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Plaintiff, in propria persona

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

ALLISON BARTON RICE, an individual,

Plaintiff,

v.

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

PLAINTIFF'S REPLY IN SUPPORT OF 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) FOR FRAUD ON THE COURT

Hearing Date: September 3, 2026
Time: 9:30 AM
Place: 450 Golden Gate Ave.
Courtroom B, 15th Fl
San Francisco, CA
94102

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I. Introduction

Plaintiff Allison Barton Rice, appearing pro se, respectfully submits this reply in support of his Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b)(6), or in the alternative Rule 60(d)(3).

Defendant City and County of San Francisco's opposition does not address the full Rule 60 defect presented in Rice's motion. The City treats the motion as a renewed jury-instruction appeal or a generalized complaint about trial strategy. It is neither.

Rice's motion rests on a specific record sequence: ECF No. 182 preserved his broad Fair Housing Act interference claim under 42 U.S.C. § 3617; ECF Nos. 188 and 189 introduced a materially different § 3617 claim description without Rice's approval and contrary to his written instructions; the different description then appeared as a change between the Court's "Final Pretrial Order Re: ECF No. 182" at ECF No. 201 and the Court's "Proposed Preliminary Jury Instructions" at ECF No. 202. Rice directed his counsel to correct the problem before trial; his counsel did not respond or seek correction; the materially different § 3617 claim description was used at trial and appeared in the final jury instructions at ECF No. 221. The City's opposition does not address that record sequence, including the City-filed unsigned ECF No. 188 and the change between the Court's Final Pretrial Order at ECF No. 201 and the Proposed Preliminary Jury Instructions at ECF No. 202.

Furthermore, the City's opposition "FACTS" omits the precise reason the judgment should be vacated. The City states: "In this case, Plaintiff Allison Rice ("Rice") alleged that the City and County of San Francisco ("City") violated the Federal Fair Housing Act by ... and (2) by unlawfully interfering with his rights under the statute, 42 U.S.C. § 3617." Opp. at 2, 7-10. That statement reflects Rice's § 3617 claim as found in ECF No. 182, which he approved. But it omits the Rule 60 defect: the jury received a different § 3617 claim description, which Rice's own counsel joined or submitted at ECF Nos. 188, 189, and thereafter despite Rice's objection and correction directive. Rice discovered the meaning, significance, and material effect of that sequence on June 27, 2026.

II. The City answers a jury-instruction appeal, not Rice's Rule 60 motion

The City repeatedly argues that Rice already challenged the jury instructions on appeal and that the Ninth Circuit affirmed the judgment. Opp. at 2, 5. But Rice's Rule 60 motion does not ask this Court to sit as an appellate court reviewing ordinary instructional error. It asks the Court to address a later-understood defect in the integrity of the claim-framing process: Rice's actual FHA theories were materially altered before trial through filings joined or submitted by Rice's counsel without his approval, despite his written instructions and later correction directive.

The distinction matters. Rice knew before trial that the framing was wrong and instructed his counsel to correct it. What Rice was unable to see, let alone understand, until June 27, 2026 was the full significance of the record sequence involving his counsel and the City's counsel, by which the broad § 3617 framing in ECF No. 182 was replaced by the materially different language in ECF Nos. 188 and 189, repeated thereafter, and submitted to the jury in ECF No. 221. The City's opposition conflates awareness of the problem with discovery of the full Rule 60 basis.

Nor did the Ninth Circuit decide the Rule 60 motion now before this Court. It did not adjudicate whether Rule 60(b)(6) relief is warranted based on the later-discovered significance of Rice's counsel's participation in the altered claim-framing sequence, nor did it decide the alternative Rule 60(d)(3) issue now presented to this Court.

The City also quotes the Ninth Circuit's statement rejecting Rice's contentions that the trial was unfair or that he was denied any right to effective assistance of counsel. Opp. at 2. Rice's motion is not a constitutional ineffective-assistance claim. Civil litigants generally do not have a constitutional right to effective assistance of counsel. Rice's Rule 60(b)(6) theory is instead an equitable one: under *Community Dental Services v. Tani*, 282 F.3d 1164, 1168-72 (9th Cir. 2002), attorney conduct may be so grossly negligent or abandonment-like that it would be unjust to bind the client to the resulting judgment.

III. The City's "strategy" label does not answer the record-based evidence

The City asserts that the issues Rice identifies were "strategic trial decisions made by his attorneys." Opp. at 4. That assertion is conclusory and does not address the record-based facts that make this case extraordinary.

The claim-framing defect was not ordinary strategy. Rice does not seek relief because his counsel chose one reasonable trial emphasis over another. Rice contends that his counsel's unapproved replacement of his actual § 3617 claim description (as found in ECF No. 182), contrary to Rice's written instructions and followed by counsel's failure to seek correction after Rice objected before trial, was an extraordinary circumstance under Rule 60(b)(6).

The City's opposition also collapses distinct issues into one generalized "trial strategy" label. The central issue is the unapproved claim-framing sequence involving ECF Nos. 182, 188, 189, 201, 202, and 221. In some places, Rice's motion described the effect as a narrowed frame, and in others as a material alteration. The Rule 60 defect is that Rice's approved § 3617 claim was materially altered into a different claim description that entered the pretrial filings and was later given to the jury.

The City does not address Rice's written instructions and does not address the fact that Rice did not approve the materially different § 3617 claim description. It does not address Rice's June 14, 2023 directive that counsel correct the problem nor his counsel's failure to submit his letter to Judge Beeler explaining that the preliminary jury instruction described his § 3617 claim as limited to lease termination and refinancing, but that Rice's interference claim also included the City's "meddling in or hampering" his efforts to maintain or obtain his requested FHA accommodation. The City's opposition does not explain why counsel's failure to seek correction after that directive and counsel's continued silence on the issue should be imputed to Rice.

The City emphasizes that Rice was represented by counsel who conducted discovery, opposed summary judgment, filed pretrial materials, and represented him at trial. Opp. at 5. But general performance elsewhere in the litigation does not answer the specific Rule 60 issue. The relevant question is not whether counsel performed some tasks. The question is whether Rice's

counsel, at the critical moment when the claims were framed for the jury, protected Rice's actual FHA theories or instead joined a different claim frame that Rice did not approve and then failed to correct after Rice objected.

The materiality of the altered frame is confirmed by the City's own reasonable-modification process. Section 305.1 of the City's Planning Code states that San Francisco's policy is to comply with the FHA, ADA, and FEHA by reasonably modifying its housing "regulations, policies, practices and procedures for people with disabilities," and it establishes a process for making and acting on such requests. The City's opposition does not explain how a claim frame centered on affordable-housing-agreement compliance fairly presented Rice's separate theory that the City failed to process his request under the FHA accommodation framework.

Compliance with the affordable-housing agreement may have been within MOHCD's authority, but Rice's FHA theory concerned the City's failure to evaluate his request under the FHA accommodation framework, including the City's process for reasonably modifying its housing "regulations, policies, practices and procedures for people with disabilities."

By replacing Rice's § 3617 theory with a description focused on whether the City acted "until he complied with the terms of his affordable housing agreement," Rice's counsel caused the jury to receive a materially different claim frame from the one Rice brought. Rice respectfully submits that this was not ordinary trial strategy. It was an extraordinary circumstance because the altered frame displaced Rice's core FHA § 3617 interference theory, despite Rice's written instructions and pretrial objection.

IV. The separate § 3617 elements instruction did not cure the altered claims-and-defenses frame

The City's principal substantive response is that the jury also received a separate § 3617 elements instruction, which the City describes as "quite broad." Opp. at 4-6. That does not cure the prejudice.

The prejudice arose because the "Claims and Defenses" instruction told the jury what Rice's § 3617 claim was about. It described Rice's interference claim as based on the City

1 requiring him to terminate his roommate lease and holding up refinancing until he complied
2 with the affordable-housing agreement. That claim description restricted the jury to the City's
3 affordable-housing-agreement compliance frame and, as a practical matter, eliminated the FHA
4 interference and accommodation framework Rice actually brought.

5 A general elements instruction does not restore a factual theory that the claim-
6 description instruction changed. The jury may have been told the elements of § 3617 in the
7 abstract, but it was also told that Rice's interference claim was the lease, refinancing, and
8 compliance formulation and nothing further. That is why the altered "Claims and Defenses"
9 instruction mattered. It defined a factual frame through which the jury would understand the
10 elements, but that frame was not the factual frame Rice actually brought.

11 The different § 3617 claim description did not merely reduce the weight of Rice's
12 broader interference theory. It functionally and fundamentally replaced that theory in the jury's
13 § 3617 consideration by recasting the claim as one about lease termination, refinancing, and
14 affordable-housing-agreement compliance, rather than the City employees' record-based threats
15 of enforcement action, obstruction, misinformation, and other conduct that meddled with or
16 hampered Rice's protected accommodation efforts.

17 This point is especially important because the omitted FHA accommodation inquiry was
18 central to Rice's theory. Rice contends that the City did not treat his request as a disability-
19 accommodation request, did not inquire into disability-related need, and did not evaluate
20 whether a rent-paying roommate may be necessary or reasonable as an accommodation. At trial,
21 the City admitted that it did not make that FHA inquiry before rejecting the requested
22 accommodation.

23 The different claim description functionally removed that evidence from the jury's §
24 3617 analysis by presenting the case as only about compliance with the affordable-housing
25 agreement.

V. The motion is timely because Rice filed after discovering the full significance of the record sequence

The City argues that the motion is untimely because judgment was entered on June 26, 2023 and Rice filed this motion on July 21, 2026. Opp. at 6. That argument focuses only on the time elapsed after judgment and does not address Rice's explanation of when and how he discovered the full Rule 60 basis, or why he acted diligently and within a reasonable time after that discovery.

The City's timeliness argument also ignores Rice's disability-related circumstances. Rice's severe mental illness is not merely background; it is part of the FHA context of this case and part of the equitable circumstances relevant to Rule 60(b)(6). Rice explained that his mental illness affects his ability to process unfamiliar and complex legal issues, including the pretrial jury-instruction sequence, the applicable FHA and Rule 60 standards, and the significance of counsel's participation in the altered claim frame. Those limitations do not excuse inaction; rather, they explain why Rice's discovery of the full Rule 60 basis required careful and extensive later cross-referencing of the record and why his diligence should be evaluated in light of his disability, pro se status, and his prior reliance on his court-appointed counsel.

Rule 60(c)(1) asks whether the motion was brought within a reasonable time under the circumstances. Rice acted diligently. Before trial, he instructed counsel not to file jury instructions without his approval. When he saw the problem with the different § 3617 framing, he directed his counsel to correct it. After judgment, he pursued his appeal pro se and repeatedly argued that his case had been displaced from the FHA framework into the City's affordable-housing-program policy frame.

The City's timeliness argument depends on conflating two different things: awareness that the framing was wrong and discovery of the full Rule 60 basis. Rice knew enough before trial to ask counsel to correct the problem. But Rice did not discover the full significance of counsel's participation in the alteration until June 27, 2026, when he cross-referenced the May 25, 2023 pretrial transcript with ECF Nos. 182, 188, 189, 201, 202, and 221. That review revealed the sequence by which the broad § 3617 claim language Rice had approved in ECF

No. 182 was replaced by the different language in ECF Nos. 188 and 189, then carried forward into the operative jury instructions at ECF No. 221 on June 22, 2023, the last day of trial.

Rice then filed this motion shortly after discovering the full significance of that sequence and after direct appellate proceedings concluded. Under the circumstances, including Rice's severe mental illness, pro se status after judgment, and prior reliance on his court-appointed counsel during the complex pretrial jury-instruction process and trial, the motion was filed within a reasonable time.

VI. The appeal does not bar Rule 60(b)(6) relief

The City argues that Rice made "similar arguments on appeal." Opp. at 5. But similarity at a high level is not the same as adjudication of the Rule 60 ground now presented.

Rice's appeal asked the Ninth Circuit to review the judgment based on the record presented in the appeal, but the absence of a Rule 50(b) motion sharply limited review, another issue on which Rice's counsel had remained silent.

This motion identifies a later-understood Rule 60 defect based on the full ECF Nos. 182, 188, 189, 201, 202, and 221 sequence, the role of his counsel in that sequence, the submission of the altered framing without his approval, his counsel's failure to correct after Rice objected, and his counsel's silence on the issue.

Rule 60(b)(6) is not a substitute for appeal, and Rice does not use it as one. The motion does not ask the Court to reweigh the evidence or revisit ordinary appellate issues. It asks the Court to recognize that the legal and factual frame submitted to the jury did not fairly reflect the FHA claims Rice actually brought, and that extraordinary circumstances make it inequitable to bind Rice to his counsel's unapproved alteration of those claims.

The City's reliance on "repeat arguments" therefore misses the point. Rice's motion is not simply a repeat of appellate arguments about jury instructions, manuals, or *Chandler*. It concerns the extraordinary circumstances surrounding how a materially altered claim frame entered the record and became operative despite Rice's instructions and objection.

VII. The equitable context matters

Rice's severe mental illness and lack of formal legal training are part of the equitable circumstances relevant to Rule 60(b)(6). The issue is not ordinary disagreement with counsel about trial strategy. The issue is that Rice's counsel joined or submitted a materially altered claim frame that Rice did not approve, contrary to his written instructions, and then failed to seek correction after Rice objected before trial.

The City's opposition minimizes those circumstances. It does not answer the role of the joint filings, the concurrence posture of ECF No. 189, Rice's written instructions requiring approval, Rice's June 14 correction directive, or his counsel's silence after Rice objected. Nor does it explain why Rice should be bound by a different FHA § 3617 claim frame, joined by his own counsel without his approval, that replaced his broader interference theory before the jury fairly received it.

The equitable question is whether Rice should remain bound by a judgment entered after his core FHA § 3617 claim frame was materially altered through filings he did not approve, despite his written instructions and pretrial objection, while his disability, pro se status after judgment, and reliance on appointed counsel limited his ability to understand the full significance of the sequence until later.

Rice respectfully submits that these circumstances were beyond his control and support relief under Rule 60(b)(6).

VIII. Rule 60(d)(3) remains an alternative ground

Rice principally seeks relief under Rule 60(b)(6). In the alternative, if the Court finds intentional officer-of-the-court misconduct, relief is warranted under Rule 60(d)(3).

The City says Rice has not identified fraud by the City or his counsel. Opp. at 5. But Rice identified the specific conduct at issue: the change from the broad § 3617 framing reflected in ECF Nos. 182 and 201 to the materially altered claim description in ECF Nos. 188, 189, and 202; the joint filing and concurrence posture of ECF No. 189; the submission of that altered framing despite Rice's written instructions requiring approval before jury instructions were

1 filed; Rice's June 14 correction directive; his counsel's silence after that directive; and the later
2 use of the altered frame at trial and in ECF No. 221.

3 Rice recognizes that fraud on the court is narrow and requires more than ordinary
4 attorney error, adverse rulings, or litigation advocacy. That is why Rule 60(d)(3) is presented in
5 the alternative. But the City cannot defeat the alternative ground merely by characterizing the
6 issue as a disagreement over jury instructions. If the Court finds that officers of the court
7 intentionally caused the Court and jury to adjudicate Rice's FHA claims through a materially
8 distorted frame, then the misconduct affected the judicial process itself.

9 At minimum, the same record supports relief under Rule 60(b)(6). The Court need not
10 find fraud on the court to grant relief. It need only find that extraordinary circumstances make it
11 inequitable to bind Rice to the judgment produced after his FHA claims were materially altered
12 without his approval and not corrected after his objection.

13 **IX. Conclusion**

14 The City's opposition does not address the full Rule 60 defect. It labels the matter
15 "strategy," quotes an abstract § 3617 elements instruction, invokes the appellate affirmance, and
16 argues timeliness from the judgment date. But it does not answer the record sequence on which
17 Rice's motion rests.

18 For the reasons stated in the motion and this reply, Rice respectfully requests that the
19 Court grant relief from judgment under Rule 60(b)(6), or alternatively under Rule 60(d)(3),
20 vacate the judgment, reopen the case for further proceedings under the Fair Housing Act
21 framework, and grant the relief requested in Rice's proposed order.

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23 Dated: August 8, 2026

Respectfully Submitted,

24 By: /s/ Allison Barton Rice

25 Allison Barton Rice, Plaintiff, pro se
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