

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

THELMA JONES, PRIYIA LACEY, FAISA
ABDI, ALI ALI, RUKIYA HUSSEIN, DAVID
TROTTER-FORD, AND SOMALI
COMMUNITY RESETTLEMENT SERVICES,
INC.,

Plaintiffs,

v.

CITY OF FARIBAULT,

Defendant.

Case No.

COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES

INTRODUCTION

1. This lawsuit challenges the City of Faribault, Minnesota’s illegal and unconstitutional Rental Licensing Ordinance, Ord. No. 2017-13, aimed at reducing the number of people of color living in rental housing within its borders. The Ordinance is attached hereto as Exhibit A.

2. In order to rent out residential property in Faribault, every landlord must secure a rental license. To secure and maintain this license, the City of Faribault requires that landlords give police enormous control over their tenants through Faribault’s codified Crime Free Housing Program.

3. The City of Faribault (“Faribault” or “the City”) enacted its Rental Licensing Ordinance and Crime Free Housing Program in order to target Black Somali tenants living in downtown Faribault, whom some in the community perceived to be engaging in crime and, by their very physical presence on streets and sidewalks, creating a “negative perception” of Faribault.

4. Faribault first enacted the scheme in 2014 despite the fact that its own Chief of Police, Andrew Bohlen, stated in a memorandum to the City Council that there was no downtown crime problem and that “fears and cultural clashes” were to blame for the community concerns. Faribault’s Black Somali population had surged in the years leading up to passage of the Ordinance.

5. Faribault’s Rental Licensing Ordinance requires that landlords use leases that allow police to order all members of a household evicted if any household member or guest engages in what police deem to be criminal activity. Police can order evictions even when there has been no arrest and no prosecution.

6. Before re-enacting the Ordinance with minor revisions, City officials made public statements concerning the Crime Free Housing Program’s success at “get[ting] rid of” residents who are “undesirable[.]” One member of the City Council stated that Faribault needed to attract higher income residents or it would “flip like Detroit in a few years.”

7. The Rental Licensing Ordinance also requires that landlords screen potential tenants for criminal history. Faribault instructs landlords to refuse to rent to potential tenants with criminal records, including convictions for minor crimes, without regard to whether a criminal record indicates a present risk for property or safety. Because Black Minnesotans are vastly more likely to have a criminal record than are white Minnesotans, this policy has a significant and unjustified discriminatory effect.

8. Finally, the Rental Licensing Ordinance limits the occupancy of every rental unit to two people per legal bedroom plus one, regardless of the size of the bedrooms or the availability of additional rooms for sleeping. Because Faribault Somali

families tend to be large, such that Faribault Somali households are significantly larger than non-Somali households, this occupancy restriction has a significant and unjustified discriminatory effect on people of Somali national origin, who are often evicted upon the birth of a child.

9. These discriminatory policies violate the Fair Housing Act and the Equal Protection Clause of the Fourteenth Amendment, as well as the equal rights guarantees provided by 42 U.S.C. § 1981 and the Minnesota Constitution.

10. This lawsuit seeks to end the many harms wrought by the Rental Licensing Ordinance on tenants and potential tenants, as well as on the health of the broader Faribault community.

PARTIES

Plaintiffs

10. Plaintiff Thelma Jones currently resides in rental housing in Faribault, where she has lived since 2008. She is a Black woman and a U.S. citizen. Ms. Jones and her family lost their home as a result of the Rental Licensing Ordinance and the Crime-Free Housing Program after the Faribault Police Department threatened Ms. Jones' landlord with criminal prosecution unless she evicted Ms. Jones and her family.

11. Plaintiff Priyia Lacey is actively seeking rental housing in Faribault. She is a Black woman and a U.S. citizen. Ms. Lacey is Ms. Jones' daughter. She, too, lost her home as a result of the Rental Licensing Ordinance and the Crime-Free Housing Program.

12. Plaintiff Faisa Abdi has resided in rental housing in Faribault since 2010. She is a Black Somali-American and a U.S. citizen. She and her family are currently

threatened with loss of their home as a result of the Rental Licensing Ordinance and its occupancy restriction.

13. Plaintiff Ali Ali has resided in rental housing in Faribault since 2006. He is a Black Somali-American and a U.S. citizen. He and his family lost their prior home as a result of the Rental Licensing Ordinance and its occupancy restriction and are at risk of losing their current home as their family expands.

14. Plaintiff Rukiya Hussein has resided in rental housing in Faribault since 2002. She is a Black Somali-American and a U.S. citizen. She and her family lost their home as a result of the Rental Licensing Ordinance and its occupancy restriction.

15. Plaintiff David Trotter-Ford currently resides in rental housing in Faribault, where he has lived since 2010. He is a Black man and a U.S. citizen. He and his family lost their home as a result of the Rental Licensing Ordinance and the Crime-Free Housing Program.

16. Plaintiff Somali Community Resettlement Services, Inc. (“SCRS”) is a non-profit corporation organized under the laws of the State of Minnesota and a 501(c)(3) tax-exempt organization, with its primary places of business in Rochester and Faribault, Minnesota. The Rental Licensing Ordinance interferes with its mission to promote the welfare and well-being of members of the Somali community and forces it to divert resources to ameliorate the harms caused to that community by the Ordinance.

Defendant

17. Defendant City of Faribault, Minnesota is a municipality capable of being sued under Minnesota law. The city is the legal entity responsible for the Faribault Police Department (“FPD”), a law enforcement agency. Plaintiffs base all applicable and

appropriate claims as to Defendant City of Faribault on the doctrines of respondeat superior or vicarious liability and municipal liability pursuant to *Monell v. Dep't of Soc. Services of City of New York*, 436 U.S. 658 (1978).

JURISDICTION AND VENUE

18. This action arises under the federal Fair Housing Act, 42 U.S.C. §§ 3601–3619, and the Fourteenth Amendment to the United States Constitution, as well as 42 U.S.C. § 1981.

19. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331. This Court may award Plaintiffs declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, and this Court's inherent equitable jurisdiction.

20. Pursuant to 28 U.S.C. § 1367, this Court also has supplemental jurisdiction over the Minnesota state law claim, which forms part of the same case or controversy. This Court has jurisdiction to grant declaratory, injunctive, and other relief as necessary or proper under the Uniform Declaratory Judgments Act (“UDJA”),¹ Minn. Stat. § 555.01 *et seq.*, and Minnesota Rules of Civil Procedure 57 and 65.

21. Venue is proper in the U.S. District Court for the District of Minnesota pursuant to 28 U.S.C. § 1391(b) because all of the events giving rise to the claims made in this complaint have occurred or will occur in this district and because Defendant City of Faribault is located in this district.

¹ The UDJA is remedial in nature and is to be liberally construed and administered to “settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” Minn. Stat. § 555.12.

FACTUAL BACKGROUND

Faribault Context: Demographic Change

22. In the years leading up to the 2014 passage of the first Rental Licensing Ordinance, Faribault's Black population had risen rapidly, and the trend continues.

23. In 2000, according to the United States Census, just 2.7% of Faribault's population was Black. By 2010, that figure stood at 7.6%. In 2016, the Census's American Community Survey estimated Faribault's population to be 9.2% Black.

24. This growth includes considerable growth in Faribault's population of people of Somali national origin. In 2009, the American Community Survey estimated that there were 175 people of Somali ancestry living in Faribault, composing about 0.8% of Faribault's population. By 2016, that population figure had risen by a factor of nearly ten. The American Community Survey estimated that there were 1,036 people of Somali ancestry living in Faribault, now composing about 4.4% of Faribault's population.

25. Faribault's Black residents, including those of Somali national origin, are concentrated in rental housing.

26. According to the 2010 Census, which provides the most recent statistics available, just 0.5% of owner-occupied households in Faribault were Black households, whereas 8.4% of renter households were Black households. Put differently, nearly 90% of Black households in Faribault lived in rental housing in 2010. By contrast, just 28% of non-Hispanic white households lived in rental housing the same year.

27. A recent draft of the forthcoming 2018 Rice County Comprehensive Housing Study noted that homeownership "by minority groups in Rice County is staggeringly low," and that "over 98 percent of households are owned by white

Americans.” The study also estimates that, although 19% of Faribault’s population is composed of racial minorities, 2% of its housing units are owned by racial minorities.

28. In Rice County, where Faribault is located, there are approximately three hundred low-income families receiving federally-funded Housing Choice Vouchers, also known as Section 8, to assist them in paying rent in private market housing. Three-quarters of the families receiving this assistance live in Faribault.

29. Two-thirds of the Rice County families receiving Section 8 are Black or African-American. When adults in households receiving Section 8 in Rice County were asked about languages spoken, 390 reported speaking Somali, three times more than the 130 who reported speaking English (some respondents marked more than one language). Thus, a majority of Section 8 recipients in Rice County are of Somali national origin.

Somali Presence and Misperceptions of Downtown Crime

30. Between 2000 and 2014, the total number of crimes in Faribault dropped significantly. According to Faribault Police Department data reported to the FBI’s Uniform Crime Reporting system, the overall number of property crimes fell by more than a third, even as Faribault’s population grew. Faribault did not consistently report all categories of violent crime data during the period, but the total number of reported violent crimes in 2014 was essentially the same as it had been in 2000.

31. Nonetheless, some Faribault residents reported concerns with crime and safety, especially downtown. Tenants “loitering” on downtown sidewalks were the locus of this concern—particularly if they were Somali.

32. A 2011 Downtown Faribault Market Analysis (“2011 Market Analysis”), funded in part by the state of Minnesota, reported that visitors to the downtown had

mentioned safety as one of their top two concerns. However, the same report noted that police “indicated there is little crime in the downtown, and certainly no more than the community at large.” Later, the report noted that “relating to the negative perception of the safety of downtown are **the low income residents** residing in second floor apartments **who are loitering and/or congregating** during peak and off-peak hours along the retail corridor.”

33. A large proportion of renters living downtown were people of color.

34. In March 2013, the Faribault Daily News noted that complaints of drug activity and theft downtown had become a hot button issue, but that, once again, police records did not corroborate this concern. A quoted resident said that the perception of downtown as unsafe exists “because people drive up and down the street and see groups of people standing in the sidewalks. But that’s not a bad thing. **Times are changing, and it’s a matter of people getting used to the new look.**”

35. Later that spring, a letter to the editor of the Faribault Daily News explicitly stated that the writer was in fear of Somalis “loitering” around town, and that she did not “understand why our beautiful city permits this activity.”

36. In October 2013, the Faribault Daily News ran an article about a dual-language video created by the FPD in an attempt to communicate with Faribault’s Somali-speaking community. That article interviewed Asher Ali, the head of the Faribault Diversity Coalition, who discussed the need to address “cultural differences” between downtown businesses and the Somali-American residents who live around them or above them. He noted that Americans deem it “loitering” when Somalis stand around

on the street, a regular practice in a culture that places more emphasis on face-to-face interactions.

37. Thus, concerns about “loitering” in downtown Faribault had become a clear code for concerns about the visible presence of Black Somali people downtown.

Events Leading to the Enactment of the 2014 Rental Licensing Ordinance

38. On October 15, 2013, the Faribault City Council’s Joint Committee held a “Discussion Regarding Downtown.” (Although notes for most 2013 Joint Committee meetings are publicly available on Defendant City of Faribault’s website, no notes from the October 15, 2013 Joint Committee meeting are posted.)

39. In advance of that meeting, Chief Bohlen of the FPD wrote a memorandum to then-City Administrator Brian Anderson discussing “ongoing police efforts to work with the downtown community on Central Avenue to alleviate some of the **fears and cultural clashes** taking place.” (The Bohlen Memorandum is attached hereto as Exhibit B.) This memorandum began by noting the proximity of the business community to a “**very large diverse population, often observed standing in groups**” and the fact that business owners had recently raised concerns about people on the sidewalks, including “alleged criminal activity and open drug transactions.” Chief Bohlen then noted that he had examined police records and concluded that there had been no increase in downtown crime, including drug crime. *See* Ex. B.

40. The Bohlen Memorandum also mentioned the “increased discussion of a revised loitering ordinance.” He noted that he had discussed the issue with the city attorney and recognized that a loitering ordinance might be “problematic and unenforceable” in many circumstances. *See id.*

41. Chief Bohlen was correct. The Supreme Court has repeatedly held that loitering for innocent purposes is part of the liberty interest protected by the Due Process Clause of the Fourteenth Amendment. *See, e.g., Chicago v. Morales*, 527 U.S. 41, 53 (1999).

42. The Memorandum segued directly from discussion of this unconstitutional proposal to discussion of plans to improve the relationship between the FPD and the Somali community. Chief Bohlen wrote:

I believe building trusting relationships with the diverse downtown culture is vital to improve police and community relations, cooperatively work towards common goals, establish enforceable laws and make genuine progress. **The Somali culture is here to stay and I have personally observed intolerance from every direction in this city** and it is not solely a problem with one ethnic group. They are a vital part of the Faribault economy, rent apartments downtown, and communicate differently than the long time residents. The new residents do not have a Somali paper, Somali TV station, and large yards to gather in so they do what their culture has taught them. They talk and visit on the street.

See Ex. B.

43. The Bohlen Memorandum demonstrates the City of Faribault's awareness that (1) concerns about downtown safety were not borne out by facts about crime; (2) these concerns were a product of community animus directed at Somali residents of downtown Faribault; and (3) the City could not legally keep its Somali residents from innocently "loitering" on city sidewalks.

44. Six months later, on March 18, 2014, the Joint Committee discussed a "Rental Licensing Ordinance and Crime Free Housing Program."

45. As part of this discussion, according to the notes, "[t]he Chief of Police and City Attorney stated that a loitering ordinance may only lead to legal issues when the real issues are more closely related to nuisance violations." Thus, the discussion once

again explicitly positioned the draft rental licensing ordinance as a substitute for the unconstitutional loitering ordinance that had been proposed. *See* Nicole Stelle Garnett, *Relocating Disorder*, 91 Va. L. Rev. 1075, 1090–01 (2005) (arguing that municipalities increasingly turn to property regulation tools in an effort to avoid legal challenges to policing policies aimed at controlling low-income populations).

46. In advance of this meeting, Community Development Director Peter Waldock prepared a memorandum for then-City Administrator Brian Anderson, attaching a draft ordinance substantially similar to the rental licensing ordinance that was subsequently enacted. (The Waldock Memorandum is attached hereto as Exhibit C.) The Waldock Memorandum explicitly linked the Ordinance to the October discussion of purported crime downtown for which the Bohlen Memorandum had been prepared, stating:

At the City Council Joint Committee meeting last October, the City Council heard concerns expressed regarding housing conditions in some rental units downtown and **concerns with problem tenants in the community**. The City Council directed staff to review the issues and recommend ways in which the City could address the issues. As a follow up to this discussion, staff presented a number of ideas for the City Council to consider addressing the concerns. **Among these was participation in a Crime-Free Multi-Housing Program and upgrading the rental registration ordinance to convert to a rental licensing program.**

See Ex. C.

47. The Waldock Memorandum demonstrates that the City of Faribault viewed the Crime-Free Housing Program and the Ordinance as a means to address ongoing “concerns” about downtown—concerns which Chief Bohlen and the City had recognized were motivated by animus and not borne out by facts about crime. *See id.*

48. Moreover, the Crime-Free Housing Program that the Joint Committee discussed, and that the City eventually adopted, follows a model created by the Arizona-based International Crime Free Association. The proposed Crime-Free Housing Program, far from being tailored to respond to the realities of crime in Faribault, was an off-the-rack solution to a problem that did not exist.

49. The Joint Committee again discussed the draft ordinance at its April 29, 2014 meeting. In advance of that meeting, Chief Bohlen and Peter Waldock prepared another memorandum to the Joint Council Committee. This memorandum contained no discussion of any recent increase in crime or calls for police service in Faribault.

Nonetheless, the memorandum stated:

By not addressing problematic tenants through a CFMH program, quality tenants will vacate problem properties, increasing calls for service to PD staff and **ultimately change the landscape of tenants renting within Faribault**. The city will continue to experience lower quality rental housing. The police department will not have a route to address problem tenants as calls for service and complaints increase, taxing existing staff.

50. The draft ordinance had a first and second reading before the City Council in June, and it was published on June 27, 2014. City of Faribault, Ord. No. 2014-009, An Ordinance Repealing and Replacing Chapter 7 and Repealing Chapter 21 of the Faribault City Code (“the 2014 Ordinance”). It passed unanimously and went into effect on January 1, 2015.

51. In 2015, Council Member Janna Viscomi, who had voted to enact the 2014 Ordinance, told the Faribault Daily News in a video interview that she had been trying to get the City Council to address the issue of loitering downtown for more than three years. She acknowledged the racial dynamics of her concern repeatedly. In response to a reporter’s prompt about the large Somali presence downtown as “the elephant in the

room,” she stated: “[H]ere’s the thing, you know, I’ve got a lot of friends that are Somali, okay. So I would not have one problem going up to any of them and saying what are you doing, you can’t be sitting on that guy’s car.” She also stated that she has “seen a change firsthand” over the last eighteen years—during the period when Faribault’s Black and Somali population expanded rapidly—and continued, “yes, I want to kumbaya and embrace everyone, and yaa,” but that she believes business is harmed by the loitering.

City Officials’ Statements About Enforcement of the 2014 Ordinance

52. In January 2016, then-City Manager Anderson and then-Mayor John Jasinski discussed the Ordinance on a City-produced Faribault Community Connections video. In that video, Anderson touted the fact that 31 families had lost their homes as a result of the Ordinance’s Crime Free Housing Program. The following exchange then took place:

CITY MANAGER ANDERSON: [I]f you want to know you know why are we putting more officers out on the streets; it’s to help fund programs like this, the Crime Free Multi Housing, and it’s to help get rid of some of the some of the, you know, what would you say, the residents that normally are –

MAYOR JASINSKI: **Undesirable?**

CITY MANAGER ANDERSON: **The undesirable ones [. . .]**

53. This group of “undesirables” includes not only adults who had not been charged with or convicted of any crime, but also children living in households targeted for eviction.

54. In that video, the then-Mayor, who served from 2008 until 2016, again linked unsupported concerns about downtown crime to passage of the Ordinance and further affirmed that community animus motivated the Ordinance. He stated:

[T]hat's something that we had heard as a council that we know **the downtown, the housing stock, the crime, and things like that** that we wanted to get out. . . . you know, it makes it a little bit difficult on the property owners, the rental property owners. It's a little bit more in-depth and they have to do a few more things. But again to **clean up our housing stock, and residents**, and things like that.

55. Faribault City Council Member Janna Viscomi, who voted to enact both the 2014 and 2017 versions of the Ordinance, used coded racial terms to describe her views on City housing policy in a 2016 interview on Faribault Community Television. Council Member Viscomi stated that the City needed to develop policies to attract “higher income people” to balance the “lower-income people” in Faribault “or **we are going to flip like Detroit in a few years.**”

Passage of the 2017 Ordinance

56. In 2017, Faribault revised the Rental Licensing Ordinance, but the core purpose and intent of the Ordinance remained unchanged.

57. In March 2017, the Faribault Daily News ran a series of articles discussing the first two years of enforcement of the Crime-Free Housing Program. Sergeant Mark Krenik, who runs the Program for the FPD, told the paper that he and city staff would be revisiting certain areas within the ordinance in order to “one, make it easier to understand, and, two, make it easier to enforce.” Gunnar Olson, *Mixed emotions: Landlords, officials measure success differently for Crime-Free Multi-Housing program*, Faribault Daily News, Mar. 29, 2017.

58. These ideas were repeated throughout the formal revision process. In May 2017, Chief Bohlen and Deanna Kuennen, now Director of Community and Economic Development, presented the City Council Joint Committee with a memorandum outlining

proposed changes to the Ordinance. The memorandum stated “Staff has worked with legal counsel to update the Rental Dwelling Licenses ordinance to ensure that the ordinance continues to serve its intended purpose.” An August version of that memorandum stated that the revisions would provide the City with tools “to effectively meet the expressed objectives of the City as well as more fully pursue the enforcement of the Ordinance.”

59. Similar language appears in the minutes of the City Council meeting at which the first reading of the revised ordinance was approved. A second reading followed on September 26, 2017. It passed unanimously and was published on September 29, 2017. City of Faribault, Ordinance No. 2017-13, An Ordinance Repealing and Replacing Sec. 7-36 Through Sec. 7-45 of Article V of Chapter 7 of the Faribault City Code, Ex. A (the “2017 Ordinance” or the “Ordinance”).

60. The 2014 Ordinance and the 2017 Ordinance describe the purpose of the Rental Licensing Ordinance in identical language. *See* 2014 Ordinance § 7-36; 2017 Ordinance § 7-36.

61. These statements, combined with the lack of significant changes to the substance of the Ordinance with the 2017 revisions, make clear that the animus involved in the passage of the 2014 Ordinance infects the current Rental Licensing Ordinance.

62. The City of Faribault’s budget document for the 2018 fiscal year, adopted on December 12, 2017, estimated that the Crime Free Housing Program had led to 90 evictions of “problem tenants.”

The Rental License Ordinance is Part of a Plan to Remove Low-Income Black Residents From Faribault's Downtown

63. The City enacted and deployed the Rental License Ordinance as one component of a broader effort to replace affordable housing downtown, occupied disproportionately by low-income people of color, with more expensive housing, as a means of forcing current residents to vacate.

64. Former Mayor John Jasinski addressed these issues in a 2016 interview on Faribault Community Television. He discussed the “inflow” of a “nationality” to Faribault, and the need to find “**housing where the Somali family can live outside of downtown**” in order to “revitalize downtown.” Then-Mayor Jasinski voted in favor of the 2014 Rental Licensing Ordinance.

65. In another 2016 interview on Faribault Community Television, Council Member Rowan, who voted in favor of both the 2014 Ordinance and the 2017 Ordinance, suggested that a lack of “quality rental properties. . . for the millennials” was one of the most pressing issues facing Faribault, caused by not “enforcing existing laws.” He described Crime-Free Multi-Housing as a “step[]” in that direction. He also stated that Faribault is “going to have to make changes” to become appealing to the “millennial generation that’s coming out of college” and getting “good paying jobs.”

66. Since at least 2011, plans for downtown have included replacing its current low-income Black residents with more affluent tenants.

67. The 2011 Market Analysis performed for downtown noted that a majority of tenants downtown are low- and very-low-income households, and observed that “low income and/or Section 8 type living quarters should be developed outside of the

downtown district.” The same analysis states that “the Somalis . . . are often low income, seeking work, looking for affordable housing.”

68. In 2014, Faribault engaged in a community planning process called Community Vision 2040, with an outside consultant. Among the strategic priorities identified in the Community Vision 2040 report was “A Vibrant Downtown.”

69. Goals listed under that heading included both “[e]stablish[ing] market rate and high-end residential [units] in the downtown” and “[e]nhanc[ing] the appearance of downtown buildings and the streetscape.” To accomplish that latter goal, the report suggested enforcing, among other things, the recently-passed “rental ordinances.”

70. The report noted that “Faribault has become significantly more diverse. Faribault was 96 percent white in 1990. It is approximately 75 percent white today. There are approximately ten times more persons of color in Faribault today than 25 years ago, and Faribault has approximately 50 percent more persons of color, as a percentage, than the average Minnesota community.” Nonetheless, the report exclusively employs images of white people to illustrate Faribault. Not a single person of color is depicted in Faribault’s “vision” of its future.

71. Faribault subsequently established a “Downtown Housing Improvement Program,” through its Housing and Redevelopment Authority, which provides loans “to encourage the development and redevelopment of high-quality market-rate housing.”

72. Specifically, the program notes the goal of “renovating substandard housing on upper floors into high-quality market-rate housing.” In order to participate in the program, a residential developer must pledge, among other things: (1) to comply with the requirements of the Crime-Free Multi Housing Program; (2) to **bar all tenants who**

use a subsidy to pay their rent for at least ten years; and (3) to charge rents **above** a minimum threshold, so that rents do not fall below city-dictated levels.

73. Among the improvements eligible for city funding are “cabinets, molding, and countertops,” as well as “amenities that add exceptional value,” such as fitness rooms and “pet spas.” The addition of these amenities is intended to attract higher-income tenants.

74. The Downtown Housing Improvement Program aims to subsidize the conversion of affordable rental housing downtown, currently inhabited disproportionately by low-income people of color, into housing that would not be affordable to this population. In order to ensure this effect, the City bars recipients of Housing Choice Vouchers—who are overwhelmingly of Somali ancestry in Rice County—from living in the units it subsidizes, although their vouchers might enable them to afford the units.

75. Per the City of Faribault website, this program continues to solicit applications to encourage the creation of more expensive housing.

76. These statements and policies make clear that the Rental Licensing Ordinance was enacted as part of a broader plan by the City of Faribault to push low-income residents of color out of the downtown area. At the same time, the City has done nothing to increase the stock of affordable and subsidized housing elsewhere in Faribault.

The Rental Licensing Ordinance: A Summary

77. The Rental Licensing Ordinance requires that any person operating a rental dwelling in Faribault obtain a rental license, § 7-38(a)(1), and sets out numerous requirements for procuring and maintaining such a license, as well as criminal penalties for landlords who fail to comply with those requirements.

78. The Rental Licensing Ordinance exempts just two categories of occupied rental dwellings from its coverage: Owners who rent a single dwelling to a relative and “snowbird[s]” who rent out their homes for fewer than 120 days each year while residing outside of Minnesota. § 7-38(a)(1)(a)–(b).

79. Licensees must file complete applications with the city, pay registration fees, stay current on taxes, fines, and penalties, and remain in compliance with all federal, state, and local laws. §7-38(c)–(e). A license is generally valid for two years, §7-38(b), although a provisional license of shorter duration is available in certain circumstances, § 7-39.

80. The Ordinance also requires that landlords who do not live in designated nearby Minnesota counties register a local agent with the City. § 7-40(a).

81. The Ordinance requires licensees to keep a “register of occupancy for each dwelling unit,” containing among other things: its address, “legal names and date of birth of adult occupants,” dates on which renters occupied and vacated the unit, and a “chronological list of complaints and requests for repair” by tenants, along with responses. § 7-40(g). This register “shall be made available for viewing or copying by the City of Faribault at all reasonable times.” *Id.*

82. The Ordinance also limits the maximum number of occupants in a rented home to two times the number of legal bedrooms plus one. § 7-40(h)(2)(b). This number can be increase by one person if *all* occupants of a sleeping room are under two years old. § 7-40(h)(2)(c). This requirement will be discussed in further detail below.

83. The Rental Licensing Ordinance prohibits “disorderly conduct,” defined broadly, and determined in most instances by a single police officer, in licensed rental

dwellings. § 7-41(a)–(d). Criminal charges need not be brought for a finding of disorderly conduct, and a dismissal or acquittal of charges does not bar police from instructing a landlord to take action. § 7-41(c). After three instances of disorderly conduct stemming from the same tenancy, the City may order the licensee to evict all occupants of the unit. § 7-41(b)(3). This section will be discussed in further detail below.

84. Licensees must also participate in Faribault’s “Crime free housing program,” modeled on the “Minnesota Crime Prevention Association’s Crime Free Multi Housing Program.” § 7-42 (the “Crime Free Housing Program”).

85. In detailing the purpose of the Crime Free Housing Program, the Ordinance states the City Council’s finding that “repeated police calls to rental dwelling units in the city related to disturbances or criminal activity have taxed law enforcement resources.” § 7-42(a). On information and belief, no evidence supporting this finding was before the City Council when it enacted the Ordinance, or its predecessor, the 2014 Ordinance.

86. The Crime Free Housing Program requires all Faribault landlords to comply with three basic components:

- (1) Attend a certified eight-hour crime-free housing course presented by police, fire, public housing and others.
- (2) Use a written lease which includes the crime-free/drug free housing lease addendum.
- (3) Conduct a criminal background [sic] of all prospective tenants 18 years and older and, upon request, provide a copy of third-party background check procedures for tenants.

§ 7-42(b). The FPD can require a landlord to evict an entire household when the FPD believes the terms of the lease addendum have been violated. § 7-42(f)(1). The requirements of the Crime Free Housing Program are discussed in more detail below.

87. The Ordinance makes it a misdemeanor, punishable by up to 90 days in jail, to violate any of its requirements. § 7-42(f)(5).

88. The Rental Licensing Ordinance provides for required inspections of rental housing and a process for issuance and appeal of orders when properties do not fully comply with City Code and other requirements. § 7-43. It also sets out the process for dwellings found unfit for human habitation. *Id.*

89. Finally, the Ordinance details the circumstances in which the City can deny, suspend, non-renew, or revoke a license, and describes the process provided to landlords in such circumstances. § 7-44.

The Tenant Control Policies

90. The Rental Licensing Ordinance and its Crime Free Housing Program, taken together, grant the City tremendous control over the lives of Faribault renters. By exerting pressure on their landlords, the Rental Licensing Ordinance provides Defendants with tools to harass and evict entire families for alleged criminal conduct that does not even necessitate criminal prosecution. Several distinct pieces of the Rental Licensing Ordinance work in tandem to provide Defendants with these tools.

91. As part of the Crime Free Housing Program, all Faribault landlords are required to include extremely broad and vague contract language adopted by the City, “or language that is contractual and legal equivalent [sic]” in each of their private lease agreements with tenants. § 7-42(e). This language, the “Crime Free/Drug Free Lease

Addendum” (“the Lease Addendum”), makes a single violation of its requirements a “material violation of the lease and good cause for termination of tenancy.” § 7-42(e)(6).

92. The Lease Addendum makes it a violation of the lease for not only members of the household to engage in the prohibited activities, but also for guests or people “under the resident’s control,” without further definition, to engage in these activities. § 7-42(e).

93. Prohibited activities range from drug sale and manufacture, to possession of drug paraphernalia, to “acts of violence or threats of violence.” § 7-42(e)(1)–(5). That last category is a loosely-defined catchall, including but not limited to “unlawful discharge of firearms, prostitution, criminal street gang activity, intimidation, or any other breach of the rental agreement that otherwise jeopardizes the health, safety, or welfare of the landlord, his agents, or tenants.” § 7-42(e)(5).

94. The Lease Addendum prohibits most of these activities “on or near the said premises,” but it prohibits certain crimes involving illegal drugs, including felony possession, “at any locations, whether on or near the dwelling unit premises or otherwise.” § 7-42(e)(4). Because that provision, like the others, applies to guests and other people “under the resident’s control,” it allows eviction purely based upon association: if someone who has been a tenant’s guest engages in drug crime anywhere, whether in Faribault or elsewhere, the tenant can be punished.

95. If the FPD determines by a preponderance of the evidence that someone has engaged in felony-level conduct violating the Lease Addendum on the rental property, they must require the landlord to evict the entire family residing in the unit. § 7-42(f)(1). If the FPD determines that someone has engaged in misdemeanor-level conduct

on the property that violates the Lease Addendum and “threatens the peaceful enjoyment or safety of any other resident or neighbor to the premises,” the Police Department has discretion to determine whether to order the eviction of the entire family. *Id.*

96. The FPD can order eviction on either of these bases without even bringing criminal charges, and even a dismissal or acquittal on the relevant charges is not a bar to ordering eviction. § 7-42(f)(2).

97. According to public records, on one occasion in 2016, the FPD issued a lease termination demand notice targeting a household based on a March 22 search of the home for drugs. The officers’ reports describe the execution of the search warrant without mentioning that any drugs were found, and the tenant was never convicted for a crime related to drugs found in the home. The tenant had, however, been charged with possession of marijuana *in his car* the week before. Accordingly, it appears that although law enforcement was unable to find drugs in the home, the FPD nonetheless opted to force the tenant’s eviction.

98. The vagueness of the Lease Addendum language, combined with its extraordinary breadth, lends itself to arbitrary and discriminatory enforcement.

99. There is no exemption in the Ordinance when the felony-level conduct was an act of domestic violence, meaning that its text allows for the eviction of a victim of domestic violence and the rest of her family along with the individual alleged to have committed the crime.

100. While the Ordinance provides for a hearing for a landlord who wishes to contest an eviction order, there is no such provision of process for the impacted tenants. § 7-42(f)(2).

101. The disorderly conduct provisions of the Ordinance, § 7-41, create an additional framework for forcing landlords to evict tenants, this time after three incidents of “disorderly conduct” within twelve months, § 7-41(c)(3).

102. Disorderly conduct is defined here with exceptional breadth. Thirty-three separate categories of crime can constitute disorderly conduct, including underage drinking, possession of marijuana or drug paraphernalia, and disturbing the peace and quiet of neighbors. §§ 7-41(b)(7), (5), (1), (10). Moreover, the Ordinance specifically states that disorderly conduct is not limited to these enumerated categories. § 7-41(b).

103. The Ordinance explicitly permits the FPD to issue disorderly conduct notices without bringing criminal charges, and explicitly allows the disorderly conduct determination to stand even if a tenant is acquitted of a related criminal charge. § 7-41(c).

104. A first instance of disorderly conduct results in a notice to the landlord instructing the landlord to take steps to prevent further violations; a second instance results in a notice requiring the landlord to provide information about the steps they have taken. § 7-41(c)(1)–(2). After a third instance, the landlord is directed to evict the entire household, and/or the City will act to suspend, revoke, or decline to renew the landlord’s rental license. § 7-41(c)(3).

105. The Ordinance provides no process through which tenants can contest these determinations. Landlords can contest the first and second notices only by requesting reconsideration from the police officer who made the disorderly conduct determination; they can contest the third notice with the City Council. § 7-41(d). These deficits in process enhance the risk of arbitrary and discriminatory enforcement.

106. For example, police have tremendous discretion to force the eviction of an entire family as a result of several noise complaints. First and second disorderly conduct notices also force landlords to take action to discipline their tenants, even where the landlord does not see the underlying conduct as an issue affecting the landlord-tenant relationship.

107. The Ordinance also allows the City to revoke a landlord's rental license altogether (or to deny, suspend, or not renew that license) if, among other reasons, a landlord fails "to actively pursue the eviction of a tenant or otherwise terminate the lease with a tenant" who has violated the disorderly conduct provisions or the Lease Addendum or who has "otherwise created a public nuisance" in violation of the law. § 7-44(c)(6).

108. In sum, the Ordinance allows the FPD to inject itself into the relationship between landlord and tenant from the inception of the lease. It allows police to order eviction of an entire family based upon allegations of criminal conduct by them or others, even without charging anyone with a crime.

109. By providing the FPD with this tremendous discretion, the Ordinance significantly expands the impact of any bias in policing decisions.

110. For example, public records demonstrate that, in 2016, police responded to eight separate complaints involving a white household before issuing a first disorderly conduct notice for a noise violation. In contrast, Police issued a first disorderly conduct notice that year to the household of a Black man who had been in a single loud verbal argument with another Black man outside of his building. The same year, police issued a first disorderly conduct notice to the household of a Latina woman who had been home

alone and screaming in grief over her aunt's recent death, despite no prior incidents noted.

111. In 2017, police issued a first disorderly conduct notice to a household consisting of a Black mother and her two children after a neighbor called in a noise complaint, which the police report describes as having to do with the reaction to a moth trapped in the house. Police issued this notice on the very same day that they issued an eviction demand aimed at excluding from the unit a man who had *stabbed the mother in the throat* a month prior.

112. Under the Ordinance, aggressive or bias-based policing can result in entire families unjustly losing their homes. In 2016, the FPD sent a notice demanding eviction of an entire household after a fifteen-year-old living there was arrested for the petty misdemeanor of possession of a small amount of marijuana.

113. Tenants who lose their homes because of an eviction demand from the FPD sometimes leave Faribault, believing that no landlord will house them and risk a conflict with police.

The Criminal Records Screening Policy

114. The Ordinance requires Faribault landlords to conduct criminal records checks for all potential tenants. The City supplements this language with instructions to landlords telling them not to house anyone with a criminal record. These instructions, combined with the Ordinance text and Faribault's enforcement practices, constitute Defendants' Criminal Records Screening Policy.

115. The Ordinance requires licensees to “[c]onduct a criminal background [sic] of all prospective tenants 18 years and older and, upon request, provide a copy of

third party background check procedures for tenants.” § 7-42(b)(3); *see also* § 7-42(d) (“All licensees will conduct criminal background checks on all prospective tenants eighteen (18) years and older.”)

116. According to the Ordinance, the criminal background check must cover “at least the last three (3) years” and be a “statewide” check. § 7-42(d)(1). This check “must be done ‘in person’ or by utilizing the most recent update of the state criminal history files.” *Id.* If potential tenants have not lived in Minnesota for at least three years, the Ordinance requires searching tenants’ previous states of residence. § 7-42(d)(2)–(3).

117. The criminal background check requirements in the current Ordinance differ in only one respect from those in the 2014 Ordinance: whereas the 2014 Ordinance made it mandatory for landlords to provide written screening criteria to potential tenants, the current Ordinance says only that landlords “should” have such criteria. *Compare* Ord. No. 2014-009, § 7-44(4)(e) *with* Ord. No. 2017-13, § 7-42(d)(5).

118. The City’s website contains a Frequently Asked Questions document concerning the Crime Free Housing Program. This document describes the required background check in terms that contradict the text of the Ordinance. It requires that landlords must conduct a *national* criminal background check on all prospective tenants who are eighteen years old or older, and that such a check be conducted by a “reputable agency that utilizes the national database.” It states that “[c]riminal background checks conducted by the Faribault Police Department no longer meet the ordinance requirements.”

119. The Frequently Asked Questions document does not suggest any limit on how far into the past a national criminal background check should extend.

120. The Frequently Asked Questions document makes clear that Defendants' implementation of the Criminal Records Screening Policy is not limited by the text of the Ordinance.

121. The City of Faribault's website also contains a page on "Crime Free Multi-Housing." This webpage provides "Resources," which it describes as "good resources for rental owners, managers, and residents."

122. Among the four documents listed as resources is a document entitled "The Importance of Screening, attached hereto as Exhibit D. This document cautions landlords that, given the costs of eviction, "it is more important than ever to do a thorough job of tenant screening." It then provides suggested screening criteria, including "*denying* applicants who: [...] Have a criminal history." It also instructs landlords to ask potential tenants if they have "ever been convicted of a crime, including a felony, gross misdemeanor, or misdemeanor, anywhere in the United States." Ex. D.

123. The "Importance of Screening" document places no limitation on what kinds of criminal records should bar potential tenants from housing. It does not exempt arrests, old convictions, or low-level crimes. *See id.*

124. According to the Ordinance, landlords must retain the results of the background check for at least one year, or "if the subject of the check becomes a tenant of the licensed premises, one year after the subject of the check has ceased to be a tenant." § 7-42(d)(4). This information "shall be available for inspection upon request by the city." *Id.*

125. While the 2014 Ordinance was in force, the FPD repeatedly cited landlords for failure to comply with the provisions of the Ordinance related to criminal

record screening and retention of criminal record screening information. According to public records, on eight separate occasions between 2015 and August of 2017, landlords received criminal citations for failing to conduct criminal record screening. Upon information and belief, this practice continues under the current Ordinance.

126. The FPD also contacts the landlords of individuals whom police know to have criminal records to ask questions about their decisions to allow these individuals to move in. These police “compliance check[s],” sometimes initiated with “rental information demand notices,” can result in misdemeanor prosecutions for landlords. Police have even targeted landlords for enforcement when they learn from a probation officer that an individual on probation is residing in a landlord’s property. These contacts serve as a further reminder to landlords that police prohibit them from renting to people with criminal records.

127. In every single case in which public records show that the FPD affirmatively contacted a landlord to ask questions about the landlord’s compliance with the Ordinance, that landlord was currently housing a tenant with a criminal record. In a number of these cases, the tenant’s criminal conviction was more than three years old.

The Occupancy Restriction

128. The Ordinance also introduced into the Faribault code an Occupancy Restriction Policy that results in evictions for renting families. For Faribault’s large families, disproportionately Somali as a group, it can mean that there are simply no rental homes in Faribault in which they may legally live as a household.

129. The Ordinance states that a rented home cannot house a family numbering more than two times the number of legal bedrooms plus one. § 7-40(h)(2)(b). For

example, that no more than five people can legally live in a two-bedroom apartment. That figure increases by one person only if all occupants of a sleeping room are under two years old. § 7-40(h)(2)(c). This Occupancy Restriction does not allow for additional occupants even when bedrooms are very large or when an additional room, such as a living room, could be used as a bedroom.

130. Under the Occupancy Restriction, because landlords want to maintain their licenses in good standing, a Faribault family consisting of two adults and three small children will be evicted from a two-bedroom apartment when they have another baby. Eviction is similarly required when a baby is born to a two-parent family with five older children living in a three-bedroom apartment or a family with seven existing children living in a four-bedroom apartment.

131. Although Minnesota statute provides that no residential tenant may be evicted “on the basis of familial status commenced during the tenancy unless one year has elapsed from the commencement of the familial status and the landlord has given the tenant six months prior notice in writing,” Minn. Stat. Ann. § 504B.315, the text of the Ordinance makes no mention of this law and therefore purports to override it. Moreover, on information and belief, none of the information provided to landlords about the Ordinance acknowledges the state law. Faribault landlords, unfamiliar with the nuances of preemption doctrine, regularly apply the Occupancy Restriction to require eviction upon the birth of a child.

132. Plaintiffs Rukiya Hussein and Ali Ali were each forced to leave their homes upon the birth of a child as a result of the Occupancy Restriction, as described in more detail below. Plaintiff Faisa Abdi has been threatened with eviction under the

Occupancy Restriction. Numerous clients of Plaintiff Somali Community Resettlement Services have had the same experience. In fact, SCRS serves approximately five families each week who are facing this exact situation.

133. The Rice County Housing and Redevelopment Authority (“RCHRA”) administers the federal Section 8 Housing Choice Voucher Program in Rice County. Through the program, some low-income Faribault families receive a housing subsidy to help them pay rent in private housing units. Under RCHRA’s Section 8 program, six people can live in a two-bedroom unit, eight people can live in a three-bedroom unit, and ten people can live in a four-bedroom unit. As a result, the Ordinance forces the evictions of families from apartments that RCHRA would allow them to stay in.

134. According to the 2016 American Community Survey the average renter household nationally contains 2.53 people. Given that Somali households compose less than one tenth of one percent of renter households nationally, the figure for non-Somali household size is substantially the same. By contrast, for the population of Somali ancestry, the average renter-occupied household contains 3.62 people, making Somali renter households nearly 50% larger than non-Somali renter households generally.

135. The average family size for households receiving Section 8 in Rice County is 4 people. Given that a significant majority of Section 8 recipients are of Somali national origin, this suggests that Somali families in Rice County are even larger than this national statistic suggests. Moreover, one-quarter of Rice County’s Section 8 households are composed of six or more people.

136. There are at least 71 Somali families in Faribault consisting of six people or more who are actively seeking housing, representing at minimum 40% of all persons

of Somali ancestry in Faribault. Many Somali families have households of ten, eleven, or twelve members.

137. In contrast, the average renter household in Faribault contains 2.37 people, indicating that non-Somali households in Faribault are far smaller than Somali households.

138. There is a severe shortage of rental housing available for large families in Faribault. A recent draft of the 2018 Rice County Comprehensive Housing Study noted the limited availability of four-bedroom rental units and the nonexistence of available five-bedroom units.

139. In 2015, when local social service agency Three Rivers Community Action opened Prairiewood Townhomes, an affordable housing development in Faribault containing nineteen three-bedroom units and six four-bedroom units, every single unit had been leased before it was built. There is currently a long waiting list for those units. As a result, a large family evicted because of the Ordinance and its occupancy standards may be unable to find any legal housing in Faribault at all.

140. Because large Faribault families are disproportionately Somali, Somali families are disproportionately likely to lose their homes, and sometimes to lose their residency in Faribault altogether, as a result of the Occupancy Restriction.

Intentional Discrimination in the Passage of the Ordinance

141. The Rental Licensing Ordinance was adopted with the express intent and purpose to discriminate against Somali and Black people on the basis of their race and national origin.

Direct Evidence

142. There was a specific and articulated link between animus against Black Somali residents of Faribault and the passage of the Ordinance.

143. The October 2014 Bohlen Memorandum, part of the City Council's legislative record, stated that community concerns about downtown crime were not borne out by an examination of police records, and explicitly linked these concerns to "fears and cultural clashes taking place" as well as the proximity of a "very large diverse population, often observed standing in groups." *See* Ex. B.

144. Chief Bohlen went on to explain that "[t]he Somali culture is here to stay and [he had] personally observed intolerance from every direction in this city." He noted that these "new residents do not have a Somali paper, Somali TV station, and large yards to gather in so they do what their culture has taught them. They talk and visit on the street." *Id.*

145. According to the Waldock Memorandum, drafted by the City's Community Development Director and introduced into the legislative record, "participation in a Crime-Free Multi-Housing Program and upgrading the rental registration ordinance to convert to a rental licensing program" were City staff's ideas for addressing the "concerns" about crime downtown, which Chief Bohlen had written were nothing more than manifestations of bias against Somalis. *See* Ex. C. The first draft of the 2014 Ordinance was put before the City Council explicitly as a response to these "concerns."

146. There were no facts in the legislative record suggesting an increase in crime downtown, and the Chief of Police had found any such concerns to be unfounded.

147. That the City Council ignored statements from the Chief of Police that there was no crime problem downtown and that any concerns were attributable to bias, and nonetheless proceeded to enact an Ordinance allegedly aimed at controlling crime downtown represents a relevant departure from a normal substantive conclusion.

148. The 2017 revisions to the Ordinance were intended to allow the City to “more fully pursue the enforcement of the Ordinance,” and did not represent any significant break with the policies or purpose of the 2014 Ordinance. The 2017 Ordinance therefore incorporates the animus that fueled the passage of the 2014 Ordinance.

Discriminatory Effects

149. There are also ample additional facts supporting the role that animus played in the passage of the Ordinance.

150. In Faribault, an ordinance targeting rental housing and its occupants will inherently have a starkly disparate impact on Black people. Approximately 90% of Faribault’s Black households are renter households, as compared to just 28% for non-Hispanic white households.

151. The fact that the ordinance targets people with criminal records causes it to have a further discriminatory effect on Black people, who are *more than ten times as likely as white Minnesotans* to be incarcerated in Minnesota’s prisons. These disparities are explored further below with respect to the disparate impact of the Criminal Records Screening Policy.

152. Moreover, the fact that the Ordinance creates housing consequences for tenants after police make note of their allegedly criminal conduct further suggests that there will be a disparate impact on Black people. One study showed that in Rice County,

Black people are 3.6 times more likely to be arrested than whites for marijuana possession. Minnesota 2020, *Collateral Costs: Racial Disparities and Injustice in Minnesota's Marijuana Laws* 4, 16 (April 2014).² This is despite studies which show Black people and white people use marijuana at similar rates. ACLU, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests* 4 (2013). The 2003 Minnesota Racial Profiling Report, submitted to the Minnesota Legislature as required by statute, found that Black drivers in Faribault were stopped by police at rates “considerably higher than would be expected” based on estimates of the driving population, while whites and American Indians were stopped at lower than expected rates. The Council on Crime and Justice & Institute on Race & Poverty, *The Minnesota Racial Profiling Report – Faribault Police Department* 4, 14 (Sept. 22, 2003).³

153. The Occupancy Restriction Policy ensures yet another discriminatory effect of the Ordinance. Because large families inevitably lose their homes as a result of the Occupancy Restriction, and because those families in Faribault are disproportionately Somali Black families, the Occupancy Restriction adversely impacts Somali Black families. Moreover, because of the known shortage of rental units available for large families in Faribault, evictions due to the Occupancy Restriction Policy result in forcing some Somali Black families out of Faribault altogether.

² https://www.mn2020.org/assets/uploads/article/collateral_costs_web.pdf.

³ <https://www.leg.state.mn.us/docs/2003/mandated/030508/www.crimeandjustice.org/Pages/Publications/Reports/Racial%20Profiling%20Study/Faribault-Final.pdf>.

Explicit and Coded Expressions of Animus by City Officials

154. Legislators and city staff repeatedly used coded expressions of discrimination in discussion of the Ordinance and of downtown Faribault leading up to the 2017 revisions.

155. In a 2016 City-produced video, then-City Manager Anderson and then-Mayor Jasinski, a voting member of the City Council when the 2014 Ordinance passed, referred to the tenants that the Crime-Free Housing Program had helped to “get rid of” as “**undesirables.**”

156. In 2016, then-Mayor Jasinski, in a separate interview, discussed the need to find “**housing where the Somali family can live outside of downtown**” in order to “revitalize” downtown.

157. In 2015, Council Member Janna Viscomi discussed on video the need for a loitering ordinance and increased police presence downtown because of men standing on the sidewalk, and noted she had “seen a change first hand” over the last 18 years, the period during which Faribault’s Black and Somali population grew significantly. In a 2016 video interview, she stated that the City needed to attract higher-income people to balance the lower-income people, “**or we’re going to flip like Detroit in a few years.**”

Community Animus and Historical Background of the Decision

158. Moreover, community animus targeted at Black Somali residents, in the form of unsubstantiated “concerns” about downtown crime, motivated the passage of the Ordinance. Memoranda in the legislative record make that clear.

159. Community animus against Black Somalis downtown also forms a crucial part of the historical background of the decision. A 2011 report noted the “negative

perception” of downtown safety was due in part to “**low income residents . . . loitering and/or congregating**” downtown. That report suggested that “low income and/or Section 8 type living quarters should be developed outside of the downtown district.”

160. 2013 statements in the Faribault Daily News also demonstrate community animus. The newspaper reported that downtown business owners were complaining about drug activity and theft, although police statistics did not corroborate that concern. One resident quoted explicitly referred to the “new look” of downtown’s population when speculating about why some feel downtown is unsafe. That same year, a letter to the editor discussed the writer’s fear of loitering Somalis, and suggested that Faribault should not “permit[] this activity.”

161. The creation and administration of the Downtown Housing Improvement Program is also part of the relevant historical background. With that Program, the City explicitly funds developers to transform downtown housing affordable to low-income people—and populated disproportionately by Black people—to housing including, for example, “pet spas” for wealthier people. To ensure that this program will result in the right kind of residents, the City requires that developers receiving funding charge rents above City-dictated thresholds and prohibit anyone who receives a housing subsidy from living in their units.

162. Moreover, there is no legitimate, non-discriminatory, and non-pretextual justification for the Ordinance. As a result, the enactment of the Ordinance constitutes prohibited intentional discrimination.

Disparate Impact of the Criminal Records Screening Policy

163. Because the Criminal Records Screening Policy has a large discriminatory impact on the basis of race and is not necessary to achieve a legitimate business purpose, it is unlawfully discriminatory.

164. Through the Criminal Records Screening Policy, Defendants instruct landlords to reject potential tenants with any criminal record whatsoever. Defendants require landlords to make records of their criminal records checks available to police at any time, and they follow up with landlords who have nonetheless housed tenants that police know to have criminal records.

165. Because of the Criminal Records Screening Policy, Faribault landlords reject people looking for housing when a member of the household has a criminal record. Landlords, even those who used to be flexible about accepting tenants with criminal records, have changed their policies for fear of retribution from the City if they accept these tenants now.

166. In April 2016, the United States Department of Housing and Urban Development (“HUD”) released “Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions”⁴ (“HUD Guidance”). That guidance notes that 100 million adults, nearly one-third of the U.S. population, have a criminal record of some kind. *Id.* at 1. It makes clear that because people of color are disproportionately likely to have criminal records, using criminal records to restrict housing opportunities can have a racially disparate impact prohibited under the Fair Housing Act. *Id.* at 2.

⁴ https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

167. As a result, a screening policy that “fails to take into account the nature and severity of an individual’s conviction,” as well as its recency, is unlikely to satisfy the Fair Housing Act. HUD Guidance 7. Individualized consideration of people seeking housing opportunities presents a less discriminatory alternative to barring individuals who have been convicted of crimes on any kind of blanket basis. *Id.*

168. The HUD Guidance also makes clear that barring an individual from housing based on a record of arrest, as opposed to conviction, will always violate the Fair Housing Act, because arrest records “do not constitute proof of past unlawful conduct.” *Id.* at 5.

169. Despite the existence of the HUD Guidance, the Ordinance does not alert landlords to the risk that they incur Fair Housing Act liability by excluding tenants based upon criminal records.

170. In fact, one of the questions in the Frequently Asked Questions Document is “Doesn’t the ordinance promote discrimination or profiling?” The response provided by the City begins: “No. The Federal Fair Housing Act . . . has seven protected classes. **A person’s behavior is not a protected class.**” This instruction, that complying with the Crime-Free Ordinance cannot create Fair Housing Act liability, runs directly counter to the HUD Guidance and the law.

171. Because—both nationally and within Minnesota—Black people are significantly more likely than white people to have criminal records, the Criminal Records Screening Policy has an adverse disparate impact on Black people.

172. Because criminal record statistics broken down by race are not available, incarceration and arrest rates can be used as proxies. The HUD Guidance takes this approach. HUD Guidance 3–4.

173. Nationally, Black people are incarcerated in state prisons at a rate more than 5 times higher than the rate for white people. Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* 3 (2016) (“*Color of Justice*”).⁵ The Minnesota disparity is even starker. Minnesota is one of just five states in which the Black incarceration rate is more than ten times higher than the white incarceration rate. *Id.*

174. As of July 1, 2017, 34.4% of Minnesota’s inmate population was Black, yet Black or African Americans comprised only 6.2% Minnesota’s population; thus, Black people in Minnesota are incarcerated at over 5.5 times their proportion of the population. *See* Minnesota Department of Corrections, *Adult Inmate Profile as of 07/01/2017* 3 (July 2017); U.S. Census Bureau, *QuickFacts Minnesota* (last updated July 1, 2017).

175. Much of this disparity can be attributed to the disparity in rates of arrest for drug possession. Nationally, in 2010, a Black person was 3.73 times more likely to be arrested for marijuana possession than a white person, even though Blacks and whites use marijuana at similar rates. ACLU, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests* 4 (2013).⁶ In Minnesota, according to the same analysis, the disparity was even worse: a Black person was 7.81 times more likely to be arrested for marijuana possession than a white person. *Id.* at 18, 49.

⁵ <http://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

⁶ https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf.

176. The FPD arrest data for the years 2014–2017 shows that Black people in Faribault, like Black people across Minnesota and nationally, are arrested at rates disproportionate to their share of the population. For example, in 2015, the year the Ordinance went into effect, Black people made up just 8.1% of the Faribault population but 44.8% of the arrests for “Disorderly Conduct” were of Black people.

177. In sum, both in Minnesota and in the country as a whole, people with criminal records are disproportionately Black, and Black people are far more likely than whites to have criminal records. As a result, Black people are much more likely than whites to be barred from rental housing in Faribault because of the Criminal Records Screening Policy.

178. The Criminal Records Screening Policy is not necessary to achieve a substantial, legitimate, nondiscriminatory interest of the City.

179. The ostensible purpose of the Crime Free Housing Program is to “preserve and protect the city’s neighborhoods and to promote public safety.” Ordinance § 7-42(a). If “preserv[ing] and protect[ing] neighborhoods” means keeping people of color out of Faribault, that discriminatory goal cannot save the policy.

180. Instructing landlords to exclude anyone with a criminal record, without limitation, is not necessary to achieve these goals. Instructing landlords instead to give individualized consideration to each potential tenant, and advising landlords of the need to comply with the Fair Housing Act and the HUD Guidance, is a less discriminatory alternative to the Criminal Records Screening Policy. Such a policy would serve public safety equally well.

181. Specifically, Defendant could inform landlords that, if they choose to perform criminal records screening on potential tenants, they must consider individualized factors like the nature of the conviction, the amount of time since conviction or release, rehabilitation and good conduct, including good tenancy, and current support from household and community. HUD Guidance 7. They can exclude potential tenants only where this evaluation shows that the potential tenant presents a demonstrable risk to resident safety or property. HUD Guidance 6. This approach would continue to protect public safety while reducing the number of people of color who are barred from housing in Faribault as a result of Defendants' policy.

182. The discriminatory effect of the Criminal Records Screening Policy is so large and foreseeable, and it is so unnecessary to meet any legitimate public safety goal, that it adds further support to the claim that the Rental Licensing Ordinance was adopted with intent to discriminate against Black people. The City of Faribault fully understands the effect that the Criminal Records Screening Policy has on the racial make-up of Faribault's tenant population. It nonetheless intentionally implemented and continues to pursue the policy for the express purpose of limiting the number of Black people in Faribault.

Disparate Impact of the Occupancy Restriction

183. Because the Occupancy Restriction has a large discriminatory impact on the basis of national origin and is not necessary to achieve a legitimate business purpose, it is unlawfully discriminatory.

184. The Occupancy Restriction requires Faribault landlords to evict tenants when the birth of an additional child means that the number of household members

exceeds two times the number of bedrooms plus one, regardless of the square footage of the unit or the availability of additional sleeping spaces.

185. In the context of claims of family status discrimination against landlords, HUD guidelines addressing occupancy restrictions note numerous factors relevant to determining whether an occupancy restriction is reasonable. *See* Fair Housing Enforcement—Occupancy Standards Notice of Statement of Policy, 63 Fed. Reg. 70256. These factors include the size of bedrooms and unit, the age of children, and the availability of additional sleeping areas. The Occupancy Restriction considers none of these factors.

186. HUD guidelines also note that occupancy policies may be found to be pretextual where there is evidence of discriminatory statements. *Id.*

187. Because, as detailed above, Somali families are significantly larger than non-Somali families, this policy has a prohibited disparate impact on families of Somali national origin. The disparate impact of Occupancy Restriction is enhanced by the extremely limited availability of rental units with enough bedrooms to legally house large families under the Ordinance.

188. In sum, Somali families are far more likely than non-Somali families to be evicted from their homes based upon the size of their families. They are also much more likely than non-Somalis to be forced out of rental housing in Faribault altogether as a result of the Ordinance, because their families are too large to live in any available rental units legally.

189. The Occupancy Restriction is not necessary to achieve a substantial, legitimate, nondiscriminatory interest of the City.

190. Although no purpose for the Occupancy Restriction is given in the Ordinance, Faribault would likely claim that it is necessary to protect the health or safety of tenants.

191. However, an Occupancy Restriction that fails to take into account the total square footage of the unit or its bedrooms, and that fails to account for additional available sleeping spaces—like living rooms—that are not legal bedrooms, cannot be necessary to protect health or safety. A policy that takes these factors into account is a less discriminatory alternative to the Occupancy Restriction.

192. Moreover, allowing three occupants in a bedroom only in situations when all of those occupants are under two years old is not justified by health or safety. The American Academy of Pediatrics and the Centers for Disease Control recommend that infants share a room with their parents for the first year of life. Additionally, a bedroom shared by three elementary-school-age children is not an inherent health or safety hazard. Raising this age for additional occupants is another less discriminatory alternative to the Occupancy Restriction.

193. The discriminatory effect of the Occupancy Restriction is so large and foreseeable, and it is so unnecessary to meet any legitimate public safety goal, that it adds further support to the claim that the Ordinance was adopted with intent to discriminate against people of Somali national origin. Defendant fully understands the effect that the Occupancy Restriction has on the make-up of Faribault's tenant population and nonetheless intentionally implemented the Occupancy Restriction for the express purpose of limiting the number of people of Somali ancestry in Faribault.

Individual Plaintiffs

Thelma Jones

194. Thelma Jones is a Black woman and U.S. citizen. She is the mother of Plaintiff Priyia Lacey.

195. Ms. Jones moved to Faribault in 2008, in search of a small city which would be a better environment in which to raise her children.

196. Ms. Jones worked as a home health aide for many years. Most recently, she worked for five years at Milestone Senior Living as a Certified Nursing Assistant in the memory care unit, until health issues forced her to stop working in October 2017.

197. In the fall of 2016, Ms. Jones was told by her landlord that she had two weeks to move out of the five-bedroom house she had lived in for five years, along with her children.

198. Prior to this, Ms. Jones had always paid her rent on time and had a good relationship with her landlord.

199. Public records show that about this same time, the FPD charged Ms. Jones' landlord with the criminal misdemeanors of "Rental Dwelling Registration/Fail to Register" and "C[rime]F[ree]M[ulti-]H[ousing]-Fail to Attend Training." Police noted that Ms. Jones had told them that she was a "regular renter with a lease" living in the home, making the landlord's failure to register the property and attend training violations of the Ordinance.

200. The landlord told Ms. Jones that police had made clear Ms. Jones would testify against her on criminal charges if she did not remove Ms. Jones from the house.

201. Ms. Jones and her family were forced to leave their home. The landlord was never convicted of the charges.

202. In discussing the charges against the landlord, police records also state that “The C[ri]me]F[ree]M[ulti-]H[ousing] Ordinance is designed to deter criminal activity and, if necessary, to remove problem tenants from rental properties in order to preserve order in a neighborhood,” before going on to discuss why Ms. Jones and her family constituted “problem tenants.”

203. The records state that police had “responded to complaints at this home 82 times” and characterized Ms. Jones’ home as the site of “ongoing criminal activity.” The records do not note any criminal convictions that would support this assertion.

204. The records also state that the property itself was “often found to be unsightly and unkempt” without any support for this assertion.

205. Rather than being based on any actual “ongoing criminal activity” at Ms. Jones’ home, police focused on her and her children as a result of repeated and harassing calls to the police by her neighbors, all of whom were white. Ms. Jones remembers calls to the police from neighbors with no legitimate basis when she hosted barbecues outside for her large Black family and when she hosted children’s birthday parties. She even recalls visits from the police prompted by calls when her children were outside playing on the trampoline.

206. On one occasion, one of her white neighbors told Ms. Jones that she should “go back to where [she] came from.”

207. The City of Faribault labelled Ms. Jones and her family as problem tenants not as a result of confirmed criminal activity on her property, but as a result of harassing calls to the police from her white neighbors.

208. When Ms. Jones' landlord told her that she had to leave, Ms. Jones was able to negotiate for some additional time to search for a new home for her family. After extensive searching, Ms. Jones was only able to find a much smaller two bedroom apartment. As a result, two of her older children can no longer live with her, as they were previously doing in the five-bedroom house. She was also forced to give up her family's dog because it is not allowed in the new apartment.

209. The move itself was incredibly stressful, and Ms. Jones had to stay in a hotel for three days because she could not move into the new home right away. She was also forced to rent a U-Haul for three days and put her belongings in storage.

210. She suffered emotional distress as a result of the Ordinance and its impact on her family.

211. Two of Ms. Jones' children, who no longer have bedrooms in their mother's home, are struggling to find places to live. Neither has been able to find stable housing in Faribault. One of those children, Plaintiff Priyia Lacey, is further discussed below.

212. As a result of the Ordinance, Ms. Jones and her family lost their home and have been separated from each other.

213. In addition to being too small, the new apartment is on the second floor. Climbing the stairs is difficult for Ms. Jones, who has sarcoidosis and uses oxygen.

214. Ms. Jones' current lease includes the crime-free lease addendum required by the Ordinance. She was also subjected to the required criminal record screening when she applied for the apartment, and she paid the cost of that screening.

215. As tenants of a licensed landlord, Ms. Jones and her family continue to be subject to the Ordinance, including its broad and vague prohibition on "disorderly conduct."

216. In her new home, Ms. Jones is constantly nervous about making noise, which could result in disorderly conduct violations or other penalties from the police. Ms. Jones has small grandchildren, one of whom lives with her, and they run around like children do. Although the apartment underneath them is currently vacant, Ms. Jones is constantly worried that someone will move in and complain to the police, leading to eviction.

217. Because of the size of the apartment combined with her concerns that a family gathering could lead to noise complaints and eviction, Ms. Jones has had to rent out other spaces to host family events like Easter. She has decided that she will not host children's birthday parties at home because of her fear of receiving noise complaints.

218. Ms. Jones and her family are at risk of losing their home again as a result of the Ordinance.

Priyia Lacey

219. Plaintiff Priyia Lacey is a Black woman and a U.S. citizen. She is the daughter of Plaintiff Thelma Jones. She is twenty-one years old.

220. Priyia works during the day at Inisfail, a residential facility as a Recipient Caregiver for people with mental illness. She also works nights at Cannon Valley Printing.

221. Ms. Lacey resided with her mother, Ms. Jones, before her family was forced out of their home.

222. As a result of the Ordinance, Ms. Lacey and her family lost their home and have been separated from each other.

223. Ms. Lacey was pregnant at the time she lost her home. She had never lived on her own before and could not afford to pay rent on her own. She wished that she could continue to live with her mother who provided her both emotional and financial support. This time was stressful for Ms. Lacey and she struggled.

224. She suffered emotional distress as a result of the Ordinance and its impact on her family.

225. Ms. Lacey has a nine-month-old baby. She has actively sought, and continues to seek, housing in Faribault without success. Ms. Lacey wants to live in Faribault to be close to her family.

226. In 2016, Ms. Lacey applied to the Faribault H.R.A. for public housing. She finally made it to the number two slot on the waiting list and filled out her paperwork for an apartment, which would allow her to be close to her family and would be affordable. Faribault H.R.A. sent her a letter dated February 9, 2018 stating that she is “**INELIGIBLE**” for an apartment owned by the Faribault H.R.A. because “Criminal background check shows 2015 Assault warrant, 2017 Judgement Assault. HRA policy states that the HRA may deny admission to an applicant if any household member has

engaged in any violent criminal activity within the last five years.” She appealed this decision, but was immediately denied, without any further explanation, on February 13, 2018.

227. Ms. Lacey was never convicted of this misdemeanor charge, which was based on an incident that took place away from her mother’s home. Her case was closed as of May 18, 2017.

228. Ms. Lacey feels concerned that she will continue to be denied housing in Faribault as a result of the Criminal Records Screening Policy.

229. As Ms. Lacey continues to seek housing in Faribault, the criminal background check required by the Ordinance makes her substantially likely to be denied housing again on the basis of an arrest alone or as a result of an erroneous background check.

230. The error in the H.R.A’s background check gives Ms. Lacey reason to be concerned that landlords’ future criminal record screening of her will result in the denial of housing.

231. As Ms. Lacey continues to apply for housing in Faribault, she will be forced to pay the costs of the required criminal record screening for each application.

Faisa Abdi

232. Plaintiff Faisa Abdi is a Black Somali-American and a U.S. citizen.

233. Ms. Abdi and her husband have resided with their children in the same three-bedroom apartment for over four years. The apartment also has a living room.

234. They have seven children, all of whom are age twelve or younger. Four of their children attend Faribault public schools.

235. Ms. Abdi's landlord has threatened that her family will be evicted due to the size of her household.

236. The landlord first made this threat shortly after Ms. Abdi's second-youngest child was born in June 2015.

237. The landlord informed Ms. Abdi that her family would have to find somewhere else to live or reduce their household size.

238. Since then, Ms. Abdi has searched without success for a new apartment.

239. Ms. Abdi feels extremely stressed that her landlord has threatened that she and her family will be evicted from their home.

240. The Abdis have always paid their rent on time and, other than this household size issue, have not had any conflict with the landlord.

241. Ms. Abdi is desperate for her family to keep the home. She is even considering taking two of her U.S. citizen children, born in Faribault, to Africa so that her family can remain in their home despite the Occupancy Restriction, as she has heard other Somali-American families have done.

242. Ms. Abdi told her landlord about this plan and that she needed to apply for passports. On information and belief, it is on that condition that she has been allowed to stay in her home so far.

243. Ms. Abdi feels that the only way she will be able to stay in Faribault is if her family is separated and members of her family move to a different place.

244. She does not want to take her children to Africa, where they will not have the same opportunities that they would have in the United States. She would not do so but for the Occupancy Restriction.

245. Ms. Abdi and her family like living in Faribault and want to stay there together.

246. As a result of the Ordinance, Ms. Abdi and her family are substantially likely to lose their home. Ms. Abdi has suffered emotional distress as a result of the Ordinance.

247. As tenants of a licensed landlord, Ms. Abdi and her family continue to be subject to the Ordinance, including its broad and vague prohibition on “disorderly conduct.”

248. Ms. Abdi and her family remain at risk of being evicted pursuant to the Ordinance in the future.

Ali Ali

249. Plaintiff Ali Ali is a Black Somali-American and a U.S. citizen.

250. Mr. Ali works at the Viracon glass factory in Owatonna, Minnesota.

251. Mr. Ali and his wife have six children, all of whom are age nine or younger. Three of their children attend Faribault public schools.

252. Mr. Ali and his family were forced to move out of their home in February 2018 because his family had a new baby.

253. Mr. Ali’s landlord sent a letter on May 10, 2017, a month before his youngest child was born, stating that their family had to move out by August 31, 2017.

254. The birth of this baby, the sixth child in their family, brought the number of people in the Alis’ three-bedroom apartment to eight, one more than allowed under the Occupancy Restriction.

255. Before they were forced to move, the Alis had lived in the same apartment for three years.

256. Mr. Ali was able to negotiate for extra time to try to find a place to live.

257. It was very difficult to find for a new home for him and his family and he had to spend a lot of time searching online and visiting apartments.

258. Mr. Ali was eventually able to find a new apartment to move into, which is where his family lives now.

259. The new home, however, is significantly more expensive and it is more difficult for Mr. Ali to pay the rent.

260. Additionally, during the move, he was forced to throw away furniture due to the cost of moving it. Moreover, his previous landlord is alleging that he owes money for alleged damage to the apartment that existed before the Ali family moved in. The former landlord is threatening to send this alleged debt “to collection,” which has been stressful for Mr. Ali.

261. As a result of the Ordinance, Mr. Ali and his family lost their home, and Mr. Ali suffered emotional distress.

262. Mr. Ali and his family like living in Faribault and want to stay there together.

263. The eight people in Mr. Ali’s family now live in a four-bedroom apartment. Mr. Ali’s wife is expecting a baby. If Mr. Ali and his wife have another child after this baby, as they plan to, their family will exceed the number of people allowed to live there under the Ordinance. As a result, he remains at risk of losing his home again as a result of the Ordinance.

264. As tenants of a licensed landlord, Mr. Ali and his family continue to be subject to the Ordinance, including its broad and vague prohibition on “disorderly conduct.”

265. Mr. Ali and his family remain at risk of being evicted pursuant to the Ordinance in the future.

Rukiya Hussein

266. Plaintiff Rukiya Hussein is a Black Somali-American and a U.S. citizen.

267. Ms. Hussein works for Essential Home Health Care as a personal care assistant. Her husband is the lead supervisor on the night shift at the Jennie-O Turkey factory.

268. In late June of 2015, Ms. Hussein gave birth by caesarean section to a baby girl.

269. Her daughter was born with a thyroid problem and needed medication every day.

270. When her baby was just a month old, Ms. Hussein received a letter from her landlord stating that her family would have to move out of her apartment and return the keys within sixty days.

271. The birth of this baby, the sixth child in the family, brought the number of people in the Husseins’ three-bedroom apartment to eight, one more than allowed under the Occupancy Restriction.

272. The Husseins had lived in the apartment since October 2010. On the date they received notice of their eviction, their six children were all age ten or younger. There was a girls’ bedroom, a boys’ bedroom, and a room for Ms. Hussein and her husband.

- 273.** The apartment was large enough for the Husseins to live in safely.
- 274.** The landlord was aware the Husseins had a newborn baby.
- 275.** On previous occasions, the landlord had asked Ms. Hussein if she was pregnant.
- 276.** The Husseins always paid their rent on time and never had a complaint from the landlord.
- 277.** The landlord was compelled to evict the Husseins to comply with Faribault's Rental Licensing Ordinance. As a result of the Ordinance, Ms. Hussein and her family lost their housing.
- 278.** When Ms. Hussein received the notice of eviction she was extremely distraught. She was required not to engage in physical activity as she recovered from the caesarian section surgery. Additionally, her newborn daughter was sick and she had to put her energy into caring for her baby.
- 279.** Moreover, she knew it was extremely difficult to find rental housing in Faribault. Family and friends had been forced to leave Faribault after they were unable to find homes to rent.
- 280.** Despite these challenges, Ms. Hussein had no choice but to try to find a new home very quickly.
- 281.** Because her husband worked the night shift, she had to look for a new home daily, in spite of having just come home with a sick newborn. Ms. Hussein took her baby with her every day to look for housing.
- 282.** Ms. Hussein was anxious that her family would not be able to find a place to live in Faribault. The whole family was worried. Her children asked her to explain why

the landlord had evicted them. They could not understand why they would have to leave their home just because their family had a newborn baby.

283. Both Ms. Hussein and her husband were extremely sad to lose their home of over five years. Ms. Hussein cried in front of the landlord.

284. Ms. Hussein found it physically painful and stressful to look for a new home for her family in these circumstances. She suffered emotional distress as a result of the Ordinance.

285. Ms. Hussein loves Faribault, which is home to her. The Husseins now have seven children, five of whom attend Faribault public schools.

286. As tenants of a licensed landlord, Ms. Hussein and her family continue to be subject to the Ordinance, including its broad and vague prohibition on “disorderly conduct.”

287. Ms. Hussein’s current lease includes the crime-free lease addendum required by the Ordinance. She was also forced to submit to the required criminal record check, and to cover the costs of this screening for her and her husband.

288. Ms. Hussein and her family plan to continue to live in Faribault.

289. Ms. Hussein and her family remain at risk of being evicted pursuant to the Ordinance in the future.

David Trotter-Ford

290. Plaintiff David Trotter-Ford is a Black man and a U.S. citizen.

291. Mr. Trotter-Ford and his fiancée live and co-parent eight children together. Mr. Trotter-Ford is the primary caregiver for the children that reside with the couple.

292. Mr. Trotter-Ford takes pride in how he raises all of his children, irrespective of whether they are biologically related. He is a father to all of the children he and his fiancée co-parent together, although three of them are his fiancée's biological children. For Mr. Trotter-Ford, his family is his priority.

293. In the fall of 2015, Mr. Trotter-Ford, his now-fiancée, and their children, were evicted from their home at the behest of the Faribault Police Department after a warrant for Mr. Trotter-Ford's arrest was issued.

294. On August 28, 2015, Mr. Trotter Ford spanked two of the children with a belt several times.

295. On September 10, 2015, before Mr. Trotter-Ford had been convicted of any crime and before charges had even been filed against him, the FPD sent an "Eviction Demand Notice" to the landlord of the home where Mr. Trotter-Ford, his fiancée, and their children resided together.

296. The letter stated that "Law enforcement responded on 8/28/2015 to 1520 Western Ave. for a disorderly violation warranting removal proceedings for **all occupants of the residence**. At this point I am requesting that you move forward with steps to have the tenant vacate the unit."

297. The letter cites "MN Statutes, Section 609.221 through Minnesota Statutes, Section 609.2231, which prohibit assault" as the basis for the Eviction Demand Notice. Mr. Trotter-Ford was never charged with or convicted of a crime in this portion of the criminal code, although his entire family lost their home on this ground.

298. When a criminal complaint was later filed against Mr. Trotter-Ford, it charged him with the gross misdemeanor of Malicious Punishment of a Child in violation

of Minnesota Statute 609.377.1. That charge was eventually dismissed. On February 16, 2016, he pled guilty to Neglect of a Child in violation of Minnesota Statute 609.378.1(a)(1), a gross misdemeanor. He was sentenced to serve a term of thirty days of electronic home monitoring and two years of probation.

299. The Social Services Department took custody of the couple's children as a result of the criminal charge. Mr. Trotter-Ford continued to have visitation with his biological children.

300. Mr. Trotter-Ford and his fiancée were forced to move out of their home under threat of eviction. They could find nowhere else to go, and had to stay in a low-quality hotel for approximately two months before they were able to find a new place to live.

301. Mr. Trotter-Ford suffered emotional distress as a result.

302. It was very difficult for Mr. Trotter-Ford to find a new home for his family.

303. Mr. Trotter-Ford applied for several units and had his application denied, at least in part because of the criminal background check required by the Faribault Rental Licensing Ordinance. Mr. Trotter-Ford's criminal record shows that he has several convictions for misdemeanors, but no felony convictions.

304. Mr. Trotter-Ford and his fiancée did everything possible to get their children back into their custody—including participating in parenting classes and working closely with their case worker. They were deeply concerned that being unable to secure housing would prevent them from being reunited with their children.

305. Full custody rights were restored as a result of their cooperation with the intense scrutiny of the Social Services Department.

306. The family has now been reunited and lives together in a five-bedroom, two-car garage home. Mr. Trotter-Ford, his fiancée, and four of their children (including a baby born in 2017) reside together. Mr. Trotter-Ford's other four children spend weekends and some vacations with them. Mr. Trotter-Ford has returned to his role as the primary full-time caretaker of the children who reside with them.

307. Mr. Trotter-Ford knows that calls to police by neighbors, regardless of whether they result in criminal prosecutions or convictions, could result in his family losing their home again as a result of the Ordinance. He remains at risk of being harmed again by the Ordinance.

Organizational Plaintiff

308. Plaintiff Somali Community Resettlement Services, Inc. ("SCRS") is a nonprofit organization that has been providing services to the refugee population in southeastern Minnesota since 1999.

309. SCRS has two offices: one in Faribault, Minnesota and one in Rochester, Minnesota. Nine staff members work in SCRS's Faribault office.

310. SCRS's mission is to promote and advance the social well-being and the welfare of its members by providing community and resettlement services. SCRS assists refugee families to secure basic needs and resources for self-sufficiency and to acclimate to a new way of life.

311. Defendants have interfered with SCRS's mission to assist refugee families to secure their basic needs by making it considerably more difficult for members to find and keep housing in Faribault.

312. The Ordinance has also forced SCRS to divert significant organizational resources from other planned activities. Because members of the Somali community seek help from SCRS when threatened with the loss of housing due to the birth of a new baby, SCRS has redirected and continues to redirect staff time, office space, and emergency assistance funds to assist these members with housing issues created by the Ordinance.

313. SCRS staff provides interpretation, transportation and other assistance to members who are at risk of losing their housing due to the Ordinance and its Occupancy Restriction. SCRS assists approximately five families each week who are at risk of losing their homes because of the addition of a new baby to their family.

314. Two of SCRS's thirteen staff members now work exclusively on housing issues, at a cost to the organization of approximately \$70,000 per year. Together, they spend about seventy hours each week assisting families who are at risk of losing their housing due to the Ordinance and its Occupancy Restriction.

315. For example, when a family comes to SCRS with an eviction notice because of the birth of a new baby, SCRS employees help by: translating documents; providing interpretation services that allow clients to communicate with landlords and lawyers from Southern Minnesota Regional Legal Services; filling out forms; negotiating with landlords; printing, faxing, and mailing documents, and paying for printing supplies and postage; and hand-delivering documents, including traveling to the surrounding area where landlords or management companies might be located.

316. Although two staff members work specifically on housing issues, in reality all nine staff members must spend time dealing with housing issues that arise because of the Ordinance.

317. In part as a result of the Ordinance and its Occupancy Restriction, SCRS has also expended resources to create an emergency assistance program for families who are at risk of losing their homes or who have lost their homes. This emergency assistance program began in November 2017 with \$53,000 and was supposed to last a full year, but due to the depth of the need for this funding, SCRS ran out of funding for emergency assistance by April 2018. Approximately 90% of the funding in this program was used to secure new housing for families whose housing was in jeopardy due to the Ordinance and its Occupancy Restriction. Specifically, the emergency assistance fund was used to help evicted families pay the upfront costs of renting a new home, such as deposits or last month's rent required upfront.

318. As a result of the resources SCRS has diverted to addressing housing needs created by the Ordinance, SCRS has fewer resources to devote to other priorities critical to its mission, including resettlement services, civic engagement, education, health, employment, and programs for youth and the elderly.

319. For example, SCRS has had to curtail its employment services. Employment is an area of great need, and SCRS would have prioritized it in the last few years had it not been for the Ordinance. Instead, SCRS has been forced to stop driving community members to job orientations and to their first week of work, as SCRS had previously done. As a result, community members now miss out on job opportunities because they cannot afford transportation before receiving a first paycheck.

320. SCRS has also been forced to divert resources from its youth programming. SCRS would like to provide tutoring and recreation opportunities for youth, but it can do only a very limited amount of this work because of the volume of housing work created by the Ordinance. SCRS had hired a staff member with the title of Youth Program Administrator, but that staff member now works exclusively on housing issues.

321. SCRS will continue to divert resources to stem the housing crisis facing the Somali-American community in Faribault for as long as the Ordinance continues to cause Somali-American families to lose their homes in Faribault.

FIRST CLAIM FOR RELIEF

FAIR HOUSING ACT – RENTAL LICENSING ORDINANCE

322. Plaintiffs re-allege and incorporate by reference all allegations set forth above.

323. The Fair Housing Act makes it illegal “to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color . . . or national origin.” 42 U.S.C. § 3604(a).

324. The Rental Licensing Ordinance violates the Fair Housing Act because it was enacted with the purpose and intent to make unavailable and deny dwellings in Faribault to Black and Somali people on the basis of race and/or national origin.

325. Direct evidence exists demonstrating a specific link between this animus and the passage of the Ordinance. Circumstantial evidence of the role of animus in the

passage of the Ordinance also exists, and there is no legitimate, non-discriminatory, and non-pretextual justification for the Ordinance.

SECOND CLAIM FOR RELIEF

**FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE –
RENTAL LICENSING ORDINANCE**

326. Plaintiffs re-allege and incorporate by reference all allegations set forth above.

327. The Fourteenth Amendment to the United States Constitution prohibits a state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.”

328. The Rental Licensing Ordinance violates the Equal Protection Clause because it was enacted with the purpose and intent to discriminate against Black and Somali people on the basis of race and/or national origin.

329. Direct evidence exists demonstrating a specific link between this animus and the passage of the Ordinance. Circumstantial evidence of the role of animus in the passage of the Ordinance also exists, and there is no legitimate, non-discriminatory, and non-pretextual justification for the Ordinance.

THIRD CLAIM FOR RELIEF

§ 1981 – RENTAL LICENSING ORDINANCE

330. Plaintiffs re-allege and incorporate by reference all allegations set forth above.

331. 42 U.S.C. § 1981 provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all

laws . . .” Making and enforcing contracts “includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” § 1981(b).

332. Section 1981 protects these rights from “impairment under color of State law.” § 1981(c).

333. The Rental Licensing Ordinance violates § 1981 because it was enacted with the purpose and intent to deny the equal right to make and enforce contracts for rental housing to Black and Somali people on the basis of race and/or ancestry.

334. Direct evidence exists demonstrating a specific link between this animus and the passage of the Ordinance. Circumstantial evidence of the role of animus in the passage of the Ordinance also exists, and there is no legitimate, non-discriminatory, and non-pretextual justification for the Ordinance.

FOURTH CLAIM FOR RELIEF

FAIR HOUSING ACT – CRIMINAL HISTORY POLICY

335. Plaintiffs re-allege and incorporate by reference all allegations set forth above.

336. The Fair Housing Act makes it illegal “to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color . . . or national origin.” 42 U.S.C. § 3604(a).

337. A policy has a discriminatory effect prohibited under the Fair Housing Act where it actually or predictably results in a significant adverse impact on members of a protected class and it is either not necessary to achieve a substantial, legitimate, non-

discriminatory objective, or that objective could be achieved through a less discriminatory means.

338. By causing potential tenants to be barred from housing based upon their criminal records, the Criminal Records Screening Policy has a large discriminatory impact on the basis of race and national origin. It is not necessary to achieve a substantial, legitimate, non-discriminatory purpose; moreover, any such purpose that did exist could be achieved through a less discriminatory alternative. As a result, it violates the Fair Housing Act.

FIFTH CLAIM FOR RELIEF

FAIR HOUSING ACT – OCCUPANCY RESTRICTION (art. V, § 7-40(h))

339. Plaintiffs re-allege and incorporate by reference all allegations set forth above.

340. The Fair Housing Act makes it illegal “to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color . . . or national origin.” 42 U.S.C. § 3604(a).

341. A policy has a discriminatory effect prohibited under the Fair Housing Act where it actually or predictably results in a significant adverse impact on members of a protected class and it is either not necessary to achieve a substantial, legitimate, non-discriminatory objective, or that objective could be achieved through a less discriminatory means.

342. By barring families from residing in otherwise-suitable housing based on family size, and by causing tenants to be evicted from housing upon the birth of

additional children, the Occupancy Restriction has a large discriminatory impact on persons of Somali national origin. It is not necessary to achieve a substantial, legitimate, non-discriminatory purpose; moreover, any such purpose that did exist could be achieved through a less discriminatory alternative. As a result, it violates the Fair Housing Act.

SIXTH CLAIM FOR RELIEF

**MINNESOTA EQUAL PROTECTION – RENTAL LICENSING ORDINANCE
(RACE DISCRIMINATION)**

343. Plaintiffs re-allege and incorporate by reference all allegations set forth above.

344. Article I of the Minnesota Constitution guarantees that “[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.” Minn. Const. art. I, § 2. The Minnesota Constitution protects a right to equal protection there and elsewhere. *Id.* Art. X, § 1; *id.* Art. XII, § 1; *id.* Art. XIII, § 1.

345. The Rental Licensing Ordinance violates Minnesota equal protection because it was enacted with the purpose and intent to discriminate against Black and Somali people on the basis of race and/or national origin.

346. As a result, the Rental Licensing Ordinance violates the right to equal protection found in the Minnesota Constitution.

SEVENTH CLAIM FOR RELIEF

**MINNESOTA EQUAL PROTECTION – RENTAL LICENSING ORDINANCE
(ANIMUS AGAINST RENTERS)**

347. Plaintiffs re-allege and incorporate by reference all allegations set forth above.

348. Article I of the Minnesota Constitution guarantees that “[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.” Minn. Const. art. I, § 2. The Minnesota Constitution protects a right to equal protection there and elsewhere. *Id.* Art. X, § 1; *id.* Art. XII, § 1; *id.* Art. XIII, § 1.

349. In order to survive rational basis scrutiny under the Minnesota Constitution, a policy must satisfy three requirements: (1) the distinctions separating those included within a classification from those excluded must be genuine and substantial rather than arbitrary or fanciful; (2) there must be an evident connection between needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the government can legitimately attempt to achieve.

350. The Rental Licensing Ordinance explicitly treats renters differently from homeowners and those residing in owner-occupied housing. Renters’ private information, including their dates of residency, are available to the City of Faribault at all times; renters can lose their homes as a consequence of contact with the police; and renters are responsible if guests or others “under the resident’s control” engage in criminal conduct. None of these requirements apply to homeowners or those who reside in owner-occupied homes. There is no evident connection between this classification and any legitimate government purpose, and there is evidence that the Ordinance was adopted with animus toward renters.

351. As a result, the Rental Licensing Ordinance violates the right to equal protection found in the Minnesota Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- A. A permanent injunction prohibiting Defendants and their officials, employees, and agents from implementing or enforcing the Rental Licensing Ordinance, including the Crime-Free Housing Program;
- B. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202, as well as the Uniform Declaratory Judgments Law, Minn. Stat. § 555.01, that the Rental Licensing Ordinance, including the Crime-Free Housing Program, is unlawful and invalid;
- C. Compensatory damages, including “garden variety” emotional distress damages, for the Plaintiffs;
- D. An order awarding Plaintiffs reasonable attorneys’ fees and expenses pursuant to 42 U.S.C. § 1988 and any other applicable law; and
- E. Such other and further relief as the Court deems equitable, just, and proper.

Dated: June 13, 2018

Respectfully submitted,

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