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ATTORNEY FOR PLAINTIFF

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

INTERMOUNTAIN FAIR HOUSING)
COUNCIL,)
)
Plaintiff,)
)
vs.)
)
ORCHARDS AT FAIRVIEW)
CONDOMINIUM ASSOCIATION, INC.)
and WINDERMERE REAL ESTATE/)
CAPITAL GROUP, INC.)
)
Defendants.)
_____)

CASE NO. CV 09-522
VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff Intermountain Fair Housing Council and for a cause of action against the Defendants Orchards at Fairview Condominium Association, Inc. and Windermere Real Estate/Capital Group, Inc., states and alleges as follows:

NATURE OF THE ACTION

1. This is an action brought by the above-named Plaintiff for declaratory judgment, permanent injunctive relief and damages on the following bases:

VERIFIED COMPLAINT AND 1
DEMAND FOR JURY TRIAL

KEN NAGY
Attorney at Law
Lewiston, Idaho

a. Fair Housing Act, 42 U.S.C. §3601 et seq. (hereinafter “FHA”), and in particular:

i. Discrimination in the sale or rental, or otherwise made unavailable, a dwelling because of “familial status” and “handicap”, 42 U.S.C. §3604;

ii. Discriminatory terms, conditions or privileges in the sale or rental of a dwelling because of “familial status” and “handicap”, 42 U.S.C. §3604;

iii. Making, printing or publishing a notice or statement with respect to the sale or rental of a dwelling that indicates a preference, limitation or discrimination based on “familial status” and “handicap”, 42 U.S.C. §3604; and

vi. Interference, coercion or intimidation, 42 U.S.C. §3617.

b. Fair Housing Regulations, 24 C.F.R. §100 et seq.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. §3613 and 28 U.S.C. §§1331, 1332, 1337, 1343 and 2201. The amount in controversy exceeds \$75,000 exclusive of interests and costs. Venue is proper in this District in that the claims alleged herein arose in the City of Boise, County of Ada, State of Idaho.

PARTIES

3. The Plaintiff Intermountain Fair Housing Council (hereinafter “the Plaintiff” or “IFHC”) is a nonprofit organization organized under the laws of the State of Idaho with its principal place of business at 350 North 9th Street, Suite M-100, Boise, Idaho 83702. Its mission is to advance equal access to housing for all persons without regard to race, color, sex, religion, national origin, familial status, or disability (the term “handicap”, as that term is used and defined in the FHA, is used herein interchangeably with the term “disability”). The Plaintiff

serves housing consumers through, among other things, education on the fair housing laws and assistance with complaints.

4. The Defendant Orchards at Fairview Condominium Association, Inc. (hereinafter “Defendant Orchards”), is a business organized under the laws and doing business in the State of Idaho. Its principal place of business is 6855 Fairview Avenue, Suite 100, Boise, Idaho 83704. The Defendant Orchards is the condominium association which manages and maintains the Orchards at Fairview Condominiums (hereinafter “the Subject Property”), the real property that is the subject of this proceeding and which is located at 1530 North McKinney Lane, Boise, Idaho 83704.

5. The Defendant Windermere Real Estate/Capital Group, Inc. (hereinafter “Defendant Windermere”) is a business organized under the laws and doing business in the State of Idaho. Its principal place of business is 501 Front Street, Boise, Idaho 83702. The Defendant Windermere is the real estate firm which handled the sale of units at the Subject Property.

STANDING OF PLAINTIFF

6. The Plaintiff has suffered damages as the result of the Defendants’ actions and omissions, including the diversion of the Plaintiff’s past and future resources, lost economic opportunity, and the frustration of the Plaintiff’s mission.

7. The Plaintiff’s mission, as described above, has been frustrated by the Defendants’ practices because the Defendants’ violations of the FHA communicate to housing consumers and housing providers that discriminatory practices are permissible and that correctional remedies are not available, thereby hampering Plaintiff’s efforts to educate the public on fair housing issues and to advance equal access to housing.

8. The Plaintiff's mission has further been frustrated as the Defendants' violations of the FHA have reduced the pool of non-discriminatory rental housing available to tenants in the State of Idaho.

9. In order to counteract the frustration of the Plaintiff's mission, the Plaintiff has had to devote significant resources to identify, investigate, document and take action to correct the Defendants' violations of the FHA, including but not limited to the incursion of litigation expenses. As a result, the Plaintiff has actually diverted resources from other fair housing-related activities, including fair housing education and enforcement activities throughout the State of Idaho and the surrounding region. Furthermore, the Plaintiff will necessarily incur additional expenses in the future to counteract the lingering effects of the Defendants' violations of the FHA through the monitoring of the Defendants' activities, publication and advertising costs, and the sponsorship of educational activities.

10. As a direct result of the Defendants' actions and omissions as described below, the Plaintiff is an "aggrieved person", as that term is defined by the FHA. 42 U.S.C. §3601(i). The Plaintiff has suffered and continues to suffer significant and irreparable loss and injury, and has sufficient standing to bring this action before this Court.

GENERAL ALLEGATIONS

11. The Plaintiff realleges and herein incorporates by reference the allegations set forth in Paragraphs 1-10 above.

12. On or about the 5th day of October, 2005, the Plaintiff viewed an article published in the Idaho Statesman newspaper which described the Subject Property as "a 42-unit 'empty nester' subdivision."

13. As a result of viewing the article identified in Paragraph 12 above, the Plaintiff mailed a letter to the Defendant Orchards to communicate its concerns about the manner in which the Subject Property is being described to the public. Said letter include technical guidances regarding such real property developments and the application of the FHA.

14. The Plaintiff continued to investigate the Subject Property to determine whether there is a pattern of discrimination occurring with regards to said real property. The Plaintiff reviewed the advertising published with regards to the Subject Property. All such advertising contained images and text which communicated to the viewer that families with minor children are not welcome to reside at said real property.

15. Richard Mabbutt, Executive Director of the Plaintiff, was contacted by Michael Dixon, agent for the Defendant Orchards, who requested a meeting to discuss the matter. Mr. Mabbutt met with Mr. Dixon and his associate Mary Givens at 802 West Bannock, Boise, Idaho on or about the 6th day of December, 2005. At said meeting, Mr. Dixon asserted that the use of the term “empty nester” in the Idaho Statesman newspaper article was the reporter’s choice of words. Mr. Dixon explicitly stated that the Subject Property is not intended to be an age-restricted community and that it will be open to families with minor children. He claimed that the Subject Property will contain a playground, although it was observed that the site plans did not contain any such fixture. Mr. Mabbutt explicitly warned the representatives of the Defendant Orchards present at the meeting that the use of the word “adult” in their advertising and other materials will violate the FHA. Said meeting lasted approximately one hour.

16. On or about the 14th day of May, 2007, Mr. Mabbutt observed a sign at the Subject Property which described the property as an “active adult condominium community”.

17. The Plaintiff began testing the Subject Property to determine whether there continues to be a pattern of discriminatory conduct with regards to said real property. On or about the 16th day of May, 2007, an IFHC tester met with Mary Liese, an agent for the Defendant Windermere, at the Subject Property. Ms. Liese made discriminatory statements to the IFHC tester, such as “we prefer people 55 and over” and specifically pointed out that the complex does not have a playground. Ms. Liese provided to the IFHC tester a document entitled “Commonly Asked Questions on Condominium Ownership”, which describes the rules of the Subject Property. Said rules expressly prohibit swing sets, unaccompanied minor children using the pool, and children and teenage parties at the community center.

18. On or about the 23rd day of May, 2007, the Plaintiff sent another tester to the Subject Property. Said IFHC tester was provided with the same materials as the first IFHC tester. In addition, the second IFHC tester requested and received from the Defendant Windermere a copy of the “Condominium Declaration and Covenants, Conditions and Restrictions for the McKinney Condominiums” (hereinafter “Condominium Declaration”) (which expressly provides that said condominiums are “commonly referred to and known as ‘The Orchards at Fairview’ ”). Said Condominium Declaration contains discriminatory statements, including the prohibition of “group homes. . .or any similar type of lodging, care or treatment facility.” The Defendant Windermere has continued to disseminate discriminatory materials regarding the Subject Property and the Defendant Orchards failed to rescind the discriminatory statements contained in said Condominium Declaration.

19. As a result of the Plaintiff’s investigation, it filed an administrative complaint with the United States Department of Housing and Urban Development (hereinafter “HUD”) pursuant to 42 U.S.C. §3610 on the 7th day of September, 2007. Said administrative complaint remained

pending with HUD until the 24th day of January, 2008, when the Plaintiff withdrew the complaint in order to seek a judicial remedy pursuant to 42 U.S.C. §3613.

20. Due to the ongoing nature of the Defendants' conduct, said conduct constitutes a continuing violation.

COUNT ONE—DISCRIMINATION ON THE BASIS OF “FAMILIAL STATUS”

21. The Plaintiff realleges and herein incorporates by reference the allegations set forth in Paragraphs 1-20 above.

22. The Defendants have discriminated in the terms, conditions and privileges of the sale or rental of a dwelling, and the provision of services and facilities in connection therewith, on the basis of “familial status”. 42 U.S.C. §3604(b). Such conduct is willful and intentional.

COUNT TWO—DISCRIMINATION ON THE BASIS OF “HANDICAP”

23. The Plaintiff realleges and herein incorporates by reference the allegations set forth in Paragraphs 1-22 above.

24. The Defendants have discriminated in the sale or rental of, and otherwise made unavailable and denied, a dwelling on the basis of “handicap”. 42 U.S.C. §3604(f)(1). Such conduct is willful and intentional.

25. The Defendants have discriminated in the terms, conditions and privileges of the sale or rental of a dwelling, and the services and facilities in connection therewith, on the basis of “handicap”. 42 U.S.C. §3604(f)(2). Such conduct is willful and intentional.

COUNT THREE—DISCRIMINATORY NOTICE OR STATEMENT

26. The Plaintiff realleges and herein incorporates by reference the allegations set forth in Paragraphs 1-25 above.

27. The Defendants have made, print or published a notice or statement with respect to the sale or rental of a dwelling that indicates a preference, limitation and discrimination on the basis of “familial status” and “handicap”. 42 U.S.C. §3604(c). Such conduct is willful and intentional.

COUNT FOUR—INTERFERENCE, COERCION OR INTIMIDATION

28. The Plaintiff realleges and herein incorporates by reference the allegations set forth in Paragraphs 1-27 above.

29. The Defendants have engaged in coercion, intimidation or interference in the exercise or enjoyment of rights granted by 42 U.S.C. §§3603 and 3604.

DAMAGES

30. The Plaintiff realleges and herein incorporates by reference the allegations set forth in Paragraphs 1-29 above.

31. As the result of the actions and conduct of the Defendants, as described above, the Plaintiff has suffered significant and irreparable loss and injury.

32. The Plaintiff is an “aggrieved person[s]”, as defined in 42 U.S.C. §3601(i), and is an intended beneficiary of the protections and requirements of the statutes, laws and regulations referenced above.

33. The Plaintiff has suffered actual damages as a result of its out-of-pocket expenses and past diversion of its resources, as described above and in the attached “Appendix A”, in the amount of \$17,285.06, which continue to accrue.

34. The Plaintiff has suffered actual damages as a result of the necessary future diversion of its resources, as described above and in the attached “Appendix A”, in the amount of \$10,000.00.

35. The Plaintiff has suffered actual damages as a result of lost economic opportunity, as described above and in the attached “Appendix A”, in the amount of \$1,000.00.

36. The Plaintiff has suffered actual damages as a result of the frustration of its mission, as described above and in the attached “Appendix A”, in the amount of \$18,285.06.

37. In addition to the injuries suffered by the Plaintiff, the Defendants have also caused significant and irreparable loss and injury to a number of as-of-yet unidentified persons.

38. Said as-of-yet unidentified victims are “aggrieved person[s]”, as defined in 42 U.S.C. §3601(i), and are intended beneficiaries of the protections and requirements of the statutes, laws and regulations referenced above.

39. All victims of the Defendants’ actions and conduct should be identified and compensated through a Victims’ Compensation Fund.

40. A Victims’ Compensation Fund should be established in the amount of \$273,180.18 in order to compensate as-of-yet unidentified victims of the Defendants’ discriminatory conduct, as described in the attached “Appendix B”, from which such victims should be compensated.

Said Victims’ Compensation Fund should be established and administered as follows:

- a. The Plaintiff shall be assigned the task of managing and administering the Victims’ Compensation Fund. The Plaintiff shall be compensated for all time spent administering said Fund at the rate of \$45.88 per hour. The Plaintiff shall keep detailed records of all tasks engaged in and shall submit copies of said records to the Court and the Defendants on a monthly basis.
- b. Within thirty (30) days of the entry of an order by this Court creating a Victims’ Compensation Fund, the Defendants shall deposit in an interest-bearing escrow

account the total sum as determined by applying the calculation set forth in the attached Appendix B.

- c. Any interest accruing to such Victims' Compensation Fund shall become a part of the fund and be utilized as set forth herein.
- d. Within fifteen (15) days after the Defendants deposit funds in the Victims' Compensation Fund, the Plaintiff shall publish a Notice to Potential Victims of Housing Discrimination (hereinafter "Notice") in at least five daily newspapers serving the main population centers of the State of Idaho informing readers of the availability of compensatory funds. The form and content of the Notice shall be approved by the Court at the time of the entry of the Court's order establishing the Victims' Compensation Fund. The Notice shall be no smaller than three columns by six inches and shall be published on three occasions in each newspaper. The publication dates shall be separated from one another by at least 21 days, and at least two of the publication dates shall be a Sunday. The Plaintiff shall send a copy of the Notice prior to each and every publication date to each of the following organizations: (1) Living Independent Network Corp. (LINC), 2500 Kootenai Street, Boise, Idaho 83705; (2) Co-Ad, Inc., 4477 Emerald Street, Suite B-100, Boise, Idaho 83706; Disability Action Center, 124 East Third Street, Moscow, Idaho 83843; and (4) Living Independently for Everyone (LIFE), P.O. Box 4185, 640 Pershing Avenue, Suite 7, Pocatello, Idaho 83201.
- e. Within thirty (30) days of the entry of an order by this Court creating a Victims' Compensation Fund, the Plaintiff shall send by first-class mail, postage prepaid, a

copy of the Notice to each tenant who currently resides or who resided at any time at the subject property.

- f. Nothing in this section shall preclude the Plaintiff from making its own additional efforts at its own expense to locate and provide notice to potentially aggrieved persons.
- g. Allegedly aggrieved persons shall have one hundred-twenty (120) days from the date of the entry of an order by this Court creating a Victims' Compensation Fund to contact the Plaintiff in response to the Notice. The Plaintiff shall investigate the claims of allegedly aggrieved persons and, within one hundred-eighty (180) days from the entry of an order by this Court creating a Victims' Compensation Fund, shall make a preliminary determination of which persons are aggrieved and an appropriate amount of damages that should be paid to each such persons. The Plaintiff will inform the Defendants in writing of its preliminary determinations, together with a copy of a sworn declaration from each aggrieved person setting forth the factual basis of the claim. The Defendants shall have fourteen (14) days to review the declaration and to provide to the Plaintiff any documents or information that it believes may refute the claim.
- h. After receiving the Defendants' refutation, if any, the Plaintiff shall submit its final recommendations to the Court for approval, together with a copy of the declarations and any additional information submitted by the Defendants. When the Court issues an order approving or changing the Plaintiff's proposed distribution of funds for aggrieved persons, the Defendants shall, within ten (10) days of the Court's order, deliver to the Plaintiff checks payable to the aggrieved

persons in the amounts approved by the Court. In no event shall the aggregate of all such checks exceed the sum of the Victims' Compensation Fund, including accrued interest and after deducting compensation to the Plaintiff as described above. No aggrieved persons shall be paid until he or she has executed and delivered to counsel for the Plaintiff a signed and notarized statement releasing the Defendants from all claims related to the subject property.

- i. In the event that less than the total amount in the fund including interest is distributed to aggrieved persons, the remaining funds shall be submitted to an education fund to be drawn upon by the Plaintiff and other non-profit organizations for purposes of educating housing consumers and providers on the requirements of the Fair Housing Act. Said education fund shall be administered by the Idaho Housing and Finance Association.
- j. The Defendants shall permit the Plaintiff, upon reasonable notice, to review any records that may facilitate its determinations regarding the claims of allegedly aggrieved persons.

41. The Court should award to the Plaintiff and against the Defendants punitive damages due to the intentional and willful nature of the Defendants' conduct in the amount of \$10,000.00.

42. The Court should enjoin the Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with said Defendants, from failing or refusing to comply with all requirements of the FHA and its implementing regulations.

43. The Court should award to the Plaintiff and against the Defendants reasonable attorney's fees and costs incurred in this action, as provided for by statute and court rule.

44. The Defendants should be held jointly and severally liable for any and all damages, including an award of attorney's fees and costs, awarded in this proceeding.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Intermountain Fair Housing Council prays that the Court enter judgment against the Defendants as follows:

A. That the Court find and declare that the actions of the Defendants constitute violations of the Fair Housing Act;

B. That the Court award to the Plaintiff and against the Defendants actual damages in compensation for its out-of-pocket expenses and past diversion of resources in the amount of \$17,285.06, which continue to accrue;

C. That the Court award to the Plaintiff and against the Defendants actual damages in compensation for the necessary future diversion of the Plaintiff's resources in the amount of \$10,000.00;

D. That the Court award to the Plaintiff and against the Defendants actual damages in compensation for the Plaintiff's lost economic opportunity in the amount of \$1,000.00;

E. That the Court award to the Plaintiff and against the Defendants actual damages in compensation for the frustration of the Plaintiff's mission in the amount of \$18,285.06;

F. That the Court enter an order establishing a Victims' Compensation Fund the amount of \$273,180.18, as determined by applying the calculation set forth in the attached Appendix B and to be administered according to the terms set forth in Paragraph 40 above;

G. That the Court award to the Plaintiff and against the Defendants punitive damages due to the intentional and willful nature of the Defendant's conduct in the amount of \$10,000.00;

H. That the Court enjoin the Defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with said Defendants, from failing or refusing to comply with all requirements of the FHA and its implementing regulations;

I. That the Court award to the Plaintiff and against the Defendants reasonable attorney's fees and costs incurred in this action;

J. That the Defendants be held jointly and severally liable for any and all damages, including an award of attorneys fees and costs, awarded in this proceeding; and

K. That the Court order any further and additional relief as the interests of justice may require.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the Plaintiff demands a trial by jury on all issues.

DATED this 15th day of October, 2009.

KEN NAGY
ATTORNEY FOR PLAINTIFF

RICHARD MABBUTT, being first duly sworn on his oath, deposes and says:

I am the Executive Director of the Intermountain Fair Housing Council, the Plaintiff herein, that I have read the foregoing document, know well the contents thereof, and that the facts therein stated are true to the best of my knowledge and belief.

_____/s/_____
RICHARD MABBUTT

STATE OF I D A H O)
 : ss
County of _____)

I, _____, a Notary Public for said state, does hereby certify that on the _____ day of _____, 2009, personally appeared before me RICHARD MABBUTT, Executive Director of the Intermountain Fair Housing Council, who, being by me first duly sworn, declared that he signed the foregoing document as such, and that the statements therein contained are true and accurate as he verily believes.

SEAL

_____/s/_____
Notary Public in and for the State of _____
Residing at: _____
My commission expires: _____

APPENDIX A:

PLAINTIFF'S MEMORANDUM OF DAMAGES

Intermountain Fair Housing Council v. Orchards at Fairview Condominium Association and Windermere Real Estate/Capital Group, Inc.

Plaintiff: Intermountain Fair Housing Council

Attorney for Plaintiff: Ken Nagy
Attorney at Law
P.O. Box 164
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Defendants: Orchards at Fairview Condominium Association
Windermere Real Estate/Capital Group, Inc.

Date Prepared: October 14, 2009

The Plaintiff has identified four categories of damages that it has suffered as the result of the Defendants' failure to comply with the FHA. These categories are: (1) Past Diversion of Resources; (2) Future Diversion of Resources; (3) Lost Economic Opportunity; and (4) Frustration of Mission. Each of these categories of damages have been recognized and awarded by various courts to organizational plaintiffs in previous fair housing cases.¹

¹*See, Southern Cal. Housing Rights Center v. Krug*, 564 F.Supp.2d 1138 (Cent. Dist. Cal. 2007) (fair housing organization awarded \$6,590.80 for diversion of resources and \$29,065.32 for frustration of mission), *Fair Housing of Marin v. Combs*, 285 F.3d 899 (9th Cir. 2002) (fair housing organization awarded \$14,217.00 for the diversion of resources); *HUD v. Perland*, Fair Housing-Fair Lending Rptr. ¶25,136 (HUD ALJ 1998) (fair housing organization awarded \$4,516 for the diversion of resources and \$1,400 for the costs of future monitoring of the defendants); *Ragin v. Harry Macklowe Real Estate Co.*, 801 F.Supp. 1213, *aff'd in pertinent part*, 908 F.3d 898 (2nd Cir. 1993) (fair housing organization awarded \$20,000 for the diversion of resources); *HUD v. Jancik*, Fair Housing-Fair Lending Rptr. ¶25,058 (HUD ALJ 1993) (fair housing organization awarded \$13,386 for the diversion of past and future resources and \$9,000 for the financial opportunity lost as a result of the investigation and litigation of the case); *City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086 (7th Cir. 1992) (fair

The following represents an itemization of the Plaintiff's damages:

1. Out-of-Pocket Expenses and Past Diversion of Resources

The Plaintiff has incurred significant pre-litigation expenses as a result of the Defendants' discriminatory actions, which are constituted by its out-of-pocket expenses and its past diversion of resources. The Plaintiff has sponsored training workshops in the Defendants' geographic area, and has engaged in site monitoring, investigation, complaint preparation, counseling and other activities with regards to this matter. As a result of these activities, it has incurred expenses as follows:

- a. Investigation and Counseling Costs: \$2,442.53
- b. Maintenance of tester program: \$500.00
- c. Educational efforts: \$10,100.00
- d. Cost of Deferred Actions: \$4,242.53

Total Past Diversion of Resources: \$17,285.06

Further litigation of these matters will result in an increase in the Plaintiff's diversion of resources, as well as other damages.

2. Future Diversion of Resources

The Plaintiff has an affirmative duty to ensure the Defendants' ongoing compliance with the FHA, with regards to both the subject property as well as any future developments in which the Defendants may participate. Such monitoring activities include site visits, training of Defendants and its employees and agents, counseling of victims, and testing.

housing organization awarded \$16,500 for out-of-pocket expenses and costs of future monitoring and training); *Saunders v. General Services Corp.*, 659 F.Supp. 1042 (E.D. Va. 1987) (fair housing organization awarded \$2,300 for the diversion of resources and \$10,000 for the frustration of its equal housing mission).

The Plaintiff expects to incur the following expenses as a result of the current violations:

a. Future Advertising Costs:	\$2,000.00
b. Cost of future training:	\$3,500.00
<u>c. Costs of Future Monitoring/Testing:</u>	<u>\$4,500.00</u>
Total Future Diversion of Resources:	\$10,000.00

3. Lost Economic Opportunity

Vigorous investigation and enforcement of fair housing complaints, including the property at issue herein, has caused the Plaintiff to divert limited resources and manpower away from grant-writing activities. The Plaintiff could reasonably expect to have obtained funding to sponsor fair housing training events in the amount of \$1,000.00 if it had not been so diverted due to the Defendants’ actions

a. Loss of Funding:	\$1,000.00
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4. Frustration of Mission

The investigation of the subject of this complaint, the counseling and training provided to the community, and the preparation of the administrative complaint have caused the Plaintiff to divert significant resources toward this proceeding and has undermined the work of furthering fair housing in the state of Idaho.

As a direct result of the Defendants’ discriminatory actions, the Plaintiff’s mission of furthering fair housing has been significantly frustrated, and the Plaintiff has had to devote, and will continue to devote, additional resources in order to counteract the past and ongoing effects of this discrimination.

Furthermore, the property at issue in this proceeding has constituted a formidable barrier to non-discriminatory housing, thereby undermining the mission of the Plaintiff in guaranteeing

fair housing to all residents of the state. The Plaintiff has determined that it will be necessary to educate housing consumers regarding fair housing requirements in order to counteract the effects of the Defendants' failure to comply with the FHA.

The Plaintiff measures the damage to its frustration as the total monetary damages that the Defendants' actions have cost to correct, including lost funding opportunities.

a. Frustration of Mission \$18,285.06

TOTAL DAMAGES

The Council calculates its total damages in this proceeding as follows:

1. Out-of Pocket Expenses and Past Diversion of Resources:	\$17,285.06
2. Future Diversion of Resources:	\$10,000.00
3. Lost Economic Opportunity:	\$1,000.00
4. <u>Frustration of Mission:</u>	<u>\$18,285.06</u>

Total Damages: \$46,570.12

APPENDIX B:

CALCULATION OF VICTIMS' COMPENSATION FUND

Intermountain Fair Housing Council v. Orchards at Fairview Condominium Association and Windermere Real Estate/Capital Group, Inc.

Plaintiff: Intermountain Fair Housing Council

Attorney for Plaintiff: Ken Nagy
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Defendants: Orchards at Fairview Condominium Association
Windermere Real Estate/Capital Group, Inc.

Date Prepared: October 14, 2009

I. INTRODUCTION

In addition to the damages incurred by the Plaintiff, a number of as-of-yet unidentified victims have also suffered damages as the result of the Defendants' discriminatory actions. In furtherance of the Plaintiff mission, a Victims' Compensation Fund should be created in order to identify and obtain adequate compensation for such victims.

The Federal District Court for the District of Idaho has previously ordered the establishment of a Victims' Compensation Fund in actions brought pursuant to the Fair Housing Act. *See, United States of America and Intermountain Fair Housing Council v. Stealth Investment, LLC, et al.*, Case No. 4:07-cv-500 (Consent Decree entered May 29, 2008, Doc. 21) (establishing Settlement Fund to compensate unidentified victims in the amount of \$12,500); *United States of America v. Thomas Development Co., et al.*, Case No. 3:02-cv-00068 (Consent

Order entered March 11, 2005, Doc. 85) (establishing Settlement Fund to compensate unidentified victims in the amount of \$100,000.00).

Said orders, however, do not contain a description of how the amount of such a fund was calculated. The Victims' Compensation Fund that should be ordered herein should be calculated according to the underlying principles and using the applicable figures set forth below.

II. UNDERLYING PRINCIPLES

A. The number of units that exist at the subject property that are required to comply with the requirements of the Fair Housing Act total 42.

B. The total number of months that residents and prospective purchasers have been subjected to discrimination at the subject property in violation of the Fair Housing Act is currently 42 months, as of the filing of this complaint.

C. It could be expected that all 42 units were purchased upon completion of construction.

D. On average, each of the 42 units would be sold to a new purchaser every 183 months. Wayne Archer, et al., *Ownership Duration in the Residential Housing Market: The Influence of Structure, Tenure, Household and Neighborhood Factors*, 8 (unpublished article) (2008).

E. United States Census data indicates that the United States population is currently composed of 77,873,000 families. U.S. Census Bureau, Current Population Survey, January 2009. Of the total number of families, 45.8% of them had children under the age of 18 years in the household. *Id.*

F. The amount of damages awarded to victims in similar cases has been \$10,000.00 or more.

G. The Plaintiff is the organization best equipped and situated to administer the Victims' Compensation Fund.

H. The Plaintiff should be compensated at its operational rate of \$45.88 per hour in the administration of the Victims' Compensation Fund.

I. The number of hours that it will take to administer the Victims' Compensation Fund and complete compensation of victims can reasonably be expected to be twelve hours per identified victim.

J. Administration of the fund will result in the incursion of out-of-pocket expenses, such as advertising and travel costs, in the amount of \$1,000.00 per identified victim.

III. APPLICABLE FIGURES

The Victims' Compensation Fund should be calculated as follows:

1. Step One. The amount of funds that can reasonably be expected to be necessary to compensate identified victims should be calculated as follows:

The total number of months that discrimination has occurred at the subject property, which is 42, **divided by** how many months elapse before each unit could expect to be sold to a new purchaser, which is 183, **times** the total number of units at the subject property, which is 42,

plus

The total number of units at the subject property (which equals the total number of sales of units upon completion of the subject property), which is 42,

times

The total number of purchasers that could be expected to be families with minor children, which is 45.8%,

times

A reasonable damage award to each victim, which is \$10,000.00.

* * *

2. Step Two. The amount of funds that can reasonably be expected to be necessary to compensate the fund administrator for work performed in administering the Victim's Compensation Fund should be calculated as follows:

The total number of months that discrimination has occurred at the subject property, which is 42, **divided by** how many months elapse before each unit could expect to be sold to a new purchaser, which is 183, **times** the total number of units at the subject property, which is 42, **plus**

The total number of units at the subject property (which equals the total number of sales of units upon completion of the subject property), which is 42, **times**

The total number of purchasers that could be expected to be families with minor children, which is 45.8%,

times
The hours necessary to administer the fund per identified victim, which is 12,

times
The Plaintiff/Intervener's operational rate, which is \$45.88 per hour.

* * *

3. Step Three. The amount of funds that can reasonably be expected to be necessarily incurred by the fund administrator as out-of-pocket expenses in administering the Victims' Compensation Fund should be calculated as follows:

The total number of months that discrimination has occurred at the subject property, which is 42, **divided by** how many months elapse before each unit could expect to be sold to a new purchaser, which is 183, **times** the total number of units at the subject property, which is 42, **plus**

The total number of units at the subject property (which equals the total number of sales of units upon completion of the subject property), which is 42, **times**

The total number of purchasers that could be expected to be families with minor children, which is 45.8%,

times
The amount that the Plaintiff/Intervener can be expected to incur in out-of-pocket costs in identifying and compensating each identified victim, which is \$1,000.00.

* * *

4. Step Four. The total amount of the Victims' Compensation Fund is the amount determined by adding the results of Step One, Step Two and Step Three, as set forth above.

The formula described above can be expressed as follows:

$$\begin{aligned}
 &42 \text{ units X } \underline{42 \text{ months inaccessible}} + 42 \text{ units X } 45.8\% \text{ families with children X } \$10,000 \\
 &\quad \text{sale every 183 months} \\
 &\qquad\qquad\qquad + \\
 &42 \text{ units X } \underline{42 \text{ months inaccessible}} + 42 \text{ units X } 45.8\% \text{ families with children X } 12 \text{ hours X } \$45.88/\text{hour} \\
 &\quad \text{sale every 183 months} \\
 &\qquad\qquad\qquad + \\
 &42 \text{ units X } \underline{42 \text{ months inaccessible}} + 42 \text{ units X } 45.8\% \text{ families with children X } \$1,000 \text{ out-of-pocket costs} \\
 &\quad \text{sale every 183 months} \\
 &\qquad\qquad\qquad = \\
 &\text{TOTAL AMOUNT OF VICTIMS' COMPENSATION FUND}
 \end{aligned}$$

IV. CALCULATION OF AMOUNT OF VICTIMS' COMPENSATION FUND

Applying the underlying principles, as described above, and the applicable figures, as set forth above, the Victims' Compensation Fund should be established as follows:

1. Funds necessary to compensate identified victims:	\$236,508.17
2. Funds necessary to compensate administrator of the Fund:	\$13,021.19
3. <u>Funds for out-of-pocket expenses in administering the Fund:</u>	<u>\$23,650.82</u>
Total Victims' Compensation Fund:	\$273,180.18

As of the filing of this Complaint, the amount necessary to identify and compensate victims in this proceeding currently totals \$273,180.18. This amount, however, will continue to increase throughout the duration of this action, and should be recalculated using updated information at the time the Victims' Compensation Fund is finally calculated.