

1 GALIA Z. AMRAM (SBN 250551)
gamram@mofo.com
2 RAMSEY W. FISHER (SBN 334228)
rfisher@mofo.com
3 HANNAH JIAM (SBN 312598)
hjam@mofo.com
4 ANNIE A. LEE (SBN 328802)
annielee@mofo.com
5 MORRISON & FOERSTER LLP
425 Market Street
6 San Francisco, California 94105-2482
Telephone: 415-268-7000
7 Facsimile: 415-268-7522

8 Attorneys for Plaintiff
9 ALLISON BARTON RICE

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 ALLISON BARTON RICE,

14 Plaintiff,

15 v.

16 THE CITY AND COUNTY OF SAN
17 FRANCISCO, et al.,

18 Defendants.

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

JOINT PROPOSED PRETRIAL ORDER

Pretrial Conference: May 25, 2020
Time: 9:30 a.m.
Ct rm: A - 15th Floor
Judge: Honorable Laurel Beeler

Pursuant to Section C(2) of the Court’s Case Management and Pretrial Order, ECF No. 108, Plaintiff Allison Rice and Defendant City and County of San Francisco (“the City”) hereby submit this Joint Proposed Pretrial Order.

I. BRIEF DESCRIPTION OF CLAIMS AND DEFENSES TO BE DECIDED

In this action, Plaintiff Allison Rice alleges the Mayor’s Office of Housing and Community Development (“MOHCD”) denied his request for a reasonable accommodation and interfered with his rights under the Fair Housing Act. Mr. Rice purchased a condominium located at 200 Brannan St., Unit 316, San Francisco, California 94107 (“the Property”) in 2004 subject to a restriction that he could not lease the Property, or any portion thereof, without the agency’s prior written consent. Mr. Rice requested to have a rent-paying roommate as a reasonable accommodation but was denied written consent and forced to terminate the lease of his then-roommate on the Property. He has since sold his home, which he claims he did under protest. Mr. Rice pursues two claims against the City: (1) a claim against the City for denying his request for a reasonable accommodation in violation of 42 U.S.C. § 3604, and (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.

The City denies liability for the claims alleged and denies causing Plaintiff any injury. MOHCD contends it offered Plaintiff to have a non rent-paying roommate to help him combat “isolation and loneliness.” MOHCD contends Plaintiff did not have a disability-related need to charge rent, and the request was not reasonable. MOHCD contends it did not interfere with Plaintiff’s rights under the Fair Housing Act.

II. STATEMENT OF THE RELIEF SOUGHT

Plaintiff’s Position:

Mr. Rice suffered harm as a result of the City’s actions and claims general and compensatory damages, punitive damages, pre- and post-judgment interest, and any further relief the Court deems appropriate.

As to compensatory damages: Mr. Rice intends to present testimony to show the harm he suffered as a result of MOHCD’s denial of his request for a reasonable accommodation and interference with his rights under the FHA. This harm includes the value of a unit comparable to the one he owned at

200 Brannan between October 2004 and May 2018, expenses incurred and personal property lost as a result of his moving in May 2018, and physical and emotional pain and suffering he has suffered since his dispute with MOHCD.

As to punitive damages: Mr. Rice intends to present testimony to show that the City acted wantonly, recklessly, and without regard for Mr. Rice's rights.

Defendant's Position:

The City denies Plaintiff is entitled to any relief. Further, punitive damages are not available against the City. See Defendant's MIL No. 6.

III. STIPULATED, UNDISPUTED FACTS

The parties stipulate to the following facts, which may be incorporated into the trial record without supporting testimony or exhibits:

1. Mr. Rice is a former Naval service member that has been diagnosed with a 100% disability rating. Mr. Rice is a person with a handicap, as defined by the Fair Housing Act under 42 U.S.C. § 3602(h).

2. In October 2004, Mr. Rice purchased a condominium located at 200 Brannan St., Unit 316, San Francisco, California 94107 through San Francisco's Limited Equity Home Ownership Program ("LEP").

3. Mr. Rice purchased his BMR condo for \$152,523.00.

4. Mr. Rice's purchase of the Property was subject to a Limited Equity Home Ownership Program – Declaration of Resale Restrictions and Option to Purchase Agreement (the "Agreement").

5. The Agreement stated that Mr. Rice: "[S]hall own and occupy the Property as Owner's Principal Residence [i.e., the location at which an individual resides for at least ten (10) months out of each calendar year], and Owner shall not lease the Property, or any portion thereof, without Agency's prior written consent."

6. The San Francisco Redevelopment Agency administered the BMR program in 2004, when Mr. Rice purchased his condominium. The San Francisco Redevelopment Agency was disbanded by order of the Governor in 2012. Thereafter, the Mayor's Office of Housing and Community Development administered the BMR program.

7. Mr. Rice sold his BMR condo for \$272,822.00, which was the maximum allowable sales price for his below market rate unit. The sale closed escrow on May 4, 2018.

IV. DISPUTED FACTUAL ISSUES

At this time the parties may dispute the following factual issues:

Count 1: Failure to Accommodate

- Whether Mr. Rice received oral permission to have a rent-paying roommate from Edith Horner in late 2008;
- Whether Dr. Ludwig's letter recommending approval of Mr. Rice's reasonable accommodation request referred to a rent-paying roommate;
- Whether MOHCD understood Mr. Rice's request for a roommate to mean a rent-paying roommate at the time Mr. Rice requested the accommodation;
- Whether MOHCD understood Dr. Ludwig's letter recommending approval of Mr. Rice's reasonable accommodation for a roommate to mean a rent-paying roommate;
- Whether a rent-paying roommate may have been necessary to afford Mr. Rice equal opportunity to use and enjoy his condominium;
- Whether but for a rent-paying roommate; Mr. Rice would have been denied an equal opportunity to enjoy the housing of his choice;
- Whether granting Mr. Rice approval to have a rent-paying roommate was reasonable;
- Whether granting Mr. Rice approval to have a rent-paying roommate would require a fundamental alteration in the nature of the MOHCD's LEP;
- Whether granting Mr. Rice approval to have a rent-paying roommate would have imposed on the MOHCD an undue financial or administrative hardship;

Count 2: Interference

- Whether MOHCD interfered with Mr. Rice's exercise or enjoyment of his rights under 42 U.S.C. § 3604;

Damages

- Whether and to what extent Mr. Rice was injured as a result of MOHCD's actions;

- Whether the City’s conduct that harmed Mr. Rice was malicious, oppressive or in reckless disregard of Mr. Rice’s rights;
- Whether and to what extent Mr. Rice is entitled to punitive damages.

V. DISPUTED LEGAL ISSUES

At this time the parties appear to dispute the following issues of law:

1. Whether an interactive process with Mr. Rice was relevant to whether MOHCD violated the FHA in denying Mr. Rice’s requested accommodation, even though it was not required, and whether such an instruction is necessary for the jury;
 - a. This issue is addressed in the briefing for the City’s Motion *in Limine* No. 4.
2. Whether the FHA requires that the requested accommodation “may be necessary” or “is necessary” to provide the individual an equal opportunity to use and enjoy his condominium;
 - a. This issue is addressed in the briefing on the jury instructions for Section 3604.
3. Whether “reasonable” under the FHA is defined as any accommodation that does not require a fundamental alteration in the nature of the housing program or impose an undue financial or administrative burden, or whether the jury decides what is “reasonable” and those are simply two examples of when an accommodation is unreasonable;
 - a. This issue is addressed in the briefing on jury instructions for Section 3604.
4. Whether punitive damages are available against a municipality under the FHA.
 - a. This issue is addressed in the briefing for the City’s Motion *in Limine* No. 6.
 - b. Additionally, should the Court deny the City’s Motion *in Limine* No. 6, Defendant will move to bifurcate the amount of punitive damages from other trial issues. Fed. R. Civ. P. § 42(b); *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002); *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct. 893, 909, 47 L. Ed. 2d 18 (1976); *see Honda Motor Co. v. Oberg*, 512 U.S. 415, 420, 114 S. Ct. 2331, 2335, 129 L. Ed. 2d 336 (1994).

VI. STIPULATIONS

A. Stipulation Regarding Advice of Counsel

In light of the City’s prior representation that it is not proceeding on an advice of counsel defense,

the parties agree that neither side will attempt to elicit testimony or present evidence relating to attorney advice as a basis for denying Plaintiff's reasonable accommodation request. This includes any reference to communications with Mr. Nagayama or other members of the City Attorneys' Office regarding Plaintiff's request. Parties may introduce email communications that carbon copy Mr. Nagayama or any other member of the City Attorneys' Office as evidence without redaction, but the Parties may not elicit testimony regarding these individuals' identities or roles as attorneys and the Parties may not introduce communications that are directed to, sent by, or directly reference advice from Mr. Nagayama or another member of the City Attorneys' Office, unless redacted. Plaintiff agrees not to elicit testimony, present evidence, or argue that any City employee should have sought advice of counsel or other professional advice, or had or lacked the training necessary to administer the FHA or ADA.

B. Stipulation Regarding Dismissed Claims or Parties

The parties agree not to present argument or evidence regarding the dismissed claims or parties in this case. The parties agree that the only remaining claims arise under the Fair Housing Act, and that the ADA, Section 1983, and Section 1985 claims were dismissed. The parties also agree that the only defendant is the City and that the individual defendants are no longer parties.

The parties will negotiate in good faith a limiting instruction regarding evidence that mentions the American Disabilities Act (ADA), before the pre-trial conference.

C. Stipulation Regarding Authenticity of Evidence

The parties stipulate to the authenticity and chain of custody of the following evidence:

1. Documents produced by the City
2. Documents produced by the Office of Veteran Affairs (VA).

VII. ESTIMATED TIME OF TRIAL

Mr. Rice estimates that he will need approximately 10 hours to present his case.

The City estimates that it will need approximately 12 hours to present its case.

VIII. SETTLEMENT

The parties participated in a Settlement Conference with Magistrate Judge Illman on February 9, 2022. The parties did not resolve this dispute and, in connection with Judge Illman, determined that further negotiations would not be productive at this time. The parties continue to believe that further

negotiations would not be productive in this matter.

IX. ATTACHMENTS TO BE APPENDED TO JOINT PRETRIAL ORDER

A. Signed Stipulations

Pursuant to the Court's Order, the parties attach as Appendix A a list of factual stipulations that can be introduced as evidence at trial, signed by the parties.

B. Joint Exhibit List

Pursuant to the Court's Order, the parties attach as Appendix B a joint exhibit list in numerical order, including a brief description of the exhibit and bates number (where applicable), a column for when it is offered into evidence, a column for when it is received in evidence, and a column for any limitations on its use. In their Joint Exhibit List, the parties have included documents they intend to introduce as exhibits, as well as documents intended only for reference. At the Court's request, the parties can also provide Appendix B as a Word document.

C. Each Party's Separate Witness list for Case In Chief

The parties attach as Appendix C their separate witness lists providing a statement of the substance of the witness' testimony and, what, if any, non-cumulative testimony the witness will give. At the Court's request, the parties can also provide Appendix C as a Word document.

D. Joint Proposed Verdict Form

The parties attach as Appendix D the joint proposed verdict form [or separate verdict forms if joint is not possible].

E. Joint Voir Dire Questions

The parties attach as Appendix E the proposed joint voir dire questions supplemented by any separate requests.

F. Proposed Jury Questionnaire

The parties attach as Appendix F the proposed jury questionnaire, which differs from the Court's standard questionnaire.

Respectfully submitted,

Dated: May 5, 2023

MORRISON & FOERSTER LLP

By: /s/ Hannah Jiam
HANNAH JIAM

Attorneys for Plaintiff
ALLISON BARTON RICE

Dated: May 5, 2023

OFFICE OF CITY ATTORNEY

By: /s/ Renee E. Rosenblit
RENÉE E. ROSENBLIT

Attorney for Defendant
CITY AND COUNTY OF SAN FRANCISCO