

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

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THE PEOPLE OF THE STATE OF NEW YORK,  
by LETITIA JAMES, Attorney General of the State  
of New York, ERIE COUNTY, NEW YORK, and the CITY  
OF BUFFALO, NEW YORK,

Plaintiffs,

– against –

ANGEL E. DALFIN a/k/a/ ELLIOT DALFIN; LORRAINE  
DALFIN; PAUL R. HEIL; BBB4, LLC; BRADSVILLE  
PROPERTIES HOLDINGS, LLC; BUFFALO COMMONS,  
LLC; BUFFALO HOLDINGS, LLC; BUFFALO NORTH,  
INC.; CTA MANAGEMENT, LLC; ECO DEV INC.; ESSEX  
INDUSTRY, LLC; GLOUCESTER LAND HOLDINGS,  
LLC; HABITAT PROPERTIES, LLC; HAMILTON  
ENTERPRISES, LLC; HOMESTEAD LAND HOLDINGS,  
LLC; IZVILLE PROPERTIES, LLP; LIBERTY GROUP  
ENTERPRISES, LLC; MONTGOMERY PROPERTIES,  
LLC; OTUAB, LLC; PECK PROPERTIES, INC.;  
SWEETHOME, LLC; TDO HOLDINGS, LLC; VIN7, LLC;  
WILLIAMSVILLE PROPERTIES HOLDINGS, LLC.; and  
YEHUDA BEN AVRAHAM GUERRERO, INC.,

Defendants.

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Index No. \_\_\_\_\_

**COMPLAINT**

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Plaintiffs, The People of the State of New York (the “State”), by their attorney, Letitia James, Attorney General of the State of New York, together with Erie County, New York (the “County”) and the City of Buffalo, New York (the “City”), allege upon information and belief:

### **PRELIMINARY STATEMENT**

1. The lead poisoning of children from lead paint in aging rental housing is an ongoing public health crisis. According to a 2018 study, the City of Buffalo “suffers from some of the highest rates” of childhood lead exposure in the nation from “poor housing conditions in old homes with lead paint.”<sup>1</sup> Moreover, “[d]espite accounting for only 29 percent of Erie County’s population, Buffalo—due to its poverty and old housing stock—accounts for almost all of its lead cases.”<sup>2</sup> Although lead has been banned from paint for over four decades, lead remains among the most common environmental toxins for young children. By this action, plaintiffs aim to reduce lead paint hazards and poisoning of children in Buffalo.

2. Lead is a toxic heavy metal that impairs neurological development and physical growth in children. There is no level of lead exposure that is safe for children.

3. Before 1960, paint with dangerous levels of lead was commonly used to paint the interiors and exteriors of buildings, including in residential buildings in Buffalo. Beginning in 1970, New York State imposed limits on lead levels in household paint, followed by the federal government in 1978. However, paint with lead levels higher than those limits remains in many homes built before those limits were imposed.

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<sup>1</sup> Sam Magavern, Policies to Reduce Lead Exposure: Lessons from Buffalo and Rochester, *Int J Environ Res Public Health* (Oct. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6210569/> (last accessed Sept. 16, 2020).

<sup>2</sup> *Id.*

4. Even when painted over several times, lead from paint with high levels of lead is accessible to small children when paint chips or peels, is on surfaces like window sills that small children may touch or chew, or is on surfaces like doors and windows where friction or impacts generate lead dust. As a result, paint with high levels of lead remains a pervasive and serious health risk, particularly for children under six years old.

5. Tens of thousands of rental properties in Buffalo that were constructed before 1978 contain lead paint which, if not properly maintained and managed, can cause lead poisoning. If such properties are properly maintained, however, lead poisoning can be prevented.

6. The Erie County Sanitary Code, Buffalo City Code, and the State Property Maintenance Code all require property owners to prevent paint deterioration and to maintain their properties in a condition that is not conducive to lead poisoning. Additionally, federal law and regulations require that: (1) owners or agents disclose lead-based paint hazards before renting out residential properties built before 1978; and (2) in properties receiving federal rental financial assistance for low-income tenants, owners alleviate any lead paint hazards identified during initial or periodic inspections or during investigations concerning children with elevated blood lead levels, and that owners conduct ongoing maintenance.

7. The defendants are a closely-affiliated group of individuals and limited liability companies who have owned and managed more than 150 single- and two-family homes and one apartment building, which have been rented predominantly to low-income people of color in Buffalo (the “Dalfin Properties”).

8. Angel Dalfin controls the defendants’ rental housing operation with Paul Heil as his agent and close associate. More than ten years ago, Mr. Dalfin began acquiring rental

properties in Buffalo through out-of-state entities and managing those and others through a network of out-of-state property management companies.

9. Over the years, Mr. Dalfin and his agent Mr. Heil, either directly or through the companies Mr. Dalfin owns or controls, have repeatedly and persistently violated County, City, State, and federal laws by failing to maintain the Dalfin Properties in a lead-safe condition, allowing lead paint to deteriorate, and routinely providing deficient and false lead disclosures – or no disclosures at all – to tenants.

10. By allowing conditions conducive to lead poisoning to persist, in violation of law, dozens of children have been poisoned with lead while residing at Dalfin Properties. From 2013 to present, at least 63 of the Dalfin Properties have been cited by inspectors from the County and/or City for chipping, peeling, or deteriorating paint and other conditions conducive to lead poisoning. During that same period, children with elevated blood lead levels were identified residing at 22 of the Dalfin Properties. In at least seven of the Dalfin Properties, there have been multiple referrals to the County health department for lead poisoned children.

11. Nearly 60 percent of Buffalo residents live in rental housing. By depriving the Buffalo community of lead-safe rental housing, Mr. Dalfin and Mr. Heil, either directly or through the companies Mr. Dalfin owns or controls, are causing or contributing to a public nuisance.

12. In addition to violating lead paint hazard control laws, Mr. Dalfin and Mr. Heil, either directly or indirectly, have violated numerous other laws. For example, they have managed the Dalfin Properties without the required property management licenses from the City and rented out units without the required real estate broker's licenses from the State. Moreover, many of the companies Mr. Dalfin owns or controls have operated without authorization from the New

York Department of State to conduct business in the State. Further, Mr. Dalfin has abused the corporate form by transferring assets among various entities he owns or controls, commingling the assets of those entities, and failing to recognize any meaningful distinctions among those entities, for the purpose of avoiding legal responsibilities, such as paying rental registration fees and judgments in lawsuits by former tenants.

13. New York Executive Law § 63(12) authorizes the Attorney General to enjoin and seek other relief for “repeated fraudulent or illegal acts” or “persistent fraud or illegality” in the transaction of business. “Illegal” acts under Executive Law § 63(12) include violations of local lead laws like the Erie County Sanitary Code and Buffalo City Code, and local, State and federal laws relating to property rentals and the conduct of business within New York.

14. Lead paint in rental housing presents a major health crisis in the City and one of environmental justice: every day that children are exposed to lead paint in Dalfin Properties they are at risk of suffering irreversible injuries. Defendants’ failure to maintain properties in a lead-safe condition is contributing significantly to this lead poisoning crisis.

15. Plaintiffs seek to stop defendants’ illegal and dangerous housing practices and compel them to provide lead-safe housing and complete and truthful lead disclosures to their tenants.

16. In order to protect the children of Buffalo from further lead poisoning, plaintiffs seek an order requiring defendants to, among other things, inspect every rental unit at least once every six months for conditions conducive to lead poisoning and effectively remediate all dangerous lead conditions immediately. Plaintiffs also seek an injunction preventing defendants from collecting any rents until their rental properties have been rendered lead-safe, and similar relief aimed at protecting their tenants from exposure to lead.



## PARTIES

### **I. PLAINTIFFS**

17. Plaintiff the People of the State of New York (the “State”) brings this action by and through Attorney General Letitia James.

18. Plaintiff County of Erie, New York (the “County”), is a municipality in New York.

19. Plaintiff the City of Buffalo, New York (the “City”), is a municipality in Erie County, New York.

### **II. INDIVIDUAL DEFENDANTS**

20. Defendant Angel Elliot Dalfin, a/k/a Elliot Dalfin (“Mr. Dalfin”) has a current New York driver’s license identifying Williamsville, New York as his place of residence.<sup>3</sup> From 2007 to the present, Mr. Dalfin, either directly or indirectly, has owned, controlled, or managed the Dalfin Properties in Buffalo, which are listed in Exhibit A. During that period and continuing, Mr. Dalfin has been responsible for all decisions concerning maintenance and management of lead-based paint hazards at the Dalfin Properties. During that period and continuing, Mr. Dalfin owned or controlled the property management companies that managed the Dalfin Properties. These property management companies are described in further detail below in Section III.A of this part. During that period and continuing, Mr. Dalfin, either directly or through the property management companies or his agents, managed the properties of, and controlled the Buffalo-area business operations of, the property owner companies described in Section III.B of this part; as noted below, Mr. Dalfin also owned certain of the property owner companies directly.

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<sup>3</sup> Mr. Dalfin has also identified various UPS Stores and Maryland addresses as his residence.

21. Defendant Lorraine Dalfin is a resident of Buffalo, New York. At various times, Lorraine Dalfin purchased and sold at least six properties in Buffalo. All of the properties owned by Lorraine Dalfin in Buffalo were managed by Mr. Dalfin and Mr. Heil through multiple companies, including Buffalo North and Peck Properties.

22. Defendant Paul Heil (“Mr. Heil”) is a resident of Williamsville, New York. From in or about 2007 to the present, Mr. Heil served as a property manager for the Dalfin Properties and as Mr. Dalfin’s agent. Under Mr. Dalfin’s supervision, Mr. Heil performed various property management services including: leasing the Dalfin Properties to tenants; collecting rent from tenants; evicting tenants; accepting federal rental assistance payments on behalf of tenants through Section 8 of the Housing Act of 1937, codified as amended at 42 U.S.C. § 1437f (“Section 8”); communicating with the public housing agencies that administer the Section 8 program and with County and City officials regarding lead paint conditions in those properties; and performing, supervising, and coordinating maintenance and repairs.

### **III. ENTITY DEFENDANTS**

#### **A. Property Management Companies**

23. Defendant Buffalo North, Inc. (“Buffalo North”) is a corporation organized under the laws of New York in or about 2007 and/or the laws of Delaware in or about 2010. It was used by Mr. Dalfin and Mr. Heil for managing the Dalfin Properties. It was dissolved by the New York Department of State (“DOS”) in or about 2011.

24. Defendant Peck Properties, Inc. (“Peck Properties”) is a corporation organized under the laws of Wyoming. It was administratively dissolved by the Wyoming Department of State on October 10, 2012. Peck Properties is the successor to Buffalo North and has been used by Mr. Dalfin and Mr. Heil for managing Dalfin Properties in Buffalo since 2011. Peck Properties is not, and has never been, authorized by the DOS to conduct business in New York.

25. Defendant Essex Industry, LLC (“Essex”), is a limited liability company organized under the laws of Maryland, which was formed in September 2018. Essex has been used by Mr. Dalfin and Mr. Heil for managing the Dalfin Properties concurrently with Peck Properties. Essex is not, and has never been, authorized by DOS to conduct business in New York.

26. Defendants Buffalo North, Peck Properties, and Essex are referred to collectively as “the Property Management Companies.”

27. At all relevant times, the Property Management Companies have been owned or controlled by Mr. Dalfin, with Mr. Heil acting as agent.

**B. Property Owner Companies**

28. Defendant Bradsville Properties Holdings LLC (“Bradsville”) is a limited liability company organized under the laws of Maryland. Mr. Dalfin is its sole member. In 2012, Bradsville obtained title to at least 23 properties in Buffalo. Between 2012 and 2015, Bradsville transferred most of those properties to affiliates, including: 18 to Williamsville Properties Holdings, LLC; three to Izville Properties, LLP; and one to D&B Properties Holdings LLC, which was transferred to Gloucester Land Holdings, LLC in 2016. At the time of this Complaint, Bradsville no longer holds title to properties in Buffalo. Bradsville is not, and has never been, authorized by DOS to conduct business in New York.

29. Defendant Buffalo Commons LLC (“Buffalo Commons”) is a limited liability company organized under the laws of New York. Mr. Dalfin is a member. Between 2008 and 2009, Buffalo Commons obtained title to at least 29 properties in Buffalo. Between 2010 and 2012, Buffalo Commons transferred most of those properties to affiliates, including: 12 to

Homestead Land Holdings, LLC; seven to Purityson LLC (“Purityson”)<sup>4</sup>; one to Montgomery Properties LLC, which was transferred that same month to Homestead Land Holdings, LLC; and one to Peck Properties, which was transferred the next year to Homestead Land Holdings, LLC. At the time of this Complaint, Buffalo Commons no longer holds title to properties in Buffalo.

30. Defendant Buffalo Holdings LLC (“Buffalo Holdings”) is a limited liability company organized under the laws of Delaware. In 2012, Buffalo Holdings obtained title to at least three properties in Buffalo. In 2019 and 2020, Buffalo Holdings transferred two of those properties to an affiliate, VIN7 LLC. At the time of this Complaint, Buffalo Holdings no longer holds title to properties in Buffalo. Buffalo Holdings is not, and has never been, authorized by DOS to conduct business in New York.

31. Defendant CTA Management LLC (“CTA”) is a limited liability company organized under the laws of Wyoming. It was administratively dissolved by the Wyoming Department of State on October 10, 2012. In 2011 and 2012, CTA purchased at least three properties in Buffalo. In 2012, CTA transferred title to all of those properties to affiliates, including two to Purityson and one to Homestead Land Holdings, LLC. At the time of this Complaint, CTA no longer owns properties in Buffalo. CTA is not, and has never been, authorized by DOS to conduct business in New York.

32. Defendant Eco Dev Inc. (“Eco Dev”) is a corporation organized under the laws of Delaware. Mr. Dalfin is its sole member. In 2012, Eco Dev obtained title to at least 12 properties in Buffalo. Later that year, Eco Dev transferred all of those properties to affiliated entities, including: seven to Williamsville Properties Holdings, LLC; three to Homestead Land Holdings,

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<sup>4</sup> Purityson, which is not owned by Mr. Dalfin, is not a defendant in this action. However, between 2011 and 2019, at least 21 properties owned by Purityson in Buffalo were managed by Mr. Dalfin and Mr. Heil through one or more of the Property Management Companies.

LLC; two to Purityson; two to Habitat Properties LLC; one to Buffalo Holdings; and one to Avant Enterprises LLC, which was transferred one month later to Homestead Land Holdings, LLC. At the time of this Complaint, Eco Dev no longer holds title to properties in Buffalo. Eco Dev is not, and has never been, authorized by DOS to conduct business in New York.

33. Defendant Gloucester Land Holdings, LLC (“Gloucester”) is a limited liability company organized under the laws of Maryland. At the time of this Complaint, Gloucester is not in good standing with the Maryland Department of State. Between 2016 and 2017, Gloucester obtained title to at least six properties in Buffalo, including from Lorraine Dalfin and TDO Holdings LLC. In 2019 and 2020, Gloucester transferred all of those properties to an affiliate, VIN7 LLC. At the time of this Complaint, Gloucester no longer holds title to properties in Buffalo. Gloucester is not, and has never been, authorized by DOS to conduct business in New York.

34. Defendant Habitat Properties LLC (“Habitat”) is a limited liability company organized under the laws of Delaware. In 2012, Habitat obtained title to three properties in Buffalo. At the time of this Complaint, Habitat holds title to three properties in Buffalo. Habitat is not, and has never been, authorized by DOS to conduct business in New York.

35. Defendant Hamilton Enterprises, LLC (“Hamilton”) is a limited liability company organized under the laws of Delaware. In 2011, Hamilton obtained title to at least three properties in Buffalo. In 2019 and 2020, Hamilton transferred all three of the properties to an affiliate, VIN7 LLC. At the time of this Complaint, Hamilton no longer holds title to properties in Buffalo. Hamilton is not, and has never been, authorized by DOS to conduct business in New York.

36. Defendant Homestead Land Holdings, LLC (“Homestead”) is a limited liability company organized under the laws of Delaware. In 2011 and 2012, Homestead obtained title to at least 29 properties in Buffalo, including from affiliates Buffalo Commons, CTA, Eco Dev, and Montgomery Properties LLC. In 2019 and 2020, Homestead transferred all of these properties to VIN7 LLC, an affiliate. At the time of this Complaint, Homestead no longer holds title to properties in Buffalo.

37. Defendant Izville Properties, LLP (“Izville”) is a limited liability partnership organized under the laws of Maryland. In 2013, Izville obtained title to at least five properties held by affiliates in Buffalo, including three from Bradsville and two from Otuab LLC. In 2019, Izville transferred four of those properties to an affiliate, VIN7 LLC. At the time of this Complaint, Izville no longer holds title to properties in Buffalo. Izville is not, and has never been, authorized by DOS to conduct business in New York.

38. Defendant Liberty Group Enterprises, LLC (“Liberty”) is a limited liability company organized under the laws of Delaware. Mr. Dalfin is the managing member. In 2012, Liberty obtained title to at least two properties in Buffalo. In 2019, Liberty transferred one of those properties to an affiliate, VIN7 LLC. At the time of this Complaint, Liberty no longer holds title to properties in Buffalo. Liberty is not, and has never been, authorized by DOS to conduct business in New York.

39. Defendant Montgomery Properties, LLC (“Montgomery”), is a limited liability company organized under the laws of Delaware. Mr. Dalfin is a member. In 2012, Montgomery obtained title to at least four properties in Buffalo. That same year, all of those properties were transferred to Homestead. At the time of this Complaint, Montgomery no longer holds title to

properties in Buffalo. Montgomery is not, and never has been, authorized by DOS to conduct business in New York.

40. Defendant Otuab LLC (“Otuab”) is a limited liability company organized under the laws of Maryland. Mr. Dalfin is a member. In 2012, Otuab obtained title to at least six properties in Buffalo. In 2013 and 2014, Otuab transferred all of those properties to affiliates, including four properties to Williamsville Properties Holdings LLC and two properties to Izville. At the time of this Complaint, Otuab no longer holds title to properties in Buffalo. Otuab is not, and never has been, authorized by DOS to conduct business in New York.

41. Defendant Sweethome LLC (“Sweethome”) is a limited liability company organized under the laws of Delaware. In 2011, Sweethome obtained title to at least four properties in Buffalo, which it transferred in 2012 to affiliates Homestead, Montgomery, and Purityson, and to one other entity. At the time of this Complaint, Sweethome no longer holds title to properties in Buffalo. Sweethome is not, and never has been, authorized by DOS to conduct business in New York.

42. Defendant TDO Holdings LLC, a/k/a TDO Holding LLC (“TDO Holdings”) is a limited liability company organized under the laws of Maryland. In 2014, TDO Holdings obtained title to at least two properties in Buffalo. It transferred one of those properties to Gloucester, an affiliated entity, in 2017. At the time of this Complaint, TDO Holdings no longer holds title to properties in Buffalo. TDO Holdings is not, and never has been, authorized by DOS to conduct business in New York.

43. Defendant VIN7 LLC (“VIN7”) is a limited liability company organized under the laws of Maryland. Mr. Dalfin is the sole member of VIN7. In 2019 and 2020, VIN7 took title to at least 117 properties in Buffalo from affiliates, including: two from Buffalo Holdings; six

from Gloucester; three from Hamilton; 29 from Homestead; three from Izville; one from Liberty; one from Purityson; 70 from Williamsville Properties Holdings, LLC; and two from Yehuda Ben Avraham Guerrero, Inc. In 2019 and 2020, VIN7 sold 41 of those properties. At the time of this Complaint, VIN7 holds title to 76 properties in Buffalo.

44. Defendant Williamsville Properties Holdings LLC (“Williamsville Properties”) is a limited liability company organized under the laws of Delaware and Maryland. Between 2012 and 2015, Williamsville Properties obtained title to at least 71 properties in Buffalo. In 2019 and 2020, Williamsville Properties transferred title to 70 properties to an affiliate, VIN7. At the time of this Complaint, Williamsville Properties holds title to one property in Buffalo. Williamsville Properties is not, and never has been, authorized by DOS to conduct business in New York.

45. Defendant Yehuda Ben Avraham Guerrero, Inc. (“YBAGI”) is a corporation organized under the laws of New York, which was dissolved in 2016. In 2010, YBAGI obtained title to two properties in Buffalo. In 2019, YBAGI transferred title to both of those properties to an affiliate, VIN7. At the time of this Complaint, YBAGI no longer holds title to properties in Buffalo.

46. Defendants Bradsville, Buffalo Commons, Buffalo Holdings, CTA, Eco Dev, Gloucester, Habitat, Hamilton, Homestead, Izville, Liberty, Montgomery, Otuab, Sweethome, TDO Holdings, Williamsville Properties, VIN7, and YBAGI are collectively referred to as the “Property Owner Companies.”

47. From 2007 to the present, the Dalfin Properties in Buffalo held by the Property Owner Companies have been managed by Mr. Dalfin and his agent, Mr. Heil, either directly or through the Property Management Companies. In addition, from 2007 to the present, the



business operations of the Property Owner Companies in Buffalo have been controlled by Mr. Dalfin and his agent, Mr. Heil, either directly or through the Property Management Companies.

**C. Other Entity Defendants**

48. Defendant BBB4, LLC (“BBB4”) is a limited liability company organized under the laws of Maryland with its principal place of business in Maryland. On information and belief, Mr. Dalfin owns or controls BBB4. BBB4 is an entity through which Mr. Dalfin, Mr. Heil, and the Property Management Companies provide certain property-management related services to properties at issue in this action, including serving as a conduit for financial transactions.

49. As of the filing of this Complaint, BBB4 is not in good standing with the Maryland Department of State. BBB4 is not, and never has been, authorized by DOS to conduct business in New York.

50. The Property Management Companies, the Property Owner Companies, and BBB4 are collectively referred to as the “Entity Defendants.”

**JURISDICTION AND VENUE**

51. This Court has jurisdiction over this proceeding pursuant to Executive Law § 63(12), which authorizes the Attorney General to commence an action for injunctive relief and other relief against any person or business entity that has engaged in or is engaging in repeated or persistent fraudulent or illegal acts in the conduct of business within New York.

52. Venue is proper in Erie County pursuant to CPLR § 503(a) because Erie County is the county in which a substantial part of the events or omissions giving rise to the claim occurred.

## LEGAL BACKGROUND

### I. LEAD PAINT HAZARD CONTROL LAWS AND REGULATIONS

53. The Erie County Sanitary Code, the Charter and Code of the City of Buffalo, and the New York State Property Maintenance Code (together, the “Codes”) impose affirmative obligations on property owners to ensure that rental properties are properly maintained and to prevent conditions conducive to lead poisoning.

54. In addition, federal regulations require that: (1) owners or agents disclose lead-based paint hazards before renting out residential properties built before 1978; and (2) in properties receiving federal financial assistance for low-income tenants, owners reduce any lead paint hazards identified during inspections, and that owners conduct ongoing maintenance.

#### A. Erie County Laws and Regulations

55. The Erie County Sanitary Code (“County Code”) was promulgated and adopted by the Erie County Board of Health pursuant to § 347 of the New York State Public Health Law (“State Public Health Law”) and § 504 of the Erie County Department of Health Charter.

56. The County Code seeks “to insure that the quality of housing and other properties is adequate for protection of public health,” including “safety from lead poisoning.” County Code, Article IX § 1.2. Dwellings cannot be occupied or leased to another unless the premises “are clean, sanitary, fit for human occupancy” and compliant with all applicable laws. *Id.*, art. IX § 1.8.

57. The County Code requires residential rental property owners to “take action to prevent the occurrence of conditions conducive to lead poisoning.” *Id.*, art. IX § 1.22(i)(3)(i). It further requires property owners to “expeditiously correct an identified or presumed lead hazard.” *Id.*

58. A “condition conducive to lead poisoning” is defined to include, *inter alia*: (1) when children with elevated blood lead levels have been previously identified in the building; (2) when lead paint is accessible for ingestion or inhalation; or (3) where deterioration of lead paint, through peeling, chipping, chalking or cracking, is likely to occur. *Id.*, art. IX § 1.7(e).

59. The existence of conditions conducive to lead poisoning in residential properties is classified as a “Nuisance.” *Id.*, art. IX § 1.22(i)(1)(i).

60. Lead-based paint is presumed to be present in residential properties constructed before January 1, 1978. *Id.*, art. IX § 1.22(i)(1).

61. Violators are subject to civil penalties of up to \$250 per day for each violation of the County Code, *id.*, art. I § 5(e)(ii), and penalties of up to \$500 per violation per day if, upon County reinspection, the violation has not been remedied, *id.*, art. I § 5(a)(5). Each day a violation continues constitutes a separate offense. *Id.*

62. The County may bring an action to enforce the County Code in any court of competent jurisdiction. *Id.*; *see also* State Public Health Law § 348.

### **B. City of Buffalo Laws and Regulations**

63. The Charter and Code of the City of Buffalo (“City Code”) also has requirements for the control of lead-based paint hazards.

64. The City Code requires owners to maintain exterior and interior surfaces of buildings, including walls, ceilings, doors, and windows, in a “clean, safe and sanitary manner” and “[f]ree of substantial deterioration.” City Code § 341-7(B). “Substantial deterioration” is defined to include “substantial conditions of peeling [and] chipping.” *Id.* § 341-7(A).

65. The City Code provides that, if a child is identified as having an elevated blood lead level, the City may conduct an inspection of the child’s dwelling and/or secondary residence. *Id.* § 261-2. If a lead-based paint violation is found, the City shall issue a notice

requiring abatement of the violation. *Id.* Each violation is subject to a penalty of up to \$1,500. *Id.* § 261-7 (citing *id.* § 1-15). Each day that a violation continues is a separate violation. *Id.* § 1-15.

66. Any building that is unfit for human habitation or otherwise violates the housing standards set forth in Chapter 242 of the City Code is a public nuisance. *Id.* §§ 294-4(E), 294-4(I).

67. The City Code provides that “[l]ead-based paint violations are subject to fines” and further provides that, “upon testing of paint in the property, any owner found to have a property with existing lead-based paint violations must remediate the violation.” *Id.* § 264-13(C).

68. The City Code incorporates the New York State Uniform Fire Prevention and Building Code, which includes the New York State Property Maintenance Code described in the next section below. *Id.* § 103-1.

69. Under the City Code, any violations of the State Property Maintenance Code are subject to a penalty of up to \$1,500 per violation. *Id.* § 1-15. Each day a violation continues is, for penalty purposes, a separate violation. *Id.*

### **C. New York State Laws and Regulations**

#### ***i. Property Maintenance Code***

70. The New York State Code Property Maintenance Code (“State Code”) is part of the New York State Fire Prevention and Building Code. *See* State Code § 101.1.

71. The State Code requires that all exterior building surfaces, including but not limited to doors, door frames, window frames, and porches, be maintained in “good condition.” State Code § 304.2. It further provides that “[p]eeeling, flaking, and chipped paint shall be eliminated and surfaces repainted.” *Id.*

72. The State Code also requires that all interior building surfaces, including doors and windows be maintained in “good, clean and sanitary condition” and provides that “[p]eeling, chipping, flaking or abraded paint shall be repaired, removed or covered.” *Id.* § 305.3.

73. Any person who violates an order to remedy a condition pursuant to the State Code or who knowingly violates the State Code is subject to a fine of up to \$1,000 per day. *See* Executive Law § 382.

*ii. Real Property Law § 235-b*

74. In 1975, the New York State Legislature codified the common law warranty of habitability by enacting Real Property Law § 235-b. The statute requires that all leased residential premises be “fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety.” *Id.*

**D. Federal Laws and Regulations**

*i. Lead Disclosure Rule*

75. The U.S. Environmental Protection Agency (“EPA”) and U.S. Department of Housing and Urban Development (“HUD”) have promulgated regulations requiring the disclosure of lead-based paint hazards before the lease (or sale) of residential housing built before 1978. The EPA’s implementing regulations, 40 C.F.R. Part 745, Subpart F, and HUD’s implementing regulations, 24 C.F.R. Part 35, Subpart A, are collectively known as the “Lead Disclosure Rule.”

76. The Lead Disclosure Rule requires owners, agents, brokers, and property managers to include a disclosure form signed and dated by both parties either in a lease or as an attachment to a lease which includes: (1) a statement warning of the risks associated with lead paint; (2) a statement disclosing knowledge or no knowledge of lead-based paint or lead-based

paint hazards; (3) a list of any records or reports pertaining to lead-based paint and/or lead-based paint hazards in the housing being leased; and (4) a statement by the lessee affirming receipt of the disclosures and the EPA-approved pamphlet. *See* 24 C.F.R. § 35.92(b); 40 C.F.R. § 745.113(b).

77. Violations of the Lead Disclosure Rule are subject to penalties of up to \$18,149 for each violation. 24 C.F.R. § 30.65(b).

*ii. Lead Abatement Regulations for Properties Receiving Federal Rental Assistance for Low-Income Tenants*

78. Federal law requires HUD to establish procedures to “eliminate as far as practicable the hazards of lead based paint poisoning” in residential properties built before 1978 that receive federal financial assistance. 42 U.S.C. § 4822(a).

79. Accordingly, HUD has promulgated regulations to eliminate lead-based paint hazards in housing occupied by families receiving tenant-based rental assistance through various programs, including the Section 8 certificate program and Section 8 voucher program. 24 C.F.R. § 35.1200(a).

80. Specifically, HUD requires owners of such housing to, *inter alia*: (1) reduce any hazards identified during initial and periodic inspections, 24 C.F.R. § 35.1215; (2) conduct ongoing lead-based paint maintenance, 24 C.F.R. § 35.1220; and (3) reduce any hazards identified during an investigation of the dwelling unit of a child with an elevated blood lead level, 24 C.F.R. § 35.1225.

**II. LAWS GOVERNING RENTAL PROPERTY REGISTRATION AND PROPERTY MANAGEMENT**

**A. City of Buffalo Laws and Regulations**

81. The City Code provides that “the management and rental of dwelling units constitutes a business which impacts upon the public health, safety and general welfare of the

people of the City of Buffalo.” City Code § 265-1; *see also id.* § 264-1. As described below, the City Code therefore requires that: (1) rental property owners obtain a rental registration certificate for each dwelling unit, *id.* § 264; and (2) property managers obtain a property management license, *id.* § 265.

*i. Rental Registration Certificates*

82. Owners of residential rental properties are required to apply to the City for a “rental dwelling unit registration certificate” and to provide detailed information concerning ownership and management of the property, including the owner and management company’s contact information. *Id.* § 264-4. The City Code provides that “a post office box shall not be accepted as the owner’s address,” *id.* § 264-4(6), and specifies that the owner must “register any change of address, agent or any other information which occurs after the filing of the application,” *id.* § 264-4(5). In addition, for properties constructed before 1978, “the owner shall certify that the owner is aware of the possibility of lead in the property [and] that the owner is aware of federal disclosure requirements concerning property that may contain lead and has complied with federal disclosure requirements.” *Id.* § 264-4(9).

83. The City may deny or revoke a rental registration certificate for various reasons including violations of the City Code. *See id.* §§ 264-6, 264-10.

84. Every holder of a rental registration certificate must “[c]onform with all other applicable state, county and City laws and ordinances.” *Id.* § 264-11(B).

85. Any violation of the rental registration certificate regulations is punishable by a fine of up to \$1,500 and revocation of the certificate. *Id.* § 264-13(A)-(B). In addition, if the annual registration fee is not paid, it will be doubled 30 days after the due date. *Id.* § 264-13(A). After 60 days, an additional fine of \$75 will be imposed. *Id.*

*ii. Property Management Licenses*

86. The City Code also requires that “property managers who engage in the management of three or more residential City properties” apply for and obtain a license. *Id.* § 265-1; *see also id.* § 265-3 (“No person, firm, corporation or entity shall act as a property manager or engage in property management activities . . . for three or more non-owner-occupied, residential rental units without first obtaining a license from the Commissioner of Permit and Inspection Services.”).

87. “Property management” is defined as “[t]he engaging on behalf of an owner of residential property of those activities commonly associated with the operation and rental of three or more residential rental units, including but not limited to the advertising or soliciting of apartments or rental units for rent; tenant review and screening; the collecting and/or oversight of rental profits; and/or the conducting of and/or arranging for minor repairs and maintenance of residential properties in the City of Buffalo.” *Id.* § 265-2.

88. “Property manager” is defined as “[a]n individual or entity who engages in the property management of three or more residential rental units in the City of Buffalo for a fee or salary. The individual must reside in Erie County or the entity must be based in Erie County.” *Id.*

89. Applicants for property management licenses are required to submit contact information, *id.* § 265-4(A)(1), and a description of the properties to be managed, *id.* § 265-4(A)(2). In addition, “[i]f an applicant will collect rents or negotiate rental of property, a copy of his New York State real estate broker’s license is required.” *Id.* § 265-4(A)(4); *see also id.* § 265-6 (“If a property manager collects rents or negotiates the rental of property, a real estate broker, associate real estate broker or real estate salesperson license as issued by the New York State Department of State pursuant to Article 12-A of the New York State Real Property Law is required.”).



90. If a property manager acquires additional properties in Buffalo after receiving a license, he or she must provide written notification to the City within 45 days of the additional properties under management. *Id.* § 265-6(C).

91. City property management licenses must be renewed annually. *Id.* § 265-7.

92. Any individual or entity in violation of the property management license requirement is subject to a penalty of up to \$1,500 per violation. *Id.* § 265-11 (citing *id.* § 1-15). Each day a violation continues is deemed to be a separate violation. *Id.* § 1-15.

## **B. New York State Laws and Regulations**

### *i. Real Estate Broker Licenses*

93. Under New York law, it is unlawful to act as a real estate broker without first procuring a New York State-issued real estate broker license. *See* Real Property Law § 440-a.

94. A “real estate broker” is defined, in relevant part, as “any person, firm, limited liability company or corporation, who, for another and for a fee, commission or other valuable consideration . . . rents, or offers or attempts to negotiate a . . . rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate[.]” *Id.* § 440(1).

## **III. LAWS GOVERNING THE CONDUCT OF BUSINESS**

### **A. New York State Laws**

#### *i. Business Corporation Law §§ 1301 to 1320*

95. A foreign corporation that does business in New York must first obtain authority to do so from DOS. *See* Business Corporation Law § 1301(a) (“A foreign corporation shall not do business in this state until it has been authorized to do so as provided in this article.”).

96. Unauthorized foreign corporations are prohibited from “maintain[ing] any action or special proceeding in this state unless and until such corporation has been authorized to do

business in this state and it has paid to the state all fees and taxes imposed under the tax law or any related statute . . . as well as penalties and interest charges related thereto, accrued against the corporation.” *Id.* § 1312(a). This prohibition applies to any successor in interest of such foreign corporation. *Id.*

97. The Attorney General is authorized pursuant to Business Corporation Law § 1303 to bring an action to restrain an unauthorized foreign corporation from doing business in the state.

***ii. Limited Liability Company Law §§ 801 to 809***

98. A foreign limited liability company that does business in New York must first obtain authority to do so from DOS. *See* Limited Liability Company Law § 802.

99. Unauthorized foreign limited liability companies are prohibited from “maintain[ing] any action, suit or special proceeding in any court of this state unless and until such limited liability company shall have received a certificate of authority in this state.” *Id.* § 808.

100. The Attorney General is authorized pursuant to Limited Liability Company Law § 809 to bring an action to restrain an unauthorized foreign limited liability company from doing business in the state.

***iii. Partnership Law §§ 121-901 to 121-908***

101. A foreign limited partnership that does business in New York must first obtain authority to do so from DOS. *See* Partnership Law § 121-902.

102. Unauthorized foreign limited partnerships “may not maintain any action, suit or special proceeding in any court of this state unless and until such limited liability company shall have received a certificate of authority in this state.” *Id.* § 121-907(a).

103. The Attorney General is authorized pursuant to Partnership Law § 121-908 to bring an action to restrain an unauthorized foreign limited partnership from doing business in the state.

*iv. General Business Law § 349*

104. Deceptive acts or practices in the conduct of any business or in the furnishing of any service in the state are unlawful. *See* General Business Law § 349(a).

105. The Attorney General is authorized pursuant to General Business Law § 349(b) to bring an action to enjoin a person or entity from engaging in deceptive acts or practices in the conduct of business and to seek restitution of any moneys or property obtained directly or indirectly by any such unlawful acts or practices. *See* General Business Law § 350-d.

*v. Executive Law § 63(12)*

106. The Attorney General is authorized pursuant to Executive Law § 63(12) to bring an action to enjoin “repeated fraudulent or illegal acts” and “persistent fraud or illegality” in the “carrying on, conducting or transaction of business.”

107. “Illegal” conduct includes the violation of any state, federal, or local law or regulation. Executive Law § 63(12). “Repeated” fraud or illegality includes the “repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person,” and “persistent” fraud or illegality includes “continuance or carrying on of any fraudulent or illegal act or conduct.” *Id.*

108. In addition to an order enjoining such activity, the Attorney General may seek restitution, damages, and other relief. *Id.*

## FACTS

### I. EXPOSURE TO LEAD-BASED PAINT HARMS CHILDREN

109. Lead is highly toxic to humans and can cause serious and irreversible adverse health effects, especially in children.

110. The Centers for Disease Control and Prevention (CDC) has found that “[n]o safe blood lead level in children has been identified.” When lead is present in a child’s blood, even at low levels, it has been “shown to affect IQ, the ability to pay attention, and academic achievement.” Critically, however, the CDC states that “childhood lead poisoning is 100% preventable.”<sup>5</sup>

111. Lead exposure is also associated with physical effects including impaired growth and hearing loss.

112. The CDC recommends that children with blood lead levels higher than five  $\mu\text{g}/\text{dL}$  undergo case management to prevent further exposure and to avoid reaching a level that requires medical intervention.

113. Children under six years old are at the highest risk of lead poisoning because their brains and bodies develop rapidly during those first six years. In addition, the tendency of young children to put their hands or lead-contaminated objects in their mouth puts them at higher risk of exposure.<sup>6</sup>

114. Lead exposure is also a health problem for women of childbearing age. First, there is a potential for the transmission of lead from the mother to the developing fetus and

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<sup>5</sup> See Childhood Lead Poisoning Prevention: Lead Poisoning Prevention, CDC, <https://www.cdc.gov/nceh/lead/prevention/default.htm> (last accessed Sept. 17, 2020).

<sup>6</sup> See Childhood Lead Poisoning Prevention: At Risk Populations, CDC, <https://www.cdc.gov/nceh/lead/prevention/populations.htm> (last accessed Sept. 16, 2020).

breastfeeding infant. Second, too much lead in a pregnant woman's body can put a woman at risk of miscarriage or cause her baby to be born too early or too small.<sup>7</sup>

115. Children of color living in older housing in low-income neighborhoods are especially at risk.<sup>8</sup>

## **II. LEAD-BASED PAINT IS PERVASIVE IN ERIE COUNTY, AND ESPECIALLY IN BUFFALO**

116. Lead paint in homes is a pervasive problem. For much of the 20th century, paint with dangerously high levels of lead was used on both exterior and interior surfaces of housing in the United States. In 1970, New York imposed a state-wide ban. Eight years later, in 1978, the U.S. Consumer Product Safety Commission imposed a federal ban.

117. According to the EPA, approximately 87% of houses built before 1940 still contain lead paint, compared with 69% of houses built between 1940-1959 and 24% of houses built between 1960-1977.<sup>9</sup>

118. New York State has the highest percentage of residential buildings built before 1950 in the United States. More than 90% of housing in Buffalo was built before 1978.<sup>10</sup>

119. According to CDC data, in 2017, 715 children in Erie County under six years of age tested with blood lead levels between five and nine  $\mu\text{g/dL}$ , and 415 children tested with

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<sup>7</sup> See Childhood Lead Poisoning Prevention: Pregnant Women, CDC, <https://www.cdc.gov/nceh/lead/prevention/pregnant.htm> (last accessed Sept. 16, 2020).

<sup>8</sup> See Childhood Lead Poisoning Prevention: At Risk Populations, CDC, <https://www.cdc.gov/nceh/lead/prevention/populations.htm> (last accessed Sept. 16, 2020).

<sup>9</sup> Protect Your Family from Exposures to Lead, EPA, <https://www.epa.gov/lead/protect-your-family-exposures-lead> (last accessed Sept. 16, 2020).

<sup>10</sup> Get Ahead of Lead, Community Foundation for Greater Buffalo, <https://www.cfgb.org/community-change/initiatives/get-ahead-of-lead/> (last accessed Sept. 16, 2020).

blood lead levels of 10  $\mu\text{g}/\text{dL}$  or higher.<sup>11</sup> That same year, Erie County was the only county in New York State in which children tested with blood lead levels exceeding 45  $\mu\text{g}/\text{dL}$  were reported. In 2019, the New York Public Health Law § 1370 and regulations were amended to lower the definition of an elevated blood lead level (“EBLL”) in a child from 10  $\mu\text{g}/\text{dL}$  to five  $\mu\text{g}/\text{dL}$ . See 10 N.Y.C.R.R. § 67-1.1(e) (last updated Oct. 1, 2019).

120. The majority of Erie County children with EBLLs live in single-family and two-family homes in Buffalo.<sup>12</sup> Approximately 80% of Buffalo properties where children were reported with EBLLs were rental properties.

121. In the Buffalo region, children who live in communities of color are 12 times as likely to be diagnosed with an EBLL as children who live in predominantly white neighborhoods.<sup>13</sup> EBLLs are also more prevalent in Buffalo’s low-income neighborhoods than high-income neighborhoods.

### **III. LEAD-BASED PAINT HAZARDS ARE PERVASIVE ACROSS THE DALFIN PROPERTIES, AND DOZENS OF CHILDREN HAVE BEEN POISONED**

122. As described *supra* at ¶ 20, since 2007, and continuing, Mr. Dalfin, either directly or indirectly, has owned, controlled, or managed the Dalfin Properties. At all relevant times, Mr. Dalfin was responsible for all decisions concerning maintenance and management of lead-based

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<sup>11</sup> See CDC Childhood Blood Lead Surveillance Data: New York, CDC, <https://www.cdc.gov/nceh/lead/data/state/nydata.htm> (last accessed Sept. 17, 2020).

<sup>12</sup> Kent Gardner, *Renewing Our Pledge: A Path to Ending Lead Poisoning of Buffalo’s Most Vulnerable Citizens*, Center for Governmental Research (2017), at v, <https://cfgr.org/wp-content/uploads/2018/07/buffalo-lead-action-plan-final-report.pdf> (last accessed Sept. 17, 2020).

<sup>13</sup> University at Buffalo Regional Institute et al., *The Racial Equity Dividend: Buffalo’s Great Opportunity*, 2016 (rev. June 2018), at 43, <https://racialequitybuffalo.org/files/documents/report/theequitydividendfinaljune2018.pdf> (last accessed Sept. 17, 2020).

paint hazards at the Dalfin Properties: Mr. Dalfin, either directly or indirectly, owned or controlled the Property Management Companies described *supra* at ¶¶ 23-27, which managed the Dalfin Properties; Mr. Dalfin and his agent Mr. Heil, either directly or through the Property Management Companies, managed the Buffalo-area business operations of the Property Owner Companies described *supra* at ¶¶ 28-47; and in some instances, Mr. Dalfin owned certain Property Owner Companies directly.

123. According to City and County records, all of the Dalfin Properties were constructed between 1810 and 1935. The vast majority are single-family or two-family homes built between 1900 and 1920 and are in low-income neighborhoods.

124. From 2013 to early 2020, at least 63 of the Dalfin Properties were cited by inspectors from the Erie County Department of Health (“DOH”) and/or the City of Buffalo for chipping, peeling, or deteriorating paint and other conditions conducive to lead poisoning. Attached hereto as Exhibit B is a table of such violations cited by DOH and/or the City of Buffalo at those properties.

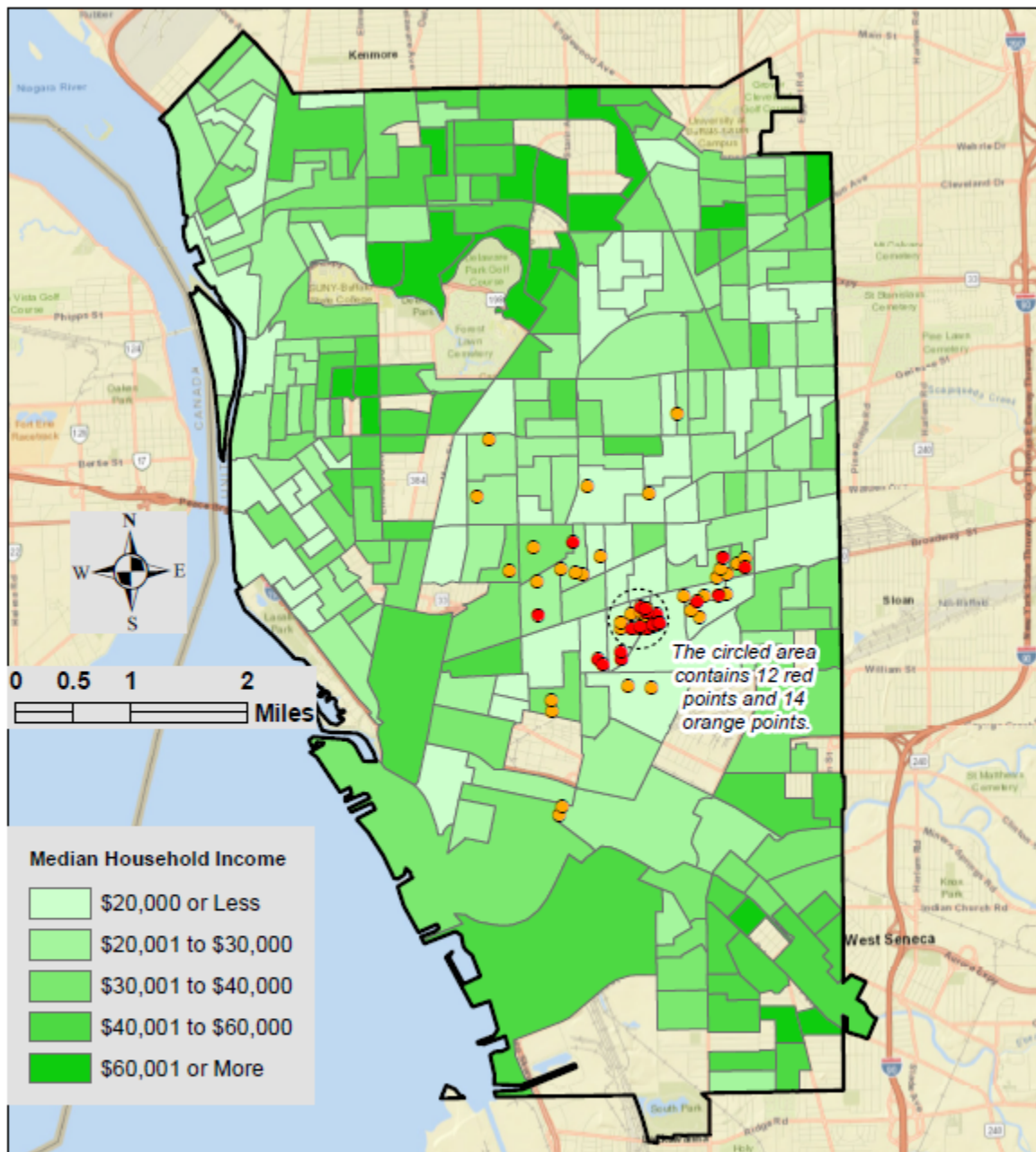
125. Dozens of children who have been exposed to conditions conducive to lead poisoning at Dalfin Properties have been poisoned by lead.

126. From 2013 through early 2020, primary physicians who conduct blood lead testing on children in Erie County reported at least 29 children with an EBLL residing in at least 22 of the Dalfin Properties. All of those test results were reported to DOH, which triggered DOH to inspect. In at least seven of the Dalfin Properties, there have been multiple EBLL referrals.

127. The Dalfin Properties in which lead paint violations were cited and/or children with EBLs were reported are heavily concentrated in low-income neighborhoods. As the figure below illustrates, a majority of those Properties are located in neighborhoods with a median

household income of less than \$20,000.

### Dalfin Properties with Child EBLR Referrals and Lead Paint Violations in Buffalo



Note: Location of each property is accurate within approximately 250 feet.

- Dalfin Properties with Lead Paint Violation(s)
- Dalfin Properties with Child EBLR Referral(s) and Lead Paint Violation(s)
- City of Buffalo Boundary

Source:  
 Property Data: NYS DOH  
 City Boundary: NYS ITS  
 Income Data: Center for  
 Governmental Research, 2017.  
 Basemap: OSM, Esri

NYSOAG  
 Env't. Protection Bur.  
 September 2020



128. Attached hereto as Exhibit C is a close-up version of the figure in the preceding paragraph illustrating that EBLR referrals of children residing at Dalfin Properties are concentrated within the Broadway-Fillmore Neighborhood of Buffalo.

#### **IV. TENANTS DID NOT RECEIVE LEAD DISCLOSURE NOTICES REQUIRED BY FEDERAL LAW**

129. Since 1996, the federal government has required lessors of housing constructed before 1978 to provide all lessees with disclosures concerning the presence of any known lead-based paint and/or lead-based paint hazards. 40 C.F.R. §§ 745.102, 745.107.

130. From 2010 until to present, approximately 40% to 50% of the units among the Dalfin Properties have been occupied by tenants receiving funding through Section 8, which provides financial assistance in the form of vouchers or certificates to very low-income families so that they can live in privately-owned housing. The other 50% to 60% of units were occupied by tenants not receiving Section 8 funding.

131. From 2010 until 2018 or later, the only tenants in Dalfin Properties who received lead disclosures were the 40-50% of tenants with Section 8 funding, who received such disclosures under the direction of the public housing agencies (“PHAs”) that work directly with low-income tenants and their landlords to administer the Section 8 program.<sup>14</sup>

132. The 50-60% of tenants who were not part of the Section 8 program did not receive any lead disclosures until 2018 or later, if at all.

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<sup>14</sup> There are three local PHAs that administer Section 8 housing: Belmont Housing, Rental Assistance Corporation, and Buffalo Municipal Housing Authority. To secure Section 8 funding, tenants must find housing that meets minimum standards set by HUD. In addition, landlords must provide certain documentation to the PHAs to show that the housing, as well as the leasing terms, meet those minimum federal standards.

133. In addition, even when tenants were provided the lead disclosure *forms* mandated by federal law, those disclosures repeatedly contained false statements to the tenants or prospective tenants, concealing hazardous conditions and the existence of reports pertaining to lead paint hazards in the premises. For example, as described *infra* at ¶ 150, in April 2018, Mr. Heil, acting as agent for Mr. Dalfin, and on behalf of Williamsville Properties and Peck Properties, provided a lead disclosure statement to the tenant, which falsely stated that the “Lessor (Landlord) has no knowledge of lead-based paint and/or lead-based paint hazards in the housing” and that “Lessor (Landlord) has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.” In fact, the property in question had been cited multiple times for lead paint hazards. The County had specifically instructed Williamsville Properties, in notices sent to Peck Properties and Mr. Heil, that records of those violations must be disclosed to tenants.

134. As further described *infra* at ¶¶ 151, 168, 200, 215, 216, Mr. Heil, as agent for Mr. Dalfin and the Property Owner Companies, and other defendants repeatedly provided tenants with similarly false lead disclosures.

**V. CHRONIC FAILURE TO PREVENT CONDITIONS CONDUCTIVE TO LEAD POISONING AND TO PROVIDE COMPLETE AND ACCURATE LEAD DISCLOSURES IN SIX EXAMPLES**

135. The pervasiveness of conditions conducive to lead poisoning, the repeated occurrence of lead poisoning among children residing at the Dalfin Properties, and the failure to provide truthful lead disclosures to tenants can be illustrated in the chronologies of six of the Dalfin Properties in Buffalo.

**A. 96 Wick Street, Buffalo, NY 14212**

136. The Dalfin Property, 96 Wick Street (“96 Wick”), is a two-family house that was built in or about 1905. Williamsville Properties purchased the property on January 25, 2013, and transferred it to VIN7 on August 12, 2020, which continues to own it.

137. Between December 2015 and August 2018, DOH found at least 19 interior lead paint hazard violations at the property. During that same period, one child was reported with an elevated blood lead level three times.

138. On November 30, 2015, DOH received a report of a two-year-old child with an EBLL of 15  $\mu\text{g}/\text{dL}$  residing at the property. DOH conducted a Lead Investigation at the property on December 14, 2015, which included, among other things, testing surfaces throughout the property for lead. Through such testing and inspection, DOH verified the existence of 10 lead paint hazards in multiple locations, which constituted conditions conducive to lead poisoning.<sup>15</sup> Following the inspection, DOH generated a “LeadSAFE Erie County Survey Report,” which set forth details pertaining to the laboratory analysis of lead-testing performed at the property on December 14, 2015 (the “December 2015 Report”). Attached hereto as Exhibit D is a copy of the December 2015 Report.

139. On December 16, 2015, DOH sent a notice and demand letter to Williamsville Properties notifying the company of the presence of conditions conducive to lead poisoning and identifying the 10 interior lead paint hazard violations that must be corrected. Attached hereto as Exhibit E is a copy of that notice and demand letter. In the notice and demand letter, DOH enclosed a copy of the December 2015 Report.

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<sup>15</sup> During the same inspection and testing, DOH also found 14 areas of intact lead paint, which are not included as lead paint hazards for purposes of this Complaint. Under federal disclosure requirements, however, even intact lead paint must be disclosed to tenants. 24 C.F.R. § 35.92(b).

140. The notice and demand letter reminded Williamsville Properties of its lead disclosure obligations, explaining that:

The Federal Residential Lead-Based Paint Hazard Reduction Act 42 U.S.C. 4852d requires sellers and landlords of most residential housing built before 1978 to disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, *including the test results contained in this notice*, to purchasers and tenants at the time of sale or lease or upon lease renewal. This disclosure must occur even if hazard reduction or abatement has been completed.

(Emphasis added.)

141. On January 4, 2016, Menachem Dalfin, for Williamsville Properties, submitted a Lead Remediation Work Plan to DOH identifying its proposed plan to employ interim controls.

142. On January 20, 2016, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of January 21, 2016, DOH reminded Williamsville Properties of its “responsibility as owner of the property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

143. Less than a year later, on or about October 6, 2016, DOH received a report that the child still residing at the property (the same child referred to in paragraph 138 above), had an EBLL of 25  $\mu\text{g}/\text{dL}$ . DOH inspected the property on October 20, 2016, tested for and confirmed the presence of lead on surfaces in multiple locations, and created a LeadSAFE Erie County Survey Report (the “October 2016 Report”) in substantially similar form to Exhibit D.

144. On October 21, 2016, DOH sent a notice and demand letter to Williamsville Properties noting conditions conducive to lead poisoning and identifying lead paint hazard violations at the property. DOH enclosed with such letter the October 2016 Report.

145. On December 13, 2016, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of December 14, 2016, DOH reminded Williamsville Properties of its “responsibility as owner of the property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

146. On April 4, 2017, Belmont Housing, after conducting an annual inspection of the property in conjunction with Section 8 guidelines, sent a letter to “Williamsville Properties c/o Peck Properties – Paul Heil,” stating that the property had deteriorating lead-based paint in violation of Housing Quality Standards. The child referred to in paragraphs 138 and 143 above and her family still resided at the property at this time.

147. In September 2017, defendants began proceedings to evict the lead-poisoned child and her mother from the house.

148. On or about May 16, 2018, DOH received a report that the same child referred to in paragraphs 138, 143, and 146 above, then five years old and still residing at the property, had an EBLL of 16.0 µg/dL. The family vacated the house shortly afterwards.

149. Upon information and belief, multiple times after receiving copies of the December 2015 Report, October 2016 Report and accompanying letters from DOH, Williamsville Properties and its agents Essex, Peck Properties, Mr. Dalfin and Mr. Heil rented the property to tenants without providing such records or reports. They instead provided false lead disclosure statements to prospective tenants.

150. For example, in or about April 2018, a new family with five children moved into the house at 96 Wick. The family was receiving Section 8 rental assistance through Belmont

Housing. In conjunction with the lease, on or about April 24, 2018, one or more defendants provided a lead disclosure statement to the tenant, which falsely affirmed:

Lessor (Landlord) has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

Lessor (Landlord) has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Attached as Exhibit F is a copy of that lead disclosure statement.

151. In 2020, the property was rented to another family who was receiving Section 8 rental assistance. In conjunction with such lease, one or more defendants provided a similar lead disclosure statement which falsely affirmed that the landlord “has no knowledge of lead-based paint and/or lead-based paint hazards in the housing,” and “has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.” Attached hereto as Exhibit G is a copy of that lead disclosure statement.

**B. 56 Newton Street, Buffalo, NY 14212**

152. The Dalfin Property, 56 Newton Street (“56 Newton”), is a two-family house that was built in or about 1910. Williamsville Properties purchased the property on May 3, 2013, and transferred it to VIN7 on August 12, 2020, which continues to own it.

153. Between September 2018 and January 2019, DOH documented three instances of lead poisoned children residing at 56 Newton and at least 11 lead paint hazard violations at the property.

154. On September 17, 2018, DOH received a report that a three-year-old child who resided with his mother and two siblings (ages one and three) at 56 Newton tested with an EBL of 16.0  $\mu\text{g}/\text{dL}$ . DOH inspected the property on October 2, 2018, tested for and confirmed the presence of lead paint hazards in multiple locations, and created a LeadSAFE Erie County Survey Report (the “September 2018 Report”) in substantially similar form to Exhibit D.

155. On October 5, 2018, DOH sent a notice and demand letter to Williamsville Properties noting conditions conducive to lead poisoning and identifying the 11 lead paint hazard violations at the property. DOH enclosed with that letter the September 2018 Report. The notice and demand letter reminded Williamsville Properties of its obligation under federal law to “disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, *including the test results contained in this notice*, to purchasers and tenants at the time of sale or lease or upon lease renewal” (emphasis added). It further explained that “[t]his disclosure must occur even if hazard reduction or abatement has been completed.”

156. Upon information and belief, multiple times after receiving copies of the December 2018 Report and accompanying letter from DOH, defendants Williamsville Properties and its agents Essex, Peck Properties, Mr. Dalfin and Mr. Heil rented the property to tenants without providing such records or reports.

157. Peck Properties submitted to DOH a Lead Remediation Work Plan dated October 12, 2018, signed by Mr. Heil. In the plan, Mr. Heil falsely stated that, at that time, the property was not occupied or visited by children under six years of age. The property was in fact occupied by three children under six years old.

158. The Plan also stated that remediation work would be limited to interim controls.

159. On or about November 19, 2018, Williamsville Properties commenced eviction proceedings against the mother and her three children residing at the house. By a stipulation dated November 26, 2018, that tenant agreed to vacate the premises by December 13, 2018.

160. Two DOH reports from December 17, 2018, shows that the two younger siblings who resided in the house tested for EBLs of 16.0  $\mu\text{g}/\text{dL}$  and 20  $\mu\text{g}/\text{dL}$ , respectively.

161. DOH reinspected the property on or about February 25, 2019, and observed that conditions conducive to lead poisoning remained unremediated.

162. On April 1, 2019, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of April 2, 2019, DOH reminded Williamsville Properties of its “responsibility as owner of the property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.” (Emphasis in original.)

**C. 53 Shepard Street, Buffalo, NY 14212**

163. The Dalfin Property, 53 Shepard Street (“53 Shepard”), is a two-family house that was built in or about 1900. Williamsville Properties purchased the property on January 31, 2013, and transferred it to VIN7 on August 4, 2020, which continues to own it.

164. Between January 2015 and August 2019, DOH found at least 41 lead paint hazard violations at 53 Shepard, including 11 violations in the interior and 30 violations on the exterior. Notices of violation were issued on at least three separate occasions: January 7, 2015, April 4, 2018, and August 6, 2019.

165. On each occasion, once DOH inspected and observed that interim controls were put in place, DOH reminded Williamsville Properties of its “responsibility as owner of the property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

166. During that same period, DOH received reports of a lead poisoned child, as well as a second child with “a higher than normal amount of lead in [her blood]” at the property.

167. On or about December 29, 2014, DOH received a report that a two-year-old resident of 53 Shepard (who resided with her pregnant mother) had a blood lead level of 8.3



µg/dL. On or about January 7, 2015, DOH inspected the house and found conditions conducive to lead poisoning, including chipping and peeling paint, and issued a notice of violation to Peck Properties.

168. On or about February 4, 2015, after receiving the January 2015 correspondence and notice of violation from DOH, and before remediating any of the six lead hazards at the property, one or more defendants provided a lead disclosure statement to a prospective tenant that falsely affirmed that the landlord “has no knowledge of lead-based paint and/or lead-based paint hazards in the housing,” and “has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.” Attached hereto as Exhibit H is a copy of that lead disclosure statement.

169. Peck Properties submitted to DOH a Lead Remediation Work Plan dated January 27, 2015, signed by Mr. Heil. The work plan identifies Peck Properties as both the owner and the property manager of the property. The plan also stated that remediation work would consist of interim controls.

170. DOH reinspected the house in April and June 2015 and determined on both of those inspections that the lead paint hazard conditions had not been remediated. Later, in July 2015, DOH inspected again and determined that lead hazards on the property were “temporarily controlled, by the use of Interim Controls.”

171. On or about April 3, 2018, DOH inspected the house again and found conditions conducive to lead poisoning from deteriorated paint. At the time, the family residing at the house was the same as the one to whom defendants previously had provided the false lead disclosure attached as Exhibit H. DOH sent Williamsville Properties a letter dated April 4, 2018, stating

that an inspection of the premises determined that “conditions conducive to lead poisoning are present on your property.”

172. Peck Properties submitted to DOH a Lead Remediation Work Plan dated April 18, 2018, signed by Mr. Heil. In the plan, Mr. Heil stated that the house was not then occupied or visited by children under six years of age. This statement, however, was false at the time it was made because the dwelling was then being visited by one child.

173. The Plan also stated that remediation work would be limited to interim controls.

174. DOH inspected the house in August 2018 and determined that the previous violations had been corrected. In an August 8, 2018 letter to Williamsville Properties, DOH noted “[p]lease be advised that if paint stabilization or other temporary methods were used, these methods are termed ‘interim controls’.” DOH also stated: “Interim controls to painted surfaces require ongoing monitoring and appropriate maintenance. It is your responsibility as owner of this property to regularly inspect painted surfaces for deterioration or damage and to maintain these surfaces in good repair.”

175. Sometime in or about September 2018, defendants began managing the property through Essex rather than Peck Properties.

176. On or about August 2, 2019, DOH received a report of a child with an extremely high EBLI of 65  $\mu\text{g}/\text{dL}$  at the property.

177. DOH inspected the premises on August 2, 2019, tested for and confirmed the presence of lead on surfaces in multiple locations, and created a LeadSAFE Erie County Survey Report (the “August 2019 Report”) in substantially similar form to Exhibit D. On August 6, 2019, DOH sent a notice and demand letter to Williamsville Properties noting conditions conducive to lead poisoning and identifying 23 interior and exterior lead paint hazard violations

at the property. DOH enclosed with such letter the August 2019 Report. The notice and demand letter reminded Williamsville Properties of its obligation under federal law to “disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, *including the test results contained in this notice*, to purchasers and tenants at the time of sale or lease or upon lease renewal” (emphasis added). It further explained that, “[t]his disclosure must occur even if hazard reduction or abatement has been completed.”

178. Essex submitted to DOH a Lead Remediation Work Plan dated August 20, 2019, signed by Lisa Peck. The plan also stated that remediation work would be limited to interim controls. In the submission, Essex also stated that the house was not then occupied or being visited by children under six years of age.

179. DOH reinspected the house on or about August 29, 2019, and informed Williamsville Properties that lead conditions were “temporarily controlled, by the use of Interim Controls.” By letter dated August 30, 2019, DOH reminded Williamsville Properties of its “responsibility as owner of the property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

180. Upon information and belief, multiple times after receiving copies of the January 2015 notice of violation, April 2018 notice of violation, and the August 2019 Report and accompanying notice and demand letter from DOH, Williamsville Properties and its agents Essex, Peck Properties, Mr. Dalfin and Mr. Heil rented the property to tenants without providing such records or reports.

**D. 57 Townsend Street, Buffalo, NY 14206**

181. The Dalfin Property, 57 Townsend Street (“57 Townsend”), is a two-family house that was built in or about 1920. Homestead purchased the property on July 23, 2012, and

transferred it to VIN7 on July 24, 2020, which subsequently transferred it to a third party on July 30, 2020.

182. Between September 2014 and November 2019, DOH observed at least 42 separate conditions conducive to lead poisoning at the house, including 6 interior and 36 exterior. Notices of violation were issued on at least September 24, 2014, October 29, 2014, and November 14, 2019.

183. In the same period, the DOH received reports of at least two instances of lead-poisoned children at 57 Townsend: one tested on September 15, 2014, and one tested on August 24, 2017.

184. On or about September 18, 2014, DOH received a report of a one-year-old child with an EBLL of 22  $\mu\text{g}/\text{dL}$  in the property. DOH inspected the premises on September 23, 2014, tested for and confirmed the presence of lead on surfaces in multiple locations, and created a LeadSAFE Erie County Survey Report (the "September 2014 Report") in substantially similar form to Exhibit D.

185. DOH sent a notice and demand letter to Homestead noting conditions conducive to lead poisoning and identifying three lead paint hazard violations at the property, including six interior and 27 exterior violations. DOH enclosed with that letter the September 2014 Report. The notice and demand letter reminded Homestead of its obligation under federal law to "disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, *including the test results contained in this notice*, to purchasers and tenants at the time of sale or lease or upon lease renewal" (emphasis added). It further explained that "[t]his disclosure must occur even if hazard reduction or abatement has been completed."

186. Mr. Heil submitted a Lead Remediation Work Plan to DOH on or about October 7, 2014. The plan stated that remediation work would be limited to interim controls.

187. A reinspection by DOH on October 29, 2014, revealed that the exterior of the house had been power-washed and paint chips littered the ground. Subsequent reinspections by DOH indicated that, as of April 20, 2015, the conditions had still not been abated.

188. On July 20, 2015, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of July 21, 2015, DOH reminded Homestead of its “responsibility as owner of the property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

189. Upon information and belief, multiple times after receiving copies of the September 2014 Report and accompanying letter from DOH, defendants Homestead and its agents Essex, Peck Properties, Mr. Dalfin and Mr. Heil rented the property to tenants without providing such records or reports.

190. On or about August 30, 2017, DOH received a report of a different child, then three years old, who resided at 57 Townsend with his parents, who had an EBLL of 22 µg/dL.

191. On or about October 1, 2019, DOH inspected the premises and determined conditions conducive to lead poisoning existed due to deteriorated paint. DOH issued a notice of violation regarding these lead paint hazards to Homestead on or about November 14, 2019. The Notice identified deteriorated paint and eight specific conditions conducive to lead poisoning.

**E. 94 Warren Avenue, Buffalo, NY 14212**

192. The Dalfin Property, 94 Warren Avenue (“94 Warren”), is a two-family house that was built in or about 1910. Homestead purchased the property on May 25, 2012, and transferred it to VIN7 on July 28, 2020, which transferred it to a third party on July 29, 2020.

193. Between February 2015 and June 2019, DOH found at least 131 lead paint hazard violations at the property, including 69 violations in the interior and 62 violations on the exterior. Notices of violation were issued on at least seven separate occasions: February 4, 2015, October 22, 2015, October 24, 2016, December 16, 2016, December 29, 2017, June 15, 2018, and June 4, 2019.

194. On each occasion, once interim controls were put in place, DOH reminded defendants of their responsibility to regularly inspect the property for deterioration.

195. In the same period, DOH received reports of at least two lead poisoned children at the property. On or about January 20, 2015, DOH received a report of a three-year-old child who occupied the house with her mother who had an EBLL of 15  $\mu\text{g}/\text{dL}$ . Also living in the house were four other young siblings – two five-year-old twins, a six-year-old, and a seven-year-old.

196. DOH inspected the house on February 3, 2015, tested for and confirmed the presence of lead on surfaces in multiple locations, and created a LeadSAFE Erie County Survey Report (the “February 2015 Report”) in substantially similar form to Exhibit D.

197. On February 4, DOH sent a notice and demand letter to Homestead noting conditions conducive to lead poisoning and identifying 50 lead paint hazard violations at the property. DOH enclosed with that letter the February 2015 Report. The notice and demand letter reminded Homestead of its obligation under federal law to “disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, *including the test results contained in this notice*, to purchasers and tenants at the time of sale or lease or upon lease renewal” (emphasis added). It further explained that “[t]his disclosure must occur even if hazard reduction or abatement has been completed.”

198. On or about March 20, 2015, Homestead initiated eviction proceedings against the family renting 94 Warren. Homestead and the family entered into a stipulation dated April 2, 2015, avoiding eviction. Homestead then moved this family to a different house located at 51 Warren while it completed interim controls on the lead paint hazards.

199. On behalf of Peck Properties, Mr. Heil submitted a Lead Remediation Work Plan dated April 8, 2015, to DOH. The plan stated that remediation work would be limited to interim controls and stated that the premises were not visited or occupied by children under six because Mr. Heil was going to move the family to a new residence.

200. Meanwhile, Homestead and its agents were preparing to rent the house to another tenant and provided a lead disclosure dated May 14, 2015. That disclosure falsely affirmed that the landlord “has no knowledge of lead-based paint and/or lead-based paint hazards in the housing,” and “has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.” Attached hereto as Exhibit I is a copy of that lead disclosure statement.

201. On June 18, 2015, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of June 22, 2015, DOH reminded Homestead of its “responsibility as owner of the property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

202. On or about October 8, 2015, DOH received a report of a one-month-old child who resided at 94 Warren with her mother, who had an EBLL of 25 µg/dL. Also living in the house were three other children ages two, five, and seven. This is the tenant who was provided the false lead disclosure statement in May 2015 that is attached as Exhibit I.

203. DOH inspected the house on October 20, 2015, tested for and confirmed the presence of lead on surfaces in multiple locations, and created a LeadSAFE Erie County Survey Report (the “October 2015 Report”) in substantially similar form to Exhibit D.

204. On October 22, 2015, DOH sent a notice and demand letter to Homestead noting conditions conducive to lead poisoning and identifying 22 lead paint hazard violations at the property. DOH enclosed with that letter the October 2015 Report.

205. On January 21, 2016, Menachem Dalfin, for Peck Properties, submitted a Lead Remediation Work Plan for the property. The plan stated that remediation work would be limited to interim controls.

206. On July 27, 2016, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of July 27, 2016, DOH reminded Homestead of its “responsibility as owner of the property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

207. DOH reinspected the property on or about October 20, 2016. The inspection report indicates “[c]hildren under six years old present or evidence thereof.” DOH sent Homestead a letter dated October 24, 2016, stating that the DOH inspector “determined that conditions conducive to lead poisoning are present on your property” and issuing a notice of violation. The notice of violation identified 19 specific violations, areas of deteriorated paint that consisted of conditions conducive to lead poisoning.

208. DOH sent Homestead a letter dated November 22, 2016, advising that reinspection of the property showed that areas of deteriorated paint on the property had not been corrected. DOH sent Homestead another letter on December 16, 2016, stating that the inspector



“determined that conditions conducive to lead poisoning are present on your property” and included a notice of violation indicating seven violations from the previous inspection that had not been properly remediated.

209. On behalf of Peck Properties, Mr. Heil submitted a Lead Remediation Work Plan dated February 9, 2017, to DOH. The plan stated that remediation work would be limited to interim controls.

210. DOH reinspected the property in December 2017 and found that lead paint violations remained. DOH sent Homestead a letter dated December 29, 2017, indicating that “[s]ubsequent re-inspection of your property have showed that the areas of deteriorated paint on your property have NOT been satisfactorily corrected.” DOH issued a notice of violation to Homestead dated December 21, 2017, for conditions conducive to lead poisoning.

211. On behalf of Homestead, Mr. Heil submitted a Lead Remediation Work Plan to DOH dated February 14, 2018. The plan stated that remediation work would be limited to interim controls.

212. In June 2018, DOH reinspected the premises, found that lead paint violations remained, and issued a notice of violation dated June 15, 2018, which identified 17 violations for conditions conducive to lead poisoning.

213. In June 2019, DOH reinspected the premises, found that lead paint violations remained, and issued a notice of violation dated June 4, 2019, for conditions conducive to lead poisoning. The violations had still not been remediated when DOH sent Homestead another letter on June 25, 2019, indicating that “[s]ubsequent re-inspection(s) of your property have showed that the areas of deteriorated paint on your property have NOT been satisfactorily corrected.”

214. Upon information and belief, multiple times after receiving copies of the February 2015 Report, October 2015 Report and accompanying letters from DOH, and DOH notices of violation from October and November 2016, December 2017, June 2018 and June 2019, Homestead and its agents Essex, Peck Properties, Mr. Dalfin and Mr. Heil rented the property to tenants without providing such records or reports.

215. For example, one or more defendants provided a lead disclosure statement dated January 26, 2016, that falsely affirmed that the landlord “has no knowledge of lead-based paint and/or lead-based paint hazards in the housing,” and “has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.” Attached as Exhibit J is a copy of that lead disclosure statement.

216. Approximately one week later, one or more defendants provided a lead disclosure statement dated February 2, 2016, that made the same false statements. Attached as Exhibit K is a copy of that lead disclosure statement.

**F. 42 Wilson Street, Buffalo, NY 14206**

217. The Dalfin Property, 42 Wilson Street, is a two-family house that was built in or about 1900. Lorraine Dalfin purchased the property on November 13, 2007, which she transferred to Gloucester on November 9, 2016. The property was transferred to VIN7 on November 19, 2019, and again to a third party on December 30, 2019.

218. Between June 2008 and November 2019, the DOH found at least 98 lead paint hazard violations at the property, including 70 violations in the interior and 28 violations on the exterior. Notices of violation were issued on at least four occasions: June 27, 2008, May 10, 2010, July 11, 2018, and November 14, 2019.

219. On or about June 16, 2008, DOH received a report of a three-year-old child with an EBLL of 26 µg/dL residing at the property. The child lived with his mother and a five-year-old sibling.

220. DOH inspected the premises on June 25, 2008, tested for and confirmed the presence of lead on surfaces in multiple locations, and created a LeadSAFE Erie County Survey Report (the “June 2008 Report”) in substantially similar form to Exhibit D.

221. On June 27, 2008, DOH sent a notice and demand letter to Lorraine Dalfin noting conditions conducive to lead poisoning and identifying 70 interior lead paint hazards and 15 exterior lead paint hazards at the property. DOH enclosed with that letter the June 2008 Report. The notice and demand letter reminded Lorraine Dalfin of her obligation under federal law to “disclose all available records and reports concerning lead-based paint and/or lead-based paint hazards, *including the test results contained in this notice*, to purchasers and tenants at the time of sale or lease or upon lease renewal” (emphasis added). It further explained that “[t]his disclosure must occur even if hazard reduction or abatement has been completed.”

222. Upon information and belief, defendants never provided such records or reports to tenants.

223. Correspondence between Mr. Heil and DOH indicates that, at the time, defendants were managing the property via Buffalo North, Inc.

224. The family residing at the property vacated the house on or about August 6, 2008.

225. On October 30, 2008, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of October 31, 2008, DOH reminded Lorraine Dalfin of her

“responsibility as owner of this property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

226. On or about April 13, 2010, and May 7, 2010, DOH reinspected the property, verified that conditions conducive to lead poisoning existed, and sent a notice and demand letter to Lorraine Dalfin on May 10, 2010.

227. Lorraine Dalfin submitted a Lead Remediation Work Plan to DOH on or about May 28, 2010. The plan stated that remediation work would be limited to interim controls.

228. On or about June 4, 2010, DOH spoke with Mr. Dalfin, who indicated that he was the husband of Lorraine Dalfin and that he was addressing the items to be remediated.

229. On June 23, 2010, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of June 29, 2010, DOH reminded Lorraine Dalfin of her “responsibility as owner of this property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

230. On or about October 6, 2016, DOH received a report of a different four-year-old child with an EBLL of 29  $\mu\text{g}/\text{dL}$  residing at the property. DOH went to inspect the property on October 14, 2016, but the family had already moved out and DOH did not complete the lead inspection.

231. DOH sent Lorraine Dalfin a letter dated October 17, 2016, informing her of a child with an EBLL at the premises. DOH contacted the property manager, Mr. Heil, who refused an inspection because the property was purportedly vacant.

232. DOH reinspected the property in June and July 2018, and identified “conditions conducive to lead poisoning.” DOH sent a letter dated July 11, 2018, to “Gloucrster [sic] Land

Holdings LLC C/o Peck Properties,” informing them of a report of a child with an EBLL at the property and the existence of conditions conducive to lead poisoning. DOH included a notice of violation identifying numerous violations.

233. Mr. Heil, on behalf of Gloucester, submitted a Lead Remediation Work Plan, dated July 18, 2018, to DOH. The plan stated that remediation work would be limited to interim controls.

234. On September 6, 2018, after interim controls purportedly were implemented, DOH inspected the property and observed that the violations had been “temporarily controlled, by the use of Interim Controls.” By letter of June 29, 2010, DOH reminded Gloucester of its “responsibility as owner of this property to regularly inspect the painted surfaces of the property for deterioration/damage, and to maintain these surfaces in good repair.”

235. DOH reinspected the property on or about November 14, 2019, and determined that conditions conducive to lead poisoning existed, identifying four lead paint violations. DOH issued Gloucester a notice of violation. On or about December 30, 2019, this property was sold to an unrelated entity, Buff Real, LLC.

## **VI. FLEET-WIDE FAILURE TO PREVENT CONDITIONS CONDUCTIVE TO LEAD POISONING IS A PUBLIC NUISANCE**

236. According to the Joint Center for Housing Studies of Harvard University, nearly everyone lives in rental housing at some point in their lives. Rental housing is particularly important for low-income households and households of color, about half of whom are renters.

237. In Buffalo, approximately 59% of households live in rental properties.<sup>16</sup> In addition, as noted *supra* at ¶ 120, 80% of lead poisoning in Buffalo occurs in rental properties.

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<sup>16</sup> U.S. Census Bureau, Quick Facts: Buffalo City, New York, <https://www.census.gov/quickfacts/buffalocitynewyork> (last accessed Sept. 16, 2020).

238. The median length of a rental in Buffalo is approximately two years, according to data gathered in a 2018 survey by the U.S. Census Bureau. Thus, on average, rental properties in Buffalo will have a new tenant approximately every two years.

239. As described *supra* at ¶ 20, Mr. Dalfin has owned, controlled, or managed more than 150 residential rental properties in Buffalo. Mr. Dalfin, Mr. Heil, and the Entity Defendants have allowed conditions conducive to lead poisoning to persist, and the repeated lead poisoning of children to occur, on a scale that constitutes a public nuisance.

240. Lead poisoning has a lifelong impact on children, as well as their offspring, parents, siblings and the greater community. Lead poisoning causes a downward shift in the population IQ, which increases the number of students who require remedial assistance. It is estimated that as a child's blood lead level increases from one  $\mu\text{g/dL}$  to 10  $\mu\text{g/dL}$ , the child's IQ declines by 3.9 to 7.4 points.<sup>17</sup> A downward shift of just five points in IQ at the population level would increase the number of children at the "very low" IQ level by 57%, requiring additional spending on special education of more than \$12,000 per year for each of these students. Nationwide, the annual price tag of lead exposure is estimated at \$50 billion due to lost economic productivity as a result of decreased cognitive potential.<sup>18</sup>

241. The County, City, and State are affected by lead poisoning in numerous ways and are spending substantial resources to prevent it.

242. In 2019, the County spent approximately \$3.5 million on its lead programs, including "LeadSAFE Erie County," and the "Childhood Lead Poisoning Prevention Program."

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<sup>17</sup> Issue Brief: Childhood Lead Exposure and Educational Outcomes, National Center for Healthy Housing, at 2, [https://nchh.org/resource-library/Childhood\\_Lead\\_Exposure.pdf](https://nchh.org/resource-library/Childhood_Lead_Exposure.pdf) (last accessed Sept. 16, 2020).

<sup>18</sup> *Id.* at 1.

Funding for the County programs is provided, in part, by HUD as well as State and County funds. The County also incurs additional annual expenses addressing the broader impacts caused by lead poisoning in the form of law enforcement and social services.

243. The City also provides numerous services addressing and/or directly related to the impacts of lead paint poisoning described herein. Employees of the City's Department of Permits and Inspections are tasked with performing property inspections, educating tenants and owners about the dangers of lead paint, and informing tenants and owners whom to contact to properly remediate their properties. In January 2020, the City initiated a pilot program to inspect rental homes for lead-based paint violations and assist owners in abating conditions conducive to lead-poisoning.

244. The City spends in excess of \$400,000 per year on its lead poisoning prevention efforts. Funding for the City's lead-related programs is provided, in part, by HUD as well as State and City funds. The City also incurs additional annual expenses addressing the broader impacts caused by lead poisoning in the form of law enforcement and social services.

245. New York State also provides services and incurs expenses directly and indirectly related to lead paint poisoning. The State Department of Health partners with local health departments to provide education and testing for lead poisoning. The State likewise incurs expenses for a variety of programs including law enforcement, educational services, and medical health services to individuals and communities impacted by lead poisoning.

246. The financial consequences of these outcomes in New York State include millions of dollars in public spending on special education, juvenile justice, and other social services. In addition, New York State loses tens of millions in tax dollars each year because of lowered earnings from lead poisoning.

**VII. DEFENDANTS HAVE COMMITTED NUMEROUS OTHER FRAUDULENT AND ILLEGAL ACTS IN THE TRANSACTION OF BUSINESS.**

**A. Mr. Dalfin, Lorraine Dalfin, and the Property Owner Companies Have Failed to Obtain Rental Registration Certificates for the Properties**

247. Mr. Dalfin, Lorraine Dalfin, and the Property Owner Companies have failed to comply with the City's rental registration requirements. *See supra* ¶¶ 82-85 (citing City Code § 264).

248. In 2019, Mr. Dalfin and the Property Owner Companies failed to make timely annual rental registration payments on more than 120 of the Dalfin Properties.

249. At least one of the Property Owner Companies, Habitat, has never paid any rental registration fees at any time during the period that it rented out properties. Habitat currently owes \$3,451.98 including interest on the three properties it acquired in 2012.

250. In an email to Mr. Dalfin and a property owner, dated April 2, 2014, Mr. Heil outlined a scheme to avoid paying rental registration fees:

As far as the Rental Registry its been around for years and last I checked its not a collectible bill issued to landlords.

...

The rental registry however is a fee asked to be paid and if not collected is not placed on the property as a lien, if need be we could change owners with a new llc every couple of years and have no issue.

I am pretty confident, that paying it not prudent and until forced I would not.

251. Mr. Dalfin and Mr. Heil in fact implemented this scheme. As one example, during the 12 years that 42 Wilson was under Mr. Dalfin's management and control, no rental registration fees were ever paid; moreover, by transferring the property from one entity to another, a substantial portion of the fees that were owed were rendered uncollectible.



252. As described *supra* at ¶ 217, Lorraine Dalfin purchased 42 Wilson on November 13, 2007. It was transferred to Gloucester on November 9, 2016, and from Gloucester to VIN7 on November 19, 2019, before being sold to a third party on December 30, 2019. On December 17, 2019, Mr. Dalfin testified under oath that he is the sole member of VIN7, LLC and that “VIN7, LLC is the owner of the premises known as 42 Wilson Street.” He further testified that “my company has owned this property [for] eleven years.” During that time, neither Mr. Dalfin, nor Lorraine Dalfin, nor Gloucester, nor VIN7 paid any rental registration fees. As of May 2018, the City of Buffalo was owed \$1,020 in rental registration fees, including penalties and late fees relating to 42 Wilson. According to City records, when Gloucester transferred the property to VIN7 in November 2019, \$810 in late fees and penalties was rendered uncollectible.

253. Likewise, no rental registration payments were ever made on 135 Sweet Street from 2010 or earlier through September 20, 2019, during the period that it was held first by Lorraine Dalfin, and then Gloucester, and then VIN7. By the time 135 Sweet Street was sold to a third party, more than \$1,600 in unpaid fees and interest had accrued on the property.

**B. Mr. Dalfin, Mr. Heil, and the Property Management Companies Have Failed to Obtain Property Management Licenses Required by the City or Real Estate Brokers Licenses Required by the State**

254. Mr. Dalfin, Mr. Heil, and the Property Management Companies are property managers within the meaning of the City Code. *See supra* ¶¶ 86-92 (citing City Code § 265). However, they have never obtained property management licenses required by the City.

255. In addition, Mr. Dalfin, Mr. Heil, and the Property Management Companies are real estate brokers within the meaning of New York Real Property Law § 440. However, they have never obtained the real estate broker licenses required by the State.

**C. The Vast Majority of the Entity Defendants Are Not Authorized to Do Business in New York**

256. BBB4, Bradsville, Buffalo Holdings, CTA, Eco Dev, Essex, Gloucester, Habitat, Hamilton, Izville, Liberty, Montgomery, Otuab, Peck Properties, Sweethome, TDO Holdings, and Williamsville Properties are foreign corporations, limited liability companies, and limited partnerships that have never been authorized to do business in New York. Buffalo North has been unauthorized to do business in New York since its dissolution by DOS on July 27, 2011; likewise, YBAGI has been unauthorized to do business in New York since its dissolution on June 29, 2016.

257. These Entity Defendants have transacted business in New York without authorization to do so from the New York DOS. Moreover, many have initiated eviction and related proceedings in Buffalo City Court without authority to do so, in violation of Business Corporation Law § 1312, Limited Liability Company Law § 808, and/or Partnership Law § 121-907(a). For example:

- a. Between 2015 and 2020, 144 eviction proceedings were initiated on behalf of Williamsville Properties in Buffalo City Court. This included: seven separate eviction actions against different tenants of 42 Wilson; five separate eviction actions against different tenants of 56 Newton; three separate eviction actions against different tenants of 96 Wick; and two separate eviction actions against different tenants of 53 Shepard.
- b. Between 2015 and 2020, approximately 12 eviction proceedings in Buffalo City Court were initiated in the name of Peck Properties.
- c. Between 2015 and 2020, approximately 10 eviction proceedings in Buffalo City Court were initiated in the name of Buffalo Holdings.
- d. Between 2015 and 2020, approximately 10 eviction proceedings were initiated in Buffalo City Court in the name of Izville.
- e. Between 2017 and 2020, approximately six eviction proceedings in Buffalo City Court were initiated in the name of Gloucester.

- f. Between 2015 and 2020, approximately nine eviction proceedings in Buffalo City Court were initiated in the name of Habitat.
- g. In 2019, one eviction proceeding in Buffalo City Court was initiated in the name of Hamilton.

258. Many of these evictions involved houses where conditions conducive to lead poisoning have been verified by the County, City, or Section 8 PHAs.

259. Upon information and belief, some of these evictions were part of an effort to avoid complying with their obligations relating to lead paint.

260. All such eviction proceedings were prohibited by Business Corporation Law § 1312 and/or Limited Liability Company Law § 808.

**D. Defendants Have Abused the Corporate Form**

261. Mr. Dalfin has created and operated a network of entities and individuals to avoid legal responsibilities, liability, and accountability relating to the ownership, maintenance, and leasing of properties in the City of Buffalo.

262. At all relevant times, Mr. Dalfin controlled the business of the Entity Defendants, including any and all of their affiliates, with respect to the operation of the Dalfin Properties in Buffalo.

263. Mr. Dalfin has disregarded legal formalities and failed to maintain arm's length relationships among the corporate entities.

264. Mr. Dalfin has commingled the funds and assets of the various Entity Defendants in bank accounts that were opened in the name of BBB4, Peck Properties, VIN7, Essex, and others without recognizing appropriate distinctions between the funds in each such account.

265. Mr. Dalfin has used the same address or business location for many of the Entity Defendants. For example, since about September 2007, Mr. Dalfin has frequently used various

UPS Store mailboxes as shared business addresses for many of the Entity Defendants as depicted below:

	UPS Store No. 2299*	Former UPS Store No. 3671**	UPS Store No. 3326***
BBB4, LLC			✓
<u>Bradsville Properties Holdings LLC</u>			✓
Buffalo Commons LLC	✓	✓	
Buffalo Holdings LLC	✓		
Buffalo North, Inc.	✓		
CTA Management LLC	✓		
Eco Dev Inc.	✓	✓	
Gloucester Land Holdings LLC			✓
Habitat Properties LLC	✓		
Hamilton Enterprises, LLC	✓		
Homestead Land Holdings, LLC	✓		✓
<u>Izville Properties, LLP</u>	✓		✓
Liberty Group Enterprises, LLC	✓		
Montgomery Properties, LLC		✓	
<u>Otaub LLC</u>	✓		✓
Peck Properties, Inc.	✓		
<u>Sweethome LLC</u>	✓	✓	
TDO Holdings LLC	✓		✓
VIN7 LLC	✓		✓
Williamsville Properties Holdings LLC	✓	✓	✓

\*UPS Store 2299: 3842 Harlem Rd. Suite #291, Buffalo, NY 14225

\*\*Former UPS Store No. 3671: 3806 Union Road #222 Buffalo, NY 14225

\*\*\*UPS Store No. 3326: 722 Dulaney Valley Rd. #199, Towson, MD 21204

266. Mr. Dalfin has diverted corporate funds and assets for his own personal use. In February 2020 alone, the corporate debit card for Peck Properties was used at restaurants, rental

car agencies, and convenience stores in Cozumel, Mexico. The same card was used for small purchases at hotels and restaurants in Miami Beach, Florida days later. The same corporate account also made a payment that month to Nordstrom on behalf of Mr. Dalfin's ex-wife.

267. In February 2020, nearly all of the withdrawals from the corporate account for BBB4 were automated clearing house transfers to one of Mr. Dalfin's sons.

268. When transferring properties between related entities, Mr. Dalfin, Mr. Heil, and the Entity Defendants have consistently failed to disclose that transactions are occurring between related companies, as required on the RP-5217 Form that is submitted to the New York Department of Taxation and Finance.

269. Mr. Dalfin has abused the corporate form to avoid other manner of liability, including avoidance of rental registration fees, as described *supra* at ¶¶ 250-253, and avoidance of actions against him and entities he owns or controls by tenants and former tenants. According to Mr. Heil, Mr. Dalfin has created new LLCs and transferred assets to new LLCs to avoid liability when tenants sue in small claims court.

270. Mr. Dalfin's abuse of the corporate form has only intensified since the Office of the Attorney General ("OAG") first served subpoenas on him in or about July 2018 at the same time as the OAG first served subpoenas on Mr. Heil and Lorraine Dalfin. Although Mr. Dalfin and Lorraine Dalfin are aware of the subpoenas served on them, they have never attempted to comply or cooperate.

271. In or about September 2018, shortly after Mr. Dalfin and Lorraine Dalfin learned they were under investigation by the OAG for their lead paint practices, Mr. Dalfin and Lorraine Dalfin took a number of steps to conceal their locations, identities, and assets. Lorraine Dalfin, in

particular, attempted to evade service multiple times, including by providing a false name to OAG investigators.

272. At about that time, Mr. Dalfin formed Essex as a new management company.

273. Mr. Dalfin and Mr. Heil also provided the Section 8 PHAs with bank account deposit information for Essex and instructed them to cease depositing Section 8 funds into the Peck Properties deposit account.

274. In addition, to meet federal requirements for receiving Section 8 funds from the PHAs, defendants were required to show the Section 8 PHAs that the owners of all Properties had entered into Property Management Agreements (PMAs). To that end, defendants provided at least five PMAs, purportedly executed in late 2018, as follows.

- a. A PMA between Essex and Williamsville Properties, effective September 1, 2018, by which Essex agreed to provide a variety of property management services in relation to at least 71 properties.
- b. A PMA between Essex and Homestead, effective September 1, 2018, by which Essex agreed to provide property management services in relation to at least 29 properties.
- c. A PMA between Essex and Purityson effective September 1, 2018, by which Essex agreed to provide property management services in relation to at least 20 properties.
- d. A PMA between Essex and “Buffalo Holding” [sic], effective September 1, 2018, by which Essex agreed to provide property management services in relation to at least three properties.
- e. A PMA between Essex and Bradsville, effective November 1, 2018, by which Essex agreed to provide property management services in relation to at least two properties.

275. The business address on each of these Property Management Agreements for Essex is a UPS Store in Williamsville.

**E. Defendants Have Repeatedly Flouted the Authority of Courts, Necessitating the Appointment of a Receiver and a Performance Bond**

276. Defendants have ignored court orders and failed to satisfy judgments in connection with the OAG's underlying investigation and other matters.

277. On September 24, 2019, Hon. Frank Sedita of the New York Supreme Court, Erie County, ordered Mr. Dalfin and Lorraine Dalfin to "produce to the New York State Office of the Attorney General within 20 days of service of this order the documents and information requested in the subpoenas dated July 20, 2018." After service of such Order on them, neither Mr. Dalfin nor Lorraine Dalfin produced any documents. Rather, Mr. Dalfin told Mr. Heil that the subpoenas were "bull\*\*\*\*" and ignored them.

278. Apart from this matter, defendants have a history of ignoring and failing to satisfy prior judgments and other court orders. For example:

- a. On or about October 1, 2015, a judgment was entered against Buffalo Holdings, LLC, in favor of Erie County, in relation to the property at 44 Wick Street. That judgment remains unsatisfied.
- b. On or about December 14, 2015, a judgment was entered against Williamsville Properties relating to 522 Wilson in the amount of \$750. That judgment remains unsatisfied.
- c. On or about March 14, 2016, a \$35,000 judgment was entered against Mr. Dalfin relating to a workers' compensation award to an employee of Mr. Dalfin injured at a property he was managing. That judgment remains unsatisfied.
- d. On or about April 18, 2017, a judgment was entered against Izville in the amount of \$9,000 in favor of the City of Buffalo in relation to 16 Shepard. That judgment remains unsatisfied.
- e. On or about June 6, 2017, a \$1,536 judgment was rendered in favor of a tenant at a house Peck Properties was managing. The tenant alleged that Mr. Heil wrongfully removed and disposed of her personal property and said "sue me" when she complained. That judgment remains unsatisfied.

- f. On or about January 1, 2019, a judgment was entered against Buffalo Holdings in favor of Erie County, in relation to a property at 381 Fargo. That judgment remains unsatisfied.
- g. On October 19, 2019, in a dispute over an unreturned security deposit, a \$1,270 judgment was entered in favor of a tenant at a property defendants were managing. That judgment remains unsatisfied.

279. Thus, in the event the Court finds the defendants liable, the defendants' history of flouting the law suggests that an order compelling compliance will not be sufficient to ensure compliance. Rather, as set out in the Prayer for Relief *infra*, the Court should also appoint a receiver and order the defendants to post a performance bond.

### **FIRST CAUSE OF ACTION**

#### **REPEATED AND PERSISTENT ILLEGALITY UNDER EXECUTIVE LAW § 63(12) Lead Paint Violations (Asserted Only by the People of the State of New York)**

280. Plaintiffs repeat and reallege each of the foregoing paragraphs.

281. Mr. Dalfin, Mr. Heil, Lorraine Dalfin, the Property Management Companies, and the Property Owner Companies have repeatedly and persistently violated the Codes and Real Property Law § 235-b(1) by renting out dwellings that are not clean, safe, or fit for human occupancy, including by allowing conditions conducive to lead poisoning, such as chipped, peeling, or deteriorating paint, to proliferate and poison children.

282. From 2013 to present, at least 63 of the Dalfin Properties have been cited by inspectors from the DOH and/or the City of Buffalo for chipping, peeling, or deteriorating paint and other conditions conducive to lead poisoning. As a result of allowing conditions conducive to lead poisoning to persist, dozens of children have been poisoned with lead while residing at Dalfin Properties. From 2013 to present, children with EBLLs have been reported as residing in



at least 22 of the Dalfin Properties; in at least seven of the Dalfin Properties, there have been multiple referrals for children with EBLs.<sup>19</sup>

283. By repeatedly and persistently violating the Codes and Real Property Law § 235-b(1), Mr. Dalfin, Mr. Heil, Lorraine Dalfin, the Property Management Companies, and the Property Owner Companies have committed repeated fraudulent or illegal acts or persistent fraud or illegality within the meaning of Executive Law § 63(12).

**SECOND CAUSE OF ACTION**

**REPEATED AND PERSISTENT FRAUD AND ILLEGALITY UNDER  
EXECUTIVE LAW § 63(12)  
Lead Disclosure Violations  
(Asserted Only by the People of the State of New York)**

284. The Plaintiffs repeat and reallege each of the foregoing paragraphs.

285. Since 1996, the federal government has required lessors of housing constructed before 1978 to provide lessees with disclosures concerning the presence of any known lead-based paint and/or lead-based paint hazards. 40 C.F.R. §§ 745.102, 745.107.

286. The Dalfin Properties were all constructed prior to 1978 and thus are presumed to contain lead paint.

287. In many of the Dalfin Properties, the presence of lead paint and lead paint hazards has been verified through inspections, testing, and reports. On each of these occasions, the Property Owner Companies received notice of such results and copies of such reports, either directly or through Mr. Dalfin, Mr. Heil, and the Property Management Companies.

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<sup>19</sup> In or about March 2020, due to the global health crisis caused by the COVID-19 pandemic, virtually all lead inspection and testing operations by the City and County were temporarily halted. Thus, the records of violations referenced in the Complaint do not extend beyond February 2020.

288. From 2010 until 2018 or later, tenants in a majority of the Dalfin Properties did not receive any lead disclosures. During that period, the only tenants who received any lead disclosures were the 40-50% of tenants participating in Section 8, who received such disclosures directly from the PHAs.

289. On many occasions, even when defendants did provide the lead disclosure forms mandated by federal law, they made false statements to tenants that they had no knowledge of lead-based paint and/or lead-based paint hazards in housing, and that they had no reports or records pertaining to such hazards. *See supra* ¶¶ 150, 151, 168, 200, 215, 216 and Exhibits F-K.

290. This had the effect of both concealing and affirmatively misrepresenting the presence of hazardous lead paint conditions from prospective tenants.

291. By repeatedly and persistently failing to notify tenants of the presence of lead-based paint and lead-based paint hazards in violation of federal regulations, Mr. Dalfin, Mr. Heil, Lorraine Dalfin, the Property Management Companies, and the Property Owner Companies have committed repeated fraudulent or illegal acts or persistent fraud or illegality within the meaning of Executive Law § 63(12).

### **THIRD CAUSE OF ACTION**

#### **GENERAL BUSINESS LAW § 349(A) Lead Disclosure Violations**

292. Plaintiffs repeat and reallege each of the foregoing paragraphs.

293. Deceptive acts or practices in the conduct of any business or in the furnishing of any service in the state are unlawful. *See* General Business Law § 349(a).

294. Mr. Dalfin, Mr. Heil, Lorraine Dalfin, the Property Management Companies, and the Property Owner Companies, either directly or indirectly, violated General Business Law § 349(a) by falsely stating to tenants that they had no knowledge of lead-based paint and/or lead-

based paint hazards in the property being rented, and that they had no reports or records pertaining to such hazards.

295. Mr. Dalfin, Mr. Heil, Lorraine Dalfin, the Property Management Companies, and the Property Owner Companies are liable for civil penalties of up to \$5,000 pursuant to General Business Law § 350-d for each false disclosure in violation of General Business Law § 349(a).

**FOURTH CAUSE OF ACTION**

**PUBLIC NUISANCE**

296. Plaintiffs repeat and reallege each of the foregoing paragraphs.

297. The existence of conditions conducive to lead poisoning is a public nuisance pursuant to City Code §§ 294-4(E) and 294-4(I), County Code Article IX § 1.22(i)(1)(i) and the common law.

298. By allowing conditions conducive to lead poisoning to proliferate across a fleet of more than 150 residential properties between 2007 and 2020, defendants have created and contributed to a public nuisance on a community-wide scale.

299. The People of the State of New York, Erie County, and the City of Buffalo have a common right to be free from the detrimental effects of lead in, on, and around residential rental properties in Buffalo.

300. As a direct and proximate result of defendants' conduct, conditions conducive to lead poisoning are present in, on, and around the Dalfin Properties. In addition, dozens of children residing at the Dalfin Properties have tested with EBLLs and numerous others have been exposed or will be exposed to lead in, on, and around the defendants' houses and properties. The community suffers from the impacts of lead poisoning of its children, including

but not limited to decreased performance in schools, increased behavioral disorders, and increased rates of crime.

301. As a direct and proximate result of defendants' conduct, the County, City, and State have incurred and will continue to incur substantial expenses arising from the presence of conditions conducive to lead poisoning in, on, and around the defendants' houses and properties, including but not limited to costs of: monitoring for and treating children suffering from lead poisoning; addressing the special educational needs of children with lead poisoning; and enforcing the law.

302. The Attorney General is authorized under Executive Law § 63(12) to bring an action to enjoin defendants' public nuisance.

**FIFTH CAUSE OF ACTION**

**REPEATED AND PERSISTENT ILLEGALITY UNDER EXECUTIVE LAW § 63(12)  
Rental Registration Violations**

303. Plaintiffs repeat and reallege each of the foregoing paragraphs.

304. Mr. Dalfin, Lorraine Dalfin, and the Property Owner Companies have failed to comply with the City's rental registration requirements pursuant to City Code § 264.

305. In 2019, Mr. Dalfin and the Property Owner Companies failed to make timely annual rental registration payments on more than 120 of the Dalfin Properties.

306. In addition, by transferring the Dalfin Properties from one entity to another, a substantial portion of the fees that were owed were rendered uncollectible in abuse of the corporate form.

307. By repeatedly and persistently violating the rental registration requirements of City Code § 264, Mr. Dalfin, Lorraine Dalfin, and the Property Management Companies have

committed repeated fraudulent or illegal acts or persistent fraud or illegality within the meaning of Executive Law § 63(12).

### **SIXTH CAUSE OF ACTION**

#### **REPEATED AND PERSISTENT ILLEGALITY UNDER EXECUTIVE LAW § 63(12) Licensing Violations**

308. Plaintiffs repeat and reallege each of the foregoing paragraphs.

309. The City requires any individuals or entities that manage three or more properties to be licensed by the City pursuant to City Code § 265-3. Property managers are further required to renew such licenses annually pursuant to City Code § 265-7. The City further requires pursuant to City Code § 265-4(A)(4) that any person who collects rents or negotiates rental of property obtain a New York State real estate broker's license, as required by the State pursuant to Real Property Law §§ 440(1), 440-a.

310. Mr. Dalfin, Mr. Heil, and the Property Management Companies, who individually and collectively manage more than three properties, are property managers within the meaning of the City Code but have never obtained the property management licenses required by the City.

311. Mr. Dalfin, Mr. Heil, and the Property Management Companies, who individually and collectively collect rent and negotiate leases, are also real estate brokers within the meaning of Real Property Law § 440 but have never obtained the licenses required by the State.

312. Mr. Dalfin, Mr. Heil, and the Property Management Companies, both individually and collectively, are liable for repeatedly and persistently violating the licensing provisions of the City Code § 265 and Real Property Law § 440.

313. By repeatedly and persistently violating the licensing provisions of City Code § 265 and Real Property Law § 440, Mr. Dalfin, Mr. Heil, and the Property Management

Companies have committed repeated fraudulent or illegal acts or persistent fraud or illegality within the meaning of Executive Law § 63(12).

### **SEVENTH CAUSE OF ACTION**

#### **REPEATED AND PERSISTENT ILLEGALITY UNDER EXECUTIVE LAW § 63(12) Doing Business in New York Without Authorization (Asserted Only by the People of the State of New York)**

314. Plaintiffs repeat and reallege each of the foregoing paragraphs.

315. Foreign corporations, limited liability companies, and limited partnerships that do business in New York must first obtain authority to do so from the New York Department of State. Business Corporation Law § 1301; Limited Liability Company Law § 802; Partnership Law § 121-902. Unauthorized foreign corporations, limited liability companies, and limited partnerships are prohibited from doing business in the State or maintaining any actions or special proceedings in the State. *See* Business Corporation Law § 1312(a); Limited Liability Company Law § 808; Partnership Law § 121-907(a).

316. Many of the Entity Defendants are foreign corporations, limited liability companies, or limited partnerships that are not authorized to do business in New York, including BBB4, Bradsville, Buffalo Holdings, CTA, Eco Dev, Essex, Gloucester, Habitat, Hamilton, Izville, Liberty, Montgomery, Otuab, Peck Properties, Sweethome, TDO Holdings, and Williamsville Properties, which have never been authorized to do business in New York. Buffalo North has been unauthorized to do business in New York since its dissolution on July 27, 2011; likewise, YBAGI has been unauthorized to do business in New York since its dissolution on June 29, 2016.

317. Each of those entities has done business in New York without authorization to do so in violation of the Business Corporation Law § 1301, Limited Liability Company Law § 802, and Partnership Law § 121-902.

318. In addition, many of those entities, including Buffalo Holdings, Gloucester, Habitat, Hamilton, Izville, Peck Properties, Williamsville Properties have initiated eviction proceedings and related proceedings in Buffalo City Court without authority to do so, in further violation of Business Corporation Law § 1312(a), Limited Liability Company Law § 808, and Partnership Law § 121-907(a).

319. The Attorney General is authorized, under Business Corporation Law § 1303, Limited Liability Company Law § 809, Partnership Law § 121-908, and Executive Law § 63(12) to bring an action to enjoin defendants' unauthorized business in New York.

### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiffs pray for a judgment against defendants, jointly and severally, as follows:

1. Ordering defendants to inspect, within 30 days of the judgment, through a qualified third-party inspector, each residence they now or in the future own and/or manage in New York for conditions conducive to lead poisoning, and to remedy all such conditions in each and every such property, by certified workers and in full compliance with Erie County Sanitary Code Article IX, and all other local, state and federal laws, within 30 days of such inspection;
2. Ordering defendants to provide tenants with safe and conveniently located accommodations while remediation work is being performed and/or appropriate compensation to terminate their tenancy and leave the premises;

3. Ordering defendants to inspect each residence they now or in the future own and/or manage in New York before a new tenant moves into the residence and at a minimum of once every six (6) months for conditions conducive to lead poisoning and to remedy all such conditions within 30 days of such inspection, in full compliance with all local, state and federal laws;

4. Ordering defendants to provide, within 15 days of the judgment, every lessee in each residential property they now or in the future own and/or manage in New York with a full and accurate lead disclosure statement that conforms to the content required by the federal Lead Disclosure Rule;

5. Ordering defendants to provide plaintiffs, within 15 days of the judgment, a list of each property owned and/or managed by defendants and further mandating that defendants provide an updated, accurate list containing all such information on the first of every month thereafter for three (3) years from the date of judgment;

6. Ordering defendants to provide, within 15 days of judgment, full and complete information for each property identified in paragraph 5 about the property owners and property managers, as required by Buffalo City Code Chapters 264 and 265, and further mandating that defendants provide an updated, accurate list containing all such information on the first of every month thereafter for three (3) years from the date of judgment;

7. Ordering defendants to file reports with the Office of the Attorney General and with a monitor, appointed at defendants' expense, who may seek additional information at the monitor's discretion regarding:

- a. defendants' compliance with paragraph 1 above within 60 days of the judgment;



- b. defendants' compliance with paragraph 3 above within 180 days of the judgment and subsequent reports every 180 days for three years following the date of judgment;
  - c. defendants' compliance with paragraph 4 above, within 30 days of the judgment;
8. Enjoining defendants from transacting any business in New York through any foreign company without first obtaining authority to do so from the New York Department of State, in accordance with Business Corporation Law § 1301, *et seq.*, and Limited Liability Company Law § 801, *et seq.*;
9. Enjoining defendants from initiating or otherwise further prosecuting any legal action in any New York state court, including, but not limited to, any eviction action, until defendants are in full compliance with Business Corporation Law § 1301, *et seq.* Limited Liability Company Law § 801, *et seq.*; and Partnership Law § 121-902;
10. Ordering defendants to immediately comply with all licensing laws relating to the rental of properties in New York, including Buffalo City Code Chapters 264 and 265 and Real Property Law § 440, *et seq.*;
11. Ordering defendants to satisfy all outstanding judgments against them in favor of the County and City, as well as any present or former tenants of the Dalfin Properties;
12. Ordering defendants to post a \$250,000 performance bond to assure compliance with all legal obligations and injunctive relief;
13. Appointing a receiver to immediately collect, hold in escrow, and disburse rent monies on properties defendants currently own or manage, such that defendants shall not be entitled to receive proceeds of rent until plaintiff, People of the State of New York, by the Attorney General, has certified that:
  - a. defendants have complied with their obligations to inspect and remedy a property of all conditions conducive to lead poisoning;

- b. defendants have complied with all rental registration and licensing requirements set forth in Buffalo City Code Chapters 264 and 265; and
  - c. defendants are in full compliance with Business Corporation Law § 1301, *et seq.*, Limited Liability Company Law § 801, *et seq.*, and Partnership Law § 121-902;
14. Permanently enjoining defendants from further illegal acts relating to lead disclosures and conditions conducive to lead poisoning in rental housing;
15. Ordering disgorgement of all profits defendants have realized from failing to fully pay City rental registration fees, fines, and penalties, as well as property management license fees;
16. Ordering defendants to pay fines and penalties in an amount to be determined by the court;
17. Retaining jurisdiction over this matter until defendants have fully complied with their obligations to inspect and remedy all existing conditions conducive to lead poisoning in properties they own and/or manage;
18. Awarding plaintiffs the costs and disbursements of the proceedings herein; and
19. Granting such other and further relief as the Court deems just and proper.

Dated: September 18, 2020  
Buffalo, New York

FOR THE PEOPLE OF THE STATE OF  
NEW YORK


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