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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

Before the Court is Defendant’ WG Scottsdale LLC’s Proposed Plan to Comply with the Court’s Order Granting Permanent Injunction. (Doc. 161.) Plaintiff filed a Response to the Plan (Doc. 167), Defendant filed a Reply (Doc. 171), and Plaintiff filed a Sur-Reply (Doc. 173.) The proposed Plan of Action and subsequent briefing were filed in response to the Court’s Order granting Plaintiff permanent injunctive relief and requiring Defendant to, among other things, “create a proposed plan of action to ensure that its staff and other representatives properly comply with their requirements to ensure timely access to sign language interpreters when necessary. This plan should address, at minimum, training and enforcement measures to ensure proper oversight and compliance.” (Doc. 154 at 6.)

Defendant submitted its proposed plan, which provides the following information. (Doc. 161.) Defendant explains that it owns one senior living community, called Atria Park at Sierra Pointe (“Sierra Pointe”). (*Id.*) Atria Management Co. LLC (“Atria”) manages the

1 Sierra Pointe facility pursuant to a management agreement with Defendant. (*Id.*) Atria’s
2 Anti-Discrimination Guidelines (“Guidelines”) inform all staff members that the
3 Americans with Disabilities Act (“ADA”) prohibits discrimination on the basis of
4 disability and “promotes the equal enjoyment and access to” the “goods, services, facilities,
5 privileges, advantages, and accommodations” at Sierra Pointe. (Doc. 161-1.) The
6 Guidelines further inform staff members that the Fair Housing Act (“FHA”) prohibits
7 discrimination on the basis of disability and requires that all individuals, whether disabled
8 or not, have “the same terms, conditions, or privileges of the rental of a dwelling or in
9 offering services.” (*Id.*) The Guidelines further state that Sierra Pointe “shall make
10 reasonable accommodation (free of charge) for all individuals living at or visiting the
11 community who are deaf or hard of hearing.” (*Id.*) The Guidelines list examples of
12 reasonable accommodations, including a whiteboard, a certified sign language interpreter
13 for “material conversations” such as “tours, residency agreement review, assessment, etc.,”
14 “visual prompt devices,” and “communication devices.” (*Id.*)

15 Defendant further states that its training program, intended for use by the Executive
16 Director and all staff members who have public contact, instructs staff on how to respond
17 to requests for reasonable accommodations including sign language interpreters. (Doc. 161
18 at 2.) That training program, attached as an Exhibit to Defendant’s filing, includes one
19 example involving a potential deaf resident. (Doc. 161-1 at 22.) The example states, “A
20 family member of a potential resident who is deaf inquires what we would do to assist the
21 potential resident with communications. Specifically, the family member requests we
22 provide a 24/7 sign language interpreter and install auxiliary aides in the apartment (e.g.,
23 text telephone, strobe light for doorbell, other communication devices.) How do you
24 respond? Do you agree to these requests?” (*Id.*) The training provides relevant follow-up
25 information: “(1) The obligation to provide auxiliary aides and services is flexible and
26 depends upon our assessment of the particular facts, circumstances, and needs of our
27 residents; (2) Inform the resident/family member of our assessment and move-in process
28 and that we want to determine whether the community is appropriate for the resident

1 despite any disability; (3) The resident’s disability shall not be a deciding factor on whether
2 the community is appropriate; (4) Contact your RVP and Operations Counsel.” (*Id.* at 23.)

3 Defendant states that it will take the following steps to comply with the ADA, the
4 FHA, and all applicable Court Orders: (1) “ensure that all staff receive, review, and
5 acknowledge its anti-discrimination policies”; (2) “conduct the anti-discrimination training
6 described [herein] for the Executive Director and all staff who interact with . . . members
7 of the public on an annual basis and require acknowledgement sheets showing who
8 attended each training session”; (3) “direct its staff to document any requests for a sign
9 language interpreter and to escalate those requests to Operations Counsel to ensure proper
10 oversight;” (4) “document whether an interpreter was provided, when an interpreter was
11 provided, and why an interpreter was not provided if any request for an interpreter is
12 denied”; (5) “maintain all the records described in this paragraph”; (6) “ensure that it has
13 an agreement in place with at least one provider of sign language interpreter services to
14 ensure that it can readily and timely obtain an interpreter if one is necessary.” (Doc. 160 at
15 2-3.)

16 Plaintiff’s Response states first that the Court should enjoin Atria to ensure that the
17 Sierra Pointe facility implements the terms of the injunctive relief. (Doc. 167 at 2.) Plaintiff
18 argues that, under Federal Rule of Civil Procedure 65(d)(2), an injunction can bind not
19 only a party but also the party’s “officers, agents, servants, employees, and attorneys” and
20 “other persons who are in active concert or participation” if they receive actual notice of
21 the injunction. Since Atria manages staffing and training at Sierra Pointe, Plaintiff contends
22 that the injunction should bind Atria. (Doc. 167 at 2.)

23 Plaintiff further argues that (1) Defendant’s policies and training are too vague to
24 ensure that Sierra Pointe will accommodate individuals with disabilities; (2) Defendant
25 does not indicate how Sierra Pointe and its public-facing employees will implement the
26 policies; and (3) the proposed policies and training materials omit important information.
27 Plaintiff counter-proposes a plan of action. (*Id.* at 2-3.) Plaintiff proposes an alternative,
28 detailed plan that includes (1) contact information on Atria’s website specifically linking

1 to requests for “special needs and accommodations”; (2) training for staff on how to handle
2 those requests; (3) procedures for handling those requests; (4) biannual “role-play” training
3 for public-facing employees; (5) biannual “testing” by having Atria randomly make a
4 request for accommodations through the website or over the phone; (6) record-keeping
5 requirements; and (7) enforcement. (*Id.* at 4-7.)

6 Defendant’s Reply argues that (1) Plaintiff lacks constitutional standing to pursue
7 injunctive relief against Atria; (2) there is no basis to expand the Order granting injunctive
8 relief to Atria, who was never added as a Defendant; (3) Atria is already bound by the
9 injunctive relief to the extent that it acts as an agent of Defendant, which it does in
10 managing the Sierra Pointe facility through its contract with Defendant, (4) Plaintiff’s
11 proposed plan is unnecessarily burdensome and beyond the scope of what is required in
12 the Order granting injunctive relief; and (5) Defendant’s current training materials and
13 policies are sufficient and effective. (Doc. 171.)

14 Plaintiff’s Sur-Reply contends that the capacity to enforce the injunctive relief
15 against Atria is supported by Federal Rule of Civil Procedure 65(d)(2) because Atria is an
16 agent of Defendant and/or a “person in active concert or participation” with Defendant.
17 (Doc. 173 at 2-3.) Thus, Plaintiff argues that Defendant’s constitutional standing argument
18 is misplaced and misleading. (*Id.*) Plaintiff argues that Atria is solely responsible for
19 providing and implementing all anti-discrimination training at Sierra Pointe, and thus the
20 injunctive relief pertaining to training must apply to Atria to be effective. (*Id.* at 3.) Plaintiff
21 further states that there is no issue of actual notice to Atria of the injunctive relief in this
22 matter because it served Atria with the injunction on November 10, 2022. (*Id.* at 5.)

23 As an initial matter, the Court agrees with Plaintiff that there is no issue concerning
24 lack of standing with respect to the injunctive relief against Atria. It is undisputed that Atria
25 is an agent of Defendant, as well as in active concert and participation with Defendant,
26 insofar as Atria actively manages Sierra Pointe and provides and implements the applicable
27 anti-discrimination policies and trainings at Sierra Pointe. Accordingly, Atria is bound by
28 the injunctive relief granted by this Court pursuant to Federal Rule of Civil Procedure

1 65(d)(2)(B) and (C). Thus, where the Order instructs Defendant to take certain actions in
2 accordance with the injunctive relief, such instructions apply equally to Atria within the
3 context of its relationship with Defendant. However, to the extent that Plaintiff seeks to
4 enjoin Atria outside of and apart from its management of Defendant’s facility at Sierra
5 Pointe, such an injunction would be outside the scope of this litigation. The injunctive relief
6 in this case applies only to Defendant and its management of the Sierra Pointe facility. As
7 Defendant has a contract with Atria to manage the Sierra Pointe facility, the injunctive
8 relief set forth applies to Atria within the context of its management of that facility, but not
9 otherwise.

10 The Court has reviewed the parties’ proposed plans. (*See* Docs. 161, 167.) The Court
11 finds that Defendant’s proposed plan does not adequately convey the steps Defendant will
12 take to ensure that its public-facing staff members properly comply with their requirements
13 to ensure timely access to sign language interpreters when necessary, as required by the
14 Order granting injunctive relief. (Doc. 154.) Furthermore, Defendant’s training materials
15 do not adequately convey employees’ duties and responsibilities under the ADA and the
16 FHA. Accordingly, the Court will direct Defendant, through Atria, to implement the
17 following Plan of Action and update its training materials as follows.

18 **I. Plan of Action**

19 To ensure that Defendant and its respective officers, agents, servants, employees,
20 and attorneys, and persons in active concert or participation with them, including all Atria
21 staff employed at Sierra Pointe and involved in managing or operating the Sierra Pointe
22 facility, comply with the ADA and FHA requirements regarding non-discrimination
23 against individuals with disabilities, the Court orders Defendant to take the following steps:

- 24 (1) The website for Sierra Pointe shall include a distinct tab titled
25 “Accommodations” that will notify visitors to the website of the ability to
26 request information about accommodations for individuals with disabilities and
27 to request accommodations.

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- 1 (2) The tab will redirect to another page that includes basic information regarding
2 the rights of individuals with disabilities to equal enjoyment of housing facilities
3 under the ADA and FHA (see below training information). The page will also
4 include contact information, including an email address and phone number,
5 which the visitor can use to request more information or to request an
6 accommodation.
- 7 (3) Emails and phone calls resulting from these contacts will be routed to the
8 appropriate staff member(s), who will have received training on how to handle
9 them in an ADA- and FHA-compliant manner.
- 10 (4) Any requests for information about Sierra Pointe’s ability to accommodate the
11 needs of individuals with disabilities shall be responded to within 72 hours, thus
12 beginning the required interactive process.
- 13 (5) Any requests for accommodations for an activity such as a tour of the facility or
14 a residency assessment, which may require a sign language interpreter, shall be
15 responded to within 48 hours. The approval or denial of such requests shall be
16 documented, along with the reasons why the request was approved or denied. In
17 the event such a request is approved, staff shall take appropriate action to provide
18 and coordinate the accommodation. In the event such a request is denied, staff
19 shall respond to the person requesting the accommodation and explore whether
20 another accommodation may meet the individual’s needs.
- 21 (6) Any requests for accommodations shall be escalated to the appropriate
22 supervisory staff if needed.
- 23 (7) Each Sierra Pointe employee shall receive a copy of Atria’s non-discrimination
24 policies, guidelines, procedures, and training materials upon hire, including this
25 Plan of Action. Current employees shall receive a copy within thirty (30) days
26 of the date this Order is issued. Each employee’s receipt of this information shall
27 be documented.
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1 (8) Each Sierra Pointe employee who interacts with the public, prospective
2 residents, residents, visitors, or family members, including the Executive
3 Director, shall receive annual training on Atria’s non-discrimination policies,
4 guidelines, and procedures. The completion of such trainings shall be
5 documented.

6 (9) At least once per year, Atria will randomly “test” its staff by making a request
7 for an accommodation through the contact information provided on the website.
8 This “test” need not be detailed or complex but may include something like a
9 request for a sign language interpreter during a tour for a prospective resident
10 who is deaf. These tests and the results shall be documented.

11 (10) All requests for accommodations and modifications for individuals with
12 disabilities shall be documented, along with the reasons why such requests were
13 approved or denied.

14 (11) Sierra Pointe shall establish a relationship with at least one local provider of
15 sign language interpretation services, to ensure that a sign language interpreter
16 will be available in a timely manner. This relationship shall be documented in
17 writing. Sierra Pointe may also establish a relationship with a video remote
18 interpretation service if it finds that such a service would assist it in meeting its
19 responsibility to provide effective communication.

20 (12) If Atria discovers a violation of any of the terms set forth in the Plan of
21 Action, it shall take appropriate action, including but not limited to remedial
22 training, discipline, writing up the employee, unpaid leave, or termination. If
23 Atria discovers such a violation, it shall notify the Court within sixty (60) days
24 and shall inform the Court what actions it has taken in response to the violation.
25 Such violations shall be documented.

26 **II. Training Updates**

27 A more detailed and thorough explanation of the requirements of the ADA as
28 applicable to deaf individuals must be included in Defendant’s training materials. The


1 example involving a deaf individual in the current training materials does not adequately
2 inform staff members of their obligations under the ADA and FHA to ensure that they are
3 aware of their responsibility not to discriminate based on deafness or any other disability.
4 Stating that Sierra Pointe’s obligation to provide aides and services for individuals with
5 disabilities is “flexible and depends on our assessment” of an individual’s circumstances
6 and needs does not explain the law in such a way that a typical employee would understand
7 his or her legal obligations. Defendant must add and include in its training materials—
8 specifically the portion of the training that explores how to address a request for a sign
9 language interpreter for a potential deaf resident—more detailed and specific information
10 about ADA requirements for public accommodations. The training shall include, at a
11 minimum, the following information:

12 Title III of the ADA prohibits discrimination based on disability, including deafness,
13 by places of public accommodation. Title III provides that a public accommodation must
14 provide an individual with a disability with full and equal enjoyment of the goods, services,
15 facilities, privileges, advantages, or accommodations of the public accommodation. It is
16 discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges,
17 advantages, accommodations, or other opportunities to an individual with a disability. If
18 modifications or accommodations to policies, practices, or procedures are necessary to
19 provide full and equal access to goods, services, facilities, privileges, advantages, or
20 accommodations, those modifications or accommodations shall be made unless they would
21 create an undue burden or fundamentally alter the nature of the goods, services, facilities,
22 privileges, advantages, or accommodations. Accommodations must provide meaningful
23 access. Outright denial of a deaf individual’s request for a sign language interpreter violates
24 the ADA. A public accommodation must consult with the individual with a disability
25 regarding his or her communication needs and abilities whenever possible, but the ultimate
26 decision as to what accommodation to provide rests with the place of public
27 accommodation, as long as it provides effective communication. While there may be
28 instances when communication via written notes or a whiteboard is ADA-compliant, there

1 may be other instances, such as those involving more complex communications, where a
2 sign language interpreter is required. Staff shall not outright deny a request for a sign
3 language interpreter or tell residents, prospective residents, or their family members that it
4 is their responsibility to provide or pay for an interpreter. Rather, when requests for sign
5 language interpreters for interactions such as tours, resident assessments, residency
6 agreement discussions and signing, and participation in group activities, as well as requests
7 for other reasonable accommodations for deaf individuals such as doorbells with flashing
8 lights, are received, staff shall engage in an interactive process with the individual until an
9 understanding is reached regarding the deaf individual's needs and abilities for effective
10 communication. Staff shall then provide the accommodation or modification that provides
11 effective communication and equal access under the given circumstances. Staff shall
12 respond promptly to requests for sign language interpreters and other accommodations and
13 modification. If a staff member is unsure of how to handle a request for an accommodation
14 or modification, he or she shall escalate the matter to a supervisor.

15 Dated this 30th day of March, 2023.

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Honorable Rosemary Márquez
United States District Judge