

1 for and was approved as a candidate for a Section 8 Housing Program sponsored by the
2 United States Department of Housing and Urban Development (HUD), San Diego
3 Impact Program, and the San Diego Housing Commission (SDHC.) (*Id.* ¶ 14.) On
4 November 8, 2007, Plaintiff entered into a month-to-month rental agreement with
5 Defendant Jaleh Hanassab (“Hanassab”) to reside at an apartment (referred to hereafter
6 as the “Property”) owned by Hanassab. (*Id.* ¶ 15.) The Property consists of twenty-eight
7 units, four of which are reserved for Section 8 housing. (*Id.* ¶ 16.) At the time Plaintiff
8 moved to the Property, it was managed by Darleen and Lonnie Thomas. (*Id.* ¶ 15.) As
9 part of the housing program, Plaintiff is responsible for a portion of his monthly rent,
10 while the remainder is paid by HUD, SDHC, and the San Diego Impact Program. (*Id.* ¶
11 14.) On June 15, 2011, Plaintiff received notice that Defendant First Light Property
12 Management (“First Light”) would be the property managers and maintenance supervi-
13 sors of the Property as of June 16, 2011. (*Id.* ¶ 17.)

14 Plaintiff claims that in spring of 2012, he became the subject of discrimination
15 while residing at the Property. (*See id.* ¶¶ 18-38.) On one occasion, Plaintiff asked
16 Lonnie Thomas (“Thomas”) to move his tools so that Plaintiff could enter his apartment.
17 (*Id.* ¶ 18.) Thomas responded with profanity in an intimidating voice, saying that
18 Plaintiff should move out. (*Id.*) Plaintiff became fearful and hid out in his apartment in
19 fear as a result of Thomas’ comments. (*Id.*) On another occasion, Thomas shook his
20 head in a disgusted manner and told Plaintiff “We don’t want your kind here.” (*Id.* ¶ 19.)
21 On a different occasion, Thomas called Plaintiff a “troublemaker.” (*Id.* ¶ 20.)

22 On August 23, 2012, Thomas came to Plaintiff’s apartment to conduct
23 maintenance and served Plaintiff with a 60-Day Notice to Move Out. (*Id.* ¶ 21.) On the
24 same date, Defendants served Plaintiff with a Notice to Vacate that ordered Plaintiff to
25 move out of the Property by October 21, 2012. (*Id.* ¶ 22.) Pursuant to the policies of the
26 Section 8 housing program Plaintiff participated in, a participating property owner may
27 not terminate a tenancy unless there is material noncompliance with the lease, material
28 failure to carry out obligations under any state landlord and tenant act, or other good

1 cause. (*Id.* ¶ 23.) The 60-Day Notice given to Plaintiff did not state a reason for
2 termination of the tenancy. (*Id.*)

3 On October 5, 2012, Thomas intimidated and coerced Plaintiff in an attempt to get
4 Plaintiff to move out. (*Id.* ¶ 24.) Specifically, Thomas spoke to Plaintiff in a “low-toned
5 voice” and asked whether Plaintiff had found a place to move. (*Id.*) Thomas further
6 stated “you know you have until October 31 [2012].” (*Id.*) On October 29, 2012,
7 Plaintiff submitted his portion of November rent owed to Defendants. (*Id.* ¶ 25.)
8 Plaintiff’s rent check was accepted and processed, and nothing further came of the
9 August 23, 2012 Notice to Vacate. (*Id.*)

10 In July 2013, Thomas and his employees renovated and performed repairs and
11 improvements to certain units at the Property, including units reserved for Section 8
12 tenants. (*Id.* ¶ 26.) No improvements were made to Plaintiff’s unit during this time
13 period. (*Id.*) On September 11, 2013, Plaintiff received another 60-Day Notice to Move
14 Out which purported to end Plaintiff’s tenancy on November 11, 2013. (*Id.* ¶ 28.) The
15 Notice was signed and delivered by Thomas and no reason was provided for the Notice
16 to Vacate. (*Id.*) On the same date, Plaintiff also received a 30-Day Notice to Change of
17 Terms of Rental Agreement and a Smoke-Free Addendum to the Rental Agreement.
18 (*Id.*)

19 On September 19, 2013, Plaintiff received an “Owner HAP Contract Termination
20 Notice” from SDHC indicating that SDHC was informed that Hanassab had given
21 Plaintiff notice to terminate the lease effective November 11, 2013. (*Id.* ¶ 29.) The
22 Notice from SDHC also informed Plaintiff that he was no longer eligible for the Rental
23 Assistance Program and that SDHC would terminate their contract with Plaintiff
24 effective November 11, 2013. (*Id.*)

25 On November 11, 2013, Darleen, acting as co-manager of the Property, demanded
26 Plaintiff allow her into Plaintiff’s unit to perform a “walk-out.” (*Id.* ¶ 30.) Plaintiff
27 denied Darleen access to his unit, causing Thomas and Darleen to forcefully enter
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1 Plaintiff's unit. (*Id.*) After Darleen and Thomas left, Plaintiff found a Three-Day Notice
2 to Cure Violation or Move Out Notice signed by Darleen. (*Id.*)

3 On November 28, 2013, Plaintiff submitted a rent check for December which was
4 accepted and processed by First Light. (*Id.* ¶ 31.) Two days later, on November 30,
5 2013, Plaintiff received another 90-Day Notice of Termination of Tenancy along with
6 correspondence regarding an unlawful detainer action from Hanassab's attorney. (*Id.* ¶
7 32.) The Notice stated that Plaintiff's tenancy would be terminated on February 24,
8 2014, and further provided Hanassab was electing to opt out of the Section 8 Program.
9 (*Id.*) Plaintiff alleges no other Section 8 tenants at the Property received notice that their
10 tenancies would be terminated by Hanassab. (*Id.* ¶ 33.)

11 On December 30, 2013 and January 30, 2014, Plaintiff submitted rent checks
12 which were accepted and processed by First Light. (*Id.* ¶¶ 34-35.) On February 25,
13 2014, Hanassab filed an unlawful detainer action against Plaintiff in San Diego Superior
14 Court based on the November 30, 2013, 90-Day Notice of Termination of Tenancy. (*Id.*
15 ¶ 37.) Plaintiff was the only Section 8 tenant that Hanassab filed an unlawful detainer
16 action against. (*Id.* ¶ 33.) On March 28, 2014, the date the unlawful detainer trial was
17 set to commence, Hanassab voluntarily dismissed the case. (*Id.* ¶ 38.) To-date Plaintiff
18 continues to live at the Property under the Section 8 program with rental assistance from
19 SDHC and the San Diego Impact Program. (*Id.* ¶ 39.) As a result of Defendants'
20 harassment, Plaintiff has suffered severe emotional distress. (*Id.* ¶ 40.)

21 On June 18, 2014, proceeding pro se, Plaintiff filed an initial complaint against
22 Defendants. (Doc. No. 1.) Thereafter, Plaintiff retained counsel and filed the first
23 amended complaint (FAC) which sets forth five causes of action for violation of: (1) the
24 Fair Housing Act, 42 U.S.C. § 3601 et seq.; (2) the Civil Rights Act, 42 U.S.C. § 1982;
25 (3) the Fair Employment and Housing Act, Cal. Gov. Code § 12955; (4) the Unruh Act,
26 Cal. Civ. Code § 51; and (5) Disability Discrimination, Cal. Civ. Code § 54.1. (Doc. No.
27 15.) On October 29, 2014, Defendants filed the instant motion to dismiss. Plaintiff filed
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1 an opposition, (Doc. No. 19), and Defendants filed a reply in further support of their
2 motion (Doc. No. 20).

3 **II. LEGAL STANDARD**

4 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the plead-
5 ings and allows a court to dismiss a complaint upon a finding that the plaintiff has failed
6 to state a claim upon which relief may be granted. *See Navarro v. Block*, 250 F.3d 729,
7 732 (9th Cir. 2001). “A court may dismiss a complaint as a matter of law for (1) lack of
8 cognizable legal theory or (2) insufficient facts under a cognizable legal claim.”
9 *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996)
10 (internal citation omitted). However, a complaint will survive a motion to dismiss if it
11 contains “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
12 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In making this determination, a court
13 reviews the contents of the complaint, accepting all factual allegations as true, and
14 drawing all reasonable inferences in favor of the nonmoving party. *Cedars-Sinai Med.*
15 *Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007). Notwith-
16 standing this deference, the reviewing court need not accept “legal conclusions” as true.
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for a court to assume
18 “the [plaintiff] can prove facts that [he or she] has not alleged.” *Associated Gen.*
19 *Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).
20 However, “[w]hen there are well-pleaded factual allegations, a court should assume their
21 veracity and then determine whether they plausibly give rise to an entitlement to relief.”
22 *Iqbal*, 556 U.S. at 679.

23 **III. DISCUSSION**

24 Defendants’ motion to dismiss generally references each of Plaintiff’s claims as
25 requiring Plaintiff to allege (1) that he applied for and was qualified to rent certain
26 property; (2) was rejected; and (3) that the property remained available thereafter. (Doc.
27 No. 16-1, p. 11.) Defendants contend that because Plaintiff was not denied housing, he
28 cannot state a claim for housing discrimination. (*Id.* at 12) Defendants also argue that

1 the FAC relies “solely on conclusion, innuendo, and speculation” to support Plaintiff’s
2 claims. (*Id.* at 13.) Finally, Defendants argue Plaintiff’s claims are untimely under the
3 applicable statutes of limitation. (*Id.* at 16.)

4 As an initial matter, much of Defendants’ motion is dedicated to explaining the
5 conduct alleged in the FAC and challenging the truthfulness of Plaintiff’s allegations.
6 However, a Rule 12 motion to dismiss is not the appropriate means for a defendant to
7 test the likelihood of success on the merits, the truth of a plaintiff’s allegations, or the
8 amount of evidentiary support for a plaintiff’s claims. *See Parks School of Bus., Inc.*, 51
9 F.3d at 1484 (noting all allegations of material fact are taken as true and construed in the
10 light most favorable to the nonmoving party); *Hous. Rights Ctr., Inc. v. Moskowitz*, No.
11 CV042266, 2004 WL 3738293, at *5 (C.D. Cal. Sept. 20, 2004) (challenges to the truth
12 of factual allegations or lack of evidentiary support are appropriately considered on a
13 motion for summary judgment, not a motion to dismiss). Accordingly, alternative
14 explanations or justifications for the conduct alleged in the FAC are not relevant in
15 determining whether Plaintiff has stated a claim for housing discrimination. *See, e.g.*,
16 *Harris v. Itzhaki*, 183 F.3d 1043, 1051 (9th Cir. 1999) (a court does not consider rebuttal
17 evidence at the prima facie case stage in a housing discrimination claim). Defendants’
18 challenges to the veracity of the allegations in the FAC based on Plaintiff’s disabilities
19 and medical conditions are likewise inconsequential. While rebuttal evidence may
20 become relevant at later stages in the proceeding, that does not bring such arguments
21 within the Court’s purview in the context of a motion to dismiss. As such, the Court will
22 only consider whether Plaintiff has adequately pleaded each cause of action challenged
23 by Defendants.

24 A. The FHA, FEHA, and Unruh Act Claims

25 Plaintiff’s first cause of action is for violation of the federal Fair Housing Act
26 (“FHA”). Plaintiff alleges that by attempting to evict Plaintiff from the Property through
27 discriminatory comments, denial of repairs and renovations, notices to vacate and the
28 unlawful detainer action, Defendants discriminated against Plaintiff in the terms,

1 conditions or privileges in the rental of the Property. (Doc. No. 15, ¶¶ 42, 43.) Plaintiff
2 further alleges that the discrimination occurred as a result of Plaintiff’s race, color, sex,
3 familial status, sexual orientation, national origin, disability and medical conditions. (*Id.*
4 ¶ 43.) Plaintiff also brings claims for violation of California’s Fair Employment and
5 Housing Act (“FEHA”), and the Unruh Act on the basis of the same allegations. The
6 provisions of FEHA² and the Unruh Act³ at issue “protect substantially the same rights as
7 the FHA, and are subject to the same analysis.” *See Cabrera v. Alvarez*, 977 F. Supp. 2d
8 969, 975 (N.D. Cal. 2013); *Walker v. City of Lakewood*, 272 F.3d 1114, 1131 n.8 (9th
9 Cir. 2001).

10 The FHA prohibits discrimination “against any person in the terms, conditions, or
11 privileges of sale or rental of a dwelling, or in the provision of services in connection
12 therewith, because of race, color, religion, sex, familial status, or national origin.” 42
13 U.S.C. § 3604(b). A claim for discrimination under the FHA can be established through
14 either a disparate impact or disparate treatment theory. *Budnick v. Town of Carefree*,
15 518 F.3d 1109 (9th Cir. 2008); *Gamble v. City of Escondido*, 104 F.3d 300, 304-05 (9th
16 Cir. 1997). To establish a prima facie case of disparate impact under the FHA, “a
17 plaintiff must show at least that the defendant’s action had a discriminatory effect.”
18 *Budnick*, 518 F.3d at 1118 (quoting *Pfaff v. U.S. Dep’t of Hous. & Urban Dev.*, 88 F.3d
19 739, 745 (9th Cir. 1996)). More specifically, a plaintiff must allege “(1) the occurrence
20 of certain outwardly neutral . . . practices, and (2) a significantly adverse or dispropor-
21 tionate impact on persons of a particular [type] produced by the [defendant’s] facially
22 _____

23 ² Government Code Section 12955 states that it is unlawful for “the owner of any
24 housing accommodation to discriminate against or harass any person because of race,
25 color, religion, sex, gender, gender identity, gender expression, sexual orientation,
marital status, national origin, ancestry, familial status, source of income, disability, or
genetic information of that person.”

26 ³ The Unruh Civil Rights Act, as codified in California Civil Code Section 51,
27 states: “All persons within the jurisdiction of this state are free and equal, and no matter
28 what their sex, race, color, religion, ancestry, national origin, disability, medical
condition, genetic information, marital status, or sexual orientation are entitled to the full
and equal accommodations, advantages, facilities, privileges, or services in all business
establishments of every kind whatsoever.”

1 neutral acts or practices.” *Comm. Concerning Cmty. Improvement v. City of Modesto*,
2 583 F.3d 690, 711 (9th Cir. 2009) (quoting *Pfaff*, 88 F.3d at 745); *see also Cabrera*, 977
3 F. Supp. 2d at 976; *Gamble*, 104 F. 3d at 306. A plaintiff makes out a prima facie case
4 of disparate treatment merely by showing that a protected group has been subjected to
5 explicitly differential or discriminatory treatment. *Cabrera*, 977 F. Supp. 2d at 976.
6 Discriminatory intent or motive is a necessary element of any disparate treatment claim
7 under the FHA. *See Wood v. City of San Diego*, 678 F.3d 1075, 1081 (9th Cir. 2012);
8 *Gamble*, 104 F.3d at 305. As Plaintiff has not alleged the application of any particular
9 policy or practice resulting in an adverse effect to Plaintiff, the Court will consider
10 whether Plaintiff has adequately stated a claim under a disparate treatment theory.

11 Plaintiff alleges that Defendants issued multiple notices to vacate in an attempt to
12 evict Plaintiff from the Property, which culminated in the filing of the unlawful detainer
13 action. Plaintiff claims the notices to vacate, tenancy termination notices, as well as
14 particular comments made by Defendants to Plaintiff, were intentional acts of discrimi-
15 nation as a result of Plaintiff’s sexual orientation, national origin, and medical conditions
16 of Schizophrenia and Alcoholism. The FHA expressly encompasses protections from
17 discrimination in housing on the basis of race, color, religion, sex, handicap, familial
18 status, or national origin. Additionally, it is well-established that persons recovering
19 from drug and/or alcohol addiction are disabled under the FHA and therefore protected
20 from housing discrimination. *See Pac. Shores Properties, LLC v. City of Newport*
21 *Beach*, 730 F.3d 1142, 1156-57 (9th Cir. 2013). Plaintiff also alleges that he has
22 suffered injury as a result of Defendants’ conduct because Plaintiff was subjected to the
23 potential loss of Section 8 housing, continual threat of eviction or lease termination, and
24 emotional distress stemming from these incidents.

25 Considering the allegations in the FAC in their entirety, and interpreting all
26 inferences in favor of Plaintiff, the Court concludes Plaintiff has alleged sufficient facts
27 to state a claim of disparate treatment under the FHA. The fact Plaintiff was not actually
28 evicted from the Property does not preclude the FHA claim as Defendants contend. *See*

1 *Comm. Concerning Cmty. Improvement*, 583 F.3d at 711-12 (concluding the FHA
2 includes claims arising after the acquisition of property); *Harris*, 183 F.3d at 1050
3 (plaintiff who claimed she was subject to eviction notices following her complaint of
4 race discrimination could state a claim under the FHA). As discussed above, the
5 appropriate inquiry in reviewing the sufficiency of a complaint “is not whether a plaintiff
6 will ultimately prevail, but whether a claimant is entitled to offer evidence to support the
7 claims.” *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (internal
8 citations omitted). Thus without reaching the merits of Plaintiff’s claims, the Court
9 concludes the allegations in the first amended complaint are sufficiently pleaded.
10 Accordingly, the Court also concludes that Plaintiff has stated a claim for intentional
11 discrimination on the basis of national origin, sexuality, and medical condition with
12 respect to the FEHA and Unruh Act claims. Thus, the Court **DENIES** Defendants’
13 motion to dismiss Plaintiff’s first, third, and fourth causes of action under the FHA,
14 FEHA, and Unruh Act.⁴

15 B. Civil Rights Claim

16 Plaintiff also brings a cause of action for violation of section 1982 of the Civil
17 Rights Act. Defendants contend that Plaintiff cannot maintain his claim for violation of
18 section 1982 because Plaintiff was not denied housing and currently resides at the
19 Property.

20 Section 1982 protects the rights of all citizens to inherit, purchase, lease, sell, hold,
21 and convey property. *See* 42 U.S.C. § 1982. Section 1982 is properly invoked when
22 discrimination is alleged against “identifiable classes or persons” who are treated
23 differently “solely because of their ancestry or ethnic characteristics.” *Shaare Tefila*
24 *Congregation v. Cobb*, 481 U.S. 615, 617 (1987). A plaintiff can state a claim under

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26 ⁴ Defendants note that the Unruh Act “aims to eliminate discriminatory practices in
27 business establishments,” (Doc. No. 16-1, p. 11 n.3), however, the law is well-
28 established that the Unruh Act includes acts of discrimination that occur in connection
with residential housing. *See Marina Point v. Wolfson*, 30 Cal. 3d 721, 731 (1982) (“For
nearly two decades the provisions of the Unruh Act, in light of its broad application to
‘all business establishments,’ has been held to apply with full force to the business of
renting housing accommodations.”).

1 section 1982 by pleading the following elements: (1) plaintiff is a member of a racial
2 minority; (2) plaintiff applied for and was qualified to rent or purchase the property in
3 question; (3) defendant rejected plaintiff; and (4) the housing opportunity remained
4 available thereafter. *Phiffer v. Proud Parrot Motor Hotel, Inc.*, 648 F.2d 548, 551 (9th
5 Cir. 1980).

6 Plaintiff's opposition does not address Defendants' argument that Plaintiff must
7 have been denied housing to maintain his section 1982 claim and instead focuses on the
8 alleged attempts to evict Plaintiff from the property as the conduct violative of Plaintiff's
9 rights.⁵ However, while the threat of eviction may be sufficient to state a claim under
10 more broadly reaching housing statutes, it is insufficient under section 1982. Plaintiff
11 has failed to provide authority from which the Court can conclude he has adequately
12 pleaded a violation of section 1982 of the Civil Rights Act, given that Plaintiff obtained
13 housing from Defendants and continues to reside at the property. While Plaintiff's
14 national origin may be sufficient to satisfy the first element—that Plaintiff is a member
15 of a racial minority—the remaining elements are not alleged in the FAC. Accordingly,
16 Defendants' motion to dismiss Plaintiff's second cause of action for violation of section
17 1982 is **GRANTED** with leave to amend.

18 C. California Disabled Persons Act (Cal. Civil Code § 54.1)

19 Plaintiff's final cause of action is for violation of the California Disabled Persons
20 Act ("CDPA"). As noted above, Defendants' motion generally challenges all five claims
21 in the FAC instead of addressing each claim individually. As a result, Plaintiff argues
22 Defendants' motion did not specifically address Plaintiff's CDPA claim, and that
23 Defendant must be precluded from supplementing any additional arguments regarding
24 this claim in their reply papers. (Doc. No. 19, p. 12.) Defendants' motion appears to
25 challenge all five causes of action; the motion references each of Plaintiff's claims, albeit
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28 ⁵ Plaintiff's opposition does address the fact that Plaintiff still resides at the
property, but only with respect to the FHA claim. (Doc. No. 19, p. 13.)

1 summarily, and challenges Plaintiff’s medical conditions upon which the disability
2 discrimination claim presumably rests.⁶ (*See, e.g.*, Doc. No. 16-1, ps. 11, 16.)

3 Under the CDPA individuals with disabilities “are entitled to have full and equal
4 access, as other members of the general public, to accommodations . . . to which the
5 general public is invited, subject only to the conditions and limitations established by
6 law, or by state or federal regulation, and applicable alike to all persons.” Cal. Civ. Code
7 § 54.1(a)(1). The CDPA ensures that individuals with disabilities are granted or
8 otherwise permitted to make reasonable accommodations to ensure full enjoyment of the
9 premises. *See id.* The CDPA is intended to secure disabled persons the same right as the
10 general public to “the full and free use of facilities open to the public. Its focus is upon
11 *physical* access to public places.” *Fetter v. Bonner*, No. 2:12-CV-02235, 2014 WL
12 654575, at *6 (E.D. Cal. Feb. 19, 2014) (emphasis in original); *see also Turner v. Ass’n*
13 *of Am. Med. Colleges*, 167 Cal. App. 4th 1401, 1412 (2008). As such, CDPA claims are
14 often associated with the denial of reasonable accommodations and claims arising under
15 the Americans with Disabilities Act.

16 In connection with the CDPA claim, Plaintiff alleges that Defendants knew
17 Plaintiff was diagnosed with Schizophrenia and Alcoholism, refused to lease, and
18 attempted to evict Plaintiff from the Property. It is unclear however, how Plaintiff was
19 denied reasonable accommodations or full and equal access to the Property. Plaintiff
20 does not allege any barriers to the Property, or identify any accommodation that was
21 necessary, requested, or denied. Even giving Plaintiff’s allegations the broadest reading
22 possible, Plaintiff has not pleaded any denial of physical access to the Property. While
23 Plaintiff may have identified interference with his right to the Property by way of the
24 notices to vacate and attempted eviction, Plaintiff has not alleged a denial of physical
25 access to the Property or any facility open to the public. Given the uncertainties
26 remaining after consideration of the FAC allegations, Plaintiff has failed to state a claim
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28 ⁶ The FAC does not allege that Plaintiff suffers from any other disability such as a physical impairment.

1 under the CDPA. Thus, Defendants’ motion to dismiss the CDPA claim is **GRANTED**
2 with leave to amend.

3 D. Statute of Limitations

4 Finally, Defendants’ motion asserts that each of Plaintiff’s claims should be
5 dismissed as untimely. (Doc. No. 16-1, p. 16.) The parties agree that the stated or
6 otherwise applicable statute of limitations for each cause of action is two years.⁷ (Doc.
7 No. 16-1, p. 17; Doc. No. 19, p. 15.) The parties do, however, dispute whether Plaintiff
8 has adequately alleged a continuing violation of the housing discrimination claims, or
9 alleged only a series of discrete acts, some of which fall outside of the limitations period.
10 Specifically, Defendants argue that Plaintiff’s failure to plead specific dates with respect
11 to three comments allegedly made to Plaintiff by Thomas in spring of 2012 is fatal to
12 each cause of action. (Doc. No. 16-1, p. 17.) Defendants argue that these three com-
13 ments fall outside of the two year limitations periods, given that Plaintiff initially filed
14 suit on June 18, 2014. Defendants conclude that because each of Plaintiff’s claims relies
15 on time-barred evidence, the FAC must be dismissed. Plaintiff argues that the FAC
16 adequately alleges a continuing violation that amounts to a pattern and practice of
17 discrimination. (Doc. No. 19, p. 15.)

18 Under the continuing violation doctrine, when a plaintiff, pursuant to the Fair
19 Housing Act, “challenges not just one incident of conduct violative of the Act, but an
20 unlawful practice that continues into the limitations period, the complaint is timely when

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22 ⁷ The FHA and FEHA have two-year limitation periods. *See* 42 U.S.C. §
23 3613(a)(1)(A); Cal. Gov. Code § 12989.1. The Civil Rights Act does not contain a
24 statute of limitations, and thus courts commonly apply the most analogous limitation
25 period provided for by state law. *See Donoghue v. County of Orange*, 848 F.2d 926, 930
26 (9th Cir. 1987) (applying California’s two-year personal injury statute in the absence of a
27 federal statute of limitations for claims arising under the Civil Rights Act). Similarly,
28 courts commonly apply California’s two-year personal injury limitation period to Unruh
Act and CDPA claims as those causes of action also do not contain an express statute of
limitations. *See Hernandez v. Sutter W. Capital*, C09-03658, 2010 WL 3385046 at *2
(N.D. Cal. Aug. 26, 2010) (discussing determination of limitations period applied to
claims for violation of the Unruh Act); *Indep. Hous. Servs. of San Francisco v. Fillmore
Ctr. Assoc.*, 840 F. Supp. 1328, 1345 (N.D. Cal. 1993) (noting that the most analogous
statute of limitations for CDPA claims is California’s personal injury statute which has a
two-year limitations period).

1 it is filed” within two years of “the last asserted occurrence of that practice.” *Havens*
2 *Realty Corp. v. Coleman*, 455 U.S. 363, 380 (1982). Congress codified the continuing
3 violation doctrine articulated in *Havens* and amended the FHA to include both the
4 occurrence and the termination of an alleged discriminatory housing practice as events
5 triggering the two-year statute of limitations. *Garcia v. Brockway*, 526 F.3d 456, 462
6 (9th Cir. 2008) (en banc). The FEHA also has a two-year limitations periods which
7 begins to run upon the termination of the alleged discriminatory conduct. *See* Cal. Gov.
8 Code § 12989.1 (“An aggrieved person may commence a civil action in an appropriate
9 court not later than two years after the occurrence or the termination of an alleged
10 discriminatory housing practice . . .”). Plaintiff cites to California Code of Civil
11 Procedure Section 335.1 for the proposition that the same two-year statute of limitations
12 is applicable to violations of the Unruh Act. (Doc. No. 19, p. 15.)

13 It appears Plaintiff conflates the continuing violation doctrine as codified in the
14 FHA and FEHA statutes with the two-year limitations period applicable to those causes
15 of action. Section 335.1 of the California Code of Civil Procedure sets forth the two-
16 year limitations period applicable to personal injury actions, which is employed as the
17 limitations period in Unruh Act claims. Section 335.1 does not state that a cause of
18 action accrues upon termination of the discriminatory conduct. To the contrary, under
19 California law, a cause of action accrues when, under the substantive law, the wrongful
20 act is done, or the wrongful result occurs. *See Norgart v. Upjohn Co.*, 21 Cal. 4th 383,
21 397 (1999). Thus, Section 335.1 does not support the proposition that Plaintiff’s Unruh
22 Act claim began to run when the discriminatory conduct ceased.

23 However, Defendants’ sweeping conclusion that because each of Plaintiff’s claims
24 rely in part on the spring 2012 comments, “the FAC must be dismissed” is without legal
25 support. Plaintiff’s claims are not based solely on the spring 2012 comments. Instead,
26 the FAC details a series of discriminatory conduct alleged to have occurred over a two
27 year period, all of which Plaintiff claims was intended to wrongfully evict Plaintiff from
28 the Property. Thus, Plaintiff’s FHA and FEHA claims are timely. *See Garcia*, 526 F.3d

1 at 462 (a complaint is timely when “based not solely on isolated incidents . . . but a
2 continuing violation manifested in a *number of incidents*—including at least one . . . that
3 [wa]s asserted to have occurred within the [limitations] period”) (emphasis in original).


4 Similarly, the Court declines to dismiss the Unruh Act claim because Plaintiff has
5 adequately pleaded a violation, even absent the comments allegedly made in spring of
6 2012. Plaintiff’s alleged injury was the wrongful attempts to evict Plaintiff, which
7 culminated in the unlawful detainer action in March 2014. To the extent Plaintiff’s
8 Unruh Act claim is predicated on the unlawful detainer action, the Court finds Plaintiff’s
9 claim for violation of the Unruh Act timely. Thus, at this stage in the proceeding, the
10 Court is not inclined to dismiss any cause of action on statute of limitations grounds.
11 However, should Plaintiff choose to amend his complaint with respect to the section
12 1982 and the CDPA claims, Plaintiff should be cognizant of ensuring the allegations
13 supporting those causes of action occur within the appropriate limitations period(s).

14 **IV. CONCLUSION**

15 For the foregoing reasons, the Court **DENIES** Defendants’ motion to dismiss as
16 to the FHA, FEHA, and Unruh Act claims and **GRANTS** Defendants motion to dismiss
17 Plaintiff’s causes of action under section 1982 of the Civil Rights Act and the CDPA
18 with leave to amend. Plaintiff must file a second amended complaint within fourteen
19 (14) days of the date of this order.

20 **IT IS SO ORDERED.**

21
22 DATED: February 12, 2015

23 
24 _____
25 Hon. Anthony J. Battaglia
26 U.S. District Judge
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28