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4 Plaintiff, in propria persona

5 **UNITED STATES DISTRICT COURT**

6 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

8 ALLISON BARTON RICE, an individual,

CASE NO. 19-cv-04250 LB

9 Plaintiff,

**OPPOSITION TO DEFENDANTS’  
MOTION AND MOTION TO  
DISMISS PLAINTIFF’S  
COMPLAINT FOR FAILURE TO  
STATE A CLAIM [F.R.C.P., Rule  
12(b)(6)]**

10 v.

12 THE CITY AND COUNTY OF SAN  
FRANCISCO; LONDON BREED, MAYOR  
13 OF THE CITY OF SAN FRANCISCO;  
KATE HARTLEY, DIRECTOR OF THE  
14 SAN FRANCISCO MAYOR’S OFFICE OF  
HOUSING AND COMMUNITY  
15 DEVELOPMENT; MARIA BENJAMIN,  
DIRECTOR OF HOMEOWNERSHIP &  
16 BELOW MARKET RATE PROGRAMS  
SAN FRANCISCO MAYOR’S OFFICE OF  
17 HOUSING AND COMMUNITY  
DEVELOPMENT; CISSY YIN,  
18 HOMEOWNERSHIP & BELOW MARKET  
RATE PROGRAMS COMPLIANCE  
19 MANAGER SAN FRANCISCO MAYOR’S  
OFFICE OF HOUSING AND  
20 COMMUNITY DEVELOPMENT; DENNIS  
HERRERA, SAN FRANCISCO CITY  
21 ATTORNEY; KEITH NAGAYAMA, SAN  
FRANCISCO CITY DEPUTY ATTORNEY  
22 and DOES 1 through 50,

Hearing Date: September 19, 2019  
Time: 9:30 a.m.  
Place: 450 Golden Gate Ave.  
Courtroom B, 15th Fl  
San Francisco, CA  
94102

Trial Date: Not Set

23 Defendants.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

1  
2  
3 1. Allison Barton Rice, “Plaintiff”, brought action against City and County of San  
4 Francisco, et al., “Defendants”, alleging both federal and state law claims. Defendants moved  
5 to dismiss the federal claims of alleged violations of the Fair Housing Act and the Americans  
6 with Disabilities Act on grounds that Plaintiff failed to state a claim. Defendants moved to  
7 dismiss the state claims alleging negligence, fraud, and abuse of a dependent adult<sup>1</sup> on the basis  
8 of failure to comply with the statute of limitations, governmental immunities, and failure to state  
9 a claim. For reasons set forth below, the Court should deny all of Defendants’ Motion to  
10 Dismiss.

**FACTUAL BACKGROUND**

11  
12 2. Plaintiff is a disabled person with granted and protected disability and civil rights  
13 under Federal and State laws. Plaintiff owned the Property located at 200 Brannan Street, Unit  
14 316 (hereinafter “the Property”). The Property was sold to the Plaintiff by the now-defunct San  
15 Francisco Redevelopment Agency which was superseded by the San Francisco Mayor’s Office  
16 of Housing and Community Development (hereinafter “the Agency”). The Agency is a public  
17 entity subject to Federal and State laws as such. The Property was encumbered by the Limited  
18 Equity Home Ownership Program Declaration of Resale Restrictions and Option to Purchase  
19 Agreement (hereinafter “the Agreement”). The Agency created and administered the  
20 Agreement, and the Agreement vested authority over the Property in the Agency. The  
21 Agreement was a required encumbrance upon the Property and upon the Plaintiff. The Agency  
22 had encompassing control of the Property and of Plaintiff’s use of the Property at all times via  
23 that Agreement.

24 3. Furthermore, the Agency provides services to the public which includes  
25 extensive and broad information and assistance with respect to low income housing and related  
26 resources needed by disadvantaged persons, including legal services and counseling.

27  
28 <sup>1</sup>Defendants’ erroneously stated “elder abuse” in their Motion and Motion to Dismiss.  
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1           4. Pursuant to 42 U.S.C. § 3603(a)(1)(D) the Property, the sale of the Property, the  
2 availability of the Property, and the use of the Property was subject to prohibitions against  
3 discrimination as set forth in 42 U.S.C. § 3604; to prohibitions against the terms or conditions  
4 of such transaction as set forth in 42 U.S.C. § 3605; and to prohibitions against interference,  
5 coercion, or intimidation with any person in his exercise or enjoyment of any right granted or  
6 protected by 42 U.S.C. § 3603, 3604, 3605, or 3606 as set forth in 42 U.S.C. § 3617.

7           5. Pursuant to 42 U.S.C. § 12131 and 12132, the Agency was subject to  
8 prohibitions against discriminating against a disabled person; and excluding the participation in  
9 or denying the benefits of the Agency's services, programs, or activities to a disabled person.

10           6. For several years Plaintiff exercised and enjoyed a reasonable and necessary  
11 disability related policy accommodation to combat his debilitating isolation and loneliness  
12 which is a very significant and detrimental symptom he suffers due to his psychiatric disability.  
13 That policy accommodation was the sharing of his home (the Property) with a roommate in the  
14 normal and expected sense (i.e. roommate paid rent to Plaintiff). Despite a medical directive  
15 from Plaintiff's physician and in violation of Fair Housing Act mandates, the Defendants  
16 interfered with Plaintiff's exercise and enjoyment of his right to that policy accommodation by  
17 forcing Plaintiff to terminate an existing roommate agreement and by refusing his request to  
18 lease a portion thereof of the Property to a roommate which was allowable by the Agreement  
19 with written consent from the Agency.

20           7. In that process and in the ordeal that followed, the Defendants denied him of his  
21 disability and civil rights, and committed additional acts in violation of several federal and state  
22 laws causing Plaintiff great damage, loss, and suffering for which Plaintiff is entitled relief  
23 under federal and state law.

24           8. Plaintiff prays the Court will be mindful of his psychiatric disability  
25 (predominantly emotional impairment) and, consequently, that he suffers a diminished  
26 competency and/or capacity to fully understand and/or respond appropriately to some matters as  
27 may be in this case and this process. Additionally, prior to and during the issue/s that bring rise

28 to this case, Plaintiff had virtually no education of the law, no legal training, and no experience  
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1 of such matters. He was fully reliant on a professional standard of care from the personnel of  
2 the Agency and of the San Francisco City Attorney’s Office, especially with respect to guidance.  
3 The Plaintiff has since spent a very extensive amount of time researching, reading, and studying  
4 applicable law and related material.

5 **OBJECTIONS**

6 9. Defendants did and continue to essentially and/or literally redefine the word  
7 “roommate” as being a person that lives at a property gratis at owners expense (i.e. “non rent  
8 paying”), and use inappropriate and/or misleading word substitutions; as well as scramble and  
9 create a false interpretation and/or application of the medical directive from Plaintiff’s  
10 physician, of Plaintiff’s written communications, and of the law. Furthermore, Defendants  
11 make claims of complete disassociation with, from, and/or between the Property, the Plaintiff,  
12 themselves, their services, programs, activities, rules, policies, practices, their responsibilities,  
13 their actions, their lack of action, and their failures to act. Essentially and overwhelmingly, the  
14 Defendants simply claim that they have no responsibly for the Agency, no responsibility for the  
15 behavior of the Agency, no responsibility for the behavior of any employee of the Agency or of  
16 themselves; and, most of all, no responsibility to Plaintiff - any and all of which is false.

17 10. The creation of the Agreement and the Agreement; the Property; the providing  
18 (i.e. sale) of the Property; the availability of the Property; the terms, conditions, and privileges  
19 of sale of the Property; the provision of services in connection with the Property; the rules,  
20 policies, practices, and services in connection with the Property; the benefits of the services,  
21 programs, and activities of the Agency (a public entity), and the ban on discrimination by the  
22 Agency (again, a public entity) - all are inextricable from the Defendants via the Agency.

23 11. Throughout Defendants Motion and Motion to Dismiss, Defendants include an  
24 issue of traveling more than two (2) months per year. That issue is not part of Plaintiff’s  
25 Complaint, which is made clear in his Complaint. ECF No. 1 at ¶ 64.

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1           12. Plaintiff objects to Defendants continuing use of the word “roommate” as used  
2 for a person that lives gratis at owners expense, such person is a “guest” (or a “sponge”,  
3 “freeloader”, or “parasite”). Defendants’ use of “roommate” in such way is an invention, a  
4 falsehood, and an outright affront and insult to the Plaintiff, to the Court, to the senses of any  
5 reasonable person, and to the public. So as to reduce the ‘muddying of the water’, Plaintiff  
6 request the Court insist the Defendants use the word “guest” when speaking of such person.

7           13. In this case at bar, Plaintiff’s use and meaning of the word “roommate” always  
8 meant and shall always mean a person who pays rent (inclusive of living at and using the  
9 Property, etc).

10           14. On page 3, lines 3-4 of Defendants Motion and Motion to Dismiss, Defendants  
11 state *“Plaintiff admits that he violated the Agreement by renting a portion of the Property*  
12 *beginning in or around September of 2009 without written permission from the Agency.”*  
13 Plaintiff did not and does not admit he violated the Agreement. To the contrary, Plaintiff  
14 communicates in his Complaint that he proceeded in good faith on the permission he had  
15 obtained from Ms. Horner of the Agency and, regardless, that he had a right to do so based on  
16 his justifiable and medically supported “necessary and reasonable disability related policy  
17 accommodation”, a right granted and protected by the Fair Housing Act. ECF No. 1 at ¶¶ 31,  
18 33, 34, and 54.

19           15. On page 3, lines 6-8 of Defendants Motion and Motion to Dismiss, Defendants  
20 state *“Once Plaintiff became aware of the written consent requirement, he attempted to obtain*  
21 *permission to have a rent-paying roommate and to be away from the Property for more than two*  
22 *months per year.”* To the contrary, Plaintiff proceeded in good faith and reliance on the  
23 permission he had already obtained from Ms. Horner of the Agency and was seeking the  
24 “written” consent that Ms. Horner of the Agency failed to provide and which Plaintiff failed to  
25 ask for when he originally received that permission. In any case, Plaintiff did have that  
26 permission. The failure of Ms. Horner and Plaintiff to ensure that that permission was in  
27 writing was a mutual mistake. A mistake does not give rise to a breach of contract, especially a  
28 mutual mistake. In order to correct that mutual mistake Plaintiff made good faith efforts to

1 obtain the “written” consent for the permission he had already obtained. But, the Agency  
2 simply never responded. ECF No. 1 at ¶¶ 42-46, 48, 51. By not responding, that mistake  
3 became a mistake by the Agency. Nonetheless, Plaintiff continued in his good faith efforts to  
4 obtain “written” consent for the permission he had already obtained.

5 16. For clarity, the core issue to this ordeal and, thus, of Plaintiff’s Complaint, is not  
6 so much a contractual issue, it is a legal “rights” issue. More specifically, “disability rights” that  
7 Plaintiff should have enjoyed as granted and protected by the Fair Housing Act and the  
8 Americans with Disabilities Act, as well as the California Fair Employment and Housing Act.  
9 ECF No. 1 at ¶¶ 1, 3(A) & (B).

10 17. On page 4, lines 10-11 of Defendants Motion and Motion to Dismiss, Defendants  
11 state “*Plaintiff ultimately decided to voluntarily sell his unit in early 2018.*” To the contrary,  
12 Plaintiff did not “voluntarily” decide to sell his unit, and he certainly did not do so free of duress  
13 and undue influence from the Defendants; and he would not have done so but for the  
14 misconduct of the Defendants. Plaintiff decided to sell (and sold) the Property “under protest”  
15 and under great duress due to Defendants’ actions, lack of action, failures to act, and treatment  
16 of Plaintiff. Most notably, Defendants’ refusal to acknowledge Plaintiff’s disability related  
17 needs and their refusal to provide Plaintiff a necessary and reasonable disability related policy  
18 accommodation by way of “written” consent to lease a portion of the Property to a roommate.  
19 All of which Plaintiff made abundantly clear to the Defendants. ECF No. 1 at ¶¶ 100-109.

20 18. Plaintiff’s Complaint adequately states enough factual allegations and factual  
21 content for which it is clearly plausible on its face that a claim for relief exists and that the  
22 Defendants are liable for the misconduct alleged, such, Plaintiff’s Complaint should withstand  
23 the Legal Standard for Motion to Dismiss.

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**ARGUMENT**

**I. PLAINTIFF’S FAIR HOUSING ACT AND AMERICANS WITH DISABILITIES ACT CLAIMS**

**A. Plaintiff’s First Cause of Action for Alleged Violations of the Fair Housing Act**

19. Plaintiff is a handicapped person - pursuant to 42 U.S.C. § 3602(h).

20. The Agency is a housing provider - pursuant to 42 U.S.C. § 3603(a)(1)(D).

21. When the San Francisco Mayor’s Office of Housing and Community Development absorbed the assets of the San Francisco Redevelopment Agency, they absorbed all rights, obligations, responsibilities, administration, and control of the assets and programs previously administered by the San Francisco Redevelopment Agency, as declared and described in the Agency’s Action Required Letter to Plaintiff. ECF No. 1.1 at 33.

22. The Property and Plaintiff’s use of the Property was encumbered by the Agreement, and it was a required element in Plaintiff’s purchase of the Property.

23. Furthermore, the Agreement states (at) *“Section 2. Recitals. The following recitals of fact are a material part of this Declaration: (a) ... (b) ... (c) Such homes constitute a valuable community resource, for which it is necessary, proper and in the public interest for the Agency to protect and preserve by administering occupancy and resale controls by means of this Declaration;”*. ECF No. 1.1 at 4. The Agreement explicitly implies an ownership interest in the Property by the community. That “community” is the City and County of San Francisco. And, the Agreement explicitly implies control of the “occupancy” by the Agency.

24. Additionally, the Agreement states (at) *“Section 6. Affordable Restrictions. 6.1 Restrictions. Owner shall own and occupy the Property as Owner’s Principal Residence, and Owner shall not lease the Property, or any portion thereof, without Agency’s prior written consent. Owner shall submit to the Agency on an annual basis a certification that Owner has occupied the Property as Owner’s Principal residence for at least ten (10) months in the proceeding year.”* ECF No. 1.1 at 8. The Agreement explicitly gave control at all times to the Agency as to whether or not the Plaintiff may have a roommate by way of written consent to lease a portion of the Property.

1           25.     On page 5, lines 11-13 of Defendants Motion and Motion to Dismiss, Defendants  
2 state *“The FHA does not apply here because Defendants did not provide housing to Plaintiff*  
3 *during the applicable time period. At all relevant times during the conduct that Plaintiff alleges,*  
4 *Plaintiff owned and occupied the Property.”*.

5           26.     On page 6, lines 5-6 of Defendants Motion and Motion to Dismiss, Defendants  
6 state *“Defendants contend that the FHA does not apply because, as stated above, they were not*  
7 *a housing provider to Plaintiff.”*.

8           27.     It is an irrefutable fact that “the Agency” provided the Property to Plaintiff and  
9 “the Agency” maintained encompassing control of the Property and of Plaintiff’s use of the  
10 Property (via the Agreement) for the entire time of Plaintiff’s ownership of the Property,  
11 including the entire time of the Defendants’ misconduct alleged in Plaintiff’s Complaint.

12           28.     “The Agency” is a housing provider, “The Agency” is an integral part of the City  
13 and County of San Francisco, and “the Agency” is controlled and operated by the Defendants.

14           29.     Thus, the Property, the providing of the Property, authority over the Property, and  
15 the administration of the Agreement encumbering the Property; the provision of services in  
16 connection with the Property; and the rules, policies, practices, and services in connection with  
17 the Property - are inextricable from the Defendants.

18           30.     On page 5, lines 14-17 of Defendants Motion and Motion to Dismiss, Defendants  
19 state *“Plaintiff’s allegation is that Defendants’ actions caused his mortgage refinancing to be*  
20 *held “hostage” because Defendants would not provide the necessary approval while he*  
21 *maintained a rent-paying roommate. (ECF No. 1 ¶¶ 57-59). In no way did the alleged conduct*  
22 *prevent Plaintiff from inhabiting his unit.”* That statement is nonsensical, if not false.  
23 Plaintiff’s Complaint does not state anything, related to his mortgage refinancing, “prevented”  
24 him from inhabiting the Property.

25           31.     Starting on page 5, at line 18 of Defendants Motion and Motion to Dismiss,  
26 Defendants reference 42 U.S.C. § 3603 and quote 42 U.S.C. § 3604 (a), (b), (c), (d), and (e).  
27 However, the Defendants do not quote 42 U.S.C. § 3603(a)(1)(D) and they omit 42 U.S.C. §  
28 3604(f) and, thus, they do not quote 42 U.S.C. § 3604(f)(1), (2), and (3)(B).

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1           32. For the Court’s convenience,

2                   42 U.S.C. § 3603. Effective dates of certain prohibitions(a) Application to certain  
3 described dwellings

4 Subject to the provisions of subsection (b) and section 3607 of this title, the prohibitions against  
discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

5 (1) Upon enactment of this subchapter, to— (A), (B), (C),

6 (D) dwellings provided by the development or the redevelopment of real property purchased,  
7 rented, or otherwise obtained from a State or local public agency receiving Federal financial  
8 assistance for slum clearance or urban renewal with respect to such real property under loan or  
grant contracts entered into after November 20, 1962.

9           33. Of significant importance and pertinence to this issue at bar is 42 U.S.C. § 3604

10 (f)(1), (2), and (3)(B) - in particular, “other prohibited practices”, “otherwise make unavailable  
11 or deny”, “a person residing in ... that dwelling after it is so sold, rented, or made available”,  
12 “terms”, “provision of services ... in connection with such dwelling”, “refusal to make  
13 reasonable accommodations in ... policies ... accommodations may be necessary ...”:

14           34. For the Court’s convenience,

15                   42 U.S.C. § 3604. Discrimination in the sale or rental of housing and other  
16 prohibited practices

17 As made applicable by section 3603 of this title and except as exempted by sections 3603(b)  
and 3607 of this title, it shall be unlawful— (a), (b), (c), (d), (e)

18 (f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling  
19 to any buyer or renter because of a handicap of—

20 (A) that buyer or renter,

21 (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, of made  
available; or

22 (C) any person associated with that buyer or renter.

23 (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of  
24 a dwelling, or in the provision of services or facilities in connection with such dwelling, because  
of a handicap of—

25 (A) that person; or

26 (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, of made  
available; or

27 (C) any person associated with that person.  
28

1 (3) For purposes of this subsection, discrimination includes —

2 (A) ...

3 (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when  
4 such accommodations may be necessary to afford such person equal opportunity to use and  
5 enjoy a dwelling; or

6 (C) ...

7 35. On page 6, lines 12-16 of Defendants Motion and Motion to Dismiss, Defendants  
8 state *“His doctor’s letter indicates that a roommate is beneficial to Plaintiff’s mental health with  
9 respect to isolation and loneliness. ECF No. 1-1 at 25. It makes no mention of a need for  
10 financial gain from that roommate to benefit Plaintiff’s mental health. Id. There is no dispute of  
11 fact that Defendants permitted Plaintiff to have a roommate, so long as rent was not charged.”.*

12 36. That statement is significantly flawed and partially false. The Defendants did not  
13 permit Plaintiff to have a “roommate”. The Defendants permitted Plaintiff to have a “guest”,  
14 for which he needed no such permit. And, contrary to what Defendants suggest, Plaintiff’s  
15 doctor did not recommend Plaintiff bear the burden of financially supporting and caring for the  
16 needs of another person, nor for Plaintiff to bear the liability of a “guest” as a means to aid  
17 Plaintiff in his struggle with isolation and loneliness. Additionally, the rent is not “financial  
18 gain” (i.e. profit). The rent is fair and equal compensation for that which Plaintiff surrenders  
19 and provides to a roommate, most notably fifty percent use of the space, the common cost  
20 (utilities, HOA fees, insurance, upkeep, wear & tear, etc.), and for bearing the significant  
21 liability of such person in such case. Furthermore, Plaintiff can not find any statute which  
22 prohibits, restricts, or limits a consequential benefit (financial or otherwise) of a mandated  
23 accommodation. Accommodations are to relieve, to the extent possible, the burdens of the  
24 recipient, not to create a burden for, and certainly not to harm, the recipient.

25 37. At all times during the purchase and during Plaintiff’s ownership of the Property,  
26 the Property, the Plaintiff, the Agreement, the Agency, the services of the Agency, and the  
27 Defendants were subject to the Fair Housing Act. Plaintiff contends the primary offense by the  
28 Defendants was a violation of 42 U.S.C. § 3604(3)(B) which caused great damage, loss, and  
suffering to him.

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1 38. The Fair Housing Act is viable and enforceable in this issue at bar. For the  
2 reasons and arguments stated above, Defendants' Motion to Dismiss Plaintiff's first cause of  
3 action of violations of the Fair Housing Act should be denied by the Court.

4 **B. Plaintiff's Second Cause of Action for Alleged Violations of the Americans with**  
5 **Disabilities Act**

6 39. On page 7, lines 1-5 of Defendants Motion and Motion to Dismiss, Defendants  
7 state *"The ADA states, "[s]ubject to the provisions of this subchapter, no qualified individual*  
8 *with a disability shall, by reason of such disability, be excluded from participation in or be*  
9 *denied the benefits of the services, programs, or activities of a public entity, or be subjected to*  
10 *discrimination by any such entity."* 42 U.S.C. Section 12132, California Civil Code Sections  
11 *51(c) and 51(f), and California Government Code Section 12948 all echo the ADA's ban on*  
12 *discrimination."*

13 40. On page 7, lines 6-8 of Defendants Motion and Motion to Dismiss, Defendants  
14 state *"Here, Defendants neither excluded from participation nor denied benefits to Plaintiff. As*  
15 *stated above, Plaintiff owned his unit at the time of the alleged violations. Defendants were not*  
16 *selling the Property to Plaintiff at the time nor were they renting the Property to Plaintiff."*

17 41. The Agency's providing of homes and the administration of the related  
18 encumbering agreements are subject to the Fair Housing Act.

19 42. The Agency's other services and activities are subject to the Americans with  
20 Disabilities Act.

21 43. Among those other services are "Legal Services" and "Counseling", as  
22 illustrated by the Agency on its "Mayor's Office of Housing and Community Development -  
23 Who We Are - What We Do - How We Do It" one (1) page identity pdf. ECF No. 1.2 at 13.

24 44. Plaintiff is a disabled person - pursuant to 42 U.S.C. § 12102.

25 45. The Agency is a public entity - pursuant to 42 U.S.C. § 12131.

26 46. By reason of a person's disability, the Agency is forbidden to exclude from  
27 participation in or to deny the benefits of its' services, programs, or activities, or subject to  
28 discrimination a disabled person - pursuant to 42 U.S.C. Section 12132.

1 47. The Agency was fully informed and fully aware of Plaintiff’s disability and his  
2 disabled status.

3 48. Out of ignorance, the Plaintiff communicated to the Agency that he should be  
4 accommodated pursuant to the ADA. In response, the Agency stated the ADA does not apply,  
5 without any appropriate explanation and/or elucidation of any kind as to why.

6 49. Consequently, Plaintiff sought “Legal Services” and/or “Counseling” from the  
7 Agency by way of his numerous and emphatic requests for an explanation as to why the Agency  
8 insisted the ADA does not apply.

9 50. The Agency’s only responses were (a) to simply repeat “the ADA does not  
10 apply”, (b) to state “Legal said so.”, (c) silence / no response, and, (d) provide a limited variety  
11 of non-relevant information.

12 51. When the Agency repeatedly refused to provide Plaintiff correct and appropriate  
13 and/or elucidating legal information and/or counseling (or make arrangements for such) of the  
14 applicability of the Fair Housing Act, they denied Plaintiff participation in the “Legal Services”  
15 and/or “Counseling” of the Agency. And, thus, denied Plaintiff the benefits of the Agency’s  
16 services and/or activities, and (ultimately) a program of the Agency.

17 52. And, by way of the Agency’s undue influence and other treatment of Plaintiff  
18 with respect to their other services and/or activities, the Agency subjected Plaintiff to  
19 discrimination by overwhelmingly and completely oppressing his knowledge of the Fair  
20 Housing Act, and, thus, oppressing his ability to obtain his “necessary and reasonable disability  
21 related policy accommodation”. Defendants violations of the Americans with Disabilities Act  
22 caused great damage, loss, and suffering to the Plaintiff.

23 53. For the reasons and argument stated above, Defendants’ Motion and Motion to  
24 Dismiss Plaintiff’s second cause of action of violations of the Americans with Disabilities Act  
25 should be denied by the Court.

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**II. PLAINTIFF’S STATE LAW CLAIMS WITH RESPECT TO THE STATUTE OF LIMITATIONS**

54. On page 7, line 20 Defendants state “*II. PLAINTIFF’S STATE LAW CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS*”.

55. Pursuant to California Code of Civil Procedure, Section 338, the relevant statute of limitations is three (3) years for Plaintiff’s claim of violations of California Civil Code, Sections 1708, 1709, and 1714(a); California Government Code, Sections 815.2, 815.6, 12948 and 53243.4.(a); and California Welfare and Institutions Code, Section 15656.(b).<sup>1</sup>

56. For the Court’s convenience:

335. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

335.1 Within two years: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another.

336. ... 336a. ... 337. ... 337a. ... 337.1. ... 337.15. ... 337.2. ... 337.5. ... 337.6. ...

338. Within three years: (a) An action upon a liability created by statute, other than a penalty or forfeiture. (b) ... (c) ...

57. On page 8, lines 9-10 of Defendants Motion and Motion to Dismiss, Defendants state “*Interpreting the accrual date in the most favorable light to Plaintiff would be the date of the transfer of deed for the Property. The deed for the Property was granted on March 29, 2018. RJN ¶ 1.*”

58. Plaintiff contends the Court should recognize May 4, 2018 (the close of escrow of the Property’s sale) as the appropriate accrual date, as that date was “The Point of No Return”, before which Plaintiff had opportunity to save the Property and the use of the Property.

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<sup>1</sup>Plaintiff advises the Court and the Defendants of typo on page 34, line 15 of Plaintiff’s Complaint, “1752” should be “1572”. ECF No. 1 at ¶ 174.

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1 59. Plaintiff filed his Complaint on July 24, 2019. Since the date Plaintiff's  
2 Complaint was filed is less than three (3) years since March 29, 2018 and May 4, 2018,  
3 Plaintiff's state law claims of negligence, fraud, and abuse of a dependent adult are not barred  
4 by the statute of limitations.

5 60. For the reasons and arguments stated above, Defendants' Motion to Dismiss  
6 Plaintiff's state law claims due to the Statute of Limitations should be denied by the Court.

7 **III. DEFENDANTS ARE LIABLE FOR PLAINTIFF'S STATE LAW CLAIMS**

8 **A. Defendants' Individual Capacity**

9 61. Defendants, in their "Individual Capacity", had a duty of care, and thus can be  
10 held liable to Plaintiff - pursuant to California Civil Code, Sections 1708, 1709, and 1714(a).  
11 And, they can be held liable - pursuant to California Civil Code, Section 54(c); and 42 U.S.C. §  
12 1983.

13 62. For the Court's convenience:

14 1708. Every person is bound, without contract, to abstain from injuring the  
15 person or property of another, or infringing upon any of his or her rights.

16 1709. One who willfully deceives another with intent to induce him to alter his  
17 position to his injury or risk, is liable for any damage which he thereby suffers.

18 1714.(a) Everyone is responsible, not only for the result of his or her willful acts,  
19 but also for an injury occasioned to another by his or her want of ordinary care or skill in the  
20 management of his or her property or person, except so far as the latter has, willfully or by want  
21 of ordinary care, brought the injury upon himself or herself. The design, distribution, or  
marketing of firearms and ammunition is not exempt from the duty to use ordinary care and  
skill that is required by this section. The extent of liability in these cases is defined by the Title  
on Compensatory Relief.

22 54(c). A violation of the right of an individual under the Americans with  
23 Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section.

24 42 U.S.C. § 1983. Civil action for deprivation of rights- Every person who, under  
25 color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the  
26 District of Columbia, subjects, or causes to be subjected, any citizen of the United States or  
27 other person within the jurisdiction thereof to the deprivation of any rights, privileges, or  
28 immunities secured by the Constitution and laws, shall be liable to the party injured in an action  
at law, suit in equity, or other proper proceeding for redress, except that in any action brought  
against a judicial officer for an act or omission taken in such officer's judicial capacity,

1 injunctive relief shall not be granted unless a declaratory decree was violated or declaratory  
2 relief was unavailable. For the purposes of this section, any Act of Congress applicable  
3 exclusively to the District of Columbia shall be considered to be a statute of the District of  
4 Columbia.

5 63. Defendants, in their “Individual Capacity”, breached their duty of care, violated  
6 state law, and deprived Plaintiff of his rights by way of bad-faith acts and/or acts so-obvious to  
7 harm and/or deprive Plaintiff of his rights, and, but not limited to, negligence, fraud, deception,  
8 dishonesty, and conspiracy, as outlined and detailed in Plaintiff’s Complaint. ECF No. 1 at ¶¶  
9 120-137, 151, 157-164, 168-175.

10 64. Defendants’ claims of immunity in their “Individual Capacity” fail, and, thus,  
11 they are each personally liable for Plaintiff’s state law claims.

12 **B. Defendants’ Official Capacity**

13 65. Defendants, in their “Official Capacity”, can be held liable for injury - pursuant  
14 to California Government Code, Section 820.(a), 12948, and 12995(l); and 42 U.S.C. § 1983.

15 66. For the Court’s convenience:

16 820.(a) Except as otherwise provided by statute (including Section 820.2), a  
17 public employee is liable for injury caused by his act or omission to the same extent as a private  
18 person.

19 820.2 Except as otherwise provided by statute, a public employee is not liable for  
20 an injury resulting from his act or omission where the act or omission was the result of the  
21 exercise of the discretion vested in him, whether or not such discretion be abused.

22 12948 It is an unlawful practice under this part for a person to deny or to aid,  
23 incite, or conspire in the denial of the rights created by Section 51, 51.5, 51.7, 51.9, 54, 54.1, or  
24 54.2 of the Civil Code.

25 12995 It shall be unlawful: (l) To discriminate through public or private land use  
26 practices, decisions, and authorizations because of race, color, religion, sex, gender, gender  
27 identity, gender expression, sexual orientation, familial status, marital status, disability, genetic  
28 information, national origin, source of income, or ancestry. Discrimination includes, but is not  
limited to, restrictive covenants, zoning laws, denials of use permits, and other actions  
authorized under the Planning and Zoning Law (Title 7 (commencing with Section 65000)), that  
make housing opportunities unavailable.

Discrimination under this subdivision also includes the existence of a restrictive covenant,  
regardless of whether accompanied by a statement that the restrictive covenant is repealed or  
void.

42 U.S.C. § 1983 please see paragraph 62.

1           67.     Regarding Plaintiff’s necessary and reasonable disability related policy  
2 accommodation under the Fair Housing Act, Defendants in their “Official Capacity” were not  
3 authorized by enactment to determine whether or not it should be provided, they were obliged to  
4 provide it.

5           “Presiding Justice Turner concurred in Justice Armstrong's analysis but wrote a lengthy separate  
6 opinion urging an additional ground for reversing the judgment of dismissal. As a matter of law,  
7 the concurring opinion asserted, section 820.2 can never provide immunity against FEHA  
8 claims. Justice Turner reasoned as follows: section 820.2 accords immunity for discretionary  
9 acts "[e]xcept as otherwise provided by statute." FEHA is such a statutory exception, because  
10 the "employer[s]" covered by FEHA include public agencies such as school districts, and  
11 individuals who cause or assist a covered "employer" to commit employment practices  
12 forbidden by FEHA are personally liable under the statute, either as "agents" or as "aiders and  
13 abettors." Therefore, by the express terms of section 820.2, whenever FEHA makes a public  
14 employee individually liable, that liability prevails over the immunity for discretionary acts.”  
15 *Caldwell v. Montoya*, 897 P. 2d 1320 - Cal: Supreme Court 1995.

16           68.     The purpose of immunity is for when it is right and just to apply immunity, it is  
17 not for the purpose to escape accountability when such application would be wrong and unjust,  
18 especially to the injured party.

19           “The Supreme Court's observations in *Ramos v. County of Madera* (1971) 4 Cal. 3d 685, 692  
20 [94 Cal. Rptr. 421, 484 P.2d 93], are significant. It said: "We must begin with the well-settled  
21 notion that in governmental tort cases 'the rule is liability, immunity is the exception.' [Citation.]  
22 '[I]t would be unjust in some circumstances to require an individual injured by official  
23 wrongdoing to bear the burden of his loss rather than distribute it throughout the  
24 community.' [Citation.] 'Accordingly, courts should not casually decree governmental  
25 immunity; ...' [Citation.] Unless the Legislature has clearly provided for immunity, the  
26 important societal goal of compensating injured parties for damages caused by willful or  
27 negligent acts must prevail.””

28           69.     Defendants claim immunity by way of discretion invested in them. A public  
employee does not have discretion in the course and scope of their employment to violate the  
law, such as by negligence, committing fraud, or conspiring to deny rights. Furthermore,  
discretion is a decision, acts and actions are not. Thus, acts and actions do not enjoy immunity  
by way of discretion.

“It can accurately be said that, generally, immunity exists if the injury results from the public  
employee's discretion to undertake an activity, liability if it results from his negligence in  
performing it after he has made the discretionary decision to do so. *Roseville Community  
Hospital v. State*, (1977) 74 Cal.App.3d 583, 589. Thus, the decision to investigate is often  
characterized discretionary, while the act of investigating is not. The “essential” requirement of  
Government Code §820.2 is “a causal connection between the exercise of discretion and the  
injury.”” *McCorkle v. City of Los Angeles*, (1969) 70 Cal.2d 252, 262.

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ALLISON BARTON RICE v. THE CITY AND COUNTY OF SAN FRANCISCO, et al.  
Case No. 19-cv-04250 LB  
Plaintiff’s Opposition to Defendants’ Motion and Motion to Dismiss for Failure to State a Claim

1           70.     Additionally, the Defendants have not argued that they did exercise discretion,  
2 and their acts and/or actions demonstrate that they did not. If the Defendants did exercise  
3 discretion, the decision/s they made was to violate the law, for which they have no immunity.

4     “The immunity for discretionary decisions provides no comfort if the public defendant did not,  
5 in fact, exercise discretion. The mere fact that a particular determination could be one requiring  
6 an exercise of discretion is no basis for immunity. The public entity must demonstrate that its  
7 employee in fact consciously exercised discretion in connection with the negligent acts and  
8 omissions alleged in the complaint. *Johnson v. State*, (1968) 69 Cal.2d 782, 794 n.8. If the  
9 employee in question believed there was no choice and the determination was required to be  
10 exercised in a particular way, the discretionary function immunity is inapplicable. Moreover, if  
11 the decision is made by one person and implemented by another, the second person cannot rely  
12 on the discretionary function immunity.”.

9           71.     With respect to conspiracy-

10     “Whenever several persons are sued as conspirators and the evidence supports a conclusion that  
11 a conspiracy existed, each member may be held responsible as a joint tortfeasor regardless of  
12 whether or not he directly participated in the act” (*Unruh v. Truck Insurance Exchange* (1972) 7  
13 Cal. 3d 616, 631 [102 Cal. Rptr. 815, 498 P.2d 1063]; *Neblett v. Elliott* (1941) 46 Cal. App. 2d  
14 294, 302-303 [115 P.2d 872]).

13           72.     The Defendants in their “Official Capacity”, breached their duty of care and the  
14 obligations of their office owed to Plaintiff, they deprived Plaintiff of his rights, and inflicted  
15 other injuries upon him by way of bad-faith acts and/or acts so-obvious to harm, and, but not  
16 limited to, negligence, fraud, deception, dishonesty, and conspiracy as outlined and detailed in  
17 Plaintiff’s Complaint. ECF No. 1 at ¶¶ 120-137, 157-164, 168-175.

18           73.     Regarding Defendants London Breed, Kate Hartley, Maria Benjamin, and Dennis  
19 Herrera.

20     “Personal involvement of supervisory officials, like that of defendants Adkison, Jackson,  
21 Armontrout and Moore, is the touchstone of their liability, because a supervisor is not liable for  
22 a civil rights or constitutional violation based solely upon the acts of his subordinate officers or  
23 employees. But if the acts complained of were done at the direction or with the knowledge or  
24 consent of defendant supervisor then the defendant supervisor can be held liable.” *Howard v.*  
25 *Adkison*, 887 F.2d 134, 139 n.3 (8th Cir. 1989).

26           74.     Defendants’ claims of immunity in their “Official Capacity” fail, and, thus, they  
27 are each liable in their official capacities for Plaintiff’s state law claims.

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**C. Defendant City and County of San Francisco**

75. Defendant City and County of San Francisco can be held liable for injury - pursuant to California Government Code, Section 815.2, 815.6 and 42 U.S.C. § 1983.

76. For the Court’s convenience:

815.2 (a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

(b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

815.6 Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

“Thus, the government may be liable when (1) a mandatory duty is imposed by enactment, (2) the duty was designed to protect against the kind of injury allegedly suffered, and (3) breach of the duty proximately caused injury.” (State Dept. of State Hospitals v. Superior Court (2015) 61 Cal.4th 339, 348 [188 Cal.Rptr.3d 309, 349 P.3d 1013].).

42 U.S.C. § 1983 please see paragraph 62.

77. Regarding Plaintiff’s necessary and reasonable disability related policy accommodation under the Fair Housing Act, Defendant City and County of San Francisco was not authorized by enactment to determine whether or not it should be provided, it was obliged to provide it.

78. “Entity” is synonymous with “person”, thus Defendant City and County of San Francisco may be held liable under 42 U.S.C. § 1983.

79. Defendant City and County of San Francisco claims of immunity fail, and, thus, it is liable for Plaintiff’s state law claims.

80. For the reasons and arguments stated above, Defendants’ Motion to Dismiss Plaintiff’s state law claims due to immunity should be denied by the Court.

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1                   **IV.     PLAINTIFF’S CLAIM OF ABUSE OF A DEPENDENT ADULT**

2           81.     Plaintiff’s disability (predominantly emotional impairment) makes him easily  
3 manipulated and taken advantage of, and induces mental limitations that restrict his ability to  
4 protect his rights, thus Plaintiff was a “dependent adult” - pursuant to California Welfare and  
5 Institutions Code, Section 15610.23(a).

6           82.     In the Agency’s own words they “protect vulnerable residents” as illustrated in  
7 “Mayor’s Office of Housing and Community Development - Who We Are - What We Do -  
8 How We Do It” one (1) page identity pdf. ECF No. 1.2 at 13. Dependent adults are vulnerable,  
9 thus Plaintiff was a vulnerable resident. Therefore, the Agency was a “care custodian” to  
10 Plaintiff - pursuant to California Welfare and Institutions Code, Section 15610.17(y). And/or;

11          83.     The Agency exercised complete control over Plaintiff’s ability to have a  
12 roommate and, thus, had some control over his welfare. Therefore, the Agency had an  
13 affirmative and continuing duty of care to Plaintiff.

14          84.     By use of undue influence (as defined in Section 1575 of the California Civil  
15 Code), the Agency breached their duty of care owed to Plaintiff, and subjected him to  
16 negligence and other treatment which were acts and/or actions of abuse of a dependent adult,  
17 and deprived him of his “necessary and reasonable disability related policy accommodation”, all  
18 of which harmed him - pursuant to California Welfare and Institutions Code, Sections 15610.07.  
19 (a)(1) and (2).

20          85.     On page 9, lines 18-20 of Defendants Motion and Motion to Dismiss, Defendants  
21 state “*Plaintiff specifically alleges violations of Cal. Welf. and Inst. Code Sections 15610.53*  
22 *and 15610.57. Plaintiff pleads no facts to support these allegations, he simply pleads*  
23 *conclusory statements.*”.

24          86.     In Plaintiff’s Complaint, regarding abuse of a dependent adult, he incorporated  
25 by reference the preceding paragraphs of the Complaint, which provided statements of facts  
26 (supported by exhibits) of Plaintiff’s disability and dependent adult status, the Agency’s duty of  
27 care owed to Plaintiff, and the Agency’s negligence and use of undue influence. Facts, such as,  
28 but not limited to:

a. Ignoring his disability, disabled status, and his dependent adult status;

b. Communicating that his necessary and reasonable disability related policy accommodation to lease a portion of the Property to a roommate was not possible and would always be denied (a partial or a full lie);

c. Keeping secret from him the applicability of the Fair Housing Act, and other critical and pertinent information;

d. Interfering with his exercise or enjoyment of his rights granted and protected by the Fair Housing Act;

e. Lying to him numerous times and creating inventions and falsehoods; and,

f. Completely and/or overwhelmingly ignoring his health, and the severe and intense emotional, mental, and psychological suffering, distress, and anguish he was experiencing from their treatment of him, despite his repeated and emphatic communications to them of such.

87. All of which was a breach of their duty of care owed to Plaintiff, clearly negligent, and criminal (misdemeanor) - pursuant to California Welfare and Institutions Code, Sections 15656.(b) and as stated in Plaintiff’s Complaint, which Defendants fail to address in their “Motion and Motion to Dismiss”. ECF No. 1 at ¶ 181.

88. For the Court’s convenience:

15656(b). Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering on him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

89. On page 9, (what appears to be) line 25 of Defendants Motion and Motion to Dismiss, Defendants state “*The Complaint is silent as to any malicious intent by Defendants.*”.

90. For the Court’s convenience:

“Malice” - as defined in California Penal Code, Section 136.(1)

136. As used in this chapter:

(1) “Malice” means an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

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1 State v. Ruiz, 94 N.M. 771, 779 (N.M. Ct. App. 1980) (“The only “act” involved  
 2 in criminal trespass as a lesser offense included within burglary of a dwelling house is entry  
 3 upon the lands of another. That act requires a “malicious intent”. In this context, malicious intent  
 4 means “malice, in the popular sense of hatred or ill will.” Conner v. Standard Pub. Co., 183  
 Mass. 474, 67 N.E. 596 (1903). This hatred or ill will imports “a wish to vex, annoy, or injure  
 another person or an intent to do a wrongful act.” Briggs v. Coykendall, 57 N.D. 785, 224 N.W.  
 202 (1929). See also State v. Cannady, 18, N.C. App. 213, 196 S.E.2d 617 (1973).”)

5 91. Plaintiff could not find or locate a definition of “malicious intent” in the  
 6 California Code or in the United States Code. Plaintiff’s internet search for “legal definition of  
 7 malicious intent” found:

8 “Malicious intent means the person acted willfully or intentionally to cause  
 9 harm, without legal justification.” - at [www.lawinsider.com/dictionary/malicious-intent](http://www.lawinsider.com/dictionary/malicious-intent);

10 “Malicious intent refers to the intent, without just cause or reason, to commit a  
 11 wrongful act that will result in harm to another. It is the intent to harm or do some evil purpose.”  
 - at <https://definitions.uslegal.com/m/malicious-intent/>;

12 and, for “malice” - “Malice is a legal term referring to a party’s intention to do  
 13 injury to another party. Malice is either expressed or implied. Malice is expressed when there is  
 14 manifested a deliberate intention to unlawfully take away the life of a human being. Malice is  
 15 implied when no considerable provocation appears, or when the circumstances attending the  
 killing show an abandoned and malignant heart.[1] Malice, in a legal sense, may be inferred  
 from the evidence and imputed to the defendant, depending on the nature of the case.” - at  
[https://en.wikipedia.org/wiki/Malice\\_\(law\)](https://en.wikipedia.org/wiki/Malice_(law))

16 92. Defendants clearly acted willfully, with ill will, without just cause or reason or  
 17 legal justification, with an abandoned and malignant heart, and an evil purpose. Defendants  
 18 clearly intended to thwart and did, in fact, interfere with Plaintiff’s exercise or enjoyment of his  
 19 rights, and clearly committed a wrongful act. Defendants clearly ignored Plaintiff’s disability  
 20 and, thus, his dependent adult status and welfare (especially in relation to their control of  
 21 Plaintiff’s ability to have a roommate). Clearly, the Defendants acted with malice and/or an  
 22 implied malice that was intentional.

23 93. On page 10, line 12 of Defendants Motion and Motion to Dismiss, Defendants  
 24 state “*Again, Plaintiff’s Complaint is silent on any facts that support a neglect allegation.*”.  
 25 Please see paragraph 86.

26 94. Plaintiff’s Complaint adequately alleges all the elements necessary for his claim  
 27 of Abuse of a Dependent Adult. The Defendants abused Plaintiff, a dependent adult.

28 ///

1 95. For the reasons and arguments stated above, Defendants’ Motion to Dismiss  
2 Plaintiff’s claim of a violation of the ‘Elder Abuse and Dependent Adult Civil Protection Act’  
3 should be denied by the Court.

4 **CONCLUSION**

5 96. For all the foregoing reasons and arguments, the Court should deny Defendant’s  
6 Motion to Dismiss Plaintiff’s Complaint.

7 **LASTLY**

8 97. Plaintiff requests the Court consider and apply California Code of Civil  
9 Procedure, Part 2. Of Civil Actions, Title 6. Of The Pleadings In Civil Actions, Article 1.  
10 General Provisions, Section 425.55.(a).

11 98. For the Court’s convenience:

12 425.55. (a) The Legislature finds and declares all of the following:

13 (1) Protection of the civil rights of persons with disabilities is of the utmost importance to this  
14 state, and private enforcement is the essential means of achieving that goal, as the law has been  
designed.

15 (2) According to information from the California Commission on Disability Access, more than  
16 one-half, or 54 percent, of all construction-related accessibility complaints filed between 2012  
17 and 2014 were filed by two law firms. Forty-six percent of all complaints were filed by a total  
18 of 14 parties. Therefore, a very small number of plaintiffs have filed a disproportionately large  
19 number of the construction-related accessibility claims in the state, from 70 to 300 lawsuits each  
20 year. Moreover, these lawsuits are frequently filed against small businesses on the basis of  
boilerplate complaints, apparently seeking quick cash settlements rather than correction of the  
accessibility violation. This practice unfairly taints the reputation of other innocent disabled  
consumers who are merely trying to go about their daily lives accessing public accommodations  
as they are entitled to have full and equal access under the state’s Unruh Civil Rights Act  
(Section 51 of the Civil Code) and the federal Americans with Disability Act of 1990 (Public  
Law 101-336).

21 (3) Therefore, given these special and unique circumstances, the provisions of this section are  
22 warranted for this limited group of plaintiffs.

23 Dated: August 27, 2019

Respectfully Submitted,

24  
25 By:  /s/ Allison Barton Rice

26 Allison Barton Rice, Plaintiff pro per

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