Farewell to Stephanie Haffner
Long time Western Center litigator Stephanie Haffner will be joining Legal Aid of Marin as their new executive director. Stephanie’s work has had a profound impact on many low-income Californians. She began her career at CRLA, where she served as lead counsel in *Price v. City of Stockton*, which secured replacement housing and relocation benefits for hundreds of hotel residents. At Western Center, she secured funding for affordable housing for homeless residents through the *Gamble v. City of Fullerton* litigation, helped thousands of hungry Alameda County residents access timely CalFresh benefits through the *Lilley* case, and enforced protections for indigent Orange County individuals seeking General Assistance in through the *Mankinen* litigation, among many other things. We wish Stephanie well in her next adventure!
Case Updates

Landlord Tenant

Trial court grants preliminary injunction enjoining landlords from proceeding with no fault evictions in multifamily housing
Corporate landlord’s purchase of a multifamily property was financed by a $17.5 million tax exempt bond. In order to secure the bond, landlord promised the City of Oxnard that all or nearly all tenants could remain in place, and that any displaced tenants would be relocated to comparable properties. Landlord then initiated eviction proceedings against multiple tenants without offering relocation. Tenants successfully defended multiple unlawful detainers and landlord kept filing more. The court granted a preliminary injunction enjoining the landlord from initiating further no-fault evictions, finding that the tenants were likely to prevail on their claims of negligent misrepresentation, fraud and unfair business practices. Kudos to Los Angeles Center for Community Law & Action for this win!

Appellate division affirms tenants’ right to demur after motion to quash denial
Tenants filed a motion to quash, which was denied with an order permitting the tenants to “answer” within 5 days. Tenants demurred to the complaint, and the court entered a default judgment against them. On appeal, the Los Angeles Appellate Division held that the court was not permitted to restrict the tenant from filing a demurrer.

TIC owners’ challenge to SF condo conversion ordinance dismissed
Tenancy in common owners challenged a local ordinance requiring them to offer their tenant a lifetime lease when they applied for a condo conversion. The court dismissed the owners’ claims, finding that the takings claims were not ripe because the owners did not exhaust state remedies, and their state law claims were time barred because they failed to file within 90 days of the City’s decision. The owners have filed an appeal.

Class certified in late fee case against Equity Residential
Tenants’ motion for class certification in this late fee case was granted by the district court. With 36,000 units in California, Equity Residential is a massive corporate
landlord and this case has the potential to afford relief to a large number of California tenants. Congratulations to Jason Tarricone and Margaret McBride at Community Legal Services of East Palo Alto on this decision.

**Airbnb prevails in suit by corporate landlord seeking to enforce sublease prohibition**


Landlord Aimco sued Airbnb for facilitating subleasing of Aimco apartments with no subletting clauses. The district court granted Airbnb’s motion to dismiss with prejudice, finding that the landlord’s claims were barred by the federal “Communications Decency Act” which protects providers of online platforms for user created content. Aimco has filed an appeal.

**Tenant loses on Anti SLAPP motion despite jury finding that landlord acted with malice in filing eviction**


A Santa Monica tenant prevailed in an unlawful detainer where the jury found that the tenant violated the lease by renovating the apartment, but that the landlord maliciously brought the action. The landlord appealed. A local anti-harassment ordinance imposes criminal and civil liability on landlords that try to evict tenants in bad faith, and, while the landlord’s appeal of the unlawful detainer judgment was pending, the tenant brought an affirmative suit against the landlord under the ordinance. The trial court granted the landlord’s Anti-SLAPP motion in the affirmative suit, and the tenant appealed. After several procedural twists, the Court of Appeal upheld the grant of the Anti-SLAPP motion, finding that the tenant’s suit arose from the filing of the unlawful detainer, which was protected activity. The court reasoned that the landlord’s conduct was not illegal as a matter of law, because of the jury’s mixed findings.

**Res judicata doesn’t help a commercial tenant avoid back rent judgment**


Commercial tenant argued that res judicata barred her former landlord from seeking additional back rent in a regular civil action after he obtained an unlawful detainer judgment including one month of back rent. The court affirmed the trial court decision finding that the unlawful detainer judgment did not preclude the landlord from seeking additional rent through the regular civil case.

**Tenant wins $350K punitive damages in wrongful eviction suit**

*Fernandes v. Singh (2017) 16 Cal.App.5th 932, 938, as modified on denial of reh’g (Nov. 2, 2017), review denied (Jan. 10, 2018).*

Wrongfully evicted tenant’s award of $87,894 in compensatory damages and $350,000 in punitive damages, plus costs, prejudgment interest, and attorney fees upheld on appeal.

**Tenant in foreclosed property wins $40K default judgment against former owner**


Tenant in foreclosed property locked out by owners awarded $40,700 in damages under Civil Code sections 789.3 and 1950.5. Default judgment entered against landlord. Congratulations to the Law Foundation of Silicon Valley team for this great result!

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**Land Use**

Charter cities may avoid housing element obligations, Court of Appeal holds
Kennedy Commission v. City of Huntington Beach (2017) 16 Cal.App.5th 841, as modified on denial of reh’g (Nov. 20, 2017), review denied (Jan. 17, 2018)
Advocates seeking to enforce cities’ obligation to build affordable housing use Housing Element law, which requires jurisdictions to accommodate their share of the Regional Housing Need Allocation (RHNA “reena”). The Housing Element is one part of a city’s “general plan,” where the city lays out a detailed plan for providing housing for all segments of the community. Charter cities have frequently argued that they are exempt from various aspects of planning laws, and the Court of Appeal handed them a big victory in this case. The trial court granted the petition for writ of mandate invalidating the City’s amendment to its development plan, because the amendment reduced the number of affordable units built and was inconsistent with the City’s Housing Element and general plan. The Court of Appeal reversed, finding charter cities are exempt from the requirement that amendments to specific plans be consistent with the general plan, unless the city has adopted a consistency requirement by ordinance, which Huntington Beach did not. Our policy team is pursuing a legislative fix.

San Francisco's tenant protection ordinances survive challenge, for now
San Francisco Apartment Association v. City and County of San Francisco (9th Cir. 2018) 881 F.3d 1169
San Francisco passed an ordinance regulating buy outs, where landlords attempt to avoid restrictions attached to Ellis Act and owner-move in evictions by negotiating with tenants to move out. Among other things, the ordinance requires landlords to provide disclosure forms to tenants, and to give the rent board copies of buy out agreements. The trial court rejected the landlord’s various constitutional arguments and the Ninth Circuit affirmed.

The City also passed an ordinance restricting no-fault evictions of families with children during the school year, and predictably, the Apartment Association filed suit. The trial court ruled for the landlord, finding the ordinance preempted by state laws governing the timing of eviction suits. The Court of Appeal reversed, finding that the ordinance creates a substantive defense for families and is a permissible limitation on the landlord’s property rights. The landlords have filed a petition for review.
Market rate development survives CEQA, subdivision map act challenge
Local group challenged approval of townhome development near transit, alleging that inadequate parking would cause various problems. The Court of Appeal upheld the trial court’s decision granting judgment to the City, finding that the development did not violate the subdivision map act and that parking impacts are exempt from CEQA review for infill projects within a half-mile of a major transit stop.

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**Fair Housing**

San Francisco's Section 8 ordinance not preempted be FEHA, Court of Appeal holds
*City and County of San Francisco v. Post*, 2018 WL 1737212, __Cal.Rptr.3d__ (Cal. Ct. App., Apr. 11, 2018)
San Francisco passed an ordinance outlawing discrimination against tenants with housing vouchers in 1998. The following year the state legislature added “source of income” discrimination to FEHA, but defined “source of income” so that it did not protect voucher tenants. Since then efforts to enact statewide protections for Section 8 tenants have failed, but advocates continue to push for local protections. Santa Monica’s ordinance recently survived an Apartment Association challenge, with Western Center and LAFLA representing Tenants Together and individual tenant interveners (summary [here](#)). In the current case, the City and County of San Francisco sued landlord Chuck Post for advertisements that said no Section 8 would be accepted, and Post defended by arguing that the local ordinance was preempted by FEHA. Even though FEHA states that it is intended to “occupy the field of regulation or discrimination in employment and housing encompassed by the provisions of this part” the trial court found no preemption. The Court of Appeal affirmed, reasoning that FEHA only preempts local laws covering “source of income”
Advocates’ efforts to protect homeless residents from sweeps meet with mixed results

Across California local officials are conducting sweeps of homeless encampments, forcing people out even though there is no safe and appropriate place for them to go. In Orange County, Elder Law and Disability Rights Center obtained a TRO enjoining local officials from enforcing anti-camping and other anti-homeless ordinances, delaying mass displacement of homeless residents camping in the Santa Ana riverbed. Residents were then provided short term motel vouchers. **OC Catholic Worker v. Orange County**, (8:18-cv-00155). Legal Aid Society of Orange County filed a separate challenge to the sweeps, and federal judge David Carter joined the cases and appointed a special master. **Ramirez v. County of Orange** (8:18-cv-00220). Meanwhile in **Drake et al. v. County of Sonoma** (3:18-cv-01955-VC) homeless Santa Rosa residents and a grassroots organization challenged the proposed sweep of the encampment where they live and sought a TRO. While the Court denied the TRO based on findings that County had made sufficient alternative shelter available, its Order acknowledged that “there is a strong argument that the Eighth Amendment (and perhaps also the Due Process Clause) precludes the government from enforcing an anti-camping ordinance against homeless people when it has no shelter available to them.” The Court further found that the government must accommodate people with disabilities, “who sometimes struggle to see their needs met in temporary shelters.” Santa Rose plaintiffs are represented by California Rural Legal Assistance, the Public Interest Law Project, and Santa Rosa attorney Alicia Roman.

**District Court denies summary judgment to discriminating City, again**


This case arises out of a City’s denial of a developer’s request to upzone a parcel of land to build moderately priced housing. We have summarized the 9th Circuit decision in the case and the district court decision [here](#) and [here](#). Back at the district court again, the City of Yuma again moved for summary judgment on plaintiff’s disparate impact claim and was again denied. Rejecting the City’s argument that disparate impact liability cannot attach to a single zoning decision, the court distinguished the factual scenario from Inclusive Communities and reasoned that “zoning decisions such as the one at issue appear to fall within what Justice Kennedy described as the “heartland of disparate-impact liability.” This “heartland” includes cases that challenge “zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification.” Cheers again to the Brancarts for their excellent work in this important case.

**Tenants’ Unruh Act claim dismissed; reckless indifference is not enough**


Tenants with disabilities sued housing provider because the elevator in their building was constantly broken. Landlords moved to dismiss the tenant’s Unruh Act claim. Held: although the Unruh Act does apply to conduct that takes place after the inception of tenancy, and to claims for a residential complex’s failure to reasonably accommodate, tenants failed to state a cause of action because they did not claim intentional discrimination, only reckless indifference.

**Philadelphia’s reverse redlining claims survive ICP challenge, Cook County’s claims do not fare as well**

**City of Philadelphia v. Wells Fargo & Co.** (E.D. Pa., Jan. 16, 2018, No. CV 17-2203) 2018 WL 424451
Local governments’ fair housing claims against banks continue to make their way through the courts, with varying degrees of success. The City of Philadelphia sued Wells Fargo for reverse redlining, a practice where people of color are targeted for predatory loans. The City presented data showing that the bank issued high numbers of predatory loans in neighborhoods with significant African American and Latino populations, and that more than 1000 of those loans resulted in foreclosure. Citing the Supreme Court’s decision in Bank of Am. Corp. v. City of Miami, the bank argued that the City’s claims were barred by the statute of limitations and failed to show proximate cause. 137 S. Ct. 1296, 1305 (2017) (summarized here). The district court found that City adequately alleged noneconomic injury to its goal of promoting fair housing and an integrated community because discriminatory lending negatively impacts the ability of minority buyers to purchase homes. The court also rejected the bank’s ICP argument that no specific policy caused the racial disparity, finding that employee discretion in implementing bank policies did not bar the disparate impact claim. Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc. (2015) 135 S.Ct. 2507 (ICP).

Cook County alleged it suffered various economic harms because of Bank of America’s many Fair Housing Act violations, including predatory lending and servicing in a discriminatory manner that increased the likelihood that black and Latino borrowers would default. The Bank argued that the County could not meet the causation standard set out in the Supreme Court’s Bank of America decision, and the district court agreed, finding that only the costs connected directly to foreclosures- such as expenses for sheriffs to remove people from their homes – were attributable to the bank's discriminatory practices under the Supreme Court standard. However the court did hold that the County adequately alleged a specific policy that caused the harm, meeting the ICP standard.

Organizational plaintiff has standing to challenge discriminatory practices, district court holds
Project Sentinel and individual Latinx tenants brought fair housing claims against landlords. In an earlier decision summarized here, the district court granted a motion to dismiss in part, finding Project Sentinel did not have standing. The landlords' subsequent motion to dismiss the amended complaint was denied, where the court found the organization had shown a significant diversion of resources, frustration of mission. Congratulations to everyone at Law Foundation and Scott Chang at Housing Rights Center.

Final settlement approval in familial status discrimination case
The court granted final settlement approval in this class action where tenants with children sued the HOA for its discriminatory policies prohibiting children from playing. Plaintiffs were awarded $800,000, plus $296,020 in attorneys’ fees. Congratulations to Law Foundation on a great result!

Landlord must accommodate tenant with disability by admitting him to housing despite criminal conviction, VA district court holds
Landlord refused to allow tenant to add her son to the lease, citing a misdemeanor conviction for indecent exposure and rejecting son’s reasonable accommodation request. The conviction resulted from an incident where the son removed his clothing in public when he was not taking medication for his schizoaffective disorder.
He then received mental health treatment and had no further incidents. The district court denied the landlord’s motion to dismiss, finding that the Fair Housing Act required an accommodation. The landlord should have made an exception to its criminal record policy where the criminal conduct resulted from the disability and the son did not present a direct threat. Congratulations to Eric Dunn for great advocacy in this case!

**Fair housing groups’ suit against Fannie Mae for failure to maintain REO properties survives motion to dismiss**


Fair housing groups sued Fannie Mae for failing to maintain foreclosed properties in minority neighborhoods. Plaintiffs conducted an extensive investigation of Fannie Mae’s maintenance of REO properties over a four year period, showing that homes in white neighborhoods were adequately maintained, while those in communities of color were allowed to deteriorate, causing various harms. The court found that plaintiffs established organizational standing based on frustration of mission and diversion of resources, and that plaintiffs adequately alleged a policy of delegation of discretion and failure to supervise that caused discriminatory impact. Congratulations to Scott Chang, Casey Epp, and the Relman, Dane & Colfax team.

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**Correction:**

In our 2017 tenants’ rights case summary, we incorrectly gave credit for the excellent *Guttmann v. Chiazor* decision, summarized [here](#), to Joshua Johnson of LAFLA. This was actually Ingrid M. Arriaga’s case, and Joshua assisted at the trial court level. Thank you for the correction!

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**Sacramento Update**

**Legislative Session in Full Swing**

On the housing front, this year promises to be very busy in the Legislature, possibly even busier than last year. Approximately 160 housing-related bills have been introduced, and there is general recognition that while last year’s Housing Package, which included six bills sponsored by Western Center and CRLAF, was a significant step forward in addressing California’s affordable housing crisis, there remains much work to be done, particularly to address issues faced by tenants as we continue to chip away at the state’s massive shortage of units affordable to lower-income households. Western Center and CRLAF are sponsoring five new bills this year and have one sponsored bill carried over from last year. We are also working to improve or defeat problematic bills and to support several non-sponsored bills with the potential to advance equitable land use and development, expand or protect the rights of low-income tenants, and address other issues of concern to our low-income clients.

With Legislators back from Spring Recess, policy committee hearings and the budget process are in full swing and we are working hard to address opposition to beneficial bills, voice needed changes to problematic proposals, and ensure appropriate amendments are made so that our sponsored bills are in the best
possible shape to continue moving towards enactment.

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**Key Western Center and CRLAF Bills**

**AB 686 (Santiago)**, introduced in 2017, would establish an obligation for California state, regional, and local governments to affirmatively further fair housing in their decisions related to housing and community development. It is co-sponsored with the National Housing Law Project and Public Advocates.

**AB 1771 (Bloom)** would reform the regional housing needs allocation (RHNA) process to ensure a more equitable, data-driven distribution of the RHNA within regions, establish greater transparency in the distribution process, and provide additional oversight. It is co-sponsored with CRLAF.

**AB 2219 (Ting)** would require landlords to accept third-party rent payments that are made on behalf of a tenant, so long as accepting the third-party payment does not require a landlord to enter into a new contractual relationship in order to receive the payment. In essence, where rental assistance is available without creating additional obligations for the landlord, such assistance could not be refused under this bill. This bill would not apply to Section 8 Housing Choice Vouchers or other similar programs. It is co-sponsored with CRLAF.

**AB 2343 (Chiu)** would make several changes to Unlawful Detainer (Eviction) procedures to make the eviction process fairer for tenants, and give them a chance to resolve issues without the need for an eviction. The bill would extend timelines for complying with certain eviction notices and for answering a complaint in an eviction case, would make changes designed to ensure all parties are able to present their evidence, and would create a presumption of retaliation for evictions filed in response to tenant organizing. It is co-sponsored with CRLAF.

**AB 2797 (Bloom)** would correct a recent California appellate court decision that undermines the application of Density Bonus Law and the Mello Act in cities within the Coastal Zone. It is co-sponsored with CRLAF.

**SB 1333** responds to the *Kennedy Commission v. Huntington Beach* decision summarized above and modifies the Planning and Zoning Law to require that charter cities, as is currently required of general law cities, make development decisions, draft specific plans, and enact zoning laws that are consistent with their adopted General Plan policies, including Housing Element policies. It is co-sponsored with CRLAF and the Public Interest Law Project.

For our complete legislative update click [here](#).

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**Research and Resources**

The Grounded Solutions Network has created an [Inclusionary Housing Calculator](#). The Calculator is helpful for understanding the costs and profits for different types of developments.

The Center for Social Innovation’s Supporting Partnerships for Anti-Racist
Communities (SPARC) released a study finding significant racial disparities in rates of homelessness. The study focused on 6 communities across the county, including San Francisco, and found that black residents accounted for nearly 65% of people experiencing homelessness, but only 13% of the overall population.

Trainings and Events

**Working with Immigrants: The Intersection of Basic Immigration, Housing, and Domestic Violence Issues in California 2018**, April 30, 2018, Webcast and live at PLI in San Francisco, CA

Subsidized housing basics (focus on LITC, Section 8, and Continuum of Care) May TBD, Law Foundation of Silicon Valley, San Jose. **Contact Madeline Howard** to sign up.

**Consumer Series Part 2: From Defense to Offense, Bringing Affirmative Consumer Claims**, May 9, 2018 from noon to 1 p.m.

**Public Interest Boot Camp 2018, June 1, 2018, Webcast and live at PLI San Francisco, CA** (training designed for law students)

**Representing the Pro Bono Client: Consumer Law Basics 2018 (Free)**, June 8, 2018, Webcast and live at PLI San Francisco, CA

Want to brag about a case or share a loss? Announce an upcoming training? Please contact Madeline at mhoward@wclp.org with updates or other items for inclusion in our Housing Update.

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