Honorable Sue Parisien
Trial Date: March 5, 2018

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

CHONG and MARILYN YIM, KELLY LYLES, BETH BYLUND, CNA APARTMENTS, LLC and EILEEN, LLC, Plaintiffs, vs. CITY OF SEATTLE, a Washington Municipal corporation, Defendant.	No. 17-2-05595-6 SEA DEFENDANT'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Defendant City of Seattle answers Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief as follows:

I. INTRODUCTION

1. Landowners have a constitutionally protected right to rent or sell their property, in a non-discriminatory manner, to whom they choose, at a price they choose—which includes a right of first refusal. *Manufactured Housing Communities of Washington v. State,* 142 Wn.2d 347, 363-65, 13 P.3d 183 (2000).

ANSWER: The paragraph above states only legal conclusions to which no answer is required. To the extent that it contains averments within the meaning of CR 8(b), the City DENIES

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

those averments.

2. The City's first-in-time rule mandates that landlords must offer a rental unit to the first applicant who satisfies the landlord's advertised rental criteria. The rule then gives the first qualified applicant a right of first refusal. The rule declares it an "unfair practice" for a landlord to choose from among qualified applicants. The City Code states that the first-in-time rule is a mandatory condition on permission to rent property and is automatically imposed whenever a landlord advertises a vacancy.

ANSWER: The averments of the paragraph above characterize Seattle Municipal Code ("SMC") 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08). The text of the ordinance speaks for itself, and the City therefore DENIES the averments of the paragraph above.

II. PARTIES

3. The plaintiffs in this action, Chong and MariLyn Yim, Kelly Lyles, Beth Bylund, CNA Apartments, LLC, and Eileen, LLC, are landlords who own and manage small rental properties in Seattle and are subject to Seattle's Open Housing Ordinance.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

4. The City of Seattle is a Washington state municipality located in King County and chartered by the State of Washington.

ANSWER: The City ADMITS that it is a Washington municipality located in King County. Whether the State of Washington "chartered" the City is a legal conclusion to which no answer is required; to the extent that that it constitutes a factual averment within the meaning of CR 8(b), the City DENIES it.

5. Plaintiffs reserve the right to name additional defendants as needed.

ANSWER: The paragraph above states no averment requiring admission or denial within the meaning of CR 8(b).

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

III. JURISDICTION AND VENUE

6. This civil action is a case of actual controversy between Plaintiffs and Defendant arising under the Washington State Constitution.

ANSWER: The paragraph above states only legal conclusions to which no answer is required. To the extent that it contains averments within the meaning of CR 8(b), the City DENIES those averments.

7. This Court has jurisdiction over this matter pursuant to RCW 4.28.020, RCW 7.24.010, 7.40.010, and Article IV, Sections 1 and 6, of the Washington State Constitution.

ANSWER: The paragraph above states only legal conclusions to which no answer is required. To the extent that it contains averments within the meaning of CR 8(b), the City DENIES those averments.

8. Under RCW 4.12.020, venue is proper in King County Superior Court because the City of Seattle sits within county limits.

ANSWER: The City ADMITS that it is within King County. The remainder of the paragraph above states only legal conclusions to which no answer is required. To the extent that the remainder contains averments within the meaning of CR 8(b), the City DENIES those averments.

IV. FACTUAL BACKGROUND

Seattle's "First-in-Time" Ordinance

9. To rent residential units in Seattle, landlords must register with the Seattle Department of Construction and Inspections. SMC 22.214.040. To register, landlords must submit an application along with a fee and renew every five years. *Id.* The City may revoke registration for failure to comply with the Rental Registration and Inspection Ordinance. SMC 22.214.045.

ANSWER: The averments of the paragraph above characterize the City's Rental Registration and Inspection Ordinance ("RRIO"), codified at SMC Chapter 22.214. The text of the

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

ordinance speaks for itself, and the City therefore DENIES the averments of the paragraph above.

10. On August 9, 2016, the City Council amended Seattle's Open Housing Ordinance in Council Bill 118755. These amendments were designed to address the city's ongoing affordable housing crisis and to affirm Seattle's "longstanding commitment to race and social justice." The amendments add anti-discrimination protections based on a renter's source of income, such as subsidies, child support payments, Social Security, and so on.

ANSWER: As to the first sentence of the paragraph above, the City ADMITS that the City Council passed Council Bill 118755 with amendments, thereby amending the Open Housing Ordinance, but DENIES that it did so on August 9, 2016. As to the second sentence of the paragraph above, the averments as to the purpose for which the amendments "were designed," including the unattributed quotation, are too vague to permit the City to formulate a response, and the City therefore DENIES them. As to the third sentence of the paragraph above, the texts of the amendments speaks for itself, and the City therefore DENIES the averments of that sentence.

11. The Council Bill also contains a section titled "First in time." That section requires landlords to "offer tenancy of the available unit to the first prospective occupant meeting all the screening criteria necessary for the approval of the application." SMC 14.08.030. If this first applicant does not accept the offer within 48 hours, then the landlord must offer the unit to other qualified applicants in chronological order. SMC 14.08.040(A)(4). The Ordinance declares it an "unfair practice" for a landlord to choose from among the qualified tenants that apply for a rental unit and deems such a choice "contrary to the public peace, health, safety and general welfare." SMC 14.08.030; 14.08.040(A)(4).

ANSWER: The City ADMITS that Council Bill 118755 contained a section entitled "First-in-time," and notes that the section is now codified at SMC 14.08.050. The remaining averments of the paragraph above characterize SMC 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08). The text of the ordinance speaks for itself, and the City therefore DENIES the remaining averments.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

12. The stated purpose of the first-in-time rule is to police against "both explicit and implicit (unintentional) bias" in tenant selection by eliminating a landlord's right to select whom he or she will rent to. [Footnote omitted.] City Council Member Lisa Herbold explained on the City Council webpage that she sponsored the bill because she believed that when a landlord selects a tenant using his or her "gut instinct," the decision may be based on implicit or unconscious bias.

ANSWER: The City ADMITS that the quoted language in the first sentence of the paragraph above (with the exception of the word "both") is contained in an August 12, 2016 posting on City Councilmember Lisa Herbold's web page at *http://herbold.seattle.gov*, and DENIES all other averments of that sentence. The City is without information or belief sufficient to admit or deny the averments of the second sentence of the paragraph above (which is vague as to which "City Council webpage" it references) and therefore DENIES them.

13. According to Council Member Herbold, the City's decision to take away landlords' right to select their tenants provides an opportunity for landlords to "unlearn" any "implicit associations" they may have. Or, as the study she cites says, taking away an individual's choice allows the government to "intervene" in an individual's unconscious mental constructs in order to "debias" or "reprogram" any "existing cognitive associations." [Footnote omitted.]

ANSWER: The City ADMITS that the quoted language in the first sentence of the paragraph above is contained in an August 12, 2016 posting on City Councilmember Lisa Herbold's web page at http://herbold.seattle.gov, and DENIES all other averments of that sentence. The second sentence of the paragraph characterizes a document referenced in that August 12, 2016 posting. The text of that document speaks for itself, and the City therefore DENIES the averments of the second sentence.

14. In the full council meeting in which the City Council adopted the rule, Council Member Debora Juarez said the first-in-time rule's purpose is to ensure that landlords do not "cherry pick which residents they deem 'worthy' and to level the playing field for those looking for housing." A city staffer likewise stated in a city council committee meeting that the rule was designed to "remove the discretion that a landlord has when deciding between two or more potential tenants."

ANSWER: The City DENIES that Councilmember Juarez made the quoted statements at

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

the August 8, 2016 meeting of the City Council, and is without information or belief sufficient to admit or deny that she made those statements at any time, and therefore DENIES that averment. The City ADMITS that a member of the City Council's Central Staff used the language quoted at a June 14, 2016 meeting of the Civil Rights, Utilities, Economic Development, and Arts Committee, but DENIES that she stated that the first-in-time rule was "designed" for that purpose.

15. Council Member Herbold shared a similar sentiment, that by eliminating the landlord's right to make that choice, the first-in-time rule was meant to "limit the likelihood of creaming the pool and going through a stack of applications to find the best one even if [the landlord has] already identified somebody . . . that meets their qualifications."

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

16. The City Council expressly recognized that the first-in-time rule limits landlord discretion even when the pool of qualified applicants contains no members of a protected class. Council Member Juarez said that discretion would be eliminated "even in cases when the landlord is deciding between tenants on factors not part of a protected class." Indeed, a City of Seattle Staff Report, dated June 14, 2016, warned that the "[u]se of a first in time policy affects the [] landlord's ability to exercise discretion when deciding between potential tenants that may be based on factors unrelated to whether a potential tenant is a member of a protected class."

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the first two sentences of the paragraph above and therefore DENIES them. The third sentence characterizes a June 14, 2016 memo from a member of the City Council's Central Staff. The text of the memo speaks for itself, and the City therefore DENIES the averments of the paragraph above.

17. The first-in-time rule lays out various rules about timing, notice, and record-keeping. When advertising, landlords must offer notice of the criteria that an applicant must satisfy to qualify for tenancy. SMC 14.08.050(A)(1). Landlords must note the date and time when they receive an application. They must then screen rental applications in chronological order and offer tenancy to the first eligible candidate. SMC 14.08.050(A)(2). If a prospective tenant needs a reasonable amount of

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

extra time to complete an application or the landlord makes further inquiries, the applicant may keep her place in line. SMC 14.08.050(B).

ANSWER: The averments of the paragraph above characterize SMC 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08). The text of the ordinance speaks for itself, and the City therefore DENIES the averments of the paragraph above.

18. The first-in-time rule has a few exceptions that do not affect these plaintiffs. A landlord does not need to follow the rule if the landlord is legally obligated to or voluntarily sets aside the rental unit for "specific vulnerable populations." SMC 14.08.050(A)(4)(a), (b). Accessory dwelling units and detached accessory dwelling units are also exempted.

ANSWER: The City is without information and belief sufficient to admit or deny whether any exceptions to its first-in-time rule do not affect Plaintiffs, and therefore denies the averments of the first sentence of the paragraph above. The remaining averments of the paragraph above characterize SMC 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08). The text of the ordinance speaks for itself, and the City therefore DENIES the remaining averments of the paragraph above.

19. The Open Housing Ordinance creates both public and private causes of action exposing landlords to liability if they exercise discretion when selecting a tenant. Private individuals aggrieved by an "unfair practice" have a cause of action under the Ordinance. If an aggrieved applicant can show that he or she was subjected to an "unfair practice," he or she may be entitled to a permanent or temporary injunction, temporary restraining order, or other order, "including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate." SMC 14.08.095(f). The aggrieved applicant may also recover damages, "including damages for humiliation and mental suffering, damages for the loss of the right to be free from discrimination in real estate transactions, and any other appropriate remedy set forth in the federal Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 et seq." *Id*. The Ordinance also provides for an award of attorneys' fees and costs to the prevailing party. *Id.*

ANSWER: The averments of the paragraph above characterize SMC 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08). The text of the ordinance speaks for itself, and the City therefore DENIES the averments of the paragraph above.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

20. The Ordinance also authorizes the City's Director of the Office of Civil Rights to pursue a claim against a landlord accused of an "unfair practice." The Ordinance directs the City Hearing Examiner to grant whatever relief it deems "necessary to correct the practice, effectuate the purpose of [the Open Housing Ordinance], and secure compliance therewith." SMC 14.08.180(C). Upon finding that a landlord engaged in an "unfair practice," the Examiner is additionally authorized to impose civil penalties of up to $11,000 for the first offense, $27,500 if another "unfair practice" had occurred in the prior five years, and $55,000 if two "unfair practices" occurred in the prior seven years. SMC 14.08.185.

ANSWER: The averments of the paragraph above characterize SMC 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08). The text of the ordinance speaks for itself, and the City therefore DENIES the averments of the paragraph above.

Plaintiffs Are Suffering Immediate and Ongoing Harm

21. Each of the plaintiffs has suffered immediate and ongoing harm because the City appropriated their constitutionally protected right to choose whom they will house and work with in these often lengthy and interpersonal landlord-tenant relationships. The inability to exercise the right of discretion increases various risks faced by plaintiffs when renting their property.

ANSWER: DENY.

22. Chong and MariLyn Yim own a duplex and a triplex in Seattle. They and their three children live in one of the triplex units. They rent out the other two units. The Yim family could not afford to live in Seattle without the rental income from these properties. The Yims have never denied tenancy to anyone based on membership in a protected class.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

23. The Yims value their right to select their tenants. The Yim family cannot afford to absorb losses because of a tenancy gone bad. And for a family with three children, selecting a tenant who will also be their close neighbor requires careful discretion. The Yims share a yard with their renters, and the Yim children are occasionally at home alone when their renters are home. The Yims treasure their right to ensure compatibility and safety by choosing among eligible applicants.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

24. The first-in-time policy has an immediate impact on the Yim family and their current tenants. The Yims have long rented their units well below market rate. Because of the first-in-time rule, they have to raise rents in order to build up a larger cushion of reserves to absorb the risks they face under the first-in-time rule.

ANSWER: The City DENIES the averment that the first-in-time policy immediately impacts the Yim family, noting that SMC 14.08.050(E) does not mandate compliance with the first-in-time provisions until July 1, 2017. The City is without information or belief sufficient to admit or deny the remaining averments of the paragraph above and therefore DENIES them.

25. The rule has also affected the Yim's rental practices. One of the Yim's tenants recently lost a roommate and needs to find a new one. The Yims drafted up new screening criteria in response to the first-in-time rule. To protect their investment, the Yims increased the stringency of their rental criteria. As a consequence, their tenant has had difficulty finding a new roommate, which may result in the tenant's displacement. The Yims have found that the rule has made it difficult for them to offer flexibility and compassion or consider special cases.

ANSWER: The City DENIES the averment that a rule with which the Yim Plaintiffs need not yet comply has affected their rental practices or caused changes in those practices. The City is without information or belief sufficient to admit or deny the remaining averments of the paragraph above and therefore DENIES them.

26. Kelly Lyles is a single woman who owns and rents a home in West Seattle. Ms. Lyles has never discriminated based on a protected class.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

27. Ms. Lyles is a local artist who relies on rental income to afford living and working in Seattle. The $1,300 in rent she receives monthly makes up most of her income.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

28. Discretion in selecting tenants is vital to Ms. Lyles's livelihood. She cannot afford to miss even a month's rent, and she does not have the resources to pursue an unlawful detainer action. As a single woman who interacts frequently with her tenants, she also considers personal safety when choosing them. Such considerations cannot be adequately addressed through general rental criteria. The first-in-time policy has an immediate impact on Ms. Lyles's decisions about how much she charges for her rent because she wants to avoid filling a vacancy with someone that she has not personally chosen as a tenant. Hence, she is less inclined to increase rent as market rates rise.

ANSWER: The City DENIES the averment that the first-in-time policy immediately impacts Ms. Lyles, noting that SMC 14.08.050(E) does not mandate compliance with the first-in-time provisions until July 1, 2017. The City is without information or belief sufficient to admit or deny the remaining averments of the paragraph above and therefore DENIES them.

29. CNA Apartments, LLC, is owned by Thomas, John, George, and Penelope Benis for college investment. The LLC manages a six-unit apartment building in Seattle. The three Benis children—ages 13, 14, and 15—use the rental income they receive from their ownership interests in the LLC as their college fund. The children each have a 20 percent ownership interest in the LLC. Their father, Chris Benis, acts as the LLC's manager, and their mother owns the remaining 40 percent interest. The Benis family values the discretion they have enjoyed in selecting tenants. They have never discriminated based on protected classes. Rather, they have used that discretion to select people that they believe will be long-term tenants and help them to build on the investment in the children's future education.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

30. Scott Davis and his wife own and manage Eileen, LLC, through which they operate a seven-unit residential complex in the Greenlake area of Seattle. Mr. Davis also owns and runs a small business, the Davis Sign Company. The rental property serves as an important supplement to the Davis family's income. They have never discriminated on the basis of a protected class.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

31. As a small family venture, the Davises treasure their ability to decide who they will rent their units to. The first-in-time rule will significantly disrupt their rental business. When a tenant notifies the Davises of a move-out, they typically have less than three days to advertise, show the unit, and

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

screen potential applicants so the applicants can notify their current landlords early in the month, as is often required by lease agreements. That means the Davises must act quickly to avoid losing a month's worth of rent. The first-in-time rule, however, slows down this process because the Davises will no longer advertise publicly in order to maintain some control over the rental process. They will only advertise by word-of-mouth through current and past tenants and friends and family.

ANSWER: The City DENIES the averment that the first-in-time rule currently "slows down the process" for the Davis Plaintiffs, noting that SMC 14.08.050(E) does not mandate compliance with the first-in-time rule until July 1, 2017. The City is without information or belief sufficient to admit or deny the remaining averments of the paragraph above and therefore DENIES them.

32. By removing the reasonable exercise of discretion, the first-in-time rule forces the Davises to make strict screening requirements that will in fact exclude good tenants who could overcome deficiencies in their application by making a good impression. Currently, the Davises rent a unit to two young men from separate minority groups. They have lived in the unit over three years, but they would not satisfy the Davises' screening requirements today. Both were recent graduates with no prior rental history and no solid credit history. The Davises liked them because they were polite, took off their shoes when they viewed the apartment, and seemed excited to live there. The Davises decided to take a chance, even though the pair did not satisfy their typical rental criteria. Under the first-in-time rule, the Davises cannot make that kind of judgment call.

ANSWER: The City DENIES the averment that the first-in-time rule currently requires any "screening requirements" of the Davis Plaintiffs, noting that SMC 14.08.050(E) does not mandate compliance with the first-in-time rule until July 1, 2017. The City is without information or belief sufficient to admit or deny the remaining averments of the paragraph above and therefore DENIES them.

33. Beth Bylund owns and rents out two single-family homes in Seattle. She has never discriminated on the basis of any protected class. Ms. Bylund filled a vacancy in one of her rentals in late January of 2017 and thus has had to comply with the first-in-time policy. Ms. Bylund chose not to advertise the unit because of the first-in-time rule. Rather than advertising broadly on large, public websites—which would give her less control over who applied—Ms. Bylund relied on word of mouth in hopes that she could narrow the pool of applicants. This slowed down the process of renting, but she would prefer to keep a unit vacant for a month than face the risk associated with opening up the pool of applicants without discretion to choose among them.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

ANSWER: The City DENIES the averment that Ms. Bylund "chose not to advertise [her] unit] because of the first-in-time rule," noting that SMC 14.08.050(E) does not mandate compliance with the first-in-time rule until July 1, 2017. The City is without information or belief sufficient to admit or deny the remaining averments of the paragraph above and therefore DENIES them.

34. The first-in-time rule also affects Ms. Bylund's ongoing management of her rental properties. Ms. Bylund hesitates to raise rents along with the market because she fears losing her current tenants and being forced to take on a tenant not of her own choosing.

ANSWER: The City DENIES the averment that the "first in time rule … affects Ms. Bylund's ongoing management of her rental properties," noting that SMC 14.08.050(E) does not mandate compliance with the first-in-time rule until July 1, 2017. The City is without information or belief sufficient to admit or deny the remaining averments of the paragraph above and therefore DENIES them.

35. The plaintiffs in this action have suffered immediate and ongoing harm.

ANSWER: DENY.

V. DECLARATORY RELIEF ALLEGATIONS (Ch. 7.24 RCW)

36. Under Article 1, Section 16, of the Washington State Constitution, the City of Seattle can only appropriate an individual's property right if the city offers just compensation and can justify the taking as a public use. Takings for private use are prohibited.

ANSWER: The paragraph above states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

37. The first-in-time rule constitutes a taking of a valuable property interest for a private use in violation of Article I, Section 16.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

ANSWER: The paragraph above states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

38. Under Article 1, Section 3, the City cannot deprive landlords of property without due process of law. By enacting an unduly oppressive rule that is not reasonably necessary to fulfilling a legitimate public purpose, the City has facially violated the plaintiffs' due process rights.

ANSWER: The paragraph above states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

39. The first-in-time rule also imposes a burden on protected commercial speech in contravention of Article 1, section 5, of the Washington State Constitution, which protects the freedom of speech. If landlords engage in commercial speech activity, such as advertising a tenancy on Craigslist or similar venues, they suffer a loss of control over who will live on their property. This burdens and chills the exercise of commercial speech rights by reducing landlord discretion as a consequence of the exercise of a protected right. Alternatively, the rule constitutes an unconstitutional condition on the exercise of the right to advertise by imposing the first-in-time requirements on landlords who advertise publicly.

ANSWER: The paragraph above states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

40. A declaratory relief judgment as to whether the City may enforce the first-in-time rule to ensure that landlords do not choose among eligible applicants will serve a useful purpose in clarifying and settling the legal relations between plaintiffs and the City. A declaratory relief judgment will also afford relief from the uncertainty and insecurity giving rise to this controversy.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

VI. PERMANENT INJUNCTIVE RELIEF ALLEGATIONS (Ch. 7.40 RCW)

41. The Yims and the other landlord-plaintiffs have no adequate remedy at law to address the City's unlawful taking of their right to lease their property to the eligible candidate of their choosing.

ANSWER: The paragraph above states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

42. The Yims and the other landlord-plaintiffs will suffer irreparable injury absent an injunction restraining the City from enforcing this uncompensated taking with no public use.

ANSWER: The City is without information or belief sufficient to admit or deny the averments of the paragraph above and therefore DENIES them.

VII. CAUSES OF ACTION

COUNT I

The City's Appropriation of Landlords' Right To Lease Their Property to the Applicant of Their Choice—Without Just Compensation—Violates the Takings Clause of the Washington State Constitution

43. The plaintiffs reallege the preceding paragraphs as though fully set out here.

ANSWER: The paragraph above states no averment requiring admission or denial within the meaning of CR 8(b).

44. Article I, section 16, of the Washington State Constitution says: "Private property shall not be taken for private use" and "[n]o private property shall be taken . . . for public or private use without just compensation."

ANSWER: The averments of the paragraph above characterize the Washington Constitution. The text of that document speaks for itself, and the City therefore DENIES the averments of the paragraph above.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

45. The Supreme Court of Washington has held that the right to sell or lease property to a person of your choosing is a protected property right. *See Manufactured Housing Communities v. State*, 142 Wn.2d 347, 364-68 (2000). By taking this right from the Yims and the other landlord-plaintiffs and granting a right of first refusal to the first eligible applicant, the City has taken property without just compensation.

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

46. The City's adoption of a first-in-time rule appropriates a right of first refusal and gives it to the first qualified person to apply for a tenancy and thereby deprives the landlord plaintiffs of their right to lease property to a person of their choosing, a valuable and protected property right, in a manner that constitutes a taking under Washington Supreme Court precedent.

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

47. The City has failed to offer any just compensation or method of seeking compensation for this taking.

ANSWER: The City DENIES that it has taken property or a property right from Plaintiffs, and thus ADMITS that it has not offered remedies associated with takings. The City DENIES the averment that there are not "method[s] of seeking compensation" available to people who assert that a taking has occurred.

48. The first-in-time rule therefore violates Article I, section 16 on its face. Plaintiffs have and will continue to suffer irreparable harm until this law is declared unconstitutional and void.

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments. The City DENIES that Plaintiffs have suffered any harm, much less irreparable

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

harm, from the first-in-time provisions, which do not mandate compliance until July 1, 2017.

49. This constitutional claim is ripe for resolution because it presents no facts in need of further development.

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

COUNT II

The City's First-in-Time Rule Grants a Right of First Refusal to the First Qualified Applicant and Constitutes a Prohibited Private Taking

50. The plaintiffs reallege the preceding paragraphs as though fully set out here.

ANSWER: The paragraph above states no averment requiring admission or denial within the meaning of CR 8(b).

51. Article I, section 16, of the Washington State Constitution forbids the government from taking private property for a "private use."

ANSWER: The averments of the paragraph above characterize the Washington Constitution. The text of that document speaks for itself, and the City therefore DENIES the averments of the paragraph above.

52. The City's first-in-time rule appropriates a right of first refusal from landlords and grants that right to the first qualified applicant—a private individual. A right of first refusal is a valuable and protected property interest. *See Manufactured Housing Communities of Washington*, 142 Wn.2d at 364-67. A governmental attempt to transfer such a right from one private individual to another is a forbidden private taking and is void.

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

those averments.

COUNT III

The City's First-in-Time Rule Violates Substantive Due Process Because It Uses an Improper, Overbroad, and Unduly Burdensome Means To Achieve an Illegitimate Public Purpose

53. The plaintiffs reallege the preceding paragraphs as though fully set out here.

ANSWER: The paragraph above states no averment requiring admission or denial within the meaning of CR 8(b).

54. Article I, section 3, of the state constitution states: "No person shall be deprived of life, liberty, or property, without due process of law." The guarantee of due process requires that all government actions that restrict individual's liberty or property rights must sufficiently relate to a legitimate end of government; otherwise, the action is void. *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330-31 (1990).

ANSWER: The averments of the first sentence of the paragraph above characterize the Washington Constitution. The text of that document speaks for itself, and the City therefore DENIES the averments of the first sentence. The remaining sentences of the paragraph above state legal conclusions to which no answer is required. To the extent that they contain factual averments within the meaning of CR 8(b), the City DENIES those averments.

55. The City's first-in-time rule seeks to address the possibility that rental decisions may be based on an individual's implicit or unconscious bias—without first having gathered any evidence that rental decisions are in fact being made based upon invidious implicit bias. Indeed, the study relied on by the City in promulgating the first-in-time rule concludes that implicit bias, by its very nature as an unconscious mental process, is unprovable. Its rectification is therefore not a legitimate public purpose.

ANSWER: To the extent that the averments of the paragraph above characterize SMC 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08), the text of the ordinance speaks for itself, and the City therefore DENIES those averments. The City DENIES all other factual averments of the paragraph above. It neither admits nor denies the legal conclusions of

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

the paragraph above, to which no answer is required.

56. The City's first-in-time rule employs improper, overboard, and unduly burdensome measures to achieve its stated goal of policing against implicit bias. The first-in-time rule attempts to curtail the possibility that rental decisions may be motivated by negative unconscious associations by depriving all landlords—whether they hold any implicit biases or not—of the protected property right to choose the person they want to offer a tenancy to. The City's rule also burdens all landlords in exercising their protected right to advertise vacancies to the public. *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557, 563 (1980).

ANSWER: To the extent that the averments of the paragraph above characterize SMC 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08), the text of the ordinance speaks for itself, and the City therefore DENIES those averments. The City DENIES all other factual averments of the paragraph above. It neither admits nor denies the legal conclusions of the paragraph above, to which no answer is required.

57. The City's first-in-time rule is overbroad, unduly burdensome, and not "reasonably necessary" to combat the risk of implicit bias. As conceded by members of the Council, the Ordinance forbids landlords from choosing among a pool of qualified applicants even if none of those applicants belong to a protected class. The rule also burdens landlords' exercise and enjoyment of constitutionally protected rights without any proof of discrimination against a protected class. The first-in-time rule also exposes landlords to damages and penalties for the exercise of constitutionally protected speech and property rights without any proof of discrimination against a protected class, implicit or otherwise. The rule is therefore far broader than necessary to halt discrimination against a protected class.

ANSWER: To the extent that the averments of the paragraph above characterize SMC 14.08.050 and other provisions of the Open Housing Ordinance (SMC Ch. 14.08), the text of the ordinance speaks for itself, and the City therefore DENIES those averments. The City DENIES all other factual averments of the paragraph above. It neither admits nor denies the legal conclusions of the paragraph above, to which no answer is required.

58. The rule is also unduly oppressive. The City has not proven that any of the landlords subject to the first-in-time rule engage in discrimination, implicit or otherwise. The harm visited upon plaintiff landlords—the deprivation of a fundamental constitutional right—is significant. Yet the study the City relied on to promulgate the rule offered several less onerous means of addressing implicit discrimination. The impact upon landlords is thus grossly disproportionate to any public benefit and

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

unduly oppressive.

ANSWER: The City DENIES all factual averments of the paragraph above. It neither admits nor denies the legal conclusions of the paragraph above, to which no answer is required.

59. The first-in-time rule violates the state constitutional guarantee of due process on its face.

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

COUNT IV

The City's First-in-Time Rule Burdens and Chills Protected Speech by Forcing Landlords To Contract with the First Eligible Applicant Who Responds to an Advertisement

60. The plaintiffs reallege the preceding paragraphs as though fully set out here.

ANSWER: The paragraph above states no averment requiring admission or denial within the meaning of CR 8(b).

61. Article I, Section 5, of the Washington State Constitution says: "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." This right includes the right to advertise and propose commercial transactions. *Kitsap Cnty. v. Mattress Outlet/Gould*, 153 Wn.2d 506, 511, 104 P.3d 1280 (2005).

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

62. Government action that chills or burdens commercial speech must face constitutional scrutiny.

ANSWER: This paragraph states only legal conclusions to which no answer is required.

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

63. The first-in-time rule burdens and chills plaintiffs' commercial speech rights on its face. A landlord who chooses to publicly advertise available units on widely viewed websites or other venues has no control over the pool of eligible applicants. In the ordinary course of business, a wide range of possible tenants would be a benefit. The first-in-time rule, however, effectively penalizes public advertising by forcing landlords to take the first eligible applicant. Thus, the more widespread the exercise of commercial speech by landlords, the less control they have over who they must do business with. Imposing such a burden on the free speech rights of landlords facially violates the state constitution.

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

64. Alternatively, the first-in-time rule creates an unconstitutional condition in violation of Plaintiffs' speech rights. A landlord may publicly advertise an available unit only if they relinquish valuable property interests—the right to decide who can enjoy a right of first refusal and the right to choose whom to lease property to. This condition facially violates the freedom of speech enshrined in the state constitution.

ANSWER: This paragraph states only legal conclusions to which no answer is required. To the extent that it contains factual averments within the meaning of CR 8(b), the City DENIES those averments.

VIII. PRAYER FOR RELIEF

Plaintiffs pray for the following relief:

1. For a declaration that section 14.08.050 (the first-in-time rule) of Seattle City Council Bill 118755 (the source-of-income-discrimination ordinance) facially violates Article I, sections 3, 5, and 16 of the Washington State Constitution;

2. For a permanent injunction forbidding the City from enforcing the first-in-time rule and its implementing regulation;

3. For an award of reasonable attorney fees, expenses, and costs as allowed by law and

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

equity, including RCW 4.84.010 and RCW 7.24.100; and

4. For such other relief as the Court deems just and proper.

ANSWER: No response is required to plaintiffs' demand for relief.

IX. AFFIRMATIVE DEFENSE

This action does not present a ripe or justiciable controversy.

X. CITY'S PRAYER FOR RELIEF

The City asks the court to DISMISS this action, enter judgment for the City, and award the City such costs and attorney fees as the law allows.

DATED August 21, 2017.

PETER S. HOLMES
Seattle City Attorney

By: *s/ Roger D. Wynne*
Sara O'Connor-Kriss, WSBA #41569
Roger D. Wynne, WSBA #23399
Sara.OConnor-Kriss@seattle.gov
Roger.Wynne@seattle.gov
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 684-8200
Fax: (206) 684-8284

Attorneys for Defendant,
City of Seattle

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

DECLARATION OF SERVICE

Erica Redding hereby declares as follows:

1. I am over the age of 18, am competent to testify in this matter, am a Paralegal in the Law Department, Civil Division, Seattle City Attorney's Office, and make this declaration based on my personal knowledge and belief.

2. On August 21, 2017, I caused a copy of the foregoing document to be delivered via KCSC E-service, as agreed to by all parties, addressed to:

Ethan W. Blevins
Pacific Legal Foundation
10940 NE 33rd Place, Suite 210
Bellevue, WA 98004
EBlevins@pacificlegal.org

3. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 21st day of August 2017, at Seattle, King County, Washington.

s/ Erica Redding
Erica Redding

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
(206) 684-8200