UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>RONALD D. PETERSON, GLENN E. JOHNSON, and FIRST PITCH PROPERTIES, LLC,<br><br>Defendants. | ) | CIVIL ACTION NO. 2:09-cv-10333<br><br>JULIAN A. COOK, JR.<br>United States District Judge<br><br>DONALD A. SCHEER<br>Magistrate Judge |

**UNITED STATES' MOTION FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF AND MEMORANDUM OF LAW IN SUPPORT**

On August 6, 2010, a jury in the above-captioned case found that Defendant Glenn E. Johnson violated the Fair Housing Act ("FHA") by engaging in a pattern or practice of sexual harassment of female tenants, or denying to a group of persons rights granted or protected by the FHA. *See* Jury Verdict Form, ECF No. 80. The jury also concluded that Defendants Ronnie D. Peterson and First Pitch Properties, LLC were liable for the actions of their agent, Defendant Glenn E. Johnson. *Id.* The jury awarded a total of $115,000 to the six women harmed by Defendants' violation of the FHA. *Id.* This award consisted of a total of $36,510 in compensatory and $78,490 in punitive damages, which it assessed separately against each Defendant.[1] *Id.* Pursuant to 42 U.S.C. § 3614(d)(1), and as the United States requested in its

[1] The jury awarded $51,895 in punitive damages against Glenn Johnson, $26,295 against Ronnie Peterson, and $300 against First Pitch Properties, LLC.

Amended Complaint, the United States now respectfully requests that the Court award civil penalties and appropriate equitable relief against the Defendants. First Am. Compl. 4-5, ECF No. 45. A Proposed Order is attached as Exhibit 1 to this Brief.

## I. FACTS

At trial, the United States presented evidence that from 2006 to 2008, Defendant Glenn E. Johnson subjected tenants Julena Mills, Sharee McClendon, Shenel McFarlin, Barbara Scott, Shawn Taylor and Tameka Williams to severe, pervasive, and unwelcome sexual harassment in their own homes and/or coerced, intimidated, threatened or interfered with these women on account of them having exercised rights granted or protected by the Fair Housing Act. The jury found that Johnson violated the Fair Housing Act with respect to each woman and awarded compensatory and punitive damages to each of them.

The United States also presented evidence that Defendant Ronnie Peterson knew or should have known of Johnson's conduct but failed to stop it. The evidence established that in 2005, Defendant Peterson retained Defendant Johnson, his cousin and neighbor, to manage eleven rental properties on his behalf, including locating tenants, showing available rental homes, collecting security deposits, collecting rent, and addressing requests for repairs and maintenance. The United States also presented evidence that although Defendant Ronnie Peterson was aware that Johnson had a felony conviction, he did little to monitor Johnson's actions, and he never provided Defendant Johnson with any training or instruction regarding sexual harassment or fair housing laws. Two tenants, Shawn Taylor and Shenel McFarlin, testified that they complained to Defendant Peterson about Defendant Johnson's unlawful conduct and harassment in 2006 and 2007 respectively, yet Defendant Peterson failed to take any steps to stop or prevent it, and Johnson's pattern of harassment continued through 2008. The jury found that Peterson was liable for Johnson's conduct and assessed punitive damages against him for each of the six victims.

The evidence also showed that in December 2007, Defendant Peterson formed First Pitch Properties, LLC, a Michigan LLC that consists solely of Defendant Peterson and his wife, and later quitclaimed some of the subject properties to First Pitch Properties, LLC. From February 2008 until the summer of 2008, Defendant Johnson managed the subject properties on behalf of First Pitch Properties, LLC and Defendant Peterson. The jury found First Pitch Properties, LLC liable for Johnson's conduct against Julena Mills and awarded punitive damages against First Pitch Properties, LLC to Julena Mills.

## II. ARGUMENT

### A. <u>This Court Should Award a $55,000 Civil Penalty Against Defendant Johnson and a $55,000 Civil Penalty Against Defendant Peterson</u>.

This Court should order Defendant Johnson to pay $55,000 and Defendant Peterson to pay $55,000, for a total civil penalty of $110,000.[2] With the passage of the Fair Housing Act Amendments in 1988, Congress recognized that the statute would be enforced more effectively if the United States could obtain significant monetary relief. *See* H.R. Rep. No. 100-711, at 16-17, 40 (1988). Among the remedies added for cases brought by the government were compensatory and punitive damages for aggrieved individuals, and civil penalties. *See id.* Section 814 of the FHA, 42 U.S.C. § 3614(d)(1)(C)(i)-(ii), provides in relevant part:

[2] Although Defendant Peterson transferred ownership of the subject properties to First Pitch Properties, LLC in 2008, the jury found Defendant Peterson liable for compensatory and punitive damages for all six of the victims. The jury found Defendant First Pitch Properties, LLC, however, only liable for damages against one victim. Further, the evidence established that Defendant Peterson and his wife are sole owners of First Pitch Properties, LLC and that First Pitch Properties, LLC has no assets other than the properties themselves. Therefore, the United States is not seeking a civil penalty against Defendant First Pitch Properties, LLC. As the current owner, however, the United States is seeking injunctive relief as to First Pitch Properties, LLC. *See, infra*, Section II(B)(1) and (3).

> 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 (ii) in an amount not exceeding $100,000, for any subsequent violation.

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)). The maximum civil penalty under the FHA is now $55,000 per defendant for a first violation and $110,000 per defendant for a subsequent violation. *See* 28 C.F.R. § 85.3(b)(3).

Civil penalties may be assessed by the Court after the jury has found liability. *See Tull v. United States*, 481 U.S. 412, 425-27 (1987). The House Report accompanying the Fair Housing Act Amendments sets forth six factors a court should consider when determining a civil penalty:

1. nature and circumstances of the violation;
2. degree of culpability;
3. history of prior violations;
4. financial circumstances of the defendant (in determining amount of penalty);
5. goal of deterrence; and
6. other matters as justice may require.

H.R. Rep. No. 100-711, at 40. *Accord Smith & Lee Assoc., Inc*. v. *City of Taylor*, 13 F.3d 920, 932 (6th Cir. 1993). After hearing the facts of this case, the jury assessed compensatory and punitive damages against each Defendant. The jury awarded damages against Defendant Johnson after hearing evidence of his egregious and repetitive sexual harassment of female tenants, which spanned the course of two years. The jury also awarded damages against Defendant Peterson after hearing evidence of his reckless disregard of Defendant Johnson's unlawful conduct. Evidence presented at trial demonstrated that Ronnie Peterson ignored complaints of harassment from Shawn Taylor and Shenel McFarlin, and in doing so, enabled Defendant Johnson's unlawful conduct. Together, Defendants Johnson's and Peterson's conduct caused six women serious injury. Thus, the nature and circumstances of the conduct weigh in favor of a heavy civil penalty against Defendants Johnson and Peterson.

Defendants' culpability in this egregious pattern or practice of discrimination or denial of rights to a group of persons has already been established by the jury's verdict, including its award of punitive damages against each Defendant. Jury Verdict Form, ECF No. 80. Defendant Glenn Johnson is culpable because of his conduct towards the six women. Defendant Ronnie Peterson is also culpable because, as the owner of the properties, he did nothing to attempt to stop or prevent the harassment, even after receiving complaints in 2006 and 2007.

Moreover, the vulnerable nature of the aggrieved persons makes Defendants' conduct particularly egregious. Defendant Johnson sexually harassed women who had no other place to live. His victims testified that they felt as though they had no choice but to tolerate his behavior. They were terrified of being evicted and/or lacked educational, financial, or legal resources to oppose someone who, like Defendant Johnson, occupied a position of power over them. Indeed, Defendant Johnson boasted to some tenants that he knew people from his days in prison who could do bad things to people. That Defendant Johnson selected such persons as his victims, and that Defendant Ronnie Peterson ignored complaints from, and did nothing to stop the harassment of such tenants, makes their conduct all the more reprehensible.

Although neither Defendant Johnson nor Defendant Peterson had previously been held liable for violations of the FHA, that does not weigh against the imposition of a heavy civil penalty. The discriminatory conduct contained in this particular violation was not an isolated event, but a pattern of illegal conduct under the FHA that harmed six women. When Johnson began working for Peterson in 2005, this was the first time he had ever worked in rental housing. Defendant Johnson used his job to harass six female tenants, in most cases in a repeated pattern, from 2006 to 2008. And Defendant Peterson overlooked at least two complaints, in 2006 and 2007, which enabled Defendant Johnson to continue his harassment into 2008.

As to Defendants' financial circumstances, trial testimony and documents establish that Ronnie Peterson continues to own seven homes, has an annual salary of $93,000, and reported $577,719 in net assets on a personal financial statement in March 2009.[3] *See* Pl.'s Trial Ex. 18. Defendant Johnson presented no evidence of limited resources at trial, and as such his financial circumstances should not be a limiting factor. *Cf. Grabinski v. Blue Springs Ford Sales, Inc.*, 136 F.3d 565, 570 - 71 (8th Cir. 1998) (explaining that "it is a defendant's burden to introduce evidence of net worth before a jury for purposes of minimizing a punitive damages award."); *Kemezy v. Peters*, 79 F.3d 33, 34 (7th Cir. 1996) (same).

With respect to the goal of deterrence, a major purpose of civil penalties is to deter unlawful conduct. *See United States v. Crawford*, Nos. 5:98CV1033, 5:98CV743 and 5:98CV1487, at 4 (N.D. Ohio Nov. 16, 1999) (memorandum and order) (civil penalties will "serve the purpose of general deterrence by sending a message to other landlords that violation of their tenants' Fair Housing rights, through sexual harassment, will have serious consequences.") (emphasis in original) (attached as Ex. 1). *See also United States v. Shanrie Co.*, No. 05-CV-306, 2008 WL 4566309, at *2 (S.D. Ill. Oct. 1, 2008) ("[T]he Court can take into account general deterrence when imposing civil penalties.") (attached as Ex. 2); *United States v. Veal*, No. 02-0720-CV-W-DW, at 3 (D. Mo. Jan. 28, 2005) (acknowledging that, in light of the defendants' discriminatory actions and lack of remorse, "a civil penalty is necessary to serve the dual purposes of retribution and deterrence.") (attached as Ex. 3). Although the jury

[3] The March 2009 personal financial statement is the most recent of any of Defendant Peterson's financial documents introduced at trial. Peterson testified that he has not yet filed his 2009 tax returns.

has already awarded punitive damages against the Defendants in this case, the award of punitive damages and the assessment of civil penalties are not mutually exclusive remedies, and both may be awarded for the same unlawful conduct. *See Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 256 (1983). Punitive damage awards, of course, are paid directly to the victims of the discrimination, while civil penalties are paid to the United States. *See United States v. Balistrieri*, 981 F.2d 916, 936 (7th Cir. 1992), citing *Tull*, 481 U.S. at 422 n. 7. Further, the plain language of the statute allows the Court to "vindicate the public interest" by awarding civil penalties within the statutory limits, as long as there is a finding of liability. *See* 42 U.S.C. § 3614(d). A $55,000 civil penalty against Defendant Johnson and a $55,000 civil penalty against Defendant Peterson will send a strong message to other landlords that they may face grave financial consequences if they sexually harass their tenants or fail to prevent their employees or agents from sexually harassing their tenants.

A $55,000 civil penalty assessed against Defendant Johnson and $55,000 civil penalty assessed against Defendant Peterson is consistent with decisions in similar cases where courts have awarded civil penalties at or near the statutory maximum, even in cases where damages awarded to victims were significantly lower than in this case, and in cases where they were significantly higher. *See United States v. Shen*, 1997 WL 119494 (9th Cir. Mar. 14, 1997) (affirming award of maximum $50,000 civil penalty and $15,000 monetary damages against a landlord for race discrimination); *United States v. Silva (Final Judgment)*, No. A-05-CA-710-LY, at 2 (W.D. Tex. July 17, 2008) (awarding $110,000 civil penalty and $103,621.97 in monetary damages for victims against two defendants for national origin discrimination in violation of the FHA) (attached as Ex. 4); *Crawford*, Nos. 5:98CV1033, 5:98CV743 and 5:98CV1487, at 4 (memorandum and order) (awarding $40,000 civil penalties against each of two defendants for sexual harassment in violation of the FHA, after the jury awarded $490,000 in monetary damages to the victims); *Veal*, No. 02-0720-CV-W-DW, at 3 (awarding $40,000 civil penalties against each of two defendants for sexual harassment in violation of the FHA, after the jury awarded $1,202,804 in monetary damages to the victims); *United States v. Koch*, No. 8:03-CV-406, at 3 (D. Neb. March 29, 2005) (awarding $40,000 civil penalties against one defendant for sex discrimination in violation of the FHA, including sexual harassment, and $66,152 in monetary damages to the victims) (attached as Ex. 5). *See also United States v. Sturdevant*, No. 07-02233-KHV (D. Kan. May 13, 2010) (D. Kan. May 13, 2010) (entering default judgment against one defendant for race discrimination and awarding the United States a $55,000 civil penalty) (attached as Ex. 6).

In this case, the jury awarded the six victims $36,510 in compensatory damages and $78,490 in punitive damages, for a total award of $115,000. An additional $55,000 civil penalty against Defendants Johnson and Peterson would bring the total to $225,000.[4] Such a result is both necessary and appropriate. Even faced with the accusations at a jury trial, neither Defendant Johnson nor Defendant Peterson displayed any regret or remorse. A $55,000 civil penalty against each Defendant, for a total monetary judgment of $225,000 for this egregious conduct, ensures that both the Defendants and similarly situated owners and managers treat such conduct with the seriousness it deserves. For these reasons, Plaintiff United States respectfully requests that this Court assess a civil penalty against Defendant Johnson of $55,000 and a civil penalty against Defendant Peterson of $55,000, for a total civil penalty of $110,000.

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[4] The jury found Defendants jointly liable for $36,510 in damages to the six victims. Further, they awarded the victims $26,295 in punitive damages against Defendant Peterson and $51,895 in punitive damages against Defendant Johnson. With an additional $55,000 in civil penalties against each of Defendants Peterson and Johnson, the total amounts would be: $36,510 in joint and several liabilities, with an additional $81,295 against Defendant Peterson and an additional $106,895 against Defendant Johnson.

B. <u>The Court Should Order Equitable Relief Against Defendants</u>

The Fair Housing Act expressly grants this Court the authority to award appropriate equitable relief:

> [The court] may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter.

42 U.S.C. § 3614(d)(1)(A).

Courts have "not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *See Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 364 (1977) (Title VII), quoting *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975). *Accord Isabel v. City of Memphis*, 404 F.3d 404, 414 (6th Cir. 2005). Courts should use their "broad equitable powers" so as "to make possible the fashioning of the most complete relief possible." *Int'l Bhd. of Teamsters*, 431 U.S. at 364. The district court has broad and flexible powers to shape an effective equitable remedy for fair housing violations. *See James v. Lucas Metro. Hous. Auth.*, 833 F.2d 1203, 1207-08 (6th Cir. 1987); *United States v. City of Parma, Ohio*, 661 F.2d 562, 567 (6th Cir. 1981); *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1236 (2d Cir. 1987).

Once a violation of the law has been found, injunctive relief is appropriate unless the Defendant can demonstrate that "'there is no reasonable expectation that the wrong will be repeated.' The burden is a heavy one." *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953) (Clayton Act), quoting *United States v. Aluminum Co. of America*, 148 F.2d 416, 448 (2d Cir. 1945). *See also Weeks v. Chaboudy*, 984 F.2d 185, 189-190 (6th

Cir. 1983) (Section 1983). In this case, the Defendants cannot show that there is a reasonable likelihood that their discriminatory conduct will not be repeated absent an injunction. In fact, none of the Defendants took responsibility for their conduct at trial nor have they shown any remorse. Defendant Johnson denied the harassment had occurred and Defendant Peterson denied that Defendant Johnson was his or First Pitch Properties, LLC's agent. In light of Defendants' conduct and the evidence presented at trial, this Court should exercise its discretion to issue the equitable relief described below.

1. The Court Should Enjoin Defendants From Further Discrimination in Housing on the Basis of Sex and From Further Coercion, Intimidation, and Interference in violation of the Fair Housing Act.

The United States requests that this Court enter a general injunction prohibiting the Defendants from engaging in unlawful sex discrimination or unlawful coercion, intimidation or interfering with the rights granted or protected by the Fair Housing Act, the same conduct the jury found the Defendants had engaged in in this case.[5] A general injunction of this sort is intended to "prevent future violations" and is appropriate where there "exists some cognizable danger of recurrent violation." *W.T. Grant Co.*, 345 U.S. at 633; *see also S.E.C. v. Quinlan*,

[5] Specifically, the United States requests that Defendants be prohibited from the following:

1. Refusing to rent a dwelling unit, refusing or failing to provide or offer information about a dwelling unit, or otherwise making unavailable or denying a dwelling unit to any person because of sex;
2. Discriminating against any person in the terms, conditions or privileges of renting a dwelling unit, or in the provision of services or facilities in connection therewith, because of sex;
3. Making, printing, publishing, or causing to be made, printed, or published any notice, statement or advertisement with respect to the rental of a dwelling unit that states any preference, limitation or discrimination based on sex; or
4. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of her having exercised or enjoyed, or on account of her having aided and encouraged any other person in the exercise or enjoyment of, any right granted by 42 U.S.C. §§ 3603 - 3606.

2010 WL 1565473, *5 (6th Cir. 2010) (upholding entry of injunction upon district court's finding "a reasonable likelihood of future violations"). In this case, the evidence established that Defendants engaged in multiple and repeated violations of the FHA and a general injunction is appropriate.

2. The Court Should Permanently Enjoin Defendant Johnson From Employment Involving "Dwellings" as Defined by the Fair Housing Act

Congress intended the broadest possible remedies be available in pattern or practice cases brought by the United States under the FHA. *See Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 380 (1982) (recognizing "the broad remedial intent of Congress embodied in the Act"). Thus, the FHA authorizes courts to "award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the persons responsible for a violation of this subchapter as is necessary to assure the full enjoyment of the rights granted by this subchapter." 42 U.S.C. 3614(d)(1)(A). An injunction is appropriate where the plaintiff shows:

> (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

*eBay v. MercExchange, L.L.C.*, 547 U.S. 388 (2006). *See also United States v. Matusoff Rental Co.*, 494 F.Supp.2d 740, 756 (S.D. Ohio 2007); *Fialka-Feldman v. Oakland Univ. Bd. of Trustees*, 678 F.Supp.2d 576, 579 (E.D. Mich. 2009).

Here, an injunction barring Defendant Johnson from working in residential housing is warranted to "bar future discrimination," *Int'l Bhd. of Teamsters*, 431 U.S. at 364, and is fully supported by the record. An irreparable injury may be presumed as a result of the jury's verdict that Defendant Johnson engaged in a pattern or practice of sexual harassment or denied to a group of persons the rights granted or protected by the FHA that harmed six women. *See Matusoff Rental Co.*, 494 F.Supp.2d at 756; *see also Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984) ("irreparable injury may be presumed from the fact of discrimination and violations of the fair housing statutes"); *United States v. Hayes Int'l Corp.*, 415 F.2d 1038, 1045 (5th Cir. 1969) ("irreparable injury should be presumed from the very fact that the statute has been violated").

As reflected in the facts recited above, Defendant Johnson's discriminatory conduct was repetitive and unrelenting and destroyed six women's sense of safety, security and privacy in their homes. While monetary damages can compensate for such emotional harm, only through the use of its equitable power can a court take specific steps to prevent it from happening again. *See Matusoff Rental Co.*, 494 F.Supp.2d at 756.

The public interest strongly supports eradicating housing discrimination. *See United States v. Edward Rose & Sons*, 384 F.3d 258, 264 (6th Cir. 2004); *Matusoff Rental Co.*, 494 F.Supp.2d at 756-57 (6th Cir. 2007). Thus, ensuring that Defendant Johnson can no longer harass tenants in their homes would serve the public interest. Furthermore, the requested injunctive relief would have a deterrent effect as it "serves as a sharp warning" to other rental managers that they face similar consequences if they engage in such conduct. *See S.E.C. v. Posner*, 16 F.3d. 520, 521-22 (2d Cir. 1994) (noting that a permanent ban can serve as a deterrent). And limiting the injunction to residential housing will not unreasonably restrict Defendant Johnson's ability to earn a living by pursuing other work. Thus, the balance of hardships and a consideration of the public interest weigh in favor of enjoining Defendant Glenn E. Johnson from working in any capacity in residential housing.

The United States requests that the injunction against Defendant Johnson be a permanent ban on engaging in any work involving "dwellings" as defined by the FHA. Testimony at trial established that Johnson was well aware that federal laws prohibited sexual harassment and that he had resigned from a job in January 2008 after other employees complained that he sexually harassed them. Yet this did not deter Defendant Johnson from continuing to sexually harass female tenants. There is no reason to believe that Defendant Johnson would not sexually harass tenants again if given the opportunity, and without an injunction, there is no adequate mechanism to ensure that Defendant Johnson will not continue his unlawful conduct. *See*, *e.g.*, *United States* v. *Hunter*, 459 F.2d 205, 220 (4th Cir. 1972) ("Denial of an injunction is proper only in cases where, after hearing the defendant and examining the particular circumstances of the violations involved, including the existence of a pattern or practice of past violations, the judge is fully satisfied that the defendant will not continue his unlawful conduct."). The egregious and persistent nature of Defendant Johnson's past discrimination suggests a high likelihood that he will continue to violate the FHA if he is again given an opportunity to do so. The permanent injunction proposed by the United States properly curbs this danger.

The equitable relief requested by the United States here is not only reasonable in light of the evidence, but it also accords with FHA relief awarded by other courts. In *United States v. Sturdevant*, the court permanently enjoined a rental manager who had engaged in a pattern or practice of discrimination on the basis of race from "working in any capacity in rental housing." *See Sturdevant,* No. 07-02233-KHV (D. Kan. May 13, 2010). Courts have also entered consent decrees providing for such relief. *See, e.g. United States* v. *Mills,* No. 1:00-cv-00276-SM, consent order at 10 (D. N.H. Nov. 14, 2001) (the court permanently enjoined former manager who had engaged in a pattern or practice of sexually harassing female tenants from future involvement in the ownership or management of rental housing properties) (attached as Ex. 7); *United States* v. *Wingo*, No. 8:01–cv–504-DOC-AN, consent order at 15 (C.D. Cal. Aug. 6, 2002) (court entered a consent decree that enjoined a former rental manager who had engaged in a pattern or practice of discrimination on the basis of race and national origin "from having any involvement in the rental real estate business") (attached as Ex. 8).

The injunctive relief requested here is also similar to orders issued in other areas of the law where the public interest is at issue. In the securities context, for example, courts have barred defendants from serving as officers and directors in, or even trading the shares of publicly held companies. *See Posner*, 16 F.3d at 521-22 (predicating the need for a permanent injunction on evidence of the defendant's extensive pattern of past abuses); *S.E.C.* v. *Rosen*, No. 01-0369-Civ., 2002 WL 34414715 at *14 (S.D. Fla. Apr. 24, 2002) (enjoining defendants from trading securities registered with the S.E.C.) (attached as Ex. 9).[6] *See also Chao* v. *Merino*, 452 F.3d 174, 184–85 (2d Cir. 2006) (upholding an injunction, pursuant to Section 409(a) of ERISA, permanently prohibiting a defendant from serving as a fiduciary or service provider to an employee benefit plan). In trade-secrets litigation, courts have prohibited defendants from working in an industry or soliciting customers. *See*, *e.g.*, *Victaulic Co.* v. *Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (noting, in the trade-secrets context, that "it is possible for a court to enjoin an employee from working in the relevant industry or soliciting customers for some period of time."); *Uncle B's Bakery, Inc.* v. *O'Rourke*, 920 F. Supp. 1405, 1437-38 (N.D. Iowa 1996) (granting an injunction barring a former employee from continuing to work for competing

[6] *But see S.E.C.* v. *Jones*, 476 F.Supp.2d 374, 384 (S.D.N.Y. 2007) (refusing to enjoin a defendant from serving as an officer or director of a company where there was no evidence of a need to protect the public from future harm).

company and balancing the public interest in protecting trade secrets against the fact that the former employee could seek employment in another field); *Heatron, Inc.* v. *Shackelford*, 898 F.Supp. 1491, 1502 (D. Kan.1995) (granting an injunction enjoining a former employee who had violated a non-competition clause from working for new employer, and finding that former employee's interest in continuing in his current position was outweighed by the harm to the plaintiff company and the public interest).

3. The Court Should Enter Additional Specific Injunctive Relief Against Defendants Peterson and First Pitch Properties, LLC

The United States also seeks specific injunctive relief against Peterson and First Pitch Properties, LLC that is tailored toward ensuring that discriminatory conduct does not occur again at their properties. Specifically, the United States proposes that the Court require that Defendants Peterson and First Pitch Properties, LLC:

(1) Attend, and require their agents and employees to attend, annual training on the Fair Housing Act;

(2) Adopt and implement a nondiscrimination policy;

(3) Notify tenants of this policy and of their right to file a complaint or to contact them directly or contact the Department of Housing and Urban Development ("HUD") or the Department of Justice if they believe they have been harassed or otherwise discriminated against; and

(4) Report future discrimination complaints and other pertinent information to the United States.

The United States proposes that this injunctive relief against Defendants Peterson and First Pitch Properties, LLC be ordered for a five-year period.

First, the Court should require Defendants Peterson and First Pitch Properties, LLC, and all of their agents and employees to undergo annual education and training on the FHA. *See e.g., City of Parma,* 661 F.2d at 577 (requiring city to implement educational program to acquaint employees with their obligations under remedial order). Employees should also be required to sign an acknowledgement that they will comply with the FHA and with Defendants' policy on nondiscrimination. Such measures are particularly important in this case, as Defendant Peterson testified that he had never required any of his employees to receive training on the FHA.

Second, the Court should require Defendants Peterson and First Pitch Properties to adopt and implement a written Nondiscrimination Policy, for all residential properties Defendant Peterson or First Pitch Properties, LLC own or manage. Defendants should distribute this policy, along with a pamphlet from HUD describing the Fair Housing Act and its enforcement provisions, to all tenants during the term of this Order. The Policy should also invite tenants to contact Peterson, HUD or the Department of Justice directly if they believe they have experienced or witnessed unlawful discrimination. And Defendants should be required to notify the United States when they receive complaints so that the United Sates can monitor how well Defendants are implementing their nondiscrimination policy. Finally, to the extent the Defendants advertise or maintain a rental office, they should be required to notify the public of their nondiscriminatory practices, and should note that they comply with the FHA in their standard leases, applications, and any promotional materials.

Nondiscrimination policies are an important component of FHA remedial orders. *See, e.g., City of Parma,* 661 F.2d at 577. Reporting and recordkeeping requirements have been upheld a number of times by courts as being an important component of FHA remedial orders. *See e.g., United States v. West Peachtree Tenth Corp.,* 437 F.2d 230-31 (5th Cir. 1971) (requiring Defendants to maintain records and file reports of compliance with the United States at three-month intervals); *Jamestown Ctr.-In-The-Grove Apts.*, 557 F.2d 1079, 1080-81 (5th Cir. 1977) (directing the district court to impose additional injunctive relief, including record-keeping and reporting requirements); *United States v. Brosh*, No. 02-CV-0368-DRH, at 13 (S.D. Ill. Nov. 20, 2003) (memorandum and order) (requiring Defendants to retain certain records and to make them available to counsel for the United States and HUD) (attached as Ex. 10); *Silva,* No. A-05-CA-710-LY, at 2 (requiring Defendants, for a period of five years, to send to the United States every three months a list of persons with whom Defendants engaged in real-estate related transactions).

Adoption of a nondiscrimination policy, notice to tenants, and reporting requirements are particularly necessary here, where the lack of such a policy and requirements contributed to the discrimination and harm caused to the six women in this case. Some of the women testified that they did not know who Defendant Peterson was, or that he owned the home in which they lived, and that they did not know how to complain to Peterson until well into their tenancies. Moreover, Defendant Peterson ignored complaints from the two tenants who had alerted him to Defendant Johnson's unlawful discriminatory conduct. Adopting and establishing a nondiscrimination policy ensures that future tenants are informed of their rights not be discriminated against at the subject properties and will know how to contact Peterson, HUD and the Department of Justice directly if there is a problem. Moreover, a requirement that Defendants report future complaints to the United States is appropriate in light of the evidence that Peterson failed to act when Shawn Taylor and Shenel McFarlin complained. This requirement will ensure that any legitimate concerns are addressed and provide an incentive for Defendants Peterson and First Pitch Properties, LLC to handle such complaints appropriately.

Finally, the United States proposes that the court retain jurisdiction for five years to ensure compliance with these measures. *See United States v. DiMucci*, 879 F.2d 1488, 1493 (7th Cir. 1989) (recordkeeping and reporting requirements for three years). In this case, due to the continuing and repeated nature of violations by Defendants, the Court's continuing jurisdiction for five years is necessary to ensure full compliance with the Order and prevent future Fair Housing Act violations.

## III. Conclusion

For the foregoing reasons, the Court should asses a civil penalty in the amount of $110, 000 against Defendants ($55,000 against Defendant Johnson and $55,000 against Defendants Peterson and First Pitch), and order the equitable relief set forth in the proposed Order at Attachment A.

Respectfully submitted,


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**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2010, a copy of the foregoing Plaintiff United States' Brief has been electronically filed with the Clerk of the Court using the CM/ECF system, which will send notice of the filing to the following CM/ECF participants.

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