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CLERK US DISTRICT COURT
 DISTRICT OF NEVADA

BY _____

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)

Plaintiff,

CV-S-05-1276-RLH-PAL

v.

ZENITH OF NEVADA, INC.,)
 Formerly Known As PERMA-BILT, A)
 NEVADA CORPORATION, and)
 RUTH OCHOA,)

Defendants.)

**SETTLEMENT AGREEMENT
 AND ORDER**

SETTLEMENT AGREEMENT AND ORDER

I. Introduction

The United States files this Settlement Agreement and Order together with its complaint on behalf of Candra and Terrell Evans and their minor children, Skylar and Madison Evans, against Zenith of Nevada, Inc., formerly known as Perma-Bilt, a Nevada Corporation (“ZNI”) and Ruth Ochoa (collectively referred to herein as “the defendants”), to enforce the provisions of Title VIII of the Civil Rights Act of 1968 (“the Fair Housing Act”), as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.* The United States brought its complaint following a Determination of Reasonable Cause and Charge of Discrimination issued by the Secretary of the Department of Housing and Urban Development (“HUD”) and a timely notice of election filed by complainants and defendants. *See* 42 U.S.C. § 3612(o).

Defendant ZNI was, during all times relevant to this action, the owner, developer, and builder of residential dwellings, including the single-family home located in Clark County at 5966 Hopkinsville Lane, Las Vegas, Nevada (“the subject premises”). Defendant Ruth Ochoa was at all times relevant to this action, the vice-president of sales and marketing for ZNI. Defendant ZNI is no longer engaged in the business of the sale, design, construction, management, or marketing of residential real estate. Defendants represent that ZNI only provides, through subcontractors, warranty services to its past purchasers. Defendants represent that Ruth Ochoa is no longer employed by or affiliated with ZNI.

The United States alleged in its Complaint that Terrell and Candra Evans, a married couple living in Law Vegas, Nevada with their two children, Skylar and Madison, who have

bronchial asthma, entered into a purchase agreement with defendant ZNI to purchase a single-family residence located in Clark County at 5966 Hopkinsville Lane, Las Vegas, Nevada (“the subject premises”). The United States alleged that the defendants unilaterally canceled the purchase agreement because of defendants’ concerns that the Evanses would sue them if their children, who are persons with disabilities within the meaning of the Fair Housing Act § 3602(h), became ill in the future.

The United States alleged that defendants violated the Fair Housing Act, 42 U.S.C. §§ 3604(f)(1), (f)(2), (f)(3)(B), and § 3605 by making housing unavailable, by discriminating in the terms, conditions, or privileges in the sale of a dwelling, by discriminating in the terms or conditions of a residential real estate-related transaction, and by violating other provisions of the Fair Housing Act. The United States alleged that, as a result of defendants’ unlawful conduct, the Evanses suffered damages. It is understood that this Settlement Agreement is a compromise of a disputed claim and execution of this Agreement is not to be construed as an admission of liability on the part of the defendants and that defendants deny liability therefor and enter into this Agreement merely to avoid further litigation.

The parties agree that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 3612(o). The parties agree that, in order to avoid costly and protracted litigation, the claims against defendants should be resolved without further proceedings. Therefore, as indicated by the signatures appearing below, the parties agree to entry of this Settlement Agreement and Order. This Settlement Agreement and Order constitute a full resolution of the United States’ claims that defendants discriminated against the Evanses on the basis of disability.

II. Affirmative Relief

A. General Injunction

Defendants, their employees, agents, successors and assigns, and all persons in active concert or participation with them shall be enjoined from:

- a. Discriminating in the sale or by otherwise making unavailable or denying a dwelling because of disability in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminating against any person in the terms, conditions, or privileges of the sale of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);
- c. Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford residents with disabilities an equal opportunity to use and enjoy a dwelling in violation of 42 U.S.C. § 3604(f)(3)(B); and
- d. Discriminating against any person by making a residential real estate-related transaction unavailable, or in the terms or conditions of such a transaction in violation of 42 U.S.C. § 3605.

B. Non-Discrimination Policy

1. Within thirty (30) days after the entry of this Order, defendant ZNI shall post and maintain in each of its offices a fair housing poster no smaller than eleven (11) inches by fourteen (14) inches that indicates that the homes offered by defendant ZNI are available on a nondiscriminatory basis. The posters shall be placed in conspicuous locations that are easily

viewable to prospective purchasers, and shall be in compliance with regulations promulgated by HUD and described in 24 C.F.R. §110.25.

2. The fair housing posters required by section B(1) of this Order shall include a statement indicating that disabled persons are entitled to seek reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

3. During the duration of this Settlement Agreement and Order, defendant ZNI shall keep written records of each homeowner making a warranty request. In addition, in the event that ZNI resumes any of the business activities described in Section III (3), ZNI shall keep records of each prospective client who has a stated disability. The records required by this paragraph shall include: (a) the name, address, and telephone number of such homeowner or prospective client; (b) the date and nature of any specific disability-related request that was made by such homeowner or prospective client; (c) whether the request was granted or denied; and (d) if the request was denied, the reason(s) for the denial.

C. Notice to Employees

1. Within ten (10) days after the date of entry of this Order, defendant ZNI shall inform each of its employees, agents, or any other persons who have responsibility for the sale or management of dwellings, and those who have supervision of the construction or maintenance of dwellings, not including independent contractors and/or subcontractors, of such person's obligations under this Settlement Agreement and Order and under the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.* Defendant ZNI shall furnish each such employee, agent, or other person

covered by this paragraph with a copy of this Settlement Agreement and Order. Each such employee, agent, or other person covered by this paragraph shall sign a statement in the form of Attachment A, acknowledging that he or she has received, read, and understood a copy of this Settlement Agreement and Order, has had an opportunity to have questions about the Order and nondiscrimination policy answered, and declaring that he or she will perform his or her duties in accordance with this Settlement Agreement and Order and the Fair Housing Act, 42 U.S.C.

§§ 3601, *et seq.*

2. New partners, managers, employees and agents, not including independent contractors and/or subcontractors, who have responsibility for the sale, construction, or management of dwellings, and those who have supervision of the construction or maintenance of dwellings shall:

a. be informed of the contents of this Settlement Agreement and Order and of their obligations under the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, when their employment commences;

b. be provided a copy of this Settlement Agreement and Order; and

c. execute the statement appended hereto as Attachment A no later than five (5) calendar days following their first day of employment.

D. Training

1. Within sixty (60) days after the date of entry of this Order, defendant Ruth Ochoa, Hyman J. Lee, Jr., Vice President and Secretary of ZNI, and defendant ZNI's employees and agents whose duties, in whole or in part, involve the sale or management of dwellings, and those who have supervision of construction or maintenance of dwellings, not including independent

contractors and/or subcontractors, shall attend an educational training program concerning the sections of the Fair Housing Act pertaining to discrimination on the basis of disability. This training shall be conducted by a qualified third party who is unconnected to defendant Ruth Ochoa, and to defendant ZNI or its employees, agents, or counsel; The United States shall approve of the trainer in advance. Defendant ZNI shall provide to the United States, within thirty (30) days after the training, the name(s), address(es) and telephone number(s) of the trainer(s) and certifications executed by the trainees confirming their attendance, in a form substantially equivalent to Attachment B.

2. During the period in which this Order is in effect, each new employee or agent of defendant ZNI who has any of the responsibilities described in paragraph II(C)(1), above, shall attend, after his or her hiring, a training session as required herein within sixty (60) days of the date they are hired or retained by ZNI.

3. All costs and expenses related to the training requirements of this Settlement Agreement and Order shall be the sole responsibility of defendant ZNI.

III. Reporting Requirements

1. Defendant ZNI shall, no later than ninety (90) days after the date of entry of this Settlement Agreement and Order, serve upon counsel for the United States a written report.¹ This report shall consist of the following:

¹ All documents or other communications required by this Settlement Agreement and Order to be sent to the United States or counsel for the United States shall be sent to: U.S. Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section - NWB, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Attn: DJ No. 175-46-120.

a. Copies of the statements signed by any and all employees pursuant to Section II(C) of this Settlement Agreement and Order; and

b. Copies of certification of attendance at fair housing educational programs pursuant to Section II(D) of this Settlement Agreement and Order.

2. Six (6) months after the date of entry of this Settlement Agreement and Order, and every six (6) months thereafter for three (3) years, defendant ZNI shall serve on counsel for the United States a written report. The final report shall be submitted not more than sixty (60) days prior to the expiration of this Order. In each report required under this paragraph, defendant ZNI shall:

a. Provide copies of statements signed by any new employees pursuant to Section II(C) of this Settlement Agreement and Order;

b. Provide copies of certification of attendance at fair housing educational programs for any new employees pursuant to Section II(E) of this Settlement Agreement and Order;

c. Notify counsel for the United States of any written complaint(s) that involve housing discrimination on the basis of disability which has come to the attention of defendants or any of their employees, agents or other representatives in the preceding six-month period. Defendants shall include a copy of the complaint(s) and any records relating to the complaint(s), including those relating to the resolution of the complaint(s); and

3. The provisions of paragraphs II (B) (1)-(2) and III (1)-(2), above, shall not be effective for any period of time in which defendant ZNI ceases to engage in business activity involving the sale, design, construction, management, or marketing of residential real estate. In

the event that ZNI ceases to engage in such activities, ZNI shall so notify the United States in writing, and shall provide reports every six (6) months for the duration of this Order, indicating:

a. That ZNI is not engaged in the sale, design, construction, management, or marketing of residential real estate; and

b. Whether ZNI has received or been notified of a claim or request for work, repairs, construction, or alterations under a warranty issued by ZNI, its employees, agents, successors or assigns, involving a homeowner with a stated disability.

4. For the purpose of compliance with the requirements of paragraph III (3), ZNI hereby notifies the United States, as of the date of this Agreement, that it is not engaged in any of the business activities described in Section III (3)(a).

5. It is explicitly understood that, notwithstanding the provisions of paragraph III (3), above, defendant ZNI, through Hyman J. Lee, Jr., and defendant Ruth Ochoa, will attend the training required by Section II (D) of this Order within sixty (60) days after the date of entry of this Order, and will execute certifications of training confirming their attendance, in a form substantially equivalent to Attachment B.

6. In the event that ZNI resumes any of the activities listed in paragraph III (3), above, after a period of cessation, ZNI shall notify the United States in writing within fifteen (15) days of the resumption of such activity, and the provisions and requirements of paragraphs II (B) (1)-(2) and III (1)-(2) shall immediately be effective for the duration of this Order.

IV. Inspection of Documents

For the duration of this Order, defendants shall preserve all records pertaining to their obligations under this Order. Upon reasonable notice to defendants' counsel, representatives of

the United States Justice Department shall be permitted to inspect and copy all such records at reasonable times in order to monitor defendants' compliance with this Order.

V. Monetary Relief

Within fourteen (14) days after the effective date of this Order, ZNI shall deliver (in three separate checks) to the United States a total of \$60,000 in monetary compensation. The first check, for \$50,000, shall be made payable to the order of Candra Evans and Terrell Evans. The Evanses shall pay all attorneys fees that have accrued in this matter to their counsel from this \$50,000, before applying the balance of the funds to any other use. The second check, for \$5,000, shall be payable to Candra Evans, custodian for Skylar Evans; the third check, for \$5,000, shall be payable to Candra Evans custodian for Madison Evans. The children's monetary awards shall be held in an interest-bearing trust account for their benefit and shall not be distributed or expended until they reach the age of maturity. Within ten (10) days of the United States' receipt of the three afore-mentioned checks, the Evanses shall sign Release Agreements, an example of which is attached hereto as Attachment C. Counsel for the United States shall not forward the checks to the Evanses until the United States has received said executed Release Agreements. The United States shall forward the executed Release Agreements to defendants' attorney upon receipt.

VI. Scope and Term of Order and Dismissal of Action

1. This Order constitutes the entire agreement among the parties and supersedes and renders void all prior agreements, written or oral, among the parties. In the event any provision or term of this Order is determined to be or is rendered invalid or unenforceable, all other provisions and terms of the Order shall remain unaffected to the extent permitted by law.

2. This Order is effective immediately upon its entry by the Court and shall be effective for a period of three (3) years thereafter.

3. The Court shall retain jurisdiction for the duration of this Order to enforce the terms of the Order, after which time the case shall be dismissed with prejudice. Prior to the expiration of the Order's term, the United States may move the Court, upon notice to counsel for defendants, to extend the duration of the Order, including on the basis that defendants have failed to comply with a provision of this Order.

4. The parties shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Order prior to bringing such matters to the Court for resolution. However, in the event of a failure by defendants to perform in a timely manner any act required by this Order, or any act by them in violation of any provision thereof, the United States may move this Court, upon notice to counsel for ZNI, to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees which may have been occasioned by the violation or failure to perform.

5. Any time limitation contained in this Order may be extended by mutual agreement, in writing, between the parties.

VII. Costs of Litigation

Each party shall bear its own attorneys' fees and costs, except as otherwise specified herein.

It is so ORDERED, ADJUDGED and DECREED on this ___ day of _____, 2005.

United States District Judge

Agreed to by the parties as indicated by the signatures of counsel below.

For Plaintiff United States:

DANIEL G. BOGDEN
United States Attorney
BLAINE T. WELSH
Civil Chief

Lori K. Wagner

STEVEN H. ROSENBAUM
Chief

KEISHA DAWN BELL
Deputy Chief

LORI K. WAGNER
Trial Attorney

United States Department of Justice
Civil Rights Division
Housing & Civil Enforcement Section- G St.
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 305-3107 (telephone)
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For Defendants:

John R. Bell

JOHN R. BELL, ESQ.

Kring & Chung, LLP

~~7220 Bermuda Rd.~~

Las Vegas, NV ~~89119~~ *89117*

(702) 260-9500 (telephone)

(702) 260-9434 (facsimile)

7040 Laredo Street, Suite C

Attachment A

EMPLOYEE ACKNOWLEDGMENT

I have received and I have read a copy of the Settlement Agreement and Order entered in United States v. Zenith of Nevada, Inc., f/k/a Perma-Bilt a Nevada Corporation, and Ruth Ochoa, No. _____, United States District Court, District of Nevada. I have had an opportunity to have my questions about that Settlement Agreement and Order and nondiscrimination policy answered; I understand the terms of the Settlement Agreement and Order.

I further understand that federal law prohibits discriminating on the basis of disability and prohibits refusing to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy his/her dwelling.

With this understanding, I agree that, as a condition of my employment or contract relationship with Zenith of Nevada, Inc., f/k/a Perma-Bilt, a Nevada Corporation, with respect to the management and/or maintenance of residential housing, I shall not discriminate in any manner on account of disability in carrying out my employment or contract services.

Signature

Name (Please Print)

Home Address

Home Telephone Number

Date

Attachment B

EMPLOYEE CERTIFICATION OF TRAINING

On _____, 200__, I, _____, was instructed by
_____ with respect to my responsibilities under the Fair Housing Act. I
understand my legal responsibilities and will comply with those responsibilities.

Dated: _____

Signature

Job Title

Attachment C

FULL AND FINAL RELEASE OF CLAIMS

I, _____, on behalf of myself and family members, agents, heirs, executors, administrators, successors and assigns, pursuant to the terms, provisions, and conditions of the Settlement Agreement and Order approved by the United States District Court for the District of Nevada, on _____, 2005 in the case of United States v. Zenith of Nevada, Inc., f/k/a Perma-Bilt, a Nevada Corporation, and Ruth Ochoa, Civ. No. _____ (“the lawsuit”) and in consideration of the payment of _____ on my own behalf/ on behalf of my minor child, Skylar Evans / Madison Evans, to hold in trust for him/ her until he/ she reaches the age of majority, do fully, finally and forever release, discharge, and hold harmless Zenith of Nevada, Inc., f/k/a Perma-Bilt, a Nevada Corporation., and Ruth Ochoa, (hereinafter “the defendants”), along with their attorneys, agents, successors, and assigns, (hereinafter “Releasees”), from any and all fair housing claims set forth, or which could have been set forth, in the Complaint in this lawsuit that I may have against defendants or any of the Releasees for any of defendants’ actions or statements related to those claims through the date of this Settlement Agreement and Order, including claims for damages, costs, fines and attorneys’ fees.

I affirm that the only consideration for signing this Full and Final Release of Claims are the terms stated in the Settlement Agreement and Order signed by the parties, and the monetary payment referenced above. I have accepted the terms of this Release and the Settlement Agreement and Order because I believe them to be a fair and reasonable settlement and for no other reason. This Release and the Settlement Agreement and Order contain and constitute the entire understanding and agreement between the parties.

DATE

NAME (PRINT)

SIGNATURE