IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO.: 02-0720-CV-W-DW
	)	
Plaintiff,	)	**PLAINTIFF UNITED STATES' RESPONSE TO DEFENDANTS' SUPPLEMENT TO MOTION FOR NEW TRIAL, OR IN THE ALTERNATIVE, MOTION FOR RELIEF FROM JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR FOR REMITTITUR OR REDUCTION IN JUDGMENT**
v.	)	
BOBBY VEAL AND JEWEL VEAL,	)	
Defendants.	)	

INTRODUCTION

On February 11, 2005, over eight months after the Defendants filed their first motion for new trial and over five months after it was denied, the Defendants filed a second motion for new trial on damages. Because the Defendants' motion is both procedurally defective and substantively without merit, it should be denied.

PROCEDURAL HISTORY

On June 12, 2003, the Court entered a default judgment in favor of the United States on the issue of Defendants' liability for violations of the Fair Housing Act. The Court found that the Defendants had engaged in a pattern or practice of discrimination based on sex. The Court also found that the Defendants had denied to a group of persons rights granted by the Fair Housing Act, the denial of which raises an issue of general public importance.

The case proceeded to trial on the issue of damages only. On May 13, 2004, the jury rendered a verdict and the court entered a judgment finding that eleven (11) women ("aggrieved persons") were victims of the Defendants' discriminatory housing practices. The jury found that all eleven (11) aggrieved persons were harmed by the Defendants' conduct and awarded each

woman compensatory and punitive damages.

On May 13, 2004, the Clerk entered judgment in favor of the United States in the amount of $1,102,804.00 on its claim for damages. This judgment was amended on May 27, 2004, to fix a typographical error.

On May 27, 2004, the Defendants filed a motion for new trial, or in the alternative, motion for relief from judgment, or in the alternative, motion for remittitur or reduction in judgment. After receiving briefing from both sides, on August 24, 2004, the Court denied the Defendants' motion.

On February 9, 2004, following the Court's January 28, 2005 Order granting in part and denying in part the United States' motion for civil penalties and injunctive relief, the Clerk entered judgment on the United States' claims for injunctive relief and civil penalty.[1]

ARGUMENT

I. DEFENDANTS CANNOT BRING A SECOND MOTION FOR NEW TRIAL ON DAMAGES AFTER THEIR FIRST WAS FULLY LITIGATED AND DECIDED ON THE MERITS; NOR HAVE THEY SHOWN SUFFICIENT GROUNDS FOR RELIEF UNDER RULE 60(B)

A. Defendants Are Not Entitled To a New Trial Pursuant to Rule 59

Defendants should not be allowed a second bite of the apple. Rule 59(b) states, "Any motion for new trial shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(b). The judgment on monetary damages was entered on May 13, 2004, and a motion for new trial on damages was due on May 27, 2004. *Id.*; Fed. R. Civ. P. 6(e). Nevertheless, Defendants claim that their motion for new trial on damages was not due until February of this

[1] The United States' motion to alter or amend the Court's February 9, 2004 Order on injunctive relief is currently pending.

year, after the Court entered a final judgment on injunctive relief and civil penalties. Even assuming, *arguendo*, Defendants are correct, it makes no difference to the outcome here. Nothing in Rule 59 invalidates a motion for new trial that is filed before it is due. Rule 59 provides a deadline by which such a motion must be filed, but no starting date before which any such motion would be premature.

Defendants cannot file serial motions for a new trial. To hold otherwise would be to invite constant re-litigation over issues up until a final judgment. The law of the case doctrine provides that a "court should not reopen issues decided in earlier stages of litigation." *Agostini v. Felton*, 521 U.S. 203, 236 (1997). As the Eight Circuit recently restated "The law of the case doctrine prevents the relitigation of a settled issue in a case and requires courts to adhere to decisions made in earlier proceedings." *Popp Telecom, Inc. v. American Sharecom, Inc.*, 361 F.3d 482, 490 (8th Cir. 2004) (quoting *Kan. Pub. Employees Ret. Sys. v. Blackwell, Sanders, Matheny, Weary & Lombardi, L.C.*, 114 F.3d 679, 687 (8th Cir.1997)). Courts frequently invoke the doctrine in refusing to consider issues that have already been addressed in the litigation. *See, e.g.*, *Unigroup, Inc. v. O'Rourke Storage & Transfer Co.*, 834 F.Supp. 1171, 1174 (E.D.Mo. 1993) (granting cross motion for summary judgment because relevant issue had already been decided and was law of the case). The rationale for applying the law of the case doctrine is particularly applicable here where the governing law in this case is statutory and has not changed. The issue of whether Defendants are entitled to a new trial on damages has been litigated and Defendants lost. Defendants should not be allowed to litigate this issue again.

B. Defendants Are Not Entitled To Relief Under Rule 60(b)

Defendants style their motion, in the alternative, as a Rule 60(b) motion for relief from

judgment.[2] *See* Fed. R. Civ. P. 60(b). Rule 60(b) authorizes a motion for relief from judgment under six specified circumstances. Defendants do not identify which circumstance they claim applies here, but the circumstances stated in Rule 60(b)(1)-(5) clearly do not apply.

Rule 60(b)(6) permits relief for "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b). Relief under Rule 60(b)(6) requires "extraordinary circumstances," not a mere legal or factual error. *See Kansas Public Employees Retirement System v. Reimer & Koger Associates*, 194 F.3d 922, 925 (8th Cir. 1999). Defendants have not made any showing that would justify relief under this section. Their only articulated basis appears to be that there has been an intervening change in non-binding case law based on the Seventh Circuit's decision in *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004). As stated in further detail below, we submit that *Halprin* does not represent a change in the applicable law. But, even if it did, that would not be sufficient to obtain relief under Rule 60(b)(6). "A change in the law that would have governed the dispute, had the dispute not already been decided, is not by itself an extraordinary circumstance" authorizing

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[2] Rule 60(b) provides, in relevant part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b).

relief under Rule 60(b)(6). *See Kansas Public Employees Retirement*, 194 F.3d at 925. Thus, the Court's August 29, 2005 Order denying Defendants' first motion for new trial and for relief from judgment is the law of the case and controls the outcome here.

II. DEFENDANTS HAVE NOT PRESENTED A VALID JUSTIFICATION FOR A NEW TRIAL

Defendants' motion also fails on substance. Defendants argue that the Fair Housing Act does not prohibit a landlord from sexually harassing a tenant. They claim that "post-acquisition of property discrimination claims are untenable under the [Fair Housing Act], and in particular, under § 3604." (Mot. at 3.) Defendants' arguments fail.

A. Defendants' Motion is an Attempt to Reopen Issues of Liability that were Decided by the Default Judgment

When this Court entered a default judgment on liability on June 12, 2003, "the Court found that the Veals had violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, by engaging in a pattern or practice of housing discrimination on the basis of sex." (August 24, 2004 Order at 1.) "A default judgment entered by the court binds the party facing the default as having admitted all of the well pleaded allegations in the plaintiff's complaint. " *Angelo Iafrate Const., LLC v. Potashnick Const., Inc.*, 370 F.3d 715, 722 (8th Cir. 2004).

In their Motion, Defendants argue that evidence of post-acquisition of property discrimination does not support a claim under the Fair Housing Act and that the United States has not made a "tenable" claim under 42 U.S.C. § 3617. However, Defendants' argument directly controverts the allegations in the Complaint and ignores the impact of the default judgment. In the Complaint, the United States alleged that Bobby Veal had:

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, unwanted verbal sexual advances; unwanted sexual touching; entering the apartment of female ***tenants*** without permission or notice; and threatening and taking steps to evict female ***tenants*** when they refused or objected to his sexual advances.

(Complaint at 2 (emphasis added).) This conduct explicitly includes discrimination against tenants, who have already entered into a lease agreement and reside in their property, as well as retaliatory conduct that would violate § 3617. The Complaint also alleged in regard to this conduct that:

> 10. The conduct of Defendants described above constitutes:
>
> a. A denial of housing or making housing unavailable because of sex, in violation of Section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a);
>
> b. 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);
>
> c. 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
>
> d. 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.
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> 11. The conduct of Defendants described above 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.*; and
>
> 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.

(Complaint at 2-3.) Thus, by entering a default judgment, this Court has already determined that sexual harassment against tenants after they reside in the property violates the Fair Housing Act and that Defendants have engaged in such discrimination. Similarly, the default judgment also establishes that Defendants engaged in conduct that violated 42 U.S.C. § 3617. In their prior motion for new trial, Defendants contested the default judgment and lost. (August 24, 2004 Order.) Defendants' current motion, which attempts an end run around the liability finding of the default judgment, should also be denied.

B. Defendants Waived Any Claim That Evidence Supporting the United States' Claims for Damages under 42 U.S.C. §§ 3614 and 3617 Was Improperly Admitted at Trial by Failing to Object At or Before Trial To Such Evidence

Despite the Defendants' recent claims that evidence regarding post-acquisition of property and evidence regarding violations of 42 U.S.C. § 3617 should not have been submitted to the jury at trial, the Defendants did nothing at or before trial to alert the judge that it would allegedly be error to allow the admission of such evidence. Under Rule 103(a)(1) of the Federal Rules of Evidence, if a party believes that the court has erred by admitting certain evidence, that party is required to make a timely objection or motion to strike, "stating the specific ground of objection." Fed. R. Evid. 103(a)(1). If a timely objection is not made, it is waived. *See U.S. v. Solomon son*, 908 F.2d 358, 362 (8th Cir. 1990) ("'[F]or an objection to be timely it must be made at the earliest possible opportunity after the ground of objection becomes apparent, or it will be considered waived'" (citing *Terrell v. Poland,* 744 F.2d 637, 638-39 (8th Cir.1984)). Similarly, as Wright and Miller state in their discussion of the requirements of Rule 46 of the Federal Rules

of Civil Procedure,[3] which explains the procedure for making objections, "A party will not be allowed to speculate with the court by letting error go without any comment and then seek a new trial on the basis of the error if the outcome of the case is unfavorable." 9A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2472 (Supp. 2004).

In this case, instead of alerting the Court and the United States to the alleged errors in a timely fashion, the Defendants waited until their second motion for new trial to raise these issues. In fact, neither Defendants nor their previous counsel took any steps to notify the Court of these alleged errors before this point. Their previous counsel did not raise these issues in the motion in limine he filed on April 26, 2004. (Def. Mot., April 26, 2004). Nor, when their counsel filed proposed jury instructions on April 4, 2004, did he offer a proposed jury instruction limiting consideration of evidence of discrimination that occurs after an aggrieved person had signed a lease or of violations of 42 U.S.C § 3617. (Def. Proposed Jury Inst. April 4, 2004). Similarly, Defendants made no objections to the admission of such evidence at trial, they did not bring a motion to strike, and they did not make a motion for judgment as a matter or law. They did nothing. Thus, they have waived any argument that the Court should not have allowed the United States to present evidence of post-acquisition of property discrimination or of violations

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[3] Rule 46 provides as follows:

> Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Fed. R. Civ. P. 46.

of 42 U.S.C. § 3617 at trial.

C. Defendants' Arguments That § 3604 Does Not Prohibit Sexual Harassment of Tenants After They Have Acquired Housing Lack Merit

Defendants claim that the United States did not establish that "any discriminatory acts prevented the aggrieved parties from acquiring housing," and that such proof is a prerequisite to establishing a violation of § 3604(a) and (b). (Def. Mot. at 2, 7.) The Eighth Circuit has ruled, however, that a violation of § 3604 can be established through evidence that a defendant landlord discriminated against a tenant after renting the tenant property. This conclusion is also compelled by the plain meaning of the Fair Housing Act and by the implementing regulations of the United States Department of Housing and Urban Development (HUD).

In *Neudecker v. Boisclair Corp.*, 351 F.3d 361, 364 (8th Cir. 2003), the Eighth Circuit held that the plaintiff's claim that he had been harassed by the landlord because of his disability after he was a tenant was actionable under both § 3604 and § 3617 of the Fair Housing Act. In *Neudecker* the district court had dismissed a *pro se* plaintiff's claims that, *inter alia*, his former landlord had violated the Act by disseminating information about his disability to other tenants, allowing the landlord's agents and other tenants to harass him because of his disability, and retaliating against him for complaining about the harassment. The court held that Neudecker had stated an independent claim under the Act by alleging that the landlord "subjected him to unwelcome harassment based on his OCD [obsessive compulsive disorder], and that this unwelcome harassment was sufficiently severe to deprive him of his right to enjoy his home, as evidenced by his physical problems and ultimate decision to move out." *Neudecker* 351 F.3d at 364-65. In holding that "disability harassment in the housing context is actionable under the

[Fair Housing Act]," the Eighth Circuit relied on and cited federal cases "permitt[ing] claims under the FHA when sexual harassment causes a hostile housing environment." *Neudecker* 351 F.3d at 364 (citing *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Honce v. Vigil*, 1 F.3d 1085, 1088-90 (10th Cir. 1993); and *Williams v. Poretsky Management, Inc.*, 955 F. Supp. 490, 495-96 (D. Md. 1996)). Thus, in *Neudecker*, the Eighth Circuit recognized that claims of discrimination after the acquisition of property – in that case harassment of a tenant because of his disability - are actionable under the Fair Housing Act. Applying *Neudecker* to the facts here, there is no question that sexual harassment of tenants likewise violates the Fair Housing Act.

Furthermore, in *United States v. Koch*, 2004 WL 3130550 (D. Neb. December 22, 2004), the district court rejected the argument that post-residence acquisition claims cannot be maintained under the Fair Housing Act. *Id.* at *2. In *Koch*, as in the present case, the United States alleged that a defendant landlord had engaged in a pattern or practice of discrimination by sexually harassing female tenants. The defendant, relying on the Seventh Circuit's decision in *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004), sought judgment as a matter or law on all post-residence acquisition claims asserted under Section 3604 of the Fair Housing Act. *Id.* at *1. The court found that the Eighth Circuit's opinion in *Neudecker* precluded this argument. The court, also questioned and ultimately rejected the Seventh Circuit's reasoning in *Halprin*, holding that *Halprin* cannot defeat a Fair Housing Act claim alleging sexual harassment against tenants by a landlord. *See id.* at *2-7.

The decision in *Koch* is also consistent with the plain language and relevant implementing regulations of the Fair Housing Act. Section 3604(a) makes it unlawful to otherwise deny or make unavailable a dwelling because of sex. *See* 42 U.S.C. 3604(a). Evicting

a tenant because she refused to engage in sexual conduct or constructively evicting a tenant by sexual harassment would make unavailable or deny a dwelling to a tenant even though that tenant had previously acquired residency. Similarly, 3604(b), which prohibits discrimination in the terms, conditions, or privileges of the rental of a dwelling because of sex, and discrimination in the provision of services and facilities in connection with such rental, on its face, does not distinguish between discrimination that occurs before, as opposed to during, the rental of property. *See* 42 U.S.C. 3604(b). In fact, the HUD regulations implementing § 3604(b) identify actions that will constitute unlawful discrimination and list practices that affect current residents, including "Failing or delaying maintenance or repairs of sale or rental dwellings. . .," and "Limiting the use of privileges, services or facilities associated with a dwelling. . . ." 24 C.F.R. § 100.65.

The decision in *Koch* is also consistent with the rulings of courts throughout the country that have either recognized or upheld the rights of tenants to bring claims under the Fair Housing Act when they have suffered post-acquisition of property discrimination. *See*, *e.g.*, *Honce v. Vigil*, 1 F.3d 1085, 1088-90 (10th Cir. 1993) (recognizing that landlord's sexual harassment of a tenant during tenancy could violate Fair Housing Act but holding that defendant's conduct did not rise to level of actionable conduct) (citing *DiCenso v. Cisneros*, 96 F.3d 1004, 1006-08 (7th Cir. 1996) ("a determination of what constitutes a hostile environment in the housing context requires the same analysis courts have undertaken in the Title VII context")); *Texas v. Crest Asset Management, Inc.*, 85 F.Supp.2d 722, 730 (S.D. Tex. 2000) (finding that defendant tenant who alleged that he was harassed because of his national origin by the property owner had "adduced direct evidence of intentional discrimination under 42 U.S.C. §§ 3604(a) and (b). . . ."); *Williams*

v. Poretsky Management, Inc., 955 F. Supp. 490, 495-96 (D. Md. 1996) (explaining that prima facie case of hostile housing environment is made upon showing that conduct was unwelcome, based on plaintiff's sex, sufficiently severe or pervasive to alter plaintiff's conditions of tenancy and to create abusive living environment, and imputable to the landlord); *Beliveau v. Caras*, 873 F. Supp. 1393, 1395-98 (C.D. Cal. 1995) (finding any unwanted sexual touching, particularly in plaintiff's own home, is adequate to support sexual harassment claim under Fair Housing Act); *People of State of New York ex rel. Abrams v. Merino*, 694 F. Supp. 1101, 1103-04 (S.D.N.Y. 1988) (finding sexual harassment is actionable under Fair Housing Act even when no loss of housing is claimed as a result of the conduct); *Shellhammer v. Lewallen*, 1 Fair Hous. Fair Lend. ¶ 15,472 (N.D. Ohio 1983) (explaining that both hostile environment and *quid pro quo* theories state viable legal claims under the Fair Housing Act), *aff'd in unpublished opinion*, 770 F.2d 167 (6th Cir. 1985) (per curiam).

In their motion, Defendants, ignoring the *Neudecker* and *Koch* opinions, rely on *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327 (7th Cir. 2004), and *King v. Metcalfe 56 Homes Association*, 2004 WL 2538379 (D. Kan.). In *Halprin*, the Seventh Circuit held that a Jewish couple did not state a claim under 42 U.S.C. § 3604 for religious-based harassment from neighbors and a homeowners association that occurred after the couple purchased their home. The court stated, with respect to this factual context, that "section 3604 is not addressed to post-acquisition discrimination," *i.e.*, to an alleged campaign of harassment that occurred after the plaintiffs purchased and moved into their home. *Halprin*, 388 F.3d at 330. As discussed above, the *Koch* court, relying on Eighth Circuit case law, specifically rejected this analysis. *See United States v. Koch*, 2004 WL 3130550 at *2-7.

In fact, *Halprin* itself acknowledged that *Neudecker* was one of several cases in which "the Act has been held to forbid harassment amounting to constructive eviction," *Halprin*, 388 F.3d at 329 (citing *DiCenso*, 96 F.3d at 1008, *Neudecker*, 351 F.3d at 364-65, 361, and *Honce*, 1 F.3d at 1090), and that "[a]cts of post-sale discrimination have been litigated successfully under the Act in two reported cases, *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972); and *Krueger v. Cuomo*, 115 F.3d 487 (7th Cir. 1997)." *Halprin*, 388 F.3d at 329. Regardless of its merits, however, *Halprin*'s holding regarding religious harassment of homeowners is not controlling in this circuit.

Furthermore, *Halprin* is distinguishable from the present case in that it involved harassment of a homeowner by neighbors, not by his landlord. Similarly, *Metcalf*, also involved discriminatory treatment by neighbors, specifically fellow tenants. *See King v. Metcalfe*, 2004 WL at 1. Unlike neighbors, landlords have the power to evict tenants. Landlords and tenants have obligations to each other that continue throughout a tenancy. Tenants must pay rent to their landlords and rely on their landlords for repairs and maintenance of their units. Landlords must respond to tenants concerns and maintain their rental properties. Moreover, unlike the situation in *Halprin*, where the plaintiffs had purchased their home, tenants generally must re-acquire their housing on an annual or other basis by renewing or signing new leases. Indeed in this case, the victims, who almost all received Section 8 assistance, were required to enter into leases with Bobby and Jewel Veal. *See* (Tr. at 205, 212; Exh. 11 (one year lease renewable on month to month basis)). Thus, the process of "acquiring property" is a continuous part of the landlord-tenant relationship.

D. Defendants' Arguments Regarding the United States' claims under 42 U.S.C. § 3617 Also Lack Merit

As noted above, *Neudecker* held that § 3617 applies to "post acquisition" conduct. Nevertheless, Defendants argue that, "[a]s to the § 3617 claims, to the extent that 24 C.F.R. § 100.400(c)(2) impermissibly expands the scope of § 3617, said regulation is invalid." (Def. Mot. at 5). They then suggest that the United States did not make a "tenable § 3617 claim." (*Id.* at 6.) Defendants' arguments are based on dicta in *Halprin*. The *Halprin* court actually reinstated the plaintiffs' § 3617 claim. *Halprin*, 388 F.3d at 330-331. In *Koch*, the Defendant moved for judgment as a matter of law on this issue and the court rejected the motion. *See United States v. Koch*, 2004 WL 3130550 at *8. In so doing, the court thoroughly examined the regulation and, after performing a *Chevron* analysis, concluded "that the regulation is not invalid, and that it provides a vehicle for the aggrieved persons' 'post-residence acquisition' claims to proceed under section 3617." *Id.*

Defendants also claim that, even if the regulation is valid, the evidence of harassment adduced at trial was insufficient to establish violations of § 3617. (Def. Mot. at 6.) This is without merit. As the *Koch* court ruled, sexual harassment is one of the methods "by which a person can be driven from his home and thus 'interfered' with in his enjoyment of it" in violation of § 3617. *Id.* At trial, the United States presented evidence from Sheila McClenton that Jewel Veal told Ms. McClenton, "we want you gone" after Ms. McClenton complained that she was being harassed by Bobby Veal. (Tr. at 141.) The Defendants also started eviction proceedings against Rauchelle McNeal after she complained to legal aid and her Section 8 caseworker about the harassment. (Tr. at 487-488.) Furthermore, the Eighth Circuit held in *Neudecker* that the plaintiff had stated a claim under 42 U.S.C. 3617, "[a]lthough the retaliatory conduct in this case involved only threats of eviction, which were never carried out". *See Neudecker*, 351 F.3d at 364

(citing *Harris v. Itzhaki*, 183 F.3d 1043, 1050-52 (9th Cir. 1999). Thus, Defendants' argument that their conduct did not violate § 3617 is without merit.

CONCLUSION

For the forgoing reasons, the United States respectfully requests that the Defendants' supplemental motion for new trial be denied.

RESPECTFULLY SUBMITTED,

Dated this 14th day of March, 2005.

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Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Rebecca B. Bond, counsel for the United States, hereby certify that on this the 14th day of March, 2005, I served a true and correct copy of Plaintiff United States' Response to Defendants Supplement to Motion for New Trial, or in the Alternative, Motion for Relief of Judgment, or in the Alternative, Motion for Remittitur or Reduction in Judgment, via ECF, on the persons whose names and addresses are listed below:

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