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

NATSUE ELLIOTT, <i>et al.</i> ,		
	Plaintiffs,	
v.		
QF CIRCA 37, LLC, <i>et al.</i> ,		
	Defendants.	

Case No. 16-cv-0288-BAS-AGS  
**ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS’ RULE 12(c)  
MOTION FOR JUDGMENT ON  
THE PLEADINGS**  
**[ECF Nos. 46, 47]**

Presently before the Court is Defendants QF Circa 37, LLC (“QF”), Versa CIC, LP (“Versa”) and ConAm Management Corporation’s (“ConAm”) (together “Defendants”) Rule 12(c) motion for judgment on the pleadings. (ECF Nos. 46, 47.) This case concerns whether the Defendants engaged in discriminatory housing practices on the basis of race, national origin, and disability, in connection with Plaintiff Natsue Elliott’s apartment at the Versa at Civita complex (“Civita”) in San Diego, California. The sole issue that Defendants raise is whether Plaintiff Linda Brown—the daughter and guardian of Plaintiff Natsue Elliott, who secured her mother’s housing and regularly interacted with Defendants to request reasonable accommodations for her mother’s disability—lacks standing to assert any claims in

1 this case. Plaintiff Brown has opposed the motion (ECF No. 58) and Defendants  
2 have replied. (ECF No. 65.) Defendants further request that this Court take judicial  
3 notice of certain records in connection with their motion. (ECF No. 48.) For the  
4 reasons stated herein, the Court grants in part and denies in part both Defendants’  
5 motion for judgment on the pleadings and request for judicial notice.

## 6 **I. BACKGROUND**

### 7 **A. Factual Background**

8 Plaintiff Linda Brown is the adult daughter and self-appointed guardian of  
9 Plaintiff Natsue Elliott, an 87-year old Asian-American who is handicapped and has  
10 Alzheimer’s disease. (ECF No. 4, First Am. Compl. [hereinafter “FAC”] ¶¶4–6.)  
11 Plaintiff Elliott lives by herself in an apartment at Civita, a complex advertised as  
12 housing for senior citizens. (*Id.* ¶¶4, 15.) Plaintiff Brown arranged for Plaintiff  
13 Elliott’s housing at Civita, and is often at Plaintiff Elliott’s apartment to assist with  
14 her mother’s day-to-day care. (*Id.* ¶¶5, 15.) Defendant QF owns and operates Civita,  
15 while Defendants Versa and ConAm serve as property managers of Civita. (*Id.* ¶¶8–  
16 11.)

17 The FAC alleges that the Defendants engaged in a pattern or practice of  
18 discriminating against disabled persons in the operation of Civita, including Plaintiff  
19 Elliott, on account of race, national origin, and handicap or disability. (*Id.* ¶14.) In  
20 April 2015, Defendants allegedly denied Plaintiff Brown’s request for a physician-  
21 prescribed emotional support animal to reside in Plaintiff Elliott’s apartment to assist  
22 in coping with her disability. (*Id.* ¶¶19–20.) During May and early June 2015,  
23 Defendants allegedly denied multiple requests for parking accommodations at Civita.  
24 (*Id.* ¶¶21–22, 28–30.) Defendants allegedly caused “no parking” signs to be erected  
25 at the curb in front of Plaintiff Elliott’s apartment. (*Id.* ¶30.) During one incident,  
26 while Plaintiff Brown tried to park at the curb, an employee of the Defendants  
27 allegedly told Plaintiff Brown that she did not care Plaintiff Elliott had a disability  
28 and she was unwilling to make any disability accommodations in parking for Plaintiff

1 Elliott. (*Id.* ¶31.)

2 In July 2015, Plaintiff Brown also made multiple requests to Defendants for  
3 her mother to move to a one or two-bedroom apartment to permit a full-time live-in  
4 caretaker to assist Plaintiff Elliott with her disability. (*Id.* ¶¶32–34.) After three  
5 weeks with no response, an employee of the Defendants informed Plaintiff Brown  
6 that Defendants’ legal department had approved her mother’s transfer to the next  
7 available one-bedroom apartment, but additional paperwork would be necessary for  
8 a two-bedroom. (*Id.* ¶35.) In September 2015, Plaintiff Brown sought to have an  
9 employee of the Defendants sign a form needed to obtain a reasonable  
10 accommodation from the San Diego Housing Association and release her mother  
11 from her lease. (*Id.* ¶39.) When the employee saw the form, she allegedly claimed  
12 that a two-bedroom unit would become available within a month. (*Id.*) However, no  
13 such unit was actually available and Plaintiff Elliott moved into a one-bedroom at  
14 Civita, above a tenant who allegedly engaged in disruptive behavior about which  
15 Defendants were aware. (*Id.* ¶¶39–42.)

16 In mid-October 2015, Plaintiff Elliott filed a housing discrimination complaint  
17 with California’s Department of Fair Employment and Housing (“DFEH”) against  
18 Defendants. (*Id.* ¶¶43–44.) At the beginning of November 2015, an employee of the  
19 Defendants told Plaintiff Brown that her mother would be able to transfer to a two-  
20 bedroom unit effective January 4, 2016. (*Id.* ¶47.) Nearly a month later, however,  
21 two other employees of the Defendants allegedly denied the transfer in retaliation for  
22 Plaintiff Elliott’s DFEH complaint. (*Id.* ¶¶49–50.) Further, Defendants allegedly  
23 served a Notice of Lease Violation on Plaintiff Elliott for noise violations, also in  
24 retaliation for her DFEH complaint. (*Id.* ¶51.) Plaintiffs allege that they have  
25 suffered economic loss and emotional distress, including humiliation,  
26 embarrassment, and mental anguish, as a result of Defendants’ practices. (*Id.* ¶52.)

27 **B. Procedural History**

28 Plaintiffs Elliott and Brown brought suit against Defendants on February 3,

1 2016, raising claims under the Fair Housing Act (“FHA”), 42 U.S.C. §§3601 *et seq.*,  
2 California’s Fair Employment and Housing Act (“FEHA”), Cal. Gov. Code §§12927  
3 and 12955 *et seq.*; the California Unruh Civil Rights Act (“UCRA”), Cal. Civ. Code  
4 §§51 *et seq.*; California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code  
5 §17204; and negligence. (ECF No. 1.) They subsequently filed the First Amended  
6 Complaint, with largely identical claims. (ECF No. 4.) On April 21, 2017,  
7 Defendants filed their Rule 12(c) motion for judgment on the pleadings (ECF Nos.  
8 46–47) and request for judicial notice (ECF No. 48). The Court now addresses both.

## 9 **II. LEGAL STANDARDS**

### 10 **A. Rule 12 (b)(1)**

11 When a defendant challenges the Article III standing of a plaintiff, Rule  
12 12(b)(1) provides the appropriate standard because it is the court’s subject-matter  
13 jurisdiction which is challenged. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).  
14 Rule 12(b)(1) jurisdictional attacks can be either factual or facial. In a facial attack  
15 to the allegations contained in the complaint, a court accepts as true a plaintiff’s  
16 allegations and draws all reasonable inferences in her favor. *Safe Air for Everyone*  
17 *v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a factual Rule 12(b)(1) attack  
18 which disputes the truth of the allegations, a court may look beyond the complaint to  
19 matters of public record without converting the motion into one for summary  
20 judgment and need not presume the truthfulness of the plaintiff’s allegations. *Id.*  
21 Once a party has moved to dismiss for lack of subject matter jurisdiction, the  
22 opposing party bears the burden of establishing the Court’s jurisdiction. *See*  
23 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The plaintiff  
24 carries her burden by putting forth “the manner and degree of evidence required” by  
25 the stage of the litigation. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

### 26 **B. Rule 12(c)**

27 “After the pleadings are closed—but early enough not to delay trial—a party  
28 may move for judgment on the pleadings.” FED. R. CIV. P. 12(c). A court ruling on

1 a Rule 12(c) motion applies the same standard used in a Rule 12(b)(6) motion to  
2 dismiss for failure to state a claim. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir.  
3 1996). The court must accept all factual allegations in the complaint as true and  
4 construe them in the light most favorable to the non-moving party. *Id.* “Judgment  
5 on the pleadings is proper when the moving party clearly establishes on the face of  
6 the pleadings that no material issue of fact remains to be resolved and that it is entitled  
7 to judgment as a matter of law.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*,  
8 896 F.2d 1542, 1550 (9th Cir. 1989). It is the moving party’s burden to demonstrate  
9 that both of these requirements are met. *Doleman v. Meiji Mut. Life Ins. Co.*, 727  
10 F.2d 1480, 1482 (9th Cir. 1984). If matters outside the pleadings are presented to  
11 and not excluded by the court, a Rule 12(c) motion must be treated as one for  
12 summary judgment. FED. R. CIV. P. 12(d); *Hal Roach Studios, Inc.*, 896 F.2d at 1550.

### 13 **III. DISCUSSION**

#### 14 **A. Request for Judicial Notice**

15 The Court first addresses Defendants’ request that this Court take judicial  
16 notice of certain documents. (ECF No. 48.) Defendants request judicial notice of:  
17 Plaintiff Elliott’s DFEH Complaint, the DFEH Notice of Case Closure, a DFEH  
18 Closure Determination and Request for Additional Information, the complaints filed  
19 in this case, email records in the files of DFEH, and various records in the files of the  
20 San Diego Housing Commission (“SDHC”). (ECF No. 48.) As to all documents  
21 except the complaints, Defendants argue that the materials are “government  
22 documents” in the form of state and city administrative records, which are proper  
23 subjects of judicial notice. (*Id.*) Plaintiff Brown argues that the materials should be  
24 excluded pursuant to Federal Rule of Civil Procedure 12(d) because they are matters  
25 outside the pleadings. (ECF No. 58 at 10.) She does not challenge the documents’  
26 authenticity. The Court grants in part and denies in part Defendants’ request.

27 The Court grants Defendants’ request to take judicial notice of Plaintiff  
28 Elliott’s DFEH Complaint, the DFEH Notice of Case Closure and a DFEH Closure

1 Determination and Request for Additional Information. (ECF No. 48, Exs. 1–3). In  
2 ruling on a Rule 12(c) motion, a court may take judicial notice of matters in the public  
3 record without converting the motion into one for summary judgment. *Lee v. City of*  
4 *Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001). Federal Rule of Evidence 201(b)  
5 in turn allows a court to take judicial notice of “a fact that is not subject to reasonable  
6 dispute because it (1) is generally known within the trial court’s territorial  
7 jurisdiction; or (2) can be accurately and readily determined from sources whose  
8 accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b). Records and  
9 reports of administrative bodies are proper subjects of judicial notice. *Interstate Nat.*  
10 *Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir. 1953); *see also United States*  
11 *v. 14.02 Acres*, 547 F.3d 943, 955 (9th Cir. 2008); *Dornell v. City of San Mateo*, 19  
12 F. Supp. 3d 900, 904 n.3 (N.D. Cal. 2013) (taking judicial notice of DFEH complaint  
13 and DFEH right-to-sue letter). However, the Court will not take judicial notice of  
14 facts or conclusions contained in these documents regarding whether Defendants  
15 violated federal and state antidiscrimination laws. *See Lee*, 250 F.3d at 690 (judicial  
16 notice of public records is limited to the existence of the documents, not the truth of  
17 their contents where facts are disputed); *In re Toyota Motor Corp.*, 790 F. Supp. 2d  
18 1152, 1160 (C.D. Cal. 2011) (materials “implicat[ing] the key disputed factual  
19 allegations at issue in th[e] action . . . are not proper subjects of judicial notice” under  
20 Rule 201(b)). Further, the Court takes judicial notice of the Notice of Lease Violation  
21 served on Plaintiff Elliott (ECF No. 48-3 at 80) because although it is not an official  
22 record, it partially “forms the basis of” her FHA retaliation claim. *United States v.*  
23 *Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

24 The Court denies the remainder of Defendants’ request. The fact that the  
25 DFEH and the SDHC are administrative bodies “does not mean all evidence related  
26 to this case . . . fits within the judicial notice exception.” *Id.* at 909. Save for the  
27 Notice of Lease Violation, the emails and documents purportedly from the files of  
28 the DFEH and the SDHC (ECF No. 48, Exs. 6–7) are not incorporated by reference

1 into the FAC, nor do they appear to be generally known within this Court’s  
2 jurisdiction. *See Prime Healthcare Servs., Inc., v. Harris*, No. 16-cv-0078-GPS-  
3 AGS, 2017 WL 3525169, at \*9 (S.D. Cal. Aug. 16, 2017). The Court also denies  
4 Defendants’ request as it pertains to the original complaint and the FAC (ECF No.  
5 48, Exs. 4–5) because the Court need not take judicial notice of filings already on its  
6 docket. *See Park Townsend, LLC v. Clarendon Am. Ins. Co.*, No. 12-cv-04412-LHK,  
7 2013 WL 3475176, at \*5 (N.D. Cal. July 10, 2013).

8 **B. FHA Standing and the Zone of Interests Test**

9 The Court first addresses Defendants’ argument that Plaintiff Brown lacks  
10 standing to assert claims under the FHA.<sup>1</sup> In the FAC, both Plaintiffs Brown and  
11 Elliott raise FHA claims premised on Defendants’ alleged discriminatory treatment  
12 on the basis of race, national origin, and handicap; alleged discriminatory statements  
13 reflecting a limitation or preference based on handicap; refusal to grant requests for  
14 reasonable accommodations for a person with a disability; and retaliation based on  
15 the exercise of a person’s fair housing rights. (FAC ¶14.) This conduct is  
16 respectively prohibited by Sections 3604(b); 3604(c), 3604(f)(3)(B) and 3617 of the  
17 FHA. *See* 42 U.S.C. §§3604, 3617. Defendants argue that Plaintiff Brown lacks  
18 standing to assert FHA claims for two reasons: (1) Plaintiff Brown’s alleged injuries  
19 are insufficient to confer standing and (2) even assuming the alleged injuries are  
20 sufficient, her interests fall outside the “zone of interests” test protected by the FHA.  
21 (ECF No. 47 at 8–9.) The Court addresses each argument in turn.

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23  
24 <sup>1</sup> The Court’s analysis regarding FHA standing also implicates Plaintiff  
25 Brown’s FEHA standing. The FEHA expressly provides that it shall not be  
26 “construed to afford to the classes protected under this [Act], fewer rights or remedies  
27 than the federal Fair Housing Amendments Act of 1988.” Cal. Gov. Code §12955.6.  
28 To the extent Plaintiff Brown has standing under the FHA, she also has standing  
under the FEHA. *See Hous. Rights Ctr., Inc., v. Moskowitz*, No. CV 04-2266 PA  
(VBKx), 2004 WL 3738293, at \*2 (C.D. Cal. Sept. 20, 2004); *Inland Mediation Bd.*  
*v. City of Pomona*, 158 F. Supp. 2d 1120, 1150 (C.D. Cal. 2001).

1                   **1. Article III Injury and FHA Standing**

2                   Defendants argue that Plaintiff Brown lacks the “distinct and palpable injury”  
3 necessary for FHA standing because the claims in this case are not based on  
4 discrimination against her, but rather against her mother. (ECF No. 47 at 8.)  
5 Defendants assert that Plaintiff Brown’s alleged injury is witnessing discrimination  
6 against her mother, which, they argue, is not a cognizable injury-in-fact. (*Id.*) They  
7 further contend that Plaintiff Brown’s visiting and assisting her mother are an  
8 insufficient basis for standing. (*Id.* at 9.) Plaintiff Brown argues that her alleged  
9 “emotional injuries” support her standing to assert FHA claims. (ECF No. 58 at 15  
10 n.49, 17.) Because Defendants challenge whether Plaintiff Brown has asserted an  
11 injury sufficient to support her standing, this Court must turn to the Article III’s  
12 constitutional standing requirements.<sup>2</sup> The Court finds that Plaintiff Brown has  
13 sufficiently alleged injuries resulting from Defendants’ allegedly discriminatory  
14 housing practices to support her standing.

15                   “Article III of the Constitution confines the federal courts to adjudicating  
16 actual cases or controversies.” *Allen v. Wright*, 468 U.S. 737, 750–51 (1984). To  
17 satisfy the constitutional requirement of standing that arises from Article III, a  
18 plaintiff must allege the “irreducible minimum” of: (1) an injury in fact via “an  
19 invasion of a legally protected interest which is (a) concrete and particularized, and  
20 (b) actual or imminent, not conjectural or hypothetical”; (2) causation, *i.e.*, the injury

21 \_\_\_\_\_  
22                   <sup>2</sup> The Court construes Defendants’ challenge to Plaintiff Brown’s standing for  
23 lack of injury as a Rule 12(b)(1) challenge, which is the procedurally proper vehicle.  
24 *See White*, 227 F.3d at 1242 (“Because standing . . . pertain[s] to a federal court’s  
25 subject-matter jurisdiction under Article III, [it is] properly raised in a motion to  
26 dismiss under Federal Rule of Civil Procedure 12(b)(1), not Rule 12(b)(6)”). The  
27 Rule 12(b)(1) challenge here is facial because Defendants’ motion (ECF No. 47 at 4)  
28 states that this Court must accept as true all factual allegations in the FAC and  
construe them in the light most favorable to Plaintiff Brown. *See Courthouse News  
Serv. v. Planet*, 750 F.3d 776, 779 n.2 (9th Cir. 2014) (determining that Rule 12(b)(1)  
challenge was facial because of defendant’s representation that the district court was  
obligated to assume truth of the complaint’s allegations).



1 is “fairly traceable to the challenged action of the defendant”; and (3) redressability,  
2 *i.e.* it is “likely, as opposed to merely speculative, that the injury will be redressed by  
3 a favorable decision.” *Lujan*, 504 U.S. at 560–61 (internal citations and quotations  
4 omitted). This requirement ensures that the plaintiff has “such a personal stake in the  
5 outcome of the controversy so as to assure that concrete adverseness which sharpens  
6 the presentation of issues.” *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (citation  
7 omitted). At the pleading stage, general factual allegations of injury resulting from  
8 the defendant’s conduct may suffice because the trial court presumes that such  
9 allegations embrace those specific facts necessary to support the claim. *Lujan*, 504  
10 U.S. at 561.

11 “The existence of federal standing ‘often turns on the nature and source of the  
12 claim asserted.’” *Chapman v. Pier 1 Imports (U.S.), Inc.*, 631 F.3d 939, 947 (9th Cir.  
13 2011) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)). This Court’s standing  
14 analysis turns to the nature and source of Plaintiff Brown’s claims—the Fair Housing  
15 Act. The FHA provides that “an aggrieved person may commence a civil action” to  
16 challenge a discriminatory housing practice. *See* 42 U.S.C. §3613(a)(1)(A). The  
17 FHA further defines the term “aggrieved person” to mean “any person who (1) claims  
18 to have been injured by a discriminatory housing practice; or (2) believes that such  
19 person will be injured by a discriminatory housing practice that is about to occur.”  
20 *See* 42 U.S.C. §3602(i). Under these provisions, standing under the FHA “extend[s]  
21 to the full limits of Article III.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372  
22 (1982) [hereinafter “*Havens*”].

23 This view of FHA standing first emerged in *Trafficante v. Metropolitan Life*  
24 *Insurance Company*, 409 U.S. 205 (1972) [hereinafter “*Trafficante*”]. In *Trafficante*,  
25 the Supreme Court interpreted standing under Section 3610(a) of the FHA to be “as  
26 broad[] as is permitted by Article III,” relying on the Third Circuit’s opinion in  
27 *Hackett v. McGuire Bros., Inc.*, 445 F.2d 442 (3d Cir. 1971). *See Trafficante*, 409  
28 U.S. at 209. Section 3610(a) permits “an aggrieved person,” *i.e.* “claim[ing] to be

1 injured by a discriminatory housing practice,” to file a complaint with the Department  
2 of Housing and Urban Development and subsequently commence suit. *Id.* at 206 n.1.  
3 *Hackett* interpreted Title VII’s analogous aggrievement provision in the context of  
4 employment discrimination to reflect a congressional intent that Title VII standing  
5 be construed as coextensive with Article III’s requirements. *Id.* at 209 (citing  
6 *Hackett*, 445 F.2d at 446). The Supreme Court determined that the white and black  
7 tenant plaintiffs had standing under Section 3610(a) to file a complaint against their  
8 apartment complex owner for allegedly discriminating against non-whites. *Id.* at  
9 208, 211. The Supreme Court found sufficient their allegations that the defendant’s  
10 discriminatory housing practices deprived them of the social benefits and business  
11 and professional advantages of an integrated community, and caused embarrassment  
12 and economic damages from the stigma of being residents of a discriminatory  
13 apartment complex. *Id.* at 208. Subsequently, in *Gladstone, Realtors v. Bellwood*,  
14 441 U.S. 91 (1979) [hereinafter “*Gladstone*”], the Supreme Court held that standing  
15 under Section 3612 similarly is “as broad as is permitted by Article III”. *Id.* at 109  
16 (quoting *Trafficante*, 409 U.S. at 209). The Supreme Court determined that although  
17 Section 3612, which permitted private suits to be brought directly in federal court,  
18 did not use the term aggrieved, it was an “alternative mechanism[.]” to Section 3610  
19 HUD complaints for enforcing the FHA. *Id.* at 104. Therefore, standing under  
20 Section 3612 was not limited to “direct victims” of alleged discriminatory housing  
21 practices, as the district court had concluded. *Id.* at 108–09. “As long as the plaintiff  
22 suffers actual injury as a result of the defendant’s conduct, [s]he is permitted to prove  
23 that the rights of another were infringed.” *Id.* at 103 n.9. In *Havens*, the Supreme  
24 Court reaffirmed that “the sole requirement for standing to sue under [the FHA] is  
25 the Art[icle] III minima of injury in fact: that the plaintiff allege that as a result of the  
26 defendants’ discriminatory housing practices he has suffered a ‘distinct and palpable  
27 injury.’” 455 U.S. at 372 (quoting *Warth*, 422 U.S. at 501).

28 In light of these decisions, the Ninth Circuit has instructed that plaintiffs suing

1 under the FHA “[are] judged under a very liberal standing requirement.” *See Harris*  
2 *v. Itzhaki*, 183 F.3d 1043, 1049 (9th Cir. 1999). “[A]ny person harmed by  
3 discrimination, whether or not the target of the discrimination, can sue to recover for  
4 his or her own injury.” *San Pedro Hotel v. City of Los Angeles*, 159 F.3d 470, 475  
5 (9th Cir. 1998) (citing *Trafficante*, 409 U.S. at 212). Defendants’ motion fails to  
6 grapple with the liberal standing requirement applied to plaintiffs suing under the  
7 FHA. In reply, while acknowledging that *Trafficante*, *Gladstone*, and *Havens* use  
8 “broad language” (ECF No. 65 at 4), Defendants contend that these precedents do  
9 not mean that any person claiming to be aggrieved has standing to pursue an FHA  
10 claim, (*id.* at 1.) This contention is at odds with the text of the FHA’s suit enabling  
11 provisions and their interpretation.

12 The Court recognizes that standing in cases such as this one, in which Plaintiff  
13 Brown generally does not allege discrimination directly against her, is necessarily a  
14 more complicated matter. “An injury is not as readily identifiable—and thus standing  
15 issues arise—where the plaintiff alleges an injury as a result of discrimination against  
16 third persons.” *Waterhouse v. City of Lancaster*, No. CV 12-00923 SJO (SHx), 2013  
17 WL 8609248, at \*8 (C.D. Cal. Mar. 13, 2013). Nevertheless, claims premised on  
18 third party discrimination are properly asserted where a plaintiff demonstrates that  
19 the defendant’s discrimination resulted in a “genuine[] injury” to the plaintiff. *Id.*  
20 (citing *Gladstone*, 441 U.S. at 103 n.9).

21 Plaintiff Brown alleges that she suffered emotional injuries as a result of  
22 Defendants’ allegedly discriminatory housing practices, including humiliation,  
23 embarrassment, mental anguish, and distress. (FAC ¶52.) Non-economic injuries  
24 may be a sufficient injury for the purposes of Article III standing. *See Valley Forge*  
25 *Christian College v. Americans United for Separation of Church & State*, 454 U.S.  
26 464, 486 (1982); *Gladstone*, 441 U.S. at 112 (stigmatic injuries). This includes  
27 “emotional harm (injury in fact) caused by the defendants” conduct. *Chaudhry v.*  
28 *City of Los Angeles*, 751 F.3d 1096, 1109 (9th Cir. 2014). However, “the

1 psychological consequence presumably produced by observation of conduct with  
2 which one disagrees” is generally insufficient. *See Valley Forge*, 454 U.S. at 485–  
3 86 (the mere fact that plaintiffs were offended by a display of a lighted cross on public  
4 property could not confer standing); *Freedom from Religion Found. v. Zielke*, 845  
5 F.2d 1463, 1467–68 (7th Cir. 1988) (psychological harm without altered behavior is  
6 insufficient). Without citing independent legal authority, at least two district courts  
7 in this Circuit have determined that allegations of merely witnessing discriminatory  
8 housing practices are insufficient. *See Sturm v. Davlyn Invs., Inc.*, No. CV 12-07305-  
9 DMG (AGRx), 2013 WL 8604760, at \*3 (C.D. Cal. Nov. 6, 2013); *see also Lee v.*  
10 *Retail Store Emp. Bldg. Corp.*, No. 15-cv-04768-LHK, 2017 WL 346021, at \*7 (N.D.  
11 Cal. Jan. 24, 2017) (citing *Sturm*, 2013 WL 8604760, at \*3). The line between what  
12 constitutes a “psychological consequence” and “emotional injuries” sufficient for  
13 constitutional standing may be a difficult one to draw.<sup>3</sup> But this Court finds more  
14 applicable to Plaintiffs Brown’s alleged injuries of “emotional distress, including  
15 humiliation, embarrassment, [and] mental anguish” decisions which have found such  
16 injuries to be a sufficient basis for constitutional standing in the FHA context. *See*  
17 *Inland Mediation Bd. v. City of Pomona*, 158 F. Supp. 2d 1120, 1138 (C.D. Cal.  
18 2001) (plaintiff had FHA standing based on “physical and emotional upset that  
19 accompanied the stigma” experienced after “witnessing” alleged discriminatory  
20 conduct); *Simovits v. Chanticleer Condo. Ass’n*, 933 F. Supp. 1394, 1400 (N.D. Ill.  
21 1996) (determining that plaintiffs had FHA standing in part because of the “emotional  
22 distress” they allegedly suffered from discriminatory housing practice); *cf. Lane v.*  
23 *Cole*, 88 F. Supp. 2d 402, 405 (E.D. Pa. 2000) (plaintiffs suffered “anger, fear, mental  
24 anguish and emotional distress” as a result of alleged discriminatory housing  
25

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26  
27 <sup>3</sup> *See, e.g.,* Rachel Bayefsky, *Psychological Harm and Constitutional*  
28 *Standing*, 81 BROOK. L. REV. 1555 (2016) (discussing treatment of psychological  
harm as a constitutional injury-in-fact by some courts, and insufficient by others).

1 practice). Thus, Plaintiff Brown has standing on the basis of these alleged injuries.<sup>4</sup>  
2 Plaintiff Brown also “fairly trace[s]”, *Lujan*, 504 U.S. at 560, her alleged injuries to  
3 Defendants’ conduct. She made the requests for reasonable accommodations to  
4 Defendants on behalf of her mother and the alleged denials were made to her by  
5 Defendants. (FAC ¶¶19–20 (emotional support animal request); *id.* ¶¶21–22, 28–31  
6 (parking spot requests), *id.* ¶¶32–35, 39, 47–50 (request for new unit necessary for  
7 live-in caretaker).<sup>5</sup> Defendants made allegedly discriminatory statements about  
8 disabled people to Plaintiff Brown. (*Id.* ¶31.) Defendants’ alleged denial of the two-  
9 bedroom unit as retaliation against Plaintiff Elliott occurred through Plaintiff Brown,  
10 who attempted to stop the alleged denial. (*Id.* ¶¶47–50.) Although Plaintiff Brown  
11 was not the object of the alleged discrimination, neither was she a mere bystander.  
12 The Court concludes that she has met her burden to show that she “sustain[ed] an  
13 actual injury from an alleged discriminatory housing practice to commence a suit.”  
14 *San Pedro Hotel Co.*, 159 F.3d at 475.

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16  
17 <sup>4</sup> This Court’s determination that Plaintiff Brown’s alleged emotional injuries  
18 constitute a sufficient injury is in part informed by the recognition that damages  
19 claims for emotional distress are available under the FHA. *See Pac. Shores Props.,*  
20 *LLC v. City of Newport Beach*, 730 F.3d 1142, 1172 (9th Cir. 2013); *Krueger v.*  
21 *Cuomo*, 115 F.3d 487, 492 (7th Cir. 1997); *Banai v. Sec’y of HUD*, 102 F.3d 1203,  
22 1207 (11th Cir. 1997); *see also Ragin v. Harry Macklowe Real Estate Co.*, 801 F.  
23 Supp. 1213, 1233 (S.D.N.Y. 1992) (regarding individual plaintiffs’ claim for  
24 compensatory damages for emotional distress caused by discriminatory housing  
25 practice: “[d]amages for such an *intangible injury* are compensable under the  
[FHA].” (emphasis added)), *aff’d in part and rev’d in part*, 6 F.3d 898, 907–08 (2d  
Cir. 1993) (affirming damages award for emotional distress). The availability of such  
damages in turn shows that Plaintiff Brown’s injuries are likely to be redressed  
through a favorable court decision.

26 <sup>5</sup> Defendants challenge whether they, in fact, denied any of these requests,  
27 relying on the DFEH’s investigative conclusions. (ECF Nos. 47 at 2–3; 65 at 3.)  
28 Although the Court acknowledges Defendants’ argument, such a challenge is proper  
in a Rule 56 motion for summary judgment, not a Rule 12(c) motion for judgment on  
the pleadings.

1           The Court rejects Defendants’ argument that Plaintiff Brown’s status as a  
2 “visitor” to Defendants’ premises or as a caretaker for her mother make her injuries  
3 insufficient. Visitors, and even prospective visitors, alleging injury from a  
4 discriminatory housing practice have standing to sue those who engage in the  
5 practice. *See Moua v. City of Chico*, 324 F. Supp. 2d 1132, 1142 (E.D. Cal. 2004)  
6 (plaintiff who did not live at residence had standing to challenge discriminatory  
7 practice they allege deterred them from visiting the residence); *Lane*, 88 F. Supp. 2d  
8 at 406 (“If it is a discriminatory housing practice to condition rental rights on the  
9 exclusion of black guests, it reasonably follows that a black invitee who is excluded  
10 or coerced into leaving because of race has been aggrieved or injured by a  
11 discriminatory housing practice.” (internal quotations and citations omitted)).  
12 Because of the broad conferral of standing under the FHA, Plaintiff Brown has  
13 alleged a sufficient injury resulting from Defendants’ allegedly discriminatory  
14 housing practices.<sup>6</sup> Assuming Plaintiff Brown’s FHA claims survive a “zone of  
15 interests” test, she will ultimately need to prove that Defendants’ allegedly  
16 discriminatory housing practices caused her to suffer the emotional injuries she  
17 alleges before she will be entitled to judicial relief. *See Spann v. Colonial Village,*  
18 *Inc.*, 899 F.2d 24, 29 (D.C. Cir. 1990).

19           In addition, Plaintiff Brown has an independent ground for standing to assert  
20 an FHA claim based on Defendants’ allegedly discriminatory statements. Congress  
21 may “creat[e] a new legal right ‘the invasion of which creates standing.’” *El Dorado*  
22 *Estates v. City of Fillmore*, 765 F.3d 1118, 1122 (9th Cir. 2014) (quoting *Lujan*, 504  
23 U.S. at 578). Section 3604(c) provides that it is unlawful “to make . . . any . . .  
24

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25           <sup>6</sup> The Court recognizes that Plaintiff Brown’s allegations of injury “may very  
26 well be at the outer bounds of the types of injuries that can be addressed by the FHA.”  
27 *Gonzalez v. Diversified Real Prop. Mgmt. & Bus. Servs., Inc.*, No. SA CV 09-718  
28 PA (RNBx), 2010 WL 10105755, at \*3 (C.D. Cal. Jan. 4, 2010). However, she has  
alleged injuries “related to violations of the FHA,” which fall within the liberal  
standard applicable to FHA standing.

1 statement . . . with respect to the sale or rental of a dwelling that indicates any  
2 preference or limitation, or discrimination based on . . . handicap . . . , or any intention  
3 to make any such preference, limitation, or discrimination.” 42 U.S.C. §3604(c).  
4 Standing under 3604(c) exists even where an individual does not intend to purchase  
5 or rent a particular dwelling. *See Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d  
6 898, 903–04 (2d Cir. 1993) (“There is no significant difference between the  
7 statutorily recognized injury suffered by the tester in *Havens Realty* and the injury  
8 suffered by the [plaintiffs], who were confronted by advertisements indicating a  
9 preference based on race.”). Plaintiff Brown alleges that Defendants made  
10 discriminatory statements to her reflecting a limitation or preference based on  
11 handicap. (FAC ¶31.) She has, therefore, alleged a violation of a statutory right  
12 sufficient to support her standing to assert this particular FHA claim.

## 13                   2.       **The FHA and the “Zone of Interests” Test**

14           Defendants’ principal challenge to Plaintiff Brown’s standing to assert FHA  
15 claims arises from *Thompson v. North American Stainless, LP*, 562 U.S. 170 (2011),  
16 in which the Supreme Court applied the zone of interests test to Title VII. Although  
17 Defendants refer to the zone of interests test in terms of standing, the test is not  
18 jurisdictional. *See Lexmark, Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct.  
19 1377, 1387 n.4 (2014); *El Dorado Estates*, 765 F.3d at 1122 (“[W]hether a particular  
20 plaintiff has a right to sue under a given substantive statute . . . is more appropriately  
21 dealt with not in terms of standing but instead as a matter of statutory interpretation.  
22 . . .”). Indeed, a court cannot address a zone of interests challenge unless it is satisfied  
23 the plaintiff has Article III standing. *Animal Legal Def. Fund v. USDA*, 632 Fed.  
24 App’x 905, 908 (9th Cir. 2015). Because this Court has determined that Plaintiff  
25 Brown possesses such standing, Defendants’ zone of interests challenge is properly  
26 resolved on their Rule 12(c) motion for judgment on the pleadings. First, the Court  
27 concludes that the zone of interests test applies to FHA claims—a proposition which  
28 Plaintiff Brown does not challenge. Second, applying the test here, the Court finds

1 that some of Plaintiff Brown’s claims fall outside the zone of interests protected by  
2 the FHA, whereas others are arguably protected.

3 **a. The Zone of Interests Test Applies to FHA Claims**

4 The Supreme Court has instructed that the zone of interests test is a  
5 “requirement of general application” and “applies to all statutorily created causes of  
6 action.” *Lexmark*, 134 S. Ct. at 1388. Because of its repeated application by the  
7 Supreme Court, “Congress is presumed to ‘legislat[e] against the background of’ the  
8 zone-of-interests limitation . . .” *Id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 163  
9 (1997)). The test denies a right to judicial review of a claim “if the plaintiff’s interests  
10 are so marginally related to or inconsistent with the purposes implicit in the statute  
11 that it cannot reasonably be assumed that Congress intended to permit the suit.”  
12 *Clarke v. Sec. Indus. Ass’n*, 479 U.S. 388, 399 (1987). Whether a plaintiff’s interests  
13 fall within a statute’s zone of interests is determined “not by reference to the overall  
14 purpose of the Act in question, but by reference to the particular provision of law  
15 upon which the plaintiff relies” and which forms the basis of the complaint. *Bennett*,  
16 520 U.S. at 175–76; *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 883 (1990) (citing  
17 *Clarke*, 479 U.S. at 396–97).

18 As Defendants recognize, the Supreme Court expressly held that the zone of  
19 interests test determines whether a plaintiff may sue under Title VII’s  
20 “aggrievement” provision for violations of Title VII’s substantive provisions. (ECF  
21 No. 47 at 7 (citing *Thompson*, 562 U.S. at 176–78).) Like Defendants here, the  
22 defendant in *Thompson* asserted that the plaintiff fell outside the applicable zone of  
23 interests. Both Title VII and the FHA permit any person “claiming to be aggrieved”  
24 by unlawful discriminatory conduct to commence suit. *Compare* 42 U.S.C.  
25 §3613(a)(1)(A) with 42 U.S.C. §2000e-5(f)(1). *Thompson* is therefore relevant to the  
26 applicability of the zone of interests test to the FHA and the Court turns to its analysis.

27 In *Thompson*, the plaintiff brought suit under Title VII’s anti-retaliation  
28 provision alleging that, by firing him, the defendant company unlawfully retaliated



1 against his fiancé who had filed a sex discrimination charge against the company.  
2 562 U.S. at 170. Drawing a parallel between Title VII’s aggrievement requirement,  
3 42 U.S.C. §§2000e-5(b), (f)(1), and the APA’s aggrievement requirement, 5 U.S.C.  
4 §702, the Supreme Court held that Title VII incorporates the zone of interests test.  
5 562 U.S. at 177–78. To reach this conclusion, the Supreme Court “decline[d] to  
6 follow” the view that Title VII’s aggrievement provision is coextensive with Article  
7 III as premised on “ill-considered” “dictum” in *Trafficante*, 409 U.S. at 209,  
8 concerning who may sue under the FHA. *Id.* at 176. The Supreme Court observed  
9 that “if any person injured in the Article III sense by a Title VII violation could sue,  
10 absurd consequences would follow,” citing the example of a shareholder suing a  
11 company for a racially discriminatory firing of an employee. *Id.* at 176–77. The  
12 Supreme Court also rejected as “artificially narrow” the view that Title VII’s anti-  
13 retaliation provision should be limited to only the employee who engaged in a  
14 protected activity. *Id.* at 177. Accordingly, Title VII “enable[s] suit by any plaintiff  
15 with an interest arguably sought to be protected by the statute, while excluding  
16 plaintiffs who might technically be injured in an Article III sense but whose interests  
17 are unrelated to the statutory prohibitions in Title VII.” 562 U.S. at 178. Importantly,  
18 while rejecting as “dictum” language from *Trafficante* on which subsequent FHA  
19 standing decisions relied, the Supreme Court cautioned that its holding in *Gladstone*  
20 is “compatible with the ‘zone of interests’ limitation.” *Id.* at 176.

21 Post-*Thompson*, multiple courts split on the impact of the decision on FHA  
22 claims. See *Lee*, 2017 WL 346021, at \*7 (“Post-*Thompson*, federal courts are split  
23 as to whether a plaintiff may establish FHAA standing by simply meeting the  
24 minimum requirements set forth under Article III, or whether a statutory standing  
25 zone-of-interests test needs to be applied.”); *Sturm*, 2013 WL 8604760, at \*2  
26 (indicating that *Thompson* “suggest[ed] a narrower standing requirement under the  
27 FHAA than Article III standing” but solely examining Article III standing). Courts  
28 took varying approaches in analyzing whether and how the zone of interests test

1 would apply to FHA causes of action. *Compare Cty. of Cook v. Bank of Am. Corp.*,  
2 181 F. Supp. 3d 513, 519 (N.D. Ill. 2015) (declining to apply test to FHA claim after  
3 finding that plaintiff had shown an Article III injury sufficient for FHA standing);  
4 *City of Los Angeles v. Bank of Am. Corp.*, No. CV 13-9046 PA (AGRx), 2014 WL  
5 2770083, at \*8 (C.D. Cal. June 12, 2014) (declining to apply zone of interests test to  
6 FHA claims on ground that “the Supreme Court has not yet applied that requirement  
7 to the FHA.”) *with City of Los Angeles v. JPMorgan Chase & Co.*, No. 2:14-cv-  
8 04168-ODW (RZx), 2014 WL 6453808, at \*5–6 (C.D. Cal. Nov. 14, 2014)  
9 (acknowledging *Thompson*, but “find[ing] that the zone of interests under the FHA  
10 is coextensive with Article III standing”); *City of Los Angeles v. Wells Fargo & Co.*,  
11 22 F. Supp. 3d 1047, 1057 (C.D. Cal. 2014) (“Since the Court has already found that  
12 the City has adequately alleged Article III standing, the City’s alleged injuries fall  
13 within the FHA’s zone of interests.”) *and with Cty. of Cook v. Wells Fargo & Co.*,  
14 115 F. Supp. 3d 909, 917 (N.D. Ill. 2015) (Feinerman, J.) (applying test because “the  
15 Supreme Court has explicitly and unequivocally . . . rejected” its “‘ill-considered  
16 dictum’ from *Trafficante* and *Gladstone*.”).

17 Unlike these courts, Defendants’ challenge comes in the wake of the Supreme  
18 Court’s decision in *Bank of America Corp. v. City of Miami*, 137 S. Ct. 1296 (2017),  
19 which applied the zone of interests test to the FHA. In the case, the City of Miami  
20 sued Bank of America and Wells Fargo for allegedly predatory practices against  
21 minority borrowers, which the City alleged caused it to suffer financial harm,  
22 including property value and tax base diminutions. *Id.* at 1300. Relying on  
23 *Thompson*, the banks argued that the City fell outside the FHA’s zone of interests  
24 and asserted that “farfetched consequences” would follow if the City could sue  
25 because it would mean anyone affected in the local economy could sue so long as  
26 they had constitutional standing. *Id.* at 1301, 1304. Cautioning that *Thompson*  
27 concerned who may sue under Title VII and not the FHA, *id.* at 1304, the Supreme  
28 Court reaffirmed the “presum[ption] that a statute ordinarily provides a cause of

1 action ‘only to plaintiffs whose interests fall within the zone of interests protected by  
2 the law invoked,’” *id.* at 1302 (quoting *Lexmark*, 134 S. Ct. at 1387 and n.4). It held  
3 that the City’s claims of financial injuries resulting from alleged violations of  
4 Sections 3604(b) and 3605 fell within the zone of interests arguably protected by the  
5 FHA, particularly in light of *Gladstone*, which found that a village had standing under  
6 the FHA for similar injuries. *Id.* at 1304–05 (citing *Gladstone*, 41 U.S. at 110–11).  
7 Whereas *Lexmark* made clear in principle that every statutory cause of action has a  
8 zone of interests which determines who may bring such an action, *Bank of America*  
9 applied that principle to the FHA. *Bank of America*, 137 S. Ct. at 1302; *Lexmark*,  
10 134 S. Ct. at 1387. Accordingly, the Court finds that the zone of interests test applies  
11 to FHA claims and considers whether Plaintiff Brown’s interests fall within the zone  
12 of interests that the FHA protects.

13 **b. Application of the Zone of Interests Test in this Case**

14 Defendants contend that this Court must apply the “zone of interests” test in a  
15 manner that precludes from Plaintiff Brown’s FHA claims, or “absurd consequences  
16 would follow.” (ECF No. 47 at 7–8.) If Plaintiff Brown may sue, they argue  
17 caregivers, friends, neighbors, or family members could bring suit if they merely  
18 knew of an alleged discriminatory housing practice and took issue with it—a result  
19 Defendants claim Congress could not have intended when it enacted the FHA. (*Id.*)  
20 Relying on *Bank of America*, Plaintiff Brown argues that a plaintiff need not be a  
21 target of the alleged discrimination to sue under the FHA, but rather only show “some  
22 direct relation between the injury asserted” and the “injurious conduct”. (ECF No.  
23 58 at 12–15.) In reply, Defendants further argue that Plaintiff Brown’s asserted  
24 injuries do not implicate and bear no relation to the interests identified in the FHA or  
25 Supreme Court precedent. (ECF No. 65 at 4–6.) Neither party addresses the specific  
26 statutory provisions of the FHA which form the basis of Plaintiff Brown’s claims—  
27 Sections 3604(b), 3604(c), 3604(f)(3)(B), and 3617.

28 It is clear that the FHA protects an “expan[sive] range of interests.” *Lexmark*,

1 134 S. Ct. at 1388. The FHA expressly codifies that “it is the policy of the United  
2 States to provide, within constitutional limitations, for fair housing throughout the  
3 United States.” 42 U.S.C. §3601. “Courts generously construe the [FHA]” because  
4 it is “a broad remedial statute.” *City of Edmonds v. Wash. State Bldg. Code Council*,  
5 18 F.3d 802, 804 (9th Cir. 1994). Moreover, the Supreme Court has directed that the  
6 relevant zone of interests inquiry under the FHA is whether a plaintiff’s interests are  
7 “arguably protected” by the specific statutory provision at issue. *Bank of America*,  
8 137 S. Ct. at 1301; *see also Bennett*, 520 U.S. at 176. The Supreme Court has  
9 clarified that its “conspicuous[.]” use of the word “arguably” to describe the inquiry  
10 under a particular statute denotes a “lenient approach,” with “the benefit of any doubt  
11 go[ing] to the plaintiff.” *Lexmark*, 134 S. Ct. at 1389. Thus, applying the zone of  
12 interests test here, the Court considers whether Plaintiff Brown’s interests are  
13 “arguably protected” by the specific provisions of the FHA at issue.

14 First, the Court concludes that Plaintiff Brown’s interests fall outside the zone  
15 of interests protected by Section 3617. In relevant part, Section 3617 makes it  
16 “unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise  
17 or enjoyment of, or on account of his having exercised or enjoyed, or on account of  
18 his having aided or encouraged any other person in the exercise or enjoyment of, any  
19 right granted or protected by section . . . 3604 . . . of this title.” 42 U.S.C. §3617.  
20 Courts broadly apply the provision to reach all practices which have the effect of  
21 interfering with the exercise of rights under the FHA, even when no discriminatory  
22 housing practice has actually occurred. *See United States v. City of Hayward*, 36  
23 F.3d 832, 835 (9th Cir. 1994); *Smith v. Stechel*, 510 F.2d 1162, 1164 (9th Cir. 1975).  
24 The provision protects the interests of persons who allege interference with their  
25 rights under the FHA by their landlord, or interference because they encouraged  
26 another. The provision arguably protects the interests of persons who, while persons  
27 who did not engage in a protected activity, suffered injuries as a result of a  
28 defendant’s “intended means” of harming a person who has engaged in a protected

1 activity. *See Thompson*, 562 U.S. at 178 (an employee, while not the object of  
2 retaliation, fell within the zone of interests of Title VII’s anti-retaliation provision  
3 because the employer intentionally terminated him as its chosen means of  
4 retaliation); *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 866 (9th Cir.  
5 2014) (applying *Thompson* to find zone of interests test under Title IX’s analogous  
6 anti-retaliation provision is not limited to those who engaged in the protected  
7 activity). Here, Plaintiff Brown does not allege that she suffered retaliation by  
8 Defendants because she exercised her fair housing rights. She also does not allege  
9 that she encouraged her mother to file the DFEH complaint, nor that her alleged  
10 injuries were Defendants’ “intended means” of harming Plaintiff Elliott. *See*  
11 *Thompson*, 562 U.S. at 178. Accordingly, the Court concludes that Plaintiff Brown’s  
12 interests fall outside the zone of interests protected by Section 3617 of the FHA and  
13 dismisses her claim under that provision.

14 Second, the Court concludes that Plaintiff Brown’s interests fall outside the  
15 zone of interests protected by Section 3604(b). Section 3604(b) makes it unlawful  
16 “to discriminate against any person in the terms, conditions, or privileges of sale or  
17 rental of a dwelling, or in the provision of services or facilities in connection  
18 therewith, because of race . . . or national origin.” 42 U.S.C. §3604(b). “The FHA  
19 was enacted to ‘ensure the removal of artificial, arbitrary, and unnecessary barriers  
20 when the barriers operates invidiously to discriminate on the basis of impermissible  
21 characteristics.” *Llanos v. Estate of Coehlo*, 24 F. Supp. 2d 1052, 1056 (E.D. Cal.  
22 1998). It is clear that Section 3604(b) reflects a congressional intent to protect tenants  
23 from unlawful discrimination on the basis of race or national origin. Its use of the  
24 phrase “any person” also shows that it “arguably protects” persons who are not  
25 tenants, but who are subjected to a discriminatory housing practice, such as by being  
26 excluded from a residence based on their race. *See Lane*, 88 F. Supp. 2d at 406; *see*  
27 *also Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1104 (9th Cir. 2004) (noting  
28 that FHA’s use of “any renter or buyer” in Section 3604(f)(1) denotes a narrower

1 class of persons protected than when the statute uses “any person”). The FAC alleges  
2 that “on information and belief, Plaintiffs contend that” Defendants denied Plaintiff  
3 Brown’s reasonable accommodation request for an emotional support animal for her  
4 mother because of Plaintiff Elliott’s race and/or national origin. (FAC ¶¶19–20.)  
5 These conclusory allegations are insufficient for the Court to find that Plaintiff  
6 Brown’s interests are “arguably protected” by Section 3604(b)’s prohibition on race  
7 and national origin discrimination in housing. The FAC contains no allegations from  
8 which this Court can reasonably infer that Plaintiff Brown was subjected to  
9 discrimination by Defendants on the basis of her race or national origin, or  
10 experienced alleged emotional injuries as a result of such discrimination against  
11 Plaintiff Elliott. Under these circumstances, the Court concludes she falls outside the  
12 zone of interests protected by Section 3604(b) and dismisses her claim under that  
13 provision.

14         However, the Court concludes that Plaintiff Brown’s interests are arguably  
15 protected by Section 3604(f)(3)(B). To properly interpret the zone of interests  
16 protected by this provision, the Court finds relevant the FHA’s overall statutory  
17 provisions concerning disability discrimination, which were added in the Fair  
18 Housing Act Amendments of 1988. *Columbia Pictures Indus. v. Prof’l Real Estate*  
19 *Investors, Inc.*, 866 F.2d 278, 280 n.4 (9th Cir. 1989) (“We believe it fundamental  
20 that a section of a statute should not be read in isolation from the context of the whole  
21 Act . . .”). The FHAA prohibits “discriminat[ion] against any person in the terms,  
22 conditions, or privileges of sale or rental of a dwelling, or in the provision of services  
23 or facilities in connection with such dwelling, because of a handicap.” 42 U.S.C.  
24 §3604(f)(2). Further, Section 3604(f)(3)(B) defines unlawful discrimination to  
25 include “a refusal to make reasonable accommodations in rules, policies, practices,  
26 or services, when such accommodations may be necessary to afford such person  
27 equal opportunity to use and enjoy a dwelling.” 42 U.S.C §3604(f)(3)(B). The  
28 purpose of these provisions is “to end the exclusion of persons with handicaps from

1 the American mainstream.” *City of Edmonds*, 18 F.3d at 806. The FHAA identifies  
2 persons whose interests are directly protected by its disability discrimination  
3 provisions. Its prohibition on disability discrimination encompasses discrimination  
4 because of a handicap of a person, any person who resides or will reside in a dwelling,  
5 or any person associated with that person. *See* 42 U.S.C. §3604(f)(2)(A)–(C). The  
6 “plain language” of this provision “adds classes of individuals who may seek to  
7 enforce rights under the provision based on either their own disability *or that of*  
8 *another.*” *Smith*, 358 F.3d at 1103 (emphasis added). Although Plaintiff Brown does  
9 not allege she has a disability, she alleges that she made multiple reasonable  
10 accommodation requests for her mother and engaged in extensive efforts to secure  
11 Defendants’ approval of them. (FAC ¶¶19–20 (emotional support animal request);  
12 *id.* ¶¶21–22, 28–31 (parking spot requests), *id.* ¶¶32–35, 39, 47–50 (request for new  
13 unit necessary for live-in caretaker).) She sought to secure fair housing for her  
14 mother through the provision of reasonable accommodations to which the FHA gives  
15 a disabled individual, like her mother, a right. Given the broad purpose underlying  
16 the FHAA’s disability discrimination provisions, this Court concludes that Section  
17 3604(f)(3)(B) arguably protects Plaintiff Brown’s interests as an individual who  
18 sought to effectuate her mother’s rights under the provision. Accordingly, the Court  
19 denies Defendants’ motion as to this claim.

20 Lastly, the Court finds that Plaintiff Brown’s interests directly fall within the  
21 zone of interests protected by Section 3604(c). Section 3604(c) prohibits the making  
22 of any statement that indicates a preference or limitation based on handicap. 42  
23 U.S.C. §3604(c). Although this provision does not expressly identify a group of  
24 persons protected, its “broad language” reflects a congressional intent to prohibit any  
25 statements indicating a preference based on handicap in connection with the sale or  
26 rental of a dwelling. *See Ragin v. New York Times Co.*, 923 F.2d 995, 999 (2d Cir.  
27 1991); *United States v. Hunter*, 459 F.2d 205, 214 (4th Cir. 1972) (“Congress has  
28 acted within the bounds of its constitutional power in prohibiting all discriminatory

1 advertising of any dwelling.”). Plaintiff Brown alleges that Defendants made  
2 discriminatory statements to her reflecting a preference or limitation based on  
3 handicap, which resulted in emotional injuries. (FAC ¶¶31, 52.) Section 3604(c)  
4 protects her interests as someone to whom the alleged statements were made and  
5 which resulted in injuries. Accordingly, the Court denies Defendants’ motion as to  
6 Section 3604(c) of the FHA.

### 7 **C. Standing Under the California UCRA**

8 The Court next addresses Defendants’ argument that Plaintiff Brown lacks  
9 standing to assert a claim under the UCRA. Defendants contend that Plaintiff Brown  
10 lacks UCRA standing for two reasons: (1) she did not personally suffer the alleged  
11 discrimination and (2) she was not a party to a transaction with the Defendants.  
12 ((ECF No. 47 at 10.) Plaintiff Brown argues that she has standing under the UCRA  
13 due to Defendants’ refusal to permit her to use the parking facilities at Civita in order  
14 to assist her disabled mother. (ECF No. 58 at 18–19.)

15 The UCRA entitles all persons within the jurisdiction of California “to the full  
16 and equal accommodations, advantages, facilities, privileges, or services in all  
17 business establishments” regardless of certain characteristics, such as race, national  
18 origin, and disability. Cal. Civ. Code. §51(b). “[A]ny person aggrieved” by conduct  
19 unlawful under Section 51 may bring a civil suit and “any person denied the rights  
20 provided in Section 51” may seek damages for the violation of their rights. Cal. Civ.  
21 Code §§52(a), (c). “[T]he [California] legislature has specifically conferred standing  
22 to sue under the UCRA upon the victims of the discriminatory practices.”  
23 *Midpeninsula Citizens for Fair Hous. v. Westwood Investors*, 271 Cal. Rptr. 99, 104  
24 (Cal. Ct. App. 1990); *Osborne v. Yasmeh*, 205 Cal. Rptr. 3d 659, 667 (Cal. Ct. App.  
25 2016). To possess standing under the UCRA, a plaintiff must allege that her civil  
26 rights were personally violated. *Midpeninsula*, 271 Cal. Rptr. at 103. A plaintiff  
27 who alleges mere knowledge or awareness of discriminatory conduct lacks standing.  
28 *See Surrey v. TrueBeginnings, LLC*, 85 Cal. Rptr. 3d 443, 446 (Cal. Ct. App. 2008);



1 *see also White v. Square, Inc.*, No. 15-cv-04539-JST, 2016 U.S. Dist. LEXIS 52432,  
2 at \*12 (N.D. Cal. Apr. 19, 2016).

3 In light of these principles, the Court finds that Plaintiff Brown has sufficiently  
4 alleged that she personally experienced discrimination in violation of the UCRA. It  
5 bears noting that Defendants do not challenge Plaintiff Elliott’s standing to raise an  
6 UCRA claim, which the Court must assume is in part premised on the conduct  
7 supporting Plaintiff Brown’s UCRA claim. When a person with a disability has  
8 standing to sue under the UCRA for discrimination against her, persons associated  
9 with her who personally experienced that discrimination also have standing. *See*  
10 *Osborne*, 205 Cal. Rptr. 3d at 669. In opposition to the Defendants’ motion, Plaintiff  
11 Brown supports her UCRA standing, in relevant part, by pointing to factual  
12 allegations that: (1) Defendants allegedly refused to permit her to park Plaintiff  
13 Elliott’s car in the handicap parking space located at the apartment complex unless  
14 Plaintiff Elliott was the driver although her mother could not drive due to her  
15 disability, and (2) in refusing a request by Plaintiff Brown for an accommodation to  
16 park at a curb near Plaintiff Elliott’s apartment, an employee of the Defendants  
17 allegedly repeatedly told Plaintiff Brown that she did not care Plaintiff Elliott had a  
18 disability and she was unwilling to make any accommodations in parking due to  
19 Plaintiff Elliott’s disability. (ECF No. 58 at 18–19 (citing FAC ¶¶29–30).) These  
20 allegations hardly position Plaintiff Brown as someone who was “merely aware” of  
21 or did not personally experience Defendants’ allegedly discriminatory conduct. Her  
22 allegations are sufficient to support her standing under the UCRA.

23 In reaching this conclusion, the Court rejects Defendants’ argument that  
24 Plaintiff Brown lacks UCRA standing because she was not a party to a transaction  
25 with the Defendants. Relying on *Surrey*, 85 Cal. Rptr. 3d at 443, Defendants argue  
26 that there is a “bright-line rule” for UCRA standing which requires a plaintiff to pay  
27 for a defendant’s services, which Plaintiff Brown cannot do because she was not a  
28 party to Plaintiff Elliott’s lease. (ECF No. 47 at 10.) Defendants read *Surrey* too

1 broadly. The plaintiff in *Surrey* challenged alleged gender price discrimination,  
2 although he had not actually paid for the defendant’s service. The *Surrey* court  
3 “adopt[ed] a bright-line rule that a person must tender the purchase price for a  
4 business’s services or products in order to have standing to sue it for alleged  
5 discriminatory practices *relating thereto*.” 85 Cal. Rptr. 3d at 444 (emphasis added).  
6 Because the plaintiff did not tender the purchase price for the defendant’s services,  
7 “[the plaintiff] did not suffer discrimination in any sense other than in the abstract.”  
8 *Id.* at 447. The subsequent decision in *Osborne v. Yasmeh* expressly cabined *Surrey*’s  
9 “bright-line rule.” 205 Cal. Rptr. 3d 656 (Cal. Ct. App. 2016). The *Osborne* court  
10 reasoned that the *Surrey* rule is inconsistent with the history and legislative intent of  
11 the UCRA as well as the prior application of the UCRA to plaintiffs who “were  
12 refused services, thereby making a purchase impossible.” *Id.* at 669. This Court  
13 agrees. *Osborne* reaffirmed that the fundamental inquiry of UCRA standing is  
14 whether the plaintiff has alleged she personally experienced the defendant business’s  
15 alleged discrimination. *Id.* at 668–69 (describing *Midpeninsula* and *Surrey* as  
16 involving plaintiff who had not “experienced the denial of full and equal treatment  
17 by the defendants in those cases.”); *see also Midpeninsula*, 271 Cal. Rptr. at 104.  
18 This Court finds *Osborne* persuasive and directly applicable here because the FAC  
19 contains no allegation of discriminatory pricing practices. *See Rios v. N.Y. & Co.*,  
20 No. 2:17-cv-04676-ODW(AGR<sub>x</sub>), 2017 U.S. Dist. LEXIS 190794, at \*11 (C.D. Cal.  
21 Nov. 16, 2017) (finding the *Surrey* rule limited to cases involving allegations of price  
22 discrimination in light of *Osborne*).<sup>7</sup>

23 The Court also rejects Defendants’ argument that Plaintiff Brown lacks  
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25 <sup>7</sup> Prior to *Osborne*, at least one federal court in this Circuit applied the *Surrey*  
26 rule to find that a plaintiff lacked standing under the UCRA because he had not  
27 tendered payment. *See White*, 2016 U.S. Dist. LEXIS 52432, at \*9–10 (finding that  
28 the plaintiff “does not cite any authority to support this argument that the rule  
articulated in *Surrey* . . . applies only in the context of discriminatory pricing  
claims.”). In light of *Osborne*, this Court declines to similarly apply *Surrey*.

1 standing based on the decision in *Arnold v. United Artists Theatre Circuit, Inc.*, 158  
2 F.R.D. 439 (N.D. Cal. 1994). (ECF No. 47 at 10.) The *Arnold* court concluded that  
3 companions of individuals with disabilities lacked standing under California Civil  
4 Code Section 54.3 to seek damages. *Id.* at 458. Although the court did not expressly  
5 refer to Section 54.3 as part of the California Disabled Persons Act (“CDPA”),  
6 California courts have made this point clear. *See Munson v. Del Taco, Inc.*, 208 P.3d  
7 623, 631 n.8 (Cal. 2009) (“Sections 54 to 55.3 [of the Civil Code] [are] commonly  
8 referred to as the ‘Disabled Persons Act,’ although it has no official title.”). The  
9 difference between the CDPA and UCRA is important because although the CDPA  
10 “substantially overlaps with and complements the UCRA,” it is “narrow[er] in focus  
11 . . . guarantee[ing] *people with disabilities* equal rights of access . . .” *Jankey v. Lee*,  
12 290 P.3d 187, 190–91 (Cal. 2012) (citing Cal. Civ. Code §§54, 54.1) (emphasis  
13 added). Section 54.3 establishes the damages remedy for CDPA violations. *Id.* at  
14 191 (citing Cal. Civ. Code §54.3). If Plaintiff Brown were asserting a CDPA claim,  
15 she would lack standing because she is not alleged to be an individual with a  
16 disability. *See Reyecraft v. Lee*, 99 Cal. Rptr. 3d 746, 755–56 (Cal. Ct. App. 2009)  
17 (“Standing under [Section 54.3] is established where a *disabled plaintiff* can show he  
18 or she actually presented himself or herself to a business or public place” (emphasis  
19 added)). This case, however, concerns standing to seek damages for violations of  
20 Section 51. (FAC ¶63.) Plaintiff Brown has standing to sue under that provision.  
21 Accordingly, the Court denies Defendants’ motion as to the UCRA claim.

#### 22 **D. Standing for UCL Claim**

23 Finally, the Court considers Defendants’ argument that Plaintiff Brown lacks  
24 standing to assert a claim under the UCL because the FAC lacks allegations showing  
25 that Plaintiff Brown suffered economic injury. The Court agrees.

26 The UCL prohibits and provides civil remedies for “any unlawful, unfair, or  
27 fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200. The California  
28 electorate limited private standing under the UCL to “any person who has suffered

1 injury in fact and has lost money or property’ as a result of unfair competition.” Cal.  
2 Bus. & Prof. Code §17204. “This statutory limitation requires that a plaintiff show  
3 [s]he has suffered losses capable of restitution.” *Zepeiro v. Green Tree Servicing,*  
4 *LLC*, No. 14-01336 MMM (JCx), 2014 WL 12596427, at \*10 (C.D. Cal. Oct. 17,  
5 2014) (citation omitted). To have standing, a private plaintiff must “(1) establish a  
6 loss or deprivation of money or property sufficient to qualify as an injury in fact, i.e.,  
7 economic injury, and (2) show that the economic injury was the result of, i.e., caused  
8 by, the unfair business practice . . . that is that gravamen of the claim.” *Kwikset Corp.*  
9 *v. Superior Court*, 246 P.3d 877, 885 (Cal. 2011). Economic injury from unfair  
10 competition can be shown in “innumerable ways,” such as “(1) surrender[ing] in a  
11 transaction more, or acquir[ing] in a transaction less, than he or she otherwise would  
12 have; (2) hav[ing] a present or future property interest diminished; (3) be[ing]  
13 deprived of money or property to which he or she has a cognizable claim; or (4)  
14 be[ing] required to enter into a transaction, costing money or property, that would  
15 otherwise have been unnecessary.” *Id.* at 885–86.

16 In opposition, Plaintiff Brown argues that a single allegation in the FAC that  
17 she and her mother suffered “economic injuries” as a result of Defendants’ alleged  
18 practices establishes her UCL standing. (ECF No. 58 at 20 (citing FAC ¶52).) The  
19 Court does not agree. Plaintiff Brown must set forth factual allegations showing an  
20 “individualized loss of money or property in any nontrivial amount.” *Kwikset Corp.*,  
21 246 P.3d at 887; Cal. Bus. & Prof. Code §17204. Although this Court must assume  
22 that general factual allegations embrace those specific facts necessary to support a  
23 claim, *see Lujan*, 504 U.S. at 561; *Maya v. Centex Corp.*, 658 F.3d 1060, 1069 (9th  
24 Cir. 2011), “formulaic recitation” of the elements of a UCL claim, such as a  
25 conclusory allegation of “loss of money or property,” is insufficient, *see Ashcroft v.*  
26 *Iqbal*, 556 U.S. 662, 678 (2009). The Court discerns no factual allegations in the  
27 FAC showing that Plaintiff Brown lost, or otherwise suffered, a deprivation of her  
28 money or property due to Defendants’ conduct. Accordingly, the Court grants the

1 Defendants' motion as to Plaintiff Brown's UCL claim.


2 **IV. CONCLUSION & ORDER**

3 For the foregoing reasons, the Court **HEREBY GRANTS IN PART AND**  
4 **DENIES IN PART** Defendants' motion and request (ECF Nos. 46–48) as follows:

- 5 1. Defendants' request for judicial notice (ECF No. 48) is **GRANTED** as  
6 to Exhibits 1–3 and the Notice of Lease Violation (ECF No. 48-3 at 80).  
7 The request is otherwise **DENIED**.
- 8 2. The Court **DISMISSES WITHOUT PREJUDICE** Plaintiff Brown's  
9 (1) FHA and FEHA claims related to (a) retaliation and (b) unlawful  
10 racial and national origin discrimination, and (2) her UCL claim.
- 11 3. Because Defendants solely challenge Plaintiff Brown's standing to  
12 assert a negligence claim that is derivative of her statutory claims (ECF  
13 No. 47 at 12–13), the claim is **DISMISSED WITHOUT PREJUDICE**  
14 only to the extent it is premised on the dismissed claims.
- 15 4. The Court **DENIES** Defendants' motion as to Plaintiff Brown's (1)  
16 FHA and FEHA claims premised on (a) reasonable accommodations  
17 and (b) discriminatory statements, (2) her UCRA claim, and (3) her  
18 negligence claim relating to these claims.

19 **IT IS SO ORDERED.**

20 **DATED: December 14, 2017**

  
21 **Hon. Cynthia Bashant**  
22 **United States District Judge**