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#### HOUSING & CIVIL ENFORCEMENT CASES

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT  
OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 3:01cv0040AS

EDWARD ROSE & SONS, INC.;  
EDWARD ROSE CONSTRUCTION CO.;  
EDWARD ROSE OF INDIANA;  
EDWARD ROSE & ASSOCIATES;  
EDWARD ROSE DEVELOPMENT CO.,  
LLC; OCCIDENTAL  
DEVELOPMENT LTD., L.P.;  
GARY WEAVER, ARCHITECT;  
ECKERT/WORDELL ARCHITECTS,  
P.C.; and DORCHEN/MARTIN  
ASSOCIATES, INC.,

Defendants.

#### FIRST AMENDED COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (" Fair Housing Act " ), 42 U.S.C. §§ 3601-3619, and Title III of the Americans with Disabilities Act (" ADA " ), 42 U.S.C. §§ 12181-12189.
2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, 42 U.S.C § 3614(a), and 42 U.S.C. § 12188(b)(1)(B). Venue is proper pursuant to 28 U.S.C. § 1391 because (a) a number of defendants reside or do business in the Northern District of Indiana and (b) all the defendants reside or do business in the State of Indiana. Venue is also proper because a substantial number of the residential rental properties at issue are situated within the Northern District of Indiana, and a substantial part of the acts or omissions giving rise to the claims occurred in the Northern District of Indiana.
3. Defendant Edward Rose Construction Co. conducts business in the Northern District of Indiana. Defendant Edward Rose of Indiana is a limited partnership organized under the laws of Michigan that conducts business in the Northern District of Indiana and elsewhere. Defendant Edward Rose & Sons, Inc., is a corporation organized under the laws of Michigan that conducts business in the Northern District of Indiana and elsewhere. Defendant Edward Rose & Associates is a company organized under the laws of Michigan that conducts business in the Northern District of Indiana and elsewhere. Defendant Edward Rose Development Co., LLC, is a limited liability company created under the laws of Michigan, that conducts business in the Northern District of Indiana and

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elsewhere. Defendant Occidental Development Ltd., L.P., is a limited partnership organized under the laws of Michigan that conducts business in the Northern District of Indiana and elsewhere.

4. Defendants Edward Rose Construction Co., Edward Rose of Indiana, Edward Rose & Sons, Inc., Edward Rose & Associates, Edward Rose Development Co., LLC, and Occidental Development Ltd., L.P., (collectively, " Rose defendants " ) are engaged in the development, construction, and operation of rental apartment complexes in the Northern District of Indiana and elsewhere.

5. The Rose defendants are responsible for the design, construction, and overall development of a number of apartment complexes, including the following:

*Apartment Complexes Located in INDIANA*

<i>NAME OF DEVELOPMENT</i>	<i>LOCATION</i>
Arbor Lakes Apts.	Elkhart County, IN
Dupont Lakes Apts.	Allen County, IN
Hurwich Farms Apts.	St. Joseph County, IN
Indian Lakes Apts.	St. Joseph County, IN
Mallard Bay Apts.	Lake County, IN
North Pointe Apts.	Elkhart County, IN
Pheasant Run Apts.	Tippecanoe County, IN
Polo Run Apts.	Johnson County, IN
South Bridge Apts.	Allen County, IN
Sundance at the Crossings	Marion County, IN

*Apartment Complexes Located in VIRGINIA*

<i>NAME OF DEVELOPMENT</i>	<i>LOCATION</i>
Sunscape Apts.	Roanoke County, VA
Trophy Club Apts.	Chesterfield County, VA
Waterfront Apts.	Virginia Beach County, VA

*Apartment Complex Located in WISCONSIN*

<i>NAME OF DEVELOPMENT</i>	<i>LOCATION</i>
Oak Shores Apartments	Milwaukee County, WI

Eight of these complexes - Arbor Lakes Apartments, Dupont Lakes Apartments, Hurwich Farms Apartments, Indian Lakes Apartments, Mallard Bay Apartments, North Pointe Apartments, Pheasant Run Apartments, and South Bridge Apartments -- are located in the Northern District of Indiana.

6. Defendant Gary Weaver, an architect domiciled in the State of Indiana, provided architectural and building designs for Mallard Bay Apartments, Pheasant Run Apartments, Polo Run Apartments, Sundance at the Crossings, Sunscape Apartments, and Trophy Club Apartments.

7. Defendant Eckert/Wordell Architects, P.C., a Michigan-chartered corporation, provided architectural and building designs for Arbor Lakes Apartments, Dupont Lakes Apartments, North Pointe Apartments, and South Bridge Apartments, all located within the Northern District of Indiana.

8. Defendant Dorchen/Martin Associates, Inc., a Michigan-chartered corporation, provided architectural and building designs for Hurwich Farms Apartments and North Pointe Apartments, both of which are located in the Northern District of Indiana.


*PATTERN OR PRACTICE VIOLATION: FAIR HOUSING ACT*

9. Each of the apartment complexes specified in paragraph 5 above (hereinafter referred to as " the subject complexes " ) contains residential apartment units that are " dwellings " within the meaning of 42 U.S.C. § 3602(b).

10. Those ground floor units at each subject complex designed and constructed for first occupancy after March 13, 1991 are " covered multi-family dwellings " within the meaning of 42 U.S.C. §3604(f)(7)(A) and are subject to the requirements of 42 U.S.C. § 3604(f)(3)(C). A substantial number of the units contained in each subject complex are " covered " dwelling units.


11. The subject complexes comprise approximately 166 buildings containing residential rental dwellings built since the effective date of the accessible design requirements of the Fair Housing Act. These buildings contain approximately 1596 ground floor units that are subject to the accessibility requirements of the Fair Housing Act.

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12. Defendants have failed to design and to construct the covered dwelling units and common use and public use areas in the subject complexes and others in such a manner that:

- (a) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
- (b) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
- (c) all premises within such dwellings contain the following features of adaptive design:
  - (i) an accessible route into and through the dwelling;
  - (ii) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  - (iii) reinforcements in bathroom walls to allow later installation of grab bars; and
  - (iv) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Defendants, through the actions described in paragraph 12 above, have:

- a. Discriminated in the rental of, or otherwise made unavailable or denied, dwellings to persons because of handicap, in violation of 42 U.S.C. § 3604(f)(1);
- b. Discriminated against persons in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with the rental of a dwelling, because of handicap, in violation of 42 U.S.C. § 3604(f)(2); and
- c. Failed to design and construct dwellings in compliance with the requirements mandated by 42 U.S.C. § 3604(f)(3)(C).

14. The conduct of defendants described above constitutes:

- a. A pattern or practice of resistance to the full enjoyment of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619; and
- b. A denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, which denial raises an issue of general public importance.

15. Persons who have been the victims of defendants' discriminatory housing practices are aggrieved persons as defined in 42 U.S.C. § 3602(i) and may have suffered injuries as a result of defendants' conduct described above.

16. Defendants' conduct described above was intentional, willful, and taken in disregard for the rights of others.

PATTERN OR PRACTICE VIOLATION:

*AMERICANS WITH DISABILITIES ACT*

17. The rental offices at the subject complexes are sales or rental establishments, the operations of which affect commerce, and therefore are "public accommodations" within the meaning of 42 U.S.C. § 12181(7).

18. The rental offices at the subject complexes other than Indian Lakes Apartments, North Pointe Apartments, and Sundance Apartments were designed and constructed for first occupancy after January 26, 1993. The rental offices and the facilities, privileges, and accommodations provided for the public appurtenant to the use of the rental offices, including the parking, sidewalks, and restrooms at the rental offices, are covered by the prohibition on discrimination in 42 U.S.C. § 12182(a), and are subject to the design and construction requirements of 42 U.S.C. § 12183(a)(1).

19. The Rose defendants have failed to design and construct the rental offices at the subject complexes and others that were designed and constructed for first occupancy after January 26, 1993, and the appurtenant parking, sidewalks, and restrooms at those rental offices, in such a manner that the facilities are readily accessible to and useable by individuals with disabilities.

20. The actions of the Rose defendants, as described in paragraphs 17-19 above, constitute:

a. Discrimination against individuals with disabilities in the full and equal enjoyment of the services, facilities, privileges, and accommodations of a place of public accommodation, in violation of 42 U.S.C. § 12182(a); and

b. A failure to design and construct public accommodations in compliance with the requirements mandated by 42 U.S.C. § 12183(a)(1).

21. The conduct described in paragraphs 19-20 above constitutes:

a. A pattern or practice of discrimination under Title III of the ADA, 42 U.S.C. §§ 12181-12189; and

b. Discrimination against a person or group of persons under Title III of the ADA, 42 U.S.C. §§ 12181-12189, which discrimination raises an issue of general public importance.

22. Persons who have been the victims of these discriminatory practices are persons aggrieved within the meaning of 42 U.S.C. § 12188(b)(2)(B), and may have suffered injuries as a result of the conduct of the Rose defendants, described above.

*PRAYER FOR RELIEF*

WHEREFORE, the United States of America prays that the Court enter an order that:

1. Declares that defendants' policies and practices, as alleged herein, violate the Fair Housing Act;
2. Enjoins defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:
  - a. Failing or refusing to bring the covered dwelling units and public use and common use areas at the subject complexes and others into immediate compliance with the requirements of 42 U.S.C. § 3604(f)(3)(C);
  - b. Failing or refusing to take such affirmative steps as may be necessary to restore the victims of the defendants' unlawful practices to the position they would have been in but for the discriminatory conduct; and
  - c. Failing or refusing to design and construct any covered multi-family dwellings in the future in compliance with the requirements set forth in 42 U.S.C. § 3604(f)(3)(C);
3. Awards such damages as would fully compensate each person aggrieved by defendants' discriminatory housing practices for their injuries and damages resulting from defendants' discriminatory conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B);
4. Awards each person aggrieved by defendants' discriminatory conduct punitive damages because of the intentional and wilful nature of defendants' conduct, pursuant to 42 U.S.C. § 3614(d)(1)(B); and
5. Assesses a civil penalty against defendants for their violation of the Fair Housing Act in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) and 28 C.F.R. 85.3(b)(3), to vindicate the public interest.
6. Declares that practices of the Rose defendants, as alleged herein, violate Title III of the ADA;
7. Enjoins the Rose defendants, their officers, employees, agents, successors, and all other persons in active concert or participation with any of them, from:
  - a. Failing or refusing to bring the rental offices at the subject complexes and others, and the parking, sidewalks, and restrooms at the rental offices, into compliance with the requirements of 42 U.S.C. § 12183(a)(1);
  - b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the unlawful practices of the Rose defendants in violation of the ADA, to the position they would have been in but for the discriminatory conduct; and
  - c. Failing or refusing to design and construct any public accommodations in the future in compliance with the requirements of 42 U.S.C. § 12183(a)(1);

8. Awards such damages as would fully compensate each person aggrieved by the Rose defendants' discriminatory practices in violation of the ADA, for his or her injuries and damages resulting from defendants' discriminatory conduct, pursuant to 42 U.S.C. § 12188(b)(2)(B); and

9. Assesses civil penalties against the Rose defendants for each of their violations of the ADA, in an amount authorized by 42 U.S.C. § 12188(b)(2)(C), to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

Respectfully submitted,

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