IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
PLAINTIFF,	)	
	)	
v.	)	CASE NO. 2:08-CV-00573-MEF-SRW
	)	
MATTHEW BAHR, *et al.,*	)	
	)	
DEFENDANTS.	)	
	)	

UNITED STATES' RESPONSE TO DEFENDANT MATTHEW BAHR'S MOTION TO ALTER, AMEND OR VACATE FINAL JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR RELIEF FROM FINAL JUDGMENT

Defendant Bahr makes three requests: (1) that the Court revise its damages downward due to alleged statute of limitations concerns (Bahr Motion at 9-10); (2) that the Court declare its "Final Judgment [] void" due to an alleged lack of subject matter jurisdiction (*id.* at 12), and; (3) that the Court vacate its order of damages and civil penalties against him due to an alleged lack of evidence (*id.* at 6-9). For the reasons stated below, the Court's original judgment should stand and Bahr's requests should be denied. Alternatively, if the Court chooses to grant Defendant's motion, the Court should affirm its award of injunctive and monetary relief based on the additional evidence offered below.

ARGUMENT

As a threshold matter, Bahr cites Fed. R. Civ. P. 59(e), 60(b)(4) and 60(b)(6) as the bases for his motion but cites no case law suggesting that Rule 59(e) is the appropriate vehicle for vacating either a default judgment or a default damages award and, the United States has not

found any reported cases in the 11th Circuit. Since Bahr's requests for *vacatur* are effectively requests for relief from the default judgment, they should be construed as arising only under Rule 60(b). *See Vesligaj* v. *Peterson*, 331 F. App'x. 351, 354 (6th Cir. 2009) (treating a Rule 59(e) motion contesting both a default judgment and default damages award as ~~"s~~seeking relief under Rule 60(b)."); *Venegas-Hernandez* v. *Sonolux Records*, 370 F.3d 183, 188 (1st Cir. 2004) (~~"I~~t is by no means clear that a Rule 59(e) motion is even a valid mechanism for altering or amending a default judgment."). If Rule 59(e) is available at all, it should only apply to Bahr's request that the Court revise its damages award based on the statute of limitations. *Cf. Day* v. *Liberty Nat. Life Ins. Co*., 122 F.3d 1012 (11th Cir. 1997) (discussing Rule 59(e) and statute of limitations defense).

A. The Court's Damages Award Should Stand Because Bahr has Failed to Present a Valid Statute of Limitations Defense.

Bahr claims that ~~"a~~ll damages based on events that occurred before July 28, 2006 are barred by the statute of limitations" under 42 U.S.C. § 3613 and are due to be reduced, ostensibly under Rule 59(e). Bahr Motion at 10. In this Circuit, ~~"[~~t]he only grounds for granting [a Rule 59] motion are newly-discovered evidence or manifest errors of law or fact." *Arthur* v. *King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (per curiam) (alteration in original) (quotation omitted). Although litigants ~~"c~~annot use a Rule 59(e) motion to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment" Bahr is raising his statute of limitations argument for the first time now. *Michael Linet, Inc*. v. *Village of Wellington*, 408 F.3d 757, 762 (11th Cir. 2005). But according to Fed. R. Civ. P. 8(c)(1), a defendant ~~"m~~ust affirmatively state any . . . affirmative defense, including. . . . statute of limitations." Since Bahr did not so plead, he has waived this defense. *See Day* v. *Liberty Nat.*

Life Ins. Co., 122 F.3d 1012 (11th Cir. 1997) ("This court has held in a number of discrimination actions that failure to plead the bar of the statute of limitations constitutes a waiver of the defense") (citing cases). This holding applies with particular force when the argument is raised for the first time after final judgment. *Id.* at 1015.

While it is true, as Bahr notes, that aggrieved persons are ordinarily granted two years to commence their own actions under § 3613, Bahr Motion at 9-10, that fact is irrelevant because this suit arose under 42 U.S.C. § 3614. *See* Dkt. 1 – Complaint at ¶ 2; *U.S. v. Tanski*, No. 1:04-CV-714, 2007 WL 1017020 * 9 (N.D.N.Y. Mar. 30, 2007) ("section 3613(a)(1)(A) [] governs only lawsuits commenced by aggrieved persons. It does not govern a section 3614(a) claim, . . . [which] allow[s] the Attorney General to recover compensatory damages on behalf of a victim . . , even where the victim is time-barred from recovering compensatory damages."); *Garcia* v. *Brockway*, 526 F.3d 456, 477 n.11 (9th Cir. 2008) (en banc) ("[N]o matter how the FHA's statute of limitations for private suits is interpreted, [defendants] may still in some instances be subject to suits brought by the Department of Justice under its 'pattern or practice' authority.") (citing 42 U.S.C. § 3614(a)).

The limitation period for claims for monetary damages brought by the United States pursuant to 42 U.S.C. § 3614(a)—the period that applies here—is three years from the date on which the cause of action accrues, in this case, when the Attorney General has knowledge of a violation of the Act. *See* 28 U.S.C. § 2415(b). Because the United States filed its suit in July of 2008, and because the harms suffered by the aggrieved person all occurred well after July 2005, there can be no legitimate question that the United States may seek damages for those individuals here.

A section 3614(a) pattern-or-practice claim is not an agglomeration of smaller claims in the way that a class action or a multi-plaintiff case is. Instead, it is a single claim, with one plaintiff, alleging a range of incidents over a period of time. *See United States* v. *Veal*, 365 F. Supp. 2d 1034, 1040 n.3 (~~"~~T]here is only one plaintiff in this case—the United States of America. It is therefore appropriate to view the punitive and compensatory damages collectively."). To establish liability in a pattern or practice case the Government must show that the defendant engaged in a regular policy or practice of unlawful discrimination, *i.e.*, ~~"~~that such a policy existed," not that each victim ~~"~~for whom it will ultimately seek relief was a victim of the . . . discriminatory policy." *United States* v. *Indigo Invs., LLC*, No. 1:09CV376, 2010 WL 4718897, at *3 (S.D. Miss. Nov. 15, 2010) (quoting *Teamsters*, 431 U.S. at 360; FHA case rejecting argument that at liability stage government had to prove a prima facie case of discrimination as to each individual aggrieved person). Once liability is established – *i.e.*, that there was a pattern or practice – the determination is made of the appropriate damages or other relief for each aggrieved party.

As such, this Court's consideration of harms suffered by the victims of Gumbaytay's harassment before July of 2006 constituted no error of law or fact so long as the United States alleged a pattern or practice of discrimination before that date, which it did, both in its complaint and through the testimony of the victims at the evidentiary hearing. Dkt. 1. ¶¶ 16-17 (~~"~~From at least 2005 through the present, Defendant Gumbaytay has been subjecting actual and prospective female tenants of the subject properties to discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment. . . . The owner Defendants [] are liable for the discriminatory conduct of their agent and manager, Defendant Gumbaytay"); *id.* ¶ 19 (~~"~~The

Defendants' conduct [] constitutes: [] A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act.").

B. The Court's Judgment Should Stand Because the United States has Satisfied all Requirements for Subject Matter Jurisdiction.

i. The United States has established "pattern or practice" jurisdiction.

Bahr seeks relief from the judgment under Rule 60(b)(4) because the United States allegedly "did not establish a pattern or practice of discrimination at Bahr's properties" as a predicate for the Court's subject matter jurisdiction. Bahr Motion at 12. Rule 60(b)(4) provides that a court may relieve a party from a final judgment or order only where "the judgment is void" as a matter of law. *See American Bankers Ins. Co.* v. *Northwestern Nat'l Ins. Co*., 198 F.3d 1332, 1338 (11th Cir.1999) ("[u]nlike motions pursuant to other subsections of Rule 60(b), Rule 60(b)(4) motions leave no margin for consideration of the district court's discretion as the judgments themselves are by definition either legal nullities or not."). As a threshold matter, Bahr misstates the relevant legal test. As this Court has recognized, the precise question is whether the United States has "*reasonable cause to believe* that [] there is an 'individual' or 'group' pattern or practice violative of the Fair Housing Act." Dkt. 197 at 7 (Summary Judgment Order of 9/1/10) (emphasis added). Not only does the United States' complaint meet this test, but also this Court found "reasonable cause to believe [that] group action exists" and that the United States "easily satisfied its burden of producing evidence . . . about whether the group of defendants 'engaged in a pattern or practice of [discrimination].'" *Id.* at 10. Thus, the legal question of jurisdiction has already been considered and resolved by the Court and cannot be revisited by Bahr, especially not after default. *Gonzalez* v. *Secretary for Dept. of Corrections*, 366 F.3d 1253, 1295 (11th Cir. 2004) ("Like a motion to reconsider, a motion under Rule 60(b)

is not a second opportunity for the losing party to make its strongest case, to rehash arguments, or to dress up arguments that previously failed.") (quoting *Kustom Signals, Inc.* v. *Applied Concepts, Inc.*, 247 F. Supp. 2d 1233, 1235 (D. Kan. 2003)).

Bahr relies on language in the Court's order leaving the ultimate determination of whether the actions of the owner-defendants in fact constituted a group pattern or practice of discrimination for trial. Bahr Motion at 12. But by the Court's own terms, this was a *factual* question, which cannot be examined by a Rule 60(b)(4) motion. But even if the question of pattern-or-practice jurisdiction were deemed to be a mixed one of law and fact, the allegations in the complaint alone are sufficient to support the Attorney General's reasonable-cause determination regarding discriminatory group action by owner-defendants through a common property manager and agent in the person of Gumbaytay. *Nishimatsu Const. Co.* v. *Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir.1975) ("~~d~~efendant, by his default, admits the plaintiff's well-pleaded allegations of fact").

The relevant facts in the complaint include:

- That Gumbaytay managed at least seventeen properties identified by address, including two owned by Bahr, and that these properties, in conjunction with others not enumerated by street address, comprised the "~~s~~ubject properties" of the complaint. Dkt. 168 ¶ 5 (Third amended complaint).
- That eighteen owner-defendants, including Bahr, "~~e~~mployed Defendant Gumbaytay as [their] agent" to manage the subject properties. *Id.* ¶¶ 6-20.
- That "~~f~~[]rom at least 2005 through the present, Defendant Gumbaytay has been subjecting actual and prospective female tenants of the subject properties to

discrimination on the basis of sex, including severe, pervasive, and unwelcome sexual harassment. Such conduct has included, but is not limited to, unwanted verbal sexual advances; unwanted sexual touching; unwanted sexual language; granting and denying tangible housing benefits based on sex; and taking adverse action against female tenants when they refused or objected to his sexual advances." *Id.* ¶ 23.

- That all the owner-defendants, including Bahr, ~~k~~knew or should have known of the discriminatory conduct of Defendant Gumbaytay, yet failed to take reasonable preventive or corrective measures." *Id.* ¶ 24.
- That all the owner-defendants, including Bahr, ~~m~~may own or have owned other dwellings, for which they employed Gumbaytay as their manager and agent, where [discriminatory] conduct similar to that described [above] may have occurred." *Id.* ¶ 29.

Even if Bahr's central allegation—that the victims who testified at the default hearing cannot be linked to any property owned by Bahr—were true (and, as shown below, it is not), it is irrelevant to the question of subject matter jurisdiction. The question of whether *particular victims* should or should not have been awarded damages after an evidentiary hearing is separate from the question of whether the United States has the authority to bring this action. Because the allegations in the complaint, as shown above, adequately support the Attorney General's reasonable-cause determination, subject matter jurisdiction is nowhere lacking.

ii. The United States has established "denial of rights to a group" jurisdiction.

The Court has noted that subject matter jurisdiction is also established where there is reasonable cause to believe that ~~"a~~ group of persons has been denied rights granted by the Act and that denial raises an issue of general public importance." Dkt. 197 at 10 (citing 42 U.S.C. 3614(a)). Since this alternative basis has not been challenged by Bahr and is supported by the complaint, the Court may find jurisdiction on these grounds as well.

The Fair Housing Act permits the Attorney General to sue when there is a denial of rights to a group of persons protected by the FHA raising a matter of general public importance. *See* 42 U.S.C. § 3614(a); *United States* v. *City of Parma*, 661 F.2d 562, 565 at n.2 (6th Cir. 1981). Whether a fair housing case raises an issue of general public importance within the meaning of section 814(a) is left to the discretion of the Attorney General. *See e.g., U.S.* v. *Bob Lawrence*, 474 F.2d 115, 124-25 & n.14 (5th Cir. 1973); *United States* v. *Northside Realty Associates, Inc*., 474 F.2d 1164, 1168 (5th Cir. 1973). As the Fifth Circuit stated in Bob Lawrence:

> Just as the Attorney General has discretion when to exercise the prosecutorial function in criminal cases, so too the Attorney General must have wide discretion to determine when an issue of public importance justifying his intervention under [this section] is raised. . . . Once the Attorney General alleged that he had reasonable cause to believe that violation of § 3604(e) denied rights to a group of persons and that this denial raised an issue of general public importance, he had standing to commence an action in District Court . . . .

Bob Lawrence, 474 F.2d at 125 n.14 (citations omitted).

Moreover, the United States' enforcement authority under this provision may be based on ~~"a~~ single (unintentional) violation of the Act when by that violation a group of persons are denied their statutory rights." *See United States* v. *Hunter*, 459 F.2d 205, 217-18 (4th Cir. 1972). Here, the complaint alleged that Gumbaytay's actions as the owner-defendants' agent denied numerous ~~"f~~female tenants" rights protected by the FHA. Dkt 168 ¶¶ 23, 27. These victims

constitute an identifiable ―group of persons," whose denial of rights has been deemed by the Attorney General to raise an issue of general public importance. Jurisdiction has, therefore, been established under 42 U.S.C. 3614(a).

C. The Court's Judgment Should Stand Because it is Supported by Sufficient Evidence Admitted at the Court's Evidentiary the Hearing.

Although the United States' complaint established that Bahr is vicariously liable for violations of the Fair Housing Act stemming from the actions of his agent, Gumbaytay, Bahr requests that the Court vacate its damages award due to an alleged lack of supporting evidence, ostensibly on the basis of Fed. R. Civ. P. 60(b)(6).[1] Bahr Motion at 1. According to the Eleventh Circuit, ―relief under this clause is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances." *Cavaliere* v. *Allstate Ins. Co.*, 996 F.2d 1111, 1115 (11th Cir. 1993) (quotation omitted). Reduced to its essentials, Bahr's argument is that the damages awarded to four of Bahr's victim-tenants should be vacated because the Bahr-owned-properties in which they resided and were harassed were not identified by street address in the complaint. Bahr Motion at 5-6. But this argument, even if true, presents no ―exceptional circumstances" warranting a reversal of the Court's award as the United States presented sufficient evidence in support of the damages at the hearing itself.

Despite Bahr's assertions to the contrary, the testimony of victims Calandra Wright, Loretta Hall-Cates, Rita Julian and Britney Knight established both Bahr's ownership of the properties in question and Gumbaytay's agency on Bahr's behalf at the times of harassment.

[1] Although Bahr does not clarify the basis of his argument, it must be presumed to be Rule 60(b)(6) over Rule 60(b)(4) because the two provisions are mutually exclusive and because Bahr argues factual, not legal, deficiencies here. *In re Gledhill*, 76 F.3d 1070, 1080-1081 (10th Cir. 1996) (―Relief under Rule 60(b)(6) may not be premised on one of the specific grounds enumerated in Rule 60(b)(1)-(5).").

Calandra Wright

Q: [W]hen is the next time that you interacted with Gumbaytay?

A: After I moved into the home.

Q: Okay. Now, tell me about the property when you visited it. What was the property address?

A: 817 North Pass Road.

Wright Dep. Tr. 5:10-15

Q:. What kind of power did Gumbaytay have over your housing?

A: I knew him as being the landlord.

Q: Did you know who he was a landlord for?

A: I eventually found out that Matthew Bahr was the owner of the home that I was living in.

Q: And how did you learn that?

A: Some tax papers or something started coming in the mail to the home.

Id. at 16:19-17:1.

Loretta Hall-Cates

Court: You said that you contacted the Montgomery Housing Authority about some Section 8 housing, and you were put in contact with Mr. Gumbaytay regarding the 609 Boyce Street residence?

A: Yes, sir. He was listed on the paper.

Cates Dep. Tr. 15:21-25.

A: [Gumbaytay] came by to collect the rent payment.

Id. at 10:3-4.

Q: [D]id you ever know who owned the property when you lived there, at either of the properties?

A: I knew about Mr. Bahr, because I had heard his name. I asked Housing about that, and they let me know that he owned that property. . .

I believe I submitted a letter either to Mr. Bahr or to Housing pertaining to the things that were going on, but I never heard anything back.

Id. at 29:5-13.[2]

Rita Julian

A: So I had called Mr. Bahr on the telephone, and I had told Mr. Bahr -- I was like, Mr. Bahr, I know this is your house, and I know you -- you know, that Mr. Gumbaytay is renting. But if any water damage happens, it's not my fault, because I've told him and I've called him several times to have someone to come and fix it.

And at that point, I was flustrated (phonetic). And I told Mr. Bahr, I said, because Mr. Gumbaytay is not fixing anything for me, I feel like it's because he's sexually harassing me and I won't sleep with him, and I feel like he's taking that out on me. So he told me that he will call Mr. Gumbaytay and get him to get somebody over there. And sure enough, happily, again, it got fixed.

Q: So the repair issue was taken care of. What happened with respect to Gumbaytay's behavior?

A: Nothing. It just -- he just kept coming on, kept coming on, kept doing the same things, advancing me for sexual favors, still coming to my house late at night, still sending me eviction notices. Nothing ever changed.

Julian Dep. Tr. 15:7-25.

Court: Who did you know to be the owner of the property located at 105 Stuart Street?

A: Matthew Bahr.

Id. at 29:23-25.

Court: Ms. Julian, you said that you moved into the residence at 105 Stuart Street. When did you move into that residence?

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[2] Additionally, when queried by the Court at the hearing, the United States represented that one of the properties discussed by Mrs. Cates was owned by Bahr. Cates Dep. Tr. 21:6-12 (~~C~~ourt: I believe one of the[] [properties] belonged to the Defendant Bahr and the other Defendant Dunn. Do you know which one? Ms. Standridge: That's correct, Your Honor. The first property, Boyce, belonged to Bahr. The second property, on Fourth Street, belonged to Dunn.").

A: It was December 2005.

Court: And how long were you in that residence?

A: I think I moved [out] in April 2006 or March of 2006.

Court: 2006 or 2007? March or April of 2006 would have meant that you were in the house for approximately four months, five months.

A: I moved in -- no -- 2007, yeah. Because I moved at the end of 2005, so it had to have been April of 20, 2007, I think it was.

Id. at 27:8-20

Britney Knight

Q: When did you first hear the name Jamarlo Gumbaytay?

A: When I moved on Stuart Street.

Q: What was the address of that?

A: 105.

Knight Dep. Tr. 4:15-18.

Q: How did you know of Jamarlo Gumbaytay?

A: He was our landlord.

Id. at 5:12-13

Court: On the day that [Gumbaytay] was at your home with his foot in the door when your mother called, you said that was about mid-June of 2007?

A: Yes.

Court: How long -- how much longer did y'all live at that house?

A: Probably four months after then.

Id. at 17:4-10.[3]

[3] Although Ms. Knight did not testify as to the ownership of 105 Stuart St. at the time of her harassment in mid-June of 2007 (when she was 15 years old), the ownership testimony of Rita

In sum, Bahr's repeated insistence that there was "no allegation or proof that Gumbaytay was acting as Bahr's agent" and "no evidence before the Court that establishes that Bahr own[ed]" the properties in question, is flatly wrong. Bahr Motion at 7. Precisely such evidence was offered by every witness that lived in Bahr's properties at the hearing. Indeed, the Court was offered two binders of supporting documentary evidence at the hearing by the United States, but ruled that it "did not need to consider the [] exhibits provided" because the testimony alone[4] was sufficient to support its judgment. Dkt. 420. Because Bahr declined to participate in the evidentiary hearing, he has waived his right to challenge the sworn assertions made by the victims as to Bahr's ownership of the properties in question and of the fact that Gumbaytay acted as Bahr's property manager.[5] Because the Court found the testimony of Wright, Cates, Julian, and Knight to be credible, and because these women testified to all of the "missing" facts in the United States' complaint, Bahr cannot meet his burden and his motion to vacate should be denied.

D. Even if the Court Grants Bahr's Motion, it Should Affirm its Original Award Based on Additional Evidence.

If the Court is inclined to grant Bahr's motion, the United States submits that it should alter or amend its judgment to incorporate additional evidence into the record and affirm its original damages awards. *See Adolph Coors Co.* v. *Movement Against Racism and the Klan*, 777

Julian provides sufficient evidence to support the inference that Bahr still owned the property at that time of Knight's harassment. *See* Julian Dep. Tr. 27:8-20 (showing Julian living at 105 Stuart St. until April 20, 2007); *id.* at 29:23-25 (showing Bahr's ownership).

[4] The only exceptions being the Court's consideration of affidavits of two victims who were not present at the hearing. Dkt. 420.

[5] Although Bahr chose to forego his opportunity to present any evidence to rebut the testimony of the victims, it is important to note that his motion *never actually states* that he did not own the properties at the relevant times or that Gumbaytay was not his property manager.

F.2d 1538, 154 (11th Cir. 1985) (reversing damages award after default and remanding ~~"s~~o that the trial court may create a record adequate to sustain whatever award of damages it deems appropriate."). In accordance with the Court's Order of September 15, 2011 (dkt. 429), the United States hereby submits the following evidence:[6]

Ex.	Bates Range	Description	Source
General Agency Evidence			
A*	n/a	Notarized certification of records by the Montgomery Housing Authority.	MHA
1*	US022713	HAP form signed by Bahr listing Gumbaytay as his ~~"A~~Agent" (undated).	MHA
32*	US072581	1/06 Gumbaytay letter to ~~"A~~All Tenants" copying Bahr.	Discovery
49	US092405-92406	5/06 letter to ~~"A~~All Tenants" from Gumbaytay as ~~"r~~ental manager" for ~~"l~~andlord[s]," copying Bahr.	Discovery
50	US002470	1/07 letter from Gumbaytay to MHA listing Bahr as owner.	MHA
22*	US072769-72770	3/07 email from Gumbaytay's assistant to Bahr and ~~"A~~All Owners" concerning management contract updates.	Discovery
37*	n/a	2006 Executive Summaries[7] and other files from Norsworthy.	Deposition
38*	n/a	2007 Executive Summaries and other files from Norsworthy.	Deposition
63	n/a	Compendium of Executive Summaries for Bahr from August 2005 - December 2007 from Norsworthy files.	Deposition
64	n/a	Excerpts from Norsworthy Deposition.	Deposition
65	n/a	Gumbaytay Deposition.	Deposition
Rita Julian – 105 Stuart St.			
44*	n/a	Bahr certified deed for 105 Stuart St.	Probate Court
66	n/a	Certified tax assessment records for 105 Stuart St.	Revenue Comm.
7*	US000241-268	12/05-11/06 HAP Contract for Julian at 105 Stuart St. signed by Bahr.	MHA
51	US000088	12/06 Executive Summary for Bahr showing Julian as	Discovery

[6] All exhibits mentioned herein refer to those attached to the United States' Motion to Supplement the Record of the July 28, 2011, hearing, which is being filed concurrently with this response brief. Exhibits that were first offered into evidence at the hearing are denoted with asterisks.

[7] The form, function and use of the ~~"E~~Executive Summaries" found at Exs. 37-38, 51-52, 55-56 and 63 are described in detail by Gumbaytay and his secretary (Norsworthy) at Ex. 64 and Ex. 65 at 413:2-415:23.

		tenant at 105 Stuart St.	
5*	US0002442	1/07 Notice of Default to Julian for 105 Stuart St. signed by Gumbaytay.	MHA
52	US096337	4/07 Executive Summary for Bahr showing Julian as tenant at 105 Stuart St.	Discovery
53	US063006	6/07 Sec. 8 Transaction list showing Julian as Bahr's tenant at 105 Stuart St.	MHA
6*	US000523	Promissory note between Julian and Gumbaytay showing repayment due date of 11/07.	MHA
Loretta Hall-Cates – 609 Boyce St. and 2233 E. 4th St.			
43*	n/a	Bahr certified deed for 609 Boyce St.	Probate Court
68	n/a	Certified tax assessment records for 609 Boyce St.	Revenue Comm.
4*	US022740-22741	6/06 Request for Tenancy Approval for 609 Boyce St. signed by Hall-Cates and by Gumbaytay on Bahr's behalf.	MHA
2*	US022745-22758	8/06-5/07 lease between Hall-Cates and Bahr for 609 Boyce St. signed by Gumbaytay.	MHA
3*	US022703-22712	8/06-8/07 HAP Contract for Hall-Cates at 609 Boyce St. signed by Bahr.	MHA
54	US062987	8/06 Sec. 8 Transaction list showing Hall-Cates as Bahr's tenant at 609 Boyce St.	MHA
51	US000088	12/06 Executive Summary for Bahr showing Hall-Cates transferring from 609 Boyce St. to 2233 East 4th St.	Discovery
Calandra Wright – 817 N. Pass Rd.			
45*	n/a	Bahr certified deed for 817 N. Pass Rd.	Probate Court
68	n/a	Certified tax assessment records for 817 N. Pass Rd.	Revenue Comm.
55	US090675	12/05 Executive Summary for Bahr showing Wright as tenant at 817 N. Pass Rd.	Discovery
56	US090670	3/06 Executive Summary for Bahr showing Wright as tenant at 817 N. Pass Rd.	Discovery
8*	US000101-103	8/06 Notice of Eviction and 7/06 Notice of Lease Termination for Wright at 817 N. Pass Rd. signed by Gumbaytay as ~~a~~uthorized agent."	MHA
Britney Knight – 105 Stuart St.[8]			
57	US035644	Birth certificate showing Rosa Knight as mother of Britney Knight.	MHA
58	US036027	4/07 Section 8 approval letter for Rosa Knight.	MHA
59	US035627-35628	Request for Sec. 8 Tenancy Approval for 105 Stuart St. signed by Rosa Knight on 4/07.	MHA

[8] *See* Exs.44 and 66 for certified deed and tax records listing Bahr as owner of 105 Stuart St.

60	US035689	7/07 HUD Sec. 8 Allowance Form for Rosa Knight and 105 Stuart St.	MHA
61	US035615-35626	8/07-9/08 Lease Agreement between Bahr and Knight signed by Gumbaytay on 1/08.	MHA
9*	US035591-35600	10/07-9/08 HAP Contract for 105 Stuart St. for Britney Knight and family signed by Bahr on 10/07.	MHA
62	US063015	10/07 Sec. 8 transaction list showing Rosa Knight as Bahr's tenant at 105 Stuart St.	MHA

The above evidence demonstrates that Wright, Cates, Julian, and Knight all lived in properties owned by Bahr and that Gumbaytay managed those properties on Bahr's behalf as his agent. Additionally, the testimony of all the women is consistent with the evidence regarding the dates of Gumbaytay's harassment coinciding with the victims' dates of occupancy.[9]

In weighing this evidence, the Court should also consider the fact that, although the record is sufficient, it will never be complete because Bahr deprived the United States of the ability to obtain additional relevant documents in discovery and the opportunity to question Bahr directly on these matters under oath. Although the United States must (and did) substantiate its damages claims, its burden of proof should be lighter than it would otherwise be by virtue of Bahr choosing default over meaningful participation in this suit. *Trans World Airlines, Inc.* v. *Hughes*, 449 F.2d 51, 63-64 (2d Cir. 1971) *rev'd on other grounds*, 409 U.S. 363 (1973) (~~It~~ would usher in a new era in the dynamics of litigation if a party could suffer a default judgment to be entered against it and then go about its business as if the slate was wiped clean and a new

[9] The fact that Ms. Knight testified to being harassed in mid-June 2007 and that her mother's lease was effective August 1, 2007, presents no contradiction. *See* Ex. 61. The evidence shows that the previous tenant-victim, Ms. Julian, vacated 105 Stuart St. in April of 2007 and that Knight's mother requested that her Sec. 8 voucher be applied to the Stuart St. address that same month. *See* Julian Dep. Tr. 27:8-20; Ex. 59. This is consistent with Ms. Knight's testimony that the family was already living at the property when she experienced harassment in mid-June 2007. Whether the Knight family lived under an annual lease, month-to-month, or under some other arrangement at the time is irrelevant.

day had dawned. To state the proposition is to expose the folly of it."). *Venegas-Hernandez* v. *Sonolux Records*, 370 F.3d 183, 187 (1st Cir. 2004) (~~"~~Defendant's decision not to appear also may have prejudiced plaintiffs' case by preventing them from obtaining sufficient evidence on which to prove actual damages").

III. CONCLUSION

For the reasons set forth above, the United States respectfully requests that the Court deny Bahr's motion or, if it grants the motion, re-affirm its original damages award in light of the additional evidence.

Respectfully submitted this 30th day of September 2011.

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CERTIFICATE OF SERVICE

I, Roger Severino, hereby certify that on this 30th day of September 2011, I served the foregoing Response to Defendant Bahr's Motion to Alter or Amend with the Clerk of the Court via the electronic case filing system which will serve the same upon the following via electronic mail:

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