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 8 CITY AND COUNTY OF SAN FRANCISCO,  
 MAYOR LONDON BREED, KATE HARTLEY,  
 9 MARIA BENJAMIN, CISSY YIN, DENNIS HERRERA,  
 AND KEITH NAGAYAMA<sup>1</sup>

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 ALLISON BARTON RICE, AN INDIVIDUAL,

13 Plaintiff,

14 vs.

15 THE CITY AND COUNTY OF SAN FRANCISCO;  
 16 LONDON BREED, MAYOR OF THE CITY OF  
 SAN FRANCISCO; KATE HARTLEY, DIRECTOR  
 17 OF THE SAN FRANCISCO MAYOR’S OFFICE OF  
 HOUSING AND COMMUNITY DEVELOPMENT;  
 18 MARIA BENJAMIN, DIRECTOR OF  
 HOMEOWNERSHIP & BELOW MARKET RATE  
 19 PROGRAMS SAN FRANCISCO MAYOR’S  
 OFFICE OF HOUSING AND COMMUNITY  
 20 DEVELOPMENT; CISSY YIN,  
 HOMEOWNERSHIP & BELOW MARKET RATE  
 21 PROGRAMS COMPLIANCE MANAGER SAN  
 FRANCISCO MAYOR’S OFFICE OF HOUSING  
 22 AND COMMUNITY DEVELOPMENT; DENNIS  
 HERRERA, SAN FRANCISCO CITY ATTORNEY;  
 23 KEITH NAGAYAMA, SAN FRANCISCO CITY  
 DEPUTY ATTORNEY AND DOES 1 THROUGH  
 24 50,

25 Defendants.

Case No. 3:19-cv-04250-LB

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

Hearing Date: January 9, 2020  
 Time: 9:30 a.m.  
 Place: 450 Golden Gate Avenue  
 Courtroom B – 15th Floor  
 San Francisco, CA 94102

Trial Date: Not Set

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 28 <sup>1</sup> The individually named Defendants hereby respond solely in their official capacity.

**INTRODUCTION**

Allison Rice (“Plaintiff”) brings his First Amended Complaint against the City and County of San Francisco (“the City”) and Mayor London Breed, Kate Hartley, Maria Benjamin, Cissy Yin, Dennis Herrera, and Keith Nagayama (collectively “Defendants”), alleging violations of the Fair Housing Act, Americans with Disabilities Act, and Civil Rights Act. Defendants moved to dismiss all claims for failure to state a claim. Plaintiff filed an Opposition to Defendants’ Motion to Dismiss (hereinafter “Plaintiff’s Opposition”). For the reasons set forth in Defendants’ moving papers and below, the Court should dismiss all of Plaintiff’s claims

**LEGAL STANDARD AND FACTUAL BACKGROUND**

The relevant legal standard and factual background was set forth in Defendants’ moving papers found at ECF No. 50 at 2-4.

**ARGUMENT**

**I. PLAINTIFF’S AMENDED COMPLAINT DOES NOT CURE DEFICIENCIES FROM HIS ORIGINAL COMPLAINT**

**A. Plaintiff’s Fair Housing Act Claim**

Defendants did not discriminate against Plaintiff in any way. Plaintiff fails to plead any facts to the contrary. The underlying act taken by Defendants that Plaintiff takes issue with is that they denied his request for a rent-paying roommate. The standard to assert a claim under the Fair Housing Act (“FHA”) is set forth in Defendants’ moving papers. ECF No. 50 at 5-6. As set forth in the letter to Plaintiff from Cissy Yin of the Mayor’s Office denying his request, the reason he was denied a rent-paying roommate was because he did not qualify for a financial hardship exemption. ECF NO. 1-1 at 33-34. Plaintiff cannot identify one fact indicating that the denial was because of a disability. Plaintiff simply making the conclusory allegation, without any supporting evidence, that the denial was because of his disability is insufficient to state a claim against Defendants. Plaintiff has failed to cure the deficiency from his original Complaint regarding his FHA claim. Therefore, the Court should dismiss Plaintiff’s FHA claim as to all Defendants with prejudice.

**B. Plaintiff’s Americans With Disability Act Claim**

Defendants’ denial of Plaintiff’s request for a rent-paying roommate was based on his failure to qualify for a financial hardship exemption, not because of his disability. ECF NO. 1-1 at 33-34. In

1 Plaintiff's First Amended Complaint and his Opposition to Defendants' Motion to Dismiss, Plaintiff  
2 attempts to expand the alleged misconduct of Defendants under the Americans With Disabilities Act  
3 ("ADA") to a refusal to provide legal services to Plaintiff for assistance with his complaints that he  
4 had been discriminated against with regard to the denial of the paying roommate. The standard to  
5 assert an ADA claim was set forth in Defendants' moving papers. ECF No. 50 at 7. Once again,  
6 Plaintiff fails to state a claim. Defendants did not deny Plaintiff any services to which he was entitled  
7 on the basis of any disability. Ms. Yin explained why the ADA did not apply to Plaintiff's request for  
8 a rent-paying roommate. ECF 1-2 at 34-35. The facts show that Plaintiff was not denied any services  
9 to which he was entitled, he just simply was dissatisfied with the explanation given as to why he was  
10 not entitled to them. Therefore, Plaintiff's ADA claim should be dismissed with prejudice as to all  
11 Defendants.

12 **II. PLAINTIFF'S CIVIL RIGHTS CLAIMS FAIL BECAUSE DEFENDANTS DID NOT**  
13 **DISCRIMINATE AGAINST HIM**

14 Plaintiff asserted violations of 42 U.S.C § 1983 and 1985<sup>2</sup>. The standard for a violation of 42  
15 U.S.C. § 1983 claim are set forth in Defendants' moving papers. ECF No. 50 at 7-8. Without an  
16 underlying constitutional violation, a § 1983 cannot survive. Here, Plaintiff fails to state a claim under  
17 the FHA and ADA. Therefore, he fails to state a claim under § 1983. As such, Plaintiff's First  
18 Amended Complaint should be dismissed with prejudice as to all Defendants.

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26 <sup>2</sup> Plaintiff identified § "1985.(2)" in his First Amended Complaint and conceded in his  
27 Opposition to Defendant's Motion to Dismiss that he erred in identifying that section, instead noting  
28 that he will later request from the Court a Leave to Amend to correct that error. ECF No. 52 at 38.  
Defendants request the Court dismiss Plaintiff's erroneously filed § "1985.(2)" claim based on  
Plaintiff's representations in his Opposition.

**CONCLUSION**

1  
2 For all the foregoing reasons, the Court should dismiss Plaintiff's First Amended Complaint  
3 with prejudice.  
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5 Dated: December 16, 2019

6 DENNIS J. HERRERA  
7 City Attorney  
8 CHERYL ADAMS  
9 Chief Trial Deputy  
10 KELLY COLLINS  
11 Deputy City Attorney

12 By:                   /s/ Kelly Collins                    
13 KELLY COLLINS

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