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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALICE M. DONOVAN,

 Plaintiff,

 v.

WOODBRIDGE MAINTENANCE
ASSOCIATION; FREI REAL
ESTATE SERVICES,

 Defendants.

No. 2:14-cv-00995 JAM-EFB

**ORDER DENYING DEFENDANTS' MOTION
FOR JUDGMENT ON THE PLEADINGS**

Plaintiff Alice Donovan, a blind individual, brings this civil rights action against her homeowners' association for refusing to provide documents in a readable (Word) format to reasonably accommodate her disability. Defendants attempt to nullify her claims in a motion for judgment on the pleadings on the basis that the claims are not sufficiently related to her "dwelling." The Court finds her allegations are sufficient and Defendants' motion is DENIED.¹

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for February 11, 2015.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Plaintiff is a blind individual who resides in "Woodbridge
3 at Natoma Station," a community of homes owned and managed by
4 Defendants Woodbridge Maintenance Association and Frei Real
5 Estate Services (collectively, "Defendants"). FAC ¶¶ 7-9. As a
6 homeowner, Plaintiff is a member of Woodbridge at Natoma
7 Station's homeowners' association. FAC ¶ 8. She also served on
8 the association's Board of Directors, which was charged with
9 adopting "rules and regulations" and making decisions on topics
10 including "certain vendors doing work on the property" and
11 "disciplinary matters." FAC ¶¶ 11-12.

12 Board members were required to "review and evaluate written
13 material prior to Board meetings[.]" FAC ¶ 14. Plaintiff
14 alleges that on numerous occasions, she requested that
15 Defendants provide these documents to her in an accessible
16 format, namely a format that is compatible with her screen
17 reader, such as "Word" documents. See FAC ¶¶ 14-15, 21, 23.
18 Defendants attempted to comply on some occasions, but on other
19 occasions refused. See FAC ¶¶ 14-15, 18, 20-22, 24. After a
20 number of Plaintiff's requests, Defendants asked Plaintiff to
21 "educate the Board on its 'legal obligations to make documents
22 available and accessible' to Plaintiff." FAC ¶ 16. This
23 request led Plaintiff to retain a lawyer from Disability Rights
24 California. FAC ¶ 17. The attorney provided an opinion letter
25 and engaged in negotiations on Plaintiff's behalf with
26 Defendants. FAC ¶¶ 17, 23.

27 In the months following the negotiations, Defendants'
28 employees commented that providing accessible documents to

1 Plaintiff would be expensive and time-consuming and that they
2 had already spent too much money on legal fees in the matter.
3 FAC ¶¶ 26, 28. They pressured Plaintiff to resign from the
4 Board. FAC ¶ 30. When Plaintiff declined to resign, the Board
5 held a meeting with homeowners' association members. FAC ¶¶ 30-
6 31. At the meeting, the Board members indicated that
7 "Plaintiff's dispute would require a special assessment to cover
8 legal expenses for providing her accommodation, which in turn
9 would either result in an increase in monthly Association dues
10 . . . or force the dissolution of the Association." Id. The
11 Board then called another meeting with all homeowners'
12 association members to discuss recalling Plaintiff from the
13 Board, allegedly citing the costs of providing Plaintiff with
14 documents and Defendants' legal liability if Plaintiff continued
15 in her position. FAC ¶¶ 35, 37. Plaintiff could not access
16 materials related to the recall campaign against her. FAC
17 ¶¶ 30, 35-37. The meeting resulted in Plaintiff's recall from
18 the Board. FAC ¶ 37.

19 Now off the Board, Plaintiff continues to be excluded from
20 accessing materials and documents provided to all homeowners'
21 association members. FAC ¶ 40. These include "Board Meeting
22 notices and agenda; notices of community events; Board election
23 materials; Association financial documents, Association CC&R's,
24 By-laws, and Articles of Incorporation." FAC ¶ 43. As a
25 result, Plaintiff is limited in her "ability to abide by the
26 Association's rule and covenants, participate in Association
27 meetings, engage in informed discussion of Association business,
28 and make informed votes on issue impacting the Woodbridge

1 community[.]” FAC ¶ 40. Plaintiff also claims that “[h]er
2 continual denial of this communication segregates and isolates
3 [her] and makes her an unwanted member of the community[.]” FAC
4 ¶ 43.

5 Plaintiff brought suit against Defendants claiming that
6 they discriminated against her on the basis of her disability,
7 failed to provide a reasonable accommodation, and retaliated
8 against her for requesting accommodation, under the Fair Housing
9 Act Amendments (“FHAA”), California’s Fair Employment and
10 Housing Act (“FEHA”), and California’s Unruh Civil Rights Act
11 (“Unruh Act”). After Defendants answered, the parties
12 stipulated to, and the court approved, filing of a first amended
13 complaint (Doc. #11, “FAC”). Defendants answered (Doc. #14) and
14 now move for judgment on the pleadings (Doc. #15). Plaintiff
15 opposes the motion (Doc. #23).

16 17 II. OPINION

18 A. Legal Standard

19 A motion for judgment on the pleadings under Federal Rule
20 of Civil Procedure 12(c) “is ‘functionally identical’ to Rule
21 12(b)(6) and [] ‘the same standard of review’ applies to motions
22 brought under either rule.” Cafasso, U.S. ex rel. v. Gen.
23 Dynamics C4 Sys., Inc., 637 F.3d 1047, 1054 n.4 (9th Cir. 2011)
24 (quoting Dworkin v. Hustler Magazine Inc., 867 F.2d 1188, 1192
25 (9th Cir. 1989)).

26 B. Judicial Notice

27 Defendant requests that the Court take judicial notice of a
28 letter from the Department of Fair Employment and Housing to

1 Plaintiff entitled "Explanatory Closure Letter." Defendant's
2 RJN at 2; id. Exh. A. The letter is "kept in the Department['s]
3 . . . records." Hansen Decl. ¶ 2. The Court may take judicial
4 notice of matters in the public record, but not conclusions of
5 law, "unreasonable inferences, or unwarranted deductions of
6 fact[.]" Davenport v. Bd. of Trustees of State Center Cmty.
7 Coll. Dist., 2008 WL 170876, at *5 (E.D. Cal. Jan. 18, 2008)
8 (citing Mack v. South Bay Beer Distributors, 798 F.2d 1279, 1282
9 (9th Cir. 1986) and Western Mining Council v. Watt, 643 F.2d
10 618, 624 (9th Cir. 1981)). The Court therefore takes judicial
11 notice of the letter, but does not take as true the conclusions
12 it contains. See Contreras v. UAL Corp., 2014 WL 551185, at *4
13 (N.D. Cal. Feb. 7, 2014).

14 C. Discussion

15 1. Plaintiff's Declaration

16 As an initial matter, Defendants challenge the propriety of
17 considering Plaintiff's declaration that she filed with her
18 opposition. On a motion for judgment on the pleadings, as in a
19 motion to dismiss, the Court looks only to the pleadings and
20 documents that have been properly judicially noticed. Crosby v.
21 Wells Fargo Bank, N.A., 2014 WL 4378774, at *1 (C.D. Cal. Sept.
22 3, 2014) (citation omitted). The Court therefore does not
23 consider the facts contained in Plaintiff's affidavit, but
24 instead looks to the FAC to evaluate the factual basis and
25 sufficiency of the claims.

26 2. The Parties' Arguments

27 Defendants argue for judgment on the pleadings because
28 Plaintiff's causes of action are not based on the "use and

1 enjoy[ment] [of her] dwelling." Mot. at 4-8. Plaintiff
2 responds that the reach of the remedial statutes supporting her
3 claims is "not limited to being able to physically live in a
4 building." Opp. at 6:1-2. These arguments are discussed below
5 as they relate to each cause of action.

6 3. First Cause of Action: FHAA

7 Plaintiff makes three claims under the FHAA: discrimination
8 on the basis of disability, 42 U.S.C. § 3604(f)(2); failure to
9 make a reasonable accommodation, 42 U.S.C. § 3604(f)(3)(B); and
10 retaliation, 42 U.S.C. § 3617.

11 The protections of the FHAA "must be given 'a generous
12 construction in order to carry out a policy that Congress
13 considered to be of the highest priority.'" Fair Hous. Council
14 of Oregon v. Bookside Vill. Owners Ass'n, 2012 WL 8017842, at
15 *16 (D. Or. Oct. 18, 2012) (quoting United States v. Cal. Mobile
16 Home Park Mgmt. Co., 29 F.3d 1413, 1416 (9th Cir. 1994)).

17 Section 3604 defines many forms of prohibited discrimination.
18 Subsection 3604(f)(2) proscribes "discriminat[ion] against any
19 person in the terms, conditions, or privileges of sale or rental
20 of a dwelling, or in the provision of services or facilities in
21 connection with such dwelling." This subsection, by its plain
22 language, does not include a requirement that the discrimination
23 interfere with "use and enjoyment of a dwelling." Therefore
24 Defendants' arguments for judgment on the pleadings are
25 inapplicable to this claim.

26 Subsection 3604(f)(3)(B) prohibits "refusal to make
27 reasonable accommodations in rules, policies, practices, or
28 services, when such accommodations may be necessary to afford

1 such person equal opportunity to use and enjoy a dwelling[.]”
2 To state a claim under section 3604(f)(3)(B), a plaintiff must
3 allege that accommodation of the handicap “may be necessary to
4 afford [her] an equal opportunity to use and enjoy [her]
5 dwelling.” McGary v. City of Portland, 386 F.3d 1259, 1262 (9th
6 Cir. 2004) (quoting Giebeler v. M&B Associates, 343 F.3d 1143,
7 1147 (9th Cir. 2003)) (quotation marks omitted).

8 Defendants argue that Plaintiff “does not articulate how
9 her inability to serve on the Board of Directors of the
10 Association interfered with her use and enjoyment of her
11 dwelling or premises as a physical structure[.]” Mot. at 6:24-
12 26. Defendants then cite to multiple portions of the FAC which
13 recite the elements of the statute, suggesting that Plaintiff
14 merely stated the elements and included no facts going to her
15 use and enjoyment of her property. See Mot. at 6-8.

16 Defendants appear to misunderstand Plaintiff’s claims and
17 ignore central allegations in the FAC. Plaintiff does not argue
18 that she had a right to be on the Board. But given that she did
19 serve on the Board as part of her participation with the
20 homeowners’ association, the Court concludes that the
21 accommodation requested – reasonable access to documents in
22 order to participate in Board decisions – “may be necessary” to
23 equal use and enjoyment of her dwelling. Indeed, the purpose of
24 a homeowners’ association is to improve the community as a whole
25 to make living there more enjoyable for all inhabitants. See
26 FAC ¶ 11 (“The stated purpose of Woodbridge’s [Homeowners’]
27 Association is to own, repair, maintain and manage the common
28 areas and common facilities within Woodbridge . . . and to

1 otherwise enhance and promote the use and enjoyment of the
2 common areas and common facilities by the Owners in common at
3 Woodbridge."). Moreover, the Board's tasks included adopting
4 "rules and regulations" to govern homeowners and their homes.
5 Id. This Court is not inclined to construe the FHAA so narrowly
6 as to preclude equal enjoyment of participation in decisions
7 about one's home. Defendants argue otherwise, but point the
8 Court to no case for the proposition that the FHAA does not
9 protect participation in such decisionmaking.

10 In their reply, Defendants argue that the accommodation
11 requested related to "materials . . . that were only available
12 to members of the Board." Reply at 5:7-8. Defendants suggest
13 that Plaintiff is only entitled to accommodation related to her
14 role as a homeowner and not to her role as a Board member. See
15 Mot. at 6; Reply at 5.

16 Defendants' argument fails. As explained above, the Court
17 rejects Defendants' argument that Plaintiff's participation in
18 the Board's decisionmaking is not sufficiently related to her
19 dwelling. But even if the Court accepted Defendants' position
20 that this lawsuit cannot be based on materials Plaintiff
21 received solely for her position on the Board, Defendants'
22 argument contains a further flaw: contrary to Defendants'
23 interpretation of the FAC, Plaintiff did allege that she was
24 denied access to materials available to all association members.
25 See FAC ¶¶ 35-37, 43. And Plaintiff further alleged how
26 deprivation of these materials affected her use and enjoyment of
27 her home. See FAC ¶ 37 (describing Plaintiff's inability to
28 respond to documents that all other association members received

1 related to her proposed recall from the Board); id. at 40
2 ("Without accessible communication of Association rules,
3 business and board agenda, Plaintiff's ability to abide by the
4 Association's rules and covenants, participate in Association
5 meetings, engage in informed discussions of Association
6 business, and make informed votes on issues impacting the
7 Woodbridge community, not only as a Board member, but as a
8 member of the Association in which she resides has been and is
9 significantly impaired; thereby effecting her quiet enjoyment of
10 her home."); id. ¶ 43 ("Her continual denial of []
11 communication[s] segregates and isolates Plaintiff and makes her
12 an unwanted member of the community as she is not able to
13 respond to Association business or show up to community
14 events.").

15 For these reasons the Court holds that the accommodation
16 Plaintiff sought "may be necessary" to ensure equal opportunity
17 to use and enjoy her dwelling. The Court accordingly denies
18 Defendants' motion for judgment on the pleadings as to
19 Plaintiff's section 3604(f)(3)(B) claim.

20 As to Plaintiff's final claim under the FHAA, section 3617
21 makes it unlawful to

22 coerce, intimidate, threaten, or interfere with any person
23 in the exercise or enjoyment of, or on account of his
24 having exercised or enjoyed, or on account of his having
25 aided or encouraged any other person in the exercise or
enjoyment of, any right granted or protected by [certain
other sections of the FHAA].

26 This section protects plaintiffs who were "engaged in [a]
27 protected activity." Brown v. City of Tucson, 336 F.3d 1181,
28 1192 (9th Cir. 2003). Protected activities include "the request

1 for a reasonable accommodation for handicapped persons." Bezi
2 v. Camacho, 2014 WL 2215911, at *8 (C.D. Cal. May 23, 2014).

3 Defendants argue that Plaintiff was not engaged in a
4 protected activity because her requests for accommodation "were
5 not related to the use and enjoyment of her dwelling." Mot. at
6 9:23. The Court disagrees. As indicated above, access to the
7 documents "may be necessary" to Plaintiff's equal use and
8 enjoyment of her dwelling. Defendants' motion as to Plaintiff's
9 section 3617 claim is denied.

10 4. Second Cause of Action: FEHA

11 FEHA mirrors the FHAA in regard to claims for disability
12 discrimination, reasonable accommodation, and retaliation.
13 Walker v. City of Lakewood, 272 F.3d 1114, 1131 n.8 (9th Cir.
14 2001); Sturm v. Davlyn Inv., Inc., 2013 WL 8604662 at *10 (C.D.
15 Cal. Sept. 30, 2013); Garza v. Raft, 1999 WL 33882969, at *3-*4
16 (N.D. Cal. Nov. 30, 1999). Because the same standards apply to
17 both statutes, the Court reaches the same conclusions for
18 Plaintiff's FEHA claims as it did for her FHAA claims. The
19 Court thus denies Defendant's motion as to the second cause of
20 action.

21 5. Third Cause of Action: Unruh Act

22 Plaintiff asserts an Unruh Act claim under California Civil
23 Code Section 51(b). This section provides that "[a]ll persons
24 . . . are free and equal, and no matter what their . . .
25 disability[] [or] medical condition . . . are entitled to the
26 full and equal accommodations, advantages, facilities,
27 privileges, or services in all business establishments of every
28 kind whatsoever." This language does not contain a requirement

1 that Plaintiff plead a connection to "use and enjoyment of her
2 dwelling". Defendants' arguments are therefore inapplicable and
3 the Court denies Defendants motion as to this claim.

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III. ORDER

For the reasons stated above, the Court DENIES Defendants' motion for judgment on the pleadings in its entirety.

IT IS SO ORDERED.

Dated: March 16, 2015



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE