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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,	:
	:
Plaintiff,	:
	:
v.	:
	:
EQUITY RESIDENTIAL and ERP OPERATING L.P.,	:
	:
Defendants.	:
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COMPLAINT

17 Civ. ____ ()

Plaintiff the United States of America (the “United States”) alleges as follows:

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the “Fair Housing Act” or the “FHA”), 42 U.S.C. §§ 3601-3619. As set forth below, the United States alleges that defendants Equity Residential and ERP Operating L.P. (together, the “Equity Defendants”), directly and/or acting through entities that they own and/or control, have engaged in a pattern or practice of unlawfully discriminating against persons with disabilities under the FHA by failing to design and construct covered multi-family dwellings – such as 170 Amsterdam Avenue in Manhattan, 1210 Massachusetts Avenue in Washington, D.C., and Veridian in Silver Spring, Maryland – so as to be accessible to persons with disabilities. In light of their history of FHA violations, and because the Equity Defendants are actively designing and

constructing new rental complexes subject to the FHA, the United States seeks an injunction to ensure that the Equity Defendants will comply with the FHA's requirements in its current and future constructions.

Jurisdiction and Venue

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

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted in this action occurred in this District and because one or more properties that are the subject of this action are located in this District.

The Equity Defendants' Involvement with Construction of Multifamily Dwellings and Their Pattern or Practice of Non-Compliance with the FHA

4. Defendant Equity Residential is a Maryland-based real estate investment trust; and defendant ERP Operating L.P. is an Illinois-based limited partnership.¹ The Equity Defendants, directly and acting through affiliates and subsidiaries that they own and/or control, have been involved in real estate development since in or about 1993.

5. As relevant here, the Equity Defendants have designed and constructed numerous rental complexes subject to the FHA's accessible design and construction requirements. Those include, among others, 170 Amsterdam Avenue ("170 Amsterdam") in Manhattan, 1210 Massachusetts Avenue ("1210 Mass") in Washington, D.C., and the Veridian (the "Veridian") in Silver Spring, Maryland.

6. 170 Amsterdam, 1210 Mass and the Veridian all are multi-story rental complexes with elevator access; and the units in those complexes are "dwellings" within the meaning of 42 U.S.C. § 3602(b) and "dwelling units" within the meaning of 24 C.F.R. § 100.21.

¹ During all relevant times, defendant Equity Residential has owned a majority partnership interest in co-defendant ERP Operating L.P.

7. Further, 170 Amsterdam, 1210 Mass and the Veridian each was designed and constructed by the Equity Defendants for first occupancy after March 13, 1991. Thus, the rental units at those complexes are “covered multi-family dwellings” within the meaning of 42 U.S.C. § 3604(f)(7) and 24 C.F.R. § 100.21, and all three complexes are subject to the accessibility requirements of 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205(a), (c).

8. Although they were required to comply with the FHA’s accessible design and construction requirements in developing rental complexes like 170 Amsterdam, 1210 Mass and the Veridian, the Equity Defendants have consistently failed to do so.

9. For example, 1210 Mass and the Veridian, which the Equity Defendants constructed in 2004 and 2008, respectively, both contained numerous conditions that fail to comply with the FHA’s accessibility requirements. The inaccessible conditions at 1210 Mass and the Veridian included, among others:

- a. Excessively high thresholds at individual unit entrances and entrances to outdoor spaces in individual units;
- b. Insufficient width of hallways and kitchens within individual units;
- c. Insufficient bathroom clear floor space within individual units;
- d. Inaccessible locations of outlets and other environmental controls;
- e. Lack of sufficient clearance between toilet centerline and adjacent lavatory countertop within in-unit bathrooms;
- f. Insufficiently wide doorways within on-site fitness facilities;
- g. Lack of handrails for ramps at building entrance; and
- h. Lack of accessible route into the building and to the on-site garage.

10. Indeed, based on the inaccessible conditions like those at 1210 Mass and the Veridian as well as at five other covered multifamily dwellings that the Equity Defendants have

designed and constructed, the U.S. District Court for the District of Maryland has determined, in a summary judgment decision issued in March 2016, that the Equity Defendants have violated the FHA's accessibility requirements.²

11. The Equity Defendants also designed and constructed 170 Amsterdam, a 20-story, 236-unit rental complex in the upper west side of Manhattan that was completed in 2015.

12. Although the Equity Defendants developed 170 Amsterdam long after they were sued in the District of Maryland for their pattern or practice of disregarding and violating the FHA's accessibility requirements, the Equity Defendants did not ensure that 170 Amsterdam complies with the FHA. Instead, 170 Amsterdam also has numerous features that fail to comply with the FHA's accessibility requirements, including:

- a. Excessively high thresholds from individual units to the private gardens for residents;
- b. Insufficient widths of hallways within individual units; and
- c. Insufficient clear widths at the entrance to the on-site fitness center.

In Light of Their Pattern or Practice of Non-Compliance, the Equity Defendants May Continue to Violate the FHA in Their Ongoing Constructions Unless Enjoined

13. The widespread inaccessible conditions at 1210 Mass and the Veridian – together with the fact that, after having been sued for violating the FHA, the Equity Residents continued to create inaccessible conditions at recent constructions like 170 Amsterdam – show that it is the pattern or practice of those defendants to disregard compliance with the FHA in designing and constructing multifamily dwellings subject to the FHA's accessibility requirements.

14. Currently, the Equity Defendants are actively designing and constructing a number of covered multifamily dwellings. Those include 455 I Street in Washington, D.C., 855

² A copy of this decision from the District of Maryland is available as *Equal Rights Ctr. v. Equity Residential et al.*, Civ. CCB-06-1060, 2016 WL 1258418 (D. Md. Mar. 21, 2016).

Brannan Street in San Francisco, and the Cascade in Seattle. In total, the Equity Defendants are currently involved with designing and constructing at least five covered multifamily dwellings that will contain more than 1,600 rental units.

15. Because those five ongoing constructions are part of the Equity Defendants' coordinated development plan, the completed rental complexes will likely have conditions that are similar to each other and to defendants' recent constructions, such as 170 Amsterdam. In light of the Equity Defendants' pattern or practice of disregarding compliance with the FHA's accessibility requirements, the Equity Defendants may — absent an injunction — design and construct the five rental complexes under development in violation of the FHA.

Fair Housing Act Claims

16. The United States re-alleges and incorporates by reference the allegations set forth in paragraphs 1–15 above.

17. The Equity Defendants violated 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205(c) by failing to design and construct covered multi-family dwellings in such a manner that:

- a. the public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities;
- b. all doors designed to allow passage into and within the dwellings are sufficiently wide to allow passage by persons who use wheelchairs for mobility; and
- c. all premises within such dwellings contain the following features of adaptive design:
 - i) an accessible route into and through the dwelling;
 - ii) light switches, electrical outlets, thermostats, and/or other environmental controls in accessible locations; and

iii) usable kitchens and bathrooms, such that an individual using a wheelchair can maneuver about the space.

18. The Equity Defendants, through the actions and conduct referred to in the preceding paragraph, have:

- a. Discriminated in the sale or rental of, or otherwise made unavailable or denied, dwellings to buyers or renters because of a disability, in violation of 42 U.S.C. § 3604(f)(1) and 24 C.F.R. § 100.202(a);
- b. Discriminated against persons in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with a dwelling, because of a disability, in violation of 42 U.S.C. § 3604(f)(2) and 24 C.F.R. § 100.202(b); and
- c. Failed to design and construct dwellings in compliance with the accessibility and adaptability features mandated by 42 U.S.C. § 3604(f)(3)(C) and 24 C.F.R. § 100.205.

19. The Equity Defendants' conduct alleged above constitutes:

- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601–3619; and/or
- b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601–3619, which raises an issue of general public importance.

20. Persons who may have been the victims of the Equity Defendants' discriminatory housing practices are aggrieved persons under 42 U.S.C. § 3602(i) and may have suffered injuries as a result of his conduct alleged above.

21. The Equity Defendants discriminatory actions and conduct alleged above were intentional, willful, and taken in disregard for the rights of others.

Prayer for Relief

WHEREFORE, the United States prays that the Court enter an order that:

- (1) Declares that the Equity Defendants' policies and practices, as alleged herein, violate the Fair Housing Act;
- (2) Enjoins the Equity Defendants from designing and/or constructing its current multi-family dwelling projects, including 455 I Street in Washington, D.C., 855 Brannan Street in San Francisco, and the Cascade in Seattle, in a manner such that they fail to comply with the requirements of the FHA;
- (3) Enjoins the Equity Defendants, including their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:
 - a. failing or refusing to bring the dwelling units and the public use and common use areas at 170 Amsterdam into compliance with the FHA;
 - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, persons harmed by the Equity Defendants' unlawful practices to the position they would have been in but for the discriminatory conduct;
 - c. designing and/or constructing any covered multi-family dwellings in the present and future that do not comply with the accessibility and adaptability features required by 42 U.S.C. § 3604(f)(3)(C), and 24 C.F.R. § 100.205; and
 - d. Failing or refusing to conduct a compliance survey at 170 Amsterdam to determine whether any retrofits ordered pursuant to paragraph 3(a) have been made properly.

(4) Awards appropriate monetary damages, pursuant to 42 U.S.C. § 3613(c)(1) and § 3614(d)(1)(B), to each person harmed by the Equity Defendants’ discriminatory conduct and practices; and

(5) Assesses a civil penalty against the Equity Defendants in the maximum amount authorized by 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest.

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

LORETTA E. LYNCH
Attorney General of the United States

By: _____/s/_____
VANITA GUPTA
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Dated: New York, New York
January 13, 2017

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