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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, SOUTHERN DIVISION

<p>DISABILITY LAW CENTER, Plaintiff, v. COYOTE CREEK APARTMENTS LLC, OVERLAND CONSTRUCTION CORPORATION, and CURTIS MINER ARCHITECTURE, LC, Defendants.</p>	<p style="text-align: center;"><u>COMPLAINT</u> (Jury Demand)</p> <p style="text-align: center;">Case No. 2:22-cv-00434-JCB</p> <p style="text-align: center;">Magistrate Judge Jared C. Bennett</p>
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Pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, Plaintiff
DISABILITY LAW CENTER, by and through counsel, the Disability Law Center, alleges and
complains against Defendants COYOTE CREEK APARTMENTS LLC, OVERLAND
CONSTRUCTION CORPORATION, and CURTIS MINER ARCHITECTURE, LC, as follows:

NATURE OF THE ACTION

This is an action to redress and prevent the violation of rights under the Fair Housing Amendments Act pursuant to 42 U.S.C. § 3601 *et seq.* (“FHAA”), based on Defendants’ failure to design and construct a residential building in accordance with the FHAA.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 3613(a) because this action involves federal questions regarding the deprivation of Plaintiff’s rights under the FHAA.
2. Venue for this action is proper in the United States District Court for the District of Utah, Southern Division, pursuant to 28 U.S.C. §1391(b)(2), because it is the judicial district in which a substantial part of the acts giving rise to the claims occurred, and the residential apartment complex that is the subject of this action is located in this District.

PARTIES

3. Plaintiff Disability Law Center (“DLC”) is a private, non-profit organization that has been designated by the Governor of the State of Utah as the state’s protection and advocacy (“P&A”) agency. In this role, the DLC works to protect and advocate for the legal rights of people with disabilities across the state. Under the leadership of its governing board, the DLC advocates for and protects the legal rights of people with a broad range of disabilities. The Disability Law Center is dedicated to ensuring, among other objectives, that all people have equal access to housing opportunities across Utah by eliminating housing discrimination and creating open and inclusive communities.

4. The DLC has been injured by the Defendants' conduct because their unlawful actions required the expenditure and diversion of resources to confirm the discriminatory conduct of Defendants. The tests of the property required use of the limited financial and personnel resources with which the Disability Law Center operates. If Defendants had not been engaged in discriminatory conduct, those resources could have been used to more fully facilitate the mission of the Disability Law Center of ensuring that equal housing opportunities are available in all areas of Utah. In addition, the mission of the DLC has been frustrated by both the Defendants' unlawful actions, and the effect of those actions upon the housing opportunities of the people DLC serves.
5. Defendant Coyote Creek Apartments LLC ("Coyote Creek LLC") is a housing provider and the owner of Coyote Creek Apartments, located at 1165 E Bulloch St in Washington, Utah 84780. The principal address of Coyote Creek is 3200 W Clubhouse Drive., Suite 250 Lehi, Utah, 84043.
6. Defendant Curtis Miner Architecture, LC, is an architectural firm and the architect of the Coyote Creek Apartments. The principal address of Curtis Miner is 233 S. Pleasant Grove Blvd., Suite 105, Pleasant Grove, Utah, 84062.
7. Defendant Overland Construction Corporation is a construction company and the builder of the Coyote Creek Apartments. The principal address of Overland Construction is 3200 W. Club House Dr., Suite 250, Lehi, Utah, 84043.
8. Each Defendant participated in the design and construction process for the property at issue in this action and/or had the ability to exercise sufficient control and/or authority to undertake to remedy the property or to otherwise make the property accessible to people

with disabilities. Consequently, each Defendant had an independent, non-delegable duty to comply with the requirements of federal, state, and local fair housing laws.

FACTUAL ALLEGATIONS

Statutory and Regulatory Framework

9. In 1988, Congress enacted the Fair Housing Act Amendments (“FHAA”). According to the legislative history of the FHAA, Congress intended the amendments to reflect the “clear pronouncement of a national commitment to end the unnecessary exclusive of persons with handicaps from the American mainstream.” H.R. Rep. No. 711.
10. Congress went on to describe the discriminatory effect created by architectural barriers to entry and use and enjoyment of a dwelling: “A person using a wheelchair is just as effectively excluded from the opportunity to live in a particular dwelling by the lack of access into a unit and by too narrow doorways as by a posted sign saying, ‘No Handicapped People Allowed.’” H.R. Rep. No. 711.
11. Specifically, the FHAA mandates that any multi-family dwelling that consists of four or more dwelling units and is built for first occupancy after March 13, 1991 (“covered dwellings”) must provide the following:
 - a. At least one accessible building entrance on an accessible route;
 - b. Accessible and usable public- and common-use areas, which include all parts of the building beyond the individual units;
 - c. Doors designed to allow passage into and within all premises in such dwellings that are sufficiently wide to allow passage by persons using wheelchairs;
 - d. An accessible route into and through each dwelling;

- e. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
 - f. Reinforcements in bathroom walls that allow for the later installation of grab bars; and
 - g. Usable kitchens and bathrooms such that a person using a wheelchair can maneuver about the space.
12. To give meaning to the FHAA design and construction requirements, the United States Department of Housing and Urban Development (“HUD”) promulgated the final FHAA design and construction regulations in January 1989, which are codified in 24 C.F.R. § 100.205. HUD published the final Fair Housing Accessibility Guidelines on March 6, 1991, 56 Fed. Reg. 9472 (“FHAAG”), which incorporate the requirements of the American National Standard for buildings and facilities providing accessibility and usability for people with physical disabilities, A117-1-1986 (“ANSE”), the Fair Housing Act Design Manual in August 1996, which was updated in August 1998, and the Accessibility Requirements for Covered Multifamily Dwellings under the Fair Housing Act in April 2013.

Disability Law Center

13. Plaintiff DLC is a non-profit organization and has been designated by the Governor of the State of Utah as the state’s protection and advocacy (“P&A”) system. The DLC is a federally authorized and funded organization established under the Protection and Advocacy for Individuals with Developmental Disabilities Act (“PADD”), 42 U.S.C. § 15041, *et seq.*

14. Under the leadership of its governing board, the DLC advocates for and protects the legal rights of people with disabilities, including individuals with developmental disabilities, across the state of Utah. The DLC consults with individuals with disabilities and their family members in identifying organizational priorities. The DLC accomplishes this by reserving space on its governing board for such individuals, providing a formal grievance process, and ensuring opportunities for public comment. The DLC is closely connected to the interests of those it serves.
15. As the designated P&A system for the state of Utah, the DLC is authorized by Congress to “pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of people with disabilities within the state...” 42 U.S.C. § 15043(a)(2)(A)(i).
16. Among other activities, the DLC works to eliminate housing discrimination and promote open, accessible, and inclusive communities. This includes: (a) providing information to the public and other non-profit organizations in Utah about fair housing laws; (b) providing intake counseling to individuals and organizations with allegations of housing discrimination; (c) providing legal representation for individuals who have faced housing discrimination; and (d) conducting testing operations to ensure compliance with fair housing laws.
17. When conducting a testing operation into the accessibility of any given housing complex, the DLC dispatches “testers” – people who pose as individuals seeking housing, or friends or associates of those individuals, for the purpose of obtaining information about

the dwellings within, including by taking measurements of particular components of the common areas and individual rental units.

18. Prior to participating in a testing investigation conducted by the DLC, testers are screened and receive training from the DLC, which includes instructions on conducting tests and preparing tester report forms.
19. The DLC joins this action as an entity that has suffered and continues to suffer a distinct economic injury as it expends significant personnel time and financial resources to advocate for the rights of individuals who are seeking accessible community housing opportunities.

Inaccessible Features of Coyote Creek Apartments

20. Coyote Creek Apartments is a new, multi-building apartment complex in a fast-growing area near St. George, Utah. Coyote Creek was first approved for occupancy on February 4, 2020.
21. Coyote Creek contains dozens of units, including both apartments and townhomes, all of which are covered dwelling units as defined by the FHAA.
22. Coyote Creek advertises itself as “St. George’s newest home for the alluring lifestyle you deserve,” and offers multiple amenities such as luxury apartment suites, private garages, covered parking, recreational vehicle storage, and a pool, hot tub, and outdoor bar.
23. On October 27, 2021, the DLC dispatched two testers to view available apartments at Coyote Creek.

24. The testers arrived at the complex around 1:58 p.m. on that date, and remained onsite until approximately 2:40 p.m. While at Coyote Creek, the testers observed various common areas as well as one available unit.
25. During their visit, the testers observed the following:
 - a. In-unit temperature controls located 57” inches above the ground;
 - b. Inaccessible kitchen controls relating to the oven hood; and
 - c. An insufficient number of marked, accessible handicap parking spots.
26. In addition, when one of the testers inquired to Defendants’ leasing agent regarding whether or not the bathroom walls were reinforced in a manner which would allow the installation of grab bars, as required by law, the leasing agent said she did not know.
27. Upon information and belief, a full inspection of the Coyote Creek Apartments will reveal the existence of other barriers to access.
28. As required by the FHAA, Plaintiff requires a full inspection of the Coyote Creek Apartments in order to document and seek remedy for areas of non-compliance not identified in this Complaint. Plaintiff intends on amending this Complaint to include any violations of fair housing laws during an inspection that are not contained herein.

FIRST CAUSE OF ACTION

(Federal Fair Housing Act – 42 U.S.C. § 3601 *et seq.*)

29. Plaintiff repeats and realleges each allegation set forth in the paragraphs above and incorporates the same herein by reference.
30. Plaintiff is an aggrieved person as defined in 42 U.S.C. §§ 3602(d) and (i), has been injured by Defendants’ discriminatory conduct, and has suffered damages as a result.

31. The apartment units and townhomes at Coyote Creek Apartments are “covered multi-family dwellings” as defined by 42 U.S.C. § 3604(f)(7).
32. Defendants designed and/or constructed the covered multi-family dwellings and common use areas at Coyote Creek Apartments in violation of 42 U.S.C. § 3604(f)(3)(C).
33. As a direct and proximate result of Defendants’ failure to design and construct the above-identified covered multi-family dwellings in compliance with the accessibility requirements of the FHA, Plaintiff DLC has suffered injury, including monetary damages.
34. Defendants’ discriminatory practices frustrated and continue to frustrate Plaintiff’s mission to ensure that all people have equal access to housing opportunities in Utah by designing and construction inaccessible housing.
35. As a direct and proximate result of Defendants’ failure to design and construct in compliance with the accessibility requirements of the Fair Housing Act, inaccessible dwellings have been constructed in Utah that reduce housing opportunities for persons with physical disabilities.
36. Upon information and belief, Defendants have and continue to design and construct additional multi-family dwellings and residential properties for first occupancy after March 13, 1992, which are subject to and violate the FHAA.
37. Defendants’ unlawful conduct was intentional, willful, and made in reckless disregard for the rights of others.
38. Accordingly, pursuant to 42 U.S.C. §§ 3613(a) and (c), Plaintiff is entitled to actual damages, punitive damages, injunctive relief, and reasonable attorneys’ fees and costs.

PRAYER FOR RELIEF

39. WHEREFORE, Plaintiff respectfully requests the following relief:
- a. An order and judgment declaring that Defendants' discriminatory practices violate the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*;
 - b. An order and judgment enjoining Defendants, Defendants' agents, employees, and successors, and all other persons in active concert or participation from:
 - i. Discriminating against persons with disabilities in the design and/or construction of all dwellings;
 - ii. aiding, abetting, inciting, compelling, or coercing the doing of any of the acts forbidden by applicable laws;
 - c. An order and judgment requiring Defendants, Defendants' agents, employees, and successors, and all other persons in active concert or participation to:
 - i. make or pay for all necessary modifications to their policies, practices, and procedures of designing and constructing multi-family residential buildings to conform and comply with fair housing and civil rights laws;
 - ii. train all management, agents, and employees on pertinent fair housing, civil, and human rights laws;
 - iii. allow for monitoring of its future design and construction processes;
 - iv. allow for periodic monitoring of the subject properties to ensure compliance;
 - v. retain records to allow for appropriate monitoring; and

- vi. develop a written fair housing policy to be distributed to all employees and agents;
- d. An order and judgment awarding monetary damages to Plaintiff DLC to compensate it fully for the economic losses, diversion of resources, and interference with mission fulfillment caused by Defendants' unlawful discriminatory practices;
- e. An order and judgment awarding punitive damages;
- f. An order and judgment awarding Plaintiff reasonable attorneys' fees, costs, interest, and expenses incurred in prosecuting this action; and
- g. Any further relief that may be just or proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury in accordance with Rule 38 of the Federal Rules of Civil Procedure.

DATED THIS 30th DAY OF JUNE, 2022.

DISABILITY LAW CENTER
Attorneys for Plaintiff

By /s/ Nicholas H.K. Jackson
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