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January 30, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: *Newsday* Investigation and Fair Housing Law Proposals

Governor Cuomo:

We, the undersigned fair housing organizations, CNY Fair Housing; Fair Housing Justice Center (“FHJC”); Housing Opportunities Made Equal, Inc. (“HOME”); LawNY®; Long Island Housing Services, Inc.; and Westchester Residential Opportunities, Inc. (“WRO”), applaud Governor Cuomo’s interest in combatting housing discrimination across New York State. However, with housing discrimination complaints on the rise at the same time the federal government retreats from its commitment to enforcement of fair housing laws, we believe the proposed actions to better inform homebuyers and renters of their fair housing rights are simply not enough. To ensure equal housing opportunity for all New Yorkers, the Governor and legislature should focus their lawmaking efforts on increasing funding for fair housing testing and enforcement throughout the state, as well as on implementing several needed improvements to the fair housing laws.

As *Newsday*’s recent *Long Island Divided* project exposed, housing discrimination remains pervasive more than 50 years after passage of the federal Fair Housing Act. As New York’s six full service fair housing organizations, we assist victims of housing discrimination, conduct testing investigations, bring enforcement actions, and promote equal housing opportunity through education and outreach. Through this work, we know that the same discrimination

Newsday found on Long Island happens across the entire State. This is not a Long Island problem, or even just a New York State problem. This is a national problem that New York can and should be showing model leadership in addressing.

If New York State wishes to lead the fight against housing discrimination, we believe the Governor and State legislature should be funding full service fair housing organizations to conduct fair housing testing and enforcement efforts. As seen in the *Newsday* investigation, real estate agents are aware that it is illegal to steer buyers based upon race and other protected characteristics but do so anyway. Often a home seeker will not know that they are being discriminated against, no matter how well informed they are of their fair housing rights. Absent overt discrimination, individuals have no way of knowing on their own if the real estate agent is withholding information from them or treating them differently based on a protected class. This discrimination is often revealed only through matched-pair fair housing testing, as was used in the *Newsday* investigation.

We understand that the three major proposals from the Governor are as follows: notification of fair housing laws, posting of fair housing laws, and video recording of fair housing training. We appreciate efforts to notify consumers of their rights (we do much of the same in our own outreach work) through written notifications and postings. But while improving housing consumer knowledge of fair housing laws is a goal we share, we do not believe increasing notification is sufficient to rid our housing market of discrimination. In fact, in our experience, many if not all, real estate agents and agencies already distribute material regarding fair housing laws and/or have it posted in their offices. More significantly, in many cases consumers are completely unaware that they are in fact being discriminated against (as *Newsday*'s matched-pair testing revealed in many circumstances). Put simply, educated consumers will not exercise their rights if they do not know their rights were violated.

With respect to the Governor's last proposal, to video record all fair housing trainings, we respectfully believe that this will in fact be counterproductive to the cause and should be eliminated from the proposals. The fair housing trainings we and other fair housing trainers conduct are the rare occasions in which real estate professionals are able to speak more candidly and openly of the challenges they have in interpreting and complying with fair housing laws. That open dialogue is hugely valuable in addressing real-world questions facing real estate professionals and helping them work through the difficult issues that sit at the core of housing discrimination. If trainings are recorded, we believe it will have a chilling effect on these conversations, impeding learning and making it more difficult for fair housing advocates and teachers to connect effectively with the line agents. Of course, if New York State is interested in evaluating how long these trainings are or how effectively the material is conveyed, we suggest that New York State take an approach similar to *Newsday* and send staff to randomly sit in upon such trainings to evaluate their adequacy.

Accordingly, if New York State is determined to effectively combat housing discrimination, the most effective way to accomplish that is to provide funding to qualified fair housing organizations in New York State. Fair housing organizations are already equipped to conduct such testing and have been successfully doing so since shortly after the passage of the Fair Housing Act thereby opening up hundreds of thousands of housing units for New Yorkers throughout the state. Many fair housing organizations currently conduct testing and enforcement activities under grants from the federal government. However, with federal funding consistently in a state of delay and/or uncertainty, New York State funding for testing and enforcement would substantially increase our capacity to combat housing discrimination on behalf of all New Yorkers.

Additionally, the Governor and legislature should consider strengthening and tightening loopholes in the state fair housing law. While the New York State Human Rights Law (HRL) includes more protected classes than the federal Fair Housing Act, there are several ways in which it could be improved to increase its efficacy in fighting housing discrimination.

- First, vicarious liability should be explicitly listed as a theory of liability under the Human Rights Law (HRL). The status of vicarious liability under the HRL is an open question under current New York State case law, which puts New York law at odds with federal law in shielding certain wrongdoers. Among other things, the inability to hold certain housing providers liable discourages advocates and complainants from pursuing enforcement actions under NY law (whether in court or before state agencies) if they have other venues available. Expressly including a vicarious liability standard in the law would ensure that owners of buildings and real estate agencies can be held appropriately accountable for the actions of their agents, which will help to facilitate systemic change and increase compliance with the law.
- Second, the HRL should be expanded to include conviction records as a protected characteristic, in addition to protected class of persons with just an arrest record that was added to the HRL in July 2019. Individuals with past criminal justice system involvement are one of the hardest populations to secure housing. Yet without stable housing, it is exponentially more difficult to successfully reintegrate into society. The only protection this population is currently afforded under existing fair housing laws is based upon a disparate impact theory of liability, which is precariously situated at the federal level, not to mention difficult and expensive to litigate.
- Third, similar to what the State of California did in 2018, the HRL should require state agencies and departments, local jurisdictions, public housing authorities and other public entities receiving state or federal funds for housing and community development to

“affirmatively further fair housing” and take no action that is materially inconsistent with this obligation.

- Fourth, the HRL should explicitly prohibit discriminatory action by local public agencies that operate housing programs, control land-use and zoning decisions, or engage in other housing and community development activities to ensure that these programs and activities do not perpetuate segregation or make housing unavailable based on a protected characteristic.

We would also urge the Governor’s office to read the joint recommendations produced by the Fair Housing Justice Center and ERASE Racism. We endorse these suggestions in their entirety and would support all efforts to enact them. Our hope is that the discrimination uncovered by *Newsday*’s investigation continues to spark interest with New York State government and that meaningful steps will be taken toward making true housing choice accessible for all New Yorkers.

Respectfully,

CNY Fair Housing
Fair Housing Justice Center
Housing Opportunities Made Equal, Inc.
LawNY®
Long Island Housing Services
Westchester Residential Opportunities, Inc.

New York State currently has six federally recognized fair housing initiative program (FHIP) organizations who assist victims of housing discrimination, conduct testing investigations, and promote fair housing laws and equal housing opportunity awareness. The following organizations have combined their expertise and knowledge to suggest next steps necessary to effectively enforce fair housing laws in New York State:

CNY Fair Housing is private, non-profit organization founded in 1991, dedicated to eliminating housing discrimination, promoting open communities, and ensuring equal access to housing opportunity for all people in Central and Northern New York.

The **Fair Housing Justice Center** (“FHJC”), a nonprofit civil rights organization, is dedicated to eliminating housing discrimination; promoting policies that foster open, accessible, and inclusive communities; and strengthening enforcement of fair housing laws in the New York City region.

Housing Opportunities Made Equal, Inc. (“HOME”) is a nonprofit civil rights organization founded in 1963 to promote the value of diversity and to assure all people an

equal opportunity to live in the housing and communities of their choice—through education, advocacy, the enforcement of fair housing laws, and the creation of housing opportunities.

LawNY® is a non-profit law firm that provides free legal assistance to people in 14 counties in western New York. LawNY’s Fair Housing Enforcement Project provides direct legal representation to clients to enforce the Fair Housing Act.

Long Island Housing Services is a civil rights non-profit focused on fair housing that was founded in 1969. Our mission is the elimination of unlawful housing discrimination and promotion of decent and affordable housing through advocacy and education. We are also a HUD-certified Housing Counseling agency providing landlord-tenant counseling and foreclosure prevention services.

Westchester Residential Opportunities, Inc. (“WRO”) is a non-profit HUD-certified housing counseling agency founded in 1968 and serving Westchester County and the lower Hudson Valley. Our mission is to promote equal, affordable and accessible housing opportunities for all residents of our region. We serve clients and the community through our several programs: eviction prevention, rental assistance, mortgage default prevention, senior housing, fair housing, independent living, and first-time homebuying.