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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	
)	CIVIL ACTION NO. _____
Plaintiff)	
)	
v.)	
)	COMPLAINT and JURY DEMAND
LINDA BARBER, BERT BARBER,)	
and LORI THOMPSON,)	
)	
Defendants.)	
_____)	

The United States of America alleges as follows:

NATURE OF ACTION

1. The United States brings this action to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et seq.* (“Fair Housing Act”). This action is brought on behalf of Diana Alton, pursuant to 42 U.S.C. § 3612(o), as well as 42 U.S.C. § 3614(a).

United States’ Complaint and Jury Demand - 1

United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
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(202) 353-9491

JURISDICTION AND VENUE

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2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 3612(o) and § 3614(a).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States’ claims occurred there, and the property that is the subject of this suit is located there.

PARTIES AND PROPERTY

4. The Subject Property is located at 1632/1634 Minor Road in Kelso, Washington. It is a four-unit residential apartment complex.

5. Defendants Linda Barber and Bert Barber (hereinafter the “Barber Defendants”) are co-owners of the Subject Property. The Barber Defendants own or manage additional residential rental properties in and around the area of Kelso, Washington, and Longview, Washington.

6. With respect to the Subject Property, Defendant Linda Barber is responsible for, among other things, showing apartments to prospective renters, processing rental applications, preparing and executing leases, fielding calls regarding maintenance, receiving and making determinations related to tenants’ requests for reasonable accommodations, and performing other managerial and administrative tasks. Defendant Bert Barber is responsible for, among other things, property maintenance and finances.

7. Defendant Lori Thompson was, at times relevant to this lawsuit, an employee of the Barber Defendants, and was hired to provide property management services for the Subject Property. Defendant Thompson’s responsibilities included, among other things, fielding calls regarding

1 maintenance, receiving and making determinations related to tenants' requests for reasonable
2 accommodations, and performing other managerial and administrative tasks.

3 8. The Subject Property and the other residential properties owned or managed by Defendants are
4 "dwelling[s]" within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

5 9. At all relevant times, Diana Alton is and has been disabled as defined by the Fair Housing Act,
6 42 U.S.C. § 3206(h). She has been diagnosed with Post-Traumatic Stress Disorder ("PTSD"),
7 depression, and anxiety. These conditions substantially impair her ability to work, leave the
8 home, and perform tasks related to daily living. She also has mobility impairments.

9 FACTUAL ALLEGATIONS

10 Defendants' Policies Regarding Service Animals and Pets

11 10. Since at least May 2008 and continuing through to the present, the Barber Defendants have had
12 a policy regarding animals in the rental units that they own or manage. Under their policy,
13 Defendants allow animals only if: (1) they are "service animals"; or (2) the tenant signs a "Pet
14 Agreement" and pays a pet deposit of \$1000. Since at least February 2011, Defendants have
15 treated \$350 of the \$1000 pet deposit as a non-refundable fee.

16 11. Under Defendants' policy, "service animals" are those that have specialized training to assist
17 persons with disabilities. Animals that do not have special training, such as emotional support
18 animals for persons with mental or emotional disabilities, are not considered "service animals"
19 under Defendants' policy.

20 12. Tenants with "service animals" are permitted to request a waiver of the \$1000 deposit,
21 including the \$350 non-refundable fee, as a reasonable accommodation for their service animal.

1 13. To qualify for a waiver of the \$1000 pet deposit and \$350 non-refundable fee, a tenant must
2 complete and return a “Service Animal Certification Form” within 30 days of the date the form
3 is provided to a tenant by Defendants.

4 14. The Service Animal Certification Form must be completed by the tenant with a disability (the
5 “patient”) and by that person’s treating physician. The form asks questions that are not
6 necessary to provide a reasonable accommodation and contains statements that dissuade
7 physicians and tenants from completing the form.

8 15. The Service Animal Certification Form advises the treating physician, in bold
9 print and in all-capital letters:

10 **WARNING: THIS DOCUMENT WILL BE USED IN COURT**
11 **PROCEEDINGS. YOU MAY BE CALLED TO TESTIFY TO DEFEND**
12 **YOUR DIAGNOSIS AND YOUR BELIEF A SERVICE ANIMAL IS**
13 **JUSTIFIED. READ AND ANSWER THIS FORM CAREFULLY.**

14 16. The Service Animal Certification Form requires that a treating physician explain: (1) how long
15 the patient has been under his or her care; (2) if the patient is handicapped as defined by the
16 Fair Housing Act; (3) whether it is “*necessary* for the above-named person to have a service
17 animal for that person to have equal access to housing”; and (4) to “explain in detail what work
18 or service the proposed animal will perform to ameliorate the unique problems of the
19 handicapped person.”

20 *Ms. Alton’s Request for a Reasonable Accommodation*

21 17. In May 2008, Diana Alton moved to Apartment #4 of the Subject Property. Apartment #4 is a
22 two-bedroom unit. During the time she lived at the Subject Property, Ms. Alton received
23 housing assistance through the Section 8 Housing Choice Voucher program.

1 18. Prior to moving in, Ms. Alton informed Defendants through written statements on her rental
2 application that she was disabled and received Social Security Disability benefits as her sole
3 source of income.

4 19. In May 2008, Ms. Alton met in person with Defendant Linda Barber, who asked Ms. Alton
5 about her disability. Ms. Alton explained that she had PTSD, depression, and anxiety and that
6 she was interested in obtaining a dog as an assistance animal to help her with her disability.
7 Defendant Linda Barber told Ms. Alton that she would have to pay a \$1000 pet deposit in order
8 to obtain an assistance animal. She did not inform Ms. Alton about Defendants' policy
9 regarding service animals. Ms. Alton could not afford to pay the \$1000 deposit, and
10 consequently did not obtain an assistance animal at that time.

11 20. In January of 2009, Ms. Alton again asked Defendants about obtaining an assistance animal for
12 her disability. Defendant Linda Barber responded that Ms. Alton would have to pay a \$1000
13 pet deposit. Because she needed an assistance animal, Ms. Alton began making monthly
14 payments of \$50 even though she did not yet have an animal. After two payments, Ms. Alton
15 asked Defendants to refund the money because she could not afford the payments, which
16 Defendants did.

17 21. In February 2009, Ms. Alton provided Defendants with a letter from her treating medical
18 professional in support of her request for an assistance animal and waiver of the \$1000 deposit.
19 The letter explained that Ms. Alton needed a "service animal" to help her with her disability.
20 Defendants denied Ms. Alton's request and did not ask for any additional information regarding
21 the request prior to the denial.

1 22. In July 2010, Ms. Alton provided a second letter from her treating medical professional in
2 support of her request for an assistance animal and waiver of the \$1000 pet deposit. The letter
3 explained that Ms. Alton needed a “therapy animal” to help her with her disability. Defendants
4 did not respond to Ms. Alton’s request.

5 23. In January 2011, another tenant at the Subject Property gave Ms. Alton her miniature
6 schnauzer, “Scrappee Anne.” Ms. Alton had developed a therapeutic relationship with
7 Scrappee Anne, as the dog ameliorated the effects of Ms. Alton’s disability. Ms. Alton
8 immediately notified Defendants that she had acquired the dog as an assistance animal.
9 Defendants required Ms. Alton to sign a “Pet Agreement” and agree to pay the \$1000 deposit,
10 \$350 of which was a non-refundable fee. In February 2011, Ms. Alton began making monthly
11 payments of \$50 toward payment of the deposit and fee.

12 24. In March 2011, Ms. Alton provided Defendants with another letter from her medical
13 professional to support her request that the \$1000 pet deposit, including the \$350 non-
14 refundable fee, be waived. The letter explained that Ms. Alton needed a “companion dog” to
15 help her with her disability. Defendants did not respond to Ms. Alton’s request.

16 25. On or around March 16, 2011, a case worker at the Kelso Housing Authority informed Ms.
17 Alton that Defendants could not charge fees or deposits for service animals, including
18 emotional support animals, and referred her to the Department of Housing and Urban
19 Development (“HUD”). Ms. Alton informed Defendant Thompson of her conversation with
20 her case-worker and of her intention to file a HUD complaint regarding the pet deposit and fee.
21 Defendant Thompson told Ms. Alton that a “service animal did not apply to her case,” or words
22 to that effect.

1 26. On April 6, 2011, Ms. Alton filed a complaint with HUD challenging Defendants' imposition
2 of the \$1000 pet deposit, including the \$350 non-refundable fee.

3 27. On May 16, 2011, Ms. Alton provided Defendants with another letter from her medical
4 professional in support of her request for a service animal and waiver of the pet deposit and fee.
5 Ms. Alton provided the letter in response to Defendants' statement to HUD that Ms. Alton had
6 failed to provide sufficient information in support of her request. As in the past, the letter
7 explained that Ms. Alton needed a "service animal" for her disability. Defendant Thompson
8 told Ms. Alton that Defendant Linda Barber did "not want to see any more of these notes."

9 28. On July 25, 2011, after receiving no response from the Defendants, Ms. Alton wrote a letter
10 requesting a reasonable accommodation and attached a prescription from her treating medical
11 professional. The prescription explained that Ms. Alton needed a "companion/service animal"
12 to help her with her disability.

13 29. On August 8, 2011, Defendants, through counsel, replied that Ms. Alton needed to complete
14 the Service Animal Certification Form to establish her need for a reasonable accommodation
15 and waiver of the deposit and non-refundable fee. Defendants' response was the first time
16 Defendants had informed Ms. Alton that she needed to complete the Service Animal
17 Certification Form.

18 30. In October 2011, Ms. Alton provided the completed Service Animal Certification Form to
19 Defendants by attaching a letter from her treating medical professional with the form. The
20 letter responded to questions asked on the Service Animal Certification Form and explained
21 that Ms. Alton needed an "emotional assistance" animal to help her with her disability.

22 Defendants did not respond to Ms. Alton's submission.

1 31. Since receiving her assistance animal in January 2011, Ms. Alton's symptoms of depression,
2 PTSD and anxiety have improved. Her assistance animal helps her complete her daily
3 activities and helps her leave her apartment and interact with her neighbors.

4 Defendants' Retaliatory Conduct After Ms. Alton's HUD Complaint

5 32. After the filing of Ms. Alton's HUD complaint, Defendants treated Ms. Alton differently and
6 less favorably than they treated her previously or than they treated other tenants.

7 33. After the filing of Ms. Alton's HUD complaint, Defendants enforced tenant rules more strictly
8 against Ms. Alton. For example, Defendants required Ms. Alton to submit all repair requests in
9 writing. This was so even for repairs requiring immediate attention or that posed safety
10 hazards. Defendants did not enforce this rule against other tenants; nor did they enforce it
11 against her prior to the filing of her HUD complaint.

12 34. After the filing of Ms. Alton's HUD complaint, Defendants required her to keep Scrappee on a
13 leash at all times. Defendants did not enforce this rule against other tenants; nor did they
14 enforce it against her prior to the filing of her HUD complaint. Given the hilly terrain of the
15 Subject Property and Ms. Alton's mobility impairments, enforcement of the leash rule was a
16 hardship for Ms. Alton, who had to hire a dog walker to comply with the rule.

17 35. After the filing of Ms. Alton's HUD complaint, Defendants subjected Ms. Alton to intimidating
18 statements. For example, Defendant Linda Barber told Ms. Alton that she "knew all of the
19 local judges," or words to that effect, and that Ms. Alton would lose any legal action she tried
20 to bring.

1 36. On May 31, 2012, and following Defendants' retaliatory conduct, Ms. Alton moved out of the
2 Subject Property. At Ms. Alton's request, the police were present during the final walk-
3 through of her unit because of fear of reprisal by Defendants.

4 37. Defendants' conduct has imposed significant direct economic costs on Ms. Alton. From
5 February 2011 to May 2012, Ms. Alton paid Defendants over \$800 toward the required pet
6 deposit and several hundred dollars more in security deposits and fees that Defendants did not
7 return.

8 38. Defendants' conduct has resulted in lost housing opportunity for Ms. Alton. At the time she
9 moved out of the Subject Property, the only housing option available was a smaller, one-
10 bedroom unit in a public housing complex. Ms. Alton had to give up her Section 8 Housing
11 Choice Voucher to move.

12 39. As a result of Defendants' retaliatory conduct, Ms. Alton experienced increased panic attacks,
13 anxiety, nightmares and increased physical pain because of the stress surrounding the dispute.

14 HUD ADMINISTRATIVE PROCESS

15 40. On or around April 6, 2011, Ms. Alton filed a timely Fair Housing Complaint against Linda
16 Barber and Bert Barber with the United States Department of Housing and Urban Development
17 ("HUD"). The complaint was amended on or around March 14, 2012, to, among other things,
18 add Defendant Lori Thompson as a respondent.

19 41. Pursuant to 42 U.S.C. § 3610, the Secretary of HUD conducted and completed an investigation
20 of the complaint, attempted conciliation without success, and prepared a final investigative
21 report. Based upon the information gathered in the investigation, the Secretary, pursuant to 42
22 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that Defendants

1 violated the Fair Housing Act. Therefore, on March 21, 2013, the Secretary issued a Charge of
2 Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above-named Defendants
3 with engaging in discriminatory housing practices on the basis of disability.

4 42. On April 1, 2013, Ms. Alton elected to have the claims asserted in the HUD Charge resolved in
5 a civil action pursuant to 42 U.S.C. § 3612(a). On this same date, the Administrative Law
6 Judge issued a Notice of Election to Proceed in United States Federal District Court and
7 terminated the administrative proceeding on Ms. Alton's complaint.

8 43. Following this Notice of Election, the Secretary of HUD authorized the Attorney General to
9 commence civil action, pursuant to 42 U.S.C. § 3612(o).

10 COUNT I

11 44. Plaintiff re-alleges and incorporates by reference the allegations set forth above.

12 45. By the actions set forth above, Defendants have:

13 a. Discriminated in the rental, or otherwise made unavailable or denied dwellings because
14 of disability, in violation of 42 U.S.C. § 3604(f)(1);

15 b. Discriminated in the terms, conditions or privileges of the rental of a dwelling, or in the
16 provision of services or facilities in connection therewith, on the basis of disability, in
17 violation of 42 U.S.C. § 3604(f)(2);

18 c. Refused to make reasonable accommodations in rules, policies, practices or services,
19 when such accommodations may be necessary to afford such person equal opportunity
20 to use and enjoy a dwelling, in violation of 42 U.S.C.

21 § 3604 (f)(3)(B); or

1 d. Coerced, intimidated, threatened, or interfered with the exercise or enjoyment of any
2 right granted or protected by the Fair Housing Act, in violation of 42 U.S.C.
3 § 3617.

4 46. As a result of Defendants' conduct, Ms. Alton has been injured and is an "aggrieved person" as
5 defined by 42 U.S.C. § 3602(i).

6 47. The discriminatory actions of the Defendants were intentional, willful, and taken in reckless
7 disregard of the rights of Ms. Alton and other persons with disabilities who need assistance
8 animals.

9 COUNT II

10 48. Plaintiff re-alleges and incorporates by reference the allegations set forth above.

11 49. By the actions set forth above, Defendants have engaged in:

12 a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair
13 Housing Act, in violation of 42 U.S.C. § 3614(a); or

14 b. A denial to a group of persons rights granted by the Fair Housing Act, which denial
15 raises an issue of general public importance, in violation of 42 U.S.C.

16 § 3614(a).

17 50. In addition to Ms. Alton, other persons may have been injured by Defendants' discriminatory
18 actions and practices as described above. Such individuals are aggrieved persons under the
19 Fair Housing Act, 42 U.S.C. §§ 3602(i) and 3614(d)(1)(B).

20 PRAYER FOR RELIEF

21 WHEREFORE, the United States of America prays for relief as follows:

22 1. A declaration that the discriminatory conduct of Defendants as set forth above

1 violates the Fair Housing Act;

2 2. An injunction against Defendants, their agents, employees, successors, and all
3 other persons in active concert or participation with any of them from:

4 a. Discriminating on the basis of disability, in violation of the Fair Housing Act;

5 b. Failing or refusing to take such affirmative steps as may be necessary to restore,
6 as nearly as practicable, Ms. Alton and other victims of Defendants' past unlawful practices to
7 the position they would have been in but for the discriminatory conduct; and

8 c. Failing or refusing to take such affirmative steps as may be necessary to prevent
9 the recurrence of any discriminatory conduct in the future and to eliminate, to the extent
10 practicable, the effects of Defendants' unlawful practices.

11 3. An award of monetary damages to Ms. Alton pursuant to 42 U.S.C. §§ 3612(o)(3) and
12 3613(c)(1);

13 4. An award of monetary damages to each additional person aggrieved by Defendants'
14 discriminatory housing practices, pursuant to 42 U.S.C. § 3614(d)(1)(B); and

15 5. A civil penalty against each Defendant in order to vindicate the public interest, pursuant
16 to 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. § 85.3(b)(3).

1 The United States further prays for such additional relief as the interests of justice may require.

2
3 Dated: July 1, 2013

4 Respectfully submitted,

5 ERIC H. HOLDER, JR.
6 Attorney General

7 /s/ Jenny A. Durkan
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10 Western District of Washington

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