

1 DENNIS J. HERRERA, State Bar #139669  
 City Attorney  
 2 CHERYL ADAMS, State Bar #164194  
 Chief Trial Deputy  
 3 KELLY COLLINS, State Bar #277988  
 Deputy City Attorney  
 4 Fox Plaza  
 1390 Market Street, 6th Floor  
 5 San Francisco, California 94102-5408  
 Telephone: (415) 554-3914  
 6 Facsimile: (415) 554-3837  
 E-Mail: kelly.collins@sfcityatty.org  
 7

8 Attorneys for Defendants  
 CITY AND COUNTY OF SAN FRANCISCO,  
 9 MAYOR LONDON BREED, KATE HARTLEY,  
 MARIA BENJAMIN, CISSY YIN,  
 10 DENNIS HERRERA, and KEITH NAGAYAMA

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 ALLISON BARTON RICE, AN  
 INDIVIDUAL,

14 Plaintiff,

15 vs.

16 THE CITY AND COUNTY OF SAN  
 17 FRANCISCO; LONDON BREED, MAYOR  
 OF THE CITY OF SAN FRANCISCO; KATE  
 18 HARTLEY, DIRECTOR OF THE SAN  
 FRANCISCO MAYOR’S OFFICE OF  
 19 HOUSING AND COMMUNITY  
 DEVELOPMENT; MARIA BENJAMIN,  
 20 DIRECTOR OF HOMEOWNERSHIP &  
 BELOW MARKET RATE PROGRAMS SAN  
 21 FRANCISCO MAYOR’S OFFICE OF  
 HOUSING AND COMMUNITY  
 22 DEVELOPMENT; CISSY YIN,  
 HOMEOWNERSHIP & BELOW MARKET  
 23 RATE PROGRAMS COMPLIANCE  
 MANAGER SAN FRANCISCO MAYOR’S  
 24 OFFICE OF HOUSING AND COMMUNITY  
 DEVELOPMENT;  
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Case No. 19-cv-04250 LB

**DEFENDANTS’ REPLY TO PLAINTIFF’S  
 OPPOSITION TO MOTION TO DISMISS  
 COMPLAINT**

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

Trial Date: Not Set

1 DENNIS HERRERA, SAN FRANCISCO  
2 CITY ATTORNEY; KEITH NAGAYAMA,  
3 SAN FRANCISCO CITY DEPUTY  
4 ATTORNEY AND DOES 1 THROUGH 50,

Defendants.

5  
6 **MEMORANDUM OF POINTS AND AUTHORITIES**  
7 **INTRODUCTION**

8 Plaintiff Allison Rice (“Plaintiff”) brings this action against the City and County of San  
9 Francisco (“the City”) and Mayor London Breed, Kate Hartley, Maria Benjamin, Cissy Yin, Dennis  
10 Herrera, and Keith Nagayama collectively “Defendants,”<sup>1</sup> alleging both federal and state law claims.  
11 Defendants moved to dismiss the federal claims of alleged violations of the Fair Housing Act and  
12 Americans with Disabilities Act on the grounds that Plaintiff fails to state a claim. Defendants moved  
13 to dismiss the state claims alleging negligence, fraud, and elder abuse on the bases of failure to comply  
14 with the statute of limitations, governmental immunities, and failure to state a claim. Plaintiff filed an  
15 Opposition to Defendants’ Motion to Dismiss (hereinafter “Plaintiff’s Opposition”). For the reasons  
16 set forth in Defendants’ moving papers and below, the Court should dismiss all of Plaintiff’s claims.

17 **LEGAL STANDARD AND FACTUAL BACKGROUND**

18 The relevant factual background was set forth in Defendants’ moving papers found at ECF No.  
19 10 at 2-5.

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21  
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26 <sup>1</sup> The individually named Defendants hereby respond in their official capacity only as they  
27 have not been properly served in their individual capacity. However, responding Defendants request  
28 that the Court exercise its discretion in dismissing the Complaint in its entirety without Defendants  
Harley, Benjamin, Yin, Herrera, and Nagayama responding in their individual capacities because  
Plaintiff fails to state claims against them separate and apart from their official capacities

**ARGUMENT****I. PLAINTIFF CANNOT STATE FAIR HOUSING ACT OR AMERICANS WITH DISABILITY ACT CLAIMS****A. Plaintiff's First Cause of Action for Alleged Violations of the Fair Housing Act Fails**

Plaintiff's first cause of action is for alleged violations of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3603, 3604, 3605, 3606, and 3617. As discussed in Defendants' Motion to Dismiss, the FHA does not apply here because Defendants did not provide housing to Plaintiff during the applicable time period. At all relevant times during the conduct that Plaintiff alleges, Plaintiff owned and occupied the Property.

Plaintiff's Opposition makes multiple conclusory statements and cites statutes without addressing how the FHA applies. Plaintiff states, "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." ECF No. 19 at 9. Plaintiff does not allege that he took issue with any provisions of the Agreement at the time of purchase. He does not allege that he was discriminated against at the time of purchase. Instead, he brings this claim years after purchase after his request for a roommate was denied. Plaintiff's Opposition fails to articulate how the FHA applies outside of conclusory statements because it does not apply here.

Even if the Court determines the FHA applies and considers Plaintiff's failure to accommodate argument, it fails on the face of the Complaint. Defendants did not bar Plaintiff from having a roommate. Plaintiff continues to fail to set forth any facts to support an assertion that being able to lease a portion of his unit to a roommate in exchange for rent was a necessary reasonable accommodation for his disability. Without demonstrating any fact that financial gain was necessary to reasonably accommodate Plaintiff's disability, Plaintiff's FHA claim fails.

For the reasons set forth above and in Defendants' Motion to Dismiss, the Court should dismiss Plaintiff's FHA claim.

1           **B. Plaintiff's Second Cause of Action for Alleged Violations of the Americans With**  
2           **Disability Acts Fails**

3           Plaintiff's second cause of action is for alleged violations of the Americans With Disabilities  
4           Act ("ADA"), 42 U.S.C. Section 12132, the California Civil Code as set forth in Sections 51(c) and  
5           54(f), and an unlawful practice pursuant to California Government Code Section 12948. The ADA  
6           does not apply here. Therefore, Plaintiff's ADA claim should be dismissed.

7           As set forth in Defendants' Motion to Dismiss, Defendants neither excluded from participation  
8           nor denied benefits to Plaintiff. As stated above and in Defendants' Motion to Dismiss, Plaintiff  
9           owned his unit at the time of the alleged violations. Defendants were not selling the Property to  
10          Plaintiff at the time, nor were they renting the Property to Plaintiff. Plaintiff's Opposition fails to  
11          identify facts to identify how the ADA applies here outside of unsupported conclusory statements.

12          Should the Court find that the ADA applies, Plaintiff's claim still fails. Defendants informed  
13          Plaintiff he was free to take in a roommate, he just could not collect rent. Plaintiff still fails to provide  
14          evidence that collecting rent is necessary or beneficial for his disability.

15          Plaintiff failed to state facts sufficient to support his second cause of action alleging violations  
16          of the ADA. It should therefore be dismissed.

17           **II. PLAINTIFF'S STATE LAW CLAIMS ARE BARRED BY THE STATUTE OF**  
18           **LIMITATIONS**

19          Plaintiff alleges state law claims of negligence, fraud, and elder abuse. As set forth in  
20          Defendants' Motion to Dismiss, Plaintiff's claims were untimely and are therefore barred. Plaintiff  
21          cites irrelevant statutes of limitations in Plaintiff's Opposition and does not address the issue of failing  
22          to comply with The California Claims Act (Govt. Code §§ 810-996.6).

23          Accordingly, the Court must dismiss the state law based causes of action contained in  
24          Plaintiff's Complaint.

1 **III. DEFENDANTS ARE IMMUNE FROM PLAINTIFF’S STATE LAW CLAIMS**

2 Plaintiff’s Opposition fails to state facts to rebut the immunities set forth in Defendants’  
3 Motion to Dismiss. Plaintiff’s Opposition cites statues and makes conclusory statements without  
4 addressing why such immunities should not apply.

5 In light of these statutory immunities that Defendants are entitled to, Plaintiff’s state law claims  
6 should be dismissed.

7 **IV. PLAINTIFF’S ELDER ABUSE CLAIM FAILS**

8 Plaintiff’s fifth cause of action alleges elder abuse under The Elder Abuse and Dependent  
9 Adult Civil Protection Act (hereinafter “EADACPA”) which is governed by California Welfare and  
10 Institution Code Sections 15600-15705.40. Plaintiff specifically alleges violations of Cal. Welf. and  
11 Inst. Code Sections 15610.53 and 15610.57. Plaintiff pleads no facts to support these allegations, he  
12 simply pleads conclusory statements.

13  
14 Plaintiff’s Opposition, like his Complaint, is silent on any facts that support a neglect  
15 allegation. Defendants never had care or custody of Plaintiff and were never involved in any self-care  
16 assistance.

17 Given the lack of a cognizable legal theory and the lack of facts to support a cognizable legal  
18 theory, Plaintiff’s fifth cause of action should be dismissed.

