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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

WASHINGTON STATE HUMAN RIGHTS COMMISSION, presenting the case in support of the complaint filed by BERNARD WATKINS,

Plaintiff,

v.

UDR, INC., a Maryland Corporation, UNITED DOMINION REALTY, L.P., a Delaware Corporation, and ASHWOOD COMMONS NORTH, LLC, a Washington Corporation,

Defendants.

NO. 20-2-13767-7 SEA

FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES UNDER THE WASHINGTON LAW AGAINST DISCRIMINATION

I. INTRODUCTION

1.1 Plaintiff Washington State Human Rights Commission (the Commission), by and through its attorney, Andrea Brenneke, Assistant Attorney General, files this action against Defendants UDR, Inc., United Dominion Realty, L.P., and Ashwood Commons North, LLC, who own and operate Elements Apartments in Bellevue, Washington, to remedy unlawful discrimination and retaliation in the rental of residential housing and to seek injunctive and other equitable relief.

1 **3.3** Elements comprises three separate glass and steel high-rise luxury mountain-
2 view apartment buildings: a stand-alone building with the address 989 111th Avenue NE,
3 Bellevue, WA 98004 (989 Building) and two buildings that are connected by a common area
4 and walkway with the addresses 958 111th Ave NE, Bellevue, WA 98004 and 909 112th Avenue
5 NE, Bellevue, WA 98004 (958/909 Building).

6 **3.4** In addition to housing, Elements provides its residential tenants with refuge and
7 resort through its common spaces, facilities, and services, including: lobby installations by
8 Dale Chihuly; a private theater; dedicated concierge services; and a 24-hour fitness center with
9 two gym rooms/work out facilities with exercise equipment (one in the 989 Building and one in
10 the 958/909 Building), as well as locker rooms, showers, an indoor lap pool, and an aerobic room
11 in the 958/909 Building, and an outdoor fitness area on the deck adjoining the 989 Building gym.

12 **3.5** At the time Mr. Watkins and Elements entered into their lease agreement,
13 Elements had a preexisting lease agreement with another tenant, Ryan Stefan, that he would be
14 permitted to operate his personal and group training and fitness business, Fire Fitness, in the
15 common areas of the Elements facility, without cost to Mr. Stefan. Mr. Stefan maintained his
16 tenancy at Elements until he moved out in November of 2016 and moved into another apartment
17 owned and operated by Defendants. Even after Mr. Stefan moved out of Elements, Elements
18 continued to permit Mr. Stefan access to Elements and its common spaces and use of those
19 spaces for his Fire Fitness training business.

20 **3.6** Professionally, Mr. Watkins is a personal and group trainer and fitness coach who
21 has worked over his career with a range of private clients, including professional athletes from
22 the Seattle Seahawks football team. Defendants, by and through Manager Erin Long, recognized
23 that Elements would gain benefits from Mr. Watkins' tenancy and his business operations at
24 Elements.

25 **3.7** When Mr. Watkins and Defendants, by and through Manager Erin Long, entered
26 into Mr. Watkins' lease, it was on the condition and based on a mutual agreement that

1 Mr. Watkins would be permitted to operate his personal and group training and fitness business,
2 Corfit Training, in the common areas of the Elements facility, without cost to Mr. Watkins.

3 **3.8** Mr. Watkins is African American. At all times material hereto, his clientele is
4 racially diverse, comprising a large proportion of Black and other people of color, in addition to
5 White people. Mr. Watkins also worked with over 30 professional athletes, many from the
6 Seattle Seahawks football organization, and the professional athlete clientele is predominantly
7 Black.

8 **3.9** Mr. Stefan is White. At all times material hereto, the trainers Mr. Stefan employs
9 are White and his clientele is predominantly White.

10 **Discriminatory Treatment**

11 **3.10** Defendants imposed substantially different and adverse terms, conditions and
12 privileges in Mr. Watkins' housing and his use of facilities and services, including the use of the
13 gym and other common areas for himself and for conducting his personal training/fitness
14 business, as compared to similarly situated White persons, because of his race. Defendants
15 imposed different adverse terms, conditions, and privileges within the period material hereto,
16 including, but not limited to, the following examples:

17 **3.10.1** Restricted the size of Mr. Watkins' classes/workout groups, while not
18 restricting the size of Mr. Stefan's classes or groups;

19 **3.10.2** Limited and then prohibited Mr. Watkins' from hiring trainers to work
20 with him, while allowing Mr. Stefan to employ trainers to work with him;

21 **3.10.3** Prohibited Mr. Watkins' from using certain common areas for group
22 fitness training, including the swimming pool, aerobics room, stairways, and hallways,
23 while allowing Mr. Stefan and other White persons to use these common areas for group
24 fitness training;

25 **3.10.4** Interfered with Mr. Watkins' promotion and operation of his business by
26 imposing limitations on Mr. Watkins' advertising and solicitations, engaging in hostile

1 and abusive behavior and actions, making negative comments about Mr. Watkins and his
2 business to staff, residents, and clients, and restricting Elements staff from interacting
3 with Mr. Watkins, helping him, or training with him. In contrast, Defendants provided
4 active support and promotion of Mr. Stefan's business by management and employees
5 training with him, permitting advertising and solicitations, referring clients, and
6 promoting his services to residents and others;

7 **3.10.5** Engaged in hyperscrutiny and surveillance, made and orchestrated
8 complaints against Mr. Watkins, enrolled Mr. Stefan in monitoring Mr. Watkins, notified
9 Mr. Watkins of resident complaints about his training (some of which were actually
10 directed at Mr. Stefan) and issued unfounded notices of rule and use violations, while
11 permitting Mr. Stefan to engage in harmful actions, behaviors, rule and use violations
12 and allowing complaints against Mr. Stefan to go without correction;

13 **3.10.6** Limited and then terminated Mr. Watkins' use of common facilities for
14 his private and group fitness training; and

15 **3.10.7** Interfered with Mr. Watkins' personal use of the common facilities.

16 **3.11** In approximately 2012, Defendants divided the locations for Mr. Stefan and
17 Mr. Watkins, assigned Mr. Stefan to the 989 Building gym facility for his personal and group
18 training and fitness business, assigned Mr. Watkins to the 958/909 Building gym facility for his
19 personal and group training and fitness business, and directed Mr. Stefan not to use the 958/909
20 Building gym facility. Defendants later provided upgrades to the exercise equipment and gym
21 facility in the 989 Building for the benefit of Mr. Stefan, while not providing comparable
22 upgrades to the 958/909 Building gym facilities. Defendants continued to allow Mr. Stefan, his
23 trainers, and clients full access to the other common areas in the 958/909 Building, including the
24 locker room and showers, where they continued to harass and intimidate Mr. Watkins;

25 **3.12** Mr. Watkins made an internal complaint to Defendants about Mr. Stefan's
26 violation of Elements rules, and racially hostile and abusive conduct he was experiencing from

1 Mr. Stefan and a trainer he employed, by and through General Manager Long on November 20,
2 2013. Mr. Watkins also complained that Defendants, by and through their Management, were
3 engaged in hostile behavior and actions, and were favoring Mr. Stefan and his personal and
4 group training, because of race. Ms. Long told Mr. Watkins that Mr. Watkins would no longer
5 be allowed to employ his personal trainer. Ms. Long also warned Mr. Watkins not to “play the
6 race card.” Defendants failed to investigate or take effective, corrective action, and the
7 discrimination continued.

8 **3.13** Mr. Watkins made additional complaints to Defendants, one in person about race
9 discrimination on January 3, 2014, followed up with a written race discrimination complaint by
10 email on January 10, 2014, in which he detailed Elements’ discriminatory treatment of him in
11 the terms and conditions of housing and requested correction.

12 **3.14** Defendants failed to initiate an investigation or take prompt and effective
13 corrective action to correct the discrimination, which continued. Ms. Long also labelled
14 Mr. Watkins a “trouble maker,” called him that with other staff, and instructed them not to talk
15 with Mr. Watkins or help him.

16 **3.15** Defendants failed to renew Mr. Watkins’ annual lease in the normal course of
17 business operations, despite Mr. Watkins’ repeated requests that they do so. Defendants
18 indicated on February 3, 2014, that they would not renew his annual lease, reverting his housing
19 to a month-to-month lease arrangement, creating insecurity and risk to Mr. Watkins’ housing
20 and work stability. Defendants did not renew Mr. Watkins’ annual lease until 2017. Defendants
21 again offered Mr. Watkins only a six-month lease in 2020, instead of a 12-month lease.
22 Defendants offered annual leases with more favorable terms and conditions to comparably
23 situated, White tenants, and those who had not made race discrimination complaints.

24 **3.16** Defendants reaffirmed and imposed further restrictions and additional adverse
25 terms and conditions on Mr. Watkins’ use of the common areas, as compared to Mr. Stefan,
26 permitted the hostile environment to continue and contributed to it, and engaged in hyperscrutiny

1 and complaints against Mr. Watkins while allowing Mr. Stefan, and the trainers he employed, to
2 violate rules without the same scrutiny or corrective action.

3 **3.17** On or about July 12, 2016, Mr. Watkins made another internal report of
4 discrimination to Defendants, by and through their Assistant Community Director, Mario
5 Manriquez. Mr. Watkins reported the hostile environment created by Mr. Stefan and his trainers,
6 together with Defendants' employees, including Ms. Mitchell, as well as the different treatment
7 because of race he was experiencing with regard to his training business, and asked for action to
8 be taken to address it. Defendants failed to investigate or take effective corrective action and the
9 discrimination, hostile environment, and retaliation continued.

10 **3.18** Defendants notified Mr. Watkins on December 1, 2016, that it was terminating
11 his ability to conduct his training business at Elements in three months.

12 **3.19** Mr. Watkins hired an attorney to mitigate the damage to his business and lodged
13 another race discrimination and retaliation complaint through his attorney in 2017 to request
14 Defendants to correct the discrimination and retaliation.

15 **3.20** Defendants then required Mr. Watkins to sign a Use Agreement, which imposed
16 even greater restrictions on the terms and conditions of Mr. Watkins' use of common areas.
17 Mr. Watkins agreed he would sign it on October 9, 2017, under protest and by registering his
18 complaint that its restrictions were racially discriminatory, because it was Defendants' condition
19 for restoring his ability to train in those areas. In contrast, Defendants did not restrict or terminate
20 Mr. Stefan's use of the facilities for his business purposes and Mr. Stefan was not required to
21 sign a Use Agreement with similar restrictions on his business use of common areas;

22 **3.21** On October 24, 2017, Mr. Watkins filed a complaint of discrimination with the
23 Washington State Human Rights Commission. Notifications of the complaint were sent to
24 Respondent on October 31, 2017.

25 **3.22** On October 25, 2017, Respondent served Mr. Watkins with a 10-day notice to
26 comply or vacate for conducting a commercial business at the subject property.

1 terms and/or conditions of Mr. Watkins' housing and created a subjectively and objectively
2 hostile, intimidating and abusive living environment for Mr. Watkins. Defendants' unwelcome
3 conduct includes the acts and omissions set forth in paragraphs 3.1 through 3.26, which are
4 incorporated by reference herein, and additionally include, but are not limited to, the following:

5 **3.27.1** Defendants permitted its tenant and/or vendor, Mr. Stefan, and the trainers
6 who worked for him, to monitor and surveil Mr. Watkins' movements and activities as
7 he used common areas and worked, invade Mr. Watkins' personal space and crowd
8 common spaces that he, his clients, and other tenants were using, stare down Mr. Watkins
9 and his clients and other residents, confront them verbally, and make loud noise and bang
10 doors to disrupt their work; and confront Mr. Watkins when he parked in his normal
11 parking space in the garage.

12 **3.27.2** Even after Manager Long assigned Mr. Stefan to the 989 Building gym,
13 Defendants permitted Mr. Stefan, the trainers who worked for him, and their clients, to
14 enter and use common spaces assigned to Mr. Watkins, and which Mr. Stefan had been
15 directed to stay out of, where they engaged in surveillance, actions and behaviors, and
16 made comments and gestures, directed at Mr. Watkins and/or his clients, family, friends,
17 and other residents with whom Mr. Watkins associated, that interfered with
18 Mr. Watkins's quiet enjoyment of his housing and/or his training activities, made him
19 feel unsafe, were hostile and intimidating, abusive, provocative and threatening, and
20 caused Mr. Watkins emotional distress and fear;

21 **3.27.3** Defendants failed to investigate, or take prompt and effective corrective
22 action, after Mr. Watkins reported the hostile behavior and rule violations by Mr. Stefan,
23 and the hostile behavior and harassment continued;

24 **3.27.4** Defendants, by and through their employees and managers, also directly
25 participated in creating a hostile environment for Mr. Watkins by engaging in their
26 hyperscrutiny of Mr. Watkins, initiating unfounded complaints against him, encouraging

1 Mr. Stefan to document and initiate complaints against Mr. Watkins, withholding lease
2 renewals, imposing negative racial stereotypes and heightened standards to his use of the
3 facilities, accusing Mr. Watkins of rule violations based upon those standards and
4 stereotypes, engaging in hostile and abusive behavior and actions, and confronting and
5 embarrassing him for his quiet use and enjoyment of the premises in front of clients,
6 friends, and other residents.

7 **Retaliation**

8 **3.28** Defendants intimidated, threatened, and/or interfered with Mr. Watkins' exercise
9 or enjoyment of rights regarding real estate transactions in violation of RCW 49.60.2235.

10 **3.29** Mr. Watkins engaged in protected activity under the WLAD by making multiple
11 complaints of race discrimination to Defendants, including direct complaints to management
12 employees, a complaint of race discrimination through his attorney, and a complaint with the
13 Washington State Human Rights Commission.

14 **3.30** Defendants retaliated against Mr. Watkins for making these complaints by
15 increasing their different and adverse treatment of him, failing to renew his annual lease from
16 2014 – 2017 and limiting his lease to six months in 2020, restricting and terminating his use of
17 the common areas of the facility, subjecting him to hyperscrutiny and unfounded notices of
18 violation, and creating a hostile and abusive living environment, as set forth in paragraphs 3.1 to
19 3.27 above, which are incorporated by reference herein.

20 **Liability for Proximately Caused Harm and Damages**

21 **3.31** Defendants are directly liable for the acts and omissions of their managers,
22 employees, tenants and/or vendors and additionally are liable for the acts and omissions of their
23 managers, employees, tenants and/or vendors because they knew or should have known about
24 them and failed to take prompt and effective corrective action to stop the discrimination and
25 retaliation, which continued.

1 **THIRD CAUSE OF ACTION**
2 **(Violation of the Washington Law Against Discrimination –**
3 **Retaliation)**

4 **4.10** The Commission re-alleges and incorporates by reference the allegations set forth
5 in each of the preceding paragraphs of this Complaint.

6 **4.11** It is an unfair practice to intimidate, threaten, and/or interfere with a person's
7 exercise or enjoyment of rights regarding real estate transactions or retaliate against any person
8 on account of his having exercised his right to be free from discrimination in housing, including
9 by making complaints of discrimination. RCW 49.60.2235.

10 **4.12** Defendants unlawfully retaliated against Mr. Watkins after he engaged in
11 protected activity under the WLAD, and because of this protected activity, by increasing their
12 different and adverse treatment of him, imposing restrictions and then terminating his use of the
13 common areas of the facility, and subjecting him to hyperscrutiny, unfounded notices of
14 violation, and a hostile and abusive living environment, all in violation of RCW 49.60.2235.

15 **V. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff Washington State Human Rights Commission prays that the Court:

17 **5.1** Adjudge and decree that Defendants have engaged in the conduct complained of
18 herein.

19 **5.2** Adjudge and decree that Defendants' conduct violates the Washington Law Against
20 Discrimination, including RCW 49.60.030(1)(c), RCW 49.60.222(1)(b), and RCW 49.60.2235.

21 **5.3** Enjoin Defendants from discriminating against, imposing different terms and
22 conditions of housing, or creating a hostile environment because of race, and/or retaliating
23 against tenants in the exercise of their rights to enjoyment of their housing, and require
24 Defendants to change their policies and procedures to comply with this injunction.

25 **5.4** Order other equitable relief which the Court finds necessary to eliminate the
26 effects of past discrimination and retaliation, to prevent future discrimination and retaliation, and
to position Mr. Watkins as close as possible to the situation he would have been in but for the

1 discrimination and retaliation. This includes retaining jurisdiction if necessary to fully effectuate
2 this Court's order.

3 **5.5** Award damages or other appropriate monetary relief to Mr. Watkins for lost
4 opportunity to use and enjoy the full benefits of his housing, emotional distress and injury, pain
5 and suffering, embarrassment, humiliation, damage to reputation, economic and financial
6 hardship, past and future loss of income, attorney's fees and costs incurred to mitigate harm from
7 Defendants' discrimination and retaliation, inconvenience and lost opportunity caused by having
8 to address discrimination and retaliation, and other damages in an amount to be proven at trial.

9 **5.6** Assess a civil penalty against Defendants in the amount of \$10,000 pursuant to
10 RCW 49.60.225(1)(a).

11 **5.7** Award attorney's fees and costs of suit.

12 **5.8** Award such other relief as the Court may deem just and proper.

13
14 DATED this 12th day of October 2020.

15
16 ROBERT W. FERGUSON
Attorney General

17 

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