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U.S. DISTRICT COURT
SAVANNAH DIV.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

SAVANNAH-CHATHAM COUNTY
FAIR HOUSING COUNCIL, INC.,

Plaintiff,

vs.

GENESIS DESIGNER HOMES, LLC;
GENESIS REAL ESTATE GROUP,
LLC; and BEST REAL ESTATE
GROUP, LLC,

Defendants.

Case No.

CV406 096

**COMPLAINT FOR MONETARY, DECLARATORY AND INJUNCTIVE RELIEF;
DEMAND FOR TRIAL BY JURY**

1. Plaintiff brings this action against the owner, developer, builder and designer of the residential housing complexes known as the Stonelake Townhomes at Berwick Plantation and Highlands Crossing Townhomes at Godley Station, both located in Chatham County, Georgia, for failure to comply with federal fair housing laws prohibiting discrimination on the basis of disability.

I. JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 42 U.S.C. § 3613 and by 28 U.S.C. § 1331 in that the claims alleged herein arise under the laws of the United States.

3. Venue is proper under 28 U.S.C. § 1391 in that the claims alleged herein

include claims which arose within the County of Chatham, Georgia, and concern or otherwise relate to real properties located there.

II. SUBJECT DWELLINGS

A. Stonelake Townhomes

4. Stonelake Townhomes ("Stonelake") is a residential housing complex located at 89 Travertine Circle in Savannah, Georgia. Stonelake is a townhome development consisting of approximately 50 residential buildings, comprising a total of 252 dwellings. Each building contains four or more dwellings, consisting of both single-story and multi-story dwellings. Construction at Stonelake is now completed. There are at least five different dwelling types at Stonelake, including three single-story models (Azalea, Gardenia, and Orchid) and two multi-story models (Jasmine, versions A, B and C, and Camellia, versions A, B, and C).

5. Each ground-floor dwelling (single-story townhomes only) at Stonelake is a "covered multifamily dwelling" as that term is defined in the federal Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C). Each of these ground-floor dwellings was designed and constructed for first occupancy after March 13, 1991, and, therefore, each is subject to the disability accessibility requirements contained in the design and construction standards of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C).

B. Highlands Townhomes

6. Highlands Crossing Townhomes ("Highlands") is a residential housing complex located at 15 Falkland Avenue in Savannah, Georgia. Construction at Highlands is ongoing, and plaintiff is unable to determine, at this time, the total number

of residential buildings and dwellings that will ultimately be constructed. Based on marketing materials published by defendants, there will be at least five different dwelling types at Highlands, including three single-story models (Azalea, Gardenia, and Orchid) and two multi-story models (Jasmine, versions A, B and C, and Camellia, versions A, B, and C). Based on construction completed to date, it can be determined that there are at least two different dwelling types presently built at Highlands, including the single-story model (Azalea) and the multi-story model (Jasmine). Based on construction completed to date, it can be determined that each building contains four or more dwellings, consisting of both single-story and multi-story dwellings.

7. Each ground-floor dwelling (single-story townhomes only) at Highlands is a "covered multifamily dwelling" as that term is defined in the federal Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C). Each of these ground-floor dwellings was designed and constructed for first occupancy after March 13, 1991, and therefore, each is subject to the disability accessibility requirements contained in the design and construction standards of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C).

III. PARTIES

8. Plaintiff Savannah-Chatham County Fair Housing Council, Inc., ("SCFHC") is a nonprofit Georgia corporation organized under the laws of Georgia with its principal place of business located in Savannah, Georgia. One of SCFHC's specific purposes and goals is the promotion of equal opportunity in the sale of housing and the elimination of all forms of illegal housing discrimination. To this end, the activities in which SCFHC engages include, but are not limited to: (1) investigating allegations of discrimination; (2) conducting

investigations of housing facilities to determine whether equal opportunity in housing is provided; (3) taking such steps as it deems necessary to assure such equal opportunity and to counteract and eliminate discriminatory housing practices; (4) providing outreach and education to the community, including housing providers and consumers, regarding fair housing; and, (5) monitoring and training housing providers that have previously engaged in discriminatory practices.

9. Defendant Genesis Designer Homes, LLC, a Georgia Limited Liability Company, served as developer, designer, and builder of the dwellings at Stonelake and in that capacity is responsible for the design and/or construction of the dwellings at Stonelake. Defendant Genesis Designer Homes, LLC also markets for sale the dwellings constructed and being constructed at Highlands. Until November 30, 2005, Richard A. Fitzer III was the principal responsible for the operation of defendant Genesis Designer Homes, LLC. Mr. Fitzer was variously described in public documents as the owner, managing member, and president of Genesis Designer Homes, LLC. On November 30, 2005, Mr. Fitzer purportedly sold the company to others, including defendant Best Real Estate Group, LLC.

10. Defendant Genesis Real Estate Group, LLC, a Georgia Limited Liability Company, is currently acting as the developer, designer, and builder of the dwellings at Highlands and in that capacity is responsible for the design and/or construction of the dwellings at Highlands. Mr. Fitzer is the principal responsible for the operation of defendant Genesis Real Estate Group, LLC. Mr. Fitzer is variously described in public documents as the managing member and principal of Genesis Real Estate Group, LLC

11. Defendant Best Real Estate Group, LLC, a Georgia Limited Liability

Company, purportedly owns and operates defendant Genesis Designer Homes, LLC, as of November 30, 2005, and, as the current owner of that company, is a party necessary to accord complete relief. Best Real Estate Group, LLC operates out of the same office at the same address as the other two defendants. To the extent that Best Real Estate Group, LLC had nothing to do with the design or construction of Stonelake or Highlands, plaintiff seeks only equitable relief against Best Real Estate Group, LLC. Joinder of Best Real Estate Group, LLC, is necessary in order to accord the complete equitable relief sought herein because it may control access to Stonelake.

12. Based on information and belief, plaintiff believes that Mr. Fitzer may be the alter ego of defendant Genesis Real Estate Group, LLC, and defendant Genesis Designer Homes, LLC, or that plaintiff may be entitled to pierce the corporate veil and hold Mr. Fitzer personally liable for the discriminatory housing practices of each of those defendants. Plaintiff therefore expressly reserves the right to seek leave to amend this complaint to add Mr. Fitzer as a defendant, should his personal liability be established through discovery.

IV. FACTS

A. INTRODUCTION

13. Defendants have engaged in a pattern or practice of discrimination on the basis of disability in the design, construction, sale and operation of Stonelake and Highlands. Defendants have pursued this pattern or practice of discrimination with the purpose or effect of excluding persons with disabilities from residing at those dwellings or enjoying those dwellings fully and on an equal basis with persons without disabilities. Defendants continue to engage in such a pattern or practice of discrimination so as to

constitute a continuing violation. Defendants' illegal acts include, but are not limited to:

- A. Discriminating in the sale or otherwise making unavailable or denying a dwelling to any person because of disability;
- B. Discriminating in the terms, conditions and privileges of sale of a dwelling, or in the provision of services or facilities in connection with sales, because of disability;
- C. Restricting or attempting to restrict the choices of a person by word or conduct in connection with the sale of a dwelling so as to perpetuate or tend to perpetuate segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development, because of disability; and,
- D. Failing to design and construct covered multifamily dwellings in such a manner that they comply with the disability accessibility requirements of federal fair housing laws.

**B. THE DESIGN AND CONSTRUCTION OF
STONELAKE**

14. Over the past several years, defendants Genesis Designer Homes, LLC, and Genesis Real Estate Group, LLC (hereafter collectively referred to as "defendants") have designed and constructed multi-family housing within Chatham County. The Stonelake Townhomes project was completed in late 2005, with the final certificates of occupancy issuing from Chatham County that same year. As dwellings were completed, and a certificate of occupancy obtained, the dwellings were sold to and occupied by members of

public.

**C. THE DESIGN AND CONSTRUCTION OF
HIGHLANDS**

15. While defendants were completing construction and sale of dwellings at Stonelake, they started the construction of Highlands. Presently, defendants have constructed fewer than 20 dwellings at Highlands, with several dwellings in various stages of completion. Defendants have prepared the Highlands site for the construction of several more buildings. Of the dwellings completed to date, each dwelling is contained in buildings consisting of four or more dwellings. The completed dwellings are listed for sale to members of the public.

16. Based on observations of both sites, and a review of the marketing materials published by defendants, it appears that the building configuration and variety of dwelling types is the same for Stonelake and Highlands. Each site contains buildings comprised of four or more dwellings. Each site contains a mix of single- and multi-story dwelling types. The marketing materials published by defendants show that the dwelling types at Stonelake are identical to the dwelling types constructed and to be constructed at Highlands.

D. SCFHC INVESTIGATION

17. In 1996, the City of Savannah issued a report entitled Analysis of Impediments to Fair Housing, in which the City reported that Savannah suffered from a severe shortage of accessible housing to meet the needs of persons with disabilities living in Savannah. SCFHC provides fair housing services to the City of Savannah and

Chatham County. Starting in 1998, SCFHC has sought to identify and address multi-family dwellings in Chatham County that fail to comply with the accessibility requirements of the Fair Housing Act.

1. Brown Complaint

18. On July 12, 2005, Charlene Brown, an elderly, disabled woman, contacted SCFHC, reporting that she had just purchased a single-story townhome dwelling within Stonelake, located at 64 Travertine Circle. Ms. Brown stated that she is a disabled person, who suffers a substantial limitation on a major life activity, namely walking, and that she uses a scooter for mobility. She also reported that she intended to move into her new home at Stonelake on July 26, 2005, but when she inspected the completed dwelling she observed that it was not accessible. In particular, she stated that the dwelling entrance was blocked by steps to the front door.

19. The certificate of occupancy for Ms. Brown's dwelling was issued by Chatham County on July 19, 2005.

20. Based upon that complaint, SCFHC conducted an investigation. In July 2005, SCFHC requested copies of documents from Chatham County to determine the dates of occupancy and the configuration of dwellings at Stonelake. Based upon a review of those documents, SCFHC determined that Stonelake included dwellings that fit within the definition of a "covered multifamily dwelling" as that term is defined in the federal Fair Housing Act, and therefore were subject to the disability accessibility requirements contained in the design and construction provisions of the Fair Housing Act, 42 U.S.C. § 3604(f)(3)(C).

2. Stonelake Site Inspection

21. To determine whether the covered multi-family dwellings at Stonelake were designed or constructed in violation of the Fair Housing Act, SCFHC retained an expert and architect, Philip Zook, to conduct a site inspection and prepare a Fair Housing Accessibility Compliance Report.

22. On August 9, 2005, Mr. Zook inspected the public and common areas of Stonelake and conducted an interior inspection of Ms. Brown's dwelling. That inspection revealed that, as to the exterior of dwellings, including the public and common areas, defendants discriminated against persons with disabilities by failing to design and construct Stonelake in accordance with the accessibility requirements of the Fair Housing Act by, inter alia:

- A. Failing to provide an accessible route to the primary entrance of each ground-floor unit by placing steps in front of ground-floor units;
- B. Failing to provide accessible routes to public and common use areas; and,
- C. Failing to provide accessible entrances to dwelling units.

23. That inspection also revealed that, as to the interior of the dwelling inspected, defendants discriminated against persons with disabilities by failing to design and construct Stonelake in accordance with the accessibility requirements of the Fair Housing Act by, inter alia:

- A. Failing to provide accessible routes within units, including failing to provide interior doors providing a nominal 32-inch clear opening;

- B. Failing to provide environmental controls in an accessible location;
and,
- C. Failing to provide sufficient floor space for maneuvering in kitchens
and bathrooms.

3. First Highlands Site Inspection

24. Following the inspection of Stonelake, SCFHC learned that defendants were in the process of constructing a new development, known as Highlands, which would be comprised of the same dwelling types as those constructed at Stonelake. SCFHC then conducted an inspection of the exterior of the dwellings under construction at Highlands and determined that they were indeed identical in building configuration and dwelling type as at Stonelake.

4. Education and Outreach by SCFHC

25. Upon confirming the existence of Fair Housing Act design and construction violations at Stonelake, SCFHC conducted education and outreach to residents of that development. In particular, SCFHC disseminated information in August 2005 to each dwelling unit at Stonelake. These materials informed residents of the requirements of the federal Fair Housing Act generally and, more specifically, of the design and construction requirements applicable to the construction of multifamily housing.

5. Additional Complaints About Inaccessibility at Stonelake

26. On November 3, 2005, DM¹, an owner and resident of a dwelling at

¹This complainant has requested that her name not be disclosed in this complaint.

Stonelake, contacted SCFHC, complaining about a lack of accessibility. Ms. McCarthy reported that she is a disabled person, who suffers a substantial limitation of a major life activity, namely walking, and uses a cane and walker for mobility.

27. On November 18, 2005, Sondra Barnes, an owner and resident of a dwelling at Stonelake, contacted SCFHC, complaining about a lack of accessibility. Ms. Barnes reported that, at the time the sidewalks were under construction at Stonelake, she warned the builder that the sidewalks did not comply with accessibility requirements. Ms. Barnes also reported that a friend with a hip replacement had inspected a dwelling at Stonelake, but decided against purchasing a dwelling there because of the lack of accessibility.

6. SCFHC Provides Technical Guidance to Defendants

28. On November 1, 2005, SCFHC responded to an inquiry from an agent of defendants, providing defendants with information about the accessibility requirements under the Fair Housing Act. Specifically, SCFHC provided defendants with directions on how to obtain materials compiled by United States Department of Urban Development, including technical guidance regarding the design and construction requirements imposed by the Fair Housing Act.

7. Efforts by SCFHC to Resolve Complaints Prior to Litigation

29. On December 5, 2005, SCFHC sent a letter to Mr. Fitzer, advising him, among other things, of the results of SCFHC's investigation, and demanding that "construction of covered multifamily dwellings at Highlands stops immediately until it can be determined whether those dwellings are designed in accordance with the Fair

Housing Act.” SCFHC reiterated that demand in writing to defense counsel on December 15, 2005.

30. On January 4, 2006, defense counsel transmitted an email to SCFHC stating that, without admitting any wrongdoing, defendants were committed to constructing all covered multi-family dwellings in the Highlands development to meet the requirements of the Fair Housing Act. On January 23 and 26, and February 2, 2006, SCFHC requested that defendants provide a written response to its demand, dated December 5, 2005. To date, no written response has been received.

8. Follow Up Site Inspection to Highlands

31. On March 30, 2006, SCFHC conducted a follow up site inspection of Highlands. That inspection revealed that several dwellings were under construction; others were completed and listed for sale. Of the single-story dwelling that were completed, none complied with the requirements of the Fair Housing Act. The model unit and office were also inaccessible.

E. INJURIES

32. SCFHC has diverted resources as a result of defendants’ discriminatory conduct: (1) to investigate, evaluate and determine the extent to which the design and construction of the Stonelake and Highlands developments fail to conform to accessibility standards under the federal Fair Housing Act and to evaluate and determine possible remedies for such deficiencies; (2) to educate and perform outreach to the residents of Stonelake to inform them of their fair housing rights; and (3) to protect the fair housing rights of their members, associates and constituents from the

continued discrimination of the defendants based on disability.

33. As a result of defendants' unlawful acts and practices, SCFHC has suffered injury to its ability to carry out its purpose and to serve the public in its efforts to eliminate housing discrimination, to resolve fair housing disputes, to make available decent housing for persons regardless of disability and to assure rights to the important social, professional, business, economic and political benefits of associations that arise from living in a community in which persons with and without disabilities reside. Defendants' unlawful acts and practices also have caused SCFHC to suffer economic losses and out-of-pocket expenditures, incurring costs in efforts to counteract and eliminate discriminatory housing practices in the design and construction of housing in Chatham County and to provide outreach and education to persons involved in the design and construction of housing in Chatham County regarding the requirements of the fair housing laws. As a result of defendants' unlawful acts and practices, the ability of SCFHC to perform its customary counseling, referral, outreach and education activities has been impaired, and it has suffered a decrease in its ability to undertake other efforts to end unlawful housing practices. Accordingly, SCFHC is entitled to compensatory damages.

34. In doing the acts of which plaintiff complains, defendants and their agents and employees intentionally or recklessly violated plaintiff's federally protected rights. Accordingly, plaintiff is entitled to punitive damages.

35. There now exists an actual controversy between the parties regarding defendants' duties under federal fair housing laws. Accordingly, plaintiff is entitled to declaratory relief.

36. Unless enjoined, defendants will continue to engage in the unlawful acts and the pattern or practice of discrimination described above. Plaintiff has no adequate remedy at law. Plaintiff is now suffering and will continue to suffer irreparable injury from defendants' acts and the pattern or practice of discrimination against persons with disabilities unless relief is provided by this Court. Accordingly, plaintiff is entitled to injunctive relief.

V. CLAIM

[FAIR HOUSING ACT]

37. Plaintiff realleges and incorporates by reference paragraphs 1 through 36 of the complaint herein.

38. Defendants have injured plaintiff in violation of the federal Fair Housing Act, 42 U.S.C. § 3601, et seq., by committing discriminatory housing practices in connection with the design, construction, sale and/or operation of the Stonelake and Highlands housing developments.

VI. RELIEF

WHEREFORE, plaintiff prays for entry of a judgment against defendants that:

1. Awards compensatory and punitive damages according to proof;
2. Declares that defendants has violated the provisions of the applicable federal fair housing laws;
3. Enjoins all unlawful practices complained about herein and imposes affirmative injunctive relief requiring defendants, their partners, agents, employees, assignees and all persons acting in concert with or

participating with them, to take affirmative action to provide equal housing opportunities to all purchasers and prospective purchasers without regard to disability;

4. Awards costs of suit, including reasonable attorneys' fees; and,
5. Awards all such other relief as the Court deems just.

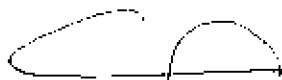
VII. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff hereby requests a jury trial.

Dated: April 7, 2006.

Respectfully submitted,

BRANCART & BRANCART



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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SAVANNAH-CHATHAM COUNTY FAIR HOUSING COUNCIL, INC.

(b) County of Residence of First Listed Plaintiff Chatham (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Brancart & Brancart, Post Office Box 686, Pescadero, CA 94060; (650) 879-0141

DEFENDANTS

GENESIS DESIGNER HOMES, LLC; GENESIS REAL ESTATE GROUP, LLC; and, BEST REAL ESTATE GROUP, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business in This State
2 2 Incorporated and Principal Place of Business in Another State
3 3 Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX MATTERS, OTHER STATUTES. Rows include categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Court

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity) 42 U.S.C. section 3601, et seq.

Best description of cause of action: Housing discrimination action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS ATP CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE: 4-7-06 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP FEE MAG. JUDGE

United States Treasury Symbol 4621

Wed Apr 12 10:41:07 2006

UNITED STATES DISTRICT COURT
SAVANNAH

Receipt No. 400 408846
Cashier kts

Check Number: 6970

DU Code Div No
4621 4

Sub Acct	Type	Tender	Amount
1:510000	N	2	190.00
2:086900	N	2	60.00
3:086400	N	2	100.00

Total Amount \$ 350.00

BRANCART & BRANCART, 1831 PESCADERO
ROAD, P.O. BOX 686

PESCADERO, CA 94060-NEW CIVIL CASE C
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