_ENTERED_SERVED ON COUNSEL / PARTIES OF RECORD 1 Alberto Gonzales 2005 OCT 21 P 2: 33 Attorney General CLERK US DISTRICT COURT DISTRICT OF MEYADA 2 Bradley J. Schlozman Acting Assistant Attorney General 3 Steven H. Rosenbaum GY____FIFTY Chief 4 Keisha Dawn Bell Deputy Chief Lori K. Wagner Attorney U.S. Department of Justice Civil Rights Division 7 Housing and Civil Enforcement Section - NWB 950 Pennsylvania Ave. 8 Washington, D.C. 20530 (telephone) 202-305-3107 (facsimile) 202-514-1116 9 Daniel G. Bogden United States Attorney Blaine T. Welsh 11 Civil Chief 333 Las Vegas Boulevard So. 12 Suite 5000 Las Vegas, NV 89101 13 (telephone) 702-388-6336 (facsimile) 702-388-6787 14 15 UNITED STATES DISTRICT COURT DISTRICT OF NEVADA 16 UNITED STATES OF AMERICA, CV-S-05-1276-RLH-PAL 17 Plaintiff, 18 19 v. 20 ZENITH OF NEVADA, INC., FORMERLY **CIVIL COMPLAINT** KNOWN AS PERMA-BILT, A NEVADA 21 CORPORATION, AND RUTH OCHOA, 22 Defendants. 23 24 25

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COMPLAINT

The United States of America alleges:

NATURE OF ACTION

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3619 (the "Fair Housing Act").

JURISDICTION & VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1345 and 42 U.S.C. § 3612(o). Venue is proper in this jurisdiction pursuant to 42 U.S.C. § 1391(b) and 42 U.S.C. § 3612(o) as defendants are located in this judicial district and the events or omissions giving rise to the claim occurred in this judicial district.

PARTIES

- 3. Defendant Zenith of Nevada, Inc., formerly known as Perma-Bilt, a Nevada Corporation ("Zenith") is a corporation having its principal places of business in Las Vegas, Nevada. Zenith is, or was at times relevant to this case, the owner, developer, and builder of the property located at 5966 Hopkinsville Lane, Las Vegas, Nevada ("the subject premises").
- 4. Defendant Ruth Ochoa was, at times relevant to this case, the Vice President for Sales and Marketing for Zenith in Las Vegas, Nevada.
- 5. The residential lot and single family dwelling located at the subject premises are "dwellings" within the meaning of 42 U.S.C. § 3602(b).

6. Terrell and Candra Evans ("the complainants") are a married couple living in Las Vegas, Nevada, with their two children, Skylar Evans, age eleven, and Madison Evans, age eight. Skylar and Madison Evans ("the children") have bronchial asthma, which condition substantially limits their daily activities. The children are persons with disabilities within the meaning of the Fair Housing Act § 3602(h).

FACTUAL ALLEGATIONS

- 7. On or about June 14, 2002, the complainants entered into a purchase agreement with defendant Zenith to buy a newly-constructed home at the subject premises, which is located in the Monterey subdivision in Las Vegas. On or about June 19, 2002, Zenith executed the purchase agreement. The agreed sales price for the subject premises was \$338,575, including a lot premium and optional upgrades.
- 8. The complainants advised the defendants prior to executing the aforementioned purchase agreement that the complainants were forced to leave their last home because it contained mold, which detrimentally affected the children's health.
- 9. On or about August 20, 2002, complainant Candra Evans went to the subject premises and noticed what appeared to be mold growing on the wood framework of the new house as it was in construction.
- 10. On or about August 21, 2002, complainant Candra Evans called the defendants' office to advise defendants of the mold and to express concern about whether the mold was of a type that would pose a threat to the children's health. The defendants understood that Ms. Evans was requesting that defendants remove the affected wood studs and test them for mold.
- 11. On or about August 21, 2002, Zenith's employees initially verbally agreed to have the mold tested and, if necessary, treated. On or about August 22, 2002, complainant Candra Evans spoke with Ruth Ochoa, a supervisor employed by Zenith. Ms. Ochoa told Ms. Evans that the defendants would not test the mold, that the house would be built as planned using the materials complainant Candra Evans had seen on the construction site, and that if the complainants were not

satisfied with this, they could terminate the contract and receive a refund of their deposit. On or about August 23, 2002, defendants decided to cancel the purchase agreement. On or about August 23, 2002, Zenith's employee, Ken Mainwal, called the complainants to advise them that the defendants intended to cancel the purchase agreement and return their downpayment. On or about August 24, 2002, the complainants visited Mr. Mainwal to discuss the matter, but he confirmed that the defendants intended to cancel the purchase agreement because of defendants' concerns that the Evanses would sue them if the children became ill in the future.

- 12. On or about September 3, 2002, the defendants' attorney wrote to the complainants, canceling the contract and returning the complainants' downpayment. In the cancellation letter, the defendants' attorney stated "Perma-Bilt did not contemplate being required to build a completely mold-free or 'sterile' home to accommodate the hypersensitivity of your asthmatic children."
- 13. On or about September 4, 2002, the complainants' attorney, Richard Young, wrote to the defendants reiterating that the complainants did not wish to cancel their purchase agreement, but wanted only to have the mold tested to determine whether it was of a type to be concerned about, and to negotiate a reasonable resolution of the matter should it be necessary to "treat and seal" the affected area.
- 14. Despite complainants' efforts to negotiate a reasonable resolution, defendants proceeded with the cancellation of the purchase agreement and returned the complainants' downpayment.
- 15. On or about September 6, 2002, complainants timely filed a complaint with the Department of Housing and Urban Development ("HUD"), pursuant to the Fair Housing Act § 3610(a), alleging discrimination on the basis of disability.
- 16. As required by the Fair Housing Act §§ 3610(a) and (b), the Secretary of HUD conducted an investigation of the complaint and attempted conciliation without success. Based on the information gathered in this investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1),

determined that reasonable cause exists to believe that illegal discriminatory housing practices occurred. Therefore, on or about February 2, 2005, the Secretary issued a Determination of Reasonable Cause and a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2), charging defendants with engaging in discriminatory practices in violation of the Fair Housing Act.

- 17. On or about February 16, 2005, both the complainants and the defendants elected to have the claims asserted in HUD's Charge of Discrimination resolved in a federal civil action pursuant to 42 U.S.C. § 3612(a).
- 18. Following the Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

FAIR HOUSING ACT CLAIMS

- 19. By the actions and statements described in the foregoing paragraphs, defendants have:
- a. discriminated against the complainants in the sale of a dwelling, or otherwise denied or made a dwelling unavailable, because of a handicap in violation of 42 U.S.C. § 3604(f)(1);
- b. discriminated against the complainants in the terms, conditions, or privileges of the sale of a dwelling, or in the provision of services in connection with such dwelling because of a handicap in violation of 42 U.S.C. § 3604(f)(2); and
- c. discriminated against complainants by making unavailable a residential real estate-related transaction, and have discriminated in the terms or conditions of such a transaction in violation of 42 U.S.C. § 3605.

and Madison Evans.

PRAYER FOR RELIEF

intentional, willful, and taken in disregard for the fair housing rights of Candra, Terrell, Skylar,

WHEREFORE, the United States prays for relief as follows:

- 1. A declaration that the conduct of defendants as set forth above violates the Fair Housing Act §§ 3601, et seq.
- 2. An injunction against 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 disability in violation of the Fair Housing Act §§ 3601, et seq.; and

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.1	3. An award of monetary damages to the Evanses, pursuant to 42 U.S.C. §§ 3612(o)(3) and
2	3613(c)(1).
3	The United States further prays for such additional relief as the interests of justice may
4	require.
5	Dated: October 21, 2005
6	ALBERTO GONZALES
7	Attorney General
8	Bradley J. Schlozna/la
9	Acting Assistant Attorney General
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