No. 20-15087

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALLISON RICE

Plaintiff-Appellant,

v.

CITY AND COUNTY OF SAN FRANCISCO, et al.

Defendants-Appellees.

APPELLEES' ANSWERING BRIEF

On Appeal from the United States District Court
for the Northern District of California
No. 3:19-cv-04250-LB
The Honorable Laurel Beeler

DENNIS J. HERRERA, State Bar #139669
City Attorney
MEREDITH B. OSBORN, State Bar #250467
Chief Trial Deputy
KELLY COLLINS, State Bar #277988
Deputy City Attorney
Fox Plaza
1390 Market Street, 6th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3914
Facsimile: (415) 554-3837
E-Mail: Kelly.collins@sfcityatty.org

Attorneys for Appellees
CITY AND COUNTY OF SAN FRANCISCO, MAYOR LONDON BREED, KATE HARTLEY, MARIA BENJAMIN, CISSY YIN, DENNIS HERRERA, AND KEITH NAGAYAMA

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INTRODUCTION

Plaintiff Allison Rice ("Rice") purchased a below–market–rate unit through San Francisco's Limited Equity Homeownership Program in 2004. In September 2017, Rice requested an exemption from the purchase agreement condition that he not lease any portion of his unit without prior written consent of the Redevelopment Agency of the City and County of San Francisco. Rice requested to lease a portion of his unit to a rent-paying roommate, after he had already done so without prior written permission. Rice claimed a rent-paying roommate was necessary to help him combat isolation and loneliness related to his mental health conditions. Rice's request was denied because he did not demonstrate a financial hardship. As the denial letter stated, a temporary lease of the Property would only be granted when the household could demonstrate a documented financial hardship or a need to relocate based on a change in employment. Rice does not allege that he made either of these showings. However, Rice was offered the option of taking on a non-rent-paying roommate as an accommodation for the loneliness and isolation he claimed to suffer. Rice declined this option and sold his unit in May 2018.

Rice's First Amended Complaint (FAC) makes unsupported allegations regarding violations of the Fair Housing Act (FHA), the Americans With Disabilities Act (ADA), and 42 U.S.C. §§ 1983 and 1985 against the City and County of San Francisco, Mayor London Breed, Kate Hartley, Maria Benjamin, Cissy Yin, City Attorney Dennis Herrera, and Keith Nagayama (collectively "the City"). Rice's FAC was properly dismissed with prejudice given Rice's failure to plead facts sufficient to support his claims. The Court should affirm the district court's judgment dismissing Rice's FAC with prejudice.

STATEMENT OF THE ISSUES

1. Did the FAC fail as a matter of law to state a FHA claim because Rice failed to allege facts sufficient to support a claim of discrimination?

2. Did the FAC fail as a matter of law to state an ADA claim because Rice failed to allege facts sufficient to support a claim of discrimination?

3. Did the FAC fail as a matter of law to state a claim under 42 U.S.C. Sections 1983 and 1985 because Rice failed to allege facts sufficient to support a claim of discrimination?

STATEMENT OF THE CASE

This case stems from Rice's failure to qualify for a financial hardship exemption to lease a portion of his property, and his dissatisfaction with the reasonable accommodation offered to him. The facts, as alleged in Rice's FAC, are as follows[1]: on October 25, 2004, Rice acquired title to the property located at 200 Brannan Street, Unit 316 ("the Property") through the City and County of San Francisco's Limited Equity Homeownership Program. SER 35. The purpose of this program was to provide home ownership opportunities to individuals and families with low and moderate incomes by offering homes for sale at prices which were below those otherwise prevailing in the market. SER 136. On September 23, 2004, Rice signed the Limited Equity Home Ownership Program Declaration of Resale Restrictions and Option to Purchase Agreement ("the Agreement"). SER 136-151. The Agreement set forth the terms of the purchase and restrictions on the Property. SER 35. The Agreement articulated which deviations from the Agreement required written consent from the Redevelopment Agency of the City

[1] Rice's FAC did not include exhibits. Instead, it referenced the exhibits included with his original Complaint. As such, the exhibits referenced herein are from Plaintiff's original Complaint.

and County of San Francisco ("the Agency")[2], including leasing any portion of the unit. SER 140.

Rice claims that sometime in 2008, he received oral permission from Ms. Edith Horner, an employee of the San Francisco Redevelopment Agency, to have a rent-paying roommate. SER 37. Rice claims that based on the alleged oral permission from Ms. Horner, he began subletting his unit to various rent-paying roommates beginning in 2009. SER 37. Rice also claims that he was "not cognizant of the 'written' consent requirement within the Agreement until the early part of 2016." SER 39. Once Rice became aware of the written consent requirement, he attempted to obtain permission to have a rent-paying roommate. *Id*. He never obtained written permission, yet continued to sublet his unit. SER 46.

In September of 2017, Rice began the process of refinancing his mortgage to obtain a lower interest rate. SER 39. During the course of the refinancing process, MOHCD became aware that Rice had been taking on rent-paying roommates in violation of the Agreement. *Id.* On September 19, 2017, Rice's doctor, Dr. Alison Ludwig, MD, submitted a letter in support of Rice's request for a rent-paying roommate. SER 157. The letter explained that Rice received services through the San Francisco Veterans Affairs Medical Center for "Depression, Paranoid Schizophrenia" and that Rice found having a roommate helpful and beneficial with respect to isolation and loneliness. *Id.* The letter did not say that Rice needed the roommate to pay rent to be beneficial for Rice's mental health. *Id.*

[2] The San Francisco Redevelopment Agency was dissolved as a matter of state law on February 1, 2012, under California State Assembly Bill No. 1X26, and the City and County of San Francisco is successor in interest to the Agency's rights and obligations under the Program. The City's Mayor's Office of Housing and Community Development (hereinafter "MOHCD") assumed responsibility and administration of all housing programs formerly administered by the Agency.

On October 26, 2017, Rice received a letter from Ms. Cissy Yin of the MOHCD. SER 165-166. This letter informed Rice that there was no record of approval for him to have a rent-paying roommate and that his conduct violated Section 6.1 of the Agreement. *Id.* The letter acknowledged that MOHCD had received and reviewed Dr. Ludwig's letter. *Id.* As an accommodation for the mental health conditions identified in Dr. Ludwig's letter, Ms. Yin informed Rice that he could have a roommate without charging rent. *Id.* The letter also set forth the circumstances under which a temporary lease to a paying roommate would be permitted and informed Rice that he did not qualify. *Id.* The letter directed Rice to terminate the current lease of the Property and not to lease any part of the Property in the future without prior written consent. *Id.* Rice complied by terminating the lease of the Property. SER 46.

Rice never received written permission to have a rent-paying roommate and chose not to take in a non-rent-paying roommate. SER 39, 46. Rice ultimately voluntarily sold his unit in early 2018. SER 46. Escrow closed on the sale of the Property on May 4, 2018. SER 48.

PROCEDURAL HISTORY

Rice filed his initial Complaint in this matter on July 24, 2019. SER 94-132. The City moved to dismiss Rice's Complaint on August 15, 2019. The district court granted the City's motion to dismiss on October 19, 2019, finding that Rice failed to state a claim under the FHA or ADA and dismissing the state law claims for lack of supplemental jurisdiction. SER 65-78. The district court's order allowed Rice leave to amend his Complaint if he could cure the deficiencies.

On November 10, 2019, Rice filed his FAC. SER 26-64. The City again moved to dismiss the FAC on November 25, 2019. SER 16-25. The district court granted the City's motion to dismiss the FAC with prejudice and without leave to

amend on January 17, 2020. SER 6-12. The district court found that Rice failed to cure the deficiencies in his original complaint in that he failed to plausibly plead that the City denied him a rent-paying roommate because of his disability. Rice filed a notice of appeal on January 21, 2010, and his opening brief on appeal on March 3, 2020 ("Opening Br."). SER 4.

SUMMARY OF THE ARGUMENT

The district court correctly held that Rice failed to allege facts sufficient to support any cognizable legal theory. Rice's claims that the City discriminated against him on the basis of his mental disability are conclusory and speculative. The facts, as alleged, demonstrate that the City offered Rice a reasonable accommodation for his disability, and he chose not to accept that accommodation. The district court properly dismissed Rice's claims with prejudice and without leave to amend, and its judgment should be affirmed in its entirety.

STANDARD OF REVIEW

The Ninth Circuit reviews de novo a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6). *Dougherty v. City of Covina*, 654 F.3d 892, 897 (9th Cir. 2011). This Court may affirm on any ground supported by the record. *Jackson v. S. Cal. Gas Co.*, 881 F.2d 638, 643 (9th Cir. 1989).

ARGUMENT

A district court should grant a Rule 12(b)(6) motion where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) (Overruling recognized by *Jawien v. County of San Bernardino*, NO. CV 10-9501-GHK DTB, 2012 WL 1204090, at *2, fn3 (C.D. Cal. Feb. 29, 2012). "The Court notes that *Balistreri* has been overruled by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562–63, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007), to the

extent that it followed the rule that, "[a] complaint should not be dismissed under Rule 12(b) (6) 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " 901 F.2d at 699 (citing *Conley v. Gibson*, 355 U.S. 41, 45–46, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)).". The district court must identify and disregard allegations "that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982) (conclusory or vague allegations are insufficient to survive a motion to dismiss). The district court then must decide whether the factual allegations, if assumed true and read in the light most favorable to the non-movant, allege a plausible legal claim. *Iqbal*, 556 U.S. at 679 ("[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss."). Here, Rice failed to state a claim upon which relief should be granted, under the FHA, ADA, or any other statutory provisions.

I. Rice's Allegations Did Not State a Plausible FHA Claim.

Rice's first cause of action in the FAC, alleging that the City failed to provide him with the reasonable accommodation of a rent-paying roommate in violation of the FHA fails because the City offered him a reasonable accommodation that he declined to accept.

The FHA states, "it shall be unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b). Additionally, the FHA sets forth,

> [i]t shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or

> enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

42 U.S.C. § 3617.

The following elements must all be met for Rice to successfully plead a failure to reasonably accommodate discrimination claim under 42 U.S.C. section 3604(f)(3): (1) the plaintiff is handicapped within the meaning of 42 U.S.C. § 3602(h); (2) the defendant knew or should reasonably be expected to know of the handicap; (3) accommodation of the handicap may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling; (4) the accommodation is reasonable; and (5) the defendant refused to make the requested accommodation. *Filho v. Gansen*, No. 4:18-cv-00337-KAW, 2018 WL 5291986, at *4 (N.D. Cal. Oct. 19, 2018) (citing *Dubois v. Assoc. of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006)).

Rice does not state a plausible FHA claim because he was offered a reasonable accommodation that he chose not to accept. Rice claims the City denied him enjoyment of his unit because he was not allowed to take on a *rent-paying* roommate. Rice admits that the City allowed him to take on a roommate, but denied his request *to have that roommate pay rent*. The City offered this accommodation after acknowledging and crediting Dr. Ludwig's letter, but did not allow for a *rent-paying* roommate because Rice did not show any financial hardship. SER 165-66. Indeed, Rice acknowledges this lack of financial hardship, as he emphasizes that he did not need a roommate to afford his unit. Opening brief at p. 7.

The City's accommodation reflected the grounds for Rice's request. Rice substantiated his request with a letter from Dr. Ludwig requesting that Rice be allowed to take on a roommate. The letter acknowledged Rice's isolation and mental health instability, and described why a roommate would be beneficial for

Rice's condition. SER 157. However, the letter did not say that Rice needed the roommate *to pay rent* to be beneficial for Rice's mental health. *Id.* Rice's own doctor failed to demonstrate the nexus between the payment of rent by a roommate and the benefit to Rice's mental health. The City's offer to allow Rice to have a non-rent paying roommate to alleviate the loneliness and isolation Dr. Ludwig described reasonably accommodated Rice's mental health condition. The City denied the unsubstantiated request that the roommate *pay rent* because Rice did not meet the income requirements to be eligible for such a request. Rice voluntarily chose not to accept the City's reasonable accommodation, and instead sold the property.

As the district court properly held, these allegations fail to state a cognizable FHA claim. SER 11. The allegations in the FAC show that the City *accommodated* the only problem that Rice identified: the loneliness and isolation stemming from living alone. That the City denied Rice's accompanying, unsubstantiated request that the roommate *pay rent* does not state a claim for discrimination under the FHA. The district court properly dismissed Rice's FHA claim with prejudice.

II. Rice Has Failed to State a Plausible Claim for Violation of the ADA.

Rice's second cause of action in the FAC is for an alleged violation of the ADA, 42 U.S.C. § 12132. Rice's ADA claim fails for the same reason his FHA claim does: Rice has not alleged an ADA violation.

The ADA states, "[s]ubject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. "To prove a public program or service violates Title II of the ADA, a

plaintiff must show: (1) he is a 'qualified individual with a disability'; (2) he was either excluded from participation in or denied the benefits of a public entity's services, programs or activities or was otherwise discriminated against by the public entity; and (3) such exclusion, denial of benefits, or discrimination was by reason of his disability." *Weinreich v. Los Angeles Cty. Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997). Additionally, "[a] plaintiff proceeding under Title II of the ADA must, similar to a Section 504 plaintiff, prove that the exclusion from participation in the program was 'solely by reason of disability.'" *Id.* at 978-979 (citing *Does 1-5 v. Chandler*, 83 F.3d 1150, 1155 (9th Cir. 1996)).

Rice has not plausibly alleged that the City violated the ADA, for similar reasons that he has not alleged a plausible FHA claim. Rice makes the conclusory statement that he was denied assistance and protection of his rights because of his disability. SER 57. But the allegations in the FAC do not show discrimination, as the district court properly held. SER 11. Rice allegedly sought these unspecified services following the denial of his request for a rent-paying roommate. But Rice *received* an accommodation for his mental health disability: the ability to have a roommate to combat his isolation and loneliness. Rice refused to accept this accommodation. Rice's request for a *rent-paying* roommate—a request that neither Rice nor anyone else connected to his disability—was denied because he did not qualify for a financial hardship. As the district court held, allegations like this do not state a plausible ADA claim. *Id*. Therefore, Rice's ADA claim was properly denied with prejudice and should be affirmed.

III. Rice Fails to Allege Sufficient Facts to Support Alleged Violations of 42 U.S.C. Sections 1983 and 1985.

Because Rice fails to plausibly allege a constitutional or statutory violation, his Sections 1983 and 1985 claims fail as well. Such claims are intended to serve as remedies for violations of constitutional or statutory rights. *See* 42 U.S.C. §§

1983 & 1985(3); *Kalina v. Fletcher*, 522 U.S. 118, 123 (1997); *United Bhd. of Carpenters & Joiners of Am. v. Scott*, 463 U.S. 825, 828-29 (1983); *Griffin v. Breckenridge*, 403 U.S. 88, 101-02 (1971). Section 1983 provides no redress for a violation of the ADA. *See Vinson v. Thomas*, 288 F.3d 1145, 1155-56 (9th Cir. 2002). In the absence of an alleged violation, he is not entitled to any remedy under Section 1983 or Section 1985. As such, his claims under these statutes fail as a matter of law and were properly dismissed with prejudice by the district court.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court affirm the district court's judgment.

Dated: July 21, 2020

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
MEREDITH B. OSBORN
Chief Trial Deputy
KELLY COLLINS
Deputy City Attorneys

By: */s/ Kelly Collins*
KELLY COLLINS
Deputy City Attorney

Attorneys for Appellees
CITY AND COUNTY OF SAN FRANCISCO, MAYOR LONDON BREED, KATE HARTLEY, MARIA BENJAMIN, CISSY YIN, DENNIS HERRERA, AND KEITH NAGAYAMA

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Dated: July 21, 2020

DENNIS J. HERRERA
City Attorney
MEREDITH B. OSBORN
Chief Trial Deputy
KELLY COLLINS
Deputy City Attorneys

By: */s/ Kelly Collins*
KELLY COLLINS
Deputy City Attorney

Attorneys for Appellees
CITY AND COUNTY OF SAN FRANCISCO, MAYOR LONDON BREED, KATE HARTLEY, MARIA BENJAMIN, CISSY YIN, DENNIS HERRERA, AND KEITH NAGAYAMA

UNITED STATES COURT OF APPEALS
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