IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, v. ELAINE MINTZES and ALLEN S. MINTZES, d/b/a CASTLE REALTY COMPANY, Defendant.	CIVIL ACTION NO. 20698 PLAINTIFF'S PRE-TRIAL MEMORANDUM

1. This Court has jurisdiction of this action. 28 U.S.C. §1345 and Section 813 of the Civil Rights Act of 1968, 42 U.S.C.§3613.

2. The Attorney General is authorized to institute this action to enjoin defendants from engaging in a pattern or practice of resistance to the full enjoyment of rights granted by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3613.

3. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq., is to be afforded a liberal construction in order to carry out the purpose of Congress to eliminate the inconvenience, unfairness and humiliation of racial discrimination. Cf. United States v. Beach Associates, Inc., 286 F. Supp. 801, 808-09 (D. Md. 1968); United States v. Medical Society of South Carolina, 298 F. Supp. 145, 151-52 (D. S.C. 1969); Jones v. Mayer, 392 U.S. 409 (1968).

4. The actions of defendants in, for profit, inducing and attempting to induce the owners to sell the dwellings involved in this litigation by representations regarding the entry or prospective entry of Negroes into the neighborhood constitute a pattern or practice of resistance to the full enjoyment of rights granted by Title VIII of the Civil Rights Act of 1968. The phrase "pattern or practice" is not defined in the Act. In the Congressional debates on the Act, Senator Scott described pattern or practice as "concerted or persistent interference with rights protected by the act." 114 Cong. Rec. S 1387 (Daily ed. Feb. 16, 1968). The history of the phrase "pattern or practice," which has been used in three previous civil rights Statutes, shows that this phrase was intended to require that the Attorney General show something more than an isolated, sporadic incident of discrimination. See, e.g., United States v. Mayton, 335 F. 2d 153, 158-59 (5th Cir. 1964); 110 Cong. Rec. 14239, 14270, 15895.

While a "pattern or practice" may be shown by various sets of circumstances, one obvious circumstance is repeated discriminatory acts by a single defendant. The activities of defendants in this case, consisting of similar representation made to a number of owners on the same block, are not "isolated" or "sporadic" incidents, but constitute conduct which is "repeated, routine, or of a generalized nature."

5. Title VIII prohibits sophisticated as well as simple minded modes of discrimination. Cf. Lane v. Wilson, 307 U.S. 268, 275 (1939); Dobbins v. Local 212, 292 F. Supp. 413, 447 (S.D. Ohio 1968) (Title VII of Civil Rights Act of 1964). If, in the context of their use, there is a substantial likelihood that words or phrases referring to a change in the nature of the neighborhood can be reasonably understood to have reference to the entry or prospective entry into the neighborhood of a person or persons of a particular race, then such words are included within the prohibitions of 42 U.S.C. §3604(e). This is so despite the omission of such explicit terms as "Negro" or "black" or "colored" and the omission of any explicit reference to persons moving into the neighborhood. Cf. libel and fraud cases applying the principle that language must be construed as it would normally be understood by the persons to whom it is addressed or published, taking into account the circumstances in which the words were used: Hubbard v. Associated Press, 123 F. 2d 864, 866 (4th Cir. 1941); Hartzog v. United Press Assn's., 202 F. 2d 81, 83-4 (4th Cir. 1953); Afro-American Publishing Co. v. Jaffe, 366 F. 2d 649, 655 (D.C. Cir. 1966); Derounian v. Stokes, 168 F. 2d 305, 307 (10th Cir. 1948); Spanel v. Pegler, 160 F. 2d 619, 623 (7th Cir. 1947); Reynolds v. Arentz, 119 F. Supp. 82, 85 (D. Nev. 1954);

Chaplin v. National Broadcasting Co., 15 F.R.D. 134, 137 (S.D. N.Y. 1953);[1/] Local 15 v. International Bro. of Elec. Wkrs., 273 F. Supp. 313, 320 (N.D. Ind. 1967); Geller v. Transamerica Corp., 53 F. Supp. 625, 628 (D.C. Del. 1944), aff'd 151 F. 2d 534.

6. Absent substantial evidence of a contrary connotation, the phrase "changing neighborhood," used in inducing or attempting to induce the sale or rental of a dwelling, is as a matter of law tantamount to an explicit representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race. A person is presumed to intend the probable consequences of his statement. Cf. Radio Officers' Union v. NLRB, 347 U.S. 17 (1954); United States v. Medical Society of South Carolina, 298 F. Supp. 145, 152 (D. S.C. 1969).

7. The dwellings involved in this litigation are a two-family house (Abel), another two-family house (Slater), a vacant lot (Ragonese), and a single-family house which was not sold or rented by the owner (Lincoln). None of these dwellings are within the exemption of 42 U.S.C. §3603(b)(1), which exempts "any single-family house sold

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1/ "The meaning of language and its effect on the opinion of the community depend upon the spirit of the times. [Citations omitted.] In times of extreme fear and suspicion, inflammatory inferences may be drawn from words which in calmer times sound completely innocent." 15 FRD at 137.

or rented by an owner" or of §3603(b)(2) which exempts "rooms or units" in a dwelling containing living quarters for no more than four families, but which does not exempt the dwelling itself.

8. The Section 3604(e) prohibition against blockbusting does not contravene the First Amendment guarantee of freedom of speech. The restriction on making representations regarding the entry of persons of a particular race, color, religion or national origin into the neighborhood applies only where the representations are made, for profit, to induce real estate sales. It does not restrict the general dissemination of information or ideas on the subject. In a number of analogous areas, the Supreme Court and other courts have ruled that commercial activities are not entitled to the same First Amendment protections that are afforded to the expression of social, religious or political views. See, e.g., Valentine v. Chrestensen, 316 U.S. 52, 54 (1942) (state may prohibit use of streets for distribution of purely commercial handbills); Jamison v. Texas, 318 U.S. 413, 417 (1943) (religious handbills distinguished from commercial); Halstead v. Securities & Exchange Commission, 182 F. 2d 660, 668-69 (D.C. Cir. 1950) (SEC prohibition against soliciting fees in a certain manner upheld; petitioners were "engaged in the market place of affairs rather than ideas."); Planned Parenthood Committee v. Maricopa County, 92 Ariz. 231,

375 P. 2d 719 (1962) (prohibition against advertising contraceptives upheld; advertisement by brand name distinguished from advocacy of ideas and general information about use of contraceptives); Supermarkets General Corp. v. Sills, 225 A. 2d 728, 93 N.J. Super 326 (1966) (state, in order to regulate pharmacy business, may prohibit advertising of prescription drugs at discount prices, even though advertisements are true); Markham Advertising Co. v. State, 439 P. 2d 248 (Wash. 1968) (upholding prohibition of billboards). Blockbusting activities result in substantial public harm. See e.g., 114 Cong. Rec. 2989 (Sen. Brook referring to research by Eunice and George Grier on effects of blockbusting). In view of this substantial public harm and of the limited interest in allowing real estate dealers to induce sales through such activities, the provisions of Section 3604(e) constitute a reasonable regulation of verbal expressions incident to commercial real estate practices.

Respectfully submitted,

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