2017 WL 1040743
Only the Westlaw citation is currently available.
United States District Court,
C.D. California.

Cornelia Martinez, et al.,
v.
Optinnis Properties, LLC, et al.

Case Nos. 2:16-cv-08598-SVW-MRW
|
Filed 03/14/2017

Attorneys and Law Firms

Deputy Clerk, Attorneys Present for Plaintiff(s), None Present

NOT REPORTED, Court Reporter, Attorneys Present for Defendant(s), None Present

Proceedings: IN CHAMBERS – ORDER RE: MOTION TO DISMISS (Doc. 38)

The Honorable STEPHEN V. WILSON. U.S. DISTRICT JUDGE

***1** Defendants move to dismiss Plaintiffs' complaint under Fed. R. Civ. P. 12(b)(6). Doc. 38. The Court rules as follows:

I. BACKGROUND

Plaintiffs are 15 individuals who reside in the Koreatown neighborhood of Los Angeles (the "Individual Plaintiffs") and two non-profit organizations that work to assist tenants and individuals with disabilities respectively (the "Organizational Plaintiffs"). Doc. 1, ¶¶ 14–30. Eleven of the Individual Plaintiffs are Latinos, nine of whom speak Spanish as their primary language. ¶¶ 14–18, 22–28. Four of the Individual Plaintiffs are persons with a disability. ¶¶ 19–22. Six live with minor children, ¶¶ 14–16, 18, 23–24. Defendants are seven interrelated companies and one individual who own and operate the buildings where the Individual Plaintiffs are tenants. ¶¶ 6, 31-38.

Plaintiffs allege that beginning in 2013, Defendants have pursued a "Koreatown Strategy," which consists of "purchasing occupied multiunit properties, instituting a discriminatory campaign to force out certain target tenants, renovating and re-renting vacated units, then selling or 'flipping' the properties for a quick profit." ¶ 6. This campaign has allegedly targeted people with disabilities. Latinos, and families with children, who occupy rent-controlled units and are protected from no-cause evictions. ¶¶ 1, 53. As part of this campaign, Defendants have allegedly subjected the Individual Plaintiffs to a variety of abusive and discriminatory practices in an effort to force them to vacate their units. ¶ 7. In addition, Defendants have allegedly failed to address Individual Plaintiffs' complaints about bedbugs, cockroaches, rodents, mold, lack of hot water, plumbing problems, failing electrical equipment, and other habitability issues. ¶ 470.

Plaintiffs initiated this action on November 17, 2016, asserting claims for (1) violation of the Fair Housing Act ("FHA"); (2) violation of the California Fair Employment and Housing Act ("FEHA"); (3) violation of the Unruh Civil Rights Act; (4) breach of the implied warranty of habitability, in violation of Cal. Civ. Code § 1941.1 and Cal. Health and Safety Code § 17920.3; (5) breach of the covenant of quiet enjoyment, in violation of Cal. Civ. Code § 1927; (6) private nuisance, in violation of Cal. Civ. Code § 3479; (7) negligence, in violation of Cal. Civ. Code § 1714; (8) excessive rent, in violation of L.A. Mun. Code § 151.10(A); (9) harassment, in violation of Cal. Civ. Code § 1940.2; (10) retaliation, in violation of Cal. Civ. Code § 1942.5(c); and (11) unfair competition, in violation of Cal. Bus. & Prof. Code §§ 17200–17210. *Id.* Plaintiffs seek declaratory and injunctive relief, compensatory damages, restitution, punitive and exemplary damages, and costs and attorneys fees. *Id.* at 91.

II. LEGAL STANDARD

A successful 12(b)(6) motion must show that the complaint either lacks a cognizable legal theory or fails to allege facts sufficient to support its theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.1988). A complaint that sets forth a cognizable legal theory will survive a motion to dismiss as long as it contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In ruling on a 12(b)(6) motion, the Court takes the plaintiff's well-pleaded factual allegations as true and construes them in the light most favorable to the plaintiff. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). Courts generally do not consider material beyond the complaint in ruling on a Rule 12(b)(6) motion. *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001) (citation omitted). "An affirmative defense cannot serve as a basis for dismissal unless it is obvious on the face of the complaint." *Gomez v. Quicken Loans, Inc.*, 629 F. App'x 799, 801 (9th Cir. 2015).

III. ANALYSIS

A. FHA

***2** The FHA provides that it shall be unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, ... national origin," or handicap. 42 U.S.C. § 3604(b), (f). A plaintiff may establish a violation of the FHA either by showing that the defendant intentionally discriminated against a protected class, or by showing that the defendant's policies or practices had a disparate impact on such a class. *See Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2521 (2015). If the plaintiff proves intentional discrimination, the defendant is liable, whether or not it had a legally sufficient justification for its action. 24 C.F.R. § 100.500(d). If the discrimination was not intentional, the defendant can avoid liability by proving that it had a legally sufficient justification for its action. § 100.500(c)(2).

Under the FHA, it is also unlawful "[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. § 3604(c). By regulation, the U.S. Department of Housing and Urban Development ("HUD") has determined that this provision prohibits "[s]electing media ... for advertising the ... rental of dwellings which deny particular segments of the housing market information about housing opportunities because of ... handicap, familial status, or national origin." 24 C.F.R. § 100.75(c)(3).

Plaintiffs allege that Defendants violated the FHA by (1) "failing to provide or delaying needed maintenance and repairs to Plaintiffs' units, or providing only substandard maintenance and repairs, while at the same time providing freshly renovated units in good condition to new tenants;" (2) "instituting baseless eviction proceedings against targeted tenants;" (3) restricting children from making reasonable use of common areas;" (4) "changing the rent payment terms in a manner that makes it more difficult for Plaintiffs and similarly situated residents to pay rent;" (5) "unreasonably refusing to post or explain notices in Spanish;" (6) marketing newly vacated units primarily through websites directed at young, English-speaking, single, non-disabled people; and (7) "interfering with tenants' enjoyment of their housing rights through harassing tactics that include derogatory comments about their disability status or national origin." Doc. 1, ¶¶ 7, 430–37. Defendants seek to dismiss the first six theories.

1. Maintenance and Repairs

Plaintiffs allege that Defendants discriminated against them by denying maintenance and repairs to people with disabilities, Latinos, and families with children, while providing freshly renovated units to new tenants who were not members of these protected classes. Doc. 1, ¶ 431. Defendants argue that they cannot be liable on this theory because "[p]ublic policy mandates renovation and redevelopment of ... 'dilapidated' areas by private enterprise." Doc. 38-1 at 14. This argument is unpersuasive. Although "the elimination of blight is an approved objective of community development activities," *NAACP v. Hills*, 412 F. Supp. 102, 109 (N.D. Cal. 1976) (citing 42 U.S.C. § 5301(c)(1)), developers are not entitled to pursue this objective in a way that has the purpose or effect of discriminating against members of a protected class. Because Plaintiffs allege that Defendants' renovation policy reflects a discriminatory intent and has a discriminatory impact (Doc. 1, ¶¶ 428–29), they have stated a claim under the FHA.

***3** Defendants argue that they would have had to raise the Individual Plaintiffs' rent in order to cover the cost of renovating their units, which would have "price[d] [them]

out of their units." Doc. 38-1 at 15–17. Such speculation will not support a motion to dismiss. In any case, it is plausible that Defendants could have cured at least some of the conditions complained of without making significant expenditures. *See* Doc. 1, ¶ 470 (complaining of "mold, peeling paint, protruding nails, and warped floors").

2. Eviction Proceedings

Plaintiffs allege that Defendants discriminated against them by serving them with baseless eviction notices in order to pressure them into moving. Doc. 1, ¶ 430. Defendants argue that they cannot be liable on this theory because Defendants have a First Amendment right to initiate eviction proceedings, and because none of the Individual Plaintiffs were actually evicted. Doc. 38-1 at 17–18.

The First Amendment protects "the right of the people ... to petition the Government for a redress of grievances." U.S. Const., amend. 1. Encompassed within this protection is the right to access the courts. *Cal. Motor Transp. Co. v. Trucking Unlimited,* 404 U.S. 508, 510 (1972). To effectuate this right, the Supreme Court has recognized a privilege (often referred to as "*Noerr–Pennington* immunity") that protects people who initiate legal action from incurring liability as a result. *White v. Lee,* 227 F.3d 1214, 1231–32 (9th Cir. 2000). The *Noerr–Pennington* doctrine protects "not only petitions sent directly to the court in the course of litigation, but also conduct incidental to the prosecution of the suit," such as the service of a demand letter. *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 934 (9th Cir. 2006). But it does not protect litigation-related activity that is "objectively baseless" and brought for an unlawful purpose. *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 60–61 (1993). Thus, a tenant served with an eviction notice can establish a violation of the FHA if she shows that (1) no reasonable landlord would have realistically expected to succeed in an eviction proceeding and (2) service of the eviction notice constituted discrimination or retaliation in violation of the FHA. *See White,* 227 F.3d at 1232.

Plaintiffs argue that Defendants may be liable under *White* because their "repeated eviction notices amounted to 'sham' litigation in abuse of the judicial system designed to intimidate protected classes of tenants into evacuating their units." Doc. 41 at 17. Plaintiffs point to dozens of paragraphs in their complaint to support this contention. *Id.* at 41 n.9. For example, Plaintiffs allege:

- Defendants threatened one tenant with eviction based on "the presence of a dog that had been permitted for years or decades before."
- Defendants issued an eviction notice to one tenant "because he had played music in the mid-afternoon on a small stereo with no external speakers."
- Defendants repeatedly threatened to evict tenants whose children were playing in hallways.
- Defendants repeatedly issued eviction notices alleging that tenants were delinquent in rent, when there was no delinquency.
- Defendants issued an eviction notice to one tenant based on unpaid rent, after refusing to cash a check tendered by the same individual to cover his arrears.

See id. Plaintiffs' detailed allegations render plausible their claim that Defendants sent eviction notices where "no reasonable litigant could have realistically expected success on the merits," *White,* 227 F.3d at 1232, in furtherance of an unlawful, discriminatory purpose.

***4** Defendants separately argue that they cannot be liable because none of the Individual Plaintiffs were actually evicted. Doc. 38-1 at 18. The Court does not agree. As the Eleventh Circuit recently explained, "the FHA protects renters not only from eviction, but also from discriminatory actions that would lead to eviction but for an intervening cause." *Hunt v. Aimco Properties, L.P.*, 814 F.3d 1213, 1223 (11th Cir. 2016). By threatening eviction, a landlord affects the "terms, conditions, or privileges of ... rental," whether or not it ultimately follows through with its threat. *See Woods-Drake v. Lundy*, 667 F.2d 1198, 1201 (5th Cir. 1982) (defendant discriminated in the "terms, conditions, or privileges of ... rental" by "threatening to evict plaintiffs if they continued to have black guests"); *Robinson v. Meyer*, 869 F.2d 1492 (6th Cir. 1989) (unpublished op.) ("Threatening to evict a person on the basis of race does state a violation of the statute") (citing *Woods-Drake*, 667 F.2d at 1201); *see also Scaduto v. Esmailzadeh*, No. CV 07-4069-GW AJWX, 2007 WL 8435679, at *6 (C.D. Cal. Aug. 9, 2007) (plaintiffs had standing to assert FHA claim based on threat of eviction). [1]

3. Rules Applicable to Children

Plaintiffs allege that Defendants discriminated based on familial status by prohibiting children from using common areas. Doc. 1, ¶ 433. Defendants argue that they cannot be liable on this theory because they had legitimate, nondiscriminatory reasons for adopting this policy. Doc. 38-1 at 19–20. Defendants are not challenging the legal or factual sufficiency of the complaint; they are asserting an affirmative defense. "An affirmative defense cannot serve as a basis for dismissal unless it is obvious on the face of the complaint." *Gomez*, 629 F. App'x at 801. It is not obvious on the face of the complaint that Defendants have a legally sufficient justification for this policy. Moreover, Plaintiffs allege that Defendants were motivated by discriminatory intent. Doc. 1, ¶ 428. If that is true, Defendants may be liable regardless of whether they are able to proffer a legally sufficient justification for their policy. 24 C.F.R. § 100.500(d). The Court will not grant a motion to dismiss based on an affirmative defense that may not even be available.

4. Rent Collection Policy

Plaintiffs allege that Defendants discriminated against them by adopting rent collection policies that had a disparate impact on Latino tenants and tenants with disabilities. Doc. 1, ¶ 434. Specifically, Plaintiffs challenge Defendants' imposition of a requirement that rent be paid on the first of the month, and their elimination of on-site payment options. ¶ 62.

Defendants argue that they cannot be liable for changing their rent collection policy to require payment of rent on the first of the month because they were entitled to adopt such a policy under the relevant rental agreements. It is not clear on the face of the complaint that all of the relevant rental agreements permitted Defendants to impose such a requirement.[2] Even if that were clear, Defendants cite no authority for the proposition that an action taken pursuant to a lease agreement is categorically immunized from FHA scrutiny.

***5** Defendants also argue that they cannot be liable for eliminating on-site payment options because they had a legitimate, nondiscriminatory reason for eliminating this option. This is an affirmative defense that is not obvious from the face of the complaint. It does not provide a basis for dismissing this theory.

5. Language Discrimination

Plaintiffs allege that Defendants discriminated on the basis of national origin by "unreasonably refusing to post or explain notices in Spanish." Doc. 1, ¶ 435. In arguing that they cannot be liable on this theory, Defendants cite cases holding that the equal protection and due process clauses do not require states to translate government documents into Spanish. *See Frontera v. Sindell*, 522 F.2d 1215, 1220 (6th Cir. 1975) (state not required to translate civil service exam); *Carmona v. Sheffield*, 475 F.2d 738, 739 (9th Cir. 1973) (state not required to provide Spanish translation in connection with application for unemployment benefits). These cases are not helpful. The FHA reaches more broadly than the U.S. Constitution, prohibiting private parties from engaging in certain conduct that would not give rise to a constitutional violation if engaged in by the state. For example, the FHA prohibits private parties from adopting policies that have a disparate impact on a protected class, although a disparate impact, without more, does not offend the equal protection clause. *Compare Inclusive Communities*, 135 S. Ct. at 2521 *with Washington v. Davis*, 426 U.S. 229 (1976). Because Defendants have not provided the Court with authority in support of their argument that language discrimination can never give rise to an FHA violation, the Court will not dismiss this theory.

6. Advertising Practices

Plaintiffs allege that Defendants discriminated against them "by select[ing] media for advertising the rental of dwellings which deny particular segments of the housing market information about housing opportunities." Doc. 1, ¶ 437. Specifically, Plaintiffs allege that Defendants advertised newly vacated units principally through the websites Radpad, Hotpads, and Walk Score, which target young, English-speaking, single, non-disabled people. ¶ 68.

Defendants argue that they cannot be liable on this theory because "Plaintiffs do not identify any statement which Defendants made on any website which indicates

a prohibited preference." Doc. 38-1 at 23. This argument is meritless. Plaintiffs do not need to point to a particular statement suggesting a discriminatory preference in order to establish a discriminatory advertising claim. *See* 24 C.F.R. § 100.75(c)(3); *Guevara v. UMH Properties, Inc.*, 2014 WL 5488918, at *6 (W.D. Tenn. Oct. 29, 2014) (plaintiffs' allegation that Defendant only advertised in Spanish language media outlets for apartments in a predominantly African-American area was sufficient to state a claim for discriminatory advertising). Plaintiffs allege that Defendants selectively advertised to particular segments of the housing market while denying information to people with disabilities, Latinos, and families with children. Their discriminatory advertising theory is viable.

B. State Law Claims

1. FEHA

FEHA tracks the FHA. *See Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1156 n.14 (9th Cir. 2013) ("we apply the same standards to FHA and FEHA claims") (citation and quotation marks omitted); Cal. Gov't Code § 12955.6. Because Plaintiffs have stated a claim under the FHA, they have also stated a claim under FEHA.

***6** Defendants argue that California's litigation privilege prohibits Plaintiffs from pursuing an FEHA theory based on Defendants' service of eviction notices. The Court does not agree. "A prelitigation communication is privileged only when it relates to litigation that is contemplated in good faith and under serious consideration." *Action Apartment Ass'n, Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1251 (2007). Plaintiffs have adequately alleged that Defendants' eviction notices were served in bad faith.

2. Unruh Civil Rights Act

The Unruh Civil Rights Act provides that "[n]o business establishment of any kind whatsoever shall discriminate against ... any person in this state on account of any" protected characteristic, such as national origin, primary language, or disability. Cal. Civ. Code §§ 51(b), 51.5. "Apartment complexes are business establishments within the meaning of the Unruh Civil Rights Act." *Scaduto v. Esmailzadeh*, 2007 WL 8435679, at *9 (C.D. Cal. Aug. 9, 2007).

Plaintiffs allege that Defendants issued baseless eviction notices, made threatening and discriminatory remarks, failed to maintain their units in habitable condition, imposed oppressive changes in the terms of tenancy, and enforced policies in a discriminatory fashion. *See e.g.*, Doc. 1, ¶ 462. Plaintiffs allege that their membership in certain protected classes was a substantial motivating factor behind Defendants' conduct. *Id.* Plaintiffs have stated a claim under the Unruh Civil Rights Act.

3. Habitability Statutes

The fourth count of Plaintiffs' complaint alleges that Defendants violated Cal. Civ. Code § 1941.1 and Cal. Health & Safety Code § 17920.3 by failing to maintain Plaintiffs' units in habitable condition. Doc. 1, ¶ 470. In their opposition to Defendants' motion, however, Plaintiffs drop their reliance on these provisions, arguing instead that Defendants are liable under Cal. Civ. Code § 1942.4(a). Plaintiffs have effectively conceded that the fourth count of their complaint, as originally drafted, fails to state a claim.

The Court will not consider Plaintiffs' argument that Defendants are liable under Cal. Civ. Code § 1942.4(a). That theory is not set forth in the complaint, and it is not clear from Plaintiffs' opposition that the complaint contains allegations sufficient to support this theory.[3] Because Plaintiffs may able to cure the defect in the fourth count, Plaintiffs will be granted leave to amend this count.

4. Quiet Enjoyment

Cal. Civ. Code § 1927 provides: "An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same." This provision prohibits a lessor from taking any action which "depriv[es] the tenant of the beneficial enjoyment of the premises." *Nativi v. Deutsche Bank Nat'l Trust Co.*, 223 Cal. App. 4th 261, 292 (2014) (citation and quotation marks omitted). Plaintiffs allege that Defendants violated section 1927 by issuing baseless eviction notices, failing to maintain the units in habitable

condition, making threatening and derogatory remarks, and imposing oppressive changes in the terms of tenancy. Doc. 1, ¶¶ 6–7, 475–76. Plaintiffs have stated a claim under section 1927.

5. Private Nuisance

***7** A tenant may sue a landlord for private nuisance where the landlord fails to maintain habitable premises. *Stoiber v. Honeychuck*, 101 Cal. App. 3d 903, 919 (1980). The tenant must show that the alleged nuisance constitutes a "substantial interference with the use and enjoyment of the premises." *Id.* at 920. The tenant must also show that the inference is objectively unreasonable, and that it has caused him substantial annoyance or disturbance. *See San Diego Gas & Elec. Co. v. Superior Court*, 13 Cal. 4th 893, 938 (1996). Plaintiffs' allegations that Defendants failed to maintain their units in habitable condition (Doc. 1, ¶¶ 478–482; *see also* ¶ 470) [4] are sufficient to state a claim for private nuisance.

Defendants argue that Plaintiffs cannot pursue a nuisance theory because this theory is duplicative of their negligence theory. *See El Escorial Owners' Ass'n v. DLC Plastering*, Inc., 154 Cal. App. 4th 1337, 1349 (2007) ("Where negligence and nuisance causes of action rely on the same facts about lack of due care, the nuisance claim is a negligence claim."). It is not clear from the face of the complaint that Plaintiffs' nuisance theory is duplicative of their negligence theory. Several distinctions exist between the two doctrines. A nuisance claim need only show substantial annoyance or disturbance, while a negligence claim must generally show physical or economic injury. In addition, nuisance is a strict liability tort, while negligence requires a showing that the defendant failed to exercise ordinary care. It may be that some of the conditions Plaintiffs complain of caused annoyance or disturbance but not actual loss, or that some of them existed despite the Defendants' exercise of due care. If so, Plaintiffs may be able to recover under nuisance but not negligence. Because the Court cannot determine at this stage in the litigation whether there is complete overlap between the nuisance and negligence theories, the Court will not dismiss Plaintiffs' nuisance claim under *El Escorial*.

6. Negligence and Negligence Per Se

"Under California law, the elements of negligence are: (1) defendant's obligation to conform to a certain standard of conduct for the protection of others against unreasonable risks (duty); (2) failure to conform to that standard (breach of the duty); (3) a reasonably close connection between the defendant's conduct and resulting injuries (proximate cause); and (4) actual loss (damages)." *Corales v. Bennett*, 567 F.3d 554, 572 (9th Cir. 2009) (citing *McGarry v. Sax*, 158 Cal. App. 4th 983, 994 (2008)) (alterations incorporated). A landlord may be liable in negligence where, as a result of its failure to exercise reasonable care, the premises are uninhabitable and the tenant is injured as a result. *See Stoiber*, 101 Cal. App. 3d at 922–23.

Individual Plaintiffs allege that Defendants negligently failed to maintain the habitability of their units and Individual Plaintiffs suffered damage as a result. Doc. 1, ¶ 486. Individual Plaintiffs have stated a claim for negligence.

***8** The doctrine of negligence per se provides for liability where: "(1) the defendant violated a statute or regulation; (2) the violation caused the plaintiff's injury; (3) the injury resulted from the kind of occurrence the statute or regulation was designed to prevent; and (4) the plaintiff was a member of the class of persons the statute or regulation was intended to protect." *United States v. Sierra Pac. Indus.*, 879 F. Supp. 2d 1096, 1103–04 (E.D. Cal. 2012) (citing *Alejo v. City of Alhambra,* 75 Cal. App. 4th 1180, 1184–85 (1999)). A tenant can invoke this doctrine in suing a landlord based on the landlord's failure to maintain habitable premises. *See Stoiber*, 101 Cal. App. 3d at 924.

Plaintiffs allege that Defendants are liable for negligence per se because (1) Defendants violated the FHA, the FEHA, and the Unruh Civil Rights Act by, *inter alia*, discriminating against them in the provision of basic maintenance services; (2) these violations were a substantial factor in bring about harm to the Plaintiffs; (3) the FHA, FEHA, and Unruh Civil Rights Act were intended to prevent actions like those of Defendants; and (4) the FHA, FEHA, and Unruh Civil Rights Act were intended to protect persons like the Individual Plaintiffs. Doc. 1, ¶ 485. Plaintiffs have stated a claim for negligence per se.

7. Excessive Rent

In Los Angeles, "[a]ny person who demands ... any payment of rent in excess of the maximum rent or maximum adjusted rent in violation of the provisions of this chapter ... shall be liable in a civil action to the person from whom such payment is demanded." L.A. Mun. Code § 151.10(A). A "rent increase" includes "any reduction in housing services [e.g., "utilities (including light, heat, water and telephone), ordinary repairs or replacement, and maintenance"] where there is not a corresponding reduction in the amount of rent received." § 151.02.

Plaintiffs allege that Defendants demanded payment of rent in excess of the maximum adjusted rent allowable for the relevant years. *See e.g.*, Doc. 1, ¶ 177. They further allege that Defendants attempted to charge Plaintiffs for utilities that had previously been included in their rent without a corresponding rent decrease. *See e.g.*, ¶¶ 359–60. Plaintiffs have stated a claim for excessive rent.

8. Harassment

In California, a landlord is prohibited "to do any of the following for the purpose of influencing a tenant to vacate a dwelling ... [u]se, or threaten to use, force, willful threats, or menacing conduct constituting a course of conduct that interferes with the tenant's quiet enjoyment of the premises in violation of Section 1927 that would create an apprehension of harm in a reasonable person." Cal. Civ. Code § 1940.2(a)(3). [5] The interference with the tenant's quiet enjoyment of the premises need not rise to the level of actual or constructive eviction. *Id.*

Individual Plaintiffs allege that Defendants engaged in a course of conduct designed to influence them to leave their units, by threatening eviction, issuing unlawful eviction notices, making menacing comments (including threats to call immigration and social service authorities), and engaging in menacing conduct (such as refusing to provide reasonable accommodations to disabled individuals and refusing to permit reentry to tenants who were locked out of their units). Doc. 1, ¶ 490.

***9** Defendants argue that threats to call immigration and social services are protected by the official proceeding privilege. But as Defendants' own case makes clear, this privilege applies only to "communications to or from *government* officials." *Slaughter v. Friedman*, 32 Cal. 3d 149, 156 (1982) (emphasis in original). The privilege does not apply to "communications between private parties who are not acting in an official capacity." *Id.*

Defendants argue that they cannot be liable for refusing to permit entry to locked-out tenants because such refusal was necessary to protect the safety of other tenants. Doc. 38-1 at 33–34 (citing Doc. 1, ¶ 305). On a motion to dismiss, the Court draws all reasonable inferences in favor of the plaintiff. *Cousins*, 568 F.3d at 1067. It is reasonable to infer from the relevant allegations that Defendants acted in bad faith. [6]

9. Retaliation

In California, "it is unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring an action to recover possession, or threaten to do any of those acts, for the purpose of retaliating against the lessee because he or she ... has lawfully and peaceably exercised any rights under the law." Cal. Civ. Code § 1942.5(c). Plaintiffs allege that Defendants retaliated against them by "increasing rent, decreasing services (including forcing Plaintiffs to physically travel to pay rent, charging trash and water fees, failing to maintain units in habitable condition, and refusing to permit pets), and by giving certain Plaintiffs baseless eviction notices." Doc. 1, ¶ 494. Plaintiffs allege that Defendants engaged in this conduct in response to Plaintiffs' communications with the Department of Public Health and the Los Angeles Housing + Community Investment Department. ¶ 495. Plaintiffs have adequately alleged a violation of Cal. Civ. Code § 1942.5(c).

10. Unfair Competition

California's Unfair Competition Law ("UCL") " 'borrows' violations of other laws and treats these violations, when committed pursuant to business activity, as unlawful practices independently actionable under section 17200 *et seq.* and subject to the distinct remedies provided thereunder." *Farmers Ins. Exch. v. Superior Court*, 2 Cal. 4th 377, 383 (1992). Thus, "if a 'business practice' violates any law—literally—it also violates § 17200 and may be redressed under that section." *Newton*

v. Am. Debt Servs., Inc., 75 F. Supp. 3d 1048, 1056 (N.D. Cal. 2014) (citation and quotation marks omitted). A plaintiff who has spent or lost money due to an unfair business practice may bring an action under the UCL to enjoin the practice, or to secure restitution of benefits which have been acquired as the result of the unfair competition. Cal. Bus. & Prof. Code §§ 17203–04.

***10** Plaintiffs allege that they have spent or lost money due to Defendants' violations of the FHA, FEHA, and state and local statutes governing habitability. Doc. 1, ¶ 498. Plaintiffs allege that they spent or lost money as a result of these violations, including the cost of unnecessary travel and certified mail to deliver rent payments, the cost of repairs, and unlawful water and trash collection fees. ¶ 503. They seek injunctive relief and restitution of excessive rent they have paid to Defendants. ¶ 506. Plaintiffs have stated a claim under the UCL.

Defendants argue that Plaintiffs must satisfy the heightened pleading requirements of Rule 9(b). Relatedly, they argue that Plaintiffs must plead reliance and causation. Defendants rely on cases where the predicate violation sounded in fraud. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097 (9th Cir. 2003); *In re Tobacco II Cases*, 46 Cal. 4th 298 (2009). Those cases are inapposite because Plaintiffs' UCL claim is not predicated on an act of fraud.

Defendants also argue that the costs Plaintiffs rely on to establish standing are not recoverable under the UCL. That is true: under the UCL, "[p]revailing plaintiffs ... may not receive damages." *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 179 (1999). But prevailing plaintiffs may receive injunctive relief or restitution, which is exactly what Plaintiffs seek. They have a viable claim under the UCL.

11. Punitive Damages

Defendants ask the Court to dismiss Plaintiffs' "claims" for punitive and exemplary damages. "Because punitive damages are a remedy, not a claim, a request for punitive damages cannot be dismissed for failure to state a claim." *MCI Commc'ns Servs. Inc. v. Contractors W. Inc.*, 2016 WL 795861, at *3 (D. Ariz. Mar. 1, 2016) (citations omitted). A motion to dismiss punitive damages will be construed as a motion to strike the request for punitive damages. *See id.* Such a motion will only be granted if it is clear from the face of the complaint that the plaintiff is not entitled to such relief. "Even 'conclusory' punitive damages allegations will not be stricken unless it is clear that punitive damages are unavailable as a matter of law." *Id.* at *4 (citations omitted); *accord Nouri v. Ryobi Am. Corp.*, 2014 WL 5106903, at *2 (C.D. Cal. Oct. 9, 2014) ("The Central District of California has previously held that 'conclusory allegations of oppression, fraud, or malice comply with federal pleading standards for a claim of punitive damages under California law.' ") (citation omitted); *cf.* Fed. R. Civ. P. 9(b) ("Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.").

Punitive damages are available under the FHA "when a defendant's conduct is shown to be motivated by evil motive or intent, or if it involves reckless or callous indifference to the federally protected rights of others." *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Exemplary damages are available under California law where a defendant acts with "oppression, fraud, or malice." Cal. Civ. Code § 3294(a). Plaintiffs allege that Defendants engaged in "abusive and discriminatory practices," and that this conduct was "intentional, willful, and made in reckless disregard of the known rights of others." Doc. 1, ¶ 442–43. If these allegations are proven, Plaintiffs will be entitled to punitive and exemplary damages. The Court will not strike Plaintiffs' request for punitive and exemplary damages.

...

IV. CONCLUSION

Defendants' motion to dismiss is **DENIED**, except that Plaintiffs' fourth cause of action is dismissed with leave to amend. Plaintiffs shall file any amendments within 21 days of the issuance of this order.

All Citations

Slip Copy, 2017 WL 1040743

Footnotes

1 Defendants cite *Congdon v. Strine*, 854 F. Supp. 355 (E.D. Pa. 1994), but that case is distinguishable. In *Congdon*, the court held that the landlord did not engage in unlawful retaliation against a wheelchair-bound tenant when, after the tenant complained about the building's broken elevator, the landlord declined to renew the tenant's lease for a fourth floor apartment but offered the tenant another unit on the first floor of the same building. *Id.* at 359. Unlike the tenant in *Congdon*, who was subject to a "one-time threat," *id.* at 364, the Individual Plaintiffs allege that they were subjected to *repeated* threats. And unlike in *Congdon*, the Individual Plaintiffs would have been forced to find new housing in the event of an eviction or would have "confronted the threat of losing their homes and becoming homeless." Doc. 1, ¶ 8.

2 Defendants cite Doc. 1, ¶ 132, but that paragraph relates to a single plaintiff's rental agreement.

3 Under section 1942.4(a), a tenant has a cause of action against his landlord if (1) an official charged with enforcing housing law has informed the landlord of his obligation to abate a nuisance or repair a substandard condition; (2) the landlord has failed without good cause to cure the habitability issue within 35 days; (3) "[t]he conditions were not caused by an act or omission of the tenant;" and thereafter, (4) the landlord "demand[s] rent, collect rent, issue a notice of a rent increase, or issue a three-day notice to pay rent or quit ...." Cal. Civ. Code § 1942.4(a). It is not clear from the opposition or the fourth count of the complaint whether Defendants ever failed to cure a habitability issue identified by a housing official.

4 Plaintiffs allege that "Defendants failed to keep Plaintiffs' units free of infestations of bedbugs, cockroaches, and rodents; failed to provide Plaintiffs with hot and/or cold water for long periods of time; failed to provide plumbing facilities that were in good working order; failed to repair leaks in ceilings, holes in walls, and broken windows and doors; failed to maintain electrical equipment, including lighting and smoke detectors, in good working order; and failed to keep the premises sanitary and free of dangerous conditions like mold, peeling paint, protruding nails, and warped floors." Doc. 1, ¶ 470.

5 "Menace" consists of a threat "[o]f unlawful and violent injury to the person or property of any such person as is specified in the last section; or ... [o]f injury to the character of any such person." Cal. Civ. Code § 1570; *see J.F. Parkinson Co. v. Bldg. Trades Council of Santa Clara Cty.*, 154 Cal. 581, 616 (1908) (to find menace, "[i]t is sufficient if the acts threatened, although lawful, were of such a character that if done they would cause loss or injury to the person threatened of so serious a nature that the mere threat prevents him from exercising his own will in the matter ....").

6 The relevant paragraph states:

> In or around July 2016, a maintenance worker changed the locks on [Plaintiff Nicolas Gregorio's] door. Gregorio, who was in his apartment at the time, was informed by the maintenance worker that she would get him the new key from on-site manager Brian Hart. The worker returned a few minutes later without the key and told Gregorio that he needed to speak to Hart himself. Gregorio went with the worker to knock on Hart's door but Hart did not respond. About ten minutes later, after the worker left the building, Gregorio knocked on Hart's door again. Finally, Hart answered and told Gregorio that he needed his identification before he would give him the key. Hart explained that he needed identification because he could not tell the difference between Gregorio and Plaintiff Ramos.

Doc. 1, ¶ 305.

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