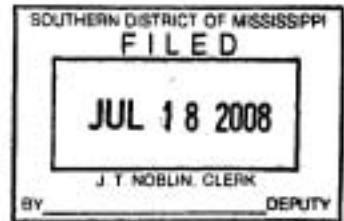


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



UNITED STATES OF AMERICA,)
)
) Plaintiff,) Civil Action No. 08cv311 HSO-JMR
)
 v.) COMPLAINT
)
 LEMUEL "LEMMY" W. KLEINPETER and)
 DENNIS RANDALL O'BRIEN,)
)
 Defendants.)

The United States of America alleges as follows:

NATURE OF ACTION

1. This action is brought by the United States on behalf of Kevin C. Ely and Clifford David Pugh, to enforce provisions of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.* (the "Fair Housing Act" or "the Act").

JURISDICTION & VENUE

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o).

3. Venue is proper under 28 U.S.C. § 1391(b), because the events giving rise to the United States' claims occurred in the Southern District of Mississippi, the subject property is located in the Southern District of Mississippi, and at all relevant times, the Defendants resided in and/or did business in the Southern District of Mississippi.

PARTIES

4. Complainant Kevin Ely is a 30-year old male.

5. Complainant Clifford David Pugh is a male. At the time the events underlying this Complaint arose, Mr. Pugh was Mr. Ely's roommate.
6. Defendant Lemuel "Lemmy" W. Kleinpeter, a male, is a resident of the State of Arizona. At the time the events underlying this Complaint arose, Mr. Kleinpeter was a resident of the State of Mississippi and owned and managed a building comprised of four (4) two-bedroom rental apartments located at 102 Park Row Avenue, Long Beach, Harrison County, Mississippi 39560 ("the subject property").
7. Defendant Dennis Randall O'Brien, a male, is a resident of the State of Mississippi. At the times the events underlying this Complaint arose, Mr. O'Brien was the agent and/or employee of Mr. Kleinpeter inasmuch as he handled maintenance and other repairs at the subject property.

FACTUAL ALLEGATIONS

8. On or about January 3, 2005, Mr. Ely and Mr. Pugh began a one-year lease with Mr. Kleinpeter of a two-bedroom apartment at the subject property. The lease, signed by Mr. Ely and Mr. Pugh, was scheduled to end on December 31, 2005.
9. During the lease period Mr. Kleinpeter lived in Unit 102B, next door to Mr. Ely's and Mr. Pugh's apartment.
10. During the term of the lease, Mr. Kleinpeter and Mr. O'Brien subjected Mr. Ely to severe, pervasive, continuous and unwelcome verbal and physical sexual advances, including, but not limited to, Mr. Kleinpeter requesting that Mr. Ely allow him to take nude photos of him in exchange for money and Mr. O'Brien on a separate occasion offering to pay Mr. Ely if he would let him perform oral sex on him. Both Mr. Kleinpeter and Mr. O'Brien often made

sexual advances toward Mr. Ely, touching and/or attempting to touch his genitals and/or buttocks. Mr. Kleinpeter also sexually harassed Mr. Ely when he came to pay his rent. In July 2005, Mr. Kleinpeter offered Mr. Ely free rent if Mr. Ely would be his "boyfriend."

11. Between March and August 2005, Mr. Ely repeatedly called the police department to report that he was being sexually harassed by Mr. Kleinpeter and Mr. O'Brien. One such complaint was made after Mr. O'Brien made sexual advances toward a minor, male friend of Mr. Ely's. In July 2005, a complaint was made to the police, and Mr. O'Brien was charged with contributing to the delinquency of a minor for allegedly selling alcohol to that minor. A restraining order was also placed against Mr. O'Brien, prohibiting him from going near the minor. On information and belief, the restraining order also prohibited Mr. O'Brien from going near Mr. Ely's apartment. Mr. Ely also reported the incident involving his minor friend to Mr. Kleinpeter, who told Mr. Ely that he should not get the police involved because "[w]hat happens in the apartments, stays in the apartments."
12. In August 2005, Mr. Kleinpeter told Mr. Ely that he would evict him and Mr. Pugh if the restraining order against Mr. O'Brien was not dropped.
13. In August or September 2005, Mr. Ely entered his apartment to find Mr. Kleinpeter in his (Mr. Ely's) bedroom on his knees going through Mr. Ely's personal belonging and drawers. Mr. Kleinpeter had a pair of Mr. Ely's underwear and pants in his hands and was putting them up to his face. Mr. Kleinpeter threatened that he would evict Mr. Ely and Mr. Pugh if he reported him to the authorities.
14. On or about August 25, 2005, Mr. Kleinpeter issued an eviction notice to Mr. Ely and Mr. Pugh with thirty (30) days to vacate the premises. Mr. Kleinpeter failed to provide a written

explanation for the eviction in the section of the notice entitled "Cause of Breach."

15. On August 29, 2005, Hurricane Katrina struck the Mississippi Gulf Coast. Because of the hurricane, there was an interruption in mail service to Long Beach, and Mr. Ely did not receive his Social Security disability check in time to pay September's rent by the third of the month. Mr. Pugh also was temporarily unemployed due to the hurricane.
16. On September 8, 2005, the Harrison County Incident Command Plans Section (HCICPS) issued a memorandum to all owners and rental agents notifying them that unless a unit was determined to be unsafe for occupancy, it was ordered "unlawful to dispossess a tenant in rightful possession of his/her rental home . . ." and any such action without cause or due process of law during the emergency period would be scrutinized for legal sanctions.
17. Mr. Ely gave Mr. Kleinpeter a copy of the HCICPS memorandum. Mr. Kleinpeter continued eviction proceedings against Mr. Ely and Mr. Pugh after receiving the memorandum.
18. On September 16, 2005, Mr. Kleinpeter signed and issued another eviction notice ordering Mr. Ely and Mr. Pugh to vacate within three (3) days, or pay rent due in arrears in the amount of \$500.
19. On or about September 16, 2005, Mr. Ely went to Mr. Kleinpeter's apartment and offered to pay the rent, so long as he and Mr. Pugh could remain in the unit. Mr. Kleinpeter told Mr. Ely, however, that he would not stop the eviction proceedings.
20. On September 26, 2005, the first day that courts were open after Hurricane Katrina, Mr. Ely and Mr. Pugh were ordered to appear in Harrison County Justice Court on October 10, 2005 to respond to Mr. Kleinpeter's eviction notice. On October 10, 2005, at the eviction hearing, Mr. Ely and Mr. Pugh testified that they wanted to remain in their apartment at the subject

- property and wanted to pay the rent. The court dismissed the eviction case due to Mr. Kleinpeter's failure to include a reason for the alleged breach on the original eviction notice.
21. On the same day, Mr. Kleinpeter issued a third eviction notice to Mr. Ely and Mr. Pugh. In this notice, Mr. Kleinpeter alleged the cause of breach was Mr. Ely's and Mr. Pugh's alleged failure to keep their apartment in a clean, orderly, safe or sanitary condition, keeping an unregistered and improperly licensed vehicle in the lot and failing to pay rent.
 22. On information and belief, any disarray Mr. Kleinpeter allegedly found in Mr. Ely's and Mr. Pugh's apartment was due to the effects of the hurricane. Moreover, on information and belief, Mr. Kleinpeter never had sought to evict a tenant for uncleanliness prior to this, despite the fact that there has previously been at least one such tenant who did not keep a clean or tidy apartment. In addition, there was nothing in Mr. Ely's and Mr. Pugh's lease that allowed for eviction for failure to maintain a clean unit.
 23. On or about October 11, 2005, as a result of the continued harassment and attempts to evict them, and after Mr. Kleinpeter had refused to accept rent so that they could stay in the apartment, Mr. Pugh and Mr. Ely moved out of the apartment.
 24. Mr. Ely moved into a Federal Emergency Management Agency (FEMA) cruise ship and subsequently into two separate trailer parks. Mr. Pugh moved into his parents' house.
 25. On or about March 8, 2006, Mr. Ely filed a verified complaint against the defendants with the United States Department of Housing and Urban Development ("HUD"). On or about September 10, 2007, the complaint was amended to add Mr. Pugh as an aggrieved person. The complaint alleged that Mr. Kleinpeter and Mr. O'Brien violated the Fair Housing Act by, among other things, making discriminatory statements with respect to the rental of a

dwelling because of sex in violation of 42 U.S.C. § 3604(c) and by coercing, intimidating, threatening and interfering with the complainants' enjoyment of the dwelling, in violation of 42 U.S.C. § 3617.

26. Pursuant to the requirements of 42 U.S.C. §§ 3610(a) and (b), the Secretary conducted an investigation of the complaint, attempted conciliation without success, and prepared a final investigative report. Based on the information gathered in that investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that a discriminatory housing practice had occurred. Therefore, on June 2, 2008, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging Defendants with engaging in discriminatory housing practices in violation of the Fair Housing Act.
27. On or about June 18, 2008, Mr. Kleinpeter elected to have the charge decided in a civil action pursuant to 42 U.S.C. § 3612(a).
28. On July 7, 2008, HUD's Office of the Administrative Law Judges issued a Notice of Election and Judicial Determination finding that Mr. Kleinpeter had made a timely election to have the claims asserted in the charge decided in a civil action.
29. On or about July 9, 2008, HUD authorized the Attorney General to commence a civil action on behalf of the complainants pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT VIOLATIONS

30. The Defendants, Mr. Kleinpeter and Mr. O'Brien, through the actions described in Paragraphs 8 - 29 above, have:
 - a. Made statements with respect to the rental of a dwelling indicating a preference,

limitation or discrimination based on sex, or an intention to make such a preference, limitation or discrimination based on sex, in violation of 42 U.S.C. § 3604(c).

- b. Coerced, intimidated, threatened or interfered with a person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of rights granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.
31. Mr. Ely and Mr. Pugh are aggrieved persons as defined in 42 U.S.C. § 3602(i), and they suffered injury as a result of Defendants' conduct described herein.
 32. The discriminatory actions of the Defendants were intentional, willful, and taken in disregard of Mr. Ely's and Mr. Pugh's federally protected rights.

PRAYER FOR RELIEF

WHEREFORE, the United States prays for relief as follows:

1. A declaration that the conduct of the Defendants, as alleged herein, violates the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619;
2. An injunction against the Defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating on the basis of sex in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601-3619; and
3. An award of monetary damages to Mr. Ely and Mr. Pugh, pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1).

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

Respectfully Submitted,

DUNN LAMPTON
United States Attorney

By:


ANGELA D. GIVENS
Assistant United States Attorney
188 East Capitol Street, Suite 500
Jackson, MS 39201
(601) 973-2822
DC Bar No. 479587

Dated July 18, 2008.

CIVIL COVER SHEET

1000 v 311 H50-JMR

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff HINDS
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Angela D. Givens, AUSA, 188 E. Capitol St., 5th Fl., Jackson, MS 39201

DEFENDANTS

Lemuel "Lemmy" W. Kleinpeter and Dennis Randall O'Brien

County of Residence of First Listed Defendant State of Arizona
(IN U.S. PLAINTIFF CASES, USE THE COUNTY OF THE LAND INVOLVED.)

NOTE: IN LAND CONDEMNATION CASES, USE THE COUNTY OF THE LAND INVOLVED.

Attorneys (If Known)

Unknown

SOUTHERN DISTRICT OF MISSISSIPPI
CLERK OF COURT
JUL 18 2008
J. T. NOBLIN, CLERK

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defunded Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 830 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input checked="" type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
 - 2 Removed from State Court
 - 3 Remanded from Appellate Court
 - 4 Reinstated or Reopened
 - 5 Transferred from another district (specify)
 - 6 Multidistrict Litigation
 - 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 3601

Brief description of cause:
Fair Housing Act Violation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

7/18/08

SIGNATURE OF ATTORNEY OF RECORD

Angela D. Givens

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____