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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15 FRESNO DIVISION

16 UNITED STATES OF AMERICA,)
17 Plaintiff,)

Case No. 1:04-cv-06732-AWI-SMS

18 v.)

AMENDED COMPLAINT

19 COVENANT RETIREMENT)
COMMUNITIES WEST, INC., d/b/a)
20 COVENANT VILLAGE OF TURLOCK,)
MT. MIGUEL COVENANT VILLAGE,)
21 THE SAMARKAND, and)
COVENANT SHORES; and)
22 COVENANT RETIREMENT)
COMMUNITIES, INC., d/b/a)
23 COVENANT VILLAGE OF GOLDEN)
VALLEY, COVENANT VILLAGE OF)
24 COLORADO, COVENANT VILLAGE OF)
CROMWELL, COVENANT VILLAGE OF)
25 FLORIDA, COVENANT VILLAGE OF)
THE GREAT LAKES, COVENANT)
26 VILLAGE OF NORTHBROOK,)
THE HOLMSTAD, WINDSOR PARK)
27 MANOR, BETHANY COVENANT)
VILLAGE, and COVENANT)
28 VILLAGE OF PORTLAND LIMITED)

1 PARTNERSHIP, d/b/a IRVINGTON)
2 VILLAGE,)
3 Defendants.)

4 The United States of America alleges:

5 1. This action is brought by the United States to enforce the Fair Housing Act ("Act"),
6 42 U.S.C. §§ 3601-19.

7 JURISDICTION AND VENUE

8 2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and
9 42 U.S.C. § 3614(a).

10 3. Venue is proper under 28 U.S.C. § 1391(b) & (c), because a substantial part of the
11 actions giving rise to the United States' claims occurred in this District; Defendant Covenant
12 Retirement Communities West, Inc., and its owner Defendant Covenant Retirement
13 Communities, Inc., own and/or do business as Covenant Village of Turlock, which is located in
14 this District; and Defendant Covenant Retirement Communities West, Inc., a California
15 corporation, has designated an agent for service of process in this District.

16 DEFENDANTS AND SUBJECT PROPERTIES

17 4. At all times relevant to this complaint, Defendant Covenant Retirement Communities
18 West, Inc. ("CRCW"), has owned and done business as Covenant Village of Turlock
19 ("Turlock"), Mount Miguel Covenant Village ("Mount Miguel"), The Samarkand, and Covenant
20 Shores, which are residential care facilities for elderly persons.

21 5. At all times relevant to this complaint, Defendant Covenant Retirement Communities,
22 Inc. ("CRC"), has owned Defendant CRCW and has owned and done business as Covenant
23 Village of Golden Valley, Covenant Village of Colorado, Covenant Village of Cromwell,
24 Covenant Village of Florida, Covenant Village of the Great Lakes, Covenant Village of
25 Northbrook, The Holmstad, Windsor Park Manor, Bethany Covenant Village, which are
26 continuing care retirement facilities, and Covenant Home of Chicago, which is an assisted living
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1 facility.

2 6. At all times relevant to this complaint, Defendants CRC and CRCW have managed the
3 operation of Turlock, Mount Miguel, The Samarkand and Covenant Shores and sold and/or
4 leased the units there.

5 7. At all times relevant to this complaint, Defendant CRC has managed the operation of
6 Covenant Village of Golden Valley, Covenant Village of Colorado, Covenant Village of
7 Cromwell, Covenant Village of Florida, Covenant Village of the Great Lakes, Covenant Village
8 of Northbrook, The Holmstad, Windsor Park Manor, Bethany Covenant Village, Covenant Home
9 of Chicago, and Irvington Village and sold and/or leased the units there.

10 8. At all times relevant to this complaint, Defendant Covenant Village of Portland
11 Limited Partnership has owned, done business as, managed the operation of, and sold and/or
12 leased the units at Irvington Village, which is an assisted living facility.

13 9. Turlock is located at 2125 North Olive, Turlock, California. Turlock has the capacity
14 to house 325 elderly residents in independent living, assisted living and skilled nursing units. It
15 has numerous common use areas, including a dining room, an auditorium, a pool, a library, a
16 beauty salon, a creative arts center, a woodworking shop, an exercise room, and a mini-market.
17 Three meals per day are served in the dining room.

18 10. Mount Miguel is located at 325 Kempton St., Spring Valley, California. Mount
19 Miguel has the capacity to house 436 elderly residents in independent living, assisted living and
20 skilled nursing units. Mount Miguel's common use facilities include a dining room, an
21 auditorium, a library, craft and hobby rooms, a woodworking shop, a beauty salon, a pool, a
22 tennis court, and a mini-market. Three meals per day are served in the dining room.

23 11. The Samarkand is located at 2550 Treasure Drive, Santa Barbara, California. The
24 Samarkand has the capacity to house 375 elderly residents in independent living, assisted living
25 and skilled nursing units. The common use facilities at The Samarkand include a dining room,
26 an auditorium, a chapel, a health clinic, a pool, a library, a woodworking shop, an exercise room,
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1 two beauty/barber shops, and a mini-mart. Three meals per day are served in the dining room.

2 12. Covenant Shores is located at 9150 Fortuna Dr., Mercer Island, Washington.

3 Covenant Shores has the capacity to house approximately 371 elderly residents in independent
4 living, assisted living and skilled nursing units. The common use facilities at Covenant Shores
5 include a dining room, an auditorium, a chapel, a health clinic, a pool, a library, a woodworking
6 shop, an exercise room, and a hair salon. Three meals per day are served in the dining room.

7 13. Covenant Village of Colorado is located at 9153 Yarrow St., Westminster, Colorado.

8 It has the capacity to house approximately 415 elderly residents in independent living, assisted
9 living and skilled nursing units. Common use facilities at Covenant Village of Colorado include
10 a dining room, an auditorium, a chapel, a health clinic, a pool, a library, a woodworking shop, an
11 exercise room, a hair salon, and a mini-market. Three meals per day are served in the dining
12 room.

13 14. Covenant Village of Golden Valley is located at 5800 St. Croix Ave., Golden Valley,

14 Minnesota. It has the capacity to house approximately 325 elderly residents in independent
15 living, assisted living and skilled nursing units. Common use facilities at Covenant Village of
16 Golden Valley include a dining room, an auditorium, a chapel, a health clinic, a pool, a library, a
17 woodworking shop, an exercise room, a hair salon, and a gift shop. Three meals per day are
18 served in the dining room.

19 15. Covenant Village of Cromwell is located at 52 Missionary Rd., Cromwell,

20 Connecticut. It has the capacity to house approximately 399 elderly residents in independent
21 living, assisted living and skilled nursing units. Common use facilities at Covenant Village of
22 Cromwell include a dining room, an auditorium, a chapel, a health clinic, a pool, a library, a
23 woodworking shop, an exercise room, and a hair salon. Three meals per day are served in the
24 dining room.

25 16. Covenant Village of Florida is located at 9201 W. Broward Blvd., Plantation,

26 Florida. It has the capacity to house approximately 420 elderly residents in independent living,
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1 assisted living and skilled nursing units. Common use facilities at Covenant Village of Florida
2 include a dining room, an auditorium, a chapel, a health clinic, a pool, a library, a woodworking
3 shop, an exercise room, a hair salon, and a store. Three meals per day are served in the dining
4 room.

5 17. Covenant Village of the Great Lakes is located at 2510 Lake Michigan Dr., N.W.,
6 Grand Rapids, Michigan. It has the capacity to house approximately 251 elderly residents in
7 independent living, assisted living and skilled nursing units. Common use facilities at Covenant
8 Village of the Great Lakes include a dining room, an auditorium, a chapel, a health clinic, a pool,
9 a library, a woodworking shop, an exercise room, a hair salon, and a store. Three meals per day
10 are served in the dining room.

11 18. Covenant Village of Northbrook is located at 2625 Techny Rd., Northbrook, Illinois.
12 It has the capacity to house approximately 463 elderly residents in independent living, assisted
13 living and skilled nursing units. Common use facilities at Covenant Village of Northbrook
14 include a dining room, an auditorium, a chapel, a health clinic, a pool, a library, a woodworking
15 shop, an exercise room, and a hair salon. Three meals per day are served in the dining room.

16 19. The Holmstad is located at 700 W. Fabyan Parkway, Batavia, Illinois. It has the
17 capacity to house approximately 575 elderly residents in independent living, assisted living and
18 skilled nursing units. Common use facilities at The Holmstad include a dining room, an
19 auditorium, a chapel, a health clinic, a pool, a library, a woodworking shop, an exercise room, a
20 hair salon, and a mini-market. Three meals per day are served in the dining room.

21 20. Windsor Park Manor is located at 124 Windsor Park Dr., Carol Stream, Illinois. It
22 has the capacity to house approximately 547 elderly residents in independent living, assisted
23 living and skilled nursing units. Common use facilities at Windsor Park include a dining room,
24 an auditorium, a chapel, a health clinic, a pool, a library, a woodworking shop, an exercise room,
25 a hair salon, a bank, and a gift shop. Three meals per day are served in the dining room.

26 21. Bethany Covenant Village is located at 2309 Hayes St., N.E., Minneapolis,
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1 Minnesota. It has the capacity to house approximately 76 elderly residents in assisted living and
2 skilled nursing units. Common use facilities at Bethany Covenant Village include a dining room,
3 a chapel, and an exercise room. Three meals per day are served in the dining room.

4 22. Covenant Home of Chicago is located at 2720 West Foster Ave., Chicago, Illinois. It
5 has the capacity to house approximately 37 elderly residents in assisted living units. Common
6 use facilities at Covenant Home include a dining room, a chapel, an exercise room, a hair salon,
7 and a mini-market.

8 23. Irvington Village is located at 420 NE Mason St., Portland, Oregon. It has the
9 capacity to house approximately 104 elderly residents in assisted living units. Common use
10 facilities at Irvington Village include a dining room, a chapel, a multi-purpose room, and an
11 exercise room.

12 FAIR HOUSING CLAIMS

13 24. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in
14 paragraphs 1-23, above.

15 25. Turlock, Mount Miguel, The Samarkand, Covenant Shores, Covenant Village of
16 Golden Valley, Covenant Village of Colorado, Covenant Village of Cromwell, Covenant Village
17 of Florida, Covenant Village of the Great Lakes, Covenant Village of Northbrook, The
18 Holmstad, Windsor Park Manor, Bethany Covenant Village, Covenant Home of Chicago, and
19 Irvington Village are “dwellings” within the meaning of 42 U.S.C. § 3602(b).

20 26. Residents, applicants and prospective residents at Turlock, Mount Miguel, The
21 Samarkand, Covenant Shores, Covenant Village of Golden Valley, Covenant Village of
22 Colorado, Covenant Village of Cromwell, Covenant Village of Florida, Covenant Village of the
23 Great Lakes, Covenant Village of Northbrook, The Holmstad, Windsor Park Manor, Bethany
24 Covenant Village, Covenant Home of Chicago, and Irvington Village, who have disabilities such
25 that they use mobility aids, including canes, walkers, wheelchairs, and motorized scooters, are
26 “handicapped” within the meaning of 42 U.S.C. § 3602(h).

1 27. Defendants have and employ a policy requiring residents who use motorized mobility
2 aids at Turlock and Mt. Miguel to sign a "Motor Driven Scooters Agreement," which mandates
3 that such residents purchase at least \$100,000 of personal liability insurance and hold Defendants
4 harmless for any injuries or damage caused by the scooter.

5 28. Defendants have and employ a written policy requiring residents of The Samarkand
6 who use motorized mobility aids to purchase personal liability insurance of at least \$300,000 and
7 to name The Samarkand as an additional-named insured on their insurance policies. Proof that
8 the insurance has been purchased must be provided to The Samarkand in the form of an
9 insurance certificate.

10 29. Defendants have and employ policies that prohibit residents and prospective residents
11 from using mobility aids, including canes, walkers, wheelchairs, and/or motorized scooters, in
12 the dining rooms at Turlock, Mount Miguel, The Samarkand, Covenant Shores, Covenant
13 Village of Golden Valley, Covenant Village of Colorado, Covenant Village of Cromwell,
14 Covenant Village of Florida, Covenant Village of the Great Lakes, Covenant Village of
15 Northbrook, The Holmstad, Windsor Park Manor, Bethany Covenant Village, and Covenant
16 Home of Chicago.

17 30. Defendants have and employ written policies that prohibit persons with disabilities
18 who use motorized mobility aids from using such aids inside the Redwood Building and the
19 Fellowship Center at Turlock, and inside any common buildings at Mt. Miguel and The
20 Samarkand. Such aids must be parked in limited exterior areas, and at Mt. Miguel are prohibited
21 near the front entrance to the Village Centre.

22 31. Defendants have and employ written policies at The Samarkand that set conditions
23 on persons with disabilities who use motorized mobility aids. Such restrictions include requiring
24 the following: preapproval by the Campus Administrator, an assessment by the clinic nurse as to
25 the individual's ability to transfer to/from the aid, a doctor's written order for use of the aid,
26 proof of the individual's competence at operating the motorized aid, an assessment by the
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1 Environmental Services Department as to the safety of the cart, and completion of a driving test
2 administered by the Environmental Services Department.

3 32. Defendants have and employ a written policy at Turlock that requires persons who
4 use mobility aids, including crutches, walkers and wheelchairs, to live in its assisted living
5 facility, rather than in independent living units. Turlock personnel tell prospective residents who
6 use mobility aids that they must live in the assisted living facility. Residents who, subsequent to
7 moving into Turlock, require the use of mobility aids must transfer to the assisted living facility.

8 33. Defendant CRC has and employs at Windsor Park Manor a written policy requiring
9 that, inter alia, persons with disabilities who use motorized mobility aids obtain liability
10 insurance and submit a copy of his/her renter's insurance certificate prior to use of the motorized
11 mobility aid.

12 34. Defendant CRC has and employs a written policy at Covenant Village of Florida and
13 Covenant Village of Cromwell that, inter alia, prohibits the use of motorized mobility aids inside
14 the village centers and care centers, and requires residents who use such aids to demonstrate they
15 need the aid prior to purchase or use, be instructed in their use, be certified to use it, be evaluated
16 by an occupational therapist, and submit certification from an ophthalmologist verifying their
17 "visual acuity" to use a motorized mobility aid.

18 35. Defendant CRC has and employs a written policy at Covenant Village of Golden
19 Valley that sets restrictions on the use of motorized mobility aids, including the following:
20 residents must park their motorized carts in certain areas designated by management and must
21 transfer to a chair, walker, wheelchair or other equipment or furnishing "without the assistance of
22 another person"; residents may not use motorized aids unless a physician provides a written
23 statement that it is necessary; residents must be trained yearly and assessed by campus
24 personnel, at the resident's expense.

25 36. Defendant CRC has and employs a written policy at Covenant Village of Northbrook
26 that, inter alia, requires approval by the Campus Administrator before a resident may purchase
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1 and use a motorized cart, the resident to demonstrate his/her ability to use the motorized cart, and
2 periodic review of the resident's need for and usage of the cart.

3 37. Defendants have and employ at Turlock, Mount Miguel, The Samarkand, Covenant
4 Shores, Covenant Village of Golden Valley, Covenant Village of Colorado, Covenant Village of
5 Cromwell, Covenant Village of Florida, Covenant Village of the Great Lakes, Covenant Village
6 of Northbrook, The Holmstad, Windsor Park Manor, Bethany Covenant Village, Covenant Home
7 of Chicago, and Irvington Village a written policy permitting residents to use motorized mobility
8 aids only if approved by the campus administrator after: the resident submits documentation
9 from his/her physician certifying that the motorized mobility aid is necessary and that the resident
10 is fit to operate it; the resident submits to a test, at his/her expense, by Defendants' personnel to
11 determine whether the resident can operate the mobility aid to Defendants' satisfaction; the
12 resident attends annual training on the use of such aids by Defendants' personnel, at the
13 resident's expense; and the resident signs a Power Operated Vehicle Use Acknowledgment
14 agreeing to comply with all restrictions on motorized mobility aids and acknowledging that
15 Defendants recommend that he/she obtain liability insurance for the use of the motorized
16 mobility aid. In addition, residents must park their motorized mobility aids in certain designated
17 locations, generally outside.

18 38. Defendants, through the actions described in paragraphs 24-37, above, have

- 19 a. Discriminated in the sale or rental of, or otherwise made unavailable or
20 denied, dwellings to renters because of handicap, in violation of 42 U.S.C.
21 § 3604(f)(1);
- 22 ii. Discriminated in the terms, conditions, or privileges of sale or rental of a
23 dwelling, and in the provision of services or facilities in connection with
24 such a dwelling, because of handicap, in violation of 42 U.S.C.
25 § 3604(f)(2);
- 26 iii. Made, printed or published, or caused to be made, printed or published, a
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1 notice or statement with respect to the sale or rental of dwelling that
2 indicates a preference, limitation, or discrimination based on handicap or
3 an intention to make such a preference, limitation, or discrimination, in
4 violation of 42 U.S.C. § 3604(c); and

- 5 iv. Represented to persons because of handicap that a dwelling is not
6 available for sale or rent when such dwelling is in fact available, in
7 violation of 42 U.S.C. § 3604(d).

8 39. Defendants' conduct, described above, constitutes:

- 9 a. A pattern or practice of resistance to the full enjoyment of rights granted
10 by the Fair Housing Act, 42 U.S.C. §§ 3601-3619; and
11 b. A denial to a group of persons of rights granted by the Fair Housing Act,
12 42 U.S.C. §§ 3601-3619, which denial raises an issue of general public
13 importance.

14 40. On information and belief, there are persons who have been injured by, and may have
15 suffered damages as a result of, Defendants' conduct. All of these persons are aggrieved persons
16 as defined in 42 U.S.C. § 3602(i).

17 41. Defendants' conduct, described above, was intentional, willful, and taken in
18 disregard for the rights of others.

19 PRAYER FOR RELIEF

20 WHEREFORE, the United States prays that the Court enter an ORDER that:

- 21 1. Declares that Defendants' discriminatory policies and practices, as alleged herein,
22 violate the Fair Housing Act, 42 U.S.C. §§ 3601-19;
23 2. Enjoins Defendants, their officers, agents, employees, and successors, and all other
24 persons in active concert or participation with them from:
25 a. Discriminating on account of disability against any person in any aspect of the
26 sale or rental of a dwelling;

- 1 b. Interfering with or threatening to take any action against any person in the
2 exercise or enjoyment of rights granted or protected by the Act; and
3 c. Failing or refusing to take such affirmative steps as may be necessary to restore, as
4 nearly as practicable, the victims of Defendants' past unlawful practices to the
5 position they would have been in but for the discriminatory policies and practices.

6 3. Awards monetary damages to all persons harmed by Defendants' discriminatory
7 practices for injuries caused by Defendants' discriminatory conduct, pursuant to 42 U.S.C.
8 § 3614(d)(1)(B) ;


9 4. Assesses a civil penalty against Defendants in order to vindicate the public interest,
10 pursuant to 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.3(b)(3).

11 The United States further prays for such additional relief as the interests of justice may
12 require.

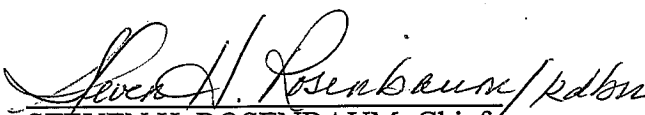
13 Respectfully submitted,

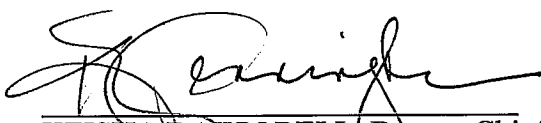
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