

1 Mr. Allison Barton Rice
13809 Research Blvd, Suite 500 PMB 90978
2 Austin, TX 78750
3 PH: (415) 579-8208
allisonbartonrice@mac.com

4 Plaintiff, in propria persona

5 **UNITED STATES DISTRICT COURT**

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

8 ALLISON BARTON RICE, an individual,

9 Plaintiff,

10 v.

11
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,

23 Defendants.

CASE NO.: 19-cv-04250 LB

**FIRST AMENDED COMPLAINT
FOR VIOLATIONS OF:**

1. **THE FAIR HOUSING ACT BY DISCRIMINATION ON BASIS OF DISABILITY;**
2. **TITLE II OF THE AMERICANS WITH DISABILITIES ACT ON BASIS OF DISABILITY; and**
3. **THE CIVIL RIGHTS ACT BY DEPRIVATION OF RIGHTS AND CONSPIRACY.**

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INTRODUCTION

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2 1. This is an action for injunctive and equitable relief, as well as monetary
3 damages, to redress THE CITY AND COUNTY OF SAN FRANCISCO; LONDON BREED,
4 INDIVIDUALLY AND IN HER CAPACITY AS MAYOR OF THE CITY OF SAN
5 FRANCISCO; KATE HARTLEY, INDIVIDUALLY AND IN HER CAPACITY AS
6 DIRECTOR OF THE SAN FRANCISCO MAYOR’S OFFICE OF HOUSING AND
7 COMMUNITY DEVELOPMENT; MARIA BENJAMIN, INDIVIDUALLY AND IN HER
8 CAPACITY AS DIRECTOR OF HOMEOWNERSHIP & BELOW MARKET RATE
9 PROGRAMS SAN FRANCISCO MAYOR’S OFFICE OF HOUSING AND COMMUNITY
10 DEVELOPMENT; CISSY YIN, INDIVIDUALLY AND IN HER CAPACITY AS
11 HOMEOWNERSHIP & BELOW MARKET RATE PROGRAMS COMPLIANCE MANAGER
12 SAN FRANCISCO MAYOR’S OFFICE OF HOUSING AND COMMUNITY
13 DEVELOPMENT; DENNIS HERRERA, INDIVIDUALLY AND IN HIS CAPACITY AS SAN
14 FRANCISCO CITY ATTORNEY; AND KEITH NAGAYAMA, INDIVIDUALLY AND IN HIS
15 CAPACITY AS SAN FRANCISCO DEPUTY CITY ATTORNEY unlawful practices against
16 Plaintiff ALLISON BARTON RICE (hereinafter “Plaintiff Rice” or “Plaintiff”), including
17 Defendants’ unlawful discrimination against Plaintiff Rice in light of his disability in violation
18 of: Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act
19 of 1988 (“the Fair Housing Act”, hereinafter the “FHA”), and Title II of the Americans with
20 Disabilities Act of 1990 (hereinafter the “ADA”); and for actions under color of state law to
21 deprive Plaintiff Rice of his rights, and conspiring with intent to deny Plaintiff Rice the equal
22 protection of the laws as covered by the Civil Rights Act of 1871, as later amended and codified
23 as section 1983 and section 1985(2), respectively.

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1 2. Plaintiff Rice alleges that Defendants engaged in:

2 (a). Discriminatory practices, services, or activities by way of refusal to make
3 a reasonable accommodation when such accommodation was necessary to afford Plaintiff Rice
4 an equal opportunity to enjoy his dwelling; and interfering with his exercise or enjoyment of a
5 right granted or protect by the FHA in violation of the FHA at 42 U.S.C. sections 3604 & 3617;

6 (b). Discriminatory practices of exclusion from participation in or the denial of
7 the benefits of services, programs or activities of a public entity and discrimination by such
8 entity by way of omissions, oppressions, suppressions, concealments, or deceptions in violation
9 of the ADA at 42 U.S.C. section 12132; and

10 (c). Deprivation of rights under color of state law and conspiracy with intent to
11 deny a person the equal protection of the laws covered in of the Civil Rights Act of 1871, as
12 later amended and codified at 42 U.S.C. sections 1983 and 1985(2), respectively.

13 3. Plaintiff Rice claims the Defendants' conduct was knowing, willful, calloused,
14 and in reckless disregard of him, his wellbeing, his mental health, his rights, and foreseeable
15 damage and injury which has caused and continues to cause him to suffer substantial economic
16 and non-economic damage and injury including, but not limited to, severe and intense mental
17 anguish and stress (at times consuming), emotional distress, debilitating anxieties, humiliation,
18 and stress related physical symptoms.

19 4. Plaintiff Rice filed a complaint of discrimination on the basis of disability and
20 failure to make a reasonable disability related policy accommodation when such
21 accommodation was necessary to afford him an equal opportunity to enjoy his dwelling in
22 violation of the FHA with the United States Department of Housing and Urban Development
23 (hereinafter "HUD").

24 5. Plaintiff Rice elects to have the claims stated in the HUD complaint determined
25 in a civil action per his rights under the FHA at 42 U.S.C. section 3613(a).

26 6. Plaintiff Rice therefore brings this action for injunctive and equitable relief, as
27 well as monetary damages, per his rights under the FHA at 42 U.S.C. section 3613(a), under the
28 ADA at 42 U.S.C. section 12133, or under the Civil Rights Act at 42 U.S.C. section 1988.

STATUTORY AND REGULATORY BACKGROUND

9. The Fair Housing Act, originally enacted in 1968, and substantially expanded by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, declares that: “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” 42 U.S.C. § 3601.

10. The 1988 amendments, among other things, added “handicap” as a prohibited basis for discrimination.¹ In describing the need for protection for this class of persons, the House Judiciary Committee report on the legislation stated that:

The Committee understands that housing discrimination against handicapped persons is not limited to blatant, intentional acts of discrimination. Acts that have the effect of causing discrimination can be just as devastating as intentional discrimination. . . . In *Alexander v. Choate*, 469 U.S. 287 (1985), the Supreme Court observed that discrimination on the basis of handicap is “most often the product, not of invidious animus, but rather of thoughtlessness and indifference – of benign neglect.”

H.R. Rep. No. 100-711, at 25 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2186.

11. For this case, a clear and comprehensive understanding of FHA, as well as ADA, statutes protecting persons with a disability against discrimination, on the basis of a disability, warrants an examination of the implementing regulation of the ADA at 28 C.F.R. section 35.130.

12. The ADA is a comprehensive civil rights law enacted, “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”. 42 U.S.C. section 12101(b)(1). Title II of the ADA provides that, “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. section 12132.

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¹ Throughout this Amended Complaint, the terms “handicap” and “disability” shall have the same meaning.

1 13. Title II does not simply prohibit outright denial of services or programs; it also
2 prohibits unequal participation in such services or programs. As defined by title II's
3 implementing regulation at 28 C.F.R. section 35.130 General prohibitions against
4 discrimination.

5 14. "No qualified individual with a disability shall, on the basis of disability, be
6 excluded from participation in or be denied the benefits of the services, programs, or activities
7 of a public entity, or be subjected to discrimination by any public entity." 28 C.F.R. section
8 35.130(a).

9 15. And, "A public entity, in providing any aid, benefit, or service, may not, directly
10 or through contractual, licensing, or other arrangements, on the basis of disability" 1. "Deny a
11 qualified individual with a disability the opportunity to participate in or benefit from the aid,
12 benefit, or service;" or, 2. "Afford a qualified individual with a disability an opportunity to
13 participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;"
14 or, 3. "Provide a qualified individual with a disability with an aid, benefit, or service that is not
15 as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or
16 to reach the same level of achievement as that provided to others;" or, 4. "Provide different or
17 separate aids, benefits, or services to individuals with disabilities or to any class of individuals
18 with disabilities than is provided to others unless such action is necessary to provide qualified
19 individuals with disabilities with aids, benefits, or services that are as effective as those
20 provided to others;" or, 5. "Aid or perpetuate discrimination against a qualified individual with a
21 disability by providing significant assistance to an agency, organization, or person that
22 discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries
23 of the public entity's program;" or, 6. "Otherwise limit a qualified individual with a disability in
24 the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the
25 aid, benefit, or service." 28 C.F.R. section 35.130(b)(1)(i), (ii), (iii), (iv), (v), (vii).

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1 16. And, “A public entity may not deny a qualified individual with a disability the
2 opportunity to participate in services, programs, or activities that are not separate or different,
3 despite the existence of permissibly separate or different programs or activities.”. 28 C.F.R.
4 section 35.130(b)(2).

5 17. And, “A public entity may not, directly or through contractual or other
6 arrangements, utilize criteria or methods of administration...” 1. “That have the effect of
7 subjecting qualified individuals with disabilities to discrimination on the basis of disability;” or,
8 2. “That have the purpose or effect of defeating or substantially impairing accomplishment of
9 the objectives of the public entity's program with respect to individuals with disabilities;” or, 3.
10 “That perpetuate the discrimination of another public entity if both public entities are subject to
11 common administrative control or are agencies of the same State.”. 28 C.F.R. section 35.130(b)
12 (3)(i), (ii), (iii).

13 18. And, “A public entity shall make reasonable modifications in policies, practices,
14 or procedures when the modifications are necessary to avoid discrimination on the basis of
15 disability, unless the public entity can demonstrate that making the modifications would
16 fundamentally alter the nature of the service, program, or activity.”. 28 C.F.R. section 35.130(b)
17 (7)(i).

18 19. And, “A public entity shall not impose or apply eligibility criteria that screen out
19 or tend to screen out an individual with a disability or any class of individuals with disabilities
20 from fully and equally enjoying any service, program, or activity, unless such criteria can be
21 shown to be necessary for the provision of the service, program, or activity being offered.” 28
22 C.F.R. section 35.130(b)(8).

23 20. And, “A public entity shall administer services, programs, and activities in the
24 most integrated setting appropriate to the needs of qualified individuals with disabilities.”. 28
25 C.F.R. section 35.130(d).

26 21. And, “Nothing in this part shall be construed to require an individual with a
27 disability to accept an accommodation, aid, service, opportunity, or benefit provided under the
28 ADA or this part which such individual chooses not to accept.”. 28 C.F.R. section 35.130(e)(1).

PARTIES

I. THE PLAINTIFF

22. For all material times herein, Plaintiff Rice was a resident of the City and County of San Francisco, California.

23. Plaintiff Rice has been diagnosed with mental health disabilities which stem from injury or disease suffered from service as a Hospital Corpsman in the United States Navy, inclusive of service with the United States Marines, and for which Plaintiff Rice has been deemed totally and permanently disabled pursuant to public laws administered by the United States Department of Veterans Affairs. Please see Exhibit “A” (ECF 1.1 page 2).

24. Plaintiff’s disabilities substantially impair his major life activities including, concentrating, thinking, communicating, working, emotional response and adjustment, and interpersonal and social skills & abilities. In particular to this case, Plaintiff’s symptoms of his mental illness include debilitating isolation and loneliness which is constantly painful and often unbearable for him.

25. For all material times herein, Plaintiff Rice was a person with a handicap as defined in the FHA at 42 U.S.C. section 3602.(h).

26. For all material times herein, Plaintiff Rice was an individual with a disability as defined in the ADA at 42 U.S.C. section 12102.(1).

II. THE DEFENDANTS

27. For all material times herein, Defendant CITY AND COUNTY OF SAN FRANCISCO was a municipal corporation, duly organized and existing under its charter and the laws of the State of California, and operated the San Francisco Mayor’s Office of Housing and Community Development (hereinafter “the Agency”); both a “public entity” pursuant to the ADA at 42 U.S.C. section 12131.

28. For all material times herein, Defendant LONDON BREED, MAYOR OF THE CITY OF SAN FRANCISCO, was the Mayor or the Acting Mayor of the City of San Francisco and directed and controlled the the Agency.

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1 29. For all material times herein, Defendant KATE HARTLEY, DIRECTOR OF
2 THE SAN FRANCISCO MAYOR’S OFFICE OF HOUSING AND COMMUNITY
3 DEVELOPMENT, was the Director or Interim Director of the Agency and directed and
4 controlled the Agency.

5 30. For all material times herein, Defendant MARIA BENJAMIN, DIRECTOR OF
6 HOMEOWNERSHIP & BELOW MARKET RATE PROGRAMS SAN FRANCISCO
7 MAYOR’S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT, was the Director
8 of Homeownership & Below Market Rate Programs of the Agency and directed and controlled
9 the Homeownership & Below Market Rate Programs of the Agency.

10 31. For all material times herein, CISSY YIN, HOMEOWNERSHIP & BELOW
11 MARKET RATE PROGRAMS COMPLIANCE MANAGER SAN FRANCISCO MAYOR’S
12 OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT, was the Homeownership &
13 Below Market Rate Programs Compliance Manager of the Agency and directed and controlled
14 the Homeownership & Below Market Rate Programs Compliance Department of the Agency.

15 32. For all material times herein, Defendant DENNIS HERRERA, SAN
16 FRANCISCO CITY ATTORNEY, was the San Francisco City Attorney and directed and
17 controlled the San Francisco City Attorney’s Office which provided legal guidance and
18 direction to the Agency.

19 33. For all material times herein, Defendant KEITH NAGAYAMA, SAN
20 FRANCISCO DEPUTY CITY ATTORNEY, was the San Francisco Deputy City Attorney and
21 provided legal guidance and direction to the Agency.

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FACTUAL BACKGROUND

34. As described in paragraphs 23 to 26 above, Plaintiff Rice was a “person with a handicap” or “an individual with a disability”. In particular to this case, his mental illness symptoms include severe and debilitating isolation and loneliness which is constantly painful and often unbearable for him.

35. In 2012, the San Francisco Mayor’s Office of Housing and Community Development became the successor in interest to the rights and obligations of a program of the San Francisco Redevelopment Agency (hereinafter collectively known as the “Agency”). Please see Exhibit “I” (ECF 1.1, page 33).

36. In early 2004, by chance, Plaintiff Rice placed high in a lottery created, controlled, and conducted by the Agency that he had entered, such, that the Agency offered to sell Plaintiff Rice a home at a price which was below those otherwise prevailing in the market.

37. That home (hereinafter “the Property”) is commonly known as a Below Market Rate condominium (hereinafter “BMR”) or “Affordable Housing”, and that price is described as “Affordable Purchase Price”. And, Plaintiff Rice did purchase the Property from the Agency on October 25th 2004 (close of escrow). Please see Exhibit “B” (ECF 1.1, pages 4 to 19).

38. The Property was part of a program of the Agency entitled the ‘Limited Equity Home Ownership Program’ (hereinafter “the Program”). The terms and conditions for purchasing and using the Property were defined and enumerated in the ‘Declaration of Resale Restrictions and Option to Purchase Agreement’ (hereinafter “the Agreement”). Both the Program and the Agreement were created and developed by the Agency. Please see Exhibit “B” (ECF 1.1, pages 4 to 19, title on page 4).

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1 39. The Agreement states [at]: “Section 2. Recitals., The following recitals of fact are
2 a material part of this Declaration: (a) The Agency has developed a program to provide home
3 ownership opportunities to individuals and families with low and moderate incomes by offering
4 homes for sale at prices which are below those otherwise prevailing in the market; (b) The
5 Agency’s intent is to preserve the affordability of such homes by restricting the resale price; and
6 (c) Such homes constitute a valuable community resource, for which it is necessary, proper and
7 in the public interest for the Agency to protect and preserve by administering occupancy and
8 resale controls by means of this Declaration; ...”. And, the Agreement states [at]: “Section
9 13.13 Controlling Agreement. Owner covenants that Owner has not executed and will not
10 execute any other agreement with provisions contradictory to or in opposition to the provisions
11 of this Declaration. Owner understands and agrees that this Declaration shall control the rights
12 and obligations between Owner and Agency.”. Please see Exhibit “B” (ECF 1.1, page 4), and
13 please take note of “...by offering homes for sale ...” at lines 3 and 4 above.

14 40. Plaintiff Rice, by way of the introduction and orientation to the Program prior to
15 his purchase of the Property and due to the Agency administering occupancy and resale controls
16 of the Property, had numerous communications with personnel of the Agency prior to and
17 throughout his ownership of the Property. Plaintiff Rice was indeed a client of the Agency from
18 a time prior to and for the entire duration of his ownership of the Property.

19 41. As such, Plaintiff Rice was extremely, if not entirely, reliant and dependent upon
20 the Defendants for guidance and advice in all aspects of the Property, his use of the Property, the
21 Program, the Agreement, his rights (especially disability rights) under the law, and so forth.
22 Furthermore, Plaintiff’s reliance upon the Agency was entirely reasonable in light of the
23 Agency’s stated purposes and list of services which include “legal services” and “counseling”
24 on housing matters as described in their MOHCD IDENTITY.pdf, and, as one of their “Strategic
25 Plain Highlights”, to “Promote Self-Sufficiency for All & Protect Rights” as shown on the
26 homepage of their website. Please see Exhibit “T” (ECF 1.2, page 13).

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1 42. Additionally, and especially with respect to his wellbeing, mental health, and
2 disability rights as they related to his use of the Property and the services of the Agency, he was
3 extremely, if not entirely, reliant and dependent upon the Defendants to not only use reasonable
4 care but to use the standard of care expected of such persons in their respective positions.

5 43. For several years Plaintiff Rice exercised and enjoyed a reasonable and necessary
6 disability related policy accommodation to combat his severe and debilitating isolation and
7 loneliness, a symptom of his mental illness. That policy accommodation was the sharing of the
8 Property (his home) with a roommate in the normal sense (i.e. roommate pays rent and utilizes
9 the space and amenities, and lives at the Property with him), which was verbally granted to him
10 in the latter part of 2008 (possibly the early part of 2009) by Ms. Horner of the Agency. To be
11 clear, this was not for reasons of finance, Plaintiff Rice could afford his home otherwise.

12 44. Four or five times Plaintiff Rice allowed a person to live for free or in trade work
13 for rent at his home, in order to help them during a difficult time. Rarely did those situations
14 work well, the individuals usually had or would develop an inappropriate attitude and the
15 situation would sour. Whereas, the situations when a person paid some amount of rent and lived
16 at his home under normal conditions almost always worked and they usually worked well,
17 sometimes very well in helping Plaintiff Rice cope with his isolation and loneliness and in other
18 therapeutic ways (i.e. improving his interpersonal communication skills, etc.).

19 45. In the introduction and orientation to the Program provided by the Agency, two
20 things were made clear, 1. Owner was required to live at the Property 10 months per year, and 2.
21 Owner was not allowed to rent out the entire Property and not live there (like an investment
22 property). Nothing was said of a “portion thereof” or having a “roommate” or “written consent”
23 for such request, and Plaintiff Rice was ignorant of such. Hence, his inquiry to Ms. Horner of
24 having a roommate in the latter part of 2008 (possibly the early part of 2009).

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1 46. With respect to the Agreement, the specific form of the policy accommodation
2 needed by Plaintiff Rice was “Agency’s prior written consent” to “lease a portion thereof”
3 pursuant to section 6.1 of the Agreement. Furthermore, being that the requested policy
4 accommodation was allowed by the Agreement, it was within the parameters of the nature of the
5 Program. That is, the policy accommodation necessary to allow him an equal opportunity to use
6 and enjoy his dwelling was within the nature of the Program and was available to some
7 participants in the Program. Please see Exhibit “B”, “I” (ECF 1.1, pages 8, and 34), and
8 “L” (ECF 1.2, page 2).

9 47. With respect to the Agreement, it was an error by Ms. Horner and in ignorance
10 by Plaintiff Rice that his request and her permission of that reasonable policy accommodation
11 was not put in writing. Even though it was a mutual mistake to have not put it in writing, a
12 mistake does not necessarily make a breach of the Agreement and, to be sure, Plaintiff Rice
13 never made any attempt to breach the Agreement. Furthermore, the FHA does not require a
14 reasonable accommodation request to be in writing nor does it require the granted reasonable
15 accommodation to be in writing. And, the Agency “... must give appropriate consideration to
16 reasonable accommodation requests even if the requester makes the request orally or does not
17 use the provider’s preferred forms or procedures for making such requests.” as found at item 12
18 in the ‘Joint Statement of the Department of Housing and Urban Development and the
19 Department of Justice *Reasonable Accommodations Under the Fair Housing Act*’. Additionally,
20 the policy accommodation that Plaintiff Rice exercised and enjoyed was a right that was, or
21 should have been, granted under the FHA as explained below in the ‘First Cause of Action - Fair
22 Housing Act Violations’ section of this Amended Complaint. Please see Exhibit “U” (ECF 1.2,
23 pages 14 to 31, item 12 quote is on page 23).

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1 48. Plaintiff Rice was not cognizant of the written requirement within the Agreement
2 until the early part of 2016. On or about the third week of March 2016, while moving storage
3 boxes and examining contents therein, he came across a copy of the Agreement and began to
4 peruse it. While perusing that portion of section 6.1 Restrictions, that states: “ ... Owner shall
5 not lease the Property, or any portion thereof, without Agency’s prior written consent.” he
6 became cognizant of the written requirement. Very shortly thereafter he initiated his own efforts
7 to rectify his lack of “Agency’s prior written consent” to “lease a portion thereof”, but he
8 received little to no response from the Agency. Please see Exhibits “D” and “H” (ECF 1.1,
9 pages 21 to 24, and 30 to 32).

10 49. The Agency finally did respond when the issue was brought to their attention in
11 the review process of the Plaintiff’s refinancing of his mortgage. Despite the previous verbal
12 granting of that policy accommodation from the Agency, their knowledge of his handicap, a
13 medical directive from his physician recommending he be accommodated, and a right that was,
14 of should have been, granted under the FHA, commencing with an “Action Required” letter
15 dated October 26th 2017, the Defendants claimed Plaintiff Rice was in: “Violation under the
16 Limited Equity Home Ownership Below Market Rate Rate Program (“Program”)", and stated: “
17 ... you must terminate any lease of the Property, ... MOHCD may take enforcement action ...”.
18 Thus, by threat of enforcement action, the Defendants did interfere with and did extinguish
19 Plaintiff’s exercise and enjoyment of a right that was protected by the FHA at section 3604, and
20 in violation at section 3617 as explained below in his ‘First Cause of Action - Fair Housing Act
21 Violations’, ‘Claim II - FHA section 3617 Violation’ section of this Amended Complaint.
22 Please see Exhibits “E” and “I” (ECF 1.1, pages 25, and 33 & 34).

23 50. And, thereafter, the Defendants did refuse to grant Plaintiff’s request for his
24 reasonable and necessary disability related policy accommodation in violation of the FHA at
25 section 3604 as explained below in his ‘First Cause of Action - Fair Housing Act Violations’,
26 ‘Claim I - FHA section 3604 Violation’ section of this Amended Complaint.

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1 51. Remarkably, during the ordeal that brings rise to this case, the Defendants never
2 acknowledged to Plaintiff Rice his disability or his disabled status or the recommendation of his
3 physician that he be accommodated, or the fact that he had rights (most significantly, his
4 disability rights). Regarding his disability, his disabled status, and the recommendation of his
5 physician that he be accommodated, there is one (and only one) related response found in the
6 record which is in the Agency's 'Action Required' letter beginning at the third paragraph in
7 which they state: "We have received the September 19, 2017 letter provided by your primary
8 care physician.". Plaintiff Rice can find no record and has no memory of any other comment in
9 any form from the Defendants that is any kind of acknowledgement whatsoever of his disability
10 or his disabled status or his physician's recommendation that he be accommodated; and, again,
11 they never acknowledged, let alone inform him of, his rights - much to his astonishment,
12 disbelief, and dismay. If they did, again, it is not something Plaintiff Rice has been able to find
13 in the record and he has no memory of such. Please see Exhibit "T" (ECF 1.1, page 33).

14 52. Furthermore, the Defendants insisted that no such accommodation was needed
15 because the Plaintiff could have a person that utilized the space and amenities, and lived at the
16 Property with the Plaintiff as long as that person did so free of charge. In at least two phone
17 discussions Plaintiff Rice had with Ms. Yin he protested that solution as being inadequate,
18 insufficient, ineffective, and a situation that simply did not work with respect to assisting him
19 with the symptoms of his mental illness based on his own experiences of such (i.e. it would not
20 provide him an equal opportunity to use and enjoy the dwelling). And, In a 23 minute phone
21 discussion he had with Ms. Benjamin on January 23rd 2018 he repeated that protest more than
22 once and he did emphatically communicate to Ms. Benjamin that, by denying him the
23 accommodation he was requesting, the Agency was forcing upon him a living situation that was
24 isolating and lonesome which was emotionally, mentally, and psychologically unbearable for
25 him, and was effectively and/or tantamount to forcing him to sell his home and move.
26 Remarkably, no concern was expressed by the Defendants and their position did not change,
27 again, much to the Plaintiff's astonishment, disbelief, and dismay. Please see Exhibits "O", "P"
28 "Q", "R", and "S" (ECF 1.2, pages 8, 9, 10, 11, and 12).

1 53. The last paragraph of item 7 in a document provided by the U.S. Department of
2 Housing and Urban Development, Office of Fair Housing and Equal Opportunity entitled ‘Joint
3 Statement of the Department of Housing and Urban Development and the Department of Justice
4 *Reasonable Accommodations Under the Fair Housing Act*’, states: “There may be instances
5 where a provider believes that, while the accommodation requested by an individual is
6 reasonable, there is an alternative accommodation that would be equally effective in meeting the
7 individual’s disability-related needs. In such a circumstance, the provider should discuss with
8 the individual if she is willing to accept the alternative accommodation. However, providers
9 should be aware that persons with disabilities typically have the most accurate knowledge about
10 the functional limitations posed by their disability, and an individual is not obligated to accept
11 an alternative accommodation suggested by the provider if she believes it will not meet her
12 needs and her preferred accommodation is reasonable.” Please see Exhibit “U” (ECF 1.2, pages
13 14 to 31, item 7 quote is on page 21).

14 54. On October 19th 2017 and October 22nd 2017, Plaintiff Rice sent emails to Ms.
15 Gates-Anderson and Ms. Yin of the Agency, respectively, providing them a history of events,
16 which gave rise to the issue(s) in this case, and he informed them he was a disabled veteran and
17 that he fully expected to receive the necessary written permission to lease a portion thereof (he
18 did, of course, notify Agency personnel of his disability and disabled status many times prior to
19 these emails). On October 27th 2017 he sent an email to Ms. Yin, and copied Ms. Benjamin of
20 the Agency and Mr. Nagayama of the City Attorney’s office, stating in one form or another that
21 he was disabled and needed the requested policy accommodation due to his disability, disability
22 related need, and/or disabled status, and that it was his understanding that such accommodation
23 was mandated by the ADA. At that time, Plaintiff Rice was ignorant of disability rights in the
24 FHA and the California Fair Employment and Housing Act (hereinafter “the FEHA”). Please
25 see Exhibits “D”, “H” (ECF 1.1, pages 21 to 24, and 30 to 32), “L” (ECF 1.2, page 1).

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1 55. The Defendants’ response to Plaintiff’s ADA assertion was 1. in an email from
2 Ms. Yin dated November 1st 2017 (copied to Ms. Benjamin and Mr. Nagayama) she stated: “The
3 Americans with Disabilities Act (ADA) is not applicable to this situation.”, 2. “The permission
4 to rental of such units is against the nature of the Program.” [sic], 3. to refer Plaintiff Rice to the
5 Agency’s same accommodation available to persons in the Program with a work relocation
6 requirement or a financial hardship, and 4. in an email from Ms. Yin dated November 8th 2017
7 (copied to Ms. Benjamin and Mr. Nagayama) she stated: “The permission to rental of such units
8 is against the nature of the Program. Allowing a BMR owner to collect rental incomes is not the
9 reasonable accommodation we can make.” [sic] - all without explanation or elucidation of
10 disability rights in the FHA, the FEHA, or the ADA, or even informing him of the existence of
11 the FHA or FEHA. Please see Exhibits “L” and “V” (ECF 1.2, pages 2 & 3, and 32).

12 56. The Agency’s own rules allowed such accommodation to persons in the Program
13 with a work relocation requirement or a financial hardship. At the same time, the Agency
14 refused to make available such accommodation to a person with a mental handicap to alleviate
15 the symptoms of his or her mental illness which may be necessary for that person to have an
16 equal opportunity to use and enjoy the dwelling, for which, there is a public law, rule, or
17 regulation to do so. Please see Exhibit “L” (ECF 1.2, page 2).

18 57. From November 1st 2017 to January 23rd 2018, via phone calls and emails,
19 Plaintiff Rice made numerous requests and pleadings to Ms. Yin, and copied to Ms. Benjamin of
20 the Agency and to Mr. Nagayama of the City Attorney’s office and others, for an explanation
21 why and/or the legal basis for the Agency denying his request for accommodation with respect
22 to his disability, disability related need, and/or disabled status and their denial of the
23 applicability of the ADA. Please see Exhibits “L”, “O”, “P”, “Q”, “R”, “S”, “V”, “Y” and
24 “Z” (ECF 1.2, pages 1, 8, 9, 10, 11, 12, 33, 37, 38 to 40).

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1 58. Additionally, R. Michael Lieberman, an attorney and friend of Plaintiff Rice sent
2 a letter on his behalf to Ms. Yin (to be clear, Mr. Lieberman only committed to that letter as a
3 favor to Plaintiff Rice and is not representing him any further than that letter, or in this case, or
4 otherwise) seeking the same explanation as to the Agency’s position that the ADA did not apply.
5 In that letter, Mr. Lieberman states:

6 “I understand from Mr. Rice that you have asserted that the Americans with Disabilities
7 Act does not apply to his situation and that, therefore, a reasonable accommodation is not
8 required.

9 If that is, indeed, your position, please let me know. I would also ask that you let me
10 know the legal basis for your position so that I can advise Mr. Rice about his legal and other
11 options.”.

12 But, Ms. Yin failed to contact and discuss the matter with Mr. Lieberman even though she said
13 she tried to do so. In an email dated December 18th 2017 to Mr. Lieberman, she states:

14 “Our office is in receipt of your letter dated December 4, 2017 regarding a request for
15 reasonable accommodation on the above-referenced matter.

16 I have left a few messages to your office over the last couple of weeks in an attempt to
17 discuss the case with you. As mentioned in one of my voice mail to you, you might not have
18 received all correspondence between our office and Mr. Rice to fully understand the situation
19 and his rental request. [sic]

20 I am attaching our response to Mr. Rice’s rental request and related communications for
21 your reference.

22 Please feel free to contact me if you have any other questions.”.

23 Mr. Lieberman forwarded Ms. Yin’s email to Plaintiff Rice on December 19th 2017 and stated:

24 “See below. (I never received any calls. She may have called someplace else.)
25 All the best,”. Please see Exhibits “M” and “N” (ECF 1.2, pages 4 to 7).

26 59. In this ordeal, the Plaintiff’s mental health was deteriorating and he became
27 desperate and he needed to obtain assistance, legal advice, and so forth. So, Plaintiff Rice left
28 voicemails, and sent emails to Ms. Benjamin on January 13th, 17th, and 18th 2018 seeking a sit
down face to face meeting with her. In this ordeal, he was never afforded a sit down face to
face meeting with Ms. Benjamin or anyone else. However, he was afforded a 23 minute
discussion with Ms. Benjamin via a phone call on January 23rd 2018, which was far less than
what he needed. Please see Exhibits “O”, “P” “Q”, “R”, and “S” (ECF 1.2, pages 8, 9, 10, 11,
and 12).

1 60. During his phone discussion with Ms. Benjamin, Plaintiff Rice explained his
2 disability and the symptoms he suffered from that disability and, in-particular, his isolation and
3 loneliness. Despite his explanations and his pleadings, Ms. Benjamin, without any explanation,
4 was adamant that he would not be granted an accommodation. At least twice, Plaintiff Rice
5 requested and pleaded for an explanation of why the Agency was denying him an
6 accommodation and the legal basis for doing so, and for their legal basis for denying the
7 applicability of the ADA. Ms. Benjamin's one and only response was "Legal said so.". Ms.
8 Benjamin did go on to suggest to Plaintiff Rice that he could easily find someone to live at the
9 Property for free. Plaintiff Rice protested that solution and explained that a non rent paying
10 roommate situation did not work in alleviating him of his mental illness symptoms and it very
11 likely would create more problems (i.e. it would not provide him an equal opportunity to use
12 and enjoy the dwelling). Remarkably, Ms. Benjamin expressed no concern and remained
13 adamant that the Agency would not provide him the accommodation he needed, much to his
14 astonishment, disbelief, and dismay.

15 61. At all times, but in-particular from November 1st 2017 to January 23rd 2018, the
16 Agency's only responses to the Plaintiff's numerous requests for explanation as to why the ADA
17 did not apply were either (a). to refer Plaintiff Rice to the temporary work relocation
18 requirement or financial hardship accommodation available to people in the Program, or (b). no
19 response, and (c). once, verbally state: "Legal said so.". The Defendants did actively
20 "stonewall" all, (for emphasis) again, all the efforts of Plaintiff Rice to obtain necessary
21 information, assistance, and counseling from them which would have enabled him to obtain the
22 "reasonable and necessary disability related policy accommodation" under the FHA which he
23 desperately needed. The Defendants' stonewalling was the complete opposite of their
24 advertised services to protect vulnerable residents and protect rights; to provide legal services,
25 service connection, and counseling to citizens on matters relating to housing. Please see
26 Exhibits "L", "M", "N", "P", "Q", "T", "V", "Y", "W", and "Z" (ECF 1.2, pages 2 to 7, 9, 10,
27 13, 12, 32 to 35, 39 and 40).

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1 62. Despite Plaintiff’s numerous requests and pleadings for explanations, assistance,
2 legal advice, and counseling the Defendants never provided any that was even remotely
3 adequate or appropriate; in reality, they provided none. Nor did they direct or offer to direct
4 Plaintiff Rice to any “legal service” or “counseling”. And, they never provided Plaintiff Rice
5 information of their obligations and/or his rights under the ADA or the FHA or even inform him
6 of the existence of the FHA or the FEHA. Instead, the Defendants dismissed Plaintiff Rice, his
7 disability and the symptoms of his disability, his physician’s directive for him to be
8 accommodated, and his requests and pleadings as trivial and not worthy of their attention or
9 time with a readily visible deliberate indifference and a very reckless or callous disregard for his
10 wellbeing, mental health, and his rights. Any or all of which left Plaintiff Rice feeling rejected,
11 oppressed, dehumanized, depressed, empty, humiliated, and void of any hope for his existence
12 and future at his home of many years.

13 63. As stated in paragraphs 41 and 42, Plaintiff Rice was extremely, if not entirely,
14 reliant and dependent upon the Defendants for guidance and advice in all aspects of the
15 Property, his use of the Property, the Program, the Agreement, his disability rights, and so forth.
16 But, what he received was in stark contrast to that which the Defendants advertise as shown in
17 their MOHCD IDENTITY.pdf and on their website. Please see Exhibit “T” (ECF 1.2, page 13).

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1 64. When Plaintiff Rice received the Agency’s ‘Action Required’ letter he did have a
2 roommate that was working well, especially with relieving him from his severe and debilitating
3 isolation and loneliness. None the less, he did comply with the Agency’s demand that he “...
4 terminate any lease of the Property, ...”. Subsequently, his emotional, mental, and
5 psychological state began to deteriorate from the ordeal and from his isolation and loneliness at
6 home, to the point that he became overwhelmingly (if not completely) distressed, distraught,
7 and depressed. So much so, he could not think clearly as to the actions of the Defendants, their
8 unexplained insistence that the ADA did not apply, their complete lack of acknowledgement and
9 concern of his disability, wellbeing, mental health, pain, suffering, the humiliation he felt, and
10 his rights. Nor could he think clearly concerning what he could or should do. As such, he came
11 to believe that he had to “escape” in order to save himself, which was contrary to his desire to
12 keep the home he lived in for many years and to remain in the City of San Francisco, the only
13 home he ever owned and the only community that he was fully integrated into. Under great
14 despair and duress, Plaintiff Rice did sell the Property (“under protest”) and left. Remarkably,
15 the Defendants never acknowledged his “under protest” declaration, let alone engage him in any
16 discussion of that protest. Furthermore, Plaintiff Rice did communicate to the Defendants his
17 emotional, mental, and psychological condition and deterioration, remarkably, the Defendants
18 never expressed any acknowledgement or concern of such. As stated in paragraph 62, the
19 Defendants clearly demonstrated a deliberate indifference and a very reckless or callous
20 disregard for his wellbeing, mental health, and his rights. This, too, was extremely painful to
21 Plaintiff Rice on a deeply personal level, as in nobody cared about him - which made him feel
22 extremely isolated and lonely, and of no value. Please see Exhibits “J” (ECF 1.1, pages 35 to
23 38) “L”, “O”, “P”, “Q”, “X”, “Y”, and “Z” (ECF 1.2, pages 1 to 3, 8 to 10, 36, 37, 38 to 40).

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1 65. As a result, Plaintiff Rice and his life was severely disrupted, destabilized, and
2 displaced; he did lose his affordable home of fourteen plus years, unable to afford housing in
3 San Francisco he had to leave his community of thirty-nine plus years and bear the related
4 personal property losses and moving expenses; and he did suffer, and continues to suffer, severe
5 and intense emotional, mental, and psychological trauma, mental stress (at times consuming),
6 stress related physical symptoms, humiliation, and a plethora of related or associated negative
7 feelings or conditions, any and all of which is indelible and for which there is little, if anything,
8 he can do to relieve himself from, which would not harm him or his life.

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PROCEDURAL BACKGROUND

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2 66. As required by the Fair Housing Act at 42 U.S.C. sections 3610(a) and (b), the
3 Fair Housing and Equal Opportunity enforcement division of the Department of Housing and
4 Urban Development conducted an investigation of the complaint made by Plaintiff Rice,
5 attempted conciliation without success, and prepared a final investigative report. Based on the
6 information gathered in their investigation and pursuant to 42 U.S.C. section 3610(g), they
7 determined that their office lacked jurisdiction under applicable fair housing laws. Plaintiff
8 disagrees and, therefore, elects to file suit in federal district court as the HUD could not or did
9 not obtain voluntary compliance. Please see Exhibit “AA” (ECF 1.3).

10 67. Statute of limitations pertaining to this case is 2 years at FHA section 3613.(a),
11 and for the ADA and section 1983, likely 3 years at California Code of Civil Procedures 338.(a).
12 Plaintiff Rice contends the Court should recognize May 4, 2018 (the close of escrow of the
13 Property’s sale) as the appropriate accrual date, as that date was “The Point of No Return” and
14 the end of the Plaintiff’s possession to the Property, before which Plaintiff Rice may have had
15 opportunity to save the Property and, thus, use of the Property.

16 68. The Plaintiff’s issues that bring rise to this case were in administrative
17 proceedings for a total of 227 days. Number of days (including start dates and end dates)
18 between May 8th 2018 and the filing of the Original Complaint on July 24th 2019 is 447 days.
19 $447 - 268 = 179$ divided by 30 = 5.967 months. Plaintiff Rice timely filed his Original
20 Complaint for his FHA, ADA, and Civil Rights Act claims.

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FIRST CAUSE OF ACTION
FAIR HOUSING ACT VIOLATIONS
(Claims Against All Defendants)

69. Plaintiff Rice claims the Defendants engaged in a discriminatory housing practice against him that was unlawful under sections 3604 and 3617 of the FHA; and, from which, Plaintiff Rice suffered and continues to suffer damage and injury to himself and his property.

70. Although the claimed discriminatory housing practice of the Defendants towards Plaintiff Rice occurred after he completed the purchase of the Property, the 9th Circuit Court of Appeals in *Committee Concerning Community Improvement v. Modesto (CCCI)*, 583 F. 3d 690 (9th Circuit 2009), held that discrimination for the purposes of the FHA does include post-acquisition discrimination. “In our view, the FHA does apply to post-acquisition discrimination, and the District Court erred in deciding otherwise.” (*CCCI*, at 714). While the FHA might not reach all post-acquisition discrimination, the Defendants were not like regular sellers who, having completed the sale, relinquish all post-acquisition control of the property. In fact, this case arises because the Defendants retained considerable post-acquisition control over, among other things, who could live in the Property and under what conditions. The control that the Defendants retained in the post-acquisition period puts them more in the role of a landlord than that of a traditional seller and their post-acquisition actions should be subject to the dictates of the FHA as the 9th Circuit held.

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Claim I - FHA Section 3604 Violation

71. To prevail under a FHA discrimination claim the plaintiff has to be a “person with a handicap” within the meaning of 42 U.S.C. section 3602. 42 U.S.C. section 3602. Definitions, As used in this subchapter—part (h), states: “Handicap” means, with respect to a person—(1) a physical or mental impairment which substantially limits one or more of such person’s life activities, (2) a record of having such impairment, or (3) being regarded as having such impairment. Plaintiff Rice, as described above in paragraphs 23 and 24, and as verified by the United States Department of Veterans Affairs and by his physician, is a person with a handicap per the FHA definition. Please see Exhibits “A” and “E” (ECF 1.1, pages 2 and 25).

72. The Defendants knew of Plaintiff’s handicapped status and handicap because he communicated such verbally by phone and in writing a number times to Ms. Horner and Mr. Sobel of the Agency early on, to Mr. Smith of the Agency earlier on, and throughout this ordeal to Ms. Gates-Anderson and Ms. Yin and Ms. Benjamin of the Agency, and Mr. Nagayama of the City Attorney’s office. One of Plaintiff’s emails to the Agency included a pdf of a letter from his physician that informed them of his handicap and his handicapped status and recommended he be accommodated, which she mailed separately to the Agency and which they acknowledged receipt of. Please see Exhibits “C”, “D”, “E”, “H”, “I” (ECF 1.1, pages 20, 21 to 24, 25, and 33 & 34), and “L” (ECF 1.2, page 1).

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1 73. To prevail under a FHA discrimination claim the accommodation must be
2 necessary to afford the person with a handicap an equal opportunity to use and enjoy the
3 dwelling. The policy accommodation requested by Plaintiff Rice was necessary to afford him
4 an equal opportunity to use and enjoy the Property (his home) because he suffers severe and
5 debilitating isolation and loneliness due to his mental handicap, which is significantly relieved
6 when he has the company of another person in normal circumstances. The accommodation
7 required by Plaintiff Rice at the Property for his particular mental handicap was a roommate in
8 the normal sense (i.e. roommate pays rent and utilizes the space and amenities, and lives at the
9 Property with the Plaintiff). Not for reasons of finance, but, quite simply, because a rent paying
10 roommate was effective in assisting Plaintiff Rice with his mental handicap and other solutions
11 were not. Furthermore, Plaintiff Rice had no other appropriate person such as a friend,
12 significant other, or relative to live with him in a normal circumstance at the Property. As such,
13 there was no other viable solution available to enable him an equal opportunity to use and enjoy
14 the Property.

15 74. To Plaintiff Rice a roommate who pays his or her own way is like an equal, a
16 companion, someone who shares in the rights and responsibilities of the dwelling. A roommate
17 who lives for free is like a parasite, or a leech getting fat while sucking the blood of it's host;
18 a person who enjoys an exaggerated standard of living, luxuriating in rights to the shared living
19 space while shouldering none of the responsibilities of the dwelling. In the mind of Plaintiff
20 Rice, a paying roommate was a companion while a non-paying roommate was more like invited
21 vermin. Inviting vermin into his home was unlikely to relieve Plaintiff Rice from the symptoms
22 of his mental illness, and, in some ways, it was likely to make them worse.

23 75. Plaintiff Rice understands that this distinction between how a rent paying
24 roommate would alleviate him from the symptoms of his mental illness, while a non-rent paying
25 roommate would not, may seem strange to some people, but that is the nature of suffering from
26 a mental illness; experiencing thoughts and feelings that seem inexplicable to other people.

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1 79. The Defendants knew of Plaintiff's handicapped status and handicap because he
2 communicated such verbally by phone and in writing a number times to Ms. Horner and Mr.
3 Sobel of the Agency early on, to Mr. Smith of the Agency earlier on, and throughout this ordeal
4 to Ms. Gates-Anderson and Ms. Yin and Ms. Benjamin of the Agency, and Mr. Nagayama of the
5 City Attorney's office. One of Plaintiff's emails to the Agency included a pdf of a letter from
6 his physician that informed them of his handicapped status and handicap and recommended he
7 be accommodated, which she mailed separately to the Agency and which they acknowledged
8 receipt of. Please see Exhibits "C", "D", "E", "H", "I" (ECF 1.1, pages 20, 21 to 24, 25, and 33
9 & 34), and "L" (ECF 1.2, page 1).

10 80. To prevail under a FHA section 3617 discrimination claim it is required that the
11 Defendants coerced, intimidated, threatened, or interfered with Plaintiff Rice in his exercise or
12 enjoyment of a right granted or protected within the meaning of 42 U.S.C. section 3617. 42
13 U.S.C. section 3617. Interference, coercion, or intimidation, states: It shall be unlawful to
14 coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on
15 account of his having exercised or enjoyed, or on account of his having aided or encouraged any
16 other person in the exercise or enjoyment of, any right granted or protected by section 3603,
17 3604, 3605, or 3606 of this title. When Plaintiff Rice received the Agency's 'Action Required'
18 letter he did have a roommate that was working well, especially with relieving him of his severe
19 and debilitating isolation and loneliness symptoms. Plaintiff Rice received his reasonable and
20 necessary disability related policy accommodation to have a rent paying roommate from Ms.
21 Horner of the Agency in the latter part of 2008 (possibly the early part of 2009). And, that right
22 was protected by the FHA at section 3604. Please see Exhibit "F" (ECF I.1, pages 26 & 27).

23 81. The Defendants' did threaten and interfere with the Plaintiff's exercise and
24 enjoyment of a right protected by section 3604 of the FHA because in their 'Action Required'
25 letter dated October 26th 2017 they forced Plaintiff Rice to terminate his roommate situation by
26 threat of enforcement action against him for not having "written consent" to "lease a portion
27 thereof". Please see Exhibit "I", and "J" (ECF 1.1, pages 33 & 34, 35 to 38).

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SECOND CAUSE OF ACTION

TITLE II OF THE AMERICANS WITH DISABILITIES ACT VIOLATION

(Claim Against All Defendants)

82. Plaintiff Rice claims the Defendants engaged in a discriminatory practice by a public entity against him that was unlawful under section 12132 of the ADA; and, from which, Plaintiff Rice suffered and continues to suffer damage and injury to himself and his property.

83. This claim is with respect to excluding from or denying Plaintiff Rice the benefits of the services, programs, or activities of the Agency (a public entity) and subjecting him to discrimination.

84. To prevail under an ADA discrimination claim the plaintiff has to be an “individual with a disability” within the meaning of 42 U.S.C. section 12102. 42 U.S.C. section 12102. Definition of disability, As used in this chapter: part (1) Disability, states: The term “disability” means, with respect to an individual— (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of having such impairment; or (C) being regarded as having such an impairment (as described in paragraph (3)). Plaintiff Rice, as described above in paragraphs 23 and 24, and as verified by the United States Department of Veterans Affairs and by his physician, is an individual with a disability per the ADA definition. Please see Exhibits “A” and “E” (ECF 1.1, pages 2 and 25).

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1 85. To prevail under an ADA section 12132 discrimination claim the plaintiff has to
2 be a “qualified individual with a disability” within the meaning of 42 U.S.C. section 12131. 42
3 U.S.C. section 12131. Definitions - As used in this subchapter:, part (2) Qualified individual
4 with a disability states: The term "qualified individual with a disability" means an individual
5 with a disability who, with or without reasonable modifications to rules, policies, or practices,
6 the removal of architectural, communication, or transportation barriers, or the provision of
7 auxiliary aids and services, meets the essential eligibility requirements for the receipt of services
8 or the participation in programs or activities provided by a public entity. Outlined in the
9 MOHCD IDENTITY.pdf are various services, programs, and activities provided by the Agency.
10 In the subsection ‘CREATE’, it states: “Affordable Home Ownership”; in the subsection
11 ‘PROTECT’ under “Vulnerable Residents”, it states: “Legal Services” and “Service
12 Connection”; in the subsection ‘EMPOWER’ under ‘People Seeking Housing’, it states:
13 “Counseling”; and on the Agency’s website, it states: “Promote Self-Sufficiency for All &
14 Protect Rights”. Plaintiff Rice, met the essential eligibility requirements for the receipt of
15 services and participation in programs and activities provided by the Agency because 1. he was
16 a resident of the City and County of San Francisco, 2. he was in possession of an affordable
17 home provided by and in a program of the Agency, 3. as an individual with a disability he was a
18 vulnerable resident in need of legal services and service connection, 4. he was a person seeking
19 to preserve his home (i.e. seeking housing) in need of counseling, and 5. He was a person
20 seeking to protect his rights. For the reasons stated and as shown by the record of
21 communications between Plaintiff Rice and the Agency, and the Agreement, Plaintiff Rice was a
22 “qualified individual with a disability” per the ADA definition. Please see Exhibits “B”, “C”,
23 “D”, “H”, (ECF 1.1, pages 4 to 19, 20, 21 to 24, and 30 to 32), “L”, and “T” (ECF 1.2, pages 1
24 to 3, and 13).

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1 86. To prevail under an ADA section 12132 discrimination claim the defendant entity
2 has to be a “public entity” within the meaning of 42 U.S.C. section 12131. 42 U.S.C. section
3 12131. Definitions - As used in this subchapter:, part (1) Public entity, states: The term “public
4 entity” means— (A) any State or local government; (B) any department, agency, special
5 purpose district, or other instrumentality of a State or States or local government; and (C) ...
6 Because the Agency is an agency of a local government (the City and County of San Francisco),
7 the Agency is a public entity per the ADA definition. Additionally, the City and County of San
8 Francisco is a local government and, thus, it is a public entity per the ADA definition.

9 87. The Defendants knew that Plaintiff Rice was an “individual with a disability”
10 because he communicated such verbally by phone and in writing a number times to Ms. Horner
11 and Mr. Sobel of the Agency early on, to Mr. Smith of the Agency earlier on, and throughout
12 this ordeal to Ms. Gates-Anderson and Ms. Yin and Ms. Benjamin of the Agency, and Mr.
13 Nagayama of the City Attorney’s office. One of Plaintiff’s emails to the Agency included a pdf
14 of a letter from his physician that informed them of his disabled status and disability, which she
15 mailed separately to the Agency and which they acknowledged receipt of. Please see Exhibits
16 “C”, “D”, “E”, “H”, “I” (ECF 1.1, pages 20, 21 to 24, 25, and 33 & 34), and “L” (ECF 1.2,
17 pages 1 to 3).

18 88. The Defendants knew that Plaintiff Rice was a “qualified individual with a
19 disability” because 1. as described in paragraph 87, they were fully cognizant that he was an
20 “individual with a disability”, 2. they were fully cognizant that he was in receipt of the Agency’s
21 services and was a participant in a program of the Agency as shown by the record of
22 communications between Plaintiff Rice and the Agency, and by the Agreement, and 3. he
23 communicated to them numerous times that he was seeking or in need of legal information or
24 counseling as shown by the record of requests and pleadings which Plaintiff Rice made to the
25 Agency.. Please see Exhibits “C”, “D”, “H”, (ECF 1.1, pages 20, 21 to 34, and 30 to 32), “L”,
26 “O”, “P”, “Q”, “R”, “S”, “T”, and “V” (ECF 1.2, pages 1 to 3, 8 to 13, and 32&33).

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1 89. To prevail under an ADA section 12132 discrimination claim the Defendants had
2 to have discriminated against Plaintiff because of his disability. 42 U.S.C. section 12132.
3 Discrimination, states: Subject to the provisions of this subchapter, no qualified individual with
4 a disability shall, by reason of such disability, be excluded from participation in or be denied the
5 benefits of the services, programs, or activities of a public entity, or be subjected to
6 discrimination by any such entity. The Defendants did discriminate against Plaintiff Rice by
7 reason of his disability because, despite his exhaustive efforts to obtain from them assistance or
8 legal advice of the kind that they advertise they provide, or just an explanation of their
9 reasoning, the Defendants refused any assistance and withheld from him participation in or
10 excluded him from the legal and housing related counseling services and the protection or rights
11 which they advertise to offer to the general public. As is clear from their communications with
12 Plaintiff Rice, Defendants denied him these services, which they offered to persons without
13 disabilities, because to offer him the assistance he needed by way of their services, would have
14 required them to make an accommodation or a change to their programs, which they saw as
15 changing the way they viewed the Program and it's goals; in other words, they refused him these
16 services because he was disabled.

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THIRD CAUSE OF ACTION

CIVIL RIGHTS ACT CAUSES OF ACTION

(Claim Against the Defendant Employees, Jointly and Severally)

(hereinafter collectively referred to as “Defendants”)

Claim I - Civil Rights Act Section 1983 Cause of Action

90. 42 U.S.C section 1983 establishes a cause of action for any person who has been deprived of rights secured by the Constitution or laws of the United States by a person acting under color of state law. A plaintiff must prove that (1) the conduct was committed by a person acting under color of state law and (2) that as a result of this conduct plaintiff was deprived of rights, privileges or immunities secured by the Constitution or the laws of the United States.

91. To prevail under a civil action for deprivation of rights under 42 U.S.C section 1983 a person must be acting under color of state law within the meaning of 42 U.S.C. section 1983. The Agreement at Section 2. Recitals., states: 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; ... The San Francisco Board of Supervisors established the San Francisco Redevelopment Agency in 1948, pursuant to the California Health and Safety Code, Division 24. Community Development and Housing, Part 1. Community Redevelopment Law, sections 33000-33964. The Defendants did act under color of state law because the Agency is part of the city government, and exercises its powers as a subdivision of the state of California and the Defendants did use that authority to enforce a regulation or custom of the Agency against Plaintiff Rice as can be seen in their ‘Action Required’ letter and from the record of denials, demurs, and ignored requests which Plaintiff Rice made to the Agency. Furthermore, two of the Defendants were the City Attorney and the Deputy City Attorney (Mr. Herrera and Mr. Nagayama, respectively) and another was the Mayor of the City of San Francisco (Ms. Breed) whose duties include enforcing laws. And, the very conduct that gives rise to this case was committed under color of state law. Please see Exhibit “B” and “T” (ECF 1.1, pages 4, 33 & 34).

1 92. To prevail under a civil action for deprivation of rights under 42 U.S.C section
2 1983 the conduct committed by a person acting under color of state law must result in the
3 deprivation of a right of the Plaintiff secured by the Constitution or the laws of the United States
4 within the meaning of 42 U.S.C section 1983. Plaintiff Rice was a citizen of the United States,
5 and was disabled as verified by the United States Department of Veterans Affairs and by his
6 physician, which the Defendants knew. The Defendants did deprive Plaintiff Rice of his rights
7 secured by the laws of the United States because 1. the Defendants acting under color of state
8 law did interfere with his exercise of and then did refuse Plaintiff Rice a reasonable and
9 necessary disability related policy accommodation which deprived him of his rights under the
10 FHA, and 2. the Defendants, acting under color of state law and by reasons of the Plaintiff’s
11 disability, did prevent him from participating in or did exclude him from the services, programs,
12 or activities of the Agency which deprived him of his rights under the ADA. In both the FHA
13 and the ADA cases, the deprivation of the Plaintiff’s rights was the deprivation of rights secured
14 by laws of the United States. Please see Exhibits “A” and “E” (ECF 1.1 pages 2 and 25), and
15 paragraphs 69 to 89 above.

16 **Claim II - Civil Rights Act Section 1985.(2) Cause of Action**

17 93. 42 U.S.C. section 1985.(2) establishes a cause of action for any person who has
18 been subjected to a conspiracy with intent to deny that person the equal protection of the laws or
19 to injure that person or their property. A plaintiff must prove that two or more persons
20 conspired for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the
21 due course of justice in any State or Territory, with intent to deny the plaintiff the equal
22 protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to
23 enforce, the right of the plaintiff to the equal protection of the laws.

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1 94. The Defendants did conspire with intent to deny Plaintiff Rice the equal
2 protection of the laws or to injure him or his property because three of the Defendants were
3 involved in the direct communications with Plaintiff Rice throughout this ordeal (actively by
4 Ms. Yin and Ms. Benjamin, passively by Mr. Nagayama), and which is clear from the nature of
5 the accommodation first enjoyed and then sought by Plaintiff Rice, and clear by the
6 relationships between of the Defendants, and clear that the matter was in the interest of all of the
7 Defendants, that all of the Defendants worked in cooperation and in agreement with one another
8 as shown by the record of communications between the Defendants and Plaintiff Rice, by Ms.
9 Benjamin's statement "Legal said so." to Plaintiff Rice, and elsewhere.

10 95. In his 'Civil Rights Act Causes of Action' claims I and II, Plaintiff Rice claims
11 the Defendants 1. while acting under color of state law, did deprive him of his rights secured by
12 the laws of the United States, and 2. did conspire with intent to deny him the equal protection of
13 the laws or to injure him or his property, respectively, and he claims from either or both claims,
14 he suffered and continues to suffer damage and injury to himself and to his property.

15 **IN SUMMATION**

16 96. The Defendants did violate the Fair Hosing Act, they did violate the Americans
17 with Disabilities Act, they did deprive Plaintiff Rice of his rights under color of state law and
18 they did conspire with intent to deny him equal protections of the law and did injure him and his
19 property in his attempt to enforce his right to equal protection of the laws as covered by the
20 Civil Rights Act - any and all of which was against Plaintiff Rice and his rights under federal
21 law, and, from which, he suffered and continues to suffer damage and injury to himself and to
22 his property for which he is entitled relief under federal law. Thus, Plaintiff's Prayer for Relief,
23 as follows, to this United States District Court, Northern District of California, San Francisco
24 Division, Courtroom B, the Honorable Magistrate Judge Laurel Beeler presiding.

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PLAINTIFF’S PRAYER FOR RELIEF

WHEREFORE, Plaintiff Allison Barton Rice requests that this Court:

97. Consider fully 1. Plaintiff’s disability, 2. Plaintiff’s veteran status, 3. Plaintiff’s exhaustive effort to resolve this case before proceeding to this court, 4. the significant power and positions of the Defendants as public authorities in housing, law, and government, 5. the knowledge and skills possessed by the Defendant employees, individually and collectively, 6. the Defendants’ deliberate indifference and/or the reckless or callous disregard for Plaintiff’s wellbeing, mental health, and his rights, 7. the readily foreseeable consequences from the conduct of the Defendants, 8. the great wealth, resources, and wherewithal of the City and County of San Francisco, and, of course, 9. the devastation to Plaintiff Rice and his property from which he suffered and continues to suffer due to the conduct of the Defendants.

As to the First Cause of Action

98. Declare that Defendants’ discriminatory housing practices violate the Fair Housing Act as set forth above.

99. Enjoin and restrain Defendants, their officers, employees, agents, successors, and all other persons or corporations in active concert or participation with Defendants, from:

(a). Discriminating 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 with such dwelling, because of disability pursuant to 42 U.S.C. section 3604(f)(2);

(b). Refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling pursuant to 42 U.S.C. section 3604(f)(3)(B); and

(c). Coercing, intimidating, threatening, or interfering 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 42 U.S.C. section 3603, 3604, 3605, or 3606 pursuant to 42 U.S.C. section 3617.

As to the Second Cause of Action

100. Declare that Defendants' discriminatory practices in their services, programs, or activities violate the Americans with Disabilities Act as set forth above.

101. Enjoin and restrain Defendants, their officers, employees, agents, successors, and all other persons or corporations in active concert or participation with Defendants, from discriminating in the services, programs, or activities of a public entity, or otherwise making unavailable or denying, a user of such services, programs, or activities because of disability, or subject such person to discrimination pursuant to of 42 U.S.C. section 12132.

As to the Third Cause of Action

102. Hold Defendant employees jointly and severally responsible, and declare that Defendant employees' conduct was a cause of action pursuant to sections 1983 and/or 1985(2) of the Civil Rights Act as set forth above.

103. Enjoin and restrain Defendant employees, and all other persons or corporations in active concert or participation with Defendant employees, from any and all acts of deprivation of rights under color of state law and from conspiring with intent to deny any person the equal protection of the laws or to injure that person or their property for lawfully enforcing, or attempting to enforce, the right of that person to the equal protection of the laws pursuant to of 42 U.S.C. sections 1983 and 1985(2).

As to All Causes of Action

104. Order Defendants to take such actions as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of their unlawful conduct, including implementing policies & procedures to ensure that no applicant or resident or participant of Defendants' services, programs, or activities are discriminated against due to disability, including developing and implementing plans to train all employees, subcontractors, or other persons involved in any of the Defendants' housing related programs on how to properly recognize and accommodate persons with mental disabilities.

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1 105. Order the creation of an independent accommodation review board to review all
2 requests for disability accommodation(s) in any housing related program(s) in which the
3 Defendants have control over terms, rules, or conditions, said board to have the power to
4 overrule accommodation denials.

5 106. Order Defendants to take such affirmative steps as may be necessary to restore,
6 as nearly as practicable, Plaintiff Rice to the position he would be in but for their actions and/or
7 conduct,

8 107. Award monetary damages to Plaintiff Rice pursuant to 42 U.S.C. section 3613(c)
9 and/or section 12133 and/or section 1988 as follows:

10 (a). Compensatory economic damages in the amount of;

11 (1). \$15,000.00 for loss of personal property incurred by logistical
12 limitations in the course of Plaintiff Rice vacating the Property;

13 (2). \$5,000.00 for moving costs incurred to transport his remaining
14 personal property.

15 (3). \$250,560.00 for current and future monetary expense incurred by
16 the loss of what was an affordable housing unit (the Property), conservatively, reasonably, and
17 predictably determined as follows:

18 (A). Expected remaining life of Plaintiff Rice at time of loss,
19 18 years (to age 82),

20 (B). \$289,440.00 for housing costs for 18 years at the Property
21 (HOA fees, insurance expense, and mortgage interest, \$1,340.00 per month x 12 x 18),

22 (C). \$540,000.00 for fifty percent (50%) housing costs
23 (\$2,500.00 per month) for similar and comparable property (two bedroom, \$5,000 per month)
24 located in same or similar and comparable neighborhood of San Francisco and shared with a
25 roommate for 18 years (\$2,500.00 x 12 x 18),

26 (D). (C) minus (B) equals \$250,560.00; or

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1 (E). Provide Plaintiff Rice with a Below Market Rate unit,
2 comparable to the one he was forced to sell, with the Agency's written consent to lease a portion
3 thereof, and \$55,680.00 (4 years of monetary expense incurred by loss of the Property).

4 (b). Compensatory non-economic damages in the amount of \$2,700,000.00
5 for the wholly unwanted severe and intense emotional, mental, and psychological trauma and
6 stress, and the stress related physical symptoms; a loss in the joy of living; severe disruption,
7 destabilization, displacement, and humiliation; and any other pains or sufferings or deprivations
8 not stated here, suffered by Plaintiff Rice due to the conduct of the Defendants.

9 108. Award punitive damages to Plaintiff Rice pursuant to 42 U.S.C. section 3613(C)
10 and/or section 12133 and/or section 1988 in the amount of \$24,300,000.00 for the
11 reprehensibility of the Defendants' conduct; consideration of such should include the 1.
12 Defendants' overwhelming power held over Plaintiff Rice, 2. Defendants' knowledge and skills
13 and positions in housing, law, and government, 3. Defendants' unwarranted actions, 4.
14 Defendants' foreseeability of the damage and injury that did and/or would occur to Plaintiff
15 Rice, 5. Defendants' deliberate indifference and/or reckless or callous disregard for the
16 wellbeing, mental health, and rights of Plaintiff Rice, 6. Defendants' obvious lack of
17 compunction, 7. Defendants' actions under color of state law, 8. Defendants' conspiratorial
18 actions, 9. Defendants' disregard for federal laws, the equal protection of the laws, and justice
19 under the law, 10. Defendants' other conduct, conditions, circumstances, or particulars which
20 may be obvious or known to this court but not stated here; and 11. to deter such behavior by the
21 Defendants and other similar persons and entities within the City and County of San Francisco,
22 the State of California, and the United States of America.

23 109. Order such additional relief as the interests of justice require.

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25 Dated: November 10th 2019

Respectfully Submitted,

26 By: /s/ Allison Barton Rice

27 Allison Barton Rice, Plaintiff in pro per

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