

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIEN HONG VO, et al.)
Plaintiffs,) 2:06-cv-00072-GEB-EFB
v.) ORDER*
JAN SCULLY, et al.,)
Defendants.)

)

Defendants move for summary judgment on each claim in this action. Plaintiffs oppose the motion except for the portion against their fifth claim for employment discrimination alleged under California Government Code § 12940. Plaintiffs request this claim be dismissed. The request is granted; this claim is dismissed.

BACKGROUND

Plaintiffs Thong Vo, Ngau Thi Nguyen, and Tien Hong Vo's (the "Property Plaintiffs") claims concern inspections of a real property located at 6045 Pomegranate Avenue, Sacramento, California (the "Pomegranate Property") and a subsequent state criminal

* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

1 prosecution against them for violations of various zoning, building,
2 and health and safety laws concerning the Pomegranate Property. The
3 Pomegranate Property was owned by Tien, who leased the Property to her
4 parents Thong and Nguyen. Three buildings are located on the
5 property, in which Thong and Nguyen operated group homes for eighteen
6 mentally impaired persons. On October 22, 2004, Nguyen made an
7 emergency telephone call for assistance because a resident on the
8 property was not taking prescribed medication and Nguyen feared for
9 this resident's health. Captain Christopher Quinn of the Sacramento
10 Metropolitan Fire District responded to that call. While on the
11 property, Captain Quinn declares he observed hazardous conditions,
12 including an open trench that was six feet in depth. He notified
13 various other government agencies that hazardous conditions existed on
14 the Pomegranate Property. In response to that notification, Defendant
15 Deputy District Attorney Natalia Luna, Sacramento County Building
16 Inspector Robin Rasmussen and Plaintiff Karen Alexandrou of the
17 Sacramento County Code Enforcement Division, conducted an inspection
18 of the Pomegranate Property on October 25, 2004.

19 After that inspection, the Nuisance Response Team ("NRT"),
20 which is comprised of individuals from various government agencies,
21 including Defendants Deputy District Attorneys Luna and Karen Maxwell,
22 and Captain James Cooper of the Sacramento County Sheriff's
23 Department, and Plaintiffs Alexandrou and Richard Maddox of the Code
24 Enforcement Division, held an emergency meeting on October 27, 2004 to
25 discuss the Pomegranate matter. Immediately following the meeting,
26 members of the NRT conducted another inspection of the Pomegranate
27 Property.

1 In late 2004, Luna filed criminal charges against the
2 Property Plaintiffs based on conditions found on the Pomegranate
3 Property. The Property Plaintiffs allege the inspections and the
4 criminal prosecution led to a distress sale of the Pomegranate
5 Property in approximately March 2005.

6 Further, Plaintiff Sonia Luong claims Defendants' actions
7 triggered her obligation to indemnify Tien (who had purchased the
8 Pomegranate Property from Luong before Defendants' inspections of the
9 property) for "an apparent breach of the warranty of quiet enjoyment"
10 which she owed Tien. (First Am. Compl. Prayer for Relief ¶ 5.) Luong
11 alleges she had to satisfy this obligation when Tien was forced to
12 sell the property "in an attempt to avoid future prosecution." (Id.)
13 Luong also declares she was forced to settle this warranty dispute
14 with Tien by forgiving a portion of the debt Tien owed her for the
15 purchase of the Pomegranate Property.

16 The Property Plaintiffs allege the inspections and criminal
17 prosecution constituted proscribed housing discrimination under the
18 Fair Housing Act ("FHA") and the California Fair Housing and
19 Employment Act ("FEHA"), and also violated other California law and
20 the Property Plaintiffs' federal constitutional rights.

21 Plaintiffs Richard Maddox and Karen Alexandrou were employed
22 in the County's Code Enforcement Division at the time of the
23 inspections, but were reassigned after the October 27 Pomegranate
24 Property inspection. They allege their reassignments were made in
25 retaliation for certain statements they made in defense of the
26 Property Plaintiffs concerning the inspections of the Pomegranate
27 Property and the criminal prosecution of the Property Plaintiffs.

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1 DISCUSSION¹

2 Defendants seek summary judgment on Maddox and Alexandrou's
3 claims, arguing these Plaintiffs lack standing to bring their claims
4 since any injury suffered from their reassessments is not "fairly
5 . . . trace[able]" to any Defendant's action, but rather is "th[e]
6 result [of] the independent action of some third party not before the
7 court." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1991)
8 (internal quotations citation omitted). Each Defendant submits a
9 declaration denying participation in the decision to reassign Maddox
10 and Alexandrou. Further, Maddox's supervisors Cheryl Creson and
11 Robert Sherry declare they decided to reassign him. Moreover,
12 Alexandrou's supervisor Larry Brooks declares he decided to reassign
13 her. Plaintiffs counter Maddox and Alexandrou were reassigned at the
14 behest of the Defendants.

15 Standing is not satisfied "if the injury complained of is
16 the result of the independent action of some third party not before
17 the court, [but this principle] does not exclude injury produced by
18 determinative or coercive effect upon the action of someone else."
19 Bennett v. Spear, 520 U.S. 154, 169 (1997).

20 In Maddox's case, Creson and Sherry declare that one month
21 before the inspections of the Pomegranate Property, they each received
22 an email from Defendant Chief Deputy District Attorney Cindy Besemer,
23 informing them that Maddox had been improperly communicating with the
24 criminal defense attorneys in an unrelated criminal prosecution
25 handled by the District Attorney's Office. Further, they declare they
26 knew that tension existed between Maddox and the District Attorney's
27

28 ¹ The summary judgment standard is well-known and need not be repeated unless applicable to a point discussed in the decision.

1 Office prior to the Pomegranate matter. Soon after the email from
2 Besemer, psychologist Patricia Wiklund was hired by the Human
3 Resources Manager for the Sacramento County Municipal Services Agency
4 to assess the ongoing tension between the Code Enforcement Division
5 and the District Attorney's Office. Wiklund reported her findings to
6 Creson, in which Wiklund stated Maddox's behavior undermined the
7 effectiveness of the Code Enforcement Division.

8 In addition, Sherry and Creson declare that around September
9 2, 2005, they received a complaint from the District Attorney's Office
10 that a memorandum written by Maddox regarding the inspection of the
11 Pomegranate Property had been produced to the Property Plaintiffs
12 pursuant to a subpoena in the criminal case although this memorandum
13 had not been previously delivered to the District Attorney's Office.
14 Sherry and Creson declare they reviewed the memorandum, following
15 which they met with Maddox to discuss the production of the
16 memorandum. Subsequently, Sherry, with Creson's concurrence,
17 reassigned Maddox to the Department of Economic Development.

18 The evidence Defendants present indicates that Creson and
19 Sherry reviewed the circumstances concerning Maddox's relationship
20 with the District Attorney's Office and then made the decision to
21 reassign Maddox. Maddox does not controvert this showing with
22 evidence creating a genuine issue of material fact on whether any
23 Defendant's action had a "determinative or coercive effect" on Sherry
24 and Creson's decision to reassign him. Since Maddox has not shown his
25 reassignment is "fairly traceable" to any Defendant's action, this
26 portion of Defendants' motion is granted.

27 In Alexandrou's case, Brooks declares he was aware that
28 tension existed between the District Attorney's Office and the Code

1 Enforcement Division which affected the efficient operation of the
2 Code Enforcement Division. He also declares there was a disagreement
3 with the District Attorney's Office regarding whether a report
4 prepared by Alexandrou on the inspections of the Pomegranate Property
5 was accurate. Brooks declares based on these reasons, he decided to
6 reassign Alexandrou.

7 Alexandrou counters, declaring her reassignment "responded
8 directly to any concerns raised by Defendants [Deputy District
9 Attorneys] Karen Maxwell and Natalia Luna as if they were [her] own
10 supervisors." (Alexandrou Decl. ¶ 16.) However, Alexandrou's
11 averment about Maxwell and Luna is a bare assertion which does not
12 contain facts creating a genuine issue of material fact on whether the
13 reassignment decision is "fairly traceable" to any Defendant. Since
14 Alexandrou fails to controvert Brooks' averments that he made the
15 decision to reassign her or to show a genuine issue of material fact
16 as to whether her reassignment is fairly traceable to any Defendant's
17 action, this portion of Defendants' motion is also granted.

18 Defendants also seek summary judgment on Plaintiffs'
19 California Unruh Civil Rights Act claims, California Civil Code § 53
20 claims, and twelve state tort claims, asserting these claims are
21 barred because Plaintiffs failed to file government claims required by
22 California Government Code § 945.4. This section provides "no suit
23 for money or damages may be brought against a public entity . . .
24 until a written claim therefor has been presented to the public entity
25 and has been acted upon by the board, or has been deemed to have been
26 rejected by the board" Further, California Government Code
27 § 950.2 states "a cause of action against a public employee . . . for
28 injury resulting from an act or omission in the scope of his

1 employment as a public employee is barred if an action against the
2 employing public entity for such injury is barred under [§ 945.4]."
3 See Fowler v. Howell, 42 Cal. App. 4th 1746, 1753 (1996) (barring the
4 plaintiff's claim against a public employee under Cal. Gov't Code
5 § 950.2 because he did not file a claim with the employing public
6 entity). However, "where a claimant seeks both damages and
7 nonmonetary relief from a public entity in the same action, the
8 applicability of the claim filing requirement turns on whether the
9 damages sought are ancillary to the equitable relief also sought, in
10 which case the claim filing requirement is inapplicable, or the
11 reverse is true, in which case the filing requirement applies."
12 Gatto v. County of Sonoma, 98 Cal. App. 4th 744, 761 (2002) (citation
13 omitted).

14 Defendants argue § 945.4 applies since Plaintiffs primarily
15 seek compensatory and punitive damages in this action. Plaintiffs
16 failed to respond to this argument. Since Plaintiffs have admitted
17 through responses to Defendants' document requests that they have not
18 filed a claim pursuant to California administrative claim filing
19 procedures, Plaintiffs' California Unruh Civil Rights Act and
20 California Civil Code § 53 claims, and twelve state tort claims, are
21 barred. Therefore, this portion of Defendants' motion is granted.

22 Defendants also argue the County prosecutors are absolutely
23 immune from liability for Plaintiffs' claims because their actions in
24 prosecuting the Property Plaintiffs and inspecting the Pomegranate
25 Property are "intimately associated with the judicial phase of the
26 criminal process," citing Imbler v. Pachtman, 424 U.S. 409, 430
27 (1976). Further, Defendants argue Defendant District Attorney's
28 Investigator William Motmans is also absolutely immune from liability

1 for Plaintiffs' claims, because this immunity depends on "the nature
2 of the function performed, not the identity of the actor who performed
3 it," citing Kalina v. Fletcher, 522 U.S. 118, 127 (1997) (quoting
4 Forrester v. White, 484 U.S. 219, 229 (1988)). Defendants argue
5 Motmans is entitled to this immunity since his involvement with the
6 October 25 inspection was for the purpose of assisting prosecutors
7 prepare for the prosecution of the Property Plaintiffs.

8 Plaintiffs counter this immunity does not apply to acts that
9 are investigatory in nature, citing Buckley v. Fitzsimmons, 509 U.S.
10 259, 273 (1993). In Buckley, the Supreme Court held "[a] prosecutor's
11 administrative duties and those investigatory functions that do not
12 relate to an advocate's preparation for the initiation of a
13 prosecution or for judicial proceedings are not entitled to absolute
14 immunity." The issue of whether the investigative acts at issue are
15 "carried out in preparation for a prosecutor's case [such that the
16 movants] enjoy absolute immunity" need not be decided because of the
17 decision infra on Plaintiffs' challenge to the inspections. KRL v.
18 Moore, 384 F.3d 1105, 1113 (9th Cir. 2004) (citation omitted). It is
19 clear that the absolute immunity doctrine bars Plaintiffs' claims
20 against the prosecutors for the criminal prosecution of the Property
21 Plaintiffs.

22 Defendants also seek summary judgment on Plaintiffs' Fourth
23 Amendment unlawful inspection claims, arguing Thong and Nguyen granted
24 permission for Defendants to conduct the October 25 and 27
25 inspections.

26 Defendants present deposition testimony from Building
27 Inspector Robin Rasmussen who testified that prior to conducting the
28 October 25 inspection, he requested and received Nguyen's consent to

1 enter and inspect the Pomegranate Property. Plaintiffs do not
2 controvert this evidence.

3 Defendants also present evidence on the October 27
4 inspection. Defendant Captain James Cooper of the Sheriff's
5 Department declares prior to conducting the October 27 inspection, he
6 requested and received Thong's consent to enter and inspect the
7 Property. Cooper further declares he instructed Sheriff Lieutenant
8 Trang To to participate in this inspection, since To is fluent in
9 Vietnamese and could assist in translating and communicating with
10 Thong and Nguyen, who are Vietnamese. To declares he explained to
11 Nguyen he was present to translate and to assist her with
12 understanding what was going on. He declares he explained why members
13 of the Sheriff's Department and other government agencies were present
14 and that they wanted to inspect the property "to make sure it was safe
15 for the tenants and complied with health, safety, fire, zoning and
16 building requirements." (To Decl. ¶ 6.) He also declares he then
17 requested and received Nguyen's consent to enter and inspect the
18 Property.

19 Plaintiffs counter that Thong and Nguyen declare they
20 "expressed objections" to the inspection. Defendants object to these
21 averments, arguing they are vague as to what Thong and Nguyen actually
22 said, and when and to whom they "expressed objections."

23 In ruling upon a Rule 56 motion, "a District Court
24 must resolve any factual issues of controversy in
25 favor of the non-moving party" only in the sense
26 that, where the facts specifically averred by that
27 party contradict facts specifically averred by the
28 movant, the motion must be denied. That is a
world apart from "assuming" that general averments
embrace the "specific facts" needed to sustain the
complaint. . . . The object of [Rule 56] is not
to replace conclusory allegations of the complaint
or answer with conclusory allegations of an
affidavit. Rather, the purpose of Rule 56 is to

1 enable a party who believes there is no genuine
2 dispute as to a specific fact essential to the
3 other side's case to demand at least one sworn
4 averment of that fact before the lengthy process
5 of litigation continues. . . . It will not do to
6 "presume" the missing facts

7 5 Lujan v. Nat'l Wildlife Federation, 497 U.S. 871, 888-89 (1990).

8 Therefore, Thong and Nguyen's vague averments are insufficient to
9 controvert Cooper and To's specific averments that they obtained
10 consent from Thong and Nguyen to inspect the Property.

11 Plaintiffs also rely on the averment of Alexandrou where she
12 declares she never saw Cooper and To speaking with Thong and Nguyen on
13 October 27. However, this averment is insufficient to controvert
14 Defendants' evidence since it does not establish Alexandrou has
15 personal knowledge of whether Cooper and To spoke with Thong and
16 Nguyen.

17 Plaintiffs also argue any consent given on October 27 was
18 coerced since there were about twenty people on the property at the
19 time Defendants assert consent was given. Plaintiffs, however, have
20 not set forth specific facts from which a reasonable inference could
21 be drawn creating genuine issues of fact on the voluntariness of Thong
22 and Nguyen's consent.

23 Plaintiffs also argue Defendants should have sought consent
24 from the Pomegranate Property residents because Thong and Nguyen
25 lacked authority to consent since they did not reside on the premises,
26 and contend the residents lacked the necessary mental competency to
27 consent. Defendants rejoin the law does not authorize Plaintiffs to
28 assert the rights of those residents. This issue need not be reached
since Plaintiffs have not controverted Defendants' evidence that Thong
and Nguyen had authority to consent to the inspections as "persons

1 generally having joint access or control for most purposes." United
2 States v. Matlock, 415 U.S. 164, 171 n.7 (1974). Accordingly, this
3 portion of Defendants' motion is granted.

4 Defendants also seek summary judgment on Plaintiffs' Equal
5 Protection claim, arguing Plaintiffs were not treated differently from
6 others similarly situated. To succeed on this claim, Plaintiffs must
7 show they were treated differently from others similarly situated.
8 Pierce v. County of Orange, 526 F.3d 1190, 1225 (9th Cir. 2008).
9 Plaintiffs counter Defendants specifically targeted group homes used
10 by mentally disabled and other disadvantaged persons, relying on
11 Maddox's declaration and the testimony of Paul Lake, the chairperson
12 of the Nuisance Response Team ("NRT"). Plaintiffs present Maddox's
13 averment in which he declares he had "an opinion that the [District
14 Attorney's Office] used . . . unlawful selective enforcement
15 practices." (Maddox Decl. ¶ 20.) He further declares he was
16 concerned that the District Attorney's Office's "criminal law
17 enforcement practices were not appropriate for administrative law
18 enforcement cases, particularly where criminal law enforcement
19 officers were taking advantage of the lower burden placed on
20 administrative officers by the Fourth Amendment in order to conduct
21 criminal investigations." (Maddox Decl. ¶ 19.) However, Maddox's
22 averments are vague as to what the District Attorney's Office actually
23 did that was "unlawful" and "not appropriate," and therefore are
24 insufficient to create a triable issue on whether the District
25 Attorney's Office targeted group homes used by mentally disabled and
26 other disadvantaged persons.

27 Plaintiffs also rely on Lake's deposition testimony in which
28 he testified that the NRT had dealt with group home issues numerous

1 times because these homes created a nuisance. However, this testimony
2 is also insufficient to show the group homes at issue were treated
3 differently from other similarly situated homes. Accordingly, this
4 portion of Defendants' motion is granted.

5 Defendants also seek summary judgment on Plaintiffs' housing
6 discrimination claims alleged under the FHA and the FEHA. Defendants,
7 argue they did not have discriminatory intent at any time, which is a
8 necessary element of these claims. The McDonnell Douglas v. Green,
9 411 U.S.792, 802 (1973), burden-shifting analysis applies to this
10 portion of the motion. Harris v. Itzhaki, 183 F.3d 1043, 1051 (9th
11 Cir. 1999) (discussing the burden shifting analysis applicable to
12 determining whether a defendant had discriminatory intent); Brown v.
13 Smith, 55 Cal. App. 4th 767, 780 (1997) (stating "FEHA in the housing
14 area is . . . intended to conform to the general requirements of
15 federal law in the area").

16 Defendants submit the declaration of Fire District Captain
17 Quinn for the purpose of explaining what conditions existed on the
18 Pomegranate Property on October 22, 2004. Captain Quinn declares he
19 observed "a large trench in the yard of the residence, approximately
20 125 feet long and three feet wide with a depth of up to six feet in
21 some areas. . . . [He] observed that many of the residents appeared to
22 suffer from mental health issues and [he] deemed this open trench a
23 hazard While on the scene [he] saw a hole of approximately six
24 feet depth in the rear yard hidden by weeds which was full of water."
25 (Quinn Decl. ¶¶ 3, 5.) He declares "[t]he bottom of the trench had
26 mud and water in it and the sides of the trench showed evidence of
27 collapse." (Quinn Decl. ¶ 10.) He also declares he saw one of the
28 residents enter the trench to recover a small dog which had fallen

1 into the trench. (Quinn Decl. ¶ 10.) He declares he "felt the
2 resident had no understanding of the potential hazards the trench
3 presented because of her mental health condition." (Quinn Decl. ¶
4 11.) He further declares he found non-working smoke detectors, and
5 observed "bars on windows which lacked panic hardware and saw other
6 evidence of fecal matter on walls and floors." He also noted
7 "[n]umerous cats . . . occupying all areas of the residence and a
8 great deal of flies . . . in at least two rooms of the residence."
9 (Quinn Decl. ¶ 12.) He declares he notified various agencies about
10 his observations. (Quinn Decl. ¶¶ 4, 9.) He declares he observed
11 Lana Harrington of the California Department of Social Services arrive
12 at the property and remove at least three residents from the property.
13 (Quinn Decl. ¶ 9.)

14 Defendant District Attorney Investigator William Motmans
15 declares he received a telephone call from Lana Harrington during
16 which he was informed there were hazardous conditions on the
17 Pomegranate Property; Motmans relayed this information to Defendant
18 Luna on October 22. (Motmans Decl. ¶ 11.) Luna declares based on the
19 information supplied by Motmans, she decided to conduct an inspection
20 of the Pomegranate Property on October 25, 2004. (Luna Decl. ¶¶ 12,
21 13.) Luna, Building Inspector Robin Rasmussen, and Alexandrou
22 conducted the October 25 inspection.

23 Thong Vo declares the trench was dug in October 2004 to
24 connect the property to the sewer system, pursuant to a building
25 permit. He further declares the trench was inspected and approved by
26 a building inspector on October 22, 2004. He also declares the trench
27 was shallow on the end near the building and increased in depth until
28 it was about six feet deep on the end near the street. However, Vo's

1 averments are insufficient to controvert Captain Quinn's averments
2 that the open trench constituted a hazardous condition for the
3 mentally impaired residents. Vo further declares the trench was
4 filled during the weekend of October 23-24, 2004. However, this is
5 also insufficient to controvert Luna's declaration that she conducted
6 the October 25 inspection based on information she received on October
7 22 that hazardous conditions existed on the Pomegranate Property.

8 Alexandrou declares she tested many smoke detectors during
9 the October 25 inspection and all the smoke detectors she tested were
10 working. However, Alexandrou's averment is insufficient to controvert
11 Captain Quinn's declaration that non-working smoke detectors existed
12 on the property since Alexandrou did not test all the smoke detectors.

13 In light of the uncontroverted evidence that Luna conducted
14 the October 25 inspection in response to information she received on
15 October 22 about conditions on the Pomegranate Property, including an
16 open trench, non-working smoke detectors, and other health and safety
17 issues, Plaintiffs have not raised a genuine material factual issue
18 regarding the authenticity of the Defendants' stated non-
19 discriminatory motive for conducting the October 25 inspection.

20 Plaintiffs also dispute whether a non-discriminatory basis
21 existed for the October 27 inspection. The question is whether a
22 genuine issue of material fact exists concerning Defendants' motive
23 for that inspection. Defendants provide Rasmussen's deposition
24 testimony in which he testified during his inspection on October 25 he
25 saw windows lacking proper egress and guardrail posts for a stairway
26 that were too far apart, which constitutes violations of the building
27 code. Rasmussen also testified that the windows lacking proper egress
28 created imminently dangerous conditions on the property. Based on

1 these violations, he issued three notices of violation, one for each
2 of the buildings on the property.

3 Plaintiffs counter, pointing to Alexandrou's declaration
4 where she declares she observed bars on two windows but "one window
5 led to an entry area with plenty of egress in case of emergency, and
6 the other [window] led to a storage closet . . ." (Alexandrou Decl.
7 ¶ 4.) However, Alexandrou's averment is insufficient to show that
8 other windows at the Pomegranate Property had proper egress.

9 Luna and Cooper declare they attended an emergency meeting
10 of the NRT on October 27, 2004, concerning the Pomegranate Property.
11 They declare that based on statements made by various team members
12 that hazardous conditions existed on the property, a decision was made
13 to inspect the property immediately.

14 Plaintiffs argue discriminatory intent can be inferred from
15 the NRT's non-compliance with the NRT procedures in conducting the
16 October 27 inspection, relying on Maddox's declaration, in which he
17 declares that before conducting an inspection, the NRT must designate
18 a "Lead Person" or "Lead Agency" who, together with the chairperson of
19 the NRT, decides how the investigation would be conducted. However,
20 this evidence is not probative of discriminatory intent.

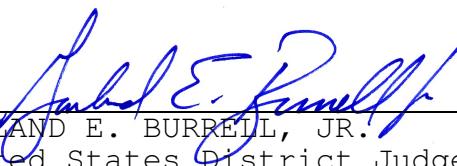
21 In light of the conditions found on the property posing
22 safety risks to the mentally impaired residents, Plaintiffs have not
23 raised a genuine material factual issue regarding the authenticity of
24 Defendants' stated non-discriminatory motive for conducting the
25 October 27 inspection. Accordingly, this portion of Defendants'
26 motion is granted.

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1 For the reasons stated, Defendants' motion is granted, and
2 judgment shall be entered in favor of Defendants.

3 Dated: January 16, 2009

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5 Garland E. Burrell, Jr.
6 United States District Judge

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