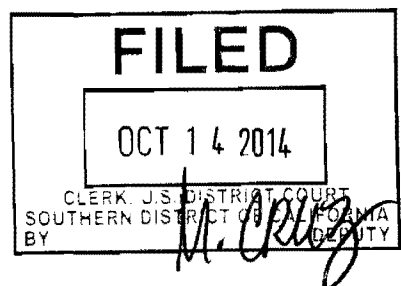


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>JAMES HAMILTON, an individual, Plaintiff, vs. LINCOLN MARINERS ASSOCIATES LIMITED, dba MARINERS COVE APARTMENT HOMES, a limited liability company; AIMCO-GP, INC, a corporation; MARIBEL ROBLES, an individual; and DOES 1 through 20, inclusive, Defendant.</p>	<p>CASE NO. 14cv1689-WQH (NLS) ORDER</p>
--	---

HAYES, Judge:

The matter before the Court is the Motion to Dismiss filed by Defendants. (ECF No. 3).

I. Background

On June 11, 2014, Plaintiff James Hamilton commenced this action by filing the Complaint in San Diego County Superior Court. (ECF No. 1 at 9). On July 17, 2014, Defendants Lincoln Mariners Associates Limited, dba Mariners Cove Apartment Homes ("Mariners Cove"), Aimco-GP, Inc. ("Aimco"), and Maribel Robles (collectively "Defendants") removed to this Court on the basis of federal question jurisdiction. (ECF No. 1 at 2). On July 24, 2014, Defendants filed the Motion to Dismiss. (ECF No. 3). On August 19, 2014, Plaintiff filed an opposition. (ECF No. 4). On August 26, 2014, Defendants filed a reply. (ECF No. 5).

1 **II. Allegations of the Complaint**

2 Since February 2012, Plaintiff has been a resident of 4330 West Point Loma
3 Boulevard, leased by Mariners Cove. Plaintiff has been diagnosed by the Veterans
4 Administration with Post Traumatic Stress Disorder (“PTSD”) “with a 100% disability
5 rating” and “degenerative arthritis, bulging discs, and chronic pain in the lower lumbar
6 of the back and spine” with a disability rating of 50%. (ECF No. 1 at 12). “Plaintiff
7 notified Defendants of his disabilities in February, 2012. He later reminded them of
8 his disabilities, including, but not limited to, the date of approval of his parking space
9 assignment, and at the times Plaintiff made complaints about the dumpster noise,
10 dumpster smell, and parking lot traffic. *Id.*

11 When Plaintiff first signed a lease with Mariners Cove, he requested a three
12 bedroom apartment. Plaintiff was told he would be placed on a waiting list and would
13 be notified when a three bedroom apartment became available. Plaintiff later learned
14 that a three bedroom apartment had become available, but he witnessed new tenants
15 moving into that apartment. “Defendants then disclosed that there was not, in fact, a
16 waiting list, and that the prior representation was false.” *Id.* at 12. When Plaintiff
17 complained to corporate customer relations about this “false representation,” “the
18 necessity to have the dumpster relocated,” and his disability, Defendants failed to
19 accommodate him and instead retaliated. *Id.*

20 Plaintiff also complained to Mariners Cove about electrical, plumbing, and
21 mechanical violations in the building, “unsatisfactory disabled access (raised sidewalks
22 and limited parking spaces), substandard housing conditions, excessive noise
23 (especially around the dumpster), fire hazards regarding excessive leaves and tree
24 debris in the gutter systems and on the roofs,” and lack of appropriate security. *Id.* at
25 13. Plaintiff also complained about landscaping and lawn maintenance activities “as
26 early as 6:30 a.m.,” but “Mariners Cove has refused to limit the landscaping and
27 maintenance activities to reasonable hours.” *Id.* at 14.

28 Plaintiff also complained about other tenants violating their leases by exceeding

1 maximum permitted pet provisions, allowing animals to “wander unchecked and
2 unleashed in the common areas,” owning dog breeds not permitted on the property, and
3 smoking cigarettes and marijuana. *Id.* at 13-14. Mariners Cove has ignored all of
4 these complaints.

5 “On September 1, 2013, a theft occurred at the main leasing office where the
6 perpetrator stole residents’ files (including Plaintiff’s). However, Mariners Cove failed
7 to notify Plaintiff of the breach of security and theft of Plaintiff’s personal information
8 for twenty (20) days, when a notice dated September 20, 2013 was finally provided.”
9 *Id.* at 13. In order to accommodate his PTSD, Plaintiff installed security cameras at his
10 unit. “In response to Plaintiff’s installation of security cameras to monitor his door
11 stoop, stairs, and parking space, Mariners Cove, including, but not limited to Maribel
12 Robles, threatened and harassed him with legal action and eviction.” *Id.* at 15.

13 Plaintiff has also been denied requests to install a tarp over his balcony and a
14 washer/dryer in his unit, even though others tenants have been permitted to do so.

15 On March 18, 2014, Mariners Cove (and specifically, Maribel
16 Robles) provided Plaintiff notice that his lease would not be renewed
17 without providing any explanation, even though he had been a tenant in
18 excess of two (2) years, and entitled by law to be offered a renewal of his
19 lease under similar terms pursuant to San Diego Municipal Ordinance §
20 98.0701 et seq. On May 6, 2014, Plaintiff was given a notice of intent to
21 perform a pre-move out inspection. Although Plaintiff also fully paid his
22 rent for the month of June, 2014, Maribel Robles issued a Three Day
23 Notice to Pay Rent or Quit on June 4, 2014. Also on June 4, 2014,
24 Plaintiff was finally provided a renewal of his lease, but only after the
25 expiration of the prior lease, and thus forcing Plaintiff into a month to
26 month lease with a \$300.00 increase until such time as he accepted the
27 lease renewal. Plaintiff was told that he would be assessed fees if he failed
28 to give at least 60 days notice of his intent not to renew his lease.

23 Plaintiff has also complained to Mariners Cove that the tenants in
24 apartment 4332 F continue to create excessive noise, permit their children
25 to play outside unsupervised (which results in the children playing “ding
26 dong ditch), playing in the parking lot area and around the dumpsters, all
27 of which exacerbate Plaintiff’s PTSD disability. Despite Plaintiff’s
28 repeated complaints, Mariners Cove refused to take any action, and
instead issued to Plaintiff a Non-Renewal/Termination Notice (in
violation of San Diego Municipal Ordinance § 98.0701 et seq.).

27 During Plaintiff’s tenancy, the premises have not been in a habitable
28 condition, including, but not limited to, dry rot and damage to the stairs
leading to Plaintiff’s apartment, water being shut off by Mariners Cove
without reasonable notice to Plaintiff, mold on the premises, termite

1 damage, bird feces that is permitted to accumulate, exterior door that does
2 not seal, and unreasonable and noxious odors that emanate from dumpster
located outside of Plaintiff's apartment.

3 *Id.* at 15.

4 The Complaint asserts the following claims for relief: disability discrimination
5 in violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. section
6 3604(f)(2)(A) and (C) (third claim); violation of the Fair Housing Act ("FHA"), 42
7 U.S.C. section 3604(f)(3)(B), for failure to make reasonable accommodations (fifth
8 claim); violation of the FHA, 42 U.S.C. section 3617, for retaliation (sixth claim);
9 violation of the FHA, 42 U.S.C. section 3604(c), for unlawful statements (seventh
10 claim); and thirteen state-law claims.

11 **III. Discussion**

12 **A. Rule 12(b)(6) Standard**

13 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state
14 a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Federal Rule of
15 Civil Procedure 8(a) provides that "[a] pleading that states a claim for relief must
16 contain ... a short and plain statement of the claim showing that the pleader is entitled
17 to relief." Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where
18 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
19 legal theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

20 "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
21 requires more than labels and conclusions, and a formulaic recitation of the elements
22 of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
23 (quoting Fed. R. Civ. P. 8(a)). "To survive a motion to dismiss, a complaint must
24 contain sufficient factual matter, accepted as true, to 'state a claim to relief that is
25 plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,
26 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual
27 content that allows the court to draw the reasonable inference that the defendant is
28 liable for the misconduct alleged." *Id.* (citation omitted). "[T]he tenet that a court must

1 accept as true all of the allegations contained in a complaint is inapplicable to legal
2 conclusions. Threadbare recitals of the elements of a cause of action, supported by
3 mere conclusory statements, do not suffice.” *Id.* (citation omitted). “When there are
4 well-pleaded factual allegations, a court should assume their veracity and then
5 determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. “In
6 sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content,
7 and reasonable inferences from that content, must be plausibly suggestive of a claim
8 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
9 2009) (quotations omitted).

10 **B. Disability Discrimination and Failure to make Reasonable**
11 **Accommodations in Violation of 42 U.S.C. § 3604(f)(2)(A) and (C)**
(Third and Fifth Claims)

12 Defendants contend that Plaintiff has failed to allege any facts to “support his
13 bald conclusion that Defendant discriminated against Plaintiff in the terms, conditions,
14 or privileges of the rental of his unit.” (ECF No. 3-2 at 18). Defendants contend that
15 Plaintiff has failed to allege any facts demonstrating that Defendant discriminated
16 against Plaintiff *because* Plaintiff is a member of a protected class. Defendants contend
17 that Plaintiff has alleged no facts demonstrating discrimination against someone
18 associated with Plaintiff. Finally, Defendants contend that Plaintiff has failed to
19 identify a reasonable accommodation, communications with Defendants regarding a
20 possible accommodation, or reasons why those accommodations were necessary.

21 Plaintiff asserts that he has alleged four pages of specific facts that show
22 Defendants discriminated against him in the terms, conditions, or privileges of his
23 rental unit. Plaintiff also asserts that he has alleged that he requested a three bedroom
24 apartment and requested to be moved away from the dumpster in order to accommodate
25 his disability.

26 42 U.S.C. sections 3604(f)(2)(A) and (C) make it unlawful to “discriminate
27 against any person in the terms, conditions, or privileges of sale or rental of a dwelling,
28 or in the provision of services or facilities in connection with such dwelling, because

1 of handicap of that person; or any person associated with that person.” 42 U.S.C.
2 § 3604(f)(2)(A) and (C). “Discrimination” includes:

3 (A) a refusal to permit, at the expense of the handicapped person,
4 reasonable modifications of existing premises occupied or to be occupied
5 by such person if such modifications may be necessary to afford such
6 person full enjoyment of the premises except that, in the case of a rental,
7 the landlord may where it is reasonable to do so condition permission for
8 a modification on the renter agreeing to restore the interior of the premises
9 to the condition that existed before the modification, reasonable wear and
10 tear excepted.

11 (B) a refusal to make reasonable accommodations in rules, policies,
12 practices, or services, when such accommodations may be necessary to
13 afford such person equal opportunity to use and enjoy a dwelling....

14 42 U.S.C. § 3604(f)(3)(A) and (B). The Court of Appeals for the Ninth Circuit applies
15 Title VII discrimination analysis in examining FHA discrimination claims. *Gamble v.*
16 *City of Escondido*, 104 F.3d 300, 305 (9th Cir. 1997). Under the *McDonnell Douglas*
17 burden-shifting framework applicable in Title VII and FHA discrimination cases, “the
18 plaintiff must first establish a prima facie case.” *Id.*

19 In the case of intentional discrimination, the “plaintiff carries the initial burden
20 of showing actions taken by the [defendant] from which one can infer, if such actions
21 remain unexplained, that it is more likely than not that such actions were ‘based on a
22 discriminatory criterion....’” *Furnco Const. Corp. v. Waters*, 438 U.S. 567, 576 (1978)
23 (applying *McDonnell Douglas* analysis in Title VII context). In the case of an alleged
24 failure to make reasonable accommodations, “a plaintiff must prove all of the following
25 elements: (1) that the plaintiff or his associate is handicapped within the meaning of
26 42 U.S.C. § 3602(h); (2) that the defendant knew or should reasonably be expected to
27 know of the handicap; (3) that accommodation of the handicap may be necessary to
28 afford the handicapped person an equal opportunity to use and enjoy the dwelling; (4)
that the accommodation is reasonable; and (5) that defendant refused to make the
requested accommodation.” *DuBois v. Ass’n of Apartment Owners of 2987 Kalakaua*,
453 F.3d 1175, 1179 (9th Cir. 2006).

The Complaint alleges that Defendants discriminated against Plaintiff, “a person
with a disability, in the terms, conditions, or privileges of sale or rental of a dwelling,

1 or in the provision of services or facilities in connection with such dwelling, because
2 of Plaintiff's disability..." (ECF No. 1 at 17). The Complaint alleges that this
3 discrimination was "intentional, willful, and taken in disregard of the rights of
4 Plaintiff." *Id.* at 18. The Complaint fails to specify what Defendants did that
5 constitutes disability discrimination in violation of the FHA or which disabilities
6 formed the basis of Defendants' discrimination. The Complaint fails to allege
7 sufficient factual matter to permit the inference that Defendants actions were more
8 likely than not motivated by discriminatory criteria, specifically, that Plaintiff was
9 denied privileges given to other residents *because of* his disabilities. *Cf. Pers. Adm'r*
10 *of Mass. v. Feeney*, 442 U.S. 256, 279-80 (1979) (holding that equal protection clause
11 intentional discrimination requires "a particular course of action at least in part
12 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group").
13 The Court concludes that Plaintiff has failed to state a claim for intentional disability
14 discrimination.

15 As to the alleged failure to provide a reasonable accommodation, the Complaint
16 alleges that "Plaintiff complained to corporate customer relations regarding his
17 disability, the request for the three bedroom apartment and the necessity to have the
18 dumpster relocated." (ECF No. 1 at 12). The Complaint alleges that "Mariners Cove
19 failed to provide a reasonable accommodation, but instead engaged in retaliatory
20 conduct against Plaintiff." *Id.* at 13. The Complaint fails to allege facts demonstrating
21 that accommodations were necessary for a particular disability or that the requested
22 accommodations would be reasonable. The Complaint also fails to allege facts
23 demonstrating that Plaintiff requested accommodations based on his disability. The
24 Court concludes that Plaintiff has failed to state a claim for violation of the FHA for
25 intentional disability discrimination or for disability discrimination in the failure to
26 accommodate Plaintiff's disabilities.

27 Defendants' motion to dismiss Plaintiff's third claim and fifth claims is granted.

28 **C. Retaliation in Violation of 42 U.S.C. § 3617 (Sixth Claim)**

1 Defendants contend that Plaintiff has failed to allege that he engaged in any
2 protected activity. Defendants contend that Plaintiff has failed to allege that
3 Defendants retaliated against Plaintiff *because of* Plaintiff's protected activity.
4 Defendants contend that Plaintiff's allegations show that the alleged retaliation was in
5 response to Plaintiff's "unilateral" installation of security cameras on Defendants'
6 property and Plaintiff's failure to renew his annual lease within a required time.
7 Plaintiff asserts that he alleged both specific requests for accommodations and specific
8 adverse housing consequences as a result of these requests for accommodations.
9 Plaintiff asserts that there is a causal link between the two, supporting a claim for
10 retaliation.

11 42 U.S.C. section 3617 provides that "[i]t shall be unlawful to coerce, intimidate,
12 threaten, or interfere with any person in the exercise or enjoyment of, or on account of
13 having exercised or enjoyed, or on account of his having aided or encouraged any other
14 person in the exercise or enjoyment of, any right granted or protected by section 3603,
15 3604, 3605, or 3606 of this title." 42 U.S.C. § 3617. To state a claim for retaliation
16 under the Fair Housing Act, the plaintiff must show: (1) he engaged in protected
17 activity; (2) adverse action causally linked to the protected activity; and (3) resulting
18 damage. *San Pedro Hotel Co., Inc. v. City of Los Angeles*, 159 F.3d 470, 477 (9th Cir.
19 1998).

20 The Complaint alleges that "Defendants coerced, intimidated, threatened, or
21 interfered with Plaintiff in the exercise or enjoyment of, or on account of his having
22 exercised or enjoyed any right granted or protected by the provisions of the Fair
23 Housing Act, in violation of 42 U.S.C. § 3617." (ECF No. 1 at 20). The Complaint
24 further alleges that "[i]n response to Plaintiff's installation of security cameras to
25 monitor his door stoop, stairs, and parking space, Mariners Cove, including, but not
26 limited to Maribel Robels, threatened and harassed him with legal action and eviction."
27 *Id.* at 15. The Complaint alleges that although Plaintiff received a notice that his lease
28 would not be renewed "without providing any explanation," he was later provided a

1 renewal of his lease, but “only after the expiration of the prior lease, and thus forcing
2 Plaintiff into a month to month lease with a \$300.00 increase until such time as he
3 accepted the lease renewal.” *Id.*

4 The allegations supporting Plaintiff’s sixth claim are a “[t]hreadbare recital[] of
5 the elements of a cause of action, supported by mere conclusory statements....” *Iqbal*,
6 556 U.S. at 678. The factual allegations found elsewhere in the Complaint are also
7 insufficient to state an FHA retaliation claim. The Complaint fails to sufficiently
8 identify a protected activity that forms the basis for Plaintiff’s retaliation claim. There
9 is no authority for the proposition that Plaintiff’s unilateral installation of security
10 cameras on leased property is protected activity, *i.e.*, a “right granted or protected by
11 section 3603, 3604, 3605, or 3606” of the FHA.” 42 U.S.C. § 3617. As a result of the
12 failure to identify a protected activity, the Complaint does not adequately allege an
13 adverse action that is *causally linked* to a protected activity. The Complaint fails to
14 identify any other protected activity. The Court concludes that the Complaint fails to
15 state a retaliation claim under the FHA.

16 Defendants’ motion to dismiss Plaintiffs’ sixth claim is granted.

17 **D. Unlawful Statements in Violation of 42 U.S.C. § 3604(c) (Seventh Claim)**

18 Defendants contend that the Complaint fails to identify any statement by
19 Defendants indicating an intention to make a preference against disabilities or to
20 discriminate on the basis of disability. Plaintiff does not address the sufficiency of his
21 seventh claim in opposition.

22 Section 3604(c) makes it unlawful to “make, print, or publish, or cause to be
23 made, printed or published any notice, statement, or advertisement, with respect to the
24 sale or rental of a dwelling that indicates any preference, limitation, or discrimination
25 based on race, color, religion, sex, handicap, familial status, or national origin, or an
26 intention to make any such preference, limitation, or discrimination.” 42 U.S.C. §
27 3604(c).

28 The Complaint lacks any factual allegations to support this claim. The only

1 alleged statement related to “the sale or rental of a dwelling” is the oral promise to
2 place Plaintiff on a waiting list for a three bedroom apartment. However, this statement
3 does not “indicate any preference, limitation, or discrimination based on...
4 handicap....” 42 U.S.C. § 3604(c). The Court concludes that Plaintiff fails to state an
5 unlawful statements claim under the FHA.

6 Defendants’ motion to dismiss Plaintiffs’ seventh claim is granted.

7 **E. State Law Claims**

8 The Complaint’s remaining claims assert violations of California law: violation
9 of California’s Fair Employment and Housing Act, violation of California Civil Code
10 section 51, intentional infliction of emotional distress, violation of California Business
11 and Professions Code section 17200, breach of the warranty of habitability (both
12 statutory and common law), breach of the covenant of quiet enjoyment, violation of
13 California Civil Code section 1942.5 *et seq.*, negligence, constructive eviction, breach
14 of contract, negligent maintenance of the premises, and breach of the implied covenant
15 of good faith and fair dealing. This case was removed to this Court on the basis of
16 federal question jurisdiction. The notice of removal only states that this Court has
17 supplemental jurisdiction over the remaining state-law claims. (ECF No. 1 at 3).

18 The federal supplemental jurisdiction statute provides: “[i]n any civil action of
19 which the district courts have original jurisdiction, the district courts shall have
20 supplemental jurisdiction over all other claims that are so related to claims in the action
21 within such original jurisdiction that they form part of the same case or controversy
22 under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). A district
23 court may decline to exercise supplemental jurisdiction over a state law claim if:

- 24 (1) the claim raises a novel or complex issue of State law,
25 (2) the claim substantially predominates over the claim or claims over
26 which the district court has original jurisdiction
27 (3) the district court has dismissed all claims over which it has original
28 jurisdiction, or
(4) in exceptional circumstances, there are other compelling reasons for

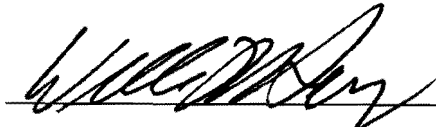
1 declining jurisdiction.

2 28 U.S.C. § 1367(c). Having dismissed all federal claims asserted by Plaintiff against
3 Defendants, the Court declines to exercise supplemental jurisdiction over the state law
4 claims pursuant to 28 U.S.C. § 1367(c). *See San Pedro Hotel Co.*, 159 F.3d at 478.

5 **IV. Conclusion**

6 IT IS HEREBY ORDERED that the Motion to Dismiss is GRANTED. (ECF
7 No. 3). The Complaint is DISMISSED without prejudice. No later than thirty (30)
8 days from the date this Order is filed, Plaintiff may file a motion for leave to amend the
9 Complaint accompanied by a proposed first amended complaint. The first amended
10 complaint must be complete in itself and may not incorporate by reference prior
11 versions of the complaint or other filings in this action. If Plaintiff does not file a
12 motion for leave to amend, this case shall remain closed or be remanded to San Diego
13 County Superior Court, where this case was originally filed.

14
15 DATED: 10/14/14


16 **WILLIAM Q. HAYES**
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28