

STATE OF INDIANA  
IN THE MARION COUNTY SUPERIOR/CIRCUIT COURT

CAUSE NO. \_\_\_\_\_

STATE OF INDIANA,  
Plaintiff,  
v.  
ALOFT MGT, LLC,  
and  
FOX LAKE AHF, INC.,  
Defendants.

**COMPLAINT FOR  
DAMAGES, INJUNCTION,  
AND FOR THE  
APPOINTMENT OF  
RECEIVER**

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Plaintiff, State of Indiana, by Deputy Attorneys General Chase Haller, Corinne Gilchrist, and Tamara Weaver, brings its Complaint for Preliminary Injunction, Permanent Injunction, Appointment of a Receiver, and Damages against Defendants, Aloft Mgt, LLC (“Aloft”) and Fox Lake AHF, Inc. (“Fox Lake”), collectively the “Lakeside Defendants.”

For years, Fox Lake and Aloft have contributed to and permitted residents of Lakeside Pointe apartments to live in unsanitary, unsightly, and dangerous conditions. Under the guise of operating a nonprofit whose mission is to “provide low income housing,” Fox Lake has benefited from charitable property tax exemptions and business advantages while racking up health code violations in the hundreds since 2017, leaving residents with conditions such as no heat, no air

conditioning, no hot water, mold, broken and inoperable windows, and abundant scattered trash. The residents of Lakeside Pointe apartments are largely immigrants and refugees who have repeatedly reported problems to Aloft only to go weeks or months without vital repairs. Now residents are subject to the fear of having their water turned off at both Lakeside Pointe apartments and Fox Club apartments because of Fox Lake's outstanding bill to Citizens Energy Group, estimated to be over \$1 million as of the filing of this complaint. Fox Lake and Aloft have betrayed the trust of the residents at Lakeside Pointe, Fox Club, and the community by continuing to take rental payments and failing to deliver habitable living conditions. As such, the State brings this action under its authority in the Indiana Deceptive Consumer Sales Act, the Indiana Nonprofit Corporations Act, and the Indiana Home Loan Practices Act.

### **THE PARTIES**

1. Aloft Mgt, LLC is an New York Limited Liability Company with a corporate and principal office located at 2365 Nostrand Avenue, Brooklyn, New York. Upon information and belief, Aloft acts as property manager on behalf of the owner for the Lakeside Pointe at Nora apartment complex at 9000 N. College Ave, Indianapolis, IN 46240.

2. Fox Lake AHF, Inc. is Delaware nonprofit corporation with a corporate and principal office located at 10 Hill Street, Suite 1E, Newark, New Jersey.

According to public records, Fox Lake is the titled owner of the Lakeside Pointe at Nora apartment complex located at 9000 N. College Ave., Indianapolis, IN 46240 as

well as the Fox Club Apartments located at 4401 South Keystone Ave., Indianapolis, IN 46227. Fox Lake AHF, Inc. was formerly known as Farh-Fox Lake Affordable Housing, Inc. until 2016 when it changed its name. JPC Charities, Inc. is an Ohio nonprofit corporation with a corporate and principal office located at 10 Hill Street, Suite 1E, Newark, New Jersey. JPC Charities is the sole member of Fox Lake AHF, Inc.

### **JURISDICTION & VENUE**

3. This Court has jurisdiction over this matter and Defendants Aloft and Fox Lake pursuant to Ind. Code § 24-4.7-5-4.
4. Venue is appropriate in this Court pursuant to Indiana Trial Rule 75(A)(2).
5. Indiana law governs the claims asserted in this lawsuit.

### **ATTORNEY GENERAL'S AUTHORITY**

6. The Attorney General is vested with the authority to enjoin the unlicensed practice of real estate pursuant to Ind. Code § 24-5-0.5 and § 24-9-3-7(c)(4).
7. The Attorney General brings this civil action under Indiana Code §§ 23-17-24-1, 23-17-24-1.5, and *Zoeller v. East Chicago Second Century*, 904 N.E. 2d 213 (Ind. 2009), which together give the Attorney General the authority to protect the public's interest in charitable and benevolent instrumentalities and to ensure the integrity of nonprofit entities operating within the State of Indiana.

8. With regard to a foreign nonprofit corporation that desires to transact business in the state of Indiana, the Attorney General is vested with the authority pursuant to Ind. Code §23-17-24-1.5(b) to seek injunctive relief or the appointment of a temporary or permanent receiver.

9. The Attorney General is vested with the authority to enjoin unfair, abusive, or deceptive acts pursuant to the Indiana Deceptive Consumer Sales Act (Ind. Code § 24-5-0.5-4, *et. seq.*), including the appointment of a receiver for the purpose of enjoining patterns of incurable deceptive acts with respect to consumer transactions in real property.

10. The Attorney General is vested with separate authority through its Homeowner Protection Unit, to enjoin violations of the Home Loan Practices Act pursuant to Ind. Code § 24-9-8-3.

### **FACTUAL BACKGROUND**

11. The Lakeside Pointe at Nora apartment complex (“Lakeside Pointe”) located at 9000 N. College Ave. is a large multifamily complex, consisting of 588 units on a 40.74-acre site in the North Side neighborhood of Indianapolis. The improvements on the property include 51 two-story buildings that were constructed in 1971. The property consists of 168 studio units, 144 one-bedroom units, and 276 two-bedroom units.

12. At Lakeside Pointe, cold water, sewer, and trash removal are all included in rent.

13. Fox Club Apartments (“Fox Club”) is a 336-unit multifamily property on a 28.82-acre site located at 4401 South Keystone Ave., Indianapolis, consisting of 24 single and two-story buildings constructed in 1972.

14. JPC Charities, as the sole member of Fox Lake, owns and operates more than 14 multifamily properties nationwide (including eight in Indianapolis) consisting of more than 5,0000 residential units.

15. According to the most recent tax filings available, Fox Lake and JPC Charities share the same individual directors, namely Oron Zarum, Jason Cook, and Tracy Hughey.

16. JPC Charities, its parent company PF Holdings, Inc., and other associated companies and principals connected to this same matter have been the subject of a multitude of lawsuits as well as widespread reports of gross neglect and mismanagement of real property across the country.<sup>123</sup>

17. In one 2017 wrongful death lawsuit, a Georgia jury found PF Holdings, Inc. responsible for the death of a 62-year-old man after he died as a result of excessive heat reaching 98 degrees Fahrenheit following the alleged neglect of an air conditioning system in his unit.<sup>4</sup>

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<sup>1</sup> Landlord gets millions while tenants suffer, <https://www.wcpo.com/news/insider/problem-properties-landlord-gets-millions-while-properties-tenants-suffer>, accessed June 23, 2021

<sup>2</sup> Mice infested, trash-ridden Kenwood apartment building is falling apart, residents say as they beg feds for help, <https://blockclubchicago.org/2020/12/09/mice-infested-trash-ridden-kenwood-apartment-building-is-falling-apart-residents-say-as-they-beg-feds-for-help/>, accessed June 23, 2021

<sup>3</sup> A nonprofit got special loans and tax breaks for low-income housing. Deal makers collected millions in fees. And buildings deteriorated, <http://graphics.chicagotribune.com/chicago-charity-housing-violations/index.html>, accessed June 23, 2021

<sup>4</sup> Woman receives \$125 million wrongful death award after dad died in housing project, <https://topclassactions.com/lawsuit-settlements/personal-injury/woman-receives-125-million-wrongful-death-award-after-dad-died-in-housing-project>, accessed June 23, 2021.

18. In October 2018, JPC Charities was the sponsor of a certain \$32.0 million mortgage loan owed to Silverpeak Argentic (“Silverpeak”).

19. Upon information and belief, the Lakeside Pointe complex as well as Fox Club Apartments in Indianapolis serve as security for the repayment of the note to Silverpeak.

20. Throughout its ownership of Lakeside Pointe, Fox Lake has utilized the property management services of Aloft to manage the daily operations of the complex.

21. Aloft has not applied for or maintained a state license as a real estate broker company.

22. Aloft has engaged in and is engaging in the practice of real estate for consideration or compensation in the state of Indiana without a license.

23. Fox Lake, by and through its agent Aloft, has allowed the Lakeside Pointe property to fall into egregious disrepair, endangering the health and welfare of hundreds of residents, including but not limited to the following deficiencies:

- a. Units 766, 768, 770, and 772 are down due to a fire at the complex on 9/11/20.
- b. Units 930A and 930C are down due to a fire on September 17, 2020.
- c. Units 936B and 906C are down to a fire on an unknown date.
- d. Units 9032F, 844, and 865 are down due to significant water damage and microbial growth.
- e. The rear roof overhang for unit 8864 has a hole in it.

- f. Boarded up broken windows are present at units 798, 922, and 918.
- g. Dozens of units experienced no-heat conditions for several weeks during the winter of 2020-2021.
- h. The main office building and clubhouse was destroyed due a massive fire on the early morning of June 12, 2021.<sup>5</sup>

24. Combined utility delinquencies for water and sewer charges at the Lakeside Pointe and Fox Club complexes in Indianapolis exceeded \$1.2 million dollars owed to Citizens Energy Group as of June 22, 2021, and the utility accounts continue to be in significant arrears.

25. This utility delinquency places both properties and their combined residents in imminent danger of a complete disconnection of water service, which would result in the constructive eviction of thousands of residents.

26. Fox Lake, through its agent Aloft, has continued managing and leasing units at Lakeside Pointe and Fox Club with the knowledge that they were not paying utility costs owed to Citizens Energy Group for sewer and water charges.

27. Fox Lake, through its agent Aloft, has allowed Lakeside Pointe to deteriorate to such a state of disrepair that it fails to meet the minimum habitability standards under state law and Ch. 10 of the Marion County Health and Housing Code.

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<sup>5</sup> Lakeside Pointe at Nora clubhouse heavily damaged in morning fire, <https://www.wthr.com/article/news/local/fire-destroys-nora-apartment-clubhouse-lakeside-pointe/531-55c0339e-9b0e-41ba-9971-80b0cc14b94b>, accessed June 23, 2021.

28. The Lakeside Defendants have repeatedly failed to respond to resident complaints, failed to remedy health department citations following inspections, and have had over 600 Notices of Violation issued by the Marion County Public Health Department dating from January 1, 2017 to as recently as June 29, 2021, with at least 50 still pending in Marion County Court.

29. The Marion County Public Health Department complaints against Fox Lake for the conditions at Lakeside Pointe include no hot water, lack of air conditioning, lack of heat, mold, water intrusion, plumbing and sewage issues, missing sewer caps, deteriorated interiors, missing screens, scattered trash, buildings that are not in a weather-tight condition, and appliances in disrepair.

30. Current Lakeside Pointe residents report going days, weeks, and sometimes months without necessary repairs to heating systems and air conditioning units.

31. Multiple current residents have experienced smoke damage from fires at Lakeside Point, have reported difficulty breathing because of the smoke, and have also reported multiple issues with water, including water leaks, water damage, and lack of hot or potable water.

32. Fox Lake has negligently mismanaged the Lakeside Point and Fox Club complexes in contravention of its stated nonprofit mission, which according to its IRS Form 990 is “to provide low-income housing.”



33. Fox Lake has continued to waste assets or misappropriate funds to purposes yet unknown, as it has collected rental payments from residents without addressing the basic purpose of providing housing.

34. On February 26, 2021, the Lakeside Pointe property lost its charitable purpose property tax exemption as a result of a decision by the Marion County Tax Assessment Board of Appeals.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Violation of the Home Loan Practices Act – Ind. Code § 24-9-3-7(c)(4) Unlicensed Practice of Real Estate (against Aloft)**

35. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

36. Aloft, by serving as a property manager on behalf of the owner Fox Lake for consideration or compensation, has engaged in the unlicensed practice of real estate in contravention of Ind. Code § 25-34.1-3, *et. seq.*, which states that:

“no person shall, for consideration, sell, buy trade, exchange, option, lease, rent, manage, list, or appraise real estate or negotiate or offer to perform any of those acts in Indiana or with respect to real estate situated in Indiana, without a license.”

37. Aloft has engaged in the practice of real estate in connection with real estate transactions without a license required by law in contravention of Ind. Code §24-9-3-7(c)(4).

### **COUNT II**

#### **Violation of the Deceptive Consumer Sales Act – Ind. Code §24-5-0.5-10(a) Soliciting and Engaging in Real Estate Transactions without being properly licensed**

*(against Aloft)*

38. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

39. The solicitations and transactions identified in the foregoing paragraphs are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(1).

40. Aloft is a “supplier” as defined by Ind. Code § 24-5-0.5-2(3).

41. As property manager, Aloft has solicited for new residents and engaged in consumer transactions with residents without being have proper license required by law, in violation of Ind. Code § 24-5-0.5-10.

### **COUNT III**

#### **Violations of Ind. Code § 24-5-0.5-4(g)**

#### **Knowing Violations of the Deceptive Consumer Sales Act**

*(against Aloft)*

42. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

43. Aloft committed the deceptive acts asserted with knowledge of its deceptive acts.

### **COUNT IV**

#### **Violation of the Deceptive Consumer Sales Act – Ind. Code §24-5-0.5-3(a)**

#### **Unfair, Abusive, or Deceptive Acts by Failing to Meet Standards of Habitability**

*(against Aloft and Fox Lake)*

44. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

45. The solicitations and transactions identified in the foregoing paragraphs are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(1).

46. Aloft is a “supplier” as defined by Ind. Code § 24-5-0.5-2(3).

47. Fox Lake is a “supplier” as defined by Ind. Code § 24-5-0.5-2(3).

48. Aloft and Fox Lake have failed to continually meet the minimum standards of habitability in the leasing of residential property at Lakeside Pointe pursuant to Ind. Code §32-31-8 and Ch. 10 of the Marion County Health and Hospital Code,<sup>6</sup> in violation of Ind. Code §24-5-0.5-3(a).

#### **COUNT V**

**Violation of the Deceptive Consumer Sales Act – Ind. Code §24-5-0.5-3(a)  
Unfair, Abusive, or Deceptive Acts by Failing to Utilize Rent Payments  
Properly for Maintenance and Payments to Creditors  
*(against Aloft and Fox Lake)***

49. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

50. The solicitations and transactions identified in the foregoing paragraphs are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(1).

51. Aloft is a “supplier” as defined by Ind. Code § 24-5-0.5-2(3).

52. Fox Lake is a “supplier” as defined by Ind. Code § 24-5-0.5-2(3).

53. Aloft and Fox Lake have engaged in gross neglect of the maintenance of the property at Lakeside Pointe by continuing to accept rent payments with no intention of using those funds to maintain Lakeside Point in a safe, clean, and livable condition or to use the funds to maintain payment obligations with respect to bona fide creditors, in violation of Ind. Code §24-5-0.5-3(a).

#### **COUNT VI**

**Violation of the Deceptive Consumer Sales Act – Ind. Code §24-5-0.5-3(a)  
Knowing violations of the Deceptive Consumer Sales Act**

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<sup>6</sup> [https://hhcorp.org/images/HHCcode/chapter10\\_rev.pdf](https://hhcorp.org/images/HHCcode/chapter10_rev.pdf)

*(against Aloft and Fox Lake)*

54. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

55. The Lakeside Defendants committed the deceptive acts asserted with knowledge of their deceptive nature, subjecting them to civil penalties under Ind. Code §24-5-0.5-4(g).

**COUNT VII**

**Violation of the Deceptive Consumer Sales act – Ind. Code §24-5-0.5-8  
Commission of Incurable Deceptive Acts  
*(against Aloft and Fox Lake)***

56. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

57. Aloft and Fox Lake committed the asserted deceptive acts as a part of a scheme, artifice, or device with intent to defraud or mislead, thus committing incurable deceptive acts in violation of Ind. Code §24-5-0.5-8.

**COUNT VIII**

**Violation of the Nonprofit Corporations Act – Ind. Code §23-17-24-1(a)(1)(C)  
Misapplication or Waste of Nonprofit Assets  
*(against Fox Lake)***

58. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

59. Fox Lake continues to receive rent payments from residents and neglects to apply these funds to the maintenance and upkeep of Lakeside Pointe, while also failing use the funds to pay its over \$1 million bill with Citizens Energy Group.

60. In violation of Ind. Code § 23-17-24-1(a)(1)(C), Fox Lake has misapplied and/or wasted nonprofit corporate assets by not utilizing income received from residents and other sources of funds to repair the significantly damaged housing units and by not paying its significant outstanding debt to Citizens Energy Group, continuing to risk the inhabitability of the very housing it purports to offer to low-income residents.

### **COUNT IX**

#### **Violation of the Nonprofit Corporations Act – Ind. Code §23-17-24-1(a)(1)(D) Failing to Fulfill the Nonprofit Purpose (against Fox Lake)**

61. The State of Indiana incorporates the foregoing paragraphs of its Complaint as if fully set forth herein.

62. Fox Lake’s stated purpose is to provide low-income housing.

63. Fox Lake is failing to address the frequent and significant violations issued against it for violations of the Marion County Health and Hospital Code at Lakeside Pointe, leading to over 600 violations since 2017, and by being on the verge of having the sewer and water services shut off by Citizens Energy Group, effectively and legally rendering the apartment complexes at Lakeside Pointe and Fox Club uninhabitable.

64. In violation of Ind. Code § 23-17-24-1(a)(1)(D), Fox Lake can no longer carry out its purposes of providing low-income housing to residents at Lakeside Pointe or Fox Club.

### **RELIEF REQUESTED**

**WHEREFORE**, the State of Indiana respectfully requests judgment against the Defendants, Fox Lake and Aloft, for the relief described in the following paragraphs:

65. Pursuant to Ind. Code § 24-5-0.5-4(c) and § 23-17-24-1.5(b), appoint a receiver over Fox Lake for the purpose of managing the operations of the Lakeside Pointe and Fox Club complexes, providing the receiver with the appropriate authority to access Lakeside Pointe and Fox Club assets and accounts, collect rents, make payments for the benefit of creditors, stabilize the condition of property for the safety and well-being of the Lakeside Pointe and Fox Club residents, and all other just and proper authority

66. Pursuant to Ind. Code § 24-5-0.5-4(c) and § 24-9-8-3, permanently enjoin Aloft from engaging in the unlicensed practice of real estate in the State of Indiana and require their cooperation with the Court's appointment of a receiver.

67. Pursuant to Ind. Code § 24-5-0.5-4(c), permanently enjoin Defendants to maintain all apartment units at Lakeside Pointe and Fox Club to applicable health code standards.

68. Pursuant to Ind. Code § 24-5-0.5-4(c), permanently enjoin Defendants to utilize consumer rental payments properly by fulfilling their obligations to creditors.

69. Pursuant to Ind. Code § 23-17-24-1.5(b), enjoin Fox Lake to cooperate with any receiver appointed, properly use nonprofit assets, and fulfill its nonprofit mission.

70. Pursuant to Ind. Code § 24-5-0.5-4(c), enjoin the Defendants from retaliation against any residents who participate in or provide evidence in these proceedings.

71. Pursuant to Ind. Code § 24-5-0.5-4(c) and § 24-5-0.5-4(d), enjoin Defendants to void contracts of any current resident who wishes to terminate his or her lease with no early termination penalties.

72. Pursuant to Ind. Code § 24-5-0.5-4(c)(2), restitution to consumers who have been unable to fully enjoy the use of their apartment units due to health code violations.

73. Pursuant to Ind. Code § 24-9-8-3, award civil penalties, for Aloft's violations of the Home Loan Practices Act, payable to the State of Indiana.

74. Pursuant to Ind. Code § 24-5-0.5-4(g), award civil penalties for Aloft's knowing violations of Ind. Code § 24-5-0.5-3(a) and -10, payable to the State of Indiana.

75. Pursuant to Ind. Code § 24-5-0.5-4(g), award civil penalties for Fox Lake's knowing violations of Ind. Code § 24-5-0.5-3(a), payable to the State of Indiana.

76. Pursuant to Ind. Code § 24-5-0.5-8, award civil penalties for Defendants' incurable deceptive acts, payable to the State of Indiana.

77. Pursuant to Ind. Code § 24-5-0.5-4(c)(4) and § 24-9-8-3(a)(3), award the Office of the Attorney General its reasonable costs.

78. All other just and proper relief.

Respectfully submitted,

INDIANA ATTORNEY GENERAL, by:

/s/ Chase M. Haller

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