

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ERSIL F. JAMES; DAN MILLER;)
 ACTION MANAGEMENT AND)
 CONSULTING SERVICES, L.L.C.;)
 MISSOURI RURAL HOUSING OF)
 PLATTE CITY, L.P.; and)
 MACO MANAGEMENT CO., INC.,)
)
 Defendants.)
 _____)

Civil Action No. 06-6044-CV-SJ-REL

COMPLAINT AND REQUEST FOR JURY TRIAL

Plaintiff, the United States of America, alleges:

1. This action is brought by the United States to enforce the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, *et seq.* (hereinafter “Fair Housing Act”).
2. This court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 3612(o), and 42 U.S.C. § 3614(a).
3. Venue is proper under 28 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o) because the events giving rise to the United States’ claims occurred in the Western District of Missouri, the subject properties are located in the Western District of Missouri, and the Defendants reside in and/or do business in the Western District of Missouri.

4. Defendant Ersil F. James is a resident of Polo, Caldwell County, Missouri. At all times relevant to this action, Defendant James performed maintenance work at numerous apartment complexes, including, but not limited to, 1) Platte Landing Apartments, located at 101 O'Rourke Drive, Platte City, Missouri; 2) Orange Blossom Apartments, located at 8 Wallingford Drive, Platte City, Missouri; and 3) Smithville Apartments, located at 501 N. 169 Hwy., Smithville, Missouri (hereinafter "the subject properties").

5. Defendant Dan Miller is a resident of Kearney, Clay County, Missouri. From approximately March 2003 to late 2004, Defendant Miller was the site manager for the subject properties and supervised Defendant James.

6. Defendant Action Management and Consulting Services, LLC (hereinafter "Action Management"), is a Missouri-registered limited liability company, with its principal place of business in King City, Gentry County, Missouri. At all times relevant to this action, Defendant Action Management served as the property management company for the subject properties, was a limited partner in Defendant Missouri Rural Housing of Platte City, L.P., and employed Defendants James and Miller.

7. Defendant Missouri Rural Housing of Platte City, L.P. (hereinafter "Missouri Rural Housing"), is a Missouri-registered limited partnership, with its principal place of business located in King City, Gentry County, Missouri. At all times relevant to this action, Defendant Missouri Rural Housing was the owner of Platte Landing Apartments, located at 101 O'Rourke Drive, Platte City, Missouri, and Defendants Action Management, James, and Miller served as agents for Missouri Rural Housing in the property management of the subject properties.

8. Defendant MACO Management Co., Inc. (hereinafter “MACO”), is a Missouri-chartered corporation, with its principal place of business located in Clarkton, Dunklin County, Missouri. At all times relevant to this action, Defendant MACO Management Co., Inc., was the general partner of Missouri Rural Housing, Defendants Action Management, James, and Miller served as agents for MACO in the property management of the subject properties.

9. The subject properties owned and operated by Defendants Missouri Rural Housing, Action Management, and MACO are dwellings within the meaning of 42 U.S.C. § 3602(b).

10. Defendants have violated the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, by discriminating against persons on the basis of sex in connection with the rental of the subject properties.

11. From at least 2002 through 2004, Defendant James subjected female tenants of the subject properties to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment. Such conduct has included, but is not limited to, 1) unwanted verbal sexual advances; 2) unwanted physical sexual advances, such as unwanted touching of the breasts, buttocks, and other parts of the bodies of female tenants; 3) forcible physical contact with the sexual parts of Defendant James’ body; 4) inappropriate statements; and 5) threatening to withhold maintenance service or to have female tenants evicted when they refused or objected to his sexual advances.

12. Defendants Action Management, Dan Miller, Missouri Rural Housing, and MACO, are liable for the discriminatory conduct of their maintenance employee and agent, Defendant James, described above. Defendants Action Management, Dan Miller, Missouri Rural Housing, and MACO, knew or should have known of the discriminatory conduct of Defendant James, yet

failed to take reasonable preventive or corrective measures to curtail and/or prevent the discriminatory conduct of Defendant James.

13. Marva Watson and Donna Kieffer filed complaints with the United States Department of Housing and Urban Development (hereinafter “HUD”) on or about March 14, 2005, and May 13, 2005, respectively. The complaints, as amended, alleged that Defendants engaged in sexual harassment of them during their tenancies. The Secretary of HUD investigated the complainants’ allegations, attempted conciliation without success, and prepared a final investigative report, pursuant to 42 U.S.C. § 3610.

14. On or about March 15, 2006, the Secretary of HUD determined, pursuant to 42 U.S.C. § 3610(g)(1), that reasonable cause exists to believe that discriminatory housing practices had occurred and issued, pursuant to 42 U.S.C. § 3610(g)(2), a Charge of Discrimination against the Defendants for violations of the Fair Housing Act.

15. On or about March 24, 2006, Ms. Watson elected, pursuant to 42 U.S.C. § 3612(o), to have the claims decided in a federal civil action in the United States District Court.

16. On or about March 28, 2006, the Secretary of HUD authorized the Attorney General to commence a federal civil action pursuant to 42 U.S.C. § 3612(o).

17. The conduct of Defendants described above constitutes:

a. Discrimination in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of sex, in violation of Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b);

b. The making of statements with respect to the rental of dwellings that indicate a preference, limitation, or discrimination based on sex, in violation of Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c); and

c. Coercion, intimidation, threats, or interference with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under Section 804 of the Fair Housing Act, in violation of Section 818 of the Fair Housing Act, 42 U.S.C. § 3617.

18. By their actions and statements described above, Defendants:

a. Discriminated against Ms. Watson and Ms. Kieffer in the terms, conditions, or privileges of the rental of dwellings, or in the provision of services or facilities in connection therewith, because of sex, in violation of Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b);

b. Made discriminatory statements to Ms. Watson and Ms. Kieffer with respect to the rental of dwellings that indicate a preference, limitation, or discrimination based on sex, in violation of Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c); and

c. Coerced, intimidated, threatened, or interfered with Ms. Watson and Ms. Kieffer in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under Section 804 of the Fair Housing Act, in violation of Section 818 of the Fair Housing Act, 42 U.S.C. § 3617.

19. In addition, the conduct of Defendants describe above also constitutes:

a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; or

b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, which denial raises an issue of general public importance.

20. Female tenants have been injured by Defendants' discriminatory conduct. These persons are aggrieved persons as defined in 42 U.S.C. § 3602(i), and may have suffered damages as a result of Defendants' conduct.

21. Defendants' conduct was intentional, willful, and taken in disregard for the rights of others.

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

1. Declares that Defendants' discriminatory housing practices violate the Fair Housing Act;

2. Enjoins Defendants, their agents, employees, and successors, and all other persons in active concert or participation with them, from:

a. Discriminating on account of sex against any person in any aspect of the rental of a dwelling;

b. Interfering with or threatening to take any action against any person in the exercise or enjoyment of rights granted or protected by the Fair Housing Act; and

c. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendants' past unlawful practices to the position they would have been in but for the discriminatory conduct;

3. Awards appropriate monetary damages to fully compensate each person aggrieved by Defendants' discriminatory housing practices for injuries caused by the Defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3612(o)(3), 42 U.S.C. § 3613(c), and 42 U.S.C. §3614(d)(1)(B); and

4. Assesses a civil penalty against Defendants to vindicate the public interest, pursuant to 42 U.S.C. § 3614(d)(1)(C).

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

Dated: April 20, 2006

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