

United States District Court
For the Northern District of California

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

PATRICIA A. MCCOLM,
Plaintiff,
v.
SAN FRANCISCO HOUSING AUTHORITY; SAN
FRANCISCO HOUSING COMMISSION; GREG
FORTNER; TONY UCCIFERRI; PAULETTE
BOYD; SHAWN COLEMAN; and DOES 1 to
100,
Defendants.

No. C 06-07378 CW
ORDER GRANTING
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
AND DENYING
PLAINTIFF'S CROSS-
MOTION FOR SUMMARY
JUDGMENT

In this lawsuit, Plaintiff Patricia McColm claims that Defendants improperly terminated benefits she was receiving under the Section 8 housing assistance program. Defendants San Francisco Housing Authority (SFHA), San Francisco Housing Commission; Greg Fortner, Director of SFHA; Tony Ucciferri, Director of SFHA's Section 8 housing program; Paulette Boyd, supervisor of inspectors of the Section 8 housing program; and Shawn Coleman, inspector for the Section 8 housing program, move for summary judgment on all of Plaintiff's claims and also move for termination sanctions or, in the alternative, evidentiary sanctions against Plaintiff.

1 Plaintiff opposes the motions and cross-moves for summary judgment.
2 The matters were heard on August 6, 2009. Having considered the
3 papers filed by the parties and oral argument on the motions, the
4 Court grants Defendants' motion for summary judgment, denies
5 Plaintiff's cross-motion for summary judgment and denies as moot
6 Defendants' motion for termination sanctions.¹

7 BACKGROUND

8 In June, 2002, Plaintiff began receiving housing assistance
9 benefits through Section 8 of the United States Housing Act of
10 1937, 42 U.S.C. § 1437, et seq., and on July 8, 2002, Plaintiff
11 signed a lease with Khalid Anber, the private owner of a high rise
12 condominium building located at 210 Harrison Street, San Francisco,
13 California. Previously, Plaintiff had resided in public housing
14 owned and managed by SFHA. She was transferred to the Section 8
15 program to accommodate her request for a wheelchair accessible
16 unit. See Curtis Ogilvie Declaration, Exs. 2 and 3. In December,
17 2002, based on that previous tenancy, Plaintiff filed a lawsuit
18 against SFHA and related defendants, McColm v. San Francisco House
19 Authority, et al., C 02-5810 PJH, alleging, among other things,
20 racial and disability discrimination, harassment and retaliation
21 for complaints of disability discrimination. On May 29, 2007,
22 judgment was granted in favor of the defendants in that case. See
23 Order Granting Defendants' Motions for Summary Judgment and Motions
24 to Dismiss (Doc. # 219 in Case No. C 02-5810 PJH).

25 _____
26 ¹On August 28, 2009, Defendants filed an ex parte request to
27 shorten time to hear their motion to dismiss (Docket # 232). This
28 request is denied as moot. On August 31 and September 2, 2009,
Plaintiff filed discovery motions (Docket ## 233, 235 and 238).
These motions are denied as moot.

1 In this case, Plaintiff's First Supplemental Complaint (FSC)
2 states the following causes of action against all Defendants:
3 (1) retaliation under the Americans with Disability Act (ADA), 42
4 U.S.C. §§ 12101 - 12213, and the Fair Housing Act (FHA), 42 U.S.C.
5 §§ 3601 et seq.; (2) violation of the California Public Records
6 Act, California Government Code §§ 6250 et seq.; the California
7 Information Practices Act, California Civil Code §§ 1798 et seq.;
8 the San Francisco Sunshine Ordinance; and applicable Housing and
9 Urban Development (HUD) and SFHA administrative regulations;
10 (3) negligence; (4) intentional and negligent infliction of
11 emotional distress; (5) civil conspiracy; and (6) violation of
12 California Civil Code §§ 51-52.1 et seq.

13 Defendants present evidence that their termination of
14 Plaintiff's Section 8 benefits was justified. They were required
15 to make certain inspections of Plaintiff's apartment, and she did
16 not allow them to make these inspections. Defendants also claim
17 that Plaintiff harassed SFHA staff. At Plaintiff's request,
18 Defendants held a hearing on the decision to terminate her Section
19 8 benefits. Immediately before the scheduled hearing, Plaintiff
20 voluntarily removed herself from the program.

21 Plaintiff presents a myriad of documents, which are primarily
22 copies of her letters and facsimiles to Defendants. The Court has
23 reviewed these documents and has ascertained that the following
24 appear to present facts that are relevant to this case. On
25 September 8, 2002, Plaintiff sent a facsimile to Nadia Anber, agent
26 for landlord Khalid Anber, notifying the landlord of problems such
27 as: excessive heat in her apartment, an influx of water into her
28 bedroom, faulty cable television, non-payment of an electric bill,

1 tenants smoking in the garden area and throwing cigarette butts
2 into Plaintiff's outdoor area, dogs barking, doors loudly slamming,
3 motorbikes without mufflers entering the building, constant noise
4 in the common area, loud construction noise, and lack of sanitation
5 and a health hazard caused by an influx of bugs and flying insects
6 from patio area. Pl's Dec. Ex. H. On August 28, 2003, Plaintiff
7 sent a facsimile to Nadia and Khalid Anber informing them of the
8 following: their notice of a plumber coming to make repairs was
9 insufficient because it failed to provide the name, address and
10 phone number of the plumber or the scope of work to be performed
11 and failed to give her a specific date far enough in advance;
12 defects needed attention, including an electrical short in a
13 closet, insect infestation, noxious odors, and excessive heat; and
14 there was continued smoking and noise in the common areas of the
15 building. Pl's Dec. Ex. G.

16 On July 15, 2003, Plaintiff sent a request to Mike Roetzer,
17 SFHA Human Resources Director, for public information and her SFHA
18 personal file and a list of documents relating to SFHA's dealings
19 with other Section 8 participants. Pl's Dec., Ex. N.

20 On September 27, 2004, Plaintiff sent a facsimile to C. Smith
21 and M. Fong, employees of the Section 8 Program, objecting to the
22 "apparent bad-faith failure to provide corrected computer form
23 verification and failure to provide report form" regarding a
24 failure to correct "the small retirement amount." She also
25 complained that Section 8 staff demanded that she sign the form
26 even though it was incorrect. Pl.'s Dec., Ex. L. On January 30,
27 2005, Plaintiff sent a letter to Tony Ucciferri thanking him for
28 meeting with and advising her, on January 28, 2005, that her 2004

1 re-certification was complete, her records had been corrected to
2 reflect her small retirement amount, and the prior notice of intent
3 to terminate benefits had been withdrawn. Pl's Dec., Ex. N.

4 On August 25, 2005, Plaintiff sent Shawn Coleman a statement
5 from her physician, George P. Fulmer, M.D., which indicated that
6 the window covering Plaintiff installed in her living room was
7 under his direction "as medically necessary to accommodate her
8 needs as a person with disability." Pl's Dec., Ex. Q. On August
9 26, 2005, Plaintiff sent another facsimile to Ms. Coleman
10 requesting that SFSA rescind its demand that Plaintiff remove the
11 window covering because she sent a doctor's letter indicating that
12 the window covering was needed as an accommodation for her
13 disability. She also informed Ms. Coleman that the ventilation
14 unit in her bathroom was merely a switch fan unit which she chose
15 not to use; repairs were needed to fix the running and noisy
16 bathroom faucet, the electrical short from the closet to the sink,
17 and water damage in the bedroom where mold was growing and
18 contributing to her asthma; and noise was interfering with her
19 safety and right to quiet enjoyment. Pl.'s Dec., Ex. R.

20 On August 30, 2005, Plaintiff sent a letter to Robert M.
21 Brilliant, attorney for the landlord, in which she stated that she
22 wished to arrange an appointment for the fumigation of her unit on
23 September 2, 2005 between 1:00 and 5:00 p.m. Pl.'s Dec., Ex. S.
24 On September 2, 2005, Plaintiff sent a letter to her landlord and
25 Mr. Brilliant titled, "Waiting for Repairs on this Date," in which
26 she stated that no contractor had contacted her for an appointment
27 to fix the deficiencies in her apartment. Pl.'s Dec., Ex. T. On
28 September 6, 2005, Plaintiff sent a facsimile to Ms. Coleman

1 titled, "Stop Any Extension of Time to Correct Pest Problem!!!
2 Objection to Abuse by SFHA Failure to give Notice of Intent not to
3 Appear for Inspection as it Demanded this Date; and Objection to
4 any Extension of Time re Correction of Non-Disputed Defects;
5 Request for Immediate Appointment to Address Medical Issues."
6 Pl.'s Dec., Ex. V(1).

7 On September 19, 2005, Plaintiff sent a facsimile to Khalid
8 and Nadia Anber indicating that the plumber had arrived on
9 September 9, 2005 but did not have the necessary parts to complete
10 the repairs. Also, the pest control company came on September 9,
11 2009 and sprayed her apartment and the pest situation was better,
12 but she received bites the next day indicating that the spraying
13 was not totally effective and no follow-up was scheduled.
14 Plaintiff also informed them that the wiring in the bathroom fan
15 was wrong, there was an electrical short in the bathroom and the
16 smoke detector was taken out due to inability to find a unit which
17 was not constantly beeping. Pl.'s Dec., Ex. X(1). Also, on
18 September 19, 2005, Plaintiff sent a facsimile to Ms. Coleman,
19 apparently responding to correspondence she had received from Ms.
20 Coleman. Plaintiff asked what alleged deficiency Ms. Coleman
21 contended "that I should take care of," and other questions
22 relating to how Plaintiff should take care of the perceived
23 deficiency. Pl.'s Dec., Ex. X(2).

24 On September 29, 2005, Mr. Ucciferri sent a letter to
25 Plaintiff informing her of the following: that on August 2, 2005,
26 Ms. Coleman came to Plaintiff's unit to conduct the annual Housing
27 Quality Standards (HQS) inspection and several items failed to meet
28 HQS criteria; specifically, the kitchen and bathroom faucets were

1 leaking, the sliding door was blocked from opening, the smoke
2 detector needed to be mounted, and a bug infestation needed
3 extermination. A re-inspection had been scheduled for September 6,
4 2005, but Plaintiff cancelled it. A re-inspection took place on
5 September 27, 2005, and SFHA was satisfied that most items had been
6 resolved except for the blocking of the sliding patio door. Mr.
7 Ucciferri came to Plaintiff's building himself to inspect the
8 structure that was obstructing the sliding door and concluded that
9 it obstructed the secondary egress from the unit and was a safety
10 hazard. Mr. Ucciferri acknowledged that Plaintiff indicated that
11 she had asthma and sought to block the door as an accommodation,
12 but stated that an accommodation could not be granted which would
13 circumvent a statute that required an unobstructed second form of
14 egress from the property. Mr. Ucciferri indicated that the barrier
15 had to be removed immediately. Pl.'s Dec., Ex. Y(1). On October
16 12, 2005, Mr. Ucciferri sent Plaintiff a letter informing her that
17 SFHA was rescinding its request that she remove the barrier because
18 it had received assurances from the San Francisco Fire Department
19 that the barrier would not pose a threat to Plaintiff's safety in
20 the event of an emergency. Pl.'s Dec., Ex. Y(2).

21 On October 20, 2005, Plaintiff wrote a letter to her landlord
22 and his attorney titled, "Failure to Eradicate Pests and Complete
23 Electrical Repair," in which she stated that, in spite of the
24 spraying by a pest control agent and her own spraying and
25 vacuuming, the pest problem had not been resolved. She also
26 advised that the fan installed in the bathroom had a problem hum
27 and the electrician had not returned to correct the loose circuits.
28 She thanked them for fixing the kitchen and bathroom faucets.

1 Pl.'s Dec., Ex. X(3).

2 On May 30, 2006, Plaintiff filed a complaint in state superior
3 court against Defendants titled, "Claim for Personal Injuries," in
4 which she alleged that Defendants caused her personal injury from a
5 disease that she contracted because of the insects in her apartment
6 that Defendants failed to exterminate or to cause her landlord to
7 exterminate. FSC, Ex. A(2). She also alleged that she brought
8 many defects in her apartment to Defendants' attention but, instead
9 of addressing the issues, Defendants retaliated against her by
10 complaining to city agencies, failing to take appropriate action
11 and encouraging the landlord to increase the objectionable
12 conditions to harass Plaintiff.

13 During SFHA's annual inspection of Plaintiff's apartment on
14 June 15, 2006, the inspector noted certain deficiencies. The SFHA
15 issued a deficiency notice addressed to Plaintiff's landlord on
16 June 20, 2006. The notice indicated that the bathroom fan did not
17 work, that Plaintiff requested that fleas and roaches be
18 exterminated from her apartment and that Plaintiff must remove
19 excessive clutter from the unit. The notice stated that a re-
20 inspection was scheduled for July 6, 2006. Plaintiff interpreted
21 the deficiency notice as retaliation for the May 30, 2006 claim she
22 had filed against Defendants and objected to the report, especially
23 to the conclusion that she had to remove clutter from her
24 apartment. She refused to allow a re-inspection. On July 6, the
25 re-inspection was re-scheduled for July 21, 2006. On July 20,
26 2006, Plaintiff notified SFHA that the specified items were
27 functioning properly, so there was no need for a further
28 inspection. On July 25, 2006, SFHA sent Plaintiff a final notice

1 of re-certification inspection which was scheduled for August 24,
2 2006. The notice stated that Plaintiff's failure to keep the
3 appointment could result in termination of her Section 8 housing
4 benefits. On July 28, 2006, Mr. Ucciferri sent Plaintiff a letter
5 explaining her legal obligation to allow a re-inspection with
6 reasonable notice. In an August 23, 2006 letter to Mr. Ucciferri,
7 Plaintiff chastised him for the "violent emotional explosion" in
8 his July 28th letter and reiterated that everything in her
9 apartment was working to her satisfaction so there was no need for
10 a re-inspection.

11 On August 25, 2006, SFHA sent Plaintiff a "Notice of Proposed
12 Decision to Terminate Section 8 Assistance" because Plaintiff had
13 not allowed the SFHA representative to inspect her unit, in
14 violation of 24 C.F.R. §§ 982.551(d) and 982.552(c)(i). On
15 September 19, 2006, a revised Notice of Proposed Decision to
16 Terminate Section 8 Assistance was issued to charge that Plaintiff
17 had made repeated abusive telephone calls to SFHA staff, in
18 violation of 24 CFR § 982.552(c)(ix). Plaintiff requested an
19 informal hearing regarding the termination. SFHA held this hearing
20 on April 13, 2007, but, as noted above, Plaintiff voluntarily
21 withdrew from the Section 8 program immediately before the hearing
22 and did not attend the hearing.

23 At the hearing, an SFHA witness testified to the events
24 described above surrounding the inspection, and attempts to re-
25 inspect, Plaintiff's apartment.

26 Ms. Boyd, supervisor of Section 8 inspectors, also testified
27 that, between September 6, and September 19, 2006, Plaintiff
28 repeatedly contacted SFHA leaving lengthy abusive, rude and

1 accusatory voicemail messages for various SFHA staff. The hearing
2 officer concluded that there was sufficient evidence to support the
3 SFHA's action to terminate Plaintiff from Section 8 participation
4 based on violations of Section 8 participant obligations.

5 Defendants' evidence is generally in accord with Plaintiff's.

6 LEGAL STANDARD

7 Summary judgment is properly granted when no genuine and
8 disputed issues of material fact remain, and when, viewing the
9 evidence most favorably to the non-moving party, the movant is
10 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
11 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
12 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
13 1987).

14 The moving party bears the burden of showing that there is no
15 material factual dispute. Therefore, the court must regard as true
16 the opposing party's evidence, if it is supported by affidavits or
17 other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg,
18 815 F.2d at 1289. The court must draw all reasonable inferences in
19 favor of the party against whom summary judgment is sought.
20 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
21 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
22 1551, 1558 (9th Cir. 1991).

23 Material facts which would preclude entry of summary judgment
24 are those which, under applicable substantive law, may affect the
25 outcome of the case. The substantive law will identify which facts
26 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
27 (1986).

28 Where the moving party does not bear the burden of proof on an

1 issue at trial, the moving party may discharge its burden of
2 production by either of two methods:

3 The moving party may produce evidence negating an
4 essential element of the nonmoving party's case, or,
5 after suitable discovery, the moving party may show that
6 the nonmoving party does not have enough evidence of an
7 essential element of its claim or defense to carry its
8 ultimate burden of persuasion at trial.

9 Nissan Fire & Marine Ins. Co., Ltd., v. Fritz Cos., Inc., 210 F.3d
10 1099, 1106 (9th Cir. 2000).

11 If the moving party discharges its burden by showing an
12 absence of evidence to support an essential element of a claim or
13 defense, it is not required to produce evidence showing the absence
14 of a material fact on such issues, or to support its motion with
15 evidence negating the non-moving party's claim. Id.; see also
16 Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990); Bhan v.
17 NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991). If the
18 moving party shows an absence of evidence to support the non-moving
19 party's case, the burden then shifts to the non-moving party to
20 produce "specific evidence, through affidavits or admissible
21 discovery material, to show that the dispute exists." Bhan, 929
22 F.2d at 1409.

23 If the moving party discharges its burden by negating an
24 essential element of the non-moving party's claim or defense, it
25 must produce affirmative evidence of such negation. Nissan, 210
26 F.3d at 1105. If the moving party produces such evidence, the
27 burden then shifts to the non-moving party to produce specific
28 evidence to show that a dispute of material fact exists. Id.

 If the moving party does not meet its initial burden of
production by either method, the non-moving party is under no

1 obligation to offer any evidence in support of its opposition. Id.
2 This is true even though the non-moving party bears the ultimate
3 burden of persuasion at trial. Id. at 1107.

4 Where the moving party bears the burden of proof on an issue
5 at trial, it must, in order to discharge its burden of showing that
6 no genuine issue of material fact remains, make a prima facie
7 showing in support of its position on that issue. UA Local 343 v.
8 Nor-Cal Plumbing, Inc., 48 F.3d 1465, 1471 (9th Cir. 1994). That
9 is, the moving party must present evidence that, if uncontroverted
10 at trial, would entitle it to prevail on that issue. Id. Once it
11 has done so, the non-moving party must set forth specific facts
12 controverting the moving party's prima facie case. UA Local 343,
13 48 F.3d at 1471. The non-moving party's "burden of contradicting
14 [the moving party's] evidence is not negligible." Id. This
15 standard does not change merely because resolution of the relevant
16 issue is "highly fact specific." Id.

17 It is not the court's task to search the record for a genuine
18 issue of triable fact. Keenan v. Allen, 91 F.3d 1275, 1279 (9th
19 Cir. 1996). The non-moving party has the burden to identify with
20 reasonable particularity the evidence that precludes summary
21 judgment. Id. If the non-moving party fails to do so, the
22 district court may properly grant summary judgment in favor of the
23 moving party. See Carmen v. San Francisco Unified Schl. Dist., 237
24 F.3d 1026, 1028-29 (9th Cir. 2001) (even if evidence in the court
25 file creates a genuine issue of material fact, a court may grant
26 summary judgment if the opposing papers do not include or refer to
27 that evidence).

28

EVIDENTIARY OBJECTIONS

Both parties object to various pieces of evidence submitted. The Court has reviewed these evidentiary objections and has not relied on any inadmissible evidence. The Court will not discuss each objection individually. To the extent that the Court has relied on evidence objected to by either party, such evidence has been found admissible and the objections are overruled.²

DISCUSSION

As a preliminary matter, the Court notes that Plaintiff's brief in opposition to Defendants' motion for summary judgment and in support of her cross-motion for summary judgment fails to proffer legal argument in support of her claims or to specify the evidence that supports her claims. Instead, she disparages Defendants' arguments, which she claims are based on fraud, and objects to Defendants' evidence. Based only upon Plaintiff's failure to provide legal argument or to identify the evidence that supports her claims, her cross-motion for summary judgment should be denied and Defendants' motion granted. See Carmen, 237 F.3d at 1029. However, in the interest of justice, the Court will address what appear to be Plaintiff's arguments from the allegations in the FSC, her declaration and the documents she submits.

I. Retaliation Under the ADA and FHA

It appears from Plaintiff's FSC that she is alleging that she engaged in the protected activities of seeking accommodations for her disabilities and filing two civil rights complaints against

²In a separate motion, Defendants move for evidentiary sanctions against Plaintiff. Because Defendants' motion for summary judgment is granted, this motion is denied as moot.

1 Defendants and because of these activities, Defendants retaliated
2 against her by threatening to terminate her Section 8 benefits and
3 by denying her good air quality, and pest and nuisance control in
4 her apartment.

5 The ADA provides that "no qualified individual with a
6 disability shall, by reason of such disability, be excluded from
7 participation in or be denied the benefits of the services,
8 programs, or activities of a public entity, or be subjected to
9 discrimination by any such entity." 42 U.S.C. § 12132. The ADA
10 also prohibits discrimination against anyone who opposes any act or
11 practice made unlawful by the ADA or because such individual made a
12 charge or participated in an investigation, proceeding or hearing
13 under the ADA. 42 U.S.C. § 12203(a). To establish a prima facie
14 case of retaliation under the ADA, a plaintiff must show: (1) he or
15 she engaged in a protected activity; (2) he or she suffered an
16 adverse action from the actions of the defendants; and (3) there
17 was a causal link between the protected activity and the adverse
18 action. Pardi v. Kaiser Found. Hosps., 389 F.3d 840, 849 (9th Cir.
19 2004). If the plaintiff can establish a prima facie case, the
20 defendant must then offer legitimate reasons for the adverse
21 action, whereupon the burden shifts back to the plaintiff to
22 demonstrate a triable issue of fact as to whether such reasons are
23 pretextual. Id.

24 The FHA prohibits discrimination in the rental or sale of
25 housing, 42 U.S.C. § 3604, and makes it unlawful "to coerce,
26 intimidate, threaten or interfere with any person in the exercise
27 or enjoyment of, or on account of his having exercised or enjoyed
28 . . . any right granted or protected" by the FHA, 42 U.S.C. § 3617.

1 To establish a prima facie case of retaliation under the FHA, a
2 plaintiff must show the same three elements required to show
3 retaliation under the ADA. Walker v. City of Lakewood, 272 F.3d
4 1114, 1128 (9th Cir. 2001); Idaho Aids Foundation, Inc. v. Idaho
5 Housing & Finance Ass'n, 422 F. Supp. 2d 1193, 1204 (D. Id. 2006).

6 Defendants argue that Plaintiff cannot establish a prima facie
7 case of retaliation because she cannot show that she engaged in
8 protected activity, that is, that she was seeking a legitimate
9 accommodation for a disability, because she was granted all the
10 accommodation requests that related to a disability. Plaintiff
11 disputes this and also argues that Defendants had no legitimate
12 reason for terminating her benefits.

13 Defendants do not dispute that Plaintiff is disabled, although
14 there is no evidence regarding the type of disability she has. The
15 evidence shows that Plaintiff complained to her landlord about such
16 things as insects in her apartment, tenants making noise and
17 smoking outside of her apartment, the bathroom fan not working
18 correctly, and a need for other repairs. She complained to the
19 SFHA that it was not forcing the landlord to fix these problems.
20 These are normal problems tenants have with landlords, not requests
21 for accommodations for a disability. Therefore, the fact that
22 Plaintiff made these requests to her landlord and asked the SFHA to
23 ensure that her landlord made the repairs is insufficient to
24 establish that Plaintiff engaged in protected activity under the
25 ADA or FHA.

26 However, the 2002 and 2006 state lawsuits Plaintiff filed
27 against Defendants constitute protected activity. Nonetheless, she
28 fails to present a prima facie retaliation case because she has not

1 submitted evidence to establish that these lawsuits were the cause
2 of any retaliation on Defendants' part. In the 2006 lawsuit,
3 Plaintiff alleged that Defendants were already retaliating against
4 her, which means the alleged retaliation preceded the lawsuit. In
5 ¶ 29 of her declaration, Plaintiff states that the 2002 lawsuit was
6 the cause of the retaliation. However, in 2005, after the lawsuit
7 was filed and was still pending, SFHA agreed to withdraw all prior
8 notices to terminate Plaintiff from the Section 8 program, see
9 Pl.'s Dec. § 26, and took other actions attempting to satisfy
10 Plaintiff's requests. This negates any inference that the 2002
11 lawsuit caused any adverse actions. Thus, Plaintiff has failed to
12 provide any evidence that an adverse action on the part of
13 Defendants was motivated by her 2002 lawsuit. Plaintiff's failure
14 to show a causal link between any alleged protected activity and
15 Defendants' adverse action means that she has not established a
16 prima facie case of retaliation under the ADA and FHA.

17 Furthermore, Defendants have shown that the alleged
18 retaliatory act, Plaintiff's termination from the Section 8
19 program, was warranted by her failure to allow inspections of her
20 apartment and her abusive behavior toward SFHA staff. Plaintiff's
21 only argument that these reasons were pretextual is that
22 Defendants' entire motion and the arguments contained therein are
23 fraudulent. This claim is not supported by evidence and, thus,
24 Plaintiff has failed to raise a disputed issue of fact that
25 Defendants' reasons for terminating her benefits were pretextual.

26 Defendants' motion for summary judgment on these claims is
27 granted and Plaintiff's cross-motion for summary judgment is
28 denied.

1 II. Violation of Public Records Act and San Francisco Police Code
2 Plaintiff alleges that she sought records under the California
3 Public Records Act, California Government Code § 6250; the
4 California Information Practices Act, California Civil Code
5 § 1798; the San Francisco Sunshine Ordinance; and HUD and SFHA
6 regulations, all of which were ignored by Defendants.

7 The California Public Records Act requires that public records
8 of a state and local agency be open to inspection by the public
9 during that agency's office hours, except as provided in the Act.
10 Cal. Gov't Code § 6253(a). Court costs and attorneys' fees shall
11 be provided to any plaintiff who prevails in litigation filed
12 pursuant to the Act. Cal. Gov't Code § 6259(d). A plaintiff
13 prevails if the action results in the defendant releasing a copy of
14 a previously withheld document. Rogers v. Superior Court, 19 Cal.
15 App. 4th 469, 482 (1993). Documents exempt from disclosure are
16 listed in Government Code § 6254. Section 6254(b) provides that
17 records pertaining to pending litigation to which the public agency
18 is a party is exempt from disclosure until the pending litigation
19 or claim has been finally adjudicated.

20 Plaintiff does not indicate specifically which documents she
21 requested were never provided to her. In ¶ 28 of her declaration,
22 Plaintiff refers to Exhibit O as one of her several requests for
23 public records. This is a list of seventeen items that she
24 requested SFHA send to her. The list includes items pertaining to
25 Plaintiff's Section 8 file, SFHA regulations, items relating to
26 SFHA employees, and personal information about others whose Section
27 8 housing benefits were terminated. Documents containing the
28 personal information of others would not be available to her

1 because they are confidential. From Plaintiff's submissions, it is
2 apparent that she received some of the information she requested
3 because she indicates that Exhibit O was obtained from her Section
4 8 file as produced in 2005, see Pl.'s Dec. ¶ 28, and she attaches
5 SFHA regulations in Exhibits AA and BB. Because Plaintiff has not
6 cited evidence to raise a triable issue of material fact, summary
7 judgment is granted to Defendants on this claim and Plaintiff's
8 cross motion is denied.

9 Plaintiff also alleges that Defendants violated the California
10 Information Practices Act. This act provides that no agency may
11 disclose personal information in a manner that would link the
12 information to the individual to whom it pertains. Cal. Civ. Code
13 § 1798.24. Plaintiff does not allege that Defendants disclosed
14 personal information about her in a prohibited manner. Therefore,
15 summary judgment for Defendants is granted on this claim and denied
16 to Plaintiff.

17 Plaintiff also claims that Defendants violated San Francisco's
18 Sunshine Ordinance. Plaintiff does not identify the section of the
19 Administrative Code under which she brings this claim, but
20 Defendants identify it as Section 67 of the San Francisco
21 Administrative Code. Section 67.35(a) of the Administrative Code
22 provides that any person may seek injunctive relief, declaratory
23 relief or a writ of mandate to enforce his or her right to inspect
24 or to receive a copy of any public record "under this Ordinance" or
25 to enforce his or her right to attend any meeting required "under
26 this Ordinance" to be open to the public. Section 67.35(b)
27 provides that costs and reasonable attorneys' fees shall be awarded
28 to the plaintiff who prevails in such an enforcement action.

1 Defendants argue that Plaintiff was not denied access to any
2 proceeding to which she was a party. They indicate that the
3 original date for the hearing on the termination of Plaintiff's
4 Section 8 benefits was scheduled for March 2, 2007, but it was re-
5 scheduled at Plaintiff's request and that she did not attend the
6 re-scheduled hearing. Plaintiff does not dispute Defendants'
7 argument nor does she allege that she was denied access to any
8 other government proceedings. Plaintiff does not address which
9 public records "under this Ordinance" she requested but did not
10 receive. Therefore, Plaintiff has failed to raise a triable issue
11 of material fact on this claim and summary judgment is granted to
12 Defendants and denied to Plaintiff.

13 Plaintiff claims that Defendants violated the San Francisco
14 Police Code which she alleges prohibits discrimination and
15 retaliation against residents of San Francisco. See San Francisco
16 Police Code §§ 3301 et seq. (prohibiting discrimination based on
17 disability in City and County of San Francisco). However,
18 Plaintiff does not allege discrimination in her complaint, nor has
19 she presented evidence that Defendants discriminated or retaliated
20 against her. Therefore, summary judgment on this claim is granted
21 to Defendants and denied to Plaintiff.

22 Plaintiff alleges that Defendants violated applicable HUD and
23 SFHA Administrative Plan Regulations. Plaintiff's FSC does not
24 specify which HUD regulations Defendants violated. In her
25 declaration, Plaintiff states that SFHA violated Appendix D of the
26 SFHA Administrative Plan, Pl.'s Ex. BB, and in her supplemental
27 declaration, Plaintiff attaches fifteen pages of "relevant sections
28 of the San Francisco Housing Authority Administrative Plan; that

1 verify the violation of SFHA of its own policy and procedures."

2 In their reply, Defendants argue that Appendix D does not
3 apply to the April 13, 2007 hearing on the termination of
4 Plaintiff's Section 8 benefits; rather, it applies to grievances by
5 program participants. Appendix D is titled "Resident Grievance
6 Procedures" and concerns requirements for hearings regarding
7 grievances that are initiated by the resident and for hearings held
8 about eviction or termination of residency.

9 Addressing the fifteen pages of the SFHA Administrative Plan
10 Plaintiff submits, Defendants argue that SFHA did not violate its
11 own regulations or procedures. Paragraph 12.0 of the
12 Administrative Plan provides:

13 The SFHA will inspect all units to ensure that they meet
14 Housing Quality Standards (HQS). . . . The SFHA must be
15 allowed to inspect the dwelling unit at reasonable times
16 with reasonable notice. The family and owner will be
17 notified of the inspection appointment by first class
18 mail. If the family can not be at home for the scheduled
19 inspection appointment, the family must call and
20 reschedule . . . or make arrangements to enable the
Housing Authority to enter the unit and complete the
inspection. If the family misses the scheduled
inspection and fails to reschedule the inspection, the
SFHA will only schedule one more inspection. If the
family misses two inspections, the SFHA will consider the
family to have violated a Family Obligation and their
assistance will be terminated.

21 Paragraph 12.1B provides that an annual inspection will be
22 conducted to determine that the unit continues to meet HQS.

23 Paragraph 12.4B provides that the owner or the tenant of the unit
24 will be given time to correct the items cited on the inspection
25 report that fail HQS. Deficiencies that endanger the tenant's
26 health or safety must be corrected within twenty-four hours and
27 less serious violations must be corrected within thirty days.

28 Paragraph 12.4B provides, "If the participant fails to correct the

1 HQS failed items that are family-caused after proper notification
2 has been given, the SFHA will terminate assistance for the family
3 . . ."

4 In this case, SFHA conducted its annual inspection of
5 Plaintiff's apartment and found some items that needed correction.
6 However, when it attempted to set up a re-inspection of Plaintiff's
7 apartment to ensure that the repairs had been made, Plaintiff would
8 not allow the re-inspection. See Ucciferri Dec., Ex. A, July 28,
9 2006 Ucciferri letter to Plaintiff. On August 25, 2006, SFHA
10 terminated Plaintiff from the Section 8 program only after proper
11 notice of her duties and responsibilities as a beneficiary of the
12 program and the consequences of her failure to meet those
13 responsibilities. Plaintiff requested an informal hearing to
14 object to her termination and, in accordance with SFHA procedures,
15 a hearing was scheduled. Plaintiff withdrew from the Section 8
16 program the day before the scheduled hearing and did not attend it.
17 SFHA acted in compliance with its regulations and procedures.

18 III. Negligence

19 Plaintiff alleges that Defendants owed her, as a Section 8
20 Program participant, a duty to comply with the ADA, FHA, HUD
21 regulations, SFHA regulations and the San Francisco Police Code not
22 to retaliate against her and to provide her housing that met all
23 statutory requirements for safety and habitability. Plaintiff
24 alleges that Ms. Coleman and Ms. Boyd violated their duty to
25 require abatement of the pest infestation in her apartment and all
26 Defendants allowed the landlord to avoid abatement of the problems
27 with pests, noise, air quality, criminal threats and other
28 "discriminatory" conditions. It appears that Plaintiff is alleging

1 claims for negligence per se and negligence.

2 "To state a cause of action under the negligence per se
3 doctrine, the plaintiff must plead four elements: (1) the defendant
4 violated a statute or regulation, (2) the violation caused the
5 plaintiff's injury, (3) the injury resulted from the kind of
6 occurrence the statute or regulation was designed to prevent, and
7 (4) the plaintiff was a member of the class of persons the statute
8 or regulation was intended to protect." Alejo v. City of Alhambra,
9 75 Cal. App. 4th 1180, 1184-85 (2000).

10 As discussed above, Plaintiff has failed to present evidence
11 that Defendants violated any statute or regulation. Therefore, her
12 claim for negligence per se fails. Summary judgment is granted to
13 Defendants and denied to Plaintiff on this claim.

14 In California, the prima facie elements of negligence are
15 a legal duty to use due care; a breach of such legal duty; and
16 proximate or legal causation of the resulting injury. United
17 States Liab. Ins. Co. v. Haidinger-Hayes, Inc., 1 Cal. 3d 586, 594
18 (1970).

19 Defendants argue that Plaintiff does not present evidence that
20 she has sustained injuries or damages having any causal nexus with
21 any conduct by SFHA or its employees. The only injuries which
22 Plaintiff could claim she sustained as result of the conditions in
23 her apartment are the bites and irritation that might have been
24 caused by an insect infestation in the apartment. However, the
25 evidence shows that Defendants notified Plaintiff's landlord of
26 this problem and the landlord made several attempts to remedy it.
27 On August 2, 2005, SFHA notified Plaintiff's landlord of the pest
28 infestation, see Ogilvie Dec., Ex. E, the landlord corresponded

1 with Plaintiff several times in an attempt to send an exterminator
2 to Plaintiff's apartment, but Plaintiff did not reply to this
3 correspondence, see Ogilvie Dec., Exs. F, G and H. On September 9,
4 2005, the landlord successfully sent a pest control company to
5 spray Plaintiff's apartment and she acknowledged that the spraying
6 remedied the situation to some degree. See Pl.'s Dec. Ex. X(1).
7 Apparently, Plaintiff feels SFHA should have caused the landlord to
8 send the pest control company again. However, there is no evidence
9 that Defendants breached any duty or caused any injuries sustained
10 by Plaintiff. Therefore, Defendants' motion for summary judgment
11 is granted on this claim and Plaintiff's cross-motion is denied.

12 IV. Intentional and Negligent Infliction of Emotional Distress

13 Plaintiff alleges that Defendants' failure to protect her from
14 a pest infestation in her apartment was intentional, malicious,
15 discriminatory, retaliatory, and done for the purpose of causing
16 her to suffer humiliation, mental anguish, emotional and physical
17 distress.

18 In order to establish a defendant's liability for intentional
19 infliction of emotional distress, a plaintiff must show
20 (1) outrageous conduct by the defendant, (2) an intention to cause,
21 or a reckless disregard of the probability of causing, emotional
22 distress; (3) severe emotional distress; and (4) actual and
23 proximate causation of the emotional distress. Agarwal v. Johnson,
24 25 Cal. 3d 932, 946 (1979), overruled on other grounds in White v.
25 Ultramar, 21 Cal. 4th 563, 574 (1999); Heller v. Pillsbury, Madison
26 & Sutro, 50 Cal. App. 4th 1367, 1388 (1996). Defendants argue that
27 Plaintiff fails to show that they engaged in outrageous conduct.
28 To be outrageous, the conduct must be so extreme as to "exceed all

1 bounds of that usually tolerated in a civilized society." King v.
2 AC&R Adver., 65 F.3d 764, 770 (9th Cir. 1995) (applying California
3 law) (internal quotation marks omitted). "Summary judgment is
4 proper if a claim cannot reasonably be regarded as so extreme and
5 outrageous as to permit recovery." Id. (internal quotation marks
6 omitted).

7 Defendants' conduct of which Plaintiff complains constitutes
8 routine administrative actions taken in accordance with SFHA
9 regulations. Defendants notified the landlord of Plaintiff's
10 complaints regarding pests in her apartment. Defendants' requests
11 for inspections of Plaintiff's apartment was in keeping with SFHA
12 regulations. Defendants' actions are not the type of outrageous
13 conduct that is necessary to establish a claim for intentional
14 infliction of emotional distress. Therefore, summary judgment is
15 granted in favor of Defendants on this claim and Plaintiff's cross-
16 motion for summary judgment is denied.

17 Under California law, negligent infliction of emotional
18 distress is not an independent tort, but a version of the tort of
19 negligence. Marlene F. v. Affiliated Psychiatric Medical Clinic,
20 Inc., 48 Cal. 3d 583, 588 (1989). The traditional elements of
21 duty, breach, actual causation, proximate causation, and damages
22 apply. Id. As discussed above, Plaintiff fails to show that
23 Defendants breached a duty of care or that any action on
24 Defendants' part proximately caused her emotional distress.
25 Therefore, Defendants' motion for summary judgment on this claim is
26 granted and Plaintiff's cross-motion for summary judgment is
27 denied.

28 V. Civil Conspiracy

1 Plaintiff alleges that Defendants entered into an agreement to
2 eliminate her Section 8 benefits by harassing her in retaliation
3 for filing the 2002 lawsuit against them.

4 Civil conspiracy is not a separate cause of action, but a way
5 to impose liability upon a defendant who did not commit a tort
6 himself or herself but who shared with the immediate tortfeasor a
7 common plan to harm the plaintiff. Applied Equipment v. Litton
8 Saudi Arabia, 7 Cal. 4th 503, 510-11 (1994). To support a claim of
9 conspiracy under state law, a plaintiff must allege that two or
10 more people intentionally entered into an agreement with the intent
11 to commit a wrongful act. Wyatt v. Union Mortg. Co., 24 Cal. 3d
12 773, 784-85 (1979). The essence of a conspiracy claim is the tort
13 committed by the co-conspirators, not the agreement to do it.
14 Applied Equipment, 7 Cal. 4th at 510-11. To engender liability,
15 the underlying tort must have been committed. Id. at 511.

16 Plaintiff appears to base her conspiracy claim on retaliation.
17 However, as previously discussed, Plaintiff has not presented
18 evidence that Defendants retaliated against her; nor does she
19 present evidence that they agreed to do so. Therefore, her
20 conspiracy claim fails. Defendants' motion for summary judgment on
21 this claim is granted and Plaintiff's cross-motion for summary
22 judgment is denied.

23 VI. California Civil Code §§ 51-52.1 et seq.

24 Plaintiff alleges that Defendants retaliated and discriminated
25 against her, and thus interfered with the exercise of her civil
26 rights, and threatened, intimidated and coerced her in violation of
27 California Civil Code §§ 51 through 52.1.

28 California's Unruh Act, California Civil Code § 51 et seq.,

1 provides in pertinent part:

2 All persons within the jurisdiction of this state are
3 free and equal, and no matter what their sex, race,
4 color, religion, ancestry, national origin, disability,
5 or medical condition are entitled to the full and equal
6 accommodations, advantages, facilities, privileges, or
7 services in all business establishments of every kind
8 whatsoever.

9 Cal. Civ. Code § 51.

10 In general terms, the Unruh Act "secures equal access to
11 public accommodations and prohibits discrimination by business
12 establishments." Black v. Dep't of Mental Health, 83 Cal. App. 4th
13 739, 745 (2000) (internal citations omitted). The objective of the
14 Unruh Act is to prohibit businesses from engaging in unreasonable
15 or arbitrary discrimination. Cohn v. Corinthian Colleges, Inc.,
16 169 Cal. App. 4th 523, 527 (2008). Intent is an element of a claim
17 under the Unruh Act. Id. at n.3 (citing Harris v. Capital Growth
18 Investors XIV, 52 Cal. 3d 1142, 1149 (1991)). The term, "business
19 establishment," within the Act, means "everything about which one
20 can be employed, and it is often synonymous with 'calling,
21 occupation, or trade, engaged in for the purpose of making a
22 livelihood or gain.'" O'Connor v. Village Green Owners Assocs., 33
23 Cal. 3d 790, 795 (1983). Plaintiff provides no authority for the
24 proposition that SFHA is a business establishment within the
25 meaning of the Unruh Act. According to the O'Connor test, SFHA and
26 its staff do not qualify as a business because they are not engaged
27 in a calling, occupation or trade for purposes of making a
28 livelihood or gain. Rather, they administer governmental housing
programs to qualified participants. See Taorimina v. Calif. Dep't
of Corrections, 946 F. Supp. 829, 833 (S.D. Cal. 1996) (prison does
not qualify as a business under Unruh Act because prisoners not

1 engaged in a calling, occupation or trade for purposes of making a
2 livelihood; they are incarcerated because of crimes committed).
3 Furthermore, as discussed above, Plaintiff has failed to present
4 evidence that Defendants intentionally, or otherwise, discriminated
5 against her.

6 Summary judgment is granted in favor of Defendants on this
7 claim and Plaintiff's cross-motion for summary judgment is denied.

8 CONCLUSION

9 For the foregoing reasons, the Court grants Defendants' motion
10 for summary judgment (Docket # 184) and denies Plaintiff's cross
11 motion for summary judgment (Docket # 211). Defendants' motion for
12 evidentiary and terminating sanctions (Docket # 201) and ex parte
13 request to shorten time to hear their motion to dismiss (Docket
14 # 232) are denied as moot. Plaintiff's newly filed discovery
15 motions (Docket ## 233, 235 and 238) are denied as moot. Judgment
16 shall enter in favor of Defendants. Each party shall bear its own
17 costs of litigation.

18
19 IT IS SO ORDERED.

20
21 Dated: 9/4/09



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CLAUDIA WILKEN
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 PATRICIA A MCCOLM,

5 Plaintiff,

6 v.

7 SAN FRANCISCO HOUSING et al,

8 Defendant.

Case Number: CV06-07378 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on September 4, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Patricia A. McColm
16 P.O. Box 27274
17 San Francisco, CA 94127

Dated: September 4, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk