



The Office of Fair Housing and Equal Opportunity, Director for Region V, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred based on disability and has authorized and directed the issuance of this Charge of Discrimination. 42 U.S.C. § 3610(g)(2).

## **II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE**

Based on HUD’s investigation of the allegations contained in the aforementioned HUD Complaint and the Determination that reasonable cause exists, Respondents are charged with discriminating against Complainant, an aggrieved person as defined by 42 U.S.C. §3602(i), based on disability, in violation of 42 U.S.C. §§ 3604(f)(1) and (f)(3)(B) as follows:

### **A. LEGAL AUTHORITY**

1. It is unlawful to make unavailable or deny a dwelling to any buyer or renter because of a disability<sup>1</sup> of that buyer or renter, or a person residing, or intending to reside, with that buyer or renter. 42 U.S.C. § 3604(f)(1); 24 C.F.R. §§ 100.50(b)(1), 100.60(a), 100.202(a).
2. For the purposes of § 3604(f), “discrimination” includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B); 24 C.F.R. § 100.204.
3. Pursuant to the Act, an “aggrieved person” includes any person who claims to have been injured by a discriminatory housing practice. 42 U.S.C. §3602(i).
4. “Handicap,” herein referred to as “disability,” means, with respect to a person – “(1) a physical or mental impairment, which substantially limits one or more of such person’s major life activities, (2) a record of having such impairment, or (3) being regarded as having such impairment...” 42 U.S.C. §3602(h)(1); 24 C.F.R. § 100.201.

### **B. PARTIES AND SUBJECT PROPERTY**

5. Complainant is an individual with a disability within the meaning of the Act, because Complainant has a condition which substantially limits one or more of Complainant’s major life activities. 42 U.S.C. § 3602(h).
6. Complainant, and Complainant’s partner, **Redacted Name**, have been injured by Respondents’ actions and are “aggrieved persons” as defined by the Act. 42 U.S.C. § 3602(i).

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<sup>1</sup> The Act uses the term “handicap” or “handicapped,” which are considered antiquated terms. In this Charge, the terms “disability” or “disabled” will be used, instead. Those terms have the same legal meaning as the term “handicap” or “handicapped,” as defined in the Act.

7. Respondent Jeffrey Koenig (“Respondent Koenig”) individually, and through his company, Sigma Commercial, LLC, owns and operates several residential rental properties in the Milwaukee area, including a two-story duplex located at [Redacted Name] N. Oakland Avenue, Milwaukee, Wisconsin, 53211 (“subject property”). Respondent Vandelay Group, LLC, which Respondent Koenig owns and controls, is the management entity that leases and services the rental properties owned by Sigma Commercial, LLC. Vandelay Oakland, LLC is the entity that owns the subject property.

### **C. FACTUAL ALLEGATIONS**

8. Complainant has received professional treatment for a mental-health condition since at least June of 2016.
9. Complainant’s need for an assistance animal was medically identified after a hospitalization in January of 2017. Complainant’s assistance animal is a canine. The dog assists Complainant by alleviating one or more symptoms of Complainant’s disability.
10. Complainant and [Redacted Name] lived in student housing on the campus of University of Wisconsin- Milwaukee in the first few months of 2017.
11. Complainant and [Redacted Name] performed a search for new housing in April of 2017.
12. The couple’s search for housing began because the Complainant was having allergic reactions to allergens in Complainant’s carpeted campus apartment. The couple was seeking a unit with wood floors to address Complainant’s allergies.
13. On April 18, 2017, Complainant and [Redacted Name] saw an advertisement for the subject property, a two-bedroom apartment located at [Redacted Name] N. Oakland Avenue, Milwaukee, WI, on craigslist.com. [Redacted Name] called the telephone number listed on the advertisement and spoke with Respondent Koenig. [Redacted Name] and Respondent Koenig agreed to a showing of the subject property for the next day.
14. On April 19, 2017, Complainant and [Redacted Name] met Respondent Koenig at the subject property. The tour of the subject property concluded with Complainant and [Redacted Name] expressing interest in renting the unit. Respondent Koenig directed them to fill out an online application to rent the unit.
15. Later in the day, Complainant and [Redacted Name] filled out an application online and paid a \$20 per person application fee. That same day, April 19, 2017, Respondent reviewed and approved their applications to rent. Respondent Koenig communicated this approval in an e-mail message. The e-mail message from Respondent Koenig also included a link to a lease agreement. The lease agreement was furnished for them to understand the terms of rental and for them to sign the lease to rent the subject property.

16. Respondent's proposed lease contained a "No Pets" provision and a "No pets allowed" contract term. The "No pets allowed" term in the lease established a \$250 fine for each offense.
17. Complainant and [Redacted Name] understood that Respondents had a prohibition against "pets" in the subject property. Complainant and [Redacted Name] also understood that an assistance animal is not considered a "pet" under the Fair Housing Act.
18. The lease agreement Complainant received did not contain an exception to the "no pets" policy for service animals or assistance animals. Neither did the lease contain a reasonable accommodation policy or procedures related to seeking lease modifications due to medically-related needs.
19. During the investigation, Respondent Koenig did not identify how he has handled interactions with individuals with service animals.
20. Respondent Koenig did mention to Complainant and [Redacted Name] that in the past he had conditioned occupancy on the prospective tenant performing allergy testing of an animal.
21. In the evening of April 19, Complainant and [Redacted Name] contacted Respondent Koenig about another available property he had advertised that was located on Bradford Avenue in Milwaukee. In response to their interest in the unit, Respondent Koenig agreed to a showing of his rental on Bradford Avenue for the next day.
22. On April 20, 2017, Respondent Koenig, Complainant and [Redacted Name] met at the rental unit on Bradford Avenue. [Redacted Name] recorded a portion of the showing. He recorded a portion of the showing because he intended to show his parents the unit as they had offered to co-sign the lease for the unit they would rent.
23. During the showing of the unit at Bradford Avenue, [Redacted Name] and Complainant told Respondent Koenig that before they signed the lease that they needed to address the issue of Complainant's assistance animal, and the need for an accommodation to any policy prohibiting assistance animals in the subject property. [Redacted Name] followed their request for an accommodation with an immediate offer to furnish documentation in support of the accommodation request.
24. Complainant's request for an accommodation to Respondent's no-pets policy was recorded as part of [Redacted Name] effort to videotape the showing of the unit. A copy of the recording was preserved and furnished to the HUD investigator.
25. The recording reflects Complainant's request for a reasonable accommodation and Respondent Koenig's immediate response.
26. Respondent Koenig responded to the request for an accommodation by stating that Complainant and [Redacted Name] would need to perform an allergy test on their assistance animal; he added that they should not sign the lease he had sent them to sign.

27. Respondent Koenig told Complainant and [Redacted Name] that the allergy testing would need to establish if the assistance animal was “hypoallergenic” or not. Respondent Koenig declared that he was allergic to some dogs and that the testing was required because if he could not “tolerate the dog” then his intolerance would be known, and an accommodation would not be permitted.
28. Respondent Koenig followed his request for testing by saying to Complainant and [Redacted Name], “Don’t sign the lease.” He went on to say that he recognized it was a “sticky legal issue” and that it is unclear whose legal rights are more important--his “rights” or their rights as prospective tenants.
29. During the showing of the Bradford unit, Respondent Koenig commented he can be around the Schnauzers breed of canines.
30. Respondent Koenig stated that unless the dog was hypoallergenic the chances of passing the allergy testing were slim.
31. Respondent Koenig did not raise as an option taking the dog out of the unit in the event Respondent needed to visit the unit. He did not propose any alternative accommodation.
32. Complainant and [Redacted Name] offered to clean the unit prior to Respondent Koenig’s visits. Respondent rejected this offer.
33. Respondent did not ask Complainant for any information or documentation regarding Complainant’s mental health condition or Complainant’s disability-related need for an assistance animal.
34. Rather, the showing on April 20, 2017 ended with Respondent imposing a leasing requirement that Complainant and [Redacted Name] verify that the assistance animal was hypoallergenic. Specifically, Complainant and [Redacted Name] were told they would have to take Complainant’s assistance animal for testing at a medical facility in order to rent the subject property.
35. The investigative record reflects that Respondent Koenig did not engage in a direct threat analysis.
36. Respondent Koenig revoked access to the proffered lease after the showing on April 20, 2017.
37. E-mail communications between [Redacted Name] and Respondent followed the showing on April 20, 2017.
38. On April 21, Respondent Koenig wrote [Redacted Name] an email stating, in pertinent part, “Please realize that there is really no such thing as a hypoallergenic dog (there is one type of cat that was genetically modified and branded from California), and the odds

are very good that your dog will not meet whatever metric is used to test animals especially if it is not one of these fancy breeds.” He went on to warn Complainant and [Redacted Name] that if he set up the testing and Complainant’s assistance animal was not determined hypoallergenic that he would expect that “we be reimbursed for our time.”

39. Respondent Koenig later rescinded an offer to have the Complainant’s assistance animal tested by his doctor for allergens, stating that his provider would not allow “comfort animals” in the hospital. Complainant and [Redacted Name] investigated this contention and they were unable to verify the existence of any prohibition against the presence of a dog at the hospital to conduct allergen testing.
40. Respondent Koenig denied Complainant’s reasonable accommodation request.
41. After noting that he was unaware of any dog that could meet his hypoallergenic criteria, Respondent Koenig concluded his final e-mail exchange with Complainant and [Redacted Name] by asserting that their continued request to reside in the subject property with Complainant’s assistance animal was not “fair,” and concluding that there were “plenty of options in this city that are set up exactly for your needs. I wish you the best of luck.”
42. During the Bradford Avenue showing, Respondent Koenig withdrew an offer of a lease in response to the request for reasonable accommodation made by Complainant and [Redacted Name].
43. Following the Bradford Avenue showing, Respondent Koenig did not instruct Complainant or [Redacted Name] that they could sign the lease that he previously instructed them not to sign. Respondent Koenig did not offer a lease to Complainant and [Redacted Name] for the preferred unit at the subject property.
44. Complainant and [Redacted Name] were forced to look for alternative housing.
45. As a result of Respondents’ discriminatory acts, Complainant and [Redacted Name] have suffered harm including, but not limited to, loss of a housing opportunity, emotional distress, inconvenience, and monetary costs associated with securing alternative housing.

#### **D. LEGAL ALLEGATIONS**

46. Respondents discriminated against Complainant on the basis of disability in violation of the Act when they denied Complainant’s reasonable accommodation request for an exception to Respondents’ no pet policy for Complainant’s disability-related need for an assistance animal in Complainant’s home. 42 U.S.C. § 3604(f)(1), (f)(3)(B); 24 C.F.R. §§ 100.202(b), 100.204.
47. Respondents made housing unavailable to Complainant and [Redacted Name], an intended occupant, based on disability when they denied Complainant’s reasonable accommodation request to reside with Complainant’s assistance animal in the dwelling, and withdrew the lease agreement. 42 U.S.C. §§ 3604(f)(1), 3604(f)(3)(B).

48. As a result of Respondents' discriminatory acts, Complainant and [Redacted Name] have suffered damages, including economic loss, emotional distress, inconvenience, and loss of a unique housing opportunity.

### **III. CONCLUSION**

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of the Regional Counsel, and pursuant to Section 3610(g)(2)(A) of the Act, hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(f)(1) and 3604(f)(3)(B) of the Act, and prays that an order be issued that:

49. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.*;

50. Enjoins Respondents, their agents, employees, successors, and all other persons in active concert or participation with them from discriminating because of disability against any person in any aspect of the rental, occupancy, use or enjoyment of a dwelling;

51. Mandates Respondents, their agents, employees, and successors, and all other persons in active concern or participation with them, take all affirmative steps necessary to remedy the effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;

52. Awards such monetary damages as will fully compensate Complainant and [Redacted Name] for their economic losses and emotional distress, including but not limited to, all out-of-pocket expenses, medical expenses, emotional and physical distress, embarrassment, humiliation, inconvenience, the loss of a housing opportunity and any and all other damages caused by Respondents' discriminatory actions; and

53. Awards a civil penalty against each Respondent for their violation of the Act pursuant to 42 U.S.C. § 3612(g)(3).

54. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted,

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COURTNEY B. MINOR  
Regional Counsel, Region V

/s/ Lisa M. Danna-Brennan  
LISA M. DANNA-BRENNAN  
Associate Regional Counsel for Litigation  
Region V

/s/ Jaret R. Fishman  
JARET R. FISHMAN  
Trial Attorney  
U.S. Department of Housing and  
Urban Development  
Office of the Regional Counsel- Region V  
Ralph H. Metcalfe Federal Building  
77 West Jackson Boulevard, Suite 2636  
Chicago, Illinois 60604-3507  
Tel: (312) 913-8016  
Fax: (312) 886-4944

Date: \_\_\_\_\_