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

UNITED STATES OF AMERICA, Plaintiff, v. BOBBY VEAL & JEWEL VEAL, Defendants.	)	CASE NO.: 02-0720-CV-W-DW

PLAINTIFF UNITED STATES' SUGGESTIONS IN OPPOSITION TO DEFENDANTS' MOTION FOR NEW TRIAL, OR IN THE ALTERNATIVE MOTION FOR RELIEF FROM JUDGMENT, OR IN THE ALTERNATIVE MOTION FOR REMITTITUR OR REDUCTION IN JUDGMENT

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INTRODUCTION

Defendants Bobby and Jewel Veal have filed a Motion for New Trial, or in the Alternative, Motion for Relief from Judgment, Remittitur, or Reduction in Judgment. Because this case was properly litigated by the parties, properly adjudicated by the Court, and properly decided by the jury, Defendants' Motion should be denied.

As set forth below, much of the Defendants' Motion is based on a claim of ineffective assistance of counsel. Even if these allegations were true, controlling authority establishes that Defendants' proper remedy is a malpractice action, not a new trial. The Defendants' remaining claims similarly are without merit. Indeed, they could be raised by any civil litigant who took a case to trial and lost. Defendants received a fair trial. There is no reason to give them a second bite.

FACTUAL BACKGROUND

On June 12, 2003, after the Defendants failed to comply with the Court's April 15, 2003 Order compelling them to answer the United States' discovery requests, and after the Defendants had failed to pay the $2000.00 sanction included in the Court's April 15, 2003 Order, 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 and struck the Defendants' pleadings. (Order, June 12, 2003). The Court found that the Defendants had engaged in a pattern or practice of housing discrimination on the basis of 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 United States identified eleven (11) women ("aggrieved persons") who it alleged were victims of the Defendants' discriminatory housing practices. At

trial, the jury had to decide: (1) whether these women were harmed by the Defendants' discriminatory actions, and (2) if so, what damages, if any, they should be awarded.[1]

A trial on damages was held May 10-13, 2004. The United States sought compensatory and punitive damages on behalf of the eleven (11) aggrieved persons. The jury was instructed that, in order to award punitive damages against a defendant, the United States had to prove at trial that the Defendants acted with malice or reckless indifference. (Tr. at 521-22, Instruction No. 15.) During the trial, the United States offered the testimony of the eleven (11) aggrieved persons, who testified that Bobby Veal, among other things, made unwanted physical and verbal sexual advances, touched them in a way that was sexual and unwanted, asked for sexual favors in exchange for tenancy and threatened to retaliate against them if they refused his sexual advances. The United States also offered evidence showing that Jewel Veal was notified in writing on several different occasions that female tenants were filing formal complaints against her and her husband alleging that Mr. Veal was sexually harassing them in their homes. Yet Jewel Veal did ***nothing*** to stop the harassment or protect the tenants.

On May 13, 2004, the jury in this case returned its verdict against Bobby and Jewel Veal. The jury found that all eleven (11) women were harmed by the Defendants' pattern or practice of discrimination based on sex and awarded $47,804.00 in compensatory damages and $527,500.00 in punitive damages against each defendant, for a total verdict of $1,102,804.00

[1] In Mr. Veal's May 27, 2004 affidavit, he states that he did not know what a default judgment was until he retained new counsel. (Def.'s Suggestions Supp. Mot. Ex. 19.) This is not true. During the pre-trial conference, Mr. Veal informed the Court that he understood that the Court had ruled that he had violated the Fair Housing Act, and that the only question before the jury was whether the aggrieved persons were harmed, and, if so, how much money they should be awarded. (Tr. at 24).

ARGUMENTS

I. DEFENDANTS ARE NOT ENTITLED TO A NEW TRIAL BECAUSE OF THE ALLEGED MISCONDUCT AND OTHER ALLEGED INEFFECTIVE ASSISTANCE OF THEIR COUNSEL

Under Rule 59 of the Federal Rules of Civil Procedure, district courts may grant a new trial in an action in which there has been a jury trial, "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." Fed. R. Civ. P. 59(a). While the authority to grant a new trial is within the discretion of the district court, this discretion is not boundless. *White v. Pence*, 961 F.2d 776, 780 (8th Cir. 1992).

A. Rule 59 of the Federal Rules of Civil Procedure Does Not Permit New Trials Due to Ineffective Assistance of Counsel

Defendants allege that Mr. W. Geary Jaco, their former attorney, incompetently and fraudulently represented them in this action. It is well-settled that in civil cases district courts may not grant new trials for ineffective assistance of counsel. *Glick v. Henderson*, 855 F.2d 536, 541 (8th Cir. 1988); *Watson v. Moss*, 619 F.2d 775, 776 (8th Cir. 1980).

In *Watson*, the appellant sought a new trial after receiving an unfavorable jury verdict in a civil rights case. The appellant argued on appeal that he should receive a new trial because his counsel was ineffective. *Id.* at 776. The Eighth Circuit, without even expressing an opinion as to the adequacy of the assistance of counsel, affirmed the trial court and explained that, "[a] party with privately retained counsel does not have any right to a new trial in a civil suit because of inadequate counsel, but has as its remedy a suit against the attorney for malpractice." *Id.; accord Glick*, 855 F.2d at 541 (holding that a party's "remedy for any ineffective assistance of counsel is a suit against his attorney for malpractice, not a new trial"). If, as it appears from their brief, the

Defendants believe that Mr. Jaco's representation in this action amounts to malpractice, their proper recourse is to sue him for malpractice.

Granting Defendants' request for a new trial would not only contravene controlling case law, it would be unfair to the United States and the eleven (11) aggrieved persons on whose behalf the United States brought this action. The United States abided by the Federal Rules of Civil Procedure at every stage of this litigation and Defendants do not contend otherwise. A new trial would be costly for the government, painful for the aggrieved persons, and burdensome to the already overloaded judicial system, without punishing the alleged bad actor, Mr. Jaco.

B. The Defendants Made a Strategic Decision to Represent Themselves at Trial; They Should Not Get a New Trial Just Because That Strategy Failed

On April 27, 2004, the Court granted Mr. Jaco's motion to withdraw as the Defendants' counsel in this action. The Court's Order stated, in part:

> The Court instructs Defendants that, unless new counsel is retained, they are expected to proceed *pro se* at trial on the issue of damages, which is set to begin on its originally scheduled date of May 10, 2004. The Court will entertain a motion for a short continuance of the trial date only if filed by new counsel, should Defendants decide to retain one.

(Order, Apr. 27, 2004.) The United States sent a copy of this Order via Federal Express to the Defendants. (Bond Decl. Ex. A.) Thus, the Defendants had notice that: (a) the Court had allowed their former counsel to withdraw, and (b) if they hired a new lawyer, the Court would entertain a motion filed by their new lawyer for a short continuance of the trial date.

The Defendants initially asserted that their former counsel, Mr. Jaco, forged Mr. Veal's signed affidavit stating that he wished to discharge Mr. Jaco. (Def.'s Suggestions Supp. Mot. at 8.) That was not true. The Defendants later acknowledged that Mr. Veal's signature was not

forged, but claim that he did not understand what he was signing because he cannot see well. (Def.'s Mot. to Amend Suggestions Supp. Mot. at 2.)

In any event, Defendants' argument is a red herring. The Defendants were aware, at least by April 28, 2004, that, for whatever reason, Mr. Jaco was no longer representing them in this action. If they wanted the Court to reconsider its Order, they could and should have raised the issue before trial. Indeed, on April 28, 2004, Rebecca B. Bond, counsel for the United States, called Bobby Veal to ask if he and his wife had hired a new lawyer. (Zeleke Decl. ¶ 3.) Mr. Veal stated that they had not. (Zeleke Decl. ¶ 3.) Mr. Veal further stated that he located one attorney who was willing to take his case, but that he decided not to hire him because, in Mr. Veal's opinion, he wanted to charge him too much.[2] (Zeleke Decl. ¶ 3.) Notably, Mr. Veal did not say that he could not *afford* to pay this attorney, only that he thought this attorney wanted too much money. When Ms. Bond asked Mr. Veal if he planned to represent himself he said he would just have to "throw himself on the mercy of the court." (Zeleke Decl. ¶ 3.) Ms. Bond told Mr. Veal that she would send him a copy of the Court's Order granting Mr. Jaco's motion to withdraw, and she suggested to Mr. Veal that he call the Courtroom Deputy with any questions he had about the trial and gave him the courtroom deputy's telephone number. Counsel for the United States called Mr. Veal again on May 3, 2004 to ask if he and his wife had hired a new attorney. Mr. Veal said that they had not. Mr. Veal repeated that he had located one attorney who was willing to take his case, but that he decided not to hire him because, in Mr. Veal's opinion, he

[2] Mr. Veal repeats this in his May 27, 2004 affidavit, stating, "I then contacted Jonathan Laurans. Since the trial was less than two weeks away, Mr. Laurans wanted to charge me, in my opinion, too high a price for representation." (Def.'s Suggestions Supp. Mot. Ex. 19 at ¶ 9.)

wanted to charge him too much. Mr. Veal also repeated that he planned to "throw himself on the mercy of the court." (Jamison Decl. ¶ 3.)

There is nothing in the record indicating that Jewel Veal took any steps to locate a new attorney for her and her husband. Ms. Veal's May 27, 2004 affidavit, filed with the Defendants' Brief, does not mention any telephone calls or visits she made in search of new representation. (Def.'s Suggestions Supp. Mot. Ex. 22.) As co-defendant in this action, Ms. Veal had an equal interest in finding new counsel. At the very least, Ms. Veal could have made inquiries during the time when Mr. Veal was having his colonoscopy.

Once the jury returned its verdict in this case, and the Defendants were facing a $1,102,804.00 verdict, they were able to retain counsel within seven (7) days. This is less time than the twelve (12) days the Defendants had previously, from the day that Mr. Jaco withdrew to the day the trial started, to find new counsel. All of the above illustrates that the Defendants *could* have hired an attorney to represent them at trial, but they chose not to. Mr. Veal decided to "throw himself on the mercy of the court" rather than pay an attorney what was, in his opinion, too much money, and Ms. Veal decided not to look for new counsel.

Once the trial started, the Defendants continued to make strategic decisions that influenced the outcome of the trial. The Defendants try to shift the blame for this strategic decision to the United States, arguing that counsel for the United States informed them that Ms. Veal did not have to attend the trial. In fact, correspondence from Mr. Jaco to the Veals shows that he informed Bobby and Jewel Veal that they must be present at the commencement of the trial. (Bond Decl. Ex. B.) Furthermore, Ms. Bond never told Mr. or Ms. Veal that Ms. Veal's attendance at the trial was not required. (Bond Decl. ¶ 6.)

Even assuming, *arguendo*, that Ms. Veal understood Ms. Bond to say that her attendance was not required, that would not be grounds for a new trial. Defendants do not assert that counsel for the United States told them Ms. Veal should not come or discouraged her from coming; they do not even state that they relied in any way on Ms. Bond's alleged statement. As Ms. Veal stated in her May 27, 2004 affidavit, "[she] understood it was up to [her] whether or not [she] attended, except for the day [she] was subpoenaed to testify." (Def.'s Suggestions Supp. Mot. Ex. 22 at ¶ 7.) Faced with the option of attending or not attending a federal trial in which she was a named defendant, Ms. Veal decided not to attend. Mr. Veal attended the trial, but he decided not to testify, not to call any witnesses, and not to make a closing argument. These were all conscious, strategic decisions that Mr. and Ms. Veal made, and the Court should not grant them a new trial just because the Veals's strategy failed. If the Court were to do so, the result would be that any *pro se* defendant who was displeased with the outcome of his or her trial would be entitled to a new trial. *See, e.g.*, *Rucker v. U.S. Postal Serv.*, No. 96-17151, 1998 WL 22043, at *2 (9th Cir. 1998) (affirming lower court's decision to deny *pro se* party's motion for new trial when *pro se* party argued, in part, that "various trial events affected his emotional balance and his ability to represent himself effectively").

II. DEFENDANTS' REQUEST FOR RELIEF FROM DEFAULT JUDGMENT LACKS MERIT

Under Rule 55(c) of the Federal Rules of Civil Procedure, a court may set aside an entry of default for good cause shown, and, if a judgment by default has been entered, a court may set it aside in accordance with Rule 60(b). Fed. R. Civ. P. 55(c). Rule 60(b) states that a court may grant relief from a final judgment or order 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, misrepresentation, or other misconduct of an adverse party;
4. the judgment is void;
5. the judgment has been satisfied, released or discharged; or
6. any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b).[3]

A. The Court Acted Within its Discretion When it Entered Default Judgment on Liability in Favor of the United States

Rule 37 of the Federal Rules of Civil Procedure grants a trial court the authority to enter a default judgment against a party who abuses the discovery process. Fed. R. Civ. P. 37(b)(2)(C); *Comiskey v. JFTJ Corp.*, 989 F.2d 1007, 1009-10 (8th Cir. 1993). The Eighth Circuit has said, "striking a party's pleadings under Rule 37 is within the range of appropriate sanctions when a party demonstrates a 'blatant disregard of the Court's orders and the discovery rules. . . .'" *Chrysler Corp. v. Carey*, 186 F.3d 1016, 1022 (8th Cir. 1999). *See also Inman v. American Home Furniture Placement, Inc.*, 120 F.3d 117, 119 (8th Cir. 1997) (stating that default judgment is appropriate when the party's conduct includes willful violations of court rules, contumacious conduct, or intentional delays). Moreover, a trial court "is not constrained to impose the least onerous sanction available, but may exercise its discretion to choose the most appropriate sanction under the circumstances." *Chrysler Corp.*, 186 F.3d at 1022. *See also Everyday Learning Corp. v. Larson*, 242 F.3d 815, 817-18 (8th Cir. 2001) (stating that "[w]hen the facts show willfulness and bad faith, . . . the district court need not investigate the propriety of a less extreme sanction").

[3] The Defendants do not state which of these six reasons the Court should rely upon in granting their request for relief from the default judgment.

Contrary to the Defendants' assertion, courts need not find that the alleged failure to comply with court orders and/or discovery rules are the result of the *party's* willfulness or bad faith. In *Comiskey*, the Eighth Circuit rejected the appellants' argument that the trial court erred in granting a default judgment without making a specific finding that the appellants—themselves, as opposed to their counsel—willfully, deliberately, or in bad faith failed to comply with court orders and discovery requests. *Comiskey*, 989 F.2d at 1009-10.

1. The Default Judgment Here Was Proper

In the instant case, the Defendants abused the discovery process by failing to respond to the United States requests for production of documents, and by failing to provide verified interrogatory answers. The United States could not litigate this case because the Defendants refused to participate in the discovery process. Recognizing this, and after holding two separate telephone conferences with counsel for the parties, the Court ordered the Defendants to respond to the United States' outstanding discovery requests, and sanctioned the Defendants $2000.00. (Order, Apr. 15, 2003.) In its Order, the Court specifically warned the Defendants that if they did not comply, default judgment would be entered:

> [T]here is adequate information in the record showing that Defendants' failure to respond to discovery thus far is deliberate, intentional and designed to thwart the United States' effort to pursue this case. . . . **Failure to comply with this Order will result in the Court striking Defendants' pleadings in the above-captioned case and the entry of a default judgment on liability in favor of the United States**.

(Order, Apr. 15, 2003 at 4 (emphasis added).) Despite this warning, the Defendants failed to comply with the Court's Order, and the Court entered a default judgment on liability in favor of the United States. (Order, June 12, 2003.)

The Defendants rely heavily on *Baker v. General Motors Corp.*, 86 F.3d 811 (8th Cir. 1996); however, *Baker* is distinguishable from the facts of the instant case in several respects. In *Baker*, a products liability action, the trial court struck the defendants' affirmative defenses, and trial proceeded on the sole issue of whether the product at issue directly caused plaintiff's injury. *Id.* at 814-15. In reviewing the trial court's decision, the Eighth Circuit said "[a]lthough the case ostensibly proceeded to trial on the issue [of] whether the defect 'directly caused or directly contributed to case' [plaintiff's injury], in effect, the jury instructions had already decided the matter for the jury." *Id.* at 817. The Eighth Circuit reversed, stating that other, less severe sanctions (including monetary fines and continuances for the plaintiffs) were available and appropriate. *Id.*

In this case, the Court did initially impose a less severe sanction, namely a $2,000.00 monetary fine, and an order compelling disclosure. The Defendants failed to pay this monetary fine or comply with the Court's order. Finally, in *Baker*, the Court found that the default judgment, together with the jury instructions, "in effect . . . decided the matter for the jury." *Id.*

2. The Default Judgment Caused Little, if any, Actual Prejudice to the Defendants

The default judgment in this case still left it to the jury to decide whether each of the eleven (11) aggrieved persons was a victim of the Defendants' discrimination, and whether, and in what amounts, they should be awarded damages. This was a significant hurdle. The jury could have concluded that none of the government's witnesses were, in fact, victimized by the Defendants.

The Court's June 12, 2003 default judgment established that the Defendants engaged in a pattern or practice of discrimination based on sex in their rental business; it did not establish

against whom the Defendants discriminated. At trial, the United States still had to prove that the Veals discriminated against each of the eleven (11) aggrieved persons. To prove this, the United States presented witnesses who testified about each aggrieved person's tenancy and contact with Mr. and Ms. Veal. The Defendants had the opportunity to cross examine each witness, and Mr. Veal did in fact cross examine nearly all of the United States' witnesses.

In other words, the default judgment only established the Defendants' general liability. The jury was still left to determine whether there were any specific victims. The Defendants actively participated in that process, which was conducted fairly.

B. The Defendants Are Bound by their Decision to Retain their Former Attorney

The Defendants concede that there was "non-production of discovery." (Def.'s Suggestions Supp. Mot. at 9.) Defendants contend, however, that the lack of discovery was not their fault, but that of their former attorney, Mr. Jaco. (Def.'s Suggestions Supp. Mot. at 9.) That they now regret their decision to retain him is not material here. The Eighth Circuit follows the "well-established principle that a party is responsible for the actions and conduct of his [or her] counsel and that, under appropriate circumstances, dismissal or default may be entered against a party as a result of counsel's actions." *Everyday Learning Corp.*, 242 F.3d at 817 (internal citations omitted). *See also Comiskey*, 989 F.2d at 1010 (stating, "A [party] chooses counsel at his [or her] peril.").

In *Inman v. American Home Furniture Placement, Inc.*, the Eighth Circuit reviewed a case where the Defendants asserted that their attorney's negligence—due to "personal problems"—was the sole reason for their inaction. 120 F.3d at 118. This is essentially the same argument that Bobby and Jewel Veal are now making. Citing Supreme Court case law, the

Eighth Circuit said, "our focus should not be on whether defendants 'did all they reasonably could in policing the conduct of their attorney [but] on whether their attorney, as [defendants'] agent, did all [s]he reasonably could to comply with the court-ordered [deadlines].'" *Id.* (*quoting Pioneer Inv. Servs. Co. v. Brunswick Assoc.*, 507 U.S. 380, 396 (1993)). The *Inman* Court went on to explain:

> While it may seem harsh to make defendants answer for their attorney's behavior, any other result would punish [the plaintiff] for the inaction of her opponents' lawyer. Defendants are better suited to bear this risk. If they were truly diligent litigants who were misled and victimized by their attorney, they have recourse in a malpractice action.

Id. at 118-19. The *Inman* Court also noted that the Eighth Circuit has held that "Rule 60(b) has never been a vehicle for relief because of an attorney's incompetence or carelessness." *Id.* at 119. Under controlling Eighth Circuit case law, Bobby and Jewel Veal's argument that they should not be punished for the acts of their former attorney is without merit.

III. ASSESSMENT OF ACTUAL AND PUNITIVE DAMAGES AGAINST JEWEL VEAL IS PROPER

The Defendants claim that, as a matter of law, neither actual nor punitive damages should have been assessed against Jewel Veal. (Def.'s Suggestions Supp. Mot. at 24.) They argue that Jewel Veal is not liable for actual or punitive damages because the United States did not plead or prove that she had any knowledge of complaints by tenants regarding Bobby Veal's conduct.[4]

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[4] Defendants' argument on this point reads in its entirety as follows:
Plaintiff did not plead (in the Complaint) or prove that Jewel Veal had any knowledge of complaints by tenants over the purported conduct of Bobby Veal. Although in a slightly different discrimination context, the Eighth Circuit has suggested that vicarious liability for discrimination (especially for punitive damages) requires that actual complaints were made to the person sought to be held vicariously liable. *Henderson v. Simmons Foods, Inc.*, 217 F.3d 612, 618 (8th Cir. 2002) (discussing *Varner v. National Supermarkets, Inc.,* 94 F.3d 1209,

(Def.'s Suggestions Supp. Mot. at 24.) As discussed below, the United States offered unrebutted evidence that Jewel Veal had actual knowledge regarding allegations of sexual harassment by Bobby Veal. Under the applicable law regarding direct and vicarious liability in sexual harassment cases, Jewel Veal was properly assessed actual and punitive damages.

A. Jewel Veal is Liable for the Actual Damages Caused By Bobby Veal's Conduct

Jewel Veal is co-owner and operator of all rental properties in which the discriminatory conduct alleged by the United States occurred. The Stipulation of Uncontroverted Facts that was agreed upon by both the Plaintiff and the Defendants and read into the record states:

> At all times relevant to this lawsuit defendants Bobby and Jewel Veal co-owned and operated numerous single-family rental homes in Kansas City, Missouri, including but not limited to houses at 3940 Flora, 4005 Highland, 4023 Highland, 5637 Highland, 5419 Michigan, 5407 Swope Park, 4625 Tracy, 4520 Virginia, 5704 Virginia, 4331 Wayne, 5415 Wayne, and 5043 Woodland.

(Tr. at 515.) Furthermore, during direct examination, Jewel Veal admitted that she and her husband were in the rental business together. (Tr. at 382.)

1. Jewel Veal is Directly Responsible for the Harm Caused by Bobby Veal's Conduct

At Bobby Veal's deposition taken in May 2003, relevant parts of which were read into the record, he admitted that, ten (10) years before (i.e. in 1993), a tenant named Carla or Carlo accused him of sexually harassing her. (Tr. at 528.) At trial, Jewel Veal testified that she had received written notification of complaints of female tenants, including a copy of the complaint that Sheila McClenton filed with the Kansas City Human Relations Department in 1997. (Tr. at 387-388.) Sheila McClenton testified that she told Jewel Veal that Bobby Veal "was always

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1214 (8th Cir., 1996).
(Def.'s Suggestions Supp. Mot. at 24.)

coming over to my house and trying to get me to have sex with him," and that Jewel Veal responded by telling her that she "was just like all the other bitches trying to get free rent . . . ." (Tr. at 141.) Jewel Veal testified that she had received written notification of Rauchelle McNeal's complaint in April 2000. (Tr. at 394.) She also testified that she had received notification in July of 1998 and in September of 2001 that the Kansas City Human Relations Bureau had made reasonable cause determinations on the McClenton and McNeal complaints, respectively. (Tr. at 390-91; 397-98.) Further, she testified that in July of 2002, she received a letter from the United States Department of Justice informing her that it was preparing to file lawsuit against her and her husband alleging sexual harassment. (Tr. at 381.) Notwithstanding all of these warnings, Jewel Veal admitted that she has "never done ***anything*** to ensure that Bobby Veal does not sexually harass [her] tenants." (Tr. at 399 (emphasis added).) Furthermore, at no point during the trial did Jewel Veal express any remorse or concern for the victims or any regret for the actions of Bobby Veal.

Based on the above evidence, the jury could have reasonably inferred that Jewel Veal knew about Bobby Veal's conduct and approved or at least acquiesced to it. *See*, *e.g.*, *United States v. Balistrieri*, 981 F.2d 926, 930 (7th Cir. 1992) (holding that punitive damages should have been submitted to the jury because jury could have reasonably inferred from the owner's presence at and control of the complex and his extensive contacts with employees "that he knew about, and approved, [the rental agent's discriminatory] actions."). Thus, the jury could have inferred from the evidence at trial that she shared direct responsibility for Bobby Veal's conduct against all of the victims.

2. Alternatively, Jewel Veal is Vicariously Liable for the Harm Caused by Bobby Veal's Conduct

Alternatively, Jewel Veal is at least vicariously liable for the reasons stated below. As co-owner and operator of the properties, Jewel Veal is responsible for the discriminatory acts of her co-owner and operator, Bobby Veal. To determine the liability of owners for violations of the Fair Housing Act by their agents, courts look to general agency principles. *See Meyer v. Holley*, 123 S.Ct. 824, 829 (2003). Under general agency law, a principal is liable for the harm caused by the acts of their agents or employees taken in the course of employment, regardless of the principal's actual knowledge of those acts. *See id.*; *see also, Alexander v. Riga*, 208 F.3d 419, 433 (3d Cir. 2000) (finding that husband was liable for wife's discriminatory conduct in violation of Fair Housing Act at jointly owned housing complex despite fact that he was out of country at time acts occurred); *Walker v. Crigler*, 976 F.2d 900, 904 (4th Cir. 1992); *Green v. Century 21*, 740 F.2d 460, 465 (6th Cir. 1984).

In applying general agency principles to determine an employer's liability for sexual harassment carried out by a supervisor, the Supreme Court has held that principles of vicarious liability apply as follows.[5] First, when the sexual harassment culminates in some tangible

[5] Although the doctrines of sexual harassment law have developed in the employment context, courts have imported the legal analysis from Title VII cases in finding that sexual harassment violates the Fair Housing Act. *See Honce v. Vigil*, 1 F.3d 1085, 1088-90 (10th Cir. 1993); *Krueger v. Cuomo*, 115 F.3d 487 (7th Cir. 1997) (upholding finding by HUD administrative law judge that landlord's sexual harassment of a female tenant and his attempt to evict her after she rejected his advances constituted *quid pro quo* harassment in violation of the Fair Housing Act); *Williams v. Poretsky Management, Inc.*, 955 F. Supp. 490, 495-96 (D. Md. 1996) (a prima facie case of hostile housing environment is made upon a showing that the conduct was unwelcome, it was based on the plaintiff's sex, the conduct was sufficiently severe or pervasive to alter the plaintiff's conditions of tenancy and to create an abusive living environment, and the conduct was imputable to the landlord); *Beliveau v. Caras*, 873 F. Supp. 1393, 1395-98 (C.D. Cal. 1995) (any unwanted sexual touching, particularly in plaintiff's own home, is adequate to support a sexual harassment claim under the Fair Housing Act); *People of*

adverse employment action, such as a discharge or a reduction in pay, then the ordinary rules of vicarious liability apply, and the principal is liable for the harm, regardless of whether the principal knew about or approved of the agent's conduct. *See Pennsylvania State Police v. Suders*, No. 03-95, 2004 WL 1300153, at *9 (U.S., June 14, 2004); *Burlington Industries, Inc. v. Ellerth*, 118 S.Ct. 2257, 2270 (1998); *Faragher v. City of Boca Raton*, 118 S.Ct. 2275, 2292 (1998). Such sexual harassment is commonly called "*quid pro quo*" harassment. *Ellerth*, 118 S.Ct. at 2264.

Applying the above principles to the present case, Jewel Veal is liable for the harm caused by Bobby Veal's actions that constitute *quid pro quo* sexual harassment, including his harassment of Sheila McClenton and Tishawna Owsley. Sheila McClenton gave uncontroverted testimony that Bobby Veal told Ms. McClenton that she would have to leave after she refused his advances. Bobby and Jewel Veal then initiated eviction proceedings against her, forcing her to move out. (Tr. at 134; 140-42.) Similarly, Tishawna Owsley testified that Bobby Veal told her that if she did "the grown up thing" she could stay in her house. (Tr. at 322.) She refused and he evicted her. (Tr. at 322.) Following Supreme Court precedent, Jewel Veal as co-owner has no defense to this.

Most of Bobby Veal's conduct, however, falls under the rubric of "hostile environment" harassment. In other words, it is sufficiently severe and/or pervasive to materially alter the nature of the housing environment. *See Suders*, 2004 WL 1300153, at *4, *Faragher*, 118 S.Ct. at 2278-

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State of New York ex rel. Abrams v. Merlino, 694 F. Supp. 1101, 1103-04 (S.D.N.Y. 1988) (sexual harassment is actionable under the 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) (both the hostile environment and the *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). Thus, these doctrines are relevant in the present case.

79; *Ellerth*, 118 S.Ct. at 2259; *Meritor Savings Bank, FSB v. Vinson*, 106 S.Ct. 2399, 2404-05 (1986); *Harris v. Forklift Systems, Inc.,* 114 S.Ct. 367, 370 (1993). In Title VII cases, the decision as to whether a principal is liable under a hostile environment theory requires a slightly more complicated analysis. In *Ellerth* and *Faragher*, the Court held that an employer in a "hostile environment" case may escape liability for the harassment of a supervisor only if it shows that (1) it exercised reasonable care to prevent the harassment from taking place; and (2) the plaintiff unreasonably failed to take advantage of the preventive measures that the employer put in place. *Ellerth*, 118 S.Ct. at 2270; *Faragher*, 118 S.Ct. at 2293. The Court has made clear that, at a minimum, the corrective or preventive measures would have to provide an avenue by which a victim could bypass the harasser and complain to someone with higher authority. *See Faragher*, 118 S.Ct. at 2293; *Vinson*, 106 S.Ct. at 2407. This is an affirmative defense upon which the employer bears the burden of proof. *See Faragher*, 118 S.Ct. at 2293; *Ellerth*, 118 S.Ct. at 2270.

There is some question as to whether this affirmative defense should be available in a case such as this one, where the Veals are co-owners and do not have the more traditional employer/employee relationship. Even assuming the affirmative defense established in *Faragher* and *Ellerth* applies here, however, Ms. Veal would not be able to take advantage of it.[6] As was established by the default judgment, Jewel Veal "knew or should have known of the discriminatory conduct of Bobby Veal, yet failed to take reasonable preventive or corrective measures." (Compl. at 2.) Indeed, Jewel Veal testified at trial that she had received written

[6] Defendants do not argue that Jewel Veal was entitled to a jury instruction on the *Faragher/Ellerth* affirmative defense, or that she is entitled to a new trial or a decision setting aside the verdict on that basis.

notification on two separate occasions that her female tenants had filed formal complaints against her and her husband alleging that Bobby Veal was sexually harassing them. (Tr. at 388, 394-95.) Ms. Veal also testified that she received reasonable cause determinations related to both complaints. (Tr. at 390-91, 397-98.) Despite this, Ms. Veal testified that after she received these notifications she did not advise her husband not to have any more contact with female tenants, did not ask him to stop going to the properties of female tenants, did not suggest he get fair housing training, and did not establish a sexual harassment policy. (Tr. at 389, 391-92, 396, and 398-99.) Indeed, Ms. Veal testified that she has never done *anything* to ensure that Bobby Veal does not sexually harass their tenants. (Tr. at 399.) Therefore, Jewel Veal is liable for all of Bobby Veal's discriminatory acts.

B. Jewel Veal Is Subject to Punitive Damages Because the Jury Could Have Reasonably Found that She Acted with Malice and/or Reckless Indifference to the Federally Protected Rights of Others

The Defendants recognize that if "actual complaints were made" to Jewel Veal, then the assessment of punitive damages against her was proper. (Def.'s Suggestions Supp. Mot. at 24.) Although the United States does not agree that these are the only circumstances in which the assessment of punitive damages against Ms. Veal would be proper,[7] the un-rebutted evidence that

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[7] In *Kolstad v. American Dental Association*, 119 S.Ct. 2118 (1999), the Supreme Court examined the circumstances in which it was proper to impute liability for punitive damages to the employer in Title VII actions. The Court held that "[t]he common law as codified in the Restatement (Second) of Agency (1957) provide[d] a useful starting point" for determining what is proper. *Id*. at 2128. Under the Restatement:

> Punitive damages can properly be awarded against a master or other principal because of an act by an agent if, but only if:
>
> (a) the principal authorized the doing and the manner of the act, or
>
> (b) the agent was unfit and the principal was reckless in employing him, or
>
> (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or
>
> (d) the principal or a managerial agent of the principal ratified or approved

Jewel Veal received and ignored multiple complaints about Bobby Veal makes clear that the jury properly assessed punitive damages against her.

Punitive damages[8] are appropriate if "the conduct is shown to be motivated by evil motive or intent, or when it involves reckless, or callous indifference to the federally protected rights" of others. *Kolstad v. American Dental Association*, 119 S.Ct. 2118, 2125 (1999) (quoting *Smith v. Wade*, 103 S.Ct. 1625, 1640 (1983)). In the context of civil rights violations, "the terms 'malice' or 'reckless indifference' pertain to the [defendant's] knowledge that it may be acting in violation of federal law, not its awareness that it is engaging in discrimination." *Kolstad*,119 S.Ct. at 2124. Thus, this standard may be satisfied if a defendant either knew his/her conduct was illegal or was recklessly indifferent to possibility. *See id.* (finding that "an employer must at least discriminate in the face of a perceived risk that its actions will violate federal law to be liable in punitive damages"); *Balistrieri*, 981 F.2d at 936 (explaining that "This does not mean that the defendant had to know he was violating the law. . . . if the conduct upon which liability is

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the act.

Id. (quoting Restatement (Second) of Agency § 217 C). The Supreme Court has crafted an affirmative defense to the "managerial capacity" prong of the Restatement, whereby an employer can escape vicarious liability for punitive damages for discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's good faith efforts to comply with Title VII." *See Kolstad*, 119 S.Ct. at 2129; *Romano v. U-Haul International*, 233 F.3d 655, 669 (1st Cir. 2000) (explaining that good faith defense upon which the employer bears the burden of proof). Because it is clear that Ms. Veal is liable for punitive damages because she ignored complaints about Bobby Veal, Defendants' acknowledgment that an owner who ignores complaints that a co-owner is sexually harassing tenants can be held liable for punitive damages, it is not necessary to explore what other circumstances might support an award of punitive damages against a principal under the *Kolstad* standard.

[8] Punitive damages are an available remedy in Fair Housing Act cases brought by the United States pursuant to 42 U.S.C. § 3614. Under § 3614(d)(1)(B), the court may award "monetary damages," which include punitive damages. *See Balistrieri*, 981 F.2d at 936; *United States v. Rent America, Corp.*, 734 F. Supp. 474, 480 (S.D. Fla. 1990).

founded evidences reckless or callous disregard for the plaintiff's rights or if the conduct springs from evil motive or intent, punitive damages are within the discretion of the jury."). There is no requirement that the conduct be independently egregious. *See Kolstad*, 119 S.Ct. at 2124.

The United States offered evidence at trial, and the jury properly determined, that Jewel Veal acted with malice or reckless indifference. At trial, Jewel Veal testified that she read the Fair Housing Act when she started renting homes under HUD's Section 8 program and that she understands that the Fair Housing Act prohibits sexual harassment. (Tr. at 384.) Further, as discussed above, *see supra* § III A 1, there was extensive evidence introduced at trial that Jewel Veal knew about Bobby Veal's behavior and did nothing to stop it. The jury could have reasonably inferred from the fact that Jewel Veal received and ignored multiple complaints from tenants about Bobby Veal's conduct, and from her failure to express any remorse or regret at trial, that she knew about and approved, or at least acquiesced to, Bobby Veals's conduct. *See discussion supra* § III A 1. At the very least, Jewel Veal was recklessly indifferent to the likelihood that Bobby Veal was sexually harassing female tenants. *See Miller v. Apartments and Homes of New Jersey, Inc.*, 646 F.2d 101, 111 (3d Cir. 1981) (upholding punitive damages award against defendant property owner who admitted that he "had not taken any action either to implement or enforce a policy of non-discrimination").

IV. THE PUNITIVE DAMAGES AWARDS DO NOT VIOLATE DUE PROCESS[9]

[9] The Defendants claim that the parties did not litigate the issue of punitive damages liability at trial. (Def.'s Suggestions Supp. Mot. at 27.) This is not the case. During the pre-trial conference, the United States and the Court agreed that liability for punitive damages needed to be proven at trial. (Tr. at 16.) Furthermore, during the trial, the United States adduced evidence establishing that Bobby and Jewel Veal acted with malice and reckless indifference. At the end of the trial, the Court gave a jury instruction, Instruction No. 15, on punitive damages, which stated, in part, "you may, but are not required to, award the victim an additional amount as punitive damages if you find it is appropriate to punish the defendants or deter the defendant and

In *State Farm Mutual Automobile Insurance Company v. Campbell*, the Supreme Court explained that, "The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor." 123 S.Ct. 1513, 1519-20 (2003). The Court further explained that "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *Id.* at 1520. Given the severity of the Defendants' conduct and the degree of harm that they caused, the verdict against them is neither excessive nor arbitrary.

The Supreme Court has articulated three guideposts to help determine whether punitive damages awards comport with due process: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties imposed in comparable cases." *Id.* at 1520; *accord BMW of North America, Inc. v. Gore*, 116 S.Ct. 1513, 1589 (1996). Applying these guideposts, the punitive damages awards in this case are proper.

A. The Punitive Damages Awards Are Appropriate Because the Defendants' Conduct Was Utterly Reprehensible

The Supreme Court has explained that "[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's

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others from like conduct in the future." (Tr. at 521-522.) The United States then argued this issue in closing. (Tr. at 528, 543.)

conduct." *Id.* at 1521 (quoting *Gore*, 116 S.Ct. at 1589). The Court listed the following factors to be considered to determine what constitutes reprehensible conduct:

> The harm caused was physical as opposed to economic; the tortious conduct evinced an indifference or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

Id. at 1521. Defendants do not contest that the jury could have reasonably found that the conduct of both Bobby Veal and Jewel Veal was reprehensible. (Def.'s Suggestions Supp. Mot. at 26.) Indeed, the conduct that Bobby Veal engaged in and that Jewel Veal willingly allowed falls at the far end of reprehensibility under each of these factors. Punitive damages awards of $527,500 against each Defendant for such conduct are neither excessive nor arbitrary.

1. The Defendants Caused Physical Harm

First, the conduct that Bobby Veal engaged in was physical. LaTonya Winters testified that Bobby Veal twice entered her home without permission, held her down on her bed, and forced her to have sex with him. (Tr. at 239-250.) Sheila McClenton described how Bobby Veal pulled her waist so hard that, in her attempts to resist him, she broke her fingernails. (Tr. at 134.) Rauchelle McNeal described how Bobby Veal came to her house and on two occasions, touched her vagina and buttocks. (Tr. at 480; 483-84.) Clareice Taylor described how, while she was seven months pregnant, Bobby Veal pressed his penis against her buttocks and how the following day he came to her house, let himself in, woke her up, and grabbed her buttocks. (Tr. at 175; 178.) Terri May described how Bobby Veal embraced her and refused to let go despite her asking him to. (Tr. at 281-282.) Tishawna Owsley described how Bobby Veal grabbed her breast as she stood talking to him at her child's birthday party. (Tr. at 313-314.) Lashawn Thomas described how Bobby Veal tried on more than one occasion to grab her breasts and her

body and how he tried to pull her hand to his "private area." (Tr. at 340; 342; 344-45.) Patricia Holloway-Johnson described how Bobby Veal pressed his body up so close to hers that she could feel his penis up against her leg and his breath on her neck. (Tr. at 408.)

2. The Defendants' Conduct Evinced a Reckless Disregard for the Health and Safety of the Victims

Nothing is more fundamental to the concept of safety than the feeling of security that a person has in their own home. Bobby and Jewel Veal took away any safety that these women had. Bobby Veal did so by entering their homes, often without notice or authorization, in order to satisfy his sexual desires. Jewel Veal did so by doing nothing to stop him or to otherwise ensure the safety of her tenants after she learned what was happening. The Defendants also cared nothing about the health of these women. The victims testified at trial as to the severe emotional toll the continuing and unrelenting harassment caused. (Tr. at 149-150; 491; 251-52.) Furthermore, LaTonya Winters testified that Bobby Veal did not even wear a condom when he forced her to have sex with him, evincing a complete indifference to her health or well being. (Tr. at 250.)

3. The Defendants Targeted Women Who Were Financially Vulnerable

Each of these victims was financially vulnerable at the time they were harassed. All of the tenant victims were receiving Section 8 assistance. Dora Ford, who was a guest, was sleeping on her daughter's floor because her furnace was broken and she had not yet found another place to live. (Tr. at 420.) Before renting from the Veals, Rauchelle McNeal had been living in her car. (Tr. at 476.) Clareice Taylor, LaTonya Winters, and Tishawna Owsley were without homes of their own. (Tr. at 171-173; 234; 307-308.)

4. The Defendants' Conduct Involved Repeated Actions

In *Gore*, the Court explained: "Certainly, evidence that a defendant has repeatedly engaged in prohibited conduct while knowing or suspecting that it was unlawful would provide relevant support for an argument that strong medicine is required to cure the defendant's disrespect for the law." *Gore*, 116 S.Ct. at 1599. Not only did Bobby Veal sexually harass numerous women over at least eight (8) years, he harassed each victim on more than one occasion. Similarly, Jewel Veal repeatedly ignored warnings about her husband's conduct. The jury could have reasonably concluded that "strong medicine" was necessary in these circumstances.

5. The Victims Were Harmed by Intentional Malice, Not Mere Accident

There is no possibility that the victims were harmed by mistake. The acts and omissions described were intentional. Bobby Veal intentionally entered women's homes without notice or warning, he intentionally made comments comparing their breast size to those of their relatives, he intentionally groped numerous women and, in the case of LaTonya Winters, intentionally forced her to have sex with him, and he intentionally asked tenants for sex in exchange for their right to stay in their homes. Jewel Veal intentionally ignored her husband's discriminatory conduct.

B. The Amount of the Punitive Damages Awards Do Not Exceed a Constitutionally Permitted Ratio

The second factor articulated by the Supreme Court is the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award. *Campbell*, 123 S.Ct. at 1520. In *Gore*, the Court explored this factor and stated, "we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula, even one that

compares actual *and potential* damages to the punitive award." *Gore*, 116 S.Ct. at 1602 (emphasis in original). In *Campbell*, the Court elaborated that: "Our jurisprudence and the principles it has now established demonstrate, however, that, in practice few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Campbell*, 123 S.Ct. at 1524. However, the Court refused to provide "rigid benchmarks that a punitive damages award may not surpass," and explained that the ratios of potential harm to punitive damages may be greater "where 'a particularly egregious act has resulted in only a small amount of economic damages.'" *Id.* at 1524. The court further explained that "a higher ratio *might* be necessary where 'the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine.'" *Id.*

1. *Campbell* Does Not Prohibit a Ratio of Punitive Damages to Compensatory Damages That Exceeds Nine to One

The Defendants argue that *Campbell* establishes a rigid rule that prohibits no more than a single digit ratio of punitive damages to compensatory damages. However, courts have rejected the notion that *Campbell* establishes such a rule, at least in cases where the compensatory damages are inherently low or difficult to quantify. For example, the Fifth Circuit, using the *Gore*/*Campbell* guidelines, found that in a Fair Housing Act case a ratio of 1 to 110 of compensatory to punitive damages ($500 in compensatory, $55,000 in punitive) was not improper. *Lincoln v. Case*, 340 F.3d 283, 293-294 (5th Cir. 2003). The *Lincoln* court was persuaded by the plaintiff's argument that the ratio was proper given the "'inherently low or hard to determine actual injuries' in housing discrimination cases and the important goal of deterring future wrongdoing." *Id.* Notably, *Lincoln* involved a single incident of discrimination in which a white property owner refused to rent to a biracial couple. *Id.* at 286. While egregious conduct,

the facts of *Lincoln* do not have all the indicia of reprehensibility (as articulated in *Gore*) that are present in this case.

Similarly, in *Mathias v. Accor Economy Lodging*, the Seventh Circuit rejected the defendants' argument that the Supreme Court's opinion in *Campbell* required a punitive damages award that was no more than four times the compensatory award. 347 F.3d 672, 675-76 (7th Cir. 2003). The court reasoned that, because "[t]he defendant's behavior was outrageous but the compensable harm done was slight and at the same time difficult to quantify because a large element of it was emotional," the punitive damages awards totaling $372,000, 37.2 times the compensatory award, were appropriate. *Mathias*, 347 F.3d at 677-78. Again, the conduct of the defendant in *Mathias*, which involved a hotel renting rooms infested with bed bugs to guests, is not as reprehensible under the factors articulated in *Campbell* as the conduct in present case. Other courts applying Gore have also upheld punitive to compensatory damage ratios that far exceed 9 to 1. *See United States v. Big D Enterprises, Inc.*, 184 F.3d 924 (8th Cir. 1999) (upholding 100 to 1 ratio—$100,000 in punitive damages and $1000 total in compensatory damages— in Fair Housing Act race discrimination case); *Jacque v. Steenberg Homes, Inc.*, 563 N.W.2d 154 (Wis. 1997) (upholding 100,000 to 1 ratio in trespass case).

In the present case, the ratio of awarded compensatory damages to punitive damages is 1 to 11 per Defendant[10] and the ratio of compensatory damages to the total punitive damages award

[10] This is comparing the compensatory damages award of $47,804, which is jointly and severally liable, to the punitive damages of $527,500 awarded against each defendant.

is 1 to 22.[11] Given that most of the harm was emotional, not economic, and was difficult to quantify, this ratio is justified.

2. A Consideration of Potential Harm also Supports the Punitive Damages Awarded

Furthermore, it is proper to consider the ratio of "actual ***or potential harm"*** to the punitive damages award. *Campbell*, 123 S.Ct. at 1520 (emphasis added). *See also Asa-Brandt, Inc. v. ADM Investor Serv., Inc.*, 344 F.3d 738, 747 (8th Cir. 2003) (using potential harm, which was greater than compensatory damages awarded, as benchmark to determine propriety of punitive damages award); and *Dean v. Olibas*, 129 F.3d 1001, 1007 (8th Cir. 1997) (using potential harm to the victim and to future victims in determining the propriety of punitive damages award in civil rights case involving false imprisonment and stating that "in imposing punitive damages it is proper to consider not only the harm that actually resulted from the defendant's misdeeds but also the harm that might have resulted"). As the Supreme Court explained in *Gore*, when reviewing a punitive damages award, courts should consider "whether there is a reasonable relationship between the punitive damages award and *the harm likely to result from the defendant's conduct* as well as the harm that has actually occurred." *Gore*, 116 S.Ct. 1589, 1602 (quoting *TXO Prod. Corp. v. Alliance Res. Corp.*, 113 S.Ct. 2711, 2721 (1993)) (emphasis in original). Important in this consideration is the "magnitude of *potential harm* that the defendant's conduct would have caused to his intended victim if the wrongful plan had

[11] The awards of compensatory and punitive damages are properly viewed in the aggregate because there is only one plaintiff, the United States, and the jury was required to consider the claims of all of the aggrieved persons together in rendering its verdict. Although the awards will be distributed to aggrieved persons, the United States, not the aggrieved persons, is the prevailing party and was the only party litigating this case against the Defendants.

succeeded, as well as the possible harm to other victims that might have resulted if similar future behavior were not deterred." *TXO*, 113 S.Ct. at 2721-22, *accord Asa-Brandt*, 344 F.3d at 747.

Although it is difficult to quantify the potential for harm in a discrimination case in which most of the actual damages are intangible, a comparable case shows that sexual harassment can cause significant intangible damages. In *Eich v. Board of Regents for Central Missouri State University*, the Eighth Circuit restored a $200,000 non-economic damage award in a sexual harassment case. 350 F.3d 752, 764 (8th Cir. 2003). The case involved the sexual harassment of a female employee over a seven year period and included incidents of sexual innuendo and touching of her breasts, hair, shoulders and back. *Id.* at 754-57. In explaining the reasons for their reversal of the district court, the court quoted another of its opinions in a sexual harassment case, stating:

> The emotional harm, brought about by this record of human indecency, sought to destroy the human psyche as well as the human spirit of each plaintiff. The humiliation and degradation suffered by these women is irreparable. Although money damages cannot make these women whole or even begin to repair the injury done, it can serve to set a precedent that in the environment of the working place such hostility will not be tolerated.

Id. at 761 (quoting *Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287, 1304 (8th Cir. 1997)).[12] *See also HUD v. Krueger*, Fair Housing–Fair Lending Rptr. ¶ 25,119 (HUD ALJ 1996), *aff'd sub nom. Krueger v. Cuomo*, 115 F.3d 487 (7th Cir. 1997) (awarding $22,000 in intangible damages to single female victim in sexual harassment case who suffered sexual harassment by landlord, including physical advances and lewd comments); *HUD v. Kogut*, Fair Housing–Fair Lending Rptr. ¶ 25,100 (HUD ALJ 1995) (awarding $25,000 in intangible damages to single female

[12] The *Eich* court also listed various amounts that were upheld for emotional distress in other civil rights and discrimination cases, including $50,000 and $100,000 awards in race discrimination cases and $165,000 and $75,000 in ADA cases. *Eich*, 350 F.3d at 763.

victim in sexual harassment Fair Housing Act case). Thus, the Defendants' actions had the potential to cause great harm.

Not only did the Veals's behavior create the potential for intangible damages, but the victims also testified as to the emotional distress they suffered. For example, Sheila McClenton sees Bobby Veal's face all the time, has nightmares, and described how the harassment has affected her relationship with her husband and with her children. (Tr. at 149-150.) Rauchelle McNeal considered killing herself because she was worried that Bobby Veal would evict her because she would not sleep with him. (Tr. at 491.) LaTonya Winters tried to kill herself by taking twelve (12) Percocet because of what she had been through with Bobby Veal. (Tr. at 251-52.) The other victims each described how they were affected by the Defendants' conduct. Just because the jury placed most of the damages in the punitive damages column, instead of compensatory damages, does not mean that the victims did not suffer appreciable tangible harm or that the jury thought the tangible harm was inconsequential. As the Seventh Circuit noted in upholding a punitive damages award in the absence of any compensatory damages, "[p]erhaps the jurors preferred to award a single sum under the punitive category rather than apportion between compensatory and punitive damages." *Timm v. Progressive Steel Treating, Inc.*, 137 F.3d 1008, 1011 (7th Cir. 1998). Thus, the ratio of potential damages to punitive damages in this case is not excessive.

3. The Defendants Suggested Method of Calculating Punitive Damages Awards Would Yield Absurd and Unjust Results

The Defendants suggest that the Court parse out the damages awards and compare the ratio of compensatory damages awarded to each victim to the total of the punitive damages

awarded against both of the Defendants. They then suggest that the ratio be limited to one to nine. This approach is contrary to case law, *see supra*, and leads to absurd results.[13]

Consider Clareice Taylor, who was in her early 20's when she moved into a house owned by Bobby and Jewel Veal. Ms. Taylor was seven months pregnant when Bobby Veal touched her sexually. The first time Bobby Veal touched Ms. Taylor he came up behind her, pressed his penis against her buttocks, and asked her twice "Is this sexual harassment?" (Tr. at 175-177.) He then came back the next day and, while Ms. Taylor lay sleeping on the couch of her own home, let himself into her house. (Tr. at 177.) He woke her up and indicated to her that she should go upstairs. As she walked upstairs, Bobby Veal grabbed her buttocks. She told him not to touch her. (Tr. at 178.) When they got to the top of the stairs, he, as Clareice Taylor explained, "grabs my hands, he spins me around, and he starts rubbing on my butt, and he gets me close and he starts rubbing on my butt." (Tr. at 178.) Shortly thereafter, Bobby Veal told visitors to Ms. Taylor's home, in her presence, that "Pregnant pussy is good pussy." (Tr. at 192.)

Ms. Taylor was severely affected by what happened with Bobby Veal. While still a tenant of the Veals, Ms. Taylor talked to Ann McKelvy, an investigator with the Kansas City Human Relations Department. (Tr. at 271.) Ms. Taylor told Ms. McKelvy that she had been

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[13] In *Jacque v. Steenberg Homes, Inc.*, the Wisconsin Supreme Court, applying *Gore*, affirmed a punitive damages award of $100,000 despite the fact that the plaintiff received a one dollar nominal damages award. 563 N.W.2d 154, 154 (Wis. 1997). In this case in which a builder of mobile homes engaged in repeated trespass, the court explained that:

> [I]n the proper case, a $1 nominal damage award may properly support a $100,000 punitive damage award where a much larger compensatory award might not. This could include situations where egregious acts result in injuries that are hard to detect or noneconomic harm that is difficult to measure. In these instances, as in the case before us, a mathematical bright line between the constitutional and the unconstitutional would turn the concept of punitive damages on its head.

Id. at 164-165.

groped by Mr. Veal and that he had made unannounced visits to her home. (Tr. at 271.) During this conversation, Ms. Taylor was very distraught and crying, but did not want to file a complaint because she was intimidated and thought Bobby Veal would retaliate. (Tr. at 271.) When her cousin Angie Taylor saw Clareice after the incidents, Clareice was crying, shaking and nervous. (Tr. at 190.) Ms. Taylor described how, as the result of Bobby Veal's conduct, Clareice cried a lot, was nervous, stopped eating, and stopped taking her medicine. (Tr. at 197.) In fact, Clareice asked Angie and her five children to move into her two bedroom home with herself and her children because she "didn't want [Bobby Veal] to think that he could come over anytime and touch me or do anything else." (Tr. at 180; 195-96.) Ms. Taylor took castor oil to send her into labor so that she could leave her home. (Tr. at 183-84.) Eventually, she and her children moved out of the house, and she gave up her Section 8 assistance because of the harassment. (Tr. at 182.)

When Clareice Taylor became a tenant of Bobby and Jewel Veal, Jewel Veal had good reason to know what Bobby Veal was doing. Clareice Taylor moved into the house in October 2000, seven years after Carla (or Carlo) had made her complaint, three years after Jewel Veal was informed of Sheila McClenton's complaint, and over five months after Jewel Veal was informed of Rauchelle McNeal's complaint. Jewel Veal did nothing to protect Clareice from Bobby Veal.

The jury awarded Clareice Taylor one dollar in compensatory damages and $50,000 in punitive damages against each defendant. Applying Defendant's logic, Clareice Taylor should be awarded only ten dollars in total. When Congress amended the Fair Housing Act in 1988, it removed the limit on punitive damages. *See* 42 U.S.C. § 3612(c), 42 U.S.C. § 3613(c)(1). In the legislative history for this amendment, the House Judiciary Committee described the limitation as "disadvantageous" and explained that "the [$1,000] limit on punitive damages served as a major

impediment to imposing an effective deterrent on violators and a disincentive for private persons to bring suits." H.R. Rep. No. 100-711, at 16 and 40. The message that a ten dollar award would send is that landlords can have a virtually free pass to sexually harass their tenants, even tenants who are young, pregnant, and tell their landlords not to touch them.

C. The Amount of Punitive Damages Awarded Comports with the Third *Gore/Campbell* Guidepost

The third guidepost provided by the Supreme Court is the civil penalties imposed in similar cases. In both *Campbell* and *Gore*, the Supreme Court suggests that the amount of civil penalties available be used as guide, but neither describes this as a cap. *See Campbell*, 123 S.Ct. at 1526; *Gore*, 116 S.Ct. at 1603. In fact, both opinions stress that the most important factor is the reprehensibility of the conduct. *See Campbell*, 123 S.Ct. at 1521; *Gore*, 116 S.Ct. at 1599. In both cases, the comparable civil sanctions were far below the amount of punitive damages awarded – $10,000 to $2,000,000 in *Gore* and $10,000 to $145,000,000 in *Campbell* – but in neither case did the Supreme Court set these civil sanctions as a limit for punitive damages. *See Campbell*, 123 S.Ct. at 1526; *Gore*, 116 S.Ct. at 1603.

In 1988, Congress amended the Fair Housing Act and removed a $1000 cap on punitive damages. *See* 42 U.S.C. § 3612(c), 42U.S.C. 3613(c)(1). At that time, Congress also amended Section 814 of the Fair Housing Act to read in pertinent part: "In a civil action [to enforce the Act], the court * * * may, to vindicate the public interest, assess a civil penalty against the respondent (i) in an amount not exceeding $50,000, for a first violation [] and in an amount not exceeding $100,000, for any subsequent violation." 42 U.S.C. 3614(d)(1)(C)(i). The Attorney General may adjust this maximum statutory penalty upward to account for inflation, in accordance with the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, §

31001(s)(1), 110 Stat. 1321-373 (codified as amended at 28 U.S.C. § 2461 (Supp. II 1996)). Pursuant to this procedure, the limits for the civil penalties are now set at $55,000 and $110,000. *See* 28 C.F.R. § 85.3(b)(3) (2001). Like punitive damages, civil penalties are assessed per defendant. *See* 42 U.S.C. § 3614(d); *see also, HUD v. Joseph*, Fair Housing–Fair Lending Rptr. ¶ 25,072 (HUD ALJ 1994) (interpreting parallel statutory language under Fair Housing Act and assessing maximum civil penalty against two defendants).

Applying the third guidepost, courts have upheld punitive damage awards equal to or in excess of the applicable civil penalty. *See*, *e.g.*, *Zhang v. American Gem Seafoods, Inc.*, 339 F.3d 1020, 1044 (9th Cir. 2003) (upholding in employment discrimination action under § 1981 jury's punitive damages award of $2,600,000 despite $300,000 cap on punitive damages under comparable Title VII); *Mathias*, 347 F.3d at 678 (upholding punitive damages award of $186,000 to each of two plaintiffs despite Illinois and Chicago laws providing penalties of $2,500 for such conduct); *Big D Enterprises*, 184 F.3d at 933 (8th Cir. 1999) (applying third guidepost in housing discrimination case and recognizing the propriety of punitive damages award of $50,000 each against two defendants); *Broom v. Biondi*, 17 F.Supp.2d 211, 215, 229 (S.D.N.Y. 1997) (rejecting defendants' motion for new trial and remittitur in Fair Housing Act case in which jury awarded punitive damages of $410,000 to one plaintiff couple and $47,000 to another plaintiff and finding that under the *"Gore* factors" "the punitive damage awards are reasonable when compared with the penalties that could be imposed for the conduct at issue."); *see also Lincoln*, 340 F.3d at 293-294 (reducing $100,000 punitive damages award to single plaintiff to $55,000 in Fair Housing Act case).

In this case, eleven (11) victims were harmed by the two (2) Defendants. Each victim suffered repeated acts of harassment, and each victim could have filed an independent action

against these Defendants. *See* 42 U.S.C. § 3613. The base civil penalty under the Fair Housing Act is $55,000 per defendant, for a case brought under 42 U.S.C. § 3614, "for a first violation." "This provision puts landlords on notice that a discriminatory act may result in a civil penalty of $50,000 [sic]." *Szwast v. Carlton Apartments*, 102 F. Supp.2d 777, 784 (E.D. Mich. 2000). In applying the parallel HUD provisions for civil penalties, the HUD Secretary has imposed the maximum civil penalty ***per violation***. *See*, *e.g.*, *HUD v. Wilson*, Fair Housing–Fair Lending Rptr. ¶ 25,146 (HUD ALJ 2000) (assessing multiple civil penalties against each defendant, i.e., assessing maximum civil penalties against each defendant for each violation of Fair Housing Act). The jury found that eleven (11) women were victims of egregious sexual harassment. Applying the analysis of the decisions noted above, a punitive damages award of $55,000 per defendant per victim ($605,000 per defendant or $1,210,000 total) is consistent with the comparable civil penalties under the Fair Housing Act. These total amounts are slightly higher than the total punitive damages awarded in this case. Given that the constitutional concerns with punitive damages awards are about fairness and notice, the Defendants cannot argue that they did not have notice that punitive damages awards of $527,500, per defendant, were a possibility. Furthermore, given the longstanding nature and extreme reprehensibility of the conduct and the number of victims, such an award is not unfair.

V. THE DEFENDANTS WAIVED ANY ARGUMENT THAT THEIR NET WORTH IS NOT SUFFICIENT TO SUSTAIN A PUNITIVE DAMAGES AWARD

The Defendants' claim that a defendant's income and net worth may be taken into account to determine an award of punitive damages and ask this court to conduct a hearing to determine the Defendants' net worth. For this proposition, they cite an Eighth Circuit case applying South Dakota law, *Jones v. Swanson*, 341 F.3d 723 (8th Cir. 2003). Under South

Dakota law, "the wrongdoer's financial condition" is one of the relevant factors to a punitive damages award, along with the amount allowed in compensatory damages, the nature and enormity of the wrong, the intent of the wrongdoer (which includes the remorse of the wrongdoer), and all circumstances attendant to the wrongdoers actions. *Id.* at 736-37. This case, which does not involve the Due Process clause and was not decided under federal law, has no bearing on the facts or relevant law in this case.

The Defendants ignore controlling federal law establishing that they have waived any opportunity to have their net worth considered in determining punitive damages and specifically rejecting the possibility of a post-verdict hearing regarding net worth. In *Grabinski v. Blue Springs Ford Sales, Inc.*, the Eighth Circuit adopted the Seventh Circuit rule that "it is a defendant's burden to introduce evidence of net worth before a jury for purposes of minimizing a punitive damages award." *Id.* at 570-71 (citing *Kemezy v. Peters*, 79 F.3d 33, 34 (7th Cir. 1996)). In so doing, the *Grabinski* court rejected the defendants' claim that, as a matter of federal constitutional law, the trial court erred by not considering post verdict affidavits of net worth. *Id.* at 570. The court agreed with the plaintiff's argument that the "defendants' failure to put on evidence of their net worth at trial constitutes a waiver." *Id.* Thus, by failing to introduce any evidence of net worth at trial, the Defendants have waived any argument that their net worth should be considered now.

At trial, the United States presented limited evidence regarding the Defendants' finances.[14] The United States presented this evidence to preempt what it believed would be the

[14] At trial, the United States introduced the following financial information. For the years from 2000 to 2003, Defendants received the following amounts in rental income from Section 8: $53,176, $102,645, $126,720, and $94,514. (Tr. at 216). These amounts do not include rental income paid from tenants directly to Bobby and Jewel Veal. (Tr. at 210.)

Defendants' defense—that they have no money. Rather than showing an exhaustive picture of the Defendants' finances, which the United States does not have, the United States sought to present enough financial information so that the jury would not believe the Defendants' claims of poverty. In fact, part of what the United States sought to show was that the Defendants have, at times, misrepresented their financial situation so that the jury would not believe any claims regarding their limited resources.[15] Neither party introduced a statement of the Defendants' net worth at trial,[16] and the Defendants have waived any right to introduce net worth information at this stage.

Defendants receive $1,200 per month in pension. (Tr. at 218.) Bobby Veal's salary when he retired from Allied Signal in 2000 was $65,000 per year. (Tr. at 218.) Bobby Veal receives $1,500 per month in Social Security. (Tr. at 218.) Bobby and Jewel Veal have rented properties since the late 1980's. (Tr. at 218-19.) Bobby and Jewel Veal own 15 or 16 rental properties, but have owned more in the past. (Tr. at 219-220.) Two of the properties that they currently own are appraised for $70,000 and $65,000. (Tr. at 225-26.) In 2002, Bobby and Jewel Veal sold ten of those properties and netted $230,000 from that sale. (Tr. at 223-24.)

[15] For example, the United States elicited testimony from Jewel Veal during a hostile direct examination that on the Defendants' 2002 federal tax return they only reported $57,862 in rental income when, in fact, they actually received $126,720 in rental income from Section 8 alone. (Tr. at 216, 384.) Also uncontroverted at trial was Tishawna Owsley's testimony that Bobby Veal's son told her that Bobby Veal had been switching property from his name to his son's name because of this lawsuit. (Tr. at 325-26.) Ms. Owsley's testimony is supported by certified real estate deeds, introduced as Exhibits 17-65. These deeds, which were signed by Bobby and Jewel Veal, show that, after this lawsuit was filed in July of 2002, Bobby and Jewel Veal transferred numerous properties in name to Chillini Property Management, Inc. their son Roberto Veal's company (many of these properties were transferred through the Veal's daughter, Flora Jeanette Lyons).

[16] The Defendants claim that their "assets, without liabilities, in the amount of $500,000 were read into evidence." (Def.'s Suggestions Supp. Mot. at 27.) However, this was not read in evidence. The United States does not know what basis Defendants have for this contention.

VI. REMITTITUR IS NOT APPROPRIATE IN THIS CASE

The Defendants ask this Court, in the alternative, to remit the punitive damages award. However, remittitur is appropriate "only when the verdict is so grossly excessive as to shock the conscience of the court." *Eich*, 350 F.3d at 763. At the trial of this case, the jury heard evidence that documented over seven years of abuse and harassment. They heard from eleven (11) women who had been harmed by this pattern of abuse. After hearing details of the abuse and the devastating effects it has had on these women, the jury rendered a verdict that was intended to both compensate the victims and to punish and deter the Defendants' conduct. Given the severe nature of the conduct and the harm, as discussed above, the jury's verdict is not unreasonable and does not shock the conscience.

VII. THE UNITED STATES' CLAIMS PURSUANT TO 42 U.S.C. § 3614 ARE NOT TIME-BARRED

The Defendants argue that the Missouri state statute of limitations bars the United States from introducing evidence of alleged discriminatory incidents that occurred more than five years before the United States filed its complaint. (Def.'s Suggestions Supp. Mot. at 23-24.) Although the Defendants recognize that the Fair Housing Act, by its terms, does not provide a statute of limitations for pattern or practice claims brought pursuant to 42 U.S.C. 3614(a), they ask the Court to import Missouri's five-year statute of limitations for personal injury actions to bar the United States' from presenting evidence of alleged incidents of discrimination prior to July 1997. This is incorrect.

In the first place, the statute of limitations is an affirmative defense on which Defendants bear the burden of proof. *See Motley v. United States*, 295 F.3d 820, 822 (8th Cir. 2002). It is

waived if it is not pled or, as in this case, if the responsive pleadings are struck.[17] *See, e.g. In re Estate of Ferdinand E. Marcos Human Rights Litigation*, 978 F.2d 493, 495 n.2 (9th Cir. 1992) (noting that defendants' claim that action against her was time barred by two-year state statute of limitations was an affirmative defense which was waived by virtue of default).

In any event, the Defendants' argument lacks merit. The Missouri state statute of limitations is inapplicable here. Claims brought pursuant to 42 U.S.C. § 3614(a) are not subject to state statutes of limitations. *See United States v. Marsten Apartments, Inc.*, 175 F.R.D. 257, 262 (E.D. Mich. 1997); *United States v. Incorp. Vill. of Island Park*, 791 F.Supp. 354, 364-67 (E.D.N.Y. 1992), *United States v. City of Parma*, 494 F.Supp. 1049, 1094 n. 63 (N.D. Ohio 1980), *aff'd*, 661 F.2d 562 (6th Cir. 1981). Rather, the applicable statute of limitations for claims for damages brought pursuant to 42 U.S.C. § 3614(a) is three years from the date on which the cause of action accrues. *See* 28 U.S.C. § 2415(b).[18] A cause of action does not "accrue" if "facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with responsibility to act in the circumstances." 28 U.S.C. § 2416(c). For purposes of bringing a pattern or practice claim under the Fair Housing Act in federal court, it is the Attorney General who is the official charged with authority to act, *see* 28 U.S.C. § 2415; 42 U.S.C. § 3614(a). Accordingly, the statute of limitations in § 2415 does not commence to run until the Attorney General knows, or has reason to know, of the facts that would give rise to its

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[17] In the Defendants' Answer they make reference to statute of limitations as a possible affirmative defense. (Def.s' Ans. at 2.) The Defendants' Answer, and any affirmative defenses contained therein, were struck by the Court's June 12, 2003 Default Judgement Order.

[18] There is no statute of limitations for claims for injunctive relief brought pursuant to 42 U.S.C. § 3614(a). *See Harrison*, 188 F.Supp.2d at 80; *Island Park*, 791 F.Supp. at 365. The United States' claims for civil penalties are subject to a five year statute of limitations. See 28 U.S.C. § 2462. Neither of these claims are at issue in this motion.

claims. *See United States v. Harrison*, 188 F.Supp.2d 77, 81 (D. Mass. 2002) (citing the date on which HUD referred a complaint to the Department of Justice as the relevant date for limitations purposes as applied to claims for monetary damages on behalf of aggrieved persons). In the instant case, the Housing and Civil Enforcement Section of the Civil Rights Division of the U.S. Department of Justice received notice of sufficient facts to initiate an investigation into the Defendants' rental practices in October 2001, when it opened the matter in this case after a referral from the Kansas City Human Relations Commission. (Damon Decl. Ex. A.). The claims at issue could not have "accrued" before that time. The United States filed its complaint in this action in July 2002, well within the three-year statute of limitations. Therefore the United States claims for monetary damages brought pursuant to 42 U.S.C. § 3614(a), are not time-barred.

VIII. THE UNITED STATES HAS STANDING TO SUE

The Defendants argue that the Court should vacate its judgment and dismiss the United States' complaint because the Fair Housing Act does not specifically grant the United States of America standing to bring suit in its name. (Def.'s Suggestions Supp. Mot. at 28-29.) The Defendants' recognize that the Fair Housing Act gives "the Attorney General of the United States" standing, but argue that the "United States of America" does not have standing "to bring suit in its name." (Def.'s Suggestions Supp. Mot. at 28.) This argument completely lacks merit, and demonstrates a fundamental misunderstanding of the Attorney General's enforcement power under the Fair Housing Act specifically, and civil rights laws generally. When the Attorney General files suit under 42 U.S.C. § 3614(a), the "United States of America" is the named plaintiff. The same is true, for example, when the Attorney General files a pattern or practice lawsuit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-6(a), and when the Attorney General files a pattern or practice lawsuit under the Americans with Disabilities Act, 42

U.S.C. § 12188(b)(1)(B). Indeed, the applicable Department of Justice regulations authorize the Assistant Attorney General for the Civil Rights Division to bring "civil actions and proceedings" enforcing such laws "on behalf of the Government." *See* 28 C.F.R § 0.50. Because the Fair Housing Act explicitly gives the United States the right to sue through an enforcement action by the Attorney General, the Defendants' argument is without merit.

CONCLUSION

For the foregoing reasons, Defendants' Motion for New Trial, or in the Alternative Motion for Relief from Judgment, or in the Alternative Motion for Remittitur or Reduction in Judgment should be denied.

Dated this ___ day of June, 2004.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rebecca B. Bond, counsel for the United States, hereby certify that on this the 25th day of June, 2004, I served a true and correct copy of Plaintiff United States' Opposition to Defendants' Motion for New Trial, or in the Alternative Motion for Relief from 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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