



**Berkeley Housing Authority**

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Item 7C

NEW BUSINESS

AB 1482 TPA of 2019

March 14, 2024

To: Honorable Chairperson and  
Members of the Berkeley Housing Authority Board of Commissioners

From: Jhaila R. Brown, General Counsel

Subject: HOUSING AUTHORITY RESPONSIBILITIES REGARDING AB 1482, THE TENANT  
PROTECTION ACT OF 2019

Oral Report

Attachments:

1. 2023 11 02 Black Men and Women United SD v. SDHC Petition for Writ of Mandate and Complaint  
SD Co. Case No. 37-2023-47874



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12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 IN AND FOR THE COUNTY OF SAN DIEGO

15 Black Men and Women United San Diego;

16 Plaintiff and Petitioner,

17 vs.

18 San Diego Housing Commission; Jeff Davis,  
19 in his official capacity as Interim President  
20 and Chief Executive Officer of San Diego  
21 Housing Commission; and Does 1 through 10,  
22 inclusive,

23 Defendants and Respondents.

Case No.: 37-2023-00047874-CU-CR-CTL

**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

1 Plaintiff and Petitioner Black Men and Women United San Diego alleges as follows against  
2 Defendants and Respondents San Diego Housing Commission, Jeff Davis, and DOES 1-10:

3 **INTRODUCTION**

4 1. The federal Housing Choice Voucher (HCV) program provides financial assistance in  
5 the form of a rent subsidy – a voucher – to help low-income families secure and maintain housing in  
6 the private market. A family with a voucher pays approximately 30% of its income to rent. The portion  
7 of the rent remaining after the family’s contribution is paid to the private landlord out of HCV funds.

8 2. Before increasing rent – and receiving *more* HCV funds – landlords participating in the  
9 HCV program must first obtain approval from the local agency administering the HCV program. The  
10 local agency is required to review each rent increase to determine if it is reasonable.

11 3. San Diego Housing Commission (SDHC) is the local agency responsible for  
12 administering the HCV program in the City of San Diego, where more than 40,000 low-income men,  
13 women, and children rely on the HCV program to be able to afford rent and avoid homelessness.

14 4. SDHC engages in the practice of approving rent increases that do not comply with state  
15 law, including the California Tenant Protection Act which caps annual rent increases at 10%.

16 5. To pay for these illegal rent increases, SDHC diverts limited HCV funds away from the  
17 low-income families the funds are intended to help. By using public funds to subsidize landlords’  
18 illegal rent increases, SDHC is engaging in the waste of public funds. These are illegal expenditures.  
19 SDHC’s practice serves as a financial incentive for private landlords to violate tenant protection laws.

20 6. SDHC expends public funds on illegal rent increases despite knowing that such illegal  
21 expenditures have no public benefit and no useful purpose, and cause harm to low-income individuals  
22 in need of rental assistance and eligible for the HCV program, including unhoused residents.

23 7. SDHC’s practice has a discriminatory effect and serves as a barrier to fair housing in  
24 the City of San Diego.

25 8. This suit seeks injunctive and declaratory relief to end SDHC’s practice of approving  
26 and subsidizing illegal rent increases in the HCV program. This suit also seeks to compel SDHC to  
27 obtain restitutionary disgorgement to recover all public funds SDHC paid to private landlords for these  
28 illegal rent increases.

1 **PARTIES**

2 9. Plaintiff and Petitioner Black Men and Women United San Diego is an association  
3 committed to helping and mentoring Black men, women, and youth. Black Men and Women United  
4 San Diego works to further equity and access of opportunity in the San Diego region and beyond. It  
5 serves as a think tank to identify and tackle pressing issues of concern, engages in advocacy to  
6 improve policies and reform institutions, and provides education to members of the public through  
7 print media and radio. Black Men and Women United San Diego members include residents of  
8 neighborhoods in the City of San Diego, the County of San Diego, and beyond. Black Men and  
9 Women United San Diego and its members seek to compel SDHC to comply with state and federal  
10 laws, and administer its programs in a manner that furthers fair housing and race equity. The interest  
11 that Black Men and Women United San Diego seeks to protect herein is central to its mission, the  
12 interest of its members, and the communities that it seeks to protect.

13 10. Defendant and Respondent SDHC is the public housing agency (PHA) responsible  
14 for administering federal HCV program funds and public housing for the City of San Diego. SDHC  
15 administers the HCV program in the City of San Diego. It receives funds from both the federal  
16 government and the State of California. It owns, leases, and manages more than 3,500 rental housing  
17 units in the City of San Diego. It is responsible for carrying out the laws of the State of California  
18 and conforming ordinances, regulations, and policies of the Department of Housing and Urban  
19 Development to the requirements of state law. It is based in and conducts business in San Diego,  
20 California.

21 11. Respondent Jeff Davis is SDHC's Interim President and Chief Executive Officer  
22 (CEO) and is named in his official capacity. As President and CEO, he is responsible for local  
23 implementation of the HCV program.

24 12. Plaintiff and Petitioner is currently unaware of the true names and capacities of the  
25 persons or entities named herein as DOES 1-10, but is informed and believe, and on that basis  
26 alleges, that each of such defendants and respondents is legally required to act in the manner herein  
27 sought. Plaintiff and Petitioner will seek leave to amend this petition and complaint when said  
28 defendants' and respondents' true names and capacities have been ascertained.

1           13.       Plaintiff and Petitioner is informed and believes and thereon alleges that at all times  
2 mentioned below, each defendant and respondent was the principal, agent, representative, partner, or  
3 co-conspirator of the remaining defendants and respondents, and each other, and that in doing the  
4 acts alleged, each of the defendants and respondents were acting within the course and scope of their  
5 agency, employment, partnership, conspiracy, or other authorized relationship with the other  
6 defendants and respondents and with the permission and ratification of respondents. Whenever and  
7 wherever reference is made in this petition to any acts of defendants and respondents, such  
8 allegations and references shall also be deemed to mean the acts of each defendant and respondent  
9 acting individually, jointly, or severally.

### **JURISDICTION AND VENUE**

11           14.       This Court has personal jurisdiction over Defendants and Respondents because  
12 Defendants and Respondents are located in and conduct business in San Diego County.

13           15.       This Court has subject matter jurisdiction over the claims asserted because relief is  
14 sought pursuant to Gov. Code §§ 12900 *et seq.* and Code Civ. Proc. §§ 526a and 1085.

15           16.       Venue is proper in this county because Defendants and Respondents are located in  
16 San Diego County, and the acts and omissions upon which this action is based occurred in San  
17 Diego County.

### **BACKGROUND**

#### State Law Governing Rent Increases

21           17.       The California Tenant Protection Act regulates the amount by which a landlord can  
22 increase rent. (Civ. Code § 1947.12(a).)

23           18.       During a 12-month period, rent increases may not exceed 5% plus the percentage  
24 change in the cost of living or 10%, whichever is lower. (*Id.*)

25           19.       The legislature exempted certain housing from the rent increase cap. (Civ. Code §  
26 1947.12(d).)

27           20.       The housing the legislature exempted is that which is required to be “affordable” –  
28 i.e., not market-rate housing – through some kind of deed, agreement, or other recorded document.

1 Because these units are already required to be rented at below market-rate rent (“affordable”), the  
2 legislature exempted these units from the rent increase cap.

3 21. In contrast to housing that is required to be below market-rate, the rent increase cap is  
4 intended to cover – and does cover – market-rate rental housing. This includes market-rate rental  
5 housing that is rented by HCV recipients.

6 22. By the very nature of the tenant-based HCV program, the units HCV recipients rent  
7 are market-rate units. HCV recipients must find these rental units on the private market. Owners of  
8 these rental units charge full market-rate rent to all tenants, regardless of whether the tenant is a  
9 HCV recipient.

10 23. By renting to a HCV recipient, the owner of a market-rate rental unit is not agreeing  
11 to provide below market-rate rent, but rather the owner is agreeing to receive a portion of its market-  
12 rate rent from an entity other than the tenant.

13 24. Under the HCV program, HCV recipients pay approximately 30% of their income to  
14 rent. The local agency responsible for administering the HCV funds pays the remaining rent portion.  
15 But when the owner of the market-rate rental unit significantly increases the rent, the HCV recipient  
16 may end up paying for that rent increase. Such increases make market-rate rental units inaccessible  
17 to HCV recipients.

18 25. Rent increases which violate the California Tenant Protection Act also undermine the  
19 purpose of the HCV program which is to make market-rate rental units accessible to HCV recipients.

20 26. The California Tenant Protection Act (Assembly Bill No. 1482) was signed into law  
21 the same day California prohibited source of income discrimination, i.e. discrimination against HCV  
22 recipients (Senate Bill No. 329).

23 27. In a rental unit protected by the California Tenant Protection Act, a rent increase of  
24 more than 10% is illegal and unreasonable by default.

25 28. In a unit not protected by the California Tenant Protection Act – i.e., a unit that does  
26 not meet the statutory requirements for protection under the California Tenant Protection Act – a  
27 ninety-day notice is required for a rent increase of more than 10% of the amount charged to that  
28 tenant at any time during the 12 months before the effective date of the increase, either in and of

1 itself or when combined with any other rent increases for the 12 months before the effective date of  
2 the increase. (Civil Code § 827(b).)

3 HCV Program and the Rent Reasonableness Standard

4 29. Once admitted to the HCV program, HCV recipients must find a rental unit on the  
5 private market. After the public housing agency (PHA) approves the rental unit for participation in  
6 the HCV program, the PHA formalizes the financial arrangement in a Housing Assistance Payment  
7 (HAP) contract. The three parties to the HAP contract are the HCV recipient (who pays  
8 approximately 30% of her income to rent), the PHA (which pays the balance of the rent directly to  
9 the landlord), and the landlord.

10 30. The HAP contract states that rent increases may not exceed the reasonable rent for the  
11 unit, and the PHA's rent reasonableness determination must be in accordance with HUD  
12 requirements.

13 31. Annually, the PHA must adopt a written Section 8 Administrative Plan, which sets  
14 forth the PHA's local policies for the administration of the program (on matters for which the PHA  
15 has discretion to establish local policies) and governs the PHA's day-to-day operations. The  
16 Administrative Plan adopted by the PHA must comply with HUD regulations and requirements. (24  
17 C.F.R. § 982.54.)

18 32. Annually, a PHA that is under a Moving to Work (MTW) Agreement with HUD must  
19 submit to HUD an MTW Plan. The MTW Agreement makes clear that even if HUD approves the  
20 PHA's MTW Plan, to the extent activities in the MTW Plan are inconsistent with state law, the PHA  
21 must still administer its activities in compliance with state law.

22 33. PHAs must administer the HCV program in accordance with federal regulations.  
23 Federal regulations require that each PHA evaluate rent increases for rent reasonableness (including  
24 compliance with local rent control), maintain records that document the basis for all PHA  
25 determinations on rent reasonableness, and set forth the PHA's method for determining rent  
26 reasonableness. (42 U.S.C. § 1437f(o)(10)(A)-(C); 24 C.F.R. §§ 982.4, 982.54(d)(15), 982.158(f)(7),  
27 982.507, 982.509.)  
28



1 34. A PHA shall not approve a rent increase that is unreasonable. (42 U.S.C. §  
2 1437f(o)(10)(B).)

3 35. HUD regulations acknowledge that state or local law may also control the amount of  
4 rent that can be paid to the owner in addition to rent reasonableness. (24 C.F.R. § 982.509.)

5 36. PHA approval is required for any changes to the amount of rent due. (24 CFR §  
6 982.308(g).) The landlord must notify the PHA at least 60 days before any proposed changes may go  
7 into effect so that the PHA can determine whether to allow the increase. (*Id.*)

8 37. The Rent Reasonableness Chapter of HUD’s Housing Choice Voucher Program  
9 Guidebook states: “Rent Control. **In regulated localities, rents are limited to the lesser of the**  
10 **PHA-determined reasonable rent or the rent controlled amount** unless units leased under the  
11 voucher program are exempt from local rent control under the local rent control ordinance.” (HUD,  
12 Housing Choice Voucher Program Guidebook, § 2.4.1 (September 2020) (emphasis added).)

13 38. The Rent Reasonable Chapter also explains the basis for and importance of the rent  
14 reasonableness determination:

15 PHAs must ensure that rents charged by owners to Housing Choice Voucher  
16 (HCV) program participants are reasonable. The PHA must compare the rent for  
17 the voucher unit to rents for similar unassisted units in the marketplace.

18 **Ensuring rent reasonableness is very important for effective program**  
19 **operations. If a PHA approves rents that are too high, government funds are**  
20 **wasted and limited housing subsidies are squandered.** Alternatively, if rents  
21 are approved at levels lower than comparable units in the private market, better  
22 owners and higher quality units are discouraged from participating in the program.  
23 In addition, families may be inappropriately restricted in where they can live.

24 Determining rent reasonableness is especially critical when a PHA uses its  
25 authority to set a payment standard higher than the FMR [Fair Market Rent] for  
26 all or a portion of its jurisdiction. Some owners will apply pressure to increase  
27 their rents to, or closer to, the payment standard. PHAs should be careful to not  
28 overpay, or the effect will be to inflate rents in a portion of the market.

(*Id.* at § 1 (emphasis added).)

The State-Based Duty to Affirmatively Further Fair Housing

39. On January 1, 2019, California’s Affirmatively Furthering Fair Housing (AFFH) law

1 (AB 686) took effect. (Gov. Code § 8899.50.)

2 40. “A public agency shall administer its programs and activities relating to housing and  
3 community development in a manner to affirmatively further fair housing, and take no action that is  
4 materially inconsistent with its obligation to affirmatively further fair housing.” (Gov. Code §  
5 8899.50(b)(1).)

6 41. ““Affirmatively furthering fair housing” means taking meaningful actions, in addition  
7 to combating discrimination, that overcome patterns of segregation and foster inclusive communities  
8 free from barriers that restrict access to opportunity based on protected characteristics. Specifically,  
9 affirmatively furthering fair housing means taking meaningful actions that, taken together, address  
10 significant disparities in housing needs and in access to opportunity, replacing segregated living  
11 patterns with truly integrated and balanced living patterns, transforming racially and ethnically  
12 concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance  
13 with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of  
14 a public agency’s activities and programs relating to housing and community development.” (Gov.  
15 Code § 8899.50(a)(1).)

16 42. California’s AFFH law codifies into state law the federal Fair Housing Act’s AFFH  
17 requirement. California enacted this law after the previous federal administration announced efforts  
18 to stop implementing and weaken the regulatory framework aimed at effectuating the Fair Housing  
19 Act’s AFFH provision. SDHC supported the previous federal administration’s efforts to weaken the  
20 federal AFFH framework. For instance, when the previous federal administration called for  
21 assistance with identifying outdated, ineffective, or excessively burdensome regulations, Respondent  
22 Jeff Davis – who was then SDHC’s Executive Vice President – proposed that SDHC identify the  
23 AFFH assessment tool as one such regulation, after which SDHC expressly identified the AFFH  
24 assessment tool in its formal comments to HUD.

25 **STATEMENT OF FACTS**

26 **San Diego Housing Commission’s Housing Practice**

27 43. At all times relevant to this complaint, SDHC engaged in the practice of approving  
28

1 illegal rent increases requested by landlords participating in the HCV program. These rent increases  
2 were unlawful because they did not comply with state law.

3 44. First, SDHC's practice of approving illegal rent increases resulted in households in  
4 rental units covered by the California Tenant Protection Act incurring rent increases that exceeded  
5 the 10% cap.

6 45. Second, on information and belief, SDHC's practice of approving illegal rent  
7 increases resulted in households not covered by the California Tenant Protection Act incurring rent  
8 increases of more than 10% without receiving the required notice period of ninety days.

9 46. After approving these illegal rent increases, SDHC used public funds to subsidize the  
10 cost, thereby transferring public funds to private landlords who were not entitled to these funds, and  
11 diverting these funds away from the low-income families the funds were intended to help.

12 47. Defendants' practice had – and continues to have – the effect of encouraging and  
13 financially incentivizing landlords to violate state laws aimed at protecting tenants.

14 48. While SDHC was diverting its limited HCV funds to subsidize private landlords'  
15 illegal rent increases, SDHC proposed – as a cost-saving measure – the elimination of the utility  
16 allowances HCV recipients rely on. (Utility allowances offset tenant-paid utility costs.)

17 Example of San Diego Housing Commission's Practice

18 49. The following example is one of multiple instances of SDHC approving illegal rent  
19 increases and then subsidizing those illegal rent increases with HCV funds.

20 50. In May 2023, a HCV recipient received notice from SDHC that SDHC had approved  
21 her landlord's request for a more than 10% rent increase. This HCV recipient had not received notice  
22 from her landlord of any rent increase, and her rental unit was covered by the California Tenant  
23 Protection Act.

24 51. This HCV recipient promptly informed SDHC that the rent increase was not legal.  
25 SDHC told this HCV recipient that the rent increase is an issue between her and her landlord, does  
26 not involve SDHC, and if she cannot resolve it with her landlord, she should seek legal help.

27 52. Through her representative, this HCV recipient approached her landlord regarding the  
28 rent increase and lack of notice. This landlord responded that the rent increase was legal because

1 SDHC approved it.

2 53. While the notice this HCV recipient received from SDHC did not provide directions  
3 on how to appeal the rent increase, this HCV recipient timely submitted a request for administrative  
4 review of the rent increase. In June 2023, SDHC denied this HCV recipient’s request for  
5 administrative review, stating “An Administrative Review is not conducted for general policy  
6 issues.”

7 54. In mid-June 2023, this HCV recipient’s landlord informed this HCV recipient that he  
8 would not be increasing her rent effective July 2023 as planned. Days later, this landlord issued this  
9 HCV recipient a rent increase notice. The notice did not comply with state law and the increase was  
10 for more than 10%.

11 55. In July 2023, this HCV recipient received a new notice from SDHC stating that  
12 SDHC had approved her landlord’s new request for a more than 10% rent increase. This HCV  
13 recipient promptly contacted SDHC and raised the same concerns regarding the rent increase notice  
14 not complying with state law. SDHC’s response was the same.

15 56. In September 2023, the rent increase went into effect with SDHC subsidizing 100%  
16 of the rent increase. Over the next year, SDHC will divert thousands of dollars in HCV program  
17 funds to subsidize just this one landlord’s illegal rent increase.

18 57. This is just one of multiple instances of SDHC approving illegal rent increases and  
19 then subsidizing those illegal rent increases with HCV funds.

20 Effect on Racial Minorities

21 58. Based on United States Census Bureau American Community Survey data, renter  
22 households in the City of San Diego are approximately 54.2% minorities (8.4% African American)  
23 and 45.6% white (not Hispanic or Latino). Meanwhile, HCV recipients in the City are approximately  
24 77.1% minorities (30% African American) and 22.8% white (not Hispanic or Latino). SDHC’s  
25 practice – and the resulting diversion of HCV funds – disproportionately adversely impacts racial  
26 and ethnic minorities in the HCV program and impedes fair housing. SDHC’s practice has a  
27 discriminatory effect and – being illegal – has no substantial legitimate justification.

28 59. On information and belief, after SDHC began implementing this practice of

1 approving – and subsidizing – illegal rent increases, SDHC’s waitlist for the HCV program  
2 increased from 10-12 years to 12-15 years. On information and belief, individuals on SDHC’s HCV  
3 waitlist are disproportionately racial and ethnic minorities. SDHC’s practice – and the resulting  
4 diversion of HCV funds – disproportionately adversely impacts minorities on SDHC’s HCV waitlist,  
5 restricts access to housing opportunities, and impedes fair housing. SDHC’s practice – being illegal  
6 – has no substantial legitimate justification.

7 60. Low-income City residents who are racial minorities constitute a subset of the  
8 population eligible for the HCV program and a protected class. This subset of individuals is  
9 disproportionately represented in the unhoused population.

10 61. At all relevant times, SDHC knew that racial minorities in the City experience  
11 homelessness at a higher rate than white individuals, that a disproportionate number of unhoused  
12 individuals in the City are racial minorities, and that there are significant racial disparities in access  
13 to housing opportunities. The SDHC-funded 2019 Community Action Plan on Homelessness for the  
14 City of San Diego states “Black/African American and American Indian/Alaskan Natives are over-  
15 represented in San Diego’s unhoused population, with Black/African Americans representing 6% of  
16 the general population in the City of San Diego, but 29% of the Emergency Shelter population...”  
17 The 2017 We All Count annual report released by the San Diego Regional Task Force on  
18 Homelessness states: “Compared to the general population of San Diego, a much higher population  
19 of the unsheltered homeless identified as Black or African-American (21 percent compared to 5  
20 percent).” The Action Plan on Addressing Homelessness Among Black San Diegans released in  
21 September 2022 by the Regional Task Force on Homelessness states “Black San Diegans make up  
22 28% of the homeless population in our region even though they only represent 5% of the overall  
23 population. This is the result of historical, systemic, pervasive racial discrimination and ongoing  
24 inequity in our nation and community.” That 2022 Action Plan – which recognizes racial disparities  
25 in access to housing – also states “today in the San Diego region, where Black people make up only  
26 five percent of the population, Black people are 6 times more likely than non-Black people to  
27 experience homelessness.”

28 62. Despite this knowledge, SDHC diverted – and continues to divert – HCV program

1 funds to subsidize private landlords’ illegal rent increases instead of using these public funds to  
2 assist unhoused residents – disproportionately racial minorities – eligible for the HCV program.  
3 SDHC’s practice disproportionately harms this subset of individuals when compared to the entire  
4 population of eligible City residents, deprives these individuals of housing opportunities, and  
5 impedes fair housing.

6 63. On information and belief, the population of City residents in need of rental  
7 assistance, eligible for the HCV program, and not served by the HCV program consists of a  
8 population with an even greater percentage of racial minorities than the percentage of racial  
9 minorities currently in the HCV program. However, even applying the racial composition of existing  
10 HCV recipients, minoritized households are significantly more likely to be negatively impacted by  
11 SDHC’s practice as white households. African American households are even more likely to be  
12 negatively impacted by SDHC’s practice, more than three times as likely as white households. Thus,  
13 of those who are eligible for the HCV program and in need of rental assistance – including unhoused  
14 residents – but not currently in the HCV program, the subset of racial minorities is  
15 disproportionately adversely impacted by SDHC’s practice.

16 64. SDHC’s practice has a disproportionate adverse effect on racial and ethnic minorities  
17 and – being illegal – has no substantial legitimate justification.

18 65. At all relevant times, SDHC’s practice has had – and is predicted to continue to have  
19 – discriminatory effects and serve as a barrier to fair housing in violation of SDHC’s obligation to  
20 affirmatively further fair housing.

21 **FIRST CAUSE OF ACTION**

22 Waste of Public Funds—Code Civ. Proc. § 526a  
23 (Plaintiff Against Defendant San Diego Housing Commission)

24 66. Plaintiff re-alleges and incorporates by reference each of the allegations set forth in  
25 the preceding paragraphs as though set forth in full.

26 67. Code of Civil Procedure section 526a permits private individuals or entities to bring  
27 an action to “obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or  
28 injury to, the estate, funds, or other property of a local agency.”

1 68. Plaintiff Black Men and Women United San Diego’s members are tax-paying  
2 residents of the City of San Diego and therefore having standing to bring an action under Code of  
3 Civil Procedure Section 526a.

4 69. SDHC administers its programs and services in a manner that subsidizes illegal rent  
5 increases imposed by private landlords in the HCV Program. Because these actions violate federal  
6 and state law, including the California Tenant Protection Act, SDHC engages in an illegal  
7 expenditure of public funds.

8 70. SDHC expends public funds on rent increases despite knowing that SDHC’s actions  
9 incentivize private landlords to violate laws intended to protect tenants and prevent homelessness.

10 71. SDHC expends public funds on illegal rent increases despite knowing that such rent  
11 increases have no public benefit and no useful purpose, and cause harm to residents of the City of  
12 San Diego, disproportionately adversely impacting racial minorities.

13 72. Plaintiff seeks a declaration regarding SDHC’s waste of public funds and an order  
14 enjoining SDHC from continuing the illegal expenditure of taxpayer monies.

15 73. Plaintiff also seeks to compel SDHC to obtain restitutionary disgorgement to recover  
16 all public funds SDHC paid to private landlords for these illegal rent increases.

17  
18 **SECOND CAUSE OF ACTION**

19 Violation of the Fair Employment and Housing Act — Gov. Code §§ 12900, *et seq.*  
(Plaintiff Against Defendant San Diego Housing Commission)

20 74. Plaintiff re-alleges and incorporates by reference each of the allegations set forth in  
21 the preceding paragraphs as though set forth in full.

22 75. The California Fair Employment and Housing Act (FEHA) prohibits housing  
23 discrimination based on race, color, religion, sex, gender, gender identity, gender expression, sexual  
24 orientation, marital status, national origin, ancestry, familial status, source of income, disability,  
25 veteran or military status, or genetic information. (Gov. Code §§ 12920, 12955.)

26 76. Under FEHA’s prohibition on discrimination based on source of income, landlords  
27 are prohibited from engaging in the discriminatory practice of treating tenants who have a Housing  
28

1 Choice Voucher differently than tenants who do not have a Housing Choice Voucher, including by  
2 administering a rental policy or practice that has a discriminatory effect on tenants with vouchers,  
3 applying inferior terms to tenants with vouchers, failing to comply with tenant protection laws when  
4 renting to tenants with vouchers, and setting higher rents for voucher-households than for non-  
5 voucher households. (Gov. Code §§ 12955, 12927(c)(1); 2 CCR § 12141.)

6 77. Under FEHA, it is unlawful to engage in discriminatory housing practices that make  
7 housing opportunities unavailable or render infeasible housing opportunities, engage in financial  
8 assistance practices that have a discriminatory effect, or fail to enforce generally imposed  
9 requirements in a discriminatory manner. (Gov. Code §§ 12900, *et seq.*; 2 CCR §§ 12005, *et seq.*)

10 78. Entities – including government agencies – are prohibited from aiding and abetting  
11 the doing of any of the acts declared unlawful by FEHA. (Gov. Code § 12955(g); 2 CCR §  
12 12005(w).)

13 79. Under FEHA, there is direct liability for failing to take prompt action to correct and  
14 end a discriminatory housing practice by a third-party, where the entity knew or should have known  
15 of the discriminatory conduct and had the power to correct it. (2 CCR §§ 12010(a)(1)(C), 12005(w).)

16 80. FEHA authorizes a claim for housing discrimination irrespective of intent, when the  
17 alleged act or omission has the effect of discriminating on the basis of race or source of income.  
18 (Gov. Code § 12955.8(b).)

19 81. Proof of an intentional violation of FEHA includes an act or failure to act that  
20 demonstrates an intent to discriminate. (Gov. Code § 12955.8(a).) There is intentional discrimination  
21 when the intent to discriminate is a motivating factor in the commitment of a discriminatory housing  
22 practice, even though other factors may also have motivated the practice. (*Id.*) An intent to  
23 discriminate may be established by direct or circumstantial evidence. (*Id.*)

24 82. At all times relevant to this action, SDHC failed to take prompt action when it knew  
25 or should have known unlawful acts – the imposition of illegal rent increases – were occurring by  
26 private landlords in a contractual relationship with SDHC when SDHC was in a position of power to  
27 prevent such unlawful acts – by not approving the requests for approval of the illegal rent increases.

28 83. At all times relevant to this action, SDHC aided and abetted unlawful acts by private



1 landlords by approving illegal rent increases and subsidizing those illegal rent increases with public  
2 funds.

3 84. At all times relevant to this action, SDHC aided and abetted unlawful acts by private  
4 landlords SDHC was in a contractual relationship with, including the discriminatory act of treating  
5 tenants with a Housing Choice Voucher different than tenants who do not have a Housing Choice  
6 Voucher.

7 85. At all times relevant to this action, SDHC's rent increase approval practice has and is  
8 predicted to have a disproportionate adverse impact on racial and ethnic minorities, causing and  
9 which is predicted to cause discriminatory effects and serve as a barrier to fair housing in violation  
10 of FEHA.

11 86. At all times relevant to this action, SDHC knew its practice violated FEHA, caused  
12 discriminatory effects including by disproportionately harming minorities, and impeded fair housing  
13 in the City of San Diego. SDHC had many opportunities to revise its practice to reduce disparities,  
14 and SDHC chose not to revise its practice to reduce disparities. SDHC has and continues to  
15 administer its practice in a way that violates FEHA, has discriminatory effects, disproportionately  
16 harms minorities, and impedes fair housing in the San Diego area.

17 87. SDHC's practice is intended to and does disproportionately harm racial and ethnic  
18 minorities.

19 88. SDHC's unlawful and discriminatory housing practice harmed and will continue to  
20 harm Plaintiff unless restrained by this Court.

21 89. Plaintiff is directly and beneficially interested in SDHC's compliance with all  
22 applicable provisions of the law and with all legal duties, as set forth herein.

23 90. Through its housing practice, SDHC has violated and will continue to violate FEHA  
24 unless restrained by this Court.

25 91. Based on the foregoing, Plaintiff is entitled to and demands declaratory and injunctive  
26 relief to enjoin SDHC from violating FEHA and administering its practice in a discriminatory  
27 manner.

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**THIRD CAUSE OF ACTION**

Violation of Duty to Affirmatively Further Fair Housing—Gov. Code § 8899.50  
(Plaintiff Against Defendant San Diego Housing Commission)

92. Plaintiff re-alleges and incorporates by reference each of the allegations set forth in the preceding paragraphs as though set forth in full.

93. Under California’s Affirmatively Furthering Fair Housing (AFFH) requirement, each public housing agency (PHA) is required to take meaningful actions to affirmatively further fair housing – including in subsidized housing programs – and take no action that is materially inconsistent with this AFFH obligation. (Gov. Code § 8899.50.)

94. The duty to affirmatively further fair housing extends to all of a PHA’s activities and programs relating to housing and community development. (*Id.*)

95. At all relevant times, SDHC administered its rent increase approval policy and practice in a manner that violated its duty to affirmatively further fair housing.

96. SDHC’s discriminatory housing practice harmed Plaintiff.

97. Plaintiff is directly and beneficially interested in SDHC’s compliance with all applicable provisions of the law and with all legal duties, as set forth herein.

98. Based on the foregoing, Plaintiff is entitled to and demands declaratory and injunctive relief to enjoin SDHC from administering its practice in a manner that violates its duty to affirmatively further fair housing.

**FOURTH CAUSE OF ACTION**

Writ of Mandate—Code Civ. Proc. § 1085  
(Petitioner Against Respondents San Diego Housing Commission and Jeff Davis)

99. Petitioner re-alleges and incorporates by reference each of the allegations set forth in the preceding paragraphs as though set forth in full.

100. Petitioner is beneficially interested in and affected by Respondents’ policy and practice in administering the HCV Program with respect to approving landlords’ proposed rent increases. Petitioner is also interested in its capacity as an association of residents in Respondents’ performance of their public duties.

1 101. Respondents’ current practice is to not consider state law when determining whether  
2 rent increases are reasonable.

3 102. Respondents have a policy and practice of approving landlord requests for rent  
4 increases in the HCV program when the requested increases do not comply with the law.

5 103. Respondents have a clear and present ministerial duty to administer the HCV program  
6 in the manner required by law. By the actions mentioned herein, Respondents have failed and  
7 refused to administer the HCV program in a manner required by law as alleged in this Petition.  
8 Specifically, Respondents have failed to comply with state law, including Civ. Code § 1947.12 and  
9 Civil Code § 827(b); failed to apply those statutes when assessing rent reasonableness; and approved  
10 – and subsidized with public funds – rent increases that violate state law, including Civ. Code §  
11 1947.12(a) and Civ. Code § 827(b). Respondents have also failed to comply with their duty to  
12 administer their programs and activities in a manner to affirmatively further fair housing as required  
13 by Gov. Code § 8899.50.

14 104. At all times, Respondents have had and continue to have the legal ability to perform  
15 their duties but have failed to do so.

16 105. Petitioner has no other plain, speedy, and adequate remedy in the ordinary course of  
17 law except by way of writ of mandate pursuant to Code of Civil Procedure § 1085.

18 106. Respondents have failed to administer the HCV program at all relevant times in a  
19 manner which ensures compliance with applicable state and federal laws, and federal regulations.  
20

21 **FIFTH CAUSE OF ACTION**

22 Declaratory Relief—Code of Civ. Proc. § 1060  
(Plaintiff Against Defendant San Diego Housing Commission)

23 107. Plaintiff re-alleges and incorporates by reference each of the allegations set forth in  
24 the preceding paragraphs as though set forth in full.

25 108. There is an actual and justiciable controversy between Plaintiff and SDHC regarding  
26 whether SDHC’s actions comply with all applicable laws. SDHC contends that its actions comply  
27 with its legal duties and Plaintiff disputes this contention.  
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1           109.       A judicial declaration of the respective parties' rights and duties is needed so that the  
2 parties can each conduct themselves in accordance with those rights and duties. Without such a  
3 judicial declaration, there will continue to be disputes and controversy over whether SDHC's actions  
4 comply with applicable law.

5           110.       Plaintiff is entitled to a legal declaration of its rights and SDHC's obligations under  
6 applicable law as alleged in this complaint.

7           111.       Plaintiff is entitled to a judicial declaration that SDHC's actions do not comply with  
8 the law.

9           112.       Plaintiff is entitled to a judicial declaration of the invalidity of the expenditure of  
10 public funds on private landlords' illegal rent increases.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff and Petitioner prays for the following:

3 1. For a peremptory writ of mandate and injunctive relief commanding San Diego  
4 Housing Commission to:

- 5 a. Refrain from committing an illegal expenditure of public funds by ceasing to approve  
6 and spend public funds on illegal rent increases, pursuant to Code Civ. Proc. § 526a;  
7 b. Refrain from committing a waste of public funds by ceasing to approve and spend  
8 public funds on illegal rent increases, pursuant to Code Civ. Proc. § 526a;  
9 c. Administer its rent increase approval policy and practice in a manner that comports  
10 with all applicable laws, including the California Tenant Protection Act, when  
11 determining rent reasonableness; and  
12 d. Administer its rent increase approval policy and practice in a manner that  
13 affirmatively furthers fair housing as required by Gov. Code § 8899.50 and complies  
14 with the Fair Employment and Housing Act (Gov. Code §§ 12900 *et seq.*).

15 2. For a declaration of the invalidity of San Diego Housing Commission’s expenditure  
16 of public funds on illegal rent increases, and for a declaration that San Diego Housing Commission’s  
17 rent increase approval policy and practice violates applicable laws, including the California Tenant  
18 Protection Act (including Civ. Code § 1947.12), the Fair Employment and Housing Act (Gov. Code  
19 §§ 12900 *et seq.*), and California’s Affirmatively Furthering Fair Housing requirement (Gov. Code §  
20 8899.50).

21 3. For restitution and disgorgement as allowed by law;

22 4. For reasonable attorneys’ fees;

23 5. For costs of suit incurred herein;

24 6. For such other and further relief as the Court deems just and proper.

25  
26 Dated: November 1, 2023

By:



Parisa Ijadi-Maghsoodi  
Attorney for Plaintiff and Petitioner

VERIFICATION

1 I, Francine Maxwell, am the Chair of Black Men and Women United San Diego, the  
2 Petitioner and Plaintiff in the above-entitled action. I am authorized to make this verification on  
3 behalf of Black Men and Women United San Diego. I have read the foregoing Petition for Writ  
4 of Mandate and Complaint for Injunctive and Declaratory Relief and know the contents thereof.  
5 The same is true of my own knowledge, except as to those matters which are therein alleged on  
6 information and belief, and as to those matters, I believe it to be true.  
7

8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct. Executed on November 1, 2023 in San Diego, California

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Francine Maxwell