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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA
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10 PARENTS AGAINST DISABILITY
11 DISCRIMINATION; CHARO AGEE;
12 DEBORAH BECK; TAMMARRA and
13 GARTH JOHNSON; KENNETH and
14 MELANIE KROOK; DESIREE SNOWDEN;
15 RONALD and KRYSTEN SPIRE; CONNIE
16 WHALEN, on behalf of themselves and all
17 individuals similarly situated,

18 Plaintiffs,

19 v.

20 EQUITY RESIDENTIAL (formerly known as
21 EQUITY RESIDENTIAL PROPERTIES
22 TRUST); EQR/LINCOLN FORT LEWIS
23 COMMUNITIES, LLC (also d/b/a
24 EQUITY/FORT LEWIS COMMUNITIES,
EQUITY RESIDENTIAL
PROPERTIES MANAGEMENT CORP.; and
EQR/LINCOLN LIMITED PARTNERSHIP
(a.k.a. EQR/LINCOLN DEVELOPMENT LP),

Defendants.

NO. C04-5267 RBL

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE, DECLARATORY AND
MONETARY RELIEF**

CLASS ACTION

DEMAND FOR JURY TRIAL

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF - 1
NO. C04-5267 RBL

1 **INTRODUCTION**

2 I. By this action, a group of military families who are stationed at the United States
3 Army's West Coast headquarters at Fort Lewis, Washington seek to require the private
4 companies that provide their on-post housing to treat individuals with disabilities fairly and
5 equally to all other individuals. Each of these families is enrolled in the Exceptional Family
6 Member Program ("EFMP"), a mandatory program of the Army. EFMP tracks families with
7 disabled members in order to ensure that the family is assigned to a base which can provide the
8 medical and special education services needed by the disabled family member. Because of their
9 membership in EFMP, and the disability-related housing needs of their disabled family members,
10 these families have experienced discrimination, retaliation, and unjust treatment from their Fort
Lewis housing provider.

11 2. Fort Lewis is the West Coast headquarters of the United States Army. In August
12 2000, the Army announced that it had selected a private development partner for on-post housing
13 at Fort Lewis, Washington, under the Military Family Housing Privatization Initiative. That
14 partner is EQR/Lincoln Fort Lewis Communities, LLC ("EQR/Lincoln"), a joint venture
15 between Equity Residential of Chicago, Illinois and Lincoln Property Company ("Lincoln
16 Property") of Dallas, Texas. Equity Residential is the largest owner and manager of residential
17 properties in the United States. It is a provider of rental housing at over 20 other military bases
18 and sites across the country. In awarding the contract for the Fort Lewis family housing
19 privatization projects to EQR/Lincoln, the Army agreed to collaborate with EQR/Lincoln to
20 develop a Community Development and Management Plan (CDMP). The CDMP was adopted
21 and now serves as a major part of the contract between EQR/Lincoln and the Army that governs
22 the Army's residential community at Fort Lewis. Pursuant to the CDMP, EQR/Lincoln, together
23 with its agents Equity Residential Properties Management Corp. and EQR/Lincoln Limited
Partnership and affiliate Equity Residential (collectively, "Equity"), manages, renovates, and
builds the on-post housing at Fort Lewis for 3,600 military families. Equity directly receives

1 rent from the families (via automatic deductions from the families' Army paychecks).

2 3. Equity has engaged in a pattern and practice of discrimination against people with
3 disabilities living in family military housing, including failure to provide reasonable
4 modifications, failure to provide reasonable accommodations, eviction threats, refusals to rent,
5 retaliation, and unlawful inquiries about individuals' disability status. Recently, Equity has been
6 conducting surprise "sanitation inspections" of residents' homes, threatening them with eviction,
7 and calling upon the Army chain of command to help enforce its demands. Families are afraid to
8 call Equity with a routine maintenance request for fear that they will be subjected to an
9 inspection or worse. These actions violate state and federal fair housing laws; they have harmed
10 and continue to harm Fort Lewis military families. Equity's practice of discrimination against
11 individuals with disabilities is particularly harmful in light of the stress and hardship faced by the
12 families during a time in which many of their soldiers have been deployed to serve in Iraq.
13 Accordingly, plaintiffs seek a preliminary and permanent injunction to prevent Equity from
14 continuing to discriminate against individuals with disabilities and to require Equity to adopt fair,
15 reasonable, and nondiscriminatory policies, practices and procedures in its provision of on-post
16 housing.

16 JURISDICTION

17 4. This Court has federal subject matter jurisdiction of this action pursuant to 28
18 U.S.C. §§ 1331 (federal question jurisdiction) and 1343 (civil rights jurisdiction) for claims
19 arising under the Fair Housing Act, 42 U.S.C. § 3401 *et seq.*, the Rehabilitation Act, 29 U.S.C. §
20 794 *et seq.*, the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and the United States
21 Constitution's Due Process and Equal Protection Clauses.

22 5. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction of
23 plaintiffs' additional claims under Washington state law because plaintiffs' state law claims
24 relate to plaintiffs' federal law claims, arise out of a common nucleus of operative facts, and

1 form part of the same case or controversy under Article III of the United States Constitution.

2
3 VENUE

4 6. Venue lies in the Western District of Washington under 28 U.S.C. § 1391 because
5 plaintiffs' claims arise from unlawful conduct occurring in this judicial district, and because the
6 real property which is the subject of this action is located in this judicial district.

7 PARTIES

8 7. Defendant EQUITY RESIDENTIAL (formerly known as EQUITY
9 RESIDENTIAL PROPERTIES TRUST) is headquartered at 2 North Riverside Plaza, Suite 400
10 in Chicago, Illinois. It is the largest publicly traded owner, operator, and developer of
11 multifamily properties in the United States and is also the nation's number one apartment owner
12 in sales. Nationwide, Equity Residential owns or has investments in almost a thousand
13 properties in over thirty states consisting of more than 200,000 units. Equity Residential is a
14 member of the S&P 500. One of its 14 regional offices is located in Seattle, Washington, and
15 12.3% of its residential properties are located in the Pacific Northwest. Equity Residential's
2003 Financial Report includes Fort Lewis Military Housing as among the properties owned by
the company.

17 8. Defendant EQR/LINCOLN FORT LEWIS COMMUNITIES, LLC (also **d/b/a**
18 EQUITY/FORT LEWIS COMMUNITIES, LLC) is a limited liability corporation registered in
19 the state of Delaware and located at 2 North Riverside Plaza, Suite 400 in Chicago, Illinois.
20 EQR/Lincoln Fort Lewis Communities, LLC is a joint venture between Equity Residential and
21 Lincoln Property. Lincoln Property is headquartered in Dallas, Texas. It is one of the nation's
22 largest diversified real estate companies. It has residential properties comprising more than
23 140,000 units and has developed about 130 million square feet of commercial properties
24 nationwide (of which it still manages 90 million). It has joint ventures with several corporations,

1 including Equity Residential, to develop commercial property, build apartments, and expand
2 internationally.

3 9. Defendant EQUITY RESIDENTIAL PROPERTIES MANAGEMENT CORP.
4 is an affiliate of Equity Residential and an agent of EQR/Lincoln. It provides property
5 management services under the CDMP.

6 10. Defendant EQR/LINCOLN LIMITED PARTNERSHIP (a.k.a. EQR/LINCOLN
7 DEVELOPMENT LP) is also an affiliate of Equity Residential and an agent of EQR/Lincoln. It
8 provides development services under the CDMP.

9 11. Plaintiff PARENTS AGAINST DISABILITY DISCRIMINATION ("PADD") is
10 an organization comprised of military families who are stationed at Fort Lewis and who have
11 family members with disabilities. Almost all of these families have personally experienced
12 disability discrimination in on-post housing since Equity began managing the housing at Fort
13 Lewis. Because the Army is the source of military families' paychecks, health insurance,
14 housing, and career advancement opportunities, and because Equity has shared (and continues to
15 share) sensitive housing information with the Army, many of the families are extremely afraid
16 that they will suffer retaliation from either Equity or the Army as a result of asserting their civil
17 rights in this lawsuit. PADD organized in order to support these families, to give them a
18 common voice, and to seek to end Equity's discrimination against them. PADD brings this
19 action in its representative capacity on behalf of its members, all of whom either have disabilities
20 themselves or who have an immediate family member with a disability, and who are directly and
21 adversely affected by Equity's disability-based discrimination. PADD also brings this action in
22 its representative capacity on behalf of other military families who are not yet known but who
23 are also directly and adversely affected by Equity's disability-based discrimination.

24 12. Plaintiff CHARO "TINA" AGEE is a resident of Fort Lewis, Washington, and a
member of PADD.

13. Plaintiff DEBRA BECK is a resident of Fort Lewis, and a member of PADD.

1 14. Plaintiffs TAMMARRA AND GARTH JOHNSON are residents of Fort Lewis,
2 and are members of PADD.

3 15. Plaintiffs KENNETH AND MELANIE "SUMMER" KROOK are residents of
4 Fort Lewis, and are members of PADD.

5 16. Plaintiff DESIREE SNOWDEN is a resident of Fort Lewis, and a member of
6 PADD.

7 17. Plaintiffs RONALD AND KRYSTEN SPIRE are residents of Tacoma,
8 Washington, and are members of PADD.

9 18. Plaintiff CONNIE WH ALLEN is a resident of Fort Lewis, and a member of
10 PADD.

FACTS UNDERLYING PLAINTIFFS' CLAIMS

A. Military Housing Privatization

11
12 19. In recent years, the Department of Defense ("DoD") has struggled with the
13 worsening problem of old and dilapidated military family housing. The DoD has estimated that
14 nearly two-thirds of its housing inventory needs repair or complete rehabilitation, which
15 represents about 200,000 housing units out of a total of over 300,000 family housing units in
16 DoD's inventory. To help remedy this problem, Congress enacted the Military Housing
17 Privatization Initiative (MPHI) in 1996 as part of the National Defense Authorization Act for
18 Fiscal Year 1996.

19 20. The standard method of funding the repair and replacement of military family
20 housing is through military construction dollars. However, declining defense budgets and
21 increasingly rigid government procurement processes have contributed to the deterioration of
22 military family housing. The military recognizes that the traditional methods it uses to repair,
23 replace, operate, and maintain military family housing are slow, cumbersome and expensive
24 compared to the private sector. At the same time, service members cannot simply be moved into
private sector housing because it is financially impossible for many young service members to

1 afford decent civilian housing. Dilapidated military housing is their only alternative.

2 21. With the MHPI, Congress gave DoD the legal authority to use a variety of
3 methods to obtain private sector financing, expertise and management to repair, renovate and
4 construct military family housing. The MHPI authorizes direct loans and loan guarantees, rental
5 occupancy guarantees, conveyance or lease of existing properties and facilities, differential
6 payments to supplement service members' housing allowances, and investments such as limited
7 partnerships and stock/bond ownership. 10 U.S.C. § 2871 *et seq.* These tools provide flexibility
8 in structuring agreements with private developers to provide military family housing. They
9 enable the services to draw upon private sector investment capital and housing construction
10 expertise. By using available government assets, DoD seeks to entice the private sector to use its
11 capital to invest in construction or renovation of military housing. The government can reduce
12 the initial cost of construction, repair and renovation using MHPI authorities.

13 22. As of December 2003, the military services have awarded 25 housing projects,
14 with 40 more in various stages of solicitation. The first military housing privatization project
15 was awarded at Lackland Air Force Base, Texas, in August 1998. The Army's first MHPI
16 project was at Fort Carson, Colorado. In September 1999, the Army awarded the Fort Carson
17 project for construction of 820 new units and renovation of 1,823 existing housing units, all
18 situated on the installation. Fort Carson executed an outright conveyance of the 1,823 existing
19 units, signed a fifty-year lease of the land to the developer, and provided a loan guarantee for a
20 private-sector loan. Similar to the Lackland project, the developer at Fort Carson owns, operates
21 and maintains housing units and rents them directly to eligible soldiers.

22 23. In August 2000, the Army awarded the Fort Lewis project to EQR/Lincoln. The
23 Army collaborated with EQR/Lincoln to develop a Community Development and Management
24 Plan (CDMP) for Fort Lewis. The CDMP was adopted and now serves as a major part of the
contract between EQR/Lincoln and the Army that governs the Army's residential community at
Fort Lewis.

1 24. Plaintiffs requested a copy of the CDMP for Fort Lewis from the Army under the
2 Freedom of Information Act on December 4, 2003. The Army provided plaintiffs with a copy
3 that was redacted in significant part on grounds of potential competitive harm and harm to the
4 Government's ability to do business. On information and belief, the contract between
5 EQR/Lincoln and the Army for Fort Lewis contains similar (if not identical) terms to the terms
6 of the agreement between the private developer and the Army at Fort Carson.

7 25. Equity took over the day-to-day management of on-post housing at Fort Lewis on
8 or about April 1, 2002. All military families living in on-post housing were required to sign new
9 leases with Equity Residential Properties Management Corp.

10 26. Fort Lewis has an advanced medical facility on post called the Madigan Army
11 Medical Center ("Madigan"). As part of the EFMP, the Army attempts to station military
12 families with disabled members at bases that have the medical and social capacity to
13 accommodate their needs. Because Madigan has substantial capacity in this regard, Fort Lewis
14 has a relatively high population of reported military families who have at least one family
15 member with a disability. The reported population is 13%, or about 3000 people, the second
16 highest of any base in the Army.

17 27. Almost all military families with disabled members want to live in on-post
18 housing so they can have easier access to Madigan, both for regularly scheduled medical visits as
19 well as emergency room visits, which are common for children with disabilities. In fact, these
20 families are strongly pressured by the Army's medical insurance program, Tri-Care, to live on-
21 post because if they do not, they often have to receive medical care from civilian hospitals in the
22 area. Tri-Care prefers military families to receive medical care from military medical facilities
23 in order to keep costs lower.

24 28. Since the enactment and implementation of the MHPI, just as before, military
members are allotted a Basic Allowance for Housing (BAH) each month. The BAH appears as a
distinct amount on the soldier's paycheck. However, the soldier does not have access to these

1 funds: for soldiers who live in on-post family housing at Fort Lewis, the BAH is automatically
2 withdrawn from the soldier's paycheck as an "allotment" and deposited with the private housing
3 provider, which is known to the families as "Equity." All military families living in on-post
4 housing at Fort Lewis pay their rent to Equity and are told that Equity manages their housing.

5 **B. Defendants' Pattern and Practice of Discrimination**

6 29. Defendants, acting individually and in concert with others, directly and through
7 agents, have engaged in a pattern or practice of discrimination against people with disabilities in
8 the operation of on-post family housing at Fort Lewis. Defendants continue to engage in such a
9 pattern or practice of discrimination so as to constitute a continuing violation.

10 30. Defendants' pattern or practice of discrimination against people with disabilities
11 includes, but is not limited to:

12 31. Equity requires new families applying for on-post housing at Fort Lewis to
13 disclose whether the soldier or anyone in his or her family is enrolled in EFMP. Equity has also
14 required new families to provide additional information about their disabled family members and
15 even copies of their EFMP paperwork to Equity before they can receive the keys to their new
16 unit. The EFMP paperwork is essentially a summary of each family's medical records. It
17 contains detailed, confidential medical information, and is protected from such disclosure by
18 federal privacy law.

19 32. Equity has refused to make reasonable structural modifications needed by persons
20 with disabilities, on grounds that such modifications are not cost-efficient or are cost-prohibitive
21 and/or that it is not required to make or allow such modifications. At times, Equity has refused
22 to even allow families with disabled members to make reasonable and necessary structural
23 modifications themselves.

24 33. Equity has refused to consider or has denied disability-related requests for
reasonable accommodations to policies, practices, or services, such as the requirement that all

1 houses be kept at a specified level of cleanliness, on grounds that it is not required to make such
2 accommodations.

3 34. Equity has harassed, threatened, and retaliated against certain people with
4 disabilities and/or families with disabled members for alleged lease violations or other
5 infractions, even after the individual has communicated that the problem relates to a disability
6 and has requested an accommodation. In almost all cases, Equity has directly contacted the
7 Army about the alleged problem without the family's knowledge or consent. Families have
8 received visits from the military police and other Army representatives regarding Equity
9 housing-related issues. In several instances, Equity has complained to a soldier's Army chain of
10 command regarding the soldier's family member's disability-related problem. These complaints
11 have had the effect of threatening a soldier's position and career in the Army.

12 35. Equity has been able to accomplish a high level of intimidation of families with
13 disabled members by exploiting military Standard Operating Procedures (SOP) and military
14 protocol. For example, Equity has told lower-ranked soldiers that they must help investigate
15 housing-related problems. Many soldiers (and others on post) do not understand the new
16 relationship between the Army and the private company that is now in charge of on-post
17 housing. Equity has deliberately manipulated this confusion in order to keep families afraid of
18 losing their housing if they complain about Equity's discrimination against them.

19 36. Equity has refused to rent to some families with disabled members because it says
20 there is no available housing unit that can accommodate them, despite the fact that there are
21 approximately 3,600 housing units at Fort Lewis.

22 37. Equity has made the process of applying for disability-related accommodations or
23 modifications extremely difficult and burdensome. Families have had to make requests multiple
24 times, and are required to provide a specific form, called a PAD-111 form, which must be filled
out by their doctor with detailed medical information and approved by both a Madigan Clinical
Services supervisor and an Army supervisor. No other form of medical disability

1 documentation, or any other medical supervisor's signature other than the Madigan supervisor's,
2 will be accepted. Even if the form is approved at multiple Army levels, Equity may still reject
3 the modification or accommodation request as too expensive or for other reasons. Furthermore,
4 Equity has recently begun requiring that all families who request mold and mildew removal must
5 submit documentation from one specific allergy specialist at Madigan. These are impossible
6 requirements to meet for many families, especially those who have recently relocated from Army
7 bases across the country or overseas.

8 38. Following military custom, Equity has a policy of allocating families to housing
9 units based solely on (1) the soldier's military rank and (2) the number of dependents in the
10 family. This policy is enforced even if a family member has a disability and an accessible unit is
11 available with a different number of bedrooms, or the accessible unit is restricted to soldiers of a
12 different rank. As applied to people with disabilities, this policy effectively denies such
13 individuals accessible housing even when accessible housing is available.

14 39. Equity has failed to make the bus stops in the residential neighborhoods at Fort
15 Lewis physically accessible, as there are no curb cuts on adjacent sidewalks. This makes it
16 extremely difficult for individuals with mobility disabilities to access services and to conduct
17 other everyday business.

18 40. Equity has failed to make playgrounds and parks in the residential neighborhoods
19 on-post physically accessible. These playgrounds and parks lack an accessible path of travel,
20 and do not have other accessible features needed by people with physical disabilities. There are
21 a large number of residents with mobility disabilities who would like to use the playgrounds and
22 parks, yet they are being denied equal access to these facilities.

23 41. Equity has failed to display a fair housing poster or any fair housing information
24 at the Equity office on post, which prevents individuals with disabilities from realizing that they
25 have rights and responsibilities under federal and state fair housing laws.

26 42. Some of the families, as well as the EFMP staff, met repeatedly with Equity

1 during November and December 2003 to attempt to resolve the problems. Equity told them that
2 there is no money to provide the modifications they seek, that the policies will not be changed,
3 and that if the families are unhappy they should move off-post. A meeting was held on
4 December 4, 2003, including a parent, EFMP staff members, and several Army and Equity
5 representatives to see if a resolution could be reached. The meeting was unsuccessful. The
6 representatives were clearly concerned about potential litigation and asserted that Equity is not
7 responsible for providing the modifications or accommodations the families seek.

8 43. In response to further meetings, representatives of Equity created a Draft "EQR Ft
9 Lewis Communities LLC Exceptional Family Member Program Policy and Procedures"
10 document. The new policy, as stated in the document, continues to require the completion of a
11 PAD-111 form by a physician and other documents. It also requires all accessibility
12 modification requests to be routed through the EFMP Committee, and multiple levels of review
13 and approval of the request from Madigan Army Medical Center supervisors, Army supervisors,
14 and ultimately, Equity. Furthermore, it states that the EFMP Committee and Equity must
15 attempt to find "outside resources" to fund modifications before Equity will fund them. The
16 policy thus makes it even more difficult and burdensome for families to make it through all the
17 levels of process to actually receive in a timely manner the modifications they need and to which
18 they are legally entitled. It effectively puts up roadblocks instead of providing accessible
19 housing as the law requires. The policy only addresses accessibility modifications and states
20 nothing about reasonable accommodation requests, the EFMP enrollment disclosure
21 requirement, or other issues raised herein. Nor does it address the situation of families who
22 arrive at Fort Lewis and may not be able to get a PAD-111 form signed or approved by Madigan
23 doctors or supervisors immediately.

24 44. Equity managers have stated that the new SOP is the governing policy effective
February 1, 2004, although they have not allowed any of the families to actually see or get
written copies of the SOP. Furthermore, since early February 2004, the PAD-111 form is no

1 longer available for individuals to get a written copy for their physicians to fill out, and Madigan
2 physicians ~~have reported~~ being unable to get copies of the PAD-111 form from any website or
3 through any other method.

4 45. As described in part above, defendants, through their agents and employees, have
5 intimidated, threatened, and interfered with named Plaintiffs and members of the putative
6 Plaintiff class in the exercise or enjoyment of, or on account of their having exercised or enjoyed,
7 or on account of their having aided or encouraged other persons in the exercise or enjoyment of
8 rights granted or protected under federal and state fair housing laws, both before and after the
9 filing of the Complaint in this action. Defendants retaliated against and harassed named
10 Plaintiffs and members of the putative Plaintiff class both when individuals asked for their legal
11 entitlements to reasonable accommodations and modifications and when they filed the
12 Complaint in federal district court. The acts of retaliation and harassment are described further
13 in section C, below, describing each named Plaintiffs' factual situation; in addition, Defendants
14 held a public meeting at Fort Lewis on May 19, 2004, in which Defendants' agents and
15 employees stated that residents with disabilities were demanding accommodations and
16 modifications which cost money, and thus were preventing other Fort Lewis residents from
17 getting new and renovated housing.

18 46. The plaintiffs' experiences at Fort Lewis with Equity are not unique. In
19 November 2002, a group of tenants filed a class action case against Equity Residential in Florida
20 state court. The lawsuit alleges that Equity Residential has violated Florida law in part by
21 charging millions of dollars in extra fees to tenants for early termination of their leases, taking
22 advantage of young consumers, and engaging in what the tenants' lawyers called "hard-nosed
23 collection tactics." Equity is accused of aggressively pursuing tenants to collect fees, threatening
24 adverse credit reports if they fail to pay within 60 days, and pursuing them in small claims court.
99 The lawsuit was certified as a class action by the Florida state court judge in November 2003.

1 **C. Experiences of Families with Disabled Members at Fort Lewis**

2 **1. Charo "Tina" Agee**

3 47. Charo "Tina" Agee is married to a soldier stationed at Fort Lewis. Mrs. Agee
4 lives in on-post housing at Fort Lewis with her husband and children. Mrs. Agee has
5 fibromyalgia and must use a motorized scooter part of the time for mobility. She is enrolled in
6 EFMP and is disabled within the meaning of the federal Fair Housing Act, 42 U.S.C. § 3602(h).

7 48. The Agees live in an older duplex that has not been renovated, as others in the
8 neighborhood have. Mrs. Agee has several accessibility problems in her home. Most of the
9 interior doors in the house and the hallway are too narrow for her to pass through with her
10 scooter. This makes it very difficult for Mrs. Agee to get around the house at times when her
11 fibromyalgia requires her to use her scooter. There are two bathrooms, and when she needs to
12 use the scooter, one of the bathrooms is completely inaccessible to her because the door is too
13 narrow for her scooter and there are no grab bars. In addition, environmental controls
14 throughout the house, such as light switches, oven controls, and thermostats are out of her reach
15 when she is using her scooter.

16 49. Because the house is largely inaccessible to Mrs. Agee when she is in her scooter,
17 she is not able to use the scooter as often as she would like. This causes her to become tired
18 more easily and fall often.

19 50. Outside of her home, there is no accessible route to the playground in the
20 neighborhood. Mrs. Agee has no way to get to the playground using her scooter, and therefore
21 cannot take her children there to play. In addition, the bus stops in her neighborhood and many
22 of the neighborhoods are not accessible to her because there are no curb cuts. This limits Mrs.
23 Agee's ability to use the bus to get around Fort Lewis or off-post.

24 51. Mrs. Agee has requested that Equity either move her to a fully accessible unit or
make all or at least some of the physical modifications she needs in order to use and enjoy her
home. Equity has refused on grounds that these modifications are not "cost-effective" or are

1 "cost-prohibitive." Equity managers have also told Mrs. Agee that she will have to pay for
2 damage to the walls from her scooter, even though the hallway and doorways are not wide
3 enough to accommodate the scooter.

4 52. Equity served Mrs. Agee with a "Notice of Violation" stating that she needed to
5 remove items from her carport. The item in Mrs. Agee's carport was her motorized scooter,
6 which she must store in the carport because it will not easily fit in the house. Mrs. Agee
7 contacted Equity and informed them that she needed the scooter because of her disability, and
8 she needed to keep the scooter in the carport so that it would not be damaged by rain or snow.
9 Equity continued to insist that she had to keep the carport "clear."

10 2. Debra Beck

11 53. Plaintiff Debra Beck is married to a soldier stationed at Fort Lewis. She and her
12 husband live in on-post housing at Fort Lewis with their children. Mrs. Beck is enrolled in
13 EFMP and is a disabled person within the meaning of the federal Fair Housing Act, 42 U.S.C. §
14 3602(h). She has several disabilities, including a condition that is similar to multiple sclerosis;
15 neurofibroma, which affects her nerves and causes leg weakness and nerve pain in her hands;
16 and fibromyalgia, which has weakened her muscles. She experiences pain frequently and has a
17 lot of trouble lifting and moving objects. Currently, Mrs. Beck's husband is serving in Iraq.
18 Without his help around the house, Mrs. Beck has had a lot of difficulty keeping the house neat
19 and orderly. Her disabilities and associated pain have made it hard for her to do the physical
20 labor of housework. In addition, her children, all teenagers, are less than cooperative about
21 helping to clean up the house.

22 54. On or about November 24, 2003, Mrs. Beck received a surprise visit from four
23 people: an Equity housing manager named Cindy Mills, Sergeant Hamilton of the Army, another
24 Army soldier whose name she did not learn, and an Equity maintenance man. They told her that
they were there to conduct an inspection of her home, and she was required to let them in. Mrs.
Beck believed that she had to let them in and did so. They inspected her house and told her it

1 was very messy and she had to clean it up. Cindy Mills took pictures throughout the house with
2 a camera.
3

4 55. Mrs. Beck admitted to the inspectors that her house was very messy and
5 disorganized, but pointed out that there was nothing that would constitute an actual health risk,
6 such as filth or refuse out in the open. She also told them about her disabilities and their impact
7 on her ability to keep the house tidy, and asked for some time to clean up the house. The
8 inspectors said she had to provide them with documentation of her disabilities. They said that
9 they would return one week later, and the house had to be cleaned up by that time. Mrs. Beck
10 understood them to be threatening that if she did not clean up the house, she could be evicted
11 and/or her children could be taken away.

12 56. The inspectors returned to Mrs. Beck's house on or about December 1, 2003.
13 Mrs. Beck had initiated the process of obtaining documentation of her disabilities from her
14 doctor, but had not yet obtained it. She had also made serious efforts to clean up the house, with
15 the assistance of friends. On the second visit, the Equity and Army representatives ignored the
16 improvements and pointed out additional areas that she needed to fix or clean. They again said
17 that they would return and threatened her with eviction if the problems were not fixed.

18 57. Two of the inspectors came back a third time on or about December 15, 2003.
19 Mrs. Beck gave them the letter she had obtained from her doctor explaining her disabilities.
20 They said, "What are we supposed to do with this? When your husband is away it's your
21 responsibility to take care of the house." They said that they were still dissatisfied with the
22 house's condition.

23 58. After the third visit, Mrs. Beck received a call from her husband in Iraq, on or
24 about January 2, 2004. Her husband was very upset because he had been told by his sergeant (an
Army supervisor) there in Iraq that his wife was about to be evicted, and if that happened, he
would not be allowed to come home and help the family find a new place to live. Mrs. Beck
does not know how the sergeant in Iraq found out about this, but assumes someone at Fort Lewis

1 passed the word along through Army command channels.

2 59. Each time the inspections occurred, both Mrs. Beck and her children became
3 extremely upset. The entire experience caused her intense stress, added to the stress she already
4 faces from running a household alone and worrying about her husband in Iraq. She takes
5 medication for breakthrough pain. During this time period, she went through the medication
6 much more quickly than usual because she was experiencing a higher than normal level of
7 physical pain. She had to explain this to her primary care doctor.

8 60. After the third visit, Mrs. Beck received offers of assistance from another Army
9 officer and the wife of an Army colonel. She accepted their help in hauling away some of the
10 items she needed to discard. Several other EFMP members also came to her house and did a
11 substantial amount of cleaning. Mrs. Beck has not been threatened with eviction again since her
12 house was cleaned up. However, she lives in fear that if she again has difficulty keeping her
13 house clean and Equity finds out, she and her children will be evicted from their home. Because
14 the house is older and has not been renovated, maintenance needs often arise. She is afraid that
15 if she calls Equity to fix the maintenance problems, she may be threatened with eviction again.

16 61. Mrs. Beck learned that Cindy Mills, the Equity housing manager, circulated the
17 photographs of Mrs. Beck's house to several people, including a social worker at Madigan Army
18 Medical Center, EFMP staff members, and the Army's housing office staff members.

19 **3. Garth and Tamarra Johnson**

20 62. Plaintiffs Garth and Tamarra Johnson are both Army soldiers. They live in on-
21 post housing at Fort Lewis with their two children. The Johnson children are enrolled in EFMP
22 because they have ADHD and other learning disabilities and are disabled within the meaning of
23 the federal Fair Housing Act, 42 U.S.C. § 3602(h). The Johnsons moved into on-post housing at
24 Fort Lewis in mid-November 2003. When they applied for on-post housing through Equity, they
were required to fill out a pre-printed, standardized rental application. The rental application

1 contained spaces in which the soldier applicant was required to list all of the family members
2 who would reside in the housing, and to state whether any member of the family was enrolled in
3 EFMP. The Johnsons were required to provide this information even though they were not
4 applying for priority housing or accessible housing.

5 63. The Johnsons listed their children as enrolled in EFMP on the Equity application
6 form. During a meeting to discuss their housing application, an Equity employee asked, "What
7 are the EFMP issues with your children?" The Johnsons told the employee about their children's
8 disability diagnoses, believing they had to disclose this information in order to obtain their
9 housing, although they felt uncomfortable doing so. They did not understand why they needed
10 to disclose their children's enrollment in EFMP or the nature of their disabilities. There was no
11 assurance made to them that the information would be kept confidential.

11 4. Kenneth and Melanie "Summer" Krook

12 64. Plaintiffs Kenneth and Melanie "Summer" Krook reside in on-post housing at
13 Fort Lewis along with their two children. Sergeant Krook is an Army soldier and is stationed at
14 Fort Lewis. Mrs. Krook and both children are enrolled in EFMP and are disabled within the
15 meaning of the federal Fair Housing Act, 42 U.S.C. § 3602(h). Their daughter Brittanie, aged
16 12, has bipolar disorder and anxiety disorder with obsessive-compulsive traits. Their son Kenny,
17 aged 5, has epilepsy and partial complex seizure disorder, with fine and gross-motor skill delays.

18 65. The Krooks have lived in on-post housing at Fort Lewis since 2001. In 2001,
19 their neighbor first complained to the military that Brittanie had displayed "threatening" behavior
20 and was a danger to the community because of her bipolar disorder. The neighbor also called the
21 military police several times when she saw Brittanie in the neighborhood. The neighbor's
22 complaints to the military continued sporadically for about two years, from 2001 to mid-2003.
23 During this period, the military police visited the Krooks' house several times as a result of the
24 neighbor's complaints about Brittanie, but never filed any reports or found any cause to
determine that Brittanie was indeed a threat to the community. Throughout this time, Brittanie

1 was suffering from anorexia and weighed less than 80 pounds, a condition exacerbated by the
2 stress of the neighbor's complaints, as well as the disability-based harassment she was suffering
3 from the neighbor's daughter at the school they both attended.

4 66. The Krooks complained several times to Equity about their neighbor's harassment
5 of them because of Brittanie's disability, but Equity refused to do anything about the problem.
6 On one occasion, Mrs. Krook expressed her belief to Equity that fair housing laws protected the
7 family from this kind of harassment, and Equity manager Cindy Mills told her, "Fair housing
8 laws don't apply on post." The Krooks became extremely concerned about Brittanie's health,
9 which was deteriorating as a direct result of the stress and anxiety she was experiencing from the
10 harassment in the neighborhood and at school. They communicated this concern to Ms. Mills
11 and requested that she take action to prevent the harassment, but Ms. Mills did nothing.

12 67. The Krooks also filed a separate complaint against the neighbor's child for
13 disability-based harassment of Brittanie at school. Equity managers became aware of this
14 separate complaint filed by the Krooks. In June 2003, as part of an investigation of the situations
15 in the neighborhood and at school, Cindy Mills of Equity requested that Mrs. Krook provide
16 Equity with Brittanie's confidential school records from her public school. Mrs. Krook refused.
17 Cindy Mills then went through military channels to obtain the school records by requesting them
18 through the military schools liaison officer and military housing liaison officer. At no time did
19 the Krooks authorize the release of these records to Equity.

20 68. The Krooks were required twice to attend meetings with Equity and their Army
21 chain of command concerning the harassment issues, at which they were threatened with eviction
22 if they failed to cooperate. After the second meeting on May 30, 2003, Equity offered the
23 Krooks the opportunity to move into a different house that would remove them from direct
24 proximity to the neighbor. The Krooks had to pay the expenses of moving themselves. Equity
also moved the other family into a different neighborhood that put their child into a different
public school, but paid all of that family's moving expenses.

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5. Desirce Snowden

69. Plaintiff Desiree Snowden is married to Stanley Snowden, a soldier who is stationed at Fort Lewis and just returned from serving in Iraq. Both Mrs. Snowden and her children are enrolled in EFMP and are disabled within the meaning of the federal Fair Housing Act, 42 U.S.C. § 3602(h). Mrs. Snowden has several debilitating health conditions. Her two children both have learning disabilities.

70. The Snowdens moved into on-post housing at Fort Lewis in early 2003. When they applied for on-post housing through Equity, they were required to fill out a pre-printed, standardized rental application. The application contained spaces in which the soldier applicant was required to list all of the family members who would reside in the housing, and to state whether any member of the family was enrolled in EFMP. When Mrs. Snowden turned in the application to Equity, the Equity manager told her that she would have to provide copies of her family's EFMP paperwork before the family could have the keys to their new home.

71. The Snowdens were required to provide this information even though they were not applying for priority housing or accessible housing. They did not understand why they needed to disclose the fact that Mrs. Snowden and the children were enrolled in EFMP to their housing provider. There was no assurance made to them that the information would be kept confidential. In addition, Mrs. Snowden was very reluctant to turn over this paperwork because it contains so much sensitive information about each family member's disabilities and health conditions, including medical diagnoses, medications and other treatment, hospitalizations and other medical history. However, she assumed she was required to do so because Equity would not allow her family to move into their on-post housing otherwise.

72. After the family moved in, Mrs. Snowden was told by her physician that due to her asthma, she should have the furnace filter changed in her home at least once per month. Mrs. Snowden contacted Equity to inform it of her doctor's requirement. An Equity employee told her that Equity would only pay for the furnace filter to be changed one time per year. The

1 employee said that Equity would come to the house and change the furnace filter every three
2 months if Mrs. Snowden paid for the extra filters herself, but that Mrs. Snowden would not be
3 allowed to change the filter more often than every three months, nor would she be allowed to
4 hire someone else to change it. The furnace is located in a locked closet and Mrs. Snowden has
5 been unable to change the filter as often as her doctor required since the family moved in.

6 73. Mrs. Snowden's physician also recommended that as an additional step to
7 alleviate her asthma, the air ducts in the home should be cleaned yearly. Mrs. Snowden
8 contacted Equity about this and was told that she had to get a PAD-111 form filled out by her
9 physician. She obtained the PAD-111 form from her physician and turned it in to Equity. After
10 receiving no response, she contacted Equity again about the request. The Equity employee she
11 spoke to claimed that they had lost the PAD-111 form. The employee also stated that Equity
12 would not clean the air ducts, nor would Mrs. Snowden herself be allowed to hire an outside
13 service to clean the air ducts.

13 **6. Ronald and Krysten Spire**

14 74. Plaintiffs Ronald and Krysten Spire reside in off-post housing in Tacoma,
15 Washington. Ronald Spire is a soldier stationed at Fort Lewis. He lives with his wife, Krysten
16 Spire, and their son, Devin, in Tacoma, Washington. Both Mrs. Spire and Devin are enrolled in
17 EFMP and are disabled within the meaning of the federal Fair Housing Act, 42 U.S.C. § 3602(h).
18 Devin's disability has been diagnosed as primary immune deficiency, although his doctors have
19 recently indicated they may change this diagnosis, and he has suffered numerous health problems
20 and hospitalizations. Mrs. Spire has severe allergic rhinitis and has also been diagnosed with
21 salivary gland cancer.

22 75. In October 2001, the Spires moved into on-post housing at Fort Lewis,
23 Washington. Shortly thereafter, the Spires all began having health problems, especially Devin,
24 who was two years old at the time. He had colds constantly and had to take several rounds of
antibiotics over a 3-month period. The Spires noticed that several surfaces in their home,

1 including windows and walls, were covered with black mildew or mold. Mrs. Spire attempted to
2 clean them with bleach but was unable to remove the mildew. In spring of 2002, Devin became
3 extremely ill and was hospitalized with what physicians thought was meningitis but turned out to
4 be a severe sinus infection. After Devin returned home, his infections continued to persist for
5 several months. Ultimately, he was diagnosed with primary immune deficiency.

6 76. Mrs. Spire suspected that the infestation of mold or mildew in her home might not
7 only be contributing to Devin's illness, but could be affecting her own health and her husband's
8 as well. Since moving to Fort Lewis, Mrs. Spire had had pneumonia several times. She was also
9 suffering chronic headaches. During their first winter in their Fort Lewis home, both she and
10 Mr. Spire had had to get spinal taps because they had both had headaches for an entire month.
11 The whole family resorted to sleeping on the living room floor in order to avoid the mildew.

12 77. In late 2002 or early 2003, Mrs. Spire approached Equity to ask about a change in
13 living quarters. Neoma Bullock, an Equity employee, told her that Equity does not move people
14 at all unless they bring in a medical document stating that the move would be medically
15 indicated. She stated that a PAD-111 form had to be completed by the family's physician.

16 78. Mrs. Spire initiated the process of obtaining these documents from the Spires'
17 physician, Dr. Thomas C. Michels of the Madigan Army Medical Center. Dr. Michels
18 completed PAD-111 forms for both Mrs. Spire and Devin Spire, and wrote detailed letters for
19 each of them explaining their disabilities and the medical reasons they should be moved to living
20 quarters without a mold problem.

21 79. Mrs. Spire gave these documents to her husband's Platoon Sergeant and also
22 called Neoma Bullock at Equity to let her know that the paperwork was ready and to ask how she
23 should proceed. Shortly after this call, Mrs. Spire received a call from a sergeant at Garrison
24 Command (the governing authority at Fort Lewis) demanding a meeting with Mr. Spire. The
message left by the sergeant was unclear, and Mrs. Spire called back to ask where the meeting
would be held. An Equity representative returned her call and told her that she would not be

1 allowed to attend the meeting.

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3 80. Mr. and Mrs. Spire went to the meeting and Mrs. Spire waited outside. Mr. Spire
4 emerged from the meeting very upset. He said that several Equity representatives and the
5 Garrison Sergeant were there. The Equity representatives said that Mrs. Spire was harassing
6 them and that if Mrs. Spire ever called Equity again, Equity would evict the family from their
7 housing. The Garrison Sergeant agreed that the family should be evicted if Mrs. Spire continued
8 to harass Equity. Mr. Spire was not allowed to say anything at all throughout the meeting.

9 81. Mrs. Spire was shocked at Equity's accusations, since she believed she had
10 always been polite when dealing with Equity and had attempted to follow Ms. Bullock's
11 instructions exactly. She could not understand why she was being accused of harassment or why
12 her husband's chain of command had been involved in the issue. After the meeting, Equity
13 employees came to the Spires' house to perform a mold test. They told the Spires that the mold
14 count inside the house was the same as that outside, and they would not change the windows or
15 move the family to different quarters. In order to preserve their child's health, the Spires moved
16 to an apartment off-post in March 2003. Since that time, Devin's health has improved.

17 **7. Connie Whalen**

18 82. Plaintiff Connie Whalen is married to Arthur Whalen, a soldier who is stationed at
19 Fort Lewis. Mr. and Mrs. Whalen have a son, Zachary, aged 9. Zachary is enrolled in EFMP
20 and is disabled within the meaning of the federal Fair Housing Act, 42 U.S.C. § 3602(h), due to
21 his autism. The Whalens live in on-post housing at Fort Lewis.

22 83. In early 2003, because of Zachary's autism, he often tried to escape from the
23 house at night, when the Whalens were asleep. This presented an increasing safety risk, and his
24 physician recommended that door alarms be installed at the home in order to alert the Whalens if
Zachary tried to escape at night. Mrs. Whalen requested Equity to install door alarms, and was
told that she had to submit a PAD-111 form. On April 15, 2003, Zachary's physician filled out a
PAD-111 form stating the medical necessity for door alarms. Mrs. Whalen submitted the PAD-

1 11 to Equity.

2 84. Equity manager Cindy Mills replied in a letter dated May 6, 2003 that Equity
3 Residential would not install door alarms because the "request is inconsistent with services that
4 Equity Residential provides to residents." The letter further stated that the Whalens were
5 approved to purchase and install a suitable alarm themselves, but that any alarm system must be
6 removed at the time they left family housing and any repair needed to the structure would be
7 their responsibility. Despite the statements in this letter, Cindy Mills later telephoned the
8 Whalens and stated that Equity had changed its mind and decided not to allow them to install
9 alarms. She said that the reason was that if alarms were installed and Zachary escaped anyway,
Equity could be "liable."

10 85. Wenonah Galusha, the director of EFMP at Fort Lewis, intervened to help the
11 Whalens and called Equity to request that they reconsider. Mrs. Galusha was told that if Mrs.
12 Whalen bought the alarm system, Equity would install it. Mrs. Whalen then purchased an alarm
13 system and requested Equity to come and install it, but Equity never came. During the delay,
14 Zachary escaped several times and Child Protective Services was called. A CPS worker, Vickie
15 Wilson, became involved and contacted Equity to discuss the alarm system issue. Equity assured
16 Ms. Wilson that they would install the alarm within two weeks, but still never did. Finally, Mrs.
17 Whalen had the alarms installed herself sometime in late July or August 2003. Zachary has not
18 escaped since then, because if he tries, the alarm wakes Mrs. Whalen up. Equity has never
reimbursed the Whalens for the alarm system.

19 D. Injuries

20 86. By reason of defendants' unlawful acts and practices, Plaintiffs have suffered loss
21 of housing, violation of their civil rights, and emotional distress and attendant bodily injury, and
22 other special and general damages according to proof. Accordingly, plaintiffs are entitled to
23 compensatory damages.

1 87. In doing the acts of which plaintiffs complain, defendants and its agents and
2 employees acted with oppression, fraud and malice, and with wanton and conscious disregard of
3 the rights of plaintiffs. Accordingly, plaintiffs are entitled to punitive damages.

4 88. There now exists an actual controversy between the parties regarding defendants'
5 duties under the federal and state fair housing laws. Accordingly, plaintiffs are entitled to
6 declaratory relief.

7 89. Unless enjoined, defendants will continue to engage in the unlawful acts and the
8 pattern and practice of discrimination described above. Plaintiffs have no adequate remedy at
9 law. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendants'
10 acts and the pattern or practice of discrimination against people with disabilities unless relief is
11 provided by this Court. Accordingly, plaintiffs are entitled to injunctive relief.

12 CLASS ALLEGATIONS

13 90. Plaintiffs bring this action on their own behalf and on behalf of all persons
14 similarly situated. The class which these plaintiffs represent is composed of all military families
15 with at least one disabled immediate family member who have been injured in their legal rights
16 or are threatened with such injury because of defendants' conduct in discriminating against
17 families with disabled members in regard to the provision of military family housing as alleged
18 in this Complaint.

19 91. The persons in the class are so numerous that joinder of all such persons is
20 impracticable and the disposition of their claims in a class action is a benefit to the parties and to
21 the Court.

22 92. There is a well-defined community of interest in the questions of law and fact
23 affecting the class in that they were all discriminated against in the provision of housing because
24 of their own disability or the disability of someone in their immediate family. Defendants have
acted on grounds applicable to the class as a whole.

1 93. Common questions of law and fact predominate.

2 94. The claims of the named plaintiffs are typical of those of the class, and named
3 plaintiffs will fairly and adequately represent the interests of the class.

4 95. References to plaintiffs shall be deemed to include the named plaintiffs and each
5 member of the class.

6 **CLAIMS**

7 **A. First Claim**

8 **[Fair Housing Act, 42 U.S.C. § 3601 et seq.]**

9 96. Plaintiffs reallege and incorporate by reference paragraphs 1 through 95 of this
10 Complaint.

11 97. Defendants have injured plaintiffs in violation of 42 U.S.C. § 3604(c) by making
12 printing, or publishing, or causing to be made, printed, or published any notice, statement, or
13 advertisement, with respect to the sale or rental of a dwelling that indicates any preference,
14 limitation, or discrimination based on handicap, or an intention to make any such preference,
15 limitation, or discrimination.

16 98. Defendants have injured plaintiffs in violation of 42 U.S.C. § 3604(d) by
17 representing to persons because of handicap that any dwelling is not available for inspection,
18 sale, or rental when such dwelling is in fact so available.

19 99. Defendants have injured plaintiffs in violation of 42 U.S.C. § 3604(f)(1) by
20 denying housing, or by making housing otherwise unavailable, to persons with handicaps and
21 persons living with those persons or associated with those persons.

22 100. Defendants have injured plaintiffs in violation of 42 U.S.C. § 3604(f)(2) by
23 discriminating against persons with handicaps, and persons living with those persons or
24 associated with those persons, in the terms, conditions, or privileges of rental of dwellings, or in
the provision of services or facilities in connection with such dwelling.

1 101. Defendants have injured plaintiffs in violation of 24 C.F.R. § 100.202(c) in
2 making an inquiry to determine whether an applicant for a dwelling, a person intending to reside
3 in that dwelling after it is so sold, rented or made available, or any person associated with that
4 person, has a handicap or making inquiry as to the nature or severity of a handicap of such a
5 person.

6 102. Defendants have injured plaintiffs in violation of 42 U.S.C. § 3604(f)(3)(A) by
7 refusing to permit, at the expense of handicapped persons, reasonable modifications of existing
8 premises occupied or to be occupied by such persons when such modifications are necessary to
9 afford such persons full enjoyment of the premises.

10 103. Defendants have injured plaintiffs in violation of 42 U.S.C. § 3604(f)(3)(B) by
11 refusing to make reasonable accommodations in rules, policies, practices, or services, when such
12 accommodations may be necessary to afford such person with a handicap an equal opportunity to
13 use and enjoy a dwelling.

14 104. Defendants have injured plaintiffs in violation of 42 U.S.C. § 3604(f)(3)(C) by, in
15 connection with the design and construction of covered multifamily dwellings for first
16 occupancy after the date that is 30 months after September 13, 1988, failing to design and
17 construct those dwellings in such a manner that the public use and common use portions of such
18 dwellings are readily accessible to and usable by handicapped persons; all the doors designed to
19 allow passage into and within all premises within such dwellings are sufficiently wide to allow
20 passage by handicapped persons in wheelchairs; and all premises within such dwellings contain
21 the following features of adaptive design: an accessible route into and through the dwelling;
22 light switches, electrical outlets, thermostats, and other environmental controls in accessible
23 locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable
24 kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

 105. Defendants have injured plaintiffs in violation of 42 U.S.C. § 3617 by interfering
with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed,

1 or on account of their having aided or encouraged any other person in the exercise or enjoyment
2 of, any right granted or protected by 42 U.S.C. § 3604.

3 106. WHEREFORE, Plaintiffs request relief as set forth below.

4 **B. Second Claim**

5 **[Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq.]**

6 107. Plaintiffs reallege and incorporate by reference paragraphs 1 through 106 of this
7 Complaint.

8 108. Plaintiffs are qualified individuals with disabilities within the meaning of the
9 Rehabilitation Act of 1973.

10 109. Defendants are the recipients of federal funds sufficient to invoke the coverage of
11 the Rehabilitation Act of 1973.

12 110. Defendants have intentionally discriminated against plaintiffs on the basis of their
13 disabilities in violation of the Rehabilitation Act. 29 U.S.C. § 794.

14 111. Solely by reason of their disabilities, plaintiffs have been, and continue to be,
15 excluded from participation in, denied the benefits of, and subjected to discrimination in their
16 attempts to receive, full and equal access to the programs, services and activities offered by
17 defendants in violation of the Rehabilitation Act. 29 U.S.C. § 794; 32 C.F.R. § 56.8(a).

18 112. Defendants have violated the Rehabilitation Act by providing different or separate
19 aid, benefits, or services to handicapped persons than is provided to others. 32 C.F.R. §
20 56.8(a)(2)(i).

21 113. Defendants have violated the Rehabilitation Act by denying qualified
22 handicapped persons the opportunity to participate in or benefit from aids, benefits, or services.
23 32 C.F.R. § 56.8(a)(2)(ii).

24 114. Defendants have violated the Rehabilitation Act by affording qualified
handicapped persons an opportunity to participate in or benefit from aids, benefits, or services

1 that is not equal to that afforded others. 32 C.F.R. § 56.8(a)(2)(iii).

2 115. Defendants have violated the Rehabilitation Act by providing qualified
3 handicapped persons with aids, benefits, or services that is not as effective as that afforded to
4 others. 32 C.F.R. § 56.8(a)(2)(iv).

5 116. Defendants have violated the Rehabilitation Act by otherwise limiting qualified
6 handicapped persons in the enjoyment of any right, privilege, advantage, or opportunity granted
7 to others receiving aids, benefits, or services. 32 C.F.R. § 56.8(a)(2)(v).

8 117. WHEREFORE, Plaintiffs request relief as set forth below.

9 **C. Third Claim**

10 **[Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.]**

11 118. Plaintiffs reallege and incorporate by reference paragraphs 1 through 117 of this
12 Complaint.

13 119. Defendants have injured plaintiffs in violation of 42 U.S.C. § 12101 *et seq.* and
14 the regulations promulgated thereunder, 28 Code of Federal Regulations Part 36, in that Fort
15 Lewis family housing includes areas of public accommodation, including, *inter alia*,
16 playgrounds, parks, and bus stops, that are covered by Title III of the ADA, and defendants have
17 failed to remove barriers to access by persons with mobility disabilities in those areas of public
18 accommodation where such barrier removal is readily achievable.

19 120. Defendants have newly constructed and/or altered some of the public
20 accommodation areas of Fort Lewis family housing without meeting the new
21 construction/alteration access requirements imposed by Title III of the ADA.

22 121. Defendants' conduct constitutes multiple ongoing and continuous violations of
23 the ADA and, unless restrained from doing so, defendants will continue to violate the law. Their
24 conduct, unless enjoined, will continue to inflict injuries for which plaintiffs have no adequate
remedy at law. Consequently, plaintiffs are entitled to injunctive relief pursuant to section 308
of the ADA, 42 U.S.C. § 12188.

1 122. WHEREFORE, Plaintiffs request relief as set forth below.

2 **D. Fourth Claim**

3 **[42 U.S.C. § 1983: Equal Protection]**

4 123. Plaintiffs reallege and incorporate by reference paragraphs 1 through 122 of this
5 Complaint.

6 124. Defendants have injured plaintiffs in violation of plaintiffs' equal protection rights
7 under the United States Constitution and 42 U.S.C. § 1983 because defendants' conduct in
8 intimidating, harassing, and retaliating against soldiers and/or their families for asserting their
9 fair housing rights was under color of state law and was arbitrary, capricious, or irrational. As a
10 result, military families have been denied housing or have been denied the ability to use and
11 enjoy their housing in an equal manner with other military families.

12 125. WHEREFORE, Plaintiffs request relief as set forth below.

13 **E. Fifth Claim**

14 **[42 U.S.C. § 1983: Due Process]**

15 126. Plaintiffs reallege and incorporate by reference paragraphs 1 through 125 of this
16 Complaint.

17 127. Defendants have injured plaintiffs in violation of plaintiffs' due process rights
18 under the United States Constitution and 42 U.S.C. § 1983 by failing to create and implement
19 clear, consistent and understandable policies and procedures regarding the provision of housing
20 for military families who have disabled family members. As a result, military families have been
21 denied housing or have been denied the ability to use and enjoy their housing in an equal manner
22 with, other military families.

23 128. WHEREFORE, Plaintiffs request relief as set forth below.

24 **F. Sixth Claim**

[Washington State's Law Against Discrimination, RCW 49.60 et seq.]

129. Plaintiffs reallege and incorporate by reference paragraphs 1 through 128 of this

1 Complaint.

2 130. Defendants have injured plaintiffs in violation of plaintiffs' rights under
3 Washington State's Law Against Discrimination to be free from discrimination in real estate
4 transactions, including rental housing transactions, because of the presence of any sensory,
5 mental, or physical disability. RCW § 49.60.030; RCW § 49.60.040.

6 131. WHEREFORE, Plaintiffs request relief as set forth below.

7 **G. Seventh Claim**

8 **[Washington State Constitution: Equal Protection]**

9 132. Plaintiffs reallege and incorporate by reference paragraphs 1 through 131 of this
10 Complaint.

11 133. Article I, Section 12 of the Washington Constitution guarantees equal protection
12 of the law to all persons.

13 134. The actions of defendants have violated and continue to violate the equal
14 protection provision of the Washington Constitution in that defendants' conduct in intimidating,
15 harassing, and retaliating against soldiers and/or their families for asserting their fair housing
16 rights was under color of state law and was arbitrary, capricious, or irrational. As a result,
17 military families have been denied housing or have been denied the ability to use and enjoy their
18 housing in an equal manner with other military families.

19 135. WHEREFORE, Plaintiffs request relief as set forth below.

20 **H. Eighth Claim**

21 **[Washington State Constitution: Due Process]**

22 136. Plaintiffs reallege and incorporate by reference paragraphs 1 through 135 of this
23 Complaint.

24 137. Article 1, Section 3 of the Washington Constitution guarantees due process of law
to all persons.

138. The actions of defendants have violated and continue to violate the due process

1 protections of the Washington Constitution in that defendants have made the process of applying
2 for disability-related requests for accommodations or modifications extremely difficult and
3 burdensome.

4 139. The actions of defendants have violated and continue to violate the due process
5 protections of the Washington Constitution in that defendants have failed to provide an appeal
6 process for denials of disability-related requests for accommodations or modifications.

7 140. The actions of defendants have violated and continue to violate the due process
8 protections of the Washington Constitution in that defendants have established policies, practices
9 and procedures for the provision of housing to families with disabled members which are not
clear, consistent, or understandable, nor are they evenhandedly applied.

10 141. The actions of defendants have violated and continue to violate the due process
11 protections of the Washington Constitution in that defendants have performed "inspections" of
12 plaintiffs' homes with no notice and have otherwise taken arbitrary, capricious, and irrational
13 actions that have injured plaintiffs.

14 142. WHEREFORE, Plaintiffs request relief as set forth below.

15 **I. Ninth Claim**

16 **[Breach of Contract: Third-Party Beneficiary]**

17 143. Plaintiffs reallege and incorporate by reference paragraphs 1 through 142 of this
18 Complaint.

19 144. In or around the year 2000, the United States Army entered into a contract with
20 defendant EQR/LINCOLN FORT LEWIS COMMUNITIES, LLC, a joint venture between
Equity Residential of Chicago, Illinois and Lincoln Property of Dallas, Texas.

21 145. The conditions of the Community Development and Management Plan (CDMP),
22 including several Memoranda of Agreement and sub-contracts, constitute the contractual
23 conditions under which EQR/LINCOLN FORT LEWIS COMMUNITIES, LLC was authorized
by the United States to hold the contract for the Fort Lewis family housing privatization project

1 and implement the Military Family Housing Privatization Initiative at Fort Lewis.

2 146. The named Plaintiffs and Plaintiff class were direct and intended third-party
3 beneficiaries of the contractual agreements between the United States and defendant
4 EQR/LINCOLN FORT LEWIS COMMUNITIES, LLC embodied in the CDMP and other
5 contractual obligations that relate to the Fort Lewis family housing privatization project.

6 147, EQR/Lincoln and its agents repeatedly failed to abide by those contractual
7 obligations and breached contractual duties owed to the Plaintiffs including, but not limited to:

8 (a) provisions that require EQR/Lincoln and its agents to comply with all federal,
9 state, and local laws, including the Fair Housing Act, that prohibit discrimination
10 against people because of disability;

11 (b) provisions that require EQR/Lincoln and its agents to display a Fair Housing
12 poster and Equal Opportunity slogan at all times in clear view of prospective and
13 current residents; and

14 (c) provisions that require EQR/Lincoln and its agents to use education resources and
15 training programs about methods that ensure compliance with Fair Housing laws.

16 148. It was foreseeable and known to EQR/Lincoln that its breach of contract and/or
17 failure to abide by the contract conditions would cause actual, special, general and emotional
18 injuries and damages to plaintiffs. As a proximate result of these acts and omissions, the named
19 Plaintiffs and the Plaintiff class were damaged and suffered injuries as alleged herein.

20 149. WHEREFORE, Plaintiffs request relief as set forth below.

21 RELIEF

22 Plaintiffs pray for the following relief against defendants:

23 150. That the Court enjoin all unlawful practices and contractual breaches complained
24 about herein and impose affirmative injunctive relief requiring defendants, their partners, agents,
employees, assignees, and all other persons acting in concert with or participating with it, to take

1 affirmative action to provide equal housing opportunities to all tenants and prospective tenants
2 without regard to handicap or disability;

3 151. That the Court declare that defendants have violated the provisions of the
4 applicable federal and state fair housing and disability laws and breached contractual duties
5 owed to plaintiffs as third-party beneficiaries;


6 152. That the Court award compensatory and punitive damages to plaintiffs according
7 to proof;

8 153. That the Court grant costs of suit, including reasonable attorneys' fees; and

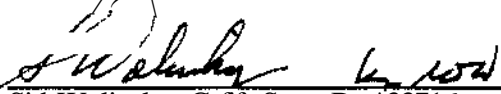
9 154. That the Court grant all such other relief as the Court deems just.

10 DATED this 1 day of July, 2004.

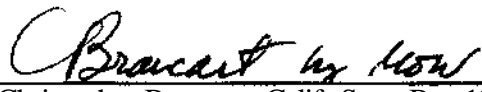
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7 **IX. JURY DEMAND**

8 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs hereby request a
9 jury trial.

10 DATED this 1st day of October, 2004.

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