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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALLISON BARTON RICE, an individual,

Plaintiff,

vs.

THE CITY AND COUNTY OF SAN FRANCISCO; LONDON BREED, MAYOR OF THE CITY 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; KEITH NAGAYAMA, SAN FRANCISCO CITY DEPUTY ATTORNEY and DOES 1 through 50,

Defendants.

Case No. 19-cv-04250 LB

DEFENDANT CITY AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO FED. R. CIV. P. 60(b)(6) OR, IN THE ALTERNATIVE, FED. R. CIV. P. 60(d)(3)

Hearing Date: September 3, 2026
Time: 9:30 a.m.
Place: 450 Golden Gate Avenue
Courtroom B – 15th Floor
San Francisco, CA 94102

Trial Date: June 19, 2023

INTRODUCTION

Three years ago, in June 2023, a jury found in favor of Defendant City and County of San Francisco and against Plaintiff Allison Rice on his Fair Housing Act claims. Rice then appealed. In June 2026, the Ninth Circuit affirmed the jury verdict. Having lost his appeal, Rice now attempts to set aside the judgment. Rice’s motion is untimely and lacks merit. The Court should deny the motion.

FACTS

In this case, Plaintiff Allison Rice (“Rice”) alleged that the City and County of San Francisco (“City”) violated the Federal Fair Housing Act by (1) failing to accommodate his request for a rent-paying roommate in his Below Market Rate condominium, 42 U.S.C. § 3604, and (2) by unlawfully interfering with his rights under the statute, 42 U.S.C. § 3617. The parties litigated the case for years, culminating in a four-day jury trial. Rice was represented by counsel from Morrison & Forrester.

On June 22, 2023, the jury found against Rice on both counts. (Dkt. 224.) This court entered judgment in the City’s favor on June 26, 2023. (Dkt. 225.) Rice then appealed. On June 2, 2026, the Ninth Circuit issued a Memorandum affirming the judgment. (Dkt. 282; 287.) The Ninth Circuit held, in part, that “[w]e reject as unsupported by the record Rice’s contentions that the trial was unfair or that he was denied any right to effective assistance of counsel.” (Dkt. 282.) On June 5, 2026, Rice filed a petition for panel rehearing and rehearing en banc, which the Ninth Circuit denied. (Ninth Circuit Case No. 23-16013, Dkt. Nos. 74, 85.) Rice also filed a motion for sanctions and a motion to appoint counsel, baselessly accusing defense counsel of misconduct and fraud, which the Ninth Circuit denied. (Ninth Circuit Case No. 23-16013, Dkt. Nos. 66, 76, 77, 85.) The mandate was entered on July 16, 2026. (Dkt. 287.) Plaintiff now asks this Court to set aside the judgment.

ARGUMENT

I. Legal Standard

Federal Rule of Civil Procedure 60(b)(6) allows a court to set aside a judgment for “any other reason that justifies relief,” “provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5).” Fed. R. Civ. Pro. 60(b)(6), (c)(1); *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988) (citation omitted); see *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 210-11 (2025). “[R]elief under Rule

60(b)(6) requires extraordinary circumstances.” *BLOM Bank SAL*, 605 U.S. at 210. “Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest injustice” and is used “only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment.” *Mikhak v. Univ. of Phoenix*, No. 21-CV-06919-CRB, 2022 WL 602516, at *4 (N.D. Cal. Mar. 1, 2022) (quoting *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993)); *see also*, *Buccola v. Boucher*, No. 22-CV-03877-NC, 2025 WL 2493765, at *2 (N.D. Cal. July 28, 2025), appeal dismissed, No. 25-5472, 2025 WL 4355427 (9th Cir. Nov. 3, 2025). The Supreme Court has stressed “the importance of a Rule 60(b)(6) movant’s faultlessness, explaining that ‘[t]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from.’” *BLOM Bank SAL*, 605 U.S. at 212 (quoting *Ackermann v. United States*, 340 U.S. 193 (1950)). Additionally, “[a] motion under Rule 60(b)(6) may properly be denied where it reiterates arguments already presented to the court because repeat arguments do not amount to ‘extraordinary circumstance[s].’” *Buccola*, 2025 WL 2493765, at *2 (citing *Maraziti v. Thorpe*, 52 F.3d 252, 255 (9th Cir. 1995)).

Federal Rule of Civil Procedure 60(d)(3) permits the court to set aside the judgment for “fraud on the court.” A Rule 60(d)(3) motion “is analyzed under a stricter standard than a motion to set aside a judgment for fraud under Rule 60(b)(3) because ‘not all fraud is fraud on the court.’” *Mahon v. Mainsail LLC*, No. 4:20-CV-01523-YGR, 2026 WL 1238503, at *2 (N.D. Cal. Mar. 23, 2026) (quoting *United States v. Sierra Pacific Indus., Inc.*, 862 F.3d 1157, 1167 (9th Cir. 2017)). “A finding of fraud on the court ‘is reserved for material, intentional misrepresentations that could not have been discovered earlier, even through due diligence.’” *Id.* (quoting *Sierra Pacific Indus.*, 862 at 1169). “[T]he relevant misrepresentations must ‘go to the central issue in the case’ and must ‘affect the outcome of the case[.]’” *Id.* (quoting *Sierra Pacific Indus.*, 862 at 1168). “Finally, relief for fraud on the court is available only where the fraud was not known at the time of . . . entry of judgment.” *Id.*

II. Rice Fails to Meet the Standard to Set Aside the Judgment

Rice fails to demonstrate either extraordinary circumstances or fraud on the court, and the Court should deny this motion.

Rice contends the Court should set aside the judgment based on “extraordinary circumstances” under Rule 60(b)(6), because his appointed counsel was grossly negligent. First, Rice argues that his Fair Housing Act claims brought under sections 3604 and 3617 were “reframed” before trial by his counsel and City counsel without his approval. Rice takes issue with a stipulated jury instruction summarizing the parties’ claims and defenses.¹ Second, Rice claims that there were two manuals – a May 10, 2013 CCSF Inclusionary Affordable Housing Program Monitoring and Procedures Manual and a October 11, 2018 Manual – that should have been admitted during trial. Third, Rice contends that his counsel should have alerted the court to a particular case, *Oregon Bureau of Labor & Industries ex rel. Fair Housing Council of Oregon v. Chandler Apartments, LLC*, No. 15-35604 (9th Cir. July 26, 2017) (unpublished memorandum) (“*Chandler*”), which was relevant to the jury instructions. (Mot. at 4-6.)

All three were strategic trial decisions made by his attorneys. Rice contends his attorneys acted contrary to his wishes and/or without communicating with him, although he admits his attorneys “convinced him” not provide the *Chandler* case to the court. (Mot. at 4-6.) But, Rice’s disagreement with his counsel’s trial strategy does not amount to “extraordinary circumstances” under Rule 60(b)(6). *See BLOM Bank SAL*, 605 U.S. at 211-12 (collecting cases). “[A] client is ordinarily chargeable with his counsel’s negligent acts” and “are ‘considered to have notice of all facts known to their lawyer-agent.’” *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002), as amended on denial of reh’g and reh’g en banc (Apr. 24, 2002) (quoting *Ringgold Corp. v. Worrall*, 880 F.2d 1138, 1141–42 (9th Cir.1989)).

Rice cites *Community Dental Services v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002) for the proposition that a court can set aside a judgment “where an attorney’s conduct rises to the level of gross negligence or virtual abandonment.” (Mot. at 11.) In *Tani*, the Ninth Circuit held that the court could set aside a *default judgment* where the attorney had virtually abandoned the defendant and failed to defend the case despite repeated court orders. *Id.* at 1170-71. For example, the attorney failed to sign a stipulation to extend the time to answer, filed the answer two weeks late but failed to serve it,

¹ Rice ignores the separate jury instructions for his claims under 42 U.S.C. § 3604 and 42 U.S.C. § 3617. The instruction for 42 U.S.C. § 3617 was quite broad. *See infra*, Section II.

1 failed to oppose a motion to strike the answer, and failed to attend multiple hearings. *Id.* That is not
 2 the case here. Here, Rice was represented by competent counsel from Morrison & Forrester during
 3 litigation and trial. His attorneys conducted discovery, successfully opposed summary judgment, filed
 4 pretrial materials, and represented him during the four-day jury trial. (*See, e.g.* Dkt. Nos. 129, 145,
 5 159, 182, 189, 207, 215, 216, 220, 222.) Rice’s complaints concern strategic choices made by his
 6 attorneys during trial. With respect to the jury instructions, his counsel submitted proposed jury
 7 instructions and advocated for Rice at the hearing on jury instructions. (Dkt. Nos. 183, 189, 207.)
 8 And, Rice and his counsel were present during trial when the Court read the instructions to the jury.
 9 Rice fails to demonstrate “gross negligence” of the sort to justify setting aside the jury verdict. *See*
 10 *Mikhak*, No. 21-CV-06919-CRB, 2022 WL 602516, at *4-5.

11 Further, Rice made similar arguments on appeal. For example, he argued that the jury
 12 instructions, including the claims and defenses instruction, did not properly instruct the jury as to his
 13 Section 3617 claim. (Ninth Circuit Case No. 23-16013, Dkt. 17 at 67-70.) Rice also argued portions
 14 of the City manuals and for application of the *Chandler* case. (*See, e.g.*, Ninth Circuit Case No. 23-
 15 16013, Dkt. 17 at 19, 25, 78-79.) The Ninth Circuit rejected these arguments and affirmed the jury
 16 verdict. (Dkt. 282.) The Court should deny this motion, because “repeat arguments do not amount to
 17 ‘extraordinary circumstance[s].’” *Buccola*, 2025 WL 2493765, at *2 (citation omitted).

18 Rice also fails to prove fraud on the court under Rule 60(d)(3). Rice has not identified or
 19 proven any fraud by the City or his counsel, much less fraud on the court which affected the outcome
 20 of the case and was not known at the time of judgment. *See Mahon*, 2026 WL 1238503, at *2 (N.D.
 21 Cal. Mar. 23, 2026). Rice takes issue with Jury Instruction 1.5, which is the summary of claims and
 22 defenses. He contends that the instructions unfairly “reframed” and “narrowed” his claim. But, the
 23 jury instructions also included separate instructions for his claims under 42 U.S.C. § 3604 and 42
 24 U.S.C. § 3617. The instruction for 42 U.S.C. § 3617 was quite broad and read:

25 **FAIR HOUSING ACT — 42 U.S.C. § 3617 — ELEMENTS AND BURDEN**
 26 **OF PROOF**

27 To prove that the City unlawfully interfered with his rights under 42 U.S.C. §
 28 3617, Plaintiff Allison Rice must prove by a preponderance of the evidence that:

1. He engaged in a protected activity;
2. The City took an adverse action against the plaintiff;

1 3. The adverse action was because of the plaintiff's protected activity, rather than a legitimate, nondiscriminatory reason; and

2 4. The plaintiff suffered injury as a result.

3 The parties agree that element 1 is satisfied. I instruct you that Mr. Rice engaged in a protected activity.

4 If you find that the plaintiff has proven each of these elements by a preponderance of the evidence, your verdict should be for the plaintiff on this
5 Claim. If, on the other hand, you find that the plaintiff has failed to prove one or more of these elements, your verdict should be for the City on this claim.

6
7 (Dkt. No. 221.)

8 Rice fails to address this instruction. In any event, these jury instructions were not "material,
9 intentional misrepresentations" to the court. The parties submitted proposed jury instructions, the
10 court issued several iterations of jury instructions, and the court held a hearing on the instructions.
11 (Dkt. Nos. 183, 189, 202, 204, 207, 212, 218, 221.) Rice was aware, or at least reasonably should
12 have been aware, of his attorneys' strategic decisions during trial and before judgment. Rice was
13 present for the trial, and could have reviewed any pretrial filings, jury instructions, or other materials.
14 Indeed, Rice acknowledges that he was aware of the "reframing" issue during trial and argued this on
15 appeal. (Mot. at 14; *see* Dkt. No. 222.) The Court should deny this motion.

16 **III. Rice's Motion is Untimely**

17 Rice's Rule 60(b) motion is untimely. Judgment was entered on June 26, 2023. Yet, Rice did
18 not file this motion until July 21, 2026 – more than three years later. Three years is not "reasonable,"
19 and Rice has not identified any compelling reason for the delay in filing. *See* Fed. R. Civ. Pro.
20 60(c)(1). His complaints concern decisions made by his attorneys before and during trial, which he
21 either knew or reasonably should have known. Indeed, he acknowledges that he was aware of the
22 "reframing" issue during trial and raised in on appeal. (Mot. at 14.) The Court should deny the
23 motion.

CONCLUSION

The Court should deny Plaintiff's motion to set aside the judgment.

Dated: August 4, 2026

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By: /s/ Renée E. Rosenblit
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