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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

-----X		
UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. CV 13-_____
	:	
v.	:	
	:	COMPLAINT AND
ANTHONY BOOTE, RED DOG	:	JURY DEMAND
CONSTRUCTION, LLC, and	:	
CHARLES J. CHANDLER,	:	
	:	
Defendants.	:	
-----X		

The United States of America alleges as follows:

NATURE OF THE ACTION

1. This action is brought by the United States to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing

Amendments Act of 1988 (the “Act”), 42 U.S.C. §§ 3601-3619. This action is brought on behalf of Montana Fair Housing, Inc. pursuant to Section 812(o) of the Fair Housing Act, 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1345 and 42 U.S.C. § 3612(o).

3. Venue is proper in this Court because the events or omissions giving rise to the United States’ claims occurred in this judicial district.

PARTIES AND PROPERTY

4. Defendant Anthony Boote (“Boote”) is a citizen of Montana, and resides in Missoula, Montana. Defendant Boote provided design or construction services in connection with the design or construction of a five-unit multifamily complex located at 215 Inez Street, Missoula, Montana, 59801 (the “Inez Street Property”).

5. Defendant Boote is involved in the management or operation of the complex at the Inez Street Property.

6. Defendant Boote owned the complex at the Inez Street Property at the time of its design and construction.

7. Defendant Boote continues to own the Inez Street Property.

8. Defendant Red Dog Construction, LLC (“Red Dog Construction”) is incorporated under the laws of Montana, and has its principal place of business in Missoula, Montana.

9. Defendant Red Dog Construction is engaged in the development and construction of rental apartment complexes in Montana.

10. Defendant Charles J. Chandler (“Chandler”) is an officer, principal, employee, or agent of Red Dog Construction, LLC, is a citizen of Montana, and resides in Missoula, Montana.

11. Defendants Chandler and Red Dog Construction provided design and construction services in connection with the design and construction of the Inez Street Property.

FACTUAL ALLEGATIONS

12. The Inez Street Property consists of three two-story townhomes (“Units A, B, and C”), a single-story, below-grade, one-bedroom unit (“Unit D”), and a single-story, below-grade studio unit (“Unit E”).

13. The City of Missoula issued a building permit for the Inez Street Property on August 2, 2011 and a certificate for occupancy for Units A, B, C, and D on February 8, 2012.

14. Units D and E each constitute ground floor units or “covered multifamily dwellings” under the Act and “dwellings” under 42 U.S.C. § 3602(b). Units D and E are therefore subject to the design and construction requirements of 42 U.S.C. § 3604(f)(3)(C).

15. The design and construction of Units D and E do not meet the accessibility requirements of the Act, including the following violations:

a. The only means of accessing Units D and E is down a fourteen-step staircase, and there is an additional step up from the outside sidewalk to the staircase;

b. The door hardware on the exterior side of the entry doors to both units is a twist-knob;

c. The openings of several interior doors in the units measure less than the required 32-inch nominal clear width when the door is open 90 degrees, and multiple interior doors in Unit D do not meet the width requirements of the Act;

- d. The thermostats in both units are located approximately 58 inches above the floor;
- e. The bathrooms in both units do not have reinforcement in the walls to permit the later installation of grab bars; and
- f. The bathroom in Unit E does not have the requisite clear space adjacent to the shower stall or toilet and the front of the toilet does not have the required clearance space from the wall in front.

16. Montana Fair Housing (“MFH”) is a Montana nonprofit corporation, whose organizational purposes are to promote equal housing opportunities and eliminate illegal housing discrimination in the State of Montana.

HUD ADMINISTRATIVE PROCESS

17. In around January through March of 2012, MFH conducted a review and investigation of the Inez Street Property concerning potential noncompliance with accessibility requirements. On March 21, 2012, MFH filed an administrative complaint with the United States Department of Housing and Urban Development (“HUD”) alleging

violations of the Act by Defendants based on the design and construction of the Inez Street Property.

18. Pursuant to the requirements of 42 U.S.C. §§ 3610(a), (b) & (f), the Secretary of HUD conducted and completed an investigation of the complaint filed by MFH, attempted conciliation without success, and prepared a final investigative report. Based on information gathered during the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause exists to believe that discriminatory housing practices had occurred.

19. On or about September 27, 2012, the Secretary issued a Charge of Discrimination pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the defendants with engaging in discriminatory housing practices in violation of the Act.

20. On or about October 5, 2012, MFH elected to have the Charge of Discrimination resolved in a civil action filed in federal district court, pursuant to 42 U.S.C. § 3612(a).

21. On or about October 9, 2012, HUD's Acting Chief Administrative Law Judge issued a Notice of Election of Judicial

Determination and terminated the administrative proceeding on the complaint filed by MFH.

22. 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).

COUNT

23. Plaintiff re-alleges and herein incorporates by reference the allegations set forth in paragraphs 1-22, above.

24. Defendants have failed to design or construct Units D and E in the Inez Street Property in accordance with 42 U.S.C. § 3604(f)(3)(C). The violations include, but are not limited to, the following:

- a. the public use and common use portions are not readily accessible to and usable by individuals with disabilities;
- b. the door hardware on the exterior side of the primary entry doors to the units are not readily accessible;
- c. all doors within the units are not sufficiently wide to allow passage by persons with disabilities who use wheelchairs; and
- d. the units do not contain the following features of adaptive design: (i) an accessible route into and through the dwelling;

(ii) electrical outlets, thermostats and other environmental controls in accessible locations; (iii) reinforcements in bathroom walls to allow later installation of grab bars; and (iv) usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about the space.

25. By failing to design and construct the dwellings in accordance with the Act, Defendants made housing unavailable because of disability in violation of section 804(f)(1) of the Act, 42 U.S.C. 3604(f)(1).

26. By failing to design and construct the dwellings in accordance with the Act, Defendants discriminated in the terms, conditions, or privileges of the sale or rental of the Inez Street Property in violation of section 804(f)(2) of the Act, 42 U.S.C. 3604(f)(2).

27. MFH is an “aggrieved person,” as defined in 42 U.S.C. § 3602(i), and has suffered damages as a result of Defendants’ conduct described above.

PRAYER FOR RELIEF

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

1. Declares that Defendants' policies and practices, as alleged herein, violate the Fair Housing Act;

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

- i. Failing or refusing to bring the ground-floor units and public and common use areas at the Inez Street Property into compliance with 42 U.S.C. § 3604(f)(3)(C);
- ii. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct; and
- iii. Designing or constructing covered multifamily dwellings in the future that do not contain the

accessibility and adaptability features required by 42
U.S.C. § 3604(f)(3)(C).

3. Awards monetary damages pursuant to 42 U.S.C.
§§ 3612(o)(3) and 3613(c)(1) to MFH; and
4. The United States further prays for such additional relief as
the interests of justice may require.

JURY DEMAND

The United States requests a jury trial in this matter.

Dated: January 11, 2013

ERIC H. HOLDER, JR.
Attorney General of the United States
THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

STEVEN H. ROSENBAUM
MICHAEL S. MAURER
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By: /s/ Michael S. Shin
MICHAEL S. SHIN
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