United States Senate
WASHINGTON, DC 20510

October 18, 2022

The Honorable Marcia L. Fudge
Secretary
Housing and Urban Development
451 7th Street SW
Washington, D.C. 20410

Ethan D. Handelman
Deputy Assistant Secretary
Multifamily Housing
Housing and Urban Development
451 7th Street SW
Washington, D.C. 20410

Dear Secretary Fudge and Deputy Assistant Secretary Handelman,

On January 10, 2020, we, along with U.S. Congressman John Larson and Hartford Mayor Luke Bronin, wrote to then Secretary of the U.S. Department of Housing and Urban Development (HUD) requesting a review and revamping of the HUD inspection and oversight process in light of the significant problems at three Section 8 facilities in Hartford, Connecticut: Barbour Gardens, Clay Arsenal Renaissance Apartments, and Infill (attachment 1). To date, we have not received any response nor been apprised of any significant changes to HUD's supervision process to avoid exposing tenants to significant health and safety code violations.

We are writing today to reiterate our strong request for a substantive response to our January 20, 2020 letter, to draw attention to a lawsuit filed by some of the Barbour Gardens' tenants against the HUD approved management company, ARCO Management (attachment 2), and to bring awareness to a similar failure of the Real Estate Assessment Center (REAC) inspection process to detect major problems at Branford Manor in Groton, Connecticut.

In the Barbour Gardens lawsuit, the tenants have alleged that through purposeful neglect, the ARCO Management Company caused residents to suffer inhabitable living conditions. We are deeply concerned by these complaints and the implication of a lack of oversight by HUD resulting in a violation of residents' rights. The complaint and additional evidence submitted at the trial contains troubling information regarding ARCO. HUD should review and consider taking appropriate action. The information further demonstrates the need for changes to the current oversight process.

By way of background, Barbour Gardens was an 84-unit affordable housing property located in Hartford Connecticut, managed by ARCO Management Company for many years. On

the last HUD inspection, ARCO received score of 9c* out of 100, the worst inspection score in HUD Connecticut's history.

All multifamily housing properties that receive federal funding through HUD are to be inspected every 1-3 years to ensure residents are living in safe and healthy affordable housing that meet national standards. Barbour Gardens received passing inspections on October 1, 2015 with a REAC inspection score of 82c* and on February 20, 2018 with a score of 81b*[1]. However, an inspection led by the City of Hartford on September 12, 2018 found over 200 violations, including plumbing failures and unsanitary living conditions. City officials provided a notice of violations to ACRO Management Company requiring the correction of all violations by November 12, 2018, but those repairs were never made.

Following the passing REAC inspection in February of 2018, residents filed complaints prompting HUD to perform a re-inspection on October 31, 2018. At this re-inspection, HUD found deplorable conditions resulting in a failed inspection with a score of 9c* and subsequently HUD terminated their contract and pulled funding to the property. Consequently, all tenants were forced to relocate.

This inspection history is alarming as it reveals a gap between actual real living conditions and inspection results. Additionally, residents allege that ARCO Management Company made strategic repairs in preparation for upcoming HUD inspections suggesting further gaps in the inspection process that could be exploited.

Similarly, in Branford Manor, the facility received a REAC score of 70c* in June of this year. Following this HUD inspection, tenants brought complaints to the attention of the town and the health district, where local inspectors have now issued more than 30 building code and public health code orders. A thorough inspection of every unit, conducted by a third party and paid for by the facility owner, is now underway. These inspections are recommending remediation work in dozens of units.

Like Barbour Gardens, there is a significant disconnect between the REAC results and reality. HUD needs to effectuate immediate and comprehensive reform.

HUD is legally responsible for providing oversight to all affordable housing properties and ensuring residents are provided with safe and healthy living conditions. This inspection process of Barbour Gardens and Branford Manor reveals a need for review of the conditions that forced residents to live in unsafe and unsanitary conditions and a tightening of oversight to ensure that all affordable housing residents are protected. We urge HUD to expediently review the Barbour Gardens inspection history in light of the evidence uncovered pursuant to the civil action brought by the tenants and the Branford Manor inspection reports to determine what additional oversight HUD should be providing to ensure resident protections and use any enforcement authority as needed.

Sincerely,

[1] "Office of Multifamily Housing Programs – Physical Inspection Scores," (Sep. 8, 2022) https://www.hud.gov/sites/dfiles/Housing/documents/MF_Inspection_Report009082022.pdf

RICHARD BLUMENTHAL
United States Senate

CHRISTOPHER S. MURPHY
United States Senate

Attachment 1:

January 10, 2020

The Honorable Ben Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Dear Secretary Carson:

We write to urge your immediate action to address the U.S. Department of Housing and Urban Development's (HUD) procedures and policies regarding the oversight of Section 8 Housing as well as the promotion of fair housing opportunities. These policies and procedures must be in accordance with the clear Congressional directive, pursuant to the Fair Housing Act, to increase and preserve the supply of affordable housing while ending discrimination and segregation.

Having worked closely with HUD, the city of Hartford and housing advocates, we found HUD's policies and oversight woefully insufficient to ensure tenants affected by the deterioration of three North End community apartment complexes – Clay Arsenal Renaissance Apartments (CARA), Barbour Gardens and Infill -- live in safe, affordable quality housing.

The current HUD policies have adversely impacted the city of Hartford's North End community by allowing dilapidated, unsafe housing to negatively affect the quality of life in these neighborhoods for thousands of families.

The relocation process was inadequate and did not focus on the immediate and long term needs of the tenants which further imposed substantial hardship on many of them during a time of crisis.

As discussed below, we strongly urge HUD to:

- Strengthen the process for selecting landlords eligible for HUD's Housing Assistance Payment (HAP) contracts under the Section 8 program
- Revise and reinvigorate its inspection process to hold landlords accountable for maintaining their apartments in secure, clean condition, consistent with all health, building and fire safety codes
- Revamp the relocation process to ensure that it is tenant-centric, sensitive to the varied needs of tenants and their families and complies with HUD's responsibility to

affirmatively further fair housing and provide meaningful housing choice to families with vouchers

- Require that HUD housing assistance policies encourage mixed income neighborhoods, breaking up concentrations of poverty and facilitating opportunity for tenants to live in diverse neighborhoods

I. Overview – Hartford's North End

CARA, Barbour Gardens and Infill are apartment buildings located in Hartford's North End.

Over the past century, this neighborhood has seen radical economic change. Now blighted by what local officials have called "pervasive poverty,[1]" the neighborhood hosts the city's highest rates of obesity and infant mortality. Its per capita income is half of Hartford's average.[2] Despite financial troubles, however, the area remains home to near 15,000 residents.[3] Though current urban decay belies former vitality, the North End sustains a rich patchwork of Puerto Rican and African American influence, hinting at the region's vibrant cultural legacy.

The neighborhood began to grow at the turn of the 20th century, with an influx of Irish and Jewish immigrants.[4] As population levels expanded, so too did industry, development spreading north from railroad tracks near Albany Avenue. A lumberyard was established in the late 1800s, followed by a gold-leafing factory — the largest in the state — a few decades later.[5] (The same company, M. Swift and Sons, worked on repairs to the capitol building's iconic gold dome in the 1970s.[6])

As the region urbanized, housing changes began to reflect the pressures of a rising population. Once dominated by single family homes, the North End started welcoming multi-family units in early 1900.[7] By mid-century, renting had become the norm; in 1965, only 4% of families in the Clay Arsenal neighborhood owned their properties.[8]

By that time, the area had started to slip into poverty, despite its early industrial growth. At the end of the 1960s, unemployment had risen to two and a half times the city average and housing conditions worsened.[9]

Still, residents of the region held onto a pride for their neighborhood, continuing to celebrate its cultural richness

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[1] *Hartford Courant*, "Hartford's North End Designated 'Promise Zone'"
[2] 2017 American Community Survey
[3] 2017 American Community Survey
[4] 1977 National Registry of Historic Places Inventory Nomination Form, Clay Hill District
[5] connecticutmills.org
[6] *Hartford Courant*, "Hartford's North End Designated 'Promise Zone'"
[7] 1977 National Registry of Historic Places Inventory Nomination Form, Clay Hill District
[8] 1965 *Hartford Conn. Community Renewal Program*
[9] 1965 *Hartford Conn. Community Renewal Program*

Given the economic, social and health challenges facing the North End, HUD should assist in the city's efforts to improve economic and living conditions. Instead, with the agency's lack of action and attentiveness to the conditions at CARA, Barbour Gardens and Infill has been an anchor dragging down the North End community rather than helping to raise it up.

HUD, with its significant resources, can be a force for positive change in the North End but it must first change its policies and practices.

II. Strengthen the process for awarding HAP contracts under Section 8

HUD's management decisions regarding HAP contracts have broad implications. The conditions at Barbour Gardens, Infill and CARA proved that the landlords and owners were unable or unwilling to maintain the housing in accordance with quality, affordable housing standards. CARA's property owner was approved for 26 HAP contracts in Hartford even though he was under scrutiny for continual neglect of apartments in New York City and such information had been brought to the attention of HUD.

The experience at CARA disrupted tenant lives, potentially endangered their health and safety and contributed to neglect in the neighborhood.

- HUD must create criteria and implement a review process that ensures that landlords, owners, LLC's or members of LLC's with a track record like CARA are never granted another HAP contract.

III. Revise and Reinvigorate Section 8 Inspection process

As a major actor in the Hartford housing market, HUD has failed in its role to provide quality, affordable housing. Rather, HUD has contributed – even aided and abetted through its inaction and inattentiveness – to the deterioration of housing conditions in many rental units. The deterioration has had a direct, negative impact on the North End neighborhood.

As we noted in our March 21, 2019 letter, the ineffective HUD inspection process directly led to the progressive deterioration of living conditions at CARA, Barbour Gardens and Infill.

These failures are particularly distressing because HUD itself identifies North Hartford as a Promise Zone, and chose to locate one of its EnVision Centers in the neighborhood as well.

The system is obviously broken: (a) Section 8 funding has been maintained without penalty for years despite HUD inspectors finding major problems; (b) inspection results have swung wildly from almost perfect to scores of 8 or 9; (c) HUD inspections have cited problems and independent follow up has not been pursued; and (d) inspections still provide passing grades while municipal officials, at the same time, have cited significant code violations.

Further, housing inspectors approved an apartment for the relocation of Section 8 tenants only to have the same apartment fail a subsequent inspection soon after the tenant moved in, causing the relocated tenant to be forced to move again – this time without any relocation assistance.

We appreciate your April 8, 2019 response to our concerns in which you indicate that HUD is currently undertaking a 'wholesale reexamination' of the HUD inspection process and where you agreed that the CARA, Barbour Gardens and Infill experience with HUD inspections 'underscores the need for the current review .. and rapid deployment of a redesigned model. However, given the pervasiveness and continued problems posed by the experience at CARA, Barbour Gardens and Infill, we request the following updates:

- Can you provide an update on the progress of this redesigned inspection process and projected timetable for implementation in Connecticut?

- Can you provide more details on this redesigned inspection process and provide assurance that the redesigned inspection process will include communication and coordination with local code officials? Will the process ensure that HUD exercises its leverage to ensure the landlord corrects cited problems in a timely manner? Will the process ensure that landlords and property owners are consistently aware of their obligation to provide safe, sanitary housing?

- Perhaps as frustrating was the inability of HUD to hold the landlord accountable because the owner was an LLC with unknown individual owners and only a facility manager as a contact. For purposes of holding individuals responsible for their mismanagement of their apartment building, HUD must insist as a precondition for Section 8 approval that individual owners be listed with HUD.

IV. Tenant Oriented Relocation Process

As difficult as living conditions may have been for the tenants, mandatory relocation can create significant unforeseen problems for tenants.

A process must be designed to ensure all tenant have a meaningful chance to secure housing of the type and quality and in the location that best meets their needs. These needs include size of the apartment, safety of the neighborhood, quality of the schools, mass transportation options, closeness to work or school and proximity to family, friends and others in the tenant's support system.

The relocation process needs to be both efficient and empathetic with tenants being provided timely information and support services to guide the decision-making process. Moreover, the relocation process should be transparent and ensure that all tenants have equal opportunity to choose to live in areas where there are opportunities to succeed economically and socially.

The relocation process was implemented jointly for tenants of Barbour Gardens and Infill. The first notice of relocation was sent on April 17, 2019. By June 6, 2019, all 52 Infill tenants and 66 of the 69 Barbour Gardens tenants were interviewed (the remaining three were either no-shows, deemed ineligible or declined assistance). At the interview, the contractor asked for information on the tenant's needs and provided relocation information.

The last tenant was relocated around October 7, 2019, or approximately 6 months later. The original deadline of August 19, 2019 was extended to September 30, 2019 and then until the last tenant moved.

The following chart shows the number of tenants who had successfully relocated to another home by date:

Building	July 11	August 15	Sept. 12	Oct. 2
Infill	5	31	47	51
Barbour Gardens	28	50	59	63

As for the effectiveness of relocating tenants to areas of higher economic opportunity, the majority of tenants remained in Hartford.

Infill			Barbour		
	Hartford	30		Hartford	41
	East Hartford	4		Bloomfield	7
	West Hartford	4		Manchester	5
	Manchester	3		East Hartford	2
	Windsor	3		Windsor	2
	Dept Housing	2		Vernon	2
	Imagineers	1		West Hartford	1
	New Britain	1		Windsor Locks	1
	Florida	1		East Windsor	1
	Waterbury	1		South Windsor	1
	Windsor Locks	1		Rocky Hill	1
				Meriden	1
Hartford and Inner Ring Suburbs		82.5%			81%

While all tenants were successfully relocated, there are a number of areas where the relocation process could – and must -- be improved to properly implement HUD's obligations under federal law:

- The original timetable was overly ambitious. While designed to move tenants along the process, as an alternative to setting an arbitrary date (which almost 30% did not meet), HUD should consider setting intermediate deadlines for tenants to start looking for apartment options, find a landlord willing to rent an apartment and finally move in. The

timelines should recognize that a number of selected apartments will not pass at least the first HUD inspection leading to further delays in relocating.

- Tenants can face a number of barriers to relocating to an apartment of their choice including discrimination. Tenants should be apprised of their rights, including how to spot potentially unlawful conduct by landlords and how to notify appropriate authorities if they feel they have been unfairly denied housing. Further, the housing agency charged with assisting tenants should take an active role in helping address any barriers that the tenant encounters.
- HUD should adopt a more robust mobility counseling process similar to those in Seattle, Baltimore and Dallas while providing interested parties with information on the census tracts in which the tenants relocated to better determine the effectiveness of mobility counseling. Tenant surveys should be conducted to get their views on the effectiveness of the mobility counseling program.
- HUD should review their notices to tenants for readability and clarity.
- HUD should ensure that the housing agency selected to administer the Section 8 vouchers for the relocating tenants have a large geographic jurisdiction to ensure that tenants have the broadest relocation opportunities. Agencies that are locally based may not have sufficient information for tenants regarding areas outside their jurisdiction.
- HUD should develop a clear protocol for emergency relocation of tenants. Several of the housing units needed to be evacuated due to flooding from a broken pipe. It was unclear to the tenants who was paying for their hotel bill, transportation for their children to school and food. This created much confusion and consternation on the part of tenants.

V. HUD housing assistance to break up concentration of poverty

Hartford's North End community is one of many communities around the country that face the challenges of inter-generational poverty and a lack of economic opportunity. Such concentrations are often associated with limited opportunities for educational success and job opportunities. When HUD encounters a situation like CARA, Barbour Gardens and Infill, there is an opportunity to work with other federal agencies, state and local governments and private organizations to focus on providing incentives for mixed income housing in the North End that help spur economic development and stabilize the area.

Further, the development of mixed income housing in areas without a concentration of poverty would assist in creating greater opportunities for people with lower incomes to succeed. In 2015, the Connecticut Department of Housing in collaboration with the Connecticut Fair Housing Center issued a report on Impediments to Fair Housing Choice.

The report included recommendations for HUD that bear repeating here because there will no doubt be additional opportunities for HUD to effectuate a creative response to a dilapidated housing situation or to promote additional mixed income housing. These recommendations included:

• When awarding grants for TOD developments or other affordable housing, HUD should prioritize fair housing considerations and make access to affordable housing in a variety of locations a paramount objective. Maximize the effectiveness of HUD programs that promote mobility.

• Increase Section 8 HCV Program voucher payment levels so that they are sufficient to support opportunity moves.

• Collaborate with the State to assess whether the use of residency preferences should be discouraged unless they clearly show no adverse impact on people of color, families with children, or people with disabilities.

• Consider reviewing the admissions criteria of all housing currently receiving HUD subsidies or HUD administered financial assistance to ensure that no housing providers are applying illegal independent living requirements. Promote fair housing enforcement and education to the greatest extent possible.

• Increase support for fair housing education and training for landlords regarding fair housing obligations.

• Increase support of testing programs that assess the incidence of housing discrimination.

• Increase support the enforcement of fair housing laws.

We look forward to your response to these critically important recommendations and working with you to provide greater housing opportunities for all.

Sincerely,

RICHARD BLUMENTHAL
United States Senate

CHRISTOPHER S. MURPHY
United States Senate

JOHN B. LARSON
Member of Congress

LUKE BRONIN
Mayor of Hartford

Attachment 2:

DOCKET NO.: HHD-CV19-6115255S

LATONNA COLLIER; ET AL, *Plaintiffs*,	:	SUPERIOR COURT
V.	:	J.D. OF HARTFORD AT HARTFORD
ADAR HARTFORD REALTY, LLC, ET AL, *Defendants*.	:	FEBRUARY 7, 2022

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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Pursuant to Connecticut Practice Book §§ 9-7 and 9-8, plaintiffs Latonna Collier, Renee Beckman, Rodnae Beckman, Roleisha Collier, Janiyah Turner, Jordynn Collier, Evelyn Jones, David Merritt, Tasha M. Jordan, Ly'Asia Thompson, and Kwan'Asi Levine (collectively, the "Plaintiffs"), hereby submit this Memorandum of Law in Support of the Plaintiff's Motion for Class Certification, dated February 7, 2022 (Entry No. 301.00). The Plaintiffs have brought this action against defendants Adar Hartford Realty, LLC, Saied Soleimani, Vivid Management LLC, Albert Soleimani, A&M Mazal LLC (collectively, "Adar") and Arco Management Corporation ("Arco", collectively with "Adar", "Defendants"), individually, and on behalf of all those similarly situated, for injuries they sustained as a result of Defendants systemic degradation of Barbour Gardens Apartment Complex between June 2004 and October 2019. The Plaintiffs request that this Court grant their Motion for Class Certification, certifying a class for all residents of Barbour Gardens between June 24, 2004 and October 13, 2019, who suffered inhabitable living conditions during that time period, caused by Defendants' purposeful neglect of the Barbour Gardens apartment complex.[1]

This action is uniquely suited to class action status because the claims all arise from a common nucleus of operative facts: all of the named plaintiffs and class members are low-income individuals who signed written leases, and resided in the same complex beset by systemic uninhabitable conditions. Defendants were aware or should have been aware of the deterioration of Barbour Gardens long before the apartment complex was evacuated. Defendants knew that foregoing repairs to Barbour Gardens would result in abhorrent living conditions, but

[1] All exhibits referenced herein are being submitted under a separate filing and are a sampling of the evidence showing the degradation of Barbour Gardens.

instead chose to ignore conditions while pocketing federal funds. Simply put, Defendants' predatory slumlord conduct harmed every resident of Barbour Gardens.

The claims of proposed class members, while egregious, may be too costly to bring individually. They are precisely the type of uniform claims Connecticut's class action rule was designed to address. Permitting a class action in this case may provide litigants with their only economically viable remedy. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997).

Plaintiffs assert statutory claims under the Connecticut Unfair Trade Practices Act ("CUTPA") and common law claims for breach of lease, fraud, third party breach of contract, negligence, recklessness, negligent infliction of emotional distress, breach of warranty of habitability. Because Plaintiffs' claims meet all of the requirements for class certification under the Connecticut Rules of Practice, class certification should be granted.

FACTUAL BACKGROUND

In 2004, Adar Hartford Realty LLC ("Adar") purchased Barbour Gardens, and in 2005, Adar contracted with Arco Management Corp ("Arco") to oversee day-to-day operations at the complex. *See* Management Agreement HUD Subsidized Rental Property between Adar Hartford Realty LLC and ARCO Management Corp. (June 28, 2005) (Exhibit 1). At all times, Barbour Gardens was a project-based Section 8 housing complex funded in large part by HUD subsidies. Throughout the duration of Defendants' ownership and management of Barbour Gardens, Defendants allowed the property to deteriorate and Barbour Gardens residents to live in inhabitable conditions..

In 1974, Congress created the Section 8 housing program "[f]or the purpose of aiding low-income families in obtaining a decent place to live." 42 U.S.C. § 1437f(a). Housing funded by the federal government through HUD must comply with housing standards propagated by

HUD. At all times, Defendants were required to maintain Barbour Gardens in compliance with HUD housing standards. HUD requires that properties be "decent, safe, sanitary, and in good repair." 24 C.F.R. § 5.703. HUD specifically notes that all areas and components of housing must be free of health and safety hazards. *Id.* The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage or debris. 24 C.F.R. § 5.703(f). The housing must further have no evidence of electrical hazards, natural hazards or fire hazards. *Id.* And the housing must be free of mold or other observable deficiencies. *Id* . At all times, HUD required that Barbour Gardens satisfied such standards. Defendants knew or should have been aware of their duties pursuant to HUD regulations. (*See e.g.*, Exhibit 1.) Further, at all relevant times, the City of Hartford maintained building standards that applied to each and every apartment at Barbour Gardens. *See* Hartford Code of Ordinances, ch. 18.

HUD requires regular REAC inspections of properties receiving HUD subsidies to ensure compliance with HUD standards, and Inspectors may award scores ranging from 1 to 100. 24 C.F.R. § 200.857. If a property receives a score below thirty, then HUD may mandate replacement of project management and may impose civil money penalties, cancel the Section 8 Contract, transfer the project to a HUD-approved owner, or seek specific performance requiring the owner to cure all deficiencies. HUD Handbook 4350.1, ch. 6.

Prior to February 2019, HUD permitted significant advanced notice of inspection, and allowed properties to reschedule inspections. This scheduling policy allowed properties to make "just in time" repairs to mask true conditions of the properties in advance of REAC inspections. Under the new guidance issued February 22, 2019, HUD provides only 14 days' notice in advance of a REAC inspection. Housing Notice H-2019-04 (Exhibit 2). To prevent any opportunity for the disclosure of inspection schedules, anyone with information may not provide

notice of inspection prematurely. *Id.* Pursuant to this new guidance, any property that refuses to undergo an inspection at the scheduled time will receive a presumptive score of zero. *Id.* If the inspection is not rescheduled within seven days, then the score shall be recorded as zero and the property may be subject to any and all available penalties. *Id.*

HUD enacted the new policy to prevent "just in time" repairs and encourage year round maintenance. *Id.* HUD acknowledged that the new brief time window "is likely to result in an inspection that more accurately reflects the housing conditions and operations" at the property year-round. *Id.*

HUD inspected Barbour Gardens on several occasions during Defendants' ownership and management of the property. During each and every REAC inspection, Defendants received advanced notice of the REAC inspection. For example, Defendants scheduled the February 20, 2018 REAC Inspection on September 27, 2017 – almost five months in advance. Correspondence between J. Phillips and Inspect Pro (Feb. 13, 2018) (Exhibit 3.)

On several occasions, Defendants worked to postpone the inspection by several months. *See* Correspondence between J. Phillips[2] and L. Reeves[3] (March 4, 2015) (Exhibit 4); Correspondence between J. Phillips and L. Reeves (August 4, 2015) (Exhibit 5). In one instance, Defendants' employee noted that if the inspection were to take place at the scheduled time that Barbour Gardens would receive a score of 15c. (Exhibit 4). In another, the employee noted Barbour Gardens would "FAIL." (Exhibit 5.) Such a statement indicates knowledge of the widespread deterioration of Barbour Gardens.

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[2] Jason Phillips is currently Executive Vice President Facilities Management at MMS Group, working on behalf of Arco. At the time, he was Senior Vice President Facilities Management. He further is the owner of Housing Inspection and Consulting Services, a REAC Inspection consulting service for housing subject to inspection. *See* https://linkedin.com/in/jason-phillips-589a8138/.

[3] Lynda Reeves was the Property Manager for Barbour Gardens, employed by Arco.

In advance of inspections, Defendants worked to hide deficiencies at Barbour Gardens. Invoice #633 and Contract from Protector Builder General Contractor Inc. (Feb. 11, 2018) (Exhibit 6.) On February 11, 2018, Defendants contracted to repair certain issues at Barbour Gardens in advance of the February 20, 2018 REAC Inspection. (*Id.*) The last-minute repairs occurred despite Defendants' failure to pay the construction company for 2015 repairs. (*See Id.*) Defendants purposefully repaired those areas that they knew or expected would be inspected, while leaving known individual unit issues touched. Correspondence from R. Vazquez to M. Wolfe (Feb. 14, 2018) (Exhibit 7) (recommending that Defendants replace first floor windows, and noting that the "rest of the broken windows we will only get hit for *if we enter those units.*") (emphasis added.) Moreover, Defendants worked to get "half" of Barbour Gardens "taken off line" for the inspection such that Defendants did not need to "care" about repairing the property in advance of the inspection. Correspondence between J. Phillips and R. Goldstein (Oct. 17, 2018) (Exhibit 8.) Defendants' attempts to mask the systemic problems at Barbour Gardens negatively affected all residents. Barbour Gardens received passing scores for each inspection of which they had significant advanced notice.

Despite the passing REAC scores, Barbour Gardens deteriorated and Defendants were aware of the deterioration. Jason Phillips, then Senior Vice President Facilities Management, referred to Barbour Gardens as a "mold and cockroach infested slum with major plumbing leaks all over the property. Missing shower walls etc." Correspondence from J. Phillips to R. Goldstein (Feb. 15, 2018) (Exhibit 9.) Further, Mr. Phillips noted that "[almost] 100% of windows" needed to be replaced. Correspondence from J. Phillips to M. Wolfe (Feb. 13, 2018) (Exhibit 10.) The window deterioration made it "impossible to lock" the windows, which was noted as "a pretty big security issue for 1st floor units." (*Id.*) Window inadequacies also may

result in "the buildings losing a tremendous amount of heat." (*Id.*) The same individual wanted to "take all unit kitchens and bathrooms offline" for repairs. (*Id.*) All recommended repairs would help Barbour Gardens pass the inspection. (*Id.*) Upon information and belief, Mr. Phillips runs an REAC inspection consulting service and is thus particularly qualified to identify deficiencies. *See* LinkedIn Profile of J. Phillips (Exhibit 11.)

Barbour Gardens residents suffered through loss of heat in the winter. *See* Correspondence from R. Goldstein to J. Goldstein (Feb. 20, 2018) (Exhibit 12.) The lack of heat was not repaired immediately. Local contractors were unwilling to work for Defendants due to a history of non-payment by Defendants. (*Id.*; *see also* Exhibit 6).

In September 2018, after months of tenant organizing and media attention, the City of Hartford conducted an inspection of Barbour Gardens. The inspection revealed systemic problems in the complex. The attached Exhibit 13, the inspection report produced by the City of Hartford, demonstrates that essentially every inspected apartment was affected by the uninhabitable conditions caused by Defendants' misconduct. Although the City inspected only 33 out of 86 units, the City discovered over 200 housing code violations. *See also* Correspondence from Mayor Luke Bronin to A. Seligson (Oct. 12, 2018) (Exhibit 14.)

Following the results of the City of Hartford inspections, HUD returned to the property to conduct a REAC inspection. Mr. Phillips noted that the REAC Inspection score for Barbour Gardens would "come back as possibly the lowest score ever received." Correspondence from J. Phillips to J. Goldstein (Oct. 24, 2018) (Exhibit 16.) After receiving notice that the inspection was officially scheduled, the president of MMS Group sent Marc Wolfe, member of Adar, "You now fucked me Not happy. Should have dumped you months ago." Correspondence from J. Goldstein to M. Wolfe (Oct. 19, 2018) (Exhibit 17.) On October 29, 2018, after providing only

thirteen days days official notice of the inspection, *see* Correspondence from HUD to C. Scofield (Oct. 22, 2018) (Exhibit 18), HUD came to Barbour Gardens. HUD inspected only 20 out of 86 apartments, and found over 130 health and safety deficiencies. The inspector projected that had he inspected every Barbour Gardens apartment, he would find over 400 health and safety deficiencies. The attached Exhibit 15, the inspection report produced by the REAC inspection, demonstrates the pervasive deterioration of the complex.

The complex received a score of 9 out of 100, the worst score ever received in the history of the Section 8 program in Connecticut.

Even after the conditions were brought to the attention of government authorities, and documented violations continued to pile up, the owners and managers of Barbour Gardens did little to nothing to address the systemic uninhabitable and dangerous conditions. The complex deteriorated to the point in which the complex was evacuated and all residents were relocated. Defendants have since sold the complex, and have refused to take any responsibility for the conditions or the displacement they created.

Defendants' actions affected hundreds of Barbour Gardens residents throughout the duration of Defendants' ownership and management of the property. Absent class certification, this Court will be drawn into repetitive and unnecessary proceedings that class action certification could avoid.

LEGAL STANDARD

The legal standard for class certification in Connecticut is well-settled. First, the proposed class must meet the four prerequisites to a class as specified in Connecticut Practice Book § 9-7: (1) numerosity – "the class is so numerous that joinder of all members is

impracticable"; (2) commonality – "there are questions of law or fact common to the class"; (3) typicality – "the claims or defenses of the representative parties are typical to the claims or defenses of the class; and (4) adequacy of representation – "the representative parties will fairly and adequately protect the interests of the class." Conn. Practice Book § 9-7; *Neighborhood Builders, Inc. v. Madison*, 294 Conn. 651, 658 (2010).

If the foregoing criteria are satisfied, the proposed class must satisfy the certification requirements under Practice Book § 9-8. *Id.* (citing Conn. Practice Book § 9-8). "These requirements are: (1) predominance – that questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (2) superiority – that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." *Id.* (citing Conn. Practice Book § 9-8) Because the requirements for certification under the Connecticut Practice Book are similar to the requirements under the Federal Rules of Civil Procedure, Connecticut courts will look to federal law for guidance in construing class certification requirements. *Rivera v. Veterans Mem'l Med. Ctr*., 262 Conn. 730, 737 (2003) (citing *Marr v. WMX Tech., Inc.*, 244 Conn. 676, 680-81 (1998)).

When evaluating a motion for class certification, "the trial court must take the substantive allegations in the complaint as true and consider … pertinent evidence in a light favorable to the plaintiff." *Standard Petroleum Co. v. Faugno Acquisition, LLC*, 330 Conn. 40, 49 (2018) (citations omitted). "In determining the propriety of a class action, the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of [the class action rules] are met." *Id.* (citing *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 321 (2005)) (alteration omitted). The court should give the requirements of class certification a liberal construction. *Campbell v. New Milford Bd. Of Educ.*,

36 Conn. Supp. 357, 360 (1980). "[D]oubts regarding the propriety of class certification should be resolved in favor of certification." *Town of New Hartford v. Conn. Res. Recovery Auth.*, 291 Conn. 433, 471 (2009) (emphasis and citations omitted).

Moreover, because Plaintiffs allege CUTPA violations, the provisions of the Practice Book concerning class certification must be read in conjunction with CUTPA's broad remedial purpose and the state's public policy. *See Hernandez et al. v. Monterey Vill. Assocs. Ltd. P'ship*, 17 Conn. App. 421, 425-26 (1989). The class action tool is particularly valuable in adjudicating allegations of a common course of conduct in violation of CUTPA, as it enables persons to seek a remedy when a common scheme of conduct injures many individuals.

"[C]lass actions serve a unique function in vindicating plaintiffs' rights." *Rivera*, 262 Conn. at 735 (citations omitted). "[C]lass action[s] … are designed to prevent the proliferation of lawsuits, and duplicative efforts and expenses." *Id.* (citation omitted). Not only do class actions "promote judicial economy," but they also "protect defendants from inconsistent obligations," and most importantly, "provide access to judicial relief for small claimants." *Id.* (citation and emphasis omitted.) "Without the backing of a comprehensive class, individual plaintiffs or their lawyers will find it difficult to muster the resources and incentives sufficient to tackle industrial giants . . . [because otherwise] [w]e will observe classic applications of the strategy of divide and conquer." *Abron v. Black & Decker (U.S.) Inc*., 654 F.2d 951, 973 (4th Cir. 1981). Class actions for damages, in particular, "encompass[] those cases in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." 2 *Newberg on Class Actions* (5th ed.) § 4:47.

As explained more fully below, the Plaintiffs meet each of these requirements for certification of this case as a class action pursuant to Practice Book §§ 9-7 and 9-8.

ARGUMENT

I. The Practice Book § 9-7 Prerequisites Are Easily Met

A. The putative class is so numerous that joinder of all members is impracticable.

The putative class in this matter exceeds 300 people and as such is so numerous that joinder of all members is impracticable. "Impracticable does not mean impossible, but simply difficult or inconvenient." *Reese v. Arrow Fin. Servs., LLC*, 202 F.R.D. 83, 90 (D. Conn. 2001) (citations omitted). Although there is no "magic number" that provides a watershed, *Town of New Hartford*, 291 Conn. at 475, courts across the country, including the Second Circuit, have held that a proposed class with as few as 40 class members should raise a presumption that joinder is unwieldy and impracticable. *See, e.g.*, *Robidoux v. Celani*, 987 F. 2d 931, 936 (2d Cir. 1993); 2 *Newberg on Class Actions* (5th ed.) § 3.12. Moreover, when a proposed class is entirely low-income individuals, courts will consider that as a factor in favor of certifying the proposed class. *See Robidoux*, 987 F.3d at 936; *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980); *McDonald v. Heckler*, 612 F. Supp. 293, 300 (D. Mass. 1985), *modified on other grounds*, 795 F.2d 1118 (1st Cir. 1986). Such is the case here, because all, or almost all, proposed class members are low-income participants in the Section 8 housing program administered by HUD.

Barbour Gardens had 84 apartments, with turnover of families during the proposed 15 year class period. Thus the size of the class is easily in the hundreds. The exact size of the class and the identity of the individuals within it will be easily determined after certification, using the

rent roll maintained by Defendants. Because the class likely consists of over 300 members, it easily satisfies the numerosity requirement of Practice Book § 9-7.

B. There are questions of law and fact common to the classes.

The commonality requirement is liberally construed, and is a minimal burden. It is a well-settled principle that "commonality is easily satisfied" by only "one question common to the class … the resolution of which will advance the litigation." *Standard Petroleum Co.*, 330 Conn. at 54 (citation omitted). "[F]actual variations among class members will not prevent a finding of commonality." *Collins II*, 275 Conn. at 325 (citations omitted). Undoubtedly, there are questions of law and fact common to the proposed that satisfy the commonality requirement of Practice Book §9-7(2).

Plaintiffs and proposed class members' claims all arise from the Defendants' mismanagement of the Barbour Gardens housing complex. Defendants perpetuated a systemic practice of failing to maintain and repair Barbour Gardens throughout their ownership and management of the property. Common questions of law and fact are applicable to all class members on their claims. Although a particular named plaintiff or class member may have been injured to a greater or lesser extent, all allege substandard housing conditions that caused injuries while they lived in Barbour Gardens. For example, the following non-exhaustive list of questions are applicable to all class members:

a. Whether Defendants systemically disregarded the maintenance of Barbour Gardens;

b. Whether Defendants were aware of the disrepair at Barbour Gardens;

c. Whether Adar underfunded Barbour Gardens;

d. Whether mold and mildew existed throughout Barbour Gardens;

e. Whether Barbour Gardens did not have proper fire safety mechanisms;

f. Whether infestations of vermin, insects, and cats existed throughout Barbour Gardens;

g. Whether Defendants failed to repair conditions at Barbour Gardens;

h. Whether Defendants had a duty to repair conditions at Barbour Gardens and breached that duty;

i. Whether Defendants misled residents as to the conditions of the apartments;

j. Whether Defendants failed to warn residents as to the environmental and health hazards identified in this Complaint;

k. Whether Defendants masked conditions at Barbour Gardens from inspectors;

l. Whether Defendants were unjustly enriched through their ownership and management of Barbour Gardens;

m. Whether Defendants' conduct defrauded residents of Barbour Gardens; and

n. Whether Defendants' conduct was unfair, immoral, unethical, unscrupulous and deceptive;

There are many more issues than the "one issue" required, "whose resolution will affect all or a significant number of putative class members." *Collins II,* 275 Conn. at 324 (quoting *Forbush v. J.C. Penney Co.*, 994 F.2d 1101, 1106 (5th Cir. 1993)). A closer examination of the common issues will accompany the predominance section of this memorandum. Each of these questions will be resolved the same way for every resident of Barbour Gardens.

C. Representative plaintiffs' claims are typical of the classes they seek to represent.

Representative Plaintiffs' claims are typical of the proposed class. Typicality is not a demanding standard. Typicality requires that the issues of fact or law in the case "occupy the same degree of centrality to the named plaintiff's claim as to that of other members of the

proposed class." *Collins v. Anthem Health Plans, Inc.*, 266 Conn. 12, 34 (2003) (citation omitted). The requirement is intended ensure "that the class representative's interests and incentives will be generally aligned with those of the class as a whole." *Standard Petroleum Co.*, 330 Conn. at 161 (quoting *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 599 (3d Cir. 2009)).

Typicality is met when each class member's claims arise from "the same course of events" and require "similar legal arguments to prove the defendants' liability." *Collins I*, 266 Conn. at 34 (citation omitted). "When it is alleged that the same unlawful conduct . . . affected both the named plaintiff and the class . . . the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *Robidoux*, 987 F.2d at 936–37 (citation omitted). This requirement is satisfied here.

Plaintiffs' claims are based on the same facts as the claims brought on behalf of the classes. Just like the proposed class, Plaintiffs suffered due to Defendants' failure to maintain or repair Barbour Gardens. Just like the proposed class, Plaintiffs claims arise from the mismanagement and deterioration of Barbour Gardens, and then the eventual relocation of all tenants.

Likewise, Plaintiffs' claims are based on the same legal theories as the claims brought on behalf of the proposed class, including negligence, recklessness, unfair trade practices, negligent infliction of emotional distress, breach of the warranty of habitability, unjust enrichment, breach of lease, third party beneficiary breach of contract, and fraud. If the Plaintiffs' claims fail, then so too do the classes' claims.

D. The proposed class will be adequately represented.

The proposed class is adequately represented by the named plaintiffs. Adequacy "is met when the representatives: (1) have common interests with the unnamed class members; and (2) will vigorously prosecute the class action through qualified counsel." *Collins II*, 275 Conn. at 326 (citations omitted).

When determining whether class representatives have "common interests" with unnamed class members, court inquiries are largely limited to ruling out conflicts of interests between the representatives and the class. "In order to defeat a motion for certification . . . the conflict 'must be fundamental.'" *In re Flag Telecom Holdings, Ltd. Sec. Litig*., 574 F.3d 29, 35 (2d Cir. 2009); *see also Charron v. Wiener*, 731 F.3d 241, 250 (2d Cir. 2013). Alleged conflicts must also not be speculative or hypothetical. *In re Olsten Corp. Sec. Litig*., 3 F. Supp. 2d 286, 296 (E.D.N.Y. 1998), *opinion adhered to on reconsideration sub nom. In re Olsten Corp*., 181 F.R.D. 218 (E.D.N.Y. 1998). "For this reason, potential conflicts over the distribution of damages—which would arise only if the plaintiffs succeed in showing liability on a class-wide basis—will not bar a finding of adequacy at the class certification stage." 1 *Newberg on Class Actions* (5th ed.) § 3:58 (citing *Gunnels v. Healthplan Servs., Inc.*, 348 F.3d 417, 431 n.7 (4th Cir. 2003)).

Further, the class representative must pursue a resolution of the case for the benefit of the class. However, "the class representative is not required to be a legal expert . . . . All that is necessary is that the representative party have some minimal level of interest in the case, familiarity with the c[laims] and an ability to assist in decision-making" regarding the litigation. *Walsh v. Nat'l Safety Assocs., Inc*., 44 Conn. Supp. 569, 588 (1996), *aff'd*, 241 Conn. 278 (1997).

Here, all of the named plaintiffs and the class members they seek to represent share a common interest in proving the defendants' liability on a class-wide basis. Indeed, there appear

to be no conflicts of interest between the class members: their claims do not conflict with but rather support the claims of fellow class members, and it is more efficient, to say the very least, for the members of the class to have the same counsel as each other and to try as much of the case as possible just once instead of many, many times.

E. Class counsel is qualified

In determining the adequacy of class counsel, Practice Book § 9-9 requires a court to consider "(A) the work counsel has done in identifying or investigating potential claims in the action; (B) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; (C) counsel's knowledge of the applicable law; and (D) the resources counsel will commit to representing the class." Conn. Practice Book § 9-9(d)(A). Additionally, courts are permitted to consider "any other matter pertinent to counsel's ability to represent the class fairly and adequately." Conn. Practice Book § 9-9 (d)(2)(i). Plaintiffs refer the Court to the attached affidavit of Mark Ostrowski, Exhibit 19, which addresses these issues.

II. <u>This case meets the Practice Book § 9-8 requirements and a class should be certified.</u>

A. Common questions predominate over individualized issues

The Plaintiffs' claims and the putative class members' claims arise from the same underlying conduct by Defendants, and thus issues of liability and causation predominate over any questions affecting individual members. Each proposed member's claim of liability and causation rely on the same exact factual basis and legal arguments, and as such, the predominance requirement is satisfied in this matter.

The Connecticut Supreme Court has reiterated a three part inquiry that courts use to determine predominance:

> A court should first review the elements of the causes of action that the plaintiffs seek to assert on behalf of the putative class . . . . Second, the court should determine whether generalized evidence could be offered to prove these elements

> on a class-wide basis or whether individualized proof will be needed to establish each class member's entitlement to monetary or injunctive relief . . . . Third, the court should weigh the common issues that are subject to generalized proof against the issues requiring individualized proof in order to determine which predominate.

Rodriguez v. Kaiaffa, LLC, 337 Conn. 248, 265 (2020) (quoting *Standard Petroleum Co.*, 330 Conn. at 61).

When evaluating predominance, Practice Book § 9-8(1) provides the following guidance: An action may be maintained as a class action if the prerequisites of Section 9-7 are satisfied, and in addition:

> (1) The prosecution of separate actions by … individual members of the class would create a risk of: (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members who are not parties to the adjudication or substantially impair or impede their ability to protect their interests ….
> Practice Book § 9-8(1)

In cases involving individualized damages, Plaintiffs "need only come forward with plausible statistical or economic methodologies to demonstrate impact on a class-wide basis." *Collins*, 275 Conn. at 330-31 (internal quotation marks omitted). "It is primarily when there are significant individualized questions going to *liability* that the need for individualized assessments of damages is enough to preclude certification." *Standard Petroleum Co.*, 330 Conn. at 61 (cleaned up).

The key consideration in this matter is that Plaintiffs' claims and the proposed class members' claims all arise from the same conduct: Defendants' neglect and the subsequent deterioration of Barbour Gardens. *See Brown v. Kelly*, 609 F.3d 467, 484 (2d Cir. 2010) (Plaintiffs "allegedly aggrieved by a single policy of the defendants, and there is strong commonality of the violation … the harm this is precisely the type of situation for which the

class action device is suited.") Liability and causation are identical across the entire class. Damages are similarly identical to the extent that they constitute the value of rent lost by each plaintiff and proposed class member. To the extent that damages flowing from Defendants' misconduct may be individualized, such as the level of emotional distress suffered by any given resident, these are relatively discrete individualized issues that do not defeat class certification given the broader common and predominating issues governing over the entire matter.

As discussed below, significant aspects of each of the counts in the complaint can be resolved for all class members in a single suit, making this proposed class ripe for certification.

i. Fraud

Plaintiffs allege that both Defendants' actions and inactions constitute common law fraud. To demonstrate that Defendants' actions constitute fraud, Plaintiffs will show that (1) Defendants made a false representation as a statement of fact; (2) that the statement was untrue and known to be untrue by Defendants; (3) that Defendants made the statement to induce Plaintiffs to act upon it; and (4) that Plaintiffs did so act upon that false representation to their injury. *Sturm v. Harb Dev., LLC*, 298 Conn. 124, 142 (2010) (quoting *Suffield Dev. Assocs. Ltd. P'ship v. Nat'l Loan Inv., L.P.*, 260 Conn. 766, 777-78 (2002)).

Common questions of law and fact predominate in determining Defendants' liability for common law fraud. Generalized evidence can be offered to prove each element of common law fraud. In essence, Plaintiffs assert that Defendants committed fraud by representing Barbour Gardens as habitable when it was not; that Defendants were aware Barbour Gardens' conditions were uninhabitable; that Defendants represented Barbour Gardens as habitable to continue to receive rent for Plaintiffs' residence in the complex; and that Plaintiffs remained in Barbour Gardens to their detriment. Plaintiffs will prove their fraud claim through generalized evidence of Defendants' actions regarding the Barbour Gardens property as a whole.

Further, Plaintiffs claim that Defendants' inaction constituted common law fraud. An action for fraud by omission exists when: (1) there is a failure to disclose facts; (2) there is a duty to do so; (3) those facts are known to the non-disclosing party; and (4) the failure to disclose is done with the intent to induce the other party to enter or refrain from entering into a transaction. *See Egan v. Hudson Nut Prods.*, 142 Conn. 344, 347-48 (1955). Each element of fraud by omission lends itself to class certification. Defendants failed to disclose the decaying state of Barbour Gardens to its residents, such that putative class members entered into rental agreements at Barbour Gardens. As a result, Adar benefited from the rental agreements by receiving federal funding, and Arco benefited from being paid to manage a deteriorating property.

The fraud claim is particularly appropriate for class certification because uniform misrepresentations create "no need for a series of mini trials." *In re U.S. Foodservice Inc. Pricing Lit.*, 729 F.3d 108, 118 (2d Cir. 2013). Here, Plaintiffs assert that Defendants' uniform failure to disclose the state of Barbour Gardens constitutes fraud. Plaintiffs may prove Defendants' fraud by omission using generalized evidence, common to the class, including but not limited to Defendants' responses to proposed REAC inspections, demonstrating their knowledge of the state of the property.

To the extent that Defendants raise "individualized questions of reliance," such questions are "far more imaginative than real" and do not undermine the cohesion of the class for predominance purposes." *Id.* at 122.

ii. Recklessness

Common questions of law and fact predominate in determining whether Defendants were reckless throughout their ownership and management of Barbour Gardens. Recklessness is aggravated negligence, entailing careless disregard or wanton failure to observe the applicable duty of care. *Dubay v. Irish*, 207 Conn. 518, 532-533 (1988). Class certification for

recklessness is proper because the Defendants' "state of consciousness with reference to the consequences" of their course of conduct is a class-wide issue. *Craig v. Driscoll*, 262 Conn. 312, 342 (2003).

Defendants' liability for recklessness will be proven by generalized evidence, common to the Plaintiffs and proposed class members. Recklessness can be established through evidence of the Defendants' conduct and attituted toward the health and safety of an entire complex. *See Williams v. Hous. Auth. of the City of Bridgeport*, 327 Conn. 338, 371 (2017) ("[A] jury, considering all the relevant circumstances, reasonably could find that the municipal defendants' persistent failure to inspect unit 205 and thousands of others like it both arose from and exemplified a pattern of reckless disregard for public health or safety"). The evidence will demonstrate Defendants' violations of local, state, and federal regulations; will demonstrate that Defendants' could have taken reasonable precautions to prevent the repeated violations; and that the risk of injury was "sufficiently great such that [D]efendant[s] either knew or should have known that [their] failure to take those precautions would expose" the plaintiffs and proposed class members "to a great risk of harm." *See Doe v. Boy Scouts of Am. Corp.*, 323 Conn. 303, 331 (2016). As such, all elements of a recklessness claim may be satisfied with general proof common to the classes.

iii. Negligence

The essential elements of a negligence cause of action are well established: "duty; breach of that duty; causation; and actual injury." *LaFlamme v. Dallessio*, 261 Conn. 247, 251 (2002) (citing *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 384 (1994)). The existence of a duty, the scope of that duty, breach, and causation for damages and emotional distress claims are

all issues subject to generalize proof, and predominate over individualized issues that may remain for individual cases.

The existence of a duty is a class-wide issue. Adar and Arco owed a duty pursuant to federal HUD regulations to maintain Barbour Gardens in decent, safe, and sanitary condition, and in good repair. *See* 24 C.F.R. § 5.703. Moreover, "[t]he general rule regarding premises liability in the landlord-tenant context is that 'landlords owe a duty of reasonable care as to those parts of the property over which they have retained control.'" *LaFlamme*, 261 Conn. at 256 (citation omitted). The standard of care here applies to the class as a whole: it is set by state and local building and housing codes, federal housing quality regulations, state statutes imposing duties on landlords, and the common law. To show that violations of these codes and statutes are a breach of the standard of care, Plaintiffs will prove that they and the class they seek to represent are "within the class of persons protected by the statute[s]," and that their injuries are "of the type that the statute[s] w[ere] intended to prevent." *Gore v. People's Sav. Bank*, 235 Conn. 360, 368-69 (1995).

Breach of duty is also a class-wide issue. First, with regard to the violation of applicable housing, and health and safety codes, the jury must "merely decide whether the relevant statute or regulation has been violated." *Id.* at 376. The named plaintiffs will prove violations of local, state, and federal codes and regulations -- violations that were documented by inspectors -- predominated through the Barbour Gardens housing complex.

Although there may be differences in the degree to which individual apartments fell below local, state, and federal standards of habitability or in the manner by which the defendants' conduct caused the violations, the defendants' "entire course of conduct and knowledge of its potential hazards is a common issue to the class, which courts have found to be

sufficient [for class certification] even in cases where there are multiple possible sources of contamination." *Collins v. Olin Corp*., 248 F.R.D. 95, 104 (D. Conn. 2008). "[I]ndividual issues of causation do not preclude class certification." *Id*.

The Connecticut Supreme Court recently addressed whether a variation in specific facts may undermine a finding of predominance in a class certification. In *Rodriguez v. Kaiaffa, LLC*, a server sought to bring a class action against a restaurant group for wage violations. *Rodriguez*, 337 Conn. at 251-52. The server alleged that the employer had a systemic practice across multiple restaurants of paying employees "service" wage while requiring the employees to perform "non-service" tasks. *Id.* at 251-53. The trial court certified the class, and the defendant appealed, arguing that individualized issues predominated, "such as how each server performed a task, how long a server spent on side work during a particular shift, and what tasks were performed during particular shifts." *Id.* at 255, 266. The Court declined to overturn the trial court decision, noting that "common issues predominate, despite the variety of tasks at issue in the case . . . ." *Id.* at 268-69.

Likewise, this court should find that common issues predominate over individual details pertaining to the conditions of each apartment. Individualized issues regarding the degree of mold in one apartment, the amount of water damage in another, the severity of rodent infestation should not predominate over the general question of whether Defendants' breached their duties to Barbour Gardens residents.

Causation for personal injury claims arising from exposure to mold or moisture in apartments, while partly individualized, is also partly susceptible to class-wide proof. General causation, which would otherwise need to be proven in every individual case, can be proven on a class-wide basis. "General, or 'generic' causation has been defined by courts to mean whether

the substance at issue had the capacity to cause the harm alleged, while 'individual causation' refers to whether a particular individual suffers from a particular ailment as a result of exposure to a substance." *In re Hanford Nuclear Reservation Litig*., 292 F.3d 1124, 1133 (9th Cir. 2002); *see also generally* National Research Council, Reference Manual on Scientific Evidence (3d. ed. 2011) at 597-606 (explaining general causation). In this case, general causation for personal injury claims due to mold or moisture can be proven on a class-wide basis.

There is an extensive medical literature documenting the adverse health effects of exposure to mold and dampness and inhabiting buildings with water instruction problems. Multiple peer-reviewed published studies have shown that living in homes with mold, water damage, and/or indoor dampness significantly increases the risk of several medical conditions including asthma, upper respiratory infections, allergies, sinusitis, and asthma exacerbations. The same literature would – in absence of class certification – likely be referenced or introduced as evidence in every one of potentially dozens of individual cases regarding harms from alleged exposure at the apartments.

iv. Negligent Infliction of Emotional Distress

Common questions of law and fact predominate over Plaintiffs' Negligent Infliction of Emotional Distress claim. "'(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress.'" *Diaz v. Griffin Health Servs. Corp*., No. X10CV156029965S, 2017 WL 960792, at *4 (Conn. Super. Ct. Jan. 31, 2017) (quoting *Carrol v. Allstate Ins. Co*., 262 Conn. 433, 444 (2003)). "Since 1941 Connecticut has permitted recovery for negligence which proximately causes foreseeable fright or shock without evidence of a contemporaneous physical injury . . . . [E]motional distress can be an independent present injury

without an attendant physical injury or physical impact if the distress falls within the scope of the risk created by the negligent conduct." *Id.*, at *3 n.4.

Class actions alleging negligent infliction of emotional distress have been certified. *See, e.g.*, *In re Telectronics Pacing Sys., Inc.*, 172 F.R.D. 271, 278, 295 (S.D. Ohio 1997) (certifying class action alleging negligent infliction of emotional distress claim); *Good v. Am. Water Works Co., Inc.*, 310 F.R.D. 274, 281, 299-300 (S.D.W.Va. 2015) (same). Plaintiffs allege that Defendants' conduct constituted a systemic practice of allowing Barbour Gardens to fall into disrepair. Defendants' conduct resulted in Plaintiffs and putative class members living in substandard living conditions out of their control – including living with mold, rodents, bed bugs, faulty heading systems or otherwise. Living in such conditions foreseeably leads to emotional distress. While differences exist in the degrees of emotional distress suffered by each tenant, overall issues relating to Defendants' conduct that created the distress predominate.

Defendants may argue that "an inquiry into each plaintiff's mental health and other potential causes of emotional distress will need to be conducted in order to determine if [the defendants'] actions are indeed the proximate cause." *Olin*, 248 F.R.D. at 104. Such an argument does not undermine class certification because "this inquiry can easily be done in conjunction with the inquiry into the actual damages sustained by each plaintiff. Furthermore, the remaining elements of an intentional infliction of emotional distress claim, such as the intent of [the defendants] and whether [the defendants] knew [their] conduct was likely to cause distress, and whether [the defendants'] conduct was extreme and outrageous, can be made on a class-wide basis." *Id.*

v. Breach of Lease

Common questions of law and fact predominate over Plaintiffs and proposed class members' claim of breach of lease against Adar. The elements of a breach of lease claim are well-established. To succeed, plaintiffs must show the existence of a lease, breach of one or more terms of that lease; and that Plaintiffs suffered damages as a proximate result of that breach. *300 State, LLC v. Hanafin*, 140 Conn. App. 327, 330 (2013).

Generalized evidence may be used to show that Adar breached its leases with Plaintiffs and proposed class members. First, it is uncontested that Plaintiffs and proposed class members entered into leases with Adar. Rental agreements, signed by named plaintiffs and based on initial review of tenant files produced to proposed class counsel, obligate the landlord to "make necessary repairs with reasonable promptness" and to "maintain all equipment and appliances in safe and working order."

Plaintiffs' breach of lease claims are based on three separate breaches. First, Plaintiffs will show through the same generalized evidence used for counts one through four that Defendants' failed on a class-wide basis to "make necessary repairs with reasonable promptness" and to "maintain all equipment and appliances in safe and working order." Second, Plaintiffs will show through generalized evidence that the evacuation of residents from Barbour Gardens following the sewage backup constituted a breach of lease for Plaintiffs and certain class members. Third, Plaintiffs will further prove breach of lease through a constructive eviction theory, as all residents at Barbour Gardens were relocated as a result of uninhabitable conditions.

To succeed in a constructive eviction theory of breach of lease, Plaintiffs will show that "(1) the problem was caused by [Adar], (2) [Plaintiffs] vacated the premises because of the problem, and (3) [Plaintiffs] did not vacate until after giving [Adar] time to correct the problem.

Welsch v. Groat, 95 Conn. App. 658, 662 (2006) (cleaned up). Proof of "failure to make necessary repairs in regard to . . . water damage and the presence of mold and mildew" has been held to constitute constructive eviction. *Id*. at 663-64. As noted above, the named plaintiffs, for themselves and for the class, allege that the defendants failed to make necessary repairs in all four buildings at Barbour Gardens, harming every family that lived there, and leading to the displacement of every resident.

vi. Breach of Warranty of Habitability

Significant aspect of the Plaintiffs' claims for breach of the implied warranty of habitability are "subject to generalized proof" that predominate over any individualized issue. "There is a fine, albeit distinguishable, line between a cause of action based on negligence and one based on breach of an implied warranty [of habitability] . . . ." *Lovick v. Nigro*, No. LPLCV940542473S, 1997 WL 112806, at *5 (Conn. Super. Ct. Feb. 24, 1997). Although there generally "is no implied warranty of habitability given to a tenant," that general rule "does not apply to defects which are the result of … disrepair and which existed at the beginning of the tenancy, were not discoverable by the tenant on reasonable inspection, and were known, either actually or constructively" to Defendants. *Id*. at *6 (citations omitted). The named plaintiffs will show that the defendants' neglect of Barbour Gardens arose from defects that were the result of disrepair to elements over which the tenants had no control (such as roofs, walls, ceilings, and plumbing), issues that were long known to the Defendants.

Under similar circumstances, courts in Connecticut, New York and across the country have certified class actions on warranty of habitability theories. *See, e.g.*, *Connelly v. Hous. Auth. of the City of New Haven*, 213 Conn. 354, 356-57 (1990) (class action maintained for defendants' failure to provide adequate heat and hot water); *Dukes v. Durante*, 192 Conn. 207, 209 (1984) (class action maintained for defendants' failure to provide safe and habitable housing); *Techer v.*

Pierce, No. Civ. N-78-484, 1982 WL 967159, at *1 (D. Conn. 1982) (same); *Techer v. Roberts-Harris*, 83 F.R.D. 124, 131 (D. Conn. 1979) (provisionally certifying class of tenants in warranty of habitability action); *Conaway v. Prestia*, 191 Conn. 484, 487-88 (1983) (class action maintained due to the numerous and severe housing and health code violations in defendants' buildings); *Menna v Maiden Lane Prop., LLC*, No. 157710/15, 2018 WL 1947370, at *1, 6 (N.Y. Sup. Ct. Apr. 25, 2018) (certifying class of tenants claiming defendants failed to adequately safeguard the residential property from Hurricane Sandy); *Residents of Royal View Manor by & through McDowell v. Des Moines Mun. Hous. Agency*, 2017 WL 2876241, at *1, 4 (Iowa App. Ct. July 6, 2017) (certifying class of tenants claiming defendant failed to properly address a bed bug infestation in their apartment building); *Roberts v Ocean Prime, LLC*, 2016 WL 247427, at *1, 5 (N.Y. Sup Ct. Jan 21, 2016) (certifying class of tenants claiming defendants failed to safeguard the residential property from and remediate the effects of Hurricane Sandy). The Court should certify this class for the same advantages that have been gained from certification in these similar cases.

vii. Breach of Management Agreement

Plaintiffs assert for themselves and all those similarly situated that Plaintiffs were third party beneficiaries of the Management Agreement ("Agreement") between Adar and Arco, dated June 28, 2005. Common questions predominate over whether (1) Plaintiffs constitute third-party beneficiaries, and (2) Adar and Arco both breached the Agreement.

To determine whether Plaintiffs and proposed class members are third-party beneficiaries under the Agreement, the Court must determine the intent of both Adar and Arco. Plaintiffs assert that it is clear from the language of the Agreement that all residents of Barbour Gardens were intended to be beneficiaries under the Agreement. For example, pursuant to the Agreement, Adar had an obligation to provide funds for the repair and maintenance of the

property. (*See* Exhibit 1.) Similarly, Arco had an obligation to repair all issues threatening the health and safety of residents. (*Id.*) In establishing whether Barbour Gardens residents constitute beneficiaries under the Agreement, class-based questions predominate. Common questions further predominate in determining whether Adar and Arco breached the Agreement. The facts alleged regarding breach of the Agreement do not differ between Plaintiffs or class members.

viii. Unjust Enrichment

Common questions of fact and law predominate over Plaintiffs' unjust enrichment claim. When evaluating an unjust enrichment claim, the "question is: Did [the party liable], to the detriment of someone else, obtain something of value to which [the party liable] was not entitled." *Indoor Billboard Northwest, Inc. v. M2 Systems Corp.*, 202 Conn. App. 139, 180 (2021) (quoting *Horner v. Bagnell*, 324 Conn. 695, 707-708 (2017). "Unjust enrichment is a doctrine allowing damages for restitution, that is, the restoration to a party of money, services or goods of which he or she was deprived of that benefited another." *Id.* (quoting *Piccolo v. Am. Auto Sales, LLC*, 195 Conn. App. 486, 494 (2020).

Plaintiffs will prove using generalized evidence that Defendants benefited from their ownership and management of Barbour Gardens. Such benefit is demonstrable through the Management Agreement between Adar and Arco (See Exhibit 1.) and the HAP Contract executed between Adar and the federal government. Plaintiffs will prove that Defendants' benefits were unjust through generalized evidence of the deterioration of Barbour Gardens, as evidenced by the HUD REAC Report and City of Hartford inspection report. (See Exhibits 15, 13.) Plaintiffs will further support the charge of unjust enrichment using the same generalized evidence used to support counts one through seven, discussed above.

ix. CUTPA

CUTPA provides that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-100b(a). CUPTA allows "any person who suffers any ascertainable loss of money or property … as a result of the use or employment o fa prohibited method, act or practice …" *Abrahams v. Young & Rubicam, Inc.*, 240 Conn. 300, 306 (1997) (alterations omitted). Plaintiffs will prove through generalized evidence that Defendants engaged in an unfair trade practice through their ownership and mismanagement of Barbour Gardens.

Defendants' activities regarding Barbour Gardens "unquestionably offend the public policy … of ensuring minimum standards of housing safety and habitability." *Conway*, 191 at 493. As described in depth above, Defendants knowingly failed to maintain Barbour Gardens, allowing it to fall into disrepair. Defendants' generalized practice will be proven with evidence common to the class. Defendants' purposeful disregard of the dangerous conditions – such as rotting walls, plumbing problems, pervasive mold and infestations – will further be proven with evidence common to the class.

Moreover, Plaintiffs have suffered ascertainable losses as a result of Defendants' activities, including but not limited to the diminution of rental value, emotional distress, and relocation costs. Defendants may argue that Plaintiffs' claims cannot be certified because of concerns regarding individualized damages. Defendants' argument would then ignore that "individual consideration of the issues of damages has never been held to bar certification of a class." *Marr v. WMX*, 244 Conn. 676. Generalized, rather than individualized, evidence is sufficient to prove in this case that all Plaintiffs have suffered some ascertainable loss as a result of Defendants' activities. *See, e.g.*, *Neighborhood v. Madison*, 294 Conn. 651.

Punitive damages are an appropriate class-wide issue. Punitive damages and statutory damages are fundamentally different. "As explained *in Gertz v. Robert Welsh, Inc.*, 418 U.S. 323 … (1974) … punitive damages are not compensation. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence." *Your Mansion v. RCN*, 206 Conn. App. 316, 335 (2021). "[P]unitive damages under CUTPA are focused on deterrence, rather than mere compensation." *Bridgeport Habour Place I, LLC v. Ganim*, 131 Conn. App. 99, 140 (2011). Courts have certified punitive damages classes in cases such as this, "when the focus is on the defendant's conduct, as opposed to the class members' harms, and the relief is sought for the class as a whole." *Palmer v. Combined Ins. Co. of Am*., 217 F.R.D. 430, 438-41 (N.D. Ill. 2003); *see also Tawney v. Columbia Natural Res., LLC*, No. 03-C-10E, 2007 WL 5539870, at *48 (W. Va. Cir. Ct. June 27, 2007) ("Trying punitive damages issues for the entire class actually protects Defendants from inordinate punitive damage awards and assures a fair award to all persons harmed."); *Iorio v. Allianz Life Ins. Co. of N. Am*., No. 05 CV 633 JLS (CAB), 2009 WL 3415703, at *5-6 (S.D. Cal. Oct. 21, 2009) ("[P]unitive damages will be awarded based on the injury inflicted upon all class members, not individual class members . . . [and the] [p]unitive damages award will be based largely on the misconduct of the Defendant."); *E.E.O.C. v. Dial Corp*., 259 F. Supp. 2d 710, 712 (N.D. Ill. 2003) ("No jury deciding compensatory damages of an individual or small group of individuals can have the same insight on what will be needed to deter the pattern or practice . . . .").

B. Superiority

A class action is "superior to other methods for the fair and efficient adjudication of [this] controversy." Conn. Practice Book § 9-8. "If the predominance criterion is satisfied, courts generally will find that the class action is a superior mechanism even if it presents management difficulties." *Neighborhood Builders, Inc.*, 294 Conn. at 671. Class certification is superior to

all other available methods for the fair and efficient adjudication of this case. Individual suits would undoubtedly require a massive amount of wasted resources litigating identical claims and issues, including multiple filings of essentially the same pleadings, motions, notices, orders, discovery materials, and use of essentially the same exhibits and witnesses over and over again.

When the main concern is manageability – as opposed to conflicts of interest among class members or between counsel and the class – denial of certification "should be the exception rather than the rule." *In re Visa Check/Mastermoney Antitrust Litig*., 280 F.3d 124, 140 (2d Cir. 2001) (citations omitted). The reason, as the Second Circuit held, is that there are "powerful policy considerations that favor certification," and whatever "difficulties in managing [a] large class action may arise, these problems pale in comparison to the burden on the courts that would result from trying the cases individually." *Id*. at 146. As the *Visa* court explained, there are many management tools available to courts that certify damages class actions, including bifurcation of liability and damage trials, decertifying the class after a finding of class-wide liability, and certifying issues classes. *Id.* at 141 (citations omitted).

Here, as in *Conaway* and many of the other authorities cited herein, "[t]his case raises serious issues of inadequate and insufficient housing for the low and moderate income classes of our society. In effect, these plaintiffs, the least insulated and most vulnerable constituents within the community, seek the enforcement of laws ostensibly enacted for their benefit by city and state legislators." *Conaway*, 1981 WL 164263, at *7.

CONCLUSION

For these reasons, the Court should certify this action as a class action.

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that on July 8, 2022 a copy of the foregoing was filed electronically through the Court's electronic filing system and served by electronic means via email transmission on the following counsel of record:

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