

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LEGAL AID CHICAGO,	)	
	)	
Plaintiff,	)	Case No. 1:23-cv-4809
	)	
	)	
v.	)	
	)	
HUNTER PROPERTIES, INC.,	)	
	)	
Defendant.	)	

**LEGAL AID CHICAGO’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

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INTRODUCTION

Legal Aid Chicago brings this action against Defendant Hunter Properties, Inc. (“Hunter”) for violation of the federal Fair Housing Act (“FHA”) and the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) based on Hunter’s blanket policy of categorically denying housing to rental applicants with any prior history of eviction proceedings. This No-Evictions Policy disparately impacts Black renters and Black women renters and does not bear a reasonable relationship to whether a prospective tenant poses an elevated risk of not paying rent or otherwise being an unsatisfactory tenant. Hunter’s policy thus violates federal and state law.

Hunter moves to dismiss Legal Aid Chicago’s First Amended Complaint (“FAC”) arguing that Legal Aid Chicago lacks standing and otherwise has failed to state a claim. But the FAC tracks this Court’s prior order enumerating the type of factual allegations Legal Aid Chicago must plead to have organizational standing. Additionally, the FAC sets forth that Hunter’s policy has an unlawful disparate impact on Black renters and Black women and is irreconcilable with Illinois’s public policy as expressed in several statutes.

Hunter ignores the numerous, detailed factual allegations regarding the injury Legal Aid Chicago suffered due to Hunter’s No-Evictions Policy. Hunter also tries a novel defense that, because, it claims, it is a relatively small player in the housing market, it cannot, as a matter of law, cause injury to Legal Aid Chicago because other landlords also employ discriminatory policies. As a matter of law, however, the bad conduct of others is no shield for Hunter here. For the reasons explained below, the motion to dismiss should be denied.

LEGAL STANDARD

A challenge to subject matter jurisdiction under 12(b)(1) can be either “a facial or a factual attack on the plaintiff’s allegations.” *Bazile v. Fin. Sys. of Green Bay, Inc.*, 983 F.3d 274, 279 (7th Cir. 2020). A facial attack under 12(b)(1) tests whether the allegations in the complaint, taken as

true and construed in favor of the plaintiff, support an inference that the elements of standing exist. *Silha v. ACT, Inc.*, 807 F.3d 169, 173–74 (7th Cir. 2015). In considering a motion to dismiss pursuant to 12(b)(6), a court must accept all factual allegations as true and draw all reasonable inferences in favor of the plaintiff. *Mack v. Resurgent Cap. Servs., L.P.*, 70 F.4th 395, 405 (7th Cir. 2023).

ARGUMENT

I. Legal Aid Chicago has standing to bring this action.

Article III standing consists of three elements: “a plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Mack*, 70 F.4th at 403 (internal quotation marks omitted). To establish injury in fact, a plaintiff “must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Id.* (internal quotation marks omitted).

A. The FAC alleges that Legal Aid Chicago was injured by Hunter’s No-Evictions Policy.

An injury in fact for Article III purposes may be established by alleging an injury under the FHA. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982). There must be a “perceptibl[e] impair[ment]” of Legal Aid Chicago’s ability to fulfill its mission that is concrete and not abstract. *Id.* at 379. Legal Aid Chicago may assert standing in its own right, demonstrating injury under the FHA—and thus Article III—by alleging that a defendant’s conduct frustrated the organization’s mission and caused the group to divert resources from other activities to combat a defendant’s conduct. *See id.* at 378–79. Relying on *Havens*, the Seventh Circuit has explained that “the only injury which need be shown to confer standing on a fair-housing agency is deflection of the agency’s time and money from counseling to legal efforts directed against discrimination.”

Vill. of Bellwood v. Dwivedi, 895 F.2d 1521, 1526 (7th Cir. 1990). The court reasoned that “[t]hese are the opportunity costs of discrimination, since although the counseling is not impaired directly there would be more of it were it not for the defendant’s discrimination.” *Id.*

This Court’s prior order provided the blueprint for the FAC’s detailed allegations regarding Legal Aid Chicago’s Article III injury. Hunter’s motion ignores all of these detailed allegations and instead cites the FAC’s general description of Legal Aid Chicago’s injuries set forth in the introductory paragraph 7 of the FAC. Mem. at 3. Hunter also misses the point when it argues that its policy does not “target” Legal Aid Chicago (Mem. at 4) because the policy “targets” Legal Aid Chicago’s clients and that causes an injury to Legal Aid Chicago for the reasons described below.

1. Legal Aid Chicago was required to make substantive changes to its programs.

The Court stated that “an organization would suffer an injury if it is forced to ‘overhaul’ its entire strategy or revamp its training materials.” *Legal Aid Chi. v. Hunter Prop., Inc.*, 2024 WL 4346615, at *8 (N.D. Ill. Sept. 30, 2024). In the FAC, Legal Aid Chicago alleges that Hunter’s No-Evictions Policy, and others like it, have compelled Legal Aid Chicago’s Housing Practice Group to make such substantive changes to the manner in which its core eviction defense and sealing activities are conducted. FAC, ¶ 71. The FAC also alleges that Hunter’s No-Evictions Policy has required it to engage in new services such as advising clients, partners, and the public about possible options for mitigating the impact of eviction records, approaching third-party screening companies to address inaccurate or sealed eviction records, and changing its intake process to specifically ask clients if they have an eviction record and then expending resources on sealing the record and identifying landlords without No-Eviction Policies. FAC, ¶¶ 75–77.

Additionally, the FAC alleges other substantial changes in the Housing Practice Group’s manner of providing representation, including: (1) representing tenants in seeking to seal all types

of eviction records, even those that are old or did not result in a judgment against the client; (2) filing and arguing more dispositive motions so that its clients can show that they won their eviction case; (3) informing clients with meritorious claims and defenses that litigating them will not avoid harmful impacts of a judicial eviction record, resulting in clients abandoning meritorious defenses in order to stay out of court; (4) negotiating more time for a tenant to move by forgoing meritorious defenses; (5) expending more time engaging in advocacy work with housing authorities to prevent housing voucher termination; (6) recruiting, training, and managing more volunteers to assist with sealing clients' eviction records; and (7) requiring attorneys to devote more time to non-legal work identifying potential landlords who will rent to clients with eviction records, sending clients information on open waitlists for affordable housing, and speaking with prospective landlords about a client's eviction records. FAC, ¶¶ 71(a)–(g).

2. Legal Aid Chicago was required to divert its resources due to Hunter's policy.

Independently sufficient to show standing, Legal Aid Chicago was required to divert its resources due to Hunter's policy. In its prior order, the Court stated, "Legal Aid Chicago's primary alleged injury is the need to divert resources from its other activities in order to fight evictions and eviction-related housing denials. So, the question is whether that is an ordinary program cost of the organization, or whether it is an extra effort that adds to their workload. Ordinary expenditures as part of an organization's purpose do not constitute the necessary injury-in-fact required for standing." *Legal Aid Chi.*, 2024 WL 4346615, at *10 (internal quotation marks and citations omitted).

The FAC alleges in detail the diversion of Legal Aid Chicago's resources requiring extra effort to Legal Aid Chicago's workload far beyond a mere ordinary program cost. As a result of Hunter's policy, Legal Aid Chicago has diverted its limited resources toward counteracting

activities at the expense of other planned non-eviction-related housing work. In particular, Legal Aid Chicago's Housing Practice Group has not been able to dedicate as many resources to: (1) challenging poor housing conditions that pose serious health and safety risks to its clients and their families; (2) challenging unlawful subsidy terminations; and (3) bringing affirmative cases on behalf of tenants, including related to illegal lockouts and rent determinations. FAC, ¶¶ 83(a)–(c).

Additionally, as a result of Hunter's policy the Housing Practice Group's new and expanded consumer protection services go well beyond just legal representation in housing matters: (1) advising clients on possible options for mitigating the impact of prior eviction records through consumer protection remedies; (2) drafting and sending letters to and filing formal disputes with third-party screening companies to request removal of inaccurate or sealed eviction records; and (3) developing and distributing public education materials to advise Cook County residents, landlords, and service providers on the enduring impact of eviction records, including those previously sealed, on housing access and the possible options to mitigate that impact through consumer protection remedies. FAC, ¶¶ 75(a)–(c).

3. Hunter's No-Evictions Policy impaired Legal Aid Chicago's ability to carry out its core mission.

Hunter's policy impaired Legal Aid Chicago's ability to carry out its core mission. The Court explained that "the impairment of its ability to do work within its core mission [is] enough to support standing." *Legal Aid Chi.*, 2024 WL 4346615, at *8 (internal quotation marks and citation omitted). Hunter's No-Evictions Policy impairs the ability of Legal Aid Chicago's Housing Practice Group to carry out core tenant eviction defense representation because, even if Legal Aid Chicago secures dismissal of an eviction case or obtains a court order sealing its client's prior eviction record, Hunter will still use the prior eviction filing or sealed record as a basis to deny housing under the No-Evictions Policy. FAC, ¶¶ 68–70.

Additionally, the Housing Practice Group’s mission is to maximize low-income Cook County residents’ access to safe, decent, and affordable housing, including by preventing evictions and reducing the impacts of evictions and eviction records. FAC, ¶ 79. Because Hunter uses any eviction record as a basis for categorically denying would-be tenants, Hunter compels Legal Aid Chicago to advise clients about the impact an eviction filing would have on their ability to secure housing even if they are successful. FAC, ¶ 80. This information often leads clients to decide they are better off moving out to avoid acquiring an eviction record, even when they have meritorious defenses. *Id.* When clients choose to move out rather than raise and litigate meritorious defenses, the Housing Practice Group is denied the opportunity to perform its core work of representing tenants in litigation to vindicate their rights and preserve their housing. *Id.* In this way, Hunter’s No-Evictions Policy impairs Legal Aid Chicago’s ability to do core work within its mission of maximizing low-income tenants remaining in affordable housing. *Id.*

Hunter’s No-Evictions Policy also nullifies the Housing Practice Group’s work in sealing eviction records and ensuring that such records are not used to exclude tenants from housing. FAC, ¶ 81. Over the last six years, Legal Aid Chicago has devoted its resources and thousands of staff hours to more than 1,100 sealing cases, and by denying housing to those with sealed records, Hunter impedes Legal Aid Chicago’s Housing Practice Group’s ability to achieve its mission of maximizing housing opportunities for low-income residents. *Id.*

4. Legal Aid Chicago was required to take on work outside its core mission.

Hunter argues that the FAC does not allege that its policy “force[d] [Legal Aid Chicago] to take on work outside its core mission ... specifically tenant eviction representation.” Mem. at 4. That is not required to establish organizational standing. As this Court stated, “adding work that

is outside a group's normal mission is not required for organizational standing.” *Legal Aid Chi.*, 2024 WL 4346615, at *8.

In any event, the FAC alleges that Legal Aid Chicago *has* been required to take on work outside its core mission. Legal Aid Chicago's core mission is to provide legal services, but it has been required to take on non-legal services. This non-legal work has included: (1) researching and contacting other potential landlords to inquire about their eviction screening policies and practices; (2) assisting clients in completing applications for rental housing; (3) drafting and sending letters to landlords to explain the eviction sealing process and why a previously sealed eviction record has no bearing on an applicant's suitability as a tenant; (4) applying for emergency funds to assist clients to place their property in storage or pay for application fees when they struggle to find housing as a result of prior eviction records; and (5) applying for rental assistance funds on behalf of a client to increase the chance the landlord will agree to settle an eviction case and seal an eviction record. FAC, ¶¶ 76(a)–(e).

Further, the Housing Practice Group's new and expanded consumer protection services go well beyond just legal representation in housing matters: (1) advising clients on possible options for mitigating the impact of prior eviction records through consumer protection remedies; (2) drafting and sending letters to and filing formal disputes with third-party screening companies to request removal of inaccurate or sealed eviction records; and (3) developing and distributing public education materials to advise Cook County residents, landlords, and service providers on the enduring impact of eviction records, including those previously sealed, on housing access and the possible options to mitigate that impact through consumer protection remedies. FAC, ¶¶ 75(a)–(c).

These allegations amply allege that Legal Aid Chicago has suffered an injury for Article III standing purposes.

B. The FAC alleges that Hunter caused Legal Aid Chicago's injuries.

Hunter argues that Article III's causation element is lacking because Legal Aid Chicago's interactions with Hunter were limited, and its allegations are "far too speculative and attenuated to support a causal connection between Hunter Properties' alleged conduct and alleged impairment of Plaintiff's tenant eviction defense representation work." Mem. at 5. Hunter, however, ignores all of the specific allegations in the FAC about the effect of Hunter's policy on Legal Aid Chicago.

The FAC makes clear that Legal Aid Chicago first learned of Hunter's No-Evictions Policy in August 2021 and thereafter undertook an investigation—including sending multiple housing testers to contact Hunter to inquire about rental units—to test whether the policy existed. FAC, ¶¶ 58–67. In particular, the FAC alleges that around August 2021, Legal Aid Chicago first learned of Hunter's aggressive No-Evictions Policy of categorically denying rental housing to applicants based on any prior eviction filing. FAC, ¶ 58. Legal Aid Chicago had previously dealt with Hunter when it defended several clients from evictions from Hunter's properties. FAC, ¶ 59. Legal Aid Chicago understood that Hunter's housing units were generally affordable to Legal Aid Chicago's client base and located in more resource-rich, integrated areas of Chicago. *Id.*

Upon learning of Hunter's No-Evictions Policy, Legal Aid Chicago opened a fair housing investigation into Hunter and assigned fair housing testers to inquire about Hunter's evictions screening policies. FAC, ¶ 60. This included expending staff time and resources to review Hunter's rental application materials and policies and assigning multiple fair housing testers to contact Hunter to inquire about Hunter's applications requirements regarding certain rental units. FAC, ¶¶ 61–64. Legal Aid Chicago also devoted time and resources to obtain information from community partners and housing counselors familiar with Hunter to assess the discriminatory harm caused by Hunter's actions on Legal Aid Chicago's clients. FAC, ¶ 65. Based on this investigation

and testing, Legal Aid Chicago concluded that all of its clients with prior eviction histories would be categorically denied rental housing under Hunter's No-Evictions Policy. FAC, ¶ 66. This fact nullified the value of Legal Aid Chicago's legal services to those clients and further obligated Legal Aid Chicago to divert scarce resources to counter Hunter's discriminatory policy and practices. FAC, ¶ 67.

Further, the FAC alleges a direct causal link between Hunter's and similar policies and Legal Aid Chicago's diversion of resources because Legal Aid Chicago could not steer its clients to Hunter properties, and this frustrates its mission. Hunter's policy impedes Legal Aid Chicago's mission by excluding tenants from housing after Legal Aid Chicago has devoted significant resources to having eviction records sealed so that those records will not be used to deny housing. FAC, ¶¶ 72, 82. As a result of the policy and others like it, Legal Aid Chicago's housing navigator must now spend approximately four times longer to secure rental housing for a client with a prior eviction record than for a client without a prior eviction record. FAC, ¶ 74.

Regardless of Hunter's speculation that other entities also discriminated against housing applicants, Legal Aid Chicago has adequately alleged that Hunter engaged in discrimination and the organization is harmed by the discrimination. "[T]he fact that a defendant was one of multiple contributors to a plaintiff's injuries does not defeat causation." *Parsons v. U.S. Dep't of Just.*, 801 F.3d 701, 714 (6th Cir. 2015); *see also Otoe-Missouria Tribe of Indians v. New York State Dep't of Servs.*, 974 F. Supp. 2d 353, 358 (S.D.N.Y. 2013), *aff'd*, 769 F.3d 105 (2d Cir. 2014) (whether or not defendant is the "only cause" of the injury "is beside the point").

C. Legal Aid Chicago's injuries are redressable.

Without any legal authority, Hunter claims that Legal Aid Chicago's injuries are not redressable because Hunter Leal Aid Chicago's injuries are too speculative and other landlords

screen tenants for prior evictions. Mem. at 5. For the reasons discussed, Legal Aid Chicago has alleged perceptible injuries resulting from Hunter’s policy and therefore those injuries are redressable by a judgment against Hunter. “The ability to effectuate a partial remedy satisfies the redressability requirement.” *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021) (internal quotation marks omitted).

II. Legal Aid Chicago has alleged violations of the FHA.

Disparate impact liability under the FHA “target[s] artificial barriers to housing” that “function unfairly to exclude minorities . . . without sufficient justification.” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 539–40 (2015). To establish a *prima facie* case of disparate impact, a plaintiff must “allege facts . . . or produce statistical evidence demonstrating a causal connection.” *Id.* at 543. This boils down to three elements: (1) a specific policy; (2) a statistical disparity; and (3) a causal connection. *Huskey v. State Farm Fire & Cas. Co.*, 2023 WL 5848164, at *7 (N.D. Ill. Sept. 11, 2023) (citing *Inclusive Cmty. Project.*, 576 U.S. at 542–43).

A. The FAC alleges that Hunter’s policy proximately caused Legal Aid Chicago’s injury.

Hunter argues (Mem. at 6–9) that the impacts of its No-Evictions Policy on Legal Aid Chicago are secondary to its impacts on disqualified renters, and therefore not within the “first step” of causation generally required to establish proximate cause under *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 203 (2017) (hereinafter “*BoA*”). But this argument fails because the injuries to LAC are direct and closely connected to Hunter’s No-Evictions Policy.

1. Injury to LAC’s mission is foreseeable and directly related to the injurious conduct.

In *BoA*, the Supreme Court recognized that the impacts of housing discrimination can be very far-reaching, but that Congress did not intend for liability to reach remote actors multiple

steps removed from the discriminatory conduct. *See* 581 U.S. at 202. The court therefore adopted the “first step” proximate causation requirement from common law tort doctrines, requiring foreseeability and “some direct relation between the injury asserted and the injurious conduct alleged.” *Id.* at 202–3.

As discussed above, the FAC alleges that Hunter’s discriminatory No-Evictions Policy has frustrated Legal Aid Chicago’s mission in multiple ways. These include diminishing or negating altogether the impact of Legal Aid Chicago’s successful legal advocacy in protecting tenants’ access to housing, and thereby disincentivizing tenants from contesting and litigating eviction cases even when meritorious defenses are available. *See* FAC, ¶¶ 2–3, 7, 15–31, 58–85. These impacts impede Legal Aid Chicago from carrying out core work within its mission of maximizing housing access and stability for low-income renters through legal representation. *See* FAC, ¶¶ 67–70. And these injuries to Legal Aid Chicago’s mission are foreseeable because renters commonly need to change residences and hence can reasonably be expected to prioritize their ability to secure new rental housing over preserving particular rental homes.

The injuries to Legal Aid Chicago’s mission are also direct and well within the first step of causation. By establishing and following a policy of inquiring into and denying admission to applicants with any kind of eviction record, Hunter impairs Legal Aid Chicago’s ability to protect its clients’ rental housing access through successful legal representation. While this condition certainly harms Legal Aid Chicago’s clients, it harms Legal Aid Chicago’s mission at the same time.

The injury to Legal Aid Chicago manifests most clearly when Hunter’s policy deters or denies admission to applicants with dismissed or sealed eviction records, or when Legal Aid Chicago’s clients opt to move out of a rental home, accept unsatisfactory settlement terms, or

otherwise resolve a housing matter out of court so as to avoid being disqualified for future housing under the No-Evictions Policy.

Hunter argues the only direct injury is to prospective tenants denied housing under the policy. Mem. at 8. But the denial of housing to such prospective tenants also injures Legal Aid Chicago’s mission—it is an associated and simultaneous injury, not a derivative or contingent one. Indeed, the denial of housing to applicants with eviction records reveals the persistent injurious condition caused by the No-Evictions Policy; so long as that policy remains in place, Legal Aid Chicago’s ability to advance its mission by vindicating the rights of low-income tenants through the civil legal system remains frustrated. *See Havens*, 455 U.S. at 381 (“HOME, too, claims injury to its counseling and referral services not only from the incidents involving Coleman and Willis, but also from a continuing policy and practice of unlawful racial steering that extends through the last alleged incident.”).

2. The lending cases on which Hunter relies are inapposite.

Hunter relies heavily on a series of cases in which courts rejected, for lack of proximate cause, fair housing claims brought by county governments for making improper mortgage loans, in which the governments alleged the subsequent defaults and foreclosures on those loans caused downstream harms in their communities. *See, e.g., Cook County v. Bank of Am. Corp.*, 78 F.4th 970, 972 (7th Cir. 2023) (“The County is at best a tertiary loser; its injury derives from the injuries to the borrowers and banks.”); *see also City of Oakland v. Wells Fargo & Co.*, 14 F.4th 1030, 1039 (9th Cir. 2021) (en banc). Unlike the injury to Legal Aid Chicago’s mission, which is continuous and directly attributable to the No-Evictions Policy, the theories of causation in the lending cases entailed elaborate chains of events, involving multiple actors and contingencies. In *Oakland*, for example, the county’s injury due to a predatory mortgage loan rested on a long chain of causal

events: the borrower must first default on the loan, then the loan servicer must decide to foreclose, and then the resulting foreclosure sale must lead to vacancy, blight, or a depressed property tax base. 14 F.4th at 1039–40. Proximate cause was lacking because the borrower might not default, the servicer might not foreclose, or the foreclosure sale might deliver the property to a conscientious buyer who occupies and maintains the home in good condition. *Id.* at 1040. By contrast, the injury to Legal Aid Chicago’s mission here results directly from the No-Evictions Policy and is not contingent upon any further events or third-party actors.

3. Proximate causation is not attenuated by factors other than Hunter’s conduct.

Precisely because Hunter’s No-Evictions Policy so directly limits the housing opportunities of renters who acquire eviction records, and thereby frustrates Legal Aid Chicago’s ability to secure relief for tenants through successful outcomes in housing cases, other factors do not materially detract from the causation between Hunter’s policy and Legal Aid Chicago’s injury.

Hunter claims other landlords “who filed evictions against Plaintiff’s clients, other landlords who screen potential tenants for prior evictions, and the third-party tenant screening companies” are alternative causes of the injury to Legal Aid Chicago’s mission. Mem. at 8. But this possibility of other injuries to Legal Aid Chicago caused by others’ conduct does not attenuate proximate cause as to Hunter. It is well-settled that a single injury can have multiple proximate causes, and “that another individual also tortiously contributes to the plaintiff’s injury does not alter the independent, concurring tortfeasor’s responsibility for the entirety of the injury which he or she actually and proximately caused.” *Woods v. Cole*, 181 Ill. 2d 512, 518–19 (Ill. 1998) (citing Restatement (Second) of Torts § 875, cmt. c (1979)); *see also Staub v. Proctor Hosp.*, 562 U.S. 411, 420 (2011) (injury caused by discrimination can have multiple proximate causes).

B. The FAC alleges a statistical disparity.

Hunter argues that the alleged statistical disparity is speculative because the FAC “does not allege an actual statistical disparity found in Hunter Properties’ tenant population but merely alleges that one is possible because there is a statistical disparity in the pool of tenants who would be impacted by an alleged” No-Evictions Policy. Mem. at 11. To establish a *prima facie* case of disparate impact, a plaintiff must “allege facts . . . or produce statistical evidence demonstrating a causal connection.” *Inclusive Cmty. Project*, 576 U.S. at 540. This boils down to three elements: (1) a specific policy; (2) a statistical disparity; and (3) a causal connection. *Huskey*, 2023 WL 5848164, at *7 (citing *Inclusive Cmty. Project*, 576 U.S. at 542–43).

Legal Aid Chicago has plausibly alleged two types of statistical disparities that show that Hunter’s No-Evictions Policy has a significant disparate impact based on race, as well as on race and sex. First, Black renters and Black women renters in Cook County are significantly more likely than non-Black renters or non-Black women renters in Cook County to have had an eviction-related proceeding. See FAC, ¶¶ 51–52. These allegations are in accord with a well-established method of determining whether a policy has a disparate impact by providing a statistical analysis that compares the relative percentage of a particular group that is adversely impacted by the policy versus the percentage impacted among those not in that group and shows that members of the specific group are more likely to be adversely impacted. See e.g., *Huskey*, 2023 WL 5848164, at *8 (plaintiffs stated a claim when they plausibly alleged “statistically significant disparities between the experiences of Black versus white State Farm policyholders”); *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 987–88 (4th Cir. 1984) (disparate impact was established by statistics showing defendant’s policy resulted in eviction notices being sent to 54.3% of nonwhite tenants but only 14.1% of white tenants).

Second, more than half of the individuals served with an eviction case or evicted are Black renters, even though they make up just one-third of Cook County renters. FAC, ¶ 51. Black women renters make up approximately one-fifth of all renters but alone account for approximately one-third of all renters served with an eviction case or evicted. *Id.* ¶ 52. Comparing the proportion of a particular group among those adversely impacted by a policy to that group's proportion in the general population, where that particular group is overrepresented among those adversely impacted relative to its share of the population, is another well-established method of showing disparate impact. *See, e.g., Gallagher v. Magner*, 619 F.3d 823, 834 (8th Cir. 2010) (City's policy that allegedly decreased the supply of affordable housing opportunities was shown to have a disproportionate adverse impact on Black residents; this was based on data showing Black residents made up approximately 61% of the population seeking such housing while only making up 11.7% of the City's population); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1286–87 (7th Cir. 1977) (noting the racially disparate impact of the defendant's action where Black people constituted 40% of the group of low-income persons impacted versus 18% of the area's total population).

Hunter concedes that Legal Aid Chicago alleges “there is a statistical disparity in the pool of tenants who would be impacted by an alleged ‘No-Evictions Policy’ if they attempted to complete [Hunter Properties’] online rental application.” Mem. at 11. Hunter, however, argues that the statistical analysis must be based on information about its existing tenants rather than the pool of potential tenants of its apartments in the relevant housing market. *Id.* For a motion subject to 12(b)(6), that is erroneous for two reasons. First, Legal Aid Chicago does not have access to the data from which to statistically analyze the demographic composition of Hunter's existing tenant or applicant pools. Whatever the information in Hunter's control might eventually show does not

make the statistics that Legal Aid Chicago alleged any less plausible. *See Nat'l Fair Hous. All. v. Deutsche Bank Nat'l Tr.*, 2019 WL 5963633, at *13 (N.D. Ill. Nov. 13, 2019) (the question is whether “Defendants’ methodological challenges . . . renders the statistical allegations unreliable or implausible.”); *Access Living of Metro. Chi. v. City of Chi.*, 372 F. Supp. 3d 663, 671–72 (N.D. Ill. 2019) (challenges to plaintiffs’ methodology for showing disability discrimination are not appropriate under federal pleading standards). Second, the No-Evictions Policy has deterrent effects on persons outside Hunter’s actual tenant population and applicant pool, and thus the relevant housing market logically includes potential applicants as well as actual applicants or tenants.

“When evaluating disproportionate impact, [the] court looks to the subset of the population affected by the challenged policy.” *Reinhart v. Lincoln Cnty.*, 482 F.3d 1225, 1230 (10th Cir. 2007). Here, Hunter’s No-Evictions Policy affects both *applicants*, by excluding them, and *potential applicants*, by discouraging them from ever applying. Therefore, the relevant analysis focuses on the impact that the policy has on the pool of potential applicants as a whole. *See Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) (approving use of national statistics in Title VII disparate impact case where “otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory”); *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 366 (1977) (“If an employer should announce his policy of discrimination . . . his victims would not be limited to the few who ignored the sign and subjected themselves to personal rebuffs.”); *Mister v. Illinois Cent. Gulf R. Co.*, 832 F.2d 1427, 1436 (7th Cir. 1987) (“An applicant pool analysis is biased against finding discrimination, if potential applicants know or suspect that the employer is discriminating.”).

Recent cases challenging similar tenant screening policies under the FHA are in accord. *See, e.g., Reyes v. Waples Mobile Home Park Ltd. P'ship*, 903 F.3d 415, 428 (4th Cir. 2018) (considering statistical analysis about the “population in Virginia” when determining whether the plaintiffs “sufficiently alleged a prima facie case of disparate impact” of a housing provider’s policy); *Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, 478 F. Supp. 3d 259, 292 (D. Conn. 2020) (“[T]he potential applicant pool data may provide a more accurate depiction of the true discriminatory impact than the actual applicant pool data[.]”).

Legal Aid Chicago alleges that Hunter’s apartments attract potential tenants from all across Cook County. FAC, ¶ 53 The renter population of Cook County is therefore the most logical proxy for the potential applicant pool for Hunter’s apartments that is impacted by the No-Evictions Policy, either by the deterrent effect of Hunter’s publicly available statements of its policy on its website or by Hunter’s denial of rental applications from anyone with a connection to a prior eviction case. *See Vill. of Arlington Heights*, 558 F.2d at 1288.

Additionally, Legal Aid Chicago plausibly alleges the existence of a causal connection between Hunter’s No-Evictions Policy and the statistical racial and gender disparities in Hunter’s applicant pool. *Contra* Mem. at 11–12. *See HSBC N. Am. Holdings, Inc.*, 316 F. Supp. 3d at 952. Hunter deterred prospective tenants with eviction histories from applying for housing by automatically denying all such applicants and clearly stating the No-Evictions Policy on its website and public-facing materials. FAC, ¶ 38. That policy disproportionately excludes Black renters and Black women renters because they are significantly more likely to have experienced an eviction case in Cook County. FAC, ¶¶ 46–52. Indeed, recent guidance from the Department of Housing and Urban Development and the Consumer Financial Protection Bureau confirm that consideration

of eviction history may unjustly exclude people based on race and other protected characteristics. FAC, ¶¶ 48–50.

III. Count III states a claim for unfair business practice in violation of the ICFA.

A. Legal Aid Chicago has statutory standing under the ICFA.

Legal Aid Chicago has statutory standing under the ICFA. A non-consumer plaintiff has standing to pursue ICFA claims if they “allege conduct [that] involves trade practices addressed to the market generally or otherwise implicates consumer protection concerns.” *Roppo v. Travelers Cos.*, 100 F. Supp. 3d 636, 651 (N.D. Ill. 2015) (internal quotation marks omitted). The adequacy of such allegations is measured by the consumer nexus test. *Athey Prod. Corp. v. Harris Bank Roselle*, 89 F.3d 430, 436–37 (7th Cir. 1996). That test has four prongs: “(1) that [Plaintiff’s] actions were akin to a consumer’s actions to establish a link between them and consumers; (2) how defendant’s representations ... concerned consumers other than [Plaintiff]; (3) how defendant’s particular [activity] involved consumer protection concerns; and (4) how the requested relief would serve the interests of consumers.” *Breeze v. Bayco Prod. Inc.*, 475 F. Supp. 3d 899, 906 (S.D. Ill. 2020). Legal Aid Chicago satisfies this test.

First, Hunter argues simply that Legal Aid Chicago is “not a potential consumer of residential rental services.” Mem. at 13. Of course, it need not be a consumer, otherwise there would be no need for the consumer nexus test. Hunter does not otherwise argue that Legal Aid Chicago lacks an adequate link to the consumers of the rental market. Unlike the situation in *CHS Acquisition Corp. v. Watson Coatings, Inc.*, 2018 WL 3970137, at *13 (N.D. Ill. Aug. 20, 2018), upon which Hunter relies for its general argument, where the plaintiff did not state any non-attenuated link to the consumers targeted by the defendant, here Legal Aid Chicago has alleged close involvement with renters and applicants. FAC, ¶¶ 18–24. Indeed, the efforts of Legal Aid Chicago to advance its mission, including by arranging for testing of Hunter’s policy and enabling

its clients to effectively exercise their own rights as tenants or housing applicants, is closely tied and akin to a renter's experience in the housing market. *See* FAC, ¶¶ 62–66. The ICFA “is to be liberally construed” to eradicate unfair practices, *Bank One Milwaukee v. Sanchez*, 336 Ill. App. 3d 319, 323 (2003), and Legal Aid Chicago has alleged a relationship with the consumers—its clients—affected by Hunter's No-Evictions Policy that shows the organization is in a prime position to vindicate the ICFA's purpose.

Second, Hunter's website sets out its blanket No-Evictions Policy that applies to all would-be tenants. This policy is unquestionably directed to and affects the market of residential tenants generally. *See Breeze*, 475 F. Supp. 3d at 907 (holding a public statement on a website was directed to the consumer public in general). Hunter argues that its conduct is “not significant enough to raise consumer protection concerns.” Mem. at 13. But Hunter's authority, *MacNeil Auto. Prod., Ltd. v. Cannon Auto. Ltd.*, 715 F. Supp. 2d 786, 793 (N.D. Ill. 2010), simply holds that an action must have a wide enough scope to affect the market generally, as opposed to a single party. Further, Hunter is a substantial business with 60 properties and 2,500 rental units and thus is orders of magnitude more significant than individuals subletting one or a few units.

Third, Hunter's No-Evictions Policy implicates consumer protection concerns and runs contrary to public policy because it undermines state and federal statutes designed to protect consumers of residential housing, including 735 ILCS 5/9-121, which authorizes sealing eviction records; 310 ILCS 70/1, the Homelessness Prevention Act; 42 U.S.C. § 3604, the FHA; and 775 ILCS 5/1-101 *et seq.*, the Illinois Human Rights Act. *See* FAC, ¶¶ 96–99. Legal Aid Chicago further alleges that Hunter's policy disproportionately affects Black renters, particularly Black women, who are more likely to have been sued in an evictions case. *Id.* ¶ 92. Hunter's policy also has deleterious impacts on the civil legal system because it prevents the eviction courts from

affording complete relief to improperly sued tenants and it chills tenants from exercising rights under their leases and landlord-tenant statutes. This impact of Hunter's policy is irreconcilable with Illinois policy as expressed through its numerous statutes.

Fourth, Legal Aid Chicago seeks a permanent injunction barring Hunter from continuing its No-Evictions Policy. Compl. Prayer for Relief at ¶ C. It is in consumers' and the public's interests that the Court bar Hunter from using its No-Evictions Policy.

B. Legal Aid Chicago Has Plausibly Alleged a Violation of ICFA.

To state a claim under the ICFA for an unfair business practice, Legal Aid Chicago must allege (1) a deceptive or unfair practice by Hunter; (2) Hunter intended reliance on its practice; (3) the unfair practice occurred in the course of conduct involving trade or commerce; and (4) the unfair practice proximately caused injury. *Wigod v. Wells Fargo Bank*, 673 F.3d 547, 574 (7th Cir. 2012). These elements are satisfied here.

First, Legal Aid Chicago has alleged that Hunter's No-Evictions Policy is an unfair practice. Conduct that is not deceptive is unfair if it "(1) offends public policy; (2) is immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to consumers." *Batson v. Live Nation Ent., Inc.*, 746 F.3d 827, 830 (7th Cir. 2014). A plaintiff need meet only one of these criteria. *Id.* Hunter's No-Evictions Policy offends public policy because it undermines state and federal statutes designed to protect consumers of residential housing. *See* FAC, ¶¶ 96–99. Those statutes set forth standards of conduct prohibiting housing discrimination and authorizing the sealing of eviction records. But, as discussed, the unjustified disparate impact of Hunter's policy violates fair housing laws. *Id.* And Hunter's reliance on sealed eviction records to deny individuals housing cannot be squared with the standard of conduct requiring that parties are expected to

respect the sealing of records because the sealing of the records is intended to prevent landlords such as Hunter from using those records in housing decisions. *See* 735 ILCS 5/9–121(b).

Hunter claims that its practice of disqualifying applicants with “eviction histories has been recognized as insufficient to constitute an unfair practice under the ICFA.” Mem. at 14 (citing *Garrett v. RentGrow, Inc.*, 2005 WL 1563162, at *3-4 (N.D. Ill. July 1, 2005)). But *Garrett* is distinguishable. There, the landlord rejected a rental applicant because of an eviction record that a tenant-screening service had reported. *Garrett*, 2005 WL 1563162, at *1. The tenant did not challenge a categorical ban like the No-Evictions Policy, but rather argued that the specific record relied upon by the landlord was not hers. *Id.* at *1–2. In determining that the plaintiff failed to state a claim, the court acknowledged that an unfair practice “offends public policy if it violates a standard of conduct set out by an existing statute,” but held that Garrett “fail[ed] to point to any established statute” that covered the challenged conduct. *Id.* at *3. Here, however, Legal Aid Chicago has pointed out several statutes that are undermined by Hunter’s No-Evictions Policy, none of which were considered in *Garrett*. FAC, ¶¶ 96–99.

Second, Hunter stated its No-Evictions Policy directly on its website and featured it prominently in its housing application, thereby deterring applicants. FAC, ¶¶ 32, 53. The reasonable inference to be drawn is that Hunter intended would-be applicants to rely on that policy.

Third, it is undisputed that the alleged unfair practice occurred in the course of commercial conduct.

Last, the unfair practice proximately caused Legal Aid Chicago’s injury. As discussed *supra*, Hunter’s policy forced Legal Aid Chicago to divert resources and frustrated its mission. The cost to Legal Aid Chicago of expending these resources is an actual pecuniary loss. As Hunter

itself admits, the failure to quantify the pecuniary loss in the complaint is not a pleading flaw.
Mem. at 15.

CONCLUSION

For the foregoing reasons, Hunter's motion to dismiss should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the foregoing was served upon all parties of record via the U.S. District Court for Northern District of Illinois' Electronic Filing System on February 19, 2025.

/s/ Brian J. Massengill
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