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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CEDRIC TYRONE MOORE,)	NO. CV 15-4687-JFW(E)
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
HOUSING AUTHORITY OF THE)	UNITED STATES MAGISTRATE JUDGE
CITY OF LOS ANGELES, et al.,)	
)	
Defendants.)	
)	

This Report and Recommendation is submitted to the Honorable John F. Walter, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

BACKGROUND

Plaintiff, proceeding in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. section 1983 on June 19, 2015. The action was reassigned under General Order 05-07 on July 6, 2015.

///

1 In the Complaint, Plaintiff alleged that the Housing Authority of
2 the City of Los Angeles ("Housing Authority") and Housing Authority
3 employees unlawfully terminated Plaintiff's "Section 8" housing
4 subsidy. Plaintiff asserted violations of Plaintiff's constitutional
5 due process right and violation of section 504 of the Rehabilitation
6 Act of 1973, 29 U.S.C. § 794(a), Pub. L. 93-112, Title V, § 504
7 (Sept. 26, 1973). Plaintiff named as Defendants: (1) the Housing
8 Authority; (2) Housing Authority senior investigator Pedro Vargas;
9 (3) Housing Authority President and CEO Douglas Guthrie; and
10 (4) Housing Authority Administrative Hearing Officer Dale Nowicki.
11

12 On July 15, 2015, the Court issued an Order Dismissing Complaint
13 with Leave to Amend. On August 13, 2015, Plaintiff filed a First
14 Amended Complaint, the operative pleading. The First Amended
15 Complaint names as Defendants only the Housing Authority and Pedro
16 Vargas.
17

18 On October 14, 2015, Defendants filed a "Motion to Dismiss
19 Plaintiff's First Amended Complaint" ("Motion to Dismiss"),
20 accompanied by a Request for Judicial Notice and exhibits. On
21 November 5, 2015, Defendants filed an additional exhibit. On
22 November 16, 2015, Plaintiff filed an Opposition to the Motion to
23 Dismiss. The Court has taken the Motion to Dismiss under submission
24 without oral argument.

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1 The Court may not dismiss a pro se complaint without leave to
2 amend unless "it is absolutely clear that the deficiencies of the
3 complaint could not be cured by amendment." Karim-Panahi v. Los
4 Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988) (citations and
5 quotations omitted); see also Lopez v. Smith, 203 F.3d 1122, 1130 (9th
6 Cir. 2000) (en banc) (district court should grant leave to amend
7 "unless it determines that the pleading could not possibly be cured by
8 the allegation of other facts") (citation and internal quotations
9 omitted).

10
11 **OVERVIEW OF SECTION 8 HOUSING CHOICE VOUCHER PROGRAM**

12
13 As the Ninth Circuit has explained:

14
15 The federal government provides rental assistance for
16 low and moderate income families, the elderly, and the
17 disabled through what is known as "the section 8 program."
18 Congress added the section 8 program to the United States
19 Housing Act of 1937 in 1974 by enacting the Housing and
20 Community Development Act of 1974, Pub.L. No. 93-383, §
21 201(a), 88 Stat. 633, 662-66 (1974) (codified as amended at
22 42 U.S.C. § 1437f). The express congressional "purpose" of
23 the section 8 program is "aiding low-income families in
24 obtaining a decent place to live and . . . promoting
25 economically mixed housing." 42 U.S.C. § 1437f(a). The
26 program is managed federally by HUD, and administered
27 locally by public housing authorities ("PHA"). Section 8
28 tenants must sign a lease and pay a portion of their income

1 toward rent. The remainder of the rent charge is paid by
2 PHA pursuant to a housing assistance payment ("HAP")
3 contract between PHA and the owner. . . .
4

5 Barrientos v. 1801-1825 Morton LLC, 583 F.3d 1197, 1202 (9th Cir.
6 2009).

7
8 A PHA such as the Defendant Housing Authority may terminate
9 assistance to a family for a number of reasons, including the family's
10 violation of any obligation under the program, fraud, or criminal
11 activity as described in 24 C.F.R. section 982.553. 24 C.F.R. §§
12 982.552(c)(1)(i), (iv), (xi). The family's obligations include:
13 (1) the obligation to provide true and complete information to the
14 PHA; and (2) the obligation not to commit fraud or engage in drug-
15 related criminal activity or violent criminal activity. 24 C.F.R. §§
16 982.551(b)(4), (k), (l). A PHA may terminate assistance if it
17 determines that any member of the family has violated the obligation
18 not to engage in any drug-related criminal activity. 24 C.F.R. §
19 982.553(b)(1)(iii). A PHA may terminate assistance because of
20 criminal activity by a household member if the PHA determines, based
21 on a preponderance of the evidence, that the household member has
22 engaged in the activity, regardless of whether the household member
23 has been arrested or convicted for such activity. 24 C.F.R. §
24 982.553(c). If the family includes a person with a disability, the
25 PHA decision is subject to a consideration of reasonable
26 accommodation. 24 C.F.R. § 982.552(c)(2)(iv).

27 ///

28 ///

1 If a PHA proposes to deny admission for criminal activity shown
2 by a criminal record, the PHA must provide to the subject of the
3 record and to the applicant copies of the criminal record. 24 C.F.R.
4 § 982.553(d)(1). The PHA must give the family an opportunity to
5 dispute the accuracy and relevance of that record in the informal
6 review process. Id. If a PHA proposes to terminate assistance
7 because of criminal activity shown by a criminal record, the PHA must
8 notify the household of the proposed terminating action, and must
9 provide to the subject of the record and to the tenant copies of the
10 criminal record and must also give the family an opportunity to
11 dispute the accuracy and relevance of that record. 24 C.F.R. §
12 982.553(d)(2).

13
14 A PHA must give a Section 8 participant family the opportunity
15 for an informal hearing before it terminates the family's benefits
16 under an outstanding HAP contract. 24 C.F.R. § 982.555(a)(2). The
17 family must be given the opportunity prior to the hearing, to examine
18 any PHA documents that are directly relevant to the hearing. 24
19 C.F.R. § 982.555(e)(2)(i). If the PHA does not make a document
20 available for examination on request of the family, the PHA may not
21 rely on the document at the hearing. Id. The family has the right to
22 present evidence and to question any witnesses at the hearing. See 24
23 C.F.R. §§ 982.555(e)(5). The hearing officer may consider evidence
24 regardless of the standards of admissibility applicable in judicial
25 proceedings. 24 C.F.R. § 555(e)(5).

26
27 Each PHA must "administer the program in conformity with the Fair
28 Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of

1 the Rehabilitation Act of 1973, and Title II of the Americans with
2 Disabilities Act." 24 C.F.R. § 982.53(b)(1).

3
4 **SUMMARY OF ALLEGATIONS OF FIRST AMENDED COMPLAINT**

5
6 Although the First Amended Complaint ("FAC") is somewhat unclear,
7 it does appear that Plaintiff's claims all arise from the termination
8 of a housing subsidy and related administrative proceedings.

9
10 Plaintiff allegedly entered the "Section 8" federal housing
11 subsidy program on October 8, 2007, assertedly after a criminal
12 background check which allegedly included Plaintiff's "drug related
13 history" (FAC, p. 8). Plaintiff alleges that, on or about July 12,
14 2013, Defendant Vargas violated federal regulations and the Housing
15 Authority's administrative plan by assertedly failing to provide to
16 Plaintiff a copy of Plaintiff's criminal history information and to
17 afford Plaintiff an opportunity to dispute the accuracy and relevancy
18 of his criminal record prior to sending Plaintiff a Notice of
19 Termination of his housing subsidy (id., p. 2).

20
21 Plaintiff allegedly received a "Notice of Intended Action" from
22 Defendant Vargas, dated July 29, 2013, notifying Plaintiff that the
23 Housing Authority intended to terminate Plaintiff's housing subsidy on
24 the grounds of drug-related activity and fraud (id.). Plaintiff
25 allegedly requested a review of the evidence, reasonable accommodation
26 and "consideration of mitigating factors" (id., pp. 6-7). On or about
27 August 7, 2013, Plaintiff requested an administrative hearing (id.).

28 ///

1 Plaintiff allegedly met with Vargas during the first week of
2 August 2013 (id., p. 7). Vargas allegedly referred to a pending drug
3 case against Plaintiff, assertedly stating that the evidence in that
4 case "was compelling and upon conviction would terminate" Plaintiff's
5 housing subsidy (id.). Vargas allegedly did not present Plaintiff
6 with any police reports, criminal history reports, court documents,
7 Housing Authority eligibility questionnaires or investigative reports,
8 or with copies of federal regulations and the administrative plan
9 (id.).¹ As a result, Plaintiff allegedly was surprised at the hearing
10 by assertedly false allegations of his purported arrests and
11 convictions (id., p. 4). A hearing officer assertedly terminated
12 Plaintiff's housing subsidy because of a finding of fraud that was
13 based on the allegedly false allegations of arrest and convictions
14 (id., pp. 7-8).

15
16 Defendants also allegedly failed to respond to Plaintiff's
17 purported request for reasonable accommodation of Plaintiff's "drug
18 addiction disability" prior to an administrative hearing and allegedly
19 failed to forward the purported request "to the appropriate staff for
20 full review and process according to the agency's administrative plan
21 prior, and during[,] the administrative hearing" (id., pp. 3-4).

22
23 The Housing Authority allegedly violated federal regulations and
24 its administrative plan by failing to "exclude" evidence which the Los
25 Angeles County Superior Court assertedly found to have been withheld

26
27 ¹ Allegedly, Plaintiff previously had authorized the
28 Housing Authority to obtain Plaintiff's criminal record
information (id., pp 2-3).

1 improperly from Plaintiff in the administrative proceedings (id., p.
2 4). Plaintiff allegedly filed a petition for mandamus which resulted
3 in a remand for a new administrative hearing (id., p. 14). Plaintiff
4 allegedly filed a "Motion to Exclude Evidence" prior to the new
5 administrative hearing on February 5, 2015, but the hearing officer at
6 the second hearing assertedly denied the motion (id., p. 14).

7
8 The First Amended Complaint alleges four claims for relief.
9 Claims I and II allege that Defendants violated due process by
10 assertedly failing to notify Plaintiff concerning the criminal history
11 information Defendants had obtained and by allegedly failing to afford
12 Plaintiff and his family the opportunity to dispute the accuracy of
13 Plaintiff's criminal history record (id., pp. 5-8). These actions
14 assertedly resulted in the loss of Plaintiff's housing subsidy after
15 an allegedly unfair hearing (id.).

16
17 Claim III purports to allege a Rehabilitation Act violation.
18 Plaintiff alleges that, on July 25, 2013, Plaintiff provided Defendant
19 Vargas with a request for reasonable accommodation and for
20 consideration of mitigating circumstances related to Plaintiff's
21 purported "drug addiction disability" (id., p. 8). Defendant Vargas
22 allegedly failed to forward the request to the "appropriate
23 coordinator for process," purportedly in violation of the Housing
24 Authority's administrative plan (id., p. 9). Vargas allegedly
25 discriminated against Plaintiff, who supposedly had a "disability drug
26 addiction with a history of addiction" (id., p. 10). The Housing
27 Authority allegedly failed to acknowledge Plaintiff's purported
28 reasonable accommodation request after Plaintiff assertedly submitted

1 the request to the hearing officer on March 26, 2015 (id.)

2
3 In Claim IV, Plaintiff alleges that the Housing Authority
4 violated due process, federal regulations and the administrative plan
5 by failing to "exclude" evidence at the second administrative hearing
6 (id., p. 11-14).²

7
8 Plaintiff seeks compensatory damages and damages for emotional
9 distress and "Loss of Profits" (id., pp. 14-15). Plaintiff also seeks
10 punitive damages in the sum of \$14 million and an injunction "to
11 exclude evidence when the law provides its exclusion and the agency is
12 found to have breach[ed] its duty to provide such discovery related
13 evidence" (id.).

14
15 **STATE ADMINISTRATIVE AND JUDICIAL PROCEEDINGS**

16
17 The Court grants Defendants' unopposed Request for Judicial
18 Notice ("RJN") of records of the administrative proceedings and court
19 records. See Mir v. Little Company of Mary Hosp., 844 F.2d 646, 649
20 (9th Cir. 1988) (court may take judicial notice of court records);
21 Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th
22 Cir. 1986), abrogated on other grounds, Astoria Federal Savings & Loan
23 Ass'n v. Solimino, 501 U.S. 104 (1991) (public records of
24 administrative proceedings are properly the subject of judicial
25 notice); Quintanilla v. Gates, 2004 WL 1661540 at *2 n.1 (C.D. Cal.
26 2004) (taking judicial notice of court docket). These records show

27
28

² Claim IV also contains allegations which are redundant
to those made in Claims I and II.

1 the following:
2

3 **Background**
4

5 Plaintiff began receiving Section 8 benefits in 2002 (RJN 173,
6 175). On June 26, 2011, Plaintiff executed and verified an
7 eligibility questionnaire in which Plaintiff answered "no" to the
8 question whether he or anyone in his household had ever been convicted
9 of a crime other than a traffic violation (RJN 110-18).
10

11 On July 19, 2012, Plaintiff executed and verified an eligibility
12 questionnaire in which Plaintiff answered "yes" in response to the
13 question whether he or anyone in his household had ever been convicted
14 of any crime other than a traffic violation, and indicated he had
15 suffered a 1998 conviction for "automotive driving without permission"
16 (RJN 100-08).
17

18 On November 28, 2012, the State charged Plaintiff with a felony
19 violation of California Health and Safety Code section 11352(a)
20 (transportation, sale and furnishing of a controlled substance) (RJN
21 9).
22

23 On July 11, 2013, Defendant Vargas signed an "Investigative
24 Report" alleging that Plaintiff had committed fraud by failing to
25 disclose, on two eligibility questionnaires, Plaintiff's three prior
26 felony convictions and three prior misdemeanor convictions (RJN 69-
27 70). The Investigative Report also alleged that a criminal complaint
28 had been filed charging Plaintiff with possession of a controlled

1 substance for sale (RJN 69-70). Also on July 11, 2013, the Housing
2 Authority issued a "Notice of Intended Action," signed by Defendant
3 Vargas, indicating the Housing Authority had discovered evidence that
4 Plaintiff or members of Plaintiff's family had participated in drug-
5 related criminal activity and had committed fraud in connection with a
6 federal housing program (RJN 141). The "Notice of Intended Action"
7 stated that if Plaintiff did not provide adequate proof that this
8 information was incorrect, the Housing Authority would take action to
9 terminate Plaintiff's participation in the Section 8 program (id.).
10

11 On July 22, 2013, Plaintiff responded, denying that he had
12 engaged in drug trafficking at his residence, stating that he had a
13 drug problem and was in drug counseling, and enclosing documents (RJN
14 142-62; FAC, Ex. F).
15

16 On July 29, 2013, the Housing Authority served Plaintiff a
17 "Notice of Intended Action and Right to Hearing" (FAC, Ex. C). The
18 Notice informed Plaintiff that the Housing Authority had determined
19 that Plaintiff had participated in drug-related activity within the
20 meaning of 24 C.F.R. section 982.553 and had committed fraud in
21 connection with a federal housing program in violation of 24 C.F.R.
22 section 982.551 (id.)
23

24 On October 28, 2013, Plaintiff pled nolo contendere to a
25 violation of California Health and Safety Code section 11352(a) (RJN
26 16-17).
27

27 ///

28 ///

1 **The First Administrative Hearing and Decision**

2
3 On November 21, 2013, a hearing was held before Hearing Officer
4 Andre Brown (RJN 164-93). The Housing Authority investigator
5 submitted, among other things, a copy of: (1) a 2013 criminal
6 complaint filed in the Los Angeles County Superior Court charging
7 Plaintiff with felony possession of a controlled substance for sale;
8 and (2) Plaintiff's criminal history report allegedly showing
9 Plaintiff had suffered three felony convictions and three misdemeanor
10 convictions which Plaintiff assertedly had not disclosed to the
11 Housing Authority (RJN 167-72).

12
13 At the hearing, Plaintiff acknowledged that he had been convicted
14 in the 2013 drug case and said he had received "a drug program"
15 sentence (RJN 184). Plaintiff argued that he thought the question on
16 the eligibility questionnaire concerning his criminal history sought
17 information only for convictions suffered during the current year (RJN
18 176, 185). Plaintiff acknowledged, however, that in the 2012
19 questionnaire Plaintiff had disclosed a conviction for driving without
20 the owner's consent in 1998 or 1999, but still insisted he had not
21 read the eligibility questionnaire "thoroughly" and had assumed it
22 required disclosure only of "current activities" (RJN 183, 186-87).
23 When the investigator pointed out that the eligibility form asked if
24 Plaintiff "ever" had been convicted of a crime, Plaintiff said "it
25 must have been a little vague to me and I just misunderstood it" (RJN
26 193).

27 ///

28 ///

1 Plaintiff also said some of the arrest information arose out of a
2 domestic situation in 2011 and 2012 as to which Plaintiff assertedly
3 had obtained a restraining order (RJN 176). Plaintiff said that the
4 "last incident" (i.e. the 2013 drug charge) was "something that
5 happened" and was a "mistake" (RJN 176). Plaintiff admitted he had
6 given drugs to an undercover agent and that this was something in
7 which Plaintiff should not have gotten involved, but claimed that the
8 drug transaction had not occurred at Plaintiff's residence (id.).
9 Plaintiff disclosed that he had been undergoing drug counseling and
10 treatment and Plaintiff submitted related documentation (RJN 177-78,
11 188-89). Plaintiff acknowledged that he had "made some bad choices"
12 and apologized for his past drug use (RJN 191). Plaintiff asked the
13 hearing officer to take into consideration Plaintiff's alleged
14 attempts to take care of his family and to "move forward" (RJN 190).

15
16 On January 3, 2014, the Hearing Officer issued a decision
17 upholding the termination of Plaintiff's Section 8 benefits, ruling
18 that the evidence was sufficient to support the allegations that
19 Plaintiff had failed to disclose his criminal arrests and convictions
20 and had engaged in drug-related criminal activity (see RJN 255).

21
22 **The First Administrative Mandamus Proceeding**

23
24 On April 30, 2014, Plaintiff filed a petition for administrative
25 mandamus in the Los Angeles County Superior Court, in case number
26 BS147769 (see Docket in Moore v. Housing Authority of the City of Los

27 ///

28 ///

1 Angeles, Los Angeles Superior Court case number BS147769).³

2
3 The Superior Court issued a tentative decision denying the
4 petition (RJN 255-65). The Superior Court held a hearing on
5 October 28, 2014 (see "Reporter's Transcript on Appeal October 28,
6 2014," attached to Defendants' "Notice of Lodgment Transcript, etc."
7 filed November 5, 2015 ["October 28, 2014 R.T."]). At the hearing,
8 Plaintiff argued that federal regulations required the agency to
9 provide Plaintiff with a copy of his criminal record prior to the
10 hearing (id. at 4-5). The Superior Court agreed, but pointed out that
11 any remedy merely would be a remand for a new hearing (id. at 8-9).
12 Plaintiff agreed the issue probably was a "technicality" (id. at 9).
13 The Housing Authority investigator pointed out that Plaintiff had
14 admitted the 2013 drug conviction (id. at 10, 12). The court said it
15 would remand for a new hearing, even though the court did not see how
16 another hearing would yield a different outcome (id. at 13-15). The
17 court did not adopt its merits tentative (id. at 15).

18
19 Plaintiff appealed (see Docket in Moore v. Housing Authority of
20 the City of Los Angeles, California Court of Appeal (2d District) case

21 ///

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25 _____
26 ³ The Court takes judicial notice of the dockets of
27 Plaintiff's two administrative mandamus actions in the Los
28 Angeles County Superior Court, available on the Los Angeles
County Superior Court's website at <http://www.lacourt.org>. See
Mir v. Little Company of Mary Hosp., 844 F.2d at 649.

1 number B261142).⁴ On April 2, 2015, the Court of Appeal dismissed the
2 appeal on the Housing Authority's unopposed motion (id.).

3
4 **The Second Administrative Hearing and Decision**

5
6 On April 10, 2015, a hearing occurred before Hearing Officer Dale
7 Nowicki (RJN 194-254).⁵ Plaintiff submitted a motion to exclude "all
8 discovery-related evidence" and all testimony and documents presented
9 at the previous hearing on the ground that the Housing Authority had
10 failed to disclose Plaintiff's criminal history record prior to the
11 first hearing, allegedly in violation of 24 C.F.R. section
12 982.555(e)(2)(i) (RJN 48-55). At the hearing, Hearing Officer Nowicki
13 denied the motion to exclude the evidence (RJN 197-98, 201-03).

14
15 On the merits, Plaintiff argued that, because Plaintiff had
16 consented to the release of his criminal history information to the
17 Housing Authority when he entered the Section 8 program, the agency
18 must have been aware of Plaintiff's criminal record, so Plaintiff
19 purportedly was not required to disclose his convictions on the
20 eligibility questionnaire (RJN 213-14, 221). Plaintiff admitted he
21 had suffered three prior felony convictions and three prior
22 misdemeanor convictions, but claimed he could not recall his criminal
23 history at the time he filled out the eligibility questionnaire except

24
25 ⁴ The Court takes judicial notice of the docket in
26 California Court of Appeal (2d District) case number B261142,
27 available on the California courts' website at www.courts.ca.gov.
See Mir v. Little Company of Mary Hosp., 844 F.2d at 649.

28 ⁵ Plaintiff had moved to disqualify Hearing Officer Brown
(RJN 38-41).

1 for the most recent incident (RJN 220-22). Plaintiff also stated:
2 (1) Plaintiff's criminal history prior to the 2013 drug conviction
3 incident was "obsolete" and irrelevant; (2) Plaintiff's criminal
4 history was "damaging" and Plaintiff should have sought expungement;
5 and (3) Plaintiff supposedly had not intended the inaccuracies (RJN
6 218-20, 239-41). Plaintiff said the 2013 conviction arose out an
7 incident that did not occur at Plaintiff's residence, and that
8 Plaintiff "served a year in a drug program" (RJN 228). Plaintiff
9 submitted letters concerning his alleged progress in drug treatment
10 programs (RJN 230).

11
12 On April 10, 2015, the Hearing Officer issued an Amended Notice
13 of Decision: (1) denying Plaintiff's motion to exclude evidence as
14 moot because Plaintiff had received the Housing Authority's discovery;
15 and (2) upholding the Housing Authority's proposal to terminate
16 Plaintiff's Section 8 housing assistance, based on findings that
17 Plaintiff had engaged in drug-related activity while a program
18 participant and had committed fraud by failing to list all of his
19 criminal convictions on the eligibility questionnaires (RJN 1-6).

20
21 **The Second Administrative Mandamus Proceeding**

22
23 On June 15, 2015, Plaintiff filed another petition for writ of
24 administrative mandamus in the Los Angeles County Superior Court, in
25 case number BS156088 (RJN 266-320). According to the Superior Court's
26 docket, that petition is still pending, and a hearing presently is
27 scheduled for March 22, 2016.

28 ///

1 **DEFENDANTS' CONTENTIONS**

2
3 Defendants contend, inter alia:

4
5 1. The action allegedly is barred by the "Rooker-Feldman"
6 doctrine;⁶

7
8 2. Plaintiff's Rehabilitation Act claim allegedly fails because
9 Plaintiff assertedly did not request reasonable accommodation from the
10 Housing Authority; and, in any event, Plaintiff's alleged addiction to
11 illegal narcotics allegedly was not a disability requiring reasonable
12 accommodation;

13
14 3. Section 1983 allegedly provides no remedy for violations of
15 federal regulations;

16
17 4. Plaintiff allegedly received due process; and

18
19 5. The decision to terminate Plaintiff's Section 8 subsidy
20 allegedly was "substantively correct."

21 ///

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27 ⁶ See District of Columbia Court of Appeals v. Feldman,
28 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S.
413 (1923).

1 DISCUSSION

2
3 I. The Rooker-Feldman Doctrine Does Not Apply.

4
5 Under the "Rooker-Feldman" doctrine, a federal district court
6 lacks subject matter jurisdiction to review state court decisions.
7 See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462,
8 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The
9 proper court in which to obtain such review is the United States
10 Supreme Court, by petition for writ of certiorari. District of
11 Columbia Court of Appeals v. Feldman, 460 U.S. at 476; 28 U.S.C. §
12 1257. Rooker-Feldman applies to "cases brought by state-court losers
13 complaining of injuries caused by state-court judgments rendered
14 before the district court proceedings commenced and inviting district
15 court review and rejection of those judgments." Exxon Mobil Corp. v.
16 Saudi Basic Industries, Inc., 544 U.S. 280, 294 (2005). "[T]he 'de
17 facto appeals' barred by *Rooker-Feldman* are those in which 'a federal
18 plaintiff asserts as a legal wrong an allegedly erroneous decision by
19 a state court.'" Vasquez v. Rackauckas, 734 F.3d 1025, 1036 (9th Cir.
20 2013) (citation omitted; emphasis deleted). "In contrast, if 'a
21 federal plaintiff asserts as a legal wrong an allegedly illegal act or
22 omission by an adverse party, *Rooker-Feldman* does not bar
23 jurisdiction.'" Id. (citation omitted). Here, Plaintiff challenges
24 the actions of Defendants, not the actions of the Superior Court.

25
26 Furthermore, in this Circuit "[p]roceedings end for Rooker-
27 Feldman purposes when the state courts finally resolve the issue that
28 the federal court plaintiff seeks to relitigate in a federal forum,

1 even if other issues remain pending at the state level." Mothershed
2 v. Justices of Supreme Court, 410 F.3d 602, 604 n.1 (9th Cir. 2005).
3 Here, the only state court judgment now existing is the Superior
4 Court's judgment of remand, which did not "resolve the issues"
5 presented in the instant action. Accordingly, Rooker-Feldman does not
6 apply.

7
8 **II. Plaintiff Cannot Maintain Section 1983 Claims for Alleged**
9 **Violations of Federal Regulations or the Administrative Plan.**

10
11 Plaintiff's section 1983 claims based on alleged violations of
12 federal regulations and the Housing Authority's related administrative
13 plan must be dismissed without leave to amend and with prejudice.
14 Section 1983 does not provide a remedy for alleged violations of
15 federal regulations. See Save Our Valley v. Sound Transit, 335 F.3d
16 932, 939-44 (9th Cir. 2003) (federal agency regulations not
17 enforceable pursuant to section 1983); Nozzi v. Housing Authority of
18 City of Los Angeles, 425 Fed. App'x 539, 543 (9th Cir. 2011) (Section
19 8 regulations not enforceable pursuant to section 1983). Therefore,
20 the claims for alleged violations of federal regulations or the
21 Housing Authority's administrative plan contained in Claims I, III and
22 IV must be dismissed without leave to amend and with prejudice.

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1 **III. Plaintiff Has Not Alleged, and Cannot Allege, a Cognizable**
2 **Rehabilitation Act Claim.**

3
4 **A. Background**

5
6 In the First Amended Complaint, Plaintiff alleges that he mailed
7 to Defendants on July 25, 2013, a letter and documents requesting a
8 reasonable accommodation (FAC, pp. 6-7). Plaintiff attaches to the
9 pleading a letter which Plaintiff alleges constituted a request for
10 accommodation and other documents, including a letter from a counselor
11 for a program through which Plaintiff allegedly received alcohol, drug
12 and parental skills counseling, a Los Angeles Dependency Court Case
13 Plan, and a drug testing document allegedly prepared for the
14 Department of Children and Family Services (FAC, p. 8; Exs. F, G, H,
15 I).

16
17 In the referenced letter addressed to the Housing Authority and
18 dated "July 22, 1013" [sic], Plaintiff stated that he purportedly had
19 not used his home for drug trafficking, acknowledged Plaintiff's drug
20 problem, and said he had undergone counseling and drug testing (FAC,
21 Ex. F). The letter stated that Plaintiff blamed himself and a "bad
22 relationship" with a female for his drug problem, and that Plaintiff
23 was willing to "get help and have testing done" to show that Plaintiff
24 was "clean" and making changes to his life (*id.*). The letter
25 concluded: "Please reconsider and grant my status in keeping my
26 housing so that I can provide Housing for me and my family and I vow
27 not to ever to have [sic] this come back again in my life." (*id.*).

28 ///

1 In his Opposition, Plaintiff alleges that Housing Authority's
2 administrative plan provided that a request for reasonable
3 accommodation be referred to the Director of Planning and
4 Accessibility Coordinator for a final determination, and provided for
5 a two-tier grievance system in the event the request was denied
6 (Opposition, p. 5). According to Plaintiff, Defendants did not follow
7 these procedures.

8
9 **B. Discussion**

10
11 The Rehabilitation Act provides

12
13 No otherwise qualified individual with a disability in
14 the United States, as defined in section 705(20) of this
15 title, shall, solely by reason of her or his disability, be
16 excluded from the participation in, be denied the benefits
17 of, or be subjected to discrimination under any program or
18 activity receiving Federal financial assistance or under any
19 program or activity conducted by any Executive agency or by
20 the United States Postal Service.

21
22 29 U.S.C. § 794(a).

23
24 "A plaintiff bringing suit under § 504 must show (1) he is an
25 individual with a disability; (2) he is otherwise qualified to receive
26 the benefit; (3) he was denied the benefits of the program solely by
27 reason of his disability; and (4) the program receives federal
28 financial assistance." Duvall v. County of Kitsap, 260 F.3d 1124,

1 1135 (9th Cir. 2001) (citation omitted). "A failure to provide
2 reasonable accommodation can constitute discrimination under section
3 504 of the Rehabilitation Act." Vinson v. Thomas, 288 F.3d 1145, 1154
4 (9th Cir. 2002), cert. denied, 537 U.S. 1104 (2003). To show
5 discrimination based on failure reasonably to accommodate, Plaintiff
6 must show that: (1) he suffers from a disability as defined by the
7 Rehabilitation Act; (2) Defendants knew or reasonably should have
8 known of Plaintiff's disability; (3) accommodation of the disability
9 may be necessary to afford Plaintiff an equal opportunity to use and
10 enjoy his dwelling; and (4) Defendants refused to make a reasonable
11 accommodation. See Giebeler v. M & B Associates, 343 F.3d 1143, 1147
12 (9th Cir. 2003). To demonstrate that an accommodation is necessary,
13 Plaintiff "must show that, but for the accommodation, [Plaintiff]
14 likely will be denied an equal opportunity to enjoy the housing of
15 [his] choice." Id. at 1155 (citation and internal quotations omitted;
16 brackets added).⁷ "Without a causal link between the defendants'
17 policy and the plaintiff's injury, there can be no obligation on the
18 part of defendants to make a reasonable accommodation." Id. (citation
19 and internal quotations omitted). An accommodation is reasonable
20 "when it imposes no fundamental alteration in the nature of the
21 program or undue financial or administrative burdens." Id. (citation
22 and internal quotations omitted).

23 ///

24
25 ⁷ Although Giebeler was a disability discrimination case
26 brought pursuant to the federal Fair Housing Amendments Act, 42
27 U.S.C. section 3601 et seq. ("FHAA"), the reasonable
28 accommodation standards applicable in FHAA cases and in
Rehabilitation Act cases are essentially the same. Giebeler v. M
& B. Associates, 343 F.3d at 1149.

1 Defendants contend the record does not show that Plaintiff made
2 any request for accommodation for a "recognized disability." The term
3 "individual with a disability" as used in the Rehabilitation Act does
4 not include an individual who is currently engaging in the illegal use
5 of drugs. 29 U.S.C. § 705(20)(C)(i). However, this provision does
6 not exclude individuals who have successfully completed, or are
7 participating in, a supervised drug rehabilitation program and are no
8 longer engaging in the illegal use of drugs, or who have otherwise
9 been rehabilitated successfully and are not using drugs. 29 U.S.C. §
10 705(20)(C)(ii). Plaintiff's allegations, taken as true for purposes
11 of the Motion to Dismiss, suffice to plead that Plaintiff was an
12 individual with a disability within the meaning of the Rehabilitation
13 Act.

14
15 Plaintiff's Rehabilitation Act claim fails for other reasons,
16 however. Plaintiff's July 22, 2013 letter did not request any alleged
17 "accommodation" other than reinstatement of Plaintiff's Section 8
18 housing benefits. Even assuming arguendo the letter constituted a
19 request for accommodation in the form of a reversal of the termination
20 decision, Plaintiff has not alleged a cognizable Rehabilitation Act
21 violation. At the second hearing, the hearing officer did not uphold
22 the termination of benefits based on Plaintiff's alleged drug
23 addiction. Rather, the Hearing Officer found that Plaintiff had
24 engaged in drug-related activity (i.e., a drug sale which Plaintiff
25 admitted at the hearing) while a program participant and that
26 Plaintiff had committed fraud by failing to list all of his criminal
27 convictions on the eligibility questionnaires. Plaintiff's alleged
28 personal drug addiction was not the basis for the decision.

1 Regardless of any potential accommodation of Plaintiff's purported
2 disability, Plaintiff's drug conviction and fraud rendered Plaintiff
3 ineligible to retain his Section 8 benefits. Accordingly, there was
4 no "causal link" between Defendants' alleged policy and Plaintiff's
5 alleged injury. See Giebeler v. M & B Associates, 343 F.3d at 1155.

6
7 Furthermore, the allegedly requested accommodation seeking
8 reinstatement of Plaintiff's Section 8 housing benefits was clearly
9 unreasonable. Such accommodation would have required the agency to
10 violate federal law and regulations by according Section 8 benefits to
11 an individual who was not eligible to receive those benefits by reason
12 of his drug-related activity and fraud. See Doe v. Housing Authority
13 of Portland, 2015 WL 758991, at *6 (D. Or. Feb. 23, 2015)
14 ("Plaintiff's requested accommodation is patently unreasonable because
15 if granted, it would violate federal regulations.") (citations
16 omitted).

17
18 For the foregoing reasons, Plaintiff has not alleged, and cannot
19 allege, a cognizable reasonable accommodation claim based on his
20 alleged drug addiction. Accordingly, Plaintiff's Rehabilitation Act
21 claim must be dismissed without leave to amend and with prejudice.

22
23 **IV. The First Amended Complaint Does Not Plead Any Cognizable Due**
24 **Process Violation.**

25
26 An individual receiving Section 8 benefits has a due process
27 protected property interest in those benefits. Ressler v. Pierce, 692
28 F.2d 1212, 1215-16 (9th Cir. 1982) (Section 8 applicant); Bezi v.

1 Camacho, 2012 WL 5519386, at *8 (C.D. Cal. Sept. 27, 2012), adopted,
2 2012 WL 5512558 (C.D. Cal. Nov. 7, 2012) (individual facing
3 termination of Section 8 benefits). At a minimum, the Due Process
4 Clause requires "that deprivation of life, liberty or property by
5 adjudication be preceded by notice and opportunity for hearing
6 appropriate to the nature of the case." Mullane v. Central Hanover
7 Bank & Trust Co., 339 U.S. 306, 313 (1950).

8
9 In Claims I and II, Plaintiff asserts that Defendants violated
10 Due Process by allegedly failing to provide pre-hearing discovery to
11 Plaintiff prior to the first administrative hearing. These claims
12 lack merit as a matter of law. "[T]here is no constitutional right to
13 pretrial discovery in administrative proceedings." Kelly v. United
14 States Environmental Protection Agency, 203 F.3d 519, 523 (7th Cir.
15 2000) (citation omitted); accord, Banister v. U.S. Dep't of the
16 Treasury, 2011 WL 7109220, at *4 (N.D. Cal. Mar. 10, 2011), aff'd, 499
17 Fed. App'x 668 (9th Cir. 2012); Clancy v. Office of Foreign Assets
18 Control of U.S. Dep't of Treasury, 2007 WL 1051767, at *7 (E.D. Wis.
19 Mar. 31, 2007), aff'd, 559 F.3d 595 (7th Cir. 2009); Weinberg v.
20 Commodity Futures Trading Comm'n, 699 F. Supp. 808, 813 (C.D. Cal.
21 1988), aff'd, 884 F. 2d 1396 (9th Cir. 1989) (unpublished). Moreover,
22 the Due Process Clause does not require a PHA such as the Housing
23 Authority sua sponte to provide a recipient of Section 8 housing
24 benefits with documents reflecting that persons's own criminal record.
25 Cf. United States v. Agurs, 427 U.S. 97, 103 (1976) (rule of Brady v.
26 Maryland, 373 U.S. 83 (1963), requiring prosecution's disclosure, in a
27 criminal case, of evidence favorable to defense, only applies to
28 evidence "known to the prosecution but unknown to the defense").

1 Furthermore, to the extent Plaintiff alleges that Defendants
2 violated federal regulations by failing to provide Plaintiff with a
3 copy of his criminal record prior to the first administrative hearing,
4 Plaintiff received due process because Plaintiff received an adequate
5 remedy in the form of an administrative mandamus proceeding and a
6 remand for a new hearing. See Raditch v. United States, 929 F.2d 478,
7 488-82 (9th Cir. 1991) (where deprivation of plaintiff's worker's
8 compensation benefits was due to unauthorized act of a government
9 official in violation of agency procedures, and subsequently a hearing
10 officer recognized the error, vacated the termination order and
11 remanded for a de novo termination of plaintiff's status, plaintiff
12 received all the process he was due).

13
14 The Due Process violation alleged in Claim IV also is
15 insufficient as a matter of law. As indicated above, there is no
16 right to constitutional discovery in administrative proceedings. It
17 follows that nothing in the Constitution requires an administrative
18 hearing officer to exclude evidence as a discovery sanction.

19
20 For the foregoing reasons, the Due Process claims alleged in
21 Claims I, II and IV must be dismissed without leave to amend and with
22 prejudice.

23
24 **CONCLUSION**

25
26 A court "considers five factors in assessing the propriety of
27 leave to amend - bad faith, undue delay, prejudice to the opposing
28 party, futility of amendment, and whether the plaintiff has previously

1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.

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