

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

ALLISON BARTON RICE,

Plaintiff,

v.

CITY AND COUNTY OF SAN  
FRANCISCO, et al.,

Defendants.

Case No. 19-cv-04250-LB

**ORDER GRANTING MOTION TO  
DISMISS**

Re: ECF No. 50

**INTRODUCTION**

The plaintiff Allison Barton Rice sued the City and County of San Francisco and various public officials (collectively, the “CCSF”) for their alleged discrimination against him (based on his disability) when they denied him permission to have a rent-paying roommate in his below-market-rate condominium.<sup>1</sup> The court dismissed the plaintiff’s earlier complaint for failure to state

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<sup>1</sup> Compl. – ECF No. 1; First Amend. Compl. (“FAC”) – ECF No. 49 (naming the following defendants: the City and County of San Francisco; London Breed, Mayor of San Francisco; Kate Hartley, Director of the San Francisco Mayor’s Office of Housing and Community Development; Maria Benjamin, Director of Homeownership & Below Market Rate Programs, San Francisco Mayor’s Office of Housing and Community Development; Cissy Yin, Homeownership & Below Market Rate Programs Compliance Manager, San Francisco Mayor’s Office of Housing and Community Development; Dennis Herrera, San Francisco City Attorney; and Keith Nagayama, Deputy City Attorney). Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 a claim under Federal Rule of Civil Procedure 12(b)(6) because the plaintiff did not plausibly  
 2 plead that the defendants denied him a rent-paying roommate because of his disability (and  
 3 instead, the allegations established that the denial was predicated on his failure to qualify for a  
 4 financial-hardship exemption).<sup>2</sup> The court gave leave to amend to cure the complaint's  
 5 deficiencies.<sup>3</sup> The plaintiff amended his complaint, and the defendants moved to dismiss it, again  
 6 on the ground that the plaintiff failed to state a claim because they denied him a rent-paying  
 7 roommate after he failed to qualify for a financial-hardship exemption, not because of his  
 8 disability.<sup>4</sup> The court can decide the motion without oral argument. N.D. Cal. Civ. L.R. 7-1(b).  
 9 The plaintiff did not cure the deficiencies in his earlier complaint, and thus the court grants the  
 10 CCSF's motion with prejudice.

### 11 12 STATEMENT

13 The facts in the amended complaint and the initial original complaint are unchanged.<sup>5</sup> The  
 14 court incorporates those facts into this order by this reference. In sum, the plaintiff bought a  
 15 below-market-rate condominium that required him to occupy the condominium as his principal  
 16 residence ten months a year, and he could not sublease it without the CCSF's written consent.<sup>6</sup> He  
 17 alleged that the CCSF (through the San Francisco Redevelopment Agency) gave him verbal  
 18 permission over the telephone to have a rent-paying roommate.<sup>7</sup> But his ownership agreement  
 19 required written consent for any lease, and recognizing that, he attempted to secure that written  
 20 consent.<sup>8</sup> Ultimately, the CCSF gave him permission for a roommate and extended travel (outside  
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 23 <sup>2</sup> Order – ECF No. 46 at 12–13.

24 <sup>3</sup> *Id.* at 14.

25 <sup>4</sup> Mot. – ECF No. 50 at 8–10.

26 <sup>5</sup> Compare Compl. – ECF No. 1 and FAC – ECF No. 49. The court incorporates its earlier order (and  
 27 its recitation of the relevant facts) by this reference. Order – ECF No. 46.

28 <sup>6</sup> Order – ECF No. 46 at 2; FAC – ECF No. 49 at 14 (¶ 48).

<sup>7</sup> Order – ECF No. 46 at 3; FAC – ECF No. 49 at 12 (¶ 43).

<sup>8</sup> Order – ECF No. 46 at 4–5; FAC – ECF No. 49 at 13–14 (¶¶ 47–50).

1 the ten-month period) but denied him permission to have a rent-paying roommate because he did  
2 not meet the financial-hardship exemption (based on his debt-to-income ratio).<sup>9</sup> He had a paying  
3 roommate, terminated the lease (as the CCSF instructed), and ultimately had to sell his  
4 condominium (because, he said, he could not afford it).<sup>10</sup>

5 The original complaint had the following claims: (1) a violation of the FHA, 42 U.S.C. §  
6 3604(f)(3)(B), based on CCSF's failure to accommodate his disability by letting him lease the  
7 condominium to a roommate, (2) a violation of the ADA, 42 U.S.C. § 12101 et seq., on the same  
8 ground, and (3) state-law claims for negligence and gross negligence, fraud, and elder abuse.<sup>11</sup> The  
9 amended complaint has the following claims: (1) a violation of the FHA, 42 U.S.C. §  
10 3604(f)(3)(B), based on CCSF's failure to accommodate his disability by letting him lease the  
11 condominium to a roommate, (2) a violation of the ADA, 42 U.S.C. § 12101 et seq., on the same  
12 ground, and (3) a civil-rights claim under 42 U.S.C. §§ 1983 & 1985, on the same ground.<sup>12</sup>

13 In support of the claims in his initial complaint, the plaintiff submitted a declaration from his  
14 primary-care physician at the San Francisco VA Medical Center recommending that he be allowed  
15 to travel outside the ten-month period and have a roommate.<sup>13</sup> In a supplemental declaration  
16 submitted December 19, 2019, she added that (1) the plaintiff is a long-term recipient of mental-  
17 health services at the VA (since 1995), (2) he is a "100% service connected disabled veteran for  
18 'Depression, Paranoid Schizophrenia' and has been a long-time recipient of mental health services  
19 through the VA medical care system," and (3) in her earlier letter on September 19, 2017, when  
20 she recommended that the plaintiff he be allowed to travel (outside the ten-month period) and have  
21 a roommate, her use of the word "roommates" meant a "rent-paying roommate[]," and that it was  
22 not her recommendation for him to have a non-rent-paying roommate.<sup>14</sup>

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24 <sup>9</sup> Order – ECF No. 46 at 8; FAC – ECF No. 49 at 17 (¶¶ 55–57).

25 <sup>10</sup> Order – ECF No. 46 at 8; FAC – ECF No. 49 at 28 (¶ 81).

26 <sup>11</sup> Compl. – ECF No. 1 at 1, 29–35 (¶¶ 143–84).

27 <sup>12</sup> FAC – ECF No. 49 at 1, 24–35 (¶¶ 69–95).

28 <sup>13</sup> Order – ECF No. 46 at 6; Letter from Alison Ludwig, M.D., Ex. E to Compl. – ECF No. 1-1 at 25.

<sup>14</sup> Ludwig Decl. – ECF No. 54 at 2.

1 **STANDARD OF REVIEW**

2 **1. Rule 12(b)(6) Standard for Motions to Dismiss**

3 A complaint must contain a “short and plain statement of the claim showing that the pleader is  
4 entitled to relief” to give the defendant “fair notice” of what the claims are and the grounds upon  
5 which they rest. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A  
6 complaint does not need detailed factual allegations, but “a plaintiff’s obligation to provide the  
7 ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic  
8 recitation of the elements of a cause of action will not do. Factual allegations must be enough to  
9 raise a claim for relief above the speculative level. . . .” *Twombly*, 550 U.S. at 555 (internal  
10 citations omitted).

11 To survive a motion to dismiss, a complaint must contain sufficient factual allegations, which  
12 when accepted as true, “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556  
13 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when  
14 the plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
15 defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a  
16 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted  
17 unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 557). “Where a complaint pleads facts that are  
18 merely consistent with a defendant’s liability, it stops short of the line between possibility and  
19 plausibility of ‘entitlement to relief.’” *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotations  
20 omitted).

21 If a court dismisses a complaint, it must give leave to amend unless the “pleading could not  
22 possibly be cured by the allegation of other facts.” *Yagman v. Garcetti*, 852 F.3d 859, 863 (9th  
23 Cir. 2017) (citations and internal quotation marks omitted).

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25 **2. Pro Se Pleadings**

26 “The Supreme Court has instructed the federal courts to liberally construe the inartful pleading  
27 of pro se litigants. It is settled that the allegations [in a pro se complaint,] however inartfully  
28 pleaded[,] are held to less stringent standards than formal pleadings drafted by lawyers.” *Eldridge*

1 v. *Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) (internal citations and quotations omitted); *see*  
 2 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *Resnick v. Hayes*, 213 F.3d 443, 447 (9th  
 3 Cir. 2000); *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404  
 4 U.S. 519, 520 (1972) (per curiam); *Hamilton v. Brown*, 630 F.3d 889, 893 (9th Cir. 2011).

## 6 ANALYSIS

7 The CCSF moved to dismiss all claims for failure to state a claim under Rule 12(b)(6). The  
 8 court grants the motion.

### 10 1. FHA Claim

11 In claim one, the plaintiff claims discrimination in violation of the FHA because the CCSF did  
 12 not allow him to have a (paying) roommate (to aid his disability) in his below-market-rate  
 13 condominium.<sup>15</sup> To boost his fact allegations in the earlier complaint, the plaintiff adds that a rent-  
 14 paying roommate is not merely someone who aids him for “reasons of finance” and instead is  
 15 someone who assists him addressing his disabilities, in part because a paying roommate is a real  
 16 roommate and a true companion (as opposed to a “parasite” or a “leech”).<sup>16</sup> This argument does  
 17 not alter the court’s previous conclusion that the plaintiff does not state a claim.<sup>17</sup>

18 A plaintiff can establish an FHA discrimination claim by, among other ways, showing that a  
 19 defendant has failed to provide reasonable accommodations in “rules, policies, practices, or  
 20 services, when such accommodations may be necessary to afford [a disabled] person equal  
 21 opportunity to use and enjoy a dwelling.” *Filho v. Gansen*, No. 4:18-cv-00337-KAW, 2018 WL  
 22 5291986, at \*2 (N.D. Cal. Oct. 19, 2018) (citing *Dubois v. Assoc. of Apartment Owners of 2987*  
 23 *Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006)). To prevail on an FHA discrimination claim for  
 24 failure to reasonably accommodate under 42 U.S.C. § 3604(f)(3), a plaintiff must prove all of the

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 27 <sup>15</sup> FAC – ECF No. 49 at 25–27 (¶¶ 71–77).

28 <sup>16</sup> *Id.* at 26–27 (¶¶ 73–77).

<sup>17</sup> Order – ECF No. 46 at 11–13.

1 following elements: (1) the plaintiff is handicapped within the meaning of 42 U.S.C. § 3602(h);  
 2 (2) the defendant knew or should reasonably be expected to know of the handicap; (3)  
 3 accommodation of the handicap may be necessary to afford the handicapped person an equal  
 4 opportunity to use and enjoy the dwelling; (4) the accommodation is reasonable; and (5) the  
 5 defendant refused to make the requested accommodation. *Id.* at \*4 (citing *Dubois*, 453 F.3d at  
 6 1179).

7 The denial of a rent-paying roommate (for failure to meet financial guidelines) is not plausibly  
 8 discrimination, especially given that the defendants allowed a roommate generally. The court  
 9 explained its reasoning more fully in its earlier order and relies on that reasoning to reach this  
 10 conclusion.<sup>18</sup>

## 12 **2. ADA Claim**

13 In claim two, the plaintiff claims a violation of the ADA (again in the form of the denial of a  
 14 paying roommate).<sup>19</sup> For the reasons advanced above and in the court’s earlier order, the claim  
 15 fails.<sup>20</sup> The ADA prohibits discrimination (“by reason of such disability”) that results in exclusion  
 16 from participation in services, programs, or activities of a public entity like the CCSF. 42 U.S.C. §  
 17 12132. For the reasons set forth above and in the court’s earlier order, the plaintiff does not  
 18 plausibly plead a claim that the CCSF denied him a roommate for discriminatory reasons given the  
 19 undisputed fact that it denied him a rent-paying roommate because he did not meet income  
 20 thresholds.

## 22 **3. Section 1983 and 1985 Claims**

23 In claim three, Mr. Rice claims a violation of his civil-rights, again on the ground that the  
 24 CCSF discriminated against him by denying him a paying roommate.<sup>21</sup> The civil-rights claims are

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 26 <sup>18</sup> Order – ECF No. 46 at 11–12.

27 <sup>19</sup> FAC – ECF No. 49 at 29–32 (¶¶ 82–89).

28 <sup>20</sup> Order – ECF No. 46 at 13.

<sup>21</sup> FAC – ECF No. 49 at 33–35 (¶¶ 90–95).

1 aimed at remedying violations that deny persons the equal protection of the law. *See* 42 U.S.C. §§  
2 1983 & 1985(3); *Kalina v. Fletcher*, 522 U.S. 118, 123 (1997); *United Bhd. of Carpenters &*  
3 *Joiners of Am. v. Scott*, 463 U.S. 825, 828-29 (1983); *Griffin v. Breckenridge*, 403 U.S. 88, 101-02  
4 (1971). Mr. Rice does not plausibly plead claims.

5  
6 **CONCLUSION**

7 The court grants the defendants' motion to dismiss with prejudice and without leave to amend.  
8 This disposes of ECF No. 50.

9 **IT IS SO ORDERED.**

10 Dated: January 17, 2020



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12 LAUREL BEELER  
13 United States Magistrate Judge  
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