UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil No. 05-CV-4025
	)	
ZELLPAC, INC., and GUY EMERY,	)	
	)	
Defendants.	)	
	)	

UNITED STATES' OPPOSITION TO DEFENDANT ZELLPAC, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I. Introduction

Defendant Zellpac, Inc. seeks a ruling that it cannot be held liable for punitive damages because it neither had knowledge of, nor ratified, the alleged discrimination of its rental agent, Defendant Guy Emery. Defendant Zellpac, Inc.'s motion, however, makes no claim that Defendant Emery was not acting for it in a managerial capacity and within the scope of his employment when he engaged in the alleged discrimination. Nor does it contend that there are undisputed facts that would bar an award of punitive damages against Defendant Emery. Because the Supreme Court has ruled that punitive damages may be awarded vicariously in just such circumstances, Defendant Zellpac, Inc.'s Motion for Partial Summary Judgment should be denied.

II. Facts

At all times relevant to this lawsuit, Defendant Zellpac, Inc. owned two apartment

buildings consisting of sixteen units located at 908 and 910 N. Bentley Street in Marion, Illinois (the "Bentley Street Property"). *See* Deposition of Zellpac, Inc., p. 34, *Excerpts attached as Exhibit A.* Zellpac, Inc. is owned and controlled by two individuals: James Zeller and John (Randy) Patchett. *Exhibit A* at 31-32. From approximately 1998 to 2003, Zellpac, Inc. employed Defendant Guy Emery to manage the Bentley Street Property on its behalf. *Exhibit A* at 34, and Deposition of Guy Emery, p. 28, *Excerpts attached as Exhibit B.* During the same time period, Mr. Emery also managed another rental property consisting of approximately 22 units located in Marion, Illinois on behalf of a related corporation owned and operated by James Zeller. *Exhibit A* at 53-55, and *Exhibit B* at 28.

In managing the Bentley Street Property, Mr. Emery reported directly to Zellpac, Inc.'s principal, James Zeller. *Exhibit B* at 32. Zellpac, Inc. delegated virtually all responsibility for the day to day management of the Bentley Street Property to Mr. Emery. *Exhibit B* at 31-32. Mr. Emery's responsibilities at the Bentley Street Property included maintaining and/or overseeing and supervising maintenance of the property, advertising vacancies, and screening and selecting tenants. *Id*. at 35-36, 38-42, and *Exhibit A* at 73. Mr. Emery generally handled all communications with prospective tenants himself and made all decisions about who would and would not be accepted as a tenant. *Exhibit B* at 70. Zellpac, Inc. admits that Mr. Emery acted as its "agent" for purposes of renting and managing the Bentley Street Property. *See* Defendant Zellpac, Inc.'s Answer to Plaintiff's First Set of Interrogatories, # 3. *Attached as Exhibit C.* In fact, Zellpac, Inc. permitted Mr. Emery to sign the tenant leases, which listed Zellpac, Inc. as the landlord, on its behalf. *See e.g.* Residential Lease Agreement for Marcella Sumoski. *Attached as Exhibit D.*

Zellpac, Inc. never provided Mr. Emery with any training or instruction in fair housing, nor did it establish or direct him to follow any non-discrimination policies related to the rental or management of the Bentley Street Property. *Exhibit A* at 60 and 82-83; *Exhibit B* at 52. Mr. Zeller claimed vaguely that Mr. Emery should have known "just by knowing us and hearing about us" that Zellpac, Inc. operates its business "honestly and fairly," and that further training or instruction was unnecessary. *Exhibit A* at 60.

Deborah Norton was born with spina bifida and uses a wheelchair. *See* Deposition of Diane Norton, p. 11-12, *Excerpts attached as Exhibit E*. During the Fall of 2001, Mrs. Norton was hospitalized for approximately three months with pneumonia as a complication of the spina bifida, and gave up the apartment in which she had been living for years until that point. *Exhibit E* at 9-10 and 12. By the beginning of December 2001, Mrs. Norton had recovered sufficiently that her doctors told her she would be discharged by December 19, 2001. *See* Deposition of Deborah Norton, p. 9, *Excepts attached at Exhibit G*. Her son, Christopher Norton, then began looking in earnest for an apartment where she could live. *See* Deposition of Christopher Norton, p. 12, *Excepts attached at Exhibit F*.

On December 12, 2001, Christopher Norton called Mr. Emery in response to an advertisement in the Southern Illinoisan Newspaper regarding an available apartment at the Bentley Street Property. *Exhibit F* at 12. This advertisement contained a contact number for Mr. Emery, but did not mention or provide contact information for Mr. Zeller or anyone else at Zellpac. Inc. *Exhibit F* at 6-7. Mr. Norton told Mr. Emery that he was looking for an apartment for his mother, and made an appointment to look at the advertised apartment the following day. *Exhibit F* at 13. On approximately December 13, 2001, Mr. Emery met with and showed the

apartment to Mr. Norton. *Exhibit B* at 103.

During this appointment, Mr. Norton told Mr. Emery that his mother, Deborah Norton, used a wheelchair. *Exhibit B* at 106. Mr. Norton used a tape measure to measure the width of the doors inside the apartment to ensure that they would accommodate her wheelchair. *Exhibit B* at 102, 106-107. Mr. Norton also told Mr. Emery that he was looking at this apartment for his mother because she was about to get out of the hospital and needed a place to live. *Exhibit B* at 102, 106-107. On or about December 16, 2001, while in the hospital, Deborah Norton completed an application for the apartment at the Bentley Street Property. *Exhibit F* at 20. The next day, Mr. Norton returned the completed application, along with a $100 check to Mr. Emery at his residence. *Exhibit F* at 22-23.

Within hours after receiving Mrs. Norton's application, Mr. Emery spoke with Mr. Norton on the phone and told him he was not going to rent the apartment to Mrs. Norton because she used a wheelchair and he did not want the liability of her slipping on the ice and getting injured. *Exhibit F* at 24. He did not give any other reasons for refusing to rent to her. *Id*. Mr. Norton immediately called his mother in the hospital, and relayed his conversation with Mr. Emery to her. *Exhibit F* at 25.

Mrs. Norton then called Mr. Emery and tried to persuade him to rent the apartment to her. *Exhibit G* at 19-20. Mr. Emery repeated that he was not going to rent the apartment to her because she was in a wheelchair and would be too great a liability. *Exhibit G* at 19-20. Mrs. Norton told Mr. Emery that refusing to rent to her because she used a wheelchair violated federal anti-discrimination laws. *Exhibit G* at 20. Emery responded "so sue me." *Exhibit G* at 20. Mrs. Norton was not able to find an apartment before she was discharged from the hospital on

December 19, 2001, and had to live with her daughter, Diane Norton, for close to two months before finding a place of her own. *Exhibit E* at 10.

On May 22, 2002, Mrs. Norton filed a complaint with the United States Department of Housing and Urban Development ("HUD") alleging that Mr. Emery discriminated against her. *See* HUD Complaint, *Attached as Exhibit H*. On August 30 2002, upon learning that Zellpac, Inc. owned the Bentley Street Property, HUD notified Zellpac, Inc. of its investigation and provided it with a copy of the Complaint. *See* Correspondence from HUD to Zellpac, Inc. *Attached as Exhibit I*. Even after receiving notice of the above-described allegations of discrimination, Zellpac, Inc. took no action to investigate or discipline Mr. Emery with regard to those allegations. *Exhibit A* at 70-71. In 2003, Zellpac, Inc. sold the Bentley Street Property and distributed the proceeds from that sale to its two principals, James Zeller and John (Randy) Patchett. *Exhibit A* at 56 and *Exhibit C* at #1. Zellpac, Inc. sold the property for financial reasons unconnected to the HUD complaint. *Exhibit A* at 56. As a result of the sale, Mr. Emery's agency relationship with Zellpac, Inc. terminated. *Exhibit B* at 32. James Zeller also sold the other property that Mr. Emery managed for him at about the same time. *Exhibit A* at 53, and *Exhibit B* at 28.

On April 20, 2004, the HUD complaint was amended to name Zellpac, Inc. as a respondent. *See* HUD Amended Complaint, *Attached as Exhibit J*. On August 23, 2004, the Complaint was again amended to name Christopher Norton and Diane Norton as aggrieved persons. *See* HUD Second Amended Complaints, *Attached as Exhibit K*. On January 6, 2005, HUD issued a determination of reasonable cause and a charge of discrimination charging the Defendants with engaging in discriminatory housing practices. *See*, HUD Determination of

Reasonable Cause and Charge of Discrimination, *Attached respectively as Exhibit L and Exhibit M*. On January 18, 2005, the Defendants elected to have the merits of the charge determined in federal court. *See*, Notice of Election, *Attached as Exhibit N*. On February 17, 2005, the United States filed this action pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. 3612(o).

III. Argument

Summary judgment is only appropriate where the undisputed facts, taken in the light most favorable to the non-moving party, show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Alexander v. City of South Bend, 433 F.3d 550, 554 (7th Cir. 2006). If a reasonable jury, after considering the facts in the light most favorable to the non-moving party, could find in favor of that party, then the court must deny summary judgment. See Anderson at 249.

Defendant Zellpac, Inc.'s Motion for Partial Summary Judgment is limited to one issue: whether the United States is entitled to recover punitive damages against Defendant Zellpac, Inc. *See* Motion at 1-2. Defendant Zellpac, Inc.'s motion does not question that Mr. Emery was its agent,[1] that Mr. Emery's conduct was within the scope of the duties assigned to him by Zellpac, Inc., or that Zellpac Inc. is vicariously liable for Defendant Emery's conduct and for any actual damages that flow from it, even if its officers did not personally participate in or authorize the

[1] In its motion, Defendant Zellpac, Inc. terms Defendant Emery as an "independent contractor." However, regardless of whether Zellpac, Inc. claims that Mr. Emery is an "independent contractor" or an "employee," they do not dispute, and have acknowledged elsewhere, that Mr. Emery was their "agent" for purposes of renting and managing the Bentley Street Property. See *Exhibit C* at #3.

discrimination. *See* Motion at 1-2. In Meyer v. Holley, 123 S.Ct. 824 (2003), the Supreme Court made clear that general vicarious liability/respondeat superior principles apply in actions brought pursuant to the Fair Housing Act. Under those principles, there is no dispute but that Mr. Emery was acting as Zellpac, Inc.'s agent, and within the scope of his agency, and that Zellpac, Inc. is vicariously liable for his conduct. See Meyer, 287-88; See also Kolstad v. American Dental Association, 527 U.S. 526, 543 (1999)("even intentional torts are within the scope of an agent's employment if the conduct is 'the kind [the employee] is employed to perform, occurs substantially within the authorized time and space limits, and is actuated, at least, in part, by a purpose to serve the employer.'") (quoting Restatement (Second) of Agency §228(1)).

Defendant Zellpac, Inc.'s motion also does not dispute that Defendant Emery's conduct would warrant a punitive damages award against Mr. Emery. *See* Motion at 1-2. Punitive damages are appropriate when "the conduct [of the Defendant] is shown to be motivated by evil motive or intent, or when it involves reckless, or callous indifference to the federally protected rights" of others. Kolstad, 527 U.S. 526, 537 (1999); Smith v. Wade, 461 U.S. 30, 54 (1982). In the context of civil rights violations, "the terms 'malice' or 'reckless indifference' pertain to the [defendant's] knowledge that it may be acting in violation of federal law, not its awareness that it is engaging in discrimination." See Kolstad, 527 U.S. at 534. If a Defendant "discriminate[s] in the face of a perceived risk that its actions will violate federal law" punitive damages may be imposed.[2] See Kolstad, 527 U.S. at 534. Here, Defendant Emery defiantly refused to rent to

[2] See also United States v. Balistrieri, 981 F.2d 916, 936 (7th Cir. 1992) "This does not mean that the defendant had to know he was violating the law. * * * if the conduct upon which liability is founded evidences reckless or callous disregard for the plaintiff's rights or if the conduct

Mrs. Norton even after she told him that his conduct was unlawful discrimination. Indeed, Defendant Zellpac, Inc.'s motion is premised on the notion that even if a jury could award punitive damages against Defendant Emery for such conduct, Defendant Zellpac, Inc. is not vicariously liable for punitive damages.

Relying solely on isolated statements in Hamilton v. Svatik, 779 F.2d 383 (7th Cir. 1985) and City of Chicago v. Matchmaker Real Estate Sales Center, Inc., 982 F.2d 1086 (7th Cir. 1993), however, Defendant Zellpac, Inc. argues that punitive damages may be imposed vicariously in Fair Housing cases only if the principal knew of or ratified the discriminatory acts of an agent. Defendant is simply incorrect. In 1999, in Kolstad, the Supreme Court clarified the applicable principles regarding the circumstances in which punitive damages may be imposed vicariously in federal civil rights actions. Specifically, the Court held that punitive damage may be imposed vicariously where the discriminatory conduct is carried out by a managerial agent acting within the scope of its employment, unless the principal shows that the agent's discrimination was contrary to the principal's "good-faith efforts to prevent discrimination in the workplace." Kolstad at 545-46. While Kolstad was a an employment discrimination case, its reasoning applies equally to Fair Housing Act cases; and every court that has considered the issue has held that its holding applies to Fair Housing Act litigation. *See infra* pp. 11-12.[3] Here, the facts

springs from evil motive or intent, punitive damages are within the discretion of the jury."), cert. denied, 510 U.S. 812 (1993)".

[3] Both cases cited by Defendant Zellpac, Inc, in its motion were decided before the Supreme Court issued its decision in Kolstad enunciating the "good faith efforts" standard. The court in City of Chicago v. Matchmaker found that the owner made significant good faith efforts designed to ensure its agents' compliance with fair housing laws, including written office policies and procedures, and mandatory attendance at fair housing training courses. 982 F.2d at 1093. The court in Hamilton did not apply the Restatement (Second) of Agency § 217 or

show that Mr. Emery was Zellpac, Inc.'s managerial agent, and that Zellpac, Inc. made no efforts whatsoever to instruct Mr. Emery about any non-discrimination policies or to otherwise prevent discriminatory conduct by Mr. Emery. Applying Kolstad's principles to these facts, there are plainly material issues of fact as to whether punitive damages can be assessed against Zellpac, Inc. based on Mr. Emery's conduct.

A. The Supreme Court Decision in Kolstad Sets Forth the Applicable Doctrine Regarding when Punitive Damages May be Imposed Vicariously in Fair Housing Act Cases.

In 1999, the Supreme Court considered the circumstances under which an employer could be vicariously liable for punitive damages based on the acts of its employee under Title VII. See Kolstad v. American Dental Association, 527 U.S. 526, 543 (1999). The Court held that the starting point for determining when vicarious liability for punitive damages was appropriate was the Restatement (Second) of Agency § 217. See id. at 542-43. That section of the Restatement – and an identical provision in the Restatement (Second) of Torts § 909 provide as follows:

> Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if:
> (a) the principal authorized the doing and the manner of the act, or
> (b) the agent was unfit and the principal was reckless in employing him, or
> (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or
> (d) the principal or managerial agent of the principal ratified or approved the act.

Restatement (Second) of Agency, § 217; See also Restatement (Second) of Torts § 909.

The Court noted that under the Restatement, vicarious liability for punitive damages

---

consider whether the principal made sufficient good faith efforts to prevent discrimination. 779 F.2d 383.

would often be imposed because "managerial capacity" was not limited to high ranking employees and could encompass employees with only modest supervisory or management responsibilities. Kolstad at 543. The Court did question the general propriety of such vicarious liability for punitive damages. Indeed in other contexts, the Court has noted that vicarious liability for punitive damages promotes deterrence and encourages principles to train and supervise adequately their agents. See Pacific Mutual Ins. Co. v. Haslip, 499 U.S. 1, 14 (1991) ("Imposing exemplary [punitive] damages on the corporation when its agent commits intentional fraud creates a strong incentive for vigilance by those in a position 'to guard substantially against the evil to be prevented.' Louis Pizitz Dry Goods Co. v. Yeldell, 274 U.S. 112, 116, (1927) If an insurer were liable for such damages only upon proof that it was at fault independently, it would have an incentive to minimize oversight of its agents. Imposing liability without independent fault deters fraud more than a less stringent rule."); Am. Soc of Professional Engineers v. Hydrolevel, 456 U.S. 556, 572 (1982) (noting deterrent benefits of imposing punitive damages and treble damages vicariously).

The Court expressed concern however, that if this part of the Restatement were applied literally in Title VII cases, "an employer who makes every effort to comply with Title VII would be held liable [in punitive damages] for the discriminatory acts of its agents acting in a 'managerial capacity.'" Kolstad at 544. The Court expressed concern that liability in this situation might frustrate compliance with Title VII as employers might intentionally fail to educate themselves or their employees about the law so as to avoid liability for punitive damages. See id. at 544-45. The Court found that the law should instead encourage employers "to adopt anti-discrimination policies" and "educate their personnel on Title VII's prohibitions."

527 U.S. at 544. These concerns led the court to fashion a limited "good faith" defense to punitive damages when otherwise the Restatement would allow vicariously liability because the tortious conduct was committed by an agent acting in a managerial capacity. Id at 545-46. Specifically, the Court held that the employer could avoid liability for the discriminatory actions of managerial agents where those actions "are contrary to the employer's good faith efforts to comply with Title VII." Id. at 545.

Although Kolstad was a Title VII case, its principles also apply to the Fair Housing Act. Like Title VII, the Fair Housing Act, prohibits discrimination "because of" membership in certain protected classes. and courts have often noted that because of the similar language and parallel objectives of two statutes, courts should generally apply principles from Title VII case in cases under the Fair Housing Act. See Village of Bellwood v. Dwivedi, 895 F.2d 1521, 1529 (7th Cir.1990) (holding that the mental element required to make out a disparate treatment claim under Title VIII of the Fair Housing Act is the same as that required under Title VII of the Civil Rights Act of 1964); see also Kormoczy v. Secretary, United States Dep't of Housing and Urban Dev. ex rel. Briggs, 53 F.3d 821, 824 (7th Cir.1995) (noting that plaintiffs may use the McDonnell Douglas framework to make out claims under Title VIII of the Fair Housing Act). Furthermore, Kolstad concerned a provision in Title VII that simply incorporated the federal common law standard and authorized the imposition of punitive damages for intentional discrimination whenever an "employee serving in a 'managerial capacity' committed the wrong while 'acting in the scope of employment." Kolstad at 543. Kolstad reflected the Court's determination of what the common law rule should be in Title VII cases. See id. at 545.

The Fair Housing Act permits the imposition of punitive damages but is silent as to when

they are appropriate. 34 U.S.C. § 3614(d)(A) ("In a civil action..., the court (B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved.") In such cases, courts must apply common law principles as adapted to further the purposes of the statute. See Meyer at 287. If the Kolstad holding is appropriate for Title VII cases, there is no basis for adopting a different rule for Title VIII. And after Kolstad, courts have uniformly applied its principles, including its holding regarding vicarious liability for punitive damages, in Fair Housing Act cases. See, Alexander v. Riga, 208 F.3d 419, 433 (3d Cir. 2000); Badami v. Flood, 214 F. 3d 994, 997 (8th Cir. 2000); US v. Habersham Properties, Inc., 319 F. Supp 2d 1366, 1376 (N.D. Georgia 2003); U.S. v. Garden Homes, 156 F.Supp.2d 413, 424 (D. New Jersey 2001).

B. Vicarious Liability for Punitive Damages is Presumptively Appropriate Against Zellpac, Inc. Because Mr. Emery was its Managerial Agent.

Kolstad, therefore, requires a two step process. First the Court must determine whether Mr. Emery was acting in a managerial capacity. If so, punitive damages may be imposed vicariously against Zellpac, Inc. for Mr. Emery's discriminatory conduct unless the good faith defense is applicable.

Determining whether an employee was in a managerial capacity is a fact intensive inquiry. See Ciesielski v. Hooters Management Corp., 2004 WL 2997648 (N.D. Ill. 2004), citing Kolstad v. American Dental Association, 527 U.S. 526, 543 (1999). The employee must be "important" but need not be "top management, officers, or directors." See Kolstad, 527 US at 541. The "Court should review the type of authority that the employer has given to the employee, the amount of discretion that the employee has in what is done and how it is accomplished." See id.

Courts have found that resident managers are "managerial" within the meaning of this rule. See Alexander v. Riga 208 F.3d 419, 432 (3rd Cir. 2000) ("a resident manager or employee with comparable responsibilities is employed in a managerial capacity."); Deal v. Byford, 537 N.E.2d 267, 272 (Ill. 1989) (upholding punitive damages award against property owner based on actions of agent where the agent was a resident manager of the complex). See also EEOC v. Walmart Stores, Inc., 187 F.3d 1241, 1247 (10th Cir. 1999) (Store manager and assistant manager were managerial agents). Here, Mr. Emery was responsible for all aspects of the day to day to management of the complex, including decisions about who could be accepted as a tenant. His action in denying an apartment to Deborah Norton because she used a wheelchair was plainly taken in a managerial capacity.

C. There are Material Issues of Fact as to Whether the Good Faith Defense Applies.

As noted above, the Supreme Court in Kolstad carved out an exception to the traditional vicarious liability rule so that principals may avoid liability for punitive damages where they made good-faith efforts to prevent discrimination. The good faith defense is an affirmative defense for which the principal bears the burden of proof. See, e.g., Romano v. Uhaul International, 233 F.3d 655, 669 (1st Cir. 2000), cert. denied, 534 U.S. 815 (2001); Zimmerman v. Associates First Capital Corp., 251 F.3d 376, 384 (2nd Cir. 2001). See also Bruso v. United Airlines, 239 F.3d 484, 858 (7th Cir. 2001) citing Kolstad at 545 ("the employer may avoid liability for punitive damages *if it can show* that it engaged in good faith efforts to implement an anti-discrimination policy.") (*emphasis added*). The good faith defense is applicable when the principal has taken sufficient efforts "to deter and detect civil rights violations and to enforce anti-discrimination policies." Kolstad at 546.

Whether the Defendant took sufficient good faith efforts is generally an issue of fact for the jury. Alexander at 433; US v. Garden Homes Management, Corp., 156 F. Supp. 2d 413 (D. N.J. 2001)(genuine issue of material facts as to whether owner of apartment building had taken active anti-discrimination actions, and thus could avoid liability for the allegedly discriminatory actions of his rental agent precluded summary judgement). Here Defendant Zellpac, Inc. has not shown that it made any good-faith efforts to prevent or deter Mr. Emery from discriminating against prospective tenants. Zellpac, Inc. did not provide Mr. Emery with any training or instruction in fair housing, nor did it establish or direct him to follow any non-discrimination policies related to the rental or management of the property. Instead, Zellpac, Inc. merely claims that Mr. Emery should have known "just by knowing us and hearing about us" that Zellpac, Inc. operates its business honestly and fairly. Defendant Zellpac, Inc. delegated all responsibilities for the selection of its tenants to Mr. Emery, without providing him with any guidelines regarding how he was to do so. Moreover, once made aware of Mrs. Norton's allegations of discrimination, Zellpac, Inc. did nothing to investigate their veracity or take any actions intended to prevent Mr. Emery from discriminating in the future. Zellpac's actions are plainly not sufficient to show good faith.

In Alexander, the evidence showed that the owner was out of the country at the time the discriminatory acts and did not involve himself in the daily management of the apartment building. Id. at 433. The owner's wife managed the complex on his behalf. Id. at 424. Despite the fact that there was no evidence that the owner knew about or participated in his wife's conduct, the Court found that punitive damages were presumptively available against the owner because his wife was acting in a managerial capacity. Id. at 433. The court found that there

were material issues of fact as to whether the owner had taken sufficient "good faith" efforts to prevent discrimination. Id. at 433-34.

Like the agent in Alexander, Mr. Emery was given virtually complete discretion and authority to approve and reject potential applicants at the Bentley Street Property. Furthermore, Mr. Emery was acting within the scope of the responsibilities conveyed upon him by Zellpac, Inc. when he refused to rent an apartment to Deborah Norton because of her disability. That decision was made pursuant to the responsibilities that Zellpac, Inc. had delegated to Mr. Emery for screening and selecting tenants.

IV. Conclusion

For the reasons set forth above, Defendant Zellpac, Inc.'s Motion for Partial Summary Judgment should be denied.

Dated this 27th day of February, 2006

For Plaintiff United States:

Respectfully submitted,

Ronald Tenpas
United States Attorney

Wan J. Kim
Assistant Attorney General

/s/ Sara L. Niles

Laura Jones
Assistant United States Attorney
9 Executive Drive, Suite 300
Fairview Heights, IL 62208
(618) 628-3700

Steven H. Rosenbaum, Chief
Timothy J. Moran, Deputy Chief
Sara L. Niles, Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave - NWB 7006
Washington, D.C. 20530

202.514.2168
202.514.1116 (facsimile)
E-mail: Sara.Niles@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil No. 05-CV-4025
	)	
ZELLPAC, INC., and GUY EMERY,	)	
	)	
Defendants.	)	
	)	

Certificate of Service

I hereby certify that on February 27, 2006, I electronically filed the United States' Opposition to Defendant Zellpac, Inc.'s Motion for Partial Summary Judgment with the Clerk of Court using the CM/EFC system. I hereby certify that on February 27, 2006, I sent by first class mail the Opposition to the following non-registered participant:

Guy Emery
1603 Smith Drive
Marion, IL 62959

Respectfully submitted,

s/Sara L. Niles
SARA L. NILES
Trial Attorney
Housing and Civil Enforcement Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave., N.W., NWB 7006
Washington, D.C. 20530
Phone: (202) 514-2168
Fax: (202) 514-1116
E-mail: Sara.Niles@usdoj.gov