

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
SYRACUSE DIVISION**

CNY FAIR HOUSING, INC.; THE FAIR HOUSING PARTNERSHIP OF GREATER PITTSBURGH, INC.; HOUSING RESEARCH & ADVOCACY CENTER, INC., d/b/a FAIR HOUSING CENTER FOR RIGHTS & RESEARCH, INC.; HOUSING OPPORTUNITIES MADE EQUAL OF BUFFALO, INC.; HOUSING OPPORTUNITIES MADE EQUAL OF GREATER CINCINNATI, INC.; PHYLLIS BARTOSZEWSKI; LOIS HARTER; and DEANNA TOWN,

Plaintiffs,

v.

CLOVER GROUP INC.; CLOVER GROUP NEW YORK LLC; WELLTOWER INC.; WELLCLOVER HOLDINGS LLC; CLOVER MANAGEMENT, INC.; CLOVER COMMUNITIES LORAIN LLC; CLOVER COMMUNITIES OLMSTEAD FALLS LLC; CLOVER COMMUNITIES HAMILTON LLC; CLOVER COMMUNITIES BETHEL PARK LLC; CLOVER COMMUNITIES NORTH FAYETTE LLC; CLOVER COMMUNITIES SCRANTON, LLC; CLOVER COMMUNITIES HARBORCREEK, L.P.; CLOVER COMMUNITIES TAYLOR LLC; CLOVER COMMUNITIES CAMILLUS LLC; CLOVER COMMUNITIES SALINA LLC; CLOVER COMMUNITIES NEW HARTFORD, LLC; CLOVER COMMUNITIES CLAY LLC; CLOVER COMMUNITIES JOHNSON CITY, LLC; CLOVER COMMUNITIES SOUTHWESTERN LLC; CLOVER COMMUNITIES SWEETHOME, LLC; LACKAWANNA SENIOR HOUSING LP,

Defendants.

Civ. Case No. _____

COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiffs CNY Fair Housing, Inc.; The Fair Housing Partnership of Greater Pittsburgh, Inc.; Housing Research & Advocacy Center, Inc., d/b/a Fair Housing Center for Rights & Research, Inc.; Housing Opportunities Made Equal of Buffalo, Inc.; Housing Opportunities Made Equal of Greater Cincinnati, Inc. (collectively “Organizational Plaintiffs”); and Phyllis Bartoszewski; Lois Harter; and Deanna Towne, (collectively “Individual Plaintiffs”) bring this action for declaratory, injunctive, and monetary relief against Clover Group Inc. and Clover Group New York LLC, and their successor owners Welltower Inc. and WellClover Holdings LLC, and their management and construction entities, Clover Management, Inc., and other related entities (collectively, “Defendants” or “Clover Group”) that own and operate multi-family rental housing complexes in New York, Ohio, and Pennsylvania for discrimination on the basis of disability in violation of the federal Fair Housing Act (“FHA”), 42 U.S.C. § 3601, *et seq.*, and the fair housing laws of the states of New York and Ohio.

2. Defendants have denied Individual Plaintiffs and other people with disabilities reserved or designated parking spaces near the rental units owned and operated by Clover entities (“Clover properties” or “Clover senior properties”). Defendants’ representatives routinely tell residents and applicants that the company does not provide designated parking spots at their multi-family, senior living complexes for anyone, including people with disabilities. Alternatively, and contemporaneously, Defendants have told residents who have requested a designated parking space as a reasonable accommodation because of their disabilities that they must pay a fee up to \$350.00 for a designated space.

3. Defendants' policies of refusing disability-related requests for designated parking spaces – either regular parking spaces or accessible parking spaces¹ – or conditioning approval of such requests on the payment of a significant fee are applied at all Clover senior properties.

4. The designated parking policies have an outsized effect at Defendants' senior living properties where many residents have mobility disabilities that significantly affect their ability to walk from their cars to their units or require the use of mobility assistance devices such as walkers, canes, and wheelchairs that can only be effectively used in the limited number of accessible spaces at the complexes. Many of the individuals living at or applying to live at Defendants' senior properties have limited, fixed incomes and cannot afford the fees charged by Defendants for the designated spaces they desperately need.

5. Defendants also discriminate against people with disabilities by adding a \$15.00-\$25.00 monthly surcharge for units required by many residents with disabilities: units with accessible features such as grab bars, units on the ground floor, and units near elevators. Residents of Defendants' properties often cannot afford the higher price of the unit they need to accommodate their disabilities and are forced to live in a unit that does not meet their needs. Defendants refuse to make any exceptions to the higher rental charge as a reasonable accommodation for people with disabilities, stating that the amenity pricing fees cannot be waived. Waiving the monthly rental surcharge for the units would not cause a financial or administrative hardship for Defendants.

¹ An accessible parking space is at least 96 inches wide, has a striped access aisle that is at least 60 inches wide and a curb ramp at the access aisle and is particularly needed by persons who use walkers, canes or wheelchairs. U.S. Department of Housing and Urban Development, *Fair Housing Act Design Manual* (last revised April 1998), 2.20-2.22.

6. Defendants' policies contravene fair housing laws and are directly contrary to Defendants' marketing statement that it seeks to ensure that seniors "have affordable living options that provide unmatched safety and opportunities for fulfillment." Clover Group Inc., *About*, accessed Mar. 25, 2021, <https://clovergroupinc.com/about-clover-group-55-apartments-active-living-senior-apartments-more/>. Instead, Defendants' practices have harsh consequences for seniors who have routinely been denied the full use and enjoyment of their homes and have created less accessible housing conditions that undermine their independence and wellbeing.

7. Residents of one of Defendants' properties complained to Plaintiff CNY Fair Housing about Defendants' designated parking and rental surcharge policies. In response, CNY Fair Housing and the other Organizational Plaintiffs investigated Defendants' policies and practices through testing at various Defendant-owned properties in three different states. The investigations confirmed the company-wide policies and practices which have both the purpose and effect of discriminating against people with disabilities.

8. Defendants' long-standing and continuing practices and policies as described herein discriminate against people with disabilities in violation of the relevant federal and state fair housing laws: the FHA, 42 U.S.C. § 3601, *et seq.*; N.Y. Human Rights Law, N.Y. Exec. Law § 290, *et seq.*; the Ohio Civil Rights Act, Ohio Rev. Code § 4112.02(H), *et seq.*; and the Pennsylvania Human Relations Act, 42 P.S. §§ 951, *et seq.*

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1367, and 2201; and 42 U.S.C. § 3613. This Court has supplemental jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

10. Venue is proper in this District and Division under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred within this District and Division.

PARTIES AND PROPERTIES

11. Plaintiff CNY Fair Housing (“CNY Fair Housing”) is a private, non-profit corporation organized under the laws of New York and registered to do business in New York. Its principal place of business is Syracuse, New York. CNY Fair Housing’s mission is to ensure fair housing opportunity for all people in Central and Northern New York. Through education, research, advocacy, and enforcement, CNY Fair Housing works to eliminate housing discrimination and promote open communities. One of CNY Fair Housing’s goals is to combat discrimination based on disability and to enable individuals to select and live successfully in their housing of choice without fear of discrimination because of their disabilities.

12. Plaintiff The Fair Housing Partnership of Greater Pittsburgh, Inc. (“Fair Housing Partnership”), founded in 1984, is a nonprofit organization organized under the laws of Pennsylvania with its principal place of business in Pittsburgh, Pennsylvania. The Fair Housing Partnership is dedicated to creating and preserving equal housing choice in southwestern Pennsylvania through education and advocacy, fair housing analysis, enforcement actions, outreach, training, and community organizing.

13. Plaintiff Housing Research & Advocacy Center, Inc., d/b/a the Fair Housing Center for Rights & Research, Inc., (“Fair Housing Center”), founded in 1983, is a nonprofit fair housing and civil rights organization with its principal place of business in Cleveland, Ohio. Fair Housing Center’s mission is to protect and expand fair housing rights, eliminate housing discrimination, and promote integrated communities. Through research, educational programs,

public policy, and enforcement activities, the Fair Housing Center seeks to ensure that all residents are guaranteed equal access to housing without discrimination, including discrimination based on disability.

14. Plaintiff Housing Opportunities Made Equal of Buffalo, Inc. (“HOME of Buffalo”) was founded in 1963 and is a nonprofit fair housing organization with its principal place of business in Buffalo, New York. It provides fair housing enforcement and education as well as housing and mobility counseling to increase access to housing opportunities in the area. The organization’s mission is to promote the value of diversity and ensure all people have an equal opportunity to live in the housing and communities of their choice. Through education, advocacy, and enforcement of fair housing laws, HOME of Buffalo seeks to ensure that everyone can have their voices heard on their housing issues; have their rights defended and safeguarded; and have their concerns genuinely considered when decisions are being made about their lives and housing.

15. Plaintiff Housing Opportunities Made Equal of Greater Cincinnati, Inc. (“HOME of Cincinnati”), founded in 1968 and doing business in Cincinnati, Ohio, is a non-profit organization that provides fair housing education and enforcement throughout the Cincinnati region. The organization’s mission is based on the belief that housing is the hub of opportunity and the gateway to a better life. HOME of Cincinnati’s board, staff and stakeholders promote a commitment to diversity, inclusion, and equitable outcomes in housing through enforcement and education.

16. Plaintiff Phyllis Bartoszewski is a resident of Camillus Pointe Senior Apartments at 3877 Milton Avenue, Camillus, NY 13031. Ms. Bartoszewski is 77 years old and has disabilities that limit her mobility, including rheumatoid arthritis, stenosis of the spine, and

pleurisy. Her disabilities affect her ability to breathe, and she can only walk a few feet without assistance. Ms. Bartoszewski uses a cane for mobility assistance.

17. Plaintiff Lois Harter is also a resident of Camillus Pointe Senior Apartments in Camillus, New York. She is 75 years old. Ms. Harter has had fibromyalgia and arthritis since her late forties, as well as neuropathy in her feet. She also has had two knee replacements. As a result of these conditions, she has disabilities that affect her mobility and balance. Ms. Harter cannot walk without the assistance of a walker and struggles to walk long distances.

18. Plaintiff Deanna Town is another resident of Camillus Pointe Senior Apartments. She is 74 years old. Ms. Town has disabilities that significantly limit her mobility and affect her balance, and she uses a wheeled walker as a mobility aid everywhere she goes. Ms. Town cannot physically get around without her mobility aid.

20. Defendant Clover Group Inc. is a for-profit corporation based in Williamsville, New York that owns and manages at least 40 multi-family residential properties targeted at seniors over the age of 55. Clover Group Inc. owns and operates properties in New York, Pennsylvania, Indiana, Ohio, Kentucky, and Missouri, including the senior properties at issue in this matter.

21. Defendant Clover Group New York LLC is incorporated under the laws of the State of New York and its principal place of business is 654 Madison Avenue #1209, New York, NY.

22. Defendant Welltower Inc. is a Real Estate Investment Trust that acquired Clover Group in July 2019. It is a publicly traded entity (NYSE: WELL) based in Toledo, Ohio with near-term liquidity of approximately \$5.0 billion as of December 31, 2020. The Company invests with leading senior housing operators, post-acute providers, and health systems to fund real

estate infrastructure. Welltower owns interests in properties concentrated in major, high-growth markets in the United States, Canada and the United Kingdom, consisting of senior housing, post-acute communities and outpatient medical properties. Welltower, Inc., owns and controls entities that own the senior properties at issue in this matter.

23. Defendant WellClover Holdings LLC is incorporated under the laws of the State of Delaware and its principal place of business is 348 Harris Hill Road, Williamsville NY. WellClover Holdings LLC owns and operates many of the properties in this matter.

24. Defendant Clover Management, Inc. is a real estate development and management company that manages over 6000 rental units including all of the senior properties at issue in this matter. It is incorporated in the state of Delaware and its principal place of business is Williamsville, New York.

25. Lorain Pointe Senior Apartments are located in Lorain, Ohio. They are owned and operated by Defendant Clover Communities Lorain LLC, which is organized under the laws of the State of Ohio with its principal place of business in Williamsville, New York.

26. Southpark Square Senior Apartments are located in Strongsville, Ohio. They are owned and operated by Defendant WellClover Holdings LLC.

27. Parma Village Senior Apartments are located in Parma, Ohio. They are owned and operated by Defendant WellClover Holdings LLC.

28. Olmsted Falls Senior Apartments are located in Olmsted Falls, Ohio. They are owned and operated by Defendant Clover Communities Olmsted Falls LLC, which is organized under the laws of the State of Ohio with its principal place of business in Williamsville, New York.

29. Eden Park Senior Apartments are located in Hamilton, Ohio. They are owned and operated by Defendant Clover Communities Hamilton LLC, which is incorporated in the State of Ohio and has its principal place of business in Toledo, Ohio.

30. Fairfield Village Senior Apartments are located in Fairfield, Ohio. They are owned and operated by Defendant WellClover Holdings LLC.

31. Ivy Pointe Senior Apartments are located in Cincinnati, Ohio. They are owned and operated by Defendant WellClover Holdings LLC.

32. Bethel Square Senior Apartments are located in Bethel Park, Pennsylvania. They are owned by Defendant Clover Communities Bethel Park LLC, which is organized under the laws of the state of Delaware.

33. Lafayette Square Senior Apartments are located in Oakdale, Pennsylvania. They are owned by Defendant Clover Communities North Fayette LLC, which is organized under the laws of the state of Delaware with its principal place of business in Williamsville, New York.

34. Green Ridge Senior Apartments are located in Scranton, Pennsylvania. They are owned by Defendant Clover Communities Scranton, LLC, which is organized under the laws of the state of Delaware with its principal place of business in Williamsville, New York.

35. Harborcreek Senior Apartments are located in Erie, Pennsylvania. They are owned and operated by Defendant Clover Communities Harborcreek, L.P., which is organized under the laws of the state of Pennsylvania and has its principal place of business in Williamsville, New York.

36. Oak Hill Senior Apartments are located in Taylor, Pennsylvania. They are owned and operated by Defendant Clover Communities Taylor LLC, which is incorporated under the laws of the state of Delaware with its principal place of business in Williamsville, New York.

37. Camillus Point Senior Apartments are located in Camillus, New York. They are owned by Defendant Clover Communities Camillus LLC, which is organized under the laws of the state of New York, with its principal place of business in Erie County, New York.

38. Buckley Square Senior Apartments are located in Syracuse, New York. They are owned by Defendant Clover Communities Salina LLC, which is incorporated in the state of New York with its principal place of business in Williamsville, New York.

39. New Hartford Square Senior Apartments are located in Whitesboro, New York. They are owned by Defendant Clover Communities New Hartford, LLC, which is organized under the laws of the state of New York.

40. Morgan Square Senior Apartments are located in Clay, New York. They are owned by Defendant Clover Communities Clay LLC, which has its principal place of business in Williamsville, New York.

41. Reynolds Point Senior Apartments are located in Johnson City, New York. They are owned by Defendant Clover Communities Johnson City, LLC, which is organized under the laws of the state of New York with its principal place of business in Erie County, New York.

42. South Pointe Senior Apartments are located in Hamburg, New York. They are owned by Defendant Clover Communities Southwestern LLC, which is organized under the laws of the state of New York with its principal place of business in Williamsville, New York.

43. Sweethome Senior Apartments are located in Amherst, New York. They are owned by Defendant Clover Communities Sweethome, LLC, which is organized under the laws of the state of New York with its principal place of business in Erie County, New York.

44. Orchard Place Senior Apartments are located in Lackawanna, New York. They are owned by Defendant Lackawanna Senior Housing LP, which is organized under the laws of the state of New York with its principal place of business in Williamsville, New York.

45. In acting or omitting to act as alleged herein, each Defendant was acting through its employees, officers, and/or agents and is liable on the basis of the acts and omissions of its employees, officers, and/or agents.

46. In acting or omitting to act as alleged herein, each employee, officer, or agent of each Defendant was acting in the course and scope of his or her actual or apparent authority pursuant to such agencies, or the alleged acts or omissions of each employee or officer as agent were subsequently ratified and adopted by one or more Defendants as principal.

FACTUAL BACKGROUND

Clover Group Properties

47. The Clover Group companies, including their parent companies Welltower Inc. and WellClover Holdings LLC, (collectively “Clover Group”) have purchased or developed over 6,500 apartment units in six states and currently manage approximately 6,000 units in large apartment complexes. Many of those complexes are specifically designated for seniors over the age of 55.

48. Clover Group properties generally have inadequate numbers of accessible parking spaces to serve the needs of its residents and visitors at its senior living properties. As a consequence, residents or visitors using mobility assistance devices frequently cannot find parking that will accommodate them.

49. Clover Group maintains a first-come, first-served parking policy at all of its senior living properties. Based on this policy, residents and applicants are informed that they

cannot have reserved or designated parking. Residents and applicants, therefore, cannot count on having access to an accessible parking space, or to a parking space near their unit or the elevator to their unit.

50. Most Clover Group apartment complexes are garden style and three stories in height. This design leads the complexes to be spread out and units to be dispersed over a large area. Available parking spaces can be hundreds of meters from the entrance or elevator to a particular unit as illustrated in this view of Green Ridge Senior Apartments digitally captured from Google Earth and screenshot on March 23, 2021.



51. In this U-shaped apartment complex, there are parking spaces along the inner and outer perimeters of the U and there is a small island of parking spaces inside the U; however, the only accessible parking spaces – digitally outlined in red – are at the very center of the U, near the main entrance. There appear to be no accessible parking spaces at any other point along the perimeter or in the additional parking island. Further, 90 of the 103 visible parking spaces (and 7 of the 8 accessible spaces) are occupied as of the time the photograph was taken. This scenario is

similar and, in some instances, almost identical to Clover Group properties where there are few accessible spaces, where all accessible spaces are clustered in one area, and where the parking lot is at or approaching capacity. There are no designated parking spaces visible at this property and none are discernable from a similar review of the other Clover senior properties.

52. Residents and applicants who request a designated parking space as a reasonable accommodation – regardless of whether they have asked for an accessible space or one reserved near their unit – are informed that Clover Group does not grant requests for parking accommodations. The explanations given for the policy are not legitimate reasons for denying an accommodation under fair housing laws. At different times, Clover Group representatives have asserted that they would not grant a reasonable accommodation request for a designated parking space because:

- The complexes have too many residents with disabilities and there are not enough spaces to provide designated parking to all of the residents with disabilities;
- The complexes have the requisite number of accessible spaces and therefore do not need to provide additional designated or accessible parking to residents;
- The complexes would not submit parking accommodation requests to corporate headquarters, because the requests would be denied; and
- The complexes are independent living communities that have no obligation to provide designated parking.

53. The refusal to permit a designated parking space as a reasonable accommodation for a person with a mobility disability is explicitly contrary to fair housing laws and the United States Department of Housing and Urban Development’s (“HUD”) interpretation of the federal

Fair Housing Act. 24 CFR § 100.204(b) Example 2 (describing designated parking as a required reasonable accommodation for persons with disabilities).

54. Occasionally, residents or applicants are told that a reasonable accommodation for a designated parking space could be granted, but only upon payment of a \$350.00 fee and/or the provision of excessive and inappropriate medical documentation even where the disability and need for the accommodation are obvious.²

55. Clover Group also has a policy of adding a \$15.00-\$25.00 surcharge to the monthly rental price for units on the first floor and for units on the second or third floor that are near an elevator. People with mobility disabilities who can only walk short distances have a disproportionate need for such units.

56. Clover Group's first-floor and near-elevator pricing scheme is applied at its senior living complexes and not at Clover Group's family housing communities. The extra rental payment for these needed units, which is often unaffordable for residents, is disproportionately borne by people with disabilities.

57. Upon information and belief, Defendants' practices and policies regarding accessible parking, up-charging for more accessible units, refusing and/or conditioning requests for reasonable accommodations, and requiring unnecessary documentation for reasonable

² Joint Statement of the HUD and the Department of Justice, *Reasonable Accommodations Under the Fair Housing Act* (May 17, 2004) at 12-13, <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf> ("If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the accommodation."); *Id.* at 13 ("An applicant with an obvious mobility impairment... asks her housing provider to assign her a parking space near the entrance to the building... the provider may not require the applicant to provide any additional information about her disability....").

accommodation requests have been continuously maintained and remained unchanged since at least 2018.

Clover Group's New York Properties

58. The Individual Plaintiffs live in Camillus Point, one of Clover Group's New York senior living properties, located just outside of Syracuse. The Individual Plaintiffs, who each have mobility disabilities, have all had their requests for reasonable accommodations denied by Clover Group representatives and as a result, have experienced great physical difficulty traveling to and from their apartment units, suffered physical injuries from falling, cancelled plans because of fear of losing their parking space, relied on friends and family for transportation, and felt imprisoned in their own apartments.

59. Phyllis Bartoszewski has lived at Camillus Pointe since early 2018. Ms. Bartoszewski has a number of disabilities that limit her mobility, including rheumatoid arthritis, stenosis of the spine, sciatica, and pleurisy. Ms. Bartoszewski has difficulty breathing and can only walk seven to eight feet without assistance. She uses a cane for mobility assistance when she is in her home, and a walker when she leaves her apartment. Ms. Bartoszewski has held a DMV-issued disability parking placard since 2017. Ms. Bartoszewski's disabilities are obvious and apparent, and Ms. Bartoszewski has told representatives of Camillus Pointe staff about her disabilities.

60. To be able to access her unit without significant difficulty, Ms. Bartoszewski needs to park close to the main entrance of the building. She is only able to park in such a spot less than half the time. When Ms. Bartoszewski must park further from the main entrance, it takes her at least an additional ten minutes to get from her car to the apartment.

61. Within a week of moving to Camillus Pointe, Ms. Bartoszewski asked Tanya Trice, the on-site manager at the time, for an assigned disability parking space because of her disabilities. Ms. Trice told Ms. Bartoszewski that Camillus Pointe did not provide designated parking because there were too many residents in the building with disabilities and not enough spaces available to accommodate them.

62. In late 2018, CNY Fair Housing submitted a request on behalf of Ms. Bartoszewski and the other Individual Plaintiffs for an assigned parking space as a reasonable accommodation for their disabilities. Ms. Trice told multiple residents in writing that an assigned parking space could only be provided for a \$350.00 fee. Emily Brady, then- and current- Vice President of Operations for Clover, confirmed that a fee would be required for a designated parking space, that the location would be selected by management, that a written request had to be provided, and that a doctor's statement might be required.

63. Ms. Bartoszewski could not afford the \$350.00 fee for the accommodation and has not received a designated parking space. Given the difficulty of accessing her car when she cannot secure a preferred spot close to the entrance, she has been forced to adjust her schedule to accommodate for the trouble she experiences every time she wants to leave her apartment. Ms. Bartoszewski has been late for appointments, skipped grocery shopping, relied more on her children or the bus to get around, and chosen not to leave her apartment when she otherwise would.

64. Without a designated space, Ms. Bartoszewski has experienced physical difficulties from being forced to walk longer distances, which causes significant pain in her chest, akin to that of a heart attack.

65. Prior to moving into Camillus Pointe, Ms. Bartoszewski had been on the waiting list for almost a year at Camillus Pointe for an apartment on the first floor that could accommodate her disabilities. After Ms. Bartoszewski moved in, she was informed for the first time that her rent was \$15.00 higher than similar units because the accessible unit was in a prime location on the first floor close to the elevator and to the front door.

66. In July 2019, CNY Fair Housing sent a letter to Clover Group seeking, on behalf of Ms. Bartoszewski and another tenant, Sally Clay, requesting that the rent surcharge for a unit on the first floor be waived because it was being imposed for features of the apartment that were necessary to accommodate Ms. Bartoszewski and Ms. Clay's disabilities. Clover Group did not change its policy and Ms. Bartoszewski continues to pay the rent surcharge.

67. Plaintiff Deanna Town has lived in a first-floor unit at Camillus Pointe since late 2016. Ms. Town has degenerative back problems and neuropathy in her legs that limit her mobility and balance. At the time she moved into Camillus Pointe, she regularly used a cane as a mobility aid and, since back surgery in 2017, she uses a bulky wheeled walker at all times. Ms. Town has held a DMV-issued disability parking placard since the 1990s, but rarely uses it at Camillus Pointe because the only accessible parking spaces are far from the entrance to her apartment at the back of the building. Ms. Town's disabilities are obvious and known by Camillus Pointe staff.

68. To be able to access her unit without difficulty, Ms. Town needs to park in one of the spaces outside her unit on the easternmost side of the building. She regularly cannot obtain one of her preferred parking spaces.

69. When Ms. Town moved in, she was told by former Clover Operations Manager for Clover Management Debbie Kucia that Camillus Pointe would not provide designated parking.

70. In 2018, Ms. Town was included in CNY Fair Housing's letter to Clover Group requesting a designated parking space as a reasonable accommodation for her and others. Ms. Town also received Ms. Brady's response rejecting the request.

71. Because Camillus Pointe has never provided Ms. Town with a designated parking space, she has both physically suffered and had to make changes in her personal life to adjust for the lack of available usable parking.

72. In early 2020, Ms. Town fell in the parking lot while trying to step up onto the sidewalk on the easternmost side of the building, where there are no curb cuts. She hit and bruised both her face and arms and had to go to urgent care to be examined. Because of her back surgeries, she was unable to get herself up, and had to wait for somebody to come to her aid.

73. The lack of designated parking has made Ms. Town reluctant to leave her apartment. She visits her son less frequently, has missed social events, and has increasingly relied on her son to drive her places more often than she otherwise would.

74. When Ms. Town moved in, a Clover employee told her that rent for units on the first floor and for units close to the elevator was \$25.00 a month higher than for other units. Since Ms. Town needed and continues to need a unit on the first floor due to her disabilities, she has paid and continues to pay a \$25.00 monthly surcharge for her apartment.

75. Plaintiff Lois Harter has lived at Camillus Pointe since late 2016. Ms. Harter suffers from fibromyalgia and arthritis as well as neuropathy in her feet. Ms. Harter has had two knee replacements and, in 2019, Ms. Harter fell and broke her hip. Ms. Harter has limited

mobility, struggles with balance, uses a walker, and has difficulty walking any distance. Ms. Harter has held a DMV-issued disability parking placard since the 1990s. Camillus Pointe property managers are aware of Ms. Harter's mobility disabilities.

76. In order to access her unit without difficulty, Ms. Harter needs a designated accessible parking space immediately adjacent to the building's main entrance. She is unable to park in one of the accessible spaces at the entrance at least half of the time.

77. Around the time she moved in, Ms. Harter complained to Ms. Trice about the lack of accessible and designated parking spaces. Ms. Trice told Ms. Harter that the property had the requisite number of accessible parking spaces and did not engage with Ms. Harter any further on the matter. Ms. Harter knew that no one in the complex had a designated parking space and concluded that it would be futile to make an additional request on her own for a designated parking space as a reasonable accommodation.

78. In 2018, Ms. Harter was included in the letter CNY Fair Housing sent to Clover Group seeking designated parking spaces as a reasonable accommodation for several residents with disabilities and was another subject of Ms. Brady's response rejecting the request.

79. Subsequently, Ms. Harter asked Ms. Trice about the current status of the provision of designated parking and was told by Ms. Trice that she was not allowed to discuss the matter. Ms. Harter has not received a designated parking space.

80. In the absence of designated space near her unit, Ms. Harter purchased a designated spot in the parking garage, at a rate of \$150.00 per month. She purchased the space to ensure she will have a parking space whenever she returns to the property.

81. Ms. Harter leaves her apartment significantly less often than she otherwise would because of concerns about not finding close parking upon her return. She is afraid to leave the

complex on her own and has postponed and forgone trips for grocery shopping and other errands. She asks others to pick her up and drive her places because she fears that she will fall in the parking lot if she is forced to park in the garage spot or a farther distance away from the building. She has asked her cousins to drive her to medical appointments and has hired someone to collect and deliver her groceries.

82. Like the Individual Plaintiffs, many other Camillus Pointe residents with disabilities have had requests for designated parking spaces denied. Other tenants with disabilities also have been told that they must pay a rent surcharge for apartments on the first floor and for apartments near the elevator, even when the location is necessary for the residents because of their disabilities.

83. After receiving complaints from residents alleging disability discrimination by Clover Group including the unjustified denial and conditioning of requests for reasonable accommodations, Plaintiff CNY Fair Housing opened an investigation.

84. CNY Fair Housing, like the other Organizational Plaintiffs, used testers – persons presenting as people with disabilities or representing people with disabilities – to request information about renting an apartment and the availability of designated and reserved parking.³

85. A tester sent by CNY Fair Housing contacted New Hartford Square, a Clover apartment complex located in Whitesboro, New York, in late 2018. The tester stated that she was looking for an apartment for her sister who was disabled and was told by the property manager, Gail Randazzo, that there was a one-time fee of \$350.00 for an accessible parking spot. The

³ Use of testers to gather information about availability and terms of housing has occurred for many years, and since the Supreme Court ruled in *Havens Realty Corp. v. Coleman*, 455 U.S. 383 (1982), courts have recognized and relied on such evidence to show violations of the Fair Housing Act.

manager also told the tester that apartments located close to the elevator were an extra \$15.00 per month.

86. A CNY Fair Housing tester who contacted Morgan Square Senior Apartments, a Clover property located in Clay, New York, in February 2019, was told by a Clover representative that there was no option for a reserved parking space for someone with disabilities and that parking was “first come, first served.” The representative also stated that there was an additional fee of \$25.00 per month for apartments on the first floor and those close to the elevator.

87. A CNY Fair Housing tester who contacted Buckley Square Apartments, a Clover property in North Syracuse, New York, in February 2019, was told that no parking could be reserved for someone who was disabled. The Clover Group on-site representative stated that there was no process for applying for a reserved parking space, because everyone who lived at the property had mobility issues. The tester was also told that the rent would be an additional \$25.00 per month for the downstairs units.

88. A CNY Fair Housing tester who contacted Reynolds Pointe Senior Apartments, a Clover property in Johnson City, New York, was told by the on-site agent that the accessible spots were reserved only for people who used wheelchairs and that other persons with disabilities could only park in regular parking spaces. The agent also stated that there would be an additional fee of \$25.00 per month for a unit on the first floor.

89. HOME of Buffalo had testers visit Clover Group properties in its service area. The organization had a tester visit Orchard Place Senior Apartments, a Clover property located in Lackawanna, New York. The tester, posing as a person looking for an apartment for a 74-year-old woman with mobility issues, was shown a unit by property manager Cheryl McMahon

who told the tester that there were no reserved parking spaces. The manager further stated that units on the first floor or near the elevator were considered to be premium apartments and had an additional extra \$10.00 monthly unit rent.

90. HOME of Buffalo sent a tester to Sweet Home Senior Apartments, a Clover property located in Amherst, New York. The tester asked if her mother with mobility issues could have an assigned accessible or “handicapped” parking space. The on-site Clover representative stated that none of the parking spaces are assigned and that all parking spaces are first come, first served. The tester was further told that all first-floor apartments had higher rents because of their location.

91. HOME of Buffalo sent a tester to South Pointe Senior Apartments, a Clover property in Hamburg, New York. The on-site agent told the tester that they did not assign parking spaces and that first-floor units were an additional \$25.00 per month. When the tester asked if the \$25.00 fee could be waived because of his mother in law’s disability, the agent stated that there was no wiggle room to waive the fee.

Clover Group’s Pennsylvania Properties

92. The Fair Housing Partnership of Greater Pittsburgh had testers contact Clover Group senior properties in the western Pennsylvania area. The organization had a tester contact Bethel Square Senior Apartments, a Clover property. When the tester, who stated that she was disabled, asked about an assigned parking space, she was told by the on-site Clover representative that there were no assigned parking spaces “because if I gave one to one, then everyone would want one.”

93. A second tester sent to Bethel Square asked about a first-floor unit because of her disability and was told that first-floor units were \$15.00 more per month than other apartments.

94. The Fair Housing Partnership had a tester visit Harbor Creek Senior Apartments, a Clover property in Erie, Pennsylvania. The tester asked if she could have an assigned parking space because of her disability. The on-site Clover representative stated that there were no assigned spots for residents because “with the number of medical conditions and disabilities that allow our residents to use these spots it would be difficult to reserve a specific spot for any one person.”

95. Another tester who contacted Harbor Creek Senior Apartments was similarly told that there were no assigned parking spots. The tester was also told that “handicap” units (units with special features designed for use by people with physical disabilities) rented for \$25.00 more per month than other units.

96. The Fair Housing Partnership also had a tester contact Lafayette Square Senior Apartments, a Clover Group property located in Oakdale, Pennsylvania. When the tester asked about an assigned parking space to accommodate a disability, the on-site representative stated that parking spaces couldn’t be assigned “because it wouldn’t be fair to the other residents.”

97. In a subsequent test at Lafayette Square, the tester was told that parking is “first come, first served.” The representative also stated that “units above the first floor rented for \$25.00 less a month than units on the first floor.”

98. The Fair Housing Partnership also had a tester contact Green Ridge Senior Apartments, a Clover Group property in Scranton, Pennsylvania. The tester was told by the on-site representative that first-floor units and units close to an elevator rented for \$25.00 more a month than other units.

99. The Fair Housing Partnership also had a tester contact Oak Hill Senior Apartments, a Clover Group property located in Taylor, Pennsylvania. The tester was told that

units near the elevator or on the first floor rented for an additional \$25.00 to \$35.00 a month. A subsequent tester received the same information.

Clover Group's Ohio Properties

100. The Fair Housing Center sent testers to visit Lorain Pointe Senior Apartments, a Clover property in Lorain, Ohio. The tester asked about a reserved parking space near the entrance for her aunt with mobility impairments and was told by the on-site representative that she could not have a reserved parking space. The tester asked, "even if she needs it because of her limited mobility?", and the Clover representative still refused the request. The tester was also told that the property charged an additional \$25.00 per month for first-floor units.

101. The Fair Housing Center also sent testers to Southpark Square Senior Apartments, another Clover property, located in Strongsville, Ohio. The tester was told that first-floor units were \$15.00 more per month.

102. The Fair Housing Center also sent a tester to Parma Village Senior Apartments, a Clover Group property located in Parma, Ohio. The tester was told that first-floor units were \$25.00 more per month.

103. HOME of Cincinnati had a tester contact Ivy Point Senior Apartments, a Clover Group property located in Cincinnati, Ohio. The tester asked for accessible parking for her mother who used a wheelchair and whether she could pay for a designated spot near the door to the property. The on-site agent said that she could not. The tester was also told that there was a \$25.00 per month fee for apartments on the first floor.

104. HOME of Cincinnati sent a tester to Eden Park Senior Apartments, a Clover Group property located in Hamilton, Ohio. The tester, who said she was looking for a unit for a

parent who used a walker, was told by the on-site representative that first-floor units cost an additional \$25.00 per month.

105. HOME of Cincinnati had a tester contact Fairfield Village Senior Apartments, a Clover property in Fairfield, Ohio about an apartment for her mother, who used a walker. The on-site Clover Group representative stated that they did not offer assigned accessible parking spaces. The representative stated that the property had put in the minimum number of “handicapped” parking spaces required. The representative also told the tester that units on the first floor cost an additional \$25.00 per month in rent.

106. Defendants’ actions as described herein were, and remain, intentional, willful and knowing, and/or have been, and are, implemented with callous and reckless disregard for Plaintiffs’ legal rights.

INJURY TO PLAINTIFFS

Individual Plaintiffs

107. As a direct, proximate, and foreseeable result of Defendants’ actions as described herein, the Individual Plaintiffs have suffered, continue to suffer, and will in the future suffer irreparable loss and injury, including but not limited to fear, humiliation, embarrassment, emotional distress, loss of housing opportunities, restriction of their activities, and unlawful deprivation of their federally protected rights.

108. As a direct, proximate, and foreseeable result of Defendants’ actions as described herein, the Individual Plaintiffs have also suffered and will continue to suffer economic injuries including payment of higher rents and out of pocket costs required to pay for alternative parking and other forms transportation.

Organizational Plaintiffs

109. As a direct, proximate, and foreseeable result of Defendants' actions as described herein, the Organizational Plaintiffs have suffered, continue to suffer, and will in the future suffer substantial, particularized, and concrete injuries.

110. Defendants' unlawful conduct, policies, and practices have frustrated and impaired the Organizational Plaintiffs' missions and purposes, forced them to drain their resources, and interfered with their ability to operate. Defendants' conduct frustrated the Organizational Plaintiffs' missions by interfering with their mission-related activities, impairing their ability to achieve their goals of ensuring equal access to housing opportunities, and harming the communities they serve.

111. Defendants' discriminatory conduct has thus forced the Organizational Plaintiffs to engage in numerous activities to identify and counteract the Defendants' unlawful conduct, policies, and practices.

112. After receiving a complaint about Clover Group's discriminatory practices, CNY Fair Housing conducted an extensive investigation of disability-related issues at Clover Group properties. For a period of more than three years, CNY Fair Housing has been investigating and counteracting Clover Group's unlawful discrimination. The investigation has included contacts with residents and other clients, interviews, on-site visits, physical inspection of five Clover Group communities, testing at five Clover Group communities, education and outreach, and research. CNY Fair Housing also engaged in extensive discussions with Clover Group in an effort to resolve and ameliorate the discriminatory policies, practices, and other conduct.

113. CNY Fair Housing also conducted extensive education and outreach in an effort to counteract the harm caused by Defendants' conduct. Among such efforts, CNY Fair Housing

has conducted eight presentations to human service providers working with individuals with disabilities in the region, conducted one training for seniors on elder law and fair housing, and produced a training video on reasonable accommodations and modifications. The presentations included education on differential treatment, such as charging higher rents due to protected status and reasonable accommodations and modifications including specific issues such as assigned parking; excessive delays in making reasonable accommodations; and charging fees for reasonable accommodations. These activities have required, and will continue to require, the expenditure of considerable financial resources and staff time.

114. CNY Fair Housing's diversion of time and other resources to address Defendants' discriminatory conduct has forced CNY Fair Housing to suspend other projects that would have helped to further its mission, including multiple training sessions for approximately two hundred housing professionals on other forms of fair housing compliance.

115. CNY Fair Housing's investigation and counteraction of Defendants' conduct, its diversion of resources, and the frustration of its mission continues and will continue until Defendants' discriminatory conduct ceases and the harms caused by Defendants' actions are remedied.

116. Upon being informed of possible disability-related discrimination at Clover Group properties in February 2019, the Fair Housing Center began an investigation of Clover Group communities in its service area.

117. The Fair Housing Center's investigation included reasonable accommodation and accessibility tests at four Clover Group properties in northern Ohio, evaluating and responding to accommodation and modification requests from prospective tenants, and research related to the

properties. The Fair Housing Center has diverted more than 150 hours of staff time to investigate and respond to Defendants' discriminatory action.

118. The Fair Housing Center's diversion of time and other resources to address Defendants' discriminatory conduct has forced it to delay its work or divert resources from projects such as filming fair housing videos; conducting an analysis of impediments to fair housing choice for Geauga County, Ohio; filing an application to partner with the Cuyahoga Metropolitan Housing Authority on a Housing Choice Voucher Mobility Program in Cuyahoga County; preparing reports to its funder, HUD; and coordinating its 2019 agency fundraiser which ultimately did not take place due to lack of staff time to plan it.

119. The Fair Housing Center has expended, continues to expend, and will expend in the future resources to counteract the effects of Defendants' discrimination by educating consumers with disabilities and seniors who may become disabled about their rights under the Fair Housing Act to be free from discrimination, to seek and receive reasonable accommodations, and to live in and enjoy accessible housing. The Fair Housing Center has created and distributed a fact sheet regarding reasonable accommodations for reserved and/or accessible parking; sponsored and organized disability discrimination-related training to housing providers; and publicized information about reasonable accommodations and accessibility. In addition, the Fair Housing Center is developing a live virtual fair housing training for housing consumers, including residents of Defendants' local properties, to include a review of fair housing laws and the right to reasonable accommodations in housing, including parking accommodations, and other disability-related issues.

120. The Fair Housing Center's investigation and counteraction of Defendants' conduct, its diversion of resources, and the frustration of its mission continues and will continue

until Defendants' discriminatory conduct ceases and the harms caused by Defendants' actions are remedied.

121. The Fair Housing Partnership began its investigation of Clover Group after being informed of possible disability discrimination in 2018. Its investigation included conducting testing at Clover Group properties in western and northeastern Pennsylvania and evaluating the results. The Fair Housing Partnership expended significant resources investigating Defendants' conduct and counteracting Defendants' discriminatory treatment of persons with disabilities.

122. The Fair Housing Partnership's diversion of time and other resources to address Defendants' discriminatory conduct has forced it to divert its scarce resources from other work such as preparing required reports for HUD (its funding agency), investigating claims of unlawful discrimination by other victims of discrimination, and conducting fair housing education and outreach on other types of cases.

123. The Fair Housing Partnership has expended, continues to expend, and will expend in the future resources to counteract the effects of Defendants' discrimination by developing a project of outreach to seniors regarding their fair housing rights, conducting outreach to groups and agencies that serve people with disabilities and to seniors about reasonable accommodation requirements, conducting outreach to groups and agencies that serve people with disabilities and to seniors about reasonable accommodation requirements, training landlords and others about their obligations to provide reasonable accommodations, developing and distributing a fact sheet on disability protections in housing for seniors, and a conducting a digital marketing campaign on disability-related issues.

124. The Fair Housing Partnership's investigation and counteraction of Defendants' conduct, its diversion of resources, and the frustration of its mission continues and will continue

until Defendants' discriminatory conduct ceases and the harms caused by Defendants' actions are remedied.

125. HOME of Cincinnati began its investigation of Clover Group after learning about likely disability discrimination at Clover Group properties in 2018. HOME of Cincinnati's investigation included research regarding Clover Group properties, testing at Clover Group communities in the Cincinnati area, and receiving and responding to accommodation and modification requests from prospective tenants.

126. HOME of Cincinnati's diversion of time and other resources to address Defendants' discriminatory conduct has forced it to divert its scarce resources from other work such as investigating and providing education on other forms of discrimination such as discrimination based on race and national origin.

127. HOME of Cincinnati has expended, continues to expend, and will expend in the future resources to counteract the effects of Defendants' discrimination by educating local housing consumers and housing providers about reasonable accommodations and modifications; expanding its fair housing training curriculum and the education portion of its website; creating a social media and video conferencing education program; creating podcast content on reasonable accommodation and modification issues; conducting trainings to discuss with housing providers, residents, and homeseekers the importance of successfully implementing policies that do not discriminate against people with disabilities and the importance of granting reasonable accommodations in a fair and efficient manner; and preparing for an April 2021 Fair Housing Summit that will focus on housing accessibility.

128. HOME of Cincinnati's investigation and counteraction of Defendants' conduct, its diversion of resources, and the frustration of its mission continues and will continue until

Defendants' discriminatory conduct ceases and the harms caused by Defendants' actions are remedied.

129. HOME of Buffalo began its investigation of Clover Group after learning about likely disability discrimination at Clover Group properties in 2018. Its investigation included researching Clover Group properties, testing at Clover Group properties in the northwestern New York area, and evaluating and responding to accommodation and modification requests from prospective tenants.

130. HOME of Buffalo's diversion of time and other resources to address Defendants' discriminatory conduct has forced it to divert its scarce resources from other work such as counseling landlords and potential victims of discrimination about their rights and responsibilities, conducting public education activities, and promoting equal access to housing in Western New York.

131. HOME of Buffalo has expended, continues to expend, and will expend in the future resources to counteract the effects of Defendants' discrimination by updating its book-length Landlord Guide to Fair Housing Issues to include sections on reasonable accommodations related to parking and unit pricing, updating its landlord training on reasonable accommodation and modifications issues, and developing additional trainings to address some of the disability-related discrimination issues that surfaced during its investigation of Defendants.

132. HOME of Buffalo's investigation and counteraction of Defendants' conduct, its diversion of resources, and the frustration of its mission continues and will continue until Defendants' discriminatory conduct ceases and the harms caused by Defendants' actions are remedied.

CAUSES OF ACTION

**Count I: Violation of the Fair Housing Act of 1968, as amended
42 U.S.C. § 3601, *et seq.***

133. Plaintiffs re-allege and incorporate by reference all allegations set forth in the paragraphs above.

134. Defendants' conduct as described herein constitutes:

- a. A refusal to make reasonable accommodation in rules, policies, practices or services when such an accommodation may be necessary to afford a person with a disability an opportunity to use and enjoy a dwelling in violation of 42 U.S.C. §§ 3604(f)(1) and (f)(3)(B);
- b. Discrimination against the Plaintiffs in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of the disability of a person residing in or intending to reside in a dwelling, including through the refusal to make reasonable accommodations, in violation of 42 U.S.C. §§ 3604(f)(2) and (f)(3)(B); and
- c. Statements that indicate a preference, limitation, or discrimination based on disability in violation of 42 U.S.C. § 3604(c).

135. As a result of Defendants' discriminatory conduct, Plaintiffs have suffered damages and are aggrieved persons, as defined in 42 U.S.C. § 3602(i).

**Count II: Violation of New York Human Rights Law
N.Y. Exec. Law § 296, *et seq.***

136. Defendants' conduct as described herein constitutes:

- a. A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford said person with

a disability equal opportunity to use and enjoy a dwelling, in violation of N.Y. Exec. Law § 296-18(2);

- b. An unlawful refusal to rent, denial or withholding of a housing accommodation because of disability in violation of N.Y. Exec. Law § 296-5(a)(1);
- c. Discrimination in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of disability in violation of N.Y. Exec. Law § 296-5(a)(2); and
- d. Statements with respect to the rental of dwellings that indicate a limitation, specification, or discrimination based on sex, in violation of N.Y. Exec. Law § 296-5(a)(3) and (c)(3).

137. As a result of Defendants' discriminatory conduct, Plaintiffs have suffered damages and are persons claiming to be aggrieved as defined in N.Y. Exec. Law § 297-9.

**Count III: Violation of the Ohio Civil Rights Act
Ohio Rev. Code § 4112.02(H), *et seq.***

138. Defendants' conduct as described herein constitutes:

- a. A refusal to make reasonable accommodations in rules, policies, practices or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, in violation of Ohio Rev. Code § 4112.02(H)(15) and H(19);
- b. An unlawful refusal to rent, denial or withholding of a housing accommodation because of disability in violation of Ohio Rev. Code § 4112.02(H)(4);
- c. Discrimination in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith because of disability in violation of Ohio Rev. Code § 4112.02(H)(16); and

- d. Statements that indicates any preference, limitation, specification, or discrimination based on disability with respect to a housing accommodation in violation of Ohio Revised Code § 4112.02(H)(7).

139. As a result of Defendants' discriminatory conduct, Plaintiffs have suffered damages and are aggrieved persons, as defined in Ohio Rev. Code § 4112.051.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiffs pray that this Court grant judgment in its favor, and against Defendants, as follows:

- a. Declaring that Defendants' actions violate the Federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, N.Y. Exec. Law § 296, and Ohio Rev. Code § 4112.02;
- b. Permanently enjoining Defendants from engaging in the conduct described herein and directing Defendants to take all affirmative steps necessary to remedy the effects of the conduct described herein and to prevent additional instances of such conduct or similar conduct from occurring in the future;
- c. Awarding compensatory damages to each Plaintiff in an amount to be determined by a jury that would fully compensate each Plaintiff for the injuries caused by the conduct of Defendants alleged herein;
- d. Awarding punitive damages to each Plaintiff in an amount to be determined by a jury that would punish Defendants for the willful, wanton, and reckless conduct alleged herein and that would effectively deter similar conduct in the future;
- e. Awarding reasonable attorneys' fees and costs; and
- f. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury on all issues triable as of right.

Dated: March 30, 2021

/s/ Conor Kirchner

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** Pro Hac Vice Application to be Submitted*