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8 John Aaron, Jenica Olah, Leonardo Barroso,
9 Rosimari Zandonadi, Randall Chandler,
Lamont Ortiz and Robertson Smith

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF ARIZONA

13 JOHN AARON; JENICA OLAH,
14 LEONARDO BARROSO,
15 ROSIMARI ZANDONADI,
RANDALL CHANDLER, LAMONT
16 ORTIZ, ROBERTSON SMITH,

17 Plaintiffs,

18 vs.

19 ENR OH, LLC DBA THE X
20 COMPANY, XSC PHOENIX
21 INVESTMENT LLC, XSC PHOENIX
CLUB LLC, AND ASSET CAMPUS
USA LLC,

22 Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE,
DECLARATORY AND MONETARY
RELIEF; JURY TRIAL DEMAND

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11 * Pro Hac Vice Application Pending

I. INTRODUCTION

1. Plaintiffs John Aaron, Jenica Olah, Leonardo Barroso, Rosimari Zandonadi, Randall Chandler, Lamont Ortiz and Robertson Smith are families with children who bring this action against Defendants for injunctive, declaratory and monetary relief for discrimination based on familial status in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3619.

2. Plaintiffs are six parents and one grandmother who lived with minor children at X Phoenix, a 330 unit and 505 bed apartment building in Phoenix, Arizona. Each Plaintiff chose to rent at X Phoenix in large part because of the rich and expansive amenities offered by X Phoenix, including a swimming pool, full service gym, fitness classes, co-working and private workspaces, large open areas and a full-service restaurant. Although the apartments are small, X Phoenix's unique living model offered them a way to have amenities and outdoor spaces for their children in the middle of an urban downtown area.

3. Residents of X Phoenix including Plaintiffs received full access to the amenities and facilities as part of their lease. The amenities at X Phoenix are contained in a separate entity named the X Club. Plaintiffs and other residents of X Phoenix were provided with complimentary membership in the X Club as part of their lease. The X Club also allowed members of the general public to become members of the X Club.

4. In October 2022, X Phoenix implemented a new policy banning children under the age of 13 from the X Club. By prohibiting children under age 13 from using the X Club, Defendants barred families with children from using the amenities at X Phoenix in violation of the Fair Housing Act. Residents without children were allowed to continue to use the amenities at the X Club without restriction.

5. Defendants' policy or practice of banning families with young children from the amenities at X Phoenix imposed different terms, conditions or privileges on Plaintiffs and limited the facilities and services provided to them because of their

1 familial status. Defendants' discriminatory housing practice made them feel
2 unwelcome in their own homes and confined to a small apartment. As a result, each
3 Plaintiff was forced to move from X Phoenix.

4 II. JURISDICTION AND VENUE

5 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343.
6 This action is authorized by 42 U.S.C. § 3613. Declaratory relief is authorized by 28
7 U.S.C. § 2201 and § 2202. This Court has supplemental jurisdiction to consider
8 Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because those claims are
9 related to Plaintiffs' federal law claims and arise out of a common nucleus of facts.

10 7. This Court has authority to grant declaratory and injunctive relief under
11 the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and the Fair Housing Act,
12 42 U.S.C. § 3613(c).

13 8. Venue is proper in this district under 28 U.S.C. § 1391(b) because all
14 events giving rise to this complaint occurred in this district.

15 III. PARTIES

16 9. Plaintiffs John Aaron and Jenica Olah lived at X Phoenix from January
17 2022 to June 2023 with their minor child J., who was 4 years old at the time. Plaintiff
18 John Aaron was employed as the Maintenance Supervisor at X Phoenix when he
19 lived at X Phoenix.

20 10. Plaintiffs Leonardo Barroso and his mother, Rosimari Zandonadi, lived
21 at X Phoenix from April 2022 to March 2023 with a minor child, V., who was
22 between three months and 15 months old at the time. V. is Leonardo Barroso's
23 daughter and Rosimari Zandonadi's granddaughter.

24 11. Plaintiff Randy Chandler lived at X Phoenix with his minor child M.,
25 then 8 years old, between April 2022 and December 2022.

26 12. Plaintiff Lamont Ortiz lived at X Phoenix from February 2022 to
27 November 2022 daughter, S.R., then age 5.

28

1 13. Plaintiff Robertson Smith lived at X Phoenix from March 2022 to
2 January 2023 with his two minor daughters B. and P., who were ages 4 and 3 at the
3 time.

4 14. Defendant ENR OH, LLC doing business as The X Company (“The X
5 Company”) is an Illinois corporation engaged in development and operation of the
6 multi-family real estate development known as X Phoenix, 200 West Monroe Street,
7 Phoenix, Arizona 85003.

8 15. Defendant XSC Phoenix Investment LLC is a Delaware limited liability
9 company that owns X Phoenix. XSC Phoenix Investment LLC currently operates X
10 Phoenix, which contains 330 apartment units and 506 beds. The residential units at X
11 Phoenix and associated public and common areas are “dwellings” within the meaning
12 of the Fair Housing Act, 42 U.S.C. § 3602(b). On information and belief, XSC
13 Phoenix Investment LLC leased the amenities spaces at X Phoenix to Defendant XSC
14 Phoenix Club LLC and contracted with it to provide club membership to the residents
15 of X Phoenix.

16 16. XSC Phoenix Club LLC is Delaware limited liability company that
17 owns and operates the X Club at X Phoenix.

18 17. Defendant Asset Campus USA, LLC is a Texas limited liability that has
19 been managing X Phoenix since approximately June 2022. As the management
20 company for X Phoenix, Asset Campus USA LLC is responsible for the day-to-day
21 management of X Phoenix.

22 18. Each defendant is the agent, manager, member, partner, co-conspirator
23 or representative of each other defendant. Each defendant, in doing the acts or in
24 omitting to act as alleged in this complaint, was acting within the course and scope of
25 his or her actual or apparent authority pursuant to such agency or the alleged acts or
26 omissions of each defendant as agent were subsequently ratified and adopted by each
27 other agent as principal. Each defendant is jointly and severally responsible and
28 liable to Plaintiffs for the injuries caused by each other defendant.

19. In acting or omitting to act as alleged herein, Defendants acted through their employees and/or agents, and are responsible for the acts and omissions of their employees and/or agents within the scope of their employment or agency. In acting or omitting to act as alleged herein, each employee or officer of Defendants was acting within the course and scope of his or her actual or apparent authority pursuant to such agencies, or the alleged acts or omissions of each employer or officer as agent was subsequently ratified and adopted by Defendants as principal.

FACTS

20. The X Company markets itself as an all-inclusive, amenity-rich apartment brand. According to its website, X is “the first and largest branded network of member clubs and private residences in the country” and “X is an unconventional social club. It’s your new network, work space, yoga studio, and neighborhood bar. Sign a lease and it’s your home base too.”

21. X Phoenix contains approximately 330 apartment units and 506 beds. X Phoenix offers studio, 1-bedroom, and 2-bedroom apartments, as well as furnished and unfurnished co-living room options in 2-, 3-, and 4-bedroom floorplans. X Phoenix apartments on average are less than 750 square feet. X Phoenix offers prospective tenants both standard apartment units and co-living units, which are shared housing where individuals rent private rooms or suites while sharing common areas like kitchens, living rooms, and sometimes bathrooms.

22. X Phoenix advertised on its website that the apartments “are complemented by our unrivaled selection of best-in-class amenities,” and informed prospective tenants that “[f]rom our massive coworking space with rentable offices to our outdoor/indoor fitness center and expansive pool, we provide everything you need to live, work, and play.”

23. Additional amenities at X Phoenix include a coffee bar, restaurant, and an open-air deck with seating and landscaping called the “Sunset Deck.” Residents

1 can take yoga classes and attend planned events like movie nights or community
2 parties. Each of these amenities is located in the X Club.

3 24. In tours and other communications with prospective tenants, Defendants
4 highlighted the amenities in the X Club.

5 25. At all relevant times, X Phoenix provided access to the X Club free of
6 charge as a component of residential leases offered to and signed with tenants.
7 Plaintiffs' and other residents' leases contained an addendum entitled "X Co. Rules
8 and Regulations," which provided, "The 8th and 9th floor amenities and areas,
9 including but not limited to The Pool Deck, The Study, The Pool House, The Gym,
10 The Outdoor Gym, The Fitness Studio, The Lockerrooms, and The Lounge, herein
11 collectively referred to as "The Club," are available to residents subject to the terms
12 of the Club Terms & Conditions and Rules and Regulations."

13 26. Each Plaintiff chose to rent a unit at X Phoenix because of the amenities
14 it provided and frequently used those amenities. Plaintiff Randy Chandler worked
15 remotely and used the co-working space. He used the pool with his daughter and she
16 would accompany him to the co-working space. Plaintiff Lamont Ortiz also worked
17 remotely and took advantage of the co-working space for his own work and to do
18 homework with his daughter. After doing homework, they would swim in the pool.
19 Plaintiff Robertson Smith loved living at the property because he could swim with his
20 kids in the pool and play with them on the grounds but still be right downtown, close
21 to his work. Plaintiff Leo Barroso frequently used the pool and workspace area at X
22 Phoenix, bringing his infant daughter with him. His mother plaintiff Rosimari
23 Zandonadi spent her days with her granddaughter on walks around the building and
24 up to the rooftop and swimming in the pool. Plaintiff Jenica Olah spent time with her
25 son in the X Club on a daily basis, enjoying the pool and walking around the open
26 spaces.

27 27. In or around June 2022, Defendant Asset Campus USA LLC was
28 brought on to manage X Phoenix apartments..

1 28. On October 4, 2022, “X Phoenix Management” sent an email to
2 residents setting forth a written policy stating that going forward, “children under the
3 age of 13 will not be permitted in the club spaces (levels 8 & 9).” The email was sent
4 by the Community Manager of X Phoenix, an employee of Defendant Asset Campus
5 acting on behalf of Defendant XSC Phoenix Investment LLC.

6 29. The notice shocked Plaintiffs, since the amenities of X Phoenix were
7 such an integral part of their home and routine with their children.

8 30. Plaintiffs found themselves living in small apartment units and unable to
9 use the parts of the complex they and their children enjoyed. Plaintiffs John Aaron,
10 Jenica Olah, Randy Chandler, Lamont Ortiz, and Robertson Smith also had to
11 contend with the disappointment and frustration of their children who did not
12 understand why they could no longer swim in the pool or play with other children on
13 the grounds, particularly when they could see the pool and grounds from their unit
14 balconies.

15 31. On multiple occasions, X Club employees enforced the rule by
16 informing tenants who were with their children in the X Club areas that the children
17 were not allowed to be there, and by asking them to leave. For instance, when
18 Plaintiff Lamont Ortiz brought his daughter into the co-working space, X Phoenix
19 staff threatened to revoke his membership and suspend his use of the common areas
20 if he continued to bring his daughter into the space. As a result of the rule and X
21 Phoenix staff’s enforcement, Plaintiffs kept their children inside and felt unwelcome
22 on the premises.

23 32. On information and belief, Defendant ENR OH, LLC (the X Company)
24 directed and/or ratified the decision to exclude children from the amenities at X
25 Phoenix.

26 33. X Phoenix was not the only X Company property with discriminatory
27 rules. Children had been banned from the X Club at another “X” property developed
28

1 and operated by The X Company, X Denver. The website for X Denver openly
2 stated that children were not welcome in the X Club.

3 34. Defendants were on notice that this ban violated fair housing law. The
4 former property management company for X Phoenix and X Denver, Cardinal Group
5 Midwest LLC, raised concerns with X Company that the X Club rules violated fair
6 housing law.

7 35. Plaintiff Leo Barroso repeatedly informed Defendants that the ban
8 violated his fair housing rights. Nonetheless, Defendants persisted in maintaining the
9 rule excluding children from the X Club facilities at X Phoenix and targeted Plaintiff
10 Barroso for strict enforcement because he opposed Defendants' unlawful rule. For
11 example, on October 5, 2022, Mr. Barroso was with his daughter in the pool area
12 again when X Club staff members told him to leave. Mr. Barroso refused to leave.
13 Staff members then threatened to have Mr. Barroso removed by the police.
14 Thereafter, Mr. Barroso had several disagreements regarding the no-kids policy with
15 staff members of X Phoenix and X Club. X Club eventually filed an injunction
16 against Mr. Barroso to prohibit him from using the amenities. On December 9, 2022,
17 the court ruled in favor of Mr. Barroso and dismissed the lawsuit seeking an
18 injunction to prohibit Mr. Barroso from using the amenities at X Phoenix with his
19 child.

20 36. On March 16, 2023, Plaintiffs Leo Barroso, Lamont Ortiz and Robertson
21 Smith, as well as the National Fair Housing Alliance and SouthWest Fair Housing
22 Council, and filed an administrative housing discrimination complaint with the
23 United States Department of Housing & Urban Development (HUD) pursuant to 42
24 U.S.C. § 3610 alleging that Defendants violated the Fair Housing Act by refusing to
25 allow residents with children to use the swimming pool and other amenities and
26 facilities at X Phoenix.

27 37. In approximately May 2023, Defendants claim that they reversed their
28 policy banning children from the amenities at X Phoenix. Plaintiffs John Aaron and

1 Jenica Olah were still living at X Phoenix at the time Defendants claim that they
2 changed their policy and allowed children in the amenities at X Phoenix. They did
3 not receive any notice that the policy had been changed before they moved from X
4 Phoenix in June 2023.

5 38. On December 7, 2023, Plaintiffs John Aaron, Jenica Olah, Randy
6 Chandler and Rosimari Zaldonadi were added as complainants to the original
7 administrative housing discrimination complaint filed with HUD and a First
8 Amended Housing Discrimination Complaint was filed that included all Plaintiffs as
9 Complainants. Plaintiffs' First Amended Housing Discrimination Complaint remains
10 pending at HUD.

11 INJURY TO PLAINTIFFS

12 39. As a direct and proximate result of Defendants' discriminatory acts
13 described above, Plaintiffs have suffered, and continue to suffer, irreparable loss and
14 injury, including, but not limited to, economic losses, injury to reputation, humiliation,
15 emotional distress, loss of housing opportunities, and the deprivation of their housing
16 and civil rights.

17 40. Defendants, acting individually and in concert with others, directly and
18 through their agents, have engaged in a pattern or practice of discrimination based on
19 familial status in the operation of X Phoenix. Defendants have pursued this pattern or
20 practice of discrimination because of familial status for the purpose or with the effect of
21 excluding families with children from the amenities at X Phoenix.

22 41. There now exists an actual controversy between the parties regarding
23 duties under federal and state laws. Accordingly, Plaintiffs are entitled to declaratory
24 relief under their federal and state law claims.

25 42. Unless enjoined, Defendants will continue to engage in the unlawful acts
26 and the pattern or practice of discrimination described in this complaint. Plaintiffs
27 have no adequate remedy at law. Plaintiffs are suffering and will continue to suffer
28 irreparable injury from defendants' misconduct unless relief is provided by this

1 Court. Accordingly, Plaintiffs are entitled to injunctive relief under their federal and
2 state law claims.

3 CLAIMS FOR RELIEF

4 FIRST CLAIM FOR RELIEF

5 Fair Housing Act

6 (42 U.S.C. §§ 3604(b) & (c))

7 [All Plaintiffs v. All Defendants]

8 43. Plaintiffs reallege and incorporate by reference all previous paragraphs
9 in this complaint.

10 44. Defendants have injured Plaintiffs by committing discriminatory
11 housing practices in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(b), 3604(c)
12 and 3617 including but not limited to the following conduct:

13 a. Discriminating in the terms, conditions or privileges of rental of a
14 dwelling, or in the provision of services or facilities in connection with rentals,
15 because of familial status, in violation of 42 U.S.C. § 3604(b) and 24 C.F.R. §§
16 100.50(b)(2) and 100.65(b)(4);

17 b. Making, printing or publishing, or causing to be made, printed or
18 published, any notice, statement or advertisement with respect to the rental of a
19 dwelling that indicates any preference, limitation or discrimination because of
20 familial status, or an intention to make any such preference, limitation or
21 discrimination, in violation of 42 U.S.C. § 3604(c) and 24 C.F.R. §§ 100.50(b)(4) and
22 100.75(a); and,

23 c. Interfering in their use and enjoyment of housing and exercise or
24 enjoyment of any right granted or protected by this part, in violation of 42 U.S.C. §
25 3617 and 24 C.F.R. §§ 100.400(b) and (c)(2).

26 45. Accordingly, Plaintiffs are aggrieved persons entitled to relief under the
27 Fair Housing Act.

28 //

1 SECOND CLAIM FOR RELIEF

2 Fair Housing Act

3 (42 U.S.C. § 3617)

4 [Plaintiff Leonardo Barroso v. All Defendants]

5 46. Plaintiff realleges and incorporates by reference all previous paragraphs
6 in this complaint.

7 47. Defendants have injured Plaintiff by committing discriminatory housing
8 practices in violation of the Fair Housing Act, 42 U.S.C. §§ 3617 including:

9 a. Coercing, intimidating, threatening, or interfering with any person in the
10 exercise or enjoyment of, or on account of that person having exercised or enjoyed
11 any right granted by the Fair Housing Act, in violation of 42 U.S.C. § 3617 and 24
12 C.F.R. §§ 100.400(c)(1), (2), (5) & (6).

13 48. Accordingly, Plaintiff is an aggrieved person entitled to relief under the
14 Fair Housing Act.

15 THIRD CLAIM FOR RELIEF

16 Breach of Covenant of Quiet Enjoyment

17 [All Plaintiffs v. All Defendants]

18 49. Plaintiffs reallege and incorporate by reference all previous paragraphs
19 in this complaint.

20 50. By prohibiting children under age 13 from accessing the 8th and 9th
21 floor amenities and areas “including but not limited to The Pool Deck, The Study,
22 The Pool House, The Gym, The Outdoor Gym, The Fitness Studio, The Locker
23 rooms, and The Lounge,” Defendants breached the implied covenant of quiet
24 enjoyment in each Plaintiff’s lease. As a result of that breach, each Plaintiff was
25 deprived of the full use and beneficial enjoyment of their property, eventually causing
26 each of them to vacate their units.

27 51. As a direct and proximate result of that breach, each Plaintiff suffered
28 substantial damages.

1 FOURTH CLAIM FOR RELIEF

2 Breach of Implied Covenant of Good Faith and Fair Dealing

3 [All Plaintiffs v. All Defendants]

4 52. Plaintiffs reallege and incorporate by reference all previous paragraphs
5 in this complaint.

6 53. By unilaterally amending Plaintiffs' leases to prohibit children under age
7 13 from accessing the 8th and 9th floor amenities and areas, Defendants acted
8 contrary to Plaintiffs' reasonable expectations and depriving them of the use of the
9 property amenities that made the X Phoenix desirable to each Plaintiff.

10 54. As a direct and proximate result of that breach, each Plaintiff suffered
11 substantial damages.

12 FIFTH CLAIM FOR RELIEF

13 Negligent Supervision

14 [Plaintiffs John Aaron and Jenica Olah v. All Defendants]

15 55. Plaintiffs reallege and incorporate by reference all previous paragraphs
16 in this complaint.

17 56. Each Defendant, directly or vicariously through its agents, employees, or
18 contractors, is liable for breaching its duty of care to adequately supervise its
19 employees and agents in the operation and management of the X Phoenix,
20 proximately causing harm and actual damages to Plaintiffs John Aaron and Jenica
21 Olah.

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23
24 RELIEF

25 Wherefore, Plaintiffs pray for entry of a judgment providing the following
26 relief:

27 1. Permanently enjoining all unlawful practices alleged in this complaint
28 and imposing injunctive relief prohibiting Defendants, their partners, agents,

1 employees, assignees, and all persons acting in concert or participating with them,
2 from violating the unlawful practices alleged herein;

3 2. Entering a permanent injunction directing Defendants and their
4 directors, officers, agents, and employees to take all affirmative steps necessary to
5 remedy the effects of the illegal, discriminatory conduct described herein and to
6 prevent similar occurrences in the future;

7 3. Declaring that Defendants have violated the provisions of applicable
8 federal and state laws;

9 4. Awarding compensatory and punitive damages to Plaintiffs according to
10 proof;

11 5. Granting reasonable attorneys' fees and costs of the suit to Plaintiffs;
12 and,

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6. Granting all such other relief as the Court deems just.

Respectfully Submitted,

WILLIAM RICHARDS
RICHARDS & MOSKOWITZ PLC

By /s/ William Richards
William Richards

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