March 2011, he was diagnosed with autism. As a result of his autism, W.E. has verbal speech delays and fine and gross motor development delays.

15. W.E. is substantially limited in one or more major life activities, including speaking, communicating, learning, performing manual tasks, and caring for himself.

16. W.E. receives disability benefits under the Supplemental Security Income (SSI) program.

17. W.E. has a live-in caregiver, Lori Foe, who helps him complete basic daily functions and reinforces the therapies he learns at his school.

18. On or about November 6, 2013, W.E.’s doctor prescribed an assistance animal to assist him in one or more of his major life activities, including speaking, communicating, learning, and performing manual tasks.

19. The Disability Law Center (“DLC”) is a non-profit disability advocacy organization in Salt Lake City, Utah. DLC’s mission is to enforce and strengthen laws that protect the opportunities, choices, and legal rights of people with disabilities in Utah.

Defendants' Policies and Forms

20. Defendant NALS created the pet policies, reasonable accommodation policies, and applicable forms for the subject properties.

21. Pinnacle Highland, Cobble Creek, and Thornhill Park allow tenants at their properties to have pets. Pets are allowed subject to the completion of a pet application, a pet interview, and the payment of a \$200 pet deposit, a non-refundable \$200 pet fee, and \$30 in monthly pet rent. Pets are limited to two per unit. Sky Harbor maintains a no-pet policy.

22. The subject properties maintain a list of dog breeds that they do not permit based on Defendants' belief that those types of dogs have a propensity to bite, including American Pit Bull Terriers or any mix or hybrid thereof.

23. Tenants who seek to live with an animal to accommodate a disability can apply for a reasonable accommodation to be exempted from the no-pets policy at Sky Harbor, and from the two pet per unit rule, the pet fees, and the restricted breed list at Pinnacle Highland, Cobble Creek, and Thornhill Park.

24. Defendants' policy provides that tenants with "known or otherwise obvious" disabilities are required to complete a pet application and a pet interview as a part of their reasonable accommodation application, but are not required to complete any additional forms.

25. At all relevant times, tenants with disabilities that were not "known or otherwise obvious" who sought to live with an assistance animal were also required to complete a "Request for Accommodation: Assistance/Emotional Support Animal Form" and have a healthcare provider complete a "Doctor's Prescription Form."

26. The Request for Accommodation: Assistance/Emotional Support Animal Form required the tenant to provide information, including the name and breed of the animal. The tenant was also required to indicate whether he or she sought a waiver of the pet fees, the two animal per unit rule, and/or the restricted breed list.

27. At all relevant times, the Doctor's Prescription Form began with the statement: "Property will not accept this form unless every field is filled in."

28. The Doctor's Prescription Form required that the tenant have a healthcare provider acknowledge through their initials that (1) he/she was familiar with the tenant's medical history; (2) in his/her professional opinion the tenant's condition met the definition of a disability; (3) due to the tenant's disability, the healthcare provider was prescribing the animal to provide assistance with limitations related to the disability; (4) there was a nexus between the tenant's disability and the assistance the animal provides and the animal was necessary to afford the resident equal opportunity to use and enjoy the premises; and (5) he/she understands that NALS would rely on the prescription and that reliance may lead to damage or injury, in which event NALS would request the doctor's insurance information.

29. Tenants without disabilities who sought to live with pets and tenants with "known or otherwise obvious" disabilities who sought to live with assistance animals were not required to provide personal insurance information or have a third party assume liability for their animals at the subject properties.

Denial of Melissa Edgeworth's Reasonable Accommodation Request

30. In early December 2013, Ms. Edgeworth began looking for a three-bedroom apartment in the Salt Lake City area for herself, her son, his caregiver, Ms. Foe, and Ms. Edgeworth's live-in boyfriend.

31. Ms. Edgeworth toured the Pinnacle Highland Apartments with a leasing agent. During the tour, Ms. Edgeworth told the leasing agent that her son had a disability and discussed the process of requesting a reasonable accommodation for an assistance animal. The leasing agent told Ms. Edgeworth that she would need to complete certain forms, and that after being approved, the complex would waive both the fees associated with having a pet and the dog breed restrictions.

32. On or about December 27, 2013, Ms. Edgeworth, Ms. Foe, and Mr. Roy signed a lease and moved into a three-bedroom apartment.

33. In early January 2014, Ms. Edgeworth went to the Pinnacle Highland leasing office to obtain the forms necessary to request a reasonable accommodation for W.E.'s assistance animal. A leasing agent provided Ms. Edgeworth with the complex's Accommodation Policy, the Request for Accommodation Form, the Doctor's Prescription Form, and the Restricted Breeds List.

34. Ms. Edgeworth sought a reasonable accommodation from the pet fees and the breed restriction.

35. On or about January 10, 2014, W.E.'s pediatrician completed the Doctor's Prescription Form but refused to provide his initials next to a liability clause on the form that stated: "I understand that NALS will rely on this prescription and this reliance may lead to

property damage and/or put other residents and employees at risk of injury, in which event NALS may request information regarding my insurance carrier and coverage.”

36. On or about January 11, 2014, Ms. Edgeworth returned the forms to Pinnacle Highland’s leasing office. Approximately two days later, Ms. Edgeworth obtained “Shadow,” a Pit Bull Terrier mix, as an emotional assistance animal for her son. On that same day, Ms. Edgeworth took Shadow to the Pinnacle Highland leasing office where a leasing agent conducted the pet interview and took Shadow’s photograph.

37. On or about January 15, 2014, a Pinnacle Highland leasing agent placed a notice on Ms. Edgeworth’s unit door stating, in relevant part: “Pinnacle Highland Management has attempted to make you aware that your service animal paperwork is not completely filled. In order for Pinnacle Highland to accept the paperwork, the doctor has to take liability of the service animal....” That same day, Ms. Edgeworth contacted the leasing office and told them that she was having difficulty getting a doctor to assume liability for the assistance animal.

38. On or about February 13, 2014, a Pinnacle Highland leasing agent posted a second notice on Ms. Edgeworth’s door which stated, in relevant part: “Management wants to make you aware that in order for us to accept your service animal paperwork a doctor has to initial the section of the paperwork accepting responsibility for the animal. Please have this filled out or please see the office about paying the pet deposit for your dog....”

39. In February 2014, Ms. Edgeworth sent the Doctor’s Prescription Form to two additional doctors treating W.E. Both doctors refused to complete the form, citing the liability clause.

40. In February 2014, Ms. Edgeworth again spoke with a Pinnacle Highland leasing agent about the difficulties she was having obtaining a doctor's initials on the liability clause of the Doctor's Prescription Form. However, the agent told Ms. Edgeworth that the liability requirement could not be waived.

41. On or around February 2014, Ms. Edgeworth contacted DLC about her failed efforts to obtain approval for her son's assistance animal.

42. In early March 2014, Ms. Edgeworth informed Pinnacle Highland management that she had moved the dog to a friend's home because she did not want to pay a fine for having Shadow in her unit. After Shadow was removed from the apartment, W.E.'s behavioral symptoms deteriorated at school and at home. Ms. Edgeworth quit her second job and altered W.E.'s schedule so that he could visit his emotional assistance animal at his new location.

43. On or around April 2014, Ms. Edgeworth, her son, and Ms. Foe vacated the apartment. Ms. Edgeworth moved to downtown Salt Lake City to live with the family friend who was keeping Shadow.

44. On April 3, 8 and 9, 2014, housing testers from DLC visited Thornhill, Cobble Creek, and Sky Harbor apartments, respectively. At each location, the tester sought information about moving into a one-bedroom apartment. The tester told the leasing agent that he or she had an emotional assistance animal and asked about the apartment complex's applicable policies. Uniformly, the leasing agents said that assistance animals were allowed but that in order to have the fees waived, the individual must complete the Request for Accommodation Form and the Doctor's Prescription Form.

HUD COMPLAINT AND CHARGE OF DISCRIMINATION

45. On or about May 9, 2014, DLC filed a timely complaint with the Department of Housing and Urban Development (“HUD”) alleging that Defendants’ policies violated the Fair Housing Act by discriminating on the basis of disability.

46. On or about January 22, 2015, Ms. Edgeworth filed a timely complaint with HUD alleging that Defendants’ policies violated the Fair Housing Act by discriminating against W.E. because of his disability.

47. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary of HUD (“the Secretary”) conducted and completed an investigation of the complaints filed by Ms. Edgeworth and DLC, attempted conciliation without success, and prepared a final investigative report. Based on information gathered during the investigation, the Secretary, pursuant to 42U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that discriminatory housing practices had occurred.

48. On or about April 28, 2016, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the Defendants with engaging in discriminatory housing practices in violation of the Fair Housing Act.

49. On or about May 18, 2016, the Defendants elected to have the Charge of Discrimination resolved in a civil action filed in federal district court pursuant to 42 U.S.C. § 3612(a).

50. Following the Notice of Election, the Secretary authorized the Attorney General to commence this civil action pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT VIOLATIONS

COUNT I

51. Plaintiff realleges and incorporates by reference herein the allegations described in paragraphs 1–50, above.

52. By the conduct described in the foregoing paragraphs, the Defendants have:

- a. Discriminated in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability in violation of 42 U.S.C. § 3604(f)(2);
- b. Refused to make reasonable accommodations in the rules, policies, practices, or services, when such accommodations may have been necessary to afford complainants Edgeworth and W.E. equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. §§ 3604(f)(2), 3604(f)(3)(B); and
- c. Made, printed, published, or caused to be made, printed, or published, statements with respect to the rental of a dwelling that indicates a preference, limitation, or discrimination based on disability in violation of 42 U.S.C. § 3604(c).

53. Melissa Edgeworth is an “aggrieved person,” as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of the Defendants’ conduct described above.

54. W.E. is an “aggrieved person,” as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of the Defendants’ conduct described above.

55. DLC is an “aggrieved person,” as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of the Defendants’ conduct described above.

56. The Defendants' discriminatory actions and practices described above were intentional, willful, and taken in disregard for the rights of others.

COUNT II

57. Plaintiff re-alleges and incorporates by reference herein the allegations described in paragraphs 1–56, above.

58. The Defendants' conduct described in the foregoing paragraphs constitutes:

- d. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, in violation of 42 U.S.C. § 3614(a); or
- e. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, which raises an issue of general public importance, in violation of 42 U.S.C. § 3614(a).

59. In addition to Melissa Edgeworth, W.E., and DLC, other persons may have been injured by the Defendants' discriminatory housing practices. Such persons are also "aggrieved persons" as defined in 42 U.S.C. § 3602(i) and may have suffered injuries and damages as a result of the Defendants' actions and practices.

60. The Defendants' discriminatory actions and practices described above were intentional, willful, and taken in disregard for the rights of others.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER that:

- 1. Declares that the Defendants' actions, policies, and practices, as alleged herein, violate the Fair Housing Act;

2. Declares that the Defendants have engaged in a pattern or practice of discrimination in violation of the Fair Housing Act or have denied rights under the Fair Housing Act to a group of persons raising an issue of general public importance;

3. Enjoins the Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:

- a. Discriminating against any person on the basis of disability in violation of the Fair Housing Act;
 - b. Stating any preference, limitation, or discrimination based on disability in violation of 42 U.S.C. § 3604(c);
 - c. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, all persons aggrieved by the Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;
 - d. Failing or refusing to take such affirmative steps may be necessary to prevent recurrence of any discriminatory conduct in the future, and to eliminate, to the extent practicable, the effects of the Defendants' unlawful practices;
4. Awards monetary damages pursuant to 42 U.S.C. §§ 3612(o)(3), 3613(c)(1), and 3614(d)(1)(B) to Melissa Edgeworth, W.E., and any other person harmed by the Defendants' discriminatory conduct and practices; and
5. Awards such additional relief as the interests of justice may require.

Dated: September 26, 2016

Respectfully submitted,

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