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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, *et al.*,
Plaintiffs;

v.

CITY OF LOS ANGELES, CALIFORNIA, *et al.*,
Defendants.

Case No. CV 12-00551 SJO (PJWx)

JOINT STATUS REPORT

Status Conference: August 20, 2012
Time 8:30 A.M.
Courtroom: 1

Complaint Filed: January 13, 2012

Pursuant to the direction of the Court during the telephonic status hearing held July 13, 2012, the Plaintiffs, the City of Los Angeles ("City"), the Community Redevelopment Agency for the City of Los Angeles ("CRA"), and the CRA/LA, a Designated Local Agency ("DLA") submit this joint status report.

I. JOINDER OF PARTIES AND SERVICE OF PROCESS.

Plaintiffs previously served the City and the Community Redevelopment Agency for the City of Los Angeles, and those parties have made appearances through counsel. After being served, the CRA was dissolved pursuant to California Assembly Bill ABx1 26 (2011) ("AB 26") ("Dissolution Legislation") and ceased to exist as of February 1, 2012. Pursuant to the Dissolution Legislation, the CRA's authority, rights, powers, duties, and obligations were transferred to successor agencies and entities. California Assembly Bill AB 1484 (2012) ("AB 1484") provided further clarification of the obligations of the successor agencies.

The DLA is one successor agency, established February 1, 2012. Pursuant to AB 1484, "[a]ll litigation involving a redevelopment agency shall automatically be transferred to the successor agency." On August 2, 2012, by stipulation, DLA voluntarily entered this litigation. (Doc. 83.)

Under the Dissolution Act, some actions of the DLA are subject to review and approval by an oversight board. On or about May 2, 2012, Defendant Oversight Board for the DLA ("Oversight Board") was officially constituted to assume the statutorily specified functions. By service of process on its custodian of records and chairperson, on August 1, 2012, Oversight Board was served with the First Amended Complaint ("FAC"), and proofs of service were filed with the Court on August 3, 2012. (Docs. 87 and 88.)

Because the CRA has ceased to exist, counsel has asked Plaintiffs to dismiss the CRA, particularly in light of the fact that the DLA is a named defendant.

Plaintiffs sued the City for its own purported actions and as a successor to the CRA of certain housing assets. The City has been served.

In their FAC, Plaintiffs named 60 "Owner Defendants" as parties pursuant to Rule 19, Federal Rules of Civil Procedure. As evidenced by Exhibit #1, all of these parties have been joined in this litigation, either by waivers or service of process.

On August 8, 2012, the Court granted Plaintiffs' application for leave to name and serve Behringer Harvard NoHo LLC as a defendant and gave Plaintiffs until August 27, 2012 to do so. (Doc. 90.) Defendant L.A. Housing Partnership is the general partner of Bronson Court Apartments, L.P., and has informally asked Plaintiffs to substitute Bronson Court Apartments, L.P. Plaintiffs seek the Court's guidance.

II. CITY'S APPLICATION FOR LEAVE TO FILE 12(b)(6) MOTION.

A. Plaintiffs' Position

The Court convened the July 13, 2012 telephonic status conference in response to the City's application for leave to file a motion to dismiss. Plaintiffs stated their opposition to this application during the July 13, 2012 conference, and the Court directed Plaintiffs to set out the grounds of that opposition in this joint status report.

Plaintiffs oppose the City's application for leave to file a motion to dismiss because, given the detailed factual pleadings in this case and clear statutory, regulatory, and other authorities establishing the City's obligations under Section 504 of the Rehabilitation Act of 1974 ("§ 504"), the Americans with Disabilities Act ("ADA"), the Fair Housing Act ("FHA"), and state law, such a motion would be futile and would unnecessarily consume judicial resources.

Plaintiffs contend that in the present litigation, no party disputes that, by virtue of receiving federal funds and being subject to the requirements of § 504 and the ADA, the City has a legal duty, with respect to its housing programs, not to discriminate and to provide meaningful access to people with disabilities. The City cannot shirk these non-discrimination and meaningful access obligations by granting those funds to sub-recipients who were not bound by those same

obligations. *See* 24 C.F.R. §§ 8.4 (b)(1)(v), (b)(4)(i) (prohibiting recipients, "directly or through contractual, licensing, or other arrangement" from discriminating in violation of the Rehabilitation Act or perpetuating discrimination through provision of financial or other assistance). *See also Lovell v. Chandler,* 303 F.3d 1039, 1051 (9th Cir. 2002) (holding that "Congress has a strong interest in ensuring that federal funds are not used in a discriminatory manner and in holding [recipients] responsible when they violate funding conditions."); *Koslow v. Commonwealth of Pennsylvania,* 302 F.3d 161, 175-76 (3d Cir. 2002) ("Through the Rehabilitation Act, Congress has expressed a clear interest in eliminating disability-based discrimination in state departments or agencies. That interest, which is undeniably significant and clearly reflected in the legislative history, flows with every dollar spent by a department or agency receiving federal funds." (internal citation omitted)); *Indep. Hous. Servs. of San Francisco v. Fillmore Ctr. Assocs.,* 840 F. Supp. 1328, 1344 (N. D. Cal.1993) (holding that a public agency violates the ADA if it provides assistance to an organization that "discriminates against disabled beneficiaries of the public agency's program.").

Plaintiffs contend that the dispute appears to be factual—that is whether the City actually discriminated or denied meaningful access—and therefore not susceptible to resolution through a motion to dismiss. Plaintiffs have alleged that the City:

- Is a public entity within the meaning of the ADA (FAC ¶ 32);
- Is the recipient of federal housing funds (*id.* ¶¶ 33, 146-151, 156);
- Maintained substantial control over the CRA (*id.* ¶¶ 40-42);
- Elected, pursuant to the Dissolution Legislation, to become CRA's "successor housing agency" (*id.* ¶ 53);
- Gave federal housing funds to the CRA and other sub-recipients for purposes of providing housing (*id.* ¶¶ 152-154, 158-164);
- Failed to ensure that the resulting housing program complied with § 504 (*id.*

¶¶ 168, 169, 185, 190, 191);

- Failed to ensure that the highly accessible units required under § 504 ("UFAS units") are made available to and are used by people who need the accessibility features of such units (*id.* ¶ 171);
- Failed to ensure people with disabilities had meaningful access to the housing program (*id.* ¶ 172);
- Could not identify which housing projects received federal funds (*id.* ¶ 173), failed to maintain or make available to the public a list of UFAS units (*id.* ¶¶ 175-176), and could not identify where the UFAS units and accessible common areas were located (*id.* ¶¶ 177-178); and
- Failed to include provisions concerning federal accessibility standards in contracts and regulatory agreements with sub-recipients (*id.* ¶180).

Plaintiffs contend that it will be for the jury to determine whether Plaintiffs have proven these allegations and whether the City's conduct amounts to disability discrimination and a failure to provide meaningful access to people with disabilities.

During the July 13, 2012 conference, the City suggested that it may be entitled to relief on grounds substantially similar to those articulated in the July 6, 2012, Order (Doc. 109, attached as Exhibit #2) entered by the Hon. Stephen V. Wilson in a different case, based on different pleadings and limited to the claims of one individual with a disability. *Ling v. City of Los Angeles, et al.,* Case No. 11-cv-7774-SVW. Plaintiffs contend that Order has no preclusive effect. *See Starbuck v. City & County of San Francisco*, 556 F.2d 450, 457 n. 13 (9th Cir. 1977) (holding that "[t]he doctrine of *stare decisis* does not compel one district court judge to follow the decision of another.").

Plaintiffs contend that Judge Wilson's decision involves different parties, so claim preclusion cannot apply. A party cannot be bound by a judgment in "litigation in which he is not designated as a party or which he has not been made a

party by service of process." *Taylor v. Sturgell*, 553 U.S. 880, 893 (2008). The organizational plaintiffs in this litigation were not parties in the *Ling* litigation, so *res judicata* and collateral estoppel cannot be applied to them. The interests of the organizational plaintiffs and Ms. Ling are not aligned, neither party understood itself to be acting in a representative capacity, and Judge Wilson did not take care to protect the interests of the organizational plaintiffs. *See id.* at 900.

Plaintiffs contend that Judge Wilson's Order is not persuasive, because it cites just one unpublished, out-of-Circuit trial court case whose facts are entirely different from those presented here. The single case cited by Judge Wilson is simply inapplicable to the City's proposed motion in this litigation. In *Dinapoli*, the question was whether the Housing Authority had an obligation to prevent discrimination against a tenant by a private landlord, whose only connection to the Housing Authority was the acceptance of a rental voucher that subsidized the tenant's rent. Because a federal regulation defining a "recipient" of federal funds, at 24 C.F.R. § 8.3, specifically excludes landlords under the rental voucher program from obligations under § 504,[1] the Court had no choice but to hold that the Housing Authority had no obligation. Here, by contrast, Plaintiffs contend that the CRA and the Owner Defendants are well within the regulation's definition of "recipient," and therefore the City has the obligation to monitor their compliance with anti-discrimination and accessibility requirements.

Plaintiffs contend that because there is ample legal authority concerning the City's obligations under § 504, and Plaintiffs have adequately pled facts supporting the City's liability for violation of § 504, the City's 12(b)(6) motion would be futile.

[1] 24 C.F.R. § 8.3 provides, in pertinent part, "An entity or person receiving . . . payments . . . under a . . . voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments."

B. City's Position

The FAC is largely just a recitation of Section 504 and HUD's implementing regulations, along with citations to the FHA, ADA, and state laws. It also includes several references to a notice that HUD issued after conducting a limited compliance review of CRA assisted properties, which is not binding on the Court. *See Plummer v. Western Int'l Hotels Co., Inc.,* 656 F.2d 502, 504 (9th Cir. 1981). Plaintiffs are three non-profit organizations who allege they have devoted resources to assisting disabled persons find accessible housing. The FAC identifies approximately sixty housing developments that allegedly fail to comply with the accessibility laws. The developments are owned by private parties that allegedly received federal funds through the CRA. The City does not own or manage any of the developments. Plaintiffs have not identified any act by the City whereby the City denied housing to a disabled person because of the person's disability. Instead, Plaintiffs' allegation is that the City failed to ensure and monitor the property owners' compliance with the accessibility laws.

The plaintiff in the Mei Ling case made the same allegations against the City and the CRA and the CRA moved to dismiss. After the parties fully briefed the issue, Judge Wilson granted CRA's motion and ruled that the plaintiff did not state a claim against the CRA for housing discrimination based on its failure to monitor other defendants. Plaintiff, who is represented by the same counsel in both cases, did not file a motion for reconsideration. The City has filed a motion for judgment on the pleadings on the grounds that the Court's ruling applies equally to the City. The City noticed the motion for August 20, 2012, at 1:30 p.m., but the Court continued the hearing to August 27, 2012.

Judge Wilson's ruling in the Mei Ling case is instructive. Although there are factual differences between the respective injury that each plaintiff alleges in the Mei Ling and the instant case, the fundamental basis for their claims against the City are the same. In both cases, the plaintiffs allege that the City is liable for

housing discrimination based upon the City's alleged failure to ensure that other defendants complied with the fair housing laws.

The City intends to file a Rule 12(b)(6) motion to dismiss the FAC. Although a complete summary of the motion is beyond the scope of this status report, the City will argue, among other things, that Plaintiffs' allegations are insufficient to state a claim against the City for the same reasons they were insufficient to state a claim against the CRA in the Mei Ling case. In addition, the courts have held that a private plaintiff cannot sue to enforce the HUD regulations upon which Plaintiffs attempt to rely in this action. *See Three Rivers Ctr. for Indep. Living, Inc. v. Hous. Auth. of Pittsburgh*, 382 F.3d 412 (3d Cir. 2004). *Three Rivers* included a thorough analysis of recent Supreme Court precedent regarding whether a private right of action exists to enforce a given statute or regulation. Notably, the court specifically addressed a private plaintiff's ability to enforce the same HUD regulations that Plaintiffs attempt to rely upon in this case and ruled that there is no private right of action to enforce those regulations. As the *Three Rivers* court held, these regulations speak to the regulated entity and create "no implication of an intent to confer rights on a particular class of persons." *Id.* at 429.

III. CRA'S APPLICATION FOR LEAVE TO FILE 12(b)(6) MOTION.

If Plaintiffs will not voluntarily dismiss the CRA from this action, then the CRA will apply for leave to file a 12(b)(6) motion. The basis of the motion is that the CRA ceased to exist pursuant to ABx1 26 and is not longer a proper defendant.

ABx1 26 dissolved redevelopment agencies as of February 1, 2012. Successor agencies were created to wind down the affairs of the dissolved redevelopment agencies and to make payments due for enforceable obligations and dispose of the assets. "Except for those provisions of the Community Redevelopment Law that are repealed, restricted or revised pursuant to the act adding this part, all authority, rights, powers, duties and obligations previously

vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies." Health and Safety Code Section 34173.

If no local agency elects to serve as a successor agency for a dissolved redevelopment agency, a public body, referred to herein as a "'designated local authority' shall be immediately formed, pursuant to this part, in the county and shall be vested with all the powers and duties of a successor agency as described in this part." Health and Safety Code section 34173(d)(3)(A). "All litigation involving a redevelopment agency shall automatically be transferred to the successor agency." Health and Safety Code section 34173(g).

As successor entities, successor agencies succeed to the organizational status of the former redevelopment agency, but without any legal authority to participate in redevelopment activities, except to complete any work related to an approved enforceable obligation. Health and Safety Code section 34173(g).

In this case, the DLA is the successor entity and the City is sued in its own capacity for its own actions and as a successor to the CRA on certain housing obligations. The proper successor entities for the CRA have been named in this lawsuit. There is no legal basis to continue to include the CRA.

IV. DLA'S MOTION TO DISMISS.

The DLA anticipates filing a Motion to Dismiss. This motion will mainly be based on the same substantive arguments that the CRA/LA made in its Motion to Dismiss before Judge Stephen V. Wilson in *Ling v. City of Los Angeles, et al*., Case No. 11-cv-7774-SVW, which he granted. (Exhibit #2.) To wit, Plaintiffs cite to no cases or statutory authority that hold an entity such as the DLA liable for housing discrimination based solely on its alleged failure to monitor other defendants.

V. OTHER ANTICIPATED MOTIONS.

To date, the City has responded to Plaintiff Independent Living Center's first set of five (5) interrogatories. Plaintiff Fair Housing Counsel of San Fernando

Valley recently served a set of twenty-five (25) interrogatories, a set of forty-seven (47) requests for production of documents, and two hundred and five (205) requests for admission on the City. The discovery requests seek a broad range of documents and information dating back more than twenty years. Counsel for the City has initiated the meet and confer process with Plaintiffs' counsel to attempt to reach a mutually agreeable resolution of the City's objections, but the City anticipates the parties may need the assistance of the Court. For instance, the City has requested that Plaintiffs limit the total interrogatories served by plaintiffs to twenty-five in accord with the spirit of FRCP 33(a)(1) since all three plaintiffs are represented by the same counsel and are pursuing the same claims against the City, but Plaintiff has not agreed.

VI. STATUS OF SETTLEMENT NEGOTIATIONS.

Preliminary settlement conversations occurred between counsel for the Plaintiffs and former counsel for the City and CRA prior to the April 23, 2012, status conference. Since then, Plaintiffs' lead counsel has attempted to engage current counsel for the City, the CRA, and DLA in further discussions about a process for surveying properties in the Redevelopment Housing Program to identify inaccessible features and in discussions concerning the advisability of mediation. The City is willing to explore mediation, but believes that it would be premature at this time given the current status of the proceedings. The CRA and DLA have advised that they are amenable to mediation so long as all parties are on board. Additionally, the DLA is awaiting responses to its demands for indemnification it made on various entities.

Dated: August 13, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2012, I filed the foregoing Joint Status Report using the Court's CM/ECF filing system, which shall serve as notice of such filing on all counsel of record. I further certify that this Joint Status Report will be served via United States First Class Mail, postage prepaid, on all parties which have not yet entered their appearances.

s/ Miriam Becker-Cohen
Miriam Becker-Cohen