

1 Gregory M. Fox, State Bar No. 070876
 BERTRAND, FOX & ELLIOT
 2 The Waterfront Building
 2749 Hyde Street
 3 San Francisco, California 94109
 Telephone: (415) 353-0999
 4 Facsimile: (415) 353-0990

5 Teresa L. Highsmith State Bar No. 155262
 Laura E. Zagaroli, State Bar No. 251682
 6 Office of the City Attorney
 2263 Santa Clara Avenue, Room 280
 7 Alameda, California 94501-4477
 Telephone: (510) 747-4750
 8 Facsimile: (510) 747-4767

9 Attorneys for Defendant
 CITY OF ALAMEDA

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

14 JOHN DOHERTY,
 15
 16 Plaintiff,
 vs.
 17 CITY OF ALAMEDA AND CITY OF
 18 ALAMEDA HOUSING AND BUILDING
 CODE HEARING AND APPEALS BOARD,
 19
 20 Defendants.

Case No.: CV09 4961 EDL

~~PROPOSED~~ ORDER GRANTING
 IN PART AND DENYING IN PART
 DEFENDANT'S MOTION TO DISMISS
 PLAINTIFF'S FIRST AMENDED
 COMPLAINT [FRCP 12(b)(6)]

21 Defendant City of Alameda's Motion to Dismiss the First Amended Complaint of plaintiff
 22 John Doherty came on regularly for hearing on December 15, 2009, before the Honorable Elizabeth
 23 D. Laporte, Magistrate Judge. Lee Grant appeared on behalf of plaintiff John Doherty and Laura E.
 24 Zagaroli and Gregory M. Fox appeared on behalf of defendant.

25 The Court, having considered all the papers and pleadings on file herein and the oral
 26 argument of counsel, HEREBY ORDERS THAT:

27 Defendant's Motion to Dismiss the First Cause of Action of the First Amended Complaint is
 28 denied.

1 Defendant's Motion to Dismiss the Second Cause of Action of the First Amended Complaint
2 is granted with leave to amend.

3 Defendant's Motion to Dismiss the Third Cause of Action of the First Amended Complaint is
4 granted with prejudice as unopposed by plaintiff.

5 The matter is ordered to Early Neutral Evaluation. The Case Management Conference and
6 related Rule 26 disclosures continued to March 30, 2010. A joint case management conference
7 statement to be filed on or before March 23, 2010. Formal discovery stayed pending completion of
8 the ENE but each party may in the meantime take 1 or 2 depositions to facilitate the ENE.

9 IT IS SO ORDERED.

10
11 Dated: January 14, 2010

Elijah D. Lynte

UNITED STATES ~~DISTRICT~~ JUDGE
MAGISTRATE

12
13
14 Approved as to form:

15
16 /s/
17 Lee Grant, Attorney for Plaintiff

18 ATTORNEY ATTESTATION

19 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
20 conformed signature (“/s/”) within this E-filed document.

21
22 Dated: January 13, 2010

/s/

Gregory M. Fox