UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Allison Barton Rice, pro se
Plaintiff-Appellant,

vs.

City and County of San Francisco
Defendant-Appellee.

9th Cir. Case No. 24-2217

District Court Case No.——
————————19-cv-04250-LB

APPELLANT'S INFORMAL OPENING BRIEF

Jurisdiction.

Plaintiff-Appellant Rice respectfully requests this Court review the March 31, 2024 district court Order Reviewing Clerk's Taxation of Costs (D.C. Dkt No. 275); in particular, its reasoning and fairness in refusing Rice's request to deny Defendant-Appellee CCSF's Bill of Costs in light of 9th Cir. precedent to do so for private civil rights litigants as found in *Ass'n of Mexican-Am. Educators v. California,* (9th Cir. 2000); *Brown v. Lucky Stores, Inc.,* (9th Cir. 2001); and *Green v. Mercy Housing, Inc.,* (9th Cir. 2021); and elsewhere.

Facts.

July 24, 2019 Rice filed his Complaint against the City and County of San Francisco, et al. ("CCSF");[1] dismissed on October, 19, 2019.[2] November 10, 2019 Rice filed his FAC;[3] dismissed with prejudice on January 17, 2020.[4]

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[1] D.C. Dkt No. 1.

[2] D.C. Dkt No. 46.

[3] D.C. Dkt No. 49.

[4] D.C. Dkt No. 58.

January 22, 2020 Rice appealed to the 9th Cir., September 16, 2020 9th Cir. MEMORANDUM reversed and remanded Rice's FHA claims.[5]

Critical revelation: On March 14, 2024 CCSF filed Transcript Order[6] for the May 25th and June 15th 2023 pretrial hearings. Seeing this and not in possession of those transcripts, on March 15, 2024 Rice filed his Transcript Order[7] for the same pretrial hearings transcripts which he paid for and received directly from Echo Reporting Inc. on March 22, 2024. Although Rice was in attendance at those pretrial hearings he does not remember specifically what was said because it was mostly over his head and he was just trying understand the legal discussions.

Regardless, in the June 15, 2023 pretrial hearing (the day before the start of the trial) Honorable Beeler admitted to, and made abundantly clear, CCSF's fraud on the district court — to wit: "**I was completely wrong** on my round one motion to dismiss, not just because the Ninth Circuit told me so but in sort of rethinking it, **Mr. Rice was right** in his round one motion, and **I'm convinced of that now**, and, again, not just because the Ninth Circuit told me, but **I too** got -- **you know**, **I got sucked into** the affordable housing in San Francisco, and that wasn't something I should have done in a motion to dismiss phase, and -- but **I got sucked in** by it because I thought, well, San Francisco is trying to do what it can for affordable housing. But **Mr. Rice was right** and said -- so said the Ninth Circuit. And **I'm convinced now that that's -- that's right**. Like, **I was wrong**. So, **you know**,

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[5] Case No. 20-15087, Dkt No. 18-1.

[6] D.C. Dkt No. 270.

[7] D.C. Dkt No. 271.

I'm always glad to know when I'm wrong."[8] (emphasis applied)

This is exceptionally important because Rice identified CCSF's "fraud" starting on page 1 of his Original Complaint[9] — which the district court ignored because it "got sucked into the affordable housing" administrative policies utilized by CCSF's officials and attorneys to violate Rice's disability rights under the FHA in such a way as [to try] to avoid the penalty for doing so[10] — and it is *that* misconduct or bad-faith practices by CCSF's officials and attorneys that created this 6+ year long legal saga, and it is that same misconduct or bad-faith practices that was a fraud on the district court by CCSF's counsel which has propelled this case to where it is today — before the Court of Appeals for the Ninth Circuit for a second and third time (counting *this* appeal). And, therein is the reason Rice finds himself to now be financially wiped out and his necessity for *this* appeal; and for his request to proceed in forma pauperis, granted on May 31, 2024.

Furthermore, the Honorable Beeler is not a gullible or easily deceived person (i.e. a sucker). CCSF's fraud (or ruse) on the district court was very clever and very well executed; and clearly targeted the trust and confidence the district court held for the City Attorney's Office — to wit: "I spent a lot of time in the case at the motion to dismiss phase. I'm very mindful of the -- of -- because, obviously, with a case involving somebody **who's representing himself, it's an extra --**

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[8] Ex. A, 6/15/2023 pretrial conference transcript, p. 66, 12-25.

[9] D.C. Dkt No. 1.

[10] Please see Rice's Informal Opening and Reply briefs in his primary appeal, Case No. 23-16013 Dkt Nos. 17.1; and 31.1, especially p. 27.

that's an extra lift. And **I can't do what I can do with lawyers**, which is rely on their accounting of the facts. **I have to do my own independent assessment**. **CCSF is always very good about giving a full record to *enable* me to do that**, so I understood the case very well in the confines of the claim that survived and what the Ninth Circuit did with it. …" (Mot. Tr 4, 4 to 7, 2) (emphasis added)"[11]

June 16 to 22, 2023 trial concerning Rice's 42 U.S.C. § 3604 and § 3617 [FHA] claims was held — CCSF prevailed. June 27, 2023 Rice terminated his pro bono representation.[12] July 10, 2023 CCSF filed its Bill of Costs.[13]

July 18, 2023 Rice filed his Notice of Appeal from a Judgment or Order of a United States District Court with the Court of Appeals for the Ninth Circuit.[14]

August 15, 2023 Rice filed his Motion to Stay Proceedings Pending Appeal Decision by the Court of Appeals for the Ninth Circuit in the district court.[15]

September 3, 2023 the district court issued its Order Extending Time to Oppose Clerk's Taxation of Costs and Denying Motion to Stay Without Prejudice[16] — stating "Under the circumstances, the court liberally construes the plaintiff's motion in part as a request to extend the time period to oppose the taxation of costs and extends the time to oppose the taxed costs until November 16, 2023."[17]

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[11] Case No. 23-16013 Dkt No. 17.1, pp. 57-58. Note: 12/22/2022 motions hearing.

[12] D.C. Dkt No. 226.

[13] D.C. Dkt No. 233.

[14] Case No. 23-16013.

[15] D.C. Dkt No. 240.

[16] D.C. Dkt No. 249.

[17] D.C. Dkt No. 249, p. 2, 2-4.

November 8, 2023 Rice filed an Objection[18] and on November 12, 2023 filed a Motion[19] to Deny Defendant's Bill of Costs with exact same arguments of:

a. Impropriety on the part of the prevailing party (including misconduct or bad-faith practices).

b. Losing party's indigence or limited financial resources.

c. Issues in the case were close or difficult.

d. Imposition of Bill of Costs would be a chilling effect on civil rights plaintiffs of modest means. And,

e. *Rice* presents a landmark issue of national importance.[20]

Which were primarily drawn from the district court's "examples" in its Order.[21]

March 31, 2024 the district court issued its Order Reviewing Clerk's Taxation of Costs[22] — refusing Rice's request that CCSF's Bill of Costs be denied and, instead, "The court taxes the full amount of claimed costs."[23]

Rice filed motions to proceed in forma pauperis in *this* appeal on April 11, 2024[24] [granted on May 31, 2024[25]], and in his primary appeal in this case on April

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[18] D.C. Dkt No. 250.

[19] D.C. Dkt No. 251.

[20] D.C. Dkt No. 251, p. 6, 1 to p. 29, 22.

[21] D.C. Dkt No. 251, p. 4, 1 to p. 5, 13.

[22] D.C. Dkt No. 275.

[23] D.C. Dkt No. 275, p. 6, 15.

[24] Dkt Nos. 3.1 to 3.9.

[25] Dkt No. 6.

2, 2024;[26] and Rice filed an application to proceed in forma pauperis with the district court on April 8, 2024[27] — each with Rice's March-April 2024 detailed financial information which essentially remains unchanged.

Proceedings Before the District Court.

Application to Proceed In Forma Pauperis, pending.

Exhaustion of Administrative Remedies.

Rice is ignorant of "Administrative Remedies" regarding Bills of Costs.

Proceedings Before the Court of Appeals.

1. Rice's appeal of the district court's judgement, Case No. 23-16013.

2. *This* appeal of the district court's decision: "The court taxes the full amount of claimed costs."[28]

Given 9th Cir. applicable precedents and HUD Elements of Proof for a private person's FHA claim of intentional disability discrimination[29] — Rice prays for the 9th Cir. to reverse the district court's order *and* deny CCSF's Bill of Costs.

Rice respectfully suggests it would be helpful and economical for the same three judge panel that is reviewing his primary appeal in the case of *Rice v. CCSF* (Case No. 23-16013) to review *this* appeal.

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[26] Case No. 23-16013, Dkt Nos. 23.1 to 23.9, and 24.

[27] D.C. Dkt Nos. 278 and 278.1.

[28] D.C. Dkt No. 275, p. 6, 15.

[29] Please consider Ex. B. HUD Elements of Proof — HUD's September 4, 2018 memorandum on Elements of Proof for intentional discrimination.

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INTRO

In the district court's March 31, 2024 Order Reviewing Clerk's Taxation of Costs, it denied Rice's request to deny costs on each of his arguments.[30]

ARGUMENT

I. Most notable is the district court went against its own citation[31] — a citation that indisputably makes clear that, in this case, denying CCSF's Bill of Costs *would be* the correct decision.

In Rice's Objection and his Motion, he communicated that his "… financial position now is a zero or negative net worth. [] To the extent details are required by this Court, Rice can provide them under seal or perhaps in a private discussion with this Court."[32] And, in his Reply: "… completely due to the City's fraudulent and egregious violation of Mr. Rice's mental illness disability rights under the FHA and the resultant difficulties, issues, and litigation for over six (6) years and counting — Mr. Rice's expenses have been significantly more than they would have been otherwise, and his once healthy savings have been wiped out and he is

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[30] D.C. Dkt No. 275, p. 4, 1 to p. 6, 11.

[31] ""In determining whether the financial resources of a plaintiff are so limited as to justify denying costs, there are no hard and fast rules" but "courts should use their common sense." *Ayala v. Pac. Mar. Ass'n*, No. C08-0119 TEH, 2011 WL 6217298, at *2 (N.D. Cal. Dec. 14, 2011) (cleaned up). "It is not necessary to find that the plaintiffs in question are currently indigent; rather, **the proper inquiry is whether an award of costs might make them so**." *Id*. (cleaned up). "Costs have been denied on the basis of financial inability in cases where plaintiffs are unemployed, sporadically employed and low-income, earning under $25,000 per year" (as of 2010), and where plaintiffs are "students [or] recent graduates with significant student debt and little income." *Id*. (cleaned up)." (D.C. Dkt No. 275, p. 4, 14-22) (emphasis added)

[32] D.C. Dkt No. 251, p. 22, 19-21.

now in significant debt. Quite simply, for now, Mr. Rice can not afford to do anything except meet his basic monthly living expenses and strive to pay down his debt as best he can with his limited Social Security and VA compensation." and "Mr. Rice would be happy to provide this [district] Court any and all of his detailed financial information under seal or, perhaps, in a private phone conversation or in a closed Zoom meeting."[33]

However, the district court made its decision ***without*** Rice's current detailed financial information. Obviously, the district court did not make a "proper inquiry" as it should have in this intentional disability discrimination under the FHA case.

Indisputably, Rice's limited financial resources are clearly so significantly "limited" that it was wrong for the district court to not deny CCSF's Bill of Costs.

II. Rice amended[34] his Motion so as to provide the district court *Green v. Mercy Housing, Inc.,* (9th Cir. 2021). Please consider the following:

***Green v. Mercy Housing, Inc.*, (9th Cir. 2021) — in part**

"We therefore hold that a plaintiff bringing suit under the Fair Housing Act should not be assessed fees or costs unless the court determines that his claim is "frivolous, unreasonable, or groundless." *Christiansburg*, 434 U.S. at 422. In so holding, we join the First, Second, and Fourth, and Fifth Circuits, all of which have applied the *Christiansburg* standard in the **Fair Housing context**. See *Casa Marie Hogar Geriatrico, Inc. v. Rivera-Santos,* 38 F.3d 615, 618 (1st Cir. 1994); *Taylor v. Harbour Pointe Homeowners Ass'n,* 690 F.3d 44, 50 (2d Cir. 2012); *Bryant Woods*

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[33] D.C. Dkt No. 258, p. 12, 16-23; and p. 13, 4-5, respectively.

[34] D.C. Dkt No. 256.

Inn, Inc. v. Howard County, 124 F.3d 597, 606 (4th Cir. 1997); *Providence Behav. Health v. Grant Rd. Pub. Util. Dist.,* 902 F.3d 448, 460 (5th Cir. 2018).

There is no indication in the record that the district court applied the *Christiansburg* standard when awarding costs. Moreover, as we reverse the grant of summary judgment in part in the accompanying memorandum disposition, it is apparent that it cannot be said at this juncture that Green's claims were overall "frivolous, unreasonable, or groundless." *Christiansburg*, 434 U.S. at 422. We therefore vacate the costs award. Costs should be awarded at the conclusion of the litigation, applying the *Christiansburg* standard should Mercy Housing ultimately prevail." (emphasis added)

CCSF argued "*Green*, however, does not establish legal precedent in the Ninth Circuit. In *Garcia v. Gateway Hotel L.P.,* 82 F.4th 750, 752 (9th Cir. 2023), the Ninth Circuit extinguished Green's precedential value and criticized the Green court for failing to consider the Supreme Court's opinion in *Marx v. General Revenue Corp.,* 568 U.S. 371 (2013), which effectively overruled Brown. … Accordingly, this Court need not deviate from Rule 54(d)(1) in awarding the City's costs."[35]

Rice's counter argument here is that CCSF is misguided and that *Green* is the applicable precedent as indicated in *Garcia* by:

"HURWITZ, Circuit Judge, dissenting:

I agree with the majority that after *Marx v. General Revenue Corp.,* 568 U.S. 371,

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[35] D.C. Dkt No. 257, p. 7, 23 to p. 8, 9.

133 S.Ct. 1166, 185 L.Ed.2d 242 (2013), Rule 54(d)(1) controls the award of costs to a prevailing defendant in an ADA action. I also agree with the majority that our prior caselaw holding that the ADA "provides otherwise" than Rule 54(d)(1) cannot be reconciled with *Marx.* But, I part company with my colleagues on whether our three-judge panel is free to reach these conclusions.

I.

In *Miller v. Gammie,* we held that a three-judge panel is bound by the opinion of a prior panel absent a conflicting "subsequent" or "intervening" Supreme Court decision. 335 F.3d 889, 899-900 (9th Cir. 2003) (en banc). If *Brown v. Lucky Stores, Inc.*—which held the ADA allowed an award of costs to a prevailing defendant "only if the claim was frivolous, unreasonable or lacking foundation," 246 F.3d 1182, 1186 (9th Cir. 2001)—were our only relevant precedent, our task would be easy because *Marx* intervened between *Brown* and this case.

But, *Brown* is not our only relevant precedent. In *Green v. Mercy Housing, Inc.,* decided *after Marx,* we held that an identical costs provision **in the Fair Housing Act** only allows a costs award to a prevailing defendant on the same heightened showing. 991 F.3d 1056, 1057-58 (9th Cir. 2021). Because *Green* came after *Marx, Marx* plainly did not "intervene" between *Green* and the case now before us. *See United States v. Eckford,* 77 F.4th 1228, 1234-35 (9th Cir. 2023); *CoreCivic, Inc. v. Candide Grp., LLC,* 46 F.4th 1136, 1141 (9th Cir. 2022).

II.

The majority excuses the absence of an "intervening" Supreme Court decision

because the *Green* panel did not address whether *Marx* had abrogated *Brown.* The majority therefore concludes that *Green* is not precedential. But, the very issue for decision before us today—whether a prevailing defendant in an ADA action may be awarded costs absent proof that the complaint was frivolous, unreasonable, or lacking in foundation—is precisely the one decided in *Green.* Put differently, ***Green* is exactly on point**; whether correctly decided or not, it squarely stands for the proposition that Rule 54(d)(1) does not apply.

I am aware of no case—and the majority has cited none—holding that a three-judge panel of this Court may ignore an opinion expressly on point simply by finding that it did not correspond with a prior Supreme Court opinion. To be sure, we need not treat cases that do not expressly decide an issue as implicitly doing so. Thus, *United States v. Kirilyuk,* cited by the majority, held that prior opinions interpreting an Application Note according to its terms did not implicitly hold that the Note was consistent with the governing Sentencing Guideline. 29 F.4th 1128, 1134-35 (9th Cir. 2022). But here, we need not imply a holding from a prior opinion's silence. Rather, *Green expressly* resolves today's issue— whether Rule 54(d)(1) applies to an award of costs under the ADA.

III.

Because I agree with the majority that *Marx* is not conciliable with our previous ADA and FHA costs jurisprudence, my concern with following the *Miller* three-judge panel rule may on the surface seem overly technical. But, if we have a rule, we are required to follow it until changed by the appropriate panel. And, if we

today allow a three-judge court not to follow Circuit precedent when it conflicts with Supreme Court decisions handed down *before* our precedent, future three-judge panels may well feel free to abrogate Circuit precedent even when the conflict with a non-intervening Supreme Court ruling is not as clear as it is today. We avoid that potential problem by following *Miller.* **The proper course—even when the eventual outcome is, as today, seemingly preordained —is to require an en banc court to inter our previous decisions unless an intervening Supreme Court abrogates them.**" (emphasis added)

Thus, if the 9th Circuit three-judge panel considering *this* appeal is inclined to accept CCSF's argument that *Garcia* should be the precedent for its decision, then Rice respectfully request "an en banc court to inter [its] previous decisions unless an intervening Supreme Court abrogates them."

III. As noted earlier, Rice provided the district court *Green v. Mercy Housing, Inc.,* (9th Cir. 2021). Presumably, the district court read it and, in any case, is familiar with *Green* and the *Christiansburg* standard.

In *Rice,* just as in *Green,* there is no indication in the record that the district court applied the *Christiansburg* standard when awarding costs. Nor, has the district court asserted that Rice's 42 U.S.C. § 3604 and § 3617 claims are frivolous, unreasonable, or groundless — they are not.

Ultimately, and simply, the district court's March 31, 2024 Order Reviewing Clerk's Taxation of Costs, in which it awards CCSF its Bill of Costs, should be reversed because it is contrary to 9th Cir. precedent and, in particular, it is *entirely*

contrary to the clear understanding of the chilling effect on civil rights plaintiffs of modest means — which is of the utmost importance for civil rights law in our nation. Because if a private party plaintiff would be subject to a prevailing defendant's cost (other than another private party of modest means), no private party civil rights plaintiff of modest means could even reasonably consider proceeding to protect their (and our) civil rights no matter how strong or significant the cause of action may be.

Please consider the opening paragraphs in the first ever joint statement by Presidential Libraries for multiple former U.S. Presidents published[36] recently:

> "The unalienable rights of life, liberty, and the pursuit of happiness, as stated in the Declaration of Independence, are principles that bind us together as Americans. They have enabled the United States to strive toward a more perfect union, even when we have not always lived up to those ideals.
>
> As a diverse nation of people with different backgrounds and beliefs, democracy holds us together. **We are a country rooted in the *rule of law*, where the protection of the *rights* of all people is paramount**. At the same time, we live among our fellow citizens, underscoring the **importance of** compassion, tolerance, pluralism, and **respect for others**." (emphasis added)

In *this* case, the efforts of CCSF's counsel is nothing short of trying to dismantle the United States Declaration of Independence and the Constitution's guarantee of individual rights and its protection of persons from action by governmental officials — at least within the City and County of San Francisco.

IV. CCSF's counsel is, or should be, familiar with applicable precedents or reasons for denying CCSF's Bill of Costs. Yet, they knowingly attempted to make a fraudulent use of CCSF's Bill of Costs in an effort to *induce* Rice to waive his

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[36] September 7, 2023 — www.nytimes.com/2023/09/07/us/politics/presidential-centers-democracy-bush.html

right to appeal, stating to him on July 5, 2023 (well before the September 15, 2023 filing of *Garcia*) "Under the Fair Housing Act, the prevailing party is entitled to recover costs and attorneys' fees. However, in the spirit of finally resolving this case and avoiding further litigation, the City is willing to waive its costs and fees in exchange for you waiving your right to appeal."[37]

Just *another* of CCSF's counsel's never ending bad-faith practices (i.e. knowing misrepresentations of the truth and concealments of material facts).[38]

Furthermore, CCSF's counsel's argument "A. Plaintiff Fails to Identify Any Cost Incurred as a Result of Impropriety"[39] is, simply, preposterous because <u>*none*</u> of CCSF's assertions proffered as its defense are based on, nor supported by, the <u>relevant</u> truthful facts as found in the <u>written record of communications</u>[40] between Rice, Yin and Benjamin of the MOHCD, and Deputy City Attorney Nagayama. Instead, CCSF's defense was (and is) an altered reality based on *its* theories of what happened. Had CCSF's officials and attorneys been truthful with Rice from the beginning, as required by the FHA, this case would never have "happened".

Put another way, ***but for*** CCSF's officials and attorneys intentional disability discrimination under the FHA by fraudulent means, this case would never have existed and, hence, there would never have been "Cost Incurred as a Result of

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[37] D.C. Dkt No. 235.1.

[38] Please consider Rice's "(a) impropriety on the part of the prevailing party (including misconduct or bad-faith practices)" argument in his Reply to CCSF's Opposition at D.C. Dkt No. 258, p. 3, 12 to p. 12, 6.

[39] D.C. Dkt No. 257, p. 8, 17 to p. 10, 2.

[40] Please consider D.C. Dkt No. 1, ¶¶ 65 to 97 and the exhibits indicated therein.

[CCSF's officials and attorneys] Impropriety". It's just that simple, and the only thing that is complex in *Rice v. CCSF* is the tangled web of deceit created by CCSF's City Attorney's Office as a ruse to avoid the penalty for violating the FHA. And, they will continue their ruse in *this* appeal just as in Rice's primary appeal.

V. The district court's order is entirely void of *Brown,*[41] *Green,*[42] and *Garcia.* And, disturbingly, the district court decided "The plaintiff has not satisfied his burden to establish that he is unable to pay the claimed amount in costs."[43] ***without*** considering the details of Rice's current financial position[44] which Rice offered to provide[45] — the district court acknowledged[46] the offer, but never accepted it.

Instead, and seemingly de rigueur, the district court took CCSF's position "The CCSF points out that at trial, the plaintiff testified [1] "that he own[s] his

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[41] *See Brown v. Lucky Stores, Inc.,* (9th Cir. 2001) "The attorney's fee provision of the ADA allows the court to award a prevailing **private** party "a reasonable attorney's fee, including litigation expenses, and costs." 42 U.S.C. § 12205. Attorney's fees under § 12205 should be awarded to a prevailing defendant **only** if "`the plaintiff's action was frivolous, unreasonable, or without foundation.'" *Summers v. A. Teichert & Son, Inc.*, 127 F.3d 1150, 1154 (9th Cir. 1997) (quoting *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978)). Because § 12205 makes fees and costs parallel, we hold that the *Christiansburg* test also applies to an award of costs to a prevailing defendant under the ADA." (emphasis added)

[42] *See Green v. Mercy Housing, Inc.,* (9th Cir. 2021) "We therefore hold that a plaintiff bringing suit under the Fair Housing Act should not be assessed fees or costs unless the court determines that his claim is "frivolous, unreasonable, or groundless." *Christiansburg*, 434 U.S. at 422, 98 S.Ct. 694."

[43] D.C. Dkt. No. 275, p. 5, 6-7.

[44] Available in Rice's Motion and Affidavit for Permission to Proceed in Forma Pauperis in this appeal at Dkt Nos. 3.1 to 3.9.

[45] D.C. Dkt Nos. 250, p. 21, 20-21 and 258, p. 13, 4-5.

[46] D.C. Dkt No. 275, p. 4, 24-24.

current place of residence near Austin, Texas," [2] that "he receives monthly benefits in the amount of approximately $2,915 from the [VA] and approximately $940 from Social Security," and [3] that he received an inheritance."[47]

Breaking those three points down:

(1) Rice's current place of residence *in* Austin, Texas was acquired with a 100% VA home loan plus $3,324.24 in closing costs. Although Rice may "own" the residence, it is entirely encumbered by the mortgage *and* the value of his current residence has decreased. Additionally, Rice's residence was not delivered as originally scheduled in August 2021 but, instead, was delivered on January 18, 2022 — necessitating Rice to spend an additional several thousands of dollars for hotel accommodations for more than 5 months that would *not* have ever been necessary *but for* CCSF's fraud that lies at the heart of this FHA case which induced Rice to sell his former home[48] of 13.5 years.

(2) Rice's "monthly benefits in the amount of approximately $2,915 from the [VA] and approximately $940 from Social Security" are amounts Rice provided to questions in the litigation process with respect to the calendar year 2017. Rice testified at the trial "The VA benefits, as well as Social Security benefits, receive what is known as a cost of living adjustment each year, if there is one."[49] For

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[47] *Id.* p. 5, 2-5.

[48] *See* D.C. Dkt No. 1.2, p. 36. "To the MOHCD, I am selling my BMR condominium "under protest", primarily because the MOHCD has ignored my disability and denies that the ADA is applicable to this/my situation - which is, and has been, injurious and detrimental to me. If and when I can, I intend to seek recourse through an appropriate legal channel. Mr. Allison Barton Rice"

[49] Tr 352, 23-25.

2024, Rice's monthly VA compensation is $3,737.85[50] and his monthly Social Security retirement benefit is $1,209.00.[51]

(3) Having never asked, CCSF and the district court speak of Rice's "inheritance" without realizing it was *not* hundreds of thousands of dollars. Rice was/is financially responsible; he was able to afford what was *his* "affordable" home with his VA and Social Security income (contrary to the district court's false statements in its Orders Granting Motion To Dismiss Rice's OC and his FAC[52]).

Nor do they acknowledge that Rice's inheritance from his mother was in 2002 with most of that being the downpayment on what was *his* former home.

Likewise, they fail to acknowledge Rice's inheritance from his father was in 2016, eight (8) years ago, which has since been spent on enormous expenses that would not have existed <u>*but for*</u> CCSF's officials and attorneys *multiple* knowing misrepresentations of the truth and concealment of material facts (i.e. fraud on Rice and on the district court) in the commission and defense of their illegal abuse of discretion to violate Rice's disability rights and avoid the penalty for doing so.

VI. Considering the injustice that has happened to Rice in this case, *and* the <u>extreme</u> imbalance of *power and wherewithal* between *any* private civil rights plaintiff and CCSF — the imposition of Bill of Costs would be a chilling effect for even a wealthy person that was a plaintiff in a civil rights case against CCSF.

CCSF's affordable housing administrative policies, and the limitations of its

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[50] Dkt No. 3.4.

[51] Dkt No. 3.3.

[52] Please consider D.C. Dkt No. 66, ¶¶ 32-40.

exemptions, are preempted by the FHA.[53] And, *Rice v. CCSF* is an intentional disability discrimination under the FHA case, and the applicable 9th Cir. precedent here (quoting *Green*) is: "… a plaintiff bringing suit under the Fair Housing Act should not be assessed fees or costs unless the court determines that his claim is "frivolous, unreasonable, or groundless." *Christiansburg*, 434 U.S. at 422."

Thus, regardless of the fact that the imposition of Bill of Costs would be a chilling effect on civil rights plaintiffs of modest means (which is true in this case), it was still wrong for the district court to not deny CCSF's Bill of Costs.

VII. The district court stated "Issues are close or difficult when the decision turns on "careful evaluation of witness testimony and circumstantial evidence." *Ogbechie v. Covarrubias*, No. 5:18-CV-00121-EJD, 2021 WL 2865183, at *3

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[53] ***See*** *McGary v. City of Portland,* (9th Cir. 2004) "*See City of Edmonds*, 18 F.3d at 806. In *Edmonds*, we specifically held that the FHAA's reasonable accommodation requirement applies to municipal zoning ordinances. Id. at 806, 115 S.Ct. 1776. In doing so, we observed that "Congress intended the FHAA to apply to `local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps.'... includ[ing] the `enforcement of otherwise neutral rules and regulations on health, safety and land-use in a manner which discriminates against people with disabilities.'" *Id.* at 805, 115 S.Ct. 1776 (quoting 1988 U.S.C.C.A.N. at 2184-85)."; ***see*** *City of Edmonds v. Washington State Bldg. Code Council,* (9th Cir. 1994) "The district court held that an exemption in the FHAA for occupancy restrictions applied. It relied on a similar holding in *Elliott*. [] We disagree with *Elliott*, and so must reverse and remand."; ***see*** *Giebeler v. M & B Associates,* (9th Cir. 2003) "[T]he FHAA "imposes an affirmative duty upon landlords reasonably to accommodate the needs of handicapped persons," [] Imposition of burdensome policies, including financial policies, can interfere with disabled persons' right to use and enjoyment of their dwellings, thus necessitating accommodation."; and, ***see*** *Walker v. City of Lakewood,* (9th Circuit 2001) "[B]ecause the FHA explicitly preempts any state law "that purports to require or permit any action that would be a discriminatory housing practice under this subchapter," 42 U.S.C. § 3615, we may not defer to state contract law principles in resolving this case."

(N.D. Cal. July 8, 2021). Here, the issues were not particularly complicated."[54]

Ogbechie is a notably different type of case — it is not a fair housing nor a disability type of case, and is not appropriate here. Also, *Ogbechie v. Covarrubias* was reversed by the Court of Appeals for the Ninth Circuit (Case No. 20-16936).

VIII. Regarding *Rice* is a landmark issue of national importance,[55] the district court stated:

"[1] The plaintiff contends that because no court of appeals has decided whether punitive damages are available under the Fair Housing Act, and the plaintiff is currently raising that issue on appeal, this case presents a landmark issue of national importance. But that does not qualify as a "landmark" issue because it is not unique to this case or novel; any Fair Housing Act plaintiff can argue for punitive damages.

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[54] D.C. Dkt No. 275, p. 6, 9-11.

[55] *See* D.C. Dkt No. 250, p. 28, 9-22. "*Rice v. CCSF* pits the "internal policies" of a municipality against federal fair housing law (the FHA) — or as [the district] Court put it:

"… **interplay** between the -- what a municipality can fairly implement as rules that govern low-income housing versus the **interplay** with the statutes that Mr. Rice advanced …"

In this regard, the critical issue in *Rice v. CCSF* is — Can CCSF rely on its own internal policy or CCSF's employees' interpretation of that internal policy and ignore the FHA to determine if Rice may or may not "lease a portion of his home" to "rent-paying roommates or a rent-paying roommate" to ameliorate the symptoms of his mental illness disability?

According to *Green v. Housing Authority of Clackamas County* (Dist. Court, D. Oregon 1998) — which mirrors *Rice v. CCSF* — the answer is no. But, that was a District Court decision and *Rice v. CCSF* is now before the Court of Appeals for the Ninth Circuit to make that determination; and to determine whether or not punitive damages may be applied against a municipality under the FHA as Rice claims it can be (a question yet to be decided by any Circuit Court) — thus, *Rice v. CCSF* presents a landmark issue of national importance." (emphasis supplied)

[2] The plaintiff also contends another issue in this case is a landmark one: whether the CCSF may "rely on its own internal policy or [its] employees' interpretation of that internal policy and ignore the [Fair Housing Act] to determine [whether the plaintiff] may or may not 'lease a portion of his home' to 'rent-paying roommates or a rent-paying roommate' to ameliorate the symptoms of his mental illness disability." The court appreciates that this was the issue in the case and it was important to the plaintiff, but it is more of a narrow or unusual issue than a "landmark issue of national importance."

The court denies the request to deny costs on this ground."[56]

(1) Completely absent is "whether or not punitive damages may be applied **against a *municipality* under the FHA**" (emphasis added) and, thus, the district court misquotes Rice, essentially, entirely.

And, whether or not punitive damages may be applied against a municipality under the FHA has thus far been undecided by a Circuit Court.[57]

Clearly and indisputably, a Circuit Court decision on "whether or not punitive damages may be applied against a municipality under the FHA" would have a national impact (i.e. be of national importance).

(2) As it stands now, the "*Rice* precedent" is — a municipality *can* rely on its

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[56] D.C. Dkt No. 275, p. 5, 19 to p. 6, 6.

[57] Please be advised, *Gilead Community Services, Inc. (Plaintiff-Appellee) v. Town of Cromwell (Defendant-Appellant)*, which concerns punitive damages under the FHA is currently under consideration in the Court of Appeals for the Second Circuit (Case No. 22-1209), and had oral arguments on, apparently, February 13, 2024. Note Dkt No. 208, CASE, before BDP, GEL, AJN, HEARD.[3609706] 22-1209 [Entered: 02/13/2024 11:21 AM]

internal policy or its interpretation of its policy to determine whether it will make a requested disability accommodation under the Fair Housing Act because it has "sole discretion" and can ignore the imposition of an affirmative duty to do so. And, if that "policy" is challenged, just use a "ruse" to avoid any penalty.

Thus, going forward, when a covered disabled person requests a may be necessary and reasonable accommodation under the FHA for his or her disability from a municipality, that municipality *can* use the "*Rice* precedent" to evade the affirmative duty imposed by 42 U.S.C. § 3604(f)(3)(B) and protected by § 3617.

Again, that's *the* precedent set in *Rice v. CCSF.*[58] Obviously, *that* precedent is entirely wrong and contrary to well established 9th Cir. precedent regarding a municipality's housing policies under the Fair Housing Act.

Without question, the precedent set in *Rice* is wrong, and it would be a landmark issue (and a manifest injustice) if the judgement is not reversed. Thus, the district court's denial of Rice's request to "deny costs on this ground" (i.e. landmark issue of national importance) was incorrect and should be reversed.

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[58] Please be advised, currently under appeal in the 9th Cir. is *The Ohio House LLC (Plaintiff-Appellant) v. City of Costa Mesa (Defendant-Appellee)* Case No. 22-56181. Similar but different. Central in the *Ohio House* case is whether or not a requested accommodation under the FHA can be denied because of a zoning ordinance's parameters. Rice's requested accommodation under the FHA was denied (according to CCSF's counsel) because of the parameters of CCSF's affordable housing administrative policies. Note *Ohio House* Dkt No. 65: "ARGUED AND SUBMITTED TO RONALD M. GOULD, SANDRA S. IKUTA and DANIELLE J. FORREST. The audio and video recordings of this hearing are available on our website at http://www.ca9.uscourts.gov/media/. [12873633] (DLM) [Entered: 03/29/2024 03:49 PM]"

IX. Disconcerting in *Rice v. CCSF* is the district court's "blind eye" to CCSF's counsel's blatant and never ending knowing misrepresentations of the truth and concealments of material facts (i.e. fraud — on Rice *and* on the district court) that started with CCSF's officials and attorneys October 26, 2017 "Action Required" letter which is notable for its extremely *precise maneuvers* around the FHA;[59] and their use of affordable housing policies in lieu of the FHA's plain language and criteria promulgated by HUD[60] and caselaw in conjunction with a failure to provide truthful information to Rice, a right under the FHA[61] — which the Honorable Beeler "got sucked into" and admitted was wrong on her part.

Yet, the district court proceeded with CCSF's ruse (which had no relevant factual support in the written record of communications, was often contradictory, and clearly not in alignment with HUD guidance or 9th Cir. precedent) — for example *here* "Even assuming Plaintiff adequately established indigence or inability to pay, those are insufficient bases to deny costs to the City."[62]

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[59] Please consider "[part] V. CCSF's Ruse (Fraudulent Scheme / Deceitful Narrative)" Case No. 23-16013 Dkt No. 17.1, pp. 17-22; note "Analysis" at 17-18.

[60] *See Ojo v. Farmers Group, Inc.,* (9th Cir. 2010) "When statutory language is ambiguous, we defer to a "permissible construction" of that statute by the agency charged with administering that statute. [] In sum, HUD's construction of the FHA is reasonable and Chevron requires us to defer to it."

[61] *See Havens Realty Corp. v. Coleman,* (U.S. 1982) "Congress has thus conferred on all "persons" a legal right to truthful information about available housing. [] [14] Congress' decision to confer a **broad** right of truthful information concerning housing availability was undoubtedly influenced by congressional awareness that the **intentional provision of misinformation** offered a means of maintaining segregated housing." (emphasis added)

[62] D.C. Dkt No. 257, p. 10, 27-28.

EPILOG

Even though Rice's FHA case is in a United States Federal Court and the statutes involved are federal statutes, Rice must be the most stupid fool on the planet to think that he, a private FHA plaintiff of modest means, could ever succeed in a FHA case against CCSF *in a San Francisco courtroom.*

Rice's hope and prayer, of course, is that the wisdom and integrity of the 9th Cir. will make clear that Rice may not entirely be the stupid fool he otherwise is.

However, in defense of the Honorable Beeler, had CCSF's counsel fulfilled their duty of candor and truthfulness to the district court — they did not — the district court would have been, presumably, error free in *Rice v. CCSF*.

Likewise, had CCSF's officials and attorneys fulfilled their duty of candor and truthfulness to Rice — they did not — this case would not have existed, Rice's life would not have been decimated, and Rice would not have suffered immense harm and injury; *and*, the district court and the 9th Circuit's time and resources would not have been taxed.

In other words, ***but for*** CCSF's officials and attorneys (i.e. the City Attorney and his Deputies) knowing misrepresentations of the truth and concealments of material facts they inflicted on Rice, and subsequently on the district court, this 6+ year long (and counting) legal saga would never have occurred.

Quoting the Honorable Beeler:

"… Mr. Rice was right … I'm convinced of that now …"[63]

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[63] Ex. A, 6/15/2023 pretrial conference transcript, p. 66, 15-16.

CONCLUSION and PRAYER

Recognizing the district court's failure to observe and comply with 9th Circuit precedent and for other reasons stated above (especially not accepting Rice's offer to examine his current detailed financial information) makes clear that its order "The court taxes the full amount of claimed costs."[64] is incorrect and plainly wrong.

Thus, Rice prays for the Ninth Circuit to reverse the district court's Order Reviewing Clerk's Taxation of Costs *and* deny CCSF's Bill of Costs.

* * *

Plaintiff-Appellant Rice is grateful for, and greatly appreciates, the Ninth Circuit's time and consideration of *this* appeal in the case of *Rice v. CCSF*.

Respectfully and Sincerely,

Allison Barton Rice, pro se Plaintiff-Appellant Name	*/s/ Allison Barton Rice* Signature
13809 Research Blvd, Suite 500 PMB 90978 Austin, TX 78750 Address	June 7, 2024 Date

[64] D.C. Dkt No. 275, p. 6, 15.