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November 20, 2015

Via Email and Certified U.S. Mail

Equity Residential
Berkeley Apartments Leasing Center
Attn: Sureyya Aktas-Gomes or Legal Counsel
1916 Oxford Street
Berkeley, CA 94704

Equity Residential Agent for Service of Process
CT Corporation System
818 West Seventh St. STE 930
Los Angeles, CA 90017

Re: Chronically-Broken Elevators at The Acton Courtyard

Dear Equity Residential Corporate and Ms. Aktas-Gomes:

Disability Rights Advocates ("DRA") writes on behalf Dominika Bednarska and other residents of 1370 University Avenue in Berkeley, California ("The Acton Courtyard") who, because of their mobility disabilities, must use an elevator in order to enter or leave their apartments. DRA understands that the Acton Courtyard's single elevator is chronically out of service, and most recently, has been out of service since November 13, 2015. We also understand that Equity Residential is well aware of the elevator issues in this building.

Dominika Bednarska is an individual with a mobility disability who has lived at the Acton Courtyard for over three years. Because of her disability, Ms. Bednarska must use a scooter or canes to travel from place to place. Her disability also requires her to use an elevator. Thus, when the Acton Courtyard's elevator is out of service, Ms. Bednarska cannot enter or leave her 5th floor apartment.¹

Ms. Bednarska has been completely unable to access her apartment since the afternoon of Friday, November 13, 2015, when one of Equity Residential's leasing managers, Milinda Kendrick, emailed to inform her that the Acton Courtyard's sole elevator was not in operation. Although Ms. Kendrick apparently knew at that time that repairing this malfunction would require replacement parts, it is our understanding that these parts were not ordered until the following Monday, and that they were not rush shipped. As of today, Friday,

¹ Ms. Bednarska's partner Perlita Payne (who is also on the lease at the Acton Courtyards) has chronic knee pain that makes climbing stairs difficult and painful for her as well.

November 20, 2015, the elevator remains out of operation. It is unclear when the elevator will be repaired and returned to operation.

While this long delay may only be a minor inconvenience for residents without mobility disabilities, Ms. Bednarska and other similarly-situated individuals have either been trapped in their apartments or stranded outside of them for nearly a week now. This means that they have either been completely shut off from the outside world or completely stranded within it—unable to cook, unable to access their clothing or other possessions, and denied the basic comforts of their homes. Ms. Bednarska, who was outside of her apartment when the elevator broke, has been one of those stranded outside of her apartment.

Since being told that the Acton Courtyard's elevator was down on November 13, 2015, Ms. Bednarska and her partner have been forced to relocate to three different hotels. Equity Residential initially sent Ms. Bednarska to La Quinta Inn, but failed to inform hotel staff of Ms. Bednarska's disability. As a result, Ms. Bednarska was booked in a room that was not wheelchair accessible, and that she could only have entered by traveling up a narrow plywood board made to serve as a makeshift ramp. Since Ms. Bednarska could not do this, she and her partner were forced to travel to another hotel that same night. Due to Equity Residential's delay in issuing the credit card authorization required to extend their stay at that hotel, they were later forced to relocate yet again, this time to the Downtown Berkeley Inn.

Ms. Bednarska and her partner have now been living in one hotel or another for nearly a week, while Equity Residential has failed to take prompt action to repair the Acton Courtyard's broken elevator. In addition to being unable to access their clothing, books, papers, medications, and other possessions during this time, they have had no access to a kitchen, and have incurred significant expenses on restaurant food – their only option.

While this current elevator outage is the longest Ms. Bednarska has experienced, it is far from the first or only time that she has been either trapped inside or stranded outside of her apartment because of issues with the Acton Courtyard's elevator. Ms. Bednarska reports that a similar multi-day outage occurred when she first moved in to the Acton Courtyard in 2012, and that outages of shorter duration are very frequent. Ms. Bednarska and her partner have repeatedly informed Equity Residential of problems with this elevator over the past several months,² and Ms. Bednarska was recently given less than 24-hours notice that the elevator would be out of service while Equity Residential installed new flooring in the Acton Courtyard's hallways.³ On each occasion,

² According to Ms. Bednarska, the current problems with the Acton Courtyard's elevator began on or around September 26, 2015. On that date, Ms. Bednarska informed Equity Residential in writing that the elevator was malfunctioning. The elevator continued to malfunction regularly, leading Ms. Bednarska to leave numerous messages on Equity Residential's emergency line over the past several months. Ms. Bednarska reports that she never received a response to these messages. Ms. Bednarska or her partner also submitted additional written requests regarding this elevator on October 9th, November 12th, and again on the morning of November 13, the date that this most recent outage began.

³ Around noon on September 28, 2015 residents of the Acton Courtyard received an email informing them, for the first time, that the buildings' elevator would be out of service between September 28th and the end of September 29th while flooring was installed outside the elevator on each floor. Worse, Equity Residential staff was not able to tell residents when specifically the elevator on each floor would be out of

Ms. Bednarska has been forced to miss work, miss appointments, or cancel plans because she could not enter or exit her home. She has also had to reschedule at least one job interview because of an unplanned elevator outage. This history suggests that Equity Residential has a policy or practice of failing to adequately maintain and promptly repair its elevators, and of failing to provide residents with disabilities with sufficient notice of elevator outages due to scheduled maintenance, construction, and repairs.

As you are aware, the Fair Housing Amendments Act of 1988 and other federal and state laws prohibit discrimination against persons with disabilities in the sale or rental of housing. Equity Residential's failure to reasonably accommodate residents with mobility disabilities by ensuring that its elevators are adequately maintained and promptly repaired, and its failure to provide residents with adequate notice of planned outages, constitutes just such discrimination. *See, e.g.*, 42 U.S.C. §§ 3604(f)(2)(A), 3604(f)(3)(B) (Fair Housing Act); Cal. Gov't Code §§ 12955(a), 12927(c)(1) (California Fair Employment and Housing Act); Cal. Civ. Code § 51(b) (Unruh Act); Cal. Civ. Code §§ 54.1(a)(1), (b)(3)(B) (California Disabled Persons Act). Equity Residential's actions and failures to act also constitute violations of the Berkeley Municipal Code, subjecting Equity Residential to civil liability and statutory damages. *See Berkeley Municipal Code §§ 19.50.010 et. seq.*

In light of these violations of federal and state law, we request that Equity Residential immediately commit to take the following remedial actions:

- (1) Immediately repair the currently-inoperable elevator at any expense (e.g., paying for expedited shipping, after hours maintenance, or overtime)
- (2) Draft and implement revised policies to ensure that the elevators in its residential buildings are properly and proactively maintained, so that its buildings remain readily accessible to people with disabilities. At a minimum, these revised policies should include:
 - a. Commitment to a yearly schedule for elevator inspection and maintenance that comports with industry best-practices;
 - b. A policy of providing all residents with at least 24-hour notice of all scheduled elevator repairs or maintenance, or of other construction that will impact elevator availability;
 - c. A commitment that, as soon as Equity Residential staff are made aware of an unanticipated malfunction of an elevator requiring shut-down and repair, Equity Residential's building operators will provide each disabled tenant in the building with written notice that the elevator is not working. This notice should also be provided to any other tenant who has requested such notice, and should be posted adjacent to the elevator on each floor. In addition, the notice should state the date, time and anticipated duration of the repair;⁴

service, making it impossible for residents with disabilities and mobility impairments to know when they would be able to enter or leave their apartments.

⁴ These steps are already required by Berkeley's Municipal Code. Berkeley Municipal Code § 19.50.050(B).

- d. A commitment to responding to all elevator repair requests, by phone or in writing, twenty-four hours a day, seven days a week, within no more than 4 hours.⁵
- (3) Reimburse any expenses relating to this elevator outage incurred by Ms. Bednarska, including but not limited to:
- a. Any hotel expenses not already paid for by Equity Residential;
 - b. Any expenses for any meals that Ms. Bednarska has had to purchase while lacking access to her apartment's kitchen;
- (4) Provide a prorated rent and utilities credit for each day that Ms. Bednarska has been unable to enter her apartment, given Ms. Bednarska's complete inability to access her home and belongings during this time.

Please respond to this letter by close of business on **December 1, 2015** to let us know what, if any, steps Equity Residential has taken or will take to remedy this situation, as well as a timetable for such steps. If you have any questions, please contact me at 510-665-8644 or by email at msmith@dralegal.org.

If DRA does not receive a timely response from you, or if you fail to implement the remedial actions described above, Ms. Bednarska will be forced to take further action, including the filing of a lawsuit.

Sincerely,



Mary-Lee K. Smith
Director of Litigation
Disability Rights Advocates

cc: Sean Betouliere, Disability Rights Advocates

⁵ At a minimum, this response should include an acknowledgement that the request has been received, and an anticipated timeline for repair.