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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARIA W. LEE, et al.,
Plaintiffs,
v.
RETAIL STORE EMPLOYEE BUILDING
CORPORATION, et al.,
Defendants.

Case No. 15-CV-04768-LHK

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS’
MOTIONS TO DISMISS**

Re: Dkt. Nos. 111, 112

Plaintiffs Maria and Wen Lee (collectively, “Plaintiffs”) bring this action against Retail Store Employee Building Corporation; Casa del Pueblo Apartment; and Barcelon Associates Management Corp. (collectively, “Defendants”). Before the Court are two motions to dismiss the Second Amended Complaint. One is filed by Barcelon Associates Management Corp. ECF No. 112 (“Barcelon Mot.”). The other is filed by Retail Store Employee Building Corporation and Casa del Pueblo Apartment. ECF No. 111 (“Retail Mot.”). Having considered the submissions of the parties, the relevant law, and the record in this case, the Court GRANTS IN PART and DENIES IN PART Defendants’ motions to dismiss.

I. BACKGROUND

A. Factual Background

1 From 2000 to 2013, Maria Lee (“Maria”) lived at the Casa del Pueblo Apartment (“CDP”)
2 complex, a senior living facility. SAC ¶ 8, 12. During this period, CDP was owned by Retail
3 Store Employees Building Corporation (“Retail Store”) and managed by Barcelon Associates
4 Management Corp. (“Barcelon”). *Id.* ¶ 7–8. Maria is in her late 80s and was diagnosed with
5 dementia in 2012. *Id.* ¶ 27. Maria’s husband, Yin-Chiau Joseph Lee (“Joseph”) lived with Maria
6 in the apartment until he passed away in November 2012.¹ *Id.* ¶ 12.

7 Plaintiff Wen Lee (“Wen”), Maria and Joseph’s son, moved to San Jose from Taiwan to
8 take care of Maria and Joseph in 2011. *Id.* ¶ 14. Wen “became his parents’ live-in caretaker in
9 mid-2011 and was a resident and lived in their apartment at CDP.” *Id.* This allegation contradicts
10 the First Amended Complaint (“FAC”), which stated that Wen had been staying with Maria from
11 time to time after 2011. ECF No. 96 (“First Order”) at 2.

12 The SAC alleges that Maria’s daughter, Lin Lee (“Lin”), lived with Maria until Wen came
13 to live at CDP in 2011. SAC ¶ 25. However, whether or not Lin actually moved out in 2011 has
14 been inconsistently pled. According to the FAC, Lin lived with Maria and Wen for some time
15 after 2011. Additionally, the Ninety Day Notice of Termination (“Eviction Notice”) and the
16 unlawful detainer eventually brought in this case listed Lin as one of the people residing in
17 Maria’s apartment and noted that part of the reason for the eviction was Lin’s residence in the
18 apartment without permission. FAC at 28. In fact, in the original complaint and in the FAC, Lin,
19 along with Maria and Wen, sued Defendants for violations of the federal Fair Housing
20 Amendments Act (“FHAA”) and the California Fair Employment and Housing Act (“FEHA”).
21 However, Lin was dismissed without prejudice on August 5, 2016 for failure to prosecute, and an
22 Order to Show Cause was issued as to whether Lin should be dismissed with prejudice for failure
23 to prosecute. ECF No. 93. On August 25, 2016, Lin was dismissed with prejudice for failure to
24 prosecute. ECF No. 99.

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26 _____
27 ¹ The First Amended Complaint (“FAC”) alleged that Joseph lived in a nursing home separate
28 from Maria from 2000 to 2010 until he suffered a stroke and “came back to [live with Maria at]
CDP.” ECF No. 52 (“FAC”) ¶ 5–11. However, this series of events is not mentioned in the SAC.

1 2011 when Wen arrived from Taiwan. *Id.* ¶ 25. Allegedly, Defendants suspected that Lin was
 2 abusing Maria and Joseph and called Adult Protective Services on multiple occasions, but took no
 3 further actions to protect Maria and Joseph from Lin. *Id.* ¶ 24. In 2012, Defendants “formally
 4 received notice” that Maria had dementia. *Id.* ¶ 27.

5 **2. Eviction**

6 In June 2013, Defendants issued a Ninety Day Notice of Termination (“Eviction Notice”)
 7 to Maria, Wen, and Lin. *Id.* ¶ 29. In August 2013, Maria was re-certified as being financially
 8 qualified to continue living at CDP and signed a new tenancy agreement. *Id.* ¶ 30. Despite Wen’s
 9 alleged role as Maria’s “live-in caretaker,” Wen allegedly relied on this re-certification, and
 10 traveled to Taiwan to visit relatives in September 2013. *Id.* ¶ 14, 32.

11 On September 19, 2013, Retail Store and CDP filed an unlawful detainer complaint against
 12 Maria, Wen, and Lin in Santa Clara County Superior Court. The unlawful detainer complaint
 13 states that Maria “materially violated the terms of the lease agreement and created and/or allowed
 14 the creation of a nuisance upon the premises.” FAC at 28.² In particular, Maria allowed Lin to
 15 reside at CDP without “obtaining the prior written approval” of Retail Store and CDP—a violation

17 ² The Eviction Notice and the unlawful detainer complaint were attached to the FAC, but have not
 18 been attached to the SAC. However, the SAC refers directly to the contents of the Eviction Notice
 19 and it is an essential part of Plaintiffs’ complaint. SAC ¶¶ 29, 32. The Eviction Notice was
 20 attached to both motions to dismiss. Retail Mot. Ex. 1; Barcelon Mot. at 81. “A district court
 21 ruling on a motion to dismiss may consider documents ‘whose contents are alleged in a complaint
 22 [or whose contents are essential to a claim] and whose authenticity no party questions, but which
 23 are not physically attached to the [plaintiff’s] pleading.’” *Parrino v. FHP, Inc.*, 146 F.3d 699, 705
 24 (9th Cir. 1998) (as amended). Therefore, the Court may consider the Eviction Notice without
 25 converting the instant motions to dismiss to motions for summary judgment.

26 In addition, the Court may take judicial notice of publicly filed documents. *See, e.g.,*
 27 *United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007) (“[Courts] may take notice of
 28 proceedings in other courts, both within and without the federal judicial system, if those
 proceedings have a direct relation to matters at issue.”); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d
 Cir. 2000) (taking judicial notice of a filed complaint as a public record). Therefore, the Court
 takes judicial notice of the unlawful detainer complaint, which was previously filed in state court.
 FAC at 28. However, to the extent any of the facts in the unlawful detainer complaint are
 disputed, the Court does not take judicial notice of those facts. *See Lee v. City of L.A.*, 250 F.3d
 668, 689 (9th Cir. 2001) (“A court may take judicial notice of matters of public record . . . But a
 court may not take judicial notice of a fact that is subject to reasonable dispute.”) (internal
 quotation marks omitted), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307
 F.3d 1119 (9th Cir. 2002).

1 of Maria’s rental agreement. *Id.* The complaint further states that Maria’s “tenancy has been
2 fraught with constant complaints from neighbors who have been terrified by threatening, hostile,
3 bizarre, and alarming behavior.” *Id.*

4 In 2010, for example, Lin “locked [Maria] out of the apartment and angrily abused [CDP]
5 staff when they attempted to intervene.” *Id.* Maria was also given infraction notices from CDP on
6 March 6, 2012; April 24, 2012; June 19, 2012; July 25, 2012; October 23, 2012; and November
7 30, 2012 because Lin and Maria were “harassing residents, staff and caregivers; knocking on their
8 doors; making unwanted contact; and physically assaulting others.” *Id.* at 29 (noting that Maria
9 was served an infraction on October 23, 2012 after she and Lin “kicked at the manager’s door,
10 screamed death threats and curses towards the staff.”). The unlawful detainer complaint also
11 produced notes that CDP staff members had received from Maria, which stated, among other
12 things, that “[e]vil fate will befall you soon. Your parents die and your son die,” and that “[y]ou
13 stinky prostitute putting stuff in my garlic bowl. Almighty will punish you. Your parents will die.
14 You are dirty and rotten.” *Id.* at 30. Maria, Wen, and Lin did not respond to the unlawful detainer
15 complaint. *Id.* ¶ 5-25. Plaintiffs allege that Wen was unable to respond on behalf of Maria and
16 himself due to his visit to Taiwan. SAC ¶ 33. On October 17, 2013, the Santa Clara County
17 Sheriff’s Office evicted Maria, Wen, and Lin from CDP.

18 Plaintiffs allege that Defendants have essentially admitted that “all the behavioral outbursts
19 alleged in the [unlawful detainer complaint] were instigated by Lin.” *Id.* ¶ 28. Plaintiffs allege
20 that Defendants’ internal documents state that if Lin were not living at the property, Maria would
21 be “an annoyance but like a small fly” and that if CDP could keep Lin away from CDP, Maria
22 would be “saner.” *Id.* However, the Court notes that Lin was previously a co-Plaintiff with Maria
23 and Wen in the instant case, and that the three asserted FHAA and FEHA claims against
24 Defendants. On August 25, 2016, Lin’s case was dismissed with prejudice for failure to
25 prosecute. ECF No. 99.

26 After the eviction, at the end of October 2013, Wen contacted In Home Supportive
27 Services (“IHSS”) to discuss Maria’s care, but was told that IHSS was not authorized to talk with

1 him because Liu, the CDP employee discussed above, was Maria’s guardian. SAC ¶ 35.
2 However, Plaintiffs allege that Liu had fraudulently told IHSS that she was Maria’s guardian in
3 order to facilitate the eviction process—allegedly, no guardianship application had ever been filed
4 to make Liu Maria’s guardian. *Id.*

5 As a result of the eviction, Plaintiffs allege that Wen and Maria have been forced to rent a
6 single room in a house due to their limited income and the loss of subsidized housing. *Id.* ¶ 36.

7 **B. Procedural History**

8 On October 17, 2014, Maria filed a housing discrimination complaint with the United
9 States Department of Housing and Urban Development (“HUD”), which asserted that she was the
10 subject of discriminatory treatment by CDP staff. Pursuant to HUD policy, Maria’s complaint
11 was forwarded to the California Department of Fair Employment and Housing (“DFEH”). On
12 November 6, 2015, DFEH closed Maria’s case after finding that she had presented insufficient
13 evidence of discrimination.

14 Plaintiffs filed the original complaint in federal court on October 15, 2015, which mirrored
15 the allegations set forth in Maria’s HUD complaint. ECF No. 1. The original complaint asserted
16 causes of action under the Fair Housing Amendments Act (“FHAA”) and Fair Employment and
17 Housing Act (“FEHA”). *Id.* On April 6, 2016, Retail Store and CDP moved to dismiss the
18 original complaint. ECF No. 39. In lieu of opposing this motion, on May 2, 2016, Plaintiffs filed
19 the FAC, which kept the same two causes of action but added Barcelon as a Defendant. As a
20 result, the Court denied Defendants’ motions to dismiss as moot. ECF No. 53. On June 17, 2016,
21 Barcelon declined magistrate judge jurisdiction, and on June 21, 2016, the instant action was
22 reassigned to the undersigned judge. ECF No. 79.

23 Retail Store and CDP moved to dismiss the FAC on May 13, 2016. ECF No. 60. Maria
24 and Wen filed a response on June 20, 2016, and Retail Store and CDP filed a reply on June 29,
25 2016. ECF No. 76; ECF No. 81. Barcelon moved to dismiss the FAC on June 9, 2016. ECF No.
26 69. Maria and Wen filed a response on June 21, 2016, and Barcelon filed a reply on June 30,
27 2016. ECF No. 78; ECF No. 82. On August 9, 2016, the Court granted Defendants’ motions to

1 dismiss for three reasons: Maria lacked capacity, Wen did not have standing, and Plaintiffs failed
2 to state a claim under the FHAA or FEHA because they failed to allege that any actions were
3 taken because of a disability. First Order at 13.³

4 On September 8, 2016, Plaintiffs filed a Second Amended Complaint (“SAC”). ECF No.
5 104. The SAC alleges violation of the FHAA and FEHA, but significantly changes the factual
6 allegations supporting those claims. *Id.*

7 On September 27, 2016, Retail Store and Barcelon each brought a Motion to Dismiss the
8 Second Amended Complaint. ECF No. 111 (“Retail Store Mot.”); ECF No. 112 (“Barcelon
9 Mot.”). On October 11, 2016, Plaintiffs filed a single opposition to both motions. ECF No. 114
10 (“Opp’n”). On October 18, 2016, Retail Store and Barcelon each filed a reply. ECF No. 116
11 (“Retail Store Reply”); ECF No. 15 (“Barcelon Reply”).

12 **II. LEGAL STANDARD**

13 **A. Motion to Dismiss**

14 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss an
15 action for failure to allege “enough facts to state a claim to relief that is plausible on its face.” *Bell*
16 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the
17 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
18 defendant is liable for the misconduct alleged. The plausibility standard is not akin to a
19 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted
20 unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). For
21 purposes of ruling on a Rule 12(b)(6) motion, the Court “accept[s] factual allegations in the
22 complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving
23 party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

24 Nonetheless, the Court is not required to “assume the truth of legal conclusions merely
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26 ³ Although this case was initially filed *pro se*, Plaintiffs obtained counsel who appeared in the case
27 on behalf of Plaintiffs on June 3, 2016. ECF Nos. 62, 63. Thus, Plaintiffs were represented by
28 counsel for the responses to Retail Stores’ and Barcelon’s motions to dismiss the FAC. Plaintiffs
continue to be represented by counsel.

1 because they are cast in the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064
2 (9th Cir. 2011) (quoting *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Mere
3 “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to
4 dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004); *accord Iqbal*, 556 U.S. at 678.
5 Furthermore, “a plaintiff may plead [him]self out of court” if he “plead[s] facts which establish
6 that he cannot prevail on his . . . claim.” *Weisbuch v. Cty. of L.A.*, 119 F.3d 778, 783 n.1 (9th Cir.
7 1997) (quoting *Warzon v. Drew*, 60 F.3d 1234, 1239 (7th Cir. 1995)).

8 **B. Leave to Amend**

9 Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend “shall be freely
10 granted when justice so requires,” bearing in mind “the underlying purpose of Rule 15 to facilitate
11 decision on the merits, rather than on the pleadings or technicalities.” *Lopez v. Smith*, 203 F.3d
12 1122, 1127 (9th Cir. 2000) (en banc) (ellipses omitted). Generally, leave to amend shall be denied
13 only if allowing amendment would unduly prejudice the opposing party, cause undue delay, or be
14 futile, or if the moving party has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ’g*, 512
15 F.3d 522, 532 (9th Cir. 2008).

16 **III. DISCUSSION**

17 The arguments in Defendants’ motions to dismiss are substantially identical to one another.
18 First, Defendants argue that Maria lacks capacity to sue. Next, Defendants contend that Wen does
19 not have standing to sue. Finally, Defendants argue that the SAC fails to allege facts sufficient to
20 state a claim under the FHAA, FEHA, and California’s privacy laws. The Court addresses these
21 arguments in turn.

22 **A. Maria’s Capacity to Sue**

23 Federal Rule of Civil Procedure 17 “governs the capacity of parties to sue or be sued in
24 federal court.” *Bennett v. Cty. of Riverside*, 2014 WL 4162564, *2 (C.D. Cal. Aug. 20, 2014).
25 Specifically, under Rule 17(b)(1), the “[c]apacity to sue or be sued is determined . . . by the law of
26 the individual’s domicile.” Fed. R. Civ. P. 17(b)(1). Because Maria is domiciled in California,
27 California law applies.

1 Under California law, “[t]he test for incompetence . . . is whether the party has the capacity
2 to understand the nature or consequences of the proceeding, and is able to assist counsel in
3 preparation of the case.” *In re Jessica G.*, 93 Cal. App. 4th 1180, 1186 (2001). If a party is found
4 to be incompetent based on this test, then that party may only appear in state court through “a
5 guardian or conservator of the estate or by a guardian ad litem.” Cal. Civ. Proc. Code § 372(a)(1).
6 Similarly, an incompetent party may only bring suit in federal court through a duly appointed
7 representative, which is defined in the Federal Rules of Civil Procedure as a “general guardian,” a
8 “committee,” a “conservator,” or a “like fiduciary.” Fed. R. Civ. P. 17(c)(1). An “incompetent
9 person who *does not* have a duly appointed representative may sue [in federal court] by a next
10 friend or by a guardian ad litem.” Fed. R. Civ. P. 17(c)(2) (emphasis added). Federal courts may,
11 in their broad discretion, appoint a guardian ad litem for an incompetent party. *Davis v. Walker*,
12 745 F.3d 1303, 1310 (9th Cir. 2014).

13 The parties here do not dispute that Maria is incompetent under the test set forth in *In re*
14 *Jessica G.* See Opp’n at 7–8; Retail Reply at 6; Barcelon Reply at 6. Thus, the issue becomes
15 whether Maria has a guardian or conservator who can sue on her behalf. Previously, the Court
16 dismissed Maria’s cause of action because Maria conceded in the FAC that Liu, an employee of
17 CDP, had been appointed as Maria’s guardian. First Order at 6. However, the SAC alleges that
18 no guardian was ever appointed for Maria. See SAC ¶ 35 (“No guardianship application was ever
19 filed.”). Defendants do not argue that such an application was ever filed or that anyone was ever
20 appointed as Maria’s guardian. Thus, no guardian was ever appointed for Maria.

21 The Court next turns to whether Wen may bring this suit on behalf of Maria. Plaintiffs
22 attach to the SAC a “Power of Attorney (with Durable Provision).” SAC Ex. 1. The power of
23 attorney provides that Wen may act as “attorney-in-fact” on behalf of Maria, which includes
24 powers involving “Claims and litigation” and “All other matters.” *Id.* The power of attorney
25 includes a “Durable provision,” which states that “the power of attorney shall not be affected by
26 the subsequent disability or incompetence of the Grantor.” *Id.*

27 Plaintiffs argue that this power of attorney provides Wen the ability to sue on Maria’s

1 behalf. Opp’n at 7–8. In response, Defendants argue that a power of attorney is insufficient under
 2 California Civil Procedure Code § 372(a)(1), which requires an incompetent person to appear by a
 3 “guardian or conservator of the estate or a guardian ad litem,” and under Federal Rule of Civil
 4 Procedure 17(c)(1), which requires a “duly appointed” representative. Barcelon Reply at 2; Retail
 5 Store Reply at 2–3.

6 The Court agrees with Defendants that a power of attorney does not confer the ability to
 7 sue on behalf of an incompetent person. As described above, § 372(a)(1) explicitly states that only
 8 a guardian, conservator, or guardian ad litem may appear on behalf of an incompetent person.
 9 That requirement is not affected by a power of attorney. Although a power of attorney may grant
 10 a person the authority to bring suit, such a grant of power is “subject to conditions of . . . law that
 11 exist outside this chapter.” *Drake v. Superior Court*, 21 Cal. App. 4th 1826, 1831 (1994). The
 12 California Court of Appeal has interpreted this statement to mean that a person with a power of
 13 attorney is still “subject to . . . the Code of Civil Procedure and local court rules. Thus, the [person
 14 holding the power of attorney for an incompetent person] may bring an action on behalf of his or
 15 her principal only as a guardian ad litem, the appointment of which is accomplished by order of
 16 the court.” *In re Marriage of Caballero*, 27 Cal. App. 4th 1139, 1152 (1994) (as amended).

17 Additionally, under California law, a power of attorney is used to *nominate* a conservator
 18 or guardian to represent a person or an estate, and does not itself confer guardianship or
 19 conservatorship status. Cal. Prob. Code § 4126 (“A principal may nominate, by a durable power
 20 of attorney, a conservator of the person or estate or both, or a guardian of the person or estate or
 21 both.”). Plaintiffs argue that the broad scope of powers provided in the power of attorney, under
 22 Cal. Prob. Code § 4263, “impliedly sweeps in all powers authorized by the statute including but
 23 not limited to [p]owers of guardians and conservators.” *Id.* However, Plaintiffs ignore that § 4263
 24 only “sweeps in” other powers where that power is “incorporate[ed] by reference to another
 25 statute.” *Id.* The power of attorney here does not contain such a reference to the guardianship or
 26 conservator statutes. SAC Ex. 1.

27 Therefore, Maria still does not have a valid guardian, conservator, or guardian ad litem to

1 bring the instant suit on her behalf. The Court notes that on August 9, 2016, the Court dismissed
2 the FAC because the guardian Maria had identified in the FAC had not brought the suit on Maria’s
3 behalf. *See* First Order at 96 (“Thus, because Maria does not have legal capacity to sue and
4 because [Liu] has not brought suit on Maria’s behalf, Maria may not proceed as a Plaintiff in the
5 instant case.”). The Court dismissed without prejudice to provide Plaintiffs the opportunity to
6 resolve the issue of Maria’s guardianship. However, on September 14, 2016, even after filing the
7 SAC, Plaintiffs had still not resolved the issue of Maria’s guardianship. *See* ECF No. 106 at 2
8 (joint case management statement in which Plaintiffs note that, despite the allegations in the SAC,
9 Liu was Maria’s guardian). The Court ordered the parties to produce all documents to one another
10 related to the guardianship issue by September 21, 2016. ECF No. 109. However, since that time,
11 Plaintiffs have taken no action to appoint a guardian for Maria and have not provided any evidence
12 concerning whether Liu was ever Maria’s guardian. Plaintiffs’ repeated failure to resolve the issue
13 of Maria’s guardianship warrants her dismissal from the case. However, the Court provides
14 Plaintiffs one last opportunity to obtain a guardian for Maria. Within 21 days of this order,
15 Plaintiffs must file a motion to appoint a guardian ad litem, or Maria will be dismissed from the
16 case with prejudice.

17 **B. Wen’s Standing to Sue Under the FHAA and FEHA**

18 The Court next addresses whether the other plaintiff, Wen Lee, has standing to sue under
19 the FHAA and FEHA. In *Harris v. Itzhaki*, 183 F.3d 1043 (9th Cir. 1999), the Ninth Circuit “held
20 that claims brought under the Fair Housing [Amendments] Act are to be judged under a very
21 liberal standing requirement.” *Id.* at 1049. “Unlike actions brought under other provisions of civil
22 rights law, under the FHA[A] the plaintiff need not allege that he or she was a victim of
23 discrimination.” *Id.* at 1049–50. “Rather, the sole requirement for standing under the Act is the
24 Article III minima of injury in fact.” *Id.* at 1050 (internal quotation marks omitted). “To meet this
25 requirement, a plaintiff [must] allege that as a result of the defendant’s discriminatory conduct he
26 has suffered a distinct and palpable injury.” *Id.* (internal quotation marks and alteration omitted).

27 The same standing standard applies to Wen’s claims under the FEHA, as the Ninth Circuit

1 has determined that “the same standards [apply] to FHA[A] and FEHA claims.” *Walker v. City of*
 2 *Lakewood*, 272 F.3d 1114, 1131 n.8 (9th Cir. 2001) (“Because the [plaintiff] can maintain an
 3 action under [the FHAA], we conclude that [the plaintiff] also can bring a [] claim under the
 4 FEHA.”); *see also Huynh v. Harasz*, 2016 WL 2757219, at *21 (N.D. Cal. May 12, 2016)
 5 (holding that “a viable FHAA claim is also a viable FEHA claim”).

6 As this Court noted in its prior order dismissing the FAC, there is some uncertainty as to
 7 whether *Harris*, which relied upon the United States Supreme Court’s decision in *Gladstone*
 8 *Realtors v. Village of Bellwood*, 441 U.S. 91 (1979), remains good law in light of *Thompson v.*
 9 *North American Stainless, LP*, 562 U.S. 170 (2011). In *Thompson*, the United States Supreme
 10 Court appeared to refer to part of its standing analysis in *Gladstone* as “dictum [which] was ill-
 11 considered.” *Id.* at 176. Post-*Thompson*, federal courts are split as to whether a plaintiff may
 12 establish FHAA standing by simply meeting the minimum requirements set forth under Article III,
 13 or whether a statutory standing zone-of-interests test needs to be applied. *Compare City of Miami*
 14 *v. Bank of Am. Corp.*, 800 F.3d 1262, 1277 (11th Cir. 2015) (holding that *Gladstone* still applies),
 15 with *Cty. of Cook v. Wells Fargo & Co.*, 115 F. Supp. 3d 909, 917–18 (N.D. Ill. 2015) (adopting
 16 more restrictive standing requirements after *Thompson*). The Ninth Circuit has not yet spoken on
 17 this issue, nor have the parties briefed it.

18 Regardless, the Court need not resolve this issue because for each cause of action Plaintiffs
 19 allege, Wen either satisfies both Article III and statutory standing or satisfies neither. Plaintiffs
 20 bring claims based on two sets of events in the SAC. First, Plaintiffs bring claims for Housing
 21 Discrimination Based on a Hostile Living Environment and Housing Discrimination Based on
 22 Discriminatory Statements Made in Connection with the Sale or Rental of a Dwelling under the
 23 FHAA and FEHA. These claims are based on the allegations that Liu and Ms. Ma verbally
 24 harassed Maria during Maria’s tenancy from 2004 to 2011. Second, Plaintiffs bring a claim for
 25 Housing Discrimination Based on the Eviction of Maria and Wen under both the FHAA and
 26 FEHA. The Court addresses Wen’s standing first for the causes of actions arising from Liu’s and
 27 Ms. Ma’s verbal harassment, and then addresses Wen’s standing for the claim arising from

1 Maria's and Wen's eviction.

2 First, Wen clearly does not have standing to bring suit for any harassment suffered by
3 Maria from 2004 to 2011 because there is no allegation that he lived at the apartment, or even
4 visited, during that time frame. Therefore, he could not have suffered a "distinct and palpable
5 injury" based on Liu's and Ms. Ma's alleged abuse of Maria. Even if Wen was a resident during
6 that time, he would not have standing because "simply witnessing discrimination [does not]
7 constitute an injury-in-fact sufficient for Article III standing." *Sturm v. Davlyn Invs., Inc.*, 2013
8 WL 8604760, at *3 (C.D. Cal. Nov. 6, 2013). The SAC contains no allegation that Wen ever
9 personally suffered any discrimination while living at CDP. Therefore, Wen does not have
10 standing to sue based on the verbal harassment Maria allegedly suffered at CDP, that is, for the
11 claims for Housing Discrimination Based on a Hostile Living Environment or Housing
12 Discrimination Based on Discriminatory Statements Made in Connection with the Sale or Rental
13 of a Dwelling under the FHAA and FEHA.

14 Second, Wen has satisfied standing with respect to the claims for Housing Discrimination
15 Based on Maria's and Wen's Eviction. The SAC alleges that Wen lived in Maria's apartment on a
16 permanent basis as a "live-in caretaker." SAC ¶ 14. The Eviction Notice issued to Maria, Wen,
17 and Lin also lists Wen as a "live-in attendant," while it lists Lin as an "unauthorized resident."
18 FAC at 22. Wen, therefore, was evicted from CDP, has an unlawful detainer judgment entered
19 against him, and now "rent[s] one room in a house" with his mother due to the loss of Maria's
20 subsidized housing. SAC ¶ 36. Thus, if Maria was evicted for a discriminatory reason, Wen was
21 also evicted and was thereby injured by the same discriminatory housing practice.

22 Wen's situation is comparable to *Mountain Side Mobile Estates Partnership v. Secretary of*
23 *Housing and Urban Development*, 56 F.3d 1243 (10th Cir. 1995). In *Mountain Side*, plaintiff
24 resided permanently with his girlfriend and his girlfriend's three children. The family was
25 subsequently evicted for violating a mobile home park rule which prohibited families of more than
26 three people from living in the mobile home park. *Id.* at 1247. Plaintiff claimed that this rule
27 constituted a discriminatory housing practice. *Id.* at 1249. The Tenth Circuit held that plaintiff

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1 had shown that he had been injured as a result of this housing practice because plaintiff resided
2 permanently in the mobile home park, and plaintiff was injured when he was evicted from the
3 mobile home park. Similarly, Plaintiffs have alleged that Wen resided permanently in Maria’s
4 apartment and was injured by the eviction sufficiently to satisfy Article III.

5 Even if the Court were to apply a statutory standing test as was described in *Thompson*,
6 Wen would have standing to sue Defendants. In *Thompson*, the United States Supreme Court held
7 that whether someone is a “person aggrieved” with a cause of action should be evaluated based on
8 whether the plaintiff “falls within the zone of interests sought to be protected by the statutory
9 provision whose violation forms the legal basis for his complaint.” *Thompson*, 562 U.S. at 177
10 (internal quotation marks and citations omitted). Thus, the United States Supreme Court stated
11 that lower courts must allow suits from plaintiffs with interests “arguably sought to be protected
12 by the statute,” while excluding those people with interests “unrelated to the statutory prohibitions
13 in Title VII.” *Id.* at 178.

14 The United States Supreme Court in *Thompson* then applied the zone-of-interests test and
15 found that the plaintiff satisfied the statutory standing test with respect to Title VII. *Id.* It did not
16 matter that the plaintiff did not suffer discrimination directly because (1) the plaintiff was an
17 employee of the defendant company (“and the purpose of Title VII is to protect employees from
18 their employers’ unlawful actions”), and (2) the plaintiff was not an accidental victim of
19 retaliation, but rather, the employer had sought to hurt the plaintiff by discriminating against the
20 plaintiff’s fiancée. *Id.* Under these circumstances, Plaintiff was “well within the zone of interests
21 sought to be protected by Title VII.” *Id.*

22 Similarly here, Wen alleges that he was a resident of CDP as Maria’s live-in attendant, that
23 Defendants evicted Maria based on a discriminatory purpose, and that, as a result, Wen was also
24 evicted. The FHAA’s purpose is to protect residents from landlords in the same way that Title VII
25 seeks to protect employees from their employers. Specifically, § 3604(f)(1) states that it is
26 unlawful “[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a
27 dwelling to any buyer or renter because of a handicap of . . . that buyer or renter.” A cause of
28

1 action is provided to an “aggrieved person,” that is, someone who is “injured by a discriminatory
2 housing practice.” 42 U.S.C. § 3602(i)(1). If Maria was evicted for discriminatory reasons, Wen
3 was also evicted for these reasons, and was “injured by a discriminatory housing practice.” *Id.*;
4 *compare Cty. of Cook*, 115 F. Supp. 3d at 918 (finding no standing under § 3604 because “Cook
5 County is not a person to whom a ‘dwelling’ can be made unavailable, for it does not ‘dwell’
6 anywhere”). Additionally, although Wen was not necessarily the intended “victim” of the alleged
7 discrimination like in *Thompson*, Defendants certainly intended to evict Wen alongside Maria, as
8 his name was on the Eviction Notice. Therefore, Wen falls within the zone of interests of the
9 FHAA with respect to Maria’s claims concerning her eviction.

10 Accordingly, Wen has standing to sue with respect to the claims for Housing
11 Discrimination Based on Wen and Maria’s Eviction under the FHAA and FEHA, but has no
12 standing to sue for the claims based on the alleged verbal harassment of Maria. Therefore, the
13 Court GRANTS Defendants’ motions to dismiss against Wen with prejudice on the FHAA and
14 FEHA claims for Housing Discrimination Based on a Hostile Living Environment and Housing
15 Discrimination Based on Discriminatory Statements Made in Connection with the Sale or Rental
16 of a Dwelling.

17 The Court denies leave to amend because in this Court’s prior order in the instant suit
18 dismissing the FAC, the Court held that Wen had no standing to sue under the FHAA or FEHA
19 because witnessing Maria’s alleged harassment did not create a sufficient injury and the complaint
20 contained no allegations that Wen was treated in a discriminatory manner. The Court specified
21 that if this deficiency was not cured, Wen’s claims would be dismissed with prejudice. As noted
22 above, with respect to the claims based on the verbal harassment of Maria, Plaintiffs have been
23 unable to cure the deficiencies in Wen’s standing. Therefore, the Court concludes that any further
24 amendment of the complaint would be futile with respect to Wen’s standing as to the claims based
25 on the verbal harassment of Maria.

26 **C. Causes of Action**

27 The SAC involves claims under the FHAA and FEHA. Additionally, Plaintiffs’ raise for

1 the first time in their opposition brief a claim involving California tenant privacy laws. The Court
2 first addresses the FHAA, then addresses the FEHA, and finally discusses California privacy laws.
3 Plaintiffs' cause of action under the FHAA has three parts: (1) Housing Discrimination Based on
4 Wen and Maria's Eviction Under FHAA, 42 U.S.C. § 3604(f)(1); (2) Housing Discrimination
5 Based on Hostile Living Environment Under the FHAA, 42 U.S.C. § 3604(f)(2); and (3) Housing
6 Discrimination Based on Discriminatory Statements Made in Connection with the Sale or Rental
7 of a Dwelling Under the FHAA, 42 U.S.C. § 3604(c).

8 Plaintiffs' cause of action under the FEHA has four parts: (1) Housing Discrimination
9 Based on Eviction Under FEHA, Cal. Gov't Code § 12955(a), (k); (2) Housing Discrimination
10 Based on Hostile Living Environment Under FEHA, Cal. Gov't Code § 12927(c)(1); (3) Housing
11 Discrimination Based on Discriminatory Statements Made In Connection with Rental or Sale of a
12 Housing Accommodation Under FEHA, Cal. Gov't Code § 12955(c); and (4) Retaliation Under
13 FEHA, Cal. Gov't Code § 12955(f).

14 Finally, Plaintiffs, for the first time in their opposition brief, allege a cause of action under
15 California privacy laws based on Maria's personal information.

16 **1. First Cause of Action – Fair Housing Amendment Act (“FHAA”)**

17 Under the first cause of action, Plaintiffs allege the following claims: (1) Housing
18 Discrimination Based on Wen and Maria's Eviction Under FHAA, 42 U.S.C. § 3604(f)(1); (2)
19 Housing Discrimination Based on Hostile Living Environment Under the FHAA, 42 U.S.C.
20 § 3604(f)(2); and (3) Housing Discrimination Based on Discriminatory Statements Made in
21 Connection with the Sale or Rental of a Dwelling Under the FHAA, 42 U.S.C. § 3604(c).

22 As noted above, on the facts in the SAC, Wen has standing to bring an FHAA claim for
23 discriminatory eviction, but not for hostile living environment or discriminatory statements made
24 in connection with the sale or rental of a dwelling based on the alleged verbal harassment of Maria.
25 On the other hand, Maria has standing to allege an FHAA claim for discriminatory eviction, hostile
26 living environment, and discriminatory statements made in connection with the sale or rental of a
27 dwelling. However, Maria must obtain a guardian ad litem, and the guardian ad litem must bring

1 the FHAA claim on Maria’s behalf. Therefore, the Court first addresses Wen’s and Maria’s
2 FHAA claim for discriminatory eviction, then addresses Maria’s FHAA claim for hostile living
3 environment and discriminatory statements made in connection with the sale or rental of a
4 dwelling.

5 **a. Housing Discrimination Based on Wen and Maria’s Eviction**
6 **Under FHAA, 42 U.S.C. § 3604(f)(1)**

7 Plaintiffs allege that Defendants discriminated against Maria by evicting her based on her
8 disability-related actions and her association with her mentally disabled daughter. Section 3604 of
9 the FHAA makes the following unlawful:

10 To discriminate in the sale or rental, or to otherwise make unavailable or deny, a
11 dwelling to any buyer or renter *because of* a handicap of—

- 12 (A) that buyer or renter;
- 13 (B) a person residing in or intending to reside in that dwelling after it is
14 sold, rented, or made available; or
- 15 (C) any person associated with that buyer or renter.

16 42 U.S.C. 3604(f)(1) (emphasis added); *Housing Rights Ctr. v. Sterling*, 404 F. Supp. 2d 1179,
17 1192 (C.D. Cal. 2004) (holding that the reason for the allegedly discriminatory action must be the
18 protected status). As noted in the statutory provision reproduced above, the FHAA provides a
19 claim whether the “handicap” is suffered by the renter or buyer, in this case Maria, or a person
20 “associated with that buyer or renter,” such as family members or friends. 42 U.S.C. § 3604(f)(1).
21 At the motion to dismiss stage, Plaintiff must allege (1) that an adverse action making the
22 apartment unavailable occurred, (2) that the action was taken against someone with a “handicap,”
23 and (3) “that the adverse action was taken *because of* a [handicap].” *Hunt v. Aimco Properties,*
24 *L.P.*, 814 F.3d 1213, 1221–25 (11th Cir. 2016).⁴

25 Here, Plaintiffs allege that Maria was evicted “based largely on her disability related
26 behavior associated with her dementia and other mental health disabilities of which defendants
27 were well aware and her association with her mentally ill daughter Lin Kou Lee.” SAC ¶ 29.

28 As an initial matter, eviction is a sufficient “adverse action” to state a claim under the

⁴ The terms “handicap” and “disability” are interchangeable. However, when discussing the FHAA, the Court uses the term “handicap” and in all other places uses the term disability.

1 FHAA because “[d]iscriminatory conduct encompasses threats of eviction or efforts to evict a
2 tenant because of a disability.” *Johnson v. Macy*, 145 F. Supp. 3d 907, 915 (C.D. Cal. 2015)
3 (citing 24 C.F.R. § 100.60(b)(5) (stating that a landlord is prohibited from “[e]victing tenants
4 because of their . . . handicap[s].”)).

5 Thus, because the first element identified above has been satisfied, to state a claim based on
6 the eviction, Plaintiffs must also allege facts to satisfy the latter two elements, namely, that (1)
7 Maria or someone associated with her, such as her daughter Lin, suffered a “handicap” within the
8 meaning of the FHAA, and (2) that the eviction occurred because of the “handicap.” The Court
9 addresses each element in turn.

10 **i. “Handicap”**

11 An individual has a “handicap” under the FHAA if he or she has “(1) a physical or mental
12 impairment which substantially limits one or more of [his or her] major life activities, (2) a record
13 of such impairment, or (3) being regarded as having such an impairment.” 42 U.S.C. § 3602(h).
14 This Court has previously held that, in the context of the Americans with Disabilities Act
15 (“ADA”), which uses a definition of “disability” that is identical to the FHAA’s definition of
16 “handicap,” a plaintiff’s disability must be pled “with some factual specificity.” *Bresaz v. Cty. of*
17 *Santa Clara*, 136 F. Supp. 3d 1125, 1135 (N.D. Cal. 2015); *see also Giebeler v. M & B Assocs.*,
18 343 F.3d 1143, 1147–49 (9th Cir. 2003) (finding that ADA case law is applicable to an analysis
19 under the FHAA). Plaintiffs’ complaint refers to three distinct potential “handicaps”: Maria’s
20 dementia, Maria’s “other mental health disabilities,” and Lin’s alleged “mental[] ill[ness].” SAC
21 ¶ 29. The Court discusses each alleged “handicap” in turn.

22 First, Maria’s dementia is a “handicap” within the meaning of the FHAA. *See Herriot v.*
23 *Channing House*, 2009 WL 225418, at *3 (N.D. Cal. Jan. 29, 2009) (finding the plaintiff to be
24 handicapped based partly because she suffered from dementia). As a result of this dementia,
25 Plaintiffs allege that, starting in 2012, Maria “was incapable [of] taking care of her own financial
26 and legal affairs” and that “[s]he needs assistance in managing her daily activities and her health
27 and safety matters.” SAC ¶ 27. Thus, Plaintiffs have alleged that Maria suffered from dementia

1 and that her dementia created a “mental impairment which substantially limits . . . [her] major life
2 activities.” 42 U.S.C. § 3204(h)(1). Accordingly, the Court finds that Plaintiffs have sufficiently
3 alleged that, as of 2012, Maria had a “handicap” within the meaning of the FHAA.

4 Second, Plaintiffs allege that Maria suffered “other mental health disabilities.” SAC ¶ 29.
5 However, Plaintiffs do not point to any specific mental illness that Maria suffered other than
6 dementia. Additionally, Plaintiffs solely allege that these other mental health disabilities caused
7 Maria “difficulty interacting with her neighbors” and caused her to think neighbors had stolen her
8 suitcase and clothing, but does not allege that these alleged disabilities caused “mental impairment
9 which substantially limits . . . [Maria’s] major life activities” as required by the FHAA. 42 U.S.C.
10 § 3204(h)(1). At the very least, to state a claim, Plaintiffs need to “identify [Maria’s] handicap” in
11 the complaint. *DeRock v. Boise City*, 2015 WL 1736488, at *2 (D. Idaho Apr. 16, 2015).
12 Accordingly, because Plaintiffs have failed to identify these “other mental disabilities,” these other
13 disabilities cannot be the basis of an FHAA claim.

14 Third, Plaintiffs allege that Lin, Maria’s daughter, suffered “mental health disabilities.”
15 SAC ¶ 14. Plaintiffs’ sole allegation regarding these disabilities is that Lin was unable to care for
16 her parents due to these disabilities. *Id.* As with Maria’s “other mental health disabilities,”
17 Plaintiffs fail to identify Lin’s mental health disability or to allege that these disabilities
18 substantially limited her major life activities such that they rise to the level of a “handicap” within
19 the meaning of the FHAA. *DeRock*, 2015 WL 1736488 at *2 (noting that the plaintiff must at least
20 identify a handicap to state a claim under the FHAA). Therefore, Lin’s mental health disability
21 cannot be the basis for an FHAA claim.

22 As discussed above, Plaintiffs allege that Maria’s eviction occurred based on three grounds:
23 her dementia, her other mental health disabilities, and Lin’s mental illness. Under the FHAA,
24 Plaintiffs can only state a claim for Housing Discrimination Based on Maria’s and Wen’s Eviction
25 if that eviction occurred “because of a handicap of” Maria or because of a handicap of “any person
26 associated with [Maria].” 42 U.S.C. § 3604(f)(1). Thus, because Plaintiffs have not adequately
27 alleged Maria’s other mental health disabilities and Lin’s mental health disabilities, the Court

28

1 GRANTS Defendants’ motions to dismiss to the extent the claim for Housing Discrimination
2 Based on Wen and Maria’s Eviction relies on these alleged “handicaps.” The Court previously
3 dismissed the FAC partly because Plaintiffs had failed to show that any discrimination had
4 occurred “because of a handicap.” Similarly here, with respect to Maria’s “other mental health
5 disabilities” and Lin’s “mental health disabilities,” Plaintiffs have failed to sufficiently plead that
6 the eviction occurred because of a “handicap.” Therefore, the Court does not provide leave to
7 amend.

8 The Court additionally notes that making the dismissal without leave to amend with respect
9 to Lin’s alleged “mental health disabilities” is especially deserved. In the SAC, Plaintiffs allege
10 that Maria has a cause of action based on Lin’s supposed mental health disabilities, and then two
11 paragraphs later, alleges that Defendants should have taken steps to ban Lin, Maria’s daughter,
12 from visiting her at CDP. Thus, Plaintiffs allege that taking an action against Lin would be
13 invidious discrimination, but that Defendants should have committed such discrimination if it
14 favored Maria. Additionally, Lin was previously a co-plaintiff with Maria and Wen in the instant
15 suit. In two successive complaints, Maria, Wen, and Lin sued Defendants for discrimination for
16 evicting all three of them, and now Plaintiffs have completely changed their position to state that
17 Defendants should have banned Lin entirely from CDP. Thus, the Court does not provide yet
18 another opportunity to Plaintiffs to allege Lin’s and Maria’s other mental health disabilities when it
19 is apparent that any further amendment on the issue would be futile.

20 The Court next turns to discuss whether the only disability Plaintiffs have adequately
21 alleged, Maria’s dementia, was the reason why Maria was evicted.

22 **ii. Eviction “Because Of a Handicap”**

23 In order to state a claim under the FHAA based on Maria’s eviction, Plaintiffs must allege
24 that Defendants evicted Maria “because of” her handicap, her dementia. *Hunt*, 814 F.3d at 1221–
25 25. Plaintiffs allege that Maria was evicted “[d]espite [Defendants] knowing that it was really her
26 daughter who was causing the disruptions” and “based largely on her disability related behavior
27 associated with her dementia and other mental health disabilities of which defendants were well

1 aware and her association with her mentally ill daughter Lin Kou Lee.” SAC ¶ 29. As discussed
2 in the prior section, Plaintiffs’ arguments that Maria was evicted because of Maria’s “other mental
3 disabilities” or Lin’s “mental health disabilities” does not provide a cause of action under the
4 FHAA. Therefore, the sole remaining question is whether Plaintiffs have a cause of action due to
5 discrimination based on Maria’s “disability related behavior associated with her dementia.” *Id.*

6 The SAC does not allege the specific behavior that was associated with Maria’s dementia,
7 but refers to the Eviction Notice that was sent to Maria, Wen, and Lin. As noted in the background
8 section above, the Court may consider the Eviction Notice because it is incorporated by reference
9 in the SAC. *See Parrino*, 146 F.3d at 705 (“A district court ruling on a motion to dismiss may
10 consider documents ‘whose contents are alleged in a complaint and whose authenticity no party
11 questions, but which are not physically attached to the [plaintiff’s] pleading.’”). Defendants have
12 also attached the eviction notice to their motions to dismiss. Barcelon Mot. Ex. A; Retail Mot. Ex.
13 B.

14 The Eviction Notice states that Defendants evicted Maria, Lin, and Wen due to Maria’s
15 “threatening, hostile, bizarre, and alarming behavior.” FAC at 26. Maria was given infraction
16 notices from CDP on March 6, 2012; April 24, 2012; June 19, 2012; July 25, 2012; October 23,
17 2012; and November 30, 2012 because Lin and Maria were “harassing residents, staff and
18 caregivers; knocking on their doors; making unwanted contact; and physically assaulting others.”
19 *Id.* at 29 (noting that Maria was served an infraction on October 23, 2012 after she and Lin
20 “kicked at the manager’s door, screamed death threats and curses towards the staff”). The
21 Eviction Notice also produced notes that CDP staff members had received from Maria in 2013,
22 after Maria’s 2012 diagnosis for dementia, which stated, among other things, that “[e]vil fate will
23 befall you soon. Your parents die and your son die,” and that “[y]ou stinky prostitute putting stuff
24 in my garlic bowl. Almighty will punish you. Your parents will die. You are dirty and rotten.”
25 *Id.* at 30.

26 As mentioned above, Plaintiffs have alleged that the behavior cited in the Eviction Notice
27 was related to Maria’s dementia. The Ninth Circuit has held, in the context of ADA employment

1 cases, that “conduct resulting from a disability is considered to be part of the disability.”
2 *Humphrey v. Mem’l Hosps. Ass’n*, 239 F.3d 1128, 1139 (9th Cir. 2001); *Giebeler*, 343 F.3d at
3 1147 (finding that ADA case law is applicable to an analysis under the FHAA). In *Humphrey*, an
4 employee was fired for being late to work and due to multiple unscheduled absences from work
5 that were caused by the employee’s obsessive-compulsive disorder. *Humphrey*, 239 F.3d at 1132–
6 33. The Ninth Circuit held that the employer could be held liable under the ADA for firing that
7 employee even though a healthy person could have been fired for the same actions. *Id.* at 1139.

8 Similarly, here, Plaintiffs have alleged that Defendants (1) knew that Maria had dementia,
9 (2) that they evicted Maria because of her behavior, and (3) that the behavior was related to
10 Maria’s dementia. Given the equivalency of disabilities and disability-caused behavior created by
11 *Humphrey*, these allegations are sufficient to state a claim that Maria was evicted because of her
12 disability. Although the parties may later dispute whether Maria’s dementia actually caused her
13 actions, that causation has been adequately pled for the purposes of a motion to dismiss. *See also*
14 *Gambini v. Total Renal Care, Inc.*, 486 F.3d 1087, 1093 (9th Cir. 2007) (finding that trial court
15 should have instructed jury that liability could be incurred based on disability-related conduct
16 “where an employee demonstrates a causal link between the disability-produced conduct and the
17 termination”).

18 In response, Defendants argue that their actions fall into a safe harbor created by the
19 FHAA. Under 42 U.S.C. § 3604(f)(9), there is no liability for discrimination based on disability
20 where a tenant’s actions “constitute a direct threat to the health or safety of other individuals or
21 whose tenancy would result in substantial physical damage to the property of others.” However, to
22 invoke this safe harbor, courts have required the landlords to demonstrate that “no ‘reasonable
23 accommodation’ w[ould] eliminate or acceptably minimize any risk” to other individuals created
24 by the disabled tenant. *Roe v. Hous. Auth. of City of Boulder*, 909 F. Supp. 814, 822–233 (D.
25 Colo. 1995) (“*Boulder*”) (holding that the landlord needed to show that no reasonable
26 accommodation would have eliminated or acceptably minimized the risk of a tenant who had
27 verbally abused, and even punched, other tenants); *see also Roe v. Sugar River Mills Assoc.*, 820 F.

1 Supp. 636, 640 (D.N.H. 1993) (applying the same standard as *Boulder*).

2 Accordingly, to invoke the safe harbor, Defendants have the burden of showing that Maria
3 was a direct threat to others and of showing that no reasonable accommodation would eliminate or
4 acceptably minimize the risk. Here, Defendants point to some facts in the eviction notice that may
5 indicate that Maria posed a threat: Maria screamed at people, kicked at doors, and “made unwanted
6 contact.” FAC at 22–23. However, Defendants have not made a showing that no reasonable
7 accommodations would have eliminated the threat or minimized the risk. Therefore, Defendants
8 have not satisfied their burden to invoke the safe harbor. Additionally, further factual development
9 is likely necessary to make such a finding. Indeed, virtually all cases determining whether the safe
10 harbor applies, including the cases cited by Defendants, have considered the issue at the summary
11 judgment stage or after a trial, not on a motion to dismiss. *Boulder*, 909 F. Supp. 814 (deciding
12 whether § 3604(f)(9) precludes relief at summary judgment stage); *Sugar River Mills*, 820 F. Supp.
13 636 (same); *Wirtz Realty Corp. v. Freund*, 721 N.E.2d 589, 596–98 (Ill. App. 1999), *appeal denied*
14 *without opinion*, 729 N.E.2d 505 (Ill. 2000) (same); *Arnold Murray Construction v. Hicks*, 621
15 N.W.2d 171, 174 (S.D. 2001) (after bench trial); *see also Thomas v. Hous. Auth. of Cty. of L.A.*,
16 2005 WL 6136440, at *8 (C.D. Cal. June 3, 2005) (determining that the § 3604(f)(9) issue could
17 not be resolved at the motion to dismiss stage).

18 Thus, because Maria has alleged that she was evicted based on behavior related to her
19 dementia, the FHAA claim based on her eviction survives Defendants’ motions to dismiss.
20 Therefore, the Court DENIES Defendants’ motions to dismiss as to the FHAA claim for allegedly
21 discriminatory eviction. Additionally, in the above section discussing Maria’s “other mental
22 health disabilities” and Lin’s “mental health disabilities,” the Court granted Defendants’ motions
23 to dismiss without leave to amend as to the FHAA claim for discriminatory eviction based on
24 those insufficiently pled “handicaps.”

25 The Court next turns to whether Plaintiffs have stated a claim based on the verbal
26 harassment Maria allegedly suffered. Plaintiffs bring two causes of action under the FHAA based
27 on this verbal abuse, Housing Discrimination Based on Hostile Living Environment Under the

1 FHAA, 42 U.S.C. § 3604(f)(2), and Housing Discrimination Based on Discriminatory Statements
2 Made in Connection with the Sale or Rental of a Dwelling Under the FHAA, 42 U.S.C. § 3604(c).
3 As discussed above, only Maria (if she has a guardian), not Wen, has standing to bring these
4 claims.

5 **b. Housing Discrimination Based on Hostile Living Environment**
6 **Under the FHAA, 42 U.S.C. § 3604(f)(2)**

7 Plaintiffs argue that they have stated a claim under § 3604(f)(2) based on Shuling Liu’s
8 alleged harassment of Maria. Section 3604(f)(2) of the FHAA makes the following unlawful:

9 To discriminate against any person in the terms, conditions, or privileges of sale
10 or rental of a dwelling, or in the provision of services or facilities in connection
11 with such dwelling, because of a handicap of—

12 (A) that person; or

13 (B) a person residing in or intending to reside in that dwelling after it is so sold,
14 rented, or made available; or

15 (C) any person associated with that person.

16 42 U.S.C. § 3604(f)(2). Thus, the FHAA “guarantees [a tenant’s] right to equal treatment once
17 [the tenant has] become [a] resident[] of that housing.” *Hous. Rights Ctr. v. Sterling*, 404 F. Supp.
18 2d 1179, 1192 (C.D. Cal. 2004). As with claims under § 3604(f)(1), the discrimination must occur
19 “because of a handicap.” 42 U.S.C. § 3604(f)(2); *see also Sterling*, 404 F. Supp. 2d at 1191–92
20 (requiring evidence of intentional discrimination on summary judgment).

21 Courts have construed this subsection of the FHAA as prohibiting “the creation of a
22 ‘hostile environment’ by individuals who have control or authority over the ‘terms, conditions, or
23 privileges of sale or rental of a dwelling.’” *Francis v. Kings Park Manor, Inc.*, 91 F. Supp. 3d 420,
24 428 (E.D.N.Y. 2015); *see also Sterling*, 404 F. Supp. 2d at 1192 (“[T]he aforementioned events
25 created a hostile environment that, in turn, subjected him to different terms, conditions and
26 privileges.”). To adequately allege a hostile environment claim, a plaintiff must state facts
27 showing that (1) the plaintiff was subjected to “discriminatory conduct”, and (2) “that the conduct
28 was sufficiently severe or pervasive to alter the conditions of the victim’s [housing] and create an
abusive [living] environment.” *See Ellison v. Brady*, 924 F.2d 872, 875–76 (9th Cir. 1991)
(reciting elements of hostile work environment claim due to sexual discrimination).

1 Plaintiffs argue that Maria was discriminated against in the “terms, conditions, or
2 privileges . . . of the services or facilities” based on the comments made by Shuling Liu to Maria at
3 CDP. Specifically, Plaintiffs allege that Liu called Maria “psycho” from 2004 until Wen arrived in
4 2011 and, when Maria thought people were stealing from her, taunted her by stating “let’s go to
5 Maria’s home to steal, shall we?” SAC ¶¶ 18–21. Additionally, Plaintiffs allege that one
6 neighbor, Ms. Ma, called her psycho at Liu’s request, and that in 2008, when Maria asked Ms. Ma
7 who told Ms. Ma that Maria had a mental illness, Ms. Ma responded “everyone in the building
8 knows.” *Id.* ¶¶ 19.

9 Plaintiffs’ contention lacks merit for two reasons. First, the complaint alleges that the
10 verbal abuse occurred from 2004 to 2011. However, according to the complaint, Maria was not
11 diagnosed with dementia until 2012. As discussed above, Plaintiffs have inadequately alleged
12 Maria’s “other mental health disabilities” that allegedly existed in the 2004 to 2011 period.
13 Therefore, Plaintiffs have failed to allege that Defendants or their agents acted “because of” a
14 mental health disability that is adequately alleged under the FHAA.

15 Second, Plaintiffs allege that the verbal harassment occurred, at most, from 2004 to 2011.
16 SAC ¶ 18. However, Plaintiffs did not initiate administrative proceedings until October 17, 2014,
17 ECF No. 52 at 35, and did not file the instant case until October 15, 2016, ECF No. 1. Thus, there
18 was an approximately three-year gap between the stated end of the verbal abuse and the beginning
19 of the administrative proceedings. For Ms. Ma’s 2008 statement, there is an approximately six-
20 year gap. Accordingly, to the extent this verbal abuse creates an independent claim from
21 discrimination it falls outside the two-year statute of limitations provided by the FHAA. 42 U.S.C.
22 § 3613(a)(1)(A) (“An aggrieved person may commence a civil action . . . not later than 2 years
23 after the occurrence or the termination of an alleged discriminatory housing practice.”).

24 Accordingly, with respect to Plaintiffs’ claim for Housing Discrimination Based on a
25 Hostile Living Environment, the motions to dismiss are GRANTED without leave to amend. The
26 Court grants the motions without leave to amend for two reasons. First, as discussed above, a
27 statutory time bar exists that precludes this claim. Second, this Court previously dismissed the

1 FAC because Defendants failed to allege facts showing that any actions were taken “because of a
2 handicap.” Here, the Court similarly dismisses the claim for Housing Discrimination Based on a
3 Hostile Living Environment because Plaintiffs have not adequately alleged that any statements
4 were made “because of a handicap.” Thus, because Plaintiffs have been unable to cure the
5 deficiencies the Court previously identified, the Court concludes that further amendment would be
6 futile.

7 **c. Housing Discrimination Based on Discriminatory Statements**
8 **Made in Connection with the Sale or Rental of a Dwelling Under**
9 **the FHAA, 42 U.S.C. § 3604(c)**

10 The FHAA makes it unlawful “[t]o make . . . any notice [or] statement, . . . with respect to
11 the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based
12 on . . . handicap.” This provision applies to “all written or oral notices or statements by a person
13 engaged in the sale or rental of a dwelling.” 24 C.F.R. § 100.75(b). Under § 3604(c), courts ask
14 whether “the alleged statement at issue would suggest a preference to an ‘ordinary reader or
15 listener.’” *Pack v. Fort Washington II*, 689 F. Supp. 2d 1237, 1245 (E.D. Cal. 2009) (citation
16 omitted). However, the Ninth Circuit has held that “[i]f the remark is unrelated to the decisional
17 process, then it is insufficient to show discrimination.” *Harris*, 183 F.3d at 1055. Other Ninth
18 Circuit decisions have interpreted *Harris* as stating that a comment can be unrelated to the
19 decisional process both (1) where the person making the statement has no influence on the
20 decisionmaking with respect to the sale or rental of apartments, and (2) where the statement is
21 made at a moment “temporally” unrelated to a discriminatory decision. *See Riesgo v. Edward D.*
22 *Sultan Co., Ltd*, 156 F. App’x 939, 940 (9th Cir. 2005) (“His statements were both temporally and
23 substantively unrelated to [the plaintiff’s] termination process.” (citing *Harris*, 183 F.3d at 1055)).

24 The Court dismisses the claim for Housing Discrimination Based on Discriminatory
25 Statements Made in Connection with the Sale or Rental of a Dwelling for three reasons. First,
26 Plaintiffs allege that Defendants violated this provision because Liu and Ms. Ma called Maria a
27 “psycho.” Opp’n at 5. However, Plaintiffs have not alleged that Liu or Ms. Ma are part of the
28 “decisional process” for the “sale or rental” of a dwelling. *Harris*, 183 F.3d at 1055 (holding claim

1 not barred because comment that “[t]he owners don’t want to rent to Blacks” was made by a
2 person who “act[ed] as a filter for the [landlords]”). Unlike in *Harris*, there is no allegation here
3 that Liu or Ms. Ma acted as “filters” for the landlord for potential tenants. Indeed, Ms. Ma was
4 just one of Maria’s neighbors, and Liu was a social services coordinator at CDP. There is no
5 allegation that either of them was involved in the decisionmaking process. Additionally, at the
6 time the alleged comments were made, from 2004 to 2011, Maria already *was* a tenant, and
7 Maria’s eviction did not occur until two years after the alleged statements ceased, on October 17,
8 2013. Thus, these statements were made at a time that was “temporally” unrelated to Maria’s
9 eviction. *See Riesgo*, 156 F. App’x at 940 (“His statements were both temporally and
10 substantively unrelated to [the plaintiff’s] termination process.”).

11 Second, as with the claim for Housing Discrimination Based on a Hostile Living
12 Environment, this claim is subject to the two-year statute of limitations provided under the FHAA.
13 42 U.S.C. § 3613(a)(1)(A) (“An aggrieved person may commence a civil action . . . not later than
14 2 years after the occurrence or the termination of an alleged discriminatory housing practice.”). As
15 noted above, Plaintiffs did not initiate administrative proceedings until October 17, 2014, ECF No.
16 52 at 35, which is approximately three years after the 2011 end-date for the verbal abuse identified
17 in the SAC. Moreover, Ms. Ma’s 2008 statements were made at least six years before. Thus, the
18 FHAA’s statute of limitations bars this claim.

19 Third, although Plaintiffs previously raised a cause of action based on § 3604, Plaintiffs
20 SAC and the opposition in response to Defendants’ motions to dismiss are the first times Plaintiffs
21 have mentioned a claim specifically under § 3604(c) for Housing Discrimination Based on a
22 Discriminatory Statement Made in Connection with the Sale or Rental of a Dwelling. This Court,
23 in its order on Defendants’ prior motions to dismiss, specified that “Plaintiffs may not add new
24 causes of actions or parties without leave of the Court or stipulation of the parties pursuant to
25 Federal Rule of Civil Procedure 15.” First Order at 13. Plaintiffs’ failure to comply with this
26 Court’s prior order warrants dismissal of this claim.

27 Therefore, Defendants’ motions to dismiss Plaintiffs’ claim for Housing Discrimination

1 Based on Discriminatory Statements Made in Connection with the Sale or Rental of a Dwelling
2 Under the FHAA are GRANTED without leave to amend. The Court denies leave to amend for
3 three reasons. First, the Court finds this claim to be legally futile because these statements were
4 made at a time that was temporally unrelated to Maria’s evictions proceedings. Second, according
5 to the FAC, the Eviction Notice, and the SAC, this claim involves statements made by a neighbor
6 and an employee who coordinates social services at CDP, not any person who makes rental
7 decisions, and were thus not made in connection with the sale or rental of a dwelling. Third, as
8 discussed above, under 42 U.S.C. § 3613(a)(1)(A), a statutory time bar exists that precludes this
9 claim. Finally, this claim has arisen for the first time in the SAC after a year of litigation. The
10 instant suit was filed on October 15, 2015 and made no mention of a claim for Housing
11 Discrimination Based on Discriminatory Statements Made in Connection with the Sale or Rental
12 of a Dwelling Under the FHAA. ECF No. 1. The FAC, filed on May 2, 2016, also made no
13 mention of this claim. ECF No. 52. The Court then specified in the order granting dismissal of the
14 FAC, that no additional causes of action could be brought without leave of Court or stipulation by
15 the parties. In contravention of that order, Plaintiffs added this defective claim for Housing
16 Discrimination Based on Discriminatory Statements Made in Connection with the Sale or Rental
17 of a Dwelling Under the FHAA without leave to amend or a stipulation. The Court finds these
18 actions are prejudicial to defendants, as they violate Federal Rule of Civil Procedure 15 and this
19 Court’s prior order, and bringing the claim now constitutes undue delay. *See Owens v. Kaiser*
20 *Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (finding “undue delay” and
21 “prejudice” to be a valid reason for denying leave to amend). Thus, the Court denies leave to
22 amend on this claim.

23 The Court next turns to discuss Plaintiffs’ claims under FEHA.

24 **2. Second Cause of Action – California Fair Employment and Housing Act**
25 **(“FEHA”)**

26 As with the claims under the FHAA, Plaintiffs’ allege the following claims under FEHA:

- 27 (1) Housing Discrimination Based on Eviction Under FEHA, Cal. Gov’t Code § 12955(a), (k); (2)
28

1 Housing Discrimination Based on Hostile Living Environment Under FEHA, Cal. Gov't Code
2 § 12927(c)(1); and (3) Housing Discrimination Based on Discriminatory Statements Made In
3 Connection with Rental or Sale of a Housing Accommodation Under FEHA, Cal. Gov't Code
4 § 12955(c). Additionally, Plaintiffs bring a claim for Retaliation Under FEHA, Cal. Gov't Code
5 § 12955(f). In their respective motions to dismiss, Plaintiffs have moved to dismiss these claims.
6 The Ninth Circuit has determined that “the same standards apply to FHA[A] and FEHA claims.”
7 *Walker*, 272 F.3d at 1131 n.8. In fact, both parties have addressed the FEHA claims
8 simultaneously with the FHAA claims. Opp'n at 4 n.1 (“California’s fair housing laws are
9 virtually identical to federal fair housing and disability laws.”).

10 As with the FHAA, Wen has standing to bring an FEHA claim for discriminatory eviction,
11 but not for hostile living environment or discriminatory statements made in connection with the
12 sale or rental of a dwelling based on the alleged verbal harassment of Maria. On the other hand,
13 Maria has standing to allege an FEHA claim for discriminatory eviction, hostile living
14 environment, and discriminatory statements made in connection with the sale or rental of a
15 dwelling. However, Maria must obtain a guardian ad litem, and the guardian ad litem must bring
16 the FEHA claim on Maria’s behalf. Therefore, the Court first addresses Wen’s and Maria’s FEHA
17 claim for discriminatory eviction, then addresses Maria’s FEHA claim for hostile living
18 environment and discriminatory statements made in connection with the sale or rental of a
19 dwelling. The Court need not address whether Wen or Maria has standing on the FEHA claim for
20 retaliation because the Court holds below that such a claim clearly would fail regardless.

21 **a. Housing Discrimination Based on Eviction Under FEHA, Cal.
22 Gov't Code § 12955(a), (k)**

23 FEHA provides almost identical protections against evictions based on discriminatory
24 reasons as the FHAA. FEHA makes it unlawful “[f]or the owner of any housing accommodation
25 to discriminate against or harass any person because of the . . . disability of that person.” Cal.
26 Gov't Code § 12955(a). Additionally, FEHA makes it unlawful “[t]o otherwise make unavailable
27 or deny a dwelling based on discrimination because of . . . disability.” *Id.* § 12955(k). Plaintiffs

1 must allege the same elements discussed above with respect to the FHAA claim: (1) an adverse
2 action must have occurred, (2) to a person with a disability, and (3) because of that disability.
3 *Hunt*, 814 F.3d at 1221–25. As discussed in the FHAA section above, Maria, Wen, and Lee were
4 evicted, which is a sufficient adverse action under FEHA. *Johnson*, 145 F. Supp. 3d at 915 (finding
5 eviction to be sufficient under the FHAA and FEHA).

6 With respect to the second requirement, the existence of a disability, Plaintiffs have alleged
7 that Maria was evicted due to her “disability related behavior” that was caused by her dementia,
8 her “other mental disabilities,” and her association with Lin, who allegedly has mental disabilities.
9 SAC ¶ 29.

10 The latter two disabilities have been inadequately alleged because Plaintiffs have failed to
11 allege facts that identify the disability or that show that the alleged disability limited Maria’s or
12 Lin’s “major life activities.” *See* Cal. Gov’t Code § 12926 (defining disability as a “mental or
13 psychological disorder or condition . . . that limits a major life activity.”). At most, Plaintiffs have
14 alleged that Maria had “difficulty interacting with her neighbors” and was suspicious that they
15 were stealing things from her. SAC ¶ 16. Similarly, for Lin, Plaintiffs alleged at most that Lin
16 could not care for her parents. Therefore, as with an FHAA claim, Maria’s “other mental
17 disabilities” and Lin’s “mental disabilities” cannot be the basis of the FEHA claim. *See Bresaz*,
18 136 F. Supp. 3d at 1135 (requiring mental disabilities be alleged “with some factual specificity”).

19 However, Maria has adequately alleged that she suffered a disability, her dementia, starting
20 in 2012. This disability was adequately alleged under FEHA because (1) Plaintiffs identified the
21 mental disability, and (2) the disability made Maria “incapable to taking care of her own financial
22 and legal affairs,” which “limits a major life activity.” SAC ¶ 27; Cal. Gov’t Code § 12926.

23 Finally, the Court addresses whether the eviction has occurred “because of” the disability.
24 As under federal law, the California Court of Appeal, in *Wills v. Superior Court*, 195 Cal. App. 4th
25 143 (2011), recognized that discrimination based on conduct arising from a disability involves
26 discrimination based on that disability. *Id.* at 164. Therefore, because Plaintiffs have alleged that
27 (1) Maria was evicted due to her behavior, and (2) that behavior was related to her dementia,

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1 Plaintiffs have adequately alleged discrimination “because of . . . disability.” Cal. Gov’t
2 Code § 12955(k).

3 Therefore, as with the FHAA claim for Housing Discrimination Based on Wen’s and
4 Maria’s Eviction, the Court DENIES Defendants’ motions to dismiss as to Plaintiffs’ claim for
5 Housing Discrimination Based on Maria’s and Wen’s Eviction Under FEHA. However, this claim
6 only survives to the extent the discrimination is based on Maria’s dementia. To the extent the
7 Housing Discrimination claim is based on Maria’s and Lin’s other “mental disabilities,” the Court
8 GRANTS Defendants’ motions to dismiss without leave to amend. Leave to amend is denied
9 because the Court previously dismissed the FAC based on Plaintiffs’ failure to allege that any
10 discrimination occurred “because of” a disability. Plaintiffs’ failure to cure that deficiency shows
11 that further amendment would be futile.

12 **b. Housing Discrimination Based on Hostile Living Environment**
13 **Under FEHA, Cal. Gov’t Code § 12927(c)(1)**

14 FEHA makes it unlawful to discriminate in the “provision of [] terms, conditions,
15 privileges, facilities, or services in connection with [] housing accommodations.” Cal. Gov’t Code
16 § 12927(c)(1). As discussed above with respect to the FHAA claim under 42 U.S.C. § 3604(f)(2),
17 Plaintiffs argue that Liu and Ms. Ma’s verbal statements to Maria that she was “psycho” created a
18 hostile living environment. However, as under the FHAA, FEHA requires that the harassment
19 occur “because of” a disability. Plaintiffs’ complaint alleges that Maria suffered this verbal abuse
20 from 2004 until Wen moved into CDP in 2011. SAC ¶ 18. However, the SAC only contains
21 conclusory allegations that Maria suffered “mental health disabilities” during that time frame, and
22 contains no allegation that Maria suffered from dementia, the only adequately alleged disability in
23 the SAC, until 2012. Therefore, Plaintiffs have failed to adequately allege that any of the
24 harassment that Maria suffered occurred “because of” a disability protected under FEHA.

25 Additionally, under FEHA, to have a cause of action a plaintiff must file an administrative
26 complaint within one year of the alleged discriminatory action. Cal. Gov’t Code § 12960 (“No
27 complaint may be filed after the expiration of one year from the date upon which the alleged
28

1 unlawful practice or refusal to cooperate occurred.”). Here, although the alleged harassment
2 ceased in 2011, Plaintiffs did not file an administrative complaint until October 17, 2014, placing
3 the alleged harassment outside the one-year statute of limitations provided under FEHA.

4 Therefore, the Court GRANTS Defendants’ motions to dismiss without leave to amend on
5 Plaintiffs’ claim for Housing Discrimination Based on Hostile Living Environment Under FEHA.
6 Leave to amend is denied because (1) the allegations here are time barred, and (2) the Court
7 previously dismissed the FAC because Plaintiffs failed to allege that Maria suffered discrimination
8 because of a disability under FEHA, the same deficiency that warrants dismissal here. Plaintiffs’
9 failure to cure that deficiency shows that further amendment would be futile.

10 **c. Housing Discrimination Based on Discriminatory Statements**
11 **Made In Connection with Rental or Sale of a Housing**
12 **Accommodation Under FEHA, Cal. Gov’t Code § 12955(c)**

13 FEHA prohibits “any person to make . . . any notice, statement or advertisement, with
14 respect to the sale or rental of a housing accommodation that indicates any preference, limitation,
15 or discrimination based on . . . disability.” Cal. Gov’t Code § 12955(c). Plaintiffs argue that Liu’s
16 and Ms. Ma’s statements that Maria was “psycho” constitute statements that indicate a preference
17 based on disability.

18 First, as with the claim for Housing Discrimination Based on a Hostile Living
19 Environment, this claim is subject to FEHA’s one-year statute of limitations for filing an
20 administrative complaint. As noted above, Plaintiffs did not initiate administrative proceedings
21 until October 17, 2014, ECF No. 52 at 35, which is over one year after the 2011 end-date for the
22 verbal abuse identified in the SAC. Therefore, FEHA’s statute of limitations bars this claim.

23 Second, as under the FHAA, the FEHA requires the alleged discriminatory statements to be
24 made “with respect to the sale or rental of a housing accommodation.” Cal. Gov’t Code
25 § 12955(c). However, the SAC contains no allegations that Liu or Ms. Ma was involved in the
26 “decisional process” for the sale or rental of apartments at CDP. *Harris*, 183 F.3d at 1055.
27 Additionally, the alleged statements were made from 2004 to 2011 at a time when no decision was
28 being made with respect to Maria’s tenancy. Maria was not evicted until October 17, 2013, two

1 years after the alleged discriminatory statements ceased according to the SAC. *See Riesgo*, 156 F.
2 App’x at 940 (“His statements were both temporally and substantively unrelated to [the plaintiff’s]
3 termination process.”).

4 Third, as discussed above with respect to the FHAA, this was a new claim brought in the
5 SAC that was argued for the first time in the opposition to the instant motions to dismiss. This
6 Court stated in its order dismissing the FAC that “Plaintiffs may not add new causes of actions or
7 parties without leave of the Court or stipulation of the parties pursuant to Federal Rule of Civil
8 Procedure 15.” First Order at 13. Plaintiffs have not sought leave of the Court and have not filed a
9 stipulation of the parties allowing the addition of this claim. Thus, this claim must be dismissed.

10 Thus, the Court GRANTS Defendants’ motions to dismiss on Plaintiffs’ claim for Housing
11 Discrimination Based on Discriminatory Statements Made In Connection with Rental or Sale of a
12 Housing Accommodation Under FEHA without leave to amend. The Court denies leave to amend
13 for three reasons. First, the Court finds this claim to be legally futile because it involves
14 statements made by a neighbor and an employee who coordinates social services at CDP, not any
15 person who makes rental decisions and at a time where no rental decisions were actually being
16 made. Second, this claim is barred by FEHA’s one-year statute of limitations. Third, this claim
17 has arisen for the first time in the SAC after a year of litigation. For the reasons discussed above,
18 adding this claim now constitutes undue delay and would be prejudicial to Defendants. *See*
19 *Owens*, 244 F.3d at 712 (9th Cir. 2001) (finding “undue delay” and “prejudice” to be a valid
20 reason for denying leave to amend). Thus, the Court denies leave to amend on this claim.

21 **d. Retaliation Under FEHA, Cal. Gov’t Code § 12955(f)**

22 FEHA makes it unlawful “[f]or any owner of housing accommodations to harass, evict, or
23 otherwise discriminate against any person in the sale or rental of housing accommodations when
24 the owner’s dominant purpose is retaliation against a person who has opposed practices unlawful
25 under this section.” Cal. Gov’t Code § 12955(f). Here, Plaintiffs make no argument in their
26 opposition that Defendants retaliated against Maria. Additionally, the SAC contains no evidence
27 that Maria, Wen, or Lee took actions to “oppose[] practices unlawful” that would allow a claim for
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1 Retaliation Under FEHA. Therefore, the SAC provides no basis to conclude that a retaliation
2 occurred in this case.

3 Accordingly, the Court GRANTS the motions to dismiss without leave to amend as to
4 Plaintiffs' claim for Retaliation Under FEHA. The Court denies leave to amend because Plaintiffs'
5 failure to even argue the issue in their opposition indicates a waiver of this claim. *Qureshi v.*
6 *Countrywide Home Loans, Inc.*, 2010 WL 841669, at *6 n. 2 (N.D. Cal. Mar. 10, 2010) (deeming
7 plaintiff's failure to address, in opposition brief, claims challenged in a motion to dismiss, an
8 "abandonment of those claims"); *see also Ramirez v. Ghilotti Bros. Inc.*, 941 F. Supp. 2d 1197,
9 1210 (N.D. Cal. 2013) (finding that failure to respond as to certain claims constituted a waiver of
10 those claims).

11 **3. Violation of Right to Privacy Under Cal. Civ. Code § 1798.81.5(b)**

12 Plaintiffs argue for the first time in their opposition to the instant motions that Defendants
13 violated California privacy laws. *See* Cal. Civ. Code § 1781.81.5(b) ("A business that owns,
14 licenses, or maintains personal information about a California resident shall implement and
15 maintain reasonable security procedures and practices appropriate to the nature of the information,
16 to protect the personal information from unauthorized access, destruction, use, modification, or
17 disclosure."). Plaintiffs make this argument in their opposition even though a violation of privacy
18 rights was not alleged in the original complaint, the FAC, or the SAC, and the Court specified in
19 the order granting dismissal of the FAC that "new causes of action" could not be added in the SAC
20 "without leave of the Court or stipulation of the parties." First Order at 13. Additionally, this
21 cause of action has not even been alleged in the *current* operative complaint, the SAC.

22 Therefore, the Court GRANTS Defendants' motions to dismiss with prejudice with respect
23 to any claim for violation of Plaintiffs' right to privacy under California law. Leave to amend is
24 denied because Plaintiffs raise this cause of action for the first time in their briefing after never
25 before mentioning it in the instant suit. The instant suit was filed on October 15, 2015, and no
26 mention of privacy laws was mentioned in that complaint. ECF No. 1. The FAC, filed on May 2,
27 2016, also made no mention of this claim. ECF No. 52. Finally, even the SAC, filed on

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1 September 8, 2016, made no mention of this claim. ECF No. 104. After pursuing litigation
2 against Defendants for a year in a case where Plaintiffs were in possession of all of the relevant
3 facts, Plaintiffs have engaged in undue delay by only making the argument in their opposition to
4 the second round motions to dismiss. *Leadsinger*, 512 F.3d at 532 (allowing denial of leave to
5 amend due to “undue delay”). Allowing Plaintiffs to add this new claim would cause prejudice to
6 the Defendants as the claim would expand discovery and the scope of litigation over a year after
7 the case was originally filed. *See Jackson v. Bank of Hawaii*, 902 F. 2d 1385, 1387 (9th Cir. 1990)
8 (denying leave to amend due to undue delay and the prejudice that would be caused by additional
9 discovery after amendment). Therefore, the Court denies leave to amend.

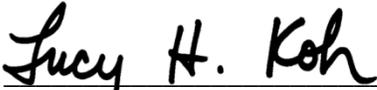
10 **IV. CONCLUSION**

11 For the foregoing reasons, the Court rules as follows:

- 12 • With respect to Wen’s and Maria’s claims under the FHAA, 42 U.S.C.
13 § 3604(f)(1), and the FEHA, Cal. Gov’t Code § 12955(a), (k), which are based on
14 the eviction of Maria and Wen, the Court DENIES Defendants’ motions to dismiss.
- 15 • With respect to all other claims, the Court GRANTS Defendants’ motions to
16 dismiss with prejudice.
- 17 • Plaintiffs must file a motion for appointment of a guardian ad litem for Maria
18 within 21 days or her claims will be dismissed with prejudice.

19 **IT IS SO ORDERED.**

20
21 Dated: January 24, 2017

22 
23 _____
24 LUCY H. KOH
25 United States District Judge
26
27
28