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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Southwest Fair Housing Council,
Plaintiff,
v.
WG Scottsdale LLC,
Defendant.

No. CV-19-00180-TUC-RM

ORDER

Pending before the Court is Plaintiff’s Motion for Permanent Injunction. (Doc. 125.)¹ Defendant filed a Response in opposition (Doc. 135) and Plaintiff replied (Doc. 140). For the following reasons, the Motion for Permanent Injunction will be granted.

I. Background

On March 16, 2022, following a three-day jury trial, the jury returned a unanimous verdict for Plaintiff the Southwest Fair Housing Council. The jury found that Defendant WG Scottsdale LLC d/b/a Atria Sierra Pointe violated Title III of the Americans with Disabilities Act (“ADA”), the Federal Fair Housing Act (“FHA”) and the Arizona Fair Housing Act (“AZFHA”), and awarded nominal damages as well as \$100,000 in punitive damages. (Doc. 120.) Defendant moved for judgment as a matter of law or, alternatively, a new trial. (Doc. 134.) The Court denied that Motion. (Doc. 152.)

¹ Plaintiff’s Motion for Attorneys’ Fees (Doc. 127), Defendant’s Motion Re: Bill of Costs (Doc. 137), and Defendant’s Motion for Extension of Time to Appeal (Doc. 153) will be resolved separately.

1 Plaintiff seeks a permanent injunction enjoining Defendant from violating the
2 ADA, FHA, or AZFHA and requiring Defendant to: (1) furnish appropriate auxiliary aids
3 and services when necessary for effective communication; (2) maintain records of
4 requests for, issuances of, and denials of an ASL interpreter; (3) create agreements with
5 ASL interpreters so that those services can be timely provided; and (4) create a plan of
6 action that ensures staff provide timely access to ASL interpreters when necessary and
7 that contains measures ensuring oversight and compliance. (Doc. 125 at 11.) Plaintiff
8 requests that Defendant prepare and submit this action plan to the Court for approval and
9 that it be implemented within thirty (30) days of approval. (*Id.*)

10 Plaintiff contends that an injunction is authorized by the relevant statutes—the
11 ADA, FHA, and AZFHA²—and that it is therefore unnecessary for it to prove the usual
12 elements for injunctive relief. (Doc. 125 at 5.) Plaintiff contends that, because a violation
13 of the applicable statutes has occurred, and the statutes’ requirements for injunctive relief
14 have been satisfied, a permanent injunction is warranted. (*Id.*) Plaintiff further contends
15 that, even analyzing its request for injunctive relief under the standard factors, such relief
16 is warranted because (1) Plaintiff has suffered irreparable injury as a matter of law; (2)
17 remedies available at law, including monetary damages, are inadequate to compensate for
18 that injury and prevent future injury; (3) the balance of hardships between the parties
19 justifies an equitable remedy; and (4) a permanent injunction would serve the public
20 interest. (*Id.* at 5-9.)

21 In response, Defendant contends that Plaintiff must demonstrate “a real and
22 immediate threat of repeated injury in the future” and that Plaintiff has not done so
23 because (1) Defendant has implemented policies and practices designed to prevent
24 discrimination against deaf individuals and (2) there is no evidence to support a finding
25 that Plaintiff or any deaf individual faces a threat of continued future civil rights
26 violations in the absence of injunctive relief. (Doc. 135 at 7-8.) Defendant further argues
27 that the requested injunctive relief is unnecessary because (1) no evidence was presented

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² The requirements of the FHA and the AZFHA are the same. (Doc. 65 at 21.)

1 at trial that any deaf individual had been harmed by Defendant’s failure to provide
2 effective communication and (2) Defendant has a comprehensive policy prohibiting
3 discrimination under the FHA and trains all its employees on that policy. (*Id.* at 9-10.)

4 In reply, Plaintiff contends that (1) it has suffered irreparable harm as a matter of
5 law; (2) multiple lawsuits have been filed against Defendant for failing to accommodate
6 the communication needs of deaf individuals; (3) the case law upon which Defendant
7 relies to supports its arguments is inapposite; (4) staffing turnover at Defendant’s
8 facilities means that institutional knowledge will not protect deaf individuals; (5) the
9 injunctive relief requested is in line with Defendant’s existing legal duties and does not
10 pose an undue financial burden; and (6) Defendant has not argued that an injunction
11 would not serve the public interest. (Doc. 140.)

12 **II. Standard for Permanent Injunction**

13 This Court has considerable discretion in granting and tailoring suitable injunctive
14 relief. *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir. 1991); *eBay*
15 *Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (“The decision to grant or deny
16 permanent injunctive relief is an act of equitable discretion by the district court,
17 reviewable on appeal for abuse of discretion.”). “[A] district court has ‘broad power to
18 restrain acts which are of the same type or class as unlawful acts which the court has
19 found to have been committed or whose commission in the future, unless enjoined, may
20 be fairly anticipated from the defendant’s conduct in the past.’” *Orantes-Hernandez v.*
21 *Thornburgh*, 919 F.2d 549, 564 (9th Cir. 1990) (quoting *N.L.R.B. v. Express Publishing*
22 *Co.*, 312 U.S. 426, 435 (1941)).

23 Generally, a permanent injunction is appropriate where: (1) a plaintiff has suffered
24 an irreparable injury; (2) remedies available at law are inadequate to compensate for that
25 injury; (3) considering the balance of the hardships between the parties, a remedy in
26 equity is warranted; and (4) “the public interest would not be disserved by a permanent
27 injunction.” *eBay Inc.*, 547 U.S. at 391; *see also La Quinta Worldwide LLC v. Q.R.T.M.,*
28 *S.A. de C.V.*, 762 F.3d 867, 879 (9th Cir. 2014). However, these standard requirements

1 “need not be satisfied when an injunction is sought to prevent the violation of a federal
2 statute which specifically provides for injunctive relief.” *Antoninetti v. Chipotle Mexican*
3 *Grill, Inc.*, 643 F.3d 1165, 1175 (9th Cir. 2010) (quoting *Silver Sage Partners, Ltd. v.*
4 *City of Desert Hot Springs*, 251 F.3d 814, 827 (9th Cir. 2001)); *see also Burlington N.*
5 *R.R. Co. v. Dep’t of Revenue*, 934 F.2d 1064, 1075 (9th Cir. 1991) (citing *In Trailer*
6 *Train Co. v. State Bd. of Equalization*, 697 F.2d 860, 869 (9th Cir. 1983)); *Shadid v.*
7 *Fleming*, 160 F.2d 752, 753 (10th Cir. 1947) (“where an injunction is authorized by
8 statute it is unnecessary for plaintiff to plead and prove the existence of the usual
9 equitable grounds, irreparable injury and absence of an adequate remedy at law. It is
10 enough if the requirements of the statute are satisfied.”); *Macias v. Lange*, No. 14cv2763-
11 GPC(JMA), 2017 WL 2445516, at *9 (S.D. Cal. June 6, 2017) (“[W]here a federal statute
12 provides for injunctive relief to prevent a violation of the statute, the standard
13 requirements for equitable relief need not be satisfied.”).

14 In a civil action brought by a private party under the FHA, the court “may grant as
15 relief, as the court deems appropriate, any permanent or temporary injunction, temporary
16 restraining order, or other order (including an order enjoining the defendant from
17 engaging in such practice or ordering such affirmative action as may be appropriate)” if
18 the “court finds that a discriminatory housing practice has occurred or is about to occur.”
19 42 U.S.C. § 3613(c)(1). The AZFHA also authorizes permanent injunctive relief,
20 “including an order enjoining the defendant from engaging in the practice or ordering
21 appropriate affirmative action,” upon a finding “that a discriminatory practice has
22 occurred or is about to occur.” A.R.S. § 41-1491.33(4). With respect to Title III of the
23 ADA, injunctive and declaratory relief are the only remedies available. *See* 42 U.S.C. §
24 12188(a); *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007) (monetary
25 damages not available in private suits under Title III of the ADA); *Beadle v. Postal*, Civ.
26 No. 17-00049 JMS-KSC, 2017 WL 1731683, at *3 (D. Haw. May 2, 2017) (“Remedies
27 available under Title III of the ADA include injunctive and declaratory relief, but not
28 damages.”). Injunctive relief under the ADA may, where appropriate, include “requiring

1 the provision of an auxiliary aid or service, modification of a policy, or provision of
2 alternative methods[.]” 42 U.S.C. § 12188(a)(2).

3 The Ninth Circuit has held that a plaintiff need not establish a reasonable
4 likelihood that a defendant will continue to violate the FHA in order to obtain an
5 injunction under § 3613(c)(1) following a jury verdict in favor of the plaintiff on an FHA
6 claim. *Silver Sage Partners*, 251 F.3d at 826–27. The plaintiff need not establish a
7 reasonable likelihood of continuing violations because courts presume a plaintiff has
8 suffered irreparable injury from the fact of a defendant’s violation of a civil rights statute.
9 *See id.* at 827 (vacating district court’s order denying plaintiff’s motion for an injunction
10 where a jury found that defendant had violated the FHA).

11 **III. Analysis**

12 Plaintiff has met the applicable standard for granting injunctive relief. The
13 applicable statutes authorize injunctive relief, and it is within the Court’s discretion to
14 grant that relief. *See Silver Sage Partners, Ltd.*, 251 F.3d at 827. The injunctive relief
15 Plaintiff seeks here is in line with applicable statutory requirements and is not unduly
16 burdensome. Because the jury concluded that Defendant violated the ADA, FHA, and
17 AZFHA, Plaintiff has presumptively suffered irreparable injury from the fact of those
18 civil rights violations. *See id.* Plaintiff need not prove a reasonable likelihood of
19 continuing violations. *See id.*

20 Moreover, even if Plaintiff were required to establish a reasonable likelihood of
21 continuing violations, it has done so. Multiple lawsuits have been filed against entities
22 owned by Defendant’s parent company for similar conduct as that at issue in this case,
23 including two other cases before this Court. In this case, the Court authorized a punitive
24 damages jury instruction based in part on evidence that Defendant’s parent company,
25 Atria Senior Living, had previously entered a consent decree³ with another fair housing
26 organizational plaintiff in New York regarding its refusal to provide ASL interpreters to

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28 ³ Although Defendant now disputes the characterization of this document as a consent
decree (Doc. 135 at 5), defense counsel referred to it as such during trial (Doc. 131 at
124).

1 deaf residents. (*See* Docs. 117 at 19-20, 131 at 124, Doc. 132 at 12, Doc. 147-5, Doc. 152
2 at 7.)

3 Accordingly, the Court will grant Plaintiff’s requested injunctive relief.

4 **IT IS ORDERED** that Plaintiff’s Motion for Permanent Injunction (Doc. 125) is
5 **granted**. Defendant is ordered to comply with the following conditions:

6 (1) Defendant and its officers, employees, and agents are hereby enjoined from
7 violating the FHA, AZFHA, and the ADA by discriminating on the basis of
8 hearing impairment or any other disability against any individual with a
9 disability who seeks services from them.

10 (2) Defendant shall furnish all appropriate auxiliary aids and services at no cost to
11 persons who are deaf or hearing-impaired, including, but not limited to,
12 qualified sign language and oral interpreters when necessary for effective
13 communication.

14 (3) Defendant shall maintain records of all requests for an interpreter, issuances of
15 an interpreter, and denials of an interpreter.

16 (4) Defendant shall have agreements in place with sign language interpreter
17 services to be able to timely provide sign language interpreter services when
18 necessary.

19 (5) Defendant shall create a proposed plan of action to ensure that its staff and
20 other representatives properly comply with their requirements to ensure timely
21 access to Sign language interpreters when necessary. This plan should address,
22 at minimum, training and enforcement measures to ensure proper oversight and
23 compliance.

24 (6) Defendant shall have **thirty (30) days** from the date of this Order’s entry to
25 prepare the proposed plan of action and submit it to the Court for approval.

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(7) Upon final approval by the Court, Defendant shall implement its action plan within **thirty (30) days**.

Dated this 30th day of August, 2022.



Honorable Rosemary Márquez
United States District Judge