

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

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**DISTRICT OF COLUMBIA,**  
a municipal corporation,  
441 4th Street, N.W.  
Washington, D.C. 20001,

Plaintiff,

v.

**FAIRFAX REALTY OF FALLS  
CHURCH, LLC D/B/A FAIRFAX  
REALTY SELECT**  
3190 Fairview Park Drive  
Suite 100  
Falls Church, VA 22042,

*Serve on:*

**David P. Michalski**  
**Registered Agent**  
3190 Fairview Park Drive  
Suite 100  
Falls Church, VA 22042

**DAVID P. MICHALSKI**  
8110 E. Boulevard Drive  
Alexandria, VA 22308,

**ELLTA SOLOMON**  
7511 Republic Court  
Apartment 303  
Alexandria, VA 22306,

Defendants.

Case No.:

**JURY TRIAL DEMANDED**

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**COMPLAINT**

Plaintiff the District of Columbia (the District) brings this action against defendants Fairfax Realty of Falls Church, LLC d/b/a Fairfax Realty Select (Fairfax Realty), a District-licensed real estate organization; David P. Michalski, Fairfax Realty's principal broker and agent of Fairfax Realty, and Ellta Solomon, a District-licensed real estate salesperson and agent of Fairfax Realty. Defendants are liable for discriminatory practices that limit affordable housing and violate the District of Columbia Human Rights Act (DCHRA), D.C. Code §§ 2-1401.01, *et seq.* In support of its claims, the District states as follows.

### INTRODUCTION

1. The District of Columbia faces a housing crisis. Affordable housing stock has trended downward while rents have trended upward, squeezing out low-income tenants. Housing-assistance programs that subsidize rent are a core pillar of the District's response to these pressures. By subsidizing rent, housing assistance programs help the District's lowest-income populations avoid homelessness and maintain a foothold in private housing. This assistance is critical in the District, where many tenants spend more than half of their monthly income on rent.

2. The District brings this action against defendants, a District-licensed real estate salesperson, a District-licensed real estate broker and a District-licensed real estate organization, who posted four advertisements that stated vouchers would not be accepted as rental payment for a property in the District.

3. Although housing discrimination is problematic in any form, it is even more concerning when perpetuated by the real estate profession. Real estate

professionals—including real estate organizations, brokers, and salespersons—play an integral role in connecting customers to housing, including low-income tenants seeking an affordable place to live. They may dispense advice to property owners on how to market properties, and they act as gatekeepers for renters and buyers. When a real estate organization or salesperson discriminates against potential tenants who use housing assistance programs, they not only violate professional licensing standards but lend dangerous credibility to discriminatory practices.

4. Defendants' discriminatory online advertisements for rental housing lend professional credence to the idea that turning away tenants based on their source of income is not only acceptable but lawful. In the District, it is neither. Instead, it is a DCHRA violation that is prohibited not only as source-of-income discrimination but, because of the large number of African Americans enrolled in housing assistance programs, as racial discrimination as well.

5. Consequently, the District seeks declaratory and injunctive relief, civil penalties, costs and attorneys' fees to prevent and deter defendants from engaging in discriminatory practices that mislead District residents and limit access to housing for vulnerable District residents.

### **JURISDICTION**

6. The Attorney General for the District of Columbia brings this action on behalf of the District of Columbia to uphold the public interest and enforce District law, here, the DCHRA. *See District of Columbia v. ExxonMobil Oil Corp.*, 172 A.3d

412 (D.C. 2017); D.C. Code § 1-301.81(a)(1) (“The Attorney General for the District of Columbia ... shall be responsible for upholding the public interest.”).

7. This Court has subject matter jurisdiction over the claims and allegations in the Complaint. *See* D.C. Code § 11-921(a).

8. This Court has personal jurisdiction over Fairfax Realty, a District-licensed real estate organization, David a Michalski, a District-licensed real estate broker, and Ellta Solomon, a District-licensed real estate salesperson, because defendants are owners within the meaning of the DCHRA, conducted transactions in real property in the District and had the actual or perceived right to rent or lease 1700 Gainesville Street, S.E. *See* D.C. Code § 2-1402.23; *see* § 2-1401.02(20) (identifying “owners” to include managing agents or other persons having the right of ownership or possession of, or the right to sell, rent or lease any real property); *see also* § 2-1401.02(30) (defining a “transaction in real property” as the “advertising ... [of] any interest in real property”). This Court also has personal jurisdiction over the defendants because defendants transact business and have caused tortious injury in the District. D.C. Code § 13-423.

## **PARTIES**

9. Plaintiff District of Columbia, a municipal corporation, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General conducts the District’s legal business and is responsible for upholding the public interest. D.C.

Code § 1-301.81(a)(1); *District of Columbia v. ExxonMobil Oil Corp.*, 172 A.3d 412 (D.C. 2017).

10. Defendant Fairfax Realty of Falls Church, LLC, d/b/a Fairfax Realty Select, is a District-licensed real estate organization, Real Estate Organization License Number REO200200316. Defendant Fairfax Realty is a limited liability company registered in the Commonwealth of Virginia. Its principal place of business is 3190 Fairview Park Drive, Suite 100, Falls Church, VA 22042.

11. Defendant David P. Michalski is a District-licensed real estate broker, Broker License Number BR102598, who serves as the designated principal broker for Fairfax Realty.

12. Defendant Ellta Solomon is a District-licensed real estate salesperson, Salesperson License Number SP200204119, who leases residential real estate in the District and surrounding areas.

## **FACTS**

### **Housing Assistance and the Rental Housing Market in the District**

13. The ability to access affordable housing free from discrimination is District residents' top civil rights concern. Office of the Attorney General for the District of Columbia, *Community Voices: Perspectives on Civil Rights in the District of Columbia* 4 (2019) <https://oag.dc.gov/sites/default/files/2019-11/Civil-Rights-Report.pdf>. In 2018, more than 23% of the District's tenant households spent more than half of their monthly income on rent. Tom Acitelli, *Nearly half of D.C.-area renter households 'cost-burdened,' report says*, Curbed (Oct. 15, 2019),

<https://dc.curbed.com/2019/10/15/20915332/dc-renter-households-burdened>. In recent years, the District's rental housing market has become more expensive while the availability of affordable rental housing has plunged. Housing-assistance programs are a core pillar of the District's response to the growing affordable-housing crisis.

14. Housing assistance programs, including subsidized rent programs, are particularly crucial in the District, where high rents consume a disproportionate share of household expenditures. D.C. Housing Authority, *Housing Choice Voucher Program*, <https://www.dchousing.org/topic.aspx?topid=2&AspxAutoDetectCookieSupport=1> (last visited June 18, 2020). These programs are therefore increasingly important to low-income District tenants seeking to obtain affordable housing and navigate the city's high cost of living.

15. Housing vouchers are one form of housing assistance available to low-income residents, referred to here as housing voucher holders, and are available through multiple District and District-area agencies and organizations. Housing voucher holders may use their voucher to pay all or part of their monthly rent to subsidize housing costs consistent with the requirements of the relevant housing voucher program. District housing voucher programs include, among others, Rapid Re-Housing and Housing Choice Vouchers Program, commonly referred to as Section 8 and identified as such herein.

16. In the District, over 90 percent of housing voucher holders are African American, although they only account for 48 percent of the total population. *See*

Aastha Uprety and Kate Scott, “In the District, Source of Income Discrimination is Race Discrimination Too,” *Equal Rights Center* (Oct. 12, 2018) <https://equalrightscenter.org/source-of-income-and-race-discrimination-dc/> (last visited June 2, 2020). Given the disproportionate number of African Americans using Housing Choice Vouchers in the District, any discrimination based on source of income is 71 times more likely to discriminate against an African American renter rather than a white renter in the District. *Id.*

**Real Estate Professionals Face Myriad  
Licensing Requirements To Protect Consumers from Discrimination**

17. Tenants use many sources to identify affordable housing in the District, including real estate agents and online housing resources. A real estate broker is a firm or person who offers properties for sale, lease or rent. Brokers have responsibility for the actions of any real estate salespersons hired to undertake these activities. *See* D.C. Code § 47-2853.161.

18. A broker that is a firm rather than a person may obtain a license as a real estate organization so long as the firm is a licensed entity in the District of Columbia, it is led by a licensed broker at all of its branches and its real estate staff hold appropriate licenses. *See* D.C. Code § 47-2853.171.

19. A real estate salesperson is someone employed by a licensed real estate broker to offer properties for sale, lease or rent. *See* D.C. Code § 47-2853.171.

20. Recognizing the critical role that real-estate professionals play in the housing market, including the market for affordable housing, the District of Columbia Regulatory Affairs’ Real Estate Commission (the Commission) requires these

professionals to adhere to standards that mandate equitable treatment of housing consumers. *See, e.g.*, D.C. Code § 47-2853.02(d)(1) (requiring a license to “protect the public”); 17 DCMR 2609.1 (“A licensee shall not discriminate or assist any party in discriminating in the sale, rental, leasing, exchange, or transfer of property.”)

21. Real estate professionals are reminded of the District’s non-discrimination laws and their obligations during the fair housing training they must take every two years to maintain their licenses. *See* D.C. Code § 47-2853.13.

22. Under their licensing standards, a real estate broker or real estate salesperson who violates the DCHRA may have her real estate license revoked and face civil—or even criminal—penalties. *See* D.C. Code §§ 47-2843.01, *et seq.*

### **Online Discriminatory Advertising**

23. Many tenants in the District—including those who receive housing assistance—rely on online housing advertisements to locate rental housing. An apartment-industry survey showed that at least 83 percent of apartment hunters used an online resource to search for housing. J Turner Research, *The Internet Adventure: The Influence of Online Ratings on a Prospect’s Decision Making 3* (2016), [https://www.jturnerresearch.com/hubfs/Docs/J\\_Turner\\_Research-The\\_Internet\\_Adventure\\_Nov2016.pdf](https://www.jturnerresearch.com/hubfs/Docs/J_Turner_Research-The_Internet_Adventure_Nov2016.pdf).

24. More prospective tenants turning to online advertising has led to new opportunities for discriminatory advertising. In 2017 alone, more than 120 advertisements contained language suggesting that the housing provider discriminated based on source of income in the District. Equal Rights Center, *The*



*Equal Rights Center Annual Report 2018* 6 (2018), <https://equalrightscenter.org/wp-content/uploads/6.20.19-annual-report-2018-final.pdf>.

25. Discriminatory postings and advertisements create permanent barriers in the rental market each day the advertisements are visible. Unlike temporary restrictions such as “no one-bedroom units available,” warnings like “no vouchers accepted” send a lasting message to voucher holders and are likely to permanently discourage them from pursuing that housing opportunity. *Cf.* John M. Yinger et al., *The Status of Research into Racial Discrimination and Segregation in American Housing Markets*, 6 OCCASIONAL PAPERS IN HOUSING AND COMMUNITY AFF. 60 (1979), <https://tinyurl.com/housingresearchagenda> (describing discrimination that discourages housing seekers from considering certain areas).

#### **Defendants’ Discriminatory Advertising**

26. On or before January 3, 2020, District-licensed real estate salesperson defendant Solomon, acting under the brokerage of defendant Fairfax Realty and approval of the designated principal broker defendant Michalski, posted at least four discriminatory advertisements for 1700 Gainesville Street S.E., Washington, D.C. 20020 (the Property). The advertisements stated that the Property was a four-bedroom, three-bath townhouse available to rent in the District. The discriminatory advertisements were posted on Zillow, HotPads.com, Craigslist and ApartmentList.com.

27. Defendant Fairfax Realty and its principal designated broker, through its agent defendant Solomon, acted as the point of contact for the discriminatory advertisement of the Property on each online platform.

28. Defendant Solomon, acting as an agent of defendant Fairfax Realty and under the direction of defendant Michalski, posted an advertisement for the Property on Zillow. The Zillow advertisement, posted through HotPads.com, identifies defendant Solomon's brokerage affiliation as Fairfax Realty Select.

29. The Zillow and HotPads.com advertisements stated: "Section 8 Voucher not accepted at this time."

30. The advertisements were posted from at least January 3 to January 15, 2020.

31. Defendant Solomon, acting as an agent of defendant Fairfax Realty and under the direction of defendant Michalski, posted an advertisement for the Property on Craigslist.

32. The Craigslist advertisement stated: "Section 8 Voucher not accepted at this time":

© craigslist - Map data © OpenStreetMap  
1700 near Gainesville St SE  
[\(google map\)](#)

2200ft<sup>2</sup> available jan 6

application fee details: **50 Per applicant for Credit check, processing etc**

cats are OK - purrr

dogs are OK - woof

furnished

townhouse

no smoking

Stunning, Luxury FURNISHED with amazing 70 inch TV, brand new 3-level end unit townhouse drenched with light! No other annacostia rental listing compares! It comes furnished with sleek modern furniture, amazing stainless steel appliance with white gorgeous kitchen granite and cabinets - A DREAM KITCHEN!

California King Bed with Master bathroom suite and walk in closet. Peaceful, serene neighborhood, new construction, only 1 years old ready for you to call home. Imagine waking up to a crisp morning with a cup of coffee on your large deck or grilling your favorite food (Grill and patio chairs included).

Large enough for entertaining amazing dinners, raising a family or for someone looking to enjoy this large space. About 1 mile walk to the vibrant downtown annacostia with many restaurants, bars, shops and Metro.

Tenant pays all utilities.  
Large Garage Parking.  
Pets allowed on case by case  
If requested, furniture can be removed  
Section 8 Voucher not accepted at this time.

Requirements:  
Good to Excellent Credit Required  
Income: Above 70k a year  
Paystubs  
\$50 Application fee and 1 month security deposit

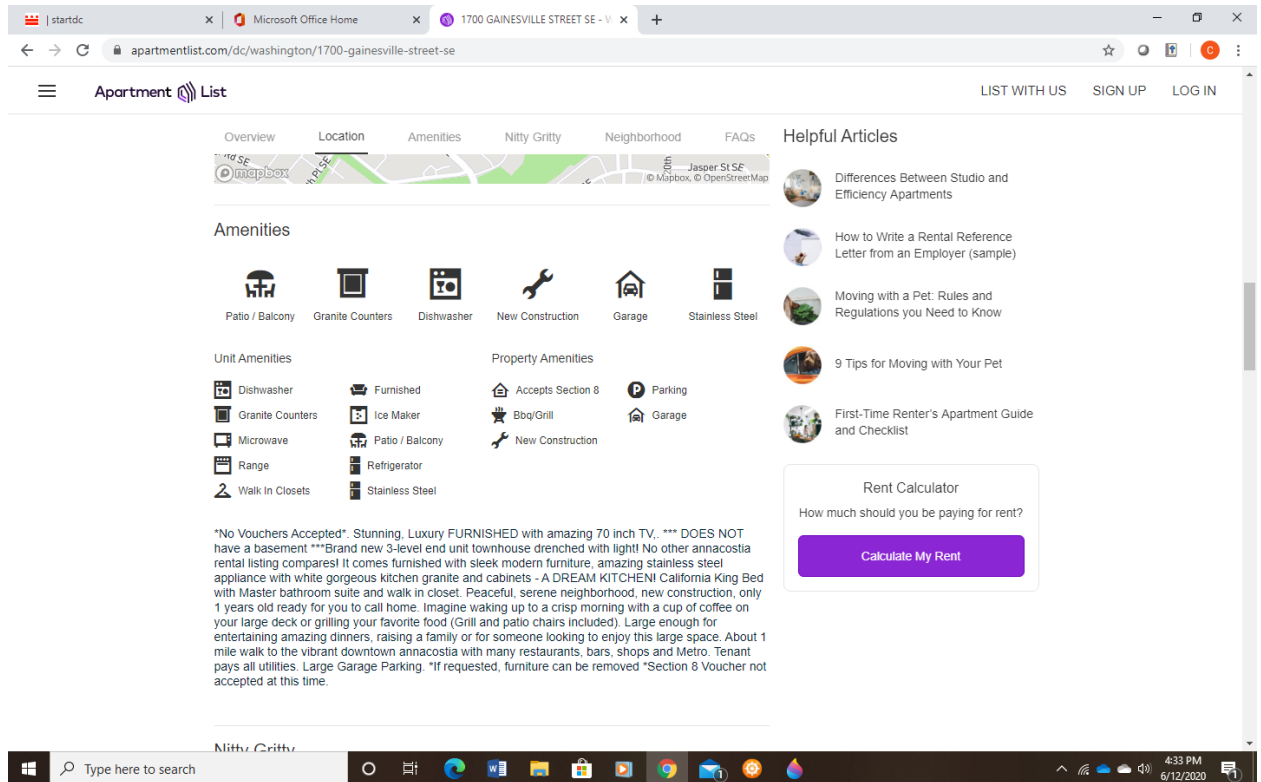
For more information look at the listings below:  
[https://www.realtor.com/realestateandhomes-detail/1700-Gainesville-St-SE\\_Washington\\_DC\\_20020\\_M68569-59441#photo1](https://www.realtor.com/realestateandhomes-detail/1700-Gainesville-St-SE_Washington_DC_20020_M68569-59441#photo1)

- do NOT contact me with unsolicited services or offers

33. The Craigslist advertisement was posted on January 3, 2020 and was visible until January 11, 2020.

34. Defendant Solomon, acting as an agent of Fairfax Realty and under the direction of defendant Michalski, posted an advertisement for the Property on ApartmentList.com.

35. The beginning of the ApartmentList.com advertisement stated, “\*No Vouchers Accepted\*.” The end of the ApartmentList.com advertisement stated, “\*Section 8 Voucher not accepted at this time\*”:



36. The ApartmentList.com advertisement was posted from January 3, 2020 to January 15, 2020 and again from February 3, 2020 to February 11, 2020.

**COUNTS I-IV  
DISCRIMINATORY ADVERTISEMENT IN VIOLATION OF THE DCHRA  
(All Defendants)**

37. The District adopts and incorporates all of the factual allegations set forth in paragraphs 1-36, above.

38. Defendants’ Zillow, HotPads.com, Craigslist and ApartmentList.com advertisements discriminate against housing voucher holders.

39. Defendant Solomon, a District-licensed real estate salesperson and agent of Fairfax Realty, defendant Michalski and defendant Fairfax Realty are all responsible for the discriminatory advertisements on Zillow, HotPads.com, Craigslist and ApartmentList.com.

40. Under the DCHRA it is an “unlawful discriminatory practice” to make “any ... statement, or advertisement, with respect to a transaction, or proposed transaction, in real property ... [that] unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on ... source of income ... of any individual.” D.C. Code § 2-1402.21(a)(5).

41. Rental payment from a housing voucher is a source of income under the DCHRA. *See* OHR Guidance No. 16-01 (stating that source of income includes “short- and long-term rental subsidies” such as “Housing Choice Vouchers”); *see also* D.C. Code § 2-1402.21(e) (the DCHRA expressly defines “source of income” broadly to encompass income from all legal sources, including funding from “section 8 of the United States Housing Act of 1937[.]”); D.C. Code § 2-1402.21(29) (expressly defining “source of income” to include “federal payments”).

42. Defendants’ statement in the Zillow advertisement that they would not rent to Housing Choice Voucher holders—“No Section 8 Voucher at this time”—is a discriminatory advertisement based on the source of income of individuals in violation of D.C. Code § 2-1402.21(a)(5).

43. Defendants’ statement in the Hotpads.com advertisement that they would not rent to Housing Choice Voucher holders—“No Section 8 Voucher at this

time”—is a discriminatory advertisement based on the source of income of individuals in violation of D.C. Code § 2-1402.21(a)(5).

44. Defendants’ statement in the Craigslist posting that they would not rent to Housing Choice Voucher holders—“No Section 8 Voucher at this time”—is a discriminatory advertisement based on the source of income of individuals in violation of D.C. Code § 2-1402.21(a)(5).

45. Defendants’ statements in the ApartmentList.com posting that they would not rent to Housing Choice Voucher holders—“No Vouchers Accepted” and “Section 8 Voucher not accepted at this time”—are discriminatory advertisements based on the source of income of individuals in violation of D.C. Code § 2-1402.21(a)(5).

46. Defendants violated the DCHRA each time they posted or allowed to be posted or syndicated a discriminatory advertisement. Defendants’ discriminatory advertisements discourage potential tenants of the Property based on their source of income.

**COUNTS V-VIII**  
**DISPARATE IMPACT BASED ON RACE**  
**IN VIOLATION OF THE DCHRA**  
(All Defendants)

47. The District adopts and incorporates all of the factual allegations set forth in paragraphs 1-46, above.

48. Defendants posted discriminatory advertisements on Zillow, HotPads.com, Craigslist and ApartmentList.com that discriminate against housing voucher holders.

49. Under the DCHRA, it is an “unlawful discriminatory practice” to “refuse or fail to initiate or conduct any transaction in real property” where such refusal or failure is “wholly or partially ... based on the actual or perceived ... race ... of any individual.” D.C Code § 2-1402.21(a)-(a)(1).

50. It is also a violation of the DCHRA to take any action that has “the effect or consequence” of discriminating based on race. D.C. Code § 2-1402.68.

51. Over 90 percent of voucher holders in the District are African American. The Defendants’ refusal to accept housing voucher holders is also a discriminatory practice against African Americans.

52. Defendants’ policy to discriminate against voucher holders disparately impacts African Americans in the District and is a violation of D.C. Code § 2-1402.21(a)-(a)(1).

53. Defendants violated the DCHRA each time they posted a discriminatory advertisement.

**COUNT IX**  
**ACTS OF DISCRIMINATION BY A**  
**REAL ESTATE SALESPERSON IN VIOLATION OF THE DCHRA**  
(Solomon)

54. The District adopts and incorporates herein all of the factual allegations set forth in paragraphs 1-53, above.

55. Defendant Solomon is a licensed real estate salesperson in the District of Columbia who posted and acted as the point of contact for the discriminatory advertisements of the Property.

56. The discriminatory language was published in four separate advertisements on Zillow, HotPads.com, Craigslist and ApartmentList.com.

57. It is an “unlawful discriminatory practice” to make “any ... statement, or advertisement, with respect to a transaction, or proposed transaction, in real property ... [that] unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on ... the . . . race . . . [or] source of income ... of any individual.” D.C. Code § 2-1402.21(a)(5). *See* D.C. Code § 2-1402.23 (holding any real estate salesperson who violates the discrimination provisions of the DCHRA as a danger to the public interest).

58. Defendant Solomon violated the DCHRA four times when she posted four separate advertisements with discriminatory language on Zillow, HotPads.com, Craigslist and ApartmentList.com.

59. As a registered real estate salesperson, defendant Solomon’s discriminatory acts are violations of the DCHRA and have endangered the public interest.

60. Her violations of the DCHRA also violate D.C. Code § 2-1402.23.



**COUNT VIII**  
**ACTS OF DISCRIMINATION BY A REAL ESTATE BROKER**  
**IN VIOLATION OF THE DCHRA**  
(David Michalski)

61. The District adopts and incorporates all of the factual allegations set forth in paragraphs 1-60, above.

62. Defendant Michalski is a District-licensed real estate broker that, through his agent defendant Solomon, posted discriminatory advertisements of the Property.

63. Defendant Michalski posted the discriminatory language four separate times on Zillow, Craigslist, and ApartmentList.com.

64. It is an “unlawful discriminatory practice” to make “any ... statement, or advertisement, with respect to a transaction, or proposed transaction, in real property ... [that] unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on ... the ... race ... [or] source of income ... of any individual.” D.C. Code § 2-1402.21(a)(5). *See* D.C. Code § 2-1402.23 (holding any real estate broker or salesperson who violates the discrimination provisions of the DCHRA as a danger to the public interest).

65. Defendant Michalski violated the DCHRA four times when his agent defendant Solomon posted four separate advertisements with discriminatory language on Zillow, HotPads.com, Craigslist and ApartmentList.com.

66. As a real estate broker, defendant Michalski's discriminatory acts are violations of the DCHRA and therefore have endangered the public interest.

67. Defendant Michalski's violations of the DCHRA also violate D.C. Code § 2-1402.23.

### **PRAYER FOR RELIEF**

WHEREFORE, the District requests that this Court enter judgment in its favor and grant relief against defendants as follows:

- (a) Injunctive and declaratory relief;
- (b) Damages;
- (c) Civil penalties;
- (d) The District's reasonable attorney's fees and costs; and
- (e) Such other and further relief as this Court deems appropriate based on the facts and applicable law.

### **JURY DEMAND**

The District of Columbia demands a jury trial by the maximum number of jurors permitted by law.

Dated: July 22, 2020

Respectfully submitted,

KARL A. RACINE  
Attorney General for the District of Columbia

TONI MICHELLE JACKSON

Deputy Attorney General  
Public Interest Division

/s/ Michelle D. Thomas  
MICHELLE D. THOMAS [993514]  
Chief, Civil Rights Section  
Public Interest Division

/s/ Nadeen J. Saqer  
NADEEN J. SAQER [971018] \*  
JAMES A. TOWNS [433435]  
Assistant Attorneys General  
441 Fourth Street, N.W., Suite 630 South  
Washington, D.C. 20001  
Tel: (202) 805-7433  
Fax: (202) 741-0584  
Email: nadeen.saqer@dc.gov

*Attorneys for the District of Columbia*

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\* Admitted to practice only in New York. Practicing in the District of Columbia under the direct supervision of Michelle D. Thomas, a member of the D.C. Bar under D.C. Court of Appeals Rule 49(c)(4).