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

TAYLOR MASSEY; JUNE MASSEY; A.M., V.M., and J.M., minors, by and through their Guardian Ad Litem, JUNE MASSEY,

Plaintiffs,

v.

HCA WOODBRIDGE APARTMENTS, L.P., d.b.a., WOODBRIDGE APARTMENTS; and HANKEN CONO ASSAD & CO, INC.,

Defendants.

CASE NO. 15cv2358 WQH (DHB)
ORDER

HAYES, Judge:

The matter before the Court is the Motion to Dismiss Plaintiffs’ Prayer for Punitive Damages Pursuant to FRCP 12(b)(6) (ECF No. 5) filed by Defendants HCA Woodbridge Apartments, L.P. and Hanken Cono Assad & Co, Inc.

I. Background

On October 19, 2015, Plaintiffs Taylor Massey, June Massey, and A.M., V.M., and J.M., by and through their Guardian Ad Litem, June Massey, initiated this action by filing a complaint, alleging discrimination based on family status, in violation of the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and California’s Fair Employment and Housing Act (“FEHA”), Cal. Gov. Code. § 12955 *et seq.*, against Defendants HCA Woodbridge Apartments, L.P., d.b.a., Woodbridge Apartments, and Hanken Cono Assad & Co., Inc. (ECF No. 1). On October 22, 2015, the Court issued an Order granting Plaintiffs’ application for appointment of guardian ad litem and appointing

1 June Massey as guardian ad litem for minors A.M., V.M., and J.M. (ECF No. 4).

2 On November 18, Defendants filed a Motion to Dismiss Plaintiffs' Prayer for
3 Punitive Damages Pursuant to 12(b)(6). (ECF No. 5). On December 1, 2015, Plaintiffs
4 filed an opposition to Defendants' motion. (ECF No. 7). On December 10, 2015,
5 Defendants filed a reply. (ECF No. 8).

6 **II. Allegations of the Complaint**

7 Plaintiffs allege that they rented an apartment from Defendant HCA Woodbridge
8 Apartments, L.P., which was managed by an offsite management company, Defendant
9 Hanken Cono Assad & Co, Inc. Plaintiffs allege that they received "false allegations"
10 from their neighbor about noise coming from Plaintiffs' apartment. (ECF No. 1 ¶ 15.).
11 Plaintiffs allege that after receiving the false allegations about noise coming from the
12 Plaintiffs' apartment, Defendants sent Plaintiffs violation notices and a notice that their
13 tenancy would be terminated if the complained of activity did not cease. Plaintiffs
14 allege that they challenged the complaints but after being harassed and bullied for two
15 weeks by Defendants' onsite manager to move out of their apartment into a downstairs
16 apartment, Plaintiffs agreed to move into a different apartment unit in the complex.
17 Plaintiffs allege that they completed a notice of intention to vacate, as instructed by the
18 onsite manager.

19 Plaintiffs allege that within two weeks, Plaintiffs changed their mind and
20 informed the onsite manager that they no longer wished to switch apartments. Plaintiffs
21 allege that the onsite manager told Plaintiff June Massey that Plaintiffs had to move out
22 of the apartment because a prospective tenant had submitted an application for the
23 apartment and if Plaintiffs did not move out they would be homeless. Plaintiffs allege
24 that Plaintiff June Massey spoke to one of Defendants' off-site managers about the
25 matter, alleging that the onsite manager was forcing Plaintiffs to move from their
26 apartment because they had children. Plaintiffs allege that Defendants' off-site manager
27 told June Massey that Plaintiffs should move to a downstairs apartment or a house
28 because they had children. Plaintiffs allege that Defendants' off-site manager told

1 Plaintiff June Massey that families with children were not allowed to live in the upstairs
2 apartments. Plaintiffs allege that they complained to Defendants about the
3 conversations with Defendants' onsite manager and off-site manager. Months later,
4 Plaintiffs sent a letter to Defendants complaining that a manager had threatened
5 Plaintiffs with eviction if their children made too much noise playing inside their
6 apartment. Plaintiffs allege that after many noise complaints from their downstairs
7 neighbor, Plaintiffs requested to transfer to available upstairs apartments twice and both
8 times their request was denied. Plaintiffs allege that Plaintiff Taylor Massey asked the
9 assistant manager of the complex if the Plaintiffs were not allowed to move into an
10 upstairs apartment because they had children. The assistant manager responded that the
11 children were the reason Plaintiffs could not move to an upstairs apartment.

12 Plaintiffs allege that

13 By reason of Defendants' unlawful acts and practices, Plaintiffs have
14 suffered emotional distress, including humiliation, mental anguish, and
15 attendant bodily injury, and otherwise sustained injury. Plaintiffs have
16 suffered invasion of their private rights of occupation and constructive
wrongful eviction as a result of Defendants' threats and rules, depriving
them of the full use and enjoyment of their tenancy. Accordingly,
Plaintiffs are entitled to compensatory damages.

17 *Id.* ¶ 33. Plaintiffs allege that "in doing the acts of which Plaintiffs complain,
18 Defendants and their agents acted with oppression, fraud, and malice, and with wanton
19 and conscious or reckless disregard of the federally protected rights of Plaintiffs.
20 Accordingly, Plaintiffs are entitled to punitive damages." *Id.* ¶ 34. Plaintiffs allege that
21 they are entitled to declaratory relief regarding Defendants' duties under the federal and
22 state housing laws and injunctive relief. *Id.* ¶¶ 35-36. Plaintiffs assert claims under the
23 Fair Housing Act, the California Fair Employment and Housing Act, the California
24 Unruh Civil Rights Act, California Business and Professions Code § 17204, and
25 negligence.

26 **III. Standard of Review**

27 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state
28 a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "A pleading that

1 states a claim for relief must contain . . . a short and plain statement of the claim
2 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under
3 Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or
4 sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police*
5 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

6 To sufficiently state a claim for relief and survive a Rule 12(b)(6) motion, a
7 complaint “does not need detailed factual allegations” but the “[f]actual allegations
8 must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v.*
9 *Twombly*, 550 U.S. 544, 555 (2007). “[A] plaintiff’s obligation to provide the grounds
10 of his entitlement to relief requires more than labels and conclusions, and a formulaic
11 recitation of the elements of a cause of action will not do.” *Id.* When considering a
12 motion to dismiss, a court must accept as true all “well-pleaded factual allegations.”
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). However, a court is not “required to accept
14 as true allegations that are merely conclusory, unwarranted deductions of fact, or
15 unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th
16 Cir. 2001). “In sum, for a complaint to survive a motion to dismiss, the non-conclusory
17 factual content, and reasonable inferences from that content, must be plausibly
18 suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572
19 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

20 **IV. Discussion**

21 Defendants contend that the allegations in the complaint are not specific enough
22 to support a punitive damages claim against Defendants. (ECF No. 5-1 at 4).
23 Defendants contend that the complaint fails to allege specific facts to show that
24 Defendants acted with malice or oppression. *Id.* at 4-5.

25 Plaintiffs contend that punitive damages are a remedy, not a claim, and a request
26 for punitive damages does not provide a basis for dismissal under Federal Rule of Civil
27 Procedure 12(b)(6). (ECF No. 7 at 8). Plaintiffs contend that the complaint alleges
28 violations of the Fair Housing Act and the California Fair Employment and Housing

1 Act, both of which provide for the recovery of punitive damages. *Id.* at 9-10.

2 In reply, Defendants contend that “Defendants do not challenge whether
3 Plaintiffs have alleged sufficient facts to assert claims under the Fair Housing Act,
4 California Fair Employment and Housing Act, California Unruh Civil Rights Act,
5 Unfair Business Practices, or Negligence.” (ECF No. 8 at 1-2). Defendants contend
6 that “Plaintiffs must make a factual showing of malice, oppression or fraud pursuant to
7 Civil Code § 3294 to support a legal theory by which punitive damages are
8 appropriate.” *Id.* at 2. Defendants contend that “the Complaint alleges only
9 conclusions and merely refers to actions in general terms and without pleading any
10 ultimate facts as to moving Defendants.” *Id.*

11 “The federal practice has been to reserve consideration of the appropriate relief
12 until after a determination of the merits, not to foreclose certain forms of relief by a
13 ruling on the pleadings. The prayer for relief is no part of the plaintiff’s cause of
14 action.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 130 (1983). “[T]he usual rule is
15 that where legal rights have been invaded and a cause of action is available, a federal
16 court may use any available remedy to make good the wrong done.” *Id.* (quoting *Bell*
17 *v. Hood*, 327 U.S. 678, 684 (1946).

18 In the motion to dismiss, Defendants seek to dismiss Plaintiff’s request for
19 punitive damages but do not challenge the adequacy of Plaintiffs’ substantive claims.
20 (ECF No. 8 at 1-2). Defendants’ motion to dismiss Plaintiff’s prayer for punitive
21 damages is denied at this stage in the proceedings. *See Lyons*, 461 U.S. at 130.

22 **V. Conclusion**

23 IT IS HEREBY ORDERED that the motion to dismiss Plaintiffs’ prayer for
24 punitive damages (ECF No. 5) is denied.

25 DATED: February 22, 2016

26 
27 **WILLIAM Q. HAYES**
28 United States District Judge