



Berkeley Housing Authority

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Item 4B

NEW BUSINESS

AB 1482 TPA of 2019

March 25, 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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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

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

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

23 19. The legislature exempted certain housing from the rent increase cap. (Civ. Code §
24 1947.12(d).)

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

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.

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18 **SECOND CAUSE OF ACTION**

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

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

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

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

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 expect 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.
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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.

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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.
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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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