

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Allison Barton Rice, pro se 9th Cir. Case No. 26-5308
Appellant(s),

v.

City and County of San Francisco, et al.
Appellee(s).

STATEMENT THAT APPEAL SHOULD GO FORWARD
(attach additional sheets as necessary)

1. Date(s) of entry of judgment or order(s) you are challenging in this appeal:

Dated: August 10, 2026, but filed: August 12, 2026.
_____.

2. What claims did you raise to the court below?

Please see attached pages, Part 2, "Claims Rice Raised To The Court Below."

3. What do you think the court below did wrong? (You may, but need not, refer to cases and statutes.)

Please see attached pages, Part 3. “What Rice Thinks The Court Below Did Wrong.”

4. Why are these errors serious enough that this appeal should go forward?

Please see attached pages, Part 4. “Why These Errors Are Serious Enough That This Appeal Should Go Forward.”

5. Additional Information:

Please see attached pages, Part 5, “Additional Information: Rice’s Position, Reasons the Appeal Is Not Frivolous, and Summation.”

Dated: September 23, 2026

Allison Barton Rice

Print Name(s)

/s/ Allison Barton Rice

Signature(s)

Appellant(s) in Pro Se

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2. CLAIMS RICE RAISED TO THE COURT BELOW

Rice moved for relief from the final judgment entered on June 26, 2023, under Federal Rule of Civil Procedure 60(b)(6), or alternatively under Federal Rule of Civil Procedure 60(d)(3).

Rice's motion was based on a narrow, record-based defect, the origin, sequence, and significance of which Rice did not fully discover until after judgment and after extensive appellate proceedings: Rice's Fair Housing Act claims, including his separate 42 U.S.C. § 3617 interference claim and his 42 U.S.C. § 3604(f)(3)(B) failure-to-accommodate claim, were materially reframed before trial into a narrower affordable-housing-agreement compliance frame that the City used to anchor its defense.

Rice sought relief because his own counsel joined opposing counsel in submitting that reframing without Rice's approval and contrary to his express written instructions, did not correct it after Rice insisted that his counsel correct it, and the reframing was then repeated in the final jury instructions and used by the City at trial.

Rice argued that Rule 60(b)(6) relief was warranted because the record supported extraordinary circumstances: Rice's counsel materially altered the FHA framing of his claims without his approval, Rice insisted his counsel restore his framing, but they did not respond, did not restore it, and remained silent on the matter thereafter. After judgment, that conduct left Rice, a severely mentally

disabled pro se litigant, bound by a trial that did not fairly consider his preserved FHA claims brought to the district court.

In reply, Rice clarified that his motion was not a renewed jury-instruction appeal or a generalized complaint about trial strategy. Rice argued that the Rule 60 defect concerned a later-understood defect in the integrity of the claim-framing process: his 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. Rice also argued that the separate § 3617 elements instruction did not cure the altered claims-and-defenses frame because a general elements instruction did not restore the factual theory that the claim-description instruction changed.

Alternatively, Rice argued that if the district court found that the record established intentional officer-of-the-court misconduct involving the joint filings and counsel's participation in the claim-framing defect, relief was warranted under Rule 60(d)(3) for fraud on the court.

Rice also identified two additional issues that *supported* his contention that his counsel's conduct was grossly negligent: counsel did not provide the district court with the information Rice had found concerning the City's affordable-housing-program rent-policy manuals, including the October 11, 2018 Manual language stating "For other reasons deemed acceptable by MOHCD in its sole discretion"; and counsel did not provide the district court with Rice's research

concerning *Oregon Bureau of Labor & Industries ex rel. Fair Housing Council of Oregon v. Chandler Apartments, LLC*, No. 15-35604 (9th Cir. July 26, 2017), which Rice argued was materially important to his FHA failure-to-accommodate theory.

Rice requested an order vacating the final judgment, reopening the case for further proceedings under the correct FHA framework, restoring his § 3617 interference claim as a separate FHA claim and his § 3604(f)(3)(B) failure-to-accommodate claim, or alternatively restoring his § 3617 interference claim alone as a separate FHA claim, and setting a status conference to determine appropriate next steps.

3. WHAT RICE THINKS THE COURT BELOW DID WRONG

Rice contends that the district court abused its discretion by denying his Rule 60 motion without addressing the full record-based defect Rice presented in his motion and reply at ECF Nos. 288 and 291, respectively.

First, the district court treated Rice's motion as a disagreement with trial strategy, adverse rulings, or jury instructions. But Rice's motion did not ask the district court to relitigate ordinary jury-instruction issues or reweigh the evidence. Rice's motion asked the district 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 own counsel

without his approval, contrary to his written instructions and later correction directive.

Second, the district court did not address the record sequence on which Rice's motion rested. That sequence included ECF No. 182, which preserved Rice's broader § 3617 interference claim; ECF No. 188, an unsigned amended draft joint statement filed by the City that introduced the materially different affordable-housing-agreement compliance framing; ECF No. 189, a jointly signed filing that repeated that altered framing and included a filer's attestation stating that concurrence in the filing had been obtained, even though Rice never gave concurrence to the unapproved narrowed claim description; ECF No. 201, which preserved the broader FHA framing; ECF No. 202, which reflected the altered claim description; Rice's June 14, 2023 correction directive; counsel's silence and failure to correct; and ECF No. 221, which gave the altered claim frame to the jury.

Third, the district court erred by failing to distinguish Rice's pretrial awareness that something was wrong from his later discovery of the full Rule 60 basis. Rice knew before trial that the § 3617 framing was wrong and directed counsel to correct it. But Rice did not discover the full significance of the record sequence, including his own counsel's participation in the claim-framing alteration, until June 27, 2026. The district court did not adequately account for Rice's severe mental-illness disability, pro se status after judgment, lack of legal training,

reliance on court-appointed counsel, and the complexity of the pretrial jury-instruction process.

Fourth, the district court failed to address the prejudice caused by the altered claim frame. The issue was not merely whether the jury received an abstract § 3617 elements instruction. The issue was whether the jury-facing “Claims and Defenses” description told the jury to decide the wrong factual § 3617 dispute by directing it away from Rice’s FHA interference and accommodation theories and toward the City’s affordable-housing-agreement compliance theory.

Finally, the district court also failed to meaningfully address Rice’s alternative Rule 60(d)(3) claim. Rice argued that, if the record established intentional officer-of-the-court misconduct or material deception affecting the judicial process, relief was warranted for fraud on the court. The district court denied relief without sufficiently addressing the unsigned ECF No. 188 filing, ECF No. 189’s joint filing and concurrence posture, the filer’s attestation that concurrence had been obtained, Rice’s statement that he never gave concurrence to the unapproved narrowed claim description, Rice’s written instructions, Rice’s June 14 correction directive, counsel’s silence, and the use of the City’s affordable-housing-agreement compliance theory that replaced Rice’s actual § 3617 interference claim in the jury instructions at ECF No. 221.

4. WHY THESE ERRORS ARE SERIOUS ENOUGH THAT THIS APPEAL SHOULD GO FORWARD

Rice contends that these errors are serious enough for this appeal to proceed because they go to the heart of the judgment and to the integrity of the adjudication process. Rice's Rule 60 motion did not raise a minor procedural complaint or a disagreement over ordinary trial tactics. It raised a record-based claim that Rice's actual 42 U.S.C. § 3617 interference claim was replaced before trial with the City's affordable-housing-agreement compliance theory, without Rice's approval, contrary to Rice's written instructions, and without correction after Rice objected before trial.

The alleged error was prejudicial because the jury-facing "Claims and Defenses" description told the jury what factual § 3617 dispute it was supposed to decide. Rice's § 3617 theory concerned interference with FHA-protected accommodation rights, including threats of enforcement action, obstruction, misinformation, and interference with Rice's disability-related accommodation efforts. The altered claim description directed the jury toward lease termination, refinancing, and affordable-housing-agreement compliance instead. That affected the legal and factual frame through which the jury evaluated the evidence.

The errors are also serious because Rice's Rule 60(b)(6) claim depends on equitable circumstances the district court did not address. Rice is a litigant with a severe mental-illness disability who proceeded pro se after judgment, lacked legal

training, relied on court-appointed counsel during the pretrial and trial process, and did not discover the full Rule 60 basis until he later cross-referenced the relevant filings, transcript excerpts, proposed instructions, and final instructions. Treating his motion as ordinary strategy or ordinary jury-instruction error did not address those circumstances.

The Rule 60(d)(3) issue also warrants review because Rice raised a nonfrivolous claim that the unsigned ECF No. 188 filing, ECF No. 189's joint filing and concurrence posture, the filer's attestation of concurrence without Rice's concurrence, Rice's June 14 correction directive, counsel's silence, and the later use of the altered claim frame implicated the integrity of the judicial process. Even if the Court ultimately concludes that Rule 60(d)(3) relief is unavailable, that alternative ground presents a substantial issue requiring review rather than summary dismissal.

For these reasons, the appeal is not frivolous. It presents arguable issues about whether the district court abused its discretion in denying relief under Rule 60(b)(6) and Rule 60(d)(3), where Rice claimed that his preserved FHA interference claim was not fairly presented to the jury and that the district court did not address the record sequence on which his Rule 60 motion rested.

5. ADDITIONAL INFORMATION: RICE’S POSITION, REASONS THE APPEAL IS NOT FRIVOLOUS, AND SUMMATION

RICE’S POSITION

The key fact is this: on June 27, 2026, Rice discovered that his own court-appointed counsel had joined the City’s counsel in placing the City’s affordable-housing-agreement compliance theory before the jury as if it were Rice’s 42 U.S.C. § 3617 interference claim. ECF Nos. 188, 189. Before that discovery, Rice believed that only the City’s counsel was responsible for the replacement, and his Rule 60(d)(3) theory focused on whether that replacement had been accomplished through improper or fraudulent means.

That discovery mattered because court-appointed counsel were not merely exercising ordinary trial discretion. They owed Rice duties of loyalty, communication, and candor sufficient to allow informed decisions about the representation, and they owed duties of candor and integrity to the court as officers of the court. Those duties are implicated when counsel joins or submits, or permits the submission of, a jury-facing claim description that the client did not approve, that contradicted the client’s written instructions, and that replaced the client’s FHA interference claim with the opposing party’s affordable-housing-agreement compliance theory.

An appeal is not frivolous if it presents any issue that is “arguable on [its] merits.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Rice's appeal satisfies that standard. It presents arguable issues under Rule 60(b)(6) and Rule 60(d)(3), including whether the district court abused its discretion by treating Rice's motion as a disagreement over attorney strategy rather than addressing the record-based claim that Rice's § 3617 interference claim was replaced with the City's affordable-housing-agreement compliance theory through conduct implicating extraordinary circumstances, manifest injustice, and the integrity of the judicial process.

REASONS THE APPEAL IS NOT FRIVOLOUS

I. Replacement of Rice's § 3617 Interference Claim Supports Nonfrivolous Review

Rice's appeal is nonfrivolous because the record presents a concrete, document-based defect. Rice's actual 42 U.S.C. § 3617 claim was an FHA interference claim. It concerned whether the City interfered with his exercise or enjoyment of FHA-protected accommodation rights, including by threatening enforcement action, obstructing his accommodation efforts, failing to provide truthful fair-housing information, and treating his disability-related accommodation request as ordinary housing-agency enforcement. That was the claim preserved in the parties' Joint Proposed Pretrial Order at ECF No. 182:

“(2) a claim against the City for unlawfully interfering with Mr. Rice in the exercise or enjoyment of the rights granted or protected by § 3604 in violation of 42 U.S.C. § 3617.” (ECF No. 182 at 2:13-15)

The district court's June 13, 2023 "Final Pretrial Order Re: ECF No. 182" at ECF No. 201 preserved that same broad statutory frame. It stated (in full):

"The plaintiff has two claims predicated on violations of the Fair Housing Act: (1) denying him the reasonable accommodation of a rent-paying roommate, in violation of 42 U.S.C. § 3604, and (2) interfering with his exercise of his rights under § 3604, in violation of 42 U.S.C. § 3617.

The parties' positions (claims, defenses, and relief sought) are reflected in their joint proposed pretrial order at ECF No. 182." (ECF No. 201 at 2:14-18)

But the jury-facing description did not present that claim. Instead, ECF No. 188, the unsigned Amended Draft Joint Statement, and ECF No. 189, the Joint Proposed Jury Instructions, introduced a different description:

"Second, Plaintiff Allison Barton Rice claims that the City unlawfully interfered with his rights under the Fair Housing Act by requiring him to terminate his lease with his then rent-paying roommate and by holding up his efforts to refinance **until he complied with the terms of his affordable housing agreement.**" (ECF No. 188 at 2:11-15; and ECF No. 189 at 5:11-14, 6:8-12) (emphasis added)

That was not Rice's § 3617 interference claim.

The difference is decisive. Rice's actual § 3617 claim asked whether City employees interfered with his FHA-protected accommodation rights. By contrast, the replacement description asked whether the City required lease termination and delayed refinancing until Rice complied with the affordable-housing agreement. Those are materially different questions. The first concerns federal disability and fair-housing rights. The second centers on the City's affordable-housing-agreement compliance narrative.

Crucially, ECF No. 182 contains **no claim by Rice** that the City required him to terminate his lease or held up his refinancing efforts until he complied with the Limited Equity Home Ownership Program “Agreement.”

Because Rice’s Rule 60 motion presented this record sequence, the appeal is not frivolous. At minimum, it presents an arguable question whether the district court abused its discretion by treating Rice’s motion as a disagreement over attorney strategy instead of addressing the concrete, document-based defect Rice presented: his § 3617 interference claim was replaced with the City’s affordable-housing-agreement compliance theory. *See United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

II. ECF No. 201 and ECF No. 202 Conflict and Jury Prejudice Support Nonfrivolous Review

The appeal is nonfrivolous because the record contains an unresolved conflict between the June 13, 2023 “Final Pretrial Order Re: ECF No. 182” at ECF No. 201, which preserved Rice’s § 3617 interference claim reflected in ECF No. 182, and the “Proposed Preliminary Jury Instructions” at ECF No. 202, which used the City’s affordable-housing-agreement compliance theory.

That conflict is central. Under Ninth Circuit law, a final pretrial order controls the subsequent course of the action unless modified upon a showing of good cause. *See El-Hakem v. BJY Inc.*, 415 F.3d 1068, 1077 (9th Cir. 2005) (citing

Zivkovic v. Southern Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002)); *see also United States v. First Nat'l Bank of Circle*, 652 F.2d 882, 886 (9th Cir. 1981).

The record does not show that Rice approved a modification of his § 3617 interference claim, that the district court made a good-cause finding to alter the preserved claim frame, or that Rice’s actual § 3617 interference claim was restored before trial.

The prejudice was concrete. During jury voir dire, the district court told prospective jurors that Rice’s second claim was that the City interfered with his rights “by requiring him to terminate his lease with his then-rent-paying roommate, and by holding up his efforts to refinance until he complied with the terms of his Affordable Housing agreement.” Tr. 11:20-25. The district court repeated that description during preliminary jury instructions. Tr. 87:14-18. It repeated the same description during final jury instructions. Tr. 787:2-6. The jury therefore heard, three times, that the operative description of Rice’s § 3617 interference claim was the City’s affordable-housing-agreement compliance theory.

Although the final instructions also included a general statement that Rice brought a claim under 42 U.S.C. § 3617, that generic reference did not cure the problem. Tr. 787:20-788:4. The issue is not whether the abstract § 3617 elements were broad, but whether the jury-facing claim description told the jury to decide the wrong factual § 3617 dispute. A generic statement of the statutory claim does not restore the factual theory that the jury was told to decide. As reflected in the

record, the jury-facing claim description directed the jury away from the City's threats of enforcement action, obstruction, misinformation, and interference with Rice's FHA-protected accommodation rights and toward the City's lease-termination, refinancing, and affordable-housing-agreement compliance narrative.

That conflict and prejudice make the appeal at least arguable. The district court denied Rule 60 relief without addressing whether the ECF No. 201 claim frame and the ECF No. 202 jury frame were irreconcilable, whether that variance affected the jury's understanding of the § 3617 claim, and whether the resulting prejudice supported relief under Rule 60(b)(6) or Rule 60(d)(3). *See United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

III. Counsel's Violation of Rice's Written Instructions Supports Nonfrivolous Rule 60(b)(6) Review

Rice's appeal is nonfrivolous because the record supports a Rule 60(b)(6) argument under *Community Dental Services v. Tani*, 282 F.3d 1164 (9th Cir. 2002) and *Lal v. California*, 610 F.3d 518, 524–26 (9th Cir. 2010). This was not ordinary trial strategy. Rice's court-appointed counsel did not merely choose one reasonable emphasis over another. Counsel placed, joined, or permitted a jury-facing description that replaced Rice's § 3617 interference claim with the City's affordable-housing-agreement compliance theory, despite Rice's written instructions concerning the filing of jury instructions.

Rice instructed his counsel on April 30, 2023, “please do not file the final draft of the jury instructions without my approval.” He again instructed counsel on May 3, 2023, “Do not submit jury instructions without my expressed approval.” ECF No. 288 at 45-46. Those instructions matter because ECF No. 189 was not filed with Rice’s § 3617 interference claim description. It was filed with the City’s affordable-housing-agreement compliance theory description and with counsel’s concurrence attestation, even though Rice did not approve the replacement.

The problem did not end with the filing. Before trial, Rice objected and directed counsel to correct the § 3617 claim frame. ECF No. 288 at 70-75. Counsel did not seek correction. Counsel remained silent while the City’s affordable-housing-agreement compliance theory moved forward into every jury instruction thereafter. That silence left Rice bound to a § 3617 claim frame he did not bring, did not approve, and had ordered counsel to correct.

Tani and *Lal* make this issue nonfrivolous. Those cases recognize that attorney gross negligence, deception, and abandonment-like conduct may constitute extraordinary circumstances under Rule 60(b)(6). *See Community Dental Services v. Tani*, 282 F.3d 1164, 1169–70 (9th Cir. 2002) (holding that the normal attorney-client relationship does not bar Rule 60(b) relief when “the evidence is clear that the attorney and his client were not acting as one”). As the Ninth Circuit concluded, an unknowing client should not be held liable or suffer the loss of the client’s substantial rights due to an attorney’s deceptive and grossly negligent

conduct; in such extraordinary cases, any adverse consequences must be isolated to the lawyer rather than visited upon the faultless client. *See id.* (citing *Carter v. Albert*, 804 F.2d 505, 807 (9th Cir. 1986)). Similarly, *Lal v. California*, 610 F.3d 518, 524–26 (9th Cir. 2010), recognizes that deliberate violation of client directives combined with attorney deception and abandonment-like conduct may support Rule 60(b)(6) relief.

Because counsel executed a formal attestation of concurrence under Local Rule 5-1(h)(3) when Rice did not concur and had withheld approval in writing, the record supports a nonfrivolous argument that counsel and client were not acting as one. It also supports a nonfrivolous argument that counsel’s conduct amounted to abandonment-like misconduct under Rule 60(b)(6).

The district court did not analyze that Rule 60(b)(6) problem. It treated the issue as a disagreement with counsel’s strategy. But Rice’s motion did not allege mere disagreement with strategy. Rice alleged that counsel violated his express written instructions not to file jury instructions without his approval, joined opposing counsel in submitting a claim frame that replaced his broad FHA statutory claim with the City’s affordable-housing-agreement compliance theory, failed to correct the violation after Rice objected, and left him bound to a jury frame that did not fairly present the FHA claims he actually brought. That is enough to make the Rule 60(b)(6) issue nonfrivolous.

IV. ECF No. 188 and ECF No. 189 Filing Irregularities Support Nonfrivolous Rule 60(d)(3) Review

Rice's appeal is also nonfrivolous because the record presents serious filing irregularities supporting Rule 60(d)(3) review. The unsigned ECF No. 188 was the first filing presenting the City's affordable-housing-agreement compliance theory that replaced Rice's FHA-focused interference claim.

The official docket entry states: "Amended Draft Joint Statement by City and County of San Francisco. (Rollan, Raymond) (Filed on 5/26/2023) Modified on 5/26/2023 (slh, COURT STAFF) (Entered 05/26/2023)." Despite being labeled an "Amended Draft Joint Statement," the unsigned ECF No. 188 contains no signature block, no client attestation, and no verification. Rice argued that ECF No. 188 appears to be composed only of pages 1 and 5 severed from ECF No. 189, a product of Rice's counsel. The caption block lists Rice's counsel, and the footer is the footer found on ECF No. 189: "DRAFT JOINT PROPOSED JURY INSTRUCTIONS / CASE NO. 19-CV-04250-LB."

The unsigned nature of ECF No. 188 matters. Rule 11 requires filings to be signed, and an unsigned paper must be corrected after the omission is called to attention. *See Becker v. Montgomery*, 532 U.S. 757, 764 (2001). As the Supreme Court observed, Rule 11(a) must be applied as a "cohesive whole," meaning that the "signature requirement and the cure for an initial failure to meet the requirement go hand in hand." *Id.* The mandated remedy for a signature omission

is “part and parcel of the requirement itself.” *Id.* Under Ninth Circuit precedent, an unsigned filing “shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.” *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830 (9th Cir. 1986).

Rice raised the issue in his Rule 60 motion. The City ignored it, and the district court did not address the role ECF No. 188 played in introducing the City’s affordable-housing-agreement compliance theory that replaced Rice’s broad FHA statutory claim. Nor did the district court address ECF No. 188’s unsigned status or its relationship to ECF No. 189.

ECF No. 189 presents a related issue. It was filed as a jointly signed proposed jury-instruction document and included a concurrence attestation. But Rice informed the district court that he had not approved the replacement § 3617 description and had instructed counsel not to file jury instructions without his approval. ECF No. 288 at 8:10, 45-46. If counsel represented concurrence or authority that did not exist, that is not mere attorney negligence. It raises a serious officer-of-the-court issue.

That is why Rule 60(d)(3) is also nonfrivolous. Rice is not asking this Court to accept every factual inference at the screening stage. He is arguing that the record raises an arguable question whether false, unauthorized, or procedurally defective filings placed a false or misrepresented claim frame before the district court and jury. *See United States v. Estate of Stonehill*, 660 F.3d 415, 444-45 (9th

Cir. 2011); *United States v. Sierra Pacific Industries, Inc.*, 862 F.3d 1157, 1167-68 (9th Cir. 2017).

Because Rule 60(d)(3) addresses fraud on the court and conduct that subverts the judicial process, the ECF No. 188 and ECF No. 189 sequence presents a substantial issue for appellate review.

V. Timeliness and Diligence Support Nonfrivolous Review

The City argued, and the district court accepted in substance, that Rice knew or should have known of the relevant issues earlier. Rice did know before trial that something was wrong with the § 3617 interference framing. That is why he sent his June 14, 2023 correction directive. ECF No. 288 at 70-75.

But knowing that something was wrong is not legally equivalent to discovering and understanding the specific, record-based grounds necessary to sustain a motion under Rule 60(b)(6). What Rice did not know or understand was that his own counsel had joined the City's counsel in replacing his broad § 3617 interference claim with the City's affordable-housing-agreement compliance theory.

The district court did not meaningfully address the record-based facts Rice presented in his motion. Instead, the court applied constructive-notice reasoning without adequately accounting for the record sequence, the record-based evidence, Rice's pro se status after judgment, his lack of legal training, and Rice's severe mental-illness disability. That disability was not a collateral circumstance. It was

central to the equitable analysis because constructive notice, diligence, reasonable discoverability, and reliance on counsel cannot be fairly assessed apart from Rice's severe psychological impairments.

Rice did not claim that he had no awareness that something was wrong. Rice claimed that he "did not discover the full significance of his counsel's material alteration of his § 3617 frame until June 27, 2026, when he cross-referenced the May 25, 2023 pretrial transcript with ECF Nos. 182, 188, 189, and 221 as part of his appellate effort." ECF No. 288 at 15:1-3.

That cross-referencing work uncovered the alignment of ECF Nos. 182, 188, 189, 201, 202, 204, 210, 212, 218, and 221 with Rice's express written directives and counsel's silence. That sequence gave Rice the knowledge of the who, what, when, where, why, and how necessary to understand what had occurred: his own counsel had joined the City's counsel in placing the City's affordable-housing-agreement compliance theory before the jury as if it were Rice's § 3617 interference claim, even though the district court's final pretrial order at ECF No. 201 preserved the broader § 3617 interference claim reflected in ECF No. 182.

Rice also claimed "that, in light of his severe mental illness, his pro se status after judgment, the complexity of the jury-instruction process, and his reliance on his counsel during trial, he could not reasonably have discovered the full significance of that sequence earlier." ECF No. 288 at 10:21-23. Before judgment, Rice trusted his counsel and believed their representation was honest. He lacked

the specialized procedural training and practical capacity required to parse a complex, multi-document pretrial and trial jury-instruction sequence to uncover a silent claim substitution executed by his own counsel.

Equitable-tolling cases support the principle that severe mental impairment and attorney misconduct may affect diligence and reasonable discoverability. *See Milam v. Harrington*, 953 F.3d 1128, 1132-33 (9th Cir. 2020) (quoting *Bills v. Clark*, 628 F.3d 1092, 1099-1100 (9th Cir. 2010)) (explaining that equitable accommodation for a severe mental impairment does not require “a literal impossibility,” but rather a showing that the impairment was a “but-for cause of any delay”); *see also id. at 1132* (quoting *Forbess v. Franke*, 749 F.3d 837, 841 (9th Cir. 2014)) (stressing that while the availability of assistance is an element of diligence, a “petitioner’s mental impairment might justify equitable tolling if it interferes with the ability ... to cooperate with or monitor assistance”); *id. at 1133* (quoting *Holland v. Florida*, 560 U.S. 631, 652 (2010)) (confirming that extraordinary relief is independently justified by “serious instances of attorney misconduct”).

Under these circumstances, constructive notice should not be applied mechanically to charge Rice with knowledge of the very misconduct and record sequence that his own counsel failed to disclose or correct.

Rice acted promptly once he discovered the full Rule 60 basis. He completed the relevant cross-referencing in the days leading up to and including June 27,

2026, and filed his Rule 60 motion on July 21, 2026. That timing supports diligence. At minimum, it creates a nonfrivolous issue as to whether the district court abused its discretion by failing to distinguish between Rice’s earlier awareness of a problem and his later discovery of the complete record sequence and Rule 60(b)(6) basis. *See Bynoe v. Baca*, 966 F.3d 972, 979-80 (9th Cir. 2020) (explaining that “[u]nlike a motion under Rule 60(b)(1), (2), or (3), a timely 60(b)(6) motion does not need to be filed within one year after the ‘final judgment, order, or proceeding,’” but must instead be brought within a “reasonable time” pursuant to Fed. R. Civ. P. 60(c)(1)); *see also id. at 980* (quoting *Hall v. Haws*, 861 F.3d 977, 987 (9th Cir. 2017)).

VI. The City’s Opposition and the Accommodation-Process Record Support Nonfrivolous Review

The City’s opposition to Rice’s Rule 60 motion reinforces that the appeal is record-based, not speculative. In opposing Rule 60 relief, the City described Rice’s underlying FHA case as involving two claims: failure to accommodate under 42 U.S.C. § 3604 and unlawful interference under 42 U.S.C. § 3617. ECF No. 290 at 2:7-10. That description matches Rice’s broader statutory frame, not the City’s jury-facing affordable-housing-agreement compliance theory. That matters because it confirms the central variance. The underlying case was not merely a lease-termination and refinancing-compliance dispute. It concerned whether the City

failed to accommodate Rice’s disability-related need, interfered with his FHA-protected rights, or both.

The May 25, 2023 pretrial hearing further shows why the issue is substantial. The district court described the dispute as one in which Rice “did everything right, and then the City denied it,” while the City’s position was that “there’s no entitlement to an accommodation process.” ECF No. 288 at 55. That was the core FHA conflict. Rice’s position was that the City knew he was disabled and was requesting a disability-related accommodation, but nevertheless treated his request as ordinary housing-agency enforcement of the Limited Equity Home Ownership Program “Agreement,” instead of directing Rice to the City’s actual disability-accommodation process.

That issue was not abstract. At trial, the City argued as though the MOHCD’s program enforcement was the relevant process. But Rice submitted a request for a disability-related accommodation, and the City did not identify evidence showing that the disability-accommodation process Rice needed was located inside the MOHCD. By contrast, Planning Code § 305.1 identifies the City process for persons with disabilities in housing regarding its “regulations, policies, practices, and procedures” and authorizes the Zoning Administrator to consider and act on those requests. Furthermore, the MOHCD’s “Inclusionary Affordable Housing Program Monitoring and Procedures Manual” ties its affordable housing programs to that Planning Code framework. ECF No. 288 at 91, section C.

That record supports Rice's contention that City employees did not merely deny an accommodation. It supports his contention that City employees displaced the FHA accommodation-process framework with the City's program-enforcement framework and then used that displaced frame at trial. For purposes of argument, the distinction between reasonable modification and reasonable accommodation is not material. *See McGary v. City of Portland*, 386 F.3d 1259, 1265 n.3 (9th Cir. 2004).

Thus, Rice's point was not merely that the City denied his requested accommodation. His point was that City employees elected to respond as Limited Equity Home Ownership Program "Agreement" enforcers and not to direct Rice to the City's actual disability-accommodation process reflected in Planning Code § 305.1. That distinction is central to prejudice. If the jury had been allowed to evaluate Rice's actual § 3617 interference claim, it could have considered whether City employees interfered with his FHA-protected accommodation rights by withholding, bypassing, or obscuring the City's actual disability-accommodation process. ECF No. 288 at 8:18-26.

That is why the City's affordable-housing-agreement compliance description was prejudicial. The jury should have been able to evaluate whether the City's conduct interfered with Rice's FHA-protected accommodation rights. Instead, the jury was directed toward whether Rice complied with the Limited Equity Home Ownership Program "Agreement." That shift went directly to the heart of the case.

C.B. v. City of Sonora, 769 F.3d 1005, 1026-27, 1030 (9th Cir. 2014) (en banc), supports the principle that disability-related vulnerability, immediate compliance, or submission to government authority should not be recharacterized as justification for unnecessary or intrusive government action. Here, Rice has at least a nonfrivolous argument that his immediate cooperation and disability-related vulnerability were improperly converted into the City's breach-of-contract-like compliance theory.

Rice's severe mental-illness disability was central to the factual and legal context of his FHA claims. The record supports Rice's argument that, by submitting and using a restrictive contract-compliance frame, his counsel and the City's counsel recharacterized Rice's disability-related need for accommodation and good-faith cooperation as contractual noncompliance. That was precisely why the replacement claim frame was prejudicial. It redirected the jury away from the FHA accommodation and interference framework and toward the City's program-enforcement narrative.

Because the district court did not address this record-based issue, Rice's appeal presents a substantial, nonfrivolous question whether the court abused its discretion in denying relief under Rule 60(b)(6) or Rule 60(d)(3).

VII. Contour of the Adjudication Process Supports Nonfrivolous Review

Rice should have been able to rely on his § 3617 interference claim preserved in the Final Pretrial Order. ECF No. 201. That claim allowed the jury to

evaluate whether the City interfered with his FHA-protected rights by threatening enforcement action, obstructing his disability-related accommodation efforts, failing to provide basic fair-housing information, and using housing-agency policies in a way that displaced the federal disability-accommodation framework.

The broad protection of § 3617 matters. The Ninth Circuit has recognized that § 3617 is construed broadly and reaches conduct that meddles with, hampers, or interferes with the exercise or enjoyment of fair-housing rights. *See Walker v. City of Lakewood*, 272 F.3d 1114, 1128-29 (9th Cir. 2001). Rice's actual interference theory fit that framework because it challenged the City's alleged threats, obstruction, misinformation, and displacement of the FHA accommodation process.

Counsel's replacement of Rice's § 3617 interference claim with the City's affordable-housing-agreement compliance theory altered the adjudication process itself. It did not merely change wording. It changed what the jury was told Rice's claim was about. It moved the case away from interference violations under fair-housing law and toward a contract-like local program-compliance-and-enforcement narrative. That is the manifest injustice Rice asked the district court to address.

As the record reflects, this issue is especially serious because Rice's § 3617 theory concerned the real-world effect of FHA interference on a person with a severe mental-illness disability, including his stability, security, and ability to

remain in his home. Rice's harm was not limited to the denial or delay of an accommodation. His § 3617 theory also concerned the emotional, mental, and psychological harm caused by threats, obstruction, misinformation, and interference with his FHA-protected accommodation efforts concerning his home of 13.5 years.

The record therefore presents a deeply arguable question under Rule 60(b)(6). The record supports a nonfrivolous argument that counsel's conduct was grossly negligent and abandonment-like because counsel replaced Rice's claim in violation of his written instructions, failed to correct that violation after Rice objected, and left him bound to a judgment entered after his actual § 3617 interference claim was not fairly presented.

Alternatively, the record presents a deeply arguable question under Rule 60(d)(3). If officer-of-the-court conduct caused the district court and jury to proceed on a false or unauthorized claim frame, then the issue concerns not merely attorney error but the integrity of the judicial process.

For those reasons, the contour of the adjudication process in which judgment was obtained presents a nonfrivolous question whether the district court abused its discretion in denying relief under Rule 60(b)(6) or Rule 60(d)(3).

SUMMATION

Rice's position is that counsel did not simply choose one reasonable trial emphasis over another. Rice's position is that the record supports a nonfrivolous

argument that his § 3617 interference claim was replaced by counsel with the City's affordable-housing-agreement compliance theory through a documented sequence involving ECF Nos. 182, **188**, **189**, **201**, **202**, 204, 210, 212, 218, and 221, despite Rice's written instructions, without Rice's approval, and without correction after Rice objected before trial.

Nor does Rice's pretrial awareness that something was wrong defeat nonfrivolous review. Awareness of a problem is not legally equivalent to discovering and understanding the full Rule 60 basis. The full basis required Rice, after judgment and while pro se, to cross-reference a complex sequence of filings, proposed instructions, final instructions, pretrial orders, written directives, concurrence representations, and transcript excerpts. That distinction matters especially because Rice is a litigant with a severe mental-illness disability that itself creates substantial obstacles to navigating complex litigation, and because he lacks the legal education and training ordinarily necessary to identify, preserve, and present these issues while opposing institutional defendants represented by experienced counsel. Rule 60(b)(6)'s equitable framework permits consideration of those circumstances, and Rule 60(d)(3) separately permits review of whether the filing and concurrence irregularities undermined the integrity of the adjudication process.

Finally, the separate § 3617 elements instruction does not eliminate the issue. The issue is not whether the jury heard abstract statutory elements in

isolation. As reflected by the record, the issue is that the jury-facing claim description told the jury to decide something that simply was not Rice's § 3617 claim. The jury was directed away from Rice's actual FHA interference theory and toward the City's affordable-housing-agreement compliance theory, supporting a nonfrivolous argument that the prejudice went to the legal framework through which the jury evaluated the evidence.

For these reasons, Rice respectfully submits that the appeal presents arguable issues on the merits and should be allowed to go forward.

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Respectfully submitted,

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