CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS
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In the Matter of

COMMISSION ON HUMAN RIGHTS
and HOLLY ONDAAN,

Petitioner,

-against-

DIANNA LYSIUS,

Respondent.
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Complaint Nos. M-H-ENOZ-18-33635;
M-H-ENOZ-18-33045
OATH Index No. 2801/18

DECISION AND ORDER

Complainant Holly Ondaan ("Complainant" or "Ms. Ondaan") complains that her landlord, Respondent Dianna Lysius ("Respondent" or "Ms. Lysius"), discriminated against her based on her actual or perceived national origin and immigration status, and retaliated after she reported Respondent's discriminatory conduct to the Law Enforcement Bureau of the New York City Commission on Human Rights ("Bureau"). (*See* Bureau Ex. 3, Compl. ¶¶ 17–22.) Complainant alleges that between January 11 and January 18, 2018, Respondent repeatedly threatened to report her to federal immigration authorities and made discriminatory statements about her as an immigrant. (*See id.* at ¶¶ 3–16.) These threats allegedly continued, even after Respondent received a cease and desist letter from the Bureau on January 17, 2018, which demanded that Respondent stop threatening Complainant based on her actual or perceived immigration status. (*See id.* at ¶¶ 11–16.)

Based on its review of the record in this case—comprised of the Report and Recommendation from the Office of Administrative Trials and Hearings ("OATH"), the hearing

record, the parties' post-hearing comments on the Report and Recommendation, and an *amicus curiae* submission from the National Immigration Law Center ("NILC")—the Commission finds Respondent liable for violating § 8-107(5)(a) and § 8-107(7) of the New York City Human Rights Law ("NYCHRL") and orders that she pay Complainant $28,000.00 in compensatory damages, undergo anti-discrimination training, and choose to either participate in good faith and complete a restorative justice process, as discussed in further detail below, or pay $12,000.00 in civil penalties to the City of New York.

I. PROCEDURAL HISTORY

On February 5, 2018, the Bureau filed a verified complaint ("Complaint") on behalf of Complainant Holly Ondaan, alleging that Respondent Dianna Lysius discriminated against Ms. Ondaan by sending her a series of text messages stating that Ms. Ondaan was an "illegal" immigrant and harassed her by threatening to contact immigration enforcement. (Bureau Ex. 3., Compl. (citing N.Y.C. Admin. Code § 8-107(5)(a)).) The Complaint also alleged that Ms. Lysius retaliated against Ms. Ondaan after she reported Ms. Lysius's discrimination to the Bureau, in violation of § 8-107(7) of the NYCHRL. *Id*.

According to the Complaint, Ms. Ondaan started to receive discriminatory and harassing texts from Ms. Lysius in January 2018. *Id*. Ms. Ondaan went to the Bureau in an attempt to get Ms. Lysius to stop this threatening behavior. (Tr. 53:1–10.) On January 16, 2018, the Bureau sent a cease and desist letter to Ms. Lysius. (Bureau Ex. 6.) Ms. Lysius received this letter on January 17, 2018. (Tr. 291:8–9.)

On February 5, 2018, Ms. Ondaan filed an official complaint with the Bureau. Ms. Lysius, *pro se*, replied to the complaint on May 1, 2018 (ALJ Ex. 1), and then filed an amended answer on May 23, 2018 (ALJ Ex. 2). In sum and substance, Respondent argued that the

Complaint should be dismissed because Complainant had previously raised similar claims in a landlord-tenant action in New York City Housing Court in Queens. (*See id*.)

On June 14, 2018, the Bureau referred the case for a hearing before OATH. (Bureau Ex. 4.) The Honorable John B. Spooner presided over the hearing held over two days at OATH on May 16, 2019 and June 3, 2019. After the hearing, the Bureau submitted its closing statement in written form.

On September 12, 2019, Judge Spooner issued a Report and Recommendation, recommending that the Office of the Chair of the New York City Commission on Human Rights (the "Commission"): (1) find Respondent liable for discrimination based on immigration status,[1] in violation of § 8-107(5)(a)(1)(b) of the NYCHRL; (2) award damages to Complainant of $12,000.00 for emotional distress; (3) impose a civil penalty of $5,000.00; and (4) require Respondent to complete fifty (50) hours of community service. (R&R at 8, 13.)

[1] At the time that the complaint was filed, the NYCHRL formally referred to protections based on immigration and citizenship status as "alienage and citizenship status." *See* N.Y.C. Local Law 58 (2020).

Both the Bureau and Respondent filed post-hearing comments on the Report and Recommendation on December 16, 2019 ("Bureau Comments,"[2] "Resp't Comments,"[3] respectively).[4] The National Immigration Law Center ("NILC") submitted comments on the Report and Recommendation on November 19, 2019 as *amicus curiae*.[5]

II. STANDARD OF REVIEW

In reviewing a report and recommendation, the Commission may accept, reject, or modify, in whole or in part, the findings or recommendations made by the administrative law

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[2] In its December 16, 2019 comments on the Report and Recommendation, the Bureau sought to include several new exhibits that are not included in the hearing record. These exhibits are not properly in evidence and the Commission excludes them from its consideration. While the Bureau notes that it asked Judge Spooner to take official notice of the emails contained in the exhibits (Bureau Comments at 4 n.11, 21–49), Judge Spooner makes no indication of having done so, as required under OATH Rule 1-48, which provides that "[m]atters of which official notice is taken will be noted in the record, or appended thereto. The parties will be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by presentation of authority." 48 RCNY § 1-48.

Additionally, taking official notice of the emails in question is not appropriate in this context. *See Walker ex rel. Velilla v. City of N.Y.*, 46 A.D.3d 278, 282–83 (1st Dep't 2007) ("the mere presence of a document in a court file does not mean that judicial notice properly can be taken of any factual material asserted in the document . . . 'A court may only apply judicial notice to matters of common and general knowledge, well established and authoritatively settled, not doubtful or uncertain. The test is whether sufficient notoriety attaches to the fact to make it proper to assume its existence without proof.'. . . We should not be encouraging sloppy practice by taking judicial notice of factual matters that a party unaccountably fails to supply before the [trial] court").

[3] Though Respondent was *pro se* at the hearing, she has been represented by counsel subsequent to the hearing.

[4] The original deadline for comments, October 25, 2019, was extended twice at Respondent's request, first to November 25, 2019 (Email from Zoey S. Chenitz, Esq. to Jonathan Rosenberg, Esq., dated Oct. 16, 2019), and then to December 16, 2019 (Email from Zoey S. Chenitz, Esq. to Katherine Carroll, Esq. and Jonathan Rosenberg, Esq., dated Nov. 22, 2019).

[5] The Commission's rules allow for the submission of amicus comments upon a written request to the Office of the Chair within thirty (30) days of the issuance of the Administrative Law Judge's Report and Recommendation. 47 RCNY § 1-66(e). NILC timely requested permission to file amicus comments (Letter from Jessie Hahn, Esq. to Office of the Chair, dated Oct. 11, 2019), and the Commission granted NILC leave to file amicus comments in a letter dated October 18, 2019 (Letter from Zoey S. Chenitz, Esq. to Jessie Hahn, Esq., dated Oct. 18, 2019).

judge. The Commission reviews a report and recommendation and the parties' comments and objections *de novo* as to findings of fact and conclusions of law. *Comm'n on Human Rights ex rel. Gibson v. N.Y.C. Fried Chicken Corp*., OATH Index No. 279/17, Comm'n Dec. & Order, 2018 WL 4901030, at *2 (Sept. 28, 2018); *Comm'n on Human Rights ex rel. Martinez v. Joseph "J.P." Musso Home Improvement*, OATH Index No. 2167/14, Comm'n Dec. & Order, 2017 WL 4510797, at *8 (Sept. 29, 2017).

III. THE EVIDENTIARY RECORD

For purposes of this Decision and Order, familiarity with the hearing record and with Judge Spooner's Report and Recommendation is generally assumed.

A. The Parties' Landlord-Tenant Relationship

During the relevant period, Respondent owned a building at 115-21 148th Street in Jamaica, Queens (the "Building"). (Tr. 514:6–9; Bureau Ex. 2.) Complainant is a single mother who had resided in the United States for twenty-eight years as of the date of the hearing. (Tr. 44:2–4; 86:8–9.) Ms. Ondaan testified that she rented a one-bedroom apartment in the Building from Ms. Lysius for seven years, from September 2011 to September 2018. (*Id*. at 42:20–43:9.) She initially obtained a lease for this rental through a real estate broker (*id*. at 510:18–19; 516:17–517:1) and renewed her lease with Ms. Lysius yearly, until 2016, when the parties entered into a two-year lease (*id*. at 45:16–46:5; Bureau Ex. 1).

The Building had two floors and a basement, and each level contained a one-bedroom apartment. (*Id*. at 43:23–24; Resp't Ex. M at 28:8–11.) Ms. Ondaan resided in the second-floor apartment with her daughter. (Tr. 44:2–3; Resp't Ex. M at 42:13–16.) Mr. Nelson Romero lived in the first-floor apartment (Resp't Ex. M at 37:11–16), and approximately four separate tenants resided in the basement apartment over the course of Ms. Ondaan's tenancy (Tr. 44:19–23; Resp't Ex. M at 42:17–43:17). Respondent used Craigslist to advertise rental spaces in the

Building when there was a free apartment. (Resp't Ex. M at 44:12–15.) Respondent did not live in the Building (Tr. 44:14–18; 45:1–14) and testified at her deposition that no member of her family had ever resided in the Building (Resp't Ex. M at 50:3–8). At the hearing, however, Respondent testified that her "nephew resided at the home at a certain point in time." (Tr. 277:12–13.) Respondent's nephew, Kymahli Lysius, testified that from approximately January to February 2018, a period of one to two months, he lived in the basement of the Building. (*Id*. at 521:12–522:2.) Mr. Lysius stated that during the time that he was living there, there were also tenants living in the units on the first and second floors of the Building. (*See id*. at 542:3–9.)

Both Complainant and Respondent testified that from the time Ms. Ondaan moved into the Building until September 2017, the parties "had no issues" in their landlord-tenant relationship. (Tr. 160:14–18; 551:2–4.) Ms. Lysius perceived Ms. Ondaan to be undocumented. (Resp't Ex. M 169:10–22.) However, there is no evidence in the record suggesting that during this period Ms. Lysius believed Ms. Ondaan to be engaged in any criminal activities, or that Ms. Ondaan's immigration status was something that needed to be reported to immigration authorities.

In October 2017, Complainant stopped paying rent to Respondent because of "financial difficulties." (Tr. 220:25–221:1.) That same month, Respondent commenced a non-payment action against Complainant in housing court (the "Housing Court Action"). (*Id.* at 57:19–21; Resp't Ex. F, *Lysius v. Ondaan*, Index No. LT-050189-18/QU (Civ. Ct. Queen's Cty. Sept. 4, 2018).) Ms. Ondaan raised several defenses and counterclaims in the Housing Court Action, including a claim of harassment under the Housing Code, which she premised in part on

Ms. Lysius having allegedly reported her to U.S. Immigration and Customs Enforcement ("ICE"). (Resp't Ex. F at 2, 7–8.)

After the commencement of the Housing Court Action, the relationship between Complainant and Respondent deteriorated. (Tr. 57:16–21; 106:8–22.) On September 4, 2018, the housing court issued its decision and order, requiring that Ms. Ondaan pay Ms. Lysius an amount in excess of $6,000.00 in arrears. (Resp't Ex. F at 14.) Ms. Ondaan moved out of Ms. Lysius's building in September 2018. (Tr. 106:10.)

B. Ms. Lysius's Discriminatory, Harassing, and Threatening Conduct Prior to Receipt of the Bureau's Cease and Desist Letter

Ms. Ondaan testified that, between January 13 and 14, 2018, Ms. Lysius "texted [her] in all caps, saying that [Ms. Lysius] reported [Ms. Ondaan] to Immigration and sent [Ms. Ondaan] a screen shot of [Ms. Lysius's] phone with a 1-800 number" and that "there were also three calls to that same number" included in the screenshot. (*Id.* at 74:20–23.) Ms. Ondaan testified that when she "called that number . . . it sa[id] it was the Immigration Hotline." (*Id*. at 74:23–24.) Indeed, Ms. Lysius's phone records from Sprint reveal that she called a phone number identified as the ICE hotline once on January 13 and three times on January 14. (Bureau Ex. 9 at 24 ll. 8, 33, 35, 37.) Ms. Ondaan's testimony is also consistent with Bureau Exhibit 5, a document that comprises a three-way group text thread between Ms. Lysius, Ms. Ondaan, and Mr. Romero. (*See* Bureau Ex. 5 at 20–21.) The document shows that, in one message to the group, Ms. Lysius sent a screenshot of her call log showing calls to a number identified as an immigration tip hotline, along with a text message, "I REPORTED YOU TOO IMMIGRATION BOO SO BE ON THE LOOK OUT THEY KNOW IM THE LANDLORD WHO WILL PROVIDE THEM KEYS

COME DIRECTLY TO YOU." (*Id.* at 20–21.)[6] Ms. Lysius denies sending this text (Tr. 363:8–12); however, the dates and times of the phone calls in Ms. Lysius's phone records match those in the screenshot in the text message. (*Compare* Bureau Ex. 9 at 24 *with* Bureau Ex. 5 at 20.) Ms. Lysius also admitted several times under oath to calling ICE, saying, "On January 13th at approximately 3:51 p.m. as well January 14th on three separate occasions, 8:40, 9:50 and at 10:19, I communicated with US Customs Enforcement, trying to find out information on whether or not a person can actually file charges against you in hopes or with – file charges against you in an attempt for them to obtain a Green Card." (Tr. 340:20; *see also id.* at 341:9–342:6; 475:17–18.)

Bureau Exhibit 5, the group text chain, includes a number of additional threatening, discriminatory, and harassing text messages apparently sent from Ms. Lysius to Ms. Ondaan and Mr. Romero. Some examples of these messages include: "GUESS WHAT YOU ARE AN ILLEGAL IMMIGRANT IN THE COUNTRY WITH NO SOCIAL SECURITY. HRA CONFIRMED IT. YOU KNOW MY GOD PROTECT ME SO YOU KNOW WHAT I GUESS ICE WILL BE COMING FOR YOU BOO. 🤣🤣🤣 now let's argue you legal" (Bureau Ex. 5 at 15–16); "Now do you think I should be as wicked as you and call Immigration???" (*id*. at 16); "SO HAVE MY MONEY OR IM CALLING ICES THAT DAY PERIOD." (*id*. at 17); and "It was fun and games when you calling DOB now it's fun and games calling immigration 12 times day. They can deport you I got your daughter Social []-@@-@@@@ I'll have a judgment" (*id*. at 23). Ms. Ondaan testified multiple times that these texts were all sent to her from Ms. Lysius, that they had not been altered in any way, and that the records of the texts were

[6] All quoted text and email messages from Ms. Lysius are accurate reflections of the original text, spelling, and grammar recorded in Bureau Exs. 5, 7, & 8.

complete. (Tr. 59:7–9; 60:4–7; 62:23–25; 72:6–8; 75:20–23; 163:10–164:2.) Ms. Lysius initially objected to these texts being admitted "because it's just one-sided communication." (*Id*. at 64:15–16; *see also id*. at 67:10.) At her deposition, when asked about these texts, Ms. Lysius repeatedly stated that she was "not sure" or "didn't remember" whether she had sent any specific text message (*see generally* Resp't Ex. M), but that "there was a lot of text messages and a lot of stuff that was done deliberately on both parts" (*id*. at 176:13–15); "there was a lot of stuff that was sent back and forth between both of us" (*id*. at 177:12–13); "I know we had conversations where we made references to each other's culture" (*id*. at 164:5–7); and when asked whether she had sent a specific text stated "I can't really say yes. I really can't say no" (*id*. at 162:6–7). On the second day of trial, Ms. Lysius changed the nature of her objection to Bureau Exhibit 5 and for the first time categorically denied sending any of the messages reflected in the document. (*Id*. at 363:8–12.) The text messages reportedly from Ms. Lysius in Bureau Exhibit 5 are similar in style and tone to those sent by Ms. Lysius to Ms. Ondaan in Bureau Exhibit 7, which Ms. Lysius testified are accurate. (*Id*. at 495:12–13; *compare generally* Bureau Ex. 5 *with, e.g*., Bureau Ex. 7 at 4 ("Monday I will have the documents from the APPELLATE COURT to provide you 😂 🙏 🙏 🙏 😂 YOU HOMELESS AND CANT GET A HOME GOOD FOR YOU LOOK HURT YOU HURT I GOT A HOME AND YOU DONT.").)

Judge Spooner found "the testimony of Ms. Ondaan that [R]espondent sent her the offending texts, testimony corroborated by the copies of texts themselves and by respondent's partial admissions, to be credible," while "Respondent's testimony, on the other hand, was heavily embellished . . . ." (R&R at 7.) The Commission adopts Judge Spooner's finding that the disputed text messages in Bureau Exhibit 5 are credible, which is well supported by the weight of the testimonial and documentary evidence. *See Frater v. Lavine*, 229 A.D.2d 564, 564 (2d

Dep't 1996) (noting that "great weight" should be afforded to a trier of fact "where conflicting testimony and matters of credibility are at issue, since … the trier of fact, had the opportunity to see and hear the witnesses and to observe them on the stand.").

C. Ms. Lysius Harassed Ms. Ondaan After Receiving Notice that Ms. Ondaan Reported Her to the Bureau

After receiving the threatening text messages from Ms. Lysius, Ms. Ondaan went to the Bureau because, she "was terrified" and wanted to stop Ms. Lysius's threats to report her to ICE. (Tr. at 75:24–76:3.) On January 16, 2018, the Bureau sent a letter to Ms. Lysius demanding that she cease and desist from, among other things, "engaging in actions or practices that inquire into or discriminate based on a tenant or occupant's perceived . . . immigration status"; "refusing to make timely repairs or provide essential services" because of a tenant's protected status; "unlawfully obtaining or disclosing tenant information including but not limited to Social Security numbers"; "retaliating . . . because such person has opposed any practice forbidden under the NYCHRL"; and "causing physical damage to the property of tenants or threatening physical harm to tenants" because of their protected status. (Bureau Ex. 6.)

Rather that ending the harassment, Respondent intensified her harassing behavior toward Ms. Ondaan after receiving the Bureau's cease and desist letter. Respondent sent Ms. Ondaan multiple messages denigrating her for reaching out to the Bureau to report discrimination and threatening unfounded accusations of criminality. Among the numerous text messages that Respondent sent to Ms. Ondaan and Mr. Romero following her receipt of the Bureau's cease and desist letter were the following: "Y'all hurt y'all never going to find a place to live. On my life NOONE will ever rent to y'all… Immigrant and aids smdh[7]" (Bureau Ex. 5 at 27); "You are

[7] "Smdh" is an abbreviation for "shaking my damn head." "SMDH," Urban Dictionary, available at https://www.urbandictionary.com/define.php?term=SMDH.

clearly uneducated and need to go on the website and read what discrimination is" (*id.* at 30); and "ALL YALL MAD MOTH-ERFUCKERS KISS MY ASS. YALL DONT KNOW DISCRIMINATION YOU HAD TO LIE TO GET THE REPORT FILED NOW I ANSWER BUT I KNOW YOU WILL BE EVICTED" (*id.* at 36). Respondent also appears to have specifically threatened to report Ms. Ondaan to law enforcement as payback for her discrimination complaint to the Bureau. (*See* Bureau Ex. 5 at 31 ("Oh and be on the opposite of discriminating on behalf of a protected class [is] reporting anyone … to law enforcement".)

D. The Impact of Ms. Lysius's Conduct on Ms. Ondaan

Ms. Ondaan testified that she was an "emotional wreck" because of Respondent's threats, and was "affected emotionally, physically and socially" starting in January of 2018. (*Id.* at 86:3; 88:9.) She testified that she thought Respondent sent her threatening and discriminatory text messages "because she was trying to intimidate me . . . [and] she perceived me to be an illegal immigrant in this country." (*Id*. at 74:14–16.) Ms. Ondaan reported that the texts she received from Respondent made her "very afraid." (*Id*. at 75:5.) She stated that she worried Respondent's reports to immigration authorities would result in her being separated from her daughter, a "terrifying" thought that left her "devastated . . . anxious, nervous and scared." (*Id.* at 86:6–11.) Ms. Ondaan explained that as a result of Respondent's threats, she "wasn't sleeping much . . . didn't eat[] much . . . [and] was losing weight." (*Id.* at 86:20–21.) Because she and her daughter "didn't feel safe" they "always barricade[d themselves] in [their] apartment" (*id.* at 86:25–87:4) to prevent Respondent or ICE from entering (*see id.* at 147:3–10).

Though Ms. Ondaan had lived in the United States for "over 28 years" (*id.* at 86:9), she noted that she felt especially threatened "because of the current climate in the country" (*id.* at 134:23), referring to vocal anti-immigrant sentiments at the time and increasingly aggressive enforcement activity by ICE in 2017. Ms. Ondaan was particularly scared about "the thought of

being separated from [her] daughter" (Tr. 86:6–7) because her daughter "doesn't have another parent here" and Ms. Ondaan was "the only one who she's been depending on" (*id*. at 149:5–6; *see also id*. at 87:9).

Ms. Ondaan stated that because "NYPD was copied on whatever email [from Respondent] . . . I figured that they knew, so I was always looking out my window thinking someone might be waiting to pick me up when I went out, or they might be waiting when I'm coming back home. So I was afraid to leave my house a lot of times." (*Id.* at 87:19–23.) Ms. Ondaan testified that Respondent's threats left her afraid to leave her home for any reason other than to go to work, causing a negative impact on her social life that left her feeling lonely and unable to socialize normally with friends and family. (*Id.* at 87:14–24; 149:1–10.)

IV. DISCUSSION

A. Legal Standard

The NYCHRL expressly states that it "shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed." N.Y.C. Admin. Code § 8-130. Pursuant to the Local Civil Rights Restoration Act of 2005, "[i]nterpretations of New York state or federal statutes with similar wording may be used to aid in interpretation of the New York City Human Rights Law, viewing similarly worded provisions of federal and state civil rights laws as a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise." N.Y.C. Local Law No. 85 ¶ 1 (2005). Similarly, case law interpreting analogous anti-discrimination statutes under state and federal law, though perhaps persuasive, is not precedential in the interpretation of the NYCHRL. *See Albunio v. City of N.Y.*, 23 N.Y.3d 65, 73 (2014) ("the New York City Council's 2005 amendment to the

NYCHRL was, in part, an effort to emphasize the broader remedial scope of the NYCHRL in comparison with its state and federal counterparts and, therefore, to curtail courts' reliance on case law interpreting textually analogous state and federal statutes.").

B. Respondent Is a Housing Provider Subject to the Commission's Jurisdiction

Respondent argues that she is exempt from the NYCHRL under § 8-107(5)(a)(4)(1), pointing to testimony that her nephew resided in the Building's basement apartment from about January to February 2018. (Tr. 276:1–277:18; Resp't Comments at 12.) Respondent's argument is unavailing.

Section 8-107(5)(a)(4)(1) protects against liability for claims of housing discrimination under the NYCHRL if *all* of the following conditions are satisfied: (i) the housing accommodation is not a publicly-assisted housing accommodation, as defined by § 8-102; (ii) the building contains no more than two separate apartments; (iii) one of the apartments is the residence of the owner or members of the owner's family; and (iv) the apartment has not been "publicly advertised, listed, or otherwise offered to the general public." *See* N.Y.C. Admin. Code § 8-107(5)(a)(4)(1). In this case, the undisputed evidence shows that these requirements have not been met. Even if Respondent's nephew did reside in the basement of the Building—an assertion that Judge Spooner found was "contradicted by other evidence and was not credible" (R&R at 9)[8]—the Building still contained two additional apartments where Complainant, along with her daughter, and her neighbor, Nelson Romero, separately resided. (Tr. 43:23–24; 44:2–3; 44:19–23; 542:3–9.) In other words, the Building exceeded the two-unit maximum for "families living

[8] That conclusion is supported by Ms. Lysius's deposition testimony from April 11, 2019, which she entered into evidence, wherein she stated that none of the people who had lived in the Building were members of her family. (Resp't Ex. M at 50:3–7.) In addition, Ms. Ondaan testified that no one lived in the basement apartment from approximately September or October 2017 forward. (*See* Tr. 164:11–25.)

independently of each other," and was not covered by § 8-107(5)(a)(4)(1).[9] Moreover, Respondent entered into evidence her sworn deposition testimony, in which she admitted that she had advertised vacancies in the Building on Craigslist and that Ms. Ondaan had used a broker when originally renting the Building. (Resp't Ex. M at 44:12–15; 510:18–19.) Therefore, the rental also failed to meet the requirement that in order to be exempt from liability under the NYCHRL, a building must not be "publicly advertised, listed, or otherwise offered to the general public." *See* N.Y.C. Admin. Code § 8-107(5)(a)(4)(1)(iv). For these reasons, the Commission concludes that Respondent is a covered housing provider under the NYCHRL and is subject to the Commission's jurisdiction in this case.

C. The Complaint Is Not Barred by the Prior Housing Court Action Between Complainant and Respondent

Respondent also argues that the Commission does not have jurisdiction over the Complaint because the allegations in the Complaint were already litigated in the previous Housing Court Action. (Tr. 382:3; 563:11–13; Resp't Ex. F.) The Commission finds that the allegations in the Complaint are sufficiently distinct from the issues raised in the Housing Court Action and that the Commission has jurisdiction over all claims alleged in the Complaint.

NYCHRL § 8-109(f)(i) excludes from the Commission's jurisdiction cases in which "the complainant has previously initiated a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice as defined by [chapter 1 of the NYCHRL] . . . with respect to

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[9] It is irrelevant that the Building was zoned as a legal two-family home (*see* Bureau Ex. 2; *see also* Resp't Ex. H at 13), because under the NYCHRL housing accommodations are assessed based on the actual number of units, not the number of legal units. *See* N.Y.C. Admin. Code § 8-107(5)(a)(4)(1) ("The provisions of this paragraph (a) shall not apply: (1) to the rental of a housing accommodation, other than a publicly-assisted housing accommodation, in a building which *contains* housing accommodations for not more than two families living independently of each other . . .." (emphasis added)); *see also Comm'n on Human Rights ex rel. Agosto v. Am. Construction Assocs.*, OATH Index No. 1964/15, Comm'n Dec. & Order, 2017 WL 1335244, at *6 n.2 (Apr. 5, 2017).

the same grievance." N.Y.C. Admin. Code § 8-109(f)(i). The question in this case is whether Ms. Ondaan's claim of harassment in the Housing Court Action[10] constituted a claim of unlawful discriminatory practice within the meaning of the NYCHRL, over which the housing court had competent jurisdiction.

When assessing whether a complainant party has elected remedies that preclude it from pursuing similar claims elsewhere, courts have generally looked to whether there is "sufficient identity of issue" between the claims raised in the first proceeding and those raised in any subsequent proceedings. *See, e.g*., *Smith–Henze v. Edwin Gould Servs. for Children & Families*, No. 06 Civ. 3049, 2006 WL 3771092, at *4, (S.D.N.Y. Dec. 21, 2006); *Spoon v. Am. Agriculturalist*, 103 A.D.2d 929, 930 (3d Dep't 1984). Although the majority of New York courts have found that a claim of discrimination under New York State Human Rights Law ("NYSHRL") shares sufficient identity of issue with a claim of discrimination under the NYCHRL and a subsequent action under these two laws should therefore be barred, *see, e.g*., *Hollander v. N.Y.C. Comm'n on Human Rights*, 118 A.D.3d 418, 418 (1st Dep't 2014),[11] a plaintiff may bring separate cases in civil court and before a human rights agency where the cases do not both concern allegations of discrimination, for example where one case involves a

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[10] It is unclear from the record whether Ms. Ondaan alleged harassment in the Housing Court Action as a defense or a counterclaim. (*See* Resp't Ex. F. at 2 (including the harassment claim in a list of "defenses and counterclaims").) In light of this ambiguity, the Commission construes the facts in Ms. Lysius's favor and assumes that Ms. Ondaan's harassment claim was framed as a counterclaim, meaning that it amounts to a separate civil action and could be covered by NYCHRL § 8-109(f)(i). *See* CPLR 3019(d); *N.Y. Trap Rock Corp. v. Town of Clarkstown*, 299 N.Y. 77, 80 (1949) (holding that a "counterclaim is in effect a separate and distinct action brought by defendants against plaintiff"); *see also In re Eshaghian*, 144 A.D.3d 1155, 1157 (2d Dep't 2016) (same).

[11] *But see Llanos v. T-Mobile USA, Inc.*, 132 A.D.3d 823, 824 (2d Dep't 2015) (holding that even when a plaintiff has already brought a discrimination claim under the NYSHRL, they may still bring a separate claim under the NYCHRL arising from the same set of facts because of the NYCHRL's uniquely broad and remedial purposes).

breach of contract claim and the other an alleged act of discrimination resulting from the same underlying behavior. *Baust v. N.Y. State Div. of Human Rights*, 70 A.D.3d 1107, 1108 (3d Dep't 2010). This is because, even when the underlying conduct that forms the basis of both complaints is the same, if the "thrust of plaintiff's [civil court] complaint is not dependent upon her showing that defendants violated the Human Rights Law," then a separate case under a human rights law can proceed. *Gorenflo v. Penske*, 592 F. Supp. 2d 300, 305 (N.D.N.Y. 2009) (ruling that a NYSHRL claim did not bar a subsequent case arising from the same behavior around a breach of contract claim, as the identities of issue were sufficiently distinct, and the defendant could be shown to have breached the contract without violating the NYSHRL); *see Heller v. Bedford Cent. Sch. Dist*., 144 F. Supp. 3d 596, 615 (S.D.N.Y. 2015) (holding that even when "material identical issues were raised in both proceedings" there is no preclusion if the "resolution of those issues was not necessary" to both cases); *Baust*, 70 A.D.3d at 1108.

The focus of Ms. Ondaan's harassment claim in the Housing Court Action was whether Respondent Lysius's conduct amounted to a constructive eviction. (Resp't Ex. F. at 10); *see also* N.Y.C. Admin. Code § 27-2004(a)(48). The harassment claim in the Housing Court Action was based on the New York City Administrative Code's specified obligations between landlords and tenants (the "Housing Code"), a separate law from the NYCHRL that defines harassment as any act by the owner of a building that "causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such . . . unit." N.Y.C. Admin. Code §§ 27-2004, 27-2005. Indeed, the housing court judge found that, although Ms. Lysius "was quite rude, obnoxious, and condescending towards [Ms. Ondaan], nothing rose to the level of a threat that would make [Ms. Ondaan] vacate the property." (Resp't Ex. F. at 10.) Moreover, the housing court found that because the non-payment of rent was not a direct result of the harassment, the

harassment claim could not support an affirmative defense to the non-payment action. (*Id*. at 11.) In contrast with a claim for an unlawful discriminatory practice under the NYCHRL, the harassment claim in the Housing Court Action did not revolve around whether Respondent had targeted Ms. Ondaan for adverse treatment based on her protected status. *Compare* N.Y.C. Admin. Code § 27-2004(a)(48) (the New York City Housing Code in effect at the time of the Housing Court Action) *with* N.Y.C. Admin Code § 8-107(7)(5)(a)(1)(b). Indeed, at the time that Ms. Ondaan filed her harassment counterclaim in housing court, there was no harassment claim available under the Housing Code related to targeting a person based on their protected status.[12]

Notably, it would be possible to establish a claim for discrimination under the NYCHRL, which requires only a showing that the complainant was treated "less well" because of their protected status, *Williams v. N.Y.C. Housing Auth.*, 61 A.D.3d 62, 76 (1st Dep't 2009), without violating the Housing Code's prohibition on harassment, a distinction that weighs in favor of allowing Complainant to proceed with her claim before the Commission. *See, e.g.*, *Gorenflo*, 592 F. Supp. 2d at 305–06 (noting that it was particularly telling that the defendant could have been found to violate one law and not the other in determining that there was not sufficient identity of issue). Moreover, the remedies available in the Housing Court Action (namely, estoppel of a non-payment action) and those available in the case at hand (including damages, civil penalties,

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[12] The Housing Code in effect at the time of the Housing Court Action also required the use of force, discontinuance of essential services, or some other significant action intended to make the tenant vacate the building in order for there to be a finding of harassment. (Resp't Ex. F at 8.) The Housing Code was amended effective May 1, 2018 to add a provision stating that "threatening any person lawfully entitled to occupancy of such dwelling unit based on such person's actual or perceived . . . alienage or citizenship status" constitutes harassment. N.Y.C. Local Law No. 48 § 1 (2018); N.Y.C. Admin. Code § 27-2004(a)(48)(f-5). This provision was not in effect at the time of the claims raised in the Housing Court Action, and the housing court relied on the earlier version of the law when considering Ms. Ondaan's harassment claim. (*See* Resp't Ex. F at 8.)

and additional affirmative relief) are separate and distinct. *See, e.g.*, *Baust*, 70 A.D.3d at 1108.[13] For these reasons, the Commission concludes that Ms. Ondaan's harassment claim in the Housing Court Action and her claim in this case that Respondent discriminated against her in violation of the NYCHRL have separate identities of issue, and the Commission has jurisdiction over all of the claims in this case.

The Commission also finds that this case is not barred by the doctrine of claim preclusion. *See Singh v. N.Y. State Div. of Human Rights*, 186 A.D.3d 1694 (2d Dep't 2020) (finding that claim preclusion did not bar proceeding under NYSHRL because "[t]he proceeding in Housing Court, which is a court of limited jurisdiction and only allows for proceedings for the recovery of possession of real property and for the collection of rent … did not allow [the plaintiff] to assert claims for discrimination and obtain compensatory and punitive damages.").

D. Respondent Subjected Complainant to a Hostile Housing Environment and Discriminated Against Her Based on Her Perceived Immigration Status, in Violation of § 8-107(5)(a)(1)(b) of the NYCHRL

Under § 8-107(5)(a)(l)(b) of the NYCHRL, it is unlawful for the owner or lessor of a housing accommodation to discriminate against a person "in the terms, conditions or privileges" of the rental, based on their actual or perceived immigration status or other protected status. N.Y.C. Admin. Code § 8-107(5)(a)(l)(b). Harassment by a housing provider, including comments that are derogatory, demeaning, and/or threatening based on a protected status, constitutes a form of unlawful housing discrimination. *See Comm'n on Human Rights ex rel.*

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[13] In addition, the Housing Court Action did not address, and indeed the housing court lacked jurisdiction to address, the allegation that Respondent retaliated against Complainant for protesting unlawful discrimination under the NYCHRL, a separate claim that she asserts in this proceeding. (*See generally* Resp't Ex. F; Bureau Ex. 3, Compl. ¶¶ 12–16, 21–22.) There is no provision dealing with retaliation for filing a human rights complaint in the New York City Housing Code or New York State housing law. *See, e.g.*, N.Y.C. Admin. Code §§ 27-2004, 27-2005 (2017); N.Y. Real Prop. Law § 223-b.

Desir v. Walter, OATH Index No. 1253/19, Comm'n Dec. & Order, 2020 WL 1234455, at *6–8 (Mar. 2, 2020). In order to prove discrimination under the NYCHRL, the Bureau must show that Complainant was treated less well by Respondent because of her protected status. *See Williams*, 61 A.D.3d at 78. As noted in the Commission's Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin, "[t]hreats by landlords . . . to evict tenants or call federal immigration authorities . . . when motivated, in whole or in part, by animus related to the tenant's actual or perceived immigration status" constitute unlawful discrimination that violates the NYCHRL. N.Y.C. Comm'n on Human Rights, *Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin,* 17 (Sept. 2019), https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/immigration-guidance.pdf.

There is no question that Ms. Ondaan is a member of a protected class under the NYCHRL based on her perceived immigration status as an undocumented immigrant, nor that, as the landlord of a three-unit building in Queens, Ms. Lysius is a housing provider covered by the NYCHRL. Moreover, the record clearly demonstrates that Respondent treated Ms. Ondaan less well by harassing and threatening her based on her immigration status, giving rise to a hostile housing environment.

It is undisputed that Ms. Lysius repeatedly notified Ms. Ondaan of her intention to report her to ICE and other authorities. (Bureau Ex. 8 at 1.) And it is further undisputed that she in fact called ICE multiple times to report Ms. Ondaan. (Tr. 340:20; 341:9–342:6; 475:17–18; Bureau Ex. 5 at 20; Bureau Ex. 9 at 24.) The record shows that these calls were motivated by a discriminatory intent to harass and intimidate Ms. Ondaan based on her perceived immigration status *after* their relationship deteriorated when Ms. Ondaan fell into arrears. Both Mses. Lysius and Ondaan were consistent in their testimony that Complainant lived in Ms. Lysius's building

for over six years prior to their conflict, during which time Ms. Lysius believed Ms. Ondaan to be undocumented, and did not ascribe any criminality to her immigration status or need to contact immigration authorities. (*See* Tr. 551:2-4 (Lysius: "Me and this woman had a relationship for almost ten years and her immigration status never meant anything to me.").) Ms. Lysius only sought to harass and threaten (*see, e.g.*, Tr. 74:4-24; Bureau Ex. 5 at 16, 23), and apparently attempt to extort (*see* Bureau Ex. 5 at 17 ("SO HAVE MY MONEY OR IM CALLING ICES THAT DAY PERIOD.") Ms. Ondaan when she became angry with her based on the rent arrears. Ms. Lysius based her threats and harassment on Ms. Ondaan's perceived immigration status, as she believed that to be a point of vulnerability for Ms. Ondaan. This is exactly the type of animus-based, exploitative harassment the NYCHRL was created to address.

Ms. Ondaan testified that Respondent threatened to make the calls to ICE, then notified her of having done so, "because she was trying to intimidate [Ms. Ondaan]" with the threat of deportation or separation from her daughter, and that Ms. Ondaan understood that Respondent was making these calls because "she perceived me to be an illegal immigrant in this country." (Tr. 74:14–24.) Ms. Ondaan's view is corroborated by documentary evidence showing that Respondent was attempting to leverage Ms. Ondaan's fears about immigration enforcement as a means of pressuring her into paying overdue rent and as retribution for grievances tied to the Housing Court Action. (*See, e.g.*, Bureau Ex. 5 at 17 ("SO HAVE MY MONEY OR IM CALLING ICES THAT DAY PERIOD."); *id*. at 23 ("It was fun and games when you calling DOB now it's fun and games calling immigration 12 times day. They can deport you I got your daughter Social 083-@@-@@@@ I'll have a judgment."); *id.* at 16 ("Now do you think I should be as wicked as you and call Immigration???").) These messages and the record taken as a whole indicate that Ms. Lysius was motivated by a discriminatory animus to harm Ms. Ondaan

in response to the non-payment and Housing Court Action by leveraging Ms. Ondaan's immigration status against her. By doing so, Ms. Lysius exceeded the legal avenues of redress available to her through the housing court system and sought to weaponize the immigration system for illegitimate, discriminatory reasons.

The Commission is cognizant that Respondent's discriminatory conduct was reflective of a broader pattern of abuse that was particularly prevalent at the time, and which remains so to this day, in which immigrants have been threatened with being reported to immigration authorities as a coercive tactic to discourage them from speaking out against mistreatment or exercising their rights under the law.[14] Threats to involve immigration authorities that are motivated by discrimination seek to demean people and deny them their rights by taking advantage of vulnerabilities tied to their perceived immigration status and are prohibited under the NYCHRL.

Based on the available evidence, the Commission finds that Ms. Lysius harassed and intimidated Ms. Ondaan with threats and phone calls to ICE that were targeted at Ms. Ondaan's perceived immigration status in an illegitimate effort to scare and coerce her. For all the above-

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[14] *See, e.g.*, Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, N.Y. TIMES, June 3, 2018, https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html; Kartikay Mehrota, Peter Waldman, & Jonathan Levin, *In Trump's America, Bosses Are Accused of Weaponizing the ICE Crackdown*, BLOOMBERG (Dec. 18, 2018), https://www.bloomberg.com/news/features/2018-12-18/in-trump-s-america-bosses-are-accused-of-weaponizing-the-ice-crackdown (reporting that immigrants were "putting up with unpaid wages, untreated injuries and various forms of mental and physical abuse" out of a fear of ICE weaponized by employers); *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State*, IMMIGRANT DEFENSE PROJECT (2019), https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf (publishing data that reports of alleged abusers threatening to call ICE to stop their victims from seeking help has skyrocketed by 78.6 percent since early 2017).

stated reasons, the Commission concludes that Respondent violated NYCHRL § 8-107(5)(a)(1)(b) by discriminating based on perceived immigration status.

The Bureau also alleged that Respondent discriminated against Complainant on the basis of national origin (*see* Bureau Ex. 3, Compl. ¶¶ 19–20), but failed to carry its burden of proof as they did not address the national origin claim at the hearing and it was not discussed in Judge Spooner's Report and Recommendation (*see generally* Tr.; R&R).

E. Respondent Retaliated Against Complainant in Violation of § 8-107(7) of the NYCHRL

In relevant part, § 8-107(7) of the NYCHRL makes it unlawful for a housing provider "to retaliate or discriminate in any manner against any person because such person has . . . opposed any practice forbidden under this chapter . . . [such as] fil[ing] a complaint, testif[ying] or assist[ing] in any proceeding [under the NYCHRL] . . . ." N.Y.C. Admin. Code § 8-107(7). A *prima facie* case of retaliation under the NYCHRL requires a showing that: (1) the complainant engaged in protected activity (which, among other things, includes reporting discrimination to the Bureau); (2) the respondent was aware of the complainant's protected activity; and (3) the respondent reacted to the complainant's protected activity in a manner that is reasonably likely to deter someone from engaging in such protected activity. *Comm'n on Human Rights ex rel. Joo v. UBM Building Maintenance Inc*., OATH Index No. 384/16, Comm'n Dec. & Order, 2018 WL 6978286, at *6 (Dec. 20, 2018); *see also Brightman v. Prison Health Serv., Inc*., 108 A.D.3d 739, 740 (2d Dep't 2013).

Each of these elements is satisfied in this case. Ms. Ondaan engaged in protected activity when she reported Ms. Lysius's discriminatory behavior to the Bureau. N.Y.C. Admin. Code § 8-107(7). The undisputed evidence shows that Ms. Lysius was made aware of that protected activity when she received the Bureau's January 16, 2018 cease and desist letter. (Bureau Ex. 6;

Tr. 299:19–20.) Ms. Lysius responded to the cease and desist letter by continuing to harass Ms. Ondaan based on her immigration status and specifically based on the fact that Ms. Ondaan had reported Ms. Lysius's discrimination to the Bureau. *(See, e.g.*, Bureau Ex. 5 at 27 ("Y'all hurt y'all never going to find a place to live… Immigrant and aids smdh."), 30 ("You are clearly uneducated and need to go on the website and read what discrimination is"), & 36 ("ALL YALL MAD MOTH-ERFUCKERS KISS MY ASS. YALL DONT KNOW DISCRIMINATION").) In addition, Respondent threatened that she would make baseless criminal allegations against Ms. Ondaan to law enforcement, in response to Ms. Ondaan's discrimination complaint. (*See* Bureau Ex. 5 at 31.) When read in the context of Respondent's earlier messages and threats to Ms. Ondaan, those statements clearly suggest that Ms. Lysius was threatening to report Ms. Ondaan to immigration authorities and to have her deported as retaliation for having reported discrimination to the Bureau.

The Commission finds that this clear and persistent pattern of harassment, including retaliatory threats to report Ms. Ondaan to immigration authorities as payback for having filed a discrimination complaint, constitute acts that are "reasonably likely to deter a person from engaging in protected activity" under § 8-107(7) of the NYCHRL. Indeed, courts have routinely held that reporting or threatening to report a person to authorities based on their perceived status as an undocumented immigrant amounts to retaliation, when carried out in response to a person exercising their rights under various other laws. For example, federal courts have ruled that calling ICE or threatening to call ICE on a person who made a complaint under the Fair Labor Standards Act ("FLSA") "manifestly falls within the purview, the purpose, and the plain language of [FLSA's retaliation provisions]." *Arias v. Raimondo*, 860 F.3d 1185, 1192 (9th Cir. 2017); *see Guohua Liu v. Elegance Rest. Furniture Corp.*, No. 15 CV 5787, 2017 WL 4339476,

at *5 (E.D.N.Y. Sept. 25, 2017). Similarly, federal courts in New York have held that reporting plaintiffs to the Immigration and Naturalization Service (the predecessor to ICE) is retaliatory action under the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act because these actions are likely to deter a person from engaging in protected activity such as filing a complaint. *See, e.g.*, *Centeno-Bernuy v. Perry*, 302 F. Supp. 2d 128, 135–36 (W.D.N.Y. 2003). Federal courts have similarly found that threats to contact governmental and immigration authorities constitute retaliation under New York State labor law. *See Perez v. Jasper Trading, Inc.*, No. 05 CV 1725, 2007 WL 4441062, at *3 (E.D.N.Y. Dec. 17, 2017). The same is true under the NYCHRL.

Based on the foregoing, the Commission concludes that Ms. Lysius violated NYCHRL § 8-107(7) by retaliating against Ms. Ondaan after she submitted a complaint to the Bureau.

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The Commission has considered Respondent's remaining arguments and her request to reopen the record and finds them unpersuasive.

V. DAMAGES, PENALTIES, AND REMEDIAL ACTION

A. Compensatory Damages

Compensatory damages, including emotional distress damages, are intended to redress a specific loss that the complainant suffered by reason of the respondent's wrongful conduct. *In re Comm'n on Human Rights ex rel. Howe v. Best Apartments*, OATH Index No. 2602/14, Comm'n Dec. & Order, 2016 WL 1050864, at *6–7 (Mar. 14, 2016). To support an award of emotional distress damages, the record "must be sufficient to satisfy the Commissioner that the mental anguish does in fact exist, and that it was caused by the act of discrimination." *Joo*, 2018 WL 6978286, at *9. An award for compensatory damages may be premised on the complainant's credible testimony alone, or other evidence including testimony from other witnesses,

circumstantial evidence, and objective indicators of harm, such as medical evidence. *See Agosto,* 2017 WL 1335244, at *7 (collecting cases). The NYCHRL places no limitation on the size of compensatory damages awards. N.Y.C. Admin. Code § 8-120(a)(8). In valuing compensatory damages in a particular case, the Commission assesses the nature of the violation, the amount of harm indicated by the evidentiary record, and awards that have been issued for similar harms. *In re Comm'n on Human Rights ex rel. Nieves v. Rojas*, OATH Index No. 2153/17, Comm'n Dec. & Order, 2019 WL 2252369, at *6 (May 16, 2019).

Judge Spooner recommended that Ms. Ondaan be awarded $12,000.00 in emotional distress damages, citing a series of disability and source of income discrimination cases in the housing context that awarded emotional distress damages in the $30,000.00 to $50,000.00 range and finding that "while tangible," Ms. Ondaan's emotional distress was "not as severe as that of the tenants in these past cases, where the discriminatory conduct lasted longer and where the consequences were far more detrimental." (R&R at 11.) The Bureau argues in its comments that compensatory damages for Ms. Ondaan's emotional distress should be $40,000.00, citing the fact that over a period of nine months, from January 2018 when Ms. Ondaan first received the threatening messages until she was evicted in September 2018, she lived in fear that she would be taken from her home, possibly deported, and separated from her daughter. (Bureau Comments at 9–11.)

In assessing emotional distress damages, Judge Spooner discussed other cases in which landlords either refused to rent to tenants or refused to reasonably accommodate their tenants' disabilities. (R&R at 11.) The relevant comparison, however, is not the context in which the discrimination occurred—be it housing, employment, or public accommodation—but, rather, the nature of the complainant's emotional harm, as evidenced in the record. While the context in

which discrimination unfolds may in fact inform the manner in which it is experienced, the guiding principle remains that "[c]ompensatory damages, including emotional distress damages … should … correspond to the complainant's specific injuries, as supported by the record." *Desir*, 2020 WL 1234455, at *8 (internal quotations omitted).

Ms. Ondaan credibly testified that Ms. Lysius's actions left her "devastated . . . anxious, nervous and scared" (*id.* at 86:6–11), and that as a result of Ms. Lysius's threats, she "wasn't sleeping much . . . didn't eat[] much . . . [and] was losing weight" (*id.* at 86:20–21). The evidence of emotional distress in this case resembles that of one of the plaintiffs, Ms. Khatun, in *Perez v. Jasper Trading, Inc*. 2007 WL 4441062, at *10. In *Perez*, the plaintiffs alleged that the defendants violated various provisions of the FLSA and the New York Labor Law and retaliated when the plaintiffs demanded unpaid wages by threatening to contact governmental and immigration authorities, and further retaliated against Ms. Khatun by threatening her with bodily harm and disseminating false statements about her character. *Id.* at *1, *3. The court noted that the defendants' threats "caused [Ms. Khatun] fear and anxiety… [s] he never exhibited … prior … and … required [her] to take various medications for which the cost is substantial," *id.* at *8, and that as a result of the defendants' conduct, she "became reclusive, venturing out of her apartment only to go to work," "lost her appetite and could not sleep," *id.* at *9. The court awarded Ms. Khatun $30,000.00 in compensatory damages, or approximately $37,200.00 in today's dollars.[15] *Id.* at *10. The record of Ms. Ondaan's experience of emotional distress in this case is very similar to that of Ms. Khatun in *Perez*. As a result of the unlawful conduct that they faced, both women became anxious, lost weight, had difficulty sleeping, and were fearful of

[15] Calculated based on the value of a dollar in December 2007, the date of the decision, compared with the value of a dollar in October 2020. U.S. BUREAU OF LABOR STATISTICS, CPI Inflation Calculator, available at https://www.bls.gov/data/inflation_calculator.htm.

leaving their home for any reason other than to go to work. However, because there is no evidence in this case that Ms. Ondaan's emotional distress rose to a level requiring medical intervention, as did Ms. Khatun's emotional distress, the compensatory damages award in this case should be somewhat less than the award to Ms. Khatun in *Perez*.

Ms. Ondaan's emotional distress in this case is also similar to that of the complainant in *New York State Division of Human Rights v. Muia*, who was denied a rental because of her marriage to a Black man. 176 A.D.2d 1142, 1143 (3d Dep't 1991). The complainant in that case "testified that as a result of the discrimination against her she was distraught to the point where her work was affected, she suffered distress, lost sleep and was nauseated and sick to her stomach." *Id.* at 1144. The court upheld an award of $25,000.00, or about $47,380.00 in today's dollars.[16] *Id.* at 1144-5. The complainant's physical manifestations of emotional distress in *Muia* (nausea and inability to sleep) resemble those of Ms. Ondaan in this case (weight loss and inability to sleep). *See also Szpilzinger v. N.Y. State Div. of Human Rights,* 160 A.D.2d 196, 196 (1st Dep't 1990) (upholding a mental anguish award of $25,000.00, or $50,500.00 in today's dollars,[17] for complainant who was refused a rental apartment because of race and suffered similar emotional distress to that catalogued in *Muia*).

This case also resembles that of *Comm'n on Human Rights ex rel. Desir v. Walter*, a case involving sexual harassment and a discriminatory housing denial in which the Commission awarded $50,000.00 in emotional distress damages. *See* 2020 WL 1234455, at *10. Similar to

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[16] Calculated based on the value of a dollar in October 1991, the date of the decision, compared with the value of a dollar in October 2020. U.S. BUREAU OF LABOR STATISTICS, CPI Inflation Calculator, available at https://www.bls.gov/data/inflation_calculator.htm.

[17] Calculated based on the value of a dollar in April 1990, the date of the decision, compared with the value of a dollar in October 2020. U.S. BUREAU OF LABOR STATISTICS, CPI Inflation Calculator, available at https://www.bls.gov/data/inflation_calculator.htm.

Ms. Ondaan's experience of emotional distress, the complainant in *Desir* became withdrawn, was unable to leave her home, and was haunted about questions about her place within her community, based on her protected status. *See id.* at *8–9. However, the complainant in *Desir* also testified that she experienced suicidal thoughts, an aggravating factor that is not present here and indicates that a lesser award is appropriate in this case. *See id*.

Ms. Ondaan credibly testified that she was particularly scared about "the thought of being separated from [her] daughter" (Tr. 86:6–7) because her daughter "doesn't have another parent here" and Ms. Ondaan was "the only one who she's been depending on" (*id.* at 149:5–6, *see also id.* at 87:9). Her fears appear to have been justified in light of news at the time of families being torn apart as a result of aggressive deportation policies by federal immigration authorities.[18] The Commission has previously recognized that a parent's emotional distress may be compounded due to concern for the welfare of their family, and should be accounted for in an award for emotional distress damages. *See, e.g.*, *Nieves*, 2019 WL 2252369, at *11–12 (holding that anguish as a parent should be considered in deciding compensatory damages); *In re Comm'n on Human Rights ex rel. Blue v. Jovic*, OATH Index No. 1624/16, Comm'n Dec. & Order, 2017 WL 2491797, at *14 (May 26, 2017) (finding that a parent's emotional distress was "compounded by her concerns for the welfare of her child"); *In re Comm'n on Human Rights ex rel. De La Rosa v. Manhattan & Bronx Surface Trans. Auth*., OATH Index No. 1141/04,

[18] *See, e.g.*, Hamutal Bernstein et al., *Adults in Immigrant Families Report Avoiding Routine Activities Because of Immigration Concerns*, URBAN INST. (July 24, 2019), https://www.urban.org/research/publication/adults-immigrant-families-report-avoiding-routine-activities-because-immigration-concerns (describing stress of common fears held by immigrants in the U.S.); Khushbu Shah, *'Every Day, It Is a Risk': Immigrant Communities Paralyzed by Fear of Impending ICE Raids*, GUARDIAN (July 13, 2019), https://www.theguardian.com/us-news/2019/jul/12/every-day-it-is-a-risk-immigrant-communities-paralyzed-by-fear-of-impending-ice-raids (same).

Comm'n Dec. & Order, 2005 WL 5632050, at *1 (Mar. 1, 2005) (noting that a parent's emotional distress was "further compounded" by feeling "helpless with regard to [her] ability to care for and protect [her] child."). Here, Ms. Lysius's conduct was intimidating for Ms. Ondaan and her daughter, in light of highly publicized human rights abuses in the U.S. immigration enforcement system that were reported at the time.[19]

After reviewing the record as a whole and in light of comparable cases, the Commission finds that an award of $28,000.00 in emotional distress damages is appropriate. *See, e.g.*, *Perez*, 2007 WL 4441062, at *10 (awarding the equivalent of about $37,200.00 in today's dollars); *Muia*, 176 A.D.2d at 1145 (awarding the equivalent of about $47,380.00 in today's dollars); *Desir*, 2020 WL 1234455, at *10 (awarding $50,000.00); *see also Cutri v. N.Y.C. Comm'n on Human Rights*, 113 A.D.3d 608, 608 (2d Dep't 2014) (upholding awards of $30,000.00 and $20,000.00, respectively, to the complainants in case involving race discrimination against tenants).

B. Civil Penalties

Where the Commission finds that respondents have engaged in an unlawful discriminatory practice, the NYCHRL authorizes the Commission to, among other things, impose civil penalties of not more than $125,000.00, unless the "unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act," in which case a civil penalty of not more than $250,000.00 may be imposed. N.Y.C. Admin. Code § 8-126(a); *see Automatic Meter Reading Corp. v. N.Y.C. Comm'n on Human Rights*, No. 162211/2015, 63 Misc. 3d 1211(A), 2019 WL 1129210, at *11 (Sup. Ct. N.Y. Cty. Feb. 28, 2019) (upholding

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[19] *See, e.g.*, Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigrant Detention* (June 2018), https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration; Alice Speri, *Detained, Then Violated: 1,224 Complaints Reveal a Staggering Pattern of Sexual Abuse in Immigration Detention*, INTERCEPT (Apr. 11, 2018), https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/.

$250,000.00 civil penalty upon a finding that respondent engaged in willful and wanton sexual harassment over a three-year period). Civil penalties are paid to the general fund of the City of New York. N.Y.C. Admin. Code § 8-127(a).

In this case, Judge Spooner recommended civil penalties of $5,000.00. (R&R at 13.) He opined that "only a minor" civil penalty was warranted, because "[t]here was no contention here that respondent's actions were willful violations." (*Id.* at 12.) The Bureau argues that civil penalties should be raised to $20,000.00 because the Report and Recommendation "fails to fully consider relevant aggravating factors, including the wanton and malicious nature of the harassment and Respondent's acts of retaliation, and made findings—specifically that Respondent lost the subject apartment building through foreclosure and was motivated by dire financial circumstances—that are irrelevant and were unsupported by the record." (Bureau Comments at 11–12.) The Bureau argues that "[i]f not for the fact of Respondent's limited size, the civil penalty would be near the upper bounds of the Commission's authority." (Bureau Comments at 14.)

In assessing whether the imposition of civil penalties will vindicate the public interest, the Commission may consider several factors, including, but not limited to: (1) the respondent's size; (2) the respondent's financial resources; (3) the sophistication of the respondent's enterprise; (4) the willfulness of the violation; (5) the duration of the violation; and (6) the impact on the public of issuing civil penalties. *See, e.g.*, *Comm'n on Human Rights v. A Nanny on the Net*, OATH Index Nos. 1364/14 & 1365/14, Comm'n Dec. & Order, 2017 WL 694027, at *8 (Feb. 10, 2017); *Comm'n on Human Rights ex rel. Cardenas v. Automatic Meter Reading Corp.*, OATH Index No. 1240/13, Comm'n Dec. & Order, 2015 WL 7260567, at *15 (Oct. 28, 2015); *Comm'n on Human Rights v. CU 29 Copper Rest. & Bar*, OATH Index No. 647/15,

Comm'n Dec. & Order, 2015 WL 7260570, at *4 (Oct. 28, 2015). The Commission also considers the extent to which respondents cooperated with the Bureau's investigation and with OATH, *see, e.g.*, *Cardenas*, 2015 WL 7260567, at *15; *Howe*, 2016 WL 1050864, at *8; *Comm'n on Human Rights v. Crazy Asylum*, OATH Index Nos. 2262/13, 2263/13, 2264/13, Comm'n Dec. & Order, 2015 WL 7260568, at *6 (Oct. 28, 2015), as well as the amount of remedial action that respondents may have already undertaken, *see, e.g.*, *CU 29 Copper Rest.*, 2015 WL 7260570, at *4 (holding "civil penalties are not necessary to deter Respondents from future violations of the NYCHRL, as they have committed to publishing advertisements that comply with the law").

1. Respondent's Size, Sophistication, and Resources

The record suggests that Respondent owned a single, small building, with two legal units and one illegal unit, in Jamaica, Queens, which she sold in October 2018 for $350,000.00. (Bureau Comments at 13 n.19 (citing Real Properly Transfer Report, Document ID: 2018102900356001, *available at* https://a836-acris.nyc.gov/DS/DocumentSearch/CityRegisterFileNumber).)[20] There is little information in the record concerning Ms. Lysius's income from the building, other than Ms. Ondaan's lease, which required rent payments of $1,200.00 per month for one of the three units in the building; however, it is undisputed that Ms. Ondaan's rent was not consistently paid. (Bureau Ex. 1; Tr. 220:25–221:1.) In sum, there is nothing in the record to suggest that Respondent has significant financial resources, and the Commission finds that she is a small housing provider with limited business sophistication. These factors limit the maximum fine that may be imposed on Respondent. *See, e.g.*, *119-121 E. 97th St. Corp. v. N.Y.C. Comm'n on Human Rights*,

[20] The Commission takes official notice of this document.

220 A.D.2d 79, 88 (1st Dep't 1996) (applying principle of proportionality based in part on respondent's size in reviewing civil penalty); *Nieves*, 2019 WL 2252369, at *8. As discussed below, other considerations weigh in favor of a robust civil penalty, bearing in mind Respondent's limited size and sophistication.

2. The Willfulness of Respondent's Violations

A respondent may be found to have acted willfully, wantonly, or maliciously where the respondent's discriminatory actions involved a "'conscious disregard of the rights of others or conduct so reckless as to amount to such disregard.'" *See Chauca v. Abraham*, 30 N.Y.3d 325, 334 (2017). Here, the record supports such a finding. Specifically, the record shows that Respondent willfully sought to leverage threats about Ms. Ondaan's perceived immigration status to extort rent payments through illicit means, outside the housing court system. (*See* Bureau Ex. 5 at 17 ("SO HAVE MY MONEY OR IM CALLING ICES THAT DAY PERIOD.").) The record further shows that Respondent was notified by the Bureau in its January 16, 2018 cease and desist letter that Ms. Ondaan was protected under the NYCHRL against discrimination based on immigration status and that reporting or threatening to report her to immigration authorities, or otherwise discriminating against her based on her immigration status, would expose her to liability under the NYCHRL. (Bureau Ex. 6.) Yet, Respondent consciously ignored that warning in reckless disregard of Ms. Ondaan's rights. Indeed, she continued to threaten and harass Ms. Ondaan for several months after receiving the letter from the Bureau, from January 2018 until October 2018. (Bureau Ex. 9 at 24 ll. 8, 33, 35, 37 (phone records detailing Ms. Lysius calling ICE in January 2018); Resp't Ex. M at 218:14–219:24 (Ms. Lysius's testimony that she called ICE about Ms. Ondaan in October 2018); Tr. 291:8–9 (Ms. Lysius's testimony that she received the Bureau's cease and desist letter in January 2018).) Respondent's

repeated threats against Ms. Ondaan were made in reckless disregard of Ms. Ondaan's rights and the serious consequences that might reasonably follow. Respondent's willful and malicious conduct weighs in favor of heightened penalties.

3. The Duration of Respondent's Unlawful Conduct

The Commission also notes that Respondent's discriminatory and retaliatory conduct took place over a period of approximately nine months, from January 2018 to September 2018, involving multiple violations of the law. Her sustained misconduct warrants a higher civil penalty than would be appropriate had she engaged in only a single act of discrimination under the NYCHRL. *See Agosto*, 2017 WL 1335244, at *10.

4. Impact of Civil Penalties on the Public

Civil penalties in this case are also likely to serve the public interest. Respondent's conduct was repugnant in that she sought to weaponize government institutions to serve her own interests and discriminate and retaliate against someone based on their perceived immigration status. In addition to the individual harm that such discrimination causes, it also fundamentally undermines the integrity of our government institutions by leaving some members of our society too fearful to exercise their rights or to engage with government, to the detriment of our communities as a whole. Indeed, fear of deportation has had the adverse effect of chilling legitimate reports of domestic violence, wage theft, and workplace injuries, and has hindered access to basic services including healthcare and school.[21] The intention and the effect of

[21] *See* Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation*, N.Y. TIMES, June 3, 2018, https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html; Kartikay Mehrota, Peter Waldman, & Jonathan Levin, *In Trump's America, Bosses Are Accused of Weaponizing the ICE Crackdown*, BLOOMBERG (Dec. 18, 2018), https://www.bloomberg.com/news/features/2018-12-18/in-trump-s-america-bosses-are-accused-

weaponizing government institutions against people because of their immigration status or the immigration status of their household members is the creation of a social underclass too vulnerable to access or demand the protections and services to which they are rightfully entitled. That is an affront to the very fabric of our community and the core values that the NYCHRL was enacted to defend.[22]

Those who seek to subjugate another based on their immigration status and to scare them away from invoking their legal rights, as well as those who engage in unlawful retaliation, are deserving of the firmest condemnation and significant civil penalties. In light of evidence that such abuses have become more prevalent in recent years, civil penalties are also warranted in this case to serve as a general deterrent to others who would seek to weaponize the immigration and

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of-weaponizing-the-ice-crackdown; *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State*, IMMIGRANT DEFENSE PROJECT (2019), https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf; Betsy Swan, *Legal Immigrants Fear Getting Arrested in Court by ICE*, DAILY BEAST (Apr. 10, 2017), https://www.thedailybeast.com/legal-immigrants-fear-getting-arrested-in-court-by-ice; Brianna Ehley, Victoria Colliver & Renuka Rayasam, *Fearing Deportation, Immigrants Forgo Medical Care*, POLITICO (July 17, 2017), https://www.politico.com/story/2017/07/17/deportation-fears-under-trump-have-immigrants-forgoing-medical-care-240635; Nicole Acevedo, *Immigration Policies, Deportation Threats Keep Kids Out of School, Report States*, NBC NEWS (Nov. 20, 2018), https://www.nbcnews.com/news/latino/immigration-policies-deportation-threats-keep-kids-out-school-report-states-n938566; *see also Recalde v. Bae Cleaners, Inc.*, 20 Misc. 3d 827, 834 (Sup. Ct. N.Y. Cty. 2008) (noting a "disturbing trend involving the private use of immigration laws to deny housing and other benefits based on immigration status").

[22] Many courts and lawmakers have begun to address this problem through other protections, as well. For example, the New York State Senate is currently considering a bill that would add threatening deportation proceedings to a list of blackmail threats criminalized by law. S.B. No. 3298, 2019 Leg. Sess. (N.Y. 2019). These concerns also echo increasing public awareness of the weaponization of law enforcement against racial minorities, which has been shown to have pervasive physical and psychological effects. Chan T. McNamarah, *White Caller Crime: Racialized Police Communication and Existing While Black*, 24 MICH. J. RACE & L. 335, 367 (2019) (collecting scientific studies and stating that "[i]n total, these findings show that calling or even threatening to call the police on Black individuals exposes them to significant risk for a range of serious, negative psychological effects.")

law enforcement systems against people based on their immigration status, or to retaliate against people who protest discrimination or engage in other protected activity.

The Commission is mindful that, for many potential complainants, fear of adverse immigration consequences often has a chilling effect on one's willingness to file complaints of discrimination. Indeed, it is awareness of that fear that often emboldens people like Respondent to engage in unlawful discrimination and retaliation, contributing to a culture of impunity. For that reason, it is important that civil penalties in this case are sufficiently large to provide a meaningful deterrent against future discrimination and retaliation.

In light of the foregoing, and in view of civil penalties in other cases involving respondents with similarly limited resources and sophistication, the Commission concludes that a civil penalty of $12,000.00 is appropriate in this case. *Accord Gifford v. McCarthy*, 137 A.D.3d 30, 43 (3d Dep't 2016) (civil penalty of $10,000.00); *Comm'n on Human Rights v. Am. Construction Assocs.*, No. 451294/2020, Dec. & Order (Sup. Ct. N.Y. Cty. Oct. 4, 2020) (civil penalty of $10,000.00); *Nieves*, 2019 WL 2252369, at *9 (civil penalty of $10,000.00); *Martinez*, 2017 WL 4510797, at *13 (civil penalty of $18,000.00). However, as discussed in further detail below, the full value of the civil penalty may be set aside if Respondent choses instead to participate in good faith and complete a restorative justice process coordinated by the Commission. *See Desir*, 2020 WL 1234455, at *2 (offering a reduced civil penalty if the Respondents agreed to engage in a restorative justice process facilitated by the Commission).

VI. ADDITIONAL AFFIRMATIVE RELIEF

The Commission is empowered to order respondents "to take such affirmative action as, in the judgment of the commission, will effectuate the purposes" of the NYCHRL. N.Y.C. Admin. Code § 8-120. The Commission finds that such affirmative remedies are appropriate here. The Commission regularly requires individuals who are found liable for violations of the

NYCHRL to attend Commission-led trainings to strengthen their understanding of their obligations under the law. *See, e.g.*, *In re Comm'n on Human Rights ex rel. Spitzer v. Dahbi*, OATH Index No. 883/15, Comm'n Dec. & Order, 2016 WL 7106071, at *10 (July 7, 2016). The types of violations that occurred in this case suggest that Ms. Lysius would benefit from such a training and the Commission orders her to attend a Commission-led training, as set forth below.

In addition to and in conjunction with monetary relief and training, the Commission has often found that the public interest can, in some situations, be better satisfied by employing more restorative remedies that can foster accountability, help repair intra-community relationships damaged through discriminatory acts, and discourage future violations of the NYCHRL. *See e.g. Spitzer,* 2016 WL 7106071, at *9-11 (providing opportunity for respondent to conduct community service in lieu of civil penalties and, if agreed to by the complainants, to participate in a restorative justice process in lieu of compensatory damages); *In re Comm'n on Human Rights v. Prada USA Corp.*, Compl. Nos. M-EP-RL-19-54461 & M-P-LR-19-54553, Comm'n Order (Feb. 4, 2020) (conciliation agreement arising from case of race discrimination, requiring respondent to, among other things, provide racial equity training to staff, develop a scholarship program for people historically underrepresented in fashion, appoint a diversity and inclusion officer and maintain a diversity and inclusion council, and to increase staff diversity); *In re Comm'n on Human Rights v. SDSH LLC*, Compl. No. M-E-R-19-70080, Comm'n Order (Sept. 18, 2019) (conciliation agreement arising from case of race discrimination on the basis of hair, requiring respondents to, among other things, create a natural hair program through which respondents' New York City salons will obtain training on how to cut and style natural hair, create a multi-cultural internship program aimed at developing and mentoring student stylists from underrepresented groups, including people of color, commit to increase the number of

employees from these groups in their New York City salons, and perform community service with a racial justice organization). Utilizing a restorative framework requires that the parties and/or their proxies are interested in pursuing a remedy that is centered on accountability rather than punishment and necessitates an inquiry into the underlying conditions in the community that allowed the discrimination to take place.

In this case, a restorative justice process would require that Respondent participate in good faith and complete a series of mediated discussions with the Complainant (if Ms. Ondaan chooses to participate) or one or more community representatives acting as Ms. Ondaan's proxy (if Ms. Ondaan chooses not to participate), with the objectives of ensuring that Respondent fully comprehends the harm that her unlawful conduct has caused, takes individual responsibility for that conduct, and works with other participants in the restorative justice process to identify a mutually-agreeable framework in which she can work to rectify and make amends for the harm that she has caused within her community. It would further require that Respondent complete, in good faith, all accountability measures that the participants agree to during the mediated discussions. The Commission would expect a significant time commitment from Ms. Lysius, and a willingness to work with a restorative justice facilitator of the Commission's choosing. Failure to complete the process or to consistently participate in the process in good faith will result in the full imposition of civil penalties.

VII. CONCLUSION

For the reasons discussed herein, IT IS HEREBY ORDERED that Respondent immediately cease and desist from engaging in discriminatory conduct.

IT IS FURTHER ORDERED that, no later than 60 calendar days after service of this Order, Respondent pay Complainant $28,000.00 in emotional distress damages, by sending to

the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to Holly Ondaan, including a written reference to OATH Index No. 2801/18.

IT IS FURTHER ORDERED that, no later than 30 calendar days after service of this Order, Respondent provide written notice to the Commission of her intent to engage in a restorative justice process by emailing notice to Senior Policy Counsel Elizabeth Bender at ebender@cchr.nyc.gov and including written reference to "Ondaan v. Lysius, OATH Index No. 2801/18." If Respondent fails to provide timely written notice of her intent to engage in a restorative justice process or if she elects not to participate in such a process, she must, no later than 60 calendar days after service of this Order, pay a civil penalty of $12,000.00 to the City of New York, by sending to the New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007, Attn: Recoveries, a bank certified or business check made payable to the City of New York, including a written reference to OATH Index No. 2801/18. If Respondent agrees to participate in a restorative justice process, the civil penalty will be vacated upon her good-faith completion of the process, as certified by the Commission-appointed restorative justice facilitator. If, however, Respondent fails to complete the restorative justice process or to participate in the process in good faith, the restorative justice facilitator must provide the Commission with prompt written notice and Respondent will be required to pay the full civil penalty of $12,000.00.

IT IS FURTHER ORDERED that, no later than 60 calendar days after service of this Order, Respondent arrange to undergo a Commission-led training on the NYCHRL, to be completed no later than 120 days after service of this Order. A schedule of available trainings

may be obtained by calling the Director of Training and Development at (212) 416-0193 or emailing trainings@cchr.nyc.gov.

Failure to comply with any of the foregoing provisions in a timely manner shall constitute non-compliance with a Commission order. In addition to any civil penalties that may be assessed against them, Respondent shall pay a civil penalty of $100.00 per day for every day the violation continues. N.Y.C. Admin. Code § 8-124. Furthermore, failure to abide by this order may result in criminal penalties. *Id.* § 8-129.

Dated: New York, New York
November 24, 2020

SO ORDERED:
New York City Commission on Human Rights

Carmelyn P. Malalis
Commissioner/Chair

To:

[redacted]